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Legal history in Belgium

Dirk Heirbaut

This article deals with the situation of legal history in Belgium. However, it is neither a survey of the research done by Belgian legal historians nor a bibliography of Belgian legal history. For that, the reader can be referred to John Gilissen's 1971 bibliography¹ and later articles about legal history in the Low Countries by Paul Nève² and Laurens Winkel³ in the *Zeitschrift für neuere Rechtsgeschichte* and most of all Xavier Rousseaux's *Crime, justice et droit*,⁴ of which a new and expanded version is forthcoming. Therefore, footnotes with bibliographical references will be kept to a minimum in this text. Needless to say, the following cannot be a perfect account of the situation of legal history in Belgium, but only a short introduction to the teaching of legal history and its general structures in Belgium. A final introductory remark is that this article will not deal with the study of Roman law in Antiquity, even though the teaching of Roman law at the universities will be mentioned.

1. The historical determinants

The study of legal history in Belgium is, as one might expect, to a large extent determined by its history.⁵ The country itself may be a fairly recent creation, but its roots go back to the Middle Ages. After the fall of the Roman Empire there was little to indicate that once Belgium would come into existence. The territories which were later to become Belgium

The author would like to thank Prof. G. Martyn, B. Debaenst, B. Vandael and B. Quintelier for their remarks.

¹ J. Gilissen. *Belgique et Nord de la France* (Introduction bibliographique à l'histoire du droit et à l'ethnologie juridique, C/3). Brussels. 1971. Less known is the more extensive J.

Gilissen e.a.. *Bibliographie de l'histoire du droit des provinces belges*, a 1986 photocopy of

Gilissen's files (up to 1965) in 2 volumes.

² P. Nève. « Niederländische und Belgische rechtshistorische Literatur », *Zeitschrift für neuere Rechtsgeschichte*, 1984, 153-162.

³ L. Winkel. « Niederländische und Belgische rechtshistorische Literatur 1980-2002 », *Zeitschrift für neuere Rechtsgeschichte*, 2004, 84-101.

⁴ X. Rousseaux. « Crime, justice et droit : quelques réflexions sur l'historiographie récente en Belgique », *Bilans critiques et historiographiques en histoire contemporaine*,

Cahiers du Centre de Recherches en Histoire du Droit et des Institutions, 23-24, 2005, 47-154 (from the French Revolution until the present day). See also X. Rousseaux. « Crimes, pouvoirs et sociétés (1400-1800). Anciens Pays-Bas et principauté de Liège », in : M.-S. Dupont-Bouchat and X. Rousseaux. *Crimes, pouvoirs et sociétés (1400-1800). Anciens Pays-Bas et principauté de Liège* (Anciens pays et assemblées d'états, 104), Heule, 2001, 15-82 (more focused on criminal law).

For the legal history of Belgium, see more in detail D. Heirbaut. « The Belgian legal tradition: does it exist? », in: H. Bocken and W. De Bondt. *Introduction to Belgian law*. Mechelen. 2001, 1-22; D. Heirbaut. « L'émancipation tardive d'une pupille de la nation française. L'histoire du droit belge aux 19ème et 20ème siècles », in : A. Wijffels. *Le Code civil entre ius commune et droit civil européen*. Brussels. 2005, 611-642; D. Heirbaut and M.E. Storme. « The Belgian legal tradition: from a long quest for legal independence to a longing for independence », *European Review of Private Law*, 2006, 645-683.

were part of the Merovingian and Carolingian kingdoms and can even be said to have formed their heartland. The break-up of the Carolingian empire led to the birth of the kingdom of France and the Empire, the border between them being the river Scheldt. In reality, a group of principalities came into being with the main difference being that Flanders, which was largely a French fief, acquired its autonomy at an earlier time than the others. This resulted in many legal and institutional changes going south and east, the forerunner Flanders being imitated by its neighbours. The proximity of Flanders to Paris and the growing power of the Capetian dynasty in the Late Middle Ages, would almost inevitably have led to an integration of Flanders in the kingdom of France and further annexations, if not for the marriage of a French prince, Philip the Bold, duke of Burgundy, to the heiress of Flanders in 1369. Their successors, the dukes of Burgundy and the Habsburgs gradually acquired almost all of the principalities of the Low Countries (except for the ecclesiastical principalities of Liège and Stavelot-Malmédy and the duchy of Bouillon), so that unification was accomplished in the first half of the sixteenth century. In the 1529 peace of Cambrai France renounced to its suzerainty over Flanders (and also over Artois, a county carved out of Flanders in 1191) and

the 1548 transaction of Augsburg ensured that the Empire's power became devoid of any real importance. The newfound unity did not last long, as in the second half of the sixteenth century the revolt against Spain led to a split, the North becoming independent, the South remaining in Habsburg hands, though there was a failed attempt at making of the Southern Netherlands an independent state. The North came to be known as 'the Netherlands' and the South as 'Belgium', but originally both meant Low Countries. The Southern Netherlands moved from the Spanish to the Austrian Habsburgs in the early eighteenth century, but by then Louis XIV had already conquered Artois and parts of other principalities, bordering France.

Political unification was never followed by legal unification. The Southern Netherlands were, as *pays de droit coutumier*, a patchwork of hundreds of customary legal systems⁶ and even under the Burgundians and the Habsburgs there was not much national legislation. This state of affairs was radically changed by the French Revolution, which led to the annexation of the Southern Netherlands and the introduction of French revolutionary law in 1795, followed later by the Napoleonic codifications. Although the Southern and the Northern Netherlands were reunited from 1815 until 1830, the independent Belgium which came into existence in 1830 was most of all a product of the French era. In fact, Belgian law for a long time was dominated by France, the country, for this, being more of a French province than an independent state. This changed from the second half of the nineteenth century due to a rapid and early industrialisation and, most of all, the Flemish movement, which challenged the dominance of the French language in Belgium. In the end, this has led to a series of constitutional reforms from 1970 on and a very original type of federalism.

Three communities (Dutch speaking, French speaking and German speaking) are competent for educational and cultural matters and three regions (Flanders, Wallonia and Brussels) are competent for economic matters. Moreover, there is growing gap between Dutch and French speaking lawyers, so that the waning of French influence has not led to the creation of a

'Belgian' law, but rather to two opposing legal mentalities in both parts of the country, which are also influenced by other factors, like the growing Europeanization. In short, there never really was such a thing as Belgian law, because before the coming of the French, local and regional law dominated and thereafter French law, which now gives way to two budding regional cultures of law.

⁶ However, Ph. Godding. *Le droit privé dans les Pays-Bas méridionaux du 12^e au 18^e siècle*. Brussels. 1987, manages to deal with them all in a masterful way.

2. Cooperation with French and Dutch legal historians

Given that a truly national law is largely absent in Belgium, the study of legal history is hardly a national affair. First of all, it is self-evident that any Belgian legal historian first

looks towards France because the abolition of the local legal systems and their replacement by

French law in 1795⁷ means that, in many ways, French legal history is more relevant for

today's Belgian law than the old 'national' legal history. Hence, there are Belgian legal

historians working in France (Serge Dauchy, Robert Jacob, Alain Wijffels) or working closely

with French colleagues (Xavier Rousseaux, Fred Stevens, Laurent Waelkens and so on) and

Belgian works may reflect the importance of France. For example, in Raoul Van Caenegem's

famous handbook of the history of private law,⁸ the watershed is the Napoleonic codifications,

which have been commemorated almost as much in Belgium as in France.⁹ In fact, in 2004

Belgians could rightly claim to have been more faithful to the originals than their French

neighbours. However, the attention for French legal history is not directed towards the whole

country, but most of all to the North. For example, John Gilissen's bibliography was one of

Belgique et le Nord de la France and, next to the 'big' *Société d'histoire du droit*, Belgian

legal historians also cherish the 'small' *Société d'histoire du droit et des institutions des pays*

flamands, picards et wallons, which brings together Northern French, Belgian and Dutch legal

historians. Up to now, language played less of a role in the ties with France, which used to be

just as strong in the Dutch speaking as in the French speaking part, but it looks as if in the

future Flemish legal historians, like Flemish historians and Flemish lawyers, will gradually

give France a lesser place in their hearts.

In fact, for many legal historians in Dutch speaking Belgium the natural companions have become their Dutch colleagues, which is also justified by the earlier unifications with the Netherlands. Once again, there are Belgians working in the Netherlands, like Randall Lesaffer, Chris Coppens, Paul Van Peteghem, the omnipresent Alain Wijffels and also some younger researchers. Reviews, conferences and societies of legal history are in many cases Belgo-Dutch. However, in reality, Belgium in these cases means Dutch speaking Belgium, i.e. Flanders, even though efforts are sometimes made to ensure that French speaking Belgians take part, the latest of these being that, in an unprecedented move, the Flemish legal historians in 2007 invited their Louvain-la-Neuve colleagues to organise the next Belgo-Dutch legal history conference. The nineteenth of these conferences will thus be unique in that for the first time a French speaking Belgian university will be its host. Needless to say, Belgian legal historians are also in contact with other countries. Bestknown in this regard, is Raoul Van Caenegem, whose handbooks have been translated in several languages, and who is, even by the English, considered to be one of the foremost

⁷ F. Stevens. « L'introduction de la législation révolutionnaire en Belgique », in: *La Révolution et l'ordre juridique privé. Rationalité ou scandale*. Paris. 1988, II, 485-493.

⁸ R.C. Van Caenegem. *An historical introduction to private law*. Cambridge. 1992.

⁹ E.g. for the Code civil : R. Beauthier and I. Rorive (ed.). *Le code Napoléon, un ancêtre vénéré?*. Brussels. 2004; A. Wijffels (ed.). *Le Code civil entre ius commune et droit privé européen*. Brussels. 2005; D. Heirbaut and G. Martyn (ed.). *Un héritage Napoléonien. Bicentenaire du Code civil en Belgique*. Mechelen. 2005; D. Heirbaut and G. Baeteman (ed.). *Edition cumulative du Code civil. Le texte actuel et l'édition originale avec toutes les modifications en Belgique de 1804 jusqu'à 2004. Edition commémorative à l'occasion du bicentenaire du Code civil en Belgique et du 40ème anniversaire de la revue 'Tijdschrift voor Privaatrecht'*. Ghent. 2004; P. Wéry (ed.). *Le droit des obligations contractuelles et le bicentenaire du Code civil*. Brussels. 2004; *Bicentenaire du Code civil, Numéro spécial, Journal des Tribunaux*, 2004, 225-347.

experts of the early common law, but there are others like, once again Alain Wijffels, or, for example, Jacques Vander Linden now working in Canada, or the late François-Louis Ganshof, John Gilissen or René Dekkers. Gilissen and Dekkers have both written universal legal

histories¹⁰ and Gilissen went even beyond that with his *Bibliographical introduction to legal history and ethnology*, a huge series of bibliographies of the legal history of the world's countries and the volumes of the *Société Jean Bodin pour l'histoire comparative des institutions*, in which certain topics of legal history, ranging from the legal status of women to the great empires, were studied from a universal point of view. It is remarkable that all these international contacts are present in a country in which the *ius commune*, the common law of Europe, was less influential and in which legal historians tend to study most of all their own local law. In this case, the international contacts are less the product of history than of the openness of today's Belgian society for international influences. No survey of the contacts of Belgian legal historians with their colleagues could be complete without a reference to the Max Planck Institute for European Legal History in Frankfurt. Ernst Holthöfer worked there about French, Belgian, Dutch and Luxembourg legal history, but anyone reading his work very soon becomes aware of the fact that Holthöfer loved Belgium the most. When he published his major studies in the 1980's and early 1990's, he largely surpassed anything written by Belgians about their nineteenth century private law and its sources.¹¹ Moreover, Holthöfer was also in charge of buying law books for the Frankfurt Institute, so that its library is still a treasure trove for a researcher of nineteenth century Belgian law.¹²

3. The teaching of legal history in Belgium

Although ultimately this article is about the structures of legal history in Belgium, it is best to turn first to the teaching of legal history.¹³ The sad reality is that funding for legal history is scarce and that at universities the research is a by-product of teaching. The legal historian himself may prefer to do research, but to get a tenured position one has to teach.

¹⁰ J. Gilissen. *Introduction historique au droit*. Brussels. 1979; R. Dekkers. *Le droit privé*

des peuples : caractères, destinées, dominantes. Brussels. 1953.

¹¹ E. Holthöfer. « Kodifikation und Gesetzgebund des allgemeinen Privatrechts. Belgien », in : H. Coing (ed.). *Handbuch der Quellen und Literatur der neueren Europäischen Privatrechtsgeschichte*, III/1. Munich. 1982, 1069-1165; E. Holthöfer, « Handels- und Gesellschaftsrecht. Belgien », in : H. Coing (ed.). *Handbuch der Quellen und Literatur der neueren Europäischen Privatrechtsgeschichte*, III/3. Munich. 1986, 3277-3395;

E. Holthöfer. « Belgien », in : P. Ranieri, *Gedruckte Quellen der Rechtsprechung in Europa (1800-1945)*. Frankfurt. 1992, 3-94; E. Holthöfer. *Beiträge zur Justizgeschichte der Niederlande, Belgiens und Luxemburgs im 19. und 20. Jahrhundert*. Frankfurt. 1993.
12 This library is also interesting because it contains many pirated editions of French works printed in Belgium, which may be different from the original (for a list of these *contrefaçons*, see C. Verbeke. *Belgian law. An annotated bibliographic guide to reference materials, 1803-1993*. Brussels. 1994, 115-135).

13 There is not much about this topic, apart from P. De Win. « Het onderwijs in de rechtsgeschiedenis aan de Belgische universiteiten », in : D. Lambrecht. *Lopend rechtshistorisch onderzoek. Handelingen van het tiende Belgisch-Nederlands rechtshistorisch colloquium* (Iuris Scripta, 3). Brussels. 1990. Fortunately, I have had help from the following

colleagues whom I would like to thank for their information: R. Beauthier, B. Delbecke, J.F

Gerkens, M. Magits, J.P. Nandrin, X. Rousseaux, C.H. Van Rhee, T. Wallinga and A. Wijffels.

Thus, the stronger the position of legal history in the curriculum the more it will be studied,

although there are exceptions, the most hopeful one being the *Centre d'histoire du droit et de*

la justice of Xavier Rousseaux in Louvain-la-Neuve (see below).

Like anywhere else, in Belgium the story of teaching legal history is one of decline. First of all, in the history departments institutional and legal history is seen as being oldfashioned.

In an older generation, lawyers with historical interest or training, like François-Louis Ganshof or Egied Strubbe, also taught institutional history, but nowadays even historians with this specialisation are becoming scarce. Even in the law faculties legal historians are becoming an endangered species. Hasselt University's program of law studies

presents a bleak view of the future. Many good law faculties already being present, only

political interference can explain why Hasselt University has been allowed to set up a new

law school which will start teaching in the academic year 2008-2009. In the information for

prospective students legal historians will look in vain for the term legal history.

Nevertheless,

Maastricht University's Remco Van Rhee will be allowed to teach a very condensed summary

(eight hours in total) of his course in the Netherlands. Fortunately, the Hasselt Law School

will be very small, but it may set a dangerous precedent for the future.

At the other law schools, the position of legal history is less than it used to be, but it is still relatively strong, the challenge being to defend this position in the future.

Originally,

Roman law dominated, a consequence of the fact that in earlier times almost the only law to

be taught was Roman law. Before the 1971 reform of the study program the professor of Roman law had 150 hours to teach his subject. Nowadays, it is not always clear how much is left of that because names of courses are not always very indicative of what is really being taught. For example, at Liège University comparative law, by Jean-François Gerkens, contains a lot of Roman law.¹⁴ Nevertheless, there is no doubt that everywhere Roman law is in retreat. In all of the French speaking universities, but also in Leuven and its Courtrai satellite it is still on the program as such. In this case, of the original 150 hours about 60, and at one smaller university even 90, are still left. Moreover, there may also be an elective course for those who want to study Roman law in depth, but never more than that. In the Flemish universities of Ghent, Antwerp and Brussels, Roman law is integrated in another course, normally history of private law, and at these universities there is no possibility to follow an elective course of Roman law (though there is such a course in Ghent for historians). In these circumstances the future problems are different. In the universities where Roman law still survives, the struggle will be to keep it that way. In the others, the problem is of another nature. Today's professors of private law still know that they also have to teach Roman law, but will their successors?

For legal history the diversity is confusing. The most logical situation is also the most common: the students have two courses, one about the history of private law and one about the history of public law, the hours for each varying from 30 to 75. Generally, if Roman law is included in the history of private law, there will be more hours to teach it and, discounting Hasselt and the small Catholic Dutch speaking university in Brussels (which is left out of this story because its number of students is negligible), the total number of hours for legal history and Roman law together varies from 120 to 216. History of private law is most of the time called just that, whereas history of public law may also be called institutional history. The most remarkable title here is *Introduction to Principal Modern States* in Brussels (*Vrije Universiteit Brussel* (Dutch speaking Free University Brussels)), a course about recent

constitutional history. Sometimes epithets are used to indicate that only recent or Belgian public law falls into the scope of the course. This clearly shows the opposition with private law, where teachers start with the early middle ages and which is generally studied in a

¹⁴ See his *Droit privé comparé*. Brussels. 2007.

European context. At some universities, students will also have a separate course of recent

political history, whereas at others this subject is integrated into the history of public law or

not taught at all. Moreover, at French speaking universities, with the exception of Liège, the

law student can also take a minor in history (or something like it). Electives are less common,

a majority of law faculties having only one of them, and they seem to reflect the specific

interests of the legal historians teaching at a certain university. The important exceptions here

are Ghent and Leuven, where students can choose three additional courses in legal history.

There is, at most universities, also the possibility to write a master's thesis about legal history,

but the reality is that law students prefer to take another subject for that, whereas some topics

may be very popular with history students (criminal justice, family law, institutions), who

lack the necessary legal background. Finally, there are also doctoral schools for Ph.D.

students, but in these legal history only makes a short appearance. There is, however, a

sizeable legal history module in the doctoral school for historians, art-historians and archaeologists of French speaking Belgium.

For now, the situation of legal history is not that bad, but exactly because of that, there

is much to lose in the future. Therefore, it is useful to look at the causes of the losses so far in

the hope that such a survey may serve as a warning for the future. Nevertheless, it is unavoidable that in the future the temptation will be growing in Belgian law schools to infringe upon the time devoted to legal history. The body of contemporary law is ever expanding and this means that newcomers will claim their share of the time. Legal historians

always lose in that debate when their students have a reason to complain because either the

teacher is bad or his teaching is not relevant for law students. However, most legal historians

in Belgium are aware of this and try to ensure that their teaching takes into account the needs

of contemporary law, e.g. by using a comparative perspective. Moreover, in many universities

legal historians are amongst the best loved and most popular professors, like Georges Martyn in Ghent and also Jos Monballyu. A measure of the latter's success was that when he taught in Antwerp, the students in the final year had a choice amongst five subjects for an elective course and almost two thirds took legal history. Given the efforts of Belgian legal historians the moment of danger is when one has to be succeeded, because one is not involved in the discussion about one's succession or no good candidates come forward, as most of the time there is no hope of getting tenure as a legal historian, so that when the tenured position comes free, there are no candidates. For example, in Antwerp and Mons (a subsidiary of the *Université Libre de Bruxelles*) teachers recently had to be 'imported' from France (Aurélie Lebel) and the Netherlands (Tammo Wallinga). An even greater threat is a sudden death, a long illness or another disabling condition. Even if legal historians are well loved, their colleagues of contemporary law will not hesitate to abolish their courses when they are ill, incapacitated or dead. Examples are : Gottfried Partsch and Roger Vigneron in Liège; Jan Van Rompaey in Ghent; Constant Matheussen in Brussels. (He taught Roman law there at the *Katholieke Universiteit Brussel*, of which he was the rector. A series of lectures is now organised to commemorate him,¹⁵ but the survival of his course of Roman law may have been a tribute he would have appreciated more.) In the analysis above no mention has been made of criminology studies, either with only a two year master's programme (French speaking Belgium) or with a three years bachelor's and a one year master's programme. It is a bit remarkable that legal historians have not made greater efforts to sell their discipline to criminologists. True, a traditional legal historian will have to teach historical criminology rather than the history of criminal law, but it is still amazing that only at the *Université Libre de Bruxelles* there is an obligatory course

¹⁵ The first acta of this series have been published: R. Van Ransbeeck (ed.). *Wilsgebreken*. Bruges. 2007.

by a legal historian and only in Ghent an elective course. Moreover, in many cases the expertise for teaching criminal law is already present because a large part of the course about the history of public law is dealing with criminal law. The number of tenured legal historians at law faculties is rather small, because

historical courses and sometimes even courses about the history of public law are taught by historians. An average staff has one full-time and one part-time legal historian, with the exception of Leuven University, which has four full-time and one part-time professor of legal history (not so long ago there was even a fifth full-time professor), but it is to be feared that this luxurious state of affairs will not survive the retirement of the current professors. Normally, there are fewer assistants than there are professors and their research will not always be about legal history or lead to a Ph.D. Many of the professors have a degree in history and a degree in law and if candidates have only one degree the law faculties prefer lawyers over historians. In general, this is also better for legal history, because a lawyer can relate better to the colleagues of contemporary law and is therefore more able to defend the position of legal history in his law school.

4. The structures of legal history in Belgium

a. Universities, State Archives and local researchers

Needless to say, the foremost organisations of legal history in Belgium are the departments of legal history in the law faculties, with the important exception of the *Centre d'histoire du droit et de la justice*¹⁶ in the Louvain-la-Neuve Faculty of Letters, which is the most active research centre of legal history in Belgium and the best is yet to come. On

January, 1st 2008 the *Centre* had five post-doctoral projects (Xavier Rousseaux, Frédéric

Vesentini, Emmanuel Berger, Margo De Koster and David Niget) and 20 Ph.D. theses are in

preparation (half of them in co-operation with other institutions; all of them about themes of

criminal law, criminal justice and historical criminology). This success has many fathers (and

mothers), but is most of all the work of Xavier Rousseaux, a tenured researcher of the *Fonds*

de la recherche scientifique, who by his actions has proven that, indeed one person can make

a difference.

Also in other cases, size is not always everything. For example, in Brussels the *Facultés Universitaires Saint-Louis* may be much smaller than the *Université Libre*, but

because of that its legal historians have more possibilities there than in a bigger institution and

they are very active in organising conferences and even have their own review.¹⁷

Likewise, at

Leuven University the Courtrai campus is much smaller than the Leuven one, but, at times, the Courtrai legal historians were more prominent than their colleagues from the big campus.¹⁸ In part this may be explained by the smaller number of students, so that, if a smaller institution is willing to hire a full-time legal historian, he will have a lot of free time for research.

However, it would be wrong to assume that the research of legal history is only being done at universities. The old law was local and regional and there are many local historians, who also study legal history and their work is published by the many local antiquarian societies in their reviews. The quality thereof may vary, some of them being excellent (the *Handelingen van het Genootschap voor Geschiedenis te Brugge*, is even ranked in the C-

¹⁶ See www.fltr.ucl.ac.be/FLTR/HIST/CHDJ/

¹⁷ See www3.fusl.ac.be/4DACTION/rechw_detail_Unite/8/F

¹⁸ The first Ph.D. in history in Courtrai was by a legal historian, Rik Opsommer, the first

Ph.D. in law by another legal historian, Georges Martyn.

category of the European Science Foundation's ranking of historical reviews),¹⁹

whereas

others are the work of amateurs. Apart from their unequal quality, their main problem is their

obscurity and inaccessibility. A few of the major ones are well-known, but most of what is

published in the others falls below the radar of academics. Therefore, it was a good initiative

of a team led by Paul De Win to publish a bibliography of Belgian legal history, for which

more than 200 of these local reviews were consulted. Unfortunately, this initiative never got

further than a first volume dealing with the publications of the years 1980-1985.²⁰ The same

problem also exists for student's dissertations, though these are better known thanks to other

bibliographies.²¹

Needless to say, no historical research is possible without sources and the State Archives have played a very active role in the study of legal history. In the more than 4500

publications of the State Archives, of interest to legal historians are the inventories of the

records from courts and other legal institutions.²² Moreover, to help the researcher the State

Archives also publish general introductions about certain courts or institutions,²³ so that the

researcher will better know how to find what he is looking for. Apart from that, a few other

books and even Ph.D. theses concerning legal history haven't been published by the State Archives.²⁴ Nowadays, they pay special attention to nineteenth and twentieth century archives. A lot of material has already been lost, sometimes because of neglect, but sometimes due to other circumstances (it seems that the buildings of the higher courts in Belgium are quite fire-friendly). However, much can still be saved or made accessible. Karel Velle has earned a lot of gratitude and respect for his hard work in this regard. As the State Archives' man for the Flemish judicial archives, he has made sure that a lot of these ended up in the Beveren repository of the State Archives and were inventoried there. (Velle himself was the author of many of these inventories; the State Archives have published almost sixty booklets which he authored, co-authored or edited.)²⁵ Even more important is that Velle, who is now the head of the State Archives, has managed to impart the importance of the mission of preserving recent judicial archives to others and to infect them with his enthusiasm. Given that he first worked in Flanders, the situation is better there than in Wallonia, which may lead to strange results, like Walloon researchers preferring to go to Beveren in Flanders. Another problem is that the uneven preservation of and access to the archives may also skew the historical research. For example, in Wallonia it may be hard to evaluate the role of the police in the persecution of Jews during World War II²⁶ because the archives cannot be found.

¹⁹ See

http://www.esf.org/fileadmin/be_user/research_areas/HUM/Documents/ERIH/ILScope_notes_Merged/History%20M.pdf

²⁰ P. De Win (ed.). *Rechtshistorische bibliografie van België* (Iuris Scripta Historica, 4).

Brussels. 1991.

²¹ See in particular the bibliographies mentioned in note 4. Some of the master's theses are available in full-text on ethesis.net.

²² See arch.arch.be

²³ E.g. R. De Poortere. *Les cours d'appel en Belgique et leurs prédécesseurs en droit 1795-1999. Compétences et organisation. Production et conservation des archives*. Brussels. 1999.

1999.

²⁴ Including even one Ph.D. thesis by a Dutchman : C.H. Van Rhee. *Litigation and*

Legislation. Civil Procedure at First Instance in the Great Council of the Netherlands in

Malines (1522-1559). Brussels. 1996.

²⁵ K. Velle. *Recht en gerecht. Bibliografische inleiding tot het institutioneel onderzoek van de rechterlijke macht (1796-1994)*. Brussels. 1994.

²⁶ See R. Van Doorslaer (ed.), *La Belgique docile. Les autorités belges et la persécution*

des juifs durant la Seconde Guerre mondiale. Brussels. 2007. 2 vol.

b. Organizations of legal historians

Belgian legal historians, who want to do so, can become members of many organizations in their field. Nevertheless, it is remarkable that there is almost no 'national'

society of Belgian legal history, with the exception of *Anciens pays et assemblées d'états/Standen en Landen*, but this organisation is not really national, as it belongs to the

network of the *International Commission for the History of Representative Parliamentary*

Institutions. Moreover, given its subject this is not an organisation for all legal historians. The

absence of a strong national association of Belgian legal historians is in part due to the shared

legal history with neighbouring countries. Many Belgian legal historians are members of the

French *Société d'histoire du droit*, which is inevitable in the light of the French influence on

Belgian law. The *Société d'histoire du droit et des institutions des pays flamands, picards et*

wallons keeps scholars in Northern France, Belgium and the Netherlands aware of the

common history of their old laws. This society has lost its former position as a leading association of Belgian legal historians, because it ignores current realities in Belgium where

Dutch has become more important than French. (And it does not help the *Société* that in the

Netherlands French is not a popular language anymore.) Another hurdle is that younger

researchers tend to see the *Société* as somewhat old-fashioned, which explains why, even with

French speaking Belgians, it is not successful anymore.

For Flemish legal historians there is also the Dutch *Stichting Oud-Vaderlands Recht* (Foundation Old National Law; known because of its review *Pro Memorie*). The

Foundation

would like to attract more Belgians, but it has not yet managed to do so. However, there are a

few Belgians on its board. Less dominated by the Dutch is the Belgian Dutch Circle for the

Study of the Reception of Roman Law in the Netherlands. The name in Dutch is *Belgisch-*

Nederlandse Kring voor de Studie van de Geschiedenis van de Receptie van het Romeinse

recht in de Nederlanden, which better indicates that the territory studied is the Low Countries (*Nederlanden*) and not just the Netherlands (*Nederland*). The shorthand *Receptieclub* (Reception Club) is used because its real name is just too long. Originally, membership was only possible after a maiden-speech, but that is no longer necessary, though one becomes a member by invitation only and a member's research still needs to have some link with the *ius commune* in the Low Countries, which is somewhat harder for Belgians, as the *ius commune* was less important in their history. The 'Reception Club' is a rather loose organisation. Robert Feenstra is its president and in Belgium Ghent University's Institute of Legal History takes care of (the almost non-existent) administrative matters. Even more informal, but also more exclusive is the Club of the professors of Roman law (*Romanistenclub*). Members are professors (or former professors) of Roman law, from Flanders and the Netherlands (though there is a member from French speaking Belgium).

A 'Flemings only' organisation is the Legal History Committee of the Royal Flemish Academy of Belgium for Arts and Sciences (*Wetenschappelijk Comité voor Rechtsgeschiedenis van de Koninklijke Vlaamse Academie van België voor Wetenschappen en Kunsten*). The name may give the wrong impression, that so many legal historians are members of this Academy, that they have their own subgroup. However, only two committee members are academicians, the others, including its president (Jos Monballyu) and secretary (Dirk Heirbaut) are not. Only holders of a Ph.D. about a subject of legal history can become members.

There is no comparable organisation in French speaking Belgium, but there is a contact group of the FNRS: *Sources et méthodes pour l'histoire du contrôle social du Moyen-Âge à nos jours: déviance, maintien de l'ordre et régulation sociale*. Moreover, the legal historians here can meet in other ways: the already mentioned doctoral school and the *Académie universitaire Louvain*, which unites the *Université Catholique de Louvain* (Louvain-la-Neuve), *Facultés Universitaires Saint-Louis* (Brussels) and the *Facultés Universitaires Notre Dame de la Paix* (Namur).

Last but not least, there is a special commission of the justice ministry for the publication of the pre-revolutionary legislation, the *Commission royale pour la publication des anciennes lois et ordonnances de Belgique/Koninklijke Commissie voor de uitgave van de*

oude wetten en verordeningen van België. Although the old law had been abolished by the French Revolution and the Napoleonic Codes, there was a long time of transition in which many situations were still regulated by older laws. Therefore, the Commission was established in 1846 to publish the old customs and statutes.²⁷ Because at first the work of the Commission was very useful for lawyers, magistrates were also members of it. By now, that practical relevance has completely disappeared and there are only legal historians in the commission, but until 1953 when François-Louis Ganshof became its president (the current president is Serge Dauchy), that post was in practice reserved for a magistrate of the Court of Cassation. The commission is still very active and has also broadened its scope. Since 1965 the Commission also publishes the old case law or chronological lists thereof. One may wonder whether the time has not come for the Commission to take another step and also look at Belgian law after 1804. The Commission has managed to publish an impressive body of sources.²⁸ The main series in 1846 was the one of the *Ordonnances*. About 40 volumes in several subseries are already available, but a lot of work still needs to be done. The statutes of the eighteenth century have all been published, but for earlier times only the legislation of Philip the Bold, the emperor Charles V and the archdukes Albert and Isabella is already available in an edition by the commission and there are a few other editions. Whereas for the *Ordonnances* a lot still needs to be done, the edition of the old customs is almost done, with only a few customs still in need of an edition. One should keep in mind here that the Commission has only edited customs of the territories of today's Belgium and not, for example, those of the part of the old county of Flanders which is now French. Still, the achievement of the Commission is impressive and for foreign researchers it may be interesting to know that in the nineteenth century French translations accompanied the original text in Dutch. Moreover, many editions are electronically available on the website 'Low Countries Law'.²⁹ A third series editing case law started only in 1966 and contains only a few volumes because standards of editing texts are much higher now than in the nineteenth century. The price for that higher quality is,

however, a lower output. However, the greatest threat to the Commission's activities is the mania of quantifying research and then using the data to award research grants, university positions and the like. The editor of the sources of legal history is doing the most fundamental research in his field, but he will not be rewarded for that when bibliometric methods of evaluation are used. Hence, young researchers are no longer interested in editing sources, because they know that text editions will not further their career.

c. Conferences

²⁷ See the articles by Philippe Godding and Guido Van Dievoet in : *Bulletin de la Commission royale pour la publication des anciennes lois et ordonnances de la Belgique*, 1996.

²⁸ See www.just.fgov.be/fr_htm/organisation/htm_commissions/commission.htm (I would also like to thank Serge Dauchy for providing additional information.)

²⁹ www.kuleuvenkortrijk.be/facult/rechten/Monballyu/Rechtlagelanden/Homepage.htm
Apart from stand alone events, there are some recurring conferences, mostly linked to

the organisations mentioned in the previous paragraph. Thus, the *Société d'histoire du droit et*

des institutions des pays flamands, picards et wallons has a yearly conference alternating

between France, Belgium and the Netherlands, following a set schedule with a well-coming of

the participants on Ascension and many social events. Summaries of the lectures are published in the *Revue du Nord* and, normally, there is a book containing those lectures

dealing with the conference theme.

Less circumscribed are the Belgian-Dutch Legal History Congresses (*Belgisch-Nederlands Rechtshistorisch Congres*; the Dutch prefer *Nederlands-Belgisch*), which should

take place every two years and take two days, but there is no organization responsible for it.

Hence, there was a four year gap between the 2003 meeting in Ypres and the 2007 meeting in

Groningen. There is also no conference theme and the organizer has a lot of liberty.

As was

indicated above, 'Belgian' almost always meant Dutch speaking Belgium, i.e.

Flanders, but in

the fall of 2008 a French speaking university will host this conference, the nineteenth in the

series. The publication policy is haphazard, though in general the conference proceedings

have been published in a book.³⁰

The Flemish Legal History Committee every year appoints one or two of its members to organize a one day conference about a theme approved by the Committee. The Academy

supports the conferences financially, so that distinguished foreign colleagues can be invited to give a lecture. The papers are published in the Committee's series, the *Iuris Scripta Historica*.³¹ Apart from its annual conference, the Committee also has an annual 'members only' meeting every year at which one speaker (a member or another legal historian invited for the occasion) will present his current research. The lecture will not be published and is rather informal. Therefore, it can be used to air new hypotheses or to present provisional findings.

The meetings of the 'Reception Club' are the occasion for a fourth series. At each yearly meeting there will be two lectures about a topic of the *ius commune*. There is no special venue of publication and, at times, lectures have dealt with work in progress. Apart from these four 'traditionals', there are also conferences within the framework of the Interuniversity Attraction Pole Justice and Society, which will be the subject of this paper's last paragraph, and organizations of historians, like the Belgian Association for Contemporary History (*Association Belge d'Histoire Contemporaine/Belgische Vereniging voor Nieuwste Geschiedenis*) regularly have sessions dealing with legal history at their meetings. Whether belonging to one of the established series or not, conferences of Belgian legal historians have some elements in common. The group of participants is rather small, with sixty being the 'glass ceiling' for any meeting which does not go beyond the group of legal historians. This small number on the one hand and the comparatively high frequency of conferences on the other has led to a rather friendly atmosphere and a very well-coming attitude to new faces. For example, at the Belgian-Dutch legal history conference the unwritten rule is that, if too many people have answered the call for papers, precedence will be given to the younger speakers. The rationale for this is that the professors will have the occasion to speak at international congresses anyway.

d. Reviews and book series

³⁰ The latest is G. Macours and R. Martinage. *Les démarches de codification du Moyen*

Age à nos jours (*Iuris Scripta Historica*, 21). Brussels. 2007.

³¹ 21 volumes so far, but it is to be remarked that vol. 21 published the articles of a conference not organised by the Committee.

Apart from local or historical reviews, which may publish articles about legal history or exceptionally even a special legal history issue,³² there are a few reviews. The most

prestigious and internationally best-known is the *Tijdschrift voor Rechtsgeschiedenis*,³³ generally just called the *Tijdschrift*, even by foreign colleagues who don't speak Dutch and this in spite of the presence on the cover of a French (*Revue d'histoire du droit*) and English title (*The Legal History Review*). E.M. Meijers founded the *Tijdschrift* in 1918 and originally it had a board of Dutchmen only, but after World War II Belgians joined them and it is now a Dutch-Belgian review with about as many Belgians as Dutchmen on the board of editors. On the Belgian side the president was Raoul Van Caenegem, but after his eightieth anniversary in 2007 he decided to retire and Jos Monballyu will take his place. The *Tijdschrift* sometimes has special issues, the most interesting one for this article being the third issue of 1993, as its theme was the study of legal history in Belgium and the Netherlands from 1918 until 1993.³⁴ The *Tijdschrift* may be Dutch-Belgian in the composition of its board of editors, but it is an international review: an overwhelming majority of its articles are not about the Low Countries (the articles about Roman law in antiquity, responsible for much of the *Tijdschrift's* fame are a case in point); almost all of its subscribers are foreign libraries and only a small part of its authors are Dutchmen or Belgians, though for them it is the first review they will send their article to. Due to the relatively high price of the *Tijdschrift*, its very selective peer review process and, most of all, its international outlook, there is also a need of a more national review, but it took a long time to arrive on the scene and it is still a Dutch-Belgian common effort which, once again, was originally all-Dutch. In the Netherlands the *Stichting Oud-Vaderlands Recht* had from its foundation in 1879 a review about the sources of the old law of the Netherlands.³⁵ At the end of the twentieth century this review had lost much of its appeal. and the Foundation decided to try a new approach: a new review, *Pro Memorie*, about legal history and not just its sources and for Belgians also, i.e. with Belgians on the board and with articles about Belgium. The hope was that this would entice Belgian legal historians to become contributors to the foundation, but this has not worked so far, though Belgian authors

have managed to fill more than their share of the review. From the start, the relationship of this review with the *Tijdschrift* was a delicate issue. The gentlemen's agreement is that *Pro Memorie* will publish only articles in Dutch about the Low Countries, whereas these articles are no longer the main interest of the *Tijdschrift*. In practice, this amounts to what the reviews would have had to do anyway, as the international subscribers of the *Tijdschrift* do not really want articles in Dutch, which they cannot understand. Thus, the two reviews are no competitors, but are rather complementary. *Pro Memorie* is quite popular because of its local content, its illustrations and a very popular series of interviews with famous legal historians

³² The *Revue belge d'histoire contemporaine/Belgisch tijdschrift voor nieuwste geschiedenis* twice had a special legal history issue, in 1998 (*Les professions juridiques en*

Belgique (XIXe - XXe siècles)), edited by K. Velle; see www.flwi.ugent.be/btngnbhc/nl/archief/1998-0102.html) and in 1983 (*Droit, histoire et société*, edited by P. Gerin; see

www.flwi.ugent.be/btng-rbhc/nl/archief/1983-0102.html).

³³ For the history of the *Tijdschrift*, see R. Feenstra, « L'histoire d'une revue d'histoire du droit », in : J. Poumarède. *Histoire de l'histoire du droit*. Toulouse. 2006. 401-407.

³⁴ See more in particular the articles by D. van den Auweele, S. Dauchy, J.-M. Cauchies,

A. Wijffels, G. Van Dievoet and X. Rousseaux.

³⁵ *Verslagen en mededelingen van de Stichting tot Uitgaaf der Bronnen van het Oud-Vaterlandse Recht*.

from the Low Countries,³⁶ but it is not less academic because of this. For example, even the interviews are heavily foot-noted because the interviewers have checked all data and include

all possible references. The European Science Foundation decided to rank *Pro Memorie* in its

C-category of historical reviews, which means that although it is not targeted towards the

international academic community, it is still an important review.

A truly Belgian review of legal history is the *Bulletin/Handelingen* of the *Commission royale pour la publication des anciennes lois et ordonnances*, published since 1848, which

has also received a C-ranking from the ESF³⁷ and is indeed of a very good quality.

This

review only publishes articles in French or, from 1935, in Dutch about the sources of prerevolutionary

legal history and the publication schedule used to be very irregular (33 issues from 1846 till 1992), but since 1994 it has become a yearly publication. A second

Belgian

'review' is very recent (first issue in 1993) : *Cahiers du Centre de Recherches en Histoire du*

*Droit et des Institutions*³⁸ (unfortunately, not ranked by the ESF), a publication in French of the Brussels *Facultés Universitaires Saint-Louis*. The one or two issues a year are always devoted to a certain theme, which in many cases was the topic of a small conference at the Centre.

A publication apart is the legal history newsletter *De Rechtshistorische Courant*, founded by Dirk Heirbaut in 2002. Its goal is not academic, as it wants to inform legal historians in Belgium and the Netherlands of publications about the legal history of the Low

Countries or written by Belgian or Dutch legal historians, legal history conferences and other

events, defences of Ph.D. theses etc. by using the possibilities offered by the internet, a fast,

democratic and cost free channel of information. Originally the publication schedule of the

newsletter, then still called *Nieuwsbrief rechtsgeschiedenis*, was rather erratic.

However, in

February 2006 Dirk Heirbaut was joined as editor by Bruno Debaenst, who changed the

name, added photographs and an editorial, archives the old newsletters,³⁹ and ensures its

timely publication every month. The *Rechtshistorische Courant* is now mailed to about 350

Belgian and Dutch legal historians and also to about 40 foreign colleagues who can understand Dutch. In Belgium and the Netherlands it has become the main source of information about legal history conferences. It may even happen that calls for papers and

invitations are only communicated through the *Rechtshistorische Courant*.

Monographs of legal history can be published as a stand alone book, but also as a volume in a series. There are several series dedicated to legal history. The first one, *Anciens*

Pays et Assemblées d'Etats (the name is a reference to the organization responsible for which

has been mentioned above) started as a review in 1950, but later became a book series. By

now, more than a hundred volumes have been published, dealing with institutions, public law

and criminal law.⁴⁰ The Legal History Committee has its own series, the *Iuris Scripta Historica*, open for any subject of legal history (twenty one volumes from 1985) and finally

there are the series of the *Commission royale* (see above).

³⁶ The 2004 issue was only composed of interviews with ranking lawyers who gave their

impressions of the evolution of law in the second half of the nineteenth century (*Prominenten*

kijken om. Achttien rechtsgeleerden uit de Lage Landen over leven, recht en werk. Pro

Memorie, 2004).

³⁷ In a first version of the list the review was ranked B under its French name, and C under its Dutch name, but then someone became aware that the two reviews were one and the same.

³⁸ For a list, see www3.fusl.ac.be/4DACTION/rechw_detail_projet/8/19/F

³⁹ On the website www.rechtsgeschiedenis.be

⁴⁰ See www.uga.be/uitgeverij/detail_fr.phtml?id=617 (this is a reference to the version in French; however, the version in Dutch is somewhat more recent).

e. Prizes

There is no specific prize for legal history as such, but at Ghent University Sarton medals are awarded to scholars who have distinguished themselves in the study of the history of a certain science. The Ghent Law Faculty may every year propose one name for consideration by the Sarton Committee and, although the number of medals awarded is much smaller than the number of faculties making a proposal, the legal historian is always awarded one, because the Committee is very impressed by the high quality of the work of legal historians. The medal is awarded after a lecture which is published in the review *Sartoniana*.

5. Conclusion

Belgian legal historians fear that things can only get worse, but looking at their situation in another way one can say that they fear a decline because there is still much to be lost. The main challenge will be to defend the relatively strong position in the law curricula which legal history still has and, if that fails, to go looking for alternatives. One of these is a recent project, the Interuniversity Attraction Pole P06/1, Justice and Society: sociopolitical history of justice administration in Belgium (1795-2005).⁴¹ Five institutions are cooperating in this project: the universities of Louvain-la-Neuve (Xavier Rousseaux), Ghent (Dirk Heirbaut) and the Facultés Universitaires Saint-Louis (Jean-Pierre Nandrin), the State Archives (Karel Velle) and the Centre for Historical Research and Documentation on War and Contemporary Society (Dirk Luyten).⁴² Thanks to a grant from the federal government, more than ten researchers are employed in this project, which started in 2007 and many conferences and books are planned. Unfortunately, already from the start the project's future is threatened, as at the beginning of 2008 the federal government plans to cut back on projects like these which want to bring Belgians together. It is to be hoped, both for legal history in Belgium and for the country itself, that wisdom will prevail.

⁴¹ The website is under construction. See for now
www.fltr.ucl.ac.be/FLTR/HIST/CHDJ/

⁴² The Centre is a public federal research institution located in Brussels (for more information, see www.cegesoma.be).