

## DOUBLE VASECTOMY AND MARITAL IMPOTENCE

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THE question of the impotence of the vasectomized man, in the view of the average physician, is not worth discussing. Doctors in general can see no room for debate on the question, since they simply assume that a man who can achieve penetration and insemination with satisfaction is, on the face of it, capable of the marriage act. The canonical question of the requirement of true semen has no meaning for them. Thus, Fr. Vermeersch interrogated a distinguished doctor on the medical faculty at Louvain and found that he unhesitatingly pronounced the vasectomized man sterile but not impotent.<sup>1</sup> Lam, speaking of the results of five hundred vasectomies, notes that the onset of impotence is in no way hastened by the operation.<sup>2</sup> Hagner, speaking of numerous cases of occluded vasa deferentia, lumps them all together as cases of sterility.<sup>3</sup> The same attitude is apparent in Taylor<sup>4</sup> and in O'Malley's blunt statement, made before he had thoroughly studied the canonical literature: "There is positively no more question of impotence arising from vasectomy than from shaving your beard."<sup>5</sup> So medical men in general are not concerned about canonical implications. They are not, therefore, safe guides where principles are under discussion, though they are reliable as sources of physiological data.

The weight of canonical authority in the recent past has favored the view that a clear state of impotence obtains where the testicular component of the ejaculate is lacking. During the past few decades, most canonists and moralists have maintained consequently that a permanently vasectomized man (that is, a man who has had both vasa deferentia cut and resected beyond hope of repair) is certainly

<sup>1</sup> Vermeersch, *De Castitate* (ed. altera; Bruges, 1921), n. 84, nota 2.

<sup>2</sup> J. W. Lam, "Vasectomy, a Study of 500 Cases," *Journal of Contraception*, I (1936), 159.

<sup>3</sup> F. R. Hagner, "The Operative Treatment of Sterility in the Male," *Journal of the American Medical Association*, CVII (1936), 1851, 1855.

<sup>4</sup> A. S. Taylor, *A Manual of Medical Jurisprudence* (Philadelphia, 1873), p. 681.

<sup>5</sup> A. O'Malley, "Vasectomy in Defectives," *Eccl. Rev.*, XLIV (1911), 691.

impotent and forbidden by the natural law to marry.<sup>6</sup> They are very positive in their statements and manifest not the slightest doubt regarding the soundness of their view. They have good reasons for their position and especially for their insistence upon its certitude. Anything less than certitude would fail to establish double vasectomy as a diriment impediment to marriage.

Can. 1068, §2 states clearly: "If the impediment of impotence is doubtful, whether as to the application of the law or as to the facts in the case, the marriage is not to be impeded."<sup>7</sup> The presumption of law therefore favors marriageability, and impotence must be demonstrated with certainty before it can impede a given marriage. So it is extremely important to distinguish carefully between certain and doubtful impotence. The doubt may refer to the man's present physical incapacity, to the permanence of that incapacity, or to whether it existed antecedently to marriage. Where there is a doubt respecting one or all of these points, the Church decides in favor of the marriage.<sup>8</sup>

From our threefold enumeration of possible sources of doubt we derive three approaches to any particular case. These approaches are concretized in the following questions: (1) Was the man vasectomized before or after his marriage? (2) If before, is his condition so hopeless of surgical remedy as to be classed as perpetual? (3) If it must be considered perpetual, is the man still capable of the marriage act? As is evident, the last question is by far the most basic and, if

<sup>6</sup> Among these are Gasparri, *Tractatus Canonice de Matrimonio* (Romae, 1932), I, app. de vasect., n. 7; De Smet, *De Sponsalibus et Matrimonio* (Bruges, 1927), n. 440, nota 5; De Becker, "Mea Responsio RR.PP. Donovan et Labouré quoad Quaestionem Motam de Liceitate Vasectomiae," *Eccl. Rev.*, XLIII (1910), 356; Ferreres, *De Vasectomia Duplici Necnon de Matrimonio Mulieris Excisae* (Madrid, 1913), n. 104; Marc-Gesterman, *Institutiones Morales* (Lugduni, 1923), II, n. 2009; Wouters, *Theologia Moralis* (Romae, 1932), II, n. 774; Tanquerey, *Synopsis Theologiae Moralis et Pastoralis* (Romae, 1920), I, Supplement, n. 5; Ojetti, *Synopsis Rerum Moralium et Juris Pontificii* (Romae, 1909-1914), n. 2425; Wernz-Vidal, *Jus Canonice* (Romae, 1925), V, n. 233; Cappello, *De Sacramentis* (Romae, 1933), III, n. 377; Merkelbach, *Quaestiones de Embryologia et de Sterilizatione* (Liege, 1937), p. 93; Chelodi, *Jus Matrimoniale* (Tridenti, 1921), n. 40; Bucceroni, *Institutiones Theologiae Moralis* (Romae, 1915), IV, 63; Ubach, *Compendium Theologiae Moralis* (Friburgi Brisgoviae, 1926), II, n. 798.

<sup>7</sup> "Si impedimentum impotentiae dubium sit, sive dubio iuris sive dubio facti, matrimonium non est impediendum." <sup>8</sup> Cf. can. 1014.

answered in the affirmative, as far as marriage validity is concerned, would make the first two questions practically unnecessary. If double vasectomy leaves intact the power to perform the marriage act in the full canonical sense, it can never of itself constitute a diriment impediment to marriage.

To our mind, a sufficient number of canonists and moralists deny or doubt the impotence of the perpetually vasectomized (and for sufficiently good reasons) to justify permitting him to marry. Among those who hold the view that he is not impotent are Vermeersch,<sup>9</sup> Jorio,<sup>10</sup> Schmitt,<sup>11</sup> Arend,<sup>12</sup> Woywod,<sup>13</sup> Donovan,<sup>14</sup> Viglino,<sup>15</sup> Grosam,<sup>16</sup> Gemelli,<sup>17</sup> Mayer,<sup>18</sup> and Labouré.<sup>19</sup> Vermeersch says that he is inclined more and more to the opinion that denies impotence as "...that which better accords with the dicta of tradition and has no difficulty in being consistent. This opinion, recognizing the vast discrepancy which distinguishes eunuchs and castrates from those who retain intact their internal secretion and sexual appetite, pronounces only castrates to be impotent and permits the latter to marry."<sup>20</sup> Many more names can be marshalled for the view which concedes that the impotence of the vasectomized man, though highly probable, is not certain.<sup>21</sup>

<sup>9</sup> Vermeersch, "Aktuelle Fragen des Eherechts und der Ehemoral," *Theologisch-praktische Quartalschrift*, LXXXIX (1936), 59.

<sup>10</sup> Jorio, *Theologia Moralis* (Neapoli, 1940), III, Pars II, n. 1178.

<sup>11</sup> Noldin-Schmitt, *Summa Theologiae Moralis* (Oeniponte, 1940), III, n. 567.

<sup>12</sup> G. Arend, "De Genuina Ratione Impedimenti Impotentiae," *Ephem. Theol. Lov.*, IX (1932), 28.

<sup>13</sup> Woywod, "Does Sterilization of a Man Constitute a Diriment Impediment to Marriage?" *Homiletic and Pastoral Review*, XXXIV (1934), 109.

<sup>14</sup> S. F. Donovan, "The Morality of the Operation of Vasectomy," *Eccl. Rev.*, XLIV (1911), 571.

<sup>15</sup> A. Viglino, "Un curioso equivoco sull'impotenza al matrimonio in diritto canonico," Estrata dalla Rivista *Il Diritto Ecclesiastico*, Vol. II, ser. III, Gennaio-Luglio, 1923.

<sup>16</sup> J. Grosam in *Theologisch-praktische Quartalschrift*, LXXXIII (1933), 90, as cited by Vermeersch, *art. cit.*

<sup>17</sup> Gemelli in *La Scuola Cattolica*, ser. IV, vol. XXI, 396 f., as cited by De Smet, *op. cit.*

<sup>18</sup> J. Mayer, *Gesetzliche Unfruchtbarmachung Geisteskranker* (Freiburg i. Breisgau, 1927), p. 419.

<sup>19</sup> Labouré, "De Vasectomia," *Eccl. Rev.*, XLIII (1910), 320.

<sup>20</sup> Vermeersch, *art. cit.*, p. 57.

<sup>21</sup> E.g., Yanguas, "De Sterilizatione Relative ad Matrimonium," *Estudios Ecclesiasticos*, XIV (1935), 387; La Rochelle and Fink, *Handbook of Medical Ethics* (Montreal, 1943), p. 140; Ryan, *Moral Aspects of Sterilization* (Washington, D. C., 1930), p. 7; Clifford,

Basic to the whole controversy is the definition of the marriage act. It is defined in can. 1081, §2, as an act which is *per se* apt for generation. All jurists and moral theologians agree, of course, on this definition, but there are disagreements as to its interpretation. There are two schools of thought regarding its application in the present matter. The more common twentieth-century view says that "semen in testiculis elaboratum" or the contribution of the testicles to the male ejaculate is absolutely essential. The other opinion says that it is not. Now, obviously, double vasectomy eliminates testicular semen from the ejaculate. No one denies that. Consequently, the

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"Marital Rights of the Sinfully Sterilized," THEOLOGICAL STUDIES, V (1944), 150; Chretien, *De Matrimonio* (Metis, 1937), p. 231, note 32; Piscetta-Gennaro, *Elementa Theologiae Moralis* (Torino, 1934), VII, p. 52, nota 1; Regatillo, *Casos de Derecho Canonico* (Administracion de Sal Terrae, Santander, 1935), III, 617, caso 549; Prümmer, *Manuale Theologiae Moralis* (Friburgi Brisgoviae, 1928), III, n. 798; Payen, *De Matrimonio in Missionibus* (Zi-Ka-wei, 1928), III, n. 987; Creusen, cf. Vermeersch-Creusen, *Epitome Juris Canonici* (Romae, 1934), II, n. 339.

In an effort to determine the present state of opinion in this country, we sent the following two cases to about one hundred canonists and moralists, including chancellors and their assistants, professors in theological seminaries, and Doctors of Canon Law serving on diocesan matrimonial boards:

1) "Titius confesses that before his marriage he was doubly vasectomized. The doctor cut the vas deferens and buried the ends, making sure they could not grow together again. Now Titius has read that he was impotent at the time of his marriage because of this operation. He is very much in love with his wife and wants to know if he can continue to have intercourse with her. She asks for it regularly.

2) "Sempronius confesses that he has had an operation of double vasectomy just like that of Titius. He is engaged to be married, and has read that he is impotent. He now asks whether he is certainly impotent."

We asked these experts to give us briefly their solution of these cases and to let us know, if possible, the views held by their fellow canonists and moralists. Responses came back from forty of the priests contacted, in which they presented their own views and, in many cases, the opinions of one or more of their colleagues. Thus the total number polled was sixty-two. They represent every section of the United States and would seem to constitute a fair cross section of canonical opinion in this country. On the basis of one supposition only, namely, that the cases under discussion have been pronounced irremediable by competent medical authority, we find the results of the inquiry to be as follows: Thirty would permit intercourse in case 1, even though Titius is and was before his marriage permanently vasectomized. Twenty-one would deny the right of such intercourse on the grounds that the marriage has been invalid from the beginning, due to the certain existence of antecedent and perpetual impotence. In case 2, twenty-eight would permit the marriage even though Sempronius is known to be in an irremediably vasectomized condition. Twenty-two would forbid the marriage on the grounds that Sempronius is antecedently and perpetually impotent, and this for certain.

supporters of the first opinion necessarily hold for the impotence of the vasectomized man. If he lacks an essential for the marriage act, he is impotent. And if testicular semen in the ejaculate is essential to the marriage act, the doubly vasectomized man is certainly incapable, here and now, of performing it.

The whole controversy swings about the following points, which we shall consider in order: (1) The Bull of Pope Sixtus V, *Cum Frequenter*, given June 27, 1587; (2) The concept of *verum semen*; (3) the physiological effects of double vasectomy; (4) the relation of these facts to the *Cum Frequenter*; (5) the reversibility of the operation of double vasectomy; (6) the obscurity in the definition of the marriage act evidenced by divergent views as to its licit use; (7) the nature and required certitude of a natural law impediment to matrimony; (8) Roman decisions and responses.

#### THE BULL OF SIXTUS V

The most important and definitive statement on impotence ever issued by a pope is the *Cum Frequenter* of Sixtus V, dated June 27, 1587. It was given in reply to an inquiry from the Bishop of Navarre whether eunuchs should be allowed to marry. This papal constitution not only forbids such marriages but assigns explicit reasons for the decision. These reasons form the principal argument of those who maintain the impotence of the vasectomized man. Since the *Cum Frequenter* is comparatively brief, we present the complete text:

Cum frequenter in istis regionibus Eunuchi quidam, et Spadones, qui utroque teste carent, et ideo certum ac manifestum est, eos verum semen emittere non posse, quia impura carnis tentigine, atque immundis complexibus cum mulieribus se commiscent, et humorem forsan quemdam similem semini, licet ad generationem, et ad matrimonii causam minime aptum effundunt, Matrimonia cum mulieribus, praesertim hunc ipsum eorum defectum scientibus contrahere praesumant, idque sibi licere pertinaciter contendunt, et super hoc diversae lites, et controversiae, ad tuum, et Ecclesiasticum forum deducantur, requisivit a Nobis Fraternalitas tua, quid de huiusmodi connubiis sit statuendum.

§1. Nos igitur attendentes, quod secundum Canonicas sanctiones, et naturae rationem, qui frigidae naturae sunt, et impotentes, iidem minime apti ad contrahenda matrimonia reputantur, quodque praedicti Eunuchi, aut Spadones, quas tamquam uxores habere non possunt, easdem habere ut sorores nolunt, quia experientia docet, tam ipsos dum se potentes ad coeundum iactitant, quam mulieres, quae eis nubunt, non ut caste vivant, sed ut carnaliter invicem coniugantur prava,

et libidinosa intentione, sub praetextu, et in figura Matrimonii turpes huiusmodi commixtiones affectare, quae cum peccati, et scandali occasionem praebeant, et in animarum damnationem tendant, sunt ab Ecclesia Dei prorsus exterminandae. Et insuper considerantes, quod ex Spadonum huiusmodi, et Eunuchorum coniugiis nulla utilitas provenit, sed potius tentationum illecebrae, et incentiva libidinis oriuntur, eidem 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 huiusmodi coniunctiones de cetero fieri quoquomodo 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.

§2. Eos etiam qui sic iam contraxerunt, si appareat illos non ut caste simul vivant, contraxisse, sed actibus carnalibus, et libidinosis operam dare, simulve in uno, et eodem lecto cum praedictis mulieribus dormire convincantur, omnino similiter separari cures.

§3. 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 forsitan est hactenus, vel attentari in posterum contigerit, irritum, et inane decernimus.

§4. Non obstantibus, etc. [Here follows the usual technical conclusion, asserting the authority of the decision and setting aside all decisions to the contrary.]<sup>22</sup>

In general, therefore, Pope Sixtus V responds to an inquiry from the Bishop of Navarre whether eunuchs may be permitted to marry. He first cites the bishop's question which comes down to this: "Since eunuchs are incapable of producing true semen, should they be allowed to marry?" He replies in the negative and assigns as his reasons: (1) that eunuchs are of a frigid nature unsuited to matrimony, (2) that they are incapable of the marriage act, and (3) that by their futile efforts to perform it and by other acts substituted for it, they sin themselves and cause scandal to others. So much for the general intent of the document. Clearly its direct concern is with castrates only, that is, with men who lack both testicles. Its extension to crypsorchides, to gonorrhoeal blockage of the vas deferens, and to vasectomy must be by way of parallel with castrates or by application of some general principle enunciated in the Bull.

<sup>22</sup> Gasparri, *Fontes Juris Canonici* (Romae, 1926), I, 298.

## THE CONCEPT OF TRUE SEMEN

Most modern canonists look upon the *Cum Frequenter* as a clear statement of the necessity of testicular semen for male potency. They argue that the Bull at least implies that true semen is necessary for the performance of the marriage act. And this *verum semen* in the sense of the Bull can not be had, they say, without the testicular contribution because that is precisely the element which is lacking in the semen of eunuchs. It is a very short step from there to pronouncing the vasectomized man impotent.

The canonists cited above<sup>23</sup> question this interpretation of the *Cum Frequenter*. Add to them O'Malley, who, though not a canonist, has written extensively on the present question and concludes that the prohibition of the *Cum Frequenter* is not applicable to the vasectomized man.<sup>24</sup>

*Is True Semen Required?*

Among the reasons advanced for believing that the Constitution of Sixtus V does not apply to a case of vasectomy is this, that the expression *verum semen* is found only in that part of the papal document which paraphrases the bishop's inquiry.<sup>25</sup> In the formal response, other reasons for prohibiting the marriages of eunuchs are assigned, and no reference is made to the lack of *verum semen*. There is something to this argument but it appears unconvincing to us for two reasons. First, the whole Bull is a papal document and Sixtus V need not have incorporated into it the clauses referring to true semen if he did not consider them reasons for declaring eunuchs impotent. Indeed, from a strict grammatical standpoint they are not presented as paraphrases or quotations from the bishop. Secondly—and this is the strongest argument for accepting the *verum semen* requirement—canonists and moral theologians have been so interpreting the *Cum Frequenter* for centuries.

<sup>23</sup> Cf. *supra*, footnotes 9-19.

<sup>24</sup> O'Malley, *The Ethics of Medical Homicide and Mutilation* (New York, 1922), p. 259. O'Malley says in this work that he now believes the vasectomized man to be impotent but, oddly enough, holds at the same time that the *Cum Frequenter* has no bearing on the question.

<sup>25</sup> Vermeersch, *art. cit.*, p. 58; J. Mayer, *op. cit.*, p. 419, note 3; G. Arend, *op. cit.*, p. 36 f.

Even the theologians who were contemporaries of Sixtus V put this construction on it. Thomas Sanchez, for instance, writes, regarding the dispute whether marriages of eunuchs were invalid from the natural as well as from ecclesiastical law: "It was the intention of the Pontiff to declare the marriage of eunuchs invalid under any law and to pronounce them incapable of marriage because they cannot emit true semen."<sup>26</sup> Ledesma, also writing at that time, speculated on what he considered the less probable opinion that eunuchs, capable of erection but not of emitting true semen, were banned from marriage only by virtue of the *Cum Frequenter* and not by the natural law. In other words, he took for granted that the *Cum Frequenter* demanded *verum semen* for a valid marriage.<sup>27</sup> Enriquez, another contemporary, is of the same mind.<sup>28</sup> They express no doubt as to the intent of the Bull.

This, therefore, seems to have been the prevailing teaching of theologians of the time. It is true, in general, that when the Supreme Pontiff makes an authoritative declaration upon a moral problem, he simply sets the seal of approval upon a doctrine commonly taught. Sanchez remarks: "... this *Motu Proprio*... has set down nothing new but simply asserts the traditional and natural law. . . ."<sup>29</sup>

The foregoing interpretation seems to have been accepted without question by the classical authors. For example, St. Alphonsus writes as a conclusion from the *Cum Frequenter* that marriages of eunuchs are invalid by reason of the lack of *verum semen*.<sup>30</sup> Lacroix makes no qualification in demanding *verum semen* for potency in the male.<sup>31</sup> The accepted view among most theologians today is voiced by Vidal when he says flatly of the eunuch's inability to emit true semen, "... it was the reason why Sixtus V pronounced marriages of eunuchs invalid. . . ."<sup>32</sup>

#### *The Concept of True Semen in the Cum Frequenter*

To us therefore it seems quite certain that Sixtus V intended to enunciate *verum semen* as an absolute requirement for marital potency.

<sup>26</sup> Sanchez, *De Sancto Matrimonii Sacramento* (Antuerpiae, 1617), VII, disp. 92, n. 18.

<sup>27</sup> *Ibid.*, VII, disp. 98, n. 3.

<sup>28</sup> *Loc. cit.*

<sup>29</sup> *Ibid.*, VII, disp. 92, n. 18.

<sup>30</sup> *Theologia Moralis* (Paris, 1874), VI, Tract. de Matrim., c. 3, n. 1095.

<sup>31</sup> *Theologia Moralis* (Parisiis, 1874), IV, n. 789.

<sup>32</sup> Wernz-Vidal, *op. cit.*, V, n. 233.



The problem is to determine what he meant by the phrase. If the vasectomized man is capable of emitting semen corresponding to that understood in the *Cum Frequenter*, he is not impotent. We think that all theologians will grant this. We think, moreover, that it is most probable that Sixtus V did not understand the term *verum semen* in a sense that would bar the vasectomized man from marriage. In other words, the *verum semen* of the *Cum Frequenter* and its contemporary and classical interpreters does not necessarily include the testicular contribution to the ejaculate.

The term *verum semen* was a time-honored one in theological usage even at the time of the *Cum Frequenter*. Sanchez says that the view demanding it for potency was the common opinion of theologians and jurists even before the *Motu Proprio* of Sixtus V.<sup>33</sup> He notes that theologians prove it from the works of Galen, the Greek physician of the second century.<sup>34</sup> Ferreres says: "So from the time of Galen and for more than 1300 years before Sixtus V, the distinction between true and false semen was known."<sup>35</sup> Since this is the case, it remains only to discover what was the basis of the distinction. True semen at that time signified the relatively copious, somewhat viscous ejaculate produced in coitus by a man capable of the marriage act. This would seem to be about all that they could have known except that it was also necessary for fruitfulness. Yet they did not demand fruitful seed for marital potency any more than do modern theologians.

Negatively speaking, it is certain that the early theologians and those of the time of Sixtus V had no microscopic knowledge of the composition of *verum semen*. Spermatozoa were discovered first in 1677, almost one hundred years after the publication of the *Cum Frequenter*, while it was two hundred and eighty-eight years later, in 1875, that Oscar Hertwig demonstrated their function.<sup>36</sup> Therefore the distinction between true and false seed certainly did not mean for Sixtus V the presence or absence of spermatozoa.

Ferreres considers the distinction between the thin, clear fluid of "distillation" and the copious, more viscous outpouring of "pollution" to be identical with that which obtains between true and false semen.<sup>37</sup> Yet modern medical observation tells us that in the clear

<sup>33</sup> Sanchez, *op. cit.*, VII, disp. 92, n. 17.

<sup>34</sup> *Loc. cit.*

<sup>35</sup> Ferreres, *De Vasectomia Duplici*, p. 138.

<sup>36</sup> *Encyclopaedia Britannica* (London-New York, 1929), s. v. "Hertwig, Oscar," XI, 525.

<sup>37</sup> Ferreres, *loc. cit.*

liquid of distillation, produced chiefly by the glands of Littré, there are occasionally present live spermatozoa.<sup>38</sup> In those cases in which it contains spermatozoa, it is, to that extent, elaborated in the testicles. It seems very likely also that such liquid has occasionally served to impregnate the woman in instances of the unsuccessful practise of birth control by withdrawal.<sup>39</sup> Would such fertile ejaculate constitute *verum semen*? It would seem so. Yet Ferreres offers the traditional distinction between the liquid of "distillation" and that of "pollution," as proof that the ancients had a clear grasp of the difference between true and false semen.

The notion of *verum semen* in the minds of sixteenth- and seventeenth-century theologians strikes us as being an a priori one, a convenient designation of the difference between the eunuch and the normal man. They observed that the eunuch was capable of some sort of ejaculation. But it was slight and watery as compared with that of the normal man. Moreover, it was absolutely sterile. The logical and correct conclusion was that this was not true semen. And that is as far as they went.

As regards the physiology of the production of semen, theologians of the time of Sixtus V were far from comprehending it accurately. Otherwise Enriquez, a reputable theologian, could not have speculated on the marriageability of a eunuch capable of producing true semen.<sup>40</sup> Since castration not only removes the spermatozoa from the ejaculate but gradually stops the functioning of the prostate, the seminal vesicles, and Cowper's glands, no one acquainted with the facts could imagine a eunuch capable of producing *verum semen*.<sup>41</sup> Enriquez' misapprehension may have been due to reports from cases of rather recent castration where the activity of the accessory glands was not yet fully impaired.

#### *Origin of the Notion "Elaboratum in Testiculis"*

To refer to a volume of liquid as "elaborated in the testicles," when only a very small portion has its origin there, seems like a misuse of words. Yet the words of the *Cum Frequenter* could still signify

<sup>38</sup> Dickinson and Bryant, *Control of Conception* (Baltimore, 1931), pp. 16, 58.

<sup>39</sup> *Loc. cit.*

<sup>40</sup> Sanchez, *op. cit.*, VII, disp. 92, n. 18.

<sup>41</sup> Lane-Roberts, Sharman, Walker, and Weisner, *Sterility and Impaired Fertility* (New York, 1939), p. 115.

semen elaborated in the testicles in the sense that at least a part of the liquid should come from that source. The question is whether Sixtus V really meant that. To our mind it is altogether unlikely that he intended to narrow down the meaning of *verum semen* to "semen elaboratum in testiculis." Not only does he nowhere employ the phrase but, as far as we have been able to discover, neither do any but comparatively recent canonists and moralists. We do not find it in St. Alphonsus. He is content with terms like *verum semen* or *semen virile* in laying down requirements for potency.<sup>42</sup> We do not find it in Migne's *Encyclopédie théologique*, where is summarized the canonical view of impotence up to that time (1849).<sup>43</sup> Nor is it to be found in Ferrares' *Bibliotheca Canonica*,<sup>44</sup> nor in Reiffenstuel,<sup>45</sup> nor in Rosset,<sup>46</sup> nor, in fact, in any canonist or moralist we have been able to consult who wrote prior to the twentieth century.

The earliest statement by a canonist which we have been able to find to the effect that *verum semen* is "semen elaboratum in testiculis" is in Gasparri's third edition published in 1904. The passage in question is cited continually by the Rota, and the canonical authority of Gasparri forms an important part of Ferreres' proof for the impotence of the doubly vasectomized man.<sup>47</sup> Yet Gasparri makes very little of the point in his third edition. Commenting on the question of the semen in the aged man and in boys before puberty, he says: "Although the semen in old men or youths is generally not fruitful either because spermatozoa are lacking or are not sufficiently vigorous, nevertheless it is of the same constitution or nature as true fertile semen, since it is elaborated in its natural organs, namely the testicles."<sup>48</sup> Clearly his object here is to differentiate the semen of youths and old men from that of eunuchs. The definition of true semen as that which is elaborated in the testicles is slipped in almost incidentally. He apparently foresees no ap-

<sup>42</sup> Ligouri, *loc. cit.*

<sup>43</sup> Migne, *Encyclopédie théologique*, s.v., "Impuissance," XXXI, 1261.

<sup>44</sup> Ferrares, "Matrimonium quoad impedimenta," *Bibliotheca Canonica* (Naples, 1854), V, 240 ff.

<sup>45</sup> Reiffenstuel, *Jus Canonicum* (Romae, 1884), IV, Lib. IV Decret., tit. XV, n. 14.

<sup>46</sup> Rosset, *De Sacramento Matrimonii* (Paris, 1895), II, nn. 1387, 1389.

<sup>47</sup> Ferreres, *De Vasectomia Duplici*, p. 51.

<sup>48</sup> *De Matrimonio* (ed. 3a.; Paris, 1904), n. 566.

plication of it to a condition like double vasectomy because there is no mention of it in the edition cited.

As authority for his statement, Gasparri cites Sanchez. It is important to know the mind of Sanchez not only because he is Gasparri's authority but because he is contemporaneous with the *Cum Frequenter*. The passage from Sanchez runs: "Although old men lack semen sufficient for generation, they do emit true semen of the same constitution as fertile semen and only *per accidens* fail to beget children."<sup>49</sup> There is no statement here to the effect that true semen must be elaborated in the testicles. Gasparri apparently looks upon it as an obvious inference. An examination of the context shows that it not only is not obvious but is even probably incorrect. Sanchez is here arguing against the validity of eunuch marriages, and considers specifically the objection that eunuchs have as much right to marry as old men, since the latter cannot produce fertile semen. He replies by pointing out that old men produce an ejaculate which is of the same "rationis" ("constitution" or, perhaps, "consistency," since he really knew nothing of its constitution) as that of normal men. If he holds that true semen must be produced in the testicles, he might well say so here and close the argument. Yet he refrains from doing so. He does the same thing in refuting an argument from Enriquez, an argument against which such a definition of *verum semen* was the obvious weapon to employ. Enriquez thought it possible that some eunuch might produce true semen and that such a man would then be barred from marriage not by the natural law but only by the *Cum Frequenter*.<sup>50</sup> Sanchez roundly denies this but nowhere makes the statement that *verum semen* must be elaborated in the testicles. He seems even deliberately to avoid any such statement. Thus he says:

In the impossible hypothesis that there were to be found a rare eunuch capable of emitting true semen, he would not be barred from matrimony by traditional law and consequently not by this *Motu Proprio* either, since it prescribes nothing new but merely affirms the ancient law. Therefore the authors. . . were right in saying that eunuchs who could produce semen were eligible for marriage. But

<sup>49</sup> "Et quamvis senes destituti sint semine sufficienti ad generationem, at verum semen eiusdemque rationis cum semine foecundo emittunt, ac per accidens non generant" (Sanchez, *op. cit.*, VII, disp. 92, n. 17).

<sup>50</sup> *Ibid.*, n. 18.

since such a supposition is impossible, Sixtus V had every right to declare the universal principle that the marriages of eunuchs, lacking both testicles, are invalid.<sup>51</sup>

This passage makes no explicit statement that *verum semen* should be elaborated in the testicles. As a matter of fact, the supposition he makes, sc., that a eunuch capable of producing true semen would not be excluded from marriage either by the natural law or by the *Cum Frequenter*, proves that he sees no repugnance between the notion of true semen and semen produced in the absence of testicles.

Our own impression is that Sanchez was not sure just where the true semen was elaborated, though he was sure that the presence of the testicles was somehow or other necessary for its production. A strong hint of this may be gathered from the following passage which, in its naive physiology, lays stress on what Sanchez, if he had known the term, could have called the endocrine activity of the testicles:

At Eunuchi quamvis membrum erigant, atque quandam aquosam materiam emittant; ea tamen non est verum semen nec eiusdem rationis cum semine: nec agitatio fit in principalibus membris, deficientibus testiculis, qui sunt tamquam folles omnia membra commoventes. Nam cor, iecur, et cerebrum, quae sunt tres nostri corporis praecipuae partes transmittunt suos spiritus ad testes, qui virtutem habent hos spiritus retinendi, ex quibus totum corpus calefit. At si testes deficiant, spiritus non retinentur, sed evanescent illuc transmissi: nec calor per totum corpus reflectitur: unde frigidiores fiunt, et inepti ad verum semen emittendum. . . .<sup>52</sup>

It strikes us that Sanchez here, and throughout this treatise, is anxious to insist as strongly as possible on the necessity of testicles for male potency without committing himself at all on the physiological origin of *verum semen*.

Gasparri makes another reference to the nature of *verum semen* in his third edition where he says: "Male semen is, as we have said, produced in the testicles. Hence castrates and eunuchs who lack *both testicles* are clearly and certainly incapable of emitting true semen, as Sixtus V expressly teaches."<sup>53</sup> The clause "certum et manifestum est verum semen emittere non posse" is right from the *Cum Frequenter*, and so Gasparri takes it for granted that in that document

<sup>51</sup> *Loc. cit.*

<sup>52</sup> *Loc. cit.*

<sup>53</sup> Gasparri, *op. cit.*, n. 568.

Sixtus V understands *verum semen* as semen elaborated in the testicles. He offers no proof for that interpretation.

No more does Wernz, the other authority frequently cited by the Rota. He simply states that *verum semen* is semen elaborated in the testicles,<sup>64</sup> seeming to assume, in the same manner as Gasparri, that if eunuchs who lack both testicles can not produce *verum semen*, then it must be elaborated in the testicles. It was a natural enough mistake at that time when canonists knew of the spermatogenetic function of the testes, but were unaware of the then very recent findings of endocrinology.

To justify projecting such a meaning back into the mind of Sixtus V one would have to produce pretty strong indications from contemporary sources. Our conviction is that the sources offer no support for such a thesis. We have already seen that Enriquez thought it possible that some eunuchs might produce true semen; and this was following the publication of the *Cum Frequenter*. His speculation was even occasioned by the papal document. So Enriquez certainly did not feel that *verum semen* meant *semen in testiculis elaboratum*. And our examination of Sanchez' teaching makes it look highly probable that he was of the same mind. A fair conclusion seems to be that one can not draw from the *Cum Frequenter* a cogent argument to the effect that *verum semen* is restricted to *semen in testiculis elaboratum*. Yet it must be cogent and certain, if it is to establish the impotence of the vasectomized man. We cannot exaggerate the importance of this point. The whole case of the impotence or non-impotence of the vasectomized man depends upon it.

#### THE PHYSIOLOGICAL EFFECTS OF DOUBLE VASECTOMY

The chief lacuna in theological information on the present subject up to comparatively recent times was a lack of knowledge of endocrinology. This science, dealing with the effects of minute secretions called hormones which are released directly into the bloodstream and not by way of ducts of any kind, is one of the youngest in the medical field. Ferreres' *De Vasectomia Duplici*, published in 1913 and probably the most important single work on this canonical problem, ex-

<sup>64</sup> Wernz, *Jus Decretalium* (Prati, 1911), IV, Pars II, n. 342.

hibits no knowledge whatever of the endocrine function of the testicles. The book as a whole is quite scholarly in its approach. It argues solidly against the liceity of eugenic sterilization and has had great influence among Catholic writers on the question. Obviously, there is no further room for discussion of the morality of eugenic sterilization since its definitive condemnation by the Holy See.<sup>55</sup> But the question whether it induces impotence remains open.

In treating this phase of the subject, Ferreres labored under the handicap of scant information regarding the effects of vasectomy. His book grew out of certain articles which he first published in *Razon y Fe* in 1910, when the subject began to be discussed.<sup>56</sup> At that time the operation was little known and he had to rely chiefly upon medical theory in lieu of scientifically observed data. As Schmitt, who then sided with Ferreres, although he has reversed his stand since,<sup>57</sup> truthfully remarked, "...European physicians...evidently perform a vasectomy only very rarely and they do not publish the fact..."<sup>58</sup> Thus, Ferreres cites rather vaguely from Eschbach a single case concerning which an anonymous "Doctor G." has written to Eschbach and reported that ten months after the vasectomy the subject had all the appearances of a castrate.<sup>59</sup> This was the sort of evidence Ferreres had to work with and he simply drew the logical conclusions. Actually, this particular operation must have been bungled, or was most exceptional, or possibly, was not vasectomy as now understood. With reports on thousands of vasectomies now available, we can say that without the slightest hesitation. The number performed in the state of California alone up to 1927 was over 5,000, and the Gosney report which studied them cites effects quite the contrary to those observed by "Doctor G."<sup>60</sup>

What Ferreres held is significant because his views were followed

<sup>55</sup> *Casti Connubii*, AAS, XXII (1930), 565; J. B. Lehane, *The Morality of American Civil Legislation concerning Eugenic Sterilization* (Washington, D. C., 1944), pp. 66-73.

<sup>56</sup> Ferreres, *op. cit.*, nn. 7, 76.

<sup>57</sup> Noldin-Schmitt, *op. cit.*, III, n. 567.

<sup>58</sup> Schmitt, "Quid ex Discussionē de Vasectomia Instituta Resultet," *Eccl. Rev.*, XLV, (1911), 86.

<sup>59</sup> Ferreres, *op. cit.*, n. 224.

<sup>60</sup> Popenoe, "Eugenic Sterilization in California: the Insane," *Journal of Social Hygiene*, XIII (1927), 257.

closely, as he himself says,<sup>61</sup> by Ojetti<sup>62</sup> and De Smet.<sup>63</sup> His book also seems to have guided the opinions of Wernz-Vidal,<sup>64</sup> Noldin-Schmitt in the earlier editions,<sup>65</sup> and Cappello.<sup>66</sup> It is interesting to note that Gasparri, when he explicitly treats vasectomy in his later editions and holds for impotence, cites Ojetti and Cappello<sup>67</sup> as his principal authorities on the physiological and moral status of such a man. With these authors leaning heavily on Ferreres, who in turn quotes the earlier edition of Gasparri as an important part of his proof for the impotence of the vasectomized man,<sup>68</sup> we have a curious canonical circle. It is an important one, too, since the Rota relies so much on Wernz and Gasparri.

### *Importance of Endocrine Facts*

A lack of knowledge of the endocrine function of the testicles has led inevitably to a confusion of the effects of vasectomy with those of castration. Earlier physiologists mistakenly assigned the characteristics of virility to the sperm-producing activity of the testes. Thus Eschbach cites various medical authorities of his day to the effect that nervous energy, strength, vigor, and other masculine qualities of the normal man derive from a reabsorption of semen into the system.<sup>69</sup> Actually all these effects are due to the minute secretions delivered directly into the bloodstream by the interstitial cells and not the sperm-producing cells of the testes. The whole theory of the Steinach rejuvenation technique is based upon this fact. This theory claims to restore youthful virility by vasectomy, insisting that the interstitial cells, with their precious endocrine products, will multiply if some kind of restraint is placed upon sperm-production.<sup>70</sup> The

<sup>61</sup> Ferreres, *op. cit.*, p. 5.

<sup>62</sup> Ojetti, *Synopsis Rerum Moralium et Juris Pontificii* (Romae, 1909-14), II, 2272 f., 2277 f.

<sup>63</sup> De Smet, *op. cit.*, n. 550, nota 5.

<sup>64</sup> Wernz-Vidal, *op. cit.*, n. 232, notae 75, 76; n. 233, notae 77, 79.

<sup>65</sup> Noldin-Schmitt, *Summa Theologiae Moralis* (Oeniponte, 1926), II, n. 328, nota 1.

<sup>66</sup> Cappello, *op. cit.*, III, n. 376, nota 69.

<sup>67</sup> Gasparri, *De Matrimonio* (Romae, 1932), App. de vasectomia, n. 6.

<sup>68</sup> Ferreres, *op. cit.*, n. 107.

<sup>69</sup> Eschbach, *Disputationes Physiologico-Theologicae* (Romae, 1884), Cap. II, art. V, p. 35.

<sup>70</sup> Benjamin, "The Effects of Vasectomy," *American Medicine*, XXVIII (1922), 437.



rejuvenating effect of the Steinach operation is in dispute, but no one denies the existence of the gonadal hormones, as the endocrine products of the testes are called. Several of their functions, says Lane-Roberts, have been established with scientific certainty. They are: (1) development of secondary sex characteristics; (2) control of secretory activity of accessory glands; (3) development of the libido; (4) activation of erectile and ejaculatory mechanisms (although the erectile mechanism, once it has attained maturity, is not so sensitive to the withdrawal of the testicular secretion); (5) normal functioning of epididymis and possibly of the testis itself; (6) regulation of the gonadotropic activity of the anterior pituitary gland.<sup>71</sup> With no knowledge of an operation which would prevent the delivery of spermatozoa to the ejaculate without terminating this endocrine activity, nineteenth- and early twentieth-century physicians, and therefore the canonists relying on them, anticipated profound emasculating results from vasectomy.

*Tendency to Confuse Effects of Castration and Vasectomy*

This misapprehension can be seen in Cappello, for example, where he says: "Vir qui hanc operationem (vasectomiae duplicis) passus est verum semen emittere nequit, licet membrum erigere, vas mulieris penetrare in eoque liquidum quoddam seu humorem aliquem aquosum a glandula prostata secretum emittere etiam valeat, non secus ac possunt castrati in adulta aetate."<sup>72</sup> Wernz-Vidal says explicitly that the vasectomized man is "... excluded from marriage by the natural law on the grounds of impotence just as completely as is the eunuch, in accordance with the declaration of Sixtus V."<sup>73</sup> This work then explains that the ejaculate of the vasectomized man is the same as that of the castrate.<sup>74</sup> Gasparri does the same.<sup>75</sup> Ferreres places great insistence on the parity with castrates throughout his book.<sup>76</sup> He seems to be the chief source of the misapprehensions of the others, as we have already noted.

<sup>71</sup> Lane-Roberts, *Sterility and Impaired Fertility*, p. 115.

<sup>72</sup> Cappello, *op. cit.*, III, n. 375.

<sup>73</sup> Wernz-Vidal, *loc. cit.*

<sup>74</sup> *Loc. cit.*

<sup>75</sup> Gasparri, *op. cit.*, App. de vasectomia, n. 2.

<sup>76</sup> Ferreres, *op. cit.*, n. 22.; *Casus Conscientiae* (Barcinone, 1926), II, n. 1029.

*Points of Difference Between Castrates and the Vasectomized*

In view of the prevailing misunderstanding, it is important to stress the difference between the castrate and the vasectomized man. The first point we have already noted. It is that to all appearances the ejaculate of the vasectomized is the same as that of normal men. The castrate, on the other hand, after his mutilation has had its full effect, can produce at most a very small volume of watery fluid. "Prostatic activity and the secretion of the seminal vesicles cease almost immediately after castration," says Lane-Roberts.<sup>77</sup> The same author says: "The volume and composition of seminal fluid obtained from vasectomized men is not different from that of normal men."<sup>78</sup> Microscopic examination will of course reveal the presence of spermatozoa in the latter case but the medical men of 1587 knew nothing about that. As far as they were concerned, *verum semen* was the liquid of normal quantity and viscosity, and *falsum semen* was the watery emission of eunuchs. In a castrate the failure in both quantity and quality of semen is due not to the removal of spermatozoa but to the withdrawal from the bloodstream of the endocrine products of the testicles. These hormones, as we have seen, control the secretory activity of the accessory glands (prostate, seminal vesicles, Cowper's glands) from which the bulk of the ejaculate comes. Lane-Roberts writes:

The seminal fluid is derived primarily from the prostate and the seminal vesicles. From indirect evidence it may be concluded that the latter contribute by far the greater portion of the ejaculate. . . The fact, moreover, that the volume and composition of seminal fluid obtained from vasectomized men is not different from that of normal men suggests that the testes and epididymis can make but a small contribution to the total volume.<sup>79</sup>

Other authorities confirm this observation, notably Dickinson and Bryant,<sup>80</sup> and Hotchkiss.<sup>81</sup> O'Malley puts the total volume of the testicular contribution at between 6% and 7% of the entire ejaculate.<sup>82</sup>

<sup>77</sup> Lane-Roberts, *loc. cit.*

<sup>78</sup> *Ibid.*, p. 39; Dickinson and Bryant, *op. cit.*, p. 24.

<sup>79</sup> Lane-Roberts, *loc. cit.*

<sup>80</sup> Dickinson and Bryant, *op. cit.*, p. 131.

<sup>81</sup> Hotchkiss, "Methods of Sperm Analysis and Evaluation of Therapeutic Procedures," *Journal of the American Medical Association*, CVII (1936), 1850.

<sup>82</sup> O'Malley, *The Ethics of Medical Homicide and Mutilation*, p. 258.

Yet Ferreres, and many distinguished canonists with him, are under the impression that there is very little difference, if any, between the ejaculate of the eunuch and that of the vasectomized man. De Smet speaks of the ejaculate of the vasectomized man as "a sort of watery fluid secreted by the prostate and Cowper's glands."<sup>83</sup> No one acquainted with the medical facts could call it "a sort of watery fluid." Cappello uses the identical phrase.<sup>84</sup> Wernz-Vidal identifies it with the liquid which Sixtus V supposes eunuchs to be capable of producing.<sup>85</sup>

The second point worth stressing is that vasectomy produces no apparent change in the sexual life; complete virility is retained. O'Malley insists that the power of coitus is not lost in any degree and that neither man nor woman is conscious of any change.<sup>86</sup> Lam reports that of three hundred and eighteen subjects interrogated most remarked a slight improvement or no change in their sex functions.<sup>87</sup> Dickinson and Bryant insist that vasectomy is "sterilization without unsexing."<sup>88</sup> Gosney and Popenoe, from their study of the California operations, say that vasectomy does not unsex nor deprive a man of any sexual impulses, nor of the enjoyment derived from the satisfaction of these impulses.<sup>89</sup> Popenoe gives especially detailed matter on this point. From one class of subjects, patients suffering from mental diseases, he derives the following data. Of thirty-six men vasectomized, twenty-two declared that they observed no change in their sexual life, nine reported an increase in sexual activity and enjoyment, while only five reported a decrease. In another group of sixty-five of above average intelligence (business and professional men, etc.), only two reported a decrease in virility. Their ages at the time of vasectomy ranged from eighteen to seventy-two years, and the time since the operation ranged from a few months to more than twenty years, with an average of five years. They were all pleased with the results and effects of the operation except the two who experienced a decrease in virility. Thirty-eight of the informants noticed no change in the pleasurable nature of coitus, eighteen reported

<sup>83</sup> ". . . humor aliquis aquosus a glandula prostata et glandulis Cowper secretus" (*De Sponsalibus*, n. 550, nota 5).

<sup>84</sup> Cappello, *op. cit.*, III, n. 375, nota 2.

<sup>85</sup> Wernz-Vidal, *op. cit.*, n. 233.

<sup>86</sup> O'Malley, *op. cit.*, p. 257.

<sup>87</sup> Lam, *art. cit.*, p. 159.

<sup>88</sup> Dickinson and Bryant, *op. cit.*, p. 128.

<sup>89</sup> Gosney and Popenoe, *Sterilization for Human Betterment* (New York, 1929), p. 87.

an increase. To what extent age or mental state were factors in rendering the coitus more pleasurable is difficult to estimate. With one exception, the wives of all the subjects were pleased with the operation. Even the one dissenter objected not to the operation's effects on her own marital relations but to the greater freedom it would give her unfaithful husband in breaking his marriage vows.<sup>90</sup>

The third point to note is that no abnormal increase of sexual appetite is to be feared from the operation. Of the sixty-five highly intelligent men cited in Popenoe's report, about one-half stated that there had been no change in the frequency of coitus after the operation, eleven reported less frequency, thirteen greater frequency. As regards the duration of coitus, fifty-one found no change, while seven reported a slight increase.<sup>91</sup> Allowing for the role of imagination, or other psychological factors, it is a fairly safe conclusion that no strong physiological impulse to sex activity is induced by vasectomy.

This point is important because it is so much misunderstood. Ferreres says that the venereal appetite is increased by the operation due to the excess of semen which the subject is unable to void.<sup>92</sup> He seems to believe that the vasectomized man is likewise unable to obtain satisfaction in his sexual relations, likening him to the castrate in this regard.<sup>93</sup> The moral implications of this view are tremendous. As Ferreres himself puts it: "... by such an operation the venereal impulses are not removed but are rather increased; and on the other hand, as we have already proved, such a man is unable to contract marriage. Therefore he is bound to an enforced celibacy and placed in the moral necessity of committing sin."<sup>94</sup> This extraordinary doctrine would put the innocently vasectomized man in an unenviable position. Fortunately, its physiological foundation is untrue. Theologically, it will pass muster only if "sin" is taken in the strictly material sense.<sup>95</sup>

<sup>90</sup> Popenoe, "Effect of Vasectomy on the Sexual Life," *Journal of Abnormal and Social Psychology*, XXIV (1929), 251-68, as summarized in Landman, *Human Sterilization* (New York, 1932), p. 219 f.

<sup>91</sup> Landman, *loc. cit.*

<sup>92</sup> Ferreres, *De Vasectomia Duplici*, n. 35.

<sup>93</sup> *Ibid.*, n. 36.

<sup>94</sup> *Ibid.*, n. 33; *Casus Conscientiae*, II, n. 1032.

<sup>95</sup> Otherwise the argument has Jansenistic implications; cf. the condemned proposition: "Aliqua Dei praecepta hominibus justis volentibus et conantibus, secundum praesentes, quas habent vires, sunt impossibilia: deest quoque illis gratia, qua possibilia fiant" (*DB*, 1092). Perhaps Ferreres uses the phrase "moral necessity of sinning" in a very broad and unusual sense.

There is no failure of secondary sex characteristics as a result of vasectomy. All the authors stress this.<sup>96</sup> This is what one would expect since medical men are now agreed that secondary sex characteristics are dependent on the gonadal hormones rather than on spermatogenesis. As Max Thorek puts it: "It has been proven beyond the least shadow of a doubt that upon the *internal* [italics mine] secretion of the testes depends the development of the secondary sex characteristics. . . ."<sup>97</sup> The *internal* or endocrine secretions are left intact by vasectomy.

Atrophy of the testicles is not at all to be feared from vasectomy. Knaus says that no testicular degeneration whatsoever occurs as a result.<sup>98</sup> Lam says of the five hundred cases reported by him: "There was no evidence of testicular atrophy in any of the patients examined. Thirty patients were examined after a five-year period and the results were uniformly similar to the one-year group."<sup>99</sup> We stress this point because in the early stages of this controversy some canonists were under the impression that testicular atrophy might result from the operation. Even some doctors were of the same mind. Ferreres quotes Cardenal, a distinguished Spanish surgeon, as holding that the testes would probably atrophy.<sup>100</sup>

Dickinson and Bryant note, in general, regarding the effects of vasectomy that ". . . the California institutions, with an unrivaled experience and unequalled follow-up through keeping patients under observation, have not noted, after elaborate investigation, either physical or mental trouble, or shrinkage of testicle or loss in desire or performance. Their series in nineteen years, from 1909 to 1928, covered 3,232 operations."<sup>101</sup> Similar observations lead Lam to the

<sup>96</sup> Cf., e.g., Landman, *op. cit.*, p. 230.

<sup>97</sup> Thorek, *The Human Testis and Its Diseases* (Philadelphia and London, 1924), p. 198. Striking evidence of the dependence of virility on internal secretions is the recent report of a Russian surgeon's success in restoring virility to a eunuch. His method was implantation in the thigh of the testis of a man recently deceased. He made no connection for the vas deferens, merely making sure that the endocrine products would enter the bloodstream; cf. *Time*, April 2, 1945, p. 54 f.

<sup>98</sup> Knaus, "Zur Funktion des Hodens nach der Vasektomie," *Klinische Wochenschrift*, XVI (1927), 131.

<sup>99</sup> Lam, *loc. cit.*

<sup>100</sup> Ferreres, *De Vasectomia Duplici*, n. 74.

<sup>101</sup> Dickinson and Bryant, *op. cit.*, p. 131.

general conclusion that "as it stands to-day, we feel that there are no medical contraindications to vasectomy as a permanent method of sterilization of the male."<sup>102</sup>

#### THE RELATION OF THESE FACTS TO THE BULL OF SIXTUS V

Against this background of medical information it will take only a cursory examination of the terms of the *Cum Frequenter* to perceive that there are solid reasons for the view that it does not apply to the case of the vasectomized man.

In the first part of the text, which poses the question of the Spanish bishop, we find the clause, "certum ac manifestum est, eos verum semen emittere non posse." The phrase "certum ac manifestum" seems to indicate that the difference between *verum semen* and that emitted by the eunuch is an obvious one. This is perfectly true. On the other hand, the difference between the semen of a normal man and that of a vasectomized man is not obvious; in fact, even an experienced medical man could not detect it without the aid of a microscope. If the phrase "certum ac manifestum" refers to the fact that the eunuch obviously lacks testicles, this makes it even less applicable to the vasectomized men. If the phrase means that the eunuch's inability is "certum ac manifestum" because semen must be elaborated in the testicles, then it does apply to the vasectomized man. But we have already seen from a study of theologians contemporary with Sixtus V that *verum semen* was probably not used in such a restricted sense.

The papal Constitution goes on to say that eunuchs emit "humorem forsan quemdam similem semini, licet ad generationem et ad matrimonii causam minime aptum. . . ." "Forsan" here seems to imply some doubt regarding the eunuch's capacity to produce semen; there is no doubt in the case of the vasectomized man. "Humorem similem semini" applies well enough to the slight, watery ejaculate of the eunuch, but can hardly mean an emission apparently identical with that of the normal man, which is true of the semen of the vasectomized.

The phrase "et ad matrimonii causam," since it is preceded by, and distinguished from, "ad generationem," probably refers to the secondary end of marriage, which is mutual help and the allaying of con-

<sup>102</sup> Lam, *loc. cit.*

cupiscence. Eunuchs were, for the most part, inept for this; vasectomized men are not.

Coming to the dispositive part of the decree, which contains the formal answer, we find it says of eunuchs: "frigidae naturae sunt, et impotentes, iidem minime apti ad contrahenda matrimonia reputantur." Eunuchs are, for the most part, frigid, in the sense that their genital system is not normally activated by the usual stimuli. This is not verified at all in the vasectomized. "Impotentes" appears to be a corollary of "frigidae naturae" in this context. "Minime apti ad contrahenda matrimonia" is a conclusion from the fact that they are "frigidae naturae et impotentes." These terms do not seem applicable to the vasectomized.

"Quas tamquam uxores habere non possunt easdem habere ut sorores nolunt" refers to the traditional discipline of the Church compelling or at least permitting impotent partners to live together as brother and sister.<sup>103</sup> The doctrine had long since been accepted by theologians that the impotent person certainly could not enter a valid marriage with a partner ignorant of his impotence. Even the restriction, proposed by Peter Lombard,<sup>104</sup> and accepted by Thomas Aquinas,<sup>105</sup> that the marriage could be valid if the other party knew of the condition beforehand, is now definitively set aside, as appears explicitly later in the Bull. So, "Quas tamquam uxores habere non possunt" means that eunuchs, being impotent, cannot enter a valid marriage, while "easdem habere ut sorores nolunt" is added in deference to the decretal noted above which permitted such cohabitation.

". . . mulieres quae eis nubunt, non ut caste vivant, sed ut carnaliter invicem coniugantur sub praetextu et in figura Matrimonii turpes huiusmodi commixtiones affectare" bears out the above assertion, "easdem habere ut sorores nolunt." The phrase "in figura Matri-

<sup>103</sup> Cf. c. 4, X, *De frigidis*, 4, 15. "Romana tamen Ecclesia consuevit in consfamiliaribus indicare, ut quas tamquam uxores habere non possunt, habeant ut sorores." This decretal is actually a relic of a much earlier date, having been erroneously assigned to Lucius III by Raymond of Penafort. Esmein, *Le mariage en droit canonique* (Paris, 1891), p. 240, attributes it to Alexander III. At the time of the *Cum Frequenter* it was accepted as from Lucius III.

<sup>104</sup> *Sent.*, IV, d. XXXIV, A.

<sup>105</sup> Cf. *Suppl.*, q. 52, art. 1 c.: ". . . sicut impotentia coeundi ignorata impedit matrimonium, non autem si sciatur, ita conditio servitutis ignorata impedit matrimonium, non autem servitus scita." This point is more thoroughly discussed by Ford, *The Validity of Virginal Marriage* (Worcester, 1938), p. 119; cf. also De Smet, *op. cit.*, n. 561, nota 4.

monii" indicates there is in such a union a mere semblance of marriage. It may also imply that the parties to this illicit union were capable of an act externally resembling the marriage act. Theologians were aware at the time of the capacity of some castrates for coitus. Such would be those who were mutilated some time after puberty.<sup>106</sup> But whether the youthful castrates of the choirs be considered (and these may have been relatively numerous in Spain at the time), or those mutilated after attaining sexual maturity, there could have been no question of an act externally identical with the marriage act, as is that of the vasectomized man. There would be at least the obvious difference in semen already mentioned.

The Constitution of Sixtus V continues: "...scandali occasionem praebeant, et in animarum damnationem tendant." That the action of the eunuch would give scandal is clear enough. There would be scandal to the woman who would not fail to perceive the unnatural character of the sexual acts performed with him. There would be the additional scandal of temptation for her to seek satisfaction elsewhere since she would not have it from her apparent husband. Finally, there would be scandal to others who, in the case of a eunuch, might know or suspect his condition. No such source of scandal would obtain in the case of the vasectomized man. His wife could not detect the condition nor would any external symptoms betray him to others.

The next phrase, "in animarum damnationem tendant," is a corollary of the preceding, the scandal leading to the loss of souls. This phrase could imply too, the insatiable irritation, leading to frequent repetition of his sins. Such a condition would not be verified in the vasectomized man.

The *Cum Frequenter* continues: "...ex...huiusmodi...coniugiis... nulla utilitas provenit sed potius tentationum illecebrae, et incentiva libidinis oriuntur..." "Nulla utilitas" in the context seems to refer to the unsatisfying nature of the eunuch's sexual relationship. The impression was certainly extant that a castrate was subject to vehement movements of lust which it was impossible for him to satisfy.<sup>107</sup> As Vermeersch says: "Existimabant enim castratos copula non

<sup>106</sup> We find references to the immoralities of such in Juvenal, *Satires*, VI, 366-67, and in Martial, *Epigrams*, VI, 67; cf. also St. Jerome, *In Matt.*, III, 19 (*PL*, XXVI, 135).

<sup>107</sup> Cf., e.g., St. John Chrysostom, *In Matt.*, hom. LXII (*PG*, LVIII, 599); St. Jerome, *Adv. Jovinianum*, I, 47 (*PL*, XXIII, 277); also *Liber de vera virginitatis integritate* (*PG*, XXX, 667 f.), long attributed to St. Basil.



satiari sed excitari."<sup>108</sup> We have already seen that no such condition obtains in the vasectomized.

"Eos qui sic iam contraxerunt, si appareat illos non ut caste vivant, contraxisse. . . omnino similiter separari cures." Here is perhaps the strongest indication that impotence is an impediment from the natural law. If Sixtus V were merely here and now setting up an ecclesiastical impediment, it would have no effect on the validity of previously contracted marriages.<sup>109</sup> But he prescribes that even those eunuchs who entered an apparent marriage prior to the publication of the *Cum Frequenter* be separated from their partners if it be clear that they are not living merely as brother and sister.

The document ends with a repudiation of all contrary doctrine, affirming of eunuch marriage, regardless of what authority may have approved it: "Nos enim. . . irritum, et inane decernimus."

A reasonable conclusion from our study of the terms of the *Cum Frequenter* seems to be that very probably it does not apply to the case of the vasectomized man.

#### REVERSIBILITY OF THE OPERATION OF DOUBLE VASECTOMY

It is not directly pertinent to our present discussion, since we have chosen to treat vasectomy as perpetual vasectomy, but the chances of success in re-operating are worth considering. On this point the Editor of the *Journal of the American Medical Association* writes: "The restoration of the potency of an occluded vas deferens has been successfully accomplished and reported by many surgeons during the last 20 years; and the operation, called resection of the vas, is now considered a standard procedure."<sup>110</sup> Hagner reports more than 50% success in operation, not on vasectomies, but on male sterility due to absence of spermatozoa in the semen.<sup>111</sup> McKenna reports between 25% and 50% success with the same.<sup>112</sup>

<sup>108</sup> Vermeersch, *Theol. Moral.* (Romae, 1933), IV, n. 41.

<sup>109</sup> Sanchez, *De Matrim.*, VII, d. 92, n. 18, uses this argument to prove that eunuchs are *jure naturae* incapable of contracting marriage.

<sup>110</sup> "Queries and Notes," *Journ. Am. Med. Ass'n.*, LXXXVIII (1927), 49.

<sup>111</sup> Hagner, "The Operative Treatment of Sterility in the Male," *Journ. Am. Med. Ass'n.*, CVIII (1936), 1855.

<sup>112</sup> McKenna, "Short Circuit of the Vas Deferens," *Journ. Am. Med. Ass'n.*, LXIV (1915), 2127.

As regards re-operation of actual cases of vasectomy, Freiburg and Lepsky report restoring normal function eight years after a vasectomy had been performed.<sup>113</sup> Strode reports one failure and one success in attempts to restore two cases of seven-year old vasectomy. He adds: "Since only one side in these two cases was re-operated on, one might be led to believe that the chances of reestablishing viable spermatozoa in the semen even after the lapse of a number of years is fairly good."<sup>114</sup> Davis reports a successful operation for anastomosing the divided vas deferens, but it was immediately after accidental severance of that organ.<sup>115</sup> Lydston, warning against sterilizing a healthy husband to save a diseased or degenerate wife from child-bearing, says, "...while subsequent anastomosis of the vas is likely to be successful, it can not be guaranteed..."<sup>116</sup> Gosney and Popenoe say that re-operations following vasectomy have been 25% successful, measured by the result of getting the wife pregnant.<sup>117</sup> This is a more exacting norm than the canonist would use, since restoration of the canal may be accomplished without any resulting impregnation of the wife. Dickinson says: "On these two kinds of sterilization—temporary and permanent—research is needed; as it is also on implantation of the cut tube into the epididymis to restore fertility, because the claim of 50% success has hardly been substantiated. It looks as if 25% of success were nearer actuality, judging not by mere semen in the specimen but by children born at or near term."<sup>118</sup> He seems inclined, therefore, to admit a good deal more than 25% success, when judging, as he says, "by mere semen in a specimen." Semen in the specimen would amply satisfy the canonical requirement. These last-named authorities, Gosney, Popenoe, and Dickinson, are

<sup>113</sup> Freiburg and Lepsky, "Restoration of the Continuity of the Vas Deferens 8 Years after Bilateral Vasectomy," *Journal of Urology*, XLI (1939), 934. A restoration of fertility five years after bilateral vasectomy is reported by Cameron, "Anastomosis of Vas Deferens," *Journ. Am. Med. Ass'n.*, CXXVII (1945), 1119-20.

<sup>114</sup> Strode, "A Technic of Vasectomy for Sterilization," *Journ. of Urol.*, XXXVII (1937), 735.

<sup>115</sup> Davis, "A Method of Anastomosing the Divided Vas Deferens," *Annals of Surgery*, XLVIII (1908), 793.

<sup>116</sup> Lydston, *Impotence and Sterility* (Chicago, 1917), p. 96.

<sup>117</sup> Gosney and Popenoe, *Sterilization for Human Betterment*, p. 78.

<sup>118</sup> Dickinson, "Sterilization without Unsexing," *Journ. Am. Med. Ass'n.*, XCII (1929), 378.

presumably the most weighty in the field because of their familiarity with the California cases.

If we accept the above testimonies—and there seems little reason to reject them—we may assert that for any particular case of ordinary double vasectomy there is a 25% to 50% chance of restoring the vas deferens to normal functioning. We say “ordinary double vasectomy” because we have heard that Nazi doctors boasted that the sterilizations they performed were absolutely beyond repair. Yanguas seems to have had such cases in mind when he wrote his article for *Estudios Ecclesiasticos*.<sup>119</sup>

Would a 25% or 50% chance of success in re-operation be sufficient to warrant the conclusion that such double vasectomy is, for canonical purposes, only doubtfully permanent? We have not seen this particular problem discussed in the light of the above percentages, but in moral problems in general a 25% to 50% probability would be considered a solid one. Especially in the case of a marriage already contracted, such a solid probability of validity might well bar any hope for a decree of nullity. “*Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur. . .*”<sup>120</sup> And even before marriage, the burden of proving certain perpetual impotence is on the one who wishes to prevent the marriage.<sup>120a</sup>:

#### OBSCURITY IN THE DEFINITION OF THE MARRIAGE ACT

As we had occasion to remark before, the whole discussion of the status of the vasectomized man hinges on the essential meaning of the phrase “*actus per se aptus ad prolis generationem*” (can. 1081, §2). This is the accepted definition of the marriage act but its meaning is greatly disputed. There is disagreement concerning its application in so many matters connected with the licit use of marriage that we incline to this conclusion: since it is so doubtful what the requirements for a true marriage act are, the vasectomized man should be given the benefit of the doubt. His act, in view of these disputes, at the very least, is probably “*per se aptus ad prolis generationem*.” Therefore he cannot be said to be certainly impotent.

Reputable authors admit, for all practical purposes, that the fol-

<sup>119</sup> Yanguas, *op. cit.*, p. 383.    <sup>120</sup> Can. 1014,    <sup>120a</sup> Cf. can. 1068, §2.

lowing are at least probably capable of acts which are *per se* apt for generation: the spayed woman, the pregnant woman, the aged of both sexes, the sterile, even the post-marital castrate, and the post-marital *vasectomiacus*. We say they admit this for all practical purposes, inasmuch as they would permit the use of marriage to all the above named classes of married people. Now it is an accepted moral principle that complete venereal acts are not licit outside the marriage act. To permit such persons to use marriage is implicitly to concede to them the probable capacity for performing the marriage act. Yet some canonists, side by side with their opinion that the vasectomized man is certainly impotent, hold that he probably may use the marriage act if his condition is only subsequent to marriage.<sup>121</sup> This looks like a contradiction to us. As we see it, a vasectomized man is either certainly incapable of the marriage act or he is not. If there is any doubt about it, he is presumed to be potent. And can. 1068, §2 guarantees that presumption just as much for the single man as for the married man.

A host of distinguished names can be marshalled for the opinion that the castrate, if he has become such after marriage, may licitly continue to perform the marriage act.<sup>122</sup> Yet the castrate is specifically set down as impotent by the *Cum Frequenter*. The obvious rejoinder that the papal document did not have in mind subjects castrated after a valid marriage does not affect the present point which is that we are still very much unsettled as to the essential meaning of an act which is *per se* apt for generation. If the unmarried eunuch is certainly incapable of performing such an act, then so is the married one, and, consequently, he must be denied the use of marriage. He can not be given the benefit of the doubt where there is none.

<sup>121</sup> Ferreres, *Casus Conscientiae*, II, n. 1035; add to his list Marc, *Inst. Morales*, n. 2095; Cappello, *op. cit.*, III, n. 66; Genicot-Salsmans, *Theol. Moral.*, n. 543. De Smet and Merkelbach avoid this contradiction by simply forbidding the use of marriage to the vasectomized until the condition has been remedied; cf. De Smet, *op. cit.*, n. 558, B, 2, b, and note 6; Merkelbach, *Quaestiones de Embryologia*, Appendix, IV, 2, p. 96. This is logical but it gives scant recognition to the weighty names who would permit the conjugal act to post-marital castrates and seems to work a hardship on a vasectomized man of good disposition but with a normally strong propensity to coitus.

<sup>122</sup> Gury-Ferreres, *Compendium Theologiae Moralis* (Barcinone, 1925), II, n. 1004; his list includes Sanchez, Schmalzgrueber, Laymann, D'Annibale, Genicot, Noldin, and Berardi.

## NATURE AND REQUIRED CERTITUDE OF NATURAL LAW IMPEDIMENTS

An essential consideration in this whole matter is that impotence is a natural law impediment to matrimony. Consequently all men, whether in or out of the Catholic Church, having such an impediment, are incapable of contracting a valid marriage. Can. 1068, §1, says: "Impotentia antecedens et perpetua. . .matrimonium ipso naturae iure dirimit." And De Smet rightly concludes: "Therefore it follows that even infidels are subject to this impediment, and no dispensation from it is possible."<sup>123</sup>

Where there is question of a marriage impediment from the natural law, which is therefore binding on all men, it should be relatively easy for all men to recognize it. Moreover it is scarcely conceivable that it should require the use of surgical technique or a microscope in order to discover it. The absence of *liquor testicularis* in the ejaculate is certainly difficult to know, especially since the absence of spermatozoa is not positive proof that no testicular liquid at all is present. Even the absence of spermatozoa can be detected only with the aid of a microscope. It is hard to see how canonists can claim as an impediment from the natural law a condition so hidden and so impossible of verification. Ferreres uses this argument to disprove the certain impotence of the woman who has had her ovaries removed.<sup>124</sup> It is odd that he sees no application of it to the vasectomized man whose potency he emphatically denies. Perhaps it is due to his misinformation regarding the effects of vasectomy.

It must be remembered that in Ferreres' view it is not the absence of spermatozoa that makes the vasectomized man impotent. Otherwise he would have to hold that old men whose semen exhibits no spermatozoa are also impotent. His own researches showed him that one could not demand the presence of spermatozoa as a proof of potency. He quotes Dr. Sappey of the University of Paris medical school who reported that M. Duplan had examined the semen of fifty-one old men, of whom only thirty-seven presented spermatozoa. In the same place, he cites M. Dieu, who examined similarly one hundred and five veterans of *L'Hotel des Invalides*, of whom sixty-four exhibited no spermatozoa in the semen.<sup>125</sup> Yet these men, in

<sup>123</sup> *Op. cit.*, n. 553.

<sup>125</sup> *Ibid.*, n. 99.

<sup>124</sup> Ferreres, *De Vasectomia Duplici*, n. 241.

accordance with the traditional practice of the Church, were not to be accounted impotent. As Ferreres himself observes: "It is not necessary that spermatozoa be actually emitted, much less that the spermatozoa be actually motile or apt for generation. . . ." <sup>126</sup>

Ferreres, therefore, has good reason canonically to insist that in addition to the spermatozoa there are other minute auxiliary secretions contributed by the testicles through the vasa deferentia. They are the only element which distinguishes the ejaculate of the senile, who are aspermatologically sterile, from that of the vasectomized, who are, in his opinion, certainly impotent. But physiologically speaking, it impresses one as an almost trivial basis for determining potency. The minute drop of liquid secreted by the epididymis and the vasa deferentia apparently has no purpose save lubrication for the passage of the spermatozoa. Ferreres cites Beclard of the University of Paris to the effect that normal semen contains, besides this liquid and spermatozoa, what are known as spermatic cells.<sup>127</sup> But these are merely undeveloped spermatozoa, and Beclard further notes that very few of them are to be found in the ejaculated semen. In the aspermatic semen of the old men noted above, they do not seem to have been found at all. Finally, all the authorities cited by Ferreres emphasize that the content of the testicular secretion, other than the spermatozoa, is very small. As he himself puts it: ". . . almost one-tenth of the true semen which is elaborated by the testicles is made up of matter other than spermatozoa."<sup>128</sup> The testicular secretion, taken as a whole, is estimated by competent authorities, as we have seen, to be a minute part of the total ejaculate. If we accept O'Malley's estimate that it constitutes about 6% or 7% of the whole volume, the contribution, which Ferreres makes the criterion of potency, is one-tenth of that or between .006 and .007 of the total bulk. And in the absence of the spermatozoa, whose passage it seems to be designed to lubricate, it has, as far as we have been able to discover, no physiological function. From a medical standpoint, it seems a very inadequate basis for distinguishing impotence.

It is true that the Church could still make the absence of this minute quantity of *liquor testicularis* the basis of a diriment impediment. But when it is a question of an impediment from the natural

<sup>126</sup> *Ibid.*, n. 212.

<sup>127</sup> *Ibid.*, n. 94.

<sup>128</sup> *Ibid.*, n. 92.

law, the supposition becomes less credible. It is going very far to ask one to believe that the natural law makes man certainly incapable of marriage because of this minute deficiency in his ejaculate, which can be ascertained only through highly complicated scientific devices.

Parallel to this consideration and just as basic is the fact that ultimately the determination of what constitutes true *copula* must be based, in the absence of explicit revelation, on the common estimation of mankind. Gasparri uses this argument to reject "seminatio ad os vaginae" as constituting the true marital act. Thus he says: ". . . simplex seminatio extra vas in communi hominum existimatione non est illa copula ad quam ordinatur matrimonium, ideoque nec copula appellari potest. . . ." <sup>129</sup> This same passage is quoted by the Rota. <sup>130</sup> So, while the professional canonist is the man to decide such questions ultimately, he must have regard to the common persuasion of mankind in a matter which pertains to the natural law, that law which is written in the hearts of all men. Now their persuasion in the matter of vasectomy, judging from the common opinion among doctors, from the ordinary designation of the operation as "sterilization," and from the practice of vasectomized persons, Catholic and non-Catholic alike, in proceeding without scruple to enter marriage, is that it does not prevent a man from performing the marriage act.

#### ROMAN DECISIONS AND RESPONSES

The ultimate word on the present question would be a papal Constitution similar to the *Cum Frequenter*, stating definitively that a permanently vasectomized man is or is not impotent. In the absence of such a papal pronouncement, which, we venture to say, may never be issued, the official mind of Rome must be deduced from Rota decisions and the responses of various congregations.

As regards decisions of the Roman Rota, we find in those which have been published a very definite tendency to regard double vasectomy as a cause of impotence. We say "a tendency," because there have been no published decisions bearing directly on a case of double vasectomy as such. There have, however, been numerous

<sup>129</sup> Gasparri, *De Matrimonio*, n. 576.

<sup>130</sup> *S. R. Rotae Decisiones*, XXI (1929), Decisio LVII (Oct. 27, 1929), n. 4, p. 479.

decisions regarding pathological occlusion of the vasa deferentia. These have been practically unanimous in ruling the condition to be one of impotence, and this on the ground that the man in question was unable to emit semen elaborated in the testicles. Thus, for example, that *verum semen* is required for potency and that this means semen elaborated in the testicles is enunciated in decisions given on March 28, 1924,<sup>131</sup> March 1, 1925,<sup>132</sup> March 20, 1926,<sup>133</sup> August 7, 1929,<sup>134</sup> October 27, 1929,<sup>135</sup> June 16, 1930,<sup>136</sup> December 23, 1930,<sup>137</sup> April 18, 1931,<sup>138</sup> and January 22, 1944, this last decision being recently published in the *Acta Apostolicae Sedis*.<sup>139</sup>

It is a fairly immediate conclusion from the above that the permanently vasectomized man also is, in the mind of the Rota, impotent and incapable of contracting a valid marriage. His vasa deferentia are permanently occluded and the emission of semen elaborated in the testicles is for him a permanent impossibility. As a matter of fact, the Rota itself has drawn that conclusion for us in some of its sessions. Thus in the decision of June 14, 1923, we read: "Again, it makes no difference whether the passage of true semen is prevented by the surgical operation known as *vasectomy* or by some other cause, e.g., as a result of venereal disease, as long as the blockage is complete and incurable. . . ." <sup>140</sup>

Such an incidental reference to vasectomy is admittedly a strong canonical argument for certain perpetual impotence, but it is not absolutely conclusive. The fact that it is incidental is one thing. The case under consideration is one of blennorrhagia, a pathological condition which implies much more serious effects than vasectomy.<sup>141</sup>

<sup>131</sup> *Ibid.*, XV (1923), Decisio XII (June 19, 1923), p. 104.

<sup>132</sup> *Ibid.*, XVII (1925), Decisio XVII (March 10, 1925), p. 124.

<sup>133</sup> *Ibid.*, XVIII (1926), Decisio VIII (March 1, 1926), p. 59.

<sup>134</sup> *Ibid.*, XXI (1929), Decisio XLVIII (August 7, 1929), p. 406.

<sup>135</sup> *Ibid.*, XXI (1929), Decisio XVII (October 27, 1929), p. 477.

<sup>136</sup> *Ibid.*, XXII (1930), Decisio XXIX (June 16, 1930), p. 340.

<sup>137</sup> *Ibid.*, XXII (1930), Decisio XLII (December 23, 1930), p. 678.

<sup>138</sup> *Ibid.*, XXIII (1931), Decisio XVII (April 18, 1931), p. 132.

<sup>139</sup> *AAS*, XXXVI (1944), 187: ". . . defectus antecedens et insanabilis iuxta constantem iurisprudentiam S. Rotae. . . hominem reddit ad matrimonium impotentem, si scilicet, in eo deest facultas seu potentia effundendi in actu coniugali *verum semen* idest in testiculis elaboratum, etsi careat spermatozois."

<sup>140</sup> *S. R. Rotae Decisiones*, XV (1923), Decisio XII (June 14, 1923), p. 104.

<sup>141</sup> Cf. Le Bec's description of its symptoms, *ibid.*, p. 111 f.



It is well to remember, too, that the decisions of the Rota, though ranking high as doctrinal commentaries on the law, are authoritative only for the cases they decide. One cannot give the force of general law to the opinions expressed by Rota judges, even if these opinions form the basis of the decision. Furthermore, in this general question of impotence, which essentially involves the definition of an "actus per se aptus ad proles generationem," the jurisprudence of the Rota has been far from clear and consistent in modern times.

A striking instance of this is seen in the matter of female impotence where some Rota judges have declared that inner occlusion of the vagina induces impotence<sup>142</sup> and some have declared the opposite.<sup>143</sup> A decision of Dec. 17, 1926, asserts that the doctrine of the Rota is not uniform and hence that a *dubium juris* exists in the matter.<sup>144</sup> And even on the present question of permanent blockage of the vas deferens, the Rota gave a first decision on August 10, 1922,<sup>145</sup> which teaches the opposite of the doctrine set forth in the numerous decisions cited above.

It is worth noting that the requirement of "semen in testiculis elaboratum" for male potency by the Rota is not of very ancient standing. The first reference to it that we have been able to find was given on July 4, 1918. The chief authorities cited by the Rota are Wernz and Gasparri,<sup>146</sup> neither of whom offers any canonical tradition for defining *verum semen* as "semen in testiculis elaboratum." We have already had occasion to examine the genesis of their doctrine and have found that it is based on an, at most, probable interpretation of the *Cum Frequenter*. Where it is a question of proving impotence, probable arguments do not suffice.

It seems, therefore, that the Rota doctrine requiring testicular semen for male potency is neither of ancient standing in itself nor

<sup>142</sup> Cf. decisions of July 14, 1917; April 17, 1916; Feb. 17, 1917; May 28, 1921; April 29, 1922; Nov. 17, 1931.

<sup>143</sup> Cf. decisions of Feb. 9, 1924; Feb. 7, 1937; Dec. 22, 1925.

<sup>144</sup> H. Callahan, *The Evolving Concept of Female Copulatory Impotence in the Rota Decisions from 1916 to 1931* (MS., Weston College, 1942), p. 72 f.

<sup>145</sup> *S. R. Rotae Decisiones*, XIV (1922), Decisio XXX (August 10, 1922), p. 272.

<sup>146</sup> *Ibid.*, XV (1923), Decisio XII, (June 14, 1923), p. 104. Reference to Wernz is *Jus Decretalium*, IV, nn. 342, 345, nota 35; and Gasparri, *De Matrimonio* (ed. 3a.), n. 567 (apparently a mistake for n. 566 or n. 568, as n. 567 is patently not to the point).

based on teaching long held by canonists. It is possible that the Rota, as a court, may reverse its stand on the point. Such reversals of opinion have occurred before, especially in the matter of female impotence, as we have had occasion to point out. If it were to do so in the present matter, it would not be a reversal in the strict sense since the court, as far as we know, has never ruled directly on a case of double vasectomy. Of all the subjects it must handle, that of impotence is one of the most difficult and involved. It is the matter in which a change of prevailing jurisprudence might most readily be expected, granted serious reasons for considering such a change.

What could conceivably change the course of Rota jurisprudence? New considerations of the physiological effects of double vasectomy or its permanence might do it. Some convincing arguments for interpreting the *Cum Frequenter*, so as to remove its bearing on the case, could do so. Certainly, if a case of double vasectomy were actually brought before the tribunal, these considerations would be introduced and carefully weighed by the judges. They strike us as being sufficiently convincing to produce a serious doubt of the certainty of impotence even in a case of permanent double vasectomy.

Above all, the thing that would bring about a change in the jurisprudence of the Rota would be an authoritative response from a Roman congregation. No conclusive response has ever been given but we have at hand two responses, one from the Congregation of the Sacraments and the other from the Holy Office, which give some grounds for holding that the permanently vasectomized man is only doubtfully impotent.

On June 17, 1937, the Sacred Congregation of the Sacraments gave what looks like an evasive reply to an inquiry from a matrimonial court relative to instituting a process for a dispensation "super matrimonio rato et non consummato." The case involved perfect and perpetual vasectomy. The inquiry was: "An in casu, si vasectomia est perfecta et perpetua et nullum semen verum transire potest, processus super matrimonio rato et non consummato secundum can. 1963, §1, instrui licet?" The response was: "Cum in precibus pars oratrix assērit matrimonium nullum esse ob viri impotentiam, patet petitam dispensationem concedi non posse. Competens tribunal ipsa

oratrice agente processum instruat super asserta nullitate, prae oculis suo tempore et si casus ferat, habito art. 206 Instructionis huius Cong. diei 15, August 1936.<sup>147</sup>

So the congregation recommends that a competent tribunal look into the matter of the alleged nullity, pointing out that a dispensation from a non-consummated marriage is not in order when the marriage is claimed to have been invalid from the beginning on grounds of impotence. The response is not of tremendous import for our purposes, but it does seem to indicate some sort of unwillingness to declare definitively that the perpetually vasectomized are impotent. Since the case is put hypothetically, the hypothesis being that the condition is perfect and perpetual, the congregation might have replied that in that case the marriage would be null, if indeed the argument for impotence is as certain as its proponents claim it to be. This the congregation declined to do. Our instance is only a straw in the wind but seems worth noting. It is also significant that two of the most prominent supporters of our view, namely, Jorio<sup>148</sup> and Vermeersch (until his death in 1936), have served as consultors to various Roman Congregations and may be supposed to be conversant with the direction in which official opinion is moving.

On June 8, 1939, the Holy Office, by authority of the Holy Father, empowered a certain Ordinary to grant a *sanatio in radice* for a marriage invalid by reason of defect of form. The male partner to this particular marriage had been doubly vasectomized antecedently to the marriage. There is no evidence that the congregation checked up on the temporary or permanent nature of the vasectomy. Yet the *sanatio* was granted.<sup>149</sup> This seems to indicate that the Holy Office is at least not certain that vasectomy, be it temporary or permanent, induces impotence. A *sanatio* cannot be granted to a certainly impotent person.

We mention at this point, not by way of argument, but merely as an item of interest, that there are rather widespread rumors of another re-

<sup>147</sup> J. Haring, "Verschiedene Ehegesetzesfragen," *Theologisch-praktische Quartalschrift*, XC (1937), 677.

<sup>148</sup> He writes in 1940: "Circa vasectomiam duplicem S. Sedes, etsi interrogata, nullum adhuc dedit responsum, nec pro nec contra existentiam impedimenti" (*Theol. Moral.*, III, Pars II, n. 1178).

<sup>149</sup> *Theologisch-praktische Quartalschrift*, XCIII (1940), 145.

sponse from the Holy Office, given secretly to a certain German bishop, allowing the marriages of certain permanently vasectomized men. It seems to us quite credible in view of the tendency exhibited in the responses cited above. The whole matter will pose quite a problem for the Church in post-war Germany because of the widespread use of eugenic sterilization by the Nazi government.<sup>150</sup>

#### GENERAL CONCLUSIONS

The permanently vasectomized man seems capable of contracting marriage because, according to the present state of canonical knowledge, his impotence is not certain. We base this conclusion on the following premises:

1) Such a large number of reputable canonists deny or doubt with good reason his impotence that it constitutes solid probability against the existence of the impediment. In accordance with can. 1068, §2, such probability would demand that the marriage be permitted.

2) Study of the *Cum Frequenter* of Sixtus V, the chief canonical ground for a conclusion of impotence, reveals: (a) The concept of *verum semen*, as understood in the *Cum Frequenter* and theological tradition, is most probably not restricted to semen elaborated in the testicles; (b) the moral and physical disabilities of the eunuch enumerated in the *Cum Frequenter* are not verified in the vasectomized man.

3) The obscurity in the definition of the marriage act, evidenced by opposing opinions as to its licit use, makes it difficult to pronounce the vasectomized certainly incapable of performing that act.

4) The nature and required certitude of impediments from the natural law induce the conclusion that greater certitude of impotence than is presently had is necessary in order to bar the vasectomized man from marriage.

5) Although Rota decisions over a period of years have tended to hold for certain impotence, recent responses from Roman congregations exhibit a tendency to doubt it.

<sup>150</sup> W. W. Peters, "Germany's Sterilization Program," *American Journal of Public Health*, XXIV (1934), 187.