Position 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, separate courses of “labour law” and “social security law” were installed. Finally, with the judicial reform of 1967, new labour courts (“arbeidsrechtbank/tribunal du travail” and “arbeidshof/cour du travail”) were installed, competent both for labour law and social security law conflicts. 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 been concentrating on the history of labour law and that the history of social security law has been 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 centenary of social history in our country.¹ This book, however, cannot conceal that this topic has long time been neglected in Belgium. This is not that 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 the law faculties: one had to wait until 1929, when it was for the first time implemented in the law curriculum, as an optional course. Only in the 1960’s social law finally gained the status of an obligatory course. This way, it was considered a ‘modern’ discipline, of which the history was not felt worthy to be studied. 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 make distinction between these three categories of researchers, as they have different approaches on the history of Belgian social law.

3. The history of Belgian social law: multiple approaches

3.1 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 till 1914.² He analysed how the Belgian parliamentarians reacted on the uprisings of 1886, first with the installation of a labour committee and next with the voting of the first so-called ‘social legislation’.³ By analysing the parliamentarian 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 of the social question. This resulted after a long struggle in the acceptance of true ‘social’ legislation, such as the 1903 Workplace Accident Act. Another topic which received attention from historians is the history of social protests, including strikes. This way,

¹ CHLEPNER (1957,1972).
² DEFERME (2007)
³ About the chronology of this social legislation, see NANDRIN (1997).
Deneckere wrote her PhD on the history of social protest in Belgium, from 1830 till 1914. She used an abundance of archival sources, including the Royal archives, offering 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 century. Another, more specific study, is Van Fraechems analysis of collective labour relations, including strikes, in the Antwerp port in the period 1880 till 1972. This leads us to the related topics of the history of labour unions, which was studied by Vandaele, 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. A final example of these historical approaches towards the history of social law is the 2005 study of Van Den Eeckhout on the individual labour relations in the nineteenth century. These are only a number of examples illustrating the interest of historians in many topics that are part of the history of Belgian social law. However interesting these studies may be, they have a common default: they are written by (social) historians, with a traditional historical training and point of view. This explains why the legal aspects are often neglected or misunderstood. Nevertheless, their studies have the benefit that they reveal aspects of the history of social law, which would otherwise remain hidden.

3.2 Legal approach

The second approach of the history of social law is the legal one. Here, social lawyers are looking for the roots of their discipline. Often, they limit themselves to the legal reconstruction of the emergence and development of modern social law, which means that they start (at earliest) with the social legislation at the end of the nineteenth century. Exceptionally, they go further back in time. For instance, already in 1963, four lawyers published a study about the genesis of social law in the nineteenth century.

These lawyers all have in common is that they look at the past through pure legal, a-contextual glasses. In other words: they study social law from the past, as if it would exist in our contemporary context. Moreover, they only have one purpose: to better understand contemporary social law. This explains why many PhD’s in social law have an elaborated historical introduction. Nevens for example, has studied the complex relationships between ‘employers’ and ‘employees’ in the nineteenth century, to conclude that the twentieth century legal relationships are outdated in the twenty-first century. Another example is Vervliet, who has thoroughly analysed the 1903 Workplace Accident Act and its origins, to better understand the employers immunity for workplace accident liability, which was the topic of her PhD. More in general, it has to be testified that social lawyers in Belgium are very interested in the history of their discipline. Not by coincidence, many

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4 DENECKERE (1997).
5 VANFRAECHEM (2005).
6 VANDAELE (2004).
8 VAN DEN EECKHOUT (2005).
9 For instance, for the mutualities, see the references in: VAN ACKER/VERBRUGGEN (2009).
10 ALEXANDER et al. (1963).
11 NEVENs (2011).
manuals of social law start with a historical introduction. Also, on study days, they often include a historical introduction of the topic.

3.3 Legal historical approach

Till recently, Belgian legal historians concentrated their efforts on the more traditional branches of law, such as civil, criminal and public law. Above, I have already explained why: 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.

To start with, since a decade, there is an optional course on the history of social, economic and tax law at Ghent University, taught by Dirk Heirbaut, who for this purpose wrote a small booklet on these topics. In his course, Heirbaut first gives a chronological oversight of the main contextual evolutions in Belgium going from the industrialisation in the first half of the nineteenth century to the neoliberal tendencies of the recent years. He then discusses a number of topics within labour law: collective labour law (from the Romans till present), labour contract (also from the Romans till 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 oversight of the social security systems from the Romans till present and then he discusses 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 point the attention of students and scholars at the richness of the history of these branches of law. Unfortunately, at this moment Ghent is the only university in Flanders where the history of social law is being taught.

Further, in the past decade, legal historical research on the history of social law has increased significantly. This research is often very different from the previous described ‘pure’ legal or ‘pure’ historical research, especially when it concerns a contextual study of social law in the past, putting legal elements in its contextual, historical framework. An example of this approach is my own research on the juridification of workplace accidents in the nineteenth century in Belgium. In the nineteenth century, 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, I used the case of workplace accidents in the nineteenth century as a case study to get a better understanding of the complex phenomenon of juridification. Third, I studied the social reality of workplace accidents and its 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

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13 For instance, I have been invited to give a legal historical introduction on a study day about triangular labour relations and on a study day about the labour regulation.
14 HEIRBAUT (2013).
15 Until recently, there was also a course on the history of social law at the VUB, in the specialized ‘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 abolished. Magits was succeeded by Dave De ruyscher, who is a specialist in the history of commercial law.
complex field of study, with many different topics that can be studied: the workplace accident liability case law,\textsuperscript{17} the genesis of the 1903 Workplace Accident Act,\textsuperscript{18} the administrative aspects of workplace accidents (such as inspection and regulation),\textsuperscript{19} the developments in specific sectors such as the mines, the railroads and the dangerous industries, etcetera. Many of these topics I have not only studied during my PhD research, but further investigated in the subsequent years.

Next to the subject of workplace accidents in the nineteenth century, there are other topics within the history of social law that have been studied recently. The first that can be mentioned here are the industrial courts (werkrechtersraden/conseils de prud’hommes) 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 the labour relations in the first half of the nineteenth century.\textsuperscript{20} Another historian, Patricia Van den Eckhout also used these archives to do historical research on the position of foremen in the nineteenth century.\textsuperscript{21} Recently, I studied the institutional history of these fascinating courts.\textsuperscript{22} They started with only two tribunals in the French period (Ghent in 1810 and Bruges in 1813), but gradually spread from the North-West of the country till the South-East, 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. In origin, they were considered ‘family courts’, by and for the world of labour: the judges were representatives from the employers and employees, dealing with daily labour related problems and aiming at conciliation. In 1910, the presence of a lawyer in the court was made obligatory, illustrating the juridification of the world of labour. In 1967, with the judicial reform, this lawyer finally became a professional judge, leading the newly founded labour courts, while the original lay judges were reduced to mere assessors. At this moment at Ghent University, Maarten Vankeersbilck is performing a PhD research on the judicial reform of 1967, including the important shift from industrial tribunals towards labour courts.

A second fruitful topic is the history of labour contract in Belgium. In 2001, a number of social lawyers organized a conference to commemorate the centenary of the 1901 Labour Contract Act.\textsuperscript{23} Also, in her abovementioned 2005 article, Van Den Eckhout shortly discusses the labour contract, inter alia based on her research in the archives of the industrial courts.\textsuperscript{24} Nevens also looked at the history of labour contract(s), from a legal perspective.\textsuperscript{25} In 2012, I organized an interdisciplinary conference on this topic, bringing together historians, legal historians and lawyers, who each from their expertise discussed an aspect of the history of labour contract in Belgium.\textsuperscript{26} Soon, an article on the legal history of Belgian labour contract will appear in English.\textsuperscript{27}

\textsuperscript{17} Debaenst (2008, 2014d).
\textsuperscript{18} Debaenst (2009b).
\textsuperscript{19} Debaenst (2014a).
\textsuperscript{20} Pittomvils (1995).
\textsuperscript{21} Van Den Eckhout (2009).
\textsuperscript{22} Debaenst (2013f).
\textsuperscript{23} Stroobant/Vanachter (2001).
\textsuperscript{24} Van Den Eckhout (2005)
\textsuperscript{25} Nevens (2011).
\textsuperscript{26} Debaenst (2013c).
\textsuperscript{27} Debaenst (2016).
A third topic that has been studied recently is the history of strikes in Belgium. Above, I have already mentioned the studies of historians Deneckere and Vanfraechem. In 1998, Stevens wrote an article on the history of the coalition prohibition (coalitieverbod, délit de coalition) in Belgium. In 2007, a book was published on the recent history of the right to strike. I also have studied this topic from a legal historical point of view. To start with, I have studied the criminal repression of striking workers in Belgium. 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 crime was never considered a political crime, even when the big political strikes for general suffrage obviously had a political goal.

A fourth topic is the emergence of social law as a new, separate branch of law in Belgium. As said before, 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. One can mention for example 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. Interestingly, these multiple origins of modern social law can be traced in the legal periodicals of that time. Moreover, we can see the emergence of new, specific journals dealing with one or more aspects of modern social law. Recently, I wrote an article, in which I demonstrate that the genesis of Belgian social law is reflected in the emergence and transformation of these social law journals, and vice versa, that the history of these social law journals sheds new light on the development of social law, as a separate branch of law. Also, at the moment, I am preparing an article about the genesis of social law as an academic discipline in Belgium, together with Jérôme Debrouwer from the ULB.

A fifth studied topic within 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, however, not stay totally blind for the risks caused by modern industry, such as steam engine explosions and workplace accidents due to steam driven machinery. In a recent publication, I discussed two self-regulating initiatives dealing with these problems.

A last topic that can be mentioned here is the research I have been doing on the international organisation on workplace accidents and social insurances. Although this research is strictly taken not ‘Belgian’ but international, it has a number of affiliations with Belgium: there were Belgian

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30 DEVOS/HUMBLET (2007).
32 DEBAENST (2015a).
33 DEBAENST (2015b).
34 DEBAENST (2014a).
35 This organisation started with an international conference in 1889 in Paris. Due to the success of this conference, a Bureau Permanent was established, with the purpose to organise new conference and to publish a Bulletin. It proved very successful and till the outburst of World War I, every two, three years, international conferences were organised.
representatives, in 1897 a conference was organized in Brussels and there was a local Belgian association on workplace accidents and social insurances. Recently, I have published a paper on this organization.\textsuperscript{36}

4. Perspectives of the history of social law in Belgium

There is no discussion that much more research on the history of social law in Belgium can be done. Just to give a few examples, I can point at the rich archives of the industrial tribunals (\textit{werkrechtersraden/conseils de prud’hommes}), which contain a treasure trove of unstudied information. In the recent years, many of these archives have been inventoried and thus made available for research. Another engaging field of study is the development of social law in the twentieth century. Till now, mostly lawyers have been interested in this period. What is needed is a full-blood legal historian who wants to study the development of social law in the fast changing context of the twentieth century. Especially the history of social security law desperately needs to be studied from a legal point of view. A final refreshing approach is to study the Belgian situation in comparison with France. At the moment, as a spin-off of my own research on workplace accidents, researchers of the Centre d’histoire judiciaire in Lille are working on this topic in France, which would allow this comparison.

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