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The Impediment of Impotency and the Condition of Male Impotence: A Canonical-Medical Study: Part II

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cilities and physical well-being. Indeed, the physician can leave a closed retreat enriched and enlightened by the grace of God, and carry out with extreme freedom of will and intelligent reason a harmonious program of realistic peace with himself, with his vocation and with God.

Leonardo da Vinci, who excelled in almost every principle profession of his time, and who pursued varied interests with extreme success, recorded this advice in one of his notebooks: “Every now and then go away—for when you come back to your work your judgment will be surer, since to remain constantly at work will cause you to lose power of judgment.”

His Holiness, Pope Pius XI, in his encyclical letter on Laymen’s Retreats described inexpressibly some of the roles played by the properly timed retreat movement:

To these Exercises an opportunity is given to a man to get away for a few days from ordinary obligations and from strife and cares, to pass the time, not in idleness, but in the consideration of the questions which are of potential and profound interest, to meditate the question of his origin and his destiny, whence he comes and whither he goes...retreats are like so many Cenacles where in courageous souls, strengthened by grace and following the prompting of eternal truth and the prompting of Christ’s example, not only perceive the value of souls, not only conceive the desire of helping souls (in proportion to each one’s vocation), but also learn the ideals, the dreams and the boldness of the Christian apostolate... We hold it for certain that in the growth of his work lies the most powerful support against growing evils.”

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copula, which is de se apt for the
generation of offspring.

Gasparri refers to and quotes the
definition of Antonelli: “Impotency is the absolute and neces-
sary inability to obtain offspring
due to the lack of organs es-
sential to generation or because of
the atrophy or because of any
other defect which renders copula
either impossible or, by its nature,
necessarily sterile.”

Noldin cites the opinion of one
group, including Antonelli, Buc-
ceroni, Wernz, Santi, Leitner and
Lehmkuhl, to the effect that an act
of ordained copula is required
but in addition, verum semen, on
the part of the man, and an ovum,
on the part of the woman, are
required, thus reducing impotency
to an inability to generate rather
than to an incapacity to copulate.

He also mentions a similar theory
that required, in addition to the
ordinated act, that the man deposit
verum semen, although there was
no ovum or could not be any ovum
on the part of the woman, because the ovaries had been excised. The
followers of this opinion described
verum semen as that fluid which is
produced in the testicles even
though it be devoid of live sperm
and not merely the fluid which is
produced by the seminal vesicles
or bulbourethral glands. Finally,
Noldin mentioned his own defini-
tion of impotency, as shared by
others, as merely an incapacity to
copulate and hastened to state that
this follows the tradition of the
older authors, which was upset
for some time after the 16th cen-
tury because of an improper un-
derstanding of the text of Pope Six-
tus V. Noldin and others held

Since generation depends
on the hidden processes of nature
not on the individual, as
required, the action of nature
becomes the inability to
generate rather than
the incapacity to
perform the action of
nature which follows, proving
there is no complicating patho-
or abnormality which would
out generation.

Thus, the terms conjugal copula,
consummation, becoming one flesh
are all made equivalent and im-
potency becomes the inability to
have successful conjugal copula,
properly to consummate a marriage
or to become one flesh with one’s
spouse. It is evident that no one
of these terms specifically or es-
entially contains within it a di-
rect reference to generation even
though the marital act is ordinated
to a generative purpose.

As stated previously, conjugal
copula is that human action where-
by, in a natural manner, the female
vagina is penetrated by the male
organ and semination occurs there-
in. This composite act is consti-
tuted by three separate operations:
erection of the penis, penetration
of the vagina and semination with-
in. These multiple operations are
required on the part of a man, a normal penis, which
was capable of being erected and
sustained in erection until penetra-
tion was accomplished; at least
one healthy, functioning testicle
and the ability to deposit verum
semen within the vagina.

The Supreme Sacred Congre-
gation of the Holy Office on
March 1, 1941 declared that for
perfect copula and consummation
of a marriage is required and
suffices that “a man, in some fash-
ion, even though imperfectly,
penetrates the vagina and immedi-
This requirement immediately semination must be intravaginal.

Harrington and Doyle, in an article in the Linacre QUARTERLY of August, 1952, concluded: "This, the minimum, which is required and suffices for true consummation, is to be found between the two extremes of mere vulvar penetration, on the one hand, and complete penetration of the entire male organ, on the other. There must be verified a true entrance through the hymeneal membrane and into the vaginal canal, so that part of the male organ can actually enter the vagina. This minimum penetration, coupled with simultaneous semination ad os vaginae, is to be said that has been born from non-matrimonial coitus and from impotent parents.

It is possible for actual copulation to occur without a marriage being canonically consummated and even when one of the parties is canonically impotent. To substantiate this conclusion, reference is made to two decisions of the S. R. Rule wherein a definite judgment was made that marriages had not been properly consummated even though the fact of conception was beyond all controversy and in a particular case, even though a woman had given birth to two children, for in this instance, it was verified that the subject was suffering from such severe vaginismus that penetration was impossible.

Thus, whatever would prevent a man from penetrating or seminating within the vagina or a woman from being penetrated would be the cause and basis of impotency.

In considering male impotency, due consideration must be given to the basic distinction between organic, anatomical, mechanical, instrumental or constitutional impotency, on the one hand, which refers to the lack or ineptness of copulatory organs or to some defect or lesion, which affects them properly be deposited in the vagina, the person is adjudged to be impotent. One total decision discusses this point at length, and sets forth that hypospadias has several forms depending on whether the urethral or lies below the glans penis or in some other part of a divided scrotum or opens behind the scrotum into the perineum. This decision continues by stating that in the case of scrotal hypospadias, if the penis is crooked, proper semination cannot be had. In perineal hypospadias, semen is emitted but between the legs of the man without touching the external organs of the woman and thus, intra-vaginal semination cannot be accomplished. In the other forms of hypospadias, where the urethral canal opens along the penile shaft, each case must be investigated individually to determine whether or not proper semination can be effected. This decision concludes by pointing out that if semination is impossible in the usual position, it might be possible if the position were to be changed and quotes Cappello to the effect that if the usual position for coitus is changed or if other licit means are used and the semen can be deposited in the vagina, there is no impediment.

Conditions, affecting the erection of the penis are also possible causes of impotency and are listed by the authors as: absolute frigidity of the man, diseases of the center controlling erection, sexual neurasthenia, progressive spinal paralysis caused by a venereal infection, anaphrodisia, which prevents erection, aphrodisia, which causes too much venereal excite-
ment with consequent premature ejaculation, and sexual anaesthesia.

Authors write that if a man is impotent, he is not unaccustomed means, because of parthenia, to excite himself. Cappello answers that the man is certainly not impotent, if the means employed are licit in themselves. If the means are licit and he can be aroused only by these licit means, he is to be considered impotent, but, in the opinion of experts, this type of condition is not of its nature permanent, can be cured by licit means and thus the impediment of impotency cannot be said to be present.

Up to the present, all canonists held that a man, to be considered potent, must possess, in addition to an erectible penis, at least one healthy, functioning testicle. Thus, they conclude that complete absence of both testicles, either congenital or by surgical removal, total atrophy of both testicles or undeveloped testicles would constitute impotent condition and if this deficiency existed at the time of the marriage and is incurable, the invalidating impediment of impotency would exist. However, in trying to establish the complete absence of both testicles, one must take into account the possibility of the condition of cryptorchidism being present, wherein the testicles are undescended and are lodged in the abdomen or in the inguinal ring and thus cannot be readily observed.

Although all canonists have agreed on the necessity of one healthy, functioning testicle being present, they do not concur on the purpose that the testicle is to serve. One theory holds that the verum semen, required for natural semination, should be manufactured in the testicles, and the testicles, with its testicular component, must pass unobstructed from the testicles through the different canals to the urethral orifice, from whence it is deposited within the vagina at the time of the marital relations.

The second theory would demand the presence of one healthy, functioning testicle not for reason of any semen that it might elaborated, but for its endocrine function whereby the testicle releases androgen into the bloodstream, which, in turn, accounts for and regulates the libido of the individual and his consequent ability to attain and maintain an erection.

Neither theory requires the presence of a functioning testicle for its spermatogenic function since the presence or absence of spermatozoa refer to fertility or sterility and not to potency or impotency.

The juxtaposition of these two theories sets the stage for the current major controversy relative to the proper understanding of the term verum semen which, as mentioned previously, has been employed by all writers from the time of Pope Sixtus V but which, has never been clearly defined or analyzed. All canonists and theologians have required some type of semination in order to have true marital copula but no one, until relatively recently, attempted to describe the composition and constitution of this semen. Thus, since semination is required for potency, and since it has not been exactly what constituted this semen, it is only natural to conclude that some difficulties would arise in the understanding of an impotent condition and some controversies would develop as to the validity or nullity of certain marriages.

As previously indicated, Cardinal Gasparri, an eminent canonist, was the first writer to attempt to define verum semen and to locate the site of its production. In the third edition of his book, which appeared in 1903, while discussing the semen of old men and youths, quite by accident and incidentally, he described true semen as that which was manufactured in the testicles and thereby canonized the phrase which is so prevalent today in canonical literature, semen elaboratum in testiculis. In this connection, he said "Although the semen in old men or youths is generally not fertile either because spermatozoa are lacking or are not sufficiently vigorous, nevertheless it is of the same constitution as true fertile semen, since it is established in its natural organs, namely the testicles."

As authority for this statement, Gasparri quotes the writings of Sanchez, who wrote his classical work on marriage shortly after the "Cum Fratresque" of Pope Sixtus V was issued.

Gasparri makes a second reference in this same edition to the nature of verum semen. He says "male semen is, as we have said, produced in the testicles. Hence eunuchs and castrates, who lack both testicles, are certainly incapable of emitting true semen as Sixtus V clearly teaches." It would appear from this passage that Gasparri believed Pope Sixtus V to have understood verum semen to be that which was manufactured by and in the testicles although the Supreme Pontiff did not define the term, because he offers no further proof or authority for his interpretation.

In 1911, Wernz, another outstanding commentator on canonical subjects, simply states, without any proof, that verum semen is that semen which is elaborated in the testicles. It would appear that he, as had Gasparri before him, had concluded that if eunuchs and others, who lacked both testicles, could not validly marry, the reason must be that the testicles, which they lacked, must produce some essential element that is required for true marital copula and it was because of this reasoning that he took it for granted that verum semen must be produced by the testicles. Such a conclusion is understandable when one reflects that in 1911 when he wrote, the spermatogenic function of testicles was known, but very little about their endocrinological function was appreciated.

The Sacred Roman Rota, quoting Gasparri and Wernz, has always interpreted verum semen as that which is elaborated in the testicles and has always insisted that, for true and perfect marital copula, the fluid, deposited in the vagina, must contain a testicular component and, therefore, that there be an uninterrupted and unobstructed channel from the testi-
cles to the os urethral. Thus, if a man lacked both testes, either by reason of a congenital defect or by surgical intervention, or if both testicles were completely atrophied or undeveloped and thereby could not manufacture semen or if the semen, once elaborated, could not pass to the urethral orifices because both vasa deferentia were occluded, by reason of disease or sutured as a result of a double vasectomy, that man would be considered impotent and he would be stopped from contracting marriage or, a marriage already contracted, would be declared null and void, if the condition was proved to be anteCEDent and permanent.

Having adopted this particular interpretation in 1914, the Sacred Roman Rota has never changed its opinion and has, over the past forty years, set up a constant, consistent and unanimous jurisprudence, which all the present judges of this august Tribunal have accepted. From 1914 through 1943, the Sacred Roman Rota judged 38 cases in which inability to emit or deposit semen, elaborated in the testicles, was the main issue and, in all cases, the above interpretation was invoked and in all but six cases, the marriages were declared invalid. In these remaining cases, the condition of impotency was established but the impediment of impotency could not be proved because there was question of the anteecedent or permanent nature of the condition and in each instance the Holy Father dissolved the marriages on the basis that they were never properly consummated by true marital relations.

The second opinion, which we might term the modern opinion, has reached its prominence in the last thirty-five years of canonical literature. Its principal arguments are that Gasparri, the author of the classical opinion, did not intentionally and purposefully conclude that true semen must be elaborated in the testicles; that the authorities quoted by Gasparri made no mention of the necessity of a testicular component in the ejaculate; that the Cum Frequenter of the sixteenth century was written at a time when the function of the testes was not clearly understood, the source of the male ejaculate was not understood and the endocrine process of the testicles had not been discovered; that the classical opinion demands too much in a situation where the law is attempting to set a minimum standard for qualification for marriage; and finally, that the condition of impotency, which flows from the natural law, and not from any positive legislation, should be easily discernible and should not have to depend for its detection upon microscopic evidence and involved medical procedures, which have only recently been perfected.

In more recent times, the supreme Pontiff, Pope Pius XI, in an allocution to the Genetico-Surgical Convention of the Italian Association of Urologists on October 8, 1953, shows definite tendency towards supporting the Gasparri opinion, as he referred to "impotent by obstructed vasa deferentia.

The constant and unchanged jurisprudence of the Sacred Roman Rota more than forty years and the apparent adoption of this jurisprudence by two recent Popes give great stature and probability to the interpretation of Gasparri at the present time.

In view of this interpretation, that verum semen be manufactured in the testicles, the following conditions would constitute impotency: complete absence or atrophy of both testicles, undeveloped testicles, double vasectomy; any obstruction of the vasa deferentia; complete occlusion of both epididymis caused by bilateral epididymitis, bilateral orchitis, bilennraghia, or other inflammatory diseases.

The adherents of the Gasparri opinion, although they require in the ejaculate, semen that has been manufactured in the testicles, do not demand that spermatozoa be present in the semen, because the presence of or absence of spermatozoa refer only to fertility or sterility and have no reference to potency or impotency.

In summarizing the classical opinion, it is evident that for male potency there is required a penis, which is capable of being erected and of being sustained in erection until the vagina has been penetrated; at least one healthy, functioning testicle, which will manufacture its proper semen, even though the semen is devoid of all spermatozoa: an uninterrupted and unobstructed passage from the testicles to the urethral orifice and the ability to deposit within the female vagina the testicular fluid thus emitted and expressed.
The supporters of this modern opinion are quick to show that the term verum semen, as found in the Bull of Pope Sixtus V, has been used by all canonists since that time but no one from 1587 to 1903 ever described it as being elaborated in the testicles. They point to the article on Impotence in Migne's Encyclopedie Theologique (Vol. 31, col. 1261), which summarizes the canonical literature on this particular subject up to 1849 and shows that no author ever referred to verum semen as being manufactured in the testicles. They mention that this understanding was not had until Cardinal Gasparri employed these now famous words in his edition of 1903. They very properly inquire of the validity of marriages contracted in all the decades and centuries before 1903 and state that if an impediment is based on the natural law, it has been in effect from the very beginning, did not come into existence at any recent time, should be completely understood at all times and should be known by common observation, which is available to all peoples.

Those who have embraced the new theory argue that Sanchez, upon whom Gasparri based his opinion, never mentioned or inferred that true semen must be elaborated in the testicles. He did say that old men emit a semen of the same kind as fertile semen but only per accidens do they fail to generate children. Sanchez, in arguing against the validity of eunuch marriages, considers the objection that those, who have been deprived of both testicles, have as much a right to marry as old men, since the latter cannot procreate children. The author proceeded by saying that old men emit semen which appears, both in quality and quantity, to be the same as that produced by any normal man; whereas the castre gets off a liquid, which is sparse and watery and essentially different from the ejaculate of a normal man. This is the reason why the person, deprived of both testicles, can not validly marry because, by common observation, he is different from the normal man.

Sanchez, in his writings, conjectured that an eunuch, who could produce verum semen, could marry in virtue of the natural law but would be stopped from marrying by reason of the positive legislation of the Cum Frequenter. Sanchez denied this conclusion because he said that such an hypothesis was impossible and therefore, Pope Sixtus V was justified in making the universal principle that observation, lacking both testicles, could not validly marry.

Nowhere in his writings did Sanchez make any mention that verum semen should be elaborated in the testicles. He had every opportunity to do so, if that were his conviction, but he refrained from doing so. However, Sanchez did speak of the activity of the testicles, in terms that would refer to the present-day understanding of their endocrine function. Eunuchs do have an errect penis and emit a watery substance, which is not true semen nor of the same constitution as semen. When the testicles are missing, there is no

arousal in the principal membranous parts. The three principal parts are the heart, the liver and the brain; these transmit impulses to testicles, which can retain the impulses and excite the body. If the testicles are lost, the impulses are not retained and vanish; the person is not capable of marrying; thus, such persons become void and inept to emit verum semen.

It is evident and certain that Sanchez did not claim that true semen should be manufactured in the testicles but it is easy to see how Cardinal Gasparri might have obtained that impression because the presence of the testicles was required. However, it is more probable that Sanchez insisted on the presence of testicles more for their endocrinological function than as a source of the male ejaculate. In the middle of the twentieth century, when the sciences of endocrinology and urology have been perfected, it is easier for us to derive this conclusion than it would have been for Cardinal Gasparri in 1903.

In concluding this particular argument, the defenders of the modern opinion claim that from the Cum Frequenter and the writings of authors, contemporary to it, one cannot draw a cogent argument to favor the theory that verum semen must be elaborated in the testicles and this should be certain and conclusive, they say, if it is to establish an invalidating impediment.

The authors who have adopted the modern opinion discuss it principally with reference to the doubly vasectomized man and his consequent potency or impotency. Thus, they place a great deal of stress on the confusion between the castrate, who was prevented from marrying by the Cum Frequenter, and the doubly vasectomized man in relation to the semen emitted by both at the time of sexual intercourse.

Nowlan, in 1945, provided an excellent discussion on this particular point. He indicates that a great deal of the confusion on this general subject is due to the fact that medical science itself, upon which the canonists depend for medical information, did not understand the endocrine function of the testes until relatively recently and this lack of knowledge has accounted for many of the errors in decades and centuries past in regard to the effects of a vasectomy operation.

Ferreres, a renowned canonist, published a work on double vasectomy in 1913. At that time, very little was known of the endocrine function of the testicles and only scant information was had of the effects of a vasectomy operation, which was then in its early days of perfection. Ferreres quoted a single case which was presented to Eschbach by an anonymous doctor, who reported that ten months after a vasectomy operation, the patient had all the appearances of a castrate. Since this was the only medical testimony that Ferreres could find, it is not to be wondered at that time this author likened the doubly vasectomized man to the castrate and drew the obvious conclusion that, since eunuchs could not

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marry, neither could the man who had suffered a double vasectomy and this condition would constitute an invalidating impediment.

However, since that time thousands of double vasectomy operations have been performed and there is no evidence to warrant the judgment that these operations produce any emasculating effects. As modern endocrinology has verified that virility and secondary male characteristics are controlled entirely by the minute secretions which pass directly into the central bloodstream from the interstitial cells of the testicles rather than by the sperm-producing cells, as was previously thought. This latter theory was responsible for the previous opinion that a double vasectomy operation would cause profound emasculating effects. As can be readily seen, the opinions of canonists on medical subjects will always depend on the medical information available at the time and if this information is found at a later date to be erroneous, then it must be expected that the canonical conclusions, based on it, will also be erroneous.

Because the doubly vasectomized man was thought to be equivalent to a castrate, Cappello, Wenz-Vidal, Gasparri and Ferreres considered double vasectomy to be an important condition. However, present day urology points out several important differences between these two classes. First, whereas a castrate can only emit a small quantity of thin, watery fluid, the doubly vasectomized man deposits an ejaculate of the same quantity and of the same viscosity as a normal man. On the one hand, there is a noticeable difference between the fluid emitted by a normal man and by a man who had undergone a vasectomy operation and this is readily observable by the eye without any need of microscopic examination. On the other hand, there is no observable difference between the ejaculate of a singly vasectomized man and a normal man, with the exception of the absence of spermatozoa, which can only be discovered by minute microscopic examination.

Those who favor the modern opinion feel that Pope Sixtus V defended eunuchs to marry precisely because they could emit only a small amount of thin, watery fluid which differed both in quantity and quality from that of a normal man and, for this reason, they argue that doubly vasectomized men, who can emit a normal viscous ejaculate, should not be equated with the castrate and should not be considered impotent.

Secondly, the vasectomy operation produces no apparent change in the sexual life of the patient. His virility is retained and he can still engage in sexual activity and derive pleasure and satisfaction from it. This cannot be said of a castrated male after the full effects of the condition have been realized.

Thirdly, contrary to the belief of Ferreres, no abnormal increase of sexual appetite is to be feared from the vasectomy operation. His theory was based on the reflection that a vasectomized man could not void a certain amount of semen because the channel from the testicles to the urethral orifice was interrupted. This semen would tend to accumulate and infect the venereal appetite. However, modern medicine has dispelled this theory.

For the above reasons, those who favor this modern opinion, believe that there is no difference between a castrated and a doubly vasectomized man and, therefore, most probably, the null Cam Frenquenter, cannot be said to apply to the latter group. Thus, on this basis, double vasectomy most probably should not be considered as constituting an impotent condition.

Nowlan also advances the argument that the definition of the marital act as an act which is per se apt for the procreation of children is open to varying interpretation and since the meaning is doubtful and a difference of opinion exists as to what constitutes a normal marital act, the vasectomized man should be given the benefit of the doubt and not be considered certainly impotent. Also, this author refers to many reputable theologians who would allow persons who were castrated after a marriage to continue the exercise of the marital rights even though, by reason of the operation, they cannot perform an act which is "per se apt for generation." He argues that if an unmarried eunuch is forbidden to marry, because he cannot perform an apt marriage act, then a man, castrated after marriage, should be denied the exercise of his marriage rights for the same reason and he cannot be given the benefit of any doubt, since no doubt exists. The inference from this argument is that if persons, castrated after the marriage, are allowed to exercise marital rights, then doubly vasectomized persons should not be declared as certainly impotent, since their act is more apt than that of the castrate.

A further argument of this group is that the impediment of impotency has its source in natural law and binds all persons. Therefore, the determination of an impotent condition should be relatively easy for all and should be made on direct observation apart from involved surgical techniques and microscopic examination. Yet, the presence or absence of a testicular component in the ejaculate can only be ascertainable by a minute microscopic examination and thus, it is difficult to understand how canonists can require a testicular component for potency. Especially does this argument have validity when one realizes that a woman, whose post-vaginal organs, uterus and ovaries, have been excised, has been considered to be potent, since the absence of these organs can be determined only by an examination and this was considered by canonical writers to be demanding too much for the verification of a natural law impediment.

The defenders of this modern opinion propose two further cogent arguments which are based on present-day physiological data. Father Ford, an outstanding moral theologian, provides a convincing summary of these two arguments in a recent article.

The first argument refers to the components of the normal ejaculate.
late and states that the seminal fluid is composed of various elements produced by the testicles and epididymides, by the seminal vesicles, the prostate and urethral glands. The greatest part of the semen comes from the seminal vesicles. The prostate and bulbo-urethral glands and not from the testicles and thus never passes through the vasa deferentia.

Quoting Doctor Victor M. Marshall of Cornell Medical Center, New York, Father Ford states that the testicles and epididymides provide about one-twentieth of the total ejaculate but this fraction includes the all-important spermatozoa, which all authors agree are not required for potency, because they refer specifically to fertility. If the spermatozoa are subtracted from the one-twentieth produced by the testicles and epididymides, there remains only a very small quantity of the liquid which passes through the vasa deferentia and which if it exists at all serves only to facilitate the passage of the spermatozoa and can be detected only by minute microscopic examination of the ejaculate. Yet, those adopting the classical Gasparri opinion would make the presence or absence of this small quantity of fluid the determining factor in establishing the potency of a given individual, which appears untenable to those preferring the modern opinion.

Those who favor the classical opinion would insist on the presence of this minute quantity described as "semen elaboratum in testiculis."

Father Ford introduces the second argument by saying that the ampulla of the ductus deferens acts as a reservoir to hold the spermatozoa ready for the moment of orgasm and is situated at the end of the vasa deferentia. The seminal vesicles and vasa deferentia is about twenty feet and this would be too long for the sperm to travel in the few seconds that the orgasm lasts. Also, it is believed, according to Doyle, that the first thrust of the ejaculation contains the heaviest concentration of spermatozoa, and this would seem to indicate that, prior to orgasm, the spermatozoa are closer to the urethral orifice and do not travel all the way from the testicles.

If it is true that the sperm do not travel from the testicles at the time of orgasm and that the testicles do not, in fact, actively participate in the orgasm, then the followers of the Gasparri opinion would consider a doubly vasectomized man to be impotent for a reason that would make every man impotent, since the testicles, even of a normal man, do not contribute anything at the moment of orgasm.

It would appear that the sponsors of the Gasparri opinion could rebut this argument by stating that they have never argued that the semen had to be manufactured in the testicles and released by the testicles at the precise moment of orgasm. They probably would accept the physiological data that the spermatozoa and other elements produced by the testicles and epididymides, are present in the ampulla of the ductus deferens and would only instigate the semen, effused at the moment of orgasm, be elaborated at some time in the testicles.

In presenting the modern opinion and setting forth its arguments in full, it remains to refer to two Papal rescripts. On June 8, 1939, the Supreme Sacred Congregation of the Holy Office granted a sanation in a marriage which was invalid because it was contracted in the presence of a civil officer or minister and not in the presence of a Catholic priest. The man had submitted to a double vasectomy operation before the validisation of the marriage and yet the sanation was granted by the Holy Office, which would indicate that the Congregation is not certain that double vasectomy induces impotence, since a sanation could never be granted in favor of a certainty. The Pope, Francis.

The Bishop of Aachen, Germany, on December 17, 1934 instructed the Supreme Sacred Congregation of the Holy Office whether "a man, who has undergone a total and irreparable double vasectomy or some similar operation, which absolutely prevents communication with the testicles with the result that the discharge of sperm cannot be made in the natural manner, can be safely allowed to marry according to the norm laid down in Canon 1068 §2?"

As mentioned previously, Canon 1068 §2 states that "if the impediment of impotency is doubtful, whether the doubt be one of law or fact, the marriage is not to be prohibited."

The Holy Office replied on February 16, 1935 that "in the case of such sterilization the marriage, according to the precepts of Canon 1068, §2, was not to be prohibited."

The Sacred Roman Rota recognized the validity of this reply but interpreted it as expressing a doubt of fact— that the Holy Office doubted the fact of the permanence of the vasectomy—even though the original petition stated clearly that the condition was permanent and that the surgery could not be reversed. This reply has not changed the jurisprudence of the Sacred Roman Rota, which refuses to admit a doubt of law in the case of those unable to deposit a "semen elaboratum in testiculis."

By reason of the above-described arguments, which are considered to be reasonable and to have probability, many renowned canonists and moral theologians are of the opinion that it has not been proved with certainty that the semen, emitted at the time of the orgasm, must be elaborated and manufactured in the testicles and that the ejaculate must contain a testicular component. Among the more noteworthy and better canonists and theologians, who have adopted this modern opinion, can be mentioned: Jorio, Noldin -Schmitt, Arend, Woywood, Donovan, Viglino.
In at least one decision, the Sacred Roman Rota has referred to the modern opinion and has stated: "In the past twenty years, some authors have understood *verum semen* simply as that liquid which is ejaculated during copula without regard to the particular gland from which the ejaculate comes, and they have denied that for the essence of perfect copula it is required that at least some part of the ejaculate come from the testicles. The Sacred Roman Rota could not consider this new doctrine as probable and so it has not applied it in its decisions."

In conclusion, the modern opinion would hold that, for male potency, there is required a normally constructed penis, which is capable of being erected and of being sustained in an erectile state until the vagina has been penetrated; ordinarily at least one functioning testicle which will produce the androgen, which, on being released into the blood stream, will provide the necessary stimuli to effect an erection and a seminal emission by the secretions of the seminal vesicles, prostate gland, Cowper’s gland, and the bulbourethral glands. This opinion differs from the Galen and the Galenists and others. The Sacra Roman Rota is required that at least one functioning testicle be normal in every case, it is clear that each individual situation must be resolved on its own merits. A bilaterally orchiectomized man cannot be prevented from marrying until it is certain that the androgen therapy will not be productive of good results. If there remains any doubt as to its effectiveness or the full period of time for testing its efficiency has not elapsed, then the man should be allowed to marry under terms of Canon 1068 §2. In regard to a marriage already contracted, Canon 1014 should be invoked, which legislates: "Marriage enjoys the favor of the law; the marriage should be sustained."

Father Ford conducted a private poll among ten distinguished canonists and theologians in Rome. All of them are professors in Roman Universities, authors of note, and members of the Roman Congregations and Tribunals and because of this background, they would be familiar with the problem and also in a position to have private knowledge of how the Church’s officials evaluate this modern opinion and whether or not the various Congregations and Tribunals might ever adopt it in adjudicating cases.

These authorities were asked if the opinion is probable and safe in practice, which states that a man, who underwent a double vasectomy operation prior to marriage,
riage, which could not be repaired and was permanent, was not certainly impotent.

Four replied that this opinion was probably and safe in practice; five answered that it was not probable or safe in practice and one indicated that a categorical answer could not be given.

These same officials were asked if such a man, as previously described, had already contracted marriage and the validity of the marriage being challenged, could the Judges of the Diocesan Tribunal declare that the nullity of the marriage had not been proved despite the jurisprudence of the Rota.

Five replied that they could so decree: one said they could so decree but should not: one answered that they could not make this finding: one declared that the judges should follow their conscience and two did not give a direct answer.

No one of those interrogated knew of any present tendency in the Sacred Rota to change its jurisprudence and adopt the modern opinion.

As to the allocutions of Pope Pius XII to the Geneticists on September 7, 1953, and to the Urologists on October 8, 1953, seven stated the Holy Father left the question of double vasectomy and its possibly invalidating effects open for future discussion: one replied that the Pope did not condemn the modern opinion: one judged that the Pope considered the modern opinion only dubiously probable: one did not answer.

Father Ford also inquired of nine professors of moral theology and canon law in American Seminaries and all of them believed the modern opinion to be probable in practice.

From the above, one thinks it evident a great difference of opinion exists among the outstanding theologians of the world, even at this present time and this opinion will not be clarified until the matter is definitely settled by official interpretation and declaration of a competent Roman authority. Until that comes, it would appear that in adjudicating a particular case, the canonist, depending upon his convictions and the dictates of his own conscience, could apply the Gasparri opinion or the modern opinion, since both would appear to be probable, or consider a doubt of law to exist and apply Canon 1068 § 2 in regard to marriage, or make the most serious of the problems raised by the marriage of a person is not potent to cohabit according to the non-prevalent sex, the marriage is clearly invalid but if he is potent to copulate marriage is valid, since when the wife is potent to copulate according to the specific sex cannot be prevented from marrying as long as the two sexes are represented in the union.

Sanchez reports that, before his era, it was judged that, if neither sex prevailed, the person could not marry because he was both male and female at one and the same time and since such a condition was an impediment to sacred orders and religious profession it should also be an impediment to marriage.

However, Sanchez and his followers declared that such a person must choose which sex according to which he wishes to marry and then he should go before an ecclesiastical judge to take an oath that he will never marry according to a sex other than the one he has chosen. Reiffenstuel adds the note that if this individual, on the death of his spouse, remarries according to the sex he has renounced, the second marriage would be valid but illicit.

The Sacred Congregation of the Council handed down two important decisions in regard to hermaphrodites. The first was issued on December 17, 1859 and declared a marriage invalid because an individual had married as a female when the male sex was more prevalent and thus there was a union between two persons of the same sex. The second was issued on August 18, 1888 and concerned a marriage in which the husband declared the sex of his "wife" was uncertain. In all, she was examined by eight doctors and the majority of these decided that the individual preferred rather to the male sex and was unable to consummate the marriage as a female. Since this condition existed before the marriage, the union was declared invalid.

In recent times, Gasparri, Nol­din and Cappello discussed the problem of hermaphroditism. They divided hermaphrodites into three distinct classifications: the perfect, the imperfect and the apparent hermaphroditic.

Perfect hermaphrodites are those who have the organs of both sexes and, at will, can act as man or as a woman in the act of marital relations. When the laws of physiology are considered, it becomes apparent that a perfect hermaphrodite cannot exist, unless it were to be posited that one complete person could be superimposed upon another complete person, since the external and internal organism of a man is completely different from the organism of a woman.

Imperfect hermaphrodites are persons of doubtful sex as they are neither true men nor true women. Their sexual organs are so formed that the organs of both sexes can be found. Even doctors have difficulty in knowing the true sex. Such persons are usually not capable of performing the conjugal
act since they can function neither as a man or as a woman. Because such anomalies are congenital and irreversible, it is clear that the diriment impediment of impotency would exist, which would prohibit a contemplated marriage from taking place or invalidate a union which has already been contracted.

Apparent hermaphrodites are individuals who seem to combine both sexes but who in reality are either men or women. They have a determined sex and, in addition to their proper organs, they seem to have or, in fact do have, some organs of the other sex, e.g., a man might be found with a uterus or an ovary; a woman might have a male testicle. In these cases, the testimony of qualified doctors is to be sought for the determination of the proper sex and the Ordinary of the Diocese is to be consulted before such a marriage can be arranged or be solemnized. Since apparent hermaphrodites can usually function normally in their determined sex, their condition would not be one of impotency and they can validly and licitly marry.

Conclusions

1) An impotent condition, whether on the part of the man or on the part of the woman, whether absolute or relative, which has certainly been proved to have been antecedent and permanent, constitutes a diriment impediment, with basis in the natural law, and prohibits a marriage to be contracted and nullifies a marriage that has already been contracted.

2) An impotent condition will be considered antecedent if it has been proved to have been consummated or if the surgery, or accident, which accounted for it, antedated marriage in question.

An impotent condition will be judged permanent, if absolutely irremediable, if no cure exists or an existing cure was considered to have been effected by miraculous intervention rather than by natural means or if an existing remedy is judged to be illicit, immoral or sinfully reason of the means employed, or if it presents a danger to the life of the patient. The availability of a remedy must be judged on a relative rather than an absolute basis, taking into consideration how advanced and modern is the medical and surgical practice in the area where the patient resides. If a remedy is readily available but the impotent person refuses to submit to the required surgery or therapy and the impotency persists, the condition must still be judged to be temporary and not permanent. However, in such an eventuality, the other party might seek a dissolution of the marriage on the ground of non-consummation. Because medical science, through experimentation and research, is making rapid strides in conquering and finding cures for many illnesses, it is very possible that an impotent condition, considered permanent today, might be thought only temporary in the years to come and thus that which might prohibit or invalidate a marriage today will not be considered an impediment in the future. If a doubt arises as to the temporary or permanent nature of an impotent condition, the impediment of impotency cannot be said to be present and, therefore, a contemplated marriage cannot be prohibited or a contracted marriage cannot be invalidated but the permanency remains of having a marriage dissolved on the basis of non-consummation.

4) It is unanimously accepted that male potency requires the presence of a normally constituted and developed male organ which is capable of being erected and of being sustained in erection, strong enough to penetrate the female vagina and to seminate within it.

5) What constitutes proper semination is a matter of controversy at the present time. The followers of Cardinal Gasparri demand that a testicular component be contained in the ejaculate and therefore, in addition to the abovementioned requirements, there should also be present at least one healthy testicle, which will elaborate some proper liquid over and above the spermatozoa and this liquid should pass through an uninterrupted passage from the testicle through the vas deferens and seminal vesicles to the urethral orifice, and ultimately be deposited within the vagina of the woman at the moment of ejaculation. The devotees of the modern opinion would not demand any testicular component in the ejaculate or an uninterrupted passage from the testicles to the urethra and would require only a satiative copula to be effected by a semination from the seminal vesicles, prostate gland, Cowper's gland and the bulbourethral glands. Those favoring this opinion would usually insist on the presence of at least one healthy testicle which, by its elaboration of androgen hormone, would account for the erection of the male organ. However, the present writers feel that if an erection can be experienced and sustained by maintaining the proper androgen level through the administration of a synthetic hormone in a male who had properly developed testicles up to puberty, then this modern theory should not require the presence of even one healthy testicle in those instances. Since synthetic androgen therapy is not effective in every instance, each case must be studied individually and decided on its own merits.

6) Since the Gasparri opinion and the modern opinion both enjoy probability, intrinsically and extrinsically, either can be preferred or invoked and it remains a third possibility, in the opinion of the present writers, that, because certainty does not exist on either side, a judgment can be made that a positive and probable doubt of law exists. Because of this doubt of law, in instances where at least one functioning testicle is not had or a testicular component is not present in the ejaculate because of the absence of the testicles or because of some irreversible obstruction along the passage, leading from the testicle to the urethral orifice, an anticipated marriage cannot be impeded or a contracted marriage cannot be declared null.

7) Although some few medical anomalies can be readily considered as impotent conditions and, because of their permanent nature, can be judged to constitute the
The officers of the Federation and one delegate from each active constituent Guild constituting the Board will conduct business.

**FEDERATION EXECUTIVE BOARD MEETING SCHEDULED**

The Executive Board of the Federation of Catholic Physicians’ Guilds will meet December 6-7, 1958. Time: 9:30 a.m. Place: Leamington Hotel, Minneapolis, Minnesota.