



“Une telle apathie est presque coupable”. How in Belgium’s *Journal des tribunaux* the interest for the Congo Free State sparked off (1885-1908)¹

Résumé : Lorsque l’État Indépendant du Congo (EIC) fut établi en 1885, le roi Léopold II le considéra comme son territoire personnel. Au début, les politiciens et les avocats belges ne semblaient pas se soucier des ambitions coloniales de son souverain. Leur attitude changea au cours des années 1890, lorsque Léopold II et l’ÉIC furent internationalement accusés de commettre des crimes contre l’humanité. Le Parlement belge chercha et trouva une solution dans le projet d’annexion durant la première décennie du XX^e siècle. Comment les avocats belges perçurent cette question ? À travers les revues juridiques, qui reflètent et forment des opinions, il est possible de reconstruire l’histoire de l’annexion de l’État libre congolais par la Belgique. Le *Journal des tribunaux* est le titre le plus important de son époque, *primus inter pares* des revues juridiques, il est lié à toutes les associations des mondes politique, juridique et colonial.

Mots-clés : histoire du droit – histoire coloniale – études des revues – Belgique – Congo

Abstract : When the Congo Free State (CFS) was established in 1885, King Leopold II ruled it as its personal territory. At first Belgian politicians and lawyers seemed not to care about the colonial ambitions of its sovereign. That changed during the 1890s, when the Leopoldian CFS was internationally accused of committing crimes against humanity. Belgium’s Parliament urged to find a solution in the annexation project during the first decade of the 20th century. How did Belgian lawyers perceive this issue ? Through means of legal periodicals, which reflect and shape opinions on certain topics, it is possible to reconstruct the annexation history of the CFS by Belgium in 1908. The *Journal des tribunaux* is the most relevant titles on this subject, as it is the *primus inter pares* of legal periodicals at that time and connected to all the relevant associations in the political, legal and colonial world.

Key words : legal history – colonial history – periodical studies – Belgium – Congo

Introduction

1. In 1885, the central African Congo Free State (CFS) was established as an independent state under the personal reign of Leopold II, King of the Belgians (1835-1909). The so-called “King of Colonialism” convinced the international community he was involved in humanitarian and philanthropic work although he earned infamy due to the atrocities committed in the Congo basin². Anglo-Saxon and Belgian

¹ I want to thank Amélie Verfaillie (Ghent University) and professor dr. Nathalie Tousignant (Université Saint-Louis Bruxelles) for their valuable remarks on the first drafts of the text. All remaining mistakes are my responsibility.

² On King Leopold and his role in Congo see amongst others, B. Emerson, *Leopold II of the Belgians : king of colonialism*, London, Weidenfeld and Nicolson, 1979 ; D. Vangroenweghe & L. Vandervelde, *Rood rubber : Leopold II en zijn Kongo*, Brussels, Elsevier, 1985 ; D. Vangroenweghe, *Leopold II en Kongo : het Evenaarsdistrict en het Kroondomein 1885-1908*, Bruges, Vangroenweghe, 1985 ; M. Massoz, *Le Congo de Léopold II, 1878-1908 : un récit historique*, Liège, Massoz, 1989 ; N. Ascherson, *The King Incorporated : Leopold the Second and the Congo*, London, Granta books, 1999 ; D. Van Reybrouck, *Congo, een geschiedenis*, Amsterdam, De Bezige Bij, 2010.

humanitarian lawyers, authors and journalists exposed those crimes to the public putting pressure on Belgium's Parliament to undertake action against the King³. It led to the annexation of CFS by Belgium.

2. Since Jean Stenger's *Belgique et Congo : l'élaboration de la Charte coloniale*, the annexation project has received little attention⁴. Recently, Vincent Viaene explored parliamentary documents and a wide variety of sources to reconstruct the discussion of *la reprise du Congo*⁵. In his research, he mentions the renowned Brussels attorneys-at-law Edmond Picard (1834-1926)⁶ and the *Conférence du Jeune Barreau de Bruxelles* (Brussels Young Bar Association) as breeding ground for Belgium's colonial party⁷. In legal history, these actors are connected to one particular legal periodical: the *Journal des tribunaux* which reported on important political and legal issues such as the colonial question. Scrutinizing the articles brings a unique insight on the way lawyers thought about it⁸.

3. At the end of the nineteenth and early twentieth century, Belgium counted about twenty legal titles of which the generalist – i.e. not focusing on a particular legal branch or court – *Journal des tribunaux* (JT) took the lead from its renowned predecessor *La Belgique judiciaire*⁹. Its pre-Second World War editors-in-chief Edmond Picard and Léon Hennebicq (1871-1940)¹⁰ propagated a strong Belgian State with its own colonial empire and hailed King Leopold II's work overseas. Secondly, the *Journal's* collaborators were involved in more specialist colonial titles. Thirdly, when in 1960 the Congo gained its independency, the *Journal des tribunaux* simultaneously celebrated its 75th anniversary¹¹. For this occasion a longer issue was published with overview articles on how the periodical can be used as a means to reconstruct the evolution of certain legal branches¹². Brussels attorney Delfosse wrote a specific contribution on colonial law and how “*la mentalité de nos compatriotes, et plus spécialement de nos confrères, à l'égard de ce qui fut jadis et sera demain*”¹³. Delfosse turned the pages of all volumes published between 1881 and 1960 and summarized chronologically the most significant contributions on the Congo question. However, he did not

3 In Britain, the campaign against Congo Free State was led by E. D. Morel, who was enforced by novelists such as Mark Twain, Joseph Conrad and Arthur Canon Doyle. American politician George Washington Williams published already in 1890 an open letter to King Leopold II about abuses he had witnessed.

4 J. Stengers, *Belgique et Congo : l'élaboration de la Charte coloniale*, Brussels, La Renaissance du Livre, 1963.

5 V. Viaene, « Reprise-remise. De Congolese identiteitscrisis van België rond 1908 », in *Congo in België : koloniale cultuur in de metropool*, V. Viaene, D. Van Reybrouck, B. Ceuppens (dir.), Louvain, Universitaire pers Leuven, 2009, p. 42-62.

6 On Edmond Picard and his vision on law and society see : A. De Brouwer, « Edmond Picard, een veelzijdig man (1836-1924) », *Rechtskundig Weekblad* (hereinafter *RW*) 1965-66, p. 369 ; L. Diercxsens, « Het onstuimige leven van Edmond Picard », *RW*, 1933-34, p. 169 ; B. Coppein, « 'J'ai vu ce que vous n'avez pas vu'. Droit et politique dans la pensée juridique d'Edmond Picard (première partie) », *Journal des tribunaux* (hereinafter *JT*) 2007, col. 21-23 ; col. 38-39, col. 57-58 ; col. 76-77 ; B. Coppein, « 'Un appareil concasseur et triturateur'. De kritiek van Edmond Picard op de wetgevende macht in België in de tweede helft van de negentiende eeuw », *Pro Memoria*, 2007, pp. 91-110 ; B. Coppein, « Edmond Picard (1836-1924), avocat bruxellois et belge par excellence de la deuxième moitié du XIX^e siècle », in *Les praticiens du droit du Moyen Âge à l'époque contemporaine : approches prosopographiques, Belgique, Canada, France, Italie, Prusse : actes du colloque de Namur, 14, 15 et 16 décembre 2006*, V. Bernaudeau (dir.), Rennes, Presses universitaires de Rennes, 2008, p. 225-237 ; B. Coppein, *Dromen van een nieuwe samenleving. Intellectuele biografie van Edmond Picard*, Brussels, Larcier, 2011 ; F. Ringelheim, *Un juriconsulte de race, Edmond Picard (1836-1924)*, Brussels, Larcier, 2012 ; P. Aron & C. Vanderpelen-Diagre, *Edmond Picard. Un bourgeois socialiste belge à la fin du dix-neuvième siècle*, Brussels, Musées royaux des Beaux-Arts de Belgique, 2013 ; W. Van Eeckhoutte & B. Maes (dir.), *Genius, grandeur & gêne. Het Fin de Siècle rond het Justitiepaleis te Brussel en de controversiële figuur van Edmond Picard/La Fin de Siècle autour du Palais de Justice de Bruxelles et le personnage d'Edmond Picard*, Ghent, Knops, 2014.

7 V. Viaene, « Reprise-remise. De Congolese identiteitscrisis van België rond 1908 », in *Congo in België, op. cit.*, p. 47-48.

8 S. Vandenberg, *Vectoren van het recht. Geschiedenis van de juridische tijdschriften in België*, unpublished doctoral thesis, Ghent University, Faculty of Law, 2014 (commercial edition accepted for publication in 2017 by Die Keure).

9 S. Vandenberg, « *Exegi monumentum : La Belgique Judiciaire (1842-1939)* », *Tijdschrift voor Tijdschriftstudies*, 31, 2012, p. 46-58.

10 Léon Hennebicq studied law at the Free University of Brussels and became an intern at the office of Edmond Picard. He was elected president of the *Conférence du Jeune Barreau*, member of the Bar Council, secretary and later president of *Fédération des avocats belges* and in 1925 he became batonnier at the Brussels Bar Association. He was also responsible for the publication of *La Vérité sur le Congo*, a periodical published between 1903 and 1907 ; G. Aronstein, « Hennebicq, Léon », *Biographie nationale*, 30, p. 451-458.

11 The *Journal des tribunaux* halted publication during both World Wars, making that only in 1960 the periodical celebrated its 75th anniversary.

12 *Journal des tribunaux*, issue 4271, March 20, 1960, p. 201-252.

contextualize the *Journal des tribunaux* as an instrument of its editors, using it as a vector to disseminate their opinion. Vector needs to be seen in its etymological sense, namely : a carrier. Journals carry out the messages from authors and editors¹⁴.

4. On which aspects of the Belgian colony did the *Journal des tribunaux* focus ? What was reported and by whom ? As some articles were anonymously it is not always known who stood for which idea, but researchers assume that all published articles have been approved by Picard or his successor and hence were in support of their ideology. We will distinguish two phases between 1885 and 1908. The first one is the economic phase, in which the *Journal des Tribunaux* showed almost no interest in the subject whatsoever and nothing seemed to be wrong in the Congo. The second phase starts around the turn of the century, when a possible annexation of the CFS has been negotiated and became an urgent matter after the 1904 Casement Report. This article will show that Belgium's legal world initially lacked any interest in what happened in the Congo basin. Only when an almost compulsory annexation of the CFS by Belgium seemed to dissolve international pressure, the Parliament rushed to legislative actions. How did the *Journal des tribunaux* report on this matter and what insights does it give on legal periodicals as a vector of editorial ideas ?

Journal des tribunaux as a vector for colonialism

5. Ever since Belgium gained its independence, the Brussels Bar Association was a meeting point of active minds, who were convinced that law had a guiding role to play to emancipate the people¹⁵. The most dynamic amongst them all was Edmond Picard. As a member of the Brussels Bar, he was closely involved in the *Conférence du Jeune Barreau*¹⁶. In addition, he headed scholarly publications such as the *Pandectes belges* (1878-1933), a full-fledged encyclopaedia on legal matters and a full bibliography of all legal publications in Belgium¹⁷. He gained respect from his peers by his most renowned publication : the *Journal des tribunaux*, which appeared for the first time on December 15, 1881 and exists until today¹⁸. Its manifesto embodied the philosophy of Picard : bring law to the people. It was conceived as a journal, meant for the public to be bought and read, hence it was distributed all over the country and available in kiosks as most newspapers. Despite the fact the *Journal* was rather expensive – 25 francs for one-year subscription – and the lower classes did not know how to read, let alone being interested what happened in the court rooms, Picard considered his publication a great success. Important is that the *Journal des tribunaux* was founded by members of the same group of *L'Art moderne* (1881-1914) a new leading artistic journal, which shared with Edmond Picard and Octave Maus (1856-1919)¹⁹ common editors²⁰. Despite its

13 G. Delfosse, « Soixante-quinze ans d'histoire du Congo à travers soixante-quinze ans d'histoire du *Journal des tribunaux* », *JT*, 1960, p. 240-245.

14 S. Vandenberghe, « From mirror to vector: an impossible step ? », *C@hiers du CRHIDI*, 37, 2015, online : <http://popups.ulg.ac.be/1370-2262/index.php?id=229>

15 E. Picard, « Paradoxe sur l'avocat », *Pandectes belges*, 3, 1879, p. xxix.

16 B. Coppein & J. De Brouwer, *Histoire du Barreau de Bruxelles/Geschiedenis van de Balie van Brussel*, Brussels, Bruylant, 2011, p. 73.

17 E. Picard & F. Larcier, *Bibliographie générale et raisonnée du droit belge. Relevé de toutes les publications juridiques parues depuis la séparation de la Belgique et de la France (1814) jusqu'au 1^{er} octobre 1889*, Brussels, Larcier, 1890.

18 V. Carré, *Le Journal des tribunaux d'Edmond Picard (1881-1899). Approche d'un journal judiciaire au dix-neuvième siècle*, unpublished master's thesis, Université Libre de Bruxelles, Faculty of Arts and Philosophy, 1986 ; R. Lesaffer, « Le *Journal des tribunaux* (1904-1914). De Belgisch-Nederlandse betrekkingen vanuit het standpunt van de Belgische nationalistes », in F. Stevens & D. Van den Auweele, *Handelingen van de XI^e Belgisch-Nederlandse rechtshistorische dagen*, Louvain, K.U. Leuven Afdeling Romeins Recht en Rechtsgeschiedenis Faculteit der Rechtsgeleerdheid, 1992, p. 107-139 ; S. Vandenberghe, *Vectoren van het recht. Geschiedenis van de Belgische juridische tijdschriften*, op. cit., p. 105-130.

19 A. Debrocq, « Maus, Octave », *Nouvelle biographie nationale*, 10, p. 286-289.

20 A. Guislain, « Edmond Picard en 1881 », *JT*, 1960, p. 230. From 1884 onwards, *L'Art Moderne* was the spokesperson of *Les XX* a circle for avant-garde art to which belonged Maus and Picard. On this art association and her successor *La Libre Esthétique* see J. Block, *Les XX and Belgian avant-gardism 1868-1894*, Ann Arbor, Umi research press, 1984 ;

intention to be an a-political periodical – the editorial board united people from all political parties – the *Journal des tribunaux* soon positioned itself close to the Belgian Socialist Party (BSP)²¹. At that time, the BSP urged for the emancipation of the working class, bringing the colonial question to the background²². Émile Vandervelde's intervention in 1895 was symptomatic when he stated : “Let us wait to treat negroes as white men until in our country white men are no longer treated as negroes”²³. Generally, the Congo question stood low on the priority list of Belgian politicians. The BSP was openly anti-colonial contrary to Edmond Picard, at that time socialist senator, who took a particular stand when it came to the most delicate problem of the Congo Free State. Picard admired King Leopold II and his colonial project : he travelled to the Congo to witness the situation over there²⁴. In general, he considered the Congo Free State as an exemplary colony²⁵. His pupil Léon Hennebicq had the same opinion.

6. In 1900, editor-in-chief Picard handed over his series to a new team of young colleagues headed by his intern Léon Hennebicq, who in several ways resembled his predecessor. They shared a common interest in arts, culture, law and politics. Both were Belgian patriots, involved in the Belgian Workers Party and shared a common interest in maritime and colonial law. Hennebicq defended a national expansion. He believed Belgium, based on its history, its industrial power and intellectual influence, deserved a prominent place in the “concert of nations”. As president of the *Ligue maritime belge* and the *Institut international de commerce*, Hennebicq advocated a large penetration of Belgium on the world markets. Further, he was involved in colonial periodicals such as *Le mouvement maritime* (1901-1904) which merged in 1905 with *La Belgique coloniale* (1895-1904)²⁶ in *La Belgique maritime et coloniale* (1905-1921). Further, he worked for *Le Matin*, a paper defending Leopold's policy in Africa, and the *Mouvement géographique* (1884-1922). All journals participated in the polemical discussion whether Belgium should have a colonial empire and thus annex the Congo. The connections between these journals are revealed in articles copied and published in the *Journal des tribunaux*²⁷. Before the First World War, the Congo question drove a wedge between the *Journal's* most important collaborators : editor-in-chief Léon Hennebicq and later Minister of Colonies Henri Jaspar (1870-1939)²⁸.

7. In 1907 and for at first sight no obvious reason, the editorial board of the *Journal des tribunaux* was reshuffled²⁹. Almost thirty years later, Hennebicq offered a glimpse on that tumultuous period. He stated : “*Toutefois, dès 1906, la campagne anti-congolaise inspirée par les enfants perdus que l'Angleterre lance dans les marches de son impérialisme réussit à diviser notre rédaction*”³⁰. In an anonymous article, one reads the

G. Ollinge-Zinque (dir.), *Les XX en La Libre Esthétique : honderd jaar later*, Brussel, Koninklijke Musea voor Schone Kunsten van België, 1993.

21 B. Coppein, *Dromen van een nieuwe samenleving*, op. cit., pp. 74-81.

22 M. Bruwier (dir.), *1886 : La Wallonie née de la grève ?*, Brussel, Labor, 1990 ; J. Deferme, « Geen woorden maar daden. Politieke cultuur en sociale verantwoordelijkheid in het België van 1886 », *Belgisch Tijdschrift voor Nieuwste Geschiedenis*, 2000, p. 131-171 ; G. Deneckere, *Sire, het volk mort. Sociaal protest in België (1831-1918)*, Antwerp, Hadewijch, 1997 ; J. Puissant, « 1886 – la contre-réforme social ? », *1886/1887 – 1986/1987. Honderd jaar Belgisch sociaal recht*, P. Van der Vorst (dir.), Brussels, Bruylant, 1988, p. 67-100.

23 « *Nous voulons, en un mot, avant de traiter les nègres comme des blancs, que l'on ait cessé de traiter les blancs comme des nègres !* », Belgian Chamber of Representatives, Session 27 June 1895, accessed through www.plenum.be

24 He published his endeavors in a book *En Congolie* published in 1896 after his voyage in Congo. He updated the book in 1909 ; E. Picard, *En Congolie*, Brussels, Larcier, 232 p. ; E. Picard, *Notre Congo*, Brussels, Larcier, 1909, 58 p.

25 B. Coppein, *Dromen van een nieuwe samenleving*, op. cit., p. 299-303.

26 *La Belgique coloniale* was headed by René Vauthier, who worked closely together with Edmond Picard and Léon Hennebicq. Several of his articles on the Congo Free State were published in the *Journal des tribunaux* ; K. Rotsaert, « *La Belgique Coloniale* » : analyse van een koloniaal tijdschrift toegespitst op de onafhankelijke Kongostaat 1895-1909, unpublished master's thesis, Ghent University, Faculty of Arts and Philosophy, 2001.

27 E.g. P. Errara, « La constitution belge et le Congo », *JT*, 1901, col. 705-716.

28 Jaspar studied law at the *Université Libre de Bruxelles* and afterwards he subscribed to the Brussels Bar where he was an intern of Victor Bonnevie, who was member of the *Journal des tribunaux's* editorial board. Together with Hennebicq, he founded the *Cercle universitaire de criminologie* ; J.-M. Jadot, « Jaspar, Henri », *Biographie belge d'Outre-Mer*, IV, 1968, pp. 593-547 ; P. Witmeur, « Henri Jaspar », *JT*, 1949, 601 ; P. Henri, *Grands avocats de Belgique*, Brussel, J.M. Collet, 1984, pp. 115-120 ; L. de Lichtervelde, « Jaspar, Henri », *Biographie nationale*, 31, p. 480-491.

29 « La route parcourue », *JT*, 1925, col. 497-499.

30 L. Hennebicq, « Léopold II », *JT*, 1935, col. 297.

story about two colleague-attorneys, one is a ‘*congophile*’, the other one is ‘*congophobe*’. During a political rally the first one propagated the Congo annexation, the latter interrupted rather violently and he took his allies outside where he talked to them. He seemed to have stirred up the mob who chased the congophile forcing him to flee to the nearest railway station. There he met his adversary again who allowed the mob to punch his colleague. He understood, he was a most popular politician³¹. This story was about Hennebicq who strongly supported the annexation of Congo and Henri Jaspas, “*chef de file des antiléopoldiens [...] qui conduisais déjà la résistance des coloniaux et des maritimes*”³².

1885-1900 : From loan to law

Investing in the Congo Free State

8. Even before his ascension to the throne in 1865, Leopold II dreamt of acquiring colonial territories for economic reasons and he drew parallels with Dutch and British colonial history³³. In 1876 he hosted a geographic conference in Brussels and founded the philanthropic International African Association (*Association internationale africaine*), which he presided. He commissioned the renowned explorer Henry Morton Stanley (1841-1904) to explore the Congo basin. Together with the explorer’s help, King Leopold II claimed a large area along the Congo River where he – officially – intended to combat slavery and open the country to legitimate and peaceful commerce.

9. To develop the Congo Free State there was an urgent need for infrastructure such as bridges, tunnels and railroads. Therefore, tribes saw their land expropriated without further ado. Moreover, to justify the claims over land, Edmond van Eetvelde (1852-1925)³⁴, secretary of State at the Internal Affairs Department of the Congo Free State, gave Picard and his intern Félicien Cattier (1869-1946)³⁵ ten questions to advise King Leopold II on the rights of the Private Domain. Both attorneys published in 1892 the results of their work³⁶. They stipulated that sovereignty of a State not automatically led to the property of unoccupied territories (*terres vacantes*). However, they continued, each State had the right to regulate property rights. Remarkably, the *Journal des tribunaux* reported on this questionnaire only ten years later when the annexation of the CFS became an imminent matter³⁷. King Leopold II provided his private resources to fund this endeavour, which became a large financial burden on his shoulders. The authorization to issue a lottery loan in 1888, the subscription of Belgium to the capital of the Congo Railway Company in 1889. On July 3rd, 1890, a first agreement between Belgium and the CFS on a loan of 25 million francs spread over a ten-year term gave the former the right to annex the latter six months after the term had expired. The Chamber of Representatives approved the agreement, which actually resulted from King Leopold’s will sent a year earlier to Prime Minister and close friend of the monarch Auguste Beernaert (1829-1912)³⁸.

31 « Politique », *JT*, 1908, col. 709.

32 L. Hennebicq, « Henri Jaspas », *JT*, 1939, col. 125.

33 J. Stengers, *Congo. Mythes et réalités. 100 ans d’histoire*, Ath, Belgique Loisirs, 1989, pp. 9-40.

34 J. Stengers, « Eetvelde, van Edmond », *Biographie coloniale belge*, II, 1951, 327-353.

35 P. Kauch, « Cattier, Félicien », *Biographie nationale*, 32, pp. 90-94 ; L. de Lichtervelde, « Jaspas, Henri », *Biographie nationale*, 31, p. 482.

36 E. Picard & F. Cattier, *État indépendant du Congo. Consultation délibérée par M^e Edmond Picard avec la collaboration de M^e F. Cattier du Barreau de Bruxelles, novembre 1892*, Brussels, Larcier, 1892, 70 p.

37 E. Picard, « Les concessions congolaises et la conférence de Berlin », *JT*, 1903, col. 737-748 ; col. 753-763 ; col. 769-777 ; col. 785-792 ; col. 801-812 ; col. 817-828.

38 Auguste Beernaert studied law in Louvain and after his law training, he visited universities in Germany and France. After his return, he became an influential attorney at the Brussels bar. From 1874 onwards, he was a politician for the catholic party and saw his political efforts succeeded as Prime Minister between 1884 and 1894. Despite the fact he supported the establishment of Congo Free State, he devoted himself to antislavery and heavily criticized King Leopold’s policy ; R. Demoulin, « Beernaert, Auguste », *Biographie nationale*, 33, p. 69-105.

Five years later, surfaced the news that the CFS – allegedly – went almost bankrupt and immediate annexation seemed the only possibility to save all Belgian investments. Major Albert Thys (1849-1915)³⁹ director of the *Société anonyme belge pour le commerce du Haut-Congo*, tried to convince Belgian businessmen that the annexation of the Congo would be an excellent matter for the country was at its highest economical level and desperately in need of resources and larger markets⁴⁰. However, at that moment the proposal to annex the Congo encountered such hostility at the Belgian public opinion because a lot of money already went lost⁴¹. The presented draft of the cession project was almost immediately subordinated⁴². The Parliament only allowed an extra loan of 6,850,000 francs under the same conditions of the 1890 act. Thus in 1901, Belgian government had the free choice whether it would engage in an annexation project.

10. Because of its economic importance, *Journal des tribunaux* hardly focused on the colonial topic. The signing of the 1885 Berlin Treaty was not mentioned at all and if reports on Congo were published, they remained hidden in the section *Droit international* (International law) or *État étranger* (foreign state). These topics contained the most important decrees, some case law, reprints of specialised colonial periodicals or book reviews⁴³. However, an increase of attention can be seen from 1885 onwards when for the first time regularly the lemma “Congo” in the *Journal's* indexes appears. The first contribution discusses Gustave Oppelt's (1817-1888)⁴⁴ book *Léopold II, roi des belges, chef de l'État indépendant du Congo*, an hagiography about King Leopold's work in Congo⁴⁵.

Congo as a legal question

11. During the last decade of the nineteenth century, the *Journal des tribunaux* and the Brussels Young Bar Association slowly turned their focus to the Congo question. A few reasons might have caused this. The aforementioned loan to develop the Congo approached its deadline, and a potential annexation urged Belgian lawyers to think about the legal implications of such annexation on both international and national level. However, at that same moment, French legal scholars posited that Belgium had no legal ground to annex the Congo. In 1894, the Bordeaux professor Frantz Despagnet (1857-1906)⁴⁶ wrote: “*les Belges veulent le Congo. Mais la France ne doit pas autoriser cette annexion, car elle serait de nature à compromettre la neutralité de la Belgique*”. A year later, Paul Fauchille (1858-1926)⁴⁷ declared the annexation of Congo to Belgium not compatible with the country's perpetual neutrality⁴⁸. In 1884, France had entered into a convention with the *Association internationale africaine* – the official predecessor of the CFS – whereby its sovereignty rights were recognized, but in case the sovereignty should lapse, the territory should go to France. Thus, France had a pre-emptive right if King Leopold and the Congo Free State were not able to fulfill their international engagements. As the annexation acted directly against CFS's and Belgium's perpetual neutrality, the right was about to be claimed.

39 P. Kauch, « Thys, Albert », *Biographie nationale*, 31, p. 688-696.

40 A. Thys, *L'annexion du Congo*, Brussels, Cercle africain, 1895.

41 Major Albert Thys had to answer to Belgian investors what happened with the money invested in the Matadi-Stanley Pool (today Pool Malebo) railway. As the Congo river between Matadi and Kinshasa, which finds itself at Pool Malebo, was not navigable, a railroad could bring relief. It was major Albert Thys who took the lead of the building project which eventually costed double of what was foreseen ; A. Thys, *L'annexion du Congo, op. cit.*, p. 6-10.

42 E. Soudan, *La reprise du Congo et le droit international*, Brussels, Larquier, 1908, p. 5.

43 E.g. « Le régime minier dans l'état indépendant du Congo », *JT*, 1894, col. 240.

44 A. Pilers, « Oppelt, Gustave », *Biographie nationale*, 16, p. 230-233.

45 The book contained all official documents, such as parliamentary preparatory works, the 1885 Berlin Convention and the like. Oppelt wrote also a biography on King Leopold II and congratulates him as head of a new State ; « Léopold II, roi des belges, chef de l'État Indépendant du Congo », *JT*, 1885, col. 1434.

46 Mémoire des Landes, *Dictionnaire biographique*, Mont-de-Marsan, Comité d'études sur l'histoire et l'art de la Gascogne, 1991, 108.

47 C. Moutadier, « Paul Fauchille », Société française pour le droit international (accessed online on October 25, 2016 ; <http://www.sfdi.org/internationalistes/fauchille/>).

48 P. Fauchille, « L'annexion du Congo à la Belgique et le droit international », *Revue générale de droit international public*, 1894, p. 400-439.

12. Secondly, in 1893, the first article of Belgium's Constitution was amended with a colonial clause, which initiated a small group of young attorneys to establish within the Brussels Young Bar Association a *cercle d'études* on colonial matters⁴⁹. The *Journal des tribunaux* reported on their meetings during which colonial law and the legal implications between the metropolis and the colony were discussed. It wanted to transplant "the best principles of our legislation" in the indigenous law. Characteristics such as race, psychology, climate and civilisation were taken into account⁵⁰. A few weeks later, the "*Société étant favorable à la politique d'expansion coloniale*"⁵¹ – abbreviated as *Société d'études coloniales*⁵² – was founded by the young Brussels attorney Victor Pourbaix (1867-1906), who became the secretary of this association⁵³. Its first president was August Courvreur (1827-1894), who had been attending the 1876 Brussels geographic conference and who was known as a propagator of the Leopoldian Congo⁵⁴. He died unexpectedly in 1894 and was succeeded by Auguste Beernaert (1829-1912) who had just resigned as Belgian Prime Minister⁵⁵. All members of the *Société* supported King Leopold II and his colonial policy.

13. Initially, the Society was divided in three sections : a scientific one (*Section scientifique*), an economic one (*Section économique*) and a legal one (*Section juridique*). A few weeks later a section of political and moral sciences was added. Those were not strictly divided, as members of one section could participate in reunions of an other. Alphonse Rivier (1835-1898)⁵⁶, professor at Brussels Free University (*Université Libre de Bruxelles*) and one of Belgium's most renowned scholars on international public law, headed the legal component⁵⁷. Each section dealt with questions raised during the colonial adventure and the results would be mentioned during a general assembly. These goals and the programme of the study group were published in the *Bulletin de la Société d'études coloniales*⁵⁸. Even though the *Société d'études coloniales* had its own periodical, the *Journal des tribunaux* reported on the legal meetings.

14. Henceforth, the colonial question drew attention of the Brussels Bar in general as in 1894, out of 700 Brussels attorneys-at-law⁵⁹, 129 became member of the aforementioned *Société des études coloniales*⁶⁰. Further, the *JT* showed interest when fellow attorneys travelled to Congo Free State⁶¹. Two consecutive opening speeches at the beginning of the judicial year were dedicated to the colonial question. On October 26, 1895, Brussels attorney René Vauthier (1864-1921), nicknamed the "champion of the colonial

49 The article was completed with the sentence : « *Les colonies, possessions d'outre-mer ou protectorats que la Belgique peut acquérir sont régis par des lois particulières. Les troupes belges destinées à leur défense ne peuvent être recrutées que par des engagements volontaires* ».

50 « La législation coloniale », *JT*, 1893, col. 173-174.

51 M. Couttenier, *Congo tentoongesteld : een geschiedenis van de Belgische antropologie en het museum van Tervuren (1882-1925)*, Louvain, Acco, 2005, p. 121-124.

52 « Société d'études coloniales », *JT*, 1893, col. 347-348, 1894, col. 79.

53 O. Landrien, « Allocution », *JT*, 1895, col. 1078 ; M.-L. Comelieu, « Pourbaix, Victor », *Biographie coloniale belge*, IV, 1955, p. 722 ; J.-M. Jadot, « Iseghem, André van », *Biographie coloniale belge*, 5, 1958, p. 464-468.

54 M. Coosemens, « Couvreur, Auguste », *Biographie coloniale belge*, IV, 1955, p. 163.

55 Auguste Beernaert studied law in Louvain and after his law training, he visited universities in Germany and France. After his return, he became an influential attorney at the Brussels bar. From 1874 onwards, he was a politician for the catholic party and saw his political efforts succeeded as Prime Minister between 1884 and 1894. Despite the fact he supported the establishment of Congo Free State, he devoted himself to antislavery and heavily criticized King Leopold's policy ; R. Demoulin, « Beernaert, Auguste », *Biographie nationale*, 33, p. 69-105.

56 R. Dekkers, « Rivier, Alphonse », *Biographie nationale*, 35, p. 627-630.

57 The legal section had four sub divisions, 1° International Law, 2° Public Law and relations with the metropole, 3° Internal Colonial Law, 4° Comparative Colonial Law ; « Société d'études coloniales », *JT*, 1893, col. 347-348, 1894, col. 79.

58 « Société d'études coloniales », *JT*, 1893, col. 347-348.

59 B. Coppein & J. De Brouwer, *Histoire du Barreau de Bruxelles, op. cit.*, p. 232.

60 During its first year, the *Société d'études coloniales* had 350 members ; M. Couttenier, *Congo tentoongesteld : een geschiedenis van de Belgische antropologie en het museum van Tervuren (1882-1925)*, Louvain, Acco, 2005, p. 122.

61 « Un avocat belge au Congo », *JT*, 1896, col. 318-319 ; « Conférence de M^c René Vauthier au Jeune Barreau de Bruxelles », *JT*, 1898, col. 1352 ; « Conférence de Me. René Vauthier au Jeune Barreau de Bruxelles », *JT*, 1898, col. 1381-1383.

cause⁶², opened the new year of before the *Conférence du Jeune Barreau de Bruxelles*⁶³. A year later, Willem Thelen (1870-1958)⁶⁴, who had visited the French colonies in North-Africa, speeched before the *Vlaamsch Pleitgenootschap der Brusselsche Balie*, with a lecture entitled “*Eenige zijden van het koloniaal vraagstuk*”⁶⁵. Both speeches carried remarkable parallels in them as they connected the colonial question to the social one which at the end of the nineteenth century stirred Belgium. The colonial models from Portugal and especially Spain were bad examples and were considered as nothing more than looting the country. This ‘killing the golden goose’ was no longer a viable solution for colonial empires. Both speeches mentioned a need for investment and denounced all kinds of slavery. Thelen went further than Vauthier and propagated the French protectorates in Algeria and Tunisia as exemplary. In addition, he openly advocated colonization as necessary for all human kind as it made all resources from everywhere available. Thelen asked himself :

if a few places in the world are inhabited by tribes not able to develop their land, or to use the natural resources for the benefit of all, what's the harm to give civilized people the right to act as a tutor, to establish a colony, and by doing so, giving all human kind the possibility to enjoy the wealth ?

He supported his thesis by giving the examples of the United States and Australia, which, thanks to the Western colonizers, were better places to live. Moreover, the presence of the West, made it possible for indigenous populations to turn their back to ‘the arbitrary tyranny of their leaders and their cruelty’. In other words : European empires brought civilization and prosperity. This message stood in contrast to the international protest, which rose during the last decade of the nineteenth century against the policy of Congo Free State. Also some Belgian lawyers were not keen on the Congo project. Especially the Brussels *Conseil supérieur du Congo* (Supreme Court of Congo), established in 1889, was questioned :

Voilà donc une juridiction étrangère qui siège et juge dans notre pays ? En vertu de quelle disposition légale ? Un pouvoir judiciaire étranger peut-il agir en Belgique ?⁶⁶

More and more, the Congo question became a legal one and a matter important for all Belgians, who were until that moment not interested in their colony.

1900-1908 : Bringing Congo Free State to the people

1900-1902 : Annexation is a national issue

15. In 1900, the annexation of the Congo to Belgium appeared for the second time on the parliamentary agenda as the 1890 loan approached its end. Again, the *Journal des tribunaux* found itself at the forefront of the debate and reported on the discussion at the Parliament. Nonetheless, the periodical expressed its

62 René Vauthier was attorney and publisher. In his capacity as editor-in-chief of *La Belgique coloniale*, one of Belgium's most important periodicals on Congo Free State, he was invited to the inauguration of the Matadi-Leopoldville railroad in 1898 and afterwards explored Congo for three months. He defended strongly in King Leopold's endeavor and became in 1905 vice president of the Congo Superior Court ; M.-L. Comelieu, « Vauthier, René », *Biographie coloniale belge*, IV, 1955, pp. 906-907 ; « Conférence de M^e René Vauthier au Jeune Barreau de Bruxelles », *JT*, 1898, col. 1352.

63 R. Vauthier, « Des fondements juridiques d'un établissement colonial », *JT*, 1895, col. 1065-1077.

64 Thelen studied law at the Brussels Free University and became in 1892 an attorney at the Brussels Bar. He was born as a Dutch citizen, explaining his zeal for the Flemish cause in Belgium. Twice he was elected president of the *Vlaams Pleitgenootschap der Brusselsche balie* ; C. Matheeußen, « Thelen, Willem », *Nieuwe Encyclopedie van de Vlaamse Beweging*, 1998, p. 3058 ; B. Coppein & J. De Brouwer, *Histoire du Barreau de Bruxelles*, op. cit., p. 148.

65 J. Thelen, « Eenige zijden van het koloniaal vraagstuk », *JT*, 1896, col. 1409-1415.

66 « La légalité de la juridiction du Conseil Supérieur du Congo », *JT*, 1894, col. 741-742.

astonishment about the large disinterest amongst Belgian civilians and its political leaders towards the Congo question⁶⁷ :

Mais ce qui est plus étrange encore, c'est qu'un milieu éclairé, tel que le Barreau, partage l'indifférence générale sur le débat qui va s'ouvrir, et qui cependant présentera un caractère éminemment juridique. Une telle apathie est presque coupable : le Barreau fournit, et on le lui reproche assez, environ un tiers de notre personnel politique⁶⁸.

16. Traditionally, lawyers had been the major professional group in the Parliament. If they wanted to remain in their leading position, the *Journal des tribunaux* instigated them to look beyond elective reasons. The editors appealed to the members of the Brussels bar to take the lead in this political debate and use the *Journal des tribunaux* as a means to disseminate their opinions. Herein, the editors remained faithful to the periodical's goal to bring law to the people. In other words, the *Journal des tribunaux* wanted to inform everyone in Belgium about the Congo problem.

17. To remove this apathy or disinterest, the *Journal* organized a conference with Maurice Duvivier on Belgium and its colonial expansion⁶⁹, and it published two anonymously written articles on the relation between Belgium and the Congo Free State. Those articles discussed whether Belgium should take the optional right to annex the Congo Free State or not. If the Belgian government decided not to do so, the sum of 25 million francs could only be demanded after a new period of ten years. However, it would generate an interest of 3,5% per semester. After the author briefly sketched the agreements between the Congo Free State (i.e. King Leopold II) and Belgium (i.e. Auguste Beernaert) on the hereditary rights and the loan⁷⁰, the legal implications of the 1890 agreement were discussed⁷¹. The author criticized the indecisiveness of the Belgian Parliament by expressing his hope that a "firm and virile stand [would be taken] to safeguard the future once and for all"⁷². MP Paul de Smet de Naeyer (1843-1913)⁷³ concluded that Belgium had only one option : annexing the Congo Free State and if it did not, it renounced this right permanently. The author of the article did not agree and argued that three options were possible for the Parliament. Firstly, a plain and simple annexation of the Congo Free State, which implied the debt disappeared. Secondly, not using the right to annex, which results in a full repayment of the loan. Thirdly, both parties could agree on a new contract with possible new terms.

1903-1905 : Annexation becomes an international issue

18. From 1903 onwards, the tone in the *Journal des tribunaux* became more grim as international protests against King Leopold II and his Congo Free State sounded louder and louder. Especially editor Hennebicq profiled himself as very militant. In the opening statement of the May 31st, 1903 issue, he mentioned two international incidents of which "*l'opinion publique de notre pays semble n'en avoir pas encore compris tout l'inquiétante gravité*"⁷⁴. Especially the United Kingdom, where the Aborigines

67 Debates in the Parliament concerning the Congo question remained very brief on key questions. Belgium's policy was actually clear : King Leopold II could have his colony as long as it did not cost anything to the Belgian tax-payer.

68 « But wat is very strange is that an enlightened environment such as the Bar Association, shares the same general indifference on the debate which will start soon and will have inherently a legal character. Such apathy is almost guilty : the Bar provides, and is therefore often blamed, almost a third of all politicians » ; « La Belgique et l'État du Congo », *JT*, 1901, col. 594.

69 « Les conférences du *Journal des tribunaux* », *JT*, 1902, col. 448 ; « Conférence du Jeune Barreau de Bruxelles », *JT*, 1902, col. 463.

70 In his 1889 will, King Leopold II legated Congo Free State to Belgium ; « La Belgique et l'État du Congo », *JT*, 1901, col. 593-597.

71 *Ibidem*, col. 625-630.

72 *Ibidem*, col. 630.

73 Paul de Smet de Naeyer headed a firm in cotton, but quite soon he became a politician for the Catholic Party. Between 1886 and 1913 he was Member of Parliament and as Prime Minister he took the lead of two national governments ; P. Van Molle, *Le parlement belge/Het Belgisch Parlement 1894-1969*, Ledeborg, Erasmus, 1969, p. 114-115.

74 L. Hennebicq, « L'annexion du Congo », *JT*, 1903, col. 666.

Protection Society (APS) raised its voice, took the lead in criticizing King Leopold II and his colonial project. The APS, an international humanitarian organisation, founded in 1837, ensured the health and well-being of and the sovereign, legal and religious rights of the indigenous peoples while also promoting the civilization. In 1889 Henry Richard Fox Bourne (1837-1909)⁷⁵ became the secretary of the Society and he was one of the first to denounce publicly the cruel treatment of natives in Congo Free State. The *Journal des tribunaux* explicitly mentioned his name. The first demand of Great-Britain was the restitution of the Lado enclave⁷⁶. Secondly, the freedom of commerce, guaranteed in the 1885 General Act of Berlin had to be respected. Léon Hennebicq saw in these demands a hidden agenda to "dismember Congo and divide it amongst Germany, England and France"⁷⁷. He openly criticised international humanitarian law as "*paravents qui ne sont dressés que pour cacher les ambitions latentes*". In his opinion, Belgium had become a competitor for the other European Powers which needed to be restrained. Léon Hennebicq continued that annexing the Congo was necessary for Belgium if it wanted to build a large commercial fleet, or if it wanted to strengthen its ambitions in China and the Far East.

19. The Casement Report, published in 1904, set off a discussion in the British House of Commons and public opinion favoured stopping the atrocities. Almost unanimous the House of Commons accused the government of the Congo Free State of infringements against humanity and freedom of commerce. On June 19, 1904 *Journal des tribunaux* reported on these debates on the other side of the Channel and according to the anonymous author it was clear that it was a campaign orchestrated by commercial intentions.

La campagne menée par les commerçants de Liverpool et accueillie par le gouvernement ne parlait de cette dernière question. Il leur paraissait plus opportune de frapper l'imagination populaire et l'opinion publique par le spectacle d'atrocités prétendues auxquelles la fonction des missionnaires dénonciateurs donnait un caractère d'authenticité apparente. De là la campagne de meetings, le rapport Casement, les votes de la Chambre des Communes⁷⁸.

20. According to the *Journal des tribunaux*, the British outrage was inspired by "*des appétits commerciaux de cette nation avide d'activité et de conquête*"⁷⁹. Through its vastness and its resources, the Congo was a profitable region and under the cloak of humanity and justice Great Britain tried to regain its position on the ivory and rubber markets. The editors of *Journal des tribunaux* questioned the Casement report and pointed to some flaws, especially in the Epondo case⁸⁰. According to the editors, the British diplomat seemed to have forgotten about "*la propension naturelle du nègre au mensonge, et le travestissement de la vérité par les missionnaires*"⁸¹. This 'misinformation' has led to the diplomatic problems for Belgium. A solution was much needed.

21. A first solution seemed to be the immediate annexation of the Congo Free State by Belgium, which made the question if Belgium, as a perpetual neutral state, could annex its overseas territory. Pierre Graux

75 H.C. Swaisland, « Bourne, Henry Richard Fox », *Oxford Dictionary of National Biography*, Oxford, Oxford University Press, 2004, (<http://www.oxforddnb.com/view/article/31993>, accessed 19 November 2016).

76 King Leopold II dreamt of an empire between the Atlantic Ocean and the river Nile. Therefore, he needed to expand the Congolese territory to the north-east where the British Lado enclave was situated. After long negotiations, the King's advisor Van Eetvelde obtained a tenancy of the territory. However, Leopold remained dissatisfied and sent a 'scientific expedition' to Bahr el Ghazal in an attempt to take the territory by force. The Belgian King had to give in and could no longer pursue his dream; M. Couttenier, *Congo tentoongesteld: een geschiedenis van de Belgische antropologie en het museum van Tervuren (1882-1925)*, Leuven, Acco, 2005, 168.

77 L. Hennebicq, « L'annexion du Congo », *JT*, 1903, col. 667.

78 « La commission d'enquête au Congo », *JT*, 1904, col. 1036.

79 « L'Angleterre et le Congo », *JT*, 1904, col. 789.

80 The Epondo Case was the only atrocity that Casement had the opportunity to investigate personally. Epondo was a Congolese boy whose hand was hacked off because of failure to fulfil the rubber quota. When the authorities of the Congo Free State replied to this accusation, they produced evidence certified by an American missionary that Epondo's hand had been bitten off by a wild boar. This news made many English doubt the validity of other parts of the report; W. R. Louis, *Ends of British Imperialism: the Scramble for Empire, Suez and decolonization*, New York, Palgrave Macmillan, 2006, p. 155.

81 « La commission d'enquête », *JT*, 1904, col. 1037.

tackled this issue during the opening speech of the 1904 *Conférence du Jeune Barreau de Bruxelles* and harvested a lot of success⁸². The attorney opened with the remark that internationally, other countries tried to confine Belgium in its colonial adventure by “imposing a new international law”⁸³. Foreign scholars argued that Belgium was artificially created during the 1831 London Conference and existed only by the grace of the five European powers which had it imposed perpetual neutrality. Building a colonial empire jeopardized this sovereignty and neutrality, as the odds for conflict increased. In other words, the recognizing powers could annul the London Treaty and make Belgium disappear. Convincingly, Graux tackled these issues and referred to renowned Belgian international lawyers such as Ernest Nys (1851-1920)⁸⁴ and Alphonse Rivier (1835-1898)⁸⁵, who both stipulated that a declaration of sovereignty is a fact and other powers have no other right but to acknowledge its existence, be it under certain conditions. Hence, Belgium’s perpetual neutrality is a mere condition for recognition of the country in the “concert of nations”. Belgium had as much as other European powers the right to develop and expand overseas. The British on the other hand believed that a small country like Belgium could not cope with a colony.

22. The *Journal des tribunaux* reported on the possibility suggested by some British MPs to install an international court to condemn the atrocities committed. Belgian lawyers saw this as a wrongful interference in an autonomous and free judiciary. Under the international pressure, King Leopold II appointed a Commission of Inquiry in July 1904. Attorney-General at the Belgian Cassation Court Edmond Janssens (1852-1919)⁸⁶ presided this international Commission and was assisted by the Swiss chief justice of the Luzern canton Edmond de Schumacher (1859-1908)⁸⁷ and the Italian president *ad interim* of the Boma Court of Appeal baron Giacomo Nisco (1860-1942)⁸⁸. The *Journal des tribunaux* hailed the King for choosing absolute impartial members⁸⁹ and expected a lot from this commission. Especially its president received high esteem as he would not be influenced by emotions. Together with their assistants, the Commission travelled four and a half months through the Congo, held hearings and took testimonies in different localities. Months later the report was published. The findings did not meet the expectations at all :

Nombreux étaient ceux qui, confiants en d’audacieux démentis, étaient persuadés que la Commission rapporterait de son voyage en terre nègre un certificat de bonne conduite et de moralité pour le jeune État⁹⁰.

This was not the case, as even the Commission condemned the Congo Free State for committing atrocities.

23. Yet, the immediate cause for the *Journal des tribunaux* and Brussels lawyers to undertake action was not the publication of the commission’s report as such nor the parliamentary debate which succeeded from it. A book published by Félicien Cattier drove a wedge between the *JT*’s editors.

82 P. Graux, « La neutralité de la Belgique et l’annexion du Congo », *JT*, 1904, col. 1211-1221 ; This speech has been published in *Revue de droit international et de législation comparée*, 1905, p. 33-52.

83 *Ibidem*, *Revue de droit international et de législation comparée*, 1905, p. 35.

84 Nys studied law at Ghent University and afterwards he went to the universities of Heidelberg, Leipzig and Berlin. After a short career as attorney-at-law he became a judge in Antwerp. He had a large interest for international law and he was discovered by Alphonse Rivier who was at the ULB and let him enter in the editorial board of *Revue de droit international et de législation comparée*; J. Salmon, « Nys, Ernest », *Nouvelle biographie nationale*, 9, p. 283-285; F. Dhondt, « ‘L’histoire, parole vivante du droit?’ François Laurent en Ernest Nys als historiografen van het volkenrecht », in *De ‘Belle Epoque’ van het Belgisch recht (1870-1914)*, B. Debaenst (dir.), Bruges, Die Keure, 2016, p. 91-115; F. Dhondt, « ‘Inter ruinas publicas scriptum’ : Ernest Nys, A Legal Historian in Defence of Belgian Tax Payers During the Great War », *Comparative Legal History*, 2015, p. 131-151.

85 Soudan used A. Rivier, *Droit des gens* and E. Nys, *L’État Indépendant du Congo et le Droit International*.

86 J. Stengers, « Janssens, Edmond », *Biographie nationale*, 31, p. 474-480.

87 V. Devaux, « Schumacher (de), Edmond », *Biographie coloniale belge*, 3, p. 793-796.

88 F. Dellicour, « Nisco, Giacomo », *Biographie coloniale belge*, 4, p. 660-661.

89 F. Cattier, *Étude sur la situation de l’État Indépendant du Congo*, Brussels, Larcier, 1906, p. 10.

90 H. Jaspar, « Dignité nationale », *JT*, 1906, col. 306-308.

1906-1908 : a colleague stirs the minds

24. In 1906 Félicien Cattier, former intern of Edmond Picard and thus colleague of Léon Hennebicq, published *Étude sur la situation de l'État indépendant du Congo*, an update of his book *Droit et administration du Congo* published somewhat ten years earlier⁹¹. At that time was Cattier an expert on colonial matters as he had served as legal counsellor in Siam (1895) and was secretary-general of the *Compagnie internationale d'Orient*. Further, Cattier was connected to the *Banque d'Outre-Mer* where he met Albert Thys (supra), Adolphe-Jules Wauters and Emile Francqui. For quite a while Cattier propagated freedom of work and commerce, respect for indigenous property which brought him into debates with his colleagues. For him the report published by the 1904 Inquiry Commission proved him largely right and for his 1906 book he relied heavily on this report. The book is a merciless long critique on the politics of the Congo Free State. In his conclusion, he stated that the Congo Free State was not a colonizing state nor was it a real state. It was a financial enterprise aiming for profit. The CFS hardly served indigenous interests, nor did it help Belgium's economy. Only King Leopold II benefitted from his colonial endeavour. Cattier questioned whether the loans given by Belgium during the 1890s helped the civilisatory work of the Congo Free State. Forced labour (le portage) had decimated the Congolese population and signalled the colonial work had failed. Further, Cattier sought whether the colony had improve the material and moral conditions for the indigenous. Due to concessionary businesses, local trade went into free fall since 1885 and poverty rose. Especially children and women were victim of the CFS policy. Nothing was done to educate the local population. The only education children could have was when they enlisted in the army. Women had to work on the fields far away from home, leaving their families behind and sometimes they were faced with forced abortion. Cattier held the CFS responsible for all what went wrong in the Congo basin and there was only way to remedy this : Belgium had to annex its colony.⁹² More than the Casement report and the report published by the Inquiry Commission it was Cattier's book that divided the Brussels bar association in two large camps using the *Journal des tribunaux* and the Bar Association as their arena⁹³. It was Hennebicq who strongly denied what happened in the Congo and kept supporting King Leopold II.

25. Some attorneys-at-law, such as Paul Emile Janson (1872-1944) and Henri Jaspar⁹⁴, hailed the work of their colleague and called out for an open, moral and public debate on the Congo question⁹⁵. They denounced the theory that violence and abuses were necessary in the Leopoldian colonial expansion and argued that, if Belgium were to inherit the Congo from its King, all must be done to wash away the humanitarian crisis. They hailed the Parliamentary debate on the Congo annexation. Others, such as Hennebicq and René Vauthier⁹⁶, opposed strongly these ideas. They loathed Cattier as an anticolonialist and antinationalist who played with fire. Hennebicq considered the book as inappropriate in a time during which the Congo was threatened "*par des convoitises étrangères*" and Belgium was "*sur un pied de guerre vis-à-vis de l'Angleterre qui nous veut prendre notre bien, conformément à sa politique traditionnelle*"⁹⁷. England was seen as an important enemy, ready to invade the Congo Free State and violating its independence⁹⁸. According to Hennebicq, Belgium and King Leopold II – thus the Congo Free State – had undeniably done a great job overseas and individual mistakes could happen in such a colonial adventure. In addition, Hennebicq accused Cattier of only taking economic arguments into account and omitting all legal and political aspects of the Congo question. By doing so, he revealed

91 This book was considered as a benchmark in colonial legal studies for it was the first time that a decent legal analysis was made of the relation between Belgium and the Congo Free State, the legislative and administrative organization of the latter ; O. Louwers, « Cattier, Félicien », *Biographie coloniale belge*, VI, 1968, p. 189-201.

92 F. Cattier, *Étude sur la situation de l'État Indépendant du Congo*, *op. cit.*, 1906, p. 341-351.

93 P. Spaak, « La fiente », *JT*, 1906, col. 338-341.

94 G. Kurgan-van Hentenryck, « Janson, Paul-Émile », *Nouvelle biographie nationale*, II, p. 203-205.

95 P.-E. Janson, « Œuvre de moralité », *JT*, 1906, col. 194-197.

96 As an answer to Cattier he wrote the book *Un méchant livre : les théories de Mr. Cattier* ; M.-L. Comelieu, « Vauthier, René », *Biographie coloniale belge*, IV, 1955, p. 906.

97 F. Cattier, *Étude sur la situation de l'état Indépendant du Congo*, *op. cit.* ; L. Hennebicq, « Un pamphlet anti-colonial », *JT*, 1906, col. 210-214.

98 L. Hennebicq, « Conférence du Jeune Barreau de Bruxelles », *JT*, 1906, col. 1305.

himself as a ‘representative of the commercial societies’ and as ‘anglophile’. In Hennebicq’s opinion it is essential that the legal status is fixed to guarantee the colonial occupation. In other words, a State as a legal person needs to have the necessary rights to position itself amongst other states and in the relation with the indigenous people⁹⁹. Moreover, and still according to Hennebicq, Cattier had made terrible mistakes in his study and negated other colonial powers had adopted similar policies¹⁰⁰. Despite the fact Cattier urged for an annexation to Belgium, he was not Belgian patriot for his propositions would lead to a de facto annexation to England. From then onwards, the discussion in the *Journal des tribunaux* escalated. Leading figures such as Alphonse-Jules Wauters defended Cattier, who also responded in an open letter to Hennebicq’s accusations¹⁰¹. It resulted in a bitter discussion as Hennebicq responded :

Quant à M. Cattier, je n’ai à répondre qu’une chose, qui est évidente, c’est que je ne suis pas de son avis et que personne, pas même lui, n’a le monopole de la justice et de l’humanité¹⁰².

The debate turned more and more sour, illustrated in an article symptomatically entitled *La fiente* (bird droppings) where a discussion between two attorneys, Jaspic and Hennebar, was overheard by their colleague who tried to find a middle way. The latter found that nothing is perfect and a colony could not be established without crimes against humanity, although it was time to clean the mess the colonials had made¹⁰³. It is clear that this discussion was between Hennebicq and Jaspic, wherein the former acknowledged that a few bad apples had given the Congo Free State a terrible reputation. Jaspic adhered the idea that there was a abuses and torture was systematically applied in the overseas territory.

26. The editor-in-chief not only aimed for his colleagues, he also attacked the Members of Parliament who he deemed to be ignorant and cowardice. Already after the Casement report, the *Journal des tribunaux* had stated that “Congo has to be ours tomorrow” but it took two more years before the Parliament debated about it¹⁰⁴. Only after the report of the *Commission d’enquête* was announced, the Parliament rushed to annex Congo and undo all harm made. According to the editor-in-chief, the politicians only knew that the Congo was in Africa and there it was hot : “*A part ça, nothing*”! He continued that a debate conducted in such an environment was doomed because politicians, in his opinion, were only preoccupied with electoral gaining. Since the territory of Congo barely had any influence on the voting ballots, the problem was, along with other international issues at that time, not thoroughly discussed¹⁰⁵. Hennebicq openly labelled the members of Parliament as a “*toku-bohu d’ignorances*”, a bunch of ignorant people. Also the opposition :

*Les ennemis de notre expansion, les anticoloniaux, ceux qui ont un programme électoral antidynastique s’en sont donné à cœur joie. Ne dansaient-ils pas sur leur tremplin ?*¹⁰⁶

27. Hennebicq assessed the Brussels *Conférence du Jeune Barreau* as the best forum to discuss the annexation problem of the Congo, because a lot of attorneys had expertise in the colonial matter. At the end of February 1906, ten members of the *Conférence du Jeune Barreau* urged for a discussion on “*Le problème de l’annexion du Congo*”¹⁰⁷. The association’s statutes stipulated that in case more than ten members asked to convene, an extraordinary general assembly needed to be installed. Throughout the year, it convened several times to work around one particular question : does the annexation of Congo need to go as fast as possible and does another regime need to be installed ? The Assembly would tackle

99 *Id.*, « Le problème de l’annexion du Congo », *JT*, 1906, col. 362.

100 For instance, Cattier compared Belgium’s colonial policy to the French, British and German. For Germany’s legislation, he discussed the legislation until 1896, henceforth omitting the evolutions afterwards, which were inspired by other colonial powers. For English law he discussed the British East Africa protectorate, which could not be compared to Congo.

101 F. Cattier, « La question du Congo », *JT*, 1906, col. 227-228.

102 L. Hennebicq, « Correspondance », *JT*, 1906, col. 228.

103 P. Spaak, « La fiente », *JT*, 1906, col. 338-341.

104 « L’Angleterre et le Congo », *JT*, 1904, col. 788.

105 Hennebicq mentions amongst others the discussion about a commercial fleet and the Hollandob Belgian negotiations about the legal position of the river Scheldt ; L. Hennebicq, « Insuffisance Parlementaire », *JT*, 1906, col. 324.

106 L. Hennebicq, *Ibidem*, col. 324.

107 L. Hennebicq, « Conférence du Jeune Barreau de Bruxelles », *JT*, 1906, col. 254.

four legal problems : taxes, freedom of commerce, revenues for Belgium and not for Congo and land regime¹⁰⁸. Alleged infringements against human rights were not discussed. Only once forced labour was mentioned. At the same time of the General Assembly, a *Section de droit maritime et de droit colonial* (Section of Maritime and Colonial Law) was established at the Brussels Bar Association which had the intention to refute the findings of Cattier and to help the Belgian legislator with the legal problems during the annexation procedure. During the parliamentary debate, two important legal problems emerged : the problem of sovereignty in international law and the regime of colonial territories when Congo would be annexed¹⁰⁹. René Vauthier discussed it during a meeting of the Section of Maritime and Colonial Law.

28. In 1907, the Section of Maritime and Colonial Law established a study group : the *Commission d'études coloniales* (Commission of Colonial Studies)¹¹⁰. Léon Hennebicq presided this group of seven attorneys at law¹¹¹ who elaborated on a certain number of questions which repeatedly have been asked by the public opinion and the Colonial Commission of the Belgian Parliament. From a comparative point of view and with eleven questions, the policies in French, British, Dutch and German colonies were discussed¹¹². The results were publicly presented to peers and published in the *Journal des tribunaux*¹¹³. At the end of November 1907, all results would be discussed publicly during a meeting accessible for all Brussels lawyers¹¹⁴. The secretary of this sub commission was the young and promising attorney Eugène Soudan (1880-1960)¹¹⁵. In 1908, Soudan published and presented *La reprise du Congo et le droit international*¹¹⁶. He discussed Belgium's and the Congo Free State's neutrality and sovereignty, taking over most arguments raised by Graux four years earlier. Soudan concluded that Belgium's neutrality stood not in the way to annex the Congo since it was each state's right to colonize territories.

29. On August 20, 1908, the Belgian Chamber of Representatives voted to annex the Congo Free State to Belgium as a colony. A few weeks later, the Senate approved the annexation too. This did not silence the *Journal des tribunaux*, because now the colonial work really took off. René Vauthier presented before the *Conférence du Jeune Barreau* on the new tasks waiting at the Belgian colony¹¹⁷. He defended the ideas he propagated already for years and saw two important remaining tasks : valorising the colony and ameliorate the lives of the indigenous¹¹⁸. Also the *Section coloniale et de droit maritime* changed its course. The colonial law had to be interpreted and now it was time to discuss the relations between indigenous customary law and the European law to have 'white' legislation in Congo¹¹⁹. Again it adopted a comparative approach in which for this time all indigenous customary law would be put next to each other. Other topics were corporate law and commentary on the colonial law¹²⁰.

108 *Ibidem*, col. 269.

109 F. Cattier, « La question du Congo », *JT*, 1906, col. 1294-1298.

110 « La loi coloniale », *JT*, 1907, col. 334.

111 Other members were de Formanoir, Marcel Despret, Panis, Renault, Eugène Soudan, J. Van Ackere. Unfortunately it we did not retrace any information on them.

112 « Études préparatoires à la loi coloniale belge », *JT*, 1907, col. 490-491.

113 V. Renauld, « Rapport préliminaire sur la législation coloniale allemande », *JT*, 1907, col. 491-494 ; J. Van Ackere, « Rapport préliminaire sur la législation coloniale allemande », *JT*, 1907, col. 616-620 ; E. Soudan, « Notes sur la loi coloniale néerlandaise », *JT*, 1907, col. 817-824 ; L. Hennebicq, M. Despret & F. Wiener, « Rapport sur les colonies anglaises », *JT*, 1907, col. 781-782 ; R. Marcq, « Notes sur les principes généraux de la législation coloniale française », *JT*, 1907, col. 882-887.

114 « Section de droit colonial et maritime », *JT*, 1907, col. 1112.

115 Soudan studied law at Ghent University and became an attorney at the Brussels Bar. After WWI he was appointed professor at the Free University of Brussels. M.-A. Pierson, « Soudan, Eugène », *Biographie nationale*, 37, p. 740-744.

116 E. Soudan, « La reprise du Congo et le droit international », *JT*, 1908, col. 585-596 ; col. 641-652 ; col. 657-668 ; col. 673-684 ; col. 689-698 ; col. 705-714 ; E. Soudan, *La reprise du Congo et le droit international*, *op. cit.*

117 « Conférence du Jeune Barreau de Bruxelles », *JT*, 1908, col. 1128-1129 ; « Après l'annexion du Congo, les tâches nouvelles », *JT*, 1908, col. 1157-1158.

118 L. Hennebicq, « Conférence du Jeune Barreau de Bruxelles », *Ibidem*, col. 1157-1158.

119 « Section coloniale et de droit maritime », *JT*, 1908, col. 1251-1252.

120 L. Hennebicq, « Conférence du Jeune Barreau de Bruxelles », *art. cit.*, col. 1324.

Conclusion

30. Between 1885 and 1908, the *Journal des tribunaux* gave quite some attention to the Congo question and in almost every way it reflected the ideas of its editors-in-chief, Edmond Picard and Léon Hennebicq. Both defended Leopold II and Belgium's colonial adventure. However, in the *Journal des tribunaux*, it is Hennebicq who publishes radically to annex the Congo Free State, regardless the increase of international protests. Amongst their colleagues at the Brussels Bar, both editors found kindred spirits who were little troubled with what happened overseas. The only legal issue raised was whether Belgium should annex the Congo Free State once the loan of 25 million francs is due. Until 1903-1904, the Congo question remained, at least for the *Journal des tribunaux*, a national problem, which could not excite the Belgian people, let alone their politicians. That happened only a few years later, with the publication of the Casement report. This lack of interest can be explained by King Leopold's attitude to keep all governmental intervention out and Belgian politicians agreed as long as the State did not had to carry the financial implications of the colonial endeavour.

31. After the Casement report and especially the Inquiry Commission, the *Journal des tribunaux*, headed by the zealous Hennebicq, published both adherents and opponents of Belgium's colonial adventure. Remarkably, the turning point which sparked the discussion on colonial Belgium was the book published in 1906 by Félicien Cattier. Hennebicq reviewed this work as outrageous and considered his colleague at the Brussels Bar and, just like him, former intern of Edmond Picard, as a traitor. This personal attack and the heavy criticism on the Parliamentary debate, positioned the editor-in-chief in the camp of "congophiles" opposed to "congophobes" with influential colleagues as Henri Jaspas. The argument between the two sides can be explained by their personal position at the Brussels Bar and in the national politics. Hennebicq headed the most influential legal periodical in Belgium at that time, whereas Cattier held on his status as an expert in colonial law. Jaspas used the Congo question to profile himself in the political field and positioned him as a herald of the Leopoldian colonization project. The discussion started in 1906 illustrated how divided Belgium lawyers perceived the colonial project.

32. The activity of the *Conférence du Jeune Barreau* on Belgium's colonial question is striking and fits into the anti-parliament movement of Hennebicq. More than anyone else, he found the bar the most suitable place to have a profound discussion on Congo's annexation as he could unite experts, such as René Vauthier or Edmond Picard, on the matter.

33. When it comes to the Congo question, the *Journal des tribunaux* remains faithful to its initial programme by 'bringing law to the people'. It wanted to wake up the Belgian public for the Congo question by offering a forum for all opinions. However, its editor-in-chief never hesitated to criticize articles, which did not concur with his personal conviction. In this way, the *Journal des tribunaux* was not only a vector for colonial law, but mostly for its leading figures. The *Journal* brought the political debate and the reading of international and colonial law on crucial legal issues such land property (*droit foncier*), freedom of trade and humanitarian questions at the frontline. If not the Belgian public was informed, at least its elite in the legal world was.

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