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Jurisprudence of Genetic Engineering in Nigeria: Prospects and Challenges for Human Dignity in the Light of the National Health Act 2014

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ABSTRACT
Until the promulgation of the National Health Act 2014, there had been in Nigeria a dearth of comprehensive legal framework that would see to the regulation, development and management of the National Health System. Yet, some portions of the new Act, in spite of laudable provisions, have not failed to provoke some reflections with regard to the enhancement or otherwise of human dignity. This paper had done anthropological jurisprudential study of the nature of the human person vis-à-vis the ethics of genetic engineering. The study finally narrowed down its thrust to the critical examination of the relevant provisions of the Nigerian National Health Act. Concluding with the fact that law making must reckon with the requirements of the dignity of the human person, the paper recommended a continuum from law to integral humanism.
Keywords: Jurisprudence, Genetic Engineering, Human Dignity, National Health Act, Nigeria

INTRODUCTION

One wonders whether there is in Nigeria today any field of study like Genetic Law. The wonder is surely founded on the fact that within the curriculum of legal education in Nigeria as of now, little or nothing of health law, health rights law or, narrowly, medical law is heard or perceived. Although genetics is a field of scientific knowledge *sui generis*, still very many aspects of it are clearly medical in orientation. Yet, even within the curriculum of medical training presently, it is doubtful whether the would-be doctors are properly grounded in issues that can legally concern them and their medical practice in future. This is in spite of the fact that great many a legal issues like that of professional negligence and recklessness (criminal and tortious) and the like matters, are practically encountered on daily basis in doctor-patient relations in Nigeria today.

The term 'genetic engineering' has a broad and a narrow meaning. In its narrow sense, it is man's efforts to eliminate defective genes and promote good and superior ones in the gene pool. In this sense, it is called Eugenics. In this paper, however, we shall understand the phrase in its broad meaning which refers to any manipulation by man of the embryo, or sperm or ovum; and hence it extends to artificial insemination, in vitro fertilization (test tube babies), surrogate motherhood, womb leasing, sex selection, artificial womb or placenta, hybridization, cloning, etc. In this sense, it is called artificial reproduction.

The scope of this paper is nonetheless limited. Not only are we concerned with the broad meaning of genetic engineering, we also deal with human genetic engineering. Allied issues such as organ transplant, commercialization of human body parts, and blood transfusion as referred to in the National Health Act

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2014 would be discussed briefly. Therefore, the purpose of this study is to relate this concern to the development and the dignity of the human person in relation to the prospects of and challenges to anthropological development of health jurisprudence in Nigeria. For this, we shall deal with the ethical, social, human and legal concerns as they affect the dignity of the human person.

2. The *Concept of Man* for the Law: Anthropological Reflection

It is a truism that law is made for man and not man for the law. Accordingly, it is apt to enquire into the nature of man with a view to determining what sort of law and lawmaking would enhance his dignity and well-being. Man, says Ndiaye, is 'simultaneously the driving force and the subject of development'.[2] He plays an active role in the development both of himself and of his environment. At the same time, he is the beneficiary of such a process. It is also trite that one's view of man fashions his understanding of human development. There is no gainsaying the fact that the perennial debate between the proponents of 'vitalistic' and those of 'mechanistic' origins of human life[3] has each influenced the philosophical anthropology and theory of human development and dignity propounded and sustained by each camp. In the same manner, Lefevre observes that 'many of the disagreements about political, economic and social policy hinge on underlying conflicts about what man is and what he is meant to be'.[4] It therefore becomes necessary to study the concept of man which subject to our investigation will meet the criterion of being humanistic and at the same time integral.

The expression 'concept of man' is capable of several meanings. 'Concept' strictly denotes the simple intellectual representation of an object; its synonym is 'idea'. Today the term 'concept' is sometimes reserved for designating the idea as general or universal, by opposition to the term 'idea' which signifies a nature or 'essence'. Kant makes a distinction between the 'pure concepts' of the understanding which are independent of experience (concepts *a priori*), and the 'empirical concepts' which are purely experimental (concepts *a posteriori*). In relation to our study, however, the 'concept of man' refers, in the words of Claude Sumner, 'the sense of the philosophical view or apprehension, the *weltanschauung,* the way of looking at man as a whole, of considering him in his nature and properties'.[5]

Throughout the history of philosophy, the concept and conceptions of man have never enjoyed any '*consensus ad idem'*. Ancient western philosophy did not begin with the study of man. Earlier Greek philosophers were chiefly interested in the object, the physical world, the not- self. They were concerned with the primordial question: *Ex qua materia constituiti mundi* (Of what material is the world made)?[6] Caird observes that the mind of the ancients was 'too busy with the object to attend to itself'.[7] The ancient Greek thinkers were therefore labeled cosmologists whom one might describe as primitive scientists. They further went beyond appearances to thought and sought to find unity in the diversity and multiplicity exhibited in the cosmos in order to determine the ultimate principle of all things. Their opinions differed as to the character of this unity, but they all held it to be material, so that, in a certain sense they may be termed materialists. Claude Sumner, however, holds that 'they were not materialists in the modern sense of the word, since the opposition between spirit and matter had not yet been grasped'.[8] Be that as it may, our considerations of the ancient Greek thinkers are relevant to the extent of the academic importance of the fact that determination of the nature, properties and the concept of man were outside their primary preoccupation. At best, they regarded man as part of the natural cosmos.

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[2]Mamadou Ndiaye, *Conception of man and Development: A Muslim Viewspoint* in H. Dobers, W. Erl, A. Khoury, and A. Ndam Njoya (eds) *Development and Solidarity: Joint Responsibility of Muslims and Christians* (Mainz: V. Haze & Koehler Verlag, 1985), p. 39.

[3]While the vitatists have considered life as an absolutely originary phenomenon irreducible to matter, the mechanists see life as a derived phenomenon, which finds in matter all the sufficient reasons of its appearance. See Battista Mondin, *Philosophical Anthropology* (Rome: Urbaniana University Press, 1991), pp 26-32.

[4] Perry Lefevre, *Understandings of Man* (Philadelphia: The West- Minister Press, 1977), p. 16.

[5] Claude Sumner, *Philosophy of Man* Vol. 1 (Addis Ababa: University College Press, 1962), pp. 23-24.

[6] See W.K.C. Guthrie, *A History of Philosophy*, Vol. 1 (Cambridge: University Press, 1962), pp. 1-25.

[7] Caird, *Critical Philosophy of Kant*, Vol. 1. P.2 Cited in Claude Sumner, *Op. Cit.*, p. 75.

[8] Claude sumner, *Op. Cit.*, p. 75.

It was not until the arrival of the sophists, Socrates and especially Plato that man became an object of study. Owing to Pythagorean influence, Plato in his *Phaedo* held an uncompromising affirmation of spiritualism and dualism where the soul of man is taken to be imprisoned in the body. Hence, life acquires a greater value as the immortal soul is freed from the concerns of the body. For Plato, man is essentially soul, spiritual and incorruptible, and therefore certainly immortal. No doubt, the inevitable result of such a Platonic anthropology would lead to a lopsided view of human development which will hardly be integral. At best, it can only promote the spiritual faculties of man; but at worst, it would be an antithesis to the physical growth of the human essence. Other anthropological discourses of Plato can be found in the *Phaedrus* and *The Republic.*

Aristotle, the disciple of Plato, defines man as a rational animal and sees him as primordially a political entity. The idea of the 'good life' for man which he holds dearly is capable of being realized only in the state. Thus, according to Aristotle 'he who by nature and not by mere accident is without a state is either a bad man or above humanity',[9] and 'he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god'.[10] Thus, politics and, we would add, law which regulates the conduct of men in the polity, are important to human development.

On another moment, Aristotle is bent on overcoming Plato's dualism. In his *hylemorphic* theory of matter and form, Aristotle describes man not as a composition of two separate substances but as a substantial unity of matter (body) and form (the soul). Without prejudice to this substantial unity of man, however, Aristotle still assigns greater importance to the soul as the form and the vital principle of the body. This observation is supported by the fact that his anthropological treatise bears the title *De Anima* (On the Soul). But this idea of substantial unity constitutes a difficulty for Aristotle to clearly defend personal immortality. Having divided the intellect into active and passive, he attributes immortality only to the former while the latter perishes with the body.[11] But it is clear that if the meaning of life cannot be extended beyond this earthly existence, then the meaning of each moment, as Alfaro opines, would be greatly compromised.[12] Yet, Onah suggests, that 'this view of man did not lead Aristotle to appreciate the equality of all men.'[13] This is perhaps why slavery is still allowed in Aristotle's thought-world. It is doubtful whether human development can be pursued along this philosophical model.

With the scholastics, a new leaf is turned for anthropological reflection. The background on which human activity develops is no longer that of nature as held by the early Greek thinkers but rather of the 'history of salvation'. Man is now studied and understood in relation to God. Anthropological discourses took on a theocentric turn. Of all the innumerable thinkers of this persuasion, St. Augustine of Hippo and St. Thomas Aquinas distinguish themselves for their originality and depth. With regard to St. Augustine who is an ardent Platonist, Mondin holds that 'the same dichotomy between soul and body, the reduction of man essentially to soul, the complete autonomy of intellective knowledge with respect to any contribution of the body'[14] still adorn the Augustinian anthropological landscape.

In the same vein, St. Thomas Aquinas makes more rigorous and systematic use of the philosophical analyses of his predecessors. He thinks that Plato offers a solution which is in substantial agreement with Christian faith in the Thomistic understanding of the time, though he deems it philosophically not satisfying. On the other hand, he knows that Aristotle's concept of man is philosophically much sounder although in some places incompatible with Christian revelation. For this reason, St. Thomas develops a new concept of man which has the following characteristics: Man is essentially composed of body and soul, but the soul is not subordinate to the body, rather the body is subordinate to the soul. According to this understanding, the soul possesses being directly, having its own 'act of being' (*actus essendi*) in

[9] Aristotle, *Politics* 1253 a 1-4, trans R. Mckeon (New York: Random House, 1941).
[10] *Ibid.,* 1253 a 27-29.
[11] Aristotle, *De Anima*, 429-430, trans R. Mckeon, *supra.*
[12] Juan Alfaro. Cited in G. I. Onah *A Concept of Man for a Developing Continent: A Search* in J. O. Oguejiofor (ed), *Africa: Philosophy and Public Affairs* (Enugu: Delta Publication (Nigeria) Ltd. 1998), p. 176.
[13] Godfrey I. Onah, *op. cit.,* p. 176.
[14] Battista Mondin, *op. cit.*, p.16.

which it makes the body a participant.[15] There is thus a profound and substantial unity between the soul and the body, precisely because their act of being is the same. But at the same time, Aquinas maintains that since the soul has a relationship of priority with the act of being, the death of the body cannot involve the soul. For Thomas Aquinas, therefore, the soul is of an immortal nature.[16]

Although the above Thomistic conviction is in consonance with the Christian dogmatic theology of the immortality of the soul, it can hardly meet the theoretical and logical parameters of the *hylemorphic* theory where the substantial form (in this case the human soul) must be united with the prime matter (in this case the human body) in order to give the secondary matter (in this case the human being, the body and soul together). Aquinas, however, had argued that the reason for the immortality of the soul is anchored on the fact of its direct priority with regard to the 'act of being.' But the burden of proof still lies on him to rationally demonstrate that his views on this matter are as a result of dispassionate and disinterested philosophical enquiry rather than as a consequence of his religious beliefs. How does a substantial form exist alone without the prime matter, and how does the substantial form not perish with the prime matter if each cannot exist alone? These are some of the questions that yearn for a more objective and rational answer. It appears it would be better to talk not merely of soul but of personal immortality or mortality as the case may be. This is due to the fact that it is not the soul alone but the unity of the soul and body that makes up the totality of a person. However, Aquinas' attempt to bridge the dualistic gap between the body and soul seems more amenable to common sense and human experience.

At the onset of the modern era, anthropological enquiry assumed an anthropocentric dimension. Man constitutes the *terminus ad quo* (point of departure) from which any philosophical project moves, and around which this project remains unceasingly polarized. With Rene Descartes, the father of modern philosophy, the critical enquiry which is the necessary starting point of every correct philosophizing has man as its object. The Cartesian *cogito ergo sum* means that the certainty of the 'I' who thinks establishes the existence of every being including God. In his '*Ethics*', Baruch Spinoza intends no other objective than to establish the scope of human life and the means to reach this scope. For him, man is made up of a body and a soul, namely, of the actual mode of extension, and of actual mode of thought which consists in the idea of this body.[17] David Hume in his *Treatise on Human Nature* wishes to offer a definitive picture of man as an individual. Unlike Berkeley whose man's existence can only be predicated on man's ability to perceive or be perceived (*esse est percipi aut percipere*), David Hume holds man to be a 'bundle of perception'. Being an empiricist to the core, Hume favours the physical and perceptive dimension of the human essence. Auguste Comte, on the other hand, seeks to present a complete picture of man as a social being. His idea that man must endeavour to outlive and jettison the theological and metaphysical stages of life in favour of the positive scientific stage exposes his predilection for and his placing a premium on the materialist aspect of man. Sigmund Freud studies man as a complex of libidos. Martin Heidegger and Ernst Block look at man as a quarry of possibilities. In the same manner, Gallen sees man as an animal that is not yet specialized.

Be that as it may, Mondin observes that 'modern philosophers while all starting from an anthropocentric perspective, still continue to elaborate anthropologies of a metaphysical character which are usually inspired by Plato.'[18] Such is the case, he observes, with the philosophies of Descartes, Blaise Paschal, Spinoza, Malebranche, Vico, and Leibniz.[19] A paradigm shift was, however, experienced in the study of man only after the writing of the *Critique of Pure Reason* by Kant who tried to prove the absurdity, in his own view, of the pretexts of metaphysics. According to Kant, the human knowledge cannot acquire an absolute knowledge: not of the world, nor of man, nor of God, entities which Kant consigned to the status of antinomies. The human mind cannot know the *noumenon,* he claims. It is only the knowledge of the practical moral character that is available to it. In line with these convictions, Kant sought to elaborate

[15] St. Thomas Aquinas, *Summa Theologiae*,1.qq.75-95.
[16] *Ibid.*

[17] Cited in C. Sumner, *op. cit*., p. 22.
[18] B. Mondin, *op. cit*., p.17.
[19] *Ibid.*

anthropology of a practical character, showing that man is essentially different being in his value, dignity and personal conviction. These ideas are contained in his *Anthropology from a Pragmatic Point of View* published in 1778. Kant subsumed all philosophical discourse into the realm of Anthropology. Thus, he writes:

> The field of philosophy can be enclosed in the questions: 1) what can I know; 2) what must I do; 3) what can I hope for; 4) what is man. The first question refers to metaphysics, the second to morals, the third to religion, and the fourth to anthropology ….basically all this could be reduced to anthropology, because the first three questions refer to the last.[20]

This Kantian critique of metaphysics, inter alia, has led to a revolution in the study of the concept of man. On the one hand, man becomes a subject not only of philosophical, but also of historical, scientific, cultural, sociological, psychoanalytic, phenomenological investigation. On the other hand, the modern and contemporary philosophers have obtained a whole new series of images of man: the 'anguished man' of Kierkegaard, the 'economic man' of Marx, the 'erotic man' of Freud, 'man as the will -to- power' in Nietzsche, the 'existent man' of Heidegger, the 'symbolic man' of Cassirer, the 'utopic man' of Bloch, the 'problematic man' of Marcel, the 'cultural man' of Gehlen, the 'incarnate spirit' of Mounier and Scheler, the 'fallible man' of Ricoeur. But this contemporary perspectival view of man is not a novelty in the history of philosophy. Ancient and medieval philosophical and historical terrains were also dotted with such a state of affair. Thus, while Aristotle would see man as a 'rational animal,' Sophocles would regard him as a 'chained Prometheus', and Plato views him as a 'fallen soul'. He is an 'image of the Logos' for Philo, an 'image of God' for Origen, a 'rational subsistent' for Aquinas, and a 'thinking reed' for Paschal.

There is no gainsaying the fact that the above anthropological views define man is his aspects. But man is according to Max Scheler 'a being so vast, so varied, so multiform, that every definition demonstrates itself as too limited. Man's aspects are too numerous'.[21] Sheed writes that 'the one road to the nature of man is by way of a consideration of what man does and what can be done to him and with him'.[22] This is compatible with the metaphysical maxim, *esse sequitur agere* (as a being is so does it act). We had argued elsewhere that 'there is an intrinsic connection between the rational soul and the human body'.[23] Operations of the soul are transferred to the workings of the body via the imagination. Man is not a mere animal packed with sensations as David Hume would hold. Neither is he simply sensual and libidinal as Freud would relish. Nor is his entire preoccupation sub-structured on economic foundation alone as Karl Marx maintains. Man cannot be defined *simpliciter* as evolutionary (Huxley and Chardin), existential (Kierkegaard), dialogic (Buber), sinful (Niebuhr), structural (Levi-Strauss). Man is more than each of these views for which he is essentially different from other living beings of earthly nature.

A more Kaleidoscopic view of man combines all of the above and even more. He is a *'homo scientificus'*, a '*homo technologicus'*, a '*homo economicus'*, but he is also a 'homo sapiens', a *'homo religiousus'*, a '*homo rationalis'*, a 'homo moralis', a '*homo politicus'*, a '*homo faber'*, a '*homo transcendentalis'*, a '*homo spiritualis'*, a '*homo eschatologicus'*, all together. He is both an 'animated body' and an 'incarnate spirit'. He is 'hypostatically' both spirit and matter together. It is for all this multi-faceted nature of man, that man cannot be treated as if he is defined only in one of his life-facets. The total man cannot accept a part for a whole. Genetic manipulators would risk committing the logical fallacy of composition should they regard man as a mere biological specimen only fit for scientific experiments even if those

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[20] Immanuel Kant, *Logic* 25A.

[21] M. Scheler, *Man's Place in Nature* (Milan: 1970), p.98.

[22] F.J.Sheed, *Communism and Man* (London: Sheed and Ward, 1976), p.95.

[23]IKE. Oraegbunam, "Modern Bio-Ethical Practices: An Onslaught to Human Dignity?", *The Focus*, No 4, 2002-2003, p.7. See also Karol Wojtyla, *The Acting Person* (London: D. Reidel Publishing Company, 1979), p.267. Karol Wojtyla, now St. Pope John Paul II, argues that "the nature of man is supposed to be rational and he is the person in virtue of the function of reason….".

experiments are construed to be for the benefit of man. Besides, man is a moral being. His conducts are also regulated by law.

It thus goes without saying that law making must reckon with the nature and being of man. With regard to the development of law, the important question of *who* and *what* man really is begs for an objective answer from law makers. This question must be the spring board from which any genuine legislation in Nigeria must derive if that legislation can boast of being relevant to the welfare of man and his development. It is therefore a very important submission of this paper that any integral and humanistic development of law in Nigeria must maintain a serious link through and with all these potentialities of man. A 'thread of Aryana' must be allowed to transverse the various faculties of man and seek to gather them in a unity. Any attempt to downplay or gloss over the importance of any dimension would lead to a partial development. It is for all this that the role of legislators is indispensable for human development and nation building. Yet, what is the criterion for a law that is geared towards human dignity and development?

It has often been said that law is an ass. Hence, law is Janus-faced capable of setting things right or putting things in disarray. Accordingly, law is a double-edged sword. However, the bad consequence of the use of law is an unfortunate human phenomenon. In spite of the myriad theories or schools of law, law is essentially an instrument of social ordering or engineering, to use the terms of Roscoe Pound. It is geared towards human development. After chiseling out the excesses of each theory of law, the collection of the respective residues would constitute an instrument of human progress which is the quintessence of any genuine humanism. Hence, natural law theory in its various strands emphasizes the universal and objective principle of morality, equity, fairness and justice. While that is appreciable, the non-enforceability of the legal regime surely constitutes a demand for the development of positivism.

Austinian positivism stresses the particularity and the relative nature of law, and hence suggests that law properly so-called is a command from a political superior to an inferior and backed up by sanction. On another hand, Kelsen's positivism enunciates a pure theory of law precipitating unto an unfortunately unidentifiable *grundnorm*. With its principle of efficacy and affectivity, Kelsen's view absconds from the materiality of the content of a particular law. Thus, it settles with the philosophy of 'once it is efficient and effective, then it passes the test of legality'. Perhaps, what is pretty about positivism is the emphasis on the need to enforce the law and step it down to the needs of particular society or jurisdiction. It is this societal and spatio-temporal context of the nature of law that positivism shares with its daughter-schools such as the sociological, the functional and the historical theories of law.

In its own turn, the economic theory following the inspiration of Marxism underscores that for any piece of legislation to qualify as law, that piece must be geared towards economic upturn. Marxism has put every social institution (education, religion, society, politics, law, etc.) on the foundation of economy considered by it as the substructure. Marxist *economism* is therefore a system that rises or falls with its many parts. However, after a possible surgery for a radical excision of its malignant organs and jettisoning them into the oceanic abyss, one may arrive at a safe Eldorado of the urgency and the importance of genuine economic development that is essential to human progress.

It goes without saying that genuine law and legislation constitutes a recipe for human development. Legislation and legal regimes must be made to respond positively to the demands of integral human well-being (*bene esse*). As a very dynamic tool for societal arrangement and organization, legislation must avoid the pitfalls of different strands of humanism, western or African. Law making must sort out the various needs of the peoples in their particular jurisdictions and respond to those needs. Law making especially in Nigeria and Africa at large must respond to human problems which as at the moment is constituted by lack of genuine freedom, want of social security, economic strangulation and poverty, maladministration, bad followership, autochthonous imperialism, corruption in high and low places, electioneering malpractices, and sundry ills. Hence, to arrive at genuine development of the person, the institutions of law making, law enforcement and law interpretation must be strengthened. Development and genuine interests of the human persons must be uppermost in the minds of the law makers. Selfish interest and egotism must give way to the spirit of service and sacrifice that are necessary ingredients for human progress.

3. Prospects and Challenges to Health Law in Nigeria: National Health Act 2014 in Focus

The Constitution of the Federal Republic of Nigeria 1999 (as amended) states that the 'government shall promote science and technology'[24] and 'encourage development of technological and scientific studies'.[25] The same Constitution provides the basis for the promotion of public health and public morality.[26] Hence, in the same piece of *grundnorm,* a pendulum of balance must be maintained between progress in science and ethical observance.

A little gaze can particularly be directed at the recently promulgated National Health Act 2014. Recently, President Jonathan signed into law the National Health Act 2014 which provides a framework for the regulation, development and management of a National Health System. Highlights of the law include the creation of several significant bodies, including the National Council on Health,[27] which would have responsibility for overall policy formulation on the protection, promotion and implementation of Nigeria's health policy as well as coordinating the sundry healthcare providers in the system which had hitherto operated in an unregulated environment. Interestingly, section 46 specifically prohibits a public officer from travelling abroad for the purposes of a medical check-up, investigation or treatment, at public expense, unless in exceptional cases on the recommendation of the medical board approved by the Minister (at the federal level) or Commissioner for Health in the states. Health is also classified as an essential service, with the clause that all disputes must be resolved within 14 days, otherwise the government or the unions could be held accountable for strikes embarked upon beyond this period.[28] Section 11 establishes basic healthcare provision fund. While Part III of the Act provides for the rights and obligations of users and healthcare personnel, Part IV provides for national health research and information system. More still, Part V of the Act deals with the development, training and distribution and management of human resources for health.

Yet, laudable as the above and more provisions are, it appears that some provisions of the Act especially in Part VI on the 'control of use of blood, blood products, tissue and gametes in humans', infringe on the right to health as guaranteed by Article 16 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[29] In other words, there seem to be provisions that are inconsistent with the fundamental rights to life, human dignity, privacy, and freedom of thought, conscience and religion. This is done by the provisions that authorize medical doctors to remove organs of living persons in Nigeria without their informed consent.[30] Falana buttresses this point by quoting sections 48 and 51 of the Act, which have made elaborate provisions for organ transplantation. It may be apt to reproduce these provisions:

> **48.** (1) Subject to the provision of section 53, a person shall not remove tissue, blood or blood product from the body of another living person for any purpose except;
> (a) with the informed consent of the person from whom the tissue, blood or blood product is removed granted in prescribed manner;

[24]Constitution of the Federal Republic of Nigeria 1999 (as amended), section 18 (2).
[25] *Ibid.,* section 21 (b).
[26] *Ibid*, section 45 (1).
[27] See section 4 of the Act. Other bodies created by the law include the National Health Research Committee to promote health research along with a National Ethics Committee (at state level also) to set and maintain standards and advise on ethical issues and the National Tertiary Health Institutions Standards Committee which will set criteria for tertiary health facilities. This committee is also empowered to investigate, advise on financial needs, collate, scrutinize and publish information, providing broad guidelines for the management of resources, monitoring and evaluating health facility performance through the analysis of annual reports submitted by the healthcare providers. The National Health Management Information Systems will coordinate the collation of health information systems at national and state levels, for the purpose of creating a comprehensive database while the National Blood Transfusion Service will regulate the procedure for blood transfusion.
[28] Section 45 of the Act.
[29] Cap A9, Laws of the Federation of Nigeria, 2004
[30]http://newsexpressngr.com/news/detail.php?news=8856&title=Falana-raises-the-alarm-over-legalisation-of-human-parts-sale-%E2%80%A2Demands-urgent-review-of-National-Health-Act,-2014. Assessed on 22/4/15.

> (b) that the consent clause may be waived for medical investigations and treatment in emergency cases; and
> (c) in accordance with prescribed protocols by the appropriate authority.
> (2) A person shall not remove tissue which is not replaceable by natural processes from a person younger than eighteen years.
> (3) A tissue, blood or a blood product shall not be removed from the body of another living persons for purpose of merchandise, sale, or commercial purposes.
> (4) A person who contravenes the provisions of this section or fails to comply therewith is guilty of an offence and liable on conviction as follows:
> (a) in the case of tissue, a fine of N1,000,000 or imprisonment of not less than two years or both; and
> (b) in the case of blood or blood products, a fine of N100,000 or imprisonment for a term not exceeding one year or both.

Section 48 (1) of the Act prohibits the removal of any tissue[31], blood or blood product[32] of any living person. The section however delineates the exceptions forming the conditions under which any of these materials can be removed. Paragraph (a) states that the informed consent of the living person can authorize the removal. Yet the Act does not define consent or informed consent. Black's Law Dictionary defines consent as an 'agreement, approval, or permission as to some act or purpose given voluntarily by a competent person'.[33] Consent can form a complete affirmative defence to certain torts such as assault, battery, defamation, invasion of privacy, conversion, and trespass. Sometimes, consent especially to a contract can be genuine and real even though it is induced by fraud, mistake or duress. However, the nature of consent required in section 48 of the National Health Act is 'informed consent'. This connotes 'a person's agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives'.[34] In relation to doctor-patient relation, informed consent evokes the idea of 'a patient's knowing choice about treatment or a procedure, made after a physician or other healthcare provider discloses whatever information a reasonably prudent provider in the medical community would provide to a patient regarding the risks involved in the proposed treatment'.[35] Yet it does appear that the living person from whom the tissue, blood or product is sought to be removed is not restricted to a patient given the expression '…from another living person', who may not be a patient or even sick. There is no doubt that the 'informed consent' required by the Act presupposes real knowledge and real volition. This is true as one cannot will without knowing what object he is concerned with, without being master and therefore conscious of the act he is to perform in order to realize the aim, and without evaluating the action in its concrete nature. Apart from the intellectual constituent of consent, the volitional dimension denotes voluntariness and the element of free choice with regard to the concrete object in which the good is sought. It is mainly in this volitional constituent that the act of giving informed consent assumes a human and free act.

Be that as it may, the question of the extent to which one may allow the removal from him, of any tissue, blood, or blood product is still an ethical matter that rears its head. There may not be any issue with one consenting to donate pines of blood for the treatment of a patient or anyone who requires it on the prescription of an authorized and competent medical practitioner sequel to a correct test of hemoglobin level. But issues would definitely arise in relation to the removal of tissue or blood products. Section 64 of the Act defines 'tissue' to include flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but

[31] "Tissue" means human tissue, and includes flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete (section 64 of the Act).
[32] "Blood product" means any product derived or produced from blood, including circulating progenitor cells, bone marrow, progenitor cells and umbilical cord progenitor cells (section 64 of the Act).
[33] BA Garner (ed.), *Black's Law Dictionary*, 7th Ed. (St.Paul, Minn., West Group, 1999), p. 300.
[34] *Ibid.*
[35] *Ibid*.

excludes blood or a gamete. The Act also defines 'blood product' to mean any product derived or produced from blood, including circulating progenitor cells, bone marrow, progenitor cells and umbilical cord progenitor cells.[36] There is no gainsaying that what are represented in the terms 'tissue' and 'blood products' are vital parts of a human body removal of any of which may result to grave health consequences. Therefore, it does seem that even after sufficient information is given to one in view of obtaining one's consent, it is doubtful if the same one may be ethically allowed to give such a consent at the risk of subsequent ill health or loss of vital tissue or blood product. No wonder section 48 (2) of the Act prohibits the removal of tissue, blood or blood products from any living person under the age of eighteen once the material cannot be replaced by natural means.

Paragraphs (b) and (c) state that the consent clause may be waived for medical investigations and treatment in emergency cases; and in accordance with prescribed protocols by the appropriate authority. These provisions are quite disturbing. Given the way they are couched, they clearly dispense with the requirement of informed consent or any consent whatsoever of the person from whom the tissue, blood or blood product is sought to be removed. They indeed waive the consent unilaterally. All that is required is need for medical investigations and treatment in circumstances of emergency following the prescribed protocols by the appropriate authority. While sometimes this dispensation or waiver of consent may be done in utmost good faith in accordance with real real demand of an emergency situation, it is subject to grave abuse at other times. It is apparent that since all hospitals and other medical establishments have been mandated to admit and treat all persons in emergency situations,[37] the Act may have licensed medical personnel to engage in unauthorized or even authorized surgical operations for the purpose of removing vital organs of living persons. Even though there are stringent penalties for commercializing any organs removed from any living person,[38] why should the consent of the donor be dispensed with? This attitude is particularly suspect. In other developing countries where similar legal regime exists, organs removed from living or dead persons are sold and transported to western countries where they are in high demand. There seems no reason to believe that the contrary would be the case in Nigeria where corruption thrives.

Nonetheless, the entire provisions of section 48 (1) are made subject to the provision of section 53 of the Act:

> **53** (1) It is an offence for a person:-
> (a) who has donated tissue, blood or a blood product to receive any form of financial or other reward for such donation, except for the reimbursement of reasonable costs incurred by him or her to provide such donation; and
> (b) to sell or trade in tissue, blood, blood products except for reasonable payments made in appropriate health establishment for the procurement of tissues, blood or blood products
> (2) Any person found guilty of an offence under subsection (1) is liable on conviction to a fine of N100, 000 (one hundred thousand naira) or to imprisonment for a period not exceeding one year or to both fine and imprisonment.

The intendment of section 53 is obvious, namely, to prevent commercialization of the human tissue, blood, or blood products. Hence, not even the person who donated the material in allowed vide subsection (1) (a) to demand and collect an unreasonable amount of money as reimbursement for the donation. In the same vein, paragraph (b) of the subsection prohibits and person whatsoever from selling or trading in human tissue, blood or blood products save and except for reasonable payments made in appropriate

[36] Section 64 of the Act.

[37] See National Health Act 2014, Section 20 (1): A health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason whatsoever. (2) Any person who contravenes this section is guilty of an offence and is liable on conviction to a fine of Nl00, 000.00 (one hundred thousand naira) or to imprisonment for a period not exceeding six months or to both.

[38] See section 48 (4) (a) and (b) of the Act

health establishment for the procurement of the needed material. The combined reading of the provisions of section 53 (1) of the Act and those of section 48 (3) which criminalizes the removal of tissue, blood or a blood product from the body of another living persons for purpose of merchandise, sale, or commercial purposes would result to a plus for human dignity. Yet the penalty of mere fine of one hundred thousand naira or imprisonment not exceeding one year or even both the fine and imprisonment is not commensurate for the offence of commoditizing any of the enumerated materials.

Furthermore, section 50 places a ban on manipulation, importation and exportation of human gametes, zygotes, or embryos. These would involve cloning, artificial insemination, in vitro fertilization, surrogate motherhood, hybridization, etc. Section 50 provides thus:

> **50.** (1) A person shall not:-
> (a) manipulate any genetic material, including genetic material of human gametes, zygotes or embryos; or
> (b) engage in any activity including nuclear transfer or embryo splitting for the purpose of the cloning of human being.
> (c) import or export human zygotes or embryos.
> (2) Any person who contravenes a provision of this section or who fails to comply therewith is guilty of an offence and is liable on conviction to imprisonment for a minimum of five years with no option of fine.

In July 1978, the birth of Louis Brown, the first test tube baby, became a historic event of profound significance both in embryology and in bioethics. Developments in these areas have, since, been rapid and extensive, and their implications for the dignity of the human person are not difficult to see. Attention and concern have been given to these developments by many especially Christians and other moralists. These developments have been subsumed under the general title known to all as genetic technology or engineering.

For many years of existence, animals including human beings, begot their likes through sexual reproduction given by sexual intercourse. But with Francis Bacon's dictum, namely, 'knowledge is power', which lay at the dawn of modern science in the 16th century, medical doctors and biologists began to research on other means of human reproduction in order to increase their knowledge. Their research has yielded many 'fruits' which include: Artificial Insemination (A.I), In Vitro Fertilization (IVF), Surrogate Motherhood and Womb leasing, Artificial Womb and Artificial Placenta, Hybridization, Cloning, etc. To what extent can man be in control of his own genetic fate? What is man to presume to be in control of his own evolution by conscious manipulation of his genetic constitution?

Any manipulation of, or experimentation of human genetic system especially when it touches human reproduction is expected to raise some dust; indeed, genetic engineering raises questions of extreme significance both in ethical and socio-legal dimensions. For instance, when man 'manufactures' his like in the laboratory, what will become of normal understanding of the human person? What of the social importance of human parenthood? What can we say about his socio-cultural identity? What would become of our religious belief in the divine origin of human life? How again do we determine legitimacy and illegitimacy? Those questions inevitably led to others: To what extent can man be in control of his own genetic fate? What is man to presume to be in control of his own evolution by conscious manipulation of his genetic constitution? Is man any higher than a mere biological specimen in a biological laboratory? Who is man, and what makes him a person? These questions are indicators to the seriousness of the nature of the issue they provoke.

Modern science is usually regarded as an embodiment of progress. Some see modernity as an era of progress. But a closer look at some of the researches and discoveries will reveal a myriad and a plethora of ethical and social degenerations, and thus a 'venture into a tunnel of madness'.[39]

[39] L'Osservatore Romano, Sept. 2002, p. 7.

The question of artificial insemination either by husband or by donor has not failed to raise further questions. While some argue that it can be justified, others hold that it is not justifiable for moral beings. The arguments of the pro-AI are: that procreation is completely separated from conjugal love; that if it is a question of doing more good than harm as having child to childlessness, A1 is justifiable; that there can be parenthood without begetting children by sexual intercourse. These arguments appear plausible but when subjected to plain reasoning, social demands, the very meaning of human family, procreation and love, and above all to the will of the divine founder who created 'them male and female'[40] in order that the later will be a helpmate to the former[41], we see these arguments faulting. For instance, both Artificial Insemination by Husband (AIH) and Artificial Insemination by Donor (AID) involve masturbation to obtain the male seed. But masturbation is immoral.[42] Again, separating the conception of the child from sexual intercourse would tend to biologise and depersonalize human marriage.[43]

Furthermore, AID particularly is morally objectionable for so many reasons. AID, even with consent, is a violation of the marriage covenant, and especially in matters of grave necessity to have a family. It breaks the bond of covenantal fidelity between couples. Since the child is the embodiment of the abiding and unitive love of husband and wife, AID takes procreation out from the intimacy of this loving union and isolates it in a sphere beyond this intimacy. And parenthood ought not be separated from the act of generation, for it is a natural consequence of the act of generative love.[44] Again in AID, the donor is anonymous, and in that, violates the right of the child to know him and his love. The donor exercises his fatherhood but refuses to accept its responsibility.

In Vitro fertilization (IVF) is another area of great moral concern. While some scholars argue for it in matters of infertility, others like those of Judeo-Christian affiliation reject it in all cases. It involves masturbation in order to obtain sperm. Even between husband and wife, it inevitably involves elements which are plainly morally questionable, for instance, the production of extra or 'spare' embryos which are then used for experimentation and discarded later on. Furthermore, the exposure of the embryo will result to a grave risk of damage or even of death. Worse still, IVF outside marriage is bound to be immoral because of the active presence of a third adult within the sexual partnership of marriage.

Surrogate motherhood is an extension of AID, and womb leasing, an extension of IVF. If this is so, then the arguments against AID and IVF are as matters of grave necessity for the childless couple to raise family. But it appears that such scholars are ignorant of the time-honoured and abiding ethical principle which states that bad means must not be used to get at a good end.

Another area of great ethical and socio-cultural concern is the question of hybridization. Hybridization in case of human beings elicits from most of us an instinctive rejection and is a gross affront to human dignity. Hence one would be hard-pressed to find reasons and purposes significant enough to justify even attempting such a project. It would lead to a blurring of the species boundaries and makes man's identity unclear. Hence ethicists regard this possibility as repugnant and morally objectionable.[45]

On artificial womb, it would seem difficult to fault this extension of the incubator system on moral grounds if it is used based on therapeutic purposes. But quite different would be the case where no attempt is made to use the mother's womb for pregnancy but recourse is made immediately to the artificial womb after IVF has been achieved. If this is done merely for purposes of research, it would be difficult to see any justification for it. The risks to child's life and health and to the psychological and emotional relationship with the mother would be serious and are sufficient to move more ethicists to rule out the issue of artificial womb or placenta.

With technical advance in science of genetics, sex selection, where a couple even in the early stages of pregnancy can know the sex of the foetus, is made possible. The great moral risk here is that this sex selection will inevitably lead to abortion of the non-selected pre-born. Abortion we know is gravely

[40] Gen. 1: 27 in *Christian Community Bible* (Claretian Publications, Philippines, 2009).
[41] Gen. 2: 18 in *Christian Community Bible* (Claretian Publications, Philippines, 2009).
[42] The Catechism of the Catholic Church, n. 2352
[43] William, Cosgrave, "Recent Moral Thinking on Human Genetic Engineering" in *Doctrine and Life*, Oct, 1984, p. 442
[44]Fagothey, A., *Right and Reason: Ethics in Theory and Practice* (Ohio: Merril Publication Co., 1985) p. 338.
[45] Social Welfare Commission, Human Fertilization, 23

immoral.[46] Again, such practice of sex selection can lead to an imbalance of sexes in the general population, as people tend to choose male offspring more often than girls. This would definitely lead to social problems.

Moreover, the more recently breakthrough which seems to be the crescendo in genetic engineering is in the question of cloning. Section 50 0f the Act prohibits cloning. When in September 1993, George Washington University researchers especially Jerry Hall and Dr. Robert Stillman attempted first cloning of human embryos, 17 microscopic human embryos were multiplied into 48. Cloning would mean producing 2, 6, 12, 24 persons *that seem the same person* simultaneously.[47] The grave moral danger about cloning is that it tends to undermine marriage and family by severing the bond between marital love and procreation. It digs shatteringly into human parentage, genealogy, legitimacy, inheritance and socio-cultural identity[48] and individuality. In addition, there would be problems about the control of the cloning process, selection of donors and the limits on its use.

Before we conclude this section, it is worthwhile to mention that those who support these forms of artificial means of reproduction base their arguments on infertility and grave necessity for a couple to have children. But then as we argued elsewhere, morally bad means could not be used to reach good ends. This is an ethical principle. Some say that necessity knows no law. Yes! This may be a 'popular' maxim but can hardly stand as a good moral law. Precisely because man is imperfect and naturally tends towards a metaphysical finality to the first cause, the infinite, as the ultimate end, everything does not end here. Man aspires for something ultramontane. Besides, these artificial human reproductive means have implications for the dignity of the human person.

It may be apt to note that the combined effect of sections 48 and 51 of the Act is slightly better than that of section 51 (1 & 2) of the first Bill which contained the statement '…without prior written approval of the Minister'. Section 51 of the Bill is in *pari materia* with the provision of section 50 of the Act, save and except the statement '…without prior written approval of the Minister', which statement was expunged in the eventual Act due to prolife protests from some civil society groups and professional associations. Section 51 (1) of the Bill states:

> (1) A person shall not without the prior written approval of the Minister:- (a) manipulate any genetic material, including genetic material of human gametes, zygotes or embryos; or (b) engage in any activity, including nuclear transfer or embryo splitting, for the purpose of the reproductive cloning of a human being, and that
>
> (2) No person shall import or export human zygotes or embryos without the prior written approval of the Minister on the recommendation of National Ethics Research Committee.'

Various health professional bodies in Nigeria, including the Pharmaceutical Society of Nigeria (PSN), Health Workers Association of Nigeria, Association of General and Private Medical Practitioners of Nigeria (AGPMPN), and the Association of Medical Laboratory Scientists of Nigeria (AMLSN) urged the President not to assent to the Bill. But the greatest opposition came from the Knights of St. Mulumba. According to the Knights, the above provisions enable the Minister to play God, with unbridled powers to grant life and death to human embryos, harvest human egg and sperm, and even do business with them. In their words: 'Simply, the section is aimed at legalizing the manipulation, aggression and violence against Nigerian children, embryos and zygotes. A mere written permission from the Health Minister is all that is required for any person to have full legal backing to manipulate any genetic materials, including genetic material of human gametes, zygotes and embryos, import and export human embryos, as well as conduct any experimentation for human cloning and other purposes. 'Section 51 grants unquestioned and

[46] The Catechism… nn. 2270-75

[47] *Time International*, Sept. 1993

[48] Iroegbu, P., *Enwisdomization and African Philosophy* (Owerri: International University Press, 1994) p. 69.

unaccountable powers to the Minister of Health. Through his written permission, he allows whomsoever he wishes to engage in any activity such as nuclear transfer, embryo splitting for the purposes of the reproductive cloning of a human being. These are activities that are morally and socially objectionable and a cause of serious concern, conflict and regulation in developed countries. 'The Health Bill empowers the Minister, through his written permission, (with or without the non-binding recommendation of National Ethics Research Committee), to grant a license to any person or group of persons to import or export Nigerian human zygotes or embryos to foreign countries for whatever purposes including cloning (therapeutic or otherwise), sale or as a gift to communities in countries with restrictive laws against such practices. 'Introducing Section 51 through the back door is treacherous and lacking in respect for the life of Nigerians and human society. This enigmatic clause is an affront on the dignity of man. The merchandising and trafficking on human gametes, zygotes, embryos or human cloning should be banned outright and not left to the whims and caprices of the Minister of Health. 'The Knights also condemned other activities of the Health Minister, whom they alleged has been hobnobbing with the United Nations Population Funds (UNPFA), and promoting various questionable projects and programmes that have nothing to do with the health needs of Nigerians, like aggressive free distribution of contraceptives, including injectable contraceptives, in all public health centres and institutions in Nigeria which he flagged off in April 2011.In conclusion, the Knights of St. Mulumba restated the deplorable state of the health sector in Nigeria, arguing that as it is, attaining the health-related Millennium Development Goals (MDGs) is virtually elusive, given that health indicators in the country remain abysmal. While calling on the President not to succumb to the intense pressure from self-serving groups from within and outside Nigeria who are asking him to sign the Bill, but to withhold his assent until all the anti-life and other retrogressive clauses are expunged, they insisted that 'the Health Bill in its present form is an invitation to more crises in the health sector. Nigerians deserve a Health Bill that will guarantee the health of all Nigerians.'[49] We thank God the above protest yielded the desired result at least to some extent.

More so, section 51 of the Act is again relevant to issues on human dignity. The provisions are restricted to transplantation of tissues from one living person to another. By virtue of section 64 of the Act, 'human tissue' includes flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete. Organ would include heart, kidney, lung, liver, pancreas, and so on. Section 51 states as follows:

> **51.** (1) A person shall not remove tissue from a living person for transplantation in another living person or carry out the transplantation of such tissue except:-
> (a) in a hospital authorised for that purpose; and
> (b) on the written authority of:
> (i) the medical practitioner in charge of clinical services in that hospital or any other medical practitioner authorised by him or her; or
> (ii) in the case where there is no medical practitioner in charge of the clinical services at that hospital a medical practitioner authorised thereto by the person in charge of the hospital.
> (2) The medical practitioner stated in subsection (1) (b) shall not be the lead participant in a transplant for which he has granted authorization under that subsection.
> (3) For the purpose of transplantation, there shall be an independent tissue transplantation Committee within any health establishment that engages in the act and practice of transplantation as prescribed.

The provisions of section 51 regulate medical treatment of patients via transplantation.[50] A look at the above provision reveals that the type of transplant envisaged is homograft, that is, transplantation from a

[49] See http://nigerianorientnews.org/2011/10/09/the-national-health-bill-controversy. Retrieved on 06/03/12.

[50]Transplantation of organs is a relatively recent surgical procedure. The first experiments with skin grafts were made in 1923-4. The first successful human renal homograft was carried out between adult identical twins in 1954. The first human heart transplant took place in 1967. It was only later that liver, kidney, pancreas and lung transplants took place. See generally *Newsweek*, Sept. 12, 1988; J. Mahoney, *Bio-ethics and Belief* (London: Sheed & Ward, 1988) 119.

human being to another human being. It is however restricted to living human beings even as homograph can also take the form of transplantation of tissue from a deceased person[51] to a living human being. The provision is completely silent on autograft meaning transfer of a tissue, say skin or bone, from the body of a person to another part of the same person's body, which practice is always justified for any reason of health. The provision is also silent on heterograft which refers to transplants of animal tissue to a human body, which practice may be permissible as long as they do not effect changes in the identity of a person.[52]

The Act clearly refers only to homograft from a living person to another living person. Ethically, it appears that while skin and bone marrow grafts have been lawful, the permissibility of the transplantation of major organs was at the beginning a matter of controversy. This controversy has recently become history. Among the major organs, kidney transplant was easily allowed since man has two kidneys one of which can fully function to sustain human activities. This is also the case with the liver which can regenerate itself in a rather short time. In the last analysis, there is no difference in principle among the different kinds of transplantations. The justifying reason is the same for all provided the transplants are in accord with good medicine, that is, as long as the donor does not suffer serious harm.

Section 51 of the Act is concerned mainly with the transplantation venue, and requisite authorization required by a person intending to conduct transplantation. Subsection (1) (a) states that transplantation shall take place only in a hospital authorized for that purpose. However, the Act does neither present the list of authorized hospitals in that regard nor set out the procedure for the application and grant of such authorization. Paragraph (b) of the subsection demands a written authorization from a medical practitioner in charge of clinical services in that hospital or from any other medical practitioner authorized by the medical practitioner in charge of clinical services. It does appear that the intendment of paragraph (b) (ii) is that once the authorizing medical practitioner is not working in the hospital where the transplant would be conducted, then that medical practitioner would need to be authorized by the medical practitioner in charge of the hospital rather than by the medical practitioner in charge of clinical services. By virtue of subsection (2) of the section, the medical practitioner stated in subsection (1) (b) shall not be the lead participant in a transplant for which he has granted authorization under that subsection. The reason for this provision is no doubt to engender a dispassionate and independent decision as to the authorization for a transplant. This is particularly necessary to avoid hasty and *unmedical* rush to transplantation of tissue from one person to another due to some extraneous reasons. Subsection (3) appears to angle for expertise and strict adherence to both the medical and legal procedures.

It is nonetheless curious that section 51 of the Act does not advert to the necessity of the informed consent of the person from whom the transplantation would be carried out. We think that informed consent of the person is germane in the light of the possibility of merchandise or trade in human parts, say kidney, especially from the poor live donors in developing nations like Nigeria. It goes without saying that marketing in human parts might develop with all the shady methods of bargaining and exploitation that go with it. There is no reason to believe that in Nigeria where sale of babies is gaining currency some

[51] Heart and lung transplants have as their exclusive source, and kidney, liver, pancreas and cornea transplant as their main source the bodies of deceased persons [See K.H. Peschke, *Christian Ethics*, Vol. 2 (Bangalore: Theological Publications in India, 1996) p. 270]. This surely raises the question of when precisely a person can be considered dead, especially in the light of the fact that a person's vegetative life can today be sustained by a machine. It seems it falls primarily upon the competence of the physicians to decide. They generally agree that a person is dead when total and irreversible function of the brain activity is clinically proven. This is consistent with the National Health Act 2014 definition of death as 'brain death' (See section 64). Yet controverted is the question whether brain death would be had if only the higher neocortical centres, on which human thought processes depend, cease to function. Some disagree with this as medically and ethically unacceptable, and hold that death should not be certified as long as the patients are able to maintain spontaneous breathing and heart beat (see O'Rourke/Brodeur, *Medical Ethics*, Vol. 1, I, c. 133). In spite of the debate, it seems it is supported by ethics that the criterion of brain death should be used only when a transplant is anticipated (K.H. Peschke, op. cit., 272). The World Medical Association evolved the principle which states that in order that death be fully assured before organ transplantation from a deceased person, the decision that death exists should be made by two or more physicians and physicians determining the time of death should in no way be immediately concerned with the performance of the transplantation (see *British Medical Association News*, October 1968).

[52] Such serious changes in identity would surely result at the transfer, for instance, of sex glands from an animal or deceased person to a living person.

people would not engage in the sale of human vital organs in return for financial compensation. Indeed, it appears that sections 48 & 51 of the Act were introduced to the Bill due to pressures from some Western countries. No wonder Falana regards sections 48 & 51 of the Act as 'immoral and illegal', calling on the National Assembly to repeal them 'without any delay.'[53] It is strongly suggested that the status quo before the enactment of the law whereby a donor of an organ had to give his/her informed consent should be restored, emergency or no emergency.

Beside the National Health Act, some medically related laws and bills like Women Reproductive Rights Bill[54], and Legalization of Abortion Bill[55], some of which have been passed in the Parliament leave much to be desired. It should be reminisced that some time ago, the Anambra State House of Assembly rushed to pass Women Reproductive Rights Bill[56], which later received executive assent. This was not to happen in Imo State where the presentation and attempt to pass a similar bill were killed by pro-life protests. A careful reading of the bills would reveal that some sections[57] empower the state government to authorize abortions in the state. Many yearned for an urgent need to reverse these anti-life laws.

4. Genetic Medicine and Implications for the Dignity of the Human Person

When we talk of person, it may not reasonably be clear to people of what is meant. This may partly be due to an abiding association of the term with the Christian speculation on the Trinity and the incarnation of the 'logos' which are not anything short of mysteries in the intellectual framework of Christian dogma. Be that as it may, the definition given by Boethius arguably stands the test of time: 'A person is an individual substance of a rational nature'. This definition repeated and commented on through the whole medieval period is explained to mean that the person is not 'a what' but 'a who'. A person is not an object but a subject, not a thing but a self, who has the mastery of his own acts, self-owned, self-possessed, self-controlled with a uniqueness that is incommunicable to anything else. Biblicists argue that the human person derives his dignity from his createdness in the 'image and likeness of God'.[58] The merely animal is not so created. A profound consideration of personhood will certainly underscore a connexion with human dignity. Man is a person. Boethius pins this dignity on the rational nature of man. Rationality then becomes the distinguishing mark of the 'Persona', the *prosopon*. The human person is of a composite nature. Among all persons (including God and angels), man is the only one gifted with the union of body and soul. It is this *hylemorphic* unity, to use Aristotle's language that forms the metaphysical and anthropological foundation of the theory of interconnectedness of rights that are enjoyed by man, for instance.

With this understanding of the person, one is confronted with the question of rationality of some of the developments in genetic engineering. With the artificial means of human reproduction, the ethos of a theocratic reproductive culture is now given a man-made alternative. The inevitable result would be the loss of our basic religious belief about human origin. There would be dilapidation of the mysteries that surround human nature, the destruction of human dignity, cultural individuality, and destiny. In 'test tube babies the number of embryos 'manufactured' is frequently greater than is necessary for implantation in the woman's uterus (womb). These 'spare embryos' are then destroyed or used in researches. The concern here is that the human being becomes a mere object of biological research like a rat. We consider this a shame on humanity. Even in the case of freezing the 'spare embryos' in order to preserve the life of another (cryopreservation), there is an offence against the respect due to human beings by exposing them to grave risks of death or harm to their physical and human integrity, and depriving them at least temporarily of material shelter and gestation, hence placing them in a situation in which further offences

[53]http://newsexpressngr.com/news/detail.php?news=8856&title=Falana-raises-the-alarm-over-legalisation-of-human-parts-sale-%E2%80%A2Demands-urgent-review-of-National-Health-Act,-2014. Assessed on 22/4/15.

[54]The bill is still before the National Assembly. Majority of women rights groups following the resolutions of Cairo and Beijing Women Conferences is very much in favour of the passage of this bill.

[55]This bill is still before the National Assembly. Some state legislatures have passed and their governors assented to similar bills as the matters are in the concurrent legislative list.

[56]See the Women Reproductive Rights Law 2006 of Anambra State of Nigeria.

[57] See section 6 of the Women Reproductive Rights Bill of Imo State of Nigeria.

[58]Gen. 1: 26

and manipulations are possible. Also, scientific research has confirmed that the survival of the already implanted embryo is to a greater proportion doubtful relative to natural reproduction. For instance, there are cases of congenital malformed babies, multiple pregnancies and premature births.

Again, even though cloning of the human has received the acclamation of being a 'nice job' from a part of the scientific community, we still join some others, scientists and other scholars alike, to see it as an assault to human dignity. It is not so much a question of the confusion of personal identity that is in cloning, as some tend to hold, because the person and the soul are also shaped by lifetime experiences and spatio-temporal conditions as is the case of identical twins, triplets or quadruplets naturally conceived. Rather the question lies in the conscious toying and reification of the human person, and playing God in an effort to get perfect individuals of say chosen Intelligent Quotient, height, complexion, etc. It seems that in cloning, a war is waged against the human person in the 'egoistic economic ambitions and gross financial abuses that are involved in the use or abuse of the human being.'[59] Human beings are sold and bought. It appears to be some kind of slavery.

The case is not a mild one for surrogate motherhood and womb lending. In these practices there is confusion if not a sheer malapropism introduced into the emotional and psychological life of the child and his relationship with his rightful parents. In these, the person, that is the child, is not only pulverized emotionally, traumatized psychologically but also is confused about which set of parents as he has two from whom to seek for love that becomes his inalienable right by virtue of his being born at all.

The issue of hybridization, I do not think, is worth spending time on as it is from the onset a destruction of the human specie in its bid to make an alloy of a human being and an infra-human being. It is a non-sense!

It may not be surprising to see that those who argue for all these means of artificial reproduction are of the understanding that human embryos are not human beings. But precisely because the fertilized ovum has the human chromosome pattern containing all the inheritable factors, and can never grow into anything but a human being, the human embryo is nothing else but human. Those who argue against this must re-examine their stand.

The immorality of the genetic manipulation of human beings is evident. Any technique that considers the human body as a mere complex of tissues, organs or functions, nor to evaluate it in the same way as the body of animals is condemnable. The human body should be seen as the constitutive part of the person who manifests and expresses himself through it.[60] There is an intrinsic connection between the basis of the person, which is the rational soul, and the human body. Operations of the soul are transferred to the workings of the body via the imagination. Man is not a mere animal packed with sensations, as David Hume would hold. Neither is he merely sensual and libidinal, as Freud would relish. Nor is he only economic (Marx), evolutionary, (Huxley and Chardin), existential (Kierkegaard), dialogic (Buber), sinful (Niebuhr), structural (Levi-Strauss). Man is more than each of these anthropological views for which he is essentially different from other living beings of earthly nature. In a sense, he is a combination of all these and more. Hence, any research and discovery in science and technology require, for its own intrinsic meaning, an unconditional respect for the fundamental criteria of moral law. That is to say, it must be at the service of the human person, of his inalienable rights and his true and integral good according to the design and will of God'.[61]

[59] P. Iroegbu, *op. cit*. p. 67.

[60] J. Ekennia, "Genetic Engineering and the Future of Man" in *The Pointer,* Vol. 5, n. 2, 1996, p. 12

[61]Flannery, Austin (ed.), *Vatican Council 11, The Conciliar and Post-Conciliar Documents (*Collegeville: The Liturgical Press, 1975), *Gaudium et spes*. n. 35

5. CONCLUSION

In man, person and nature differ. Person is unique and unrepeatable, while nature is participated in by many. The unique person wishes to present himself in the uniqueness of person rather than in the common humanity of nature. Hence, the human veils the nature in order to enhance the uniqueness of the personal. The animal is completely at home with nature by virtue of which it does not for instance wear dress nor has table etiquette. On the other hand, the human person is not completely at home with nature. He manifests this by hiding the merely appetitive in the gracefulness of a human act, say, in improving on his nature as in table etiquette. Hence he is free and seeks to have mastery of his actions. Because of this, man must not be treated as a mere object, a thing but as a self, a subject, a person created in God's image.

Truths of science are only an aspect of the whole truth about man. Lonergan holds that such truths are only provisional. Reflection and consideration must then be given to the metaphysical, ethical, social, and religious truths about man. Man in his mystery goes beyond the sum of his biological characteristics. As a unit, his biological life, even though separable, must not actually be separated from the spiritual and the social, for to do so would atomize the corporate understanding of the human. The human body should not be used as mere object of experiment.

Genetic engineering would be very rational if it is channeled to the improvement of genetic medicine. But when scientists tend to fulfill their Cartesian ambition of becoming the lords and possessors of nature including the nature of the human person, we run the risk of self-destruction. Man is commanded by God to be the caretaker of and if possible to explore the world and not to exploit it. Apart from this understanding, there is always a risk of shattering the divine shatterable impulse. Law making should not be privy to this form of secularist engineering.