

INCEST, COUSIN MARRIAGE, AND THE ORIGIN OF THE HUMAN SCIENCES IN NINETEENTH-CENTURY ENGLAND

I

AFTER THEOLOGY

In England from the twelfth century until the early nineteenth century, incest was a matter for the church authorities alone. ‘Adultery was not, bigamy was not, incest was not, a temporal crime’, as Pollock and Maitland summed up the English legal tradition; ‘fornication, adultery, incest and bigamy were ecclesiastical offences, and the lay courts had nothing to say about them’.¹ To be sure, the legal situation had changed briefly under the Commonwealth, when, in Blackstone’s words, ‘the ruling powers found it for their interest to put on the semblance of a very extraordinary strictness and purity of morals’. Incest and wilful adultery became capital offences, and severe punishments were introduced for brothel-keeping or fornication:

But at the restoration, when men from an abhorrence of the hypocrisy of the late times fell into a contrary extreme, of licentiousness, it was not thought proper to renew a law of such unfashionable rigour. And these offences have been ever since left to the feeble coercion of the spiritual court, according to the rules of the canon law.²

Following the repeal of the Test and Corporation Acts in 1828, and Catholic Emancipation the year after, ecclesiastical control of sex and marriage was gradually eroded. The Marriage Act of 1836 recognized civil marriage and also marriages solemnized in Nonconformist or Catholic churches. In 1857, the Matrimonial Causes Act transferred jurisdiction of matrimonial cases from ecclesiastical to civil courts, and a Court of Divorce and Matrimonial Causes was established. The Married Women’s Property Acts of 1870 and 1882 abandoned the principle of ‘couverture’, according to which a woman’s legal personality was

¹ Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I*, 2 vols. (Cambridge, 1895), ii, 372, 542.

² William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford, 1765–9), iv, 64.

subsumed in that of her husband by the doctrine that a married couple constituted one body before God.³

Albert Venn Dicey discerned the operation of a general principle: 'From 1832 onwards, the tendency of legislation has been to make the political and civil rights of Englishmen independent in the main, not only of their churchmanship but of their religious belief'. This was the case even in the domain of family law. 'The Divorce Act of 1857 was a triumph of individualistic liberalism and of common justice'. But Dicey was under no illusion that these reforms reflected some grand philosophical design. He commented that

English lawmakers, whilst showing little respect for ecclesiastical dogmas, and whilst attending very little to abstract principles of any kind, have been guided in the main by ideas of immediate expediency, or, to put the matter more plainly, by the wish to remove the grievances of any class strong or organised enough to make its wishes effectively heard in Parliament.⁴

Expediency certainly played its part in the decision-making process, and changes in the law were made piecemeal. Nevertheless, these reforms cumulatively produced a tectonic shift from religious to secular control of family law. Abstract principles may indeed have been largely ignored, as Dicey remarked, but secular concepts of marriage, divorce, adultery and incest had to be worked out. It was necessary to establish new principles to justify and to guide state regulation of sex and marriage. Politicians were necessarily drawn into these debates; public opinion was engaged, and now appeals were made to new sources of expertise. Scientists, for example, began to make their voices heard. Questions of public policy began in turn to influence the development of scientific research programmes, and doctors, biologists and anthropologists were drawn into debates on marriage.

Charles Darwin's theory of natural selection had been inspired by a reading of Malthus, but Malthus's problem was recast to fit the preoccupations of a more expansionist age. For Malthus, the great danger was that population would outgrow resources, resulting in widespread famine. The Darwinians came to be more concerned with the reproductive success of the nation, and in

³ Mary Lyndon Shanley, *Feminism, Marriage and the Law in Victorian England, 1850–1895* (Princeton, 1989), 8–9.

⁴ A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London, 1905), 342–5.

particular of the elite (perhaps quality mattered even more than quantity). Darwin's cousin Francis Galton argued for a national breeding policy designed to improve the human stock. A pioneering statistician, he also developed techniques to measure the incidence of different kinds of marriages. Darwin himself anxiously contemplated the risks of inbreeding. He and Galton (and other Darwinians, including Huxley and Lubbock) were members of the Ethnological Society, and, from the very beginnings of the new science in the 1860s, the first generation of anthropologists were almost obsessively concerned with the question of the incest taboo. And as it turned out, some of the most difficult issues that arose from the secularization of marriage policy had to do with the regulation of incest and inbreeding.

II

INCEST

The ecclesiastical courts (the 'bawdy courts') treated incest simply as a form of fornication or adultery, to be punished by a light penance.⁵ The situation did not change immediately after jurisdiction over marriage passed to the lay courts. When, as late as 1851, a divorce was granted by parliament on the grounds of the wife's adultery, the fact (which came out at the trial) that the defendant's adultery was with her full brother was passed over without specific comment.⁶

Should incest now be made a crime? In Scotland it had been a capital offence since the Reformation, and remained so until 1887.⁷ The issues were complex, however, the language for considering them uncertain, and the very definition of incest extremely problematic. The notions of incest current in early nineteenth-century England had been inherited from centuries of theological debate and church regulation, and canon law was mired in ancient ecclesiastical controversies. Incest was traditionally defined as sexual intercourse between persons who were prohibited from marrying: prohibited, that is to say, by church

⁵ Polly Morris, 'Incest or Survival Strategy? Plebeian Marriage within the Prohibited Degrees in Somerset, 1730–1835', in J. C. Fout (ed.), *Forbidden History: The State, Society and the Regulation of Sexuality in Modern Europe* (Chicago, 1992), 139–41.

⁶ Sybil Wolfram, *In-Laws and Outlaws: Kinship and Marriage in England* (London, 1987), 46 (n. 22).

⁷ G. H. Gordon, *The Criminal Law of Scotland*, 2nd edn (Edinburgh, 1978), 896–900.

decree. However, these prohibitions were many and various, and they applied not only to blood relatives but also to certain relatives by marriage. In Catholic doctrine, there was a further offence of spiritual incest, which referred to sexual relations between a godparent and godchild, or with a person who had taken a vow of celibacy. These prohibitions had been amended under Henry VIII, but the rationale of even the reformed code was difficult to grasp for anybody not versed in canon law.

The doctrine on incest was based in the first instance on Leviticus 18:6–18. These verses prohibited sexual intercourse with certain close kin and with the wife of a father, a son, or a brother. Cousin marriage was permitted in ancient Israel, however, as it was also in classical Greece and Rome. In the fourth century the Emperor Theodosius I introduced a ban on cousin marriage, but local variations and problems of definition persisted throughout the Middle Ages. The Lateran Council of 1215 ruled that marriages within the fourth degree of consanguinity — that is, between third cousins — were null; but there was still uncertainty about the marriageability of fourth cousins until the Council of Trent decreed that these could be married while third cousins could not.⁸

The early Church had also greatly extended the range of affinal kin with whom marriage was prohibited, but in this instance a complex argument was constructed on the basis of biblical texts. Adam described Eve as ‘bone of my bones, and flesh of my flesh’. Genesis 2:24 added a peremptory commentary: ‘Therefore shall a man leave his father and his mother, and shall cleave unto his wife; and they shall be one flesh’. This text was referred to several times in the New Testament (in Matthew 19:6, Mark 10:8, and Ephesians 5:31), and it provided the foundation upon which a large edifice of prohibitions was raised. It was reasoned that if your spouse was your flesh and bone, then it followed that his or her kin were on a par with your own kin. Consequently, for a man to have sexual relations with a wife’s sister, for example, was equivalent to having sex with his own sister. Similarly, if a man could not marry a third cousin, then this rule applied equally to a third cousin of his deceased wife. And there was a further twist; in the medieval Catholic view, ‘the efficient cause of affinity

⁸ Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge, 1983), 53–9, 144–6. In practice, it was possible to obtain special papal dispensation from the rules.

is not marriage but sexual intercourse', as Pollock and Maitland delicately phrased it.⁹ Strictly speaking, therefore, a person could not marry the close relative of any lover.¹⁰

Despite local variations, all provinces of the Catholic Church did agree that marriage between first cousins was essentially unacceptable. However, this doctrine was amended in England in 1540, when parliament legalized marriages between first cousins. The immediate purpose of this law was to clear the way for the marriage of Henry VIII to Catherine Howard, who was the first cousin of a previous wife, Anne Boleyn.¹¹ Despite this pragmatic motive, the reform was approved by many Protestant theologians. Following Luther, they took the view that only those marriages expressly prohibited in the Bible should be forbidden. Nowhere did the Bible indicate that cousin marriage was undesirable. Indeed some Puritans read the scriptures to show that Jesus was himself the son of a marriage between first cousins.¹² Not all the reformers agreed on these questions, and in general Calvinists frowned on close-kin marriages, but, following Henry's reform, cousin marriages were freely permitted by the main Protestant churches in England and in the colonies.

On the other hand, Henry endorsed the prohibitions on marriage with relatives-in-law. After all, his own marriage to Catherine of Aragon had been dissolved on the grounds of her previous engagement to his deceased elder brother, Arthur. This doctrine proved useful to the Tudors on other occasions, and it was invoked by Henry's daughter, Elizabeth, when she turned away the marriage proposal of Philip II, who had been married to her sister Mary. This taboo was also a common theme in contemporary drama (Hamlet's denunciation of his mother for marrying her deceased husband's brother being only the most famous example).¹³

A marriage within the prohibited degrees was 'voidable', that is, the ecclesiastical courts could declare that no marriage had

⁹ Pollock and Maitland, *History of English Law*, ii, 387.

¹⁰ *Ibid.*, 388: 'Then with relentless logic the church had been pressing home the axiom that the sexual union makes man and woman one flesh. All my wife's or my mistress's blood kinswomen are connected with me by way of affinity'.

¹¹ J. J. Scarisbrick, *Henry VIII* (London, 1968), chs. 7–8.

¹² For example, Robert Dixon, *The Degrees of Consanguinity and Affinity: Described, and Delineated* (London, 1674).

¹³ See Bruce Thomas Boehrer, *Monarchy and Incest in Renaissance England* (Philadelphia, 1992).

been contracted, and order the couple to separate and to perform penance. There was, therefore, chronic uncertainty about the legal status of a voidable marriage and the legitimacy of any issue. Moreover, such marriages could also be challenged by outside parties in order, for example, to exclude children from inheritance, which presented a constant risk of blackmail. In an attempt to tidy matters up, an Act of Parliament passed in 1835 ('Lord Lyndhurst's Act') affirmed that any marriage within the prohibited degrees which existed at that date should stand, but that any such marriage contracted in future was to be void *ab initio*.

III

MARRIAGE WITH THE DECEASED WIFE'S SISTER

The one marriage prohibition that aroused significant opposition in nineteenth-century England was the ban on marriage with a dead wife's sister. This relied on the biblical doctrine that husband and wife were one flesh. It was an idea that may have had a genuine resonance in nineteenth-century English custom. (In Jane Austen's novels, for instance, wife's brother and sister's husband were addressed as 'brother', while husband's sister and brother's wife were 'sister'.¹⁴) However, the interpretation of the biblical texts and their implications were matters of dispute. The correct translation of Leviticus 18:18 was controversial, but the wording of the Authorized Version ('Neither shalt thou take a wife to her sister . . . beside the other in her life time') suggested that there was nothing against a marriage with the wife's sister being contracted after the wife's death. In any case, public opinion was not offended by such marriages, and unions with the deceased wife's sister were far and away the most common within the prohibited degrees. (In five districts in England, there were 1,364 unions within the prohibited degrees between 1835 and 1848. Of these, 90 per cent were with the deceased wife's sister.¹⁵) Many people travelled abroad in order to contract such marriages, and

¹⁴ 'The basic rule . . . was that a man called his wife's relatives by the same terms as she did, and she called his relatives by the same terms as he did; and those relatives used the appropriate reciprocals': I. Schapera, *Kinship Terminology in Jane Austen's Novels* (London, 1977), 16–19.

¹⁵ *First Report of the Commissioners Appointed to Inquire into the State and Operation of the Law of Marriage, as Relating to the Prohibited Degrees of Affinity, and to Marriages Solemnized Abroad or in the British Colonies; with Minutes of Evidence, Appendix and Index*, Parliamentary Papers (hereafter P.P.), 1847–8 (973), xxviii, pp. x–xi.

some vicars in England were prepared to recognize these unions, and even to solemnize them.

In 1848 a Royal Commission, appointed to look into 'the state and operation of the *Law of Marriage* as relating to the prohibited degrees of affinity', reported in favour of legalizing marriage with a deceased wife's sister. The commissioners pointed out that marriage between these affinal relatives was generally permitted in most European countries, and in many states of the USA. (The American states had moved at an early stage to lift the prohibition on marriage with the deceased wife's sister, beginning with Massachusetts in 1785; by the time of the civil war, a third of the states had abolished all prohibitions on marriages with affinal kin, except with the spouses of parents and children.¹⁶) Popular opinion in Britain was favourably disposed to the reform of the law, and the commissioners came to the conclusion that such marriages were socially efficient. Typically they allowed a woman to take over the responsibilities of a sister who had died in childbirth, leaving small children. As the commissioners noted, 'in all cases where there are children of a tender age, there is a vacancy made by the death of the wife which her sister appears, above all persons, qualified to supply'. Such a marriage could be represented as a duty, or as an act of fidelity. 'It would be repugnant to my feeling to displace old associations, and to seek marriage elsewhere', a solicitor who had himself married his dead wife's sister remarked to the commissioners. 'I could not do it. My wife's sister disturbs nothing; she is already in the place of my wife'.¹⁷

Opponents of reform suggested that the integrity of the family might be threatened if a man could think of his wife's sister as a potential wife. Gladstone warned the House of Commons in 1849 that 'the purity of sisterly love itself . . . was threatened to be tainted by the invasion of possible jealousies'.¹⁸ However, the main source of opposition to reform was the sense that parliament should not overrule biblical injunctions. As late as 1903 Winston Churchill would tell the House of Commons that it was bound to defend 'the principle . . . that when a man and a woman were married they became as one', and that in consequence 'any person

¹⁶ Martin Ottenheimer, *Forbidden Relatives: The American Myth of Cousin Marriage* (Urbana, 1996), 22–4, 35, 37, 45–7.

¹⁷ *First Report of the Commissioners . . . Law of Marriage*, pp. x–xi, 66.

¹⁸ Quoted in Wolfram, *In-Laws and Outlaws*, 33.

the man could not marry by reason of consanguinity to himself he could also not marry if similarly related to his wife'.¹⁹

The issue divided parliament throughout the Victorian era and beyond. First mooted in 1842, the Deceased Wife's Sister's Marriage Act of 1907 was, as Sybil Wolfram wrote,

the outcome of one of the most protracted struggles in British Parliamentary history. It took 65 years, 46 sessions of debate, 18 successful second readings in the House of Commons to effect this piece of legislation, and in the meantime there had been annual leaders in *The Times* on the subject, pamphlets in their hundreds, a Marriage Law Defence Association and a Marriage Law Defence Union.²⁰

At last, in 1907, a statute permitting marriages with the deceased wife's sister was introduced for the first time, not as a private member's bill but as a government measure, and it was driven through parliament by a Liberal government backed by a large majority.

The passage of the statute did not finally settle the arguments. It was only in 1921 that a companion law was passed allowing marriage with a deceased husband's brother. Even after that date adultery with a wife's sister in the wife's lifetime continued to be defined in law as 'incestuous adultery'. This was regarded as a particularly heinous form of adultery, and constituted one of the few grounds on which a woman could be granted a divorce until 1923, when a law was passed allowing a woman to divorce her husband for any adultery. The Church of England changed its own doctrine only in 1946. As late as 1949 a Marriage Act was passed that, among other provisions, prohibited marriage between a man and his *divorced* wife's sister.²¹

IV

THE ISSUE OF COUSIN MARRIAGE

The debate on cousin marriage followed a very different trajectory. The theological position was largely uncontroversial. Some Nonconformists frowned upon marriages between first cousins, but since Henry VIII's day such unions had been accepted by the Church of England. Randolph Trumbach has shown that, while

¹⁹ *Ibid.*, 39.

²⁰ *Ibid.*, 30–1.

²¹ Cynthia Fansler Behrman, 'The Annual Blister: A Sidelight on Victorian Social and Parliamentary History', *Victorian Studies*, xi (1967–8), 502 (n.)

metropolitan aristocrats in the eighteenth century disapproved of marriage with the dead wife's sister, they regarded cousin marriage as perfectly appropriate, although in practice only about 1 per cent of their marriages were with first cousins, half of them between a man and his father's brother's daughter.²² Among the middle classes these attitudes tended to be reversed. Marriage with the deceased wife's sister was regarded as right and proper, while cousin marriage was thought to be unsuitable.²³

In the nineteenth century, cousin marriages became more acceptable among the gentry and middle classes,²⁴ perhaps particularly after Queen Victoria, a model of propriety, married her first cousin, Albert, her mother's brother's son. (This was and remains a Hanoverian tradition. George I had married his father's brother's daughter, and George IV his father's sister's daughter. George V and Elizabeth II carried on this tradition, both marrying second cousins. The tradition may be traced back to the Stuarts. The parents of James I were first cousins, children of a half-sister and half-brother.²⁵)

Love and marriage between cousins became a regular topic of novels in nineteenth-century England. In *Mansfield Park* (1814), Fanny married Edmund, her mother's sister's son. In *Persuasion* (1817), Charles Hayter similarly married his mother's sister's daughter, Henrietta Musgrave. In the same novel, Elizabeth Elliot dreams of a marriage with her cousin and her father's heir, William Elliot (apparently her second cousin in the male line), and he later woos her sister Anne.²⁶ Any objections to these relationships had to do with such extraneous factors as the difference in status between Fanny and Edmund or Henrietta and Charles. There were similar marriages within Jane Austen's own family. Jane's brother Henry married his widowed cousin, Eliza de Feuillide, after Eliza had rejected his brother James.²⁷ (Another of Jane Austen's brothers, Charles, married his dead wife's sister

²² Randolph Trumbach, *The Rise of the Egalitarian Family: Aristocratic Kinship and Domestic Relations in Eighteenth-Century England* (New York, 1978), 18–30.

²³ Kenneth M. Boyd, *Scottish Church Attitudes to Sex, Marriage and the Family, 1850–1914* (Edinburgh, 1980), 258–64.

²⁴ Nancy Fix Anderson, 'Cousin Marriage in Victorian England', *Jl Family Hist.*, xi (1986), 291; Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780–1850* (London, 1987), 219–22.

²⁵ Patricia H. Fleming, 'The Politics of Marriage among Non-Catholic European Royalty', *Current Anthropology*, xiv (1973), 241–2.

²⁶ Glenda A. Hudson, *Sibling Love and Incest in Jane Austen's Fiction* (London, 1992).

²⁷ Claire Tomalin, *Jane Austen* (London, 1997), 125–7.

in 1820, albeit 'to general disapproval'.²⁸) Cousin marriages continued to feature regularly in English novels and plays to the end of the nineteenth century, without being represented as strange or problematic.²⁹ As late as 1895, *The Importance of Being Ernest* ends with the happy discovery that Ernest and Gwendolen are cousins. His mother was not a handbag, or Miss Prism, but Lady Bracknell's sister. Since they were the children of two sisters, Lady Bracknell could have no objection to their marriage.

What the anthropologists were later to term sister exchange was also an established royal tradition. The Hanoverians were famous for it.³⁰ In the nineteenth century it became a familiar practice in middle-class circles. The marriage of Charles Darwin to Emma Wedgwood was a case in point. Not only were they first cousins, but since Emma's elder brother, Josiah Wedgwood III, had married Charles's elder sister, Caroline, the two men were also exchanging sisters. The combination of marriage to first cousins with a propensity to sister exchange (or with the marriage of two brothers to a pair of sisters) meant that it was not uncommon in the next generation for double first cousins to marry. Darwin's father-in-law Josiah Wedgwood II and his brother John Wedgwood (themselves children of third cousins) married two sisters. In the next generation, John's daughter, Jessie, married Josiah's son, Henry Allen Wedgwood. She was his father's brother's daughter and also his mother's sister's daughter.³¹

Nevertheless, there was a persistent undercurrent of concern about close consanguineal marriage. Samuel Taylor Coleridge was uneasy when he read his nephew Henry's confession in his *Six Months in the West Indies in 1825* that: 'I love a cousin; she is such an exquisite relation, just standing between me and the stranger to my name, drawing upon so many sources of love and

²⁸ *Ibid.*, 280.

²⁹ Glenda Hudson cites Collins's *The Moonstone* (1868), where Rachel Verinder marries her first cousin Franklin Blake; a number of novels by Trollope, including *The Eustace Diamonds* (1873), in which Lizzie Eustace 'attempts to ensnare' her cousin Frank Greystock, *Can You Forgive Her?* (1864–5), in which Alice Vavasor marries her cousin George Vavasor, and *Sir Harry Hotspur of Humblethwaite* (1870), in which Emily Hotspur wants to marry her cousin George; Hardy's *Return of the Native* (1878), which features a romance between cousins, and *Jude the Obscure* (1896), in which Jude marries his cousin Sue Bridehead: see Hudson, *Sibling Love and Incest in Jane Austen's Fiction*, 28.

³⁰ Fleming, 'Politics of Marriage among Non-Catholic European Royalty', 241.

³¹ Josiah C. Wedgwood, *A History of the Wedgwood Family* (London, 1909).

tying them all up with every cord of human affection — almost my sister ere my wife!’ Coleridge was then thoroughly dismayed when he discovered that Henry’s beloved was his own daughter, Sara, and that the couple were secretly engaged to be married. The love of cousins seemed to him to be of the same kind as that between brother and sister, and he was moved to comment:

How much truth is there in this plea, Henry himself has *let out*, unawares, in the words ‘my Sister ere my Wife’ — words which have given offence, I find, to three or four persons of our acquaintance and I own shocked *my* feelings . . . Surely, the best interests of Society render it expedient, that there should be some *Outworks* between the Citadel, that contains the very *Palladium* of the Human Race, and the Open Country.³²

However, he gave way with good grace: ‘If the matter were quite open, I should incline to disapprove the marriage of first cousins; but the church has decided otherwise on the authority of Augustine, and that seems enough upon such a point’.³³ In 1829 Henry married Sara, who described him as her ‘cousin-husband, certainly nearer and dearer to me for being cousin, as well as husband’. When Henry died, she buried him beside her father.³⁴

There was an established European belief that marriages between close kin were liable to produce few or sickly offspring, and this was often taken to be a sign of divine disapproval of such unions. From the 1830s, however, a new perspective on cousin marriage began to gain currency. Following the secularization of marriage law in France and Italy, cousin marriages became legal, and the incidence of such marriage began to rise.³⁵ New medical research began to focus on the consequences of close-kin marriage, and studies were published which indicated that inbreeding might in itself be a cause of deafness, blindness, insanity, infertility, and so on.³⁶

In the late 1850s, when he was writing *The Origin of Species*, Charles Darwin himself became troubled about the deleterious effects of inbreeding in human populations, and indeed in his

³² An autograph note, published in *Collected Letters of Samuel Taylor Coleridge*, ed. Earl Leslie Griggs, 6 vols. (Oxford, 1956–71), vi, 590 (n. 1).

³³ *Specimens of the Table Talk of the Late Samuel Taylor Coleridge*, ed. H. N. C. [Henry Nelson Coleridge], 2 vols. (London, 1835), i, 55: entry for 10 June 1824.

³⁴ Anderson, ‘Cousin Marriage in Victorian England’, 289.

³⁵ See Raul Merzario, ‘Land, Kinship, and Consanguineous Marriage in Italy from the Seventeenth to the Nineteenth Centuries’, *Jl Family Hist.*, xv (1990).

³⁶ An extensive bibliography was published in England at the height of the debate: Alfred Henry Huth, ‘Index to Books and Papers on Marriage between Near Kin’, appendix to *Report of the First Annual Meeting of the Index Society* (London, 1879).

own family.³⁷ In 1865, Arthur Mitchell, Deputy Commissioner in Lunacy for Scotland, published a study that impressed him forcefully. Mitchell noted that popular opinion in Scotland condemned 'blood-alliances' as 'productive of evil'.³⁸ And there were grounds for concluding that the Scots were quite right. His own studies of the Scottish national statistics showed that nearly 14 per cent of 'idiots' were children of close kin. In 44 per cent of families with more than one idiot child, the parents were blood relatives. Six per cent of the parents of deaf mutes were close relatives. These figures were, he believed, far in excess of what might have been expected, given informed estimates of the incidence of close-kin marriages in the general population.

But Mitchell's own more detailed studies of fishing villages in the West Highlands and Islands suggested that there was significant regional variation, both in the actual incidence of marriage with cousins and in the consequences of such marriages. Although cousin marriage was reputedly widespread in the Highlands and Islands, Mitchell found that the overall incidence of marriage with first and second cousins combined was under 2 per cent. However, in one small town on the north-east coast of Scotland, 9 per cent of marriages were with first cousins and 13 per cent with second cousins. Nonetheless, there was no evidence that birth defects were particularly common here. In Berneray-Lewis (now Great Bernera, off the Isle of Lewis), 11 per cent of marriages were with first and second cousins. And yet, 'instead of finding the island [Berneray-Lewis] peopled with idiots, madmen, cripples, and mutes, not one such person is said to exist in it'.³⁹ The reason, Mitchell concluded, was that environmental factors ('occupation, social habits, etc.') could reduce biological risks.

Between 1868 and 1877 Darwin published three monographs on cross-fertilization in animals and plants.⁴⁰ In the first of these books, *The Variation of Animals and Plants under Domestication*, he proposed that 'the existence of a great law of nature is almost

³⁷ See Adrian Desmond and James Moore, *Darwin* (London, 1992), 447–9.

³⁸ Arthur Mitchell, 'On the Influence which Consanguinity in the Parentage Exercises upon the Offspring', 3 pts, *Edinburgh Medical Jnl*, x (Mar./Apr./June 1865), pt 1, 781.

³⁹ *Ibid.*, pt 2, 907.

⁴⁰ Charles Darwin, *The Variation of Animals and Plants under Domestication*, 2 vols. (London, 1868); *The Effects of Cross and Self Fertilisation in the Vegetable Kingdom* (London, 1876); *The Various Contrivances by which Orchids are Fertilised by Insects* (London, 1877).

proved; namely, that the crossing of animals and plants which are not closely related to each other is highly beneficial or even necessary, and that interbreeding prolonged during many generations is highly injurious'.⁴¹ Was this relevant to human reproduction? Darwin was convinced that this was indeed the case, but he was reluctant at first to press the issue. ('Before turning on to Birds, I ought to refer to man, though I am unwilling to enter on this subject, as it is surrounded by natural prejudices'.⁴²) But the opportunity soon came to alert the governing classes to the potential risks, and Darwin took immediate action.

In 1870, Darwin's close associate, the anthropologist John Lubbock, was elected to parliament. The census was about to be discussed in the House of Commons, and Darwin urged Lubbock to propose the inclusion of a question on cousin marriage in the census itself. It could then be established whether families in which the spouses were cousins had fewer children than the average. If so, 'we might safely infer either lessened fertility in the parents, or which is more probable, lessened vitality in the offspring'. Later it might also be possible to find out whether or not 'consanguineous marriages lead to deafness, and dumbness, blindness, &c.'⁴³

Lubbock put it to the House that 'consanguineous marriages were injurious throughout the whole vegetable and animal kingdoms'. Would it not therefore be 'desirable to ascertain whether that was . . . the case with the whole human race'?⁴⁴ The response was unenthusiastic. One member remarked that the House was already busy every year debating marriage with the deceased wife's sister, and he objected that 'if there were to be legislation about the marriage of first cousins also, the whole time of the House would be taken up in deciding who was to be allowed to marry anybody else'.⁴⁵ In the end, according to George Darwin, the proposed census question 'was rejected, amidst the scornful laughter of the House, on the ground that the idle curiosity of

⁴¹ Darwin, *Variation of Animals and Plants*, ii, 144. In the revised edition he dropped the qualification 'highly' before 'injurious': Charles Darwin, *The Variation of Animals and Plants under Domestication*, 2nd edn (London, 1875), ii, 126.

⁴² *Ibid.*, 122.

⁴³ *The Life and Letters of Charles Darwin*, ed. Francis Darwin, 3 vols. (London, 1887), iii, 129.

⁴⁴ *Hansard*, 3rd ser., cciii, col. 817 (25 July 1870).

⁴⁵ *Ibid.*, col. 1009 (26 July 1870).

philosophers was not to be satisfied'.⁴⁶ Nonetheless, forty-five members voted for Lubbock's motion in committee. Although ninety-two voted against, Lubbock remarked in his summing up that virtually everyone who spoke shared his concern.⁴⁷

The failure of Lubbock's initiative encouraged private scholars to pursue the matter themselves. Charles Darwin's eldest son, George, had published an essay in 1873 which suggested that it might prove necessary to place restrictions upon cousin marriage.⁴⁸ Darwin now asked him to find out 'by inquiry in asylums, whether the percentage of the offspring of consanguineous marriages amongst the diseased was greater than that in the healthy population, and thus to settle the question as to the injuriousness of such marriages'.⁴⁹

An essential preliminary step was to establish how common consanguineous marriages were in the general population. This was a question on which there was remarkable uncertainty, as George Darwin discovered. Well-informed people offered him estimates ranging from 10 per cent to one in a thousand. ('Every observer is biased by the frequency or rarity of such marriages amongst his immediate surroundings'.⁵⁰) Given that the question would not be included in the census, how were the correct figures to be established? Trained as a mathematician, and acquainted with the new statistical techniques being developed by his cousin Francis Galton and others, George Darwin proceeded to attempt a sample survey.

He made use of a variety of sources, including 18,528 marriage announcements in the *Pall Mall Gazette*; the genealogical information provided by *Burke's Peerage*; a questionnaire that he sent to 800 'members of the upper middle and upper classes',⁵¹ in which he asked for information on first-cousin marriages in the family; and finally a large sample of marriages from the General Registry of Marriages at Somerset House. After elaborate computations, he concluded that in the aristocracy about 4.5 per cent of marriages were with first cousins; 3.5 per cent in the

⁴⁶ George H. Darwin, 'Note on the Marriage of First Cousins', *Jl Statistical Soc.*, xxxviii (1875), 153.

⁴⁷ *Hansard*, 3rd ser., cciii, cols. 1006–10 (26 July 1870).

⁴⁸ George H. Darwin, 'On the Beneficial Restrictions to Liberty of Marriage', *Contemporary Rev.*, xxii (1873), 412–26.

⁴⁹ Darwin, 'Note on the Marriage of First Cousins', 153.

⁵⁰ *Ibid.*, 178.

⁵¹ *Ibid.*, 156.

landed gentry and the upper middle classes; about 2.25 per cent in the rural population; and among all classes in London, about 1.15 per cent. (The only information he collected on the distribution of different kinds of cousin marriage showed that marriage with a father's brother's daughter accounted for about a quarter of all first-cousin marriages. He concluded that there was no particular preference for one form of cousin marriage over another.)

The second part of George Darwin's study required him to collect statistics in asylums. He found that between 3 and 4 per cent of patients were the offspring of marriages between first cousins. 'It will be seen [he concluded] that the percentage of offspring of first-cousin marriages is so nearly that of such marriages in the general population, that one can only draw the negative conclusion that, as far as insanity and idiocy go, no evil *has been shown* to accrue from consanguineous marriages'.⁵² Reviewing studies that suggested an association between consanguineous marriages and blindness, deafness, infertility, etc., he reiterated the same broad conclusion. There was no evidence that such marriages had significant deleterious consequences from the biological point of view, although in another paper he had noted that among Oxbridge 'boating men', who were obviously the fittest of the fit, sons of first cousin parents were slightly less common than might have been expected (2.4 per cent as opposed to 3–3.5 per cent among their peers).⁵³

At the same time, he recognized the existence of a common belief that the offspring of close consanguineal unions were often unhealthy. Perhaps, he concluded, the practice might be quite all right for the rich but bad for the poor.

I may mention that Dr Arthur Mitchell, of Edinburgh, conducted an extensive inquiry, and came to the conclusion that, under favourable conditions of life, the apparent ill-effects were frequently almost nil, whilst if the children were ill fed, badly housed and clothed, the evil might become very marked. This is in striking accordance with some unpublished experiments of my father, Mr Charles Darwin, on the in-and-in breeding of plants; for he has found that in-bred plants, when allowed enough space and good soil, frequently show little or no deterioration, whilst when placed in competition with another plant, they frequently perish or are much stunted.⁵⁴

⁵² *Ibid.*, 168.

⁵³ *Ibid.*, 168–72.

⁵⁴ *Ibid.*, 178.

Charles Darwin accepted these conclusions.⁵⁵ 'Within the inbred Darwin-Wedgwood clan', Gwen Raverat recalled, 'it became a joke to point to lazy or sickly members as examples of degeneracy due to consanguinity'.⁵⁶ But the Darwinian establishment was no longer seriously concerned with the risks of inbreeding within prosperous families. Francis Galton wrote enthusiastically to George Darwin that he had 'exploded most effectually a popular scare'. He added that his cousin should be able to make a fortune from his discovery.

Thus: there are, say, 200,000 annual marriages in the kingdom, of which 2,000 and more are between first cousins. You have only to print in proportion, and in various appropriate scales of cheapness or luxury:

WORDS of Scientific COMFORT

and ENCOURAGEMENT

To COUSINS who are LOVERS

then each lover and each of the two sets of parents would be sure to buy a copy; i.e. an annual sale of 8,000 copies!! (Cousins who fall in love and don't marry would also buy copies, as well as those who think that they *might* fall in love.)⁵⁷

These conclusions of George Darwin, endorsed as they were by Charles Darwin and Francis Galton, were generally welcome in England, though for a variety of reasons. No doubt it was significant that Queen Victoria had married a first cousin, and that several of her descendants had also married cousins. Landowners in the House of Lords were inclined to believe that the inbreeding of good stock was sound policy. In any case, there were strong doubts about the propriety of legislating about such private matters. In the same year that George Darwin's paper was published, a gentleman scholar of liberal opinions, Alfred Henry Huth, noting that 'the subject has been exciting increased attention from all quarters', published a book entitled (with characteristic Victorian amplitude) *The Marriage of Near Kin: Considered with Respect to the Laws of Nations, the Results of Experience, and the Teachings of Biology*.⁵⁸ Yet another Victorian intellectual who had married his first cousin, Huth argued that even if it could be proved that the children of close relatives were

⁵⁵ Darwin, *Effects of Cross and Self Fertilisation*, 460–1.

⁵⁶ Anderson, 'Cousin Marriage in Victorian England', 295.

⁵⁷ Karl Pearson, *The Life, Letters and Labours of Francis Galton*, 3 vols. (Cambridge, 1914–30), ii, 188.

⁵⁸ Alfred Henry Huth, *The Marriage of Near Kin: Considered with Respect to the Laws of Nations, the Results of Experience, and the Teachings of Biology* (London, 1875), p. v.

liable to have various defects, this would not justify a legal prohibition on marriages between first cousins. After all, marriage was permitted in the case of people suffering from hereditary illnesses.

V

THE ANTHROPOLOGISTS

Incest was not a matter only for theologians or for doctors. It became a central topic in the new school of anthropology. Authorities such as J. F. McLennan and Lewis Henry Morgan argued that promiscuity had been the rule in early human societies, and that incest had been commonplace. The incest taboo was a late human invention, and it marked the passage from pure savagery to the first rude stage of civilization. According to McLennan, there were still living witnesses to earlier stages of unbridled licence, not only in the outback of Australia but even in London. The whole history of human mating practices could be discovered in the city's slums, 'from the lowest incestuous combinations of kindred to the highest group based on solemn monogamous marriage'.⁵⁹

Darwin would not accept that early humans had been promiscuous and incestuous. 'The licentiousness of many savages is no doubt astonishing', he remarked, 'but it seems to me that more evidence is requisite, before we fully admit that their intercourse is in any sense promiscuous'.⁶⁰ In other animal species, including the apes, adult males tended to be jealous. Early human males would probably have been equally reluctant to share their females. Nor was there any other reason to suppose that incest had ever been commonplace. On the contrary, without strong controls on incest a population would have struggled to reproduce itself. Conversely, those groups that developed the habit of breeding out would have been more successful, and in consequence the custom would have spread by natural selection.⁶¹ This view was echoed by Darwin's ally Lubbock. In a book published in 1870 (the same year that he had urged parliament to look into the question of cousin marriages), Lubbock argued that among the

⁵⁹ J. F. McLennan, 'The Early History of Man', *Northern Brit. Rev.*, 1 (1869), 68.

⁶⁰ Charles Darwin, *The Descent of Man, and Selection in Relation to Sex*, 2nd edn (London, 1874), 896.

⁶¹ Darwin, *Variation of Animals and Plants*, ii, 124.

benefits conferred by what McLennan had termed 'exogamy' was 'the advantage of crossing, so well known to breeders of stock'. The good effects of this practice 'would soon give a marked preponderance to those races by whom exogamy was largely practised'.⁶²

In Darwin's view, there was no need to suppose that the incest taboo had been deliberately enacted, much less that it was the outcome of a quasi-scientific risk assessment. Natural selection would have done its work, whether or not people recognized that inbreeding was dangerous. On this point Henry Maine (who had also married his first cousin) ventured to disagree: 'I cannot see why the men who discovered the use of fire and selected the wild forms of certain animals for domestication and of vegetables for cultivation should not find out that children of unsound constitutions were born of nearly related parents'.⁶³

Other anthropologists pointed out that the incest taboo might also have social advantages. E. B. Tylor, the leading British anthropologist, argued that these social effects may have been decisive, as Darwin uneasily noted.⁶⁴ 'Among tribes of low culture', according to Tylor, 'there is but one means known of keeping up permanent alliance, and that means is intermarriage . . . Again and again in the world's history, savage tribes must have had plainly before their minds the simple practical alternative between marrying-out and being killed out'.⁶⁵

Others again preferred to see the evolution of incest taboos as evidence of advances in morality. Lewis Henry Morgan (an American lawyer, and yet another anthropologist to have married a first cousin) proposed a particularly elaborate and influential speculative history of human mating practices. In the most primitive societies, brothers shared their own sisters. The first great advance came when one group of brothers exchanged their sisters with another group of brothers. From this point on, brother/sister incest was no longer practised. However, each group of brothers still held their wives in common. The next breakthrough came with the introduction of a ban on group marriage. Henceforth brothers no longer shared their partners. Successive

⁶² John Lubbock, *The Origin of Civilization and the Primitive Condition of Man* (London, 1870), 94.

⁶³ Henry Maine, *Dissertations on Early Law and Custom* (London, 1883), 228.

⁶⁴ Darwin, *Variation of Animals and Plants*, ii, 123.

⁶⁵ E. B. Tylor, 'On a Method of Investigating the Development of Institutions: Applied to Laws of Marriage and Descent', *Jl Anthropol. Inst.*, i (1889), 267.

evolutionary advances had therefore produced the two classic sets of Christian incest taboos, on marriage or sexual relations with close kin or with the spouse of a close relative.⁶⁶

Once this advance had been established some very superstitious people had apparently gone overboard and put a stop to any marriages between kin, however distant. McLennan concluded in *Primitive Marriage* (1865) that the most extensive restrictions were eventually dropped as the large clans of primitive societies were progressively weakened and decayed.⁶⁷ This was to be the general view among anthropologists in the next generation. Edward Westermarck noted in his magisterial *The History of Human Marriage* (1891) that very broad prohibitions were a sign of backwardness: 'As a rule, among peoples unaffected by modern civilization the prohibited degrees are more numerous than in advanced communities'.⁶⁸ In 1909, the year after the British parliament passed its incest law, a measure that concerned itself only with sexual relationships between close consanguineal kin, James George Frazer remarked that 'among many savages the sexual prohibitions are far more numerous, the horror excited by breaches of them far deeper, and the punishment inflicted on the offenders far sterner than with us'.⁶⁹

Some anthropologists actually represented a preference for cousin marriage as the logical consequence of the incest taboo. Once men began to exchange sisters with other men, regular exchange relationships would become established between groups, and the children of a brother and a sister would be encouraged to marry each other. Tylor endorsed this view,⁷⁰ but others had doubts about the evolutionary status of cousin marriage. Curiously, the American scholar Lewis Henry Morgan, who wrote voluminously about the evolution of marriage, had nothing at all to say about the preference for marriage with cousins, despite the fact that he had personally assembled particularly good reports on cousin marriage in societies in North America and southern India.⁷¹

⁶⁶ Lewis H. Morgan, *Systems of Consanguinity and Affinity of the Human Family* (Washington, DC, 1871), pt 3, ch. 6.

⁶⁷ J. F. McLennan, *Primitive Marriage: An Inquiry into the Origin and the Form of Capture in Marriage Ceremonies* (Edinburgh, 1865), ch. 9.

⁶⁸ Edward Westermarck, *The History of Human Marriage* (London, 1891), 297.

⁶⁹ J. G. Frazer, *Psyche's Task*, 2nd edn (London, 1909), 47.

⁷⁰ Tylor, 'On a Method of Investigating the Development of Institutions', 263.

⁷¹ Morgan's informant on the Tamil, the Revd Ezekiel Scudder, pointed out to him that the same term was used for uncle and for husband's father, and suggested that this was appropriate because a person 'is expected to marry an uncle's daughter or

(cont. on p. 177)

According to his most recent biographer, Thomas Trautmann, it was because Morgan had himself married his mother's brother's daughter that he was reluctant to stigmatize such a practice by identifying it as exotic or primitive,⁷² but he may have been responding to a change in public sentiment. In the 1860s, public opinion in the United States was turning against marriage with cousins. Medical objections to close-kin marriages became widely accepted, perhaps part of a climate of opinion that produced at the same time a growing concern with miscegenation. Before the American civil war there had been no laws against first-cousin marriage in any state in the Union. By the end of the nineteenth century such marriages were prohibited in Arkansas, Illinois, New Hampshire and Ohio. Fourteen other states followed them in the course of the twentieth century.⁷³

In 1866, Morgan's friend and mentor, the Revd McIlvaine (to whom Morgan later dedicated his masterpiece, *Ancient Society*), condemned cousin marriage at a meeting of the Pundit Club, a society of Rochester intellectuals in which he and Morgan played leading roles. Though he was a Presbyterian minister, McIlvaine did not suggest that there was any theological or moral objection to cousin marriage. The problem was one of biology; the threat, degeneration. McIlvaine held that the practice of cousin marriage had been responsible for the 'degradation and inferiority' of the Tamil and American Indian peoples. This was because 'the blood, instead of dispersing itself more and more widely, is constantly returning upon itself'.⁷⁴

VI

THE DECLINE OF COUSIN MARRIAGE

George Darwin's estimate of the incidence of cousin marriage in England around 1875 may have been generally accurate, but it was in the nature of a snapshot, and would not have uncovered any trend towards a decrease in the incidence of these marriages. Moreover, his study would not have picked up local variations,

(n. 71 cont.)

son, and thus the two relationships are combined in one': Thomas Trautmann, *Lewis Henry Morgan and the Invention of Kinship* (Berkeley, 1987), 242–3.

⁷² *Ibid.*, 243–5.

⁷³ Ottenheimer, *Forbidden Relatives*, 37, 52–7.

⁷⁴ Trautmann, *Lewis Henry Morgan and the Invention of Kinship*, 244.

or any unusual tendency for particular communities, or even families, to favour cousin marriage.

The striking proclivity of the Darwins and the Wedgwoods for marriages with cousins may have been exceptional, but recent studies show that the incidence of first-cousin marriage was significantly higher in some British or British-derived populations during the nineteenth century than George Darwin's statistics suggested. Men of Boston Brahmin families had a remarkably high level of close kin (mostly first-cousin) marriage from 1680 to 1859, averaging around 25 per cent, but climbing to 66.6 per cent in the middle of the eighteenth century. Sibling exchange was also common.⁷⁵ Close-kin marriage was by no means restricted to the elite. In the first half of the nineteenth century, 20 per cent of marriages among Protestant Northern Irish immigrants to the Midwest were with first cousins.⁷⁶ Highland Scots migrants to New Zealand were also strikingly endogamous. What Maureen Molloy calls 'kin group endogamy' reached 70 per cent in some areas. Sibling exchanges were frequent, and 'it is quite common to find three siblings marrying two sibling cousins and a third cousin or cousin's cousin'. Molloy found genealogical evidence to show that this pattern preceded emigration, and argued that it was perhaps related to the imposition of British rule and population resettlement.⁷⁷

People who belonged to minority religions were particularly likely to marry close kin, as were family members who worked together in business. The Rothschilds qualified on both counts, and had an extraordinary propensity to marry cousins. The founder of the London branch of the family bank was Nathan Rothschild. His first son, Lionel, married a daughter of Nathan's brother Carl, in 1836. In 1842 Nathan's younger daughter married a son of Carl. His second son, Anthony, married Louise Montefiore, Nathan's sister's daughter. His third son, Nathaniel, married a daughter of Nathan's youngest brother, James. Nathan's fourth and youngest son, Mayer, married his mother's

⁷⁵ Peter Dobkin Hall, 'Marital Selection and Business in Massachusetts Merchant Families, 1700–1900', in Michael Gordon (ed.), *The American Family in Socio-Historical Perspective* (New York, 1978), 104, 110.

⁷⁶ Russell M. Reid, 'Church Membership, Consanguineous Marriage, and Migration in a Scotch-Irish Frontier Population', *Jl Family Hist.*, xiii (1988).

⁷⁷ Maureen Molloy, '“No Inclination to Mix with Strangers”: Marriage Patterns among Highland Scots Migrants to Cape Breton and New Zealand, 1800–1916', *Jl Family Hist.*, xi (1986).

brother's daughter. (Nathan's remaining daughter, Hannah Mayer, contracted a shocking marriage with a Christian, Henry FitzRoy, in 1839.) Lionel, who succeeded Nathan as head of the London bank, had five children. The first three married Rothschild cousins.⁷⁸

In the USA, marriage with cousins declined sharply from the middle of the nineteenth century, but it was only in the late Victorian period that public opinion in the United Kingdom turned against cousin marriage, and such marriages also began to be less common.⁷⁹ By the early twentieth century they were very rare, and a matter for remark and concern. In the 1930s the Medical Research Council carried out a special survey and reported that only about 0.6 per cent of 100,000 marriages were with a first cousin.⁸⁰ By the middle of the twentieth century such unions accounted for only 0.004 per cent of the marriages of a middle-class London sample.⁸¹

Biological concerns were not the only reasons that marriages with cousins became less popular, certainly in England, where scientific opinion was divided. (Incidentally, current scientific opinion tends to agree with George Darwin that the risks are small.⁸²) Changes in social conditions probably had a more direct effect. Among the middle classes cousin marriage might counteract the division of land through inheritance, or avoid the necessity for very expensive marriage settlements, but in any case such marriages tended to occur naturally in isolated communities, with few middle- or upper-class families, poor communications, and little mobility of women. These factors became less important as investments in land were replaced by shares in financial and industrial companies, rail travel became common, and the middle class became increasingly urbanized.

⁷⁸ See Adam Kuper, 'Fraternity and Endogamy: The House of Rothschild', *Social Anthropology*, ix (2001). The study is based on Niall Ferguson, *The House of Rothschild*, 2 vols. (London, 1998–9).

⁷⁹ Anderson, 'Cousin Marriage in Victorian England', 297.

⁸⁰ Medical Research Council, *Report for 1938/9* (London, 1940), 81.

⁸¹ Raymond Firth, Jane Hubert and Anthony Forge, *Families and their Relatives: Kinship in a Middle-Class Section of London* (London, 1970), 191–3.

⁸² See A. H. Bittles and E. Makov, 'Inbreeding in Human Populations: An Assessment of the Costs', in C. G. N. Mascie-Taylor and A. J. Boyce (eds.), *Human Mating Patterns* (Cambridge, 1988), esp. 164, where they conclude that 'with the exception of incest and families known to carry deleterious recessive mutants, the risks to the offspring of inbred union generally are within the limits of acceptability. For first cousin progeny, it also must be admitted that they appear to be in remarkably close agreement with the levels calculated by [George] Darwin in 1875'.

At all levels of society the incidence of cousin marriage was likely to be highest in small communities, for example within an isolated group of gentry in a small town, or among the members of minority churches and immigrant groups. As these groups integrated into the wider society, so the rate of cousin marriage would go down.⁸³ Another factor may have been the secular decline in family size, since the more siblings your parents had, and the more children these siblings raised, the greater the chance of finding a partner among your cousins. Finally, the incidence of cousin marriage declined as women began to marry at a later age, and as young people, and particularly young women, became more independent.

VII

INCEST AS A SOCIAL EVIL

The greatest change in the English conception of incest occurred in the late nineteenth century. From the 1880s, the term began to be used primarily to mean sexual relations between close kin, and particularly between fathers and daughters, or brothers and sisters. Moreover, incest came to be thought of as an offence committed by an adult male relative against a young girl. To put it in contemporary terms, incest came to be thought of more and more as a form of child abuse. And child abuse had become a major public issue.

The National Vigilance Association and the National Society for the Prevention of Cruelty to Children, both founded in the 1880s, were concerned at first with the control of child labour. Soon, however, they became concerned with the exploitation of children for sexual purposes. In 1885, the reforming journalist W. T. Stead described in the *Pall Mall Gazette* how he had bought Lily, a thirteen-year-old girl, from her mother for £5.⁸⁴ There was agitation to raise the age of consent, and sexual intercourse with children under thirteen was made a crime. Reformers now pointed to a more specific and sensitive problem: the sexual abuse of girls in the congested family quarters of the large cities.

⁸³ See, for example, Merzario, 'Land, Kinship, and Consanguineous Marriage in Italy'; Reid, 'Church Membership, Consanguineous Marriage, and Migration'.

⁸⁴ Discussed in Frederic Whyte, *The Life of W. T. Stead*, 2 vols. (London, 1925), i, ch. 8; for the original article, see *Pall Mall Gazette*, 6 July 1885.

When Beatrice Webb worked in a sweatshop in 1888, she was shocked to find talk of incest commonplace (perhaps missing the irony of her fellow workers). In her diary she describes a seamstress muttering to her that the girls at the next table were a bad lot. 'Why bless you, that young woman just behind us has had three babies by her father, and another here has had one by her brother'.⁸⁵ And the younger workers,

young girls, who were in no way mentally defective, who were, on the contrary, just as keen-witted and generous-hearted as my own circle of friends — could chaff each other about having babies by their fathers and brothers . . . The violation of little children was another not infrequent result. To put it bluntly, sexual promiscuity, and even sexual perversion, are almost unavoidable among men and women of average character and intelligence crowded into the one-room tenement of slum areas.⁸⁶

The Royal Commission on the Housing of the Working Classes (1884–5) questioned expert witnesses who gave evidence indicating that incest between young girls and their close male relatives was common.⁸⁷ Home Office studies of cases of carnal knowledge and rape that came up for review led to the same conclusion.⁸⁸ In 1906 an internal Home Office memo summed up the official view in blunt terms: 'Incest is very common among the working classes in the big towns'.⁸⁹ Opponents of legislation had argued that incest (in this sense) was rare, and that police involvement and prosecution would lead to still greater problems. However, the numbers were decisive. 'Faced with statistical proof of the incidence of incest, and with the administrative problems created by the absence of a specific incest statute, the Home Office were increasingly convinced of the need for legislation'.⁹⁰ In 1908 the Punishment of Incest Act was passed. It referred only to sexual acts between close consanguineal kin. The male partner was liable to imprisonment for between three to seven years.

⁸⁵ *The Diary of Beatrice Webb*, ed. Norman and Jeanne MacKenzie, 4 vols. (London, 1982–4), i, 244.

⁸⁶ Beatrice Webb, *My Apprenticeship* (London, 1926), 275 (n.); Anthony S. Wohl, 'Sex and the Single Room: Incest among the Victorian Working Classes', in Anthony S. Wohl (ed.), *The Victorian Family* (London, 1978). See also Victor Bailey and Sheila Blackburn, 'The Punishment of Incest Act 1908: A Case Study of Law Creation', *Criminal Law Rev.* (1979).

⁸⁷ *First Report of Her Majesty's Commissioners for Inquiring into the Housing of the Working Classes*, 3 vols., P.P., 1884–5 (C. 4402), xxx, vol. 2, *Minutes of Evidence and Appendix as to England and Wales*, 79, 85, 87, 121, 164, 191, 222, 225.

⁸⁸ Bailey and Blackburn, 'Punishment of Incest Act', 713–14.

⁸⁹ *Ibid.*, 715. This paragraph draws on their study.

⁹⁰ *Ibid.*, 714.

VIII

FROM SIN TO CRIME

Traditionally incest had been a matter for the ecclesiastical authorities. It referred to sexual relations between people whose relationship fell within the prohibited degrees as fixed by a tradition of biblical exegesis. In some cases, particularly where relatives-in-law were concerned, these prohibitions might seem absurd or even cruel to many lay people, but it turned out to be very difficult to ease the regulations even where there was a great gulf between what the Church thought right and what people in general considered to be proper. Marriage with the dead wife's sister remained against the law until 1907, despite widespread opposition, and notwithstanding a generation of energetic lobbying led by 'thousands of middle- and upper-class couples who had taken advantage of their wealth and the more lenient laws of other countries to contract affinal marriages abroad'.⁹¹

On the other hand, new arguments might be put forward for the extension of some of the prohibitions on marriage, particularly on marriage between blood relatives. In the 1860s, British scientists began to collect data on risks to the health of the offspring of close-kin marriages. It was also argued that cousin marriage might have to be prohibited on the grounds of public health. This actually happened in several states of the USA. The initial impulse of the Darwinians was that Britain should move in the same direction, but research findings persuaded them that the practice did not constitute a risk to the reproductive success of the best families.

Finally, in the 1880s, incest began to be thought about in a new way, as a criminal violation of a girl by her father, brother or uncle, and as a crime that was most likely to occur in some crowded slum tenement. In this sense, incest was a clear danger to the institution of the family. The Evangelicals saw it as a symptom of more general moral laxity. It was also widely regarded as an act of individual wrongdoing, and the Home Office came under pressure to make it a crime. However, there was the difficulty that in law the term 'incest' still covered a sexual relationship between a man and his dead wife's sister. In 1907 the Deceased Wife's Sister Act was passed. This law finally severed the connection with the ecclesiastical definition of incest.

⁹¹ Morris, 'Incest or Survival Strategy?', 141.

It was in the following year, in 1908, that incest in the modern sense, the sexual abuse of a child within the family, became a crime.

The social purity movement was concerned with the spiritual rather than the physical health of the nation. Biological and more specifically eugenics issues were hardly raised during the public debates on the Incest Bill, although the country was much concerned at the time with questions of public health, and the eugenics movement (led by Darwin's cousin Francis Galton) was by then in full swing.⁹² In the USA, debates on cousin marriage, and also on what came to be called miscegenation, were infused with eugenic arguments. However, the case against inbreeding among humans was by no means firmly established in scientific circles in Britain. Both Darwin and Galton had accepted George Darwin's reassuring findings on the effects of cousin marriage. The eugenicists accordingly avoided the issue. In England, by the end of the nineteenth century, the question of incest had become a matter of morality and social policy.

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⁹² Bailey and Blackburn, 'Punishment of Incest Act'; Sybil Wolfram, 'Eugenics and the Punishment of Incest Act 1908', *Criminal Law Rev.* (1983).