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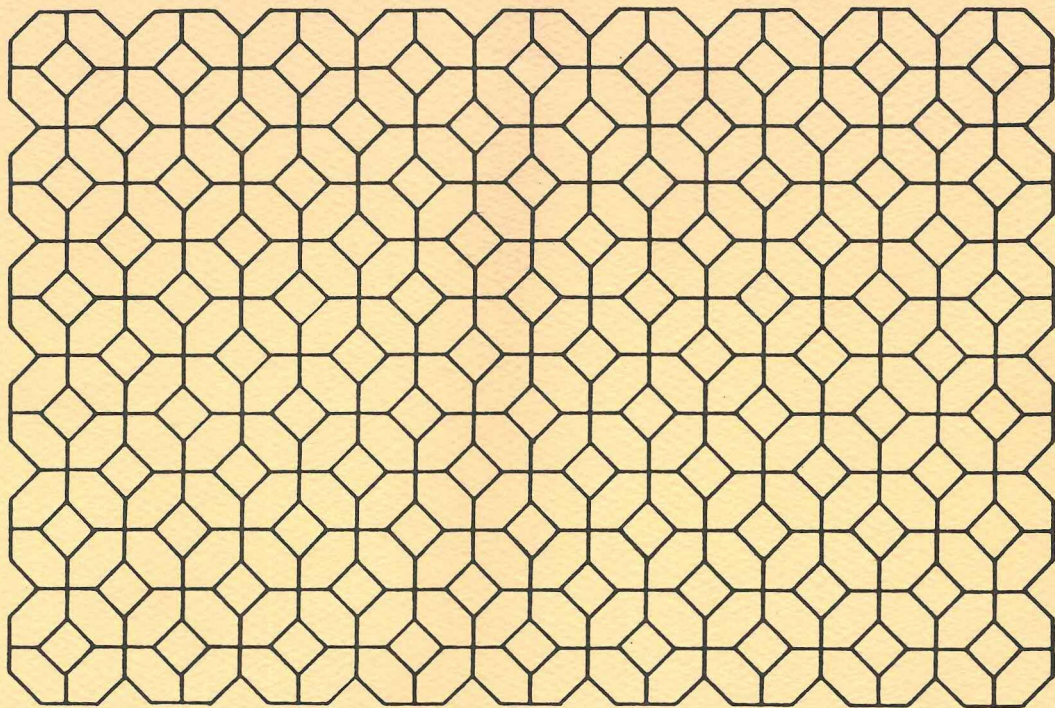
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THE SOUTHERN ANTHROPOLOGIST



Fall 1984

Volume 12

Number 1



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LETTERS

Dear Colleagues:

Dr. Louise Robbins (UNC-Greensboro), the SAS president 1984-1985, reports that she is fully recovered from the illness which prevented her from attending the meetings in Atlanta, Georgia last April. Dr. Robbins sends her greetings and expresses her hope that 1984-85 will be a productive and successful year for the society's members.

A new format is being tried with this issue of the Southern Anthropologist. I urge each of you to help me make the Southern Anthropologist an important vehicle for communicating the activities, interests, and news of the Society's membership. Send any contributions for the March 1985 issue directly to me and I shall be happy to prepare them for publication.

Sincerely,

Patricia B. Lerch, Editor
THE SOUTHERN ANTHROPOLOGIST

CONVENTION NOTES

The 1985 annual meeting of the Southern Anthropological Society will be held in Fayetteville, Arkansas from Wednesday evening, April 10, to Saturday, April 13, 1985.

The meeting will be held at the Fayetteville Hilton and the Continuing Education center of the University of Arkansas just off the town square in Fayetteville. These are adjacent and connected buildings just three years old and are fine facilities for a meeting of our size. The town square area has been recently restored and makes a beautiful setting for a meeting. There are many restaurants and hotel/motel rooms within a few minutes walk of the convention site, and the university is only a twenty minute walk or five minute bus ride away. Room charges will be \$50 for a double and \$42 for a single at the Hilton.

There will be a folklore conference entitled "Handiwork: Folklife Traditions in the South and Southwest" in the same facility Thursday and Friday during our meeting. Many of their papers should be of interest to anthropologists and vice versa. Their keynote speaker, Terry G. Jordan, Walter Prescott Webb Chair in Geography at Texas-Austin, will speak on "Ethnicity and Colonial American Material Culture" on Thursday night. We will be able to attend all of their sessions.

Abstracts for volunteered papers or symposia should be sent to:

Dr. William M. Schneider
SAS Meeting Program Chair
Department of Anthropology
419 Hotz Hall
University of Arkansas
Fayetteville, Arkansas 72701.

Abstracts should be approximately 100 words. Also please supply three key words under which your paper can be most accurately categorized, e.g., religion, Africa, circumcision. Abstracts and key words accompanied by your meeting registration fee of \$15 (\$10 for students) should be received by December 10, 1984.

There will be a student paper competition. Entrants in the competition should send their papers along with the \$10 student registration fee to the program chair by March 29, 1985. Papers should be clearly marked as 'Student Competition' papers.

In addition to papers or symposia, exhibitions of publications, films, slides, and photographs are invited. Exhibition space and security will be provided by the Hilton. Advanced shipment of exhibition materials may be sent directly to the Hilton provided shipment is not made prior to two weeks before the event and arrangements for return shipment are made by the exhibitor.

The key symposium entitled "Ethnohistoric Perspectives on the South" is described below.

During recent decades the American South has become an increasingly important area for anthropological research. Most studies, however, have focused on modern communities with the result that interpretations stem largely from a synchronic perspective. This symposium will bring together historical anthropologists, historical archaeologists and ethnohistorians to present research which adds a diachronic perspective to our understanding of problems concerning organization and change in the American South. While the theme chosen for this symposium is purposefully broad to include a variety of research orientations, the geographical focus will be primarily on the mid-south, particularly Arkansas and surrounding states.

There is still room for more contributions to the key symposium. Prospective contributors should contact:

Dr. George Sabo
Department of Anthropology
419 Hotz Hall
University of Arkansas
Fayetteville, Arkansas 72701

as soon as possible.

The Ozarks are very pleasant in April, and there are many interesting towns, trout streams and fishing lakes close by for those of you who would like to take a side trip. Fayetteville is served by two airlines to Drake Field which is only three miles from the meeting site.

ANNOUNCEMENTS/NEWS

1985 Student Paper Competition: This year's student paper competition deadline is March 29, 1985. Send your student papers and \$10.00 to Dr. Bill Schneider, SAS Meeting Program Chair, Department of Anthropology, 419 Hotz Hall, University of Arkansas, Fayetteville, Arkansas 72701.

1984 Student Paper Competition Winners: Dr. Carolyn L. Elhardt of the University of Georgia announced the following winners of the 1984 contest. The first place winner was Susan F. Hirsch of the Department of Anthropology at Duke University. Her paper is printed in this issue of the Southern Anthropologist and is entitled "Defining Incest: A Synchronic and Diachronic Approach to Substantive Law." Honorable Mention went to Lisa Cottrell of the Department of Anthropology at Georgia State University for a paper entitled "The Cultural System of Nervios Among the Afro Caribbeans of Lowland Costa Rica," and to Janice Gilliland of the College of Community Health Sciences at the University of Alabama for a paper entitled "Growth and Physical Fitness as Related to Socioeconomic Status Among Rural Alabama High School Students." Congratulations to all three winners!

The Society for Applied Anthropology has recently created a liaison role to organizations concerned with the survival of indigenous peoples. The purposes of the liaison role are to formally declare SfAA's concerns with the problems of indigenes, to offer help to indigenes by linking SfAA members to those organizations, thereby providing channels through which voluntary, technical assistance, and other activities may be provided upon request, and to facilitate communication with the SfAA membership.

As a first step, it is requested that names and addresses of relevant organizations and periodicals be sent to Gilbert Kushner, SfAA Liaison, Department of Anthropology, University of South Florida, Tampa, FL 33620.

Fifth Annual SUN BELT SOCIAL NETWORK CONFERENCE. February 14-17, 1985, at the Palm Beach Hilton, Palm Beach, Florida. Session Topics include: Networks through Time; Networks and Perception; Statistics and Networks; Bounded vs. Open Networks; Network Measurement; Networks in Archeology; Autocorrelation Models; Comparison of Methods for the Analysis of Social Networks; Networks in Historical Research; Agents, Brokers and Corporate Actors; Posters and Summary Reports; and Computer Programs for Network Analysis. Potential participants are urged to communicate with session organizers: H. Russell Bernard (Anthropology, U. of Florida, Gainesville, 32611) or Alvin Wolfe (Anthropology, U. of South Florida, Tampa, 33620).

Dues for the 1984-85 academic year are now being collected. Members will receive free of charge the proceedings of the society, No. 18, "Civilization and its Discontents" edited by Miles Richardson. Fees are \$12.00 for regular members; \$7.50 for students and \$18.00 for a joint membership. Dues should be sent to Holly Mathews; Dept. of Sociology and Anthropology; East Carolina University; Greenville, NC 27834.

UNC-Wilmington offers anthropology major: The Department of Sociology/Anthropology at UNC-Wilmington now offers a full major in Anthropology. Professors in the program include James C. Sabella, Professor of Anthropology, Patricia B. Lerch, Assistant Professor of Anthropology, Robert Dale McCall, Associate Professor of Anthropology and Research Associate at the Institute for Marine Biomedical Research, and Thomas C. Loftfield, Associate Professor of Anthropology.

CALL FOR MANUSCRIPTS: The Southern Anthropologist invites contributions of book reviews,

articles and research reports. Submitted materials should be double spaced and follow the American Anthropologist style guide. Mail to: Patricia B. Lerch, editor, Department of Sociology/Anthropology, UNC-Wilmington, Wilmington, NC 28403-3297.

Special discount to SAS members: Culture and Ethos: Essays in Honor of John J. Honigmann Published by the Society for Humanistic Anthropology \$5.00. Make check payable to Geoscience Publications and mark for Society for Humanistic Anthropology. Send to Geoscience Publications Department of Geography and Anthropology, Louisiana State University Baton Rouge, LA 70803.

The Anthropology and Humanism Quarterly is the voice of humanistic science. In this capacity, it accepts articles from anthropologists who concern themselves with the central question of the discipline: what it is to be human. Believing that such an issue must be addressed both holistically and by the whole discipline, the Quarterly welcomes contributions from all major fields of anthropology; physical anthropology and archaeology no less than linguistics and ethnology. Likewise, it welcomes articles from scholars in other disciplines, in the humanities as well as in the sciences.

Among the types of submissions it especially values are (1) those that explore the relationship between humanistic anthropology and other anthropological currents; (2) those that bring to the fore trends in the humanities that may further humanistic science; and (3) those that bring out the intricacies and contradictions of different cultures as these intricacies and contradictions constitute people's lives, including the life of the anthropologist.

In the treatment of the above themes, the Quarterly encourages a writing style that is concrete, vivid, and personal. In addition to the essay, the Quarterly solicits short fiction and poems.

The length of essays and fiction should not exceed 20 pages and that of poems three pages. Both essays and fiction should have a short summary of approximately 150 words. A style sheet is available from the editor.

Please send the original and one copy of the manuscript to:

Miles Richardson, Editor
Anthropology and Humanism Quarterly
Department of Geography and Anthropology
Louisiana State University
Baton Rouge, LA 70803

REPRESENTATIVE SELECTIONS: Bruce T. Grindal (1978) *The Human Story in Anthropology* (vol. 3, no. 3); Gerald D. Berreman (1980) *Are Human Rights Merely a Politicized Luxury in the World Today?* (vol. 5, no. 1); Miles Richardson, ed. (1980) *The Anthropologist as Word Shaman (Fiction and Poetry)* vol. 5, no. 4); Toni Flores (1982) *Field Poetry* (vol. 7, no. 1); Ann McElroy, ed. (1982) *Culture and Ethos: Special Issue in Honor of John J. Honigmann* (vol. 7, nos. 2-3); Gregory Reck (1983) *Narrative Anthropology* (vol. 8, no. 1); Edward Spicer (1983) *Return (Fiction)* vol. 8, no. 4); Gifford S. Nickerson (1984) *Civilization and Other Cultures* (vol. 9, no. 1).

THE SOUTHERN ANTHROPOLOGICAL SOCIETY
General Business Meeting
Ramada Inn, Capital Plaza
Atlanta, Georgia
20 April 1984

The meeting was opened by President Blakely before an audience of about 35, all sitting in hushed anticipation of exciting revelations to come!

OLD BUSINESS

1. Minutes--Blakely

The Minutes of the 1983 General Business Meeting were published in the Spring 1983 Newsletter and were approved as circulated.

2. Secretary-Treasurer's Report--David Johnson

1. Elections: President-Elect (President 85-86) is James Peacock; Councilor (84-87) is John Peterson, and Secretary-Treasurer (84-87) is Holly Mathews.

2. Membership: around 200, including 194 in the computer as of Monday, and additional persons who have joined at the Meetings and are just late!

3. Finances: See handout. Basically in good shape, with dues income shown down as of 31 Dec. 83 because the dues notice for 83-84 was not sent until the spring, since the Sec-Treas was waiting for the 82-83 proceedings to be published before he billed people again! Pres. Blakely pointed out that the \$300 shown for "videotape" was a donation from the SAS to the AAA's Committee on Public Understanding of Evolution for their videotape on dinosaur footprints.

3. Mooney Award--Harriet Kupferer

The Mooney Award was started by Pres. Hudson many years ago, and is made in conjunction with the Univ. of Tennessee Press. It provides for an \$1000 award plus publication for each prize winning manuscript, which must be on a new world culture. This year the committee agreed on a manuscript for submission for the award and sent it to the editor of the Press, Carol Orr, who has not responded as of meeting time. The Press is committed to two more manuscripts, whenever they are found.

Harriet raised the question of why so few good manuscripts are being received, and asked whether the award is getting enough visibility, even though she has sent notices to folklore, history, archaeology and even writers' bureaus in addition to the AAA.

4. Atlanta Meetings--Carole Hill

Meetings have 25 sessions, 159 papers with 14 other participants; 204 prepaid and 66 registered for a total of 275 registrants (although about 25 have not shown up yet). Estimated participation is 230-250. The Appalshop film session was organized too late for the program, and she thanked Barbara Browne and Diane Sheppard for putting the program

together. She also thanked Victoria Durant-Gonzalez for local arrangements and Carolyn Ehardt for organizing the student paper competition. She discussed difficulties with the book exhibit and said that, although she had sent out letters early about it, she had later received a 'phone call from Carol Orr complaining about the lack of information on the layout of the exhibits. Carol recommended that in the future a person be appointed to take care of book exhibit arrangements in the same way that someone is routinely appointed to handle local arrangements.

5. 1985 Meetings--Bill Schneider

They will be hosted by the Univ. of Arkansas at Fayetteville and held on 14-16 March 1985. He assured all present that Fayetteville can be reached by air!

6. Newsletter--Marilyn Welle

She is retiring as Editor as of the Winter 1983 issue, and has refunded \$200 in unused money to the Society. Pat Lerch of UNC-Wilmington will take over as Editor.

7. Proceedings--Mary Helms

The top volume in sales is still Proc Vol #2, Urban Anthro; Vol 16 on Bilingualism is the latest top seller, with Vol 15, "Land and Lord," is popular also. Vol 17 will be mailed soon and Vol 18, from Baton Rouge, is being worked on by the volume editors. David Johnson mentioned that the Univ of Georgia Press had told him, when he was getting the latest information for the poster, that a number of early proceedings were officially out of print; people should check their posters (which they should have gotten for details. <Note: the list of Out of Print Proceedings Volumes is: No 1, No 2, No 6, No 7.>

8. Kimball Award--Elizabeth Eddy

This award was established by the AAA in memory of Solon Kimball, and the award will "recognize outstanding achievement in the development of anthropology as an applied science" (quoted from the handout she had prepared for the meeting).

The first award, a cash award, will probably be given at the AAA meetings in Denver this fall. She gave out information on the award and asked that it appear in the SAS newsletter. Those who wish to contribute to the fund should contact her.

9. Student Paper Competition--Carolyn Ehardt

The Competition brought good response, with 11 students from 6 universities represented. There will be a first prize and two honorable mentions, and these will be awarded after she had judged both the written and oral presentations. The prizes will be a set of books from several Univ. presses and publishers, including U of Ga. Press, U of Fla. Press, U of Tenn. Press, U. of Texas Press, Harper, and Holt. The winner's paper will also be published in the SAS Newsletter. As a follow-up to Carole Hill's earlier comment, she suggested that perhaps the chair of the student paper competition be the person who should be in charge of contacting the presses for the exhibits.

10. Resolutions

On behalf of a somnolent Malcolm Webb, the following resolution was made and passed: All present thank Georgia State University and all the people who contributed to the success of the SAS meetings in Atlanta; the people to be thanked include: Carole Hill, Barbara Browne, Diane Sheppard, Carolyn Ehardt, and Victoria Durant-Gonzales.

11. **Moment of Silence**

was observed for the following departed colleagues: Irma Honigmann, Bill Carter, and Catherine Hardle.

NEW BUSINESS

Pres Blakely said he would continue the tradition of passing the gavel from the left to right hand to symbolize the transition of power to a new President who was unable to attend. This tradition was begun last year when he was unable to attend the meetings, and he continued it by standing in for Louise Robbins, who was unable to attend since she was recovering from surgery.

Malcolm Webb said he wanted to "note with satisfaction" that Robert McC Adams is the new Secretary of the Smithsonian, and urged that the Society write to Adams to congratulate him. <The delegation of this matter was taken care of immediately after the meeting> With no further business, the meeting was adjourned.

Minutes submitted by
David M. Johnson
Secretary--Treasurer

TREASURER'S REPORT

Comparison Sheet
Cash Revenues and Disbursements
for the years ending:

	31 Dec 1980 \$5336.87 Figures for 1981	31 Dec 1981 \$5940.97 for 1982	31 Dec 1982 \$7137.64 for 1983
Cash on deposit			
Cash Receipts			
Dues	\$3147.20	\$3372.10	\$1014.00
Proceedings	170.30	185.10	204.15
Convention profit	376.79	125.73	475.97
Royalties	174.99	158.95	364.55
Newsletter refund	----	335.49	----
Sale of member list	20.00	----	20.00
Use of figure by Cambridge U Press	----	20.00	----
T-shirt sales (1)	----	----	655.00
Interest income: (2)			
Ed Workers Fed Credit Union	220.00	240.50	145.22
State Employees Credit Union	----	----	430.19
Total cash receipts	\$4110.03	\$4437.87	\$3309.08

Disbursements			
Proceedings	1788.39	1889.24	1895.20
Newsletter	500.00	500.00	700.00
Other printing	403.05	240.70	338.10
Officers' expenses	12.60	33.13	----
Keypunch data entry	279.00	216.00	78.00
Photography	67.86	67.60	71.00
Visiting Lecturer Program	127.00	----	----
Legal and accounting	80.50	43.50	45.00
Videotape project	----	----	300.00
Office supplies	34.28	39.00	58.48
Prizes and awards	200.00	200.00	----
Honoraria for Mooney Award judges	----	----	400.00
Corporation report--state of Ga	5.00	5.00	5.00
Bank Service charges	8.24	7.03	12.62
T-shirt purchases	----	----	721.00
Total disbursements	<u>\$3505.92</u>	<u>\$3241.20</u>	<u>\$4624.40</u>
Cash on deposit 31 December 1983:			
Greensboro National Bank checking account		\$ 111.59	
State Employees Credit Union money market account		5684.23	
State Employees Credit Union passbook savings acct.		26.50	
Total		<u>\$5822.32</u>	

NOTES:

- (1) The Society, in the person of bold entrepreneur Miles Richardson, purchased 150 T-shirts for a total of \$721 (or \$4.81 apiece) for the Baton Rouge meeting. He is still selling them for \$5 apiece (a price urged upon him by the Secretary-treasurer), and when they are all sold, the Society will make a small profit on them. For the time period covered by this report, however, the Society grossed \$655.00 on the sales, for a net loss.
- (2) On March 1983 the Secretary-Treasurer took all savings in the Educational Workers Federal Credit Union and transferred most of them to the State Employees Credit Union money market savings account, which has a much higher yield. The SECU passbook account is necessary for the Society to qualify for the money market account.

DEFINING INCEST: A SYNCHRONIC AND DIACHRONIC
APPROACH TO SUBSTANTIVE LAW

Susan F. Hirsch

Duke University

Paper submitted for Student Paper
Competition, Southern Anthropological
Society Meetings, Atlanta, Georgia

April 18-21, 1984

This paper explores the role of the United States legal system in both reflecting and reshaping cultural conceptions of incest. The anthropological literature on incest suffers from an emphasis on identifying universalist explanations of incestuous behavior and its prohibition. Schneider (1976) claims that the range of cross-cultural variation demands particularist discussions of kinds of norms and kinds of behaviors rather than over-arching explanatory models. An examination of the statutory law on incest in the U.S. reveals synchronic and diachronic variation in the prohibition of incest behavior and suggests similar variation in the meaning of incest.

Statutory Law and Cultural Meaning

In reformulating the concept of incest Schneider (1976:18) argues that

'Incest' is symbolic of the special way in which the pattern of social relationships, as they are normatively defined, can be broken. 'Incest' stands for the transgression of certain major cultural values of a particular pattern of relations among persons.

Schneider advises analysts to examine the cultural values of particular societies; yet, he neglects to articulate the way in which values acquire normative definitions in a society. If the act of incest breaks both cultural values and normatively or institutionally defined social relationships, then norms could be seen as embodying values. One could conclude that an examination of the norms regulating incest would uncover well-defined cultural conceptions. In analyzing a society where norms are codified in statutes and cases, one might be tempted to read values directly from a law book.

Although equating rules of law with values can be rejected as a gross simplification, numerous authors identify a connection between the existence of laws and commonly-shared social values (Malinowski 1926; Lelewellyn and Hoebel 1941; Bohannan 1957). This emphasis on "law as public opinion" stands in opposition to the view of "law as the exercise of power politics" implicit in the work of various legal anthropologists (Gluckman 1955; Pospisil 1974; Moore 1978; Harrell-Bond and Burman 1979). The most recent scholarship in legal anthropology moves toward uniting these perspectives by conceiving of law as a process of negotiating values and meanings in the context of ongoing social relations (Comaroff and Roberts 1981; Dominguez, in press). The negotiation of meaning through the process of law illuminates the underlying logic of the sociocultural order. Analyzing rules of law along with the legal process itself can reveal the shared cultural meanings which statutory law both reflects and redefines.

A Synchronic Analysis of Incest Law

The current incest statutes in the United States regulate either sexual relations or marriage, or both, within a specified degree of relationship.^{2,3} Incest statutes in every jurisdiction except Michigan, New Hampshire, New Jersey, Ohio, and Vermont impose criminal penalties on relatives engaging in sexual relations.⁴ Of the 46 states with criminal incest provisions, 26 also provide criminal sanctions for marriage between relatives.⁵ Civil statutes in 14 states prohibit marriage between relatives and label the unions incest.⁶

The state incest statutes reflect the same confusion between sex and marriage which has plagued academic discussions of incest. While incest statutes in many states involve both sexual intercourse and marriage, other jurisdictions view either sexual intercourse or marriage between relatives as incestuous behavior.

Many states have incest-type provisions which prohibit marriage or sexual relations between relatives without designating the behavior as incestuous.⁷ The lack of consistency across state statutes in labelling certain behaviors incestuous confuses the problem of defining incest. Certain behaviors legally constitute incest only in particular jurisdictions, thereby, casting doubt on the existence of a generally understood cultural conception of the phenomenon.

Incest statutes vary widely in the category of persons forbidden from engaging in sexual relations or marriage. Every state proscribes sexual relations between parent and child. Every state also forbids intercourse between other categories of consanguineally related individuals. Grandparent/grandchild and sibling/sibling sexual relations are criminally punished along with parent/child in 41 states.⁸ In 37 states, uncle/niece and aunt/nephew sexual relationships are also prohibited under criminal incest statutes. Only 14 states restrict the prohibition on sex to consanguineally related individuals.⁹ A majority of jurisdictions prohibit step-parent/step-child sexual relationships. Eleven jurisdictions include adoptive parent/child relationships;¹⁰ two include adoptive siblings.¹¹

Civil statutes prohibit marriage between a wide range of consanguineally and affinally related persons. Marriage is prohibited between persons within the following degrees of relationship: parent/child, grandparent/grandchild, sibling/sibling, uncle/niece, and aunt/nephew.¹² The prohibition applies to siblings of the half blood in ten of these and first cousins in six.^{13,14} Five states include affines in the relationships prohibited under civil incest provisions.¹⁵

By documenting the range of variation in behaviors and participants, the synchronic approach suggests assumptions underlying incest as a social phenomenon. Under the present configuration of statutes, incest can be analytically categorized as a crime against society or a crime against individual victims. Although states generally refrain from designating the entity (society or individual) sought to be protected, the particular behaviors and participants referred to in statutes lend support to the categorization mentioned above

The widespread prohibition of sexual intercourse or marriage between a core of consanguines emphasizes the link between incest and an alleged biological risk to society. Commentary to the Model Penal Code indicates that some states seek to avoid the genetic defects believed to accompany "inbreeding."¹⁶ Fourteen states appear to be motivated by a concern for protecting society from genetic defects in the light of their exclusive focus on regulating relationships between closely related consanguines.¹⁷

It is also possible to construe the prohibition of sex and marriage among a core of consanguines as a morally or religiously motivated attempt by the state to preserve the sanctity of the family for society's benefit. The inclusion of affines, such as step-parents, in the incest

provisions of most states weakens the biological argument yet is consistent with an imperative of maintaining family sanctity.

State laws also address intrafamilial sex between adults.¹⁸ The prohibition on sex or marriage between adult affines carries the assumption that the state has a role in constraining the actions of family members, even after they reach adulthood. In regulating sex and marriage between adult consanguines and affines, incest statutes bear a similarity to other laws which supposedly serve the state's interest by prohibiting immoral or deviant acts like consensual sodomy or fornication. In the majority of states, the statutory incest laws support the assumption of both a biological and moral motivation behind regulating incest.

A synchronic analysis also allows for the categorization of incest as a crime against individuals. Statutes in a few states appear to focus on regulating incestuous behavior involving minor children. Although most incest and incest-type statutes protect children from sexual exploitation by family members, the classification of incest primarily as a form of child sexual abuse reflects a concern for the personal rights of individuals in the context of family relationships. The state's interest in maintaining morality or protecting the gene pool is less readily apparent given the concentration on protecting the rights of minor children.

A Diachronic Analysis of Incest Statutes

Discussions of incest law suggest that the two conceptions reflect a developmental progression (Storke 1964; Bulkley 1981; Hermann and Wilcox 1982). The presence at one moment in time of incest laws embodying concerns for the individual, the family, and the moral order perhaps results from differences (both temporal and substantive) among states in redesigning statutes. By charting the general history of incest laws and subsequently focussing on recent changes in two states it is possible to account for the various configurations of incest statutes and to suggest a role for politics in effecting statutory change and, ultimately, the meaning of incest.

General History

At the time of codification, incest statutes enacted in the various states were based on the English Incest Statute of 1540 and Old Testament law. Early case law demonstrates the connection between U.S. statutes and religious prohibitions.²⁰ By the late nineteenth century, genetic arguments against intrafamilial sex and marriage were also used to support the statutory provisions (Bulkley 1981:53). In case law, however, the condemnation of incest continued to invoke moral as well as biological imperatives.²¹

Statutes regulating marriage between relatives can be understood as resulting from early beliefs in the biological and/or sociological harmfulness of incest; however, the recent decriminalization of incestuous marriage in some jurisdictions perhaps reflects the paucity of scientific evidence for continuing to prohibit consanguineal marriages (Daugherty 1979:111). Storke (1964:783) identifies a similar trend toward eliminating the prohibition on marriage between affines altogether. It therefore appears that states are slowly relinquishing their control over marriage as the grounds for prohibiting adult intrafamilial relationships become less compelling.

Recent U.S. Supreme Court decisions reflect a similar interest in limiting the state role in promoting traditional marriage and family relations. In Griswold v. Connecticut (1965), the Court established a right to privacy which protects individuals from the intrusion of government into personal decisions. In affirming the rights of individuals vis-à-vis the government, Griswold and

subsequent rulings have eroded the notion of the family which guided previous statutory and case law.²²

In reconceiving of marriage as a potentially revocable contract between individuals rather than as a sacred or moral pact forever bonding two parties, statutes begin to accommodate previously interdicted relationships. Possibly, the relaxation of state intervention in marriage between affines might eventually extend to other prohibited relationships such as marriage between consanguines or homosexuals (Einbinder 1973:786). While numerous political pressure groups have called for individual rights to privacy, the Women's Movement represents the most visible and influential advocate for legislation.

There is the hint of a contradictory trend in the reform of criminal incest laws involving intrafamilial sexual relations. While some states are repealing or decriminalizing incest, others are revamping statutes to protect minor children. Both trends, as well as the lack of revision in some states, lead toward new conceptions of incest. A brief history of significant reforms in Illinois and New Jersey incest statutes suggests the direction of recent trends.

Case One: Illinois

In 1962 the Illinois state legislature revised its incest statutes to eliminate the exclusive concentration on father/daughter sexual relations (see Appendix I). Section 11-10 of the Criminal Code, Aggravated Incest, redefines the parent/child relationship to include mothers and nonconsanguines; however, both Illinois case law and the Committee Comments following §11-10 approve of the retention of a distinction between father/daughter and other forms of incest citing the prevalence and seriousness of the former.²³ The revision of §11-11, Incest, redefines the category of incest in two respects. It excludes all categories of relatives, except siblings, from criminal prosecution for incest, and it eliminates the correspondence between criminal incest laws and marriage prohibitions. Committee Comments following the two revised sections admit an intention to prevent the biological risk of incest, yet, they acknowledge the inconclusive scientific evidence. Their weak defense of the biological rationale for the legislation stands in sharp contrast to the explicitly stated concern for using incest laws to prohibit parental sexual abuse.

A 1982 addition to the Illinois statute is unequivocally designed to protect minor children. Under §11-11.1, Sexual abuse of a child by a family member, the victim, a minor in every case, is guaranteed protection from abuse by other family members. The specification that sexual child abuse includes casual contact as well as intercourse denies the existence of a biological risk rationale. Instead, the new law shares with the previously revised sections the primary goal of protecting the well-being of children.

Case Two: New Jersey

In 1979 the category of incest was removed from the New Jersey civil and criminal statutes. The repeal of §2A:114-1, Incest, eliminates the prohibition on consensual sex between adult relatives and decriminalizes consanguineal marriages (see Appendix II). The state action follows the trend outlined previously toward granting individual adults autonomy regarding sexual relations. Although the repeal of §2A:114-2 appears to indicate a complete renunciation of concern for minor children, New Jersey provides for their protection under separate criminal sexual abuse provisions (see Appendix III). The New Jersey statutes are extremely comprehensive.

In eliminating incest as a legal concept, the New Jersey statutes retain only one link to the former criminal incest provisions: the protection of the minor child. This legislation follows the more general trend of concentrating on the prohibition of child sexual abuse to the exclusion of laws designed to address biological risk and general family sanctity.

It is difficult to assess the strength of the trend toward using incest and incest-type laws primarily to protect minor children. A few states have redefined their statutes to reflect this concern, and there is evidence that other states concentrate on children as they apply the already existing statutes (Wulkan and Bulkeley 1981:55-56). In the U.S., the concern with protecting children from familial abuse has been pursued through extensive state and federal legislation since the early 1960's, although, more recently, child sexual abuse has been the target of legislative action.

Conclusion

A diachronic analysis of U.S. statutes suggests three broad conclusions about the substance of incest provisions: 1) the identification of incest with marriage prohibitions is breaking down; 2) the emphasis on preventing genetic defects is becoming less compelling; 3) the protection of children is increasingly constituting the focus of legislation. In other words, a more secular rationale, which espouses the protection of social actors who cannot protect themselves, is coming to replace moral, religious and pseudo-scientific justifications for prohibiting incestuous behavior.

These shifts suggest significant consequences for the meaning of incest. It can be posited that the meaning of incest narrows as states move toward an exclusive focus on protecting children. In theory, narrowing the definition of incest corresponds, in part, to a general preference in a legalistic culture for replacing vague concepts with precise definitions. New Jersey's approach, the elimination of incest as a legal concept, represents an alternative strategy for reducing vagueness. Examining the shifting meaning of incest as a legal concept provides a clue to the direction of change in the culturally understood meaning. Clearly, incest as a cultural construct will not disappear from general usage as readily as it vanishes from statutory law on the decision of legislators. Rather, this paper suggests that concepts like incest preclude precise definitions because they embody the synchrony and diachrony of culture in progress.

NOTES

¹Several reviews of the anthropological literature on incest point out the overwhelming concern with developing theories to explain the origin or existence of incest and incest taboos (Schneider 1976; Fox 1967, 1980). The various models attempt to explain incest with reference to biological (Morgan 1877; Lowie 1920; Fox 1967), psychological (Westermarck 1889; Freud 1931; Wolf 1966; 1968), or sociological (Durkheim 1898; White 1948; Levi-Strauss 1956) phenomena.

²Throughout this paper, incest statute refers to state civil and criminal laws which contain the word incest. Other statutes prohibiting similar behaviors are designated incest-type statutes.

³The data analyzed herein consist of statutes and case law from fifty-one United States jurisdictions (fifty states and the District of Columbia).

⁴Generally, the type of sexual behavior punished under the criminal incest statutes is limited to sexual intercourse; however, four states extend the provision to include "deviate" sexual conduct (IL, IN, OR, TX). In addition, the Kansas state statute categorizes the prohibition of "any unlawful sexual acts", such as rape, sodomy, or lewd and lascivious conduct involving relatives as incestuous behavior.

⁵AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, KN, LA, MS, MO, MT, NB, NE, NM, NY, ND, OK, OR, RI, TN, WS.

⁶AR, CA, FL, ID, KN, KY, MS, NB, NM, NY, ND, OK, RI, VT.

⁷In New Jersey, Michigan, New Hampshire and Ohio, sexual relations between relatives of certain degrees is punished through criminal sexual offense statutes. Similarly, marriage between relatives is prohibited, through not labelled incestuous, by civil statutes in 33 states. Twelve states designate marriage between relatives incestuous yet fail to identify the same behavior as incest in the civil code. In 21 states, marriage between relatives is never statutorily defined as incest.

⁸Exceptions to the consanguineal core of relatives (parent/child, grandparent/grandchild, sibling/sibling) encompassed in criminal incest provisions include Colorado, West Virginia, Wyoming, and Illinois which excluded grandparent/grandchild provisions.

⁹AK, AZ, CA, DC, FL, ID, MD, MN, NE, NM, NY, OR, WV, WS.

¹⁰AR, CO, DE, IL, KS, KY, MS, NC, VT, WA.

¹¹TX, VA.

¹²The Rhode Island statute includes the following exception:

15-1-4. Marriages of kindred allowed by Jewish religion. The provisions of § 15-1-1 to 15-1-3, inclusive, shall not extend to, or in any way affect, any marriage which shall be solemnized among the Jews, within the degree of affinity or consanguinity allowed by their religion. Gen. Laws of R.I. § 15-1-4.

¹³AK, CA, ID, KY, NB, NM, NY, ND, OK, VT.

¹⁴AK, KN, KY, ND, OK, VT.

¹⁵MS, OK, RI, SD.

¹⁶The Model Penal Code is a set of statutes developed in the 1950's by a committee of attorneys interested in standardizing state statutes. The incest laws in many states resemble those in the Model Penal Code. The Commentaries on the statutes in the Model Penal Code provide detailed justification for their inclusion.

¹⁷See Note 9.

¹⁸In Maine the crime of incest applies only to adult relatives.

¹⁹CO, IL, KN

²⁰State v. Lamb 227 N.W. 83 (Iowa, 1929); Commonwealth v. Ashe 142 N.E. 778 (Mass., 1924); Fensterwald v. Burk 98 A2d. 358 (MD., 1916) as cited in Storke 1964:476.

²¹See, for example, Bucca v. State 43 N.J. Super. 315; 128 A2d. 506 (1957).

²²Eisenstad v. Baird 405 U.S. 438 (1972); Carey v. Population Services International 431 U.S. 478 (1977); Planned Parenthood of Missouri v. Danforth 428 U.S. 52 (1976).

²³People v. Yokum 5 Ill. Dec. 665, 66 Ill. 2d 211; 361 N.E. 2d 1369; People v. Williams 32 Ill. Ap. 3d 547; 336 N.E. 26 (1975).

APPENDIX I

The 1935 Illinois statute:

§ 374. Father with daughter;

If a father shall rudely and licentiously cohabit with his own daughter, the father shall be imprisoned in the penitentiary for a term of not less than one year and not exceeding twenty years.

§ 375. Of relatives

Persons with the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be imprisoned in the penitentiary for a term of not less than one year and not exceeding ten years. Ill. Ann. Stat. (Smith-Hurd 1935)

The 1962 Illinois statute:

§ 11-10. Aggravated Incest

a) Any male or female person who shall perform any of the following acts with a person he or she knows is his or her daughter or son commits aggravated incest:

1) Has sexual intercourse; or 2) An act of deviate sexual conduct.

b) "Daughter" for the purposes of this Section means a blood daughter regardless of legitimacy or age; and also means a step-daughter or an adopted daughter under age 18.

c) "Son" for the purposes of this Section means a blood son regardless of legitimacy or age; and also means a step-son or an adopted son under age 18.

§ 11-11 Incest

a) Any person who has sexual intercourse or performs an act of deviate sexual conduct with another to whom he knows he is related as follows commits incest:

- 1) Brother or sister, either of the whole or the half blood.
Ill. Ann. Stat. (Smith-hurd 1979).

APPENDIX II

The New Jersey statute (repealed in 1979):

2A:114-1. Incest

Persons who intermarry within the degrees prohibited by law, or who, being related within such degrees, together commit fornication or adultery, are guilty of incest, and each shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 5 years, or both.

2a:114-2 Incestuous conduct between parent and child

A parent who commits incest, fornication, adultery or lewdness with, or an act of indecency towards, or tending to debauch the morals and manners of a child of such parent, or who makes any infamous proposal to his own flesh and blood.
N.J. Rev. Stat. Ann. (West Supp. 1970).

APPENDIX III

2C:14-2. Sexual Assault

a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- 1) The victim is less than 13 years old;
- 2) The victim is at least 13 but less than 16 years old and
 - a) The actor is related to the victim by blood or affinity to the third degree, or
 - b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or
 - c) The actor is a foster parent, a guardian, or stands in loco parentis within the household.

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