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SOME REFLECTIONS ON THE CASE OF DR PRITCHARD*

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When I agreed to give a lecture this evening I cast around for a subject which might be of some interest, not only to those who work in the law but also to those who are medically minded. It occurred to me that a suitable point at which legal and medical lines of thought could meet was in sharing some observations about the case of a doctor who was tried by due process of law in 1865 for murdering his wife and her mother by poisoning!

OUTLINE OF THE EVENTS

Edward William Pritchard (Figure 1) was born in England, and after serving for six years as an assistant surgeon in the Royal Navy practised in Yorkshire until 1860 when he moved to Glasgow. He lived there at various addresses, and from Whitsunday 1864 in Clarence Place which was part of Sauchiehall Street. The household consisted of Dr and Mrs Pritchard, four of their children, a cook and a nurse/housemaid. Mrs Pritchard (Figure 2) came from Edinburgh, where her father, Michael Taylor, was a highly respected silk merchant. Mrs Pritchard first became unwell in October 1964, but it was significant that her health improved when she was home in Edinburgh for a month at the end of the year. After she returned to Glasgow her symptoms reappeared, at that time mainly sickness after meals. She was seldom able to eat with the family, and food was taken or sent to her room by Pritchard. On occasions it was carried up by Mary McLeod, the nurse/housemaid. Her first serious attack of illness came in February 1865, this time pain and cramp as well as sickness. She was seen by two doctors. One did not consider her case to be serious; the other prescribed a simple diet and recommended, without success, that she be removed to the care of her brother who was a doctor in Penrith.

On 10 February Mrs Taylor (Figure 3) came to Glasgow to look after her daughter. She never returned alive to Edinburgh. Three days later she herself became sick after taking some tapioca, remarking - with far greater insight than she knew - that she must have got the same complaint as her daughter. On 24 February she took ill. Her son-in-law called in a neighbour, Dr James Paterson, who had been in practice for over 30 years and until recently had been the Professor of Midwifery in the Andersonian University. When Dr Paterson arrived Pritchard told him that his mother-in-law had fallen from her chair in a fit, and that 'she was in the habit of taking a drop'. Then they went to the bedroom in which mother-in-law was lying, fully dressed. Dr Paterson was to say later that he expressed the opinion that she was dying under the influence of powerful narcotic. Pritchard clapped her on the shoulder saying 'You are getting better, darling'. Dr Paterson remarked 'Never in this world'. Pritchard then told Dr Paterson that mother-in-law was in the habit of taking Battley's solution of opium, and that it was highly probable that she had taken 'a good swig at it'. Mrs Taylor died in the early hours of the following morning. I will return later on to what was in Dr Paterson's mind when he visited the dying Mrs Taylor.

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Thereafter the condition of Mrs Pritchard did not change for the better. Servants noticed the horrible taste of, or the burning sensation produced by, food which was intended for her - cheese on 13 March, egg flip two days later. On 17 March Mrs Pritchard took a severe attack of cramp and became light-headed after Pritchard was seen to have given her something to drink. Dr Paterson was called in during the evening and found that her condition had taken an alarming change for the worse. After dictating a prescription he left. About 1 am Mrs Pritchard died while the servants were preparing a mustard poultice. Two days later Pritchard certified the cause of her death as gastric fever, its duration two months. That same day he accompanied the body of his wife to Edinburgh with a view to its interment besides that of her mother in the Grange cemetery. At his request the coffin was opened at Mr. Taylor's house and he kissed his dead wife on the lips, exhibiting, we are told, 'a great deal of feeling'. However, as he stepped off the train in Queen Street Station in Glasgow on his return from Edinburgh he was arrested. This followed the receipt by the Procurator Fiscal of an anonymous letter pointing to the suspicious circumstances in which mother and daughter had died.

THE TRIAL AND WHAT FOLLOWED

Pritchard's trial opened on 3 July and was finished in four days. The trial was held in the courtroom of the High Court in Edinburgh. The presiding judge was Lord Justice-Clerk Inglis who, eight years before, had successfully defended Madeleine Smith in that courtroom on the charge of poisoning her lover.

Much of the procedure of the trial is quite familiar when compared with what happens today. Evidence was taken from witnesses by examination, cross-examination and re-examination. At the end of the evidence there were closing speeches by counsel. There were, of course, no opening speeches because that has never been the Scottish practice. Before the jury retired to consider their verdicts they received a charge from the presiding judge with his directions as to the law which they were to apply and his guidance in regard to the issues which lay before them.

On the other hand, there were some significant differences from today's trials. The indictment was elaborate. It began with reciting the heinous nature of murder. It went on to set out in some detail the steps which Pritchard had 'wickedly and feloniously' taken to cause the death of the two women. It ended with a statement that on conviction Pritchard ought to be punished with the pains of law 'to deter others from committing the like crimes in all time coming'. Since 1887 it has been sufficient to set out charges in a simplified and shorter form.

The Lord Justice Clerk was accompanied on the bench by Lord Ardmillan and Lord Jerviswoode. They were there to assist him with advice. This was once common practice but today it is not done unless a point of difficulty requiring such assistance crops up - and the assistance comes to an end when the point has been dealt with. The old practice would put an intolerable strain on resources today!

Next it should be noted that the jury was all male. It was still some years before the sexes had been treated on an equal basis for jury service and other purposes.

The accused could not himself give evidence, but he could found on his judicial declarations, in this case two made before the Sheriff of Lanarkshire. These were read out immediately before the end of the evidence for the Crown. In them he affirmed his innocence, and stated that it was his opinion that his wife's last illness was gastric fever and that her mother had died of paralysis and apoplexy. It was not until 1898 that it became competent for an accused to give evidence on his own behalf.

The hours of sitting were more exacting than at present. So on the first three days the court rose at times ranging between quarter to six and half past six in the evening. Some 36 years before, the trial of Burke ended in the early hours of Christmas Day 1828.

Going beyond the trial itself there are a number of features which might strike us as odd. It is not unusual today for press coverage to be intense, but in those days every step of the investigation was reported with a frankness which is astonishing. Thus the press published the results of the post-mortem and analyses, with comments on the characters and personal appearance of those who were understood to be the significant witnesses. There were also ingenious theories as to how the crimes were committed and what the nature of the defence was going to be. In due course Pritchard was to become known as 'the human crocodile' because he wept false tears over those whom he had poisoned.

Pritchard was hanged for his crimes on 28 July, three weeks after his conviction. It was the last public hanging in Glasgow, if not in Scotland, and attracted tens of thousands of onlookers. The Edinburgh Evening Courant the following day gave a detailed account of the preparations for the execution outside the South Jail, including how Pritchard spent his last few hours of life, leaving for his spiritual advisers a series of scriptural texts, very neatly written on strips of paper. For his last moments in life he wore his best coat and trousers, and his patent leather boots. At 8.10 pm he was 'launched into eternity' on the gallows erected over the pavement in front of the building. (His body was not cut down for over half an hour after that). Some members of the Phrenological Society of Edinburgh had come to take a cast of his head. From their examination they concluded that the desire to please was his ruling passion, and that he exhibited low cunning and well developed self-esteem. Pritchard was plainly very fond of his own appearance. He used to hand out photographs of himself, even on the journey to Queen Street Station which ended in his arrest!

THE QUESTION OF MOTIVE

What were the issues at the trial? As regards Mrs Pritchard, it was not in dispute that she had died from chronic poisoning by antimony. Her body was impregnated with it: ten grams were recovered from her liver and intestines. The Crown case was that Pritchard had the means, the opportunity and the skill. He had made considerable purchases of antimony and other poisons, more than were required by an ordinary physician. He had also indulged in gratuitous falsehoods. The defence maintained that it was too improbable that Pritchard would have wanted to poison his wife, having regard to his position, his education and his affection for her. It was no use suggesting that she had been poisoned by one of the cooks, because the poisoning began before one of them came, and continued after the other one had left the household. Hence the defence introduced the suggestion that the guilt lay with Mary McLeod (Figure 4), who had been the nurse/housemaid since Whitsunday 1863, of whom I will have more to say in a moment.

As regards Mrs Taylor there was a dispute as to the cause of her death. The Crown said that her death was due to the combined effect of antimony, aconite and opium (the last being due to her taking Battley's solution). Antimony and aconite were found in the last bottle of Battley's which she used. The defence - who did not offer any medical evidence - suggested that she had died of opium alone.

One curious feature of the Crown case was its weakness in regard to the matter of motive. Now in this context by motive I mean ulterior motive, where an accused

commits a crime in order to obtain some advantage or avoid some disadvantage for himself or someone else. The Crown does not have to show that an accused had a motive, but evidence of an apparent motive can strengthen the cogency of evidence pointing to guilt. However, it is important not to attach too much weight to possible motives. As is observed in one of the leading textbooks on the law of evidence, 'almost every child has something to gain by the death of his parents, but rarely on the death of a parent is parricide even suspected'. (*Best,* Principles of the Law of Evidence 12th edition page 384.) Conversely, evidence tending to show that it is improbable that a given motive existed can be used to weaken the Crown case. However, the fact that evidence of motive absent or weak does not take the defence a great distance. As Chanell J. in R. v. *Ellwood* (1908) 1 Cr. App. Rep. 181 at page 182 said: 'There is a great difference between absence of proved motive and proved absence of motive'.

In the course of Pritchard's trial two possible motives for murder were suggested by the Crown. The first was his connection with Mary McLeod, the nurse/housemaid. At the time of the trial she was a freckle-faced girl of 16 who had come from Islay. She said in evidence that in 1863 Pritchard gave her a ring and seduced her. In May of the following year she found herself pregnant. 'He said he would put it all right', she said, - a euphemism, no doubt, for an abortion, which she had. Their connection continued thereafter, including the time when Mrs Pritchard was in Edinburgh visiting her parents. She said in evidence that before Mrs Pritchard became ill he spoke to her about marrying her, but did not say when. (Note that at the time of the trial Pritchard was 39 years of age). Pressed to say more, she said that Pritchard had told her that if Mrs Pritchard died before him, he would marry her. In 1865 he had given her a brooch and a locket containing his photograph. After an objection to this evidence had been repelled she said that she and Pritchard had been seen by his wife kissing in a bedroom. She wanted to go away but Mrs Pritchard would not let her, saying that she would speak to Pritchard and that he was a 'nasty, dirty man'. This had been in the summer of 1864.

The defence itself sought to make capital of this evidence which, with some difficulty, the Crown had brought out from this witness. Could it really be supposed that this provided a motive for the murder of the two women? The Lord Justice Clerk warned the jury in his charge not to read too much into this. To say that there was no motive meant that no motive had been discovered: the entire absence of evidence of motive was not a sufficient reason for acquitting.

The second possible motive for murder was financial gain. It was true that Pritchard was short of money. Mrs Taylor's will was to leave him a liferent in two thirds of £2,500 until the children came of age. However, there was no evidence that he knew of the will. In any event he was an idol in her eyes and was probably more valuable to him alive than dead - as a source of future loans.

We will never know what exactly was in Pritchard's mind. William Roughhead, the chronicler of his trial, expressed the view that he thought that Pritchard had tired of his wife and 'found her continued existence incompatible with the free pursuit of a lawless pastime'.

It may be added that in prison Pritchard confessed, not just on one occasion but with three separate confessions, each conflicting with the other. Those of you who are 'end readers' may want to know what he said. In his first confession he said that he had murdered his wife by an overdose of chloroform when Mary McLeod was present and that Mary was aware that the food she took to his wife was poisoned. In his second confession he said that he had given his wife the chloroform at her own earnest

request. He believed that his mother-in-law had died through an overdose of Battley's. After her death he had put aconite in the bottle 'in order to prove death by misadventure in case any enquiry should take place'. He added his wife had been aware of his misconduct with Mary 'and rather sought to cover my wickedness and folly'. During the fortnight when Mrs Taylor was nursing her daughter she had caught him with Mary in the consulting room. In the last of his confessions, perhaps as a result of the labours of the ministers who had wrestled with his reluctance to come to terms with the truth, he accepted that he had murdered both women and that Mrs Taylor's death had been caused in the manner set out in the charge against him. He accepted that he alone had poisoned his wife. As to his motive, he could not assign any, beyond a species of 'terrible madness' and the use of 'ardent spirits'.

DR JAMES PATERSON

It is now time for me to return to Dr Paterson. Here we encounter a case within the case. As you will remember he was called in by Pritchard on 24 February after Mrs Taylor collapsed. He said in evidence he was convinced that she was under the influence of opium and was dying. Lying next to her was Mrs Pritchard in a state of pitiful agitation and distress. She seemed to be exceedingly weak and exhausted; her features sharp and thin with a high, hectic flush; her voice very weak and peculiar as if she was verging on the collapsed state of cholera; her countenance conveying the idea of a semi-imbecile. He said he could not rid his mind of the idea, or rather the conviction, that she was under the depressing influence of antimony. In cross-examination he said that his impression was that she was being poisoned by its long-continued administration. In re-examination he was even more definite: he believed that somebody was administering antimony to her for the purpose of procuring her death. He saw her twice again before her death on 18 March. On 3 March he visited her as a result, he said, of a chance meeting with Pritchard. Her symptoms and his opinion were unchanged. It was more like a friendly call of condolence, because he understood that Pritchard was attending her. However, he left a prescription for champagne, brandy and ice, etc. When he was called in by Pritchard on the 17th he was very much struck by her terribly altered appearance and particularly by her wild expression. He prescribed morphia, ipecacuanha, wine, chlorodyne and cinnamon water.

A number of searching questions were asked of Dr Paterson. Why had he not told Pritchard of his concern? Faced with that question in cross-examination he said: 'It would not have been a very safe matter to do that'. Asked in re-examination to explain that answer he said that this 'would not have been very natural'. Asked whether his suspicions concerned Pritchard, he said that he would rather not answer that question! Why had he not told Mrs Pritchard? His answer:

> Because the treatment I prescribed for her, provided she got nothing else, was quite sufficient, in my opinion, to have very soon brought her round.

Why had he not gone back to see her?

> She was not my patient...it is the etiquette of our profession that the consultant has no right to go back to see the patient.

Why had he not told the authorities?

> There was another doctor in the house. I did my best by apprising the registrar...by refusing to certify the death.

FIGURE 1
Dr Pritchard.

FIGURE 2
Mrs Pritchard.

FIGURE 3
Mrs Taylor.

FIGURE 4
Mary McLeod.

This last answer referred to the fact that he had been asked to certify the death of Mrs Taylor, first of all by Pritchard who sent Mr Taylor round for this on the same day as she died, and secondly by the registrar who asked him to do so by a letter which he received on 3 March. On the following day he wrote to the registrar refusing to do so.

The evidence of Dr Paterson excited a great deal of comment, both within and outside the trial. Counsel for the accused, the future Lord Rutherfurd Clark, submitted to the jury that his evidence was 'credible only at the expense of his honour'. The Lord Justice Clerk delivered himself of the following scathing comment:

> I care not for professional etiquette or professional rule. There is a rule of life, and a consideration that is far higher than these - and that is, the duty that every right-minded man owes to his neighbour to prevent the destruction of human life in this world, and in that duty I cannot but say that Dr Paterson failed.

Following the trial Dr Paterson felt the need to defend himself in a public way and he wrote to the *Glasgow Herald*. In that letter he expanded on what he said in the witness box. In his letter to the Registrar - which the Registrar had, in his view, culpably destroyed - he wrote this in regard to the death of Mrs Taylor:

> I only saw the person for a few minutes a very short period before her death. She seemed to be under some narcotic, but Dr Pritchard, who was present from the first moment of the illness until death occurred, and which happened in his own house, may certify the cause. The death was certainly sudden, unexpected and to me mysterious.

This letter, he claimed, would have achieved three objects. Firstly to save Mrs Pritchard's life. Secondly to guard his own professional reputation. Thirdly, if possible, to lead to the detection of the poisoner. Why the first and the third objects? Dr Paterson's answer was that his refusal to certify the death implied suspicion of foul play and should have alerted the registrar. A post-mortem on Mrs Taylor would have put a stop to the poisoning of Mrs Pritchard, at least by scaring Pritchard 'and thus arresting him in his diabolical career of slow poisoning of his unsuspecting and confiding wife'. He had written the letter after consulting medical colleagues.

And what about the guarding of his professional reputation? Well, if he had told the authorities, Pritchard could have brought forward no less than three medical friends, all Edinburgh graduates, none of whom suspected that she was being poisoned by antimony. Would the diagnosis of a Glasgow graduate have been believed for one moment when opposed by such a galaxy of professional talent and experience in consultation? The immediate consequence would have been most assuredly an action for heavy and ruinous damages. It was abundantly evident that there was a most decided bias against everything professional connected with Glasgow!

WHAT SHOULD A DOCTOR DISCLOSE?

The case of Dr Paterson is an old controversy but it has its echoes today. When is a doctor free to divulge information which he has obtained from his patient? I will not presume any expertise in medical ethics, so my observations are those of an outside observer.

In line with the Hippocratic oath the medical profession recognises confidentiality as the cornerstone of good clinical practice:

> ...whatever, in connection with my professional practice or not in connection with it, I see or hear in the life of men, which ought not to be spoken abroad, I will not divulge as reckoning that all such should be kept secret.

The law recognises that confidentiality is part of the engagement of a doctor, and so a patient can obtain a court order to prevent disclosure, or damages if he is too late to stop it. In some instances, such as with venereal disease, the law gives statutory support to the duty of preserving confidence.

On the other hand, there are a few cases in which the law requires disclosure, for example in regard to notifiable diseases, drug dependency and in the context of the prevention of terrorism - no doubt for overriding reasons of public safety.

The BMA *Handbook of Medical Ethics* gives five exceptions to the general duty to preserve confidential information. The one which is of present interest is when a doctor 'is under an overriding duty to society'. The GMC's booklet *Confidentiality: Guidance from the General Medical Council* - which appears to have superseded the Blue Book (*Professional Conduct and Discipline: Fitness to Practise*) - enlarges on 'disclosure in the interests of others' as follows:

> Disclosures may be necessary in the public interest where a failure to disclose information may expose the patient, or others, to the risk of death or serious harm. In such circumstances you should disclose information promptly to an appropriate person or authority.

Three examples are given in the booklet. Again, the one of which is of interest is:

> Where disclosure is necessary for the prevention or detention of a serious crime.

So, for example, a doctor who was suspicious of child abuse would, I understand, be considered to be under an ethical duty to volunteer information to an appropriate authority. But it might be different if the abuse is old and there is no possibility of it continuing against the patient or anyone else and the victim has asked for confidentiality to be respected. There is plainly a distinction between acting to forestall crime or its continuance and acting to enable it to be detected where there is no risk of repetition.

There are very few cases in which a court has had to consider crime prevention as a defence to what otherwise would be a breach of confidentiality. In *W.* v. *Egdell* [1990] Ch 359 a psychiatrist, at the request of a patient's solicitors, examined a violent patient who was hoping to be released from detention. The psychiatrist was so concerned by his findings that he disclosed them to the appropriate authority without the patient's consent. As a result the patient's application for release was turned down. The Court of Appeal dismissed his claim against the psychiatrist. In their view, whether it was proper for a doctor to disclose depended upon a balancing of the public interest in maintaining confidence against the public interest in protection against dangerous persons. Incidentally this depended, not on what the doctor thought were the decisive factors, but on the view which the court took. In that case it was emphasised that the risk had to be real rather than fanciful and had to imperil the physical safety of members of the public. Furthermore the disclosure should only be to persons to whom it was necessary.

In this discussion I am concentrating on situations in which the suspicion of serious crime may make it proper for a doctor to disclose to an appropriate authority. But

analogous questions may arise where there is no question of serious crime but there is a plain risk to the safety of the public. The GMC guidance in *Confidentiality* gives as examples the patient who insists on driving despite the fact that he has received medical advice that he is unfit to do so; and the medical colleague who is also a patient and who is putting patients at risk because of illness or some medical condition. The importance of ensuring that disclosure is only to a responsible authority is highlighted by the decision in *Duncan* v. *Medical Practitioners' Disciplinary Committee* [1986] 1 NZLR 513 in which a doctor was found guilty of professional misconduct where, in an attempt to have a bus driver's licence withdrawn, he warned his passengers of the supposed danger.

In this lecture I am not attempting to go into difficult questions which can arise when it is said that a doctor may in certain circumstances disclose patient information not to a responsible authority but to some specific individual. One example is the question of the propriety of a doctor disclosing to a spouse or partner the risk arising from the patient's illness, such as AIDS. Another thorny point is - when parents should be told that their teenage daughter is 'on the pill' - *Gillick* v. *West Norfolk and Wisbech Area Health Authority and the DHSS* [1986] AC 112.

So far I have been thinking of occasions when the doctor may be released from the otherwise strict obligation to respect confidentiality. Could a doctor be held responsible if he did not disclose to others?

It is, I suppose, natural that attention turns in the first place to the American case of *Tarasoff* v. *Regents of University of California* (1976) 131 Cal. Rptr. 14. In that case a psychiatrist was held liable in damages for failing to warn Tatiana Tarasoff, a former girlfriend of one of his patients, that he knew that her life was in danger from the patient, who later murdered her. It was held that he had a duty to take reasonable care for her protection. That duty, in the words of the court, 'may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police or take whatever other steps are reasonably necessary under the circumstances...The protective privilege ends where the public peril begins'. The decision in *Tarasoff* gave rise to widespread debate in the United States and elsewhere. Some courts imposed a duty to warn whenever it was foreseeable that persons would be endangered. Others required that not only a victim was foreseeable, but that a particular victim be readily identifiable (e.g. *Gammill* v. *US* (1984) 727 F 2d 950). Also in the latter category was a case in Pennsylvania in which it was held that a doctor who allowed a diabetic to drive was not liable for road traffic injuries sustained by a person could not be notified of the driver's condition. In some jurisdictions of the United States the courts refused to apply *Tarasoff* at all.

So far there is no decision in the United Kingdom which tackles such a claim against a doctor, and it may be thought that the claim would be unlikely to succeed except in the most special of cases. In this country it would be difficult to construct a duty towards someone to whom a doctor otherwise owed no professional or other responsibility. This is simply one example of a general point that, in the absence of a special relationship, no one is under a positive duty to render assistance to someone else. Thus, as Lord Diplock observed in *Home Office* v. *Dorset Yacht Co*. [1970] AC 1004 at page 1060, the very parable of the Good Samaritan 'illustrates, in the conduct of the priest and the Levite who passed by on the other side, an omission which was likely to have as its reasonable and probable consequence damage to the health of the victim of the thieves, but for which the priest and Levite would have incurred no civil liability in English law'. And, by way of an example in a very different context, in *Hill*

v. *Chief Constable of West Yorkshire* [1989] AC 53, which arose out of the activities of the Yorkshire Ripper, the House of Lords held that police officers did not owe a duty of care to individual members of the public to identify or apprehend unknown criminals who might cause them injury.

POSTSCRIPT

After that excursion I return to Dr Pritchard. He was hanged in front of the portico which formed the centrepiece of the building which housed the South Jail and the principal court in Glasgow. In 1910 the whole building - all except the portico - was swept away and replaced with a new court building. It is still in use and this year was joined on to a huge extension made necessary by the growth in criminal business.

In 1910 when the workmen were digging in the foundations they came across a grave over which lay a slab with the letters E.W.P. The body was examined and once more the skull was the subject of scientific examination. The corpse still wore patent leather boots which - unlike Dr Pritchard's reputation - were in a perfect state of preservation.