

## Consilium 66

Translated by Alice Browne

Concerning pregnancy, superfetation, and moles.

When Joannes Nicolaus Sobrejus was killed in a brawl, his wife, Laureta Polymnia, an unusually tall woman of excellent character, was left pregnant. At the expected time, eight months after her husband's death, she gave birth to a son. Her belly did not go down, and the midwife stated that another fetus was there, but even with the greatest effort she was unable to expel it from the womb at that time. Almost exactly a month later, even a day or two more than a month, she was seized with labor pains again and gave birth to a healthy and well-formed child; the previous one had died at birth and gave no signs of life, so he was not even baptized, and besides, he was deformed and not fully developed. Joannes Nicolaus's family, who were eager for his inheritance, objected that the child had been conceived by superfetation, and by another man, not Joannes Nicolaus, so he should not inherit from the putative father, the said Joannes Nicolaus. As a result, Laureta's modest reputation was terribly besmirched. So there are two points to be discussed: first, whether this second fetus was the result of superfetation? Second, whether Laureta's chastity should be suspected as a result? At the request of the family of Joannes Nicolaus, I have answered as follows.

Summary.

1. Births of children resulting from superfetation can be days or even weeks later than the birth of the first child conceived.
2. Eleven-month births result from very unusual circumstances, which are not dealt with in law.
3. Ten-month births born in exactly ten months are very rare.

4. Eleven-month births are rejected by the text in the section *Unum siquidem, Authent. de Restit.*<sup>1</sup>
5. Eleven-month births are rejected by the astrologers.
6. In what circumstances Hippocrates admits eleven-month births.
7. Why ten-month births and Hippocrates's eleven-month births are born after the same number of days.
8. Children conceived at the same time are born at the same time – cf. No. 12.
9. Why eleven-month births do not live.
10. The length of time between births corresponds to the length of time between the first conception and the superfetation.
11. Aristotle's statement that children resulting from superfetation do not grow up.
12. [no text – covered in 8]
13. When fetuses should be said to be conceived at the same time.
14. Children conceived together are enclosed in the same membrane, unless they are of opposite sexes; children conceived at different times each have their own.
15. Children conceived together are not always born on the same day.
16. An eight-month fetus cannot survive.

If someone does not believe in cases of this kind, because of his wonder at them, I would refer him to Gaspard Bauhin, the doctor and expert surgeon: in the appendix to Rousset, *De partu caesareo*, entitled *De superfetatione* he gives several case histories, especially the third, which confirm the credibility of this case.

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<sup>1</sup> This refers to the chapter *De muliere quae peperit undecimo mense*, in the collection of Justinian's *Novellae constitutiones* which was known as the *Authenticum* or *Liber authenticorum*. My thanks to Amanda Lepp for this reference.

Bauhin's third case history is very like ours in almost every respect.

So, proceeding to our argument, I say the first point presents no obstacle to saying the second child resulted from superfetation, because it was born after the interval when children of superfetation are usually born. If it had been conceived at the same time as the first child, it would have stayed in the womb some days after the tenth month. If nine months, or two hundred and seventy days had passed, and then another thirty days or more were added, it would have been an eleven-months child, not of the kind that Hippocrates allows in the book *De octimestri partu*, last section, but of the kind that everyone rejects, as we shall see.

But births that are so late are extremely rare, and not recognized in law; even ten-month births, especially if they are born a day or two after the tenth month, are thought to be extremely rare. The text in *Authent. de Restit.* and the contents of the paragraph *Unum siquidem*, and the glosses on it, including those from the opinions of Aristotle and Hippocrates, clearly reject eleven-month births. Ludovico de Mercado, *De morbis mulierum*, book 4, number 10, says that children born even a day or two past the tenth month are extremely rare. Vittore Trincavelli, *Epistolae medicae*, number 5, agrees, although he allows the possibility of eleven-month births. For this reason Aulus Gellius, *Noctes atticae* book 3, chapter 16, says the ancient Romans did not recognize them, because they saw them as monstrous rarities. Mercado also cites this text; for the ancients only accepted things which happen often or usually as natural. Cf. Aristotle, *De generatione animalium*, book 4, chapter 4. But in reality it looks as though this fetus was born at the right time, and conceived after the death of the husband. The long delay in its mother's womb after the first birth is a more than sufficient proof of this, as we must say the delay came about because it had not yet reached the perfection it needed to be able to live, since it was very strong, as it showed after it was born: therefore it must

have been perfected in the womb, and completed the ninth month before it was born, otherwise it would have died.

But just as philosophers and doctors reject eleven-month births, so too do the astrologers, as Nicolas de Nancel confirms, in *Analogia microcosmi ad macrocosmon*, book 7, Problems, part 3, and rightly so, for, as he adds, such a birth is not natural in any way: indeed, not only is it not natural, but it is completely unnatural and monstrous: [Federico] Bonaventura *De octimestri partu*, book 3, chapter 43.

This should not be contradicted by the authority of Hippocrates, in the passage I am about to cite, at the end of *De octimestri partu*, when he states that some births are eleven-month births: for he affirms that what he calls eleven-month births do not stay longer in the womb than ten-month births, but both are born after seven forty-day periods, that is, after two hundred and eighty days. So Prospero Marziani, in verse 49 of his commentary on this passage, is right to say that we do not call the eleven-month fetuses born in half the year eleven-month because they have really completed a significant part of the eleventh month, in the way that seven-month fetuses have completed a significant part of the first and last month, i.e. more than half the month, but it is simply a verbal matter. The real calculation is the same in both cases, and eleven-months and ten-months children are born after the same number of days, as Bonaventura explains, *De octimestri partu*, book 7, chapter 130. For example, if a fetus is conceived at the beginning of the month, at the new moon, and is born after seven forty-day periods, it is described as a ten-month birth, but if it is conceived later in the month, after the new moon, and is born after seven forty-day periods, it is described as an eleven-month birth, because the days missing in the first month make up for the days in the last month, and so the eleven-month birth does not exceed two hundred and eighty days by more than a day or two; for Hippocrates states that two hundred and eighty-two days is the maximum length of

time from conception to birth. So, although we must allow the existence of eleven-month births born in not more than two hundred and eighty days, or at most two hundred and eighty-two, we cannot allow the existence of eleven-month births born after ten whole months and some days of the eleventh, amounting to at least three hundred days, for the reasons stated by doctors and philosophers. I do not see how we can admit the possibility of a birth after three hundred days, such as this child, which was born thirty or more days after the previous one; this second child must have been the result of superfetation, and have been born after the first one at its correct term, in the ninth or tenth month.

Besides, if this second fetus had been conceived at the same time as the first one, it would necessarily have been born at the same time, as happens with twins in the same womb, who are conceived as a result of the same sexual act. If it had stayed in the womb for the same length of time as the first, it would have reached its full development in the ninth or tenth month, or, I should say, definitely in the ninth, and it should have been born at the same time as the first. If it had reached the development demanded by nature, it would have been futile for it to remain in the womb for another thirty or more days, and this would have caused its death, as well as that of the mother. As a result, we see that eleven-month births, if they sometimes occur, cannot survive, because they are less perfectly developed than others. See Bonaventura, *De octimestri partu*, book 3, chapter 61, where he rightly compares them to eight-month births. If we wanted to affirm that this second fetus was an eleven-month birth, conceived at the same time as the first, and unable to be born at the same time because of its weakness, this is easily disproved by the fact that as well as surviving it was vigorous and strong, the opposite of what should have happened if it had stayed so long in the womb because of its weakness. Hippocrates confirms this, in the same book of *De octimestri partu*, number 1, in these words: “The fetus is most

perfectly developed in the first forty days: if more time passes, it dies;” he goes on to explain the reasons for this.

As to the second point, whether the superfetation is an argument that Laureta lived immodestly, and conceived by another man, either before or after her husband’s death, the issue seems clear. There is consensus that the interval between the births of a first fetus and one conceived by superfetation is the same as the interval between the times of their conception: Fernel, *Physiologia*, chapter 11, Mercado, *De steriliis & praegnantium accidentibus*, book 3, chapter 6, Jean Hucher, *De sterilitate*, book 3, section entitled *De superfoetatione*. Thirty and more days passed between the birth of the first fetus and the second, so it follows that the second fetus must have been conceived thirty or more days after the first, and must have been conceived after her husband’s death. As the deposition states, Laureta gave birth to the first child eight months after her husband’s death, and it was inferred that she was carrying a one-month fetus when her husband died, and gave birth at the right time, in the ninth month, as usually happens. If we grant this, then the second fetus was conceived by superfetation after her husband’s death, since it was born a full nine months after her husband died. If the time is calculated correctly, it was born in the tenth month, not the ninth, after the aforesaid death of her husband, for Laureta gave birth to the first child eight full solar months after her husband’s death, so it is possible that the first month was not more than fifteen or twenty days; on this assumption the first birth was a fully developed nine-months child, born after two hundred and fifty-five or two hundred and sixty days. But the second fetus was born exactly nine months after her husband’s death, so if it had been conceived after the new moon it would have been born in the tenth month: if we count the first month as fifteen days, and add twice fifteen days to two hundred and forty days, the result is two hundred and fifty-five days, which makes up nine months, with fifteen more days left over, which are part of the tenth month: so this is definitely a ten-months birth, and could only have been

conceived after her husband's death; for if it was conceived before, it would have been associated with the symptoms without which it would have been unable to grow, which Hippocrates says must always be observed, in the book *De superfoetatione*, number 1. Cf. Aristotle, *De generatione animalium*, book 7, chapter 4 [i.e. book 4, chapter 7 dealing with mola uteri]. In the same work, [i.e. *Historia animalium*], book 7, chapter 4 [reference in text book 4, chapter 7], Aristotle writes that births resulting from superfetation are impossible, and both conceptions are bound to miscarry.<sup>2</sup>

Moreover, if this second fetus had been conceived before the first, it would have to have stayed in the womb several days beyond ten full months, and been an eleven-months child, that is, it would have been born after ten months (even if we assume the first month consisted of fifteen days) plus fifteen days of the eleventh month, making three hundred days. Besides the fact that this is so rare that no more need be said about it, the child could not have been born with such complete and strong vital forces, since, as we have said, these children are not able to live.

All the same, whether this second fetus was the result of superfetation or not (granting both possibilities for now), I would affirm that there is no reason to suspect Laureta's chastity, as she could have conceived it at the same time as the first one, and she could have conceived by superfetation while her husband was alive.

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<sup>2</sup> The Aristotle references here are scrambled; Zacchia has conflated *De generatione animalium* and *Historia animalium*, and reversed the book and chapter numbers; I have corrected them in the translation.

It is clear that it could have been conceived at the same time as the first; since it was born nine months after her husband's death, and Laureta could have conceived fifteen days or less before her husband's death, and so it follows that it would have been born on the two hundred and eighty-fifth day at the latest and probably on the two hundred and eightieth; so it follows that it would have been born fit for life and entirely viable, as Hippocrates says *loc. cit.* about children of this kind. But if we say it was conceived by superfetation, this still could have happened before her husband's death, because if Laureta was one month pregnant when her husband was killed, she could have conceived by superfetation in the first days of this pregnancy, so that even if it was conceived fifteen days after the first one, it would not exceed the term of a ten-months child. Although, as her husband did not suffer from any illness which would have prevented him from having intercourse, but was killed in a brawl, as we know, he could have had relations with Laureta the night before he was killed, and she could have conceived by superfetation as a result of this act, and so this fetus would be a perfect nine-months child. This seems likelier, since, as it was born a full month after the first one, it is more probable that it was conceived a full month later. It follows there can be no suspicion about Laureta's chastity, since she conceived by superfetation from intercourse with her husband.

There is a possible objection to this statement that the second fetus could have been conceived together with the first: according to most people's opinion, confirmed by the authority of Hippocrates, fetuses conceived at the same time are born together, as we said above, so this second fetus could not have been born so long after the first if it had been conceived at the same time. However, this difficulty can be resolved by pointing out that there are two senses in which we can say that fetuses were conceived together: they may be conceived in a single act of intercourse, or in a separate act of intercourse on the same night. So we should state that the second fetus was not conceived together with the first, in the sense

of resulting from the same act of intercourse and the same ejaculation of semen, but it was conceived at the same time, from a repeated act of intercourse on the same day, from fresh semen, as sometimes happens. A clear indication of this is that the first and the second fetus each had their own placenta, which never happens with conceptions from the same act of intercourse and emission of semen. These conceptions always share the same placenta, unless they are of different sexes, as is clear from the authority of all doctors, especially those I have cited above. Besides, even if fetuses are conceived together, they are not always born on the same day: see Laurent Joubert book 3 of *Erreurs populaires*, chapter 1, where he describes several cases in which fetuses were born five, six, or even eight days apart, even though they were conceived together.

It is easy to object to this statement that this could happen for a few days, or eight at most, but it is neither plausible nor possible for the second fetus to delay its exit from the womb for thirty days or more. This could only result from the fetus being extremely weak, and such a long delay in the mother's womb would necessarily be fatal to both the fetus and the mother.

But all the error in this case comes from supposing that the first fetus was conceived first, and the second later, by superfetation. When we look carefully at the sequence of events, we can easily see that the opposite is more likely to be true, i.e. that the first birth was not conceived first, and the second was not the result of superfetation, but the first resulted from superfetation, and the later birth was conceived first, even though the opposite is what usually happens, and the child resulting from superfetation is born later than the one conceived first. See the cited work of Hippocrates, *De superfetatione*, where he says "Later she gives birth to a child which is unable to live", and the same thing appears from the stories related by Marcello Donati, *De medica historia mirabili*, book 4, chapter 10, and by Johann Schenck, in book 4,

*Observationes*, under the title *De superfoetatione*. However, it is clear that this is not always the case: see the story told by André Du Laurens, *Anatomy*, book 2, question 32, and other stories told by Caspar Bauhin, in the appendix to Rousset, *De partu Caesareo*.

But I would have good reason to affirm that the first child to be born was the result of superfetation, in the event that it was not well grown or well formed or fully developed; this is what happened in this case, so it is reasonable to conclude that it did not stay long enough in the womb, but was the result of superfetation, perhaps conceived the day before the husband's death, and so it would only be an eight-months child, which as everyone knows, cannot survive, whereas the second fetus was strong enough to stay in the womb until its term was completed, and was born as a ten-months child, as we can see from counting the days. In the same way, in the story from Bauhin cited above, the first fetus was born dead, and lacking a skull, a very clear sign that because it was the result of superfetation it could not be formed perfectly; but the second fetus, born ten weeks later, was perfectly formed, and survived. Because of its strength, it was able to stay in the womb, despite the previous miscarriage, until the right time for it to be born, so that it would be well and completely developed, which indeed was the happy outcome.

Therefore it is against all justice and truth to doubt Laureta's chastity: since, as we have said, this second fetus was conceived by her husband before the first one, and was born at the due time, as we can see from correctly calculating the days of gestation, even if we grant that it was conceived fifteen days before her husband's death.