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SLAYING THE SIXTH GIANT: THE CHANGING FACE OF JUSTICE
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(1) Introduction¹

1. It is a pleasure to be back with you today. May I begin by talking with our students? Imagine that you have a passion for the rule of law, perhaps in the same way as for medicine, history, astrophysics, rugby, social media or the latest subject of your affections. That may be a difficult comparison. But if you are to succeed in the world of lawyers and judges you will need to have that passion and an ability to focus it on the problems of others.

2. 44 years ago I was being interviewed by a young and brilliant law tutor in Peterhouse, Cambridge: Dr Roderick Munday. He asked me why we did not have a national legal service. I am not sure I knew the answer but I knew from school how to lead a debate, rise to the challenge and find a solution to a problem. My headmaster, teachers and family had found that in me and I remain forever grateful to them. The opportunity to engage in higher education changed my life.

3. I am now approaching the end of my tenure in one of the most fulfilling jobs in the law. As a head of jurisdiction I lead over 5,500 specialist judges and panel members across the whole of the United Kingdom in three different justice systems, (England and Wales, Scotland and Northern Ireland), with three different legal cultures and more than 500 different jurisdictions as diverse as mental health, employment, the environment, asylum, taxation and infrastructure regeneration. If you haven't heard of us, you have been lucky

¹ I wish to thank John Sorabji for all his help in preparing this lecture.

not to need us. We provide non-adversarial, informal and specialist decision making. We have survived and flourished because people want what we provide but, like all other institutions, we must adapt to survive and it is that context that I ask you the question: what do you think you will want and need for your future?

4. In June 1941, a sixty-two-year old civil servant, Sir William Beveridge, was called in to see Arthur Greenwood MP, at that time Minister for Reconstruction in the wartime coalition Government. To his disappointment, Beveridge was asked to chair an interdepartmental committee on social reconstruction. He is said to have left the meeting with tears in his eyes. Not of joy. But of crushing disappointment. We can imagine that in 1941 chairing such a committee might not have seemed the most attractive of job offers, particularly for someone like Beveridge who had a distinguished career behind him and could have expected something a little more important for the war effort.²
5. That commission, however, turned out to be more important than he might have imagined. Rather than have it churn out neatly written, carefully drafted, reports with fine recommendations that everyone understood would be considered, reconsidered, and noted before they were put into a drawer or placed on a shelf, to be forgotten, Beveridge transformed it into something that would shape the fundamental structure of post-War British society. From inauspicious beginnings, he transformed it into a commission that would tackle what he described as the Five Giants of: Want; Disease; Ignorance; Squalor; and Idleness.³ His answer to these problems was set out in what would become known as the Beveridge Report.⁴ Its recommendations would soon become a series of White Papers prepared and issued by the Wartime Coalition Government: a White Paper on Social

² N. Timmins, *The Five Giants – A Biography of the Welfare State*, (3rd ed, 2001) at 11.

³ See <<https://www.nationalarchives.gov.uk/wp-content/uploads/2014/03/t-161-11651.jpg>>.

⁴ Report on Social Insurance and Allied Services was published in December 1942.

Security; on the creation of a National Health Service; and, on Employment Policy.⁵ The ultimate product of all this work was the establishment of the Welfare State following the 1945 general election.

6. There can be no doubt about the importance of the Giants Beveridge identified. Yet there was a further one that he did not consider; that of, 'Injustice' or, more accurately, the denial of access to justice. To be fair to Beveridge, the Giant that got away from his grasp did so because of his commission's terms of reference. They focused on existing social insurance schemes.⁶ There were no such schemes concerning legal advice and assistance at the time. Where such assistance was available it came under a historic form of legal aid that could be traced back to Tudor times, known as the '*in forma pauperis*' process. This was a common law, and later statutory, power by which the courts could set aside the requirement that litigants pay court fees and require lawyers to act free of charge for the impecunious.⁷
7. It is an interesting aside that without the availability of this form of legal assistance the most famous, and far-reaching, case in the development of the common law might not have been brought. The case was *Donoghue v Stevenson*,⁸ which in 1932 established the basis of the modern law of negligence. As every law student knows, it involved the consumption of a bottle of ginger beer by Mrs Donoghue. The drink was alleged to have been contaminated by the unintended presence of a decomposing snail, which was said to have caused Mrs Donoghue a bad case of gastro-enteritis. Without the possibility of using the *in forma*

⁵ N. Timmins *ibid* at 48.

⁶ The Committee's terms of reference were: '*To undertake, with special reference to the inter-relation of the schemes, a survey of the existing national schemes of social insurance and allied services, including workmen's compensation, and to make recommendations*' <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/19_07_05_beveridge.pdf>

⁷ See R. Egerton, *Legal Aid*, (Routledge, 1998) at 7ff.

⁸ 1932 SC (HL) 31, [1932] AC 562.

pauperis procedure, she would not have been able to bring the claim, which ultimately concluded in the House of Lords.

(2) Slaying the Giant of Injustice

8. The Giant of injustice did not escape entirely. Beveridge may not have considered it, but it was the subject of another Government committee, this one appointed by the Lord Chancellor in May 1944.⁹ It was chaired by Lord Rushcliffe. Its remit was to consider what facilities there were for the provision of ‘*legal aid and assistance to* (in the words of the time) *Poor Persons*’ and to make recommendations for reform.¹⁰ Its work ultimately resulted in the Legal Aid and Advice Act, which received Royal Assent on 30 July 1949 and created the legal aid scheme. It has formed the basis of legal aid ever since, although today it is markedly different in its scope and extent.

9. The one major difference between the 1949 Act and the Rushcliffe recommendations was that it made legal aid available in the courts only. Rushcliffe had intended it to be available both in courts and tribunals.¹¹ If its recommendations had been followed the development of the Tribunals system could well have been markedly different over the last 70 years: our investigative, user centred process may not have had the same imperative to survive and be developed. That is perhaps a thought for another day. Significantly, however, neither Rushcliffe nor the Government in preparing the Legal Aid and Advice Act followed the approach that had been taken to implement Beveridge’s recommendations concerning

⁹ R. Egerton *ibid* at 141.

¹⁰ Cited in A. Elson, *The Rushcliffe Report*, (1946) U Chi Law Rev (13) (2) 131 at 132.

¹¹ H. Shawcross MP AG, On the Second Reading of the Legal Aid and Advice Bill, HC Hansard, 15 December 1948, col 1230, ‘*we have felt that it is essential to limit legal aid to the ordinary courts of justice but including now, of course, the county court in which so many actions are brought. Legal aid will thus be available in the ordinary courts before which the ordinary action, action between party and party, is normally brought. That will leave outside the scope of the Bill some tribunals, important tribunals—tribunals like the pensions appeal tribunals, the rents tribunals and some of the discipline tribunals which have been established under various codes. They are tribunals which do most useful work but they seem to do it quite effectively and they seem to get along quite well—I regret to say—without having members of the legal profession appearing before them.*’

health. There was to be no national legal service comparable in form or nature to what would become the National Health Service. This may have been because, as Sir Henry Brooke, once put it, ‘*Legal aid, . . . was never one of the four pillars of the new welfare state.*’¹² Those pillars being the ‘*NHS; universal housing; state security (benefits); and universal education.*’¹³ Michael Cook, who was for many years the leading expert on litigation costs, put forward a different possible explanation:

*‘In 1945 the new Labour government gave the legal and medical professions the alternatives of being nationalised, or of voluntarily coming up with proposals for providing their services for free to those who could not afford them. The medical profession came up with nothing, and they got the National Health Service. The legal profession avoided the creation of a National Legal Service [by] proposing the Legal Aid Scheme . . .’*¹⁴

A slightly more cynical explanation than that given by Sir Henry. There is, however, a key point to take from it: that there is rarely a single way in which an objective can be realised.

10. In 1945, the legal profession devised an alternative means to slay the Giant of Injustice. Since then additional alternatives have been devised, such as the further development of Tribunals as a means for individuals to hold the State to account. It is a system that provides expert, innovative, specialist and problem-solving processes. And it is designed for use by individuals by and large without the assistance of lawyers. We have also seen the development of Ombuds schemes in many areas, providing ready access to dispute resolution, free of charge, such as financial disputes with banks that are dealt with by the Financial Services Ombudsman. We are now seeing the development of online access to justice through the modernisation of our courts and tribunals, all of which is intended to

¹² H. Brooke, *The History of Legal Aid 1945 to 2010*, Bach Commission on Access to Justice: Appendix 6, (2017) at 5.

¹³ *Ibid.*

¹⁴ See, for instance, M. Cook, *Cook on Costs 2012*, (Lexis Nexis, 2012) at 693.

make access to justice easier for all, for example, the virtual court and continuous online resolution using a smartphone or tablet.

11. Both legal aid, and the alternative considered in the 1940s, focus on one aspect of what Sir Brian Leveson, the former President of the High Court's Queen's Bench Division, called the justice 'ecosystem'. He said this,

*'... there is no single criminal justice system. It is a system of systems: a normative system, with Parliament and the courts determining the nature of criminal law; a preventive, detective, and investigative system operated by the police; a prosecutorial system, operated by the DPP and Crown Prosecution Service; and adjudicative system, made up of, and requiring effective access to, legal aid, the legal profession for defence representation, and the courts; and, a punitive and rehabilitative system operating with the Prison Service.'*¹⁵

He then went on to say

*'As with any ecosystem, its vitality is a product of the effective interaction between its constituent parts and of their individual vitality. A structural weakness in their interaction, a fundamental weakness in any one or more parts, will undermine the system as a whole. Cures to problems in one part of the system may have an adverse impact on the operation of other parts of the system or on the system as a whole. Reform should not be viewed in isolation. It needs to be a co-ordinated, co-operative endeavour.'*¹⁶

I doubt anyone could credibly disagree with Sir Brian's analysis. It is one that is equally valid for civil, family and tribunals justice systems. We can, I think, properly say that the judicial branch of the State is the means by which a constitutional State fulfils its primary duty to its citizens to secure for them the rule of law, upon which everything else rests.

¹⁵ Sir Brian Leveson PQBD, *The Pursuit of Criminal Justice*, (Criminal Cases Review Commission Lecture, 25 April 2018) at [46] <<https://www.judiciary.uk/wp-content/uploads/2018/04/speech-leveson-ccrc-lecture-april-2018.pdf>>.

¹⁶ *Ibid* at [47].

12. Beveridge, with a long background in social policy prior to his appointment in 1941, approached his task on a holistic basis: the Five Giants were each a part of the broader, interconnected, system of social policy. Rushcliffe, given his terms of reference, could only focus on one part of the system of justice. What was needed, however, was a commission to carry out an holistic review, so that Justice as a whole could be examined. There was no reason why that could not have happened in the 1940s. At the same time as Rushcliffe was being appointed to consider legal aid provision, Lord Evershed, at the time the Master of the Rolls, which is to say the most senior judge in the civil justice system, had been asked to carry out an inquiry into its operation.¹⁷ It would take him and his committee from 1947 to 1953 to do so. The opportunity was not then taken to undertake what might today be described as a ‘joined-up’ approach. Nor has such an approach been taken since, despite the numerous reports that have been written.

13. If a broad approach had been taken, one that properly treated our justice system in the way in which Sir Brian aptly conceived of it, the question for Rushcliffe would not have focused on the provision of legal aid. Nor would the question for Evershed have focused on the practices and procedures in the High Court and Court of Appeal. The problem to be solved would have been much more extensive. It would have started, for instance, from first principles, identifying the justice system’s purposes and how they interrelate with each other. It would have identified its elements: courts and tribunals, judges, lawyers and users. And not forgetting those that might not immediately come to mind: mental health professionals; debt advisers; housing specialists; surveyors; teachers; doctors and so on. They all play a very valuable part in my Tribunals. It would have identified, as Sir Brian did, the pathways to justice: preventive; consensual; and adjudicative. It would have

¹⁷ The Committee on Supreme Court Practice and Procedure. Its Final Report, after three interim reports, was published in 1953 (Cmd Rep. 8878/1953).

identified the cost of justice; and the cost of injustice or its absence. With few notable exceptions, such as the work that is being carried out at the moment by Professor Chris Hodges in the University of Oxford, the idea of a holistic review of justice has not been given detailed consideration.¹⁸

14. With all this in mind, I should perhaps set you a challenge: to do what Rushcliffe and Evershed failed to do – to examine the justice system as a whole with the aim of slaying the sixth Giant. And in doing so, to approach the task with a critical perspective; the same one that an early US President, Thomas Jefferson, took to constitutions and to ‘*the possibility of political and intellectual progress.*’¹⁹ In July 1816, he said this,

‘Some men look at Constitutions with sanctimonious reverence, and deem them, like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment . . . I am certainly not an advocate for frequent and untried changes in laws and constitutions . . . but I know also that laws and institutions must go hand in hand with the progress of the human mind . . .’²⁰

It is easy to look at the choices that were made in the past and assume they were the best that could have been made. They may not have been the best choices then. Even were they to have been, we should not assume they are the best choices now. Given the failure in the 1940s to consider the reform of our justice systems, there is no reason to assume their reforms were the best. We, you, need to look at things afresh. In that, it is better to follow Jefferson: but how might it be done?

(3) The Changing Face of Justice – Guiding Principles

¹⁸ C. Hodges, *Delivering Dispute Resolution – A Holistic Review of Models in England and Wales* (Hart, 2019).

¹⁹ J. Meacham, *Thomas Jefferson – The Art of Power*, (2012) (Random House); Letter to Samuel Kercheval, <<https://teachingamericanhistory.org/library/document/letter-to-samuel-kercheval/>>.

²⁰ Cited in *ibid.* at 467 – 468.

15. The starting point must be principle. What are our design principles? Which principles underpin the operation of the justice system? We can identify the following, at the least.

16. The first principle is that the justice system must be designed and operated on the understanding that its fundamental purpose is to secure the rule of law. We are a society governed by law. Those laws are made by Parliament or as interpreted by the courts. And where they are made by the courts they are subject to Parliament's power to change the law. The justice system exists to ensure that those laws are given effect. Where individuals, business, the Government does not act within the law, the courts and tribunals exist to correct that. Just as importantly, through court and tribunal judgments, the law is clarified. Its meaning and application is explained. As a result, those same individuals, businesses, and Government can understand what their rights and obligations are. They can understand how to order their lives on a sure and lawful footing.²¹

17. To secure the rule of law the justice system must be accessible and it must be accountable. This has a number of facets. It must be accessible to those with legal problems. There must therefore be equal access for all members of society. It must be open to the public generally, and to the media. Both to secure democratic accountability through civic participation, debate and scrutiny, and to ensure as far as possible that the law is understood by all. It must also be accessible as an institution to all members of society. By that I mean that its personnel, whether judges, lawyers, advisers or administrators, cannot be drawn from any one narrow sector of society.

18. The system must be open to all. As an open society based on democratic consent, the system cannot but be open to all. Additional to that, it must be open to all to enable the common

²¹ See *Lord Reed in R (UNISON) v Lord Chancellor* [2017] UKSC 51; [2017] 3 WLR 409 at [66]-[78].

law – our judge made law – to continue to develop effectively as it has done since the Middle Ages. The common law is evolutionary, unlike a codified system of law where all the law on a particular subject is set out in a single text. It is not the product of one mind, but of many. It is not the product of one time, but of many. It has benefited from, and developed to incorporate, the arguments, the breadth of understanding of judges, lawyers, theorists, each of whom would have had a different view of the world, of the law, of justice. It needs to continue to benefit from the perspectives of all members of society, if it is to continue its expansive journey, to both shape and be reshaped by individuals who represent the breadth of diversity in society today.

19. The second principle is that the justice system must be organised, led and managed coherently and effectively. We have not always lived up to this principle. Historically, our courts developed over time in an unplanned manner. The result of this in the 19th century was a confusing and complex web of courts, each with their own rules, procedures and jurisdictions. Each competing with the other for work. Such complexity inevitably led to delay and excess cost, which denied access to many people. We rectified this through creating a single High Court and Court of Appeal in the 1870s, with a simple procedure. Since then the overall coherence of the justice system has been lost once more, including by the growth of Tribunals and more recently by the growth of Ombuds schemes. If the senior judges are the stewards of our system, I would suggest they must look after it and hand it on in better condition than they found it. They (we) have responsibilities for the governance of it in performing what are known as our executive functions: the things we do to lead and manage the system when we are not in court.

20. The third and fourth principles can be set out more succinctly. They are that the justice system must be effective. By that I mean it must be specialist, expert, innovative. It must

be informal where necessary, and formal where necessary. It must be efficient, cost-effective and speedy. It must also be properly focused, and not assume that the only or the only proper means to resolve disputes is through a court or tribunal judgment. There are many paths of justice, and that is only one of them. The justice system must incorporate all possible paths if it is to be properly effective. I want to return to this in a moment. The final principle is that the approach taken to identify a just solution to a problem must be based on evidence, and be proportionate – in other words we must match the process to the nature and value of the dispute. As the stewards of the system we must look to best practice in the ways of decision making and problem solving that exist. That is an inter-disciplinary empirical exercise of considerable importance.

21. How might we implement these various principles which are derived from the constitutional norms, statutory duties and ethics which govern us as judges? I want to focus here on changing roles and changing professionals because these questions are the most relevant to you.

(4) Changing Roles

22. The justice system's traditional role is to decide cases. Courts and tribunals decide cases by determining what the relevant facts are, identifying the relevant law, applying one to the other to come up with a reasoned judgment. This is the adjudicatory approach to resolving disputes. It establishes individuals' rights, and it is also the means by which we explain and develop the law. As such it is a form of remedial or corrective justice for those who are involved in disputes. It also helps to shape the framework of law in which we carry out our lives, and so is a form of declaratory or explanatory justice for everyone. In both ways it is essential to the rule of law.

23. It is now well-established that this form of justice is not the only one. There are other pathways to secure justice known as preventive justice and consensual justice. Preventive justice is inherent in the work we do because by declaring or explaining the law and by being accessible, we promote compliance with the law, and deter actions that would, if taken, be contrary to law. But it must go further than this. Individuals and businesses who do not know their rights and obligations bring disputes before courts and tribunals which could have been avoided. The problem could have been defused or solved.
24. Justice systems across the world are starting to consider how they can do more to help prevent disputes. At an individual level, online systems could and should contain the means to help individuals to understand the law. They can signpost advice and solutions to help people to order their affairs and provide opportunities to resolve their disagreements. At a systemic level, if we digitally link together courts, tribunals, regulators and ombuds schemes, they will be able to identify the best way to resolve a particular problem where at the moment a confusing array of pathways are available.
25. Take for instance bank charges. A couple of years ago large numbers of individuals issued claims against their banks seeking to recover money they had been charged for going over their agreed overdrafts. It was argued that the charges were unlawful penalties. Ultimately the legal question at the heart of the disputes was considered by the Supreme Court. By that time thousands of claims had been issued. A preventive approach could have been taken. Assume that in a similar situation in future a large number of claims that centred on the same legal question were issued. If the courts could, through the use of AI for instance, easily identify that pattern, they could provide that data to an ombuds scheme. It in turn could carry out its function of scrutinising that area of law to provide preventive guidance or advice to Parliament. By linking courts and tribunals with other elements of the justice

system, we could provide both vaccination as well as cure. My tribunals are working with ombuds schemes at the moment to identify opportunities to work in this way.

26. Additionally, we can build on the promotion of consensual dispute resolution within the justice system. Courts and tribunals have always played a key role in promoting the settlement of disputes by the parties themselves. And this is an area where they have taken a more active role since the 1990s by encouraging parties to take part in, for instance, mediation. Most recently, the courts have been held to have the power to require parties to take part in a specific form of consensual dispute resolution known as Early Neutral Evaluation.²² Their role has thus expanded to formally incorporate dispute resolution through settlement alongside their traditional role of resolution through corrective or remedial justice.

27. This could be and is being developed further. Whether we incorporate a discrete negotiation and mediation phase as part of the formal court and tribunal process (such as the ACAS early conciliation procedure in Employment Tribunals) or as has been done by the Civil Resolution Tribunal in British Columbia in Canada where the steps are mandatory parts of a digital process. We should not focus on only one or two of these mechanisms but look at how we can properly target the right form of consensual settlement process to the dispute, whether that is mediation, collaborative legal practice, ENE, structured negotiation, arbitration and so on.

28. If we are to slay the Giant of Injustice, do we not need to look at how our system of systems incorporates these various pathways to justice, and in doing so move from an exclusively adjudicatory to a mixed methods, problem-solving approach. Only if we take a coherent

²² *Lomax v Lomax* [2019] EWCA Civ 1467.

approach to our planning and governance informed by data and good practice will we be able to ensure that the right approach is taken to the right case. That is a constitutional role for the senior judiciary. It is a component part of an independent judiciary that they exercise their civic obligations to identify how the rule of law can be furthered including by education, communication and engagement with the public, which as Dame Victoria Sharp, the current President of the Queen's Bench Division recently put it, serves both the private interest of litigants and the public interest generally.²³ We need to not only properly acknowledge that each role is inherent in our justice system but that we should, consistently with the principles I have outlined, ensure that they are organised and managed as a coherent whole.

29. If we take this approach we can also start to consider how we can make justice more open and accessible, and hence subject to greater civic accountability. You will all be familiar with the traditional picture of the court building. Some are majestic Victorian buildings. Others are more modern, like the Manchester Civil Justice Centre. Some are in relatively good condition, others are not. I have said before that justice is not – nor should it be – something that is done to people.²⁴ Justice should not stand apart from society. It and its delivery should be inherent in society i.e. delivered through and with the people it serves.

30. We have embarked upon a process of court and tribunal modernisation. The focus is on transforming the way in which we deliver justice. We are replacing our historic paper-based processes with digital ones. We are also creating new ways in which hearings can take place. That in turn has helped us focus on those who cannot or are less likely to use digital process (or for that matter paper forms) and the steps we must take to facilitate their access to justice.

²³ *Mionis v Democratic Press SA* [2017] EWCA Civ 1194; [2018] QB 662 at [88].

²⁴ Sir Ernest Ryder SPT, at [32] <<https://www.judiciary.uk/wp-content/uploads/2018/03/speech-ryder-spt-keele-uni-march2018.pdf>>.

And we hope to make the process less daunting than it might otherwise be. People sometimes talk of the majesty of the law. When they do so there seems to me to be a confusion: it is not the institution of courts and tribunals that have a majesty, let alone its judges, although the design of our buildings is critical to their success and the way they should be perceived as helping to provide access to justice rather than being a barrier to it. What majesty there is is in justice itself, its ability to be accessed by all equally, to secure the rule of law and the benefits that flow from that. It is trite to say that people often only realise the importance of that which they have when they need it or it is no longer there.

31. We still have a way to go to be able to show you new justice spaces – buildings and environments in which new digital tools can be both used and challenged. In addition, the procedural and substantive legal protections that you will each need in a digital world must be acknowledged and understood. Not since the 1870s have judges been so involved in changes to our justice systems but they need your help. The values, practices, traditions, language and customs of our communities need to be reflected in the ways in which we work; ever more so in a global economy which at times causes the individual to feel embattled or at least isolated from others in their community. We have to strive to make justice part of the life of our communities if trust, respect and confidence in the judiciary and the rule of law is to be maintained and that involves examining the quality and variety of the processes we provide, the clarity of the language we use and the way in which we deliver it.

(5) Changing Professionals

32. It is not enough to ensure that we restructure our justice system to take proper account of its multiple roles to change how we deliver them. We must also ensure that its decision makers are properly reflective both of society as a whole and of its different roles.
33. I do not just mean that the judiciary must be reflective of society. That it must properly reflect gender, BAME, sexuality and social mobility is a given. That is essential to ensure that everyone in society can see that they have a proper stake in it; that society's institutions are open to all in practice and not just in theory. It is also essential for the reason I outlined earlier. Greater diversity among the judiciary expands the experience from which it can draw in its decisions, both at first instance and on appeal. It broadens and deepens our decision-making. And in that way we make the law more inclusive, and accountable. The Tribunals have now achieved a level of diversity that is broadly representative of the society we serve but that is only a stepping stone on the way to understanding what our communities need from us.
34. Lest the lawyers among you think I am going to ignore the essential roles you perform, let me acknowledge them. Not just in the provision of advice and representation, but just as fundamentally to ensure the system is kept under proper scrutiny. Take lawyers out of the equation and you remove an essential element of accountability. They are the members of society with the knowledge and experience to ensure that the judiciary carry out their role according to law. And they are also the judges of the future. If we are to maintain the health of our judiciary in years to come, we need to continue to encourage the development of skilled and experienced lawyers from all our jurisdictions. It is as lawyers that judges learn the human facility of mercy or kindness and how that is properly translated into the work that we do.

35. The new approach I outlined earlier would necessitate an expansion in professionals within the justice system. A model here can be seen in operation in collaborative law which is used to help resolve family disputes, and is a form of enhanced negotiation. One particular form, developed in the United States, is called Interdisciplinary Team Practice. It involves a range of professionals in the settlement process. In addition to lawyers, it engages mental health professionals, financial advisors, life coaches and child welfare specialists. The aim: to put the parties in the best position to determine how they may resolve their dispute themselves.²⁵
36. If we are to take serious steps to develop a justice system, which properly incorporates the three pathways I have identified, this approach has much to offer as an example. It has both preventive and consensual elements but works with judges to provide access to courts and tribunals to validate settlements and enforce them or to decide the disputes that are irresolvable where an adjudication is required. We many need to re-think the roles that professionals play in our system but as Professor Susskind has reminded us, the advance of the digital world will cause that to happen in any event. If we work together and plan for the future we want the result can be better and more diverse forms of justice.

(6) Conclusion

37. I want to leave you with a final thought. In the year 533 the Roman Emperor Justinian commissioned a number of academics to draw together Roman law into a single text. The ultimate product of that is known as *Justinian's Digest*. It is fair to say that it is probably the most influential law book ever written; both in the common law and the way it underpins the civilian law systems across the world. Its opening line, said to have been written by the jurist Ulpian, sets out a universal truth. Justice, it says, is "*the constant and perpetual wish*

²⁵ P. Tesler, *Collaborative Family Law, the New Lawyer, and Deep Resolution of Divorce-Related Conflicts*, Journal Of Dispute Resolution [2008] 83.

*to render everyone (their) due.*²⁶ If we – if you – are to do what Beveridge and Rushcliffe were not asked to do, to help slay the Giant of Injustice, to ensure that we can render to everyone their due, it is time to rethink how we deliver justice – preventive, consensual and adjudicative. It is time we take a new approach to it, treating justice as a system of systems each with a necessary, funded, and complementary role. If we do that, then our justice system will be properly fit for the 21st century; for your century.

38. Thank you.

²⁶ Thomas (ed), *Justinian's Institutes*, (Cornell University Press) (1987).