

20th Century Gods: the Rise and Fall of the Medical Priesthood

Nick Ross

Broadcaster

A meeting of the Medico-Legal Society was held at The Medical Society of London, 11 Chandos Street, London W1, on Thursday, 10 March 2005. The President, Dr Neville Davis MBE, was in the Chair.

The President: Good evening, ladies and gentlemen, and welcome. Tonight our speaker has a face which is likely to be very familiar to you. He is, of course, Nick Ross, of *Crimewatch* fame, but there is very much more to our speaker than meets the eye, very much more. A Londoner by birth, he read psychology at Belfast's Queen's University, remaining in Northern Ireland, I think, for seven years. Very active in the Students' Union, he was Deputy President when the violence really was at its worst. He was among the first to conduct academic research into the troubles, investigating, for example, prejudice among schoolchildren in the Province. He reported regularly on the troubles for BBC Northern Ireland and was evidently lured away from academia by tempting offers of broadcasting work in London.

He is a member of the Nuffield Council of Bioethics and the Medical Ethics Committee of the Royal College of Physicians and he has served on several government advisory bodies, including the NHS Review Team, and since 1998, incidentally, he has been a Fellow of the Royal Society of Medicine.

Now, subsequent to the horror of Jill Dando's murder in 1999, he initiated the Jill Dando Institute of Crime Science, and this was founded at University College London in 2000, inaugurated in 2001. He opened the Crime Science Laboratory in Sandwell in the West Midlands in the following year. The reports I have read indicate that the Institute has already been involved in what is described as "a whirlwind of initiatives". The world's first Master's course in Crime Prevention started in September 2003, and it also provides a Certificate in Crime Prevention and Community Safety for anyone with an interest in the delivery of the immediate reduction in crime.

He is firmly convinced of the need for evidence-based medicine and social policy, especially in crime reduction. I was particularly impressed by an article he wrote that was published in the *Evening Standard* in October last year. It was entitled "Criminal Failures of Our Justice System". A short quote is even more apt this day than it was then. "Politics", he wrote, "rather than science, rules supreme."

So it is with considerable interest and anticipation that I now invite Mr Ross to address us on **20th Century Gods: The Rise and Fall of the Medical Priesthood**. (Applause.)

Mr Nick Ross: Let me be quite candid: I am going to take advantage of the fact that this is quite a small and intimate gathering to say things that I think to some extent are very hard to say and certainly I couldn't possibly say as anything to do with the BBC, and let me first point out that I speak personally and my views don't reflect those of any of the boards or bodies on which I sit, let alone the BBC, which, as you all know, of course, has no views anyway. (Laughter.)

I am going to be deliberately provocative, so if you have blood-pressure problems do forgive me. But I am serious in my approach; I hope to be stimulating and challenging, even if you don't agree with much of what I say.

My thesis essentially, I suppose, is that blue collar unions were tackled (rather belatedly) in the 1980s, but we still haven't got round to really tackling the stranglehold of the white collar professions. They (including medicine and especially law) have motored on serenely, mostly

clinging to their old ways: largely smug and self-interested, still islands of protectionism standing out against the rising tide of payment by results.

It may not feel like that from the inside, but my message is that medicine is still largely pseudoscientific, that lawyers are a bigger drain on society than even the buffooning anti-lawyer stereotypes would allow; and, perhaps above all, that the criminal justice system is an outrageous waste of money and resources and is largely tangential to cutting crime.

Now that is all I propose to say really! (Laughter.)

They seem quite modest aims to me. I don't know how many of you share these views and I wonder if you will permit me if, unconventionally, I can start with a vote, or, rather, three votes.

Could I ask, first of all, how many of you believe medicine as practised – not in principle or in the journals but as practised – is properly and rigorously scientific? Can I just see the hands of those who believe that medicine is properly and rigorously scientific as practised? I am astonished: not a single hand. Oh, one...

The President: One...

Mr Ross: Two, three. I might as well scrap the speech and let's go out for a drink. (Laughter.)

How many believe the English criminal justice system is fundamentally sound? 20%, 25% perhaps.

One last one. If you take civil law, if you had a disagreement with somebody over, say, a contract, how many people here would go to court as a first resort to try and solve it, your first line would be "I'd go to court"? Nobody.

It is interesting, isn't it, that when it's our own money we do everything to avoid litigation: when the State is paying we are very happy to throw £13 billion a year at the courts for no formal measurable result, and I will come back to justifying that statement shortly.

I should say that for lack of time (not through lack of enthusiasm, I promise you) there is one profession, conspicuously, that I don't propose to tackle, and that is the worst of the lot, the most unreconstructed of the lot, and it's my own profession, journalism, but frankly it's far too big a problem to try to encompass here, so I am going to skip that.

Let me start with the title of the lecture, which perhaps was chosen rather rashly before I'd thought the whole thing through, but it sort of works. By "20th Century Gods" I mean to chart the rise and the decline of doctors – or more specifically the rise and decline of the status of the medical profession. I then propose to go on and extrapolate from that to lawyers and say what I think might happen in the 21st century.

Let's start then looking back to the turn of the previous century, to 1900, and so forth, and as the calendar goes forward into the great Liberal victory of 1906, the Great War of 1914–18, then the great depression, then the even greater Second World War, the loss of empire, the post-war austerity and the contraceptive pill, and then the swinging 60s. Who and what did we believe in through all that period? Well, apart from politics (and my, what a century it was for lunatic politics of one sort or another), if you try to chart what happened to people's sense of confidence and trust, I think there is one group that does really come out substantially, above all.

As faith in the clergy declined, we turned for deliverance to new saviours. For over half a century the medical profession enjoyed the highest standing among professions, and the progress of medical science seemed absolutely relentless.

This is not just a rosy view of history. They always say "Nostalgia ain't what it used to be". I have looked back over old newspapers and magazines: there are virtually no criticisms of doctors, the medical profession or of medicine itself, until you get right up until the 1980s. It is quite remarkable.

But as the century drew to a close the miracle workers were really struggling to maintain their halo. The old adage "Trust me, I'm a doctor" was wearing thin. Their failings were increasingly making headlines, they were being sued for negligence, patients were drifting to alternative

therapies, and public authorities and insurers who paid their bills were looking, for the first time really, for evidence of effectiveness, and they were looking for better value for money.

Suppose we wanted to make a six-part TV series to chart the rise and fall of confidence in the people who practise medicine. Let me take you through what I think a television proposal would look like. You may think it's a calumny, you may think it's unfair: it is the way that television would consider a thesis like this, and, let's face it, television has an enduring fascination with medicine, that rich mix of human drama, of technological wonders, the heroes, the clinicians battling against evil, in this case mostly disease, though sometimes injuries inflicted by other people.

So we call the programme *Twentieth Century Gods*, and it would borrow from popular television portrayal to provoke; and yet it would be grounded utterly in fact, and it would have the support, I believe, of leading members of the medical profession and the scientific community – the sort of people here, who, when I asked “Do you think it is rigorously scientific in practice?”, didn't put their hands up.

So, imagine this programme, imagine it is sponsored by the Medico-Legal Society, or whatever, and we are hoping to sell it to Channel 4 or the BBC, or whatever.

Programme 1. Great Expectations

This would chart the astonishing rise of medicine in the twentieth century: the development of hospitals, of pharmaceuticals, and of family practitioners, as we know them today. It shows how “healing” developed from a trade into a highly systematic discipline, and how public expectations of medicine grew – and yet how, at its twentieth century heart, lay an intellectual fraud: the mutually contradictory claim that medicine is both a science and an art. It shows how, as the century drew to a close, there was still precious little audit of the effectiveness of individual treatments or indeed of individual clinicians. Even now, neither governments nor insurers know who is spending their money wisely and who is not – they are tipping their cash into a vast dark void.

Programme 2. The Priesthood

This would be looking at what is in many respects a closed shop – at least, it was during much of the twentieth century. It shows how medical students were recruited in the image of the existing priesthood to carry on the rituals, how students lived in fear of stepping out of line, how much reliance was placed on passing detailed exams – often rather more importance given to that in some medical schools than in understanding the underlying concepts – how quaintly hierarchical the system remained, and how little emphasis was placed on understanding science or of really critical appraisal of scientific evidence – that is why you still get doctors saying “Well, never mind what the randomised controlled trials say, in my experience...” It explores the pressures on doctors to deceive – after all, “faith” can help people get better, and as the cost of insurance and threats of litigation grew, weaknesses, it was regarded, should not be advertised. The programme explains a culture where ostensibly the patient is put first, but only ostensibly, where bad practice (including reckless cover-ups) were quite routine. It explores the Bristol heart surgery controversy merely as one that was the glistening tip of an iceberg. It shows how surgeons and physicians routinely turned a blind eye to incompetence, even scientific fraud, and worse, where lives were at risk. It shows how doctors who knew perfectly well that other doctors were no good, and in some cases could be fatal, didn't send their own families there but didn't speak out. It shows how governments, insurers, health maintenance organisations and managers (those who pay the bills) grew so fearful of the power of the priesthood and allowed them to get on with things in a way that would be unthinkable in any other group of employees –

I use the word “employees” wisely, because of course this union was so powerful that its members weren’t actually employees, they managed to maintain a very different status on the whole.

Programme 3. Trials and Error

That would take a public health perspective and lament the lack of properly conducted clinical trials through most of medicine. It would report on the widespread scientific illiteracy among doctors and how this, combined with lack of controls from managers, led to astonishingly poor clinical audit – and therefore inadequate check on costs and little control of outcomes. The programme explores how many doctors are ignorant of best practice, how they ignore evidence from well-conducted trials, how they prefer anecdotal evidence, as I was saying, to hard science, and resist measurement of the effectiveness of their individual treatments. It questions whether the much-vaunted notion of “clinical freedom” is (outside the area of proper research) anything more than a licence to conduct quackery.

Programme 4. Practising On You

This observes the patient’s perspective. How much of a lottery is it when you go to a primary care physician, for example? How reliably will he or she make an accurate diagnosis? If good at one diagnosis, will he or she be equally good at another diagnosis? Has anybody checked? Does anybody know? Does anybody care? How likely are you to be referred to a specialist, or offered an appropriate treatment? How much do GPs differ in this? (That we now do have research on: we didn’t through most of the twentieth century.) The programme shows how to a huge extent medical practice varies from doctor to doctor, area to area, and country to country. It shows how throughout the twentieth century, once a doctor had qualified, that was pretty much it: no further checks. We know, of course, about Harold Shipman, but what about other far less conspicuous evils and incompetencies, how many of those wallowed beneath the surface? Whereas airline pilots have to undergo stringent and frequent examinations, doctors (as the twentieth century priesthood) were omniscient and omnipotent, and the priesthood looked after its own.

Programme 5. Alternative Medicine

This charts the growing attraction of pseudo-science: a lot of it sincere nonsense, middle of the road quackery, some of it downright fraud. What is the attraction? What is the evidence? What are the risks? Above all, why do so many doctors play along with it? Every pharmacist knows better, of course, though every pharmacy still peddles all this snake oil, and if you ask a pharmacist is it any good, he or she will, privately off-line in a meeting like this, acknowledge that they don’t exactly lie but they don’t exactly conspicuously tell the truth. How come these great and trusted professions have so cheapened themselves that all this nonsense passes muster? Perhaps, as Voltaire remarked, the real art of a great physician is to keep his patient amused until she either gets better or dies.

Programme 6. Patient Heal Thyself

It questions to what extent, whether in private or public practice, medicine is geared to doctors rather than other staff, let alone patients, and sets out a charter for the twenty-first century. It redefines the Hippocratic oath. After all, it is absolutely daft, if not immoral, that a doctor should put his patient first – every need in life has to be balanced, of course it does. We’ll show how frequently in the twentieth century (and it still happens now) experienced doctors often continued to work in the manner they learned at medical school, ignoring scientific advances and

insisting that they knew better than could be taught by properly conducted science. We show how primary care physicians are entrusted with more and more but, because science advances so rapidly, they know less and less of available scientific data, and I think, above all, we show that people have wholly unrealistic impressions sometimes (in the twentieth century, at any rate) of what medicine can achieve.

So there is the series. Emphatic, but I hope it wouldn't be strident in the way it was done. We would find leading physicians and surgeons, pharmacologists and epidemiologists to endorse, I think, every one of those allegations. Interestingly, how many Presidents of Royal Societies would endorse many of them privately? I don't know how many would endorse them publicly. Too much of medicine, let's face it, is pseudo-science; almost none of it is adequately monitored.

Now I leave you with an anecdote before I move on to the law. One of my sons was born with an inguinal hernia, and at a few weeks of age he was handed – he was frightened, to say nothing of his mum and me – to a surgeon at the Royal Free Hospital in North London. We assumed the operation had been a success – we weren't told otherwise. A few years later, when his testes had not descended, we had him examined, and it turned out that the surgeon had managed to suture his testis to the hernia repair. It then took further operations at Great Ormond Street, this time eventually bringing in a world-famous surgeon used to separating Siamese twins, to try and fight through the mass of scar tissue and try to repair the damage.

Now, these things happen. I am not complaining about that. If I was fired for every mistake I made in life I would have been fired many times and, if I wasn't allowed to make mistakes, I would never have taken any risks and not got very far. What I am complaining about is that nobody at the Royal Free knew that the operation was botched. The surgeon still doesn't know. There is simply no mechanism for giving him feedback. The medical system is so insouciant about this sort of thing that it has virtually no audit system. It does, of course, have the National Confidential Inquiry into Peri-operative Deaths, but you have to be both dead and anonymous before you can feature in that.

I just make radio and television on the whole. Doctors play with people's health and with their very lives, and I believe that this slapdash approach, which was good enough when medicine was really a trade in the seventeenth/eighteen centuries, and, my gosh, might just have scraped through the twentieth century – but fundamentally something has to change in the twenty-first. We need to be much, much more scrupulous, otherwise the halo will go on slipping. As you all know, expectations from patients, from the community and from those who pay the bills will go on rising.

Now, I don't say any of this with enthusiasm. Half of my family are in the medical profession, one of my sons is about to embark on a career, I hope, in medicine, and I work a very great deal with doctors and others within the clinical arena. But I see people's falling esteem and falling self-esteem, and it is not good. On the other hand, I don't believe it will ever get better if we ignore some of these really fundamental issues about whether medicine is doing what it ought to be doing and, if you try and compare it with the way other things work, it is in so many ways lamentably backwards.

So, what of lawyers? Well, I asked at the start how you would settle a civil dispute, and very sensibly people go to court as a very last resort. I am going to set civil litigation aside for two reasons: one, I just haven't got time to cover everything, though I would love to reform it from top to toe if I had the time, but also because I know much more about criminal law. I have spent over 20 years now working with the police, working with the Crown Prosecution Service, and indeed been involved with some charities looking at the other side of this, working with victims and witnesses and looking at how prisoners are treated and trying to get them into the workplace thereafter. I know we all imbibe with our mother's milk an absolute and unshakeable confidence

that British justice is the best in the world, so I am intrigued that so few people here would put their hands up in support of what I think is a generally accepted totem.

It would be nice to look at this as a Martian might. I can't claim to be a Martian, though you might think my views are on the far side of the moon, but my primary angle is cutting crime and disorder. That is what I feel society wants. I think that is what local residents want; I think that is what businesses want; I think that is what, frankly, politicians, everybody wants: we want to cut crime and disorder. We don't want any system there for the sake of a system, it is there for a purpose, and I have to say that, after two and a half decades working in the business, I am literally in contempt of court.

There are three fundamental reasons:

- the criminal justice system is unjust;
- it's absurdly expensive; and
- it's hugely tangential to crime.

The comprehensive failure, I think, is all the more remarkable and extraordinary because, just like Medicine, the Law commands huge international prestige, and it engages and employs the talents of some of the sharpest minds and the most decent people you could ever want to meet.

I think that the English criminal justice system is another 20th century god – revered too much, with the fundamentals going mostly unchallenged, and I fear it is nothing but clay. Reverence for it is little short of idolatry. However, I do feel the two “gods” are different, because in my view the criminal justice system is largely irredeemable and I certainly don't think that of medicine.

Why do I say it's unjust? Well, justice, of course, is a relative concept. What we have now is certainly better than trial by ordeal. But it's unjust because courtroom debate is a rotten way of assessing the facts. Many of you work in this arena and I will be intrigued (in discussion afterwards) to hear your own views on this.

Supposing it really mattered: supposing it was a matter, say, of whether we should certify a new Boeing jet as safe to fly – this is really important stuff. Would you leave it to twelve people, selected for their naivety, literally their ignorance? Indeed, of course, they'd be deselected if they knew anything about aviation, aerospace, avionics, or anything like that. They'd then be subject to biased arguments by people paid specifically to be selective in their evidence. They'd then go into a room on their own and in secret, and after a while they'd come out and say, “Yep, you're safe to fly that new version of the jumbo jet.” Well, would you fly in it? I'm damned if I would. The criminal justice system was fine for the time at which it had its origins, but it is still basically medieval. There is less guarantee of liberty or justice, at least in jury trials, where most people think liberty resides, than there is of secrecy and impenetrability.

I have a small experience in Northern Ireland, as you have heard, and at least there in the Diplock courts – which were anathema to the electorate and to the law profession, which is weaned on that milk of tradition – at least there the process is open and judges must give reasons for their decisions. At least there it is open to proper appeal on the facts and not just on the legal issues, and if anybody has friends there who are barristers, or even solicitors – and I know several barristers in Northern Ireland – not one of them will say openly that they support Diplock courts, but if you ask them to give chapter and verse of any time when they think a Diplock court has got things wrong and it's remained wrong, they remain silent. I am not suggesting Diplock courts, all I am saying is that what we have got really has to be shaken up and challenged.

The system, of course, is also unjust because it has been hugely corrupted by bureaucracy. Concerns for legal niceties have become more important than concerns for the truth – or even for public safety. So a serial rapist can be freed because of a technical error. This has happened not long ago, and another one you might have seen in the papers in the last few weeks, a police officer twice accused of rape, who has lost the confidence of his Chief Constable and whose

colleagues refuse to work with him because they believe the charges are true. Yet, because of red tape he remains at work. For all I know, the allegations against him may be deeply and grievously unfair, but it does worry me that he is still in uniform because of a procedural error in disclosing a witness statement at the correct time. Of course witness statements ought to be produced at the correct time and steps should be taken against those who don't do so, either by mistake or, more seriously, by deliberately withholding it, but it is not in the public interest to take reckless actions which can endanger public safety because you want to maintain those legal niceties.

I believe the criminal justice system is an inadequate way of assessing facts. I think it is corrupted by silly procedures. What is more, when it comes to sentencing, it is full of untested assumptions and based on lies.

"Untested assumptions" – take the basis of sentencing. I mean, presumably the sentence should be effective – but at what? What is it supposed to do? It is plainly unreliable in preventing re-offending. The recidivism rates are over 50% for adults and 75% for young offenders, and those figures paint a ludicrously rosy picture, because they count only those who are actually *caught* and taken to court a second time, then convicted and sentenced. According to research (and I am quoting the Home Office Findings 183 – these are quite recent), *actual* re-offending – this one is only sex offending – is more than five times greater than conviction rates.

Well, we catch half of the adults within two years again, and three-quarters of the youngsters, and we think that they probably carry out at least five times more repeat offences than we catch them for. Now, is this really the best justice system in the world, one that demands public confidence?

Even the evidence is tainted. This is unsurprising given the Anglo-Saxon adversarial model in which each side will pay people to select the evidence that suits them best and often hires mercenaries to fight on their behalf. Most of you will know that this came from the old medieval concept where you could hire somebody to fight on your behalf, and that was eventually transmogrified into hiring somebody to speak on your behalf, which I agree is somewhat better. These barristers are brought in to disguise the weaknesses of their client's position and exaggerate the strengths. Some lawyers work exclusively only for the prosecution or only for the defence, which must inevitably influence their judgment, and indeed some quite openly see their work in the criminal law as part of a political struggle. Others earn substantial fees – and why would any client pay bigger fees unless he or she felt the lawyer would influence the chance of a desirable outcome? Justice, it is implicitly acknowledged, can be bought, at least at the margins.

Expert witnesses are up for rent as well, as of course we all know, because we've all been them, or many people in this room have, including me. At last, just last November, England's top government law adviser, the Attorney-General, Lord Goldsmith, seemed to awake to these insidious dangers of paid witnesses, warning that some of them were "charlatans", and he was joined by the Chairman of the Criminal Cases Review Commission, Graham Zellick, who said some paid experts seemed to "make it up as they go along". Indeed, well they might, because their earnings can be very substantial. Quite apart from the incalculable fees paid privately, the legal aid fund alone doles out £130 million a year for expert witnesses, and research by Bond Solon (which of course trains mostly non-lawyers, I think, in court appearances) suggests that a third of professional witnesses earn £800 a day or more, and at least one in twelve charges much, much more than that. Even the most incorruptible experts must surely be swayed by such profitable pickings, if only at the margins. I myself was once offered £13,000 for evidence (albeit in a civil case, not a criminal one), but of course there was a catch: the job was only mine if I was going to say exactly what was wanted of me.

What about witnesses who are not paid? Well, there is no general duty in English law to give evidence against another citizen in a criminal trial, and in general the system relies on people's sense of goodwill and civic duty. Yet the criminal justice system has traditionally handled

witnesses so disgracefully that many people are deterred from coming forward. Every month on “Crimewatch” I am brought close to lying about how good the system is in order to encourage people to come forward in a system I know they will regret in the main having anything to do with. Indeed, given how badly witnesses have been treated in the courts, I really think it is a wonder that so many noble people are still prepared to go through it all. They are made to wait around for hours, or even days, sometimes cheek by jowl with those they are about to give evidence against, some of whom are neighbours of theirs, who intimidate them. They may be told that they are not needed then, or, if they are called, they may be challenged as though they were fools or inveterate liars. The pressures can be intense. I mean, we all know about sex crimes and victims having to rake over the embers of painful memories, but many witnesses experience anger and there is fear as well which has been bottled up for months or years. Victim Support surveys (but also now those done by the Home Office) concur that witnesses feel intimidated and frightened, and sometimes for good reason, for their physical safety. They are rarely kept informed of progress in the case, implied promises of anonymity are sometimes broken, and rarely (unless they remain in court throughout the trial) does anyone have the courtesy even to tell them what the outcome of the proceedings were. In fact, the system is so poor that it really is difficult to speak openly about its failings for fear of deterring other people from coming forward.

Now, if all this wasn’t bad enough, the criminal justice system is only capable of reaching a crude conclusion: guilty, or not guilty. Now, if only risk came in such discrete binary packages, wouldn’t life be simple? As with most judgments, it is sometimes easy to reach a verdict, but nearly always there is room for doubt. It is scarcely sensible to pretend otherwise. Yet, a guilty verdict is extremely hard to overturn, and a not guilty verdict means that many offenders get away with it – they have the slate wiped clean as though their crime had never happened. I really think it is hard to think of any other field of human endeavour where risk or public safety is at stake which is trapped in such an austere and absurd dichotomy.

Now, another thing I said was that the system was based on lies. I feel deeply affronted that this should be so. If you read the small print, for example, about sentencing – I will just give you one example of this – “A prisoner sentenced to under four years shall be entitled to be released after serving half the sentence.” You didn’t miss that word “entitled”, did you? “... *entitled* to be released ...” Maybe magistrates should say “I sentence you to six months, but point out that in normal circumstances this amounts to a term of three months, less the four weeks you have spent in custody. I therefore send you down for eight weeks”, and get the newspapers to publish that he was sent down for eight weeks.

In this Kafkaesque world 4 means 2, 1 means half.

Even violent long-term prisoners can expect to be released after half the sentence – and are *entitled* to go free after two-thirds.

What’s more, sentences can be served concurrently. This is even more Kafkaesque. The mathematics of this goes as follows: $2+2 = 1$.

Now, if this isn’t dishonest, perhaps I need some lessons in moral philosophy, because we all know, when that sentence is read out, that is what people are going to talk about; that is what is published in the papers; that is what we say on radio and television – “He was sentenced to life”; “He was sentenced to eight years”; “He was sentenced three years”; “She got six months”. It’s a lie, it isn’t true in any meaningful sense.

Now, don’t get me wrong; I am not arguing for longer sentences. I just don’t share the contempt for the public which says you have to play tricks on them. I believe we can rely on the public’s good sense – I have got considerable evidence for it. One is some evidence we collected ourselves in the biggest vote that has ever been conducted on this issue, which involved several hundred thousands of votes – in fact, it might even have been a million. Two years ago, on BBC 1, we conducted some trials where we showed précis of the evidence. Firstly, we reconstructed

what had happened. Then we reconstructed a little bit of what was said in court from the court transcripts. Then we asked viewers to vote on what they thought the proper sentence to be; we asked a panel of judges what they thought the proper sentence should be; we asked probation officers, we asked police, and all the rest of it. Do you know, the interesting thing was the judges and the public agreed on almost every single case. It was not, as politicians fear, that you have this ludicrous public out there steaming, mad for blood, red in tooth and claw, who would be hanging people from the nearest lamp post – they agreed with the judiciary. Senior police officers were slightly more liberal than the judiciary or the public. Junior police officers were rather more punitive. Probation officers wouldn't have sent anybody to prison under any circumstances whatsoever. (Laughter.)

Then, as if that is not bad enough (that we aren't truthful), we allow politicians to dictate the tariff, and that they do out of prejudice and whim. Can you imagine Ministers specifying which untested drug a doctor should prescribe, and doing so without any scientific evidence of what works and what doesn't? I really think history will look back on the fact that politicians still intervene – still, not in medieval times, in the 21st century – as, frankly, scandalous.

And when people are sentenced? Well, most get a conditional or unconditional discharge, a few (a very few) are sent to prison, and I'll come back to that in a moment. But what do we do with these bad people by sending them to prison?

Can I just have a show of hands on how many people here have been to prison – not necessarily as an inmate but have toured prisons? Quite a few. I mean, you will know that many of them struggle to be good, but a bigger proportion are just terrible.

We send these people into conditions which can only prevail because (disgracefully) society just doesn't care. Time after time the official statistics and official reports on prisons, including those by the government's own inspectors, paint such a damning picture of overcrowding, lack of proper supervision, lack of care, and (and I quote) “in many institutions: frequent bullying and intimidation, rampant drug-abuse, rape, violence – and suicide”. That is from Her Majesty's immediately past Inspector of Prisons. We forget that many prisoners themselves, of course, are vulnerable people. In fact, capital punishment still exists in prison: the death rate if you are sent to jail is twelve times that for people of the same age who are outside. Do we think that by sending these people to prison we are installing civilised values in them? Or are we showing how limited civilised values really are and teaching them, if we are teaching them anything at all, that “the way to go on is the way we have taught you to go on in prison”?

So I am really not an admirer of the intrinsic merits of the system.

Then, to draw this to a close, I said it was expensive. It is colossally expensive, the English judicial system. The average cost of taking anyone before a magistrate and getting him convicted was £5,750 and that excludes all the police costs of finding, arresting and detaining a suspect.

If the case goes to the Crown Courts, where most members of the public believe justice is at its best, the average hearing costs £24,000; the average sentence is another £30,000; and this excludes all the detection costs again, which might add another £20,000 on average. And all these figures, are I am afraid, three or four years out of date, so they are likely to be even higher now.

Each year in England and Wales we spend £5 billion on the criminal justice system, and that excludes over £8 billion spent on the police. It does seem to me that, if I spend £13 billion on something, I should have plausible evidence that it is effective – that it does what it says on the tin.

My final point (the one I am most concerned about) is I have no evidence that it does. We do precious little research on this, it has to be said. One piece of research is self-evident: one of the purposes of the criminal justice system is to stop citizens hanging suspects from lamp posts. It does manage that reasonably effectively, I agree, and I don't want to drop that. But in terms of reducing crime, which is what most people think it should be there to do, it fails miserably. I got

a leaflet through the letter box this morning from the Conservatives locally, who asked a series of questions – they wanted feedback – and one of them was “What do you want to do about crime? What should be our priorities?” and they asked “Is it more police? Is it longer sentences?” – and that was it! Those were their only options: all the old rubbish that we know doesn’t really work.

Ideally, we’d have real trials to find out what does work. I talked about randomised trials earlier – they’re not the Holy Grail but, my gosh, they’re better than nothing – randomly allocate and test the long-term outcomes. We don’t. We do it for new medicines, we do it for new surgical techniques. We don’t do it when they’re in practice, incidentally, we just throw them out there and let the doctors get on with it. But, where we do it in introducing things, we do it well. Is justice too unimportant to test the outcomes? How can I put my hand on my heart and go to the public and boost their confidence in the criminal justice system when we really don’t know if it works and where it works and when it doesn’t?

By coincidence, there is a very strong editorial in a recent edition of *The Lancet*, and I will quote it:

“Judges prescribe sentences on lesser evidence about what works and what is cost-effective than doctors prescribe medicines. That is a disservice to the judiciary, to public safety and to offenders themselves, and is a serious loss in financial, democratic and scientific accountability.”

Now, I don’t have time to develop this more. I merely make the point that if the criminal justice system is interested in evidence (and of course it always says it is: that is what trials are supposed to be about), the onus really is on it to come up with some credible evidence that it is effective at cutting crime.

But it can’t be, and I’ll explain why it can’t be and why I said at the beginning it is mostly tangential to mass crime. We are very good at catching murderers – in the Metropolitan area we catch and convict something like 97%. That is, let’s face it, mostly because it’s not worth murdering someone unless you’re married to them, so often it is fairly easy to find out who did it, but, even so, it is because we put a great deal of resource into it and a huge amount of money.

But that is not the sort of crime that people in this country are most upset about. It’s true that occasionally you get a couple of girls murdered and it makes for absolutely massive headlines and the media go completely bonkers about it, but every survey that asks people what sort of crime worries them, they will tell you it is mostly relatively minor stuff; it’s mostly public disorder, they’re frightened about their daughter walking home from the station at night, they’re worried about drug pushers, they’re worried about the rowdy lads outside there, they’re worried about burglaries, they don’t want somebody putting a key down the paintwork of their car; it is that level.

If you take all crime, for every 100 crimes that are revealed by the British Crime Survey – the biggest survey of its kind, conducted with 40,000 interviews (it makes a Gallup poll look rather pathetic by comparison as it’s about 30 times bigger) – 50 are reported to the police, 45 are recorded by the police, 24 are “cleared up” by the police – now 24 cleared up by the police doesn’t mean they act on them – three of those 100 result in cautions or convictions, and 1 will result in any form of custodial sentence. It’s known as the “Criminal Justice Funnel” – you put a lot in at the top and you get very little out the other end. 99% of crime does not result in a custodial sentence; 97% of crime does not result in a punishment. “Ah, well,” you might say, “these are mostly trivial crimes.” But they’re not. If you examine the British Crime Survey and you look at what sort of crimes get reported and what sort don’t – and here is where law and medicine come together again – I think it was at Southampton Infirmary where the A & E Department was intrigued that so many people were coming in with serious injuries but the police weren’t involved, yet the injuries were obviously commensurate with crime, with beatings,

with rapes, with all sorts of things. In some cases people had very, very serious or life-threatening injuries, and the police were not called. You talk to rape crisis centres, you talk to women's refuges and find out what proportion of these offences are reported to the police. We get this irony that, as the police get better and manage to persuade women that they should report, the crime rates go up. Why? Because, although the underlying level of crime may be going down or may be the same, the reporting rate has gone up. Moreover, when women report, instead of being patronised, it is actually recorded as well.

So we have a problem with the criminal justice system in that when you get to trial you are talking about a very small part of crime, and somehow we need to do things that affect crime in its totality. We need to design a world where crime is simply less likely and less rewarding.

Actually, crime has fallen since 1995. I don't know how many of you believe it. I have no reason to say it if it is not true, none whatsoever. The drop started under the Conservatives. Labour, ungraciously, always uses figures from 1997 to show the improvement, refusing to point out that they inherited the start of it. The Tories, equally ungraciously, can't even celebrate the success that they started because, although privately they will acknowledge to me, and to you if you ask them, that crime is indeed going down, in public they are making as much of a shriek about it as they can.

Now does anybody here think they know why crime has gone down since 1995? It isn't fiddling of the statistics; we are much more sophisticated about the statistics at the moment; and I doubt it's because people have got much nicer (though they might have done) or that the courts have got wiser, certainly. It's mostly because we have used design against crime. It's mostly because instead of trying to change people – which Stalin, Hitler, Pol Pot were very bad at: the Jesuits realised you couldn't do it, not once you're over the age of six or seven – instead of trying to change people, we have been changing the circumstances in which people find themselves.

I will give you an example. Car crime is down by almost 50% since 1995. Now I know you don't read this in the *Daily Mail*, or, for that matter, even in the *Independent*, but I promise you it's true: car crime is down, whether that is stealing cars, stealing from cars, vandalism of cars, and all the rest of it. Why? Because we have fitted solutions: we have fitted steering locks, deadlocks, hi-fi PIN numbers; we have installed cameras at car parks, we've had safer car parks which are overlooked or where there is actually somebody looking after them, and all the rest of it.

I was in Sweden last year and they've got a real time database of cars reported stolen; it's very sophisticated and you can throw up a whole relational database; and I asked if we could look at the cars that had been stolen in the last hour anywhere in Sweden, and 36 vehicles had been stolen. Ten years ago in Sweden that would have been about 300 – amazing. It's just replaced horse stealing. Remember, horse stealing has become extinct – crime doesn't always go up! Every one of those cars in Sweden on that screen was over seven years old. If you want to nick a car now it's pretty hard to steal the new ones. You have got to be sophisticated. You can't get into them; once you've got into them you can't hot wire them, and all the rest of it. We've designed out the solution.

Now have these people, not being able to get into cars, gone off and robbed safes? No. There is virtually no safe-breaking now; safe-blowing has gone out of business; the technology has defeated the safe-blowers. Have they gone away and mugged old ladies? No. Most car crime was done by people in their late teens/early 20s; nearly all mugging is done by children, is done by people who are 16/17. I mean, you will get obviously quite a lot of exceptions to that, but if you look at the general trend one of the things that we learned is that most crime is not displaced. Now why should that be? Well, firstly because most crime isn't actually all that highly motivated – you'd be astonished – even in armed robberies. If you watch *Crimewatch*, for example, look at the CCTV: you often find three guys wandering up and down wondering whether to do that bank, that bank or this one. It's just extraordinary how few people sit down and think of crime with a

serious business plan. It is one of the reasons that deterrent punishment doesn't work very well. It works with me, because, by god, I'd be out with my calculator working out, "Well, if I do that, that's seven years; if I do that, that's three years." But they don't. Not even on the back of an envelope. In any case, a lot of crime is crime of passion: it's a fight that develops because the pubs are badly run. If you run the pubs better, you sell as much drink but you don't get the fights. By going upstream of these offences we are reducing them.

If you want an example of lack of displacement, look at suicide. Surely, if I am intent on committing suicide, I will find a way of committing suicide. If I'm thwarted, "Well, I wasn't really serious in the first place." But certainly thwarting people for a short time should make no impact on the overall suicide statistics. Yet, when North Sea gas replaced town (coal) gas the suicide rate went down 20%, and it has stayed down; in fact, the figures out today show suicide rates at, is it, a 30 or 50-year low – I can't remember. If you change the circumstances in which people find themselves they behave in different ways. It's really not all that remarkable.

So I think what we need to do is – police, engineers, designers, town planners, geographers, physicists, economists, psychologists, crime analysts – we have got to embrace everybody, a whole new bunch of disciplines, and think about how we arrange society in ways that we don't get so much crime.

I will just leave you with one thought about crime, before I sum up. If I draw a graph here of GDP (Gross Domestic Product) of England and Wales from 1900 to 2003 – I'm not sure what happens after 2003, I haven't got the evidence – you will see a graph that more or less goes up like *that*; I mean, it has wiggles in it during the war and all sorts of things, but more or less goes up in a progressive steep curve. If you take a graph of acquisitive crime, that is property crime, it matches the GDP graph almost perfectly, but you have to slide it three years backwards, as attractive items for burglars like televisions have to be sufficiently widely in circulation before they steal them, otherwise you're too conspicuous, because nobody in your street has got a television and suddenly you have one. If you take violent crime, the match is again astonishing. Here you need to – and I don't know why, I can't explain this – you need to slide it back between eight and ten years, and it's probably because we've got far more anonymity, we've got far more drink, we've got far more people staying out at night. Youngsters, frankly, a hundred years ago, what did they do? Most of them, working class youngsters, would have been at work: they came home absolutely knackered, they had their tea, they went to bed, and that's it. They're not out on the streets carousing till two o'clock in the morning, the women in short skirts, with half a bottle of gin inside them. Crime substantially reflects the fact that society has got richer, not that it's been impoverished.

So, there you have it. I think both in medicine and in law the systems have long outgrown their inheritance and we need to have some radical reappraisals. I would love to think that you and many other people will really want to tackle the priesthoods, the entrenched interests, the conservatism, the complacency. Both professions are full of very hard-working, very decent, very intelligent people; but so were the blue collar trade unions in the 1950s. The professions (white collar), I think, like the blue collar workers, need to undergo radical reform.

Thank you. (Applause.)

Discussion

The President: Well, that, I think, was a remarkable collection of observations, facts, plain speaking and with a very constructive, logical follow-up, and we, I am sure, are all the richer for it. You said you would be provocative and you haven't disappointed us. I am sure that there will be no shortage of questions from the floor and I would merely ask, as usual, that you state your name and your profession when you begin, please.

Mr Anthony Adams: I am Anthony Adams, Emeritus Professor of Anaesthetics in London University. I much enjoyed your talk. My question is: are there any aspects of the legal system or process in other countries which you think we should copy in the UK?

Mr Ross: Yes, there are indeed, and I quite like many aspects of the inquisitorial system. Incidentally, if you look at what the FDA does when it is looking at drugs, it has a bit of both; I mean, you allow inquisitorial but you also allow a bit of Punch and Judy stuff; and if you look at Vioxx, for example, or Celebrex, was it, some of the evidence did emerge from people being allowed to take a very adversarial position. So I am not against adversarial. To be honest, when I think in terms of reducing crime, what I am trying to persuade the police to do and would like to persuade society to do is, as with civil law, treat lawyers as a last resort. If you've got a problem, of course in the end you might have to go to law, but most of it you should be doing way before you get to that stage in different ways. Even when you have got repeat offenders, we know sending them to prison is useless, except it keeps them from doing any harm outside prison. They do tremendous harm inside prison, beating people up, or whatever the heck it is. So, firstly, I am not so much interested in devoting my time to legal reform so much as alternatives to the law, but, yes, at the end of the day the law ought to adopt an enormous amount, not so much from other systems, in France for example, but from science. If we're interested in seriously finding out facts, why do we think science is only for these things and not for those things? I spoke to the Air Accident Investigation Branch deputy head and had a long conversation about the methods that they use, completely different from the English legal system, and I said "Yeah, but, you know, you don't have to take human mal-intent; you know, people like in court. People aren't going to lie to you", and he physically took a step back from me as though I was naive. He said:

"Everybody lies. Firstly, all the witnesses are wrong. Virtually every time there is an aeroplane crash people tell us there was an explosion. Well, I mean, you just discount that for a start. People believe it; they're shocked. Don't believe what people tell you. That's the first thing. The second thing is in nearly every crash you've got a large number of people who are trying to disguise something, and certainly in crashes which involve developing countries, but even sometimes involving middle of the road countries, it crashed because parts of the aircraft weren't the real ones, they were black market ones, and all the rest of it."

He said "Yeah, we have exactly the same". I would want to learn from that, and many other areas.

Dr Josse: Eddie Josse, medical practitioner. Thank you very much for your interesting talk. Incidentally, Shipman was not incompetent, he was a murderer.

Mr Ross: Yes.

Dr Josse: He was very competent.

Mr Ross: Absolutely.

Dr Josse: You have to know the history on the medical side of why it got into this trouble. I was an academic for 25 years and used to go round the country inspecting hospitals, universities, and so on and so forth. When Aneurin Bevan wanted to form the National Health Service he gave power to the Royal Colleges to approve posts, contracts, and so on, and they failed to do the task. I mean, they have changed now, but for 30/40/50 years they had the power and they failed to do it. So you are quite right, it was the profession who failed to undertake that task. But, if you go abroad, the General Medical Council in Germany is part of the state system, and that is why Hitler's doctors had to conform with the situation, because their GMC was not independent. They don't have colleges in many European countries. They have universities with the same adversarial central style of "If you cross me, you'll never get a job in this country". So you have got to be careful on how you look. My question is about the legal side of things, and you did touch on it. Can you give me any good reason why many, particularly amongst the judiciary, do

not wish to investigate how juries work, why there is a Juries Act which specifically prohibits it? I can't understand why this happens. I mean, I hear their reasons, but I can't understand it. Can you give an explanation?

Mr Ross: Well, I suppose it's in the way that a Cardinal doesn't want a bunch of scientists turning up and telling him whether a statue really is bleeding blood. There is such faith in the jury system I don't think they want any destabilising of it. But, I mean, I'm with you. Because I don't believe in it... That's actually not true: I do believe in the jury system. I believe where we need juries is where our liberty ultimately resides. At the moment it resides in the House of Lords with unelected people who may or may not be representative of us – I mean the Law Lords. Actually, that is where I would quite like some sort of Grand Jury as a very, very last resort, you know, as things go higher and higher. But, anyway, that is neither here nor there. I can't answer that, I don't know.

Just very quickly going back to what you were saying about Germany and the way other societies run their medicine, I am not trying to make a point specifically about the United Kingdom or British doctors. I mean, this is a profession. Of course there are differences. Of course British journalism exhibits some of the worst excesses in the world, but the Australians are pretty much as bad and the Italians are becoming as bad; there are differences; but most of these things are universal, one way or another. I don't think the problems that I'm addressing are because the Royal Colleges didn't do enough or because in Germany the government hasn't done enough. I've just been, for example, to a bioethics meeting in Paris – it's fascinating how governments do so much more on the Continent – but they haven't tackled these issues either. They haven't said to an individual doctor "We want to know what your outcomes are". Even with surgeons, we don't know which surgeon doing testicular surgery, which surgeon doing breast cancer surgery, we don't know what their outcomes are. That's not just in Britain, that's everywhere, and it just seems to be something that is wrong.

Dr Josse: Read this week's *British Medical Journal* on thoracic surgery.

Mr Ross: I will.

Mr Brahams: Malcolm Brahams, solicitor. When I read the title of your talk, Nick, I thought we lawyers would come off with an easy evening, but it wasn't so. Nevertheless, I am going to talk about the medico-legal process. Do you think that switching to a no fault system in resolving medical accidents and the causes of them would assist, or would it be irrelevant? I mean, in the sense that a number will go to law if they think there is no other way of resolving their claim against a doctor and getting their claim investigated?

Mr Ross: Yes. I wouldn't be popular and I wouldn't win any elections on this, but I think the answer is yes. Can I just go back to the air accident investigator analogy? If I was an air accident investigator I would have in my wallet or my handbag a warrant that would allow me, without notice, to enter your premises to search and to seize whatever I wanted. It would allow me to detain you, it would allow me to look at your personal computer, and a whole bunch of other things; it would allow me to do stacks of extraordinarily intrusive things that normally in a society would be instinctively abhorrent. Do you know, even Liberty hasn't mentioned any concerns about this. Nobody has. Why? Because they're not out to blame, they're out to find out what happened for public safety, and the public will go along with quite draconian measures provided at the end of the day we can see what it's about. The reason we've got so many checks and balances in the legal system is because the kings had too much power. Magna Carta came along and, frankly, the aristocrats were only trying to look after their own at the beginning as well. We still describe criminal cases as the Crown against the individual – no wonder we've got a lot of stuff to try and protect the poor little sod who is at the receiving end of it. In medicine I do think public safety is paramount, therefore I am much more inclined to go to the no fault process (the Air Accident Investigation Branch process). But I am speaking off the top of my

head. I would need to think through the implications of that, Malcolm. I don't see, if I've had a botched operation, why I should try and go after the surgeon for tens of thousands of pounds. I think the two things are separate. If I should have compensation because something has gone wrong and I need the money, I should have compensation. If I am trying to improve surgery, that is a different issue, it seems to me. I think we conflate them at our peril.

Ms Selina Lynch: Selina Lynch, lawyer. I do want to ask you a question, but first can I say something about juries. You need to bear in mind that only about 4% of defendants are tried by juries. The majority of our criminal justice system is at the magistrates' court level.

Mr Ross: Absolutely, and indeed it is much less than that, because something like 70% of defendants that go to Crown Court have pleaded guilty before the case gets to the jury.

Ms Selina Lynch: Yes.

Mr Ross: So it is much less than 4%, which also begs the question: if we can't trust anything but juries, how come we leave about 98% of court dispositions to a non-jury process?

Ms Selina Lynch: Well, I think you will find many lawyers would agree with you. We are steeped in the jury system now and many lawyers would like to see them go. But the question really is what sort of system you would like to have for a criminal justice system in this country? You mentioned something about the inquisitorial system. I would be very interested to know if that is the system that you are favouring. You have told us that you don't like the adversarial system, but I would be interested to know what you would like.

Mr Ross: Well, to some extent, as I said to Anthony at the beginning, I am slightly copping out of this, because I've just got so many other priorities, and my main priority is cutting crime, and I just see lawyers as "What have they got to do with it? What do they know about cutting crime?"

Ms Selina Lynch: Well, it's not just the criminal justice system that will cut crime. It's to do with education and due to poverty, surely?

Mr Ross: I don't see either of those as fundamental either actually. Interestingly, if you look at poverty, as our wealth as a nation rises so does crime. If you look at whether you can keep society together in wealth, even that doesn't seem to help us. Certainly a coherent, cohesive society does help enormously. That is partly an economic issue but much more a social issue. Education is a huge issue in petty crime, huge. I mean, most of the people who are in prison are undoubtedly people who are not very competent and wouldn't survive elsewhere. But, you know, I want to improve education for the sake of improving education, not to reduce crime, and we should be improving society to improve society and social conditions, not to reduce crime. If I want to reduce crime – these things are really rather separate – it's mostly about redesigning the way that we interact with everything around us, including other people. If I go to the bank, to the ATM or to the bank, and I get £10,000 in tenners and I put it in a clear polythene bag and I put that over my shoulder and I walk down the street and then I realise "Ah, I've got to go back to bank to get some money for the meter for my car", I just pop it outside the bank and I go in and I come out and somebody has nicked it, that's theft, somebody stole that, but who was responsible? Now we are always told (and still to this day it still irks me) that some judge about 20 years ago got so viciously lampooned for saying that a girl who was drunk, with a very short skirt, with a see-through blouse and no bra, was dressed provocatively. Well, you know, my money was dressed provocatively in that example: that is what I am more concerned about. But I am ducking your question, I admit it. I'd love to take six months off and really think this through. I've only attended an inquisitorial trial for half a day, which is really not much of a test, and some of it was impressive. One of the things I liked was the way that the investigating magistrate would ask questions which were aimed at just getting at the truth. What really, really depresses me, watching English trials, is how magistrates may do that but how judges don't. I mean, I sat through a lot of the Barry George trial and ludicrously loaded questions were being asked,

because someone was trying to persuade the jury of something. Persuading is what barristers are there for. They're not there to get at the truth, as I would want the truth to be got at. So I think I would start with a clean sheet of paper. I wouldn't look at inquisitorial, I wouldn't look at the British system. Actually, I'd get a bunch of scientists and engineers round and say "How would you decide? People are going to lie to you" and they'd say "Yeah, but physical things lie to us as well. You think that particle is doing that, but actually we've discovered electromagnetic properties we didn't know about at the time." You know, I would be very interested in learning from them about how to discover truths.

Mr Bertie Leigh: Bertie Leigh, lawyer. Mr Ross, can I suggest that your thesis, entertaining as it was as far as medicine was concerned, was fundamentally flawed because it didn't attempt to address the process which is going on and which has gone on within the National Health Service since the National Health Service was born 50 years ago. You have criticised doctors for the fact that most of their therapies are not, as you call it, "scientific" – I think actually you mean evidence based – and you overlook the fact that evidence-based medicine wasn't invented 50 years ago. Nobody is ever going to do an evidence-based trial for the treatment of acute appendicitis, because nobody is ever going to try leaving an acute appendix until it ruptures, and therefore it must remain an art based on experience and based on assessment of signs and symptoms. Medicine, similarly, when it is looking at the outcomes and basically towards its processes. The reason why it wasn't publishing lists of what doctors could do fundamentally as individuals is because it couldn't measure it. The new outcomes on cardiothoracic surgery which Dr Josse referred to have only become possible because of work done over the last ten years to assess risk of different categories of patients and produce some sort of fair means of assessing risk. It would not be in the public interest to publish crude data, because people would just refuse to operate on you if they knew perfectly well that you were a high risk for reasons which the data wouldn't reveal. Now what has happened in the last 15 years is that medicine has scored a series of demonstrable and obvious extraordinary successes. When I was born the mortality from anaesthesia was 1 in 1,000, and now it's 1 in 240,000. This success has been achieved by the profession. So great have been the successes of the profession that society has decided that medicine is too important to be left to the doctors and they have taken it away from them. We are demanding perfection because we will not tolerate excellence, and I am afraid that it seems to me that your statements and your abuse of what you call "the priesthood" ignores the fact that the achievements, the excellence which you deride, has in fact been delivered by that priesthood, and I think that we are in danger of creating a medical environment in which it is impossible for doctors to continue to practise with the excellence that they have achieved. (Applause.)

Mr Ross: Well, if I was a politician and this was *Question Time*, I'd say "Absolute rubbish", because I'd have to, but I'm not a politician and I don't have to take an adversarial line. I agree with much of what you said. It was just the last part I don't agree with, and it was probably the last part that actually generated the applause, so I am happy to be in the minority here. I don't believe that medicine has been excellent and that people want perfection. I believe medicine has been mediocrity. There have been certainly been wonderful examples of excellence. Look, I give a lot of my private life to working in the healthcare business, healthcare charities, the NHS, and so forth. If I was that disdainful of it I'd walk away from it. Of course, on the whole, it is a marvellous thing, but it is not an institution of excellence for me; it just isn't. I find it extraordinary that these things that we're getting now are only just beginning to happen, when some of us have been campaigning for years. If, you know, Richard Smith, he was here on this very platform. He was for 20 years the Editor of the *British Medical Journal*, and has now just moved on. He's been banging on about these things for very much the same time. He and I tried, 10 or 15 years ago, to get a group together called "The Rationing Action Group", for example, to try and get some more transparency into medicine, to say "Look, doctors can't do everything. We

have to prioritise. Let's not pretend that we're not doing it and let's be more open. In order to do that what we've got to find out is what works and what doesn't in a much rigorous way." Now in those days nobody wanted to talk about it. You're right, it is happening, of course it's happening. We've got wonderful things like NICE. It has problems, but I think it's much better having a system that tries to analyse than a system that doesn't try at all. It depends on the extent to which its outputs are then mandatory. But we are making huge advances in the way that you're talking about. I just wish they had happened a lot earlier.

Mr Bertie Leigh: Can I just come back on that?

Mr Ross: Yes.

Mr Bertie Leigh: Evidence-based medicine was born in medicine, it wasn't imposed on doctors from outside. Let me give you one pronouncement from NICE, which is, I think, illuminating, about home delivery. NICE, in describing what is a common problem, which is home deliveries, says, "There is no decent quality medical evidence that there is any increased risk associated with home deliveries." By that it means exactly what you meant by saying "Is medicine scientific?" There is no evidence because nobody has ever done a double blind random controlled trial, so a woman didn't know whether she was delivering at home and would agree to go to a random allocation as to whether she would be delivered at home or not. But there is very good evidence as to outcome, which suggests that the risks of being delivered at home are very much greater than the risks of being delivered in hospital, in some cases four or five times greater, but NICE doesn't publish that, because NICE is essentially trying to put forward the sort of evidence basis that you are describing where, if you can't measure it by a certain technique, it doesn't exist.

Mr Ross: Well, first, sir, I think that is unfair on Mike Rawlings, actually, I really do. I don't know the details of what NICE said on this particular issue about home births. I agree with you, if they have said that there is no evidence and therefore have drawn the conclusion that there is evidence that it is equally safe, it's ludicrous. Nearly all the evidence that I have seen published endorses your view. But the fact that we are moving in this direction is to be welcomed. You can say it is welcomed and endorsed by doctors. Yes, by some doctors. If you take one of those who has really promoted this most of all, Ian Chalmers, who is a doctor himself – Ian, if he was here (and he too was here just a few months ago speaking on this very platform), would tell you he still feels he is having to pull and drag doctors kicking and screaming, and certainly when he started out doing this he was. I am not trying to abuse doctors; I am not trying to abuse half my family and the people that I went to this morning, incidentally, for a health check-up: I wouldn't have gone if I'd thought they were a bunch of rogues and vagabonds. What I am looking at is a profession, an institution, and the trouble with institutions is they become institutionalised, they have ways of doing things, ways of thinking, and that is what I think has taken an awfully long time. Incidentally, I deliberately said "Twentieth Century Priesthood", because I do think things have changed tremendously, I really do, since the 1990s, and for the better in fact.

Dr Martin Mansell: Martin Mansell; I am a doctor. I wasn't going to speak, but you mentioned Ian Chalmers, and before that you mentioned Richard Smith and the *British Medical Journal*. There are so many things I could say, but I won't, except to point out that the BMJ published a meta-analysis by the Cochrane Collaboration about six years ago about the use of albumin to resuscitate sick patients. It was an extremely bad meta-analysis. It relied on papers that went back 30 or 40 years. It was turned down by one of the senior referees, who looked at it and said "This is nonsense and you shouldn't publish it". Because it came from the Cochrane Collaboration, because the BMJ is making an awful lot of money from clinical evidence and apparently believes that randomised controlled trials are the only way forward, it was published. It attracted the most terrible correspondence that went on for months. In Scotland you could not use albumin to resuscitate a sick patient because the Trust had taken it off the pharmacy issue.

Now (I follow that up) last year there was a SMART study in the *New England Journal of Medicine* which looked at the evidence, and it concluded that albumin is actually good for you. I have to tell you, I disagree with almost everything that you said, but I am not being personal about it. The interesting thing for me is that we inhabit two completely different worlds. I think that I'm living in a harsher and more realistic world than yours, which is rather idealised, simple, where there are facts that are incontrovertible and there is evidence and there is only one rational decision to be made. I have to tell you, with the greatest respect, I don't think life is like that.

Mr Ross: Well, I was deeply inarticulate, if that is the impression I gave. Indeed I thought when talking about *guilty* or *not guilty* I was trying to make it clear that very few truths come as dichotomous facts and, even if they do (great physical facts even), then along comes Einstein and finds it's not right. Nor do I think in medicine we are ever going to reach the stage – I mean *ever* going to reach the stage – of certainty, even when we understand the genome much, much better and understand how individual pharmaceutical products can be tailored to individual genetic conditions, even when we really can treat an individual. At the moment, for example, I am very well aware, if you have got a randomised clinical trial, controlled trial, all you are going to go on is averages. There may be, at the corners of that normal distribution curve, people who have huge benefits from these drugs, and you may get people who suffer massive harm from them, and that is lost in the way in which these things work. I am not trying to say there is a Holy Grail and, if you think that I live in an ivory tower where I don't have to cope with these things, I promise you that I do deal with some very nitty-gritty things in terms of crime. I don't believe there are simple dichotomous answers. I do believe you have to grasp that evidence, I do believe you have to publish it and, as in the BMJ, let people come back and throw stones at it. Look, the great difference for me is between faith and science. What faith does is it puts something on a pedestal and it prays to it, it bows before the pedestal. What science does is it puts an idea on a pedestal and throws rocks at it, then it invites its friends and even its enemies to throw rocks at it, and usually after a time it falls over and you have to put another theory up. It's not a Holy Grail. It's awful and nearly always it falls over somewhere or other, but it's better, surely, than the alternative. That's all I'm saying.

The President: I can take two more, one *there* and one at the back.

Mr Gardiner: My name is Bill Gardiner; I am a sort of lawyer, but certainly not a criminal lawyer. I wanted to build on one of the interesting things you said at the very beginning, and that was that, as far as sentencing was concerned, there was a terrific correlation between the lay panel and the judiciary.

Mr Ross: Quite unexpected.

Mr Gardiner: Yes. So I wanted to make that into a bit more of an emotive question and ask whether you have got any auditable evidence about what I will call the stability in society which comes from a sense of satisfaction about retribution? I think that retribution can be colossally bad, but I think if there is an insufficient sense of retribution, then perhaps both the police and the criminal justice system, the whole thing, doesn't have a chance, whether it is inquisitorial or adversarial. Is there much auditable knowledge on that point?

Mr Ross: There isn't. There is very little auditable knowledge on sentencing generally. It tends to be highly politicised and such scientific evidence as there is is waved around in an absurd way so that people who are on the right generally think that if you're nasty to people you will get less crime and people on the left generally think if you are nicer to people you will get less crime, and each waves the statistics that supports its own position. I agree with you. I mean, I really cheated when I was talking about punishment, because punishment has three drivers. One is to reduce crime, another one is to maintain a sense of public cohesion for society as a whole, and a third one is for the individual to produce a sense of justice – these are all inter-related. You could add a fourth one, if you wanted to, separately, which is to stop these people offending,

quite regardless of justice, and all the rest. Quite apart from whether you reform them, at least you're just keeping them out of the system. It is a complex issue. There is such a paucity of research. We have had criminology as a formal and hugely expensive academic past-time for 50 years and more and it is quite remarkable how little it contributes to practical questions like this. It is often pseudo-science; it really doesn't do much of this sort of research and, you're right, we need to know. For example, if you take a woman who murders her husband, the recidivism rate is so close to zero as to defy the Royal Statistical Society bothering to get up in the morning and come in and do any work on it; it is virtually zero; but it's a mandatory life sentence. Now it may well be the tariff has to be the same as a reckless Mafiosi character who goes out and shoots people, because society would fall apart if not, but I would like to have some evidence, like you. We haven't got any though.

Dr Deepak Desor: Deepak Desor; I am a GP. What is it about faith in medicine? I wonder if it is the loss of faith in medical practice that is driving people to the alternative practitioners, who really are magicians, you know, under another name, and I just wonder if we as a profession need to start to actually practise a bit more magic and regain some of that faith that we have lost?

Mr Ross: Yes. Let's get back to Martin's point. Life is complicated and we cannot be naïve and pretend there are simple solutions. There aren't. We all want transparency and openness, and yet we all know the placebo effect is absolutely huge. For example, in Pfizer's work on Viagra, when people were given the same pill but without the active ingredients, it worked in 25% of cases, even where people had erectile dysfunction. So do we want to be entirely honest with people? Do we want, where doctors aren't particularly good, to go to the patient and say "Oh, I don't think she's very good, you know"? I agree it is a complex issue and I don't pretend I've got the answers. I would not say in front of a lay audience half the things I have said in this room. Because you're lawyers, because you're doctors, you're the people that really have to have these conversations, it seems to me. You've got to find ways somehow yourselves of building back as much confidence as possible in the medical profession, without it being unrealistic in a sense where it can hurt. I'm not answering your question very effectively because I haven't got an answer.

Dr Deepak Desor: There isn't one.

Mr Ross: No.

The President: Thank you very much for sharing your views with us and particularly for interacting with some of the interesting comments from the floor. Please, we would like you to accept a very small token of our appreciation of your time and effort and everything you have done to make our evening so enjoyable.

Mr Ross: Thank you very, very much indeed. (Applause.)