

Incest and the American Family

by

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Dedication

For Maria

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Abstract

One in four sexual crimes reported annually in the U.S. involves incest, yet few historians of social movements, sexual violence, childhood, or the family have touched the topic. “Incest and the American Family” examines moments in U.S. history when women activists and state actors have worked together (although not always in unison) to solve the problem of incest in American homes. While historians have sometimes characterized incest as an “unspeakable” offense prior to second-wave feminists’ triumph in “giving voice” to the matter, my project shows that incest was a driving political issue at the heart of debates about freedom, justice, and the American family long before the genesis of modern feminism’s perspective on the subject. I connect the “discovery” of family violence in the 1870s to earlier critiques of patriarchal power made by Black and white women abolitionists, examine how judges and child protection activists wrestled with incest as a social issue through the mid-twentieth century, and trouble some of the conclusions other historians have drawn about the success of second-wave feminist organizing. My project contributes to historical analyses of the family by examining how patriarchal power and state power are produced and maintained in relationship to one another, untangling the ways incest compels the state to regulate families and restore legitimacy to patriarchal power as an organizing social, political, and economic principle underpinning U.S. governance. Integrating age, gender, race, class, and disability as categories of analysis, I argue incest victims have long served as the ground upon which America’s patriarchal family ideal has been contested, mapped, retrenched, and revised.

Introduction

Until the twenty-first century, it was not possible to accurately estimate the scope of child sexual abuse in the United States, including incest. The Uniform Crime Reporting System, which has been America's primary source of information about crime since 1929, did not collect information about crimes by age of victim except in cases of homicide. As more jurisdictions began to participate in the FBI's National Incident-Based Reporting System (NIBRS) starting in the early 2000s, however, clearer estimates emerged. We now know that sixty-six percent of all sexual crimes reported annually in the United States are perpetrated against children. Nearly half of those children are under the age of twelve. One in four sexual offenses reported annually involve incest, most commonly between fathers and daughters. Family perpetrators make up the majority of offenders against children under the age of four.¹

This information can, and should, reshape our conversations about sexual violence. To date, most feminist scholarship on sexual violence has focused on adults rather than youth. Likewise, public discussions of sexual violence in the United States—such as the #MeToo movement, or responses to the Supreme Court's repeal of *Roe v. Wade*—have centered women, not girls. When the sexual abuse of children does make the news, it is most often in connection to powerful institutions like the Catholic church or elite sports teams like USA Gymnastics. When was the last time you heard anyone talk about America's incest problem?

¹ David Finkelhor and Anne Shattuck, "Characteristics of Crimes Against Juveniles," Crimes Against Children Research Center (Durham, N.C.), May 2012. One possibility, of course, is that sexual crimes against adults are underreported compared to sexual crimes against children. Any attempt to explain the data in a different way, however, would require access to accurate information about unreported crime, which is by definition inaccessible.

Well, readers who opened abolitionist newsletters in the 1850s read and thought about it. Child protection activists discussed it in Chicago during the 1910s. 1970s Minneapolis residents saw it in the local news. These stories show that at times, incest has come to the public's attention as a problem to be solved, largely thanks to the efforts of women activists. Mining a range of historical texts, "Incest and the American Family" examines moments in U.S. history when women activists and state actors have worked together (although not always in unison) to solve the problem of incest in American homes. While historians have sometimes characterized incest as an "unspeakable" offense prior to second-wave feminists' triumph in "giving voice" to the matter, my project shows that incest was a driving political issue at the heart of debates about freedom, justice, and the American family long before the genesis of modern feminism's perspective on the subject.

But there's a catch, of course. After all, if Americans have possessed awareness of incest as a widespread problem since the mid-nineteenth century, why is it still widespread today? If incest has for so long been central to debates about freedom, justice, and the American family, what exactly did second-wave feminists accomplish when they again brought the issue to the forefront of U.S. politics? This is where the second piece of my argument becomes important: incest victims have repeatedly served as the *ground* upon which America's patriarchal family ideal has been contested, mapped, retrenched and revised. Crucially, debates about America's incest problem prior to second-wave feminism's emergence did not center incest *victims*. Instead, they centered patriarchs and argued over the limits and legitimate uses of violence against women and children to which all men were fundamentally entitled. Second-wave feminism challenged the notion that men ought to be entitled to such violence at all. It created the

theoretical and political context in which incest experiences could finally be properly articulated and understood as a *logical*, if not necessarily universal, consequence of male dominance.

This was an incredibly powerful and socially transformative achievement. Yet most historical and feminist scholarship on the subject focuses on how second-wave feminism empowered incest victims to tell their stories publicly, catalyzing an explosion of confessional literature and tell-all interviews on daytime television during the 1980s and '90s.² Consciousness raising is only the first step toward organizing, though. Beyond encouraging self-telling, how did second-wave feminism act to influence the treatment of incest in courts, hospitals, schools, and the child protection system? My concluding chapter in this dissertation tries to answer those questions, uncovering some of the competing discourses and material obstacles second-wave feminist organizers encountered which frustrated their ability to implement solutions to incest at the institutional level. While judges, doctors, educators, and social workers did become more willing to believe incest victims' self-reports, they were never entirely convinced of the need to challenge male power. As a result, many of the long-term, meaningful, culturally transformative solutions to incest proposed by second-wave feminists more than fifty years ago have yet to be reflected in U.S. law, medicine, education, or family welfare.

My project contributes to feminist historical scholarship on women's activism, sexual violence, childhood, and the family. Within sexual violence studies, I reframe sexual violence as an issue that first and foremost affects children and present age as a useful category of analysis alongside gender, race, class, and disability. Placing incest at the center of my study allows me to contribute to historical analyses of the family by examining how patriarchal power and state power are produced and maintained in relationship to one another, particularly as incest compels

² For a particularly excellent discussion of this phenomenon, see Gillian Harkins, *Everybody's Family Romance: Reading Incest in Neoliberal America* (Minneapolis: University of Minnesota Press, 2009).

the state to regulate families and restore legitimacy to patriarchal power as an organizing social, political, and economic principle underpinning U.S. governance. Placing incest at the center of my study also enables me to examine the changing ways women activists have conceptualized and critiqued the relationship between public and private male power over time, working both with and against the state to prevent child sexual abuse.

Although one in four sexual crimes reported annually in the U.S. involve incest, to date there have been few historical studies on the subject. Most focus on incest in relationship to the “discovery” of family violence in the 1870s and its subsequent suppression through the mid-twentieth century. My project contributes a wider chronology to the subject, connecting the “discovery” of family violence in the 1870s to earlier abolitionist critiques of the family and troubling some of the conclusions other historians have drawn about the success of second-wave feminist organizing. I also strive to bridge some of the disparate sites of encounter between incest survivors and the state that have so far been analyzed by other scholars, mapping multiple “pain points” across time and space rather than focusing on any one particular intersection such as the law, medicine, or media. Finally, most previous studies have focused on incest in white families, and for good reason—it is through the state’s reaction to incest in white families that we can most clearly see its rearticulation of patriarchal power. Historians have contended that for most of the twentieth century, white Americans believed incest was a problem particular to poor Black and immigrant communities. While many sources lend credence to that claim, my dissertation shows the state systematically suppressed evidence of incest in non-white families as well. This finding should encourage us to examine a broad range of sources and teach us to resist easy conclusions about the inter-workings and coarticulations of race, gender, and patriarchal power.

Key Terms and Concepts

Incest

Incest is a term that has meant different things in different time periods and cultural contexts. What an abolitionist meant by “incest” was not quite what a eugenicist meant by “incest,” and what a eugenicist meant by “incest” was not at all what second-wave feminists meant by the term. My project unpacks the different connotations “incest” has carried over time while also insisting upon and measuring them against a definition grounded in feminist theory. I define incest as *any form of sexual exploitation by a guardian of a child entrusted to their care*. Sexual exploitation is a broad category that encompasses rape, molestation, attempted rape or molestation, threats of rape or molestation (either overt or implied), and non-contact sexual behavior (such as exposing a person’s genitals to a child or photographing them in sexual poses.) A parent or relative need not be related to a child biologically for the sexual exploitation to be considered incestuous. They may also be connected to the child by legal or social ties which bind them together as members of a familial group.³

Because incest most commonly occurs between fathers and daughters, my dissertation necessarily discusses father-daughter incest at considerable length. Historian Linda Gordon’s analysis of the patterns underpinning father-daughter incest which appear in Massachusetts Society for the Prevention of Cruelty to Children (MSPCC) social workers’ case notes between

³ While the adult/child distinction is a key element of my definition of incest, throughout this dissertation I also cite instances of older siblings (usually brothers) sexually abusing younger siblings (typically sisters), as well as instances of older adults (usually fathers or stepfathers) sexually abusing much younger adults (usually daughters and stepdaughters.) What these exceptions have in common with the rule is a power imbalance between the older and younger person, making them abusive in character.

1880 and 1960 is, in my opinion, extremely helpful for understanding why father-daughter abuse occurs. For example, Gordon finds that in an overwhelming majority of father-daughter incest cases reported to the MSPCC, victims' mothers were either deceased, seriously ill, or severely battered, thereby diminishing or eliminating their ability to protect their daughters. Moreover, daughters sexually abused by their fathers typically assumed a wifely role, taking care of household management tasks such as cooking and cleaning in addition to sexual service. Incest can therefore be understood as part of an overall dynamic of parentification, undergirded by a belief in traditional gender roles and a general sense of male entitlement.⁴

Gordon also finds differences between sexual abuse and physical abuse cases reported to the MSPCC. Unlike cases of physical abuse, in which parents overidentify with their children and view them as unruly or embarrassing extensions of themselves, sexual abuse stems from emotional distance and a caretaker's inability to internalize their child's needs as their own. Gordon hypothesizes that part of the reason women are as likely as men to physically abuse their children but so rarely sexually abuse them may be because mothers carry pregnancies and assume a majority of childcare responsibilities. Finally, MSPCC case workers' records show that when there were multiple children in the home, incestuous fathers tended to abuse their daughters in order from oldest to youngest. Gordon notes that father-son incest composed only four percent of incest cases reported to the MSPCC between 1880 and 1960, and in every case where boys were abused there were also girls abused in the home.⁵ As is clear from Gordon's work, a working understanding of the psychology of the family is key to comprehending the gendered dynamics of incestuous abuse.

⁴ Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence—Boston, 1880-1960* (Champaign, IL: University of Illinois Press, 1988), 204-249 (see especially pages 211-13 and 230).

⁵ *Ibid.*

In addition to confirming the patterns described above, more recent studies in the social sciences have also established that incest occurs at comparable rates across different racial and ethnic groups and that it happens in middle-class families as well as in poor and working-class homes.⁶ Children with disabilities and children who do not conform to traditional gender norms (including gay, lesbian, and transgender youth) are sexually abused at higher rates compared to non-disabled and cis-gendered children, yet to date no studies have examined how incest affects these groups specifically.⁷ Psychological studies have repeatedly shown that incestuous abuse typically begins in early childhood and occurs as part of a grooming process. It is therefore something that gradually escalates over time, not a sudden event.⁸ Incest survivors generally describe their families as stressful and chaotic and characterize their relationship with their abuser as conflictual, emotionally neglectful, and sometimes violent.⁹

Patriarchy

I use the terms *patriarchy* and *patriarchal* to describe the social, economic, and political system that structures gender roles and gender inequality in American society. It differs from the term *sexism* because sexism refers to the discrimination and devaluation women experience

⁶ See Susan Alexa Pusch, Thomas Ross, and María Isabel Fontao, “The Environment of Intrafamilial Offenders—A Systematic Review of Dynamics in Incestuous Families,” *Sexual Offending: Theory, Research, and Prevention*, Vol. 16 (2021): 1-20; Pat Gilmartin, *Rape, Incest, and Child Sexual Abuse: Consequences and Recovery* (New York: Garland Publishing, Inc., 1994), 47; Stefanie Doyle Peters, Gail Elizabeth Wyatt, and David Finkelhor, “Prevalence,” in Finkelhor, *A Sourcebook on Child Sexual Abuse*, Vol. 15 (Beverly Hills: Sage Publications, 1986): 27-30.

⁷ See Michael Munson and Loree Cook Daniels, “Transgender Sexual Violence Survivors: A Self-Help Guide to Healing,” FORGE Transgender Sexual Violence Project (Sept. 2015), at 36; and Joseph Shapiro, “The Sexual Abuse Epidemic No One Talks About,” All Things Considered, National Public Radio (Jan. 8, 2018), <<https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about>>.

⁸ See John R. Christiansen and Reed H. Blake, “The Grooming Process in Father-Daughter Incest,” in A.L. Horton, B. L. Johnson, L. M. Roundy, & D. Williams (eds.), *The Incest Perpetrator: A Family Member No One Wants to Treat* (Sage Publications, Inc., 1990), 88-98.

⁹ Susan Alexa Pusch, Thomas Ross, and María Isabel Fontao, “The Environment of Intrafamilial Offenders—A Systematic Review of Dynamics in Incestuous Families,” *Sexual Offending: Theory, Research, and Prevention*, Vol. 16 (2021): 12.

under patriarchy, not the cultural beliefs, values, and expectations that make such discrimination and devaluation commonplace. It is impossible to understand America's incest problem without first attending to patriarchy because patriarchy teaches men that they have a right to power over women, children, and sometimes even servants, in the home. Even if men refuse to abuse this power, the state nonetheless anticipates and supports their entitlement to it. For example, in Chapter 2 I show how the presumption of consent in laws against incest has historically been buttressed by the assumption that fathers use their authority over girls in an honorable and moral way—as protectors. Changing the law to reflect the fact that men do not always steward the power entrusted to them by the state responsibly has required sustained and organized effort by women activists.

Sometimes people ask me whether the terms *patriarchy* and *patriarchal* are appropriate, given that boys may also be victims of incest. To that, I respond that while boys grow up to benefit from and (often) to perpetuate patriarchy, they can just as readily be victimized by it. Nowhere is this truer than in childhood. It is through patriarchal violence (or the threat of patriarchal violence) that boys are taught their place in society as “proper” men, and through patriarchal violence (or the threat of patriarchal violence) that girls are taught their place in society as women. Sexual violence is profoundly shaming, and although boys and girls may experience that shame differently, it is nevertheless intimately connected to how they understand and experience their gender within a patriarchal system. Moreover, patriarchy is not a zero-sum game. It is possible for women and girls to benefit from patriarchy, too, and the extent to which a person benefits from patriarchy can be attenuated by myriad variables such as age, race, gender identity, sexual orientation, (dis)ability status, and economic class.

Feminist theorist bell hooks coined the phrase *imperialist white-supremacist capitalist patriarchy* to describe the interlocking political systems that are the foundation of American politics.¹⁰ While the phrase is admittedly awkward, each modifier usefully clarifies the ways patriarchy is practiced, lived, and experienced in the U.S. context. It helps to unpack the phrase in reverse: *Patriarchy* I've defined. *Capitalist patriarchy* describes a gender/economic system in which a man's access to social status and power is defined significantly by his wealth. It is also a gendered system of labor in which work labeled as "women's work"—such as cooking, cleaning, and childcare—is devalued, whereas men's work is typically waged. *White-supremacist capitalist patriarchy* refers to a race/gender/economic system where, in addition to the above, white Americans possess greater access to wealth than people of color. This is because white-supremacist capitalism is extractive: it purposefully creates and perpetuates racial hierarchy so that it can exploit the labor of people of color and use the profits to generate wealth. Finally, white-supremacist capitalist patriarchy is also *imperialist*: it seizes control of land and natural resources globally and uses the profits to generate wealth for Western and white-owned corporations. Throughout this dissertation I draw attention to the ways patriarchy is constellated vis-à-vis these mutually reinforcing systems.

Private and Public Spheres

Lastly, a key concept in this dissertation is the idea of *public and private spheres*. In simple terms, the public sphere refers to the realm of politics, public institutions, and paid employment whereas the private sphere is the domestic world of the home and family relationships. The public sphere is often associated with men while the private sphere is

¹⁰ bell hooks, *Feminist Theory: From Margin to Center* (London: Pluto Press, 1984/2000), xiv.

associated with women and children. The domestic sphere is customarily viewed as a space removed from politics, but feminist theorists argue this split is illusory. Both spheres are in fact interdependent and co-constitutive within patriarchal societies.

Feminist philosopher Silvia Federici has argued that as the private conjugal family emerged as a site for capital accumulation in the 1500s and 1600s, it transformed women's status through the development of a new patriarchal order based on women's exclusion from waged work and subordination to men. Women's primary function in this new system became the reproduction and maintenance of a waged workforce.¹¹ As gender came to be disciplined and underwritten by the logic of capital, the rift between public and private rendered women particularly vulnerable to violence and exploitation in the home. Feminist historians, however, caution against universalizing the relationship between gender and capital in this way. In 1988, Linda Kerber observed that women's historians tended to deploy the concept of separate spheres uncritically in ways that—among other things—obscured white women's stake in the private conjugal family as a site of capital accumulation.¹² Kerber's point was not so much that the concept of separate spheres lacks any basis in reality, but rather that it falls short of the ability to adequately capture and explain the unevenness of women's oppression in what bell hooks describes as our imperialist white-supremacist capitalist patriarchal society.

With that caveat in mind, I still think the concept of separate spheres remains useful for the way it positions patriarchal power and helps scholars understand power dynamics within family life. In her history of the rise of paternity testing, Nara Milanich argues that fatherhood is a deeply politicized social role that represents “the line between public and private governance.”

¹¹ Silvia Federici, *Caliban and the Witch: Women, the Body, and Primitive Accumulation*, 2nd ed. (New York: Autonomedia, 2014).

¹² Linda Kerber, "Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History," *The Journal of American History*, Vol. 75, no. 1 (June 1988).

As Milanich puts it, “The question of [fatherhood] raises questions about the balance of rights and responsibilities between individuals and societies,” which explains why some men have historically suppressed knowledge about their children’s paternity when the truth is disadvantageous to them. The rise of mandated paternity testing in child support, custody, and immigration cases reveals how the stakes of fatherhood are public as well as private; they matter to states and societies and not just individuals.¹³ Milanich’s positioning of fatherhood as the frontier between the private and public spheres helps explain why, when men—especially wealthy white ones—commit incest, their crime is understood as an act which dangerously *delegitimizes* the patriarchal order organizing and underpinning questions of governance in American public and political life. My dissertation explores how the state attempts to restore the patriarchal order and ensure families *function* in service to a well-ordered imperialist white-supremacist capitalist state.

Historiography

To date, only a few historians have taken up the question of incest’s meaning and significance in U.S. history. Early discussions of incest first appeared in histories of domestic violence. Elizabeth Pleck’s 1987 study, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* raised the subject of incest but only as an aspect of social policies regulating American families.¹⁴ Linda Gordon has written two essays about incest and includes a chapter on the subject in her 1988 monograph, *Heroes of their Own Lives: The Politics and History of Family Violence, 1880-1960*, all of which focus on the

¹³ Nara Milanich, *Paternity: The Elusive Quest for Fatherhood* (Cambridge: Harvard University Press, 2019), 3.

¹⁴ Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence From Colonial Times to the Present* (New York: Oxford University Press, 1987). See also Pleck, “Feminist Responses to ‘Crimes Against Women,’ 1868-1896,” *Signs* 8 (Spring 1983): 451.

relationship between incest in poor and working-class families and the development of mechanisms for child protection in Boston, Massachusetts.¹⁵

Lynn Sacco has so far been the only historian to write an entire book about incest in American culture, titled *Unspeakable: Father-Daughter Incest in American History*. In it, she describes how physicians between 1880 and 1940 suppressed evidence of incest in white, middle-class American homes by revising the etiology of gonorrhea, a sexually transmitted infection. By the late 1800s, physicians warned that the number of young white girls infected with gonorrhea in the United States was an “epidemic.” Rather than viewing gonorrhea as evidence of sexual contact, however, doctors blamed its transmission on unclean toilet seats and improper hygiene. Sacco argues physicians denied incest’s occurrence in middle-class white families because it was unthinkable that “civilized” men would sexually abuse their own daughters. Admitting that incest was a pervasive issue in white communities would seriously jeopardize white men’s position at the top of the U.S.’s racial hierarchy.¹⁶

Alexis Neumann has written a dissertation about incest as part of the systematic sexual violence enslaved women and girls experienced at the hands of enslavers prior to slavery’s abolition, a phenomenon legal scholar Zanita Fenton has described as occurring in “transparent obscurity.”¹⁷ Literary critic Hortense Spillers has theorized that slavery’s strategies of captivity, de-gendering, and breaking kinship ties forged an alternative sex/gender system that persisted after emancipation and made Black girls especially vulnerable to sexual abuse by their fathers

¹⁵ Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence—Boston, 1880-1960* (Champaign, IL: University of Illinois Press, 1988), 204-249. See also Gordon, “The Politics of Child Sexual Abuse: Notes From American History,” *Feminist Review* 28, no. 1 (January 1988): 56-64; and “Incest and Resistance: Patterns of Father-Daughter Incest, 1880-1930,” *Social Problems* 33, no. 4 (April 1986): 253-267.

¹⁶ Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore, MD: Johns Hopkins University Press, 2009).

¹⁷ See Alexis Broderick Neumann, “American Incest: Kinship, Sex, and Commerce in Slavery and Reconstruction,” Ph.D. diss., University of Pennsylvania, 2018; and Zanita E. Fenton, “An Essay on Slavery’s Hidden Legacy: Social Hysteria and Structural Condonation of Incest,” *Howard Law Journal* 55, no. 2 (2012): 319-338.

and other male family members.¹⁸ I believe Spillers’s claim is supported by an examination of criminal prosecutions for incest after the Civil War (see Chapter 2.) Recently, legal scholar Jenny Logan has drawn similar conclusions based on her analysis of appellate court decisions from the late nineteenth century to the 1970s.¹⁹

Historian Peter Bardaglio includes a discussion of criminal prosecutions for incest in the post-Civil War U.S. South in his book, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* and published an essay in 1991 consolidating his findings. Bardaglio found that appellate courts overturned half of all convictions appealed by white Southern men between 1865 and 1900.²⁰ Like Jenny Logan, Bardaglio argues Southern jurists’ reluctance to prosecute white men for raping their daughters must be understood in relation to changing modes of racial control after the Civil War. Although not focused on incest exclusively, Stephen Robertson’s study of trial transcripts from statutory rape cases prosecuted in Manhattan between 1880 and 1960 uncovers similar patterns in prosecutions involving incestuous abuse, mainly because statutory rape laws in New York—theoretically designed to obviate questions about consent in instances of child sexual abuse—were accompanied by the requirement that assault victims prove their chastity and procure witnesses able to testify on their behalf.²¹

¹⁸ Hortense Spillers, “‘The Permanent Obliquity of an In(phi)lly Straight’: In the Time of the Daughters and the Fathers,” in *Black, White, and in Color: Essays on American Literature and Culture* (Chicago: University of Chicago Press, 2003).

¹⁹ Jenny Logan, “Incest and the Production of Property in Children: Maintaining White Supremacy Through U.S. Criminal Law,” *Feminist Legal Studies* (June 2023): <<https://rdcu.be/ddSeN>>.

²⁰ See Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995); and Bardaglio, “‘An Outrage Upon Nature’: Incest and the Law in the Nineteenth Century South,” in *Joy and Sorrow: Women, Family, and Marriage in the Victorian South, 1830-1900*, ed. Carol Bleser (New York: Oxford University Press, 1991), 32-51.

²¹ See Stephen Robertson, *Crimes Against Children: Sexual Violence and Legal Culture in New York City, 1880-1960* (Chapel Hill: University of North Carolina Press, 2005); and Robertson, “Signs, Marks, and Private Parts: Doctors, Legal Discourses, and Evidence of Rape in the United States, 1823-1930,” *Journal of the History of Sexuality* 8, no. 3 (1998): 345-73.

Several historians have skirted the issue of incest in studies focused on the policing of adolescent girls' sexuality from the 1880s to the 1960s, including the creation of juvenile reformatories intended to rehabilitate sexually "deviant" girls to patriarchal social norms and values. These include such studies as Anne Meis Knupfer's *Reform and Resistance: Gender, Delinquency, and America's First Juvenile Court*; Mary Odem's *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920*; Michael Rembis's *Defining Deviance: Sex, Science, and Delinquent Girls, 1890-1960*; and Tera Agyepong's research on the rise of the incarceration of "wayward" Black girls in Chicago.²² Although incest survivors show up as protagonists in their stories, none of these scholars discuss the treatment of incest victims specifically. Chapter 3 in this dissertation contributes an important perspective to scholarship on juvenile delinquency by centering incest victims' experiences of Progressive reform and emphasizing the extent to which incest victims were represented among institutionalized populations.

As I mentioned previously, there are no histories of second-wave feminist organizing against incest except those which focus on how feminist theorizing made possible its accurate representation in literature and popular culture. Legal scholar Leigh Bienen discusses the second-wave feminist rape law reform movement to some extent in her review of incest laws in the United States.²³ Histories of the 1970s feminist anti-violence movement have tended to focus on

²² See Tera Agyepong, *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899-1945* (Chapel Hill: University of North Carolina Press, 2018); Anne Meis Knupfer, *Reform and Resistance: Gender, Delinquency, and America's First Juvenile Court* (New York: Routledge, 2001); Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920* (Chapel Hill: University of North Carolina Press, 1995); Michael Rembis, *Defining Deviance: Sex, Science, and Delinquent Girls, 1890-1960* (Urbana and Chicago: University of Illinois Press, 2011); and Agyepong, "Aberrant Sexualities and Racialised Masculinisation: Race, Gender, and the Criminalisation of African American Girls at the Illinois Training School for Girls at Geneva, 1893-1945," *Gender & History* 25, no. 2 (Aug. 2013): 270-93.

²³ Leigh B. Bienen, "Defining Incest," *Northwestern University Law Review* 4 (Summer 1998): 1501-1640.

women's organizing against domestic abuse, marital rape, and battering.²⁴ Catherine Rymph has written a history of the development of the U.S. foster care system which glosses the subject of intrafamilial sexual abuse, but does not devote attention to it.²⁵ In Chapter 4 I aim to illuminate some of the material achievements of second-wave feminist organizing against incest in the realms of law, healthcare, social welfare, and child protection.

Chapter Outlines

Chapter 1, “‘The Worst Place of Bigamy and Incest in the World’: Slavery, Abolition, and the Remaking of the American Family” uses anti-slavery literature written by white and Black women abolitionists to examine the effect that bringing incest between enslavers and enslaved women and girls into the national spotlight had on American attitudes toward slavery, abolition, and the family. Black and white women's activism in the anti-slavery movement introduced incest, among other forms of sexual violence, to the American public as a systemic social problem for the first time in the country's history. With it, I argue, came a radical revisioning of the relationship between patriarchy and property as well as increased, albeit unequal, scrutiny of men's governance in the home in both white and Black families. These cultural transformations help explain the “discovery” of family violence in the 1870s and become important in Chapter 2, where I examine how American courts responded to father-daughter incest between Reconstruction and World War II.

²⁴ See Emily L. Thuma, *All Our Trials: Prisons, Policing, and the Feminist Fight to End Violence* (Chicago: University of Illinois Press, 2019); Rose Corrigan, *Up Against a Wall: Rape Reform and the Failure of Success* (New York: NYU Press, 2013); Aya Gruber, *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration* (Berkeley, Calif.: University of California Press, 2009); Kristin Bumiller, *In An Abusive State: How Neoliberalism Appropriated the Feminist Movement against Sexual Violence* (Durham: Duke University Press, 2008); Nancy Matthews, *Confronting Rape: The Feminist Anti-Rape Movement and the State* (New York: Routledge, 1994); and Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (New Jersey: Princeton University Press, 1995).

²⁵ Catherine E. Rymph, *Raising Government Children: A History of Foster Care and the American Welfare State* (Chapel Hill: University of North Carolina Press, 2017).

Chapter 2, “Constructing the American Family: Debates on Incest in U.S. Law” uses U.S. appellate court opinions regarding convictions of incest from the 1870s to the 1940s as a means by which to analyze changing attitudes toward incest in American culture. Because incest statutes are written and enforced by states rather than the federal government, my analysis of the law necessarily considers differences at the state level and emphasizes regional trends in addition to tracking change over time. One thing that incest statutes in all states had in common throughout this period, however, was their presumption of consent. My research demonstrates this presumption was consistently at odds with the facts before the court. I show that the majority of appeals for convictions of incest in the U.S. between 1870 and 1940 involved adult men (typically fathers) abusing children (typically daughters), and I call attention to the ways women activists urged legal reform through the creation of statutory rape laws. How appellate courts wrestled with that contradiction and responded to women activists, I argue, reveals how the law—as an institutionalized, rationalized form of state power—has not only functioned throughout U.S. history as a repressive apparatus which polices and disciplines the so-called “natural” family unit, but also as a tool which helps to define it, imbue it with meaning, and give it power.

Rather than progressing our timeline forward, Chapter 3, “Ru,” retraces our steps to the Progressive Era. There, it tells the story of a seventeen-year-old incest victim identified by only the first two letters of her surname in a 1915 Chicago Municipal Court report. “Ru’s” case was identified in the report as a “typical” example of a case brought before the Court of Domestic Relations, “worthy of careful study” because of its “important implications” for similar cases. As Michael Willrich has argued, the Chicago Municipal Court was unique among U.S. courts at the turn of the twentieth century for its commitment to “socializing justice,” which stemmed from its

conviction that crime was less a product of free will than of poverty and other social forces beyond an individual's control. "Ru's" case offers evidence of how Chicago's court system grappled with incest as a social problem that demanded a social solution. Unfortunately, her story does not have a happy ending. By centering "Ru's" experiences, Chapter 3 productively troubles my finding from Chapter 2 that Illinois was a "best case scenario" state for girls who tried to escape abuse through the law: if they asked for the state's protection, they usually received it. Using court reports as well as juvenile reformatory and asylum records, Chapter 3 shows that what state protection meant in practice was another matter. It lays bare the patriarchal values underpinning the child-saving movement, complicating the extent to which we can call women's anti-violence activism in this period "feminist."

Finally, Chapter 4, "Incest, Child Protection, and the Feminist Anti-Violence Movement" takes us to Minneapolis, Minnesota, whose lesser-known claim to fame is developing guidelines in the 1970s for legislation, prosecution, child protection, and prisoner treatment programs in response to incest which came to be lauded as America's best. Using Hennepin County Child Protective Services records, records from the Minnesota Battered Women's Coalition, and records from the National Committee for the Prevention of Child Abuse and Neglect, I examine the role of grassroots second-wave feminist organizing in shaping best practices across the Twin Cities' institutional landscape. I argue the reforms which were ultimately implemented and sustained only partially reflected feminists' vision. Even though feminists were largely responsible for creating urgency around child sexual abuse, Cold War family politics and Reagan-era funding cuts to prisoner rehabilitation, healthcare, and child welfare programs jeopardized the guidelines' potential for social change. Chapter 4 contributes a much-needed materialist analysis to discussions of second-wave feminism's impact on attitudes toward incest

in American culture, which have so far tended to focus on personal narrative rather than collective action.

Chapter 1: “The Worst Place of Bigamy and Incest in the World”: Slavery, Abolition, and the Remaking of the American Family

When considering the treatment of incest and incest victims in the United States, most historians have focused their analyses on the Progressive Era. From the late nineteenth century through much of the twentieth, white Americans denied incest’s occurrence in white, middle-class families in order to protect the reputations of “respectable” family men. They believed such “carnal abuse” occurred only among the racialized poor.²⁶ Despite their attention to race, these historians have not considered how white Americans formed incest’s taboo around such classed and racialized lines. In this chapter I aim to show how race and class came to be so significant in Americans’ understandings of incest. By excavating the relationship between incest and U.S. slavery, I reveal how American attitudes toward incest and incest victims have been shaped by the institution that contemporary conservative lawmakers insist does not define the nation’s founding: enslavement.²⁷

In 1949, anthropologist Claude Lévi-Strauss published *The Elementary Structures of Kinship*, in which he developed a general argument for the universality of the incest taboo. Lévi-Strauss argued that marriage is a basic form of gift exchange, in which women are exchanged as gifts in order to form kinship ties and social alliances. Incest is therefore taboo because it violates

²⁶ See Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore: Johns Hopkins University Press, 2009); Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995); Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (Champaign: University of Illinois Press, 1988).

²⁷ I am referring, of course, to the recent spate of anti-“critical race theory” bills proposed in response to Nikole Hannah Jones’s 1619 project, which attempt to criminalize teaching K-12 and public college students about racism in American history.

the principle of the gift.²⁸ Feminist anthropologist Gayle Rubin argued in 1975 that Lévi-Strauss's idea that marriage is a basic form of gift exchange constructs an implicit theory of the nature and origin of gendered oppression. She argues that when men are linked through the exchange of women. Therefore, marriage primarily establishes relationships between two groups of men, not between men and women. Rubin contends that the power differential between the gift exchangers (men) and the gifts (women) constitutes women's lesser social status.²⁹

Black feminist literary critic Hortense Spillers offers a critical re-reading of Rubin's argument that women's status as "gifts" to be exchanged constitutes their lesser social status, pointing out that enslaved girls and women were strategically excluded from the status of "gifts" in order to justify and perpetuate their captivity. She asserts that in a typical patriarchal system like the one Rubin describes, patriarchal gift-exchanging established a degree of personhood and, in most cases, protection for white girls and women. Conversely, enslaved girls and women were viewed merely as a "frontier of flesh" available for sale, purchase, consumption, and disposal. Enslavers' deliberate breaking of kinship ties established enslaved women's and girls' status as commodities, rather than gifts. Black women's and girls' status as commodities made them "unrapeable" under enslavement—and, Spillers argues, beyond.³⁰

²⁸ Claude Lévi-Strauss, *The Elementary Structures of Kinship*, trans. James Harle Bell and John Richard von Sturmer, ed. Rodney Needham (Boston: Beacon Press, 1969). (Published first in France as *Les Structures élémentaires de la Parenté* in 1949.)

²⁹ Gayle Rubin, "The Traffic in Women: Notes on the Political Economy of Sex," in *Toward an Anthropology of Women* (Monthly Review Press, 1975). Rubin refers to this gift economy as the "sex/gender system" rather than "patriarchy" because not all gender-stratified societies are adequately described as patriarchal (see Rubin, "The Traffic in Women," 39-41). I prefer the term "patriarchy" first because it is simpler for readers to understand and second because it emphasizes the interrelated powers of fatherhood and private property ownership that, while not shared across all gender-stratified societies, undeniably apply in the U.S. context to the power dynamics that produce incest. I am not as concerned as Rubin is with the universal applicability of the term.

³⁰ Hortense Spillers, "'The Permanent Obliquity of an In(pha)llibly Straight': In the Time of the Daughters and the Fathers," in *Black, White, and in Color: Essays on American Literature and Culture* (Chicago: University of Chicago Press, 2003).

In this chapter, I examine from a historical perspective the role that incest has played in creating and perpetuating America's racial stratification. I argue that the abolitionist movement's condemnation of incest between slave-owning fathers and enslaved daughters represents the first time that a social movement forced Americans to confront incest as a systemic social problem, as opposed to an aberrant form of family dysfunction. Abolitionists used incest to delegitimize slavery and challenge slave-owners' claims to Christian propriety. In doing so, they also challenged the identity of the nation. Would the United States tolerate behavior as ungodly as incest, or would it eradicate the "peculiar institution" that normalized such perversion? Yet in their attempts to politicize incest, both Black and white abolitionists promoted a "more inclusive patriarchy" as a solution to slavery's sexual violence. Equally important, white abolitionists especially depicted incest under slavery as a threat to white racial purity. After the Civil War, race scientists and lawmakers reconfigured the connection white abolitionists had established between incest and the blurring of America's white/Black binary in order to criminalize interracial marriages, likening "miscegenation"—a pejorative term for interracial intimacy—to incest. This maneuver shifted incest's meaning from an act of sexual violence under a patriarchal, property-based system to a perversion of "natural" sexual order. The ways that race scientists and lawmakers recruited incest's taboo to justify racial segregation and Black subjugation ultimately (re)constructed the idealized white family as the primary conduit through which Americans could access the privileges of citizenship. It also had lasting consequences for the treatment of incest victims in U.S. law from the 1860s through much of the twentieth century.

Incest in the Early Republic

Laws against incest in the American colonies stemmed from British ecclesiastical law or from the Biblical prohibition against incest in Leviticus.³¹ Because father-daughter incest is not specified among the relationships prohibited by the Bible, early incest statutes neglected to include it. For instance, in 1639 the Articles of Confederation between the Massachusetts, Plymouth, Connecticut, and New Haven plantations included a criminal prohibition against incest. The law did not specify which relationships were prohibited, however. Instead, it referred to those “within the degrees by God forbidden” and clarified in a footnote, “Levit. 20.11, 12, 14, 17, 19, 20, 21.”³² None of the passages cited in the law prohibited father-daughter incest. Incest statutes in U.S. law therefore evolved with a focus on regulating marriage between consenting adults in consanguineous relationships, even though most incest cases in U.S. decisional law have involved patriarchal sex abuse (see Chapter 2.) Incest statutes have exemplified a gap between legal theory and practice since the nation’s founding, a space continually negotiated by abusive fathers, their daughters, and the state.

Rather than punishing child sexual abuse, incest statutes in early America were intended to maintain social order through the regulation of marriage. Marriage in the colonial period was undergoing a significant shift, whereby unions rooted in free choice increasingly replaced arranged marriages. Historians of the family argue that marriages based on intimacy, companionship, and affection have been common since at least the Roman Empire, so the concept of marrying for love was not new.³³ What was new was the *importance* given to

³¹ Leigh B. Bienen, “Defining Incest,” *Northwestern University Law Review* 92, no. 4 (1997-1998): 1523.

³² John D. Cushing, ed. “Incest,” *The Earliest Laws of the New Haven and Connecticut Colonies, 1639-1673* (Wilmington, DE.: Michael Glazier, Inc.), 35.

³³ Kyle Harper, “The Sentimental Family: A Biohistorical Perspective,” *American Historical Review* 119, no. 5 (Dec. 2014): 1547-1562.

romance. Nancy Cott argues that colonists “tied the institution of Christian-modeled monogamy to the kind of polity they envisioned; as a voluntary union based on consent, marriage paralleled the new government.”³⁴ Put another way, Jan Lewis writes that the colonists found “a metaphor for their ideal of social and political relationships” in marriage, where the consent of the governed was a foundational principle.³⁵ Thus, a republican woman’s submission to her husband stemmed ideally from her own desire to submit to his authority. The principle of consent could only be taken so far, however, before it proved problematic for the fledgling government’s legitimacy. Brian Connolly explains, “as the consensual nature of the marriage contract reinforced the centrality of a consensually governed people in the new nation, [...] [consensual] incestuous marriages called its virtue into question.”³⁶ Laws against incest ensured that consensual marriages, upon which a new national identity would be built, did not stray from traditional Christian values.

Importantly, the rise of the sentimental family ideal—where love and companionship between spouses supplanted an instrumentalist view of marriage—also reconfigured women’s subordination to men in new ways. Susan Okin argues that the idealization of the sentimental family during the colonial period retrenched the notion that women were unsuitable for public and political life. Women were depicted as “persons guided by their feelings” rather than reason.³⁷ They made “charming and beguiling” companions to men, never equal partners in domestic or national governance.³⁸ Depicting women’s role in companionate marriages as that of

³⁴ Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000), 10.

³⁵ Jan Lewis, “The Republican Wife: Virtue and Seduction in the Early Republic,” *William and Mary Quarterly* 44 (Oct. 1987): 689-721.

³⁶ Brian Connolly, “‘Every Family Became a School of Abominable Impurity’: Incest and Theology in the Early Republic,” *Journal of the Early Republic* 30, no. 3 (Fall 2010): 415.

³⁷ Susan Moller Okin, “Women and the Making of the Sentimental Family,” *Philosophy & Public Affairs* 11, no. 1 (Winter, 1982): 87.

³⁸ *Id.*

sweet and deferential servants to their husbands protected the structure of the colonial family as a “patriarchal, property-based clan system” in which property rights descended from a father to his sons.³⁹ Women, children, and slaves were considered the property of their husband, father, or master, who had the authority to maintain order as he saw fit. Except for homicide, laws against child abuse and intimate partner violence did not exist. The idealized sentimental family was therefore often used to excuse or deny the occurrence of domestic tyranny and terror.

The memoirs of Abigail Bailey provide a vivid example of how the idealized sentimental family heightened vulnerability for women and girls. Abigail Bailey was the wife of Asa Bailey, a prominent landowner in early New England. Asa physically and psychologically abused Abigail and sexually abused their sixteen-year-old daughter, Phebe. When Abigail angrily confronted Asa about the incest, he replied:

He asked me [...] whether I knew what an awful crime I had laid to his charge? which he said could not be proved. He wished to know whether I had considered how difficult it would be for me to do any such thing against him? as I was under his legal control; and he could overrule all my plans as he pleased. [...] As to what I could prove against him I told Mr. B. he knew not how much evidence I had of his unnatural crimes.⁴⁰

Asa Bailey was able to taunt and belittle his wife for her outrage about her abuse of Phebe because he was a propertied man with high status in their New England community. He took pleasure in reminding Abigail that she was “under his legal control” and he could therefore obstruct any move she made against him. Fearing what would happen to her and her ten other children if deprived of Asa’s support, Abigail never reported the abuse, although she did

³⁹ E.g., John D. Cushing, ed., “Marriage,” *The Earliest Laws of the New Haven and Connecticut Colonies, 1639-1673* (Wilmington, DE: Michael Glazier, Inc., 1977), 41-42; John D. Cushing, ed., “Marriages, Births and Burial,” *The Laws of the Pilgrims: A Facsimile Edition of the Book of the General Laws of the Inhabitants of the Jurisdiction of New-Plimouth, 1672 and 1685* (Wilmington, DE: Michael Glazier, Inc., 1977), 47-48; Leigh B. Bienen, “Defining Incest,” *Northwestern University Law Review* 92, no. 4 (1997-1998): 1524-34; Peter Bardaglio, “An Outrage Upon Nature: Incest and the Law in the Nineteenth-Century South,” in *In Joy and In Sorrow: Women, Family, and Marriage in the Victorian South, 1830-1900*, ed. Carol Bleser (New York: Oxford University Press, 1991), 44.

⁴⁰ Arm Taves, ed., *Religion and Domestic Violence in Early New England: The Memoirs of Abigail Abbott Bailey* (Bloomington: Indiana University Press, 1989): pp. 77-78.

eventually divorce him in 1793. Women and children's status as property of the family patriarch made it difficult, if not impossible, to escape abusive husbands and fathers.

Throughout the colonial and early national periods prosecutions for father-daughter rape and incest were rare. In her examination of U.S. decisional law, Lynn Sacco writes that many states did not record a single case of incest for the entire nineteenth century.⁴¹ There is no reason to believe incest prosecutions at the trial court level occurred at much higher rates than appeals for incest convictions appeared in appellate court opinions. For example, Cornelia Hughes Dayton finds only three criminal prosecutions for father-daughter incest in her analysis of Connecticut court records for the 150 years before 1789.⁴² In her study of rape in the nineteenth-century South, Diane Miller Sommerville also finds only three cases of father-daughter incest involving stepdaughters, all occurring before the Civil War.⁴³ Kathleen Ruth Parker's analysis of 544 sex crime prosecutions in a Michigan county over a hundred-year period finds no cases of incest in the nineteenth century and only fifty-three men who were prosecuted for incest after 1900.⁴⁴ Even in a metropolis as large as New York City, prosecutions for incest were rare.⁴⁵ Until the 1880s, reporting any type of domestic violence or child abuse was uncommon due to a

⁴¹ See Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore: Johns Hopkins University Press, 2009), 35.

⁴² Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995), 275.

⁴³ Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2004), 281.

⁴⁴ Kathleen Ruth Parker, "Law, Culture, and Sexual Censure: Sex Crime Prosecution in a Midwest County Circuit Court, 1850-1950," Ph.D. diss., Michigan State University, 1993: 238.

⁴⁵ Stephen Robertson estimates in his analysis of Manhattan District Attorney's rape files between 1886 and 1921 that only seven child rape cases were filed each year, and he only occasionally—and casually—specifies that these rapes involved fathers victimizing their daughters (Robertson, "Sexuality Through the Prism of Age: Modern Culture and Sexual Violence in New York City, 1880-1950," Ph.D. diss., Rutgers University, 1998: 50). Lynn Sacco's dissertation includes a study of Los Angeles county court transcripts from 1885 to 1904, identifying thirty-four cases involving sex crimes. Of these, only two were prosecutions for incest (Sacco, "Not Talking About 'It': A History of Incest in the United States, 1890-1940," Ph.D. diss., University of Southern California, 2001: 47).

lack of avenues for legal recourse.⁴⁶ Still, accusations of patriarchal sex abuse could provoke public outrage and condemnation in ways that other forms of patriarchal abuse did not.

Lynch mobs often attacked men accused of molesting their daughters before their case even reached a trial.⁴⁷ In Texas, one mob “hooted and shouted” and “laughed and leaped with joy” as they hung A.A. Stegall, a white man accused of incest, after grabbing him out of jail. If a man accused of incest was fortunate to live long enough to see the inside of a courtroom, he might find himself “crowded to suffocation” as 200, 500, or even 1,000 spectators jostled for seats.⁴⁸ At Ephraim Wheeler’s execution for the rape of his daughter in 1806, “not less than 5,000” people turned out to witness the hanging.⁴⁹ Another “twelve to fifteen thousand” people, including five thousand women, gathered in 1833 to watch Ira Gardner’s execution for killing his stepdaughter after she resisted his attempt to rape her.⁵⁰ The shame of an incest trial was so

⁴⁶ See Chapter 2 for a discussion of the Woman’s Christian Temperance Union and its national Age of Consent campaign, which raised the age of consent for girls from ten to at least sixteen in most states between 1884 and 1920.

⁴⁷ E.g., “San Bernardino County,” *Los Angeles Times*, Apr. 30, 1892; “Local News in Brief, Long Island,” *New York Times*, Oct. 30, 1870; “Otero Occurrences,” *Santa Fe New Mexican*, Oct. 10, 1899, [I]; “Found Guilty of Incest,” *Morning World-Herald* (Omaha), Dec. 2, 1895; “Arrested for Incest,” *Aberdeen (SD) Daily News*, Aug. 1, 1895, [2]; “Crime of a Brute,” *Morning World-Herald* (Omaha), Feb. 19, 1895 [I]; “An Unnatural Father,” *Los Angeles Times*, Sept. 6, 1893; “Incest Charged,” *St. Paul Daily News*, June 29, 1893, col. E; “Bound Over,” *Atlanta Constitution*, Aug. 12, 1892, 2; “A Father’s Crime,” *Atlanta Constitution*, July 22, 1892, 2; “In Pursuit of a Fiend,” *Morning Oregonian* (Boise), June 17, 1891, col. C; “They Should Not Have Interfered,” *Washington Post*, Apr. 13, 1888, I; “Hiding from the Justice He Merits,” *Dallas Morning News*, Aug. 21, 1887, 14; “Ruined by Her Father,” *Atlanta Constitution*, Apr. 15, 1886, 5; “Brief Telegrams,” *Wheeling (WV) Register*, Apr. 17, 1885; “A Change; Another Beastly Father,” *Los Angeles Times*, June 11, 1882; “A Father’s Crime,” *Wheeling (WV) Register*, July 27, 1880, [I]; “Local and Other Matters: An Incestuous Parent,” *Deseret (UT) News*, Mar. 10, 1880; “A Case That Judge Lynch Missed,” *Wheeling (WV) Register*, July 27, 1880, [I]; “An Inhuman Father,” *New York Times*, May 27, 1878. Orig. cit. in Sacco, *Unspeakeable*, 19.

⁴⁸ See, e.g., “Trial of Chamberlain,” *Morning World-Herald* (Omaha), Apr. 12, 1899, 3; “Moscow Matters,” *Idaho Daily Statesman* (Boise), Feb. 26, 1895, [2]; “Rockville,” *Hartford (CT) Courant*, Mar. 1, 1894, 8; “Bowers Sensation,” *Tacoma Daily News*, Jan. 30, 1893; quotation from “The Bowers Held: Both Father and Daughter,” *Tacoma Daily News*, Oct. 29, 1892, 7; “A Horrible Crime,” *Columbus (GA) Enquirer-Sun*, July 30, 1890, [4]; “An Infamous Parent,” *NPG*, Feb. 14, 1880, 10; “The End of the Avery Incest Case,” *Chicago Tribune*, Mar. 27, 1862, 4; “Boston, September 21,” *Northern Post* (Salem, NY), Oct. 10, 1805, [2]; and *People v. Gillet*, 2 Edm. Sel. Cas. 406 (N.Y. Supp. 1845). Orig. cit. in Sacco, *Unspeakeable*, 19.

⁴⁹ “Ephraim Wheeler,” *Connecticut Gazette and the Commercial Intelligencer* (New London), Mar. 12, 1806, [3]’ “Pittsfield,” *Connecticut Courant* (Hartford), Mar. 5, 1806, [3]; “Pittsfield, February 24, 1806,” (*Boston*) *Democrat*, Mar. 5, 1806, [2]; “Boston, Sept. 21,” *Kline’s Carlisle (PA) Weekly Gazette*, Oct. 18, 1805, [3]. Orig. cit. in Lynn Sacco, *Unspeakeable*, 21.

⁵⁰ “Execution of Gardner,” *Ohio Observer* (Hudson), Nov. 9, 1833, col D.

intense that some men committed suicide before the court reached a verdict. Richard Goodwin, an “old negro” accused of incest, drew a knife in a South Carolina courtroom and “began to hack away at his own throat” as spectators watched in stunned silence.⁵¹ Though incest trials may have been infrequent, incest accusations triggered a powerful visceral reaction from nineteenth-century Americans. Lynn Sacco suggests that public reactions to incest may have been so strong because the crime was reported so rarely.⁵² She finds that at the same time incest began to be reported more frequently with the creation of legal protections for girls in the 1880s and ‘90s, reports of incest gradually disappeared from newspapers.⁵³ When father-daughter incest seemed rare, white American men could see themselves as noble patriarchs who condemned such uncivilized abuses of paternal power; when incest was revealed to be more widespread than nineteenth-century Americans had previously imagined, people became more skeptical of incest accusations, fearing that acknowledging incest’s true prevalence would call the righteousness of patriarchal authority into question.

Notably, even though incest statutes did not name father-daughter incest among the relationships prohibited by law, nineteenth-century Americans reacted so swiftly and violently to such accusations that many accused men—men like A.A. Stegall and Richard Goodwin—were killed or killed themselves before their cases were adjudicated. Compare nineteenth-century Americans’ reactions to father-daughter incest to their reactions to consensual incestuous relationships: in 1826, a bone-setter and farmer published in *The Observer* a copy of his “penance” for marrying his deceased wife’s sister, in which he publicly apologized for his sin and asked readers to pray with him for Christ’s forgiveness.⁵⁴ These kinds of cases were

⁵¹ “Hacked His Own Throat,” *Atlanta Constitution*, Jan. 31, 1890, I.

⁵² Sacco, *Unspeakable*, 21.

⁵³ Sacco, *Unspeakable*, 191.

⁵⁴ “Penance,” *The Observer (1791-1900)*, Jul. 23, 1826, 1.

typically handled by the church, rather than by the courts, as can be seen from an 1842 news report on the proceedings of the U.S. Presbyterian Church's annual assembly in Philadelphia. At the assembly, church officials debated whether a Presbyterian minister who had married his deceased wife's sister should be stripped of his title. The officials could not agree as to whether the minister's behavior was "sufficiently flagrant" to warrant discipline, and thus referred the matter back to the Presbytery of Fayetteville, North Carolina to investigate whether the minister had committed any other character offenses before censuring him.⁵⁵ By contrast, consider a news report titled "An Inhuman Father," in which a farmer from Clarksburg, West Virginia repeatedly told his daughter that "a child belonged to its father, and he had a right to do with it as he pleased," then bound, gagged, and raped her and threatened to kill her and her mother if she told anyone about the abuse. The daughter eventually reported the assault to a neighbor, whose husband took the matter to police. At the time of the news report the father was awaiting trial in jail "with a heavy guard around it in order to prevent the community from lynching him."⁵⁶

When daughters were viewed as potential "gifts" to be given by a father to a husband, public outrage was explosive. In the case from Clarksburg, West Virginia, the reporter noted that the daughter possessed "extraordinary attractions" and had always "borne a most exemplary character," which, aside from evoking sympathy for the victim, signaled to readers that her father had deprived a potential suitor of a gift that should have been his to claim.⁵⁷ However, public sympathy for victims only applied when fathers and daughters shared the same race, or at the

⁵⁵ "Marriage," *Democratic Free Press (1842-1848)*, Jun. 1, 1842, 3.

⁵⁶ "An Inhuman Father: Fiendish Outrage of a West Virginia Farmer Upon His Own Daughter—His Arrest and Imprisonment," *New York Times*, May 27, 1878, 5.

⁵⁷ *Ibid.*

very least, when both fathers and daughters possessed the status of free persons.⁵⁸ Public reaction was muted when incest occurred between slave-owning fathers and enslaved daughters, who were viewed as commodities rather than gifts. Incest between white enslavers and their enslaved daughters was, as legal scholar Zanita Fenton describes it, a phenomenon that occurred in “transparent obscurity.”⁵⁹ Such abuses happened, and it was common knowledge that they happened, but within the context of American slavery a white father’s sexual use of a daughter born to a mother whom he enslaved did not constitute gross misconduct. Enslaved girls were strategically deprived of protection within a white, capitalist, patriarchal slavocracy: they had no value as potential brides, and slavery’s systematic breaking of family ties ensured no enslaved girl was afforded the protected status of a daughter.

⁵⁸ In Ephraim Wheeler’s case, for example, Wheeler was white but his daughter was mixed-race (her mother was black and Native American.) Historians Irene Brown and Richard Brown argue that Ephraim Wheeler’s marriage to a non-white woman likely reflected his own low social status, and that his existence on the fringes of society probably made it easier for his wife to denounce him to authorities. She had little to lose, for example, as compared to a woman like Abigail Bailey. There is too little data about early nineteenth-century rape trials, however, to draw any conclusions about the role that race played in Wheeler’s prosecution. See Irene Quenzler Brown and Richard D. Brown, *The Hanging of Ephraim Wheeler: A Story of Rape, Incest, and Justice in Early America* (Cambridge: Belknap Press of Harvard University Press, 2003). It was difficult to find much information about father-daughter incest between enslaved fathers and daughters, but I did find one example where a slave-owner sold a father accused by other slaves of raping his daughter because the other slaves were threatening to kill him [Thomas Sowell, *Ethnic America: A History* (New York: Basic Books, 2008), 188]. That seems to be a rational response from someone motivated to enslave people for money, as slave-owners would lose the opportunity to profit if one of their slaves was killed by the others. Sowell adds that incest taboos were stronger among enslaved Africans than among whites, and that they brought these taboos with them from Africa rather than mimicking whites’ attitudes toward incest (cousin marriages, for example, were considered taboo by enslaved Africans long before whites began to understand such couplings as incestuous in the 1850s.) Conversely, Guyanese psychologist Beryl Gilroy has argued that under slavery, fathers sometimes preferred to “open up” their daughters rather than allow her first sexual experience to occur at the hands of an overseer or master. See Melba Wilson, *Crossing the Boundary: Black Women Survive Incest* (London: Virago, 1993): 13-14. There seems to be a historical trend in black feminist writing to attempt to trace incest’s contemporary occurrence between black fathers and daughters to sexual practices under slavery [see Wilson, *Crossing the Boundary*; Spillers, “The Permanent Obliquity of an In(pha)llibly Straight”; Carolivia Herron, *Thereafter Johnnie* (New York: Random House, 1991)], though I find it difficult to ground such assertions in historical evidence. From the WPA interviews with formerly enslaved people like Mattie Curtis (discussed later in this chapter), it seems that enslaved people strongly objected to incest, and not only for reasons of sexual violence—Curtis, for example, remarked that children borne of incest on the Mordecai plantation were more “dim-witted” than the rest [Mattie Curtis Interview, Federal Writers’ Project: Slave Narrative Project, Vol. 11, North Carolina, Part 1, Adams-Hunter (1936). Manuscript/Mixed Material, Library of Congress, <http://hdl.loc.gov/loc.mss/mesn.111.>]

⁵⁹ Zanita E. Fenton, “An Essay on Slavery’s Hidden Legacy: Social Hysteria and Structural Condonation of Incest,” *Howard Law Journal* 55, no. 2 (2012): 320.

Beginning in the 1830s, however, the U.S. anti-slavery movement began drawing attention to the widespread occurrence of incest under slavery and naming it as an offense. The occurrence of father-daughter incest between white, slave-owning fathers and Black, enslaved daughters became an integral part of white and Black abolitionists' attempts to delegitimize the institution of slavery and challenge slave-owners' claims to Christian propriety. Their efforts mark the first organized effort in American history to politicize sexual violence and identify incest as a systemic social problem.

Incest and U.S. Slavery

In 1936, at the age of ninety-eight, a formerly enslaved woman named Mattie Curtis dictated her life's story in an interview with the Federal Writers' Slave Narrative Project. Curtis had been enslaved by the Mordecai family, who owned one of the largest plantations in North Carolina. Enslaved women on the Moses Mordecai Plantation were segregated by the lightness of their skin, with "yaller gals"—girls of a yellowish complexion—housed in separate quarters from the rest of the plantation. Moses Mordecai forced these light-skinned girls to have sex with him, his sons, and his friends. When one of them gave birth to a child, the child was separated from its mother and sent to the "black quarter" to be raised. Often, Mattie said, those same children were returned to the "yellow quarter" upon reaching puberty. There, they were raped by the very men who sired them: "Dey do say dat some of dese gal babies got grown an' atter goin' back ter de yaller quarter had more chilluns fer her own daddy or brother."⁶⁰

⁶⁰ Mattie Curtis Interview, Federal Writers' Project: Slave Narrative Project, Vol. 11, North Carolina, Part 1, Adams-Hunter (1936). Manuscript/Mixed Material, Library of Congress, <http://hdl.loc.gov/loc.mss/mesn.111>. Unfortunately, many white WPA interviewers caricatured black speech due to a long history of entrenched stereotype dating back at least to the early nineteenth century. I have reluctantly reproduced it here rather than re-script the interview entirely, in order to preserve (at least some of) Mattie Curtis's voice. Again, on the distorted representation of black speech by white writers, see Lawrence W. Levine, *Black Culture and Black Consciousness: Afro-American Folk Thought from Slavery to Freedom* (New York: Oxford University Press, 1977), xv-vi. The Library of Congress also includes a disclaimer on its website.

Although the rape of enslaved women and girls by white masters is sometimes framed as a matter of expedience—that is, by forcing enslaved women to bear children, an enslaver could increase his labor reserves without incurring additional costs—the existence of a “yellow quarter” at Moses Mordecai Plantation clearly served a different purpose. Presumably, only light-skinned girls and women were permitted within the zone reserved for the sex work of slavery because the men of the Mordecai family preferred them. That continually supplying the “yellow quarter” with new sexual objects required Moses Mordecai and his sons to commit incest with their own daughters did not seem to bother them or the company they kept. Alexis Neumann finds in her study of the Mordecai family’s papers that more than one-third of the Mordecai family’s slaves were listed as “mulattos” on the slave schedules of the plantation’s overseer, Willie Perry.⁶¹ Strangely, many of them shared the same first names as members of the white Mordecai family. Although Neumann cautions that there is no concrete evidence that slaves who shared names with white members of the Mordecai family were the product of incest, nor that slaves listed as “mulattos” were offspring of the “yellow quarter,” it suggests the Mordecai family made no effort to conceal biological ties they may have had to the people they enslaved.

Legal scholar Zanita Fenton describes acts of “miscegenation” and incest under slavery as occurring in “transparent obscurity.”⁶² By this, she means that incest—and with it, “miscegenation”—often occurred between slave-owning fathers and their enslaved daughters, and even though knowledge of such behavior was widespread, it did not provoke public reaction. Fenton provides as an example the clemency trial of an enslaved girl named Peggy. Peggy, the

⁶¹ Alexis Broderick Neumann, “American Incest: Kinship, Sex, and Commerce in Slavery and Reconstruction,” Ph.D. diss., University of Pennsylvania, 2018, 3.

⁶² Zanita E. Fenton, “An Essay on Slavery’s Hidden Legacy: Social Hysteria and Structural Condonation of Incest,” *Howard Law Journal* 55, no. 2 (2012): 320.

enslaved daughter of John Francis, was granted clemency by the Governor of Virginia in 1830 after murdering her father to end his abuse and threats of rape. Remarkably, the request for clemency was made by one hundred (white) men of New Kent County who were outraged by Francis's repeated attempts to rape Peggy. The clemency request is remarkable because, as the property of their masters, enslaved women and girls had no legal right to defend themselves from rape.⁶³ Moreover, because the breaking of kinship ties was a constitutive element of enslavement, Peggy did not have access to the limited rights and protections normally afforded to "daughters" under the rubric of patriarchy. Yet in a rare twist of events, John Francis's white, slave-owning peers sided with his enslaved daughter. A white neighbor, Abner Ellyson, testified "it was currently reported in the neighborhood that the deceased was the father of Peggy and that he wished to have illicit intercourse with her, to which she objected and that was the course of their disagreement."⁶⁴ At least three other white men supported Ellyson's testimony. They all knew that Francis was Peggy's father and that he "wished to cohabit" with her.⁶⁵ The petition explicitly argued that Francis's incestuous abuse of Peggy should mitigate her punishment.⁶⁶ However, as Fenton emphasizes, despite local whites' knowledge of John Francis's attempts to rape his daughter, it was not until Peggy beat her father and set him on fire that the white men of

⁶³ See *Missouri v. Celia, a Slave* (1855). Celia was a sixteen-year-old girl purchased by Robert Newsom in Callaway County, Missouri, for the purpose of providing a sexual replacement for Newsom's deceased wife. One night as he attempted to rape her she struck him with a stick, killing him. Her defense counsel was unable to support a self-defense claim because by law a slave could not testify against a white person, even a dead one. Instead, the defense argued that as a *woman*, Celia had a right to defend herself from rape. The trial judge rejected this argument, as it would have set a precedent granting enslaved women more rights than married white women, who were not permitted to protect themselves from marital rape (rape in this period was defined as "trespassing" on another man's property.) Celia was executed. This case is widely understood as significant because it solidified the legal status of enslaved women and girls as not-women and therefore un-rapeable. See Melton A. McLaurin, *Celia, a Slave* (Athens: University of Georgia Press, 1991), 93-96, 100.

⁶⁴ Testimony of Abner Ellyson, Case of Peggy, Patrick, and Franky, Executive Papers—Pardon Papers, box 316, May-September 1830, The Library of Virginia, Richmond, Virginia.

⁶⁵ Testimony of Nathaniel White, John Royster, and William E. Clopton, Case of Peggy, Patrick, and Franky.

⁶⁶ Petition for Transportation of Peggy, Patrick, and Franky, Executive Papers—Pardon Papers, box 316, May-September 1830, The Library of Virginia, Richmond, Virginia.

the community stepped up to condemn Francis's incestuous behavior. Though they may have disapproved of Francis's treatment of Peggy while he was alive, they did not confront him or attempt to intervene.

It speaks to the perversion of slavery as an institution that father-daughter incest, a phenomenon which regularly drove nineteenth-century Americans to swift retribution when it occurred between free fathers and daughters of the same race, did not trigger an immediate or forceful reaction when the victim was enslaved. As Mattie Curtis testified about the Moses Mordecai Plantation, not only did the men of the Mordecai family rape their enslaved sisters and daughters, they also invited friends to the "yellow quarter" to partake in that sexual violence. If any of the Mordecai family's friends suspected or knew that the "yellow quarter" involved extensive incest, there is no record that they challenged it. Likewise, the white men who petitioned Virginia's governor for Peggy's clemency were aware that Peggy's father, John Francis, victimized her. Still, they did not publicly condemn his actions until after he died. Considering their unwillingness to interfere during Francis's lifetime, it is impossible to speculate with any certainty why they finally spoke out against him after his death. Were they stirred by genuine sympathy for Peggy? Did they feel remorse for not stepping in before the situation got out of hand? Joshua Rothman posits one reasonable explanation: the white men of New Kent County chose to treat Peggy's case as an aberration so that they could "[demonstrate] to other slaves that they could handle individual slave discontent flexibly even as they maintained firm control over the rest of the enslaved population."⁶⁷ In other words, while Peggy's crime may have terrified other slave-owners who feared the possibility their own slaves would revolt, they mitigated the likelihood of such an attack by depicting Peggy's action to

⁶⁷ Joshua Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia 1787-1861* (Chapel Hill: University of North Carolina Press, 2003), 158.

protect herself from her master's incestuous abuse as exceptional and uniquely warranted.

Petitioning for her clemency represented an attempt to redeem the institution of slavery—and patriarchy itself—as a benevolent and moral social order.

Compare Peggy's case to that of Celia, an enslaved girl executed in Jacksonville, Florida for killing her master, Jacob Bryan, in 1848. Bryan acknowledged paternity of both Celia and of her four children during his lifetime, listing them all as descendants in his will.⁶⁸ Jacksonville's newspaper reported that on December 7, 1847, Bryan approached Celia with the intent to punish her for some offense. Celia was in the middle of making a hoe-handle with a drawing knife when Bryan attacked. She tried at first to use the hoe-handle to resist him, then the drawing knife, which she swung at his head. Bryan's skull cracked open and he died instantly.⁶⁹ The six-member jury, composed of white men, convicted Celia of manslaughter, not murder. They also recommended clemency in her case, though we cannot know why because the original petition was destroyed in a courthouse fire.⁷⁰ It was Judge Thomas Douglas who decided Celia would pay the ultimate price against the jury's recommendation to spare her life. Douglas's decision so

⁶⁸ *Heirs of Jacob Bryan v. Dennis et. al*, 4 Fla. 445, 450 (1852); and *In Re the Estate of Jacob Bryan*, Case No. 47-99B, Probate Court of Duval County, Florida (1847). That Bryan listed Celia and her children as descendants in his will is unusual. This may be explained by the fact that Bryan manumitted his slaves in 1842 and thereafter identified Celia's mother as his common-law wife and their children and grandchildren as his "family." The manumission was contested by Bryan's relatives after his death. They asserted that Bryan erred in manumitting his slaves because two of them lived in "open adultery" with white men, thereby violating a Florida law which stipulated slaves could not legally be freed if they had committed a crime. The probate court ruled in favor of Bryan's relatives. See H. Franklin Robbins, Jr. and Steven G. Mason, "Florida's Forgotten Execution: The Strange Case of Celia," *Florida Supreme Court Historical Society* (Spring/Summer 2014): 1-21.

⁶⁹ "Murder," *The News* (Jacksonville, Florida), December 10, 1847. *The News* was a periodical published weekly in Jacksonville between 1847 and 1850. *The News* lists the victim's surname as "Bryant," and his white relatives used the name Bryant, but he is nearly always referred to in court documents and case reports as "Bryan." "Bryan" is the name used herein.

⁷⁰ *The News* (Jacksonville, Florida), June 3, 1848. There is no record of the clemency recommendation because the Jacksonville courthouse burned down on May 3, 1901, leaving the newspaper accounts of her crime and trial as the only original source.

shocked the jury that they appealed to Florida's governor.⁷¹ Roughly half a dozen citizens took up Celia's cause, including Isaiah D. Hart, Jacksonville's founder.⁷² Celia's sympathizers were outnumbered, however, by "some seventy or eighty of the most respectable citizens" of Duval County who submitted a counter petition urging the governor to execute her.⁷³ Celia was ultimately executed by hanging on Friday, August 11, 1848.

There are similarities and differences between Peggy's and Celia's cases. Both Peggy and Celia were enslaved by fathers who either intended to or did in fact rape them. But whereas Peggy killed her father to prevent him from committing incest with her, Celia killed her father to prevent him from beating her. Reporters in Florida ignored Bryan's sexual abuse of Celia, never mentioning incest in newspaper reports of her crime. Only Isaiah D. Hart, who was the appointed administrator of Bryan's estate, had access to Bryan's will which listed Celia and her children as his descendants. Hart was sympathetic to Celia's case. Hart's peers, however, regarded him as overly sympathetic to the plight of enslaved people generally.⁷⁴ Therefore his defense of Celia may have been motivated primarily by his opposition to slavery rather than the specific revelation of incest between Celia and Mr. Bryan. This made him less credible in the eyes of his white peers than the petitioners in Peggy's case, who sought to preserve slavery but condemn incest. Even though Celia, unlike Peggy, had not premeditated her father's murder, she was executed because incest was not the focal point of her story. The differences between Peggy's and Celia's cases suggest that although incest occurred in "transparent obscurity" under slavery,

⁷¹ There is no record of an appeal from Celia's conviction for the reasons stated in the preceding footnote. We can assume that an appeal was filed, however, because Florida's governor, William D. Moseley, set a new execution date in order to consider the matter of clemency recommended by the jury. News of his proclamation was published in the Jacksonville newspaper on July 29, 1848. *The News* (Jacksonville, Florida), July 29, 1848.

⁷² See H. Franklin Robbins, Jr. and Steven G. Mason, "Florida's Forgotten Execution: The Strange Case of Celia," *Florida Supreme Court Historical Society* (Spring/Summer 2014): 1-21.

⁷³ *The News* (Jacksonville, Florida), June 3, 1848.

⁷⁴ See H. Franklin Robbins, Jr. and Steven G. Mason, "Florida's Forgotten Execution: The Strange Case of Celia," *Florida Supreme Court Historical Society* (Spring/Summer 2014): 9-11.

white slave-owners reserved a specific reaction for incestuous abuse that did not apply to other kinds of violence deemed “legitimate.”

The extent to which incest occurred under slavery is difficult to assess. Because enslaved people were not legally permitted to testify against whites, we cannot use criminal trials to reliably estimate incest’s prevalence.⁷⁵ Moreover, because descent under slavery was configured matrilineally—where, if a child was born to an enslaved mother, they, too, became enslaved—there are few to no records of enslaved people’s paternity. WPA narratives like Mattie Curtis’s point to incest’s occurrence, but it is not possible to generalize from these sources because, as Andrea Helen Livesey attests, many WPA interviews were edited, with references to sexual abuse (including but not limited to incest) being the reason for censure about one-third of the time.⁷⁶ Even if WPA interviews were not edited for white readers, they still would not provide a reliable estimate of incest’s occurrence under slavery due to the fact that not all formerly enslaved people were approached for interviews. Nor did all formerly enslaved people approached for interviews agree to share their experiences.

While it may not be possible to know how widespread incest was under slavery, such behavior was nonetheless frequently charged by anti-slavery society newsletters, abolitionist speeches, and represented in abolitionist novels.⁷⁷ These texts brought incest out from the

⁷⁵ For example, searching the ProQuest Slavery and the Law database—which features petitions on race, slavery, and free blacks that were submitted to state legislatures and county courthouses across ten states and the District of Columbia between 1775 and 1867—for mentions of “incest” only yields divorce cases in which wives alleged their husbands committed incest upon their (white) daughters, wherein the matter of how to divide the family’s property (including their slaves) was raised. See: Race, Slavery, and Free Blacks, Series II: Petitions to Southern County Courts, Part C, Virginia (1775-1867) and Kentucky (1790-1864), and Part D, North Carolina (1775-1867) and South Carolina (1784-1867), Folders 016453-001-0689, 016455-014-0576, and 016453-010-0367, Slavery and the Law database, ProQuest History Vault.

⁷⁶ Andrea Helen Livesey, “Sexual Violence in the Slaveholding Regimes of Louisiana and Texas: Patterns of Abuse in Black Testimony,” Ph.D. diss., University of Liverpool, United Kingdom (2015): 124.

⁷⁷ Chapter Three of Alexis Broderick Neumann’s dissertation discusses depictions of father-daughter incest in abolitionist novels. See Neumann, *American Incest*, 137-180.

“transparent obscurity” in which it occurred under slavery and centered it in debates about freedom, justice, and the American family. Incest vividly represented the ways in which slavery perverted the values patriarchy purported to uphold, including the sanctity of marriage and the sentimental family. Both Black and white abolitionists argued that slavery’s perversion of patriarchal values made it an affront to a well- and rightly ordered nation. They did not, however, clearly or unanimously condemn incest as an affront to women and girls themselves. Their arguments retrenched the relationship between private and public male power even as they critiqued it.

Abolition and the Politicization of Incest

In 1827, *The African Observer*, an abolitionist paper produced in Philadelphia, printed a travelogue by a French abolitionist traveling through South Africa. He was astonished by the “multitude of white slaves” he saw on South African plantations, which, he surmised, were “almost all the fruit of adultery and incest.”⁷⁸ For abolitionists, the phenomenon of “white slaves” served as a prime example of enslavers’ unnatural perversions. Turning a person’s skin color from dark to light, transforming them from one race into another, meant transgressing the twin taboos of interracial sex and incest. Expressing revulsion at the lightened hue of enslaved persons, however, did not center or clearly represent incest as sexual violence. Rather, it centered the feelings of white readers, who might imagine themselves among the multitude of “white slaves” toiling in the field for a horrified moment before continuing their day.

Abolitionist texts, aimed at white audiences, mobilized incest to win white readers’ sympathy to their cause. Though I argue that the abolitionist movement represented the first

⁷⁸ “Sismondi’s Review of J. Comte’s Treatise of Legislation,” *The African Observer (1827-1828)*, Vol. 1, No. 33 (Dec. 1827), E441.A58 v.35, Philadelphia, pp. 258-59. Source: Historical Society of Pennsylvania, Philadelphia, PA.

organized social movement against sexual violence in the U.S., the ways white abolitionists in particular deployed incest can appear problematic when viewed from a twenty-first century perspective. One of the key rhetorical strategies white abolitionists used was to show how the institution of slavery violated the domestic values white readers shared. For example, in 1832 William Lloyd Garrison's *The Liberator*—the most widely circulated anti-slavery newspaper in the antebellum period—decried “incest, adultery, and prostitution” as characteristic of a system which deprived enslaved women of any “protection whatever for their chastity,” leaving them at the mercy of masters who “ravished [them]...with impunity!”⁷⁹ While incest in this example is clearly depicted as sexual violence, Garrison later emphasized in an 1838 address to the Broadway Tabernacle in New York City that at stake in a “legalized system of adultery, incest, and concubinage” was the ruin of “marriage [...] sacred to virtue and love!”⁸⁰ To appeal to white audiences, white abolitionists tended to accept rather than question the patriarchal, property-based family form even as they condemned its abuses.

Black abolitionists also conceptualized patriarchal power as protective and saw the right to marry and form kinship ties as key to ending sexual violence against enslaved women and girls. In 1845, Frederick Douglass wrote that “concubinage, adultery, and incest” were rampant within a system where “the marriage institution [was] abolished.” William J. Anderson wrote in 1857 of the slave-owning South, “It is undoubtedly the worst place of bigamy and incest in the world.”⁸¹ Like Garrison, both men depicted incest as an affront to the Christian institution of marriage. Yet they also impressed upon white readers the cruelty of slavery's sexual violence.

⁷⁹ “There are in this country A MILLION female slaves...,” *The Liberator* (Boston, Mass.), Aug. 11, 1832.

⁸⁰ William Lloyd Garrison, address delivered at the Broadway Tabernacle, New York City, Aug. 1, 1838, reprinted in *The Colored American* on Aug. 18, 1838.

⁸¹ Frederick Douglass, *Narrative of the Life of Frederick Douglass, An American Slave. Written by Himself* (Boston: Anti-Slavery Office, 1845), x; William J. Anderson, *Twenty-four Years a Slave; Sold Eight Times! In Jail Sixty Times!! Whipped Three Hundred Times!!! or The Dark Deeds of American Slavery Revealed. Written by Himself* (Chicago: Daily Tribune Book and Job Printing Office, 1857), 19.

For example, in his autobiography Douglass recollected witnessing one of his masters, Mr. Plummer, whip his aunt Hester for going out one night after Plummer commanded her not to leave in the evenings and not to spend time with a young man from a neighboring plantation (implying Plummer raped her regularly.) It is a shocking scene not easily forgotten. Douglass was so overwhelmed as a child watching his aunt endure such brutality that, despite his ability to recall the event in vivid detail, he struggled to “commit to paper the feelings with which [he] beheld it.”⁸² Anderson decries slavery’s incest in the same passage he remembers watching a woman be stripped, tied down, beaten, and raped. He specifically articulates the powerlessness he felt that day as emasculation.⁸³ Therefore, although slave narratives promoted patriarchal values, they were also uniquely powerful because they invited readers to empathize with the terror, helplessness, and rage that enslaved children (Douglass) and men (Anderson) felt at being unable to protect women they cared about.

Firsthand accounts of incest under slavery were rare. Louisa Picquet’s *Louisa Picquet, The Octoroon, or, Inside Views of Southern Domestic Life*, published in 1861 with the help of white abolitionist Hiram Mattison, however, gives us one example. Picquet estimated she was no older than twelve or thirteen years old when her enslaver, a man named David Cook, began demanding intercourse with her. Because Mr. Cook sustained a sexual relationship with Picquet’s mother and fathered three of her siblings (only one of whom survived infancy), historian Andrea Livesey likens Cook’s relationship to Piquet as that of a stepfather to a stepdaughter.⁸⁴ Like other narratives written by women survivors of enslavement, Picquet’s

⁸² Douglass, *Narrative of the Life of Frederick Douglass*, 5-6.

⁸³ Anderson, *Twenty-four Years a Slave*, 19.

⁸⁴ Andrea Helen Livesey, “Sexual Violence in the Slaveholding Regimes of Louisiana and Texas: Patterns of Abuse in Black Testimony,” Ph.D. diss., University of Liverpool, United Kingdom (2015), 124.

demand for sexual justice for herself and other enslaved women and girls urged a radical redefinition of freedom, justice, and the American family.⁸⁵

Picquet's autobiography is a complicated source for several reasons, however. First, Picquet's proximity to whiteness formed the basis of the narrative's appeal to white readers. Picquet emphasized she possessed "every appearance of a white woman," a self-assessment underscored by the inclusion of her portrait on the autobiography's cover. Historian Mary Niall Mitchell has explained that pictures and stories of "white slaves" were popular with white audiences not only because they troubled familiar racial categories, but also because they depicted slavery as a looming threat to white girls' "virtue." The rise of photography in the antebellum period made it possible to circulate images (some real, some falsified) of rosy-cheeked and fair-haired enslaved girls, which Mitchell contends "quietly pressed the argument" that "southern slavery threatened the freedoms and privileges of all white people."⁸⁶ White audiences' morbid fascination with "white slaves" shaped the kinds of stories that were permissible for women like Picquet to tell about their lives and their political consciousness. Even in freedom, women like Picquet remained what Saidiya Hartman has called "spectacles of subjection": the abuses they'd endured advanced the emancipationist cause while simultaneously titillating white readers.⁸⁷

⁸⁵ On Black women abolitionists' demands for sexual justice, see Crystal N. Feimster, "'What If I Am a Woman': Black Women's Campaigns for Sexual Justice and Citizenship," in *The World the Civil War Made*, eds. Gregory Downs and Kate Mansur (Chapel Hill: University of North Carolina Press, 2015), 249-268.

⁸⁶ Mary Niall Mitchell, "'Rosebloom and Pure White,' or so It Seemed," *American Quarterly* 54, no. 3 (Sep. 2002): 375.

⁸⁷ Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America*, 1st edition (New York: Oxford University Press, 1997). An important side note, here: Although sexual abuse under slavery was not exclusive to light-skinned girls and women, the existence of "mulattos" (or "octoroons," like Picquet) was often directly and deliberately linked to sexual abuse by abolitionists prior to the Civil War whereas the sexual abuse of darker skinned women was not as widely discussed or recognized.

Second, Picquet's autobiography discusses her efforts to free her mother from bondage at great length, a struggle that had not yet concluded at the time of her narrative's publication. Throughout her interviews with Mattison, Picquet felt pressured to disclose experiences she wanted to keep private in order to make the book's sales profitable enough to purchase her mother's freedom. Picquet understood that her experiences of childhood sexual abuse were important to the abolitionist cause, but her reluctance to describe her experiences in intimate detail suggests she experienced white readers' curiosity as invasive, even pornographic. When describing Mr. Cook's abuse to Mattison, Picquet focused on how much Cook's threats of rape terrified her and described the elaborate schemes she devised to avoid him. To protect herself Picquet needed to keep her wits about her, living in a constant state of hypervigilance. Mr. Cook's abuse was so humiliating that Picquet would not repeat the sexual commands he gave her to Mattison, nor would she describe for Mattison how Cook whipped her for refusing his orders.

When Mattison asked if she had scars from the whippings, Picquet reluctantly admitted she did. She said the final whipping Mr. Cook gave her was so severe that "I made up my mind [resisting him] 'twas of no use, and I'd go [along with his orders], and not be whipped any more; and told him so."⁸⁸ In what Picquet felt at the time was a stroke of great luck, police arrested Mr. Cook the next day for his failure to pay some outstanding debts. A sheriff came to collect Picquet, her mother, and her brother (Mr. Cook's biological son) around noon and they were all sold the next morning. "I tell you I was glad when I heard I was taken off to be sold, because of what I escape," Picquet told Mattison, "but I jump out of the fryin'-pan into the fire."⁸⁹ Her next master, Mr. Williams, was a divorced man from New Orleans who purchased Picquet because he

⁸⁸ Picquet and Mattison, *Louisa Picquet*, 15.

⁸⁹ *Ibid.* On the distorted representation of Black speech by white writers, see Lawrence W. Levine, *Black Culture and Black Consciousness: Afro-American Folk Thought from Slavery to Freedom* (New York: Oxford University Press, 1977), xv-vi.

wanted a sexual companion. She bore four children by him, his threat to “beat [her] half to death” if she refused to cooperate conjuring memories too fresh in her mind to put up a fight.

Picquet’s narrative makes clear that incestuous abuse under slavery was traumatic. She was so disturbed by what she experienced as a young girl she could scarcely verbalize it. Through words and actions Picquet felt were still unspeakable as an adult woman, Mr. Cook made her feel scared and ashamed. His threats of rape eroded her sense of dignity. Picquet’s pain stemmed from the way Cook attempted to strip her of her inner sense that her mind and body were meant to be sacred, and ought to be hers to share with whom she chose. Because of Mr. Cook’s whippings, Picquet dared not resist the advances of her next enslaver, Mr. Williams, even though she estimated she was no older than fourteen when he purchased her. She protected herself the only way she felt she could: She prayed for him to die.

Louisa Picquet’s narrative invites readers to understand the psychological impact of rape and incest on enslaved women from one survivor’s perspective. Her trauma did not stem from the fact that Mr. Cook’s behavior toward her was “unbecoming” or “dishonorable,” but rather that Cook, a powerful man with frightening desires, made her feel helpless. Her focus is on her survival and self-preservation. Nonetheless, Mattison made sure to include Picquet’s husband’s perspective on her sexual trauma. Henry Picquet, with whom Louisa operated a safehouse for freedom seekers in Cincinnati after fleeing north when Mr. Williams died, was “mortified” by his wife’s habit of praying aloud, from night until morning, for forgiveness for sins she believed she committed with Williams.⁹⁰ Mattison’s inclusion of Picquet’s husband’s perspective reinforced Picquet’s virtue for white readers by stressing her regret for betraying her future husband, even though that was not really something within her control.

⁹⁰ Picquet and Mattison, *Louisa Picquet*, 28.

Abolitionist novels written by white authors often sensationalized rape and incest for white readers' benefit and included climactic scenes in which enslaved daughters protested their masters' desires for their bodies by exclaiming—in so many words—*but you're my father!*⁹¹ Such “spectacles of subjection,” as Saidiya Hartman terms them, contained in their depictions of slavery's sexual violence sadistic fantasies that undermined the humanity of the enslaved while attempting to critique enslavement.⁹² Perhaps it was the overtly moralizing goal of white abolitionist novels that precluded depicting enslaved people as anything other than two-dimensional archetypes—e.g., “rape victim”—in order to galvanize whites to act.

One such example is *The Stars and Stripes* (1858) by Lydia Maria Child, a white women's rights activist, abolitionist, and opponent of American expansionism from Medford, Massachusetts. She understood the abolitionist cause and the cause for women's rights as inextricable from each other, with the abolition of a property-based patriarchal system necessary to guarantee the rights of women, the enslaved, and Native nations. Throughout her life she insisted that the intellectual capabilities of women and enslaved Africans were equal to those of white men.⁹³ In 1826 Child founded the *Juvenile Miscellany*, the first monthly children's periodical published in the United States, which promoted an anti-slavery message. In 1860 she wrote the preface for and edited Harriet Jacobs's *Incidents in the Life of a Slave Girl*, which is

⁹¹ For examples, see Richard Hildreth, *The Slave: or Memoirs of Archy Moore* (Boston, 1836); *The octoroon; or, life in Louisiana: a play, in five acts*, by Dion Boucicault, Ford's Theatre, New York, April 17, 1865; and Hezekiah Lord Hosmer, *Adela, The Octoroon* (Columbus: Follett, Foster & Co.: 1860).

⁹² Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America*, 1st edition (New York: Oxford University Press, 1997).

⁹³ For an overview of Child's political beliefs and commitments, see Shirley Samuels, *The Culture of Sentiment: Race, Gender, and Sentimentality in Nineteenth-Century America* (New York: Oxford University Press, 1992), 64-70.

regarded alongside Frederick Douglass's *Narrative of the Life of Frederick Douglass* as one of the most important and influential antebellum slave narratives in American history.⁹⁴

Lesser known is Child's foray into fiction. In 1858 she published *The Stars and Stripes*, which dramatizes the escape of a real enslaved couple, William and Ellen Craft, from a Southern plantation to Canada.⁹⁵ The opening scene depicts a boisterous Fourth of July celebration on the plantation of "Mr. Masters," who accompanies a Northern visitor (aptly named "Mr. North") to the festivities. Two enslaved men carrying the American flag march to upbeat music below a floral garland that spells out the word "LIBERTY." Enthused by the jubilant atmosphere, Mr. North tells Mr. Masters that he cannot believe northern abolitionists would condemn slavery when Mr. Masters's slaves appear so happy. "Don't I see for myself, that their stories are a cursed pack of lies?" he asks. "I am free to say that I never set eyes on a happier set of fellows than your slaves."⁹⁶ Mr. Masters replies, "We always call 'em *boys*, sir. We never say slaves. I feed my boys well, and clothe 'em well, as you see. They're so attached to me and their mistress that we couldn't *whip* 'em away from us, if we *tried*."⁹⁷

But Child quickly reveals that the happy scene is merely an illusion disguising the tragedy of enslavement. In a slave cabin later that night, William and Ellen, two of Mr. Masters's slaves, are clearing a frugal supper table. Ellen begins singing to cheer up her husband, who sits

⁹⁴ David S. Reynolds, "To Be a Slave," *New York Times* (July 11, 2004). Crystal Feimster notes that Frederick Douglass's narrative was the first slave narrative to expose sexual violence against women under slavery, and Harriet Jacobs's narrative drove this point home from the perspective of an enslaved girl. She adds that in Jacobs's narrative slavery's sexual violence was framed explicitly as an appeal to solidarity with white women, whose support and protection Jacobs felt was needed to end enslavement (see Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2011), 4.

⁹⁵ Lydia Maria Child, *The Stars and Stripes: A Melo-Drama* (Boston: American Anti-Slavery Society, 1858), electronic edition hosted by the Emory Women Writer's Project Collections, Lewis H. Beck Center at the Woodruff Library, Emory University.
<http://womenwriters.digitalscholarship.emory.edu/content.php?level=div&id=child_stars_001&document=child_stars>. Last accessed Sept. 27, 2021.

⁹⁶ *Ibid*, Scene I.

⁹⁷ *Ibid*.

with his face in his hands, appearing miserable. She improvises a silly tune to rouse a reaction from him:

My love is sad, my love is sad!
What shall I do to please him?
Will he be glad, will he be glad
To have his Ellen tease him?

[Meeting with no response, she chants slowly, with a kind of mock solemnity:]

Shall I sing to him of the cold, dim moon,
Sailing through the weeping clouds over a tomb?
Shall I sing *so*?

[She stoops to look up in his troubled face, then springs back, singing gaily and rapidly:]

No, no, no,
I won't sing so:
But like the summer morning,
When streamlets flow,
Bright dew-drops glow,
And birds salute the dawning.

Rich warble and gush!
Quick twitter and trill!
The twirling notes rush
Like drops from a mill.⁹⁸

As Ellen sings the final refrain, William gradually relaxes into a smile. But he turns sour again as he warns her not to sing so freely. “I tremble when I hear you sing so sweetly, for fear somebody will buy you for the sake of your ear and voice. If a large price was offered, do you suppose massa would hesitate to sell you? Not *he*!”⁹⁹ Ellen turns serious and remains silent for a moment, then confesses tremulously that she has reason to fear an outcome even worse than being sold. “I have been afraid to tell you all my troubles, for fear you would do something rash, and then they would burn you alive, as they did poor Peggy’s husband,” she says. “When I am at the big house, sewing for missis, as sure as she goes out to ride, he [Mr. Masters] comes into my room and asks me to sing, and tells me how pretty I am. And—and—I know by his ways that he

⁹⁸ *Ibid*, Scene III.

⁹⁹ *Ibid*.

don't mean any good. [...] Now massa says if I make him angry, he will sell *you* to the traders.”¹⁰⁰

“The old villain!” William exclaims. “And he knows all the while that you are his own daughter!”¹⁰¹ Ellen replies, “I told him *that*, but he paid no attention to it. My poor, poor mother! I suppose *she* was afraid, too; for I remember she always seemed so modest. Oh, it is a dreadful situation to be in!” She bursts into tears. The revelation of Mr. Masters’s incestuous desires for Ellen is the novel’s climactic moment, catalyzing William’s decision to run away from the plantation with Ellen. Ellen resists William’s plan at first, sobbing hard as she shakes at all the fearful things that might happen to them if they flee. William is depicted as the level-headed, rational patriarch who promises to protect Ellen from any harm that might befall them. The rest of the novel follows their daring escape and perilous journey to the Canadian border, where they row a boat to freedom across the Detroit River, singing triumphantly.

What makes *The Stars and Stripes* markedly different from Louisa Picquet’s narrative is Child’s flat characterization of Ellen. Neither Ellen or William are depicted as having much depth. They appear as caricatures—William is the steady protector, and Ellen, his damsel in distress. Even as the Fourth of July celebration is revealed to be a farce, Ellen remains a minstrelsy stereotype in the privacy of the cabin she shares with her husband. She sings a cheery song for William’s entertainment, then collapses into a puddle of tears as she tells William about Mr. Masters’s sexual harassment. William is forced to reassure Ellen when she only becomes more inconsolable at the prospect of running away. The scene is discomfiting to read in the twenty-first century because Child’s depiction of Ellen’s suffering feels like mocking.

Understandably, any person in Ellen’s position would feel deeply afraid. However, the only time

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

Ellen appears to have a will of her own is when she protests Mr. Masters's sexual advances by reminding him, politely, that he is her father (a point that does not move him.) Despite Child's belief in the equal intelligence of women to men and Africans to whites, Ellen is portrayed as weak-willed and in need of a rescuer (a role that William fulfills.) What makes Ellen a moral person (and therefore, a sympathetic character) in *The Stars and Stripes* is not her resistance to enslavement, but rather her sweet and caring subservience to her husband. It is Ellen's virtuous commitment to the institution of marriage that fully exposes the perversity of her master's incestuous desires.

We might go so far as to say that Ellen's character *represents* the dangers that slavery poses to the institution of marriage. It is for this reason that she appears helpless and in need of a strong protector. Ellen and William lack dimensionality because they are merely vehicles for the moral of Child's story. In this way, the incest plot in *The Stars and Stripes* deindividuates Ellen and William, undermining the couple's humanity by linking readers' compassion for them to their courageous defense of Christian values and "proper" American sexual order. Whereas Ellen is depicted as childlike, Louisa Picquet was actually a child when her stepfather, Mr. Cook, threatened to rape her. Picquet endured Mr. Cook's abuse alone, silently, because she had no one to protect her. She was humiliated by Mr. Cook, not merely offended by his harassment and afraid of what it might mean for her relationship to another man. To protect herself Picquet needed to keep her wits about her, living in a state of constant vigilance. She was relieved to be free, but the trauma of what she endured when she was enslaved stayed with her as an adult. Because *The Stars and Stripes* ends on a jubilant note, readers do not see how Ellen and William may have been haunted even in freedom by their pasts in bondage. The complexity of Louisa

Picquet's life, and the lives of all enslaved girls and women who survived rape and incest, is reduced and oversimplified in *The Stars and Stripes* for white readers' benefit.

Child fictionalized the incest plot, in a story otherwise based on true events. The real Ellen and William Craft ingeniously escaped slavery by disguising Ellen as a young white cotton planter traveling with her slave, William. They traveled in first-class trains, dined with a steamboat captain, and stayed in the best hotels during their escape to Philadelphia and freedom in 1848. It was William's idea to disguise Ellen, but it was Ellen who convincingly performed a new race, gender, and social status during their four-day trip. They co-authored a book chronicling their escape in 1860, *Running a Thousand Miles for Freedom*.¹⁰² The Crafts were not escaping incest; rather, according to the Crafts, they escaped because "above all, the fact that another man had the power to tear from our cradle the new-born babe and sell it in the shambles like a brute, and then scourge us if we dared to lift a finger to save it from such a fate."¹⁰³ Eventually they had five children together, who were born and raised in England (the Crafts moved to London for their safety after the passage of the Fugitive Slave Act in 1850.)¹⁰⁴ Why would Child fabricate an incest plot when the Crafts were clear about the reasons for their escape?

Alexis Neumann proposes that Child's decision to insert an incest plot "speaks to a desire, a projection, and likely also a legitimate belief in the widespread incest of the slave South."¹⁰⁵ Although the real Ellen and William were motivated to escape slavery in order to protect the sanctity of their marriage and the family they wanted to build together—an element

¹⁰² *Running a Thousand Miles for Freedom; or, the Escape of William and Ellen Craft from Slavery* (London: William Tweedie, 337, Strand. 1860).

¹⁰³ *Ibid*, 1-2.

¹⁰⁴ Barbara McCaskill, "William and Ellen Craft," *New Georgia Encyclopedia*, 2010.

<https://www.georgiaencyclopedia.org/articles/history-archaeology/william-and-ellen-craft-1824-1900-1826-1891>.

¹⁰⁵ Neumann, *American Incest*, 165.

preserved in Child's retelling—Child seemingly felt that an incest plot would more powerfully persuade white audiences to support the abolitionist cause. This is somewhat surprising considering that one of the ways that women abolitionists like Angelina Grimké and Harriet Beecher Stowe commonly attempted to galvanize white women was by emphasizing the bonds that enslaved mothers felt with their children.¹⁰⁶ Emphasizing Ellen's identity as a mother-to-be, however, would have involved ascribing a sense of agency to her that seems deliberately absent in *The Stars and Stripes*. Child may have felt, too, that the addition of an incest plot more clearly villainized Ellen's master. Depicting Ellen's master as a depraved and perverse patriarch may have appealed more broadly to white men and women alike than focusing on Ellen's maternal feeling, an emotion understood (or thought to be understood) primarily by women. Certainly, the addition of incest injected sensationalism into an already sensational story. Though we may not be able to speculate about Child's motives with any certainty, *The Stars and Stripes* caricatures—and thereby, as Saidiya Hartman argues, undermines the humanity of—both Ellen Craft, one of the real people whom the novel is based upon, and the experiences of enslaved incest victims generally.

Still, abolitionist novels like *The Stars and Stripes* exposed something real, and they did seem to affect real change in public sentiment. As President Abraham Lincoln is reported to have said upon meeting Harriet Beecher Stowe (author of *Uncle Tom's Cabin*), “So you're the little woman who wrote the book that started this great war!”¹⁰⁷ Abolitionist novels by white authors represented a genre that flourished throughout the antebellum period. They were so provocative that Southern states imposed heavy fines on individuals found with anti-slavery literature and

¹⁰⁶ On this point see Chris Dixon, *Perfecting the Family: Antislavery Marriages in Nineteenth-Century America* (Amherst: University of Massachusetts Press, 1997), 30.

¹⁰⁷ Daniel R. Volaro, “Lincoln, Stowe, and the ‘Little Woman/Great War’ Story: The Making, and Breaking, of a Great American Anecdote,” *Journal of the Abraham Lincoln Association* 30, no. 1, Winter 2009: 18-34.

passed anti-literacy laws that forbade teaching slaves to read and write.¹⁰⁸ Though federal postal law guaranteed security of the mail, U.S. Postmaster General Amos Kendall permitted Southern postal officials to refuse delivery of abolitionist texts.¹⁰⁹ And, as Alexis Neumann argues, many abolitionist novels contained within them “a concentrated exploration of the role of incest and slavery.”¹¹⁰ This means that although incest may not have been the most salient factor in persuading white readers to take up abolition, anti-slavery authors clearly felt that it was one of the compelling reasons to dismantle the “peculiar institution.” Historians have tended to dismiss abolitionist novels as fictional and propagandistic, but the repetition of incest as a trope within them perhaps reveals something valuable about how abolitionist authors perceived their readers and, if we judge their efforts as successful, even tell us something about what convinced whites to support the abolitionist cause.

Whereas the slave-holding petitioners in Peggy’s case sought to depict incest as an aberrant and unwarranted form of violence in an otherwise “legitimate” system, abolitionists understood incest as endemic to enslavement. They linked slavery’s incest to the desecration of the marriage sacrament, the blurring of racial boundaries, and to the sexual violence that enslaved women and girls endured. Rather than being mutually exclusive framings, these depictions of incest worked together to condemn slavery. However, even as abolitionists identified incest as a systemic problem, they did not consistently recognize or acknowledge how the patriarchal, property-based family gave shape and form to enslavement in the first place. It is not that they failed to understand this connection—Lydia Maria Child, for example, understood

¹⁰⁸ A.B. Wilkinson, “Antislavery Literature: An Overview,” *Gail Library of Daily Life: Slavery in America*, undated. <<https://www.encyclopedia.com/humanities/applied-and-social-sciences-magazines/antislavery-literature-overview>>. Last accessed Sept. 29, 2021.

¹⁰⁹ Stephen L. Vaughn, “Kendall, Amos,” in the *Encyclopedia of American Journalism* (New York: CRC Press, 2007).

¹¹⁰ Neumann, *American Incest*, 137.

that slavery flourished by the same mechanisms that constituted women's lesser status, and Frederick Douglass, along with several other prominent Black male abolitionists during his lifetime, publicly and privately forged radical alternative epistemologies of male parenting directly opposed to white notions of fatherhood rooted in rights of ownership and domination.¹¹¹ However, when they addressed the American public about slavery—whether through novels, memoirs, sermons, or periodicals—abolitionists seem to have strategically withheld their more radical views in order to galvanize more conservative audiences. Conversely, a simpler explanation is that their political ideologies were not entirely consistent, which is true for most of us. Either way, abolitionists' deployment of incest to condemn slavery often reinforced more traditional conceptions of patriarchal morality and narrowed what might otherwise have been a broader political horizon toward which to organize.

Moreover, abolitionists' depiction of incest between white slave-owners and enslaved daughters as an offense against the institution of marriage assumed that white men's sexual abuse of their slaves violated marital vows to white women. This was not always the case. While Moses Mordecai was a married man, John Francis, Peggy's master, was not married; nor was Jacob Bryan, Celia's master. Neither Mr. Cook nor Mr. Williams, Louisa Picquet's sexual abusers, were married, either. Abolitionists' emphasis on the threats that slavery's rape and incest posed to marital relationships between white men and women therefore importantly represented a symbolic transgression rather than a thoroughly accurate accounting of white men's moral failings. This move could undermine Black women's narrative authority, as my juxtaposition of Louisa Picquet's narrative and Lydia Maria Child's novel illustrates. Missing

¹¹¹ On alternative models of fatherhood imagined and practiced by black male abolitionists, see Pierre Islam, "Perplexing Patriarchies: The Father in the Public Rhetoric and Private Correspondence of Black Opponents and White Defenders of Slavery During the Nineteenth Century," diss., Yale University (Department of History), 2018.

from most white abolitionists' framings of incest between white slave-owners and enslaved daughters was concern for the impact that incest had on Black families. Concern for the protection of the Black family was not a common framing that white abolitionists used to condemn incest.

White abolitionists' neglect, misrepresentation, or (possibly forced) suppression of the impact of slavery's incest on Black familial bonds inadvertently contributed to the lack of protection Black families faced after emancipation. These conditions facilitated the continued sexual violation of Black girls and women by white men with impunity after the Civil War. Though abolitionists by no means caused white men to behave badly, framing slavery's incest as an affront to white women particularly (by depicting them as the victims of white men's sexual abuse of enslaved women) was not as successful at getting Southern white women to support the abolitionist cause as it was at reinforcing the white family as an institution that represented the nation's moral status. Equally important, abolitionists failed to locate incest as endemic not only to enslavement but also more fundamentally to the patriarchal, property-based family form. I argue these factors made it intellectually conceivable for race scientists and lawmakers after the Civil War to reconfigure the relationship that abolitionists had established between incest and the blurring of racial boundaries to pass laws against "miscegenation."

Incest and Anti-"Miscegenation" Laws

Though abolitionists had imagined themselves as America's front line of defense against slavery's perversion of marital and family values, the tables would be turned against them shortly after the Civil War with one powerful little word: "miscegenation." The term "miscegenation" was newly minted in 1863 during President Abraham Lincoln's reelection campaign, when two Democratic pamphleteers working in New York published a thinly

disguised parody, *Miscegenation: The Theory of the Blending of the Races, Applied to the American White Man and Negro*. The pamphlet mocked Lincoln's 1863 Emancipation Proclamation as an edict promoting "the mingling of the races" and joked that science, religion, common sense, and the Republican Party all agreed that "the intermarriage of diverse races is indispensable to a progressive humanity."¹¹² They referred to Lincoln's supposed vision of a racially blended society as "miscegenation," a pseudo-scientific word that linked "misceg," or the mixing of genus/family/race, with "nation."¹¹³ And, as Peggy Pascoe argues, that word set the stage for "the rise of a social, political, and legal system of white supremacy that reigned through the 1960s and, many would say, beyond."¹¹⁴

Laws against interracial marriages in the United States date as far back as the colonial period. In 1662, Virginia passed a law clarifying the legal status of children born to enslaved mothers and English fathers: they would inherit their mother's enslaved status.¹¹⁵ That same law imposed a steep financial penalty on interracial sex, stating that "if any Christian shall commit fornication with a Negro man or woman, he or she so offending shall pay double the fines imposed by the former act."¹¹⁶ Maryland passed a law in 1664 outlining the legal status of a free white woman who voluntarily married an enslaved man: she would serve as the master of her husband until his death, and any offspring of their union would be born into slavery.¹¹⁷ In 1691

¹¹² *Miscegenation: The Theory of the Blending of the Races, Applied to the American White Man and Negro* (New York: Dexter, Hamilton, 1864), I, 49. For interpretation, see Sidney Kaplan, "The Miscegenation Issue in the Election of 1864," *Journal of Negro History* 34 (1949): 274-343, and Elise Lemire, "*Miscegenation*": *Making Race in America* (Philadelphia: University of Pennsylvania Press, 2002), 116-44.

¹¹³ Pascoe, *What Comes Naturally*, 28; David Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (London: Verso, 1991), 156.

¹¹⁴ Pascoe, *What Comes Naturally*, 1.

¹¹⁵ William Waller Hening, *Statutes at Large; Being a Collection of all the Laws of Virginia* (Richmond: Samuel Pleasants, 1809-1823), II, 170.

¹¹⁶ *Ibid.*

¹¹⁷ Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (Cambridge, England: Cambridge University Press), 459.

Virginia passed a law forbidding free Blacks and whites to intermarry, followed by Maryland in 1692.¹¹⁸ These laws represented the first time that access to marriage partners was restricted solely on the basis of race, not class or condition of servitude. Laws against interracial marriage became increasingly common as the number of colonies grew. By the time of the Civil War, twenty-five of thirty-four states and the District of Columbia outlawed interracial marriages, though the contents of their prohibitions and the degree to which they were enforced varied.¹¹⁹

Though laws against interracial marriage were widespread before the Civil War, Peggy Pascoe argues that it was only when the Civil War “threw the future of slavery into doubt” that lawyers, legislators, and judges began to develop the “elaborate justifications that signified the emergence of miscegenation law and made restrictions on interracial marriage the foundation of post-Civil War white supremacy.”¹²⁰ What followed the publication of *Miscegenation: The Theory of the Blending of the Races* was an “unprecedented outburst” of laws against interracial marriage.¹²¹ Not only did the U.S.’s Western territories suddenly pass a spate of anti-“miscegenation” laws, Southern states also revised their existing statutes banning interracial marriage to make the penalties for violators considerably more severe.¹²² Mississippi, for example, which had not imposed a law banning interracial marriages prior to the Civil War,

¹¹⁸ Hening, *Laws of Virginia*, 86-87; James Bisset, *Abridgement and Collections of the Acts of Assembly of the Province of Maryland, At present in Force* (Philadelphia: William Bradford, 1759), 76.

¹¹⁹ States that passed laws against interracial marriage before the Civil War include Alabama (1822), Arkansas (1838), California (1850), Florida (1832), Georgia (1788), Illinois (1829), Indiana (1818), Iowa (1839), Kansas (became a state in 1861 during the Civil War, but passed a law against intermarriage in 1855), Kentucky (1792), Louisiana (1724), Maine (1821), Maryland (1692), Michigan (1838), Missouri (1835), North Carolina (1715), Ohio (1861, passed during the Civil War), Oregon (1862, passed during the Civil War), Rhode Island (1798), South Carolina (1717), Tennessee (1741), Texas (1837), Virginia (1691), and West Virginia (1863, passed during the Civil War.) The District of Columbia outlawed interracial marriage in 1801. Interracial marriage was also prohibited in the territories of Nebraska (1855), Nevada (1861), New Mexico (1857), Utah (1852), and Washington (1855). Massachusetts and Pennsylvania both repealed their laws against interracial marriage prior to the Civil War. Several American Indian nations also banned marriage to blacks. These included the Cherokee (1824), Creek (1825), and Chickasaw (1858) nations. See Pascoe, *What Comes Naturally*, 19-22.

¹²⁰ Pascoe, *What Comes Naturally*, 27.

¹²¹ Pascoe, *What Comes Naturally*, 29.

¹²² *Ibid*, 29-30.

passed an anti-“miscegenation” law in 1865 which sentenced violators to life in prison.¹²³ Laws against “miscegenation” became the foundation upon which other laws enforcing racial segregation in the post-emancipation political landscape were built, such as laws restricting employment opportunities, property ownership, education, voting rights, punishing vagrancy, and requiring African Americans to post a monetary “bond” (sometimes as much as one thousand dollars) before moving to a new state, among other laws.¹²⁴ Laws against “miscegenation” therefore not only excluded African Americans from white family life, they also supported African Americans’ structural exclusion from the national family—which those very same laws constituted as white.

Pascoe notes that one of the most striking features of these new or revised laws was how often they likened “miscegenation” to incest. How was it logical to use laws forbidding marriage between people deemed “too similar” as justification for the creation of laws forbidding marriage

¹²³ *An Act to Confer Civil Rights on Freedman, and for Other Purposes*, ch. 4, sec. 3, 1865 Miss. Laws 82.

¹²⁴ See, for example: David W. Blight and Jim Downs, eds., *Beyond Freedom: Disrupting the History of Emancipation* (Athens: University of Georgia Press, 2017); Jane E. Dailey, Glenda Gilmore, and Bryant Simon, eds., *Jumpin’ Jim Crow: Southern Politics from the Civil War to Civil Rights* (Princeton: Princeton University Press, 2000); W.E.B. DuBois, *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880* (New York: Russell & Russell, 1935); Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1998); Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1996); Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Harvard University Press, 2005); Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Random House, 1995); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016); Evelyn Brooks Higginbotham, *Righteous Discontent: The Women’s Movement in the Black Baptist Church, 1880-1920* (Cambridge: Harvard University Press, 1994); Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004); Kate Masur, *An Example for All the Land: Emancipation and the Struggle over Equality in Washington, D.C.* (Chapel Hill: University of North Carolina Press, 2010); Michelle Mitchell, *Righteous Propagation: African Americans and the Politics of Racial Destiny after Reconstruction* (Chapel Hill: University of North Carolina Press, 2005); Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009); LaKisha Michelle Simmons, *Crescent City Girls: The Lives of Young Black Women in Segregated New Orleans* (Chapel Hill: University of North Carolina Press, 2015); and Michael John Witgen, *Seeing Red: Indigenous Land, American Expansion, and the Political Economy of Plunder in North America* (published by the Omohundro Institute of Early American History and Culture and the University of North Carolina Press, 2022).

between people supposedly “too different?” Despite the mystifying rationale, these seemingly opposite kinds of relationships were understood to be the same. Mississippi’s 1880 revised State Code, for example, declared marriages between whites and “persons of one-quarter or more Negro blood” to be “incestuous and void,” punishable by a fine up to \$500 or imprisonment in the state penitentiary for ten years, or both.¹²⁵ North Carolina’s state attorney general argued in 1877 that interracial marriage should be treated in the same way that an incestuous marriage would—it should be criminalized under North Carolina law.¹²⁶ Even New York, which had not prohibited interracial marriage since the Dutch colonial period, considered a law that would have declared marriages between a “white or Caucasian person and person of the negro or black race” to be “incestuous and void.”¹²⁷ Judges from California to Tennessee refused to recognize “miscegenous” marriages performed lawfully in other states when interracial couples crossed state lines, despite the Constitution’s full faith and credit clause, on grounds that such couplings were “incestuous.”¹²⁸ Rhetorical comparisons of “miscegenation” to incest were so persuasive that even legal commentators who were otherwise doubtful about the validity of racial segregation, including Ernst Freund, a northern judge who wrote the standard book on police powers in 1904, were swayed. “Marriage,” Freund explained, “is clearly a matter in which race

¹²⁵ J.A.P. Campbell, *The Revised Code of the Statute Laws of the State of Mississippi, prepared by J.A.P. Campbell, and Reported to and Amended, and Adopted by the Legislature at its Biennial Session, in 1880* (Jackson: J. L. Power, State Printer, 1880), Chapter 42, § 1147, p. 335.

¹²⁶ *State v. Kennedy*, 76 N.C. 251 (1877), 245.

¹²⁷ David H. Fowler, *Northern Attitudes Towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic and the States of the Old Northwest, 1780-1930* (New York: Garland Publishing, 1987), 299.

¹²⁸ 28 U.S.C. § 173, or the Full Faith and Credit clause, requires every state to give a certain measure of respect to every other state’s laws and institutions. For example, if a couple weds in a state where their union is legal and then moves to a state where their union is illegal, the state to which they have moved must honor their marriage as lawful. This is known as the principle of “reciprocal recognition.” For examples of cases where the rule of reciprocal recognition was not honored with respect to interracial marriages, see: *Ex Parte Kinney*, 14 F. Cas. At 607 (C.C.E.D. Va. 1879) (No. 7825); *State v. Tutty*, 41 Fed. Cas. At 760 (C.C.S.D. Ga. E.D., 1890); *Estate of Wilbur*, 8 Wash. At 37 (1894); *Succession of Gabisso*, 119 La. at 713 (1907); *Eggers v. Olson*, 104 Okla. At 301 (1924).

difference has a natural and specific operation [...] and the prohibition is at least as reasonable as that of marriages between first cousins.”¹²⁹

Rhetorical comparisons of “miscegenation” to incest ring familiar to twenty-first century ears, as slippery slope arguments against gay marriage often invoked the threat of incest, too. Consider U.S. Senator Rick Santorum’s infamous statement to the *Associated Press* in April 2003 that if the Supreme Court legalized gay marriage, “then you have the right to bigamy, you have the right to polygamy, you have the right to incest, you have the right to adultery. You have the right to anything.”¹³⁰ While publicly condemned for his homophobic remark, Santorum was merely giving voice to the chain of implied catastrophe that the Supreme Court majority in *Bowers v. Hardwick* envisaged in 1986, and that the late Justice Antonin Scalia, dissenting in *Lawrence v. Texas*, would portend slightly later in June 2003.¹³¹ Legal scholars writing in defense of gay marriage at the turn of the twenty-first century recruited historical comparisons of “miscegenation” to incest as a usable past that could reveal social conservatives’ anxieties about mass sexual disorder following the legalization of same-sex unions as unfounded.¹³² But how has the continual invocation of “incest” in slippery slope arguments against interracial or same-sex marriages informed American understandings of incest itself?

If laws against incest were the backbone of anti-“miscegenation” laws, then laws against “miscegenation” fundamentally depended on an understanding of incest as consensual in order

¹²⁹ Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (1904; New York: Arno Press, 1976), 717.

¹³⁰ Interview by the Associated Press with Sen. Rick Santorum (Apr. 7, 2003).

¹³¹ *Bowers v. Hardwick*, 478 U.S. 186, 195-96 (1986) (White, J.) (“[I]f respondent’s submission is limited to the voluntary sexual conduct between consenting adults, it would be difficult, except by fiat, to limit the claimed right to homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though they are committed in the home. We are unwilling to start down that road”); *Lawrence v. Texas*, 539 U.S. 558, 586 (2003) (Scalia, J., dissenting.)

¹³² E.g., Courtney Megan Cahill, “Same-Sex Marriage, Slippery Slope Rhetoric, and the Politics of Disgust: A Critical Perspective on Contemporary Family Discourse and the Incest Taboo,” *Northwestern University Law Review* 99, no. 4 (2005): 1550-1612.

for the comparison to work. And the comparison *needed* to work in order to hold together America's identity as a white nation. It was enslavement itself, through the violence of rape and incest, that produced the "miscegenation" white Americans so feared, and it was through denying that same violence that whites hoped to reconstruct a color line they themselves had blurred. "Miscegenation" was "incestuous" not because incest forced by white slave-owners upon enslaved daughters had turned African complexions from dark to light, but because whites needed once again to control African Americans' sexuality and protect themselves from its "polluting" force in the post-emancipation political landscape. In the same stroke of the pen that enclosed the white family as the primary conduit through which Americans could access the full privileges of citizenship, white sexual violence and black subjugation were wiped from national memory. Instead, African Americans were painted as the aggressors: black men were "beasts," black women were "Jezebels." It was they, not white patriarchs, who (supposedly) threatened the American family. Through comparisons to "miscegenation," then, laws against incest performed the impossible trick of externalizing sexual threats to the home.¹³³

Conclusion

Race scientists and lawmakers after the Civil War were able to liken "miscegenation" to incest partly because, despite abolitionists' condemnation of incest, they did not link incest's occurrence under slavery more fundamentally to the patriarchal, property-based family form. Although white and Black abolitionists used incest to condemn slavery's sexual violence, they

¹³³ The same could easily be said for the rhetorical invocation of laws against incest to prevent the legalization of same-sex marriage. Consider the long history of depicting gay men as pedophiles, or the popularization of the term "chomo" to refer to child molesters (a spin on the slur "homo.") Gay marriage is deemed a threat because gay men (particularly) are assumed to possess "monstrous" sexual desires that exceed the boundaries of the private home and bleed (as in the HIV/AIDS epidemic, which was stigmatized as a "gay disease" during the 1980s and '90s) into the public sphere. See Joseph Fischel, *Sex and Harm in the Age of Consent* (Minneapolis: University of Minnesota Press, 2016).

also proposed a more inclusive patriarchy as a solution to that violence. Inadvertently, their rhetoric retrenched the white American family as the barometer of the nation's moral status. While we may recognize that the contested political terrain upon which abolitionists organized likely limited the blossoming of more radical ideas within the movement, abolitionists' emphasis on the redemptive power of marriage and family nonetheless reiterated the notion that the private, white patriarchal family was normatively good so long as slavery was not a constitutive element.

Laws against incest in the U.S. have not remained more or less static since the colonial period due to some inherent resistance of the law to change. For instance, anti-“miscegenation” statutes were updated frequently, and changed over time in response to shifts in local demographics.¹³⁴ In the meantime, what legal scholar Leigh Bienen describes as a “bizarre jurisprudence” grew up around incest statutes because of their rigid insistence upon incest's consensual nature, despite how—as I reveal in the next chapter—most incest cases involved coercion.¹³⁵ Fully ninety-nine percent of appeals for incest convictions between 1870 and 1940 were filed by fathers, stepfathers, and uncles (rarely brothers) who had abused a female child in their care. While some states (three, to be precise) updated their statutes to define father-daughter incest as a crime analogous to rape, the overwhelming majority did not. Incest laws retained their presumption of consent partly because anti-“miscegenation” statutes, in order to protect the interests of a white nation, relied on a definition of incest as consensual in order to liken interracial relationships to incestuous ones. As I demonstrate in Chapter 2, the role incest law

¹³⁴ States like California, for example, banned intermarriage not only between whites and blacks but also between whites and people of East Asian, South Asian, and Pacific Islander descent. Other states, such as Nebraska, included American Indians as a group that whites were not permitted to marry. In 1911 the U.S. Congress entertained an amendment to the Constitution (that was not passed) which forbade not only intermarriage between whites and blacks, but also between whites and Natives, “Mongols,” and “Malays.”

¹³⁵ Bienen, *Defining Incest*, 1523.

played in promoting white nationalism had devastating effects for victims of all races and ethnicities.

Chapter 2: Constructing the American Family: Debates on Incest in U.S. Law

In 1937, a girl named Katherine Trejo stood before the Bell County District Court in Killeen, Texas—a small, ethnically mixed agricultural community forty-five miles north of Austin—and alleged that her father, Ollie Trejo, forced her to have sex with him five times “in the cotton-picking time” that year.¹³⁶ The Bell County District Court sentenced Trejo to seven years’ imprisonment. Then, Trejo appealed his conviction. In his appeal, he did not deny that he had had sex with his daughter. Instead, he claimed Katherine’s trial court testimony showed she was complicit in the crime. From his point of view, Katherine was complicit not because she desired him in the same way he desired her, but because she failed to protect herself from his advances. Even though he admitted he had threatened Katherine with a knife on one occasion to force her to yield to him—a detail which suggests Katherine’s resistance to her father’s sexual advances was in fact so strong that he could not merely coax her to comply—the Texas Court of Criminal Appeals was persuaded by Ollie Trejo’s contention that the Bell County District Court erred by failing to try Katherine as an accomplice to incest. In Texas, a conviction as an accomplice carried the same sentence as a regular incest conviction.

Justice George E. Christian, who delivered the appellate court’s unanimous opinion, reversed the lower court’s decision and remanded Trejo’s case to a new trial. In the superior court’s view, a retrial was necessary because “[...] the witness did not testify that on *each* occasion of intercourse [the] appellant drew a knife on her [emphasis added]. [...] As far as her

¹³⁶ Trejo v. State, 135 Tex. Crim. 39, 117 S.W.2d 115, 1938 Tex. Crim. App. LEXIS 541 (Court of Criminal Appeals of Texas June 1, 1938, Delivered.)

testimony is concerned, she might have consented to four of the incestuous acts of the appellant.”¹³⁷ Justice Christian cited legal precedent from the 1885 Texas Court of Criminal Appeals decision in *Mercer v. State*, where the appellate court similarly reversed a trial court’s decision to convict a father who sexually abused his daughter for seven years. Quoting the decision in *Mercer*, Justice Christian wrote: “That this long continued incestuous intercourse [...] could have occurred without the consent of the witness, is to our minds unnatural, unreasonable, and incredible. We cannot believe it.”¹³⁸ The use of a weapon in Ollie Trejo’s case, whether as a first or last resort, made no difference to the court’s assessment of Katherine’s guilt so long as she had “consented” on other occasions.

Importantly, the Texas appellate court’s views about the dynamics of father-daughter incest were not universally shared. The Illinois Supreme Court, for example, adjudicated an appeal of an incest conviction 25 years before the Texas Court of Appeals delivered its opinion in *Trejo* and arrived at a very different conclusion. The appellant, Irvin Turner, alleged that the Logan County Court in Lincoln, Illinois erred in failing to try his daughter Grace as an accomplice to incest because she testified upon cross-examination that “[she] did not enjoy [sex with him] at first, but afterwards [she] did.”¹³⁹ Justice James H. Cartwright, a Republican elected to judgeship in 1895, rejected Turner’s appeal. “Whatever the rule may be as between other relatives, a daughter is not an accomplice of her father,” he asserted. “The statute was made for her protection.”¹⁴⁰ The Illinois Supreme Court unanimously agreed.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ *People v. Turner*, 260 Ill. 84, 102 N.E. 1036, 1913 Ill. LEXIS 1863 (Supreme Court of Illinois October 28, 1913.)

¹⁴⁰ Ibid. Justice Cartwright was praised for even-handedness throughout his career: “Since his advent to the Supreme Court, Justice Cartwright has been universally praised for his ability to go to the heart of a case and produce a lucid interpretation of the law, as well as for his tireless activity” (326-327, Vol. XVII, Nos. 1-2, “Justice James H. Cartwright, Illinois Supreme Court Justice, 1842-1924,” *Journal of the Illinois State Historical Society* (1908-1984), Vol. 17, No.1/2, Apr - July 1924).

Why did Illinois's and Texas's superior courts have such dramatically different responses to father-daughter incest? What social and political forces shaped how the law was made, practiced, and experienced at the local level? In this chapter, I examine the ways U.S. appellate court judges conceptualized the crime of incest between 1870 and 1940, a period that coincides with the rise of what historian Lynn Sacco calls "the social denial of incest" in American culture.¹⁴¹ In Sacco's view, this period was characterized by the vehement disavowal of incest's occurrence in genteel white society by psychiatrists, social workers, and medical professionals. In the realm of law, however, a different story unfolds—judges did not debate whether incest occurred so much as they debated how to prosecute it. At stake was the meaning and significance of patriarchal power for the nation-state. The question of consent in cases of father-daughter incest was not about girls' sexual autonomy so much as it was about the limits and legitimate uses of violence against women and children to which the law fundamentally entitled men. I argue that judges across the U.S. used incest to enshrine men's right to violence in law, even as they disagreed about the limits and legitimate uses of patriarchal power.

Methods

To support my claim, I analyze twelve state appellate courts' decisions, in a total of 244 incest appeals, between 1870 and 1940. I examine Texas, Kentucky, and Georgia in the South; Illinois, Iowa, and Nebraska in the Midwest; California, Oregon, and Washington on the West Coast; and New York, Massachusetts, and Vermont in the North. These states had the highest number of incest appeals in their respective regions during the period under study, making it easier for me to detect patterns in decisional law and identify changes in judicial reasoning over

¹⁴¹ Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore: Johns Hopkins University Press, 2009), 40.

time at different geographic scales. This approach makes it possible for me to paint a general, if not precise, picture of how patriarchal power was constructed vis-à-vis the law from after the Civil War to World War II.

A regional approach, of course, assumes that the United States is not a cultural or political monolith. Indeed, incest statutes vary from state to state and reflect states' diverse cultural, historical, and legal contexts. For example, Rhode Island was the first state in the nation to decriminalize marriage between first cousins due to its large and longstanding Orthodox Jewish population, for whom cousin marriages are not prohibited by halachic law.¹⁴² In fact, most major religions—except Christianity—do not prohibit cousin marriages. For this reason, cousin marriages are currently permitted in twenty-two states.¹⁴³ Moreover, states' diverse cultural, historical, and legal contexts produce differences in courts' interpretation and application of the law. Between 1870 and 1940, political and cultural dynamics at the local and regional levels—including organized white supremacist terrorism, the temperance movement, and the national age of consent campaign—influenced judges' interpretation and application of criminal law to incest appeals cases in places where those movements held sway. In particular, I examine how members of the Woman's Christian Temperance Union, or WCTU, pushed for statutory rape legislation that would better protect girls from sexual violence in the home.

What judges in all twelve of the states under study had in common was an understanding of incest as a crime against the *polity*, not only—or even at all—against abused girls. As the Texas Court of Criminal Appeals stated in a 1934 decision, “incest is an offense *against society* in which both parties ordinarily engage with the same intent and purpose; hence both parties to

¹⁴² Graham Hughes, “The Crime of Incest,” *Journal of Criminal Law and Criminology* Vol. 55, No. 3 (September 1964): 323, fn. 6.

¹⁴³ Juliet Lapidus, “How Did West Virginia Get a Reputation for Inbreeding?” *Slate Magazine*, June 3, 2008. <https://slate.com/news-and-politics/2008/06/how-did-west-virginia-get-a-reputation-for-inbreeding.html>.

the offense are principals and *equally guilty* [emphasis added].”¹⁴⁴ As this quote suggests, a key element of incest’s legal definition is its presumption of consent. However, in the 244 appeals cases I surveyed, genuinely consensual incestuous relationships appeared only three times (specifically, between married first cousins in Texas, New York, and Washington state.) Of the remaining 241 appeals, 139 were filed by natural fathers (57%), 46 were filed by stepfathers (19%), 39 were filed by uncles (16%), 11 were filed by older brothers (4.5%), one was filed by a grandfather (0.4%), and five were filed by men whose relationship to the plaintiff was unclear (2%). In sum, fully 99 percent of incest appeals in these twelve states, which had the highest volume of appeals overall, involved adult perpetrators and non-consenting child victims. All the plaintiffs in these cases were female, generally between the ages of thirteen and seventeen. Clearly, these statistics indicate that debates about incest in U.S. law did not rage over whether first cousins should be permitted to marry. Rather, debates about incest’s significance and meanings in U.S. law were a site of intense conflict and confrontation between abused girls, the men who abused them, and the state.

Feminist historian Nara Milanich has theorized fatherhood as a politicized status, one which “raises questions about the balance of rights and responsibilities between individuals and societies.”¹⁴⁵ Under Milanich’s formulation of fatherhood as a politicized status, patriarchal power represents “the frontier” between private and public governance. Borderlands studies scholars have theorized frontiers as “fictions of material consequence,” representing contested ground where struggles between competing powers are most visible and pronounced.¹⁴⁶ With respect to father-daughter incest, the state “steps in,” so to speak, when men “cross the line.”

¹⁴⁴ *Alexander v. State*, 72 S.W.2d 1080, 1082 (Tex. Crim. App. 1934).

¹⁴⁵ Nara Milanich, *Paternity: The Elusive Quest for Fatherhood* (Cambridge: Harvard University Press, 2019): 3.

¹⁴⁶ See Nicole M. Guidotti-Hernández, “Borderlands,” in *Keywords for Latina/o Studies*, eds. Deborah R. Vargas, Lawrence La Fountain-Stokes, and Nancy Raquel Mirabal (New York: New York University Press, 2017), 21-24.

Where that line is, however, is never obvious or clear. I argue that judges understood incest to be a crime because it represented the violation of a shared patriarchal order underpinning questions of governance in American public and political life. Because male power in the home was crucial to the justification of male power in public life, abused girls represented a challenge to this national order. Ultimately, abused girls were the ground upon which male power and control in the domestic sphere was continually contested, mapped, and finally, reinscribed, underwriting the preservation of male power in the civic realm even as women made gains toward equality in the public sphere.

In the pages that follow, I track key developments in debates about incest in U.S. law between 1870 and 1940 through twenty-four appellate cases. Readers may notice I generally avoid using the word “rape” to describe coerced or forced penetration, and similarly that I do not describe most incestuous sexual abuse as “violent.” Briefly, I avoid using the word “rape” because to do so would cause confusion between cases where girls charged abusers with rape *and* incest, and cases in which the only allegation at stake was incest. If an abused girl described her experience as rape, I use that term. For the same reasons, I do not describe most incestuous sexual abuse as “violent.” Many abused girls experienced incestuous sex as an expression of their abuser’s care and affection for them. His restraint of violence was an important part of his strategy in manipulating her loyalty to him.

Southern Courts: Texas, Georgia, and Kentucky

Ada Bland, a fifteen-year-old Black girl from rural Washington County, Texas, gave birth to a child on June 29, 1886. She claimed the child belonged to her stepfather, Joe Jackson. Jackson had cornered Ada in a peach orchard the previous year and demanded that she “give him some.” When she refused, he threatened to kill her with an axe. Ada bolted, running hard toward

the nearest public road. She had nearly made it to the stretch of dry brush and undergrowth separating the orchard from the road when her stepfather tackled her to the ground. The rape, Ada testified, occurred “around the time” of a circus performed in the nearby town of Independence. The Washington County court convicted Jackson of rape and incest and sentenced him to five years’ imprisonment. Jackson, indignant, submitted his case to the Texas Court of Criminal Appeals for review.¹⁴⁷

The Texas appellate court reversed Jackson’s convictions and remanded his case to a new trial for two reasons. First, the circus in Independence that Ada used to approximate the date of her rape occurred on November 17, 1885. She gave birth seven months and nineteen days later. Although “born small,” the trial court observed that her baby was “well-formed and perfectly developed.” The infant’s good health was inconsistent with such a premature delivery, which caused the appellate judges to doubt Ada’s timeline. Second, the trial court noted that the child had a lighter complexion than either Ada or her stepfather. Unaware that two dark-skinned parents can conceive a light-skinned baby if either parent has even one distant blood relative or ancestor of lighter complexion, the white appellate judges doubted Ada’s “reputation for chastity.” With Ada’s credibility compromised, the appellate court further pointed out that she said she had only “wept a little” during the alleged rape, but “made no outcry.” They also noted she said she kept silent about the alleged assault for several weeks because she worried her mother would not believe her. By emphasizing these details, the judges expressed skepticism as to whether Ada had experienced her stepfather’s abuse as sufficiently severe or distressing enough to constitute assault, if her stepfather had even assaulted her at all.¹⁴⁸

¹⁴⁷ Jackson v. State, 22 Tex. Ct. App. 442, 3 S.W. 111, 1886 Tex. Crim. App. LEXIS 277 (Court of Appeals of Texas November 27, 1886, Opinion Delivered.)

¹⁴⁸ Ibid.

In 1904, the Texas Court of Criminal Appeals solidified its view that non-consent could be affirmatively established only in cases where the victim actively resisted her abuser. In that year a white man named William Clifton, who had been sentenced to five years' imprisonment for incest with his stepdaughter, Josie Clifton, appealed his conviction. Twenty-year-old Josie had testified that her stepfather fondled her from a young age, which turned into sexual intercourse once or twice a week from the ages of twelve to nineteen. "I was not desirous and willing for it," she insisted. "I did it only as a duty. I just felt I was under his influence and whatever he would do would be all right, until I began to really find out the wrong of it. I was under his influence and control." Josie's testimony modeled a classic pattern of sexual abuse. Her stepfather never resorted to threats or violence because by the time he escalated the abuse from fondling to intercourse, she had already experienced his inappropriate intimacy as normal. Anticipating the court's skepticism, Josie defended her competence by noting that she had a "good common school education" and had "clerked in two stores."¹⁴⁹

The Texas Court of Criminal Appeals was not impressed by Josie's trial court testimony. They reversed the trial court's conviction and remanded the case to a new trial on the grounds that, in their view, Josie was an accomplice to the crime because she did not physically resist her stepfather's abuse. In the written opinion for the court, Justice William Lewis Davidson wrote, "[The trial court] should have charged that if she did not oppose the act of carnal intercourse, she would be an accomplice, and not that she must enter into it with the same desire the defendant did." The *Clifton* decision set an important precedent for the trajectory of incest's treatment in Texas criminal law. While it did not necessarily change established practices in the law—it was not new, for example, for an abused girl to be tried as an accomplice to the crime committed

¹⁴⁹ *Clifton v. State*, 46 Tex. Crim. 18, 79 S.W. 824, 1904 Tex. Crim. App. LEXIS 45 (Court of Criminal Appeals of Texas March 23, 1904, Decided.)

against her—it clarified the Texas appellate court’s interpretation and application of the law when it came to defining the line between complicity and coercion. In effect, the court affirmed that it was abused girls’ responsibility to protect themselves. Of course, as the 1886 *Jackson* decision and the 1938 *Trejo* decision described at the beginning of this chapter show, the irony is that Texas jurists almost never found a father’s abuse of power extreme enough to warrant a girl’s exculpation. A girl could never run fast enough, cry hard enough, or be close enough to the blade to prove her innocence.

The construction of abused girls’ consent out of seemingly thin air in Texas decisional law highlights a fundamental paradox at the heart of incest statutes. On one hand, girls are supposed to defer to patriarchal authority and accept their father’s will for them as their own. On the other, girls are supposed to guard their sexual honor. Incest puts these expectations in direct conflict with each other. Fulfilling one requires unfulfilling the other. Blaming the victim resolves this tension by pretending that a child’s power to resist harm is equally as great as an adult man’s power to inflict it. This “both sides-ism” rescues the state from having to rethink the law’s assumptions about men’s natural right to rule over women and children. It reaffirms men’s right to private and public power while rendering girls more vulnerable to their tyranny. Defining the legal meaning of “consent” differently, for example by bringing it back to its roots in the Latin verb *consentire*, meaning “to feel together,” would require men to imagine a world in which women are fully capable of self-governance, equally free to initiate or decline sex and procreation, within or without the constraints of marriage. To the Texas Court of Criminal Appeals, this was unthinkable. It would precipitate anarchy, in every sense of the word.

Historian Peter Bardaglio has argued that Southern courts’ reluctance to prosecute incest must be understood in relation to changing modes of racial control after the Civil War. He writes

of Southern newspapers, “Not even the grossest violations of the incest ban seemed to generate as much horror and rage in the white community as rape by an African American man.”¹⁵⁰ This observation goes a long way toward explaining why girls whose fathers abused them, whether they were white like Josie, Black like Ada, or Mexican American like Katherine, represented an intractable problem for the law. In order to sustain the myth of Black-on-white rape as the only serious or cognizable sexual crime in the Jim Crow South, Southern judges discounted abused girls’ testimony, which told a different story: the real threats they faced were in the home. Put another way, the fiction of Black-on-white rape—which Southern whites used to justify lynching and other extralegal terror tactics designed to intimidate free Black communities into submission—was fundamentally underwritten by Southern courts’ complicity in abused girls’ suffering. Abused girls were the ground upon which Southern white patriarchal control was made and fortified.

Feminist legal theorist Jenny Logan expands upon Bardaglio’s argument, pointing out that the criminal law of incest that emerged in the U.S. after the Civil War “played a key role in producing race, gender, sexuality, and the normative family through the bodies of children.”¹⁵¹ After emancipation, incest in white families suddenly jeopardized the twin objectives of protecting racial purity and the property interests of white males, neither of which had been threatened by incest when slavery was institutionalized and white men’s power to wield violence with impunity was enshrined in U.S. law. However, as Katherine Trejo and Ada Bland’s cases suggest, Southern jurists *also* protected non-white patriarchs from allegations of sexual impropriety. Why? Would it not have served the interests of a white exploiter class to use

¹⁵⁰ Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995), 213.

¹⁵¹ Jenny Logan, “Incest and the Production of Property in Children: Maintaining White Supremacy Through U.S. Criminal Law,” *Feminist Legal Studies* (June 2023): n.p.

examples of incest in non-white families as “evidence” of their inferiority? One possibility, as Logan contends, was that excluding Black and Brown girls from the category of victim ensured white girls could not access legal recourse for the sexual violence they experienced, either. Within a white supremacist and capitalist social order, acknowledging Black and Brown girls’ victimization would require institutions like the law to see them as human. Seeing Black and Brown girls as human would entitle them to more rights to personhood and autonomy than white girls, whose victimization inconvenienced the collective property interests of white men. Southern courts’ refusal to acknowledge white girls’ victimization automatically precluded the possibility of justice for Black and Brown girls, too.

Overall, Southern courts were more conflicted about how to prosecute incest than courts in any other region. While courts in Georgia also tended to consider abused girls accomplices if, in their estimation, the abuse they experienced did not rise to a narrow definition of rape, at least some Georgia jurists were cognizant of the subtler dynamics of incest. As Justice Henry Kent McCay noted in a dissenting opinion in an 1871 case, “The unnatural crime [...] is generally the act of a man upon a woman, over whom, by the natural ties of kindred, he has almost complete control, and generally he alone is to blame.”¹⁵² Unlike many of his colleagues, McCay realized that there was “a *force* used, which, while it cannot be said to be that violence which constitutes rape, is yet of a character that is almost as overpowering.”¹⁵³ By contrast, Kentucky jurists tended to sustain convictions for incest, even in the absence of physical force. In *Whittaker v. Commonwealth* (1894), a Kentucky man appealed a conviction for incest because he had not used physical force to coerce his daughter. In his view, the trial court erred by not considering her an accomplice. The appellate judges felt little need to explain their affirmation of the trial

¹⁵² Powers v. State, 44 Ga. 209, 1871 Ga. LEXIS 354 (Supreme Court of Georgia July, 1871, Decided.)

¹⁵³ Ibid.

court's conviction, stating simply, "The crime was committed against the daughter. She was not the accomplice, but the victim of her father."¹⁵⁴ In subsequent cases, Kentucky jurists also decided that whether a victim had "yielded willingly" to her abuser on multiple occasions was irrelevant to determining his guilt, and that attempts to suggest a victim was "unchaste" constituted slander.¹⁵⁵

In sum, the South was not a legal monolith. The wide range of legal approaches to prosecuting incest in the South partly reflects the greater geographic distance between Texas, Georgia, and Kentucky than between states in other regions. Still, of these three states, only Georgia is firmly situated in both the "old" and "deep" South, yet Georgia jurists were more conflicted about how to prosecute incest than Texas jurists, who cleaved aggressively to conservative understandings of female sexuality and girls' culpability in sexual crimes. By contrast, Kentucky was more sympathetic toward victims than jurists even in some Northern states. Contrary to crude stereotypes about poor, rural whites and inbreeding in Appalachia, Kentucky was among the few states in America that consistently recognized incest is rarely consensual and took abused girls' testimony seriously.

Northern Courts: New York, Massachusetts, and Vermont

In New York, Massachusetts, and Vermont, the crux of legal debate regarding incest hinged on the victim's relationship to her abuser. Unlike courts in Texas and Georgia, Northern courts tended to uphold father-daughter incest convictions even in the absence of physical force, and it was unheard of for daughters to be considered accomplices. This was not the case for girls

¹⁵⁴ Whittaker v. Commonwealth, 95 Ky. 632, 27 S.W. 83, 1894 Ky. LEXIS 75 (Court of Appeals of Kentucky June 14, 1894, Decided.)

¹⁵⁵ Burdue v. Commonwealth, 144 Ky. 428, 138 S.W. 296, 1911 Ky. LEXIS 624 (Court of Appeals of Kentucky June 21, 1911, Decided); Martin v. White, 188 Ky. 153, 221 S.W. 528, 1920 Ky. LEXIS 248 (Court of Appeals of Kentucky May 14, 1920, Decided.)

sexually abused by male relatives, however. Northern courts routinely considered girls abused by uncles, brothers, and other male family members accomplices to the crimes committed against them. Because Northern courts' decisions in incest cases were reasoned along blood lines, judges were almost entirely unresponsive to a victim's articulation of harm done to her. For better or for worse, questions about consent did not generally factor into Northern judges' decision-making processes. Incest was considered a crime because it represented a violation of the institution of family, not the violation of abused girls themselves.

Most historians who have studied incest have focused on father-daughter incest. Aside from being the most common type of incest, father-daughter incest also carries something of a shock-and-awe factor because fathers are endowed with a degree of social, political, and of course, familial importance that uncles, brothers, and other male relations simply do not share. Yet it was precisely male relatives' lesser status that rendered girls abused by them most vulnerable before the law. The abuse they experienced was no less world-shattering than the abuse experienced by daughters victimized by their fathers, but courts did not see it that way. We can learn something about the law's construction of paternal power by paying attention to them. Namely, judges' arbitrary distinction between fathers and male relatives—and their less sympathetic treatment of girls abused by the latter—suggests that judicial decisions in incest cases were often informed by uncritical understandings of fatherhood that did not interrogate how domination and subordination formed the very basis of “natural” patriarchal authority. Incest was only offensive when it represented a violation of a shared code of paternal power, not the violation of girls themselves.

For example, in September 1886 Minnie Dana alleged that her uncle, Foster Dana, was the father of her newborn child. She testified that he had forced her to have sex with him

multiple times, using a jackknife to secure a bedroom door and prevent her from escaping. When Minnie realized she was pregnant, she confronted her uncle near a “dugaway” not far from his home and begged him to “help her,” indicating euphemistically to the court that she had wanted an abortion. Minnie’s mother testified that she saw Minnie and her uncle at the “dugaway,” but she did not hear their conversation. Foster Dana admitted that he owned a jackknife, and he did not deny that he met Minnie at the “dugaway,” but he denied that Minnie had told him she was pregnant. Foster Dana appealed his conviction for incest on the grounds that, without testimony corroborating that his private conversation with Minnie was about her unwanted pregnancy, the trial court had erred in issuing a guilty verdict.¹⁵⁶

The Vermont Supreme Court rejected Dana’s appeal, but it did not question the trial court’s treatment of Minnie as “a voluntary accomplice in the crime charged.” In recounting Minnie’s version of the confrontation with her uncle, the appellate court referred euphemistically to Minnie’s pregnancy as “her guilt,” and stated that if her uncle talked with her about it, it was “a circumstance tending to show that he was *in some measure* responsible for it [emphasis added].”¹⁵⁷ It is difficult to imagine Minnie describing her pregnancy as “her guilt” after testifying her uncle coerced her. That Minnie’s pregnancy made her “guilty” was a judgment made by the Vermont courts alone. Even though they convicted Minnie’s abuser, they still dismissed her account of her experiences. Without even questioning her testimony, the Vermont Supreme Court simply ignored Minnie’s assertion that she never consented to her uncle’s abuse.

The issue of consent was of little importance to Northern courts. For example, a Suffolk County, Massachusetts court convicted a husband and wife for marrying “within the prohibited

¹⁵⁶ State v. Dana, 59 Vt. 614, 10 A. 727, 1887 Vt. LEXIS 162 (Supreme Court of Vermont, Washington County, May, 1887, Decided.)

¹⁵⁷ Ibid.

degrees of consanguinity.” The husband was the wife’s half-uncle, and she was his half-niece. It is impossible to assess whether their relationship was consensual or not because the Massachusetts appellate court was concerned solely with the couple’s biological relationship to one another.¹⁵⁸ In one extraordinary 1907 New York case, a man named Max Block appealed a conviction for incest with his sister by arguing that the crime he committed was actually rape.¹⁵⁹ His appeal is remarkable because the maximum penalty for rape in New York in 1907 was twenty years’ imprisonment, whereas the maximum penalty for incest was ten.¹⁶⁰ To rest his case, Block cited his sister’s testimony, in which she insisted that their relationship was not consensual. Block was effectively requesting a longer prison sentence, which makes his appeal stand out as a rare gesture of real contrition. He recognized his own actions as abusive and asked the law to hold him accountable to the standard that fit his actual crime. The New York Supreme Court was unmoved by his remorse. The appellate court admitted that “there is some evidence in the case to the effect that the complainant, the defendant’s sister, did not consent to such act [...] but the evidence is not such to justify that contention, it not being proven that the complainant was under eighteen years of age.” In other words, the appellate judges agreed with Max that his sister had good reason to feel that he raped her, but because she was over the age of consent in New York her articulation of harm done to her was deemed irrelevant, and they continued to regard her as Max’s accomplice.

Even though Northern courts were more likely to sustain convictions for incest than their Southern counterparts, that did not mean they viewed abused girls as victims. Girls abused by

¹⁵⁸ Commonwealth v. Ashley, 248 Mass. 259, 142 N.E. 788, 1924 Mass. LEXIS 895 (Supreme Judicial Court of Massachusetts, Suffolk, March 1, 1924.)

¹⁵⁹ People v. Block, 120 A.D. 364, 105 N.Y.S. 275, 1907 N.Y. App. Div. LEXIS 1178 (Supreme Court of New York, Appellate Division, First Department June 28, 1907, Decided.)

¹⁶⁰ New York (State), *Penal Law of the State of New York: Being Chapter 88 of the Laws of 1909* (New York: The Banks Law Publishing Co.), 1909: Article 102 (Incest), § 1110 and Article 180 (Rape), § 2010, pp. 186; 328.

male relatives were consistently regarded as accomplices by Northern courts, even when they testified to the contrary. While Northern courts did not press victims on the matter of their consent with a demeaning line of questioning intended to discredit them, Northern courts, like Southern courts, were complicit in abused girls' suffering. Like Southern judges, Northern judges willingly believed that men had sex with female relatives but refused to consider how it was abusive.

In "Thinking Sex," feminist theorist Gayle Rubin writes, "Contrary to popular mythology, incest statutes have little to do with protecting children from rape by close relatives."¹⁶¹ She describes incest statutes instead as a way the state polices consensual adult relationships under a rubric of "good sex" versus "bad sex," where "bad sex" is sex that society deems "abnormal, unnatural, sick, sinful, or 'way out'." She explains that this hierarchy of "good" versus "bad" sex is not animated by questions of consent versus coercion, but rather by its tendency to reinforce a system of sexual power that privileges whiteness, maleness, and heterosexuality.¹⁶² While Rubin's assessment that incest statutes have little to do with protecting children from rape by close relatives is apt, her critique is obviously not that incest statutes have historically failed to protect children from rape. We might reformulate her observation that incest statutes were not designed to protect children from rape by close relatives to say that precisely *because* incest statutes were not designed to protect children from rape by close relatives, they function as a piece of legal architecture that disguises child rape as "bad sex." By characterizing incestuous relationships as "unnatural" rather than as an extension of normative dynamics of

¹⁶¹ Gayle S. Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in Gayle S. Rubin, ed., *Deviations: The Gayle Rubin Reader* (Durham: University of North Carolina Press, 2011), 176.

¹⁶² *Ibid.*, 153.

male power and control in the domestic sphere, incest statutes are complicit in perpetuating child sexual abuse.

West Coast Courts: California, Oregon, and Washington

Of the 244 incest cases I surveyed, only three involved consenting adults. One of these cases, *Washington State v. Nakashima* (1911), stands out for its stakes in debates about the relationship between sexual and racial order, citizenship, and national belonging.¹⁶³ Masaji Nakashima and his wife, Tama Kawamura, were first cousins who wedded in Japan prior to immigrating to the United States. Sometime after they arrived in King County, Washington, they were tried and convicted of incest. Upon appeal, the Washington Supreme Court reversed their conviction, but not because Washington jurists respected that cousin marriages are common in many cultures, or because they wished to promote tolerance of the couple's cultural difference. Rather, the Washington jurists begrudgingly realized they were bound by a clause in the United States Constitution not to punish Masaji Nakashima and Tama Kawamura for incest because they had wedded lawfully in a foreign jurisdiction where Washington's statute prohibiting cousin marriages did not apply.¹⁶⁴ The appellate judges made clear that their decision to reverse the couple's conviction did not mean they condoned their relationship, emphasizing that cousin marriages were still "repulsive to a correct sense of decency."¹⁶⁵ Despite its powerlessness to affirm the couple's conviction, the Washington Supreme Court used the opportunity to ridicule Masaji Nakashima and Tama Kawamura's relationship in order to demean Japanese immigrants.

¹⁶³ *State v. Nakashima*, 62 Wash. 686, 114 P. 894, 1911 Wash. LEXIS 767 (Supreme Court of Washington, Department Two, April 5, 1911).

¹⁶⁴ Commonly known as the "full faith and credit clause," Article IV, Section 1 of the U.S. Constitution stipulates, "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." To use marriage as an example, states are constitutionally bound to respect marriages performed outside their jurisdiction as legal within their own borders, even if their own state laws would prohibit it.

¹⁶⁵ *State v. Nakashima*, *ibid.*

That the couple's alleged sexual degeneracy was perceived as synonymous with their foreignness was typical of early twentieth-century U.S. courts' anti-Asian sentiment, which culminated in the 1917 Asiatic Barred Zone Act barring immigration to the U.S. from Japan (as well as from most other Asian countries) until 1952.

Aside from *State v. Nakashima*, the other 32 incest cases tried between 1870 and 1940 in the West Coast region—comprised of California, Oregon, and Washington—dealt with girls abused by fathers and male relatives. West Coast courts, like Southern courts, had mixed approaches to prosecuting abusive incestuous relationships, but differences between states were less extreme. Furthermore, there was a marked shift in West Coast attitudes to father-daughter incest cases at the turn of the twentieth century, from treating daughters as accomplices to recognizing them as victims. Like Southern courts, the Oregon appellate court in 1890 held a daughter as her father's accomplice, despite her insistence she was forced; and the Washington appellate court in 1898 determined that a daughter "consented" because "there was no outcry or demonstration made by her."¹⁶⁶ In all subsequent father-daughter cases, however, the Washington Supreme Court rejected appeals from fathers who attempted to argue their daughters were accomplices, even if they were not physically forced, and even if they had submitted to the appellant's advances multiple times.¹⁶⁷ However, this shift in favor of daughters' testimony did not extend to girls abused by their stepfathers or other male relatives in these two states.

Like Northern appellate courts, the Washington appellate court placed a premium on blood ties over affiliative ones. For example, in *State v. Bielman* (1915), the Washington

¹⁶⁶ *State v. Jarvis*, 20 Ore. 437, 26 P. 302, 1891 Ore. LEXIS 97 (Supreme Court of Oregon, April 6, 1891, Filed); *State v. McGilvery*, 20 Wash. 240, 55 P. 115, 1898 Wash. LEXIS 514 (Supreme Court of Washington, November 26, 1898, Decided.)

¹⁶⁷ *State v. Wood*, 33 Wash. 290, 74 P. 380, 1903 Wash. LEXIS 520 (Supreme Court of Washington, December 2, 1903, Decided); *State v. Hornaday*, 67 Wash. 660, 122 P. 322, 1912 Wash. LEXIS 1228 (Supreme Court of Washington, Department One, March 27, 1912).

Supreme Court reversed a stepfather's conviction for incest because, Justice Wallace Mount explained, "there was no blood relation between [the] defendant and the victim, his stepdaughter."¹⁶⁸ Even though Mount described the stepdaughter as a "victim," the fact that she was not a blood relative of her abuser precluded the court from treating her like one. By contrast, in 1923 the Washington Supreme Court upheld a conviction for a father who appealed his sentence by arguing that because his daughter was born out of wedlock, she was therefore his illegitimate offspring, and Washington's incest statutes need not apply. Justice Warren Tollman and his colleagues disagreed, arguing that the fact of the father's blood relationship to his daughter alone was sufficient to sustain his conviction.¹⁶⁹

Justice Mount and his Washington Supreme Court colleagues in the *Bielman* case recognized that the defendant had exploited the steep power differential between himself and his stepdaughter, but because the defendant had not sired her, he had not abused his *natural* power to rule over her. Therefore his abuse failed to meet the definition of a violation of the shared code of paternal power, grounded in notions of men's divine right to rule over women and children, underpinning the definition of "family" in incest law. This notion of natural fathers' God-given power which buttresses the legal reasoning embedded in incest law, regardless of a father's practical or actual legal relationship to his children, was reinforced in both the *Bielman* case and by Justice Tollman and his colleagues in the *Williams* decision. Together, the *Bielman* and *Williams* decisions underscore Gayle Rubin's point that incest law is more about regulating "bad sex" than protecting children. Girls' vulnerability to exploitation by men other than their natural

¹⁶⁸ State v. Bielman, 86 Wash. 460, 150 P. 1194, 1915 Wash. LEXIS 1037 (Supreme Court of Washington, August 4, 1915.)

¹⁶⁹ State v. Williams, 124 Wash. 160, 213 P. 921, 1923 Wash. LEXIS 858 (Supreme Court of Washington, Department Two, March 22, 1923).

fathers creates an insoluble problem for incest law because the quiet expectation of submission and deference to power constructs the very basis of supposedly “natural” patriarchal authority.

The California Supreme Court, on the other hand, was not stumped by this paradox in incest law. Of the twenty-five incest appeals cases adjudicated by the appellate court between 1870 and 1940, beginning in 1893 and ending in 1938, twenty-four involved natural fathers and one involved a stepfather. The court upheld convictions of incest in every case. In 1926, Justice Gavin Craig—a Progressive reformer known for his original legal thinking in domestic violence and abuse cases—delivered the court opinion in *People v. Jones*, where he not only upheld a stepfather’s conviction for incest but also inserted details into the decision that powerfully rendered the victim’s experience of abuse and directed the court’s sympathy toward her. For example, he explained that the victim’s natural father had died when she was seven years old and that the defendant had taken on the responsibility of being “charged with her protection” when he married her mother three years later.¹⁷⁰ The defendant broke this promise when he began to sexually abuse his stepdaughter, “a mere child” of ten tender years, and escalated the abuse over a five-year period, “until finally [the stepdaughter’s] advancing age and wisdom prevailed upon her to rebel.” Justice Craig considered it inappropriate for the appellant’s defense to ask why the victim had not made an “outcry” when her stepfather came into her room and forced her to have sex with him one night while she was studying in her bed, because “the vast difference in the ages of the parties here concerned [suggests] the apparent domination by one over the other,” and moreover, he added, “We must judge of the defendant’s intent by his conduct and not by that of his victim.”¹⁷¹ The decision in *Jones* shows that a court did not have to struggle to reconcile a

¹⁷⁰ *People v. Jones*, 76 Cal. App. 144, 244 P. 101, 1926 Cal. App. LEXIS 412 (Court of Appeal of California, Second Appellate District, Division Two January 4, 1926, Decided).

¹⁷¹ *Ibid.*

stepfather's status as an "unnatural" relation to the victim with incest law when it understood fatherhood fundamentally as a social role, defined by its occupant's position of power relative to children for whom he was obligated to care.

The California Supreme Court also treated abused girls as victims, not accomplices, in all but one instance. That case, *People v. McCollum*, involved a father and a sixteen-year-old daughter who had been tried and convicted as his accomplice at the trial court level. A district court upheld her conviction upon appeal, which was such a startling departure from its holding on the question of the plaintiff as an accomplice that the Attorney General filed a petition with the Supreme Court for review. Just as bafflingly, the Supreme Court reaffirmed the trial and district courts' decisions. Justice William H. Waste, who was himself a Republican inclined toward liberal and progressive ideas, delivered the appellate court's unanimous opinion. He reasoned that even though the daughter was under the state's age of consent (eighteen) at the time her father imposed himself upon her, she was above the age at which children in California could be prosecuted for a crime (fourteen.)¹⁷² Because Section 26 of the California Penal Code exempted children from criminal prosecution only "in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness," and because the daughter knew that her father's conduct with her was wrong, Justice Waste and his colleagues ruled that the trial court had not erred in trying her as an accomplice.¹⁷³

The *McCollum* decision was not cited positively by the court in any of its future decisions, however, and was eventually superseded by statute. Its negative citation in a 2001 case, *People v. Tobias*, offers the only clue to the court's anomalous decision. In *People v.*

¹⁷² *People v. McCollum*, 214 Cal. 601, 7 P. 2d 301, 1932 Cal. LEXIS 496 (Supreme Court of California, January 22, 1932.)

¹⁷³ *Ibid.*

Tobias, the *McCollum* decision is cited alongside five other decisions next to the words “oral copulation” in parentheses.¹⁷⁴ Although the incestuous act was not identified in the text of the *McCollum* decision itself, *McCollum*’s citation in *Tobias* suggests that the question before Justice Waste and his colleagues was whether or not oral sex performed by a daughter for her father ought to be held to the same standard as penetrative sex, where a daughter was not usually held to be an accomplice. Because the *McCollum* decision did not mention this detail, it is impossible to speculate with any certainty about the court’s reasoning for why in their view oral sex was less abusive. Perhaps they perceived oral sex as volitional in a way that penetrative sex is not necessarily presumed to be, or maybe they imagined penetrative sex as an “ultimate” and therefore more serious sexual act, despite the nearly limitless ways for one person to abuse another sexually.

Whatever their reasoning may have been, *Tobias* overturned the *McCollum* decision and the five other (non-incestuous) oral copulation cases that had set precedents in criminal law. “The holdings in these cases were highly questionable in light of the contemporaneous holding that a girl under 18 could not give legal consent to intercourse and therefore could not be an accomplice to incest,” the court explained. “Under these cases, a 17-year-old girl who voluntarily had sexual intercourse and engaged in oral copulation with her father could have been prosecuted for the oral copulation but not the sexual intercourse. The more reasonable rule is the one proposed here: the girl cannot be prosecuted for either crime, because the law considers her to be the victim and puts the burden on the adult to avoid the sexual relationship.”¹⁷⁵ The appellate court in *Tobias* recognized that oral sex was not a diminutive form of penetrative sex, but rather

¹⁷⁴ *People v. Tobias*, 25 Cal. 4th 327, 21 P.3d 758, 106 Cal. Rptr. 2d 80, 2001 Cal. LEXIS 2607, 2001 Daily Journal DAR 4073, 2001 Cal. Daily Op. Service 3313 (Supreme Court of California April 26, 2001, Decided).

¹⁷⁵ *Ibid.*

that the act's meaning and impact derived wholly from the power dynamics between the recipient and performer. It understood that treating oral sex as if its significance was lesser than penetrative sex created a loophole in the law that abusers could exploit with almost total impunity. "The heavy social stigma associated with incest and the love, respect, and (in some cases) fear minors have of adult relatives already work to discourage minors from reporting incest," the court concluded. "If minors were also to face criminal liability, their adult sexual partners might warn them of this fact as a way of coercing their silence."¹⁷⁶

Overall, California's generally sympathetic attitudes toward incest victims, as well as Oregon and Washington's shift from treating daughters as accomplices to treating them as victims, may be partly explained by the rise of Progressive reform movements to prominence on the West Coast. Most of the elected justices in these states were Republicans, generally sympathetic to the Progressive movement, and several actively participated in Progressive politics (including Justice Craig and Justice Waste.)¹⁷⁷ In the last decades of the nineteenth century and the first decades of the twentieth, Progressive reformers advocated vigorously for increased legal protections for girls. State legislatures created statutory rape protections and rapidly revised age of consent standards. Historian Nayan Shah notes that California jurisdictions were "at the vanguard" of instituting these legal reforms, increasing the age of consent for sexual intercourse for females from the age of ten in 1872 to fourteen in 1883 and sixteen in 1897.¹⁷⁸

¹⁷⁶ Ibid.

¹⁷⁷ Tom Sitton, "Did the Ruling Class Rule at City Hall in 1920s Los Angeles?," in *Metropolis in the Making: Los Angeles in the 1920s*, eds. Tom Sitton and William Deverell (Berkeley: University of California Press, 2011), 305; Lewis Francis Byington and Oscar Lewis, eds., "Biography of Hon. William Harrison Waste," in *The History of San Francisco, California* (San Francisco: S.J. Clark Publishing Company, 1931).

¹⁷⁸ Nayan Shah, "Between 'Oriental Depravity' and 'Natural Degenerates': Spatial Borderlands and the Making of Ordinary Americans," in *American Quarterly*, Vol. 57, No. 3 (Sept 2005): 706.

The legislature finally lifted the age to eighteen in 1913, the year after women exercised suffrage in the state.¹⁷⁹

Shah argues that the new protections were underwritten by “a conventional understanding of male aggression and female vulnerability,” whereby it was understood girls “could be forced, persuaded, or duped into sexual relations with male adults.”¹⁸⁰ My analysis of the legal treatment of sexually abused girls up to this point tends to contradict Shah’s suggestion that an understanding of the role of psychological coercion (being “persuaded” or “duped”) in adult sexual relationships with children was “conventional,” and that it was in fact the age of consent campaign that sensitized the public to sexual abuse’s subtler dynamics. If an awareness of the ways in which young girls could be manipulated into giving consent had been a fairly uncontroversial cultural truism, then in the Jim Crow South, where Lynn Sacco writes “whites frantically sought to retain white male supremacy by spreading the lie that African American men were incapable of restraining their sexuality,” legislators would not have decried age of consent legislation as impinging on white males’ “human liberty.”¹⁸¹ The age of consent campaign was not universally welcomed with open arms, but it did enjoy more widespread support than the campaign for woman suffrage. At its height, the Woman’s Christian Temperance Union—which spearheaded the age of consent campaign—boasted more than 150,000 women members, greater than ten times the membership of the nation’s major suffrage organization.¹⁸²

¹⁷⁹ Ibid.

¹⁸⁰ Ibid, 706-707.

¹⁸¹ Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore: Johns Hopkins University Press, 2009), 47-48.

¹⁸² Ibid, 49.

Shah's analysis of the age of consent campaign in California draws primarily from Jane Larson's and Mary Odem's research on the Woman's Christian Temperance Union's organizing against child prostitution, a scandal that WCTU president Frances Willard regrettably described as a crisis of "white slavery."¹⁸³ Larson and Odem both criticize the WCTU's nouveau abolitionist movement for its focus on protecting white girls from sexual threats frequently depicted as racialized villains (immigrant or Black men), its complicity in the criminalization of working-class girls for "delinquent" sexuality, and its exclusion of immigrant and African American girls from its crusade for child protection. Moreover, Stephen Robertson has argued that support for age of consent and statutory rape laws could be deceptive, as it was in New York City, where working-class and immigrant parents used the legislation to pressure men who raped their daughters into marrying them, a resolution known as "reparative marriage" which was commonly thought to "make right a girl's ruin."¹⁸⁴ But to its credit, the WCTU's age of consent campaign also had another, often overlooked dimension, focused on sexual threats girls faced in the home.

Across the nation, WCTU members packed courthouses at incest trials, crowding out the men who flocked to hear the titillating details of abused girls' testimonies. In one Vermillion, South Dakota courtroom, more than two hundred WCTU women showed up to observe the proceedings of a case where a fifteen-year-old girl accused her father of incest. A *Morning World-Herald* reporter observed that this was the largest number of women he had ever seen

¹⁸³ Jane E. Larson, "'Even a Worm Will Turn at Last': Rape Reform in Late-Nineteenth-Century America," *Yale Journal of Law and the Humanities* Vol. 9, No. 1 (1997); Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920* (Chapel Hill: University of North Carolina Press, 1996).

¹⁸⁴ Stephen Robertson, *Crimes Against Children: Sexual Violence and Legal Culture in New York City, 1880-1960* (Chapel Hill: University of North Carolina Press, 2005), 95-116.

gathered in a Vermillion courtroom.¹⁸⁵ The women stayed in the courtroom all day, refusing even to take recesses for meals due to their fear that they would not be able to gain readmittance. Reassured by the calm, unswerving presence of these female reformers, according to the reporter the daughter was emboldened to deliver her testimony “in a cool and convincing manner.”¹⁸⁶ As Lynn Sacco notes, the presence of so many reform-minded women not only transformed the courtroom from a site of re-traumatization into a site of empowerment for abused girls, it also sent a strong political message to the public and to the state.¹⁸⁷ Because WCTU women were associated with the national age of consent campaign, their presence at incest trials reinforced their demand for legislative change. Sacco explains, “Unlike the ambiguous incest statutes, age-of-consent or statutory rape laws unequivocally defined sexual contacts with girls below a certain age, including one’s daughter, as a crime. With the removal of consent as a defense, the only factual issues left for trial would be a girl’s age and whether there had been sexual contact.”¹⁸⁸ All over the country, WCTU members organized to politicize incest and explode the question of consent through direct action. The movement rejoiced when the first defendant to be convicted under Michigan’s new statutory rape law was the stepfather of a victim.¹⁸⁹

In its organizing against sexual dangers faced by girls both inside and outside the home, however, the WCTU framed the social issue at stake as “female virtue.” It was not a girl’s right to bodily autonomy and self-determination per se that the WCTU sought to protect. Rather, they fought to preserve girls’ sexual honor, which was tightly bound to gendered notions of sexual propriety, especially the idea that girls and women who had sex before or outside the confines of

¹⁸⁵ “Trial of Chamberlain,” *Morning World-Herald* (Omaha), Apr. 12, 1899, orig. cit. in Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore: Johns Hopkins University Press, 2009), 49.

¹⁸⁶ *Ibid.*

¹⁸⁷ Sacco, *Unspeakable*, 49.

¹⁸⁸ *Ibid.*

¹⁸⁹ “Since Our Last Issue,” *Union Signal* (Evanston, IL), July 5, 1888, I, orig. cit. in Larson, “Even a Worm Will Turn,” 17.

marriage were either morally corrupted or corrupt. So too, did West Coast appellate courts reproduce this thinking. The *McCollum* decision, for example, reflected California courts' struggle to prosecute incestuous oral sex by the same standard it prosecuted incestuous penetrative sex, because oral sex did not neatly square with a rubric that defined incest's harm as a perversion of the socially appropriate procreative function of sex within the confines of marriage.

West Coast courts' changing interpretation and application of incest statutes at the turn of the twentieth century increased the state's protection of abused girls, but it also reconfigured the meanings of fatherhood and paternal power. Jurists, following women activists' lead, lifted the onus placed on abused girls to guard their sexual purity, but women activists and jurists alike maintained that unmarried girls should be sexually innocent. What changed were not the moral values underpinning the law so much as ideas about who should be held responsible for their fulfillment. Not only did West Coast jurists assign greater responsibility to natural fathers for their daughters' welfare, but increasingly, they assumed that a key element of paternal power was to discipline and control female sexuality. Incestuous fathers violated this mandate by prematurely developing girls' sexuality and "corrupting" it. Therefore, West Coast courts' apparent change of heart toward father-daughter incest victims must be understood as a reconfiguration and retrenchment of "natural" paternal authority, not necessarily as a step toward identifying and eradicating the power dynamics that facilitated sexual abuse.

Midwestern Courts: Illinois, Iowa, and Nebraska

Midwestern appellate courts' decisions in incest cases stand out from Southern, Northern, and West Coast appellate courts' decisions in one important way: they consistently upheld convictions of incest regardless of the victim's kin relationship to her abuser. Fathers,

stepfathers, and male relatives all found it difficult to achieve the relief they sought upon appeal. Furthermore, unlike courts in other regions where victims' testimonies were deemed too revolting to print, states like Iowa and Nebraska destigmatized victims' experiences of abuse by frequently reproducing portions of their testimony in court opinions. Iowa ignored its own incest statute's stipulation that girls of sixteen years of age or older were automatically considered accomplices to the crime. To a greater extent than courts elsewhere in the U.S., Midwestern courts recognized that incest was often abusive, and they were more likely than courts in other regions to appropriately identify and emphasize harms experienced by girls.

In 1885, nineteen-year-old Cornelia Davis (née Lawrence) alleged that her father, Peter Lawrence, used psychological coercion to sexually abuse her on a regular basis between the ages of sixteen and eighteen. She testified to the trial court:

Between April 1st, 1882 and April 1st, 1884, my father did something improper to me—the same as to his wife. During that period my father had sexual intercourse with me—sometimes two or three times a week and sometimes not for a month or two, and this continued in that way throughout the period between the first day of April, 1882, and the first day of April, 1884, at his own house in Platte County, Nebraska. This sexual intercourse took place sometimes one time of day and sometimes another, sometimes on the bed and sometimes on the floor. The way this sexual intercourse came about he told me I should do it, and he should do as he had a mind to do with me. He said it was nobody's business but his own. He said that other men did the same, but their girls didn't tell of it and that I shouldn't. He would swear at me and said I shouldn't tell of it.¹⁹⁰

According to Cornelia, her father did not use physical force. Instead, he made the abuse seem normal by telling her that “other men did the same, but their girls didn't tell.” For the very reason that he was her father, he demanded Cornelia's obedience, telling her that “he should do as he had a mind to do with [her].” *I'm your father, so you should do what I tell you to do*: it was a common refrain, echoed in abused girls' testimonies throughout the seven decades under study.

¹⁹⁰ State v. Lawrence, 19 Neb. 307, 27 N.W. 126, 1886 Neb. LEXIS 161 (Supreme Court of Nebraska, January 1886, Filed).

It reflects a culturally entrenched sense of ownership, entitlement, and superiority so strong it distorted men's sense of right and wrong.

Lundy Bancroft, a counselor with more than thirty years' experience working with men who have abused their female partners, writes that the first thing he does with abusers is to ask them, "Why *didn't* you do that?" Why *didn't* you kick her after you knocked her down? Why *didn't* you slap her after you called her a bitch? The client can *always* give him a reason. "Jesus, I wouldn't do *that*," they say. "I would never do something like that to her."¹⁹¹ Bancroft emphasizes that his client's responses prove that an abuser almost never does anything that he himself considers morally unacceptable. An abuser's core problem is not that he "loses control," but that he has a destructive value system. The unfortunate part is that his value system is the norm. For example, most people can probably remember hearing some variation of *I'm your father, so you must do as I say* from their own upbringing. The refrain is so familiar we can recite it from memory. It stems from the same sense of ownership, entitlement, and superiority as that of the speaker who carries it to the extreme. Abuse only varies in degree, never in essence. As Bancroft puts it, "an abuser can be thought of not as a man who is a 'deviant,' but rather as one who learned his society's lessons *too* well."¹⁹²

We can see these dynamics in Peter Lawrence's appeal of his conviction and in the appellate court's response. The precise statute under which Lawrence was convicted, Section 204 of the Nebraska Penal Code, read: "If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years." The problem, Lawrence contended, was that his behavior was

¹⁹¹ Lundy Bancroft, *Why Does He Do That? Inside the Minds of Angry and Controlling Men* (New York: Penguin Group, Inc., 2002), 34.

¹⁹² *Ibid*, 330.

not “rude.” He argued that the definition of “rudely” within the context of the statute must mean “coarsely, uncivilly, violently.”¹⁹³ He had not used violence to force Cornelia to submit to him. Why *didn't* he do that? *That* would be unthinkable. *That* would cross the line.

The Nebraska Supreme Court rejected his appeal. Physical violence was not necessary to constitute the crime, Justice Manoah Reese averred, because “the exercise of parental authority with which [the appellant] is *clothed by law and social life* [...] compels [his daughter] to submit to his amorous embraces, and thus [he] prostitutes her life to the satisfaction of his beastly desires [emphasis added].”¹⁹⁴ His colleagues concurred. The Nebraska appellate court recognized that paternal power was so enshrined in law and culture that a father need not resort to violence to exact obedience from his children. A girl’s hypothetical capacity to resist meant little within the context of a social and political order where her father exercised near total control over her world.

The Illinois Supreme Court similarly recognized coercion as an inherent feature of paternal power when, in 1913, a man named Irvin Turner argued that the trial court erred in failing to convict his daughter Grace as an accomplice to incest because she had testified upon cross-examination that “[she] did not enjoy [sex with him] at first, but afterwards [she] did.”¹⁹⁵ Turner claimed that the fact Grace confessed she found sex with him pleasurable made her complicit in the crime. It is not uncommon for sexually abused girls to confuse abuse for care and affection. As Linda Gordon notes, “One of the most complicated, and painful, aspects of incestuous sex—and all child sexual abuse, for that matter—is that it cannot be said to be motivated only by hostility or to be experienced simply as abuse. Understanding incest requires

¹⁹³ State v. Lawrence, *ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ People v. Turner, 260 Ill. 84, 102 N.E. 1036, 1913 Ill. LEXIS 1863 (Supreme Court of Illinois October 28, 1913.)

accepting ambiguity.”¹⁹⁶ The Illinois Supreme Court grasped that ambiguity. Whatever mixed feelings Grace might have had during the years her father raped her between the ages of thirteen and seventeen, she ultimately enlisted the help of an aunt in Decatur to help her and her younger sister Tona escape, after which the aunt notified authorities and had Turner arrested. Justice Cartwright dismissed Turner’s appeal. “Whatever the rule may be as between other relatives, a daughter is not an accomplice of her father,” he asserted. “The statute was made for her protection.”¹⁹⁷

Why did Justice Cartwright single out fathers for reproach? What made father-daughter incest an exception to “whatever the rule may be as between other relatives?” Lundy Bancroft describes the architecture of an abuser like a tree. The roots are ownership, the trunk is entitlement, and the branches are control. For an abuser to change, he must cut down the tree.¹⁹⁸ But when courts see the task before them as negotiating the line between a socially acceptable amount of male ownership, entitlement, and control and an *excessive* amount of the same, they are not cutting down the tree. They are trimming its branches. A trim every now and then helps the tree to grow. When courts use one set of rules for abusers for whom male ownership, entitlement, and control are deemed their *natural rights* (natural fathers) and another set of rules for whom these sensibilities are not, in the eyes of the law, their God-given rights to claim (stepfathers and male relatives), they are giving the trees the illusion of being a natural part of the landscape, when in fact the trees are part of a cultivated grove that is now running wild. Jurists are like farmers who descend upon the grove with trimmers. They quickly realize that the

¹⁹⁶ Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (Chicago: University of Illinois Press, 1988), 209.

¹⁹⁷ *People v. Turner*, 260 Ill. 84, 102 N.E. 1036, 1913 Ill. LEXIS 1863 (Supreme Court of Illinois October 28, 1913.)

¹⁹⁸ Lundy Bancroft, *Why Does He Do That? Inside the Minds of Angry and Controlling Men* (New York: Penguin Group, Inc., 2002), 75.

branches are everywhere; there are too many to cut. Maybe what the orchard needs is to be burned, but the farmers lack the equipment for that. So too did Justices Reese and Cartwright, despite their deep ties to the child protection movement, use rhetoric that unintentionally recreated the problems they were trying to solve.¹⁹⁹

Yet despite the conservative ideas about natural patriarchal authority that Midwestern appellate courts reproduced, their actual application of the law was a different story. Despite Justice Cartwright's rhetorical distinction between the rules governing father-daughter incest and incest between relatives, the Illinois appellate court ultimately also protected girls abused by male relatives, even if the law did not presume their innocence. For example, when a man named William David alleged that an Illinois trial court erred by failing to regard as an accomplice his fourteen-year-old niece, Belle Price, who alleged her uncle had sex with her three times while she was in his care, a summarized version of Belle's testimony printed in the appellate court opinion reflected a vigorous cross-examination by the defense at the trial court:

She does not remember that he hurt her or that she made any outcry; there were no bloodstains on her clothing or person when she left the barn; she said nothing to anyone about this and continued in school the same as usual; [and] she does not remember offering any resistance or of trying to prevent him from accomplishing his purpose.²⁰⁰

Remarkably, the Illinois Supreme Court still affirmed David's conviction and refused to consider Belle an accomplice, despite the fact she testified she had not struggled against her uncle's advances. One might assume this meant the appellate court understood "consent" as mutual

¹⁹⁹ Justice Reese (NE) was a Progressive Republic justice elected to judgeship with the support of the state Anti-Saloon League over a Democrat opponent, G. L. Loomis, who was supported by the opposing saloon interests. The Woman's Christian Temperance Union, which had political ideals compatible with those of the Anti-Saloon League, worked with the Anti-Saloon League to bolster his campaign. Justice Cartwright (IL) was an active supporter of the Republican Party, even though he never sought office. He was heavily sympathetic to the child protection movement and progressive juvenile justice reforms and wrote the monumental opinion in *Witter v. County Commissioners* (1912), which granted circuit court judges oversight of the juvenile probation department. His opinion in *Witter* is considered one of the founding documents in the history of the juvenile court movement. See Robert E. Wegner, "The Anti-Saloon League in Nebraska Politics, 1898-1910," *Nebraska History* Vol. 52 (1971), 277; David Spinoza Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004), 98-99.

²⁰⁰ *David v. People*, 204 Ill. 479, 68 N.E. 540, 1903 Ill. LEXIS 2574 (Supreme Court of Illinois October 26, 1903.)

willingness and desire, unlike courts in other states that defined “consent” as acquiescence, even under extreme duress. Puzzlingly, that was not the case. In fact, the Illinois Supreme Court’s reasoning seemed to contradict its ruling:

The things which the law is intended to punish are the purpose and desire to have, and the act of having, sexual intercourse with another who is related to the first as specified in the statute. The mind of the male is equally criminal and his act equally deplorable, unnatural and detestable whether the female consents or not. The fact that she consents adds nothing to his moral and legal turpitude. It is his intent and his act that the law punishes him for. It was not intended to punish him because she consented to the fornication, but because he desired and participated therein. Nor is the persuasion or enticement of the female by the male an element of the crime, because she is equally guilty with him *if she consents, however reluctantly and no matter under what persuasion or inducement*, to the fornication, and his legal guilt would not be less if she should entice and persuade him to join her in the commission of this crime [emphasis added].²⁰¹

Notably, the Illinois appellate court did not express a radically different understanding of consent than jurists in states more likely to regard girls abused by male relatives as accomplices, such as Oregon, Washington, New York, Massachusetts, or Vermont. In theory, a girl could consent, “however reluctantly and no matter under what persuasion or inducement,” and the Illinois court would regard her as “equally guilty with him.” In practice, however, Belle’s case suggests it did not regard girls as comparably culpable.

The Iowa Supreme Court also refused to view girls as accomplices, even when they were above the state’s age of consent. Henrietta Kurtz was sixteen years old when she confided in her mother that her father, William Kurtz, had for the past year forced her to have sex with him when Mrs. Kurtz went grocery shopping or to visit friends, and now she was pregnant. When Mrs. Kurtz confronted her husband, he fell silent, then replied, “Don’t set me crazy.” The next morning, Mr. Kurtz tasted something strange in his coffee and felt sick afterward. Believing his wife had poisoned him, he got up from the table and instructed his son to bring him his good suit and drive him to the train station. When his son asked him where he was going, Mr. Kurtz explained he was taking an impromptu trip to New York to visit a brother he had not seen in

²⁰¹ Ibid.

twenty-two years. When Mr. Kurtz finally returned home three weeks later, Mrs. Kurtz had him promptly arrested. Despite his standing in the community as a man of good reputation and moral character, as well as his service as a church Sunday school superintendent for six years, the Iowa Supreme Court found Mr. Kurtz's behavior "utterly inconsistent with innocence."²⁰² They rebuffed his charge that the trial court erred by not regarding Henrietta as an accomplice, as well as his (conflicting) insistence that he was never intimate with Henrietta, that her child was not his, and that the allegations against him were a conspiracy orchestrated by his wife, who hated him. A cornered man accustomed to having his way, Mr. Kurtz was determined to win his freedom from prison, and if he could not have it, then to punish his daughter for putting him there. The Iowa appellate court saw through his story.

Henrietta, Belle, Grace, and Cornelia did not physically resist their abusers. Midwestern appellate courts nonetheless sustained their abusers' convictions and refused to consider the girls accomplices, even if, like Belle, her abuser was not her father. There seemed to be a greater *applied* understanding of incest as abuse in Nebraska, Illinois, and Iowa than in courts elsewhere in the country, even if jurists' ideas about the relationship between incest and abuse were not exactly innovative. Remarkably, Midwestern courts also tended to enforce maximum penalties for incest convictions—up to twenty-five years' imprisonment—even in the absence of force. By contrast, in Texas—the state most reluctant to sustain incest convictions—courts rarely sentenced men to more than three to seven years in prison, with penalties of seven years' imprisonment reserved for the most violent offenders.²⁰³ One might expect just the opposite, that

²⁰² State v. Kurtz, 183 Iowa 480, 165 N.W. 355, 1918 Iowa Sup. LEXIS 10 (Supreme Court of Iowa, Des Moines April 1918, Decided).

²⁰³ Illinois' maximum penalty for father-daughter incest was 20 years; Kentucky's was 21. In Nebraska, penalties ranged from two to 20 years. In Georgia and Oregon, the maximum was three years; in Washington, penalties ranged from one to ten years. A list of sentencing laws pertaining to incest can be found in Appendix B.

courts in states with more extreme sentencing laws would be more reluctant to convict abusers than courts in states with more relaxed penalties. Indeed, a closer look at Iowa and Nebraska's sentencing laws and practices reveals a more complicated story.

Of all the states under study, Iowa had the greatest maximum penalty for incest: twenty-five years. However, the Iowa Board of Parole reported in 1913 that the average term served for incest was six years and three months, which more closely resembles penalties imposed in other states.²⁰⁴ In Nebraska, the maximum penalty for incest was twenty years. But in 1922, Nebraska's legislature passed a law that permitted men convicted of incest to apply for a commutation of their sentences if they consented to surgical castration.²⁰⁵ Nebraska's state penitentiary did not report average time served during the decades under study, so the extent to which sterilizations generally reduced men's sentences is unknown. Still, the fact that a Nebraska man convicted of incest could trade time served for sterilization is telling. Sterilizing an abuser could only prevent him from reproducing, not from raping again. What, then, was the logic behind commuting sentences for sexual abusers who had reproductive surgery?

As we know from the California Supreme Court *McCullum* decision, courts struggled to come to a consensus when they were forced to grapple with incestuous acts that were not neatly congruent with an understanding of incest's harm as a perversion of the socially appropriate procreative function of sex within the confines of marriage. Sterilization sprung from this same logic. Children borne of incestuous relationships were believed to be predisposed to criminality and to harbor a dangerous lack of respect for moral and political order, including family values. In 1911, the Race Betterment Foundation—a eugenics lobbying organization that promoted

²⁰⁴ Iowa Board of Parole, *Legislative Documents Submitted to the Thirty-Fifth General Assembly of the State of Iowa*, Des Moines (1913), 554.

²⁰⁵ Nebraska, *Laws Passed by the Legislature of the State of Nebraska*, Lincoln (1929), 565.

research, policies, and legislation designed to “improve the race” by encouraging “proper breeding”—was founded in Battle Creek, Michigan through the benefaction of John H. Kellogg with money from his Kellogg cereal fortune.²⁰⁶ The early twentieth century U.S. eugenics movement sought to reform the genetic composition of the United States through sterilization and other restrictive reproductive measures. In 1914, the Race Betterment Foundation announced that a recent study by renowned eugenicists Charles Davenport and David Weeks found that incest was “rife” in so-called “hovel types”—impoverished families that lived in squalor. The Race Betterment Foundation endorsed sterilization as a solution:

The accompanying pedigree of this type shows a condition wherein the sterilization of both the male and the female would have been desirable, for, with an equal lack of sex control in both of them, it is likely that, if the unions specified in the pedigree had not been made, both male and female would have found consorts elsewhere and would thus have perpetuated their unworthy stock.²⁰⁷

The Race Betterment Foundation attributed incest to poverty, and poverty to poor breeding. Court records told a different story, one where abuse could happen in any family, regardless of its economic status. Moreover, the Race Betterment Foundation did not understand that incest was rarely consensual and more often than not predicated on paternal power and control. Rather, it characterized incest as “an equal lack of sex control” between men and women of “unworthy stock.” While a direct link between the 1914 Race Betterment Foundation report and the Nebraska state legislature’s decision to sterilize inmates convicted of incest cannot be established, given the Race Betterment Foundation’s role in influencing eugenic policy set by the U.S. Supreme Court in cases such as *Buck v. Bell* (1927) and *Skinner v. Oklahoma* (1942), it

²⁰⁶ Race Betterment Foundation, *Proceedings of the First National Conference on Race Betterment* (Battle Creek, Michigan), 1914: 2.

²⁰⁷ *Ibid.*, 485-486.

seems probable that Nebraska state legislators were influenced indirectly by its recommendations.²⁰⁸

Of course, appellate jurists did not make laws; they only interpreted and applied them. There is no evidence that Nebraska jurists were aware of their state penitentiary's sterilization policy, or that it informed their sentencing decisions in incest cases. It is worth noting that jurists did not discuss appellants or victims in terms of their genetic (un)desirability in any of the twelve states under study. Still, the discrepancy between Nebraska lawmakers (elected politicians) and law-interpreters (jurists) points to a complex interplay between law, politics, and society that impacted victims and informed their understandings of their right to freedom from abuse. Discursive contradictions and elisions within the law, as well as between the law and other institutions, like medicine, psychiatry, and social work, no doubt sent conflicting messages to abused girls about their worth and how to make sense of the harm they survived.

Conclusion: Who's the Real Victim?

French philosopher Jean Baudrillard once wrote, "The denunciation of scandal always pays homage to the law."²⁰⁹ Where incest is the scandal, family *is* the law. Describing a crime that is, ninety-nine percent of the time, actually rape as "incest" decenters abused girls' experiences of violation and instead frames the injustice at stake as a transgression against the social and political institution of the family. The family co-opts the abused girl's status as the injured party and becomes the object of moral, legal, and social restitution. Precisely because incest threatens to expose patriarchal power as something that is not *de facto* morally right, incest

²⁰⁸ Rachel Gur-Arie, "American Eugenics Society (1926-1972)," *Embryo Project Encyclopedia* (Nov. 22, 2014). ISSN: 1940-5030. <http://embryo.asu.edu/handle/10776/8241>.

²⁰⁹ Jean Baudrillard, "Simulacra and Simulations," in *Jean Baudrillard, Selected Writings*, ed. Mark Poster (Stanford: Stanford University Press, 1988), 166-184.

cases represent an electrified arena of U.S. law in which the meaning and significance of the family, and especially the rightful place of patriarchal power within it, is intensely contested.

To this point, legal scholar Liam McHugh-Russell has argued that law does not merely reflect the structure of social relations; it also helps to constitute and materialize those relations. In his view, the law—as “an institutionalized, rationalized form of state power”—plays a role in giving categories and concepts like “father,” “family,” and “wife” social substance, because “[it] is part of the fabric by which [those] relations are understood, circulated, and maintained.”²¹⁰ In other words, the law does not simply police and discipline the “natural” family unit. It also helps define it, imbue it with meaning, and give it power. With respect to incest, the law is not just a repressive apparatus that punishes men who abuse their power within the family. It also *constitutes* male power and authority in the family and *materializes* the heteropatriarchal family as a fundamental political unit.

Judges across the U.S. used incest to enshrine men’s right to violence in law, even as they disagreed about the limits and legitimate uses of patriarchal power. Texas jurists did not disbelieve fathers copulated with daughters, but blamed daughters for failing to protect themselves from victimization. Northern and West Coast courts condemned father-daughter incest as abusive, but regarded girls abused by male relatives as accomplices despite girls’ insistence they had not consented. Northern and West Coast courts’ differential treatment of girls abused by male relatives exposed their assumption that incestuous fathers abused the “natural” paternal that was their God-given right—they did not see father-daughter incest as a symptom of an unequal patriarchal family structure which fundamentally endangered girls and rendered them vulnerable to abuse. Even Midwestern courts, despite their greater willingness to understand the

²¹⁰ Liam McHugh-Russell, “Getting the Constitutive Power of Law Wrong,” *Legal Form*, March 31, 2018.

role of psychological coercion in sexual abuse cases and to regard girls abused by male relatives as victims, maintained a legal distinction between rape and incest that Nebraska legislators mobilized easily to misdiagnose the causes of incest as poverty and undesirable genetic traits, not male power and control in the domestic sphere.

Jurists' treatment of incest as a "family crime" fundamentally diverted their attention away from victims' understandings of harms done to them and caused them to focus instead on whether a patriarch had exceeded the appropriate limits of his power within the family by sexually abusing a girl in his care. Their interpretations of incest law did not simply discipline the "natural" family unit; they actively shaped its membership and helped determine the parameters of male members' power and control over female members' sexuality. Incest was criminal because it represented the violation of a shared patriarchal order underpinning the justification of men's power in civic life, not the violation of girls themselves. Abused girls were the contested territory upon which male power and control in the domestic sphere, and by extension the public realm, was continually challenged, mapped, and ultimately reinscribed. Sadly, that girls themselves were mistreated was hardly cause for alarm.

Chapter 3: “Ru”

In 1915, a seventeen-year-old identified only by the first two letters of her last name, “Ru,” petitioned the Chicago Municipal Court for protection from her sexually abusive father. The court summarized her case in its annual report, citing it as a “typical” example of a case brought before the Court of Domestic Relations, “worthy of careful study” because of its “important implications” for similar cases. For two years, “Ru” kept her father’s rape and abuse of her secret because her father warned her “he would be sent up [to prison] for twenty years and she would be sent to a reform school” if she told anyone. She finally broke her silence when her father brought a teenage boy to the house for her to have sex with because he “needed the money.” What happened that day is not clear from the court’s report, but “Ru” was so disturbed by the experience that she reported her father’s abuse to authorities the next morning. “Ru’s” father was convicted of incest and sentenced to twenty years’ imprisonment, as he expected. His prediction that “Ru” would be sent to a reformatory, however, was less prescient. She was sent instead to the Lincoln State School and Colony, Illinois’s facility for “feebleminded” children. The court claimed this placement was in “Ru’s” best interest based on the results of her intelligence test by its auxiliary Psychopathic Laboratory, a clinic established in 1914 to provide guidance regarding the institutional placement of individuals above the age of sixteen. The Laboratory determined the placement of abused youth like “Ru” on the basis of considerations

not permitted into evidence at trial, including their intelligence, personality, family history, and sexual experiences.²¹¹

The Psychopathic Laboratory classified “Ru” as a “high grade moron,” a term denoting mild intellectual disability. Never mind that “Ru’s” score was higher than that of Chicago’s mayor, whom the *Chicago Tribune* ridiculed as a “moron” later that same year after the Laboratory’s associate director, Mary Campbell, administered tests to city officials in December 1915 to prove they were nearly impossible to pass.²¹² Though Campbell’s scheme to discredit the tests worked—the American Psychological Association convened an emergency meeting to revise the Laboratory’s testing methods in light of the mayor’s embarrassing test results—“Ru” was not spared. Illinois legislators had passed a eugenic segregation law earlier that year permitting the involuntary (and theoretically permanent) institutionalization of the “feeble-minded.”²¹³ Lincoln, once among the world’s foremost academic institutions for the Deaf, became a warehouse for Illinois’s “feeble-minded” children and youth almost overnight. Its facilities became so crowded and disease so rampant that 10 percent of residents died each year.²¹⁴ Conditions improved negligibly over time. In 1941, the director of Illinois’s Department of Public Welfare described Lincoln as a “concentration camp complex” and urged the rescue of its children.²¹⁵ Lincoln’s facilities nonetheless remained at illegal capacity levels well into the

²¹¹ Chicago, Illinois, Municipal Court: Court of Domestic Relations, *Tenth and Eleventh Annual Reports of the Municipal Court of Chicago* (December 6, 1915 to December 2, 1917): 367, 381-82; Harry Olson, “The Psychopathic Laboratory of the Municipal Court of Chicago,” *Central Law Journal* 92, no. 6 (1921): 102. Due to “Ru’s” anonymity in the original source, it was not possible to trace her story after she was sent to Lincoln. The Court of Domestic Relations only made annual reports for three years, between 1914 and 1917. Within them, “Ru’s” is the only incest case described in detail.

²¹² “Who’s Loony? Why, Every One, Even the Mayor—Psychopathic Test Shows City Officials Have Minds of Ten Year Olds—Dry Leader About Eight,” *Chicago Tribune*, December 29, 1915.

²¹³ Ingrid G. Farreras, “Clara Harrison Town and the Origins of the First Institutional Commitment Law for the ‘Feeble-minded’: Psychologists as Expert Diagnosticians,” *History of Psychology* 17, no. 4 (2014): 271-81.

²¹⁴ *Biennial Reports of the Lincoln State School and Colony*, Illinois Asylum for Feeble-minded Children (Springfield: D.W. Lusk, State Printer and Binder), 1902-1921.

²¹⁵ Rodney N. Brandon, “State Welfare Conference Delegates Greeted as 46th Annual Session is Convened,” *The Welfare Bulletin* 32, no. 12 (Springfield: December 1941): 14.

1960s. After decades of investigations into the neglect and abuse of patients, Lincoln eventually closed on August 31, 2002.²¹⁶

“Ru’s” predicament was not unique. Sociologist Margueritte Elowson estimated in 1930 that 70 percent of incest victims in Illinois were institutionalized at either the state’s reformatory for girls or at Lincoln, most commonly “for their protection.”²¹⁷ I argue that incest victims like “Ru,” through the institutionalization process, became the ground upon which the patriarchal family ideal was contested, mapped, and ultimately reinscribed in early twentieth-century Illinois. I focus on Illinois because even though Illinois’s criminal justice system viewed father-daughter incest as a crime analogous to rape—which, as I showed in Chapter 2, was a relatively novel idea at the time—the institutions Illinois used to protect incest victims nonetheless viewed abused girls as morally and mentally deficient. Incest victims represented one in three “sex delinquents” at the state’s reformatory for girls and an untold number of children at Lincoln. Because incest victims were not recognized or discussed as a distinct group at Lincoln, however, I necessarily focus on the process by which decisions about incest victims’ institutional placement were made rather than their confinement at Lincoln specifically. I examine the logic by which Chicago’s municipal court differentiated “redeemable” incest victims from “irredeemable” ones, as well as the assumptions about victims’ sin and culpability underlying that logic.

To understand why incest victims were painted as “feeble-minded” and “sex delinquents,” I turn to disability studies scholar Nirmala Erevelles’s theory of the co-construction of deviance and disability and expand on Michael Rembis’s analysis of how inmates at Illinois’s reformatory

²¹⁶ Darold Leigh Henson, “Lincoln Developmental Center,” <http://findinglincolnillinois.com/lssandc.html>.

²¹⁷ Margueritte Elowson, “Some Aspects of the Cook County Juvenile Court in Relation to the Readjustment of the Delinquent Girl” (master’s thesis, University of Chicago, 1930), 47, 53.

for girls were pathologized by the school's doctors, psychologists, administrators, and staff.²¹⁸ Erevelles contends that the process of criminalization is co-constituted with the construction of disability. She argues that criminalization produces disability not only in a material sense—by subjecting criminalized people to physical and emotional trauma that impacts their ability to function “normally”—but also in a conceptual sense, by mobilizing disability as a social and political category that justifies incarceration. Her framework helps us understand how incest victims came to be understood as both mentally and morally defective by the adults responsible for their protection, as well as to appreciate the impact this pathologization had on abused girls' lives. I show that the municipal court, reformatory, and asylum stood united by a shared logic, one that understood incest victims not only as a vulnerable population that needed protection but also as a group that posed sexual dangers to “normal” Americans. Gender, race, class, and disability status were simultaneously constituted and deployed by this logic, which located deviance not only in the act of incest itself but also in the minds and bodies of incest victims.

Surviving Incest in the Progressive Era

In the late nineteenth and early twentieth centuries, father-daughter incest came to be viewed as a problem particular to immigrant and African American families as physicians and psychologists denied incest's occurrence in middle- and upper-class white homes. As one medical examiner for the New York Society for the Prevention of Cruelty to Children claimed before an audience of white, middle-class professionals in 1907, immigrants were more likely to commit incest because “childhood is not sacred [for them] as with us,” and belief in the curative

²¹⁸ Nirmala Erevelles, “Crippin’ Jim Crow: Disability, Dis-Location, and the School to Prison Pipeline,” in *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*, ed. Liat Ben-Moshe et al. (New York: Palgrave Macmillan, 2014), 81-99; Michael Rembis, *Defining Deviance: Sex, Science, and Delinquent Girls, 1890-1960* (Urbana and Chicago: University of Illinois Press, 2011).

power of intercourse with a virgin commonly motivated incest “among certain classes, especially ignorant Italians, Chinese, and Negroes.”²¹⁹ According to historian Lynn Sacco, psychologists discouraged judges from believing abused white girls’ testimonies while physicians placed the blame for sexual infections transmitted via father-daughter rape on unclean public toilet seats and poor personal hygiene. Sacco argues that medical and therapeutic professionals suppressed the scandal of incest along classed and racialized lines in order to preserve the idealized white family as the exemplar of “civilization” over and against the claims of Black and immigrant families to equal status.²²⁰

Notwithstanding such racist assumptions about sexual impropriety and child maltreatment, Linda Gordon argues that social workers for societies for the prevention of cruelty to children—an early forerunner to child protective services—interpreted incest in powerfully feminist terms. Though their reports exhibited discomfort using exact language to describe incestuous abuse, women reformers did not hesitate to identify male brutality and a lack of sexual control as incest’s causes. Like Sacco, however, Gordon is careful to note that upper-class child savers could safely offer such critiques of male power only because they believed child battering and incest to occur exclusively among the Black and immigrant poor, whom they perceived as “inferior [racial] stock.”²²¹

In focusing on the institutional commitment process in Chicago, I reinforce and extend Sacco’s argument by showing how the ideological labor invested in incest’s denial among genteel white families shaped the experiences of incest victims from the poor and working

²¹⁹ W. Travis Gibb, “Indecent Assault Upon Children,” in *A System of Legal Medicine*, ed. Allan McLane Hamilton and Lawrence Godkin (New York: E.B. Treat, 1894), 649.

²²⁰ Lynn Sacco, *Unspeakeable: Father-Daughter Incest in American History* (Baltimore: Johns Hopkins University Press, 2009).

²²¹ Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (Champaign, University of Illinois Press, 1988), 204-249; Linda Gordon, “The Politics of Child Sexual Abuse: Notes from American History,” *Feminist Review* 28 (Spring 1988): 56.

classes. And while I believe Gordon is justified in her description of social workers as feminists “in their upper-class way,” I stress that the goal of women reformers was not to restore incest victims’ sexual autonomy but rather their “honor.” This project ultimately reinforced the very patriarchal authority that social workers critiqued, necessarily circumscribing the extent to which we can read their responses to incest as feminist. It also positioned incest victims both as deserving recipients of state protection and as children “at risk,” requiring confinement, observation, and study to prevent sexually “dishonorable” behavior.

Incest victims’ quasi-carceral status reflected new thinking about incest as a systemic social problem as opposed to a private offense. Legal historian Michael Willrich has analyzed the establishment of the Chicago Municipal Court in 1906 as the first modern, metropolitan court system in the United States, unique among courts of its time for its embrace of social reform. In its commitment to “socializing justice,” Willrich locates a paradox in the municipal court system: its belief that crime was caused at least in part by social factors paved the way for greater incursions against individual liberty by the state.²²² I examine that paradox with respect to the crime of incest. And, while scholars of juvenile reform in Chicago have sometimes noted that incest victims were among those incarcerated at Illinois’s reformatory for delinquent girls, no historians to date have explicitly acknowledged the extent to which incest victims were represented among the reformatory’s population or attempted to explain why they were there.²²³ By taking up that task, I contribute an important perspective to scholarship on juvenile delinquency and reform.

²²² Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003).

²²³ See Tera Agyepong, *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago’s Juvenile Justice System, 1899-1945* (Chapel Hill: University of North Carolina Press, 2018); Anne Meis Knupfer, *Reform and Resistance: Gender, Delinquency, and America’s First Juvenile Court* (New York: Routledge, 2001); Rembis, *Defining Deviance*.

My work involved interpreting inadequate records and reading against the grain of sources that vacillate between sympathy, contempt, and indifference toward their subjects. As Aisha Finch writes, we must cultivate ways of reading the archive that “consider silences as texts unto themselves, often with gendered implications,” paying attention to small details—paraphrased utterances, fleeting observations of girls’ frustration—that signify opportunities to make incest victims’ inner worlds more legible.²²⁴ While I offer interpretations grounded in empirical evidence, like Tiya Miles I also “accommodate supposition and imagination” where the archive limits or obscures historical understanding.²²⁵ In addition to attempting to render incest victims’ experiences more fully than the archive sometimes permits, I occasionally pause to imagine what abused girls wanted or needed from the adults they encountered. I ask what justice might have looked like for them, while simultaneously recognizing the impossibility of righting historical wrongs. With this approach it is not my intention to romanticize archives as places that promise us what gender theorist Judith Butler calls “resources for resistance”—but rather as spaces where we might find, as American Studies scholar Lisa Lowe suggests, “eloquent descriptions” of how interconnected processes of racializing and gendering cohere to prohibit alternatives to violence.²²⁶ That the archive may also provide “resources for resistance,” I remain optimistic.

²²⁴ Aisha Finch, *Rethinking Slave Rebellion in Cuba: La Escalera and the Insurgencias of 1841-1844* (Chapel Hill: University of North Carolina Press, 2015), 12.

²²⁵ Tiya Miles, *All That She Carried: The Journey of Ashley’s Sack, A Black Family Keepsake* (New York: Random House, 2021), 17.

²²⁶ Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham: Duke University Press, 1996), x; Judith Butler, *Frames of War: When is Life Grievable?* (London: Verso, 2010), xiii.

The Limits of Progressive Reform

Illinois was one of only three states in the country where father-daughter incest was specified as an aggravated offense, analogous to rape, under the state's incest statute.²²⁷ In other states, as I demonstrated in Chapter 2, victims were frequently tried as accomplices to the crime of incest, or their cases were tried under statutory rape laws that required victims to prove their chastity and procure witnesses able to testify on their behalf. Illinois was exceptional. Of the sixteen appeals filed for incest convictions between 1875 and 1930, none were overturned by the Illinois Supreme Court. Because superior courts set precedents for lower courts to follow, reading the Illinois Supreme Court's jurisprudence as broadly representative of incest prosecutions in Illinois during the period under study is not unreasonable. "Ru's" father, for example, was not the first abuser convicted even though his daughter was older than sixteen, Illinois's age of consent. Illinois judges also sustained convictions when the abuser was not a biological parent and, most impressively, even when the victim confessed she sometimes "liked" the abuse—as we saw in Grace Turner's case.²²⁸ While we cannot be certain that precedents set by the appellate court were always followed by lower courts, the fact that "Ru's" father accurately predicted he would be sentenced to twenty years' imprisonment if his crimes were discovered suggests the law was enforced well enough that abusers feared getting caught. Illinois therefore appears to have been a "best-case scenario" state for girls who tried to escape abuse through the law: if they asked for protection, they usually received it.

²²⁷ "Incest—Father With Daughter," states, "If a father shall rudely and licentiously cohabit with his own daughter, the father shall be imprisoned in the penitentiary for a term not exceeding twenty years." Harvey B. Hurd, *The Revised Statutes of the State of Illinois, 1895: Comprising the "Revised Statutes of 1874," and All Amendments Thereto, Together with the General Acts of 1875 [...] [to] 1895* (Chicago: Chicago Legal News Company, 1895), § 156.

²²⁸ *David v. People*, 204 Ill. 479, 68 N.E. 540, 1903 Ill. LEXIS 2574 (Supreme Court of Illinois, October 26, 1903), involving an uncle who abused his niece; *People v. Turner*, 260 Ill. 84, 102 N.E. 1036, 1913 Ill. LEXIS 1863 (Supreme Court of Illinois October 28, 1913.)

Whether that protection was adequate was another matter. Theoretically, Chicago could have been a city where children in crisis received reliable help. By the turn of the twentieth century, Chicago was the second largest city in the United States (after New York) and the fastest growing city in the world. Its increasing population of Roman Catholic immigrants and African American refugees desperately needed services and assistance. These conditions were ripe for the humanitarian work of maternalist reformers, club women, and charities dedicated to child protection and family welfare. The aims of Chicago's "child savers" were manifold: to curb urban crime and juvenile delinquency; to promote Protestant ideals of temperance and sexual restraint; and to crack down on prostitution and sex trafficking. Reformers created a robust, interrelated network of institutions for children and families in Chicago to achieve these ends, including settlement houses, juvenile courts, maternity homes, and reformatories. But their efforts were focused foremost on European immigrant families, whose whiteness they hoped to discipline and forge in the image of an Anglo-Saxon America. This work of white racial uplift was not extended to Chicagoans of African descent, who were forced to create charitable organizations from what limited resources they could assemble on their own. White middle-class reformers' racism and paternalism ultimately shaped the institutional character and meanings of social uplift and reform in Chicago, including that of protection from incestuous abuse.²²⁹

Consequently, the archive that emerges from that era—newspaper articles, court reports, textbooks, and case studies compiled by court physicians and psychologists, reports from

²²⁹ On the exclusion of African Americans from Progressive reform, see Barbara Levy Simon, *The Empowerment Tradition in American Social Work History* (New York, Columbia University Press, 1994); Janet Andrews and Michael Reisch, *The Road Not Taken: A Radical History of Social Work in the United States* (New York: Routledge, 2002); Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885–1920* (Chapel Hill: University of North Carolina Press, 1995); Noralee Frankel and Nancy Dye, *Gender, Class, Race, and Reform in the Progressive Era* (Lexington: University Press of Kentucky, 1991). On African American women's clubs in Chicago, see Anne Meis Knupfer, *Toward a Tenderer Humanity and a Nobler Womanhood: African American Women's Clubs in Turn-of-the-Century Chicago* (New York: NYU Press, 1996).

children's institutions to the Illinois State Board of Charities, and studies conducted by social work graduate students at the University of Chicago—are colored by the prevailing racist and paternalist assumptions of Progressive reform. These sources nonetheless make it possible to consider the range of public actors with whom incest victims came into contact after testifying against their abusers in court and to ask how these actors, in the aggregate, shaped incest victims' pursuit of freedom from violence. My research question is simple: to what extent, if any, did Illinois's affordance of legal protection from incestuous abuse translate to abused girls' lived experience of mental, physical, and emotional emancipation from violence? I trace answers to these questions along lines of disability, race, and class, analyzing how these categories were simultaneously constituted and deployed by reformers as they grappled with the conceptual problem of incest's significance and meaning for American families. In order to understand why the Psychopathic Laboratory of the Chicago Municipal Court believed that placing "Ru" in an asylum for "feebleminded" children was in her best interest, we must first understand how Progressive reformers conceptualized the relationship between incest and "sex delinquency."

Incest and "Sex Delinquency"

"Ru's" reluctance to report her father's abuse reveals that despite the relatively good odds of securing convictions for their abusers under Illinois's incest statute, incest victims still faced other deterrents to reporting abuse. Specifically, "Ru" feared her father would be sent to prison for twenty years and she would be sent to a reformatory. Only one public reformatory existed for girls in Illinois: the Illinois State Training School for Delinquent Girls at Geneva (hereafter Geneva). Geneva's reputation was poor. Its superintendent, former Civil War nurse Ophelia Amigh, was forced to resign in 1910 after an investigation by the State Board of Charities uncovered rawhide whips worn from overuse in her office, as well as a chair the *Chicago*

Tribune described as “so constructed that a girl could be confined in it and made unable to use her limbs, hands, or feet.”²³⁰ When “Ru” weighed the risks of reporting her father’s abuse, she may have understood that asking the state to intervene not only would not guarantee her safety, it could potentially subject her to further mistreatment.

Physical abuse at Geneva was a symptom of greater dysfunction. Five hundred girls were crammed into two cottages and a dormitory built to accommodate 150 students. Epidemics of scarlet fever, measles, and whooping cough were constant. Moreover, the matrons at Geneva had little to no training. Between the matrons and the girls were wide differences of class and culture, as the matrons were typically middle class whereas most of the girls were poor or working class, and many of them were immigrants. Between white matrons and African American girls there was also the difference of race. Girls received three hours of academic instruction daily under the employ of two teachers, who were expected to teach more than one hundred pupils in the first through eighth grades simultaneously. Unsurprisingly, few girls progressed in their studies. Beyond the classroom, girls devoted every spare minute to mastering the domestic arts: cooking, cleaning, sewing, and mending. For reprieve the girls were permitted only a religious program, chiefly prayer and Bible study. Under a regime of relentless labor, physical abuse, and neglect, throats and stomachs punctured from girls’ attempts to commit suicide by swallowing sewing pins were among the most common injuries reported by school physicians.²³¹

²³⁰ “Reveals Torture at Girls’ School: State Board Statement Explains Enforced Resignation of Geneva Head. Rawhides in Evidence: Mrs. Amigh Charged with Confining the Pupils in Cruel ‘Strong Chair,’” *Chicago Tribune*, July 8, 1911, 3.

²³¹ *Illinois State Training School for Girls biennial reports, 1901–1910*, Illinois State Library—General Collection (Illinois Digital Collection).

Most girls at Geneva were committed for “immorality.”²³² Immorality was a term applied to girls who had engaged in any kind of sexual behavior regardless of whether they had participated willingly or not. In 1912, Geneva’s biennial report stated that 74 percent of girls were committed for immorality; by 1923, social scientist Beth Corman estimated the percentage was closer to 85.²³³ The best estimate of how many “immoral” girls at Geneva had experienced incest comes from Sophonisba Breckenridge and Edith Abbott’s 1912 report for the New York Charities Committee. Breckenridge and Abbott, two activists and social reformers, interviewed girls and examined records kept at the school, identifying 125 girls who had been victimized by a family member. Seventy-eight of them were committed to Geneva after their abusers were prosecuted for incest. Of the forty-seven who disclosed incest in interviews, forty-one were picked up from brothels or from “street walking.”²³⁴ At the time, Geneva had on average 500 inmates. Approximately one in four Geneva girls, or one-third of the institution’s “sex delinquents,” had endured incest.

Incest victims’ categorization as “sex delinquents” was not accidental, but rather actively constructed. Breckenridge and Abbott described incest as a “pitiable and tragic” phenomenon that occurred in “degraded” families, which represented a “serious problem for the court” because such “depraved” homes were difficult to identify and there was “no sure method of reaching these children until it [was] too late for any treatment to prove efficacious.” Breckenridge and Abbott stressed that by the time incest victims were committed to Geneva, there was “little hope of saving either soul or body” and few interventions could be made to

²³² Louise Morrow and Olga Bridgman, “Delinquent Girls Tested by the Binet Scale,” *The Training School* 9, no. 3 (May 1912): 33.

²³³ Agyepong, *The Criminalization of Black Children*, 73.

²³⁴ Sophonisba Breckenridge and Edith Abbott, *The Delinquent Child and the Home* (New York: Charities Publication Committee, 1912), 106.

prevent them from becoming “wayward and immoral,” even though most incest victims they encountered were under the age of fourteen.²³⁵ Maude Miner, secretary of the New York Probation and Protective Association, was so impressed by Breckenridge and Abbott’s work at Geneva that she commissioned a similar study by criminologist Anne T. Bingham to investigate the roots of female delinquency at the Waverly House in New York City.²³⁶ Bingham found that among 500 girls at the Waverly House, two in three incest victims became prostitutes. In Bingham’s view, incest victims could not resist the “sensual appeals” prostitution made because their “early start in sex delinquency” rendered them unable to “establish protective inhibitions.”²³⁷ Though Bingham, Breckenridge, and Abbott were sympathetic toward sexually abused girls, they also felt that the abuse they endured made sex delinquency “almost inevitable” and recommended courts be less reluctant to strip parents of their rights so that by the time such cases were discovered it was not “too late for the industrial or reform school to be effective.”²³⁸

Bingham, Breckenridge, and Abbott failed to consider a simpler explanation for the correlation between incest and prostitution: money. Consider incest victims’ material circumstances: Linda Gordon’s study of incest cases reported to the Massachusetts Society for the Prevention of Cruelty to Children (MSPCC) between 1880 and 1960 reveals that incest almost always occurred in families where the mother was dead, chronically ill, or severely battered, and where the father used his daughter(s) as a sexual substitute for his wife.²³⁹ This was the case for “Ru,” whose father began abusing her shortly after her mother died. None of her

²³⁵ Breckenridge and Abbott, *The Delinquent Child and the Home*, 105–14.

²³⁶ Sophonisba Breckenridge to Jane Addams, November 1912, Sophonisba P. Breckenridge Family Papers, accessed through the Jane Addams Digital Papers Project, Ramapo College of New Jersey, <https://digital.janeaddams.ramapo.edu/items/show/6896>.

²³⁷ Anne T. Bingham, “Determinants of Sex Delinquency in Adolescent Girls Based on Intensive Studies of 500 Cases,” *Journal of the American Institute of Criminal Law and Criminology* 13 (February 1923): 35.

²³⁸ Breckenridge and Abbott, *The Delinquent Child and the Home*, *ibid.*

²³⁹ Gordon, *Heroes of Their Own Lives*, 210–15.

relatives were safe, either—one of “Ru’s” sisters was raped by their maternal uncle after running away from home to escape their father’s abuse, and their paternal grandfather was so physically abusive that he beat their grandmother to death.²⁴⁰ Michael Rembis estimates 67 percent of girls committed to Geneva were daughters of immigrants, making it less likely that they could count on financial support from extended family.²⁴¹ In fact, their families often relied on *them* for financial support, as Bingham found in one interview with an incest victim named Lucia who sent money to her relatives in Italy during her time in Waverly.²⁴² Breckenridge and Abbott similarly emphasized in their report to the New York Charities Committee that many incest victims at Geneva came from impoverished and unstable homes.²⁴³

In Chicago, the only barrier between poor girls and a living wage was stigma. Labor bureau statistics from 1916 estimated wages from women’s textile and manufacturing work at \$8.38 for fifty-six hours per week.²⁴⁴ Girls at Geneva paroled as domestic servants to local families earned three dollars weekly.²⁴⁵ By comparison, the Chicago Vice Commission found in 1911 that girls who exchanged sexual favors for pay made between one and five dollars per client.²⁴⁶ As Anne Meis Knupfer argues, Geneva’s curriculum in domestic skills rarely prepared girls to become financially self-supporting.²⁴⁷ It was not “sensual appeals” that attracted girls to prostitution; more likely, it was hope for financial security. The link that reformers found between incest and prostitution, however, facilitated victims’ criminalization. In turn, this

²⁴⁰ *Tenth and Eleventh Annual Reports of the Municipal Court of Chicago*, 381–82.

²⁴¹ Michael Rembis, “‘I Ain’t Been Reading While on Parole’: Experts, Mental Tests, and Eugenic Commitment Law in Illinois, 1890–1940,” *History of Psychology* 7, no. 3 (2004): 256.

²⁴² Bingham, “Determinants of Sex Delinquency,” 37.

²⁴³ Breckenridge and Abbott, *The Delinquent Child and the Home*, 105–14.

²⁴⁴ “Wages and Hours of Labor—Cotton Goods,” *Wages and Hours of Labor in Cotton Goods, Manufacturing, and Finishing, 1916* (Washington, DC: US Bureau of Labor Statistics), 10.

²⁴⁵ *Geneva Eleventh Biennial Report* (1912–14): 12.

²⁴⁶ *The Social Evil in Chicago*, Vice Commission of Chicago, 1911: 106–7, University of Michigan Law Library, Ann Arbor, MI.

²⁴⁷ Meis Knupfer, *Reform and Resistance*, 83.

criminalization prompted deeper study of what reformers imagined might be biological explanations for their delinquency.

The Juvenile Psychopathic Institute and the Psychopathic Laboratory of the Chicago Municipal Court

Prostitution and pregnancy were the leading causes of recidivism at Geneva. In 1909, 45 percent of Geneva residents returned to the reformatory after earning parole—a recidivism rate more than twice as high as that of the boys’ industrial school. Concerned that recidivism among “reformed” youth would discredit the Chicago Municipal Court’s belief in children’s capacity for rehabilitation, Judge Merritt W. Pinckney organized the Chicago Committee on Juvenile Delinquency in 1908 to study the problem of recidivism.²⁴⁸ Ethel Sturges Dummer, a member of that committee, furnished a generous donation in 1909 for the creation of the Juvenile Psychopathic Institute, a child guidance clinic that would apply scientific expertise to juvenile crimes and advise appropriate placement and care so that children might avoid future offenses leading them back to the reformatory. In a speech on feminism in 1916, Dummer claimed she developed an interest in eugenics after listening to a report at the Juvenile Protective Association about several cases of incest, a phenomenon she imagined “to have passed with the Old Testament period.”²⁴⁹ Eugenics—a term that means “good breeding”—was the new science of the Progressive era, an epistemological tool that promised biological explanations for pressing social problems. Perhaps incest occurred in some families because they were the product of “inferior stock,” making them susceptible to such primitive behavior. Under such a rubric, incest

²⁴⁸ Kathleen Jones, *Taming the Troublesome Child: American Families, Child Guidance, and the Limits of Psychiatric Authority* (Cambridge: Harvard University Press, 1999), 41.

²⁴⁹ Draft of speech, A-127, folder 232, box 24, Papers of Ethel Sturges Dummer, Schlesinger Library at Harvard University, quoted in Sacco, *Unspeakable*, 187.

would not appear as a problem endemic to the patriarchal family, where some fathers used their power to abuse their daughters with impunity. Instead, incest would seem to occur between fathers and daughters who shared subnormal capacities for intellect and sexual restraint. Curious to test this hypothesis, Dummer appointed William Healy—an American physician who had developed an interest in psychoanalysis after studying abroad in Vienna and reading Sigmund Freud’s *Interpretation of Dreams*—as the Institute’s director.

Where incest occurred, Healy expressed little faith in victims’ potential for reform. In a textbook of case studies published in 1915, he wrote:

Incest and other evil practices leave ineradicable stains [...]. [E]arly teaching of this kind must fall on fertile ground to produce long-enduring vicious results [...]. Very many times in our studies of the genetics of a delinquent career we have ascertained that the earliest beginnings were connected with illicit sex practices. There seems to be little reason for the individual pursuing any paths of rectitude when the most intimate relations of life are morally awry.²⁵⁰

Rather than recognize that young girls were not able to refuse sexual contact due to their age and dependence upon their abuser, Healy attributed the victimization of girls like “Ru” to the presence of mental defect. He believed incest victims were highly “suggestible.” Suggestibility was a trait associated with “feeble-mindedness” that doubled as an explanation for girls’ participation in “early sex experiences.” This assessment reflected the prevailing opinion of physicians in Healy’s day. As Dr. W. A. Evans informed readers of the *Chicago Tribune* in November 1915, “When we look into any of the well-known histories of degenerate families [...] The feeble minded female has no mental power of resistance.”²⁵¹ Healy located incest’s harm not in its deprivation of a girl’s will, her sense of self, or her ability to control even her most basic and intimate physical functions, but rather in its “ineradicable stains” leading girls astray from Christian values. The “long enduring vicious results” to which Healy referred were a

²⁵⁰ William Healy, *The Individual Delinquent: A Text-book of Diagnosis and Prognosis for All Concerned in Understanding Offenders* (Boston: Brown-Little, 1915), 410.

²⁵¹ W. A. Evans, “How to Keep Well: Rebuilding a Nation,” *Chicago Tribune*, November 7, 1915, A4.

euphemism for prostitution. We can infer that his insights were taken seriously from the fact that the Juvenile Psychopathic Institute became the blueprint for similar guidance clinics in Boston, New York, California, and of course, Chicago, where the Psychopathic Laboratory that evaluated “Ru” was located.²⁵² While the Institute focused its efforts on children below the age of sixteen, the Laboratory evaluated adolescents and adults ages sixteen and older.

At the Psychopathic Laboratory, Dr. William Hickson served as director and Mary Campbell, a graduate student of laboratory psychology at Johns Hopkins and Harvard University, served as his associate. Hickson came under scrutiny in April 1915 for labeling a sex trafficking victim, who was beaten by two captors while waiting for police to rescue her, “feeble-minded.” He insisted the seventeen-year-old was “hysterical” and her testimony could not be relied upon without corroboration, despite physical evidence of the assault. Her plight stirred heated public debate about Hickson’s methods. The news-reading public, which up to that moment had not known how intelligence tests worked, was outraged when they realized a person could fail abstruse and subjective questions like “What is charity?” by replying “Where you get something for nothing,” one of several reasonable answers from the victim that Dr. Hickson marked “incorrect.”²⁵³ In the wake of that scandal Campbell herself became increasingly critical of the Laboratory’s intelligence testing methods, culminating in her bold exposé of Chicago’s mayor as a “moron” in December 1915. But when Campbell started her job, she believed “50 percent of persons [referred to the Laboratory] [were] not normal mentally.”²⁵⁴ Among “feeble-minded” females, her most common findings were “perversion” and “dementia praecox,”

²⁵² On the founding and influence of the Juvenile Psychopathic Institute, see Jones, *Taming the Troublesome Child*, 38–61.

²⁵³ “Trial Reveals Dr. Hickson’s Mind Tests: Psychopathic Chief Grilled for Calling Girl Feeble Minded. Hot Fight in Court,” *Chicago Tribune*, April 23, 1915, 1.

²⁵⁴ Marion Walters, “Woman Expert an Aid to Courts in Judging Subnormal,” *Chicago Tribune*, May 24, 1914, E7.

a condition with symptoms including warped perception, withdrawal from reality and interpersonal relationships, flattened affect, and a sense of mental fragmentation—all symptoms now recognized by the American Medical Association as signs of post-traumatic stress.²⁵⁵ The Municipal Court’s annual report in 1915 stated that the Laboratory had discovered incest was “not uncommon” in “praecox families,” revealing what they imagined to be a link between feeble-mindedness and incest rather than a link between incest and trauma.²⁵⁶

“Ru” was among the women diagnosed with “dementia praecox” by the Psychopathic Laboratory. Her examiner also noted she was classified as a “high grade moron.” But he or she also included additional details seemingly irrelevant to the question of “Ru’s” “feeble-mindedness.” For instance, “Ru’s” examiner included a family history detailing her father’s upbringing and occupational history, the marital statuses of women in her family (some married, some divorced), her family’s racial makeup (mostly white Anglo-Saxons with one Native grandparent—the same one beaten to death by “Ru’s” grandfather), and information about her younger siblings. “Ru’s” eight-year-old brother and six-year-old sister had been removed from the home by the Municipal Court and evaluated by the Juvenile Psychopathic Institute, which discovered that the youngest daughter had been sexually abused by “Ru’s” father, too. She was deemed “quite feeble-minded” due to a speech impediment. It was difficult for the Institute to make any analysis of “Ru’s” brother, as growing up in such a traumatic environment had rendered him mute. How these details influenced the examiner’s conclusion of “Ru’s” “feeble-mindedness” is unclear. The examiner also asked “Ru” about her sexual

²⁵⁵ Paul Hoff, “Bleuler Eugen (1857–1939),” *International Encyclopedia of the Social & Behavioral Sciences*, eds. Neil J. Smelser and Paul B. Baltes (Elsevier Ltd., 2001); William E. Copeland et al., “Traumatic Events and Posttraumatic Stress in Childhood,” *Journal of the American Medical Association (JAMA) Psychiatry* 64, no. 5 (May 2007): 577–84.

²⁵⁶ *Tenth and Eleventh Annual Reports of the Municipal Court of Chicago*, 108.

experiences with men other than her father. One, of course, was the teenage boy with whom “Ru’s” father forced her to have sex; luckily, however, her examiner seemed to comprehend that she was coerced.²⁵⁷ “Ru’s” examiner nevertheless concluded she had been “promiscuously immoral” for another reason: “Ru” admitted she had had sex with another teenage boy when she was fifteen years old. Whether the sex was consensual or not is unclear from the report, but as Michael Rembis explains, the “most important marker” of feeble-mindedness to examiners, especially among women, was “any evidence of experience in ‘sex matters.’”²⁵⁸ “Ru’s” choice to have sex with someone—if indeed we can assume it was consensual—was probably the most important determinant in her placement at Lincoln.

Constructing Incest Victims as “Feeble-minded Sex Delinquents”

Remember that the Chicago Municipal Court identified “Ru’s” case as a “typical” example of incest. That “Ru,” an incest victim, had consented to sex outside marriage was not viewed as an aberration; it was expected. Girls who needed no remuneration to have sex outside of marriage were just as worrying to reformers as girls who exchanged sex for money. “Ru’s” examiner may have judged her sexual behavior similarly to the way Anne Bingham judged the sexual behavior of Alice, one of the girls she included in her study of the roots of female juvenile delinquency in New York City. Alice was institutionalized for her protection after her brother attempted to rape her when she was fifteen years old. Within mere weeks of earning parole, Alice was staying out late, drinking, smoking, partying, and having sex with soldiers. She was recommitted to the Waverly House after confessing her illicit affairs to the New York City Children’s Court. She spoke of them with an air of indifference that Bingham thought indicative

²⁵⁷ *Tenth and Eleventh Annual Reports of the Municipal Court of Chicago*, 381–82.

²⁵⁸ Rembis, *Defining Deviance*, 86.

of a “well-developed grudge attitude” toward adults.²⁵⁹ One way to read Alice’s “grudge attitude” is to imagine that, like many survivors of sexual abuse, Alice developed an understanding of sex and morality fundamentally at odds with the patriarchal ideology underpinning the court’s moral reform project. For Alice, sex may have been a way to assert her right to govern her mind and body in response to her brother’s attempt to strip her of those rights. It may have represented a reparative act, a way to receive the affection and pleasure she had been denied. Perhaps seducing men made her feel powerful, a feeling she could use to rewrite her experience of humiliation. In any case, what made sex right or wrong to Alice was how she felt about it. That standard was unconscionable in the eyes of the juvenile court. In their view, female sexuality belonged strictly within the confines of marriage, where it existed to serve the family patriarch. In any other scenario sex was an affront to patriarchal authority. “Ru,” too, may have been seeking pleasure, power, or romance. But because all that mattered to “Ru’s” examiner was the fact that she had had sex, we cannot know for certain what she may have wanted to experience or achieve by it—assuming the encounter was consensual at all.

Geneva’s administrators and staff viewed incest victims’ attempts to define their value for themselves as a problem. Girls who demonstrated they understood Geneva’s reform program as necessary to save them from a “life of shame” had “normal brains,” but girls who rebelled against the institutional regime did not. This, at least, was Superintendent Amigh’s view. Though Amigh had argued in 1900 that girls could be reformed “to become good wives and mothers and take pride in establishing good American homes,” by 1910 she had grown more skeptical of girls’ potential.²⁶⁰ Writing to the Illinois Board of Charities, Amigh complained, “Many claim that environment does the whole work of helping children towards the downward grade, but

²⁵⁹ Bingham, “Determinants of Sex Delinquency,” 56; 37–38.

²⁶⁰ “Superintendent’s Report,” *Geneva Fourth Biennial Report* (1898–1900): 8.

brought in close contact with these irresponsibles, as we are from day to day, there is no contradicting the statement that heredity plays by far the most important part.” She continued:

The school is largely composed of subnormal girls, and among the number a great company of those who are positively imbecile, of even a lower grade than many who are sent to Lincoln to the State school [...]. I hope no sickly sentimentality will keep our law makers from passing a bill if it is presented again, making the operation of sterilization legal on all who are pronounced by competent physicians and psychologists unfit to bear children or procreate their kind.²⁶¹

By encouraging compulsory sterilization, Amigh linked girls’ histories of abuse with mental inferiority. An unsafe home was made unsafe, in her view, by a lack of pride that “normal” families possessed. She imagined this lack of pride was an inherited condition, and as such, too difficult for the reformatory to correct. Amigh perceived rebellious girls as threats to society because they would likely pass their “defective” traits to future children. To propose compulsory sterilization was to strip girls of their value in a patriarchal culture by removing their potential to fulfill a wife’s most important duty: motherhood. From the perspective of the girls themselves, it also removed any possibility of choice in the decision to bear children. Though Illinois never passed a compulsory sterilization law, it did pass the eugenic segregation law that relegated “Ru” to Lincoln in 1915.

Intelligence testing became a routine part of Geneva’s commitment process after Amigh’s departure, representing broad support from the state for this measure and perhaps some agreement with Amigh about girls’ incorrigibility, even if the Board of Charities disapproved of the way she used violence to discipline children. Resident physicians Louise Morrow and Olga Bridgman performed an initial assessment of girls at Geneva and published their results in 1912 in *The Training School*, a monthly bulletin edited by Henry Goddard, the eugenicist who introduced the Binet-Simon intelligence tests from France to America in 1908. Morrow and Bridgman performed Binet-Simon tests on sixty girls and concluded “twenty at most” would in

²⁶¹ “Superintendent’s Report,” *Geneva Ninth Biennial Report* (1908–1910): 5, 7.

the future be “able to take anything like a normal place in society.”²⁶² Bridgman wrote a report three years later for the *Journal of Social Hygiene* that made the initial study’s findings look optimistic. She stated that 104 of the 118 girls committed to the institution during her period of investigation were “sex delinquents,” and 101 of those 104 sex delinquents were “feeble-minded.” She resolved that “the courts which commit these girls [frequently] fail to recognize the fact of their mental deficiency and irresponsibility,” arguing that “mental deficiency” played a causative role in sexual immorality.²⁶³ Goddard himself endorsed the results. “It may be that the tests scale too high and that many normal persons [...] would be unable to pass the tests creditably,” cautioned physician Walter Clarke in a review of Bridgman’s 1915 findings. “Dr. Henry H. Goddard however speaks of Dr. Bridgman’s work in this study as ‘one of the most careful studies on record.’”²⁶⁴ The Binet Simon tests at Geneva therefore furnished evidence accepted by the scientific community of a link between “sexual delinquency” and “feeble-mindedness.”

Not only was every girl at Geneva subjected to an intelligence test upon commitment after 1912, she was placed into a “family” of twenty-five to thirty other inmates with similar scores. The notable exception to the rule were Black girls, who were unilaterally placed in Lincoln cottage. It is not clear whether the parallel between Lincoln cottage and the Lincoln asylum for “feeble-minded” children was intentional. Black girls’ presence at Geneva was taken for granted; it required no psychological analysis or scientific explanation. Tera Agyepong notes in her study of African American girls at Geneva that Black girls tended to be younger on average than their white counterparts. They were committed more frequently for reasons of

²⁶² Morrow and Bridgman, “Delinquent Girls Tested by the Binet Scale,” 36.

²⁶³ Walter Clarke, “Prostitution and Mental Deficiency,” *Journal of Social Hygiene* 1 (June 1915): 373–74.

²⁶⁴ *Ibid.*

“dependency” than delinquency due to a dearth of resources available to poor Black families in Chicago. Technically the placement of “dependent” children—defined as children under the age of ten—at Geneva was illegal, but the superintendent lacked authority to transfer them elsewhere.²⁶⁵

Despite white adults’ disinterest in Black girls’ experiences, evidence of sexual abuse in their lives abounded. James Beane reported in 1931 that fewer than 10 percent of girls admitted to Geneva were virgins.²⁶⁶ Presumably that figure included African American girls, as all girls committed to Geneva were given gynecological exams upon entry to identify and treat any sexually transmitted infections. Tera Agyepong identifies in her study many examples of African American girls who were raped, although none of the cases she discusses involve incest specifically. If Black girls were abused by family members, they may have been reluctant to report it due to stigma from within and outside the Black community. William Hannibal Thomas, in *The American Negro* (published in 1901), suggested incest was caused by Black girls’ immodesty within their own homes.²⁶⁷ In Black families as in white ones, the patriarch’s dignity was paramount to claims of respectability on behalf of his entire race. But because Black men’s status as civilized was systematically undermined, Black incest victims may have experienced acute pressure to keep their abuse secret.²⁶⁸

²⁶⁵ Tera Agyepong, “Aberrant Sexualities and Racialised Masculinisation: Race, Gender, and the Criminalisation of African American Girls at the Illinois Training School for Girls at Geneva, 1893–1945,” *Gender & History* 25, no. 2 (Aug. 2013): 270.

²⁶⁶ James C. Beane, “A Survey of Three Hundred Delinquent Girls,” *Journal of Juvenile Research* 15 (July 1931): 198–208.

²⁶⁷ William Hannibal Thomas, *The American Negro* (New York: The Macmillan Company, 1901): 173–207. For a discussion of *The American Negro*, see Michelle Mitchell, *Righteous Propagation: African Americans and the Politics of Racial Destiny after Reconstruction* (Chapel Hill: University of North Carolina Press, 2004).

²⁶⁸ On cultural betrayal trauma theory, see Jennifer M. Gomez and Robyn L. Gobin, “Black Women and Girls & #MeToo: Rape, Cultural Betrayal, & Healing,” *Sex Roles* 82 (2020): 1–12.

The fact that Black girls at Geneva were very young may also have inhibited their ability to articulate their experiences to adults, least of all white ones. Juanita, a ten-year-old girl at the Chicago Detention Home (a temporary shelter for children awaiting permanent placement by the Juvenile Court), was placed in solitary confinement for five months because she was discovered “teaching” other children at the home about sex. Sharing sexual knowledge with other children is an overt symptom of sexual abuse, but no one asked Juanita where she learned about sex. Was it her father? An uncle? Perhaps another child, or an adult outside her family? We cannot answer that question because adults either did not ask or did not record her response. Juanita may not have understood why what she did was “wrong” because she was too young to identify and describe her own experiences in those terms. The only lesson she could have learned from being trapped in a cell deprived of play, stimulation, and companionship for nearly half a year, given only bread and milk to eat, was that she was a “bad” child. It is hard to imagine how that experience would not have scarred her permanently.²⁶⁹

White girls, by contrast, expressed that they had been molested and raped by family members in vivid and forceful terms to adults at Geneva. It mattered to them that the adults entrusted with their care understand what they had been through, but their efforts were to no avail. Ruth, who was sent to Geneva for protection from her sexually abusive father, announced during the intelligence test, to which all newly committed white girls were subjected, that her father had raped her. This confession took Ruth great courage to divulge. Her examiners noted she “blushed a good deal” and “seemed quite disturbed over the situation and could not speak freely about it” due to embarrassment. They commented that Ruth gave them the “impression of being unstable, and possibly easily disturbed emotionally.” They also said she showed signs of

²⁶⁹ Phyllis Rae Osborn, “A Study of Detention of Six Hundred Children” (master’s thesis, University of Chicago, 1931), 59–60.

“indecision and uncertainty.” Ultimately, they found Ruth to be of “dull to low average” intelligence and concluded she had reached her academic limit, which was the eighth grade. Ruth needed adult support. What she received was adults’ judgment and further alienation. Unfortunately, Ruth’s experience was not uncommon. Michael Rembis writes that in many cases, mental examiners at Geneva interpreted stories of sexual abuse as either “a direct sign of an inmate’s inherent inability to control both herself and the men she encountered, as the product of [an] overactive imagination [...] or as signs of the girl’s willingness to deceive.” Thus, sexual abuse was often interpreted as evidence of mental defect.²⁷⁰

Disability studies scholar Nirmala Erevelles contends that the process of criminalization is co-constituted with the construction of disability. She argues that criminalization produces disability not only in a material sense—by subjecting criminalized people to physical and emotional trauma that impacts their ability to function “normally”—but also in a conceptual sense, by mobilizing disability as a social and political category that justifies incarceration. Channeling Emile Durkheim’s functionalist view of crime and Michel Foucault’s understanding of biopower, Erevelles reasons that the carceral state blurs deviance and disability to legitimate the devaluation of human life and justify social death.²⁷¹ Her theoretical perspective helps us understand why even as Geneva’s physicians and psychologists labored to parse the difference between “delinquent” and “feble-minded” incest victims, the line between those categories was never firm. The power of intelligence tests to resignify girls’ courtroom testimonies by redirecting reproach from the abuser to the abused girl herself, thereby casting her as an imperfect victim, cannot be understated. The court told one story about incestuous abuse: it was

²⁷⁰ The information in Ruth’s case was taken from an unprocessed collection of records from Geneva located at the St. Charles facility for male juvenile offenders and originally cited in Rembis, *Defining Deviance*, 87. The quotation from Michael Rembis is from *Defining Deviance*, 87–88.

²⁷¹ Erevelles, “Crippin’ Jim Crow,” 81–99.

the abuser's fault. The institutions to which the court sent abused girls, however, told a different story. Incest victims were morally corrupt "sex delinquents" who "allowed" themselves to be abused because they were "subnormal." The project of criminalizing incest victims cannot be understood independently from the production of their disability.

Michael Rembis reminds us that the fact incest victims were commonly institutionalized for their protection hardly precluded viewing them as "feble-minded" or delinquent. Reformers imagined that institutionalization not only protected girls from abusive fathers, it also protected them—and the American public—from what William Healy described as the "vicious results" of such abuse. It may seem ironic that at the same moment reformers like Sophonisba Breckenridge and Edith Abbott sought to expose abuse and protect children from violence in the home, their colleagues in science and medicine reverted the blame for that violence onto victimized children. Rembis explains, however, that the eugenics movement contained such contradictory impulses through a circular logic. Eugenicists used a four-point program of education, restriction, segregation, and sterilization they hoped would eliminate the presence of "defectives" from American society.²⁷² The inclusion of education in that program meant that although eugenicists' prognosis for incest victims was grim, it was not hopeless. It was possible, as Breckenridge and Abbott believed, to steer incest victims back on the "right" path so long as intervention was swift, and the victim possessed aptitude for reform. Though intelligence tests were used to establish a link between incest and "feble-mindedness," they could also be used to identify girls who might be "redeemed" from incestuous abuse by completing Geneva's reform program and becoming "good wives and mothers." That Geneva's goal in saving girls from sexual abuse was to make them marriageable lays bare the patriarchal values of Progressive reform.

²⁷² Rembis, *Defining Deviance*, 3, 92–93.

To be clear, I do not wish to “rescue” abused girls from the category of disability so much as to emphasize how disability was deployed to justify their confinement. As Michael Rembis cautions, many historical critiques of eugenics reject the label of mental defectiveness that eugenicists ascribed to test subjects, but such an approach unwittingly reinforces the logic that disability is either “true” or “false” rather than socially and historically constructed. According to recent statistics from the US Justice Department, neurodivergent children are sexually assaulted at a rate seven times higher than their neurotypical peers.²⁷³ Disabled children must be prioritized in conversations about sexual abuse. The problem with Geneva’s reform program was that mental examiners perceived girls’ submission to abuse as symptomatic of both disability and moral failure, linking cognitive impairment with sexual immorality. Furthermore, although reformers understood in their own way that abuse itself could be disabling, their concern was for incest victims’ purported promiscuity, not their trauma. For this reason, many incest victims continued to struggle when placed in adoptive homes, contributing to Geneva’s high recidivism rate. Abused girls’ anxieties and vulnerabilities in interpersonal relationships were exacerbated, not helped, by a child-saving movement more concerned with restoring girls’ “virtue” than caring for their mental, emotional, and physical safety and autonomy.

Conclusion

The process by which “Ru” was deemed “feebleminded” exemplifies how even in a state where father-daughter incest was conceived as a crime analogous to rape, incest victims were never considered innocent. Their trauma, survival strategies, and ways they tried to navigate the

²⁷³ Joseph Shapiro, “The Sexual Abuse Epidemic No One Talks About,” *All Things Considered*, National Public Radio, January 8, 2018, <https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about>.

world on their own terms and experience power or pleasure conflicted with reformers' attempts to restore their "virtue." Progressives located incest's harm not in its deprivation of a girl's will, her sense of self, or her ability to control even her most basic and intimate functions, but rather in its "ineradicable stains" leading girls astray from the industry, obedience, and restraint of "good Christian" women. Rather than view patriarchal power as the underlying condition that made girls vulnerable to incestuous abuse, physicians, psychologists, and social reformers turned instead to the explanatory power of mental defect. The distinction between "sex delinquency" and "feeble-mindedness" was a matter of degree, not of essence. Whether incest victims were committed to Geneva or to Lincoln depended upon reformers' estimation of their marriageability—shorthand for their potential to conform to racialized, classed, and gendered standards of human value.

"Ru" represents one among many girls whose lives were the ground upon which patriarchal authority was contested, mapped, and finally reinscribed by social reformers who sought to "protect" them from their fathers' abuses of that power. By centering "Ru's" experience of the institutional commitment process, we can see how control and coercion operated within and across institutions like the family, law, asylum, and juvenile reformatory in the early twentieth century. Centering incest victims also reveals the critical role that conceptions of incest as "uncivilized" played in retrenching patriarchal power as normative and in reinforcing submission to patriarchal authority as the mechanism by which girls and women could achieve national belonging. Regrettably, these were the very conditions that made the abuse from which incest victims sought freedom possible in the first place.

Chapter 4: Incest, Child Protection, and the Feminist Anti-Violence Movement

In March 1996, Hennepin County Child Protective Services initiated termination of parental rights proceedings for twenty-nine families in Minneapolis, Minnesota. Six of the twenty-nine cases involved incest. In four of the six cases, a father, stepfather, or mother's boyfriend perpetrated the abuse; in one case it was two uncles; and in another, the abuser was a severely mentally ill mother whom case workers described as having experienced "life threatening abuse of a ritualistic nature" as a child.²⁷⁴ Only one of the six cases involved a child who reported her stepfather's abuse to police directly. In the other five, child protective services uncovered evidence of sexual abuse after removing children from the home due to a mother's drug addiction. "I'm sure you'll find the reading of the case synopses both alarming and in accord with your understanding of what is happening," wrote Mark Toogood, guardian ad litem for the Hennepin County District Court, to Esther Wattenberg, a professor of social work who coordinated social services programs for Minneapolis's Center for Urban and Regional Affairs. Toogood compiled the case synopses to give Wattenberg "[...] a baseline 'reality check' of what [was] going on with the kids," and "to monitor the extent to which reunification cases [were] recycling into the system." At the time, Wattenberg was working with Hennepin County child

²⁷⁴ "Case Examples of Children in Need of Protection or Services—Daily Log (Anonymous)," SW0243, Box 35 (Restricted Folders), Esther Wattenberg papers, Social Welfare History Archives, Minneapolis, Minn. The "abuse of a ritualistic nature" to which case workers referred was likely Satanic abuse, a conspiracy theory widespread in the U.S. during the 1980s and '90s. For more on the Satanic Panic, see Kier-La Janisse and Paul Corupe (eds.), *Satanic Panic: Pop Cultural Paranoia in the 1980s* (Surrey, England: FAB Press, 2016).

protection workers to establish family reunification guidelines for children in foster care.

Toogood's synopses gave her valuable insight into abused and neglected children's experiences.

In the 1980s and '90s, Minnesota's guidelines for legislation, prosecution, child protection, and prisoner treatment programs regarding child sexual abuse served as models for the nation. Yet Mark Toogood's case log suggests child protective services seldom investigated families because they suspected a child was sexually abused. More commonly, a parent's substance abuse—specifically, a mother's—was grounds for intervention. However, it was a mother's inability or unwillingness to protect her children from a partner's or relative's sexual abuse that ultimately triggered termination of her parental rights. In some cases, mothers were uncooperative, either disbelieving their children's allegations or minimizing the abuse. ("He's not that bad," one woman complained after learning her boyfriend molested her six-year-old daughter. "He didn't rape her. You guys act like he's a Jeffrey Dahmer.") In others, mothers were unable to keep their children safe. One woman attempted to leave her children's father several times, seeking safety in a battered women's shelter and asking her case worker for help renting an apartment. Her children had been absent from school for two months by the time child protective services followed up and learned the father had forced his way into her new apartment by holding a knife to her throat. She and her children had been held hostage there ever since. The Hennepin County Court ordered her to secure a No Contact order and keep her children's father out of the home if she wanted to retain custody. They also mandated she attend therapy, parenting skills classes, and a sexual abuse education group. The court did not require the father to do anything.²⁷⁵

²⁷⁵ *Ibid.* In some cases police arrested sexual abusers after child protective services uncovered such abuse, but that does not seem to have been a consistent standard. Typically, mothers were ordered to secure No Contact orders, and it was only after not abiding by their terms (either because they did not want to end the relationship or because they

Why did the state place mothers under greater scrutiny than sexually abusive men? Why were victims of domestic violence required to attend parenting classes and sexual abuse education programs while abusers eluded consequences? Members of the Minnesota Coalition for Battered Women, a statewide feminist organization for victims and survivors of domestic violence, raised questions like these to illuminate the double standard applied to mothers monitored by the child protection system. Battered women's advocates observed that child protection workers tended to "hold the woman responsible for the safety of the children even when [her] safety [was] threatened," and noted that case plans "[...] rarely include[d] the male perpetrator of violence in part due to the expectation that other systems, such as the criminal courts, [would] address the problem." In reality, police did not investigate abuse uncovered by child protection workers consistently, and abusers mandated to attend court-ordered batterer programs were rarely penalized for non-compliance. Because the criminal justice system was unreliable, the repercussions of men's physical and sexual violence frequently fell to women.

In this chapter I examine the impact of second-wave feminist anti-violence organizing on institutional responses to incest in Minnesota from the 1970s through the 1990s. My analysis focuses on Minneapolis and St. Paul, where physicians, psychologists, social workers, prosecutors, judges, and members of the Minnesota Coalition for Battered Women began working in the late 1970s to address the state's hidden child sexual abuse "epidemic."²⁷⁶ Though calling it an epidemic was still largely speculative at that point, no one questioned their use of

were not able to) that police intervened and pressed charges. A No Contact order is not the same as a restraining order. Unlike restraining orders, No Contact orders are not immediately arrestable; i.e., if a No Contact order is broken, the defendant is not arrested on the spot. If a No Contact order is violated, law enforcement refers the case to a victim advocate, who then notifies the solicitor's office. The solicitor's office must make a motion to a general sessions judge to have a hearing on the matter. No government agency in the U.S. tracks data on protective orders, so we cannot reliably estimate how often they are violated or how effectively they are enforced.

²⁷⁶ Paul Levy, "Project hopes to set guidelines for dealing with child molesters," *Star Tribune*, October 26, 1986, SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

hyperbole. A newly energized child protection movement was sweeping the nation, equipped with the power of radio, television, and telephone for the first time in U.S. history. Child abuse reporting hotlines were so overwhelmed by call volume that the National Center on Child Abuse and Neglect (established by the Children’s Bureau in 1974) stopped encouraging people to call.²⁷⁷ Amid what appeared to be a nationwide crisis, Minnesota joined the fray and developed guidelines for legislation, prosecution, child protection, and prisoner treatment programs in cases of child sexual abuse lauded as America’s best.²⁷⁸

Relationships between feminists, healthcare workers, and state actors in Minnesota were uneven and precarious, however. Their mandates and motivations differed. As a grassroots movement, the Coalition had the sharpest and most holistic critique of institutional complicity in sexual violence but the fewest resources to address the problem. Hospitals, courts, and child welfare agencies were ready and willing to embrace change, but they had to answer to greater powers. State funds for child protection efforts were tied to the National Child Abuse Prevention and Treatment Act, signed by President Nixon in 1974. Elected to replace Lyndon “War on Poverty” Johnson, Nixon was reluctant to support anything that might be perceived as “another poverty program” by his base. As such, the Child Abuse Prevention and Treatment Act framed child abuse narrowly as a problem unique to “dysfunctional” families, not as an issue that demanded political and cultural transformation. Federal limitations shaped child protection at the

²⁷⁷ Oversight Hearings on Title I—Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, *Hearings Before the Subcommittee on Select Education of the Committee on Education on Labor*, House of Representatives, 96th Congress, 2nd session, Washington, D.C., December 2 and 4, 1980: 76.

²⁷⁸ *Ibid.*

state level, deliberately disaggregating child abuse from connected issues like domestic violence and a lack of financial or social support for poor single mothers.²⁷⁹

These existing fractures widened after Ronald Reagan became president in 1981. Reagan's administration reduced federal funding for child protection by over thirty percent and redirected government spending from social services toward crime prevention programs. On one hand, this shift generally increased prosecution and strengthened the role of law enforcement in cases of child sexual abuse, which had historically been weak. On the other, the administration's deregulation of the American healthcare system made recovery programs for incest victims and families prohibitively expensive. Moreover, it warped the criminal justice system in unintended ways. Incest offenders who could not afford outpatient sex offender treatment were either sent to family therapy, where mothers were forced to assume a therapeutic role normally outsourced to a team of trained professionals in families of greater means, or sent to prison. Incarcerated offenders could receive inpatient treatment in exchange for a reduced sentence, but by 1989 the Minnesota Department of Corrections only had thirty beds available each year at Lino Lakes for its intensive ten-month sex offender program established in 1978.²⁸⁰

The Reagan era also marked a rapid expansion of Nixon's declaration of a "war on drugs," catalyzing the rise of mass incarceration in the United States. Whereas Reagan reduced child protection funding from \$22.9 million in 1981 to \$16.2 million in 1982 (where it remained for the duration of his first term in office), he increased federal spending on drug enforcement

²⁷⁹ For example, in 1971 Nixon vetoed a universal child care bill that would have created a national day care system designed partially to make it easier for single parents to work and care for children simultaneously. He claimed such legislation was "communist" and would weaken American families. *See* President Richard Nixon, "Veto Message—Economic Opportunity Amendments of 1971," U.S. Senate, 92nd Congress (1st Session), Document No. 92-48 (December 10, 1971).

²⁸⁰ Attorney General's Task Force on the Prevention of Sexual Violence Against Women, Final Report (February 1989), 15.

from \$8 million in 1981 to \$95 million by 1984.²⁸¹ A conviction for possession of three grams of crack cocaine (less than a teaspoon) in Minnesota prior to 1992 was punishable by up to four years' imprisonment, even for a first-time offense, while incest offenders were sentenced to three years' imprisonment for molestation and five years' imprisonment for rape prior to 1985.²⁸² Between 1984 and 1991 Minnesota's incarcerated population rose by fifty percent, attributable mainly to convictions for drug-related offenses.²⁸³ The number of children in U.S. foster care nearly doubled between the mid-1980s and the late 1990s, driven by decreasing welfare benefits and higher rates of female incarceration following the passage of the 1986 Anti-Drug Abuse Act.²⁸⁴ The "war on drugs" shifted the focus of the child protection system from abuse to neglect.

To date, most historical and feminist scholarship about the impact of second-wave feminism on American attitudes toward incest has focused on its success in "breaking the silence" surrounding sexual abuse.²⁸⁵ However, some of these scholars—with a more critical eye toward the relationship between social movements and the state—have concluded that aside from encouraging women to share their stories publicly, incest survivors built no real movement with social impact. Instead, victims fashioned "wounded identities" focused primarily on personal

²⁸¹ Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (London: Oxford University Press, 1999), 52-53, 167; 98th Congress, 1st Session, *Federal Budget of the United States Government, 1984* (Federal Reserve of St. Louis, Missouri), 451; National Child Abuse and Neglect Training and Publications Project, "The Child Abuse Prevention and Treatment Act: 40 Years of Safeguarding America's Children," U.S. Department of Health and Human Services, Children's Bureau (Washington, D.C., 2014): 25.

²⁸² Minnesota Sentencing Guidelines Commission, "Report to the Legislature on Controlled Substances Offenses," February 1992; Minn. Stat. § 609.342 (criminal sexual conduct in the first degree); Minn. Stat. § 609.343 (criminal sexual conduct in the second degree).

²⁸³ Jenni Gainsborough and Marc Mauer, "Diminishing Returns: Crime and Incarceration in the 1990s," *The Sentencing Project* (Washington, D.C.: September 2000): 14.

²⁸⁴ Christopher A. Swann and Michelle Sheran Sylvester, "The Foster Care Crisis: What Caused Caseloads to Grow?" *Demography* 43, no. 2 (May 2006): 309-335.

²⁸⁵ See Linda Gordon, "The Politics of Child Sexual Abuse: Notes from American History," *Feminist Review* 28, no. 1 (January 1988): 56-64; Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore, MD: Johns Hopkins University Press, 2009).

empowerment rather than political change.²⁸⁶ As Wendy Brown argues, when movements organize around identities rooted in shared injury and call upon the state for protection, they expand the state's disciplinary and regulatory powers at their own expense.²⁸⁷ While I agree that a more materialist analysis of second-wave feminism is necessary, I contend that a closer examination suggests these arguments oversimplify the complexity of feminist strategy vis-à-vis the state. The Minnesota Coalition for Battered Women rigorously critiqued the criminal justice and child protection systems even as it called upon them for support. Rather than navel-gazing, they created a vision for a violence-free society (which is now reflected in the organization's name, Violence-Free Minnesota.)²⁸⁸ It was larger political forces that stunted the feminist anti-violence movement's potential, not the movement itself.

Sexual Abuse and the Child Protection Movement

Increased public concern for child abuse during the 1970s was largely driven by two groups: physicians and advocates. Initially, physicians were foremost concerned with physical abuse because of the frequency with which they treated children for injuries such as fractures, burns, and internal hemorrhaging. Medical students were trained to spot signs of child battering beginning in the 1960s, after pediatrician Henry Kempe published a landmark article with

²⁸⁶ Louise Armstrong, *Rocking the Cradle of Sexual Politics: What Happened When Women Said Incest* (Boston: Addison-Wesley Publishing Company, 1994); Gillian Harkins, *Everybody's Family Romance: Reading Incest in Neoliberal America* (Minneapolis: University of Minnesota Press, 2009). Armstrong and Harkins make slightly different arguments here, with Armstrong focusing on how the "therapeutic turn" in feminist organizing unwittingly retrenched incest as a personal rather than political problem and Harkins focusing on how the 1990s "boom" in novels and popular media about father-daughter incest contributed to broader transformations in family life associated with neoliberal governance. With few exceptions, Harkins argues these confessional narratives broadly re-affirmed the state as the "proper locus for familial transformation" even as they deconstructed the father as the symbol of patriarchal power unifying public and private governance.

²⁸⁷ Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995).

²⁸⁸ The Minnesota Coalition for Battered Women changed its name to Violence-Free Minnesota in 2018 in order to "better reflect [its] ultimate goal: to live in a violence-free state." See Violence-Free Minnesota, <vfmn.org>.

several colleagues identifying symptoms of “battered child syndrome” in 1962.²⁸⁹ Feeling powerless to protect children from parental violence represented an enormous mental health stressor within the medical profession. Many children whose parents physically abused them were hospitalized repeatedly, and one in ten children hospitalized for maltreatment died each year.²⁹⁰ In 1963, the U.S. Children’s Bureau published model statutes for individual states to adopt as they developed legal requirements for reporting child maltreatment, with a focus on physician reporting.²⁹¹ By 1967, forty-nine states had passed child abuse laws with a mandatory reporting requirement for healthcare workers.²⁹² However, the problem remained largely invisible to the general public until President Nixon signed the Child Abuse Prevention and Treatment Act in 1974.²⁹³

The Child Abuse Prevention and Treatment Act was first introduced by U.S. Senator Walter Mondale (D-Minn.), who had worked closely with Esther Wattenberg to draft its provisions.²⁹⁴ The new law allocated funds to states for the development of child protective services and hotlines to prevent serious abuse to children. These hotlines, however, were quickly overwhelmed by high call volume. In testimony before Congress, experts initially estimated that some 60,000 children were abused in the United States annually; however, over one million reports were made in the first five years of CAPTA’s enactment, averaging more than 200,000

²⁸⁹ C. Henry Kempe, Frederic N. Silverman, Brandt F. Steele, William Droegemuller, and Henry K. Silver, “The Battered Child Syndrome,” *Journal of the American Medical Association* 181 (1962): 17-24.

²⁹⁰ *Ibid.*

²⁹¹ U.S. Children’s Bureau, Department of Health, Education, and Welfare, *The Abused Child: Principles and Suggested Language for Legislation on Reporting of the Physically Abused Child* (Washington, D.C.: U.S. Government Printing Office, 1963).

²⁹² Mical Raz, “Unintended Consequences of Expanded Mandatory Reporting Laws,” *Pediatrics Perspectives* 139, no. 4 (April 2017): 1-3.

²⁹³ Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974).

²⁹⁴ Sharyn Jackson, “Minnesota child welfare pioneer Esther Wattenberg dies at age 99,” *Star Tribune*, July 26, 2019. <<https://www.startribune.com/minnesota-child-welfare-pioneer-esther-wattenberg-dies-at-age-99/513269862/>>.

reports per year.²⁹⁵ It became clear that the United States urgently needed child abuse prevention, not just awareness. For this purpose, when CAPTA was reauthorized by the Carter administration in 1978 it earmarked funds for research and demonstration projects aimed at prevention and treatment. At the federal government's discretion, these grants initially were awarded primarily to social service agencies, law enforcement, hospitals, and other state actors with child protection mandates. After Ronald Reagan reduced CAPTA's budget in 1981 by more than one-third, however, the purpose and impact of these discretionary grants changed.

First, Reagan's reduction of the child protection budget increased the child protection system's reliance on demonstration projects to innovate solutions to violence against children. Demonstration projects were by definition low-cost and temporary, not long-term. Under Reagan's administration demonstration projects were increasingly piloted with the assumption that nonprofit organizations, rather than government agencies, would procure ongoing funding and oversight to sustain them. Paradoxically, this facilitated the power of non-state actors to shape the national conversation surrounding child abuse. The National Committee for the Prevention of Child Abuse and Neglect emerged as a particularly influential advocacy group. As the largest nonprofit in the U.S. dedicated to child abuse prevention, the Chicago-based Committee was an important voice the national conversation surrounding child maltreatment. Established in 1972 by philanthropist Donna Stone, the Committee organized the first ever national conference on child abuse prevention in 1973 and launched a series of national ad campaigns and educational programs aimed at parents and children starting in 1974. Between

²⁹⁵ Senator Javits (NY), "National Center on Child Abuse and Neglect," *Congressional Record* 119: 19 (July 13, 1973—July 19, 1973), p. 23896; Oversight Hearings on Title I—Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, *Hearings Before the Subcommittee on Select Education of the Committee on Education on Labor*, House of Representatives, 96th Congress, 2nd session, Washington, D.C., December 2 and 4, 1980, 178; and John E.B. Meyers, "A Short History of Child Protection in America," *Family Law Quarterly* 42, no. 3 (Fall 2008): 459.

1979 and 1989, the Committee received eight demonstration project grants totaling \$1,065,086 for abuse prevention programs and developed a comprehensive abuse prevention model adopted by Departments of Children, Youth and Families across the United States.²⁹⁶

The Committee's first public service announcement aired on national television the same year Nixon signed the Child Abuse Prevention and Treatment Act. "Help Destroy a Family Tradition: Prevent Child Abuse" was filmed on death row in a New York state prison. Zooming in on a caged middle-aged man with long, blondish brown hair and a lost look in his eyes, a solemn voice-over declared in baritone, "You are looking at an abused child." The camera continued to pan across the faces of imprisoned men and women as the voice-over continued:

"Most men and women in prison today were abused children. The severe neglect and physical, sexual, and emotional abuse of our children make child abuse a national tragedy. It is estimated that there at least one million cases of it in America each year. Over 2,000 of those abused children die each year, and because many abused children grow up to abuse their own children, child abuse is passed on from generation to generation. For many families, child abuse is a family tradition. Yet child abusers can be helped. Help destroy a family tradition. Write Prevent Child Abuse, Box 2866, Chicago, Illinois, 60690."²⁹⁷

Unlike later advertisements from the Committee which depicted abusive behavior such as yelling at and berating small children (the camera would alternate between shots of adults shouting and children looking upset, so no children were harmed during filming), the Committee's first ad did not provide examples of abuse that people should report so much as it linked reporting child abuse to preventing crime. Notably, the ad did not say committing child abuse was a crime, but rather advanced the more nebulous and abstract premise that people abused as children might grow up to commit crimes as adults.

²⁹⁶ U.S. Department of Health and Human Services Administration for Children and Families, *National Center on Child Abuse and Neglect Clearinghouse Compendium of Discretionary Grants, Fiscal Years 1975-1991* (Washington, D.C.: April 1992), 79, 168, 170, 177, 304, 346, 378, 380; Child Welfare Online Library <childwelfare.gov>.

²⁹⁷ National Committee for the Prevention of Child Abuse and Neglect and the Advertising Council of New York, "Prevent Child Abuse PSA—1970's," In 16mm, <<https://www.youtube.com/watch?v=AWYWPqAcyzc>>. It is not clear to me where the Committee sourced the "one million cases of [child abuse] each year" estimate, but the statistic about child fatalities was consistent with research at the time.

The idea that abuse and criminal behavior were linked was a prevalent theme in the Committee's rhetoric, especially surrounding sexual abuse. In 1985, the Committee's director Anne Cohn attributed the steep rise in reported sexual abuse cases since 1980 to America's status as a nation in moral decline. Changing social norms, deviations from the nuclear family structure, the "sexual revolution" of the 1960s, and the availability of pornography had contributed, in her opinion, to the normalization of previously "taboo" sexual behaviors.²⁹⁸ Cohn felt that if the issue was not addressed, America would continue to regress. She was particularly concerned for what would happen to sexually abused children as they grew up. In her view, they had "a good chance of carrying the scars of abuse into adolescents [sic], as a juvenile delinquent or runaway or prostitution [sic] or into adult life, as an abuser."²⁹⁹ By attributing the rise in sexual abuse cases to the deterioration of "traditional" American family values, Cohn unwittingly maps for us the Committee's distance from feminist critiques of the nuclear family. Like the Progressive Era child savers of a bygone generation, her concern was not so much for children themselves as for what the abuse they endured could make them become: delinquents, runaways, prostitutes, abusers. All these categories represented a rejection of American family values and a threat to the nation's moral fiber.

The notion of a "cycle of abuse" remains prevalent in U.S. discourses surrounding child maltreatment. Evidence to support this idea has been conflicted for some time, however. By 1991, studies showed that while rates of abuse were high across generations, people abused by their parents did not necessarily abuse their own children. The most important predictor of child battering is not a history of being abused, but rather a lack of perspective-taking and warped

²⁹⁸ Anne Cohn, "The Secret is Out," draft of article for 1985 World Year Book, SW85, Box 39, National Committee for the Prevention of Child Abuse, Social Welfare History Archives, Minneapolis, Minn.

²⁹⁹ Ibid.

beliefs about children's behavior.³⁰⁰ That is, a parent is more likely to hit their child when they interpret their child's behavior as a sign that they are a bad parent or that their child is a bad child, whereas parents who have realistic expectations for their children's behavior from a developmental standpoint are less likely to lash out. When it comes to sexual abuse, the correlation between past and present abuse is even weaker. In 1998, the U.S. Department of Justice found that while one in four men imprisoned for sexual offenses reported experiencing sexual abuse as a child—a rate more than twice as high as the general (male) population—three in four did not.³⁰¹ Furthermore, although a history of physical abuse was more prevalent among incarcerated men in general, men imprisoned for violent offenses were not abused at higher rates than men imprisoned for non-violent crimes.³⁰² Incarcerated women also reported higher rates of physical and sexual abuse compared to the general U.S. population, but they were more likely to have suffered intimate partner violence than childhood maltreatment.³⁰³ Put simply, researchers have not been able to substantiate the connection the Committee made between child abuse and crime perpetration, and studies suggest that “cycle of abuse” rhetoric is more usefully supplanted by attitudinal factors as a framework for predicting the risk of child abuse.

The impact of the “cycle of abuse” rhetoric that Cohn espoused was twofold. First, it contributed to an impression of child sexual abusers as anti-social, “out of control” deviants, rather than as people adept at manipulating social norms to their advantage. Second, it attributed sexual abuse to non-normative family structures, thereby implicating unmarried and divorced

³⁰⁰ Byron Egeland, “A Prospective Study of High-Risk Families: Antecedents of Child Maltreatment,” in *Issues in Human Services Research and Policy*, Wilder Research Center Report, Amherst H. Wilder Foundation, Vol. 2, no. 2 (Winter 1991): 6-7. SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³⁰¹ U.S. Department of Justice, Office of Justice Programs, “Early Childhood Victimization Among Incarcerated Adult Male Felons,” *National Institute of Justice* (April 1998): n.p.

³⁰² *Ibid.*

³⁰³ U.S. Department of Justice, Bureau of Justice Statistics, “Prior Abuse Reported by Inmates and Probationers,” NCJ 172879 (April 1999): 1-4.

mothers in the rise in sexual abuse cases nationwide. The first part had a direct impact on states' push for improved legislation. In Minnesota, the attorney general's office feared that sex offenders committed a "multitude of crimes," including the rape of adult women and the molestation of young boys. Boys made up one-third of the sexually abused victims treated at the Children's Hospital in St. Paul, but the attorney general's office speculated that boys represented eighty-five percent of all sexual abuse victims. Boys just didn't report it because they "[didn't] watch *Leave It To Beaver* anymore, they watch[ed] Clint Eastwood"—a famously stoic Hollywood actor.³⁰⁴ The belief that boys suppress their emotions more than girls do is common, even though children assigned to both genders are expected to comply with rigid rules dictating appropriate emotional regulation and expression within patriarchal societies. Children are vulnerable to sexual abuse in part because of these expectations. Girls, however, compose the overwhelming majority of children sexually abused by family members and represent more than half of children sexually abused by adults and older children outside the home.³⁰⁵ Boys are comparatively more likely to be abused by adults outside the family, but by no means do they represent four in five victims of sexual abuse. Still, the idea of boys being the primary targets of sex offenders elicited a certain horror that the sexual abuse of girls did not, fueled by social anxieties surrounding homosexuality, AIDS, and the gay rights movement.³⁰⁶ It was easier to

³⁰⁴ Paul Levy, "Project hopes to set guidelines for dealing with child molesters," *Star Tribune*, October 26, 1986, SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³⁰⁵ David Finkelhor, "The Prevention of Childhood Sexual Abuse," *The Future of Children* 19, no. 2 (Fall 2009): 171.

³⁰⁶ A major catalyst for the national panic surrounding the sexual abuse of boys was the kidnapping and murder of six-year-old Etan Patz in May 1979, in which investigators, activists, and the media (wrongly) implicated the controversial North American Man/Boy Love Association in Etan's abduction (see Paul M. Renfro, "'He Was Beautiful': Etan Patz, Queer Politics, and the Image of Endangered Childhood" in *Stranger Danger: Family Values, Childhood, and the American Carceral State* (Oxford: Oxford University Press, 2020), 25-56. On the depiction of gay men as child molesters, see also Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in American Culture* (New Haven: Yale University Press, 2008).

push for tougher laws against child sexual abuse when the impact would hit already-criminalized groups hardest rather than “good family men.”

The Committee’s support for patriarchal authority was also reflected in its K-12 educational programs for schools, YMCAs and YWCAs, childcare and neighborhood centers, and Big Brother/Big Sister programs. These public prevention efforts were aimed primarily at mothers and young children of both sexes. With respect to physical abuse, the Committee taught children “It’s OK for your dad to punish you when you do something wrong, [as long as] it doesn’t leave a mark.”³⁰⁷ Explicitly, the Committee taught children that spankings were not abuse.³⁰⁸ Only punishments that resulted in injuries were abusive, and the Committee’s programs helped children brainstorm who they could ask for help, such as “a friend, a mom, or a mom’s friend.”³⁰⁹ With respect to sexual abuse, the Committee taught children to say “NO” to any touch that made them “uncomfortable,” and to seek support from a trusted adult.³¹⁰ The Committee also gave parents (particularly mothers) guidelines for how to talk to children about sexual abuse.³¹¹ The problem with the Committee’s messaging around physical and sexual abuse was that teaching children that they have a right to refuse touch from adults that make them

³⁰⁷ Harry Elleson, “Program teaches children they needn’t be helpless victims of child abuse,” *The Houston Chronicle*, July 10, 1983, Section 6, page 3, SW85, Box 40, National Committee for the Prevention of Child Abuse records, Social Welfare History Archives, Minneapolis, Minn.

³⁰⁸ An abundance of research shows that spanking children is abusive and that it commonly results in poor self-esteem and emotional dysregulation. Many countries have banned the use of spanking altogether, and spanking is prohibited in most U.S. school districts as well as in the U.S. foster care system. However, surveys show that approximately half of American parents still spank their children (David Finkelhor, et. al, “Corporal Punishment: Current Rates from a National Survey,” Crimes Against Children Research Center, University of New Hampshire, 2019.) It’s also important to emphasize that there are many types of child abuse besides sexual abuse that do not leave marks, such as forcing children to hold stress positions (e.g., holding their arms above their head or standing on tip-toes); public shaming (e.g., head-shaving or forcing a child to wear a sign around their neck); confinement (e.g., locking a child in a closet) or depriving children of shelter or privacy (e.g., forcing them to sleep outside); verbal disparagement; withholding food, putting children on restrictive diets, or forcing them to eat foods that make them sick; treating disability accommodations as a privilege rather than a right (e.g., confiscating a child’s glasses); and so on. By no means should these discipline methods be considered safe alternatives to spanking.

³⁰⁹ Elleson, “Program teaches children they needn’t be helpless victims of abuse,” *ibid.*

³¹⁰ “He told me not to tell,” pamphlet, SW85, Box 30, National Committee for the Prevention of Child Abuse records, Social Welfare History Archives, Minneapolis, Minn.

³¹¹ *Ibid.*

uncomfortable, but that they do not have a right to refuse touch from adults that cause them pain, is confusing and contradictory. By contrast, the Minnesota Coalition for Battered Women was much clearer in its guidance for parents and children. The Coalition understood that a father's power to sexually abuse a child derived from his "right" to physically coerce them, even if he did not resort to blows to get his way.³¹² They analyzed physical and sexual abuse as interrelated phenomena. In the same vein, they discouraged parents from spanking their children and suggested more effective, non-violent ways to communicate.³¹³ Any use of physical force to extract obedience from a child, no matter how "normal," taught children they did not have a right to set boundaries around interpersonal contact. Parents could not be appalled by sexual abuse but believe spanking was okay.

On some level, Anne Cohn was aware of the contradictions in the Committee's messaging around sexual abuse. In handwritten notes to herself, Cohn asked if she was saying the right things, if she was making any difference. What happened when kids said 'no?' she wondered. Could children really rely on adults to listen to them or help them? What risks was she asking children to take? In some ways, the media the Committee used to raise awareness of child abuse foreclosed more sophisticated analyses of family violence. Cohn knew her audience spanned from preschoolers to adults and needed to "get the point" within the span of a thirty-second PSA or a 600-word newspaper article. She needed to communicate with practicality and urgency; there was no room for nuance or abstraction. "The time is NOW," she told herself, striking three lines under the final word. She could not wait for the more sophisticated studies she hoped researchers would write or let self-doubt cloud her commitment to action. Even

³¹² Rich Snowdon, "Working with Incest Offenders: Excuses, Excuses, Excuses," SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³¹³ "Please Don't Spank Children," SW0290, Box 53, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

though later studies would show that sexual abuse awareness and prevention efforts aimed at young children are ineffective, Cohn pressed on—America had a child sexual abuse crisis on its hands.³¹⁴

None of this is to say that the Committee’s work was anti-feminist, or that it had no meaningful impact. Substantiated cases of child battering and sexual abuse have declined significantly across the United States: from 1992 to 2009, substantiated cases of sexual abuse declined by sixty-two percent and cases of physical abuse by fifty-six percent.³¹⁵ While it is possible that the decline in substantiated cases of abuse reflect changes in investigatory effort, reporting practices, definitional standards, and administrative or statistical changes rather than real changes in underlying abuse, the National Child Abuse and Neglect Data System (which aggregates and publishes statistics from child protection agencies) uses consistent and standardized definitions of child maltreatment and gathers reports directly from schools and hospitals, thereby avoiding problems created when state agencies change their standards or practices.³¹⁶ The decline in substantiated cases of child abuse therefore likely represents real cultural change, even if the investigation and substantiation processes of state agencies remain inconsistent and inadequate.³¹⁷ The Committee’s prevention efforts undoubtedly played a role in driving down rates of physical and sexual abuse in the United States.

³¹⁴ Anne Cohn’s handwritten notes, SW85, Box 31, National Committee for the Prevention of Child Abuse records, Social Welfare History Archives, Minneapolis, Minn. Studies show that most children cannot tell the difference between appropriate and inappropriate touching, even with instruction, before the third grade. As many as one in five young children who receive education about “good” and “bad” touch believe that normal parent-child activities such as bathing are “bad.” See Howard Levine, “UC Study Urges Dismantling Child Sex-Abuse Program,” *San Francisco Examiner*, 24 Feb. 1998, B-1, N; Dickon Repucci and Jeffrey J. Haugaard, “Prevention of Child Sexual Abuse: Myth or Reality,” *American Psychologist* 44, no. 10 (1989): 1266-75.

³¹⁵ David Finkelhor, Lisa Jones, and Anne Shattuck, “Updated Trends in Child Maltreatment, 2010,” Crimes Against Children Research Center, University of New Hampshire, 1-4.

³¹⁶ *Ibid.*, 2.

³¹⁷ Despite high rates of reporting, nine in ten families are not investigated by child protective services. Where families are investigated, the rate of substantiation is 8.6 per 10,000. (See Finkelhor, et. al, “Updated Trends in Child Maltreatment, 2010.”) According to surveys conducted by the U.S. Centers for Disease Control, the actual rate of

Nonetheless, raising awareness of child abuse without alienating parents who might see their own “normal” assumptions and behaviors reflected back to them as abusive required, on some level, a depoliticization of such abuse. Abuse could be described as “intergenerational,” even as a “family tradition,” but not located in patriarchal power; children could have certain limited rights to freedom from violence, but not a total right to bodily autonomy. Disentangling child abuse from the myriad ways that American society systematically disempowered children was not only a matter of expedience, but also a strategic choice to distance the child protection movement from more controversial political debates around gender, race, and class. Using the “p”-word—patriarchy—could alienate parents who, despite their skepticism of the women’s movement, cared about their children’s well-being and wanted to be good parents. The Committee needed their advocacy to be as inclusive as possible, and that required a flexible politics with room for ideological pluralism. Not unwisely, the Committee focused on practical solutions with maximum impact. They feared that a step too bold or too far in the wrong direction could imperil their efforts to help children in crisis.

Feminist Approaches to Incest and Child Sexual Abuse

Despite its name, the Minnesota Coalition for Battered Women was not focused solely on intimate partner violence or on women. Its advocacy encompassed multiple kinds of patriarchal violence, including child battering and incest, as well as the sexual abuse of children by adults

U.S. adults who claim to have experienced physical or sexual abuse is much higher. Seventeen percent report experiencing physical abuse as children (excluding spanking, which would likely drive the rate higher), twelve percent report experiencing sexual abuse, and sixteen percent report witnessing domestic violence. Twenty-six percent report experiencing emotional or psychological abuse, one in five report having a mentally unstable or suicidal parent, and one-third report having a caregiver who abused alcohol or prescription drugs. Respondents ages 18-24 were more likely to report experiencing physical abuse than respondents ages 55 and older. See Julie Steenhuisen, “Many Americans grew up in troubled homes: CDC study,” *Reuters*, December 16, 2010. This data suggests child abuse remains underreported, but it also shows that current reporting rates hew more closely to actual incidence rates than ever before.

outside the home. Incest survivors played a key role in the Coalition's consciousness raising. By sharing their personal experiences, survivors laid the groundwork for a theory of incest as patriarchal sex abuse. In a collectively authored 1984 manifesto titled "Victimization and Society," survivors argued that incest first and foremost stemmed from an attitude of male entitlement. It was therefore hardly a symptom of "abnormal" psychology. Survivors were taught, as most other girls were taught, that their girlhood was a training ground for womanhood, and that a good woman took care of her man. While sexually abusive fathers took certain liberties in shaping that training which other men did not, both abusive and non-abusive fathers founded their parenting philosophies upon the same principle. That principle was fundamentally flawed.³¹⁸

In order to understand the rationale sexual abusers used to justify their behavior, survivors pointed to the myriad ways American society enabled the sexual abuse of children. Children were taught to obey adults rather than told they had rights. Adults expected youth to respect their elders but did not feel obligated to reciprocate that respect, instilling in children that they were inferior. Mainstream religion taught women and children that God's love and protection were contingent on their deference to husbands and fathers, while newspaper and television advertisements depicted men's love and protection as rewards for women's use of the right lipstick and shampoo. A lack of sex education in schools deprived many abuse victims of language to articulate what was happening to them. A culture of compulsory heterosexuality restricted girls' freedom to explore and define their own sexual desires. Survivors also argued that pornography, rather than serving as an outlet for men's sexual urges, frequently contributed

³¹⁸ Adults Recovering from Incest Anonymous (ARIA), "Victimization and Society," Minneapolis, Minn. (1984), SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

to the sexual exploitation of women and children by depicting women as mere vessels for men's fantasies of power or pleasure. Some survivors' fathers even forced them to participate in the making of pornography or to replicate sexual acts shown in porn.³¹⁹

Amid this abuse, victims felt they had nowhere to turn. After all, the U.S. government had no laws prohibiting the sale of child pornography until 1977. The criminal justice system was unreliable, often favoring abusers over victims. Social services emphasized keeping families together at all costs, and doctors rarely asked whether victims were abused even when they sought treatment for sexually transmitted infections as children. Therapy was often prohibitively expensive, and therapists frequently lacked a feminist perspective. Many survivors also felt trapped because their mothers were uneducated, unable to drive, and either unemployed or paid so inequitably that leaving the abuser was not an option. All these factors contributed to the prevalence of sexual abuse in American society.³²⁰

Reframing sexual abuse as a social problem that implicated major institutions like the church, the law, and the U.S. government was a mammoth achievement. Sexual abuse was no longer an individual problem or a "family matter." It was the manifestation of centuries of cultural conditioning; it represented a systemic failure of colossal proportions. Patriarchal power—previously a goliath unchallenged—greased the wheels of this social injustice and permitted sexual abusers to victimize children with impunity. Sexual abusers could get away with abuse because they knew they would not be the first or last person to tell their victim that they were lesser-than, that their feelings did not matter, that their boundaries were unimportant,

³¹⁹ *Ibid.*

³²⁰ *Ibid.* The U.S. Congress first passed legislation against child pornography with the Protection of Children against Sexual Exploitation Act of 1977, which made it a crime to knowingly use a minor under 16 years of age in the production of sexually explicit media. Due to enforcement difficulties, in 1988 the U.S. Criminal Code was amended to add 18 U.S.C. § 2257, stipulating clear record keeping requirements for all producers of sexually explicit media in order to ensure ignorance of a performer's age could not be used as a legal defense.

that their mind and body were not rightly their own. Children needed to be treated with respect, to be taught they had a right to say “no,” to decide for themselves whom they would grant permission to touch them, and to have their thoughts and feelings taken seriously. “[Until] women and children [are] no longer seen as property,” survivors warned, “violence in our communities will always exist.”³²¹

While the anonymously-authored manifesto focused on the forces of ageism and misogyny, racism is another way that American society teaches children that their minds and bodies are not theirs to govern. The Native women members of the Coalition knew this well. They identified sexual abuse in Native communities as one of the most devastating legacies of boarding schools intended to “civilize” American Indian children. Forcibly separated from their families and held captive in institutions designed to destroy their cultural identities, Native children endured some of the most extreme human rights violations in North American history.³²² School authorities, who were white, subjected Indigenous students to all manner of abuses, including rape and molestation. It should not surprise us that sexual abuse was rampant in boarding schools, given that white adults viewed Native children as having even less of a right

³²¹ *Ibid.*

³²² On the topic of abuse at American Indian boarding schools, see Ward Churchill, *Kill the Indian, Save the Man: The Genocidal Impact of American Indian Residential Schools* (San Francisco: City Lights Publisher, 2004); Michael C. Coleman, *American Indian Children at School, 1930-1950* (Jackson: University Press of Mississippi, 1993); Brenda J. Child, *Boarding School Seasons: American Indian Families, 1900-1940* (Lincoln: University of Nebraska Press, 1995); Margaret D. Jacobs, *White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940* (Lincoln: University of Nebraska Press, 2011); Jean A. Keller, *Empty Beds: Indian Student Health at Sherman Institute, 1902-1922* (East Lansing, MI: Michigan State University Press, 2002); Denise K. Lajimodiere, *Stringing Rosaries: The History, the Unforgivable, and the Healing of Northern Plains Indian Boarding School Survivors* (Fargo: North Dakota State University Press, 2019); K. Tsianina Lomawaima, *They Called it Prairie Light: The Story of Chilocco Indian School* (Lincoln: University of Nebraska Press, 1995); Hayes Peter Mauro, *The Art of Americanization at the Carlisle Indian School* (Albuquerque: University of New Mexico Press, 2011); Francis Paul Prucha, *The Churches and the Indian Schools, 1888-1912* (Lincoln: University of Nebraska Press, 1979); David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience* (Lawrence, KS: University of Kansas Press, 1995); Andrew Woolford, *This Benevolent Experiment: Indigenous Boarding Schools, Genocide, and Redress in Canada and the United States* (Lincoln: University of Nebraska Press, 2015). For historical context surrounding American Indian education in Minnesota specifically, see Julie Davis, *Survival Schools: The American Indian Movement and Community Education in the Twin Cities* (Minneapolis: University of Minnesota Press, 2013).

to personal sovereignty than white children. Native women members of the Coalition knew that Native incest survivors had to navigate added layers of complexity that white survivors did not, because their abusers were also typically victims in some way. “It’s unrealistic to base my counseling from a perspective that [a perpetrator] is really terrible and we need to lock him up and throw away the key [...] or castrate him or whatever,” explained a Native woman counselor at the Minnesota Division of Indian Work. “For the most part I see Indian perpetrators as being victims themselves, in need of help. It’s victims of a lot of different things, of oppression, of racism, of economics, just a lot of things like that.”³²³ In her view, most of her clients felt similarly. While some families were very angry, “most want healing, want to keep the family intact, and to achieve a healthier relationship.”³²⁴

Both white and Native women members of the Coalition were mutually committed to long-term, culturally transformative solutions to child sexual abuse. Each group, however, was positioned differently in relationship to state power. While social workers pressured white families to stay together no matter how abusive they were, Native families had a completely different relationship to child protective services. Social workers were far less reluctant to remove Native children from abusive homes, and Native children were significantly overrepresented in Minnesota foster care.³²⁵ In an undated report, members of the White Earth Ojibwe nation stated that fifty percent of Native children placed in Hennepin County emergency shelters were removed from the home without proper documentation in response to domestic assault calls. In those cases, police either failed to report the assault to criminal court, committed

³²³ “Incest in American Indian Families,” SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³²⁴ *Ibid.*

³²⁵ U.S. Senate Select Committee on Indian Affairs and the Minnesota Department of Human Services, “Minnesota Foster Care Placements Per Thousand, 1975 & 1990,” SW290, Box 41, Folder 6, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

the mother and/or her assailant to a detox facility without filing charges, or elected to deliver their own brand of justice to the assailant in the heat of the moment—a serious lapse in judgment that caused charges against the abuser to be dropped in most cases.³²⁶ For Native mothers, it was devastating to be separated from their children in a moment of crisis with little recourse to retrieve them due to police negligence or brutality. For Native children, wanton and unaccountable law enforcement and child protection systems intensified the pressure to remain silent because they feared what might happen if they called for help.

No matter how dysfunctional, Native families were an essential barrier between Native children and a white world that vacillated between hostility and indifference toward American Indians. Being removed from their homes not only meant that they might not see their parents or siblings again, but also that they could be uprooted from the place they called “home” in a larger sense. They would be stripped of their community, identity, and culture and forced to be a Native child alone in a white society without protection from what that meant or could mean. Moreover, Indigenous children “[got] the message early that they [were] not as good as others,” and exposing dysfunction in their homes could make children feel as though they were lending credibility to that message.³²⁷ Although the foster care system is not necessarily safer for white children than for children of color, Native incest victims were especially distrustful of state involvement and understood they were vulnerable to certain psychological harms within the child protection system that white children did not share.

³²⁶ Deb Brunner, Jamie Cyson, Eileen Hudon, Linda Skinaway, and Erica White, “A Response to Domestic Assault; Removal of Indian Children,” SW0290, Box 41, unnumbered folder labeled “The Court System’s Response to the Children of Battered Women/Legal Systems Advocacy Committee Forum,” Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³²⁷ “Incest in American Indian Families,” SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

As I illustrated with “Ru’s” story in Chapter 3, forcing children to choose between unsafety at home and unsafety in the world tasks them with a cruel and impossible choice. Many Native children confronted with that choice were unable to cope. According to the counselor for the Minnesota Division of Indian Works, approximately half of Native women who sought treatment for incest were addicted to drugs or alcohol.³²⁸ Drugs and alcohol, as one incest survivor put it, helped many Native women numb the distress they felt from trying to exert tremendous self-restraint, constantly telling themselves “you’re supposed to be strong and not bother a lot of people with your problems [because] people around you have enough problems of their own to deal with.”³²⁹ When Native incest victims did approach police for help they were often disbelieved, or their investigations were handled poorly.³³⁰ Others, who approached the Minnesota Division of Indian Works for mediation, were ultimately disappointed when constructive confrontation failed. Most perpetrators denied the incest or minimized its impact, blamed the victim or someone else, and refused to accept responsibility.³³¹ Being dismissed and belittled both by the police and by their abusers underscored Native women’s disempowerment, reinforcing the message that their experiences were unimportant and that their feelings did not matter.

Part of the problem with attempting to resolve incestuous abuse through what the Division of Indian Works counselor described as “constructive confrontation” was that perpetrators walked in and out of the counselor’s office with the same attitude of patriarchal entitlement they had used to justify their abuse. They were not being challenged by anyone other than their victim, whom they did not respect, to examine and work on that attitude. In order to

³²⁸ *Ibid.*

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ *Ibid.*

promote more productive outcomes, the Coalition advocated for specialized counseling for incest offenders from a feminist perspective. They pointed to treatment models in California from the Men Against Male Violence project and the San Francisco Probation Department which had experienced some success.³³² There, counselors had identified narratives men used to justify or excuse their incest behavior and tried to help them reframe their attitudes and beliefs about themselves and their victims. Men were not powerless to control their sexual urges. Abuse didn't "just happen." Their behavior was within their control, not the fault of sexually unavailable wives or children who sought their affection. Using a child to meet their sexual needs was not loving, or instructive, or their right. Even though the majority of the men in these programs denied their wrongdoing "from start to finish," some got the message. The few success stories with feminist approaches to counseling at least seemed more encouraging than family therapy. Abusive men could not participate in any sort of reconciliation constructively without first being confronted with the scripts they used to justify their behavior, seriously forced to examine their beliefs about masculinity and male sexuality, and—most importantly—faced with sustained peer pressure from other men to transform themselves from the inside out.

Restorative Approaches to Sexual Abuse: The Transitional Sex Offenders Program

With pressure and support from the Coalition, the California model was applied to a Minnesota prison treatment program known as the Transitional Sex Offender Program. The Transitional Sex Offender Program was founded in 1978 with funding from the Carter administration. Inmates in the program included incest offenders and other sex offenders, and men accepted into the program had to request treatment as part of their prison sentence. Whereas

³³² Rich Snowdon, "Working with Incest Offenders: Excuses, Excuses, Excuses," SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

the California model required offenders to attend weekly counseling sessions, the Minnesota program was much more intensive and in-prison treatment took place daily over ten consecutive months. During the first month, men completed five standard psychological tests, wrote autobiographies, and watched films and read books on the causes of sexual abuse and the impact of sexual abuse upon victims. After the first thirty days, offenders attended daily group discussions with staff during which any minimization or denial of their crimes was confronted directly by both staff and other offenders. Following the orientation period, they also attended ninety-minute therapy groups three evenings a week led by feminist male counselors and weekend educational groups led by inmates. These sessions focused on social skills as well as lessons in assertiveness, anger management, social roles, and sex education. After nine months, program participants watched sexually explicit movies featuring adult performers and reevaluated their beliefs, feelings, and values about sex. Once every other month the group was visited by sexual assault advocates, who were usually volunteers trained to counsel victims of incest and rape. In many cases these advocates were survivors themselves who had powerful stories to share with the offenders. These meetings served to confront offenders with the consequences of their acts, and many men in the program valued them especially.³³³

Following treatment, men continued to meet in outpatient groups at a halfway house for until being released back into the community. Initially men remained in the supervised release program for four to six months, but this decreased to two months during the mid-1980s due to a shortage of beds stemming from the Reagan administration's crackdown on drug offenders.³³⁴ Of the offenders who completed treatment, one-third returned to the family in which they committed

³³³ Greg Owen and Nancy M. Steele, "Incest Offenders After Treatment," in *Family Sexual Abuse: Frontline Research*, ed. Michael Quinn Patton (Newbury Park, CA: SAGE Publications, Inc., 1991), 178-199.

³³⁴ Minnesota Department of Corrections, "Sex Offender Supervision: 2000 Report to the Legislature," St. Paul, Minn. (January 2000), 10.

the offense and forty percent were married or lived with a partner in a home with children under the age of eighteen. Men who completed all phases of the program were less likely to reoffend than men who did not complete the program. Approximately eighteen percent of program participants were returned to prison following release. While parole officers felt that one-third of incest offenders in the program were not supervised for an adequate length of time in the community, they did not suggest lengthening the period of incarceration. In fact, parole officers' comments suggested that a greater portion of offenders' sentences should be spent in the supervised release program which provided treatment rather than in a prison setting.³³⁵ The effects of ensuring incest offenders received intensive treatment aimed at reducing recidivism were not miraculous, but the combination of punitive and restorative approaches seemed more effective than either family therapy or incarceration without treatment.

The Coalition's interest in developing restorative approaches to the crime of incest could be characterized as part of their broader commitment to creating effective, long-term solutions to sexual and domestic violence. The Transitional Sex Offender Program was emphatically not a family therapy program. Its point was to change offenders' beliefs and behaviors. While victims and other impacted parties were invited to have a voice in that process, they were not required to participate nor asked to reconcile against their will. In fact, most families abstained from participation.³³⁶ The fact that one-third of program participants returned to the family in which the offense occurred did not necessarily indicate fulfillment of program objectives. Families may

³³⁵ Greg Owen, "Evaluation of a Prison Treatment Program for Incest Offenders," WRC Report: Issues in Human Services Research and Policy, Amherst H. Wilder Foundation 2, no. 2 (Winter 1991), SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³³⁶ Greg Owen and Nancy M. Steele, "Incest Offenders After Treatment," in *Family Sexual Abuse: Frontline Research*, ed. Michael Quinn Patton (Newbury Park, CA: SAGE Publications, Inc., 1991), 185. Approximately thirty-five percent of offenders enrolled in the program had at least one treatment session with their spouse, and thirty percent had at least one treatment session with one or more of their children (who may or may not have been victims of the abuse.)

have reunited in the absence of victim-offender reconciliation for financial stability, because the mother desired it, or for other reasons. In a follow-up study with 110 offenders who participated in the Transitional Sex Offender Program between 1977 and 1988, researchers found that men from rural areas of the state were significantly overrepresented in the program due to a lack of accessible and affordable outpatient treatment services outside the metropolitan area of the Twin Cities.³³⁷ Researchers did not speculate as to whether men from rural areas were more or less likely than men from metropolitan areas to reunite with their families post-treatment, but relatively fewer options for alternative living arrangements (as one might find in a city) may have skewed the family reunification rate.

The majority of offenders in the Transitional Sex Offender Program did not return to the families in which they had offended, though. Nonetheless, ninety-one percent of men who completed the program felt the program was beneficial.³³⁸ “Basically it helped me understand that other people have their own sexuality and I have been selfish about a lot of things,” one said.³³⁹ Another stated, “Now I can look at children and realize they are just children. I have no fantasies about them, I no longer see them as sexual objects.”³⁴⁰ Above all, men frequently cited the program’s emphasis on personal responsibility, perspective-taking, and communication skills as transformative. They no longer turned to children as intimates because they felt capable of forming healthy emotional and sexual connections with adult women.³⁴¹ Only three of the 110 offenders surveyed said the program’s “lack of emphasis on restoring the family” was unhelpful to them.³⁴² Requiring men to turn inward and analyze their behavior through a feminist lens

³³⁷ *Ibid*, 183.

³³⁸ *Ibid*, 187.

³³⁹ *Ibid*, 189.

³⁴⁰ *Ibid*, 190.

³⁴¹ *Ibid*, 189-191.

³⁴² *Ibid*, 188.

helped the vast majority of surveyed offenders lead more connected and fulfilling lives post-treatment, regardless of their family reunification status.

Today, the Transitional Sex Offender Program continues to offer treatment, therapy, and transitional services to convicted men in Minnesota prisons. Longitudinal studies have shown that men who participate in the program are thirty-three percent less likely to commit future sexual offenses post-imprisonment than men who do not participate in the program, earning the program a current “promising” rating from the U.S. Department of Justice’s research department.³⁴³ But members of the Coalition knew that rehabilitating offenders was only one piece of the puzzle. Offenders left a trail of destruction in their wake that didn’t disappear just because they were “cured.” Victims and families needed services and support, too. After all, restorative justice is not a one-way street.

Blaming Mothers

While the intensive Transitional Sex Offenders Program was a success by any standard, funding cuts to family and child welfare programs under successive Republican administrations during the 1980s and early ‘90s had a significant impact on incest victims and families. Cheerful deregulator-in-chief Ronald Reagan set to work rolling back domestic and social programs when he assumed the presidency in 1981, and the impact on child protective services and other family programs was substantial. In 1982, the Reagan administration slashed federal funding for child protection by thirty percent.³⁴⁴ Reagan made these cuts to appease the radical right-wing lobby groups that composed his political base, including the four million members and two million

³⁴³ U.S. Department of Justice, “Program Profile: Minnesota Prison-Based Sex Offender Treatment Program,” <<https://crimesolutions.ojp.gov/ratedprograms/233>>. Last updated May 21, 2012.

³⁴⁴ National Child Abuse and Neglect Training and Publications Project, “The Child Abuse Prevention and Treatment Act: 40 Years of Safeguarding America’s Children,” U.S. Department of Health and Human Services, Children’s Bureau (Washington, D.C., 2014): 25.

donors of Moral Majority, a fundamentalist Christian organization which opposed child abuse laws on the grounds that the government had no business interfering in “family life.”³⁴⁵ Reagan did not share their opinion, however, that child abuse was a non-issue. The best way to describe the Reagan administration’s approach to child maltreatment is “conflicted.” While federal funding for social services dwindled under Reagan’s administration, federal funding for anti-crime programs expanded. There was a steady stream of federal legislation during the mid-1980s focused on criminal penalties or procedures for investigating charges of child abuse. One of the most significant pieces of legislation from this period was the 1984 Child Protection Act, which increased penalties for the production, distribution, and possession of child pornography and solidified a punitive attitude toward adults who sexually exploited children.³⁴⁶ Another important piece of legislation was the 1986 Children’s Justice Act, which required states to appoint multidisciplinary task forces including police, medical and psychological professionals, and child advocates to jointly investigate and prosecute child sexual abuse. The Children’s Justice Act also funded police training programs in order to improve the chances of successful prosecution without further traumatizing victims.³⁴⁷ The ready availability of federal funding for anti-crime programs under Reagan’s administration thus led to increased prosecution and strengthened the role of law enforcement in cases of child sexual abuse, which had historically been weak.

On the other hand, Reagan’s decision to abandon the Carter administration’s efforts to expand social services and regulate healthcare costs had far-reaching consequences for families and victims of sexual abuse. The Reagan administration cut federal medical aid to more than

³⁴⁵ On Moral Majority’s influence, see Seth Dowland, “Family Values” and the Formation of a Christian Right Agenda,” *Church History* 78, no. 3 (September 2009): 606-631.

³⁴⁶ Child Protection Act, 18 U.S.C. § 2251 (1984).

³⁴⁷ Children’s Justice Act, 42 U.S.C. § 5101 (1986).

one-fifth of the American population and permitted states to reduce or eliminate medical assistance for some groups they were previously required to serve.³⁴⁸ Members of the Minnesota Coalition for Battered Women complained that skyrocketing healthcare costs had made recovery programs for victims and families prohibitively expensive. At the Bush Children's Home, a residential treatment center, social workers reported that sexually abused children were often unable to receive adequate care because their health insurance would not cover the costs of necessary treatment. As a result, the course of treatment had become less intensive and much shorter than it used to be.³⁴⁹ The Family Project Program, which offered treatment through outpatient clinics for incest offenders and victims, claimed to have a high success rate but lamented that their program was "intensive, long term and very expensive."³⁵⁰ The financial burden for children's recovery from sexual abuse increasingly fell to families, especially mothers, who could not always afford to give their children quality care.

Ballooning healthcare costs also, ironically, shaped prosecution in cases of child sexual assault. Since 1985, legislative changes in Minnesota had made it possible for judges to grant a stay of imposition or execution of incest offenders' sentences under one of two circumstances. The first circumstance was if the defendant was eligible for and agreed to participate in outpatient sex offender treatment. Outpatient programs like Family Project were effective, but expensive. The defendant either needed to pay for the program out of pocket or have his insurance cover the cost. Alternatively, a defendant could receive a stay of imposition or execution of his sentence if a judge believed family therapy was in the family's best interests. If

³⁴⁸ Spencer Rich, "Reagan Budget Means Drastic Cuts in Medicare and Medicaid Programs," *Washington Post*, August 21, 1981.

³⁴⁹ Barbara Monsey, "Trends in Services for Victims of Abuse and Their Families," WRC Report: Issues in Human Services Research and Policy, Amherst H. Wilder Foundation 2, no. 2 (Winter 1991), SW0290, Box 53, Folder 28, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³⁵⁰ *Ibid.*

a defendant met at least one of these criteria, he was eligible to serve a reduced, two-year sentence in county jail and could avoid going to state prison for ten to fifteen years.³⁵¹ These changes were theoretically intended to standardize prosecutions for child sexual assault and limit judges' discretion to prescribe family therapy in lieu of making a conviction, but the law notably did not offer guidance in determining what a family's "best interests" might be. It is difficult to estimate the percentage of cases in Minnesota where judges used their discretion to mandate family therapy rather than state imprisonment for incest offenders, but as of 1989, Minnesota placed fewer convicted incest offenders in the state prison system than all but one other state in the nation.³⁵² Minnesota's low state imprisonment rate for incest offenses suggests that judges may have prescribed family therapy when outpatient therapy was unaffordable for defendants. Given the questionable effectiveness of family therapy in cases of incest generally—something the 1985 law was made to caution against—this meant mothers in low-income families had to assume a therapeutic role that was normally outsourced to a team of trained professionals in families of greater means.

Aside from creating a blueprint for the Transitional Sex Offender Program and supporting similar outpatient treatment programs in the Twin Cities, the Minnesota Coalition for Battered Women actually played a limited role in shaping prosecution and sentencing in cases of child sexual abuse in Minnesota. The legislative changes made to the state's sentencing guidelines in 1985 were driven by pressure from multiple directions. For judges, incest cases were often time-consuming and emotionally excruciating because children were not, as a general rule, equipped to withstand adversarial hearings.³⁵³ Many incest victims recanted their testimony

³⁵¹ Laws of Minnesota 1985, Chapter 286-H.F. No. 848.

³⁵² Greg Owen and Nancy M. Steele, "Incest Offenders After Treatment," in *Family Sexual Abuse: Frontline Research*, ed. Michael Quinn Patton (Newbury Park, CA: SAGE Publications, Inc., 1991), 178-199.

³⁵³ Ted Rohrlich, "Group seeks to ease testimony by victims of child abuse," *Los Angeles Times*, Jun 25, 1984, B3.

under emotional duress.³⁵⁴ Until at least the mid-1980s, the FBI, the president of the National Council of Juvenile and Family Court Judges, and some U.S. circuit court judges explicitly discouraged incarceration for incest offenders, preferring to order family counseling in lieu of making a conviction.³⁵⁵ In 1984, the Attorney General’s Task Force on Family Violence recommended reforms to the investigation and prosecution process which would make testifying less intimidating for children. These recommendations included allowing hearsay evidence at preliminary hearings as well as permitting victim advocates to accompany children to court. By 1990 these recommendations were codified in the Victims of Child Abuse Act.³⁵⁶ As Minnesota’s criminal justice system incorporated these reforms suggested (and eventually, mandated) by the federal government, there was a trend toward prosecution and away from family therapy. However, Minnesota’s 1985 revised law went a step further, merging the crimes of “intrafamilial sexual abuse” and “criminal sexual conduct” in order to encourage sentencing parity between incest offenders (who were sentenced to three to five years’ imprisonment under the state’s sentencing guidelines prior to 1985) and other sex offenders, who were sentenced to a maximum of ten to fifteen years’ imprisonment for the same crimes with different victims.

It is unclear where the pressure to create sentencing parity came from. The Minnesota Coalition for Battered Women’s records contain no evidence that its legal advocacy committee ever raised the issue, and as of the early 1980s the Coalition did not support incarceration beyond two to three years because research from the Japanese legal context—where changes to the criminal justice system made in the 1950s had halved the country’s violent crime rate—

³⁵⁴ Curtis J. Sitomer, “Conflicting rights in sex-abuse cases: Rulings reinforce suspect’s right to fair trial, not child’s right to privacy,” *The Christian Science Monitor*, Aug 21, 1985, 3.

³⁵⁵ “Pedophilia,” FBI law enforcement bulletin (1984), SW85, Box 31, National Committee for the Prevention of Child Abuse records, Social Welfare History Archives, Minneapolis, Minn.; Curtis J. Sitomer, “Jurists consult on how to cope with cases of child sexual abuse,” *The Christian Science Monitor*, Mar. 4, 1985, 3.

³⁵⁶ Title II—Victims of Child Abuse Act, 34 U.S.C. § 10101 (1990).

suggested incarceration beyond three years was ineffective and contributed to higher recidivism rates.³⁵⁷ It is possible—probable, even—that the Coalition’s membership held a range of opinions on the subject, with some in favor of harsher punishment than others. No record remains of debates they may have had amongst themselves, though. What we do know is that from the outset the Coalition had consistently envisioned justice as a project of long-term cultural transformation, and that they had supported the state’s creation of an intensive rehabilitation program for incarcerated offenders (the Transitional Sex Offender Program.) Based on the available evidence, we can guess that the Coalition generally supported rehabilitation in lieu of longer sentences, which is why the 1985 revised statute made it possible for judges to reduce offenders’ sentences in exchange for outpatient treatment programs which resembled the Transitional Sex Offender Program. The Coalition could not have predicted sweeping reforms to the American healthcare system would create a bifurcated criminal justice system in which offenders from poor families and offenders in a position to afford outpatient treatment served substantially different sentences for equivalent offenses.

The need to rehabilitate offenders, supervise them after release, and treat victims did not disappear just because access to resources for rehabilitation, supervision, and treatment were disappearing. The responsibility for this labor merely shifted from the state to women. Poor mothers were in an especially burdened position, and poor mothers with substance abuse problems were in the most vulnerable position of all. Child protection workers and their informants could not detect symptoms of sexual abuse as clearly as they could detect symptoms of physical abuse or neglect. In a memo describing characteristics of child abuse and neglect distributed to Minneapolis public schools in 1981, the only symptom listed under “sexual abuse”

³⁵⁷ John Haley, “Criminal Justice Reform: What Works!”, SW0290, Box 41, Folder 1, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

was “may cry easily.”³⁵⁸ It was comparatively easier to spot neglected children, either because their mothers were arrested for crimes associated with drug use (such as DWIs, prostitution, and check forgeries), or because the children bathed infrequently, lacked age-appropriate social skills, and appeared malnourished. By comparison, sexual abusers—who were typically men—generally had less interaction with mandated reporters such as teachers, physicians, and welfare workers. This was doubly true if the abuser was not his victims’ biological father or did not possess custody rights, such as when he was a mother’s boyfriend or an ex without established paternity status. Moreover, sexual abuse victims could appear healthy, clean, and developmentally “normal,” allowing them to go unnoticed unless neglect or physical abuse was also happening in the home.

Although Mark Toogood did not disclose racial data about mothers involved in termination of parental rights proceedings, women of color were more often arrested for prostitution and drug-related offenses than white women. Sociologist Dorothy Roberts writes that despite comparable rates of cocaine use among Black and white mothers, Black mothers were disproportionately likely to be charged with child abuse or neglect for their addictions to the drug during the 1980s and ‘90s.³⁵⁹ In Minnesota, American Indian mothers were also singled out for substance abuse. Child protection workers identified the Phillips neighborhood in Minneapolis, which has the third largest urban American Indian population in the U.S., as a place where crack cocaine use was particularly prevalent.³⁶⁰ Native children were seven times

³⁵⁸ “Minneapolis Public Schools: Special Education Division, School Social Work Department—Characteristics of Abuse and Neglect,” SW0290, Box 49, unnumbered folder labeled “Child Advocacy Conference, March 30, 1981,” Social Welfare History Archives, Minneapolis, Minn.

³⁵⁹ See Dorothy Roberts, “Making Reproduction a Crime,” in *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Pantheon, 1997), 150-201.

³⁶⁰ “Termination of Parental Rights Focus Group Notes, (Anonymous), 1998,” SW0243, Box 9, Esther Wattenberg papers, Social Welfare History Archives, Minneapolis, Minn. According to the 2000 census, about 31 percent of Phillips residents were African American, 29 percent were white, 22 percent were Latino, 12 percent were American Indian, and 6 percent were Asian American.

more likely to be placed in Minnesota foster care than white children in 1990.³⁶¹ Poverty was a salient underlying factor. Child protection workers commonly cited homelessness, a lack of food, and unsanitary housing conditions as compounding reasons for children's removal.³⁶²

Many child protection workers were frustrated by their role in a system that aggressively targeted women with substance abuse problems yet offered them no treatment or support to reunify with their children. The real “problem parents,” in their eyes, were the narcissistic parents, noncompliant parents, parents who refused to take responsibility for their choices, and parents who had already sustained physical or sexual abuse of their children for a long time—not the drug addicts.³⁶³ At the time that Esther Wattenberg received Mark Toogood's case notes describing termination of parental rights cases in March 1996, she was working with Hennepin County child protection workers to extend the family reunification timeline from six months to two years. Wattenberg believed that preserving families, where it was reasonable to do so, was a prime obligation of the child protection system. While children obviously could not stay safely with a parent whose addiction interfered with meeting their basic needs, Wattenberg knew that getting clean and staying clean was rarely feasible within a six-month timeframe.³⁶⁴ She felt a two-year timeline for family reunification was more reasonable, since the main obstacle to recovery for many drug-addicted mothers was not a lack of love for their children but rather the

³⁶¹ U.S. Senate Select Committee on Indian Affairs and the Minnesota Department of Human Services, “Minnesota Foster Care Placements Per Thousand, 1975 & 1990,” SW290, Box 41, Folder 6, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³⁶² “Termination of Parental Rights Focus Group Notes, (Anonymous), 1998,” SW0243, Box 9, Esther Wattenberg papers, Social Welfare History Archives, Minneapolis, Minn.

³⁶³ “Termination of Parental Rights Focus Group Notes, (Anonymous), 1998,” SW0243, Box 9 (Restricted Folders), Esther Wattenberg papers, Social Welfare History Archives, Minneapolis, Minn.

³⁶⁴ Esther Wattenberg's reflections and insights on practice and policy challenges in child welfare can be found at her blog, “Notes from a Cluttered Desk,” which the Center for Advanced Studies in Child Welfare has maintained since her death at age ninety-nine in 2019: <<https://cascw.umn.edu/tag/notes-from-a-cluttered-desk/>>.

inaccessibility of treatment.³⁶⁵ Nonetheless, as the Minnesota Coalition for Battered Women pointed out, extending patience to drug-addicted mothers did not fundamentally address the way child protection workers tended to focus on mothers' behavior while under-analyzing fathers' behavior in homes where child neglect was accompanied by abuse. The Minnesota Coalition for Battered Women applied considerable pressure to child protective services to pay more attention to fathers' behavior—including when fathers did not have custody—and to develop joint strategies to support battered women and their children, as domestic violence co-occurred in approximately half of child protection cases.³⁶⁶

American public opinion of poor mothers with drug addictions, however, was unsympathetic. They were the quintessential “bad mothers,” widely depicted as lazy, selfish, and burdensome to the tax-paying public. In cases where incest victims' mothers were addicted to drugs or alcohol, the media took pains to emphasize their negligence. As one *Minneapolis Tribune* article declared in 1976, mothers of incest victims were typically “weak,” “emotionally unstable,” and either “oblivious” to the abuse or tacitly “allowed” it to happen while they slept off a drug or alcoholic “binge.”³⁶⁷ Ronald Reagan's acceleration of the “war on drugs” only made matters worse by ramping up policing and punishment for drug offenders, which, combined with decreased welfare benefits, shifted the focus of the child protection system from abuse to neglect. The National Committee for the Prevention of Child Abuse and Neglect fueled anxiety around women's drug use by linking child sexual abuse with prostitution, addiction, and crime, citing these “unwomanly” behaviors to signify America's fall from grace and

³⁶⁵ “Termination of Parental Rights Focus Group Notes, (Anonymous), 1998,” SW0243, Box 9, Esther Wattenberg papers, Social Welfare History Archives, Minneapolis, Minn.

³⁶⁶ “From Conflict to Collaboration: Child Protection and Battered Women's Services (1998),” SW0290, Box 53, Minnesota Coalition for Battered Women records, Social Welfare History Archives, Minneapolis, Minn.

³⁶⁷ “INCEST: Typical mother is weak, submissive,” *Minneapolis Tribune* (Jan. 11, 1976), newspaper clipping, SW0093, Box 39, Folder 29, National Council on Family Relations Records, Social Welfare History Archives, Minneapolis, Minn.

simultaneously urge protection for the nation's girls. As sociologist Kristen Luker quipped dryly about American attitudes toward teenage pregnancy in 1996, "What's toxic about teenage pregnancy is that it combines a threat to the public purse with a threat to morality."³⁶⁸ By scaremongering about the future crimes sexual abuse victims might commit, child advocates likewise positioned incest as a threat to the nation's moral and economic fabric. Had child protection discourse evolved at all from the early twentieth century to the century's end?

Evaluating the Feminist Anti-Violence Movement's Impact in Minnesota

Feminist historians who depict second-wave feminism's impact on American attitudes toward incest as successful have argued that the movement's direct challenge to patriarchal power created the theoretical and political context in which incest experiences could finally be properly articulated and understood as a logical, if not necessarily universal, consequence of male dominance.³⁶⁹ Feminists' breaking of the "silence" surrounding sexual abuse—which I would not describe as silence so much as misunderstanding—was undoubtedly a historic achievement. Other scholars, meanwhile, have argued more pessimistically that the movement raised consciousness at the expense of building political power.³⁷⁰ The Minnesota Coalition for Battered Women, however, shows us that feminists could walk and talk at the same time. The Coalition did not reject statist solutions to sexual violence, but it did not embrace the state uncritically, either. They advocated for an intensive sex offender treatment program precisely because they were critical of retributive justice. They collaborated with child protection workers

³⁶⁸ Kristen Luker, *Dubious Conceptions: The Politics of Teenage Pregnancy* (Cambridge, Mass.: Harvard University Press, 1996), 43.

³⁶⁹ See Linda Gordon, "The Politics of Child Sexual Abuse: Notes from American History," *Feminist Review* 28, no. 1 (January 1988): 56-64; Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore, MD: Johns Hopkins University Press, 2009).

³⁷⁰ Louise Armstrong, *Rocking the Cradle of Sexual Politics: What Happened When Women Said Incest* (Boston: Addison-Wesley Publishing Company, 1994); Gillian Harkins, *Everybody's Family Romance: Reading Incest in Neoliberal America* (Minneapolis: University of Minnesota Press, 2009)..

not because they saw state intervention as the solution to family violence but because they did not want to see children who had been sexually abused by their fathers or other family members further traumatized by separation from their mothers. They organized not only around shared injury but also a shared vision for a violence-free society. As Carrie Baker and Maria Bevacqua have argued, depicting the mainstream feminist anti-violence movement as “co-opted” by the state oversimplifies the movement’s relationship to state power.³⁷¹ The feminist anti-violence movement may not have achieved all it set out to accomplish, but it tried—and it continues to try.

³⁷¹ Carrie N. Baker and Maria Bevacqua, “Challenging Narratives of the Anti-Rape Movement’s Decline,” *Violence Against Women* 24, no. 3 (March 2017): 352.

Conclusion

I have two pictures of myself as a child. In the first, taken within the first twenty-four hours of my life, I'm dressed in a pink terrycloth jumper, my hair gently brushed to one side, laying in a bassinet with a Winnie the Pooh stuffie. In the second I am a shy, half-smiling eleven-year-old wearing an (again, pink) dress my mother sewed for my first ballet performance. There was once a third somewhere, taken by a classmate in ninth grade homeroom, but I lost it due to my own carelessness. The rest are collecting dust in an evidence locker (or perhaps, by this point, destroyed), pictures of me in my first pair of glasses or sledding in my beloved red wool sweater with the knitted black-and-white pandas on it lumped indiscriminately with my father's homemade child pornography collection.

My father was arrested in 2017 when police uncovered photographic and videotaped evidence of his sexual abuse. Because the state confiscated enough evidence to establish my father's guilt without witness testimony, I chose not to participate in his trial. Instead, I watched the state build its case against him from a distance. I was struck by some of the language the prosecution used to describe my father and explain his behavior: *pedophile*, *sociopath*, *sexually violent predator*. To me, these labels—*sociopath* and *sexually violent predator* especially—seemed oversized, even cartoonish. Moreover, they confused cause and effect and cohered only through circular reasoning. I sensed the prosecution's intent was to ostracize and humiliate my father, not elucidate his behavior. I wondered, *Is this justice?*

I became transfixed by how the state redeemed the logic of patriarchal power from patriarchal violence through such sensationalizing rhetoric. The prosecution disaggregated my father's crimes from his abuse of patriarchal authority, painting him not as an abusive father but as a lurking monster who jumped from behind bushes and snatched up unsuspecting children. In truth, my father was more parasite than predator. He was manipulative and coercive, rarely violent. Any power he had was derivative of his position within the family hierarchy, not earned or possessed by him in his own right. Calling him a predator made him seem like someone who *hunted* for victims. He did not. He merely took advantage of what was already accessible and convenient to him. That detail, in my opinion, is important. It was the defining element of his crimes, the very thing that made them cruel.

I sensed the state's disingenuous portrayal of my father was both pre-programmed and, in the usual way machines execute scripts, deliberate. It was only in doing my own research that I learned my father was a textbook sexual abuser. His behavior fit a common pattern, one which the prosecution purposely ignored. I started researching and writing this dissertation in the months leading up to my father's trial to counter the state's mischaracterization of patriarchal sex abuse. My feeling that the court was *off base, out of touch, distorting the truth* drove my research questions. I wanted to understand why the state used needlessly shocking, theatrical language. I wanted to understand why the prosecution discussed my father's behavior as if it were the work of a criminal mastermind on one hand, and on the other, as a symptom of severe mental illness, a compulsion beyond his control. I knew that between those two extremes there was a quieter, more rational explanation. I felt an inner urgency to understand what forces in the past had shaped the present and write a meaningful corrective to the narrative imposed by the state.

Chickasaw poet Linda Hogan reminds us the past need not be a “field of ruins” (à la French philosopher Gaston Bachelard), but can be instead “a field of healing [with] the capacity to restore the world, not only for the one person who recollects, but for cultures as well.”³⁷² Through my research I have tried to unearth the truth, insofar as that is a plausible goal, and through my writing I’ve tried to turn the past from a field of ruins into a field of healing. The past cannot be redeemed, but the historical context I’ve gathered and presented in this dissertation was important for my own understanding. You could even say this project represents, at least partially, my own pursuit of justice.

As any historian will tell you, time heals nothing. Only the truth has the power to move us forward. I hope my work mends that which needs repair, destabilizes what ought not be stable, and asks questions perceptive enough to help us find our way to a freer future.

³⁷² Linda Hogan, *The Woman Who Watches Over the World: A Native Memoir* (New York: W.W. Norton & Company, 2001): 15. Thank you, Charlie Bruce, for giving me this book as a college graduation gift.

Appendices

Appendix A: U.S. Appellate Court Cases

SOUTH

Texas

Hardy v. State (1877)
Gay v. State (1877)
Freeman v. State (1881)
Compton v. State (1882)
McGrew v. State (1883)
Nance v. State (1885)
Mercer v. State (1885)
Johnson v. State (1886)
Jackson v. State (1886)
Taylor v. State (1886)
Covey v. State (1886)
Jones v. State (1887)
Dodson v. State (1887)
Blanchette v. State (1890)
Sauls v. State (1891)
Tipton v. State (1891)
Schoenfeldt v. State (1892)
Simon v. State (1892)
Simon v. State (1892)
Burnett v. State (1893)
McWilliams v. State (1893)
Stanford v. State (1895)
Clements v. State (1895)
Stewart v. State (1895)
Waggoner v. State (1895)
Dill v. State (1895)
Owens v. State (1896)
Cummings v. State (1896)
Coburn v. State (1896)
Kilpatrick v. State (1898)
Clark v. State (1898)
Hardin v. State (1898)
Poyner v. State (1899)
Adock v. State (1899)
Buchanan v. State (1899)
Stanford v. State (1900)
Ratliff v. State (1901)
Jennings v. State (1902)
Smith v. State (1902)
Richardson v. State (1902)
Ball v. State (1903)
Barnett v. State (1903)
Ingram v. State (1903)
Tate v. State (1903)
Gibson v. State (1904)
Clifton v. State (1904)
French v. State (1905)
Elliott v. State (1906)
Gillespie v. State (1906)
Cude v. State (1906)
Pridemore v. State (1908)
Harville v. State (1908)
Knapp v. State (1908)
Barrett v. State (1909)
Baker v. State (1909)
Harville v. State (1909)
Skidmore v. State (1909)
Wadkins v. State (1910)
Jordan v. State (1910)
Pilgrim v. State (1910)
Pridemore v. State (1910)
Nolan v. State (1910)
Jennings v. State (1910)
Gross v. State (1911)
Jordan v. State (1911)
Streight v. State (1911)
Lucas v. State (1911)
Battles v. State (1911)
Harris v. State (1912)
Foote v. State (1912)
Tyler v. State (1912)
Drake v. State (1912)
Vickers v. State (1912)

Hamilton v. State (1913)
Cowser v. State (1913)
Mizell v. State (1917)
Bradshaw v. State (1917)
Alexander v. State (1917)
Hollingsworth v. State (1917)
Griffin v. State (1917)
Griffin v. State (1918)
Mizell v. State (1918)
Bohannon v. State (1918)
Hollingsworth v. State (1919)
Wingo v. State (1919)
Bradford v. State (1919)
Armstrong v. State (1919)
Lawrence v. State (1920)
Greer v. State (1920)
Lankford v. State (1920)
Rodriguez v. State (1921)
McClure v. State (1921)
Chewning v. State (1922)
Bison v. State (1922)
Cottrell v. State (1922)
Greer v. State (1922)
Ware v. State (1922)
Austin v. State (1923)
King v. State (1923)
Weber v. State (1923)
Garcia v. State (1923)
Sanford v. State (1924)
Jones v. State (1924)
Hutson v. State (1924)
Matsen v. State (1925)
Parrish v. State (1925)
Channon v. State (1925)
Landin v. State (1925)
Clark v. State (1925)
Ulmer v. State (1925)
Tindall v. State (1931)
Alexander v. State (1934)
Marchbanks v. State (1934)
Kincaid v. State (1936)
Sanders v. State (1937)
Trejo v. State (1938)
Musser v. State (1938)

Georgia

Powers v. State (1871)
Raiford v. State (1882)
Taylor v. State (1900)
Lipham v. State (1906)
Nephew v. State (1909)
Welch v. State (1938)

Kentucky

Whittaker v. Commonwealth (1894)
Riggs v. Commonwealth (1898)
Smith v. Commonwealth (1901)
Cecil v. Commonwealth (1910)
Burdue v. Commonwealth (1911)
McCreary v. Commonwealth (1915)
Martin v. White (1920)
Hickerson v. Masters (1921)
Craig v. Commonwealth (1921)
Breeding v. Commonwealth (1921)
Commonwealth v. Stites (1921)
Spencer v. Commonwealth (1921)
Maxey v. Commonwealth (1928)
Alford v. Commonwealth (1929)
Alley v. Commonwealth (1929)
Denham v. Commonwealth (1931)
Williams v. Commonwealth (1939)

NORTH

New York

People v. Lake (1888)
People v. Grauer (1896)
People v. Block (1907)
People v. Bord (1926)

Massachusetts

Commonwealth v. Lynes (1886)
Commonwealth v. Haywood (1923)
Commonwealth v. Ashley (1924)

Vermont

State v. Wyman (1887)
State v. Dana (1887)
State v. Manley (1909)

WEST COAST

California

People v. Benoit (1893)
People v. Gleason (1893)
People v. Lane (1894)
People v. Patterson (1894)
People v. Kaiser (1897)
People v. Stratton (1904)
People v. Koller (1904)
People v. Cook (1905)
People v. Letoile (1916)
People v. Marino (1917)
People v. Ramey (1924)
People v. Jones (1926)
People v. Wilson (1926)
People v. McAfee (1927)
People v. Stoll (1927)
People v. Young (1927)
People v. Johnson (1931)
People v. McCollum (1931)
People v. Forbragd (1932)
People v. Hobday (1933)
People v. Lachuk (1935)
People v. Hall (1938)
People v. De Coe (1938)

Oregon

State v. Jarvis (1890)
Ex parte Hart (1907)
State v. Hembree (1909)
State v. Russell (1913)
State v. Winfree (1931)
State v. Coffeey (1937)

Washington

State v. Butler (1894)
State v. McGilvery (1898)
State v. Nugent (1899)
State v. Wood (1903)
State v. Fetterly (1903)
State v. Glindemann (1904)
State v. Aker (1909)
State v. Nakashima (1911)
State v. Hornaday (1912)
State v. Primmer (1912)

State v. Bielman (1915)
State v. Williams (1923)
State v. Hooper (1925)
State v. Ward (1925)

MIDWEST

Illinois

Cox v. People (1876)
Bartholomew v. People (1882)
Bolen v. People (1900)
David v. People (1903)
McKevitt v. People (1904)
People v. Russell (1910)
People v. Gray (1911)
People v. Afton (1913)
People v. Turner (1913)
People v. Turner (1914)
People v. Butler (1915)
People v. Ashbrook (1916)
People v. Binger (1919)
People v. Peck (1924)
People v. Miller (1925)
People v. Wood (1925)

Iowa

State v. Schaunhurst (1872)
State v. Thomas (1880)
State v. Lindley (1879)
State v. Miller (1884)
State v. Moore (1891)
State v. Chambers (1893)
State v. Hurd (1897)
State v. Kouhns (1897)
State v. Kimble (1897)
State v. Rennick (1905)
State v. Price (1905)
State v. Judd (1906)
State v. Goodsell (1908)
State v. Heft (1912)
State v. Andrews (1914)
State v. Sparks (1914)
State v. Kruppa (1916)
State v. Schultz (1916)
State v. Pelsler (1917)
State v. Kurtz (1918)

State v. Wilcox (1918)
State v. Jacobson (1924)
State v. Terry (1925)
State v. Candler (1928)
State v. Purdin (1928)
State v. Lamb (1929)

Nebraska

State v. Lawrence (1886)
Yeoman v. State (1887)
Owens v. State (1891)
Bedford v. State (1893)

Fager v. State (1896)
Cordson v. State (1906)
Bridges v. State (1907)
Smothers v. State (1908)
Peterson v. State (1909)
Guyle v. State (1918)
Centoamore v. State (1920)
Schrump v. State (1922)
Daggett v. State (1925)
Mathews v. State (1927)
Purvis v. State (1928)
Henry v. State (1939)

Appendix B: Sentencing Laws

**Sentencing laws for California, New York, Massachusetts, Texas, and Vermont were not found.*

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2. *The Revised Statutes of the State of Illinois, 1905*, comp. & ed. by Harvey B. Hurd (Chicago: Chicago Legal News Co.), 1906: § 156, p. 704.
3. *Code of Iowa, 1924; Containing All the Statutes of a General and Permanent Nature*, comp. & ed. by U.G. Whitney and O.K. Patton, § 12974, p. 1538.
4. *The Kentucky Statutes*, comp. & ed. by John D. Carroll (Louisville, KY: The Baldwin Book Co.), 1922: § 1219, p. 578.
5. *The Compiled Laws of the State of Nebraska, 1881 (Fourth Edition); With Amendments 1882-1889; Comprising All Laws of a General Nature in Force November 1, 1889*: § 6869, p. 1344.
6. *The General Laws of the Commonwealth of Massachusetts Enacted December 22, 1920, to Take Effect January 1, 1921* (Boston: The Jordan & Moore Press), 1921, Vol. 2: p. 2764.
7. *Oregon Laws; Showing All the Laws of a General Nature in Force in the State of Oregon, Including the Special Session of 1920*, comp. & ed. by Conrad Patrick Olson, Code Commissioner (San Francisco, CA: The Bancroft-Whitney Co.), Vol. 2: § 2098, p. 1238.
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Democratic Free Press
Deseret (UT) News
Hartford (CT) Courant
Houston Chronicle
Idaho Daily Statesman
Kline's Carlisle (PA) Weekly Gazette
The Liberator
Los Angeles Times
Minneapolis Tribune
Morning Oregonian
Morning World Herald
New York Times
The News (Jacksonville, FL)
Northern Post (Salem, NY)
The Observer

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