

Incest

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This paper is based on two presentations under the auspices of the Edinburgh Medical Group in 1976. Dr Noble and Professor Mason, explore the incidence of incest and society's attitudes to it from legal, anthropological, medical and social viewpoints. They place this in a world context by looking at the universal prohibition of incest and the theories related to that taboo. In conclusion, they suggest that there seem to be sufficient sensible grounds on which to base a reappraisal of attitudes to incest. Their conclusions are in turn appraised by brief commentaries from a moral philosopher and a psychiatrist.

Incest is defined in the *Concise Oxford Dictionary* as the 'sexual commerce of near kindred'. It relates, then, to sexual relations and not marital relations; legal prohibitions as to mating and marriage may be similar but do not necessarily coincide (*vide* Marriage Act 1949; Sexual Offences Act 1956, ss. 10 and 11; Marriage (Scotland) Act 1977; Incest Act 1567). The distinction is important because many theories which purport to explain the outlawing of sex within the family are really only explanations of why marriage between family members is not allowed.

The universality of the incest prohibition

One of the most interesting features about the prohibition of incest is its universality; there are rules prohibiting sexual congress between certain close relatives in every society of which we know. But an equally interesting characteristic is that these rules are not identical from one society to another nor even in one society at different times.

The one relationship which seems everywhere to be regarded as incestuous is that of mother and son. Generally, intercourse between father and daughter and between brother and sister are also banned but there are exceptions even to these rules. Father/daughter and sibling incest certainly occurred in ancient Egypt and among the Inca aristocracy - it was, in fact, specifically encouraged so as to maintain the sanctity of the royal blood. In certain Pacific islands where matrilineal descent (i.e. descent traced through females) is practised, a father is not deemed to be related to the children of his wife; it is then theoretically impossible for a father to

commit incest with his daughter, who is not a kinswoman.

There are vast variations in the incest regulations as regards other relationships. Much depends upon the descent rules of the society. Thus, when the rules are patrilineal (i.e. descent is traced through the male) it may be quite permissible for a man to marry his sister's daughter. Distinctions may also be made between a man's father's brother's daughter and his mother's brother's daughter; in a patrilineal society, intercourse with the former would be incestuous while the latter could be regarded as an ideal mating.

Where, as in many North European societies, there is generally no strong emphasis on patrilineal or matrilineal descent groups or lineages, then incest regulations usually apply to sexual intercourse between people forming a small familial core - the elementary family of father, mother and children, their direct lineal connections (i.e. grandparents, grandchildren, uncles, aunts, nieces, nephews) and, sometimes, first cousins on both sides of the family.

Table I *Incestuous intercourse*

Male and:	Scotland	England and Wales
Grand-daughter	+ (v.10)	+
Daughter	+ (v. 7)	+
Sister	+ (v.9)	+
Mother	+ (v.7)	+
Half-sister	+ (v.11)	+
Step-mother	+ (v.8)	-
Aunt	+ (v.12, 13)	-
Aunt-in-law	- (v.14)*	-
Daughter-in-law	+ (v.15)	-
Mother-in-law	+	-
Sister-in-law	- (v.16)*	-
Great-grand-daughter	+	-
Step-daughter	+ (v.17)	-

**Leviticus* negated by more recent statute law.

Such variations in definition are even evident within Britain. In England and Wales, the Sexual Offences Act 1956 defines incest as simply intercourse with a woman a man knows to be his grandmother, daughter, sister or mother. The Law of Scotland, however, is based on Chapter 18 of the *Book of Leviticus* and is, in some ways, even more strict than is the Bible. The resulting contrasts within

Great Britain are expressed in Tables I and II. An extraordinary difference is that, whereas in England the offence is committed whether or not the relationship can be traced through lawful wedlock, there can be no incest between bastard relations in Scotland (although common law would probably regard mother/bastard son and father/bastard daughter sexual relationships as criminal). The importance of this illegality will become apparent later.

Table II *Variations in law of incest Great Britain*

	Scotland	England & Wales
Bastard relationship	No incest	Specifically incest (s. 10 (2))
Half blood	As for whole blood	Half siblings only
Direct dependency	Infinite	Second generation only
Age limitation	None	Must be over 16 (female) Must be over 14 (male)
Proof of ignorance	Defender must prove ignorance	Prosecution must prove knowledge

The law of Scotland is, however, being slowly modified (e.g. Criminal Procedure (Scotland) Act 1938) and, in general societies now tend to concentrate on prohibition of sexual relationships within the central family core. In societies with a cognatic descent system, in which no important social or legal distinctions are made between the male and female sides of the family, unions between first cousins of all types are forbidden but there is no proscription on sex or marriage beyond the bar of first cousinship. Our own society is similar to this in concentrating on the elementary family – within which there is a complete prohibition on sexual relationships – or on direct dependency – the prohibition in this respect is limited to three generations in England and Wales but is infinite in Scotland. There is an emotionally preferred abstinence between first cousins and then an open access to distant relations.

Theories related to the incest taboo

Several theories have been developed to explain the origin and persistence of prohibitions on incest but none is entirely satisfactory.

The first is based on the theory of natural selection which depends on the premise that man, whose survival depends on the maintenance of relatively stable family groupings, is alone among the animals in having discarded the natural protective mechanisms against in-breeding – including the expul-

sion of the young and sexual (or, at least, procreative) promiscuity. The only way in which the twin problems of in-breeding and conflict within the family could be met was by developing a taboo on intercourse between members of the family. Groups that bred out would survive at the expense of those who did not. This theory does not explain the need for a ban on a father/daughter relationship and it infers much about the effects of in-breeding, which will be discussed later.

The 'demographic theory' postulates that early man bred out because he was forced to do so by a combination of a short life expectancy, late puberty, relative infertility and a high infant mortality rate. On this hypothesis, incest taboos have evolved simply because the fact of out-breeding was assumed and succeeding generations of societies have found themselves unable to abandon the principles.

Both these arguments have been expanded to include the development of man's conscience – the group must have obedience and conformity for it to survive and these entail the inhibition of personal desires in favour of group rules.¹

Other theorists have suggested that prohibitions are designed to eliminate deleterious social consequences. It has been said, for example, that persistent incest would cause confusion of relations.⁶ This is, however, to confuse the problems of incest with those of inter-marriage; moreover, the simultaneous marriage of a man to a woman and her daughter seems to cause no confusion of roles – at least in Tibet.

A more acceptable explanation is that incest across the generations upsets the authority relationships of the family⁴ and, certainly, the majority of wives who report incestuous activity between their husbands and daughters do so because they feel their position undermined. Although attractive, this theory assumes that incest is the cause rather than an expression of family disharmony.

Goody³ attempted to relate incest to adultery – both are disruptive of basic kinship and the severity with which each is regarded depends on the descent rules of the group. He concluded that the concepts of incest and adultery are not alternatives but, rather, they are linked phenomena having different meanings in societies with different descent systems.

Incest and genetics

The argument most commonly cited in defence of an incest taboo is that in-breeding was avoided because it led to genetic deterioration. This most acutely highlights the confusion as to the nature of incest – the crime is that of sexual intercourse within certain degrees of kinship and has nothing to do with persistent in-bred procreation. Moreover, it cannot explain an instinctive revulsion in so far as primitive man cannot have argued on the basis of the principles of genetic inheritance; it also seems likely

that the life expectancy of each generation would have allowed no time for any selective bias against in-breeding to have been noted. Nonetheless, the proposition is so widely believed as to merit separate consideration.

There is no doubt that certain populations - e.g. Appalachian highlanders and, more recently, certain Icelandic groups - tend to show such deleterious effects. Many of these appearances may be conditioned rather than truly genetic. Given a single recessive deleterious gene appearing in a father, the chances of two such genes combining are 1:16 sibling pregnancies and 1:64 random cousin matings; even in the 'desert island' situation, the chance is constant at 1:16 pregnancies. These figures presuppose that the homozygous state is not selectively disadvantageous; the counter-proposition that the same could apply to positively advantageous genes is ignored. The oft-quoted royal families of Europe are not apposite to the discussion - the haemophilic state is transmitted through the female irrespective of her mate.

Certain opposing arguments are often brought which are unacceptable. A comparison with animal breeding, is, for example, irrelevant - animal breeders can destroy runt stock as well as retain the best results of in-breeding. The suggestion that readily available abortion nullifies any ill effects of in-breeding strikes at the basic spirit of the Abortion Act 1967. On balance, it can only be said that the evidence as to the effects of in-breeding is presently confused, but, whatever the true position, its essential relevance is to marriage laws and not to those relating to incest.

Incest in Great Britain

The question of consent is irrelevant to the proof of incest, the conditions for which are, otherwise, similar to those for rape - i.e. there must be penetration which need only be superficial but emission is not essential; deviate intercourse cannot be incest.

On the face of things, the offence is very uncommon. Sexual offences are, as a whole, fairly evenly distributed throughout Great Britain and this applies to the specific offence of incest (Table III). Something under 400 cases are known to the police each year and, of these, rather less than half will be proceeded against.

Table III Sexual offences in Great Britain (1974-75)

	Cases per million population	
	Overall	Incest
England	448	6.6
Scotland	483	6.5
Wales	452	6.2

Figures 1 and 2 show that the occurrence of incest is fairly steady over the years and, as compared with

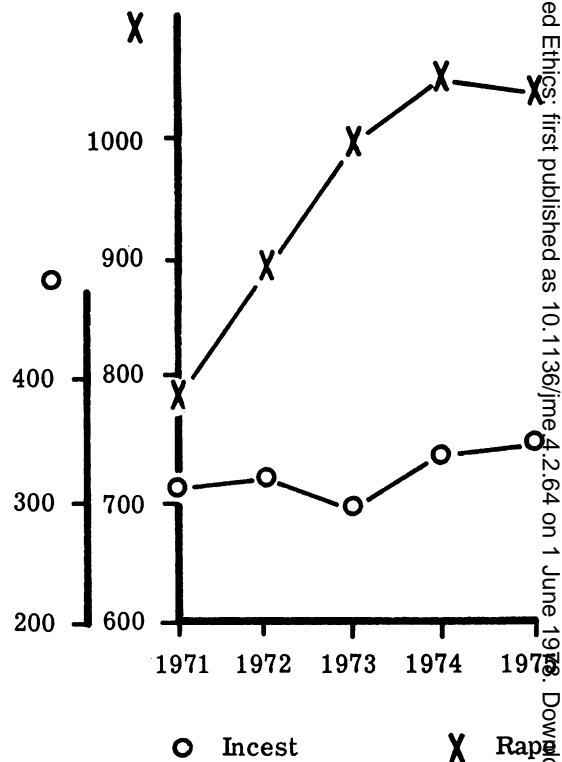


Fig 1 Sexual offences in England and Wales

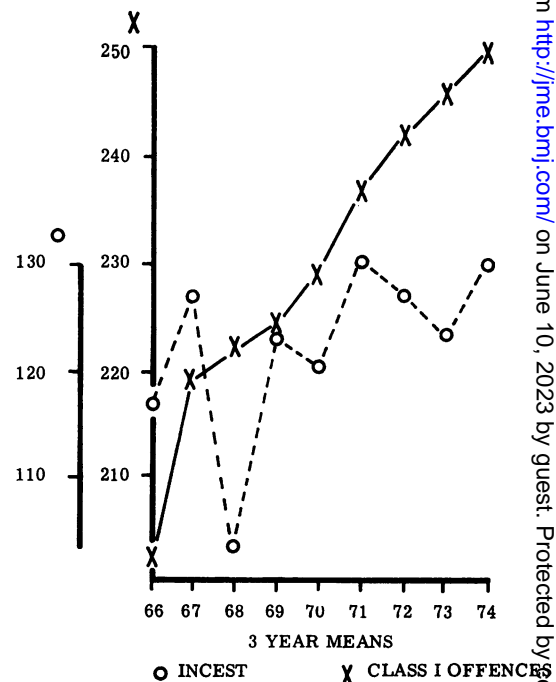


Fig 2 Incest in Scotland. Persons proceeded against. (1939 = 100 N Class I Offences = 429, N₁ Incest = 110)

rape, the indications are that it does not increase *pari passu* with crimes of violence.

Some idea of the distribution of incest is shown in Table IV. No pattern is discernible; the offence rate is high in some metropolitan areas and low in others and the same anomaly appears when comparing rural areas. Such statistics are, however, relatively meaningless in so far as they reflect only reported instances. An exceptionally low reporting rate may result from an exceptionally high occurrence and corresponding acceptance of the state as a way of life; alternatively, individual police forces may prefer alternative charges.

The attitudes of the community to the given offence are indicated by the criminological statistics. Table V shows the fate of cases known to the police in England and Wales and in Scotland which have, as we have seen, very different legal concepts of incest. Although Scottish juries seem less easy to convince than their English counterparts – which may well be a result of definition – this is somewhat balanced by the relative lenience of the English judges. The end result is remarkably similar, which suggests that society's reaction is not dictated by legalistic definition but rather by an innate 'horror' or revulsion.

Table IV Incidence of incest (1975)

	Per 1,000 sexual offences	Per 10,000 indictable offences
Rural districts		
Devon and Cornwall	13.9	2.6
Avon and Somerset	20.0	1.9
East Anglia	4.6	0.6
Urban districts		
Metropolitan London	13.7	0.8
Merseyside	3.1	0.2
Greater Manchester	9.9	1.1

Table V Incest – criminological aspects

	Scotland (1970–74)	England & Wales (1974)
Made known to police (a)	176	337
Proceeded against (b)	76	152
	(43% of a)	(45% of a)
Full committal (c)	66	147
	(87% of b)	(97% of b)
Found guilty (d)	53	143
	(80% of c)	(97% of c)
Imprisoned	42	96
	(80% of d)	(67% of d)
Imprisoned/known to police	24%	28%

The innate revulsion to incest

Most persons, if asked why they thought incest was a crime, would reply that they felt instinctively that it was bad. This has certainly been emphasised in the past – in some African societies incest is considered typical of witches while the English Elizabethan theatre repeatedly related incestuous practices to general villainy. Today, some of the most abusive epithets used in the Middle East and America relate to the incestuous origins or practices of the addressee.

But since the definition of incest is society-dependent and variable, there can be no pure universal instinctive revulsion. In fact, many societies have no severe penalties for incest as such – in Belgium, for instance, incest is not a crime in itself but greatly aggravates the offence of having sexual intercourse below the age of consent. It has been suggested⁷ that incest is disapproved because members of a family who have grown up together are so used to each other by the time of sexual maturity that 'familiarity breeds contempt'; this plainly cannot hold and, in any case, fails to explain either the need for or the strength of the sanctions which are so often directed against incest. Freud² on the other hand, suggested that we are all consumed with incestuous desire and accounted for the 'horror' as a built in mechanism for suppression of these desires. The need for suppression was based on obedience to the family disciplinary hierarchy and the 'horror' or guilt complex arose not so much from the act of incest as from the breaking of the rules of obedience.

There seems to be a basic feeling that incest itself is not the primary target of the widespread prohibitions but, rather, that society is defending itself against the *associated* evils. It is for this reason that the National Council for Civil Liberties has recommended that the crime of incest be abolished.⁵ The NCCL argue that the assumption that incest destroys the family is false in so far as incest is not the cause of but rather one symptom of a disrupted family. While this is not so in every case, it is certainly true that the majority of families involved are under some strain – particularly due to alcoholism – and a high proportion of incestuous parents have had previous convictions.

The NCCL further stress that the laws governing assault and intercourse with minors are adequate without introducing the complication of proving the fact of incest. It is at this point that a trend in society's collective psychology becomes discernible. Of 21 consecutive prosecutions in Scotland, 20 involved two generations – 15 were father/daughter, 3 were uncle/niece and 2 were step-father/step-daughter cases. It seems probable that society is essentially reacting to the brazen use of female children for sexual gratification of animal type. It is the captive nature of those exploited which is so repellent and the Courts appear to reflect such an

opinion – it is notable that, throughout Great Britain, the offence is dealt with severely when two generations are involved and that this applies particularly to the father/daughter relationship.

There seem to be sensible grounds for a re-appraisal of attitudes to incest and the related law in the light of recent medical, anthropological and social work. Certainly, as regards Scotland, 400 years appears an undue time for a statute to remain virtually unamended and the whole subject is currently being considered by the Scottish Law Commission.

Acknowledgements

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Commentary

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The moral philosopher's first reaction to the paper by Noble and Mason is to ask what it is trying to do, and what assumptions about the nature of morality underlie its treatment of the subject. It appears to me that the principal assumption of the paper is entirely a correct one, that for any conduct to be considered morally wrong, or to be justifiably made illegal, it must be possible to demonstrate that that conduct is in some way harmful. The paper accordingly sets out to examine various grounds on which incestuous behaviour might be considered harmful. The cautious conclusion is that although such behaviour may well be harmful on other grounds

(e.g. that it often involves molestation of minors, or assault, or the degrading treatment of women) it is far from clear that there are grounds for considering it harmful precisely because it is incestuous. There are therefore grounds for suggesting that a review of the legal situation might well be opportune. I am in agreement with the overall method of approach but there are some points at which the argument strikes me as less than conclusive.

Some comparatively minor quibbles may be dealt with reasonably briefly. In general, I would wish for a somewhat clearer distinction to be drawn between the question 'What led people to hold that particular view about incest?' and the question 'Is that particular view about incest defensible?' People can get the right answer for the wrong reasons, or draw a mistaken conclusion from correct premises, after all. Thus is it at least possible that incestuous conduct (or some form of such conduct) might be harmful, and that people grasp that it is, and for them still to explain this to themselves in ways which cannot in the end be supported by evidence. Again, I am not altogether happy about the use of the term 'instinct', when it is, I think, a matter of dispute among psychologists whether, if at all, human beings can properly be said to have instincts. I should make it clear, however, that it does not seem to me that these criticisms would seriously undermine the overall argument of the paper as a whole. Finally, in the light of the claims made by the NCCL, I would have found it helpful to have some evidence about the *age* of the younger person in connection with the cases of incest reported, those brought to court, and those in which prosecution resulted in imprisonment.

Two rather more important issues seem to me to arise out of the paper, even assuming that the evidence as there presented is factually correct.

Firstly, it does not seem to me that the conclusion which strictly follows from the evidence is not quite that there is no 'pure universal instinctive revulsion to incest (even allowing for the unclarity of 'instinctive' here). All that strictly follows is that if there is such a revulsion, it is expressed through, and overlaid by, a very varied set of institutionalised forms and structures. Moreover, even if 'revulsion' is not the right word, it seems to me to be at least compatible with the evidence as presented that incest is not universally viewed as dangerous, and is permitted only for other over-riding motives, or where other social structures exist to minimise the potential dangers involved. Thus, where 'incestuous' (in roughly British terms) relations are permitted, they are seen as a means towards safeguarding the purity of the royal lineage: or, the other structures defining and maintaining kinship relations are sufficiently clear that 'incestuous' relationships do not present any threat provided they remain within the limits. I would be inclined to think that incest has been so widely disapproved of because it has been seen