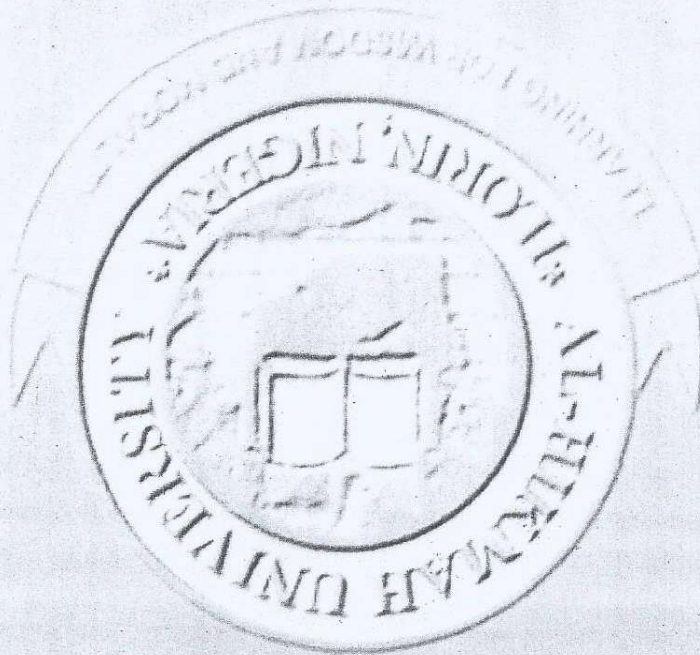
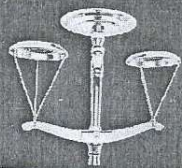


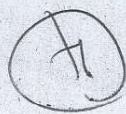


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LEGISLATING MORALITY OF ABORTION IN NIGERIA

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Abstract

Termination of pregnancy is highly restricted in Nigeria under both the Penal Code (applicable in the North) and Criminal Code (applicable in the South) and carries heavy jail term of up to 14 years for the provider and 7 years for the woman, unless it is performed to save the life of the woman. This provision is viewed by the pro-lifers as a good step in the right direction. The pro-lifers want a regime world-wide that will accord to the unborn child the right to life. For the pro-choicers on the other hand, this is seen as infringing on the right of women to decide what they deem fit and proper for themselves. For the pro-choicers, a pregnant woman should be left free to decide whether or not she is prepared and ready to carry a pregnancy to term. If she is not ready, she ought to be free to carry out an abortion without any interference from the state. We are left at a cross-road, and this paper is set to maintain a balance between the pro-lifers and the pro-choicers by adducing the fact that, legislating morality of abortion is a core function of the criminal laws of Nigeria. This is a doctrinal research wherein a library based study was undertaken, making use of text books, journals as well as internet sources. At the end of the study, a recommendation relating to value judgments of all rational persons was adduced.

Key Words: Abortion, Morality, Criminal Law, Women, Pro-lifers, Pro-choicers.

1. Introduction

Pregnancy consists of a special relation between a woman and a fetus. This condition normally begins with conception and ends when the fetus has emerged from the woman's body and the life support connection between the two has been broken. The normal outcome of pregnancy is live birth.

In general, a process or sequence of events has aborted when it has been interrupted before issuing in its normal or natural outcome. In the broadest sense, therefore, pregnancy has been aborted when it has terminated before issuing in live birth.¹

¹ Summer, L. W, *Abortion and Morality Theory*, (Newjersy: Princeton University Press 1981) 6.

This process, called abortion is sanctioned by the radical feminists of the 60s. Feminism is the main foundation of the campaign for a guaranteed women's right to choose abortion. Consequently, the radical feminists vigorously canvassed for equal right of men and women. They felt that in order for women to have equal right with the men, women should be given the right to choose to do whatever they want with their body. Radical feminists want to possess the right to determine whether or not to abort their babies. A right which they claim should be absolute without any intervention.

Radical feminists' campaign was boosted by the decision by the Supreme Court of the United States in the case of *Roe v. Wade*.² The decision in effect, recognizes a woman's right to choose and this right, at least in the early months of pregnancy, was ruled to prevail over the fetus's right to life. This is because, there is little reason for extending legal protection to human life until a person comes into existence.

The court held that, during the first trimester, which starts from conception till around the 12th week, the woman and her doctor are free to determine whether or not to abort the baby without regulation by the state. During the second trimester, which elapsed at the 28th week, the conflicting interest of the state in maternal health allows the state to adopt regulations that promote safe abortion. When the fetus reaches the stage of viability at the third trimester, the state may exercise its power to prohibit abortions except when necessary to protect the health of the mother.³ In other words, by this decision, fetus is not a person and therefore, there is no reason to accord it a right to life.

With due respect to the justices of the Supreme Court of America, this decision leaves more to be desired because, going in line with all the international human rights instruments, life begins at conception.⁴ Pro-lifers presented a convincing argument stating that the fetus is a human person entitled to right to life as all other human beings. Typically, they hold that, human personhood begins at conception.

² 410 US 113 (1973). The Supreme Court of the United States declared that the fetus is not a person within the language and meaning of the fourteenth Amendment to the United States Constitution and so, does not deserve a right to life. It is only when the fetus reaches the point of viability that the State may prohibit abortion, except when necessary to protect the health of the mother.

³ Sperling D, *Management of Post-Mortem Pregnancy. Legal Philosophical Aspect* (England: Ashgate Publishing Company, 2006), 2.

⁴ Such as, *Draft American Declaration of the International Rights and Duties of Man* (1948).

Their argument hinges on the claim that it is arbitrary to separate human person from the biological identity of human organism.⁵

Ethics and Morality of Abortion

Abortion has been the subject of much ethical thought from both the pro-life and the pro-choice perspectives.⁶ The central philosophical question concerns the moral

⁵ See, Michael Potts, P A Byrne and Richard G Nilges, *Beyond Brain Death: The Case against Brain Based Criteria for Human Death* (2002) 123.

⁶ The pro-choice group consists of people who believed that, the right of the pregnant woman is superior to that of the unborn fetus. To this people, little or no concern is given to the right to life of the fetus. Instead, they believe that the pregnant woman should have a right to decide whether she wants her fetus to die or to live. See, Joyce Arthur, 'Let No Fetus Defeat Us' <<http://mypage.direct.ca/w/writer/fetus-defeat.html>> and Joyce Arthur, 'Personhood: Is a Fetus a Human Being?' <<http://mypage.direct.ca/w/writer/fetusperson.html>> in The Step-by-Step Guide on How Pro-Choice Advocates can Raise the Level of the Dialogue. This guide accompanied the book, Steve Wagner, *Common Ground without Compromise: 25 Questions to Create Dialogue on Abortion*. (2007) 1&2. Available from Stand to Reason ([www.STR.org](http://www.str.org)) <<http://www.str.org/site/DocServer/Raise the Level PC v02.pdf?docID=2421>> Accessed 27th March 2012. In contrast, to say that a person is pro-life is to say that the person believes that the government has an obligation to preserve all human life, regardless of intents, viability or quality of life concerned. A comprehensive pro-life ethics, such as that proposed by the Roman Catholic Church and similar religious organizations prohibits abortion. In cases where pro-life ethics conflicts with personal autonomy, as in the case of abortion, it is conservative. See, Tom Head, 'Pro-Life v Pro-Choice' *Civil Liberties Guide* (2012). <<http://civilliberty.about.com/od/abortion/tp/Pro-Life-vs-Pro-Choice.htm>> accessed 27 March 2012. The United Nation Conference held in September 1994 was dominated by the debate on abortion. The strong opposition to abortion, and attacks on feminist attitudes by the Vatican and the Muslims could not be ignored, and this made abortion a significant issue in the debate, which resulted in the 1994 conference having stronger impact on the public than previous United Nations Population Conferences. See, Leo Driedger and Shiva S Halli, 'Pro-Life or Pro-Choice: Politics of Career and Homemaking (1997) 51 *Population Studies* 129-137. <<http://www.jstor.org/eserv.uum.edu.my/stable/pdfplus/2174681.pdf?acceptTC=true>> accessed 27 March 2012.

status of the embryo or fetus. If the fetus is a person,⁷ with the same right to life as many human beings who have been born, it would seem that, very few, if any abortion could be justified, because it is not morally permissible to kill children because they are unwanted or illegitimate or disabled.⁸

This being the case, the conservatives maintain that prohibitions of abortion are necessary to protect human life, defend human right and uphold the moral and family values.⁹ A society cannot live without morals. Morals of the society are those standards of conduct which the reasonable man approves.¹⁰ Hence, the society requires the use of instruments without which morality cannot be maintained. The

⁷ See the pro-lifers argument in Michael Potts, P A Byrne and Richard G Nilges, *Beyond Brain Death: The Case against Brain Based Criteria for Human Death* (2002) 123. The fact that human person begins from conception is true of all fetuses, be it defective or not. The provisions of the International Human Rights Law have lend support to this view. See especially, the *Draft American Declaration to the International Rights and Duties of Man* (1948) which provides;- 'every person has the right to life. This extends to the right to life from the moment of conception; to the right to life of incurables, imbeciles and the insanes'. From the time the ovum is fertilized, a new life begins. From the first instance, there is established the program of what this living being will be. See, Pope John Paul II in his *Evangelium Vitae* 1995. A zygote is a human being and must not be killed. Human individual comes into being from conception. See Patrick Lee, 'A Christian Philosopher's View of Recent Directions in Abortion Debate' (2004) 10(1) *Christian Bioethics: Non-Ecumenical Studies in Medical Morality* 7,9. Under Islamic law, it is believed that, both active and passive potential fetus has the right to life. See, the expression by the 5th Shia Imam Mohd Al-Baqri in Arif Abdul Hussein, 'Enoulment and the Prohibition in Islam' (2005) 16(3) *Islam and Christian Relations* 239-250. Hence, Makhene's writings that there is no present evidence that the fetus possess consciousness- the proposed hall mark to personhood cannot be valid. See, Edward R W Makhene, *Philosophy for the Medical Student and Practitioner* (2009) 281. This is because, it has been proved that, the human fetus is 'thinking, sensing, feeling and hearing in that watery world'. See, Roy Ridgway and Simon H House, *The Unborn Child: Beginning of a Whole Life and Overcoming Problems of Early Origin* (2006) xiv. Furthermore, the content of the Hippocratic Oath sworn to by all doctors is enough evidence to show that the fetus is a person having the right to life. According to the Oath ... 'the physician should not take with impunity legally or illegally, the lives of the defenseless ones (the fetus and the unborn child). See the World Wide Medical Code and Medical Ethics: World Medical Association Bulletin (1949) 1(3) 109-111. File revised on 8 June 2002. <www.cirp.org/library/ethics/intlcode> accessed 12 February 2011.

⁸ According to pro-lifers, any act of abortion, amount to murder. See, Rogert Ebert, Rogert Ebert's Movie Yearbook 2010 (2009) 245; See also, Sinha Nishit K, *The Pearson Complete Guide to the Cat* (2011) 9. See also, *The Evangelium Vitae* 62 by Pope John Paul II, which made it clear that abortion is murder. <www.prolifeformankind.com> accessed 27 March 2012. See also, <<http://www.youtube.com/watch?v=CFoazLMimFs>> accessed 27 March 2012.

⁹ See, Mala Htun, *Sex and The State: Abortion, Divorce and the Family under Latin American Dictatorship and Democracies* (2003) 142.

¹⁰ These are positive morality.

two instruments are those of teaching, which is doctrine and enforcement, which is law.¹¹

The law in question here is the criminal law. There seems to be a very general agreement in our society that, the main domain of the criminal law is behavior that causes harm to other people, that is, anti-social conduct.¹² In this wise, pro-life proponents argue that abortion is an extreme form of anti-social conduct, since it involves the destruction of other human beings.¹³ The argument is hereby put forth that, abortion is an anti-social behavior because, the fetus is considered a human person with full human right at the time of abortion and its destruction is obviously an anti-social act necessitating prohibitory criminal legislation.¹⁴

Traditionally, the preservation of public morality has been regarded as an important function of criminal law.¹⁵ The enforcement of morals through the law in general, and in particular through criminal law, has been the theme of a deservedly famous debate which took place in English Speaking Countries some years ago. The main protagonists of the debate were Lord Devlin and Professor H. L. A. Hart.¹⁶

¹¹ See, David Dyzenhaus, Sophia Reibetanz Moreau and Arthur Ripstein, *Law and Morality: Readings in Legal Philosophy* (2007) 390.

¹² The purpose of criminal law is to protect the society so that members of that society can be reasonably secured in carrying out their constructive activities. Only behaviors that are detrimental to the welfare of the society are made criminal. There are three forms of harm that criminal law protects against. They are, i) protection from harm caused by others eg homicide, rape, theft and so on, ii) protection from harm caused by ourselves eg paternalistic laws, iii) protection of societal morals. See, Ian H Witten, Eibe Frank and Mark A Hall, *Data Mining: Practical Machine Learning Tools and Techniques* (2011) 5-6.

¹³ i.e, the fetus. See, Mark MacGuigan, *Abortion, Conscience and Democracy* (1994) 98.

¹⁴ ibid 99.

¹⁵ Today, this assumption is often questioned by those who believe that, morality like religion is a personal matter. They argue that the state should be neutral on matters of morality and so, morality cannot be legislated. Consequently, countries like America have abolished some offences like sexual offences on grounds that it has become obsolete. In other countries, the courts have declared unconstitutional laws relating to these offences. However, it must be noted that, the moral basis of the law extends far beyond ancient prohibitions of sexual conducts. Many proscriptions of criminal law are based on collective societal judgment about what is right and what is wrong. In order to maintain its legitimacy, the criminal law must reflect the prevailing morality of the people. In a democratic society, laws that do not reflect broadly shared values will be challenged and eventually, likely to be changed. See, John M Scheb, *Criminal Law and Procedure* (2010) 6.

¹⁶ See, Carlos Santiago Nino, 'The Limits of the Enforcement of Morality through Criminal Law' in Jorge J E Gracia (ed.) *Philosophical Analysis in Latin America* (1984) 93-113.

Opposition and Proposition of the Motion: Devlin and Hart

Professor H. L. A. Hart, supporting the liberal views on the legal enforcement of morals believes that, critical morality does not support the contention that law should enforce positive morality. Lord Devlin on the other hand, supporting the perfectionist view, considers that the enforcement of positive morality is a necessary means of preserving the social structure.¹⁷

This brings us to a cross-road in ascertaining the limits of the criminal law. It will do this present study a lot of good if reference is made to the Wolfenden Report published in 1957. Although this report was mainly on the morality of prostitution and homosexuality, the actual point about the report relates specifically to the functions of the criminal law.¹⁸

The recommendations of the Commission in the report were that, both prostitution and homosexuality were to be permissible in private, with public soliciting subject to prosecution.¹⁹ In the Commission's view, 'Mill's 'no harm' principle was paramount, i.e., private consensual activities between two adults that did not directly harm anybody else should be beyond the reach of the law.²⁰

Patrick Devlin, a senior judge argued forcefully on the thinking behind the Wolfenden Report in a lecture he delivered in 1958. Devlin rejected the assertion of the Wolfenden Report that, there is a realm of private morality and immorality that is

¹⁷ Positive morality is the morality prevalent in a society and expressed in its public opinion, its laws and lives of its members. Critical morality on the other hand, is a set of moral principles, rules and values which an individual may adopt. See, Alan Soble, *The Philosophy of Sex: Contemporary Readings* (2002) 452. As an empirical phenomenon, morality exists as a positive morality, which is to say as the moral view prevailing within a certain group of people. A positive morality can be subjected to critical evaluation which results in a personal critical morality different from the positive morality. See, Alf Ross, *On Guilty, Responsibility and Punishment* (1975) 156.

¹⁸ Mark Tebbit, *Philosophy and Law: An Introduction* (2005) 131-132.

¹⁹ The government accepted the proposals on prostitution and rejected the proposal on homosexuality which was to remain illegal until 1967. *Ibid.* 131.

²⁰ According to this principle, deviant behavior i.e. crime without victims, involving acts engaged in voluntarily by all parties should not be within the contemplation of the law, since no victim or complainant is involved. See, Edwin M Schur, 'Crimes Without Victims' (1967) 53 *American Bar Journal* 71.

not the law's business.²¹ According to Devlin, there can be no theoretical limits to legislation against immorality.²² He also rejected the separation of morality into private or public sphere. His stand also amounted to a complete rejection of Mill's 'no harm' principle according to which the harmfulness of an action is a necessary condition for using the law against it. If there are no limits to the reach the law, and hence, no recognition of privacy, it cannot be conceded that there is an area of activity, however apparently harmless to the public that the law cannot touch.²³

Devlin's position is that, law without morality destroys freedom of conscience and is the paved road to tyranny. Devlin appealed to the ideas of society's moral fabric. He argued that criminal law must respect and reinforce the moral norms of the society in order to keep social order from unraveling. Devlin's view was that any category of behavior was capable of posing a threat to social cohesion. Therefore, moral laws are justified to protect society against the disintegrating effects of action that undermines the morality of the society.

This being the case, it can be seen that, the law must be an instrument for inducing people to embrace valuable ways of life and to realize the ideals of human excellence. Abortion has been identified as an extreme anti-social act, which though affects negatively the fetus, by causing its death, also affects the public as a moral village. Hence, the inclusion of abortion as a crime is not by any act, a mistake. We don't have to wait for a complainant to surface before the criminal law performs its function of legislating the morality of abortion.

²¹ *Ibid.* 131. Criminal law might be understood as one institution which constructs outer limits of permissible behavior in society. Provided people stand within certain outer limits, the criminal law is not really interested in how members of the society live their everyday lives. That is to say that criminal law is not in general the sort of institution that tends to be concerned to regulate the tiny details of everyday behavior as maintained by some critics, that criminal law is an intruder into our lives. As long as a conduct is not wrong and does not concern the wider public, criminal law has no business in our affairs. Controlling wrongful conduct is the sole aim of criminal law. See, Gerry Johnstone and Tony Ward, *Law and Crime* (2009) 7.

²² The perfectionist conception of the scope of criminal law is that, any immoral act can in principle be converted into a criminal offence or made the object of other kinds of legal inference. See Santiago Nino (n16).

²³ *ibid.* Any immoral act is criminal whether or not the act represents harm to other people's interests or right. Crimes without victims are offences against morality. This is because; those involved do not feel that they are being harmed. Prosecution of these offences is justified on the grounds that the society as a whole is harmed because of the moral fabric of the community is threatened. See George F Cole and Christopher E Smith, *The American System of Criminal Justice* (2006) 19. Crime without victims attempts to legislate morality. See, Schur (n20); See also, Joseph R Gusfield, 'The Culture of Public Problems: Drinking and the Symbolic Order' (1984) 123.

The mere existence of some consensus like those in support of abortion is not by itself a good reason for its legal enforcement. The claim that the law should enforce morality must be interpreted as referring to a well accepted positive morality. Any action (like abortion) which seriously contravenes ideals of human worth²⁴ tend also to violate standards of positive morality and are thus, proper objects of legal interference like the criminal law.

Anything contrary to the above views, like those proposed by Professor H. L. A Hart on critical morality seeming to suggest that individual should be left free to pursue their own ends in their own way²⁵ without reference to positive morality, as well as those proposed by Mill, suggesting that acts of individual which involve no harm to anybody should not be within the contemplation of the law, will cast doubt upon the intelligibility and consistency of the criminal law as an upholder of public morality. In order therefore, to uphold public morality, the criminal laws in Nigeria has lived up to the standard expected of law by criminalizing the act of abortion, except when done in good faith to save the life of the mother.²⁶ As far back as 1981, effort to present abortion reform bill on the floor of the house of legislative was blocked by the National Council of Women Society, traditional and religious leaders²⁷ on the ground of morality. The NCWS urges parents and government to promote moral and religious education to prevent pregnancies among unmarried women, and that

²⁴

This is the first principle of natural law i.e. the moral importance to do good and avoid evil, and emanating from this, the precept that affirms the preservation of any human life. Natural law principle, such as this, found concrete expression in the Declaration and were declared by the drafters to be universal. See, Rita Joseph, *Human Right and the Unborn Child* (2009) 40. At the early stage in the lecture delivered in 1958, Devlin accepts that the authority of law can no longer depend on the Christian doctrine, because in contemporary society, the civil right to disbelieve is beyond dispute. In the search for a secular alternative, however, he insists that the society must retain the right to pass moral judgment to approve or condemn from the stand point of a clear-cut distinction between good and evil. It is precisely this right that he accuses the Wolfenden authors of undermining. See, Tebbit (n18).

²⁵

It must be noted that, this liberal view may be overridden if the nature of the ends or the means of their attainment is such that their prosecution would be dangerous or harmful to others. See, John Kleinig, *Paternalism* (1983) 18. This is also suggestive of the fact that, critical morality is also in support of positive morality.

²⁶

See Secs 232,235 *Penal Code* (applicable in the Northern Nigeria) and secs 228, 229 and 230 *Criminal Code* (applicable in the Southern Nigeria). In the Southern States, physical and mental health reasons are also inclusive.

²⁷

Traditional and religious leaders oppose any reform of abortion law. They see such a move as jeopardy to the moral and family life of the society. See, Louis-Kennedy Osinachi Ilobinso, 'Policy on Abortion in the Nigerian Society: Ethical Consideration' [Master's Thesis in Applied Ethics, Center for Applied Ethics, Linkopings Universitet (2007)] 20.

government should improve family planning education and services for married women.²⁸

Criminal Laws of Nigeria

Nigeria is one of those countries with restrictive abortion laws. Termination of pregnancy in Nigeria is restricted under both the Penal Code (applicable in the North) and Criminal Code (applicable in the South) and carries very heavy jail term of up to 14/years for the provider and 7/years for the woman, except it is performed to save the woman's life.²⁹

Hence, going in line with the argument of Patrick Devlin that, the law must be an instrument for inducing people to embrace valuable ways of life and realize the ideals of human excellence, the criminal laws of Nigeria has been seen as an instrument which provides guidance and direction to the country as a whole, as to the conduct that must be avoided or must be performed, and where a violation of rules of conduct occurs, the criminal law must take on the role of adjudication.

The criminal law, therefore, can be said to perform three basic functions. Firstly, the criminal law defines and announces the conduct that is prescribed (or required). Such rules of conduct supply *ex ante* direction to members of the society as to the conduct which they must keep away from. Secondly, when a violation of the rules of conduct occurs, the criminal law takes on a different role, and must decide whether the violation merits criminal liability. Thirdly, where liability is to be imposed, criminal law doctrine must examine the relative seriousness of the offence.³⁰

In order to operate within the ambit of the supreme norm (Constitution)³¹, the criminal laws of Nigeria have defined the act of abortion as a conduct that must be avoided. Where a person is found to commit an abortion, the criminal laws decide the liability and extent of liability of the criminal.

²⁸ See, Ruth Dixon-Mueller, *Population, Policy and Women's Rights: Transforming Reproductive Choice* (1993) 98.

²⁹ Secs 232 and 235 Penal Code Law of Nigeria 1963 and secs 228, 229 and 230 Criminal Code Law of Nigeria 1990.

³⁰ Paul H. Eobinson, 'A Functional Analysis of Criminal Law,' (1994) 88 *North West University Law Review* 857.

³¹ Constitution of the Federal Republic of Nigeria provides under section 17(2) that; the sanctity of human person shall be recognized and human dignity shall be maintained and enhanced". Section 1(3) provides further; "if any other law is inconsistent with the provisions of the Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void". If this is the case, the criminal laws of the country must, as a matter of fact prohibits abortion, which is an act that does not recognize human dignity. Also, if the criminal laws of the country want to be consistent with the provision of the Constitution, abortion must be prohibited.

By this elaboration, the author maintains that the criminal laws of the country, by prohibiting abortion, are legislating morality and protecting the dignity of citizens against the actions of other citizens.³² This obliges the State to protect individuals against attack by others and entails the creation of criminal prohibitions.³³ The State in protecting individuals against attack by others are mindful of the unborn child as needing protection from any attack by others, either the mother or the doctor. Hence, the prohibition of abortion to stop any attack and consequently, to give right to life to the unborn child.

Conclusion and Recommendation

In respect of the arguments from some quarters that the law and morality are separate entities, it has been established that morality is the proper basis for criminal law, whether or not the morality is rooted in a particular religion. Criminal law is a product of moral notions. Legislations should be morally informed- Criminal Law. Promiscuity³⁴ will be rampant and morality will be down the drain if abortion is not made scarce and hard to get, except to save the life of the mother. A society without morality will be in a shamble. This thus, serves as a value judgment indicating that adherence to the view of the pro-choicers (legalizing abortion) is bad. All rational persons will hold this view. All persons do not share the same religion, but all persons possess the same human nature and the same desire for justice. All persons belong to the human race and are endowed with the gift of reason, and are born with conscience, an innate moral law that is God-given and natural; the basis for natural law.³⁵

The natural law is one of the oldest moral concepts in the history of civilization. Natural law is not invented or formulated by any man, but discovered as inherent in the structure reality, in the nature of things. The natural law is independent of opinion and not relative to culture. It encompasses individuals of all nations, race and religion and is the basis of international law, what the founding fathers call "the law of nature and nature's God"³⁶

³² See the debate between Hart and Devlin.

³³ Tatjana Hornle and Mordechai Kremnitzer, 'Human Dignity as a Protected Interest in Criminal Law,' (2012) 14 *Israel Law Review* 147.

³⁴ Characterized by or involving indiscriminate mingling or association, especially having sexual relations with a number of partners on a casual basis. Dictionary.com. <<http://dictionary.reference.com/browse/promiscuous>> accessed 1 July 2012.

³⁵ Mitchel Kalpakgian, 'The Right to Life and Natural Law,' (1999) IX *Life and Learning* 1-3, <<http://www.uffl.org/vol%209/kalpakgian9.pdf>> accessed 28 January 2013.

³⁶ *ibid*

Following the views as expressed by the pro-choicers (legalizing abortion) is a kind of action which the natural law prohibits³⁷ because of its resultant effect of making the generality of the people to be promiscuous. Adultery and fornication will be the order of the day, and since there is a law to back the people up, abortion will be used to get rid of any resultant pregnancy, which in itself is harm to others (killing the fetuses), as well as harm to oneself (being promiscuous result in harm to one because of sexually transmitted diseases).³⁸

It is here recommended that Nigerians, men and women should be well grounded in their respective religious beliefs. One of the ways to prevent girls from unwanted pregnancy that will necessitate an abortion is to encourage them to follow their religious precepts, which have morality as an embedded concept, and usually promote strict sexual guidelines. Whilst Christianity only accepts sex within monogamous marriage,³⁹ Islam accepts polygamy, but again only endorses sex within marriage.⁴⁰ Traditional religion in Africa appears to propagate polygamous marriage, but with varying taboos regarding extra-marital sex.⁴¹ What this emphasizes is that underlying traditional, cultural and religious values continue to be the foundation upon which behavior is based.⁴²

³⁷ From the perspective of natural law, only one criterion is decisive: what the fetus is, not what we want the fetus to be. And since it is a human being, only one conclusion is possible, abortion is not right. Jakob Cornides J. D., *Natural and Un-natural Law* (New York: Catholic Family and Human Rights Institute, 2010), 30.

³⁸ The environment can have effect on sexual-decision making. Legalizing abortion might affect social conditions and behavioral decisions. It was hypothesized that legalizing abortion lowered the cost of sexual activity leading individuals to engage in more risky sex, causing an increase of gonorrhoea and syphilis incidences. Individuals consider the costs and benefits of sexual activity before engaging in sexual intercourse. Costs include an unplanned pregnancy. The availability of abortion lowers the expected cost of sexual intercourse, because the pregnancy can be aborted in the event of undesired conception. Jonathan Klick and Thomas Stratmann, 'The Effects of Abortion Legalization on the Incidences of Sexually Transmitted Diseases,' (2008) 32 *Journals of Legal Studies* 407-409.

³⁹ Corinthians 7: 1-40.

⁴⁰ Quran 23: 5-6.

⁴¹ Chastity before marriage on the part of the woman is essential. Within marriage, only women should be prevented from having extramarital affairs. Magun is a type of traditional magic used to guard against sexual immorality by women. Familusi O. O, 'African Culture and the Status of Women: The Yoruba Example,' (2012) 5(1) *The Journal of Pan African Studies* 303-305. <<http://www.ipanafrican.com/docs/vol5no1/5.1AfricanCulture.pdf>> accessed 3 February 2014.

⁴² Oluduro O, 'The Role of Religious Leaders in Curbing the Spread of HIV/AIDS in Nigeria,' (2010) 22 *Potchefstroom Electronic Journal* <<http://www.saflii.org/za/journals/PER/2010/22.html>> accessed 3 February 2014.