

by David Cohen

Since the advent of Vatican Council II initiated by the late Pope John XXIII, indeed of blessed memory, there has been a great transformation within the Roman Catholic Church in its attempt to renew itself. Traditional Catholic patterns of thought and attitudes of mind have been under severe criticism, challenge and analysis. Indeed, a reformation from within has taken place. As a consequence there has been theological development, a revaluation in biblical exegesis and an attempt to show how the Church in its mission is relevant to the problems and the needs of contemporary society.

It was during this process of self-examination and *aggornamento* that the Encyclical *Humanae Vitae*, 'On Human Life', appeared, in July 1968. The impact of the encyclical was enormous upon the Catholic world and the world at large and so began the debate, discussion and division of opinion within the Church.

Countless numbers of Catholics who were looking forward to a modification in the traditional teaching on birth control were deeply disappointed. The Holy Father had spoken and it was forbidden.

As a Jew with a profound regard for the Kerygma of Christ, I attended many lectures and 'Teach Ins' within the Catholic community on *Humanae Vitae* and it was strange to observe that not on any single occasion did I hear a Catholic speaker or member of an audience ask the basic question; what does Jewish religion that is Orthodox Rabbinic Judaism teach on birth control? In view of the fact that the Church claims to be the new Israel, the completion of the old Israel, I was puzzled as to why this vital question was never asked.

As a consequence of the world-wide interest in *Humanae Vitae* even within the Jewish community, many Jews began to ask questions and wished to know what is the teaching of Judaism on the many issues involved.

Now it so happens that there appeared in England in 1968 a remarkable volume entitled *Birth Control in Jewish Law* by a Rabbi, Dr David M. Feldman, published by the University of London Press Limited. This book is a unique work of rabbinic scholarship, covering the whole field of Bible—Talmud—Midrash—rabbinic *responsa* and the great Jewish codes of law. Entering into many

¹*Birth Control in Jewish Law*, Marital Relations, Contraception and Abortion as set forth in the classic texts of Jewish Law, by Rabbi Dr David M. Feldmann. *New York University Press*, 1968; *University of London Press*.

centuries of rabbinic literature he shows how Halacha, that is Jewish law, is applied to human problems relative to marriage, sex and procreation. It will become a classic of its kind and doubtless will not be equalled in this century. The author has a superb ability to put into simple terms for the ordinary reader the complexities of rabbinic methodology in discussion and Midrash.

What is of particular interest to Catholics is that Rabbi Feldman examines the whole field of the traditional teaching of the Church relative to marriage, sex, procreation and allied themes, and makes a comparative study of the Catholic and rabbinic tradition. As a contribution to ecumenical dialogue at theological and biblical level it is a vital thesis. I therefore highly commend it for serious study and reflection.

What does Judaism teach about birth control? Does it permit it, and if so, why? Does it differ from the traditional Catholic teaching? There is no doubt whatsoever that rabbinic tradition differs from Christian tradition on nearly every issue relative to marriage, sex and procreation. The gap between the two traditions is vast and wide. It can be said the rabbinic tradition is practically unknown to the Catholic mind and that the concepts involved in Jewish thought will come as a surprise to many, including Jews. The student of Judaeo-Christian thought and tradition can discern the Jewish antecedents of the Christian sacraments and the Jewish background of the Christian liturgy, but when he comes to the study of the teaching of the Church on birth control there are no Jewish roots. For a Jew, the Church has deviated from its Jewish origins in which it was born, because it entered into a Greek and Hellenistic world of thought. In dealing with human beings as persons with their very human problems the naturalism of the Jewish approach is different from the apparent dualism of soul and body within the Christian tradition.

Jewish rabbinic teaching

In the Jewish teaching marriage is an institution in which procreation is one of its ends and birth control can only be viewed in terms of marriage, marital sex and procreation. Marriage is a *Mitzvah*, the carrying out of a divine command. It is for companionship, fulfilment and procreation. Simply put, it is this. That marriage has three ends: the relational aspect of husband and wife, the legitimacy of sexual pleasure as a good and an end in itself, and procreation. All these ends which are a good in themselves are of fundamental value in the goodness and holiness of marriage. Procreation is not the primary end of marriage. It is one of the ends. It must be related to the good of the other two ends.

This is in sharp contrast to *Humanae Vitae* which affirms 'that each and every marriage act (quilibet matrimonii usus) must remain open to the transmission of human life'. In Jewish law every act of sex need not be procreative and in certain circumstances it is a

religious duty not to be procreative. Non-procreation is not a sin in Judaism provided that there are two children. A Jew is commanded to 'be fruitful and multiply', *P'ru ur'vu* (Gen. 1, 28 and Gen. 9, 1 and 7), the first of the divine commands. A man not married is half a man. A married man without children is not a full man.

Mitzvah Onah

There is yet another *Mitzvah*, that of *Mitzvah Onah* based on Exodus 21, 10. Of this rabbinic tradition Catholics should know more of the concepts involved. This means that apart from the procreative end of marriage, a man has a duty to his wife to comfort and love her through the conjugal act and to satisfy her needs, physical, emotional and mental, as a good and an end in itself. This is basic in rabbinic thinking. There are therefore two divine commands, *P'ru ur'vu* and *Onah*. In Jewish law the living mother is of greater value than potential life (a sharp contrast to the issue of mother or child as assessed in *Marriage and the Moral Law* of Pius XII). Any divine command may be broken to save human life, which is sacred. Therefore if there is a grave health hazard to a woman and her life is in peril, then contraception is permitted. Preservation of health is also a divine command. This means that *Pr'u ur'vu* cannot be fulfilled. Yet there still remains the *Mitzvah Onah* to be fulfilled. If there are two divine commands of equal value as ends in marriage and one cannot be fulfilled, it does not lessen the legitimate right to fulfil the other. Therefore contraception is permitted even though the conjugal act is of a non-procreative character. Conjugal love has high value in Jewish thought even if it is non-procreative. Again a sharp distinction to *Humanae Vitae*.

If contraception is allowed, what kind of contraception is permitted?

To answer this question involves an understanding of the 'natural law'. What does Judaism teach on this theme? The Catholic view of the conjugal act is not acceptable. Judaism has a different understanding of the natural law. Since non-procreative intercourse is permissible, the true nature of the sex act is *not* defined and understood in terms of procreation. It is not the natural law of procreative possibility that determines the integrity of the act, but the naturalness of the heterosexual act with its attendant gratification. The sex act has its own integrity and validity. A man must cast his seed where the seed should be cast, that is within the body of a female, and there must be seminal ejaculation leading to satisfaction of husband and wife. This is the natural law.

Any kind of contraceptive device chemical or mechanical which interferes with the integrity of the act and the attendant gratification would be forbidden. There are, of course, many rabbinic *responsa* as to whether a particular device comes within this category. The 'pill' would be the most acceptable of contraceptives as it would not

interfere with or take away from the integrity of the sex act and would not be offensive to the dignity of the woman.

Hash-hatat-zera—the destruction and wastage of male seed

The rabbis in all circumstances would not allow a male to use a contraceptive device of any kind, as male seed must not be destroyed or wasted. A permissible conjugal act which is not procreative is not *Hash-hatat-zera*, that is, seed wasted or destroyed. Permitted contraception, provided the integrity of the sex act is maintained in its true heterosexual nature, is not wastage and destruction. Rather it would mean improper seminal emission. The rabbis frowned upon and condemned all forms of auto-erotic sexual behaviour. Therefore permitted contraception must exclude *Hash-hatat-zera*, the improper emission of male seed. One of the reasons why abstinence is not the alternative to contraception is the concept that if a Jew did not fulfil either *P'ru ur'vu* or *Mitzvah Onah* he is in fact destroying and wasting his seed. This is why celibacy was frowned on and thoroughly discouraged. To understand the basis of rabbinic teaching it is necessary to have a clear conceptual and notional understanding of *P'ru ur'vu-Mitzvah Onah* and *Hash-hatat-zera*. In these terms one can begin to have some understanding of the rabbinic teaching on marriage, marital sex and procreation, and contrast it with Christian teaching.

Old Testament texts

What is astonishing is the way in which the Church Fathers have taken texts, narratives and situations from the Old Testament and through the eyes of the early Church have given them meanings and interpretations which in rabbinic thought are erroneous and invalid. With the biblical revival in the Church it will be interesting to see how Catholic Bible scholars attempt to understand the Old Testament through Jewish eyes and in terms of the thought of ancient Israel. Also this applies to the Gospels. How far do we understand the Jewish mind of the apostles? Two simple examples of Christian interpretation of the Old Testament texts are (a) the Act of Er and Onan, Gen. 38, 7-10, and (b) the phrase: 'Behold I was brought forth in iniquity and in sin did my mother conceive me' (Psalm 51, 7).

The Act of Er and Onan

The sin or act of Onan has always been used by Catholic writers to show that contraception is evil; God slew Onan, therefore contraception is evil. In fact in rabbinic thought the act of Onan has nothing at all to do with the lawful use of contraception in normal marriage, and is no guidance for moral duties and obligations of husband and wife. One explanation is that Onan entered into a Levirate situation and deliberately failed to fulfil the Levirate obligation to Tamar and therefore turned the Levirate situation into

a prohibited and forbidden union. Therefore God slew him (see Lev. 18, 16). He also wanted the rights of primogeniture as he coveted his dead brother's estate.

Conceived in sin

Judaism does not believe in the doctrine of Original Sin and that man is born in sin and requires to be redeemed from this state of transmitted sin. It believes rather in the verse 'The soul thou gavest me is pure'. Therefore the phrase 'conceived in sin' cannot in Jewish thought mean the traditional interpretation given to the text by the early Fathers, and remaining constant from Augustine down to St Thomas. In rabbinic thought it applies to the period of impurity of a woman during her menses when co-habitation was forbidden. It actually refers to the monthly cycle of conception.

Conscience

It is strange that there is no reference to conscience in Rabbi Feldman's book. For this I have turned to a lecture given by Chief Rabbi Jakobovitz to the Jewish Marriage Education Council. Catholics today are deeply troubled by the problems of conscience and authority and many priests are profoundly anxious and worried. The scholastic view of St Thomas on the nature of conscience is well known, and so is the view and understanding of the great Cardinal John Henry Newman, a view with which I have a great affinity. Yet what is the view of Judaism? Broadly speaking the Chief Rabbi states as follows: that the rabbinic attitude on birth control is far less rigid than the Catholic view, and that the Jewish attitude is more restrictive than the Protestant denominations, who believe the issue must be determined by individual conscience. Judaism does not recognize natural law as the arbiter of right or wrong. The Jewish rulings on contraception derive their form and authority neither from the whims of conscience nor from the laws of nature, but from the positive divine obligation to propagate the race: presumably conscience should enforce the moral law as revealed in the law of God.

Conclusion

In giving this brief outline of Rabbi Feldman's brilliant work I have added some of my own comments to show how rabbinic teaching would relate to current Catholic problems. His book is a mine of information, intellectually a delight to read and study. The hundreds of *responsa* dealt with and the general principles arrived at are the result of questions put to the Rabbis by married people and to which they have to give an answer.

As a Jew I consider the rabbinic tradition healthy, balanced and having common sense, with a naturalistic approach to people as persons, with, of course, a love of God. 'Dualism' is foreign to the Judaic tradition. Has Catholicism, in upholding the universality of

law, perhaps underemphasized Christ's personal concern for the individual and his needs, not his wants? I wonder. Yet in spite of all this, the Catholic ideal of marriage, its duties and obligations and love of Christ remains as an object of striving and attainment, a witness to the Christian life. To those Catholics who with loyalty, faith and conviction remain true to *Humanae Vitae*, I as a Jew would say, May Christ give you much blessing and grace. To those other Catholics who in all conscience and with integrity are deeply troubled by all the problems and intellectual issues aroused by *Humanae Vitae*, I would also say, May Christ give you as well blessing and grace to find the answers you seek. It may be that as a result of Vatican II, particularly in the document *The Church in the World Today*, there will be a development in theology on these grave and vital issues. Can there be a contrast between tradition and a development in theology in the future? I have no doubt that in any theological development, implicit or explicit, of *Humanae Vitae* there will be a return to the rabbinic teaching of the past and the people of Israel. Is there a paradoxical possibility of the Church returning to a Jewish tradition within a framework of Christian thinking so that the Church could crown it with her wisdom and her glory? This is an absorbing question for the future. To all my readers may I extend the traditional Hebrew greeting of the centuries: *Shalom*—peace be unto you.

Glossary of Jewish terms:

Talmud: The oral law of Jewish religion expressed in the written form.

Bible: The Old Testament includes *Torah*, the five books of Moses; the prophets and the holy writing the *Hagiographa*.

Midrash: Meaning exposition: refers to the extra-Talmudic collection of biblical interpretations.

Mishnah: Meaning study: being a code of laws. Part of Talmud.

Halacha: Meaning to go or walk. The law or a particular law and its application.

Rabbinic *responsa*: Replies to questions legal and otherwise submitted to the Rabbis.

Codes of Law: Systemization of Jewish Law and commentary.

P'ru ur'vu: Be fruitful and multiply (Gen. I, 28, 9, 1 and 7 and 35, 11).

Mitzvah: The duty of fulfilling a divine command.

Mitzvah Onah: The fulfilment of a wife's marital sexual rights.

Hash-hatat-zera: The prohibition of male seed being wasted or destroyed.

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