

## **Homosexuality and the Two-Way Test of Moral Validity of Sexual Affairs**

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**ABSTRACT:** In this article, I examined the various ethical problems raised to morally discount homosexuality. I found that so far no moral argument proved adequate ground to discount homoeroticism. However, I have developed the 'Two-Way Test' (TWT) by which the social acceptability of any sexual relation should be tested for moral validity. From the analysis, homosexuality was found to have failed the test. That is to say, homosexuality is not a morally valid act. Despite that, the immoral status of homosexuality did not constitute sufficient ground for its criminalization, because not all immoral acts are criminalized but only those that impede the right or liberty of others. In conclusion, the paper submitted that although homosexuality had failed the TWT it does not call for violence, criminalization and discrimination against persons of homosexual orientation but that homosexuals should be accommodated without deliberately discouraging heterosexual relationship. My advocacy for sexual tolerance is based on the grounds that ongoing biological research has so far shown the phenomenon as biological reality beyond the personal control of most homosexuals.

**Keywords:** Homosexuality, Two-Way Test, Sexual Tolerance, Morality, Sexual Ethics

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### **I. INTRODUCTION**

On the 29<sup>th</sup> November, 2011, the Nigerian Senate passed a bill to criminalize same-sex erotic relations, and the bill was assented to by the President on January 7<sup>th</sup> 2013; making Nigeria the 38<sup>th</sup> African country to criminalize homosexuality. The passage of the bill rekindled anxiety regarding the criminalization of homoerotic relations in Nigeria. In the wake of that legislative action, there were arguments and debates concerning homoeroticism. In fact, the entire debate revolves fundamentally round the question of moral status of homosexuality; it also raises legal, religious, biological and philosophical issues regarding what are considered normal and abnormal sexual relations within the society. As a contribution to the debate, I subjected the various perspectives in the debate to philosophical analysis. However, I paid special attention to the biological perspective; since most contemporary legal rulings, and to some extent, moral understanding of the human being seems to be partly based on biological facts. As Timothy Murphy (1997) rightly observed, some people do seem to be more favourably inclined towards biological findings on human sexuality.

The issue of homoeroticism is part of the larger project on human sexuality. Interest in human sexuality is almost as old as man. Sharon Turnbull (1995) noted that even "scientific and clinical interest in human sexuality is ancient" (p.996). However, the issue of human sexuality became more interesting when biologists began to undertake researches into it, with the intention to give it scientific interpretation which would be less speculative and more exact. In spite of that, as noted by Bertrand Russell (2004), "sex, more than any other element of human life, is still viewed by many, perhaps by most, in an irrational way" (p.103). Immanuel Kant, and by extension, the Kantians, view sexuality as a threat to human rationality. Kant (1986), in particular, argued that "sexuality exposes mankind to the danger of equality with the beast" (p.76). This suspicion became much more interesting, even volatile, when researchers and scholars began to openly discuss the most controversial aspect of human sexuality – homosexuality. The humanity of the homosexual became suspect. Hence, the biologist thought it was time they determine the biological, "as well as the moral", status of the homosexual.

Homoeroticism has always been regarded with scorn and contempt. The homoerotic, throughout most Western and African societies, have been subjected to all kinds of ridicule and inhuman treatment. As Richard Mohr (1996) noted, the homosexuals became targets for stereotypes, dehumanizing jokes, names-labelling and all kinds of false accusation. They were being associated with habitual rape, serial-killing, examination cheatings, sex-maniac, child-molestation, bullies and corruption (Mohr, 1996, p.412). Even, some African communities regard the homosexuals as witches (Ibanga, 2012). These stereotypes catalyzed psychiatry into

categorizing homosexuality as mental disorder.<sup>1</sup> Moreover, a 2007 report from the Institute of Medicine at Washington D.C. indicated that doctors tended to discriminate against patients who are homosexuals thereby leaving them isolated with higher rates of chronic diseases such as diabetes and hypertension (Institute of Medicine, 2011). In Zimbabwe, homosexual females were raped as corrective therapy with tacit approval from local authorities (Muparutsa, 2010, p.30). And because of the discrimination, criminalization and stigmatization the gay face and fear, many, especially in countries with anti-gay law, have difficulty accessing medical and ordinary care; thus face an increase risk of drug abuse and suicide.

In 1948, Alfred Kinsey's pioneered a research which involved the study of the sex lives of 5,000 white American males. The outcome of the study, which was published as "Sexual Behaviour in Human Males", shows that 37 per cent of those studied had at least one homosexual experience to orgasm in their adult lives; 13 percent had homoerotic fantasies to orgasm; 4 per cent were exclusively homosexuals; 5 percent had virtually no heterosexual experience; and nearly one-fifth had at least as many homoerotic as heterosexual experiences.<sup>2</sup> When this was interpreted nationally, it was discovered that: two out of five men one passes on the American street have had homoerotic sex; every second family in that country had a homosexual member; and many more people regularly had homoerotic experiences (Mohr, 1996, p.411). This means that the homosexual was no longer the isolated bad-egg, who exists some safe distance away. The homosexual was your friend, client, teacher, student, pastor and so on. This fact stamped itself as a threat against the establishment – 'a sudden burst on their faces'.

It should be noted that before Kinsey revealing study, homosexuality had been viewed basically as a practice of isolated few. Chandler Burr (1993) observed that historically the focus was on the acts of homosexuality rather than on the actors. Burr based his view on the position of the historian, John Boswell, who noted that during the Middle Ages in Europe homosexuality was regarded as a sin, whereas those who committed "the sin" were not defined as being biologically different; this remained the same in the 16<sup>th</sup> and 18<sup>th</sup> centuries Europe when homosexuality became both a sin and crime.<sup>3</sup> This changed in the 19<sup>th</sup> and 20<sup>th</sup> centuries when Sigmund Freud came to describe homoeroticism as a childhood trauma, an "arrested development". The psychiatrists, taking a clue from the Freudian charge, came to regard homoeroticism as derange, a mental challenge, "a psychopathic, paranoid and schinoid personality disorders." Having presumed homoeroticism as a pathological condition, the psychiatrists tried to find ways to treat it. For over five decades, homosexuals were coerced to submit to hysterectomies and estrogens injection, castrations and various kinds of aversion therapy. This kind of approach led to the suicide of one of the homosexuals, Alan Turing, who was one of Europe's most promising mathematicians and computer scientists. Despite all these psychiatric mess, the psychoanalyst, Richard Isay, wrote in his book, *Being Homosexual*, that even "Alfred Kinsey and his co-workers for many years attempted to find patients who had been converted from homosexuality to heterosexuality during therapy, and were surprised that they could not find one whose sexual orientation had changed" (Burr, 1993, p.48). This indirectly proved, at least from the psychiatrist perspective, that homoeroticism was a biological construct. Yet, in spite of the embarrassing research of Evelyn Hooker in the 1950s, the American Psychiatric Association did not denounce homoeroticism as a mental disorder until 1973.

Now, with homosexuality released from its official status as a psychiatric disease, research efforts took a new turn. Other areas of biology took interest, and began asking the question: what is homosexuality? In other words, what is homoeroticism if it is not a disease? Are homosexuals and heterosexuals biologically different? In an attempt to answer this question, some biological researchers discovered that homoeroticism is a biological orientation of the human body. This means homosexuality is human biological nature. This conviction is so strong among some biologists that the geneticist, Michael Bailey said, "I would – and have – bet my career on homosexuality being biologically determined" (quoted in Burr, 1993, p.65).

In this paper, ethical issues raised regarding homosexuality are examined. At one end of the spectrum, it is argued that homosexuality contravenes natural law which upholds the reproductive function of the genitals – hence it unnatural and immoral. On the other end, it is argued that sexuality has no reproductive function, and that homosexuality is not immoral since, like heterosexuality, it is biologically apparent in nature. Therefore, this article aimed to analyze the ethical issues raised regarding homosexuality, especially the arguments that have been advanced to oppose homoerotic relations.

## **II. THE ARGUMENT FROM "NATURE"**

One of the moral arguments against homosexuality is that it has no basis in nature. In other words, homosexuality is unnatural. Murphy (1997) noted that it has sometimes been argued "that homosexuality does not occur in nature except among human beings" (p.168). It is evident that nature, in this context, is intended to refer to human biological nature. Michael Ruse (1986) notes that this was the basis of Plato and Aquinas as well as Kant arguments against homosexuality. However, both Murphy and Ruse argued that such a claim is false. Ruse (1986) in particular argued that "virtually every animal whose activity has been studied in detail shows some forms of homosexual behaviour" (p.82). Joan Roughgarden (2004) alone have documented over 450 different vertebrate species that involve in homosexual erotic relations: Male big horn sheep live in homosexual

societies, giraffes have all-male orgies, so do bottlenose dolphins, killer whales, gray whales, West Indian Manatees, etc. Roughgarden (2004) averred that Bonobos, one of our closest primate relations, are largely homosexuals.

The question now is: 'if homosexual activity is so widespread in the animal world, why has it not been noted before?' To this Ruse (1986) argued that it was due to the fact that "people writing on human sexuality have failed to note it or have simply been ignorant about it" (p.82). He cited Geist who misrepresented the homosexual behaviour of mountain sheep as struggle for dominance and supremacy but only to admit later that he could not bring himself to terms with their homoerotic activities. Similarly, Roughgarden (2008) expressed frustration about evolutionary biologists who refuse to report the fact of homosexuality in their data.

From the foregoing it is evident that if anyone was hoping to argue that homosexuality is unnatural, the animal world was certainly not a place to look. Murphy (1997) argued that if homosexuality was going to be morally defended on the ground of being natural, nature must mean something other than a phenomenon in the animal world because "there is no convincing reason to think that human beings should take their moral cues from the behaviour of other animals" (p.169). For example, animals exhibit all manner of traits which should be morally discounted.

Now, if the idea of nature is something other than what is biological, then the term or concept nature or "being natural" is rather technical. Michael Slote (1975) in his article *Inapplicable Concepts and Sexual Perversion* argued for the indefensibility of the concept of nature. He averred that people used the terms "natural" and "unnatural" for various contradictory reasons. Hence, it is difficult to say what constitute the natural. Some have understood the concept of the natural in teleological terms. According to Mohr (1996), another sense of "natural" people usually have is that "if it fulfils some function in nature" (p.416). (I shall consider that view in the next section). However, Slote (1975) argued that "the concept of unnatural behaviour involves the idea of behaviour that is not in nature (with us)" (p.264). On the basis of this understanding, homoeroticism has been condemned as unnatural. Yet people who understand nature in material terms represented above by Slote seem to be ignorant about the immense varieties of organism in the biosphere.

The theory of evolution clearly demonstrates this inexhaustibility, and the possibilities which its infinitude nature portends. Mohr (1996), on the other hand, has argued that "when unnatural means 'by artifice' or 'made by humans', it need only be pointed out that virtually everything that is good about life is unnatural in this way" (p.416). Mohr is technically, but rigidly, correct especially when we look, superficially, at the world as technologically animated. However, if we consider Kant philosophy we may accept that everything in the world is a creation of the human mind, in other words, the world (i.e nature) as we see it is a representation of the human mind and not as it is in itself. Therefore, if we label a sexual behaviour as "natural" or "unnatural" in contrast with what we think is found in nature, it boils down to our opinion, representation of what we think the natural world is; and may not represent the true state of affairs. On that basis, the labelling of homosexuality as "unnatural" may be merely an opinion.

Moreover, some have argued that homosexuality is unnatural and inconsistent with African culture; hence it is an attempt to alter the order of nature. Douglas Anele (2009) has responded to this claim thus:

*A significant number of intellectual garbages arise from the ideas people have concerning "nature" and what is deemed "natural"... But a little acquaintance with anthropology and history would dissipate such beliefs. In general, what people consider natural are behavioural patterns they are used to, or are prominent in the societies in which they live. On the other hand, new or strange modes of life are considered unnatural (p.15).*

He argued further that homoerotic expression was rare in Africa traditional setting mainly because the homoerotic expression was suppressed by taboo. This position is confirmed by Diana-Abasi Ibanga (2012) who argues that claims that homosexuality is at variance with African culture is inconsistent with the facts on ground. It is important to note that the so-called African culture is not a static phenomenon: what we call African cultures are socially accepted behavioural patterns in our communities which we are used to. Culture is neither natural nor prior to man. For example, Somparn Promta noted that in Buddhist ethics, the concept of being natural does not determine moral phenomena. According to him:

*One who argues like this state that what appears in the world is natural, meaning further that it is prepared by God... In this line of argument, we will find that a concept of being moral is equated to a concept of being natural... According to Buddhist teaching there seems to be impossible to say that such as such phenomenon is natural... But they are natural in the sense that they are permitted to appear in the universe... In general, Buddhism admits that whatever is happening in the world is natural (Promta, 2004).*

Nature is not an entity as such. That, in Gilbert Ryle's phrase, would be "a category mistake," because we would be thinking that nature is an entity different from all that we have seen. Unah (2005) states that existence is a possibility – unfolding and revealing itself to us in profiles (p.77). This means that what we have seen so far is

not all that is possible, thereby they are not all that is to be considered natural or permitted by god. It is important to restate that homoeroticism is not a new phenomenon in our society, history proves that it has always been with man from time immemorial. The fact of homoeroticism is not new to our being.

Taking a different view, Robert Solomon argued that nature is not what is materially given in the biosphere.

*It seems reasonable to look to nature for an account, but it is clear from the history of the philosophical concept of "nature" that this is not what has been intended... when the philosophers of eighteenth-century France and their counterparts in England and America appealed to "nature", it was rarely biological nature that they had in mind. Rather, "nature" served as a particularly solid and incontrovertible court of appeal, beyond the reach of the dogmas and practices of particular traditional and typically attitude societies. However, "nature" is not the natural world, but man's "natural reason". "Nature" is what is rational, not what is biological... when philosophers sought a "natural religion" or "natural justice", for example, they were not appealing to a "return to nature worship or animal faith, nor to the "law of the jungle". They were appealing to reason, to rational faith and rational law. And so too, "natural sex", as part of this tradition, is not a call for bestiality or rear-entry intercourse, but to "rational sex" (Solomon, 1975, p.271).*

Solomon argues that the appeal to nature as a basis to condemn homosexuality should not be seen in biological sense but in rational terms. However, I suspect that Solomon seem to have misunderstood the trends in the history of philosophy. I think it is not true that philosophers in history or in the tradition of natural law appealed to human reason as such on matters of conduct. Appeal to human reason is mainly Kant's idea. Aristotle, Aquinas, the social contractarians and others in their tradition were actually concerned with fallibility of the human reason; hence they sought interpretation of the cosmological order and how it applies to human conduct. Therefore, "nature", for them, represented the divine. In other words, the cosmos was an expression of God's mind – especially because it was also the "abode of God." Solomon was right when he asserted that the appeal to nature did not refer to the biosphere but it is wrong to claim that it referred to human reason. Rather, they actually referred to a divine order, which is teleological, and derived from the cosmological but not independent of creationist understanding of nature. Therefore, in this understanding a sexuality that was in tandem with nature or the natural could only have been purposive.

Apart from that, the charge that homoeroticism has no basis in nature is usually based on the Darwin evolution theory of sexual selection. According to Charles Darwin (1958), sexual selection is the basic mechanism of evolution which guarantees the continuity of species, through generational transfer and inheritance of genes by offspring through a reproductive process. This therefore means that reproduction is key to evolutionary success. In other words, reproduction is the driving force of specie evolution. Evolutionism is the scientific theory that explains the origin, nature and process of organisms. The argument is that homosexuality is inconsistent with the evolutionary nature of the world. In other words, an evolutionary world has no place for a nature which runs contrary to its wheel. On the basis of that, homosexuality has been condemned as unnatural. This position has been challenged by the evolutionary biologist Joan Roughgarden. She argued that evolutionary theory is inadequate because it cannot explain evidence of homoeroticism in nature. There is something wrong with the sexual selection theory rather than with the homosexuals, she said, it is the theory that could not explain the sexual variety in nature.

*One issue for sexual selection is whether Darwin's claim about its universality is true or not. If you pick up a random bird or bee or snail or fish, is it true that the males are passionate and the females coy? The answer is frequently no—the data aren't there. We don't have survey articles, for example, of 10,000 species showing that ninety percent of them have passionate males and coy females. In fact, it's the other way around. The harder you look at just about any species, the less and less accurate the templates appear to be (Roughgarden, 2008).*

Roughgarden also argued that "the time has come to declare that sexual theory is indeed false and to stop shoe-horning one exception after another into a sexual selection framework...To do otherwise suggest that sexual selection theory is unfalsifiable, not subject to refutation" (quoted in Lehrer, 2006).

Indeed, being homosexual clearly makes individuals less likely to pass on their genes. However, I believe Roughgarden was right to assert that by ignoring homosexual evidences among animals' species, Darwin and his disciples misunderstood the basic nature of heterosexuality. In spite of the fact that Joan Roughgarden has effectively challenged Charles Darwin's theory of natural selection; it is becoming ever clearer that nature did not prepare all individual animal species to perpetuate their genes by passing it to the next generation through procreation as such – bareness and infertility (which I think is wrongly interpreted as disease) even homosexuality are clear pointers to that fact. If sexual contact is for reproduction, why do we have homosexual strands, even the biologically conditioned infertile, among species?

Michael Ruse has provided a possible explanation for the homosexual strand among animal species. According to him,

*Reproduction is the key to evolutionary success. It is possible, however, to reproduce by proxy. Suppose that instead of reproducing oneself, one aids close relatives to reproduce more efficiently... this vicarious reproduction is known as "kin selection", and it has been very extensively documented in the animal world, particularly in hymenoptera (ants, bees, and wasps) (Ruse, 1986, p.82).*

Roughgarden (2008) also provided similar explanation for the phenomenon of homoeroticism. For her, the process of selecting sex mate, contrary to Darwin's, was that of same-sex cooperation and friendship – which she called "social selection" process. Ruse and Roughgarden seem to have postulated theories to provide explanation for the evidence of homosexuality among animal species. But it appears that they have committed the same error that Darwin committed, which is reading purpose into natural phenomenon. Indeed, sex-for-procreation mantra, domiciled as a dogma of science, has been faulted severally by eminent philosophers. It seems certain that Darwin natural selection theory as well as Roughgarden "social selection" and Ruse "kin selection" hypotheses are based on Aristotle's metaphysical notion of teleology which was further based on Aristotle concept of a creator. It is my opinion that Darwin teleological view of sexuality is inconsistent with his overall theory of evolution. Evolutionism is generally not teleological so the sexual selection component would be a fallacy if it is teleological.

### **III. THE ARGUMENT FROM "FUNCTION"**

One of the prevalent moral questions held against homosexuality is that the genitals have function which homoerotic relation supposedly violates. This argument is based on the Aristotelian metaphysical principle of teleology. It is also embedded in the natural law doctrines.

*These conceptions of nature are metaphysical in kind and purport to identify goals inherent in the beings of the world sometimes in the world itself and its history. The conceptions of humanity that underlies the ethical tradition of natural law, for example, describe the nature of human life not in terms of individual traits and interests but in terms of generalized goals said to pertain to human beings as such. These goals include, for example, maintaining bodily and mental integrity, discovery of truth, the bearing and rearing of children, participation in society (Murphy, 1997, p.173).*

Michael Levin is one of the philosophers who view the human sexual relation in teleological terms. According to him, "there can be no reasonable doubt that one of the functions of the penis is to introduce semen into the vagina" (Levin, 1993, p.351). It is on this basis that he asserted that homosexual relations involve "a misuse of bodily parts" (Levin, 1993, p.350). This implies that same sex is impermissible because it violates genital functions. Levin called it an "abnormality"; not in social or biological terms, but in functional terms.

*Homosexuality is abnormal and hence undesirable – not because it is immoral or sinful, or because it weakens society or hampers evolutionary development, but for a purely mechanical reason. It is a misuse of bodily parts (Levin, 1993, p.350).*

Homosexuality has also been regarded as an aberration on genital function which is said to be enshrined in the natural law; it is said to be an affront on natural law. Thomas Aquinas is often presented as the most outstanding representative of the natural law tradition especially as it relates to sexuality. His argument, Louis Tietje and James Harrison noted, rest on some basic assumptions: one, a good sexual conduct cannot be determined by its social role, and two, the world is an expression of the divine will, hence human beings through their own rationality can access the natural law which is God's plan for the world.

*We can uncover God's sexual plan by asking what the purpose, goal, or function of sexuality is. Aquinas argued that the purpose of sexuality is reproduction or procreation. Sexual activities are natural if they fulfill this purpose and thus accord with the eternal or natural law. All non-procreative sexual activities are unnatural (Tietje & Harrison, 1995, p449).*

This means that each parts of the body have its own predetermined function. It will only mean that whatever function the bodily parts have it has to be intrinsic, that is, written into the body parts. This view is founded on a more fundamental notion called genetic determinism. Accordingly, to Mohr (1996):

*One problem with this view is that lots of bodily parts have lots of functions and just because some one activity can be fulfilled by only one organ (say, the mouth for eating) this activity does not condemn other functions of the organ to immorality (say, the mouth for talking, licking stamps, blowing bubbles, or having sex). So the possible use of the genitals to produce children does not, without more, condemn the use of the genitals for other purposes, say, achieving ecstasy and intimacy (p.416).*

In other words, Mohr was arguing that body parts are multifunctional; hence can serve one function against the other but limited not to it. For example, the penis can be used to discharge metabolic waste only; instead of also using it to discharge semen. The celibates supposedly provide a good practical example of this in our societies. Furthermore, Levin's notion of "function in genitals", which homosexuality supposedly diminishes, was destroyed by Sigmund Freud in his book *Three Contributions to the Theory of Sex*. In that book, according to Solomon (1975), Freud "changed our conception of sexuality from reproduction to sex-for-its-own-sake, to personal satisfaction... that sexual activity is aimed at release of tension or 'discharge' which he called 'pleasure' and as such aims at no further goals" (p.272). Sex-for-reproduction was no longer pure sex "but sex plus something else" – because pure sex is sex-for-pleasure. It is obvious that Freud relegated the social role of sex to the background and enthroned pleasure. This manner of conception of sexuality also found approval, though implicitly, in Kant.

*Marriage, which is the union of two person of different sex for life-long reciprocal possession of their sexual faculties – the end of producing and educating children may be regarded as always the end of nature in implanting mutual desire and inclination in the sexes; but it is not a necessity for the rightfulness of marriage that those who marry should set this before themselves as the end of their union, otherwise the marriage would be dissolved of itself when the production of children ceased. And even assuming that enjoyment in the reciprocal use of sexual endowment is an end of marriage, yet contract of marriage is not on that account a matter of arbitrary will (Kant, 1986, p.77-78).*

From the foregoing, we can see that Kant approved of a "non-functional" sexual union, and implicitly ordained "enjoyment" as the end of marriage. Now, coming back to Freud's thesis, Solomon (1975) noted:

*As release of tension, oral and anal sexuality are literally sexual although they need not involved any use or association with the genitals or with reproductive functions... Again, the new conception of sexuality is release of pleasure for its own sake. It follows that any part of the human body has an equal biological and logical claim as an "erogenous zone"... Sexual release need not be through intercourse alone, nor need it even involve intercourse; it need not be heterosexual (p.274).*

Freud indicates that sexuality was not merely an act of seminal discharge, but it was now of pleasure, enjoyment and satisfaction. This means that the function of sexuality is not limited to the genitals; any part of the body could cause a discharge, an arousal, an orgasm. Sex organ can imply any part of the body that can arouse sexual feeling when sensate (example touch), and by which one can attain sexual satisfaction through it. These may include: ears, eyes, nose, mouth, tongue, lips, anus, breasts, vagina, penis, and so on – provided by caressing it one can reach orgasm through it, then it becomes a sex organ. Sex organs are not fixed, they are not limited to vagina and penis; sex organs are not given but are discovered (Ibanga, 2012; 2017). On the basis of this, the notion of "function in genitals" cannot serve as the basis to discount homosexuality. Besides, the notion of "function in genitals", which homosexuality supposedly violates, makes the said functions to appear as biological entities that develop alongside tissues in the human body. So on the basis of this distinction, the notion of "function in genitals" cannot serve as the basis to discount homosexuality.

#### **IV. HOMOSEXUALITY AND THE TWO-WAY TEST (Ibanga, 2017, p.66-67)**

So far this analysis has shown that there is no adequate moral basis to discount homoeroticism. However, I have invented the 'Two-Way Test' (TWT) by which the social acceptability of any sexual relation should be tested for moral validity. And as we shall see in this section, homosexuality has failed the TWT of moral validity of sexuality.

Two-Way Test (TWT) as the name implies is based on two criteria by which we can examine or assess any sexual relation for its moral validity. Moral validity, as used here, does not imply social acceptability; in fact, a sexual act may be socially acceptable without being morally valid. Moral validity of any sexual act is derived from the following criteria, namely: pleurability criterion and procreativity criterion.

Pleurability criterion states that a sexual act or affair is morally valid if it is generate or leads to pleasure, enjoyment, gratification, satisfaction or ecstasy – provided procreativity criterion is affirmed in the process. The procreativity criterion states that a sexual act or affairs is morally valid if it is capable of leading to reproduction at least in principle – provided pleurability criterion is enhanced in the process. This implies that a sexual act or affair cannot be mustered as having been morally valid act except both criteria – pleurability and procreativity – are satisfied. It should be noted that while procreativity criterion can be affirmed in principle at least; pleurability criterion cannot be affirmed in principle. To affirm procreativity criterion in principle is to say that the process, all things being equal, is capable of leading to reproduction but that it must not necessarily result in fertilization.

The two criteria are further based on a 'Third Condition' which is 'Dualistic Consent'. What this means is that the veracity of the criteria themselves is tested on the Third Condition. Dualistic Consent refers to the implicit or explicit agreement between two or more desiring parties to engage in sexual activity. (Dualistic Consent does not include uninformed consent of a minor). What this means is that the consent must arise from desire because I cannot consent without desiring it although I can desire without consenting. Moreover, the Dualistic Consent must be informed consent. The Third Condition states that even though a sexual activity produces pleasure it cannot be affirmed as a valid criterion if it was not done out of informed consent of the parties involved. Therefore, while the moral validity of a sexual act is tested on the two criteria, the validity of each of the criteria must be tested on the Third Condition. I have noted earlier that homosexuality has failed the TWT. Now, how does homosexual relation fail the test? First, it is noteworthy that most homosexual affairs seem to have satisfied the pleasurable criterion except in the cases of rape. (Rape defined generally as sexual act in the absence of dualistic consent). The possibility of homosexuality leading to pleasure, enjoyment, gratification, satisfaction and ecstasy is not in doubt – given my definition of sexuality of as sexual arousal derived from any part of the body when sensate for that intent and by which sexual satisfaction can be attained. My definition of sexuality obviously has removed the binary between genitals and other bodily parts. What this means is that if by caressing your toe or finger you can reach orgasm through it then it becomes sex organ. "Sex organs are not bodily given but are discovered" (Ibanga, 2012, p.107). Barbara Mackinnon (1998) defines the term "sexual" to include passionate caresses and kisses, sexual intercourse, erotic dancing or erotic communication at a distance; as well as masturbation or looking at sexually stimulating pictures – which is typical activity that does not involve another individual or genitals. Now, if sexual satisfaction can be reached through any part of the body then it follows that homosexual relation can easily produce sexual pleasure based on dualistic consent. But that is where it stops.

Homosexuality can produce sexual pleasure based on dualistic consent but it cannot satisfy the pleasurable criterion – because the pleasurable criterion must be met in consonance with procreativity criterion. Homosexuality also fails the procreativity criterion. Remember, procreativity criterion states that a sexual act or affair is morally valid if it capable of leading to reproduction at least in principle – provided pleasurable criterion is enhanced in the process. It is easily obvious that homosexual relationship cannot lead to reproduction even though it may produce abundant pleasure. On the basis of this homosexuality cannot be said to be a morally valid sexual relation. This is probably the moral ground by which homosexuality should not be encouraged, namely – its inability to satisfy the two criterion of moral validity of sexuality.

## **V. HOMOSEXUALITY AND CRIMINALISATION**

It is evident from the TWT analysis that homosexuality is an immoral act. However, the immoral status of homosexuality does not imply that it should be criminalised. That homosexuality has failed the TWT does not warrant adequate ground for its criminalisation. As we shall see in this section, the TWT itself is an inadequate ground for criminalisation of any immoral sexual act. No doubt, the TWT is the necessary condition towards determining the legal statuses of sexual affairs but it is not the sufficient condition that should warrant such. The sufficient condition that should crown the TWT is whether homosexuality can inflict physical injury on others who are not involved in the homosexual relation or has it impeded their right to life, property and liberty.

First, it is evident to us that not all immoral acts are criminalised. For example, lying except to a magistrate is not criminalised. (Lie itself is not a criminal offence). Fornication, though considered immoral, is not punishable offence in many jurisdictions (except forced or done with a minor). Nudity, though viewed as immoral in some societies, is not a criminal offence in most jurisdictions. Pornography, abortion, masturbation and animalism – viewed by some as immoral acts – are not criminalised in some jurisdictions. There are many examples of immoral acts that are not criminalised in most jurisdictions.

In fact, global trends are indicating that most actions that were criminalised because they were immoral acts are gradually being released from this legal burden. Why? Most societies are becoming enlightened that an immoral act that neither causes injury to others nor undermine their right to liberty, life and property lacks the substance of crime – which is the threat to the existence and property of the other. In fact, criminal acts are acts that threatened the life and property of others or that seek to deny them right to life and property. Criminal law was invented basically to protect liberty/right to life and property. For example, adultery cannot be punished unless it can be proven to the magistrate that the wife is the property of the man. So if not all immoral sexual affairs are criminalised then the immoral status of homosexuality cannot lead to its criminalisation. For homosexuality to warrant being legitimately criminalised it has to cease being merely an immoral act; it has to constitute a threat to the right of others to life and property. Homosexuality, like fornication, is an ordinary act of common sin. If the State does not criminalise fornication because it is a moral sin then it cannot criminalise homosexuality on that ground. If homosexuality has constituted itself as a threat to right of others to life, property and liberty then its criminalisation would be legitimate and unavoidable. Homosexuality does not threaten the right and liberty of others. Consensual homosexuality, like consensual heterosexuality, is an affair

that helps the parties to attain ecstasy, tranquillity and happiness. Arch Bishop Desmond Tutu avers that sexuality is the “part of our humanity that makes us more gentle and caring, more self-giving and concerned for others” (see Jenkins, 1999, p.84). When people are involved in this activity, whether it be homosexuality or heterosexuality, it is usually done in private, away from public eye. The act of homosexuality, like other acts of ordinary sex, provides similar benefits as heterosexual affairs. Biomedical science has confirmed that people with active sex lives live longer, by helping them release stress, sleep well, improve blood circulation, boost immunities, and build healthy heart. Also, the prurient act does not threaten the lives and properties of others. This is evidently the case whether it is homosexuality or heterosexuality. Since this is the case, the sufficient condition for the criminalisation of homosexuality is absent. The TWT cannot therefore lead to the criminalisation of homosexuality.

## VI. CONCLUSION

Despite the fact that homosexual relation has failed the TWT of moral validity of sexuality, it shall amount to act of gross immorality to call for social upheaval against the homosexuals. As it is evident in the introductory section of this work, homosexuality appears as a biological reality. There are obviously people who were born with homosexual genes in their body make up; but there are others who became homosexuals by association (either as activism strategy or by socio-cultural influence). Since the society is made up of people who are either lesbian, gay, bisexual, transgendered and straight, I advocate for sexual tolerance. By sexual tolerance I mean the removal or liquidation of social, legal and environmental discrimination against homosexuals. Sexual tolerance has become necessary due to the tension, chaos and conflict which the society has been thrown as a result of the resurgence of homoerotic culture.

It is important for the society to recognize that sexuality is an aspect of the being of man. Human being is a reality susceptible to change. Charles Darwin theory of evolution indicates that man has undergone countless evolutions in which he took on various forms and nature, and the good news is that he is still evolving. The fact of evolution therefore indicates that human being is capable of taking up new traits, forms and modes. The characteristic of change and becoming is native to human nature. So we should not punish change rather human becoming should humble us into realizing that the totality of the human nature is not yet fully known. Moreover, the evidence of homoeroticism among organisms in their micro and macro forms indicates that heterosexuality does not tell us the full story about sexuality. It also indicates that homosexuality and heterosexuality are dimensions of sexuality. Since this is the case, the summation is that we should be tolerant to persons of other sexual orientations without necessarily or deliberately encouraging it. That homosexual relation has failed the Two-Way Test of moral validity of sexuality does not call for any form of violence and discrimination against persons with homosexual orientations.

## VII. NOTES

1. In 1952 American Psychiatric Association listed homosexuality as a Mental Illness in the first edition of its *Diagnostic and Statistical Manual of Mental Disorders* (DSM). This was adapted from the World Health Organization’s International Classification of Diseases.
2. Alfred Kinsey carried out similar studies involving females which he published in 1953 as “*Sexual Behaviour in Human Females*.”
3. John Boswell published a book called “*One Hundred Years of Homosexuality*” which catalogues the charge and experiences of the homosexuals in Middle Ages and Modern Europe.

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