

Fifty years of Labour Law and Social Security

M.G. Rood
B. Aaron
R. Blanpain
F. Gamillscheg
T. Hanami
B.A. Hepple
T. Treu
J.J.M. v.d. Ven

Kluwer

Fifty years of Labour Law and Social Security

Studies at the occasion
of the fiftieth anniversary
of the chair in sociaal recht
at the Rijksuniversiteit Leiden,
the Netherlands

Kluwer Law and Taxation Publishers

DEVENTER . ANTWERP . LONDON . FRANKFURT .
BOSTON . NEW YORK

Professors of labour law and social security at
the Rijksuniversiteit Leiden

Hugo SINZHEIMER	from 1936 till 1945
Anthonie Nicolaas MOLENAAR	from 1947 till 1958
Nicolaas Ernst Herman VAN ESVELD	from 1967 till 1976
Max Gustaaf ROOD	from 1978

Distribution in USA and Canada
Kluwer Law and Taxation
101 Philip Drive
Assinipi Park
Norwell, MA 02061
USA

ISBN 90 6544 267 7

D/1986/2664/51

© 1986, Kluwer Law and Taxation Publishers, Deventer, The Netherlands

Cover design: Roelf Kleinman

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Contents

M.G. Rood	
Introduction	1
I. Why this book?	1
II. About this book	9
A. The authors	9
B. The concept	11
C. Some threads	11
B. AARON	
Fifty years of Labor Law and Social Security: main developments and prospects in the United States	15
I. Introduction	15
A. Terminology and Scope of the Essay	15
B. Brief Historical Background	16
C. Basic Provisions of the National Labor Relations Act of 1935	18
D. Basic Provisions of the Social Security Act of 1935	19
II. Major Statutory Developments: 1935-1985	21
A. Labor Relations Laws – Private Sector	21
1. The Labor Management Relations Act, 1947	21
2. The Labor Management Reporting and Disclosure Act of 1959	23
3. Title VII of the Civil Rights Act of 1964	25
4. The Labor Reform Act: An Unsuccessful Legislative Initiative	26
	V

CONTENTS

B.	Labor Relations Laws – Government Employment	27
1.	Federal Law – Civil Service Reform Act of 1978	27
2.	State Laws	28
C.	Social Security Laws	30
1.	Old Age, Survivors', Disability, and Health Insurance	30
2.	Public Assistance	33
D.	Social Legislation	34
1.	Minimum Wages, Maximum Hours, and Protection of Women and Children	34
2.	Workers' Compensation	35
3.	Occupational Safety and Health	35
4.	Retirement Income Security	36
III.	Principal Issues, Problems, and Trends	36
A.	Labor Relations Laws – Private Sector	36
1.	Collective Labor Relations	36
2.	Workers' Participation in Management	39
3.	Individual Employment Rights	42
4.	The Changing Role of Unions	44
B.	Labor Relations Laws – Government Employment	45
C.	Social Security Laws	45
1.	Old Age and Survivors' Insurance	45
2.	Health Insurance	46
3.	Public Assistance	47
IV.	Summary and Conclusions	48
A.	Labor Relations Laws	48
B.	Social Security	49

R. BLANPAIN

Fifty years of Labour Law in Belgium 51

I.	Preliminary remarks	52
A.	Labour Law – Social Law	52
B.	Setting the science: some statistics	53
II.	1935-1940	54
III.	1945-1969 'Post war collaboration and golden sixties'	55
A.	Collective Labour Relations: Solidarity and Social Programmation	55
B.	Individual Labour Relations: elaborating of full range of standards	57
IV.	1970-1974: From harmony to conflict	58
A.	Collective Labour Relations: end of social programming	58

VI

CONTENTS

B. Individual Labour Law: expanding protective standards	60
V. 1974-1985: The impact of the crisis	60
A. Collective Labour Relations: Increased Government Intervention	61
B. Individual Labour Law: Protection and Flexibility	65
VI. Some conclusions and prospective remarks	66

F. GAMILLSCHEG

Sixty years of Labour Law and Social Security in Germany 69

I. Collective Law	69
II. Social Security	79
III. Statutory and judge-made law	80
IV. Perspectives	86

T. HANAMI

Fifty years of Labor Law in Japan 89

I. Introduction	89
II. Constitutional Guarantee of Workers' Rights	90
III. The general labor law system	90
IV. Brief Historical Development of Legislation	91
V. Collective labor law and state intervention	92
VI. Workers' participation and informal dialogue in industrial relations	94
VII. The limit of the enterprise unionism	95
VIII. Life-time-employment system	96
IX. Recent legislation to cope with slower economic growth and change of industrial structure and labor market	97
X. Future perspective	99

B.A. HEPPLE

Fifty years of Labour Law and Social Security in Great Britain 101

I. The expansion of teaching and research	102
II. Consolidation of the traditional voluntary system: 1930s to 1950s	105
III. Things fall apart: the 1960s and 1970s	110
IV. Legal restriction and market individualism: the 1980s	116
V. The Future	119

CONTENTS

T. TREU

Fifty Years of Italian Labor Law 121

- I. The origins 121
- II. The fascist period 123
- III. The Constitution and the reconstruction of free unionism in postwar Italy 124
- IV. The Fifties and Sixties 125
- V. The growth of collective labor relations and the Workers' Statute 129
- VI. Labor law and the crisis of the mid-seventies 132
- VII. Enterprise labor relations in the eighties 136
- VIII. Recent developments in individual labor law 139

J.J.M. v. D. VEN

Social Law in the Netherlands 147

- I. Introductory Remarks: Limits 147
- II. Anno 1936 148
- III. Decline and Rise 151
- IV. Progressive Years 156
- V. Wavering Development 160
- VI. Anno 1986 164

Introduction

Max G. Rood

PROFESSOR OF LABOUR LAW AND SOCIAL SECURITY, UNIVERSITY OF LEIDEN*

The purpose of this introduction is twofold. The first part (I) explains why this book is being published. The second part (II) declares the choice of the authors and tries to draw general lines from the different chapters that follow.

I. Why this book?

The existence of a chair in the field of labour law and social security (or as it is called nowadays in the Netherlands: sociaal recht) at the Rijksuniversiteit Leiden (RUL or Leiden University herein after) for a period of fifty years is the immediate cause of the composition of this book.

SINZHEIMER (1875–1945)

The history of the chair at RUL began with the appointment of H. Sinzheimer. His appointment as ‘bijzonder hoogleraar’¹ meant that labour law was recognised as a separate field and deemed of such importance that a chair to be occupied by a professor was considered to be appropriate. Hugo Sinzheimer came to Leiden University in 1936, fifty years ago. At that time he was already an internationally known and respected scholar of labour law as well as of sociology of law. The chair he was to occupy in Leiden was in sociology of labour law.

In order to understand this name-giving and the complications around his appointment it seems necessary to explain the system that existed at that time in the Netherlands re the different functions scholars could have at the universities. In and around 1936 universities in the Netherlands knew a

* See for a curriculum this Introduction.

1. See for the meaning of these dutch words below.

- | | | |
|-----------------------------|---|------------|
| 1. gewoon hoogleraar, | } | professors |
| 2. buitengewoon hoogleraar, | | |
| 3. bijzonder hoogleraar, | | |
| 4. lector, | } | lecturers |
| 5. privatdocent. | | |

A 'gewoon hoogleraar' was a professor with a full-time position at the university. A 'buitengewoon hoogleraar' was a professor who had a part-time position at the university. Both were being appointed at Leiden University by the Crown and after having been appointed, employed and paid by the university. The third type of hoogleraar, the 'bijzonder hoogleraar' on the contrary was a professor who had not been appointed by the Crown and after his appointment not employed or paid by the university. He was appointed by a foundation, which prior to that appointment was granted the right to establish a chair at the university. The establishing of such a chair and the appointment of such a 'bijzonder hoogleraar' needed the permission of the Crown, which sought the advice of the board of governors of the university before taking a decision. No. 4 in our list, the 'lector', can be described as a senior lecturer and no. 5 at last, the 'privaatdocent' had been admitted to the university as a lecturer at his own request, but was neither employed nor paid by the university. One can compare him in a sense with the 'bijzonder hoogleraar' (no. 3 in our list) as none of the two held a position paid by the university, but the latter was a professor occupying a chair and the former only a lecturer, without a chair.

At the time of Sinzheimer's appointment as 'bijzonder hoogleraar', the situation re the teaching of labour law at dutch universities was the following. As of 1926 M.G. Levenbach, generally known as the 'Nestor of labour law in the Netherlands' was a senior lecturer at the municipal University of Amsterdam. At Leiden University A.N. Molenaar had been admitted as 'privaatdocent' in 1927 and at other universities in the Netherlands labour law as a separate field was yet unknown. Amsterdam knew a chair and Leiden was aware of the new field, but had no chair. Such was the situation when (June 1933) the 'Foundation to promote the study of labour law and sociology of law in the Netherlands' petitioned the Crown for the right to establish a chair in labour law at Leiden. In the course of the proceedings around that petition the Foundation changed its request in so far as it petitioned for a chair in sociology of labour law. The cause of that change was the presence of Molenaar, who – as a 'privaatdocent' – already taught labour law. Right from the start the said Foundation made it clear that it wished to appoint a 'bijzonder hoogleraar' and that it would propose Sinzheimer as its candidate. As appears from the foregoing the chair, if granted, would not be the first but the second one in the Netherlands in this field, but it would be occupied by the first professor of labour law in this country, as the chair in Amsterdam was occupied by a senior lecturer.

Around Sinzheimers appointment now some observations must be made.

INTRODUCTION

The petition that has just been mentioned, was sent by the Crown (materially by the minister of Education) to the board of governors of Leiden University. That board in its turn sought the advice of the academic Senate. As rarely happened, between the Senate on one side and the board of governors on the other side a conflict arose around this chair and the person to be appointed as 'bijzonder hoogleraar'.

Before dwelling on this conflict, it seems correct to throw some light on Sinzheimer. He was born in 1875 and taught labour law and sociology of law at the Wolfgang Goethe University of Frankfurt a/Main since 1920. His publications on labour law date from 1902² and his book from 1927 about the basis of that law³ was considered to be the first systematic description of the new field. On an international level he was seen as the founder of labour law as a new speciality. No one less than Levenbach described Sinzheimer in 1945 (at his death) as 'the Einstein of labour law'⁴. In the German Federal Republic Sinzheimer's importance was recognised when f.i. the yearly Sinzheimer-lectures were instituted at his old University in Frankfurt in 1977. He was also a politically active person in the socialist party of Germany, member of the municipal board of Frankfurt and of the constituting assembly of the Weimar republic.

It is clear that Sinzheimer, because the nazi's came to power in Germany in the beginning of 1933, became a person at risk. The risks were as will be clear, his political activities and jewish background as well. As we all know, eventually his situation would have been one of mortal risk. Inspired by these political developments in Germany the 'Foundation to promote the study of labour law and sociology of law in the Netherlands' came into being in June 1933. One of the founders was the first lecturer of labour law in this country, Levenbach.

Paul Scholten, one of the very finest legal scholars the Netherlands have known, was the chairman of the board that eventually appointed Sinzheimer at the chair in Leiden. The Foundation had already succeeded in 1933 to establish a chair in the sociology of law at Amsterdam University and got Sinzheimer appointed there.

When it started its efforts to get him appointed in Leiden as well, the academic Senate considered (in its advice to the board of governors of Leiden University) that Sinzheimer was an eminent scholar and that his appointment would fit in the dutch tradition to offer shelter to foreign scholars who had to flee from their own country. But the governors denying that there was a lacuna in the education of labour law in Leiden at that time⁵, held that the purpose of

2. Lohn und Aufrechnung, Berlin VIII, S. 127.

3. Grundzuege des Arbeitsrechts, Jena 1927.

4. Paraat 1945; see T. van Peype, *Recht en Kritiek* 1984, p. 8.

5. Molenaar was a 'privaatdocent' then.

establishing the chair was only to offer help to a certain person which purpose ought not to be recognised. It is interesting to note that the Crown, although the conflict postponed its decision, eventually decided favourably on the petition and therefore against the board of governors⁶. As soon as the establishment of the chair had been granted, the Foundation announced its intention to appoint Sinzheimer. Around that intention, the conflict between the governors and the Senate continued.

According to the governors a professor at a dutch university should be a dutch national and able to speak the language in order to be understood by the students. Based on that opinion they advised against the recognition of Sinzheimer's appointment. Again the Senate was of another opinion, which again was supported by the Crown when it decided favourably on the Foundation's intention⁷. Nevertheless, it took the board of governors till 1936 to agree with the appointment sulkily. At a later point of time, the conflict between the Senate and the governors went through a third episode, when the board refused the Senate's proposal to grant Sinzheimer the power to take exams before he had proven himself. This – as far as can be gathered from the documents, last – conflict around the appointment of the first professor of labour law in Leiden was again lost by the governors. As for the matter of the language, it may be interesting to note that Sinzheimer held his inaugural adress in Amsterdam in german⁸, but his Leiden-adress two years later in dutch⁹.

Pondering about this prolonged conflict and trying to draw conclusions from it half a century after it occurred, one must be careful. Nowadays we are fully aware of the risks which existed in Germany in or around 1936 for people as Sinzheimer, but such knowledge did not exist at least not everywhere in the Netherlands at that time. Furthermore, we have accepted in the course of these fifty years that labour law is a specialism which justifies a chair, which acceptance in 1936 at least was not general.

Keeping this in mind, one may conclude that the academic Senate as well as the dutch government were not reluctant in 1935 to continue in the best dutch tradition, to offer shelter and work to a famous foreign scholar who was endangered in his own country. At the same time the board of governors either was not aware of the dangerous position of the nominated professor or refused to take that position into consideration when advising against the establishment of a chair and against the recommended professor to occupy it. And a last conclusion must be that the governors alas dealt with the matter before them on a

6. Royal Decree of May 8, 1935, Stb. 238.

7. Royal Decree of September 24, 1935.

8. At November 6, 1933. 'Das Problem des Menschen im Recht, Groningen 1933.

9. At February 14, 1936. 'De achtergrond van het arbeidsrecht', Haarlem 1936.

narrow national level instead – as one would have hoped – on a higher, a more humane, international level.

Unfortunately, Sinzheimer's period of teaching at Leiden University turned out to be a short one on account of World War II and the nazi occupation of the Netherlands (1940-1945). He was discharged by the nazi's in the beginning of 1941¹⁰. The mortal risk mentioned before was avoided by his going in hiding shortly after that discharge. Sinzheimer died at the age of seventy just after the war¹¹.

Directly after the liberation of the Netherlands by the allied forces in May 1945, a provisional board of governors started energetically to resurrect Leiden University which had been closed down during the war by the nazi forces.

MOLENAAR (1888-1958)

The Faculty of Law, taking into consideration that Sinzheimer in April 1945 had reached the age of seventy years at which age professors in the Netherlands at that time were being discharged, proposed to appoint A.N. Molenaar in his place in July 1945. It may be recalled that Molenaar who was born in 1888, since 1927 had been admitted as a 'privaatdocent' to teach labour law¹².

Although his position had threatened to become somewhat awkward in 1935/36 by the appointment of a professor who would teach labour law also, it must be noted that he actively supported Sinzheimer's coming to Leiden. Very shortly after Sinzheimer's appointment, a foundation called 'Labor' petitioned the Crown to be allowed the establishing of a chair in social legislation. In 1937 such permission was granted after which Molenaar was appointed as a 'bijzonder hoogleraar' to teach that legislation.

During the war Molenaar was one of the professors who deemed it impossible to stay in office under the prevailing conditions and consequently resigned in June 1942. After the war had ended, the Faculty of Law argued in a letter to the provisional board of governors of Leiden University not only that Molenaar should be reinstated, but that he should be appointed as a 'buitengewoon hoogleraar' (vide supra)¹³. The importance of labour law had grown considerably, according to the Faculty, which made the appointment of a part-time professor employed and paid by the university indispensable. In its letter the Faculty recalled that there had been doubts about an appointment of Molenaar

10. At February 21, 1941.

11. At September 16, 1945.

12. Ministerial decision of March 24, 1927 nr. 1055.

13. At July 12, 1945.

in the past. Those doubts had been inspired by the fact that he worked as general secretary of an employers' association and that he therefore might teach in a partial way. But, as was noted in the said letter, the doubts had proved to be totally unfounded which inspired the Faculty to recommend Molenaar wholeheartedly. In addition, as may be observed, he was not employed by an employers' association any longer.

Although there seemed to be no problem re this appointment, it nevertheless took the Crown till 1947 to comply with the request¹⁴. It is not quite clear why it took so long to grant this urgent request of Leiden University that dated from July 1945. But it appears from the documents that the Minister of Education at first was not satisfied that the recommended person could totally separate his 'employers-past' from his task as a professor. Indeed, he asked the board of governors to argue their opinion on this point at large, although – as appears from the foregoing – the Faculty had written to have no doubts whatsoever on Molenaars ability to teach in an impartial way. In this respect it seems appropriate to mention that Molenaar was a member of the Upper House of Parliament for the most important right wing party. One can perhaps say that he, as Sinzheimer, was a political figure but indeed he was far less exposed as such by what he did and wrote. Yet, one wonders whether Molenaar's position as a rather prominent member of a right wing party whilst the government was centre-left, accounted for the length of the period it took the Crown to decide.

But if there were political reasons at that time which caused the Crown (materially the Minister of Education) to react slowly, they must have vanished since. For Molenaar was appointed only a couple of years later as a 'gewoon hoogleraar', i.e. in a full-time position as from January 1951¹⁵. In Molenaar's time and at his special request, his field was described as 'social legislation'. His publications date from 1916 when he defended his thesis on the legal meaning of the Budget deficit. His first publication on subjects of labour law appeared in 1925¹⁶. He held a 'public lecture' as 'privaatdocent' in 1927 on the sources of labour law¹⁷ and after his appointment as 'bijzonder hoogleraar' his inaugural adress in 1938 on the importance of the ILO conventions for the Netherlands¹⁸. Some time later he wrote a well known book (in three volumes) on Labour law¹⁹, which at that time and for years to come was the most complete descrip-

14. Royal Decree of February 21, 1947, nr. 30.

15. Royal Decree of January 10, 1952, Stb. 154.

16. De vakverenigingen, Leiden 1925.

17. At October 17, 1927; Bronnen van arbeidsrecht, Leiden 1927.

18. At February 11, 1938; De naleving van arbeidsconventies, Den Haag 1938.

19. Arbeidsrecht, Zwolle 1953/1957/1958.

tion of the field. In March 1958 his career as a professor ended on account of his reaching the age of seventy. Shortly afterwards he died²⁰.

VAN ESVELD (1915-1976)

Molenaar was succeeded on the Leiden chair by N.E.H. van Esveld, who was born in 1915. Van Esveld, who defended his thesis on compulsory insurance of 'small' self-employed people in 1941, had been the president of the 'Raad van Arbeid', first in Dordrecht and later on in Rotterdam. The 'Raad van Arbeid' was a body according to public law which administered the children's allowance and the old age pension as well. He had been a 'buitengewoon hoogleraar' (part-time professor) of labour law at Rotterdam University since 1953 and had been appointed a 'gewoon hoogleraar' (full-time professor) at that university in 1958. At the same time he lectured at Groningen University in the same field. He had strong ties with different organisations in society, was a member of the executive committee of the Socio-Economic Council the foremost body advising the government on economic and social matters. He also acted as chairman, on behalf of the Minister of Home Affairs, of the central commission of consultation between the government on one side and the unions of public personell on the other side.

Van Esveld was appointed in Leiden as of January 1, 1967²¹. The chair's name at that moment was changed into 'sociaal recht'. The inaugural adress of the third professor on this chair in Leiden, was on the shaping of sociaal recht²². Unfortunately he fell ill after a couple of years and eventually died in 1976.

ROOD (1927)

The author is the fourth professor of labour law and social security in Leiden. He was born in 1927 and as a student at Leiden University from 1946 till 1950, he had experience with both his predecessors Molenaar and Van Esveld. At that time he followed Molenaar's lectures and eventually took an oral examination. As acting chairman of a student corporation, he introduced Van Esveld as a speaker at one of the corporation's meetings. Many years later (1975) Van Esveld started to act as the professor who supervised Rood's thesis on the question whether a law should regulate the strike of workers. This thesis²³ was defended in Leiden in 1978. Rood was a practising lawyer and member of a lawfirm in Amsterdam for years before becoming a professor of 'sociaal recht'. He was appointed first as a 'buitengewoon hoogleraar' (1978) and as of January

20. At November 28, 1958.

21. Royal Decree of October 17, 1966, nr. 18.

22. At January 27, 1967, Sociale rechtsvorming, Alphen a/d Rijn 1969.

23. Naar een stakingswet? Deventer 1978. (Supervising professor T. Koopmans.)

1, 1980 as a 'gewoon hoogleraar'²⁴. Neither his appointment, nor that of Van Esveld met with problems as was the case with Sinzheimer. But in a certain sense Rood turned out to be some sort of political figure also. Indeed, he left his position at RUL for some time in 1982, when he was the Minister of Home Affairs of this country. Rood is a member of the executive committee of the Socio-Economic Council, as Van Esveld was. He furthermore is one of the five members of the commission of advice and arbitration between the government and the unions of public personnel.

His publications date from 1951; he first published on a subject of labour law in 1966²⁵ and his inaugural address was on codetermination of workers²⁶.

Part I of this introduction began saying it would try to explain why this book appears. After having described the chair's history during the first fifty years, the author can be brief. In that period 'sociaal recht' emerged as a subdivision of law and it only seems appropriate to throw light on the important developments in this field during the first half century of its existence. In the course of those years the coming of age of 'sociaal recht' was gradually recognised at the other dutch universities²⁷ by appointing professors of 'sociaal recht'. At the symposium that is being organised on the occasion of the fiftieth anniversary of the Leiden chair (May, 30, 1986) quite a few of them will be present as either speakers or audience. The establishment of a chair in this field, maybe revolutionary in 1936, nowadays is just normal.

It seems appropriate too that this book consists of contributions from different countries. In that way the attention given to 'sociaal recht' is internationally oriented. And it may be remarked that sociaal recht at Leiden University had an international flavour right from the beginning. That beginning, as has been explained, was the appointment of a foreigner at the dutch university RUL. An internationally renowned scholar came to open the eyes of the dutch students and taught them a subject that would grow in importance hence. His successor, Molenaar, contributed as the expert from the Netherlands to different publications on labour law by the first European Community, i.e. that for Iron and Coal in 1961/62²⁸. Van Esveld on his turn was the dutch member of the

24. Royal Decree of July 29, 1978 nr. 31.

25. Kanttekeningen bij de Maastrichtse stakingskwestie, NJB 1966, p. 327.

26. Bedrijfsdemocratie; vlag of lading? Deventer 1979.

27. There are professors of 'sociaal recht' at the universities of Amsterdam, Eindhoven, Groningen, Leiden, Nijmegen, Rotterdam, Tilburg and Utrecht.

28. Publicaties over het arbeidsrecht van de Europese Gemeenschap voor Kolen en Staal, Deel I, De bronnen van het arbeidsrecht, Luxemburg 1962, Deel V, Staking en uitsluiting, Luxemburg 1961, Deel IX, De bescherming van de werknemers in geval van werkloosheid, Luxemburg 1961.

socalled 'system of experts' the European Communities in the meantime had instituted, which experts inform the Communities on a quarterly basis about the social developments in their country. Rood at last took Van Esveld's place in that 'system' and contributed to different reports on social developments, the worker's strike and the working time regulations for the Communities.

As sociaal recht at the RUL thus has been internationally oriented during its existence, it seems justified that the retrospective view and the prospective thoughts in this book should be on an international level. Those then are the reasons why this book has been written²⁹.

II. About this book

Contributions about this book came from Belgium, the Federal Republic of Germany, Great Britain, Italy, Japan, the Netherlands and the United States of America. In order to compare the developments in the Netherlands with those in other countries, a choice of those countries that more or less surround the Netherlands, seemed indicated. For that reasons Belgium, the Federal Republic of Germany, France and Great Britain were selected. But the developments in the then remaining important member of the European Communities, Italy, seemed interesting too. And last but not least Japan and the USA were selected as two countries which being no neighbours at all, know in subjects of labour law totally different but very sophisticated systems.

From these countries and naturally from the Netherlands themselves eminent scholars were approached in the autumn of 1984, at the occasion of the regional European congress of the International Society for Labour Law and Social Security, which was held at that time in Szeged (Hungary) or shortly thereafter. Unfortunately the french contribution to the book fails as prof. J.C. Javillier of the Centre for comparative labour and social security law of Pessac (France) fell seriously ill at a point of time at which it turned out to be impossible to still find another scholar from France to write in his place.

A. The authors

The choice of the different authors from the countries indicated seems to be self explanatory.

Mr. Aaron is not only a professor of labour law at the University of Califor-

29. For the description of the chair's history contained in part A of this Introduction the author feels greatly indebted to mr. G. Suurland of the archives-department of RUL.

nia in Los Angeles (USA), but one of the foremost (if not the foremost) author on labour law and industrial relations in the whole United States. He is the president of the International Society for Labour Law and Social Security and a member of the Committee of Experts for the Application of Conventions and Recommendations of the ILO at Geneva.

Mr. *Blanpain*, who is a professor of labour law at the Catholic University of Leuven (Belgium), is a well known writer of quite a few books on different subjects of that division of law. He is the editor of the International Encyclopaedia for Labour Law and Industrial Relations. From his numerous functions his presidency of the International Industrial Relations Association may be mentioned.

Mr. *Gamilschegg* is a professor of labour law and private international law at the University of Göttingen (Germany) as well as director of the Institute for labour law of that University. He is a vice-president of the International Society for Labour Law and Social Security and a well known writer of different books and articles on subjects of labour law.

Mr. *Hanami*, who is a professor of labour law at the Sophia University of Tokyo (Japan), is also well known from his different publications on subjects of labour law (in English). His book on Labour Law and Industrial Relations in Japan, which was published by a Dutch publisher in 1979, appears to be the most recent handbook on that subject in Western Europe.

Mr. *Hepple*, who is a professor of English Law in the University of London at University College (England), is one of the general editors of the Encyclopaedia of Labour Relations Law. He has been a barrister at law and was during five years a full-time chairman of Industrial Tribunals. He has written extensively on subjects of labour law and may be called one of the foremost British authors on such subjects nowadays.

Mr. *Treu*, who is a professor ordinarius of labour law at the old and respected University of Pavia (Italy) and a teacher in that field at the Catholic University of Milan at the same time, published a number of books and articles on subjects of labour law and industrial relations. He is a member of the editorial staff of different Italian labour law journals and an expert consulted by the European Communities from time to time.

Mr. *Van der Ven* was a professor of labour law, sociology of law and philosophy of law at the Rijksuniversiteit of Utrecht (The Netherlands) and may be considered the living Nestor of labour law in that country. He was a member of the Committee of Experts for the Application of Conventions and Recommendations of the ILO (Geneva) for fifteen years. He published in Dutch and in German as well. Pretty recently (1981) two books appeared of which one is called 'Ius humanum-Das Menschliche und das Rechtliche' containing various of his publications through the years.