



biblio.ugent.be

The UGent Institutional Repository is the electronic archiving and dissemination platform for all UGent research publications. Ghent University has implemented a mandate stipulating that all academic publications of UGent researchers should be deposited and archived in this repository. Except for items where current copyright restrictions apply, these papers are available in Open Access.

This item is the archived peer-reviewed author-version of:

A study on juridification. The case of industrial accidents in nineteenth century Belgium

Bruno Debaenst

In: *The Legal History Review* (81) 2013, 247-273

To refer to or to cite this work, please use the citation to the published version:

B. DEBAENST, A study on juridification. The case of industrial accidents in nineteenth century Belgium, *The Legal History Review* (81) 2013, 247-273.

A STUDY ON JURIDIFICATION. THE CASE OF INDUSTRIAL ACCIDENTS IN NINETEENTH CENTURY BELGIUM.

by

BRUNO DEBAENST (GENT)^{*,}**

Introduction

Juridification, described as ‘the process of increasing legal intervention in the employment relationship that can be seen in an expanding volume of legal regulation of employment and increasing recourse to legal process to resolve employment disputes’¹ is an ambiguous legal concept that is, for the most part, only theoretically studied. This article will correct this problem by presenting legal historical research on juridification. The first part of the article will analyze the concept of juridification and develop a research model from which future research may be conducted. The second part of this article will apply this research model to nineteenth century Belgian industrial accidents².

The legal transitions of industrial accidents in nineteenth century Belgium

Accidents have always and will always be a part of the workplace. In the past, industrial accidents were often considered merely a coincidence of ‘bad luck’ with no compensation for the worker, which greatly contrasts with the contemporary western world. Nowadays social security accommodates workers with well-organized systems to deal with the impending damage caused by industrial accidents. The origin of these systems can be found in the nineteenth century with the first

* Postdoctoral Fellow of the Research Foundation – Flanders (FWO). Contact: Bruno.debaenst@ugent.be.

** I would like to thank William Mattingly and prof. dr. Melodie Harris Eichbauer for the revision of this paper.

¹ "juridification" *Oxford Reference Online*. Gent University. 6 April 2012.

<<http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t162.e674>>

² In this article I will concentrate on the Belgian situation. A comparison of this Belgian situation with other European countries will be the object of another article.

statutes on industrial accident insurance. These statutes were the result of an interesting transitional process³.

For France, the historian, lawyer and philosopher François Ewald studied this transitional process in his famous study 'L'Etat providence'⁴. His study starts at the end of the eighteenth century and describes the transition from a liberal to a 'social' French society, where the changing legal points of views were crucial. Industrial accidents were no longer perceived as insignificant accidents, but events that caused damage that had to be reconciled through insurance. Looked at from a legal historian's point of view, one can ask the question if this transitional process can be seen as a process of juridification.

Juridification has already been used to describe the general development of the laboring and industrial world⁵. More in particular, juridification was used to characterize the transition from a contemplative state to an active one, the so-called 'Interventionsstaat' and the genesis of the contemporary social security state⁶. It started with smaller state interventions that limited excesses of specific aspects such as women or child labor or dangerous labor conditions in certain branches of industry⁷. These limited interferences led to new interventions and the development of proper dynamics⁸. According to Simitis, labor law constitutes the classic paradigm of juridification, which makes this branch of law the perfect study on juridification⁹. Although industrial accidents fit perfectly within this picture, surprisingly, the legal transitional process of industrial accidents has yet to be studied from a perspective of juridification¹⁰.

³ B. Debaenst, *The relativity of turning points: labour accident legislation and its 'hidden' prelude*, in: S. Hornyák, B. Juhász, K. Korsósne Delacasse and Z. Peres (ed.), *Turning points and breaklines*, Munich 2009, p. 207-213.

⁴ F. Ewald, *L'Etat providence*, Paris 1986; see also : F. Ewald, *Le mal du siècle*, *Histoire des accidents du travail*, 15 (1984), p. 1-57.

⁵ I refer to Habermas who describes these transitions as the fourth and final big stage of the legal development. According to him, the first stage was the development of the civil society and the capitalistic market economy in the 17th century, the second the development of the constitutional state and the third the development of the democratic constitutional state. J. Habermas, *Theorie des kommunikativen Handelns*, Frankfurt am Main 1981, II, p. 525.

⁶ M. Stolleis, *Die Entstehung des Interventionsstaates und das öffentliche Recht*, in: M. Stolleis, *Konstitution und Intervention. Studien zur Geschichte des öffentlichen Rechts im 19. Jahrhundert*, Frankfurt am Main 2001, p. 253-282.

⁷ T. Mayer-Maly, *Ausgewählte Schriften zum Arbeitsrecht*, Vienna 1991, p. 56-60; S. Simitis, *Zur Verrechtlichung der Arbeitsbeziehungen*, in: F. Kübler (ed.), *Verrechtlichung von Wirtschaft, Arbeit und sozialer Solidarität*, Baden-Baden 1984, p. 74. A nice example are the railroads: D. Ziegler, *Eisenbahnen und Staat im Zeitalter der Industrialisierung*, Stuttgart 1996, p. 534-549.

⁸ 'Where, therefore, the industrialization process begins, there is no alternative to juridification'. S. Simitis, *Juridification of labor relations*, in: G. Teubner, *Juridification of social spheres. A comparative analysis in the areas of labor, corporate, antitrust and social welfare law*, Berlin 1987, p. 115.

⁹ S. Simitis, *Zur Verrechtlichung der Arbeitsbeziehungen*, in: F. Kübler (ed.), *Verrechtlichung von Wirtschaft, Arbeit und sozialer Solidarität*, Baden-Baden 1984, p. 74.

¹⁰ This does not mean that some authors have not yet mentioned the concept of juridification in the context of industrial accidents, but this was only marginal. Rob Schwitters for example spoke about a juridification of the aid relationships ('hulprelaties') in his PhD about the genesis of the industrial accident statute in the Netherlands. R. Schwitters, *De risico's van de arbeid. Het ontstaan van de Ongevallenwet 1901 in sociologisch perspectief*, Groningen 1991. Other authors used the concept of juridification in the larger framework of the employment

There are two explanations for this gap. Firstly, the transitional process of industrial accidents in the nineteenth century is a gigantic field. One can concentrate on one country or draw comparisons between multiple countries¹¹. One can also choose between different approaches, such as sociological¹², economic¹³, political¹⁴, historical¹⁵ or legal¹⁶. Finally, different topics can be studied, such as the legislative process¹⁷, the social politics¹⁸, the compensation mechanisms¹⁹ or the genesis of the social welfare state²⁰. So, looking at this transitional process from the point of view of juridification is just one of many possibilities.

Secondly, juridification as a concept is very complex and not easily applied to legal historical research. In the past, it has mainly been discussed theoretically. For example, in the 1980's it was a popular topic in academia because it was used as a theoretical concept to better understand the problem of overregulation²¹. But juridification as a concept is much more complex. It has many different layers and is not easily defined²². Nevertheless, there is an explicit necessity to define, or

relationship. S. Simitis, *The case of the employment relationship. Elements of a comparison*, in: W. Steinmetz (ed.), *Private law and social inequality in the industrial age. Comparing legal cultures in Britain, France, Germany and the United States*, Oxford 2000, p. 181-202. For another example, see: J.-P. Nandrin, *L'Histoire du contrat de travail et la problématique de l'entreprise avant 1914*, *Revue interdisciplinaire d'études juridiques*, 15 (1985), p. 41-88. Lacking however is a study using the theoretical concept of juridification to understand the transitional process of industrial accidents.

¹¹ P.A. Köhler and H.F. Zacher, *Ein Jahrhundert Sozialversicherung in der Bundesrepublik Deutschland, Frankreich, Großbritannien, Österreich und der Schweiz*, Berlin 1981; G. A. Ritter, *Sozialversicherung in Deutschland und England. Entstehung und Grundzüge im Vergleich*, Munich 1983; J. Moses, *Accidents at work, security and compensation in industrialising Europe: The case of Britain, Germany and Italy, 1870-1925*, *Annual Review of Law and Ethics*, 17 (2009), p. 237-258. Julia Moses has also written a PhD on this topic, which at this moment is not yet published.

¹² R. Schwitters, *De risico's* (supra, n.10); see also R. Schwitters, *Een calculerende solidariteit in wording*, in: G. Van Den Bergh, C. Lorenz and R. Pieterman (ed.), *Het recht van de geschiedenis. Historische dimensies in sociaal-wetenschappelijk onderzoek van recht*, 's Gravenhage 1993, p. 77-96.

¹³ M. Eckardt, *Technischer Wandel und Rechtsevolution. Ein Beitrag zur ökonomischen Theorie der Rechtsentwicklung am Beispiel des deutschen Unfallschadensrecht im 19. Jahrhundert*, Tübingen 2001.

¹⁴ J. Deferme, *Uit de ketens van de vrijheid. Het debat over de sociale politiek in België. 1886-1914*, Leuven 2007.

¹⁵ It would take us too far to list all historical works discussing industrial accidents in the nineteenth century. As an example, I refer to the series 'Histoire des accidents du travail' that has been published between 1975 en 1985 in Nantes. Recently there was also a workgroup active on the topic 'Histoire(s) de la santé au travail', with a conference in 2008 in Le Creusot.

¹⁶ One example is a study about the shifts in liability law. S. Klosse and T. Hartlief (ed.), *Shifts in compensation work-related injuries and diseases*, Vienna 2007.

¹⁷ W. De Vries, *De totstandkoming van de Ongevallenwet 1901: De invloed van werkgevers en werknemers op de eerste sociale verzekeringswet in Nederland*, Deventer 1970.

¹⁸ P. Bartrip and S. Burman, *The wounded soldiers of industry: industrial compensation policy, 1833-1897*, Oxford 1983.

¹⁹ J.F. Witt, *The accidental republic: crippled workingmen, destitute widows, and the remaking of American law*, Cambridge 2004.

²⁰ E.P. Hennock, *The origin of the welfare state in England and Germany, 1850-1914. Social policies compared*, Cambridge 2007.

²¹ R. Voigt (ed.), *Verrechtlichung. Analysen zu Funktion und Wirkung von Parlamentarisierung, Bürokratisierung und Justizialisierung sozialer, politischer und ökonomischer Prozesse*, Königstein 1980.

²² 'This (defining) is not a straightforward task, since the concept of juridification is not precise and different writers have developed their own variations on the meaning of the term.' M. Partington, *The juridification of*

rather conceptualize, juridification²³. 'What is needed is a conceptualisation that is complex enough to grasp the different meanings of the term and still simple enough to work as an inter-subjective standard'²⁴. This statement comes from two Norwegian researchers, who distinguished five different dimensions of juridification applied upon European law²⁵. Although it is not possible nor desirable to apply their approach to the transitional process of juridification of industrial accidents, it shows the necessity to differentiate between concepts of juridification²⁶.

Because of the magnitude of the study and the complexity of the juridification concept, the development of a research model is necessary. Within this research model, I first must draw a horizontal differentiation. Following Rüdiger Voigt, I will make a triple distinction following the 'trias politica'²⁷. The first section will be the juridification through parliament ('Vergesetzlichung' or 'Parlementarisierung'), with, for example, the first social legislation. The second will be the juridification through administrative organs ('Bürokratisierung'), with, for example, the rise of the labor inspection. The third will be the juridification through case law ('Justizialisierung')²⁸. These three different 'fields of juridification' on the horizontal level are characterized by a proper evolution following its own dynamics and by an influence from other 'fields of juridification'. In this article I term the three horizontal fields as 'semi-autonomous social fields', inspired by legal anthropology. In 1973, Sally Falk Moore introduced this concept, defining it as²⁹:

The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.

Social Welfare in Britain, in: G. Teubner (ed.), *Juridification of social spheres. A comparative analysis in the areas of labor, corporate, antitrust and social welfare law*, Berlin 1987, p. 420.

²³ 'A precise use of terms and definitions is necessary, especially in the case of juridification, not just for the sake of terminological clarity but, as already indicated, to create a working framework in which to examine the complex phenomenon of juridification.' G. Teubner (ed.), *Juridification of social spheres. A comparative analysis in the areas of labor, corporate, antitrust and social welfare law*, Berlin 1987, p. 6.

²⁴ L. Blichner and A. Molander, *Mapping juridification*, *European Law Journal*, 14 (2008), p. 37.

²⁵ Their first dimension is 'constitutive juridification'. The second dimension is the process by which an activity becomes subjected to legal regulation or more detailed legal regulation (quantitative and qualitative differentiation). Next comes the dimension of the use of law for conflict resolution, which they divide between judicial, legal and lay conflict solving. The fourth dimension is the increase of power of the judiciary (judicialisation). The fifth and last dimension is juridification as legal framing, 'the increased tendency to understand self and others, and the relationship between self and others, in light of a common legal order.'

²⁶ The dimension of constitutive juridification for example cannot directly be applied upon industrial accidents.

²⁷ R. Voigt (ed.), *Verrechtlichung*. (*supra*, n. 21), p. 18-23.

²⁸ In my Ph.D. study, I refined this by adding jurisprudence (with the development of new theories and insights) and the world of labor itself (with the production of norms such as the labor contract or workhouse regulations), although it has to be added that these two are less important in the general process of juridification. That is why I will not discuss them here, due to the limited scope of this article. Jurisprudence here will be discussed as an annex of case law. B. Debaenst, *Een proces van bloed, zweet en tranen. Juridisering van arbeidsongevallen in de negentiende eeuw in België*, Brussels 2011.

²⁹ S. Falk Moore, *Law and social change: the semi-autonomous social field as an appropriate subject of study*, *Law & Society Review*, 8 (1973), p. 720.

Although Falk Moore used this concept in a different context, 'semi-autonomous social fields' can be very useful to demonstrate the simultaneous autonomy and interdependency of the three horizontal fields of juridification. For example, Maus wrote that the introduction of new statutes did not lead to the inactivity of the administration and judiciary, but rather to the development of new administrative norms and case law³⁰. These five 'fields of juridification' also have to be put in a general and specific context. For example, the evolutions in parliament depend on the political context, case law and jurisprudence, which are all determined by legal context. Therefore, all of them must be situated in their respective historical context.

I must now draw a vertical differentiation. The lowest level, which has the least to do with the dynamics of juridification, is the individual case. Every accident happens within a specific context and is the result of specific events. Although it can be very interesting to study an individual case, it is not very enlightening for the process of juridification, as it is a 'static' event³¹. More interesting is the local level, where a sequence of industrial accidents can be studied within one judicial district, one factory or one economic sector over a longer period of time. However, the most important level is the national level, as the national legal culture, the parliamentary activities and the national administration are situated here. Last is the international level, with for example the international conferences regarding industrial accidents that began to be organized in 1889. In this article I will only discuss the juridification of industrial accidents on the national Belgian level.

Juridification of industrial accidents in Belgium

The 1843 Mareska and Heyman survey

I will start with a survey conducted by Mareska and Heyman between 1843 and 1845³². In this period, these two physicians investigated the living and working conditions of the workers in Ghent, which was at that time a huge center of mechanized textile industry. In order to conduct their research, Mareska and Heyman visited the textile factories and talked with workers and factory owners. They were not only staggered by the poor working conditions³³, but also by the large

³⁰ I. Maus, *Rechtstheorie und Politische Theorie im Industriekapitalismus*, Munich 1986, p. 277.

³¹ A specific industrial accident can be interesting for the history of juridification, when it constituted an important changing point in the evolution of case law for example. I will discuss some of these cases further.

³² J. Mareska and J. Heyman, *Enquête sur le travail et la condition physique et morale des ouvriers employés dans les manufactures de coton, à Gand*, Ghent 1845. This study was also published in the *Annales et Bulletin de la Société de médecine de Gand*.

³³ Cleaning cotton for example created a lot of dust, which made it hard to breathe. In other stages of the production process, workers had to work in unbearable temperatures of 37-38°. Weaving was deafening because of the incessant rattling of the looms. In the bleaching rooms there was a high level of humidity. But most importantly, the workers had to work long days, performing repetitive, mind numbing tasks, which led to all kind of deformations.

number of accidents that occurred³⁴. Most dangerous were the moving mechanics that could severely maim, mutilate, or kill workers³⁵. Out of 1.000 workers, Mareska and Heyman registered no less than 194 workers who suffered injuries because of the dangerous machinery³⁶. This staggering statistic did not include all the workers who were killed or disabled due to such an accident³⁷.

When looking for the causes of these accidents, the factory owners blamed the workers, who were often imprudent or even reckless while performing their daily tasks. The physicians agreed: living amid the daily dangers caused a certain familiarity. The workers also had a number of bad habits, such as wearing too loose clothing, cleaning active machinery or replacing moving belts³⁸. In general, the workers were very detached to industrial accidents, which were considered to be 'malheurs'. Instead of taking effective preventive measures, workers trusted upon their faith to prevent bad luck happening to them³⁹.

The workers, however, were not the only ones to blame. Mareska and Heyman also pointed at the factory owners who knew the dangers and the habits of the workers, but failed to take the necessary preventive measures. In a number of factories, preventive measures were implemented with great success⁴⁰, but in most cases, factory owners did nothing to prevent accidents. When an industrial accident occurred, the poor victim was carried to the hospital or to his family and replaced by a new worker...

Not surprisingly, in their conclusions, Mareska and Heyman favored labor inspection and safety regulation in order to prevent these horrific accidents from happening⁴¹. Their survey was part

³⁴ Mareska and Heyman gave a description of all kind of accidents in the subsequent stages of the production process. They mentioned for example accidents with flywheels. One day, when they were interrogating workers, the news came that such an accident had occurred and killed a young girl in a nearby factory. In another factory they have met a woman who had survived such an accident. J. Mareska and J. Heyman, *Enquête (supra, n. 32)*, p. 21-22.

³⁵ Workers could be caught by these moving parts or get entangled with their clothes. Because of the speed and force of this powerful machinery, such an unpleasant encounter could lead to a quick death, or in the best case, a serious mutilation.

³⁶ In most of the cases (113) the workers had only suffered minor injuries, but in 57 cases the workers had permanent injuries and in 24 cases one could even speak from real deformations.

³⁷ Mareska and Heyman based their numbers upon their interviews with the workers in the factories.

³⁸ J. Mareska and J. Heyman, *Enquête (supra, n. 32)*, p. 202.

³⁹ Mareska and Heyman gave the example of a holy Mass being celebrated to ask for Divine intervention in order to stop a series of industrial accidents in a certain factory. Ironically, the next day, the one person who had done all the efforts to organize the Mass became himself victim of an industrial accident: while incautiously replacing a moving belt, his left thumb was ripped off.

⁴⁰ These preventive measures included positioning the dangerous machines in a way that the workers did not have to walk next to the moving parts or covering parts with protective shields. J. Mareska and J. Heyman, *Enquête (supra, n. 32)*, p. 24.

⁴¹ The regulation had to contain provisions towards the obligatory coverage of moving parts, a general defense to clean machines during labor time and a minimum surface of the rooms to allow the workers to move without danger. In order to supervise these regulations, an efficient inspection was necessary. According to the two physicians, one inspector would be sufficient to overview the mechanic textile industry. J. Mareska and J. Heyman, *Enquête (supra, n. 32)*, p. 253-256.

of a bigger investigation on child labor and in the final report of the parliamentary commission in 1848 their safety regulation recommendations were adopted. Charles Rogier, the Minister of the Interior, sent a report to the commercial chambers for advice⁴². Unfortunately, the chiefs of industry showed a fierce opposition to the proposals⁴³, which they described as an attack upon the rights and interests of industry and a disastrous disruption to the organization of industrial labor⁴⁴. Basically, they defended the old liberal dogma of state non-intervention in the industrial world⁴⁵. As a result, Rogier wisely decided not to bring the report to the parliament⁴⁶.

The administrative evolutions after 1848

Instead, Rogier decided to take the administrative route. On the 12 November 1859, King Leopold I signed the Royal Decree 'relatif à la police des établissements dangereux, insalubres ou incommodes'⁴⁷. This Decree reformed earlier regulation of the French⁴⁸ and Dutch⁴⁹ periods, concerning the health and safety regulations of dangerous, unhealthy or polluting factories. Interestingly enough, the Decree for the first time explicitly mentioned labor safety⁵⁰. Following the Decree, Rogier sent a number of clarifying instructions to the governors, which implored the administration to ensure that all possible preventive measures were taken. After all, the workers themselves could not complain about poor labor conditions without risk of losing their jobs. Thus, the administration had to fulfill the role of guardian ('les fonctions de tuteur') over the workers and ensure that all necessary protective measures were taken⁵¹. In 1851, Rogier specified which

⁴² Charles Rogier (1800-1885) was a liberal politician.

⁴³ In 1859, Charles Rogier testified: 'Le projet de loi, proposé par cette commission, n'a pas abouti. Soumis à l'avis des Chambres de commerce et des principaux industriels du pays, il n'a pas été bien accueilli dans son ensemble par la majorité des collègues et des hommes compétents consultés. On a trouvé en général que ce projet de loi ne tenait pas assez compte des nécessités du travail industriel, que les dispositions en étaient conçues à un point de vue trop abstrait, et qu'il compliquait la solution de la question principale de beaucoup d'accessoires, étrangers à l'objet essentiel à régler, à savoir l'admission et le travail des enfants et des femmes dans les manufactures.' Letter dd. 20 juli 1859 from Charles Rogier to the governors, in: Bulletin du Conseil supérieure de l'industrie et du commerce (1862), p. 219 ; Parliamentary pieces Chamber (1859-60), p. 250.

⁴⁴ Other 'arguments' were: the Belgian industry would not be able to withstand competition with abroad, the factory owners would be treated as criminals, valuable secrets would be revealed, etc.

⁴⁵ A.F. La Berge, *Mission and method. The early nineteenth-century French public health movement*, Cambridge 1992, p. 149.

⁴⁶ This would have had no effect, as the members of parliament shared the same opinions as the members of the commercial chambers.

⁴⁷ Royal Decree 12 November 1849 'relatif à la police des établissements dangereux, insalubres ou incommodes', *Moniteur belge* (13 November 1849), *Pasinomie*, III, 19 (1849), p. 472-480.

⁴⁸ Decree 15 October 1810 'concernant les manufactures qui répandent une odeur insalubre ou incommodes', *Pasinomie*, I, 15, p. 179-184. Before 1810, the safety and health regulation about the industrial factories was issued by the local authorities. J.-L. Halpérin, *Histoire du droit privé depuis 1804*, Paris 1996, p. 138.

⁴⁹ Royal Decree 31 January 1824 'rakende de vergunning ter oprigting van sommige fabrieken en trafieken', *Staatsblad* (20 februari 1824), *Pasinomie*, II, 7, p. 470-473.

⁵⁰ 'Elle fera connaître, de plus, les mesures qu'on se propose de prendre pour empêcher ou diminuer les inconvénients de l'établissement, tant pour les voisins que dans l'intérêt des ouvriers'. Article 2 Royal Decree 12 November 1849 'relatif à la police des établissements dangereux, insalubres ou incommodes', *Moniteur belge* (13 November 1849), *Pasinomie*, III, 19 (1849), p. 472-480.

⁵¹ Letter of 27 September 1850 'instruction générale pour l'exécution des arrêtés royaux du 12 novembre 1849 et du 15 avril 1850', *Pasinomie*, III, 20 (1850), p. 285-292.

measures had to be introduced⁵². As it turned out, they were identical to the safety recommendations of the child labor commission of 1848⁵³, which shows the policy of minister Rogier: rather than suffering a guaranteed defeat in an unwilling parliament, he tried to introduce the safety measures by updating an existing regulation.

At first sight this seemed a good idea, but the plan was flawed. Firstly, the impact of the new safety regulation was very limited. It only applied to new factories. Existing factories were not affected. There was also a problem with the control over safety measures: this task was confined to the local police, which was just not up to it⁵⁴. But perhaps the biggest problem was the unstable basis for safety regulation. Whereas in the 1850's Charles Rogier and his successors tried to impose and improve safety regulations⁵⁵, in the next decade everything changed with Alphonse Vandenpeperboom in 1861. He was a notorious non-interventionist and in 1863, he issued a new Royal Decree, by which he turned back the regulatory clock⁵⁶. With this Decree, he 'simplified' the administrative procedure to establish new industrial plants. Basically, the 'long and costly' procedure on the national level was abolished and transferred to the provincial and local level.

Looked at from the perspective of juridification, I have to conclude that the parliamentary plan to introduce safety regulations in the world of industry was firmly blocked because of the dominant liberal ideology of non-interventionism (no 'Parlementarisierung'). The Minister of the Interior tried to circumvent this obstacle by adjusting a previous regulation ('Bürokratisierung'). At first sight, this seemed successful, but a closer look learns that these efforts were marginal and only brief.

The first industrial accident trials

For the next stage in the history of juridification of industrial accidents in Belgium, one has to look at the judiciary ('Justizialisierung') because at the end of the 1860's the first cases on industrial

⁵² Letter 5 March 1851 'Mesures de précaution à prendre, dans certaines fabriques, en faveur des ouvriers qui y sont employés', J. Vilain, *Traité théorique et pratique de la police des établissements dangereux, insalubres ou incommodes*, Brussels 1857, p. 554-556.

⁵³ For example: the moving parts of the machinery had to be covered with protective shields, it had to be forbidden to remove moving belts, etc.

⁵⁴ In 1857 Vilain wrote that the police was just not apt for the job, because they were not experienced. He proposed the introduction of a special inspection. J. Vilain, *Traité* (*supra*, n.52), p. 333-334 ; This opinion was confirmed in 1895 by labor inspector De Camps, who said that had to be admitted that the local police only rarely did its job. *Rapports annuels de l'inspection du travail*, 2 (1896), Part II, p. 114-115.

⁵⁵ After Charles Rogier, ministers of the interior Piercot and De Decker also tried to improve the quality of the safety measures in the industry: they also wrote letters to the governors reminding them of the importance of a good safety supervision of industry. The liberal Ferdinand Piercot was minister from 1852 till 1855 and the catholic Pieter De Decker from 1855 till 1857. From 1857 till 1861, Charles Rogier was again minister of interior affairs.

⁵⁶ Royal Decree 29 January 1863 'contenant révision et simplification des dispositions concernant la police des établissements dangereux et insalubres', *Moniteur belge* (30 January 1863), *Pasinomie*, III, 33 (1863), p. 45-54.

accidents appeared in court, which can be separated into three industrial categories: steam engines, mines, and railroads. It is no coincidence that these were the first to appear and there are a number of explanations as to why these specific industrial accidents were the first to be 'juridified'.

The three mentioned categories of accidents all belonged to highly technological, capital intensive sectors. The installation of a steam engine with all the corresponding machinery, the construction of a fully equipped mine or the purchase of locomotives and wagons were all very expensive. In addition, each category shared a similar element of danger. Steam boilers could explode and destroy whole factories in a blink of an eye. Mines could collapse, fill with water, catch fire or explode because of the feared mining gas. And the railroads were also a continuous source of danger, with colliding or derailing trains, exploding engines, etc. Aside from the financial losses, many people lost their lives in these catastrophes.

The combination of the danger and the magnitude of events explain why these three sectors were already subjected to state regulation and inspection ('Bürokratisierung') from an early date. The safety regulation in the mines dated back to the French period, with the introduction of the mining inspection in 1810⁵⁷. The state had to supervise the public safety, maintenances of the pits, the solidity of the underground and the safety of the miners and the edifices on the surface⁵⁸. Two mining disasters in Liege in 1812 illuminated the need for a comprehensive safety regulation to prevent future mining accidents⁵⁹. The answer to these tragedies was the Imperial Decree of 3 January 1813 'contenant des dispositions relatives à l'exploitation des mines'⁶⁰. This Decree provided foundations for safety regulations in the mines⁶¹. Regulations on the steam engine also began in the French period⁶². The railroad regulation appeared later, which is only logical, as the first railroads did not appear in Belgium until the 1830's⁶³.

⁵⁷ Act 21 April 1810 'concernant les mines, les minières et les carrières', *Pasinomie*, I, 15, p. 83-92.

⁵⁸ Article 50 Act 21 April 1810.

⁵⁹ The 10th of January 1812 a big mining gaz explosion happened in Horloz with 68 deadly victims. Only a few weeks later, the 28th of February 1812, another deadly mining disaster happened in Beaujonc.

⁶⁰ Decree 3 January 1813 'contenant les dispositions de police relatives à l'exploitation des mines', *Pasinomie*, I, 16, p. 201-203. The link between the two catastrophes and the Imperial Decree of 1813 can be read in the preambule : 'Les évènements survenus récemment dans l'exploitation des mines de quelques départemens de notre Empire, ayant excité, d'une manière particulière, notre sollicitude en faveur de nos sujets occupés journellement aux travaux de mines, (...)'

⁶¹ To start with, there was a clear division between the owners, the mining inspection and the local administrative and judicial authorities. The Decree also contained a number of provisions to prevent mining accidents. The Emperor also laid down the procedures that had to be followed after a heavy accident, with lethal consequences. The mining inspection for example had the obligation to write a report with the suspected causes of the accident.

⁶² Decree 15 October 1810 'concernant les manufactures qui répandent une odeur insalubre ou incommodes', *Pasinomie*, I, 15, p. 179-184.

⁶³ The origins of the railroad regulation are found in the Act of 12 April 1835 concernant les péages et les règlements de police sur les chemins de fer, *Moniteur belge* (17 April 1835), *Pasinomie*, III, 5 (1835), p. 187-188.

During the nineteenth century, these early regulations evolved gradually, following technological developments, which are exemplified by steam engine regulations. The first 'Belgian' regulation was the Royal Decree of 1839⁶⁴. This Decree was regularly updated in the course of the nineteenth century, in 1846, 1853, 1864, and 1884⁶⁵. On the one hand, some prescriptions were repeated, such as the requirement to report a fatal steam engine accident to the public prosecutor⁶⁶. On the other hand, new technical requirements were added, such as new safety prescriptions, which was no luxury. Due to the steady rise in the quantity of steam engines – from 2.282 in 1850 to 22.961 in 1900 – the respective number of steam engine accidents rose proportionately in the third quarter of the nineteenth century⁶⁷.

A famous Belgian example concerns the mechanic textile factory 'Société linière' in Saint Gilles near Brussels⁶⁸. On 14 April 1870, a boiler exploded. Instantaneously the factory was ravaged. Five people were killed instantly and seven soon afterwards. The administrative investigation revealed that the accident was caused by the poor quality of the iron plates⁶⁹. Interesting enough, a number of relatives went to court to claim damages for the loss of their loved ones. On 31 May 1871 the civil tribunal of Brussels condemned the 'Société linière', requiring them to pay damages⁷⁰. This judgment was confirmed by the Court of Appeal of Brussels on 16 April 1872⁷¹. Meanwhile, disaster struck again. On 26 March 1872, less than two years after the first incident, another boiler exploded, with even more devastating consequences: twelve workers were killed on the spot. This time, the criminal investigation led to the conviction of the factory director by the correctional tribunal of Brussels on 4 March 1874, confirmed by the Court of Appeal of Brussels on 4 February 1875⁷². In the slipstream of these procedures, a number of relatives again succeeded in obtaining compensation for their losses⁷³.

⁶⁴ Royal Decree 24 June 1839, 'Machines à vapeur', *Moniteur belge* (1 July 1839). There were also separate regulations for the locomotives of the State railroads and the steam engines on the steam boats.

⁶⁵ Royal Decree 15 November 1846 'concernant l'établissement et la surveillance des chaudières et machines à vapeur', *Moniteur belge* (27 November 1846), *Pasinomie*, III, 16 (1846), p. 671-677; Royal Decree 23 December 1853 'décrétant un règlement général sur l'emploi et la surveillance des appareils à vapeur', *Moniteur belge* (30 December 1853), *Pasinomie*, III, 23 (1853), p. 595-602; Royal Decree 21 April 1864 'contenant règlement pour l'établissement et la surveillance des chaudières et machines à vapeur', *Moniteur belge* (26 April 1864), *Pasinomie*, III, 34 (1864), p. 171-176; Royal Decree 28 May 1884 'concernant l'emploi et la surveillance des chaudières et machines à vapeur', *Moniteur belge* (7 June 1884), *Pasinomie*, IV, 19 (1884), p. 228-235.

⁶⁶ Article 21 Royal Decree 1839; article 55 Royal Decree 1846; article 55 Royal Decree 1853; article 51 Royal Decree 1864 and article 61 Royal Decree 1884.

⁶⁷ The numbers of steam engines: 1850: 2.282, 1860: 4.997, 1870: 9.294, 1880: 14.060, 1890: 17.663 and in 1900: 22.961. F. Fresson, *Administration des mines et appareils à vapeur*, *Annales des mines*, 68 (1963), p. 109.

⁶⁸ The full name was 'Société anonyme pour la Filature des Lins et Étoupes à la mécanique', later renamed 'Société Linière de Bruxelles'. It was founded in 1837 and employed at its peak almost 1.200 workers. Soon after the explosions, the factory was shut down.

⁶⁹ This report is published in the *Annales des travaux publics*, 29 (1871), p. 208-209.

⁷⁰ Civil tribunal Brussels, 31 May 1871, *La Belgique Judiciaire*, 29 (1871), p. 758-764.

⁷¹ Court of Appeal Brussels, 16 April 1872, *Pasicrisie* (1872), p. 176-179.

⁷² I found this information in: Tribunal Brussels 21 July 1875, *La Belgique Judiciaire*, 33 (1875), p. 1098-1099 and Court of Appeal Brussels, 20 March 1876, *Pasicrisie* (1876), II, p. 242-243.

⁷³ As can be read in the introduction of the judgment of the civil court of Brussels de dato 21 July 1875: 'Plusieurs actions furent intentées à la Société Linière par les enfants ou parents des victimes' Civil Court Brussels, 21 July 1875, *La Belgique Judiciaire*, 33 (1875), p. 1098-1099.

These cases illustrate steam engine, mining or railroad disasters in nineteenth century Belgium. The magnitude of these events caused much distress and alarmed not only public opinion, but also the judicial and administrative forums, which gained recognition during the event. The existing steam engine regulations required the competent administration to draw a report describing the accident, the suspected causes and the persons who were to be held liable⁷⁴. This report was then sent to the public prosecutor, who decided rather or not to prosecute, then added this report to the criminal file. In a number of cases, people were prosecuted and condemned because of their role in the fatal disasters. Also, from the 1870's on, the victims of such disasters or their relatives addressed themselves to the judiciary in order to be compensated for their losses⁷⁵. According to Belgian liability law, they had to prove that the employer made a mistake that caused the accident⁷⁶. In normal circumstances, this proof was very hard to deliver, but thanks to the preceding criminal and administrative procedures, in a number of cases, such as the disaster of the Société linière, they succeeded⁷⁷.

It is important to note that contemporaries did not immediately look at these procedures as 'industrial accident procedures'. They saw them as 'liability procedures', in accords with the legal ground, or 'mining or railroad accident procedures' of the economic sector⁷⁸. Gradually, as more judgments were published, the separate 'industrial accident procedures' started link with each other, through cross-references. One example can illustrate this. In a railroad accident case from 1872, the Belgian State used the defense that it could not be held liable for the damages caused by one of its employees, if the victim was an employee himself⁷⁹. To strengthen the state's argument, she referred to mining accidents⁸⁰. In the accompanying note, the authors referred to the judgment of the civil tribunal of Brussels in the already mentioned steam accident case of the Société Linière⁸¹. In other words, in this specific case, the three mentioned categories (railroad, mining and steam engine accidents) were linked to each other. Other interesting phenomena are referenced in foreign case

⁷⁴ Article 51 Royal Decree 1864. See above.

⁷⁵ These claimed compensations concerned mainly the loss of future earnings, but also other compensations were asked (for example moral damages). For an overview, I refer to my article: B. DEBAENST, *l'Evaluation judiciaire des dommages-intérêts des accidents du travail à la fin du XIXe siècle en Belgique : le cas de Mons*, in : J. Horeau-Dodinau, G. Metairie et P. Texier (ed.), *La victime. II. Réparation du dommage*, Limoges 2009, p. 415-437.

⁷⁶ The articles 1382-1386 Civil Code.

⁷⁷ In the judgment of the Court of Appeal of Brussels in the case of the Société linière, one can read: 'Attendu que, d'après l'administration des points et chaussées, l'accident doit être attribué à la qualité défectueuse de la tôle du fond bombé de la chaudière qui a été arrachée (ainsi que l'a publié le Moniteur du 2 mars 1871)'. So, this Court based itself on the administrative report that had been published. Court of Appeal Brussels, 16 April 1872, *La Belgique Judiciaire*, 30 (1872), p. 1314.

⁷⁸ In the volume of the *Pandectes Belges* (a juridical encyclopedia) of 1879, one finds references to 'accident', 'accident de chemin de fer' and 'accident dans les mines', but not to 'accident du travail'. In 1921, part 113 contained a lemma 'travail (accident du)'.
⁷⁹ Civil tribunal Liege, 15 June 1872, *La Belgique Judiciaire*, 31 (1873), p. 63.

⁸⁰ 'Il faudrait aller jusqu'à dire que, par exemple, dans les accidents de houillères, où périssent parfois un nombre considérable d'ouvriers, l'exploitant serait responsable vis-à-vis de toutes les familles de ces ouvriers si l'accident était dû à l'imprudence de l'une d'eux.'

⁸¹ This case was also mentioned in the discussion of other judgments, such as: Court of Appeal Brussels 21 January 1873, *La Belgique Judiciaire*, 31 (1873), p. 454 and Civil Tribunal Antwerp, 9 April 1874, *La Belgique Judiciaire*, 33 (1875), p. 1531-1534.

law and jurisprudence. Already in 1864, French cases concerning industrial accidents were being published in *La Belgique Judiciaire*⁸² and authors discussing Belgian cases often referred to French case law from Sirey and Dalloz⁸³. This was not that surprising, as Belgium at that time was a backwards 'legal colony' of France⁸⁴. After all, in France, the Cour de Cassation already decided in 1841 that an employee could start a procedure against his employer to be compensated for damages⁸⁵.

The early industrial accident cases published in Belgian case law established precedence, and, more importantly, the early industrial accident cases broke some juridical barriers. On 7 May 1869 for example, the highest Court, the Cour de Cassation, rendered an important decision in the case of Lammertyn, a train driver⁸⁶. The defendant, the Belgian State, claimed that his relatives could not sue his employer. After all, when Lammertyn started working for the Belgian state railroads, he accepted all the risks of the job⁸⁷. In return, he received his wage and other benefits, like retirement rights⁸⁸. The judges rejected this argument. They determined that the labor relation was nothing more than the simple exchange of wages for work with labor as a commodity⁸⁹. The contractual relationship did not have an influence upon possible claims based on extra-contractual liability law⁹⁰. With this decision, the Belgian Cour de Cassation acknowledged the possibility for an employee to start a procedure against his employer, based upon extra-contractual liability law.

⁸² Cour impériale de Lyon, 26 November 1863, *La Belgique Judiciaire*, 22 (1864), 430-431 and Cour impériale de Metz, 26 May 1864, *La Belgique Judiciaire*, 22 (1864), p. 986-988.

⁸³ For example the commentaries under: Civil tribunal Liege, 15 June 1872, *La Belgique Judiciaire*, 31 (1873), p. 64; Court of Appeal Brussels 21 January 1873, *La Belgique Judiciaire*, 31 (1873), p. 454; Court of Appeal Brussels 4 May 1874, *La Belgique Judiciaire*, 32 (1874), p. 632; Civil Tribunal Antwerp 9 April 1874, *La Belgique Judiciaire*, 33 (1875), p. 1534.

⁸⁴ D. Heirbaut, *L'émancipation tardive d'une pupille de la nation Française. L'histoire du droit belge au 19ème et 20ème siècles*, in: A. Wijffels (ed.), *Le Code civil entre ius commune et droit civil européen*, Brussels 2005, p. 611-642; D. Heirbaut and M.E. Storme, *The Belgian legal tradition: from a long quest for legal independence to a longing for independence*, in: E. Dirix en Y.-H. Leleu (ed.), *The Belgian reports at the congress of Utrecht of the International Academy of Comparative Law*, Brussels 2006, p. 3-43; see also: *European Review of Private Law*, 14 (2006), p. 645-683.

⁸⁵ J.-L. Halpérin, *Histoire du droit privé français depuis 1804*, Paris 1996, p. 111.

⁸⁶ Cassation, 7 May 1869, *Pasicrisie*, IV, 4 (1869), I, p. 330-338. See also: Court of Appeal Brussels, 18 May 1868, *La Belgique Judiciaire*, 26 (1868), p. 694-695.

⁸⁷ '(...) en acceptant l'emploi pénible et dangereux de machiniste au chemin de fer, l'auteur des demandeurs s'est soumis par avance aux dangers inséparables de cet emploi' Judgment Civil Tribunal Brussels, 8 February 1868, *La Belgique Judiciaire*, 26 (1868), p. 695.

⁸⁸ 'Ils trouvent dans leurs salaires et dans la pension, le cas échéant, une compensation du dommage qu'ils pourraient éprouver'. Cassation 7 May 1869, *Pasicrisie*, IV, 4 (1869), I, p. 333. In a similar procedure before the civil tribunal of Liege, the Belgian State took a similar position: 'L'Etat objectait en outre que le salaire extraordinaire attribué aux machinistes du chemin de fer, les pensions relativement considérables assurées à leurs familles, avaient précisément pour but de compenser les chances qu'ils courent et mettaient la responsabilité de l'Etat à couvert'. Civil tribunal Liege, 15 June 1872, *La Belgique Judiciaire*, 31 (1873), p. 63.

⁸⁹ 'en leur payant le salaire, il ne fait qu'acquitter le prix du travail, et la pension n'a pas pour objet la réparation d'un dommage imprévu'. Cassation 7 May 1869, *Pasicrisie*, IV, 4 (1869), I, p. 338.

⁹⁰ The civil tribunal of Brussels put it as follows: '(...) si en acceptant l'emploi pénible et dangereux de machiniste au chemin de fer, l'auteur des demandeurs s'est soumis par avance aux dangers inséparables de cet emploi, il ne s'est nullement soumis à supporter sans indemnité pour lui ou ses représentants, le dommage qui pourrait leur occasionner la faute, l'imprudence ou la négligence d'autres employés de la même administration'. Civil tribunal Brussels, 8 February 1868, *La Belgique Judiciaire*, 56 (1898), p. 695.

In other countries, it was not the judiciary, but the legislator who tore down certain juridical obstacles. In the common law countries for example, it was very hard for an employee to start a procedure against his employer because of the so-called 'Unholy Trinity'⁹¹. First, the fellow servant rule stated that it was impossible for an employee to sue his employer for another employee's mistakes. Another obstacle was the assumption of risk, which could be compared with the discussion in the above mentioned Belgian case⁹². The third 'unholy' rule was the rule of contributory negligence, which blamed the imprudence of the victim. The 1880 Employer's Liability Act softened the effects of these juridical obstacles in England⁹³. In Germany, a similar act was voted in 1871, the Reichshaftpflichtgesetz⁹⁴. Before, the workers were hindered by very strict procedural rules, which made it almost impossible to deliver necessary proof to obtain compensation for personal damages⁹⁵. The Reichshaftpflichtgesetz expanded the liability of employers in a number of dangerous sectors, which made it easier on paper for the employees to litigate. In reality, however, it remained very difficult for employees to receive compensations from their employers because of the harsh attitude of many judges and the difficulty in finding and presenting evidence⁹⁶.

Belgian workers faced the same problem. Although it became possible for a victim of an industrial accident or his relatives to go to court to claim damages from his or her employer, this was only successful in a few cases. After all, according to Belgian liability law, the plaintiffs had to prove that the employer – or one of his employees – made a mistake that caused the accident⁹⁷. However, in many cases it was impossible to deliver this proof because the accident was caused by a mistake of the victim himself⁹⁸ or by a so-called 'Act of God'⁹⁹. Even if the employer or one of his employees was to blame for the accident, it remained very difficult to deliver proof thereof in court. In many cases, the employer destroyed incriminating evidence and it was also difficult to find witnesses willing to

⁹¹ J.F. Witt, *The transformation of work and the law of workplace accidents, 1842-1910*, Yale Law Journal, 107 (1997-98), p. 1467-1502; for a thorough discussion of the three defences, see: J.L. Bronstein, *Caught in the machinery: workplace accident and injured workers in nineteenth-century Britain*, Stanford 2008, p. 19-32.

⁹² The origin of the 'assumption of risk' rule lies in a famous case, *Priestley v. Fowler* of 1837. S. Jack and A. Jack, *Nineteenth-century lawyers and railway capitalism: historians and the use of legal cases*, Journal of Legal History, 24 (2003), p. 77-79 ; J. Munkman, *Employer's liability at common law*, London 1985, p. 6-9. In the USA the most famous case was *Farwell v. Boston & Worcester Railroad*. J.F. Witt, *Rethinking the nineteenth-century employment contract, again*, Law and History Review, 18 (2000), p. 634.

⁹³ It was only a partly solution. The worker could only obtain compensation if he could prove that the accident was the consequence of a defect in the ways, works, machinery or plant, or of the negligence of an authority figure. J. Munkman, *Employer's liability* (*supra*, n. 91) p. 13-15; P.W.J. Bartrip and S.B. Burman, *The wounded soldiers of industry. Industrial compensation policy 1833-1897*, Oxford 1983, p. 126-157; M. Lobban, *Tort, IV, Workplace injuries*, in: J. Baker (ed.), *The Oxford history of the laws of England*, XII, 1820-1914, Private law, Oxford 2010, p. 1012-1017.

⁹⁴ The 'Gesetz betreffend der Verbindlichkeit zum Schadenersatz für die beim Betrieb von Eisenbahnen, Bergwerken usw. herbeigeführten Tötungen und Körperverletzungen vom 7 juni 1871'. M. Kloepfer, *Technik und Recht im wechselseitigen Werden*, Berlin 2002, p. 37; see also R. Schwitters, *De risico's van de arbeid. Het ontstaan van de Ongevallenwet 1901 in sociologisch perspectief*, Groningen 1991, p. 247.

⁹⁵ R. Ogorek, *Untersuchungen zur Entwicklung der Gefährdungshaftung im 19. Jahrhundert*, Cologne 1975, p. 87-97.

⁹⁶ B. Barentsen, *Arbeidsongeschiktheid. Aansprakelijkheid, bescherming en compensatie*, Deventer 2003, p. 136; R. Ogorek, *Untersuchungen* (*supra*, n. 95), p. 113.

⁹⁷ The articles 1382 and following of the civil code.

⁹⁸ I refer to the testimonies of Mareska and Heyman above.

⁹⁹ In many cases, accidents were considered an Act of God, because the technological knowledge was not advanced enough to trace the real cause.

testify against their employer. In all, only a small percentage of industrial accident procedures ended well for the plaintiffs.

The 1884 theory of Charles-Xavier Sainctelette

This problem was acknowledged by Charles-Xavier Sainctelette¹⁰⁰. As a lawyer practicing in the coal mining district of Mons, he came across many victims of industrial accidents, who had tried the judicial route, but drastically failed to obtain compensation for their losses. Moreover, between 1878 and 1882, Sainctelette was the minister responsible for the mining, railroad and steam engine administrations, so he was well acquainted with the industrial accident problem (and trials) in these sectors. In 1884, he wrote a book, 'De la responsabilité et de la garantie', containing a new legal theory¹⁰¹.

According to Sainctelette, there were two kinds of obligations: obligations originating from a contract and obligations originating from law¹⁰². In the former, one contract party had to 'guarantee' that damages caused to the other contract party in the execution of the contract would be paid¹⁰³. In the latter, the damaging party had to pay for these damages based on traditional extra-contractual liability law¹⁰⁴. Unfortunately, in the past the legislator was not always careful with this terminology, which led to confusion in jurisprudence and case law¹⁰⁵. After a comprehensive overview of his theory, Sainctelette applied it to a number of contracts, such as the contract of transport of goods, the contract of transport of passengers and, important for this story, the labor contract. If a worker became victim to an industrial accident, the employer had a contractual obligation to pay the damages ('guarantee'), unless he could prove that he had done everything to prevent the accident from happening. This shift in the burden of proof was of course beneficial to the workers.

Underlying his theory was a modern view of the labor contract. Sainctelette did not start from the traditional juridical view on labor, which dictated that the labor contract was nothing more than an exchange of labor and money without any further obligations for either party. He began with

¹⁰⁰ About Sainctelette: E. Discailles, *Sainctelette (Charles-Xavier)*, Biographie Nationale, XXI (1911-13), p. 51-86.

¹⁰¹ It is impossible to discuss his theory here in detail. I will only try to give the most essential information. For an extensive overview of his study, I refer to my forthcoming article 'Charles-Xavier Sainctelette and the birth of modern labor contract in Belgium'

¹⁰² In his 1883 article in the *Belgique Judiciaire*, Sainctelette summarized it as follows: 'La garantie naît du contrat; la responsabilité de la loi d'ordre public'. C. Sainctelette, *Droit commercial. Du contrat de transport. Transport des choses. Obligations du voiturier. Difficultés principales*, La Belgique Judiciaire, 41 (1883), p. 386.

¹⁰³ The function of this 'obligation of guarantee' was to oblige the contract parties to respect the contract. When the contract was not executed properly, the deficient contract party had to pay for the damages, based on the contractual element of 'guarantee'.

¹⁰⁴ For Sainctelette, there was a fundamental difference between the two categories: in the first, there was consensus between the parties, while in the latter, there was no agreement whatsoever.

¹⁰⁵ 'De la loi, la confusion a passé dans la jurisprudence et dans la littérature.' C. Sainctelette, *De la responsabilité et de la garantie (accidents de transport et de travail)*, Brussels 1884, p. 10.

the modern labor contract, which also included the authority relationship. In the modern world, with its giant factories, steam driven machinery and complex railroad system, it was an illusion to think that the worker was not subordinated to the authority of his employer. In this labor relationship, the machine dictated the pace. Labor was divided and every worker had his specific task to fulfill. 'The worker had become a soldier, what do I say, almost an automate', Sainctelette claimed¹⁰⁶. Sainctelette's analysis was not surprising if one takes into consideration that he was a practicing lawyer with a good understanding of modern labor. It was, however, the opposite of contemporary legal thinking. Not surprisingly, Sainctelette criticized the lawyers, with their theoretical, outdated and conservative interpretation of labor relations, and especially the exegetic school, which he called 'la fâcheuse école du texte'¹⁰⁷. The 'exegists' started from statutes as the primary source of law and they limited themselves to writing comprehensive commentaries on the Napoleonic codes, especially the civil code. In fact, Sainctelette was an early example of the so-called 'École de la libre recherche scientifique', with François Géný as its most important exponent¹⁰⁸.

The new theory of Sainctelette had limited success in some lower courts¹⁰⁹. In 1886, the Cassation court had to take it into consideration in the industrial accident case of Jules Masy¹¹⁰. On 13 November 1883, train conductor Masy, controlling tickets on the train from Manage to Mons, fell off the moving train and died. His relatives started a procedure against the Belgian state and claimed that the state had a contractual obligation to guarantee the safety of its employees during their duty. On 3 May 1884, the civil tribunal of Brussels rejected the claim because such an obligation was not mentioned in the civil code. On 7 August 1884, the Court of Appeal of Brussels confirmed the judgment. After this rejection, the relatives of Masy went to the Cassation court. Attorney-general Mestdach de ter Kiele claimed in his requisitory that they were first and foremost searching for a ruling principle regarding the new theory of Sainctelette¹¹¹. The Cour de Cassation ruled that the obligation of 'guarantee' was not an essential element of the labor contract, since the civil code was mute on the subject. If the relatives of Masy wanted to receive compensation from the Belgian state, they had to prove that the state made a mistake, according to the rules of extra-contractual liability law. In other words, Sainctelette's theory was rejected.

¹⁰⁶ C. Sainctelette, *De la responsabilité* (supra, n. 104), p. 122.

¹⁰⁷ B. Bouckaert, *De exegetische school: een kritische studie van de rechtsbronnen- en interpretatieleer bij de 19^{de} eeuwse commentatoren van de Code civil*, Antwerp 1981.

¹⁰⁸ François Géný (1861-1959) was a French jurist and professor of law at the university of Nancy (starting from 1901). He introduced the notion of 'free scientific research' into the field of law, hence the name of the school. O. Motte, 'Géný, François', in: M. Stolleis (ed.), *Juristen: ein biographisches Lexikon von der Antike bis zum 20. Jahrhundert*, Munich 2001, p. 236 ; B. Coppein, *Edmond Picard (1836-1924), actor en getuige van een veranderend Belgisch rechtsdenken in Europees perspectief aan het einde van de negentiende eeuw*, Leuven, 2010.

¹⁰⁹ Commercial court Brussels 28 April 1885, *La Belgique Judiciaire*, 43 (1885), p. 571-572; Supreme Court Luxemburg 27 November 1884, *La Belgique Judiciaire*, 43 (1885), p. 1537-1539 ; Commercial court Antwerp 21 September 1885, *La Belgique Judiciaire*, 43 (1885), p. 1556-1557 ; Commercial court Brussels 20 December 1884, *La Belgique Judiciaire*, 43 (1885), p. 8 ; Civil court Namur 24 December 1884, *La Belgique Judiciaire*, 43 (1885), p. 14; Civil court Brussels 25 April 1885, *La Belgique Judiciaire*, 43 (1885), p. 569.

¹¹⁰ Court of Appeal Brussels 7 August 1884, *La Belgique Judiciaire*, 43 (1885), p. 1-6; Cassation 8 January 1886, *La Belgique Judiciaire*, 44 (1886), p. 129-135.

¹¹¹ 'Ce qu'ils veulent, ce qu'ils sollicitent de votre justice, c'est une déclaration de principe, absolue, générale, réglant une fois pour toutes, ce dont la loi s'est discrètement abstenue, les rapports de patron à subordonné, en ce qui concerne l'imputabilité des accidents.'

The 1886 Labor Commission

Nevertheless, Sainctelette had a second chance. The year 1886 was not only the year in which his theory was rejected by the judiciary, it was also a troublesome year in Belgian history: in the spring, the miners in the south of the country embarked upon strike because of the long lasting economic crisis¹¹². This action was smashed down by the army which caused a lot of commotion in parliament and a Labor Commission was installed to study labor conditions¹¹³. In 1887, the industrial accidents were discussed and the parliamentary process of juridification of industrial accidents finally took off.

In anticipation of the discussion in the Labor Commission, two members wrote a report describing the problem of industrial accidents and the solution in some western European countries¹¹⁴. Not by coincidence, Charles-Xavier Sainctelette was one of them. He even added a bill to convert his new theory into law. Surprisingly, during the discussions, his proposal was rejected because the solution offered was incomplete. Even with a shift of burden of proof, workers or their relatives still had to go through court to receive compensation for the damages caused by an industrial accident. This not only meant that the number of industrial accident trials would increase – with more conflicts between employers and employees – but also that not all workers would be helped¹¹⁵. Also, in many cases, the workers or their relatives would have to wait a long time to receive compensation, as the trials often took much time. For these reasons, the assembly favored the solution offered by the second reporter, Charles Dejae, a professor of political economy from the University of Liege. He proposed to introduce a system of insurances. This way, all workers would be helped without having to go to court. This was the solution that was finally adopted in the conclusions of the labor commission¹¹⁶.

Towards the 1903 Industrial Accident Insurance Act

Surprisingly enough, it would take sixteen long years before the Industrial Accident Insurance Act would be voted by the Belgian parliament. There are a number of explanations for this delay. To start with, the Labor Commission only gave recommendations. Moreover, not everybody in the Labor Commission was convinced that insurance was the best system to solve the industrial accident problem. I have already mentioned Sainctelette, but he was not the only skeptic on insurance being the best solution for the industrial accident problem. Eudore Pirmez for example, the president of

¹¹² M. Bruwier (ed.), *1886: La Wallonie née de la grève?*, Brussels 1990.

¹¹³ Royal Decree 15 April 1886, *Moniteur belge* (17 April 1886).

¹¹⁴ England, France, Italy, Switzerland, Austria and Germany.

¹¹⁵ Some workers would not go to court, because they feared their employer or because they did not know that they had that possibility. Other workers would go to court, but lose the trial.

¹¹⁶ Commission du travail, *Comptes rendus des séances plénières*, Brussels 1888, p. 609.

the Labor Commission, also thought industrial accident disputes had to be solved using traditional, although slightly adapted, civil law. That is why the industrial accident problem was referred to the commission for the reform of the civil code¹¹⁷. In 1888, Pirmez developed a new theory, which was very similar to the theory of Sainctelette, but he spoke of a legal obligation of warranty instead of a contractual obligation¹¹⁸. The purpose was the same: to make it easier for the laborers to deliver the necessary proof in court. In the session of the civil code reform commission on 23 March 1889, the industrial accident problem was discussed. The commission decided this matter needed to be solved outside the civil code¹¹⁹. The parliamentary rollercoaster regarding industrial accidents really took off on 17 May 1890 with a proposal from four members of parliament¹²⁰. Three other proposals would follow, whereof the first two would fail and only the third and last one would lead to the 1903 Industrial Accident Insurance Act¹²¹.

The question remains why did it take so long? In the first years after the Labor Commission, the political minds were just not ready to take such a drastic step. The dominant ideology was still liberal. I have already pointed at Sainctelette and Pirmez, who were willing to alter the existing liability rules a little, but they did not want to introduce a generalized system of insurance because their mental framework was still liberal. The same can be said about the first 'social' legislation, which in fact was clearly liberal¹²². In his Ph. D. dissertation about the development of social legislation in Belgium, Jo Deferme explained this development as a gradual evolution from 'atomism' to 'holism' with a slow, but increasing acceptance of state intervention in the individual labor relationships¹²³. During the discussions in the Labor Commission, Sainctelette already stated that the proposal for a general insurance was necessary, but ultimately unrealistic ('utopie')¹²⁴. As an experienced politician, he realized that the Belgian parliament at that moment would never vote in favor of such a radical proposal. Many years later, in 1899, Charles Dejace, his opponent in the Labor Commission, would admit: 'Le problème était trop neuf, il paraissait trop vaste et trop difficile à

¹¹⁷ 15th labor accident recommendation of the Commission du Travail. Commission du travail, *Comptes rendus* (*supra*, n. 116), p. 610.

¹¹⁸ E. Pirmez, *De la responsabilité. Projet de révision des articles 1382 à 1386 du Code civil*, Brussels 1888.

¹¹⁹ J. Legrand, *Le contrat de louage de services et la question des accidents du travail en Belgique et à l'étranger*, Namur 1895, p. 82-83.

¹²⁰ These four members of parliament were Janson, Casse, Hanssens and Houzeau de Lehaie. Parliamentary records Chamber (1889-90), 15 July 1890, p. 41-47. Proposition de loi sur les assurances contre les accidents du travail, Bulletin du comité permanent, 1 (1891), p. 563-587.

¹²¹ The second proposal was the Proposal van Berchem dd. 13 August 1891. This proposal linked the industrial accidents to the reform of the labor contract. *Projet de loi sur le louage de services des ouvriers et des domestiques*, Bulletin du comité permanent, 1 (1891), p. 588-608; The third proposal, of 26 April 1898, originated from Minister of Labor Nyssens. Parliamentary records Chamber (1897-98), 26 April 1898, p. 1248. *Projet de loi sur la réparation des dommages résultant des accidents du travail*, Bulletin du comité permanent, 8 (1898), p. 157-176; The fourth and final proposal was the proposal Surmont de Volsberghe and de Smet de Naeyer de dato 12 March 1901. Parliamentary records Chamber (1900-01), 12 March 1901, p. 717; *Projet de loi sur la réparation des dommages résultant des accidents du travail*, Bulletin du comité permanent, 11 (1901), p. 1-22.

¹²² J.-P. Nandrin, *La genèse du droit du travail en Belgique. Plaidoyer pour la chronologie*, in: S. Dauchy, J. Monballyu and A. Wijffels (ed.), *Auctoritates Xenia R.C. Van Caenegem oblata*, Brussels 1997, p. 256-288; J.-P. Nandrin, *La laborieuse genèse du droit social belge: une utopie récupérée?*, in: G. Kurgan-Van Hentenryk (ed.), *La question sociale en Belgique et au Canada XIXe-XXe siècle*, Brussels 1988, p. 123-138.

¹²³ J. Deferme, *Uit de ketens van de vrijheid. Het debat over de sociale politiek in België. 1886-1914*, Leuven 2007.

¹²⁴ Commission du travail, *Comptes rendus* (*supra*, n. 116), p. 212-213.

résoudre pour occuper utilement l'activité d'un parlement qui faisait ses premiers pas dans la voie de la législation sociale¹²⁵.

In the testimony of Dejae, one can read that its complexity was a second explanation why it took so long to introduce a general system of industrial accident compensation through insurance. At first sight, it looks simple: just introduce a general system of insurance and the problem is solved. A closer look, however, reveals a great number of discussion points, some of them small, others fundamental. It would take us too long to discuss them all in detail, but a number of examples can illustrate my point. Deciding which laborers were to be included in the new system necessitated a difficult delimitation of the concept 'laborer', through a definition of the labor contract. Not by coincidence, the second parliamentary proposal discussed both the labor contract and industrial accident insurance¹²⁶. Finally, the discussion regarding the labor contract would be solved with two acts from 1896 and 1900¹²⁷. Another point of discussion was which industrial 'accidents' were to be compensated. Between the systems of fault liability and objective liability, there was a whole spectrum with possible nuances. After all, the concept of professional risk ('risque professionnel') could have been interpreted broadly or narrowly¹²⁸. One specific discussion point was if gross negligence ('faute lourde') had to be covered. In 1897, this specific question was even submitted to the international conference of industrial accidents in Brussels for discussion by the international assembly¹²⁹. Other discussion points that had to be solved concerned the procedure (which tribunal is competent to solve this matter?), the amount of the damages awarded, the organization of the system (by the state or by private actors?), etc. Not surprisingly, over 200 amendments were submitted and it took parliament over a month to discuss all aspects of the new legislation until it was finally voted on Christmas Eve 1903, which was an early Christmas present for the Belgian victims of industrial accidents¹³⁰.

'Bürokratisierung'¹³¹

During the long parliamentary process that would result in the 1903 Act, the world outside the parliament changed. Half a century after the recommendations of Mareska and Heyman, in 1894,

¹²⁵ Bulletin du comité permanent, 9 (1899), p. 50.

¹²⁶ Proposal van Berchem dd. 13 August 1891. Projet de loi sur le louage de services des ouvriers et des domestiques, Bulletin du comité permanent, 1 (1891), p. 588-608 ;

¹²⁷ Act 15 June 1896 'sur les règlements d'atelier', Moniteur belge (25 June 1896), Pasinomie, IV, 31 (1896), p. 184-203 and Act 10 March 1900 'sur le contrat de travail', Moniteur belge (14 March 1900), Pasinomie, IV, 35 (1900), p. 76-130.

¹²⁸ Hesse gives a statistical and juridical interpretations of the concept 'professional risk'. P.J. Hesse, *Les accidents du travail et l'idée de responsabilité civile au XIXe siècle*, Histoire des accidents du travail, 10 (1979), p. 34-35.

¹²⁹ M. Demeur, *Le projet de loi sur les accidents du travail. La faute grave, la faute inexcusable et le risque professionnel*, Revue des accidents du travail, 6 (1903), p. 12.

¹³⁰ Act 24 December 1903 'sur la réparation des dommages résultant des accidents du travail', Moniteur belge (28-29 December 1903), Pasinomie, IV, 38 (1903), p. 286-324.

¹³¹ Other aspects of this process of 'Bürokratisierung' are discussed in my forthcoming article 'The hidden Interventionsstaat. The long genesis of labor inspection in Belgium'.

labor regulation and inspection finally saw the light. This event can be contextualized in the larger process of juridification of the administration ('Bürokratisierung'). I already discussed the decisive role of the different specialized administrations in the juridification of mining, railroad and steam engine disasters and the failed efforts of the ministers of the interior to expand inspection and regulation for certain categories of dangerous, unhealthy or polluting factories. The 1886 Labor Commission would here too turn out to be a catalyst, in two ways.

Firstly, the recommendations of the Labor Commission resulted in a number of acts promulgating protective measures for the laborers, such as wage protection¹³² and woman and child labor regulation through minimal age rules, limited working hours and a prohibition of night labor¹³³. In order to be able to enforce this regulation, the legislator foresaw in measures to appoint officials to monitor the work floor¹³⁴. These officials were appointed in 1891¹³⁵ and had free access to the factories, could ask for the 'livret' (a kind of workers' passport) and report any violations on the regulation¹³⁶.

Secondly, the findings of the 1886 Labor Commission also led to a next step in the regulation of the dangerous, unhealthy or polluting factories. On 27 December 1886 a new Royal Decree adjusted the one of 29 January 1863¹³⁷. An industrialist who wanted to build a new polluting factory had to report which measures he would take to limit the dangers for his laborers. In 1887 a new categorization was introduced with a special category for factories whose laborers were subjected to increased dangers¹³⁸. These factories were subjected to more severe regulations and supervision. The most important step however, was taken in 1888, when a new act regulated the inspection of dangerous, unhealthy or polluting factories¹³⁹. The inspectors had free access to the factories and

¹³² Act 16 August 1887 'relative à l'incessibilité et à l'insaisissabilité des salaires des ouvriers', *Moniteur belge* (21 October 1887), *Pasinomie*, IV, 22 (1887), p. 375-377; Royal decree 5 December 1887 'd'exécution de la loi du 16 août 1887, portant réglementation du paiement des salaires aux ouvriers', *Moniteur belge* (16 December 1887), *Pasinomie*, IV, 22 (1887), p. 531.

¹³³ Act 13 December 1889 'concernant le travail des femmes, des adolescents et des enfants dans les établissements industriels', *Moniteur belge* (22 December 1889), *Pasinomie*, IV, 24 (1889), p. 596-599.

¹³⁴ Article 12 Act 13 December 1889.

¹³⁵ Royal decree 6 November 1891 'relatif à la désignation des fonctionnaires spécialement chargés de surveiller l'exécution de la loi du 13 décembre 1889 concernant le travail des femmes, des adolescents et des enfants dans les établissements industriels', *Moniteur belge* (8 November 1891), *Pasinomie*, IV, 26 (1891), p. 425-427.

¹³⁶ Article 13 Act 13 December 1889

¹³⁷ Royal decree 27 December 1886 'modifiant et complétant par des dispositions nouvelles l'arrêté royal du 29 janvier 1863, concernant la police des établissements dangereux, insalubres ou incommodes', *Moniteur belge* (28 December 1886), *Pasinomie*, IV, 21 (1886), p. 581-583.

¹³⁸ Royal decree 31 May 1887 'modifiant les articles 2 à 7 de l'arrêté royal du 29 janvier 1863, relativement aux demandes en autorisation concernant certains établissements dangereux, insalubres ou incommodes', *Moniteur belge* (15 June 1887), *Pasinomie*, IV, 22 (1887), p. 166-167.

¹³⁹ Act 5 May 1888 'relative à l'inspection des établissements dangereux, insalubres ou incommodes, et à la surveillance des machines et chaudières à vapeur', *Moniteur belge* (13 May 1888), *Pasinomie*, IV, 23 (1888), p. 101-115.

they had to draw reports of specific infractions¹⁴⁰. In reality however, the officials did not have the man power to begin inspecting¹⁴¹.

Despite all these new regulatory efforts, the general inspection of the world of labor remained nonexistent. This changed on 21 September 1894, when a number of important Royal Decrees were promulgated. For the first time, specific labor inspectors were appointed to inspect the factories to see whether they complied with the different labor regulations¹⁴². Moreover, a regulation was issued to ensure the hygiene of the work place and to protect the laborers against industrial accidents¹⁴³. Interestingly enough, many of these regulations were just copied from earlier examples in the admission procedure¹⁴⁴. This time, however, they had a generally binding character, not only for newly established factories, but also for existing ones.

If one puts these evolutions into the larger picture, one could define them as a further colonization of the world of industry by the state ('Bürokratisierung'). During most of the nineteenth century, this state intrusion was limited to dangerous, capital intensive sectors such as mines and railroads. Efforts to push forward in other sectors were effectively blocked by the industrialists. By the end of the century, the government finally succeeded in imposing regulation and inspection, by combining the tools it received through the early social legislation (a result of an early 'Parlementarisierung') with the already existing regulation in the dangerous, unhealthy or polluting factories (earlier 'Bürokratisierung').

The 1894 regulation started a new era. For the first time in Belgian history, specialized labor inspectors started visiting the collective of classified factories. They registered many kinds of industrial accidents and wrote extensive reports, which allowed the competent minister in Brussels to understand the problem. This began a very dynamic period, resulting in new, improved regulation and the publication of many statistics¹⁴⁵.

¹⁴⁰ Article 1 Act 5 May 1888.

¹⁴¹ On 10 July 1889 a new royal decree was promulgated to solve this problem, but without any result. Royal decree 10 July 1889 'organisant la surveillance et instituant un comité technique pour les établissements dangereux, insalubres ou incommodes', *Moniteur belge* (14 July 1889), *Pasinomie*, IV, 24 (1889), p. 306-307.

¹⁴² Royal decree 21 September 1894 'portant réorganisation de l'inspection du travail et du service du surveillance des établissements dangereux, insalubres ou incommodes', *Moniteur belge* (28 September 1894), *Pasinomie*, IV, 29 (1894), p. 544-547.

¹⁴³ Royal decree 21 September 1894 'règlement relatif à la salubrité des ateliers et la protection des ouvriers', *Moniteur belge* (28 September 1894), *Pasinomie*, IV, 29 (1894), p. 547-549.

¹⁴⁴ For example: the employers had to prevent the workers from coming in direct contact with moving parts of the machinery: moving parts had to be shielded (art. 10), the machines had to be installed in such a way that the workers did not have to pass nearby (art. 11), machinery needed to have an emergency break (art. 12), etc.

¹⁴⁵ The reports of the labor inspection were being published from 1894 on in the 'Bulletin special de l'inspection du travail'; from 1895 on called 'Rapports annuels de l'inspection du travail'. On 12 November 1894 an 'Office du travail' was founded. This new instance had to process all the figures delivered by the labor inspectors and to make statistics. It was also responsible for a number of publications such as the 'Arbeidsblad' (°1895) and the 'Annuaire de la législation du travail' (°1897). In 1895, a new ministry of labor was founded.

Despite the progress, two problems remained. The industrialists continued to fight fiercely against the state intrusion, which irritated them. They argued that the new regulation did not have a solid legal base: it was only issued by the administration which – according to them – did not have the competence to do so. Another problem was the often arbitrary line between classified and non-classified factories. In a number of cases it was not clear whether a company fell under the classified regulation or not. Also, the labor inspectors soon noticed that the classified, often larger factories actually did a good job in putting the new rules into practice. The worst labor conditions could be found in the smaller factories, which were in most cases not covered by the regulation of the dangerous, unhealthy or polluting factories.

In order to deal with these two problems, on 23 November 1898, minister of labor Nyssens laid down a new proposal in parliament. It resulted in the Act of 2 July 1899, which expanded the existing safety regulation on the non-classified factories¹⁴⁶. Interesting enough, the proposal did not meet any opposition in the parliament. As I have shown above, the mentality of the members of parliament changed. Moreover, this expansion was a logical next step in the ongoing colonization of the world of labor¹⁴⁷.

‘Justizialisierung’

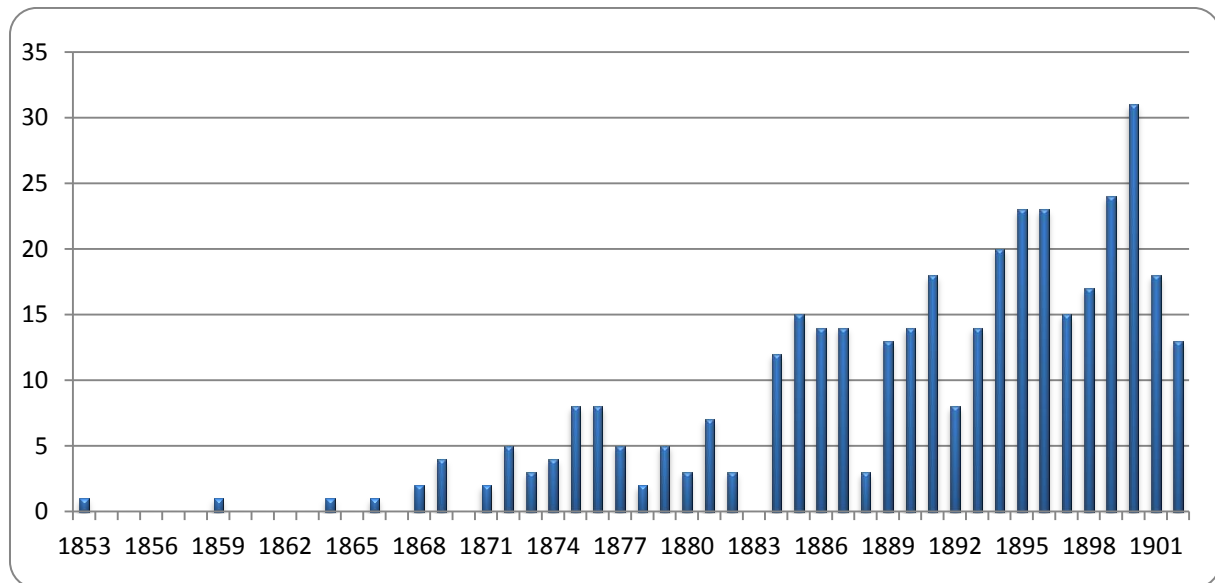
At the end of the nineteenth century, juridification of industrial accidents could not only be detected in the parliament and administrations, but also (still) in the case law. To illustrate this, I refer to the graph below, on which the number of industrial accident cases published in two important reviews, *Pasicrisie* and *La Belgique Judiciaire*, is represented¹⁴⁸. After a few isolated cases in the 1850’s, 1860’s, and 1870’s one sees the number of industrial accident trials following mining, railroad or steam engine disasters, as discussed above. A second peak is situated in the middle of the 1880’s, which can be explained by the reaction to Sainctelette’s new theory in case law. In the 1890’s every year a substantial number of judgments involving industrial accidents were published. The explanation for this considerable number is simple: more and more laborers or their relatives started a judicial procedure to receive compensation for the damage they suffered as a result of an industrial

¹⁴⁶ Act 2 July 1899 ‘concernant la sécurité et la santé des ouvriers employés dans les entreprises industrielles et commerciales’, *Moniteur belge* (12 July 1899), *Pasinomie*, IV, 34 (1899), p. 175-178.

¹⁴⁷ Although it would take more than 6 years before the first royal decrees based upon this Act would be promulgated. J.-M. Degreve, A. Van Der Sypt, G. Lamont, G. Van Den Bossche, F. Van Quatem et al., *Honderd jaar sociaal recht in België. De arbeidshygiëne en –geneeskunde*, *Arbeidsblad*, 88 (1987), p. 889-890 and R. Nuyts, *Honderd jaar sociaal recht in België. De arbeidsveiligheid en het arbeidsmilieu*, *Arbeidsblad*, 88 (1987), p. 1101-1102.

¹⁴⁸ I have selected all cases involving industrial accidents, even if this was not categorized this way by the contemporaries. For a list of these cases: B. Debaenst, *Een proces van bloed, zweet en tranen. Juridisering van arbeidsongevallen in de negentiende eeuw in België*, Ghent 2010, p. 425-432 (Doctoral Thesis).

accident. The majority of these cases were extra-contractual liability cases; in a limited number of cases, the discussion involved industrial accident insurance contracts¹⁴⁹.



The rejection of Sainctelette's new theory did not mean the end of industrial accident procedures in Belgium, on the contrary. The rising number of industrial accident cases showed the necessity to find a structural solution for the many victims of such an event, who all too often failed to receive compensation. It also increased the pressure on the employers to find a satisfactory solution. After all, when condemned by a tribunal or court, the expenses could be costly. Even in the many cases the employer won, he lost a lot of money due to the lawyer and procedural costs. The 1903 Act offered them many advantages from this perspective: the industrial accident cases ceased to exist, because of the so-called immunity the 1903 Act gave them¹⁵⁰. Also, the industrial accident cost could be precisely calculated, as this was the cost of the premium.

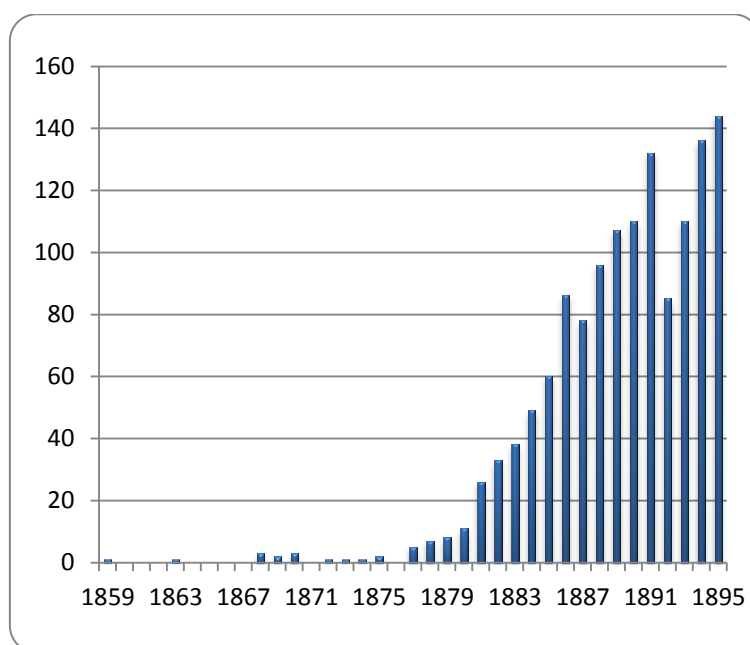
The most important consequence of the rising number of industrial accident cases in the years preceding the 1903 Industrial Accident Act, however, was the development of a new branch of extra-contractual liability law, which was reflected in the jurisprudence. To start with, many cases were being published in various juridical reviews, as the graph above shows. In 1898, a specialized review, the 'Revue des question de droit industriel', from 1903 on called the 'Revue des accidents du travail et des questions de droit industriel' even saw the future. In this review, case law and articles regarding aspects of industrial accident discussions were being published. As shown above, the first

¹⁴⁹ In all of these extra-contractual liability cases, the legal framework still was that of the fault. The non-fault liability concept – as originated in Germany – would only break through in Belgium with the 1903 Industrial Accident Insurance Act.

¹⁵⁰ Of course, there would still be judicial procedures involving industrial accidents based upon the 1903 Act. The competent judge here was the justice of the peace.

industrial accident cases also inspired lawyers such as Saintelette and Pirmez to develop new theories. Of course the jurisprudence did not limit itself to reproducing case law: it also discussed the parliamentary evolutions and the developments abroad. After all, at the end of the nineteenth century, industrial accidents were an international phenomenon, as the international conferences illustrate. Again, a graph can illustrate this development of the jurisprudence.

In 1895, Léon Losseau published a bibliography of published industrial accident compensation jurisprudence. Originally, this bibliography was intended as an appendix of a industrial accident study, but due to its large size, Losseau decided to publish it separately. The bibliography only contained jurisprudence regarding the compensation of industrial accidents and was published only in French. Case law was not included, as this was already the topic of other repertoires. Despite these limitations, his bibliography was gigantic, with no less than 1357 topics.



The graph shows a clear and continuous increase of the number of doctrinal contributions, really taking off from the mid 1870's and especially 1880's. It reflects the boom of industrial accident contributions in the jurisprudence.

In conclusion

In this article, I have sketched the complex process of juridification of industrial accidents in nineteenth century Belgium. My research model helped to distinguish between different forms of juridification. These semi-autonomous social fields of juridification have on the one hand an

autonomous evolution and on the other a continuous, increasing mutual interference. Both the study of the autonomous evolutions and the mutual influences are necessary to fully grasp what happened. Underlying are a number of sub-processes of juridification that will have to be studied more thoroughly in the future. The influence of 'Bürokratisierung' upon 'Justizialisierung' for example can explain why some specific accidents were brought before the courts earlier than others. From an international perspective, a comparison of the processes of juridification can shed new light upon the diverging evolutions of industrial accidents in the various European countries. Moreover, the general principles of juridification can be applied upon many other evolutions in legal history.

Summary:

A study on juridification. The case of industrial accidents in nineteenth century Belgium.

Juridification is a complex and ambiguous concept, which legal history can help to understand. In the article, the transitions regarding industrial accidents in nineteenth century Belgium are discussed as processes of juridification. It shows the necessity to distinguish between several semi-autonomous social fields of juridification (administration, parliament, justice), each of which is characterized by autonomous evolutions and mutual interferences.

Keywords: juridification, accidents, labor law, liability law, Belgium, nineteenth century