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# The Risks of Childbirth: Physicians, Finance, and Women's Deaths in the Law Courts of Seventeenth-Century Rome

SILVIA DE RENZI

**SUMMARY:** In seventeenth-century Rome a popular financial scheme made it crucial to establish if pregnancy or childbirth had caused a woman's death. Courts sought medical advice, and this prompted physicians to reconsider the issues. Their disagreements provide historians with evidence from which to reassess received views of early modern doctors' involvement with birthing bodies. Among others, Paolo Zacchia intervened, revealing discord between physicians and jurists on how to establish the causes of death. One of his testimonies in a case shows more broadly how legal, medical, and lay views on pregnancy and childbirth intersected in courts of law. In Roman tribunals the very distinction between healthy and preternatural births was contentious, and the parties had an interest in having births either proved healthy in medical terms or construed as pathological. The controversies, the author argues, challenge historical expectations about early modern perceptions, including the boundaries between female and male, private and public, healthy and pathological.

**KEYWORDS:** causes, childbirth, expert witnesses, legal medicine, Paolo Zacchia, physicians, pregnancy

Since the Middle Ages, physicians routinely provided expert testimony in courts of law following the Roman canon procedure. In early modern Continental Europe, they would testify on matters ranging from establishing the causes of death in criminal cases to assessing paternity claims in

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civil courts.<sup>1</sup> The social and cultural significance of lineage made issues of generation central to many legal controversies, and the demand for physicians' expertise in these areas grew. Of the eighty-five medicolegal *consilia* in the 1661 edition of Zacchia's *Quaestiones Medico-Legales*—the main synthesis of legal medicine for centuries to come—just under a third are broadly related to sexuality and generation, including impotence, the right to inherit of a miscarried fetus, and the definition of conjugal rights.<sup>2</sup> In her history of legal medicine, Esther Fischer-Homberger recognized the importance of these matters, but their implications for contemporary physicians have yet to be fully appreciated. Now that the extent and nature of physicians' knowledge of the female body are being reassessed, it is useful to look again at early modern courts. At the center of this article are the legal controversies generated by a financial contract that was popular in seventeenth-century Rome and in which payment depended on whether or not pregnancy had caused a woman's death. Decisions called for medical judgment, but the question was novel, and a debate between physicians ensued. Examining their discussions allows me to recapture how expert testimony shaped medical discourse in seventeenth-century Rome and how physicians mobilized their knowledge in interpreting women's deaths. The legal arena also gives me access to the broader dynamics between expert and lay actors and their perceptions of pregnancy and childbirth.

1. The literature on early modern medical testimony in Continental courts is expanding; for a seminal survey: Esther Fischer-Homberger, *Medizin vor Gericht: Gerichtsmedizin von der Renaissance bis zur Aufklärung* (Bern: Verlag Hans Huber, 1983); more recently: Catherine Crawford, "Legalizing Medicine: Early Modern Legal Systems and the Growth of Medico-Legal Knowledge," in *Legal Medicine in History*, ed. Michael Clark and Catherine Crawford (Cambridge, UK: Cambridge University Press, 1994), 89–116; Alessandro Pastore, *Il medico in tribunale: La perizia medica nella procedura penale d'antico regime (secoli XVI–XVIII)* (Bellinzona, Switzerland: Edizioni Casagrande, 1998); Silvia De Renzi, "Witnesses of the Body: Medico-Legal Cases in Seventeenth-Century Rome," *Stud. Hist. Philos. Sci.* 33A (2002): 219–42; Silvia De Renzi, "Resemblance, Paternity, and Imagination in Early Modern Courts," in *Heredity Produced: At the Crossroads of Biology, Politics, and Culture, 1500–1870*, ed. Staffan Müller-Wille and Hans-Jörg Rheinberger (Cambridge, Mass.: MIT Press, 2007), 61–83; Gianna Pomata, "Malpighi and the Holy Body: Medical Experts and Miraculous Evidence in Seventeenth-Century Italy," *Renaiss. Stud.* 21 (2007): 568–86; Cathy McClive, "Blood and Expertise: The Trials of the Female Medical Expert in the Ancien-Régime Courtroom," *Bull. Hist. Med.* 82 (2008): 86–108.

2. Paolo Zacchia, *Quaestionum medico-legalium tomus prior [posterior] in hac editione lugdunensi ab auctore novis additionibus locupletatus* (Lugduni, France: Sumptibus Ioannis-Antonii Huguetan & Marci-Antonii Ravaud, 1661), tomus posterior, 123–360.

The investment was known as *societas officii*: dating back to the early sixteenth century, it was linked to the purchase of an office in the papal bureaucracy. The large sum of money that was required could be borrowed by entering into a *societas* contract; the lender would then share in the profits. As time passed, the *societas* became a popular money-lending vehicle, in which the officeholder provided just a front for the investment. It was short term but could be renewed every six months. Archival evidence suggests that in early seventeenth-century Rome the *societas* was popular in all social strata; the amount invested ranged from sums as low as fifty scudi to two orders of magnitude more than that. The 12 percent interest was almost double that of other financial “products,” but the *societas* was riskier too because should the lender die, the contract would be annulled with the cancellation of the borrower’s debt to the heirs of the deceased.<sup>3</sup> There were two further twists. First, the lender could designate another person whose death would annul the contract. Second, the death of the lender or the designated person had to be natural and not violent (“*violenta*”). Violent death allowed exemption, that is, the borrower would have to return the money to the lender or the lender’s family. Death counted as violent not only by murder and in war but also during an epidemic,<sup>4</sup> and if a woman was the nominated person, her death in pregnancy and childbirth allowed exemption too.<sup>5</sup> As Paolo Zacchia explained, in addition to the causes of violent deaths they shared with men, women risked their lives during pregnancy and this had to be

3. For a description of the scheme: Renata Ago, *Economia barocca: Mercato e istituzioni nella Roma del Seicento* (Rome: Donzelli, 1998), 190–95, and 193 for small sums; a specialized worker could earn thirty-six scudi yearly: *ibid.*, 8–9. The wealthy Fabrizio Massimo invested four thousand scudi: Giovanni Incisa della Rocchetta and Nello Vian, eds., *Il primo processo per San Filippo Neri*, 4 vols. (Vatican City: Biblioteca apostolica vaticana, 1957–63), 2:364. Like other investments, *societas* contracts were drawn up by notaries, could be transferred and used to repay debts, and are listed in wills. The scheme lost its appeal in the second half of the seventeenth century with the rise of other kinds of investment: Aldo Mazzacane, “Giambattista De Luca e la <<compagnia d’uffizio>>,” in *Fisco Religione Stato nell’eta’ confessionale*, ed. Hermann Kellenbenz and Paolo Prodi (Bologna: Il Mulino, 1989), 505–30.

4. As clarified in the template of the contract included in Silvestro Zacchia, *De modo valide contrahendi Societates super officijs Romanae Curiae, sive ad formulam Instrumenti Societatis officij, Discursus. Accesserunt decisiones LXXXI Sacrae Rotae Rom. De materia tractantes* (Rome: Typographia Camerae Apostolicae, 1619), pages unnumbered.

5. The template reads, “with the exception of childbirth and because of that childbirth” (“*excepto partu et illius causa partus*”), Silvestro Zacchia, *De modo valide* (n. 4), pages unnumbered. As I will show, the wording and its interpretation were contested.

addressed to restore the balance between lenders and borrowers.<sup>6</sup> Lenders took note: linking money to a woman's life, especially if she was of childbearing age, gave them more chance to save their capital than if the money was linked to a man. We lack statistical data, but it was common for husbands to invest money on the lives of their wives.<sup>7</sup>

What happened when a woman who had been designated in the contract died? If borrowers and lenders disagreed on the cause of her death, the controversy could come to court, though starting a legal dispute may have been more common among wealthy families; bringing new partners into the contract was also an option.<sup>8</sup> In the tangled web of Roman justice, various tribunals adjudicated financial disputes, including the tribunal of the Auditor Camerae and, at the appeal stage, the authoritative Tribunal of the Sacra Rota, whose *decisiones* (the rationales for the judgments) were often published and became an important source of jurisprudence for courts across Europe.<sup>9</sup> The relative novelty of the *societas officii* challenged Roman jurists who struggled to match it with the contracts more routinely discussed in the legal literature.<sup>10</sup> On the causes of women's deaths they agreed to follow the views of expert witnesses.<sup>11</sup> Physicians responded not just by giving testimony; between 1602 and 1621 three of them—Marsilio Cagnati, Girolamo Perlini, and Paolo Zacchia—published on the issue. Their printed works were the tip of an iceberg: women's deaths linked to the *societas* stirred controversies in the medical community at large.<sup>12</sup> The stakes were high; as Perlini put it, "Since this is of no little weight

6. Paolo Zacchia, *Quaestionum* (n. 2), tomus prior, 89.

7. Renata Ago, personal communication. Some of the features of the *societas* contract resemble life insurance schemes, which were popular in Italy at this time: Federigo Melis, *Origini e sviluppi delle assicurazioni in Italia (sec XIV–XVI)* (Rome: Istituto Nazionale delle Assicurazioni, 1975).

8. Ago, *Economia barocca* (n. 3), 192.

9. On the Rota: Niccolò Del Re, *La Curia romana. Lineamenti storico-giuridici* (Rome: Edizioni di Storia e Letteratura, 1970), 243–59; on the administration of civil justice in early modern Rome: Ago, *Economia barocca* (n. 3).

10. Among other works, Francesco Castracane, *Tractatus de societibus quae fiunt super officiis Romanae Ecclesiae* (Rome: haeredem Marci Amadori, 1590); Silvestro Zacchia, *De modo valide* (n. 4). For a survey: Mazzacane, "Giambattista De Luca" (n. 3).

11. "If it is dubious whether the pregnant woman . . . died because of her giving birth (*ex partu*) or because of another cause, the opinion of the physicians has to be upheld" ("*arbitrio medicorum standum est*"): Castracane, *Tractatus* (n. 10), 63. Silvestro Zacchia, *De modo valide* (n. 4), 108, referred to the same formula, "standum est iudicio medicorum."

12. See, for example, the correspondence of the future papal physician Giulio Mancini, who in the 1610s gave expert testimony on a woman's death and challenged Cagnati's views: Archivio della Società di Esecutori di Pie Disposizioni, Siena: C XIX 168, fols. 721–22.

because of the parties' loss and interest (as the jurists have it) . . . it is to be investigated."<sup>13</sup>

The financial meaning that women's bodies acquired in Rome is probably unique,<sup>14</sup> but the legal requirements of the *societas* contracts set in motion practices and controversies that help us recapture contemporary preoccupations of broader significance. First, the Roman disputes open up new perspectives from which to enrich and review standard accounts about expertise in the early modern pregnant and birthing body. Albeit intermittently, gynecology had been an area of male competence since ancient times, and physicians may have attended childbirth much more commonly than was once believed.<sup>15</sup> Especially on the Continent and whenever means allowed, physicians' competence would be sought to guarantee fruitful sex lives, comfortable pregnancies, and healthy progeny. Research so far has focused on the period up to the sixteenth century, but the Roman controversies allow me to take the reassessment further and show how a continuing tradition shaped learned physicians' reflections and activities as well as their patients' expectations. They also enable me to reach into contemporaries' perceptions of childbirth beyond historians' clear-cut distinction between normal and ill-fated parturition, the former a social event within female competence, the latter the only occasion for male practitioners to become involved, but mainly as surgeons removing a dead fetus.<sup>16</sup> In Rome conflicts revolved around deaths in childbirth, but the parties disagreed on where to put the blame, making

13. "Quae res cum non pauci ponderis sit ob damnum, & interesse (ut Iurisperiti loquuntur) partium . . . investiganda," Girolamo Perlini, *De morte causa graviditatis, abortus, et partus. Medica quidem disputatio. Sed societatibus officiorum necessaria* (Rome: Haeredes Aloysij Zannetti, 1607), 1.

14. The *societas* may have spread to other cities of the Papal State: Mazzacane, "Giambattista De Luca" (n. 3).

15. Rudolph M. Bell, *How to Do It: Guides to Good Living for Renaissance Italians* (Chicago: University of Chicago Press, 1999); Katharine Park, *Secrets of Women: Gender, Generation, and the Origins of Human Dissection* (New York: Zone Books, 2006), esp. 97–103, and 100 for physicians attending births; Helen King, *Midwifery, Obstetrics and the Rise of Gynaecology: The Uses of a Sixteenth-Century Compendium* (Aldershot, UK: Ashgate, 2007) on male attendance at normal childbirth in antiquity; Monica Green, *Making Women's Medicine Masculine: The Rise of Male Authority in Pre-Modern Gynaecology* (Oxford, UK: Oxford University Press, 2008). Michael R. McVaugh, *Medicine before the Plague: Practitioners and Their Patients in the Crown of Aragon, 1285–1345* (Cambridge, UK: Cambridge University Press, 1993), has stressed a similar involvement by late medieval physicians in Catalonia.

16. For a standard account of the English experience: Adrian Wilson, *The Making of Man-Midwifery: Childbirth in England, 1660–1770* (London: UCL Press, 1995); for Europe: Jacques Gélis, *History of Childbirth: Fertility, Pregnancy and Birth in Early Modern Europe*, trans. Rosemary Morris (Cambridge, UK: Polity, 1991).

the very distinction between kinds of childbirths contentious, with important consequences for the extent of physicians' involvement, too.

Second, the controversies throw new light on a question as central to early modern medicine as the concept of cause. Establishing the causes of diseases was the defining skill of learned practitioners, and we now have thorough analyses of their university training in logic and some sense of how this shaped bedside practice.<sup>17</sup> By following physicians as they articulated their views on women's deaths, I show how they applied this logic to their medicolegal activities and their intense exchanges with jurists, who had similar but not identical intellectual resources. Third, and more broadly, the clashes stirred by the contract reveal some of the interactions between different kinds of knowledge of the body—lay and professional, medical and legal—for which trial records are such a valuable source.<sup>18</sup> In the Roman courts medical experts' advice was sought after and assessed by judges charged with mediating between specialized judgment—their own and physicians'—the perspectives of lay witnesses and the broadly held views that constituted the common opinion, a key benchmark in judicial practice.<sup>19</sup> Moreover, boundaries between lay and medical could be blurred as lay parties would embrace medical arguments to make their claims. This, I suggest, can help historians reassess the notion of medicalization and develop a more nuanced understanding of the processes by which medical knowledge traveled and was appropriated in society at large.<sup>20</sup>

Finally, by moving between the two venues where the disputes unfolded, the birthing room and the courtroom, I also contribute to current research on how knowledge of the female body was made public.<sup>21</sup> In

17. Ian Maclean, "Evidence, Logic, the Rule and the Exception in Renaissance Law and Medicine," *Early Sci. Med.* 5 (2000): 227–57; Ian Maclean, *Logic, Signs and Nature in the Renaissance: The Case of Learned Medicine* (Cambridge, UK: Cambridge University Press, 2002).

18. Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven, Conn.: Yale University Press, 2003); other kinds of legal documents are equally valuable: Katharine Park, "The Death of Isabella Della Volpe: Four Eyewitness Accounts of a Postmortem Caesarean Section in 1545," *Bull. Hist. Med.* 82 (2008): 169–87.

19. On the appeal of *comune sentire* in early modern justice and its relationships to specific expertise: Renata Ago, "Una giustizia personalizzata. I tribunali civili di Roma nel XVII secolo," *Quaderni storici* 101 (1999): 389–412.

20. I find McVaugh's discussion of medicalization in his *Medicine before the Plague* (n. 15), 190–235, a useful framework for the later period too as demand for medical knowledge could come from various sectors of society and not only be the result of physicians' strategies. Growing empirical research shows the limitations of the still influential model of imposition of, and resistance to, learned medical knowledge.

21. Park, *Secrets of Women* (n. 15).

legal cases such as infanticides and rapes, bodily details were routinely discussed in front of juries or judges, redrawing the boundaries between private and female on the one hand and male and public on the other. The situation was most extreme in Rome, where the judges were often clerics and would engage with details such as the quality and quantity of female bleeding and babies' size. We should allow for the specific procedure of Roman canon law where testimonies and reports were written and courtrooms were not scenes for the exhibition of evidence and cross-examination. Still, we should also rethink who possessed knowledge of the pregnant body and where such knowledge was enacted.

### Understanding Pregnancy, Defining Causes

When he authored his thirty-page *On Death Caused by Childbirth: A Medical Discussion But Necessary to Dealing with Legal Affairs* in 1602, Marsilio Cagnati had just been elected Protomedico—head of the College of Physicians—for the second time.<sup>22</sup> A successful practitioner, he was a renowned university professor and a prolific writer. The title of the tract suggests that he was fashioning himself as an advisor on a matter that was bothering jurists. There is evidence of an ongoing conversation on the question with Giulio Benigni, a university colleague and member of the powerful college of the *avvocati concistoriali*—the elite lawyers and prestigious advisors to the Pope.<sup>23</sup> Cagnati may have acted as an expert witness in a *societas* controversy, but his only cases in the *Disputatio* are deaths of pregnant women from Hippocrates's *Epidemics*. A year later, he included the *Disputatio* in a collection of five pamphlets on medical topics with clear political implications, from the effects on health of the river Tiber's floods to a recent epidemic.<sup>24</sup> Medicolegal issues and matters of public health provided physicians with the most effective examples of the political significance of their knowledge.

22. Marsilio Cagnati, *De morte caussa partus medica quidem disputatio sed forensibus negotiis tractandis necessaria* (Rome: Aloysium Zannettum, 1602). On Cagnati: Giorgio Stabile, "Cagnati, Marsilio," in *Dizionario biografico degli Italiani* (Rome: Istituto dell'Enciclopedia Italiana, 1973), 16:301–3; Nancy G. Siraisi, "Historiae, Natural History, Roman Antiquity, and Some Roman Physicians," in *Historia: Empiricism and Erudition in Early Modern Europe*, ed. Gianna Pomata and Nancy G. Siraisi (Cambridge, Mass.: MIT Press, 2005), 325–54.

23. On the power of this college: Giuliana Adorni, "Statuti del collegio degli avvocati concistoriali e statuti dello Studio romano," *Rivista internazionale di diritto comune* 6 (1995): 293–355.

24. Marsilio Cagnati, *Opuscula varia* (Rome: ex typographia Aloysii Zannetti, 1603).

Cagnati's discussion of the causes of women's deaths focuses on two main questions, the nature of pregnancy and childbirth, and the time frame within which death can be attributed to them. He forcefully claimed that pregnancy and parturition were natural, not preternatural, the category to which illnesses belong. As an effect of Venus, pregnancy was good for a woman's health; widows and those who chose celibacy were known to have poorer health than regularly pregnant women. Childbirth, too, was natural, Cagnati argued, although he admitted that this was disputed. For example, some claimed that during childbirth the pelvic bones disarticulate, and such separation of what should be joined would imply illness. Drawing on Vesalius as well as the surgeon Ambroise Paré, who allegedly dissected women immediately after delivery to check the position of the bones, Cagnati claimed that in fact the bones of the anterior pelvis are joined by cartilage only and so no disjunction can occur. As to the posterior part of the hip bones, they too are not joined, but just close, and indeed in women are farther apart than in men. During childbirth they come further apart, but this is no disease and indeed does not require medical attention.<sup>25</sup> Pregnancy and childbirth are perfectly natural.

Despite this claim, Cagnati accepted that pregnancy and childbirth could cause death. As he explained, external events such as a serious injury or internal accumulation of humors could change their nature, making them "*praeter naturam*" (outside the course of nature: pathological, we may say).<sup>26</sup> This distinction may look sophisticated, but in his staunch defense of pregnancy as a natural event, Cagnati was taking sides in a broader dispute, in which, as I will show, Perlini was of the opposite opinion. While they both saw the definition of pregnancy as key to their discussion of the causes of death, they drew on fundamentally different assumptions about women's bodies.

Even on the duration of puerperium, Cagnati had a clear position. Historians are familiar with the religious and social meanings of this special time after the delivery when, according to widespread opinion, a woman

25. Cagnati, *De morte* in *Opuscula varia* (n. 24), 7–12.

26. "They die when something alien and preternatural and serious happens; and because of that both pregnancy and childbirth are said to become preternatural." *Ibid.*, 12. The category of preternatural is complex; on its relation to diseases in early modern medical discourse: Maclean, *Logic, Signs and Nature* (n. 17), 251–69. Paolo Zacchia's discussion of women's deaths also makes it clear that physicians worked in a framework in which "praeter naturam" could overlap with "morbosum": *Quaestionum* (n. 2), tomus prior, 71. On this basis, I translate preternatural with pathological, but am aware that the two concepts do not completely overlap.

cleanses herself. But physicians took a view too: since the necessary process of cleansing could be abruptly interrupted, this was when a woman who had given birth ran the highest risks to her health.<sup>27</sup> The timing was controversial. The general assumption was that the crucial period was thirty days following parturition for a boy and forty-two for a girl. However, Cagnati argued, these terms do not indicate the time within which a woman would have to die for parturition to be blamed but the time for the onset of a disease.<sup>28</sup> If a woman sickens within this time, regardless of when she actually dies, childbirth should be taken as responsible for her death. Diseases following childbirth could be slow as well as acute.

Cagnati's view on puerperium made it easier to claim childbirth as the cause of death; but it also entailed replacing a simple calculation of days—something anyone could do—with a medical account of the postpartum symptoms. By relativizing the chronological boundaries to the onset of an illness, Cagnati was advocating for proper medical competence, as opposed to the perceptions of laypeople, including jurists. In doing so, he was assuming that physicians had access to a woman's room soon after birth in order to start monitoring her condition.

Cagnati shared the interest in casuistry of his contemporaries and so surveyed various combinations of events in which the assessment of causes might be difficult. But overall, he tended to believe that, short of a compelling alternative cause, and if the disease had started within the right period, pregnancy and childbirth should be regarded as the cause of death and exemption granted.<sup>29</sup> The jurist Benigno was unconvinced and must have objected that Cagnati's view would open a too easy road to exemption.<sup>30</sup> The physician clarified his position in an appendix focused on issues of definition, in particular the two expressions *ex partu* and *causa partus*, which appeared in the text of the *societas* contracts. *Ex partu*, argued Cagnati, referring to jurists' use, means an immediate cause, as for example when the baby is in the breach position or very big. If childbirth is obviously difficult and no other cause is apparent, then the conclusion must be that the woman died *ex partu*. In the expression *causa partus*, however,

27. Hippocrates's *Epidemics* was a standard reference for examples of how the untimely end of postpartum purges could cause serious illnesses.

28. Cagnati, *De morte* in *Opuscula varia* (n. 24), 17, 19.

29. *Ibid.*, 29–30.

30. "Sermo ille, quem habuisti mecum proximis diebus, Iuli ornatissime, postquam typis data erant, quae de morte caussa partus scripseram; cum diceres, videri quidem tibi, me apte satis ad rei naturam explicandam scripsisse, sed laxam nimis viam exceptioni, cuius causa scripseram, fecisse." *Ibid.*, xxix.

*causa* should be understood in the sense of “on the occasion of,” where “occasion” means “the appropriate time to do or to suffer something.”<sup>31</sup> He added that this interpretation of *causa* as occasion was so well known that he did not have to explain it. Invoking the spirit of the contract (“*mens contrahentium*”), he argued that exemption should be granted for as long as danger could have presented itself and that after childbirth a disease could start any time within thirty or forty-two days.<sup>32</sup>

Cagnati was clearly pulled in different directions. On the one hand, he was committed to saving the principle that only if there is an external cause can childbirth become lethal; on the other, he wanted to acknowledge that childbirth could be legally blamed, and in a broad range of circumstances. So he introduced the loose interpretation of *causa*. But he was aware of friction between his medical view and its legal consequences and explained to his jurist colleague that if the period within which a death should be blamed on parturition sounded too vague, then the law on exemption should define it more stringently. Short of that, “the nature of things should be considered and followed.”<sup>33</sup> When positive law was wanting, physicians’ expertise would step in.

Through Cagnati’s exchange with his legal interlocutor we can start to appreciate the doctrinal framework within which learned physicians discussed women’s deaths; the key points were the contested nature of pregnancy and the definition of causality. To call for physicians’ expertise in the assessment of what can go wrong in the pregnant body and when, Cagnati did not have to understand that body as sick.<sup>34</sup> However, following an illustrious tradition, some of his colleagues did, including Girolamo Perlini, a learned and successful physician with some ambition but not Cagnati’s status. In 1607, just a few years after the exchange between Cagnati and Benigni, he entered the arena with his *On Death Caused by Pregnancy, Abortion and Childbirth: A Medical Discussion But Necessary to the Societas Officiorum Contracts*.<sup>35</sup> Unlike Cagnati, Perlini dealt with a specific

31. *Ibid.*, xxx.

32. *Ibid.*, xxxi.

33. *Ibid.*, xxxii.

34. According to Park, *Secrets of Women* (n. 15), 101, the pathologization of pregnancy allowed Michele Savonarola to bring it within a physician’s sphere of competence. King, *Midwifery* (n. 15), 22, makes a similar point.

35. Perlini, *De morte caussa graviditatis* (n. 13). From his native Forlì in the Romagna region (part of the Papal State), Perlini had won the trust of important patients and patrons in Rome. He also wrote on how to compile medical cases: *Historia medica, physiologica, pathologica et therapeutica . . . cui adiecta est methodus compendiarie scribendi huiusmodi historias* (Rome: Facciotti, 1610).

case. Domitilla De Finibus was seven months pregnant when she suddenly developed fever; her baby died, and soon after so did she. But what had caused her death, the fever as an external event or the death of the fetus, and therefore pregnancy?

### Why Pregnancy Can Kill

Perlini's tract opens with the written testimonies (*fides*) of both the woman's attending physician and the surgeon who dissected her; it is probable that Perlini had been asked to resolve their disagreement.<sup>36</sup> The *fides* exemplify the short and rather formulaic reports that physicians and surgeons would routinely submit to the legal authorities in cases of suspicious deaths.<sup>37</sup> The physician provided a brief account of the events: after spontaneously suffering from fever, the woman was fiercely troubled "on the occasion" of the death of the fetus on the seventh day; the following day she herself was dead. As we know, the expression "on the occasion of" could be used to indicate a causal relationship, but the doctor did not draw any explicit conclusion and likely inclined toward blaming the fever as a phenomenon unrelated to pregnancy.<sup>38</sup> By contrast, the surgeon was unambiguous. He had opened the body and found that the baby had suffocated in the waters and was almost entirely putrefied. This, he concluded, had caused Domitilla's death. The postmortem may have taken place as a matter of routine or because all those involved in the contract were poised to start a legal controversy and a dissected body would be key evidence. Either way, autopsies were uncontroversial in early modern Rome.

No short report, a learned discussion frames Perlini's engagement with the details of the case; the dedicatee Antonio Portius, a jurist from the Romagna region, may have been the judge in charge.<sup>39</sup> Influenced by Aristotelian misogyny, but equally drawing on Galen and Fernel, Perlini held an extremely bleak view of pregnancy. The common assumption was that menstrual blood nourishes the fetus, but some can accumulate, and this, Perlini claimed, disposes pregnant women to disease.<sup>40</sup> That he could

36. On physicians resolving clashing testimonies of lower status practitioners: De Renzi, "Witnesses of the Body" (n. 1). The printed reports omit the practitioners' names.

37. Pastore, *Il medico in tribunale* (n. 1).

38. This emerges from Perlini's subsequent discussion.

39. On Portius: Giorgio V. Marchesi, *Vitae virorum illustrium foroliviensium* (Forlì, Italy: Typographia Pauli Sylvae, 1726), 184–85.

40. Perlini, *De morte caussa graviditatis* (n. 13), 8–10.

make childbirth equivalent to a “crisis,” “the solution, as it were, of a serious preternatural condition of the body”—confirms that he understood pregnancy and childbirth in fundamentally pathological terms.<sup>41</sup>

Within this framework, Perlini argued that the death of the fetus, and therefore pregnancy, had brought about Domitilla’s death: the case qualified for an exemption.<sup>42</sup> He could not deny that she had been well until fever struck, but, he insisted, pregnancy makes serious diseases fatal. The fever had causes other than pregnancy, but on its own would have remained unresolved and ambiguous (“*anceps*”); only in conjunction with pregnancy and the consequent death of the fetus had it killed her.<sup>43</sup> Perlini explained the various reasons why pregnancy worsens otherwise not necessarily lethal conditions. Pregnant women cannot be treated as they should; purging is bad before the fourth and after the seventh month and diet cannot be regulated appropriately because the child needs nourishment in the right amount and quality.<sup>44</sup> With treatment hampered, diseases worsen, the fetus is likely to die, and as a result the mother dies too. More generally, Perlini argued for a distinction between acute diseases and acute diseases with “*additamentum*,” complications, we may say.<sup>45</sup> The main cause of complication is the age and general condition of the patient, but in this view, pregnancy similarly amplifies the effects of an acute disease. Mobilizing his philosophical background and siding with the Arabic philosopher Averroes, Perlini argued that in matters of health and illness the qualities of the subject are more important than those of the agent; a patient’s condition, not the disease, determines the outcome.

Constantly shifting between doctrinal statements and the case of Domitilla, Perlini carried on the philosophical game. Which cause is to be blamed? Without doubt, he wrote, the one without which the effect ceases and which, by its presence, brings about the effect (“*qua data, datur effectus*”).<sup>46</sup> The implicit conclusion was that pregnancy caused Domitilla’s death because, had it been possible to remove it, death would not have occurred. Perlini admitted that pregnant women can fall sick independently of their condition, for example, when they suffer from apoplexy. However, external illnesses are often only a preliminary (“*pro-*

41. *Ibid.*, 10.

42. *Ibid.*, 16.

43. *Ibid.*, 25.

44. *Ibid.*, 11–12.

45. *Ibid.*, 21.

46. *Ibid.*, 25.

*catartica*”) cause, with limited effects in the absence of an internal stimulus (“*fomentum*”).<sup>47</sup>

While the fever began outside Domitilla’s pregnancy, the progress, intensification, and force of the disease clearly originated within.<sup>48</sup> It is, concluded Perlini, like when during a plague epidemic all diseases become pestilential due to the vice of the air; similarly, diseases affecting pregnant women are made fiercer by the trials and tribulations of pregnancy.<sup>49</sup> The comparison illustrates the persistent power of plague as a model for thinking about diseases: Perlini could hardly have driven home the link between pregnancy and death more strongly. If, he continued, the suppression of purges after birth is damaging to a woman’s health, how much more serious was a putrefied fetus in her womb? His image of a sword cutting the throat of the woman vividly evoked the violent deaths that were an established reason for exemption.<sup>50</sup> In Domitilla’s case, the baby’s corpse was not just putrefied but “*sphacelatus*,” a technical term indicating a stage further than putrefaction, and so much so that the flesh came off the flesh and even off the bones at the slightest touch.<sup>51</sup> Perlini had either attended the autopsy or received a full report; if surgeons were in charge of extracting dead fetuses, physicians were ready to use their appearance as evidence.

While discussing the still open question of the nature of pregnancy, Perlini made another point that shows how the dispute was also rooted in broader discussions of generation. How was a death by *mola* to be assessed in relation to the financial scheme? A *mola* was a fleshy formation of controversial origins that could mimic symptoms of pregnancy but remain in the womb for years. Perlini argued that a *mola* should provide grounds for exemption because as the product of the mixing of seeds it should be regarded as similar to a conception. For legal purposes, it did not matter that without proper concoction it remained shapeless flesh. But a clear distinction should be made from false *molae* (growths of some other kinds) that are not the result of conception; these should not grant exemption.<sup>52</sup> To an anonymous physician’s objection that more often than Perlini was prepared to admit external illnesses, and not pregnancy,

47. *Ibid.*, 33.

48. *Ibid.*, 19.

49. *Ibid.*, 25.

50. *Ibid.*, 15.

51. *Ibid.*

52. *Ibid.*, 34. For a survey of contemporary discussions in Rome on the nature of *mola*: Maria Conforti, “‘Affirmare quod intus sit divinare est’: mole, mostri e vermi in un caso di falsa gravidanza di fine Seicento,” *Quaderni Storici* 130 (2009): 125–52.

caused death, he responded with a second edition in 1610; but he merely expanded his arguments.

Further research may throw light on why Cagnati and Perlini held such different views on the pregnant body, but in their arguments and defenses they shared a distinctive medical tradition and knew where they stood in relation to their legal counterparts. In these very years, however, a different approach to medicolegal duties was promoted by Cagnati's former student, Paolo Zacchia, who at the beginning of the 1620s took up the pressing issue of women's deaths.

### A Medicolegal Perspective

From a family of jurists and physicians, Zacchia had not reached his later fame but was building authority as the compiler of the *Quaestiones Medico-Legales* which were published between 1621 and 1635.<sup>53</sup> Issues of generation figure prominently in the first book: sandwiched between a chapter on pregnancy and *molae* and one on children's resemblance to their parents is a dense chapter on childbirth as a cause of death in relation to the *societas* scheme.<sup>54</sup> Characteristically, Zacchia provided a comprehensive and systematic discussion, engaging with medical sources ranging much more widely than those used by Cagnati and Perlini: on women's diseases he deployed medieval collections such as those authored by Trotula and recent physicians including Girolamo Mercuriale and Rodrigo de Castro, but also Giovanni Marinello, the author in 1563 of the successful *Medicine partendenti alle infermità' delle donne*. Zacchia's familiarity with the legal literature is also remarkable; here, familiarity is textual but also literal: one of the main legal sources on *societas* was his brother Silvestro's tract, from which he quoted abundantly. Early modern relations between jurists and medical expert witnesses could be intensely personal instead of merely professional and bureaucratic.

Zacchia's specific medicolegal perspective emerges clearly in his discussion of the three issues on which I have focused so far: the nature of pregnancy, the definition and hierarchy of causes, and the status of *molae*. While professing unreserved respect for his teacher Cagnati, Zacchia denounced the unresolved tensions in his argument. The definition of pregnancy and parturition as natural was either false or failed to deal with

53. On his biography: Silvia De Renzi, "Per una biografia di Paolo Zacchia: nuovi documenti e ipotesi di ricerca," in *Paolo Zacchia: Alle origini della medicina legale, 1584-1659*, ed. Alessandro Pastore and Giovanni Rossi (Milan: FrancoAngeli, 2008), 50-73.

54. Paolo Zacchia, *Quaestionum* (n. 2), tomus prior, 66-90.

the question at hand. Like any natural process, pregnancy can become preternatural and bring about disease and death. It is therefore unhelpful, maintained Zacchia, to mobilize general natural philosophical and medical arguments in the context of legal discussions dealing with pregnancies and childbirths that by definition were *praeter naturam*. While giving their advice on the causes of women's deaths, physicians should rather engage with the specificity of jurists' questions.<sup>55</sup> Physicians who had relied solely on their medical approach had allowed jurists to pass bad judgments.<sup>56</sup> Aware that new objects of investigation were emerging at the intersection between medicine and the law—indeed a whole new doctrine was taking shape—here as elsewhere in the *Quaestiones*, Zacchia encouraged physicians to embrace novel medicolegal tasks.<sup>57</sup>

Sharing the reservations of the jurist Benigni, to whom he too dedicated his discussion, Zacchia also objected to Cagnati's point that precisely because pregnancy or childbirth become dangerous only when a preternatural event changes their nature, most of the time they can be blamed for the death. This, he argued, would make all cases exceptions.<sup>58</sup> Perlini's broad claim that pregnancy is a disease was equally flawed, contradicted by what usually happens and by the entire medical tradition from Galen to Fernel, according to which conception and pregnancy are natural processes of concoction similar to digestion.<sup>59</sup> Despite starting from opposite premises, Perlini's conclusions were remarkably similar to Cagnati's: pregnancy and childbirth tended to provide unconditional grounds for exemption. This, Zacchia argued, would turn the whole of pregnancy into a risk-free zone for the lender, and the contract would dangerously resemble usury.<sup>60</sup> To Zacchia, it was right that a medicolegal expert should engage with such consequences, as his discussion of the complicated status of *mola* further illustrates. Unlike Perlini, Zacchia tended to regard a *mola* as a disease—even if it is the fruit of an interrupted conception; as such it should not provide grounds for exemption. To the counterargument that *mola* is uniquely female, and therefore introduces an imbalance between lender and borrower, he replied that no other

55. *Ibid.*, 71.

56. *Ibid.*, 89.

57. On Zacchia's specific medicolegal perspective: Marco Boari, "Prospettive di mediazione tra sapere medico e sapere giuridico nell'opera di Paolo Zacchia," in Pastore and Rossi, *Paolo Zacchia* (n. 53), 91–99.

58. Paolo Zacchia, *Quaestionum* (n. 2), tomus prior, 70–71, 86.

59. *Ibid.*, 87.

60. *Ibid.*, 89.

uterine condition was grounds for exemption and so neither should *mola*. Furthermore, a *mola* can last for many years; should death caused by *mola* allow exemption, the terms of the contract would be suspended for even longer than the duration of pregnancy, and this would be unfair to the borrower.<sup>61</sup> In Zacchia's hands, the question of women's deaths became a powerful example with which to argue for the specific competence of the medicolegal expert, who, while mastering medical doctrine, was also able to consider the social and legal implications of his decisions.

At the core of the controversy was an issue of interpretation. As Zacchia stated, when reading the expressions *ex partu* and *causa partus* physicians, "not comprehending the meaning of these words correctly, did not understand the essence of the said contract, because they explained the thing according to their way of understanding; by contrast we interpret the words in themselves and one by one, so that we can follow their true sense."<sup>62</sup> Physicians' "way of understanding" had allowed Cagnati to argue that *causa* should be taken as "on occasion"; but this was gibberish.<sup>63</sup> Although inexperienced notaries may have used the expressions *causa et occasione* in drafting the contracts, words should be understood much more rigorously. "Ex" refers to the immediate and closest (*immediata et proxima*) cause,<sup>64</sup> and so death *ex partu* should comprise only those difficult childbirths that bring about such turmoil of humors and spirits that death is inevitable. And with *causa partus* we should include effects that originate from childbirth, such as the retention of the placenta or the suppression of postpartum purges.<sup>65</sup> In all these cases exemption should be granted because they comply with the legal requirement that pregnancy and childbirth be "principal, primary, immediate and final causes" of death.<sup>66</sup> A clear line then should be drawn to exclude those cases in which pregnancy and childbirth are merely "nurturing" (*foventes*) or "contributing" (*coadiutrices*) causes.<sup>67</sup> Typically, this happens when an acute fever develops before childbirth and leads to death: whereas Perlini had argued that

61. *Ibid.*, 76.

62. "Horum verborum sensum non integre assequentes medici, praedictae pactionis vim non intellexerunt, quia rem secundum proprium intelligendi modum exposuerunt; nos autem iam ea verba singula per se explanemus, ut verum eorum sensum assequi possimus"; *ibid.*, 72.

63. "Hallucinati sunt medici," *ibid.*, 73.

64. *Ibid.*, 72.

65. *Ibid.*, 76–77. Sometimes Zacchia uses the expression *ex causa partus*.

66. *Ibid.*, 71.

67. *Ibid.*, 89.

even here pregnancy was the ultimate cause, Zacchia believed that fever is not always related to pregnancy and therefore should not automatically provide grounds for exemption.<sup>68</sup>

Defining causes and establishing their hierarchy were the bread and butter of both jurists' and physicians' training in logic, though they developed different approaches to the tasks, partly a consequence of their different professional remits.<sup>69</sup> To account for the complexity of phenomena related to health and sickness and the wide range of individual responses to diseases, physicians had multiplied the number of causes and were used to mobilizing a looser and more flexible system of categories and arguments. Cagnati's suggestion that his interpretation of "cause" as "occasion" was widely accepted illustrates such an approach. Jurists were overall more economical and stringent in using categories, and courtrooms, the only territory that brought together physicians and jurists, would make their different views apparent. If physicians wanted to play the key role they deserved, argued Zacchia, they had to reconsider their lax understanding of causes.

Medicolegal tasks required more rigorous thinking from physicians, but Zacchia also disagreed with the rationale sustaining some of the jurists' conclusions. For example, he criticized judges of the Rota for identifying the wrong sequence of causes leading to a woman's death in a case adjudicated in 1612. Zacchia provides scant details but refers to Silvestro Zacchia's tract where the decision of the Rota is fully reported. So we can compare the judges' and the physician's approach.<sup>70</sup>

A pregnant woman who had already been troubled by kidney difficulties developed fever and measles; after miscarrying with great loss of blood, she died. The judges argued that although the miscarriage had taken place after the fever, the former should be considered the cause of death and exemption granted. The legal template for their conclusion was the commentaries of the Roman *Lex Aquilia* (Digest, 9.2) about a seriously wounded slave who dies in a shipwreck: the shipwreck is a stronger cause of death than a wound and should be regarded as the cause of death.<sup>71</sup> The same rationale applied to the woman's case, in that the

68. Ibid., 80–81, for various cases of fever before and after birth that should not grant exemption.

69. Maclean, "Evidence, Logic, the Rule" (n. 17).

70. Paolo Zacchia, *Quaestionum* (n. 2), tomus prior, 79; Silvestro Zacchia, *De modo valide* (n. 4), 172–77.

71. Silvestro Zacchia, *De modo valide* (n. 4), 174. The *Lex Aquilia* was about the compensation of damage to property, including a slave; the ensuing legal tradition examined complicated sequences of events that would make it hard to establish responsibility; for the text: *The Digest of Justinian*, Latin text edited by Theodor Mommsen with the aid of Paul Krueger,

miscarriage of a premature or dead fetus was a stronger cause of death than fever. The woman's attending physician too had argued that the miscarriage had caused death: attending physicians' views, claimed the judges, should be upheld and in very uncertain cases the party that would lose his investment should be favored—this meant giving preference to exemption.<sup>72</sup> At an appeal the judges confirmed their decision: invoking again the case of the slave, they now added that in the same way as the shipwreck made it impossible to assess if the wound had caused death, so the loss of blood caused by the miscarriage made it impossible to assess if the fever and measles had caused the woman's death. Moreover, during pregnancy the woman had already been troubled by kidney problems, so even if fever had caused the miscarriage, pregnancy with its tribulations might have caused the fever in the first place. A correct sequence of causes, the judges argued, should be reconstructed as follows: the first cause was the pregnancy and the last the miscarriage; as an intermediate cause fever was irrelevant.

To Zacchia the judges' assumption that miscarrying is a stronger cause of death than fever was wrong; on the contrary, acute fever is more able to kill per se, while miscarrying kills only when accompanied by intervening problems. As evidence, he cited those women who lose their children with little fuss and no consequences (especially, he conceded, at the beginning of pregnancy).<sup>73</sup> Elsewhere he had also challenged the tendency of nonexperts to regard loss of blood as compelling evidence of gravity, when, in fact, medical knowledge shows that this is not always the case.<sup>74</sup> At stake here was the medical ability to establish the proper hierarchy of causes, something that lay witnesses or even jurists might lack altogether.<sup>75</sup> But Zacchia seems to have been objecting also to the judges' reliance on cases that the legal tradition had singled out as exemplary. Both jurists and physicians used such cases to frame and discuss matters at hand—Hippocrates's cases often played a similar role—but where the body, with its huge variations, was the focus of the dispute, only medical expertise could assess the relevance of a textual case.

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English translation edited by Alan Watson, 4 vols. (Philadelphia: University of Pennsylvania Press, 1985), 1:277–93, esp. 281.

72. Silvestro Zacchia, *De modo valide* (n. 4), 175.

73. Paolo Zacchia, *Quaestionum* (n. 2), tomus prior, 79.

74. On wounds: *ibid.*, tomus prior, 343.

75. Silvia De Renzi, "La natura in tribunale. Conoscenze e pratiche medico-legali a Roma nel XVII secolo," *Quaderni Storici* 108 (2001): 799–822.

To help his colleagues get to grips with the thorny issue of women's deaths, Zacchia classified the cases where exemption was to be granted, where it was not to be, and where the decision was particularly difficult. Examining deaths *ex partu*, Zacchia thoroughly described the phases of childbirth, including the anatomy and function of various bodily parts. So he argued that distress during childbirth could originate in the mother (she could be too fat or too thin), in the fetus (either too big or weak), in the womb (too hard, scarred, or with too small a neck), in the membranes ("*panniculi*")<sup>76</sup> surrounding the fetus (they could break too soon or not at all), or even in the excrements (the waters) that are expelled with it (if they come out too soon, they do not fulfill their specific purpose of easing delivery).<sup>77</sup> References to works by the anatomist Realdo Colombo and Paré, as well as to Hippocrates, are interspersed in the discussion, evidence that knowledge of various aspects of childbirth was central, not marginal to medical investigations, and was being revised according to the latest works. While showing a remarkable familiarity with birth, Zacchia was assuming, or at least encouraging, the same in his colleagues. It is worth pausing to consider the evidence of physicians' practice among women in early modern Rome.

### At Women's Bedsides

Research into women's experiences of pregnancy in Rome has only just begun, but the evidence from the correspondence of prosperous families is that physicians were a regular presence even though female relationships, especially between mother and daughter, were the main source of advice. One of the women of the wealthy Spada family, for example, suggested remedies for her daughter's morning sickness and also recommended not informing the doctor about her problems. By contrast, the mother of noblewoman Artemisia Colonna sent her personal physician to care for her pregnant daughter, while the daughter's husband took advice

76. Literally, *panniculi* mean pieces of cloth; other contemporary writers would call the membranes *tunicae*. On this terminology: Barbara Duden, "Zwischen 'wahrem Wissen' und Prophetie: Konzeptionen des Ungeborenen," in *Geschichte des Ungeborenen. Zur Erfahrungs- und Wissenschaftsgeschichte der Schwangerschaft, 17.–20. Jahrhundert*, ed. Barbara Duden, Jürgen Schlumbohm, and Patrice Veit (Göttingen, Germany: Vandenhoeck & Ruprecht, 2002), 11–48.

77. Paolo Zacchia, *Quaestionum* (n. 2), tomus prior, 75.

from another doctor.<sup>78</sup> A major concern for physicians was how to treat pregnant women without causing a miscarriage, an issue acknowledged by Perlini and discussed, for example, in the consultation with a pregnant woman included in Silvio Lanceano's work of 1602. Today an unknown physician, Lanceano enjoyed a reputation among wealthy Roman families; tackling several problems surrounding generation, he also discussed the various techniques with which to ensure that fetal membranes, *molae*, and dead fetuses could be expelled; he recommended administering pessaries and oral medicines.<sup>79</sup> Expelling the placenta was a crucial phase of childbirth and worried physicians deeply. In his case collection of 1600, Giovanni Zecchi, who taught at the university and became papal physician, also discussed medical methods of expulsion, including oral remedies, before suggesting that, if all else failed, a midwife or surgeon could pull it out. Roughly at the same time, a Roman physician administered lozenges to purge the womb of a woman whose baby had probably died in situ.<sup>80</sup>

I am not suggesting that physicians attended childbirth routinely; if things looked normal, this remained the remit of relatives, friends, and, gradually, midwives, who could also deal with births made difficult by the baby's position.<sup>81</sup> But as in Bologna, even in Rome physicians were expected to provide advice on a series of crucial aspects of delivery and were building up specific competence; checking the condition of the

78. For Spada: Marina D'Amelia, "Diventare madre nel XVII secolo: l'esperienza di una nobile romana," in *Tempi e spazi di vita femminile tra medioevo ed età moderna*, ed. Silvana Seidel Menchi, Anne Jacobson Schutte, and Thomas Kuehn (Bologna: Il Mulino, 1999), 279–310; for Colonna: Giuseppe Gabrieli, ed., *Il Carteggio Linceo* (Rome: Accademia Nazionale dei Lincei, 1996), 469. For the relationships between mother and pregnant daughter: Susan Broomhal, "'Women's Little Secrets.' Defining the Boundaries of Reproductive Knowledge in Sixteenth-Century France," *Soc. Hist. Med.* 15 (2002): 1–15. It is hard to find for Italy such a rich source as the English vernacular print, which has provided much insight into female experience and nonmedical perceptions of women's bodies, as in Mary Fissell, *Vernacular Bodies. The Politics of Reproduction in Early Modern England* (Oxford, UK: Oxford University Press, 2004). More broadly on rituals of birth in Italy: Jacqueline Marie Musacchio, *The Art and Ritual of Childbirth in Renaissance Italy* (New Haven, Conn.: Yale University Press, 1999).

79. Silvio Lanceano, *De molae generatione & cura, de foetus formatione, & alijs quibusdam* (Rome: Lepidum Facium et Stephanum Paulinum, 1602).

80. Giovanni Zecchi, *Liber primus consultationum medicinalium* (Rome: Facciotti, 1600), 345; for the lozenges: Elizabeth S. Cohen, "Miscarriages of Apothecary Justice: Un-Separate Spaces of Work and Family in Early Modern Rome," *Renaiss. Stud.* 21 (2007): 480–504, esp. 501.

81. Claudio Schiavoni, "L'attività delle levatrici o 'mammane' a Roma tra XVI e XVIII secolo: storia sociale di una professione," *Sociologia* 35 (2001): 41–58; in 1591 only 22 percent of births were assisted by midwives and not just by relatives; by 1645 the figure had risen to 46 percent.

womb immediately after birth already fell within their sphere.<sup>82</sup> A combination of patronage relations and the duty of charity, which included making physicians available to one's clients or servants, meant that in Rome physicians' advice was available to a broader range of women than usually thought. In 1561 the musician in the service of Cardinal Farnese called in a physician when it was clear that the baby was stuck and his wife half dead. While the midwife objected that the only physician needed was God, the husband was happy to take advantage of the physician—not a surgeon—attending his cardinal patron.<sup>83</sup> When the wife of apothecary Pasquini was ill immediately after giving birth, he called a physician, “as is customary in these cases,” he explained.<sup>84</sup>

Inspection of a female body may have remained taboo for male practitioners, but this was no obstacle to physicians' full engagement with a woman's gynecological history, a continuum in which giving birth and miscarrying were key episodes rather than completely separate events. When a Roman noblewoman started to suffer from uterine disorders, a midwife inspected her internally and found a tumor; the attending physicians consulted a senior colleague who suggested that one of its causes was the frequent miscarriages; he recommended pessaries.<sup>85</sup>

Further research will refine this picture, but the evidence is that Zacchia's medical readers attended women and were expected to cultivate specific competence—practical as well as textual—over gynecological problems and pregnancies and, to some extent, childbirth, too. From 1615 medical students in Rome were offered a course on women's diseases.<sup>86</sup> On this basis, when requested, physicians would advise on the causes of women's deaths, as Domitilla's attending doctor and Perlini did. Zacchia himself was not only a superb synthesizer but also a sought-after expert

82. For seventeenth-century Bologna: Pastore, *Il medico in tribunale* (n. 1), 88–90.

83. However, I am cautious about drawing clear-cut boundaries between surgeons and physicians, as surgeons in Rome could obtain a university degree. For another interesting example of the fluid boundaries between medical practitioners in Rome, see the midwife who in 1576 carried out a caesarean section, as quoted in Ottavia Niccoli, “Corps maternels. Les mystères de la génération aux débuts de l'époque moderne,” *Micrologus* 17 (2009): 379–97, 396.

84. Both cases are in Incisa della Rocchetta and Vian, *Il primo processo* (n. 3), 1:5 and 1:262.

85. Angelo Vittori, *Medicae consultationes* (Rome: Ex officina typographica Caballina, 1640), 267–69. Evidence that late medieval physicians would inspect and touch the female body is urging historians to reassess the strength of the taboo: Park, *Secrets of Women* (n. 15), 100.

86. Emanuele Conte, ed., *I Maestri della Sapienza di Roma dal 1514 al 1787: I rotuli e altre fonti*, 2 vols. (Rome: Istituto storico italiano per il Medio Evo, 1991), 1:181.

witness. Of the eight *consilia* concerning the *societas* in the 1661 edition of the *Quaestiones*, only one deals with the alleged death of a man from plague—the controversy stemmed from the fact that epidemics provided grounds for exemption. The other seven concern the causes of death in pregnant women or women who had recently given birth. I now consider how Zacchia fulfilled his duty as an expert witness and explore the dynamics between his knowledge and other views of the pregnant body in court.

### The Court as the Crossroads of Knowledge

Sometime in the 1610s Cecilia Blancaria died, three months after giving birth and after a short fever and abdominal pain. Her husband reckoned the lapse of time no obstacle to claiming that childbirth caused her death and wanted to recoup the money he had linked to her life. Zacchia had been asked for advice either by the borrower—who, as we might expect, refused to return the money—or by the judge; either way he was convinced that the death was not the result of childbirth or pregnancy. He built his *consilium* around three key claims: first, the time lapse was relevant; second, Cecilia's parturition had been natural; and third, an alternative and adequate cause explained her illness and death.<sup>87</sup> Zacchia's *consilium* brings me as close as currently possible to the dynamics among the parties, witnesses, expert witnesses, and jurists adjudicating on the causes of a woman's death.<sup>88</sup>

Implicitly rejecting Cagnati's broad understanding of the time limits of puerperium, Zacchia argued that the mere passage of time between birth and death meant that parturition could not be blamed: after ninety days any cause of troubles linked to childbirth would have weakened and then ceased. To endorse this claim Zacchia mobilized Aristotle's argument about the temporal efficacy of a cause. By contrast, because Zacchia had never attended Cecilia, to claim that parturition had been healthy he relied on the testimony of other witnesses, one in particular. His (or her) account was so crucial that Zacchia even reported it verbatim: "I know that *signora* Cecilia gave birth to a son very happily" (*felicissimamente*). It

87. Paolo Zacchia, *Quaestionum* (n. 2), tomus posterior, 255–57.

88. I have not yet been able to locate the record of the case in the Rota archive or the lower court in which the trial may have begun. I deduce the date from the fact that the *consilium* contains no reference to Zacchia's own work (published in 1621) but does quote Cagnati and Perlini. It was published in a later edition of Zacchia's *Quaestiones*.

is hard to guess from the word *signora* what the witness's relationship to Cecilia was—a relative, a servant, perhaps the attending midwife—but in Zacchia's hands the merely descriptive adverb was given a strongly medical interpretation. "*Felicissimamente*," he explained, indicates that everything, from the time of delivery to the duration of labor and the quality of pain, and from the position of the fetus to the expulsion of the placenta, had gone according to nature, "*naturaliter*." Even the purges postpartum had been normal. So, Zacchia concluded, Cecilia had not fallen sick because of childbirth (*ex culpa partus*), and neither should the death be blamed on events following childbirth (*ex causa partus*).

By contrast, one of the parties claimed that at some point Cecilia's purges had weakened and that together with the abdominal pain they showed that something had gone wrong after childbirth. Once again, Zacchia found in the witnesses' testimony an alternative explanation. They had unanimously testified that her husband's illness had upset Cecilia deeply. That this could reduce the purges, Zacchia claimed, was known to everyone, even old women ("*aniculae*").<sup>89</sup> Furthermore, the abdominal pain had not forced Cecilia to bed and neither had she sought medical assistance from either a doctor or some other practitioner; no bloodletting had been prescribed. There was enough evidence to conclude that the pain was mild and could not have caused the ensuing acute illness: severe illnesses require strong causes. Indeed after giving birth Cecilia had regained perfect health; again Zacchia maintained this both by mobilizing ordinary observations probably supplied by lay witnesses—Cecilia had attended to her domestic chores<sup>90</sup>—and also by adding a medical spin to what at least two witnesses had observed: her periods had started again. To Zacchia this confirmed that even with regard to natural actions ("*quoad actiones naturales*") Cecilia was in good health.

Without the trial record we cannot identify the witnesses and so do not know who testified that menstruation had returned: the attending doctor, a midwife, a relative, or all of them. However, we can assume that it was presented as a relatively simple fact and, by contrast, we can follow Zacchia as he interwove it into his doctrinal discussion. He started with a general assertion: breastfeeding women do not usually menstruate. Cecilia did. His explanation was that perhaps nature was providing for the

89. Paolo Zacchia, *Quaestionum* (n. 2), tomus posterior, 256.

90. The suspension from routine domestic tasks has been regarded as a key element of confinement: Wilson, *Making of Man-Midwifery* (n. 16); contemporaries might consider doing chores as a sign of regained normality after parturition: Musacchio, *Art and Ritual* (n. 78), 22.

previous weakening of the postpartum purges. Even assuming that childbirth had troubled the woman, the early return of menstruation conclusively showed that Cecilia was now healthy. She had completely overcome her tribulations and any possible cause of illness had ceased. The following fever could not be the effect of the previous events. This was also proven by the nature of her illness. It had been an acute, fast, and almost pestilential condition, certainly caused by an abundance of hot humors. But as Hippocrates maintained, the reduction of the discharges rather leads to the accumulation of cold, thick humors, followed by chronic rather than acute illnesses. All in all, it was clear to Zacchia that Cecilia's fever and death were unrelated to her giving birth. And even conceding that the reduction of purges might have affected Cecilia's health—Zacchia frequently makes this kind of concession—this would be at most a contributing factor (“*ut causa remota seu potius ut causa fovens*”) and not the primary and immediate cause, which alone could grant exemption.<sup>91</sup>

I draw several conclusions from Zacchia's *consilium*. During the trial, various accounts of Cecilia's parturition and subsequent health were produced as witnesses, male and female, relatives, acquaintances, and probably the attending physician and midwife, answered the notary's questions, reconsidered past events, and built their own narratives. As an expert witness, Zacchia had access to these and in his *consilium* expertly interwove them to prove his point.<sup>92</sup> In his prose we hear the voice of a family celebrating a happy event, their subsequent account of Cecilia's discomfort, the description of her return to normal activities both from a social perspective (she could do her chores) and from one more attentive to bodily functions (her menstruation had started), the concern of her relatives for her emotional turmoil, but equally their comments—surely responding to a precise question—that no midwife or doctor had come to see her following her abdominal pain, and finally the account of her deterioration and the attempt to link it to childbirth. While Zacchia's key sources of authority are Hippocrates and contemporary learned physicians, he equally sought to persuade by knowledge that everyone, even old women, possessed. In the legal arena their usually despised opinions could be used to represent that common belief that was so important in early modern legal procedure: what everyone knows and knows in the same way.<sup>93</sup> Drawing on what even old women knew, Zacchia reached

91. Paolo Zacchia, *Quaestionum* (n. 2), tomus posterior, 257.

92. This was routine: De Renzi, “Witnesses of the Body” (n. 1).

93. For this definition, if for an earlier period: Daniel Lord Smail, “Witness Programs in Medieval Marseille,” in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (New York: Palgrave Macmillan, 2006), 227–50, 247; on judges

out, making his expertise more accessible to those who lacked it; here, crucially, the legal experts he wanted to persuade.

In Roman canon law the credibility of lay witnesses was weighted according to status, gender, and age, but the judges took full account of their perspectives. That jurists could ask and witnesses answer questions about the degree and nature of Cecilia's abdominal pain, the weakening of her discharges, and then the return of menstruation shows that all the actors involved in the controversies shared a language for, and understanding of, pregnancy and childbirth. But this was not necessarily medical; after all, the very existence of the *societas* contract was based on the common awareness that pregnancy was potentially dangerous: explanations for what could go wrong could be found in widely held perceptions of the pregnant body. To place physicians' expertise in the right perspective, it is also important to consider that the judges would be guided by legal, moral, and political concerns, and in their sentences medical reasoning could be overruled if, as we have seen, it was felt that lenders should be favored.<sup>94</sup>

However, Zacchia's strong medical spin on the lay testimonies shows that the legal setting did impose a hierarchy and fostered medical accounts. The law established that to gain exemption a clear sequence of causes leading from childbirth and pregnancy to death had to be produced. Learned physicians (here as opposed to lay witnesses or non-learned medical practitioners) were regarded as best equipped to provide or exclude it; they added a refined account of causation, a more precise estimate of the timing of events, and doctrinal authority.<sup>95</sup> Although physicians were often advising judges, medical reports could be submitted to support a party's claim and the power of medical reasoning would become obvious to ordinary Roman citizens who could play the legal game and either resort to using physicians as expert witnesses or appropriating

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mediating between specific expertise and common knowledge: Boari, *Prospettive di mediazione* (n. 57), 93. For a later period and a different legal system, the expert's ability to "map scientific fact on to the broader and less stable network of public belief" has been stressed in Ian Burney, *Poison, Detection, and the Victorian Imagination* (Manchester, UK: Manchester University Press, 2006), 53.

94. Mary Lindemann, "The Body Debated: Bodies and Rights in Seventeenth- and Eighteenth-Century Germany," *J. Mediev. Early Mod. Stud.* 38 (2008): 493–521 warns us not to assume that physicians' views would automatically outweigh lay witnesses' testimony, or the authority of religious and civic institutions.

95. In the case examined by Cohen, "Miscarriages of Apothecary Justice" (n. 80), while a neighbor testified that the woman had not felt the baby for several days, the midwife and the physicians made a more precise estimate based on the condition of the miscarried fetus.

medical arguments themselves in the pursuit of their interests.<sup>96</sup> This shows the limitations of any model of medicalization postulating a simple substitution of lay with learned medical knowledge, as more complex exchanges can be observed here.

Like all lenders fighting to recoup their money, Cecilia's husband had to demonstrate that childbirth had been the one and only cause of death. Although it is hard to establish how often controversies over women's deaths would end up in court, they would all involve the production of coherent medical histories arguing that a woman's parturition had been far from normal and that the ensuing health problems were linked in a chain of medical cause and effect.<sup>97</sup> Under financial pressure, healthy childbirths were construed as pathological. Pathological pregnant bodies routinely called for medical experts, and disputes about the *societas* may have had the effect of increasing the currency of medical explanations of pregnancy and childbirth in society at large. Interestingly, the other side of the coin would also favor medical experts. As Cecilia's case shows, in the legal framework even healthy and natural births, which historians have usually regarded as a female realm, had become medical in that their "healthiness" had to be proved. Even when physicians' presence had not been required in the birthing room, they now had a reason to claim competence over normal births.

Zacchia's *consilium* offers insight into another area of recent studies. Katharine Park has argued that starting with the late Middle Ages a transition occurred from a private and domestic approach to generation (the secrets possessed by women) to a situation in which female secrets had been "unveiled and disseminated by learned doctors in service of public interest and public good."<sup>98</sup> A fundamental step in the process that led to "a regime of anatomical publicity" was print.<sup>99</sup> Nothing, however, could be more public than a courtroom, even in the shielded evidence gathering of the Roman canon procedure. The case of Cecilia shows how details of

96. On the routine access of ordinary Romans to courts of law: Ago, *Economia barocca* (n. 3); Thomas V. Cohen and Elizabeth S. Cohen, *Words and Deeds in Renaissance Rome: Trials before the Papal Magistrates* (Toronto: University of Toronto Press, 1993).

97. For the power of the legal sphere to reshape narratives about pregnancy: Gowing, *Common Bodies* (n. 18), 142–43.

98. Park, *Secrets of Women* (n. 15), 116. For the complementary argument that older women (and midwives) played a role in making public the secrets of generation, and for a useful discussion of early modern boundaries between public and private with regard to female bodies, Gowing, *Common Bodies* (n. 18).

99. Park, *Secrets of Women* (n. 15), 120, and on the role of print, 116.

a woman's pregnancy and parturition were presented, assessed, and challenged by judges, witnesses, and physicians. We do not know what all the dead women would have made of what was by all accounts a public display of their bodies, but judging by the readiness with which their families complied, secrets of women had really come a long way away from the private and domestic sphere. As male clerics, judges of the Rota and of some other Roman courts adjudicating on *societas* disputes were the people we might expect least likely to deal with female bodies. Yet in seventeenth-century Rome, the topic of women's conversations in the birthing room could easily move out of the enclosed space of confinement to be scrutinized and discussed in the all-male space of the courtroom.

### Conclusion

A woman's death in childbirth was a tragedy early modern families experienced all too often and all over Europe, but in Rome the *societas* contracts transformed it into a contentious and public event. As for other issues arising from generation, for example paternity disputes, the ensuing controversies reveal how social and economic concerns prompted medical debates, especially through physicians' forensic activities. Responding to the request for expertise from jurists, Roman doctors discussed pregnancy and childbirth with remarkable gusto. Physicians' familiarity with issues of generation is a growing area of investigation, but the Roman discussions make particularly visible the contours of their expected knowledge and the pressure from their legal role to expand it. I have shown how the literature on which Cagnati, Perlini, and Zacchia variously drew still allowed for disagreement on key questions such as the nature of pregnancy—a fundamentally natural process or almost a disease—and also that physicians were claiming competence either way. This was not simply mastery of a textual tradition but was rather rooted in, and may have enriched, physicians' professional engagement with gynecological issues such as the treatment of pregnancy's illnesses and the dangers of the postpartum.

Furthermore, the terms of the *societas* contract urged physicians to focus on childbirth as the strongest cause of death that would allow exemption. In their discussions Cagnati and Zacchia mobilized anatomical and physiological knowledge of childbirth as well as of its potentially preternatural elements. This was not about claiming expertise in the manual task of delivering a baby; man-midwifery did not emerge in Rome in the early seventeenth century, nor did female support networks disappear or lose importance. But the medical debates surrounding women's deaths reveal a dimension of male involvement with the birthing body that has

been eclipsed in received accounts: physicians were prepared to regard childbirth—its normal progress as well as its troubles—as one in the series of the events leading to procreation, and this they unanimously considered within their remit. The legal controversies made the status of parturition the bone of contention—natural and healthy or the cause of illness and death—urging all those involved to take a broader look at the events surrounding childbirth, from the progress of pregnancy to the postpartum period. I have argued that from this larger perspective the distinction between normal and difficult childbirth on which historians have focused (and the different expertise associated with each) would have appeared narrow to contemporaries, and in two ways: the nature of childbirth was open to negotiation and physicians could be required to demonstrate medically that it had been healthy.

The second area illuminated by the Roman disputes is how the distinctive feature of learned medicine—understanding through causes—translated into medicolegal practice and shaped physicians' encounters with jurists. Unsurprisingly, what could be framed as a dry issue of logic had major consequences. Preoccupied with legal and moral implications, jurists objected to the less than stringent definition of cause in the medical tradition—potentially a blanket exemption for all pregnant women. But the ongoing exchanges between doctors and jurists fostered by the legal system allowed physicians such as Zacchia to argue for the specific epistemology of legal medicine and claim a fundamental role in resolving social controversies.

This was not just about the clashes of experts. Focusing on the courtroom has dramatized the dynamics between the different kinds of knowledge that were enacted there. Many people could be involved in the disputes stirred by the contract, as parties, as witnesses (lay or expert), or as judges. The courtroom provided an arena where views on pregnancy and childbirth would intersect. Parties claiming exemption would produce histories of women's pathological pregnancy, parturition, and puerperium. They mobilized a range of widely held explanations about the risks of pregnancy and childbirth, the same with which more generally women and their families would make sense of childbirth deaths. As the expression of broader perceptions of the body, many such views were non-medical. However, I have argued that the legal experience created by the contract—especially the requirement that the direct and immediate cause be identified and the consequent presence of medical experts—would encourage the parties' appropriation of medical discourse. Influential work on early modern medicine has focused on how the learned approach of physicians gradually undermined lay, and especially female, claims to

authority. But when we enlarge our view to consider the range of actors involved in legal disputes, the model of a competition between lay and medical knowledge is too simple. While expert witnesses engaged with, and in part depended on, lay testimonies, the parties took full advantage of the power of medical reasoning. In the courtroom, ordinary people, not just physicians, sought the benefits of a doctrinally sound medical explanation. Judges too were part of these dynamics, and I have highlighted the legal tradition and exemplary cases through which they would make sense of women's deaths, but also their broader social concerns and their role as arbiters between expert views and common opinion, an essential component of ancien régime justice. At the center of clashing interests and understood through different ways of knowing that variously intersected in the courtroom, Roman deaths in childbirth add to our growing appreciation of how the political and economic significance of pregnancy made secrets of women public.



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