

## A legal periodical for the whole nation? The “*Journal des Tribunaux*” facing the linguistic issue (1881-1935)

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### Résumé :

Par une analyse longitudinale de la question linguistique en Belgique entre 1881 et 1935, Jérôme de Brouwer teste la neutralité politique, idéal inscrit par les fondateurs du *Journal des Tribunaux*. Cette étude de cas s'articule en plusieurs phases, témoignant en même temps de l'évolution des revendications linguistiques flamandes et des attitudes exprimées par les rédacteurs en chef du journal, Edmond Picard, puis Léon Hennebicq. D'emblée, le journal fait preuve d'ouverture à l'égard des revendications, bien que de Brouwer suggère qu'il puisse s'agir d'un malentendu. En effet, Picard promeut le bilinguisme en Flandre comme solution. Le journal publie davantage de documents en néerlandais et, sous la houlette de Hennebicq, se pense comme un pont entre communautés, garant de l'unité nationale. La création du *Rechtskundig Weekblad* en 1930, l'adoption d'une nouvelle législation et la fracture linguistique entre praticiens du droit malmènent la réputation de neutralité du journal.

**Mots-clés** : Belgique, conflits linguistiques, études des revues, Flandre, histoire contemporaine du droit, revues juridiques, Wallonie

### Abstract :

Jérôme de Brouwer tests the political neutrality, inscribed by the founders of *Journal des Tribunaux*, with the linguistic conflicts in Belgium (1881-1935) in a diachronic analysis. This case study develops around many phases, documenting at the same time the Flemish linguistic claims evolution and the attitude expressed by the journal's editors-in-chief, Edmond Picard, then Léon Hennebicq. At first, the journal shows openness to these claims, albeit de Brouwer suggests that it may be a misunderstanding. In fact, Picard promotes Flanders bilingualism as solution. The journal published some documents in Dutch and, under Hennebicq, presented itself as bridge between communities, safeguarding national unity. In 1931, the creation of the *Rechtskundig Weekblad*, the adoption of new legislation and the linguistic partition between legal practitioners jeopardized the journal's reputation of political neutrality.

**Keywords** : Belgium, contemporary legal history, Flanders, legal periodicals, linguistic

issues, periodical studies, Wallonia

In 1881, four lawyers from Brussels, with the support of the publisher Ferdinand Larcier, founded the *Journal des Tribunaux*<sup>1</sup>. In its first issue, the *Journal des Tribunaux* devoted its editorial to its objectives. Inspired by foreign models, it meant to position itself as a periodical presenting judicial life to the largest possible audience. It meant to help “mak[e] judicial life common to the nation as a whole”<sup>2</sup>. Its objectives were repeated in the following years<sup>3</sup>. This testifies to the approach to law and justice developed by one of the four founders of the *Journal des Tribunaux*, Edmond Picard, who was also its first editor. Besides a geographical objective, it reflects his purpose to *socialise* law and justice<sup>4</sup>. This objective of making law and judicial life accessible was accompanied by a second goal, which was to avoid partisan stances. To guarantee this political neutrality, the editorial’s author declared that the founders had opposite political affiliations<sup>5</sup>.

It has already been shown that the first objective of the *Journal des Tribunaux*, which was to make law and judicial life accessible to all, i.e., to the widest audience, quickly turned out to be a failure. It never attracted the interest of the popular public. As Bart Coppein has said, the project was utopian. Most Belgians were illiterate or did not speak French. In addition, the periodical was too expensive<sup>6</sup>.

The objective of remaining politically neutral did not prove to be any more realistic. How was it possible to maintain that the periodical would reflect the everyday reality of law and justice without entering, at least a little, the political arena ? Edmond Picard’s progressive commitment was reflected in the periodical from its beginning onwards. The importance given to issues such as universal suffrage and the working class were significant examples of this fact<sup>7</sup>. This goal also seemed difficult to reach due to the importance given to lawyers’ participation in political life, at all levels of power, during the second half of the nineteenth century<sup>8</sup>. The editor himself was appointed as a senator in 1894. Yet these arguments need to be mitigated : Although it must be admitted that the *Journal des Tribunaux*, as led by Edmond Picard, was indeed a politically-oriented periodical, it avoided, as much as possible, engaging in a politically biased commitment related to arguments between parties.

The *Journal des Tribunaux*’s approach to Flemish linguistic claims also reflected, at first, that of Edmond Picard. In agreement with its editor’s views, the periodical took a very open-minded stance towards Flemish claims. In accordance with the objectives established in 1881, the *Journal des Tribunaux* seems to have aimed at addressing the whole population from a linguistic point of view. The nature and importance of this commitment still needed to be determined. Reflecting a misreading of the nature of the aspirations related to Flemish identity, the *Journal des Tribunaux* preferred to support letting Flemish claims thrive within existing structures (I). This first phase, in which there was consistently a great deal of openness to Flemish claims, was followed by a shift at the beginning of the twentieth century. The limits of the *Journal des Tribunaux*’s commitment in favour of the Flemish cause became clearer. After World War One, at the end of the 1920s, and mostly between 1930 and 1934, during the period, which was marked by the debates preceding the adoption of the Marck Act, the *Journal des Tribunaux* handled the linguistic issue with increasing difficulty. Could the linguistic issue, which had mainly become a political issue at that time, be considered with the neutrality that had been established as one of the periodical’s objectives when it was founded ? Although the *Journal des Tribunaux* continued to assert its neutrality and its intention to welcome all opinions, it was clearly and definitely becoming a periodical for the law’s

French-speaking stakeholders (II).

## Open-mindedness and misunderstanding

When the *Journal des Tribunaux* was founded in December 1881, the linguistic issue was temporarily settled. The law of August 17, 1873 (the Coremans Act) brought a first – and partial – response to Flemish linguistic claims, in a domain in which the legislators’ intervention was a priority, that is, the carrying out of penal justice<sup>9</sup>. The interest in the linguistic issue discretely emerged from 1883 onwards, when two judicial decisions were published concerning the application of the law of August 17, 1873. A turning point seemed to occur in 1886, when the Coremans-De Vigne draft bill emerged, which was aimed at amending the 1873 Act<sup>10</sup>. The *Journal des Tribunaux* devoted an extensive article to the Report on the works of the *Conférence flamande du Barreau de Gand* for the judicial year 1885-1886<sup>11</sup>. The *Journal des Tribunaux* supported linguistic claims, but expressed some critiques on details, which revealed a certain misunderstanding of the nature of these claims. It reflected the position of Picard. Janine Beyers-Bell had already observed that Picard was convinced that the Flemish linguistic claims must be supported, but that he had not thought further than a bilingual solution in Flanders<sup>12</sup>. This type of approach reflects a lack of understanding of the objectives of the Flemish movement and the nature of the linguistic claims. The periodical therefore expressed regret that, in order for its claims to be satisfied, the community of Dutch-speaking lawyers required independent representative bodies to be set up exclusively for Dutch-speaking lawyers, whereas these new bodies, considered by the periodical as totally legitimate, could be integrated with previously created and existing bodies. In other words, it regretted that the Flemish movement preferred *fracture* to *subdivision*. It suggested the creation of a *Conférence flamande* within Brussels’ *Conférence du Jeune Barreau*. The periodical’s editorial board seems not to be able to perceive the true nature of the movement, which focused on asserting the Flemish community’s identity, implying that it could not be satisfied with blending in with structures originally set up by French-speaking stakeholders. In the same article, the *Journal de Tribunaux* prided itself on its publication of judicial decisions in Dutch since 1886. It declared that it was the first periodical to re-establish a practice that was common in the 1820s, under the Dutch regime. In spite of this concrete form of open-mindedness, only a limited number of judicial decisions were published in Dutch. Indeed, only three were identified in 1886. They were not related to the use of languages in judicial matters. Issued by the Court of first instance in Termonde, the Court’s indictment division in Ghent and the justice of the peace court in Hooghlede, respectively, they dealt with civil law and penal law-related issues<sup>13</sup>.

The initiative undertaken by the *Journal des Tribunaux* in 1886 undoubtedly reflected the editorial board’s policy of openness regarding linguistic claims. It was pursued in the following years, but the number of decisions published in Dutch remained extremely marginal<sup>14</sup>. The period between the end of the 1880s and the early 1890s was marked by the Josson case and by the foundation of the Vlaams Pleitgenootschap in Brussels<sup>15</sup>. For this occasion, the *Journal des Tribunaux* expressed its support for Flemish claims with subtlety. Edmond Picard defended Josson before the Court of Cassation. In 1891, Picard became the Honorary President of the Vlaams Pleitgenootschap. Carefully avoiding the use of the *Journal des Tribunaux* as a forum to expose his personal views, the editor only put forward the events in which he was involved or the causes he supported. A very extensive article about the inauguration session for the Vlaams Pleitgenootschap was published in 1891<sup>16</sup>. Although Picard’s involvement did not allow him to express his opinion on Josson’s case, the Court of Cassation’s ruling in the Josson case hit the periodical’s headlines in 1892<sup>17</sup>. In line

with the publication of jurisprudence in Dutch, the *Journal des Tribunaux* published a whole speech in Dutch at the end of the 1890s, arguing that “Flemish is one of Belgium’s national languages”<sup>18</sup>.

During the period when Picard was the editor of the *Journal des Tribunaux*, the periodical showed its commitment to the progress of the linguistic cause in a nuanced way, as explained above. In 1899, when Picard was about to hand over his post to Léon Hennebicq, the periodical still praised the maturity and the achievements of the Flemish movement<sup>19</sup>. Under his successor, did the periodical retain the open-minded attitude that was obvious when Edmond Picard directed the periodical ? Judicial decisions continued to be published in Dutch as before. A symbolic commitment was therefore guaranteed<sup>20</sup>. But wasn’t the *Journal des Tribunaux* only showing its commitment in a different way ? In 1907, when commenting on works from the *Fédération des juristes flamands*, the periodical praised the efforts, which had been undertaken to build a bridge between the Dutch-speaking popular layers of the population and the French-speaking middle class. This bridge could be built by promoting Flemish as a language, which could be used by the higher strata of the population. It also praised the efforts made to demonstrate that Dutch also was an appropriate language in the field of law. The periodical concluded that these undertakings were not only useful in practice, but also had a social impact of the utmost importance. It also supported their national and patriotic significance<sup>21</sup>. Yet the limits of the periodical’s commitment in favour of the linguistic claims became increasingly defined and obvious. The Herne’s<sup>22</sup> parricide case notably shed light on the policy of the periodical under Hennebicq. The *Journal des Tribunaux* pointed out that the defendants were Flemish and that the entire proceedings were held in French<sup>23</sup>. It considered that the defendants had been condemned in a language they did not know. In the same article, the periodical commented on the draft bill issued in the wake of the Herne’s case by Deputy Van der Linden on the use of languages for repressive matters in the district of Brussels<sup>24</sup>. Van der Linden’s draft bill was aimed at determining the language of the proceedings from the first interrogation on the basis of the defendant’s choice. The *Journal des Tribunaux* was concerned that the legislators would make this choice irreversible. According to the periodical, this solution could deprive a defendant who had chosen Dutch of the opportunity to be defended by a prominent lawyer of the Criminal Court. It was necessary to protect oneself against “all Flemish traps”, he added. However, he saw fit to issue a reminder that “no one else was more inclined to defend the rights of the Flemish than he was”<sup>25</sup>. Later the same year, the *Journal des Tribunaux* once again commented on the draft bill<sup>26</sup>. Gradually, a resistance threshold emerged towards the linguistic claims. The choice of language for the proceedings during the first interrogation was perceived as an obstacle to the defendant’s freedom to choose his lawyer<sup>27</sup>. The principle of freedom became a *leitmotiv* of the *Journal des Tribunaux*’s stance<sup>28</sup>. This idea became so important that it resulted in the wish for a more global reflection on the relation between language, territory and the individual. In 1911, while the Flemish claim to make the University of Ghent exclusively Dutch-speaking (the so-called *flamandisation* of the University of Ghent) gave rise to important tensions, the periodical organised a series of conferences on the status of language at the Courthouse of Brussels : Must the language status be linked to the territory or to the person, following his personal choice ? Tension was then clearly observed in the Board : Flemish claims were a threat to national unity<sup>29</sup>. The claim to make the University of Ghent an exclusively Dutch-speaking university was considered to be a concrete part of this threat. The *Journal des Tribunaux* was still in accordance with its first editor. As a supporter of a bilingual solution, Picard did not agree with the process of making the University of Ghent exclusively Dutch speaking<sup>30</sup>.

The *Journal des Tribunaux*’s positive perception of the Flemish movement, that is, the interaction

between the development of the Flemish movement and the national identity suddenly pertained to the past. Yet only three years had passed since it had underlined the national and patriotic significance of the efforts undertaken by the *Fédération des juristes flamands*. In 1911, the *Journal des Tribunaux*, taking advantage of its positive reputation towards the community of Dutch-speaking legal practitioners, claimed that it supported appeasement ; however, it was confronted with the development of Flemish claims, which made it difficult for the periodical to keep the stance that had been maintained throughout the previous two decades. It claimed to be the strongest supporter of the *rights of the Flemish*. In fact, its perception was based on an out-dated view of the *rights of the Flemish*. Picard's ideas, which had managed to reconcile strong support for the Belgian nation with that for Flemish claims, as represented by a bilingual solution and in accordance the principle of freedom of linguistic choice, could no longer be followed. The periodical's board of editors considered that Flemish claims had developed in such a way as to jeopardise national unity. However, it should be mentioned that its members were just as concerned about the way in which the Walloon movement had developed during the same period. Unfailing in its support of the idea of the nation, the *Journal des Tribunaux* rejected the excesses of both movements<sup>31</sup>.

## Neutrality claim and confrontation

The most critical phase in the relations between the *Journal des Tribunaux* and the Flemish movement started at the end of the 1920s. After a long period of silence on the Flemish linguistic issue, which can be explained by the so-called *latency* period of Flemish claims after the end of World War One<sup>32</sup>, the periodical once again dealt with the linguistic issue in a noteworthy way. The government then considered legislation on the use of languages in the field of civil matters<sup>33</sup>. The reaction was not long in coming. In the early 1930s, Hennebicq, who was still at the head of the periodical, undertook to revise the layout and to provide better coverage of provincial judicial life, both in Flanders and Wallonia. He probably intended to use the *Journal des Tribunaux*, at its level, as a tool for national unification. Once again, he stressed that the periodical's identity was "free from any political or other influence"<sup>34</sup>.

Yet in March of the following year, Hennebicq expressed his ideas on the new Flemish linguistic claims. He voiced his concern about the possible disappearance of the free language choice system for claimants in favour of a constraint-based system. He feared that this system, which had been instituted for penal matters in response to Flemish claims, would be extended to civil cases<sup>35</sup>. In spite of this first article, signed by Hennebicq himself, the *Journal des Tribunaux* affirmed its decision to maintain an objective and neutral attitude in the following years. Although he meant to provide the opportunity for opinions that did not coincide with the ideas of the members of the editorial board to be expressed in those pages, and in spite of claiming that it avoided any *policy* that would collectively commit the editorial board<sup>36</sup>, it has to be admitted that the stance of some of its members and its editor discredited the image that the periodical wished to project of itself. At the beginning of the 1930s, it appeared obvious that the *Journal des Tribunaux* no longer met the expectations of Dutch-speaking readers, not only because it continued to be a periodical written in French, in spite of symbolic publications in Dutch, but also because the periodical's views now strongly diverged from the opinion of Dutch-speaking legal practitioners. From 1931 onwards, a new periodical, the *Rechtskundig Weekblad*, was published to meet their demands<sup>37</sup>. The tensions that emerged once again in 1930 increased during the following year. In line with his previous propensity, Hennebicq began to call for contributions to promote national unity<sup>38</sup>.

Later on, a confrontation emerged between Dutch-speaking and French-speaking contributors, both members of the editorial board and external contributors. It echoed the confrontation between the *Journal des Tribunaux* and the *Rechtskundig Weekblad*<sup>39</sup>. Moreover, it led to a crystallisation of the French-speaking periodical’s attitude. During this confrontation, the *Journal des Tribunaux* underlined that the content of contributions was the sole responsibility of their authors : The articles signed by editorial board members did not collectively commit the editorial board and did not always express the periodical’s *policy*.

However, it should be mentioned that the resistance threshold that was expressed in the beginning of the century, and that was reaffirmed by Hennebicq at the beginning of 1930, seemed to shift. The idea of maintaining a system of absolute freedom regarding the use of languages for civil proceedings was not shared by all members of the editorial board. Paul Struye, who also was the chairman of the *Conférence du Jeune Barreau de Bruxelles*<sup>40</sup>, considered that coercive measures were necessary, “because justice should be dispensed in Flemish in Flemish-speaking parts of the country”<sup>41</sup>. In fact, the main stumbling block in the debate was the issue related to the use of languages in Brussels. The idea of a coercive system in Brussels was unacceptable to the French-speaking bar. Struye, who accepted the coercive system for Flanders, energetically rejected it for Brussels, which had to maintain a system of absolute freedom. The case of Brussels pushed the confrontation to its climax. The articles published concerning Brussels’ fate stimulated the *Journal des Tribunaux* to intervene several times. Before such a confrontation, which even involved its members, the editorial board felt that it was necessary to repeatedly remind its readers that the signed articles were the sole responsibility of their authors<sup>42</sup>. Moreover, it felt the need to mention that it “thought [it was] necessary to welcome all currents of opinion”<sup>43</sup>.

Hennebicq’s policy did not change. After having encouraged his collaborators to provide contributions supporting the idea of a community of interests between the Flemish and the Walloons in 1931, he wrote another article in 1933 to once again show his support for the freedom system, putting forward the twenty-third article of the Constitution<sup>44</sup>. A few months later, he undertook to send a petition to the king, in which he even referred to the founding mythology of the bar : “Colleagues who do not wish lawyers to be reduced to silence (...) should absolutely sign this petition to the king”<sup>45</sup>. Here, we clearly see traces of an expression of Napoleonic dictatorship used by Hennebicq. This should be regarded as an explicit reference to Napoleon’s words and was a way to evoke the principles of freedom and independence that should guide the lawyer’s activity, in compliance with the traditional values of the bar<sup>46</sup>. Hennebicq signed another opinion column in 1933, in which he openly criticised Paul-Emile Janson’s amendment<sup>47</sup>. Ultimately, in 1934, while many French-speaking lawyers, including lawyers from Brussels, seemed to approve of Marck’s draft bill, Hennebicq once again put forward his project to send a petition to the king. His stance was once more clearly stated, and he took responsibility for it by signing the article<sup>48</sup>. In accordance with the principles formulated by the *Journal des Tribunaux*, he took sole responsibility for his declarations, which did not collectively commit the editorial board. Yet how could the editorial board believe that the credibility of this principle could be maintained only by affirming it, even repeatedly ?

When examining the way in which the linguistic issue was handled by the *Journal des Tribunaux*, we see that it proved difficult for the periodical to reach its goals in the long run. Edmond Picard, its first editor, mainly inspired the periodical’s editorial policy. The idea of supporting national unity, which integrated, as needed, the promotion of Flemish cultural identity, was rooted in the very foundations of the *Journal des Tribunaux*. There was no real contradiction in this regard. Generally speaking, beyond Picard’s views, the support of Flemish claims appeared to be evidence

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of the *Journal des Tribunaux*'s progressive stance : The aim was to promote the right of defence. Therefore, the use of the Dutch language had to be supported. The national idea and the promotion of the right of defence continued to be the main axes of the periodical's policy under Hennebicq, Picard's successor. But the situation changed. The way in which the linguistic claims developed was a serious blow to these two founding pillars and caused irritation within the editorial board, or at least part of it.

From the beginning onwards, the *Journal des Tribunaux* proved to be ambiguous in determining the responsibility for the articles published by members of the editorial board. Although the periodical established, as one of its principles, that the editorial board only assumed collective responsibility for unsigned articles, which could therefore be considered as expressions of the opinion of the *Journal des Tribunaux*, the multiplication of articles signed by the editor himself or by some members of the editorial board was bound to create confusion among readers, Dutch-speaking readers in particular. The period that started with the debate on Marck's draft bill was certainly a defining moment. The creation of the *Rechtkundig Weekblad* in 1931 was a concrete consequence of this situation : The *Journal des Tribunaux* could no longer meet the expectations of Dutch-speaking readers, as it rejected the principle of coercive measures, whereas this was the only satisfactory solution from a Flemish perspective. Indeed, only the coercive system could enable the Dutch language to occupy the place it deserved in the field of justice. The case of Brussels struck an ultimate blow to the dialogue between French-speaking lawyers and Dutch-speaking lawyers, for whom only the coercive system could guarantee that the use of the Dutch language would develop in Brussels and that Brussels would truly be a national capital for the Belgian population as a whole.

The *Journal des Tribunaux* was entangled in the linguistic issue, which damaged its credibility as a "national" periodical, whose purpose was to address the whole nation. Dirk Heirbaut had already noted, however, that the *Journal des Tribunaux* "still saw the whole country as its territory" and "its anti-Flemish attitude in the years before 1935 ensured that Flemish lawyers would turn away from it"<sup>49</sup>.

The *Journal des Tribunaux* was not an ordinary member of the press, and the people at its head were not journalists. They were members of the judicial world, who were intimately bound to the debates about which they reported in the weekly periodical's columns. As the months passed and Marck's draft bill went its way, it proved to be increasingly difficult for the *Journal des Tribunaux* to maintain its so-called neutrality. In 1934, when the debates concerning the Marck draft bill ended, the *Journal des Tribunaux* definitely was no longer a periodical addressing the nation as a whole.

## Notes

<sup>1</sup> See, regarding the origins of the *Journal des Tribunaux* : B. COPPEIN, *Dromen van een samenleving. Intellectuele biografie van Edmond Picard*, Brussels, Larcier, 2011, 61-62 ; *id.*, *Mirror of changing law : the Journal des Tribunaux in the Fin de siècle*, in V. DRAGAVONA and al. (eds.), *Die Inszenierung des Rechts. Law on Stage*, Munich, Meidenbauer, 2011, 155-175 ; B. COPPEIN and J. DE BROUWER, *Histoire du Barreau de Bruxelles 1811-2011 / Geschiedenis van de Balie van Brussel 1811-2011*, Brussels, Bruylant, 2012, 98-102 ; V. CARRÉ, *Le Journal des Tribunaux d'Edmond Picard (1881-1899). Approche d'un journal judiciaire au dix-neuvième siècle*, unpublished master's thesis, Brussels, Université Libre de Bruxelles, Faculté de Philosophie et Lettres, 1986, VII + 142 p. ; D. HEIRBAUT, *Law reviews in Belgium (1763-2004) : instruments of*

*legal practice and linguistic conflicts*, in T. SIMON and M. STOLLEIS (eds), *Juristische Zeitschriften in Europa*, Frankfurt am Main, Klostermann, 2006, 352-361 ; D. STERCKX andal., *Un siècle de J.T.*, in *JT*, 1982, 261-263 ; S. VANDENBOGAERDE, *Vectoren van het recht. Geschiedenis van de Belgische juridische tijdschriften*, unpublished doctoral thesis, Faculty of Law, Universiteit Gent, 2014, 105-130.

2 E. PICARD, *Au lecteur*, in *JT*, 1881, 2 : “Il importe (...) que la vie judiciaire soit commune à la nation entière. Seule elle peut donner le sentiment du droit. Quand les citoyens s’en désintéressent, la loi perd sa force qu’on n’en comprend plus le sens ni l’utilité (...)”.

3 E. PICARD, *Question de format*, *JT*, 1886, 1-4 : “Nous voudrions que le Journal des Tribunaux pénétrât insensiblement dans la vie de tous ; qu’on le vit davantage sur la table des cafés, dans les cabinets de lecture, dans les cercles. Familiariser la nation entière avec le sentiment du droit, avec sa réalisation pratique, avec ses applications journalières dans les tribunaux, serait rendre un service social signalé”.

4 See, regarding Edmond Picard’s approach to the social role of law, the democratization (« socialisation ») of law and justice and their link with the social context of the 1880s, B. COPPEIN, *Dromen van een samenleving*, especially 157-233.

5 E. PICARD, *Au lecteur*, 3 : “La loi, le droit et la justice dominant les luttes des partis ; quand leurs ministres, à quelque rang ou à quelque ordre qu’ils appartiennent, y décèdent, ils déchoient et se discréditent. C’est assez dire que notre journal se gardera, comme d’un amoindrissement, des partis pris incurables qui rongent tant de nos institutions. Ceux qui (...) ont fondé [le Journal des Tribunaux] en ont donné un gage au public et à eux-mêmes, en se recrutant dans les rangs les plus opposés pour essayer de donner cet exemple qu’on peut encore chez nous, quoi qu’on en dise, travailler à une œuvre commune et belle, même quand les consciences habitent un idéal différent. Nos lecteurs de toutes les opinions peuvent donc être assurés de notre modération et de notre tolérance. (...) nous nous ferons une règle de dignité et de loyauté de ne jamais avilir le droit en le mêlant aux querelles des partis”.

6 B. COPPEIN and J. DE BROUWER, *op. cit.*, 98.

7 *Ibid.*, 99-101.

8 *Ibid.*, 62-94.

9 The 17 August Act established the use of Dutch in penal procedures and in the penal courts in the provinces of East and West Flanders, Antwerp, Limburg and in the arrondissement Louvain, but did not extend it to Brussels. See, for more details, H. VAN GOETHEM, *De taaltoestanden in het Vlaams-Belgisch gerecht, 1795-1935*, *Verhandelingen van de Koninklijke Academie voor Wetenschappen, Letteren en Schone Kunsten van België*, 1990, 162-178.

10 The Chamber of Representative’s central section approved the Coremans-De Vigne draft bill on the 26 January 1886. The De Vigne-Coremans Act was enacted on 3 May 1889. The 3 May 1889 Act established the use of Dutch in penal courts in the district of Brussels. See, for more details, H. VAN GOETHEM, *De taaltoestanden in het Vlaams-Belgisch gerecht*, 190-211.

11 *Le mouvement judiciaire flamand en 1885-1886*, *JT*, 1886, 1516-1518.



- 12 J. BEYERS-BELL, Picard, in *Encyclopedie van de Vlaamse beweging*, vol. 2, Tielt, Lannoo, 1973, 1245.
- 13 Civ. Termonde, 9 février 1886, *JT*, 1886, 297-298 ; Gand (mis. acc.), 22 mai 1886, *JT*, 1886, 729-730 ; J.P. Hooghlede, 28 septembre 1886, *JT*, 1886, 1420-1421.
- 14 Corr. Termonde, 19 janvier 1887, *JT*, 1887, 157-158 ; J.P. Anvers, 4 novembre 1887, *JT*, 1888, 91-92 ; Corr. Anvers, 27 décembre 1887, *JT*, 1888, 172 ; Corr. Anvers, 7 octobre 1889, *JT*, 1889, 1288-1289 ; Corr. Furnes, 23 septembre 1889, *JT*, 1889, 1337 ; Corr. Tongres, 25 octobre 1889, *JT*, 1889, 1432-1433 ; Corr. Courtrai, 21 janvier 1890, *JT*, 1890, 300 ; Corr. Bruges, 13 février 1890, *JT*, 1890, 538.
- 15 C. MATHEEUSSEN, *Honderd jaar Vlaams Pleitgenootschap bij de balie te Brussel, 1891-1991. Een verhaal van Vlamingen in hun hoofdstad*, Tielt, Lannoo, 1992, 224 p.
- 16 *JT*, 1891, 676.
- 17 Cass., 3 mai 1892, *JT*, 1892, 657-662.
- 18 *JT*, 1898, 7-9.
- 19 *JT*, 1899, 554-555 : “A la suite des légitimes revendications des Flamands, des concessions leur ont été faites, notamment sur le terrain législatif et juridique (...). Le mouvement flamand s’est épanoui en une belle efflorescence, et a démontré d’une façon péremptoire combien le droit de se servir partout, toujours et en toutes occasions, publiques comme privées, de sa langue maternelle, est sacré, et tient au cœur de ceux qui voient dans leur langue la manifestation de leur originalité locale. Eh bien, ce droit doit être sanctionné par la vigilance de ceux qui en sont les titulaires ; il doit être étendu, amplifié jusqu’à satisfaction complète des intéressés ; il doit être jalousement surveillé dans ses applications (...)”.
- 20 Corr. Gand, 19 avril 1906, *JT*, 1906, 600 ; Comm. Bruges, 21 octobre 1930, *JT*, 1930, 783-784. In addition to the Court decisions, some other articles have been found, inter alia : IIIde Vlaamsch rechtskundig Congres op Zondag 3d Juli 1904, te Gent, *JT*, 1904, 862-863 and 881.
- 21 *Ive Congrès des jurisconsultes flamands*, *JT*, 1907, 505 : “(...) les travaux [du Congrès] ne sont pas seulement d’utilité pratique, mais d’une haute portée sociale, et par suite, quoi qu’on en dise, nationale et patriotique au meilleur sens”.
- 22 Herne (Hérinnes) is the Flemish municipality located in the province of Brabant (today’s Flemish Brabant).
- 23 Assises du Brabant. Affaire du parricide d’Hérinnes, in *JT*, 1908, 171-174.
- 24 The Van der Linden draft bill led to the Act of 22 February 1908 concerning the use of Dutch in penal procedures, in particular for the Brussels arrondissement. See H. VAN GOETHEM, op. cit., 231-236.
- 25 *JT*, 1908, 174 : “C’est contre tous ces pièges flamingants qu’il faut se mettre en garde. Personne n’est disposé à défendre les droits des Flamands mieux que nous (...). Il convient d’éviter de soumettre à un jury exclusivement flamand un accusé bruxellois, accablé par des dépositions de témoins français tronquées par un traducteur malhabile, ne pouvant se faire défendre par un

grand avocat français et ne comprenant d’ailleurs rien aux termes barbares d’une langue judiciaire obscure et souvent ridicule”.

26 *JT*, 1908, 197-200.

27 *JT*, 1908, 200.

28 *JT*, 1908, 32 : “La langue appartient au libre choix individuel. Ce n’est pas le territoire qu’il faut diviser, ce sont les individus”.

29 *JT*, 1911, 155. The *Journal des Tribunaux* argues that the development of the Flemish claims “menacent gravement l’unité nationale”. The periodical offered the solution of individual freedom of choice “au sectarisme et à l’arbitraire de toute disposition légale qui attacherait rigoureusement et pour la vie un homme sous contrainte”.

30 J. BEYETS-BELL, op. cit., 1245 : “(...) ook bij de strijd om de vernederlandsing van de Gentse universiteit verklaarde Picard zich voorstander van een tweetalig stelsel”.

31 *JT*, 1912, 145-146 : “(...) Les uns ne valent pas mieux que les autres”.

32 See H. VAN GOETHEM, op. cit., 239-245.

33 See, regarding the Act of 15 June 1935 concerning languages before Belgian courts, Ibid., 246-262.

34 L. HENNEBICQ, *Rationalisation de nos périodiques*, *JT*, 1930, 265 : “[le Journal des Tribunaux] proposera un aperçu vivant et complet de la vie judiciaire, juridique et parlementaire de la Capitale et de la Belgique entière, flamande et wallonne. A un numéro spécial rédigé par nos confrères liégeois, répondrons bientôt des numéros anversois, gantois, carolorégiens. (...) Dégagé de toute influence politique ou autre, sincèrement voué à l’intérêt public (...), le Journal des Tribunaux est un des rares organes qui puisse se dire entièrement libre et indépendant”.

35 L. HENNEBICQ, Le problème linguistique au Palais, *JT*, 1930, 337-338.

36 *JT*, 1931, 683 : “Pour répondre à des observations qui lui ont été faites, le Journal des Tribunaux rappelle à ses lecteurs que les articles signés qu’il publie n’engagent que leurs auteurs. Spécialement sur l’emploi des langues en matière judiciaire, (...) le Journal des Tribunaux a tenu à faire accueil aux divers courants de l’opinion” ; *JT*, 1932, 173 : “Le Journal des Tribunaux rappelle à ses lecteurs que les articles publiés cet endroit n’engagent que leur signataire. Les thèses soutenues ne sont donc pas toujours conformes à l’esprit du Journal” ; *JT*, 1932, 267 : “Nous publions l’article ci-dessous à titre de libre contradiction, et pour rester fidèle aux traditions de liberté de notre journal”.

37 D. HEIRBAUT, op. cit., 357-362.

38 L. HENNEBICQ, L’Etat malade, *JT*, 1931, 41.

39 D. HEIRBAUT, op. cit., 361.

40 Paul Struye (1876-1974), as a member of the Catholic Party (PSC), would later become a member of the Senate (1946-1973) and would serve as Minister of Justice (1947).

41 P. STRUYE, *Pour l'unité nationale. Vers un terrain d'entente*, JT, 1931, 535 : "le régime de liberté absolue n'est manifestement pas satisfaisant. Il faut donc bien recourir à des mesures de contrainte. La justice doit être flamande en pays flamand".

42 JT, 1931, 683 ; JT, 1932, 173, previously mentioned.

43 JT, 1931, 683, previously mentioned.

44 Belgian Constitution of 1831, art. 23 : "L'emploi des langues usitées en Belgique est facultatif : il ne peut être réglé que par la loi, et seulement pour les actes de l'autorité publique et pour les affaires judiciaires".

45 JT, 1933, 634.

46 See the quotation of Napoleon Bonaparte in G. DUCHAINE and E. PICARD, *Manuel de la profession d'avocat en Belgique*, Brussels Paris, Durant et Pedone-Lauriel, Claassen, 1869, 14 : "(...) je veux qu'on puisse couper la langue à un avocat qui s'en servirait contre le gouvernement".

47 L. HENNEBICQ, Des clerks vont-ils nous trahir ?, JT, 1933, 677.

48 Id., Appel au roi, JT, 1934, 251.

49 D. HEIRBAUT, op. cit., 361.

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