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A JURY OF MATRONS

by

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In particular circumstances, the civil and criminal laws of England required that a litigant or a prisoner convicted of a capital offence should be examined to determine whether she was pregnant. Such efforts to solve a medical problem for legal reasons illustrate, among other things, one of the interfaces between the two disciplines and their interdependence when confronted with a common problem. This paper reviews some typical English cases.[1]

Once the classical physical signs of pregnancy had appeared, there was ordinarily no problem in diagnosing it.[2] When the law required that a woman be examined for the signs indicating pregnancy, the examination was undertaken by such more or less expert individuals as a medical man, *accoucheur,* midwife, matron, or other lay persons.[3] The choice by the court depended on the law and its interpretation; these, in turn, were influenced ultimately by such factors as tradition, the relative authority at a given time of various medical and lay practitioners, and their availability. The diagnosis, even when that of an experienced physician or surgeon, was far from infallible.[4] James Blundell, Professor of Obstetricy at Guy's Hospital, ruefully remarked in 1834, "The most certain mode of knowing whether a woman be in a state of gestation or not, is by waiting until the term of nine months is completed."[5] Not until the nineteenth century was there much advance in the medical diagnosis of pregnancy.[6] Inevitably, the midwife, matron, or medical man testifying as an expert witness in a court of law sometimes revealed uncertainty or was proved at a later time to have been in error.[7]

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[1] In 'On "pleading the belly:" a concise history of the jury of matrons', *Criminal Justice History,* 1985, **6:** 1-64, James C. Oldham has reviewed this subject in detail, particularly in its legal historical aspects.

[2] In past centuries, a great variety of superstitious methods, many of them involving urine tests, were employed in the effort to diagnose pregnancy before physical signs and symptoms had appeared. See, for example, Thomas R. Forbes, *The midwife and the witch,* New Haven, Conn., Yale University Press, 1966, pp. 34-49.

[3] The lengthy history of controversy and competition between the professions involved in childbirth has been discussed elsewhere (see, for example, Jean Donnison, *Midwives and medical men: a history of inter-professional rivalries and women's rights,* London, Heinemann, 1977; and Ann Oakley, *The captured womb: a history of the medical care of pregnant women,* Oxford, Blackwell, 1984).

[4] J. M. Munro Kerr *et al.* (editors), *Historical review of British obstetrics and gynaecology, 1800-1950,* Edinburgh, E. & S. Livingstone, 1954, pp. 9, 332-333; Oakley, op. cit., note 3 above, p. 17.

[5] James Blundell, *The principles and practice of obstetricy,* Washington, Duff Green, 1834, p. 108.

[6] Munro Kerr, op. cit., note 4 above, p. 9.

[7] Ackerknecht and Fischer-Homberger have discussed the Continental midwife as an expert witness (Erwin H. Ackerknecht, 'Midwives as experts in court', *Bull. N.Y. Acad. Med.,* 1976, **52:** 1224-1228; E. Fischer-Homberger, *Medizin vor Gericht,* Berne, Stuttgart, and Vienna, Hans Huber, 1983, pp. 53-68) but little seems to have been written about her English counterpart in a similar situation.

In May 1220 AD, Peter Constable of Melton appeared before the justices of the peace with an unusual complaint. He alleged that Muriel, the widow of his brother William, had asserted that not long before his death William had impregnated her. Peter went on to say that Muriel's claim was false and was being made so that he, Peter, should not inherit from his dead brother's estate. Muriel, called before the bench to answer the complaint, at once took the initiative. She requested that the justices send to the sheriff of Norfolk a writ ordering *per legales feminas diligenter faceret inquisicionem si esset pregnans nec ne,* that with the help of legally qualified matrons he diligently investigate whether she was pregnant or not.[8] This writ, or something similar, was later known as a writ *de ventre inspiciendo,* an inspection of the abdomen. The dozen or so worthy ladies who made such an examination at the direction of the court were often referred to as a jury of matrons.

But to return to the importunate Muriel. She came back to the justices before the sheriff had made his report and again requested that she be examined for signs of pregnancy. This time they assigned the task to fourteen "worthy and discreet" London matrons. The latter reported that she was indeed with child. Thereupon the justices told Muriel that she was free to go until another complaint was made. She did not have long to wait. Soon Peter was once more in court, again alleging that the widow was not pregnant by his brother.

Called before the bench, Muriel was questioned as to when she had last met her husband and when he died. The dates she gave were 24 May and 29 June 1220. Peter accepted these but, repeating his complaint, asked that the widow be held in custody, a precaution to prevent a false claim of a delivery and the introduction of the newborn baby of another woman. The court, acceding, ordered that Muriel be placed in the keeping of the Lord Mayor of London. Four London matrons were instructed to take charge of her.

Peter cannily bided his time until April 1221, forty-eight weeks after the date when, said Muriel, she had last seen her husband. No child had appeared, and he renewed his complaint before the justices. Muriel gave up, admitting she had not been pregnant. Her story now was that the previous year she had been ill and felt "so heavy in her sickness" that she thought she was with child. The court declared Peter the rightful heir of William.[9]

Thorne provides a translation of the form of one thirteenth-century *de ventre* writ. It directed that the woman

> be examined by lawful and discreet women through whom the truth may the better be known, and let the same women carefully [examine] her by feeling her breasts and abdomen and in every way whereby they may best ascertain whether she is pregnant or not. And if the said keepers and women discover that she is pregnant, or if they are in doubt, then let them lodge her in our castle, such a one, in such a way that no maid who may be pregnant nor any other who may be suspected of contriving a deception has access to her, and let her remain in the castle until the question of her offspring can be settled. And provide that in that castle she be separately guarded, lest any deception respecting her offspring occur while she is in custody.

[8] A writ was a letter issued under seal in the name of the king from a court of justice. It commanded a sheriff, some other officer of the law, or a private individual to perform a specified action.

[9] Frederic W. Maitland (editor), *Bracton's note book,* London, C. J. Clay, 1887, vol. 3, pp. 417-418; Henry G. Richardson and George O. Sayles, *Select cases of procedure without writ under Henry III,* London, Bernard Quaritch, 1941, pp. cliii-clv; Samuel E. Thorne, *Bracton on the laws and customs of* England, Cambridge, Mass., Belknap Press, 1968, vol. 2, pp. 201-203.

A similar writ could be issued on the complaint of a brother and heir of the deceased if he believed that the widow was attempting to practise an *excogitatam malitiam,* a premeditated fraud.[10] An additional writ directed the sheriff not to allow any pregnant woman to approach the widow in custody. This was to prevent the fraudulent introduction of another baby, particularly if "the heir might be a female child, and a substitution made of a male child, to take the inheritance under the English laws of primogeniture."[11]

In February 1220, a few months before the Constable affair began, the writ *de ventre* had been invoked by one Thomas de Aldham against Joan, the widow of his brother Adam. This also was a matter of a contested inheritance. The examination for pregnancy was to be made by both knights and matrons, discreet and worthy; if the woman was found to be with child, the dates of conception and of probable delivery were to be established.[12]

Henry de Bracton (d. 1268), the great English jurist, was a Judge of the King's Bench, a Justice in Eyre, and Chancellor of Exeter Cathedral. He gives the form of various writs relating to suppositious birth; one of them specifies that *coram praedictis militibus facias eam videri a praedictis mulieribus,* in the presence of the aforesaid knights you cause her to be seen by the aforesaid women.[13] Discreet and lawful women might be the experts in matters of pregnancy but their testimony before the justices would not be held as reliable as that of knights of the realm, who were usually noblemen and landowners.

There are records of the issue of the *de ventre* writ on three occasions in 1222. Each case involved disputed inheritance and examination by worthy matrons. The claim of Letitia, widow of William of Caynes, that she was pregnant was found to be correct. Matilda, widow of Richard Thorne, initially had said she was with child but later confessed that she was not, thus releasing Richard's estate to the rightful heirs. Agnes, widow of Richard of Tours, asserted that she was pregnant by her late husband. Indeed, she said she had rejoiced to feel foetal movements. The news was disputed by Avis, daughter of Agnes and Richard, and by Roger Hyde, Avis's husband. He pointed out, with understandable concern, that if Agnes should be pregnant and have a son, the son would inherit the estate, whereas a daughter would not. (The estate in this case was the fief of a knight on half-pay.) So the court put Agnes in custody in a castle in Oxford and the fief was left in the hands of one of the justices until the baby was born. Bracton, recording this case, was concerned with matters of law, not human interest; he does not tell us whether Agnes had a son or daughter.[14] Still another *de ventre* writ was issued in 1252.[15]

The determination of pregnancy might also be an issue in a criminal case. Here the *de ventre* writ did not apply. However, if a woman was found guilty of a capital offence

[10] Henry J. Stephen, *New commentaries on the laws of England,* New York, J. S. Voorhies, 1843, vol. 2, p. 318; Thorne, op. cit., note 9 above, vol. 2, pp. 201-203.

[11] William H. Arnoux, 'The writ de ventre inspiciendo', *Papers Medico-Legal Soc. New York,* 1882, 2nd ser., pp. 334-353.

[12] Richardson and Sayles, op. cit., note 9 above, p. cliii; Elsa de Haas and George D. G. Hall, *Early registers of writs,* London, Bernard Quaritch, 1970, pp. lxxvii-lxxviii.

[13] Thorne, op. cit., note 9 above, p. 203.

[14] Maitland, op. cit., note 9 above, vol. 2, pp. 161-162, 112, 116-117.

[15] De Haas and Hall, op. cit., note 12 above, p. lii.

and was sentenced to death, she could "plead her belly", that is, claim that she was pregnant. Should the court decide that she was telling the truth, execution of sentence was deferred until she had delivered her child. The underlying principle, which had come down from Roman law and which had existed in English law from earliest times, was the protection of the life of the unborn infant. There were, however, three restrictions. The plea of pregnancy having been made,

> the judge must direct a jury of twelve matrons or discreet women to inquire the fact; and if they bring in their verdict *quick with child,* (for, barely *with child,* unless it be alive in the womb, is not sufficient), execution shall be stayed generally till the next session; and so from session to session, till either she is delivered, or proves by the course of nature not to have been with child at all. But if she once hath had the benefit of this reprieve, and been delivered, and afterwards becomes pregnant again, she shall not be entitled to the benefit of a farther respite for that cause. For she may now be executed before the child is quick in the womb; and shall not, by her own incontinence, evade the sentence of justice.[16]

There are records of reprieves for pregnancy being granted to two women as early as 1228 and to others in 1248 and 1253. While the prisoners waited for their babies to be born, each capital charge was further investigated, with the result that three of the women were pardoned by the king. The fate of the fourth victim is not recorded.[17]

In 1596, "Sir Francis Willoughby died Seized of a great Inheritance, having five daughters, whereof the eldest was married to Perc[ival] Willoughby and not any Sons; And the said Sir Francis, leaving his wife Dorothy, who at the time of his death, pretended her self to be with Child by Sir Francis, which if it were a Son, all the five Sisters should thereby lose the Inheritance descended unto them." Percival and his wife Bridget, alarmed at the threat to their prospects,

> prayed a Writ *de Ventre Inspiciendo* out of the Chancery, directed to the Sheriff of London, that he should cause the said Dorothy to be viewed by twelve knights and searched by twelve Women in the presence of the twelve Knights, & *ad tractandum per Ubera,* and *Ventrem Inspiciend.* [and by palpating the breasts and examining the abdomen] whether she were with Child, and to certifie the same unto the Common Bench. And if she were with Child, to certifie for how long time in their Judgments, & *quando sit paritura* [when she might deliver]. Whereupon the Sheriff accordingly caused her to be searched, and returned, that she was twenty weeks gone with Child: And that within twenty weeks *fuit paritura* [she will have given birth]. Whereupon another Writ issued out of the Common Bench, Commanding the Sheriff safely to keep her in such an House, and that the doors should be well guarded; and that every day he should cause her to be viewed by some of the Women named in the Writ (wherein ten were named) and when she should be delivered, that some of them should be with her to view her Birth, whether it be Male, or Female, to the intent there should not be any Falsity. And, upon this Writ, the Sheriff returned; that accordingly he had caused her to be kept, &c. And, that on such a day she was delivered of a Daughter.[18]

A few years later, dispute over an inheritance centred not on the existence but the duration of pregnancy. Edward Andrews had died of plague on 23 March 1610 after an

[16] Stephen, op. cit., note 10 above, 1845, vol. 4. p. 460; Matthew Hale, *The history of the pleas of the Crown,* Dublin, E. Lynch, 1778, vol. 1, pp. 368-369; vol. 2, p. 413.

[17] *Close rolls of the reign of Henry III. A.D. 1227-1231,* London, Eyre & Spottiswoode, 1902, p. 53; *Close rolls of the reign of Henry III. A.D. 1251-1253,* London, HMSO, 1927, p. 501; *Calendar of the patent rolls. A.D. 1247-58,* London, Mackie, 1908, p. 20; Naomi D. Hurnard, *The king's pardon for homicide before A.D. 1307,* Oxford, Clarendon Press, 1969, p. 43.

[18] Harebotle Grimston, *The second [first] part of the reports of Sir George Croke, Kt.,* London, A. Roper, 1669, p. 566; Thomas R. Forbes, *Surgeons at the Bailey: English forensic medicine to 1878,* New Haven, Conn., Yale University Press, 1985, p. 44.

illness of one day. On 5 January 1611, forty-one weeks and two days later, a little girl was born to his widow. During the preceding month and a half the wretched woman had been harrassed by her father-in-law. Driven to the streets, she was rescued when her labour began by a kindly female in whose home a baby girl was delivered. But the troubles of mother and daughter were not over. Eleven years later a suit was brought for their ejection from inherited land because, it was claimed, the child was illegitimate. The Court sought expert opinion from

> two Doctors of Physick, viz. Sir William Baddy and Doctor Mundford, and one Chamberlaine (who was a physician, and in nature of a Midwife) upon their Oath, they affirming that the child came in time convenient to be the Daughter of the party who died; And that the usual time for a Woman to go with child, was nine months and ten days, viz. menses Solares, that is thirty days to the month, and not menses Lunares, and that by reason of the want of strength in the woman or the child, or by reason of ill usage, she might be a longer time, Viz, to the end of ten months, or more. The Court held here, that it might well be as the Physicians had affirmed, that ten months may be said properly to be the time mulieribus pariendo constitutum [recognized as usual for pregnancy in women]

and instructed the jury that the little girl was indeed the legitimate daughter of Edmund Andrew.[19] Grimston, citing precedents in this case, illustrates the primitive level of seventeenth-century forensic medicine. He refers to "a widow in Paris, that was delivered of a child the fourteenth month after her husband's death, and yet the Judges awarded the child to be legitimate. The like judgment was given in the Consistory at *Witenburgh,* in case of a woman who was brought to bed in the eleventh month after her husband's death."[20]

William Theaker, husband of Mary, died on 15 February 1624. The widow, apparently not overcome with grief, "was married again to one John Duncomb within a week after the death of her husband." When Mary made it known that she was pregnant by William, Alphonsus Theaker, cousin of the dead man and his heir if John had no male child, induced the Court of Chancery to issue a writ *de ventre inspiciendo.* It directed the Sheriff of London to have Mary examined by a jury of matrons to determine not only whether she was pregnant but, if so, when she would deliver. Back came a report that the baby would be born within twenty weeks.

Now on the strength of another writ Mary and her second husband were *both* moved to Wandsworth in charge of the sheriff. So that "there might not appear to be any false or suppositious birth", the complainant Theaker asked that Mary be isolated and be seen daily by court-appointed matrons. But such seclusion was not acceptable to the justices. Mary was a married woman, "a Feme-covert, who ought to habit with her husband". A third writ was issued directing that she would be left with her spouse; however, she had to promise that she would not leave the house, that one or two matrons could see her daily, and that two or three of them could attend her delivery. Once more Nature resolved the litigation; Mary, like Lady Willoughby, gave birth to a daughter.[21]

[19] "Chamberlaine" was Peter Chamberlen the younger (1572-1626) or Peter Chamberlen the elder (d. 1631), his elder brother, accoucheurs and proprietors of the Chamberlen forceps.

[20] H. Grimston, *The second part of the reports of Sir George Croke, Kt.*, London, W. Rawlins, 1683, pp. 541-542.

[21] Grimston, op. cit., note 18 above, pp. 685-686.

Recourse was again had to the writ in 1725. A testator had bequeathed his estate to his children, if any, and otherwise to a charity. Shortly before his demise, this gentlemen married an enterprising prostitute. Soon after his death, she reported that she was bearing his child. The Attorney General, properly suspicious, arranged to have two midwives examine the widow and, if they found her pregnant, attend her delivery. At this point, the lady confessed that she had no expectations.[22]

By now, literary references to the examination for pregnancy were appearing. Joseph Addison, for example, referred in jest to his consultation with "a jury of matrons".[23] In John Gay's *The beggar's opera* a woman thief asks for help.

> *Filch.* Black *Moll* hath sent word her Tryal comes on in the afternoon, and she hopes you will order matters so as to bring her off.
> *Peachum.* Why, she may plead her Belly at worst; to my knowledge she hath taken care of that Security.[24]

The writ was sought in cases of disputed inheritance in 1731, 1786, 1792, and 1835.[25] Meanwhile, medical men were being called on more frequently to deliver babies as the competence of the accoucheur relative to that of the midwife was increasingly recognized. Some women preferred to be attended by their own medical practitioner. When a Mrs Fox, a testator's widow who had already made known her pregnancy, learned in the Vice Chancellor's Court that she would be the subject of the obligatory examination, she objected because it would be made by strangers rather than her own surgeon. He and her physician submitted affidavits that they believed her to be in the fifth month. The Vice Chancellor, attempting both to respect the widow's modesty and to follow the legal dictate, compromised by directing that two matrons and two medical men visit the widow every two weeks after giving her notice.

The sympathies of the *London Medical Gazette* were with Mrs Fox. It poured its wrath on the authorities who, in recently purging the *Registrum brevium*[26] of outmoded writs, had failed to remove "the old and disgustingly indecent writ" *de ventre inspiciendo*. The *Gazette* quoted the offending precept only in Latin—the text "requires the veil of the original language in which it is expressed, to shadow its gross indelicacy." But what was perhaps most infuriating to the editor was the writ's requirement, not actually enforced in the case of Mrs Fox but still a threat to less fortunate victims, that the "sheriff is commanded to select twelve matrons and twelve respectable men, who are, in his presence, to make the requisite examination . . . What a scene to be even possibly contemplated as likely to occur in a civilized country!" On 7 November, the *Gazette* triumphantly recorded the birth, some weeks earlier, of a son and heir to Mrs Fox.[27]

[22] William P. Williams, *Reports of cases argued and determined in the High Court of Chancery*, Dublin, James Moore, 1790, vol. 2, no. 591; Arnoux, op. cit., note 11 above, p. 343.
[23] Joseph Addison, *The lucubrations of Isaac Bickerstaff, Esq.*, London, C. Bathurst, 1786, vol. 3, p.387.
[24] John Gay, *The beggar's opera*, London, John Watts, 1735, Act I, scene 2.
[25] Williams, op. cit., note 22 above, vol. 2, no. 591; Samuel C. Cox, *Cases determined in the Courts of Equity from 1783 to 1796, inclusive*, New York, O. Halsted, 1824, pp. 297-299; William Brown, *Reports of cases argued and determined in the High Court of Chancery*, Boston, Little & Brown, 1844, vol. 4, pp. 67-72; Arnoux, op. cit., note 11 above, p. 345.
[26] *Registrum brevium*, London, Richard & Edward Atkins, 1687, p. 227.
[27] 'Some late proceedings in chancery. De ventre inspiciendo', *Lond. med. Gaz.*, 1835, **16:** 697-700; **17:**191.

This seems to have been the last time that the *de ventre* writ was invoked in a matter of disputed inheritance. However, the possibility of reprieve on a plea of pregnancy was not forgotten by desperate women facing the gallows. A jury ordered to examine Ann Hurle, found guilty at the Old Bailey in 1804 of forgery, then a capital offence, could not make up its mind. The sheriff thereupon called in a physician, who found her not pregnant.[28] In Norwich on 22 March 1832, a Friday, Mary Wright was found guilty of fatally poisoning her husband with arsenic. She was sentenced to be executed on the following Monday. Before the court could be adjourned, the prisoner's counsel requested a reprieve on the basis of her alleged pregnancy. The judge, said the *London Medical Gazette,*

> immediately directed the sheriff to summon a jury of matrons to inquire into the truth of the plea. Twelve married women were accordingly sworn to try whether the woman was pregnant with a *quick* child. The female jury and the prisoner retired into a private chamber; and in the course of an hour returned into court, and gave their verdict that the prisoner, Mary Wright, was *not quick with child.* Fortunately, the eyes of the profession in Norwich were not closed to the absurd nature of this transaction: three gentlemen, with the humanity which is seldom absent from minds of superior attainments, procured access to the prisoner next morning, examined her professionally, found her to be pregnant with a quick child, drew up a representation instantly for the judge, to the facts of which they were obliged to swear; and the consequence is that the woman stands reprieved from the execution of her sentence.

The surgeon-accoucheurs estimated that Mrs Wright was in her fifth month. She delivered a healthy daughter on 11 July.

Notwithstanding the *Gazette's* somewhat self-righteous posture, its criticisms were justified. The decision, said the journal, should not have been entrusted to "such female stragglers and idlers as chance finds present in a criminal court on such an occasion. Such persons must be, literally, loungers and idlers." But not even intelligent matrons could always be accurate in a diagnosis which was sometimes difficult for the experienced accoucheur, nor could they necessarily determine whether the child was *quick,* a question that might challenge even the professional man. The *Gazette* also took issue with the law's inclusion of quickness as a requirement for a reprieve, since it made invalid a prisoner's plea of pregnancy in the months *before* quickening. Finally, the editor raised the question of the determination of pregnancy in relation to inheritance. "Can there be any rational solution why, if a foetus be held unendowed with life until quickening has occurred, that very same foetus is yet held capable of inheritance from the moment of its conception? In other words, an embryo, by the laws of real property, may succeed to an estate, and yet, in three or four months later, be put to death for its mother's crime!"[29] The dispute as to when life begins is not a new one.

When Anne Wycherley, a few years later, was sentenced to death for the murder of her young daughter, she replied, "I am with child now." Ordered the judge, "Let the sheriff impanel a jury of matrons forthwith. Let all the doors be shut, and no one be suffered to leave the Court", this last apparently a precaution to prevent a rapid exodus of married ladies. Twelve of them were impanelled and the forematron [*sic*] and her

[28] Theodric R. Beck and John B. Beck, *Elements of medical jurisprudence,* Albany, Packard & Van Benthuysen, 1835, vol. 1, pp. 154-155.

[29] 'Norwich jury of matrons', *Lond. med. Gaz.*, 1832, **12:** 22-26; 'The late jury of matrons at Norwich', ibid., 1833, **12:** 585-586; ['A jury of matrons'], ibid., 1847. **5:** 597-598.

colleagues were duly sworn to "diligently inquire, search, and try Anne Wycherley, the prisoner at the bar, whether she be quick with child or not". A bailiff was sworn to "keep this jury of matrons without meat, drink, or fire, candle light excepted; you shall suffer no person but the prisoner to speak to them . . .."

Shortly after the prisoner and jury retired, the Court received a message that the help of a surgeon was desired. The women were brought back into court to repeat their request. A surgeon-accoucheur, present in court as a witness in another case, was startled to find himself ordered to examine a prisoner in private. His wife attending as an onlooker, fared no better—she was chosen as forematron of the jury. Upon his return, he stated under oath that "he saw no reason to believe that the prisoner was quick with child, his opinion being that she was not with child at all, but that if she was, she could only be in a very early stage of pregnancy." The Court then called attention to a nice legal distinction: "'Quick with child' is having conceived. 'With quick child' is when the child has quickened."[30] The jury of matrons returned a verdict that Anne Wycherley was not quick with child. However, she was subsequently given a reprieve "in order that it might be ascertained with certainty whether she was with child or not." Unhappily, the outcome seems not to have been recorded.[31]

The British Medical Association in August 1843 unanimously passed a resolution condemning the law under which the sentence of death could be delayed if a pregnant prisoner had quickened but offered no mercy if she had not done so, "thus making a distinction where there is no difference".[32]

A reprieve on the grounds of pregnancy was requested after a trial in 1843; the matrons found the prisoner not pregnant.[33] In 1847, a jury of matrons was directed to examine Mary Ann Hunt, a convicted murderer. The assistance of a surgeon was offered if the jury desired it. The matrons, declining, returned to court in half an hour. Their verdict was against the prisoner.

> Mr. Baron Platt.—You say that she is not quick with child—that she has not a living child within her?
>
> Forematron.—That is our verdict. We are all of that opinion.
>
> Mr. Baron Platt—Let the prisoner be removed. The law must take its course.

Fortunately, the Secretary of State intervened, ordering an examination by experienced medical men. They decided that Mary Ann Hunt was pregnant "and had passed that stage at which quickening (foetal movement) is most commonly perceived." She was given a respite, and three months later delivered a healthy seven months' son. Meanwhile, her sentence had been commuted to transportation for life. Again, the medical press was outraged, "by a law which virtually leaves the issue in the hands of ignorant and incompetent persons."[34]

[30] That is, when it has moved (Henry C. Black, *Black's law dictionary*, St Paul, Minn., West, 1968, p. 1415).

[31] Beck and Beck, op. cit., note 28 above, vol. 1, p. 155; Alfred S. Taylor, *Medical jurisprudence*, Philadelphia, Blanchard & Lea, 1856, p. 393; 'A jury of matrons', *Legal Observer*, 1838, **16:** 306; Frederic A. Carrington and John Payne, *Reports of cases argued and ruled at nisi prius*, London, S. Sweet, 1839, pp. 262-265.

[32] 'Historical sketch of the British Medical Association', *Br. med. J.*, 1882, **i:** 847-885.

[33] Taylor, op. cit., note 31 above, p. 394.

Mary Weeks, indicted in 1856 for murder, was found by a jury of matrons and two physicians to be pregnant. Sentence was postponed.[35]

Rachel Busby, under sentence by an Oxford Court in 1872 and found not pregnant by the matrons, would have died "but for the exertions of some philanthropic gentlemen". She subsequently delivered a stillborn baby in the county gaol.[36]

In the same year, the notorious Christiana Edmunds, already five months in prison before her trial, was arraigned at the Old Bailey on a charge of wilfully murdering a four-year-old boy by giving him a chocolate cream containing strychnine. It was proved that she had bought the poison from a pharmacist in Brighton and that on several occasions she had induced various young boys to purchase chocolate creams for her. The woman had attempted unsuccessfully to poison other children. There was a familial history of insanity, and several medical men who had examined the prisoner testified as to her apparent inability to distinguish right from wrong.

The jury returned a verdict of guilty and Christiana Edmunds was sentenced to death. She then stated that she was pregnant. Said the *Medical Times and Gazette:*

> The Sheriff was directed forthwith to empanel a jury of matrons, and in obedience to this injunction a raid was made by the Under-Sheriffs upon the matrons present in Court. A dozen respectably dressed women were marched into the jury-box and sworn, with a forewoman of course. They then retired with the prisoner into the judge's parlour to consider their verdict. The result is well known; the prisoner was not quick with child .... Half an hour after their retirement a messenger came into Court, and an inquiry was made for an accoucheur. One was found—Mr. J. Beresford Ryley, of Woolwich—and he was directed to assist the matrons. Some further delay occurred. It is rumoured that a policeman was sent for a stethoscope, but brought a telescope instead. At length the jury returned, and the brief verdict "Not" was returned .... The period of quickening is selected as that after which the convict may be respited, because it was formerly the opinion of Medical men—and is even now the opinion of the vulgar—that the foetus only receives life when the woman quickens. Quickening is now known to be such an extremely uncertain sign, occurring at such varying periods during the pregnant state, that the audible pulsation of the foetal heart is invariably substituted, and this can be ascertained by none other than a Medical examination.

The sentence of death on Christiana Edmunds was eventually remitted on the grounds of insanity.[37]

A few years later, another convicted prisoner similarly pleaded her pregnancy. The judge again directed that a jury of women be

> taken from among those casually present in court (*de circumstantibus*); and they were sworn to try not only whether the convict was pregnant, but whether she was quick with child or not. The learned judge who tried the case very properly directed that the surgeon of the gaol, Dr. McEwen, should be associated with the twelve matrons or discreet women required by law. He was sworn to assist the jury; and, after due consultation, they returned a verdict that the woman was with child of a quick nature.[38]

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[34] ['A jury of matrons'], op. cit., note 31 above; ['A jury of matrons'], *Lond. med. Gaz.*, 1848, **6:** 22; 'The verdict of the jury of matrons', ibid., 1847, **5:** 681.

[35] William A. Guy and David Ferrier, *Principles of forensic medicine,* London, Henry Renshaw, 1875, p. 59.

[36] 'A jury of matrons', *Med. Times Gaz.*, 1872, **1:** 317.

[37] 'A jury of matrons', ibid., 1872, **1:** 98-99; J. Malcolm Cameron and A. J. Hardy, 'The Brighton poisoning case, 1872', *Practitioner,* 1872, 401-405.

[38] 'The jury of matrons in criminal cases', *Br. med. J.*, 1878, **i:** 268.

It should be appreciated that "pleading the belly" was a relatively uncommon occurrence. The case of Catherine Webster illustrates the point. When she made her plea for a stay of execution on 19 July 1879 at the Old Bailey, the judge, Mr Justice Denman, observed that this was his first experience of the sort in thirty-two years on the bench. A jury of matrons was assembled from women in the gallery and was sworn: "You shall search and try whether the prisoner be with child—quick child, and return a true verdict according to the best of your skill and judgment."

After consulting with a Mr Avory, an experienced lawyer, the judge sent for the matron of the gaol. At this point, Catherine Webster appeared on the verge of collapse. It was the opinion of the matron that the prisoner was "not quick" with child. Next, at the direction of Mr Justice Denman, Mr Bond, a surgeon who was present, and the jury of matrons retired to the jury room. "To them was taken the prisoner, who was assisted by two female warders, she now being in a prostrate condition."

The convicted woman was examined and then was returned to the court with the surgeon and the jury of matrons.

> The Judge: Have you made a careful examination? Mr. Bond: I have, my lord.
> The Judge: Have you made such an examination as to have clearly satisfied yourself that the prisoner is or is not with child? Mr. Bond: I have.
> The Judge: What do you say, sir? Mr. Bond: She is not quick with child.
> The Judge: Have you formed any judgment as to the question whether she is or is not in a state of pregnancy? Mr. Bond: I have formed a judgment from the statements of the matron.
> The Judge: That I don't think you ought to give us. Mr. Bond: It is impossible for me to form an opinion whether she is with child or not. I can swear that she is not quick with child. She has not arrived at the fourth month of pregnancy, and that is as far as I can go . . ..
> Mr. Sleigh: She must be quick with child to stay the execution.
> The Judge: Yes, that is the law . . ..

Note that Mr Bond here used the phrase "not quick with child", meaning that he had not detected the foetal movements that usually appear in the fourth or fifth month of pregnancy.

The jury of matrons, having now heard the opinions of the matron of the gaol and of the surgeon and having themselves examined the prisoner, were instructed by the judge to reach a verdict. They deliberated for two or three minutes without leaving their seats and then stated their conclusion that the prisoner was not "with child—quick child".[39] Catherine Webster was hanged at Wandsworth Prison on 29 July 1879. There was a inquest as required by law but, unfortunately, no autopsy.[40]

Justice Denman's initial instruction to the jury of matrons, to "search and try whether the prisoner be with child—quick child" could be taken as ambiguous. Was the prisoner simply pregnant or had she reached the fourth or fifth month when foetal movements can usually be detected? However, the law was specific: if the jury of matrons "bring in their verdict *quick with child,* (for, barely *with child,* unless it be alive in the womb, is not sufficient,) execution shall be stayed generally till the next session [of the court]."[41]

[39] 'A jury of matrons', *Central Law J.*, 1879, **9:** 94-96; 'A jury of matrons', *Law Times,* 1879, **67:** 212-213; 'A legal point as to a "jury of matrons",' *Lancet,* 1879, **ii:** 97.
[40] 'The Richmond murder', *The Times,* 30 July 1879, p. 7.
[41] Stephen, op. cit., note 10 above, vol. 2, p. 460.

The role of the medical witness is an ancient one. The juries of matrons in the thirteenth century must have been among the very first to state medical opinions in courts of law. In our day, of course, jury members render a verdict but do not give testimony; thus by modern definition a juryman or jurywoman cannot be a witness. But in the Middle Ages, members of a jury were expected to know or to obtain the facts of a case and then reach their verdict; there were no witnesses as such.[42] As medicine slowly advanced in later centuries, the authority of the medical man grew but the law regarding proof of pregnancy for long remained unchanged. Not until the latter part of the nineteenth century does the jury of matrons seem to have been superseded by the medical man.[43]

When a woman under sentence of death claimed pregnancy and the physical signs were uncertain, the evaluation of her state must have been harrowing for the medical witness of any century. A decision that the prisoner was indeed expecting a child would bring a respite from the rope, an interval in which new evidence and new witnesses could be sought, some time in which to seek a pardon. And perhaps, in spite of the sentence, the matron or midwife or doctors still secretly doubted the guilt of the condemned woman. The years rolled on; not until 1931 was the Sentence of Death (Expectant Mothers) Act passed, directing that if a trial jury decided on the basis of medical evidence that a woman convicted of a capital offence was pregnant, she must be sentenced to life imprisonment. "The ancient right formerly possessed by a woman to move in arrest of execution" was withdrawn.[44] Great Britain abolished the death penalty in 1965.

[42] Forbes, op. cit., note 18 above, p. 23.

[43] John J. Reese, *Text-book of medical jurisprudence and toxicology*, Philadelphia, Blakiston, 1884, pp. 432-433; William A. Guy and David Ferrier, *Principles of forensic medicine*, London, Renshaw, 1895, pp. 82-83; Clark Bell, *A manual of medical jurisprudence*, New York, Lea, 1897, p. 520; J. Dixon Mann, *Forensic medicine and toxicology*, London, Griffin, 1898, pp. 118-119.

[44] Keith Simpson (editor), *Taylor's Principles and practice of medical jurisprudence*, London, Churchill, 1965, vol. 2, p. 20.