We are sitting today in the Victorian splendour of the Exam Schools. Completed in 1882, this is the institution that is remembered by Oxford educated lawyers as the place where the rite of passage that is finals prepares you for your future. A life of exacting preparation and timetables, the ability to construct skeleton arguments or judgments in the most complex, urgent and exacting situations and the confidence to deliver analysis that is persuasive, accurate, ethically sound and sometimes innovative. The walls depict the old men in scarlet who look the same as the ones I remember in the Royal Courts of Justice. Their state robes and the grandeur of the surroundings were designed to represent the outward manifestation of the legitimacy of the Rule of Law and, it ought to be said, the patriarchal and hierarchical perceptions of the day. We should not forget, however, that the history of the decade before this building opened included the rationalisation of the delivery of the Rule of Law that came with the Judicature Acts of the 1870s.

We need nothing less now: a revolution in strategy and delivery and a change that will positively impact on people's perceptions of the Rule of Law. The exam question is how do we get there? The answer to the question is: that it is in your hands – do not wait for others to get it wrong.

Let me fast forward from the optimism of the 1870s to the atomised negativity of 2025.

The media presentation of courts is one of detachment from everyday life. Social media is much less charitable in its opinion. The language, behaviours and process of the courts is regarded as unintelligible to users. The senior judiciary admitted as much when the then Lord Chancellor, Mr Michael Gove, the Lord Chief Justice, Lord Thomas, and I embarked on a £1Bn transformation programme in 2016 known as 'Transforming our Justice System'. That included an, as yet, only partially realised digital or online capability that has its own accessibility issues for the vulnerable and less IT literate.

Save for the excellent judiciary and schools engagement programme and those forward-thinking schools that are represented here today, we don't teach our citizens much if anything about the Rule of Law and we don't encourage participation other than through jury service and our dwindling magistracy. The public are estranged and that is a democratic deficit. The court estate is a national disgrace: in part literally crumbling and more to the point not fit for purpose either from the perspective of those who work in it or the users and victims who have no choice but to be there. In the 10 years up to 2019 more than 50% of all court buildings closed to save money and/or to cross subsidise the transformation programme on the overt and true basis that the system could not afford to run its business as usual without doing otherwise. Meanwhile, the impact of austerity and the change in people's behaviours, as a consequence of the Covid pandemic, have had a serious impact on one of our foundational constitutional principles: access to justice. There are delays and backlogs that are antagonistic to justice. Case volumes are increasing and resolution rates in many jurisdictions are declining. Austerity without strategy brings price rationing which is the antithesis of access to justice.

We are all adversely affected by institutional decline and that is what it is. If you, your family or friends, are in a vulnerable situation, the impact is worse. Consider some of those affected by waiting far too long for a decision: young people removed from the care of one or both of their parents, criminal defendants on remand in jail awaiting trial, autistic children waiting for a special educational need determination, the benefits and asylum support appellants who are destitute and those in mental health detention. Systemic unfairness, whether as respects sub-postmasters in the Post Office or the subjects of the proliferation of inquiries and judicial review claims involves real people who have nowhere else to go. And then there is the forgotten world of civil claims where, like most Tribunal appeals, there is no legal aid and the individual citizen or small business, that is you and me, has a very serious question to ask about their so-called equality before the law: can I afford to go to court and take the risk? The Ministry of Justice remains a non-priority spending department of Government and employees of His Majesty's Courts and Tribunals Service are some of the most loyal but also the least well-paid public servants that we have. We have justice systems that have a

disconnect between strategic direction and delivery because the leaders are given no positive levers to pull, despite their herculean best efforts to do so.

Who then has the courage to identify the problems and find empirically valid solutions? My principal message is it should be us. Academic and civic leaders who have the experience and the knowledge to help our institutions flourish.

It is important to say that I am speaking as a former head of jurisdiction not as a serving judge whose words might otherwise be the subject of adverse comment from those who champion the concept that judges are guilty of overreach in either their interpretation of the common law and statute or their extra-judicial statements. As it happens, I agree with those commentators about the pre-eminent importance of the concept of Parliamentary Sovereignty, the respect that must be afforded to the Legislature, and the Executive provided it abides by the Rule of Law to which it is subject, and the importance of a flourishing political debate about justice and the Rule of Law. Where I part company with those commentators is when Parliament has itself invested political and judicial leaders with responsibilities, both constitutional and statutory, but has provided no mechanism to make the justice systems they concern work effectively.

The constitutional context of the problem I am describing is important. It is the systemic backdrop to the decline of the Rule of Law and Justice Systems as institutions and the question: who has the responsibility to do anything about it? The context is not the cause, but it foreshadows the decision-making vacuum that exists. Between 2004 and 2008 Parliament passed legislation that included the Constitutional Reform Act 2005 and the Tribunals Courts and Enforcement Act 2007. The legislation and the Concordats or agreements that preceded it were part of a broader constitutional settlement that is poorly understood. The then Government created the UK Supreme Court and abolished the jurisdiction of the Judicial Committee of the House of Lords. Those reforms were predicated on a principle which is the separation of powers. At the same time, they abolished the Lord Chancellor and then brought back the office as a non-judicial sinecure held by the Secretary of State for Justice. The office holder

continues to hold key responsibilities in law but has little or no operational power to effect delivery. The Secretary of State is now an elected politician who does not have to be a lawyer. What was one of if not *the* highest office of state – a reflection hitherto of the importance of the Rule of Law - was changed forever. I do not suggest that the change can now be reversed but it is a fact and there is no person in whom the apolitical conscience of the State is vested.

Alongside that reform came the creation of an executive function for heads of jurisdiction and statutory and other duties imposed on them to fill the vacuum created by the Lord Chancellor's demise. The chief justices were given the function of being presidents of their courts and tribunals with a wide range of responsibilities for recruitment, diversity, discipline and the efficient delivery of justice. For example, as Senior President, I was charged with the duty to have regard to the need for proceedings to be handled fairly, quickly and efficiently. That would be a near impossible burden to discharge today. In addition, I had to have regard to the need for Tribunals to be accessible, for the members to be experts in the subject-matter and to develop innovative methods of resolving disputes. How is one supposed to deliver those new functions? One should also bear in mind that Tribunals, unlike the courts, are a 'managed judiciary' with independent presidents of chambers like tax, social entitlement and mental health. They are supposed to deliver an identified volume of decisions or appeals for the money that Government provides.

The new executive functions given to judicial leaders involve a plethora of boards to work in partnership with other chief justices, to work with civil servants in Government departments and agencies who have no direct relationship with you as an executive leader in the way civil servants work to Ministers in accordance with the Carltona doctrine. The functions involve engagement in carefully scripted and minuted diplomatic processes of influence using bilateral meetings with Select Committees and Ministers, in my case from a range of departments concerned with Tribunals business, the Treasury and the Secretary of State, both to try and change their decision-making practices for the better and to obtain enough funding to run the jurisdictions for which I was responsible. That is to be done at the same time as not prejudicing one's role as an

independent judge in the individual case, which of necessity at that level can be a case of singular importance.

If one is misled into thinking the statutory protections are sufficient, I can give two easy examples of them going wrong. During the *Miller* case which concerned the need to obtain the consent of Parliament to trigger Article 50, rather than the use of the Royal prerogative to exit from the European Union, the judges sitting in the Divisional Court were described by the Daily Mail as 'enemies of the people'. The constitutional duty to protect the Rule of Law is vested by section 1(1) of the 2005 Act in the Lord Chancellor who by sections 3(1) and 3(6) must uphold the independence of the judiciary including by having regard to the need to defend that independence to enable them to exercise their functions. The Lord Chancellor at the time, Ms Truss, was widely criticised for failing to respond in a timely or appropriate fashion. It is easy to forget now the acute attack on the Rule of Law that this represented.

In relation to the key question about adequate funding of a justice system, there arose in a different Government a serious question concerning the legality of the fee structure imposed on the Employment Tribunals for which I was operationally responsible as part of my executive functions. Whether the fees order was an attempt to reduce backlogs and/or an attempt to increase funding by making litigants who could not afford to pay do just that is not the point. Whatever the rationale, the impact was to deny users access to justice. Despite representations to Government and Parliament by the judiciary in their executive roles the issue had to be tested in the courts. The outcome was perhaps the strongest defence of the Rule of Law delivered in modern times, condemning Government for its illegality - delivered by the Supreme Court in the *Unison* Case (R (UNISON) v Lord Chancellor [2017] UKSC 51). That was a fine judgment but the systemic protections and structures did not work in either case. If UNISON had not challenged the Government, would the judges have been able to do so?

There is meant to be a systemic remedy available to the chief justices for their new executive functions. In each of our geographic jurisdictions there is a framework or service level agreement that is predicated on the new constitutional settlement. The

Framework in England and Wales builds on the statutory power given to the heads of jurisdiction to make representations to Parliament. For example, if justice cannot be effectively delivered one can go to Parliament to be heard. The firing of that Exocet is however a matter of last resort not least because the Framework comes to end leaving the chief justice with even fewer levers to use. The Framework in England and Wales is widely regarded as inadequate by those senior judges who have toiled hard with their excellent civil service and independent colleagues on the HMCTS Board, year after year, to try and make the funding arrangements work. For the avoidance of doubt, they continue to do so but the funding and delivery arrangements are flawed. Neither the Judiciary nor HMCTS are given the levers to make the executive functions work effectively and efficiently and the Ministry, at least in this respect, is not an operational department.

In summary, the system is not designed to deal with business as usual in the context of increasing work, infrastructure demands and the reasonable expectations of the public. If we suggest that it should also deal with systemic reform, the design and implementation of justice policy and a response to critical events like austerity or the Covid pandemic, then I would suggest these are a bridge too far. These are all challenges that need to be met today.

May I in that context briefly address the socio-legal problems that underline the need for systems to work. This is the subject of a different lecture but in headline form I want to challenge my colleagues. I began by highlighting people and the impact upon them of both the Rule of Law and declining institutions or at least people's perceptions of our institutions.

In his recent lecture in the Current Legal Problems series at UCL, Professor Joe Tomlinson argues that the neglected subjective experiences of individuals matter in the formation of their attitudes and behaviours because taken together they shape the outcomes of public action and even what the State may be capable of achieving. What individuals feel about fairness and the legitimacy of authorities affects voluntary compliance with laws because they trust the system not because they fear it. And

compliance is not the only outcome, society depends on co-operation for effective implementation of policies. Others suggest that there are three core capacities of the State: fiscal capacity, legal capacity (enforcement, regulation and compliance) and collective capacity (spending that results in value added). I would add governance capacity, i.e. fair process, outcomes and perceptions. In the same way that the common law develops in response to fact rather than abstract principle, the public's perception of fairness is guided by whether the process in question aligns with their sensibilities not some abstract legal or theoretical definition. It is not only the perception of the individual who is affected by the process but their families, friends and community. Context is everything. As Lord Mustill said in *ex parte Doody* (R v SoS for the Home Dept ex p Doody [1993] UKHL 8 at 14): "The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type". To develop the analysis of human experience, Prof Tomlinson argues that lawyers need greater collaboration with disciplines such as psychology, economics and political science. I gratefully agree with his thesis.

I also happen to agree with the aphorism coined by Professor Hannah Ahrendt that it is in the nature of the human condition that "nobody is ever the same as anyone else who has ever lived, lives, or will live". A pluralism of values in society is in my view the inevitable consequence. That may lead to conflict between communities and individuals because some values are incommensurable or at least there will be conflicting practices and behaviours that cannot be reconciled which need adjudication to prevent conflict.

It is the role of the Rule of Law institutions, (Courts, Governments and Parliaments) to adjudicate that conflict. My experience since leaving the senior judiciary in being both the adviser to the House of Commons privileges and standards jurisdictions which included the contempt hearing and determination against the former Prime Minister, Mr Boris Johnson, and my role as an independent adviser to the First Minister in Scotland on their Ministerial Code, have given me a unique insight into how the three institutions and our representatives and judges work. They need a partnership in fact not just a

partnership in constitutional theory to make sure that we curate our constitutional protections and foster the Rule of Law.

Society and community life bring us together for all manner of reasons, some rational, others not, but the sociability that exists allows us to acquire and develop narratives or stories that are a representation of something shared. The institutions that provide governance use shared visions in which people can have trust, respect and confidence. Our stories are based at least in part on values and social practices. They give us a deeper identity beyond the narrowness of individualistic identity politics or the fashionable neoliberal assumptions of the right and the left. For example, if we permit external actors with power and/or wealth to reduce standards or act in ways that curtail State sovereignty we will eventually damage democratic accountability. Even those who are wedded to their smartphones and the atomised moralistic norms that are fostered on that media by those with an economic self-interest, will realise that the riot that is the consequence is no substitute for the Rule of Law. We prosper by living and working together. The sum is greater than the parts. As Professor Amartya Sen said: there is benefit in the analytic power of bringing together diverse insights across cultures. The engagement of a diverse people in and with institutions enables practical wisdom and knowledge to be garnered for the benefit of the common good and provides a legitimacy to the decisions taken on their behalf by others. That is what we do and do well here in the University of Oxford. I will return to it in conclusion because in that analytical disourse there is a solution.

Legal processes have a purpose in supporting the Rule of Law but they should not be fossilised or treated as being immutable. There are many different means of inquiry, negotiation, debate or contest (which after all is a form of intellectual disputation arguably derived from the ancient recursive argument techniques beloved of Indic scholars at least from the late 10th Century CE). Some are adversarial others investigative or inquisitorial. Then there is the quality of different forms of reasoning: preventative, consensual or determinative: judgement or interpretation and deliberation, adjudication or facilitation, all of which should tend to further human understanding and in the process develop legal norms out of disputes which help the

social purpose of resolving or at least accommodating difference. The law should never be still. It should take account of changing human experience. The Rule of Law should provide or at least facilitate that purpose as the glue that holds society together. In the modern era, the adoption and description of human rights have provided a conceptual and supportive vehicle that co-exists with a plurality of values both within and between societies and helps to provide the juridical bridge between beliefs, abstract reason and lived experience.

So much for a superficial digression into very important questions of political science that I will leave with a plea that they be engaged with not ignored. Psychological and economic analyses provide an equally fertile ground for re-thinking how we deliver the law. For all those reasons and many more, there is no substitute for the Rule of Law, i.e. decision-making in accordance with a transparent, clear, consistent and comprehensible corpus of legislation and precedent that gives us predictability. The Rule of Law is more than the data that underpin disputes, whatever the reality in truth that data allegedly represents and the value judgements of individuals as moral actors. It is more than the undoubtedly high-quality decisions of its judges in the common law tradition. It is more than the rational, codified determinations in the civil law tradition. It is more than the specialist administrative re-making of decisions in Tribunals. It is about the distribution and control of power between people and the impact of that on people. There are internationally accepted lists of principles which in a reductive form describe it (regularly referred to as the 'I's: integrity, independence and impartiality). There are constitutional principles such as the sovereignty of the legislature, the separation of powers, the independence of the judiciary, the accountability of Ministers to Parliament and the ethical governance of our leaders, that are hard wired into it. Degradation of the institutions that are charged with looking after the Rule of Law therefore carries major implications for the health of political and social debate and community coherence. If we allow the narrative to be damaged, it is not easy to repair. It has, after all, taken centuries to develop – it is our 'archaeology of knowledge', full of context, cultural allusion and history.

The quality of the Rule of Law depends in part on the health of the justice systems that deliver it. Those justice systems are the institutions we depend on and they depend on the fundamental concepts of access to justice and equality before the law including the availability of an effective remedy. When the institutions degrade it is access that suffers and that is a real social and democratic deficit. It undermines trust and alienates people. As Dicey had it, the practice of our courts is the building block of the Rule of Law, eschewing induction from first principles in favour of deduction from day-to-day experience. We should not be trapped in social or legal structures; we can choose to act in new ways. Leadership involves agency within a community to deliver the collective purpose. We are responsible for that leadership. The health of the whole including the continued quality of our decision making involves us focussing on practices to ensure they remain fit for purpose by restoring belief in and respect for the Rule of Law. To do otherwise is to accept decline of the institution that is the Rule of Law and accept conflict as the correlative. Leadership should be our purpose and law is a function of that purpose, an agent capable of transformation.

You may think those are fine words but let me return to the reality.

Government has been promising Commissions of Inquiry into the efficacy of our Rule of Law arrangements and institutions for as long as I can remember. Promises have come and gone as quickly as our political leaders. Even if they were to be honoured, the long and expensive Inquiry or Commission that would be the result would not in itself be the answer. It may simply add to the many disproportionate inquiries that we already have. It may not regard systemic reform and leadership as a priority.

There is a task to develop leadership principles in justice systems where there is a role for those who are politically neutral, informed, socially engaged, independent of partisan interest groups, rational, normative, empirical and able to act without fear or favour. The chief justices fulfil that role but they cannot act on their own. In other jurisdictions there are joint committees of the Legislature and chief ombudsmen or commissioners whose role is to highlight what has not been done and what should be done.

There are innovative and interesting ideas that foundations, think tanks, interest groups and commentators regularly publish. I declare an interest, but perhaps greater attention should be paid to the work funded by the Nuffield Foundation and the reports published by Justice, to mention just two. The Nuffield has embarked on a strategic programme of research to examine justice inequality and outcomes as well as an ambitious project to recommend transformation that can be achieved by reference to empirical data.

There are solutions used by other jurisdictions who have pioneered de-criminalisation and non-adversarial process for regulatory questions, and procedural reform across a wide range of jurisdictions including less serious crime with more involvement of the public just as lay members sit with judges in the Tribunals. There are more cost effective and user-friendly processes that can be used for disputes that do not require adversarial protections where support for litigants in person and online process can deliver real benefits. The United Kingdom Tribunals have, in this respect, a great deal of experience to offer. Small civil claims could follow their lead and be, as a consequence, so much faster, proportionate and cost effective.

Wouldn't it be good if someone had the over-arching non-political role of identifying to Parliament and Government unfairness that ought to be redressed. Someone who could bring together the conclusions of ombuds in relation to maladministration, the systemic unfairness uncovered by judges and the recommendations of inquiries that have been accepted but never acted upon. Someone who could identify solutions to delay, unintelligible process and, most importantly, circumstances where people are unequal before the law and have no access to justice.

Talk to our students in this great place and they will use the words I have captured without embarrassment. They have hope, vision and ability and they are not alone. For my part, I would involve the public in the delivery of justice in ways that go beyond our present imaginings. The Rule of Law is after all for them and their perception of it

matters, from school to college, employment, family life and into entrepreneurship, national and international relations.

There is a need for a new partnership: a better way of working.

Let me conclude with a challenge to our leaders. I have this afternoon ridden at speed across the specialist research of my colleagues. In my time here and in the other place, as well as on the bench, I have had the privilege of discussing with some of our finest minds the problems and solutions that could transform our justice systems. It is time to bring that together. Neither Government and Parliament nor the Judiciary can do it alone. The University should re-instate its Professor of Justice Systems. It has an excellent chair in civil justice systems and so there is both a history and an existing model to build upon. There should be a centre that brings us all together with a bold public agenda. Colleges like mine will offer it a home. Who among us here is going to help by funding a place that sustains the Rule of Law by regenerating our institutions with innovative but principled ideas. A place that can have debates in depth from profoundly different perspectives and derive new ideas. The delivery of hope and imagination is a vision that this University proudly supports but the time to act is now.