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“Uphold the Rule of Law – Resist the Push Back”

Speech by Michael O’Flaherty
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Lady Chief Justice

Dear Chief Commissioner

Former Chief Commissioners

Commissioners

Chair of the Bar Council

Dear friends,

Thank you very much for inviting me to deliver the 2025 Annual lecture. I am delighted to be back. It was one of the honours of my life to lead the Northern Ireland Human Rights Commission, already over a decade ago. I learned much from my fellow commissioners and from the gifted team at the Commission. I saw how it contributed to consolidation of the Belfast/Good Friday Agreement and towards the embedding of fairness in public service in this jurisdiction. I have watched with respect and some pride how it has also come to play an important role in Europe and more widely, including across the Commonwealth.

The Commission, in other words, has demonstrated the important role of national human rights institutions for the well-being of a society. These institutions constitute elements of the architecture for a healthy democracy. They are components of that post-World War II revolution in building a social model that serves and does not subjugate the human.

The immediate story begins with the Charter of the United Nations, the adoption of the Universal Declaration of Human Rights, the negotiation of numerous human rights treaties and a suite of other initiatives in support of democracy and rule of law. Here in Europe the Council of Europe has, for 75 years, played its essential role in presenting, defending and promoting those three core and interlocking concepts of human rights, democracy and rule of law. Together with the OSCE and the European Union, they have elaborated their own standards and developed numerous institutions in support and in furtherance of human thriving.

The totality of the efforts of the UN and the regional organisations is to clarify an understanding and affirm the validity of that interplay of democracy, rule of law and human rights. We lack an English language noun to capture this interplay – to describe a state that integrates the three elements in an

interdependent and indivisible form – and so I will generally use the term ‘rule of law’ by way of shorthand for the interplay of all three.

States have invested in oversight mechanisms intended to promote respect for rule of law. The investment is longstanding when it comes to human rights, including in the activities of the European Court of Human Rights, of other regional human rights courts, and of numerous other human rights promotion and protection mechanisms. The international developments are accompanied by national initiatives, including the establishment of national human rights institutions, equality bodies and other entities of that kind.

Beyond human rights, attention to oversight of rule of law more generally is more recent. For instance, the Council of Europe Venice Commission has elaborated a checklist to assess compliance with rule of law. The EU, in its own turn, has instigated a rule of law compliance assessment system for its own member states.

Importantly, the intergovernmental and state commitment in these areas is reflective of strongly held attitudes in our societies. The results of a 2023 global survey by the Open Society Foundations were revelatory. It surveyed 36,000 people across 30 countries, finding that 86% of people say that they wish to live in a democracy and that 72% believe that human rights are a force for good. Indeed, 71% say that “human rights reflect values that I believe in”. These findings echo the results of surveys conducted across the EU by its Fundamental Rights Agency.

From this brief review, we can conclude that the establishment and consolidation of the rule of law is a notable achievement; all the more so for having emerged from the chaos and the horrors of war. What is more, it has unique qualities. Above all, it is the only model for society that can be said to have the universal agreement of the world’s states – as evidenced, at least nominally, in the outcome declarations of repeated global and regional summits, such as that of the 2023 Council of Europe Summit of Heads of State and Government.

But so far so theoretical you might say – with these impressive ideas often far from the reality of the lives of millions of people. You would, of course, be right.

We still have such a long way to go to realise the dream of a world where everyone is equal in dignity and rights. The vision of the UN Charter is unrealised. States ebb and flow in their commitment to and respect for rule of law. Progress is rarely linear, achievements fall apart and are undermined. Right now, the Russian aggression against Ukraine testifies to what happens when the values are insufficiently embedded – how much damage can be done by an aggressor bent on conquest and destruction.

What is more, and focusing just on Europe, in recent years and in too many places we have seen an insidious withdrawal from central tenets of the rule of law. We see it in the agendas and actions of far right political groups. They in turn, as they acquire places in parliaments and governments, seek to undermine much of what has been achieved. They attack institutions, fill them with their own supporters or starve them of resources. Their attention typically turns to those at the edges of our societies whom they problematise, render as “other”; identify as the cause for all the malaise of our states.

Right now the primary target for this othering is migrants. Other groups under extreme pressure include the Roma community and LGBTI persons – especially trans men and women. Civil society

defending such groups are exposed to particular challenges. Efforts are made to block a free media and to consolidate media ownership in the hands of one's supporters, or indeed of one's bankrollers.

The playbook of the those who attack our institutions grows ever more diverse, today also embracing school curriculum reform and the replacement of the leaders of cultural institutions. Everything is accompanied by disinformation that is actively promoted on social media platforms that themselves are failing adequately to police their own spaces. Evidence suggests that across these phenomena, and at least as regards Europe, one state, Russia, plays a particularly pernicious role.

An especially disturbing development, notably observable in the past year, has been the embrace by some politicians from the political middle ground of ideas that are antithetical to the rule of law – presumably for electoral purposes. So far we have seen this most obviously in the context of migration management where parts of the political centre join with the extreme right to denigrate asylum seekers, blame them for our societies' ills and advocate such breaches of international law as summary returns across borders and violation of the principle of non-refoulement.

I describe this new willingness of the political middle ground to compromise on principle as 'especially disturbing' because it is to it that we look for firm commitment to and leadership for the rule of law. If the middle ground, even in part, withdraws its commitment then, as WB Yeats put it in his poem, "The Second Coming", 'Things fall apart; the centre cannot hold'.

And all of this now plays out against the background of the actions of the new US administration, which, for instance, through withdrawal of USAID funding is already negatively impacting the operation of European civil society and independent media. US-sourced rhetoric also seems to embolden those who denigrate the trans and other minority communities.

A critical moment came with the speech of US Vice President Vance at the Munich Security Conference, on the 14th of this month. Mr Vance addressing Europe, or at least its leaders, implicitly rejected our understanding of the rule of law. Seemingly defending an absolutist form of free speech, he described EU and other actors as being like Soviet era commissars in their quest to tackle disinformation. He was no less scathing in his denigration of efforts to regulate in the interests of human well-being. With his reference to the removal of 'firewalls' – in a speech in of all places, Germany - he seemed to identify extreme right wing groups as the voice of the people that must be respected and he concluded that European leaders should, 'embrace what your people tell you even when it is surprising, even when you don't agree. And if you do so you can face the future with certainty and with confidence knowing that the nation stands behind you.'

As I have said elsewhere, I reject the analysis of the US Vice President. Europe, for all its failings, can be proud of its efforts to uphold values that are underlain by human rights. We seek to uphold a right of free speech as it is mapped out in international human rights law – a right that is fundamental in importance but the application of which is subject to limitation. As to his reference to the 'voice of the people' I will return to that in a moment.

Dear friends,

The delivery of that speech marks an arresting moment, a time to wake up to the acute dangers for our societies. It somehow crystallises the peril. It shines a light on the prospect of losing the formula for peace and well-being that, for all its limits and under-delivery, serves us so well. That is not something we should even countenance tolerating. We have to, in the words of the late French writer, Stephan Hessel, wake up and, as he put it, 'indignez vous!' – Get furious!

But what should we do in our outrage? Let me offer a few suggestions. In the first place, the saving of rule of law requires that our efforts be evidence-based. This in turn requires us to seek out and challenge the disinformation and myths that infect the discourse. We need to call out the nonsense, dispel the myths.

I already addressed the myth that our peoples simply are not interested in human rights or rights-respectful society.

Another set of myths concerns the primary targets of populist ire – irregular migrants (who were also referenced by the Vice President). Study after study undermines the repeated claims that such migrants are primary drivers in Europe of crime in general and of sexual violence in particular.

A further cluster of myths concerns the role of regulation, including laws intended to make our societies safer. The myth is that such oversight impedes innovation, undermines global competitiveness and strikes at free speech, and it is being invoked with increasing stridency. But it does not stand scrutiny. Take, for example, the oversight of AI. It is increasingly clear that this is not the source of Europe's poor track record of innovation. That instead results primarily from such problems as inadequately developed capital markets, onerous bankruptcy regulations and, more generally, a distaste for risk.

Regarding regulation of social media, I am very concerned by calls for a retreat, for instance for a weakening of the EU Digital Services Act. Such instruments as the DSA do not undermine free speech – instead they defend it as it is understood in international law – a fundamental right, as I said, that is subject to carefully constrained limitations in the service of the public good.

Also, I deplore the abandonment of content moderation on the part of some digital platforms, the effects of which are already visible in the proliferation of criminal-level hate speech and malicious targeted disinformation. And recall how an absolute free speech hits hardest for women, and for minority groups.

One last myth to mention suggests that our populations are crying out for a shift to less tolerant and more closed societies, for a retreat from a vision of society that respects diversity and inclusion - from a vision of a rights-respectful society. This myth is very impactful. But it does not stand up to scrutiny. Recent research suggests that far right populism is a top-down phenomenon, driven by political actors and fed by waves of disinformation. What is more, as the Open Society Foundations survey demonstrates, the levels of hate online are in no way a reliable guide to the views and the values of our general populations.

Next we must identify those actors that need to rally in defence of the rule of law.

The state is the key actor and I will return to it in a moment.

But let me first observe that the role of National Human Rights Institutions and of such other entities as Equality bodies and ombudsmen institutions is no less critical. I acknowledge their work with deep respect and appreciation. I continue to urge states that have yet to establish such bodies to do so without further delay. Frankly it is unacceptable that there remain holdouts across the continent. We must also be vigilant in resisting cuts to their budgets, interference with their independence or their effective sidelining in society. Remember that the health of a national human rights institution is a bell weather indicator for the condition of our rule of law states.

The part played by civil society is equally essential and, as I have said, it is delivered with great courage and often at the expense of personal safety. The pressure under which civil society functions is unacceptable. It is deplorable that, in so many places, so many activists, human rights defenders and others confront harassment, violence, detention, exile and repression through regulation. Standing up for human rights defenders has to be a core task of national and international human rights bodies. I see it as one of my highest priorities.

Regarding the state, all of its institutions are engaged, and on multiple fronts.

Concerning the executive arm let me concentrate on just one area. I look to the executive to do a much better job of honouring the indivisibility of human rights, according co-equal status to civil and political rights on the one hand, and social and economic rights on the other. It is only if this is achieved that our general populations will appreciate that the rule of law is about and for them.

Here I recall the legitimate disaffection within our communities. Progress has left many behind. There are worrying levels of inequality in Europe. Until that is addressed we both fail our people and offer electoral opportunities to those who would undermine our democracies.

Obviously, and drawing, on our shared experience, I realise that my ask is an enormous one. But we should see it as a long-term objective. What is more, there are concrete things that we can do right now towards its deliverance.

For , we can be more consistent in demonstrating our own understanding of the unrealised vision of indivisible rights. Here I acknowledge the work of the Northern Ireland Human Rights Commission, which through the annual Human Rights Statement, strongly frames socio-economic challenges as issues of human rights. I also recall the innovative efforts in Belfast to address housing issues through a rights-based framework. I can add that efforts, here and elsewhere, to clarify poverty as a human rights ground of discrimination seem to be gathering growing support.

There is one additional step that could radically impact attitudes to rights and to our values. It would be if we could persuade our national executives to make reference to human rights in the context of all the socio-economic improvements that they already seek to achieve. I would them express the delivery of health care as an issue of human rights; jobs strategies as about the rights to employment, and similarly regarding education, social welfare and otherwise.

Before moving past the executive arm of government, allow me one further observation. An essential element of the rule of law is the full participation of our peoples in the reflection processes that impact their well-being. In other words, our states can get much better at listening to their people. Across Europe people complain that consultations on important policy areas are missing or inadequate or tokenistic. This issue of meaningful engagement with policy makers has been flagged for years by civil society. It is especially acute regarding the possibilities of engagement for marginalised groups – think, for instance, of the degree of exclusion of members of the Roma and Traveller communities.

Addressing the participation and consultation gaps is a basic issue of rule of law. It will also yield better outcomes and, in the context of my words today, will support the deepening of trust and buy-in on the part of citizens.

The need to actively listen is particularly acute regarding young people. They correctly complain about the paucity of structured spaces within which they can dialogue with decision makers. And in terms

of investing in this area, I recall how surveys and other research show that the most disaffected group across our societies is that of young men. We must talk with them.

Very closely related to the right of people to be consulted is the importance of respecting the rights of peaceful protest. Sometimes the security pendulum swings too far towards the limiting of protest. Just look at the excessive restraints we have seen in recent months in some countries in the context of pro-Palestine and climate crisis related protests.

Let me now briefly mention two other institutions of the state: parliaments and courts.

The potential of parliaments in standing up for the rule of law remains underdeveloped. It is still the case that many European parliaments fail to undertake human rights scrutiny of draft legislation and some of them lack a related parliamentary committee – with Westminster being a notable exception. And I suggest that all parliaments on our continent could benefit from enhanced training on human rights and rule of law for parliamentarians and their staff.

Turning to the courts, I appreciate with the deepest respect the principled manner in which so many of them play their essential role. Indeed, where I come from, a strong argument can be made that the Courts were the primary driver of recent and great social changes. And in that context when I refer to courts I have in mind not only the Irish domestic courts but also the European Court of Human Rights. But courts too need investment and attention if they are to function everywhere as the strong independent institutions we require. For a number of European courts reform of the judicial and related prosecutorial services is in urgent need of attention Courts also should not be exposed to unnecessary risk by policymakers who, rather than tackle controversial issues instead trust that the courts will eventually resolve the matters. This is a phenomenon one can occasionally see behind the migration-related cases that arrive at the Court of Human Rights and the Court of Justice of the EU.

One last word on rule of law-related institutions at the regional and international levels. In troubled times such as now they are more important than ever and they need to be protected and rendered resilient. For sure typically they could benefit from reform and revised mandates, but that is well beyond my scope in this lecture. Suffice for now to flag their vulnerability – look for instance of the situation at the International Criminal Court – and do not forget that history has shown us how institutional weakening has a contagious quality to it.

My friends,

Finally, and I have left this to last because I believe it needs high and particular attention: today where are we to find our champions of rule of law? We need champions who are persistent and consistent. They need courage and to be willing to challenge convention. They have to be able to accept and withstand unpopularity, even derision.

For sure we need exceptional visionary leaders. But such leadership is very rare. But we cannot simply rue its scarcity or wait for it to emerge.

Instead, for my hope, I look across the breadth of the political middle ground that I spoke of earlier. For all my current concerns, I see that is full of decent, honourable, hard-working and well-motivated people. I meet them constantly, whether in national or local government or in such places as the European Parliament and the Parliamentary Assembly of the Council of Europe.

These people of the middle can be engaged and persuaded. We need them to be alert to the gravity of the moment and engage it in law, policy and discourse. We need their attention nationally and beyond.

And they, for their part, need our help. Those of us who work for human rights – whether in the public service or in civil society – must present clear, evidence-based arguments for our claims, something that is not always the case. I would add that I consider that our claims must always be soundly based on the existing international law standards – something I have argued for repeatedly but again a topic beyond my scope today. And we have to acknowledge the complexity of governance and put forward recommendations that reflect that context.

Beyond that, it is no less important for us persistently to call out any resiling from minimum acceptable standards. More generally, we can all do a better job of monitoring and assessing the work of the relevant authorities and bodies.

Friends,

In this lecture I can no more than engage the tip of the iceberg in terms of the risks to and means to uphold the rule of law. There are so many other sectors and contexts to examine and engage. I have said nothing about the role of local government. I have managed an entire speech in 2025 with only the slightest reference to the AI revolution. I have largely overlooked the business sector. I have by no means said enough about content moderation and the tackling of disinformation.

But if I have at least shone some light and conveyed the urgency then my purpose is served. To apply the title of a book of the Norwegian adventurer Thor Heyerdahl, “time is short and the water rises”.

As we all engage the challenge, I know that my own organisation, the Council of Europe, will accompany us, provide what support it can. After all it is the organisation’s *raison d’être* – its only purpose - to uphold human rights, democracy and rule of law. I too will employ the breadth of my mandate to support member states and their societies – their rights holders.

I am confident that efforts will not be futile – that- ultimately -we will achieve much and that the rule of law will prevail, at least in Europe. What is more, in terms of what we face, I recall the words of Nelson Mandela in his famous “Make Poverty History” speech in London in 2005:

“Sometimes it falls upon a generation to be great. You can be that great generation”.

Thank you.