

**Imperatives of the Gospel and imperatives of the South African  
Constitution regarding the right to life:  
a Christian ethical perspective**

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## Abstract

This study presents divergent views and approaches to the issues of the right to life, abortion, and HIV/Aids prevention in South Africa. The right to life, and abortion, considered from the constitutional perspective, acknowledge the presence of human life *in utero* from conception to parturition, but do not presently deem that unborn human life imperatively worthy of legal protection. Failure to take account of developments in international jurisprudence, notably in the United States, regarding the separate legal personality of the unborn child, other than that presently accorded by the *nasciturus* fiction, means that the issue of abortion continues to be viewed solely from the point of view of the woman's wellbeing and her right to terminate her pregnancy. From a Christian ethical perspective, abortion is seen as a violation of the constitutional imperative right to life. As *imago Dei*, the unborn child is a bearer of this unqualified right from conception to birth to death and has a categorical claim to life no different to that of its mother.

From a constitutional perspective, HIV/Aids prevention forms part of the constitutional right to health care. Due to legitimate constraints on financial, material, and human resources in health service provision, and other lawful demands contending for these resources, the approach to HIV/Aids prevention is predominantly utilitarian, resulting in a cost-effective approach to treatment and prevention that may jeopardise the welfare of those directly and indirectly affected by this pandemic. From a Christian ethical perspective, the response to HIV/Aids treatment and its prevention is an imperative obligation on Christ's disciples, both individually and as the Church, and not without cost, towards the multitudinous bearers of God's image directly and indirectly affected by the disease.

This study examines the degrees of divergence and of congruence between the constitutional unqualified right to life and the current interpretation of the impact of that right on abortion and HIV/Aids prevention, in contrast to the Gospel imperatives of discipleship, in this case, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross", and their impact on the right to life, abortion, and HIV/Aids prevention. The conclusion of this study is, that from a Christian ethical perspective, whilst recognising the Constitution as the framework *sine qua non* in which Christ's disciples are called to live out their commitment to Christ and his Gospel in South Africa, Gospel imperatives, which like constitutional imperatives are concerned with life and attitudes to life, ultimately have primacy over constitutional imperatives.

### KEY WORDS

imperative	Gospel	Constitution
life	ethics	morals
rights	dignity	abortion
HIV/Aids		

## Opsomming

In hierdie studie word aandag gegee aan die uiteenlopende perspektiewe en benaderings op die volgende sake: die reg op lewe, abortie en MIV-Vigs in Suid-Afrika. Volgens die grondwetlike perspektief word menslike lewe *in utero* vanaf bevrugting tot bevalling erken, maar word tans geoordeel dat die ongebore menslike lewe nie noodwendig geregtig is op wetlike beskerming nie. Dit is duidelik dat internasionale ontwikkelings in die regs wetenskap aangaande die ongebore kind as 'n regspersoon, soos veral sigbaar in die VSA, nie in ag geneem word nie. Omdat daar met betrekking tot abortie alleen volgens die sogenaamde *nasciturus-fiksie* geoordeel word, word steeds net die vrou se welstand en haar reg om haar swangerskap te beëindig, in ag geneem. Vanuit 'n Christelike etiese perspektief word abortie beskou as verbrekking van 'n grondwetlike reg op lewe. As *imago Dei* het die ongebore kind vanaf ontvangenis, tot geboorte, tot sterwe die ongekwalifiseerde reg op lewe. Hierdie reg verskil in geen opsig van die reg van die ongebore kind se moeder nie.

Vanuit die grondwetlike perspektief is die voorkoming van MIV-Vigs deel van die grondwetlike reg op gesondheidsorg. As gevolg van beperkings op finansiële, materiële en menslike bronne en as gevolg van geldige aansprake op hierdie bronne, is die benadering ten opsigte van die voorkoming van MIV-Vigs hoofsaaklik utilitaristies. Die gevolg is dat daar in die behandeling en voorkoming van MIV-Vigs 'n koste-effektiewe benadering gevolg word wat die welsyn van mense wat direk en indirek deur hierdie pandemie geraak word, in gevaar stel. Vanuit 'n Christelike-etiese perspektief is Christus se volgelinge, sowel individueel as die Kerk, verplig om, selfs met koste, te sorg vir behandeling en voorkoming van MIV-Vigs met betrekking tot die tallose draers van God se beeld.

Hierdie studie ondersoek die grade van verskil en ooreenstemming tussen enersyds die ongekwalifiseerde grondwetlike reg op lewe en die impak wat die huidige interpretasie van daardie reg het op abortie en voorkoming van MIV-Vigs het en andersyds die Evangelie se eise om dissipelskap – eise soos “Volg my”, “Jy moet God liefhê, en jou naaste soos jouself” en “Neem jou kruis op”, en die impak van hierdie eise op die reg op lewe, abortie en die voorkoming van MIV-Vigs. In hierdie studie word erken dat die grondwet *sine qua non* 'n raamwerk is waarbinne Christus se volgelinge geroep is om hulle toewyding aan Christus en sy evangelie uit te leef. Die studie kom egter tot die gevolgtrekking dat die volgelinge van Christus geroep is om hulle toewyding aan Christus en sy evangelie in Suid-Afrika uit te leef. Die imperatiewe van die Evangelie wat, soos die grondwet, gerig is op die lewe en lewenshoudings, het voorrang bo die imperatiewe van die grondwet.

### SLEUTELWOORDE

imperatief	evangelie	grondwet	lewe
etiek	moraal	regte	waardigheid
abortie	Miv-Vigs		

## Preface

This comparative literature study is a Roman Catholic's attempt to theologise within the parameters of the Reformed tradition and consider the ethical implications of the right to life, abortion, and HIV/Aids prevention within the framework of the Constitution of the Republic of South Africa 1996. In endeavouring to understand and work within the Reformed theological and ethical tradition, I have, where occasion arises, assessed certain ethical and theological issues from within my Roman Catholic tradition, as well as offering a critique of certain Reformed opinions I consider lying outside, or on the margins of, the Reformed tradition. This, however, is incidental to this study's methodology, and is meant primarily to clarify my own thinking not to form polemical objections. The age of Pighius is over or ought to be over. Nor is the intention of critiquing the Reformed tradition an attempt to produce a *Roomsedopper* synthesis of theology and ethics, but rather to come to an understanding of how the Reformed tradition, giving primacy to *sola scriptura*, faces, evaluates, and offers solutions to moral dilemmas. In the light of this, Reformed and Roman readers, and those familiar with these traditions, will perceive shortcomings in this study. This is an acknowledged inherent weakness, but it may also be an impetus to further study of the issues raised.

It is true that in some areas Reformed and Roman doctrines are quite distinct, particularly in ecclesiology, sacramental theology, and soteriology. In the field of ethics and morals, however, there is a deal of coincidence on the right to life, human rights, and respect for life. The foundation of this is Judaeo-Christian anthropology, namely, the human person created by God as *imago Dei*. The history of division between the Geneva and Rome is long and sometimes bitter. Under the impetus of the Holy Spirit, these Christian traditions' stubborn refusal or reluctance to meet has given way to encounter. This study, apart from being a contribution to the ethical evaluation of the right to life, abortion, and HIV/Aids prevention, is an exercise in ecumenism, namely, receptive ecumenism, which itself is an exercise in critical listening to other Christian traditions, in this case, listening critically to the Reformed Tradition.

Finally, a note on language usage: in all cases the pronoun 'he' and its derivatives are inclusive of the female gender.

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## Abbreviations

AAS	-	Acta Apostolicae Sedis
ASSA	-	Actuarial Society of South Africa
Belg	-	Belgic Confession
CCC	-	Catechism of the Catholic Church
CCL	-	Code of Canon Law
CCMA	-	Council for Conciliation Mediation and Arbitration
Dort	-	Canons of Dort
FC	-	Final Constitution 1996
GKSA	-	Gereformeerde Kerk in Suid-Afrika
Heid	-	Heidelberg Catechism
HelC2	-	Second Helvetic Confession
IC	-	Interim Constitution 1993
Inst	-	Institutes of the Christian Religion
RSA	-	Republic of South Africa
SACBC	-	Southern African Catholic Bishops' Conference
SACC	-	South African Council of Churches
WestC	-	Westminster Confession of Faith
WestLC	-	Westminster Larger Catechism
WestSC	-	Westminster Smaller Catechism

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**APPENDICES**

**BIBLIOGRAPHY**

# 1. CHAPTER ONE – INTRODUCTION

## 1.1 Title

Imperatives of the Gospel and imperatives of the South African Constitution regarding the right to life: a Christian ethical perspective.

**1.2 Key Words:** imperative; Gospel, Constitution, life, ethics, morals, rights, dignity, abortion, HIV/Aids.

**Sleutelwoorde:** imperatief, evangelie, grondwet, lewe, etiek, moraal, regte, waardigheid, aborsie, MIV-Vigs.

## 1.3 Background

Few Christians, with the exception of contextual absolutists who hold there is always one resolution of any given moral dilemma that is morally right and free from sin, would deny the reality of moral dilemmas in the Christian life (Vorster, 2004:107). Daily choices with regard to the demands of the Gospel are made not only between moral good and evil, but between moral good and moral good, and evil and evil. In the context of this study, Christian moral choices are made within the territory of the Republic of South Africa and within the framework of its foundational law, the Constitution of the Republic of South Africa 1996, (hereafter, Constitution). For the Christian, with the exception of Anabaptists and like traditions that deny the priority and/or relevance of the God-given authority of the state, imperatives of the Gospel and imperatives of the Constitution are inextricably linked, ethically and morally (Romans 13:1-7). As with the commands of the Gospel, the Christian must also make daily moral choices between various and sometimes conflicting commands of the Constitution.

A critical issue for Christians, whom God calls to live out their commitment to Jesus Christ and his Gospel in the Republic of South Africa, is that they, like all citizens and aliens within the Republic, are subject to the laws of the Republic, here under consideration, the foundational law, namely, the Constitution of the Republic of South Africa 1996, and this by coercion (Rautenbach, 1999:4). Conflicts may arise between the law of the Gospel expressed *inter alia* in Matthew 4:18-32; 22:34-40; 10:38 – which are coercive as the 'Judgement of the Nations' illustrates in Matthew 25:31-46 – and Constitutional demands expressed in Constitutional law. It is not the task of this study, however, to cover every aspect of Christian concern for life and attitudes to life, but out of necessity it chooses to

limit itself to two representative examples of the right to life that are of concern to all within the Republic of South Africa, namely, abortion and HIV/Aids prevention, both of which, from within the Christian theoretical framework, concern the preservation of life.

Abortion, or the right to choose to wilfully terminate a pregnancy, in principle runs counter to the Christian attitude to God-given life which is in the image and likeness of God (Genesis 1:26-27). On the principle of *imago Dei*, the Reformed theologian, Joachim Douma, reiterates the generally agreed Christian principle that the unborn is a God-given human life irrespective of the stage of development when he writes, "Unborn life deserves the protection afforded to human life" (Douma, 1996:218). Within the Christian ethical theoretical framework, Douma's statement raises the question of the natural and juristic status of the unborn.

With respect to the Constitution, and under consideration here, Chapter 2 of the Bill of Rights, the Choice on Termination of Pregnancy Act 92 of 1996 does not afford to the unborn the right to life and to dignity. The Act recognises the dignity and right to life of the natural and juristic person, in this case the woman (s1 (xi)), and implicitly denies dignity and legal rights to the unborn on the grounds that the human embryo or foetus is not a natural person, therefore not a juristic person with rights in law. In short, the Constitutional right to dignity (2 s 10) and the right to life (2 s 11) of the unborn are demonstrably of no concern to the Act, for, to be held a natural person in South African law, the person must be born alive (Rautenbach, 1999:325); the legal fiction of *nasciturus* notwithstanding.

In the court case, *Christian Lawyers of SA and Others v Minister of Health and Others*, 1998 (4) SA (T) 1113, it was unsuccessfully argued *inter alia* that the Choice on Termination of Pregnancy Act is unconstitutional on the grounds that the Constitutional term "everyone", as in, "2 s 11 Everyone has the right to life", includes the unborn, and therefore the unborn as a natural person has juristic status from conception to the moment of birth, with the right to dignity and life consequent on such a status. The question of the natural and juristic status of the unborn, not only within the Republic of South Africa but beyond, has implications for this study regarding the Constitutional right to life in the light of the Gospel.

The importance of HIV/Aids prevention in the Republic of South Africa is illustrated by mandated implementation of the current national government's HIV/AIDS/STD strategic plan for South Africa. Prevention is the plan's first priority (Department of Health, 2000:19-21), followed by treatment and care (Department of Health, 2000:6). Christians resident within the territory of the Republic of South Africa actively engage in prevention, treatment and care of people living with HIV/Aids through their Churches and Church entities (UNAIDS, 2006:5). The basis for this is that Christian discipleship implies action (James 1:22-25), service (John 13:1-20), and perseverance (Hebrews 12:12). The scope of Christian action and service is universal: "You shall love the Lord your God with all your

heart, and with all your soul, and with all your mind...You shall love your neighbour as yourself" (Matthew 22:34-40) known and unknown, as the Good Samaritan illustrates (Luke 10:25-37). This parable may be considered a synecdoche for the universal reach of Christian concern for life and attitudes to life.

The Constitution and the Gospel are demonstrably concerned with life and attitudes to life. Three foundational Gospel imperatives illustrate this concern in terms of discipleship, service and perseverance. Inclusive of Synoptic parallels, these are, "Follow me" (Matthew 4:18-22), "Love of God and your neighbour" (Matthew 22:34-40), "Take up your cross" (Matthew 10:38). These evangelical imperatives considered in relation to Constitutional imperatives implied in the moral agent's compliance with "2 s 10 Everyone has an inherent dignity and the right to have their dignity respected and protected", and "2 s 11 Everyone has the right to life", combine to confront the Christian disciple with demands of the Constitution that are arguably universal in their nature and reach within the Republic of South Africa, and whose compliance is imperative in the eyes of the State. The demands of the Gospel are likewise arguably universal in nature and reach within the Republic of South Africa and beyond, and their compliance is imperative in the eyes of God. Demands of the Gospel and the Constitution, however, are not only imperative in the eyes of God and the Constitution, but also in the eyes of the Christian moral agents who by God's grace, common and particular, take ownership of the Gospel and the Constitution when they make the will of their superior, in this case, God and the Constitution, their own (Hare, 2006:63).

### **1.3.1 State of the research**

The author is presently unaware of any research or literature legal, ethical, philosophical, or theological, dealing specifically with the relationship between the selected Gospel imperatives (Matthew 4:18-22, 22:34-40, 10:38), and the selected Constitutional imperatives (Bill of Rights, Chapter 2 s 10, 11). This situation may change with research. In the absence to date of known studies or other literature referring specifically to the focus of this study, the following literature review is presented as indicative of the usefulness of the attached bibliography, from which it can be deduced that the titles are generally, if not specifically, relevant and supportive of this research proposal.

Within the Reformed tradition, Calvin asserts the correlation of the Church and State (Inst 4.20). In his second and third Stone Lectures, Abraham Kuyper likewise describes the respective roles of Christian religion and politics and their distinct but related nature and character (Kuyper, 1898:41-109). Kuyper also discusses the important ethical question of fallen humanity's capacity for ethical decision-making in his monumental examination of the Reformed concept of common grace (Kuyper,

1903). Herman Hoeksema denies the possibility of common grace within the Reformed theoretical framework; his denial has implications for the role of the will in the face of moral dilemmas (Hoeksema, 2004:378-381). J. A. Heynes gives systematic consideration to the philosophical and theological foundations of Christian ethics (Heynes, 1982).

Douma investigates the relationship between human rights, and *inter alia*, Christian anthropology. When he writes, "Maar wie belijdt dat de mens naar God's beeld geschapen is, erkent dat deze hoge waarde niet inherent aan de mens is, maar hem verleend is" (Douma, 1983:20), Douma states a Christian fundamental formal principle that human rights do not belong to a person by sole virtue of being human, but are a gift of God to the human person as *imago Dei*. Douma's Christian anthropological insight is vitally important to this proposed study. Commenting systematically from the fourth up to and including the tenth commandment of the Decalogue, Douma brings out the implicit and explicit relationship between the ethical demands of the Gospel and positive law (Douma, 1996:109-353).

Throughout his title, *Ethical Perspectives on Human Rights*, J. M. Vorster begins with the concept of human rights, and systematically examines selected human rights in the light of the Gospel in order to determine their nature and validity for Christian ethics, as well as their reach within and beyond the Christian community (Vorster, 2004). Germane to the focus of this study is Vorster's later enquiry regarding the Christian attitude, namely, that of an obedient servant of God vis-à-vis the demands of the State, be the demands just or unjust (Vorster, J. M., 2007:133-148).

Authors outside the Reformed tradition are useful, and therefore pertinent to this study. Aquinas, in his detailed systematic examination of a priority in charity, demonstrates that moral dilemmas are indigenous to Christian discipleship and the demands of the Gospel (Aquinas, 1975:22a2æ 23-33). Aquinas assumes that these dilemmas must and will be addressed, and not ignored or denied. Such an assumption is foundational to a consideration of the selected demands of the Gospel and the Constitution. Civil and canon lawyer, Jude Ibegbu, throughout his study and proposal for an international convention on the rights of the unborn child, explicitly links Christian ethics and positive law, and specifically Constitutional law (Ibegbu, 1997). From a medical and philosophical viewpoint, the overarching thought of Norman Ford's consideration in his title, *Prenatal Person*, is the natural and juristic status of the unborn in the light of the Roman Catholic Christian tradition, as opposed to the secular tradition, which is arguably, fundamentally relativistic (Ford, 2002). The moral and legal status of the unborn is integral to this proposed study.

Alison Munro, echoing the exhortation of John XXIII to "read the signs of the times", defines the HIV/Aids pandemic as such a sign, and examines Christian responsibility in the light of this (Munro, 2003:32-51). Germain Grisez, in his contribution to the discussion on the doctrine of God as the

content of Christian ethics, examines *inter alia* Roman and Reformed doctrines of the will and the consequent role of the will in the process of ethical decision-making. (Grisez, 2006:125-137). The role of the will, considered as either free or bonded, is of fundamental importance to this proposed study. Christian active responses to the HIV/Aids pandemic are amply documented by the Southern African Catholic Bishops' Conference (SACBC), which comprises the bishops of South Africa, Botswana and Swaziland, and for the purpose of HIV/Aids prevention, Namibia and Lesotho (Southern African Catholic Bishops' Conference, 2007, 2006, 2004; UNAIDS, 2006).

With respect to Protestant Churches, other than the Gereformeerde Kerke in Suid-Afrika (GKSA) for whom the author currently finds no literature or documentation concerning a coordinated policy response of member Churches to the HIV/Aids pandemic, a comprehensive source of records regarding coordinated and individual approaches of Churches to the HIV/Aids pandemic is the umbrella body, the Christian AIDS Resource and Information Service (CARIS), whose membership comprises principally members of the South African Council of Churches (SACC), and other Churches and organisations not affiliated to the SACC (CARIS, 2007:7-8).

Within the context of western jurisprudence and ethics, the relationship between law and ethics, and law and morality, has been, and remains to date, arguably, unclear. Writing in 1989, the then Professor of Law at Witwatersrand University, Johan van der Vyver, alluded to the long history of the unresolved issues surrounding law and morality due to lack of clarity between the respective demands of positive law and morality (Van der Vyver, 1989:157-183). A decade later, at a symposium on legal and moral ethics, lawyers J. D. Feerick, R. G. Pierce, and I. Schorsch's, in their Welcome and Introductory Remarks, address themselves to the topic of the symposium, namely, the role religion once played in the practice of law and that it ought to play in the life of legal practitioners today (Feerick, 1999:821-826). The unambiguous requirement of rectitude on the part of legal practitioners is foundational to maintenance of the rule of law within a democracy. Later, and in the same vein as Van der Vyver, the late Australian academic and Constitutional lawyer, Alice Erh-Soon Tay, was concerned about the blurring of distinctions between moral and legal rights (Erh-Soon Tay, 2000). The issue of clarity in matters legal and moral is vitally important to a study of the right to life in the light of the Gospel.

The blurring of the distinction between moral and legal rights is illustrated by the specific issues of the natural status and the juristic status of the unborn, which in point of international law are arguably ambiguous. Rebecca Stringer, commenting *inter alia* on a provision in the recent United States of America's Unborn Victims of Violence Act of 2004 which states, "whomsoever [...] causes bodily injury [...] to, a child who is *in utero* at the time the conduct takes place, is guilty of a separate offence [to bodily injury to the mother] under this section", namely, s1841 (a) 1, welcomes the legislative incremental recognition of the natural and juristic status of the unborn, but laments that the act

makes an exception of the right to abortion (s1841 (D) (c)) (Stringer, 2005). Descriptive of legal ambiguity is section 1841(a) 1 of this Act that arguably stands in contrast to the provisions of the South African Choice on Termination of Pregnancy Act 92 of 1996. On the other hand, section 1841 (D) (c), which makes an exception of abortion, is in sympathy with the provisions of the South African Act.

Incremental recognition of the natural and juristic status of the unborn is noted in the Polish Constitutional Tribunal's 1997 amendment to the Abortion Act 1996. This Act employs the term "*dziecko poczęte*statusu", 'child conceived' (Poland 1997). The point here is that the unborn is referred to in law as a child and not, for example, as unborn, embryo, or foetus.

South African academic and Constitutional lawyer, G. E. Devenish, notes the obligation of the Constitutional Court of the Republic of South Africa when sitting, deliberating, and handing down judgements, to heed relevant international customary international law rulings (Devenish, 1998:327). The principle of international *opinio juris* is relevant to the right to life, abortion, and HIV/Aids prevention. It should be noted, however, that under general provisions regarding international law, the Constitution states, "Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament" (14 s 232). This provision is likewise relevant to this study.

## 1.4 Research question

What, within the theoretical framework of Reformed ethics, is the status and relationship of Gospel and Constitutional imperatives with respect to the right to life, abortion, and HIV/Aids prevention in the Republic of South Africa?

Issues arising from this research question are *inter alia*:

- What is the nature, and how far is the reach, of selected Gospel and Constitutional imperatives?
- What is the relationship between the imperatives of the Gospel and the imperatives of the Constitution, i.e. their compatibility and/or otherwise?
- What are the implications of the priority of Gospel imperatives over Constitutional imperatives and *vice versa*?
- What are acceptable norms and criteria for ethical decision-making within the theoretical framework of Reformed ethics?

- What is the natural and juristic status of the unborn in the light of the Gospel, and according to the Constitution of the Republic of South Africa?
- What recommendations are appropriate to an active Christian ethical response to the right to life, abortion, and HIV/Aids prevention in the Republic of South Africa?

## **1.5 Aims and objectives**

The aim of this study is to compare selected Gospel imperatives and selected Constitutional imperatives with respect to the right to life, abortion, and HIV/Aids prevention in the Republic of South Africa.

### **1.5.1 The objectives are**

- to examine the nature and reach of Gospel and Constitutional imperatives;
- to compare and contrast, to seek points of coincidence, divergence, and overlap, with respect to the selected Gospel and Constitutional imperatives with reference to the right to life, abortion, and HIV/Aids prevention in the Republic of South Africa;
- to establish acceptable norms and criteria for ethical decision-making according to the principle of *sola scriptura*, sin and grace;
- to apply these norms and criteria to the issue of the right to life, abortion, and HIV/Aids prevention within the Republic of South Africa;
- to make recommendations in the light of these norms with respect to a christian ethical response to the right to life, abortion, and HIV/Aids prevention within the Republic of South Africa.

## **1.6 Central theoretical argument**

The central theoretical argument of this comparative study is that Gospel imperatives are concerned with life and attitudes to life, and within the theoretical framework of Reformed ethics ultimately have primacy over Constitutional imperatives that are likewise concerned with life and attitudes to life.

## **1.7 Methodology**

This comparative study is made from within the Reformed tradition. It will be a literary comparative study and will address the research question employing the following methods:

- 1.7.1 The study and evaluation of the nature, reach, priority and distinctive character of Gospel and of Constitutional imperatives:
- 1.7.2 The study and evaluation of the nature, reach, priority and distinctive character of selected Gospel and Constitutional imperatives:
- 1.7.3 The drawing of conclusions from the literary comparative study with respect to the research question, namely the issue of stated Gospel and Constitutional commands with respect to the right to life, abortion, and HIV/Aids prevention in the Republic of South Africa:
- 1.7.4 The formulation of a Christian ethical response to abortion and HIV/Aids prevention in the Republic of South Africa with appropriate recommendations.

## CHAPTER TWO – ETHICAL DECISION-MAKING: THE DOCTRINE OF SIN AND GRACE

Ethical decision-making presupposes the ability to make ethical decisions freely. Central to a discussion on Reformed ethics is the question of the bounds of the freedom of the will. The Reformed tradition, along with the wider Christian tradition, affirms that the will is not free in the Pelagian sense of being absolutely free, but is constrained by the effects of humanity's fall from original righteousness. In question here is the nature and extent to which the will is considered free, or no longer free at all. Is freedom of the will so vitiated that a person is incapable of any effective choice of action or inaction in the face of any moral dilemma, or does fallen humanity still possess some ability to make a free choice, albeit under conditions of impaired freedom of the will?

It is possible to remain within the Reformed tradition without prejudice to membership of this tradition so long as one can affirm, *sola Christo, sola fide, sola gratia, sola scriptura*, as taught in the Forms of Unity and the Catechisms. One can also remain within the Reformed fold if one affirms that the will is either so totally ruined that a person can make no meaningful choice, or that the will is indeed ruined, but a person, under certain limitations, can make meaningful choices. In the face of divergent Reformed opinion on the bounds of the will, and so as to establish some degree of certainty about man's ethical abilities, this chapter will argue that under certain constraints, fallen humanity, degenerate and regenerate alike, is possessed of a freedom with respect to ethical decision-making.

### 2.1 Free will, bonded will

Imperatives of the Constitution must not remain abstract, but continuously be given meaning by legislators and courts. Likewise, imperatives of the Gospel must continuously be given meaning by Christ's disciples. Constitutional imperatives become a living reality through judicial praxis, and Gospel imperatives, by God's grace, through Christian praxis. The Reformed tradition considers moral dilemmas arising from a conflict between Gospel and constitutional imperatives within its ethical parameters. These Reformed parameters comprise principally: Calvin and his successors' theologies, Reformed Creeds and Catechisms, and Acts of Synod, the gauge of which is God's will infallibly revealed in Sacred Scripture.

Under consideration in this chapter is *inter alia* the understanding of two interrelated Christian concepts: the Fall, and the will. The Reformed doctrine of the Fall, and its consequences for the will, are pivotal to an understanding of the process of resolution of moral dilemmas within the Reformed theoretical framework of ethics. Undifferentiated fallen humanity's capacity to make decisions in the face of choices between moral good and evil, good and good, and evil and evil, is a moot point with

Reformed theology and ethics. The debate centres on the modes of God's grace-full dealings with the regenerate and unregenerate alike, to be precise, the acceptance or denial of the doctrine of common grace. It is possible to accept or deny the doctrine of common grace within the Reformed tradition and remain within it. It is likewise possible to hold the doctrine of supralapsarianism and infralapsarianism and remain Reformed.

Abraham Kuyper argues that all rational human beings, regenerate and unregenerate, are capable of making and indeed do make moral decisions within diverse ethical theoretical frameworks with regard to, for example, the common good of fellow human beings. Some, within Reformed ethics and theology, however, represented by Herman Hoeksema, for one, deny that the apparent morally good actions of the unregenerate are in fact so, as they are not beneficiaries of particular grace for a particular people. From a radical superlapsarian standpoint, Hoeksema maintains that God is ceaselessly active in preserving the sinful condition of the unregenerate (Hoeksema, 2004:236-237). Kuyper, on the other hand, maintains that God ceaselessly involves himself in the world and in the lives of the regenerate and unregenerate alike, and this, with regard to the unregenerate, God effects by common grace:

Gemeene gratie [...] heeft alleen een *negatief* doel t. w. de volledige ontwikkeling van het gif der zonde te stuiten. Naar dit tweeërle doel is, zijn ook de middelen, en zulks wel in dien zin, dat de middelen der gemeente gratie nooit iets positief *ten leven* in den *dooden* zondaar kunnen uitwerken; maar dat ze zeer wel bij de bekeering kunnen invloeden (Kuyper 2, 1903:239).

This study addresses these divergent doctrinal opinions.

To highlight the distinctive Reformed doctrine of the will, and its implications for ethical decision-making, as and when appropriate, useful reference is made to the Roman Catholic doctrine of the will. This comparison is valuable, since the Reformed theological tradition defines itself over and against the Roman tradition. Comparing and contrasting these doctrines of the Fall and the will is an aid to understanding the extent to which fallen humanity is totally depraved with respect to the will, which in turn, determines the understanding of fallen humanity's ethical capacity. The relevant debate within the Reformed theoretical framework of ethics is the degree to which human nature is vitiated, and the extent to which this vitiation impairs ethical decision-making and moral choice among the regenerate and unregenerate alike.

### **2.1.1 Free will, bonded will: a Reformed perspective**

Throughout his writings, Calvin intermittently protests that he is not overly concerned about the use of words "providing a sound understanding of the reality is retained" (Calvin, 1996:69). Reformed theology's understanding of the Fall accords with other Christian traditions' understanding of Genesis 3, that Adam and Eve, man's first parents, lived in total harmony with God until they voluntarily

succumbed to the serpent's temptation to equality with God. Reformed theology holds that this act of disobedience destroyed the necessary condition for free will, i.e. the total harmony between God's will and man's will. Calvin, then, holds the will to be no longer free but bound by sin's fetters (Inst 2.2.7, 1960:249-250). In his treatise, *The Bondage and Liberation of the Will*, Calvin declares freedom and bondage to be mutually contradictory (Calvin, 1996:68). Contrariwise, Roman Catholic doctrine states that after the Fall, man's will is free, but now, because enslaved to sin, it is limited and fallible (CCC, 1739, 2001:389).

Calvin, therefore, avoids the term "free will" scrupulously, for he fears that understanding of sound reality cannot be safeguarded. "But how many men are there, I ask, who when they hear free will attributed to man do not immediately conceive him to be master of his own mind and will, able of his own power to turn himself to either good or evil?" (Calvin, 1996:69). Here, as ever, Calvin is alert to Pelagianism and its variants. These hold man is born in original innocence, and by the act of his proper will, and independently of God's grace, is able to turn from sin to God. The Council of Orange (529 AD) condemned this doctrine, affirming original sin, and confirming that God's grace, of necessity, precedes man's turning from sin to God.

The Fall, *per se*, then, is not a theologically contentious issue here. The human predicament is invariable. Judeo-Christian experience attests to the universality of sin, religious experience to evil, secular experience to alienation between self, others, and nature. Reason itself attests to the brokenness of the human condition. However, man's free will, or in Reformed parlance, the lack thereof (Inst 2.2-3, 1960:255-316), demands consideration. The nature and extent to which man's will is not free, but bonded to sin, is germane to the focus of this ethical study, namely, the right to life and its relevance to abortion, and to HIV/Aids prevention in the RSA.

Henceforward, the term "will" rather than "bonded will" or "unfree will" is used, and is understood in the Reformed sense as bonded or unfree. Unless otherwise stated, the use of the term "free will" is understood in the Pelagian sense.

In keeping with other Christian traditions, Reformed Christian anthropology posits a correlation between the Fall and the will. Adhering to the Reformed tradition, the central thesis of this chapter is that undifferentiated fallen man, notwithstanding his total depravity, retains the inalienable status of the image of God, and a will with the capacity to effect ethical choice. This chapter considers the correlation between the Fall and the will, and how it affects ethical choice.

### 2.1.2 In the beginning: creation

In order to appreciate the nature and consequence of the Fall of man, it is necessary to reflect upon man's prior state of perfection, which is generally termed in the Reformed tradition, "original righteousness". The locus for this is the Garden of Eden.

The concern of Genesis 1-2 is not primarily the created universe with man at its centre and summit. Its interest is the relationship between God the Creator and God's creation. The purpose of these chapters is twofold: to proclaim God the Creator's absolute sovereignty and transcendence over all creation, and his simultaneous imminence within it. Genesis 1-2 establishes the divinely revealed premise that God is Creator of all, subject to no one other, and to no thing other. There is no cooperation or conflict between God and gods; no cooperation or conflict between creating forces; no conflict between opposing moral forces of good and evil. God has no rivals. God alone commands, "Let there be...; and there was" (Gen 1:3-26). God alone fashioned man from the dust of the ground and brought him to life (Gen 2:7). God took counsel with himself only (Gen 1:26).

God's imminence in creation affirms that God's relationship to man and creation is not remote in nature. God ties himself to creation by creating man in the image of God and placing man at the centre of creation. For the essential meaning of "created in the image of God" is relational (Gen 1:26-31; 2:7). The German Lutheran theologian, Jurgen Moltmann, observes, "To be an image of something always means letting that something appear, and revealing it" (Moltmann, 1985:219). Man's task as the image of God can be performed meaningfully only in relationship to God, because God first establishes a meaningful relationship with man.

Genesis 1-2, then, describes man's God-given dominion over creation and his freedom to act within creation with respect to God his Creator (Gen 1:28-31; 2:19-20a). However, Genesis 1-2, noticeably does not relate that man's rule over creation establishes man's autonomy with respect to God the Creator, nor with respect to God's creation. The teaching of the first two chapters of Genesis is that man's freedom is not autonomous freedom but theonomous freedom. Man at the dawn of creation is demonstrably free, yet demonstrably dependent upon God, absolutely sovereign. In short, according to Genesis 1-2, man is free not in relation to self, but free in relation to God and creation. Man is dependent upon God for his very existence: "...then the Lord God formed man from the dust of the ground, and breathed into his nostrils the breath of life; and the man became a living being" (Gen 2:7). "Man is made the servant-friend of God" (Hoeksema 1, 2004:279). Adam and Eve's freedom is circumscribed by their essentially dependent relationship with God. Created in the image of God, they alone stand in a conscious dependent relationship to God. All else in creation flies, floats, stands, sits, or lies in an essentially unconscious dependent relationship to God. Freedom, as essentially limited by dependence upon another, is relevant to the understanding of the nature of

Gospel and of constitutional imperatives, as it raises the issue of the possibility, or impossibility, of constraints on these imperatives.

### **2.1.3 Original righteousness**

Contending against liberal individualism, the Lutheran theologian, Wolfhart Pannenberg, in his lecture, *Human nature and the individual* (1977), makes the point: “The image of the individual who takes himself or herself to be the centre of his or her life aptly describes the structure of sin” (Pannenberg, 1977:26). In the setting of the Garden of Eden, Judaeo-Christian anthropology makes the point that a right relation with God aptly describes the structure of man in the image of God.

In what did that right relation with God, original righteousness, consist? Genesis 1-2 gives no theological detail of this state, indicating only that God lived with Adam and Eve in mutual harmony. As the image of God on earth, Adam and Eve’s rule over creation was exercised as a blessing. Until the moment of the Fall, man’s first parents knew only the good. “Then the Lord God said, ‘See, the man has become like one of us, knowing good and evil’” (Gen 3:22a).

#### **2.1.3.1 Original righteousness: Calvin**

Commenting on Genesis 1:26, Calvin enumerates some attributes of perfect human nature as follows, “Adam was endued with right judgement, had affections in harmony with reason, had all his senses sound and well-regulated, and truly excelled in every thing good” (Calvin, 1965:94-95). Other qualities proper to man in the unspoilt image of God can be derived from further reading of Calvin’s commentary on Genesis 2. Attributed to this state of excellence is “knowledge of him who is the chief good”, and true wisdom, prudence, wisdom, obedience, marital harmony (Calvin, 1965:118-137).

Institutes 1.15 is devoted to the original state of man before God. In the opening paragraph of this chapter, Calvin writes, “...among all God’s works, here [in man] is the noblest and most remarkable example of his justice, wisdom, and goodness” (Inst 1.15.1, 1960:183). For a deeper understanding of the qualities attached to man as *imago Dei*, Calvin turns to Christ, the Second Adam, and reflects upon the meaning of the text, “and to clothe yourselves with the new self, created according to the likeness of God in true righteousness and holiness” (Eph 4:24). In the first place, putting on the new man restores to the regenerate, knowledge [of God’s will], pure righteousness, and holiness. These qualities do not exhaust the matter. Calvin declares them synecdoches (Inst 1.15.4, 1960:189). Thus, knowledge, righteousness, and holiness have a multitude of facets and manifestations.

### **2.1.3.2 Original righteousness: Forms of Unity**

The Belgic Confession, the Canons of Dort, and the Heidelberg Catechism take Genesis 1:26-27, man as *imago Dei*, as their point of departure in considering the several qualities of original righteousness. Bearing in mind that the Forms of Unity are by nature concise formulations of faith and belief, and not elaborated theological treatises, they are nevertheless still relatively terse in this respect, confining themselves to bare comment on Genesis 1-2. They affirm God's revelation in Scripture that man, created by God in God's image, was originally created good, and lived in original righteousness before God and in harmony with creation.

The Belgic Confession briefly describes man as "good, righteous, and holy, capable in all things to will agreeably to the will of God" (Belg, 14, 1999:46).

Original righteousness is addressed indirectly by the Heidelberg Catechism in answer to the question concerning whether or not God is unjust in requiring man to keep God's law, which of man's proper volition man is incapable of keeping. To which the Catechism answers, "Not at all; for God made man capable of performing it; but man, by instigation of the devil, and his own wilful disobedience, deprived himself and all his posterity of those divine gifts" (Heid, Q9, 1999:46).

The Canons of Dort state, "Man was originally formed after the image of God. His understanding was adorned with a true and saving knowledge of his Creator and of spiritual things; his heart and will were upright, all his affections pure; and the whole man was holy" (Dort, III-IV, 1, 1999:48).

### **2.1.3.3 Original righteousness: Second Helvetic Confession**

The Second Helvetic Confession states tersely, "Man was from the beginning created by God after the image of God, in righteousness and true holiness, good and upright" (Second HelC2, VIII. 1, 1999:46).

### **2.1.3.4 Original righteousness: Westminster Confession of Faith**

The Westminster Confession of Faith succinctly states, "By this [first] sin they [our first parents] fell from their original righteousness and communion with God" (WestC, VI. 2, 1999:46).

It appears that the qualities describing what it means to be *imago Dei* living in original righteousness before God, living in total harmony with God's will, and therefore in total harmony with creation, are of secondary theological concern for the Forms of Unity, the Second Helvetic Confession, and the

Westminster Confession of Faith. Of primary concern is the confession of faith in God the Creator, God freely creating the universe, man created freely in the image and likeness of God, and, as God's image on earth, ruling creation in conformity with God's will.

In sum, for the Confessions of Faith and the Catechism cited above, the state of original harmony between God, man, and creation pertained in the Garden of Eden, not because at the centre of Adam and Eve's life was the tree of life, and the tree of knowledge of good and evil, but God, their Creator and life-giver (Gen 2:9). So long as this comprised the *status quo*, man dwelt in a state of original righteousness and holiness before, with, and in God.

### **2.1.3.5 Original righteousness: Kuyper, Jr**

Abraham Kuyper, Jr., like his elder namesake, a Dutch neo-Calvinist, says little of the qualities attached to original righteousness, and what he does say, he does not derive from Genesis but approaches the issue from a Christological perspective, after the example of Calvin (Inst 1.15.4, 1960:189-190): "He [Christ] is the source of your life in Christ Jesus, who became for us wisdom from God, and righteousness and sanctification and redemption" (1Cor 1:30). Being made righteous before God in Christ, restores to man the qualities attached to original righteousness, namely, true wisdom, and true holiness. "Hij [Adam] was zoo geschapen, dat hij ter wereld kwam als een voor God rechtvaardige, met ware wijsheid en heiligheid. Het was alles aan, in en bij hem" (Kuyper, Jr., 1929:81). Of course, only Christ has the fullness of true wisdom and holiness. As Adam was "complete, in himself and with himself", so too is Christ, the Second Adam.

### **2.1.3.6 Original righteousness: Hoeksema**

With regard to man as *imago Dei* living in harmony with God before the Fall, Hoeksema says only, and without further comment or elaboration, "there was a reflection of the perfections of God in man" (Hoeksema 1, 2004: 289).

This lack of interest in the qualities of original righteousness is unsurprising. Hoeksema, along with Bahnsen, Einwechter, and Rushdoony, represents a particular school of Calvinism after Calvin that would deny that there is anything, even a slight residue of the image of God left in man totally depraved, if "total depravity" is to retain its meaning. Foundational to Hoeksema's theology of fallen man, and denial of common grace, is a radical definition of the absolute loss of the *imago Dei*, even going as far as to claim that fallen man bears the image of Satan (Hoeksema 1, 2004:294).

Calvin does not claim that the *imago Satani* supersedes the *imago Dei*. Hoeksema's opinion goes beyond Calvin's overarching view of *imago Dei* expressed in the Institutes and his commentary on Genesis, "Truly, there are many things in this corrupted nature [of man] which may induce contempt; but if you rightly weigh all circumstances, man is, among other creatures, a certain pre-eminent specimen of Divine wisdom, justice and goodness..." (Calvin, 1965:92).

### **2.1.3.7 Original righteousness: summary**

The term "Original righteousness" is a theological attempt to describe man's original relationship to God when man, possessed of free will, effortlessly projected the image of God. This situation no longer pertains, because the image of God in man, and man's free will, are corrupted, though not totally annihilated. All attempts to speak of the theological facets of *imago Dei*, therefore, are necessarily impaired because of the Fall. Calvin's remark on the true nature of the image of God is relevant in this respect, "it seems that we do not have a full definition of "image" [of God]", and implies, correctly, that a full definition will never be arrived at (Inst 1.15.4, 1960:189). Reformed theology and doctrine are content to affirm without elaboration that, under the conditions of original righteousness, God's glory shone out in all its fullness in man, and the perfections of God were manifest fully in God's image on earth.

## **2.2 Effect of the Fall**

It is beyond the scope of this study to discuss detailed theological differences of opinion posited by various Christian theological traditions on the effect of the Fall, specifically, differences between the Reformed and the Roman Catholic traditions, in which Calvin engaged. However, it is necessary to pay attention to the basic divergence of opinion over the consequences of the Fall within the Reformed theological tradition, as this study is undertaken from within its parameters.

In his introductory remarks to Genesis 3, Calvin writes, "After he [man] had been deceived by Satan, revolted from his Maker, [man] became entirely changed, and so degenerate, that the image of God in which he had been formed, was obliterated" (Calvin, 1965:139). Here Calvin expresses the consequences of the Fall using particular vocabulary. Within the Reformed tradition, diverse theological interpretations of Calvin's terminology have caused to appear towards the poles of Reformed theology's continuum, Arminianism, and popularly named, Hyper-Calvinism. In addition, misunderstanding outside the Reformed tradition, of interest here the Roman Catholic Church, has occurred around Calvin's theological terminology of the Fall and its effect on free will.

Arminianism is commonly considered as an enemy within the Reformed tradition. Arminian soteriology stands in theological opposition to the five points of Calvinism as expressed in the acrostic, TULIP: Total depravity: man's will is not free, but bonded to sin. Unconditional election: election of some is solely by God's own will and choice from eternity. Limited atonement: Christ died for the elect only. Irresistible grace: the Holy Spirit's call to the elect can never ultimately be rejected. Perseverance of the saints: the elect of God, redeemed in Christ, and with the Holy Spirit's gift of faith are saved, and by God's grace are able to persevere to the end.

In contrast to TULIP, Arminianism asserts that fallen man has free will and the ability to choose in matters spiritual. God unconditionally elects certain members of the human race, and this election is based on God's foreknowledge that they will respond. Christ died for the sins of all, but salvation becomes effective only when salvation is accepted. By his freedom, man can effectively resist the Holy Spirit, thus limiting the atoning work of Christ. Believers who are truly saved can lose salvation by lack of perseverance. The Reformed tradition essentially views Arminianism as a variation of Pelagianism, more accurately as semi-Pelagianism.

Hyper-Calvinism, so called, stands at the opposite pole of the Reformed theological spectrum, against the tenets of Arminianism. After Scripture, Hyper-Calvinism takes the Forms of Unity and other Reformed Confessions as its principal point of theological departure. This approach leads to a certain selective reading of Calvin's theological corpus *vis-à-vis* other Reformed readings. Of specific interest, with respect to this study, is the equating of man's depravity to Satan's, which is absolute rather than "total", and the denial of common grace. These theological propositions are relevant to the focus of this chapter, namely, the correlation between the Fall and the will, and the effect of the Fall on ethical decision-making.

External to the Reformed tradition, it is sufficient to cite one example of the Council of Trent's (1545-63) thirty-three anathematising canons on Justification, several of which are anti-Pelagian, and the rest uncompromisingly against the Reformers. Germane to this study is Trent, Session 6, Justification, Canon 5, on free will. Here free will is not understood in the Pelagian sense but in the Roman sense as enslaved to sin and therefore limited and fallible. "If any one says, that after the sin of Adam, man's will was lost and destroyed, or that it is a thing only in name, indeed a name without reality, a fiction introduced into the church by Satan: let him be anathema" (Trent, 1978:43). Here Trent has in mind Luther who maintained that, after original sin, free choice is a reality only in the mind. Calvin follows Luther here, and rejects Trent's interpretation and condemnation of Luther.

### 2.2.1 Effect of the Fall: problematic terminology

The stance of Luther and Calvin on the will begs the question of the function, if any, of the will with respect to ethical choice. Arminianism answers this question by affirming man's will is free after the Fall. Hyper-Calvinism's affirmation that man is absolutely depraved leads to the conclusion that the will is destroyed. Trent's anathematising response to Luther, Calvin, and the Reformers results in part from the vitiation of right theological relationships. Parties in dialogue had become deaf.

Reformed terminology then, is not without problems. With respect to man's will, terms such as "depraved" and "obliterated" need some explanation, as from a Reformed perspective at least they appear to be misunderstood. Trent seems to treat Calvin's theological terminology, *inter alia*, "depraved" and "obliterated", as cognates of "destroyed" or "annihilated", and therefore perceives a denial of free will, albeit defined in the Roman sense as enslaved to sin, fallible and limited.

Furthermore, the wording of chapter headings, for example, "Only damnable things come forth from man's corrupt nature" (Inst 2.3, 1960:289), may inform an erroneous view that Calvin denies that man is capable of any ethical choice, other than possibly between evil and evil. It should be remembered that Calvin's Institutes, Scripture commentaries, catechisms, and polemical works, were addressed primarily to his followers, and not to his opponents. Tempering theological terminology to opposing theological opinion was not *de rigueur* in sixteenth century Wittenberg, Geneva, and Rome. The bondage and liberation of the will – a defence of the orthodox doctrine of human choice against Pighius" (1543), hardly indicates willingness to dialogue with the Dutch Roman Catholic theologian, Albert Pighius. Then Calvin's opponents acted likewise, Pighius being a prime example. Pighius', Ten books on human free choice and divine grace (1542), is a forthright attack on two chapters of the Institutes (1539), namely, The knowledge of humanity and free choice, and, Predestination and providence of God.

### 2.2.2 Effect of the Fall: attempting an understanding of the terminology

Reformed theology discusses fallen man's predicament in terms of *imago Dei*, and the nature and extent of the bondage of the will, in preference to Trent's theology of man as *imago Dei*, and the nature and extent of man's will defined as free to whatever slight degree. Calvin's stated reluctance to use "free will", and his preference for "bondage of the will", is helpful in considering constraints inhibiting man's choice between good and evil, good and good, and evil and evil. It also maintains the status and necessity of God's prevenient grace affirmed by the Council of Orange.

It ought to be acknowledged, however, that Calvin's theological terminology of the Fall opens itself to the possibility, within and outside the Reformed tradition, of an unjustifiably pessimistic view of man's

radical depravity and ethical ability. As noted previously, Calvin does not intend that man's total depravity be considered a cause for pessimism (Inst 1.1.1, 1960:35-37). Such gloomy anthropology may originate from a consideration of man's sinful acts, which admittedly, arguably reflect the *imago Satani*, rather than project the *imago Dei*. This may lead to the hypothesis that man is incapable of making any meaningful ethical decision in any sphere of life, religious or civic. Man's manifest penchant to sin does not imply that the reality of his ontological status as the image of God, albeit corrupted, or deformed, or obliterated, is ever forfeit to Satan.

Calvin does not intend his theological terminology of the Fall and its consequences to be defined or interpreted as nihilist. Indeed, Calvin is anxious to maintain this point throughout his work, for example, "There is no doubt that Adam, when he fell from his state, was by this defection alienated from God. Therefore, even though we grant that God's image was not totally annihilated and destroyed by him, yet it was so corrupted that whatever remains is frightful deformity" (Inst 1.15.4, 1960:189). That man definitely retains some degree of his God-given endowments *inter alia*, wisdom, reason, and will, is specifically dealt with by Calvin (Inst 2.12-17, 1960:464-534).

### **2.2.3 Effect of the Fall: summary**

Affirming that man retains something of God's gifts of nature, does not lessen the gravity of man's fall from his original state of righteousness before God and his harmonious relationship to creation. Nor does it imply that man, of his proper volition, can do any good towards God that will earn him salvation. The real tragedy of the Fall of man from original righteousness, true wisdom, and holiness is a double one. The shattering of the image of God in man, and the ruination of the original harmonious relationship willed by God, means not only that man no longer reflects the full glory of God, whose image he is, but that God no longer sees the fullness of his glory shining forth from man freely created in the image of God.

The fundamental reality and misfortune of man's total depravity is his vitiated relationship with God. Nevertheless, in the face of this, Reformed anthropology insists on common humanity's essential and irrevocable status as *imago Dei*. Man's deeds, good, bad, and indifferent, are important but of secondary concern. Reformed anthropology further maintains that under common grace, undifferentiated humanity is indeed capable of deeds that benefit the common good of society.

In sum, the consequence of the Fall and man's total depravity ought not to shoulder a greater burden than Calvin lays upon it. The *imago Dei* is adjectivally qualified as corrupted, and deformed, and obliterated. Calvin's grammar of the Fall unfortunately leaves itself open to unintended theological interpretation. Writing from within the Reformed tradition, one must take Calvin's corpus in its

entirety, which affirms that undifferentiated fallen man retains his will to a degree. Pertinent to this study is the nature and parameters of the will with respect to ethical choice.

### 2.3 Free will: its nature and reach

Arguably, free will, by whatever criteria, is a misnomer, for in practice the will is never free, but bound. The Judaeo-Christian tradition affirms that Adam and Eve possessed free will. Their will was deemed free as long as it remained in harmony with God's will. Even in this state of original righteousness, however, Adam and Eve's wills were not autonomous, but mutually bound to God, each other, and the rest of creation. But man freely changed this relationship by sin, and *ipso facto*, the conditions of the bound will. In sum, both graceful and sinful relations constrain freedom.

In the theonomous sphere, under consideration here the Judaeo-Christian tradition, God periodically binds fallen man's freedom with respect to himself – Noah (Gen 9:1-7), Abram (Gen 15), Moses (Ex 20:1-21). God also charges Israel never to forget this covenant dependence and necessary obedience to God's will (Deut 6:1-9). The Pentateuch extensively details practical constraints placed on man's freedom by duties and obligations towards God and neighbour.

In the Christian milieu, Christ, in his proper person, is confessed as the hoped for fulfilment of God's promised new covenant (Jer 31:31-37). Attachment to Christ circumscribes man's freedom, and further extends the reach of obligations set forth in Deuteronomy 6:1-9 and detailed in the Pentateuch. Christian discipleship means putting God, through, with, and in Christ, first in all things, and even putting one's neighbour before oneself, albeit at some considerable personal cost (Rom 15:1-6).

In the secular (*laïque*) sphere, men, not God, limit man's freedom. The constitutions and common law of States attest to this. Thus, a secular hypothesis that man is naturally free in the sense that Stoics claim that freedom is inalienably natural to man, and modern and post-modern claims of radical individuality that posits man's innate freedom with respect only to himself, do not, in practice, give the individual possessed of freedom, so defined, unbounded rights with respect to himself and no other.

In sum, from the Reformed Christian theological perspective, theology attests that God first established his relationship with man, and by this creative act, God's freedom is freely bound. Created in God's image, fallen man's freedom is likewise bound by relationships, whether to sin or by particular grace to God in Christ, or, by common grace to one another and the totality of creation.

### **2.3.1 Bonded will: its nature and reach – Forms of Unity**

There is uniform Reformed agreement concerning the nature of fallen man's will, namely, that it is depraved, bonded to evil and incapable of any good towards salvation. The Forms of Unity address the issue of fallen man's nature thus. The Canons of Dort state that by an act of man's free will, God's outstanding gifts pertaining to original righteousness were replaced by "blindness of mind, horrible darkness, vanity and perverseness of judgment, became wicked, rebellious, and obdurate in heart and will and impure in his affections" (Dort, *III-IV.1*, 1999:48). Having lost God's excellent gifts by sin, affirms the Belgic Confession "[Man has] thus become wicked, perverse, and corrupt in all his ways" (Belg, 14, 1999:46). And, in answer to the Heidelberg Catechism's question on man's ability to keep God's law perfectly, the Heidelberg Catechism affirms, "In no wise, for I am prone by nature to hate God and my neighbour" (Heid, Q5, 1999:46).

### **2.3.2 Bonded will: its nature and reach – Second Helvetic Confession**

The Second Helvetic Confession is more fulsome in its statement on the fall of man, and the cause of sin.

Man was from the beginning created by God after the image of God, in righteousness and true holiness, good and upright; but by the instigation of the serpent and his own fault, falling from the goodness and unrighteousness, he became subject to sin, death and diverse calamities; and such a one he became by his fall, such are all his offspring, even subject to sin, death and sundry calamities (HelC2, *VIII. 1*, 1999:46).

### **2.3.3 Bonded will: its nature and reach – Westminster Confession of Faith**

On the fall of man, and man's punishment consequential thereupon, the Westminster Confession of Faith confines itself to this cryptic formulation. "By this [first] sin they [our first parents] fell from original righteousness and communion, with God, and so became dead to sin, and wholly defiled in all their parts and faculties of soul and body" (WestC, *VI.2*, 1999:47).

In sum, for these five Reformed confessions of faith, original sin definitively bound man's will.

#### **2.3.4 Bonded will: its nature and reach - Calvin**

Calvin's doctrine of total depravity of the will that is foundational to all Reformed opinions concerning fallen man's nature and will has been systematically referred to throughout this paper thus far. It may be summarised accordingly as, "sin overturns the whole man" (Inst 2.1.9, 1960:266-267); consequently, "Man cannot ascribe to himself even one single good work apart from God's grace" (Inst 2.3.12, 1960:306).

#### **2.3.5 Bonded-will: its nature and reach – Kuyper, Jr**

Kuyper, Jr discusses man's nature in its narrower sense (*engeren zin*), and wider sense (*ruimeren zin*). After the Fall, man lost true knowledge, righteousness, and holiness; thus, man's nature in the narrow sense was lost. Man however, retained his nature in the wider sense, attested by the vestige of knowledge, reason, and wisdom (Kuyper, Jr., 1929:126-127). Kuyper, Jr affirms the irrevocable (*onverliesbaar*) status of man in the image of God, and that man's status of *imago Dei* is never forfeit to Satan. Man's will is bound to sin, not to Satan.

#### **2.3.6 Bonded will: its nature and reach – Hoeksema**

On man's nature, Hoeksema avoids speaking in terms of man in the image of God, and speaks of man as man. "He is man in the state of rectitude. He remains man when he falls. And he is still man when he is regenerated" (Hoeksema 2, 2005:148). Retaining some knowledge of earthly things, Hoeksema states that fallen man's nature, "spiritually and ethically was put into reverse. His knowledge became darkness and the lie, his righteousness was changed into unrighteousness and iniquity, and his holiness became hatred of the living God... He loves sin with all his heart and follows it all his life. He is an enemy of God who minds and wills sin" (Hoeksema, 2005:152-153).

#### **2.3.7 Bonded will: its bounds**

According to Reformed theology, the will is only free when it is truly aligned with God's will. "In general, freedom is the state in which man's inner nature is in perfect accord with the law of God" (Hoeksema 1, 2004:300). Since the Fall, this original total harmony of wills no longer pertains. The will, says Calvin in his reply to Pighius on human choice, is now bonded to evil: "A bound will, finally, is one which, because of its corruptness, is held captive under the authority of evil desires, so that it can choose nothing but evil" (Calvin, 1996:69).

The Reformed use of bonded will rather than free will, principally due to inherent associations with Pelagian claims of man's ability to turn from sin to God by *sole* use of his unfettered will, still leaves the issue of the extent of bounds of the bonded will, and their effect as a constraint on his ethical decision-making. Reformed opinion diverges regarding the extent of the influence of man's bonded will on his ethical decision-making capacity. This raises the issue of how strongly bound to all evil, is the bonded will? In the light of Calvin's uncompromising condemnation of Pelagianism in his reply to Pighius, and reiterated elsewhere in Calvin's writings, and echoed throughout Reformed theology, the answer to this question is that the will is solidly bound to all evil.

It is of importance, however, that this answer does not exclude the action of God's grace. The Reformed categorical reply allows for the operation of the Holy Spirit, be that the working of particular grace in particular people, or the operation of common grace for the common good. As difficult as it is to recognise under the conditions of total depravity, God continues to maintain his intimate and influential sustaining relationship with fallen man and the fallen world. "God, whenever he wills to make way for his providence, bends and turns men's wills even in external things; nor are they so free to choose that God's will does not rule over their freedom" (Inst 2.4.7, 1960:315).

Thus, Reformed theology asserts the robust bounds of man's will corrupted and bound to all evil. However, the will does not operate in isolation from fallen man as an entity *per se*. The will is integral to man as *imago Dei*, and as such, is an essential constituent of man's entire relationship to God. God, accordingly, through his graceful relationship with man and the rest of creation, is freely able to modify the internal and external parameters under which the bonded will operates. The answer then to the question of the parameters of the bounds of the will bound to all evil, is the freedom of God the Creator in relation to fallen man, God's creature. In other words, Reformed theology affirms that under the constraint of sin, and the liberty of God's grace, the will indeed has the capacity to effect ethical choice.

## **2.4 Free will – bonded will: summary**

The issue of the nature and bounds of man's will arises in Reformed and Roman traditions. The Reformed tradition's doctrine of the Fall, and its effect on the will regarding ethical decision-making, is so formulated as to refute unambiguously all Pelagian and semi-Pelagian doctrines of sin and free will. The Roman tradition, in expounding its doctrine of the Fall, does not systematically reiterate its opposition to the doctrines of Pelagianism and semi-Pelagianism. Rome presupposes that one reads its theology of the Fall and free will within Tradition, i.e. Scripture, the Early Fathers, Councils; and here specifically, the canons of the Council of Orange, and Trent's reaffirmation of these by the Decree concerning original sin (Trent, Session Five).

Reformed, and Roman terminologies, are avowedly anti-Pelagian, and both are open to interpretations other than intended. Rome's doctrine of free will taken out of context, i.e. Tradition, leads to the accusation that man, solely by the power of his will, is capable of turning from sin to God. The Reformed doctrine of the bonded will, in conjunction with the doctrine of man's total depravity, taken out of the context of particular and common grace, leads to the assumption that man has no choice in matters ethical, or if he has a choice, only between evil and evil. The denial by some Reformed schools, of common grace, likewise leads to an unintended pessimistic view of man that negates his God-given irrevocable status of *imago Dei* to an irrelevance with respect to ethical decision-making, and consequently imposes limits to his ethical ability beyond those Calvin intended.

Optimistically, Reformed theology affirms that the limits to man's will, and hence man's ethical ability, is ultimately determined by his dependence on God, and not upon his bondage to sin, and even less upon the power of Satan; for the whole person is bound to sin, not to Satan. Original sin manifestly ruined man's harmonious relationship to God, but did not annihilate it. Further, man is not immune from Satan's temptation to sin. It is within this matrix of sin and grace that fallen man exercises his will and ethical ability. Alternatively, now that sound understanding of the reality of free will is here established, one may say that fallen man exercises his free will and ethical ability within this matrix of sin and grace.

In short, the valid Reformed position of radical supralapsarianism notwithstanding, the balance of the Reformed ethical tradition affirms that the regenerate and unregenerate alike are not so bound to sin that they are rendered incapable of meaningful ethical decisions in the face of moral dilemmas. The Reformed theoretical framework of ethics acknowledges that moral choices are a practical possibility, be it through the activity of particular grace for the regenerate, or common grace for the unregenerate. Acceptance or rejection of an impaired human moral faculty that is capable of grasping universal concepts of good and evil has practical implications for an evaluation and Christian ethical response to the right to life, abortion, and HIV/Aids prevention in the Republic of South Africa. This study accepts that man is in possession of an impaired moral faculty that is nevertheless capable of grasping universal ethical implications of moral dilemmas.

### 3. CHAPTER THREE – IMPERATIVES: A CHRISTIAN PERSPECTIVE

The Constitution of the RSA and its imperatives, their practical formulation in constitutional court rulings, and their expression in statute law, is the legal framework within which, Christians resident in the RSA live out the imperatives of the Gospel of Jesus Christ. The nature of imperatives in general, and of Gospel and constitutional imperatives in particular, their distinctiveness and relationship, is the subject of this chapter.

From these foci arise *inter alia* the following issues for consideration.

- The nature of an imperative *per se*.
- The distinctive nature of Gospel imperatives whose source is divine and grounded in the duty to love God, self, and neighbour.
- The distinctive nature of constitutional imperatives whose source is human and grounded in the wellbeing of the individual and the common good of society, however defined, within the RSA.
- The issue of the priority of Gospel imperatives in contrast to constitutional imperatives, and *vice-versa*.

This chapter will discuss various ethical theories and their approaches to moral dilemmas, as well as their relative strengths and weaknesses from within their proper ethical theoretical framework. Strengths and weaknesses of these ethical theories will also be considered from a Reformed ethical perspective. This perspective posits the primacy of Gospel imperatives over all other imperatives derived from all other ethical frameworks, including that of the current Constitution of the Republic of South Africa. Consideration will be given to distinctive characteristics of legal and moral imperatives, the relationship between the two, and, from a Reformed ethical perspective, possible moral conflicts arising between legal and moral imperatives.

#### 3.1 Epistemology for ethics: a Christian perspective

In his title, *Christian Attitude in the South African Liberal Democracy*, Vorster presents the following schematic epistemology for ethics (Vorster, J. M., 2007:3).

<b>WORLDVIEW</b> (Ideology & religion) ▶	<b>ETHICAL THEORY</b> ▶	<b>NORMS FOR MORAL CONDUCT</b>
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"All ethical norms flow from an ethical theory which in turn is determined by a certain worldview. The worldview depends on ideology, religion or belief" (Vorster, J. M., 2007:3). This explains the diversity of ethical theories *inter alia*, Christian, Muslim, Buddhist, secular, atheist, each of which is grounded in its particular worldview, be that religious or ideological. Depending upon the underlying worldview, each worldview proposes particular norms for moral conduct. These norms may be universal in character, or general in character, (Heyns 1982:15). By general in character is to say, limited and local in scope, as is illustrated by the following, for example.

Interestingly, Vorster's schematic epistemology can be applied to construct any ethical theory, even one proposing norms of immoral behaviour, i.e. behaviour that is accepted as universally wrong for all, for all time, and in all places and circumstances, such as wilful and unlawful killing, wilful and malicious lying, wilful and unlawful deprivation of liberty. Within a particular ethical theory, such behaviour is perceived as moral, and not immoral. An extreme example is an ethic of organised crime. The worldview of organised crime is based on wilful selfishness. The ethical theory of organised crime is that optimal profit can be made by any and all manner of means. Examples of norms of moral behaviour within the ethical theoretical framework of organised crime are that it is moral to trade women and children for slavery and prostitution, and it is moral to sell drugs to the children of others outside organised crime. It is, however, immoral to trade one's own and associates' women and children, as it is immoral to sell drugs to one's own and associates' children. From a Christian ethical perspective whose ethical theory and moral norms are universal, such an ethical theory and its resulting moral norms are considered to be immoral.

Vorster's schematic general epistemology of ethics and the example of an epistemology for organised crime conveniently differentiates universal moral norms and general moral norms. The Christian world view is universal, the Christian ethical theory is universal, and Christian moral norms are universal. This epistemology for a Christian ethic is in contrast to the general world view, the general ethical theory, and general ethical norms that characterise the epistemology of the Choice on the Termination of Pregnancy Act 1996.

At the centre of the Christian world view stands Christ and his Gospel. Christ and his Gospel are simultaneously the content of Christian ethical theory and the norm of Christian moral conduct. Christians are called to act morally, in, through and with the risen Christ. What this means in practical terms, Vorster expresses as "attitude". His translation of Philippians 2:5 is, "Your attitude should be the same as that of Christ Jesus" (Vorster, J. M., 2007:16). This means that Christ's attitude, which according to Vorster's exegesis of the text, is characterised by self-sacrifice, service, humility and obedience to God, must become the Christian's attitude in practice (Vorster, J. M., 2007:17-18). Praxis of selected Gospel imperatives, "Follow me" (Mt 4:19), "Love God, and your neighbour as yourself" (Mt 22:34-40), and "Take up your cross" (Mt 10:38) are illustrative of Christ's attitudes of self-sacrifice, service, humility and obedience to God worked out by Christ's disciples through, with, and in him. These imperatives are much more than a mere code of Christian moral conduct.

## **3.2 Imperatives: nature and reach**

This study proposes that the nature of any given imperative, i.e. what one ought to do in the face of any moral dilemma, is expressed by the imperative's formal rudimentary principle, i.e. its proper ethical theory, and its material rudimentary principle, i.e. consequent specific norms of action. The following examples of normative ethical theories drawn from Mitchell's title, *Charts of Christian Ethics*, - contractarianism (Chart 48), graded absolutism (Chart 45), theological voluntarism (Chart 42), act utilitarianism (Chart 46), virtue ethics (Chart 37), deontology (Charts 12, 41, 43, 44) – have proper formal rudimentary principles that propose proper and specific norms for application in any given moral dilemma.

The above normative ethical theories, selected from among others, are representative of possible approaches to moral conflicts presented to the Christian moral agent. These normative ethical theories and their variants, with the qualification that the moral agent is not defined in terms of pure reason and absolute autonomy of will in all matters ethical and moral, however defined, may usefully serve the Christian moral agent; notably and more generally among them is deontology in conjunction with its content source, theological voluntarism. This study notes that any one, or a combination of these ethical theories, may not be *ipso facto* exclusive. They are however distinct, and may be interrelated.

### **3.2.1 Contractarianism: imperative**

The formal rudimentary principle of contractarianism is "contract" i.e. consensus. Contractarianism's material rudimentary principle is the imperative that the moral agent must always act in such a way as to promote peace and order, however defined (Mitchell, 2006:48). The determining of peace and order by a collective or collectives of individuals rather than society itself, however defined, is problematical for this Christian study of the right to life, abortion, and HIV/Aids prevention.

### **3.2.2 Graded absolutism: imperative**

The formal rudimentary principle of graded absolutism is that there are moral absolutes dependent upon the will of God. Graded absolutism's material rudimentary principle is the imperative that the moral agent ought always to act in accord with God's will, even where the moral choice may be between the lesser of two moral evils (Mitchell, 2006:45).

### 3.2.3 Theological voluntarism (aka Divine command ethics) imperative

The formal rudimentary principle of theological voluntarism is that God's will determines the (moral) good. As with graded absolutism, the material rudimentary principle of theological voluntarism is the imperative that the moral agent ought always to act according to the will of God, even where the choice is the lesser of two moral evils (Mitchell, 2006:42).

Theological voluntarism and graded absolutism are distinct from, but related to, the ethical theory of deontology, since within the Christian ethical theoretical framework, as the Anglican ethicist, Oliver O'Donovan, commenting on theological voluntarism, observes in so many words, Christian dogma determines the content of Christian ethics (O'Donovan, 2006:39). Following O'Donovan with respect to God's will and imperatives, it may be said that the will of God determines the content of Christian deontological imperatives.

#### 3.2.3.1 Contextual absolutism: imperative

Contextual absolutism is a radical form of theological voluntarism that proposes that "there is always one resolution of any given moral dilemma that is morally right and free from sin" (Vorster, 2004:107). In common with proponents of a radical theonomous ethic, *inter alia* Bahnsen, Einwechter, Hoeksema, and Rushdoony, contextual absolutism admits no hierarchy of moral duties, only the singular duty towards God's absolute will infallibly revealed in Scripture. The approach of contextual absolutism to moral dilemmas is dogmatically and ecclesiastically problematical for the Reformed tradition. Two distinct but related doctrines usefully demonstrate this, namely, "man's total depravity", and the Reformed tradition's rejection of personal human infallibility within the Church.

With respect to the doctrine of "man's total depravity", there lies within the theoretical framework of contextual absolutism an inherent flaw, namely, in order for any moral dilemma to be resolved *solely* by recourse to God's will infallibly revealed in Scripture, the employment of an infallible hermeneutic is required. J. M. Vorster, writing from within the Gereformeerde Kerke in Suid-Afrika (GKSA) tradition, notes in so many words that "man's total depravity" precludes this. Vorster, citing the view of another Reformed ethicist, Stanley Grenz, observes that Christian ethicists, because of the moral agent's fallen nature, and hence "the pervasive presence of sin", must reject the premise of contextual absolutism that there is always one way to act in all moral dilemmas "that is morally right and free from sin" (Vorster, 2004:107). The wider Christian ethical tradition, with few exceptions, Hoeksema *et al*, for example, concurs with the point of view of Vorster and Grenz.

The doctrine of man's total depravity, therefore, implies the impossibility of human infallibility within the Church and, *ipso facto*, of one or more of her members. The Reformed tradition, thereby, rules out the possibility of any infallible interpretation of Scripture by any individual member of the Church, and even by the Church corporate herself, however defined, Presbyterian, Roman, or otherwise.

Regarding error and the Church; the Second Helvetic Confession's chapter dealing with the catholic character of the Church, and her unique head, Christ, allows that the Church, so long as she remains true to her foundations, namely, Christ and the testimony of the prophets and apostles, does not err, but if she strays from her foundations, she can err.

*This holy Church of God is called "the temple of the living God" (2Cor 6:16), builded of "lively stones...a spiritual house" (1Pet 2:5) founded upon a rock (Mt 16:18), "which cannot be moved" (Heb 12:28), upon a foundation besides which none can be laid (1Cor 3:11). Whereupon it is called the "pillar and ground of the truth" (1Tim 3:15) that does not err, so long as it relies upon the rock of Christ, and upon the prophets and apostles. And no marvel if it do err, so long as it forsakes him who is the alone (sic) truth (HelC2, XVII. 5, 1999:190).*

The Westminster Confession of Faith also allows that the Church should not err but can err because of the fact that sin is ever present in and through her members here on earth. "The purest Churches under heaven are subject to mixture and error and some have so degenerated as to become no Churches of Christ, but Synagogues of Satan. Nevertheless, there shall always be a Church on earth to worship God according to his will" (WestC, XXV. 5, 1999:189).

Calvin's opinions on the papacy and papal inerrancy expounded in his literary corpus, *inter alia* Institutes 4.7.1-4.8.16, 1960:1118-1166, are foundational to the Reformed ecclesial dogma and doctrine of the total rejection of any possibility of human infallibility, personal or collective, within the Church i.e. the Bishop of Rome alone, or bishops gathered in ecumenical council. On personal infallibility within the Church, countering Roman claims to papal inerrancy, Calvin writes:

*Yet these [claims to papal inerrancy] are the oracles by which the Romanists wish their papacy esteemed! Hence arose those famous sayings, which today carry the force of oracles everywhere in the papacy: that the pope cannot err, that the pope is above all the councils, that the pope is universal bishop of all Churches, and supreme head of the Church on earth (Inst 4.7.20, 1960:1139-1140).*

In sympathy with Calvin's view, the statement of the Westminster Confession of Faith's on the spiritual qualities of the Bishop of Rome, or rather the perceived lack thereof, written in the mutually antagonistic style of the day, would unambiguously deny any possibility of personal inerrancy with respect to the interpretation of Scripture. "There is no other head of the Church but the Lord Jesus Christ. Nor can the pope of Rome in any sense, be head thereof, but is that Antichrist, that man of sin, and son of perdition, that exalteth himself, in the Church, against Christ and all that is God" (WestC, XXV. 6, 1999:191).

The Reformed tradition, therefore, has no place for the dogma of personal papal infallibility promulgated by the Roman Catholic bishops assembled from 1869-1870 at the First Vatican Council (Vatican I, Session 2.4, 1990:816). Yet, paradoxically, proponents of contextual absolutism implicitly argue for individual infallibility in their personal interpretations of Scripture. Such interpretations, within the theoretical framework of contextual absolutism, are the grounds of singular pragmatic formulations of infallibly correct ethical and sinless solutions to any given moral dilemma. This is problematical for the Reformed tradition, aware that sin is ever present, to whatever degree, in all moral dilemmas and human attempts to resolve them. The unique relationship between Scripture, the Holy Spirit and the reader is also problematical, as contextual absolutism appears to diminish the divinely mandated authoritative tasks of the Church, namely, those of proclamation, custodianship, and interpretation. (Matthew 28:16-20).

In sum, based on the Reformed tradition's inadmissibility of any possibility of personal or collective infallibility within the Church, this study adjudges contextual absolutism to be incompatible with Reformed ecclesial dogma and doctrine, and consequently to be an unacceptable ethical approach to moral dilemmas. Calvin's view on the Church and her perfection, and, by extension, the fact of corporate and individual inerrancy within the Church, may be summarised in his words:

Indeed, God distributes the gifts of his Spirit to each of the members according to measure [Eph 4:7]; so that when the gifts are given in common, the whole body may not lack anything essential. But the riches of the Church are always far from that supreme perfection of which its adversaries [the Church of Rome] boast. Not that that the Church is in any respect so destitute that it does not have enough. For the Lord knows what its needs require. But to keep it within humility and godly modesty, he has bestowed no more upon it than he knows is expedient (Inst 4.8.12, 1960:1160).

It should be noted that the contemporary Roman Catholic Church, with the exception that the Church of Rome would dispute that infallibility is synonymous with the fullness of perfection, would be hard pressed to find anything objectionable in Calvin's statement as it stands. Roman Catholic dogma and doctrine situate the dogma of papal infallibility, and the infallibility of the College of Bishops in council, within God's knowledge of the needs of the Church and what is expedient for her (Vatican Council II, *Lumen Gentium*, 25, 1965: 379-380). The matter of papal infallibility, however, is beyond the scope of this study, and is more aptly pursued elsewhere under a discussion of Pope John Paul II's observation that the Bishop of Rome's petrine ministry is currently a topic of discussion by other Churches and ecclesial communities. This debate on the exercise of the petrine ministry is one that the Bishop of Rome welcomes as an aide to mutual understanding of his ministry (John Paul II, *Ut unum sint*, 1995:98-107).

### **3.2.4 Act utilitarianism: imperative**

The formal rudimentary principle of act utilitarianism is the good, defined as happiness or pleasure. Its material rudimentary principle is the norm that the moral agent ought always to act in such a way as to promote the good (Mitchell, 2006:46). Act utilitarianism, and utilitarianism *per se*, and other variants that necessarily enjoin, "do no harm", however harm is defined, in order to fulfil the imperative of happiness or pleasure, may be problematical for this study of the right to life, abortion, and HIV/Aids prevention.

### **3.2.5 Virtue ethics: imperative**

The formal rudimentary principle of virtue ethics is that virtue is the property that makes a thing, however defined, good. The material rudimentary principle of virtue is the imperative to act always in such a manner as to promote human excellence or the good (Mitchell, 2006:37). Problematic for Reformed ethics is the definition of excellence or the good defined solely in terms of the good of the absolutely autonomous individual, to the exclusion of all other individuals and society.

### **3.2.6 Deontology: imperative**

The formal rudimentary principle of deontology is duty. Its material rudimentary principle is the imperative that the moral agent ought always to act to promote the right and (moral) good by dutifully following rules and laws (Mitchell, 2006: 12, 41, 43, 44). The formal and material rudimentary principles of deontology are foundational to the Christian call, discipleship, and perseverance.

Where, however, the imperative of duty is defined as a Kantian categorical imperative, i.e. duty for duty's sake determined by pure reason, the Reformed tradition raises the theological issue of the status of human reason and will. Due to the Fall, human reason is grossly impaired by sin with respect to discerning the moral good, as is the human will that is now capable of willing sin; consequently sin permeates every morally good act (Inst 2.2.12-17, 1960:270-277; Belg, 14, 1999:46; Heid Q 7-8, 1999:46; HelC2VIII. 3, 1999:46; WestC, VI. 4, 1999:47). The wider Christian tradition generally concurs with this Reformed analysis.

#### **3.2.6.1 Kant's categorical imperative**

Immanuel Kant formulated his categorical imperative thus, "Act only on that maxim through which you can at the same time will that it should become a universal law" (Kant, 2005:97). That is to say, one's maxim and one's action must be unquestionably accepted by all other rational moral agents as self-

evidently universally valid, as are laws of nature, understood in their most general sense and commonly accepted by all rational moral agents (Kant, 2005:97). Consequently, if one determines that one's maxim, i.e. one's subjective principle of action, is not universally normative for all rational moral agents, then one is in duty bound not to act according to that maxim, for it would not be accepted by all other rational moral agents as a universal principle of moral action.

A foundational principle of Kant's categorical imperative is that the rational moral agent's will is in total accord with the moral agent's reason, which in turn enables the moral agent to will both the effect and the action to accomplish the desired effect. Kant's principle of ideal human potential and act in the field of ethical and moral standards of behaviour is therefore problematical for Reformed ethics. For according to a Reformed critique of the Kantian theoretical framework of ethics, the autonomous free moral agent in practice idiosyncratically judges any given maxim's universal validity under the conditions of man's total depravity, albeit within the parameters of common grace and/or particular grace.

The Reformed doctrine of man's total depravity does not accept that reason and will harmonise perfectly. Thus, the premise that any rational moral agent is capable by *sole* use of reason of willing a morally good effect and morally good action to accomplish the moral good, is effectively excluded. Under the conditions of the Fall, reason is now a remnant of its prelapsarian purity and wholeness, and the will is now bound to all evil (Inst 2.2-3, 1960:256-258). Thus, Reformed ethics, and Christian moral theology and ethics in general, necessarily contradict the proposition of Kant's categorical moral imperative *per se* as normative for Christian ethical theory and moral praxis.

Dismissal, on Pelagian grounds, of Kant's formulation of the categorical imperative, does not mean that Kant's insight into the role of deontology with respect to morality finds no appreciation whatsoever in this Christian study of Gospel and constitutional imperatives. The pragmatic philosopher, Nicholas Rescher, writing within the context of the philosophy of values, notes, "The root idea of Kant's moral theory is that of universality – that when an action is wrong or right, it is so always for everyone" (Rescher, 1989:12).

By this principle of universality, albeit determined by his proper understanding and formulation of the categorical imperative, Kant usefully draws out the important distinction between "universal" and "general", and in so doing, affirms the Christian assertion of the existence of, and the universal validity of, moral norms. However, the Christian tradition's claim of the existence of an objective universal moral order of valid universal moral norms – that are constituent of Christian ethical content – cannot be deduced from Kant's foundational principle of universality of norms and act.

Kant's principle of the categorical imperative, as stated above, profitably sharpens the focus on the universality of the Christian ethical and moral imperative, which is, by the grace of God, the duty always to act ethically and morally, and never to act unethically and immorally. The formulation of the categorical imperative, and Kant's insight and insistence that the rational moral agent is in duty bound to

act morally because the moral agent is *solely* by reason and will so capable, is from the Reformed and Christian anti-Pelagian point of view, impossibly unrealisable.

Kant's categorical imperative *per se*, remains problematical as a normative ethical theory for the Reformed tradition, on the grounds, as Pannenberg observes with reference to Kant's later thinking on the relationship between religion, belief in God and the moral law, that "he [Kant] asserted that religion must be a consequence of our moral consciousness, not a presupposition of moral obligation" (Pannenberg, 2006:48). Kant's priority of the autonomous will over and against religion, and therefore, ethics over and against religion, and by implication, the content of religion, i.e. doctrine, flies not only in the face of the Reformed doctrine of "man's total depravity" but in the face of the Reformed doctrine of God's absolute sovereignty.

Consequent upon the Reformed doctrines of God's absolute sovereignty and Man's total depravity, the Reformed tradition affirms that Christian dogma and doctrine alone determine the content of Christian ethics, and forthrightly rejects the contention that Christian ethics determines the content of Christian doctrine. This affirmation of the priority of the doctrine of God, over that of ethics does not mean, however, that Christian ethics may not, and can not, illuminate the Christian understanding of Christian dogma and doctrine, nor, according to the Reformed ethicist, John Hare, does it necessarily exclude a Reformed interpretation and understanding of Kant's autonomy of the will.

### **3.2.6.2 Kant's hypothetical imperative**

Essentially, Kant's hypothetical imperative states, "only an action is good for some purpose or other, either *possible* or *actual*" (Kant, 2005:89). If as Reformed Christian ethicists are obliged to do, one lays aside Kant's principle of absolute freedom (which means in practice, with respect to the moral good, laying aside Kant's proposition that the autonomous rational moral agent, *solely* of their proper volition, is capable to will an effect, and also to will an action to accomplish that effect) then arguably, the formulation of Kant's hypothetical imperative itself is useful in illuminating the Reformed, deontological approach to moral and legal imperatives.

Scripture, proclaimed and taught in the Church, explicitly admonishes Christ's disciples habitually, by the grace of God, to will their acts as means to something other than selfish ends; namely, *ad maiorem Dei gloriam*, and love of neighbour, with whom they share, without distinction of religion, the common dignity of *imago Dei* (Matthew 22:37-40). Christ's disciples are also admonished not to will that which is sinful since sin is an affront to God's majesty and love and an affront to their neighbour (Matthew 7:12). From a Christian ethical standpoint, therefore, Christ's disciples are admonished not to will their acts for their personal ends.

The Constitution likewise enjoins upon the State, and therefore its citizens and residents, the legal imperative of acting for the moral good of the individual person in the interest of the common good of all, however defined. "The state must respect, protect, promote and fulfil the rights of the Bill of Rights" (1 s 2 (2)).

In sum, the Kantian categorical imperative's formal rudimentary principle of pure reason and the absolute autonomous will, from a Reformed and Christian anti-Pelagian perspective wholly misrepresents the deontological nature of Gospel and constitutional imperatives. The Reformed tradition and aligned Christian traditions reject as unbiblical and undogmatic Kant's proposition that *solely* by virtue of pure reason the autonomous moral agent can will an effect, and also will the action to accomplish the effect.

John Hare, however, proposes that Kant's idea of the autonomous will of the rational moral agent is open to modification, and therefore to a Reformed interpretation and understanding (Hare, 2006:63-67). If this is the acceptable case, then this study may usefully link Hare's concept of the autonomous moral agent's will to the formal rudimentary principle of Kant's hypothetical imperative, namely, that the object, not the will, determines the (moral) law. The resultant material rudimentary principle states that the rational moral agent ought always to will that his acts be the means to something else. Applied to Christian ethics, Kant's hypothetical imperative helpfully but incompletely describes the normative demand of the Gospel imperatives to love God and neighbour, and the demand of the constitutional imperative to act in the interest of the common good, here, the common good of the Republic of South Africa, her citizens, and all residents however defined.

### **3.2.6.3 Autonomy of the will: John Hare**

Hare, in his contribution to the title, *The doctrine of God and Theological Ethics*, argues for a theological content to ethics as opposed to the projectionist view of ethics, which asserts that "the moral law is a projection of our own desires and volitions onto the world", and therefore that "we create the law by our own wills alone". Hare makes the case that positing an external source of ethics, for example the infallibly revealed will of God in Scripture, is not the only path open to Christians to refute Kant's notion of the autonomous will against an external source of moral law (Hare, 2006:63).

There is, says Hare, such a thing as autonomous submission to authority. In this case, the moral agent submits to the superior's will, be that human or divine. Hare understands this as appropriating the will of one's superior, however defined, and suggests that this is what Kant meant with respect to the law. In short, writes Hare, the moral agent does not create the law, but wills the law, be it human or divine as his own. Hare writes, "But Kant himself no more thinks we create the law than that we create God. In Kant's system, moral agents can only believe (as they must) that God supports moral agency, if they believe

that God is *not* their own creation. There is an essential vertical dimension to his moral philosophy, which the secondary literature of the twentieth century has largely ignored” (Hare, 2006:63).

Hare does not deny that autonomy of the will can be understood as the rational moral agent creating the universal moral law, but insists that within the Christian theoretical framework of ethics, the moral agent must own the moral law, just as the Christian moral agent owns God in Christ. In other words, in order to make the God-given moral law one’s own, the moral agent has to will it as his or her own. The moral agent by the grace of God must will submission to God’s law. This, Hare asserts, accords with the Reformed doctrine of divine sovereignty: “Someone can be my sovereign, and I can be under some law, whether I acknowledge it or not. But to make someone my sovereign, or to make something my law, requires the engagement of my will” (Hare, 2006:64). Likewise, with respect to the Constitution, the moral agent must will submission to the Constitution if he or she is to make it their own. In short, Hare contends that in willing the law of a superior, human or divine, in this case that of the Constitution or the Gospel, the moral agent, through an act of autonomous submission, comes to own the law in question.

Hare’s concept of autonomous submission to law, human and divine, is open to the charge of Arminianism by those within the Reformed tradition, above all, by those who deny the theology of common grace. The first point of Arminianism states in relevant part: “he [God] does not interfere with man’s freedom. Each sinner possesses a free will, and his eternal destiny depends on how he uses it. Man’s freedom consists in his ability to choose good over evil in spiritual matters: his will is not enslaved to his sinful nature” (Steele, 2004:5-6). If this study supposes, as it does on the evidence of the entirety of Hare’s article, that Hare accepts the Reformed theology of common grace, then it may be assumed that Hare’s proposition of autonomous submission to the law of God, and in this case, to constitutional law, broadly accords with Reformed dogma and doctrine of God’s absolute sovereignty and man’s total depravity, and so may serve some useful purpose in this study.

The concept of autonomous submission and ownership of human and divine law and their ordinances is useful to this study, as it offers an explanation as to why some rational moral agents follow Gospel and divine imperatives, and others do not. Following Hare’s thinking, those who own God and God’s will, are obliged to will to follow God’s moral law, although they are free to will not to do so. With respect to the Constitution, those who own the Constitution are obliged to will to act according to its principles and the prescriptions of statute law derived from the Constitution, although they too may will not to do so.

In sum, within the Reformed theoretical framework of ethics, this study considers that Hare’s principle of autonomous submission offers a reasonable explanation of the rational moral agent’s observance and/or non-observance of divine and human law. Autonomous submission also clearly affirms that dogma and doctrine supply the moral content of a given ethical theory, in this case, theological voluntarism. It rejects the proposition that ethics determines the content of Christian dogma. The ability of the autonomous Christian moral agent to will between good and good, good and evil, and evil and evil remains possible.

Hare's concept of autonomous submission is situated in the normative ethical theory of theological voluntarism. As stated, different ethical theories are not necessarily *ipso facto* exclusive, and may possibly be interrelated. Autonomous submission and deontology are interrelated. The autonomous submission of the moral agent to the demands of the Gospel and the Constitution allows the moral agent to will to act the moral good with respect to a given moral dilemma, and, at the same time, allows the moral agent to will otherwise.

### 3.2.7 Moral imperatives: moral relativism

The thesis of this chapter is that Christian moral imperatives fundamentally derive their validity from God's will infallibly revealed in Scripture, and are universally valid but not absolutely valid. Further, Christian ethical praxis the foundation of which is the will of God, applies universal moral imperatives in diverse societal and cultural contexts without prejudice to their universal validity.

The premise of ethical or moral relativism is that all opinions are valid, and hence ultimately nothing is really right or wrong (Rescher, 1989:19). Reformed ethics rejects this proposition basically for two reasons. Firstly, Reformed ethics holds to the principle of a God-given universal objective moral order and moral norms. Secondly, within the theoretical framework of moral relativism, the autonomous rational moral agent is the absolute rational progenitor of relativist ethical imperatives.

Imperatives of moral relativism formulated by the autonomous rational moral agent in a unique situation are within those parameters, pertinent solely to the given moral conflict. Imperatives of moral relativism, therefore, within the theoretical framework of moral relativism, are *ipso facto* absolutely valid by virtue of their unique and provisional local character.

The principal objection of Christian ethics to the theory and praxis of moral relativism is not to the relative parameters of any given situation *per se*. Under the conditions of finitude, all moral dilemmas within their unique parameters are, *ipso facto*, relative. Nor is the objection automatically to the proposed resolution of a moral dilemma by a particular normative ethical theory. Vorster notes that on the occasions where deontology is found wanting, employing consequentialist and utilitarian approaches might usefully clarify specific moral conflicts (Vorster, 2004:107).

The primary objection to moral relativism is to the premised absolute autonomous status of the moral agent. Within the theoretical framework of moral relativism, the moral agent's absolute autonomy, *ipso facto*, confers an absolute character upon moral norms determined by an idiosyncratic understanding of good and evil; and this to the exclusion of the idiosyncratic understanding of good and evil of all other absolute autonomous moral agents.

The Reformed tradition, with the exception of that of contextual absolutists who may consider themselves part of the Reformed tradition, affirms as normative the premise that universal moral standards bind all reasonable beings without distinction of culture and time, but not absolutely. Thus the Reformed tradition rejects the concept of the absolute autonomy of the moral agent and the absolute moral imperatives generated by the absolute moral agent.

Where officially promoted in liberal Christian Churches, moral relativism may properly be described as Pelagian, or in terms of its contemporary derivative, secular. Exercised in a Christian context, moral relativism is arguably a form of salvation by good works; and as such, unorthodox.

In Churches whose sole and therefore ultimate moral authority is *sola scriptura*, the danger of contextual absolutism may arise. Contextual absolutism may be categorised as a casuist approach to moral dilemmas. Casuistry, Jesuitical or puritanical, notoriously inhibits the action of the Holy Spirit upon and within the moral agent. Casuistry may be likewise considered a form of salvation by good works, and, for this reason, unscriptural.

### **3.2.8 Moral imperatives: universal validity; particular praxis**

Establishing the universal validity of a moral imperative is critical to the Christian understanding of ethical theory and praxis. Moral imperatives may be considered as essentially universal or general. Considered as universal, moral imperatives are valid for every rational being without exception. Considered as general, they are valid for a particular moral agent or agents faced with a particular dilemma at a particular time: new moral conflict, new ethical norm, new imperative, new act.

Christian ethical praxis is patently not uniform. There exists a divergence of ethical praxis derived from universal ethical norms. This plurality of praxis is determined in part by the moral agent's society and culture. All societal conditions and cultural mores contribute to the manner in which moral imperatives are applied and realised. Societal conditions and cultural mores are not, as a relativist anthropological approach to ethics and morality would have it, the formal rudimentary principles of ethical and moral praxis.

How one promotes human rights, how one acts justly, how one preserves and promotes life, how one speaks truthfully, etc., varies from individual to individual, society to society, and culture to culture. However, the ethical imperatives to promote human rights, to preserve and promote life and not to kill unlawfully, to speak the truth and not to lie maliciously, remain universally valid for all, for all time, and in all places and circumstances. Reformed and other Christian ethical traditions in general insist that plurality of ethical practice does not *ipso facto* imply ethical relativism. Diverse ethical praxis is simply the application of universal moral imperatives in sundry societal and cultural conditions.

Conscious, therefore, that Christian moral praxis varies from individual to individual, society to society and nation to nation, this study argues that plurality of moral praxis establishes the distinct public local character of any given moral imperative without prejudice to its universal character. For example; the imperatives – do not kill unlawfully, but promote and preserve life; do not steal, but assure the common material welfare of all; do not lie maliciously, but speak the truth; do not break promises wantonly but cultivate trust – are arguably all unanimously recognised as universally valid imperatives that are applied in a plurality of ethical praxis. It should be noted, however, that in any given circumstance, the valid moral claim of one individual may conflict with the valid moral claim of another individual, and/or another group, however defined. Where universal moral standards are occasionally denied, the grounds of rejection may be based on mores and not on morals, i.e. the way an individual may treat another, for example in the issues of gender, genocide, racism, xenophobia, and the mutilation and unlawful killing of fellow human beings for *muti*.

In sum, Christian ethics holds that the nature and reach of moral imperatives is universal, and not general, nor are moral imperatives absolute. Universal moral imperatives, however, do acquire a distinct public and local character through their application. A particular and local character does not render a moral imperative relative, or general. Contextualisation of a particular moral imperative does not negate its universal veracity and legitimacy, because the public local character of a particular moral imperative is rooted in the universal veracity and legitimacy of the particular universal moral norm.

### **3.2.9 Moral and legal imperatives: distinction and relationship**

In his presidential address to the National Congress of the Society of University Teachers of Law, Cape Town, 1989, the South African legal academic J. D. Van der Vyver draws attention to the unresolved issues surrounding law and morality.

Since the infancy of Western thought, the problem of law and morality has intrigued legal philosophy and ethicists alike. The history of jurisprudence of this debate remained focused upon several primary questions:

- a Does any particular moral principle enjoy legal validity *per se*; that is to say, are there certain ethical norms that must be enforced by a court of law even though the norms in question have not been formally promulgated by a competent law-creating agent?
- b Must the law necessarily comply with certain minimum ethical standards; that is to say, is the validity of positive law dependent upon the incorporation into the legal system of particular moral values?
- c Is it a function or duty of depositaries of state authority to enforce by legal compulsion the current code of good moral behaviour? (Van der Vyver, 1989:158).

The terms law and morality are synecdoches, for there are in fact diverse theories of law, *inter alia* commercial, canon, contractual, natural, positive, and, as noted previously, diverse theories of ethics. The complex matrix of legal and ethical theories makes an acceptable consensus on the relationship between law *per se* and morality *per se*, at worst, impossible, and at best, grounds for continued discussion.

Sundry legal and ethical theories expressed in formularies of positive law and moral law allow assorted legal and moral imperatives to be deduced and applied in any given moral conflict situation. Although the terms law and morality may cover all moral and ethical theories, no one particular ethical theory, and no one particular legal theory, may represent all ethical theories or all moral theories, since any given legal or ethical theory is based on unique legal and ethical suppositions. Lack of clarity on the relationship between law and morality has implications for the understanding of legal and moral rights germane to this study.

Alice Erh-Soon Tay is mindful that the historical unresolved discussion around law and morality has led to a blurring in the public mind of the distinction between legal rights and moral rights.

The most misunderstood and controversial aspect of human rights theory and perception is the distinction between human rights as a species of moral rights and human rights as the bases of legal rights.

*Blurring the distinction between moral and legal rights:* While serious people may easily appreciate the distinction, in the language of public debate this distinction is often lost. Legal rights are laws of state while moral rights are claims of people. Legal rights by definition are enforceable, while moral rights may not be. Some moral rights are enforced, becoming legal rights, while others are not (Erh-Soon Tay, 2000:134).

The distinct but related insights of Van der Vyver and Erh-Soon Tay are useful to this study in arriving at an understanding of the nature and reach of imperatives, since imperatives, be they legal or moral, proceed from legal and moral norms, which proceed from legal and moral theories, and which ultimately extend to legal and moral ethical dilemmas.

Van der Vyver's three questions concerning the relationship of morality and the law: a) the legal validity of moral principles, b) the compliance of the law with minimum ethical standards, and c) the question of the State's role in compelling moral behaviour, are addressed directly and indirectly further on in this study.

Erh-Soon Tay's useful fundamental distinction between legal rights as laws of the State, and moral rights as claims of people, is noted and upheld throughout this study of the right to life, abortion, and HIV/Aids prevention.

### 3.2.10 Moral and legal imperatives: conflicts

Conflicts considered in this study of the right to life, abortion, and HIV/Aids prevention from within a Reformed theological framework, are primarily moral and legal. Imperatives generated by demands of the Gospel and the Constitution are considered by this study as principally, though not exclusively, deontological in nature; they command, “do no wrong”, and, “do good”. These negative and positive duties and obligations are two sides of the Gospel and the constitutional deontological coinage whose values cannot be fixed by a series of positive and negative categorical imperatives. Commenting on moral absolutes, Rescher notes, “One cannot say simply and flatly that a certain wrong action [lying, stealing, etc] is never to be done. For in difficult situations virtually any sort of action can be the lesser of two [moral] evils” (Rescher, 1989:7).

With respect to the selected human rights issues of this study, Vorster’s observes that “In the application of human rights, situations may appear where the rights of one may violate the rights of others. Sometimes the application of the rights of an individual can even be detrimental to the welfare of the community at large” (Vorster, 2004:105). This further underlines Rescher’s contention that one must never succumb to simplistic formulae and solutions to moral conflicts arising from contending human rights claims. Hence it is important that the Reformed tradition bear in mind the complexities of moral issues entailed in *inter alia* the constitutional right to life, the issues of abortion, and HIV/Aids prevention.

For example, Life (2 s 11); the right to life of the mother, however defined, may clash with the right to life of the unborn, however defined. With respect to HIV/Aids prevention; Health care (2 s 27), food, water and social security; the right of a person to antiretroviral treatment and health care appropriate to that condition, may clash with Equality (2 s 9), by which the Minister of Health is arguably duty bound to equably disburse finite human and financial resources among contending health care needs and wants.

### 3.2.11 Moral and legal imperatives: Christian ethical conflicts

For Christians, moral conflicts arise *inter alia* from the application of the material rudimentary principle’s imperative of the Greatest Commandment, formulated by Jesus Christ in answer to the lawyer’s question: “Master, which is the greatest commandment of the Law? Jesus said to him, ‘You must love the Lord your God with all your heart, with all your soul, and with all your mind’. This is the greatest and the first commandment. The second resembles it: ‘You must love your neighbour as yourself’. On these two commandments hang the whole Law, and the Prophets too” (Mt 22:36-40).

Jesus’ prioritising and linking of these two commandments *ipso facto* sets up a moral dilemma. The formal rudimentary principle of the fused first and second commandment is love. The material rudimentary principle that determines that the moral agent ought always to act with love towards God

and neighbour necessarily sets up from the outset an inescapable moral conflict for the Christian. Ought one to love God and neighbour equally, or ought one to love God more than one's neighbour, or one's neighbour more than God? Moral conflicts are further multiplied when the Christian moral agent reflects upon the lawyer's question to Jesus, "And who is my neighbour?" (Lk 10:29). Jesus' reply with the parable of the Good Samaritan (Lk 10:29-37) may indeed answer the lawyer's question, but the actions of the priest, the Levite and the Samaritan illustrate the multitude of moral conflicts the Christian faces in daily life.

Thomas Aquinas, the thirteenth century Roman Catholic philosopher and theologian, in his systematic enquiry into priorities of love, enumerates and discusses thirteen moral conflicts in *De ordine caritatis* (Summa, 2a2æ. 26,1-13).

1. Is there an order in charity?
2. Ought a man to love God more than his neighbour?
3. more than himself?
4. himself more than his neighbour?
5. his neighbour more than his own body?
6. one neighbour more than the other?
7. a better person more than someone more closely connected?
8. a kinsman rather than someone who is united to him by other ties?
9. his son more than his father?
10. his mother more than his father?
11. his wife more than his father or mother?
12. a benefactor more than one to whom he himself is a benefactor?
13. Do these priorities of charity remain in heaven? (Summa 2a2æ. 26, 1), (Aquinas, 1975:119).

It is beyond the scope of this study to discuss Aquinas' affirmative answers to the thirteen questions posed in *De ordine caritatis*, as it is beyond this study's scope to debate Aquinas' philosophy, theology, and methodology, since a consideration of Scholastic and neo-Scholastic moral theology is outside this study's parameters of the Reformed ethical and moral theological tradition.

This research paper limits itself to noting Aquinas' questions flowing from the lawyer's question and Jesus' reply. It observes that taken together, or individually, Aquinas' hierarchical division of the order in charity, his questions concerning moral dilemmas arising from this division, the discussions and answers that flow from positing a priority of charity, are unambiguous illustrations of Christian imperatives inexorably posing moral and legal dilemmas to Christ's disciples, which incessantly demand resolution.

Moral conflicts are demonstrably an inescapable fact of Christian discipleship. If justice and human rights are to flower and prevail, it is imperative that Christians should not avoid moral conflicts but by God's

grace face them squarely. Attending to the establishment of human rights, and claims of contending human rights, are constituent elements of the perseverance of the saints in the Christian life. The nature of selected Gospel and constitutional imperatives are considered in Chapter 4. However, it has been clearly indicated by this study thus far, that the reach of Gospel and constitutional imperatives is a far reach, the former embracing the totality of creation and humanity, and the latter embracing the territory that is the RSA, her citizens and residents.

In sum, this Christian ethical study asserts the primacy of the deontological approach to resolving Gospel and constitutional imperatives, but with the reservation and qualification stated in this chapter, namely that diverse normative ethical theories are not necessarily, *ipso facto*, exclusive with respect to deontology. For example, theological voluntarism informs deontology of its duty. This study further accepts, with the reservation and qualification stated in this chapter to this point, that formal and material rudimentary principles of moral and legal imperatives (other than deontological imperatives of course) are possibly acceptable and useful to the Christian moral agent in the resolution of any given moral conflict resistant to a deontological moral and legal determination.

### **3.3. Gospel imperatives: distinctive nature and reach**

The source of the distinctive nature and reach of Gospel imperatives is the person of the risen Christ himself, and faith in him (Gal 2:19-20). Christ risen is likewise the primary content of Gospel imperatives (Jn 14:15-17). The formal rudimentary principle of Gospel imperatives, therefore, is not the normative letter of God's law in Scripture understood in the sense of constitutional law, parliamentary acts, and statute law, but the risen Christ, and God-given faith in this living person who is God's ultimate revelation of the good. Nor is the material rudimentary principle of Gospel imperatives the obligations of Christ's commandments understood in the sense of legislation and ordinances. It is primarily obedience to the person of the risen Christ revealed in the word of God, which is something living and active (Heb 4:12). In short, the material rudimentary principle of Gospel imperatives enjoins doing the same good through the risen Christ, in the risen Christ, and with the risen Christ, which the risen Christ does today and will continue to do until the end of ages (Rom 11:36).

Living the morally good life is, according to the Swiss Reformed theologian, Emil Brunner, possible when one allows oneself, in and through Christ's Spirit, to be placed within God's activity (1 Cor 13-14). "The good is that which God does; the goodness of man can be no other than letting himself be placed within the activity of God. This is what believing means in the New Testament. And this *faith* is the principle of ethics" (Brunner 1937:55). Men and women allow (or, will) themselves be placed in the centre of God's activity when gracefully answering Christ's call to follow him (Mt 4: 19-20), when acting as they do in *loving God and neighbour* (Mt 22:34-40), and by *generously persevering in discipleship whatever the cost of witnessing to Christ may be* (Mt 10:37-39).

In sum, the distinct nature of Gospel imperatives lies in this, that there is, contrary to the case with moral imperatives derived from other ethical theories, ultimately no distinction between the formal and the material rudimentary principles of Gospel imperatives. They are unique, namely the living person of the risen Christ, and faith in him. Consequently, for the Christian, the person of the living Christ himself informs theological voluntarism of God's will, which in turn provides the content of the Christian's ethical duty. The nature of Gospel imperatives is further developed in a discussion of this study's selected Gospel imperatives, which arguably encompass the scope of Christian ethical praxis, namely, Matthew 4:19-20; 22:34-40; 10:37-39; these are respectively, discipleship, service, and perseverance in following the risen Christ.

### **3.4 Constitutional imperatives: distinctive nature and reach**

The distinctive nature of constitutional imperatives resides in the founding provisions of the Constitution of the Republic of South Africa 1996 which states: "This [Constitution] is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and obligations imposed by it must be fulfilled" (s 2). Thus, the formal rudimentary principle of constitutional imperatives is the supreme law of the Republic. The material rudimentary principle of constitutional imperatives is universal mandatory implementation and compliance.

### **3.5 Gospel and constitutional imperatives: priority**

The formal rudimentary principle, the supreme law of the Republic, poses no ethical problem for the Reformed tradition that esteems the State as a divinely mandated sphere of human activity (Rom 13:1; Inst 2.20.3-7; Belg, 36; WestLC, Q 124, 127). Moreover, the Reformed tradition accepts the Constitution as the primary framework within which Christians resident in the RSA live out Gospel imperatives within civil, ecclesial, and social spheres. Nor is the material rudimentary principle of constitutional imperatives *per se* problematical to the Reformed tradition, with the exception of Anabaptists and like traditions, which deny the priority and/or relevance of the authority of the sword (Rom 13:1-7).

Problematic for the Reformed tradition are ethical issues and moral dilemmas arising from universal mandatory implementation and compliance with the supreme law of the Republic expressed in statute law. For example, provisions in the Choice on Termination of Pregnancy Act 92 1996, give priority to the woman's rights over the unborn because the unborn lacks legal personality, and consequently has no standing in law. This means that under to this Act the unborn has no legal right to life. Ironically however, in this Christian study's view, the law does confer on the unborn child the privilege of the skilled termination of its life by a qualified practitioner (s 2 (2)) in the safety of a designated place (s 3 (1)).

Reformed Christian anthropology asserts that humanity's common unifying element is the person as *imago Dei*. In short, God-given personhood is the foundational common denominator of universal dignity, equality and (circumscribed) freedom. Central to the issue of the priority of Gospel imperatives over constitutional imperatives, is however, not only their nature, but their reach. Gospel and constitutional imperatives claim a universal reach. The Reformed tradition, basing itself upon the doctrine of God's absolute sovereignty as Creator of each human person in the image and likeness of God, adjudges Gospel imperatives' claim to universality to be greater than constitutional imperatives' valid claims to universality. Gospel imperatives, by virtue of their origin, God, in and through Jesus the risen Christ, affirm the value of all human life from the moment of conception to the date of death. Constitutional imperatives' valid claim to universality (although affirming constitutionally the value of all human life) is from a Christian perspective secondary order, since its claim proceeds from the created human person as *imago Dei*, and not immediately from God the Creator. This qualification holds true even if the authors of constitutional imperatives are authors in the restored *imago Dei*, i.e. Christians.

This Christian study is aware that its claim to the priority of Gospel imperatives over constitutional imperatives is rigorously contested by proponents of ethical theories of secular atheism. It further recognises that within the theoretical framework of secular atheism, the Christian claim to the priority of Gospel imperatives is arguably demonstrably false, and secular atheism's claims arguably true. However, this study, which accepts the reality of a God-given objective universal moral order, argues that secular atheism's ethics belong naturally to the order of moral relativism. By virtue of being relative, secular atheism's ethics are *ipso facto* incapable of universal validity, and hence incapable of offering a critique of ethical theories of an objective moral order, or indeed, any other normative ethical theory. Paradoxically therefore, because of its relative nature, secular atheism is even incapable of evaluating its own ethical theory. This begs the question of the quality of the content that ethical relativism can supply to deontological imperatives. In short, this study affirms the priority of Gospel imperatives over constitutional imperatives on ontological grounds, but does not deny the claim of the universality of constitutional imperatives within its proper juridic sphere, namely the Republic of South Africa.

### **3.6 Imperatives: summary**

A review of various normative ethical theories demonstrates possible approaches to moral dilemmas. With the exception of the refutation of the secular atheist definition of the reasonable autonomous moral agent as absolutely normative, and the religious ethical theory, contextual absolutism, which fails to account fully for the role of sin in human nature and in the process of ethical decision-making, diverse normative ethical theories are shown to be distinct, but possibly not unrelated, as with the case of theological voluntarism and deontology. Further, not all ethical theories apparently at variance with the Christian affirmation of an objective moral order are *ipso facto* ruled out in every circumstance as an invalid ethical approach to moral dilemmas, as for example, Kant's hypothetical imperative that an action

is good for some purpose or another; in a Christian context, loving God and neighbour. Rescher's observation of Kant's affirmation of the universal character of right and wrong, and John Hare's insight into Kant's autonomy of the will expressed in terms of autonomous submission of the will, and his reminder that Kant was not an atheist, are likewise pertinent.

Of relevance also within the Christian theoretical ethical framework, is the declaration that Gospel imperatives are universally valid, and not generally valid. In other words they are valid for all in all circumstances, and not merely for some in some circumstances. Gospel imperatives remain universally valid in diverse cultural contexts where implementation of universal norms, such as honesty, respect for property, and respect for a person's word may legitimately vary in expression without prejudice to the principle of universality.

In rejecting moral absolutism and extreme theories of theonomous ethics, it is important that this study recognises that Gospel imperatives, *ipso facto*, generate unavoidable moral conflict. Constitutional imperatives likewise *ipso facto* generate unavoidable legal and moral conflicts. This is demonstrated by the need for, and rulings by, constitutional and lower courts of law. Aquinas' *De ordine caritatis* helpfully schematises the unavoidable possibility of moral conflicts.

Legal imperatives, though distinct, are inextricably tied to moral imperatives, as Van der Vyver observes with respect to unresolved issues surrounding positive law and morality, and as Ehr-Soon Tay shows with her important insight into the blurring in the public mind of the distinction between moral and legal rights. Unresolved issues between morality and positive law, and confusion in the public mind between legal and moral rights, serve to obscure ethical issues pertaining to the right to life, abortion, and HIV/Aids prevention. This is particularly important with respect to a crucial question of this study, namely, the legal and moral status of the unborn as a juridic person from the point of conception.

With respect to the priority of Gospel imperatives over constitutional imperatives and *vice versa*, this Christian ethical study affirms the priority of the former over the latter on ontological grounds, whilst upholding the valid claim of constitutional imperatives to universality. However, it finds the claim of constitutional imperatives to universality are from a Christian perspective of secondary order on the grounds that constitutional imperatives proceed from the secondary order, i.e. the human person as *imago Dei*, and not immediately from God the Creator of the human person as *imago Dei*. This study is aware that the ethical relative theory of secular atheism challenges this contention, but it dismisses its objections on the grounds of the self-defined inherent limitation of the ethical theory, i.e. relativism itself.

The Judeo-Christian anthropological tradition that considers each human person from the creation of our first parents as a divinely created *imago Dei* is central to this ethical study, as it is constituent of Christian deontological ethical content. The distinctive Christian characteristic of this anthropology is the person of the risen Christ, who as the fullness of the restored *imago Dei* (Col 1:15-20), is the formal and

material rudimentary principle of Gospel imperatives. Christ himself is the form and content of Christian ethics. For Christian ethics, then, the universal living Word, communicated by the Holy Spirit and Scripture, has priority over the constitutional written word, no matter how powerful and compelling the universally normative legal written word may be.

In every age, the universal person of the living Word, the risen Christ, through his Holy Spirit, calls men and women to live the content that he is, through executing the imperatives of loving service of God and neighbour, and by persevering in faithfully following Christ who first called them. Aspects and implications of this threefold Christian deontological task are considered in an examination of selected Gospel imperatives and selected constitutional imperatives related to the right to life, abortion, and HIV/Aids prevention.

## **4. CHAPTER FOUR – SELECTED GOSPEL AND CONSTITUTIONAL IMPERATIVES: NATURE, REACH, PRIORITY, AND DISTINCTIVE CHARACTER**

Issues of the right to life, abortion, and HIV/Aids prevention will be considered from the perspectives of selected Gospel and constitutional imperatives. In the penultimate chapter, the subjects of abortion and HIV/Aids prevention will form the framework for a considered Christian ethical response to legal and moral dilemmas arising from constitutional and Gospel imperatives with respect to the right to life, abortion, and HIV/Aids prevention.

Christians are called to live out Gospel imperatives within the legal framework of the Constitution of the Republic of South Africa. Evangelical imperatives impose themselves as a consequence of Christian discipleship. These are many and diverse, explicit and implicit. Consider the variety of imperatives flowing from the Sermon on the Mount in Matthew 5:1-7:29, the Sermon on the Plain in Luke 6:17-49, Paul's hymn to love in 1Cor 13, respect for the poor in James 2, respect for civil authority in 1Peter 2:13-17, and conditions for breaking with sin in 1John 3:3-24. For this reason, the selected Gospel imperatives, "Follow me" (Mt 4:19 and Synoptic parallels), "Love God, and your neighbour as yourself" (Mt 22:34-40 and Synoptic parallels), and "Take up your cross" (Mt 10:38 and Synoptic parallels), are selected and considered by this study as synecdoches of all Gospel imperatives, since vocation, discipleship, witness and perseverance are foundational and integral to the praxis of Christian living and the specific moral imperatives it entails.

### **4.1 Constitutional imperatives: secular character of the Constitution**

The Founding Provisions of the Constitution of the Republic of South Africa 1996, and indeed, the Constitution in its entirety, while reflecting some moral values held by Christian Churches, is not based explicitly on Gospel values or on confessions of Christian Churches that publicly profess evangelical counsels. The character of the Constitution is essentially secular, not religious.

1 s 1 The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- b. Non-racialism and non-sexism.
- c. Supremacy of the Constitution and the rule of law.
- d. Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness

Without prejudice to secularity, the Constitution tolerates public religious expression.

#### 2 s 15 Freedom of religion, belief and opinion

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that
  - a. those observances follow rules made by the appropriate public authorities;
  - b. they are conducted on an equitable basis; and
  - c. attendance at them is free and voluntary.
3.
  - a. This section does not prevent legislation recognising
    - i. marriages concluded under any tradition, or a system of religious, personal or family law; or
    - ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
  - b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

#### 2 s 31 Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community,
  - a. to enjoy their culture, practise their religion and use their language, and
  - b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

In contrast with the constitutional legal framework is the Christian ethical theoretical framework the essential content of which is Christ and his Gospel. Legal and moral dilemmas arise for the Christian when the imperatives of Christ and his Gospel conflict with constitutional imperatives. For although the Constitution may choose to ignore one or more Gospel imperatives, the Gospel as it is daily lived by Christ's disciples may not, as stated, without sanction of statute law, choose to ignore constitutional imperatives. The Constitution states, "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled" (1 s 2). Statute law reinforces this principle.

#### **4.1.2 Constitutional imperatives: formal and rudimentary principles**

The formal and material rudimentary principles of constitutional imperatives were formulated earlier in this study and are expressed thus:

- The formal rudimentary principle of constitutional imperatives is the supreme law of the Republic. The material rudimentary principle of constitutional imperatives is universal mandatory implementation and compliance.

These twin principles govern the following consideration of the issues of the right to life, abortion, and HIV/Aids prevention from a constitutional standpoint.

## 4.2 Right to life: constitutional imperative

- The formal rudimentary principle of the constitutional imperative of the right to life is that everyone has the right to life, and the material rudimentary principle of the constitutional right to life is that life should be respected and protected.

This formulation begs the question of the meaning of the term “life”, and the meaning of the term “right”.

### 4.2.1 Life: constitutional character

The Bloomsbury Dictionary of Law’s definition of “life” states in relevant part; “life *noun* 1. the time when a person is alive” (Dictionary of Law, 2004). The Collins Dictionary of Law’s definition of “person” states in relevant part; “person the object of legal rights” (Dictionary of Law, 2001). “Life” clearly has a wide scope; *inter alia* aquatic, terrestrial, plant, animal, human. The subject of this study is human life, which is here understood as the “human life of a person”, i.e. a living subject with rights in law, natural and positive.

### 4.2.2 Right: constitutional character

In his title, Ethical Perspectives on Human Rights, Vorster, in the chapter, A Christian Theory of Human Rights, states, “One man’s duty establishes another man’s right” (Vorster, 2004:94-95). This statement holds true whether one considers rights as creational rights, i.e. rights derived from God-given obligations toward creation and humanity, or human rights, i.e. rights derived from obligations toward creation and humanity *solely* from the inherent status of a human being *per se*. Within the Reformed ethical framework, rights are understood as God-given creational rights but are commonly called human rights. This study retains this usage and understanding.

The legal philosopher and Professor of Jurisprudence Herbert (H L A) Hart, in his title, The Concept of Law, in offering a critique of *inter alia* the eighteenth century English jurist John Austin’s theory and analysis of law as coercive order, agrees with Austin’s point of departure, namely, “[...] where there is law, there human conduct is made in some sense non-optional or obligatory” (Hart, 1961:80). With Austin’s formulation, this study understands “right” within the framework of a constitution (written or

unwritten) as the sovereign State's binding formulation of non-optional or obligatory duties towards its citizens and those subject to the Constitution, and the non-optional duties or obligations of citizens and those subject to the Constitution towards the State and one another.

The Constitution's Founding Provisions foresees possible instances of non-compliance with one or more provisions of the Constitution; of interest here, Chapter 2, The Bill of Rights states, "1 s 2 This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and obligations imposed by it must be fulfilled". In case of behaviour or conduct inconsistent with the Constitution which is legally proven, the Constitution provides compliance by coercion under Chapter 8, Courts and Administration of Justice (8 s 165 (5)). An order or decision by a court binds all persons to whom and all organs of State to which it applies. The coercive authority of the Constitution is further emphasised *inter alia* by the provisions regarding the Prosecuting Authority (8 s 167).

In their simplest and commonest form, therefore, it may be said that constitutional rights are grounded in obligations and duties, however defined, towards legal personalities national and international, however defined, who are subject to a Constitution which in turn confers rights on these legal personalities. With respect to constitutional rights considered in this study, s 11 Life, and s 10 Human dignity, the obligation of the Republic of South Africa and legal personalities within the Republic to preserve life and to respect and protect human dignity confers the right to life and dignity upon legal personalities subject to the Constitution of the Republic of South Africa. It follows that "life", *per se*, is a constitutional imperative.

#### **4.2.3 Constitutional imperative of the right to life**

The Bill of Rights states tersely, "s 11 Everyone has the right to life". Currie and De Waal note the textually unqualified nature of this formulation (Currie, 2005:281), as does Devenish (Devenish, 2005:48). Although textually unqualified, s 11 along with all other rights in the Bill of Rights is subject to limitation, as Currie and De Waal state, "In South African constitutional law, the right to life may only be limited in terms of the limitation clause [s 36]" (Currie, 2005:281). Along with s 10 Human dignity, it is noted however, that although subject to limitation, s 11 Life is entirely non-derogable even in states of emergency. The status of these constitutional rights is so designated in s 37, Table of Non-Derogable Rights (South Africa, 2006:21). The South African lawyer and writer, Joanne Fedler, notes, "Unlike other more complex clauses [in the Interim Constitution] s 9 [Every person shall have the right to life] and [the Final Constitution] s 11 are deceptively simple. [...] Section 9 and s 11 contain a positive statement, whilst other right to life clauses [in other Constitutions] are often framed negatively. Also where the affirmative version appears in other documents it is often qualified" (Fedler, 1998:15-1).

The Republic of South Africa's textually unqualified constitutional formulation of the right to life, a formulation referred to repeatedly by the Justices in the case of *S v Makwanyane and Another* 1995,

which deals with the death penalty, contrasts with numerous constitutionally qualified rights to life. Ibegbu lists one hundred and fifteen constitutional formulations of the right to life. The qualifying formula in common use is, "save in accordance with law" (Malaysia Federal Constitution, art. 5 para. 1). Variants are *inter alia*; "unless by law" (Constitution of the Republic of Afghanistan, art. 39); "save in execution of the sentence of a court" (Constitution of the Commonwealth of the Bahamas, art. 16 para. 1); "[save] for crimes established by law" (Constitution of the Federal Democratic Republic of Ethiopia, art. 14); "except in cases sanctioned by law" (Constitution of the Islamic Republic of Iran, art. 22); "to the extent that it does not interfere with public welfare" (Constitution of Japan, art. 13); "without due process of law" (Constitution of the Republic of the Philippines, sec. 1); "only by court sentence as an exceptional means" (Constitution of Turkey, art. 17. para 1); "without due process of law" (Constitution of the United States, amendment art. (v)). Negative formulations are commonly, "no person", or "a person shall not be", for example, "No person shall be deprived of his life intentionally save in execution of the sentence of a court of law" (Antigua and Barbuda Constitution Order, 1981, art. 4 par 1). Variations are minor, "A person shall not be deprived of his life intentionally save in [...]" (Constitution of Belize, art. 4. para.1) (Ibegbu, 1997:37-56).

Constitutional qualifications and negative formulations of the right to life apply to the provision of capital punishment. Textual qualifications and negative formulations of the right to life do not specifically occur with respect to the unborn child, zygote, embryo, or foetus, or to the subject of abortion itself.

The hypothesis and overarching thought of Ibegbu's title, Rights of the Unborn Child in International Law – towards a convention, is that the right to life, unqualified or unqualified, ought to apply internationally *erga omnes* (extending to all), not from the date of birth to date of death, but from the point of conception through all biological phases until biological life is extinct. This is not currently the case regarding s 11 "everyone" in the Constitution of the Republic of South Africa as illustrated by the controlling legal decision in this matter.

*Held* further, as to whether the word 'everyone' in s 11 included the unborn child, that plaintiff's argument that the foetus was qualified for protection because the 'life of a human being starts at conception' and that therefore human beings were from conception persons as envisaged by this section was a *non sequitur*: the question was not about whether the *conceptus* was human but whether it should be given the same legal protection as everyone else. (At 1120 H-J). (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1114 C-D).

Arguing from a positive law and not natural law, the court did not dispute that the embryo is a human life. But it ruled that it did not logically follow from the embryo's being human life that the embryo or unborn child was entitled to the same protection as everyone else. McCreath quotes Professor Glanville Williams' article, The Foetus and the Right to Life (1994) 33 *Cambridge Law Journal* 71 at 78: "the question is not whether the *conceptus* is human but whether it should be given the same legal protection

as you and me". (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1120 I-J).

#### 4.2.4 A Christian ethical perspective on *S v Makwanyane and Another* 1995

Juta's, *The Constitution of the Republic of South Africa*, lists as first among, Groundbreaking Judgements of the Constitutional Court, the case of *S v Makwanyane and Another* 1995(3) SA 391(CC) (Constitution, 2006:xix). This case was not only groundbreaking in its ruling that the death penalty was unconstitutional, but in its insistence throughout on the unqualified right to life and the respect and protection of human dignity. Fedler describes the right to life and human dignity as the underlying values of both the Interim Constitution (1993) and the Final Constitution (1996), and that the terms, "everyone", "person" and "life" will be given generous and purposive interpretations in the legal process (Fedler, 1998:15-1). From a Reformed ethical perspective, Fedler's hoped for interpretation has fallen short. Reformed ethics hopes for the terms "everyone", "person" and "life" to apply equally in law from conception to the date of death.

The case for the right to life in *S v Makwanyane and Another* 1995 was pleaded under the provisions of the Interim Constitution Act 200 of 1993 3 s 9 Life, "Every person shall have the right to life". The question in this case was whether the death sentence in terms of section 277(1) (a) of the Criminal Procedure Act 51 of 1977 was in conflict with the provisions of the Constitution of South Africa Act 200 of 1993 (the Interim Constitution) or not (Constitution, 2006:xix). This case, as with *Christian Lawyers Association and Others v Minister of Health and Others* 1998, limits the concept of a natural person with *locus standi* to one already born. From a Reformed ethical perspective, however, the Constitutional Court's overarching positive attitude of the right to life *per se*, and the right to dignity *per se*, is not discouraging.

In *S v Makwanyane and Another* 1995, the Court asserted the foundational importance of the right to life and dignity. "The Court held that the rights to life and dignity were the most important of all human rights and the source of all other personal rights in [IC] chap 3. By committing themselves to a society founded on the recognition of human rights, South Africans were required to value these two rights above all others" (*S v Makwanyane and Another* 1995(3) SA 391(CC) at 396 A). This statement concerning "a society founded on the recognition of human rights" is an encouragement to Christians to proclaim, and by God's grace, realise in the Republic of South Africa, the unity of undifferentiated humanity as an *imago Dei* from conception to death.

In the same judgement, Justice Pius Langa writes:

A culture of respect for human life and dignity, based on the values reflected in the Constitution, had to be engendered, and in this the State had to take the lead. The ethos of the new culture was expressed in the provision on National Unity and Reconciliation contained in the Constitution, which suggested a change in mental attitude from vengeance to an appreciation of the need for understanding, from retaliation to reparation, and from victimisation to 'ubuntu'. (At para [223].) An outstanding feature of 'ubuntu' in a community sense was the value that it put on life and human dignity: the dominant theme of the culture was that the life of another person was at least as valuable as one's own (*S v Makwanyane and Another* 1995 (3) SA 391 (CC) at 397 F-I).

Langa's introduction of the concept of *ubuntu* into his opinion is important in the context of South Africa. Not a Gospel concept *per se*, *ubuntu* is notoriously difficult to understand by those outside *ubuntu's* proper cultural context. Christ and his Gospel are never proclaimed in the abstract but always proclaimed in a specific social and cultural context, in this case, South Africa. *Ubuntu* and the ethics of *ubuntu* are open to evangelisation according to Paul's dictum: "Finally, beloved, whatever is true, whatever is honourable, whatever is just, whatever is pure, whatever is pleasing, whatever is commendable, if there is any excellence and if there is anything worthy of praise, think about these things" (Phil 4:8).

Professor Mogobe Ramose helpfully describes *ubuntu* in Western philosophical terms thus:

It is best philosophically to approach this term [ubuntu] as an hyphenated word, namely, *ubu-ntu*. *Ubuntu* is actually two words in one. It consists of the prefix *ubu-* and the stem, *-ntu*. *Ubu-* evokes the idea of be-ing in general. It is enfolded be-ing before it manifests itself in the concrete form or mode of ex-istence of a particular entity. *Ubu-* as enfolded be-ing is always orientated towards the unfoldment, that is, incessant concrete manifestation through particular forms and modes of being. In this sense *ubu-* is always orientated towards *-ntu*. At the ontological level, there is no strict and literal separation and division between *-ubu* and *-ntu*. *Ubu-* and *-ntu* are not two radically separate and irreconcilably opposite realities. On the contrary, they are mutually founding in the sense that they are two aspects of be-ing as a one-ness and an individual whole-ness. Accordingly, *ubu-ntu* is the fundamental ontological and epistemological category in the African thought of Bantu-speaking people (Ramose, 2002:324-325).

What, if anything, is there of *ubuntu* to evangelize in the light of Philippians 4:8? This question may not only be asked of *ubuntu*, but may be, and is asked, of the constitutional imperative of the right to life expressed in unqualified terms in s 11. There is no reason to suppose that Ramose's explanation is not open to the transforming power of the inspired Word of God as written by Paul. The concept of "unfolding-being" sits well with the Judaeo-Christian anthropology of Genesis 1:26-27, and the Christian affirmation that the human person begins at conception.

Then God said, "Let us make humankind in our image, according to our likeness; and let them have dominion over the fish of the sea, and over the birds of the air,

and over the cattle, and over all the wild animals of the earth, and over every creeping thing that creeps upon the earth.” So God created humankind in his image, in the image of God he created them; male and female he created them (Gen 1:26-27).

Likewise, Justice Kate O’Regan’s statement in *S v Makwanyane and Another* 1995 is easily susceptible to a Christian understanding. “The right to life was entwined with the right to dignity: the right to life was more than existence; it was a right to be treated as a human being with dignity. Without dignity human life was substantially diminished; without life there could be no dignity” (*S v Makwanyane and Another* 1995(3) SA 391(CC) at 399 I). The right to God-given life is entwined with the God-given right to God-given dignity.

From a Reformed ethical perspective, the change of terms in the Interim Constitution, “every person” (IC s 9) to “every one” (FC s 11), and the Constitutional Court’s observations on the entrenched right to life in *S v Makwanyane and Another* 1995, are of interest and help to this study’s consideration of the constitutional imperative of the right to life in the Final Constitution 1996, in that they are illustrative of the Constitution’s underlying attitude towards human life itself, and the unqualified right to life expressed in s 11. The Court’s overall positive attitude to the right to life as illustrated below in *S v Makwanyane and Another* 1995 may give the Christian cause for hope. This judgement did not definitively rule out the possibility that, in future, medical and scientific, religious and philosophical grounds, and not just legal grounds, may form part of the Justices’ consideration of future cases concerning the constitutional right to life.

#### **4.2.5 A Christian ethical perspective on *Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998**

The plaintiff’s claim that the constitutional term “everyone” includes the unborn, was denied solely on grounds of legal positivism, which excluded medical and scientific evidence and religious and philosophical criteria (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1118 B-D). McCreath notes that throughout, the Constitution employs the terms “every one” and “every person” interchangeably and it makes reference to s 38 Enforcement of rights, which lists such persons who may approach a court (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1117 G-H). The unborn child is not accorded *locus standi* by s 8. Those listed in this section are already born.

In seeking to define “everyone” solely on legal grounds to the exclusion of other grounds, McCreath addresses “s 28 Children”, and makes the point that had the Constitution intended to include the unborn child in the term “everyone”, one may reasonably expect to find mention of the unborn child or foetus in this section. McCreath’s reasons are worth quoting in full.

Had the drafters of the Constitution wished to protect the foetus in the bill of rights at all, one would have expected this to have been done in s 28, which specifically protects the rights of the child. The right of every child to family or parental care (28 (1) (b)), to basic nutrition, healthcare and social services (28 (1) (c)), to protection against maltreatment, neglect, abuse or degradation (28 (1) (d)), and to legal representation (28 (1) (h)), as well as the provisions in ss (2) that a child's best interests are of paramount importance in every matter concerning the child, would have been particularly apposite to protect the foetus as well. Yet there are clear indications that the safeguards in s 28 do not extend to protect the foetus. A 'child' for the purposes of the section is defined in ss (3) as a person under the age of eighteen years. Age commences at birth. The protection afforded by ss (1) (g) (ii) is dependent on the 'child's age'. A foetus is not a 'child' of any 'age'. The rights afforded by s 28 (1) are in respect of 'every child' – i.e. all children. Yet certain of the rights could not have been intended to protect a foetus; para (f) relates to work, para (g) relates to detention and (i) to armed conflict. The protection afforded in the other paragraphs of ss (1) must accordingly also exclude the foetus (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1122 B-E).

*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) is currently the controlling judgement of the definition of 'everyone' in s 11, and therefore, the controlling definition of who is and who is not a child in terms of the Constitution. One may conclude, that "s 28 Children", is McCreath's most compelling legal reason for recognising and applying the status "everyone" only at parturition, and denying provisions of s 28 to human life prior to this event.

It should be noted however, that the issue of the intention of the framers of the Constitution arises three years earlier in *S v Makwanyane and Another* 1995 with respect to the constitutionality or otherwise of the death sentence. "He [Mr Bizos] argued that, if the framers of the Constitution had wished to make the death penalty unconstitutional, they would have said so, and that their failure to do so indicated an intention to leave the issue open to be dealt with by Parliament in the ordinary way" (*S v Makwanyane and Another* 1995(3) SA 391(CC) at 404 D-E). Bizos' argument failed. In this case the lack of the framers' explicit intention to declare the death penalty unconstitutional did not sway the Justices, whereas the lack of the framers specific intention in *Christian Lawyers Association and Others v Minister of Health and Others* 1998 did sway the judge. That Bizos' argument failed indicates that "intention" vis-à-vis the framers of the Constitution is moot. This *status quo* is encouraging from the Reformed perspective.

McCreath also mentions developing jurisprudence regarding the *nasciturus* rule whereby the unborn is deemed to be born if this to the advantage of the unborn, as for instance in the case of inheritance (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1121 B-D). Within any ethical theoretical framework, secular or religious, the preservation of the life of the unborn is arguably to the unborn's advantage. *Nasciturus* and related matters will be addressed later in connection with the Unborn Victims of Violence Act of 2004, also known as Laci and Conner's Law.

It may be concluded that within the constitutional theoretical framework, the nature and reach of the constitutional imperative of the right to life is universal and not general. However, from the Reformed ethical theoretical framework, the nature of the constitutional imperative of the right to life as defined by *Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998 is general, as its constitutional nature and reach conflicts with the Reformed contention that human biological life and personhood commences from the moment of conception. Conflicting legal and moral claims of the universal and general nature and reach of the constitutional right to life pose legal and moral dilemmas for the Christian. The central theoretical argument of this study is that Gospel imperatives have priority over constitutional imperatives. This being the case, Christ's disciples cannot just let a general legal determination that the unborn child has no legal personality rest in the face of the courts' admission that unborn life is human life. From a Christian universal ethical perspective, life *in utero* has a claim to promotion and protection in law, for it is already a separate life, albeit dependent on the mother for life.

This maternal dependence does not diminish the universal right of the unborn to a dignified human life. Nor does it permit the mother, nor the law, to end the life of the dependent life within. From a Christian perspective, all life as *imago Dei* is of equal value. To date, the law has not demonstrated that life from conception to parturition has less value than life from date of birth to death. It has only declared this to be so on general grounds of positive law to the exclusion of other criteria. Sean De Freitas writes, "Positivism in contemporary abortion debate proclaims a clear distaste for anything religious/philosophical/transcendental/moral in law" (De Freitas, 2006:182). Christians must work to see that the universal character of religious, philosophical, transcendental and moral elements is incorporated in law.

### **4.3 Right to human dignity: constitutional imperative**

- The formal rudimentary principle of the constitutional imperative of the right to human dignity, however defined, is that everyone has inherent dignity, and the material rudimentary principle of the constitutional right to life is that human dignity should be respected and protected.

This formulation begs the question of the meaning of the term "dignity", and the meaning of the term "right".

#### **4.3.1 Right: constitutional character**

The Nature and reach of the constitutional imperative of the right to human dignity is inseparable from the constitutional imperative of the right to life. Life and dignity are the two constitutional rights that are to be valued above all other constitutional rights (*S v Makwanyane and Another* 1995(3) SA 391(CC) at

396 A). What therefore has been said thus far concerning the character of rights with regard to right to life in relation to the Constitution and with respect to preliminary remarks and the cases of *Makwanyane* and *Christian Lawyers*, applies to the constitutional imperative of the right to human dignity.

What has been said thus far concerning the nature and universal reach of the constitutional imperative of rights in regard to life within the theoretical framework of the Constitution, and what has been said thus far concerning rights and the nature and universal reach of the constitutional imperative of the right to life within the Reformed ethical theoretical framework *vis-à-vis* universal reach and general reach, applies, without distinction, to the constitutional imperative of the right to human dignity.

#### **4.3.2 Human dignity: constitutional character**

Although life and human dignity are commonly considered inseparable, it does not follow that both terms are equally easy to define. Human life implies some reproductive capacity. This ability is uncharacteristic of something dead, understood here in its simplest and commonest form, as disintegrated and decomposed. Human life, apart from a capacity to reproduce itself, is characterised by consciousness of this reproductive capacity. Consciousness of the capacity of consciousness is a sure and certain indication of human vitality, a faculty that a dead human being does not possess. In short, all reasonable human beings can agree with the apophatic definition of life, which is, not dead.

Currie and De Waal observe, "Though we can be certain of the pivotal importance of human dignity in the Constitution we can be less certain of the meaning of the concept. As is typical of its treatment of important abstractions in the Constitution, the Constitutional Court has not ventured a comprehensive definition of human dignity" (Currie & De Waal, 2005:273). Even if some children for example, may not be able to articulate the concept of human dignity, it appears that all reasonable human beings have an innate sense of personal dignity. It is this personal sense of dignity that the Constitutional Court and lesser courts seek to respect and protect. In respecting and protecting human dignity the courts endeavour to articulate and give meaning to the abstract constitutional formulation of human dignity.

Dignity *per se*, and the innate sense of human dignity, demand, therefore, to be translated into recognisable justice. The uncertain meaning of human dignity is legally problematical, as issues of human dignity must ultimately be something justiciable. The Roman Catholic theologian and ethicist, Maureen Junker-Kenny, observes, "A transcendent statement – every human being is accorded human dignity by virtue of his or her moral capability – is transformed into an empirical one, e.g. that suffering and pain are contrary to human dignity" (Junker-Kenny, 2003:59). The issue of abortion from the Reformed ethical perspective is likewise contrary to human dignity, or from a Pro-choice ethical perspective, compatible with human dignity. In order to come to a legal decision regarding the matter of the right to life and dignity, the courts, and here, the Constitutional Court, must always endeavour to

work toward a clear understanding on the meaning of the constitutional term, “human dignity” which it does through its rulings. It is important, therefore, that the Court’s definition of this term be as clear as possible, all things being equal, otherwise it is very difficult for advocates and opponents of abortion to present their cases. In part, the problem is that that “human dignity” is not a static concept. The judicial understanding of human dignity evolves over time in diverse concrete situations, Vorster, N. 2007:10).

#### **4.3.3 *Dignitas* and *dignatio*: social construct or inherent**

In his article, *Dignatio and the Human Body*, the academic of law, Jonathan Barrett, makes the distinction between dignity as *dignitas*, and dignity as *dignatio*. Barrett argues that within the meaning of the South African Constitution, dignity ought to be understood as *dignatio*, not *dignitas* (Barrett, 2005:525). The linguistic distinction between *dignitas* and *dignatio* is useful in arriving at a more certain meaning of the abstract concept of human dignity.

Posing the question, “What is dignity?” Barrett quotes Loïc Wacquant, “The ultimate spring of conduct is the thirst for dignity, which society alone can quench. For only being granted a name, a place, a function within a group or institution can an individual hope to escape contingency, finitude, and ultimate absurdity of existence” (Barrett, 2005:527). Wacquant is a sociologist, and his argument that it is society *alone* that can quench the thirst for dignity holds true within a secular and relativist ethical and social theoretical framework, but does not hold true within the Reformed Christian ethical and social theoretical framework, which holds that God *alone* can quench the thirst for human dignity through his Son Jesus Christ. Be that as it may, it remains true that a name, a place, a function within a group or institution is a vital component of human dignity as these give a person some degree of meaningful identity.

Socially conferred dignity is relative in that it is essentially hierarchical and entrenches “socially constructed inequality” (Barrett, 2005:526). For example, it generally holds true that society, however defined, confers a higher status on a judge than on a criminal, on a free person than on a prisoner, on an academic than a student, on a military officer than on an enlisted soldier. This distinction of status holds true within the Church, which, basing itself on “Headship” in Ephesians 5:21-33 excludes women from some ministries in spite of Galatians: “There is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; for all of you are one in Christ Jesus” (Gal 3:28). However, Church order, Reformed and Roman, is not a social construct in Wacquant’s sense. Perceptions, nevertheless, are important with respect to human dignity, and the issue of exclusion of women from the offices of Servant of the Word, Bishop, Priest, and Deacon. Such exclusions may be perceived by those inside and outside the Church as a manifestation of gender inequality, with a consequent loss of status and concomitant human dignity. Examples of the mass media and the masses conferring celebrity status, and therefore dignity on those who are, or would be, famous for being famous, in contrast to non-celebrities leading lives of commendable service, are myriad. Socially conferred dignity can be spurious.

These few examples satisfy Wacquant's criteria of social inclusion and satisfaction of the thirst for human dignity, albeit to varying degrees, by socially conferred status. Barrett calls socially conferred dignity, *dignitas*. "*Dignitas* relates to societal perceptions of a person's 'character', 'status' and 'regard'". These are qualities [the person] enjoys by accident of birth and achievement in life. As a relativist concept, the rationale of *dignitas* depends on the possibility of drawing distinctions between different status-holders" (Barrett, 2005:529).

In contra-distinction to *dignitas*, *dignatio* signifies inherent human dignity, which is radically different from socially conferred dignity (Barrett, 2005:531-532). According to Barrett's distinction, *dignatio* necessarily precedes *dignitas*.

*Dignatio*, as a necessary ethical consequence of human existence is always inherent in all people. Social custom or positive law has simply denied this fact for the benefit of hegemonic groups in societies. The extension of *dignitas* to all people springs then, from an awakened recognition of *dignatio*, not its conferral. If *dignitas* indicates what a particular person has achieved or was born into, *dignatio* includes the capacity to achieve inherent in everyone (Barrett, 2005:532).

Barrett's distinction between *dignitas* and *dignatio* is helpful in clarifying the meaning of "dignity" in terms of the Constitution, and helpful in clarifying the meaning of "God-given dignity" in terms of Scripture and doctrine. Within the Reformed ethical theoretical framework, and any given secular ethical theoretical framework, *dignatio* may be held to be inherent and *dignitas* relative. This distinction however, between inherent and relative dignity, is, from a Reformed ethical perspective, moot, for *dignitas* and *dignatio* are not always necessarily distinct, as the following critique suggests.

#### **4.3.4 *Dignitas* and *dignatio*: a Reformed perspective**

*Dignatio*, according to Barrett is the inherent human dignity the Constitutional Court respects and protects. It is *dignatio* rather than *dignitas* that is problematical when it comes to addressing the meaning of human dignity within the framework of the Constitution, as it is *dignatio* that is beyond financial value. *Dignatio* is held to be either God-given or an inherent natural human quality. Inherent qualities are inalienable. *Dignitas*, on the other hand, as socially conferred, is *ipso facto* susceptible to alienation. For example, one's status as a free person may be legally forfeited. Forfeiture may involve the legal status of prisoner, which in turn entails some reduction of *dignitas* by the social authority of the majority who do not live within, and act out of, a criminal ethical theoretical framework.

A court of law considers the social aspect of human dignity a commodity of material value, for example, in terms of assessing damages to be awarded to natural and juristic persons, when for instance an allegation of libel or slander is proven. This material component of human dignity allows a court to

determine and award financial compensation to a plaintiff for a degree of damage to, or loss of, human dignity.

Dignity, considered as *dignitas* and *dignatio*, is therefore helpful in the judicial process, as it facilitates application of the formal rudimentary principle of the constitutional right to human dignity, i.e. universal inherent human dignity, to the material rudimentary principle of this right, i.e. respect and protection. In other words the distinction between *dignitas* and *dignatio* facilitates the application of content of the constitutional right to human dignity, i.e. the norms of respect and protection to be applied to the subject of the law i.e. to natural or juristic persons.

Though useful for practical legal purposes, and for this study, from a Christian anthropological perspective, the question arises, are *dignitas* and *dignatio* as defined by Barrett, always necessarily distinct? How easy in practice is it to distinguish between the two concepts of human dignity? Is *dignitas*, as Barrett suggests, only conferred by society, or is it possible for a person to hold *dignitas* without reference to society's appraisal? Is it not the case that a person whose socially conferred status is *légèrement supérieur à zéro*, for example, he or she may be afflicted by one of the following: e.g. material poverty, poor physical health, poor mental health, illiteracy, lack of formal education, poor housing, yet presents a shining example of *'n God geskepte heer*? When one encounters such a person, may one not ask if *dignitas*, like *dignatio*, is innate? Christian anthropology, which considers the person to be the bearer of God's image, answers that this is indeed the case. Reformed Christian anthropology regards *dignitas* and *dignatio* as two sides of the same coin of God-given human dignity. God-given dignity is an indivisible quality that inheres in each and every living person from conception to the date of birth to the date of death.

In sum, whilst affirming that *dignatio* and *dignitas* are inseparably constituent of human dignity *per se*, this study will speak of the constitutional imperative of the right to human dignity, and the Christian understanding of God-given human dignity in terms of Barrett's useful definition of *dignatio*.

#### **4.4 Gospel imperatives: particular parameters**

To this point, reference has been made to diverse theoretical frameworks, ethical, theological, secular and relative. Where considered appropriate, in order to emphasise a particular characteristic or an aspect of a theoretical framework, comparisons and distinctions between various frameworks have been made. In this subsection dealing with Gospel imperatives, the unique theoretical framework under consideration, to the exclusion of all other theoretical frameworks, is the Christian theological/ethical framework with particular reference to the Reformed tradition. The following, therefore, is to be understood within these Christian parameters. In short, what follows is to be understood solely within the framework of the person of Jesus Christ and his Gospel.

#### 4.4.1 Gospel imperatives as divine imperatives

The Reformed theologian, Emil Brunner, in his classic work, *The Divine Imperative*, states, "The Reformation as a whole is simply one long protest against moral levity, one long struggle for the reality of the Good. That was the whole point of the struggle for *sola fide* in the fight against a 'righteousness of works,' for moralism, with its legalism and self-righteousness is at all times the worst enemy of true morality" (Brunner, 1937:57). Brunner defines the good according to the truth of the Bible, "Only that which God wills is good; and thus [...] we are to will what God wills because he wills it" (Brunner, 1937:58). And one may add, by God's grace, actively respond to God's will that is the good. The Christian, in the light of Scripture, perceives in the issues of the right to life, abortion, and HIV/Aids prevention, an attitude of moral levity, and in the case of *Christian Lawyers and Others v Minister of Health and Others* 1998, by the court's insistence on deciding the issue on legal grounds alone, to the exclusion of scientific, medical, religious, or philosophical grounds, an expression of the righteousness of legal works.

The Book of Genesis reveals that God wills all life. With respect to human life, God explicitly wills life and the continuation of life (Genesis 1:26-28). God's will, therefore, demands an imperative response from his creatures regarding matters of divinely willed human life that is formalised in love of neighbour. Brunner writes, "The form of the will, obedience, is all. But to be obedient to the will of God means 'love your neighbour!' Hence the content of the commandment is not an abstract law, not a programme that can be known beforehand and codified, but it means a swift responsiveness to the needs of others, and action in accordance with their needs in their particular circumstances" (Brunner, 1937:59). In the light of Brunner's admonition, response to the issues of the right to life, abortion, and HIV/Aids prevention requires of Christ's disciples a swift response. This means that the Church, comprising Christ's disciples, may not abandon or neglect these issues, even in the face of the seemingly overwhelming authority and power of a secular ethic, which, with regard to the issue of abortion apparently sees no moral issues in this matter other than the health and safety of the mother and registered providers of abortion.

In the light of Brunner's dictum, "Only that which God wills is good" and Hare's proposition of autonomous submission of the will to God's sovereign will (Hare, 2006:63-67), responses to the issues of the right to life, abortion and HIV/Aids are not only divine imperatives in God's eyes, they also become divine imperatives in the eyes of Christ's disciples, and the collective of Christ's disciples, his Church.

#### 4.4.2 Gospel imperatives: formal and rudimentary principles

The formal and material rudimentary principles of constitutional imperatives were formulated earlier in this study (3.4).

- The formal rudimentary principle of Gospel imperatives is the risen Christ and God-given faith in this living person who is God's ultimate revelation of the good. The material rudimentary principle of Gospel imperatives is obedience to the person of the risen Christ revealed in the Word of God, which is something living and active (Hebrews 4:12).

#### 4.4.3 "Follow me": a divine imperative

- The formal rudimentary principle of the Gospel imperative "Follow me", is Christ's call to discipleship, and the material rudimentary principle is, by God's grace, obedience to Christ's call.

This formulation requires scriptural exegesis of Matthew 4:19-20 and the Synoptic parallels.

##### 4.4.3.1 Matthew 4:19-20 and Synoptic parallels

- "And he said to them, 'Follow me, and I will make you fishers of men.' Immediately they left their nets and followed him" (Mt 4:19-20) (Throkmorton, 1979:16).
- "And Jesus said to them, 'Follow me and I will make you become fishers of men.' And immediately they left their nets and followed him" (Mk 1:17-18) (Throkmorton, 1979:16).

#### 4.4.4 "Follow me": call to office

The proclamation of the Kingdom of Heaven (Mt 4:17), precedes Jesus' imperative call "Follow me", and Peter and Andrew's imperative response. Jesus' call to discipleship and the response to the call to discipleship are imperative. The Roman Catholic New Testament scholars, J. R. Donahue and D.J. Harrington, point out that Mark's, and Matthew's, rendering of Jesus' imperative, "Come after me" (come, *deute*), is hortatory (Donahue, Harrington, 2002:74). Jesus' command itself then, incites those who hear to respond. This form of speech underlines the authoritative nature of Jesus' imperative call. The unhesitating nature of the response to Jesus' call, say Donahue and Harrington, "suggests the power of Jesus' call and his attractiveness" (Donahue, Harrington, 2002:74).

The New Testament scholar, Craig Keener, points out that Jesus' call, and Peter and Andrew's response, is a continuation of God's affirmation of Jesus and God's mission confided to Jesus, "In [Mt] 4:18-22 the one whom the Father called in 3:17 now calls others who will advance his mission. Jesus' call to leave profession and family was radical, the sort of demand that only the most radical teacher would make. The text provides Matthew's community with several examples of servant leadership and radical discipleship" (Keener, 1999:149). Keener points out the high personal cost of following Jesus in giving priority to the proclamation of the Kingdom of Heaven. The transition from fisherman to itinerant disciple entailed an economic loss of livelihood and family security, and an associated reduction in social status and social dignity (Keener, 1999:151-155). Peter recognizes the high cost of discipleship when he says, "Look, we have left everything and followed you" (Mt 19:27).

Jesus' call to Andrew and Peter is not only one of discipleship, but to the particular office of Apostle, an office of instructing, as Calvin calls it (Calvin 1, 1949:242). Christ does not call all disciples to apostleship and the hardship entailed in leadership exercised through, with and in Christ. "There are some whom the Lord is satisfied with having in his flock and his Church, while he assigns to others their own station" (Calvin 1, 1949:243). Jesus' initial call to Peter and Andrew is to the task of forming a community of believers. "For God's rule does not operate in a void – it implies a people living under it. It involves the formation of a community" (Hunter, 1949:31). Be the call to that of Apostle or to that of discipleship alone, it is important to note the imperative response to the imperative call. Hunter observes that the word "straightaway" (immediately) is used forty-one times by Mark, often as a connecting link, but it lends "an air of breathlessness to his story which is the story of Jesus proclamation of the Kingdom of Heaven and its priority over all else" (Hunter, 1949:32). The same air of breathlessness ought to characterise those who follow Jesus today, particularly his Servants of the Word.

#### 4.4.4.1 "Follow me": call to discipleship

The role of Apostle and of the Twelve, as Calvin states above, is a distinct office or ministry within the community. Discipleship, however, is wider than the office of Apostle or the Twelve. Jesus' call to discipleship precedes his call to apostleship. Donahue and Harrington state, "The two essential elements of the call to discipleship are being with Jesus and doing the things of Jesus" (Donahue, Harrington 2002:31). In Mark's Gospel many fit these criteria and may thereby be designated, disciples:

1:31, Peter's mother-in-law rises up and serves (*diēkonei*) 1:45, the leper goes out and begins to proclaim and spread the word; 2:15, tax collectors and sinners follow (*ēkolouthoun*); 3:35, 'whoever' does the will of God is a member of Jesus' family; 5:20, the healed demoniac goes out and begins to proclaim; [...] 10:29-31, 'whoever' leaves family etc. will receive a hundredfold; 10:52, the healed Bartimaeus 'follows Jesus on the way'; 11:23, 'whoever' prays with faith will be heard; [...] Jesus' statements are meant for all; 14:9, an unnamed woman anoints Jesus; a 'passer-by' carries Jesus' cross; 15:39, the centurion confesses Jesus; 15:41, the women who had followed him and ministered to him (*ēkolouthoun kai*

*diēkouon*) in Galilee are at the cross; 15:43-47, Joseph of Arimathea, who was waiting for the kingdom of God, performs the burial ritual; and 16:1-8, the women come to the tomb and hear the resurrection proclamation (Donahue, Harrington, 2002:31).

Discipleship therefore derives directly from Christ's call and is not dependent on any other authority within the community; thus those "whom the Lord is satisfied with having in his flock and his Church" are rightly designated disciples.

Donahue and Harrington enumerate six characteristics of Jesus' call to discipleship in Mark's Gospel: the call to discipleship is Jesus' initiative; Peter, Andrew and others were engaged in ordinary occupations; the call is unambiguous, it is a clear summons; the call is to share in the missionary task of the one calling; the response to the call is immediate and spontaneous; the response to the call is not private but communal as one joins others who have responded (Donahue, Harrington 2002:31). In every age then, Christ's disciples do not choose Jesus; prior formal learning in theology and philosophy is not a prerequisite; they are invited to respond to Christ's call and thereafter discover its implications in following him. The call is not to promote slavishly the teachings of Jesus as related in the Gospel, rather it is a call to collaboration and to communion with Jesus and his disciples. Jesus' call to discipleship is a divine imperative, a call to each and every member of Christ's Church to become "fishers of men" and to leave everything for Christ and his Gospel. In casting aside everything else and following Jesus, disciples will, in responding to Jesus imperative to love God and neighbour, discover the true meaning and implications of following Jesus. This is of importance to this study's focus: the right to life, abortion, and HIV/Aids prevention.

#### **4.4.5 "Love God, and your neighbour as yourself": a divine imperative**

- The formal rudimentary principle of the Gospel imperative "Love God, and your neighbour as yourself" is love (*ἀγαπάω*). The material rudimentary principle is, by God's grace, to love God with all one's mind and heart and one's neighbour as oneself.

This formulation requires scriptural exegesis of Matthew 22:34-40 and the Synoptic parallels.

##### **4.4.5.1 Matthew 22:34-40 and the Synoptic parallels**

- When the Pharisees heard that he had silenced the Sadducees, they gathered together, and one of them, a lawyer, asked him a question to test him. 'Teacher, which commandment in the law is the greatest?' He said to him, 'You shall love the Lord your God with all your heart, and with all your soul, and with all your mind'. This is the greatest and first commandment. And the second is like it: 'You shall love your neighbour as yourself'. On these two commandments hang all the law and the prophets (Mt 22:34-40).

- One of the scribes came near and heard them disputing with one another, and seeing that he answered them well, he asked him, 'Which commandment is the first of all?' Jesus answered, 'The first is, 'Hear, O Israel: the Lord our God, the Lord is one; you shall love the Lord your God with all your heart, and with all your soul, and with all your mind, and with all your strength.' The second is this, 'You shall love your neighbour as yourself.' There is no other commandment greater than these.' Then the scribe said to him, 'You are right, Teacher; you have truly said that 'he is one, and besides him there is no other'; and 'to love him with all the heart, and with all the understanding, and with all the strength,' and 'to love one's neighbour as oneself,'--this is much more important than all whole burnt offerings and sacrifices.' When Jesus saw that he answered wisely, he said to him, "You are not far from the kingdom of God." After that no one dared to ask him any question (Mk 12:28-34).
- Just then a lawyer stood up to test Jesus. 'Teacher,' he said, 'what must I do to inherit eternal life?' He said to him, 'What is written in the law? What do you read there?' He answered, 'You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbour as yourself.' And he said to him, 'You have given the right answer; do this, and you will live' (Lk 10:25-28).

#### 4.4.6 The core of Christian ethics: love

The lawyer's question about the greatest commandment, and Jesus' affirmation of the priority of love above other commandments of duty or obedience, was part of an ongoing debate among teachers of the law as to whether duty took precedence over love, or *vice versa*, with respect to the law (Donahue, Harrington, 2002:530-531). The love that Jesus speaks of does not remain an abstract, but is given meaning as an active ingredient of discipleship. The primacy of love "is also clearly the fundamental ground upon which the ethical teaching of the NT Church is built" (Hagner 33B, 1995:647). Paul writes to the Church in Rome that love is the fulfilment of the law (Rom 13:8-10), and to the Church in Galatia, that love is the summary of the whole law (Gal 5:14). The Johannine community receive Jesus' new commandment, "[...] love one another. Just as I have loved you, you also should love one another. By this everyone will know that you are my disciples, if you have love for one another" (Jn 13:34-35). And James, the leader of the Church in Jerusalem, holds that loving one's neighbour as oneself is the supreme law in one's dealing with one's fellow human beings (Jas 2:8) (Donahue, Harrington 2002:531). On the priority of love, Calvin writes, "Above all, clothe yourselves with love, which binds everything together in perfect harmony" (Col 3:14) (Calvin 3, 1949:61).

In conformity with Christ and his Gospel, the primacy of love remains the formal principle of the Church's ethical teaching. The question as to why love is central to the Christian ethic is answered by Jesus at the end of his exchange with the lawyer, "On these two commandments hang all the law and the prophets" (Mt 22:40). Calvin understands by this that Jesus does not intend to reduce all other commandments to love of God and neighbour, "but because all that is anywhere taught [in Scripture] as to the manner of living a holy and righteous life must be referred to these two leading points" (Calvin, 1949:63).

#### 4.4.6.1 The core of Christian ethics: nature and reach

Christ's response to the lawyer sets a lofty ethical benchmark. Stated earlier in this study, in Aquinas' *De ordine caritatis*, the double imperatives of the Greatest Commandment are a source of moral dilemmas for the disciple of Christ (3.2.11). The imperative of loving God with all one's heart, soul, mind and strength demands that the whole person love God; and the imperative of loving one's neighbour as oneself is based on the understanding that a person cares for himself enough to promote and protect his own interests. "The [ethical] challenge is to show the same kind of love to others" (Donahue, Harrington, 2002:355). The accompanying parable of the Good Samaritan in Luke 10:25-37, understands "neighbour" and "love of neighbour" not generally, i.e. restricted to one's friends, acquaintances and co-religionists, but universally, "The general truth conveyed is, that the greatest stranger *is our neighbour*, because God has bound all men together for the purpose of assisting each other" (Calvin, 1949:61). In short, the Judeo-Christian imperative to love the Lord God with all one's heart, and with all one's soul, with all one's mind, and with all one's strength, is universal: universal in embracing the whole of one's being, and universal in loving one's fellow human being, whether seen and unseen, known or unknown.

Universal dimensions of loving God and neighbour have implications for the issues of the right to life, abortion, and HIV/Aids prevention, since universal love embraces the unborn child, which implies the duty and responsibility of promoting and protecting the right to life of the child *in utero*. On the principle of the universality of the imperative, "Love God, and your neighbour as yourself", the life of the unborn child cannot be taken away at will, even when the complex situation of the mother and/or the family would indicate abortion as a possible solution among other solutions to, for example, a given pressing social problem. By the same token, endangering the life of a child, whether *in utero* or born, through *inter alia* wilful disregard for sexual health negates the universality of the imperative to "Love God, and your neighbour as yourself", since wilful disregard for the life of another, is nothing more than regard for one's own life to the exclusion of other lives. Giving exclusive priority to one's own life effectively hinders Christ's disciple from fulfilling the imperative to take up his cross and from bearing witness to Christ and his Gospel, even at some cost to himself, in this case preventing possible HIV infection from the mother to child.

#### 4.4.7 "Take up your cross": a divine imperative

- The formal rudimentary principle of the Gospel imperative, "Take up your cross", is commitment to Christ. The material rudimentary principle is, by God's grace, to persevere in one's commitment to Christ.

#### 4.4.7.1 Matthew 10:38 and Synoptic parallels

- “[...] and whoever does not take up his cross and follow me is not worthy of me” (Mt 10:38).
- Then he said to them all, “If any want to become my followers, let them deny themselves and take up their cross daily and follow me” (Lk 9:23).
- “Whoever does not carry his cross and follow me cannot be my disciple” (Lk 14:27).

#### 4.4.8 “Take up your cross”: total commitment

Only John 19:17 relates that Jesus carried his own cross to his execution. In the Synoptic Gospels, Simon of Cyrene is pressed into carrying Jesus’ cross to Golgotha (Mt 19:17; Mk 15:21; Lk 23:26). The difference matters not, for here the point is not that the condemned carries his instrument of execution to the place of execution, but that his life is forfeit. When one becomes a follower of Jesus, his life is forfeit possibly even to physical death (Keener, 1999:331). Keener further points out that in the Pauline tradition the disciple’s willingness to die for Christ’s sake becomes death to self and to his right to make selfish choices: “Put to death, therefore, whatever in you is earthly: fornication, impurity, passion, evil desire, and greed (which is idolatry)” (Col 3:5), also Colossians 3:3 and Romans 6:3-4 (Keener, 1991:331, fn 51). This is a lifelong process: “Luke believes that the Christian life is dying daily to self [Lk 9:23], much as Paul does in 1 Cor. 15:31: ‘Every day I die’” (Tinsley, 1965:101).

Calvin states that one cannot be a disciple without carrying the cross of suffering: “Let us remember this condition, that Christ subjects all his disciples to *the cross*. Yet let us also bear in mind this consolation, that in *bearing the cross*, we are the companions of Christ” (Calvin 1, 1949:472). Discipleship and the cross then are intimately linked, but the disciple always bears the cross of Christ in his company. With Christ carrying the cross, it becomes easier and lighter than it would be otherwise, much after the fashion of Christ’s yoke and burden (Mt 11:30).

As one must love God with all one’s heart, soul, mind, and strength, Christ demands of his disciples *commitment to the same degree; i.e. total commitment of one’s whole self to Christ. But then why should Jesus Christ, God incarnate, demand any less of those whom he calls to discipleship?* In sum, the imperative of taking up one’s cross day after day continually actualises the imperatives “Follow me” and “Love God and your neighbour as yourself”. Christ’s disciples are known by their fruits (Mt 7:16).

## 4.5 Gospel imperatives: right to life of the unborn

The right to life, both within the framework of the Gospel and the Constitution, is essentially the right to a dignified human life. The issues of the right to life, abortion, and HI/Aids prevention are distinct but not separate *vis-à-vis* the right to a dignified human life, but are separated here for convenience of consideration. Similarly, the Gospel imperatives "Follow me", "Love God and your neighbour as yourself" and "Take up your cross", are distinct but not separate *vis-à-vis* a life of discipleship.

Flowing from the secular character of the Constitution, and central to this study, is the legal question of the right to life and dignity of the unborn. Implicit in the issue of the right to life of the unborn are several questions. At what stage of biological development is the unborn considered an unborn child? At what stage from the point of conception and throughout its biological development, zygote, embryo, foetus, until the date of birth, ought the unborn to be accorded natural status and hence legal personality? On these points, the academic of law, M. N. Slabbert, comments, "Die vraag na die regsdimensies or regstatus van die menslike embrio en fetus, een van die mees kontroversiële regs vrae ooit, is van belang ten einde die regstatus en regsbelange van hierdie entieite af te baken." (Slabbert, 1997:91). The Collins Dictionary of Law defines "person" as the object of legal rights (Dictionary of Law, 2001). Constitutional recognition or denial of the natural status of the unborn determines the unborn's constitutional right to life (s 11) and dignity (s 10). Consequently, constitutional recognition or denial of the unborn's right to the fullness of life and dignity, and protection of that life in its fullness before the law, is affected accordingly.

Currently, the unborn child in the RSA is denied natural status under the Constitution. The Oxford Dictionary of Law defines "unborn" [as] "a child still in its mother's body and not yet born" (Dictionary of Law, 2003). Touching on the legal status of the foetus, in *Christian Lawyers Association and Others v Minister of Health and Others* 1998, McCreath states, "I proceed to a consideration of the provisions of the Constitution itself. There is no express provision affording the foetus (or embryo) legal personality or protection" (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1121 G-H).

This constitutional position *vis-à-vis* the legal status of the unborn is in contrast with the Reformed Christian ethical position regarding the unborn. This presents a moral dilemma for the Reformed tradition. In the Reformed Churches, human beings are held to be God's work, created in God's image and likeness (Gen 1:26-27), and confessed as such (Belg, 14, 1999:46; see also HelC2, VIII. 1, 1999:46). Accordingly, the unborn at all stages of biological development is held to be an unborn child created in the image of God.

This natural status of the unborn child as *imago Dei* clearly conflicts with the constitutional position that confers natural status only on the date of birth. The Christian assertion that the unborn child has natural

status implies legal status for the unborn child under the Constitution. This presents a Christian moral conflict with regard to the right to life, for, in order to be endowed with legal status, the Constitution must recognise someone as a natural person. Under the Constitution, the unborn child – zygote, embryo, or foetus – is not a natural person, as McCreath observes above.

A fundamental distinction between the constitutional framework and the Reformed Christian ethical theoretical framework is that according to the latter, there is no essential bioethical distinction between prenatal and postnatal stages of life. The South African Reformed theologian, Riaan Rheeder, highlights this; “Twee sake staan dus vas. Allereers: daar is ‘n mens-in-ontwikkeling en nie ‘n ontwikkeling-na-‘n-mens nie. Vervolgens: daar is nie ‘n ontwikkelde mens nie, asof daar in die embrionale ontwikkeling verder niks meer gebeur nie” (Rheeder, 2002:479). In the Reformed Christian tradition, therefore, the unborn child, from the point of conception, is held to be endowed with natural status and dignity derived from its God-given status as *imago Dei*; this status the unborn shares with constitutional natural persons.

From a Reformed Christian perspective, the Constitution, by denying a legal right to life to the unborn through the provision of legal termination of pregnancy, does not thereby, according to Reformed soteriology, necessarily deny the unborn child salvation and eternal life with God, even though the unborn child is denied the opportunity of the sacrament of baptism. As Calvin states, “God declares that he adopts our babies as his own before they are born” (Inst. 4.15.20, 1960:1321), and as the Westminster Confession of Faith, though not speaking directly of the unborn child, states formally, “Although it be a great sin to contemn or neglect this ordinance [to baptise], yet grace and salvation are not so inseparably annexed unto it, as that no person can be regenerated, or saved without it; or, that all baptised are undoubtedly regenerated” (WestC, XXVIII, 5, 1999:217). Read in the light of Calvin’s declaration, it may be supposed that this article of the Westminster Confession of Faith is applicable to the unborn. This Reformed theological perspective on the relationship between the sacrament of baptism and salvation underlines the high status of all human life as *imago Dei*, at whatever stage of biological development, pre and post-natal. It further emphasises the imperative right to life of a person be they “sealed and engrafted into Christ, partakers in the covenant of grace, and engaged with the Lord” (WestSC, 94, 1999:217), or otherwise.

Of concern to Christian theology, moreover, is not only that termination of pregnancy denies the unborn the possibility of discipleship, but entails the denial of Christ’s right to call a person to discipleship. Termination of pregnancy is a denial of Christ’s right to call a person to fellowship. It denies Christ’s right to call co-workers to proclaim the Kingdom of Heaven by a life of loving God and neighbour, and it is a denial of the Holy Spirit’s right to assist a person to persevere in discipleship for the term of his or her natural life.

The claim of the unborn child's God-given right to a dignified life is linked to the issue of HIV/Aids prevention. The HIV/Status of both parents impinges upon the God-given right of the unborn to life and the fullness thereof in Christ Jesus (Jn 10:10).

In short, from a Reformed Christian ethical perspective, the issues of abortion and HIV/Aids, and lack of prevention, are at best a curtailment and at worst, a denial, albeit explicit or implicit, of the Judeo-Christian assertion that God alone creates and sustains life, (Gen 1:26-27), which is not man's to take wilfully.

#### **4.6 Gospel and constitutional imperatives: summary**

The parameters of the Constitution of the Republic of South Africa form one framework within which the issues of the right to life, abortion, and HIV/Aids prevention, and the nature and reach of Gospel and constitutional imperatives are considered by this study. The theoretical ethical framework of the Reformed Christian tradition forms the second set of parameters within which the legal and Christian ethical considerations of the right to life, abortion, and HIV/Aids prevention, the nature and reach of Gospel and constitutional imperatives, are considered.

Between the frameworks of the Gospel and the Constitution, there is a divergence of understanding concerning the concept of the right to life, and what constitutes a full life. This divergence, formally and materially affects the issue of the right to life, abortion, and HIV/Aids prevention. Disciples of Christ in the Republic of South Africa live under both the provisions of the Gospel, "But our citizenship is in heaven" (Phil 3:20a), and the provisions of the Constitution, "Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God" (Rom 13:1). Moral dilemmas arise for Christians as and when constitutional and Gospel imperatives conflict; a case in point being the Christian perspective on the constitutional right to life (s 11) which conflicts with the perspective of and provisions in the Choice of Termination of Pregnancy Act 1996.

The selected Gospel imperatives, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross", along with the constitutional imperative of the right to life considered in relationship to the constitutional right to human dignity, serve to illustrate this distinction between evangelical and constitutional imperatives. For Christians, the matter of the nature and reach of the Gospel and the constitutional imperatives, be they mutually compatible or incompatible intrude *inter alia* into the fundamental duty and obligation of every disciple of Christ to promote God-given life and dignity in its fullness, and to do this from conception to birth to death. From a constitutional point of view, however, Gospel imperatives do not materially affect legal considerations of the right to life and the fullness of life. The law admits no moral conflict in the constitutional provisions of the promotion of human life and

dignity from conception to birth, and to death within the parameters of the Choice on Termination of Pregnancy Act 1996, because the unborn is not a natural person in law.

The Bill of Rights, Chapter 2 of the Constitution, apparently by design, follows the sequence, "s 9 Equality", "s 10 Human dignity", "s 11 Life". The primacy of "equality in law" in this sequence, is due to the constitutional recognition of legal personality solely from the date of birth. In *Christian Lawyers Association and Others v Minister of Health and Others* 1998, it was held that, "Age commenced at birth and the foetus was not a 'child' of any age" (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1114 F). The Reformed tradition, on the other hand, endows the unborn with personhood from conception, and argues from this principle for the right to life of the unborn. If the principle that the foetus is a rights holder within the meaning of the Constitution were ever conceded and established constitutionally in the Republic of South Africa, the constitutional right to human dignity, and equal protection and benefit of the law, would flow to the unborn child. However, the *status quo* pertains, but for the purpose of argument in this study, the prescribed succession of constitutional priorities is reversed, thus; "s 11 Life", "s 10 Human dignity", "s 9 Equality".

The case for the constitutional right to life of the unborn based upon "s 11 Life", "Everyone has the right to life", and that "everyone" includes the unborn, was argued and lost in 1998 (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1126 G). Consequently, the claim that the unborn has constitutional rights to dignity and equality before the law fell of necessity, as did indeed the constitutional claim to the right to human dignity and equal protection and benefit of the law.

Although the right to life is the primary constitutional focus of this study, from a Reformed Christian perspective, and any reasonable secular theoretical framework of ethics, the right to life cannot be separated from the right to human dignity, because in speaking of the right to life within the context of the Gospel and the Constitution, one speaks of the right to the dignified human life of a person, however defined. In discussing the right to life, therefore, it is necessary to give some consideration to the constitutional right to human dignity, a right to dignity that resonates to a degree with the Christian belief in the God-given dignity of all human life by virtue of being created as *imago Dei*.

The Constitution of the Republic of South Africa is the legal framework within which Christ's disciples, by the grace of God, live out the call of the Gospel. Christ's disciples cannot ignore the imperatives of the Constitution without legal sanction, nor can they deny the Christian claim to the priority of Gospel imperatives over constitutional imperatives. Moral dilemmas arise within this matrix of Gospel and constitutional imperatives. This begs the question of how, within the Reformed Christian ethical framework, moral dilemmas are faced, and addressed, and how solutions are proposed.

## 5. CHAPTER FIVE – EVALUATION AND CHRISTIAN ETHICAL RESPONSE TO ABORTION AND HIV/AIDS IN THE REPUBLIC OF SOUTH AFRICA

Abortion and HIV/Aids prevention form the parameters of this chapter for an evaluation of the selected Gospel imperatives, “Follow me”, “Love God, and your neighbour as yourself”, “Take up your cross”, and the Constitutional imperative of the right to a dignified human life. The purpose of the evaluation is to arrive at a considered Christian ethical response to the moral and legal dilemmas Christians perceive in the issues of the right to life, abortion and HIV/Aids prevention.

This Christian evaluation and ethical response stems from within the Reformed ethical framework, which poses problems of authoritative sources for the Roman Catholic mind applying itself to this task. This chapter deals with this issue, and discusses criteria for the use of abortion and HIV/Aids statistics. A systematic evaluation of Gospel and constitutional imperatives and proposed Christian ethical responses to the right to life, abortion and HIV/Aids follows.

### 5.1 Reformed theological and ethical authorities: a Roman dilemma

It is challenging for a Roman Catholic to discern a definitive Reformed position in certain areas of Reformed ethics. The problem is, which among various Reformed ethical opinions is authoritatively Reformed, for divergent understandings of doctrines may still be held to be Reformed, while downplayed or dismissed by Reformed parties of other opinions. Reformed theologians and ethicists may consider this question beside the point, and one typical of a Roman Catholic mind, but it is a Roman Catholic mind that applies itself to the issues of this study, and in the absence of a definitive declaration on the meaning of *ecclesia reformata, semper reformanda*, seeks to arrive at a degree of certainty on what is and what is not an authoritative Reformed position, lest views expressed here be dismissed on the grounds that they are inconsistent with Reformed doctrine.

#### 5.1.1 *Behoudende Gereformeerde pad*

Doctrine and praxis of the Gereformeerde Kerke in Suid-Afrika are not determined or governed by magisterial authority in the Roman Catholic sense. Regardless of whether one agrees or not with the principle and doctrine of *magisterium*, the *Magisterium* establishes clear doctrinal norms, which all, whether Church members or not, may confidently consult. These doctrinal norms are the ultimate gauges of Roman orthodoxy, by which speculative theological opinion may be deemed to concur or conflict with authoritative Roman norms.

The Gereformeerde Kerke in Suid-Afrika, through the power of the Holy Spirit, endeavours to hold to what is popularly known as a *behoudende Gereformeerde pad*, i.e. faithfulness to Scripture and the Forms of Unity. Afrikaans-English dictionaries translate, “*behoudend-e*”, as “conservative”. In the context of *behoudende Gereformeerde pad*, this study understands the term as, consistent Reformed doctrine, i.e. consistent with Scripture, Calvin’s writings, the Forms of Unity, and the Reformed Confessions of Faith. On the principle of *Ecclesia reformata, semper reformanda*, a conservative Reformed path is a contradiction in terms, since it does not appear to imply the possibility of doctrinal change. The Reformed tradition has no definitive concept of *Behoudende Gereformeerde pad* since it is not a doctrinal term *per se* but a vulgar one. This is problematic but not insuperably so. The office of Professor of Theology in the School of Theology is a highly respected teaching ministry whose word carries weight in all Synods and Churches comprising the Gereformeerde Kerke in Suid-Afrika. Consequently, opinions of such Professors are deemed normative for the purpose of this study.

Among the four distinct ministries in the Reformed Churches – Servant of the Word, Professor of Theology, Elders, and Deacons (GKSA, 1998, Art 2: 15) – the ministry of Professor of Theology in the School of Theology distinguishes itself from the three other ministries whose office is restricted to local churches (*plaaslike kerke*), in that the Professor of Theology is deemed to have local standing in all local churches of the Gereformeerde Kerke in Suid-Afrika (GKSA, 1998, *Bylaes* Art 5.3.3:40). Professors of Theology in the School of Theology are also advisory members of General and Local Synods (GKSA, 1998, *Bylaes* Art 50.1.21:53). The duties and responsibilities of Professors of Theology to hold and teach classic Reformed theology and doctrine are unambiguously stated in the commissioning formula of Professors of Theology in the School of Theology. Consequently, opinions of such Professors are deemed normative by this study.

Ek, die ondergetekende, beroep vir die opleiding van predikante, verklaar met hierdie ondertekening van my opreg en met 'n goeie gewete voor die Here dat ek van harte glo en oortuig is dat al die artikels en leerstukke wat vervat is in die drie Formuliere van Eenheid, te wete die Nederlandse Geloofsbelydenis, Heidelbergse Kategismus en Dordtse Leerreëls, soos aanvaar in die Gereformeerde Kerke in Suid-Afrika, in alles met die Woord van God ooreenstem.

Ek sal hierdie leer ywerig verkondig en getrou verdedig sonder om openlik of heimlik, regstreeks of onregstreeks iets daarteen te leer of te skrywe en ek sal alles wat daarmee in stryd is, teëstaan en help om dit te weer.

As ek ooit enige beswaar teen hierdie leer of enige onderdeel daarvan mag hê, sal ek die beswaar aan die Kuratorium onder wie se toesig ek dien, voorlê. As 'n Kuratorium of enige sinode weens gewigtige redes dit nodig ag om vir die behoud van die eenheid en suiwerheid van die leer van my 'n nadere verklaring van my opvatting oor enige punt van die Gereformeerde belydenis te vra, sal ek te alle tye bereid wees om dit te gee, sodat die kerke daarvoor kan oordeel. Ek sal my aan die oordeel van die betrokke kerklike vergadering onderwerp, behoudens die reg in K.O, art. 31 vervat. Gedurende die tyd van appel sal ek my onderwerp aan die uitspraak en oordeel van die betrokke vergadering. Ek verklaar dat ek begryp dat indien ek ooit in stryd met bostaande sou handel, ek onmiddellik in my diens geskors en moontlik uit my diens afgesit mag word (GKSA, 1998:83).

## 5.2 Abortion and HIV/Aids statistics

The availability of most recent historical statistics on abortion and HIV/Aids infections in the RSA is hindered by delays in the correlation and publication of official data. Accuracy of published official abortion and HIV/Aids statistics in the Republic of South Africa is also problematic. Statistics covering the period, 1975-2005, for abortions carried out on residents in the RSA, are only estimates (Appendix C). Johnston notes, "Parenthetical figures are estimates, some of which are derived from reported data" (Appendix C:4). Johnston further notes that data for 1997, 2004, and 2005 abortion figures is incomplete (Appendix B:1). In the same appendix, it is noted that the reported number of live births from 1997-2004 are likewise incomplete (Appendix B:2). Johnston's data for the RSA is sourced *inter alia* but principally from Statistics South Africa (Appendix B:3; Appendix C:5).

In the light of the lack of availability of historical data, and of reliability of appropriate figures with respect to abortion, this study selects Johnston's comprehensive historical data covering 1975-2005, since it covers the longest time span among other available data (Appendices B and C). Various statistical sources on HIV/Aids are available to this study *inter alia* UNAIDS, WHO, Statistics South Africa, Actuarial Society of South Africa (ASSA). With respect to criteria for selection of data sources, a comparison of mathematical models employed, and resulting data, is beyond the requirements of this study. All data sources on HIV/Aids infections broadly indicate a rising trend. It suffices, therefore, that this study selects one authoritative source among others to illustrate rates of HIV/Aids infections in the RSA. The Actuarial Society of South Africa's, HIV/Aids Prevention Model 2003 (Appendix A), is selected as this mathematical model provides an estimated overall trend in rates of HIV/Aids in the RSA from 2000-2015. This is a timeframe in which this study, providentially, and usefully, stands midway. It ideally suits a consideration of historical data and a reflection on projected data, which is realistically helpful in evaluating and formulating a Christian ethical response to the issues of the right to life, abortion and HIV/Aids prevention.

As mentioned, figures published in the ASSA's, HIV/Aids Projection Model 2003, cover 2000-2015 (Appendix A). The National Department of Health has selective data for 2006. Its report, National HIV and Syphilis Prevalence Survey, South Africa, 2006, is an antenatal survey for that year. These most recent figures for a segment of the population, though interesting and germane, do not directly assist this study, which concerns HIV infections within the total population of the RSA. The report itself notes, "Antenatal surveys are not designed to provide information on HIV prevalence in the rest of the population (men, non-pregnant women and even children) who have HIV infection" (Department of Health, 2007:15).

The lack of availability of most recent reliable historical data on abortion and HIV/Aids infections for the total population in the RSA does not hinder this study. Trends in the rates of abortion and HIV/Aids infections, rather than accurate historical data, are necessary for the purpose of an

evaluation of, and a Christian response to, these issues under consideration. Important as recent historical data on abortion and HIV/Aids is, the National Department of Health itself recognises the significance of trends in planning responses to the issue of HIV infections. Improved sensitivity in mathematical models of HIV statistics, recent collaboration with UNAIDS, WHO and other interested organisations in 2002, enabled the Department, using the spectrum model, to estimate the total number of HIV infections in the RSA in 2006 to be in the region of 5.41 million (Department of Health, 2007:15).

With respect to reported abortion data of Appendix C, as the appendix title implies, Historical abortions statistics South Africa, is not a projection of rates of increase. The data, however, demonstrate the progressive rise in abortion rates from 1975-2005. Annual statistics for this period may be consulted in Appendix C. Illustrative of the steadily rising trend, however, are the ten-yearly figures for the total number of reported abortions for residents of the RSA carried out under the Abortion and Sterilization Act 1975. In 1975 there were 570 abortions, in 1985, 1312 abortions, and in 1995, 1720 abortions (Appendix C:2-3).

The rate of reported abortions for residents in the RSA markedly escalated with the introduction of the Choice on Termination of Pregnancy Act 1996. In 1997 there were 26,555 reported abortions, and in 2005 there were 85,621 (Appendix C:3-4). The Choice on Termination of Pregnancy Amendment Bill [B 21 –2007] passed by the National Assembly on 17 February 2008, and currently awaiting the signature of the President, makes it reasonable to assume that the historical rising trend in RSA abortion rates set forth in Appendix C will continue. Consequently, it is realistic for this study to anticipate a consistently rising trend of abortion rates within the timeframe of the ASSA's, HIV/Aids Projection Model 2003, which is instant to 2015 (Appendix A). This chronological congruency sets the parameters for the consideration of relevant data.

### **5.3 Abortion: nature and reach of the term**

The Bloomsbury Dictionary of Law defines "abortion" as, "the ending of a pregnancy before its natural term" (Dictionary of Law, 2004). This is a definition of abortion in its simplest and commonest form, and requires further elaboration for the purpose of this study. The term abortion is used here in conjunction with the adjective "provoked", which is to say, abortion as the wilful or deliberate evacuation of the products of conception from the uterus. This understanding of the term contrasts with the spontaneous natural evacuation of the products of conception from the uterus, commonly called, miscarriage. Douma uses the term *abortus provocatus*, which he describes as the, "afdrijving uit de moederschoot van een vrucht die daarbuiten nog niet levensvatbaar is" (Douma, 1975:19). Unless otherwise stated, in all cases, the term abortion is employed throughout this study in Douma's

understanding, namely, the wilful expulsion of the living embryo from the uterus, but not the wilful expulsion of the dead embryo or foetus.

#### 5.4 Constitutional perspective on abortion

Parliament and the judiciary of the RSA currently admit no legal conflict arising between the imperatives of, “s 11 The right to life”, “s 10 Human dignity”, and current abortion legislation, the Choice on Termination of Pregnancy Act 1996. In law, the term, “everyone”, in “Everyone has the right to life” (s 11), does not extend to the *conceptus*, even though the law accepts that the *conceptus* is indeed, human life (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1120 H-J). *Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998 also states that if the term “everyone” was intended to include the unborn child, it would be reasonable to expect mention of the terms, unborn child, or foetus, in “s 28 Children”, of which, there is none. The reason for this omission, states the judgement, is that age commences at birth, i.e. parturition; consequently, in law, a foetus is not a child of any age (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1122 B-E). Accordingly, the foetus is not a natural person in law, and if not a natural person in law, then not a juristic person and rights holder under s 11.

Denial of legal personality to the unborn child is reflected in current abortion legislation. Abortion is perceived solely as a surgical procedure, the subject of which is the woman alone who herself alone must request the termination of pregnancy (Choice on Termination of Pregnancy Act 1996, s 2 (1) (a)). The woman is to be informed of her rights under this Act (Choice on Termination of Pregnancy Act 1996, s 6). This act makes no mention of the foetus, but only of pregnancy.

The, Choice on Termination of Pregnancy Amendment Bill [B 21–2007], recently passed by the National Assembly underscores the contention that a termination of pregnancy is not only a surgical procedure, but a routine surgical procedure. The underlying purpose of this Bill is to ease access to abortion services. A means to this *inter alia* is, “to exempt a facility offering a 24-hour maternity service from having to obtain approval for termination of pregnancy services under certain circumstances” (Amendment 2 s 3 (1)). Now enacted but not yet promulgated, this particular amendment eases access to abortion services. Easier access to abortion services is further illustrated by the amendment concerning the addition of a registered nurse with prescribed training to those authorised to perform a termination of pregnancy, namely, a medical practitioner, or midwife with the prescribed training (Amendment 1 s 1 (d)). Taken together, these amendments, and others relating to a shift from National to Provincial responsibilities, contribute to the perception that a termination of pregnancy is a mere pedestrian affair.

### 5.4.1 *Nasciturus*

The application of, “*Nasciturus pro iam nato habetur, quotiens de commodis eius agitur*” (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1121 B), may be translated: The unborn is considered to be born to the measure that its own benefits are concerned. The case of the *Christian League of Southern Africa v Rall* 1981, states that in South African law an embryo is not a legal subject. He becomes a person in law at birth. Accordingly, the embryo is not a bearer of legal rights. By means of the *nasciturus* rule, however, the unborn child’s interests are protected.

In ons reg is ‘n ongebore vrug of nasciturus nie ‘n regs subjek nie, en word hy dit eers by sy lewende geboorte, en kan dus nie die draer van regte wees, wat namens hom afdedwing kan word voor daardie tydstrip nie.  
By wyse van die nasciturus-fiksie word egter aan die ongebore vrug beskerming verleen reeds in die Romeinse reg soos duidelik blyk uit Digesta 1.5.7:  
“A child in its mother’s womb is cared for just as if it were in existence, whenever its own advantage is concerned: but it cannot benefit anyone else before it is born” (*Christian League of Southern Africa v Rall* 1981 (2) SA 821 (O) at 827 F-H).

The judgement continues, “In die huidige Suid-Afrikaanse reg word die nasciturus-fiksie ook aangewend om die belang van die ongebore vrug te beskerm” (*Christian League of Southern Africa v Rall* 1981 (2) SA 821 (O) at 827 H). This implies that within the RSA, the *nasciturus* rule may be still invoked to protect the interests of the unborn child. This includes the right to life. The use of the *nasciturus* rule with respect to the right to life of the unborn was alluded to in *Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1121 B-D, but other than this single reference, the *nasciturus* rule did not enter into consideration in this case.

### 5.4.2 Unborn Victims of Violence Act of 2004 (UVVA)

Under current RSA legislation, legal subjectivity commences at birth and endures until death. Human life, at every biological stage *in utero*, is not a bearer of constitutional rights. The exception to this is the *nasciturus* rule. This rule, however, does not endow the unborn child with legal personality, “since [the unborn child] cannot benefit anyone else before it is born” (*Christian League of Southern Africa v Rall* 1981 (2) SA 821 (O) at 827 H). In matters pertaining to potential benefit of the unborn child, for example, property, it is possible to appoint a *Curator ad litem* to represent the unborn child’s interests.

In matters pertaining to the termination of a pregnancy, the court admits no *Curator ad litem* to plead the interests of the unborn child. The case of the *Christian League of Southern Africa v Rall* 1981 deals with the dismissal of an application for a *Curator ad litem*. “[Die Hof het aansoek op 14 Maart

1980 van die hand gewys en die onderstaande redes vir uitspraak op 22 Januarie 1981 inhandig.]” (*Christian League of Southern Africa v Rall* 1981 (2) SA 821 (O) at 824 A). Of interest to this study is *inter alia* “2. Dat daar geen regsgrond bestaan vir die aanstelling van ‘n kurator ad litem om ‘n foetus te verteenwoordig in sake of aangelegenhede wat op die beëindiging van die moeder se swangerskap betrekking het nie” (*Christian League of Southern Africa v Rall* 1981 (2) SA 821 (O) at 824 C-D). Of further interest, is that currently in the RSA, in the case of termination of pregnancy – a procedure to end unborn life – the interests of the unborn child in question may not be represented in a court of law. Reasons for this have already been stated thus far in instances throughout this paper to this point which are in sum: legal subjectivity begins at birth, and the unborn child is denied this status.

The Unborn Victims of Violence Act of 2004, or Laci and Conner’s Law (One Hundred and Eight Congress of the United States of America) is an amendment to the United States Uniform Code of Military Justice (Laci and Conner’s Law s 3 (a)). It also amends the US Federal Criminal Code (Stringer, 2005:2). Laci and Conner’s Law stipulates that it is a separate punishable offence to cause death or injury to a child *in utero* at the time of the conduct by violating specified provisions of the law. In relevant part, Laci and Conner’s Law states:

**SEC. 2. PROTECTION OF UNBORN CHILDREN.**

(a) IN GENERAL- Title 18, United States Code, is amended by inserting after chapter 90 the following:

**CHAPTER 90A--PROTECTION OF UNBORN CHILDREN**

Sec.

1841. Protection of unborn children.

**‘Sec. 1841. Protection of unborn children**

(a)(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child’s mother.

(B) An offense under this section does not require proof that--

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall instead of being punished under subparagraph (A), be punished as provided under sections 1111, 1112, and 1113 of this title for intentionally killing or attempting to kill a human being.

**Sec. 919a. Art. 119a. Death or injury of an unborn child**

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section

and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.

(2) An offense under this section does not require proof that--

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

In contrast to the absence of recognised legal subjectivity of the unborn child in the RSA, and germane to this study, is the application of the two-victim thesis in Laci and Conner's Law. This thesis posits two individual victims of a crime, the mother and the unborn child, rather than a single pregnant victim. Application of this thesis results in acknowledgment of the legal subjectivity of the unborn child *in utero*, and consequently provides for legal representation of the rights of the unborn child. Laci and Conner's Law, however, does not cover the case of deprivation of unborn life caused by legal abortion, and as such, parallels the South African denial of the unborn child as a legal subject *vis-à-vis* abortion.

#### **Sec. 919a. Art. 119a. Death or injury of an unborn child**

(c) Nothing in this section shall be construed to permit the prosecution--

(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) In this section, the term 'unborn child' means a child in utero, and the term 'child in utero' or 'child, who is in utero' means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb.

With regard to s 919a. Art. 119a. (c), Singer writes, "By criminalizing violence against the unborn while exempting abortion and pregnant women from prosecution, the UVVA provides the discursive backdrop against which the legal right to abortion can begin to appear as form of "special treatment" the law affords women at men's expense" (Singer, 2005:13). Singer's observation is pertinent in reviewing *Roe v. Wade*, 410 U.S. 113 (1973).

It is beyond the scope of this study to discuss all details of Stringer's paper on the unborn as a crime-victim and as an individual and separate legal subject. Likewise, also beyond the parameters of this study is the issue whether or not Laci and Conner's Law can co-exist with *Roe v Wade* or undermine it, with the result that a woman's right to choose will, in the long run, be abolished. Noteworthy in Singer's paper, however, is the observation on the Supreme Court's declaration that

Article 1196 of the Texas Penal Code is unconstitutional. Article 1196 prohibited procurement of an abortion on medical advice, except in the case of saving the life of the mother. By ruling Article 1196 unconstitutional, the Supreme Court declared that the abortion statutes in the Texas Penal Code as a whole must fall away (*Roe v. Wade*, 410 U.S. 113 (1973) at XII).

The following points, in Singer's paper, however, are also significant as they arguably form a basis for a change of public perception and ethos with regard to the acceptability of the practice of abortion.

- The pro-choice argument that violence against a pregnant woman is that and no more, falls away when the 'unborn child *in utero*' is recognised as 'a separate distinct legal person, crime victim and sufferer of harm (Singer, 2005:3).
- The rapid rise in the number of States treating violence against pregnant women as involving two separate offences provided a key source of validation for the UVVA (Singer, 2005:4).
- UVVA influences state legislation with respect to violence against the unborn child, "encouraging states that have not yet adopted this kind of legislation to do so; and secondly by promoting uniformity with this existing body of legislation" (Singer, 2005:5).
- "The UVVA sets in place a legal judgement that produces the unborn subject as a rights-bearing person via the category 'crime-victim'" (Singer, 2005:8-9).
- "The alienating and non-moral terms, conceptus, zygote, morula, blastocyst, embryo and foetus are traded for the familiarizing and morally compelling term "unborn children" (Singer, 2005:10).
- "The UVVA [by means of the two-victim thesis] casts the unborn subject as an individual crime victim whose presence in law is on a par with that of the pregnant woman" (Singer, 2005:11).

Marshalling facts with the aim of changing public perception of abortion is vitally important, as reliable facts can influence the public, political, and judicial ethos surrounding abortion. Gathering legal facts such as the above, and working for a change of ethos surrounding Choice on Termination of Pregnancy Act 1996 forms part of a Christian ethical response to abortion and HIV/Aids prevention in the Republic of South Africa. The issue of the right to life falls within the competency of the Constitutional Court. A change of public perception about abortion can impact on the Constitutional Court's decision. If so moved and minded, under "8 s 172 Powers of courts in constitutional matters", the Court can declare termination of pregnancy inconsistent with the Constitution on the grounds of the two-victim thesis, and hence, invalid to the extent of the inconsistency.

Public reflection upon the two-victim thesis could have influenced political decisions concerning the Choice on Termination of Pregnancy Amendment Bill [B 21 –2007]. It is now, however, too late in the

day for such public reflection. Furthermore, Christian Churches in the RSA do not hold a unanimous position on abortion. Witness the discrepancy between the South African Council of Churches media statement entitled, SACC affirms Choice on Termination of Pregnancy Amendment Bill with qualification (SACC, 23 Aug 2007), and the Southern Africa Catholic Bishops' Conference media statement entitled, The right to life is inalienable: the South African Catholic Church continues to object to the Choice on the Termination of Pregnancy Act (SACBC, 24 Aug 2007).

## **5.5 Christian ethical perspective on abortion**

Judaeo-Christian anthropology affirms that God is the author of human life (Gen 1:26-27), and by this affirms humanity's God-given dignity as *imago Dei*. Consequently, the Christian perspective on the right to life is that of a dignified human life. As noted in Chapter 3, the affirmation of the nexus of life and dignity is not exclusively Christian. This bond is affirmed by the Constitutional Court as foundational to a legal consideration of the right to life; *inter alios*, Langa, (*S v Makwanyane and Another* 1995 (3) SA 391 (CC) at 397 F-I) and Regan, (*S v Makwanyane and Another* 1995(3) SA 391(CC) at 399 I). God-given human life and dignity is, however, the distinctive and exclusive foundation of the Christian perspective on human life and human dignity.

The Christian view on the divine foundation of the right to a dignified human life is in direct opposition to the constitutional view on the right to life and dignity, which affirms that the constitutional right to life and dignity has a human foundation. The Constitution *per se* as the supreme law of the Republic of South Africa, is the foundation of all constitutional provisions (1 s 2). Diversity of foundations notwithstanding, the concept of an inherent right to a dignified human life is a basis for discussion regarding the reach of the constitutional right to life, in this case, the right to life of the unborn child. Meaningful dialogue with the law may usefully form part of a Christian response not only to the issue of abortion, but to HIV/Aids prevention.

### **5.5.1 Ensoulment and the value of human life**

The value of unborn human life is highlighted by the classic Calvinist understanding of the relationship between man as *imago Dei* and man's God-given soul. Calvin elaborates on this point in Institutes 1.15. Calvin writes, "For although God's glory shines forth in the outer man, yet there is no doubt that the proper seat of his image is the soul" (Inst 1, 1.15.3, 1960:186). Calvin considers that each soul is a new creation at conception (Inst 1. 2.1.7, fn 10, 1960:249). The Roman Catholic bioethicist, David Jones, in his title, *The Soul of the Embryo*, writes, "Calvin saw no reason to follow the Aristotelian view that the soul was infused at [forty] days or thereabouts. He held rather that the

soul was created and infused at the moment of conception” (Sermons on Job, 12, in Bouwsma 1988, p 78) (Jones, 2004:146).

The classic Calvinist view on ensoulment from the point of conception is helpful in clarifying the Christian perspective on the value of unborn human life *vis-à-vis* various arguments that deny the unborn child legal personality, and thereby never speak of the first stages of human life *in utero*, in terms of, for example, a baby. Douma writes, “[...] voices are resounding today among modern defenders of abortion, [...] claiming that the unborn embryo in its first stages is no more than a collection of cells, a lump of tissue, formative life, or something similar” (Douma, 1996:217). In the face of such popular arguments, affirming that the embryo or foetus is ensouled from the moment of conception brings precision to the Christian claim that all human life, at whatever stage of biological development, is endowed with the common status of *imago Dei*. In short, according to the Reformed Christian perspective on the status of the unborn child, there can never be a moment from conception when human life is without a soul. Accordingly, there is never a moment from conception, when human life *in utero* is denied the same status as human life accorded natural and legal personality in law, which is from the date of birth. In contrast, Aquinas’ discussion of different souls, their nature and function, is less clear-cut than Calvin’s view of ensoulment at conception (Summa, 1a 90-102:3-15), and may unhelpfully obscure the Christian anthropological perspective on the inherent value of unborn human life from the moment of conception.

It does not follow that all human life, having inherent equal value, *ipso facto* has an absolute right to protection of life. For instance, with respect to medical treatment, e.g. an organ transplant, the life of a thirty-year-old father or mother of three children is commonly held to be more worthy of preservation than a single man or woman without parental responsibilities. Taking the same medical example of an organ transplant, the life of any person of around thirty years old is reasonably held to be of more value than a person of eighty years old or over. These examples do not deny that all life has inherent value, but affirm a priority of human life in the face of ethical dilemmas posed in deciding who does and who does not receive a donated organ.

A principle of priority of human life, however, does not admit an argument for abortion. One may not argue that human life has less priority the closer its proximity to the moment of conception. Within the Christian framework of ethics, the opposite holds true, as witnessed by Scripture. Orphans, often coupled with widows, represent the most vulnerable in society. The explicit command, “You shall not abuse the widow and orphan” (Ex 22:22), is elaborated by the ordinances of Deut 10:17-18, 14:29, 24:17, 26:12-13, 27:19. In short, it is a Judaeo-Christian duty to protect the orphan. James writes of the Christian obligation to the orphan, “Religion that is pure and undefiled before God the Father, is this: to care for orphans and widows in their distress, and to keep oneself unstained by the world” (Jas 1:27). Jesus’ promise not to leave his disciples orphans, is indicative of the orphan’s vulnerable status (John 14:18). Paul describes his separation from the Christians of Thessalonica in terms of

“orphan” (1Thess 2:17). By analogy, therefore, it is the Christian view that unborn human life deserves proportionally greater protection, being even more vulnerable than that of an orphaned child. This claim of the unborn’s right to life contrasts with the spirit and intention of the Choice on Termination of Pregnancy Act 1996, and the Choice on Termination of Pregnancy Amendment Bill [B 21 –2007].

In sum, the Christian tradition’s understanding of the value of life and the right to the protection of life is, that the more proximate human life is to the moment of conception, the greater is that inherently valuable life’s claim to protection by natural and legal persons. “[...] Differences in *valuation* [of life] do not exclude equality *in the right to protection* [of life]” (Douma, 1996:219). The principle of a priority of value of human life and equal protection of human life raises legal and moral dilemmas for Christians faced with contending claims of the constitutional right to life, abortion and HIV/Aids prevention, namely, the mother’s right to a dignified life and the unborn child’s right to a dignified life.

### **5.5.2 Choice on Termination of Pregnancy Act 1996: a Christian ethical perspective**

In principle, the Choice on Termination of Pregnancy Act 1996 *per se*, and its application, arguably pose no legal dilemmas for Christian gynaecologists, midwives, and auxiliary and ancillary personnel. Provisions of the Bill of Rights concerning freedom of conscience, religion, thought, belief and opinion (2 s 15 (1)), in principle allow medical practitioners and registered midwives to exclude themselves from participating or assisting in a termination of pregnancy.

The Choice on the Termination of Pregnancy Act 1996, however, contains no conscience clause, but, s 9 of the Abortion and Sterilization Act 1975 contains the following provision, and the principles of this provision are arguably currently constitutionally compatible with respect to “2 s 15 (1)” and participation or non-participation in a termination of pregnancy .

9. Participation in or assistance at abortion which is not prohibited, or a sterilization. — A medical practitioner (other than a medical practitioner referred to in section 6 (1)), a nurse or any person employed in any other capacity at an institution referred to in section 5 (1) shall, notwithstanding any contract or the provisions of any other law, not be obliged to participate in or assist with any abortion contemplated in section 3 or any sterilization contemplated in section 4 (s 9 Abortion and Sterilization Act No 2 of 1975).

The Employment Equity Act No 55 1998, also protects a person’s right not to be discriminated against *inter alia* on grounds of religion or conscience.

No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice on one or more of the following grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth (2 s 6 (1)).

In short, medical, nursing, and other personnel involved in maternity services, can, in principle, simply opt out of abortion procedures. Jurisprudence, with respect to the above principles in s 9, and the Bill of Rights, 2 s 15, ought to ensure that for reasons of conscience, medical practitioners, midwives, and other personnel, incur no direct legal or financial penalties for refusing to participate directly or indirectly in a termination of pregnancy within the provisions of the Choice on Termination of Pregnancy Act 1996. As such, legal issues concerning contracts or provisions of any other law ought not to arise. In practice, however, those who may wish to opt out of abortion provision may be liable to sanction by an employer, as demonstrated by *Charles and Others v Gauteng Department of Health and Others* 2007.

#### **5.5.2.1 *Charles and Others v Gauteng Department of Health and Others* 2007**

The case of *Charles and Others v Gauteng Department of Health and Others* 2007 concerns the Gauteng Department of Health employee, Nursing Sister, Wilhelmiën Charles, who for reasons of conscience, refused to assist in abortion procedures at Kopanong Hospital, Gauteng. On the grounds that a nurse assigned a theatre must provide all the services of that theatre, the Gauteng Department of Health barred Sister Charles from working in the theatre. Alleging discrimination of employment, Charles and others challenged the Department's decision under the dispute provisions (2 s 10) of the Employment Equity Act No 55 1998, with respect to the provisions of 2 s 6 (1). To date the dispute is unresolved. In July 2007, the Labour Appeal Court of South Africa gave the order: "2. The complaint of the Appellant is referred to the CCMA for expeditious hearing" (*Charles and Others*, Case No.: JA 67/06, 22 July 2007).

The decision of the Council for Conciliation Mediation and Arbitration will give meaning to 2 s 6, in this case the right of an employee to opt out of abortion services on the grounds of religion or conscience. In short, that which is arguably guaranteed by law in principle, in this case, freedom not to participate in abortion procedures for conscience sake, needs to be effectively applied by the courts. At the time of writing the court's decision is unknown, but from a Reformed ethical perspective, it is hopefully anticipated that the CCMA may find for the appellants.

#### **5.5.3 Nature and reach of the Sixth Commandment**

It is beyond the scope of this study to debate the slaughter of animals within the context of the Sixth Commandment, "You shall not kill unlawfully" (Ex 20:13), just as it is to discuss environmental issues such as the use of material resources for human ends that leads to the degradation of God's creation, which is arguably, indirect killing. Douma affirms that the Sixth Commandment pertains to the protection of human life, "Just as the subsequent commandments treat marriage, property, and

the reputation of others, here too the command envisions the lives of *other people*" (Douma, 1996:207). God's words to Noah, "Every moving thing shall be food for you" (Gen 9.3), and what constitutes humane treatment of animals and the environment, though within the broad reach of the Sixth Commandment, does not come directly within its ordinance, and may be more properly considered within a reflection upon the whole of creation as the work of God's hands, (Gen 1:1-2:3), and the entirety of creation that gives glory to God (Dan 3:51-90). Douma's restriction of the Sixth Commandment to the protection of human life is constituent of this study's parameters for a Christian ethical perspective on abortion.

## 5.6 Abortion in Scripture

"*De Bijbel kent geen paragraaf over abortus*" (Douma, 1975:37). In his survey on abortion in Scripture, Douma points out that a search for the term abortion yields little (Douma, 1975:29), and what references there are, refer to miscarriage, rather than *abortus provocatus* (Douma, 1975:31). Paul refers to himself as "εκτρώματι", a miscarriage or abortion, when he writes of himself as one "untimely born", "έσχατον δε πάντων ὡσπερὲι τῷ εκτρώματι ὠφθη κάμοι" (1Cor 15: 8). This usage, Douma points out, is figurative, not literal, "Waarschijnlijk wil Paulus ermee zeggen, dat hij – geestelijk geoordeeld – niet op de rechte tijd geboren is" (Douma, 1975:29). The context of 1 Corinthians 15:1-11, referring to Christ's resurrection, bears out Douma's supposition.

In the Old Testament, there is no suggestion of actual *abortus provocatus*. In Job's lament, "Or why was I not buried like a stillborn child, like an infant that never sees the light" (Job 3:16), he is simply bewailing his sad plight. Ecclesiastes' reflection on the frustration of desires implies miscarriage. "A man may beget a hundred children, and live many years; but however many are the days of his years, if he does not enjoy life's good things, or has no burial, I say that a stillborn child is better off than he. For it comes into vanity and goes into darkness, and in darkness its name is covered; moreover it has not seen the sun or known anything; yet it finds rest rather than he" (Eccl 6:3-5).

Jeremiah's dissatisfaction with his situation, which is one of persecution, does indeed say that he could have escaped his plight had he been aborted, "Cursed be the man who brought the news to my father, saying, 'A child is born to you, a son', making him very glad. Let that man be like the cities that the Lord overthrew without pity; let him hear a cry in the morning and an alarm at noon, because he did not kill me in the womb; so my mother would have been my grave, and her womb forever great" (Jer 20:15-17). Taking into consideration the accepted portrait of Jeremiah as the reluctant prophet (Jer 1:1-19), a theme that runs as a thread of aversion to the task of prophet throughout the Book of Jeremiah, one ought to consider Jeremiah's words in the context of frustration and desperation. In any case, this single Old Testament reference to *abortus provocatus* hardly amounts to a scriptural warrant for the practice of wilful abortion.

Reference is made in Exodus 21:22-23, to miscarriage as a result of brawling between people. In these verses, it is probably the case that the pregnant woman is a secondary victim of a fracas. Recompense is prescribed, either material, if just the unborn child dies, or a life for a life, if both the mother and child die. The prescription of graded penalties for the loss of life of a child, and/or, the child's mother, is not the primary intention of this Mosaic ordinance. Its purpose is to highlight the fact that a child's life has value, albeit not solely in and of itself as *imago Dei*, as in the Christian anthropological tradition, but as Douma states, a child's life is valued as a token of the blessing of a marriage within the meaning of marriage in Israel. "Een kinderloos huwelijk werd als een ramp beschouwd, een kinderrijk huwelijk als een zegen. Elke beschadiging van dit bezit is derhalve strafbaar" (Douma, 1975:35).

The value that Scripture places on human life is further emphasized in Psalm 139:13-16.

For it was you who formed my inward parts; you knit me together in my mother's womb. I praise you, for I am fearfully and wonderfully made. Wonderful are your works; that I know very well. My frame was not hidden from you, when I was being made in secret, intricately woven in the depths of the earth. Your eyes beheld my unformed substance. In your book were written all the days that were formed for me, when none of them as yet existed (Ps 139:13-16).

Vorster, commenting on this text writes, "Hierdie verse dui op God se betrokkenheid by die mens vanaf die swangerskap. Hierdie betrokkenheid gee waarde aan die embryo en fetus" (Vorster, 2002:189). By indicating these verses speak of God's involvement with human life from the embryonic and foetal stages of human development, Vorster is saying that God is involved in human life from conception, and by extension, one may add, to the moment of death. In short, Scripture affirms that the life of an unborn child has a value that may not be devalued at will by any one or more of God's creatures.

## **5.7 Abortion: Gospel imperatives**

### **5.7.1 "Follow me"**

In the previous chapter, an exegesis of Matthew 4:19-20 discussed two aspects of the imperative "Follow me"; the first, a call to office, and the second, a call to discipleship. Though distinct, office and discipleship are not separate, but two sides of the coin of discipleship. For the purpose of evaluation and response to the issue of abortion, office and discipleship will be considered separately.

### 5.7.1.1 “Follow me”: call to office

A call to office in the Church is a call to leadership of Christ’s disciples. It is a leadership of service to Christ’s disciples exercised through, with and in Christ. There are diverse ministries in the Church originating as gifts of the Holy Spirit that may be broadly considered as leadership ministries.

The gifts he gave were that some would be apostles, some prophets, some evangelists, some pastors and teachers, to equip the saints for the work of ministry, for building up the body of Christ, until all of us come to the unity of the faith and of the knowledge of the Son of God, to maturity, to the measure of the full stature of Christ (Eph 4: 11-13).

The primary purpose of these ministries, as Ephesians states, is to equip the Church for building up the body of Christ in order to prepare the Church for her mission, which is a mission of actively fulfilling Christ’s last will and testament; “Go into all the world and proclaim the good news to the whole creation. The one who believes and is baptised will be saved; but the one who does not believe will be condemned” (Mk 16:15-17). A Reformed perspective of leadership in the Church is expressed in the Second Helvetic Confession, Of the Ministries of the Church, their Institution and Office, which states in relevant part, “God has always used his ministers for the gathering or erecting of a Church to Himself, and for the governing and preservation of the same; and still He does, and always will, as long as the Church remains on earth” (HelC2, XVIII. 1, 1999:200).

In his commentary on Matthew 4:19-20, Calvin writes that Jesus’ call to Andrew and Peter is not only one of discipleship, but to the particular office of Apostle, an office of instructing (Calvin 1, 1949:242). The office of evangelist, pastor, and teacher are also offices of instruction. In the New Testament, the office of Apostle is distinguished from that of pastor and teacher in that the authority of the Apostles ran throughout the whole Church, whereas the pastors and teachers were stable, and generally served only one community. Evangelists, who were itinerant, ranked lower than the Apostles (2Tim 4:5).

This is not the place to discuss the development of the doctrine of ministries in the Anglican, Orthodox Roman, and Reformed traditions. The point in this case, is that there are various offices of leadership within the Church that is the Body of Christ, and these office holders, from a Reformed perspective, have the God-given service of instructing their brothers and sisters in Christ, with a view to preparing and strengthening them for mission. Proclamation of the Good News of Jesus Christ is addressed to and amidst both universal concerns and particular concerns. Of interest to this study is the proclamation of the Gospel in the face of the issues of the right to life, abortion and HIV/Aids prevention. It is the role of those within the Church, charged with strengthening the community, to challenge all disciples to examine these issues in the light of Christ and his Gospel.

### 5.7.1.2 “Follow me”: call to discipleship

The response to Christ's imperative, “Follow me” is initially actualised in preparation for Baptism and in the sacrament itself. Of Baptism, the Westminster Confession of Faith states:

Baptism is a sacrament of the New Testament, ordained by Jesus Christ, not only for the solemn admission of the party baptized into the visible Church, but also to be unto him a sign and seal of the covenant of grace, of his ingrafting into Christ, of regeneration, of remission of sins, and of his giving up unto God, through Jesus Christ, to walk in the newness of life. Which sacrament is, by Christ's own appointment, to be continued in His Church unto the end of the world (WestC, XXVIII. 1, 1999:217).

This Gospel imperative, “Follow me”, is a call to communion with Christ and Christ's disciples. The imperative, therefore, has both a communal and an individual character. It is as members of the Church that the disciples' response to Christ's imperatives is actualised. This study considers the actualisation of the imperative, “Follow me”, as essentially communal in character, which, nevertheless, relies upon the individual disciple's response to Christ's imperative.

The Westminster Confession of Faith formally expresses what Donahue and Harrington hold to be the two essential elements of discipleship, namely, being with Jesus and doing the things of Jesus (Donahue, Harrington, 2002:31). These fundamental elements of discipleship give meaning to the imperative “Follow me” when they are actualised by the Church through the response of Christ's disciples to the needy. This is exemplified in tending the hungry and thirsty, foreigners, the destitute, the sick, prisoners (Matthew 25:35-36). When Christ's disciples respond to the needy, they respond to Christ himself (Matthew 25:40). In South Africa today, the issue of abortion is one need among others that presents itself to Christ's disciples.

How best then, may Christ's disciples, as the Church, express their response to Christ's imperative “Follow me”. Vorster examines various models of the Church proposed by the Roman Catholic theologian, Avery Dulles, namely, the Church as Institution, Mystical Communion, Sacrament, Herald, and Servant, and points out the strengths and weaknesses of each model (Vorster, J. M., 2007:248-249). The Church as Institution is the most common model. It has endured and is arguably the most functional of all the models, and probably the reason for its durability. Dulles notes that clearly the Church of Christ could not perform its mission without some organisational features (Dulles, 1976:72). The Scriptural basis for the model of Institutional Church is, however, weak, and may be the reason that the Institutional Church, may lapse into what Dulles calls institutionalism. “By institutionalism we mean a system in which the institutional element is treated as primary” (Dulles, 1976:32).

Vorster's preferred model is the Servant Church, a type that expresses the reign of God as a present reality, of which the Church is a sign (Vorster, J. M., 2007:253). A Servant Church necessarily negates intuitionism, but not the Institutional Church. The Roman Catholic theologian, Louis Luzbetak, writes: "By viewing the Church as Servant, we emphasise a very basic characteristic of the mission of Jesus himself. His mission was a total self-giving and an unreserved commitment to the Kingdom of God, a Kingdom of love, justice, peace and freedom in a world of sin. The Church continues this self-giving in Jesus' name" (Luzbetak, 1988:387). The Church's unreserved self-giving is an imperative response to an imperative call to discipleship.

Within the context of South Africa, the model of Church as Servant is a corrective to the Church as Institution, which in the Apartheid era lapsed into institutionalism. Institutionalism was a situation that worked for and against the institution of Apartheid (Vorster, J. M., 2007:249), depending on the pro or contra stand of a particular Church. Luzbetak points out that cognizance must be taken that the Servant Church does not fall into the error of identifying itself with the Kingdom of God, and so succumb to the danger of associating itself with the more radical liberation theologies (Luzbetak, 1998:387). With respect to this study, this danger is avoidable if Christ's disciples bear in mind that the task is to respond to the issue of abortion as an Institutional Church at the service of Christ and his Gospel, and at the service of all humankind which is created in the image of God.

With regard to matters of the right to life, it is vitally important that the institutional aspect of the Church is not negated by the model of Servant Church. The task of disciples called by Christ to leadership of his Church is to hold these two aspects of the one Church in tension. When dealing with the issue of abortion, the Church deals with constitutional institutions, i.e. the Government and Judiciary. To speak to these entities, one must commonly have status in the eyes of Parliament or standing with a court of law. This the Church has as an institution, and it must never risk losing it in the eyes of the world, particularly when the plight of the most vulnerable of society is at stake.

If discipleship means being with Jesus and doing the things of Jesus, then it is imperative that Jesus' disciples be where Jesus is and do the things that Jesus does, in this case, argue for the rights of the unborn child before Parliament and the Judiciary. Among those whom the "Lord is satisfied with having in his flock and his Church" (Calvin 1, 1949:253), are those with the necessary professional skills who can speak for those who cannot yet speak. It is helpful when the Gereformeerde Kerke in Suid-Afrika and the Roman Catholic Church speak to Parliament with one voice on the issue of abortion, as they do periodically to relevant Parliamentary Standing Committees. It would likewise be helpful if *Gemeente* and Parishes of these traditions could cooperate practically in the political process to negate the necessity of abortion. In this way, Christ's disciples could more effectively actualize their response to the Gospel imperative "Follow me".

### 5.7.2 “Follow me”: abortion

Regrettably, Christian Churches in the RSA do not have a common understanding or approach to the sanctity of life (SACC, 23 Aug 2007; SACBC, 24 Aug 2007). This suggests that the Gereformeerde Kerke in Suid-Afrika seek Churches with a shared understanding on the sanctity of life, with a view to a common approach to life issues, in this case the issue of abortion. Though the Reformed and Roman traditions differ fundamentally in certain areas of ecclesiology, *inter alia* sacraments and dogmatic theology, they share a consistent ethic of life with respect to abortion which, though not totally congruent, is possibly sufficient as a basis of cooperation and collaboration with respect to the matter of abortion. The American Roman Catholic theologian, Kenneth Overberg, defines a consistent ethic of life as, “A comprehensive ethical system that links many different issues focusing attention on the basic value of life” (Overberg, 2006:25). The foundation of this ethic is the person of Jesus Christ who is the “Word of life” (1John 1:1). John Paul II in his Encyclical Letter, *The Gospel of Life*, does not use the term consistent ethic of life, but illustrates this basic value.

The *Gospel of Life* is not simply a reflection, however new and profound, on human life. Nor is it merely commandments aimed at raising awareness and bringing about significant changes in society. Still less is it an illusionary promise of a better future. *The Gospel of Life* is something concrete and personal, for it consists in the proclamation of *the very person of Jesus Christ* (John Paul II, 1995: 33).

On the subject of abortion and the value of life, Vorster writes, “The Christian view of man is based upon man’s likeness to God. Man is the image of God, and therefore his life may not be taken. This principle grants the embryo or foetus intrinsic value” (Vorster, 2004:125).

In like spirit, on respect for human life John Paul II states, “The inviolability of the innocent human being’s right to life “from the moment of conception until death” is a sign and requirement of the very inviolability of the person to whom the Creator has given the gift of life” (John Paul II, 1987:4). Given the coincidence of understanding on the sanctity of life in general, and in the context of this study, with specific respect to abortion, some dialogue between those entrusted with the office of instructing and strengthening for mission the communities of the Gereformeerde Kerke in Suid-Afrika and the Roman Catholic Church in South Africa, suggests itself as an effective way of fulfilling Christ’s imperative, “Follow me”. A successful dialogue and resulting cooperation can only strengthen the Body of Christ as it seeks to address the issue of abortion from a Christian ethical perspective.

### 5.7.3 “Love God, and your neighbour as yourself”

For Christians in the RSA, in principle, if not sometimes in practice, the Church, the living Body of Christ, is the setting for living out the primacy of love within the Constitution. As with the Gospel imperative “Follow me”, the imperative to “Love God, and your neighbour as yourself” has both communal and individual dimensions. It is in and through the Church that the disciples’ response to Christ’s imperatives is actualized. This study considers the imperative “Love God, and your neighbour as yourself” essentially from a communitarian stand-point, without prejudice to the fact that it is the individual disciple who personally faces a variety of ethical dilemmas in the exercise of the imperative to love. Actualizing the primacy of love properly belongs to the ministry of the Church in the wide sense. Wherever and whenever any one of Christ’s disciples employ his or her God-given talents, for example, by helping the hungry and thirsty, foreigners, the destitute, the sick, or prisoners, he or she exercises the ministry of the Church, which is essentially making Christ and his Gospel present in the world. This pertains to both the issues of abortion and HIV/Aids prevention.

### 5.7.4 “Love God, and your neighbour as yourself”: abortion

In a consideration of the current abortion legislation, Choice on Termination of Pregnancy Act 1996, it is significant that the question, “Teacher, which commandment of the law is the greatest?” (Mt 22:36), is posed by a lawyer. The background to the lawyer’s question was the debate among lawyers as to whether duty took precedence over love, or *vice versa* (Donahue, Harrington, 2002:530-531). The lawyer’s question concerning the greatest commandment and Jesus answer (Matthew 22:34-40), does not place the imperative of law as *Torah* in opposition to the divine imperative of love. The imperatives of the law as *Torah*, and love as a divine imperative are universal not generalised expressions of God’s will.

In *Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4), McCreath states that his judgement was determined solely on legal grounds, to the exclusion of all other grounds, (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1118 B-D). Had McCreath included other grounds in his consideration of the question of termination of pregnancy, for example theology and science, he might possibly have come, if not to a different decision, at least to one based on a wider premise than the text of the law alone. This is not to say that the primacy of love excludes law. To paraphrase Dulles’ description of the strength of the institutional Church: clearly love could not be exercised without the organisational feature of the law. It is the Christian contention that if love is not to degenerate into selfishness, the primacy of love must always operate within the framework of the law, whether constitutional, criminal, civil, military or ecclesiastical. With respect to the focus of this study, the Christian plea is that South African jurisprudence takes account of its particular ethical perspective on the right to life.

Disciples of Christ must respond to the imperative “Love God, and neighbour as yourself” in a spirit of selflessness within the bounds of the law. The commandment to love God and one’s neighbour as oneself, demands that one cares for the interests of others to the degree that one cares for one’s proper interests. It is in a spirit of selflessness that Christians face moral dilemmas arising from the current abortion legislation in the RSA when actualising the imperative to love of God, neighbour, and self. This begs the question as to the manner Christians ought to actualise the Gospel imperative in the face of the Choice on Termination of Pregnancy Act 1996, for Christ’s disciples are called to value the lives of all, unborn and born, as much as they value their own lives.

#### 5.7.5 “Love God, and your neighbour as yourself”: actualization

From within the Christian ethical theoretical framework, an obvious strategy for actualizing the Gospel imperative “Love God, and your neighbour as yourself” is to challenge current abortion legislation by application of the principle of the consistent ethic of life, whose reach extends from the moment of conception until the moment of death. The Vatican’s Declaration on Procured Abortion, 1974, affirms the value of each distinct human life. New human life begins from the moment of fertilisation of the ovum. It is a new life that is distinct from that of the unborn child’s father or of the mother. This new life has, says the Declaration, its own growth. This new life is not potentially human; it is already human. “Simul atque ovum fecundatum est, iam inchoata est vita, quae neque patris neque matris est, verum novi viventis humani, qui propter se ipsum crescit. Is numquam humanus fiet, nisi iam tunc talis fuit” (AAS, 1974:738).

Current RSA abortion legislation does not deny that the embryo or foetus is human life, but that it does not follow that unborn human life has the same value as born life, in this case, the mother’s, and therefore, the same right to protection as those born (*Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998(4) SA 1113(T) at 1120 I-J). This supposition has lost some force in the light of Laci and Conner’s Law, and the two-victim thesis. South African courts do have the obligation to heed international *opinio juris* (Devenish, 1998:327), in this case, with respect to abortion, even though the Constitution states, “Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament” (14 s 232).

Professor of Criminal Law at the Catholic University of Lublin, Alicja Grześkowiak, correctly points out that a constitutional right to life does not mean that such a right is always defensible in law. “In analysing [international] legislation on the right to life, one can observe that the judicial recognition of the right to life, or the lack of denial of such a right, does not in the least mean that the relevant judicial system defends such a right” (Grześkowiak, 2004:182). Grześkowiak’s observation, from a Christian ethical standpoint, correctly describes the current South African constitutional *status quo* with respect to unborn human life, namely, “2 s 11 Everyone has the right to life”.

Christ's disciples could actualize the imperative, "Love God, and your neighbour as yourself", by bringing current international legal opinion regarding abortion to the attention of parliamentarians and Parliament, and, if and when the opportunity arises in a court of law, by pleading Laci and Conner's Law and the two-victim thesis. The Gereformeerde Kerke in Suid-Afrika and the Roman Catholic Church in South Africa could consider usefully cooperating formally in such endeavours.

At the level of *Gemeente* and Parish, Christ's disciples ought to respond to the issue of abortion in their localities. The Roman Catholic Church, through its system of ecclesial government is highly organised with respect to pastoral issues. The basic unit of the local Church comprises the diocese headed by a bishop, and priests and deacons in their parishes which they run with pastoral councils made up of parishioners (CCL, 1983, Can 368-572:135-219). Bishops of these dioceses form the Southern African Conference of Catholic Bishops (SACBC) (CCL, 1983, Can 447-459:169-173), which is managed day-to-day by the General Secretariat. Pastoral and social issues are addressed through the SACBC Departments, Offices, and Associated Bodies, *inter alia* the Department of Justice and Peace, the Office for Aids, the Office for Social Communications, and the associate bodies, Catholic Health Care, the Catholic Institute of Education, and the Siyabhabha Trust (the development agency of the SACBC) (SACBC, 2006:12-13). These and other Departments, Offices and Associated Bodies are actively present in each of the twenty-six dioceses covering the territory of the RSA, and in principle, if sometimes not in practice, are represented in all local parishes.

This Roman Catholic system of Church government, with regard to pastoral issues, in this case, abortion, arguably, has an advantage over the Gereformeerde Kerke in Suid-Afrika, whose church governance is Presbyterian in nature, *kerkraad, klassis, partikuliere sinode, nasionale sinode en algemene sinode* (GKSA 1998, Art 29:20). In the Reformed tradition of church governance, each local (*plaaslike*) church is autonomous. "In die Gereformeerde kerkregering word uitgegaan van die Skriftuurlike feit dat elke plaaslike kerk 'n kompleete kerk is, en as 'n vergadering van gelowiges bekend is. [...] 'n Fundamentele vertrekpunt is dat geen (plaaslike) kerk oor 'n ander kerk enige heerskappy mag voer nie, juis omdat elkeen volledig en kompleete kerk van Jesus Christus is" (GKSA, 1998, 6.3: 10).

The principle of each *Gemeente* as an *Ecclesia completa*, is arguably in practice a constraint on Christ's disciples in the Gereformeerde Kerke actualizing the Gospel imperative, "Love God, and your neighbour as yourself" *vis-à-vis* abortion. A possible source of the constraint is that though local Churches may choose to engage with the issue of abortion, they do so in relative isolation, compared to Roman Catholic Parishes. The role and authority of *klassisse, partikuliere sinode, nasionale sinode en algemene sinode*, is not essentially that of coordinators of local, regional, national, and international pastoral initiatives. It is rather one of formulating pastoral policy strategies that leave each local Church to respond to pastoral issues as it sees fit.

From the Christian point of view, the grave moral and legal issues of abortion are too important to be left to an uncoordinated *laissez faire* approach by local Churches, be they Reformed or Roman. The secular voice in favour of abortion, and the easing of further restrictions currently rings out loud and clear in the arena of public opinion, as the successful passing of the Choice on Termination of Pregnancy Amendment Bill [B 21–2007] illustrates. A Christian response to abortion is strengthened only by a concerted effort on the part of Christ's disciples who share the same mind on the moral and legal questions involved. A coordinated response to the issue of abortion by the Gereformeerde Kerke in Suid-Afrika and the Roman Catholic Church in South Africa would be a powerful actualization of Christ's command "Love God, and your neighbour as yourself".

### 5.7.6 "Take up your cross"

This section evaluates the moral dilemmas posed by abortion itself in the light of the Gospel imperative, "Take up your cross", and also Christian ethical and moral responses to the moral dilemmas raised by abortion. Furthermore, this evaluation operates within the parameters of the Christian world view and ethical perspective on the right to life, and norms of moral conduct with respect to the right to life, to the exclusion of all other world views, ethical theories, and consequential norms for moral conduct. In short, the Christian ethical perspective on abortion may be summarised using Singer's three hypotheses on abortion: it is wrong to kill an innocent human being; a foetus is an innocent human being; therefore it is wrong to kill a human foetus (Singer, 1979:117).

### 5.7.7 "Take up your cross": abortion

The disciple's willingness to adhere to the Gospel imperative, "Take up your cross", is indispensable to the actualisation of all Gospel imperatives, in this case, "Follow me" and "Love God, and neighbour as yourself". As the ongoing task of courts is to give meaning to constitutional imperatives, so the ongoing daily task of discipleship is to give meaning to Gospel imperatives. By the grace of God, this meaning is witnessed by the perseverance of the saints denying themselves and taking up their cross daily (Lk 9:23).

The cross is the sign of the Christian, *par excellence*. If it is not to remain a mere wooden sign it must be transformed into a living sign of Christ's redemptive work through the lifelong process of responding *inter alia* to the Gospel imperative, "Take up your cross". Keener notes that the disciple actualises this imperative by forfeiting the right to make selfish choices, (Keener, 1991:331). For those who live out of a world view of ethical relativism, in which the highest good is that of the autonomous moral agent, the premise that one should die to self daily (1Cor 15:31) is absurd. For example, the formal rudimentary principle of act utilitarianism of the good, which is happiness,

however defined, explicitly enjoins avoidance of pain. To endure pain of any type, psychological or physical, to take up one's cross and follow Christ for the love of God, one's neighbour and oneself, contradicts this utilitarian principle.

The cross is not only a paradox for man as the absolute moral agent "For the message about the cross is foolishness to those who are perishing, but to us who are being saved it is the power of God" (1 Cor 1:18), but also for Christ's disciples. The paradox of the cross lies in the fact that it is not only a sign of suffering and death, but at the same time, a sign of God's graceful protection. "For in him all the fullness of God was pleased to dwell, and through him God was pleased to reconcile to himself all things, whether on earth or in heaven, by making peace through the blood of his cross" (Col 1:19-20). The paradox of the practical effect of the cross is that God's graceful protection is not without personal cost to Christ's disciples. "Truly I tell you, there is no one who has left house or brothers or sisters or mother or father or children or fields, for my sake and for the sake of the good news, who will not receive a hundredfold now in this age – houses, brothers and sisters, mothers and children, and fields, with persecutions – and in the age to come eternal life" (Mk 10:29-30).

The Synoptic Gospels relate that Jesus was assisted in carrying his cross to Calvary (Matthew 27:32; Mark 15:21; Luke 22:26), and John tells that Jesus carried his own cross to Golgotha (John 19:17). For the purpose of this study, this discrepancy is unimportant. From application of exegetical principles derived from the classic Reformed view of Scripture, which Vorster describes as, organic, it is evident that the "consent of all the parts" is commensurate with "the scope of the whole" (Vorster, J. M., 2007:5-7). One of the four Gospels indicates that some individual disciples of Christ may carry their cross alone, and three of the Gospels indicate that Christ's disciples as a collective, which is the Church, carry the cross together. In reality, one never carries ones cross alone, but always with Christ, for it is ultimately his cross. Carrying the cross of Christ, either individually or collectively, has implications for a Christian response to the issue of abortion with respect to Christian witness.

The Christian response to abortion is not unanimous (SACC, 23 Aug 2007; SACBC, 24 Aug 2007). This has implications for the dying to self implied in taking up one's cross. Sources available to this study on the Reformed tradition's Christian ethical perspective on abortion, while consistently affirming the value of God-given human life, consistently make an exception for a termination of pregnancy when the woman's life is endangered. Here the distinction should be drawn between the clinical termination of a pregnancy, and clinical treatment of a woman's grave pathological state, which may result in the death of the unborn child. Termination of pregnancy, the deliberate taking of unborn life, is inconsistent with the principle that the unborn child possesses the same right to life as the mother by virtue of the equality of its inherent God-given dignity as *imago Dei*. Treating the grave pathological state of a woman, which if left untreated would result in the woman's death, but if treated might result in the death of the unborn child, does not violate the unborn's God-given right to life and

God-given dignity, since the deliberate intention is to save the woman's life and not to deprive the child of the right to life.

The incongruence of Reformed ethics regarding abortion raises moral dilemmas with respect to the principle of a consistent ethic of life. Ethical incongruence with respect to the issue of abortion begs the question of authoritative ethical and theological sources. Is this study correct in its assumption that the authoritative stance of the Reformed Churches is that rare exceptions to the prohibition on abortion are permissible when the choice is between the life of the woman and the life of the unborn child? From the representative available sources below, it appears that this assumption is correct. But on what Scriptural authority does Reformed ethics permit this albeit rare exception to the prohibition?

The Gereformeerde Kerke in Suid-Afrika, through the power of the Holy Spirit, endeavour to hold to a *behoudende gereformeerde pad*, i.e. consistent with Scripture, and the writings of Calvin and his contemporaries and successors expressed in the Forms of Unity and the Reformed Confessions of Faith. On the principle that Professors of Theology are authoritative voices in all Gereformeerde Kerke, the theological and ethical opinions of Professor J. M. Vorster, and by extension of this principle those of Professor J. Douma of the Theological University of Kampen, are taken as representative of a *behoudende gereformeerde pad*. Any dissenting opinion on this choice of theologians and ethicists may be argued by others, elsewhere.

#### **5.7.7.1 Die Stigting van Etiese Medisyne: *Die verklaring oor aborsie***

The Christian anthropological perspective of the Reformed tradition on the value of human life, the foundation of which is Genesis 1:26-27, affirms that the Triune-God created human life as *imago Dei*. This principle is elaborated in, *Die verklaring oor aborsie* (Appendix D) issued by the Pretoria based, *Stigting van Etiese Medisyne*. This Reformed Declaration states in relevant part, "Die mens is in sy ontstaan, bestaan en voortbestaan, vanaf bevrugting, volkome afhanklik van God - van elke asemteug is die mens van God afhanklik" (Appendix D, art 2). The corollary of this is that no person may take the life of another, "Geen mens mag 'n ander doodslaan nie (κτεν) [moord], want die mens is die beeldraer van God (Gen 9:6), en elke ander mens is 'n uiting van ons eie vlees (Jes 58:7)" (Appendix D, art 3).

*Die verklaring oor aborsie* is consistent with the Reformed ethical perspective, which, while overwhelmingly affirming God-given life, not unusually, makes an exception to the prohibition of abortion in the case of the endangered life of the mother (see Douma and Vorster following). On this point, the reasoning of the Declaration is arguably deficient. The Declaration is correct when it states in relevant part, "Slegs God is absoluut, daarom is die lewe van die mens nie absoluut nie, daarom

mag die mens se lewe na inhoud geweeg word en nie net na moontlike duurte nie” (Appendix D, art 5). From a Reformed ethical perspective, the Declaration is right in premising that human life ought to be measured by its content and not its possible duration. But the inference, “Wanneer daar tussen die lewe van die moeder en die lewe van die kind gekies moet word, mag die lewe van die moeder bo die lewe van die kind word” (Appendix D, art 5), is a *non sequitur*. The inference that the mother’s life may be chosen above that of her unborn child may not be drawn from the premise that the value of life lies in its content and not in its span, over whatever time. On what grounds does one judge that the content of a life of comparatively short duration, in this case, conception to termination, is less dear to God than a life of long duration, i.e. from conception to the present moment, if not on the relative span of life and relative lack of content?

Admittedly, the inference of the Foundation is not imperative but conditional, and thereby allows for the possibility for the mother to “die to self” and even to lay down her life (John 15:13). But even in the light of this readiness to offer the ultimate sacrifice of one’s life, is it not to God who is eternal, incomprehensible, invisible, immutable, perfectly wise, just, good, and the overflowing fountain of all good (Belg, 1, 1999:6), and not to man, dependent as he is on God for each breath he takes, to determine the inherently valuable content of each human life? For this reason, grounds for a termination of pregnancy, the choice wilfully to end unborn life, on the premised priority of a mother’s life over that of an unborn child’s life, albeit in *rare* circumstances, is not condoned by this study.

#### **5.7.7.2 Abortion: Douma**

Singer’s three hypotheses; it is wrong to kill an innocent human being; a human foetus is an innocent human being; it is therefore wrong to kill a human foetus, beg the question of the possibility of exceptions to this argument. Stated another way; are there ever any circumstances in which abortion could be justified? After affirming the value of God-given unborn life, Douma poses the question, “May we insist then, that no argument justifies abortion? No, we may not” [...] (Douma, 1996, 219). There are exceptions to the prohibition. Douma lists standard arguments for the necessity of abortion: medical, psychological, eugenic, judicial or ethical, and social. Arguing these, Douma admits the possibility of abortion in the *rare* case of medical necessity, specifically, where the life of a mother with family responsibilities is endangered. “In cases involving the choice to save one life or another, we may legitimately decide to save the mother’s life, and the abortion would be justifiable” [on medical grounds] (Douma, 1996: 219). This statement poses a moral dilemma when viewed in the light of Laci and Conner’s Law and the two-victim thesis that acknowledge the legal subjectivity of the unborn child *in utero* and thereby the right to a dignified human life.

Douma also admits the possibility of abortion on psychological grounds *vis-à-vis* the threat to the mother’s life (Douma, 1996:219). The weakness in the argument for abortion on psychological

grounds in such cases, is says Douma, the difficulty of establishing that the pregnancy in question does actually threaten the mother's life. "But this should not preclude any psychiatric assessment as possible legitimate grounds for abortion" (Douma, 1996:319). That Douma employs "assessment" and not diagnosis or prognosis, indicates the degree of uncertainty in establishing a credible threat to the mother's life. In the face of dubious probability, the moral dilemma arises as to why one would not give the vulnerable life of the unborn child the benefit of the doubt on the balance of probabilities.

With respect to abortion for eugenic reasons, Douma does rule out abortion on the grounds of probability, as it is also improbable that the child may be born handicapped, or otherwise impaired. Even after medical tests and the diagnosis is found to be sure and certain, continues Douma, we are dealing with human life. "We are not allowed to dispose of that life arbitrarily – whether or not the child is handicapped" (Douma, 1996:219). There is incongruence of opinion between Douma's reasons for abortion on psychological grounds and eugenic grounds, which, *ipso facto*, sets up a moral dilemma on the basis of inconsistency of reason. Coming to terms with the possibility of a child born handicapped in some way or other, and the acceptance of a handicapped child forms part of the Christian ethical response to abortion, since the psychological and physical difficulties involved actualize the Gospel imperative "Take up your cross" in the double sense of suffering with Christ, and witnessing to the life of Christ in one whom society perceives as an incomplete person. In the case of judicial or ethical grounds for abortion, Douma, admitting the trauma of a child conceived by an act of rape, incest, or abuse of a minor, asks if it is permissible to procure an abortion even in such dire cases as these. He does not answer definitively, but responds with the statement that "A society in which these children are accepted with love by their mothers and/or by others, who can offer a helping hand if the mothers cannot nurture their children after birth, has a highly developed morality" (Douma 1996, 219-220). Correspondingly, a Church that can do this may be said to have a highly developed response to Christ's imperative "Take up your cross".

The social argument for abortion, which is closely linked to the psychological argument for abortion, acknowledges that while a mother may not be psychologically endangered, she may suffer social difficulties, e.g. housing, food, income. Society, says Douma, ought to alleviate such obstacles as may prevent a mother carrying her baby to term (Douma, 1996:220). A Christian ethical response to abortion can concur with this approach, and ought to actualize it, even at some personal cost to the individual disciple and to the Church witnessing to the Christ who suffers with the suffering.

In sum, Douma's ethical response to the issue of abortion is predominantly in favour of the unborn child. His ethical approach, which admits circumstances in which abortion may be justified, i.e. on certain medical and psychological grounds, is arguably indicative of an inconsistent ethic of life, and as such sets up moral dilemmas among Christ's disciples who argue for a consistent ethic of life that admits no exception to the prohibition on abortion. Current abortion legislation in the RSA and in other jurisdictions is premised in part on the avoidance of suffering. Note the heading, "s 2

Circumstances in which and conditions under which pregnancy may be terminated” in the Choice on Termination of Pregnancy Act 1996: *inter alia*, on request, (s 2 1(a)); in consultation with the woman if it is deemed there is risk of physical or psychological injury to the mother (s 2 1 (b) (i)); a substantial risk to the foetus of severe of physical or mental abnormality (s 2 1 (b) (ii)); the pregnancy results from rape or incest. All the above conditions as well as others unmentioned are premised on the avoidance of pain, and on the attainment of happiness of the mother.

From a Christian ethical perspective, the provisions of s 2 are a denial of the Gospel imperative, “Take up your cross”. In conclusion, an overall Christian evaluation and response to abortion must address the issue of a consistent ethic of life. Christians must proclaim that suffering is something to be faced; not avoided. Willingness to face suffering is an imperative of discipleship actualized in following Christ and loving one’s neighbour as oneself even in *rare* and *extraordinary* cases that are exceptions to the otherwise comprehensive prohibition of abortion.

### **5.7.7.3 Abortion: Vorster**

Vorster’s overall ethical perspective on the right to life of the unborn accords with Singer’s hypotheses that firstly, it is wrong to kill an innocent human being; secondly, a human a foetus is an innocent human being; and thirdly, it is therefore wrong to kill a human foetus. This, Vorster, expresses in Christian anthropological terminology. “The Christian view of man is based upon man’s likeness to God. Man is the image of God, and therefore, his life may not be taken. This principle grants the embryo and foetus intrinsic value” (Vorster, 2004:125).

Vorster is also correct when he says that in a Christian theory of rights, no right can be absolutized without prejudice to all other rights. “In ‘n Christelike teorie van menseregte kan ‘n reg nooit absoluut word nie, want dan word die fyn balans tussen verskillende regte en die verhouding tussen reg en plik skeefgetrek” (Vorster, 2002:192). This he states in connection with the mother’s right to choose being absolutised. The corollary of this principle is that neither can the prohibition on abortion in every case be absolutised.

Douma and Vorster concur that in some cases, abortion must be allowed. “In sommige gevalle moet abortie wel toegelate word” (Vorster, 2002:185-206). Qualified justifiable cases are, as with Douma, medical, psychological and judicial or ethical. Vorster rules out eugenic and social reasons for abortion on broadly the same arguments as Douma (Vorster, 2004:127-128). What is said of Douma’s view, therefore, holds for Vorster’s view. The *rare* cases where Vorster admits the possibility of abortion is being justified, appear to be at variance with the stated principle that from conception the unborn is an *imago Dei*, and thereby that the embryo and foetus are of intrinsic value (Vorster, 2004:125). How valuable?

Within a Christian ethical theoretical framework, it is precisely when there is conflict between the value of the mother's life and that of the child's life that the Gospel imperative "Take up your cross" becomes a dominant reality for Christ's disciples, and in particular, for a specific disciple of Christ, the mother. Who, then, is to take up the cross in the midst of this moral dilemma? The mother obviously, for the reason that as Christ's disciple she is also called to actualize this imperative and that of "Love God, and your neighbour as yourself". In actualizing these Gospel imperatives in the face of the multitudinous facets of this moral dilemma, the mother must take into account that the Christian life involves dying to self daily (Lk 9:23). "Let us remember this condition, that Christ subjects all his disciples to *the cross*. Yet let us also bear in mind this consolation, that *in bearing the cross*, we are companions with Christ" (Calvin, 1949:472). As in the face of all moral dilemmas, what is required of Christ's disciples is the attitude of Christ.

In sum, Vorster's ethical response to the issue of abortion, like that of Douma and the *Stigting van Etiese Medisyne*, is primarily in favour of the unborn child. Vorster's concession that there are, albeit *rare* circumstances in which abortion is justified, is arguably indicative of an inconsistent ethic of life with respect to the premise that God-given life bestows inherent dignity on all human life at whatever stage of biological development. From a Christian ethical perspective, it appears that with respect to the right to life, and possible *rare* cases in which abortion may be justified, the ethical parts of Vorster's exceptions do not exactly fit the whole scope of the consistent ethic of life.

As is the case with Douma's arguments for justified cases of abortion, Vorster's medical and psychological grounds set up moral conflicts for those who argue that a consistent Christian ethic of life permits no justifiable exceptions to the prohibition of abortion. Further consideration within constitutional and Reformed ethical parameters on *rare* exceptions to the prohibition against abortion, which takes into account Laci and Conner's Law, the two-victim thesis, and the consequent legal personality accorded the unborn, suggests the eventuality that *rare* cases where abortion must be permitted may be eliminated.

In conclusion, Die Stigting van Etiese Medisyne, Douma and Vorster's predominantly overarching positive attitude to the value of human life that is qualified by rare exceptions to the prohibition on abortion, raises a moral dilemma for those who argue that taking up one's cross admits no exceptions to the prohibition on abortion. Abortion is always a choice between life and death. In the case of a choice between the life and death of the mother or that of her unborn child, the choice always remains one between the life and death of two human lives. From a Reformed ethical perspective, the choice is between the life and death of one bearer of God's image and the other bearer of God's image, each of whom, in the words of the *Die verklaring oor abortsie*, in their origin, being and existence is utterly dependent upon God since conception, (Appendix D, art 2).

## 5.8 HIV/Aids: nature and reach of the term

Overberg describes the nature of HIV/Aids thus: "AIDS (Acquired Immune Deficiency Syndrome) is caused by HIV (Human Immunodeficiency Virus). This virus attacks certain white blood cells called T-cells, eventually destroying the person's immune system. As a result, the HIV-infected individual can suffer from many other infections that a healthy immune system would reject" (Overberg, 2006:7).

UNAIDS describes the HIV epidemic in the RSA as

...one of the most intense in the world [which] shows no evidence of a decline, Based on its extensive anti-natal clinic surveillance system, as well as national surveys of HIV testing, and mortality data from its civil registration system, an estimated 5.5 million [4.9 million – 6.1 million people] were living with HIV in 2005. An estimated 18.8% [16.8% – 21.7%] of adults (15 – 45 years) were living with HIV in 2005 (UNAIDS, 2006:7).

This data is in line with that of the National Department of Health's 2006 estimate of 5.41 million people infected with HIV (Department of Health, 2007:15), and the ASSA's estimate for 2006 of 5,511,751 HIV infections, or 11.4% of the total population of the RSA (Appendix A:1). The UNAIDS statement that the HIV infection rate shows no sign of decline is also in agreement with the ASSA's forecast of an annual rising HIV infection rate until 2015 .

In sum, the current RSA HIV infection rate and the projected rate of HIV infection indicate that the nature of HIV infection borders on the catastrophic with respect not only to those infected but to those directly and indirectly affected. The projected 6,027,509 HIV infections or 12% of the total population in 2015 (Appendix A:2), will presumably negatively affect *inter alia* the economy in general, impede planned development of health and education, and constrain the RSA's defence capability, regardless of HIV cases which may or may not develop into Aids. The reach of HIV infection in the RSA is indisputably wide with regard to numbers infected, affected, and chronologically, long.

Prevention, and strategies for prevention of HIV/Aids, are vital components in combating this pandemic. The constitutional right to life, and the Gospel imperatives, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross" are this study's parameters for a consideration of the legal and moral dilemmas arising from HIV/Aids prevention strategies.

## 5.9 Constitutional perspective on HIV/Aids prevention

Section 27 of the Bill of Rights states:

27 Health care, food, water and social security

- (1) Everyone has the right to have access to
  - (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

Erh-Soon Tay maintains that it is vital not to blur the distinction between moral and legal rights in the public mind. (Erh-Soon Tay, 2000:134). Confusion of legal and moral rights may lead to claims that rights are disregarded or not allowed by courts, when in fact the matter in question is possibly a privilege and not a legal right. In the RSA, it is vital that the Constitutional Court and lesser courts endeavour to eliminate confusion over legal and moral rights as a confused public perception that rights are ignored, violated, or not accorded can create a degree of frustration that can lead to violence against property and person, and to loss of innocent life.

A possible confusion in the public mind is that between the constitutional right to health care and the moral right to health. It is vital to note that s 27 (1) (a), affirms the constitutional right *solely* to health care, and *not* a rights holder's constitutional right to health *per se*. The right to health *per se* is understood here as the right to treat each presenting pathological case regardless of available resources. Only if the right to health *per se* were absolute could be this requirement be fulfilled, and this, to the human, material, and financial detriment of all other constitutional rights.

Legal rights by definition are enforceable; the right to health care being one such. The right to health *per se*, albeit a reasonable aspiration, is a moral claim only, and not *de jure* enforceable in court. The moral claim to health *per se* is within the ambit of limitations and possibilities set forth in s 27 (2): it is an ideal. Such a claim to health *per se* within s 27 (2) is a problem of law and morality, which raises dilemmas concerning treatment and prevention of disease in general. Although health care is an enforceable legal right, in practice, it is the case that often treatment of a presenting pathological case is a privilege. Legal and moral dilemmas concerning which pathological cases to treat, *inter alia* HIV/Aids may arise here. This particular issue of law and morality falls within the parameters of Van der Vyver's questions concerning the legal validity of moral principles; the compliance of law with

minimum ethical standards, and the State's role in compelling moral behaviour (Van der Vyver, 1989:158).

The constitutional right to health care, as with provisions for food, water and social security, is an example of a moral principle legally enforced. Adequate provision of food and water is self-evidently a moral principle, for without basic provision of these, life is jeopardised. Provision of health care and social security are moral principles, because, like food and water, they are deemed a necessary minimum requirement in a democratic society that cares for all its citizens. As such, they are a minimum ethical requirement that demands legal enforcement. Section 27 (1) (a) (b) (c), in order to be effective, demands that the State, albeit progressively, implement the provisions of these constitutional rights, and this, lest government neglect or abandon its particular constitutional responsibility.

The constitutional right to health care is a qualified right, and as such may also be described as an ethical principle that must be progressively actualized, unlike the constitutional right to life, that is an unqualified right, which must be applied with immediate effect. The fact that the right to health care is a qualified constitutional right means, nevertheless, that it is also a fundamental right. "In legal circles human rights are understood as those rights which are included in a declaration of human rights and are legally enforceable" (Vorster, 2004:88).

In keeping with the principle that no right may be treated as an absolute right, for the reason that it affects the principle of rights and duties *vis-à-vis* contending rights (Vorster, 2002:192), rights holders to the constitutional right to health care must acknowledge that other fundamental rights in s 27, food, water, and social security, have an equal claim to available finite human, material and financial resources of the RSA government. Recognition of contending demands for available resources raises legal and moral issues about provision of health care, food, water, and social security.

Within health care provision itself, HIV/Aids is one among other demands competing for human, material and financial government and private resources. These constraints are a factor in the growth of HIV/Aids infection rates, a constraint that impedes prevention. The issue of HIV/Aids prevention is one contending demand among others for vital resources. Given the totality of finite resources available to combat the prevalence of HIV/Aids, HIV/Aids prevention is arguably a strategic component of the constitutional right to health care deserving of a reasonably adequate portion of available human, material, and financial resources. Actualization of the qualified constitutional right to health promotes and protects the unqualified constitutional imperative of the right to life. The two are inseparable. Working within the parameters of the Constitution, Christians can attend to the matter of HIV/Aids prevention through actualizing the Gospel imperatives, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross", by complementing and supplementing, *lacunae in*

healthcare and social service provision through its own Church run health and social services to the extent that financial, material, and human resources allow.

## **5.10 Christian ethical perspective on HIV/Aids prevention**

What has been said thus far in its entirety regarding a Christian ethical perspective on the right to life and abortion can be said for the Christian ethical perspective on the right to life and HIV/Aids prevention. To wit; Judaeo-Christian anthropology affirms that God is the author of human life (Gen 1:26-27), and by this affirms humanity's God-given dignity as *imago Dei*. Further, the Christian ethical perspective on the constitutional right to life (s 11) concurs with the constitutional view that the right to life is inseparable from the right to respect and protection of inherent human dignity (s 10).

HIV/Aids and abortion, though distinct, are not separate, since both issues relate to the right to a dignified life of the unborn child. For example, from a Christian ethical perspective, the transmission of mother to child infection, especially if left untreated, infringes on the unborn child's right to a dignified life. From the same perspective, the health risk to the unborn child ought to be a factor in preventing HIV/Aids, motives for prevention being love of one's unborn neighbour as *imago Dei*, and provisions of the Bill of Rights, in this case "s 11 Everyone has the right to life", and "s 10 Everyone has inherent dignity and the right to have their dignity respected and protected".

## **5.11 HIV/Aids prevention in Scripture**

Scripture of course, has nothing explicit to say on the matter of HIV/Aids. It has much to say, however, on attitude towards sickness and the sick, stigmatizing of the disease and the excluding the diseased from the community, and an attitude of reintegration and inclusion of the diseased and stigmatized in the community. "Stigma is difficult to define. Generally though, it implies the branding of or labelling of a person or group of persons as being unworthy of inclusion in the community, resulting in discrimination and ostracization" (UNAIDS, 2005:11). This study accepts this general definition of stigma. With respect to stigmatization, discrimination and ostracization, resulting from physical sickness, and the need for restoration to the community, the scriptural parallel to HIV/Aids is most obviously leprosy and the plight of the leper.

### 5.11.1 Leprosy and lepers: Old Testament

The diagnosis of leprosy symptoms in humans, the authoritative sacerdotal declaration that a man or woman was unclean, and the requirement to live outside the community for the duration of infection, (Lev 13-14), aptly illustrates UNAIDS general definition of stigma. Leviticus 13 deals with varieties of leprosy and their symptoms. There is leprosy in humans (Lev 13:1-46), and leprosy in clothing (Lev 13:47-59). Leviticus 14 deals with leprosy in buildings (Lev 14:33-57). It is clear from the scope of the term leprosy that Scripture does not speak of the chronic infectious disease afflicting humans that is today termed Hansen's disease. "The popular character of the described disorder makes it impossible to determine the exact nature of the disease cited. Not every disease made one unclean, but only those considered active and therefore infectious" (Farley, 1989:69). Any so called active infection was feared and considered, correctly or incorrectly, to be contagious, and therefore a threat to the wellbeing of the community. The practical measure to protect the community was to exclude the diseased for the duration of the disorder.

Leprous infections in humans were identified by the disorder's active spread (Lev 13:22, 17, 35). Symptoms requiring inspection were *inter alia* varieties of deep sores (Lev 13:3, 20, 25, 30) and open sores (Lev 13:10, 15, 42). Farley observes that "ordinary skin blotches, burns, scalp disorders, face eruptions, and baldness were not signs of impurity, so long as they were not infectious" (Farley, 1989:69). Leviticus 14:3 indicates that the leper dwelt outside the community during the infectious period, and was only readmitted, subject to completion of specific rituals (Lev 14:1-32), once the priest, who did not treat the disease, verified that the infection was either dormant or cured, and so, no longer leprosy, i.e. infectious. Being no longer leprosy, the sufferer was no longer a danger to the community.

### 5.11.2 Leprosy and lepers: New Testament

The Christian attitude towards lepers and leprosy, and by analogy those whom contemporary society may endow with the status of lepers, in this case, people suffering from HIV and Aids, is that of Jesus. Jesus' overarching approach to the ostracised leper was healing and reintegration into the community. His stretching out his hand to touch the leper is a powerful sign of acceptance of the stigmatized (Matthew 8:1-4). Mark recounts that Jesus was moved with pity for the kneeling leper (Mark 1:40-45). The Christian community is to imitate Jesus' example. Healing lepers is part of the mission of the Twelve (Matthew 10:8). It is also a sign of the arrival of the long awaited Messiah (Matthew 11:15). Jesus' acceptance of Simon the Leper's hospitality endows the host with new status (Matthew 26:6). In short, the Christian attitude towards the HIV and Aids sufferer entails being with Jesus and doing the things of Jesus. Jesus disciples give meaning to the attitude of Jesus in the

face of HIV/Aids through application of the Gospel imperatives, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross".

## **5.12 "Follow me": HIV/Aids prevention**

The exegesis of "Follow me" (Matthew 4:19-20), already applied to the issue of abortion, namely, discipleship as a call to office, and a general call to discipleship is the basis for consideration of the Gospel imperative, "Follow me" with respect to HIV/Aids prevention.

### **5.12.1 "Follow me": call to office and HIV/Aids prevention**

The call to office is a call to Christ's disciples to service leadership. This office is exercised in the Church, the Body of Christ. Within the context of the imperative of the right to life, and HIV/Aids prevention, leaders in the Christian community ought to prepare all members of their particular Churches to address the issue of HIV/Aids and its prevention. Where possible, at an ecumenical level, Church leaders ought to assess the possibility of addressing the issue of HIV/Aids prevention collectively *vis-à-vis* government and private sector agencies.

Leadership in this task of preparing the community to serve those affected by HIV/Aids, belongs not only to pastors whose task it is to give a Christian ethical perspective on HIV/Aids in the light of Christ and his Gospel, but also to members of the Church who are qualified to teach in the broad sense about HIV/Aids and its prevention, for example, health care professionals and social workers. With a view to a common Christian witness concerning HIV/Aids issues in South Africa, Church leaders should explore the practical understanding of the sanctity of life in order to discover where there is identity of views and where there is disagreement. In areas of agreement, such as patient transport to clinics, provision of clothing, nutrition, and home care, leaders should consider the possibility of pooling human, material and financial resources. In areas of disagreement of ethical principles, such as the provision of prophylactics, and abstinence from sexual intercourse outside marriage, Church leaders may continue to discuss the application of ethical principles that prove an obstacle to a united witness to Christ and his Gospel of life.

A useful source of South Africa's wide responses to services caring for orphans and vulnerable children, volunteers caring for orphans and vulnerable children, home-based care, and 146 projects supported by the Southern Africa Catholic Bishops Conference is listed in the UNAIDS report, *A Faith-Based Response to HIV in Southern Africa: the Choose to Care Initiative* (UNAIDS, 2006, Appendices C, F).

### 5.12.2 “Follow me”: call to discipleship and HIV/Aids prevention

What is said above with respect to the various models of the Church and the issue of abortion is valid for the issue of HIV/Aids prevention. To reiterate briefly: the model of the Servant Church expresses the reign of God as a present reality, of which the Church is a sign (Vorster, J. M., 2007:253). Luzbetak says the Servant Church is a sign to the world of Jesus’ mission which is one of total self-giving and an unreserved commitment to the Kingdom of God, a Kingdom of love, justice, peace and freedom in a world of sin. The weakness of the Servant Church, Luzbetak points out, is the danger of identifying itself with the Kingdom of God, and succumbing to the danger of associating itself with the more radical liberation theologies (Luzbetak, 1998:387). The institutional Church, as Dulles observes, has the history of durability in its favour, the danger of intuitionism notwithstanding, (Dulles, 1976:72). This suggests that an Institutional Servant Church may be the model for Christian communities to actualize discipleship today with respect to the issue of HIV/Aids prevention.

Giving practical meaning to discipleship necessitates willingness on the part of the one who by grace answers Jesus’ imperative call to actualize his or her Baptism in communion with Christ and other disciples in a spirit of total self-giving. In other words, being in communion with Christ necessitates the disciple giving practical meaning to the essentials of discipleship, namely, being with Jesus and doing the things of Jesus (Donahue, Harrington 2002:31), and also their expressing of fellowship with Christ’s disciples, in this case, with respect to HIV/Aids prevention. In viable terms of a Christian ethical response to HIV/Aids, this could mean at the level of *gemeente* and parish, that disciples exercise their God-given gifts in favour of those afflicted directly and indirectly, and possibly cooperate ecumenically where this appears feasible and appropriate. The disciples’ motive for tending to the needs of all afflicted with HIV/Aids is that whatever one does to one’s neighbour, one does to Christ (Matthew 25:35-36). Tending to the immediate needs of HIV/Aids sufferers is not the only way of responding to the needy. Promotion of HIV/Aids prevention personally is also a mode of Christian response to the Gospel imperative, “Follow me”. How this is practically demonstrated, is worked out in actualizing the Gospel imperative, “Love God, and your neighbour as yourself”.

### 5.13 “Love God, and neighbour as yourself”

The individual disciple of Christ is not an isolate, firstly because that the disciple is never alone, but always with Christ, and secondly because individual disciples, together with other individual disciples, form living cells of the Body of Christ which collectively constitute the Church here on earth. A disciple, therefore, always actualizes Christ’s imperatives, in this case, to love, in communion with Christ within the community of Christ. On the basis of this rationale, this study considers the Gospel imperative to love God, and one’s neighbour as oneself, essentially from its communitarian aspect,

but without prejudice to the fact that on occasion, together with Christ, a disciple of Christ faces moral dilemmas in physical, psychological and emotional isolation from other disciples of Christ.

### 5.13.1 “Love God, and neighbour as yourself”: HIV/Aids prevention

The lawyer’s question, “Which is the greatest commandment?”, and Jesus answer, does not place in opposition law as *Torah* and the divine imperative of love. Jesus’ dispute with the Scribes and Pharisees was not about God’s will expressed as *Torah*, “Do not think that I have come to abolish the law or the prophets. I have come not to abolish but to fulfil” (Mt 5:17), but about the law as *mitsvot* (the six hundred and thirteen commandments). From a rabbinical perspective, actualizing these ordinances is an expression of love for God. Jesus, however, perceives in their rigorous application a constraint, if not an outright obstacle to actualizing *Torah*. “Woe to you, scribes and Pharisees, hypocrites! For you tithe mint, dill, and cumin, and have neglected the weightier matters of the law: justice and mercy and faith. It is these you ought to have practiced without neglecting the others. You blind guides! You strain out a gnat but swallow a camel!” (Mt 23:23-24).

The basic Christian attitude towards those infected with HIV/Aids is that of Christ, namely compassion. Out of compassion, Christ cured the sick (Matthew 14:14) and the blind (Matthew 20:34). Other mentions of Christ’s compassion are broadly indicative of restorative healing, *inter alia* compassion for the harassed and helpless multitude (Matthew 9:36), the sheep without a shepherd (Mark 6:34), the widow of Nain (Lk 7:13). From a Christian ethical perspective, stigmatization and ostracization are a counter-witness to Christ and his Gospel that enjoins love of neighbour as oneself.

### 5.13.2 “Love God, and neighbour as yourself”: actualization

From within the Christian ethical theoretical framework, an obvious strategy to actualize the Gospel imperative, “Love God, and your neighbour as yourself”, is for Christ’s disciples to work by all means to prevent HIV/Aids. Where feasible, all Churches, and here in question, the Gereformeerde Kerke in Suid-Afrika and the Roman Catholic Church in South Africa, could work collaboratively towards alleviating and ameliorating social and economic conditions that lead to and even compel men and women to live promiscuously as a means of generating income in order to finance life’s daily necessities. Overberg observes that HIV infection is spread world-wide most commonly through heterosexual intercourse rather than homosexual activity and drug abuse (Overberg, 2006:8).

Cooperative participation in health education programmes, job creation, provision of housing, and working towards the elimination of the stigma of HIV/Aids are some ways in which Christ’s disciples

can actualize the imperative to love God, and one's neighbour as oneself. Another important way of educating people is compassionate care of those infected and those affected by HIV/Aids. HIV/Aids may exasperate existing personal domestic circumstances. Stigma of the infection may also mean social isolation and loss of close family support, even marriage and family breakdown. One, or a combination of health, domestic, social and economic factors, may suggest a termination of pregnancy on the grounds that the child's best interests will not be served by bringing him or her into such adverse conditions.

Ultimately, actualisation of Gospel imperatives is an affirmation of the priority of Gospel imperatives over constitutional imperatives which according to the latter's particular utilitarian lights may seek in practice, if not in principle, to alleviate the suffering of those affected by HIV/Aids at the expense of another human life by the allocation of adequate funding of abortion services and inadequate funding of medical resources for the treatment and prevention of HIV/Aids.

Finally, from a Christian ethical perspective, actualisation of the Gospel imperative, "Love, God, and your neighbour as yourself", is, as is the praxis of all Gospel imperatives, a proclamation of Christ and his Gospel. This proclamation may, should it please God, rouse a person to faith in Christ and his Gospel. Or in the case of a disciple of Christ, refresh the gift of God-given faith. For this reason, in their attempts to minister to all those affected directly and indirectly by this HIV/Aids pandemic, Christ's disciples must never lose sight of the fact that their actualization of the imperative to love God, and neighbour as oneself, may by God's grace, lead a person to a definitive change of lifestyle which in itself contributes to the prevention of HIV/Aids.

#### **5.14 "Take up your cross": HIV/Aids prevention**

Practical responses of Christ's disciples as the Church to the issue of HIV/Aids treatment and prevention have been suggested when dealing with the imperatives, "Follow me" and "Love God, and your neighbour as yourself". This section deals with the personal example of Christ's disciples, and their witness to Christ and his Gospel, within the parameters of interpersonal relationships, which are themselves in some sense common vectors of HIV infection. Noël Simard, theologian and bioethicist commenting on interpersonal relationships, notes the role of such relationships in the spread of the infection, "HIV is always transmitted through unprotected sexual relations, sharing syringes, or material for injecting drugs, pregnancy, delivering, and breastfeeding (by a mother infected with HIV to her baby)" (Simard, 2006:217). The corollary is that exclusive interpersonal relationships may usefully serve as a vector of prevention.

From a Christian ethical perspective, personal examples of the disciples' witness, collectively and individually, to the demands of Christ and his Gospel, of which the Gospel imperative "Take up your

cross” is representative, cannot be underestimated as one of the sources of HIV/Aids prevention. The personal witness of those in communion with Christ and one another to the values of Christ and his Gospel, *ipso facto* poses a moral dilemma to those acting moral agents whose formal rudimentary principle is, for example, the absolute autonomy of the acting moral agent in relationship with other autonomous acting moral agents. Taking up one’s cross is simultaneously a dying to self and a witness to Christ’s redemptive suffering. Any acting moral agent operating out of any ethical theoretical framework is of course at liberty to take or not take cognizance of the disciples’ witness.

Taking up one’s cross entails more than a compassionate response to those infected and affected by HIV/Aids and bearing their cross with them. It involves moral dilemmas that arise from prevention of this illness. These moral dilemmas entail in the first place an individual choice about relationships. Overberg mentions two examples of interpersonal relationships that are pertinent to HIV/Aids prevention, namely the couple’s moral responsibility *vis-à-vis* risky behaviour regarding sexual health, and the question of a partner’s right to know the HIV status of the other (Overberg, 2006:47).

#### **5.14.1 “Take up your cross”: moral responsibility and risky behaviour**

From a Christian theological and ethical perspective, marriage is the exclusive setting for sexual relations. The Seventh Commandment, “You shall not commit adultery” (Ex 20:14) in its widest sense says Douma, sets the parameters for personal sexual relationships (Douma, 1996:245). Leviticus 18 and 20 also sets boundaries of permissible sexual relationships in a comprehensive list of prohibitions. These prohibitions reinforce the exclusivity of the marriage bond’s scriptural warrant which is found in the second account of creation, “Therefore a man leaves his father and his mother and clings to his wife, and they become one flesh” (Gen 2:24), and affirmed by Christ’s teaching on the sanctity of marriage and against divorce, “For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh” (Mt 19:5).

The exclusivity of the marriage bond in the Judeo-Christian tradition mirrors the exclusive bond between YHWH and his people, a bond that YHWH reaffirmed throughout the history of Israel, *inter alia* in the covenants with Noah (Gen 8:20-22), Abram (Gen 15), and Moses (Ex 20). The marriage bond also mirrors the exclusive relationship between Christ and his Body which is the Church, and of which he is the head (Col 1:18). This is reflected in the Gereformeerde Kerke in Suid-Afrika’s Formulier vir die huweliksbevestiging. “Hieruit leer ons dat die huwelik, wat in die welbehae van God gegrond is, baie eerbaar is, want dit is 'n afbeelding van die verhouding tussen Christus en die gemeente” (Psalmboek, 2003:152). This marriage formula echos the great mystery of the relationship between Christ and his Church expressed in Ephesians 5:32. From a Christian perspective, therefore, no one may violate the marriage bond without prejudice to Christ’s Body, the Church. For this reason, from a Reformed ethical perspective, marriage is the exclusive setting of

sexual relations. Actualization of the enduring stability of the marriage bond that may periodically entail great suffering of the cross, is a witness to those who propose fidelity in a relationship so long as the relationship lasts, and fidelity in a subsequent relationship so long as that relationship lasts. An enduring stable Christian marriage, and indeed, any enduring stable marriage, poses a moral dilemma for those who live promiscuously and thereby put themselves and any offspring at risk of HIV/Aids. The testimony of enduring stable marriages is a significant contributing factor to HIV/Aids prevention.

#### 5.14.2 “Take up your cross”: a partner’s right to know

Douma describes the twofold purpose of marriage as *matrimonium*, which emphasises motherhood, and *coniugium* which emphasises the common task of life assumed by the spouses (Douma, 1996:250). *Coniugium* provides the conditions for a home in which spouses nurture children. From a Christian ethical perspective, the HIV/Aids-discordant couple’s desire for a child or children poses ethical dilemmas that involve risking the health of the HIV-negative spouse and risking the health of the child, not to mention the possibility of death. These dilemmas entail a consideration of the wide scope of the Sixth Commandment, “You shall not kill”, which, expressed positively, enjoins respect *inter alia* for the life of one’s neighbour both born and *in utero*. The crux of these ethical dilemmas, therefore, is the right to life of the HIV-negative spouse and child, and the duty of the HIV-positive spouse to protect and promote life. This implies the duty of a spouse to inform his or her spouse of their HIV status, be it positive or negative, when his or her status is in question.

Within the Christian ethical framework there is a correlation between God-given obligations and God-given duties to one’s neighbour as *imago Dei*, as there is a correlation between the God-given right to life and dignity. Not informing one’s partner of one’s HIV-positive status is a negation and in fact a violation of one’s duty to protect and promote another’s God-given right to a dignified life as *imago Dei*. From a Christian anthropological and ethical perspective, therefore, the God-given responsibility of the infected spouse towards their marriage partner imposes the duty to inform the other of his or her HIV-positive status. Informing one’s spouse of one’s status is not without difficulty as it involves the suffering of the cross which may entail the possible risk of stigma, alienation and rejection. Within all marriages, but in this case, Christian marriage, responsibilities and duties are mutual.

Stigma, alienation and rejection, when actualized, are a counter witness to the unbreakable marriage bond which is a symbol of Christ’s bond with his Church. The uninfected spouse has the co-responsibility of shouldering the cross of their infected partner with whom they are called to follow Christ and love God and neighbour, in this case their spouse, as themselves. This the husband or wife is called to do in union with Christ within their Christian marriage and in union with Christ’s disciples who as the Church, are called to share in carrying that cross.

Taking up the cross of Christ in the face of HIV and Aids within marriage is a witness to those who would choose not to disclose their HIV-positive status to their current or former sexual partners, thereby jeopardising the right of others to a dignified human life, to say nothing of the moral right of all, without exception, to health *per se*. Christian witness to the cross of HIV/Aids poses a moral dilemma to those who advocate an absolute right to privacy at the expense of the common good of society, a dilemma they may choose to resolve one way or another. In the case of Christian witness of responsible sexual behaviour, the witness of the exclusive loving relationship of a stable Christian marriage is itself a means of HIV/Aids prevention, and a challenge for others to follow.

## 5.15 Summary

The underlying premise for this evaluation of the right to life, abortion, and HIV/Aids prevention, and a Christian ethical response to these issues, considered from within the theoretical framework of Reformed ethics, is that Gospel imperatives, which are concerned with life and attitudes to life, ultimately have primacy over constitutional imperatives that are likewise concerned with life and attitudes to life. This is illustrated throughout by a comparison of the constitutional perspective on abortion that to date, and in sum, denies any right to the unborn child in the matter of abortion with the Christian ethical perspective on abortion that affirms the God-given right to life and dignity from the moment of conception to the date of death.

The same comparison is likewise demonstrated by a constitutional perspective on HIV/Aids and its prevention, which, in many cases, for just reasons of constraints on financial, material, and human resources, proposes and adopts what is in practice a utilitarian general cost effective strategy to the detriment of those who are directly and indirectly affected by this pandemic. Such a general cost effective strategy is in principle at variance with a Christian ethical perspective, which, recognising the reality of financial, material and human constraints, also proposes cost-effective strategies; strategies that involve personal cost to the collective of disciples as the Body of Christ, the Church, and to individual disciples as they daily actualize the Gospel imperatives of following Christ, loving God, and neighbour as oneself, and taking up the cross of suffering and witness to Christ who is God's victory over suffering.

This study proposes that from a Christian ethical perspective, the most effective way of actualizing the selected Gospel imperatives, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross" is, where possible, to collaborate ecumenically, both locally and nationally, on the issues of the right to life, abortion, and HIV/Aids prevention. There is a considerable degree of coincidence between Reformed and Roman perspectives on the attitude to life generally, and in this case, within this South African liberal democracy. Significant doctrinal differences notwithstanding, these traditions should consider the possibility of practical partnerships in an attempt to transform

what is from a Christian theological and ethical perspective a culture of death into a culture of life. The scriptural *raison d' être* for this proposal is Christ's prayer for his disciples, which in so many words is a prayer for daily perseverance in actualizing his imperatives to follow him, and to love God and one's neighbour as oneself. It is also Christ's prayer that his disciples, individually, and collectively as his Church persevere in witnessing to the fact that in Christ, suffering, and even death on the cross is not the last word, but the living person of the risen Christ and his Gospel is indeed God's last Word on God-given life and its joys and sorrows.

I am not asking you to take them out of the world, but I ask you to protect them from the evil one. They do not belong to the world, just as I do not belong to the world. Sanctify them in the truth; your word is truth. As you have sent me into the world, so I have sent them into the world. And for their sakes I sanctify myself, so that they also may be sanctified in truth. I ask not only on behalf of these, but also on behalf of those who will believe in me through their word, that they may all be one. As you, Father, are in me and I am in you, may they also be in us, so that the world may believe that you have sent me. The glory that you have given me I have given them, so that they may be one, as we are one, I in them and you in me, that they may become completely one, so that the world may know that you have sent me and have loved them even as you have loved me. Father, I desire that those also, whom you have given me, may be with me where I am, to see my glory, which you have given me because you loved me before the foundation of the world. Righteous Father, the world does not know you, but I know you; and these know that you have sent me. I made your name known to them, and I will make it known, so that the love with which you have loved me may be in them, and I in them (Jn 17:15-26).

## 6. CHAPTER SIX – CONCLUSIONS AND RECOMMENDATIONS

This ethical study carried out from within the Reformed Christian tradition whose foundational authority is *sola scriptura*, has presented viewpoints, deductions and summaries in the preceding chapters. These chapters dealt sequentially with the nature of ethical decision-making within the Reformed ethical framework; a Christian perspective on imperatives *per se*; a Christian perspective on Gospel imperatives, and constitutional imperatives; selected Gospel and constitutional imperatives; and based upon the nature and reach of constitutional and Gospel imperatives, an evaluation and Christian ethical response on abortion, and HIV/Aids prevention. Each of these subject divisions revealed particular perspectives on the ethical issues under consideration by this study.

This chapter proceeds by way of a concise synthesis of salient points in each of these preceding chapters with the purpose of indicating that the aims and objectives set out in Chapter One 1.5 -1.5.1 have been achieved. Where recommendations concerning further study occur they indicate lacunae in the literature and the research. This concluding chapter represents the personal view of the author on the Christian ethical perspective on imperatives of the Gospel and imperatives of the South African Constitution regarding the right to life.

In this study the issues of the right to life, abortion, and HIV/Aids prevention are viewed from two diverse ethical perspectives; the secular constitutional perspective, and the Christian ethical perspective. The source of these distinct perspectives is their particular world view. Under consideration here are the South African constitutional world view that is specifically secular in character and whose formal rudimentary principle is the authority of the South African Constitution itself, and the Christian world view whose formal rudimentary principle is the person of Christ himself and his Gospel.

Constitutional and Christian ethical theories are informed by their respective world views. These ethical theories in turn propose particular moral norms of action applicable to moral dilemmas. The constitutional imperative of the right to life, and the Gospel imperatives, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross", are the selected moral norms for this study's consideration of the moral dilemmas entailed in the right to life, abortion and HIV/Aids prevention.

The compatibility, and/or incompatibility of constitutional and Christian ethical moral norms that propose solutions to these moral dilemmas, and the ethical theories that are the source of these norms, have been a consideration at every stage of this study. Degrees of harmony or dissonance between constitutional moral norms and Christian moral norms have been gauged by the this study's central theoretical argument, which proposes that, from within the Reformed theoretical ethical framework, Gospel imperatives have priority over constitutional imperatives, without prejudice to the privileged locus of the Constitution, the framework *sine qua non*, in which Gospel imperatives are called to be actualized by Christians in South Africa.

The Reformed perspective on the Christian doctrine of man's prelapsarian state of original righteousness that was one of total harmony with the will of God the Creator, and man's fall from this original state into sin, and the consequent total vitiation of man's will, raised the question of the possibility of man's ability to make moral decisions. If the will, after the Fall, is now so bound to all evil and totally vitiated, then arguably, ethical decision-making, understood in its simplest and commonest form as the free choice, however defined, between two options, in this case to act or not act in accordance with a moral norm, is impossible. The moral praxis of Reformed Christians and others in favour of the good, negates this premise.

Even in the face of this fact, however, some Reformed theologians, Hoeksema and his school for example, utterly deny the possibility of any degree of choice whatsoever, free or otherwise, in ethical decision-making, on the grounds that the remaining slender vestige of the vitiated will does nothing other than impel man towards evil and sin. Others, contextual absolutists, effectively deny the necessity of making moral choices since Scripture itself, in any situation, will indicate a course of action that is morally good and sin-free. This view stands alongside another Reformed theological opinion that affirms that man, under conditions of common grace can and does indeed make moral choices for the good.

A consideration of Reformed theological opinions on sin and grace, and their implications for the understanding of the bonded will, revealed that the doctrine of the bondage of the will is not in fact about the denial of the ability of man to act morally, but about the self-inflicted punitive limitations on man's ability to freely make moral choices between good and evil, good and good, and evil and evil. This study clearly refutes the proposition that man is totally incapable of making moral choices, and affirms that man's residual moral capacity to make choices in favour of the good under common grace, is, by no means and in no manner, salvation by good works.

Reformed terminology of the doctrine of sin and grace as it pertains to ethical decision-making is problematic for those outside this tradition, who, when coupling their popular perception of the Reformed doctrine of sin and grace with, for example, their popular grasp of the Reformed doctrine of election and predestination, may conclude that the views of Hoeksema or contextual absolutists are normative for ethical decision-making within the Reformed tradition. If the Reformed Christian tradition wishes to make its doctrines easily intelligible to other Christian traditions, as indeed it ought for the sake of unity of the Church for which Christ prayed, it is incumbent upon this tradition, while remaining steadfast in its own doctrines, to formulate their teaching on Christian dogma in language comprehensible to other traditions. This proposal necessitates further study within the Reformed tradition.

Demands of the Gospel demonstrate that the nature of Christian ethics is predominantly, but not uniquely, deontological. A study of various ethical theories, and a consideration of the formal rudimentary principle proper to each, and their proper material rudimentary principle, i.e. specific norms of action derived from the formal rudimentary principle, present the acting moral agent with various approaches to

moral dilemmas. Some ethical theories, for example contractarianism and act utilitarianism, were found, from a Christian ethical perspective, to be useful; their usefulness, however, was qualified. The qualification to various ethical theories can be reduced to a common denominator, namely, the absolutising of the status of the acting moral agent, or that of the collective of acting moral agents in the case of contractarianism, to the total exclusion of all other norms.

Theonomous ethical theories, *inter alia* graded absolutism, theological voluntarism, and virtue ethics, were also considered and deemed useful for the acting moral agent. These were shown to be interrelated rather than mutually exclusive. The principle reservation regarding these and other theories of theonomous ethics was that theonomy must not be defined in such a way as to negate the acting moral agent's freedom of choice, as is the case with contextual absolutism. This study concluded that within the Reformed theoretical framework, contextual absolutism is an invalid approach to moral dilemmas as it contains an inherently flawed supposition, namely, that *exclusive* recourse to the infallible word of God in Scripture for a revealed morally good and sinless solution to a moral dilemma requires an infallible hermeneutic. The Reformed perspective on the total vitiation of the will *ipso facto* rules out such a hermeneutic, moreover, the Reformed tradition unambiguously denies personal or collective infallibility within the Church. Further study of the ethical theory of contextual absolutism with reference to the Reformed doctrines of the vitiation of the will, and categorical rejection of personal and collective infallibility within the Church, is necessary to prove or to refute the veracity of this hypothesis of contextual absolutism's inherent flaw, and hence this theory's standing in Reformed ethics.

Special consideration was given to Kant's theory of categorical and hypothetical imperatives and their incompatibility with the Reformed theological and ethical perspective on man's moral capabilities. His premised autonomous reason and will of the moral agent conflicts with the anti-Pelagian stance of Reformed theology. This difference is illustrated by Kant's categorical imperative which states that one must act only on that maxim through which one can will at the same time that the maxim must become a universal law (a necessary condition for which is man's reason and will be in total accord) and the Reformed doctrine's affirmation that fallen man's reason can never harmonise totally with his will. By the *sole* use of autonomous reason, therefore, man is incapable of willing an action to accomplish the desired effect. Kant's hypothetical imperative, on the other hand, which effectively means one should always will one's act as means to something else, is useful in illustrating the deontological nature of Christian ethics, for Christians are indeed enjoined to will their actions as a means to something else, *inter alia*, by the grace of God, to will love of God and neighbour.

Hare argues for a Reformed reading of Kant's autonomy of the will, not in the sense of the rational moral agent creating the moral law, but in the sense of the Christian acting moral agent, by God's grace, willing the God-created moral law as his own; such willing, Hare calls autonomous submission. This study agrees that Hare is correct in saying that for the moral law to become meaningful, the acting moral agent must will to make the moral law his own. The same applies to the Constitution. If the Constitution is to be

something meaningful and not remain a dead letter, the acting moral agent must will that law to be his own. In short, the Christian acting moral agent must willingly take ownership of the moral law written in the heart and expounded in Scripture, and take ownership of the Constitution and its expression in statute law. From the Reformed perspective, under the conditions of common grace, acting moral agents will the Constitution as their own, not by an autonomous act of the will, but by an autonomous submission of the will to the Constitution.

Hare's theory of autonomous submission of man's will to God's will as expressed in the universal moral law and Scripture, was useful in affirming that the acting moral agent is, under the conditions of sin and grace, capable of making free moral choices, be they in the face of moral dilemmas arising from imperatives of the Gospel, or legal dilemmas arising from imperatives of the Constitution, or both. A comparative study of the Reformed doctrine of the bondage of the will, and Hare's hypothesis of autonomous submission of the will in relation to imperatives of the Gospel and imperatives of the Constitution regarding the right to life, or indeed any other ethical issue, suggests itself as a useful contribution to the body of Reformed ethics.

This study affirmed that Christian moral norms, understood here as imperatives of the Gospel, are universally valid but not absolutely valid in the sense that they allow no exception and therefore must be followed blindly. Gospel imperatives are not absolutely valid, because moral choice is not exclusively concerned with good and evil, but good and good, and evil and evil, and one can never say *tout court* that a particular action must always, or must never be preferred. Gospel imperatives, moreover, without compromising their universal validity and reach, are bound by sanction of law to accommodate Constitutional imperatives that may or may not harmonise with Gospel imperatives.

Moral relativism as a valid approach to moral dilemmas was rejected on the grounds of the inherent flaw in its own premise which states that all opinions are valid and ultimately nothing is really right or wrong. If all opinions are valid and nothing is really right or wrong, then, essentially, moral relativism can offer no relevant critique of ethical theories, including its own, and therefore, can propose no meaningful moral norms. It can be inferred from this premise that the absolute moral agent is incapable of generating moral imperatives of a universal nature. All moral imperatives deduced from the ethical theories of moral relativism are *ipso facto* general in character and specific only to the moral dilemma in hand.

This Reformed fundamental distinction between Gospel imperatives that are universal in nature and reach, and secular moral imperatives that are general in nature and reach, was demonstrated by unresolved differences of Christian and constitutional opinions on, and approaches to, the right to life of the unborn child, and HIV/Aids prevention. This study did not seek to resolve the differences; it only enunciated and considered them. Indeed, given that the Reformed theological and ethical tradition is in duty bound to adhere to the will of God revealed in Scripture, it appears to this study, with respect to abortion, that until constitutional jurisprudence recognises the Christian perspective of the right to life of

the unborn child, and incorporates this view in its rulings, the *status quo* will pertain. With respect to HIV/Aids prevention, it is reasonable to hope that an evolving constitutional jurisprudence which recognises that legal personality commences at conception will influence the application of the constitutional right to health care.

The priority of Gospel imperatives over constitutional imperatives was affirmed on ontological grounds. From a Christian ethical perspective, the source of Gospel imperatives is God absolutely sovereign, and the source of constitutional imperatives is man the autonomous rational being. This does not at all imply that Christians can ignore constitutional imperatives, but that they must live out the Gospel imperatives, *inter alia* the selected evangelical imperatives of this study within constitutional parameters.

The issue of the constitutional right to life begged the question of the nature of a right *per se*. This study accepted the premise that duties establish rights. This principle is true from the Reformed perspective that affirms that rights are derived from God-given obligations, and true from a constitutional perspective that affirms rights are derived from the obligations entailed in the inherent status of being human *per se*. The inference drawn from this premise is that rights, be they God-given or derived from a person's human status, imply obligations to the other. These obligations towards others are imperative. Obligations towards others in turn begged the question, who is the other, or from a Christian perspective, who is my neighbour.

From a constitutional perspective, the right to life, which in South Africa is an unqualified right, does not extend to another who is a child *in utero*. The current constitutional position on the status of the unborn child is that life *in utero* is indeed human life, but it does not follow, as stated in the case of *Christian Lawyers Association and Others v Minister of Health and Others* 1998, that such human life is worthy of the same legal protection as the life of everyone else. Paradoxically, this statement itself is unqualified, as the judgement gives no reason for its assertion. Though the constitutional perspective is deeply unsatisfactory from a Reformed ethical perspective, legal recognition that the unborn life is indeed human life and not merely potential human life, allows for the possibility that courts in the future may develop this ruling in favour of the right to life of the unborn child. This slim hope, although not developed by this study, was at least incorporated into its overarching argument that all human life from conception to death ought to be a rights holder of the constitutional unqualified right to life.

Further study could be profitably undertaken from within the Reformed theoretical ethical framework on the current constitutional denial of the right to legal protection of unborn human life. Apart from taking cognisance of the Christian perspective on the right to life, such a study ought to make reference to evolving international *opinio juris*, notably the Congress of the United States' Unborn Victims of Violence Act 2004. This Act recognises the legal personality of the child *in utero*, at all stages of biological development, with respect to acts of violence against the unborn child consequent upon acts of violence

against the mother, but not with respect to the act of legal abortion. A proposed central theoretical argument for such a study may be formulated as follows.

The constitutional provision that customary international law is law in the Republic unless inconsistent with the Constitution or an Act of Parliament notwithstanding; the constitutional duty of South African courts to heed international *opinio juris* implies that the South African Constitutional Court must heed the Congress of the United States' Unborn Victims of Violence Act 2004, and grant legal personality to human life *in utero* in order to protect that human life from legal termination of pregnancy which is a wilful act of violence against the person of the unborn child.

Additional consideration of the unqualified constitutional right to life, showed this right to be inseparably linked to the constitutional right to the promotion and protection of human dignity. An opinion in *S v Makwanyane and Another* 1995, a case that dealt with the constitutionality of the death penalty in South Africa, affirmed that the constitutional right to life and the constitutional right to the promotion and protection of human dignity are the two rights to be valued above all other constitutional rights. This prized concept of human dignity is abstract, but the courts, in the application of promotion and protection of human dignity, give meaning to the constitutional right to human dignity. From a Reformed ethical perspective, the unborn child's God-given dignity inherent in its status as *imago Dei* has the right to constitutional promotion and protection through the courts' application of this right in its favour.

The result of this study's reflection upon human dignity transformed its perception of the constitutional unqualified right to life into one of the constitutional unqualified right to a dignified human life, albeit not so formulated in the Constitution. This developed awareness was incorporated into this study's reflection upon Gospel imperatives in general, and selected Gospel imperatives with respect to the right to life of the unborn child. The conclusion drawn was that not only is abortion so obviously a denial of the unborn child's right to a dignified human life, but neglect of HIV/Aids prevention by individuals and responsible government departments is a violation of the unborn child's right to a dignified human life. Disciples of Christ, in giving meaning to the Gospel imperatives, in this case, "Follow me", "Love God, and your neighbour as yourself" and "Take up your cross", have the God-given task to actualize the promotion and protection of the divine and constitutional right to a dignified human life within the parameters of the Constitution. This study is a contribution to this task of discipleship.

In evaluating and formulating a Christian ethical response to the issues of abortion and HIV/Aids prevention in the Republic of South Africa, the question of the authoritative status of views expressed by Reformed theologians and ethicists became crucial to the authority itself of this evaluation and proposed response to the issues of this study. At least it became crucial to this Roman mind that must apply itself to the tasks of evaluating and formulating a response to the issues of this study from within the Reformed ethical and theological tradition. The anticipated danger was that the flaw inherent in moral relativism may be paralleled here, namely; all Reformed ethical and theological opinions are valid expressions of the matrix of *sola scriptura*, the individual believer, and the action of the Holy Spirit within

and upon that believer; therefore, all opinions are valid Reformed opinions. The question arises in this Roman mind as to how one verifies that this is indeed the case that all opinions are valid Reformed opinions, if indeed they are.

It may be that Reformed Churches and their members simply live with this paradox, and a Reformed ethicist would resolve the issue of authorities in this study by selecting sources that agree with, or come close to, his personal theological and ethical opinion on the matter in hand, and ignore or deny other Reformed opinions. This study used a classic Roman solution to the matter of authority by trawling the authoritative current edition of the *Kerkordeboekie van die Gereformeerde Kerke in Suid-Afrika* for authoritative ethical and theological authorities. Such a solution is satisfactory for present needs, but this study is of the opinion that a Reformed answer to the matter of authorities is required to satisfy Roman curiosity.

It would be an act of ecumenical significance if a study were undertaken from within the Reformed tradition with the aim of explaining to the Roman mind how and why the same Holy Spirit says one thing to one theologian and ethicist, and to another, something different, and yet both views may be deemed valid Reformed formulations. It would be too simplistic if a Reformed reply were to the effect that such an enquiry constitutes a trespass on the mind of God, and to leave the matter at that. A comparative study of Reformed Church Order and Roman Magisterium with a central theoretical argument based on Jesus' reply to Nicodemus that affirms plurality in truth suggests itself, "The wind blows where it chooses, and you hear the sound of it, but you do not know where it comes from or where it goes. So it is with everyone who is born of the Spirit" (Jn 3:8). A study that attempts to delineate the parameters of a *behoudende Gereformeerde pad* for other Churches should be helpful to the Reformed Churches themselves in considering the nature of such a path.

The classic Calvinist view on ensoulment from the moment of conception affirms the value of human life from in its very first stages. From the Reformed ethical perspective, human life *in utero* is the life of a person from the moment of conception, not the life of a potential person at some later stage of gestation, animation for example. Such life was considered worthy of the same degree of protection as the mother's life, and, from a Christian ethical perspective, the closer to the point of conception, the greater claim of that life to protection. This principle of proportional protection of life in inverse ratio to lifespan contrasts with the secular view that the more developed human life is from the moment of conception, the greater its claim to protection. This at least is the case until physical and mental decay occurs in the closing stages of life, or earlier if for example quality of life is judged from within a utilitarian theoretical ethical framework.

Conflicting views on the Christian and secular values of life led to a consideration of the implications of the Choice on Termination of Pregnancy Act 1996, and freedom of conscience of medical and clinical nursing practitioners not to participate in abortion procedures. It was concluded that in principle, medical,

nursing and ancillary personnel may opt out of abortion procedures. In practice, however, as the case of *Charles and Others v Gauteng Department of Health and Others 2007* illustrates, this principle has yet to be affirmed in law, as the case continues to date before the Council for Conciliation Mediation and Arbitration. The principle of freedom of conscience with respect to voluntary non-participation of health employees in abortion services is one the Reformed Churches need to attend to, as a decision in favour of the Gauteng Health Department could reasonably be supposed to extend to other issues of the right to life, for example, eugenics and euthanasia, which from a Christian ethical perspective are a denial of the God-given and constitutional right to a dignified human life.

Finally, selected Gospel imperatives formed the parameters for an evaluation and response to the issues of the right to life, abortion and HIV/Aids prevention. The ethical implications of these imperatives, "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross", for Christ's disciples were reflected upon from the double perspective of the individual disciple and the collective of Christ's disciples, his Body that is his Church.

The call to discipleship, "Follow me", is essentially a call to fellowship with Christ and his disciples, who with Christ as its head form the Church here on earth. It is within the Church, Christ's Body, that individuals are called to live out their commitment to Christ by proclaiming his Gospel of the Kingdom of God in word and deed. In the context of this study this means that the obligation on Christ's disciples is to respond to the issues of abortion and HIV/Aids. From a Christian perspective, these vital issues are an opportunity to witness to Christ and his Gospel in the face of the current constitutional perspective on the right to life, abortion, and HIV/Aids prevention, the theory and praxis of which are a counter-witness to Christ and his Gospel.

The Christian response to these ethical issues, therefore, is not made on an individual disciple's *ad hoc* initiative, but with Christ in fellowship with his disciples, in other words, within the Church. In the light of this, discipleship was considered from the point of view of both a call to office in the Church and a general call to discipleship. Discipleship, exercised as an office, is a ministry of service to the community to strengthen the Body of Christ for mission. This study concluded that the appropriate model of the Church to engage with the issues of abortion, HIV/Aids, and other ethical issues facing South Africa today, is a combination of two models of Church that may be termed the Institutional Servant Church.

The basis for this model is the Institutional Church that over centuries has proved durable and is indispensable from an organisational point of view. Its weakness, however, is that it is open to institutionalism defined as the priority of the institution itself over the preaching of Christ and his Gospel. The other model is the Servant Church with its focus on active proclamation of Christ and his Gospel, but which is open to the danger of identifying itself with programmatic theologies to the detriment of organisation and order in the Church; hence the necessity of this combination of models of the Church.

Where the model of Institutional Servant Church is adopted, disciples in service leadership have the task, by God's grace, to strengthen their communities for service of God and neighbour after the example of Christ's service set forth in Philippians 2:1-11, which is an attitude of self-emptying and reliance on God the Father. After establishing criteria for the model of the Institutional Servant Church, a comparative study of Synods and *klassisse* documents and *Gemeente* praxis would initially indicate the extent to which Reformed Churches live out of this model with respect to the issues of abortion and HIV/Aids prevention, and indeed other ethical issues affecting life in this South African liberal democracy. Further study may be made on the basis of this initial research in cases where Churches wish to deepen their actualization of Gospel imperatives within an Institutional Servant Church.

It was affirmed that Christ's call to discipleship entails being where Christ is and doing the things of Christ. Discipleship entails being present within the framework of the Constitution wherein the legal and ethical issues of abortion and HIV/Aids prevention reside, and wherein the Gospel imperative, "Love God, and your neighbour as yourself" is actualized by individual disciples and by Christ's disciples as the Church. In formulating a Christian response to these issues, the imperative "Love God, and your neighbour as yourself" was considered primarily, but not exclusively, from the perspective of the collective of disciples that is the Church.

The Choice on Termination of Pregnancy Amendment Bill recently passed by Parliament is illustrative of an area of possible ecumenical cooperation at national level, particularly between leaders of the Reformed Churches and the Roman Catholic Church. Such cooperation is possible due to considerable agreement on the issues of the right to life and abortion between the Churches. Church leaders may profitably *jointly* bring to the attention of Parliament and parliamentarians not only their Christian ethical perspective, but the implications of the legal personality of the unborn child in the two-victim thesis in the United States' Unborn Victims of Violence Act 2004, for example. There exists at present no specifically formal Reformed-Roman co-ordinating structure dedicated to ethical issues of the right to life affecting the liberal democracy of South Africa. Why should this be so? This question should at least be considered by leaders of these Churches in the interests of common actualization of Christ's imperative, "Love God, and your neighbour as yourself".

Reformed and Roman Catholic Churches may also cooperate in actualizing the imperative to "Love God, and your neighbour as yourself" at *gemeente* and parish level through active collaboration in alleviating the present effects of HIV/Aids, participation in preventive education, and by responding in charity to those affected by the issue of abortion. It was suggested that the Roman diocesan system of accountable governance that reaches down to parish level ensures, in principle at least that the Diocesan Church's response to ethical and social issues is implemented at the local level. This may provide a platform for *gemeente* and parish cooperation. It was also suggested that the Reformed principle of autonomous *gemeente* may constrain the Reformed Churches in their collective response to these ethical issues in question. If and when active interest arises in formal Reformed-Roman

cooperation on ethical issues, the assumption that the principle of autonomous *Gemeente* is a constraint on collective actualization of Gospel imperatives ought to be researched.

The Gospel imperative, "Take up your cross" was considered from the perspective of witness to Christ, and suffering as Christ suffered. Taking up one's cross implies dying to self. In the context of abortion, if taking up one's cross means anything in terms of suffering with and witness to Christ, it means dying to self so that the other, the unborn child, may not die. This moral dilemma unambiguously illustrates the nature and reach of the three selected Gospel imperatives. For abortion is always a choice between life and death. In its most obvious sense abortion is always a choice between the life and death of the unborn child. In another sense abortion is a choice between the life and death of the mother, rarely in the literal sense in case of medical grounds, but commonly in the metaphorical sense. Moral choices between dying and living to self present themselves *inter alia* in the guise of psychological, eugenic, ethical, and social imperatives. The current constitutional perspective on abortion favours living to self at the expense of the unborn child. A Christian ethical perspective favours dying to self in the face of psychological, eugenic, ethical and social imperatives, and in the case of medical imperatives propose the choice between literally dying and living to self. Given the standard of medical care in South Africa, it is reasonable to suppose that such cases endangering the life of the mother are rare.

In *rare* cases of medical necessity, where danger to the mother's life can be empirically verified, or danger to life ascertained on psychological grounds, the Reformed ethical tradition permits exceptions to the prohibition on abortion. What are the implications of this exception for disciples bearing the cross of Christ as a witness to Christ's suffering and his victory over death, and for the individual disciple's willingness to bear Christ's cross of personal suffering? Recognising that a medical case threatening the life of the mother is admittedly a hard case, this study criticised this exception on the grounds that it does not accord with the principle of a consistent ethic of life. What does it mean to follow Christ, to love God, and one's neighbour as oneself, and take up one's cross, if the acting moral agent in the face of cases such as the above chooses not to maintain the imperative God-given right to life of the unborn child? In short, when is a Gospel imperative not a Gospel imperative?

It is reasonable that the mother of a family, in the face of the Gospel and constitutional imperatives involving the choice between the life of the mother and that of her unborn child, and the lives of her family to whom she also has an obligation, should consider her obligations towards her family in the face of the option of abortion on medical and/or psychological grounds. But, as this study maintains, such a choice between the life of the mother, the life of the unborn child, and the lives of other family members, cannot be made on the grounds that the God-given life of the mother as *imago Dei* is inherently more valuable than the God-given life of the unborn child as *imago Dei*, for from a Reformed theological and ethical perspective, one life is not more valuable than the other. A comparative study between the Reformed permission of *rare* exceptions to the prohibition on abortion and the principle of a consistent ethic of life suggest itself.

With respect to the constitutional perspective on HIV/Aids prevention, it was asserted that Departments of Health take a cost-effective approach to this issue. From the point of view of finite financial, material, and human resources this is a legitimate approach, about which little if anything can be done except to plead actively the case for a larger share of government resources. This pleading poses a moral dilemma for Christians actualizing the imperative of taking up one's cross of suffering. Should Christ's disciples in fact in the face of legitimate competing health care demands apply for resources for HIV/Aids treatment and prevention that are adequate to their needs? Or should they remain content with incremental but inadequate financial, material, and human funding for the present, and die to themselves every day, even if ultimately this means death itself?

Churches ought not to give definitive direction to individual Christians facing this moral dilemma; the individuals involved know their own needs. But Churches can lighten the weight of Christ's cross through prayerful contemplation of Scripture and the requirements of the virtues of wisdom, temperance, prudence and fortitude, as they remain in solidarity with those afflicted by this pandemic. Churches, of course, ought never to cease reminding governments of the constitutional imperative of health care, lest governments ignore or neglect their duty of care. Such lobbying ought to be a field of inter-Church endeavour, and the Reformed and Roman Churches should consider this means of strengthening witness to Christ who is God's victory over suffering and death. Further research suggests itself in order to ascertain the feasibility of this proposal.

The Christian ethical perspective on HIV/Aids prevention is necessarily that of Christ. This study proposed that HIV/Aids with its accompanying stigma and exclusion by society from society, is the contemporary scriptural parallel to leprosy (Hansen's Disease). Christ's attitude which must be that of individual disciples and of the Church as a whole is one of healing, acceptance, and reintegration into society. The imperative, "Follow me", and discipleship considered in its dimension of service leadership in the Church, ought not only to concern itself at national level with promoting HIV/Aids prevention, but also strengthen those of Christ's disciples with appropriate skills *inter alia* medical and social. These in their turn may strengthen other disciples in their Churches so they may actualise Christ's call to discipleship by their concern for those affected by the HIV/Aids pandemic in actualising love of God, and their neighbour as themselves. Here, again, inter-Church cooperation suggests itself.

Lastly, the Gospel imperative, "Take up your cross" was discussed in terms of the efficacy of the disciples' personal witness of dying to self in Christ within personal relationships, and the moral dilemmas this poses for those autonomous rational moral agents whose moral norms are derived from the secular ethical imperative which is essentially one of living to self. From the Christian ethical perspective, marriage is the exclusive locus for sexual relations. Maintaining this exclusive relationship, even at some cost, poses moral dilemmas to those who promiscuously open themselves and others to the risk of HIV infection. Christ's disciples should not underestimate the witness of fidelity in Christian marriage as an effective means of HIV/Aids prevention.

The stigma attached to HIV/Aids raises the moral issue of disclosure or non-disclosure of one's HIV status. For some, the constitutional right to privacy overrides the common good of society. In this case, non-disclosure of one's HIV status is normative, while on the other hand, a case for protection of the common good may be made for HIV becoming a notifiable disease. The Christian ethical perspective does not definitively pronounce in favour of disclosure or non-disclosure. Imperatives of the Gospel, however, in this case "Follow me", "Love God, and your neighbour as yourself", and "Take up your cross", indicate that the disciple as *imago Dei* with inherent God-given dignity, has the imperative duty to fellow bearers of God's image and God-given dignity, to inform those whom it is necessary to inform of his or her HIV status. From a Christian ethical perspective, disclosure of one's HIV status, positive or negative, promotes and protects the God-given and constitutional right to life from conception to death, as well as promoting HIV/Aids prevention.

In sum, this study of imperatives of the Gospel and imperatives of the South African Constitution regarding the right to life, affirms the interrelationship of Gospel and constitutional imperatives in so far as the Constitution is the framework in which Christ's disciples live out the imperatives of Christ and his Gospel, which being universal in nature and reach, have priority over Constitutional imperatives that are general in nature and reach. In the face of moral dilemmas, the application of constitutional moral norms and Gospel moral norms derived from their respective ethical theories may indicate a resolution of moral dilemmas in ways that are ethically irreconcilable. From a Christian ethical perspective, this does not mean disengagement from dialogue with those opposed or indifferent to a Christian ethical resolution of society's problems. It is a cause for hope that neither the Constitution nor Christ's disciples are content to leave resolution of South Africa's social ills as an optional task, but declare through actualization of the God-given and constitutional right to life that legal and ethical resolutions of the issues of abortion and HIV/Aids prevention are imperative.

**APPENDIX A**
**Actuarial Society of South Africa (ASSA)**
**HIV/Aids Projection Model 2003**

<b>National</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
The flow items in the following table refers to the standard calendar year (1 Jan to 31 Dec and NOT to the model projection year (1 July to 30 June)									
<b>Numbers (total and infected)</b>									
Total population	44871939	45504436	46086931	46608823	47071290	47486216	47866984	48218209	48545698
Total HIV infections	3559585	4024100	4419443	4741791	4997457	5203773	5372476	5511751	5628474
Total births	1129810	1127128	1122120	1115423	1107655	1099592	1091710	1084151	1076967
Births infected perinatally	46831	48849	45524	42994	39699	38106	38429	38592	38638
Babies newly infected by mother's milk	28518	30722	30666	29171	27494	26011	25624	25786	25856
<b>AIDS sick</b>									
Total AIDS sick (in the middle of year)	182823	253502	333807	418592	503725	554629	599298	633931	659637
<b>Deaths:</b>									
Non-AIDS deaths (in the year starting 1 July)	377113	377271	381010	384324	387210	389753	392053	394197	396277
AIDS deaths (in the year starting 1 July)	147525	191589	237435	282348	315870	336901	354379	367000	374655
Accumulated Aids Deaths (to middle of the year)	302790	450315	641904	879339	1161686	1477556	1814457	2168836	2535836
<b>Prevalence rates</b>									
Antenatal clinics	22.3%	24.1%	25.5%	26.5%	27.3%	27.9%	28.3%	28.7%	28.9%
Women aged 15 - 49	15.2%	16.7%	18.1%	19.1%	20.0%	20.7%	21.2%	21.6%	22.0%
Men aged 15 - 49	12.2%	13.4%	14.2%	14.7%	15.0%	15.2%	15.4%	15.4%	15.5%
Adults aged 15 - 49	13.7%	15.1%	16.2%	17.0%	17.6%	18.0%	18.3%	18.6%	18.8%
Adult women (ages 20 - 64)	14.5%	16.0%	17.4%	18.4%	19.3%	19.9%	20.4%	20.8%	21.1%
Adult men (ages 20 - 64)	13.8%	15.2%	16.2%	17.0%	17.4%	17.7%	17.8%	17.9%	17.9%
Adults (ages 20 - 64)	14.2%	15.6%	16.8%	17.7%	18.4%	18.8%	19.2%	19.4%	19.6%
Total population	7.9%	8.8%	9.6%	10.2%	10.6%	11.0%	11.2%	11.4%	11.6%
<b>Incidence rates</b>									
Total population	1.5%	1.4%	1.4%	1.3%	1.3%	1.3%	1.2%	1.2%	1.2%
Total new infections	621415	600940	578065	559688	546473	531935	521607	512931	505046

**APPENDIX A**

Actuarial Society of South Africa (ASSA)

HIV/Aids Projection Model 2003

<b>National</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
The flow items in the following table refers to the standard calendar year (1 Jan to 31 Dec and NOT to the model projection year (1 July to 30 June)							
<b>Numbers (total and infected)</b>							
Total population	48855213	49147177	49418610	49670161	49904215	50123162	50328900
Total HIV infections	5728712	5813089	5880199	5932129	5972018	6002970	6027509
Total births	1070153	1063567	1057049	1051080	1045462	1039985	1034556
Births infected perinatally	38606	38504	38340	38130	37897	37655	37416
Babies newly infected by mother's milk	25861	25816	25727	25602	25454	25295	25134
<b>AIDS sick</b>							
Total AIDS sick (in the middle of year)	676058	701508	727616	750838	770018	785219	797003
<b>Deaths:</b>							
Non-AIDS deaths (in the year starting 1 July)	398355	400448	402552	404689	406874	409114	411416
AIDS deaths (in the year starting 1 July)	382521	393777	404587	413635	420680	425970	429862
Accumulated Aids Deaths (to middle of the year)	2910491	3293012	3686790	4091377	4505012	4925692	5351662
<b>Prevalence rates</b>							
Antenatal clinics	29.1%	29.2%	29.3%	29.3%	29.2%	29.2%	29.1%
Women aged 15 - 49	22.2%	22.4%	22.5%	22.5%	22.5%	22.5%	22.5%
Men aged 15 - 49	15.5%	15.6%	15.7%	15.7%	15.7%	15.8%	15.8%
Adults aged 15 - 49	18.9%	19.0%	19.1%	19.1%	19.1%	19.1%	19.2%
Adult women (ages 20 - 64)	21.3%	21.5%	21.6%	21.6%	21.6%	21.5%	21.4%
Adult men (ages 20 - 64)	17.9%	17.9%	17.9%	17.8%	17.8%	17.8%	17.7%
Adults (ages 20 - 64)	19.7%	19.7%	19.8%	19.8%	19.7%	19.7%	19.6%
Total population	11.7%	11.8%	11.9%	11.9%	12.0%	12.0%	12.0%
<b>Incidence rates</b>							
Total population	1.2%	1.1%	1.1%	1.1%	1.1%	1.1%	1.1%
Total new infections	497756	492244	488186	485346	483480	482285	481471

<b>APPENDIX A</b>	<b>Actuarial Society of South Africa (ASSA)</b>					<b>HIV/Aids Projection Model 2003</b>				
<b>National</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	
<b>Mortality statistics</b>										
Life expectancy at birth	56.2	54.9	53.5	52.2	51.4	51.0	50.7	50.5	50.5	
<b>Maternal orphan statistics</b>										
Total orphans (in middle of year)	739054	819651	922786	1051849	1203969	1371626	1542201	1708032	1862671	
Total AIDS orphans (in middle of year)	158073	240533	349506	486940	650736	832246	1018548	1201675	1374883	
<b>Staging</b>										
Pre-AIDS	3376762	3767835	4076157	4302039	4455024	4548084	4588562	4589436	4561668	
Untreated AIDS	182823	252580	330647	411539	490822	520942	537759	537803	523914	
On ART	0	3424	11700	26020	47434	123990	225775	351489	494731	
Discontinued ART	0	260	939	2194	4177	10757	20379	33022	48161	
<b>Numbers (total and infected)</b>										
Total population	44871939	45504436	46086931	46608823	47071290	47486216	47866984	48218209	48545698	
Total HIV infections	3559585	4024100	4419443	4741791	4997457	5203773	5372476	5511751	5628474	
Total births	1134620	1128469	1124624	1118771	1111539	1103623	1095651	1087930	1080559	
Births infected perinatally	44559	47840	47187	44259	41346	38903	38268	38510	38615	
Babies newly infected by mother's milk	26859	29620	30694	29919	28333	26752	25817	25705	25821	
<b>AIDS sick</b>										
Total AIDS sick (in the middle of year)	182823	253502	333807	418592	503725	554629	599298	633931	659637	
<b>Deaths:</b>										
Non-AIDS deaths	382158	377192	379140	382667	385767	388481	390903	393125	395237	
AIDS deaths	127848	169557	214512	259891	299109	326386	345640	360689	370828	
Accumulated Aids Deaths (to middle of the year)	302790	450315	641904	879339	1161686	1477556	1814457	2168836	2535836	

<b>APPENDIX A</b>	<b>Actuarial Society of South Africa (ASSA)</b>					<b>HIV/Aids Projection Model 2003</b>	
<b>National</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Mortality statistics</b>							
Life expectancy at birth	50.5	50.4	50.3	50.2	50.2	50.2	50.3
<b>Maternal orphan statistics</b>							
Total orphans (in middle of year)	2001479	2123286	2229985	2322158	2400101	2464127	2513100
Total AIDS orphans (in middle of year)	1532991	1674359	1800456	1911406	2007063	2087368	2151616
<b>Staging</b>							
Pre-AIDS	4514793	4456834	4395365	4335831	4281649	4234516	4194850
Untreated AIDS	496770	483259	475210	469018	463234	457473	451784
On ART	651769	791001	912219	1015994	1103596	1176775	1237467
Discontinued ART	65381	81996	97405	111286	123539	134205	143407
<b>Numbers (total and infected)</b>							
Total population	48855213	49147177	49418610	49670161	49904215	50123162	50328900
Total HIV infections	5728712	5813089	5880199	5932129	5972018	6002970	6027509
Total births	1073560	1066860	1060308	1054064	1048271	1042724	1037271
Births infected perinatally	38622	38555	38422	38235	38014	37776	37536
Babies newly infected by mother's milk	25859	25839	25772	25664	25528	25374	25214
<b>AIDS sick</b>							
Total AIDS sick (in the middle of year)	676058	701508	727616	750838	770018	785219	797003
<b>Deaths:</b>							
Non-AIDS deaths	397316	399402	401500	403620	405781	407994	410265
AIDS deaths	378588	388149	399182	409111	417158	423325	427916
Accumulated Aids Deaths (to middle of the year)	2910491	3293012	3686790	4091377	4505012	4925692	5351662

<b>APPENDIX A</b>	<b>Actuarial Society of South Africa (ASSA)</b>					<b>HIV/Aids Projection Model 2003</b>				
<b>National</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	
<b>Prevalence rates</b>										
Antenatal clinics	22.3%	24.1%	25.5%	26.5%	27.3%	27.9%	28.3%	28.7%	28.9%	
Women aged 15 - 49	15.2%	16.7%	18.1%	19.1%	20.0%	20.7%	21.2%	21.6%	22.0%	
Men aged 15 - 49	12.2%	13.4%	14.2%	14.7%	15.0%	15.2%	15.4%	15.4%	15.5%	
Adults aged 15 - 49	13.7%	15.1%	16.2%	17.0%	17.6%	18.0%	18.3%	18.6%	18.8%	
Adult women (ages 20 - 64)	14.5%	16.0%	17.4%	18.4%	19.3%	19.9%	20.4%	20.8%	21.1%	
Adult men (ages 20 - 64)	13.8%	15.2%	16.2%	17.0%	17.4%	17.7%	17.8%	17.9%	17.9%	
	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	
Adults (ages 20 - 64)	14.2%	15.6%	16.8%	17.7%	18.4%	18.8%	19.2%	19.4%	19.6%	
Total population	7.9%	8.8%	9.6%	10.2%	10.6%	11.0%	11.2%	11.4%	11.6%	
<b>Incidence rates</b>										
Total population	1.5%	1.5%	1.4%	1.4%	1.3%	1.3%	1.2%	1.2%	1.2%	
Total new infections	630540	611178	589503	568877	553081	539204	526771	517269	508989	
<b>Mortality statistics</b>										
Life expectancy at birth	56.7	55.5	54.2	52.8	51.8	51.2	50.8	50.6	50.5	
<b>Maternal orphan statistics</b>										
Total orphans (in middle of year)	739054	819651	922786	1051849	1203969	1371626	1542201	1708032	1862671	
Total AIDS orphans (in middle of year)	158073	240533	349506	486940	650736	832246	1018548	1201675	1374883	
<b>Staging</b>										
Pre-AIDS	3376762	3767835	4076157	4302039	4455024	4548084	4588562	4589436	4561668	
Untreated AIDS	182823	252580	330647	411539	490822	520942	537759	537803	523914	
On ART	0	3424	11700	26020	47434	123990	225775	351489	494731	
Discontinued ART	0	260	939	2194	4177	10757	20379	33022	48161	

**APPENDIX A**

Actuarial Society of South Africa (ASSA)

HIV/Aids Projection Model 2003

<b>National</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Prevalence rates</b>							
Antenatal clinics	29.1%	29.2%	29.3%	29.3%	29.2%	29.2%	29.1%
Women aged 15 - 49	22.2%	22.4%	22.5%	22.5%	22.5%	22.5%	22.5%
Men aged 15 - 49	15.5%	15.6%	15.7%	15.7%	15.7%	15.8%	15.8%
Adults aged 15 - 49	18.9%	19.0%	19.1%	19.1%	19.1%	19.1%	19.2%
Adult women (ages 20 - 64)	21.3%	21.5%	21.6%	21.6%	21.6%	21.5%	21.4%
Adult men (ages 20 - 64)	17.9%	17.9%	17.9%	17.8%	17.8%	17.8%	17.7%
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Adults (ages 20 - 64)	19.7%	19.7%	19.8%	19.8%	19.7%	19.7%	19.6%
Total population	11.7%	11.8%	11.9%	11.9%	12.0%	12.0%	12.0%
<b>Incidence rates</b>							
Total population	1.2%	1.1%	1.1%	1.1%	1.1%	1.1%	1.1%
Total new infections	501401	495000	490215	486766	484413	482882	481878
<b>Mortality statistics</b>							
Life expectancy at birth	50.5	50.4	50.3	50.2	50.2	50.2	50.2
<b>Maternal orphan statistics</b>							
Total orphans (in middle of year)	2001479	2123286	2229985	2322158	2400101	2464127	2513100
Total AIDS orphans (in middle of year)	1532991	1674359	1800456	1911406	2007063	2087368	2151616
<b>Staging</b>							
Pre-AIDS	4514793	4456834	4395365	4335831	4281649	4234516	4194850
Untreated AIDS	496770	483259	475210	469018	463234	457473	451784
On ART	651769	791001	912219	1015994	1103596	1176775	1237467
Discontinued ART	65381	81996	97405	111286	123539	134205	143407

**South Africa: abortions and live births by province, 1997-2002**

Compiled by Wm. Robert Johnston

**Reported abortions by province, 1997-2005**

Province	1997	1998	1999	2000	2001	2002	2003	2004	2005
Eastern Cape	2,693	2,932	3,030	3,265	4,671	5,814	6,819	6,210	2,347
Free State	2,534	3,636	4,058	5,843	4,758	3,109	4,158	8,161	2,438
Gauteng	13,505	19,417	19,298	17,408	20,321	18,227	29,021	37,806	12,341
KwaZulu-Nata	1,259	4,564	6,900	7,288	7,533	9,592	11,015	8,224	
Limpopo	487	852	1,728	2,493	4,512	4,706	4,236	4,445	1,041
Mpumalanga	1,509	1,792	2,558	3,728	3,520	3,218	2,206	2,110	165
Northern Cape	435	530	610	615	716	910	779	1,408	473
North West	199	446	2,231	2,329	3,120	3,070	2,011	3,165	
Western Cape	3,780	5,008	5,775	6,721	8,300	10,065	10,513	11,157	1,703
<b>TOTAL</b>	<b>26,401</b>	<b>39,177</b>	<b>46,188</b>	<b>49,690</b>	<b>57,451</b>	<b>58,711</b>	<b>70,758</b>	<b>82,686</b>	<b>20,508</b>

Note: data for 1997, 2004, and 2005 is incomplete. Updated 25 August 2005.

## Reported live births by province, 1997-2004

Province	1997	1998	1999	2000	2001	2002	2003	2004
Eastern Cape	108,884	119,830	130,287	119,328	115,153	110,779	112,696	99,672
Free State	41,832	40,505	43,152	44,146	45,331	44,745	45,848	44,248
Gauteng	144,427	127,716	141,875	145,739	150,952	150,621	147,127	149,792
KwaZulu-Nata	176,362	190,652	209,511	207,442	202,664	199,295	171,410	135,469
Limpopo	93,217	101,263	105,733	99,591	99,223	93,086	93,198	91,314
Mpumalanga	56,145	58,109	61,563	62,348	61,915	57,909	59,585	53,715
Northern Cape	17,064	14,998	16,311	16,580	16,095	15,930	15,936	15,741
North West	54,694	55,859	61,164	62,004	61,593	58,968	60,541	55,640
Western Cape	82,990	71,852	79,377	80,251	81,769	80,330	78,201	80,969
<b>TOTAL</b>	<b>775,615</b>	<b>780,784</b>	<b>848,973</b>	<b>837,429</b>	<b>834,695</b>	<b>811,663</b>	<b>784,542</b>	<b>726,560</b>

Note: reporting for births is incomplete. Last updated 25 August 2005

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### Historical abortion statistics, South Africa

Compiled by Wm. Robert Johnston  
last updated 13 February 2007

Definition of table data (see notes after table for additional information):

- *Live births.*
- *Abortions, reported* includes legal reported induced abortions.
- *Abortions, residents, in country only* includes reported abortions obtained within the country by residents only.
- *Abortions, residents, obtained abroad* includes reported abortions by country residents obtained in other countries.
- *Abortions, residents, total* includes reported abortions by residents, obtained both within the country and abroad.
- *Fetal deaths* generally includes fetal deaths or stillbirths of at least 20 weeks' gestation.
- *Miscarriages* generally includes spontaneous fetal losses/ abortions, fetal deaths, or stillbirths, regardless of gestation period.
- *Abortion ratio* is abortions per 1000 live births.
- *Abortion %* is abortions as percentage of pregnancies (excluding fetal deaths/miscarriages).
- *Abortion rate* is abortions per 1000 women of childbearing age.

APPENDIX C

Year	Live births	Abortions, reported	Abortions, residents, in country only	Abortions, residents, obtained abroad	Abortions, residents, total	Miscarriages and abortions	Fetal deaths	Abortion ratio		Abortion %		Abortion rate, residents
								Residents, in/out of country	All in country	Residents, in/out of country	All in country	
1975		570	(570)		(570)							
1976		625	(625)		(625)							
1977		539	(539)		(539)							
1978		541	(541)		(541)							
1979		423	(423)		(423)							
1980		347	(347)		(347)	29979						
1981		381	(381)	511	(892)	33194						
1982		464	(464)	600	(1064)	35759						
1983		474	(474)	600	(1074)	32839						
1984		566	(566)	800	(1366)	29596						
1985		712	(712)	600	(1312)	32500						
1986		780	(780)	517	(1297)	36062						



2003	875748	71552	(71552)	10	(71562)			81.7	81.7	7.6	7.6	
2004	897514	87035	(87035)	5	(87040)			97.0	97.0	8.8	8.8	
2005	848043	85621	(85621)		(85621)			101.0	101.0	9.2	9.2	
2006												
Year	Live births	Abortions, reported	Abortions, residents, in country only	Abortions, residents, obtained abroad	Abortions, residents, total	Miscarriages and abortions	Fetal deaths	Abortion ratio		Abortion %		Abortion rate, residents
								Residents, in/out of country	All in country	Residents, in/out of country	All in country	

**Notes:**

- Parenthetical figures are estimates, some of which are derived from reported data.
- Abortion ratios, percentages, and rates may be based on a mix of data from different sources and thus may not represent a consistent time series.

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## APPENDIX D

### ***Die verklaring oor aborsie***

*Uitgereik deur die Stigting van Etiese Medisyne*

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1. God Drie-enig is die Skepper van hemel en aarde, en het die mens na sy beeld geskep. God het die mens uit stof geformeer en in die mens se neus die asem van die lewe geblaas. Sedertdien word elke mens deur God in die moederskoot gevorm soos Hy wil, wanneer Hy wil.
2. Die mens is in sy ontstaan, bestaan en voortbestaan, vanaf bevrugting, volkome afhanklik van God – ja, van elk asemteug is die mens van God afhanklik.
3. Geen mens mag 'n ander doodslaan nie (רצח), want die mens is die beelddraer van God (Gen 9:6), en elke ander mens is 'n uiting van ons eie vlees (Jes 58:7).
4. Aborsie is daarom 'n gruwel.
5. Indeen die voortsetting van swangerskap die afsterwing van die moeder sou veroorsaak mag 'n uitsondering gemaak word. In so 'n geval mag die swangerskap beëindig word al sou dit die afsterwing van die kind beteken. Slegs God is absoluut, daarom is die lewe van die mens nie absoluut nie, daarom mag die mens se lewe na inhoud geweeg word en nie net na moontlike duurte nie. Wanneer daar tussen die lewe van die moeder en die lewe van die kind gekies moet word, mag die lewe van die moeder bo die lewe van die kind gekies word.
6. Na die vitale indikasies vir aborsie bestaan geen ander uitsondering vir aborsie nie.
7. Die bevel van God geld vir alle mense, gelowiges sowel as ongelowiges. Ook in Noag, die vader van alle mense, ontvang ons die beval om nie die bloed van een mens te vergiet nie.

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