

Introduction

Optimism in action

Brian Bercusson and forty years of labour law

Brian Bercusson (born Montreal, Canada, 1948) was a UK-based labour lawyer who became one of the leading experts on European labour law. He arrived in the UK from Israel to study at the London School of Economics, before moving to Cambridge, where he completed his PhD under the guidance of Paul O'Higgins and Bob Hepple. In 1986, Brian Bercusson obtained a professorship at the European University Institute in Florence, and moved to Italy with his family, where he remained for the next eight years. In 1995, he returned to the UK, first to the University of Manchester, before being appointed Professor of European Labour Law at King's College London in 2000.

Brian Bercusson's early work dealt with the theme of collective industrial relations in Britain. His PhD was published in 1978 as a scholarly work on British 'fair wages resolutions'. His commentaries on the British Employment Protection Acts were very well known in Britain and much used by trade unionists in their negotiations to protect pay and working conditions.

In the course of the 1980s, Brian Bercusson increasingly engaged with European developments, becoming convinced that, in the new world of internalisation and globalisation, national labour law would no longer offer employees adequate protection. This shift in focus resulted in the publication of what is perhaps his best-known work, *European labour law* (Law in Context series) in 1996. He finalised the second edition of this book during the summer of 2008, shortly before his death, and it was published in 2009.

In the 1990s and 2000s, Brian Bercusson continued his research on European labour law, publishing a large number of articles, many of which have become essential reference points for those in the field.

Brian Bercusson was not only a sharp observer and commentator on European labour law, he was also an activist who sought to promote a Social Europe and achieve better protection for workers. He fostered this ambition through his advisory role on labour law issues at the European Trade Union Confederation, Thompsons law firm and the European Parliament.

He also collaborated with the European Trade Union Institute, the research institute with links to the ETUC, leading several working groups. In 1999, under the auspices of the ETUI, he set up an experts group on transnational trade union rights (TTUR).¹ This group worked actively under Brian Bercusson's leadership until his death in summer 2008. It was an extremely enriching experience for all participants, and Brian Bercusson's open and inclusive leadership was central in integrating this broad range of expertise and knowledge in a series of discussions and publications. This group took the decision during the autumn of 2008 to honour Brian Bercusson's memory by editing and publishing the selection of his best articles presented in this volume.

The decision to proceed with this publication was endorsed by the TTUR and the ETUI for several reasons.

First, Brian Bercusson had an unique insight into the fact that national labour law and EC labour law should not be regarded as two separate legal systems, and over the course of his career he sought to stress their interaction and symbiosis. He also argued for a socio-political approach which looked beyond the vertical interaction between member states and EC institutions to the roles of different actors, processes and outcomes within the framework of multilevel governance. These were vital contributions within the field of EU labour law and the publication of Brian Bercusson's work in a single, easily-accessible volume will

1. The group has been assisted by two researchers at ETUI: Stefan Clauwaert (1996–2002) and Isabelle Schömann (since 2002). The members of the group are professors Thomas Blanke – University of Oldenburg, Niklas Bruun – Helsinki University, Simon Deakin – University of Cambridge, Filip Dorssemont – Université Catholique de Louvain, Antoine T.J.M. Jacobs – University of Tilburg, Csilla Kollonay–Lehoczky – Central European University, Yota Kravaritou (†) – University of Thessaloniki, Klaus Lörcher – Legal Secretary at the European Union Civil Service Tribunal, Bruno Veneziani – University of Bari and Christophe Vigneau – Université de Paris I Panthéon Sorbonne. At an early stage, Pertti Koistinen, Ulrich Mückenberger and Alain Suptiot participated in the 'Manifesto for a Social Europe' published in 1996.

provide a valuable resource for all those who have an interest in both the past and the future of the EU.

Second, publication of such a volume will allow the reader to follow, on the one hand, the development of Brian Bercusson's academic vision and, on the other hand, the consistency of his ideas and objectives in his writings, from his work on British labour in the 1970s to his last thoughts on how to overcome the crisis created by the *Laval* and *Viking* judgments.

Third, this compilation of Brian Bercusson's work provides an apparatus with which to encourage further reflection on the development of EU labour law from the 1980s until 2008, since he was an ongoing participant in the European scene, an 'optimist in action' who always tried to influence the development of EU labour law in his writings and continually made proposals and suggestions on how one might go further in promoting social objectives in this field of law.

In distinguishing between the three models of Europe presented by Miguel Maduro, Brian Bercusson clearly advocated a model in which harmonisation pursues European social values and is complemented by EU-level instruments of social justice. He rejected models of social policy based on market integration, relying on the social effects of the economic constitution and the model of social policy harmonisation to promote market integration by equalising competition conditions and preventing a 'race to the bottom'.

Brian Bercusson argued that the progress of European integration over the last half-century has produced a specific EU context for employment and industrial relations. This context includes: (i) supranational institutional structures, (ii) a legal framework of supremacy, (iii) transnational economic integration and (iv) an emerging EU social dimension or even a constitutional framework concerned with employment and industrial relations.

These thoughts were expressed in his co-authored work *European industrial relations*.² Brian Bercusson determined the structure of this

2. See B. Bercusson and N. Bruun, *European industrial relations. Dictionary. Overview*, published by the European Foundation for the Improvement of Living and Working Conditions (2005).

Dictionary, dividing it into nine sections.³ We have tried to follow this same structure in our classification of his articles, although with some adjustments. We grouped the institutional and legal framework together because often distinctions are hard to make; 'The enterprise' was renamed 'Participation at enterprise level' and 'Free movement of workers' was transformed into 'Economic freedom versus fundamental social rights'. Within health and safety, the publication focuses on working time and the last chapters cover the conceptualisation of European labour law and future challenges. We believe that these headings cover essential issues which Brian Bercusson explored in his research and we hope that this publication will highlight the distinctive and rich knowledge of European labour law which marked his work. Our sincere thanks go to Catherine Bercusson, his wife, for her tremendous and most appreciated support in this project.

The ETUI Transnational Trade Union Rights Experts Group:

Thomas Blanke, Niklas Bruun, Simon Deakin, Filip Dorssemont, Antoine T.J.M. Jacobs, Csilla Kollonay-Lehoczky, Yota Kravaritou (†), Klaus Lörcher, Bruno Veneziani, Christophe Vigneau, Isabelle Schömann, with the participation of Cateleene Passchier.

3. 1. Institutional framework; 2. Legal framework; 3. Collective industrial relations; 4. Individual employment; 5. The enterprise; 6. Free movement of workers; 7. Anti-discrimination and equality in employment; 8. Health and safety; and 9. Towards an EU system of industrial relations.