

# **The Official Stance of the Dutch Reformed Church on Abortion: A Christian Ethical Perspective**

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*By sy algemene sinode in 1982 het die Nederduits Gereformeerde Kerk (hierna NG Kerk) 'n eenduidig negatiewe standpunt teen aborsie en die liberalisering van aborsiewetgewing ingeneem. Kritiek is ook gelewer teen die Wet op Aborsie en Sterilisasie (Wet nr. 2 van 1975) wat voorsiening gemaak het vir wettige aborsie in die geval van sekere indikasies. Alhoewel die NG Kerk tot dusver nog geen amptelike standpunt oor die huidige aborsiewetgewing wat in 1996 ingevoer is, ingeneem het nie, impliseer die amptelike standpunt van 1982 algehele verwerping daarvan. In die artikel word waardering uitgespreek vir die respek vir ongebore menslike lewe wat in die amptelike standpunt van die NG Kerk tot uitdrukking kom. Die simplistiese en absolutistiese styl van argumentering, asook die miskenning van die fundamentele onderskeid tussen die morele en die wetlike aspekte van die lewe word egter gekritiseer. Aandag word gegee aan 'n gepaste kerklike benadering tot aborsiewetgewing in die huidige liberaal demokratiese konstitusionele bedeling in Suid-Afrika. Enkele voorstelle vir die hervorming van die huidige aborsiewetgewing wat kerke behoort voor te staan, word ook gedoen.*

## **1. Introduction**

It is conspicuous that the last time that the Dutch Reformed Church (DRC hereafter) made an official pronouncement on abortion at one of its General Synods was in 1994, two years before the parliament approved the present legislation on abortion. The most probable reason for the

official silence of the DRC during the last twelve years was that the leaders of the DRC believed that the clear and unambiguous stand it had already taken against abortion and the liberalisation of abortion legislation in 1982 made it unnecessary to draw up a new report and to formulate a new official stance on the 1996 abortion legislation. The 1982 official stance of the DRC – in their opinion – clearly implied complete rejection of the *Choice of Termination of Pregnancy Act* of 1996.

In this article a brief summary of the report on which the official stance of the DRC in 1982 was based, is provided. Attention is also given to the 1994 pronouncement. Subsequently the assumption that the 1982 official stance also provides an adequate response to the *Choice of Termination of Pregnancy Act* of 1996 is critically discussed. In a Christian ethical assessment of the official stance of 1982 the respect for unborn human life expressed in it is appreciated, but the simplistic and absolutist style of ethical argumentation and the lack of any recognition of the fundamental difference between the moral and the legal realms, is criticised. Some suggestions are in the end made on a more appropriate critical stance that the DRC could take on the present abortion legislation.

## **2. The official stance on abortion and abortion legislation taken in 1982**

After already in 1974 the general synod of the DRC requested a comprehensive report on abortion and such a report was eventually tabled at the general synod of 1982.<sup>1</sup>

The report starts off with the assertion that the most pivotal issue in the abortion debate is the one on when human life begins. Many proponents of abortion deny that human life already begins at conception. They assert that it only begins at some later stage in the development of the fetus. Over against these views the report maintains that scientific data unequivocally point to the conclusion that human life begins at conception. “At no stage ‘anything’ biologically or physiologically is added that can make the embryo essentially or qualitatively something else as at the moment of conception. Scientists are therefore in agreement that the only logical point for the beginning of human life is conception ... It clearly means that

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1 The report was written in Afrikaans and printed in the Agenda of the General Synod of the Dutch Reformed Church of 1982, 479-486. In the Agenda recognition is given to dr. D.A. du Toit, who at that time taught Christian Ethics at the Theological Faculty of the University of Pretoria, as the author of the report. The report is to a large extent based on a book by dr. Du Toit on *Die Christen en abortie*, published in 1978.

abortion at *any* stage after conception is nothing but the destruction of a human life” (Agenda, 1982:481, translated from Afrikaans).

This conclusion is, according to the report, corroborated by data from Scripture. The Bible teaches that God is the Creator of all life and that only He has the right to take a human life. The power of the sword entrusted by Him to the state has as main purpose the protection of innocent human life. Scripture does not in any way differentiate between different grades of human life with different rights to protection. In fact, special care should be given to those in society who are weak and cannot fend for themselves. In the light of Scripture we have to apply this also to unborn human life. Unborn human life has to be granted the same care and protection as all other human life.

The report contends that this view is also supported by theological anthropology. The Christian belief that human beings are created in the image of God does not only imply that all human beings are created as such. “It [also] means that the human being is image of God from the moment of conception, or *never* at all” (Agenda, 1982:482, translated from Afrikaans). Scripture also teaches the fundamental unity of the human being over against the dualistic anthropology of Greek philosophy, according to which the human being is a composite of two separate entities, the body and the soul. “This unity is of such a fundamental nature that no point in the development process can be singled out as the one at which something like the soul is added to the body” (Agenda, 1982:482, translated from Afrikaans). In addition to that Scripture emphasises the unique worth of every *individual* human being. God knows everyone by name and cares for everyone even before their birth (Ps. 139).

From the data provided by both science and Scripture we can – according to the report – conclude that abortion is nothing but the killing of a human being. As such abortion can never be the will of God. On the basis of this conclusion the report contends that the distinction of different so-called ‘indications’ that would make abortion morally acceptable in certain exceptional cases, does not hold. It may seem that a strong case for abortion can be made out in the case of *medical indication*, especially when the life of the mother is threatened by the continuation of pregnancy. In reality such life-against-life cases is almost non-existent today as a result of the advancement of medical science. The misuse of medical indication to justify abortion in cases in which not so much the life, as the well-being, or even the convenience of the pregnant woman is at stake, is however widespread. *Eugenic indication* refers to those cases in which the unborn child would, in all probability, be severely bodily or mentally handicapped after birth. From an ethical perspective the problem with this indication is that the degree of uncertainty in diagnosing disability is

relatively high. Added to that there is the difficulty of deciding what degree of disability would count as adequate justification for abortion. Most importantly, however, Christians are called to care for the handicapped, not to murder them.

The ethical problems that beset *psychiatric indication* are numerous. How can a psychiatrist be sure that the serious psychiatric problems of a particular woman can only be relieved if she undergoes an abortion? Experience has shown that such problems are often rather aggravated by abortion. It is also a well established fact that no other indication is misused so much to arbitrarily justify abortion as the psychiatric one. *Social indication* that is used to justify abortion in the case of the difficult financial or social situation of pregnant women, can never be accepted by the church. The appeal to the rights of pregnant women and to the inevitability of abortion as a birth control measure, which often accompany the application of the social indication, should also be rejected out of hand. *Juridical indication*, which applies to cases in which pregnancy is the result of illegal sexual intercourse such as rape, incest and sexual intercourse with minors and mentally retarded people, poses a more difficult problem. Apart from the fact that in many of these cases allurements on the part of the woman also plays a role, one may ask whether it is morally right to let the innocent unborn child, who has had no part in its own conception, pay with its life for the transgressions of another person. It is a serious question whether even in these cases pregnancy should not be allowed to follow its course and the pregnant women not be offered all the assistance they need before and after the birth of their children.

In conclusion the report argues that although the scientific data point to only one conclusion, namely that abortion is the killing of a human being and should therefore be rejected from a moral perspective, concrete decisions on the application of abortion are taken for the most part on the basis of the pre-scientific view of life of the persons involved. The final decision is a faith decision based on either Biblical teaching that affirms human life, or the modern abortion mentality, characterised by a hostile attitude over against human life. The church has to avoid in its own decision making on abortion the extremes of cold legalism (that deny the own responsibility of the individual) and the relativistic situation ethics of casuistry (that tries to circumnavigate the clear command). “The point of departure (and only possible *general* ethical-scientific principle) is a clear “no” to abortion. ... Therefore the church may never in such a way approve of “exceptions” that relativise God’s command and lead to legalism and moral irresponsibility. For that reason the so-called indications should rather be abolished” (Agenda, 1982:486, translated from Afrikaans).

By that the report does not deny that even Christians may sometimes, in the most exceptional cases, be forced to undergo abortion. Even then the inevitable should only be accepted in a spirit of contrition, in the knowledge that it is never God's will that a human being should be killed. In such cases *confession* and not *concession* should be the operative word.

On the basis of this report the General Synod approved, among others, the following recommendations:<sup>2</sup>

- The Synod concludes, in the light of Scriptural and scientific data, that abortion is unacceptable. In highly exceptionable cases of complete inevitability, it still remains a matter that is not in accordance with God's revealed will and may therefore be only accepted with deep remorse, confession of guilt, inner pain and under strong protest.
- The Synod urgently appeal to the government to thoroughly review the applicable legislation in the light of the above-said. (Proceedings, 1982:1241-1242).

In its official stance on abortion taken in 1982 the DRC thus did not only strongly condemn all abortion as such. It also strongly criticised the Abortion and Sterilisation Act, which had been approved by parliament seven years before in 1975. This act declared "abortus provocatus" illegal, except in the case of medical, psychiatric, eugenic and juridical indication. The gist of the Dutch Reformed Church's criticism of this act was that no legal allowance should have been made for abortion even in the case of these indications.

In the light of its strong criticism of the 1975 abortion legislation, which was – in comparison to the abortion legislation of some Western countries at that time, and the abortion legislation introduced by the South African government in 1996 – not liberal at all, it comes as no surprise that the DRC's response to plea for the liberalisation of abortion legislation in the early nineties was a negative one. In the report of the General Doctrinal and Current Affairs Commission of the Church, tabled at the 1994 General Synod, mention is briefly made of these pleas and the fact that the liberalisation of abortion legislation had become a political football.<sup>3</sup> The Commission reported to the General Synod that the official stance of the Church taken in 1982 – the one quoted above – had been communicated to politicians (Agenda, 1994:63).

As mentioned in the introduction this pronouncement in the report tabled at the 1994 General Synod was the last official response of the Dutch

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<sup>2</sup> See for all the recommendations on abortion approved by the General Synod: Proceedings of the General Synod of the Dutch Reformed Church of 1982, 1241-1242.

Reformed Church on abortion and abortion legislation. It is a bit surprising that the DRC did not find it necessary to critically scrutinise the *Choice of Termination of Pregnancy Act* of 1996 in a report and to take an official stance on it at one of its subsequent General Synods. The 1996 abortion legislation was at that time regarded as one of the most liberal in the world and clearly contradicted the conservative views of the DRC. One would have expected the DRC to also in this case resort to the procedure it has for the most part followed when confronted with controversial ethical issues: to give an instruction to draw up a report on the issue involved and then – in the light of the recommendations made in the report – take an official stance on the issue at its general synod. One possible explanation is that the leaders of the DRC at that stage just had too many other urgent matters to attend to as a result of the introduction of the new political dispensation, to also give thorough attention to the new abortion legislation. Another plausible explanation – that does not contradict the first one - is that they believed that the DRC had already taken a clearly negative stance against any liberalisation of abortion legislation in South Africa in 1982 and that it was therefore not necessary to pay separate attention to the new abortion legislation of 1996.

### **3. Is a response to the 1996 abortion legislation based on the 1982 stance adequate?**

The answer to this question depends on whether one agrees with the assumptions on which the 1982 negative stance of the DRC on abortion and abortion legislation were based. The first of these assumptions is that abortion is always morally unacceptable from a Christian perspective. The second is that if abortion is morally unacceptable from a Christian perspective, it should also be legally prohibited. It is only when one agrees with both of these assumptions, and the arguments on which they are based, that one would unequivocally agree that no new stance on the 1996 legislation on abortion was and is needed.

In the author's opinion, full agreement with any of these two assumptions would be unjustified.

#### **Assumption 1**

With regard to the first of these assumptions the following can be said: In the report a rather simplistic line of argumentation is used to morally

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3 This report was printed in the Agenda of the General Synod of the Dutch Reformed Church of 1994, 62-101. In this report only one paragraph is devoted to the Commission's response to pleas for the liberalisation of the abortion legislature.

condemn abortion: the embryo is already a human being after conception; abortion is therefore the killing of human beings; Christians have the obligation to strictly obey God's command not to kill innocent human beings; therefore all abortion is morally unacceptable. Several questions can be asked with regard to this line of argumentation:

(1) The point of departure is that the embryo is already a human being in the full sense of the word and, as a result, has the same moral status as an adult human being. This assumption is based in the report on the conclusion that scientists agree that human life begins at conception and that we are human beings, in the full sense of the word, since conception. This is, however, a conclusion that can be contested. In fact, the different views on the moral acceptability of abortion depends to a large extent on different views, also among scientists, on when individual human life begins. There are scientists who are not of the opinion that individual human life begins at conception. For many nidation is rather the point at which individual human life begins. They base their opinion primarily on the fact that roughly half of the embryos are spontaneously aborted before they could be attached to the womb and that the remaining embryos only develop into full human beings as a result of nidation. Even a conservative theologian like Gilbert Meilaender is convinced that nidation should be regarded as the point at when individual human life begins. To accept that all embryos are fully human the moment after conception, would – in his opinion - mean that we have to conclude that half of humankind are on a continuous basis killed before nidation (Meilaender, 1996:30-31). He also refers to the fact that up to the point of nidation segmentation of the blastocyst into identical twins or triplets can take place. It would therefore be difficult, in his opinion, “to argue that an *individual* human being exists prior to that point” (Meilaender, 1996:31). Other scientists believe that the fetus only becomes fully human at a later stage in its development, for example when the primitive or primal streak appears, its brain starts to function or when it becomes viable outside the womb of the mother.<sup>4</sup> The philosopher Peter Singer is even of the opinion that there is, from the perspective of moral status, very little that distinguishes human beings from other sentient beings before they become “persons”, that is, beings who are rational and self-conscious (Singer, 1993:76).

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4 See for a discussion of different views on the moral status of the early human embryo: Smith 1996: 81-90. In his dissertation John de Roubaix argues that viability is the criterion for attributing, from a moral perspective, full human status to the fetus (2005:21).

It is clear that even scientists disagree on when individual human life begins and when the fetus reaches the stage at which its moral status equals that of an adult human being. Without taking sides in this still undecided debate, the author does want to point out a few things. It can hardly be denied that without conception no human being would come into existence. Conception is a crucial first step in the development of a human being. It does not however imply, as the 1982 report of the DRC suggests, that we have all been human beings, in the full sense of this word, from the moment of our conception. The human life that is present at the moment of conception is nothing more than embryonic human life, with the potential to develop into a human being or – to use the customary term – a human person in which this potential has been fully realised. Whether this potential will eventually be fully realised depends heavily on what happens at certain crucial points in the development of the embryo and the fetus, for example at nidation and at birth. It therefore makes little sense to talk in an undifferentiated way of both the embryo that has just been conceived and the pregnant mother as human beings or persons, and to completely ignore the long process of development that differentiates the pregnant woman from the embryo in her womb.

This does not imply that we should now go to the other extreme and confirm the philosopher Peter Singer's view that we have the moral obligation to only respect the lives of persons, in other words fully actualised human beings, who have the characteristics of rationality and self-consciousness.<sup>5</sup> The fact that we only gradually, over a long period of time, develop into persons contradicts such a stark dichotomy between human life that at one moment need not be protected in any way, and at the next moment should be protected unconditionally, because it has suddenly become a person. We surely have a moral obligation to also

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5 Singer goes so far as to assert: "Self-consciousness, which could provide a basis for holding that it is wrong to kill one being and replace it with another, is not to be found in either the fetus or the newborn infant. Neither the fetus nor the newborn infant is an individual capable of regarding itself as distinct entity with a life of its own to lead, and it is only for newborn infants, or for still earlier stages of human life, that replaceability should be considered to be an ethically acceptable option" (Singer, 1993:188).

5 John Stott argues that God's providential care for unborn human life, that is poetically and movingly described in, *inter alia*, Psalm 139, implies that the fetus already has the moral status of a person (Stott, 1990:315-316). Although such a conclusion is not a valid one, because the purpose of Psalm 139 is not to demonstrate the full moral status of fetuses, but the unbelievable range of God's providential care – it includes *even* emerging human life - the moral implication surely is that believers should emulate this care for weak and vulnerable unborn human life in their own conduct.



protect the life of the developing human being, as far as possible. That applies also to the fetus and even to the embryo. In the case of Christians this obligation is implied by the biblical principle of special care for the weak and the biblical witness concerning God's providential care of unborn human life.<sup>6</sup>

The obligation to also care for the protection of the life of the undeveloped embryo does not, however, mean that such an embryo has the same moral status as the fully developed pregnant woman who carries the embryo and that it is entitled to the same care and protection as the pregnant woman. Intuitively we tend to accept that the moral status of human life increases to the extent that human life develops into a person. A demonstration of this intuition is that most churches have – up till now – not find it necessary to conduct a funeral for a human fetus that dies as the result of a miscarriage. If a newborn child, however, dies, all parents – including Christian parents – experience the need to conduct a proper funeral for the dead child. With this gradual increase in the moral status of the developing fetus as a human being, the extent of our moral responsibility to protect its life also increases, or to put it another way, our presumption against allowing it to be killed for whatever reason, grows stronger. There comes a point – it may well be the point of viability – when the status of the fetus as a human being reaches such a level that the presumption against killing it becomes just as strong as the presumption against the killing of any other human being.

(2) There is another reason why the line of argumentation followed in the 1982 report of the DRC is too simplistic. By denouncing one after the other of the so-called indications as inadequate justification for abortion, by – for the most part – pointing out the misuse that can be made of these indications, it completely ignores the complexities that often surround pregnancy. Pregnant women and their loved ones are often faced with real and serious moral dilemmas.<sup>7</sup> When a woman is, for example, raped and

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6 That serious moral dilemmas are involved in decisions regarding abortion is not sufficiently recognised by both the pro-life and pro-choice positions. The pro-life position indiscriminately condemns abortion as nothing but murder, because it regards the moral status of the fetus as human, the latter being the solely relevant moral consideration. The pro-choice position emphasises the pregnant woman's right to choose whether she wishes to give birth or not to such an extent, that other moral considerations hardly play any role in decisions on abortion. See for a brief but illuminating discussion of the different ethical views regarding abortion: Kretzschmar & Hulley 1998: 93-100. Brief accounts of the different ethical views on abortion are also provided by Cleminshaw 1994:166-170; Grenz, 1990:135-138; Smedes 1983:138-144; Stott 1990:311-315; Vaux 1989:73-87.

7 See for a discussion of the concept of moral presumption: Wogaman, 1989:59-71.

becomes pregnant as a result of it, it is not only the moral obligation to protect the life of the fetus that is at stake. Those who have to decide about the moral acceptability of an abortion, have to weigh up this moral obligation against a number of other moral obligations: to see to it that the life of the pregnant woman is not utterly disrupted as a result of the pregnancy that was forced on her, to take into account the foreseeable negative effect that the continuance of the pregnancy would have on the psychological health of the raped woman, as well as on relationships with her husband, other children that she has, her parents, friends and colleagues and finally what the chances are that the child that will be born would be able to live a normal life, free from the stigma of being the result of a rape. There is no reason to always give in the case of such serious moral dilemmas priority to the protection of the physical life of a fetus in a very early stage of its development and allow the life of a fully developed affected woman – in its emotional, relational and vocational dimensions – to fall apart. We have to make allowance for the fact that in the case of many such serious moral dilemmas the positive results of an abortion may have more moral weight than the negative results. In means in the end that the type of blanket condemnation of abortion that is given in the 1982 report, is not acceptable from the perspective of Christian ethics. The church, of course, has the obligation to spread the message that Christians should have a strong presumption against abortion and to assist church members who are faced with a difficult decision regarding abortion with pastoral care.<sup>8</sup> The final decision on whether abortion is morally acceptable in a particular case should, however, be left to those who are personally involved and know the concrete implications of the different options they face far better than others.

### **Assumption 2**

The second assumption in the 1982 official stance of the DRC is that the moral unacceptability of all abortion from a Christian perspective provides ample enough reason to also legally prohibit all forms of abortion. This is an assumption that is, in the author's opinion, totally unacceptable in the present constitutional dispensation in South Africa and necessitates the conclusion that the 1982 stance does not provide an adequate basis for dealing with 1996 abortion legislation. One can

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8 The theocratic approach to the social responsibility of the church has been typical of most Reformed churches since the reformation. See for a discussion of the theocratic approach: De Kruijf 1994 and De Villiers 2005: 521-535.

imagine that the strict application of such an approach would have caused problems even in the previous political dispensation. Even then the different churches had disparate official views on abortion and abortion legislation. Which church's official stance on abortion should have served as the basis for legislation on abortion? Those churches with a more liberal view on abortion would surely not have been happy were the total moral condemnation of abortion by the DRC taken as point of departure in the abortion legislation.

In the previous constitutional dispensation the theocratic approach that characterises the 1982 stance and assumes that God's law should also be the foundation of state legislation, at least had some credibility.<sup>9</sup> The 1983 South African constitution made allowance for the promotion of Christian values in society. In the present constitution, a strict separation between religion and the state is, however, maintained. There is absolutely no chance that abortion legislation could be based on the conservative and explicitly Christian moral stance of one particular church. A church like the Dutch Reformed Church can of course ignore this pivotal constitutional change and just keep on reiterating its prophetic stance of condemning the abortion legislation publicly, using language and arguments derived from its own "strong" Christian morality. It should, however, know beforehand that it would make no impression on the legislator, not as a result of his stubbornness, but as a result of the fact that the South African constitution does not allow him to be partial to the views of one particular religious denomination. A church that persists in such an approach may, in the end, pride itself that it has at least done its Christian duty in prophetically condemning the existing abortion legislation, although no improvement of the legislation could be achieved. One may, however, ask: Is such an approach responsible? In fact, is it not irresponsible to persist in an all or nothing approach that has no chance of any success, and not even try to explore more appropriate approaches that have a better chance of bringing about at least some reform of the existing legislation? In the authors' opinion, a responsible church would take the context, including the constitutional context, in which it has to operate, thoroughly into account and pursue the most effective ways in such a context of bringing about reform of legislation that it finds unacceptable from a Christian perspective.

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9 See for the distinction "thick" and "thin" used with regard to morality and ethics: M. Walzer, *Thick and thin: Moral argument at home and abroad* (1994), xi, footnote 1. Walzer utilises the term "thick" to point to a kind of moral argument that is "richly referential, culturally resonant, locked into a locally established symbolic system or network of meanings". "Thin" is simply the contrasting term.

A prophetic approach that aims at the complete replacement of the existing abortion legislation by one based on conservative Christian morality can be criticised not only from the perspective of effectiveness, but also from the perspective of Christian ethics. The present chairperson of the EKD, bishop Wolfgang Huber, maintains that it is, in the light of the Golden Rule, morally problematic to try to urge the legislator in our religiously and morally plural societies to make a particular interpretation of Christian morality the basis of legislation. He suggests that instead of applying our Christian moral principles in a simplistic and absolutist way to matters of government policy we should make reflexive use of our own principles. By that he means that we always have to take into account the probable impact on the consciences of people with different moral views, should our own moral principles be the foundation of legislation. If the legal application of our principles would have as a result that other people are bound in their consciences, in the sense that they would not be legally allowed to act in accordance with their own consciences, Huber believes that we should not insist on such principles as foundation of legislation (Huber, 1990:149-152; 1993:588-589).

#### **4. Some proposals regarding the approach of the church to the 1996 legislation**

In conclusion I would like to make some proposals regarding the approach that the DRC, and for that matter, also other South African churches ought to take to the 1996 abortion legislation:

##### **Proposal 1**

The author does agree with the Dutch Christian ethicist, Gerrit de Kruijf, that the church has to go through two processes of reflecting ethically on moral issues such as abortion (De Kruijf, 1994:209-210). It has, first of all, to go through a process of reflecting on abortion from the perspective of its own “thick” Christian morality.<sup>10</sup> Such a process is needed in order to assist members of the church in making personal decisions regarding abortion. If the church stays true to fundamental Christian beliefs and principles, such a process of reflection would, in the author’s opinion, inevitably result in a very strong presumption against abortion. On the basis of this presumption members would be urged not to resort to abortion as far as possible. Not only the life and well-being of the fetus should, however, be taken into consideration, but also the life and well-being of the pregnant woman and other people involved. Recognition should be given to the dilemmatic nature of many moral decisions on

abortion. As a result some moral room should be allowed for abortion in exceptional cases.

The church has, however, also to go through a second process of moral reflection regarding its public stance on abortion legislation. I agree with De Kruijf that the church would, in a liberal democratic society like ours, have to use language and arguments that could also be understood and accepted by non-Christians. It would only be able to convince the legislator that changes in the abortion legislation are necessary if he believes that proposals for reform are not in conflict with the “thin” moral consensus prevalent in society. This does not mean, as De Kruijf seems to take for granted, that the moral consensus, or – as he also calls it - cultural law principles, should be uncritically accepted and used as foundation for the ethical reflection on the moral stance of the church on abortion legislation (De Kruijf, 1994:227). In the author’s opinion the tension between Christian moral principles and such cultural law principles should be upheld even in this second process of ethical reflection by the church. The church should not *abandon* in this moral reflection its own moral principles for the existing cultural law principles of society. It should rather on the basis of Christian moral principles scrutinise the cultural law principles and decide to what extent it can relate to it or not. It can even try to shift the moral consensus in society to be more in accordance with its own moral principles by using arguments that can also be understood and accepted by non-Christians (De Villiers, 2005:532).

De Kruijf accepts – in the end – the following two cultural law principles as foundation of the church’s ethical reflection on abortion:

- (1) The primary, but not absolute, right of the pregnant woman to decide on what should be done with the fetus in her womb (the right to privacy).
- (2) The obligation of the state to protect human life, including the life of the unborn (a cultural law principle that is – in De Kruijf’s opinion – largely the result of the influence of Christian religion in Western societies).

These two principles ought, according to him, to be balanced in the public stance the church takes on abortion legislation (De Kruijf, 1994:227-229).

In the author’s opinion it is rather surprising that De Kruijf seems to have no qualms about the first of these two principles and to allocate the same moral weight to it as to the second one. From a Christian ethical perspective the widespread tendency to extend the right to privacy to include the right of the pregnant woman to do with the fetus in her womb as she wishes, is highly problematical. The assumption on which this

extension is based, is that the fetus is nothing but a part of the pregnant woman's body that is completely at her disposal. Such an assumption is, however, not justified. From the moment of conception the embryo, and later the fetus, as budding human life, has a separate and higher moral status than the tissues in the rest of the pregnant woman's body. From a Christian ethical perspective the second of the two cultural law principles mentioned by De Kruijf should have priority not only over against the right to privacy, but also over against all other human rights. The church should therefore unabatedly try to convince non-Christians and the legislator to respect the priority of the obligation to protect all human life.

This does not mean that such an obligation has *absolute* priority and that the killing of human life, including abortion, should as a result always be legally regarded as murder. I have already argued that even from the perspective of Christian morality abortion may sometimes be regarded as the lesser of two evils. One can consistently argue that even Christians need some legal room for abortion in order to act in accordance with their own consciences. It is, however, not only Christians whose right to act in accordance with their own consciences need to be legally recognised by the legislator in drafting abortion legislation. The right of non-Christians, even more liberal minded non-Christians, to do so, should also be recognised, not only by the legislator, but also by the church if it wants to stay true to the golden rule.

The two principles that form part of the moral consensus in the South African society that the church can accept and should weigh up in its ethical reflection on abortion legislation are therefore the right to freedom of conscience and the obligation to provide legal protection to all human life, including the life of the unborn. Of these two principles the obligation to protect human should have priority, although this priority should be regarded as a relative one that does allow the legislator to provide legal room for people with different moral convictions to act in accordance with their own consciences.

## **Proposal 2**

What are the implications of what has been said for the reform of the abortion legislation in South Africa that the churches should promote? In conclusion a few brief – and incomplete – proposals are made:

(1) In the present legislation three periods during pregnancy are distinguished to which three different sets of conditions for abortion apply. The intention behind this distinction is clearly to increasingly restrict the legal room for abortion as pregnancy progresses. As a result of the fact that

provision is made for social indication in the second period (13-20 weeks) and seemingly even in the third period (21<sup>st</sup> week onwards) – depending on how the rather ironic clause that abortion is permitted when the continued pregnancy “would pose a risk of injury to the foetus” should be interpreted - the distinction is, however, blurred. Medical doctors do not have the time and means at their disposal to ascertain whether the social circumstances of the pregnant woman are really as dismal as she claims. They just have to take her on her word. This means that in practice the period of abortion on request is extended to at least the 20<sup>th</sup> week of pregnancy. It would indeed be an improvement if the clause making provision for abortion on account of social indication during the second period and the clause permitting abortion during the third period on account of the risk of injury the continuing pregnancy poses to the foetus, are omitted.

(2) One can, however, ask whether the distinction of three periods with three sets of conditions for abortion is not unnecessarily complicated. In the author’s opinion more thorough reform would involve at least the following, making provision in the end for only two periods during pregnancy to which different sets of conditions for abortion apply:

(2.1) The restriction of the length of the period during which abortion would be legally permissible. Acceptance of the view that the moral status of the fetus increases with its development until it reaches full moral status as a human being from at least the stage of viability, would also imply acceptance of the view that the moral obligation to protect the life of the fetus grows stronger as it develops during pregnancy. Preferably no abortion should be legally permissible during the later stages of pregnancy. As a result of the fact that the life of a pregnant woman is sometimes seriously threatened during the later stages of pregnancy, an exception should, however, be made when two medical practitioners agree that the life of the pregnant woman can only be saved by executing an abortion. There is no obvious starting point that presents itself for this period during which abortion would only be legally permitted in exceptional cases. From a Christian ethical perspective one could argue that it would be unacceptable to postpone this starting point by unnecessarily extending the period during which pregnant woman would be legally permitted to get an abortion on request.

(2.2) Retention of a limited period at the beginning of the pregnancy during which the pregnant woman would be legally permitted to have abortion on request. The present period of 12 weeks would suffice for most pregnant women as it allows them enough time to undergo the

necessary medical procedures, to consult with their family (e.g. her husband or parents) and professional people like a pastor or clinical psychologist and to make an informed decision. Allowance should, however, be made for pregnant women in rural areas of South Africa who often do not have ready access to a medical doctor and to the advice of other professional people. It would therefore probably be advisable to expand this period to at least the 16<sup>th</sup> week of pregnancy. Church support for such a limited period during which abortion on request would be legally permitted, should not be based on the right of the pregnant woman to privacy, because such a basis is too individualistic and ignores the moral status of the fetus as developing human life that distinguishes it from other bodily tissue of the pregnant woman. From the perspective of Christian ethics it should rather be based on the right to freedom of conscience. It is not only those who have moral convictions regarding abortion that differ from those of Christians, whose right to act in accordance with their own consciences ought to be respected. Legal room should also be given to Christians who are faced with serious moral dilemmas regarding abortion to do so.

(2.3) A punishment clause stipulating the punishment that would result if abortion is executed in contradiction to the requirements of the legislation, should be introduced. The fact that such a punishment clause is lacking in the present legislation means that no effective juridical deterrent for illegal abortions is available at present.

(2.4) Consideration should be given to the introduction of a clause that every pregnant woman who is planning to have an abortion, should provide written proof to a medical practitioner that she has beforehand consulted a pastor, clinical psychologist or social worker. An informed decision on abortion can only be made by the pregnant woman if she is aware of the procedures, the psychological after-effects and ethical issues involved in abortion.

(2.5) The present legislation denies the supportive role of the family in times of crises by allowing a minor of fourteen years to have abortion without the consent of her parents and a married woman to have one without the consent of her husband. Consideration should be given to the reformulation of existing clauses that exclude parents or the husband.

## **5. Conclusion**

In the end the churches have the choice between two approaches in promoting the legal protection of unborn human life in South Africa. They can suffice with prophetically condemning in strong Christian language



and arguments the present abortion legislation. The probability is that they will find in the end that their efforts were in vain, because they have not adequately enough taken the separation between church and state in our liberal constitutional dispensation into account. They can, however, also translate their Christian views into language and arguments that can be understood and supported by non-Christians and in such a way contribute constructively to the public debate on abortion legislation. In the author's opinion the last mentioned approach undoubtedly has the best chance of contributing to the reform of unacceptable aspects of the present abortion legislation.

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