Crime and non-punishment
How the justice system failed the Marcinelle dead

Tutti Cadaveri,
Le procès de la catastrophe
du Bois du Cazier à Marcinelle
(The Bois du Cazier mine disaster trial)
by *Marie Louise De Roeck,*
Julie Urbain and Paul Lootens,
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There are few enough books on the history of workplace health and safety, and almost none on what happens when matters come to trial. And yet, questions have to be asked about what makes the justice system so purblind and enfeebled when some human beings are killed in others' drive for profits.

Tutti Cadaveri examines the trial that followed the Marcinelle mining disaster in Belgium. On 8 August 1956, fire swept through the Bois du Cazier coal mine, killing 262 miners. Only 13 escaped alive. In the resulting prosecution, the trial court acquitted all the accused on 1 October 1959. An appeal was lodged, and on 30 January 1961, the court gave the mine manager a gentle slap on the wrist (6 month suspended jail sentence and a 2000 Belgian franc[1] fine), and let all the other accused off scot-free.

The great value of this book is that it is less an outraged chronology of the facts than an analysis of what it was that enabled those responsible for the deaths of 262 miners to go all-but unpunished. Its explanations go beyond the specific trial to give greater insights into why the administration of justice has failed in many other cases.

Among the various factors in play in this case were:

- The management of mine safety was overseen by a public inspection agency – the Mines Inspectorate – which was part of the Ministry for Economic Affairs. Its remit was couched in ambiguous terms: to ensure safety while promoting the profitable operation of mines. The agency's role was muddied by the conflicting pressures of profit and safety. Especially as in 1956, the industry was in decline and mines were struggling to stay afloat.

- There was a mutual professional protectionism between the mining engineers working for the public inspection agency and the engineers working for the mine owners, which had been prompted by past prosecutions, and led to the forming of professional associations, one of whose aims was to avoid any criminal liability from attaching to mining engineers.

- The court's trial of fact was based on technical expert evidence (mostly informed by the mines inspectorate's accident investigation report). A narrowly technical approach precluded any discussion of organisational and economic factors, or labour relations. The entire trial was focused on identifying direct responsibility for technical decisions that produced the disaster. Raising production targets in increasingly unsafe conditions, the lack of proper training for miners, the irresponsibility of managers who consistently put profit before safety – all these factors were sidelined from the legal debate. A very narrow legal conception of what constitutes manslaughter and a grossly exaggerated purely technical approach worked in concert to the same end.

One example speaks volumes. One of the things that caused the fire was the use of oil as a means of fluid power. The oil line ran between the power cables. All the defence's engineer expert witnesses told the court that this was not known to be a danger when the accident happened, and the court uncritically accepted this claim. The ECSC experts took the same line. When questioned by the presiding judge, a prosecution witness said "It has been known for 55 years that split oil is ignited by a spark. The diesel engine is proof of that". The presiding judge pressed on: "Yes, but was it known that oil burned before le Cazier?". The witness' reply was as scathing as it was unavailing: "Your Honour, I have just come back from Greece, where I saw oil lamps that were over 4000 years old!". The trial court's decision to acquit makes express mention of the mutual professional protectionism between the engineers, whom it places beyond criticism "having found that scientifically knowledgeable and skilled engineers would have acted as did the accused".

- The victims' families pressing a civil claim in the case took the opposite tack by trying to put the disaster in context. Their lawyers called witnesses to give evidence of work intensification, the lack of training, the hopelessly muddled passing-on of information, management authoritarianism and arrogance, the failings of the inspection services, past accidents from which no lessons had been learned. All to no avail. This unwonted intrusion of miners' advocacy in court did not suit the machinery of justice. The facts they produced were held inadmissible.

- The miners' strategy itself was undermined by the lukewarm attitude of a section of the trade union movement. The authors point out that the trade union press carried little coverage of the trial. There was no all-out protest action. There are two reasons why. The miners who died in Marcinelle were of twelve different nationalities, mostly Italian. Belgian workers had been shunning coal-face work since the end of World War Two. Rather than improve pit safety and working conditions, the government launched an immigration drive.

[1] Equivalent to about €50. Allowing for inflation, it is worth a little less than €300 in purchasing power terms in 2006.

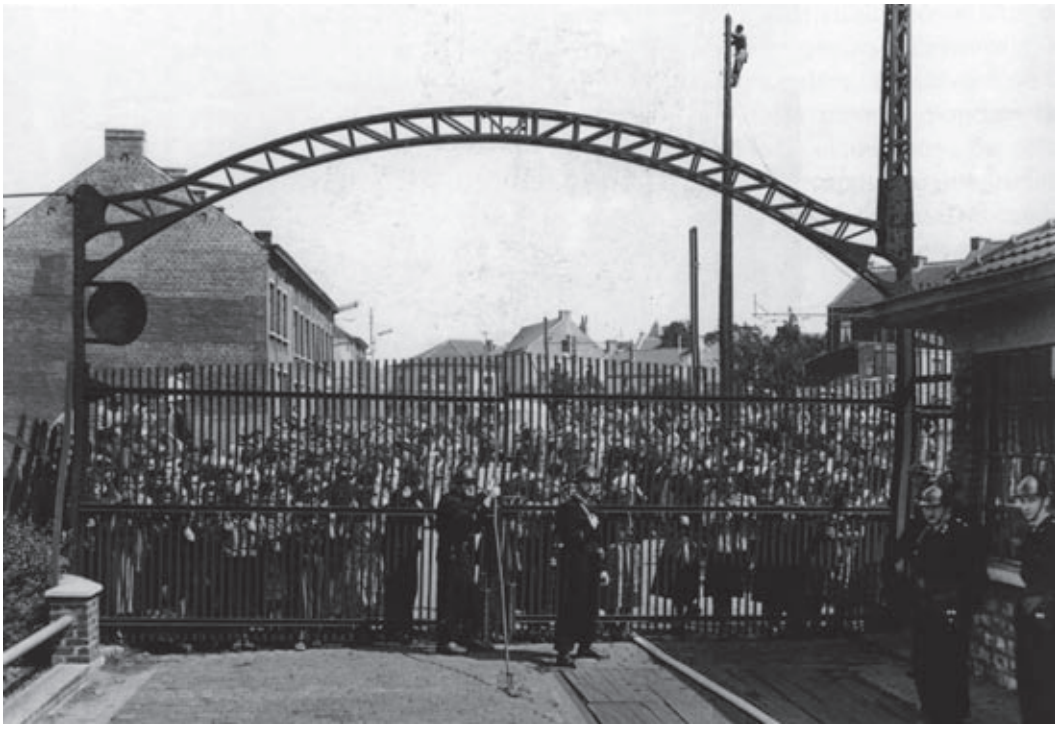

Photo : Camille Detraux

Families at the Cazier gates, 8 August 1956

Immigrant workers tended to have little representation in trade union policy bodies. Joint action with employers to keep pits open often took precedence over miners' demands for better working conditions. A divided union movement also played its part. The initiative to set up a group of lawyers for the miners came from a communist group whose roots lay in the anti-Nazi resistance. It won support from Italian Christian trade unionists (ACLI) but, in the cold war era, there was no common strategy with the majority socialist trade union, and the Belgian Christian trade union did not intervene in the trial.

Is this just a historical chronicle that opens a door onto the past? The wildcat strike that rocked the Cockerill (Arcelor group) plants in the Liège region in September 2004 shows a little bit of history repeating. Following a fatal accident, a court handed down suspended prison sentences to two workers, while letting all the management and supervisory staff off scot-free. Despite the legislative reforms, we still face the same disregard from the justice system, the same narrowly technical approach to the causes of accidents and, in the final analysis, the same old-boy net between those holding the reins of power.

Belgium recently commemorated the 50th anniversary of the Marcinelle mining disaster. Moving public tributes were paid. This book's conclusions do a creditable job of setting the record straight. They point out that under Belgian law, workers who suffer a work accident or occupational disease cannot sue for compensation on the basis of their employer's civil liability. Belgium is now the only European Union country to deprive workers of the benefit of ordinary law. A situation like that holds back prevention. It has been regularly challenged, not least by asbestos victims. As Paul Lootens, one of the book's authors and a trade union official, puts it, an overhaul of the century-old Work Accidents Act would be "the greatest justice that could be done for the Bois du Cazier dead today".

Laurent Vogel, researcher, ETUI-REHS
lvogel@etui-rehs.org

Quick picks

Europe is the main focus of the latest issue of *New Solutions*, the occupational health policy journal put out by the University of Massachusetts at Lowell (USA). The issue was produced in collaboration with our Department, and features four articles reviewing recent developments in health and safety in Europe.

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