MALE STERILIZATION: FROM CRONUS TO DENNING AND BEYOND

By Professor Hugh Dudley

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It is, and I shall try to show this at other times this evening, characteristic of the medical profession that they aim to turn their backs on speculation, to practise rather than to preach, to adopt, if I may use modern jargon, an existentialist rather than an analytic point of view. This may well also be true of the legal profession and it could be such commonality that so often leads to their coming together in harmony to play an acceptable if rather dull tune. Be this as it may, we do not often find practitioners in either profession grappling with broad and intractable problems: when we do they are usually ostracized by their kin or find that alternative careers—in journalism, literature or politics—give them more freedom to work out and to express their views. I should note that the past proceedings of this Society probe the veracity of this view.

You may well ask what all this has to do with my subject. I can reply to this self posed question—what a useful device that is incidentally—by saying that when offered the privilege of addressing you I had grave doubts as to my fitness to do so. Doubts which stem from the professional-cultural upbringing I have just described which characteristically eschews speculation at the fuzzy edge of technical medicine and human behaviour. These doubts have persisted because in thinking about and endeavouring to explore the subject chosen for me, I have found few guides, no chartered course. Indeed it could be more truly said that I have a sense of unease, of being a babe in a darkling wood where lurk, waiting to be aroused, dark relics of our former days as individuals and as a collective of human beings. Thus I fear that I shall present but a fragmentary view of a subject which has received little formal study, which is a new form of behaviour superimposed on a great structure of myth and ritual.

This sense of unease begins the moment one attempts any

rational discussion of male sterilization with one's colleagues. In my younger, brasher and more mechanistic days I had looked upon the subject merely as one which was related to economics and perhaps to hedonism in a superficial way. It came as a shock to me to find therefore that when I offered sterilization to individuals as a technical service that I could provide, my fellow doctors seemed to withdraw from participation and furthermore when asked if they could imagine themselves as candidates expressed vehemently and to me irrational negative sentiments. It was this that set me thinking and it was this that has now pushed me into the position of feeling that we are dealing with a fundamental and important problem, albeit one which with our present scant knowledge we may not be able to analyse.

It would for you be a wearisome catalogue if I tried to draw together all the small facts and expression of attitude that make up our college of the sterilization picture today. Instead I am going to concentrate on three things: first, some aspects of myth, ritual and behavioural analysis that may have a bearing upon today's attitudes, particularly the attitudes of the medical profession; secondly, just a word about Lord Denning and his views; thirdly, the possible effects of male sterilization on individuals which should condition our future activities and attitudes. All these are of course interrelated and one must realize the futility of trying to single threads and patches from the infinitely complex tapestry of life. I suspect it is a realization of this complexity and a reluctance so to abstract that makes the behavioural scientist or the modern philosopher so difficult to follow. It is also in all probability what makes doctors and lawyers—the anti-abstractionists and system makers, the unpickers, if you will, of the needlework—so contemptuous of those who are less willing to simplify. Thus it is that we tend to know so little about the proper study of the complex world in which we practise. But enough of this.

You will recall that in a variety of legends,[1] particularly the Olympian, Mother Earth or Ge gave birth to Uranus although who the father was is not stated. Indeed he may not have been regarded as essential for in Palasgian, Homeric, Orphic and Babylonian myth the various mother figures—Eurynome, Tethys, Black Winged Night and Aruru—are primary. Creator is Creatrix. It is only later that a patriarchal dominance develops although the transition is neatly made early in Olympian myth where

[1] Well summarized in R. Graves "The Greek Myths" (1955), London.

Uranus fathers her first brood—the giants Briareus, Gyges and Cottus or Hundred Handed Ones. The Oedipus legend is thus projected back to meander as a thread of apparent sexual trespass from time out of mind.

However, more relevant to our subject, are Uranus' next children who according to Appolodorus were the Cyclopes. All doctors should know of them because they were involved in the death of Aesculapius from whom our healing tradition and our staff with coiled serpents descends. But the real evil, and as far as I am aware the first emergence of castration in our Western cultural antecedents, came with the birth of the Titans to Uranus and Mother Earth. These prototype men were persuaded by an angry mother to attack their father. Their leader was the youngest—Cronus who was not content to kill Uranus but instead unmanned him, seizing his genitals with the left hand and thus, some say, beginning the association with evil that the left hand has since always had. The genitals were flung into the sea and contributed much to its subsequent fertility and perhaps to the birth of Aphrodite.

To the Greeks the Titans were the archetype—the first race on earth and ultimately the begetters of mankind. How typical of the imperfection of man that they should turn on their father and unman him. Indeed Cronus has certain satanic attributes which would make him a suitable subject for Milton and those who are aficiandos of Goya will recall how that horror-steeped genius portrayed him as the ultimate evil. Thus, from the outset evil doers unto their fellow man have been associated with castration and all cultures seem to have known of the relationship between virility, potency and the male external genitals. Furthermore, there seems to be some circumstantial link in early Greek mythology between the castration legend and the tension between father on the one hand and the mother-sons group on the other hand. This may be of some significance in that this, as exemplified in the Oedipus legend, has played such a significant part in modern sexual theory.[2] I shall have a little more to say on this shortly.

We can, without unduly straining our imaginations, see a cultural pattern building up in the uneasily patriarchal society—the symbolic need for genital preservation.

Interestingly enough there seems, in the ages of manual war-

[2] S. Freud, "Three Essays on Sexuality." (1905) Vienna.

fare, to have been an almost tacit understanding between contestants that this area was left alone. Only after death or captivity did it become a method of humiliation to mutilate the body by castration. Even today in some societies such mutilation is not unknown and those of us who have fought in our current northern frontier war have seen it done.

Following upon this long background of tacit knowledge it is scarcely surprising that Freud was able to create a wide-ranging theory in which anxiety about the external genitalia from an early age figured very largely. This is neither the time nor place to enter into the ramifications of Freud's views on the Oedipus complex even were I competent to do so. However, without necessarily accepting all of his projectings and while noting also that his application of Greek myth, though extensive, was not always accurate, we can admit that he identified in adult man significant fragments which indicated a deep-seated and ongoing concern for his maleness which was in turn closely related to those parts of his external image so clearly different from woman. Furthermore, we can also admit that most women would have the same identification of the site of virility and potency in their mates.

Now the purpose of this amateur anthropology is to give some cultural and historical background for the situation of today in which it is only quite recently that male sterilization has become something relatively non-taboo. Indeed, there are yet many, as I have already indicated—both medical and lay—who are still under the weight of such taboo or who react with the primitive emotion of anger to discussion. For example most psychoanalysts aware of the Oedipal phase of development and its postulated residue are aggressive in their rejection of any possible good in male sterilization and to this subject we shall return. Although it is non-taboo it is true, however, that, as with so many other matters, the long slow wave of Freudean thought has permitted freedom of discussion by others and the subject is gradually ceasing to be proscribed. However, it is still one which doctors discuss with some reluctance. Part of this is their predominant maleness and thus their involvement in the cultural background I have just discussed; part is traceable to their general unwillingness to enter into controversy—for protest and unorthodoxy within the medical profession is the exception rather than the rule. It would be simple to put this down to the need for solidarity within a craft guild, particularly one which operates in an area open also to the activities of others which it would like to feel are less reput-

able or deserving. But it is possible that there is more to it than this: a doctor, as Garrett Harden has said,[4]

> "is not only a man who is technically trained; he is also the aggregation of a life time of psychological experiences, traumas and enduring threats with which he has somehow made his peace."

The price of this peace may be a conscious or unconscious disengagement from affairs which threaten the framework within which he operates and particularly an avoidance on the one hand of moral judgments—using that phrase in its broadest sense—and on the other hand of matters which relate to long established social rituals and customs. Indeed it would be possible for a psychodynamically oriented cynic to see the rigid discipline in relation to public controversy of the medical profession not as a fine institutional structure representing a solid analysis of the best of contemporary mores, but as a manifestation of a Jungian collective unconscious, protecting the ego of a tribe within a tribe.

We come then to our present day and age. The route we have travelled suggests that we will as males, on a basis of anthropology or of psyche, carry with us some fear, some anxiety about possible genital mutilation. Our females will share this for us, but will not perhaps have the same *primary* fear of female sterilization where external mutilation is absent. This is not to say of course that they cannot be the secondary victims of psychosocial guilt but to this I will return in connection with the aftermath of sterilization as it may affect both sexes. This basic anxiety has tended negatively to curb discussion of the problem and positively to promote sterilization in the female as an acceptable social solution whenever sterilization seems indicated. How true this is may be illustrated by my experience in Aberdeen just over a decade ago. As many of you will know this city was the site of a socio-economic population control policy which some would call enlightened, others neo-Fabian and yet others frank heresy. In short, through the efforts of a male professor of obstetrics and gynaecology, abortion was available virtually on demand long before the abortion reform law saw the light of day. In addition, female sterilization was widely used for permanent family limitation. Although I had had by this time some experience of

[4] G. Harden, "Population, Evolution and Birth Control" (1969), San Francisco.

male sterilization and though I raised it as an alternative to female sterilization with my colleagues in obstetrics, I was never once in four and a half years asked to sterilize a man. Thus runs our male culture and it would be idle to deny the force of its stream.

I do not need to do more than sketch very briefly the atmosphere which, for the Western World, has made sterilization a subject of interest to individuals. It is compounded of three things. First, the strong socio-economic drive towards a limited family in today's complex society.[5] Secondly, limitations on the efficacy of other techniques such as the pill. And thirdly, the emancipation of the female sex which makes for a greater sharing of all burdens, among them that of decision to be the agent of the adopted policy.

To enter into a discussion of all these would be to range over the whole field of conception control and this is far beyond my purpose. It is clear, however, that the use of male sterilization as a means of family limitation usually stems from a pseudo-rational and what I might call *terminal* decision on the part of the man or both man and woman. This is in contrast to the use of some preventative technique against conception in which the aim is to stave off from day to day the occurrence of something which yet must remain a threat. The difference is, I believe, important for to come to such a rational view implies rational thought. It would be fair to say that the training and the time for this is more freely available to those who are already in the more successful strata of Western Society—that is who have acquired money and status. They can afford the luxury of considering moves other than those the distinguished sociologist Lee Rainwater calls the "strategies of survival".[6] Therefore, it is not surprising to find both the demand as individuals and the campaigning for facilities originating predominantly in such groups. As we have read in recent articles in the lay press—which lag only about a decade in this instance behind the medical journals and which, mark you well, have been stimulated by the sudden realization by a group of doctors that male sterilization can be a money spinner—as we have read, the characteristic individual in our community positively interested as an individual in sterilization is in his early thirties, has two or three children

[5] See, for example a dispassionate account in *Lancet* (1967) i 42 and also T. Fox, *Lancet* (1966) ii 1238.

[6] Rainwater "The City Poor" (1967), *"New Society"* **10**, 741.

and is riding the crest of a breaking economic wave. His social needs for certainty of a future stability of family numbers or at worst decline, outweigh his anthropological fears. It may be that he is also driven by a moral imperative to share with his wife in family limitation although in my relatively limited experience this is not statistically obvious. Perhaps, however, there is a real additional need to deal with a situation where the wife is intolerant of or inadequate in female methods of contraception. Such candidates often arrive through the more orthodox channels of medical men who, when they encounter difficulties in the woman may now, particularly if she is not in perfect health, occasionally seek to have the husband sterilized. I say occasionally because it is still more the rule to ask the woman to go under the shadow of failure or to submit (the word is carefully chosen) to sterilization.

In this context then male sterilization take its place alongside the use of the pill as a phenomenon of social significance in family regulation. Its difference is its terminal nature—for few men are interested in its potential reversibility which in any event is but a small chance—and its relatively stratified application. You might enquire why the pill is not also so stratified: to a certain extent it is, but there is something more fundamentally acceptable about a potion or pill than a surgical procedure and indeed medicines are an accepted part of magic in nearly all cultures in a way that operations have never been. In this regard, the surgeon is more a product of an advanced culture than a physician, although few of my gold-headed-cane carrying colleagues would admit their affinities to the witch doctor nor are voodoo drums heard beating above the ring of cash registers along the upper reaches of Collins Street.

We must now ask ourselves how does male sterilization fit in to the legal framework by which we regulate our society and what price does the individual who is sterilized pay for his surgically achieved sexual emancipation. Now I tread here on difficult ground for although I can claim in an amateurish way some contact with and at least a minimal understanding of social factors in human decision making, I know nothing of the law and its place in society. This is a terrible admission for me to make but I do not think it is untypical and represents as I have previously mentioned the cobbler-at-his-last attitude of the medical profession in which I have grown up. Particularly I find myself

in difficulties in understanding how far the law should be regarded as *custodes mores* both for the individual and the community for it is with this area that we are concerned in male sterilization.

Since World War II when male sterilization first began to attract attention it has occasioned a number of essays, mostly theoretical, by men of the law. Most famous of these is Lord Denning's dissenting judgment in *Bravery v. Bravery*[7] where, in a divorce action based upon sterilization of the male, allegedly to spite the wife, he quite properly drew on the precedent of the law's attitude to self-mutilation to gain personal ends. It would probably have been agreed in the past by most people that deliberately maiming in order to become a beggar or, in a society at arms, to escape what was regarded as a duty of military service, was inexcusable under law. This would also be Lord Denning's view as a moral custodian in relation to the operation of sterilization. However, the chain of reasoning between the personal decision for a sterilization procedure and its social effects is much more tenuous and circumstantial. Indeed the social effects must be judged against the social climate of the day: Lord Denning seemed to have in mind that this procedure struck socially at the roots of the family, that all men were inherently bad and promiscuous and that in consequence wholesale freedom to disport oneself as a sexually predatory male would spell the doom of society. In fact he was voicing the same fears as expressed in Pope Paul's *Humane Vitae,*

> Upright men can even better convince themselves of the solid grounds on which the teaching of the church in this field is based, if they care to reflect upon the consequences of methods of artificial birth control. Let them consider . . . how wide and easy a road would thus be opened up toward conjugal infidelity and the general lowering of morality. Not much experience is needed to know human weakness . . .

So spoke Pope Paul, invoking the primrose way to the everlasting bonfire, and to some he and Lord Denning would appear to say "only by the fear of pregnancy can we keep the wretches in order".

Lord Denning's motives apart, and his judgment in *Bravery v. Bravery* notwithstanding, it would appear from other legal opinion taken theoretically[8] that there would not be any great

[7] *Bravery v. Bravery* (1954) 1 W.L.R. 1169; (1954) 3 All E.R. 59.
[8] See *British Medical Journal* (1970) i, 704.

likelihood of success in an action in relation to sterilization, whether brought by the Crown—as actions could be brought in Britain certainly under the Offences Against the Person Act—or by individuals as in *Bravery v. Bravery*. Clearly, we must as doctors move within the social framework of the day, but there is not at the moment any evidence whatever to support the contention that male—or for that matter female—sterilization carried out within an existing family situation does increase promiscuity. In that fear is removed, and as a consequence sexual pleasure heightened in about one-third of those couples that have been studied, the reverse is more likely to be true. Perhaps Pope Paul was more concerned about the pill, for it, applicable in the premarital or early marital situation, certainly can and probably has set the stage for a change in basic sexual behaviour although not necessary for the total dissolution of the family.

It is of some interest to reflect how widespread and often quoted is Lord Denning's judgment. I am not familiar with how the legal information network is managed, nor am I able to assess how it is that a legal authority acquires the technique of carrying all before him, but it does strike me as a little surprising that what was obviously a minority view which did not prevail should have become a keystone around which nearly all subsequent public debate has been built. The more so in that his statement is couched in such Calvinistic terms and that it reflects clearly an attitude of mind of one who must have grown up under a type of moral tutorship of the cold shower and codswollop type. To be fair to Lord Denning he prefaced his remarks by specific reference. He did say "take a case". It is largely others who have over generalized his remarks. Perhaps this is so because they have felt that to do so would well suit their ends. Are we dealing once more with a predominantly male medical and legal profession who do not want to encourage a situation where it is no longer mayhem for them to be involved physically and emotionally in a decision about their family unit's future? I suspect we are, but only further study will reveal this, study which we are hoping to undertake in this State in the near future.

How then should we read the matter legally at this moment? There has not been a court action other than *Bravery v. Bravery* and it seems unlikely there will be, provided those practising male sterilization stay within the area of informed consent by both members of a marriage and on the grounds of genetics—occa-

sionally, illness—infrequently, and socioeconomic circumstances of a fairly tangible kind—commonly. Trouble may arise if medical practitioners were to move away from these constraints and be willing to undertake sterilization outside the family organization much as they have moved away from any similar constraints in the prescription of the pill or intra-uterine contraceptive device. On the face of it this seems less likely, although still possible, not because the medical practitioner is an appropriate moral custodian—anything but in my view—but because of the terminal nature of sterilization and the threat it does impose.

When I say trouble may arise I am trying not to make a moral assessment but only to opine that it is much more likely that difficult medico-legal situations will occur if single men, or men in their early marital life are sterilized without the clear grounds that genetic problems may provide. There may well be a case for such a procedure in a limited number of people—I can think of some good candidates although I should prefer more radical operations—but I am with Lord Denning in not yet seeing it as part of our current social framework. But we have seen such remarkable changes in sexual behaviour in the last twenty-five years that we should not discount the possibility that other ways of thinking will emerge in our lifetime. With the experience of the pill and of abortion behind us perhaps we should be trying to sketch the scenario of the future for male sterilization and so avoid being caught unawares.

To undertake forward planning or perhaps theorizing of this kind one must have some idea of what effects male sterilization can produce. Here again we are noticeably lacking in information and I feel that in this country with its imitative tendencies we may be particularly at risk if we rush into a large programme of vasectomy. Here, the private activities of some practitioners are not above reproach in that, as far as I can judge, they are making no attempt to evaluate what they are doing.[9]

First then and briefly, the medical effects appear minimal although there exists a possibility that formation of antibodies to the dammed back sperm can occur which may have two effects: permanent sterility even if the normal pathway can be restored, an exercise of some difficulty in itself; and just possibly the production or potentiation of diseases, which are of that general type known as auto-immune. We have no hard evidence on

[9] See The *Age*, 24th October 1970 and The *Sunday Review*, 25th October 1970.

either, but a long term follow-up will be needed—and a much more discriminating one than has so far been done—before the matter has been completely sorted out. Until this information is available it is essential that we are not promiscuous in our application of what still could be a dangerous technique.

Second, and of more immediate interest because we do know a little about it, we can say that there are certain psychosocial effects of male sterilization, at least in American societies.[10] These effects are far-reaching and I would judge of some medico-legal significance so they are of considerable relevance to our discussion tonight. Let us consider them in turn, recognizing as we do so that we cannot divorce ourselves from our own particular cultural set and methods of upbringing.

As might be expected from our previous discussion of the emergence of male sterilization, it would be foolish to deny that the operation does pose a threat. We do not need to be rigid Freudians to recognize this. Thus, it is not surprising to recognize after sterilization certain losses of masculinity when these are sought for by appropriate techniques: such losses are not in terms of direct sexual performance, but more in the general set of mind and behaviour of the vasectomized man. They are nearly always very mild and in some instances could be regarded as socially desirable—for example an increased tendency to take part in day to day domestic chores. Of themselves they are not particularly important but they may give rise to a situation in which other problems can express themselves.

The common reaction to having taken any irreversible step which may have had some undesirable side effects, or which alters self-esteem is to justify it by some form of rationalization. This technique, to which some workers have assigned the high-flown phrase dissonance-reduction is apparent amongst the vasectomized and may lead to aggressive attitudes and display. Thus, the ego-threatened vasectomized man may in certain circumstances become progressively more "angry" as may also those who oppose the operation not on rational but on emotional grounds. Such aggressive behaviour may have its effects on interpersonal relations in a marriage and it is not difficult to foresee a sound case for divorce being built up.[11]

The changes that I have described have some of the respecta-

[10] S. J. Ziegler, D. A. Rogers and S. A. Kriegsman, Psychosomatic Medicine (1966), 28, 50.

[11] H. Wolfer, *British Medical Journal* (1970), ii, 197.

bility of having been obtained by techniques that we might regard as semi-scientific, whatever that may mean. Less easy to evaluate in causative terms yet quite compelling as events, are individual case histories where it seems that vasectomy has been used as a bargaining piece in some complex transactional situation between husband and wife or where some unusual pattern of psycho-sexual development in early life leads to a deterioration with failure of sexual relations. For example a husband who repeatedly emphasizes the sacrifice he had made may either make his wife's life intolerable or use this as a good excuse for treating her with much less consideration than before. Or if either husband or wife has been brought up in the belief that intercourse should only be related to procreation then the existentialist guilt of sterilization may generate impotence in the male or unbreakable frigidity in the female. It can be said that all these instances represent problems that antedate sterilization but this does not make them any the less real.

Some psychodynamically oriented doctors—all of them males—have gone much further, implying, as I suppose they would imply of every life action from saying "good morning" to tying one's tie, that sterilization is never sought for its overt reasons—that is, a contraceptive technique. Predominant among these is M. H. Erikson,[12] who in many respects is now regarded as the doyen of American psychodynamists. In their view, it may be used as a weapon by either sex or it may be an indication of underlying problems in the minds of one, other or both parties in a marriage.

As I have mentioned before many psychoanalysts are so rigid in their condemnation as to make one doubt their own motivation. Is it that the admission of the possibility of this procedure is too threatening to them?

This may well be so if we consider how central is the dogma of the Oedipus-Jocasta relationship to psychoanalytic thought. As I have related, this dogma seems to be part of the basic social glue which has permitted adherence within all Western cultures; Oedipus was long antedated by more primal myth. In that male sterilization challenges the hardwon patriarchy of the West and the dominance of male thought in the Western social and scientific ethic, it may be inadmissible to those who depend upon dogma for their stability. There are hints here at the arguments

12 M. H. Erikson, "Therapeutic Abortion" (1954), New York.

which have revolved around the concept of open and closed societies[13] but I do not think that we can follow them any further tonight. In the narrower context of sterilization it would be of interest to turn the matter upside down or inside out: to have the views of women on male sterilization, women on female sterilization and men and women on the pill. Unfortunately again we are still largely ignorant although there is developing some understanding of how women can use the pill as a weapon much as they can also use male sterilization. For example a woman who is intolerant of the pill with physical or mental symptoms may be expressing guilt, may be petitioning her husband, may be manoeuvring him into a position of inferiority.

Some women on the pill develop vague depressive symptoms which are difficult to relate to any known metabolic effects and which seem directed at making their husbands uncomfortable. They may claim irritability and inability to cope with the children. The future may uncover some sound physical reason for this intolerance, but in the meantime it is tempting to assume that here is an attempt to involve the husband, to act as a praying mantis, to suck him into the emotional whirlpool. Dynamic studies of husband and wife diads will be needed to elucidate this point. Even if it turns out to be so, we must not necessarily assume it is wrong. Perhaps the male has stood too aloof from the trials and tribulations of procreation. Forsaking as he should the hunter and predator image he will find his fate in early vasectomy at the whim of the dominant female.

One of the dangers of a male oriented society is that these symptoms are *ignored.* If they are not explained by the pill as a pill they do not exist. This is a highly dangerous attitude typical of our narrow minded male medical machinations.[14]

Yet another method of dissonance-reduction has been postulated. It has been characteristic even of the most professional discussions on male sterilization (or an abortion for that matter) that they have had an angry rather than a dispassionate tone. It may well be that the proponents of male sterilization are overcompensating for the threat it may pose to them; they adopt an aggressive behavioural show. We know how an animal no longer potent or physically able will still maintain dominance by ag-

[13] K. Popper, "The Open Society and its Enemies" (1936), Vienna.
[14] See The *Age*, 16th February, 1971.

gressive behaviour and something of the same may be a feature of the vasectomized.

Now I have been very critical of Lord Denning. However, I am bound now to admit that in *Bravery v. Bravery* he may well have been right. Everyone quotes this appeal but I don't suppose many people read it. As I know I was to appear before all you learned gentlemen I thought I had better do my homework. What emerges, as the other two judges maintained, is that the act of sterilization was made but a small part of the divorce action. What dominated in the plaintiff's mind was the increasing irritability and aggressiveness of the husband after sterilization—his temper got worse and worse—and his development of bizarre and effeminate habits. In the light of our more modern information on the potentially threatening effects of sterilization on man's self image we would relate these to his sterilization procedure and then be drawn to the conclusion that in his case it *had* struck at the roots of his marriage. In Lord Denning's words "the operation produced the discord (in the family) and the discord produced the injury to (the wife's) health". Admittedly it is possible that the roots were planted shallowly in poor soil and that the sterilization procedure merely shook the visible branches of an already cankered tree. However, the long time that elapsed between the procedure and the divorce makes one doubt this slightly.

Thus Lord Denning did intuitively reach the conclusion that the bilateral vasectomy was the cause of the marital breakdown although he cloaked this conclusion in a blanket of moral condemnation which seems to us now highly illiberal. Reinterpreting *Bravery v. Bravery* then has value and it may well be that, should further action of this kind be brought, the issue will not be on the legality of the procedure—over which Lord Denning dissented—but as to its relevance in any mental disturbances or sexual inadequacies which may be used as more obvious grounds for terminating a marriage relationship. At this point in time I for one would have to agree that it would be legitimate to assign mental changes of these kind to sterilization and if asked to give evidence would do so. With the increase in the use of sterilization it seems to me inevitable that cases of this kind are going to crop up. The need to prevent them is not to protect ourselves as doctors, for this will not be the point of doubt, but to endeavour to avoid the weight of misery, publicity and exposure that could

follow for individuals. How this can be done is not clear but it does behove us to look with the utmost care at candidates for the procedure. Even those unskilled in the subtleties of transactional psychology will have little difficulty in detecting some whose motives are complex and in whom the operation may precipitate disaster.

How can we sum up in a medico-legal context? First, that we need more facts. They will never be grey, uncoloured facts but at least they can give us some rough templates against which we can make some moral or value judgment. Secondly, we need—and this is particularly true of doctors—to take the plunge into trying to understand the complex warp and weft of the social fabric in which we play our little surgical games. Thirdly, that change in long standing evolutionary social patterns is achieved only at a price for both individuals and societies. In the area of male sterilization what first appears to be a simple answer to the need for effective conception control, rapidly unfolds as a murky area of ill-understood cultural influences, change in which may profoundly influence the subject.

Some doom prophets might say that as with urbanization, and its psychosocial ills, as with mastery over other aspects of our biological future, control of fertility by whatever means is premature in that we are yet insufficiently developed away from the primeval swamp of our possible simian ancestors to handle the situation. It is particularly premature when it strikes at man's external physical form, at his internal mental esteem, and threatens his self image. They may well be right but it is the *doom* of the 20th century man to lay hands and ideas on himself as part of his evolutionary process. Where it will lead who knows but as long as we try to retain some conscious control and analysis of what we do we are probably justified in going on. But any doctor who undertakes male sterilization or any lawyer who tackles the legal problems which hover round it, is a social engineer, building from inadequate blueprints new structures for which there are no precedents and certainly no stress analyses. But perhaps we should not be faint-hearted. Good may emerge even though in Machiavelli's words[15]

> it ought to be remembered that there is nothing more difficult to take in hand, more perilous to conduct, or more uncertain

[15] M. Machiavelli, Il Principe (1513).

in its success than to take the lead in the introduction of a new order of things.

Discussion

MR. RICHARD SEARBY: I would like to say at the outset how grateful we are to Professor Dudley for the depth of learning which he has exhibited in relation to his topic, and for dealing so comprehensively with the wider implications of male sterilization. Misleadingly, perhaps, he may have caused us to feel at ease with what must essentially be an uncomfortable subject.

There is, of course, no legislation in Victoria directed to the question of sterilization. Overseas, although the matter has not been dealt with generally, at least in the aspects of its legality, apart from specific circumstances, it appeared to me that it might be useful to outline certain statutes which have been passed in other jurisdictions to indicate not only their limited nature, but the kind of reasons which are assigned as justification for their existence. In the end, it will be the doctors who perform the operations, and it will be the lawyers, in different cases, who are obliged to justify their being done.

The major legislation in relation to sterilization is on sterilization of the insane, and it is not, in fact, a recent phenomenon. There are now over thirty of the United States and many other countries where there is legalized sterilization, and compulsory sterilization, and the other countries include Japan, Sweden and certain parts of Switzerland and India. There, the compulsory sterilization is to be performed only upon the recommendation of a Board which determines that it would be in the best interests of society and of the patient that the operation should be performed. In Canada, and in Sweden as well, I think, there is provision for compulsory sterilization of persons suffering from severe defects or disorders established to be transmissible, some forms of chorea or epilepsy, but, generally speaking, it is confined to those who are certified insane, or those who are regarded as feeble-minded. The first legislation of which I am aware in relation to this topic was, in fact, passed in the State of Indiana in 1907, a brave attempt which was subsequently declared unconstitutional by the Supreme Court. It is useful to look briefly at the fate of the legislation in the United States for the purposes of seeing the context in which the law is there discussed. Various States have passed enactments directed towards the performance of vasectomies, and a large number of them, or a substantial pro-

portion of them have been held invalid by reason of violation of the due process provisions of the Fifth and Fourteenth Amendment in the Constitution. Those provisions have a common element which provide that "No person shall be deprived of life, liberty or property without due process of law". In the Fifth Amendment the process is general, and in the Fourteenth Amendment it is directed more particularly to the States. Put more positively, a State may limit personal freedom in any reasonable manner for the protection or promotion of public health. The difficulty has chiefly arisen, however, in the concluding part of the Fourteenth Amendment which provides that "No State shall deny to any person within its jurisdiction the equal protection of the laws" and this has been the rock on which most of the laws have foundered. The classification has been the difficulty, and two examples will illustrate the type of problem which arises. It was held, for instance, that the clause was not violated where the statute applied to imbeciles confined in specified State institutions, but that it was violated where it applied to imbeciles whose children were likely to become public charges, but the law did not apply to individuals who could, or whose families could support the children who might be born. The statutes must not, of course, be enforced arbitrarily or unequally. The legality of that type of legislation was ultimately decided in a case called *Buck v. Bell*,[16] in which Holmes, J. observed in the course of the majority judgment that he had reached the conclusion that three generations of imbeciles were quite enough.

Now, the result is that in the context of compulsory sterilization, which is a subject somewhat removed from the major part of Professor Dudley's paper, male sterilization has been discussed in broad terms and with some compelling reasons. The explanation of the Constitution in the United States has led to a generally satisfactory position when one considers the relevant considerations. That is to say, it is put upon the basis of the benefit of the public at large, and of the individual, and it is what might be called generally a eugenic argument rather than a question of therapy or convenience. That analysis which exists contrasts very favourably with the result to be seen in England and other countries where the absence of a Constitution has not effectively compelled the Courts to turn their minds to a consideration of the fundamentals by reference to which such mat-

[16] (1926), 274 U.S. 200, 207.

ters should be decided. In England, as late as 1950, which was some 24 years after *Buck v. Bell* was decided, the Home Secretary, Mr. Chuter Ede, said, at a time when the proposal was made to introduce male sterilization in certain cases, that "The Government is not prepared to consider the matter because it is highly controversial and involves very serious infringements of the liberty of the subject." That might be conceded, but, in the circumstances, it can only be regarded as a refusal to grapple with the difficulties with which he was presented. Strangely enough, there was, in England, in 1934, a Departmental Committee appointed to investigate the question of sterilization as a topic for legislation generally. It is known as the Brock Report, and it resulted, even more peculiarly, in an unanimous recommendation which was to the effect that voluntary sterilization should be declared lawful, subject to certain safeguards, not only for mental defectives and persons who have suffered from mental disorders, but for persons who suffer from or can or are able to carry grave physical disabilities which have been established to be transmissible, and also persons likely to be able to transmit mental disorders and effects. In their Report, the Committee referred to the social insufficiency and the individual misery which was involved in having what was then about a quarter of a million persons in the population of the United Kingdom who were certified mentally insane, and a very large number who were not certifiably defective who were, in fact, deficient, and they referred first to the social insufficiency and individual misery which was entailed in that situation, and then they thought that, in those circumstances, it was only voluntary sterilization which should be approved. Two classes were selected for consideration. First, those who were insane or mentally deficient, and second, those who wished voluntarily to terminate their possibility of having children. They appeared to regard the law as excluding the latter class from relief, but why they thought that the former class would be suitable for voluntary sterilization is somewhat hard to detect. It is less hard, perhaps, notwithstanding the difficulty that a lawyer might find in having a mental defective give any valid consent. Their observations of what they considered to be voluntary consent, "The essence of a voluntary system", they said, "is that those who object should be free to do so. What this is is that there will be no compulsion, so long as there is no unfair pressure and no patient is forced or bribed to consent. It seems to us mere casuistry to discuss how far the patient appre-

ciates all the implications of consent." There is no need to point out that the last part would have been transcribed, "No patient is forced or bribed to undergo". It seems to us mere casuistry to discuss how far the patient appreciates all the implications of undergoing the operation. Professor Dudley referred to the fact that only in societies where the charter for survival was no longer the dominant consideration that male sterilization had been the subject of any serious examination. It is my understanding, although I am open to correction about this, that in India there is a very active campaign for male sterilization, and it is part there of a conscious Government policy in the charter for survival. Their views in India coincide with those in England as to the voluntary nature of the operation, because vasectomy, according to reliable reports is encouraged or rewarded by presenting the patient, after his operation, with a transistor radio.

I think I should say something briefly now about the status of such an operation where there is no question of compulsion and where it is a matter neither of therapy in the strict sense, nor of eugenics, which is the basis that has been found in the United States in decreeing enforced sterilization. In *Bravery v. Bravery*, Denning L. J. was, as Professor Dudley observed, the dissenting judge. That case was preceded by a decision in 1934, *R. v. Donovan*,[17] on which amongst others, Denning L. J. relied. That was a decision of the Court of Criminal Appeal, a case in which a sex pervert had caned a girl for the purpose of his own gratification—at least, that is what the report amounts to. The girl's consent, it was held, was not necessarily a defence, even though the injury did not amount to plain mayhem. I would have thought that Professor Dudley's account of a mayhem was entirely correct. It is the crime, as I understand it, of inflicting a bodily injury upon a person so as to make him less able to defend himself or annoy his adversary. There was, therefore, a question in the case of the compliant girl in *R. v. Donovan* that the man who inflicted the blows may have been guilty of a mayhem, and the Court was obliged, in order to arrive at the conclusion at which they reached, to explain how it was that the consent was irrelevant. They did so by saying that the infliction of an injury, or the taking of action which was calculated to lead to injury was *mayhem in se*, which was the first time for many decades, at least, that that notion of crime had reappeared. The difficulty of *may-*

[17] (1934), 2 K.B. 498.

hem in se may be illustrated by the putting of examples. Supposing a person undergoes plastic surgery which is, as I believe, often painful, but is entirely for reasons of convenience and beautification, the person who undergoes that, and, more importantly, the doctor who engaged in it would, on that theory, be guilty of an offence. The trouble, if I may say so, with respect, with the Court of Criminal Appeal's judgment is that it is impossible to imagine the grounds on which it may be substantiated. The theory of an offence being *mayhem in se* is such that it is, in its very nature, an offence no matter what the circumstances, and therefore consent was irrelevant, and if that was so, one would have thought that caning at school was also *mayhem in se*, the theory being that the circumstances do not justify it. Their Lordships did not deal with the alternative case, which appears to have been put to them, of flagellation of the respondent for the gratification of the masochist who was receiving it. Now, in *Bravery v. Bravery*, the purpose of the operation for sterilization of a man was said by Denning, L. J. to be an unlawful assault in the absence of some just cause, an act which was criminal *per se*, to which consent provided no answer or defence. The Master of the Rolls and Hodson, L. J. disassociated themselves from that view, and I, myself, was mildly surprised to find that Professor Dudley thought that the decision of Denning L.J. had such great currency in the legal world. I was aware from the title what he was referring to when he spoke of Cronus, but quite unaware of what he had in mind when he spoke of Denning. The theory that it provides no answer or defence appears to be entirely irrelevant for the purposes of divorce, the only question being, as Professor Dudley indicated, what the consequence of the act may be so far as the marital relationships are concerned. It would be my conception that the question how far male sterilization is to be pursued in this community is fundamentally a matter for the doctors, because it does not appear to me that, as the law exists in Victoria at least, there is any fundamental objection to sterilization by consent, even on the grounds of convenience.

Finally, I would like to say that I was very taken by Professor Dudley's suggestion that in ancient warfare there was no hitting below the belt under some basic notion of the Queensbury Rules or the Geneva Convention. The only reference, of which I am aware, to this topic is from a Greek poet in the seventh century, B.C., who, since he lived in Sparta, was well accustomed to war-

fare, and in the poem he wrote, was accustomed also to urge the populace to go to war. He spoke of the shame that existed in elderly people fighting and dying before young men, suggesting that the youth should die rather than the elders. In the course of that, he referred to the disgrace it involved in seeing an elderly man holding his bleeding genitals tenderly in his hands, and he referred to it as being a common injury. Everything else was of that nature in the passage referred to. I would have thought, myself, that if that were a convention, nobody would subsequently have been obliged to provide the armour.

PROFESSOR P. BRETT: May I say briefly why I think that this operation is not a mayhem. There is some authority, very shadowy, seventeenth century authority, for saying that one cannot consent to being maimed, though as Stephen J. pointed out in the 1800s, and he was, in my view at any rate, incontrovertibly the best criminal lawyer that the English Bench has ever seen, if this were true, cosmetic dentistry would be illegal. The only authority I know of for saying that assaults which do not amount to mayhems cannot be consented to is the case of *R. v. Donovan*, to which Mr. Searby referred. It was complicated by the fact that the assault there was a flagellation for sexual purposes, and the Court plainly disapproved of it. I must admit I have thought in the past that they disapproved of it because they could not understand the male whipping the female rather than the reverse. Whether they approved of it or not, the Court was at pains to find some reasons which were not reasons of sexual morality for holding that this form of activity was illegal, and they did so by saying that it was illegal to consent to any infliction of bodily harm on oneself. That was an entirely new proposition, and the reasoning that led to it is best illustrated by saying that in order to reach this conclusion, the Court had to grapple with the acceptance of boxing matches and wrestling matches, and they said blithely that they were different because the parties were not seeking in them to hurt each other, and one can only suppose that they had never seen a boxing match in their lives. I think unless one holds the view that any view said by any judge in any judgment is the law, and I do not believe that could possibly be so, there is no reason to say that these statements are the law. To me, the interesting problem of all this is still the one to which Professor Dudley referred, and that is, why is so much importance attached by the medical profession to these remarks in

the context of sterilization when if they are taken at their face value they prevent such things as cosmetic plastic surgery about which no one raises any question.

JUDGE NORRIS: Mr. Chairman, speaking as one who has the responsibility very frequently to administer the criminal law, and not merely to philosophize about it, may I say that I emphatically disagree with what Professor Brett has just said. Professor Brett is at liberty to form his own views at to what the law ought to be. Those of us who are concerned with its administration are concerned to administer the law as we understand it is. *Donovan's* case, which Mr. Searby has experienced in the criminal sphere, and which Professor Brett denigrated, has stood for very many years. It is cited without disapprobation in the standard texts on the law, and it is commonly referred to from day to day in the administration of the law by those who have to do it. And the principle upon which the legality or otherwise of the operation of vasectomy is to be determined is the principle on which the validity, the legality of any operation conducted by a legally qualified medical practitioner is to be determined. You are not at liberty to consent to the infliction of bodily harm upon yourself. It is true, of course, that in contests of sport, bodily harm may from time to time be inflicted but the deliberate infliction of bodily harm, as such, you cannot consent to. Professor Brett, in referring to boxing matches, omitted to refer to the law relating to prize fights and to those who were found guilty of manslaughter by taking part in them, even by taking part in the encouraging of them, without actually indulging in fisticuffs there. The medical profession here tonight should take into account the fact that the justification for the performance of the operation of vasectomy is to be found in the justification for the performance of any operation at all in medicine.

DR. J. T. HUESTON: I am not sure that all the legal people know what vasectomy is, but there are two different ways of performing vasectomy. You can either divide the *vas*, or you can resect a portion of the *vas* to be absolutely certain that there is no communication re-established. The *vas* is short for the term *vas deferens* which differentiates it from the *vas afferentia*, and the *vas deferens* is quoted frequently as one vast difference between the male and the female. It is a reversible procedure. It is not a permanent thing.

PROFESSOR DUDLEY: The incidence of the production of anti-

sperm antibodies after vasectomy is at least 50 per cent, and even in the hands of experts the successful establishment of continuity is probably less than 20 per cent, so I would take the view that the patient should be told to regard the procedure as irreversible, even though there is a possibility that in perhaps 5 per cent of cases it could be reversed.