

THE HAMLYN LECTURES 2004

to be delivered by **Sir Bob Hepple QC FBA**

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RIGHTS AT WORK:

Global, European and British Perspectives

Lecture 1: Rights in the Global Economy

Chair: The Rt Hon Lord Steyn

Tuesday 16 November 2004 at 6pm

J Z Young Lecture Theatre, UCL, Gower Street, London WC1

Lecture 2: Fundamental Rights in the European Union

Chair: Professor James Crawford

Thursday 25 November 2004 at 6pm

Lecture Theatre LG18, The Faculty of Law, University of Cambridge, 10 West Road, Cambridge CB3 9DZ

A reception will follow the lecture

Lecture 3: The Common Law and Statutory Rights

Chair: The Rt Hon Lord Hope of Craighead

Tuesday 30 November 2004 at 6pm

J Z Young Lecture Theatre, UCL, Gower Street, London WC1

A reception will follow the lecture

SYNOPSIS

There has been a transformation of the world of work over the past 32 years since Sir Otto Kahn-Freund delivered his celebrated Hamlyn lectures on Labour and the Law.¹ A feature of this transformation has been the growing emphasis on individual rights rather than collective power as the main source of regulation of employment relations.

In these lectures I am going to discuss three controversial issues concerning this growth of individual employment rights:

1. Can the expansion of legal rights be reconciled with global competitiveness?
2. What is the nature and significance of the Charter of Fundamental Rights of the European Union, which forms a part of the Treaty establishing a Constitution for Europe, signed on 29 October 2004?
3. How can judges in the United Kingdom apply the employment rights granted by statute with those developed in the common law in a principled and consistent way?

In the first lecture I shall develop a theory of comparative institutional advantage to argue that nations prosper in the global economy not by becoming more similar in their labour laws but by building their institutional advantages on a floor of fundamental human rights.

In the second lecture I shall argue that the importance of the EU Charter of Fundamental Rights is twofold: first, it provides European judges with a bedrock of fundamental principles on which to base their judgments in hard cases; secondly, some parts of the Charter inject the idea of positive obligations to recognise, respect or ensure certain rights into the new soft law methods of economic and social integration – in particular the open method of co-ordination and the social dialogue.

In the final lecture I shall be turning to the way in which the growing number of new rights created by Parliament fit in with the judge-made common law. Are statutory rights a floor on which the courts and tribunals can build or are they a glass ceiling? Lord Steyn has recently commented that the vitally important area of personal contracts of employment 'is in an unsatisfactory state,'² and Lord Nicholls that the inter-relation between the common law and statute 'is not satisfactory.'³ I shall suggest some ways to improve the situation.

All these issues have far wider ramifications than employment law, and should interest anyone who takes rights seriously. I am focusing on rights at work for two reasons. First, rights at work are as crucial as property rights to the functioning of the market economy. The contractual relationship between employer and worker is essential to the success of the modern business enterprise. The contract enables firms and workers to exchange work in return for pay. This exchange gives management the right to decide on detailed work assignments and when they shall be done. It rests on the worker's agreement to be available to undertake certain kinds of work as and when their manager directs. Only in the most exploitative regimes, however, does the employer have unlimited rights. The worker has rights which determine how and when managerial authority is exercised. Secondly, rights at work – such as the rights to equality, to freedom of association, to job security, to decent working conditions, and to combine family and working life - express the moral judgment that labour is not a commodity and that all human beings are entitled to be treated with equal dignity and respect.

Footnotes

¹ O.Kahn-Freund, *Labour and the Law* (London, Stevens, 1972); 3rd ed. (1983) ed. By P.Davies and M.Freedland. In *Johnson v Unisys Ltd* [2001] UKHL 13, [2003] 1 AC 518, para.36, Lord Hoffmann referred to the 'employment revolution'; see too, D.Brodie, 'The Legal Consequences of the Employment Revolution' (2001) 117 LQR 604. I prefer the word 'transformation' because 'revolution' suggests the complete overthrow of the previous regime, and this has not happened – there are many continuities.

² *Eastwood v Magnox Electric plc* [2004] UKHL 35 at para.36; at para. 51 he refers to this as 'a great structural problem' that requires Parliamentary re-examination..

³ *Ibid.*, at para.33