The phenomenon of incest in Sweden over 250 years: a summary discussion

Incest is a topic that provokes strong feelings. From time to time, tragic stories about the abuse of minors are revealed, causing widespread horror and concern. As late as 2008, an incest case from Austria created headlines all over the world when it was discovered that a man had kept his biological daughter locked up in his basement and abused her for over twenty years. But revelations of voluntary sexual relationships between relatives also cause powerful reactions among the general public. In the 1990s, Woody Allen created a scandal by marrying the daughter of his former partner, which is only one example of many where voluntary sexual relationships between relatives have attracted attention and created indignation in the community.

What is it about these cases that affects people so much? Why do other people’s sexual activities become interesting to the people around them?

In all societies, the sexual lives of citizens are limited in one way or another by formal or informal rules. Incest prohibitions may be said to be universal, because they have existed in some form in almost all known cultures. At the same time, the rules are variable and the boundaries negotiable, indicating that the prohibitions are to some degree socially constructed. There are simply no universal answers to the question of which marriage alliances may be considered legitimate. No one drawing of boundaries is more ‘correct’ than any other, and no universal definition of incest may be considered to be valid in all contexts. One comprehensive question which this study attempts to answer has to do with the values and cultural ideas that determine which relationships are accepted or defined as

1 Thorén 2009.
forbidden and punishable in a society. In other words, on what norms are the rules actually based?

In Sweden the configuration of incest prohibitions has varied from the Middle Ages, when a man was forbidden to marry his deceased wife’s sixth cousin according to the matrimonial laws of the Catholic Church, to today’s incest prohibitions which only include sexual relationships between members of the same biological nuclear family (parent/child, full siblings). The penal consequences of incest crimes have varied significantly over time, too. For instance, a sexual relationship between a man and his deceased wife’s sister led to a fine during the Middle Ages, to capital punishment in the seventeenth and eighteenth centuries, and to imprisonment in the nineteenth century, only to be completely decriminalised from 1872 onwards. Clearly, then, definitions of incest and the penal consequences of incest crimes have changed from one extreme to the other. Case law for incest was at its very strictest in Sweden around the turn of the century in 1700. Conversely, today the country stands out owing to its liberal legislation. Even though the situation in Sweden thus evinces exceptional characteristics, developments can always be put in relation to norms and values that have existed far outside the country’s borders.

Since attitudes to incest may be so closely linked to general social phenomena, it is not strange that the changing position of incest prohibitions in society has gone through a similar transformational process in countries with similar cultures and histories. During the early modern period, Catholic countries were characterised by numerous incest prohibitions and mild penalties, whereas Protestant areas were characterised by fewer prohibitions but severe punishments. The latter was true of Sweden as well as of Denmark, Norway, Iceland, Holland, and the German-speaking areas. Subsequent centuries saw a development in the direction of fewer prohibitions and milder punishments all across Europe.

Circumstances in Britain differed from those in the rest of Protestant Europe in two ways: firstly, incest crimes were not transferred to secular jurisdiction after the Reformation, and as a result, incest crimes were relatively mildly punished. Secondly, cousin marriages were allowed after Henry VIII abolished the prohibition in the sixteenth century. In most other Protestant countries, cousin marriages were not legalised until the nineteenth century. In spite of the divergent characteristics of Britain with respect to the legal handling of incestuous acts, there were great similarities compared to other countries in how such relationships, in practice,
ended up in conflict with ideas surrounding family life and social hierarchies.

Legal developments in France were also special because incest was completely abolished as a crime in 1791. From a moral point of view, incestuous acts nevertheless continued to be considered deviant; and as in many other European countries, fears surfaced towards the end of the nineteenth century regarding degeneration and bad social conditions in relation to incestuous acts. Consequently, national differences did not prevent the emergence of significant similarities across national boundaries when it comes to the question of how incestuous acts have been perceived and discussed in society.

Previous research on this topic has focused either on crimes of incest and judgement-book material, or on marriage strategies and applications for dispensation. While the investigation of criminal cases has often dealt with the early modern period, when such crimes were punished most severely, studies of marriage patterns have concentrated on the nineteenth century, when marriages between related people were at their most popular. Earlier scholars hence focused on various aspects of the phenomenon of incest, but no one has specifically investigated the social practice of legal application and its long-term changes.

Here my investigation differs from what has been done before. By allowing it to cover a longer period of time, and to include different arenas in society, I have been able to extend the perspective, which has provided a better overview of the changes that took place. This has enabled me to identify ideological continuity as well as ideological change. That, in turn, made it possible to bring out those norms that formed the basis for formal legislation in Sweden during different periods.

My analysis was inspired by American sociologist Joel M. Charon’s interpretation of the theory of symbolic interactionism. According to this theory, the common norms and life ideals in a society are the outcome of an ongoing negotiation between individual actors and groups. It is in the encounters between people – and in the symbolic interaction involved in these encounters – that an opportunity for change comes about. When single individuals or entire groups challenge social regulatory frameworks through speech or action, this leads to a questioning of the legitimacy of basic normative values, and the result of that is a renegotiation of the boundaries of the relevant norms. In the process of negotiation that ensues, cultural ideas and ideals which the actors take as their point of departure – and which they perceive to be relevant in the context
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– are made visible. These negotiations can lead either to the re-establishing of the legitimacy of the norms or to an adjustment of the norms’ boundaries.

By assuming that change occurs when people interact, I was able to steer the investigation to arenas where established norms and rules were challenged in different ways. Apart from incest crimes and applications for dispensation, where the legislation was variously tested through people’s actions, the prevailing regulatory framework was challenged in open discussions between lawyers, theologians, and politicians in connection with debates in the Riksdag and legislative action. For this reason, the source material for the investigation has consisted of laws and preparatory legislative material, of criminal cases (approximately 230) and applications for dispensation (approximately 200), and of parliamentary records from twelve different debates.

Continuity and change

Society’s attitudes to incest and incest prohibitions can usefully be discussed in terms of continuity and change. The long timelines in this study have helped in bringing out those ideas that have lived on more or less unchanged throughout the centuries, as well as the emergence of new ideals and values.

The legislation at the beginning of the investigated period was certainly strict and authoritarian; but in spite of everything there was a built-in flexibility in the system which left scope for interaction and negotiation. The investigation also shows that historical actors have been able to argue for diametrically opposed points of view even though they started out from a certain shared cultural framework. Throughout the period investigated in this book, there was a sense of insecurity surrounding the assessments of relationship categories that were in a kind of grey area between formal illegitimacy and informal acceptance. As the laws changed, so did the relationships that caused consternation; but this insecurity recurred time and again, indicating that there was always a reciprocal influence between legislation and the popular sense of justice.

Incest crimes: from religious crimes to moral crimes to crimes of violence

Ever since the Middle Ages and the introduction of Christianity in Sweden, the Bible provided the basic guiding principles for Swedish
incest legislation. After the Reformation, the number of prohibitions was reduced and the range of punishments was made more severe; but incest continued to be defined and treated as primarily a religious crime.

When the legitimacy of the incest prohibitions was challenged during the latter part of the eighteenth century, religious arguments took up less space in the debate. Instead, the main reasons for the prohibitions tended to be connected with social morality. Loose living and general immorality were believed to threaten the social order, and incest prohibitions were needed in order to create balance and stability. Incest had thus become a moral crime.

A hundred years later, the prohibitions against cousin marriages and several affinity relationships had been abolished, which led to relationships between a father and his (step)daughter becoming the most common incest crime. These relationships were more often based on violence and exploitation, which is why incest was increasingly perceived to be a crime of violence. Consequently, the current association between incest and abuse is due to the reduction of the scope of incest prohibitions that occurred towards the end of the nineteenth century, when several of the voluntary incest relationships were legalised.

In very broad terms, society’s idea of incest has thus shifted from a perception of the forbidden act as a religious crime to a moral crime and then to a crime of violence.

Economic circumstances

The general attitude towards and the existence of incestuous relationships have to a great extent been influenced by material factors, such as financial matters and inheritance. Economic circumstances have determined which relationships have been perceived as advantageous in different contexts. For instance, when cultural taboos surrounding cousin marriages diminished in society, the popularity of these alliances increased, especially among propertied groups. During the Middle Ages and also at the beginning of the early modern period, the possibility of dispensation was primarily used by the nobility; but during the nineteenth century, when several affinity relationships also became more culturally acceptable, the popularity of marriage alliances between related people increased in all social groups.

Both Swedish and international research has shown that there was a shift in emphasis during the second half of the eighteenth
century as regards people’s expectations concerning marriage, from a primary focus on marriage as a financial settlement between two families to a view of a matrimonial union as a loving alliance between two individuals. But for the individual, the emotional dimension of marriage was important both before and after the love match became an established ideal. At the same time, though, the individual in question had to bear his or her economic situation in mind. The fact that marriage between related people became immensely popular during the nineteenth century can definitely be linked to economic conditions. Economic and practical arguments were used as active means of exerting pressure when people applied for dispensations for marriage well into the 1910s; and although people from all social groups made use of marriage alliances within the family, this phenomenon was more common among propertied groups than among those who lacked wealth.

Even though the emotional aspects of marriage were valorised in society after the turn of the century in 1800, individuals have always acted on the basis of practical as well as emotional circumstances. In the course of the most recent hundred years, since the Swedish state assumed the role of social safety net for its citizens – through, among other things, organised care for the elderly, unemployment benefits, and income support – the ideals of mutual love and individual choice have acquired even greater significance.

The institution of marriage

For centuries, the conception of marriage as the only legal union between a man and a woman has been of decisive importance to the ways in which incest prohibitions have been formulated and challenged. During the eighteenth century, for instance, requirements for a virtuous relationship were introduced for those who wished to gain approval for a dispensation for marriage. At the same time, dispensation was in fact granted for certain marriages even when people did not live up to the requirement of virtue. Both these fundamentally contradictory attitudes on the part of decision-makers were geared to safeguarding and reinforcing the institution of marriage while counteracting extramarital relations.

The institution of marriage was also defended on a popular level. While the relevant relationship categories have varied over time, the arguments regarding the sanctity of marriage have remained the same. When couples attempted to legalise their relationships after the fact by applying for dispensation for marriage, the community
was also forced to take up a position as to which norm was more important to defend, the *institution of marriage* or the *kinship prohibition*. As long as the cases concerned relationships in the border area between legal and illegal, both the general public and the authorities appear to have come down on the side of marriage.

Over the past century, marriage as an institution has lost its status as the only officially accepted form of cohabitation in Swedish society. The strong connection of marriage to religion has dissolved, and today it is considered completely natural for two people to choose to live together without first having gone through an official marriage ceremony. For those who nevertheless choose to marry, the phrase ‘till death us do part’ no longer carries any literal meaning, since the possibility of divorce is always present. It has become possible to opt out of marriage, or to choose marriage and then change one’s mind, matrimonial law having been adapted to the personal desires of individuals. Ideas regarding equality and the right to make individual choices have consequently played a crucial role in discussions about the legal regulation of matrimony during the greater part of the twentieth century. Further back in history, however, these issues had little significance where matrimonial law was concerned. Marriage was perceived as all but indissoluble, and the debate dealt primarily with who was allowed to marry whom from a kinship perspective.

In other words, the absolutely most enduring and most important issue that has dominated the debate on marriage for almost a thousand years has had to do with the potential spouses’ family relationship relative to each other and with the question of where the line should be drawn between acceptable family relationships and prohibited ones.

**Views on love and passion**

Ideas about love and passion in society have varied over time, in ways that have affected how incestuous relationships have been perceived and dealt with. In earlier times, love was an ambiguous concept. Conjugal love was described as a positive energy that strengthened the bond between spouses, whereas extramarital love was seen as a potentially dangerous force which should be suppressed by any means available. Extramarital sexuality symbolised uncontrolled, dangerous passions which could be exploited by the Devil in order to lead people to their ruin. As long as extramarital sexuality was saddled with such unfavourable connotations, love, tenderness,
and passion could not be regarded as mitigating circumstances when an incest crime had been committed. While prosecuted couples might be reprieved for a single offence because of intoxication or youthful indiscretion around the turn of the century in 1700, couples whose relationships were described as loving and tender were executed without the court of appeal recommending a reprieve.

Towards the end of the eighteenth century, a gentler practice was established in connection with the assessment of incest crimes in Swedish courts. The death penalty was almost always reduced to a month’s imprisonment on bread and water; and in several cases where the relationship appeared to be reciprocal, the punishment was reduced further. The lenient handling of convicted incest offenders is clearly connected to ideological changes that occurred in Europe, changes which brought demands for a humane and equal penal policy. But the mild punishments can also be linked to new ideas about romantic relationships. At the same time as the matrimonial ideal changed, love and the emotions generally were acquiring ever more favourable connotations. To act on the basis of personal emotions without allowing reason to govern one’s actions had previously been seen as a weakness that could only be excused in children. With Romanticism, personal taste and mutual love between spouses were valorised and idealised. Emotionality became a virtue.

This cultural change, which has been demonstrated by Niklas Luhmann, Stephanie Coontz, and Ronny Ambjörnsson among others, had an impact on the handling of incest crimes in that mutual love was now treated as a mitigating circumstance. In several incest cases where the relationship was described as loving, the couples were sentenced to more lenient punishments than what was in fact prescribed by both law and practice. Even though the court of appeal never formally invoked a couple’s love as a motive for reducing a sentence, the pattern indicates that at this time greater consideration was given to the nature of the relationships. The valorisation of the role of emotions from the end of the eighteenth century onwards also meant that love and mutual attraction were increasingly often used as leverage in order to have an application for dispensation approved.

Clearly, then, prevailing attitudes to love and passion affected assessments of different relationships. As long as love was not seen as a thoroughly positive and valuable force, it could not be invoked either to excuse a committed crime or to justify exceptions from the prohibitions; but when emotions came to be regarded as meritorious, the situation changed. Love became a common argument both
for justifying applications for dispensation and for excusing crimes committed. True, people around prosecuted individuals had been more favourably disposed towards relationships that appeared to be reciprocal in earlier times as well; but it was not until love was valorised in society that mutual affection came to function as a mitigating circumstance in the official assessment of a case.

Kinship: from extended households to nuclear families

One of the most important results of this investigation is the insight into the extent to which views and definitions of kin and family have influenced ideas about incest and incest prohibitions. David Herlihy claims that the incest prohibitions originally aimed to promote a healthy family life by preventing romantic relationships between members of the same household. He thus sees the household as the unit that was to be protected by the provisions. Because the household could include other members than the innermost nuclear family, it was logical that incest prohibitions also covered cousins or relatives by marriage living under the same roof. Any romantic relationships between different members of the household risked causing jealousy and sowing dissension among people who had an interest in sticking together and helping one another. Michael Mitterauer also thinks it likely that the composition of the family and the household structure constituted a more fundamental explanation than biological kinship for how incest prohibitions have been configured in various societies.

The positive influence of incest prohibitions on the stability of the household recurred as an argument on several occasions when incest prohibitions were debated in the nineteenth century, even though the family rather than the household was referred to in the Swedish material. However, similar ideas regarding the household may have influenced how relationships were perceived much earlier in history. At the beginning of the eighteenth century, the Skara Cathedral Chapter approved an application for marriage from a man and his sister's stepdaughter but rejected an application from a man and his wife's stepdaughter. On the basis of the theoretical division of incest degrees, the first of these family relationships is closer because only one marriage separates the people in question; but if one looks at the situation from the point of view of the household, it is more likely that the latter individuals have lived under the same roof – and that would make the decision of the cathedral chapter more logical.
Family life changed in the nineteenth century. Previously, the family had first and foremost constituted a work community living in close interaction with servants, neighbours, and friends. Alongside the nuclear family, a household usually consisted of more distant relatives and sometimes additional servants. Later on, the size of the household was reduced and the private life of the family was separated from the provision of their daily livelihood. Henceforth the nuclear family came to stand out as a separate and more intimate unit. Since the number of individuals that were included in a family/household had been reduced, it was seen to be reasonable that the boundaries of incest prohibitions should be adapted to the more modern family composition. Though the number of prohibitions was reduced, the family was therefore protected in the same way as before from jealousy and dissension due to love affairs between family members.

This change is apparent in debates conducted in the Swedish Riksdag during the first part of the nineteenth century. All political debaters supported and defended basic ideas regarding the importance of marriage, family, and social morality for the development of a good society. But there were different views about how the forms of social intercourse in a normal family functioned, which resulted in different positions being assumed with respect to the drawing of boundaries of incest prohibitions. The main dividing line thus had to do with how the family should be defined, that is to say, where to draw the lines between kin, family, and society. The changed forms of social intercourse within the family were a main argument for those politicians who promoted a reduction of Swedish incest prohibitions. For instance, since cousins and relatives by marriage did not live together or socialise as intimately as before, it was argued that it made sense for the boundaries of the prohibitions to be revised in accordance with contemporaneous patterns of social intercourse. Opponents claimed that the behavioural pattern of families had not changed that much, and that the prohibitions were needed in order to promote the solidarity of families and safeguard their opportunities for helping one another when somebody needed economic or social support. Similar arguments were presented by both sides throughout the period; but over time, more and more people came to support the ideas that pointed towards reform and change, and in 1872 several of the affinity prohibitions were finally abolished.

The definition of the family, and ideas about social intercourse within the family and the household, were hence obviously decisive
for the formulation of incest prohibitions. At this time, incest prohibitions were justified by references to ethics and social morality linked to the composition of families. When new family patterns emerged, this development entailed direct consequences for the ways in which the prohibitions were formulated.

Kinship: family hierarchies

Ideas about kin and family have always affected assessments of incestuous relationships from another perspective as well. Early modern society had a hierarchical construction, and one of the most powerful guiding principles was filial deference and respect between the generations. Filial deference was understood to be a foundational principle which should be safeguarded in all contexts, so that society could continue to exist in balance and harmony. This notion was crucial to perceptions of incestuous relationships. A child should always – regardless of age – show respect for and obedience towards his or her elders, especially his or her parents or other people who might have a disciplinary function. Step-parents and parents-in-law as well as aunts and uncles were hence included in the principle of filial deference. Sexual relationships constituted an obvious threat against the natural respect and deference that was considered to exist between the generations, which is why the taboo against sexual relationships between the generations was particularly powerful.

Under the old legislation, incest crimes should be assessed according to the closeness of the family relationship, regardless of whether it was lineal or horizontal. In spite of this, people who were related in a lineal degree (stepmother, stepdaughter) were more severely dealt with when they had violated the moral norms than people who were related in a horizontal degree (wife’s sister, brother’s widow). While reprieves were rare around the turn of the century in 1700, people who were related in a horizontal degree were very occasionally reprieved from the death penalty if there were greatly mitigating circumstances. People related to each other in a lineal degree were hardly ever reprieved if they were found guilty of an incest crime. However, a woman might be reprieved if she was thought to have been forced to participate in the sexual act.

The same tendency to treat people related in a collateral degree with greater leniency can be noted in applications for dispensation from the whole of the eighteenth century. People who were related to each other in a vertical degree (wife’s stepdaughter, stepmother’s aunt, aunt’s husband’s widow) found it more difficult to have their
application for dispensation approved than people who had a horizontal family relationship (wife’s ex-husband’s sister, wife’s brother’s widow). Here the safeguarding of filial deference, or the natural respect that was assumed to exist between children and parents, was explicitly mentioned. The same ideas influenced the legislation in that when the prohibitions were relaxed, it was the prohibitions against the horizontal relationship categories that were abolished first, followed by the diagonal ones and, finally, the lineal ones.

Ideas about a person’s position in the family were especially important when the religious regulatory framework was unclear. With the aid of the dispensational system, cousin marriages were more or less routinely approved throughout the eighteenth century with the justification that this prohibition was secular, that is to say not included among the prohibitions in Leviticus. But no similar exceptions were made regarding other prohibitions where the parties came from different generations in the family (stepfather’s widow, wife’s niece). The Bible did not forbid these relationships either, and the Crown was entitled to grant dispensations for marriage in all these cases. Nevertheless, dispensations were only approved in cases involving cousins related in horizontal degrees.

Judging from the practical handling of applications for dispensation and criminal cases, people’s family positions relative to each other hence had a very significant impact on how the relationships were perceived. Sexuality between people from different generations was regarded as a threat to the hierarchical order in society. In this context, family positions were defined solely in accordance with social circumstances, not according to the age relationship between the people in question. Ages were rarely stated, which indicates that this information was not thought to be relevant for the assessment of a case, regardless of whether it involved an application for dispensation or had to do with the examination of a suspected crime.

The lineal affinity prohibition remained until the middle of the twentieth century, but the prohibition against marriage persisted for yet another couple of decades. Sexual relationships were thus not punished following the amendment of the law; but in order to be able to marry, official permission was still required. As late as 1920, an application for dispensation between a man and his stepdaughter was rejected in spite of their being relatively close to each other in age (he was thirty-five, she twenty-eight), and in spite of their never having lived together in the same household. The directly lineal affinity relationship was still perceived to be so
objectionable that the prohibition could not be revoked even though the applicants had never lived together in the relationship suggested by their family positions. The fact that lineal relationships were less common among criminal cases and applications for dispensation indicates that this attitude also had a certain degree of support among the population at large. Only in 1973 was the prohibition against marriages in the lineal affinity degree completely removed from Swedish legislation.

Clearly, then, there were informal norms that reinforced the taboo against sexual relationships across the generational divide in spite of the fact that the older legislation did not differentiate between horizontal and vertical kinship. Although the legislation became more lenient over time, these norms were active well into the modern era. Indeed, they have proved extremely persistent; and they probably affect us to this day.

Kinship: from family position to age relationship

During the early modern period, the position of an individual in society was determined by several power-creating factors such as sex, age, wealth, social position, and marital status. The individual’s position was attended by certain expectations about his or her behaviour, expectations that were based on ideals and widely shared norms governing a person’s conduct towards his or her fellow human beings. Among these power-creating factors, filial deference was, as we have seen, one of the most powerful. During the first half of the eighteenth century, the focus was solely on which family position the people in question had in relation to each other when an incest case was assessed, and this applied both to criminal cases and to applications for dispensation. The actual ages of the two persons were rarely stated. In these contexts, then, the family position appears to have been more important than the age relationship.

Towards the end of the century, the older generation’s position of authority was challenged in Swedish society. David Gaunt and Birgitta Odén have shown that the number of conflicts between the generations increased, and at the same time the unconditional respect for older people dwindled. In international research, David Warren Sabean and several others have shown how family relationships, contacts, and networks as well as marriage alliances tended to shift from vertical to horizontal relationships in large parts of Europe at the same time.

Temporally speaking, these changes coincide with an increased interest in the ages of applicants in the Swedish dispensational
material. Whether this is a consequence of an ongoing renegotiation of the relationships between generations is hard to tell with any certainty; but from this period onwards, information about the ages of applicants clearly mattered more in the practical assessment of incestuous relationships. Firstly, occasional couples invoked a small age difference as an argument in order to have their application for permission to marry approved. Secondly, the ages of the applicants were enquired after and noted by the authorities, which indicates that this information was now considered to be a relevant basis for decision-making. Thirdly, the first divergent decisions, where applications for marriage were granted in opposition to the previous practice, can be directly linked to the age relationship between the applicants. In other words, when the cases involved relationship categories that had acquired increased cultural acceptance, it was the age relationship between the parties that determined the outcome. If there was a small age difference between the applicants (stepfather’s widow, wife’s niece), or if the man was older than the woman (uncle’s widow), a dispensation could be granted even though the parties’ family positions crossed a generational divide.

The increased importance of the age relationship to the outcome of applications for dispensation can also be linked to informal norms that idealised marriages between couples of the same age. Even though the ideal marriage had always contained the notion that spouses should be about the same age, numerous examples show that the ideal could be set aside when a marriage alliance appeared to be advantageous for other reasons. One example is supplied by the so-called widow conservation, i.e., when a younger clergyman married the older widow of his predecessor in order to secure her continued support. In these cases, the difference in ages never constituted an insurmountable impediment to marriage. If the marriage was perceived to be advantageous from a practical or emotional perspective, that circumstance had consequently overshadowed any objections that might exist because of the age difference between the prospective spouses. As time passed, though, so did this kind of marriage.

Several indications suggest that the tolerance for marriages where the presumptive spouses failed to meet the ideal-age-relationship requirement decreased during the nineteenth century. The custom of widow conservation was significantly reduced in the clerical estate as well as in artisanal groups, and at the same time marriage patterns changed. In northern Sweden and in Stockholm, it has been shown that the number of marriages where there was a great age difference
between the spouses, and where the woman was older than the man, decreased towards the end of the century. Taken altogether, the material indicates that there was less tolerance for deviations with regard to age difference between spouses in relation to the ideal. This cultural shift also entailed consequences for the assessment of dispensational cases at the beginning of the twentieth century.

Around the turn of the century in 1900, the Swedish incest debate had been medicalised, as it had been in the rest of Europe. The experts were no longer clergymen but doctors; and in connection with applications for dispensation, applicants were now required to submit several medical certificates. Although there was great interest in predispositions for disorders and health risks at this time, most of the rejections were in fact justified by ‘too great an age difference’ between the prospective spouses. Even though age did not constitute an official impediment to marriage according to the legislation, it was hence used as an active impediment to marriage by the authorities. Here the authorities probably acted in accordance with cultural ideas that connected spouses of the same age with happy marriages: ideas that seemingly gained strength during the second half of the nineteenth century.

In summary, it can thus be established that interest in age has changed radically over time. At the turn of the century in 1700, age was not recorded either in connection with the assessment of incest crimes or in the processing of applications for dispensation. A century later, around 1800, there was an increased interest in the age relationship, above all between couples applying for dispensation. When yet another century had passed, a great age difference between presumptive spouses came to be used as a decisive argument for rejecting a couple’s application for permission to marry, even though this did not constitute an official impediment to marriage. By now, age – previously completely irrelevant to the assessment of incestuous relationships – had become the decisive factor.

The lower tolerance of a great age difference between spouses may be viewed in relation to two circumstances: firstly, economic changes in society which reduced an individual’s dependence on kin and family for his or her support; secondly, the new ideals of love and reciprocity between husband and wife.

Incest offenders: from perpetrators to victims

Society’s attitude to incest crimes and incest offenders may also be linked to various jurisprudential conceptions. During the early modern
period, when incest was defined as a crime against God’s law, it was essential that any criminals were brought to trial and punished. Regardless of the context in which the crime had been committed or the intention of the guilty parties, they had offended against God’s law. If they were not punished, one risked invoking God’s wrath in the form of crop failure, war, or disease. Lawyers assumed that both parties had participated voluntarily in the sexual act; their guilt was consequently judged to be the same, and they were sentenced to equivalent punishments. Though there were a few cases where the authorities deviated from this exclusively religious interpretation of the crime, these ideas constituted the basis for judicial policy.

At the turn of the century in 1800, the rhetoric regarding religion and God’s law was toned down in favour of arguments concerning the preservation of morality and the promotion of shared social morals. The crime of incest was perceived to be a social hazard because it challenged general moral values and risked leading young people astray. As before, however, it was assumed that both parties had participated voluntarily in the sexual act. They were thus still considered equally guilty of the crime; and even though the set penalties had been reduced, men and women were still punished in an equivalent manner. Consequently, the idea that incest involved two offenders, and that both were equally guilty, did not change. There were no discussions about the uneven power relationship between, for instance, an older man and his younger relative, or between a master and a maid who was also his kinswoman. Since the responsibility for the crime was shared equally between the man and the woman, their punishments would be essentially the same.

In connection with the Penal Act of 1864, the penalties for incest distinguished between the older and the younger party for the first time. The younger party was described as having been seduced by the older, and would therefore receive a milder punishment; but both were still held partly responsible for the crime.

When several prohibitions against affinity relationships were abolished in 1872, relationships between a father and his (step)daughter came to be in the majority among Swedish incest crimes. Because most of these relationships were based on violence against or exploitation of a girl or a younger woman, the crime of incest came to be associated with violence, exploitation, and abuse for the first time. The woman, who was in a mentally and physically disadvantaged position relative to her (step)father, was described as the victim of his actions, which made her innocent of the incest crime.
But even the guilt of the father began to be questioned. In the 1930s, it was found that the crime was almost exclusively committed among the lower orders, especially in families with a difficult economic situation and a morally dubious way of life. Since the majority of discovered offences were committed by people from the lowest stratum in society, the crime of incest was linked to bad social conditions. The man in question was described as more poorly equipped biologically speaking, as his parents belonged to what was defined as an ‘inferior citizenry’ according to the race-biological viewpoints of the time. In addition, the man’s strong sexual drive was foregrounded as a possible cause of the incest crime. Sexual abstinence might make a man lose control so that he committed unnatural sexual acts, such as incest. Besides, both the male offender and the female victim were regarded as victims of the environment in which they had grown up, in that they had not been provided with proper cultural education and moral discipline in their homes – a deficiency which, according to the authorities’ way of thinking, resulted in their lacking ‘proper’ moral insights.

As a result of these developments, the view of incest offenders had, paradoxically enough, been turned upside down. Previously, both parties had been considered wholly responsible for the criminal act, and very little account had been taken of the environment in which the people in question grew up, or how the incestuous act had come about. Nor had the age relationship of the accused, or their family position relative to each other, been taken into serious consideration when the issue of guilt was determined. The authorities’ point of departure had been that the crime had been committed by two active offenders, and therefore the burden of guilt and the penal consequences had been shared alike between the man and the woman. Now each of them was seen as something of a victim. She was considered to be a victim of his actions, whereas he was regarded as a victim of his biology, both because of his ‘inferior genes’ and his ‘powerful sexual drive’. Furthermore, they were both described as victims of their impoverished cultural environment, in consequence of which neither could be held to be fully responsible for his or her actions.

And then what?

Incest and incest prohibitions did not cease to be debated in the middle of the twentieth century just because my investigation ends there. On the contrary, there was renewed interest in this issue in
Swedish society during the second half of the twentieth century, an interest which has led to more inquiries, new proposals for laws, and changed regulations. In 1947, the lineal affinity prohibition (mother-in-law, daughter-in-law, stepmother, stepdaughter) was abolished, even though the prohibition against such marriages remained in force. The prohibitions against marriages in lineal affinity degrees (stepmother, daughter-in-law) as well as in diagonal consanguinity degrees (aunt, niece) were not abolished until 1973. In that same year, sexual relations between half-siblings were decriminalised, but for marriages between half-siblings a dispensation is still required. In this way, the Swedish incest legislation became one of the most liberal in the world. Developments have thus continued in the direction of increasing liberalisation; indeed, a complete abolition of all incest prohibitions was discussed in the 1970s. Those who advocated this idea wanted sexual relations between biological relatives where children had been exploited to be treated as exploitation of a child in a position of dependency, without taking special account of the family relationship. The proposal was not realised, though, and the prohibition against sexual relations between members of a nuclear family still stands.

These more recent negotiations have invoked genetic, ethical, and social arguments, as in earlier times, in order to legitimise everything from continued prohibitions to additional liberalisations. Today there is an increased tolerance of deviant sexual behaviour in Swedish society, the well-being of the individual taking precedence in relation to the sexual act. The law is primarily intended to protect vulnerable people without moralising about voluntary acts performed by adult individuals. Nevertheless, the topic continues to arouse strong emotion. Some people believe that incest prohibitions should only be discussed on the basis of the perspective of hereditary biology.

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3 These more modern investigations have been studied in a practical application paper by Sara Semmler. Semmler primarily analyses public inquiries from 1976, 1982, and 2001. Semmler 2003.
5 Semmler 2003, p. 17.
7 Justitieutskottets betänkande 1977/78:26, pp. 5–8.
8 Inger 2011, p. 326; Tottie 1974, p. 35. See also Proposition 1977/87:69 (Government bill 1977/87:69), where several arguments for and against a liberalisation of the incest prohibitions were discussed.
9 SOU 1976:9, proposal for a statute, p. 17.
whereas others also wish to incorporate ethical assessments. Regardless of which standpoint is chosen in these discussions, it is important to realise that all opinions bear the stamp of values that are present in the social context at the relevant point in time.

At the most fundamental level, incest prohibitions may be seen as examples of how people’s sexuality has been circumscribed over time. The issue thus involves universal ideas that are as topical today as they were three hundred years ago. The varying status of incest relationships in society – where one and the same relationship has been assessed as natural or unnatural, legal or illegal, depending on the period in which a person happened to live – reflects not only the changing regulation of sexuality over time, but also shifts in more general norms and values in society. Whatever stance a person adopts in relation to the problem of incest, it must hence be regarded in the light of the norms and values that were current during that particular period.

Unlike earlier studies, my investigation has been able to demonstrate a close connection between cultural norms and the official legislation in a long-term perspective. Although the laws of different periods were justified with religious, moral, or biological arguments, many other cultural values have turned out to have been crucial to the implementation of the legislation, including the practical processing and assessment of various cases of incest. Ideas regarding kinship, the definition of the family, and the view of relationships within the family are examples of factors that have played a decisive role in the assessments of different cases. The occurrence of incestuous relationships has also been affected by economic conditions at a structural as well as an individual level. Furthermore, notions regarding marriage, sexuality, love, and passion have influenced the assessments of different cases in various ways. The prevailing view regarding the relevant persons’ respective ages has also been important to assessments of incestuous relationships at different points in time. All of these varying norms and values in society have had a direct impact on how incest has been defined, how relationships have been assessed, and how any crimes have been handled; and they are likely to continue to do so.