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A Defense of First-Cousin Marriage

Marvin M. Moore*

IN MOST AMERICAN JURISDICTIONS a marriage between first cousins constitutes incest.¹ This rule cannot be justified, as this writer hopes to demonstrate in the following discussion.

As one might suppose, marriage between members of the immediate family has been condemned by most (though not all²) of the world's people through history.³ That most of the ancient Greeks abhorred such a union is evidenced by Sophocles' play, *King Oedipus*, in which Jocasta's act of marrying her son is viewed as a crime that can be expiated only by her death. Pertinent are the lines:

And loudly o'er the bed she wailed where she
In twofold wedlock, hapless, had brought forth
Husband from a husband, children from a child.
We could not know the moment of her death,
Which followed soon.⁴

The Ashanti tribesmen of West Africa regarded such mating with actual terror. States Lord Raglan:

Both parties to the offense were killed. Had such an act been allowed to pass unpunished, then . . . children would have ceased to be born, the spirits of the dead ancestors would have been infuriated, the gods would have been angered . . . and all would have been chaos in the world.⁵

And the peasants of southern France long opposed such unions on the ground that they cause crop failures and epidemics among the flocks.⁶

However, though mating within the immediate family has commonly been banned, mating within more remote degrees of consanguinity has not elicited such widespread antipathy. It appears that societies have differed considerably in their definitions of incest, the prohibition of parent-child and brother-sister relationships constituting the only area of general agreement.⁷

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¹ Perkins, *Criminal Law* (1957) 332.

² The atypical societies will be discussed later.

³ Walter, *Genetics* (1914) 239, and 35 *Am. Jur. Marriage* § 140 (1938).

⁴ Act V, scene 1, third speech of the messenger.

⁵ Raglan, *Jocasta's Crime* (1933) 2.

⁶ *Ibid.*

⁷ See Holmes, *The Trend of the Race* (1921) 238, and Wiggam, *The Fruit of the Family Tree* (1924) 141.

There is therefore no clear pattern of historical precedent upon which one can base an argument for or against the allowance of first-cousin marriage.

In the early history of England marriage was under ecclesiastical control, and the canon law was the source of the rules declaring what persons were too closely related (by consanguinity or affinity) to marry.⁸ The canon law originally followed that of the Jews, as set out in the Book of Leviticus in the Old Testament. The pertinent section of Leviticus begins by forbidding a person to "approach to any that is near of kin" and then goes on to prohibit sexual relations between an individual and his mother, stepmother, sister, half sister, granddaughter, aunt (by blood or marriage), daughter-in-law, or sister-in-law.⁹ A woman is by implication forbidden to form any of the equivalent relationships.¹⁰

Gradually, however, the church began adding to the above prohibitions, and the forbidden degrees of relationship soon became extended beyond all reasonable bounds, so far that persons related to each other in the seventh degree (by the canon law) could not marry.¹¹ The abuse became so serious that it was no longer safe to get married. Finally during the reign of Henry VIII a statute was passed which remedied the situation.¹² Under this law only persons more closely related than first cousins were prohibited from marrying. Said the statute:

All and evy such marriages as within this Church of England shalbe contracted between lawful psonnes, as by this Acte wee declare all psonnes to be lawful that be not prohibited by Goddes lawe to mary, suche marriages . . . shalbe by auctorite of this present Plament aforesaid demed, judged, and taken to be lawful, good, juste, and indissoluble. . .¹³

The "Goddes lawe" referred to comprised both that contained in the Book of Leviticus and that found in the Book of Common Prayer,¹⁴ which forbids a man to wed his: (1) grand-

⁸ Vernier, *American Family Laws* (1931) 173.

⁹ Leviticus 18:6-24.

¹⁰ *Ibid* 18:5.

¹¹ 15 St. Louis L. R. 176 (1930).

¹² Contrary to what one might suppose, Henry's motive in obtaining the passage of this act was not a concern for the public interest, but rather, "a desire to give color of respectability and legal sanction to his infatuation for Anne Boleyn." 51 Can. L. J. 152 (1915).

¹³ 32 Hen. 8, c. 38 (1540).

¹⁴ 72 L. J. 143 (1931). See also *Rex. v. Chadwick*, 11 Q. B. 173 (1847).

mother, (2) grandfather's wife, (3) wife's grandmother, (4) father's sister, (5) mother's sister, (6) father's brother's wife, (7) mother's brother's wife, (8) wife's father's sister, (9) wife's mother's sister, (10) mother, (11) stepmother, (12) wife's mother, (13) daughter, (14) or wife's daughter.¹⁵ Corresponding prohibitions are, of course, applicable to women. It will be noted that neither Leviticus nor the Book of Common Prayer forbids marriages between first cousins, and such unions are permitted in England today.¹⁶

However, in the United States twenty-six jurisdictions disallow first-cousin marriages, even though our statutes prohibiting consanguineous weddings are in most respects based upon the Levitical Degrees. These states are: Arizona, Arkansas, Delaware, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Washington, West Virginia, Wisconsin, and Wyoming.¹⁷ Oklahoma forbids marriages between second cousins as well.¹⁸ Typical statutes are those of Arizona, Delaware, and Oregon:

Marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews, and between first cousins is incestuous and void . . . Persons within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, shall be punished by imprisonment in the state prison for not to exceed ten years.¹⁹

¹⁵ King, *The Family and the Law* (1941) 30.

¹⁶ Halsbury, *The Laws of England* (1911) 284.

¹⁷ Ariz. Rev. Stat. § 25-101 (1956); Ark. Stat. § 55-103 (1947); Dela. Code Ann. § 13-101 (1953); Ill. Ann. Stat. § 891 (Smith-Hurd 1956); Ind. Ann. Stat. § 44-101 (1952); Iowa Code § 595.19 (1958); Kan. Gen. Stat. § 23-102 (1939); Mich. Stat. Ann. ch. 244, § 25.4 (1957); Minn. Stat. Ann. § 517.03 (1947); Miss. Code § 457 (1942); Mo. Ann. Stat. § 451.020 (Vernon 1949); Mont. Rev. Code § 48-105 (1947); Neb. Rev. Stat. § 122.020 (1956); N. H. Rev. Stat. Ann. § 457.1 (1955); N. D. Rev. Code § 14-0303 (1943); Ohio Rev. Code Ann. § 3101.01 (Page 1955); Okla. Stat. § 43-2 (1951); Ore. Rev. Stat. § 106.020 (1959); Penn. Stat. Ann. ch. 48, § 1-5 (Purdon 1959); S. D. Code § 14.0106 (1939); Utah Code Ann. § 30-1-1 (1953); Wash. Rev. Code § 26.04.020 (1959); W. Va. Code §§ 4680-81 (1955); Wis. Stat. § 245.03 (1957); and Wyo. Stat. § 20-32 (1957). (Wisconsin permits first cousins to wed after the woman has attained the age of fifty years.)

¹⁸ Okla. Stat. Ann. § 43-2 (1955).

¹⁹ Ariz. Rev. Stat. Ann. §§ 13-471 and 25-101 (1956).

Says the Delaware act:

A marriage is prohibited and void between a person and his or her ancestor, descendant, brother, sister, uncle, aunt, niece, nephew, or first cousin . . . The guilty party or parties to a marriage prohibited by (the preceding) shall be fined . . . and in default of the payment of the fine shall be imprisoned not more than thirty days.²⁰

And declares the Oregon enactment:

The following marriages are prohibited and, if solemnized within the state, are absolutely void. . . When the parties thereto are first cousins or any nearer kin to each other, whether of the whole or half blood, computed by the rules of the civil law . . . Any persons, being within the degree of consanguinity within which marriages are prohibited by law, who intermarry or commit adultery or fornication with each other, shall be punished upon conviction by imprisonment in the penitentiary for not more than three years or by imprisonment in the county jail for not less than three months or by a fine of not less than \$200 nor more than \$1,000.²¹

It being established that over half of our jurisdictions consider the first-cousin marriage objectionable, one naturally asks, in what way has it offended?

In the first canto of *Don Juan* the poet Byron stated the complaint that is most frequently voiced:

Marrying their cousins—nay their aunts and nieces,
Which always spoils the breed if it increases.

And a similar view is expressed in the writings of Noah Webster:

Near blood connections often produce imperfect children. The common people have hence drawn an argument to prove such connections criminal; considering weakness, sickness, and deformity in the offspring as judgments upon the parents.²²

Expressed more prosaically, first-cousin unions are said to be undesirable because they "very often result in a deficient and degenerate offspring, and if occurring to any great extent, would lead to a serious deterioration of the race."²³ The afflictions most commonly ascribed to consanguineous marriages are steril-

²⁰ Del. Code Ann. tit. 13, §§ 101-2 (1953).

²¹ Ore. Rev. Stat. §§ 106.020 and 167.035 (1956).

²² East, *Heredity and Human Affairs* (1927) 156.

²³ 2 S. C. L. Q. 281 (1950).

ity,²⁴ idiocy, insanity, deaf-mutism, albinism, hemophilia, and even baldness. Although many other lamentable phenomena have been attributed to near-kin marriages, they have been omitted from the above list, since no authorities link them with such unions today.²⁵ However, there unquestionably is some basis in fact for connecting the distresses just enumerated with consanguineous wedlock. When a near-kin marriage takes place there is, of course, a union of similar heredities. The two mates are, by virtue of their common ancestry, possessors to a greater degree than usual, of the same inheritable characteristics. And the coming together of like genes into the same individual (the child of such mates) is the condition under which recessive genes come into expression.²⁶ Stated more technically, "Recessive characters, hitherto latent in the stock are rendered homozygous" and thus enabled to manifest themselves.²⁷ Consequently, if a harmful recessive gene (say for amaurotic idiocy) is present in the family strain, there is a possibility that the child of a consanguineous marriage will exhibit the undesirable character, for he may receive the gene in double dose.²⁸ Conversely, if the ancestry is sound, the child may receive a double benefit. As one might suppose (and the importance of this fact will become evident in subsequent paragraphs), the nearer the relationship of the parents, the greater is the likelihood that recessive genes will become operative.²⁹

One should realize that the consanguinity of the parents is never in itself the cause of defective offspring. Rather, such a result is ascribable to the presence of a deleterious recessive gene in the ancestry. In the words of one writer:

While it seems certain that . . . close inbreeding may afford opportunity for an inherent taint to show itself . . . it is not

²⁴ The belief that consanguineous unions lead to sterility may be traceable in part to a misinterpretation of Leviticus 20:20-1, which reads: "If a man shall be with his uncle's wife . . . they shall die childless. And if a man shall take his brother's wife . . . they shall be childless." Since a man is no relation to his brother's wife, the passage is obviously intended to be a condemnation of adulterers and not a statement of biological fact.

²⁵ Examples are rickets and leprosy. See East, *Heredity and Human Affairs* (1927) 140, 146. On the latter page the author declares: "Every sickness, physical abnormality, or mental defect not easily accounted for otherwise has been ascribed to parental consanguinity."

²⁶ Dunn, *Heredity and Variation* (1934) 100.

²⁷ Moore, *Heredity, Mainly Human* (1954) 99.

²⁸ Mohr, *Heredity and Disease* (1934) 206.

²⁹ Dunn, *op. cit.*, *supra*, n. 26, p. 100.

the consanguinity that is to blame for the taint. The same consequences would result if matings took place among unrelated organisms with the same kind of taint.³⁰

The truth of this statement—that consanguinity itself produces no woeful consequences—can be demonstrated by numerous examples: The pharaohs of Egypt's eighteenth dynasty and the Ptolemies, who followed them, practiced brother-sister marriage regularly for religious reasons. This close inbreeding existed for many generations, in fact, for the longest known period in history. Yet none of the evils generally attributed to near-kin wedlock resulted.³¹ "The offspring furnished illustrious and able rulers for centuries."³² Cleopatra herself was the child of a brother-sister union,³³ and in the opinion of Julius Caesar and Marc Anthony, at least, there was very little wrong with her. The upper-class Persians of the Ptolemaic period married not only their sisters but their daughters as well, without any apparent ill effects.³⁴ The Greeks were highly inbred, particularly the Spartans. Yet according to East, "During the period in which inbreeding was the closest the Spartans were the greatest race physically of which we have any record."³⁵ Before the advent of Moses the Jews commonly married close relatives,³⁶ and no unfavorable results have been ascribed to this practice. Abraham married his half-sister, Sarah, and Jacob married his first cousins Rachel and Leah.³⁷ Moses himself was the offspring of a nephew-aunt marriage, although he prohibited such unions when he codified the laws.³⁸

Proceeding into more recent times, Abraham Lincoln and the four sons of Charles Darwin were the progeny of first-cousin marriages, a fact which seemingly failed to impair their health or intelligence.³⁹ According to Holmes, "All of Darwin's sons became celebrated for their intellectual achievements and are

³⁰ Thompson, *Heredity* (1953) 338.

³¹ Wiggam, *The Fruit of the Family Tree* (1924) 140.

³² Knox, *The Family and the Law* (1941) 30.

³³ Scheinfeld, *You and Heredity* (1939) 383.

³⁴ Raglan *supra*, n. 5, p. 9.

³⁵ East, *op. cit.*, *supra* n. 25.

³⁶ Montagu, *Human Heredity* (1959) 302.

³⁷ Genesis 20:12.

³⁸ Exodus 6:20.

³⁹ Scheinfeld, *op. cit.*, *supra*, n. 33, p. 249.

noteworthy for their being normal and unusually able types of men."⁴⁰

In November of 1866 there appeared in the London Medical Times and Gazette an article concerning the inhabitants of the islets bordering the northern coasts of Scotland. Said the writer:

Our experience—founded on an intimate acquaintance with the people of the fishing villages . . . who are altogether a race apart, intermarrying . . . to such an extent among themselves that it is nothing unusual to find only one or two family names in a village—leads us to agree . . . that a hardier or more robust set of men and women than these people do not exist.⁴¹

Near Monsefu, Peru is a village named Eten. Until eighty years ago the (then) six hundred inhabitants of this town had preserved the purity of their blood from the time of the Spanish conquest. Every individual vowed not to wed outside of the group. Frequently, because of the difficulty of finding suitable mates, a brother and sister would marry. Despite this arrangement the people were "very healthy, with fine shapes, and in many instances very good-looking."⁴²

The people of the Pitcairn Islands were for a long time highly inbred. The entire population was descended from some of the famed mutineers of the Bounty. All of the islanders born after 1800 were the progeny of a group composed of one man, five women, and nineteen children. Yet the islanders exhibited "a truly remarkable freedom from physical and mental defects."⁴³ In 1907 there existed on Smith's Island in Chesapeake Bay a community of about seven hundred people. The members of this group had little contact with the mainland, and consanguineous marriages were "very frequent." As a result "nearly all" of the inhabitants were interrelated. Over thirty percent bore one surname, and the most common four surnames embraced fifty-nine percent of the population. Nevertheless, between September of 1904 and October of 1907 the local physician observed not one case of idiocy, insanity, deaf-mutism, hemophilia, or epilepsy on the island.⁴⁴

⁴⁰ Holmes, *op. cit.*, *supra*, n. 7, p. 247.

⁴¹ Huth, *The Marriage of Near Kin* (1887) 143.

⁴² Fitzroy Cole, *Peruvians at Home* (1884) 77.

⁴³ East, *op. cit.*, *supra* n. 25, p. 147.

⁴⁴ Arner, *Consanguineous Marriages in the American Population* (1908) 16-17.

The town of Batz, near Le Croisic, France, is situated on a peninsula and was for many years shut off from the mainland by a salt marsh. In the year 1864 forty-six consanguineous unions existed there, though the total population was only 3,300. This situation was typical of that which had prevailed for a long period, since the town's location precluded much intercourse with outsiders. Nevertheless, in 1864 Batz contained "not a single individual afflicted with any malady or malformation or suffering from a disease of the mind."⁴⁵

Finally, at the turn of the twentieth century there existed a community of twelve hundred people in the Tengger Hills of Java who never married out of their community. This group had practiced close inbreeding for numerous generations, and yet the people were "bigger and stronger than any other race in Java."⁴⁶

In addition to the above examples there are the results of many animal experiments to which one can refer: Dr. Helen King of the Wistar Institute inbred rats brother with sister for twenty-five generations and found "that races of large size, vigor, and complete fertility may be maintained under the closest inbreeding."⁴⁷ The rat named Goliath, who was born in the sixth generation, was "the largest and finest" specimen of his breed ever before recorded.⁴⁸ In another experiment a race of guinea pigs, all of whom were descended from the same individual, were closely inbred for ten years. They remained energetic, fecund, and undefective.⁴⁹ The geneticist Castle worked with the pomace fly, *Drosophila*, and found that brother and sister could be mated for at least fifty-nine generations without diminishing the fertility or vitality of the line.⁵⁰

Anatole Beaudouin inbred a flock of (originally) three hundred merino sheep for twenty-four years. The sheep remained "remarkably strong and healthy. . . . Far from degenerating, they became even finer and more to be depended upon to reproduce their proper type than is ordinary in flocks. . . ." ⁵¹ In the year 1535 eleven horses were turned loose in Argentina. By

⁴⁵ Voisin, *Memoirs of the Paris Society of Anthropology* (1865) 436.

⁴⁶ Huth, *op. cit.*, *supra*, n. 41, p. 143.

⁴⁷ Castle, *Genetics and Eugenics* (1921) 231.

⁴⁸ Wiggam, *op. cit.*, *supra*, n. 31, p. 148.

⁴⁹ Dunn *supra*, n. 26, p. 388.

⁵⁰ Walter, *op. cit.*, *supra*, n. 3, p. 241.

⁵¹ Huth *supra*, n. 41, p. 252.

the century's end there were large herds. "These . . . horses showed no signs of ill effects from inbreeding."⁵²

Guyer points out that near-kin mating has long been practiced "to a marked degree" in establishing breeds and pedigreed strains of livestock.

The result has been the production of valuable types, as is evidenced by any of our popular breeds of cattle, sheep, hogs, or horses.⁵³

The famous Jersey bull, Sybils Gamboge, who sold for \$65,000, descended from four generations of half-brother and half-sister matings.⁵⁴ Finally, one should note that brother-sister unions are of common occurrence among tigers, buffaloes, red deer, and most species of antelope and that defective offspring occur no more often among these animals than among others.⁵⁵ The above evidence should suffice to demonstrate that near-kin mating is of itself harmless. In other words:

The children from a consanguineous marriage, where each parent is free from inheritable defects . . . are no more likely to be defective than are any other children.⁵⁶

It certainly does not follow that close mating may be practiced indiscriminately and indefinitely without undesirable results. For, as indicated earlier, inbreeding enhances the possibility that recessive genes may express themselves, and unfortunately, the majority of recessive genes are harmful.⁵⁷ If the family strain contains no noxious recessive genes, then consanguineous mating is (as evidenced by the above examples) perfectly safe. But if a baneful recessive gene is present in the lineage, then inbreeding gives it an opportunity to become operative. As already mentioned, however, the more distant the relationships of the parents, the more remote is the possibility that a deleterious recessive gene will exhibit itself in the progeny. For this reason, a first-cousin union entails less risk than does one between a brother and sister, an uncle and niece, or an aunt and a nephew.⁵⁸ But the question remains to be answered

⁵² Raglan *supra*, n. 5, p. 11.

⁵³ Guyer, *Being Well-Born* (1927) 172.

⁵⁴ Wiggam, *op. cit.*, *supra*, n. 31, p. 144.

⁵⁵ Raglan *supra*, n. 5, p. 10.

⁵⁶ Huth *supra*, n. 41, p. 222.

⁵⁷ Dunn *supra*, n. 26, p. 101.

⁵⁸ See Hogben, *Nature and Nurture* (1933) 65.

whether this lesser risk is still substantial enough to justify a statute disallowing first-cousin wedlock. The answer, briefly, is no.

Declares Thompson:

The idea that there can be any eugenical objection to the marriage of two healthy cousins who fall in love with one another is preposterous.⁵⁹

States Altenburg:

If examination of the family history shows that there is no gene for some seriously objectionable trait in the family, then there can be no real objection to the marriage.⁶⁰

And says Montagu:

If there is reason to believe that the inheritance . . . is likely to be free of deleterious influences, such judgment being based on a knowledge of the genealogical record on both sides, the genetic risk would be slight.⁶¹

While it is true that these authorities limit their approval to unions between cousins with sound ancestry, this reservation is not applicable merely to cousin marriages. As stated by Scheinfeld, a mating between *any* two persons (related or not) whose families have manifested the same serious hereditary defect is inadvisable.⁶²

With reference to Montagu's suggestion that cousins contemplating marriage examine the genealogical histories of both families, East calculated that if the same blemish has not appeared on both sides within four generations, it is as safe for cousins to wed each other as to marry into an outside family.⁶³

The chance that a person carries the same recessive gene as his cousin is about one in eight, as compared with one in seventy for unrelated individuals.⁶⁴ (This assumes, of course, that the persons involved know nothing about their ancestors' health.) However, even if two cousins do carry the same harmful recessive gene, the chance of their procreating a child who exhibits the defect is only one in four.⁶⁵ Consequently a man who mar-

⁵⁹ Thom *supra*, n. 30, p. 388.

⁶⁰ Altenburg, *Genetics* (1957) 146.

⁶¹ Montagu, *op. cit.*, *supra*, n. 36, p. 305.

⁶² Scheinfeld, *You and Heredity* (1939) 383.

⁶³ Wiggam, *op. cit.*, *supra*, n. 31, p. 151.

⁶⁴ Montagu, *op. cit.*, *supra*, n. 36, p. 304.

⁶⁵ Scheinfeld, *op. cit.*, *supra*, n. 62, p. 247.

ries his cousin must twice lose against favorable odds before he can father a congenitally defective child.

Suppose that a deleterious recessive character were present in twenty-five percent of the marrying population and that all the matings in a given generation were between first cousins. This would raise the percentage of recessive homozygotes (carriers of the gene in latent form) to 26.6 percent.⁶⁶ The 1.6 percent difference is hardly a big one. In short: "Any result which could be got with human beings (through their practicing first-cousin wedlock) is insignificant."⁶⁷

In reality, moreover, the number of first-cousin marriages that would, if permitted, take place would be relatively small. Though most European countries allow such mating, it does not exceed one percent of all marriages in any European nation.⁶⁸ And despite the fact that nearly half of the American jurisdictions permit such wedlock, first-cousin unions now constitute "much under one percent" of the marriages in the United States.⁶⁹ Moreover, although England condones such mating, only .5 percent of the marriages contracted there are between first cousins.⁷⁰

In summary, then, because of the remoteness of relationship between first cousins (which renders unlikely the bringing out of any unfavorable recessive gene which may be present in the strain), and because of the comparative infrequency of cousin-marriage even when sanctioned, there is no genetical justification for statutes forbidding first-cousin mating.

Can such enactments be vindicated on non-genetical grounds? Two such justifications have been attempted. The first is that statutes proscribing first-cousin marriage are simply natural manifestations of mankind's "instinctive" abhorrence of incest.⁷¹ There are two infirmities in this thesis. First, many authorities doubt that mankind's general aversion to incest is instinctive. Says Arner:

The 'instinctive horror of incest' is a myth, for although a horror of incest does exist in civilized and in many tribal

⁶⁶ Dahlberg, *Race, Reason, and Rubbish* (1942) 165.

⁶⁷ *Ibid.*

⁶⁸ Hogben, *op. cit.*, *supra*, n. 58, p. 56.

⁶⁹ Scheinfeld, *op. cit.*, *supra*, n. 62, p. 249. This statement is supported by Arner's conclusions. Arner, *op. cit.*, *supra*, n. 44, p. 28.

⁷⁰ Montagu, *op. cit.*, *supra*, n. 36, p. 304.

⁷¹ See East, *op. cit.*, *supra*, n. 25, p. 137.

societies, it is purely a matter of custom and education and not at all a universal reaction.⁷²

And declares Gillette:

It is quite certain that during the . . . evolution of societies the ties of kinship, even those which we are accustomed to regard as sacred, have not always been an impedient to sexual unions. Like the sentiment of modesty, the horror of incest has only been engraved on the human conscience with difficulty. . . .⁷³

These statements are supported by the fact that various peoples, such as the Persians and Javans discussed earlier, have practiced incest for long periods. Surely an antipathy cannot be termed "instinctive" when an entire nation or tribe has demonstrated that its members are devoid of the feeling.

The second weakness in the "natural horror of incest" argument is that even if true, it has no applicability to first-cousin mating. For the repugnance, whatever its origin, with which most persons regard parent-child and brother-sister unions simply does not exist when first-cousin wedlock is contemplated. The fact that over half the countries of Europe and nearly half the states in this nation sanction cousin marriages would seem to bear this out.

The other theory advanced in defense of statutes disallowing first-cousin wedlock is that any degree of intermarriage is detrimental to family stability. It is said that civilized society is based upon the institution of the family and that consanguineous mating constitutes a threat to this institution and to the moral standards grounded upon it.⁷⁴ This contention would doubtlessly have merit were it restricted to mating within the immediate family (such as father-daughter and brother-sister unions), but it loses its force when applied to cousin-marriages. For it is obvious that first cousins are not related closely enough for marriage between them to undermine the family unit and the morals of society. Were the truth otherwise, family solidarity and moral values would, logically, have broken down in those states and countries which now permit cousins to wed, and no one has alleged that this has occurred.

⁷² Arner, Columbia University Studies in History, Economics, and Public Law (1908) 88.

⁷³ Gillette, *The Family and Society* (1914) 117.

⁷⁴ See 27 Am. Jur. *Incest* § 1 (1938).

In conclusion, it is clear that there are neither genetical nor sociological reasons for prohibiting first-cousin marriage. If any marriages are to be forbidden, unions between individuals possessing inheritable defects (including couples both of whom are likely to carry a noxious recessive gene) are the logical ones to disallow.⁷⁵

A proposed union should be questioned not on the basis of 'are they related by blood,' but rather, 'are they carriers of desirable traits.'⁷⁶

Today about half of the states still follow the absurd policy of forbidding the wedding of two healthy persons merely because they are first cousins and allowing two congenitally deaf people to marry and pass their affliction on to their offspring.⁷⁷ Such laws impede, rather than promote, human happiness and should surely be changed.

⁷⁵ Many states follow this principle to the extent of prohibiting idiots, imbeciles, epileptics, and persons afflicted by certain kinds of insanity from wedding. 55 C. J. S. Mental Capacity § 12 (1955). But except for those suffering from tuberculosis (in a few jurisdictions) or a venereal disease, and those incapable of coitus, individuals afflicted with inheritable disorders of the body, rather than those of the mind, may nearly everywhere marry. Jacobs and Goebel, *Cases on Domestic Relations* (1952) 187-188.

⁷⁶ *Supra*, n. 11, p. 181.

⁷⁷ The writer does not suggest that individuals with transmissible physical disorders should necessarily be prohibited from marrying. For a state might simply condition their right to wed on their submitting to a sterilization operation. Nebraska has made this requirement applicable to mental defectives. Neb. Rev. Stat. § 42-102 (1943).