

## LAUDATIO: SIR STEPHEN SEDLEY

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I WAS genuinely delighted to be asked to give this address, and I am very happy to do so. This is for three reasons: first, Lord Justice, Sir Stephen Sedley is a giant in the legal world and a key figure particularly among public lawyers. Secondly, it gives me a chance to express some of the appreciation that academia in general (and myself in particular) feel towards a figure who has done as much as anyone to break down some of the more negative perceptions of judges in the UK as remote figures, and cross the divide into the academic world. Thirdly, because it is such an easy task: Stephen Sedley is enjoying a hugely interesting life, both within the law and outside it, that the only difficulty I have is in editing down what I could say about him as an advocate and judge, scholar and writer, man of culture ... or indeed folk singer.

To move to the formalities first:

Stephen Sedley grew up in London where his father Bill Sedley, a life-long communist, operated a legal advice service in the East End of London. No doubt this is a source both of his interest in law and his commitment to social justice. After graduating from Queen's College Cambridge he was called to the Bar, Inner Temple, 1964, made a Queen's Counsel in 1983, and a Bencher of the Inner Temple in 1989. He was appointed as Judge of the High Court, Queen's Bench Division, 1992-9 and Lord Justice of Appeal, 1999-2011. In addition he has been Judge *ad hoc* of the European Court of Human Rights and Member *ad hoc* of the Judicial Committee of the Privy Council.

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These titles, stated baldly, although evidence of his hugely successful legal career, do not reveal what is perhaps uniquely compelling about Sir Stephen's life in the law. Stephen Sedley's twenty eight years of legal practice were marked by a succession of important and high-profile cases, in the area of public law and discrimination particularly. Indeed a list of his cases provides a checklist of some of the most significant cases and inquiries in the later part of the Twentieth Century, from the death of Blair Peach and the Carl Bridgewater murder trial to the contempt hearing against Kenneth Baker, then Home Secretary. But his list of cases does not just cover the high-profile causes of the day but also works through some more detailed issues about holding power to account. Recently I was researching on the democratic dynamics of government consultations and trying to critique some of the "participatory disempowerment" that is involved in many rather tokenistic consultation exercises in this field. I again came across the *Gunning Principles* or *Sedley Principles* as they are often termed. These originate in the arguments offered by Stephen Sedley QC (as he then was), and accepted by the court in *R v. Brent London Borough Council, ex parte Gunning*<sup>1</sup>, and subsequently approved by the Court of Appeal<sup>2</sup>. While there has been a certain amount of recent discussion of consultation in the UK Supreme Court, the *Gunning Principles*, - requiring that: (i) consultation must take place when the proposal is still at a formative stage; (ii) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response; (iii) adequate time must be given for consideration and response; and (iv) the product of consultation must be conscientiously taken into account - have not been bettered as a practical tool for establishing the ground rules and re-balancing the power relationship between government and citizens in this important area.

This principled yet practical approach to public law was continued when Stephen Sedley was appointed to the bench, made a

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<sup>1</sup> (1985) 84 LGR 168 at 169.

<sup>2</sup> See Simon Brown LJ in *R v. Devon County Council, ex parte Baker* [1995] 1 All.E.R. 73 and *R v. North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213 at [108].

Knight Bachelor in 1992, and a Lord Justice of Appeal and Privy Counsellor in 1999. Indeed Sir Stephen can be seen as one of the new generation of judges, freed from the constraints of the so-called Kilmuir Rules which required circumspection and discretion from Her Majesty's judges. The freedom that was obtained by the removal of these rules in 1987, has meant that the judicial mind of such leading figures as Sir Stephen and, indeed his sparring partner and our fellow member of the European Group Lord Justice Laws, can be seen much more clearly. These two judges, in particular, are the Romulus and Remus, or perhaps the Castor and Pollux, of UK public law. Certainly few have done more to articulate a fully rounded philosophy of public law through a series of important rulings. For Sir Stephen this involves (and I quote from his own extra judicial writings) "a belief that the common law itself has both the capacity and the obligation to move in the next generation towards a principled legal order". His belief is in the common law. The constitutional order is to be understood as "a common law ocean [only] dotted with islands of statutory provisions". In this landscape it is the job of modern judges to take on and develop the common law constitutionalism, championed by such figures as Lord Justice Edward Coke in the early years of the 17<sup>th</sup> Century, and Chief Justice Robert Wilmot a little later.

Of course only a very few judges have the courage, intellectual reach and confidence to develop such an approach where (and again I quote) "the independent courts of law hold the responsibility for interpreting, applying - and importantly - *supplementing* the law laid down by parliament in the interests of everybody". Sir Stephen is certainly one of those.

This life in the law as an advocate and judge would be more than enough for most people. However Sir Stephen has several more strings to his bow. He chaired the Judicial Studies Board's working party on the Human Rights Act 1998 and has, since 1999, been President of the British Institute of Human Rights. He also helped to establish the Public Law Project, a UK charity concerned with access to justice and social exclusion, and is a Trustee of the Equal Rights Trust and the Hamlyn Trust (where his wise counsel and

matchless ability to draw upon a wide range of contacts in the legal establishment is much appreciated).

But beyond this he has what amounts to almost a parallel career as a lecturer, legal scholar and theorist. The distinction of his work here has been recognized by honorary doctorates from no less than eight British universities, and appointments as an Honorary Professor of Law at Warwick and Cardiff and Oxford Universities as well as the role of Distinguished Judicial Visitor in University College London. These honours are well merited. He has an enviable list of distinguished publications. These include: *The Making and Remaking of the British Constitution* (with Lord Nolan; the 1996 Radcliffe Lectures) 1997 and *Freedom, Law and Justice* (the Hamlyn Lectures) 1998.

My personal favourite is his most recent book, *Lions Under the Throne: Essays on the History of English Public Law* (OUP 2015). Here he picks up on the remark that Francis Bacon made in 1625 to the effect that judges must be lions, but lions under the throne. The book explores in a fascinating way the historical tension within the state between parliamentary, judicial and executive power and offers a superb history of the development of the body of public law in England (which my JD students at Queen's University from across the world find curious and fascinating in equal measure).

He is a regular essayist and reviewer for the *London Review of Books* (and I count myself as honoured that he once reviewed - more or less favourably - one of my own books). He writes about a range of legal and less legal themes that are often topical and always penetrating, and I cannot be the only one who regularly turns first to his contribution when the *LRB* arrives through the letterbox.

Some of these essays have been collected and published by CUP in 2011 as *Ashes and Sparks: Essays On Law and Justice*.

No lesser authority than the Man Booker prize winning author Ian McEwan said of *Ashes and Sparks* in a review in the *New York Times* "you could have no interest in the law and read his book for pure intellectual delight, for the exquisite, finely balanced prose, the prickly humor, the knack of artful quotation and an astonishing historical grasp".

I suppose we should not be surprised by this given his earlier work in translating the Spanish civil war poetry of Marcos Ana and Vida de Nicolas as *From Burgos Gaol* in 1964. (I am sure that I am not alone in feeling a twinge of something less noble than total admiration, when I learned that rather than picking fruit or working in a bar to supplement his student existence - as many of us probably did - Stephen had the skills andchutzpah to make his extra income by working as a high level translator!)

I hope I have caught a flavor of this most outstanding lawyer and judge, scholar and friend to academia, as well as all-round renaissance man of culture.

But what about the reference to folk singer mentioned earlier?

Some you may know that he produced a magisterial volume called *The Seeds of Love ... A comprehensive anthology of folk songs of the British Isles compiled and edited by S. Sedley and published ... in association with the English Folk Dance & Song Society*.

Some may even recall that in 2006 Sir Stephen was invited to present an award at the annual BBC 2 Folk music Awards.

But I wonder how many know about his own career in performance, or the heights that this reached.

In the preface to his excellent collection of essays *Ashes and Sparks* he writes modestly about his career as a folk singer, and recalls that

"I still have the guitar I lent one evening in 1962 at the Troubadour folk club to a tousled young American whose first LP had just been released in the States. [*Who could that be? Bob Dylan no less!*] We played a jam session which lasted into the small hours; then he went his way and I went mine."

Stephen Sedley has always gone his way - and long may he continue to do so...