

A New Look at Liceity of Hysterectomy in Certain Cases

Initial Observations by CHA Member Ethicists on the Vatican Document

Shortly after this document appeared we solicited comments from some of our system ethicists. We combined them with our own observations and grouped them under three categories. We hope that these initial thoughts will stimulate more reflection on the meaning and importance of this document. We will be happy to publish other comments in our next issue.
-C.B. and N.B.H.

On December 10, 2018, the Congregation for the Doctrine of the Faith issued a new document on the liceity of hysterectomy in certain cases.¹

This document is a response to questions about certain “extreme cases” in which the uterus is in an irreversible condition such that a pregnancy will result in a spontaneous abortion before the fetus is able to arrive at a viable state.

OBSERVATIONS AND QUESTIONS

The questions behind the *dubium* and the CDF response are complicated. It seems that the document makes some new distinctions. It also raises some new questions. We have solicited

comments from a number of ethicists and have integrated their comments into this essay under three general categories: questions about methodology, clinical questions and questions about language and meaning. They are intended to facilitate dialogue and to help achieve consensus on the correct interpretation.

METHODOLOGICAL QUESTIONS

The new document responds to three questions: a) Is it licit to remove a damaged or diseased uterus in order to counter “an immediate serious threat” to the mother, even if it results in permanent sterility? b) Is it licit to remove a uterus that is not in itself a “present risk to the life and health of the woman,” but in order to prevent a “possible future danger” deriving from conception? c) Is it licit to substitute tubal ligation, “also called ‘uterine isolation’ for the hysterectomy,” because it is simpler and less serious, and because the resulting sterility might be reversed?

For two of the questions, the new document affirms teaching found in the 1993 Response of

the CDF to “Questions Proposed Concerning ‘Uterine Isolation’ and Related Matters.”²

Regarding (a), it uses traditional double effect reasoning to affirm that it is licit to perform a hysterectomy to remedy an immediate threat such as endometriosis or uterine cancer.

Regarding (c), it affirms that a tubal ligation, even if described in terms of uterine isolation, is still “intrinsically illicit as an end and a means.”

With (b), however, it takes a methodological turn and allows a hysterectomy when the uterus is deemed to be incapable of bringing a pregnancy to term. In this case, hysterectomy does not “regard”³ sterilization and is entirely different than the “uterine isolation” question to which they responded in July of 1993.

However, this still seems to beg the question: If a hysterectomy in the cases referred to is not equivalent to a direct sterilization, what is its purpose? As one ethicist asks: “What would be the purpose of removing the uterus in this instance? It’s not cancerous or diseased, so it’s not threatening her health or the life of the fetus. There aren’t fibroids so it’s not a pre-cancerous condition and it isn’t causing her pain or suffering. It’s just sitting there and would be fine if left alone.” The purpose seems to be to prevent future pregnancy which in all likelihood could not come to term.

Principle of Double Effect: The new document continues to tolerate sterilization as an unintended effect of a therapeutic action (e.g., to treat uterine cancer or endometriosis) on the basis of the principle of double effect because the two effects – therapy for the disease and loss of fertility – are inseparable. Yet it allows a hysterectomy because of an existing, virtual sterility due to the condition of the uterus. In this case, however, the two effects are not

inseparably connected. The removal of the uterus, which is not undertaken with a therapeutic intent, is done *in order to* prevent a future pregnancy.

The document suggests that hysterectomy is permissible because the uterus is damaged or diseased beyond repair and is therefore “unable to fulfill [its] procreative function.” Since the uterus is unable to fill this role, procreation is impossible so the hysterectomy is not “against procreation.”

However, it also says “we are not dealing with a defective, or risky functioning of the reproductive organs.” Does this mean that hysterectomy is not allowed if the uterus is defective or functioning badly in a way that may harm the mother, but only if it is so thoroughly compromised that it is a risk to the fetus?

How certain is certain? The document does not indicate exactly what might constitute the extreme cases in which a hysterectomy is permissible, but it does acknowledge the need for a clinical judgment and requires “the highest degree of certainty” that the uterus cannot support a pregnancy to term.

There are two issues here. First, physicians agree that “certainty” is difficult to come by in most medical matters. One ethicist noted the necessarily prudential nature of this judgment: “There are conditions in which this judgment might attempt to be applied, such as repeated damage from C-sections, congenital malformations (bicornate uterus), anti-phospholipid antibodies, etc. All of these could conceivably (pardon the pun) result in multiple miscarriages, without being able to declare with the highest degree of medical certainty that such a result would be inevitable in an

individual case, and it must perforce occur prior to viability. The present responsum requires and assumes the presence of all these conditions. However, all medical prognostication is really just an exercise in probabilities – **certainty** is extremely hard to come by, and rarely possible.” Second, it is unclear whether the “highest” certainty called for is the same as “moral certainty” which has been the traditional criterion for action in cases of doubt or if it is a more rigorous standard.

The role of circumstances. Another issue is the relevance of circumstances. Traditional moral reasoning allows circumstances a determinative role in the moral quality of the action only when the action does not involve intrinsic evil. However, Dr. Amy Warner and Sr. Patricia Talone suggest the complex circumstances of time, geography, finances and personal issues that are part of clinical judgments are very important to good medicine especially when the issue is a sustained medical event like pregnancy. Shouldn't the ability to pre-empt complications and travel distance from medical resources figure into the equation if we are virtually certain of future outcome?

CLINICAL QUESTIONS

The most important clinical issue is the disparity between medical standards of care⁴ which call for the most effective, safest, and least invasive treatment possible, and the requirements of our moral tradition. At the moment, our understanding of pre-emptive sterilizations as intrinsically illicit runs counter to best practice because it is often the safest and least invasive option.

Another issue is anatomical. Both documents speak as if the uterus and fallopian tubes are

totally separate organs such that it is permissible to remove one but not the other. Medical embryology suggests they develop as one. As Talone and Warner say elsewhere in this issue:

Fallopian tubes, also called uterine tubes are not distinct from, but a part of the uterus. It is important to note that the uterus develops embryologically from the fusion of the two paramesonephric ducts which fuse in the midline to form the uterine body and fundus. The free ends of these ducts remain as appendages forming the uterine, or fallopian, tubes.⁵

This is a very important point. If the uterus and the fallopian tubes are both part of a single organ, then doesn't it seem more logical (and clinically sound) to remove as little of the organ as possible? Wouldn't that suggest a partial or total salpingectomy rather than a hysterectomy if they both accomplish the same purpose?

Clinical circumstances. We have already noted the methodological importance of circumstances. They are also important in clinical judgments. Warner and Talone note specifically clinical circumstances like the patient's condition, blood pressure, medication side effects, as well as time, place, and available resources. These circumstances often determine the appropriateness of one course of treatment over another. Is there not a way that we can take greater account of circumstance from a moral perspective as well?

LANGUAGE AND TERMINOLOGY QUESTIONS

The document notes that the “malice of sterilization” (here referring to a tubal ligation or “uterine isolation”) is rooted in the “refusal of children” and is “an act against the *bonum prolis*.” The removal of a uterus which is unable to bring a pregnancy is not a refusal of children the document maintains, because no complete pregnancy is possible. However, it does not seem that a salpingectomy in the same situation is necessarily a refusal of children, either. In fact, in the cases described by Warner and Talone, the couple may sincerely WANT more children, but deem it impossible or too risky.

There is also some question about whether this new document redefines procreation. Our traditional understanding is based upon a presumption that a unique human person exists from the moment of conception. Even though it is physically impossible for the egg and sperm to unite and result in a new organism in the absence of a uterus, the document’s understanding of “procreation” seems to imply that procreation involves ovulation, fertilization, implantation, gestation and delivery. If that is so, it seems to give full protection only to children that are born. Even though fertilization is impossible without a uterus, since the sperm must travel through the uterus to fertilize the egg in the uterine tube, doesn’t the fact that conception could take place if the uterus were left in place indicate that the intent is to prevent conception?

Others have raised similar questions. Jeanne Smits says the document “rests on skewed definitions of the words ‘procreation’ and ‘sterilization.’” The classic definition of

procreation, Smits says, “is here destroyed by a stroke of the pen.”⁶

The Couple to Couple League raises similar questions, saying “this reasoning on the part of the CDF is somewhat surprising.” Both groups suggest that the document confuses, rather than clarifies, the matter. Dr. Philip Schepens, a former member of the Pontifical Academy for Life, says the Response is “unnecessary and at the same time unnecessarily creates confusion.”⁷

One final point about language is that the document does not use the terms “intrinsic evil” or “intrinsically immoral,” terms that have appeared in other documents, including the *Ethical and Religious Directives*.⁸ Instead they speak of “intrinsically illicit” and “morally illicit.” These terms may be equivalent to “evil” and “immoral,” but some of us wonder whether the shade of difference is significant. Is the choice of language lowering stakes in some way?⁹

This document is important because it takes explicit account of advances in medical science that enable us to diagnose causes and anticipate outcomes in a way that was not possible in the past. Until modern times, there was little understanding of what caused miscarriages or failure to conceive in the first place. Can our moral reasoning find a way to acknowledge these advances?

Overall, the document seems to open the door to further discussion, but it also raises as many questions as it answers. It seems to ignore important clinical facts, such as the connection between the uterus and the uterine tubes, and in our view does not give adequate attention to

our responsibility to prevent foreseeable future harms to mother and child.



ENDNOTES

¹ Congregation for the Doctrine of the Faith, “Response to a Question on the Liceity of a Hysterectomy in Certain Cases,” December 10, 2018.

² “Responses to Questions Proposed Concerning Uterine Isolation and Related Matters,” July 31, 1994.

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_31071994_uterine-isolation_en.html See also “Reply of the Sacred Congregation for the Doctrine of the Faith on Sterilization in Catholic Hospitals” (*Quaecumque Sterilizatio*) March 13, 1975.

³ “Regard” is not common English usage in this case. The Italian phrase is “perche non si tratta di sterilizzazione” and the French is “il ne s’agit pas de stérilisation” both of which have a clearer connotation of “has nothing to do with.” If the intent is to distinguish the case they cite from sterilization, a better choice would have been “does not constitute” or “does not involve” sterilization.

⁴ While standards of care are often used to assess allegations of medical malpractice, they are also guidelines for the best treatment, given current evidence. See Brian K. Cooke, Elizabeth Worsham and Gary M. Reisfield, “The Elusive Standard of Care,” *Journal of the American Academy of Psychiatry and the Law Online* (September 2017) 45 (3) 358-364.

⁵ Thomas W. Sadler, *Langman’s Medical Embryology*, 13th edition, (Philadelphia: Wolters, Kluwer Health, 2015) 266. Sadler’s view is affirmed in Moore’s *The Developing Human: Clinically Oriented Embryology*, 10th edition (Elsevier, 2015) and Schoenwolf, *Larsen’s Human Embryology*, 5th edition (Elsevier, 2014).

⁶ Jeanne Smits is the editor of the right-wing French periodical *Présent* and a frequent critic of Pope Francis. “Do the Vatican’s New Guidelines on Hysterectomy Open a Door to Contraception and Abortion?” *LifeSite News* (January 18, 2019). The document, she says, employs “strange reasoning indeed, insofar as the removal of the uterus is well and truly performed in order to ‘impeded the functioning of the reproductive organs...deliberately preventing that from happening in itself constitutes sterilization.” She also says that “the response “if read logically, appears to consider a conceived child who is not viable as not being the fruit of the true procreation.” (<https://lifesitenews.com/opinion/do-vaticans-new-guidelines-on-hysterectomy-open-a-door-to-contraception-and-abortion>). Accessed January 27, 2019. (On January 30, the website said the article “no longer exists or has moved.”)

⁷ Forest Hempden, “What the New Vatican Document says About Hysterectomy,” Couple to Couple League, January 3, 2019. (<https://ccli.org/2019/01/01/what-the-new-vatican-document-says-about-hysterectomy/>). Accessed January 27, 2019.

⁸ United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 6th ed. (Washington DC: USCCB, 2018).

⁹ In sacramental theology, there is a significant difference between “illicit” and “invalid.” The former connotes a violation of law, doing something not allowed, but still sacramentally valid. The latter means that, to use a mechanical analogy, just doesn’t work because of some inherent defect, such as inappropriate matter (e.g., attempting to consecrate a bottle of chocolate milk instead of a chalice of wine). Is the use of illicit here rather than immoral analogous to the sacramental use, where licit is a matter of law, and valid refers to sacramental effectiveness?