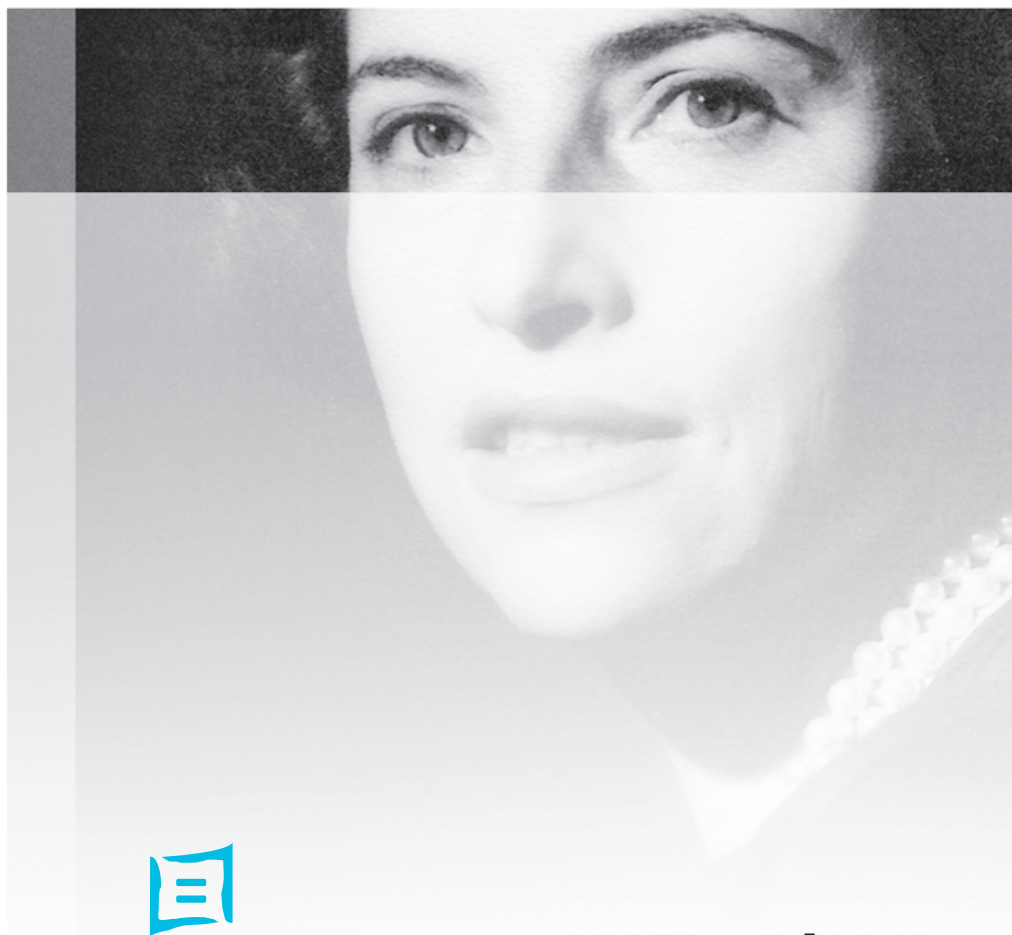


Éliane Vogel-Polsky

A WOMAN OF CONVICTION



INSTITUTE
FOR THE EQUALITY
OF WOMEN
AND MEN

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pour l' *Histoire des Femmes*

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A WOMAN OF CONVICTION

Éliane Gubin

In collaboration with Catherine Jacques

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FOREWORD

A Belgian Act of Parliament established the Institute for the Equality of Women and Men (IEWM) on 16 December 2002 (published in the Official Journal of 31 December 2002). The IEWM succeeded the Equality Directorate of the Federal Public Service Employment, Labour and Social Dialogue, which Directorate had been created in 1993 by the merger of two structures: the Secretariat of the Women's Labour Commission (set up in 1974, the first administrative unit to address the situation of women on the labour market) and the Committee for Social Emancipation, established in 1985 in the Ministry of Public Health and Environment and responsible for implementing social emancipation policy in general.

Thus for over thirty years the Federal State has had an active policy to promote equality for women and men, while the IEWM acts as custodian of the vivid memories of this struggle and continues to be a driving force for implementing these emancipation policies.

But the fight to achieve equal rights and opportunities is by no means confined to public institutions: it has the individual support of many committed women who, working behind the scenes or in the open, have fought and continue to fight for the equality of women and men.

Éliane Vogel-Polsky is one such woman. As lawyer before the courts, as university researcher and lecturer, and as expert for international institutions, she has advocated equal rights and opportunities for women and men. Equal pay, feminist studies, parity, social Europe: these are just some of the issues she has been engaged in over many years. She

has won many victories but, as she herself readily admits, there have also been many disappointments.

The IEWM has taken the initiative of honouring this exceptional woman in the present essay on her research, her work and her achievements. This project falls within the IEWM's remit, which includes action to conduct, develop, support and coordinate studies and research on gender and on the equality of women and men. And it provides an opportunity to explain and publicize the achievements and principles of Belgian and EU legislation concerning the equality of women and men.

This publication is a production of the Archive Centre on Women's History (CARHIF), a bilingual (Dutch/ French) pluralist organization that since 1995 has worked to preserve all archives concerning the history of women and the feminist movement in Belgium and to bring them into the public domain, thereby preserving the memory of the movement for future generations. Likewise CARHIF contributes to establishing a long-term record of research into our women's history.

We should like to thank Professor Éliane Gubin, Co-director of CARHIF, who took on the responsibility of producing this book; Catherine Jacques for the time and effort she has invested; and Els Flour, CARHIF's archivist, for her help in editing the final versions of the book.

Particular thanks are due to Éliane Vogel-Polsky for her enthusiastic cooperation with regard to this book and for her commitment to equality of women and men over so many years.

Our hope is that this publication will not only shed light on the history and accomplishments of a woman of conviction, but also inspire other women – and men – to take up the fight for the equality of women and men.

Michel Pasteel

Director, Institute for the Equality of Women and Men

June 2007

| Introduction

Biography is a difficult genre, whether it be a simple obituary notice cutting an existence down to a few short lines, or a weightier publication that nevertheless condenses a whole life into a volume that can be held in one hand.

How do we combine the strict rules of grammar and the compass of a lifetime, often filled with the unexpected and unforeseeable? Biography is a kind of balancing act or sleight of hand, whereby chance and necessity come together in a ‘long quiet river’. Trying to stick to the biographer’s safe bets, those core elements of someone’s life (birth, education, commitments, milestones, declarations and writings) does not preclude subjective interpretations. Confronted with personal experiences forged by life’s surprises – material often ‘truer’ than fiction, and more malleable in the hands of a novelist – the historian is obliged to arrange the material with an implacable, verifiable and ‘readable’ logic.

The finished product often tends to astonish. Éliane Vogel-Polsky herself recalled Léon-Éli Troclet’s surprise on reading his own biography in the issue of *Mélanges* published for his 65th birthday. “*I found it interesting, as if it was about someone else; but then some overly direct or personal aspects reminded me it was about myself. I must admit I found myself unrecognisable, in the same way that we tend not to recognize our own voice on a tape recording or a radio programme... From this we may simply conclude, at the risk of disillusioning the historian, that all biographies are fake.*”¹

1 Vogel-Polsky, É. (1992). ‘Hommage à Léon-Éli Troclet’, in: *Quel avenir pour l’Europe sociale: 1992 et après? Actes du colloque en hommage à Léon-Éli Troclet*, Brussels: CIACO, p. 22.

So should we give up trying to portray the women who have – each in her own way – shaped the 20th century, the ‘century of women’? Or should we modestly limit ourselves to recording in brief, logical fashion just the objective facts, to preserving for present-day consumption the raw data about the past? We have preferred to assume that everyone is more or less aware that any well-ordered biography is an intellectual framework for keeping alive things worth remembering, with the provision that it will shed light on only one facet of the person, among the many that could be addressed.

This approach often implies that events will be given dates (those reassuring safe-conducts for the historian), and that the subject’s life will be cut up into categories or themes, which are somehow woven together to form a logical narrative. But what is missing is the flesh, the emotions, the joys, the pain, the disappointments, everything that makes up the complexity of the person, whom we know to be so different and so much more than can be expressed in words, but whose privacy we are unable or unwilling to betray. Scientists have a private life too. And that life is lived – in theory – behind the closed doors of the family, unconnected – again in theory – with their public life; but as we all know, such a division is illusory. Behind the articles, the seminars, the research, the discoveries, the successes and the failures are human beings whose lives are “a hotchpotch of genius, enthusiasm, humour, children, worries and bicycles”.²

So this book necessarily contains both information and distortion. We have endeavoured not to misrepresent the facts; but these themselves stem from choices and from putting things in context. As such, they reveal only a tangled mass of battles, illusions, journeys and hopes or failures. We have made use of recent interviews complementing earlier published material. We have drawn on Éliane Vogel-Polsky’s many publications to evoke her ideas and her goals.³ We ask her to be kind enough to accept this (re)constructed image and to excuse us for dis-

2 *L’Avant-scène Théâtre*, I, 15 October 1989, p. 47, review of J.N. Fenwick’s play *Les palmes de Monsieur Schutz*, on the life of the Curies and the discovery of radium.

3 In the text, italics are used when quoting Éliane Vogel-Polsky from her writings or interviews.

torting to inform. Every reader will take from it what they can or what they want to see, but there is an urgent need – as the Institute for the Equality of Women and Men is well aware – to uphold the memory of those women who have contributed to the fight for equality within the broader goal of achieving a better democracy.

These pages are an attempt: a portrait of a great lady embattled in the cause of women.

The book is arranged by subject, the first being Éliane Vogel-Polsky's childhood and youth up to the end of university, her training as a lawyer, her marriage and motherhood. This deliberately short chapter helps place her in a family context, while respecting the discretion she has always maintained regarding her private life. These personal aspects are hinted at elsewhere only when relevant to her career as an activist.

The second chapter relates her brilliant academic career. It begins with her research work and teaching activities, which together formed a continuous path up the echelons of the university, culminating in the award of an honorary doctorate from Lleida University in 1992.

This doctorate (*honoris causa*) was won in the cause of women. Éliane Vogel-Polsky's feminist activism began in the memorable year 1966, when she was shocked to discover the daily reality of armaments workers at the FN factory in Herstal and their determination during a strike kept up for several weeks. From that moment she became committed, as a lawyer, as a law theoretician, aiming at the 'heights' of European and international law, which she hoped would impact Belgian legislation. This is the subject of the third chapter.

We should add that the rich profusion of her activities has not precluded their overall coherence, as practical experience feeds into the theoretical considerations. To keep it readable, the text has been divided into chapters; but it should be borne in mind that all is inter-related and complementary. Éliane Vogel-Polsky teaches at university

on the strength of her expertise in European social law; she obtains research and consultancy contracts because of her university teaching. There is a seamless continuity in her activities, and her European and international activities are so extensive – with almost fifty years of work on Community law – that they are given two full chapters before we reach our conclusions.

Éliane Gubin

Co-director, CARHIF

March 2007

We were fortunate enough to meet with Éliane Vogel-Polsky at her home in Brussels on 26 December 2006, 8 January 2007 and 2 February 2007. We would like to thank her for the warm welcome she gave us.

We are deeply grateful to Catherine Wallemacq for her help in gathering all the documentation in such a short space of time.

CHAPTER 1

Childhood and youth

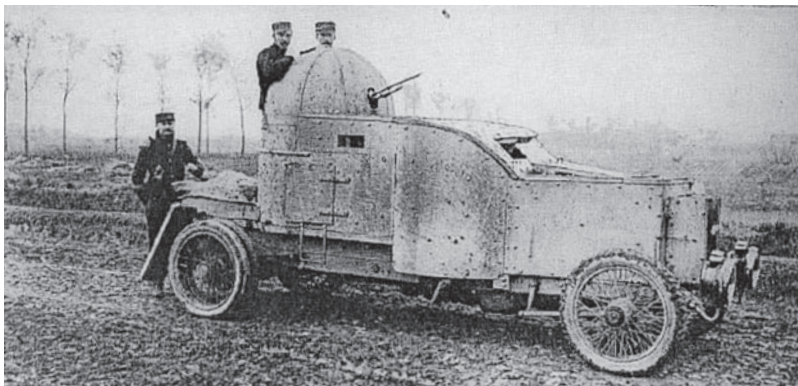
AN ADVENTURE-STORY BACKGROUND

Both Éliane Polsky's parents were Russian. Her father, Jean Isthok Polsky,⁴ was born in Gostomiel (Kiev, then part of the Russian Empire). He was a 19-year-old student at Liège University when the First World War brought his engineering studies to an abrupt end: all Belgian universities were closed in an act of solidarity with the troops at the front. Jean Polsky volunteered and in 1915 joined one of the most astonishing Belgian corps of the Great War, the ACM corps – 300 men and ten armoured vehicles, one of the first such units to be sent to the Eastern front in 1915. He took part in this unique epic, with a number of former students who had enlisted like him, but also with writer-to-be Marcel Thiry and future MP (Communist party) Julien Lahaut.⁵ The expeditionary corps distinguished itself in numerous battles in Galicia, until the fall of the tsarist regime in 1917. This marked the beginning of an amazing withdrawal from a Russia torn apart and laid waste by civil war. Acting as the group's interpreter, Polsky on several occasions obtained safe-conducts from the Red Army, each one short-lived and requiring renegotiation.

In Kiev in December 1917 he met the local generalissimo of the Soviet troops, who told him, "I am Krilenko, my brother often spoke of you... but yes, you had strong ties with Liège." With safe-conduct provided, the troops prepared for a journey of uncertain duration through regions no less uncertain: Kiev, Moscow, Vologda, Transsiberia – 9,000 km in the direction of Manchuria – Omsk, Tomsk, Irkutsk. ("When we

4 Originally Gornostaïpolsky, changed to Polsky by the Court of First Instance of Ghent on 3 March 1926.

5 The Royal Museum of the Armed Forces, in Brussels, has abundant literature and many illustrative documents relating to the activities of this army corps on the Russian front. See also the recollections of: Thiry M. (2003). *Le tour du monde en guerre des auto-canon belges*, Liège (first edition 1965).



*Armoured vehicles
of the Belgian army
during the Great War*

first read *Michael Strogoff*,” writes Marcel Thiry, “little did we imagine that one day we would be following in his footsteps?”⁶) They marvelled at the ‘Chinese’ locomotive and carriages... “only to discover that they were made in Charleroi”.⁷ On reaching Kharbin, a wonderful cosmopolitan town, the corps contacted the Belgian authorities, and arrangements were made for their return. But they stayed on for three weeks, time enough for Polsky to meet and fall in love with Nine Nekhama Kisselew, a year younger than him, born in Vetka (present-day Belarus) and then a refugee in Manchuria where she was studying at university to be a dental surgeon; the young couple became engaged.

⁶ Thiry, *Le tour du monde...*, *op. cit.*, p. 89.

⁷ *Idem*, p. 96.

However, Polsky's regiment embarked for Vancouver, arriving in April 1918. The regiment then crossed the United States and was shipped to Bordeaux, reaching Paris in July. The men were assigned to various regiments on the Yser front. Polsky was spared the terrible slaughter of the major offensives of 1918.

In 1919 Jean Polsky was granted full Belgian citizenship for his services to the country. A scholarship enabled him to resume his studies at Ghent University, but in 1920 these were again interrupted, this time by his marriage. For he had been reunited with his fiancée in a most unexpected turn of events. During the war he had become friends with the son of champagne producer Mercier, who now helped him set up a small import-export business which then arranged to bring his future wife from Kharbin. This was surely the only Belgian-Manchurian champagne export company ever!

CHILDHOOD IN GHENT

The young couple set up home in Ghent, with modest means. Nine Kisselew could not practice in Belgium, as her diploma was not recognized. And before long their first daughter Marie-Françoise was born, which also kept her at home. A second daughter, Éliane, was born on 5 July 1926. As émigrés they were a relatively isolated nuclear family, though Nine's widowed youngest sister was to join them in Ghent.

Éliane's parents were cultured people with modern ideas and they were anxious to secure the best possible education for their two daughters. In this open environment, they were bathed from childhood in a sense of equality. Éliane Polsky would later touchingly and enlighteningly allude to this in a scientific article on the equality of men and women in the Belgian labour law,⁸ which she dedicated to her father, "*an expert in equality. When we asked him which daughter was*

8 In: Verwilghen, M. (ed.) (1986). *L'égalité juridique entre femmes et hommes dans la communauté européenne*, t. 2, Louvain-la-Neuve: Presses Universitaires de Louvain, pp. 15-39.

his favourite, he would invariably reply to the younger one, 'You are my favourite younger daughter', and to the elder of the two, 'You are my favourite elder daughter'."

In Ghent, the 1920s were a time of strong linguistic tensions. Following the war, demands for a Flemish university had inflamed passions, which led to a sharp break with the post-war patriotic momentum. The response to the unwillingness of French-speaking Belgians to understand the Dutch-speaking middle classes' hope for democratization was met with violence. The conflicts were harsh, ending in the complete takeover of the university by Dutch-speakers in 1930, and the exit of French-speaking staff and students. Two years later, the language border created separate regions. Ghent nevertheless continued to be home to a French-speaking bourgeoisie, and thus French was the language of Éliane Polsky's primary education.

BRUSSELS-LIÈGE-BRUSSELS: TROUBLED TIMES

Éliane Polsky's education was interrupted when she was eight years old: after contracting a primary infection she had to spend a year in Switzerland. On her return to Belgium, where her family had moved to Brussels in 1934, she worked twice as hard to make up for lost time, completing her primary education at École Carter in 1938.⁹

She then entered Lycée Émile Jacqmain, a secondary school (lyceum) that may today seem unexceptional but at the time was an elite establishment. Although after the First World War many liberal towns and cities had founded secondary schools with outstanding reputations, few girls were enrolled for the classical humanities. In 1925 the State had simply opened its secondary schools (atheneums) to girls, without founding any separate establishments. And though the number of girls grew

⁹ Later to become a secondary school, this institution of the City of Brussels was established in 1908 based on Isabelle Gatti de Gamond's 'Cours d'Éducation' model. With Lilly Carter at its head (1865-1937), the school enjoyed a solid reputation, distinguishing itself with its innovative ideas on education, inspired by Decroly and Hamaïde. Between the wars, it had a primary and middle section, as well as a commercial section.

steadily between the wars, on the eve of the Second World War they accounted for a mere 15% of pupils in senior secondary education.

The Émile Jacqmain Lycée, established by the City of Brussels in 1922 and significantly called an ‘athenaeum for girls’, was clearly aimed at preparing its pupils for university. Under the energetic direction of Jeanne Kessler, who had a Doctorate in Germanic Philology from the Université Libre de Bruxelles (ULB) and had been headmistress since 1933, the school’s goal was to educate “emancipated women, destined to play an effective role in tomorrow’s society... with an education equivalent to men’s and of robust character”.¹⁰ The lessons were demanding, the discipline strict and the teaching staff an impressive group of university graduates with first-class degrees, many of whom regarded education for girls as the best (and perhaps the only) means of improving the position of women. But while some of the teachers were fundamentally feminist and active outside of school (in the National Council of Women of Belgium, the Belgian Federation of University Women or the Belgian branch of Open Door), in the classroom only scientific rigour applied: it was as if all these women “*made an absolute distinction between their private life and their public functions*”.¹¹ There was nevertheless one exception: their democratic anti-fascist engagement. “*We knew of course that all our teachers were against fascism, yes, it was common knowledge... But I did not perceive any ‘feminist’ climate, no tendency to inculcate us with ideas of that kind... During the war our English teacher adopted ‘passive resistance’ by making us sing English songs with all the windows wide open!*”¹²

At this school the young Éliane was particularly impressed by the morality course, given by a young ULB graduate in classical philology, Hélène Tranchant, who would succeed Jeanne Kessler as headmistress in 1952 and who used her lessons above all to initiate her students in philosophy.

10 De Coster, S. (s.d.). ‘La naissance et le développement du Lycée Émile Jacqmain’, *Cahiers bruxellois* (15-16), pp. 347-375.

11 Interview with Éliane Vogel-Polsky in Brussels on 26 December 2006 (hereafter indicated by the date only).

12 Interview, 26/12/2006.

Shielded up to now from the consequences of the war, which embroiled Belgium in May 1940, the Polsky family was brutally confronted with the situation a few months later. Confident at first, like many Belgian families of Jewish origin, that their nationality would protect them from the exactions of the occupier, Éliane's parents were not overly concerned by the first anti-Jewish edicts announced in October 1940. The first restrictions were aimed at specific targets, such as lawyers, civil servants and journalists (28 October 1940), and barred them from those professions. But other edicts followed – an obligation to be entered in a national register, a restriction on freedom of movement – and these were now aimed at all Jews, which showed that the noose was tightening. The Order of 1 December 1941 banned children over 14, for whom schooling was not compulsory, from attending “non-Jewish establishments”.¹³ An identical measure would soon affect all Jewish children of school age, who were now required to attend ‘emergency’ schools under the control of the Association of Jews in Belgium (AJB). In a city like Brussels, where the population of Jewish origin was highly assimilated and attended state schools,¹⁴ this edict radically changed the educational landscape and turned the daily life of thousands of schoolchildren upside down. But it did not elicit any particular response from the city councils or public opinion: the general public seemed not to sense its significance. Public opinion was however shaken by the 7 December 1941 announcement of the remarriage of King Leopold III to Liliane Baels.

When summoned by the headmistress Jeanne Kessler to hear that she had to leave the school, Éliane Polsky suddenly realised that she was not “*a young girl like any other*”. Her expulsion hit her hard, “*like a slap in the face*”. Holding back her tears, she managed to retort: “*It doesn't matter Miss, my parents wanted to put me in a better school anyway!*”¹⁵

13 For this aspect of Jewish persecution during the Second World War, see: Dickschen, D. (2006). *L'école en sursis. La scolarisation des enfants juifs pendant la guerre*, Brussels: Ed. Devillez.

14 There were no Jewish schools in Brussels, though extra courses were available to Jews.

15 Interview, 26/12/2006.

In 1942 the decrees against the Jews followed one after the other. In June the obligatory wearing of the star, in August the first roundup of Jews in Antwerp, followed by roundups in Brussels a month later. No Jewish family was spared, regardless of nationality, religion, class, economic circumstances, or how long they had been in Belgium. The Polsky family found themselves on the wrong side of the law and in a precarious situation. Éliane's sister Marie-Françoise, who had studied Roman philology at the ULB, taught French in an underground Jewish school at Bassines castle in the Condroz, where she worked alongside young intellectuals of her own age, such as Georges Papy, who taught maths. He would later join Group G. It was there that she also met Raoul Brancart, who studied philology at the ULB until it was closed in 1941 and who had earlier offered to teach Latin and Greek at the Jewish secondary school in Brussels. His daughter Évelyne,¹⁶ incidentally, was later to win the Queen Elisabeth piano prize, in 1975. Marie-Françoise barely escaped a roundup in 1943 that dismantled the organization.

In September 1942 Éliane went into hiding under a false identity among the Benedictine Sisters of La Paix Notre Dame on boulevard d'Avroy in Liège, where she completed her humanities studies. Not without humour, she liked to recall how her reply to Jeanne Kessler had turned out partially true, though with no credit to herself: *"The level of knowledge and the demands of Latin and Greek were tougher there than at Émile Jacqmain!"*.

RETURN TO NORMAL LIFE

In October 1944 Éliane Polsky enrolled at the Facultés universitaires Saint-Louis in Brussels, a choice dictated by her gratefulness to the Catholic nuns in Liège who had given her a temporary home. She would have liked to study philosophy (still under the influence of Hélène Tran-

16 Born in 1954, Évelyne Brancart went on to have a brilliant career as an international pianist, after winning the Queen Elisabeth piano prize in 1975. She married the Israeli violinist Atar Arad.

chant!), but her father felt “*that it is not very serious*”. She opted instead for a preparatory law degree “*because the idea of defending causes, of being a lawyer, pleased me, and they said it could serve for any career*”.¹⁷

She took her doctorate at the ULB in 1947-1948, and was awarded it with first class distinction on 7 July 1950. The class of 1950 was clearly a very good one, including as it did many women determined to make a career for themselves. Wivine Bourgaux, wife of lawyer Jacques Hirsch, would be the first woman to plead at the Court of Cassation, and Odette De Wynter the first woman in Belgium to qualify as notary public (1955).¹⁸

During her three years studying for a doctorate Éliane Polsky formed a happy trio with Marie-Thérèse Cuvelliez¹⁹ and Odette De Wynter. The youngest of the three, Odette De Wynter (1927-1998), was kindly but firmly teased by her friends, because she was in addition studying to become a notary public, despite the fact that women were then barred from the profession.²⁰ But that restriction was lifted just in time, in 1950, the very year that Odette received her diploma, after parliamentary debates in which the reactionary old guard predicted for the last time that giving women access to the legal professions would bring about “disorder of society, weakening of the family and decadence of morality”. In short, women’s desire for equality was seen as no less than a “danger to the family (...) and a threat to the restoration of spiritual and moral values”!²¹

Marie-Thérèse Cuvelliez, who fought alongside Éliane Polsky in many battles, was the oldest of the three, having been for family reasons obliged to interrupt her studies. The immediate post-war years

17 Interview, 26/12/2006.

18 The Act of 7 May 1947 permitted women to work as a lawyer in the Court of Cassation; the Acts of 21 February 1948 and 1 March 1950 gave them access to all juridical positions, the latter to the Council of State and the profession of the notary. For Odette De Wynter (1927-1998), see: Gubin, E. et al. (dir.) (2006). *Dictionnaire des femmes belges, XIX^e-XX^e s.*, Brussels: Racine, pp. 204-205.

19 For Marie-Thérèse Cuvelliez (1923-2005), lawyer, see: *Chronique féministe* (86-88), Sept 2003-Jan 2004, pp. 149-151; *Chronique féministe* (93), Sept-Dec 2005, p. 64.

20 Her mother Yvonne Prayé, a liberal party activist, passionately wanted her daughter to take after her father Jean De Wynter, notary in Ostend, who died young.

21 *Documents parlementaires*, Chamber, 1949-1950, No. 180.

were characterized by strong political tensions (repression of activism, the royal question), but the two young women retained a certain Bohemian attitude, discovering existentialism, Sartre and Simone de Beauvoir, whose *The Second Sex*, published in 1949, caused a scandal in right-thinking society.

LAWYER AND MOTHER

Éliane Polsky's graduation class at the ULB comprised 133 men and 24 young women (15%): female law graduates were still clearly in the minority, a 'backwardness' explained by the slowness with which women were given access to the legal professions. They were admitted to the Bar in 1922, to the magistracy in 1948. The Law Faculty was a male bastion, in stark contrast to the university's other faculties, which were boosted by relatively new students from the rapidly expanded secondary education for girls. By way of example, 43% of graduates at the Philosophy and Literature Faculty were women in 1950, at the Science Faculty that was 50%. At the Law Faculty however it would not be until 1982 that parity was achieved among graduates. But in this highly masculine, even somewhat chauvinist environment (all teachers were men, with the exception of Madeleine Gevers-Dwelshauvers²²), Éliane Polsky did not experience any shadow of discrimination – no doubt because the number of women was too small to cause concern among either students or staff. At the Bar women were a tiny minority: ten years later, in 1960, they still accounted for only 7% of all lawyers.

Éliane Polsky's main concern in the summer of 1950 was finding a work placement. She finally managed to find a position on 2 October with Marc-Antoine Pierson, a *"boss chosen somewhat randomly, which would not be the last time in my life"*.²³ Pierson (1908-1988) had yet to

22 For Madeleine Dwelshauvers, wife of Gevers (1897-1994), jurist, the first woman to enter the professional ranks of a Belgian university (in 1925), full professor from 1933 and the first female faculty dean in 1953, see: Gubin et al., *Dictionnaire des femmes belges...*, op. cit., p. 230.

23 Interview, 26/12/2006.

start his political career in the Socialist Party.²⁴ Éliane Polsky was admitted to the Bar on 1 December 1953; she would remain a member until her request to step down on 1 September 1969.

During her three years with Pierson she regularly contributed, as did Marie-Thérèse Cuvelliez, to the *Journal des Tribunaux*. Her columns were ironic and impulsive; she loved writing and gave full rein to that pleasure, even coining feminine forms for legal titles like ‘magistrat’ and ‘bâtonnier’!²⁵ She did not dream of an academic career, describing herself as ‘anti-institutional’. She gave free rein to her imagination, feeding her hunger for literature. She was especially charmed by surrealist poetry, unconventional images in which wordplay prevailed over imagery. As she put it herself, “*it’s thanks to words that I got over the war*”.²⁶

The following poem published in the *Journal des Tribunaux* is from this period:²⁷

Cortège à la manière de Prévert

Un avocat à la sauce tomate avec un macaroni à la Cour d’Appel
Un substitut de porcelaine avec un raccommodeur du procureur du Roi
Un stagiaire à repasser avec un fer de première année,
Un palais pour la Corée avec un volontaire de justice
Une Conférence diplômée avec une sage-femme du Jeune Barreau,
Un dossier saignant à point avec un beefsteak répressif,
Un Conseil de la farce avec un dindon des prud’hommes,
Une Cour sans provision avec un chèque de cassation
Un hélicoptère de rentrée avec un orateur postal
Un tribunal bruxellois avec un tramway correctionnel,

24 Doctor of Law, ULB professor, MP for Brussels from 1952 to 1968, Alderman of the City of Brussels, President of the socialist group in 1962, co-opted Senator in 1968. Minister of Economic Affairs (1965-1966), Minister of State in 1974. Member of the Benelux Interparliamentary Consultative Council (1957-1965, then 1967), President (1960). Member of the Assembly of the Western European Union, member of the Consultative Assembly of the Council of Europe (1962). Married to the writer Marianne Piérard and himself an essayist and novelist in his free time.

25 *Journal des Tribunaux*, 2 March 1952, p. 143.

26 Interview, 26/12/2006.

27 *Journal des Tribunaux*, 11 March 1951, p. 158.

Un casse-tête général avec un procureur chinois,
Un objecteur des tribunaux avec un journal de conscience
Un conservateur des pas-perdus avec une salle des hypothèques.

At the time she was a regular at *La Fleur en papier doré*, a bistro in the centre of Brussels (Rue des Alexiens) with a literary and cultural following. Half-pub, half-museum, it sported a decorative jumble of porcelain and china, prints and engravings, antique clocks and an enormous Louvain stove salvaged from the celebrated pre-war student café *Le Diable au corps*. Many of the regulars were poets, artists and students. Following the hardships of the war years, young people had a thirst for life: as Marie-Thérèse Cuvelliez recalled: “I lived at night, going to a concert or the bistro with friends. I was free to leave my digs around eleven p.m. and go here and there... I had to make up for lost time because my family had felt it was not right to have fun during the war.”²⁸

On 28 March 1952 Éliane Polsky and Marie-Thérèse Cuvelliez were debaters at the Auguste Marin Circle. These debates, held by the Brussels Young Bar Committee, were on topical issues, and the two women chose as their subject ‘Simone de Beauvoir or the revolt of woman’. “That Friday there was a whirlwind of excitement,” notes Basile Risopoulos,²⁹ who organized the debate. “There were supporters and opponents; the beasts of prey were released into the arena and the hoi polloi came to see the tamer get eaten. The woman is in revolt...”³⁰ While Marie-Thérèse Cuvelliez was relatively critical, Éliane Polsky showed herself to be an ardent admirer of Simone de Beauvoir, defending all her ideas. Risopoulos was charmed not just by her “remarkable words” and intellectual ease but also by her panache: “one metre sixty tall, her cheeks glossy with emotion, a sparkling mischievousness in her eye, the devil still beautiful even when staring defeat in the face...” At the Bar the two young women were nicknamed ‘the little Sartres’.³¹

28 ‘La vie d’une avocate féministe. Propos recueillis par Hedwige Peemans-Poullet’, *Chronique féministe* (86-88), Sept 2003-Jan 2004, p. 152.

29 Basile Risopoulos (1919-1997), lawyer, Secretary of the Order, resistance fighter and political prisoner who made his political career with the Liberals and was Vice-President of the Board of Trustees of the ULB.

30 *Journal des Tribunaux*, 6 April 1952, p. 219.

31 ‘La vie d’une avocate...’, *op. cit.*



*Éliane Polsky,
young lawyer*

That same year Marie-Thérèse Cuvelliez and Éliane Polsky decided to compete for the Janson Prize. At the time there were only two prizes for young lawyers: the Janson Prize for eloquence and the Lejeune Prize for legal reasoning. All second and third year work placement students were eligible to compete, but since its instigation in 1925 the Janson Prize had always gone to a man. Those close to Marie-Thérèse and Éliane tried to dissuade them from entering a competition they could not hope to win, claiming: “The prize will never be awarded to a woman!”. Supported by the lawyer André Vogel, her future husband, Éliane Polsky persisted... and won the day. *Le Journal des Tribunaux* rejoiced, stressing that it was the first time a woman had been given that honour: “Mrs Éliane Polsky’s talent as a speaker is complemented by her friendliness, her grace and her writing, all three of them spontaneous.”³² The reporter was clearly spellbound, for when Éliane Polsky opened the first legal session of the Young Bar (a traditional privilege of the Janson and Lejeune prize-winners) he continued heap- ing praise on her presentation (‘A work-related accident’), conclud-

32 *Journal des Tribunaux*, 29 June 1952, p. 407.

ing “that it is comforting to know that any case can be argued with elegance and refinement and that one should never hesitate to use not only striking arguments but also ones charm and attractiveness.”³³

Need we labour the point? This was exactly what the grumblers had feared: women lawyers “just out of university, and behaving in the most dignified courts with a freedom of attitude contrasting with the seriousness of the most distinguished barristers”... Or worse still: “Male lawyers both young and old, titillated and charmed by the arrival of this element of interest in a dreary environment, will all be competing to secure the good graces of their female colleagues!”³⁴

But though there was much enthusiasm in the Young Bar, one could hardly say the same of the more senior lawyers, among whom vulgar sexism tended to be the order of the day. This was borne out by the reaction during the dinner that followed the announcement of the Janson and Lejeune prize-winners. When it was time for the prize-winners to make their usual short address “*some of the lawyers made a din with their cutlery and chatted amongst themselves... until, more or less embarrassed by this unseemly behaviour, the two presidents urged them to silence so that I could be heard. I wasn’t particularly taken aback by this incident, for I had just read Simone de Beauvoir’s The Second Sex... so in my address... I reversed the usual roles, turning the harem back to front; I spoke of men the way they typically speak of women, as sexual objects. This didn’t go down too well...*”³⁵

On 14 August 1952 Éliane Polsky and André Albert Vogel, also a lawyer, were married in Brussels. André Vogel was born in Schaerbeek on 18 September 1918, son of stockbroker Oscar Jules Vogel and Germaine Marie Irène Bocage.³⁶ He joined the Bar in 1941, and was part of the Front de l’Indépendance resistance movement during the war.

33 *Journal des Tribunaux*, 2 November 1952.

34 Cour d’appel de Liège, *Mercuriale de M. Le Procureur Général ff. Delwaide à l’audience solennelle de rentrée du 16 septembre 1946*, Liège, 1947, p. 7.

35 Interview, 26/12/2006.

36 He died in Ohain on 1 April 1976. Éliane Polsky was remarried in 1984, to the jurist Claude Larsimont. The couple has one daughter, Victoire.

The marriage quickly produced three sons: Jean (1953), Laurent (1955) and Alain (1956), “*which*,” Éliane Vogel-Polsky observed, “*left me little time to work on the development of social law*”. The beginning is always the hardest part, not least for a young woman lawyer, and the more so for Éliane Vogel-Polsky because many clients preferred to engage her husband. She was mainly occupied with divorces and civil defence cases.

As soon as she could – having, as she admitted herself, no particular vocation for household duties – she escaped to new studies: “*What could be more interesting than deciding to return to your studies when you feel swamped by the demands of family life that permit little in the way of outside activities?*”³⁷

37 Vogel-Polsky, É. (2006). ‘Cinquante ans de droit du travail’, in: M. Sylin, *Cinquante ans d’évolution du travail. De la semaine de 5 jours à la Directive Bolkenstein*. Colloquium organized on the occasion of 50 years of the Institut des Sciences du Travail of the ULB, Brussels, p. 30.

CHAPTER 2

A scientific and academic career

The Institut du Travail (Labour Institute) had just been established at the ULB on 25 June 1955, under the management of Madeleine Gevers-Dwelshauvers, who would remain in charge until 1970. This establishment was far from insignificant. It recognized “the interest of the academic world in social problems” of post-industrial society. Social battles had spawned laws, regulations on employment and collective agreements that gradually laid the foundations for a new branch of law. After the Second World War its rapid development would be spurred by the social security pact, which was the basis of the social security system (1944).

The new institute opted for interdisciplinary education, which filled Éliane Vogel-Polsky with enthusiasm. “*I was taken aback by the abundance of courses in subjects that were totally new to me and likely to introduce me to a new discipline, covering the area of professional relations, collective and union law, labour conflicts, comparative labour law and especially international social law, which was never mentioned in any of the courses I took.*”³⁸ She graduated in law and the sociology of work in 1958, with the highest distinction. Her thesis would later be published – in a revised and expanded version – as a 350-page book, *Du Tripartisme à l’Organisation Internationale du Travail* (1966), in which she told the history of union freedoms since 1919, analysing amongst other things the obstacles and restraints they had faced, the changes imposed on the union model by totalitarian regimes in Italy, Spain and Portugal, and the perception of the employer in a communist system in which private ownership of the means of production has been outlawed.

38 Vogel-Polsky, ‘Cinquante ans de droit du travail...’, *op. cit.*, p. 30.

The contacts she made at the Institut du Travail were fundamental. It was there that she came to realise that labour law could not be reduced to a set of regulations. She also keenly followed the course given by Léon-Éli Troclet.³⁹

Léon-Éli Troclet was the son of Léon Troclet, one of the first socialist MPs for Liège, who had been introduced to socialism by Jean-Baptiste Clément, writer of the famous song *Le Temps des Cérises*. Léon-Éli studied law at Liège University before starting his teaching career at the ULB. Here was a man who did not hide his working-class roots; indeed, he would speak of them passionately. “Desiring to make me an intellectual [my parents] were keen to instil in me an affection for humble working people, such that I was naturally inclined towards social law... while endeavouring not to restrict myself to legalism, to armchair social law.”⁴⁰

His idea of social law was diametrically opposite to anything Éliane Vogel-Polsky had already experienced. “*I was fascinated straight away... It was there that I discovered social law, the problems relating to the condition of workers. It was a revelation for me... Until then my law studies had given me only extremely rudimentary ideas of labour law. Madeleine Gevers had taught a course (which she considered far less important than her big civil law course) and the material, related to what she called small contracts, was very disappointing. It was a set of existing regulations... and it was so uninteresting it was the only course I failed in my three-year doctor’s degree!*” Éliane Vogel-Polsky’s memory was of daunting, dry matter that in no way touched upon “*the working conditions nor even the very foundations of labour law.*”⁴¹

Troclet, on the other hand, “*brought social law to life*”. Deeply involved in the political and social life of his era, Troclet was a practical man, a

39 Léon-Éli Troclet (1902-1980), Doctor of Law, Professor at the ULB, socialist statesman, Minister of Labour and Social Security (1945 / 1945-1946), Minister of Economic Affairs (1946), Minister of Labour and Social Security (1946 / 1946-1947 / 1947-1948 / 1948-1949 / 1954-1958), Minister of State in 1969. He was a member of the European Parliament in 1961.

40 *Quel avenir pour l’Europe sociale...*, op. cit., p. 22.

41 Interview, 26/12/2006.

provincial representative, Senator for Liège and eight times a Minister. He was also a convinced ‘European’ who took his seat in the European Parliament in 1961. Passionate about social security issues and international social legislation, he infected the young woman with two viruses in one fell swoop, “*the social virus and the European virus!*” She would assist him in his international social law course from 1958.

In that same year Léon-Éli Troclet, then Minister of Labour and Social Security, founded the Centre National de Sociologie du Droit Social (CNSDS, National Centre for Sociology of Social Law), which he headed until his death in 1980. This was a prosperous era in which national research centres started springing up in response to the Royal Decree of July 1955, which enabled innovative programmes to be financed. Housed in the Institut de Sociologie (Institute for Sociology), the CNSDS was, like the other national centres of the time, completely independent. Éliane Vogel-Polsky was thus able to conduct her work autonomously, first as a researcher, then as a chief researcher and finally as Director of research in 1972. As deputy Director of the CNSDS since 1969, she officially succeeded Troclet in 1980, though most duties had been delegated to her well before then, owing to Troclet’s busy workload. Between 1978 and 1983 she worked at the CNSDS with Marie-Thérèse Cuvelliez, who continued to be attracted to research.

As the first – and only – centre for fundamental and applied research that combined labour law and labour sociology, the CNSDS aspired to be an institution that prepared law reforms and devised strategies targeting the least privileged workers – women, young people, the disabled and migrants. Éliane Vogel-Polsky soon added a militant feminist dimension to her scientific research, as shown in her involvement in the Herstal strike of 1966, to which we return below.

These years were clearly decisive, as Éliane Vogel-Polsky herself concedes. “*Until then I loved practising law as a lawyer in a highly theoretical way. I was much less interested in human aspects than in the game of law, which was about deciphering all the data in a problem and developing the*

ability to build an original or new line of reasoning, supported by research, of course, in legal doctrine and jurisprudence, that had a realistic chance of achieving acceptance for the hypothesis being defended and of bringing about advances in law.”⁴²

To be able to devote herself more truly towards the orientation she had discovered in the institute, Éliane Vogel-Polsky began a special degree in social law, which she completed on 19 June 1963 with a paper on international social legislation and the problems involved in resolving collective labour conflicts peacefully. She studied several different systems of labour law, Romano-Germanic, Anglo-Saxon, Nordic and Communist.

The final piece in the jigsaw was the Institut d’Études Européennes (Institute for European Studies), which was established by the ULB Board on 7 June 1962 and officially set up on 27 February 1964 on the initiative of Walter-Jean Ganshof van der Meersch.⁴³ The new institute offered a law programme that enabled Éliane Vogel-Polsky to complete her specialization. Unsurprisingly, she was among the first graduates, the class of 1963-1964, and was awarded her special degree in European Studies on 6 October 1965 with great distinction.

Armed with these three special degrees – earned in less than seven years, and destined to shape her main interests (international social law, comparative social law and Community social law) – she chose a career as a researcher and teacher. She entered the ULB’s Law Faculty as junior lecturer in 1969, gradually climbing the career ladder. By October 1969 she was an associate lecturer under Léon-Éli Troclet (international social law and European social law) and Maurice Cornil⁴⁴ (comparative social law and contemporary social history). When the latter passed away on 11 October 1969 she took over his duties on an acting basis, an appointment that was extended by the Faculty on

⁴² Vogel-Polsky, ‘Cinquante ans de droit du travail...’, *op. cit.*, p. 31.

⁴³ Jurist, crown prosecutor in Brussels (1933), professor at the ULB, High Commissioner for State Security in London during the war, advocate general (1947), public prosecutor at the Court of Cassation (1968).

⁴⁴ Jurist (1909-1969), Director of studies at the Institut du Travail, Director of the Libre Académie Picard (Free Academy Picard), professor at the ULB.



Éliane Vogel-Polsky with the Belgian delegation at the International Labour Bureau in Geneva, 1964

the recommendation of the scientific committee, which described her *Cours de droit social comparé* (Presses universitaires, 1970), as “a considerable effort for a professor in a new programme, and one that would not have been possible but for many earlier studies”.⁴⁵

She was gradually given responsibility for various programmes without ever being halted by the ‘famous glass ceiling’. Not that the Law Faculty could be described as feminist in any shape or form. But the young woman was (perhaps) able to benefit from mitigating circumstances, as she admitted herself, not without humour. “*I never felt I was prejudiced against because of my sex. I was given courses fairly easily, inasmuch as I didn’t cost anything; I had a full-time salary from the Centre National de Sociologie du Droit Social.*”⁴⁶

45 AULB, administrative file P 13007.

46 Interview, 26/12/2006.

She gave courses at Institut du Travail, the Law Faculty and the Social, Economic and Political Sciences Faculty, and in Charleroi, at the Institut de Formation Sociale et Culturelle (Institute for Social and Cultural Training), where from 1963 she took a cycle on the responsibilities of labour movements.

Her position at the CNSDS also led to directing various projects commissioned by the Belgian government or by international bodies like the International Labour Organization, the Commission of the European Community and the Council of Europe. She soon earned a reputation as an expert in these bodies, as will be described in later chapters.

THE END OF THE 1960s AND THE BEGINNING OF ACTIVISM

At the end of the ‘golden sixties’, two events affected the direction of Éliane Vogel-Polsky’s career. In 1966, during a major strike, she discovered the shocking conditions of women workers at the Fabrique Nationale at Herstal (FN, the national armaments factory). This was to trigger her feminist engagement, as detailed hereafter.⁴⁷ And after the events of May 1968 she became involved in the women’s liberation movement and gradually focussed on women’s studies. The detonator for her was not the May 1968 movement itself, but rather what was happening off campus, the profusion of new ideas and theories on sexual social relations, which would gradually become integrated – albeit not officially – in the academic disciplines.

THE DISAPPOINTMENT OF MAY 1968

The student protests of May 1968 at the ULB were hugely disappointing from the point of view of women – and Éliane Vogel-Polsky in particular. She could not avoid comparing what she saw in Brussels with the events in France. When the student revolt broke out there on 3 May, spreading from Nanterre to the Sorbonne and then other campuses – the brutal intervention of the police reinforcing the solidarity among the students – Éliane Vogel-Polsky was in Paris for a collo-

47 See Chapter 3.

quium organized by the Senate, at the end of which she had prepared a paper on Article 119 of the Rome Treaty. The closing dinner was disrupted by an announcement by students who had occupied the Senate and barricaded the doors. There was complete confusion. Forced to extend her stay due to a public transport strike, she attended the events that followed. In the night of 10 May the capital burned and barricades were erected in the Latin Quarter. There were violent confrontations; social protest superseded the student protest. *"It was a revolution... The atmosphere and the student demands thrilled me. It was fantastic."*⁴⁸

In Brussels the protests started to take shape on 13 May, and by 21 May they were supported by a group of professors, assistants and researchers, some of whom expressed very radical ideas. The university buildings were gradually occupied; a root and branch reform of structures and programmes was demanded.⁴⁹ The movement didn't have the same scope as in Paris however, remaining socially and geographically limited. At the Institut de Sociologie, which was ruled with an iron fist by Arthur Doucy, researchers oscillated between rebellion and submission, and Éliane Vogel-Polsky judged their moderate and diverging reactions as often too soft.

Her criticism of an abortive May 1968 is no doubt overly negative. The movement did lead to some crucial changes for the institution, including new statutes and the democratization of universities' structures and the way they functioned. It also produced a host of generous, utopian ideas, expressed in open assemblies, reflecting the extraordinary shake-up of morals and culture that marked the end of the decade. These new utopian ideas reverberated among secondary school students, especially at schools in Brussels, including the Charles Buls teacher training college, and Adolphe Max and Léon Lepage athenaeums. A coordination committee, CLES, was established to harmonize the actions of the different groups, something that particularly caught Éliane Vogel-Polsky's imagination, much more than the disorder on

48 Interview, 26/12/2006.

49 For the detailed events, see: Govaert, S. (1990). *Mai 68. C'était au temps où Bruxelles contestait*, Brussels: POL-HIS, pp. 17-99.

campus. It was a movement of precociously politicised, combative and often radical teenagers, and because her sons took a very active role she was directly involved. While she lamented the lack of revolutionary spirit at the university, at home she felt the full force of the revolt.

EQUALITY, A FINE ASPIRATION?

May 1968 was primarily a revolt of sons against fathers. There was little room for feminist demands at the universities, and even less so in Brussels where the situation was better for girls than elsewhere. A velvet revolution had taken place since the 1920s and 1930s in the lecture rooms and among the academic personnel. The presence of girls – even in faculty positions – grew, irregularly but seemingly inexorably. All faculties began to take on a more mixed character.⁵⁰ From 1960 women made up almost a quarter (23.5%) of staff at the ULB; at the Institut de Sociologie 43% of researchers were women. Female assistants and researchers were now more visible and there was optimism about the appointment of more women, even though only 5% of professors were women. Many wanted to believe that “the principle of equality is respected at the ULB in appointments and promotions”.⁵¹

The ULB even had the beginnings of feminist education. In 1963 the estate of Suzanne Tassier⁵² had financed a chair for visiting professors to lecture on the condition and working situation of women. Some of the topics addressed were very controversial for the period. In 1968-1969 the chair was held by Dr Marie-Andrée Lagroué Weill-Hallé, head of department at La Pitié-Salpêtrière hospital in Paris and co-founder of La Maternité Heureuse (happy motherhood), an organ-

50 For this aspect, see: Gubin, É. and V. Piette, with the collaboration of P. Van den Dungen (2004). *Emma, Louise, Marie... L'Université libre de Bruxelles et l'émancipation des femmes (1834-2000)*, Brussels: Ed. GIEF-Service des Archives, pp. 125-213, pp. 233-281.

51 Interview with Simone Huyberechts, professor at the ULB, Dean of the Social, Political and Economic Sciences Faculty from 1972 to 1975, in: *Chronique féministe*, Dec 1984-Jan 1985, pp. 5-6.

52 For Suzanne Tassier (1898-1956), first associate professor of history at the ULB and early feminist, see: Gubin et al., *Dictionnaire des femmes belges...*, op. cit., p. 523.

ization that worked to promote family planning and contraception.⁵³ In this particular field the ULB was ahead of its time, and physicians such as Dr Peers and Dr Hubinont⁵⁴ fought a parallel battle to that of the feminists.

In 1970-1971 the chair passed to a lawyer by the name of Simone Constant-David,⁵⁵ who taught civil and social law at Liège University, as well as giving courses at the Institut du Travail. She chose an unambiguous subject: 'Development of the legal condition of women. History of a decolonisation'. Éliane Vogel-Polsky attended her course, but they did not become close.

Two years later she was given the job of organizing the Chaire Suzanne Tassier. She considered giving it a new focus – as a colloquium inviting experts to address women's employment in the six Member States of the European Union. Jean Bingen, Dean of the Philosophy and Literature Faculty, expressed support for this new move in a communication to the ULB's Rector, André Jaumotte: "Research must serve the elaboration of a social policy to devise and present solutions that improve the introduction of the female population in the world of labour."⁵⁶ This was a reference to the major survey supervised by Éliane Vogel-Polsky on the situation of female employees in Europe.

THE SURVEY OF FEMALE EMPLOYEES IN EUROPE

The initiative had taken shape in 1970: "*I was very attached to this survey,*" explained Éliane Vogel-Polsky. "*I had contacts with the EEC since*

53 See: Bard, Ch. and J. Mossuz-Lavau (2006). *Le Planning familial. Histoire et mémoire 1956-2006*, Archives du Féminisme, Rennes: Presses Universitaires de Rennes.

54 For Willy Peers (1924-1984), one of the main advocates of the abortion legalisation, see: *Nouvelle Biographie nationale*, t. V, pp. 279-280; Gubin et al., *Dictionnaire des femmes belges...*, *op. cit.*, pp. 443-444. For Pierre-Olivier Hubinont (1919-1986), gynaecology/obstetrics consultant at Saint-Pierre Hospital in Brussels, professor at the ULB, see: Gubin et al., *Dictionnaire des femmes belges...*, *op. cit.*, pp. 321-322.

55 Simone David, wife of Constant, Doctor of Law at Liège University (1941) and social sciences graduate of the same university (1942), full Professor in Civil and Social law at Liège University, honorary lawyer, member of various working groups at the Ministry of Justice, Commander of the Order of the Crown (AULB, Chaire S. Tassier, 643).

56 From J. Bingen to A. Jaumotte, AULB, Fonds Chaire Tassier, letter of 2 July 1973.

1962... so I approached Jacqueline Nonon, who was the head of what was called the 'Women's Bureau'.⁵⁷ But she told me very clearly that she had no funding and that the Commission wasn't ready to devote any to women.... She did however put me in touch with Huguette Defosse, who was President of the International Association of the Female Press and owner (with her husband) of both the Belgian and French editions of *Femmes d'Aujourd'hui*. We met at a very smart restaurant and she was enthusiastic about my plan."⁵⁸

That plan came just at the right time; the International Association of Women and Home Page Journalists had held its third congress in Barcelona and Madrid in November 1968 on the role and mission of women in modern society. While there was a divergence of opinions, most participants had stressed that the women's press should promote "the ever more desirable participation of women in economic and social life".⁵⁹ Huguette Defosse saw Éliane Vogel-Polsky's plan as a way of reinvigorating the women's press by associating it with a current project. Five magazines, *Amica* (Italy), *Margriet* (Netherlands), *Femmes d'Aujourd'hui* (France and Belgium), *Het Rijk der Vrouw* (Belgium) and *Brigitte* (Germany) agreed to support it. The survey was launched with the support of the European Commission, coordinated by the CNSDS and bankrolled by the women's magazines; it was supervised by a national expert in each country, and the results appeared simultaneously in the six countries. The national data was published on 4 October 1972, and the European-wide comparison one week later.⁶⁰ The main objective was to circulate the survey to the widest possible public, bearing in mind it concerned millions of female readers.

57 The Bureau for Questions concerning Employment and Equal Treatment for Women of the EEC, entrusted to the French jurist Jacqueline Nonon. Virtually its only task was to produce an annual report on the application of Article 119 of the Rome Treaty. Jacqueline Nonon was also national Delegate for the status of women in France (a post established by Giscard d'Estaing in 1974) from February 1978 to July 1980, but she eventually resigned citing a lack of resources. She authored books on women and Europe, including *L'Europe, un atout pour les femmes*, Paris: La Documentation française, 1998.

58 Interview, 26/12/2006.

59 *Bulletin bimestriel du Conseil national des femmes belges*, No. 128, pp. 15-17.

60 See also the interview with Éliane Vogel-Polsky, in: Denis, M. and S. Van Rokeghem (1972). *Le féminisme est dans la rue*, Brussels: POL-HIS, p. 61.



The survey on female employment in the Member States was published in Amica (Italy), Margriet (Netherlands), Brigitte (Germany), Het Rijk der Vrouw (Belgium) and both editions of Femmes d'Aujourd'hui (Belgium/France)

Backed by statistics and tables, the results exposed gender inequalities in the labour market. The conclusions called for changes required for the equality of women and men to be extended to the world of work.

In a 1974 article in *Revue nouvelle*, Éliane Vogel-Polsky emphasised the absence of appropriate training for most female workers, who continued to be victims of the deep-rooted idea that marriage was the be-all and end-all for women. Only 10% of female employees in Belgium had a higher education certificate and 7.5% an upper secondary school certificate, while more than one third (36%) had left school at the first opportunity. “*Society refuses to integrate girls into an identical education and training process to that of boys and give them the same work options,*” she observed. When they did study they were oriented to ‘female occupations’, especially schools of domestic science, commercial schools and infant care, hairdressing and seamstress courses. “*If we judge the condition of women in western society on the basis of the level of education*

given to girls, as Fourier proposes,⁶¹ it does not go much beyond what was expected of the 'natives' in the colonial age in the schooling structures established by those same societies," she concluded. "It shows how strong the roots of inequality are and how much of a damper socio-cultural resistance is."⁶² Only education and career orientation could break the vicious circle that maintained the gender division of work on which pay discrimination was based.

A few weeks later, the Chaire Suzanne Tassier added academic resonance to the survey. Between February and May 1974 various reports on the survey were presented by six European experts,⁶³ including Éliane Vogel-Polsky who also drew the conclusions. The reports furnished objective data and statistics, linked to the interviews. While highlighting the inadequate education of women, they also underlined the lack of career promotion, the difficulties of reconciling a paid job and domestic duties, and the persistence of low pay, as women's wages were still often felt to be a mere extra income. Éliane Vogel-Polsky set the tone with her inaugural lecture 'The patriarchal structures in the world of female employment in contemporary Europe', emphasising external factors that influenced the situation. "*It's as though there were women's ghettos and a conscious policy of apartheid.*"⁶⁴ Her closing lecture was just as firm. She compared the conditions of the female worker with those of the colonial worker, and identified the battleground as people's hearts and minds.⁶⁵ The conclusions were based on four points: the ideological transformation of values, especially through education; the creation of new jobs for women with a quota system based on positive discrimination; legal texts to promote equality of pay and treatment; and a social policy with more importance given to reception structures.⁶⁶ This programme, she added, was a "*challenge to*

61 Charles Fourier, French utopian socialist from the first half of the 19th century.

62 Vogel-Polsky, É. (1974). 'La préparation professionnelle des femmes salariées dans les pays des Communautés européennes', *Revue nouvelle* (1), January, pp. 35-39.

63 Ms H. Pross for Germany, Évelyne Sullerot for France, Ms Lulling for Luxembourg, Nora Federici for Italy and Ms Degeller for the Netherlands.

64 *Le Soir*, 15 February 1974.

65 *La Métropole*, 25 May 1974.

66 Vogel-Polsky, É. (1973). 'Les conditions de travail des femmes salariées dans les six états membres de la communauté européenne', *Cahiers du Grif* (1), p. 35.

our deeply unequal society”.⁶⁷ The event got plenty of press coverage, not so much on account of any intrinsic interest in women’s matters but because Queen Fabiola attended the first session.

LINKING ACTIVISM AND TEACHING

Using her academic freedom, Éliane Vogel-Polsky had no hesitation incorporating the issue of gender discrimination in her courses. She was one of the first at the ULB to address the sociological and legal aspects of equal pay in national, European and international law, and to consider equal pay for men and women a fundamental social right. On the status of female workers she stressed that *“despite the fact that the occupational activity of female employees constitutes participation in economic activities on a par with men, the gender-based division of social, family and cultural roles between men and women will have a direct effect on the organization of the work environment and on the legal rules that govern it”*.⁶⁸ She denounced *“the influence of prejudice and values that authorize and justify the difference in legal treatment between workers of the same sexes”*, evoking the resolute clauses of employment contracts linked to the age or civil status of female workers, and their exclusion from the negotiation table. *“Women make up almost one third of the workforce but are virtually absent from forms of social dialogue... The patronization of women, inherited from the civil code and maintained by socio-cultural factors, is found in all Belgian political and public institutions. So it is not surprising that the same goes for bodies concerned with social dialogue.”*⁶⁹

While the subject matter made up just a small part of the course, her ideas were all the more striking because they broke with the long-standing supposed neutrality and objectivity of the law in a faculty steeped in tradition. The terms she employed were disturbing: exclusion, oppression, exploitation, recovery. Though succinct, her conclusions were striking in their radicalism that clearly established a link between the discrimination of female workers and production

67 *Le Soir*, 23-24 June 1974.

68 Vogel-Polsky, É. (1976). *Syllabus de droit social*, vol. 2, *La réglementation du travail*, Brussels: PUB, p. 16.

69 *Idem*, pp. 17-18.

evaluations.⁷⁰ The reactions were immediate. “*When I started to put my activism into my courses and spoke about inequalities in the job market between men and women, good, well-intentioned law students complained, found it unbearable... and I received a lot of negative pedagogical advice! But this didn’t stop me; I continued propagating my ideas whenever I had the chance!*”⁷¹

When in 1972 the Cercle du Libre Examen (Circle of Free Inquiry) addressed the topic of neo-feminism with a series of lectures and a special edition of its *Cahiers* (journals) entitled *La condition féminine*, Éliane Vogel-Polsky gave a critical reading of works by women who had founded the feminist new wave and by their opponents. She affirmed that the condition of women corresponded to “*a sexual colonisation*,” which “*is without doubt the most widespread ideology in our culture, providing it with its most fundamental concept of power... Our society is patriarchal. All roads that lead to power – the army, manufacturing, technology, universities, science, the police – are in the hands of men.*”⁷² “*The really important thing in researching gender policy is the very foundation of millennial oppression, the apparent justification of which is gender, but the deep origin of which is the division of labour, which engenders economic exploitation and social division.*”⁷³

In International Women’s Year – 1975 – Éliane Vogel-Polsky held the ULB Chair in social law and was responsible for 180 hours of teaching, spread over four courses – labour law and social security in Belgium, international social law, comparative social law and European social law. Three years later, in 1978, she was given tenure.

Between 1978 and her retirement on 1 October 1991, she devoted herself to academic activities. Her competence was by then internationally recognized. She was active in many colloquiums, establishing relations with European labour law colleagues in France, Italy, the United Kingdom, Denmark, Spain, Finland and Greece. Since 1968

70 Idem, p. 61.

71 Interview, 26/12/2006.

72 Vogel-Polsky, É. (1972). ‘La libération de la femme thème vu par Kate Millet, Norman Mailer et Germaine Greer’, *Cahiers du Libre*, May, pp. 49-50.

73 Ibidem.

she had been invited to give courses and seminars in various European and US universities. And the frequency of these foreign invitations increased over the years.

Foreign influence (1968-2000): courses given in response to invitations

		UNIVERSITÉS
<i>Europe</i>	France	Bordeaux I, Nantes, Paris-Jussieu, Nanterre
	Italy	Macerata, Bari, Florence (European University Institute), Trieste
	Spain	Madrid, Lérida, Séville
	Greece	Thessaloniki
	Portugal	Lisbon
	Switzerland	Geneva
<i>North America</i>	United States	Berkeley
	Canada	UQAM (Montreal), Montreal University

In 1991 she became professor emeritus, which allowed her to return to her research and to continue giving her course in comparative social law until 30 September 1995.

What could have been a well-deserved retirement proved on the contrary to be a highly productive period. We will see below how the 1990s were devoted to defending women's work, promoting social Europe and European citizenship, and developing women's studies. Éliane Vogel-Polsky would invest great efforts in these three fields, which she combined to achieve a single end – recasting the idea of equality of women and men to ensure its acceptance as a fundamental right.

The award of an honorary doctorate from Lleida University (Catalonia) on 13 December 1999 constituted recognition of her theoretical and pragmatic work, especially in the service of women.



*On the occasion of the presentation
of her honorary doctorate, Lleida
University (Catalonia), 1992*

THE 1990s, THE ERA OF WOMEN'S STUDIES

Unlike neighbouring France, where activists and intellectuals soon came together and women's studies were developed very early on (including in universities), in Belgium there was a dichotomy between the rapid development of women's studies outside the universities and the indifference of academics. While women's studies garnished great praise abroad, symbolised by the success of the *Cahiers du GRIF*, the innovations they advocated met with reticence in the universities. Yet some advances were made through some individual efforts. The 1980s saw slight progress, the efforts made being unrecognized and unvalued. A true movement was still lacking in the universities, although slowly but surely "*the analyses, the themes, the terminology, the analysis of gender relations*"⁷⁴ were incorporated into some courses, thanks to the perseverance of the few.

74 Vogel-Polsky, É. (1993). 'Aujourd'hui... des études féministes', *Sextant* (1), p. 94.

In the 1990s working in isolation came to an end and was gradually replaced by team-based research. It was the beginning of a new age. While the 1990s perhaps saw *“an apparent decline in feminism as a social movement and as a collective and combative movement of a political nature, there was in many social sciences great interest in and acknowledgement of women’s studies”*.⁷⁵

Besides the personal dynamism shown by some teaching staff in integrating the gender perspective into their discipline, the trend was intimately intertwined with the development of institutional feminism, which re-energised many studies with financial subsidies. The goal was pragmatic – establishing a scientific basis for political action for women – but also sociological and historical: restoring the memory of women to make them aware of their full role in political, social and economic developments. In that sense, feminist studies nurtured equal opportunities policy and vice versa. And at the heart of the analyses were women’s labour and their right to work which, according to the formula established by French sociologist Margaret Maruani, are “a thread enabling us to read the place of women in society in all contemporary societies”.

While still at the ULB Éliane Vogel-Polsky was a member of the scientific committee of the new review *Sextant*, which was founded by the Groupe Interdisciplinaire d’Études sur les Femmes (GIEF, Interdisciplinary Women’s Studies Group), recently established (in 1989) and recognized by the Research Board the following year. When the GIEF held its first round table, she was a natural choice for presenting its conclusions. The round table had a subject rich in history, namely the Ligue Belge du Droit des Femmes (Belgian League for Women’s Rights), the first structured feminist association, which had held its first general assembly at the ULB one hundred years previously, with the support of Hector Denis, the university’s socialist Rector. Éliane Vogel-Polsky was unable to attend the meeting but sent a message which, recalling the slow fermentation of feminist thinking, gave a measure of the progress made by activists in the course of the cen-

75 Idem, p. 93.

tury. The battles of those activists “*have been essential in legitimizing demands, articulating arguments and in many cases achieving the adoption of new legislation or substantial amendments to law*”. Through this account she took her place in the unbroken line of women lawyers who have always been a driving force in Belgian feminism.

In Belgium, feminism had always been concerned with law reform, even more than with political equality. It had always affirmed the priority of equal economic and civil rights over all other demands, which distinguished it from feminism elsewhere in Europe. Revision of the Civil Code and defence of the labour rights of women were key concepts for the first women academics, for lawyers like Marcelle Renson and Georgette Ciselet, for philosophers and sociologists like Louise De Craene-van Duuren, and for medical doctors like Marie Derscheid and Adèle Hauwel.⁷⁶ These women blazed a difficult trail, not hesitating to get involved at international level between the wars, lobbying the earliest international bodies such as the League of Nations and the International Labour Bureau. The seeds were sown then; the first fruits came after 1945, summed up by Éliane Vogel-Polsky as follows:

- “*in family law: the status of married women, legal emancipation, substitution of parental authority for paternal authority, causes of divorces and marriage settlements;*
- *in labour law: prohibition of resolute clauses connected to marriage or pregnancy, the full right of married women to sign employment contracts, equality of pay, equality of opportunities and treatment;*
- *in social security law: the financial organization of the protection of maternity, the equalization of unemployment benefits, the equalization of pensions, etc;*
- *in public law: the much-vaunted Article 6 of the Constitution prohibiting discrimination based on gender*”.⁷⁷

76 For more details on these feminists, see: Gubin et al., *Dictionnaire des femmes belges...*, *op. cit.*, respectively pp. 479-481 (Renson), pp. 100-103 (Ciselet), pp. 560-561 (Van Duuren), pp. 188-189 (Derscheid), pp. 310-311 (Hauwel).

77 Vogel-Polsky, ‘Aujourd’hui... des études féministes...’, *op. cit.*, pp. 91-95.

From 1990 to 1994 Éliane Vogel-Polsky was head of the Women's Studies Support Centre established by the Belgian Science Policy Service as part of its Research and Social Sciences programme.

THE WOMEN'S STUDIES SUPPORT CENTRE (1990-1994)

The Women's Studies Support Centre was established "*with difficulty, because things didn't go smoothly. Points d'Appui (Support Centres) were planned for almost every field of social science,*⁷⁸ *but not for women's studies. It was a hard fight getting acceptance of the idea that a Support Centre to deal with the status of women could also be worthwhile. Success was certainly not a forgone conclusion, and it was thanks to the strenuous efforts of the Flemish researchers that the day was won. I didn't get involved myself at all; I didn't even know negotiations were going on. Only after the centre had been set up was I contacted to head the French-speaking section.*"⁷⁹

Organized on national lines with the aim of promoting women's studies and bringing them to the attention of the widest possible public, the Women's Studies Support Centre was placed under the direction of the CNSDS at the ULB and the Centrum voor Vrouwenstudies (Centre for Women's Studies) at the Universitaire Instelling Antwerpen (UIA, University Institute of Antwerp, now University of Antwerp), based on a division of tasks reflecting the particular competences of the two centres. "*The French-speaking section of the Support Centre opted to get more involved in the legal, political and social aspects of women's studies and in the exploration and further study of the theoretical problems that women's studies introduced in the fields of social and human sciences.*"⁸⁰ On the Dutch-speaking side, under the direction of Mieke Van Haegendoren, Doctor of Political and Social science and Professor at the Limburgs Universitair Centrum (LUC, Limburg University Centre, now University of Hasselt), the aim was to collect data from recent studies and make gender statistics available. There was a great

78 In all, ten Support Centres were established.

79 Interview, 8/1/2007.

80 Vogel-Polsky, É., M.-N. Beauchesne and L. Zaïd (1994). *Manuel des ressources*, Brussels: Women's Studies Support Centre, p. 7.

need for such data, despite the obvious fact that they are indispensable to establish objectively the inequality that women suffered.⁸¹

In June 1991 the Support Centre published its first bilingual newsletter, which was a regular source of information about ongoing research in Belgium and of in-depth articles. It came out twice a year until 1994.

To encourage interdisciplinary dialogue, on 20 February 1992 Éliane Vogel-Polsky organized a first workshop, appositely entitled 'Fertility and limits of feminist research'. In her introduction she underscored how much each human science was confronted with the central 'political' question, which demanded a full review of concepts as fundamental as equality, discrimination, gender and the historically constructed character of 'universal and abstract' citizenship.

Between 1992 and 1994 she organized two series of seminars with outstanding foreign speakers, including Françoise Gaspard, Colette Apprill and Alisa del Re.⁸² In these, two subjects prevailed: on the one hand, the exploration of feminist criticism and the development of epistemology, and on the other, the concept of parity democracy, which first saw the light of day in the 1990s.⁸³ The analysis of the democratic deficit concerned every discipline, and with the celebration of the bicentennial of the French Revolution, which gave a new impulse to research on the foundation of modern democracy, the observations of women researchers had become irrevocable: inequality between the sexes in democratic regimes was neither accidental nor localised. Nor was it the result of malfunctions or due to deviation. It was rooted in the beginnings of democracy in France: when founding a Republic 'of brothers', the members of the Convention had intentionally kept the

81 This worry would return in 1995, after the Beijing UN conference on Women, which asked States to collect statistical data on the situation of women. This mission would stimulate Employment and Labour Minister Laurette Onkelinx to assign a survey of 'Femmes (in)visibles dans les statistiques' (Women (In)visible in Statistics) (1997-1998) to Mieke Van Haegendoren. 2001 saw the publication of a book, *Hommes et Femmes à l'aube du 21^e siècle. Un manuel d'utilisation des statistiques sous l'angle du genre* (Men and Women on the Threshold of the 21st Century. A Companion to Gender Statistics).

82 Françoise Gaspard is a historian, feminist activist and former socialist Mayor of Dreux in France; Colette Apprill is a European civil servant. Both are French. Alisa del Re is Professor of Social sciences at Padua University in Italy.

83 See below for more details.

door closed to women, despite the demands for equality. On 27 April 1994, Éliane Vogel-Polsky closed the series of seminars with a lecture on the subject of 'Parity democracy, towards a new social contract'.

After four years of activity, the French-speaking Support Centre had produced more than satisfactory results. As well as a regular newsletter twice a year, it published working tools like the *Revue des revues*, the proceedings of the colloquium 'Fertility and limits of feminist research' and a copious *Manuel des ressources*. This resource manual, coordinated by the two co-workers, the sociologist Marie-Noël Beauchesne and the philosopher Lydia Zaïd, was published in September 1994 under the direction of Éliane Vogel-Polsky, and contained the main points from the seminars and conferences. Sensitive to the question of media, which she felt was a fundamental vector for changing mentalities – and so combating sexist prejudice – Éliane Vogel-Polsky also entrusted Monique Rémy⁸⁴ with a study on 'images and status of women in the media'. The results, as published by the Support Centre, proposed "a critical summary of research on the subject... also showing how and why, when it comes to images of women, the mirror the media claims to be reflects the past more than the present" as well as suggesting strategies to adapt the media space to match women's expectations and providing a long reading list.⁸⁵ The Women's Studies Support Centre also worked with the Labour-Employment-Training Assistance Centre to organize a workshop on night work at the Palais des Congrès in Brussels on 21 September 1992.

Yet at the end of the period, unlike the other Support Centres, which were seen as centres of excellence, those dealing with women's issues were closed. Éliane Vogel-Polsky tried in vain to prevent this. "*I went to Catherine Orfinger, who worked in the Science Policy Department to try to find a way to extend or maintain the Women's Studies Support Centre.*

84 Monique Rémy is a Doctor of Philosophy and Literature and senior lecturer at the Journalism and Communication Department of the ULB. She has written a doctoral thesis on women's movements in France, published as *De l'utopie à l'intégration. Histoire des mouvements de femmes*, Paris: L'Harmattan, 1990.

85 Rémy, M. (1994). *Comment les femmes sont vues*, Brussels: Women's Studies Support Centre and GER-FES.

I argued that we were unique in Belgium, no one was doing the same thing, there was no equivalent." The response was negative and surrealistic. *"It's not possible to get a subsidy for women's studies 'because women... are not a federal matter (are not the competence of the State at federal level)!"*⁸⁶ That was the end of the French-speaking Support Centre. Mieke Van Haegendoren was more fortunate in obtaining the support of the Flemish regional government for her research on gender statistics.

A FINAL ATTEMPT, GERFES

Éliane Vogel-Polsky then founded the Groupe d'Etudes et de Recherches sur les Femmes dans la Société (GERFES, Group of Studies and Research on Women in Society), together with two philosophers, Lydia Zaïd and Dominique Rodriguez, and two sociologists, Véronique Degraef and Marie-Noël Beauchesne. Without resources, without subsidies, and without any special assistance from the university, the Group experienced great difficulties. It did however manage to secure a subsidy from the Commission of the European Communities, through Agnès Hubert, who was then at the Directorate-General for Equal Opportunities. *"Agnès Hubert is a very open woman who is very sensitive to everything to do with feminism. Not just attentive to women's issues, but a real feminist. Thanks to her I got quite a nice subsidy to study 'Women and Governance'. But I didn't get any money to publish the results."*⁸⁷ The Group eventually came to an end due to a lack of financing.

Looking back, Éliane Vogel-Polsky's academic career appears to have been free from conflicts, a smooth rise up the academic ladder. She herself felt she had never experienced professional discrimination based on her sex. At the CNSDS she was completely free to conduct the research as she saw fit; Léon-Éli Troclet trusted her completely and never interfered in her decisions, though he did occasionally warn her: *"You know, women's studies is not a great niche!"*⁸⁸

86 Interview, 8/1/2007.

87 Interview, 8/1/2007.

88 Interview, 8/1/2007.

Contracts, however, had to be honoured; they were what the CNSDS lived on. *“It was a small centre, I was the first female researcher in 1958, but as Troclet had a very active political life he gave me a free hand. He brought us a lot of contracts; these kept the centre going. We had to work on a great variety of issues in collective labour law. I myself spent a lot of time looking for contracts. It was exasperating... I worked in many domains, but my field was social Europe. I worked with Mario Telo. I really believed in international law. That was Troclet’s influence.”*⁸⁹

It may indeed have been a small centre, but the CNSDS grew all the same. Under Éliane Vogel-Polsky’s leadership it had as many as twelve researchers until, like all the research centres, it ran into financial difficulties.

Above all, Éliane Vogel-Polsky was a researcher and a teacher. But she was also an expert and a consultant. Her assessments and reports for international, European and national bodies cannot be separated from her research activities. Both were characterized by the same rigour and the same goals. They nourished each other.

89 Interview, 8/1/2007.

CHAPTER 3

Equal rights for all
workers (1961-1976)

Parallel to her academic career, Éliane Vogel-Polsky quickly earned herself a solid reputation as a national and international expert. In 1961-1962 she conducted research for the Directorate-General for Social Affairs of the Commission of the European Communities, notably on the prevention and arbitration of collective labour conflicts in the Member States. She also worked for the Council of Europe on the Social Charter from 1961; and later she worked on specific equal opportunities programmes. In the wake of Troclet she participated in several sessions of the International Labour Conference, following the work of various commissions, and would herself become an expert at the International Labour Organization and the International Labour Bureau.

Her preferred domains were industrial relations, social politics, the freedom to strike and union rights, any conflicts between internal social law and national law, and all at national, international and European level. The interdependence of international agreements focused her attention and constituted a priority in her considerations. What were the consequences of a State ratifying agreements in the same field but established by different international organizations of which it was a Member? What was the responsibility of such a State in respect of the international community and other Member States? And in respect of its own citizens?

The question of interdependence was also a driving force in her work on fundamental social and economic rights. Her critical thinking on the theories that distinguish 'genuine' fundamental civil and political rights from the so-called 'second generation' rights (personal economic and social rights) would begin to mature in the 1990s.

Clearly, Éliane Vogel-Polsky's research concerned not only women's rights, even though women were most often the victims of inequality

and as such occupied an important place in her work. In a battle as complex as that for equality of the sexes everyone must act in accordance with his or her own skills. Éliane Vogel-Polsky's skills were legal, and she would deploy them for almost fifty years. This specialization was a conscious choice for her, which explains her apparent retreat from other battles concerning women's rights, such as the legalisation of abortion. *"I am a great advocate of the division of labour when it comes to feminism. My legal skills are in the field of labour and that is where I can be of use. In the other fields, such as the legalisation of abortion, I obviously signed petitions and went to demonstrations, but I didn't have any particular skills to make advances there. In those matters I was a woman like any other."*⁹⁰ As a lawyer, Éliane Vogel-Polsky had a broader aim, that of building a social Europe and of endeavouring to do so on the basis of a very feeble embryo, Article 119 of the Rome Treaty (1957), given that the Treaty was almost completely devoted to economic goals.

THE CONTEXT OF THE 1960s AND 1970s

The 1960s, which began with a major social conflict – the great winter strike of 1960-1961 against the Unity Act – saw other important social battles such as the strike by women at FN Herstal in 1966 and the Zwartberg miners' strike the same year. For women, the decade brought improved access to all levels of education and an increased presence on the job market. The share of women in employment had risen constantly since 1947. The situation of full employment worked in their favour, as did the development of the service industry. The emergence and commercialisation, still limited, of the contraceptive pill gave hopes of women being able to harmonize their family and work obligations. The first family planning centres opened in Antwerp and Ghent in 1956, followed by Brussels in 1962 (*La Famille Heureuse* [The Happy Family] in Saint-Josse).

The rising number of female workers brought greater awareness of economic inequality. Women were clearly under-represented in the

90 Interview, 26/12/2006.

unions, accounting for just one-fifth of membership by 1965,⁹¹ while men continued to dominate the leadership positions. Equal pay and equal treatment, while recognized in principle by Belgium's two main unions, the Confédération des Syndicats chrétiens de Belgique (CSC, Confederation of Belgian Christian Labour Organizations) and the socialist Fédération Générale du Travail de Belgique (FGTB, Belgian General Labour Federation), remained unfulfilled promises. It was not until the first strike of women workers at the Fabrique Nationale in 1966 that the FGTB adopted a Charter of Women's Rights (1967) and the CSC a Statute of the Woman Worker (1968). Both unions set up women's committees. But politicians had other fish to fry in the sixties: there was the conflict between the language communities, there was the university crisis of May 1968, supplemented in Louvain by a political crisis, with cries of "Walloons out" – and the French-speaking part of the university was indeed thrown out. Belgium entered an era of institutional reform that would come to dominate the political agenda.

THE ERUPTION OF FEMINISM'S NEW WAVE

The decade was also a prelude to the second feminist wave, which led up to the emergence of institutional feminism. This new wave came from the United States and hit Flanders first. Following the lead of the Netherlands, the first Dolle Minas took to the streets of Antwerp in the 1970s. These young women from the militant left called for contraception, better childcare and equal treatment for women and men on the job market. They raised awareness among the public with provocative campaigns, and soon there were Dolle Mina cells in Ghent, Louvain, Ostend and Brussels. Though rather short-lived,⁹² these groups had a strong impact on feminist thinking. They also kick-started the movement in Wallonia, where one activist, Jeanne Vercheval-Vervoort, established the Marie Mineurs after hearing a radio interview with Chantal De Smet, one of the Dolle Mina founders. The movement set

91 See particularly: Fuks, F. (1968). 'Le travail des femmes et le syndicalisme', in the March issue of *Revue du Travail*.

92 See particularly: Van Mechelen, R. (1979). *Uit Eigen Beweging. Balans van de vrouwenbeweging in Vlaanderen, 1970-1978*, Leuven: Kritak.

down roots especially in Charleroi and in Belgium's industrial heartland (the province of Hainault) where the Marie Mineurs adopted a very radical programme focusing on two issues: the legalisation of abortion and the working conditions of women.⁹³

The new feminist groups multiplied spontaneously, forming a kind of parallel network alongside the more established associations that were grouped together in the National Council of Women of Belgium (CNFB) and had just held their first women's convention at Palais des Congrès in Brussels in 1968. In the turmoil of May 1968, the new wave broke with the old, demanding women's liberation – and not simply equal rights – in a festive, provocative movement. It rejected any structure, preferring spontaneity and informality, organizing itself 'among women', a separatist option that divided feminists. Éliane Vogel-Polsky was rather sympathetic to this separatism, at least initially: *"This conviction rose in me after what I saw in the meetings; as soon as the men arrived they monopolised the floor and the women did not dare express themselves. It was very clear in the union assemblies where women virtually never got to speak... Now, the people of the Rue du Méridien⁹⁴ were uninitiated, with no experience of speaking in public. Most of them were angry housewives who had come to show how they felt for the first time. It was fantastic... they liberated themselves through their words; they said things they would never have dared say in front of men. These discussion groups would never have existed if they had been mixed."*⁹⁵

Éliane Vogel-Polsky was interested in the movement but she did not get deeply involved. She rubbed shoulders with feminist activists like Marie Denis,⁹⁶ Jacqueline Aubenas, Hedwige Peemans-Poullet

93 See: Denis and Van Rokeghem, *Le féminisme est dans la rue...*, op. cit., pp. 45-47; 'La condition féminine', special edition of *Cahiers du Libre examen*, May 1972.

94 Maison des femmes, Rue du Méridien 79, Brussels, opened 11 November 1974.

95 Interview, 26/12/2006.

96 Marie Denis (1920-2007), writer, essayist, feminist and founder of Maison des femmes in Brussels (see her 1980 book *Dis, Marie, c'était comment rue du Méridien?*).

and philosopher Françoise Collin,⁹⁷ with whom she would remain in contact, albeit not as a close friend. Éliane Vogel-Polsky invited her several times to seminars and colloquiums. She collaborated on the preparation of *Petit livre rouge des femmes* (Little red book for women), a book with contributions from women from a wide range of backgrounds, from the Dolle Minas and Marie Mineurs to members of the Equal Work, Equal Pay Committee,⁹⁸ intellectuals and women on the ground.⁹⁹ She later attended the first Women's Day on 11 November 1972, which brought together thousands of women at the Passage 44 Auditorium in Brussels, in the presence of Simone de Beauvoir and Germaine Greer.

When in 1970 the Groupe de Réflexion et d'Information Féministes (GRIF, Feminist Research and Information Group) was founded on the initiative of Françoise Collin, who wanted to stimulate theoretical thinking, Éliane Vogel-Polsky showed an interest, joining the board of *Cahiers du GRIF* between 1973 and 1978; Marie-Thérèse Cuvelliez and Marthe Van de Meulebroeke were on the editorial board.¹⁰⁰ But Éliane Vogel-Polsky kept a low profile. *"I was not often at GRIF or at the Université des Femmes [Women's University]. But I did go when they invited me. I held lectures there. There were some very diverse people there, and there was plenty of discussion, even divisions among the feminists. I had the feeling that I was wasting my time somewhat. There was one thing I was good at and that was law. I could make progress there, because law is intrinsically evolutionary. I thought I should devote myself to that and I didn't have much time for the rest. But I probably came across as distant as a result."*¹⁰¹

97 Other activists, still living: Jacqueline Aubenas, French, editor of the magazine *Bruxelles-Jeunes*, co-founder of *Voyelles* with Marie Denis, Jeanne Vercheval-Vervoort and Suzanne Van Rokeghem; Hedwige Peemans-Poullet, historian and co-founder of Université des Femmes (Women's University); Françoise Collin, philosopher and founder of Groupe de Réflexion et d'Information Féministes (GRIF, Feminist Research and Information Group).

98 See below.

99 Denis and Van Rokeghem, *Le féminisme est dans la rue...*, *op.cit.*, p. 72; Collin, F. and V. De Graef (1979). 'Néo-féminisme', in: L. Courtois, F. Rosart and J. Pirotte, *Femmes des années 80*, Academia/Crédit communal, p. 205.

100 Marthe Van de Meulebroeke (1 September 1922 - 25 April 2006). Professor of Moral Philosophy at École normale Charles Buls et Émile André, co-founder of Mouvement contre le Racisme et la Xénophobie (MRAX), participant in the RTB broadcast 'La pensée et les Hommes'.

101 Interview, 8/1/2007.

THE BEGINNINGS OF INSTITUTIONAL FEMINISM

The International Women's Year of 1975 was the starting point. Strongly denigrated by neo-feminists who viewed it as a hijacking manoeuvre, the Year was supported by older feminist associations. Émilienne Brunfaut¹⁰² chaired the French-speaking Belgian committee that organized activities and events throughout 1975.

The ground had been prepared some time earlier however. Employment Minister Ernest Glinne¹⁰³ wanted to establish a task force to analyse discrimination against female workers. In February 1973 he approached Éliane Vogel-Polsky, and she worked half-time at the Ministry for two months. Together with Marijke Van Hemeldonck,¹⁰⁴ she prepared a project that would pave the way for the creation of a Women's Labour Commission, which was officially established within the Ministry of Employment and Labour in 1974. It was however purely an advisory body.

Main bodies responsible for gender equality issues in Belgium, 1985-2007

FEDERAL LEVEL

1985	Establishment of the Committee for Social Emancipation
1989	Positive Action Units in the Department of Collective Labour Agreements at the Ministry of Employment and Labour, intended to help implement positive action initiatives in the private sector
1992	Integration of the Committee for Social Emancipation in the Ministry of Employment and Labour, and later the Ministry of Civil Service and Large Cities Policy

102 For Émilienne Brunfaut, née Steux (1908-1986), union activist, feminist, socialist then communist, Vice-Chair of the Women's Labour Commission founded in 1974, see: Gubin et al., *Dictionnaire des femmes belges...*, *op. cit.*, pp. 517-519.

103 Ernest Glinne, born 1931, MP for Charleroi from 1961 to 1980, and from 1983 to 1984, MEP from 1968 to 1972, Minister of Employment and Labour from 1973 to 1974.

104 Born in 1931, Germanic philology graduate, socialist, staff member in various cabinets from 1973 to 1980, MEP from 1982 to 1994, Professor at the University of Cape Town (South Africa) in 1999. Between 1982 and 1986 she published, with the support of the European Parliament, a small review that bore her name, with the aim of raising awareness among women on European issues.

1993	Creation of the Equality Directorate at the Ministry of Employment, Labour and Social Dialogue, established by merging the: – Secretariat of the Women's Labour Commission (established in 1974) – Committee for Social Emancipation (created in 1985)
1993	Council for Equal Opportunities between Men and Women (Royal Decree of 15/02/1993), advisory body
2002	Institute for the Equality of Women and Men (Act of 16/12/2002)

COMMUNITY AND REGIONAL LEVEL

FLEMISH COMMUNITY	
January 1996	Equal Opportunities Unit Flanders
July 1996	Interdepartmental Equal Opportunities Commission
FRENCH COMMUNITY	
1994	Equal Opportunities Department, replaced the Department for the Cultural and Professional Promotion of Women
WALLOON REGION	
1994	Regional Women's Committee of the Economic and Social Council of the Walloon Region
March 1997	Advisory Committee on Equal Opportunities for Men and Women

PARLIAMENT

CHAMBER OF REPRESENTATIVES	
1988	Advisory Committee on Social Emancipation
SENATE	
1996	Advisory Committee on Equal Opportunities for Women and Men

The International Women's Year stimulated research. The Centre Féminin de Rencontre et d'Échanges (Women's Centre for Meeting and Discussion), which had been established in 1958, now conducted a major survey on the life of single women. Éliane Vogel-Polsky was asked to process the results. When published three years later, they provided a complete overview of material, family and professional conditions of single women as well as their problems from a legal and sociological perspective.¹⁰⁵

105 'Comment vivent les femmes seules: résultat d'une enquête', *Cahiers JEB*, 1978.

The International Women's Year was prolonged, becoming the longest year in history: the World Conference on Women (Mexico City, 1975) announced a Decade for Women, which would end with the World Conference on Women in Nairobi in 1985. These new forms of action provided a stronger link to the reformism of 'first wave' feminists, confirming their strategies, in which lawyers had always played an important role. It was a time marked by tensions between different trends within feminism, as the new wave rejected all cooperation with the political parties and the unions, criticising the very concept of equality, inasmuch as it signified reconciliation with the masculine model, which was its reference. But as institutional feminism developed (see table on pp. 66-67) and the subversive inspiration of the early years faded, the resulting institutional dynamic gradually initiated a reconciliation of the different movements and trends.

This institutional dimension to feminism dovetailed well with Éliane Vogel-Polsky's skills and her conception of the 'division of labour' in the movement. In a context favourable to research and action, she was able to make full use of her knowledge and put her expertise to good use in the national commissions. At the same time, she used European Community law to reorient Belgium's national legislation with regard to gender equality and especially equal pay.

EQUAL PAY AND ARTICLE 119 OF THE ROME TREATY

The establishment of the Common Market was accompanied by the creation of a European legal framework whose main principles were laid down in the Rome Treaty in 1957. The repudiation of discrimination was central, at least with regard to the criterion of nationality and the free movement of capital and workers. The goal was purely economic, save Article 119, which also had a 'social' germ that Éliane Vogel-Polsky wanted to nurture and grow. Article 119 stipulated that "each Member State shall during the first stage¹⁰⁶ ensure and subsequently maintain the application of the principle that men and women

106 The first step was supposed to have been completed by 31 December 1961.

should receive equal pay for equal work”. It entailed the gradual reduction of differences in pay between women and men performing the same functions and a job classification system based on the same criteria for both sexes. Far from showing any particular benevolence to women workers, the article reflected a concern to prevent “overly high salary discrepancies from obstructing free competition between industries of the various Member States”. Its inclusion in the Treaty was demanded by France, the only country at the time to have adopted a law on equal pay. The French were concerned that payroll costs would seriously disadvantage its industries, especially textile manufacturing. But none of the partners had any inkling that this article would lay the foundations for the establishment of a social Europe.

The Belgian government ratified the Rome Treaty in 1958 but repeatedly pointed out that it could exert only moral pressure in the matter of pay. By virtue of the Royal Decree of 9 June 1945, it was left to the social partners to establish pay levels in the joint industrial committees and within the framework of collective agreements.¹⁰⁷ The State accordingly considered Article 119 to be “a simple programme measure that did not confer any subjective right and did not impose any responsibility on the Belgian State vis-à-vis its contracting parties”.¹⁰⁸

EQUAL PAY: A HISTORICAL LOCH NESS MONSTER

Equal pay for women and men is one of the oldest feminist demands both nationally and internationally. In Belgium, socialist Alice Bron¹⁰⁹

107 Coenen, M.-Th. (1991). *La grève des femmes de la FN en 1966. Une première en Europe*, Brussels: POL-HIS, p. 65. For this strike, see also: Gubbels, R. (1966). *La grève au féminin. Essai d'analyse du mouvement revendicatif à la Fabrique nationale d'armes de guerre*, Brussels: CERSE; 'Les grèves féminines de la construction métallique et la revendication pour l'égalité de rémunération', *Courrier hebdomadaire du CRISP* (325-326), 24 June 1966.

108 Vogel-Polsky, É. (1978). 'Les facteurs d'extranéité. Le rôle du droit et de la jurisprudence communautaires', *Revue de l'Université libre de Bruxelles, A l'enseignement du droit social belge* (1-3), pp. 283-311; Vogel-Polsky, É. (1968). 'L'égalité des rémunérations entre hommes et femmes', *Revue du Travail*, November, pp. 1505-1558.

109 For Alice Bron, née Defré (1850-1904), feminist close to the Belgian Workers Party, philanthropist and writer (under the pseudonym Jean Fusco), see: Gubin et al., *Dictionnaire des femmes belges...*, *op. cit.*, pp. 152-153.

had been the first to formulate the slogan ‘equal pay for equal work’ in the newspaper *Le Peuple* in the early 1890s. After the First World War, equal pay was mentioned in the Part XIII of the 1919 Versailles Treaty (the International Labour Charter, which laid the foundations for the International Labour Organization). This economic demand entered the domain of political history because the war had shown that “peace can only be founded on social justice”. It now seemed clear that the various States had to advance together “on the road of social progress”. This was the only way to ensure peace. The principle of equal pay was accepted by the League of Nations, energetically lobbied by international feminism.¹¹⁰ But the ink was barely dry before the Member States promptly forgot about it, despite the pressure from radical feminist groups. The various governments turned a deaf ear. Although it had ratified the Versailles Treaty, faced with a deep economic crisis the Belgian government did not hesitate to pass discriminatory laws freezing the wages of female State officials (28 January 1935) and reducing women teachers’ pay (23 January 1935). The economic crisis drove it to favour men in an effort to rein in male unemployment, to the detriment of women and foreign workers. Glaring pay discrimination was one of the weapons deployed to dissuade women from remaining in their jobs.

The Groupement Belge de la Porte Ouverte (GBPO, Belgian Open Door Group) was the only group in Belgium to adhere to the Charter of the Economic Rights of Women Workers, adopted in Berlin in June 1929 by Open Door International,¹¹¹ stipulating that “women shall have the right to equal pay for equal work”. At the *Partie Ouvrier Belge* (POB, Belgian Workers Party), the *Comité National d’Action Féminine* (National Feminine Action Committee), a socialist body, also supported the call for equal pay. The Christian women’s movement on the other hand continued to see women workers primarily as mothers and was more concerned about securing specific allowances

110 Jacques, C. and S. Lefèbvre, in: É. Gubin and L. Van Molle (dir.) (2005). *Des femmes qui changent le monde. Histoire du Conseil international des femmes*, Brussels: Racine, pp. 101-104.

111 Open Door International was founded in 1929 by Chrystal Macmillan, with the aim of fighting the protectionist tendencies of the International Labour Bureau. Groupement Belge de la Porte Ouverte was its Belgian branch, led by the philosopher Louise De Craene-van Duuren and lawyers such as Georgette Ciselet and Marcelle Renson.

or higher pay for men so that women could remain at home, rather than demanding equal pay for men and women. The socialist and Christian unions did reach agreement on the application of the equality principle to minimum pay in 1936, but failed to invest much time or energy to advance the cause. And when they did do something they had a hidden agenda: the underlying idea was always that a boss who had to pay men and women equally would prefer to hire a man. Many saw equal pay as a way of reducing male unemployment by ousting women from the job market.

Equal pay is one of the most delicate demands because it not only concerns the economy or the identity of work, it threatens the very foundations of patriarchal society – the social division of gender roles based on the idea of the protector-breadwinner male and the house-working child-bearing female. Thus, despite being presented at an early stage, this demand never occupied a prominent place on the agendas.

After the Second World War some progress was made in the national and international arena. The United Nations Charter (1945) laid down the principle of equal rights for men and women;¹¹² the International Labour Organization and the International Labour Bureau, the United Nations and later the Council of Europe and the European Communities pronounced themselves in favour of equal pay. They created international legal tools that could be deployed in national law. In 1948 the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly also included the principle of equal pay (Article 23), which was consequently included in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms in 1950.

As from 1944 the National Labour Conference was confronted with pay inequalities that were so shocking that it agreed that women could not be paid less than 75% of the pay of an unskilled man or 60% of a

112 Jacques, C. and S. Lefèbvre, 'Dans le sillage de l'ONU. Restructuration et nouveaux modes d'action de 1945 à nos jours', in: Gubin and Van Molle (dir.), *Des femmes qui changent le monde...*, op. cit., pp. 121-147.

skilled man. It reaffirmed the necessity of achieving equal pay in the long run (Recommendation No. 71). The Employment Minister (we recall that Léon-Éli Troclet held this post from 1954 to 1958) and the National Labour Council reiterated their demand in joint industrial committees that the discrepancies in pay between men and women be reduced. Not a single stipulation of Belgian social law related to equal pay, but in 1952 Belgium ratified International Labour Convention No. 100, which recognized the principle of equal pay for equal work. The issue would return to the table regularly from 1956, but results were meagre. A second milestone was reached in 1957, with the signing of the Rome Treaty by the Belgian government and its ratification in 1958. The women's associations had repeatedly been on the attack since 1944, but had little to show for it. The unions passed a few minor measures.¹¹³ In industry, the average pay gap between women and men was 42.72% in 1954. Ten years later it was 38.75%.¹¹⁴ But there was still clearly a long way to go.

The FGTB, the Femmes Prévoyantes Socialistes (Socialist Provident Women) and the Émile Vandervelde Institute repeatedly stressed the need to observe international obligations; several socialist parliamentarians filed private bills on equal pay, but without success. The CSC demanded “fair pay for women’s labour” but also family pay for housewives in a system that continued to see the father of the family as the rightful breadwinner.¹¹⁵

At the end of 1961, despite the European Commission’s reminder to Member States of their obligation to fulfil the terms of Article 119 by July 1960, application of the Article remained a dead letter. A conference of Ministers from the Member States was urgently convened. The result was the adoption of a resolution that transformed Article 119 from a clause concerning equal pay to a clause concerning social policy. This allowed for a new timetable to be introduced, delaying its implementation until 31 December 1964. It was a conjuring trick

113 See: Coenen, *La grève des femmes...*, *op. cit.*, pp. 72-79.

114 Fuks, F. (1968). ‘Le travail des femmes et le syndicalisme’, *Revue du Travail*, March.

115 Coenen, *La grève des femmes...*, *op. cit.*, p. 74.

performed by a body not recognized by Community law, in defiance of the review procedure provided for by the Treaty itself (Article 236). In plain words: *“It was a clear violation of the Treaty. The Treaty had never, ever been violated like that, and it was women again that had to pay the price.”*¹¹⁶ *“This underhand legal manoeuvre”* drew scarcely a whimper from lawyers however, save from Éliane Vogel-Polsky, whose remarks were completely ignored.¹¹⁷ *“The resolution of the so-called Conference of Representatives of Member States of 1961 cleared the way for a painless transition from the first to the second phase and thereafter paralysed implementation of equality of men and women inasmuch as it was no longer deemed necessary at institutional level to verify the achievement and the preservation of the guarantees recognized by Article 119 before advancing to the third phase.”*¹¹⁸ Since Article 119 was supposed to have been implemented during the first phase *“it was no longer among the goals whose achievement needed to be verified. Thus the European Economic Community could end its period of transition and enter its final phase without having to deal with the legal obstacle related to Article 119!”*¹¹⁹

From that time on Éliane Vogel-Polsky ceaselessly pointed out that Article 119 was self-executing; in other words, that it was directly applicable in the Member States. Unfortunately she was completely on her own in this. *“In 1967 I was still alone in believing in the direct application of this article. I’d written so many articles that I sent to all my European colleagues in the legal profession, but they just smiled and replied good-humouredly... I was seen as the duty feminist who was blinded by my feminism! I was furious.”*¹²⁰ She became increasingly convinced that she would only be proved right in law, a conviction supported by Léon-Éli Troclet.

¹¹⁶ Interview, 8/1/2007.

¹¹⁷ Vogel-Polsky, É. (1968). ‘L’égalité des rémunérations entre les hommes et les femmes’, *Revue du Travail*, November, pp. 1505-1558; Vogel-Polsky, ‘Les facteurs d’extranéité...’, *op. cit.*, p. 299.

¹¹⁸ Vogel-Polsky, É. (1992). ‘L’influence du droit social européen sur le droit du travail belge’, in: P. Van der Vorst, *Cent de droit social en Belgique*, third edition, Brussels: Bruylant, p. 735.

¹¹⁹ Ibidem.

¹²⁰ ‘Agir pour les droits des femmes. Interview with Éliane Vogel-Polsky’, *Raisons politiques* 10(2), 2003, Paris: Presses de Sciences Po, p. 139 ff.

“You’ll have to find a case, because you’ll never convince anyone like that.”¹²¹ That was the path she would now opt for.

The differences in pay began falling, but progress was slow, despite a union agreement on 26 December 1962 whereby, over a period of three years, women’s minimum wages would come closer to those of unskilled men,¹²² such as to reach 85% of the wage of an unskilled man.

For several reasons this proved an especially tough battle. For one thing, equal pay seemed to be a concept that was difficult to pin down: for the collective agreements pay was assumed to be equal once women’s pay was no lower than the minimum pay for the lowest form of unskilled work by men. The inequalities were often masked by a job classification system that systematically undervalued traditional women’s jobs. “It’s as if when measuring women a metre rod is only 80 centimetres long,” quipped the Liège unionist Annie Massay with irony.

The women’s associations were not prepared to yield. The Conseil National des Femmes belges (CNFB), the Groupement Belge de la Porte Ouverte and the Comité de Liaison et de Vigilance used the network of their international federations or applied direct pressure on the government. The CNFB raised awareness among the public with several conferences on this issue in the 1950s and 1960s,¹²³ various campaigns were rolled out, including a TV broadcast on the initiative of Émilienne Brunfaut that reaped some success and raised the spirits of women workers. During the ‘60s the National Federation of Business and Professional Women, the Soroptimist clubs of Belgium and the Belgian Association of Women Entrepreneurs also entered the fray. On 4 November 1964, at an information meeting on equal pay held at the seat of the EEC, Émilienne Brunfaut presented the CNFB’s report in the presence of women’s associations and unions.¹²⁴

121 Ibidem.

122 Coenen, *La grève des femmes...*, op. cit., p. 79.

123 CNFB, Conférence d’information, 28 novembre 1961. Carhif, Fonds CNFB, 21-13.

124 Lettre d’information du GBPO, 12 novembre 1964. Carhif, Fonds Adèle Hauwel, 628.

Not long afterwards, in September 1965, the FGTB organized a union education week at Zeezicht (Mariakerke). Éliane Vogel-Polsky gave a seminar on Europe in which she set out her own ideas on Article 119 of the Rome Treaty. *“I was young, full of fervour, confidence and a desire to fight to improve women’s rights; rarely had I had such intense contact with ordinary women workers, and their day-to-day experience brought a dynamic impact to this educational seminar... experience that turned it into a laboratory of ideas, proposals, criticism of macho union practices, and above all a revolutionary crucible, both for me and for them.”*¹²⁵ *“I said to them,”* she remembered later, *“[Article 119] exists and everyone acts as if it didn’t.”*¹²⁶ *“What’s missing is information. We need battles. We need to bring the question of the interpretation of Article 119 of the Rome Treaty before the Court of Justice of the European Communities.”*¹²⁷ Among the twelve activists at her seminar were three workers from FN Herstal, including Charlotte Hauglustaine. The discussion was lively, and the workers described their working conditions. *“One of them exclaimed: ‘If we went on strike we would paralyse the entire factory.’ That got the whole group laughing.”*¹²⁸ Back in Liège the workers brought their colleagues up to speed.

THE LONGEST STRIKE: HERSTAL, FEBRUARY TO MAY 1966

In 1965 FN Herstal (near Liège) employed over 13,000 people, of which 10,000 were on the shop floor. There were 3,550 women on that shop floor, almost 2,000 of them (the ‘female machines’) working in particularly unpleasant conditions, with dilapidated equipment. *“The atmosphere was ghastly, the filth, the noise, those women covered in oil.”*¹²⁹ It was not just dirty, it was dangerous and stressful too. Faster production was constantly called for (365 pieces a day, 100 more than a decade or so earlier), the large hall where they worked was stifling in summer, glacial in winter. Despite that, the health and safety commit-

125 Vogel-Polsky, ‘Cinquante ans du droit du travail...’, *op. cit.*, p. 42.

126 ‘Interview with Éliane Vogel-Polsky’, in: Denis and Van Rokeghem, *Le féminisme est dans la rue...*, *op. cit.*, p. 21.

127 ‘Agir pour les droits des femmes...’, *op. cit.*

128 Biographical notes (personal records of Éliane Vogel-Polsky).

129 Charlotte Hauglustaine, July 1991, in: Coenen, *La grève des femmes...*, *op. cit.*, p. 97.

tee never once demanded modernisation of the premises. There was only one (cold) water supply point, and the women were not allowed to go to the toilet outside of the one morning break and the one afternoon break. They were virtually tied to their machines, even during the half-hour lunch break (the canteen was too far away). The work was repetitive and exhausting, but demanded dexterity and precision. "It was a penal colony."¹³⁰ Yet these 'female machines' received less than a road sweeper's wage (85%). Moreover, there was no possibility of promotion, in contrast to the 'lads', who could take factory training courses co-run by the union.

In January 1966 the union meetings came thick and fast with collective bargaining for the 1966-1968 agreement. The meetings were stormy affairs as management repeatedly tabled proposals that were unsatisfactory to the women workers. After a walkout on 9 February, which the union delegates had their hands full controlling, the women returned to work when the (men's) union promised to contact factory management. But when the women workers heard that management would not enter into any internal negotiations before a national agreement was reached, tensions mounted. Stoppages became more frequent until 16 February when the women went on strike. The CSC and the FGTB, which had formed a single front the day before, were left with no choice but to yield to their determination. The delegates attempted to reason with the women, but in vain; the women were furious. "It was a revolution pure and simple. Even if I live to be a hundred, I'll never forget it. The first person who'd have tried to stop them would have been done in."¹³¹ "The strike of the 'female machines' soon paralysed the whole enterprise. More than 1,000 workers were laid off, and over 5,000 male workers were affected." As notice had not been given of the strike, the women received no compensation. "*The situation went on for a month. They set up a resistance fund with donations but it was very tough.*"¹³² The strike elicited strong reactions, also in the women's families, as the men did not necessarily 'back them'. "*I saw*

130 Brunfaut, É. (1987). *Émilienne Brunfaut. Interview with Anne-Marie Lizin, Charleroi*: Archives de Wallonie, p. 38.

131 Ch. Hauglustaine and R. Jeusette in: Coenen, *La grève des femmes...*, op. cit., p. 113.

132 Interview, 2/2/2007.

husbands come to the factory gates with infants in their arms and hurl insults at them: 'You bitches! And your bread and butter? What do you think you're doing?' It was appalling."¹³³

But the solidarity of the female machines was unshakable. Indeed, their determination inspired others. The protest spread to ACEC in Charleroi and Jaspar-Westinghouse in Awans-Bierset. At Herstal the strikers held out until 10 May, under the energetic leadership of two women workers, Charlotte Hauglustaine (FGTB) and Rita Jeusette (CSC).

The feminist associations immediately expressed support for the strike. Equal pay and the application of Article 119 of the Rome Treaty were presented as demands in the first few days. When Éliane Vogel-Polsky found out from the newspapers and radio that a strike had brought FN Herstal to a standstill, she set off for Herstal immediately. "*It remains one of the best memories of my life, one of the darkest too, because it was a terrible failure.*"¹³⁴ Till then social conflict had been a 'theoretical' matter for her. Through the strike she was brought face to face with the day-to-day reality of women workers. But it also strengthened her conviction that the law could support social struggle. "*I realised that the law was a tool that could really serve a struggle and I felt it was important to do this work. This was the personal revelation that brought me to feminism. I went to investigate as a sociologist and a lawyer. What I found there was not what I had expected.*"¹³⁵

The movement was supported not only by the women's associations, but also by foreign union delegations from France, Italy and the Netherlands. It raised awareness among intellectuals. In Brussels on 21 April 1966 the Union de la gauche socialiste (Union of the Socialist Left) (1965) established a pluralist committee of support on the initiative of Nicole Gérard, Marthe Van de Meulebroecke and Mo-

133 'Agir pour le droit des femmes...', *op. cit.*

134 Ibidem.

135 'Interview with Éliane Vogel-Polsky', in: Denis and Van Rokeghem, *Le féminisme est dans la rue...*, *op. cit.*, p. 21.

nique Van Tichelen.¹³⁶ They were later joined by Marie-Thérèse Cuvellez, Éliane Vogel-Polsky, Régine Karlin-Orfinger¹³⁷ and Marijke Van Hemeldonck. Eloquently called the Equal Pay for Equal Work Committee, it circulated a petition for the application of Article 119, submitted to the Christian Democrat Employment Minister Léon Servais¹³⁸ on 2 June after a march in support of the strikers. The Committee was relatively isolated: the main women's organizations, the Femmes Prévoyantes Socialistes and the Ligues ouvrières féminines chrétiennes (Leagues of Christian Working Women) labelled it 'bourgeois' and pluralist. Later unionists like socialists Annie Massay and Emilienne Brunfaut (and Christian Democrat Miette Piérard) joined the Committee, albeit in a personal capacity. Feminist associations like the CNFB were also reticent in their dealings with a committee that 'came from nowhere'. Only the GBPO backed it.

The committee outlived the strike, transforming itself into a pressure group and a think tank on the status of women. It was chaired by Pierre Vermeylen,¹³⁹ a male president some radical feminists contested. Though in favour of a separate organization, Éliane Vogel-Polsky saw Vermeylen as an asset, as potentially an effective supporter (the government was a coalition of Christian Democrats and socialists). Pierre Vermeylen attended all Committee meetings and had an active role.¹⁴⁰ Éliane Vogel-Polsky was very positive about the Equal Pay for Equal Work Committee, seeing it as the expression of "*an intelligent feminism*" that "*ought to be able to contribute to a radical transformation of society... I did a lot of work for the Equal Pay for Equal Work Committee.*"

136 History graduate of the ULB, Monique Van Tichelen was then teaching history at secondary school level. She won renown especially through her campaigning for the abortion legalisation.

137 For Régine Karlin-Orfinger (1911-2002), feminist, member of the Resistance, lawyer involved in the defence of Willy Peers, and medical doctor involved in the abortion movement, see: Gubin et al., *Dictionnaire des femmes belges...*, op. cit., pp. 341-342.

138 Léon Servais (1907-1975), leader of workers organizations, Christian Democrat politician, Minister of Social Security (1958-1961), three times Minister of Employment and Labour between 1961 and 1968, MEP from 1968.

139 Pierre Vermeylen (1904-1991), jurist, professor at the ULB, socialist Senator from 1946, Minister several times, Minister of State in 1966, introduced co-education in state schools in 1969. In the Senate he proposed on several occasions that the equality of women and men be included in the Constitution.

140 Interview, 8/1/2007. Vermeylen confirmed his interest and participation in the Committee in his *Mémoires sans parenthèses*, Brussels: CRISP, 1985, p. 175.

*At the beginning, at least (later, things changed). Early on, we did some very good work with Marthe Van de Meulebroeke.”*¹⁴¹

The tumult of the strike reverberated in Parliament where two socialists, Germaine Copée-Gerbinet¹⁴² and Mathilde Schroyens-Groeser¹⁴³ filed an equal pay bill on 29 March.¹⁴⁴ On 5 April the Labour and Employment Minister Léon Servais had to respond to several questions. He affirmed the Government’s sincere desire to “achieve equality of pay between women and men”, but stressed the need to advance in stages, “without compromising acceptable payroll costs in the current economic situation and without disrupting the balance in the structure and hierarchy within an industry or even a company.” In response to socialist Victor Larock,¹⁴⁵ who called for legislation to ensure observance of international conventions, the Minister stated that the social partners were independent and that they alone were competent to achieve a balanced pay structure. In the Senate, Marguerite Jadot,¹⁴⁶ Théo Dejace¹⁴⁷ and Pierre Vermeulen also questioned the Government. The Social Affairs Committee of the European Parliament called for an extraordinary session in Strasbourg in May to debate the non-application of Article 119 in the Member States.

When they went back to work in Herstal in May after a twelve-week strike, the women had won little more than half a victory. Under the terms agreed, they were given a pay rise of half what they asked for and a commission would be established to study the matter of equal pay and to upgrade women’s jobs. This was far from equality, in theory or

141 Interview, 8/1/2007.

142 For Germaine Copée-Gerbinet (1909-1983), leader of Femmes Prévoyantes Socialistes de Verviers, MP from 1950, first Vice-president of the Chamber, see: Gubin et al., *Dictionnaire des femmes belges...*, *op.cit.*, pp. 272-273.

143 For Mathilde Schroyens (1912-1996), socialist politician, President of the socialist women’s organization FPS/SVV in 1948, Alderwoman of Public education, then Mayor of Antwerp in 1976, see: Gubin et al., *Dictionnaire des femmes belges...*, *op. cit.*, pp. 498-499.

144 *Annales parlementaires*, Chamber, 29 March 1966, Document n°156.

145 Victor Larock (1904-1977), jurist, philosopher and sociologist, secondary school teacher, political director of the newspaper *Le Peuple* (1944-1954), MP and President of the socialist group, Minister several times from 1954; Council of Europe member from 1949 to 1954.

146 For Marguerite Jadot (1896-1977), member of the Resistance, founder of the review *Femmes libérales* in 1954, Senator, see: Gubin et al., *Dictionnaire des femmes belges...*, *op. cit.*, pp. 331-332.

147 Théo Dejace (1906-1989), teacher, communist MP, then Senator for Liège.

in practice. Other movements and a further strike in 1974 would be necessary to get some improvement in women's working conditions. While the strike failed to achieve many of its aims, it nevertheless sent a shock wave through the union movement, forcing it to consider the specific problems of women workers. The movement had turned the spotlight on "women's determination to improve their status in society and in the workplace"¹⁴⁸ and had vigorously questioned their under-representation in the ruling bodies of the unions. This aspect had incidentally not escaped the attention of the bosses, who were quick to blame the strike on the unions and on their indifference to their women members.¹⁴⁹

The Herstal strike was above all the first strike to be called in the name of the European law. As such, it was a first in European social history. It was also a milestone in women's history, and one of the key events of 1966 in French historian Florence Montreynaud's encyclopaedia *Le XX^e siècle des Femmes* (Paris: Nathan, 1992): "16 February 1966 saw women's Europe take shape. Through their rage. On that day there was the first movement demanding the application of the Equal Pay for Equal Work principle in Article 119."

In addition to writings the Herstal strike has also inspired audiovisual material, including the documentary *Femmes-machines* by Liège film director Marie-Anne Thunissen (1996). And the radio programme by Séverine Liatard and Christine Robert, *La grève des ouvrières d'Herstal en 1966. Un tournant pour l'histoire des femmes*, containing interviews with strikers and with Éliane Vogel-Polsky, was rebroadcast by France-Culture in 2005 and presented at the Longueur d'Ondes (Wavelength) Festival in Brest in December 2006. As Éliane Vogel-Polsky would later stress, "*in terms of providing information and raising awareness of the unacceptability of pay discrimination and working conditions, the strike initiated a profound change of mentality within women's associations, among lawyers, in the political parties' women's committees and in the unions*".¹⁵⁰

148 *Bulletin trimestriel du CNFB*, March-April 1967, p. 30.

149 Various notes in Carhiif, Fonds Ernst-Henrion, 5.

150 Personal notes (Archives Éliane Vogel-Polsky).

At the end of 1966, the Employment and Social Affairs Ministers of the EC's six Member States took the decision to continue harmonizing male and female pay.

Returning later to the issue of trade unions and women, Éliane Vogel-Polsky felt that the unions had pushed women into a corner. *"They told them: 'you should above all show your solidarity with the working class'... They told them: 'you have to be reasonable', when negotiating after a strike, choices have to be made... you have to understand that this time we are not going to fight for equal pay because better working conditions or better protection of safety or health is in sight, so the women themselves fell into the trap, because like a man, a woman has many different identities."*¹⁵¹ One of the reasons for the weak position of women workers was their underrepresentation in union decision-making bodies, and their separate organization. *"Very often, in all countries of Europe, women were appointed to women's committees that functioned as ghettos."*¹⁵² These committees, which were generally advisory, *"never have the same legitimacy as those that are supposed to represent all workers. The female delegates are thus considered to defend a specific group rather than a collective union interest. And this situation will endure as long as problems of reconciling family and work are felt to be women's problems. The right to work is therefore not the same for the two sexes, because women workers 'are generally felt to accept withdrawing from the workplace for the sake of the family and private life'"*¹⁵³ *and division of labour on the basis of gender is such that the improvement of working conditions in 'female' industries is still seen as a women's issue. They are also victims of prejudice that persists despite changes in mentality and sees them as less qualified, less available, more frequently absent, and so on."*¹⁵⁴

This observation still held water at the end of the century. In 1999 "women in Europe account for 41% of the working population and 40% of union membership. However, their presence in the various forms of un-

151 Interview with Éliane Vogel-Polsky by Lydia Zaïd, Brussels, May 1999 (www.eurit.it/Eurplace).

152 Ibidem.

153 Vogel-Polsky, É. (1999). 'La négociation collective du temps de travail dans la perspective de genre', in: Y. Kravaritou (ed.), *La réglementation du temps de travail dans l'Union européenne: perspectives selon le genre*, Brussels-New York: Institut Universitaire Européen, p. 325.

154 Idem, p. 327.

ion representation varies from 5% to no more than 20%. At European level they are just as under-represented.” But, *“as long as critical mass is not achieved, women cannot play a fully-fledged role in the unions”*.¹⁵⁵

THE IMMEDIATE CONSEQUENCES OF THE HERSTAL STRIKE

After the strike, Éliane Vogel-Polsky endeavoured to keep the public interested, writing many legal and popular texts as well as giving lectures on equal pay. She participated in the Equal Pay for Equal Work Committee’s press conference at the beginning of 1967 to mark the first anniversary of the strike. “We can say that this final reckoning is at the same time a new major feminine offensive – under the presidency of Senator Vermeylen, a former Minister – by four lawyers: Marlise Ernst-Henrion,¹⁵⁶ Marie-Thérèse Cuvelliez, Éliane Vogel-Polsky and Régine Orfinger, together with Annie Massay (FGTB) and Marijke van Hemeldonck. In particular, Marlise Ernst-Henrion, then President of the Belgian Association of Women Lawyers, Régine Orfinger and Marijke van Hemeldonck emphasised the persistence of inequalities; even where there appears to be equality it has been distorted by the system of job classification.” On the same occasion, Éliane Vogel-Polsky stressed legal discrimination in social security.¹⁵⁷

Faced by the prevarication of political parties and the management class, which were always ready to present good arguments to slow down or curb the move towards true gender equality, the Equal Pay for Equal Work Committee also decided to give priority to a legal approach by bringing to court those cases in which professional equality was clearly being ignored. Éliane Vogel-Polsky chose the same approach.

On 24 October 1967 Royal Decree No. 40 confirmed the principle of equal pay, giving all workers the right to take their employer to court.

¹⁵⁵ Ibidem.

¹⁵⁶ Marlise Ernst, married to Minister of Finances Robert Henrion (1915-1997), born 1914, jurist, active liberal party member, Chair of Association Belge des Femmes Juristes (1961-1967) and the International Federation of Women in Legal Careers (1961-1964). Belgian delegate to the 23rd session of the Commission on the Status of Women of the United Nations in Geneva (1970), played a role in international feminism.

¹⁵⁷ *Bulletin trimestriel du CNFB*, March-April 1967, p. 15.

Although that would appear to be a constructive provision, the text as a whole was much less positive. Éliane Vogel-Polsky wasted little time in expressing severe criticism. First and foremost she deplored the fact that a decree of this importance, which brought together a series of measures on women's work, was based on the 21 March 1967 Special Powers Act, which allowed the government to bypass the law-making process and dodge a parliamentary debate on issues as fundamental as certain restrictions that continued to apply to work for adult women.¹⁵⁸ She then stressed that the Decree reinforced the distinctions between the sexes in the workplace by maintaining specific regulations for women, curbing their integration in society. *"It seems outdated in 1968 to exclude 38% of the working population – the female population – from common law and to subject them to exceptional status. There are certainly dangerous and unhealthy jobs, but that problem is not exclusive to women's work. This should be regulated for all workers – male and female. What can be meant by dangerous and unhealthy work that only affects women? Of course, we have to crack down on abuses and regulate night work. But we have to do it for all categories that these regulations can apply to, with due consideration for the demands of production."* Lastly, she stressed the hypocrisy of a system of restrictions with numerous exceptions, which meant that women could work nights after all, whenever it was practical, in hospitals, transport, hotels, entertainment, seasonal industries, etc.¹⁵⁹ As for the equal pay demanded, the Royal Decree did not define it, the Government hiding behind the European Court of Justice in Luxembourg which had sole competence in matters of interpretation (Article 164 of the Rome Treaty).

It is worth recalling here that the European Court of Justice is the supreme court of the European Community. Its purpose is to "ensure observance of the law in the interpretation and application of the Treaties"; but a growing part of its activities are devoted to referrals, including referrals of prejudicial matters, i.e. questions submitted by a national court on the interpretation of controversial stipulations of

158 Vogel-Polsky, É. (1968). 'Le travail des femmes et l'arrêté royal n°40 du 24 octobre 1967', *Socialisme*, March, pp. 2-12.

159 On night work for women, see *Sextant* (4), 1995 and Point d'Appui TEF, dossier 7, Journée d'étude Extérieur nuit, held in Brussels on 21 September 1992; *Travail de nuit des femmes*, Brussels: INBEL, 1988.

Community law (Article 177). The decision of the European Court of Justice is then the *bona fide* interpretation, which is binding on all Member States, and the national courts must decide pay disputes in accordance with this interpretation.

For Éliane Vogel-Polsky, this was proof of the importance of the European Court of Justice in elaborating a coherent supranational European law, and thus its influence on national legislation. This opinion was shared by her colleagues at the recently established Institute for European Studies at the ULB, such as Michel Waelbroeck. Educated in the United States, Michel Waelbroeck “*essentially worked with decisions of the Court of Justice... We knew that the European Court of Justice would be fundamental, because it was a court that not only pronounced law but also created it... The first Advocates General of the Court attempted to create a European consciousness based on rules of law. It made a deep impression on me and I believe that I would never have dared take on the cases I did – for women in particular, since I occupied myself with those cases – if I had not been convinced that citizens can act to demand or assert their rights and that, through litigation, they can have a right confirmed.*”¹⁶⁰

She looked for cases that could be tried in law because “*by virtue of its dynamism, jurisprudence can lead to the harmonization of individual contracts and collective agreements with the principle of equal pay between male and female workers. To be successful, we need to hope that all workers that are the victim of pay discrimination are not afraid to go to court. They have this right; will they dare claim it? Repeated litigation is the only way to define the problem from every angle and reveal the interior of hypocritical sexless agreements, the differences in classification, the excuses that motivate them and the poorly paid jobs that basically only women are allowed to do.*”¹⁶¹

Éliane Vogel-Polsky faithfully attended union meetings of the FGTB in Liège and Charleroi looking for cases she could take on. “*I was naturally invited by Émilienne Brunfaut. I worked with the FGTB a lot,*

160 ‘Agir pour les femmes...’, *op. cit.*

161 Vogel-Polsky, ‘Le travail des femmes et l’arrêt royal n°40...’, *op. cit.*, p. 11.

in Liège mainly and in Charleroi.”¹⁶² Émilienne Brunfaut and Éliane Vogel-Polsky had already crossed paths at various meetings. They had co-authored an article in *Revue du travail* (‘Le droit à l’égalité des rémunérations’, 1968, pp. 1505-1509). But the friendship between the two women grew somewhat by chance a little later in Helsinki, at the ninth congress of the International Federation of Women in Legal Careers in July 1970. “We became friends in Helsinki in July 1970. The International Federation of Women in Legal Careers, which was the only association to accept women from the Eastern bloc, organized a three-day colloquium. The first female cosmonaut Valentina Terechkova¹⁶³ attended. It was summer; so the sun almost never set in Helsinki and we chatted a lot, Émilienne and I, with plenty of vodka. Émilienne spoke of what she had experienced, the discriminations against working women, how she had taken the floor at male-dominated assemblies, how she had imposed herself. Her stories fascinated me because I had legal experience of inequality on the work floor and she had real experience. She was amazing and she also had the knack of establishing contacts everywhere. She used every possible network to advance the cause of women. At the ILO [International Labour Organisation] everyone knew her; they were all on first name terms: ‘Ah, Émilienne!’”¹⁶⁴ As a political and union activist with an irrepressible worker’s mentality, Émilienne Brunfaut had a real hold on people. She never had a managerial position herself, but she rubbed shoulders with numerous directors of the socialist union for the steel industry (CMB) and the FGTB, and she played a decisive role in women’s organizations.

Despite her appeals, Éliane Vogel-Polsky received not a single case of pay discrimination that she could bring to court. The unions withdrew, refusing to support any plaintiffs, citing the argument that their own liability would be questioned as the offending discrimination was stipulated in the collective agreement. The workers themselves, isolated as they were, feared they would be dismissed in retaliation. “I

¹⁶² Interview, 8/1/2007.

¹⁶³ Russian Valentina Terechkova was 26 years old when she became the first woman cosmonaut, orbiting the earth 48 times between 16 and 19 June 1963. Nicknamed The Sea Gull, she was famous throughout the world. After 1987 she was a member of the Central Committee of the Communist Party and the Presidium of the Supreme Soviet. She remained the only ‘spacewoman’ until 1983, when the American Sally Ride repeated the feat.

¹⁶⁴ Interview, 26/12/2006.



*Éliane Vogel-Polsky
at the time of the 'affairs'*

*told them, 'I'll do it for nothing, just bring me cases!' No one wanted to give me any pay discrimination cases. They said, 'No, you know we can't do it, we signed the collective agreement'... That got my blood boiling."*¹⁶⁵ Eventually she got herself an unemployment benefit discrimination case thanks to Christiane Labarre, an FGTB delegate for office workers in Charleroi. As this case did not question the collective agreements but was against the State (Office National de l'Emploi [ONEM, National Employment Office]), the FGTB was able to allow it to go to court.

THE MERTENS AFFAIR: A BITTER-SWEET VICTORY

Christiane Mertens was a 19-year-old (a minor in those days) who lost her job in May 1967. At the time, unemployment benefit was governed by the Royal Decree of 20 December 1963, which laid down six cate-

¹⁶⁵ Interview, 26/12/2006.

gories according to sex, age and family expenses.¹⁶⁶ Christiane Mertens received the lowest benefit, much less than what a 19-year-old male would have received. While the unemployment fund contributions were the same for both sexes, women were entitled to lower benefits. It was a flagrant case of discrimination, but which had nothing to do with Article 119! In effect, the latter concerned the salary paid by the employer for a job of work, whereas unemployment benefits are received when work is lacking and are not paid by the employer. Article 119 therefore needed some massaging if the claim was to be justified: *“I argued that unemployment benefit was a substitute wage linked to the fact of having worked, and that being a principle and not a rule Article 119 was eligible for interpretation... This was twisted reasoning, but I said to myself, ‘we’ll see where we end up’.”*¹⁶⁷

Represented by her father and supported by the FGTB, Christiane Mertens was defended by Éliane Vogel-Polsky on 27 June 1967. The case failed in the first instance, but on 7 February 1968 Éliane Vogel-Polsky appealed to the Unemployment Appeals Commission, arguing her case on 14 June 1968. She based herself on the discrepancy between the Royal Decree of 20 December 1963 on the one hand and the ILO’s Convention No. 100 and Article 119 of the Rome Treaty on the other. Subsidiarily, she requested that the Appeals Commission submit the prejudicial question on Article 119 to the European Court of Justice.

In his ruling of 18 June 1968, the President of the Appeals Commission (*“a judge at the end of his career who appeared to be embittered against his superiors”*) rejected the idea of consulting the Court of Justice on the grounds that unemployment benefit was not a wage. On the other hand, he observed that “no reason can be found to justify the difference in the amount of benefit against the young girl”. He concluded that it was a matter of arbitrary discrimination based exclusively on sex, contrary to Article 6 of the Constitution, and that the Royal Decree of 20

166 See: Vanthemische, G. (1994). *La sécurité sociale. Les origines du système belge. Le présent face à son passé*, Brussels: De Boeck.

167 Interview, 8/1/2007.

December 1968 was illegal. At that time, there was no mechanism for investigating the constitutionality of laws, though judges could question the legality of royal decrees. *"I was delighted. We had won!"* The ruling also stated that as from 8 May 1967 Christiane Mertens was entitled to receive the same benefit as a man of her age.

On 18 July, the socialist MP Germaine Copée-Gerbinet submitted a question to the Employment and Labour Minister Louis Major.¹⁶⁸ The Minister said the question was too complex for him to be expected to respond immediately; and furthermore, that the ONEM intended to bring the matter before the Council of State (but not before 1970). Not long afterwards, Éliane Vogel-Polsky was summoned to the Ministry of Employment and Labour. The former Secretary General of the FGTB Louis Major was known for his brusqueness and for misogyny, which Éliane Vogel-Polsky had experienced at a dinner at the end of an ILO conference. *"I was seated next to him and he made such sexist comments that at a certain moment I stood up and told him I didn't want to remain in his company. He grabbed hold of my sleeve, saying, 'Come on, my little girl, stay. You know all too well that women always get what they want in bed!'"*¹⁶⁹ Later, in 1972, Louis Major distinguished himself in the Chamber with a blunt retort aimed at Volksunie MP Nelly Maes¹⁷⁰ that has entered the annals of feminism. When she asked not to be addressed by her husband's surname, Major rejoined: *"Wijven"*¹⁷¹ shouldn't get so bothered about things." Émilienne Brunfaut was herself forced to admit: *"Though Louis Major was a good activist, it didn't stop him being a misogynist."*¹⁷²

Infuriated by the Mertens ruling, Major hurled abuse at Éliane Vogel-Polsky with his customary rudeness. *"You think you've won, eh? Well you haven't, my child, you've lost. Now, because its constitutional, we're going to*

168 Louis Major (1902-1985), former worker, transport workers union leader (UBOT), National Secretary of FGTB in 1946, General Secretary from 1952 to 1968, socialist MP for Antwerp from 1949, Minister from 1968 to 1973.

169 Interview, 8/1/2007.

170 Nelly Maes, born 1941, secondary school teacher of history and Dutch, taught until 1971. Politician for Volksunie then Spirit, alderman and MP of Sint-Nicolas (1971), Senator since 1981.

171 'Wijf, pl. wijven' is Dutch slang for 'woman' that can be highly pejorative.

172 Émilienne Brunfaut..., *op. cit.*, p. 34.

set unemployment benefits neutrally, proportional to wages, and masses of women, mothers, are going to get less than they ever got when it was a fixed amount!”... “It was terrible. It was a slap in the face. I was speechless. And the last thing I managed to blurt out before I left was: ‘How can you, a former trade unionist, say that!’”¹⁷³

The Mertens affair was turned from a victory into a defeat. The new 1971 regulations, perfectly neutral from a gender perspective, pegged unemployment benefit to wages; and because women’s wages were much lower than men’s, women were the losers.

A DECISIVE STEP: DEFRENNE VERSUS SABENA

The action by Gabrielle Defrenne against Sabena to get equal pay and equal treatment from the airline was not just “a good story about solidarity between women”.¹⁷⁴ It also helped to secure air-hostesses a professional status, transforming an occupation that was originally felt to be a (very) temporary job. Originally the average ‘career’ of an air-hostess did not exceed around eighteen months, because the first collective agreements demanded that the women be unmarried, widowed or divorced, and childless. Marriage or pregnancy triggered immediate cancellation of the employment contract.¹⁷⁵ In 1956 a new clause was added to contracts, preventing women over 40 from flying.

Compared with male stewards, the discrimination was glaring, in terms of age limit, family situation but also pension rights. Stewards could work until the age of 55, and after 23 years service they were entitled to an extra pension granted to cockpit personnel. Hostesses were simply dismissed when they turned 40 and were consequently excluded from this system. Sabena had no obligation whatsoever to find them a job on the ground, and even then they were not entitled to the extra pension granted to cockpit personnel. The professional union

173 Interview, 8/1/2007.

174 *Voyelles* (8), April 1980, p. 22.

175 They were given permission to marry in 1963, after a case won by a French airhostess.

of cabin personnel, which was a mixed organization but nevertheless dominated by male delegates, had virtually never defended the interests of female cabin personnel. In 1966 female cabin personnel established an organization of their own to help find new jobs for hostesses no longer allowed to fly. In 1971 they joined Monique Genonceaux, an air-hostess who founded the Belgian Corporation of Flying Hostesses (BCFH).

When Gabrielle Defrenne's employment contract was terminated on 15 February 1968 at the fateful age of 40, she decided to file several suits against her employer. She was represented by Éliane Vogel-Polsky and Marie-Thérèse Cuvellez. For over ten years the Defrenne cases ebbed and flowed, attracting the attention of feminists and journalists alike. They ended in 1976 with an 'historic' ruling that would have a major impact on Community law, because Éliane Vogel-Polsky brought the case before the European Court of Justice on a number of occasions.

The first appeal (Defrenne I) was a failure. The aim was to get the Council of State to scrap the Royal Decree of 3 November 1969 given that it was discriminatory in establishing special rules with respect to pension rights for aircraft crews from which air-hostesses were excluded. The action was founded on Article 119 of the Rome Treaty. The court submitted the prejudicial question to the European Court of Justice, which stated in its ruling that Article 119 was applicable solely to pay and not to a social security system. This position angered Éliane Vogel-Polsky. Confining oneself to pay in the strictest sense without regard for the sociological and ideological implications that come with it was a 'timorous' and 'backward' view, because "*equality of pay, taken in isolation, does not exist. It's a myth. It can only have significance in the wider context of the recognition of equal treatment.*"¹⁷⁶ The two lawyers, Éliane Vogel-Polsky and Marie-Thérèse Cuvellez, were not to be discouraged: they subpoenaed Sabena a second time, this time basing the case on pay discrimination and compensation for termination of the contract.

176 Vogel-Polsky, 'Les facteurs d'extranéité...', *op. cit.*, p. 301.

This time the European context was more favourable. Strikes for equal pay had broken out in various countries. The feminist movement had been mobilised, and since the Paris summit of 1972 the European Community's social policy was beginning to change. The Council of Ministers had clearly expressed its wish to pursue a policy of equality (Resolution of 21 January 1974). For the first time, an action programme recognized that "social policy can constitute a competence of derived law and be the subject of constraining directives". As a consequence, several directives were adopted by the Commission, including the 10 February 1975 Directive (concerning 'the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women' (Directive 75/117)¹⁷⁷). That was followed by Directive 76/207¹⁷⁸ of 9 February 1976 on 'the implementation of the principle of equal treatment of men and women as regards access to employment, vocational training and promotion and working conditions'. Lastly, Directive 79/7¹⁷⁹ of 19 December 1978 targeted the progressive implementation of the principle of equal treatment for men and women in matters of social security. The timeframe for the first directive was two years, for the second two and half years and for the third, four years. These directives had a direct impact on Belgian law. Collective Agreement No. 25 of the National Labour Council (1975¹⁸⁰) and the Economic Reorientation Act of 4 August 1978 established the principle of equal treatment of men and women in access to employment, working conditions, vocational training and orientation, and access to the liberal professions.

DEFRENNE II: SUCCESS

This time Gabrielle Defrenne subpoenaed her employer to recover damages suffered after her employment contract was terminated. She claimed the difference between the end-of-career allowance she received and the same allowance given to stewards, who were permitted

177 *Official Journal of the European Communities*, 19/2/1975, n° L.45.

178 *Official Journal of the European Communities*, 14/2/1976, n° L.39/40.

179 *Official Journal of the European Communities*, 10/1/1979, n° L. 6/24.

180 Made obligatory by the Royal Decree of 9 December 1975.

to continue working after 40 years of age. She also claimed arrears due to pay discrimination.

The Brussels Labour Tribunal dismissed the case and Gabrielle Defrenne appealed. The Brussels Labour Court rejected the first two claims, but submitted the prejudicial question on the matter of wage discrimination to the European Court of Justice, which accepted the direct applicability of Article 119 in its 8 April 1976 ruling. Éliane Vogel-Polsky was exultant: *“The Court of Justice accepted that Article 119 was self-executing, that the State and the employers had to implement it by 31 December 1961... The Court accepted... that Article 119 had to be applied. It even accepted that this was a fundamental right. So it was a fantastic ruling.”*¹⁸¹

The rulings in the Defrenne affairs¹⁸²

- Article 119 establishes an individual right that can be directly invoked before the courts of any Member State of the European Community, independently of the state of the issue in the national legislation in question.
- Individuals may demand observance of Article 119 not only by the Member States and the public authorities but also in any collective agreement or private contract.
- Article 119 is based on the general principle of equality and non-discrimination, the respect of which has to do with fundamental human rights and must be a cornerstone of the legal order of the European Community.

This was a fine victory that unleashed a chain of rulings, but it still left a bitter taste in Éliane Vogel-Polsky’s mouth, for several reasons.

The ruling only applied to ‘direct’ discrimination, meaning discrimination that could be established using the criteria listed in Article 119 itself. It did not apply to hidden, ‘indirect’ discrimination, which was prohibited, but less precisely, by Directive 76/207. The concept of in-

¹⁸¹ Interview, 8/1/2007.

¹⁸² See Defrenne I ECCJ, Aff. 80/70, Defrenne contre État belge. Defrenne II ECCJ, Aff. 43/75, Defrenne contre Sabena.

direct discrimination was however very important, because it allowed complaints to be filed based on a practice affecting women as a group. Thus, it could be used to expose the very employment structure that perpetuates collective discrimination rather than simply individual discrimination.

But above all, the Court of Justice set a deadline *ratione temporis*, which reduced its impact considerably. Though recognizing that Article 119 should have been applied since 1 January 1962, the Court permitted it to be invoked only on or after the date of the judgement, except for persons who had instituted proceedings before 1976. The Court justified this deadline by citing “pressing legal security considerations”, an argument that was in reality based on the economic interests of employers. *“But there were no ongoing cases, no one in Europe had instituted proceedings... I felt that ruling was scandalous too....”*¹⁸³ Without denying the underlying economic context, Éliane Vogel-Polsky was indignant that the Court of Justice had so easily trampled over the law. *“In reality it’s an entirely political ruling, taken under very strong pressure from the United Kingdom. But I remained bitter.”*¹⁸⁴ The more so, bearing in mind that the employers had not had to pay very much, because by application of Belgian social law their obligations with respect to employees’ pay were limited to the past three years.

Notwithstanding this, the ruling proved to be very useful and would be seen as a milestone in the fight for equal pay in Europe. The air-hostesses themselves brought other suits, this time to acquire equal working conditions. In 1970 they were given permission to fly beyond the age of 40, though Sabena immediately set up an Aesthetics Committee, made up of four men and one woman. All women had to go before the committee every two years to determine whether they had sufficient charm and presence to serve the passengers. They had to radiate the image the company wished to project to its customers. In other words, they had to be young and pretty.

183 Interview, 8/1/2007.

184 Interview, 8/1/2007.

This humiliating and arbitrary procedure was denounced by Monique Genonceaux, Chair of the air-hostesses' union (for which Marie-Thérèse Cuvelliez was legal counsellor), in an open letter to the Minister of Employment and Labour on 27 July 1974.¹⁸⁵ When the Aesthetics Committee reconvened on 6 August 1974, feminist associations demonstrated noisily. The Committee was seen as a blow against human respect and the right to work.¹⁸⁶ It aroused a general outcry and resulted in parliamentary questions from Irène Pétry¹⁸⁷ and Nelly Maes. But even when it was forced to disband its Aesthetics Committee in 1974, Sabena was not willing to concede defeat. The airline implemented a new recruitment policy by which female cabin crew were offered five-year contracts, without the possibility of building up seniority. The five-year contract would eventually be withdrawn in 1979.

Reminded of this period in her life quite some time after, Éliane Vogel-Polsky stressed how much these events had formed her. Her 1965 meeting with the workers in Zeezicht *"transformed my views on equal pay and made me realise that there was no point in demanding it or, more importantly, in seeking to achieve it, without giving our action much wider scope at both levels: at the initial level of training for and entry into professions and posts, and especially of their evaluation, which was then the main instrument by which companies trivialised women's jobs; and at the level of working conditions themselves, professional mobility, permanent training and so on."*¹⁸⁸ About the strike itself, she said: *"For me the moral was that information, knowledge of one's human and working rights, is a powerful lever of social change, then as now."*¹⁸⁹ And as to the cases she fought: *"My conclusion... is that as frustrating and difficult as our efforts were to ensure the triumph of an elementary right to equality and social justice, they were not in vain. They soon achieved results... These cases were taken up by the*

185 Alfred Califice (1916-1999), former union secretary, PSC (Christian Democrat) MP for Charleroi in 1965, MEP in 1968.

186 See: 'Tout ce qui brille n'est pas or', *Cahiers du GRIF* (4), October 1974, pp. 44-45.

187 Irène Pétry, married to Scheys, born 1922, leader of the FPS, President of the Socialist Women's International (1972), MP for Liège from 1974, Senator in 1977. Secretary of State for Development Cooperation (1973-1974), President of the Council of the French Community from 1980 to 1982, member and later President of the Constitutional Court (1992), Minister of State in 1992.

188 Vogel-Polsky, 'Cinquante ans de droit du travail...', *op. cit.*, p. 42.

189 Idem, p. 43.

*media; they raised awareness of how inadmissible these practices were, given the great changes in attitude.”*¹⁹⁰

But despite the optimism of these reflections, deeper down she still harboured strong resentment of the “treachery of the authorities”. She still quivered with indignation when recollecting the contravention of the Rome Treaty by the Conference of Ministers of 30 December 1961. *“That breach of Community social law was a big lesson for me. From then on I understood that total legal and activist commitment was needed to change society’s resistance and indifference to the question of gender equality.”*¹⁹¹

190 Idem, p. 38.

191 Idem, p. 45.

CHAPTER 4

The 1980s: positive action for parity

At the end of the 1970s, twenty years after the Rome Treaty, the situation was still lamentable. The pay gap between women and men in the job market was far from being closed, equality of treatment was far from being achieved. Throughout Europe the obstacles to the genuine equality of male and female workers remained in place, buried deep in mentalities. Discrimination in pay levels, still very much in evidence, continued to hide behind skill qualifications that systematically disfavoured women's jobs or their capacity for work. In February 1979 the European Commission reported on the persistence of pay gaps to the detriment of women: 24% in France and Italy, 25% in the Netherlands, 29% in Germany, the United Kingdom and Belgium, 37% in Luxembourg.

A FAVOURABLE INTERNATIONAL CONTEXT

Yet the international context was favourable to more energetic action. On 18 December 1979, the UN signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁹² In the early 1980s the Council of Europe also pursued a proactive policy to eliminate inequalities.

The European Community could not remain behind. The Directive of 9 February 1976 (76/207) had already recognized that equal treatment entailed more than simply equal pay; while introducing in rather vague terms the idea of indirect discrimination, the text authorized positive action insofar as it helped achieve equal treatment. The first

¹⁹² Adopted on 18 December 1979 by the General Assembly of the United Nations. It marks the completion of the work of the Commission on the Status of Women established in 1946 and is considered to be an historic step in the development of women's rights in the world. Gradually ratified by 175 States, CEDAW became effective in Belgium on 9 August 1985.

programme for promoting equal opportunities was rolled out in 1982 (1982-1985), to be followed by similar programmes until 2006.

On 13 December 1984 a Recommendation of the Council of Ministers clearly established the policy of equal opportunities (Council Recommendation of 13 December 1984 on the promotion of positive action for women). It provided for “the stepping up of action to ensure observance of the principle of equal treatment and the promotion of equal opportunities in practice by positive action” and recommends Member States “to adopt a positive action policy designed to eliminate existing inequalities affecting women in working life and to promote a better balance between the sexes in employment (...) while fully respecting the spheres of competence of the two sides of industry”.¹⁹³

EQUAL OPPORTUNITIES POLICY: A NEW RATIONALE?

This new approach was based on the poor results achieved in the field of equality in Member States. Éliane Vogel-Polsky shared this view completely: *“If we take stock of the results achieved by all legislation and institutional mechanisms put in place to impose equal pay or equal treatment in working conditions between men and women, it appears that no noteworthy progress has been made in the past decade.”*¹⁹⁴ Why were the results so meagre? The attempts to develop social provisions on the basis of derived law were certainly not ineffectual, but most often, she said, they simply produced *“soft law, law that is not really law, which proposes some orientations to governments but without providing any guarantee or possibility of rigorously imposing the proposals.”*

In terms of work, the handicaps were such that the action originally termed ‘positive discrimination’ was necessary if any headway was to be made. Such action had originated in the Anglo-American world and Nordic countries as a means of compensating for the initial inequali-

193 Official Journal L 331, 19/12/1984, P. 0034-0035.

194 Vogel-Polsky, É. (1988). ‘De la problématique des actions positives en Europe’, in: M.-Th. Meulders-Klein and J. Eckelaar (dir.), *Famille, État et sécurité économique d'existence*, t. 2, Brussels: Storia-Scientia, p. 1043.

ties with measures favourable to the victims of discrimination. Thus the idea was based on an individual vision: if each person had started out with the same rights (such as the right to education and training), the effects of social stratification or gender difference could be counteracted and equal treatment of men and women better achieved. The policy involved either measures to promote women or measures to correct the most flagrant discrepancies between men and women. It required reliable statistics on the sexes, to measure the scope of discrimination and determine its significance. This equal opportunities policy also introduced the concept of quotas, setting a threshold above which inequality would be considered 'acceptable'.

Equal opportunities policy represented a complete break with the logic of equal rights. From the very beginning Éliane Vogel-Polsky regarded it as more workable: it finally opened up the issue to wider considerations than simply formal compliance with the norm. *"These are norms for the promotion of equal opportunities. As a sociological and dynamic concept, equal opportunities opposes the static concept of equal rights, generally expressed in negatives (do not discriminate)."*¹⁹⁵

*"For over fifteen years I have believed in the virtues of positive action. I have worked a lot in this field, in terms of both theory and practice, having several times been in charge of a positive action programme in Belgium's Ministry of Employment and Labour and in an international organization (the Council of Europe). What is attractive about positive action strategy is that its aim is real equality. The idea is to create a momentum that goes beyond equality by decree and the forbidding of discrimination. This means acknowledging the fact that social relations between the sexes reduce women's opportunities in economic, social and political life. We fall back on measures that give women an advantage or are aimed solely at them, as a means to correcting the inequality they actually experience. There is a move from the idea of abstract, neutral legal protection to that of promoting real equality in practice."*¹⁹⁶

¹⁹⁵ Idem, p. 1047.

¹⁹⁶ Vogel-Polsky, É. (1994). 'Les impasses de l'égalité. Ou pourquoi les outils juridiques visant à l'égalité des femmes et des hommes doivent être repensés en termes de parité', *Manuel des ressources*, Brussels: Women's Studies Support Centre, p. 129.

ESTABLISHING CONDITIONS FOR EQUAL OPPORTUNITIES POLICY

In the 1980s Éliane Vogel-Polsky worked in defence of this ‘alignment’ of women and men, in the spheres of both theory and practice. A first report in 1981, commissioned by the Directorate-General for Social Affairs of the European Commission, examined the strategies developed by the United States and the Nordic countries, with the view of integrating them in the EC Member States.¹⁹⁷ Together with her research team, she conducted several surveys commissioned by the European Communities¹⁹⁸ and Council of Europe.¹⁹⁹

These studies analysed the implementation techniques and instruments, and especially the conditions to ensure that these policies would not be simply empty words. They made comparisons between the different European countries, taking stock of the results. Among the conditions for success, which were highly complex, Éliane Vogel-Polsky above all identified political will and the allocation of adequate resources, the demand for better representation for women in decision making and the need to take account of the psycho-sociological dimension, given that sexism could creep into even the best measures. *“That is where the system is fragile. It has become almost mundane to say that equality of the sexes cannot be achieved without a change in mentality.”*²⁰⁰ *“For fifteen years my research has been based on the issue of equality of women and men in the world of work... Invariably, any proposed solution... collided*

197 Vogel-Polsky, É. (1981). *Les actions positives. Examen des stratégies d'actions positives aux USA et dans les pays scandinaves. De la perspective de leur intégration dans la Communauté européenne*. Study commissioned by DG V of the EC.

198 Vogel-Polsky, É. et al. (1982). *Étude des programmes d'action positive en tant que stratégies destinées à intégrer les travailleurs féminins et d'autres groupes minorisés dans le marché du travail*. Rapport de synthèse, Brussels: Commission of the European Communities, DG Employment, Social Affairs and Education, Doc No 34.

199 Vogel-Polsky, É. (1985). *Les mécanismes nationaux institutionnels et non-institutionnels mis en place par les états-membres du Conseil de l'Europe pour promouvoir l'égalité entre les femmes et les hommes*, Strasbourg: Ed. Council of Europe, 110 p.; Vogel-Polsky, É. (1987). *Les actions positives et les obstacles constitutionnels et législatifs qui empêchent leur réalisation dans les états membres du Conseil de l'Europe*. Study commissioned by the Council of Europe, CEEG, 102 p. (Published in French, English, German and Spanish).

200 Vogel-Polsky, 'De la problématique des actions positives en Europe...', *op. cit.*, p. 1051.

at some point with a sledgehammer argument: whatever you do, you have to change mentalities."²⁰¹

The 1980s was a decade of an increasing number of studies on mentalities. The issue of representation was at the heart of all social sciences that explored its impact on social life. Stereotypes, socially constructed masculine and feminine identities that were in no way 'natural' or 'immutable', appeared very quickly among the main obstacles to equal opportunities policy. Influencing mentalities became a prerequisite of success. Article 5 of CEDAW had clearly expressed this need "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and any customary or other practices based on the idea of the inferiority or the superiority of either sex or on stereotyped roles for men and women."

A group of experts convened by UNESCO in Vienna in November 1979 underscored the importance of the media for changing mentalities, which in time would produce a cataclysm in gender relations.²⁰² In 1981 and 1983 the Council of Europe organized several seminars in Strasbourg. Influencing the media in favour of women and changing the image given of them were seen to be indispensable alongside the new equal opportunities policy. To identify and combat the sources of inequality "*one must address three dimensions – the political, the sociological and the legal – and act in accordance*".²⁰³ Éliane Vogel-Polsky now turned her attention to the sociological dimension.

A PREREQUISITE: CHANGING MENTALITIES

Some alarming sexual stereotypes were kept alive by the media and in particular by the rapidly growing medium of television. "During their

201 Vogel-Polsky, É., J. Vogel and L. Zaïd (1984). *Images de la femme dans les télévisions de la CEE. Quelles actions positives? Quelles stratégies? Bilan et leçons à tirer des émissions « alternatives »*, vol. 2, Brussels: EC Commission, V/2062/84-FR, p. 2.

202 *Women and the Media. Report of an Expert Group Meeting*, Vienna 24-27/11/1981, UN, AWB/EGM/1981/1, New York, 1982.

203 Vogel-Polsky, É. (1985). 'Les programmes d'action positive en faveur des femmes', *Revue internationale du travail*, July-August, p. 428.



*Éliane Vogel-Polsky (right), with the Unesco delegate
at a conference in Tunis*

life, European citizens spend twice as long in front of the television as in the classroom. Media productions are a form of lifelong learning as to what we should think, expect and dream about.”²⁰⁴ TV was not just a source of information, it had become the main vector of creation. TV was regarded as “*the preferred domain for conditioning, (de)forming and constructing mentalities. Television is indeed an industry of awareness.*”²⁰⁵

From 1983, within the framework of the second Action Programme, the European Commission’s DG V conducted a major investigation into women and television in the Member States. The originality of the study lay in its addressing several aspects of the problem at the same time, not only analysing television’s images and programmes but also the employment structures of the major public broadcasters. Three teams were given the task of completing this huge study. Gabriel Thoveron, professor of journalism and communication at the ULB, headed the

204 Gallagher, M. (1988). ‘Les femmes et la télévision en Europe’, *Supplement to Women of Europe* (28), September, p. 4.

205 Vogel-Polsky et al., *Images de la femme dans les télévisions...*, op. cit., vol. 2, Présentation, p. 1.

first team. Its remit was to study the position and role of women in television news and in a selection of soap operas and commercials. The second team, headed by Éliane Vogel-Polsky, had the task of evaluating 'alternative' transmissions and the space given to female creativity by the main national channels.²⁰⁶ British expert Margaret Gallagher headed the third team. Its remit was to study female employment in television and positive action taken to achieve greater balance.

Research of this type had already been undertaken in the Anglo-American world, but it was something completely new to Belgium. Previous studies had typically concentrated on the written press, but few of them addressed gender: even feminists had shown little interest in relations between women and the media, which they considered to be in the iron grip of men. Information about women was circulated in specialized publications. The feminist press – produced and written by women – included the monthly *Voyelles* (1979-1982), which for the three years of its existence sought to be the antithesis of the traditional women's magazines. Other publications included *Schoppen-vrouw*, initially produced by socialist feminists but later more pluralist (1978-1999), and *Lilith* (1980-1986), the feminist newssheet that began as the mouthpiece of the Vrouwen Overleg Komitee (VOK, Women's Consultation Committee) before finding its own voice and eventually becoming a Flemish supplement to the Dutch periodical *Opzij*.²⁰⁷ Yet despite an abundance of (small) feminist publications, especially in Flanders where every women's centre seemed to have its own newssheet, and despite the efforts of feminist bookstores, which opened in Brussels (*La Rabouilleuse*) and Louvain (*Dulle Griet*, which started out in Brussels) in the 1970s, the mainstream press remained relatively indifferent to feminist concerns.

Radio on the other hand began to open up somewhat. Women's radio programmes even experienced a resurgence on the back of a neo-feminist wave, but especially due to the policy of breaching taboo subjects

²⁰⁶ Idem.

²⁰⁷ Vrouwen Overleg Komitee, established in April 1972 as a consultation body for Flemish feminists, organizes an annual women's day on 11 November. An analogue committee was established in 1980 by French-speakers, Comité de Liaison des Femmes (Women's Liaison Committee).

like sexuality. In France, programmes like Éliane Victor's *Les femmes aussi* were on the air between 1964 and 1973. In Belgium the driving force on women's issues was Jacqueline Saroléa. In 1962 she was given the job of writing a report on women's work by Jacques Yerna, regional FGTTB Secretary for Liège, and she used this as launch pad for a weekly broadcast, *Radio Vérité*, which first went on the air in 1964. This broadcast was part of *Magazine F*, a daily programme presented by Laurette Charlier and Georges Pradès on Channels 1 and 2 between 9 a.m. and 12 noon. She examined both the working conditions of women and their everyday way of life, the division of household duties and the problem of child-minding. Experts like Éliane Vogel-Polsky were asked to participate in the discussions.²⁰⁸ These subjects were examined until the early 1970s, particularly by Laurette Charlier on *TV F*. In Flanders the programmes of Lea Martel and Paula Semer played a similar role.

THE RESULTS OF THE EUROPEAN TELEVISION SURVEY

Each of the three teams produced its own report, and Éliane Vogel-Polsky wrote the overall conclusions and proposals.²⁰⁹

On the subject of the 'alternative' broadcasts that her team analysed, Éliane Vogel-Polsky stressed that interest in such programmes soon evaporated. In the 1980s almost all programmes by women about women went off the air, and there was a return to male conservatism. The time given to women programme makers by most channels – which had made 'women's television' possible – shrank to nothing. "*This reversal,*" observed Éliane Vogel-Polsky, "*was only possible because the apparent power balance in favour of the women's movement – that had enabled many aspects of women's emancipation to be forcefully addressed for several years – did not bring about any in-depth change in behaviour or mentality.*"²¹⁰ "*Despite some progress, football clearly remained 10,000 times*

208 Van Rokeghem, S., J. Vercheval and J. Aubenas (2006). *Des femmes dans l'histoire en Belgique depuis 1830*, Brussels: Ed. Luc Pire, p. 205.

209 Vogel-Polsky, É. (dir.) (1987). *Images de la femme dans les télévisions de la CEE*, vol. 3, Luxembourg: Office of official publications of the EC.

210 Idem, vol. 3, p. 18.

more important; likewise with game shows, which can run for years... But once some programmes had been made about women... that was regarded as enough for a good few years!"²¹¹ Only the United Kingdom's Channel 4 continued to be a benchmark, characterized as it was by a ready openness to women's programming.

Furthermore, all the indicators employed in the three studies showed that things were going downhill. Virtually everywhere, women did not figure in news items: a mere 1.4% of all news items in Europe concerned women. They appeared on television less often (even in Sweden, Norway and Finland), especially as expert. And when they did appear, in the UK for instance, where they were seen slightly more often, they were given much less air-time than men.

In her summary Éliane Vogel-Polsky linked this absence and the poor media image of women to their under-representation on decision-making bodies, to the fragmentation of their experience and to the lack of communication between women. Once again she argued the need for an overall approach rather than one-off measures that only patched things up. *"The promotion of positive images of women needs to be part of a collective, complex and independent approach."*²¹² If real progress was to be made – not superficial or fleeting like the surf of a wave – change had to be effected at every level, *"in accordance with an overall strategy in which the promotion of positive images of women in specialist programmes is just one element in a series of coordinated measures"*.²¹³ It was not enough to keep special women's programmes on the air. Women's presence at all levels had to be strengthened by positive action, greater balance was needed in decision-making bodies, a global strategy was needed for all domains, including news, series and advertising. The presence of women in the media should not lead to the formation of 'women's ghettos'. It had to permeate all programmes. *"Innovation is an essential part of forming a new image of women on television... based on the fact that you don't necessarily endeavour to express the point of view of*

211 Interview, 8/1/2007.

212 Vogel-Polsky, *Images de la femme dans les télévisions...*, op. cit., vol. 3, p. 23.

213 Idem, p. 19.

women by dealing with women's subjects but through the approach you take, whatever the subject."²¹⁴

The overall results of this huge project were published in the September 1988 edition of *Supplements to Women of Europe*. They were also discussed at a seminar organized with the support of the EC Commission in June 1985 at the ULB, on the subject of employment, television schedules and measures needed to achieve equal opportunities, and to which professionals and directors of the major European broadcasters were invited. Over 200 people attended, but most of them were women, which showed the problems involved in getting the study's main message across, i.e. that equal opportunities were not a 'women's issue' but a general problem affecting the whole of society.

Various measures were introduced during the Third Action Programme. These included the establishment of a Steering Committee for equal opportunities in radio and television in 1986 and the establishment of the biennial Niki Prize in 1988 for programmes that best conveyed women's role in society.

These studies on stereotypes clearly showed that women were not the problem, society was. In that sense, the results of the media study would produce a sea change in how the equality issue was approached. Rather than seeking to integrate women in a system by putting them on the same footing as men, it appeared more logical to adapt the social system itself, making it work for women and men alike. This meant going further than cosmetic changes and considering fundamental change.

CHANGES AT NATIONAL LEVEL TOO

While Europe occupied an important place in her activities at the time, Éliane Vogel-Polsky was also involved in various national projects. The switch in European policy was clearly felt in Belgium, where women's emancipation policy had begun modestly in 1975 with the Women's

214 Idem, p. 27.

Labour Committee and for a decade had been almost entirely concerned with employment issues.

The establishment of the Committee for Social Emancipation at the Ministry of Public Health and Environment in 1985 changed all that. The new Committee was entrusted to Christian Democrat Miet Smet,²¹⁵ former Dolle Mina activist and founder in 1973 of *Vrouw en Maatschappij* (Woman and Society), a women's lobby within the Christian Democrat party, who had chaired the Women's Labour Commission since 1975. Under her direction the Committee for Social Emancipation adopted a determined equal opportunities policy, supported by various bodies established to strengthen this new orientation (see table on pp. 66-67).

The general goal of this equal opportunities policy was never defined but rather pragmatically shaped around three main themes: the position of women in the job market, the struggle against violence, and women's participation in decision-making. In the domain of employment, two Royal Decrees (14 July 1987 and 27 February 1990) implemented measures to promote professional gender equality in the private and public sector. These decrees promoted positive action both as a regulatory instrument in the job market and as an instrument that could eliminate the actual inequalities between men and women. Miet Smet also supported some highly diverse studies on women, which resulted in an impressive series of reports as well as sociological, legal and historical books on women over a 15 year period. Éliane Vogel-Polsky was invited as expert on a number of occasions, primarily concerning women's participation in decision-making structures. She was also consulted on the legality of quotas, and refuted the arguments of the Council of State which had first considered them unconstitutional (1981) and then, after allowing them, issued a negative advice on the sanctions provided for in the Election List Reform Bill (1994).²¹⁶

215 Miet Smet, born in 1943, social assistant, Director of IPOVO (Institute for Political Training), Chair of the Women's Labour Commission from 1975 to 1985, CVP MP for Sint-Niklaas from 1978 to 1995, Secretary of State for the Environment and Social Emancipation 1985-1992, Minister of Employment and Labour 1992-1999, MEP and Flemish Parliament MP.

216 Vogel-Polsky, É. (1995). *La licéité des quotas sexuels dans la théorie légale de l'égalité en droit constitutionnel et comparé*. Unpublished report, Brussels.

THE LIMITS OF EQUAL OPPORTUNITIES POLICY

While some expected great things of it, equal opportunities policy also met with reticence and criticism. Radical feminists were dissatisfied, seeing it as a framework for the integration of women in the dominant male model.

UNSATISFACTORY RESULTS

The limitations became increasingly clear even for the most enthusiastic supporters of positive action. The goal itself was limited: aiming for equalization between men and women was not the same as seeking equality of men and women. *“It soon became apparent in most cases that the achievement of equality will depend on other factors than individual liberty or the equalization of initial situations; and that it could in some cases even have totally reprehensible boomerang effects. Even supposing true equalization of starting points were possible, you could ask yourself how it could be achieved without mistreating other people or other values which are just as important for the social system? In other words, one has to accept that equality is not the key to equality! Equality of opportunities does not guarantee equality of results. On the contrary, it allows the justification of functional inequalities.”*²¹⁷

And the cat was out of the bag: while equality of opportunity could prove useful on specific occasions to counteract openly discriminatory rules of law, it could not guarantee any equality of results, and was an ineffective instrument for counteracting increasingly sophisticated forms of indirect discrimination.

Besides, the policy was based on the myth *“that positive action must consist of ‘temporary measures’ that will be withdrawn when the discrimination has disappeared... The dilemma of positive action is that it is a catch-up measure implicitly aimed at bringing women up to the standard of men. So quotas are usually presented and analysed as special temporary measures that*

217 Vogel-Polsky, É., L. Taminiaux and J.-M. Dellis (1989), ‘Les droits des femmes’, *Droits de l’homme et libertés en Belgique. Le point sur quelques situations particulières*, Brussels: Labor, p. 80.

must be withdrawn when equality has been achieved. This is a poor way to address the question, because experience shows that far from inducing a continuous evolution towards equality, quotas solidify inequality at a given point."²¹⁸

Quotas could also have a perverse effect and stigmatise women appointed to a grade or job to fulfil them: accused of being where they are because of their sex rather than their competence, they would be automatically devalued.

Experience showed that positive action did not attack the gender-based division of labour head-on, was ineffective for changing deep-seated mentalities (which had been the hope), and had no effect whatsoever on the absence of women in political and economic decision-making structures. These limitations were combined with legal obstacles, mainly stemming from the fact that positive action was regarded as a deviation from the general principle of equal treatment.

LEGAL OBSTACLES

These legal controversies arose because there was no precise definition of equal treatment or because of difficulties in identifying indirect discrimination. Éliane Vogel-Polsky stressed that a very high number of lawsuits "*concern men who feel that any difference in treatment introduced to promote equal opportunities for women in working conditions or social security directly discriminates against them. The [European] Court [of Justice] has most often ruled in their favour on the grounds that any exception to the principle of equality is to be strictly interpreted and cannot have equal results as its purpose.*" That was the sticking point. For a long time the Court of Justice strongly limited the right to equal opportunities by affirming "*that it [the Court] guarantees only the equalization of starting conditions... but prohibits measures that ensure a concrete equality of results.*"²¹⁹

²¹⁸ Vogel-Polsky, 'Les impasses de l'égalité...', *op. cit.*, p. 130.

²¹⁹ Vogel-Polsky, É., 'Les femmes et le changements de la démocratie dans l'Union européenne', in: *La parité est l'avenir de l'homme*, Brussels: Ed. Luc Pire, p. 43.

In 1995 the Kalanke affair turned the spotlight on this strict interpretation. The legislation of the German State of Bremen accorded absolute priority to the appointment or promotion of women in public services, when they were under-represented in the job that needed to be filled (less than 50% of the workforce) and when female candidates had the same qualifications as male candidates. Faced with this situation, one unsuccessful male candidate complained to the Court of Justice on the grounds that he had been discriminated against because of his sex. The Court of Justice ruled in his favour (17 October 1995), establishing that priority cannot be given unconditionally in the event of an appointment or promotion because this exceeded the terms of Directive 76/207 on equal treatment. This ruling obliged the State of Bremen to abandon advanced legislation that was supposed to produce an equality of results, but that was considered to be contrary to the individual right of every person to equal treatment without discrimination on the grounds of sex.²²⁰

The ruling stirred up strong emotions. For Éliane Vogel-Polsky, the idea of ‘reverse discrimination’, suggested by the Kalanke affair was an artefact, “*a legal aberration*”, since positive action was neither a privilege nor an advantage in favour of women but an instrument to eliminate prejudices that had worked in favour of men up till then.²²¹ This above all “*showed strikingly what a Sisyphean task the equality of the sexes was, as the ruling went back on the Community law on positive action*”.²²² At the end of the 20th century, in modern democracies the condition of women was still an oddity, in that their equality was never recognized once and for all but had to be constantly defended and legitimized.

Embarrassed by the ruling, the European Commission looked for a solution. Should it amend Directive 76/207, making positive action in recruitment matters legitimate on certain conditions? Or should it try to amend Article 141 (former Article 119) of the Maastricht Treaty to facilitate the use of positive action in the professional domain? A new

220 ECJ, 17 October 1995, Aff. C 450/93, E. Kalanke versus Freie Hansestadt Bremen.

221 Interview, 8/1/2007.

222 Vogel-Polsky, É., ‘Femmes, citoyenneté européenne et Traité de Maastricht’, www.penelopes.org.

Court of Justice ruling reopened the debate on 11 November 1997. The Marshall ruling²²³ recognized that it was not sufficient for two candidates of different sexes to have the same qualifications for them to have equal opportunities; hence it permitted the application of preferential clauses in recruitment or promotion matters, under certain conditions. Basically, the ruling allowed a preference for women in certain jobs, provided that it did not happen automatically and that the possibility of a different decision was safeguarded.

These two rulings, which seemed to be incompatible, breathed new life into the legal controversy. The Committee on Women's Rights of the European Parliament held a public hearing on 22 January 1998, in which Éliane Vogel-Polsky was questioned as an expert. She dismissed both the Kalanke and Marshall rulings, stressing that neither of them resolved the contradiction between a fundamental right (equality of treatment) and an individual right (positive action). Even in amended form the Directive remained unsatisfactory, as it would always consider positive action to be an exception to equality of treatment. Éliane Vogel-Polsky placed her hopes in the Amsterdam Treaty²²⁴ (which had yet to be ratified) and the innovations it contained.²²⁵ The Amsterdam Treaty guaranteed, for the first time in Community law, equality of men and women (Article 2) and made its achievement a Community mission in all domains in which it was competent (and no longer only in employment). Article 141 (the former Article 119) officially recognized positive discrimination and gave the Council of Ministers the task of adopting its Community regulations, this time by qualified majority.²²⁶ The Community also adopted a new approach to the question of equality – gender mainstreaming – which aimed at the transversal application of equality in all Community policies and actions. These innovations rekindled the hope that the right to equality of women and men would soon be approached as a fundamental right.

223 ECJ, Aff. H. Marschall versus Land Nordrhein-Westfalen, C-409/95.

224 The Amsterdam Treaty was signed by the 15 Member States on 16 and 17 June 1997, entering into force in 1999.

225 Garcia Munoz, C. (1998). *Droits de la femme et le Traité d'Amsterdam sur l'Union européenne*, European Parliament. Série Droits des femmes FEMM 104-FR, Document de travail, pp. 54-56.

226 And not unanimously as previously.

THE ROAD TO PARITY

Here we need to go back a few years, to the opportunities offered by the Maastricht Treaty (1992). The Treaty had established the European Union with a political remit guaranteeing EU citizenship to any person holding the nationality of a Member State. This was an exceptionally important milestone, rooted in a society in which women took increasing responsibilities. EU citizenship was seen as a road-map for improving a democracy that was still far from perfect.

In the early 1990s Éliane Vogel-Polsky gradually turned away from the equal opportunities policy, having been able to appreciate its pernicious effects. *“The formulation of gender equality as ‘equality between women and men’ had generated incorrect and limited arguments centred on comparing the positions of women and men, whose outcome was legal approaches and techniques of the anthropological type. In this way, law and legal doctrine assimilated the male stereotypes and values of European society and reproduced the exclusions that they justify, or sought to integrate women, not as human beings but as a socio-legal minority whose members are the subject of passive or protective rights.”*²²⁷ A page had been turned, opening the way to parity.

227 Vogel-Polsky, ‘Les femmes et les changements...’, *op. cit.*, p. 47.

CHAPTER 5

Breaking the deadlock.
The 1990s: parity and
parity democracy

The European Commission's Third Equal Opportunities Programme (1991-1995) offered opportunities to break the deadlock. It had been set up after proclamation of the Charter of Fundamental Rights of the European Union at the European Commission's Nice summit of 7 December 2000,²²⁸ which proved a great disappointment even if it did succeed in going beyond the domain of employment. The Third Programme's premise was that the main obstacle to successful equal opportunities policy was the under-representation of women in decision-making bodies. As had been made clear by all previous reports and efforts, to achieve long-lasting results it was necessary to attack all the factors that kept women in a position of inferiority: their position on the job market was simply a (faithful) reflection of that. The Commission accordingly created fifteen highly diverse networks, one of which was 'Women in Decision-making' in 1992. A team of experts from the Member States headed by Sabine de Béthune was given the task of studying the participation of women at all levels of decision-making – political, economic and social. Sabine de Béthune was a young lawyer of 34 who nevertheless had been involved with feminist issues for several years, since 1987 in the Committee for Social Emancipation and since February 1989 as Chair of *Vrouw en Maatschappij*, the women's group within the CVP party.²²⁹ *Vrouw en Maatschappij* had since its creation applied strong and constant pressure to gaining a

228 Jacques Delors first drew attention to the need for a social dimension in the European project at the European Congress of Unions in Stockholm in 1988. As an expert, Éliane Vogel-Polsky helped formulate the Recommendation requested by Jacques Delors. Ultimately, the Community's Charter of Fundamental Social Rights adopted by State and government leaders in Strasbourg on 9 December 1989 was restricted to an intergovernmental declaration of intent, owing to a UK veto. This Charter did however contain one point stating that 'equality of treatment between women and men must be assured', which formed the basis of the Third Programme.

229 Co-opted onto the Senate in 1995, Sabine de Béthune was a CVP Senator 'without family' (i.e. she was not directly linked to one of the party's families (*standen*)). Senator 1995-2008, Chair (1995-1999), Vice-president (1999-2003) and Member (2003-2008) of the Advisory Committee for Equal Opportunities of the Belgian Senate.

more balanced participation of women in political parties and elected assemblies. “*She was a highly organized woman, I immediately received letterhead, envelopes, cards... materials I’d never even thought about!*”, said a smiling Éliane Vogel-Polsky.²³⁰

The Decision-making network was to play a decisive role in spreading a new idea known as parity. France’s expert was none other than Françoise Gaspard, history teacher, *énarque*, but also politician, former socialist mayor of Dreux, and one of the leading figures in the debate on parity that had just begun in France. Éliane Vogel-Polsky was also very interested in this new idea, which she felt could be a response to the legal deadlocks that had been reached on the equality question.

A NEW CONCEPT: PARITY

Parity was initially a pragmatic demand, expressed by a few small political groups in France. It was turned into a theoretical concept in 1989 by the Council of Europe, in particular at the instigation of Claudette Apprill, an expert on the Steering Committee for Equality between Women and Men (CDEG) set up in 1979.²³¹ The events marking the bicentennial of the French Revolution, in particular the major colloquium in Toulouse, ‘Les femmes et la révolution française’, once again challenged the idea of the ‘universal citizen, neutral and asexual’, that had been presented by the Conventionnels to justify women’s political exclusion and later their civil incapacity. This really fired up Claudette Apprill, who proclaimed that to demand equal treatment of men and women on the basis of the universality of rights was the wrong approach. Everything needed revising, including the very idea of equality. On 6-7 November 1989 the CDEG organized a seminar in Strasbourg on ‘Gender Parity in Democracy. Forty years of Council of Europe activity’, at which ‘parity’ was defined for the first time: “No real democracy is possible... if the question of gender

230 Interview, 8/1/2007.

231 See: Apprill, C. ‘Les apports du Conseil de l’Europe au concept de parité’, *Manuel des ressources...*, *op. cit.*, pp. 89-99.

equality is not made a political precondition, falling within the constituent principles of the regime, precisely like universal suffrage or the separation of powers.”²³²

The new concept broke completely with the old idea of equality, insofar as the masculine was no longer the benchmark. Without ignoring the differences between men and women, or their multiple identities, the concept recognized only the characteristic that transcends the individual: we are born into this world as a boy or a girl and the two sexes have equal legitimacy. It is the recognition of an obvious fact: that humanity is split into sexes and that all diversity is channelled through this duality. Human beings are women or men.

Parity turned on its head the idea of equal opportunities, which was based on the notion that women needed to catch up, and excluded the quotas that trapped women in a minority position. Contrary to positive action, it was not a temporary measure that was supposed to disappear in due course, but a foundation on which democracy would be conceived and built, in terms of a couple (man and woman). The concept eliminated any idea of assimilation (*“for is it not both comical and despairing to hear the vocabulary of the policies concerning women: integrating 52% of the population, what does that mean? And integrate them into what?”*²³³). Parity got rid of the idea of catching up, even if the need for a ‘parity threshold’ was accepted (generally 40%) to enable democracy to function properly. After the seminar, the Council of Europe got down to the business of identifying the obstacles that could arise and the strategies for eliminating them.

The concept of parity spread quickly. In the early 1990s the UN, UNESCO and the Inter-Parliamentary Union all adopted it, given the persistent imbalances in political representation despite the theoretical equality of women and men with respect to the right to vote and stand for election. Seminars were organized in various European countries.

232 Sledziewski, É. (1989), in: *Rapport sur les idéaux démocratiques et les droits des femmes*, Strasbourg, 6-7 November 1989.

233 Vogel-Polsky, ‘Comment recourir au concept de Good Governance...’, *op. cit.*, p. 40.

In France the concept of parity inspired a women's movement that some had thought to be dead. It triggered a strong mobilisation, but split the feminists.²³⁴ Think-tanks were established; seminars debated the issues. In Lisbon, at the UN Seminar on 'Building Equality' (28-30 May 1992), Éliane Vogel-Polsky gave a lecture entitled 'Parity democracy: towards a new social contract'.²³⁵ She would remain in contact with Portuguese researchers, and later said that it was in Portugal she had made the biggest impact.²³⁶

This was the context in which the European Network of Experts on 'Women in Political, Economic and Social Decision-making' began its work. "*I participated as member for Belgium, Françoise Gaspard for France, Maria Stratigaki was secretary. Portugal's representative was outstanding too. Agnès Hubert (the Director of DG V) came to almost all our meetings... The group did an important job.*"²³⁷

The Network began by collecting quantitative data on women's participation in politics, which confirmed their virtual exclusion from centres of power. It then harmonized the results for a Europe-wide comparison. At the beginning of the 1990s the average presence of women in the parliaments of member states was barely 11%, and that only thanks to countries like Denmark (33%) and the Netherlands (30%). The European Parliament itself did not fare much better, with 19% women MEPs in 1989. In the Commission there was just one woman out of 18 commissioners in 1993. The Network adopted various strategies to try to correct this democratic deficit, proposing a *Guide to Parity* of best practices for promoting equal access of men and women to decision-making, based on the positive experiences of some countries.

234 For these divisions and the debate, see: Scott, J.W. (2005). *Parité! L'universel et la différence des sexes*, Paris: Albin Michel.

235 Vogel-Polsky, É. (1993). 'La démocratie paritaire vers un nouveau contrat social', *Actes du séminaire Construire l'égalité*, Cadernos Condição Feminina, n°39, Comissão para a Igualdade e para os Direitos das Mulheres, Lisbon, pp. 53-68.

236 Interview, 8/1/2007.

237 Interview, 8/1/2007.

On 2-3 November 1992 the Network held its first conference, the 'Women in Power' Summit in Athens, in association with the European Women's Lobby.²³⁸ This brought together more than 400 participants, raising the Network's profile and ensuring maximum exposure for the parity concept. After the conference, eighteen women who had held or continued to hold high positions (including Simone Veil,²³⁹ Miet Smet, Méлина Mercouri²⁴⁰ and Édith Cresson²⁴¹) adopted a Declaration drafted by the Network,²⁴² which can be summarized as follows: "Democracy imposes parity in the representation and administration of nations". Thus it was no longer just a question of equal treatment of men and women: the stakes had been raised to include democracy and its functioning.

Based on the commitments entered into in Athens, the Network organized a European seminar in Brussels on 14-15 October 1993.²⁴³ The purpose was to inform public opinion and to provide support to candidates in the European elections of June 1994. The Network pursued a three-point strategy based on research, action and communication. "*The group also produced guides to best practice (how to present yourself for election, etc.... things like that), because our group was not only composed of theoreticians; there were also active women (in particular the Dutch and British representatives).*"²⁴⁴ *And that was also very interesting.*"²⁴⁵

238 Conceived in 1987 and established at an assembly in Brussels on 21-22 September 1990, the European Women's Lobby is made up of representatives of women's NGOs and European organizations. It presents itself as a pressure group that launches awareness-raising campaigns supported by member organizations. The goal is to enable a political, economic and monetary Europe to become also a social Europe.

239 Simone Veil, magistrate, Auschwitz survivor, France's second female Minister (of Health), who proposed in 1974 an eponymous abortion bill. Between 1979 and 1982 she chaired the first European Parliament elected by universal suffrage. Minister of State under Balladur in 1993.

240 Méлина Mercouri, famous Greek actress, exiled in France during the Colonels' dictatorship, actively worked for a return to democracy. After the fall of the dictatorship she entered politics, becoming an MP in 1974 and Minister of Culture in 1981.

241 Édith Cresson, French politician, Mayor of Chatellerault from 1983, Minister several times before becoming France's first woman Prime Minister in May 1991 under the presidency of François Mitterrand. Her Government included five female Ministers. She was subsequently a European Commissioner.

242 Women's Studies Support Centre, *Newsletter* 4, Dec 1992-Jan 1993, pp. 51-53.

243 It would be followed by a conference in Dublin in 1995 and a second Summit in Rome (1995).

244 One such guide was titled *How to create male-female equilibrium in politics*.

245 Interview, 8/1/2007.

Athens Declaration (3 November 1992) on the occasion of the first European summit 'Women in Power'

Because	Formal and informal equality of women and men is a fundamental human right.
Because	Women represent more than half the population, and equality requires parity in the representation and administration of Nations.
Because	Women represent half the potential talent and skills of humanity, and their under-representation in decision-making is a loss for society as a whole.
Because	A balanced participation by women and men in decision-making would produce different ideas, values and styles of behaviour, suited to a fairer and more balanced world for all, both women and men.
Because	The under-representation of women in decision-making prevents full account being taken of the interests and needs of population as a whole.
We proclaim	the need to achieve a balanced distribution of public and political power between women and men.
We demand	equality of participation by women and men in public and political decision-making.
We emphasise	the need for substantial changes in the structure of decision-making in order to ensure such equality.

THE 1994 EUROPEAN ELECTIONS

The group developed a campaign to raise awareness among women ahead of the 1994 European elections in association with Saatchi and Saatchi (some of whose women executives were feminists interested in the issue).²⁴⁶ "The 'Vote for women' logo created by the Network for the occasion is now used throughout Europe and is regarded as

²⁴⁶ De Béthune, S. (1998). 'Le réseau européen Les femmes dans la prise de décision', in: H. Peemans-Poullet (dir.), *La démocratie à l'épreuve du féminisme*, Brussels: Université des Femmes, p. 258.

the logo of parity democracy.”²⁴⁷ The stakes were high, because the number of female elected MEPs remained disappointing. In 1979 women accounted for just 16% of MEPs. There were great disparities between countries; Belgium was at the bottom of the table with only 8% (out of 24 seats just two representatives: Antoinette Spaak,²⁴⁸ former Chair of the Front Démocratique des Francophones (FDF) and socialist Anne-Marie Lizin²⁴⁹). Women made no great progress in the European Parliament subsequently. Even with the high scores of Denmark and the Netherlands, women accounted for merely 17.2% and 19.3% of MEPs in 1984 and 1989 respectively.

In the European elections of 10 June 1994, Éliane Vogel-Polsky stood for the United Left, which adopted parity as part of its programme, alongside well-known figures like virologist Lise Thiry and philosopher Isabelle Stengers. Her candidacy was not an expression of late-blossoming political ambitions, but a logical extension of her commitment within the Network.

*“I was a candidate in the 1994 European elections... There was of course equal representation on the list. I held meetings in Charleroi, among the workers. I liked that a lot, it was exciting to talk about parity with them. Otherwise, I’d never been attracted to politics because I’d never wanted to give up my career or my research. And I knew all too well what male politicians were like... that world, it didn’t attract me in the least. If you want to do it well, it’s terribly consuming. There should obviously be women doing it, but it’s a matter of temperament.”*²⁵⁰

The Network’s hard work paid off as women made some progress in the European Parliament. After the election, one in four (25.7%)

247 Ibidem.

248 Antoinette Spaak, born 1928, daughter of Paul-Henri Spaak, MP for Brussels 1974-1995, MEP 1979-1984, 1991-1996, President of the Council of the French Community 1988-1992, first female Chair of the FDF party 1977-1982.

249 Anne-Marie Vanderspeeten (married name Lizin), born in Huy in 1949, economic sciences graduate, socialist politician who held a number of positions, Secretary of State to Europe ‘92 from 1988 to 1992, MEP 1979-1988, Chair of the Socialist Women’s International (1992), Chair of the National Council of French-speaking Women of Belgium (CFFB, 1996), Chair of the Senate.

250 Interview, 8/1/2007.

MEPs were women. Belgium distinguished itself with a spectacular advance in terms of women MEPs, from 8% in 1979 and 16% in 1984 and 1989, to 32% in 1994.²⁵¹ This success was due to a favourable climate established over many months, particularly by the ‘Vote for male-female balance’ campaign launched by Miet Smet (particular efforts were made in 1994, which was also a year of municipal and provincial elections) but it was also helped by measures to make the general public in Belgium more aware of the importance of Europe.

Thus Anne-Marie Lizin, appointed Secretary of State for Europe ‘92 in 1989, worked to raise awareness of the importance of the European project for women’s lives, and gave Éliane Vogel-Polsky the task of producing a book for the general public presenting in clear, accessible terms the development of Community law and its impact on women’s work. Éliane Vogel-Polsky drew attention to the instruments aimed at advancing equality and stressed “*an irreversible awareness of the role of women in the economy and in all sectors of social life*”. At the same time, she called on women to be vigilant and to get involved in European policy: “*They need to have a clear understanding of what is at stake for the future, involving themselves in centres of political decision-making and using their full weight to influence the direction taken by the powers that be... Women must build a Europe that is not solely economic and monetary, but that defends a social project in which there is room for social justice and the recognition and observance of equal opportunities for all citizens.*”²⁵²

The Network focused mainly on women’s place in politics, under the impetus of Françoise Gaspard, who persuaded Éliane Vogel-Polsky “*that if power-sharing was achieved, decisions could be taken in another direction. Viewpoints and agendas could be changed.*”²⁵³ But this was also a place of theoretical reflection and a laboratory of ideas and strategies. The final report, a weighty 238-page document that brought months of work to a close, included two parts by Éliane Vogel-Polsky: Part II, which provided a legal and institutional analysis of the concept of

251 Gubin, É. and L. Van Molle (dir.) (1998). *Femmes et politique en Belgique*, Brussels: Racine, pp. 72-77.

252 Vogel-Polsky, É. (s.d.). 1992. *Quelles perspectives pour les femmes?*, Brussels, pp. 15-16.

253 Interview, 8/1/2007.

European citizenship and Part IV, which summarized the projects for legal and institutional changes that would guarantee this citizenship for women.²⁵⁴

The 'Women in Decision-making' Network was not continued in the Fourth Equal Opportunities Programme (1996-2000), though a Council of Ministers' Recommendation of 1996, which referred to parity democracy, prolonged its influence. Somewhat disappointed (she had hoped for a Directive), Éliane Vogel-Polsky concluded: "*But that was not possible. It became – which was a good thing after all – the Council of Ministers' Recommendation of December 1996 on the balanced representation of women and men in political, economic and social decision-making.*"²⁵⁵ "*That's very important because a Recommendation, even a non-binding one, is nevertheless an instrument of Community law that creates its own impetus. This one called for regular checks on its implementation by the Member States and Community bodies. The first application report was published in 2001.*"²⁵⁶

SPREADING THE PARITY CONCEPT

Parity was the subject of lively debate in France, where it even split the feminists. But in Belgium it was accepted without too much trouble, though implemented in the form of quotas, which was not the original intention.

Belgium is essentially a country of compromise and quotas. Its political world has developed adroit balances at all levels with constant negotiations, forming a system that political scientists call 'consociativism'. While there was clearly more resistance to 'gender quotas' than to other quotas, they were imposed on the political parties in the course

254 *Les femmes et la citoyenneté européenne. Réseau Les femmes dans la prise de décision politique, économique et sociale*, European Commission report 1994 V/233/94-FR; Vogel-Polsky, É., part 2, 'La citoyenneté européenne et le Traité de l'Union', pp. 47-101, and part 4, 'Les femmes et la citoyenneté européenne', pp. 173-238.

255 Interview, 8/1/2007.

256 'Agir pour le droit des femmes...', *op. cit.*, p. 146.

of the 1980s.²⁵⁷ On 24 May 1994 the so-called Smet-Tobback Law was passed, banning party election lists at any level with more than two-thirds of candidates of the same sex. Essentially this meant that all lists should have at least one-third women or would be invalid. This law was the only one of its kind in Europe. Admittedly, the legislator made it less explosive by dropping the demand that men and women candidates should alternate in the lists.

Thus many in Belgium saw parity as implying a 50/50 quota, making it yet another anti-discrimination instrument of the ‘catching-up’ kind. That approach was just what Éliane Vogel-Polsky objected to: if equality is understood to be a ‘50/50 quota’, then in spite of the progress made, such equality was still “*incidental in character and constantly needing to be legitimized, justified and won back*”.²⁵⁸

She constantly endeavoured to get people to understand that parity was the opposite of quotas. This was the period of her international seminars on parity democracy given at the ULB as part of the Women’s Studies Support Centre, and of her articles on the subject. One of the best historians specialized in women’s history, the American Joan W. Scott, notes that parity became a subject of study “especially thanks to the theoretical contributions of academics Éliane Vogel-Polsky and Élisabeth Sledziewski”.²⁵⁹

When the concept of parity democracy was introduced, Éliane Vogel-Polsky’s two battlegrounds – women’s rights and the fight for a social Europe – suddenly became one. The Maastricht Treaty (7 February 1992) turned the European Union into a European Community that acknowledged its political vocation. EC competence was extended to new areas, such as education, culture and public health. A social chapter was attached to the Treaty (though not adopted by the UK). The Maastricht Treaty provided for its own revision in order to improve the effectiveness of Community institutions, in principle consolidat-

257 See: Gubin et Van Molle, *Femmes et politique en Belgique...*, op. cit.

258 ‘Démocratie, femmes et citoyenneté européenne’, *Sextant* (7), 1997, Brussels: GIEF-ULB, p. 26.

259 Scott, *Parité! L’universel et la différence des sexes...*, op. cit., p. 129.

ing its social dimension and strengthening the protection of fundamental rights, so it is no surprise that Éliane Vogel-Polsky worked intensely during this period. She was on the front line at every moment, whether the issue was parity democracy, the development of feminist studies or the defence of women's rights. It is difficult to classify her work by subject; she felt that everything was interconnected. She participated in numerous intergovernmental conferences, and published a mountain of material. Between 1994 and 2000, she tirelessly presented her ideas at colloquiums, study days and workshops, and in scientific and popular articles.²⁶⁰

Summarizing her 'feminist rereading' of Community law,²⁶¹ she stressed how parity was structured around a general vision of democracy, for both men and women. *"In Europe, since the emergence of representative democracies, one can only say that there is a long tradition of excluding women and their interests from public life. This situation is not just a serious attack on women's political rights but also constitutes an enormous waste of human resources that affects the whole of society... Women's access to decision-making stems from a fundamental principle, recognized internationally and nationally, uncontested in theory but nevertheless still awaiting its application in practice. Though there is much talk of the 'democratic deficit' in Europe, only the feminists have denounced the real seizure of political power by men in western democracies. On the other hand, the phenomenon does not offend public opinion and it has never been seen as a central factor in the crisis our democracies are experiencing."*²⁶² *"To address the issue of women's rights in 21st century, which is almost upon us, we must first assess the incompleteness and singularity of these rights. We need to admit that the constitution of a truly shared space for men and women, a space in which equal rights and equal opportunities preserve the different identities, has not yet been achieved... Especially in the public and socio-economic spheres, the dominant positions continue to be occupied exclusively or predominantly by men and the devalued positions by women. And the fact that this continues cannot be understood without reference to the third sphere, the private sphere*

260 The aim here is not a detailed analysis. See the appended bibliography, in particular Vogel-Polsky, É. (1996). 'Genre et droit: les enjeux de la parité', *Cahiers du GEDISST* (117), Paris: IRESO-CNRS, pp. 11-31.

261 Vogel-Polsky, É. (1994). 'La citoyenneté européenne et les femmes', *Cahiers du GRIF*, October, pp. 9-43.

262 Idem, p. 30.

OPEN FORUM

du Conseil de l'Europe

Lundi 10 avril 1995

13 h 30, salle 5

Sous la présidence de M. Peter Leuprecht

Exposé de

Madame Eliane Vogel-Polsky

Professeur à l'Université Libre de Bruxelles, Belgique

Ancienne Conseillère en Egalité auprès du Secrétaire Général

« La démocratie paritaire »

Débat

Pour tous renseignements, s'adresser à la Mission d'études et de programmation. Tél. 88 41 20 72

Flyer publicising Éliane Vogel-Polsky's conference on parity democracy

of the family, which does not have the same importance, ideologically or practically, for men and for women."²⁶³

Éliane Vogel-Polsky stressed that gender equality was not always recognized as a fundamental right in European treaties. She saw that as a consequence of programmed inequality. In addition, insofar as the elimination of discrimination is not seen to derive from a fundamental right (the equality of men and women), it remains dependent on the assessment of judges, who are regarded as authorities in the matter. Her criticism also drew on the lack of logic that equates the prohibition of sex discrimination with discrimination based on colour, religion, political affiliation, race and nationality, thus reducing gender to an accidental variable, whereas it is actually an essential fact, a concrete expression of the duality of the human species. *"In fact, women do not constitute a socio-legal category worthy of interest or protection; women make up half the human race, the human species, and are entitled to equal status with men as a principal, autonomous and subjective right."*²⁶⁴

Éliane Vogel-Polsky's main goal had become the inclusion of the fundamental right of men and women to equality in the revised Maastricht Treaty.²⁶⁵ She also used the media to get her message across, writing a piece with Gisèle Halimi²⁶⁶ for *Le Monde* of 4 May 1996 to denounce the continuing virtual exclusion of women from European political citizenship. In an article for *Le Monde Diplomatique* she denounced the collective hypocrisy of States that were content to accept the principle of equality without providing any means of implementing it. Europe continued to be her preferred subject area: *"The women of Europe must first and foremost attack the Community institutions so as to reorient democracy in their respective countries, insofar as these institutions are subject to*

263 Idem, p. 31.

264 Idem, p. 35.

265 Idem, p. 36.

266 Gisèle Halimi, lawyer, born in Tunisia, known for her efforts in the war in Algeria and the Burgos case. In 1971 she founded 'Choisir la Cause des Femmes', an association defending those who were being prosecuted in abortion cases. She won the Bobigny case, in which she defended a mother charged with having assisted her daughter, a minor, to get an abortion. Elected to the National Assembly and Ambassador to UNESCO, she authored the 1997 report on parity between men and women in politics. Novelist and author of two essays, *La cause des femmes* (1973) and *La nouvelle cause des femmes* (1997).

treaties and directives emanating from Brussels. The recent appearance of the parity concept in the political domain gives a new impulse to the creation of a European citizenship that is neither passive nor virtual...."²⁶⁷ Just a glance at her many publications reveals the determination with which she defended the causes she adopted.

CONFRONTATIONS IN THE FIELD

While parity caused less of a stir in Belgium than in France, the country's feminists were not unanimous in accepting the concept. Some opposed Éliane Vogel-Polsky on the grounds that preference should be given to representatives who defended women's causes, regardless of their gender. Opinions were divided at Université des Femmes: "*I remember often coming up against Françoise Collin and Hedwige Peemans (especially Hedwige), who felt that it would be better to vote for an intelligent man than for a stupid women. But that isn't the issue, I told them. That's not the problem.*"²⁶⁸ By placing the problem in the context of *realpolitik*,²⁶⁹ the historian Hedwige Peemans-Poullet gave parity an additional dimension of proportionality and an electoral strategy, which was exactly what Éliane Vogel-Polsky refuted. But that was also the position taken by the political parties. The Greens warmly applauded the principle of parity. The Christian Democrats, especially *Vrouw en Maatschappij*, remained fundamentally attached to quotas, which had already proved themselves in the system of 'standen' (political families). Like their French colleagues, the Belgian socialists adopted parity; Laurette Onkelinx,²⁷⁰ Minister of Employment and Labour, who was responsible for equal opportunities, viewed parity as "a logical democratic issue" and declared

267 'Faire de l'Union un levier pour l'égalité des sexes', *Le Monde diplomatique* 43, July 1996, pp. 6-7.

268 Interview, 8/1/2007.

269 See: Peemans-Poullet, H. (2000). 'Plutôt 10% de féministes progressistes que 50% de femmes', *Mensuel Réflexions*, February, Dossier No 42, p.19.

270 Laurette Onkelinx, lawyer, born in Ougrée in 1958, Socialist MP since 1987. Vice-Chair of the Chamber 1991-1992, Minister of Social Integration, Public Health and the Environment 1992-1993, Minister-president of the French Community in 1993, Federal Minister of Labour and Social Integration 1999-2003, Minister of Justice and Deputy Prime Minister 2003-2007, Minister of Social Affairs and Health and Deputy Prime Minister 2008.

herself ready to take restrictive measures.²⁷¹ Liberal women were split; the French-speakers were opposed to any restrictive measure, which they felt would be humiliating, judging that an election should be based on personal merit. After having been in favour of parity at one time, women in the Dutch-speaking Liberal Party VLD ultimately adopted this position too. In the political world as a whole, the parity debate was seldom based on ideas: more often than not, it was shaped by electoral considerations. Nevertheless, Éliane Vogel-Polsky, unwilling to rein in her efforts to clarify the concept, was incessantly taking part in colloquiums, giving lectures and producing publications.

On 23 May 1997, the Network of Parliamentary Committees on Equal Opportunities for Women and Men in the European Union (NCEO) was founded on the initiative of the Advisory Committee for Equal Opportunities of the Belgian Senate, chaired by Sabine de Béthune. Éliane Vogel-Polsky was immediately involved.²⁷² The NCEO was a cooperation network supported by the European Commission as part of the Fourth Action Programme (1996-2000). At the first conference Éliane Vogel-Polsky pointed out the paradox of still having to establish such bodies in democratic countries – which showed how much “*the achievement of equality of women and men in all spheres of life in society is an ongoing Sisyphean task for which the relevant networks, mechanisms and knowledge remain largely unexplored*”.²⁷³ On this occasion she analysed the paths offered by the new political culture (the concepts of mainstreaming, empowerment and governance²⁷⁴) that women, she said, had to make their own to render the gender dimension effective. In passing, she was unable to resist the temptation to emphasise the persistence of such

271 The Smet-Tobback Law (1994) was amended on her initiative. Now women and men had to be equally represented on the lists, in a system of alternation (parity acts of June and July 2002). The equality of women and men was laid down in Article 10 of the revised Constitution of February 2002. And that December Laurette Onkelinx founded the Institute for the Equality of Women and Men.

272 See her contributions in: *Répertoire des Commissions parlementaires chargées de la politique de l'égalité des chances des femmes et des hommes et au parlement européen*, Brussels, June 1997, pp. 40-81; *Rapport. Première Conférence des Commissions parlementaires chargées de la politique de l'égalité des chances des femmes et des hommes et au parlement européen*, Brussels, 1997, pp. 19-26 and pp. 31-37.

273 *Rapport. Première conférence...*, op. cit., p. 20.

274 For a detailed treatment, see: Vogel-Polsky, É. (s.d.). 'Comment recourir au concept de Good Governance pour garantir la participation égale des femmes au pouvoir?', *Le pouvoir en force. Actes du colloque de Bruxelles, 1^{er} octobre 1998*, Brussels: MET, pp. 39-54.

‘scandals’ as the total absence of women in the EC Court of Justice, which she had already condemned earlier in very strong terms: *“How can the fact that not a single woman has a seat in this supreme court be down to coincidence or the greater competence of men, when women have been studying law since the start of the century and now occupy every legal position?... How is it that not one of the 15 governments of our civilised countries that respect the equality of citizens feels it essential to present qualified female candidates for this position? But once again, which journalist, which political scientist, which legal columnist would feel it useful or necessary to draw attention to this state of affairs? Who is shocked by this?”*²⁷⁵

NEW DISAPPOINTMENTS

The revision of the Maastricht Treaty gave Éliane Vogel-Polsky some hope that the three proposals she held dear – recognition of the fundamental right to equality of women and men, the overhaul of the Union’s consultative bodies and organs to ensure equal representation and the enrichment of the concept of European citizenship – would be recognized. But although it did contain some innovations the Amsterdam Treaty (1999) did not live up to her expectations. It continued to see women as a special group requiring special policies, and even the new approach it adopted – mainstreaming – was questionable. *“[Mainstreaming] means the integration of gender equality policy through its immersion in all Union policies. So everyone’s congratulating themselves because for the first time in the history of the European Community and European Union, Article 2 introduces the goal of equality... but it concerns the principle of equality and not the right to equality and that is very different: few people seem to make that distinction.”* In fact, the Treaty did not provide any policies to achieve this equality: *“which means that if there is not a single word on policy to achieve equality, no director-general will be responsible for it, no specific budget will be devoted to it, no ways or means will be employed. On the contrary, there is only a very short paragraph 2 in this Article 5 devoted to mainstreaming... In reality, the Amsterdam Treaty downgrades all the fundamental rights (particularly the fundamental economic and social rights)*

275 Vogel-Polsky, É. (1996). ‘Les trous noirs de l’univers des medias’, *Chronique féministe* (58), p. 6.

to simple principles, and there is no recognition of the fundamental right to equality of women and men.”²⁷⁶

HISTORY REPEATS ITSELF...

There was to be another disappointment in her final expertise assignment in 2006 with respect to working out a European charter on the equality of women and men for local authorities at municipal and regional level.

This time it was Éliane Vogel-Polsky's hope that by working “*with the grassroots*” the right to equality of women and men could be put at the top of the agenda, something that had not been achieved until then. The text adopted in May 2006 by the Council of European Municipalities and Regions (CEMR) fulfilled her expectations completely.

“(It) has managed to go very far in its recommendations on policy, strategy and action in favour of the principle of equality of women and men... it does not content itself with establishing principles and rights but has provided, in every field it addressed, a list of resources and working methods to ensure the practical and concrete achievement of equality. It addresses the issue of the democratic responsibility of elected representatives of both sexes at regional and municipal level in terms of gender equality. In short, this Charter is without doubt the most contemporary and most complete of the innumerable international texts dealing with the equality of women and men.

But the Charter is in no way binding.

It has been impossible to achieve in Part IV on commitments anything that binds the regional and municipality authorities that signed the Charter... The concept of gradual equalization always triumphed, à la carte, in accordance with the political or financial opportunities. How many times have I been told that my proposals were unrealistic, that they would not be accepted,

276 Interview with Éliane Vogel-Polsky by Lydia Zaïd, Brussels, May 1999 (www.eurit.it).

that they would need to be tempered or the Charter would not be signed by a single local authority!

But signing a text with no binding force commits you to nothing, it's virtually useless. This has been one of the most painful experiences in my career as an expert. In good faith I believed that by restricting our efforts to domains of regional and local competence, in the area of daily life, housing, health, or-

ganization of public transport, social assistance, schools, sports fields, houses or refuge centres for battered women, violence, police training, urban planning... we would be able to obtain precise commitments on gender policy and trigger a dynamic of equality in the European Union.



*That has proved impossible and we all need to learn from it. The law cannot change society, morals, prejudices, the division of power, mythology, gender relations, with a wave of a magic wand; but it can be an important factor in the transformation of society by changing mentalities and establishing a legal standard."*²⁷⁷

Social Europe, one of Éliane Vogel-Polsky's main subjects

²⁷⁷ Vogel-Polsky, É., 'Comment la femme s'intègre-t-elle dans la norme de droit?'; course given at the Université des Femmes on 29 September 2006.

| Conclusions

Éliane Vogel-Polsky's feminist activism is undisputed. It is part of her personality, expressed in her life and her battles. But it is not everything. When asked about her priorities she answers without hesitation: social Europe. Her desire for equality of men and women is part of a wider goal of social justice, based on the EU body of law as it is currently taking shape. From this perspective, there is certainly enough material for a second biography.

Though this aspect of her research has been given little space in these pages²⁷⁸ its scale and importance should not be overlooked. To establish a legal base for Community law able to guarantee basic social protection for all EU citizens, Éliane Vogel-Polsky has since 1961 been using international law and all major international agreements that most EU Member States adhere to and that they have transposed into their national law. This is a shared foundation that can be built upon. *“When examining a series of instruments that relate to the same family of rights and that are adopted by various organizations, you can only observe how these different texts complement each other; thus adding a new aspect to the interdependency principle. Clearly, if texts are closely akin to each other in terms of purpose and related standards, it is appropriate to apply them as a coherent and interdependent whole.”*²⁷⁹

Her activities in defence of a social Europe were particularly intense at times, as when the Community Social Charter was drawn up. She participated in that project and its relative failure caused her much reflection. Faced with an EU that puts increasing emphasis on the market economy, she has never failed to stress the growing gulf with

278 See the bibliography for relevant publications.

279 Vogel-Polsky, É. (1989), ‘L’Acte unique ouvre-t-il l’espace social européen?’, *Droit social* (2), February, p. 186.



*Éliane Vogel-Polsky on
a mission in Wash-
ington (Ford Founda-
tion),
1981*

the social Europe she has always defended. She sounded the alarm on many occasions. The Maastricht Treaty inspired her to express serious concerns, due to the “*oppressive bareness*” of what she called the Treaty’s “*social prosthesis*”. From the Maastricht Treaty (1992) to the Amsterdam Treaty (1999), she attended intergovernmental negotiations, and the number of articles, seminars, meetings and expert assignments proliferated. Several important publications express her quest for a social Europe, which was her battleground in the 1990s together with parity democracy. There were many disappointments, and she did not mince her words when warning against a model of EU society detached from everything “*that constitutes the foundation of the welfare state and the specific character of the European countries in which the market economy has always been counterbalanced by a very profound organized solidarity*”.²⁸⁰

280 Vogel-Polsky, É. (1994), ‘Le modèle européen de société’, *En quête d’Europe. Les carrefours de la science et de la culture*, Rennes, p. 92. These are meetings of intellectuals to debate the major questions of Europe, which have been held since 1992 on the initiative of Jacques Delors. Éliane Vogel-Polsky represented Belgium in Lausanne in September 1994 together with Françoise Thijs-Clément (Rector of the ULB) and the jurist Marie-Thérèse Meulders (UCL).



Éliane Vogel-Polsky, on a mission for the European Parliament in South Africa, November 1986

But we are concerned with her feminist activism here: an activism born of the indignation, acknowledged on many occasions, felt at the decision of the EU Council of Ministers in 1961, which simply skirted around the application of Article 119 of the Rome Treaty. Her activism became tougher and more solid during the Herstal strike of 1966.

From that moment on she worked constantly for women's rights. She started with labour problems and equal pay, but soon broadened her gaze to include social and political interests too. Labour problems are not restricted to economics after all. They are also intimately linked to social exclusion and social recognition. The issue of pay is not just about income; work *"directly guarantees the economic security (of workers) and, by the mechanisms of tax redistribution or social security, it also indirectly guarantees the protection of the non-working population. It has a central place in the organization of our society... at this time, all forms of social exclusion have a common dimension, the loss of work... That goes for young people, old people, immigrants, the disabled, women. The suffering that social exclusion creates is not solely economic. It does not only comprise a loss of*

income: above all, it leads to a loss of social status. From that moment you are no longer in charge of your own destiny. You become a passive citizen, depending on assistance, a second-class citizen."²⁸¹

She gradually discovered that legal standards contained hidden traps that were only revealed in the field. Her shock at the Herstal strike in 1966 was a turning point, as she faced up to the reality of the union leaders' attitude: *"Experience, practice at the bar and the discovery of the workers' situation, the working conditions of women employees in 1960, attendance of the unions' women's committees, their impotence and ghettoisation within the organization, made me aware of the pitfalls of contemporary law in regard to women."*²⁸² The main pitfalls, as she repeated on many occasions, are rules that apply specifically to women (often under the guise of 'protection') and the neutrality of a standard that turns out to be disadvantageous to women as interpreted in practice.

She also warned against formulation pitfalls. Equality between men and women is not the same as the right to equality of men and women. Formulating the ban on discrimination in general terms dilutes and eclipses the singular nature of sexual discrimination. She also emphasised technical pitfalls, the perverse effects of the introduction of equality policies. That is the case when equalizing situations in a context qualified as neutral and abstract, when society is actually unequal and governed by prejudice and stereotype.

She is very interested in the question of representation: *L'institution imaginaire de la société* (Le Seuil, 1975) by Cornelius Castoriadis left a deep mark on her. *"Castoriadis made a strong impression on me, and had a great influence on my way of thinking. Not directly – Castoriadis mentions women very little – but what appealed to me in his writings was the way he showed how in a society there are obviously laws, institutions and standards that are functional. Society must be structured and it must function. But*

281 Vogel-Polsky, 'Le modèle européen de société...', *op. cit.*, p. 77.

282 Vogel-Polsky, É., 'Comment la femme s'intègre-t-elle dans la norme de droit?', course given at the Université des Femmes on 29 September 2006.

there is also what he calls the imaginary institution of society, which comprises everything that is irrational in it (religion, myths, rites...).

*And what is more irrational in a society than to think that half of it is inferior to the other half? When in fact this half (its women) is absolutely indispensable to the reproduction of the species? And how does one explain that in all societies, whatever the system, women are always on the losing side? And, lastly, how can this irrationality be perpetuated in societies so different in terms of time and space? It's fascinating... but there's no answer."*²⁸³

That's why she very quickly understood that "the law is not enough". Formal equality is not the same as actual equality. To achieve that, you must "*work simultaneously in all domains. Specific battles are often evoked; working for a change of mentality, the economic aspect, women's professional integration... But in fact, it's not enough to work in one of these domains. Because there are not, as is so often said, just two separate spheres – the private and the political – there is a third, the economic and social, which overlaps and influences the other two. It's an illusion to believe that working in a single domain can change the world.*"²⁸⁴

The battles she fought on all fronts for fifty years (in the fields of legal doctrine, theory, jurisprudence, expertise) certainly achieved results, but not those she had hoped for. "*I am a little tired of repeating, year after year, the dysfunctions in the integration in law of women as equals of men.*" In 2007 she observed the continued lack of "*overall implementation of the right to equality of women and men in our Western legal systems... The legal construction of gender equality has taken the form of successive, fragmentary approaches.*"²⁸⁵

As women's studies developed in the 1980s and 1990s (and she played an active role in their expansion) and provided her with new concepts, solutions were at last presented to resolve the previous contradictions. The concept of gender permitted the deconstruction of inequalities

283 Interview, 8/1/2007.

284 Interview, 8/1/2007.

285 Vogel-Polsky, É., 'Comment la femme s'intègre-t-elle dans la norme de droit?', course given at the Université des Femmes on 29 September 2006.

that had until then been considered ‘natural’ and so legitimate. The concept of *parity*, which Éliane Vogel-Polsky had helped formulate since the early 1990s, finally provided a way out of the previous impasses. At the same time, this made her fundamentally question the right to equality.

“I asked myself why we had always failed to achieve our aims. And when we did win, why the effects were always so limited? When a woman takes a case of discrimination to court, even if she wins, the Court of Justice will feel that privileging this woman because she is a woman attacks a man’s individual rights. That’s the pitfall of the individual right to equality: reverse discrimination. As long as we consider the right to equality as an individual right we are in a stalemate. Because when we demand its application, we unavoidably harm another individual right. So you have to consider that the right to equality is a third-generation right (as opposed to first- and second-generation rights), and that it is a collective and individual right. The purpose of democracy is to guarantee the entirety of citizens’ rights, and it is in this general interest that individual sacrifices are made.

This right to equality can be justified not by representing women because they are women, not because they must be represented in institutions, parliaments or companies, but because that is how we see democracy, as guaranteeing the rights of all individuals... We should fight by invoking not women’s rights but the interests of democracy itself. I have come to the conclusion that the right to equality must be recognized as a collective right, for otherwise equality will remain a principle and hence a dead letter.”²⁸⁶

As long as this right to equality of women and men is not recognized as a fundamental right, both collective and individual, the legal systems will continue to oppose measures to achieve equality “*with formulations and techniques that are in themselves ineffective*”.²⁸⁷ These practices can still be observed today, and among the failings she emphasises, “*the most serious is the disappearance of the obligation to guarantee equality by*

²⁸⁶ Interview, 8/1/2007.

²⁸⁷ Vogel-Polsky, É., ‘Comment la femme s’intègre-t-elle dans la norme de droit?’, course given at the Université des Femmes on 29 September 2006.

replacing it in practice with a process of equalization. Even in the new concepts introduced by the European Union, such as empowerment of women or mainstreaming, the equalization approach remains supreme."²⁸⁸ Thus all the Community programmes, including the latest ones, endeavour to promote women from an equalization perspective. Mainstreaming is a procedure, an interpretation that cannot replace actual rights.

To explain the ever-recurring difficulties, Éliane Vogel-Polsky pointed out the absence of political will – a criticism she formulated as early as the 1970s. An EC Regulation is the only instrument of law-making directly applicable in all Member States, but it is never used with respect to gender equality (with one exception, relating to development cooperation). We have to make do with Recommendations and Opinions, that are in no way binding. Today, *"no text of Community law, not even the draft of the Constitution, permits us to claim the direct applicability (as is possible within the framework of Article 119) of a right to the political, economic and social equality of women and men. From the day that our governments, our parliaments, our legal bodies are finally persuaded that the right to equality of women and men – a founding value of democracy – requires them to arrive at a result (and not a process of one-off, case-by-case equalization), and that they are politically responsible for bringing it about, a big step forward will have been taken in the effective establishment of gender equality."*²⁸⁹

After our interviews with Éliane Vogel-Polky we were left pondering what her most striking characteristics might be. We identified two: her clear thinking (she is methodical) and her unfailing capacity for indignation.

Her thinking is lucid, pessimistic and proactive. Lucid because she clearly sees what the problems are; pessimistic because the frequent disappointments have made her emphasise the shortcomings and the fragility of victories, the possibility of it all being taken away; but proactive because she always finds a way to bounce back. Éliane Vogel-Polsky always looks for a 'seed' from which to grow her argument.

288 Idem.

289 Idem.

*“There must be a seed in the Treaty that you can start from.”*²⁹⁰ As in the Rome Treaty, whose Article 119 was the touchstone that could serve to enlarge a very slender social chapter. Like the Maastricht Treaty, which *“introduces for the first time the idea of European citizenship, in an altogether unfortunate, incomplete and insufficient way. But this mention of European citizenship in a Treaty of the Union enabled activists and interest groups to act and have rights recognized.”*²⁹¹ This balancing act between criticisms and proposals is clearly apparent in her publications, and gives her approach coherence and pugnacity, *“because I have worked doggedly and I have opened many doors,”*²⁹² she acknowledges. Éliane Vogel-Polsky does not let go easily; the Defrenne affairs are testimony to that.

Another striking characteristic is her unfailing capacity for indignation. She still reacts strongly when reminded of events in the past – sometimes a long time in the past – that have outraged or shocked her. She does not pardon, unless grudgingly, the “treachery of the authorities”, the “conjuring tricks” of governments, the cowardice or weaknesses of the Court of Justice in bowing to pressure, or the shortcoming of treaties to the detriment of women or other disadvantaged groups.

What better way to conclude than to quote her at length?

“My great discovery during my long career is returning to law and realising that we were wrong from the start. The right to equality is not workable.

Why? Because if you start with the idea that the right to equality is a fundamental right (which we said), you are wrong. It's not a fundamental right; all that the States and the international community are willing to recognize is that equality is a principle. A principle serves to interpret a legal standard, but it is not a right. I have tried to show that when you recognize a principle, actually you take on no obligation whatsoever.

290 ‘Agir pour le droit des femmes...’, *op. cit.*, p. 146.

291 Ibidem.

292 Interview, 8/1/2007.

Sometimes I say to myself, if I could start over again... I travelled a lot in the last few years of my career, going from colloquium to colloquium. It was very tough because I had plenty of teaching commitments. At the end of the day, you expend an enormous amount of energy, and what is a colloquium? It takes up so much time, time you cannot devote to writing books.

If I ever find the time, I would love to write a book that I would call – perhaps – Theory and Limits. Discovering the limits, especially concretely, every time you are slapped in the face or a case fizzles out... it's tough, but it's a way to go forward.”²⁹³

293 Interview, 8/1/2007.

| Annexes

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Éliane Vogel-Polsky

A WOMAN OF CONVICTION

The strike of women workers from February to May 1966 at FN Herstal – the national armaments factory – raised awareness that equal pay was still not a reality, despite its inclusion in the Rome Treaty (1957), which had been ratified by Belgium in 1958.

That strike sparked off Éliane Vogel-Polsky's feminist commitment. Her first battle was equal pay for women and men. She would subsequently focus her efforts on equal opportunities policy, political equality and, in the 1990s, gender parity.

For some fifty years she has fought on several different fronts: in key legal cases that have left their mark on Community law, in scientific studies and research, and as an expert in European and international bodies.

This book endeavours to shed new light on the battles fought by this woman of conviction and also on their background, which included legislation on gender equality, the laborious development of women's studies, the limits of equal opportunities policies and the introduction of parity democracy.