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“Turpitudinem uxoris fratris tui non revelavit”: John Stokesley and the Divorce Question

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This article provides a new perspective on a lesser-known figure of the Henrician period, John Stokesley, and on the theological foundation of Henry VIII's first divorce. The paper first traces Stokesley's involvement in the matter to about 1527, shows that he was the earliest advocate of Henry VIII, and outlines Stokesley's arguments. Second, it examines how Stokesley's argument was used to meet royal needs, by tracing his position to ancient Fathers and scholastic writers. Third, it details how Stokesley combined nominalist and realist theology into a workable definition of divine law so his own arguments could function logically. We then see how Henry's royal scholars, neatly avoiding the Leviticus–Deuteronomy dichotomy, showed that Henry's marriage to Catherine was unlawful and that the pope had overstepped his authority when he granted a dispensation to allow marriage.

THE QUESTION OF THE LEGITIMACY OF HENRY VIII's first marriage initiated investigations into all aspects of relations between church and state, and precipitated strained and prolonged debates concerning the most profound theological and political theories of the day. Not only did substantial change, both social and political, come in its wake, but out of the search for a new polity stepped some of the greatest figures in Tudor history. They make an impressive list, which includes such men as Thomas More, Thomas Cromwell, John Fisher, and Thomas Cranmer. Some others, who are familiar to modern historians as names in footnotes to the main figures, also made important contributions. Among the figures in this second category is Dr. John Stokesley, bishop of London from 1530 to 1539,¹ who supplied and sustained, with an impressive intellectual steel, one of the single most important aspects of the debate about Henry VIII's divorce. The aim of this article is to increase our understanding and appreciation of Stokesley's scholarly contribution, and to a lesser extent, to introduce some other figures. To do this we must first examine Stokesley's gradual immersion into the divorce controversy, and then look at the important aspects of his work. The former is supplied particularly through a brief examination of Stokesley's academic initiatives of 1527 to 1530; the latter, by

¹For a comprehensive examination of the life and work of John Stokesley, see Andrew A. Chibi, “Bishop John Stokesley: A Humanist Reformer at the Court of Henry VIII” (unpublished Ph.D. thesis, University of Sheffield, 1992).

examination of his *Henricus octavus*,² his *Gravissimae censurae*,³ and his sermon of July 11, 1535.⁴

We can trace directly Stokesley's involvement in the king's marriage crisis to the year 1527, although, as dean of the Royal Chapels, he was doubtless aware of the king's growing controversy much earlier.⁵ In May 1527, a secret legatine court, under the dual authorities of Cardinal Wolsey and Archbishop Warham, had been convened at Westminster.⁶ When the court failed to render a decision on the validity of the royal marriage, Wolsey and Henry adopted different means of concluding the matter. Stokesley, as dean, was one of the first scholars approached by the king. Stokesley was asked to examine the underlying theological principles upon which Henry's marriage had been sanctioned.⁷ That Stokesley took a leading role in the research effort thereafter is supported by his own letters and those of the Spanish ambassador, Eustace Chapuys.

In his routine reports to the emperor, Chapuys describes Stokesley as:

²Public Records Office, State Papers, hereafter cited PRO SP) 1/63, fols. 303–13v, 360–84v. For a comprehensive examination of this material, see Virginia M. Murphy, "The Debate over Henry VIII's First Divorce: An Analysis of the Contemporary Sources" (unpublished Ph.D. thesis, University of Cambridge, 1984), 15–48.

³John Stokesley, Edward Fox, and Nicholas de Burgo, *Gravissimae, atque exactissimae illustrissimarum totius Italiae et Galliae academiaram censurae*. . . (London, 1530), hereafter cited *Censurae*, or idem, *Determinations of the mooste famous and mooste excellent universities of Italy and France* . . . , tr. Thomas Cranmer (London, 1531), hereafter cited *Determinations*. A clear edition of both of these can be found in *The Divorce Tracts of Henry VIII*, ed. Edward Surtz, S.J., and Virginia Murphy (Angers: Moreana, 1988). All references will be to this edition.

⁴References to the sermon are in *Letters and Papers of Henry VIII*, ed. J. S. Brewer, J. Gairdner, and R. H. Brodie (London: Longmans, 1862–1932), 8.1019, hereafter cited LP; M. Maclure, *The Paul's Cross Sermons: 1534–1642* (Toronto: University of Toronto Press, 1958), 187; G. R. Elton, *Policy and Police: The Enforcement of the Reformation in the Age of Thomas Cromwell* (London: Cambridge University Press, 1972), 189; and Susan Brigden, *London and the Reformation* (Oxford: Clarendon, 1989), 233–34. The notes to the sermon are at PRO SP 6/6, fols. 90–98v, or Andrew A. Chibi, "Henry VIII and His Marriage to His Brother's Wife: The Sermon of Bishop John Stokesley of 11 July 1535" *Historical Research* 67/162 (February 1994): 40–56.

⁵His involvement in the king's difficulties might have begun as early as 1518. In a report by Loys de Helwighen, *Calendar of State Papers Spanish (CSPS)*, 4.(2) 967 at p. 472, he recalls a dinner conversation. According to John (William?) Barlow, dean of Westbury, "the King, after he had been married nine or ten years, having gone to confess to a priest whom the Dean named, though being a strange name I have quite forgotten it, found by the counsel and advice of the said confessor, whom the Dean described as a learned divine, that he (the King) could not any longer live with the Queen, his wife, his marriage being certainly null and void, he having married his own brother's wife, which marriage no dispensation could make lawful." This has been used to suggest John Longland's early involvement in the affair; see Gwendolen E. Wharhirst, "The Reformation in the Diocese of Lincoln as illustrated by the Life and Work of Bishop Longland (1521–47)," *Lincolnshire Architectural and Archaeological Societies Reports and Papers* 1:2 (1937): 137–76, at 156. If the dating of the report is correct, it would place this confession some time in 1518 or 1519. For much of 1518, and for some time in 1519, the king's confessor was Stokesley. Longland replaced him as confessor in mid-1519; see LP, 2.2.4340; Alfred B. Emden, *A Biographical Register of the University of Oxford, to A.D. 1500*, 3 vols. (Oxford: Clarendon, 1959), 2:1160–61; Margaret Bowker, *The Henrician Reformation: The Diocese of Lincoln under John Longland: 1521–47* (Cambridge: Cambridge University Press, 1981), 8.

⁶The best modern accounts of the breakdown of the marriage and subsequent events are: Eric Ives, *Anne Boleyn* (Oxford: Oxford University Press, 1986), 99ff., and J. J. Scarisbrick, *Henry VIII* (London: Eyre & Spottiswoode, 1968), 151ff.

⁷George Cavendish, "The Life and Death of Cardinal Wolsey," in *Two Early Tudor Lives*, ed. R. S. Sylvester and D. P. Harding (Oxford: Oxford University Press, 1962), 321.

the man who has most violently and obstinately supported the cause of the divorce, and who is still doing the utmost he can to promote it, for, I am told, scarcely one day passes without his writing some paper or suggesting some new argument in support of what he calls his master's rights.⁸

Chapuys later called Stokesley "the greatest enemy the Queen has hitherto had,"⁹ and kept watch over Stokesley's activities for the next year.¹⁰ William Roper, Thomas More's son-in-law and biographer, also made note of Stokesley's activities. Roper wrote that Stokesley thought the cardinal was not doing as much as he could to further the king's wishes,

thinking that forasmuch as the Cardinal, for lack of such forwardness in setting forth the King's divorce as his grace looked for . . . busily travailed to invent some colourable device for the King's furtherance in that behalf. Which as mentioned above, Stokesley to the King revealed hoping to gain the King's favour thereby and the more disliking of the Cardinal.¹¹

Whether Stokesley's motivation had been to further the king's wishes or bring disfavor upon the cardinal is uncertain, but he at least won the king's ear with his "colourable device." William Tyndale referred to the growing rivalry between Stokesley and Wolsey over the issue:

If among those cormoraunts any yet began to be to much in favour with the Kyng, and to be somewhat busie in the Court and to drawe any other way then as my Lord Cardinall had appointed that the plowe shoulde go, anone he was sent to Italy or to Spayne, or some quarrel was picked agaynst him, and so was thrust out of Court, as Stokesley was.¹²

What had Stokesley produced that made Chapuys perceive him as such a threat, and prompted Roper to associate the threat with Wolsey's later downfall?

It is certainly clear that questioning the legality of the royal marriage was nothing new. Archbishop Warham had expressed doubts several years earlier, saying that the marriage was inconsistent with divine law.¹³ Such opinion necessitated Pope Julius II's dispensation of the impediment between Henry and Catherine, affinity in the first degree. John Fisher, John Longland, and Cuthbert Tunstal, among others, agreed that the dispensation was sufficient to clear away the impediment.¹⁴ Stokesley was, according to Chapuys, the first and only "man of learning

⁸CSPS, 4.1.160, at p. 238.

⁹CSPS, 4.1.168, at p. 256.

¹⁰E.g., CSPS, 4.1.194, 224, 241, 250, 257.

¹¹William Roper, "The Life of Sir Thomas More," in *Two Early Tudor Lives*, ed. R. S. Sylvester and D. P. Harding (Oxford: Oxford University Press, 1962), 218.

¹²William Tyndale, "The Practise of Prelates" (Marburg, 1530), in *Expositions and Notes on Sundry Portions of the Holy Scripture*, ed. Henry Walter (Cambridge, 1849), 309.

¹³British Library: Cottonian Manuscript, hereafter cited BL Cott. MS, Vitellius, B.12, fol. 123v; LP, 4.3.5774.

¹⁴PRO SP, 2/1, fols. 22–23; LP, 4.3.3140; Raphael Holinshed and William Harrison, eds., *Chronicles*, 3 vols. (London, 1586), 3:906.

... found to write in his favour or defend his unjust cause.”¹⁵ Chapuys made the point of recalling that in the early stages of the matter Stokesley had initially supported the validity of the marriage, as had Fisher and Tunstal, but “having studied and pondered the case he finds that he was quite wrong” to have done so.¹⁶ Stokesley pointed out to the king that if, as had been said, the marriage had indeed transgressed divine law, it must be considered invalid. When Henry referred to Julius II’s dispensation, Stokesley pointed out that it was a generally accepted principle, based on Aquinas, that “divine laws” were beyond the papal power of dispensation.¹⁷ Julius II’s dispensation was therefore null and void; the king was not married. Stokesley referred to the text of Leviticus (examined below) and claimed it represented the Word of God or divine law. He also referred to Deuteronomy, with its example of the levirate, and insisted it represented only an unpopular custom and, therefore, did not have the strength of legality behind it. Consequently, the pope could not depart from the divine law as written in Leviticus. Henry VIII was most pleased by this solution¹⁸ and would refer to it repeatedly over the course of the controversy.¹⁹ It would, in fact, become the central argument of the anonymous publication, *Glasse of Truthe*.

All other questions aside, we know that the marriage crisis revolved around two main difficulties. The first was the question of whether Catherine and Arthur had consummated their marriage.²⁰ The second, the concern of this article, was the need to reconcile the two central biblical texts, from Leviticus and Deuteronomy. As Stokesley illustrated to the king, Lev. 18:16 and Lev. 20:21²¹ could be employed as support against the marriage. This is true enough, in the broadest sense of the two texts. We know that in several early sixteenth-century editions of the Vulgate, the text of Lev. 18:16 in particular contains an interpolation: “Nobody may marry his brother’s wife.”²² John Fisher argued against this because these words did not appear in the Hebrew or Greek texts, whereas Robert Wakefield, one of Stokesley’s research assistants, an expert Hebraist, and a contributor of valuable material in his own right,²³ argued that these words could be found in the Arabic texts, and

¹⁵CSPS, 4.1.241, at p. 386.

¹⁶Ibid.

¹⁷Thomas Aquina, *Summa Theologicae*, 60 vols. (London: Blackfriars, 1969), 29:154 (I-II, Q.97, a.4, ad.3.)

¹⁸Nicholas Harpsfield, *The Life and Death of Sir Thomas More, Knight, Sometimes Lord High Chancellor of England*, ed. E. V. Hitchcock, Early English Text Society, original ser., no. 186 (London: EETS, 1932), 49.

¹⁹Roper, *Life of More*, 218; BL Cott. MS, Cleopatra E.6, fols. 148rv; Richard Marius, *Thomas More* (New York: Knopf, 1984), 375; John Guy, *Tudor England* (Oxford: Oxford University Press, 1988), 153, 155.

²⁰Edward Lord Herbert of Cherbury, *The History of England under Henry VIII* (London, 1870), 378ff.

²¹Lev. 18:16: “Turpitudinem uxoris fratris tui non revelavit, quia turpitudine fratris tui est.” Lev. 20:21: “Qui duxerit uxorem fratris sui rem facit illicitam; turpitudinem fratris sui revelavit, absque liberis erunt” (Vulgate)

²²Richard Rex, *The Theology of John Fisher* (Cambridge: Cambridge University Press, 1991), 166.

²³Chibi, “Stokesley,” 81–84; Rex, *Fisher*, 166–70; Robert Wakefield, *Kotser Codicis R. Wakefeldi*. . . (London, 1532). Wakefield was a recognized Hebrew scholar, who tutored Fisher, and possibly Stokesley, in the subject. His voice did carry some weight in this matter.

indeed in the others, if only in spirit.²⁴ The difficulty, of course, appeared in the text of Deut. 25:5,²⁵ which commanded the Hebrew custom of levirate marriage.²⁶ Since the king's marriage seemed to conform to these words, the marriage could be taken as sound and the dispensation as valid. The problem was how God could command a man to marry his brother's wife in one text, and forbid the same practice as an unforgivable sin in another? For the most part, theologians had tried to reconcile these two texts by making accommodation for the levirate. Stokesley's solution had the advantage of proving that Leviticus was received as divine law, while at the same time making a case for the levirate which avoided the taint of evil, and which did not compromise Henry VIII's situation. To understand this solution, we must first examine prior attempts to reconcile these passages.

One of the earliest was made by Augustine. In his *Quaestiones in Heptateuchum*, he examines three possible solutions. Perhaps the levitical prohibitions barred marriage between a man and the wife of his living brother. This, however, neither applied to the king's situation, nor was this situation a gray area in divine law (discussed below). Perhaps, then, the prohibitions barred marriage between a man and the divorced wife of his living brother. Again, this was neither a gray area, nor applicable to the king's case. Perhaps the prohibitions barred marriage between a man and the widow of his dead brother, unless the brother had died childless.²⁷ This accommodated the levirate, and of course, seemed to outline the king's situation. The majority of scholars who used this interpretation to reconcile the two texts included John Fisher and Thomas Abel, two of Catherine's most prolific champions.²⁸ Stokesley followed a minority view, however, which upheld the levitical ban in its full force. For him, the levirate rule was a judicial precept, not a moral one, a mere human interpretation of divine law which applied to the Jews only.²⁹ Although there was some strong evidence to support this view, which was used by some provincial councils, some church fathers (including Basil and Gregory the Great), and some scholastics (including Thomas Aquinas), Scarisbrick quite successfully points out that much of this had to be qualified in some way.³⁰ Stokesley's approach, however, was to produce a coherent examination of divine law and its relation to natural/moral law and human law in order to show where

²⁴Nicholas Harpsfield, *The Pretended Divorce between Henry VIII and Catherine of Aragon*, Nicholas Pocock, ed. (London: Camden Society, 1878), 149–51.

²⁵Deut. 25:5: "Quando habitaverint fratres simul, et unus ex eis absque liberis mortuus fuerit, uxor defuncti non nubet alteri, sed accipiet eam frater eius, et suscitabit semen fratris sui" (Vulgate).

²⁶Levirate marriage was that between a widow (the *yevamah*) whose husband had died without leaving offspring, and the brother (the *vavan* or *levir*) of the deceased. The practice preceded the Mosaic laws; see Gen. 38:8. In the Talmud, the word *ben* ("son" in Deuteronomy) was interpreted to mean *septuagint* (offspring). It should be noted that biblical law did not require formal marriage to fulfill the *levir* custom, nor was it legally binding; see *Encyclopaedia Judaica*, Cecil Roth, ed. (Jerusalem, 1971–72), 11:122–23.

²⁷Augustine, "Quaestiones in Heptateuchum" in J. P. Migne, ed., *Patrologiae cursus completus: series Latina*, 221 vols. (Paris: Bibliothecae Cleri Universae, 1844–1903), 35:486–824, at 705.

²⁸Rex, *Fisher*, 164.

²⁹For an account of the many ways Henry VIII's supporters attempted to reconcile the two texts, see Jasper Ridley, *Henry VIII* (London: Constable, 1984), 160; Scarisbrick, *Henry VIII*, 164 ff.

³⁰Scarisbrick, *Henry VIII*, 164–65.

the levitical prohibitions and the levirate rule stood in comparison. Before we examine this, can we be sure of Stokesley's involvement?

Virginia Murphy's research makes the connection between the early writings of the scholars contacted by the king and that collection of arguments, or "libellus," submitted by him at the Blackfriars trial. The libellus was known as the *Henricus octavus* or the "king's book."³¹ It would be sufficient to conclude that since we know Stokesley was one of the few scholars to support the king and, according to Chapuys, the most prolific, much of the *Henricus octavus* was Stokesley's work. Fortunately, additional evidence in one of Stokesley's own letters places the question beyond doubt.

In 1535, looking back on the earlier period, Stokesley wrote that the "king's book" had been written by himself, by the king's almoner (Edward Fox), and by Nicholas de Burgo.³² These, of course, were the same men who wrote the *Gravissimae censurae*, so named because it had the determinations of several European universities appended to it as a prologue. The *Henricus octavus*, as Murphy makes quite plain, is the *Gravissimae censurae* without the determinations, and with several additions and reworkings of the material.³³ These books represent the collection of evidence upon which the king's scholarly defense was based, and from them we can determine Stokesley's, and his researchers', first major contribution, the untangling of the confusion which surrounded the concept of "divine law."

By the sixteenth century, after nearly four hundred years of scholastic furor, the meaning of divine law had become rather obscured. Two major schools dominated, however. These were the nominalists, who followed the teachings of William of Ockham, and the realists, who traced their origins to Thomas Aquinas.³⁴ Stokesley, an expert scholastic theologian,³⁵ developed a definition of divine/natural law, which proved to be a synthesis of these two major schools of thought and, thus, very useful indeed.

In brief, the realists explained divine/natural law as an "intellectual act independent of will," or a *lex indicativa*.³⁶ God became a teacher, not a lawgiver, who led man to self-knowledge by means of reason. In other words, God taught right and wrong, based on the "Being of God"—laws unalterable even by himself.³⁷ By

³¹Murphy, "Debate," 15ff; PRO SP 1/63, fols. 244–407v; LP, 5.5.8.

³²PRO SP 1/94, fol. 98v; LP 8.1054.

³³For an examination of the development of those additions and reworkings, plus the contributions of other scholars, see Chibi, "Stokesley," 79ff.

³⁴For superior examinations of the theories of these two schools, see Gordon Leff, *William of Ockham: The Metamorphosis of Scholastic Discourse* (Manchester: Manchester University Press, 1975); Francis Oakley, "Medieval Theories of Natural Law: William of Ockham and the Significance of the Voluntarist Tradition," *Natural Law Forum* 6 (1961): 65–84; Otto von Gierke, *Political Theories of the Middle Ages*, tr. F.W. Maitland (Cambridge: Cambridge University Press, 1927); and Heiko A. Oberman, *The Harvest of Medieval Theology: Gabriel Biel and Late Medieval Nominalism* (Durham, N.C.: Labyrinth Press, 1983).

³⁵Richard Pace, *De Fructu Qui ex Doctrina Percipitur* (Basel, 1517), or *The Benefit of a Liberal Education*, ed. Frank Manley and Richard S. Sylvester (New York: Renaissance Society of America, 1967), 127.

³⁶Gierke, *Political Theories*, 173.

³⁷Aquinas, *Summa*, 28:93 (I-II, Q. 94, A.5, ad.2).

way of contrast, the nominalists saw in the law of nature a mere divine command. This was right and binding only because God was the lawgiver (not a teacher).³⁸ For the realists, based on Aquinas, there exists an eternal law which provides an order for all creation. Man understood this order through his own reason, by way of natural law. For Ockham and the nominalists, natural law did not possess any intrinsic rationality or ontological foundation, and was, therefore, grounded solely in the decisions of a sovereign divinity. Ockham extrapolated from this, in his commentaries on Peter Lombard's *Sentences*, that hatred of God as well as adultery, robbery, all such vices, could be stripped of their otherwise intrinsic evil, and rendered meritorious "if they were to agree with the divine precept just as now de facto their opposites agree with the divine precept." "God is obliged to no act."³⁹ Thus, while natural law is absolute, immutable, and beyond dispensation, it is also completely dependent on God's will. Ockham was making a distinction between the ordained or ordinary power of God—by which God has actually established a moral order (within the framework of which the moral law was absolute)—and the absolute power of God—whereby God could order the opposites of the acts which he has, in fact, forbidden.⁴⁰

In the *Gravissimae censurae*, Stokesley and his coauthors examine such definitions, and conclude that divine law is

the worde or minde of god, commanding thinges that be honest, or forbidden thinges that be contrary to honestie whiche lawe the sacre holy universall church hath of longe time, by her authorite, received and confirmed as other beinge sowed and planted in the resonable creature of god, by the mouth and spirite of almighty god, orels shewed to him bi revelation.⁴¹

This implanted wisdom provides humans with certain rules, the laws of general justice, virtue, and honesty,⁴² through which they learn what is good or evil, right or wrong, in order to obtain their ultimate destiny. Because these principles have to be applied in concrete terms, however, people's reasoning abilities are supplied with a speculative dimension which allows them to reason in a way similar to what we might term scientific method, and with an active dimension, which allows humans to apply observations of nature to their own lives. Just as "scientists" use certain self-evident natural principles, God has placed in the human mind equally self-evident moral principles, by which he is to order his life. Extrapolating from

³⁸Oakley, "Medieval Theories," 66; Oberman, *Harvest*, 96–98; Gabriel Biel, *Sacri canonis misse expositio resolutissima* (Basel, 1510), lecture 23 E; . . . neque enim quia bonum aut iustum est aliquid ippsum deus vult sed quia deus vult ideo bonum est et iustum. Voluntas namque divina non ex nostra bonitate sed ex divina voluntate bonitas nostra pendat nec aliquid bonum nisi quia a deo sic acceptum.

³⁹Ockham, *Super Quatuor Libros Sententiarum* (Lyon, 1495), 2, Q.19; Leff, *Ockham*, 382ff.

⁴⁰E.g., Ockham, *Opus Nonaginta Dierum* in *Guillelmi de Ockham Opera Politica*, 3 vols. (Manchester: Manchester University Press, 1963), 2:728–29.

⁴¹*Divorce Tracts*, 168–69.

⁴²*Ibid.*, 178–79.

this, Stokesley divides divine law into the three categories of moral, judicial, and ceremonial law.⁴³

The most important of these are the moral laws. These teach of the acts, offices, and duties of moral virtue: “They shew howe a man shall do vertuously and after good maners and what dedes be good and what be not.”⁴⁴ To stray from these laws is vice; the choice is in the individual’s conscience. The levitical prohibitions are placed in this category.

For Stokesley, judicial laws are precepts of particular acts of justice between humans, and precepts of punishment and rewards. The levirate rule is placed under this category. Ceremonial laws, those which command certain outward deeds deemed necessary to the proper worshiping of God, are placed to one side because they play little part in his theological construct.

The judicial laws are further broken down into universal, distributive, and communitative forms. These govern the distribution of honor and money, regulate equity, and correct bargains and other types of dealings such as written contracts. The crux of this is that most of the old biblical laws are judicial in nature. Moses had asked for divine counsel in matters of suits and controversies affecting the Jews alone. Punishments were handed down to instill a sense of dread in the Jews and to provoke them to virtue. The judicial laws were “made and ordained” of God in holy scripture specifically for governing of the Jews alone; they pertained to particular justice, and as such had no moral grounds in and of themselves. Therefore, they had no real moral strength or moral authority over anyone except the Jews of Old Testament times, and have no authority outside of that time.⁴⁵ This interpretation follows that of Aquinas.⁴⁶

For Stokesley, then, the levitical prohibitions represented the Word of God grounded upon natural reason. This was clear to him, because the phrase “I am the Lord thy God”—or words to that effect—continually accompanies verses in Leviticus.⁴⁷ The pivotal block of the books of Moses are the “laws of holiness” (Lev. 17–21), which represent the very words of God and, therefore, are the very laws of God.⁴⁸ Since the levitical prohibitions specifically outline forbidden practices, to ignore them would be unthinkable.⁴⁹ For Aquinas, Leviticus presents an entire

⁴³E.g., Aquinas, *Summa*, 29:33ff. (I-II, Q.99); *Divorce Tracts*, 172–73: “Iam divinarum species faciunt Theologu, nempe ut sint morales, quae eadem naturales decuntur, vel iudicials, vel ceremoniales.”

⁴⁴*Divorce Tracts*, 172: “ut morales quidem appellent, quae de actibus, et officiis virtutum moralium.”

⁴⁵*Ibid.*, 176–77.

⁴⁶Aquinas, *Summa*, 29:45 (I-II, Q.99 A.4), 28:48 (I-II, Q.94, A.4). He wrote that while “the exercise of justice in general falls under the moral precepts,” which are common to all people and which “do appoint neither time, place, nor manner how to keep them,” in order to make application in specific cases, it “falls under the judicial precepts,” which betoken certain judgments and an exercise of justice done by reason. That is applying the general rules to special cases, “as pertaining to the ordering of people and considering the state of those people only.”

⁴⁷E.g., Lev. 18:2, 4, 5, 6, 21, 30; Lev. 20:7, 8, 24, 26.

⁴⁸*Divorce Tracts*, 39–40 (Lev. paraphrased): “Loquere o Moses filijs Israel, loquere ac narrato illis non tuum verbum, non tuum praeceptum, sed meum. Ego enim ipse dominus et dea illorum . . . ; see also Lev. 19:1–4, 19:10–14, 20:7–8.

series of moral precepts indicating acts of holiness in the ethical sense. United as the Jews were with Yahweh, they were still to keep themselves separated from the immorality that was alien to them, so that God's holiness might shine forth in the righteousness of their lives.⁵⁰

The immorality referred to here was the ancient customs of the Egyptians and the Canaanites. They practiced such "mischievous vices" as "mingling or marrying themselves by most shameful lust and pleasure of their bodies with women that were closest of their blood and of their affinity, putting no difference between them and other women."⁵¹ They paid little attention to kinship or blood ties, despite the fact that Leviticus clearly restricts marriage between a man and certain female relations:

None of you shall approach to any that is near of kin to him, to uncover their nakedness, nor to the mother, father's wife, sister, son's daughter, father's wife's daughter, father's sister, mother's sister, father's brother's wife. . . . And if a man shall take his brother's wife, it is an unclean thing, they shall be childless.⁵²

In order to better reflect the original Hebrew meaning of the text, Stokesley and the scholars replaced the plural *absque liberis erunt* (they will be without children) with the singular *absque filiis erit* (he will be without heirs). Wakefield's research had brought to Stokesley's attention that the original meaning of *filiis* had been "heirs."⁵³ To the contemporary mind, and indeed to the Judaic mind, an heir, particularly where dynastic continuity was at stake, had to be male. This was, in fact, a strong element in the case, particularly in bolstering the king's conscience. Henry was, therefore, being punished because of his and Catherine's transgression of affinity. He had married his brother's wife, and this was a sin because

no man could pretend any colour or cloak or find any manner of cavillation, whereby that man who had married his brother's wife, should not be judged of all the whole people, not only to have contempered and despised god, the which had with so great majesty commanded the contrary, but also... done against the laws of nature. . . .⁵⁴

Now Stokesley could face the problem of Deuteronomy from a stronger position.

Thomas Abel, one of Catherine's chaplains, stated the problem best. He claimed that, as the levirate rule had been commanded in Deuteronomy, it too must be a divine, moral duty. God would certainly not have commanded that

⁴⁹Lev. 20:22, 20:37.

⁵⁰Aquinas, *Summa*, 29:36–37 (I-II, Q.99, A.2).

⁵¹*Divorce Tracts*, 40–41.

⁵²Lev. 18:6–17 and 20:21: "quatenus omnis homo ad proximam sanguinas suinon accedat, ut revelet turpitudinem eius, nempe ad matrem, novercam, sororem, neptem, amitame, amitam, matert-eram, filiam previgno. . . ." and "Uxorem autem fratris sui, rem facit illicitam absque liberis erunt."

⁵³Murphy, "Debate," 72. The Hebrew is a rare term, used only a few times in the Old Testament, and it implies a failure or withering of the family tree.

⁵⁴*Divorce Tracts*, 42–43.

which was forbidden (as it must appear if Stokesley was right), and both verses are divine commands.⁵⁵ John Fisher brought up a number of useful examples—like that of the marriages of the three sons of Judah, who in turn married Tamar—to illustrate that levirate marriages had been practiced by the Jews without risk of eternal damnation.

Both Abel and Fisher observe that Judah recognized the moral duty of the levirate rule when ordering his two younger sons to marry the relict of the eldest, in succession.⁵⁶ This would seem to indicate that God ordered Judah to commit an act of intrinsic evil, which God would certainly not have done. Stokesley counters this argument by reference to examples where God seems to have done exactly that. He says, in his sermon, that divine commandment can take the “malice” away from an otherwise evil action, and make it “good,” as in the case where God orders a man to kill his natural child—as Abraham was ordered to kill Isaac.⁵⁷ God’s commandment, as Ockham speculates, makes this otherwise cruel and unnatural crime, good and even praiseworthy.⁵⁸ If Moses had of his own volition robbed the Egyptians, his offense would have been worthy of reproach. However, because it was done at the commandment of God, Moses is to be commended.⁵⁹ Similarly, if Samson had killed himself without a clear commandment from God, his action would also have been cruel and unlawful. However, he acted on divine commandment, and is to be “not only excused but praised.”⁶⁰ Divine commandment can, under certain conditions, make good an otherwise evil act. When those conditions cease to exist, the action once again takes on its formerly evil nature, “as a man to slay his child, to spoil, or to kill himself.” As God forbade the brother to reveal the turpitude of the brother,⁶¹ through marriage to the brother’s wife (the revelation is an unlawful action). Where God commands a man to marry his brother’s widow, under certain circumstances, the previous evil is taken away, but returns when the special circumstances have been removed. The marriage of a brother to his sister-in-law becomes once again as unnatural as that between a brother and sister, or a son and mother. While it was agreed that the king had not been under any legal obligation to marry his brother’s wife, it could now be argued that since there was no specific divine commandment to justify the marriage, the intrinsic evil of such a marriage still applied, and this would explain the lack of sons born to the marriage. Moreover, since the levitical prohibitions were divine in nature, and the levirate rule was not, the pope could not dispense with the sin of the revelation of the turpitude of the brother, and had, therefore, overstepped his authority by allowing the second marriage. Henry and Catherine were not married.

Great changes begin with simple ideas. Stokesley’s development of a useful and straightforward argument was the reason that he was so vilified by Chapuys.

⁵⁵Thomas Abel, *Invicta veritas* (Luneberg, 1532), C2v–3v.

⁵⁶Gen. 38:7–12.

⁵⁷Gen. 22:2.

⁵⁸PRO SP 6 /6, fol. 98.

⁵⁹Exod. 3:21–22.

⁶⁰Judg. 16:28–30.

⁶¹Lev. 18:16.

The simple logic of Stokesley's position undermined papal authority in England by sowing seeds of suspicion as to where else the pope had overstepped his authority. Martin Luther, perhaps inadvertently, had begun a process of widespread religious revolution by merely questioning the papal practice of selling indulgences. On a smaller scale, Stokesley, in England, inadvertently brought about great changes in the relationship of church and state by merely showing that God could indeed order a man to commit evil, a divine dispensation which Henry VIII, however, did not have. As the questions mounted, Henry VIII put more and more stock in Stokesley's scholarship. By so doing, Henry caused this particular royal servant to become more than a mere footnote in the history of these important events.