

Vasectomy as an irregularity for holy Orders

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Human vasectomy, as a form of direct sterilization, is objectively evil and may never licitly be chosen either as an end in itself or as a means to another end.¹ But, notwithstanding the Church's exceptionless rejection of vasectomy, the procedure (nearly painless, inexpensive, and highly effective) is widely performed today, particularly on more affluent and better educated males.² Given that the average age of ordinands has risen sharply over the last few generations,³ to the extent that men seek-

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¹ *Catechism of the Catholic Church* 2370 and 2399; Paul VI, enc. *Humanae vitae* (25 iul. 1968), in: *Acta Apostolicae Sedis* 60 (1968) 490, n. 14; and P. PALAZZINI, s.v. "Sterilizatio", in P. PALAZZINI (Italian prelate, 1912-2000), ed., *Dictionarium Morale et Canonicum*, 4 vols., Roma, Officium Libri Catholici, 1962-1968, [hereafter, *DMC*] IV (1968) 371-372. One's culpability for having undertaken an objectively evil act such as vasectomy is dependent, of course, on various factors including the degree of freedom and amount of knowledge with which one performed the deed (CCC 1859, 1860, 1874).

² See generally A. SENAGORE, ed., *The Gale Encyclopedia of Surgery*, 3 vols., Detroit, Thomson & Gale, 2004, III: 1524, wherein: "About one out of every six men [in the United States] has had a vasectomy. Higher vasectomy rates are associated with higher levels of education and income."

³ "In 1966 the average age of a newly ordained priest was 27.2 years, and by 1986 the average age had risen to 31.8 years, according to a 2002 report from Catholic News Service. ... By 2005, the average age of newly ordained priests had risen to 37, according to a 2006 report by Dean Hoge, a sociologist at Catholic University of America in Washington, D.C." J. BURKE, "New priests are older", *Catholic Courier* (Diocese of Rochester, NY, 3 Jan 2011), on-line at <http://www.catholiccourier.com/faith-family/features/priesthoods-face-is-changing/>. See also K. OSBORNE, *The Permanent Diaconate* New York, Paulist Press, 2007, 157, wherein: "the diaconal formation program in the United States today is basically for older men", and M. BARONE, et al., "Characteristics of men receiving vasectomies in the United States 1998-1999", *Perspectives on Sexual and Reproductive Health* 36/1 (January-February 2004), on-line at <http://www.guttmacher.org/pubs/journals/3602704.html>, wherein: "[M]en seeking vasectomies are typically non-Hispanic and white, well educated, married, relatively affluent, and privately insured ... Minority, low-income, and less educated men make up a disproportionately small share of vasectomy clients."

ing holy Orders (particularly married men intending to serve as deacons for life) tend to come from higher income and education brackets, the chances that ecclesiastical authority will need to deal with canonical questions related to vasectomy increases.

Canonists today disagree about whether a man who has undergone a vasectomy is irregular for holy Orders,⁴ which means that canonists disagree about an important and increasingly common issue impacting the licit reception (1983 CIC 1041, 5^o) and/or exercise (1983 CIC 1044 § 1, 3^o) of holy Orders.⁵ Such disputes require resolution, of course, and so I write to argue first that, according to the principles established for the interpretation of canon law—and notwithstanding the Church's negative moral evaluation of the procedure—vasectomy does *not* at present constitute an irregularity for holy Orders; second, that the “doubt of law” asserted by some concerning whether vasectomy is an irregularity would itself, if verified, preclude declaring irregular for Orders a man who has undergone vasectomy; and, third, if briefly, that a vasectomized man is not suitable to image *Christum fecundum* in ordained ministry and that therefore vasectomy should, upon its proper incorporation into the canonical tradition, be treated as an irregularity.

⁴ See, e.g., R. GEISINGER, commenting on Canon 1041, in J. Beal, *et al.*, eds., *New Commentary on the Code of Canon Law*, New York, Paulist Press, 2000, [herein, *CLSA New Comm.*] 1218, wherein: “Canonists disagree on whether or not a man’s prior vasectomy renders him irregular for orders.” See also P. BIANCHI, commenting on Canon 1041, in A. PERLASCA, *et al.*, eds., *Codice di Diritto Canonico Commentato* [2001], 3rd ed., Milano, Ancora, 2009, [herein *Codice Comm.*] 850. These questions turn, of course, on the interpretation of codified canon law: *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus, Acta Apostolicae Sedis* 75/2 (1983) 1-320; English trans., Canon Law Society of America, *Code of Canon Law, Latin-English Edition, New English Translation*, Washington DC, Canon Law Society of America, 1999.

⁵ 1983 CIC 1041. *Ad recipiendos ordines sunt irregulares: . . . 5^o qui seipsum vel alium graviter et dolose mutilaverit vel sibi vitam adimere tentaverit; English trans.*, The following are irregular for receiving orders: . . . 5^o a person who has mutilated himself or another gravely and maliciously or who has attempted suicide.

1983 CIC 1044. § 1. *Ad exercendos ordines receptos sunt irregulares: . . . 3^o qui delictum commisit, de quibus in can. 1041, nn. 3, 4, 5, 6; English trans.*, The following are irregular for the exercise of orders received: . . . 3^o a person who has committed a delict mentioned in can. 1041, nn. 3, 4, 5, 6.

Orientation to vasectomy as “mutilation” under codified canon law

Although, as noted above, canonists are divided over whether vasectomy is currently an irregularity for holy Orders,⁶ all disputants acknowledge that their disagreement turns on the interpretation to be accorded the word “mutilated” (*mutilaverit*) in Canon 1041, 5°. ⁷ Most commentators, alert to the sequence of steps directing canonical interpretation contained in Canon 17,⁸ invoke the writings of moral theologians, recent exercises of papal magisterium, and the general perceptions of the Christian faithful in support of their conclusions for or against irregulari-

⁶ Prescinding from contributions to this debate offered in pan-textual commentaries discussed herein, the following list provides a chronological orientation to the modern arguments affirming or denying vasectomy as an irregularity for holy Orders: W. VARVARO, “Canon 1041: Irregularity for receiving order of the diaconate (permanent) following vasectomy”, in: W. SCHUMACHER & J. CUNEO, eds., *Roman Replies and CLSA Advisory Opinions 1988*, Washington DC, Canon Law Society of America, 1988, 95 (denying irregularity); J. JUKES, “Irregularity for the reception of Orders: CIC 1041, n. 5”, in: *Canon Law Society of Great Britain & Ireland Newsletter* 108 (December 1996) 85 (asserting irregularity); W. WOESTMAN (American, Oblate Mary Immaculate, b. 1929), *The Sacrament of Orders and the Clerical State: A Commentary on the Code of Canon Law* [1999], 2nd ed., Ottawa, St. Paul University, 2001, [hereafter, WOESTMAN, *Orders*] 72 (denying irregularity); B. DUNN, “Does a vasectomy constitute an irregularity to the sacrament of Orders?”, in: *Studia Canonica* 38 (2004) 481 [hereafter, DUNN, *Studia* (2004)] (asserting irregularity); J. CORIDEN, “Does a vasectomy constitute an irregularity to the sacrament of Orders? Another answer to the question”, in: *Studia Canonica* 43 (2009) 81 (denying irregularity); B. DUNN, “Does a vasectomy constitute an irregularity to the sacrament of Orders? A response to James A. Coriden’s critique”, in: *Studia Canonica* 43 (2009) 89 (asserting irregularity); and J-D. FLYNN, “Canon 1041, 5°: Vasectomy as an irregularity for receiving Orders”, in S. EUART & S. VERBEEK, eds., *Roman Replies and CLSA Advisory Opinions 2009*, Washington DC, Canon Law Society of America, 2009, [hereafter FLYNN, “Vasectomy”] 100 (asserting irregularity).

⁷ The concept of “mutilation” briefly appears in penal canon law (see 1983 CIC 1397 and 1917 CIC 2354 § 1) and had appeared in the former law of “patronage” (see 1917 CIC 1470 § 1, 6°), but these mentions do not contribute appreciably to our understanding of mutilation in the context of irregularities for holy Orders.

⁸ 1983 CIC 17. *Leges ecclesiasticae intellegendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum.* *Eng. trans.*, Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.

ty consequent to vasectomy. But precisely in turning too quickly, I suggest, to “the purpose and circumstances of the law and to the mind of the legislator” for insights into this matter,⁹ these commentators neglect, I fear, a more fundamental principle of canonical interpretation placed earlier in the Johanno-Pauline Code, specifically, Canon 6 § 2 of the 1983 Code which states “Insofar as they repeat the former law, the canons of this Code must be assessed also in accord with canonical tradition.”¹⁰ Seen by most canonists as a specification of the “text and context” examination called for early in the interpretational sequence presented in Canon 17,¹¹ Canon 6 § 2 provides a crucial directive to the proper application of the canonical tradition.¹²

⁹ Ladislaus Örsy warns: “The purpose of the law, the circumstances in which it was enacted, and the mind of the legislator behind it—they all can contribute to its understanding. Nonetheless, such references to external factors not present in the text and context of the law must be invoked cautiously. The presumption is that the legislator said what was meant; hence, the meaning of the text should not be changed on the bases of factors which are not expressed in the law itself.” L. ÖRSY, in *CLSA COMM.* (1985) 36.

¹⁰ 1983 CIC 6 § 2. *Canones huius Codicis, quatenus ius vetus referunt, aestimandi sunt ratione etiam canonicae traditionis habita.*

¹¹ A. Mendonça writes: “If, after considering their text and context, the meaning of the words of a law still remain obscure or doubtful, then—but only then—recourse must be had to certain subsidiary criteria of interpretation.” A. MENDONÇA, in G. Sheehy, et al., eds., *Canon Law: Letter and Spirit: a practical guide to the Code of Canon Law prepared by the Canon Law Society of Great Britain and Ireland*, Collegeville, Liturgical Press, 1995, [herein *GB & I Comm.*] 17. See also J. OTADUY, commenting on 1983 CIC 6 § 2, in A. MARZOA, et al., eds., *Exegetical Commentary on the Code of Canon Law*, 5 vols. bound as 8, Montreal, Wilson & Lafleur, 2004, [hereafter, *Exeg. Comm.*] 1: 254, wherein: “Thus, we think that the views of the commentators and authors of the CIC/1917 now represent an indispensable element in the interpretation of large parts of the Code whose primary source, or at least one of them, is the CIC/1917 itself,” adding, if somewhat tautologically, that “we also think that interpretations which rely excessively on tradition are unsuitable.”

¹² For example, J. HUELS in *CLSA New Comm.* (2000) 55 writes: “The canonical tradition refers here to the expanse of time prior to the 1983 code in which a common understanding of a norm emerged by means of the practice of the Holy See and the writings of canonical scholars. . . . [T]he interpreter of the 1983 code must investigate the canonical tradition in order to achieve a well-grounded interpretation of such canons.” See also G. BRUGNOTTO in *Codice Comm.* 103, who writes: “Molti cann., di fatto, benché nuovi nella formulazione, sono frutto della bimillennaria storia delle istituzioni ecclesiali: essi, pertanto, devono essere interpretati anche facendo tesoro della tradizione antica. Viene qui prestato un criterio di interpretazione dottrinale, che integra quanto previsto al can. 17.”

A single footnote for Canon 1041, 5° of the Johanno-Pauline Code indeed directs researchers to Canon 985, 5° of the Pio-Benedictine Code,¹³ which in its day stated "The following are irregular by delict . . . those who have mutilated (*mutilaverunt*) themselves or others, or who have attempted to take their own lives."¹⁴ The textual similarities between Canon 1041, 5° of the 1983 Code and Canon 985, 5° of the 1917 Code are striking.

First, and most importantly, both canons use the verb *mutilare* (to mutilate) to describe the specific action giving rise to an irregularity; second, both canons declare that mutilation performed on others also causes the irregularity; and third, both canons discuss mutilation in the same norm as suicide (although this last factor does not add much to our discussion). In other words, except for the addition of two words to the Johanno-Pauline norm on mutilation, namely, "gravely and maliciously" (discussed below, fn. 46), both twentieth-century codifications of Western canon law on mutilation *qua* irregularity read essentially identically.¹⁵ To that same and very considerable extent, then, in accord with the directive of Canon 6 § 2, Canon 1041, 5° of the 1983 Code can and must be assessed in light of the interpretation accorded Canon 985, 5° of the 1917 Code. We now investigate, therefore, the interpretation accorded Canon 985, 5° of the Pio-Benedictine Code in regard to mutilation as an irregularity for holy Orders.

Mutilation under Pio-Benedictine and even late Decretal law

Just as Canon 6 § 2 of the Johanno-Pauline Code directs researchers to predecessor provisions of the Pio-Benedictine Code for insights into the meaning of modern canon law, so Pio-Benedictine law directed re-

¹³ Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus, *Acta Apostolicae Sedis* 9/2 (1917) 3; English trans., E. PETERS, *The 1917 or Pio-Benedictine Code of Canon Law in English Translation with Extensive Scholarly Apparatus*, San Francisco, Ignatius Press, 2001.

¹⁴ 1917 CIC 985. Sunt irregulares ex delicto: . . . 5° Qui seipsos vel alios mutilaverunt vel sibi vitam adimere tentaverunt;

¹⁵ See, e.g., HUELS, in *CLSA New Comm.* 55, wherein: "A [1983 Code] canon does not have to repeat exactly the wording of the [1917 Code] for the principle [of Canon 6 § 2] to apply, so long as the substance of the old law has been legislated anew." See also MENDONÇA, in *GB & I Comm.* 6, n. 20, wherein: "This paragraph gives notice that history and tradition are important factors in [canonical] estimation."

searchers to still earlier canon law, chiefly the *Ius Decretalium*,¹⁶ for insights into the proper interpretation of the 1917 Code.¹⁷ To assist researchers in accessing that veritable mass of pre-codification law, the architect of the Pio-Benedictine Code, Pietro Cdl. Gasparri, outfitted the 1917 Code with thousands of footnotes containing in turn tens of thousands of citations to prior canon law. Specifically in regard to Canon 985 of the 1917 Code, Gasparri provided nearly one hundred citations to canonical sources that he considered relevant for understanding the seven individually-numbered provisions of that Pio-Benedictine norm on irregularity. We need not, however, examine these pre-codified sources for what they might have to say about *vasectomy*, for the simple reason that nearly all of Gasparri's citations under Canon 985 pre-date the first performance of vasectomies on human beings,¹⁸ and the very few canonical sources provided by Gasparri that do date to the late 19th century say

¹⁶ For more than 680 years prior to the appearance of the Pio-Benedictine Code in 1917/1918, canon law was organized according to the *Quinque Libri Decretalium* promulgated by Pope Gregory IX in 1234. See, e.g., P. TORQUEBIAU, "Les Décrétales de Grégoire IX", in R. NAZ, ed., *Dictionnaire de Droit Canonique*, 7 vols. Paris, Librairie Letouzey et Ané, 1935-1965, [hereafter, *DDC*] IV (1949) 627 and generally Gasparri's "Preface [to the Pio-Benedictine Code]" available in all monographic printings of the 1917 Code. Appreciation of pre-codified canonistics, especially the *Ius Novissimum* as it developed after the Council of Trent (1545-1563), is crucial for understanding how the codified canon law of the 20th century incorporated, or departed from, the techniques and insights developed over several centuries of ecclesiastical life.

¹⁷ 1917 CIC 6. . . . 2° Canones qui ius vetus ex integro referunt, ex veteris iuris auctoritate, atque ideo ex receptis apud probatos interpretationibus, sunt aestimandi; 3° Canones qui ex parte tantum cum veteri iure congruunt, qua congruunt, ex iure antiquo aestimandi sunt; qua discrepant, sunt ex sua ipsorum sententia diiudicandi; 4° In dubio num aliquod canonum praescriptum cum veteri iure discrepet, a veteri iure non est recedendum; *Eng. trans.*, 2° Canons that refer to the old law as an entirety are to be assessed according to the old authorities and similarly according to the received interpretations of the approved authors; 3° Canons that are only partly congruent with the old law, in so far as they are congruent, should be assessed according to the old law; to the extent they are discrepant, they are to be assessed according to their own wording; 4° In cases of doubt as to whether a canonical prescription differs from the old law, it is not considered as differing from the old law;

¹⁸ Vasectomies for human sterilization were first performed in 1899. See T. HARGREAVE and L. HALL, "Vasectomy", in C. BLAKEMORE, et al., eds., *The Oxford Companion to the Body*, Oxford, 2001, 706. For a few years before that, vasectomy had been proposed as a treatment for certain pathologies, though quickly found useless against them. See J. LEAVESLEY, "Brief history of vasectomy", in: *Family Planning Information Service* (N.S.W. Australia) 1/1 (5 Dec. 1980) 2.

nothing about *vasectomy* as a canonical issue. But the absence of pre-codified canonical sources specifically treating *vasectomy* as an irregularity does not mean that late Decretal law had no doctrine on *mutilation* in the context of irregularity. To the contrary, Decretal canon law had a very clear understanding of "mutilation" in the context of irregularities for holy Orders, and it was, as we shall see, the late *Ius Decretalium* understanding of mutilation that was relied on by Pio-Benedictine commentators when they treated the word *mutilaverunt* in Canon 985, 5°, and which, therefore, must be appreciated by those who would bring Pio-Benedictine insights to bear on the interpretation to be accorded the word *mutilaverit* in Canon 1041, 5° of the 1983 Code. I propose Gasparri himself as a trustworthy guide to late Decretal law on mutilation.

Discussing mutilation as an irregularity for holy Orders in his classic treatise *De Sacra Ordinatione* (1893), Gasparri wrote:

Mutilation is the cutting away of a *member*. Now "member", according to the more probable and most common teaching, is a part of the body that has its own function distinct from that of other parts; not therefore something that supplies only a subsidiary function. Thus the hand, arm, foot, eye, tongue, female breast, and so on, are members. In contrast, the ear and nose are not members, for, if these are removed, the function of hearing or smelling are not entirely prevented; likewise teeth are tools of the jaw for chewing food, likewise hair and beards; nor does it seem that the loss of a finger, or even two fingers and part of the palm, qualifies, for one who has lost these is not called mutilated but disabled; nor does the loss of part of a member qualify, for example, part of the tongue. Finally, both testicles are a member, for they have their own function, namely, of producing semen; but not so [if] only one [testicle is removed], for one [testicle] does not have a function distinct from that of the other, in that both work together in their task; likewise the male member is a member, as is obvious from the name. *To cut away* is to separate from the body. For this reason it is not considered a cutting-away if a member is merely damaged or deformed, indeed, not even if it is rendered entirely useless. From all of this, it is clear that mutilation is understood in a strict sense.¹⁹

¹⁹ "*Mutilatio* autem est membri abscissio. Porro *membri* nomine in probabiliori et communissima doctrina venit pars corporis quae proprium et a ceteris distinctum officium habet; non item quae subsidiariam tantum operam praestat. Hinc manus, brachium, pes, oculus, lingua, mamilla mulieris, etc., sunt totidem membra. E contrario auricula et nasus non sunt membra, quia, iis ablatis, non tollitur omne officium audiendi aut olfaciendi; nec dentes qui sunt instrumenta maxillarum ad cibos mandendos; nec

Perhaps the first thing to notice about the above passage is that, in the context of canonical irregularities, Gasparri defined the term "mutilation" rather more narrowly than the word was typically used in more common (Latin) parlance.²⁰ For a "mutilation" to provoke *canonical* consequences, Gasparri required that the act result in the *removal* of a significant *external* member of the body. Damage to a part of the body, even if such damage rendered that body part useless, did not qualify canonically as a "mutilation" unless that part was actually cut away from the body; moreover Gasparri offered no examples of the "mutilation" that could not be verified by a gross or exterior inspection of the body.²¹

capilli et barba; nec unus digitus, imo nec duo digiti cum medietate palmae, ut videtur, quia qui haec amisit non dicitur mutilatus, sed debilitatus; nec pars membri, e.g. pars linguae. Tandem ambo testiculi sunt membrum, quia propriam operationem habent, nempe efformandi semen; non vero unus tantum, quia unus non habet officium ab altero diversum, cum uterque ad operationem concurrant; item membrum virile est membrum, ut ex ipso nomine patet. *Abscindere* autem est separare a corpore. Quamobrem abscissio non intelligitur, si membrum laesum vel deformatum tantum fuerit, imo nec si factum fuerit prosus inutile. Ex his patet quid mutilatio in sensu stricto." Pietro GASPARRI (Italian prelate, 1852-1934), *Tractatus Canonici de Sacra Ordinatione*, 2 vols., (Delhomme et Briguet, 1893-1894) I: 254, n. 406, (citations omitted, original emphasis). The Decretal law upon which Gasparri was expounding was tit. 12, *De homicidio voluntario et casuali*, X, lib. V, available in A. FRIEDBERG, ed., *Corpus Iuris Canonici editio Lipsiensis secunda post Aemilii Ludouci Richteri, Pars Secunda, Decretalium Collectiones, Decretales D. Gregorii P. IX Compilatio* Union, Lawbook Exchange, 2000, coll. 793. For a more general introduction to the transition from late Decretal to codified canon law in regard to irregularities, see G. OESTERLÉ, s.v. "Irrégularités", in *DDC VI* (1957) coll. 42 (hereafter, OESTERLÉ, "Irrégularités").

²⁰ See, e.g., F. LEVERETT, *A New and Copious Lexicon of the Latin Language*, Philadelphia, Lippincott, 1850, s.v. *Mutilo* ... "to cut or lop off, to cut short, clip, crop, maim, mutilate ... figur[at]ively] to diminish;" but see A. FORCELLINI, *Totius Latinitatis Lexicon* [1771], 6 vols., Prati, Typus Aldinianis, 1868, IV: 212, s.vv. *Mutilatio*, *Mutilatus*, *Mutilo*, *Mutilus*, all of which speak of mutilation in terms of "cutting away", "reducing", "truncating", and so on. As will be discussed below, moral theologians had, and still have, a broader understanding of the concept of "mutilation" than did, and do, canon lawyers; that canonists used the word "mutilation" in a narrower sense than was accorded it in other contexts seems to have been recognized at the time. William Fanning, for example, wrote in 1910 that "Mutilation, in the canonical sense, is the separation from the body of one of its principal members or of some part of the body having a distinct office, as a hand or a foot or an eye." W. FANNING, s.v. "Irregularity", in *The Catholic Encyclopedia VIII* (1910), 171.

²¹ No canonist would consider, for example, appendectomy or gall bladder removal to be "mutilations" although in other respects, save for being externally visible, such procedures would seem to fall within the canonical description of mutilation.

In writing as he did, Gasparri represented no minority position among late Decretal canonists. His strict understanding of mutilation was shared by, for example, Laurentius, who wrote in his *Institutiones* (1907) that: "Mutilation is understood as the cutting away or cutting off of a member that has its own role in the human body."²² Similarly, Rivet in his own *Institutiones* (1914) wrote that: "Mutilation is the cutting off of a member Cutting off is understood as a separation or digging out, but not a mere wounding, even if the member is left useless as when, for example, one were to blind another by injecting poison."²³ Likewise Huguenin and Craisson spoke of mutilation in terms of "amputation."²⁴ And Franz Wernz, *Ultimus Decretalistarum*, was content to invoke Gasparri's strict view and noted simply that "One has mutilated who has cut away a member of the human body having its own function..."²⁵

From these esteemed authorities on late Decretal canonistics, a fundamental point emerges: when determining a mutilated man's eligibility for holy Orders, the mutilation in question had to be understood in the strict sense of entirely *removing* a significant *external* part of the body, while any procedure that merely destroyed the usefulness of, but did not actually remove, a significant external part of the body was *not* a mutilation in the canonical sense. Now, because the Pio-Benedictine Code used the canonically well-settled term "mutilation" to describe an act by which a man was rendered irregular for holy Orders, and because nothing in the

²² "Mutilatio intellegitur abscissio seu truncatio membri quod in corpore humano speciale officium habet." J. LAURENTIUS (German Jesuit, 1861-1927), *Institutiones Iuris Ecclesiastici* [1902], 2nd ed., Friburgi, Herder, 1908, 69, n. 80. In support of my rendering "truncatio" as "cutting off", see Lewis & Short, *A Latin Dictionary* (1879/1984), s.v. *truncatio*, *-onis*, defined as "a maiming or mutilating by cutting off" (my emphasis).

²³ "Mutilatio est abscissio membri ... Abscissio intelligitur separatio, effusio, non autem lacsio, etsi membrum reddat inutile, v.g. si quis veneno iniecto alterum excaecaverit." L. RIVET, (French Jesuit, 1871-1915), *Institutiones Iuris Ecclesiastici Privati*, 2 vols., Roma, Gregorianum, 1914, I: 158, n. 186.

²⁴ See L. HUGUENIN (French priest, 1826-1871), *Expositio Methodica Juris Canonici*, 2 vols., Paris, Gaume Freres et J. Duprey, 1867, I: 169 (*amputaverit*), and D. CRAISSON (French priest, d. 1881), *Elementa Juris Canonici ad usum Galliae Seminariorum* [1862], 3rd ed., Paris, Jouby et Roger, 1873, 447, n. 614 (*amputaret*).

²⁵ "Mutilavit [qui] membrum corporis propriam functionem habens abscindit..." F. WERNZ (German Jesuit, 1842-1914), *Ius Decretalium ad Usum Praelectionum in Scholis Textus Canonici sive Iuris Decretalium*, 2nd ed., 6 vols., Prati, 1905-1913, II/1: 231, n. 148, citing frequently to Gasparri's *De Sacra Ordinatione*.

text of its Canon 985, 5° or in the footnotes to Canon 985, 5° suggested any basis for taking the word "mutilation" in a sense other than that used by late Decretal law, Canon 985, 5° of the Pio-Benedictine Code could only correctly be interpreted *against* holding that a procedure such as vasectomy, which did not remove an external member of the body,²⁶ was a mutilation rendering a man irregular for holy Orders.

Now, among Pio-Benedictine commentators who expounded a view on Canon 985, 5° (not all of them did so, of course), three groups were discernible: those who expressly interpreted the word "mutilation" to mean the physical removal of a significant external member of the body, those who implicitly accepted this definition, and a very few who voiced some hesitancy in accepting this definition. The first two groups represented the overwhelming majority of Pio-Benedictine commentators, and the esteemed Felix Cappello may be taken as speaking for these:

Mutilation is the cutting away of a member ... An attempted mutilation does not suffice [under law], but rather, what is required is a mutilation, that is, a cutting away that truly separates. He is not irregular who blinds a man by depriving him of sight, unless he extracts the eye. Some raise questions about him who voluntarily debilitates a member. But there is no solid foundation for such doubts. For a debilitation, even if it were gravely sinful, can hardly be confused with a mutilation.²⁷

Lincoln Bouscaren and Adam Ellis also reflected this majority view:

In order to induce the irregularity, the mutilation must be notable, that is, a part of the body which has its own function distinct from that of other members must be cut off; for instance, a hand, a foot, an eye, complete castration. If the member is not cut off, but mere-

²⁶ So called "chemical vasectomies" (see, e.g., <http://malecontraceptives.org/methods/mpu.php>) do not remotely approach a mutilation in the current canonical sense.

²⁷ "Mutilatio est abscissio alicuius membri ... Non sufficit [in lege] attentatio mutilationis; sed requiritur mutilatio seu abscissio vere secuta. Irregularis non est, qui hominem excaecat privando eum solo visu, quin oculum extrahat ... Nonnulli dubitant de eo qui voluntarie membrum debilitat. At nulla profecto est solida ratio dubitandi. Nam debilitatio, etsi forte graviter culpabilis, minime confundenda est cum mutilatione." F. CAPPELLO (Roman Jesuit, 1879-1962), *Tractatus canonico-moralis de sacramentis iuxta Codicem juris canonici* [1921], 5 vols., IV, Roma, Marietta, 2nd ed., 1947, 378, n 507. See also, e.g., S. ROMANI (Italian priest, d. 1967), *Institutiones Juris Canonici*, 3 vols., [1941], Editrice Iustitia, 1944, III: 370, n. 538, noting that a member rendered useless, but not actually removed (*separare a corpore*), was not considered "mutilated".

ly rendered useless, no irregularity is incurred though the act may be grievously sinful.²⁸

Matthaeus Conte a Coronata, echoing Huegenin's and Craisson's amputation terminology, agreed:

Mutilation speaks in terms of amputation, that is, a cutting away from the body, and thus a mere injury, or a wounding, or a deformation, even if it were so grave as to render the member useless, is not a mutilation in the legal sense, nor does it induce irregularity.²⁹

Finally, several canonists drew the specific conclusion relevant to our question. For example, Heriberto Jone, citing frequently to Cappello, wrote: "It is not considered a mutilation if the member is not removed but is rendered useless, for example, if one destroys an eye. Thus, sterilization of a man does not result in irregularity."³⁰ Likewise Eduardo Regatillo wrote "Double *vasectomy* does not seem to be a mutilation; but total castration would qualify,"³¹ as did Eduard Eichmann: "By mutilation one understands the removal of a member (e.g., an eye, tongue, arm,

²⁸ L. BOUSCAREN (American Jesuit, 1884-1971) and A. ELLIS (American Jesuit, 1889-1961), *Canon Law: A Text and Commentary* [1946], 4th ed. by F. Korth, Milwaukee, Bruce, 1966, 447. Bouscaren-Ellis do not shy away from discussing the canonical consequences of vasectomy in regard to marriage law (*op. cit.* 537), so, if they had seen canonical consequences for vasectomy in regard to holy Orders, one might have expected them to mention same. I find the fact that they did not make such arguments in the context of Orders significant. Something similar may be said, I think, of, e.g., P. PALAZZINI, s.v. "Vasectomia", *DMC IV* (1968) 636-637, who treated of the "*Quaestio canonica*" occasioned by vasectomy only in terms of possible impotence for marriage, as did H. JONE (German Capuchin, 1885-1967), *Moral Theology* [1929], 8th ed., Adelman trans., Westminster, Newman, 1948, [hereafter JONE, *Moral*] 514, n. 698, and 554, n. 749, writing here as a moral theologian.

²⁹ "Cum mutilatio dicat amputationem seu abscissionem a corpore, sola laesio, vel vulneratio vel deformatio etiam gravis ita ut membrum inutile evadat, mutilatio in sensu iuris non est, nec irregularitatem inducit." M. CONTE A CORONATA (Italian Capuchin, 1889-1961), *Compendium Iuris Canonici*, 3 vols., Roma, Marietti, various editions and years after 1937, III (1947): 322, n. 520.

³⁰ "Mutilatio non habetur, si membrum non aufertur sed inutile redditur, si quis v. g. oculus excaecat. Inde sterilizatio viri non inducit irregularitatem." H. JONE (German Capuchin, 1885-1967), *Commentarium in Codicem Iuris Canonici*, 3 vols., Paderborn, Officina Libraria F. Schönigh, 1950-1955, II: 198.

³¹ "*Vasectomia duplex non videtur mutilatio; utique castatio totalis [sufficit].*" E. REGATILLO (Spanish Jesuit, 1882-1975), *Ius sacramentarium* [1945], 4th ed. Santander, Sal Terrae, 1964, 534, n. 960, original emphasis.

hand, or foot) and also emasculation, in contrast to simple vasectomy (sterilization) because that accomplishes not the removal but rather the disabling of the function of a member. This surgery done for purposes of health does not result in irregularity."³²

These commentators, and the many others besides them who discussed mutilation solely in traditional terms,³³ made up the great majority of Pio-Benedictine scholars who weighed in on the question of mutilation in general and on vasectomy in particular. Combined with the force of the late Decretal canonistics upon which Canon 985, 5° of the Pio-Benedictine Code rested,³⁴ the conclusion is inescapable that the 1917

³² "Unter Verstümmelung versteht man die Entfernung eines Gliedes (z. B. Auge, Zunge, Arm, Hand, Fuß) auch die Entmannung, dagegen nicht die bloße Unfruchtbarmachung (Sterilisation), weil es sich hier nicht um die Entfernung, sondern um die Unterbindung der Funktion eines Gliedes handelt. Die zu Heilzwecken erfolgende Abnahme eines Gliedes macht nicht irregular." E. EICHMANN (German priest, 1870-1946), *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici*, 3 vols., [1923] 9th ed., rev. by K. Mörsdorf, Wien, Verlag Ferdinand Schöningh, 1958-1960, II: 118 (trans. cjp/enp).

³³ See, e.g., F. WERNZ (German Jesuit, 1842-1914) and P. VIDAL (Catalan Jesuit, 1867-1938), *Jus Canonium ad Codicis Normam Exactum*, 7 vols., variously bound, in up to three editions, later editions edited by P. Aguirre and F. Cappello, Roma, Gregorianum, 1924-1949, IV/1: 337 (requiring removal of a member, and not simply damage to it); S. SIPOS (Hungarian priest, 1875-1949), *Enchiridion Iuris Canonici* [1926], 6th ed. rev. by L. Gálos, Roma, Orbis Catholicus-Herder, 1954, 395 (requiring removal of a member, and not simply damage to it); Dom AUGUSTINE (Charles Bachofen, Swiss/American Benedictine, 1872-1944), *A Commentary on the New Code of Canon Law*, 8 vols. St. Louis, Herder, 1918-1922, IV: 491 (requiring cutting off of a member); and A. BLAT (Spanish Dominican, 1870-1943), *Commentarium Textus Codicis Iuris Canonici*, 5 vols., Roma, Libreria del Collegio Angelico, 1921-1923, III/1: 429, nn. 348-349 (requiring removal of a member, and not simply damage to it, and underscoring the importance of understanding canonical terminology according to canonical usage).

³⁴ If pressed to show any discrepancy between late Decretal canon law on mutilation and the opinions of an appreciable number of Pio-Benedictine commentators thereon, I would suggest what seemed to be some divergence between Gasparri's position that the excision of a single testicle (incomplete castration) was not a mutilation sufficient for irregularity, and several Pio-Benedictine commenters (e.g., Cappello, Vermeersch-Creusen) who held that the removal of a single testicle *did* constitute a mutilation in the context of irregularity. Perhaps those Pio-Benedictine commentators who specified "complete castration" as resulting in irregularity (e.g., Regatillo and Bouscaren-Ellis. *pace* Ayrinhac and Beste) sided with Gasparri on this point as well but, as castration is never performed today with contraceptive motives, the issue is moot. For some other minor differences between Decretal law and the 1917 Code in this area (though not dif-

Code did not regard vasectomy as an irregularity for holy Orders. And yet it seems that a few Pio-Benedictine commentators voiced some hesitancy in accepting the established understanding of mutilation in the context of vasectomy, and it is to these few that we now turn. In brief, I think these authors, faced with the novel medical development that vasectomy represented at that time, and sensitive to the lively discussion of vasectomy being carried on by moral theologians (see fn. 53, below), improperly parlayed the negative *moral* categorization of vasectomy into a negative *canonical* conclusion.³⁵

The minority Pio-Benedictine view on vasectomy

Aside from the very unusual case of Stanislaus Woywod, to be discussed below, I located only one minor Pio-Benedictine commentator (Patrick Lydon) who directly asserted that vasectomy constituted an irregularity,³⁶ and three others (the team of John Abbo & Jerome Hannan, Henry Ayrinhac, and Uldaricus Beste) who even suggested that vasectomy *might* constitute an irregularity.³⁷ None of these authors offered a rea-

ferences relevant to our question), see F. CLAEYS BOUUAERT & G. SIMENON, *Manuale Juris Canonici*, 3 vols., Gandae & Leodii, Prostat apud Auctores in Seminariis Gandavensi et Leodiensi, 1935, II: 184, discussing, for example, the number of fingers to be assessed in mutilation cases and the codification of attempted suicide as an irregularity.

³⁵ Not to get ahead of this discussion which will recite some moral theology arguments below, but even here it may be suggested that a syllogistic error might have occurred in the thinking of these canonists, along the following lines: recognizing that castration was unquestionably a mutilation that resulted in irregularity, and seeing that castration is a form of sterilization, some commentators might have inadvertently concluded that it was *sterilization* that resulted in irregularity, and neglected to consider whether the type of sterilization at issue (vasectomy) was first a *mutilation* that, in turn, would result in an irregularity. Of course, these canonists might have also been moving, even if unawares, toward a development in the law on irregularity, but which developments should come into law, if it all, only in an orderly and conscious way, as discussed below.

³⁶ In his popular handbook for parish priests, Lydon wrote "Mutilation implies the removal of a member with distinct function, e.g., castration, vasectomy, not the removal of a finger or tooth, etc." P. LYDON (American priest, 1883-1969), *Ready Answers in Canon Law* [1934], 3rd ed., New York, Benziger, 1948, 342.

³⁷ Ayrinhac wrote: "Mutilation as commonly understood here by canonists implies amputation, not mere deformation . . . Castration if complete and more probably vasectomy constitute grave mutilations." H. AYRINHAC (American Sulpician, 1867-1931), *Legislation on the Sacraments in the New Code of Canon Law* New York, Longmans/Green, 1928, 369, n. 313. Abbo-Hannan wrote: "Complete castration is mutilation in the sense

son for his assertion; neither Lydon, nor Ayrinhac, nor Beste cited to any concurring authorities in support of their views, while Abbo-Hannan cited only to Beste. Absent argumentation for their position, and offering almost no citations to other authorities, this Pio-Benedictine minority who, against the unambiguous canonical tradition, held vasectomy as a possible irregularity, cannot be explained. That is, not unless they all relied on (without citing) the same respected pair of authors that Woywod relied on in expressing his own openness to considering vasectomy as an irregularity. If so, however, then this minority school missed, as Woywod obviously missed, a crucial change in the views of this influential team of authors.

Woywod, like the other minority authors mentioned above, had but briefly mentioned vasectomy *qua* mutilation when, despite the settled view of the canonical tradition against regarding vasectomy as an irregularity, he nevertheless declared the matter "not certain".³⁸ Woywod offered no reasons for his claim, but cited the esteemed Belgian Jesuit canonists and moralists, Arturus Vermeersch & Josephus Creusen, alleging that Vermeersch-Creusen considered it "more probable" that an irregularity was incurred for vasectomy. In so citing Vermeersch-Creusen, Woywod was initially correct, for, in the first edition of their *Epitome Iuris Canonici* (1925), Vermeersch-Creusen had indeed written:

Mutilation is the cutting away of a part of the body that has its own function distinct from the rest. Therefore the nose, ears, teeth, and hair are not members, nor is one or another finger. Nor is it considered a mutilation if the damaged or mangled member remains. About whether one who has undergone a vasectomy is mutilated,

of canon 985, 5°. It seems that vasectomy is also in this category." J. ABBO (Italian priest, 1911-1994) and J. HANNAN (American bishop, 1896-1965), *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church* [1952], 2 vols., 2nd ed., St. Louis, Herder, 1960, I: 131. DUNN, *Studia* (2004) 495, by the way, goes beyond their words when he claims that Abbo-Hannan definitely held for irregularity in cases of vasectomy; clearly, they expressed their views but tentatively. Finally, Beste wrote: "whether one who undergoes vasectomy incurs the irregularity is *doubted*, but it seems it should be affirmed." U. BESTE (American Benedictine, 1885-1976), *Introductio in Codicem* [1938], 5th ed., Roma, M. D'Auria Pontificius, 1961, 586 (my trans.)

³⁸ Stanislaus WOYWOD (German/American Franciscan, 1880-1941), *A Practical Commentary on the Code of Canon Law* [1925], 2 vols., rev. by C. Smith, New York, Wagner/Herder, 1957, I: 605. And recall Cappello's rejection, above at fn. 27, of any "solid foundation" for such doubts ("Nonnulli dubitant de eo qui voluntarie membrum debilitat. At nulla profecto est solida ratio dubitandi.")

doubt remains, although the affirmative opinion seems much more probable. Castration, if either testicle is removed, is a grave mutilation. Punished here is a voluntary and gravely culpable mutilation.³⁹

Vermeersch-Creusen did not offer a reason for their position, and their albeit-tentative assertion that vasectomy constituted a mutilation was "much more probable" ran flatly counter to the canonical tradition to that point. But, even though their position is inexplicable, they unquestionably held the view that Woywod attributed to them, and he was within his rights to invoke their considerable prestige for his own position, until, that is, Vermeersch-Creusen dropped their claim in regard to this allegedly "much more probable" view and indeed ceased (as far as I can tell) further reference to vasectomy as an irregularity.⁴⁰ Consulting as many later editions of the *Epitome* as I could locate,⁴¹ in none of them do I find Vermeersch-Creusen repeating their initial claim about vasectomy as even a possible irregularity. Unfortunately, despite Vermeersch-Creusen's apparently rapid retreat from their controversial stance on vasectomy, all successive editions of Woywod's influential *Practical Commentary* (up to the last one published in 1957), continued to describe the interpretation of Canon 985, 5° as "uncertain" and, worse, invoked Vermeersch-Creusen in support of a position they had apparently long since abandoned!⁴²

³⁹ "Mutilatio est abscissio partis corporis quae proprium et a ceteris distinctum officium habet; ideoque membra non sunt nasus, auriculae, dentes, capilli, nec unus alterve digitus. Neque mutilatio habetur si membrum laesum aut mutilatum supersit. Num mutilatus sic qui vasectomiam passus est, facto dubium manet etsi sententia affirmans multo probilior [*sic*] est. Castratio, si uterque testiculus aufertur, est gravis mutilatio. Plectitur hic voluntaria et graviter culpabilis mutilatio." I have the first edition (1925) text of Vermeersch-Creusen from a pericope cited (and relied upon) by DUNN, *Studia* (2004) 494, fn. 41. But see also fn. 42, below.

⁴⁰ See, e.g., A. VERMEERSCH (Belgian Jesuit, 1858-1936) & J. CREUSEN (Belgian Jesuit, 1880-1960), *Epitome Iuris Canonici cum Commentariis* [1922-1925], 3 vols., 4th ed., Mechliniae, Dessain, 1930-1931, II: 156, n. 257.

⁴¹ I have examined the fourth (1930), fifth (1934), sixth (1940), and seventh editions (1954) of the second volume of the *Epitome*. Note that the fourth edition of the *Epitome* was released just a few years after the first edition appeared in the late 1920s, suggesting that the change in position came about fairly quickly. See also fn. 42.

⁴² This episode occasions an observation. The proclivity of Pio-Benedictine commentators to release new "editions" of their works, often with changes so minor that such new editions would today be called simply new "printings", is well-known. It is not unusual

In sum, Pio-Benedictine law on mutilation in the context of irregularities for holy Orders took over without modification the well-settled Decretal law on mutilation and, in the nearly unanimous view of Pio-Benedictine commentators, held vasectomy *not* to be a "mutilation" of the type required to occasion an irregularity for the reception or exercise of holy Orders. We may, and indeed, given the strong parallels between Pio-Benedictine and Johanno-Pauline legislation in this area, must now apply the insights of Pio-Benedictine law in explicating the 1983 Code on mutilation as an irregularity.

Application of Pio-Benedictine canonistics to the 1983 CIC 1041, 5°

Canon 1041, 5° of the Johanno-Pauline Code uses the same verb (*mutilare*) as did Canon 985, 5° of the Pio-Benedictine Code to describe one of the actions by which a man becomes irregular for holy Orders, namely, that the man "mutilates" himself.⁴³ Now, as Örsy observes, "The presumption is that the legislator said what was meant."⁴⁴ Nothing in the legislative history of Canon 1041, 5° suggests any question about the canonical meaning of the verb "to mutilate",⁴⁵ so, because the Legislator

for modern researchers to pull from their shelves a set of Vermeersch-Creusen, or Dom Augustine, or Felix Cappello, or Wernz-Vidal and, upon closer inspection, to notice that the volumes before them actually come from different editions of the same work. In most cases, of course, it is sufficient for research purposes to note the edition consulted and cite the views expressed therein with the confidence that those views represented the opinion of the authors. But, where such views were, objectively speaking, very controversial (as were Vermeersch-Creusen's early views on vasectomy), and where so much of one's argument depends on the tenacity with which one might assume such views to have been sustained, it behooves researchers to make at least a brief inquiry among other "editions" of various authors' works to test precisely for the consistency of their views over time. Else, one risks the consequences that must befall, say, Dunn's otherwise excellent study of vasectomy (see fn. 6 above) wherein he relied in large part on Vermeersch-Creusen to ground his claim that vasectomy is an irregularity, only to see his argument fail, now, in this regard due to his reliance on views that Vermeersch-Creusen themselves quickly abandoned.

⁴³ There was under Pio-Benedictine law, and there is under Johanno-Pauline law, no question but that a man who directs, say, a physician to perform on him what would be a mutilation incurs the irregularity as surely as does a man who immediately mutilates himself (as would the physician himself, of course, per the text of law), and there is no need to belabor the obvious.

⁴⁴ See fn. 9, above.

⁴⁵ See generally, E. PETERS, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, Montreal, Wilson & Lafleur, 2005, 938.

spoke in terms of “mutilation” (and not in terms of “wounding” or “damage” or “alteration” of the body, even though all of these concepts figured in the general canonical discussions of “mutilation” up to that point), one must assume that the Legislator meant “mutilation” and did so knowing that vasectomy did *not* qualify as a “mutilation” in the context of irregularity for holy Orders.⁴⁶ The text and context, then, of Canon 1041, 5° of the 1983 Code establishes—beyond, I think, any serious question—that the Decretal canonical tradition, as codified in Canon 985, 5° of the 1917 Code, has been carried over by the Legislator into the Johanno-Pauline Code. As a result, vasectomy cannot be held to be an irregularity for the reception or exercise of holy Orders under the 1983 Code.

Implications of an alleged doubt of law in regard to irregularities

In light of the apparently uncontested definition of mutilation under late Decretal law as the removal of (and not simply damage to) a significant external member of the body, the importation of that definition into Canon 985, 5° of the Pio-Benedictine Code, and the overwhelming acceptance of that narrow definition by nearly all major commentators on the 1917 Code, it is difficult to see how the hesitations of a few commentators (mistakenly relying, it seems, on the tentative and quickly abandoned views of Vermeersch-Creusen) could occasion a “doubt of law” in this matter then or now, but two commentators (Woywod and Beste) implied that a doubt of law existed under the Pio-Benedictine Code and, for

⁴⁶ See, e.g., WOESTMAN, *Orders* (2001) 81, and KELLY in *GB & I Comm.* 566. For examples of this same principle being recognized under earlier law, see e. g., CAPPELLO, *De Sacramentis* IV: 332, n. 439. Note that the addition of two words to the modern law on mutilation, namely, “gravely and maliciously” (*graviter et dolose*), actually *raises* the bar for finding an irregularity among men who undergo various surgical procedures, in that not only must the act be found to have been a mutilation in the first place (something not canonically possible under the law as it exists today), but it must also be shown that the mutilation was “grave” (likely demonstrable, for reasons outlined below) and was undertaken “maliciously”, that is, with an evil will, a claim harder to prove in specific cases. See, e.g., D. PRÜMMER (German Dominican, 1866-1931), *Handbook of Moral Theology* [1921], 5° ed., Shelton trans., Mercier, 1956, [hereafter PRÜMMER, *Handbook*] 391, n. 825(b) wherein: “anything which excuses from grave sin, e.g. parvity of matter, lack of advertence, good faith, excuses likewise from irregularity”. Ignorance concerning the moral depravity of vasectomy would mitigate one’s evil intention in having the procedure.

the sake of completeness, a few words on the implications of "doubt of law" in the context of irregularities may be offered. Simply put, even if there were a "doubt of law" concerning whether vasectomy was embraced within the definition of mutilation, then, until that doubt was resolved, vasectomy would *not* have been considered a mutilation. Palazzini explained this view succinctly: "It is required that an irregularity be certain, for if there is a grave and prudent doubt as to its existence, it is, strictly speaking, not incurred if it concerns a doubt of law."⁴⁷ Geisinger makes this point expressly in regard to vasectomy as an alleged irregularity under the 1983 Code: "Since it is doubtful that such a procedure [vasectomy] is truly physically mutilating, this argument holds that the irregularity would not be incurred."⁴⁸ So, whether considered historically or under current law, to the extent that one might claim that a "doubt of law" exists over the possibility that vasectomy constitutes a mutilation for purposes of irregularity, to that same extent an irregularity for vasectomy *cannot* apply. In sum, the school holding *against* vasectomy as constituting a mutilation sufficient to occasion an irregularity under Canons 1041, 5° or 1044 § 1, 3° has the far sounder argument, and any lingering doubt or uncertainty about that legal interpretation would, precisely in light of that doubt, have to be canonically resolved *against* holding for irregularity in the wake of vasectomy.

Toward recognizing vasectomy as an irregularity

Turning, now, to whether vasectomy *ought* to be an irregularity for holy Orders, several factors suggest that vasectomy should be so scored

⁴⁷ "Requiritur ut irregularitas sit certa, nam si adest dubium grave ac prudens de eius existentia, stricte loquendo, irregularitas non incurritur, si agatur de dubio iuris." P. PALAZZINI, s.v. "Irregularitas" in *DMC* II: 807. See also OESTERLÉ, s.v. "Irrégularités", *DDC* VI: 51, wherein: "Si avant l'acte un doute de droit existe, tout le monde est d'accord pour dire que l'irrégularité n'est pas encourue, parce que la loi est douteuse." See also, JONE, *Moral* 472, n. 643, wherein: "In a doubt about an irregularity we distinguish between a *dubium iuris* and *dubium facti*. If the doubt is of law there is no irregularity." See also PRÜMMER, *Handbook* 391, n. 825(a).

⁴⁸ R. GEISINGER, commenting on 1983 CIC 1041, in *CLSA New Comm.* 1219. Note that most questions about vasectomy are not questions of fact (there is usually no dispute that the procedure actually took place); instead they raise, if anything, questions of law, specifically, about whether the procedure in question met the canonical definition of a mutilation. On such concerns, see generally, CAPPELLO, *De Sacramentis* IV: 332-333, n. 439. I would not have questioned, therefore, whether vasectomy was "truly physically mutilating", but rather, whether it was "truly *canonically* mutilating".

in the future. Without attempting to make an exhaustive case for listing vasectomy as an irregularity, the following considerations seem relevant.

First, it must be borne in mind that the purpose of irregularities for holy Orders is not to punish individual wrong-doing (indeed, some irregularities are incurred without personal fault), but rather, to protect and promote the reverence that is owed to ordained ministry and the sacred ministers thereof.⁴⁹ Beyond, in other words, questions of a candidate's natural or canonical *capacity* for holy Orders,⁵⁰ the question of an irregularity for the reception or exercise of holy Orders goes to the appropriateness of such an individual representing to the faithful and the world Christ the Servant or Christ the Head (1983 CIC 1009, as revised). A vasectomized male lacks, I suggest, in St. Augustine's classic phrase, "the integrity of a regular person (*personae regularis integritas*),"⁵¹ and presents a distorted image of Christ. Arguments to this effect are present in the writings of moral theologians concerning vasectomy as a mutilation and a better appreciation of the incongruity posed by a vasectomized male imaging Christ espoused to his Bride the Church.⁵²

Within just a few years of the first vasectomy being performed for human sterilization purposes, an intense debate over the basic morality of the procedure (and over some speedily enacted social applications for vasectomy, such as a punishment for criminals) erupted in, for example,

⁴⁹ CAPPELLO, *De Sacramentis* IV (1947) 330, n. 435. See also N. HALLIGAN (American Dominican, 1917-1997), *The Administration of the Sacraments*, New York, Alba House, 1962, 385, wherein: "The purpose [of an irregularity] is to safeguard the dignity of the clerical state and office, reverence and becomingness in the sacred ministry, and to avoid offense to the laity, by excluding those unqualified to serve at the altar." See also WOESTMAN, *Orders*, 65, wherein: "[I]rregularities were not established primarily and directly as a punishment for an offense or crime, but to assure the dignity and reverence of sacred ministry."

⁵⁰ See OESTERLÉ, "Irrégularités", *DDC* VI: 46, wherein: "L'inhabilité qui nait de l'irrégularité est *canonique*, en tant qu'elle est établie par le droit canonique. D'où il suit qu'au sens proper le terme d'irrégularité ne doit pas être appliqué aux empêchements de droit naturel." See also, HALLIGAN, *Sacraments*, 385, wherein: "Only those capable of receiving holy orders can contract an irregularity."

⁵¹ A pericope from St. Augustine, as cited by WOESTMAN, *Orders* 63, fn. 2.

⁵² The image of Christ as the "Bridegroom" of the Church and of his being "espoused" to the Church is well-known. See, e.g., Second Vatican Council, Dogmatic Constitution on the Church *Lumen gentium* (21 Nov. 1964), esp. nos. 4, 6-7, 39, 41, and 64-65. See also John Paul II, lit. *La ciascuna* [Letter to Women] (29 iun. 1995) in: *Acta Apostolicae Sedis* 87 (1995) 803, esp. no. 11.

the pages of the *American Ecclesiastical Review*.⁵³ Fairly quickly, vasectomy was found gravely morally objectionable. Writing not later than 1915, for example, Timothy Barrett, in his immensely influential updating of Gury's *Compendium*, stated: "Vasectomy is certainly a grave injury for a man, for it deprives him of an important good; therefore, it is a grave wounding. According to many, it is a grave mutilation in the strict sense, for it is cutting although it is not a removal; it renders the *vas* useless for its purpose. Others hold that it does not certainly constitute an irregularity for the member is not removed, as is required for an irregularity."⁵⁴ In these words one sees the unequivocal rejection of vasectomy on moral grounds, even if there was some hesitation (by a moralist) to reach that conclusion canonically. Moreover, the rejection of vasectomy on moral grounds has perdured over the decades. Just before the Second Vatican Council, John Ford and Gerald Kelly wrote: "In summary, speaking officially for the Catholic Church, Pius XI and Pius XII taught that contraception is always immoral, and that it is not objectively justifiable under any circumstances. This teaching applies not only to contraceptive acts but also to direct sterilization, whether this be merely temporary (as in the use of anti-ovulatory drugs) or permanent (as is generally the case with vasectomy and salpingectomy). There is no equivocation or

⁵³ See T. LABOURÉ, "A backward glance over the articles on vasectomy", *American Ecclesiastical Review* 48 (May 1913) 553, summarizing roughly a dozen English and Latin language contributions to the vasectomy debate in *AER*. The novelty of the vasectomy question for moralists, factual disputes over the details of the procedure itself, and enthusiasm over some initial (and later rejected) reports of the benefits of vasectomy in controlling criminal impulses, were in evidence in the spirited and sophisticated *AER* exchanges conducted in the tradition *ex conflictu idearum veritas et lux*.

⁵⁴ "Vasectomia est certe hominis damnificatio gravis, nam privat eum bono ingenti: ideoque est laesio gravis. Juxta multos mutilatio gravis est in sensu tecnico, nam est membri abscissio licet non excisio; reddit vasa ad finem suum inutilia. Alii autem dicunt non certo constare de irregularitate, quia membrum non exciditur, id quod exigitur ad irregularitatem." GURY/SABETTI *Compendium Theologiae Moralis*, rev. by T. Barrett, Pustet, 1915, 1056, n. 1046. The 1905 edition of the Gury/Sabetti/Barrett *Compendium* did not discuss vasectomy, not surprising, considering that human vasectomy was just a few years old at the time. See also Vermeersch writing as moral theologian, as follows: "Mutilatio autem est quaedam abscissio vel aequivalens actio qua functio organica vel definitus usus membrorum supprimitur aut directe deminuitur. Suppressio habetur perfecta et magis proprie dicta mutilatio." A. VERMEERSCH (Belgian Jesuit, 1858-1936), *Theologiae Moralis: Principia, Responsa, Consilia* [1922], 3 vols., 4^o ed., Roma, Gregorianum, 1947, II: 223, n. 299.

loophole in this papal teaching.”⁵⁵ About the same time, Bernard Häring noted: “Intrinsic reasons and the authoritative utterances of the Church require that we adhere strictly to the principle that direct sterilization which has only one purpose, namely to avoid further conceptions, is morally untenable.”⁵⁶

Perhaps most interesting among moralists rejecting vasectomy during the enforcement period of the Pio-Benedictine Code was Henry Davis, who stated:

It is sometimes said in justification of the sterilization of defectives that it is not a serious mutilation. It is induced by a very slight excision, and if necessary, it can be remedied. The patient suffers no pain or inconvenience; indeed he is sometimes positively improved. But this plea is hardly worth refuting. The keystone of an arch may be very small to look at; the optic nerve is a very small thing; the *vas deferens* is a small tube, through which a hair will hardly pass. But we judge of these things not by their size but by the function which they fulfill.⁵⁷

This is a remarkable passage, highlighting both the strong arguments that moralists could make in condemning such an apparently minor surgery and yet, at the same time, even if inadvertently, showing the inability of such analogies in morals to carry the day canonically. Consider: as Davis correctly observed, cutting of the optic nerve would have dramatic consequences for the individual—yet even such a blinding would *not*, as expressly noted by many canonists including Cappello and Regatillo, have qualified canonically as a “mutilation” for purposes of assessing one’s

⁵⁵ J. FORD and G. KELLY, *Contemporary Moral Theology*, 2 vols., Westminster, Newman Press, 1963, I: 242.

⁵⁶ B. HÄRING (German Redemptorist, 1912-1998), *The Law of Christ* [1959], 3 vols., Kaiser trans. of 7th German ed., 5th ed., Westminster, Newman, 1966, III: 244. Häring advised some leniency in pastorally assessing concrete cases, but not in such a way as to question the moral principle being applied.

⁵⁷ H. DAVIS (English Jesuit, 1866-1952), *Moral and Pastoral Theology* [1935], 4 vols., 3rd ed., London, Sheed and Ward, 1938, II: 159-160. Davis’ analogy, as a moral matter, was basically shared by other moralists, e.g., J. AERTNYS (Dutch Redemptorist, 1828-1915), *Theologia Moralis secundum doctrinam S. Alfonsi de Ligorio*, 2 vols., 11^o ed., rev. by C. Damen, Roma, Marietti, 1928, I: 386, n. 568, wherein: “*Vasectomia: quandoquidem momentum mutilationis non solum dijudicandum est ex gravitate ejus materialiter spectata, verum etiam ex gravitate functionis, qua hominem privat.*” But while Davis held vasectomy to render a man irregular for holy Orders (*op. cit.* IV: 38), Aertnys (*op. cit.* II: 420) did *not* consider vasectomy as giving rise to irregularity.

possible irregularity for holy Orders. To reach that result canonically, a change in the law would be required.

Beyond arguments from moral theology, however, there are, I suggest, observations to be drawn from Christian anthropology. Christ's taking on of human nature, specifically his coming as a man, forever shapes the Catholic appreciation of, among other things, the nature and nobility of the masculine person (CCC 359, 458-459, and 504). Moreover, Christ's mystical espousal to his Bride the Church (CCC 796 and 1617), an espousal oriented to bringing forth from his Bride spiritual sons and daughters—children for whom He sacrificed his very life—requires, I suggest, of the men who would image Christ the Bridegroom that they, too, image the fecund and self-sacrificing Lord. Vasectomy disrespects the body that God gave men and the ends for which it was given;⁵⁸ whatever might be its remote motives, vasectomy today is sought only to make possible for a male sexual relations without the consequences associated with fatherhood. It is a direct and destructive assault on the fecundity of a man and a repudiation of the potential for a man's participation in God's plan for the responsible procreation of children.

If, in light of the above considerations, vasectomy is to be held as a canonical irregularity, an entry into canon law will need to be found for it. There are, I think, two ways in which vasectomy could be recognized as an irregularity for holy Orders:⁵⁹ first, by direct amendment of Canon 1041 to include vasectomy as an irregularity, and second, by authentic interpretation of Canon 1041 to this same effect. Of these two ways, I believe that the first would be far preferable.⁶⁰ Language to accomplish this

⁵⁸ As Flynn puts it, "voluntarily rendering oneself completely sterile constitutes a significant limitation on the capacity to act in an authentically and fully human way." FLYNN, "Vasectomy" 100.

⁵⁹ Vasectomy may, even now, be taken into consideration by a bishop prior to ordaining a man to diaconate or to priesthood in accord with Canon 1052 § 3 of the 1983 Code whereby, if a bishop still "doubts for specific reasons whether a candidate is suitable to receive orders", he may decline to promote him. For example, WOESTMAN, *Orders* (2001) 72, mentions vasectomy as possible grounds for deciding against ordaining a man per c. 1052, even though Woestman does not think vasectomy is an irregularity. Such a case-by-case approach, however, risks inconsistent decisions being made on a matter that obviously impacts the wider Church in a significant way.

⁶⁰ There is virtually no support for the claim that vasectomy has, all along, been latent in the law and requires only a "declarative" or "explanatory" form of authentic interpretation in accord with Canon 16 § 2 to settle any questions to that effect. As we have seen,

goal legislatively would be easy to develop, for example, "A person who has mutilated himself or another gravely and maliciously, procured permanent sterilization, or attempted suicide (*qui seipsum vel alium graviter et dolose mutilaverit, vel sterilizationem permanentem procuraverit, vel sibi vitam adimere tentaverit*)..." This or similar language addresses three key points: first, it embraces all forms of permanent male sterilization (whether surgical or chemical); second, while it embraces all vasectomies, this language does not include a man's resort to temporary contraceptive techniques such as condoms (matters that should be addressed, of course, but in the realm of Confession, not of law); third, it provides sufficient immediate guidance to formation personnel who might be faced with typically vasectomized candidates for holy Orders or those already ordained (and who would thus need a dispensation for licit reception or exercise of Orders) yet also allows the moral and canonical tradition to develop further refinements of the notion of vasectomy as an irregularity.

only a handful of canonists even tentatively suggest vasectomy to be an irregularity under codified law, these, against an overwhelming line of interpretation holding against vasectomy as an irregularity. Because the Pontifical Council for Legislative Texts avoids, for practical purposes, giving on its own authority the kind of "extensive" interpretations (see J. OTADUY, commenting on Canon 16, in *Exeg. Comm.* I: 323) that would be necessary to find vasectomy as a form of mutilation in the context of irregularity, and would request specific approval from the Roman Pontiff before issuing such an interpretation, it seems better simply to reform the law itself rather than resorting to strained interpretation of the law on mutilation so as to include vasectomy.