

# The Documents of the Papal Commission on Birth Control

241

by Michael Dummett

In the present crisis over *Humanae Vitae*, Catholic opinion may be roughly divided into three groups: those who believe that the Pope's pronouncement ought to be treated as definitive; those who already agreed with or have come to accept the Pope's decision, but deplore the process of disciplinary enforcement of it on the clergy now under way in some countries, including this one; and those who think that the decision was wrong and must be reversed. Presumably, however, there are few Catholics who would deny that the fact that the Pope chose to take this stance, and to promulgate his decision in so weighty a manner, ought to be weighed carefully by anyone concerned to have a true opinion on the matter. It is therefore of great importance to come to understand what may have led the Pope to his decision; and this can best be done by enquiring into the cogency of the three documents submitted to him by the Papal Commission.

The first of these documents, generally known as the 'majority report', presents arguments of a general moral and theological nature in favour of the view that the use of contraceptives is not in all cases morally impermissible. The second, the 'minority report', offers arguments to show that it would be impossible for the Church to reverse her traditional position and adopt that of the majority report. The third document, without advancing any position of its own on the substantive question, attempts to controvert the arguments of the minority report and show that it would be in principle possible for the Church to change the official line on contraception.

To the extent that the Pope was influenced by the Commission documents, he must have been most heavily influenced by the minority report. In this article, I shall therefore concentrate upon the arguments of the minority report, considering the majority report only so far as it says things which the minority is concerned directly to controvert.

The minority report does not attempt to present a plausible *a priori* case (I mean one appealing to purely moral reasoning) for considering contraception always and intrinsically wrong. Rather, it does two main things: (i) it makes heavy play with the fact that the weight of the Church's authority was for so long thrown behind this doctrine, and powerfully argues that to suppose the Church to have been in the past mistaken on this serious point is incompatible with what someone commits himself to believing about the Church by membership in it; and (ii) it makes much of the 'Where do we

draw the line?’ form of argument—if contraception is lawful, then perhaps so also are sterilization, abortion, sodomy, masturbation, fornication or even adultery.

### *The teaching authority of the Church*

The majority insists that no infallible decision has been given birth control, and argues plausibly that, while ‘in recent decades there has been an increasing tendency to consider the authentic non-infallible magisterium infallible in practice’, on the contrary ‘in reality it must be expected that the non-infallible magisterium is sometimes mistaken’. The minority report, on the other hand, dwells heavily upon the traumatic effect a decision in favour of contraception would have on trust in the teaching Church. It underlines two things: first, that there has been an unbroken tradition condemning contraception as unlawful, from the early centuries until now; and, secondly, that in recent times this teaching has been ‘forcefully proposed as necessarily to be followed in order to obtain eternal salvation’, and thus ‘furnished in the name of Jesus Christ to . . . many of the faithful . . . the occasion for formal sin and spiritual ruin’. There are traces here of a political argument, of the form ‘People would lose confidence in us if we admitted having been in the wrong’: thus ‘If the Church could err in such a way, the authority of the ordinary magisterium in moral matters would be thrown into question: the faithful could not put their trust in the magisterium’s presentation of moral teaching’, and ‘If the Church should now admit that the teaching passed on is no longer of value . . . it must be feared greatly that its authority in almost all moral and dogmatic matters will be seriously harmed’. Of course, if it is the case that the Catholic Church ‘forcefully proposed’ something erroneous, then it is of the utmost importance that it should be known that such a thing can, and did, happen. But for the most part the minority report admirably emphasizes, as central, the central question: Is it *true* that contraception is always seriously wrong?

For the most part, the minority report cites previous teaching as a ground for believing that that teaching must be true: to think that the Church could err so seriously would conflict with the faith we have in the Church. It brushes aside as pedantic quibbling arguments to show that no *infallible* declaration against the permissibility of contraception was ever made, and it thus in effect endorses the thesis that the majority rejects, that the non-infallible magisterium can, on occasion, be taken as ‘in practice infallible’.

The majority argues that, if a teaching is not irreformable, it is reformable; the minority declares that ‘to dispute in a subtle way whether the teaching is technically infallible . . . is empty-headed’, since ‘if this doctrine is not substantially true, the magisterium itself will seem to be empty and useless in any moral matter’. Which is right?

The minority is clearly right about this much: it is not a light matter. If the teaching was not true, then it is a scandalous thing that for so long Popes, members of the Holy Office, bishops, theologians, preachers, confessors and propagandists not only put it about that it was true, but asserted that they had the authority of the Church behind them in doing so; that countless thousands of people were told they were committing sin when they were not, and hence denied the sacraments or caused to fall away from the Church altogether; and countless other thousands induced to struggle to keep an unnecessary law, bringing in its train poverty, ill health, anxiety and frustration. The bland tones of the majority report are hopelessly inadequate to this situation. The minority quite rightly objects that no-one is going to be impressed by being told that a reversal of the former teaching 'does not contradict the genuine sense of the tradition'. If we seek a reason why the Pope should have rejected the majority report (and do not allow the guidance of the Holy Spirit or the truth of the traditionalist thesis as the explanation), then surely it is here: the majority report does not begin to look like a response to things as they are. If the majority had had the courage to say, 'We have decided, for this and this reason, that the traditional teaching was wrong; and it follows that, during this century, when the use of contraceptives was a pressing practical problem for so many, Popes and bishops and priests have, however sincerely, acted as blind leaders, laying on men burdens they were unable to bear; and we shall have to take the almost unprecedented step of confessing that this was so, if we are not to appear to the world as dealers in doubletalk', then at least the step they recommended would have looked like one it was possible to take.

The minority's argument is straightforward, and would surely be extremely compelling to any Catholic who (if there could be such a person) had no opinion about contraception one way or the other. It is that, even if no technically infallible decree had been made on the subject, still our faith in the Church makes it incredible that so many people should have been led so grievously astray, with the gravest ecclesiastical sanctions being imposed on those who did not accept the false teaching; especially since we cannot say that the climate of opinion prevented people from conceiving of the true alternative—there was the Anglican Church advancing just the very alternative now being proposed by the majority, while Catholic Cardinals were denouncing them for having abdicated the title of teachers of Christian morals. If the majority report was to be accepted it had to establish that such a thing was compatible with our faith in the Church; and it had also to recognize the consequences of admitting that it had in fact happened. For, once that had been admitted, radical consequences would have had to ensue: Popes and bishops could not simply have carried on as before. They would have had to offer some assurance to Catholic people that they would not be so

misled again: that no-one was going to proclaim as certainly part of Catholic teaching anything not quite certainly irreformable, or attempt to impose any such teaching by acts of authority. From such consequences, the majority simply averts its eyes. As to the proof that such erroneous teaching can occur, the majority offers a single example, that 'for many centuries . . . with the active concurrence of the Popes, it was all but unanimously taught that marital intercourse was illicit unless accompanied by the intention to procreate—or at least to offer an outlet to the other partner'. Frankly, this appears to me thin. It is probably true that that was indeed for long the general teaching: but how many of the married laity were aware of the fact, or took any notice of it when they were aware? Between a generalized intention to procreate (or at least accept what children the Lord sends), and a resigned realization that more children are likely is so narrow a line; the sin was held to be only venial, anyway: so I doubt very much whether this teaching had any very serious effect on anyone's lives—certainly not the overwhelming effect that the teaching on contraception has had on many.

I do not know of any strictly comparable case. Certainly the Church has frequently condoned or promoted the most terrible moral evils, under the impression that she was doing the work of Christ: the burnings of heretics and witches; the largely abominable Crusades; the rapacious imperialism of Spain and Portugal; the African slave trade, and the colonial institution of slavery; the persecution of the Jews; and, in our century, the mass destruction of civilians in war: all these things the Church has at least condoned by silence, and most of them has actively encouraged. Anyone who adheres to the Church, professing her to be the Church of Christ, has to square his faith with these facts, has to acknowledge that it is into the hands of men capable of incurring the guilt of such monstrous crimes, very often not recognizing them as crimes, that he has entrusted the preaching of his gospel and the administration of the means of salvation.

It would however be comforting to be able to draw the line between the area in which the Church can betray her master, and the area where she cannot fail, neatly between practice and theory; for example, to hold that those general principles of morality which the Church proclaims to be as such part of Christian teaching are guaranteed to be sound; and one could, perhaps, argue that all the things I have listed are matters of application rather than of the enunciation of principle (though the Papal threat of excommunication against rulers who failed to burn heretics comes very close to the bone). That, evidently, is what the minority on the Commission would have us think: however far the Church may stray in practice, still what she teaches must be sound. The fact is that neither the minority nor the majority attempts to face the issue. Indeed, so far as I know, no-one during these years since the Council was sum-

moned by Pope John has seriously tried to face this issue, which, as I wrote in an earlier article (*New Blackfriars*, August 1965, 'How Corrupt is the Church?') and still believe, is the most crucial issue before us: In what respects can the Church become corrupted, and in which can she not? I do not know how to evaluate the minority's claim that it *could* not happen that false doctrine could have been proclaimed, and enforced, for so many years.<sup>1</sup> Only those with sounder historical knowledge than I could survey what the Church has done in past centuries, and hence tell us whether such a claim is at least compatible with the facts. But everyone has shied away from such an investigation—perhaps because the facts are too painful to contemplate steadily. Perhaps if such an investigation has been made, the Commission might have been able to reach agreement.

The minority report does not demonstrate that the majority were wrong: but it does show that they had failed to face up to the magnitude of what they were saying. The majority deals deprecatingly with the argument from authority: in what they were proposing, the 'substance of tradition' is preserved, they say, as if we were dealing with a minor adjustment. Arguably, in the theoretical order, we are (though in the next section I shall question that): but the minority are right in saying that, in practice, the consequences of a reversal of teaching upon the view of Catholics concerning the authority of their Church would have been overwhelming. It is in dispute whether such a reversal would have been in principle possible; and it is the first failure of the majority that they made no serious enquiry designed to resolve this dispute. But it is indisputable that such a reversal would have been unprecedented; and the second failure of the majority lies in their unwillingness, once they had decided the reversal was both possible and desirable, to spell out the consequences. If the pastors of the Catholic flock really taught as Christ's law what was not such at all, thereby inflicting unnecessary hardship on thousands of people, and driving others from the Church, then this was a scandal, only made worse by the fact that these pastors were sincere in their teaching: and the conditions that allowed it to happen would have to be removed so that such a thing could never happen again.

We have now to consider the problem of authority in a situation altered from that in which the Commission was deliberating it by the publication of the encyclical. Apropos of this encyclical, the argument of the third document, that if a statement is not irreformable, it is reformable, has in those very words been contradicted by

<sup>1</sup>I do know one thing, however. In a city in this country where many Asian children are getting no education at all, because the local education authority says that there is no room for them, a priest in charge of a Catholic school which has empty places refuses to admit Asian children. Today many priests are being silenced, suspended, etc., for opposing the Papal decision on contraception; yet this priest has, so far as I know, escaped any rebuke. I think I am entitled to claim to know this: that there is something dreadfully wrong about the priorities of at least some of our bishops.

Mgr Lambruschini. There is, it is true, a school of mathematical logicians (the intuitionists) which denies that an affirmative statement follows from the negation of its negation: but I think most of us would require some indication of what logical system Mgr Lambruschini was employing before we regarded as anything but doubletalk his claim that 'It is reformable' does not follow from 'It is not irreformable'.

One defence I have heard is this: that it does not follow from the fact that *Humanae Vitae* does not, in whole or part, fulfil the conditions for being an infallible decree that what it teaches is not certainly true. This, of course, is clear: for what it teaches might already have been certainly true before it was issued. But I should maintain that the issue of such an encyclical, though indeed it must add weight to the teaching, could not possibly render what it taught certainly true if it was not already certainly true before the encyclical was issued. As to whether the traditional teaching *was* already certainly true, I wish to distinguish between two possible senses of 'certainly true', which I will illustrate by means of an analogy. Suppose that one publishes an extremely difficult proof of a mathematical proposition. If the proof is correct, then there is one sense in which it can be said of it that it is certainly true, or, better, that it may be known to be certainly true: namely that there exists a conclusive demonstration of its truth which is capable of being recognized as such. But in another sense, the theorem may not yet be certainly true: for, if the proof is sufficiently complex, it may be that at present most mathematicians are unable to satisfy themselves whether or not the proof is correct, i.e. they are uncertain whether it *is* a conclusive demonstration.

Likewise here. It may be that the minority is right in thinking that our faith in the inerrancy of the Church is incompatible with the supposition that what has been taught so consistently and so forcefully is erroneous: if they are right, then in one sense the traditional teaching is certainly true. But I should also maintain that, precisely because no-one has carried out a sufficiently careful and honest investigation of the limits beyond which we cannot, consistently with our faith, suppose the Church to have gone astray, no-one really knows at present whether this argument of the minority is correct or not: hence in the second sense—which is the sense in which an individual is entitled to claim certainty—I should hold that this teaching is quite definitely not at present certainly true. It is for this reason that I hold that the operation of the machinery of enforcement, by those who are not at present entitled to claim certainty that they are right on those who are not at present capable of being certain that they are wrong, is unjust. Of course, someone may sensibly accept the Papal teaching on the ground that he *believes* that his faith entails that the Church could not have been in error on this matter in the past: I am maintaining only that he is not

entitled to claim that he is certain of the truth of this proposition which he believes, and which is for him the ground for accepting the Papal teaching on contraception.

We also have a spate of remarks like that of Fr Gagnebet, O.P., writing in the *Osservatore Romano*, that the Church's magisterium is not a scientific one but one of authority. In plain words, this means that, although the Pope may be wrong, we nevertheless have a duty to believe him (it is plain from the context that Fr Gagnebet was not talking only of a duty to refrain from voicing disagreement). What are we to make of this? Now I think it quite false to maintain in general that one can have a duty to believe only what one can be certain of. I will not take space to argue this here, beyond remarking that I think it can lead to serious error to hold that one has a duty to form one's belief solely with regard to the weight of the evidence (including for this purpose faith in divine revelation, and divinely guaranteed interpretation of it, as on the side of evidence); one has also to take account of the *consequences* of mistakes on either side. At the same time, it seems to me that the case in which a teacher speaks *as a teacher* is precisely one in which the general thesis I have rejected is valid: namely that one's duty to believe what he says extends only so far as the evidence will carry it, including among the evidence his authority as a teacher, i.e. the probability that this teacher teaches truly about this matter. Of course, someone may wish to hold that the probability that the Pope is teaching truly on this subject, while not amounting to certainty, is nevertheless so high that it must outweigh every other consideration whatever: but to assess such a probability would demand another historical enquiry into the frequency of Papal mistakes in such circumstances which I am not competent to undertake.

*Where do we draw the line?*

The minority report argues, in effect, that, if contraception were admitted as permissible, practically no sin concerning either sex or pregnancy could logically be prohibited. This is the argument of the minority most likely to strike sympathizers with the reformist position as strained and specious. A section of the third document is devoted to this: of abortion, it says that it is entirely different, since it concerns human life already in existence—and in practice, abortion is more frequent where contraception is neglected; of oral and anal copulation, that these offend against the dignity of the person; of extra-marital relations that they contradict the principles of complete, irrevocable self-giving and of the ordering of sex towards offspring; and of masturbation that it contradicts the intersubjective character of sex. It is obviously impatient with the arguments which it is controverting, regarding them as an attempt to generate panic. But the fact of the matter is that the minority's argument is quite a strong one.

The reformist's position can be sketched like this: Surely we may bend a little our formerly inflexible attitude that the sexual act is permissible only when it is done by married people in an absolutely straightforward, unimpeded manner, to the extent of allowing interventions which distort the act only minimally (or, like the Pill, strictly speaking do not distort the act itself at all), when there are such grave reasons for limiting births? To react to such a mild plea by saying, 'Why, then, *anything* would become permissible', naturally seems to them hysterical. But the traditionalists evidently heard, behind the voices of the Catholic reformists, other voices from the secular world, telling a quite different story, as follows: In former times, when almost every sexual act, the woman not being either pregnant or past the menopause, had to be regarded as capable of causing conception, this fact obviously determined the morality of sex. But now that for the first time we have almost wholly reliable contraceptive methods, the situation is totally changed: sex has been liberated from its necessary connection with procreation, and the whole basis of the argument against sex between those who cannot support a family, or do not want to stay together, has been removed. Now I do not think that this reasoning is sound: but it is not unintelligent. On the contrary, the possibility of the use by traditionalists of a 'Where do you draw the line?' argument shows up a great weakness in traditional Catholic moral theology: namely, that the fundamental burden of almost all the arguments used to show the unlawfulness of a whole range of sexual activity, whether between those not married to each other, or between married people but of a deviant character, was borne by appeal to the connection between sex and procreation, i.e. in the former case, to the possibility that a child might result, and, in the latter, to procreation as the purpose of our Creator in giving us the faculty of sex. As a result, we have never really had an account of what chastity is.

Thus, on the traditional accounts, the primary reason that fornication is wrong is that illegitimate children do not have two parents and a settled home: for the same reason marriage must be permanent. Even with the advent of efficient contraceptives, if you say that their use is intrinsically wrong, you can still maintain the same argument: but once you allow that their use is alright between married people, then the old argument against sex between the unmarried can no longer honestly be employed.

Though the point is different, it appears to me that the recognition that the use of contraceptives is sometimes lawful would deal an equal blow to the traditional condemnation of deviant types of copulation (oral and anal). The dialogue goes as follows:

Reformist: Once you allow the use of rhythm, you are allowing the sexual act as a mere expression of love, even when it is known that conception is impossible: you have abandoned the only pass from which you could have defended your position.



Traditionalist: Not at all. Whatever theologians may have said in general, in practice the Church has always held sexual intercourse during pregnancy, or in other circumstances in which conception cannot result, as permissible. Where the line has to be drawn is at artificial interference with procreative effect. Once you have allowed people to overstep that line, you have no argument to prevent them going still further.

R.: There you are wrong. *I* draw the line at copulation, even between the married, which is, in the traditional phrase, not 'in the right vessel'. I do so because it is offensive to dignity, and hence cannot be an expression of genuine love.

T.: How do you know? We are not talking of any act which is not done with the full consent of both partners: but it just is the case that many people, as they say, get a kick out of doing such things—at least occasionally, as a variation. You may say that then it can only be an expression of mutual lust, not of true love: but if that is so, presumably the same is true of normal copulation—yet I do not hear you say anything about that, or give any criteria for distinguishing between love and lust. Obviously, the fact that a couple do love one another is no guarantee that any particular act they perform together is an expression of that love; and I assure you that many happily married couples would give a very much more earthy account of their sexual relations than the rather high-flown descriptions you are fond of. But suppose a couple were to assure you that they found the occasional practice of oral or anal copulation a genuine sealing of the bond between them—they rejoiced in an intimacy which stripped away every reserve—what could you say to them? When you started to tell them it attacked their dignity, they might well tell you that there is not much dignity in sex, or in birth either, externally regarded (that is in part why it is a perversion to like to be watched in these acts); the dignity they have lies in how they are experienced from within, by those engaged in them. I think in the end you would have to fall back on saying, 'The Church has always condemned . . .'; but, of course, you are in a weaker position to say this than I.

For myself, I have little doubt that, at the present stage of the argument, the traditionalist has the better of it. The reformist is in the position of having to offer new reasons for the old prohibitions he wishes to maintain: and a large part of the weakness of his position is that he has paid insufficient attention to the difficulty of doing this. This is why I denied that a reversal of teaching on contraception could be presented as the majority wish to present it, as a minor adjustment which leaves the bulk of the doctrine untouched. On the contrary, only a really radical revision of the basis of the Christian teaching on sex could result in a coherent position in which contraception was allowed as sometimes lawful but the other kinds of act

traditionally condemned were still condemned. The majority not only failed to undertake such a revision: they failed to acknowledge the necessity for it, and hence left the minority in an argumentatively strong position. But in the long run it must be unclear what the outcome will be. The weakness of the minority's position lies in the fact that, difficult as it is, such a revision is called for anyway, quite independently of the problem about contraception. I mean that the traditional accounts, though they speak of the virtue of chastity, give a quite unconvincing account of it, for—according to the particular exemplification of it being discussed—on these accounts it always seems to reduce to some other virtue with a quite different flavour: it is intrinsically implausible that the virtue of chastity can ever consist primarily in a care for the welfare of possible children. The problem lies in the extreme difficulty of steering a course between alternative errors. The contrast love/lust is a real enough one, if we could find a way to characterize it; but in doing so, we stand in great danger of a kind of etherealism which demands an impossibly exalted state of feeling to accompany sexual union, and looks down its nose at straightforward enjoyment. Besides, while sexual intercourse is obviously meant to be an expression of love, and a marriage ought to be founded on love, there is many a validly married couple which could not be said to love one another. No-one would think—at least, no-one ought to think—that they have thereby forfeited the right to sexual intercourse, at least if they are trying to keep the marriage going in some fashion: so we cannot be satisfied with any account which rules out as illegitimate any sexual activity which is not a full-fledged expression of love.

No-one can blame the majority for not having got these matters right, for they are very difficult; and no-one can be sure that, when we have got them right, they will lead to conclusions about contraception which agree with his. But I think that the majority can be blamed for not having recognized the difficulty of thinking about these things, and often substituting a handful of tired phrases for thought.

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