DOUBLE VASECTOMY AND THE IMPEDIMENT OF IMPOTENCE

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THE question raised here is whether double vasectomy, antecedent to marriage and certainly permanent, constitutes a diriment impediment. We are not concerned with any case in which there is a doubt of fact as to the antecedent and perpetual condition. The question is a much controverted one. It will be settled only by an explicit, official decision from the competent authority in Rome. Up to the present time we have had no such decision. In the meantime one can only attempt to clarify the state of the question and thus make whatever contribution one can to the cause of theological truth. In order to do this I shall set forth briefly some physiological data, the two principal opinions, their position as to the meaning of true seed, the Rotal jurisprudence and papal statements; then I shall try to bring the matter up to date by quoting some recently received private opinions from Rome.

It would probably be an advantage if all this could be done with the complete impartiality of one who had never taken sides in the debate. On the other hand, it would be hard to find anyone who has ever devoted any time to the study of the question without having taken sides one way or the other. If as a result of this discussion any light is thrown on the practical problems of making decisions in chanceries and tribunals, so much the better. But obviously nothing that is said here will settle the controversy, or take the place of a decision from Rome.

PHYSIOLOGICAL DATA

The whole body of the ejaculate which is emitted during orgasm is referred to as the semen or the seminal fluid, whether it is fertile or not, and whether there are any spermatozoa (sperms) in it or not. The quantity of fluid ejaculated varies in various individuals and in the same individual at various times. Urologists estimate that the average quantity of ejaculate after several days of abstinence is roughly about a

teaspoonful.[1] This fluid in normal cases is composed of various elements produced by the testicles and epididymides, by the seminal vesicles, the prostate and the urethral glands. The bulk of the semen comes from the seminal vesicles, the prostate, and the bulbo-urethral glands, not from the testicles. The bulk of the fluid never passes through the vasa deferentia.[2]

Of the teaspoonful of seminal fluid normally ejaculated the part which originates in the testicles and epididymides and passes through the vasa is very small. The exact percentage is not known, but some estimates put it at about one-twentieth of the total ejaculate.[3] But this one-twentieth contains the all-important element, the spermatozoa or sperms. The sperm is the essential male element in reproduction.

It is estimated that there are between three hundred and five hundred million sperms in a normal ejaculate, but they are so small that their presence or absence can be detected only with the help of a microscope. One hundred of them could swim side by side through the eye of the smallest needle.[4]

A man is sterile, that is, unable to have children, not merely when all sperms are absent from his ejaculate, but even when their number is notably reduced. It is a matter of degree. "Fewer than 60,000,000 spermatozoa in a cubic centimeter of semen is usually associated with sterility."[5] A man might produce a quantitatively normal ejaculate

[1] Kimber, Stackpole and Leavell, *Textbook of Anatomy and Physiology* (New York: Macmillan, 12th ed., 1951) 689.

[2] *Howell's Textbook of Physiology* (Philadelphia and London: W. B. Saunders, 15th ed., edited by Fulton, 1948) 1226.

[3] "The percentage of the entire volume of the ejaculate coming from the testicles and/or epididymides is certainly quite small, because the bulk of the ejaculate is composed of prostatic fluid and fluid from the seminal vesicles and terminal portions of the vasa (ampullae). Of course the portion from the testicles contains the sperm but, volumewise, the sperm are only minute contributions to the total volume. There is probably also a very little fluid from the epididymides. I would guess that the volume coming from the testis and epididymis would not exceed four or five per cent (that is, exclusive of the contributions from the ampullae, the seminal vesicles and prostate). There is probably some tiny amount of fluid which comes up from the testes and epididymides as the vehicle for the spermatozoa, but I do not know the percentage composition of this component of the ejaculate" (private communication from Victor M. Marshall, M.D., Cornell Medical Center, New York).

[4] *Howell's Textbook of Physiology*, p. 1226; Paul Popenoe, *Problems of Human Reproduction* (Baltimore: Williams and Wilkins, 1926) 29.

[5] *Howell's Textbook of Physiology*, p. 1226.

containing millions upon millions of live sperms, and yet be sterile, because these millions would not be numerically sufficient to result in conception, according to the physicians. When conception finally occurs, it is one sperm that does it; but in order for this one to be successful it is apparently necessary that immense hordes be present in the ejaculate.

In addition to the sperms it is probable that there is also produced in the testes or epididymides some tiny amount of fluid which serves as the vehicle for the spermatozoa. Urologists seem to speak hesitantly about this component.[6] As far as I know, they do not give any exact estimates as to what percentage it constitutes of the material coming from the testicles and epididymides. It is clear, however, that it must be a very minute quantity of fluid, which can be detected, if at all, only with the help of the microscope. We may call this fluid (together with whatever other secretions may possibly come from the testicles and epididymides through the vasa) for want of a better name the carrier fluid.

Thus it is estimated that the entire testicular and epididymal component in the normal ejaculate of a fertile man is about one-twentieth of a teaspoon, and that whatever carrier fluid there is can be only a very minute part of that one-twentieth.

It is usually thought that in ejaculation the several components of the genital tract discharge their contents in orderly sequence. The paraurethral glands of Littré and the bulbo-urethral glands discharge first, their secretions serving to lubricate the urethra. The prostatic secretion is added next and exerts its neutralizing function. Next the hordes of spermatozoa in the ampulla of the ductus deferens are discharged. Finally, according to this presumption, the seminal vesicles project their bulky secretion.[7]

The ampulla of the ductus deferens is situated at the end of the vas deferens farthest removed from the testicle. Apparently it serves as a

[6] See the letter quoted in note 3 above. Rota decisions themselves, in quoting physiological authorities, reflect a degree of uncertainty as to whether the testicles produce anything but the sperms; e.g., *coram* Wynen, 25 April 1941 (*Decisiones S. R. Rotae* 33 [1941] Decisio 28, nn. 5, 6, pp. 308, 309); *coram* Wynen, 25 Oct. 1945 (reported partially in *Periodica* 35 [1946] 5–28; cf. p. 10). Cf. also a case in the Tribunale Regionale Picenum, reported in *Monitor ecclesiasticus* 75 (1950) 77–84, at p. 79; and another case in the Tribunale Apellationis Bononiense, reported in *Monitor ecclesiasticus* 78 (1953) 240–46. Compare Aguirre, "De impotentia viri iuxta jurisprudentiam rotalem," *Periodica* 36 (1947) 5–23, at p. 12.

[7] *Howell's Textbook of Physiology*, p. 1227.

reservoir for the spermatozoa, holding them ready for the moment of orgasm.

In the opinion of competent urologists it is unlikely that in a given orgasm any sperms travel all the way from the testicles to the external world. "It is generally thought that the vast majority of the sperm found in a given ejaculate have come from the terminal ends of the vasa, and very few if any have come all the way from the epididymis."[8] Indeed, the journey from the testicles would be a rather long one to take place in the time during which an orgasm lasts, which is a matter of seconds. The coiled tubes of the epididymides through which the sperm would have to travel to reach the beginning of the vasa deferentia are from sixteen to twenty feet long, and the vasa deferentia themselves are about two feet long. Furthermore, there is reason to believe that in a given orgasm it is the first impulse of the ejaculation which contains the heaviest concentration of sperms.[9] These considerations make it unlikely that in a given orgasm anything travels all the way from the testicles and epididymides out to the external world.

It is important to call attention here to the similarities and differences in the ejaculates of the castrate and of the doubly vasectomized man. They are alike inasmuch as neither one contains any spermatozoa, and neither one contains the minute quantity of carrier fluid which appears to be present in the seminal fluid of the average individual. They are also alike inasmuch as the castrate's watery ejaculate is

[8] "During a given orgasm it is unlikely that any sperm travel all the way from the testicles to the external world. Certainly sperm spend some days in the epididymis and vas. In fact the vas is probably more of a storehouse than we usually think. After a bilateral vas ligation in the upper scrotum, sperm can usually be found in the ejaculate for at least a week; sometimes for three or four weeks. It is generally thought that the vast majority of the sperm found in a given ejaculate have come from the terminal ends of the vasa, and very few, if any, have come all the way from the epididymis. It is also probable that at all times there is a slow progression up the vas. Ejaculations four or five days apart, from normal individuals, usually show no significant variation or reduction in numbers of sperm. Ejaculations one and two days apart, however, nearly always show a reduction in sperm count" (private communication from Victor F. Marshall, M.D., Cornell Medical Center, New York).

[9] Private communication from Joseph B. Doyle, M.D., St. Elizabeth's Hospital, Brighton, Mass. See also J. MacLeod, "The Present Status of Male Infertility," *American Journal of Obstetrics and Gynecology* 69 (June, 1955) 1256–67, abstracted in the *Journal of the American Medical Association* 159 (Sept. 3, 1955) 84–85.

presumably derived from the same glands which also play their part in the case of the normal individual; for instance, the prostate gland.

But they are different in the following respects. The ejaculate of the castrate is a watery emission which lacks the quantity, the viscosity, and the general appearance of normal seminal fluid. It is obviously different from ordinary seminal fluid; to recognize this difference no microscope is required, but only common observation. The ejaculate of the doubly vasectomized man, on the other hand, is to outward appearance the same as that of the normal man. It is not obviously or visibly different in quantity, viscosity, or general appearance.[10] The absence of the sperms can be detected only by microscopic examination, and the absence of the carrier fluid can be detected, if at all, only by means of such examination.

Treatises on moral theology and canon law to this day continue to provide mistaken physiological information on this point. They compare the ejaculate of the vasectomized man to that of the castrate, and say that it is a watery liquid of some kind or other like the ejaculate of the adult castrate, etc.[11] This is not true and there is abundant clinical evidence to prove that it is not true. The semen of the doubly vasectomized man, of the normal fertile man, and of the otherwise normal but sterile man, are all outwardly indistinguishable as far as common observation can discover.

THE TWO PRINCIPAL OPINIONS

There are two principal opinions on this question of double vasectomy and the impediment of impotence. It will be convenient to refer to them as the majority and minority views.

The majority view holds that double vasectomy, if certainly permanent and antecedent to marriage, makes a man incapable of an *actus per se aptus ad generationem*, constitutes the diriment impediment

[10] Edward H. Nowlan, S.J., "Double Vasectomy and Marital Impotence," THEOLOGICAL STUDIES 6 (1945) 392–427; on pp. 405 ff. he gives a more complete account of the physiological effects of double vasectomy. This essay is one of the most important contributions to the literature on the present controversy.

[11] See, for example, Fanfani, *Theologia moralis* 4, n. 591, dub. II, p. 780; Cappello, *De sacramentis* 5 (De matr.) n. 375, quoted also by Wynen in his Rota decision of 25 Oct. 1945, reported partially in *Periodica* 35 (1946) 17; Ferreres, *Casus conscientiae* 2, n. 1029; etc., etc.

of impotence within the meaning of canon 1068 §1, and so makes him certainly incapable by natural law itself of contracting marriage.

It would be superfluous to enumerate all the many canonists and moralists of great name who have held or do hold this view. The question was not discussed until early in the present century. In 1913 Ferreres wrote his monograph, *De vasectomia duplici, necnon de matrimonio mulieris excisae,*[12] in which he unhesitatingly held that the vasectomized man is certainly impotent. He likened him to the castrate throughout, and was obviously under the impression that the ejaculate of the vasectomized man is like that of the eunuch. Even in the sixth edition of Ferreres' *Casus conscientiae* there still appears the statement that the vasectomized man cannot emit "true semen" although he can emit "that liquid which is emitted in distillation."[13] Ferreres' physiological misconceptions got into the canonical and moral literature at an early date, and in my opinion these factual errors played a large part in the formation of the majority view and in determining the course of the jurisprudence of the Rota.

Among the more weighty names that can be cited as absolutely in favor of the majority view are Gasparri, DeSmet, Ojetti, Wernz-Vidal, Marc-Gestermann, Cappello, Merkelbach, and many others too numerous to mention.[14]

Furthermore, there is a whole series of Rota decisions which definitely favor the majority view.[15] These decisions, though they did not decide any actual case of double vasectomy, dealt with very similar problems, and decided them on grounds which would be applicable also to cases of vasectomy. There are similar cases in the lower tribunals. One case, later reversed, held a marriage to be invalid on the grounds of antecedent vasectomy which was complete and permanent.[16]

[12] Madrid, 1913.

[13] Ferreres, *Casus conscientiae* 2, n. 1029.

[14] Nowlan, *art. cit.*, p. 393, note 6, gives the references to these authors.

[15] An elenchus summarizing these decisions was published in graphic form in *Periodica* 33 (1944) 216–17.

[16] This was the New York case, *coram* McCormick, 23 May 1947, reported in *Monitor ecclesiasticus* 75 (1950) 207–23, and summarized in Bouscaren, *Canon Law Digest* 3, 417, under canon 1068. This decision of nullity based on the double vasectomy was overturned, however, when the case was appealed to Philadelphia, where the court found that the vasectomy was not proved to be permanent; but the annulment of the marriage was sustained on other grounds.

Most important of all is the fact that the Holy Father has granted more than once a dispensation *super rato et non consummato* in circumstances where the only ground seems to be the conviction that a vasectomized man is incapable of an *actus per se aptus ad generationem*, and is therefore incapable of consummating marriage.[17] Finally we have two recent public statements of the present Holy Father, in which, though he refrained from any authoritative settling of the controversy, he showed clearly an inclination to favor the majority view.[18]

The minority view holds that a doubly vasectomized man, even if the vasectomy is certainly permanent and irreversible, is only doubtfully impotent within the meaning of canon 1068 §1, and is therefore to be allowed to contract marriage in accordance with canon 1068 §2. This opinion is associated with the name of Vermeersch because he is one of the greatest names to defend it; but actually it was defended by others before him, and continues to this day to have its defenders among writers of name, despite the Rota decisions and the trend of papal statements.[19]

Writing about ten years ago, Edward H. Nowlan, S.J., defended this view in THEOLOGICAL STUDIES,[20] and cited in its favor the following names: Vermeersch, Jorio, Schmitt, Arendt, Woywod, Donovan, Viglino, Grosam, Gemelli, Mayer, and Labouré.[21] In addition he mentioned the names of others who do not consider that the impotence of the vasectomized man is certain: Yanguas, LaRochelle and Fink, Ryan, Clifford, Chretien, Piscetta-Gennaro, Regatillo, Prümmer, Payen, and Creusen.[22] At that time the papal dispensations *super rato et non consummato* referred to above were not publicly known, in

[17] Cf. *Periodica* 33 (1944) 216–17, for an elenchus which includes these cases.

[18] To the Geneticists, *AAS* 45 (8 Oct. 1953) 596–607; and to the Urologists, *AAS* 45 (15 Nov. 1953) 673–79.

[19] Arthur Vermeersch, "Aktuelle Fragen des Eherechts und der Ehemoral," *Theologisch-praktishe Quartalschrift* 89 (1936) 59; cf. also Vermeersch, *Theologia moralis* 4, n. 47. Among his predecessors were Labouré, "De vasectomia," *Ecclesiastical Review* 43 (1910) 320; and S. F. Donovan, "The Morality of the Operation of Vasectomy," *Ecclesiastical Review* 44 (1911) 571.

[20] Nowlan, *art. cit.*, p. 394.

[21] Nowlan, *art. cit.*, p. 394, notes 9 to 19, gives the references.

[22] Nowlan, *art. cit.*, p. 394, note 21, gives the references.

this country at least. I do not know that any of the authors mentioned have changed their views since then.

Since that time, too, we have some further names to add to those who explicitly defend or admit the practical probability of the minority view: John McCarthy of the *Irish Ecclesiastical Record*;[23] Francis J. Connell, C.SS.R., of Catholic University;[24] Gerald Kelly, S.J., of THEOLOGICAL STUDIES;[25] Canon E. J. Mahoney of the *Clergy Review*;[26] L. Bender, O.P., of the Angelicum;[27] L. J. Fanfani, O.P., author of a well-known manual of moral theology in four volumes;[28] and Lanza-Palazzini, authors of another recent work on moral theology.[29] Undoubtedly there are some others.[30]

Because of the authority of all these men, and their number, no one can seriously doubt that their opinion has at least extrinsic probability.[31]

[23] John McCarthy, "The Impediment of Impotence in the Present Day Canon Law," *Ephemerides iuris canonici* 4 (1948) 96–130. And see, by the same author, "Towards a Definition of Impotence," *Irish Theological Quarterly* 18 (1951) 72–76.

[24] In *Ecclesiastical Review* 106 (1947) 70–71.

[25] In THEOLOGICAL STUDIES 9 (1948) 115–16, quoting with approval J. J. Clifford, S.J., "Reoperation after Double Vasectomy," THEOLOGICAL STUDIES 7 (1946) 453–63. Fr. Clifford did not share Fr. Nowlan's optimism as to the probabilities of successful reoperation, but shared his opinion that double vasectomy, even if permanent, does not constitute impotence. The present discussion is concerned exclusively with the *quaestio juris* and consequently has not taken up the probabilities of successful reoperation. Dr. Vincent J. O'Connor, "Anastomosis of the *Vas Deferens* after Purposeful Division for Sterility" (*Journal of the American Medical Association* 136 [1948] 119–30) gives an account of repair operations showing a high degree (35% to 40%) of success.

[26] E. J. Mahoney, "Male Sterilization and Impotence," *Clergy Review* 34 (1950) 43–45.

[27] Vlaming-Bender, *Praelectiones juris matrimonii* (ed. 4a, 1950) p. 190, with note.

[28] Ludovicus J.Fanfani, O.P., *Manuale theoretico-practicum theologiae moralis* 4 (Romae: Ferrari, 1951) p. 781, n. 591, Dub. II.

[29] Lanza-Pallazini, *Theologia moralis, Appendix de castitate et luxuria* (Taurini-Romae: Marietti, 1953) pp. 258–59.

[30] E.g., P. J. Lydon, in *The Priest*, December 1946, p. 48. Aertnys-Damen (*Theologia moralis* 2 [ed. 15a, 1947] n. 716) admits the probability of the opinion in practice, though favoring the other side "speculative loquendo." Damen cites, as favoring the minority view, Mulder, in *N. K. St.* (1934) p. 162. See also Donovan, *Homiletic and Pastoral Review* 50 (1950) 1154–58. It may be noted that Iorio (*Theologia moralis* 3, n. 1064) still admits the minority view in his 1954 edition, which was censored about a year after the most recent papal pronouncements.

[31] Contra: *coram* McCormick, Metropolitan Tribunal of New York, 23 May 1947, reported in *Monitor ecclesiasticus* 75 (1950) 207–23. Cf. Bouscaren, *Canon Law Digest* 3, 417, under canon 1068.

But even at this stage I cannot refrain from emphasizing one point. It is a most remarkable thing about these two opinions that neither one requires for *verum semen* any spermatozoa at all in the ejaculate. This seems remarkable to me in view of the fact that potency and impotency are defined for canonical purposes in terms of fundamental or *per se* aptitude for generation; and the spermatozoa are the essential male contribution to the generation of new life. But both opinions are agreed that a man whose seminal fluid is entirely devoid of spermatozoa can nevertheless be capable of emitting *verum semen* and of positing an *actus per se aptus ad generationem.*

For the majority view, adopted by the Rota, admits that when the seminal fluid contains only dead sperms, or infertile ones, or defective ones, or very few, or none at all, the act can still be *per se aptus ad generationem*, as long as the vasa deferentia remain open and unoccluded, and as long as there is present in the ejaculate some testicular component, so that it can be said of the ejaculate that it is *elaboratum in testiculis.*[32]

The consequence of this state of affairs is that the majority view requires for potency, in cases where there are no spermatozoa, the presence in the ejaculate of a microscopic quantity of what we have called the carrier fluid; and this minute component, as coming from the testicles through the vasa, is said to be the difference between the capacity and incapacity to marry according to the natural law itself. It is because this idea is so difficult to accept that the holders of the minority view remain unconvinced in spite of the jurisprudence of the Rota. And if I were to offer an opinion of my own as to the reason why we have this continuing clash of opinion, it is because of two considerations. One side cannot see how such a factor can be the criterion of a natural law impediment; but the other side cannot see how the

[32] Wynen, in a Rota decision, 25 Oct. 1945, n. 5 ad fin. (cf. *Periodica* 35 [1946] 10) says this is the constant and uniform jurisprudence of the Rota. Cf. also Aguirre, "De impotentia viri iuxta iurisprudentiam rotalem," *Periodica* 36 (1947) 5–23, at p. 13 and p. 17. It is obvious that the defenders of the minority view do not require sperms for true seed. In the papal allocution to the urologists, cited below (note 61), it is stated: "The lack of active sperm is not ordinarily a proof that the husband cannot exercise the function of transmission. Even azoospermia, oligospermia, asthenospermia, and necrospermia have nothing to do, in themselves, with the *impotentia coeundi*. . . ." But the Holy Father does not go so far as to say that the lack of all sperms, alive or dead, is irrelevant. It would be interesting to know if this was left out by design.

jurisprudence of the Rota and the dispensations *super rato* can be explained unless some such criterion is accepted.

THE MEANING OF "TRUE SEED"

A controversy concerning impotence is bound to revolve about the definition of the marriage act. For a person who is capable of a true marriage act is not impotent, as all will agree; and a person who is incapable of a true marriage act is impotent. The definition of a true marriage act, however, has always been a thorny problem for canonists and moralists. The problem cannot be solved merely by quoting canon 1081 §2, which requires an *actus per se aptus ad generationem.* The difficulty is to determine just what is meant by *per se aptus*, especially as regards the seminal fluid. Both sides are agreed that a man who is incapable of an *actus per se aptus* is impotent. Both sides are agreed that sexual intercourse cannot be considered an *actus per se aptus* unless the man can deposit "true semen" in the vagina. But both sides are also agreed that a man's seminal fluid can be "true semen" even if it contains no spermatozoa at all.[33]

Now the majority view holds that *verum semen* to be such must be "elaborated in the testicles," and they appeal to the Bull *Cum frequenter* of Sixtus V (June 27, 1587) to establish this point.[34] The argument seems to run something like this. Sixtus V declared eunuchs impotent because they do not emit true seed. But the reason eunuchs do not emit true seed is because they have no testicles. Therefore true seed, in order to be such, must be elaborated in the testicles. But the seed of a vasectomized man is not elaborated in the testicles; it is therefore not true seed, and he is consequently impotent just as the eunuch is.

Let it be granted for the sake of the argument that Sixtus V decreed

[33] Of course, if one defines true semen as being semen elaborated in the testicles, then the two sides are not in agreement. And in fact some defenders of the minority view, accepting this definition, have spoken as though true semen were not necessary. See, for example, the Rota decision *coram* Wynen, 25 Oct. 1945, reported in *Periodica* 35 (1946) 12, where he refutes the judges of the lower court who seem to say true seed is not necessary. But this is a question of terminology. The real question is much more appropriately debated in these terms: Is it necessary that true seed, in order to be such, must be elaborated in the testicles?

[34] Gasparri, *Fontes iuris canonici* 1 (Romae, 1926) n. 298; full text cited by Nowlan, *art. cit.*, pp. 396–97.

eunuchs impotent precisely because they lack true seed. Actually, one might dispute this, because in the dispositive part of the decree, where Sixtus enumerates several reasons for his decision, he does not mention this one. The phrase "verum semen" occurs only in the expository or introductory section, where it is contrasted with the seed of eunuchs, which is described as "perhaps some kind of liquid (*humorem forsan quemdam*) similar to seed." But since both sides are agreed that true seed is required, and since, whether Sixtus V used the phrase textually or not, both sides are willing to admit that he intended to require true seed, there is not much point to arguing about it. Besides, for centuries moralists and canonists have agreed on true seed as a requisite and have interpreted the Bull of Sixtus V in that sense. So let it be granted that at least one of the reasons why Sixtus declared the eunuchs impotent was because they lack true seed.

Nor will anyone quarrel with the second statement, that eunuchs have no true seed because they have no testicles. Both sides will agree to that, too. But the further inference, that therefore true seed, in order to be such, must be elaborated in the testicles, is not accepted by those who hold the minority opinion.

They point out, first of all, that the phrase "elaboratum in testiculis" does not appear in the Bull *Cum frequenter* at all, neither in the introductory part, nor in the dispositive part of the decree. In fact, the phrase "elaboratum in testiculis" seems to be of recent origin in canonical literature. It is sometimes mistakenly attributed to the decree of Sixtus V, even in direct quotation,[35] but he did not use the phrase or any equivalent of it. Cardinal Gasparri seems to have been the first to use this expression. It occurs in the third edition of his work on matrimony, published in 1904.[36] Thence it was taken up by Ferreres, and it has since become a commonplace in canonical literature.[37] The

[35] E.g., in the New York case, three times. Cf. *Monitor ecclesiasticus* 75 (1950) 209, 211, 212, where Sixtus V is cited in direct quotation as follows: "verum semen formari debet in testiculis." This is a mistake which has inadvertently crept in; there are no such words in the decree of Sixtus V.

[36] Gasparri, *De matrimonio* (ed. 3a; Paris, 1904) n. 566. Fr. Nowlan, author of the article cited above in note 10, made a careful search of the authors, but was unable to find anyone who made this an essential requirement prior to Gasparri's third edition, where Gasparri made use of the phrase rather incidentally to differentiate the semen of boys and of old men from that of eunuchs.

[37] Ferreres, *De vasectomia duplici* (Madrid, 1912) 51.

requirement, "elaboratum in testiculis," cannot be ascribed to the decree of Sixtus V.

However, it may be objected that, even if Sixtus did not use this phrase, he certainly must have thought that true seed comes from the testicles and is produced there. This is undoubtedly true, in my opinion, but it proves a little too much. It is altogether likely that Sixtus and everyone else at that time thought that the whole bulk of the viscous ejaculate of normal men comes from the testicles—which it does not. That is what many ordinary people, uninstructed in the physiology of reproduction, believe today. Certainly Sixtus knew nothing of spermatozoa. They were first discovered almost a hundred years after his decree, and their function was not ascertained until almost three hundred years later, in 1875.[38] If we argue from what Sixtus thought about the physiological origins of true seed, we will immediately become involved in the physiological misconceptions which were unavoidably current at that time. It seems to me providential that Sixtus V avoided the mistake of incorporating in his decree physiological inferences which would later be proved false.

What Sixtus and the other learned men of his age knew about seminal fluid was this: they knew the obvious difference, apparent to common observation, between the viscous ejaculate of the average man and the watery "humor" produced by castrates. The first they called true seed, mistakenly thinking that the bulk of it comes from the testicles; the other they refused to call true seed. A castrate who produced only this watery "humor" was not only sterile but was declared certainly incapable of marriage from natural law—a position held previously by many theologians but not by all. A man who was not castrated, and who produced the viscous fluid of the normal ejaculate, was considered capable of marriage. His seed was true seed whether it was fertile or sterile.[39]

When Ferreres wrote his influential monograph in 1913 he consist-

[38] Nowlan, *art. cit.*, p. 400.

[39] Later on, when spermatozoa had been discovered and their function ascertained, a very natural development in canonical opinion took place. Some—for example, Alberti—defended the view that living spermatozoa were required for true seed. Cf. Rota Decision, *coram* Wynen, 25 Oct. 1945, reported in *Periodica* 35 (1946) 8; and cf. Rota Decision, *coram* Cattani, 8 Jan. 1913. But this opinion is now altogether obsolete; see note 32 above, citing the words of the Pope.

ently compared the ejaculate of the vasectomized man to that of the castrate. He said that the vasectomized man did not produce true seed because his ejaculate was a watery humor secreted by the prostate. And, using the phrase culled from Gasparri, he said that this watery ejaculate was not true seed because it was not "elaboratum in testiculis."[40] This misconception about the watery humor of the vasectomized has been corrected in the writings and judicial opinions of certain modern authors; but it persists in some works to the present day,[41] and nobody can estimate how many originally committed themselves to the majority view under the mistaken impression that the seed of the vasectomized man is strictly comparable to that of the castrates of Sixtus' decree. As we have seen, there is no real comparison between them. As far as common observation discloses, even very careful observation, the ejaculate of the *vasectomiacus* is just like the ejaculate of certain sterile but otherwise normal men.[42]

The many other sexual differences between eunuchs and the vasectomized have been sufficiently described by others. Due to the fact that the testicles are preserved intact after vasectomy and do not atrophy, the hormonal secretions which control and regulate secondary sexual characteristics remain unimpaired. Consequently the vasectomized man is sexually altogether different from a eunuch. As far as careful observation discloses, he is sexually no different at all from many other sterile men.[43]

From this exposition it will be seen that those who hold the minority view make much of the fact that the bulk of the ejaculate does not come from the testicles in any case. In a fertile man it is estimated that the three to five hundred millions of spermatozoa produced in the testicles, and their carrier fluid (if any), amount to only about one-twentieth or less of the total ejaculate. And the average total ejaculate is about a teaspoonful, while the carrier fluid (the very existence of which seems to be inferred rather than demonstrated) is a microscopic part of that one-twentieth or less of a teaspoonful, perhaps as little as four one-thousandths (.004) of a teaspoonful.[44]

[40] Ferreres, *De vasectomia duplici*, p. 51.

[41] Cf. note 11 above.

[42] Nowlan, *art. cit.*, pp. 405 ff.

[43] Nowlan, *art. cit.*, pp. 407 ff.

[44] Cf. Nowlan, *art. cit.*, p. 421, in conjunction with Dr. Marshall's estimate that the total testicular component is four or five per cent of the total ejaculate; see note 3 above.

Why do the minority make so much of this matter of quantity or proportionate quantity? Is it of any importance? It would not be important and would not even be pertinent, if the debate were carried on between two sides, one of which held that spermatozoa are essential to true seed, and the other held that they are not. Obviously, quantitative differences would be insignificant if the debate centered on the presence or absence of the one essential reproductive element, the spermatozoa. But this is not the controverted point.

Here we have the strange situation in which both sides grant that there can be true seed without any spermatozoa at all—for instance, in cases of aspermia. The crucial point of the debate is whether or not some testicular or epididymal component is essential. Of course, if the vasa of the vasectomized man were reopened, his ejaculate would usually contain not only this component but also the spermatozoa produced in the testicles, and there would be no question thereafter but that his seed was true seed. But if his vasa were reopened and because of a disease like aspermia there were no spermatozoa in his ejaculate, he would not be considered impotent by the majority on that account. He would be considered potent, because of the presumption that something in his ejaculate had been produced in and transmitted from the testicles through the vasa.

This component can only be the carrier fluid. Hence we are back to the question, whether the presence or absence of this component can be the essential criterion of impotence in cases of this kind—a component so exceedingly minute that it can be discovered, if at all, only with a microscope. Furthermore, this carrier fluid is a component which has no more bearing on the generation of new life than does the watery humor of the eunuch. It has only one claim to consideration, say the minority. That is the fact that it does come from the testicles or epididymides and is transmitted through the vasa. It does make it possible for the majority to say of the man's seminal fluid that it was "elaborated in the testicles," although one may doubt the propriety of this predication when it is based on such an exceedingly minute, and from the standpoint of generation exceedingly insignificant, component. The minority refuse to be satisfied with the idea that such a component is the final criterion of the natural law capacity of a man to get married.

But the majority introduce another concept to justify their demand

that the vasa be unobstructed. They distinguish, as both sides do, between the *actio naturae* in generation and the *actio hominis* or *actio humana*, which consists in an *actus per se aptus ad generationem*, or in "perfect natural coitus" or in a "true marriage act."[45] And they say that the testicles must play their part in the *actio humana*, the activity of natural coitus itself. Msgr. Wynen, the distinguished judge of the Rota, argues somewhat as follows. Nature has imposed on both sexes the requirement of bringing to coitus whatever is demanded for the procreation of new life inasmuch as this procreation depends precisely on the very act or activity of coitus itself. This fundamental principle is true of both men and women but in different ways. The ovaries of the woman need not play any immediate part in the activity of coitus itself in order that that activity may be said to exhibit all the elements that nature requires of it. Hence the woman whose vagina is internally occluded or who has no ovaries at all is still capable of a marriage act. But the testicles of the man must take part in the very activity (the *actio humana*) of coitus itself, according to the majority, in order to have a true marriage act. The reason, they say, is that nature itself demands that a man bring to the act of coitus seed which is *per se* capable of generating new life. If the vasa are obstructed the testicles cannot play their part in the very activity of coitus itself.[46]

As Aguirre puts it, in defense of the Rota jurisprudence: "By the operation of vasectomy the man's organ of copulation is so injured that it cannot exercise at all its essential function during the copula."[47] And again: "It cannot be doubted that according to the mind of the Pontiff there is required for the marriage act ... the cooperation of the testicles, and this by means of emitting that secretion in the very act of copula."[48]

The minority think they see in this argumentation a *petitio principii*, because the whole point in dispute is just what constitutes true seed and just what constitutes a true marriage act. To repeat that

[45] E.g., Rota Decision, *coram* Wynen, 25 April 1941, *Decisiones S.R. Rotae* 33 (1941) 290, Decision 28, n. 7.

[46] This is a summary of one part of Wynen's argumentation in the Rota decision cited in note 45 above.

[47] Aguirre, S.J., "De impotentia viri iuxta iurisprudentiam rotalem," *Periodica* 36 (1947) 22.

[48] *Ibid.*, pp. 20, 21.

nature demands true seed, and that true seed is demanded for an *actus per se aptus*, and that true seed must be elaborated in the testicles, does not advance the argument. If the assertion were that nature demands for an *actus per se aptus* the essential male element, the sperms, then it would be easier to agree.

But apart from the *petitio principii* the defenders of the minority view attack the physiological assumptions of this line of argumentation. They point out that in all probability, according to modern scientific opinion, the testicles and epididymides do not play any part in the act of copula, whether the vasa are open or obstructed, whether the man is fertile or sterile. It is believed very unlikely by modern specialists in the field, to quote one of them, that "during a given orgasm ... any sperm travel all the way from the testicles to the external world.... It is generally thought that the vast majority of the sperm found in a given ejaculate have come from the terminal ends of the vas, and very few, if any, have come all the way from the epididymis."[49] At best it is dubious that the testicles normally cooperate in the activity of coitus in the way which is assumed by these defenders of the majority opinion. Consequently they find themselves in the embarrassing position of accusing the vasectomized man of impotence for a reason which, if valid, would make everyone impotent, because it is much more probable scientifically that the testicles do not play a part in any marriage act by contributing to it during the act itself the transmission of sperms or anything else through the vasa.

And so the minority take the view that it is far from certain that the *actio humana* of intercourse becomes any more of an *actus per se aptus ad generationem* merely because the vasa are unobstructed during the act. Nor do they consider it at all plausible that the tiny addition of the carrier fluid (perhaps only .004 of a teaspoonful), which has no more relation to generation than the watery secretion of the prostate, can change a man's ejaculate from false seed to true seed. Most of all, they balk at the idea that nature itself makes considerations of this kind the essential criterion of a natural law diriment impediment to matrimony.

[49] Private communication from Dr. Victor F. Marshall, Cornell Medical Center, New York City.

ROTAL JURISPRUDENCE AND PAPAL STATEMENTS

Now let us turn to the other side of the picture and consider the very strong position occupied by the holders of the majority view.

For thirty or forty years the Rota decisions have held with great consistency that a man is incapable of a true marriage act and impotent if he does not emit *"verum semen in testiculis elaboratum."* None of their decisions so far has annulled a marriage on the grounds of antecedent, perpetual, double vasectomy, as far as I know. But they have dealt with many cases in which the point at issue was whether or not the man could emit true seed. In cases where it was proved that there could be no testicular component in the ejaculate, either because the testicles were diseased and fully atrophied, or because the vasa deferentia were permanently and completely occluded (for instance, by disease), the Rota has decided without hesitation that the man was impotent. The reason for the impotence was either because the man could not produce true seed or, if the testicles could produce it, it could not be ejaculated *ad extra* because of the obstruction of the vasa.

There is no need of citing in detail these cases. There was released for publication in 1944 a catalogue of thirty-eight Rota decisions in which the issue of impotence by reason of incapacity to emit true seed was discussed.[50] Some of these decisions had already been published previously, others had not. The list begins in 1914 and ends in 1943. Since that time there have been other cases, notably a case *coram* Wynen, decided on Oct. 25, 1945. Of these cases twenty-two resulted in a sentence of *constat de nullitate*, and sixteen in *non constat*. In six of the *non constat* cases the further decision was that the Holy Father should be advised to grant a dispensation *super rato et non consummato*. These dispensations were granted, two by Pius XI and four by Pius XII. It should not be inferred that in the cases in which a decision of *non constat* was reached, there was any deviation from the current jurisprudence already referred to. In order to reach a decision of *constat de nullitate* it is necessary to prove not only the incapacity to emit true seed but the fact that this incapacity was antecedent to marriage and was certainly irremediable.

It would simply be laboring the obvious, therefore, to attempt a detailed proof that for the last thirty or forty years the Rota has regu-

[50] Cf. *Periodica* 33 (1944) 216–17.

larly declared marriages null on grounds which, if applied to cases of permanent, antecedent, double vasectomy, would result in decisions of *constat de nullitate* in these cases too.

Most significant of all are the dispensations *super rato et non consummato* granted by two Popes. In this type of case the Rota was not satisfied of the nullity of the marriage, because it was not certain that the impediment of impotence, which must be antecedent and perpetual, was present. But being satisfied that the man in the case had been incapable of emitting true seed from the day of the marriage all during the common life of the partners, they concluded that his seeming marriage acts during that time were not true marriage acts, and therefore that the marriage had never been consummated. On this basis they reached the decision: *consilium praestandum esse SSmo pro dispensatione super matrimonio rato*; and it is hard to see what other grounds the Holy Father could have had for granting the dispensation.[51]

Even when we remember that the Rota is not infallible in its decisions and that its jurisprudence is not necessarily binding on the whole Church as if it had the force of law,[52] and even keeping in mind that the Holy Father is not infallible in individual cases when he exercises his papal prerogative in dispensing *super rato*, it would still be foolish to deny that all this adds up to extremely weighty authority—so weighty that one wonders why it is that despite this authority there are a good many voices still heard in a contrary sense. I can only suggest, in addition to the arguments for the minority view, some possible reasons why this is the case.

The impediment of impotence has had a long and stormy career in the centuries of the history of the Church. It has always been extremely difficult to determine just what it is, and whence it is. The practice of the Roman Church in early times did not coincide with that of France and Germany. Historians of canon law cannot agree that even in the Roman Church impotence was always regarded as an impediment to valid marriage.[53] Up to the very time of the decree of Sixtus V Sanchez

[51] However, neither Pius XI nor Pius XII have published the reasons on which these dispensations were based, and the decisions in individual cases do not juridically preclude further developments.

[52] Cf. Maroto, *Institutiones iuris canonici* 1 (ed. 3a) n. 366, on the binding force of Rotal jurisprudence; quoted in *Periodica* 35 (1946) 9–10.

[53] DeSmet, *De sponsalibus*, n. 561, p. 494; Wernz-Vidal, *Jus canonicum* 5, n. 222, note 25, p. 249.

was able to cite a not inconsiderable number of reputable theologians who held that the impediment was not of natural law but of ecclesiastical origin.[54] There were still weightier names who held that impotence was not an impediment at all if it were known to the parties before marriage, and if, notwithstanding this, they were willing to consent. This was the opinion of Peter Lombard and of St. Thomas himself.[55] It was only after centuries of dispute that Sixtus V put an end to these controversies and authoritatively declared not only that eunuchs were impotent but that their impotence was an impediment of natural law, and that it invalidated their marriages whether the fact of impotence was previously known to their consorts or not.[56]

In the light of these lengthy and serious controversies our present debate seems of short duration and capable of further evolution. The question is only about fifty years old, and the jurisprudence of the Rota on "true seed elaborated in the testicles" seems to be of still shorter duration. We are in a period of development with regard to concepts of impotence—a development made inevitable by modern biological discoveries with regard to the physiology of reproduction. Even the Rota itself has experienced some of these vicissitudes in our day.

In the matter of the concept of female impotence the jurisprudence of the Rota has undergone very considerable evolution in recent times. During the past forty or fifty years some Rota decisions were based on the principle that inner occlusion of the vagina rendered the woman impotent, and other decisions were based on the principle that inner occlusion did not constitute impotence in the woman.[57] Even as late as 1922 one Rota decision was made which definitely favored the minority view. The next year another ternus of the Rota reversed it.[58] It is only

[54] Sanchez, *De sancto matrimonii sacramento* 7, disp. 97, n. 1.

[55] Sanchez, *loc. cit.;* John C. Ford, S.J., *The Validity of Virginal Marriage* (Worcester, Mass., 1938) p. 119 ff.

[56] Sixtus V, "Cum frequenter" (Gasparri, *Fontes iuris canonici* 1, n. 298).

[57] Cf. Henry A. Callahan, S.J., "The Evolving Concept of Female Copulatory Impotence in the Rota Decisions from 1916 to 1931," MS (Weston College, Weston, Mass., 1942).

[58] *Coram* Solieri, 10 Aug. 1922, *Decisiones S.R. Rotae* 14, Decisio 30, p. 272; reversed *coram* Chimenti, 28 Mar. 1924, *Decisiones S.R. Rotae* 15, Decisio 12, p. 103. The Rota has not been altogether consistent on the question of requiring sperms for true seed; cf. *coram* Cattani, 8 Jan. 1913, *Decisiones S.R. Rotae* 5, pp. 23 ff., which required actual sperms in the ejaculate. The opposite and altogether prevalent view is held in *coram* Massimi, 14 Jun. 1923, *Decisiones S.R. Rotae* 15, p. 105.

since 1923, then, that the Rota jurisprudence has been completely uniform.

It is extremely unlikely, however, that the Rota would reverse itself on this question at the present time. It is not impossible; but it would hardly happen without a clear and definitive settlement of the controversy coming from the Pope or from a competent Roman Congregation.[59] The reason why we still have dissenting voices is not merely the difficulty of the problem itself but the fact that *pari passu* with the Rota's tradition there has existed during all of this time the opposite opinion, publicly proposed, and based on reasons by no means frivolous.[60] This opinion, furthermore, has had its defenders in Rome itself. They are still there today, as we shall see.

If one asks why the minority opinion persists in spite of the implications of the papal dispensations *super rato et non consummato*, the only answer I can find is that, despite these grants, the Pope himself has refrained from settling the controversy, even on two recent occasions when he spoke publicly on this matter and indicated his preference for the majority view. He could have given a definitive statement, as he had undoubtedly been urged to do, but he refrained from doing so, thus leaving the matter open for further discussion.

On Oct. 8, 1953, the Holy Father gave an allocution to the Twenty-sixth Convention of the Italian Association of Urologists.[61] In answer to their request for guidance in giving testimony in matrimonial cases of impotence, he had this to say:

> How can one know that the *potentia coeundi* really exists and that consequently the act of the spouses comprises all its essential elements? A practical criterion of this, even if it is not valid without exception in every case, is the ability to achieve the external act in a normal way. It is true that an element can be lacking without the partners being aware of it. Nevertheless this *signum manifestativum* ought to suffice for practice in everyday life, which demands that for an institution as broad as marriage men should possess in normal cases sure and easily recognizable

[59] One recalls the surprise with which the canonical world received the decision of the Code Commission, 20 July 1929, on the meaning of "ab acatholicis nati" (can. 1099). The decision ran counter to the overwhelming weight of canonical authority.

[60] Cf. notes 20 to 31 above; also Bouscaren, *Canon Law Digest* 3, 410 (under can. 1068), who cites a Holy Office reply (16 Febr. 1935) which must have given the inquiring Bishop of Aachen, Germany, the impression that the minority view was admitted by the Holy Office. When carefully read, however, the reply is evasive on that point.

[61] *AAS* 45 (15 Nov. 1953) 676, 677, 678.

means of ascertaining their aptitude for marriage; this suffices because nature is accustomed to build the human organism in such wise that the internal reality corresponds to the external form and structure.

In addition the *potentia coeundi* comprises on the part of the husband the capacity to transmit in a normal way the fluid of the seminal glands; there is no question of each of the specific and complementary constituents of this fluid. The lack of active sperm is not ordinarily a proof that the husband cannot exercise the function of transmission. Even azoospermia, oligospermia, asthenospermia, and necrospermia have nothing to do, in themselves, with the *impotentia coeundi*, because they concern the constitutive elements of the seminal fluid itself, and not the power of transmitting it....

One can, then, in the great majority of cases omit the microscopic examination of the sperm. One can demonstrate in another way, if this should be of any use, that the seminal tissue still possesses some functional aptitude and likewise that the canals which link these glands to the organs of ejaculation still function, are not completely deteriorated or definitively obstructed.

When the Holy Father refers to an element that could be missing without the knowledge of the partners, he seems to have in mind something like what we have called the carrier fluid, or what the tribunal of Bologna calls "preternemaspermatic secretions";[62] but he does not say so. A little later he mentions that the presence of active sperms is not essential. The "liquid of the seminal glands" would also seem at first sight to mean only the liquid of the testicles; but in the same sentence it is apparent that the liquid referred to is the whole ejaculate or seminal fluid. It is also noteworthy that the Pope enumerates several diseases in which the sperms in the ejaculate are deficient or defective; but he does not explicitly mention, as the Rota judges do, cases where there are simply no sperms at all. Finally the reference to the "definitively obstructed" vasa deferentia indicates once more that this whole passage is written in terms which definitely tend toward the majority view.

And yet, in my opinion, it cannot be considered an authoritative settlement of the controversy about double vasectomy. This is the actual controversy that deeply troubles the minds of many and really calls for a definite solution. Undoubtedly this was the controversy that the urologists had in mind when they asked for guidance. It would have been so easy to say that double vasectomy which is ante-

[62] Case reported in part in *Monitor ecclesiasticus* 78 (1953) 240–46.

cedent and certainly permanent makes a man impotent and incapable of marriage. The Holy Father refrained from saying this, as he had previously refrained just one month before. On September 7, 1953, the Pope had addressed the geneticists, in a more widely publicized discourse; on that occasion too he had discussed vasectomy without mentioning it by name. The following paragraph of the papal discourse will be more intelligible if one reads it keeping in mind the controversy on vasectomy, and substituting the word "vasectomy" for the word "sterilization" when it occurs:

> In order to justify direct eugenic sterilization or the alternative of segregation, it is claimed that the right to marriage and the acts that is implies it not impaired by sterilization even if it is prenuptial, total, and certainly permanent. This attempt at justification is doomed to failure. If a person of good sense judges that the fact in question [prenuptial, total, permanent sterilization] is doubtful, then the unfitness for marriage is also doubtful, and this is the moment to apply the principle [of canon 1068 §2] that the right to marry continues as long as the contrary is not proved with certitude. Even in this case the marriage should be permitted; but the question of its objective validity remains in doubt. If on the other hand there remains no doubt as to the fact of the aforesaid sterilization [that is, prenuptial, total, and permanent], it is premature to assert that despite this there is no question as to the right to marry; and in any case this assertion is open to very serious doubts."[63]

Again it seems to me clear that the Holy Father, while favoring the majority view in this statement, has purposely abstained from settling the controversy. This reserve is highly significant, considering the Rota decisions, the previous dispensations *super rato et non consummato*, and the pressure for a decision which from the nature of the case must have been felt by the Holy Father. Is it not likely that the reason for this reserve is to allow time for further discussion of the issue?

Some may feel that these papal statements are a practical solution to the entire controversy; but to me it seems that they are not definite, final, and authoritative. With all due allowance for changes in the *stylus curiae* since the days of Sixtus V, and recognizing that the Holy Father is not bound to any particular formalities of utterance, one

[63] *AAS* 45 (8 Oct. 1953) 606, 607. See Ford, S.J., and Kelly, S.J., "Notes on Moral Theology, 1953," THEOLOGICAL STUDIES 15 (1954) 95, 96.

cannot avoid contrasting the tentative tone of these statements with the unmistakeable pronouncements of Sixtus V:

Fraternitati tuae per praesentes committimus, et mandamus, ut coniugia per dictos, et alios quoscumque Eunuchos, et Spadones, utroque teste carentes cum quibusvis mulieribus, defectum praedictum sive ignorantibus, sive etiam scientibus, contrahi prohibeas, eosque ad Matrimonia quomodocumque contrahenda inhabiles auctoritate nostra declares, et tam locorum Ordinariis, ne hujusmodi conjunctiones de cetero fieri quomodocumque permittant, interdicas, quam eos etiam, qui sic de facto Matrimonium contraxerint, separari cures, et Matrimonia ipsa de facto contracta, nulla, irrita, et invalida esse decernas. . . .

Nos enim ita in praemissis, et non aliter, per quoscumque iudices, et Commissarios, quacumque auctoritate, et dignitate fungentes, sublata eis, et eorum cuilibet, quavis aliter iudicandi, et interpretandi facultate, in quacumque causa, et instantia iudicari, et definiri debere, et si secus super his a quoquam quavis auctoritate, scienter vel ignoranter attentatum forsan est hactenus, vel attentari in posterum contigerit, irritum et inane decernimus. . . .[64]

RECENT PRIVATE OPINIONS FROM ROME

Considering the amount of trouble which the present question gives to the practicing canonist and moralist in this country, it occurred to me that it would be worthwhile if I were to canvass the opinions of certain canonists and moralists who practice their profession in Rome. I have done this by obtaining privately expressions of opinion from ten men—seven canonists, two moralists, and one dogmatic theologian. All of them, except one of the canonists, are members of the Roman Congregations or tribunals; some of them are consultors to several of the Congregations. The list includes members of the Holy Office and of other Roman Congregations, of the Poenitentiaria, of the Rota, and professors of moral theology and canon law teaching in Rome; most of them are men whose names are well known through their writings.

The following are the four questions proposed to these men and a brief summary of the answers they gave:

"1) Is the following opinion probable and safe in practice: 'A man who previous to marriage undergoes double vasectomy which is certainly irreparable is not certainly impotent with a view to contracting marriage' (cf. can. 1068)?"

[64] Gasparri, *Fontes iuris canonici* 1, n. 298.

To this question four replied in the affirmative, five in the negative, and one said the question did not admit of a categorical answer.

"2) When such a man has already married and the marriage is accused in a diocesan tribunal, can the judge decree, 'Non constat de nullitate,' notwithstanding certain decisions of the Rota?"

To this question five replied that the diocesan judge can decree, "Non constat"; one said "he can but should not"; one said he cannot; one said he should follow his conscience; and two did not give a direct answer.

"3) Is there discernible in the present jurisprudence of the Rota, any tendency to admit the probability of the opinion stated in (1)?"

In answer to this question none of the respondents knew of any present tendency in the Rota to change its jurisprudence. One of them, a member of the Rota, replied that if there is any tendency it is a tendency not easily to admit the *de facto* perpetuity of the condition.

"4) Did the Allocution of Pius XII to the meeting of geneticists on Sept. 7, 1953 (*AAS* 45[8 Oct. 1953] 606) leave the question open and still to be discussed, whether double vasectomy which is certainly irreparable invalidates marriage?"

To this last question seven replied that the Pope had left the question open; one replied that the Pope did not condemn the minority opinion; one did not answer; and one said that in his opinion the Pope considered the minority view only dubiously probable.

In addition to these Roman opinions I have recently asked nine professors in American seminaries—eight professors of moral theology and one of canon law—whether they believed the minority opinion to be probable and safe in practice. They all answered in the affirmative.

If I may presume to add my own opinion on the questions proposed, I would answer as follows: I consider the minority opinion probable and safe in practice; I think the diocesan judge may pronounce, "Non constat," in accordance with that opinion; I discern no tendency in the Rota to change its jurisprudence; and I do not believe that the papal allocution to the geneticists, or that to the urologists, closes the matter; they leave it open for further debate and discussion.

To me this cross-section of eminent Roman opinion together with the opinions from this side of the water makes it very clear that the

only thing which will bring about a satisfactory settlement of the controversy and satisfactory norms for practice will be an explicit official decision by competent Church authority. While awaiting such a decision discussions like the present one serve a useful purpose. The Church is accustomed, before making authoritative decisions, to take into account the honest and humble work of theologians, moralists, and canonists.