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Bruno Debaenst

State and Perspectives of the History of Social Law – Belgium

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1 Preliminary remark

In Belgium, social law includes both labour law and social security law. This has historical reasons, as the first ›social legislation‹ comprised both. Also, the first courses at university were courses of ›social legislation‹. Only later were separate courses of ›labour law‹ and ›social security law‹ instituted. Finally, with the judicial reform of 1967, new labour courts (›*arbeidsrechtbank / tribunal du travail*‹ and ›*arbeidshof / cour du travail*‹) were instituted, competent both for conflicts in labour law and social security law. Therefore, in this article I will not discuss the topics of labour law and social security law separately. One more reason is that the research on the history of social law has concentrated on the history of labour law, leaving the history of social security law rather neglected.

2 Introduction

One could situate the starting point of the scientific research on the history of social law in Belgium in 1952, when Chlepner published his excellent study on the centennial of social history in the country.¹ This book, however, does not compensate for the fact that this topic has long been neglected in Belgium. This is not terribly surprising, as modern social law only emerged at the end of the nineteenth century. Also, the development of social law as an individual academic discipline emerged rather late in law faculties: not until 1929 did it appear in the law curriculum and then only as an optional course, and not until the 1960s did social law finally gain the status of an obligatory course. Accordingly, it was considered a ›modern‹ discipline, whose history was not considered worthy of study. Over the past two decades, this attitude has changed and the history of social

law has received increased attention from historians, lawyers and legal historians. I deliberately distinguish between these three categories of researchers, as they have different approaches toward the history of Belgian social law.

3 The History of Belgian Social Law: Multiple Approaches

3.1 *The Historical approach*

Belgian social historians have studied many aspects of the history of social law. For instance, Deferme has studied the political history of Belgian social legislation from 1886 to 1914.² He analysed how Belgian parliamentarians reacted to the uprisings of 1886, first with the installation of a labour committee and then by voting on the first so-called ›social legislation‹.³ By analysing the parliamentary debates, he studied the different attitudes of Catholics, liberals and socialists towards the ›social question‹. He noticed that there was a slow shift from an ›atomic‹ towards a more ›holistic‹ approach to the social question. This resulted from a long struggle over the acceptance of truly ›social‹ legislation, such as the 1903 Workplace Accident Act. Another topic that received attention from historians is the history of social protests, including strikes. Deneckere, for example, wrote her doctoral dissertation on the history of social protest in Belgium from 1830 to 1914.⁴ She used an abundance of archival sources, including the royal archives, and offered a unique inside perspective of the authorities towards the social protests. Also, she demonstrated the changing character of collective actions, from traditional petitions and street protests in the first decades of the Belgian kingdom to the well organised national strikes for general suffrage around the turn of the

1 CHLEPNER (1957; 1972).

2 DEFERME (2007).

3 On the chronology of this social legislation, see NANDRIN (1997).

4 DENECKERE (1997).

century. Another, more specific study is Van Fraechems analysis of collective labour relations, including strikes, in the Antwerp port in the period from 1880 to 1972.⁵ This leads to the related topics of the history of labour unions, which was studied by Vandaele,⁶ and the history of social economic negotiations, by Luyten and Vanthemsche, including the historical social pact of 1944, which was the start of the Belgian post-war social security system.⁷ A final example of these historical approaches towards the history of social law is the 2005 study of Van Den Eeckhout on individual labour relations in the nineteenth century.⁸ These are only a selection of examples illustrating the historians' interest in many topics that are part of the history of Belgian social law.⁹ However interesting these studies may be, they have a common flaw in that they are written by (social) historians with traditional historical training and points of view, which explains why the legal aspects are often neglected or misunderstood. Nevertheless, their studies have the benefit of revealing aspects of the history of social law that would otherwise remain hidden.

3.2 *The Legal approach*

The second approach to the history of social law is the legal one. Here, social lawyers are looking for the roots of their discipline. They often limit themselves to the legal reconstruction of the emergence and development of modern social law. For instance, already in 1963, four lawyers published a study about the genesis of social law in the nineteenth century.¹⁰

Common to all these lawyers is their view of the past through purely legal, a-contextual lenses. In other words, they study social law from the past as if it existed in our contemporary context. Moreover, they only have one purpose: to better understand contemporary social law. This explains why

many doctoral dissertations in the field of social law have an elaborate historical introduction. Nevens, for example, has studied the complex relationships between ›employers‹ and ›employees‹ in the nineteenth century and concluded that twentieth century legal relationships are outdated in the twenty-first century.¹¹ Another example is Vervliet, who has thoroughly analysed the 1903 Workplace Accident Act and its origins to better understand the employers' immunity from workplace accident liability, which was the topic of her doctoral dissertation. More generally, it has to be admitted that social lawyers in Belgium are very interested in the history of their discipline. Not by coincidence, many manuals of social law start with an historical introduction.¹² Also, at symposia, they often include historical introductions to the topic.¹³

3.3 *The Legal historical approach*

Until recently, Belgian legal historians concentrated their efforts on the more traditional branches of law, such as civil, criminal and public law. The reason, as mentioned above, is that social law was considered a modern branch of law and, therefore, its history was considered not interesting enough to study. Luckily, in the past few years, this attitude has changed and (some) legal historians in Belgium finally seem to have discovered the fascinating history of social law.

The first indication is that an optional course on the history of social, economic and tax law has been offered at Ghent University for a decade, which is taught by Dirk Heirbaut, who for this purpose wrote a small booklet on these topics.¹⁴ In his course, Heirbaut first gives a chronological overview of the main contextual evolutions in Belgium going from industrialisation in the first half of the nineteenth century to the neoliberal tendencies of recent years. He then discusses a number of topics in labour law: collective labour

5 VANFRAECHEM (2005).

6 VANDAELE (2004).

7 LUYTEN (1995).

8 VAN DEN EECKHOUT (2005).

9 For the mutualities, see, for instance, the references in: VAN ACKER/ VERBRUGGEN (2009).

10 ALEXANDER et al. (1963).

11 NEVENS (2011).

12 See, for instance, VAN EECKHOUTTE (2015a, 2015b).

13 For instance, I have been invited to give a legal historical introduction at a symposium about triangular labour relations and at another symposium about labour regulation.

14 HEIRBAUT (2013).

law and labour contracts from the Romans until the present, labour protection law and the labour courts. Finally, he also deals with the history of social security law. Here he starts with a chronological overview of the social security system from the Romans until the present before discussing a number of social risks, such as workplace accidents, occupational diseases, sickness and invalidity, unemployment and old age. The value of this course is clear: it is a very direct way to introduce students and scholars to the richness of the history of these branches of law. Unfortunately, Ghent is currently the only university in Flanders where the history of social law is taught.¹⁵

Research in legal history is often very different from the ›purely‹ legal or ›purely‹ historical research described above, especially when it concerns a contextual study of social law in the past, putting legal elements in their historical context. An example of this approach is my own research on the juridification of workplace accidents in the nineteenth century in Belgium.¹⁶ In the nineteenth century, the view of workplace accidents slowly evolved in Belgium, just as in other industrializing countries, from simple facts without legal consequences to legal facts. With this research, I fulfilled three goals. First, I described this fascinating evolution in Belgium, as this had not been done here yet in contrast to the neighbouring countries. Second, the study of workplace accidents in the nineteenth century provides a better understanding of the complex phenomenon of juridification. Third, I studied the social reality of workplace accidents and their consequences for the victims and their families. In my research, I used both historical and legal methods and sources. It turned out that the legal history of workplace accidents in the nineteenth century is a very broad and complex field of study with many aspects worthy of study: workplace accident liability case law;¹⁷ the genesis of the 1903 Workplace Accident Act;¹⁸ the administrative aspects of workplace accidents, such as

inspection and regulation;¹⁹ developments in specific sectors, such as the mines, railroads and dangerous industries; and so on.

Next to the subject of workplace accidents in the nineteenth century, there are other topics in the history of social law that have been studied recently, among them the industrial courts (*werkrechtshraden/conseils de prudhommes*) and their successors, the labour courts (*arbeidsrechtbanken/tribunaux de travail*) in Belgium. In the nineties, historian Kathleen Pittomvils used the archives of the Ghent industrial court (the oldest in Belgium, founded in 1810) to study labour relations in the first half of the nineteenth century.²⁰ Another historian, Patricia Van den Eeckhout also used these archives to do historical research on the position of foremen in the nineteenth century.²¹ Recently, I studied the institutional history of these fascinating courts.²² They started with only two tribunals in the French period (Ghent from 1810 and Bruges from 1813), but they gradually spread from the northwest of the country to the southeast, a movement that was only finished in 1960 with the establishment of industrial courts in the provinces of Limburg and Luxembourg. Another aspect is the professionalization of these courts. They were originally considered ›family courts‹, by and for the world of labour. The judges were delegates from the employers and employees and dealt with daily problems related to labour and aiming at conciliation. The presence of a lawyer in the court was made obligatory in 1910, illustrating the juridification of the world of labour. In 1967, with the judicial reform, the status of the legal professional required to attend was upgraded from lawyer to judge, and they would preside over the newly founded labour courts, while the original lay judges were reduced to mere assessors. Maarten Vankeersbilck is currently conducting doctoral research at Ghent University on the judicial reform of 1967, including the important shift from industrial tribunals towards labour courts.

15 Until recently, there was also a course on the history of social law at the VUB, in the specialised ›*Master in het sociaal recht*‹, called ›Historische ontwikkeling van het arbeidsrecht en het socialezekerheidsrecht‹. Unfortunately, with the retirement of professor Magits, this course has been removed from the curriculum. Magits was succeeded by Dave De ruyscher, who

is a specialist in the history of commercial law.

16 DEBAENST (2010b, 2011, 2013a).

17 DEBAENST (2008, 2014d).

18 DEBAENST (2009b).

19 DEBAENST (2014a).

20 PITTOVILS (1995).

21 VAN DEN EECKHOUT (2009).

22 DEBAENST (2013f).

A second fruitful topic is the history of labour contracts in Belgium. In 2001, a number of social lawyers organized a conference to commemorate the centennial of the 1901 Labour Contract Act.²³ Also, in her abovementioned 2005 article, Van Den Eeckhout briefly discusses the labour contract, based on her research in the archives of the industrial courts among other sources.²⁴ Nevens also examined the history of labour contracts from a legal perspective.²⁵ In 2012, I organized an interdisciplinary conference on this topic, bringing together historians, legal historians and lawyers, who each discussed an aspect of the history of labour contract in Belgium from their area of expertise.²⁶ Recently, an article on the legal history of Belgian labour contracts appeared in English.²⁷

A third topic that has been studied recently is the history of strikes in Belgium, which would include the studies of Deneckere and Vanfraechem mentioned above.²⁸ In 1998, Stevens wrote an article on the history of the coalition prohibition (*coalitieverbod, délit de coalition*) in Belgium.²⁹ In 2007, a book was published on the recent history of the right to strike.³⁰ I also have studied this topic from a legal historical point of view, starting with the criminal repression of striking workers in Belgium.³¹ This study included the legal history of the coalition prohibition (*coalitieverbod, délit de coalition*) and its successor, article 310 of the Criminal Code, with an analysis of the law in the books, the law in action and the law in minds. Recently, I also analysed why this was never considered a political crime, even though the big political strikes for general suffrage obviously had a political goal.³²

A fourth topic is the emergence of social law as a new, separate branch of law in Belgium. For most scholars, the history of modern social law in Belgium simply starts in 1886 with the emergence of the first social legislation. This social legislation, however, was not the only source of modern Belgian social law. Further examples would include the administrations responsible for the implementation of this social legislation, the activities of the Belgian courts and tribunals in the matter of workplace accidents and the industrial courts. Interest-

ingly, these multiple origins of modern social law can be traced in the legal periodicals of that time. Moreover, new, specific journals dealing with one or more aspects of modern social law began to emerge. I demonstrated in a recent article that the genesis of Belgian social law is reflected in the emergence and transformation of these social law journals and vice versa, and that the history of these social law journals sheds new light on the development of social law as a separate branch of law.³³ I am also currently preparing an article about the genesis of social law as an academic discipline in Belgium together with Jérôme Debrouwer from the Université Libre de Bruxelles. Social law appeared rather late in the law curriculum with an optional course on »social legislation« in the 1930s. After the Second World War, it became a mandatory course. The discipline profited from judicial reform in the 1960s, when lawyers trained in social law were needed to staff the new labour courts.

A fifth topic in the history of social law concerns workplace regulation and inspection. During the nineteenth century, Belgian industrialists did everything they could to prevent the state from interfering in their business, blocking every attempt from the state to impose workplace regulation and inspection upon them. They could not, however, remain blind to the risks caused by modern industry, such as steam engine explosions and other workplace accidents due to steam-driven machinery. I recently published a discussion of two self-regulating initiatives dealing with these problems.³⁴

4 Perspectives of the History of Social Law in Belgium

Without question, much more research on the history of social law in Belgium remains to be done. For example, the archives of the industrial tribunals (*werkrechtshraden / conseils de prud'hommes*) are very rich and contain a treasure trove of unstudied information. In recent years, many of these archives have been inventoried and thus made available for research. Another engaging

23 STROOBANT/VANACHTER (2001).

24 VAN DEN EECKHOUT (2005).

25 NEVENS (2011).

26 DEBAENST (2013c).

27 DEBAENST (2016).

28 DENECKERE (1997), VAN FRAECHEM (2005).

29 STEVENS (1998).

30 DEVOS/HUMBLET (2007).

31 DEBAENST (2012, 2014a).

32 DEBAENST (2015a).

33 DEBAENST (2015b).

34 DEBAENST (2014a).

field of study is the development of social law in the twentieth century. Until now, lawyers have shown more interest in this period than scholars of other disciplines. What is needed is a genuine legal historian to study the development of social law in the rapidly changing context of the twentieth century. Especially the history of social security law richly deserves attention from a legal point

of view. A final and refreshing approach is to study the Belgian situation in comparison with France. Drawing on my research on workplace accidents, researchers of the *Centre d'histoire judiciaire* in Lille are working on this topic in France, which would allow such a comparison.



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