

**SAME-SEX MARRIAGE: A PHILOSOPHICAL EXAMINATION OF THE
ETHICAL ISSUES**

BY

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BENIN CITY**

NOVEMBER, 2022

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**AN ORIGINAL ESSAY SUBMITTED TO THE DEPARTMENT
OF PHILOSOPHY, FACULTY OF ARTS, UNIVERSITY OF BENIN,
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FOR THE AWARD OF BACHELOR OF ARTS (B.A.) HONOURS
DEGREE IN PHILOSOPHY**

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CERTIFICATION

We the undersigned hereby certify that this project was carried out by Edobor Diane Chineye (Miss) in the Department of Philosophy, University of Benin, Benin City and that it is sufficient in both scope and content in partial fulfilment of the requirements for the award of Bachelor of Arts (B.A) Degree in Philosophy.

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DEDICATION

This project is dedicated to my heavenly father up there, God, whose name is JEHOVAH, for His loving kindness and faithfulness. CHUKWU, TAKE THE GLORY.

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My appreciation goes to MR and MRS EDOBOR for their constant and continuous guidance and protection throughout my academic journey in the University of Benin, and has aided me to the completion of this journey , I also want to specially thank my mum for her constant check-ups and prayers that have kept me fueled till this day, to my dad for his silent cheers , my siblings Mrs Deborah Obii, Mrs. Sandra Osunde, and Miss Pearl Edobor for their endless support and motivation, soothing my soul with gracious words whenever I felt weary.

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ABSTRACT

A key component of morality or what tends to be moral has become quite contentious and topical in the 21st century due to the ever increasing number of persons who are involved in some same relationship or marriage. The 21st century has witnessed a rapid increase on the concepts of marriage that calls for gender neutrality rather than gender specification. There are so many philosophical (favorable and others against) arguments about the practice of same-sex marriage, ranging from religious, cultural, legal, and political grounds. Supporters pose that there is nothing immoral or abstract about it as long as it backed by the human rights doctrine. This work adopts the analytical methodology to rresearch into extant statutes *vis-a-vis* African traditional ethical values on marriage/family. The work discovers that whereas in western consideration, the concept of same-sex marriage contradicts the law (since the statutory definition of marriage has not been abdicated); and that, the concept contravenes the norms and ethical values of traditional Africa. Besides, this study will serve as an additional study material on the issue of same-sex marriage, its ethical values if there is and its effect on modern day society. Hence the work suggests that concerning same-sex unions, the law should be silent; i.e., same-sex relationships should not be outlawed – for persons have the right to freedom of association; nor should it be legalized – for it will introduce a burden on the law to develop its principles of such marriage. By and large, same-sex relationship offends the basic moral ideal of human rational power higher and over bestiality.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

The question of morality or what tends to be moral has become quite relevant in the 21st century due to the ever increasing numbers of people who are involved in a same sex marriage. Morality we speak of here is seen as what constitutes a good act from a bad one. Same sex marriage never started today, and has been from time in antiquity preceding the Renaissance period¹, which has been accepted by some cultures of the world as a normal way of life. The way culture conceive marriage varies depending on many factors such as; customs, gender roles, religion, human rights etc. However, marriage usually is an institution in which interpersonal relationships usually sexual are acknowledged.

The 21st century has witnessed a flurry of conceptions of marriage that calls for gender-neutral language rather than gender specifications, and this is why all major English classifications define the term marriage to include same-sex unions. Same-sex marriage is a phenomenon that has engendered moral, religious and legal debate all over the world². Its moral status has been hotly debated by scholars of different backgrounds. Some ethics of same marriage say it is immoral and unnatural, while supporters poses that there is nothing immoral about it as far as it is covered by Human Rights doctrine. Many also believe that same-sex marriage is exclusively a Western phenomenon and so one ignore out of the fact that it is practiced and

accepted by other cultures such as in the sub-Saharan Africa. However, there have been several calls for reconceptualization of the term marriage, to the extent that marriage is now regarded as a union of two people living together as spouses in a family³. This characterization fits the argument on same-sex marriage as well. Historian John Boswell records that the first performance of same-sex marriage between child Emperor Elagabius and Hierodea his chariot driver, as the husband. Medieval times called the same-sex marriage between Perodias and Munho Vandias Hindi Galician municipality off Raiziz deveig, Spain⁴. The contemporary. Witnessed a rise of gay-rights activism in the 1970s and the LGBT (lesbian, gay, bisexual and transgender) community especially in the Western world. It is against these backdrops and the need to examine what constitutes as morality in fostering moral decadence that this present topic finds its pin interest.

1.2 Statement of the Problem

This study aims at addressing the problem of same sex marriage which would further isolate marriage from its procreative purpose. Traditionally, marriage and procreation have been tightly connected to one another. Indeed from a sociology perspective, the primary purpose of marriage is to secure a mother and father for each child who is born into a society. Among other things, the danger with this mentality is that it fosters an anti-naturalist mindset that fuels population decline. Marriage thrives when spouses specialize in gender typical roles hence, It becomes a problem If same-sex marriage is institutionalized then our society will take yet another step down the

road of de-gendering marriage; but marriage typically thrives when spouses specializes in gender typical ways and are attentive to the gendered needs and aspirations of their husband and wife. The traditional concept of marriage is consistently found across cultures throughout history. This is not to say matters such as customs and rituals have not changed over time. It is simply to say that marriage has always been understood in every society throughout recorded human history as being between a man and a woman. This study aims also to address the problem of same sex marriage as a union of difference.

1.3 Significance of the Study

This research is to investigate the effects of same sex marriage in the society and its ethical implication. In this study we shall be looking at the moral implication or ethical implication of same sex marriage. It tends to make us find the indebt understanding about the term morality.

Being that morality is relative and perspectival based on different cultures and background, We will try to re echo what ethics is, what morality stands for and the impact of same sex marriage in our society.

We shall be looking at its implication to health, contribution to the world in terms of population, understanding the true concept of marriage and how it affects the world in terms of reproduction.

1.4 Purpose of the Study

The purpose of this study is to find out the reason behind the affection for same sex that leads as far as marriage. Scientifically speaking, a male gender is supposed to be sexually attracted to the other gender hence, they ought to be together. But in this case, a male gender is 'in love' with another male gender, this also goes for the female. Religiously speaking, it is not acceptable. Although, cultures differ hence, making the idea of same sex marriage relative morally. This work however, will try to understand the force, push and reason behind same sex marriage and if it is morally right or wrong.

1.5 Methodology

This write up intends to use the critical and evolutionary method. The critical method because it tends to find the in-depth knowledge or understanding about the concept morality because morality according to many is relative. Evolutionary method is used to evaluate our findings in order to give a sum total of what morality entails.

1.6 Literature Review

For Plato, the idea of same sex marriage is un-natural⁵. Plato, in contrast, argued that unchanging truths underpin the flux of the material world. Reality, including eternal moral truths, is a matter of *phusis*. Even though there is clearly a great degree of variety in conventions from one city to another (something ancient Greeks became increasingly aware of), there is still an unwritten standard, or law, that humans

should live under. In the *Laws*, Plato applies the idea of a fixed, natural law to sex, and takes a much harsher line than he does in the *Symposium* or the *Phaedrus*. In Book One he writes about how opposite-sex sex acts cause pleasure by nature, while same-sex sexuality is “unnatural”. In Book Eight, the Athenian speaker considers how to have legislation banning homosexual acts, masturbation, and illegitimate procreative sex widely accepted. He then states that this law is according to nature.

This clearly states that Plato’s view as regards to same sex marriage is un-natural. Since it is only natural for a male gender to be attracted to a female gender, anything that goes contrary to this is un-natural. In my opinion, same sex marriage does not give room for reproduction which could be detrimental to humanity.

The most influential formulation of natural law theory was made by Thomas Aquinas in the thirteenth century. Integrating an Aristotelian approach with Christian theology, Aquinas emphasized the centrality of certain human goods, including marriage and procreation. While Aquinas did not write much about same-sex sexual relations, he did write at length about various sex acts as sins. For Aquinas, sexuality that was within the bounds of marriage and which helped to further what he saw as the distinctive goods of marriage, mainly love, companionship, and legitimate offspring, was permissible, and even good⁶. Aquinas did not argue that procreation was a necessary part of moral or just sex; married couples could enjoy sex without the motive of having children, and sex in marriages where one or both partners is

sterile (perhaps because the woman is postmenopausal) is also potentially just (given a motive of expressing love). So far Aquinas' view actually need not rule out homosexual sex. For example, a Thomist could embrace Same-sex marriage, and then apply the same reasoning, simply seeing the couple as a reproductively sterile, yet still fully loving and companionate union.

Aquinas, in a significant move, adds a requirement that for any given sex act to be moral it must be of a generative kind. The only way that this can be achieved is via vaginal intercourse. That is, since only the emission of semen in a vagina can result in natural reproduction, only sex acts of that type are generative, even if a given sex act does not lead to reproduction, and even if it is impossible due to infertility. The consequence of this addition is to rule out the possibility, of course, that homosexual sex could ever be moral (even if done within a loving marriage), in addition to forbidding any non-vaginal sex for opposite-sex married couples. What is the justification for this important addition? This question is made all the more pressing in that Aquinas does allow that how broad moral rules apply to individuals may vary considerably, since the nature of persons also varies to some extent. That is, since Aquinas allows that individual natures vary, one could simply argue that one is, by nature, emotionally and physically attracted to persons of one's own gender, and hence to pursue same-sex relationships is 'natural' (Sullivan, 1995). Unfortunately, Aquinas does not spell out a justification for this generative requirement.

James Rachels and Stuart Rachels (2012), analyze the term ‘unnatural’ in three senses. First, they hold that to be unnatural could be taken as a statistical notion in which case “a human quality is unnatural if most people do not have it.” In this sense, homosexuality and same-sex marriage would be unnatural because the majority of people do not engage in it. They argue that this is not sufficient reason to reject homosexuality and same-sex marriage, since, for example, being left-handed, being tall and even being immensely nice in the same sense would be seen as unnatural. Second, they note that the meaning of ‘unnatural’ might be connected with the notion of a thing’s ‘purpose’. They point out that it is common for critics to argue that: The part of our bodies seem to serve particular purposes. The purpose of the eyes is to see, and the purpose of the heart is to pump blood. Similarly, the purpose of our genitals is to procreate: sex is for making babies ... gay sex is unnatural because it is sexual activity that is divorced from its natural purpose. Their position is that if gay relationship is to be condemned this way, then a number of other accepted practices and norms have to be condemned: these might include oral sex, masturbation, using condoms, sexual intercourse during pregnancy and during menopause: artificial insemination and the like: all of these would be just as bad and unnatural as homosexuality.

In this same line of thought, Seth Millstein, argues against the notion that the basic purpose of marriage is to procreate, and therefore same-sex couples cannot procreate. He raises the question if we should prohibit heterosexual (straight) couples from

getting married if they are biological incapable of having children or decide not to have babies. He also notes that there are many legal benefits that heterosexual couples without children enjoy, such as “hospital visitation rights, joint tax return, welfare benefit for spouses and estate inheritance” and should it be held that the fundamental purpose of marriage is procreation, then such couples should not benefit from such legal provisions. At this point it is important to note that Millstein and the like (who do not seem to believe that every part of the human body has its specific function, nor that human activities have specific and some fundamental purposes) should take a very objective and deep look at the human structure, physique and physiology. This would reveal to them the unnaturalness of same-sex marriage. We will come back to this. From the aforementioned observation it has shown that the idea of same sex marriage is not totally agreed upon. There have been several arguments for and against it which | will be looking at in this work using our contemporary.

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CHAPTER TWO

SEX, SAME-SEX AND MARRIAGE: THE MEANINGS AND THE CONCEPTS

2.1 The Concept of Marriage and Sex

There have been relatively few empirical investigations of marital sexual attitudes. However, several general conclusions can be gleaned from the available literature. First, sexual intercourse is considered part of marital relationship. “Historically, marriage has been defined by secular and non-secular forces as a socially sanctioned sexual and reproductive relationship. During the seventeenth century, for example, western European church doctrine identified sexual intercourse as a marital duty for both spouses.”¹ “Three hundred years later, social scientists continue to employ a similar definition: Noted sexologist Havelock Ellis defined marriage as ‘a sexual relationship entered into with the intention of making it permanent’²This is a notion echoed by other theorists.

Whereas, some cultures sanction extramarital sex, marital sex is assumed to be exclusive sex. That is, once an individual is married, the general presumption is that his or her sexual activities (if not his or her sexual desires) will be confined to the marital relationship (or, in polygamous mating systems, the marital relationships). Self-report survey and interview data do, however, reveal that “marital infidelity actually is quite common. Nonetheless, a majority of individuals disapprove of extramarital sexual activity.”³ Anthropologist Suzanne Frayser (1989) for example,

examined sexual behavior and customs in sixty-two different cultures and found that “extramarital relationships ranked second after incestuous relationships as the most forbidden type of sexual liaison. Large-scale attitude surveys of adults living in the United States found similar high levels of disapproval with regard to extramarital sex”⁴

As with most sexual attitudes, men and women differ slightly. Compared to women, men tend to hold more permissive attitudes about extramarital sex and are more likely to express an interest in having an extramarital sexual relationship. Although men may possess more positive attitudes toward infidelity, they are not necessarily less likely to be punished for such behavior. Frayser's (1989) cross-cultural investigation revealed that “40 percent of societies punish both the husband and the wife about equally for extramarital sexual activity, 35 percent of societies punish the husband more severely than the wife, and 25 percent of societies punish the wife more severely than the husband.”⁵

Another belief about marital sexuality concerns the relative power accorded to each sex in the making of sexual and reproductive decisions. Traditionally, choices and decisions about the sexual aspects of married life—including when and how to initiate sexual activity, the amount and type of sex, the timing and number of children, and the use of contraception—were considered the exclusive province of the male partner. The excerpt below is from a popular guide to love, courtship, and marriage published in the United States over a hundred years ago:

Usually marriage is consummated within a day or two after the ceremony, but this is gross injustice to the bride. In most cases she is nervous, timid, and exhausted by the duties of preparation for the wedding, and in no way in a condition, either in body or mind, for the vital change which the married relation brings upon her. . . . This, then, is the time for all approaches by the husband to be of the most delicate . . . Young husband! Prove your manhood, not by yielding to unbridled lust and cruelty, but by the exhibition of true power in self-control and patience with the helpless being confided to your care!⁶

The authors of this advice manual clearly view sexual decisions as the husband's duty and right—he is the one who must guard against yielding to "unbridled lust," determine the appropriate time for sexual initiation, and calmly and patiently guide the couple's first and subsequent physical interactions.

An examination of modern marriage manuals and guides to newlyweds reveals that this particular constellation of beliefs about marital sexuality has changed significantly over time, at least in the United States and Western Europe. Martin Weinberg, Rochelle Swensson, and Sue Hammersmith (1983) analyzed forty-nine sex manuals published in the United States between 1950 and 1980. During the 1950s and 1960s, for example, writers continued to emphasize differences between male and female sexuality and complementarity in sexual roles (i.e., husband as sexual teacher and wife as sexual learner). By the late 1970s, both sexes were depicted as autonomous sexual beings in control of their own sexuality, capable (and desirous) of sexual pleasure, and equally able to enact the parts of sexual teacher and learner. In many other parts of the world (e.g., Africa, Central America, and India),

however, men continue to be, and are expected to make the major sexual and reproductive decisions

Another general belief relevant to marital sexuality concerns preferences for various partner attributes that are specifically related to sexuality, including a potential spouse's sexual history or level of sexual experience. In general, research indicates that “laws to moderate levels of sexual experience are considered more desirable than extensive sexual experience.”⁷ For example, sociologist Susan Sprecher and her colleagues (1997) surveyed “over 400 college students living in the United States and found that men and women preferred "chastity" more than "extensive sexual experience" when considering a potential marriage partner.”⁸

Some cultures value chastity or sexual inexperience more than others. An international team of researchers led by psychologist David Buss (1989) surveyed over ten thousand men and women from a variety of countries and cultures (including Africa, Asia, eastern Europe, North America, western Europe, and South America) about their preferences in a spouse. The characteristic "chastity" was highly valued in Asian cultures, including Taiwan, China, Indonesia, and India, and more so than in any other cultures. In western European cultures (e.g., France, Sweden, Norway), however, chastity was considered irrelevant (a few respondents even jotted down in the margins of their questionnaires that it was undesirable in a mate). These cultural differences notwithstanding, less rather than more sexual experience seems to be the rule governing marriage partner preferences.

2.2 The Concept of Sex

Good sex comes from understanding how your body works. Everyone likes different things when it comes to sex, so don't worry about whether you're "normal." Sex isn't one size fits all. What feels good to you might not be right for someone else. Everyone's different when it comes to sexual behaviors and desires, but here are some common kinds of sexual activity, including:

- Masturbating alone or with a partner
- Oral, vaginal, and anal sex
- Kissing
- Rubbing your bodies together
- Using sex toys
- Phone sex or "sexting"
- Reading or watching porn

People get turned on by different things, so communicating about what you like or don't like lets your partner know what's okay and what's off limits. This implies that having a healthy sex life is good for you both emotionally and physically. Sex can help one create a connection with another person, and sexual pleasure has lots of health benefits — whether you're with a partner or not. When you have an orgasm, your body gives you a natural high. You release endorphins, which are hormones that block pain and make you feel good.

There are lots of other health benefits associated with sexual pleasure, and they include:

- Better general health
- Better sleep
- Better self-esteem

- Better fitness
- Less stress and tension
- Longer life

There's no amount of sex that's considered "normal" — everyone's different. How often you have sex depends on a lot of things, like whether you have a partner, what else is going on in your life, and how strong your sex drive (your desire to have sex) is.

People have different sex drives. One's own sex drive can change based on things like stress, medications one takes, and other physical, emotional, and lifestyle factors. Some people want to have sex every day or more than once a day, and some people hardly ever want to have sex. People who don't experience any sexual attraction for anyone may be termed asexual.

Having a healthy sex life is about taking care of oneself, whether one has a partner or not. Physically, that means practicing safer sex, getting tested for STDs regularly, preventing unintended pregnancies, and seeing a doctor or nurse if one has a sexual disorder or any other health problems.

Sex is one of the most common and overrated terms that is used today. To ask 'what is sex' is necessary though as it can mean different things to different people. If we talk of the process of sex, it is simply about people enjoying and indulging in an intimate session with their partner, which can include foreplay, cuddling sessions, kissing, hugging and penetration. For different kinds of sexual orientations, sex is

different. Whether you are straight, bisexual, gay, lesbian, pansexual, queer or still questioning will determine what sex means and includes for you.

As mentioned above, sex can mean different things to different people. It can be affected by your brought up, your beliefs, your sexuality and even your gender as it is now a matter of study how men and women think of sex differently. A sexual act can involve many things besides vaginal sex and may not include vaginal sex at all. It involves everything and anything that feels sexual in nature, such as hugging, kissing, any touch that is sexual in nature, anal intercourse, oral sex, stripping in front of someone, so on and so forth. However, the act of sex by definition refers to the act of penetration, the intercourse. However, many LGBT activists are fighting against this definition as it is heteronormative.

As said above, sex in itself is merely about the intercourse, the act of penetration. However, when we look at the types of sex, we usually mean the types of sexual activities, which can be of the following types.

Vaginal Sex: This is the heteronormative, straight sex, where a man penetrates his penis into the vagina of a woman. This is the most common type of sex as the majority of couple falls into the straight category.

Oral sex: This refers to the act of stimulating the sexual organs of you partner orally, by swallowing or licking them. Oral sexual activity is not dependent on a particular sexual orientation and can be practised by partners of any sexual interest.

Anal sex: It refers to penetrating a partner into their anus. Usually, anal sex is stereotyped for gay men. However, more and more women are also indulging in anal sex. The chances of infection in anal sex are higher and it carries multiple other risks with it.

Mutual Masturbation: This form of sex does not involve penetration. It involves masturbating in front of your partner or helping him masturbate. This is the safest form of sexual activity as the risk of STDs, pregnancy or infections is non-existent.

2.3 Meaning of Same-Sex Marriage

Same-sex marriage is marriage between two persons of the same biological sex and/or gender identity. Legal recognition of same-sex marriage or the possibility to perform a same-sex marriage is sometimes referred to as marriage equality or equal marriage, particularly by supporters. The first laws in modern times enabling same-sex marriage were enacted during the first decade of the 21st century. “As of May 2013, thirteen countries, and several sub-national jurisdictions, allow same-sex couples to marry. Uruguay and New Zealand have both enacted laws to legalize same-sex marriage which will come into force in August 2013.” Bills allowing legal recognition of same-sex marriage have been proposed, are pending, or have passed at least one legislative house in Andorra, England and Wales, Finland, Germany, Ireland, Luxembourg, Nepal, Scotland, and Taiwan, as well as in parts of Australia, Mexico, and the United States.”⁷ Introduction of same-sex marriage laws has varied

by jurisdiction, being variously accomplished through a legislative change to marriage laws, a court ruling based on constitutional guarantees of equality, or by direct popular vote. The recognition of same-sex marriage is a political, social, human rights and civil rights issue, as well as a religious issue in many nations and around the world, and debates continue to arise over whether same-sex couples should be allowed marriage, be required to hold a different status, or be denied recognition of such rights. Allowing same-gender couples to legally marry is considered to be one of the most important of all LGBT rights.

Although same-sex marriage has been regulated through law, religion, and custom in most countries of the world, the legal and social responses have ranged from celebration on the one hand to criminalization on the other. Some scholars, most notably the Yale professor and historian John Boswell (1947–1994), have argued that “same-sex unions were recognized by the Roman Catholic Church in medieval Europe, although others have disputed this claim. Scholars and the general public became increasingly interested in the issue during the late 20th century, a period when attitudes toward homosexuality and laws regulating homosexual behaviour were liberalized, particularly in Western Europe and the United States.”⁸

The issue of same-sex marriage frequently sparked emotional and political clashes between supporters and opponents. “By the early 21st century, several jurisdictions, both at the national and subnational levels, had legalized same-sex marriage; in other

jurisdictions, constitutional measures were adopted to prevent same-sex marriages from being sanctioned, or laws were enacted that refused to recognize such marriages performed elsewhere. That the same act was evaluated so differently by various groups indicates its importance as a social issue in the early 21st century; it also demonstrates the extent to which cultural diversity persisted both within and among countries.”⁹

It should be noted that the existence of religious pluralities within a country seems to have had a less determinate effect on the outcome of same-sex marriage debates. In some such countries, including the United States, consensus on this issue was difficult to reach. On the other hand, the Netherlands—the first country to grant equal marriage rights to same-sex couples (2001)—was religiously diverse, as was Canada, which did so in 2005.

Most of the world religions have at some points in their histories opposed same-sex marriage for one or more of the following stated reasons: homosexual acts violate natural law or divine intentions and are therefore immoral; passages in sacred texts condemn homosexual acts; and religious tradition recognizes only the marriage of one man and one woman as valid. In the early 21st century, however, Judaism, Christianity, Hinduism, and Buddhism all spoke with more than one voice on this issue. Orthodox Judaism opposed same-sex marriage, while the Reform, Reconstructionist, and Conservative traditions allowed for it. Most Christian

denominations opposed it, while the United Church of Christ, the United Church of Canada, and the Religious Society of Friends (Quakers) took a more favourable stand or allowed individual churches autonomy in the matter. The Unitarian Universalist churches and the gay-oriented Universal Fellowship of Metropolitan Community Churches fully accepted same-sex marriage. Hinduism, without a sole leader or hierarchy, allowed some Hindus to accept the practice while others were virulently opposed. The three major schools of Buddhism—Theravada, Mahayana, and Vajrayana—stressed the attainment of enlightenment as a basic theme; most Buddhist literature therefore viewed all marriage as a choice between the two individuals involved.

2.3.1 Types of Same-Sex Marriage

Gay: Gay is a “term that primarily refers to a homosexual person or the trait of being homosexual. The term originally meant 'carefree', 'cheerful', or 'bright and showy.’”¹⁰ While scant usage referring to male homosexuality dates to the late 19th century, that meaning became increasingly common by the mid-20th century. “In modern English, *gay* has come to be used as an adjective, and as a noun, referring to the community, practices and cultures associated with homosexuality. In the 1960s, *gay* became the word favored by homosexual men to describe their sexual orientation. By the end of the 20th century, the word *gay* was recommended by major LGBT groups and style guides to describe people attracted to members of the same sex, although it is more commonly used to refer specifically to men.”¹¹

The use of *gay* to mean "homosexual" was often an extension of its application to prostitution: a *gay boy* was a young man or boy serving male clients. Similarly, a *gay cat* was a young male apprenticed to an older hobo and commonly exchanging sex and other services for protection and tutelage. The application to homosexuality was also an extension of the word's sexualized connotation of "carefree and uninhibited", which implied a willingness to disregard conventional or respectable sexual mores. Such usage, documented as early as the 1920s, was likely present before the 20th century, although it was initially more commonly used to imply heterosexually unconstrained lifestyles, as in the once-common phrase "gay Lothario".

By the mid-20th century, *gay* was well established in reference to hedonistic and uninhibited lifestyles^[12] and its antonym *straight*, which had long had connotations of seriousness, respectability, and conventionality, had now acquired specific connotations of heterosexuality.^[21] In the case of *gay*, other connotations of frivolousness and showiness in dress ("gay apparel") led to association with camp and effeminacy. This association no doubt helped the gradual narrowing in scope of the term towards its current dominant meaning, which was at first confined to subcultures. *Gay* was the preferred term since other terms, such as *queer*, were felt to be derogatory. Homosexual is perceived as excessively clinical, since the sexual orientation now commonly referred to as "homosexuality" was at that time a mental illness diagnosis in the Diagnostic and Statistical Manual of Mental Disorders (DSM).

Lesbianism A lesbian is a homosexual woman. The word lesbian is also used for women in relation to their sexual identity or sexual behavior, regardless of sexual orientation, or as an adjective to characterize or associate nouns with female homosexuality or same-sex attraction.

The concept of "lesbian" to differentiate women with a shared sexual orientation evolved in the 20th century. Throughout history, women have not had the same freedom or independence as men to pursue homosexual relationships, but neither have they met the same harsh punishment as homosexual men in some societies. Instead, lesbian relationships have often been regarded as harmless, unless a participant attempts to assert privileges traditionally enjoyed by men. As a result, little in history was documented to give an accurate description of how female homosexuality was expressed. When early sexologists in the late 19th century began to categorize and describe homosexual behavior, hampered by a lack of knowledge about homosexuality or women's sexuality, they distinguished lesbians as women who did not adhere to female gender roles. They classified them as mentally ill—a designation which has been reversed since the late 20th century in the global scientific community.

Women in homosexual relationships in Europe and the United States responded to the discrimination and repression either by hiding their personal lives, or accepting the label of outcast and creating a subculture and identity. “Following World War II,

during a period of social repression when governments actively persecuted homosexuals, women developed networks to socialize with and educate each other. Gaining greater economic and social freedom allowed them to determine how they could form relationships and families. With second wave feminism and the growth of scholarship in women's history and sexuality in the late 20th century, the definition of lesbian broadened, leading to debate about the term's use."¹² While research by Lisa M. Diamond identified sexual desire as the core component for defining lesbians, some women who engage in same-sex sexual activity may reject not only identifying as lesbians but as bisexual as well. Other women's self-identification as lesbian may not align with their sexual orientation or sexual behavior. Sexual identity is not necessarily the same as one's sexual orientation or sexual behavior, due to various reasons, such as the fear of identifying their sexual orientation in a homophobic setting.

Portrayals of lesbians in the media suggest that society at large has been simultaneously intrigued and threatened by women who challenge feminine gender roles, as well as fascinated and appalled with women who are romantically involved with other women. Women who adopt a lesbian identity share experiences that form an outlook similar to an ethnic identity: as homosexuals, they are unified by the heterosexist discrimination and potential rejection they face from their families, friends, and others as a result of homophobia. As women, they face concerns separate from men. Lesbians may encounter distinct physical or mental health

concerns arising from discrimination, prejudice, and minority stress. Political conditions and social attitudes also affect the formation of lesbian relationships and families in open.

Lesbians in Western cultures in particular often classify themselves as having an identity that defines their individual sexuality, as well as their membership to a group that shares common traits. Women in many cultures throughout history have had sexual relations with other women, but they rarely were designated as part of a group of people based on whom they had physical relations with. As women have generally been political minorities in Western cultures, the added medical designation of homosexuality has been cause for the development of a sub-cultural identity.

2.4 Same-Sex Marriage and the Law: Some Examples around the World

While Human Rights Watch found no evidence that any individual has been prosecuted or sentenced under the SSMPA, the report concludes that its impact appears to be far-reaching and severe. The heated public debate and heightened media interest in the law have made homosexuality more visible and LGBT people even more vulnerable than they already were. Many LGBT individuals interviewed by Human Rights Watch said that prior to the enactment of the SSMPA in January 2014, “the general public objected to homosexuality primarily on the basis of religious beliefs and perceptions of what constitutes African culture and tradition. The law has become a tool being used by some police officers and members of the

public to legitimize multiple human rights violations perpetrated against LGBT people. Such violations include torture, sexual violence, arbitrary detention, violations of due process rights, and extortion.”¹³ Human Rights Watch research indicates that “since January 2014, there have been rising incidents of mob violence, with groups of people gathering together and acting with a common intent of committing acts of violence against persons based on their real or perceived sexual orientation or gender identity.”¹⁴For instance, “in February 2014 in Gishiri village, Abuja, a group of approximately 50 people armed with machetes, clubs, whips, and metal wires dragged people from their homes and severely beat at least 14 men whom they suspected of being gay. Three victims told Human Rights Watch that their attackers chanted: ‘We are doing (President Goodluck) Jonathan’s work: cleansing the community of gays.’” Another victim said that the attackers also shouted: “Jungle justice! No more gays!”¹⁵

Arbitrary arrest and extortion by police is commonplace under the SSMPA. Interviewees in Ibadan and other places told Human Rights Watch that they had been detained by the police multiple times since the passage of the SSMPA. Human Rights Watch interviewed eight of the 21 young men who were arrested, but not charged, at a birthday party in Ibadan. They told Human Rights Watch that members of the public informed the police that gay men were gathered together and when police arrived and found a bag of condoms that belonged to an HIV peer educator, they were all arrested. They were held in police custody for four days, and released,

without charge, after paying bribes ranging from 10,000-25,000 Naira (approximately US\$32-64). These individuals said they had never been subjected to questioning, arrest, or detention prior to the enactment of this law. Individuals who have been arrested and detained are released on “bail,” usually after offering bribes to the police. Faced with 14 years’ imprisonment, several interviewees said they had little choice but to pay.

Lesbians and gay men interviewed by Human Rights Watch said that the law has had an insidious effect on individual self-expression. “Since January 2014, several said that they had adopted self-censoring behavior by significantly and consciously altering their gender presentation to avoid detection or suspicion by members of the public and to avoid arrest and extortion. They told Human Rights Watch that this was not necessarily a major concern prior to the passage of the SSMPA. Lesbian and bisexual women in particular reported that fear of being perceived as “guilty by association” led them to avoid associating with other LGBT community members, increasing their isolation and, in some cases, eventually compelling them to marry an opposite-sex partner, have children, and conform to socially proscribed gender norms.

“On June 26, 2015, the U.S. Supreme Court determined that same-sex couples have the right to marry, and newspapers across the country declared that gay couples could now exercise this right in all 50 states. While the Obergefell decision was an

important moment in history and a significant victory for the LGBT movement, it was not an immediate and complete change in policy. Rather, the change emerged slowly over decades from numerous complex interactions among federal, state, and local governmental actors. These same actors continue to influence marriage equality even after the Supreme Court's historic ruling."¹⁷

A careful consideration of the path of marriage equality demonstrates the importance of federalism in the evolution of policy in the U.S. context. Not only does the extent of federal involvement influence state decision-making, but state policies also respond to the policymaking processes in other states. Examining the progression of marriage rights for same-sex couples also illustrates how variation in state government institutions shape policy outcomes in the U.S. system. For example, aspects of state courts such as judicial capacity influence the nature of state policy responses on the issue of gay marriage. Finally, focusing on marriage equality provides an opportunity to consider how institutions of government and political actors strategically interact to influence the policymaking process. For example, advocacy coalitions make strategic choices to focus on levels and institutions of government that are more responsive to their interests. Overall, same-sex marriage policy and the scholarship that investigates it highlight the complex and sometimes convoluted development that characterizes the policymaking process on many important issues in American politics and society.

It should be noted that “More “than 18 years after the Netherlands became the world’s first country to legalize same-sex marriage, Northern Ireland has become the latest European jurisdiction to allow gays and lesbians to marry. Although Northern Island is a constituent of the United Kingdom, with its own parliament at Stormont, the change in its marriage laws ultimately came about due to action by the UK Parliament in London. British lawmakers justified the change (which was accompanied by the legalization of abortion) because the Northern Irish parliament was suspended in January 2017 amid a stalemate between Northern Ireland’s parties.”¹⁹Northern Ireland is the 18th European jurisdiction to legalize gay marriage. This number counts England and Wales together and Scotland and Northern Ireland as separate entities, since same-sex marriage became legal in the UK due to the enactment of three different pieces of legislation: first in England and Wales in 2013, then in Scotland the following year, and now in Northern Ireland.

Same-sex marriage is now legal across the vast majority of Western Europe. One prominent exception is Italy, which has historical ties to the Roman Catholic Church. In spite of these ties, Italy began recognizing same-sex civil unions in 2016. Switzerland also offers same-sex couples the option of civil unions, but not full marriage.

By contrast, people in Central and Eastern Europe are broadly opposed to the practice. “Just 5% of Russians and 9% of Ukrainians, for example, say they favor

allowing same-sex marriage, according to surveys conducted in 2015 and 2016. Figures in Poland (32%) and Hungary (27%) are higher, though Poles and Hungarians who support same-sex marriage remain in the minority. The Czech Republic is the only country out of 19 surveyed in Central and Eastern Europe where a majority of adults (65%) support gay marriage.”²⁰

Likewise, no country in Central or Eastern Europe – not even the Czech Republic – allows same-sex couples to legally marry. However, the Czech Republic, along with Croatia, Estonia, Hungary and several other countries in the region, does allow civil unions. Greece joined this list in late 2015 when it agreed to begin recognizing same-sex civil partnerships despite opposition from the Greek Orthodox Church. Slovenia also allows civil unions, but its voters rejected a 2015 referendum that would have legalized full same-sex marriage. (Ireland, on the other hand, became the world’s first country to approve same-sex marriage by popular vote in 2015.)

More than half of the entities around the world that allow same-sex marriage are in Europe, though Taiwan recently became the first Asian jurisdiction to join the list.

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CHAPTER THREE

SAME-SEX UNION/MARRIAGE: A PHILOSOPHICAL EVALUATION OF THE ETHICAL ISSUES

3.1 Legal Evaluation of Same-Sex Marriage

The law is subject to interpretation and can be interpreted in various ways by legal practitioners. From the legal point of view, arguments for and against same sex marriage abound. This apparent legal lacuna needs proper redress. Hence, Okoroma did a detailed and seemingly unbiased and unsentimental legal review of this issue. Therefore, his work will be used as the basis for evaluation.

Be that as it may, Lawyers Alert published a clause by clause critical analysis of same sex marriage. Here, virtually all the clauses are flawed using the instrumentality of 1999 constitution of the Federal Republic of Nigeria (as amended) and other human rights instruments. A few examples will be pointed out here. They opine that clause 1 (1) which states that “a marriage contract or civil union entered into between persons of same sex has always been void and has never had a legal backing or reckoned with in the Marriage Act in Nigeria. Hence, it does not need further prohibition. Lawyers Alert therefore believes that this clause is unnecessary. For Okoroma however, “marriage in clause 1 is out of place because same sex relationship cannot be referred to as marriage as defined in the Marriage Act.”²

Clause 2 (1) states that “a marriage contract or civil union entered into between persons of same sex shall not be solemnized in a church, mosque or any other place of worship in Nigeria.”³ This has also been criticized by Lawyers Alert. They cite section 10 of the 1999 constitution which unequivocally state that no religion shall be adopted as state religion. They maintained that Nigeria’s legislators will be acting *ultra vires* and infringing on Nigerian’s right to worship if they dictate doctrines to religious bodies and impose the sort of marriage to celebrate on them.

Again, Lawyers Alert refutes Clause 4 (1) which stipulates: “every person shall be entitled to assemble freely and associate with other persons, ... trade union or any other association for the protection of his interests.”⁴ For Lawyers Alert, this clause therefore is undemocratic and sinister to Nigeria’s democracy. This section can be twisted by unscrupulous law enforcement agents to harass and arbitrarily arrest innocent citizens as a result of its ambiguities. Also, clause 4 (2) which states that “the public show of same sex amorous relationship directly or indirectly is hereby prohibited”⁵ has also been criticized because of its equivocality. There are no concrete yardsticks for measuring the distinctive definition of ‘same sex amorous relationship’. ‘Direct’ and ‘Indirect’ here are also vague and not precise. It must be recalled that Article 20(1) of the Universal Declaration of Human Rights also states that “everyone has the right to freedom of peaceful assembly and association” ⁶ and in its ninth article, it states that, “one shall be subject ted to arbitrary arrest, detention

or exile”.⁷ The Universal Declaration of Human Rights therefore apparently supports the claim of Lawyers Alert.

Okoroma however refutes the claim of the Act that it violates constitutionally guaranteed rights. According to him, “the same constitution, in its wisdom, understands that fundamental rights in themselves are not absolute.”⁸ Okoroma reveals that section 45(1) (a) of the constitution counters the absoluteness of fundamental rights by stating thus: “Nothing in section 37,38, 39, 40 and 41 of the constitution shall invalidate any law that is REASONABLY JUSTIFIED in a democratic society – in the interest of defense, public safety, public order, PUBLIC MORALITY or public health.”⁹ In other words, appropriation of fundamental rights is overridden by public interest and considerations that are reasonably justified. Okoroma therefore answers a resounding yes to the justifiability of the Same Sex Marriage (Prohibition) Act in the light of section 45 (1) (a) of the Constitution. He however makes it clear that homosexuality in itself is an essentially private issue which the Act has not criminalized or prohibited.

According to Okoroma, “homosexual acts have brought about conflicts because most Nigerians get offended at it. Therefore it needs to be addressed.”¹⁰ He insists in contrast to Lawyers Alert that it is democratic for the majority’s right or will to overrule the minority’s will. This perfectly played out in this Act. Homosexual

relationship offends majority of the Nigerian population even though it is victimless. Hence, this prohibition is democratically justified.

3.2 Moral Evaluation of Same-Sex Marriage

Much of the moral qualms with same-sex union could be said to be founded on it being antithetical to African traditional moral values. One of the central concern of any theory of law is the determination of the relationship or otherwise between morality and the law. Not in committed here to pontificate on that tension, this work is based on certain presuppositions, one, that even if the law (elsewhere may not consider same-sex union as offensive against it, it definitely offends African traditional values of the family; and two, that the law is definitely meant to strengthen morality. In line with the foregoing, if the law is the sum total of a society's value system, mores, and culture, then such laws ought to reflect the people's culture and identity. Homosexuality has never been part of traditional African culture. Hence where a government or individuals attempt to introduce accretions which offend against the basic values which form the spine of our social organization, such must be resisted. This is because acceptability is the core and essential part of every (good) law. What needs to be done in this session is to establish that, whereas in the western consideration, the concept of same-sex marriage offends the law (in view of the statutory definition of marriage has not been formally abdicated); and that, the concept contravenes the norms, values, aspirations, virtues, and the spirit of traditional Africa—ideas which had been the spine of

African world outlook, including the need to have food, shelter and clothing; to live free of want and diseases; to be assured of justice; to propagate humanity; and to access opportunities for, and not be constrained in self-actualization. Since we have already specified what marriage is, what sex/same-sex entails, one needs to adumbrate what the law on same-sex marriage is; what the traditional impression is, and those values in the face of the law. It appears as if this provision permits any kind of marriage union including homosexuality. Perhaps the definition of marriage in the Marriage Act clears this ambiguity, positing that marriage as “a legally binding union between a man and a woman, be it performed under the authority of the state, Islamic law, or customary law”.

Some have argued, in reference to certain lower animals and beasts that free engage in and have institutionalized ‘same-sex relationships’, that homosexuality is natural and consistent with human sexual desires. That homosexuality is as natural as any other sexual inclination and that, at worst, it ought to be taken as the cumulation of the freaky interactions of genes and cells in the prenatal formation of the specie, giving rise to the unusual sexual behavior known as homosexuality. Yet, no known, even Darwin’s classical *evolutionary* theory nor any modern scientific theory on human genetics and psychology, supports this claim. In fact, this is an unfair comparism and *False Analogy*. Truly, cannibalism, incest, bestiality or any other form of pestiferous carnality and perturbations amount to a retrogression/degeneration into the animalistic tendencies of lesser mortals.

Another argument (sociological) for same-sex marriage holds that if sex is the basis of marriage and its stability, then homosexuality is best suitable for it because it is more stable and less likely to end in divorce. But proponents of this view must first realize the meaning of sex as “the sum of the peculiarities of structure and function that distinguish a male from a female...sexual intercourse”.¹¹ Thus anal or oral penetration cannot count as sex because such do not project any gender peculiarities. Or can we genuinely separate marriage from sex? Unthinkable. Yet others refer to the various Conventions providing for fundamental human rights to freedom of association, amongst others.¹² One must be quick to retort that those conventions and proclamations are deeply thought-out rational provisions to get humans to the best possible life, away from bestiality to sensibleness, and not otherwise. Hence section 45 of the 1999 constitution of Nigeria restricts any right which does not protect public morality. Again, both arguments of those pushing for same-sex union to count as marriage represent blatant demeaning and desecration of marriage institution, and is an embarrassment to human civilization—the ideals and moral fabric of the society. Moreover, traditional family relations, norms and relationships would be hampered, raising several other legal issues such as inheritance, pension rights, citizenship, labour, sex-roles, and criminal responsibility; it has salient epistemological implication for extant perceptive issues about rape, sodomy, and adultery—not to mention the medical threat it poses in placing humanity in an untold vulnerability to unimaginable diseases. No wonder Christianity and Islam condemns

same-sex union as demonic, and traditional African conceives it an abomination since such offends her valued ethos.

In traditional Africa, homosexual behaviours and tendencies are marks of insanity introduced either by orientation or by association because such could experiment with any idea provided it is a vice or incredible. A preposterous indicator of their insanity rests in the (homosexuals') quest to be allowed to adopt children. This is a show of vivid ignorance. Now, imagine an adopted girl-child who has grown mature in the two-male homosexual adopter-family. Serial and persistent rape, unmitigated paedophilia and other forms of malevolent sexual abuses and harassment of that child would be all the 'benefits' that must naturally accrue from such a union. More ridiculous about the same-sexists' quest to adopt children is the puzzle: Imagine for a moment all marriages are same-sexists! Where would there be children to be adopted? In all considerations, it would mark the collapse of the essential values and characteristics of our marriage and family institutions.

Many scholars have engaged the moral issues concerning same-sex marriage. We present here some of the most basic or general points of such evaluations.

i. That It Is Not Marriage

“Calling something marriage does not make it marriage. Marriage has always been a covenant between a man and a woman which is by its nature ordered toward the procreation and education of children and the unity and wellbeing of the spouses.”¹³

The promoters of the same-sex “marriage” propose something entirely different. They propose the union between two men or two women. This denies the self-evident biological, physiological, and psychological differences between men and women which find their complementarities in marriage. It also denies the specific primary purpose of marriage: the perpetuation of the human race and the raising of children. Two entirely different things cannot be considered the same thing.

ii. It Violates Natural Law

Marriage is not just any relationship between human beings. It is a relationship rooted in human nature and thus governed by natural law. Natural law’s most elementary precept is that “good is to be done and pursued, and evil is to be avoided.”¹⁴ By his natural reason, man can perceive what is morally good or bad for him. Thus, he can know the end or purpose of each of his acts and how it is morally wrong to transform the means that help him accomplish an act into the act’s purpose. Any situation which institutionalizes the circumvention of the purpose of the sexual act violates natural law and the objective norm of morality. Being rooted in human nature, natural law is universal and immutable. It applies to the entire human race, equally. It commands and forbids consistently, everywhere and always. Saint Paul taught in the Epistle to the Romans that the natural law is inscribed on the heart of every man (Rom. 2:14-15).

iii. It Always Denies a Child Either a Father Or a Mother

It is in the child's best interests that he be raised under the influence of his natural father and mother. This rule is confirmed by the evident difficulties faced by the many children who are orphans or are raised by a single parent, a relative, or a foster parent. The unfortunate situation of these children will be the norm for all children of a same-sex "marriage". A child of a same-sex "marriage" will always be deprived of either his natural mother or father. He will necessarily be raised by one party who has no blood relationship with him. He will always be deprived of either a mother or a father role model. Same-sex "marriage" ignores a child's best interest

iv. It Validates and Promotes the Homosexual Lifestyle

In the name of the "family", same-sex "marriage" serves to validate not only such union but the whole homosexual lifestyle in all its bisexual and transgender variants. Civil laws are structuring principles of man's life in society. As such, they externally shape the life of society, but also profoundly modify everyone's perception and evaluation of forms of behavior. Legal recognition of same sex "marriage" would necessarily obscure certain basic morals values, devalue traditional marriage, and weaken public morality.

v. It Turns a Moral Wrong into a Civil Right

Homosexual activists argue that same-sex "marriage" is a civil right issue similar to struggle for racial equality in the 1960s. This is false. First of all, sexual behavior and race are essentially different realities. A man and a woman wanting to marry may be

different in their characteristics: one may be black, the other white; one rich, the other poor or one tall, the other short. None of these differences are insurmountable obstacles to marriage. The two individuals are still man and woman, and thus the requirements of nature are respected. Same-sex “marriage” opposes nature. Two individuals of the same-sex, regardless of the race, wealth, stature, erudition or fame, will never be able to marry because of an insurmountable biological impossibility. Secondly, inherited and unchangeable racial traits cannot be compared non-genetic and changeable behavior. There is simply no analogy between two individuals of the same sex.

vi. It Does Not Create a Family but a Naturally Sterile Union

Traditional marriage is usually so fecund that those who would frustrate its end must do violence to nature to prevent the birth of children by using contraception. It naturally tends to create families. On the contrary, same-sex “marriage” is intrinsically sterile. If the “spouses” want a child, they must circumvent nature by costly and artificial means or employ surrogates. The natural tendency of such a union marriage and give it the benefits of true marriage.

vii. It Defeats the State’s Purpose of Benefiting Marriage

One of the main reasons why the state bestows numerous benefits on marriage is that by its very nature and design, marriage provides the normal conditions for a stable, affectionate, and moral atmosphere that is beneficial to the upbringing of children— all fruit of the mutual affection of the parents. This aids in perpetuating the nation

and strengthening society, an evident interest of the state. Homosexual “marriage” does not provide such conditions its primary purpose, objectively speaking, is the personal gratification of two individuals whose union is sterile by nature. It is not entitled, therefore, to the protection the state extends to true marriage.

viii. It Imposes Its Acceptance on All Society

“By legalizing same-sex marriage, the state becomes its official and active promoter. The state calls on public officials to officiate at the new civil ceremony, orders public schools to teach its acceptability to children, and punishes any state’s employee who express disapproval. In the private sphere, objecting parents will see their children exposed more than ever to this new “morality”, businesses offering wedding services will be forced to provide them for same-sex unions, and rental property owners will have to agree to accept same-sex and all couples as tenants. In every situation where marriage affects society, the state will expect Christians and all people of good will to betray their consciences by condoning, through silence or act, an attack on the natural order and Christian morality.”¹⁵

ix. It is the Cutting Edge of the Sexual Revolution

In the 1960, society was pressured to accept all kinds of immoral sexual relationship between men and women. Today we are seeing a new sexual revolution where society is being asked to accept sodomy an same-sex “marriage”. If homosexual “marriage” is universally accepted as the present steps in sexual “freedom,” what logical arguments can be used to stop the next steps of incest, pedophilia, bestiality,

and other forms of unnatural behavior? Indeed, radical elements of certain “avant garde” subcultures are already advocating such aberrations. The railroading of same-sex “marriage” on the American people makes increasingly clear what homosexual activist Paul Varnell wrote in Chicago Free Press’: “The gay movement, whether we acknowledge it or not, is not a civil rights movement, not even a sexual liberation movement, but a moral revolution aimed at changing people’s view of homosexuality.”

x. It Offends God/Religion

This is the most important reason. Whenever one violates the natural moral order established by God, one sins and offends God. Same-sex “marriage” does just this. Accordingly, anyone who professes to love God must be opposed to it. Marriage is not the creature of any State. Rather, it was established by God in Paradise for our first parent, Adam and Eve. As we read in the book of Genesis: “God created man in His own image in the divine image he created him; ‘be fertile and multiply fill the earth and subdue it. (Gen.1:28-29)”¹⁶ The same was taught by Jesus Christ: “From the beginning of the creation, God made them male and female. For this cause a man shall leave his father and mother; and shall cleave to his wife.”¹⁷ Genesis also teaches how God punished Sodom and Gomorrah for the sin of homosexuality: “The Lord rained down sulphurous fire upon Sodom and Gomorrah. He overthrew those cities and the produce of the soil.”¹⁸

Taking a principled not a personal stand in writing this statement, we have no intention to defame or disparage anyone. We are not moved by personal hatred against any individual. In intellectually opposing individuals or organizations promoting the homosexual agenda, our only intent is the defense of traditional marriage, the family, and the precious remnants of moral civilization.

The Religious/Cultural Perspective on Same-sex Relationship

As earlier stated same-sex marriage is an African and in shape contrast with the religion practiced in Nigeria. Therefore, its prohibition was a welcome development to majority of Nigerians. A lot of arguments have been put forward from the Bible, Quran and by people with indigenous religious persuasion against same sex marriage. In Christianity for instance, same sex union is seen as a deviation from God's standards of marriage. In their hermeneutical study of Genesis 2:18-24, Uzoma and Okoye (2010) opine that "during the creation, God was not just interested in providing a companion for man but one that was matching, compatible and sexually complementary. So God made a suitable companion-woman for man which is diametrically opposed to same sex marriage."¹⁹ To further buttress this stance; they cited Jesus' words in the New Testament where he states in Matthew 19:4 "have you not read that he who made them from the beginning made them male and female. It is for this reason that a man should leave his father and mother and cleave to his wife and both become one flesh."²⁰

On his own, Harvey decries same sex marriage. He is of the opinion that the Biblical norm of marriage is heterosexual and procreative for the sake of perpetuity of mankind. He cites specific texts from the Bible that condemns same sex marriage. They include Genesis 19:4-11 (where God destroyed Sodom and Gomorrah because of homosexuality) and Roman 1:26 (where female same sex acts are condemned). He insists that same sex union is a distortion and intrinsically immoral. In Harvey's word, "same sex marriage threatens freedom of religion because it is a direct attack upon our culture,, marriage and our faith."²¹

For Peschke, contraction of marriage by homosexuals is declined in Christianity because it is equivocally unbiblical and is "detrimental to society and deprecates the institution of marriage and the family."²²

More so, in Islam, the question of homosexuality has always been clearly articulated in the Sharia penal code as abominable and therefore grossly unacceptable. Also, culturally, marriage is seen as a sacred institution that must be upheld in sanctity. Therefore anything outside heterosexual marriage is an anomaly and seriously frowned at. Along this line, Uzoma and Okoye assert that "in the traditional society, before the civilization, marriage institution was held in sacred esteem."²³ The culture of Nigerians is based mostly on natural law which is interested in complementarily – true communion of bodies and fruitfulness (reproductive character). The Igbo culture for instance refers to any kind of homosexuality as *aru* (abomination).

Onouha, as cited by Uzoma and Okoye concludes that “same sex union in whatever guise it may manifest homosexuality, lesbianism, sodomy, bisexuality, gay, civil partnership is unnatural, un biblical, unreasonable, unethical, ungodly and unafrikan.”²⁴ Suffice to say that it is mostly on religious/cultural grounds that most Nigerians dismiss homosexuality as merely an inverted means of gratifying sexual concupiscence and therefore unscrupulous and grossly unacceptable.

In conclusion, marriage is considered by moralists as a basic human good that we can participate and must valorize. A good account of this position can be found in Finnis’ essay titled, *Marriage: a Basic and Exigent Good*. There, Finnis delimits the *focal meaning or point of marriage*. He maintained that Marriage’s point is twofold: procreation (or parental care) and *friendship* between spouses. These characteristics are united in a special manner, in a way that marriage can be considered a human good so basic and constitutive of human fulfillment that can be said to be intrinsic value. Furthermore, these points demonstrate marriage goes far beyond its legal dimension.

The procreation act does not forcefully depend on generating children, as they do not constitute an inexorable consequence of marriage. Reproduction is viewed by Finnis as a function that operates through the union between the reproductive organs of a man and a woman, uniting them biologically. This biological reality is not a simple “instrument” – it is part of everyone’s personal reality, as Finnis argues in his essay

Law, Morality, and 'Sexual Orientation.' Therefore the fundamental is not related to offspring generation but to reproductive sort of acts – which Finnis calls the *biological union*:

Biological union between humans is the inseminatory union of male genital organ with female organ; in most circumstances it does not result in generation, but it is the behavior that unites biologically because it is the behavior which, as behavior, is suitable for generation.

Therefore, biological union can only take place through the union between a man and a woman. Sterile or not, their genital organs are nonetheless reproductive organs. Spouses can “actualize” and “experience” the good of marriage only by this kind of sexual relation, which remains for sterile couples but not for homosexual ones.

Sex could give mutual pleasure, but when it does not correspond to biological union it is regarded by Finnis as the instrumentalization of people – who, in Finnis’ words, “disintegrate themselves.” Thus, homosexual acts could be similarly criticized as copulation between humans and animals: they are dissociated from the expression of an intelligible common good, treating the human bodily life as merely animal. So marital sex, by definition, can be the only rational use of man and woman’s reproductive organs- and as reproductive organs, can only perform their function when united. Homosexual sex acts are for this reason deemed as the instrumentalization of individuals involved in them (as well as heterosexual acts

which do not correspond to biological union- e.g. oral sex). Even if these sex acts were mutually delightful, they are incompatible with the very idea of marriage.

At this point, we must recall the seventh requirement of practical reasonableness, that each human good must be respected in all our actions. For Finnis believes that “non-marital sex acts (i.e. sex acts distinct from the biological union) are an opposite and disrespectful choice to the good of marriage. So, individuals who have a homosexual inclination should remain with no active sexual life. Otherwise they would be confronting the good of marriage and acting immorality”²⁵

In addition to the biological union the other marriage’s point substantiates a special link between spouses, in an affective, emotional way. This link is not a pure and simple friendship but a kind of relationship where spouses passionately participate, oriented towards the practice of reproductive sex acts. This marital friendship matches what Aquinas conceived as *fides*, as interpreted by Finnis. *Fides* does not only involves abstaining from extramarital affairs (i.e. adultery), but is a reason for action. It is willingness and commitment of each spouse to cleave (*accedere*) to the other and no other person, in a bodily and spiritually way – what constitutes a “positive *fides*” (the mutual support and sharing of a common life in a home).

Finnis also argues the commitment and marital exclusiveness are particularly hard to keep among gay couples, precisely because same-sex partners are unable of

reproductive acts. Thus, Finnis raises not only philosophical but also empirical arguments which would render implausible the defense of same-sex marriage.

In short, Finnis conceives only the unity of a man and a woman as a genuine marital union. The sex act, as the biological union, is only reasonable and moral when addressed to participation in the good of marriage. Therefore, protecting heterosexual marriage is a moral requirement. The “simulation” of this union by same-sex partners is an illusory performance and is disrespectful to the good of marriage- thus being an offence to the seventh requirement of practical reasonableness.

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CHAPTER FOUR

SUMMARY, CONCLUSION AND RECOMMENDATIONS

4.1 Summary

Same sex is an adjective of, for, relating to people of the same sex specifically homosexuals. Same sex/homosexuality is romantic sexual attraction or behaviour among members of the same sex. Same -sex marriage is a marriage contract that is restricted to members of the same-sex -gay men and lesbians.”¹ It is also described as gay marriage but the gay positive groups prefer to be addressed as marriage equality. Their agitations have been that: (a) the treatment given to them is unjust and unfair in a democratic set up. (b) they are not accorded dignity and respect. (c) they are denied human right and freedom of choice of marriage partners. (d) they should be allowed to naturally express their sexual needs (e) they are also demanding for financial protection and as such would want the civil partnership union to be given full religious rights. “Though there is long history of homosexual practices, the idea of same sex marriage was rare, widely unacceptable, and unknown until the mid-nineties. This was followed by the continued campaign for homosexual marriage, and civil union.”² These agitations have brought about a paradigm shift in the societal understanding and attitudes towards homosexual relationships.

In fact, Onuoha, a Nigerian bishop commented thus, “same sex union whatever guise it may manifest homosexuality, lesbianism, sodomy, bisexuality, gay, civil partnership — is unnatural, unbiblical, unreasonable, unethical, ungodly and

unAfrican.”³ The full endorsement of homosexual/ same -sex marriage as religious act has sparked off an unending debate as it is a major threat to cultural advancement.

Nature has hermeneutically exposed the sacred nature of marriage. Marriage was made, created and formed, by God, from the beginning of creation. It is God who has the prerogative to decide how marriage should be contracted. That is why when human beings were created from the beginning, they were created male and female. Marriage is not an exclusively human/ secular institution. The divine involvement in marriage made it clear that marriage should not be socialized and legalized as a state affair. The state should therefore acknowledge this holy institution as a divinely ordained pre-political institution.

More so, marriage relationship should not be politicized in any form or by any nomenclature. The values, virtue, vision and patterns of the institution should be shaped by creation order and what it was meant to be as it was handed down to the society and not on human constitution and reasoning as it has a far-reaching implication on reproduction and the family. One important aspect of creation is the charge given to man to be fruitful and replenish the earth. Man needs to tend the earth, maintain it and ensure its continuity. Man can achieve this through a heterosexual union and not through the same —sex union, Reproduction is therefore a very fundamental aspect of marriage for the continuity of the human race. The implication of creating the woman for the man was an avenue of sustenance of the

earth. It is not good for the man to be alone without the ability to procreate. When God brought the man and the woman together, the family emerged. The family unit is a very Strategic structure in the society. Societal life is shaped through the family unit. The family provides the avenue for proper nurturing of children and consequently the entire society. God in his infinite wisdom knew that the society can only be ideally impacted by the family. By trusting the family in the hands of the man and woman, God intended that through the complementary efforts of the two, the children will be given proper direction. Therefore, socialization of the institution of marriage will eventually destabilize the home and alter God's plan for the family. It creates confusion of gender role and identity for the younger generation. It denies a child right or access to a love of a father or mother. And, a child needs the love of both parents. The presence of both parents seems to be necessary for proper emotional and mental development of a child.”⁴

Same sex marriage negates divine order of procreation through sexual relationship of man and woman. Recent trends in the same sex saga show that gay couples now make moves to adopt children. “Labour laws are supporting that gay couples can adopt children. Arguments raised by gay couples are that children are not necessarily hindered psychologically and may not end up as gays.”⁵ They have also disputed the role of the environment in child nurturing. Whatever may be their philosophy, this project work maintains that since the gay position is anti-nature based, the issue of gay child adoption is a distortion of the natural order for family. Same sex marriage

is incompatible with the creation of male and female as distinct and yet complementary sexual beings. After instituting marriage, God gave the man and woman the authority to pro-create in order to multiply and fill the earth. Sex between two men or two women cannot produce children. And as noted by Blumstein, and Schwartz (1993), “The order of having a family only to adopt children as family members is an aberration and distortion of the original order nature has set in place.”⁶

The sanctity of marriage made which was made obvious by nature presupposes morality in the home and the society. A modification of marriage to include same sex union will deprive marriage of its biblical meaning. Same sex marriage will result in the neglect of moral principles. In fact, same —sex marriage anchors on immorality. Any form of marriage that opposes the divine principle of one man, one woman is a distortion of natural order. As Stone puts it, “the marriage which nature formed excludes adultery, polygamy, homosexuality, and immoral living. Legalization of same -sex marriage will slowly destroy the sanctity of marriage.”⁷

The debate on same sex marriage is an unending one posing legal, ethical and moral challenges to both the society and religious institutions. The society has not been able to handle this issue, and it has become an object of threat to the world at large. The development in the Western society in its acceptance of homosexual life style has put pressure on the African continent to yield to its Western counterpart.

Advocates of both sides have continued to air their views on the knotty matter. No ethical issue has in recent times generated much debate in the society like the issue of the acceptance of same-sex marriage. Although societal attitude towards it varies from culture to culture, the idea of committed monogamous same-sex marriage is incompatible with nature. From Genesis 1 onwards, the Bible repeatedly affirms that God created man and woman for a lifelong marriage relationship. The difference in their genders constitutes the foundation for sexual union and establishes men's procreative possibilities. Marriage as a heterosexual covenant relationship is the initiative of God right from the beginning. Homosexual marriage is a violation of divine order and design. The divine order for marriage is man is to woman and not man is to man as some argued. God's standard for marriage overrides cultural and societal legislations. Sexual expression between a man and woman is natural and fulfilling. God, the initiator of marriage provided principles that should guide marriage relationships.

"In same-sex (sexual) relationship, it is like trying to attach a screw to a screw or a nut to a nut. This is a violation of design and purpose. A screw is meant for a nut."⁸ In short, it is an assault on the integrity of God, the creator, and his intention of creating human beings into two distinct and complementary genders. Any change or threat to change to the culture is distressing to many people. But a change to the structure of the fundamental building block of society the family can be particularly upsetting.

4.2 Conclusion

While considering the various arguments supporting Same-sex, this project emphasized that the practice of homosexuality is detrimental to marriage and the society in terms of procreation, morality, family life and natural sexual fulfillment. It is an affair which challenges Gods authority and integrity as well as moral misnomer. Marriage is a divinely instituted union, involving a man and woman. As such, marriage is a sacred covenantal union of one man and one woman, formed when the two swear before God or tradition an oath of lifelong loyalty and love to one another. It is a means through which the society perpetuates itself culturally. Marriage therefore presupposes family. In the traditional society, before the inception of civilization, marriage institution was held in sacred esteem. Over time, this divinely/culturally ordained union began to lose its sanctity and in fact became secularized in most societies. All forms of marriages began to spring up and are actually accepted in the society. Marriage is now wrongly understood merely as a union that is consummated without the consciousness of divine involvement in the actual relationship.

Secularization of marriage has changed God's intention of marriage and turned it into a social affair. Campos who evaluated the effect of secularization on marriage came up with the view that marriage is no longer taken seriously. Further threats to marriage can be traced to the influence of electronic media, modern technologies and

new teachings. Women enlightenment contributed a larger quota to the problems facing marriages in recent times.

One other major threat to marriage is the introduction and legalization of same - sex marriage in some societies. Although it has not been legalized in Nigeria, it is a big force to contend with. Same-sex marriage or gay marriage is an official term deployed for the legally and socially recognized bond or arrangement between people of the same-sex living as husband and wife. Same-sex marriage is akin to homosexual marriage. Within the context of homosexual marriage, one of the males acts as a queen and the other the man. This sexual expression which started as pleasure has in recent times been commercialized and turned into a lucrative business. Unlike the female counterparts, the male undergraduates, it was gathered makes more money and get more patronage because the number of men involved in the business is still low. In fact, investigation shows that this practice is a new business among male campus students. Investigations reveal that “the young men make an average of N50,000 from one outing and get more money when they travel out of their base to meet their partners who usually belong to the affluent group in the society. More money still can be made in the business depending on who act as “top” or “bottom” in the relationship.”⁹ The gay movement prefers their marriage to be addressed as equal marriage stressing that they seek equality.

Logically speaking, same-sex marriage is not religious marriage nor culturally recognized marriage because it negated the actual meaning and purpose of marriage. This is because marriage is divinely ordained and designed to form a permanent union between one man and one woman for the purpose of procreation and propagation of the human race. Protagonists of homosexual marriage argue that marriage is not exclusively a heterosexual union and defining it as such infringes on individual's fundamental rights to privacy, free associations and expression. In marriage, an individual should be allowed to express his choice of a life partner. They therefore insist that marriage should be based on moral commitment to equality and belief that human sexual orientation is a gift from God whether homosexual or heterosexual. This problem of the placement of same sex has sparked off a debate. The contemporary debate on the legalization and acceptance of homosexual marriage is of serious concern to the society. Hence, this project examines these arguments critically in the light of the actual principle and purpose of marriage. This project work historically and hermeneutically examine the implications of same-sex practice on family, and on the moral and social aspects of the society. God was the one who created all things ~ hence from the beginning, God created man in his own image to rule over the rest of creation. God observed "it is not good for the man to be alone, hence, he made him a suitable helper.

By declaring that man should not be alone, God was opposed to the practice of celibacy and the suitable help meet, the woman is opposed to the same sex union.

Marriage is a re-uniting of two constituent parts — male and female — of a man. What was one flesh in man, in marriage comes together again, and once more become one flesh in husband and wife and together they form an inseparable partnership. One ‘fleshness’ is related to sexual union, sexual union is reserved to marriage, between a man and a woman. This union excludes adultery, fornication, and homosexuality. Adultery and fornication were ruled out as violations of the creator’s holiness. The sexuality aspect of marriage is a divinely endowed ability for procreation. Only a man and woman together have the natural biological capacity to produce children. This power of procreation of life in order to bring God’s spirit children into the world is sacred and precious. The misuse of this power undermines the institution of family and therefore weakens reproduction.

Marriage is designed as a framework for raising children. If we allow gay marriage now, it will be incestuous marriage next; same-sex-marriage would threaten the right to religious freedom.

Same-sex marriage is a contested terrain both within and outside lesbian, gay and feminist academia and activism. There are those who argue that exclusion from marriage on the grounds of a partner’s gender is discriminatory, while others claim that lesbians, gay men and feminists alike should be fighting to abolish marriage rather than extending it to same-sex couples.

4.3 Recommendations

Same-sex practitioners in Nigeria must realize that the activity is yet to be recognized. However, same-sex families should be denied the capacity to adopt children since homosexuality cannot independently produce one. Hence, against inordinate ambition/exaggerated expression, same-sex agitators or practitioners should be moderate in their activities. To revert this condition, and for the statutes and formalities to accommodate same-sex union as marriage, those extant definitions of marriage must have to be reviewed and substituted (doing such would be nothing new since older terms and concepts do acquire newer interpretations/meanings, and newer ones emerge frequently following the dynamic nature of man and society). Hence for now, and until this is done, the quest for admissible status of same-sex as marriage remains eclectic—a quest that is not plausible nor wise but threatens the sanctity of both legal and natural justice because morality, judges and the law do not work in a vacuum; they are guided by the values recognized in a (particular) society. Hence, on a final note, the law (if it cannot accommodate it) should be silent on S-SM it for now: S-SM should neither be outlawed (for persons have the right to freedom of association); nor it be legalized (for it will introduce a burden on the law to develop its principles of such marriage)—but one which does not obliterate the values of the union itself outlined above!

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