

STUDIES IN LAW, POLITICS, AND SOCIETY

VOLUME 21

**AUSTIN SARAT
PATRICIA EWICK
Editors**

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PART I
‘DANGEROUS INTIMACIES’

“WHAT IS OUR BANE, THAT ALONE WE HAVE IN COMMON”: INCEST, INTIMACY, AND THE CRISIS OF NAMING

Courtney Megan Cahill¹

INTRODUCTION

For most individuals, the idea of incest immediately excites horror and disgust. Historically as well as legally, this instinctive moral reaction against incest has most often been justified in at least three different, though not entirely unrelated, ways. First, incest is condemned on biological grounds, that is, out of a fear that consanguineous reproduction could lead to genetic defects in the resulting progeny.² Second, according to anthropologists such as Claude Lévi-Strauss, the incest taboo arises from an exogamous necessity for reciprocal economic exchange in ‘primitive’ societies – that is, the exchange of women between kinship groups (and outside one’s own kinship group) that allows for economic survival (Lévi-Strauss, 1949, p. 478). Third and last, incestuous unions within the immediate or even distant family are ascribed the dangerous power to disrupt much-respected familial hierarchies based on age and gender.³ This dissolution of the familial hierarchy is not only, in several instances, accompanied by coercion and sexual violence, but can also lead to severe psychological and emotional trauma for the victims of incestuous abuse.⁴

While these justifications for the incest taboo are persuasive, none of them fully accounts for the fear of, and the legal prohibition against, incest. The biological justification, for instance, is under-inclusive; it fails to explain why several states prohibit incestuous unions (marriage as well as sexual reproduction) by step-relatives and by adopted children and their adoptive parents.⁵ Similarly, the anthropological argument that the incest taboo serves the economic need of exchange in primitive societies is somewhat irrelevant in a society, such as the United States, where families by and large no longer depend on intermarriage for economic survival (Parker, 1987, p. 212).⁶ Finally, the argument that incest disrupts familial hierarchies could be characterized as over-inclusive. To be sure, incestuous unions between family members of different ages and genders (father/daughter; mother/son; brother/sister) are very often abusive and coercive, and certainly do lead to perverse situations in which daughters in effect become ‘little mothers’ (Renvoize, 1982, p. 147).⁷ At the same time, however, one could conceive of instances of adult consensual incestuous encounters, either because they occur in the absence of gender and/or age distinctions (sister/sister; brother/brother; sister/brother) or outside the nuclear family (cousin/cousin). As Richard Posner says: “Once siblings reach adulthood, why should they be forbidden to have sex and marry?” (Posner, 1992, p. 200).⁸

One way to examine the complex ideology surrounding the incest taboo is through a reading of literary accounts of incestuous unions, accounts that at once illuminate, reflect, and problematize these traditional justifications. Although the incest taboo did not historically ‘begin’ with a literary text – *Oedipus Rex* – Western analysis from Freud onward has persistently turned to Sophocles’ tragic myth in order to lend meaning and significance to the incest enigma. Furthermore, anthropologists like Bronislaw Malinowski have long noted the central role that myth and literary chronicle play in both the production and the maintenance of sexual taboos such as incest (Malinowski, 1962, p. 292).⁹ Considering that our conceptions of incest (at least in Western culture) are therefore shaped to a large degree by a particular literary text (*Oedipus Rex*) and transmitted and/or perpetuated through myth, an examination of literary representations and myths of incest will help to broaden an understanding of the taboo’s moral and legal etiology.

Most important, though, is the way that literary representations of incest play with language in highly subtle and nuanced ways, and, in so doing, dramatize the complex interrelationship that exists among incest, language, and prohibition. As this article will argue, Ovid’s *Metamorphoses* offer a particularly rich and illuminating analysis of both the nature of incestuous desire and the cultural logic surrounding the taboo. As with Oedipus, Ovid’s characters invariably experience prolonged psychological and emotional conflicts when dealing with issues such

as a sexual desire for similitude. Furthermore, because Ovid's *Metamorphoses* comprise a vast network of genealogical and etiological myths, they lend themselves exceptionally well to an analysis that seeks to approach incest within a larger cultural, sociological, and anthropological framework.

This article elucidates justifications for the incest taboo, as well as attitudes toward incest, as they appear in the theoretical, literary, and legal realms. More specifically, it examines the way that incest radically challenges most societies' strong ideological beliefs that sexual unions should take place only within a domain of difference, that is, between persons of different biological sex as well as between persons from different families.¹⁰ At the same time, however, this article also recognizes and confronts the paradox that while most cultures condone certain kinds of desires and attachments based on similitude – that is, on a certain level it appears perfectly natural that an individual would have special connections to her own race, ethnicity, class, religion, age group – they simultaneously condemn and are fearful of other kinds of 'cognate' attachments, in particular homosexual and incestuous unions. In *Sex and Reason*, Richard Posner raises precisely this issue in response to Roger Scruton's contention that homosexual desire is an unnatural, narcissistic desire for the self and/or similitude. Posner says: "Why a relationship with someone more rather than less like oneself should be thought intrinsically unfulfilling is unclear, and seems contrary to the ideal of companionate marriage" (Posner, 1992, p. 229). Indeed, as with homosexual desire, incest is troubling because it represents a seemingly natural desire for sameness or similitude that is not condoned on legal, societal, and biological grounds, a desire that radically threatens both a sexual and a linguistic system that is dependent on notions of opposition and difference.

In examining this concept of 'naturalness' as it is used to characterize, in a notably selective and paradoxical way, only certain kinds of attachments and affiliations, this article seeks to determine whether language – and, by extension, the law – can effectively carve out spheres of legitimate (natural) desire and illegitimate (unnatural) desire. In so doing, it considers several legal commentators' critiques of the way in which courts use so-called rational analysis to justify the distinctions they make between legitimate and illegitimate desire. In addition, this article will look to literature's more nuanced representations of incest and other tabooed sexual subjects, such as homosexuality, as a means of exposing legal culture's relatively 'thin' understanding of sexual identity, desire, and intimate relationships. To be sure, this article is aware that a juxtaposition of literature/cultural theory and the law will almost invariably expose the 'thinness' of the latter as compared to the 'robustness' of the former. Nevertheless, this study is also grounded in a belief that the law is inevitably influenced by culture, as culture is by law – and that, as a result

of this mutual exchange, one might juxtapose the two in order to illuminate differences as well as similarities. Thus, in looking at representations of incest in both the literary and the legal dimensions, this article will focus on the peculiar role that language performs in creating, maintaining, and legitimating sexual prohibitions generally, and the incest prohibition in particular. Indeed, these literary representations and legal analyses of incest (as well as homosexuality) ultimately reveal the struggle – and, at times, the inability – of language itself (be it legal or literary) not only to stabilize, but also to justify fully the distinctions that it attempts to make between natural and unnatural, legitimate and illegitimate desire.

This article is structured in the following way. Part II provides a theoretical framework by examining theories of both incestuous desire and the incest prohibition as they appear in anthropological and linguistic contexts. The primary aim of this part is to provide a close look at the way in which a broad range of anthropological and cultural historians have approached both incest and the prohibition in terms of linguistic hierarchies and classificatory systems. More specifically, this part is divided into three sections that contemplate the relationship between language and the incest prohibition in increasingly specific and particularized terms. For instance, before examining the incest prohibition and its relationship to language, this part looks first at sexual prohibitions more generally, as well as at the relationship between the prohibition against homosexuality and the prohibition against incest. In so doing, it logically charts the unique relationship between language and the incest prohibition,¹¹ as well as the failure of the incest prohibition to capture real differences between so-called legitimate (natural) and illegitimate (unnatural) sexual desire.

Part III of this study turns to narrative depictions of incest and, by way of analogy, of homosexual relations and narcissistic desire, as they appear in Ovid's *Metamorphoses*. This part examines two tales of incest in Ovid's text: those of Myrrha and Cinyras (10.298–518) and Byblis and Caunus (9.453–665).¹² In both of these myths, Ovid treats incest not only as a natural desire that has the potential to lead to unnatural consequences (the disruption of familial hierarchies), but also as a crisis of naming. More precisely, Ovid shows that incest, a seemingly natural desire for similitude, violates both the fundamental law of difference that governs linguistic systems as well as the belief that sexuality naturally occurs only within a realm of difference, that is, between discrete genders and at a distance from the familial sphere. Furthermore, this Ovidian analysis situates the tales of incest within the larger theoretical context of desire for sameness and/or similitude that is discussed in part II.B and C. In so doing, it also examines two other pivotal Ovidian myths that address desire for 'like-

nesses' in roughly equivalent terms: those of Ianthe and Iphis, 9.666–797 (homosexual desire) and Narcissus and Echo, 3.339–510 (desire for self).

Part IV addresses the ways that legal culture has generally treated incest as a sexual crime in the United States in light of the theoretical concerns raised in parts II and III. More specifically, this part aims primarily to elucidate the courts' inability to discuss sexuality generally, and incest in particular, in either a concrete or a uniform way. Rather than using a process of logical argumentation, courts tend to allow their revulsion for incest to dictate their belief in the taboo, and, by extension, in its criminalization. Furthermore, rather than confronting their anxieties over the 'problem' of incest in a logical way, courts instead use a language of condemnation that often betrays its own instability. Indeed, by focusing obsessively on the taboo – the negative, prohibitive, and punitive 'thou shalt not' – and by refusing to treat incest/incestuous desire as anything but an 'erotic negative',¹³ courts engage in what Eve Kosofsky Sedgwick refers to as the rhetorical act of preterition: the act of assigning an unspeakable act a negative value and thereby obliterating (though simultaneously reifying) its existence (Sedgwick, 1990, pp. 202–212).¹⁴

By approaching the legal analysis of incest in the broader context of the anthropological, cultural, and literary/mythical analyses, this study hopes to accomplish two goals: first, to show that the law, like the Ovidian tales, perpetuates its own 'myths' or representations about incest specifically and about sexual desire more generally; second, and relatedly, to argue that by situating the law within this broader cultural context, we might better understand the anxiety that often underlies the courts' analyses of threatening sexual subjects. Although this article is thus organized around a tripartite structure (anthropology/sociology, literature, law), its fundamental aim is to elucidate the differences as well as the similarities among the analyses of incest that appear in all three disciplines. For this reason, this article grounds its three major areas of focus around similar themes, including the roles that both nature and language play in the controversy surrounding incest.

Finally, it should be mentioned that this article does not necessarily aim to present a normative argument that individuals in the United States should be accorded a 'fundamental right' to engage in incestuous unions. Rather, this study relies on a theory and methodology that is similar to that employed by Binder and Weisberg (1997, p. 1149) in their article *Cultural Criticism of Law*, which attempts to show not only how 'legal phenomena' can be "viewed as social artifacts or 'social texts,'" but also how "legal forms and legal processes play a compositional role in modern culture" (p. 1150). Accordingly, this work proposes that we might approach law and culture (anthropology and literature) as engaged in a bilateral exchange, whereby law both reflects *and* shapes our

understanding of, and anxieties surrounding, incest specifically and tabooed sexual subjects more generally.

II. LANGUAGE AND PROHIBITION

As with all prohibitions, the taboo against incest is radically dependent on what Foucault would call the 'juridico-discursive' power to name. Indeed, anthropologists and cultural historians have long recognized the pivotal role that language plays in the shaping and production of all sexual prohibitions. In *The Red Lamp of Incest*, for instance, anthropological historian Robin Fox posits a direct correlation between 'the power to name' and the injunction against incest. He says:

The first attribute of language obviously is the power to name. It is not surprising that the mere naming of things continues to have magical overtones or to give an unreal but satisfying sense of control over nature itself . . . What do we need to add to this to get language? I would suggest that if our model is correct, then commands and injunctions must have come next. You cannot have rules without them (1980, p. 192).

Working from Lévi-Strauss' thesis that the incest prohibition arose from social rather than natural/innate forces,¹⁵ Fox explains that "[o]nce it became the case that we acted on the world as we classified it, that is, that our actions took on 'meaning' in the fully human sense, then our anxieties could fix – had to fix – on the stability and reliability of our categories and rules" (pp. 181–182).

In emphasizing the somewhat obvious point that language plays a pivotal role in the creation and maintenance of sexual prohibitions, Fox situates himself in a well-established anthropological and sociological tradition that regards prohibition in similar terms. For instance, in *Elementary Structures of Kinship*, one of Lévi-Strauss' primary aims is to elucidate the radical similarity between sexual and linguistic prohibitions. More specifically, he offers comprehensive empirical evidence that in most 'primitive' societies prohibitions against certain sexual behaviors – marriage with near kin, daughter or mother and son sleeping too close to one another, as well as homosexual unions – can be "reduced to a single common denominator: they all constitute a *misuse of language*" (p. 495). In fact, toward the end of his monumental study on kinship structures, Lévi-Strauss asserts that "the linguist who studies language and the anthropologist who studies incest are in effect studying the same thing" (p. 495).

Although Fox and Lévi-Strauss focus in particular on the relationship between language and prohibitions against incest, one might also consider their observations in light of sexual prohibitions more generally, and of the prohibition against homosexuality in particular. To be sure, like the incest taboo, prohibitions against

other so-called 'deviant' forms of sexual desire are deeply dependent on the power of language to make logical distinctions between legitimate and illegitimate sexual acts. The widespread legal prohibition against homosexuality, for instance, strongly rests on the courts' power to discriminate rationally between what they regard to be natural and unnatural sexual activity. At the same time, however, it appears that language – or, as Fox observes, the power to name and to classify – plays a much more central role as far as the prohibition against incest *specifically* is concerned. More precisely, whereas the 'nature' or biological argument is systematically invoked to justify the illegality of same-sex unions, the same argument falters in the context of incest. Not only can incestuous, heterosexual couples sexually reproduce, but they can also undergo genetic screening to determine the possibility of genetic defects – a possibility that is itself a subject of some debate (Bratt, 1984, *passim*).

While courts thus often group incest and homosexuality together as unnatural desires for similitude, the nature argument as applied to incest is fraught with risks as far as legal classifications are concerned. Furthermore, from a purely objective standpoint, legal prohibitions against incest, unlike other sexual prohibitions, are widely dependent on a vast array of linguistic classifications. As part IV of this article will demonstrate in greater detail, when courts are confronted with instances of consensual incestuous unions, they almost invariably turn to increasingly refined definitions of familial 'names' – i.e., what it means to be a sister, brother, uncle – in order to justify the legal prohibition. This being the case, it is important to consider the ways in which prohibitions against incest, unlike prohibitions against homosexuality, often rely on distinctions that are purely linguistically based. As this article will argue, language plays such a unique and pivotal role in the incest prohibition *per se* that it often appears that language is, in fact, doing all the work to demarcate legitimate (natural) from illegitimate (unnatural) sexual desire.

In order to document the ways in which the prohibition against incest is specifically and uniquely tied to language, the following part is divided into three sections that detail this relationship in increasingly particularized terms. Section A considers the connection between language and sexual prohibition generally, and demonstrates the way that linguistic discomfort or squeamishness with tabooed sexual subjects can have an effect that is at once silencing/dismissive and productive/empowering. In other words, by refusing to name at an appropriate level of specificity the prohibited sexual practice/act, these prohibitions not only generate a space in which the sexually prohibited act may exist, but also call into question the legitimacy or authority of the prohibition itself. Next, section B turns to the role that language plays in the prohibitions against both incest and homosexuality. More specifically, this section argues that both

of these prohibitions condemn as unnatural acts and practices that in fact reflect, and, in many ways, epitomize an otherwise natural desire for similitude and/or the self. Finally, section C examines the singular relationship that exists between language and incest by probing the connections that Lévi-Strauss and others have made between linguistic transgressions and intrafamilial sexual unions.

A. LANGUAGE AND SEXUAL PROHIBITIONS

As discussed above, prohibitions are radically dependent on the ability of language to recognize and articulate distinctions between legitimate and illegitimate acts; consequently, an inability even to name or acknowledge illegitimate acts can threaten the integrity of the prohibition itself. This potentially unstable relationship between language and prohibition is much more acute in the context of sexual prohibitions since these taboos deal with subjects, such as incest and homosexuality, that are relegated to a hidden and privatized ‘closet’ (Sedgwick, 1990, pp. 3–4).¹⁶ Indeed, society’s general discomfort in discussing tabooed sexual subjects is particularly manifest in legal opinions, where judges frequently evince revulsion when addressing so-called unorthodox sexual ‘practices’ such as homosexuality and incest (Posner, 1992, *passim*). What often results from such discomfort is an inability to differentiate legitimate from illegitimate sexual acts in a uniform and particularized way. Some legal commentators have noted that in the case of incest, for instance, “the law . . . varies considerably from state to state, [and] tends to be vague in its definition of the act and its rationale for taking punitive action. . . .” (Parker, 1987, p. 215).

At the same time, however, this cultural and judicial vagueness surrounding rational analysis of sexually tabooed subjects can create a larger conceptual space in which the unthinkable or prohibited becomes a legitimate focal point of discussion. In *The History of Sexuality: An Introduction*, Foucault elucidates the complex causal relationship that exists among prohibition, repression/silence, and articulation (1976, pp. 108–109). More specifically, Foucault reveals the ways in which diverse power mechanisms actually generated a multiplicity of discourses—including the discourse of ‘silence’—around tabooed sexual subjects in the eighteenth, nineteenth, and twentieth centuries; in so doing, he radically challenges conventional theories of ‘Victorian’ sexual repression. He argues that far from being a monolithic site of repression, the complex machinery of power purposefully elicited and produced an entire ‘science’ or taxonomy of sex (*scientia sexualis*). Not only did such discourses turn the homosexual into a ‘species’, but they also turned the family into “a hotbed of constant sexual incitement” (pp. 108–109). Foucault’s acute analysis of the generative and