The CDF's Response to a Question on the Liceity of a Hysterectomy in Certain Cases: A Fundamental Turn

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Author's Note: This analysis is provided in my individual capacity as an ethicist.

On December 10, 2018, the Congregation for the Doctrine of the Faith (CDF) issued a responsum to the question whether it is morally permissible to perform a hysterectomy when a uterus is in such a state that in a future gravid condition it is likely to cause a spontaneous abortion prior to fetal viability.[1] The CDF answered that a hysterectomy in these circumstances is permissible because it does not constitute a direct sterilization.[2] The CDF characterizes such a case as "extreme" and argues that the case is morally different in kind from the cases that received a negative response in the 1993 responsum by the CDF.[3] In this analysis I hope to show that the 2018 responsum case is not morally different from the cases denied in the 1993 responsum and to suggest what the implications of their similarity might be.

I believe that the reasoning of the 2018 responsum contradicts the 1993 responsum and that the moral standards on which both responsa rest cannot both be true if their respective conclusions are to be justified. This contradiction is not discoverable through the explicit language of the 2018 responsum but mainly through the implicit assumptions that underlie its conclusion. I will also suggest that by contradicting the 1993 responsum, the 2018 responsum establishes a new moral criterion by which it evaluated its case of hysterectomy and that this standard has several possible implications. This new moral standard suggests that tubal ligation might be an equally legitimate intervention for the case considered in the responsum, and the logical extension of the standard suggests that hysterectomy and tubal ligation in the cases rejected in the 1993 responsum might be morally acceptable.

I wish to make it clear that in providing this moral analysis I am not opposing Catholic teaching on direct sterilization nor the magisterial definition of direct sterilization as articulated in *Quaecumque Sterilizatio*: "Any sterilization which of itself, that is, of its own nature and condition, has the sole immediate effect of rendering the generative faculty incapable of procreation, is to be considered direct sterilization . . . ."[4] What my analysis does is to suggest that what counts as indirect

sterilization in the 2018 responsum appears to be more expansive than what is identified in the 1993 responsum. This is not contrary to the definition of direct sterilization insofar as the cases examined are consistent with the notion of procreation found in the 2018 responsum and because the procedures entail more than one immediate effect. My intent is not to oppose the teaching but invite dialogue about how to understand the definition in light of the new responsum.

A FUNDAMENTAL CONTRADICTION BETWEEN THE RESPONSA

The CDF argues in its 2018 responsum that its question is essentially different from the 1993 responsum question because the 2018 responsum pertains to a uterus that is incapable of sustaining a pregnancy, whereas the negative responses of 1993 responsum pertain to a uterus that while compromised may still sustain a pregnancy, and also to situations in which a pregnancy will likely exacerbate an underlying pathological condition of the mother. The 2018 responsum describes the situation of the 1993 responsum as "a defective, or risky, functioning of the reproductive organs." The difference between the 2018 and 1993 responsa is the difference between the biological inability to achieve the final end or *telos* of the procreative process on the one hand, and "difficulty" of uterine function, or "risks of greater or lesser importance," related to a preexisting maternal condition on the other.[5]

The 2018 responsum states the following: "Furthermore, the response to the question does not state that the decision to undergo a hysterectomy is always the best one, but that only in the above-mentioned conditions is such a decision morally licit, without, therefore,

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excluding other options (for example, recourse to infertile periods or total abstinence)." The fact that natural family planning and total abstinence are referenced as options in addition to hysterectomy begins to indicate one way in which the 2018 responsum contradicts the 1993 responsum.

The 1993 responsum made the possibility of using NFP or total abstinence a moral criterion for assessing whether hysterectomy or tubal ligation constitute direct sterilization in certain cases. The 1993 responsum concluded that "the described procedures [hysterectomy and tubal ligation] do not have a properly therapeutic character but are aimed in themselves at rendering sterile future sexual acts freely chosen. The end of avoiding risks to the mother, deriving from a possible pregnancy, is thus pursued by means of a direct sterilization, in itself always morally illicit, while other ways, which are morally licit, remain open to free choice." For the purposes of this analysis, this conclusion may be called the moral standard of the 1993 responsum.

From the perspective of the 1993 responsum, the fact that a free choice exists between

hysterectomy and tubal ligation on the one hand, and on the other, NFP or total abstinence as means to achieve the end of avoiding a dangerous pregnancy, indicates that both hysterectomy and tubal ligation constitute direct sterilization in such cases. The reason why this choice makes a moral difference is because "the uterus in and of itself does not pose a pathological problem for the woman" in contradistinction to when the uterus is at imminent risk of rupture and hemorrhage and poses "a serious present danger to the woman independent of a possible future pregnancy." The 1993 responsum conclusion implies that so long as the avoidance of pregnancy and preservation of health may be achieved by a choice of means that does not involve the removal or impairment of the reproductive organs, there is a moral obligation to achieve the end by such means. To choose otherwise under these circumstances is to have a contraceptive intent and to take actions that are by nature contraceptive.

This circumstance is exactly what the 2018 responsum allows. In so doing, it contradicts the standard of the 1993 responsum.

To understand this contradiction, it is necessary first to see how the case of hysterectomy that is allowed in the 2018 responsum is essentially the same in its moral aspects as the case of hysterectomy that the 1993 responsum rejects. In both responsa, the ultimate end of hysterectomy for these similar cases of uteruses that are presently non-threatening and non-gravid is the prevention of death to human beings. In the 2018 responsum, avoidance of pregnancy is the means by which the foreseen death of a fetus is prevented. It cannot be validly claimed that the ultimate end of the hysterectomy in the 2018 case is merely to remove a uterus that will not function properly. The reason why hysterectomy is allowed in the 2018 responsum is not simply to prevent uterine dysfunction, but to prevent the death of a human individual because of the uterine dysfunction. The two are inextricably linked. The responsum argues that the uterus may be removed because it cannot attain its procreative end; but the moral significance of not attaining its procreative end is identical to the fact that a new human life will be lost. Consider a woman who has medically confirmed sterility. The mere fact that her reproductive organs cannot fulfill their procreative end does not justify their removal. Preventing the procreative dysfunction of the uterus in the case of the 2018 responsum is identical with preventing the death of a future child. Thus, the intention and action to prevent the dysfunction of the uterus in this case is necessarily one and the same with an intention to prevent the grave harm of death.

The non-hemorrhaging hysterectomy case examined in the 1993 responsum is similar to the case examined in the 2018 responsum insofar as hysterectomy is proposed as a means of preventing serious harm. The relevant case in the 1993 responsum is described as the situation in which the uterus "is foreseeably incapable of carrying a future pregnancy to term without danger to the mother, danger which in some cases could be serious." For both the 1993 and 2018 responsa, the ultimate end of hysterectomy in non-hemorrhaging hysterectomy cases is the prevention of serious harm to human beings. The fact that in one case possible harm is prevented for an existing individual and in the other possible harm is prevented for an individual not yet conceived is an accidental, not an essential difference. They share the same purpose and the same moral

reasoning. Furthermore, their moral evaluations are based on uteruses that in their present non-pregnant state do not constitute a danger to the woman. This second shared moral component is not altered by the fact that the pathophysiological conditions of the uteruses might be different in each of the cases; this also is an accidental difference. The fact that the 2018 responsum case shares two essential moral components with the rejected cases in the 1993 responsum is an important indication of the fundamental difference between the responsa.

The contradiction between the 1993 and 2018 responsa is also evident in the problematic way in which the 2018 responsum defines direct sterilization. The 2018 responsum states that "the precise object of [direct] sterilization is to impede the functioning of the reproductive organs, and the malice of sterilization consists in the refusal of children: it is an act against the *bonum prolis*." However, the object of direct sterilization is not merely to impede functioning, but to impede the functioning of reproductive organs *qua* reproductive; and yet, this is exactly what the responsum allows. Contrary to the 1993 responsum, the 2018 responsum permits a procedure that impedes the functioning of a non-threatening, non-gravid uterus precisely in its reproductive dimension for the purpose of preventing future harm, the fact that the uterus' reproductive functioning is defective notwithstanding.

If we apply the 1993 responsum standard to the case of the 2018 responsum, it is evident that there are means available to achieve the end of avoiding pregnancy other than removal of the uterus, which poses no threat to the woman. However, contrary to the 1993 responsum, the 2018 responsum permits hysterectomy when the uterus does not pose a serious threat to the mother in order to prevent serious harm (to a future child). In this way, the 2018 responsum contradicts the 1993 responsum on the two essential grounds that disqualified hysterectomy in the non-hemorrhage case for the earlier responsum: (1) the uterus is in a non-threatening state, and (2) the hysterectomy is undertaken to prevent future harm. Therefore, the 2018 responsum is morally valid only if the moral standard of the 1993 responsum is false.[6]

Because the 1993 responsum relies heavily upon *Quaecumque*, we need to ask whether the 2018 responsum contradicts *Quaecumque*. It does but only if the meaning of "procreation" in *Quaecumque* is reduced to conception. Such a reduction is not evident. *Quaecumque* defines direct sterilization and its implications in this way:

> Any sterilization which of itself, that is, of its own nature and condition, has the sole immediate effect of rendering the generative faculty incapable of procreation, is to be considered direct sterilization, as the term is understood in the declarations of the pontifical Magisterium, especially of Pius XII. Therefore, notwithstanding any subjectively right intention of those whose actions are prompted by the care or prevention of physical or mental illness which is foreseen or feared as a result of pregnancy, such sterilization remains absolutely forbidden according to the doctrine of the Church. And indeed the sterilization of the faculty itself is forbidden for

> an even graver reason than the sterilization of individual acts, since it induces a state of sterility in the person which is almost always irreversible.[7]

It is clear from this text that the CDF is referring to all procreative aspects of reproductive organs (female and male) insofar as it makes a distinction between the sterilization of the generative faculty itself and sterilization of individual acts, together with the fact that the term "procreation" is not qualified. The various aspects of procreation include conception, implantation of the embryo, gestation, and birth. Direct sterilization occurs when the "sole immediate effect" of the procedure renders "the generative faculty incapable of procreation." The 2018 responsum is not contrary to *Quaecumque* because a uterus that is already incapable of the final end of procreation as the final stage of the procreative process cannot be rendered incapable. If one aspect of the procreative process is incapable of functioning, then even though other aspects have capacity it cannot legitimately be said that the procedure is the cause of rendering procreation incapable. Thus, despite the fact that *Quaecumque* does not recognize the intention to prevent future harm as a moral justification for direct sterilization, the 2018 responsum hysterectomy case does not contradict the essential definition of what constitutes direct sterilization.

LOGICAL IMPLICATIONS OF THE 2018 RESPONSUM

The contradiction between the two responsa indicates another fundamental difference between them that has potentially significant implications for a change in Catholic teaching on sterilizing interventions for medical reasons. The fact that the 2018 responsum permits the removal of the uterus that in its non-pregnant present state does not pose a serious threat implies the following moral standard that is in direct contradiction to the standard of the 1993 responsum: underlying conditions of the reproductive organs, or the known risk of them, which do not pose a present problem but can cause the grave harm of death for a woman or a fetus with a future pregnancy, constitute a morally sufficient basis to determine that direct action on those organs is not direct sterilization.

Since the 2018 responsum recognizes the moral validity of surgically affecting female reproductive organs that do not present a dangerous threat to the woman or a fetus (not yet conceived) for the sake of preventing the grave harm of death to a fetus with a future pregnancy, then it is legitimate to ask the following question: Does consistency require that the standard on which this responsum is based also validly apply to other situations in which there is a desire to prevent death with a future pregnancy due to other underlying pathological conditions? Examples of such conditions include a uterus that is so compromised from previous pregnancies that there is a likely risk of uterine rupture with another pregnancy, or cases involving serious underlying cardiac or renal condition of a woman which could be exacerbated to the point of causing grave danger for her and her child in a future pregnancy, or even a salpingectomy to prevent death from ovarian cancer.

Moreover, if all these cases share the same moral basis upon which the 2018 responsum affirmation rests, then it is also legitimate to ask whether a medically indicated (e.g., less

invasive) tubal ligation ought to be permitted rather than hysterectomy, to prevent pregnancy consistent with the moral standard of the 2018 responsum. The responsum argues that a uterus in the condition being considered is not capable of fulfilling its procreative function. The responsum states that "the objective of the "procreative process" is to bring a baby into the world," and that for the case considered, this objective cannot be realized; therefore, removing the uterus is not direct sterilization. Biological processes are comprised of integral parts. The uterus as an organ does not exhaust the "procreative process." Integral to this process is the functioning of the fallopian tubes as conduits of the gametes and the embryo. Even though the fallopian tubes may retain their normal function in the case considered, there is a relevant sense in which their function too is disordered because another integral part of the process (the uterus) is incapable of contributing to the end of this process.[8] The fact that the uterus in a pregnant state may not be a primary cause of death does not alter the fact that the uterus cannot contribute to the end of the procreative process.

Moreover, because the 2018 responsum does not restrict its description of the procreative process to the uterus, but rather refers to "reproductive organs" that together "are not capable of fulfilling their natural procreative function" is consistent with the implication drawn here regarding the role of the fallopian tubes in the procreative process. For all these reasons, the two cases share not only the ultimate end of preventing grave harm to human beings, but also the proximate end of removing a non-threatening reproductive organ that cannot contribute to the procreative process. In this regard, what the 2018 case accepts with respect to the uterus (and implies with respect to fallopian tubes), the 1993 responsum rejects, viz. the notion that reproductive organs in a non-threatening state may legitimately be judged as not being able to contribute to the procreative process; and it is partly on that basis that these organs may be either removed or prevented from functioning.

Thus, we may draw two conclusions from the reasoning of the 2018 responsum and its application to methods and cases beyond what the responsum explicitly considered. First, to perform tubal ligation rather than hysterectomy, if medically warranted, is to prevent the grave harm of death to a future fetus for the same moral reason that hysterectomy prevents this harm according to the responsum; namely, tubal ligation causes a non-threatening reproductive organ to cease functioning as part of a disordered procreative process that cannot attain its end. Second, in cases of women with underlying conditions that are not directly related to the uterus itself but will be exacerbated with a future pregnancy, the likely death of the mother in such cases means that, as with the 2018 responsum case, the procreative process will not reach its end. The difference between the "incapability" of the uterus in the case of the 2018 responsum and the high risk of maternal (and fetal) death in the other cases does not alter the fact that in both sets of cases surgical action takes place on non-threatening reproductive organs whose functioning cannot contribute to the final end of the procreative process, and will result in the likely death of one or more human beings.[9]

Therefore, I maintain that the 2018 responsum contradicts the 1993 responsum and implicitly relies on a moral criterion that was rejected in 1993. The moral standards of the 2018 responsum implies that a woman's reproductive

organs (not simply the uterus) may be deliberately impaired when they do not pose a threat in order to prevent likely grave harm or death. The consistent application of this criterion would also permit tubal ligation for cases in which an underlying pathology that does not directly affect the non-pregnant state of the uterus and would likely be exacerbated to the point of endangering the life of mother and child in a future pregnancy. Just as with the 2018 responsum case, and for the same reasons, these other cases would not necessarily involve a contraceptive object or intent because they involve actions that entail impairment or removal of organs that could not achieve procreation in any case.

By clarifying that the meaning of procreation is more than conception, the 2018 responsum indicates (contrary to the 1993 responsum) that direct interventions on female reproductive organs to prevent harm associated with a future pregnancy do not constitute a sole immediate effect and can be consistent with the magisterial definition of direct sterilization. The 2018 responsum has provided a moral standard and line of reasoning that warrants revisiting the question of what constitutes direct and indirect sterilization in Catholic moral teaching.[10]

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Creating Dialogue

What similarities and differences do you see between the 1993 and 2018 responsa from the CDF regarding the liceity of a hysterectomy in certain cases?

Describe the moral implications of each responsum.

Discuss the key components of the procreative process that are addressed in each of the responsa.

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, http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/01/03/0005/00014.html#en. The responsum allows a hysterectomy when medical experts have reached "the highest degree of certainty that medicine can reach" that a spontaneous abortion will occur. It is important to note that medical certainty is usually not absolute. In many cases, the level of certainty is a moral or prudential certitude, which is the same sort of certainty that would obtain in other types of high risk pregnancies. Moreover, what counts as the "highest degree of certainty" is not the same in each case but varies depending upon the condition and the particular circumstances.

[2] The CDF uses term "sterilization" (sterilizzazione) but means "direct sterilization." This is clear from the sense in which "sterilization" is used throughout the document and from the explicit reference to "direct sterilization" (sterilizzazione diretta) in the sixth paragraph.

[3] Congregation for the Doctrine of the Faith, July 31, 1993, *Responses to Questions Proposed Concerning "Uterine Isolation" and Related Matters*, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_31071994_uterine-isolation_en.html.

[4] *Responses to Questions Concerning Sterilization in Catholic Hospitals* (*Quaecumque Sterilizatio*), n. 1, March 13, 1975, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19750313_quaecumque-sterilizatio_en.html.

[5] As will be explained below, the 2018 responsum does not reduce "procreation" to one event but understands it as a process comprised of multiple components, including its final end, which is the live birth of a child.

[6] For an example of not recognizing the underlying circumstantial and moral similarities between the two cases of the 1993 and 2018 responsa that lead to the moral contradiction between them, see the statement by the ethicists of The National Catholic Bioethics Center, "Commentary on the CDF *Responsum* of December 10, 2018, https://www.ncbcenter.org/resources/news/commentary-cdf-responsum-december-10-2018/.

[7] *Responses to Questions Concerning Sterilization in Catholic Hospitals*, n. 1.

[8] For a description of the fallopian tubes as a part of or appendages of the uterus see "A New Look at Liceity of Hysterectomy in Certain Cases: Initial Observations by CHA member ethicists on the Vatican Document," *Health Care Ethics USA* 27, 1 (Winter 2019): 30; and Sr. Patricia Talone, RSM and Amy Warner, "Ethics and Medical Standards of Care: Hysterectomy, Tubal Ligation or Salpingectomy?" *Health Care Ethics USA* 27, 1 (Winter 2019): 24, https://www.chausa.org/publications/health-care-ethics-usa.

[9] Included among the kinds of cases that the moral standard of the 2018 responsum might justify would be tubal ligation following endometrial ablation to prevent the likely risk of miscarriage with a possible future pregnancy, or Asherman's Syndrome which involves intrauterine adhesions and scarring.

[10] The limited goal of this analysis precludes the articulation of these other arguments for this article.