

The Hon Sir Richard Plender

Sir Richard Plender was one of the finest specialists at the Bar in international and EU law, and at the same time felt a deep conviction that he should make his skills available to anyone who needed them. Mervyn Bennun, a South African lawyer who was instrumental in setting up a legal wing for the African National Congress reacted to Sir Richard's death as follows: "What a man, what a distinctive character, what rock-solid honesty, what strength, what brilliance, what a depth to jurisprudence and human rights he brought, what love and warmth and collegiality and humour, and in our anti-apartheid struggle what a comrade." Sir Richard had met Mr Bennun as well as Albert Dlomo, both of whom were involved in the ANC, when teaching at Exeter University in 1974. They had many discussions, in particular on the importance and content of human rights law, which helped to craft ANC policies to accelerate the end of apartheid. When Nelson Mandela became President of South Africa, Sir Richard remained in touch with his South African friends and readily acted as a sounding board for legal and constitutional questions which arose during the early years of the Mandela Government.

Born the youngest son of George and Louise Plender, he was also the grandson of Adolf and Adele Pfeffer, Viennese emigrés to London in the early 1900s who had been befriended by William, later Lord, Plender, a prominent London accountant. When Adolf wanted to anglicise his name in 1913, he took his friend's surname. Adolf Pfeffer was Jewish and his Austrian family was later to perish in the infamous concentration camp at Theresienstadt. This was critical background to the younger Plender's later legal studies. Born in 1945 just after the end of the Second World War, his family soon moved to New York where his father had obtained a position in a stock broking company on Wall Street. Living in the New World and experiencing the potential of great opportunities free from the aftermath of World War II ignited a lifelong fascination with America. The family returned to London after five years and Sir Richard completed his primary education in South London. His intellectual potential led to a London County Council scholarship from his primary school to Dulwich College where he thrived, particularly in debating.

At the age of 16, he was awarded an Open Exhibition to read English at Queen's College, Cambridge but, due to his youth, was recommended to delay his studies for a year. He undertook voluntary service overseas and was allocated £100, a hatchet, a length of rope, a Land Rover, and 100 convicts in order to build a road from an outpost in the Zambian copper belt to an established settlement some 100 miles away, which they successfully achieved in 8 months. Gifted with an ear for languages, he quickly picked up Chilala, one of the main languages of Zambia, from his team - his powers of recall were such that, decades later, he was able to put Zambian litigants before him at ease by unexpectedly addressing them in their native tongue in court. Sight of the poverty he encountered on voluntary service never left him. After a year of studying English under lecturers who included FR Leavis and EM Forster and following a challenging conversation with his father, he changed to law for Part II of the Tripos, completed an LLM at Cambridge, an LLM and JD at the University of Illinois, and, at 25, wrote a doctoral thesis at the University of Sheffield which was subsequently published as *International Migration Law*, a book which was to become a standard reference work in the field.

Teaching posts at Exeter University and King's College London followed and he was subsequently the director of the Centre for European Law at King's in 1988-1991. He maintained a lifelong affinity with young people starting out in their careers for whom he always found the time to advise and mentor. Alongside academia, he worked part-time as the Legal Adviser to the UN High Commissioner for Refugees where he met Patricia (Patsy) Ward, whom he later married. At the same time, he found a seat in the chambers of Louis Blom-Cooper QC at 1 Goldsmith Buildings where he was able to combine the early years of practice at the Bar with his academic pursuits. In 1980 he moved to the European Court of Justice in Luxembourg to join the cabinet of the UK Advocate General as a legal secretary (*référéndaire*), writing drafts first of Sir Jean Pierre Warner's and later Sir Gordon Slynn's opinions. Returning to King's in 1983, he also acquired appointments at Université de Paris II, Robinson College, Cambridge, and City University, London; as Leverhulme Fellow at Yale Law School, as British Academy Fellow at the Soviet Academy of Sciences in 1985; as Specialist Legal Adviser to the States of Jersey from 1989, and, later, as Visiting Professor at the University of Groningen, Netherlands. In 1987-8, he was Director of Studies and then Director of Research at the Hague Academy. He subsequently lectured at the Academy in

1997. A prolific author, he produced numerous leading reference works in international and European law in addition to *International Migration Law*, including *Cases And Materials on the Law of the European Communities*, *The European Contracts Convention*, and *The European Private International Law of Obligations*, and contributed to and edited many others in English, French, German, and Spanish. Recognition of his substantial publication record came when in 1993 he was awarded the very prestigious LLD by the University of Cambridge.

Taking Silk in 1989, one of the first EU barristers to do so, in 1990 he moved chambers to what is now 20 Essex Street, joining eminent public international lawyers, Sir Arthur Watts and Sir Eli Lauterpacht. A series of high profile cases in the fields of international and European law followed. His particular gift was to present complex problems in a simple way. He represented for example, the Kingdom of Jordan in the proposed waterway from the Red Sea to the Dead Sea which was designed to bring water (after desalination) from the Red Sea to benefit Jordan, the West Bank and Israel. In the dispute between the UK and Ireland over the risk of pollution of the Irish Sea from new operations at the Sellafield nuclear plant (the Mox Plant Case), the UK Government called on his knowledge and experience of both international and European law to unravel the complex jurisdictional issues. He later arbitrated against South Africa on behalf of Belgo-Italian mining interests which brought an investment treaty arbitration against South Africa. The case settled but the South African Government was so impressed by the arguments marshalled by Sir Richard and his team against the Government that South Africa subsequently renounced all of its bilateral investment treaties. His fluent languages came to his aid on one particularly notable occasion, the first ever case held before ITLOS (International Tribunal of the Law of the Sea), in Hamburg. The case revolved around a ship being detained in Papua New Guinea, and in particular, Sir Richard's cross examination of the master of the vessel. The master seemed to speak good English but when Sir Richard asked a difficult question the master did not understand, he reverted to his native French. In normal circumstances this would have allowed him time to think due to translation, but Sir Richard immediately cross-examined him in French instead, much to the master's surprise. It was a resounding victory for Sir Richard.

The Blair Government called regularly on his EU law skills to defend the UK Government, in particular in litigation seeking repayment of vast sums of tax allegedly levied in breach of EU law, and also sought his advice around the legality of the invasion of Iraq in 2003. Credited with first coining the phrase 'European citizenship,' an invitation to Chequers reflected the high opinion in which he was held at Number 10.

In chambers at 20 Essex Street, he was known for his kindness and humour, with frequent recourse to 'delightful and often wicked' limericks according to a former colleague, specialising in rhyming 'unrhymeable' words. He was a generous supporter of many charities, and often discreetly took on pro bono work at significant personal cost. He was committed to his respective parishes of the Temple Church, London and St Mary's, Sundridge; in a circularity which pleased him, he funded the renovation of the chapel at the latter, which had first been built and dedicated by William Plender in the early 20th century. One chambers colleague described working with Sir Richard and observing "his intellectual and human qualities," saying "around that same time I worked as a junior for a senior silk from another chambers who was somewhat deficient on the human qualities front. I was in no doubt as to which of the two approaches and styles I was keen to emulate". Sir Richard's clarity of thought and communication meant he was also the go to person for seemingly intractable legal problems of other members of chambers with whom he was very generous with his time. The questioner often received the answer at dictation speed before leaving Sir Richard's room.

He was appointed to the High Court bench in 2008 where he said his approach was 'to listen and listen well'. In particular, his judgments on European and international law issues naturally showed a very sure hand and, had health issues not cut short his judicial career, he would undoubtedly have reached senior judicial office.

In 1978 he married Patsy Ward, with whom he had two daughters. When he could be persuaded away from his desk, he loved sailing and his curiosity about the wider world and other cultures meant he was a keen traveller. His great loves of poetry, music, and his family sustained him throughout his prolonged illness, and, however physically frail he

became and after losing the power of speech, his eyes always eloquently expressed his affection and point of view.

The Hon Sir Richard Plender, High Court Judge and leading academic, was born on 9th October 1945. He died at home of bronchial pneumonia with underlying neurological complications on 23rd May 2020, aged 74. He is survived by his wife and their two daughters.

PRINCIPAL PUBLICATIONS

Books: *International Migration Law*, Nijhoff, first ed. 1972, second ed. 1988; *Cases and Materials on the Law of the European Communities*, with J.A. Usher, Macmillans, first ed., 1979, Butterworths, second ed., 1988 and third ed., 1993; *Introducción al Derecho Comunitario Europeo* with J. Peres Santos, Civitas, 1984; *The European Contracts Convention: The Rome Convention on the Choice of Law for Contracts*, Sweet & Maxwell 1991, second ed., with M. Wilderspin, 2001; *European Courts Practice and Precedents*, 1996, First Supplement 1997, published as *European Courts Procedure*, loose-leaf since 2000; *Procedure in the European Courts: Comparisons and Proposals*, 267 *Hague Recueil* (1997) 13-343.

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