

RETHINKING THE LEGALITY OF HOMOSEXUALITY IN ZIMBABWE: A PHILOSOPHICAL PERSPECTIVE

Munamoto Chemhuru

Lecturer in Philosophy, Great Zimbabwe University & PhD Candidate at University of Johannesburg,
South Africa

ABSTRACT

The paper situates and examines the practice of same-sex sexual relationships and marriages within the Zimbabwean context. Reflecting on the existential realities of the indigenous Zimbabwean in general, the paper develops the thesis that same-sex sexual relationships and marriages are an epitome of unnatural sexual perversions that are not only alien, but perceived as taboo to traditional Zimbabwean societies. Whereas gay and lesbian activists support same-sex relationships and marriages, this paper argues that calls for justifications for the legality of homosexuality, which are mainly informed by the western liberal, human rights notions and perhaps some feminist philosophical perspectives are misplaced. It proffers the argument that same-sex relationships are unnatural deviations and hence, a direct contradiction to the natural, normal and commonly expected inclination of human nature. Above all, it is argued that same-sex relationships and marriages are not only unproductive, but that they are not compatible with the Zimbabwean value system in general. Thus, as an observation, the paper noted that despite almost growing consensus on the tolerance of homosexuality among globalising, democratising and libertarian societies of the world, same-sex relationships remain alien, travesty, unthinkable and difficult to justify from a Zimbabwean perspective where generally value systems are sacrosanct to the philosophies of communitarianism and 'unhuism' among other values that formed the mainstay of traditional Zimbabwean and African communities at large.

INTRODUCTION

The term ‘homosexuality’ was coined in the late 19th century by a German psychologist, Karoly Maria Benkert to refer to what Palen (2001: 273), described as “a sexual orientation toward, and sexual activity with, members of the same sex.” Today, the most common term that is used to refer to male homosexuals is *gays*; and for female homosexuals is *lesbians*, (a term derived from the inhabitants of the Greek island of *Lesbos*). In the same vein with Palen’s understanding of the term, Boss, (2008: 807) described homosexuality as having a sexual attraction that is exclusively, or almost exclusively, toward members of the same gender. Thus, in the light of these two corresponding working definitions of homosexuality, the paper takes the term homosexual as a universal term to refer to inclinations or acts involving either gay and lesbian relationships and marriages, although it does not constantly use the two respective terms, (gay and lesbian).

Although the term homosexual was coined in the 19th century, homosexual practices, relationships and marriages are not new to humanity. In addition, although the term is fairly new, philosophical discussions and practices of homosexuality can be traced to the ancient or classical period, where it is established that even the most celebrated philosophers like Plato, Alexander the Great, Ludwig Wittgenstein, Alfred Jules Ayer and Michael Foucault among others, have been linked to homosexual practices. See http://www.knowledgerush.com/kr/encyclopedia/List_of_homosexual_philosophers.

The world over, homosexuality is legal in countries such as Denmark, Norway, Sweden Netherlands, Belgium, Canada, Spain, Argentina and surprisingly South Africa, the only African country that has taken a leading role in Africa so far towards legalising homosexuality. However, there is a fundamental difference between the legality of an action and its morality. While morality has to do with ethical standards of right or wrong, the legality of homosexuality has to do with whether it conforms to human positive law. Hence, homosexuality for some, may be viewed as illegal but not necessarily immoral. This paper however is not a discussion of the morality of homosexuality. It examines, from a philosophical perspective, whether homosexuality should be legally permissible in the African set-up, particularly in Zimbabwe. Whether homosexuality is moral or immoral, that remains outside the scope of this discussion.

While the constitutional law seem to remain silent on the legality of homosexuality in Zimbabwe, some liberal philosophers such as Thomas Nagel, Robert Solomon Alan H. Goldman and French Philosopher and feminist, Simone de Beauvoir among others, are of the thinking that sexuality is not inherently a matter for moral evaluation or concern by others, hence their argument that homosexuality should neither be a moral nor a legal issue. On the other hand, conservative thinkers such as St Augustine, St Thomas Aquinas, John M. Finnis and Burton M. Leiser along with other conservative thinkers, believed that homosexuality remains contrary to the law of nature and hence it should be immoral and not be part of any human positive law. The paper tries to reconcile and situate these arguments in the context of Zimbabwe and see what can be taken thereof as a way-forward in the light of the debates about the legality of homosexuality, especially considering the fact that debates about homosexuality are highly politicised in Zimbabwe.

Unlike in the ancient or classical periods where theological frameworks dominated much of the debates on issues to do with sexuality and also where marriage was taken as a holy sacrament, recently, in the 19th and 20th century sexual roles have slowly been redefined. For a variety of reasons, for example, premarital sexual intercourse has slowly become more common, fashionable and eventually socially acceptable. With the decline of prohibitions against sex for the sake of pleasure even outside marriage, it has become even more difficult to argue against homosexual sex in contemporary globalizing and democratizing societies.

First, the paper examines the libertarian, the human rights notion as well as some of the feminist perspectives informing some contemporary justifications for homosexuality. In this section, while accepting the fact that all globalising and progressive nations the world over ought to respect human liberty, human rights, justice, good governance, peace and development, still, it remains to be seen if the right to freedom of association in the context of associating with members of similar sexual orientation could be seriously taken as so basic a right to talk and make noise of.

Second, the paper examines some conservative notions that argue for the abolishment of any attempts to tolerate acts of homosexuality. In this regard, the paper examines the natural law argument against homosexuality as well as the arguments by St Augustine, St Thomas Aquinas Sigmund Freud and Thomas Nagel that homosexuality is a perverted sexual

orientation that needs to be corrected or medicated. The argument proffered in this section is that regardless of the various theories that have attempted to justify it, homosexuality remains an unnatural sexual orientation.

Third and lastly, the paper situates the debates of homosexuality within the Zimbabwean context. In this regard, it considers the possibility of the acceptance of same sex relationships and marriages in Zimbabwe. It is here where some of the reasons are provided for as to why homosexuality may not be socially and politically tolerable in Zimbabwe. Thus, overall, the paper is a challenge to Zimbabwe, especially in the light of its post-independent efforts to democratise and be part of the wider global community that has already embraced some of the ideals of democracy and good governance by legalising homosexual relationships and marriages.

THE LIBERTARIAN ARGUMENT

The libertarian argument calls for liberty or freedom of the individual person and totally opposes the social or political restraints on human individual freedom. British Philosopher, John Stuart Mill (1806-1873) has had a profound influence on the development of this libertarian argument. Although Mill himself did not discuss the issue of homosexuality, his argument for the liberty that should be accorded to the individual has been used as a defence for acts of homosexuality as he considered the “...nature and limits of the power which can be legitimately exercised by society over the individual...” in Rachels, (2008: 219).

Arguing for what he calls the *harm principle* Mill seems to suggest that homosexual acts should be legally permissible. For Mill, in Rachels and Rachels (2008: 222), “the only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it.” In this light, it is Mill’s contention that society has no obligation whatsoever to impinge on the freedom of the individual human person, so long as the liberty of the individual can enjoy his liberties in a manner that does not affect others or society at large. For Mill, in Shaw (1999: 197) :

The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self protection.

That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others . . . the only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his body and mind, the individual is sovereign.

Thus, following this thinking, libertarian thinkers find it possible to justify acts of homosexuality using the harm principle because if homosexual individuals are given equal rights and treatment, provided it harms no one else, then for them, there seem to be no problem at all hence society should not be seen to impose formal or informal sanctions or social pressure on individuals with homosexual orientation. According to this argument, the denial of freedom, equality and the rights to same-sex relationships and couples to have homosexual sex and marry is a gross violation of the principle of equality and the safeguard of human individual liberty. See Boss, (2008: 379).

However, it suffices to note that all these arguments may not hold water if the arguments from traditional Platonists, Thomistic philosophers and Freudian psychologists are to be taken seriously. These are of the position that homosexuality is a harmful personality disorder that should be cured. see Sigmund Freud, (1920). While Freud believed the expression of homosexuality as having some psychological origins, he did not however believe that psychoanalysis alone could solve the problem of homosexuality. Rather, he argued that explanation beyond this belonged to biology (Ibid). As a result, Freud cautioned against seeing homosexuality as either unequivocally acquired or congenital (Murphy, 1992).

Also, the flaw of the libertarian argument is found in it failing to justify homosexuality on the merit of its morality. In other words, the libertarian argument merely looks at the individual in terms of the liberties that he is entitled to, but fails to look at the practice of homosexuality in terms of whether it is good or bad. Although it is not the scope of this discussion to discuss the morality of homosexuality, still, a discussion of the issues surrounding homosexuality, but without taking its moral implications will be far from satisfactory. Hence, the libertarian argument may not satisfy grounds that are necessary for the justification of homosexuality.

The libertarian argument also faces the problem of relativity of societal norms and values. If seen in the light of the Zimbabwean and African communitarian way of life, there is a sense in which the libertarian argument for the legality of homosexuality does not hold water. African societies are inherently communitarian; hence the place for individual liberties may not have a place in the Zimbabwean and African set-up at large. As Ramose (1999: 154) sees it, “neither the individual nor the community can define and pursue their respective purposes without recognizing their mutual fondness and their complementarity.” Viewed this way, thus, the promotion of individual liberties that is fostered by the philosophy of liberalism may not be necessary for the Zimbabwean and the African at large since being such presupposes that the community will safeguard such liberty on behalf of the individual. In other words, liberty amongst Zimbabweans and Africans at large may not necessarily be for the individual, but, rather for the whole community. The Zimbabwean and African communities at large give the priority of liberty to the whole society at the expense of the ontological status of the individual person. It is, therefore, apparent that the Zimbabwean and African political value system strongly contradicts with the idea of liberalism in general.

THE HUMAN RIGHTS NOTION

Arguments for the legal justification of homosexuality have been linked to desire to protect and safeguard human rights. Above all, it is the contention of this human rights notion that the denial of legal rights to homosexual relationships, unions and marriages is, in all respects contrary to the safeguard of human rights and human dignity.

As Shaw (1999: 196) sees it, “human rights designate certain important interests that people have. . . those interests include having certain areas of decision-making free from the need to subordinate one’s choices to the wishes and interests of others.” This understanding forms the basis for the justification of homosexuality in the modern democratising and globalising state where human rights, justice, freedom and equality seem to be the order of the day.

Also, a rational justification of homosexual behaviour is that when an individual consents to indulge in homosexual acts he/she would be simply doing so freely. So, in that light,

following the human rights notion, it may be very difficult for individuals to find a strong defence for the denial of basic rights of association to persons with homosexual orientation because it may be out of their will to choose a sexual orientation that suits their choice. However, the only question that still remains, although it is not part of this paper, is the morality of the practice.

Human rights are recognised in the Universal Declaration of Human Rights, the African Charter on Human and People's Rights and other International Human Rights instruments to which Zimbabwe is a signatory to. As Shaw, (1997: 196) sees it, The preamble to the Universal Declaration of Human Rights adopted on 10th December 1948 emphasises that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human community is the foundation of freedom, justice and peace in the world."

Human beings are inherently sexual, some more than others, and it would be good if human rights are to be properly upheld in the light of the province of sexuality, such that individuals were able to feel free to choose a partner without any social or political expectations concerning the sex of the partner from society or the state. Thus, the contention of this argument from human rights perspectives here is that, regardless of the purported unnaturalness and uncommonness of same-sex behaviour, the denial of legal rights to persons of homosexual orientation remains unjust and contrary to the globalising world where freedom (i.e. of association, speech, movement) , peace and development are the order of the day.

However, there is a philosophical problem as to whether the right to freedom of association, especially to associate with people of similar sexual orientation could be seriously taken as a basic human right. In essence, human rights have in the long run meant different things to different people. The notion of human rights seems to have over the years changed meaning more than once, and in more than one direction, hence the temptation in this section to view human rights as sometimes a hypocrisy especially in the light of the question of the justification of homosexual practices, regardless of the fact that it is may be contrary to the notion of human rights and human dignity, that are enshrined in the Universal Declaration of

Human Rights, the African Charter on Human and People's Rights and other International Human Rights instruments.

Also, within the Zimbabwean and African context at large, there is a problem of whether society should safeguard the rights of the individual human person, or to respect the *people's* rights, that is, the community's well-being and dignity. In essence, human rights notions have tended to be highly atomistic, individualistic and at the same time exclusive, in so far as they prioritise the interests of the individual at the expense of the autonomy of the community. In this regard, Zimbabwean, just like other African communitarian societies which for Eze (2008: 01), "advances a priority of the community over the individual" remains highly communitarian and prioritises communitarian values than individual values. Thus, in the context of the debate on homosexuality in Zimbabwe, this is the reason why it is very difficult to tolerate homosexuality as it sacrifices the communalistic value system all in the name of individualism, liberalism and human rights.

SOME FEMINIST PERSPECTIVES

Feminism according to <http://www.merriam-webster.com/dictionary/feminism> in general refers to movements that are aimed at establishing and defending equal political, economic, and social rights and equal opportunities for women. See also <http://dictionary.cambridge.org/dictionary/british/feminism>. Today, the concept of feminism overlap with those of women rights. Feminism, according to Gardiner (2002: X) is mainly focused on women's issues, but because feminism seeks social, political, economic and gender equality, some feminists argue that men's liberation is therefore, also a necessary part of the feminist agenda, and that men are also harmed by sexism and gender roles. Hence, more recently, feminism has not been understood to be women's vocation alone. Rather the feminist agenda has taken an inclusive approach to include women, men and children as well.

While acknowledging that the feminist movement, with its various forms has gone a long way towards promoting women, and [men]'s rights to bodily integrity and autonomy, through various awareness campaigns against crimes like domestic violence, sexual harassment, and sexual assault among other sexual crimes, there is a sense in which some perspectives of the

philosophy of feminism form the cornerstones for the justification of homosexuality, especially in the light of some of the feminist arguments and conceptions of the institution of heterosexual marriage.

Historically, the institution of marriage has been and continues to be gender structured. In the African set-up this institution is also inherently characterised by and expected to serve the functionalist approach in so far as the marriage institution is expected to produce social stability in general. However, while being a noble cause of committing themselves to the improvement of the position of women and [men] in society, in general, some feminist thinkers such as Judith Starcey and Simone de Beauvoir regard the institution of marriage as inherently unjust, (Boss, 2008: 379) hence the temptation to escape proper heterosexual marriages.

For Boss (2008:379), “the traditional view of marriage, which is tied to sex roles, has been seen as a hindrance to the realization of justice in marriage as well as the recognition of same sex marriage. According to this feminist perspective, a two parent-heterosexual family is not necessarily a solution, but a serious social problem, hence feminist Judith Starcey advocates for the abolishment of the traditional heterosexual marriages, as she (1990: 269) is of the thinking that heterosexual marriages are a prejudice that promulgate and legitimises gender hierarchy. For Starcey, (Ibid), “the family is not ‘here to stay’ . . . [and that] all democratic people, whatever their kinship preferences, should work to hasten its demise.” Understood this way, the feminist agenda seems to be going too far to the extent of arguing for the demise of proper heterosexual marriages at the expense of homosexual unions.

French philosopher, Simone de Beauvoir (1908-1985) also regards sexuality and motherhood as key aspects of women’s oppression, hence she thinks that it is not an obligation for the woman to always carry the burden of pregnancy. For her, “the relationship between parent and offspring, like that of husband and wife, ought to be freely willed....” In Boss, (2008: 459) Hence, one of the arguments proffered by those who advocate for the legality of homosexuality is that heterosexual marriages are inherently oppressive to women. However, it remains to be seen whether oppression can be eliminated in society by merely adjusting marriage institutions.

Following some of these feminist perspectives, nowadays, many people accept the fact that biological sex is of course not a significant factor when hiring an employee. The world over, legislation has been passed in many countries to address and redress the traditional power and gender imbalance between men and women. This attitude towards the significance of sexuality seem to also have extended to the more personal spheres of sexual relationships and marriages, as already shown by people who identify themselves as homosexuals. However, if some of the feminist agendas could be used to provide a rational justification for the permissibility of homosexual unions, there seem to be a problem of overstretching this feminist schema.

NATURAL LAW AND UNNATURAL SEXUALITY

There seem to be a problem as to whether homosexuality is contrary to natural law, or that it is in conformity with the laws of nature. Many argue that it is against nature, but there seem to be no obvious reasons to believe so. This section will adopt arguments that try to defeat the practice of homosexuality using the natural law position with regards to human sexuality. The argument proffered in this section, thus, is that homosexual acts go against the natural moral law. As Muyembe and Muyembe, (2001: 286) see it, as human beings “...we must respect the laws inherent in nature, and work with nature and not against it.... we still need to see that our sexuality too is such a natural environment whose inherent laws we have to respect.” This argument should be taken in the light of certain unnatural practices that are peculiar to sexuality like homosexuality.

Generally, it is believed that, it is a law of nature to procreate, and at the same time it is ‘out of the ordinary’ to be attracted to persons of similar sexual orientation. The basic assumption of this unnaturalness argument is that the sole purpose of any sexual practice should be the procreation of species, otherwise any sexual practice outside this simply defeats its essence. Fertility in general, acts as a universally contested and essential virtue that is given a special position in any marriage set-up regardless of differences that exist among people. For instance, in traditional African societies, the peoples’ ability to control and go against nature was limited, but wherever they thought they could influence it in order to increase fertility, they could do so in order to give marriage some form of dignity,

spine and stability. The importance of procreative sexual act is acknowledged by Mbiti (1969: 130) who is of the idea that:

For Africans marriage is the focus for existence. It is the point where all the members of a given community meet: the departed, the living and those yet to be born. Marriage and procreation are a unity; without procreation marriage is incomplete. A person with no descendants in effect quenches the fire of life.

Although it is believed that he was of a homosexual orientation, in his book, 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 heterosexual acts cause pleasure by nature, while homosexuality is “unnatural” (636c). Probably the best to understand Plato's discussion here should be in the context of his overall concerns with the appetitive part of the soul and how best to control it, especially in the light of his tripartite division of the human person. Plato clearly sees homosexual passions as especially strong, and hence particularly problematic, for the simple reason that the individual will simply have failed to control his faculties of reason, will and desires which should work in harmony.

One of the most influential formulation of the natural law theory was made by St 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 morally permissible, and even good. Hence, natural law theorists like Augustine and Aquinas argue that sexual union in the context of the realization of marriage between people of different sexual orientation as an important human good is the only permissible expression of sexuality. According to this perspective, heterosexual marriage is an important good in a very particular way, since it puts procreation at the center of marriage as its “natural fulfillment” (see George, 1999: 168). This is why there seems to be a contradiction in engaging in a marriage that is not heterosexual, and hence unproductive. Following this perspective, thus, it is reasonable to assert the

position that all acts of sex that are not tailored for procreation are unnatural, hence homosexuality is such an act that cannot go towards procreation of offspring, hence unnatural.

On the other hand however, some philosophers argue that what is uncommon may not necessarily be unnatural. In as much as homosexual behaviour may not be common, it does not necessarily mean that it is unnatural. According to Burton M. Leiser, (1985: 339), the argument for [the alleged unnaturalness of homosexuality] by mostly theologians and moralists, does not necessarily hold water. There is a sense in which human sexuality may vary with time, place and context hence the need, sometimes, to have a relativist approach to sexuality if in any way humanity is to tolerate homosexuality. In a series of works he set out to analyze the history of sexuality from ancient Greece to the modern era (1980, 1985, 1986), Michel Foucault articulates how understandings of sexuality can vary across time and space, in an attempt to argue for the permissibility of homosexuality.

However, in the light of some of the strengths of the arguments for unnaturalness of homosexuality, one weakness of this unnaturalness argument is the ambiguity of the terms 'natural' and 'unnatural'. There is a problem as to whether 'unnatural' means contrary to the 'laws of human nature' or whether it means the 'uncommon'. If it means the former, then, it is not possible to have a practice that goes against the law of nature simply because nature takes care of its laws like the laws of gravity. If properly understood, natural law differs from human positive law in that it is purely descriptive. See Leiser, (1985: 340). For example, it is a law of nature that under normal circumstances, water boils at one hundred degrees Celsius. When taken in this light, thus, it is not possible to violate this rule that water boils if it reaches one hundred degrees Celsius because it is a law of nature which is purely descriptive, unlike human positive law which is prescriptive. Thus, in the light of this argument, therefore, it may be very difficult to look at homosexual practices as unnatural because if there was a sexual practice that is natural, human beings could not change them. In pursuit of this argument, Leiser, (1985: 341) asks the following questions:

...when theologians and moralists speak of homosexuality, contraception, abortion, and other forms of human behaviour as being unnatural, and say that for that reason such behaviour must be considered to be wrong, in what sense

are they using the word *unnatural*? Are they saying that homosexual behaviour and the use of contraceptives are contrary to the scientific laws of nature, are they saying that they are artificial forms of behaviour or are they using the terms *natural* and *unnatural* in some third sense?

At the same time, if the word *unnatural* is to mean that which is uncommon, then it is problematic since there are several types of uncommon and out of the ordinary behaviours such as being clever, witty, beautiful, genius and so on that are highly desirable rather than *unnatural*. Also, there are many sexual acts that are done in normal heterosexual relations as various forms of accepted and recommended sex plays which would be *unnatural* or uncommon or out of the ordinary, yet they are said to be normal in common usage.

HOMOSEXUALITY: A SEXUAL PERVASION

Although he did not argue for the position that homosexuality is a sexual pervasion, Thomas Nagel (1985: 315), defines sexual pervasions as “desires or practices that are in some sense *unnatural*...,” notwithstanding however the definition hazy of the *natural/unnatural* distinction discussed in the previous section. According to Sigmund Freud (1856-1939), however, homosexuality remains a deviation from the norm, (see Boss, 2008: 372), hence it is merely a sexual pervasion. However, although he admits that homosexual orientation is a deviation from the norm, to dismiss the general thinking that homosexual orientation is a sickness or disease that stands to be cured, Freud is noted as having said that: “I am of the firm conviction that homosexuals must not be treated as sick people... wouldn’t that oblige us to characterize as sick, many great thinkers and scholars whom we admire precisely because of their mental health?” (In Lewes, 1988: 32). Of course Freud had in mind great thinkers such as Plato, Wittgenstein, Bertrand Russell and even Alfred Jules Ayer.

For St Augustine and St Thomas Aquinas, only sexuality within marriage, between a man and a woman was normal and therefore morally permissible. According to Augustine, sexual intercourse must be viewed as a teleological practice that should be tailored towards the production of children. Otherwise any sexual practice besides that point was viewed as a perverted act and depravity or a sin against nature (Boss, 2008: 374). Following this perspective, thus, in as far as homosexual partners may clamour for marital rights, it may be

an oxymoron to successfully talk of marital rights within a homosexual relationship or marriage for the reason that homosexual unions cannot be a biological union capable of producing children. Such unions are simply abnormal and hence remain sexual perversions.

To justify the view-point that homosexuality is a sexual pervasion, Sigmund Freud provides us with a queer explanation of homosexual orientation. For Freud, homosexuality is an orientation that results from a boy's inability to resolve what he called the Oedipal conflict and the normal sexual attraction to one's mother which produces an anxiety to turn away from the person of a sexuality that is similar to one's mother to that of his similar sex. See <http://psychotherapypapers.wordpress.com/2008/11/12/kirby1/>. He believed homosexuality to be a variation of the sexual function produced by arrest of sexual development Freud argued that a sublimated homosexuality was necessary for normal heterosexual function (Ibid).

Also, to substantiate the argument that homosexuality is a sexual perversion, Barth (1980: 49) provides us with an emotively charged definition of homosexuality as he defines it as "the physical, psychological and social sickness, the phenomenon of perversion, decadence and decay, which can emerge when man refuses to admit the validity of the divine command in the sense in which we are considering it."

Thus, following these notions of the perverted argument for homosexuality, it appears that homosexuality remains a deviation and a perverted form of sexual union which is not natural, hence it is considered wrong despite some modern attempts to look at it as an innate and a biologically driven sexual orientation that need not be criminalized.

THINKING HOMOSEXUALITY IN ZIMBABWE

Within the African context, social institutions such as heterosexual relationships and marriages are highly controlled by the family as well as social and political institutions. According to Mbiti (1975: 107) "there are, in all African societies, regulations concerning those that one may not marry. These are most often people of one's own clan, and relatives of one's mother or father up to a certain degree of kinship." It is in this light that a practice such as homosexuality seem to have no place and unthinkable in Zimbabwe. The reason simply

being that amongst traditional Zimbabwean societies, it is almost taboo to engage in a sexual relationship involving people of similar sexual orientation, hence a homophobic attitude permeates across most Zimbabwean families, social and political institutions as well as African communities at large.

Historically, in Zimbabwe, homosexuality has been, and continues to be treated with derision, contempt and humour. Although grassroots traditional Zimbabwean societies did not have laws that outlawed homosexuality, the practice itself was saliently discouraged by the mockery and scorn given to people with homosexual orientation. Hence, in traditional Zimbabwean societies, acts of sex for non-reproductive purposes, for Mark Epprecht (1996: 14), were considered evidence of immaturity or witchcraft. Worse-still, homosexuality, which was, and continues to be unthinkable because even today, many serious Zimbabweans will say: *Tine nyaya dzokutaura dzakakosha, pane iyi yokutungana kwembudzi*; meaning to say that we have other serious issues that are worth discussing and not homosexuality.

While it is not the position of this paper that homosexual orientation is alien to traditional Zimbabwean societies, it is the observation of this writer that such behaviour was considered weird and heavily discouraged as implied also by the importance of procreative marriages. No wonder why in pre-colonial Zimbabwean traditional societies, as throughout the region, riches and the good life in general were primarily measured in people, especially children. Children, in addition to their social importance, were also valued as crucial economic and political assets. Thus, heterosexual marriage was the vocation those children were taught from their earliest years. It was also virtually the only sensible path to a relatively secure old-age. Choosing not to marry was thus simply not a viable life choice, for men and women.

Also, it suffices to note that our definition of sexuality and marriage should be deeply rooted in our society and nation's history and tradition. The practice of same sex may seem to be a result and requirement of the philosophy and discourse of liberalising and the democratising societies, but really it is very difficult to accept it within the Zimbabwean context. While purporting to be an agenda of a libertarian society, some thinkers are of the persuasion that the practice of homosexuality has some imperial or colonial overtones in not only Zimbabwe, but Africa at large. As Mark Epprecht (1996: 14) sees it, tolerance of homosexuality (if not

homosexuality itself) has thus been widely cited as yet another intolerable case of Western imperialism.

Traditional marriage institutions are the optimal structures in which to bear and raise children. Hence, legalising same-sex relationships and marriages will undermine the institution of marriage itself. Homosexuality amongst Zimbabweans and most African societies in general is saliently discouraged. The value given to procreative marriages goes a long way in explaining that amongst Zimbabweans and Africans in general, all acts of sex must be teleological oriented towards procreation, hence academics arguing for the functionalist approach to marriage such as Palen (2001: 273), maintain the position that “the family is essential to children and to a well-ordered society, and society must become more child and family friendly.” Perhaps this is the reason why African cultures throughout the region in fact provide mechanisms to ensure that sterile marriages could still appear to be fruitful.

Whether it is a justified true belief, or simply a myth, it remains to be established, but, the view that homosexuality is intolerable in Zimbabwe is also shaped by the belief that it contributed to the birth and spread of HIV/AIDS is not new to not only Zimbabwe, but it is rather one of the commonly held theories for the origin of the HIV/AIDS scourge. Besides liberal attempts to view the practice of homosexuality as one of the human rights to be enjoyed by humanity, the practice of same-sex sex and marriages remains, not only inhuman, but rather a mucky practice. For Boss, (2008: 372) the high prevalence of HIV/AIDS, which was first diagnosed in 1977 among homosexuals, fuelled the public’s belief that homosexuality was inherently unhealthy and immoral, although militant gays continue to protest that not enough research is being done, asserting that this constitutes discrimination against gays. See, (<http://www.narth.com/docs/militant.html>)

The debates surrounding homosexuality are highly charged, partly because they often involve issues that are socio-political and tend to be sharply polarized between individuals subscribing to different and divergent social, political and religious views and backgrounds. Sometimes, the legality of it can be a political game, where most often than not issues of

homosexuality can be used as a tool to silence opponents subscribing to different and divergent political opinions.

Sometimes, the debates about the legality of homosexuality involve fundamental issues of human rights, justice, and other socio-political issues. In Zimbabwe, for example, it is with great interest that the constitution making process under the GNU has somehow brewed unnecessary controversy on whether homosexual relationships and marriages should be legal in the new proposed constitution. Although no individual political party has so far come up in the open in support of the legalisation of homosexual sexual relationships and marriages, there are suspicions amongst politicians that some of the agendas of the democratisation schema in Zimbabwe could be overstretched to accommodate the legalisation of homosexuality.

While the writer of course, does not subscribe to the thinking that the struggle for democracy in Zimbabwe could be easily reduced to the quest for the legality of homosexuality, the writer still strongly believes that homosexuality should be illegal because it is against human nature and above all, it is an alien practice to Zimbabwe, besides it being unproductive.

Although libertarians and feminists would like the homosexuality-as-a-mental-illness viewpoint to be replaced by the viewpoint that homosexuality is a way of life or simply a sexual preference, it is difficult to easily accept their argument considering the fact that sometimes the practice of homosexuality is alien and debatable to indigenous people of Zimbabwe. It is thus against this background that although today, gender differences are increasingly becoming less pronounced, Zimbabwe as a society with traditional values of communitarianism and *unhuism*, still has a long way to go before individuals can embrace the western liberal democratic ideals like the calls for the legalisation of homosexuality.

CONCLUSION

It is the contention of this paper that although Zimbabwe still has to show its commitment to the democratisation process as well as the protection of human rights and justice including the purported rights of individuals to choose partners of their free-choice as argued by

libertarian and feminist philosophers, still, homosexual relationships and marriages remain unthinkable and at the same time a cultural threat to Zimbabwean communities in terms of their values. Hence the position of this paper is that homosexuality remains, not only unnatural, but a cultural taboo and an intolerable business as the foregoing arguments have established.

REFERENCES

- Barth, K, (1980), “Church Dogmatics”, in E. Batcherlor, (eds.), *Homosexuality and Ethics*, New York: Pilgrim. Pp48-51.
- Boss, J. (2008), *Analysing Moral Issues*, New York: McGraw-Hill.
- Epprecht, M, (1996), “Gay bashing in Zimbabwe: II - Outing the gay debate”, in *Southern Africa Report Archive*, Vol:11 Number 4, July. Pp. 14.
- Eze, M.O, (2008), “What is African Communitarianism? Against Consensus as a Regulative Ideal”, in *South African Journal of Philosophy*, Vol. 27 (4).
- Freud, S, (1920), “The Psychogenesis of a Case of Homosexuality in a Woman”. In *Standard Edition*, 1955, (Vol. 18, pp. 145-172), London: Hogarth Press.
- Foucault, Michel, 1980, *The History of Sexuality. Volume One: An Introduction*, Translated by Robert Hurley, New York: Vintage Books.
- _____(1985), *The History of Sexuality. Volume Two: The Use of Pleasure*, New York: Pantheon Books.
- _____(1986), *The History of Sexuality. Volume Three: The Care of the Self*, New York: Pantheon.
- Gardiner, J. K, (2002), *Masculinity studies and feminist theory*, Columbia: Columbia University Press.
- George, R. P, (1999), *In Defense of Natural Law*, New York: Oxford University Press.
- Leiser, B. M, (1985), “Homosexuality and the “Unnaturalness Argument”, in Velasquez, M. and Rostankowski, C. (Eds.), *Ethics: Theory and Practice*, New Jersey: Prentice Hall. Pp339-346.
- Lewes, K, (1988), *The psychoanalytic theory of male homosexuality*, New York: Simon and Schuster.

Mbiti, J.S, (1975), *Introduction to African Religion*, Oxford: Heinemann Educational Publishers.

_____ (1969), *African Religions and Philosophy*, New York: Doubleday.

Murphy, T, (1992), “Freud and sexual orientation therapy”, In *Journal of Homosexuality*, 23(3), 21-38.

Muyebe, S, and Muyebe, A, (2001), *The African Bishops on Human Rights*, Nairobi: Paullines Publications.

Palen, J.J, (2001), *Social problems for the 21st Century*, New York, McGraw Hill.

Plato, (1981), *The Symposium*, Translated by Walter Hamilton. New York: Penguin Books.

Plato, (1970), *The Laws*, Translated by Trevor Saunders. New York: Penguin Books.

Rachels J and Rachels J, (2008), *The Truth about the World*, New York: McGraw-Hill.

Ramose, M.B, (1999), *African Philosophy Through ‘Ubuntu’*, Harare: Mond Books.

Shaw, M.M, (1997), *International Law*, Cambridge: Cambridge University Press.

Shaw, W.H, (1999), *Contemporary Ethics: Taking Account of utilitarianism*, Oxford: Blackwell Publishers.

Simone de Beauvoir, (2008), “The Second Sex”, in Boss, J. (2008), *Analysing Moral Issues*, New York: McGraw-Hill.

Starcey, J, (1990), *Brave New families: Stories of Domestic Upheaval in the Late Twentieth Century America*, New York: Basic Books.

Velasquez, M. and Rostankowski, C. (Eds.), (1985), *Ethics: Theory and Practice*, New Jersey: Prentice Hall.

Internet Sources:

<http://psychotherapypapers.wordpress.com/2008/11/12/kirby1/>.

Date Downloaded: 23/01/2011.

<http://www.merriam-webster.com/dictionary/feminism>.

Date Downloaded: 23/01/2011.

<http://dictionary.cambridge.org/dictionary/british/feminism>.

Date Downloaded: 23/01/2011.

<http://www.narth.com/docs/militant.html>.

Date Downloaded: 23/01/2011.

http://www.knowledgerush.com/kr/encyclopedia/List_of_homosexual_philosophers

Date Downloaded: 09/02/2011.