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# Critiquing Consensual Adult Incest

## Abstract

In this chapter, I argue that we can make sense of moral norms against consensual, adult incest by appealing to the value of familial relationships and the potential for sex to damage them. Viewing sex as unconscionable between family members helps to enable the loving intimacy normally associated with family relationships. Therefore, there is good reason for incest, even when consensual and between adults, to remain taboo. That being said, I argue that there is insufficient legal justification for *all* consensual, adult incest to be criminalised. I examine four potential arguments in favor of consensual, adult incest being illegal, and conclude that none of them succeeds in justifying a total legal prohibition against it.

## Introduction

Pat and Allen Muth, both American, were partners and parents of four children. They were biological siblings, but had first met when Pat was 18 years old, as she had been raised in foster care. In 1997, when Pat was 30 years old and Allen was 45 years old, Pat was sentenced to five years and Allen was sentenced to eight years in a maximum-security prison for having a sexual relationship. They also had their children removed from them and put up for adoption. The Judge responsible for their sentencing said: " I believe severe punishment is required in this case....I think they have to be separated. It's the only way to prevent them from having intercourse in the future." (Bergelson 2013: 44)

Incest, even when consensual and between adults, is widely considered to be morally wrong. Incestuous sexual activity between an adult and a child is always a serious wrong because it cannot be consensual and it is likely to cause grave harm. But why should incestuous sex be

wrong if it is between consenting adults? From now on in this chapter, the term ‘incest’ will refer to consensual sex between close adult relatives. I will use ‘consent’ as Section 74 of the Sexual Offences Act 2003 defines it: “a person consents if he agrees by choice, and has the freedom and capacity to make that choice”. In order to focus the discussion, I mainly consider sex between consenting adult siblings and between parents and their adult-children, with the assumption that the sex began in adulthood. Sex between parents and their adult-children or between sibling and sibling is almost universally taboo (Rosman et al. 2009: 101). It is also, in the UK and many other places, illegal.

That consensual adult incest is illegal in Western, liberal states makes it unusual, because, as Tatjana Hornle notes, its illegality seems to go against a general legal principle in these states “not to target consensual sexual acts between adults” (Hornle 2014: 78). However, whether or not it ought to be legally prohibited is rarely questioned, including by philosophers, who have paid relatively little attention to the issue.

In this chapter I argue that there is insufficient legal justification for all consensual, adult incest to be illegal. This is, at least in part, because incest can take place in quite different contexts, and different cases might raise quite different issues. For example, it is often a product of what’s known as “Genetic Sexual Attraction” (GSA): the phenomenon of experiencing sexual feelings for a close relation from whom you were separated at birth but with whom you were reunited as an adult (Colman 2015). However, there *is* nonetheless good reason to retain a strong social and moral norm against all incest. This is because the perception of sex as unconscionable between close family members helps make the particular kind of loving intimacy normally associated with families possible. First, the norm against incest—if adhered to—removes the possibility of sex damaging the relationship; and, second, it allows family members to engage in emotional and physical intimacy free from suspicion that the intimacy is code for a sexual overture.

I first examine four arguments in favor of adult, consensual incest being illegal: first, because most people think it ought to be illegal; second, in order to protect those involved in incest from harm; third, to stop children of incestuous parents being born, as they have a higher probability of being born with congenital disorders; and fourth, to prevent harm to individual families and to the family as an institution. I argue that none of these arguments justifies a total legal prohibition against all consensual incest. However, such incest always carries a significant risk of harm to a familial relationship, and the sociomoral norm against it is justified because of the role this norm plays in facilitating the special kind of love and intimacy that is associated with well-functioning families.

### **1. Incest ought to be illegal because people think it should be**

Although consensual incest is illegal in most Western states, I will focus on the UK as an example. In 2002, the UK Government outlined proposals for updates to the Sexual Offences Act 2003, and gave two justifications for including adult incest within the new offence of “Prohibited adult sexual relationships.” This was one of two new offences relating to familial sexual activity, replacing the previous gender-specific offences of incest by a man and incest by a woman the other new offence was “Familial sexual abuse of a child.” The first justification the Government gave for prohibiting consensual incest was this: “it is generally believed that all such behaviour is wrong and should be covered by the criminal law.” The second justification was that “some adult familial relationships are the result of long-term grooming by an older family member and the criminal law needs to protect adults from abuse in such circumstances” (Home Office 2002: 26). I will discuss the second justification in the following section. Here I object to the first.

In a democratic state, it is true that laws should typically be founded on widely agreed-upon, foundational moral principles. However, this is not the same as saying that laws should simply

parrot the moral views of the populace. There is, rather, a two-way street between the laws and popular sentiment. As Keith Burgess-Jackson notes, the law “has some causal connection to how people think” (Burgess-Jackson 1999: 15): it does not only reflect what most people believe is right or wrong, but also has a role in shaping their views. The first justification provided by the UK Government in its proposal implies that the sheer fact that most people believe that incest should be illegal at least partly justifies its illegality. But of course, the fact that incest is illegal already might causally contribute to this widespread belief.

Furthermore, one does not need to look far into history to see examples of laws which both shaped and tracked views held by many people, yet which are now widely considered to be morally abhorrent in liberal Western societies (for example, laws allowing slavery, or laws forbidding interracial or same-sex marriages). Such laws not only reflected what people believed, they also normalized such beliefs and likely influenced people to hold—or hold onto—such beliefs in the first place. For example, the fact that it was illegal until recently for same-sex couples to marry undoubtedly tracked the beliefs of many who thought that same-sex couples *ought not* to be able to marry. But the legal prohibition on same-sex marriage also played a causal role in maintaining that belief. Empirical support for this hypothesis can be found a study by Christopher Aksoy et al. (2018) which looked at attitudes towards same-sex relationships across Europe. The authors concluded that the legalisation of same-sex marriage causally contributed to increased support for same-sex relationships and to more positive attitudes toward gender and sexual orientation minorities more broadly.

Vera Bergelson argues that widely held feelings of disgust have often been used politically, for example against Black people, Jewish people, and homosexuals, or against activities associated with these groups. But it is not justifiable for the law to “[placate] social anxieties at a cost of punishing essentially harmless behavior” (Bergelson 2012: 57). Bergelson reminds us of the argument posed by the influential legal philosopher H. L. A. Hart that we must ask first,

whether a practice is “harmful, independently of its repercussion on the moral code;” and second, whether “failure to translate this item of general morality into criminal law will jeopardize the whole fabric of morality and so of society.” In other words, to justify making a practice illegal, even if it is widely considered to be immoral, we must be able to point to some harm it is causing either to people or to society (see Flanigan, this volume, for further discussion). Thus, private, harmless sexual acts ought not to be criminalised on the basis of popular “sexual morality” alone (Bergelson 2012: 50).

Bergelson points out that incest, for most people, produces a “yuck” reaction: “it is widely perceived not only as an antisocial act but also as a major human transgression, a true vice” (Bergelson 2012: 55). However, people struggle to provide reasons for this reaction in the case of adults who engage in incest by mutual consent. In fact, the psychologist Jonathan Haidt has famously used the example of adult incest to show that moral judgement is often a post-hoc rationalisation of an unreflective emotional response. To show this, Haidt uses the following example:

Julie and Mark are brother and sister. They are traveling together in France on summer vacation from college. One night they are staying alone in a cabin near the beach. They decide that it would be interesting and fun if they tried making love. At the very least it would be a new experience for each of them. Julie was already taking birth control pills, but Mark uses a condom too, just to be safe. They both enjoy making love, but they decide not to do it again. They keep that night as a special secret, which makes them feel even closer to each other (Haidt 2001: 814).

Haidt writes that, when given this example, most people say Julie and Mark did something wrong. When asked why, they give reasons that don't fit the example. They say, for example, that it is dangerous to inbreed, even though Julie and Mark use two forms of contraception, or

they suggest that Julie and Mark will be hurt, although the example specifically states that they are not harmed by the experience, and at least implies that they will not be harmed later.

How might the common moral intuition about the wrongness of Julie and Mark's behavior be explained? Various theories have been offered, but one goes like this. Inbreeding is uncommon across species as it can often lead to genetic problems in the offspring (Pusey and Wolf 1987). This includes humans. The "Westermarck Effect," named after the Finnish anthropologist Edvard Westermarck, who first proposed it, tries to make sense of the fact that humans do not tend to find their immediate family members sexually attractive. Westermarck hypothesized a mechanism of "negative sexual imprinting," whereby those in one's environment during childhood (usually, but not always, close genetic relatives) get "tagged" by the brain as ineligible sexual partners. Incest, accordingly, is rare, and people are likely to find the idea of having sex with their relatives—especially those they grew up with—to be distasteful and even disgusting (Westermarck 1921). Thus, people's aversion to the idea of having sex with their own close relations, coupled with the uncommonness of its happening in general, could lead to a widespread emotional response of revulsion against its happening at all (Bergelson 2013: 57-58).

A causal explanation for the origins of a moral intuition, however, do not tell us whether the intuition is normatively valid (that is, whether it *should* carry moral weight). In what follows I want to question whether the moral norm, and corresponding law, against consensual incest can be made sense of beyond emotional revulsion. I have argued above that a law against such incest should not be based *merely* on the fact that most people think it is immoral and/or that it should be illegal. If people's liberty to engage in private, consensual sexual relations is to be restricted, and if people who engage in such relations will be criminalised and possibly imprisoned (for up to two years under the UK law), this needs to be adequately justified. In this case, the strongest possible justification for such restrictions and criminal punishments is that

they are necessary to prevent some greater harm. I will thus consider whether the risk of harm caused by adult incest is significant enough to legally prohibit it, focusing on the following considerations: firstly, whether prohibiting consensual incest is justified in order to prevent harm to those involved in the incest; secondly, whether it is justified to prevent harm to the potential offspring of incestuous couples; and finally, whether it is justified in order to prevent harm to the family (both to individual families and to the family considered more broadly as a social institution). I will argue that the criminalisation of consensual, adult incest is not justified, but that there is nevertheless very good reason to maintain the social and moral norms against it.

## **2. Prohibiting consensual incest in order to prevent harms to those involved in incest**

I have already stipulated that in this chapter I am discussing moral norms and laws against consensual incest only. Non-consensual incest (legally, rape or sexual assault) is always morally wrong and should be illegal because it is non-consensual (that is, in addition to typically causing harm or trauma, it also directly disrespects the person whose sexual boundaries are crossed by undermining their right to decide who may engage with them in such an intimate manner, and under what conditions) (Archard 2007: 379). However, it is reasonable to assume that consensual incest might also cause harm to the participants, or make abusive incest more likely. Either of these possibilities could, in principle, justify making consensual incest illegal.

Before we can look at such harm-based arguments, however, we must first ask ourselves whether “consensual” incest is even possible. In other words, we might think that the ostensible consent to incest is given under circumstances which could serve to undermine its ethical validity. Indeed, this potential seems to be, at least in part, what is underlying the UK Government’s reasoning for making consensual sex between adult family members illegal. As



noted above, the second justification which they provide for criminalising consensual adult incest is that “some adult familial relationships are the result of long-term grooming by an older family member and the criminal law needs to protect adults from abuse in such circumstances” (Home Office 2002: 26).

In order to understand the force of this justification, we need to get clear about what ‘grooming’ is or amounts to.<sup>1</sup> The term ‘grooming’ has been used since the 1980s (Manning 2018:7) and is generally used to refer to actions which help offenders to “gain access [i.e., to the victim], maintain compliance, and avoid disclosure” (Plummer 2018: 38). The term could, therefore, refer to a number of different behaviors, including attempting to gain the trust of a child with the intention of later abusing or exploiting them, desensitizing a child to sexual ideas or images, or destroying the child’s confidence in order to make them more compliant and less likely to disclose to others what has happened. In addition, it is not only children who can be groomed; vulnerable adults, such as those with certain learning difficulties or overly trusting emotional dispositions, can be groomed as well. For behavior to count as grooming, however, what seems crucial is *intent*. The groomer must have an intention to commit a sexual offence later on (Ost 2004: 151-2).

Some cases of adult (purportedly consensual) incest will no doubt be a result of long-term grooming in the sense just described. A father might have groomed his daughter since she was a child, for example, with the intention of developing a sexual relationship with her once she turns 16. In such a case, even if the daughter ostensibly gives consent to sex with her father, the long-term grooming would morally vitiate the “consent” given by the daughter. Grooming is particularly an issue with incest because families are places where adults have access to and authority over children, both while they are children and as they grow up. It is also an issue in other areas where adults have similar access to and authority over children and young people, such as schools. Under Sections 16 and 17 of the Sexual Offences Act 2003, it is a criminal

offence for a teacher to have sex with a pupil who is under the age of 18, regardless of whether the pupil has consented. By contrast, while it is not illegal for a teacher to have sex with a pupil or former pupil, once the pupil has turned 18—depending on the terms of their contract—a teacher who has done so could be dismissed and barred from the profession due to concerns that the teacher had groomed the pupil, and (thereby) abused a position of trust.

It is right to be concerned about grooming. But we ought also to be concerned about sex between a father and his 16 year old daughter or a teacher and their 18 year old former pupil even if the father or teacher had no intention of having sex with the daughter or pupil while the latter were children (such that there was no explicit long-term grooming involved). This is because the position of trust and authority that the father and the teacher holds or held over the daughter and former pupil, respectively, does not evaporate once they have turned 16 or 18. So, for the same reasons we should be skeptical about “consent” in the case of explicit grooming, we should be sceptical about consent in these latter cases as well.

That being said, the fact that someone used to hold a position of authority over someone is not, in itself, enough to rule out the possibility of sexual consent being genuine (that is, ethically valid). With teachers and relationships with former pupils, for example, the context has to be taken into account. If a teacher had sex with their former pupil when the pupil had just left school, this would likely justify investigation into the case and perhaps the dismissal of the teacher in order to protect others. However, if the teacher and the former pupil happened to come back into contact with one another later in life, it is possible that enough time would have passed—and/or that the nature of the relationship would have changed enough—since the teacher had any authority over the former pupil that the relationship could be permissible. To ban *any* relationship between teachers and their former pupils, seems, therefore, to go beyond what is necessary to prevent the cases that are of ethical concern. Similarly, making all adult

consensual incest illegal seems to go further than what is needed to prevent those cases where there is a serious abuse of power.

Suppose we leave aside the specific issue of grooming. We might still worry in the case of purportedly consensual incest that it is at least sometimes not in fact consensual. But non-consensual incest is illegal already, *because it is non-consensual*.<sup>ii</sup> The relationship between the perpetrator and the victim would, and should, then be taken into account during sentencing, and in rehabilitating the perpetrator. This relationship contributes to the wrong of the incest in a number of ways: the perpetrator might have abused the trust of the victim, or reneged on a duty of care to them, for example. However, if a person has sex with another person and the other person did not consent to this sex, then, whatever other ethical problems may also apply to such a case, the first person will have committed a wrong *because the sex was not consensual*. Similarly, if a person commits any kind of sexual abuse against another person, it is wrong because it is abusive. As Bergelson puts it, if the reasoning for incest being illegal is to prevent sexual abuse, then the law is “overbroad and redundant.” It is overbroad because it covers cases not involving sexual abuse or sexual imposition, and redundant because sexual abuse is already illegal (Bergelson 2013: 49).

One might respond that it is reasonable to make all incest illegal because in cases of incest it will be difficult to establish whether consent was genuinely given. This is because familial relationships, especially those between parents and their adult-children, typically involve one person having more power or authority over the other. There is good reason to be wary about the validity of sexual consent in such relationships, even if the more powerful partner does not have any nefarious intentions. Let us consider a hypothetical example: a boss proposes sex with his employee after a work night out. The employee might consent (that is, agree) to have sex with her boss because she has heard a rumour that her job is on the line and she thinks having sex with him will make him less likely to sack her. Her boss might not have any wicked

intentions here. He might really like her, believe that she is agreeing to sex because she finds him attractive, and he might have no intentions of firing her if she doesn't have sex with him. However, the boss's authority over the employee here led to the employee having sex that she might not have agreed to if she had not been in a subordinate position. In order to avoid situations like this, as well as preventing people from abusing their power when they do have nefarious intentions, it might seem best just to prevent all sex occurring in relationships where one person has power and/or authority over the other, and indeed many organisations have workplace policies against sexual relationships between employees and their supervisors, or between professionals and those for whom they have a duty of care/ over whom they have authority. For example, though not illegal, sex between a doctor and their own patient is prohibited by the General Medical Council (the professional body for physicians in England). Similarly, it is common for employment contracts for university lecturers to stipulate that they can have their contract terminated if they have sex with a student and for contracts for prison officers to state that they can be fired for having sex with inmates.

A similar situation to the one between the boss and employee described above could happen in a familial relationship: a father could suggest sex with his son, for example, and the son might acquiesce, despite not wanting to have sex, for fear of rejecting his father, or because he, even as an adult, feels he has a duty to do what his father asks. Even if the father in this case did not intend to abuse his power over his son, and made sure to get the son's express consent, and even if the son himself saw the act as voluntary (in the sense of not being directly coerced), the son might still feel degraded, as the act was not an expression of his autonomy. In addition, as familial relationships are ongoing, and often involve frequent contact, it could be difficult to withdraw from a sexual relationship in this context.<sup>iii</sup> The son might feel that, as he has agreed to have sex with his father once, he is duty-bound to agree to sex whenever requested. Even if

the son feels that he has given full consent to the sex, it could cause huge psychological damage to him, impacting his self-esteem, relationships with others, and life in general.

Therefore, the likelihood of incestuous sex occurring because of felt pressure or obligation as a result of one partner having power over the other makes it reasonable to be cautious when thinking about the permissibility of sex in this context.

There are two important differences between these examples and incest though. Firstly, in the case of consensual incest, both partners are at risk of prosecution, particularly if there is doubt over which partner had the most power over whom. This means that the illegality of incest could, for those in more vulnerable positions, worsen their situation, since they may feel too scared to seek help for fear of being prosecuted. The second important difference between these examples and incest is that the professional roles that these people occupy make the relationships necessarily ones of authority/subordination. Familial relationships are not like this. They might involve unequal power relations, but they might not – we can't say definitively that an older sister will have power or authority over her younger sister, or even that a parent will have power or authority over their adult son or daughter. It is, of course, *more likely* that a parent would have authority over their adult-child than that a sibling would have authority over their sibling, particularly if the parent had raised the child. Therefore, we should be much more worried about inter-generational incest compared to intra-generational incest. However, family relationships are diverse and the dynamic between family members may be complex: we can't say with certainty that a particular sibling relationship would be less likely to involve problematic power dynamics or abuse than a particular relationship between a parent and their adult-child. Indeed, it cannot be taken for granted that a parent will have power over their adult-child merely because they are the parent: parents can be vulnerable for all sorts of reasons, including economic reasons or reasons to do with age or infirmity, and people can and do abuse their parents.

We do not have reliable data on the number of people who engage in consensual adult incest, or on their characteristics, so we don't know how common it is for consensual incestuous relationships to involve problematic power dynamics. Given its illegality and the social stigma around it, those who engage in it are unlikely to be willing to participate in research about it. However, it is at least *possible* for familial relationships, particularly sibling relationships where the siblings are of similar age, not to involve inequality of power or authority. This means that it is reasonable to suppose that it could be possible for an incestuous relationship to also be one in which neither had authority over the other. Though it is possible that some are instances of "false consciousness" (i.e. a person's perception of reality does not match up to how things actually are), accounts of people in consensual incestuous relationships, such as those on internet blogs, written by people who declare themselves as "consanguinamorous," suggest at least that some such relationships are reasonably equal in power and care, and genuinely consensual.<sup>iv</sup> Therefore, given that it is possible to distinguish between incestuous relationships which are genuinely consensual from those which are not, it seems unreasonable to criminalise people in *consensual* relationships on the basis that much incest is not consensual.

Moreover, as mentioned in the introduction, consensual adult incest often occurs because of GSA. According to Madeline Greenberg and Roland Littlewood (1995) over 50% of relatives reunited after early separation will experience GSA. There are no reliable data on the proportion of consensual adult incest that is between people who were reunited as adults after being separated at birth, because, as noted, there are no reliable data on the number of people who engage in consensual adult incest. However, given the dual phenomena of the Westermarck Effect and GSA, it is reasonable to assume that some of the consensual adult incest which takes place is between people who have first met as adults, so that there won't necessarily be any pre-existing power imbalance or authority/subordinate dynamic involving,

e.g., special caretaking responsibilities. Of course, there may be feelings of obligation and authority between the relations, or such feelings might develop, but that is true for any developing sexual relationship, and we do not thereby criminalise *all* sexual relationships on the basis that *some* may involve problematic power dynamics or even coercion or abuse. If two siblings, for example, meet for the first time as adults, the younger or less confident one might feel obliged to defer to the older one. However, these sorts of feelings of obligation could occur in a new relationship for a number of reasons which predate the relationship: for example, one partner might have higher social status than the other, be richer, more educated, more successful, or more confident, than the other, and this might lead to the less powerful partner feeling they should defer to them. Therefore, familial relationships are not unique in this respect, and so it would seem inconsistent to criminalise all sex between familial relations on the basis that there might be problematic power dynamics within them, when such power dynamics exist in many other sexual relationships, which are not criminalised. Indeed, it is common for one partner in a romantic relationship to have more power over the other<sup>v</sup> and a significant proportion of romantic relationships involve abuse, with the Office for National Statistics reporting that 17.6% of adults in the UK have experienced domestic abuse by a partner (including sexual and non-sexual abuse) since the age of 16 (ONS 2019). This is compared to 8.1% of adults who have experienced domestic abuse by a family member since the age of 16 (ONS 2019). This is, rightly, a cause for concern, and it is right to question whether agreeing to sex in an abusive relationship counts as genuine consent. However, to criminalise *all* romantic relationships or to criminalise sex within romantic relationships because some involve abuse or unequal power, would seem to be an extreme and unnecessary measure to deal with this issue.

There is one final argument I would like to consider here. This is the argument that prohibiting consensual adult incest is justified in order to prevent incestuous abuse of children. Our interest

in preventing child abuse is so strong that such a prohibition could be worth it, even if it meant criminalising some people for consensual sex. However, to justify the prohibition of consensual incest on these grounds would require some evidence that it would prevent child abuse. Assessing such evidence is out of the scope of this chapter, but I will briefly look at one relevant consideration, which is a comparison between rates of child sexual abuse in countries where consensual adult incest is legal with those where it is illegal. Cross-national comparisons are, of course, fraught with issues, since the way that data is collected across samples varies and there are likely to be confounding variables to take into account. Thus, we should be cautious about any such comparisons, and I do not mean here to suggest that we can draw any firm conclusions from such limited data sets. That being said, it is worth noting the findings of a cross-national comparison of studies looking at the prevalence of child abuse by Rosaleen McElvaney and Kevin Lalor in 2014. In France, Portugal, and Spain, where consensual adult incest is legal, the percentages of adults in studies who reported being sexually abused as children were 1.3%, 2.6% and 17.9% respectively. This is compared to 17.7% of UK adults (1.2% while under 11 years and 16.5% while 11-17 years) (McElvaney and Lalor 2014: 5-7). A separate study, looking at the prevalence in Belgium, where consensual adult incest is also legal, found that 6% of under-18-year-olds had been sexually abused (Pieters et al. 2010). From these tentative comparisons, it does not seem that there is a correlation between the illegality of consensual adult incest and a lower prevalence of child sexual abuse.

To summarize, it is right to be concerned about grooming, abusive relationships, and relationships with unequal power dynamics. People who have been pressured into sex with family members, or who have agreed to sex only because they felt unable to say no because of the power structure of the relationship should be able to seek help and legal recourse. It is also right that there are social and moral norms against people with power and authority having sex with those over whom they have power and authority. However, not all incestuous relationships



are the product of abuse or power imbalances, and there are, in any case, already laws against sexual abuse and assault. What's more, it is possible that incest being illegal could make people who have been pressured or coerced into sex with a family member less likely to seek help because they are worried that they will be prosecuted. Finally, at first glance, cross-national data on child abuse does not support the hypothesis that the illegality of consensual adult incest correlates with a lower prevalence of child abuse, but more analysis needs to be done.

I now turn to consider a second group of people who might be harmed by incestuous sex: children of incestuous parents.

### **3. Harm to potential offspring**

As Haidt's research showed, when questioned about why incest is wrong, the first response that often springs to people's minds is that it is wrong because inbreeding can lead to children being born with congenital disorders. This concern can be broken down into two distinct issues: firstly, by decreasing the genetic diversity of a community, people are more likely to be born within that community with congenital disorders; and secondly, the children of closely related parents are more likely themselves to have congenital disorders.

It is true that populations with low genetic diversity have higher rates of congenital disorders. For example, Anna Rajab et al. (2014) found that in Oman, where 49% of marriage is consanguineous (between people who are blood-related), 10% of babies are born with a genetic or congenital disorder, compared with 5% in Europe (Christianson et al. 2006). However, Hornle, discussing research into this question by the Max Planck Institute, highlights that it is possible that there are other factors, such as socioeconomic differences, playing a role in the higher prevalence of genetic disorders in societies where first cousins frequently marry (Hornle 2014: 96). In addition, as incest between close family members is likely to be rare (due to the

Westermarck Effect), even if legal, it is unlikely that legalising incest would have much impact on the wider genetic diversity of the population.

What about the concern that children born of closely related parents will, themselves, have a higher chance of being born with a congenital disorder? The combined results of four studies of first-degree incest (incest between parent and child or full siblings) found that 39.4% of the offspring died as infants or were born with a congenital disorder (March 2010: 48). There are some concerns about confounding in the available data. For example Johan Tralau notes that ‘incestuous parents differ significantly from non-incestuous ones in regard to such factors as age, mental health, and propensity to alcoholism’ (Tralau 2013: 99). Nonetheless, it is reasonable to assume that children born of close relatives have higher risk of having a congenital disorder, compared to children not born to close relatives, holding all other factors equal. However, though this risk should be taken seriously, it does not justify the legal prohibition of all incest. This is because, firstly, not all incest has even a possibility of resulting in conception. If it is only the risk to potential future children that is a worry, then the norm and the law should be against penetrative vaginal sex between opposite-sex close relations of child-bearing age, without contraception. This would mean that sex with contraception would be morally and legally acceptable, as would sex when the woman is post-menopausal, or when the sex is anal or oral. Indeed, any sex between same-sex relations would be fine. However, the law and the norm against incest extend beyond vaginal sex without contraception between fertile opposite-sex adults. Bergelson notes that many laws ban more than just vaginal intercourse, giving the law of Massachusetts as an example, which bans: “oral or anal intercourse, fellatio, cunnilingus, or other penetration of a part of a person’s body, or insertion of an object into the genital or anal opening of another person’s body, or the manual manipulation of the genitalia of another person’s body” (Bergelson, 2013: 48). In addition, the UK law also bans sex between adoptive parents and children, despite the genetic risk to their

potential offspring being no greater than for any other couple. Therefore, either the risk of congenital disorders is not what is really driving incest laws, or it is only one reason among others.

However, there is reason to believe that the risk of congenital disorders should not even be one reason among others for incest laws. Incestuous couples are not the only couples with a high risk of having a baby who is born with a congenital disorder. Many people risk passing on genetic conditions. For example, the World Health Organisation website states that people who carry the gene for Huntington's disease have a 50% of passing on this gene to their children, and if two parents both carry the gene for cystic fibrosis, there is a 25% chance that their child will have cystic fibrosis (WHO 2020). However, rightly, there is no law against people with the gene for Huntington's disease or cystic fibrosis having sex. Indeed, such a law would be eugenicist, among several other reasons why it would be highly objectionable.

Therefore, the risk to the gene pool and to the children of incestuous parents ought to make people cautious about increased incestuous procreation.<sup>vi</sup> However, a total legal prohibition of incest cannot be justified on these grounds.

#### **4. Harm to the family**

As discussed above, some incest may not cause any harm to anyone in particular (or at least no more harm than is appropriately tolerated in other cases). However, as I will argue below, it is right that there is a social and a moral norm against incest because it carries a significant *risk* of damaging the family relationship. As Daniel Jacobsen reminds us, regarding the Haidt example of sibling incest above, even if Mark and Julie's sex does not *in fact* cause any harm to anyone, they acted recklessly, without proper concern for the very real risks that their having sex posed. Mark and Julie risk doing "irreparable harm to their relationship as siblings ... a lifetime of family get-togethers, funerals and weddings—perhaps even Mark and Julie's

respective weddings—lie in the future” (Jacobsen 2012: 301). Jacobsen also points out that the reason they have sex – because it might be “interesting and fun,” or at least “a new experience,” does not seem to justify such a big risk. He argues that “it would be crazy to claim that an act wasn’t dangerous just because it turned out well” and if we are looking at incest from a utilitarian perspective, the balance of expected utility would rule against it, since what is gained from incest is not worth the risk (Jacobsen 2012: 301). It is true that the Haidt example concerns an “interesting and fun” one-night stand. However, the balance of expected utility might look different had Mark and Julie fallen deeply in love romantically with each other. Nonetheless, in thinking about incest, we ought to balance what is being risked with what is being gained, not just consider whether it is possible for incest to be harmless.

It is near impossible to provide a “one-size-fits-all” account of the value of the family since, firstly, what counts as “the family” is up for grabs; and secondly, there are many differing but equally valid ideas about what the roles of family members are or should be, and about the value of those roles. However, there are some broad-brush things we can say about the family, which are relevant to making sense of a norm against incest. Firstly, familial relationships, or at least those which are included in incest laws, are *unchosen*. This is a crucial differentiator between family relationships and friendships or romantic relationships. Secondly, and largely because they are unchosen, they are difficult to end, and will, in most cases, last a lifetime in some form. Even people who have disowned their parents, for example, may still have to acknowledge them as their biological parents in some circumstances. The unchosen nature of family relationships, coupled with their tenacity, means that there is a tendency to assume that the relationship should be one of unconditional love, or at least of strong loyalty and commitment to each other. It is questionable whether this *should* be the case (Gheaus 2012), and for many it won’t be, but the ideal of the family is usually considered to involve long-lasting non-contingent care, support, and loyalty. As Anca Gheaus points out, this ideal

explains why groups of people not related by blood can see themselves as being part of a “family” when they enter relationships based on unconditional commitment and loyalty—the mafia being one example (Gheaus 2018: 174). Thus, the ideal of a close family relationship is, broadly speaking, a relationship that will last as long as the relations live and will provide committed love, support, and care with few, if any, conditions attached. Family relationships are paradigmatic of what psychologists Margaret Clark and Judson Mills (1979) have termed “communal” relationships, that is, relationships where “members... assume that each is concerned about the welfare of the other” and “they have a positive attitude toward benefiting the other when a need for the benefit exists” (1979: 13).

Having the support of one’s family, people on whom one can rely (almost) whatever one does, and (almost) however one behaves, can be hugely valuable (Dressler 1985; Kramer 2011). Being part of a family can provide us with a feeling of what Simon May refers to as “ontological rootedness,” a feeling of being at home in the world (May 2011). Perhaps another way of putting this is that it gives us security, which may be construed as “a feeling of confidence in one’s well-being and in one’s ability to competently navigate the world” (Wonderly 2016: 231). Though the ideal of the family relationship is often not achieved, the security it can provide seems to be good reason to value this ideal and to maintain a norm that people love and support their families. This does not mean that for each person their main sense of security will come from their biological family, or from those with whom they have been raised, or that it ought to. Other close loving relationships, notably friendships, romantic relationships, and (other) “chosen family” can also provide security and a sense of rootedness. However, being biologically related, or being raised with someone, does seem to create strong bonds, which means that families are often very good at providing a support network to people, a sense of collective identity, and a feeling of “being at home in the world.”

Incest poses a significant risk to the unchosen family relationship. Sexual attraction is notoriously short-lived and fickle; it is also rarely felt equally between partners. For these reasons, sexual activity can often cause hurt and damage relationships. Friends sometimes refuse to let their friendships turn sexual, even if they are both attracted to one another, because they are worried that sex will complicate the relationship or lead to one of the friends developing unreciprocated romantic love for the other (Bisson and Levine 2009: 69). However, the consequences of such potential complications, or of sex leading to the development of unreciprocated romantic feelings, are arguably more serious for familial relationships than for friendships. This is because, while particular friends are irreplaceable, we tend to have many friends over a lifetime. Therefore, if you lose one friend because of complications caused by having sex with them, though this will likely be a great loss to you, you are able to have other friends. A similar point can be made about romantic partnerships, around which families are often built. It is true that sex can sometimes lead to such relationships becoming unstable or breaking up, and it could be that co-parenting with someone with whom you do not have a sexual relationship will provide greater stability (see Bakht and Collins 2018 for an account of such a non-conjugal co-parenting relationship). However, there is, arguably, greater justification for romantic partnerships being sexual relationships, particularly for people who desire to have and live with children who are biologically related to them. A full discussion of the relationship between sex and romantic love is beyond the scope of this chapter (see Shpall, this volume), but suffice it to say here that as with friendship, if a romantic partnership or marriage breaks down, the partners can usually find new partners. Conversely, if your relationship with your biological father is irrevocably damaged due to having sex with him, you can't get another biological father, and similarly with a sibling relationship: even if you have several siblings, you will have a finite number. Thus, though people often consider their

romantic partners or spouses to be their family, we can distinguish between our chosen and our unchosen familial relationships.

Let us consider how incest could damage a familial relationship in more detail with a hypothetical example: two sisters have a brief sexual relationship but then one sister loses interest and begins a sexual relationship with someone else, and the other sister becomes jealous and hurt. Regardless of whether such jealousy is justified,<sup>vii</sup> in such a scenario the sisters might find that their relationship is now soured, or at least that they are unable to continue as they were before. In such a case, each sister hasn't just lost one sexual partner among the several she will have in her life, or one friend among many; she's lost the only sister she will ever have (or if the family contains a group of sisters, she has lost one sister among the small finite number).

There are, therefore, important concerns about bringing sex into the unchosen family relationship if we think that there is value to the family as an ongoing, supportive, practically unconditional loving relationship. Countless tales of people getting into difficult situations because they have had sex with others with whom they really shouldn't have, show us that often people are very bad at making decisions about with whom to have sex. This means that it can be good for extra barriers (such as the threat of losing one's job) to be put in the way of having sex with some people (such as one's employee) to make the choice *not* to have sex with them easier to make. It is generally considered to be right, for example, that there are rules, with accompanying sanctions for breaking them, against having sex with one's student, one's patient, or one's employee. This adds extra weight to the reasons *not* to have sex with these people, and means that the professional relationships in question can go forward on the assumption that sex is "off the table." The reason for wanting sex to be "off the table" in certain relationships is partly a concern about consent, but it is also because of the understanding that sex, or even just sexual thoughts, can complicate and damage relationships. For example, a

student worrying that their lecturer is thinking about them in a sexual way could damage the professional academic dynamic between them (even if the lecturer is having no such thoughts), preventing the relationship from being effective in providing the goods that are particular to the relationship. As Amia Srinivasan argues, sex between a professor and their student “constitutes a pedagogical failure: that is, a failure to satisfy the duties that arise from the practice of teaching” (2019: 1100). Thus, even if the student consents to sex with their professor, they may nonetheless feel betrayed by the professor’s failure to “live up to the implicit terms set by the... pedagogical relationship” (Srinivasan 2019: 1123). In order to protect the pedagogical relationship, it is, therefore, necessary to do as much as possible to prevent a sexual relationship developing.

A similar case can be made with regard to familial relationships. Though obviously it does not entail that family members are never attracted to each other, the Westermarck Effect means that family members are unlikely to be attracted to each other. However, the norm against incest makes this possibility even less likely because it stops people, in most cases, from even considering whether they are attracted to their family members. Thus, in addition to preventing relationship damage and complications caused by sex, by making sex between family members unconscionable, the norm against incest also allows family members to engage in intimacy free from suspicion that the intimacy is code for a sexual overture, or that the other is having sexual thoughts about them. Communication of sexual attraction is often indirect; we use signals to show our sexual desire for others and we interpret signals from others. Therefore, we must always be on guard to notice these signals, and we must be careful not to give “wrong signals” to others, for example by making them believe through our actions, body language, etc., that we are attracted to them when in fact we are not. As people are not always good at giving signals that they are attracted to another, and are often bad at interpreting signals from others, it is not unusual for a person to over-analyse their own behaviour and subsequently refrain from



acting in certain ways, asking certain questions, or disclosing certain things about themselves in order to ensure they are not misinterpreted as “coming onto” the other. In addition, people sometimes question the actions of others, wondering if, for example someone’s friendliness is code for sexual attraction. All of this analysing and questioning can impinge on intimacy. Therefore, in the same way that a norm against sexual activity enables trusting professional relationships, a norm against sexual activity enables trusting intimate relationships between family members as well.

To summarise: if we value the family relationship, we have good reason, not only to keep sex out of it, but to maintain a norm against thinking sexually about one’s family at all. However, as I will argue in the next section, the value of the family relationship does not justify a law against incest.

## **5. Maintaining the norm, but not the law**

I have argued above that the family relationship has a distinct value in providing us with security and rootedness. As sex threatens this value, there is good reason to keep it out of the unchosen family relationship. However, these concerns do not necessitate or justify a total legal prohibition on adult consensual incest. This is for four reasons, which I will elaborate on below.

Firstly, to have a different view about the value of “the family,” or of what constitutes a family, such as not considering biological relationships to have particular moral significance, are reasonable positions someone could take. Some people don’t value the family relationship; perhaps they see no moral imperative to care for people just because they are biologically related or grew up together. Gheaus argues that there is nothing uniquely valuable about the family, and that there is a good argument for the legal boundaries between family and friends to be blurred (Gheaus 2012: 121). She argues that the almost unconditional commitment and loyalty between family members can be problematic, potentially leading people to stick by

members of their family even when their behaviour is morally repugnant (Gheaus 2018: 173-174). I do not have space here to fully interrogate her view, or the value of the family more generally; suffice to say that there is reasonable disagreement as to what the value of family is, and some people—such as gender or sexual orientation minorities, as is often the case in reality—might not consider their biological relationships a source of security and rootedness, or see them as justifying specific moral norms.

Secondly, if the state prohibited incest on the grounds that it is risky to the family, for consistency's sake it ought to prohibit other behaviours that are similarly risky to the family. If the state legislates against incest because of intra-familial sexual jealousy, for example, then surely the state ought to legislate against other sexual relationships which might lead to intra-familial sexual jealousy (Collins et al. 2008: 1395), such as sex with one's mother's boyfriend or brother's wife. Similarly, divorce is often disastrous for families, as is adultery, but although neither is encouraged, neither is illegal.

Thirdly, even unchosen families come in all shapes and sizes, and so, if the aim is to protect the family relationship, at the very least, the law on incest might need to be rewritten to take into account such relationships. For example, families might include step-parents and step-siblings, and in families with polyamorous parents, communes, or guild-parent families (where more than two parents co-parent as a family) (Gahan 2019), children might have grown up together with several adult parent figures and other children to whom they are not biologically related. Even once the children have grown up, there could be a good reason to keep sex out of these sorts of familial relationships as with biological or adoptive familial relationships, but they would not be covered by incest laws.

Moreover, as noted earlier, it is possible that a proportion of consensual adult incest that takes place is between adult relations who did not know each other previously and have just been

reunited: the result of the phenomenon known as GSA. In such a case, there is no pre-existing familial relationship to damage. This was true for Pat and Allen Muth, who, as mentioned earlier, in 1997 were convicted of incestuous sex, had their four children taken from them and were both put in maximum security prisons.(Bergelson 2013: 44). As Bergelson points out, they had created their own family unit, and their relationship provoked no jealousies or rivalries (Bergelson 2013: 48). It could be argued that in this case, and in others like it, a (non-sexual) familial relationship that could develop was prevented or ruined by the relationship being sexual. Pat and Allen Muth cannot go back to being “just siblings” now that they are also co-parents and have had a significant romantic and sexual relationship. However, to argue that it would have been better for them to have been “just siblings” would be dealing in hypotheticals. While they might have had a strong, loving sibling relationship had they not had sex with one another, they might also have simply gone their separate ways and not had a relationship at all. Finally, the norm against incest can be upheld without the need for incest to be a criminal act. Consensual incest is not illegal everywhere, and the existence of countries which don’t legally prohibit incest but maintain the norm against it, such as Belgium, France, Spain, and Portugal, show that a law against it is not necessary for maintaining the norm. Although, as I said earlier, the law does have some causal role in shaping people’s views, if a norm supports ideals or institutions that are widely valued, then they are likely to continue to be upheld without a law backing them up. For example, the norm of sexual exclusivity within marriage has continued to be upheld in Western states, despite adultery being no longer considered a crime. Similarly, the norm of truth-telling can be maintained without the need to criminalise liars. We must always bear in mind the tremendous damage done to a person’s life through them being criminalised and potentially imprisoned (Alexander 2010). Such damage requires strong justification. If a law against incest is not necessary to uphold a norm against it, then criminalising people who have engaged in consensual incest, which has harmed no-one, cannot

be justified on the grounds that it is necessary to prevent others from doing so and to uphold the value of the family.

Therefore, the state is not justified in legislating against incest because of the risk it poses to the family. However, as the benefits of eroding the norm against incest do not outweigh the risks it poses to the family, the norm against it ought to be maintained.

## **6. Conclusion**

In this chapter I have examined four potential justifications for incest being illegal. First, I dismissed the view that incest should be illegal (just) because it is widely condemned. I argued that a majority of people believing an act to be immoral is not enough to justify criminalising it; the act needs to be shown to be harmful. Second, I examined whether incest ought to be illegal in order to protect people from sexual abuse, or to protect them from feeling pressured into unwanted sex with a more powerful family member. I argued that while there is obvious justification for preventing sexual abuse and some justification for prohibiting sex between people when there is a relationship of unequal power and authority, this does not justify making all incest illegal.

Third, I argued that the risk of children being born as a result of incest with genetic defects does not justify a law against incest, because, firstly, not all incest can result in procreation, and because such a law would, for consistency sake, also warrant making it illegal for anyone at high risk of passing on a negative genetic condition from having sex, which would be eugenicist. Finally, I considered the risk to the family posed by incest. I argued that the family relationship can have significant value, providing people with a sense of rootedness and security, and that incest poses a risk to this relationship.

Therefore, there is good reason to maintain the norm against incest in order to preserve the family relationship. Nonetheless, this risk does not justify making incest illegal as not everyone

will agree on the value of the family, not all incest will damage a pre-existing familial relationship, and the norm against incest can be maintained without needing to criminalise those who transgress it.

**Word Count: 9993**

## References

Aksoy, C. Carpenter, C, De Haas, R and Tran, K. “Do Laws Shape Attitudes? Evidence from Same-Sex Relationship Recognition Policies in Europe”, EBRD Working Paper No. 219, European Bank for Reconstruction and Development, 2018.

Alexander, M. (2010) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.

Anon. ‘Consanguinamory: A Blog for the Intelligent Discussion of Relationships between Family Members’ [Online] (Accessed 27 April 2020) Available at: <https://consanguinamory.wordpress.com/>

Anon. ‘Consanguinamory: Consanguinamory Resources and Guidelines’ [Online] (Accessed 27 April 2020) Available at: <https://consanguinamorousrainbow.wordpress.com/>

Archard, D. (2007) ‘The Wrong of Rape.’ *Philosophical Quarterly*. 57(228)

Bakht, N and Collins, L. (2018) “Are You My Mother? Parentage in a Nonconjugal Family”. *Canadian Journal of Family Law*. 31(1)

Brunning, L., 2020. ‘Compersion: an alternative to jealousy.’ *Journal of the American Philosophical Association*. 6(2), pp. 225-245

Burgess-Jackson, K. (1999) “A History of Rape Law” in *A Most Detestable Crime: New Philosophical Essays on Rape*. Oxford: Oxford University Press.

- Clark, M. and Mills, J. (1979) "Interpersonal Attraction in Exchange and Communal Relationships". *Journal of Personality and Social Psychology*. 37(1) pp. 12-24.
- Collins, J., Leib, E., & Markel, D. (2008). Punishing family status. *Boston University Law Review*, 88(5), 1327–1423.
- Dressler, W. (1985). Extended Family Relationships, Social Support, and Mental Health in a Southern Black Community. *Journal of Health and Social Behavior*, 26(1), 39-48.
- Christianson A, Howson C, Modell B. (2006). Global report on birth defects. The hidden toll of dying and disabled children. White Plains, NY: March of Dimes Birth Defects Foundation.
- Colman, A. (2015). *A Dictionary of Psychology (4<sup>th</sup> ed.)* Oxford University Press.
- Firestone, S., (1970) "Love" *The Dialectic of Sex: The Case for Feminist Revolution*. New York: Bantam.
- Gahan, L. (2019). Separation and Post-Separation Parenting within Lesbian and Gay Co-parenting (Guild Parented) Families. *Australian and New Zealand Journal of Family Therapy*. 40 pp. 98-113.
- Gheaus, A. (2012). Is the Family Uniquely Valuable? *Ethics and Social Welfare*, 6(2), 120–131.
- Gheaus, A. (2018) Love, Not the Family. *Analyze: A Journal of Gender and Feminist Studies* 11, 168-176
- Greenberg, M. and Littlewood, R. (1995). Post adoption incest and phenotypic matching: experience, personal meanings and biosocial implications. *British Journal of Medical Psychology*, 68, 29-44.

- Haidt, J., & Hersh, M. (2001). Sexual Morality: The Cultures and Emotions of Conservatives and Liberals 1. *Journal of Applied Social Psychology*, 31(1), 191–221.
- Hamamy H, Antonarakis SE, Cavalli-Sforza LL, Temtamy S, Romeo G, Kate LP, et al. (2011). Consanguineous marriages, pearls and perils: Geneva International Consanguinity Workshop report. *Genet Med* 13: 841–847.
- Hornle, T. (2014) Consensual Adult Incest: A Sex Offense. *New Criminal Law Review*. 17 (1) 76-102.
- Jacobson, D., (2012), Moral Dumbfounding and Moral Stupefaction, *Oxford Studies in Normative Ethics*, 2: 289–316
- Lanning, K., (2018). The Evolution of Grooming: Concept and Term. *Journal of Interpersonal Violence*. 33(1): 5–16
- Kramer, L. (2011). Supportive sibling relationships. *Sibling development: Implications for mental health practitioners*, 41-58.
- Kasemset, C. (2009) Should Consensual Incest Between Consanguine Adults Be Restricted? *Intersect: The Stanford Journal of Science, Technology, and Society* 2(1)
- May, S. (2011) *Love: A History* New Haven: Yale University Press.
- McElvaney, R. & Lalor, K. (2014). Child abuse in Europe. In J. Conte (Ed.), *Child Abuse and Neglect Worldwide*, Vol. 2. Santa Barbara, CA: Praeger.
- Ost, S. (2004). Getting to Grips with Sexual Grooming? The New Offence under the Sexual Offences Act 2003. *Journal of Social Welfare and Family Law*. 26 (2) 147-159
- Parfit, D. (1987) *Reasons and Persons*, Oxford: Clarendon Press.

Pieters, J., Italiano, P., Offermans, A., and Hellemans, S. (2010) Emotional, physical and sexual abuse – the experiences of women and men. *Institute for the equality of women and men*.

Plummer, M., (2018). Lived Experiences of Grooming Among Australian Male Survivors of Child Sexual Abuse. *Journal of Interpersonal Violence*. 33(1) 37-63.

Pusey, A., & Wolf, M. (1996). Inbreeding avoidance in animals. *Trends in Ecology & Evolution*, 11(5), 201–206.

Rajab A, Al Salmi Q, Jaffer J, Mohammed AJ, Patton MA. (2014). Congenital and genetic disorders in the Sultanate of Oman. First attempt to assess healthcare needs. *J Commun Genet* 5:283–289.

Rosman, A., Rubel, P., Weisgrau, M. (2009), *The Tapestry of Culture An Introduction to Cultural Anthropology*, Ninth Edition, AltaMira Press.

Sokol, D. (2012) ‘Incest: legal in Portugal, illegal in Germany’ *The Guardian*. 16 April. Available at: <https://www.theguardian.com/law/2012/apr/16/incest-legality-ethics>

Srinivasan, A. (2020). Sex as a Pedagogical Failure. *The Yale Law Journal*, 129 (4), 1100-1146

Tralau, J. (2013) Incest and Liberal Neutrality, *The Journal of Political Philosophy*: 21(1) 87–105

United Kingdom. Home Office. (2002) *Protecting the public. Strengthening protection against sex offenders and reforming the law on sexual offences*. Available at: <https://webarchive.nationalarchives.gov.uk/20030731061058/http://www.homeoffice.gov.uk:80/docs/ptp.pdf> (Accessed: 27 April 2020)

United Kingdom. Office for National Statistics (2019) Domestic abuse prevalence and trends, England and Wales: year ending March 2019. Available at:



<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsendlandandwales/yearendingmarch2019> (Accessed 27 April 2020)

United Kingdom. Sexual Offences Act 2003. [Online] (Accessed 27 April 2020). Available at: <http://www.legislation.gov.uk/ukpga/2003/42/contents>

Westermarck, E. A. (1921). *The History of Human Marriage* (5th ed.). London, England: MacMillan. (Original work published 1891)

World Health Organization (WHO). Human Genomics in Global Health. [Online] (no date) (Accessed 27 April 2020) Available at:

<https://www.who.int/genomics/public/geneticdiseases/en/index2.html>

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<sup>i</sup> Section 15 of the Sexual Offences Act 2003 makes meeting a child following sexual grooming a criminal offence, but this offence involves an intention to commit a sexual offence with a child under the age of 16, so it wouldn't be applicable in cases of consensual adult incest.

<sup>ii</sup> This is not to say that sexual assault is always dealt with adequately by the law; conviction rates for rape and sexual assault are worryingly low, but the difficulty in establishing sexual consent in sexual assault and rape cases does not lead us to conclude that all consensual sex should be illegal.

<sup>iii</sup> Marriage also makes it difficult to withdraw from a sexual relationship if either of the spouses wants to. Furthermore, as Elizabeth Brake points out, 'by creating economic dependency and exempting spouses from sexual battery charges' (as it does in some US states), marriage could increase the likelihood of rape or sexual abuse within a relationship (Brake 2012: 68-69). This may be a good reason for marriage law to be reconsidered, an issue which is outside of the scope of this paper. Of note here though is that one difference between a marriage and a parent-child relationship is that it is possible to stop being married to someone by divorcing them, and then get married to someone else. While it is possible to 'disown' one's parents, in most states, there is not a standard legal route to 'divorcing' them, and what's more, as an adult, it is not possible to get new parents. One could find someone willing to be their surrogate mother, for example, but the relationship they shared would be very different to the relationship they shared with the mother who had raised them.

<sup>iv</sup> See, for example: <https://consanguinamory.wordpress.com/> and <https://consanguinamorousrainbow.wordpress.com/>.

<sup>v</sup> Power in romantic relationships often, though not always, falls along gendered lines. This has long been a concern of feminists. For example, Shulamith Firestone writes "for love, perhaps even more than childbearing, is the pivot of women's oppression today" (Firestone 1970: 126).

<sup>vi</sup> Parfit's (1987) non-identity problem is also relevant here. This problem is that we cannot identify a particular person who is harmed by a child being brought into existence with a congenital disorder, since *that child* is not harmed by being born because *that child* would not otherwise exist. A full discussion of the non-identity problem is out of the scope of this paper though.

<sup>vii</sup> For a comprehensive discussion of the purported reasonableness and value of jealousy in comparison to compersion (i.e., taking delight in one's partner's sexual pleasure had through sex with another person) see Brunning (2020).