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## Championing the Rights of Women

A study of Éliane Vogel-Polsky's quest for gender equality in the European integration process

Bachelor's project in European Studies and Foreign Languages  
Supervisor: Lise Rye

May 2019



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## 1. INTRODUCTION

It is well known that the European integration process and the course the European continent has taken, have been shaped and greatly influenced by the “founding fathers” of Europe<sup>1</sup>. There are, however, some aspects the founding fathers did not draw attention to – namely gender equality. It was not until female activists engaged that women’s rights were effectively called upon. Belgian lawyer Éliane Vogel-Polsky is one of these essential activists. Therefore, this thesis will investigate the relation between Vogel-Polsky and gender equality in the integration process. How did Éliane Vogel-Polsky contribute to gender equality within the European Union (EU)?

In modern Europe, one of the priorities of the European Commission is to close the gender gap within the member states of the European Union (European Commission, n.d.). The EU has taken action to fight pay discrimination within the Union, and works to promote gender equality across the world. The European Union is today one of the leading promoting actors of gender equality, but this is not a matter of course. Only a few decades ago, the reality was drastically different. Until the late 1970s, women’s rights and gender equality was not on the EU political agenda. The change that occurred cannot be understood without emphasizing the importance of the female activists.

Article 119 stated that men and women should receive equal pay for equal work (Treaty of Rome, Art. 119). Éliane Vogel-Polsky was the first lawyer to handle a lawsuit based on the equal pay provisions of Article 119. She viewed Article 119 as a tool that could be used to expand women’s labor rights. This she proved through two court cases – Defrenne I and II – where her client sued the Belgian national airline, Sabena, for discrimination based on gender. The judgement of the second court case extended the scope of Article 119.

This bachelor thesis examines the integration process from a female perspective. The story of the “founding fathers” and how they created a new way of cooperation is familiar. Instead of studying what the “men of Europe” have done for European integration, I wanted to research what has been done for – and by – the women of Europe. The fight for – and the implementation of – gender equality has resulted in significant changes, both for women, men, the society and

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<sup>1</sup> Jean Monnet, Robert Schuman, Konrad Adenauer, Winston Churchill, Altiero Spinelli, Paul-Henri Spaak, Sicco Mansholt, Walter Hallestein, Alcide de Gaspari, Johan Willem Beyen and Joseph Bech are often referred to as the founding fathers of the European Union (European Commission 2012).

European cooperation. This thesis sets out to examine an initial step in that process. By examining how Vogel-Polsky eventually succeeded in court, the thesis also contributes to the literature on the driving forces of the integration<sup>2</sup>. The argument presented is that Vogel-Polsky contributed to a norm change within the European Community, and that she, as a result, may be characterized as a pioneer in the history of European integration.

## 2. THEORY – CONSTRUCTIVISM

The thesis draws on the theory of constructivism. Constructivists argue that ideas, norms and identities form the structure of society (Saurugger 2014:145). The theory is applicable in this study, as it will examine the ideas and norms present in the 1970s, in regards to gender equality. This part of the thesis introduces and discusses the theoretical framework that has informed the subsequent analysis.

The theory of constructivism is based on the concept of social reality, and that social reality is under continuous development through changing interaction between agents (Saurugger 2014:146). Originally, the theory emerged as a critique of realist theory, as constructivists wanted to draw attention to neglected factors of international relations, such as ideas, identity and culture. Said factors and their influence, according to constructivists, are essential for understanding the reality of society.

Constructivists believe that interests will change concurrently with agents' altering understanding of the world, and the changing of their priorities (Saurugger 2014:146). The individual is therefore more important than the state. The theory of constructivism argues that the individual's thoughts, ideas and interest will shape further development. The political elite is considered as the most significant actor, as they actively can challenge and change the structure of identity and interests (Grieco, Ikenberry & Mastanduno 2015:93).

Alexander Wendt, one of the developers of the theory of constructivism, argues that world politics is socially constructed (1995:71). Wendt elaborates his statement by arguing that the structures of international politics are social rather than material, and that these social structures play a significant role in shaping actors' interests and identities. The theory of constructivism is however not used exclusively on international politics – it is applicable to several levels and

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<sup>2</sup> Theories presenting driving forces of the European integration include e.g.; neofunctionalism; intergovernmentalism and; multi-level governance (Saurugger 2014).

areas, such as the European level or the process of increased gender equality within the European integration process.

There are three notions within the field of constructivism; the logic of appropriateness, the logic of consequentialism, and the logic of arguing (Saurugger 2014:147). The logic of arguing suggests that the processes of argumentation and persuasion clearly affect the social interaction (Risse 2000:1). Risse states that “human actors engage in truth seeking with the aim of reaching a mutual understanding based on reasoned consensus” (2000:2). He further claims that arguing is a necessary step in a negotiating process, and that argumentation is relevant for problem solving. It is necessary for actors who engage in a truth-seeking discourse, to have an open mind towards new inputs. They therefore have to be prepared to change their own views, interests and identities (Risse 2000:2). In the case of Éliane Vogel-Polsky and the impact she has had on gender equality in the European integration process, the logic of arguing will be examined. This study sets out to investigate the relation between Vogel-Polsky and gender equality in the European integration process, mainly through the two Defrenne cases. Therefore, the strategies and arguments Vogel-Polsky used, especially in the second case, will be analyzed in the light of the logic of arguing.

### 3. METHOD – HISTORICAL RESEARCH

The aim of the thesis is to examine the relation between Éliane Vogel-Polsky and gender equality, and, more precisely, to answer how Vogel-Polsky contributed to gender equality in the European integration process. The purpose of the study is explanatory. Vogel-Polsky’s impact on gender equality will be examined and analyzed. In order to achieve this, I will conduct a qualitative historical investigation. Historical research, according to Berg, seeks to understand the ideas, events, and the people that have influenced and shaped the present (2001:201). Therefore, historical research can be explained as “the study of the relationship among issues that have influenced the past, continue to influence the present, and will certainly affect the future” (Berg 2001:211). Through historical research, the goal is to gain a broader understanding of how humans behave and what laid the foundation for what we know today.

The thesis builds on Berg’s method of historical research, which involves seven steps. The steps include to 1) identify an idea, topic or research question; 2) conduct a background literature review; 3) refine the research question; 4) determine that historical research will be the applied method; 5) identify and locate primary and secondary data sources; 6) confirm the authenticity

and accuracy of source materials; and 7) analyze the data and develop a narrative exposition of the findings (Berg 2001:215). Although Berg's seven steps method of historical research has inspired the procedure of this thesis, the steps will not be followed consistently. Step four is considered irrelevant, as historical method already is established and will therefore not be further elaborated.

This study originally started out as an idea to explore gender equality within the European Union. During three years of European Studies, the "founding fathers" and how they have shaped the European continent has frequently been referred to in lectures and course literature. Women, on the other hand, have rarely been mentioned, especially in the early years of the integration process. My initial ambition was therefore to research what role women have had in the process.

One of the problems I encountered during the study, was the lack of information in English regarding Éliane Vogel-Polsky and her work. Most of the available literature is written in French, which created some linguistic difficulties. I know, for example, that Vogel-Polsky had a close relationship with the advocate-general, but other than a few sentences, I could not find relevant literature on this in English. I am confident that this bachelor thesis would be strengthened if I had access to more information about how Vogel-Polsky cooperated with the advocate-general, and what this cooperation meant for the Defrenne cases, and further for gender equality in the European integration process.

Of the information available in English, Catherine Hoskyns book "*Integrating Gender: Women, Law and Politics in the European Union*" and Rachel Cichowski's chapter "Institutionalizing Sex Equality Policy" are both significant as informative research materials (Hoskyns 1996 & Cichowski 2001). The two authors place great emphasis on Éliane Vogel-Polsky and her work to expand the applicable scope of Article 119 of the Treaty of Rome.

In addition to Hoskyn's and Cichowski's works, a third literary source constitute the research material of this thesis. In 2007, Éliane Gubin published a biography about Éliane Vogel-Polsky's life - "*Éliane Vogel-Polsky: a woman of conviction*". This book has been significant, especially in regards to the biographic approach of this study, as it provides a comprehensive and thorough description of Vogel-Polsky's personal and professional life, as well as her role in the struggle for legislation on gender equality. The formulation of the research question, of

how Éliane Vogel-Polsky has contributed to gender equality within the European Union, was inspired by the research material presented in Hoskyns', Cichowski' and Gubin's literary works.

Primary sources of this study consists of the Treaty of Rome, mainly Article 119 of the Treaty, and the European Court of Justice's rulings in Defrenne I and II. The documents on the rulings in the Defrenne cases, contains summaries of the claims, the different parties' arguments, and the judgements in its entirety. Vogel-Polsky's arguments in Defrenne I and II are retrieved from the summaries of the Court of Justice's rulings.

Although I have mainly relied on three secondary sources throughout this thesis, namely Hoskyns, Cichowski, and Gubin, I have conducted an attentive critique of the sources to rule out any misleading information in any of the three literary works chosen in this study. I found that the information presented is consistent.

#### 4. ANALYSIS

The analysis starts by orderly introducing the historical context in which Éliane Vogel-Polsky operated in, followed by an introduction of the judicial framework she dealt with. As the Treaty of Rome is considered part of the judicial framework, it will only be mentioned briefly in the historical context. Thereafter, the analysis is divided into two separate parts. The first is a biographic approach, where I examine Éliane Vogel-Polsky's life and career. The second part is a study of Defrenne I and II, which analyzes both the Defrenne cases in chronological order.

##### 4.1. HISTORICAL CONTEXT

The 1950s were characterized by great changes in Europe – the European Coal and Steel Community (ECSC) was established in 1952, to ensure peace and economic growth for the member states (Bache, Bulmer, George & Parker 2011:94). Peace and economic growth were to be achieved through the common management of the member states' coal and steel industries. The member states were Luxembourg, the Netherlands, West-Germany, France, Italy, and Belgium. In 1957, the Treaty of Rome was signed, creating the European Economic Community (Bache, Bulmer, George & Parker 2011:113).

Women's suffrage was another political aspect central in this decade. While Luxembourg, the Netherlands and Germany all had implemented women's suffrage in 1919, France, Italy and

Belgium did not do so until 1944, 1946 and 1948 (Aidt & Dallah 2008:395). The latter three countries, in addition to joining the ECSC, had to adapt to the societal change of women being eligible to vote during the 1950s. Despite the positive change of implementing women's right to vote, the 1950s were somewhat occupied by other objectives and so the priority of gender equality were neglected from the political agenda. Instead, European integration and economic cooperation were the two leading political issues of the decade.

The role of women during the 1950s is most fittingly described as ambivalent. During the Second World War, European women had to take over men's jobs as most men fought the war (Fernandez, Fogle & Olivetti 2004:2). When the men then returned from the war, women were expected to give up their jobs and go back to their previous roles as housewives. However, with the continuous development of the service industry alongside the technological changes that had taken place during the war, new jobs were created and again women were needed as employees (Gubin 2007:62). Women were therefore expected to fill the roles as housewives, and simultaneously, participants in the labor force.

The 1960s brought more empowerment to women, as education and more jobs were made available (Gubin 2007:62). In addition, contraception was launched on the market, giving women the opportunity to balance the family life with a career. As women became more visible in society, the gender inequality also became striking. Nevertheless, when the European Community was established in 1967, similar to the development of both ECSC and the ECC, no women were sufficiently involved in the process (Hoskyns 1996: 44). The existing issue of women and their rights were repeatedly given a low priority as the governments had, in their view, more urgent matters to handle.

During the 1970s, feminism's second wave flourished in Europe (Nash 2000:150). The feminists demanded contraception, improved situation for childcare, and equality between men and women in the work field. The feminist movement resulted in strikes and protests for women's rights. This influenced a shift in the European Community occurred midway through the seventies, where social policy including women's rights had gained importance (Hoskyns 1996:90).

## 4.2. THE TREATY OF ROME & ARTICLE 119

### 4.2.1. The Treaty of Rome

The Treaty of Rome was signed 25 March 1957, and was “determined to lay the foundations of an ever-closer union among the peoples of Europe” (Treaty of Rome 1957:Preamble). These foundations included to eliminate barriers within Europe, improving living and working conditions for the people, strengthen the member states’ economies, and abolish restrictions on international trade. To realize these aims, the Treaty established the European Economic Community (EEC) (Treaty of Rome 1957:Preamble).

The Treaty of Rome, in addition to creating the EEC, created four institutions. These were a Commission; a Council of Ministers; a Parliamentary Assembly; and a European Court of Justice (ECJ) (Treaty of Rome 1957:Art. 4). The European Court of Justice is especially essential in this context. The Court’s jurisdiction established in Article 177, involves giving preliminary rulings regarding the interpretation of the Treaty, and the validity and interpretation of acts of the Community. The Article gave national courts the opportunity to suspend a case, while asking and awaiting an answer on a precise question to the European Court of Justice (Treaty of Rome 1957:Art. 177). While the ECJ is working a case, states or institutions can submit written observations. The national court will then make a decision based on the response from the ECJ. This procedure became central in both *Defrenne I* and *II*.

The Treaty of Rome was the first distinct step that led the European integration process in the direction of social policies (Dodo 2014:53). The Treaty stated that the competences of social policy were to remain under the member states’ jurisdiction, with restricted interference from the EEC. The restriction concurred with the general view the member states had at the time, namely that the cooperation of the states would be on an economic level, and that the individual state would handle the social policy within the state (Hoskyns 1996:48). One of the main arguments contained the perceived view that social policy would occur naturally through the existing economic integration. However, the advocates for incorporating social policies in the Treaty based their opposing argumentation on the empirical premise of the ESCS, which already had recognized some aspects of social policy – such as the living standards of the industry workers.

Eventually, the Treaty of Rome included 13 Articles on social policy (Treaty of Rome 1957:Title 3). Although social policy was incorporated in the Treaty, the lack of consensus

from the member states on the matter complicated the process of fully implementing them, which Article 119 is a clear example of (Dodo 2014:53).

#### 4.2.2. Article 119, social policy, and the reasoning behind the Article

Article 119 of the Treaty of Rome is placed under Part three – “Social Policy” (Treaty of Rome 1957:Title 3). The objective of social policy, according to Kenneth E. Boulding, is to “build the identity of a person around some community in which he is associated”, and that social policy is “centered in those institutions that create integration and discourage alienation” (1967:7). The Article importantly established the principle of equal pay within the member states of the European Economic Community. Article 119 stated that:

*Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work (Treaty of Rome 1957).*

Further, the Article presents a definition of “pay” in this context:

*[...] means the ordinary basic minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer. Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job (Treaty of Rome 1957).*

In 1957, when the Treaty was signed, it was not uncommon to have different rates of pay between men and women performing the same job (Hoskyns 1996:53). The different pay rates were justified through several factors e.g.; women were worth less to the employer because of absenteeism while pregnant; and women’s “needs” were less – they were not considered responsible for the family’s economy.

France was one of the first countries in Europe to adopt equal pay for men and women (Hoskyns 1996:54). In 1950, minimum wage was introduced in France, with a single scale for both men and women (Hoskyns 1996:55). The French already had national focus on gender equality in regards to pay, so when the formulation of the Treaty of Rome was under construction, France

was a natural initiator of Article 119 (Hoskyns 1996:54). For the other states, however, the issue of gender equality revolved more around making compromises to please the French rather than the matter of equal pay itself.

The incorporation of Article 119 in the Treaty of Rome presented several challenges. While one of the challenges resided on the mere matter of persuading the member states to accept an article on equal pay, another problem was how to categorize it. In other words, it was problematic to decide whether it was an economical issue or a social issue. The fact that it ended up in the Part three – “Social Policy” was therefore not a matter of course. Lise Rye argued that the French focus on social policy was not about the social policy itself, but rather about securing time, protection and approval (2002:85). In the mid-1950s, the French industrial sector was, compared to neighboring states, relatively small and unproductive. In addition, there was a lack of a competitive power. This resulted in a gap between the French prices and the foreign prices at the international level (Rye 2002:96). The French managed to conceal these factors by focusing on social legislation as a trade distortion. The result of this was the initiating of Article 119. As Hoskyns stated: “Article 119 was adopted for tactical reasons and not for its content or the results its application might achieve” (1996:60).

Article 119 constituted a legal basis for a certain level of gender equality in the European integration process. Nonetheless, this did not mean that gender equality in regards to pay was a fact by 1957. It would take years before the Article became applicable, a process that did not happen automatically. Article 119 was in fact ignored by the member states until the late 1960s (Cichowski 2001:118). By that time, none of the member states had taken any action to implement the policy on equal pay. However, where national governments failed to take action, activist women took the lead. Éliane Vogel-Polsky was one of these women.

### 4.3. ÉLIANE VOGEL-POLSKY

#### 4.3.1. Early Life and Education

Éliane Polsky was born 5 July 1926 in Ghent, Belgium (Gubin 2007:21). She grew up in a Jewish-Russian family, where equality was a significant part of her childhood. Years later, in a scientific article dedicated to her father, she wrote:

*When we asked him which daughter was his favorite, he would invariably reply to the younger one, 'You are my favorite younger daughter', and to the elder of the two, 'You are my favorite elder daughter' (Gubin 2007:22).*

At the age of 12, Polsky attended the secondary school Lyceé Émile Jacqmain. The school's aim 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" (Gubin 2007:23). Up until now, Éliane had been treated equally to her peers, experiencing an educational system that was non-discriminatory. This however changed in 1941, when the Belgian state, occupied by the Nazis, banned children over the age of 14 from attending "non-Jewish establishments" (Gubin 2007:24). This resulted in Éliane being expelled from the school, and it was the first time she personally experienced discrimination.

Nazi Germany and the Second World War did, however, not put an end to Polsky's education. During the occupation, she continued her humanities studies under a false name at the monastery La Paix Notre Dame in Liège (Gubin 2007:25). In 1944, Polsky enrolled at the Facultés universitaires Saint-Louis in Brussels, where she studied law. In her graduating class of 157, Polsky was one of only 24 women. Being a character of ambition, Polsky indulged further in her educational path and spent the time between 1947-1948 taking her doctorate at the Université Libre in Brussels, for which she was awarded a first class distinction (Gubin 2007:26).

#### 4.3.2. Professional Career

Éliane Polsky married André Albert Vogel, also a lawyer, in 1952 (Gubin 2007:31). During the four following years, Vogel-Polsky gave birth to three sons, which gave her little time to practice law. When she returned to practicing law, she soon realized the difficulties of being a young, female lawyer, as most clients preferred her husband over her. Therefore, she mostly ended up working with family law and civil defense cases (Gubin 2007:32). It did not take long before Vogel-Polsky engaged in new studies.

The Labor Institute at the Université Libre in Brussels, established in 1955, offered interdisciplinary education, which triggered Vogel-Polsky (Gubin 2007:35). Through her studies, she was introduced to – among other disciplines – social law, which she had no previous experience with. She graduated in 1958, yet again, with the highest distinction. The National

Center for Sociology of Social Law (CNSDS) was established the same year, and the independent center gave Vogel-Polsky the opportunity to work autonomously. Working her way up from researcher to chief researcher she eventually became Director of research in 1972 (Gubin 2007:37). The research conducted at the CNSDS focused on the least privileged workers, such as women, young people and the disabled.

Vogel-Polsky continued her studies and by 1963, she gained a special degree in social law. In 1965, she then went on to receive a great distinction for her special degree in European Studies (Gubin 2007:38). In less than seven years, Vogel-Polsky had remarkably gained three special degrees. With this strong educational background, she pursued a career within research and teaching, starting as a junior lecturer at the Université Libre in Brussels in 1969. Soon she became an associated lecturer and was given more responsibility at the CNSDS. Vogel-Polsky stated that during this time she never felt discriminated against based on her sex. She emphasized that she received a full-time salary from the Center (Gubin 2007:39).

Vogel-Polsky's feminist engagement was sparked in the late 1960s, when she became aware of the working conditions that many women were subjected to (Gubin 2007:42). In contrast to her personal experience, Vogel-Polsky discovered that a substantial amount of women were not treated equal to men. Discrimination based on gender was common in many work places, something female activists shed a light on through demonstrations and strikes. In 1970, Vogel-Polsky's first contribution to the gender equality struggle became a reality through a survey of female employees in Europe – where Vogel-Polsky actively undertook a major role in conducting the study.

The data of the survey of female employees in Europe was published in 1972 (Gubin 2007:44). The results uncovered the gender equality gap between men and women in the working market. Éliane Vogel-Polsky's response to the survey's result was to emphasize the importance of education for women, as few women at the time had any interest in perusing a higher education. In fact, more than one third of Belgian women left school at the first opportunity in the early seventies (Gubin 2007:45). Those few who did continue towards a higher education were encouraged to pursue what was characterized as “female occupations”, such as schools of domestic science, hairdressing and seamstress courses. In an article in *Revue nouvelle*, Vogel-Polsky wrote: “Society refuses to integrate girls into an identical education and training process to that of boys and give them the same work options” (Gubin 2007:45). She proposed four

points to shrink the gender gap; change the ideological values in society, that legitimized women as inferior; create new jobs where the hiring process was based on positive discrimination; the promotion of equal pay and treatment through legal documents; and a more functioning social policy (Gubin 2007:46). Through her work on the survey, Vogel-Polsky evidently became an important advocate and spokesperson for gender equality, but she realized that the best way of making any significant impact would be through law. She decided to take the implementation – or lack thereof – of Article 119 to court. Gabrielle Defrenne became her opportunity.

### 4.3. THE DEFRENNE CASES

Gabrielle Defrenne was a Belgian airhostess, working for the Belgian state airline, Sabena (Hoskyns 1996:69). At the age of 40, her contract with the airline was terminated – because of her age. Airhostesses employed by Sabena, had to retire at the age of 40, while their male co-workers could continue until the age of 55. In addition to forced retirement, women working for Sabena received significantly less pension than men. After losing her job and facing financial instability, Defrenne became depressed and angry at the way she had been treated. In her frustration, she reached out to Vogel-Polsky and her colleague, Marie-Thérèse Cuvellez, and together they agreed to form a case against Sabena. As there was no Belgian law on equal pay at the time, Article 119 was the only law that could be cited on the matter (Hoskyns 1996:70).

The arguments presented by Vogel-Polsky are essential when analyzing the outcome of the cases. The arguments introduced in the two following sections are extracts from the summaries of the European Court of Justice's rulings.

#### 4.3.1. Defrenne I

The first of the two Defrenne cases consisted of two separate court cases, where both questioned whether the Sabena pension system violated the principle of non-discrimination stated in Article 119 (Cichowski 2001:118). Vogel-Polsky argued this point during the first court case (Brussels' Labor Court 1968), highlighting that by establishing special rules for pension rights that excluded female workers, was by Article 119's functionality indeed a discriminatory offence (Gubin 2007:90). In addition, Defrenne claimed compensation for the loss of salary as

a consequence of discriminatory pay scales, as well as reduced pension and severance pay due to her gender.

The Courts' process to reach a final decision took over two years and resulted in all claims being dismissed as unfounded (Hoskyns 1996:70). Vogel-Polsky appealed the Court's ruling, and the case went on to the Labor Court Appeal. In the Labor Court, no progress was made until 1975. Because the case was stalled in the Labor Court Appeal, Vogel-Polsky and Cuveillez decided to launch a second court case, this time against the Belgian state (Hoskyns 1996:70).

The Belgian state had decided to annul a special pension plan for air crew, resulting in, what Vogel-Polsky and Cuveillez believed to be, a contravention with Article 119 (Hoskyns 1996:71). The case went to the Belgian Administrative Court, which referred the case over to the European Court of Justice, as made possible through Article 177. The Administrative Court questioned the phrasing of Article 119, and whether it could cover a pension plan established by national ruling (Hoskyns 1996:71). The European Court of Justice therefore, on request from the Belgian Administrative Court, had to establish whether a pension counted as pay (Hoskyns 1996:73). The ECJ also had to clarify whether the employee received the pension either directly or indirectly from the employer. In addition, the Court raised the question of whether Article 119 of the Treaty of Rome directly introduced the principle of equal pay between men and women as a national rule of law to all Member States (ECJ 1976:4).

Defrenne's lawyers presented several arguments to the European Court of Justice. One of the arguments, was in regards to the wording of Article 119. Vogel-Polsky stated that the terms of the Article were "clear and simple" – which clearly required a duty to take action (ECJ 1976:5). Vogel-Polsky firmly argued that Article 119 implied that the Member States were the responsible actors in ensuring the application of the principle of non-discrimination in regards to equal pay between workers on the ground of sex (ECJ 1976:4). The article, according to Vogel-Polsky, did not require, nor rule out, the intervention of either the Community or national authorities in implementing equal pay (ECJ 1976:5). Therefore, both the State and the Community had a duty to implement the Article.

The Member States' responsibilities in regards to signing an official treaty, was also on Vogel-Polsky's agenda. She argued that by signing a treaty, the states were obligated to implement and act in accordance with the articles of said treaty. Vogel-Polsky therefore meant that the

principle of equal pay entered Belgian law on equal terms as any other national law, when the Belgian government signed the Treaty of Rome (ECJ 1976:5). This also reflected on the application of the Treaty. Article 119, according to Vogel-Polsky, was directly applicable, and should be applied to the citizens of the Member States – she meant that Article 119 was “capable of having a direct effect on relationships between the State and women workers” (ECJ 1976:5). Vogel-Polsky argued that the clear wording of Article 119 should have resulted in the Article being embraced by the states at the time of the signing.

The counterarguments were presented by the Commission, and the governments of the United Kingdom and Ireland (ECJ 1976:4). They argued, amongst other things, that Article 119 did not satisfy the governments’ criteria of clarity, hence the Article could not be directly applicable. In other words, the government of the United Kingdom believed the wording was capable of wide interpretation. The Irish government, on the other hand, insisted that the Article could not be directly enacted into the national law of each Member State (ECJ 1976:7).

In 1976, the European Court of Justice ruled against Vogel-Polsky’s arguments. The ECJ stated that Article 119 was only applicable in regards to pay, and not a social security system, which a pension plan would be (Gubin 2007:90). Therefore, the Sabena pension did not count as either direct nor indirect payment under EU law (Cichowski 2001:118). The ECJ ruling on the matter was transferred to the first case, resulting in the Labor Court Appeal dismissing the case once again (Gubin 2007:91).

Even though the first Defrenne case was not successful, it was far from insignificant. The case became of great political importance for the extension of women’s rights in the seventies (Hoskyns 1996: 74). Defrenne I proved that an expansion of the applicable scope of Article 119 was necessary, if the objectives of the Article were to be of effect. In addition, the case was the first to directly cite Article 119, which evidently became important for future cases. Provided that a more appropriate legal question would be presented, it was, because of Defrenne I, likely that the Court would rule in favor of Article 119 being applicable (Hoskyns 1996:74).

#### 4.3.2. Defrenne II

The political climate of the late 1970s became an advantage in Defrenne II. By 1978 and the final ruling of the second Defrenne case, the European Community had adopted two directives on women’s rights – namely the Equal Pay Directive in 1975, and the Equal Treatment of Work

Directive in 1976 (Cichowski 2001:120). In 1979, the Equal Treatment in Social Security Directive was adopted. The feminist movement had become more visible, calling for women's rights and gender equality (Gubin 2007:91). Defrenne II came at just the right time.

In 1976, Defrenne sued Sabena on the grounds of discrimination based on pay (Gubin 2007:90). In addition, she demanded compensation for her financial loss after her contract was terminated. Similarly to Defrenne I, Defrenne II was first dismissed by Brussels' Labor Court. Defrenne and her lawyers appealed the case to the Labor Court Appeal, which, in 1977, requested a preliminary ruling of the European Court of Justice, through the jurisdiction of Article 177 (Gubin 2007:91). The Labor Court presented two questions to the ECJ; Whether the content of Article 119 was directly applicable in the context of this specific case; and again, whether Article 119 was directly applicable to member states' national law, and if this was the case, from what date (ECJ 1978:3).

In Defrenne II, the strategy of Vogel-Polsky and Cuveillez was to change the argumentation from Defrenne I. Instead of focusing on pension, the focus this time was closer to the wording of Article 119 – equal pay and the principle of non-discrimination. Vogel-Polsky argued that the “mere fact of providing for a lower age-limit for women may be classed as discrimination (...)” (ECJ 1978:4). Such a clause, according to Vogel-Polsky, would deprive women from employment. Because Article 119 expressly guaranteed non-discrimination, Vogel-Polsky stressed that the principle of non-discrimination had to apply to all women working within each Member State (ECJ 1978:5).

Vogel-Polsky introduced two arguments in Defrenne II that was not stated in Defrenne I; namely “equality in conditions of employment” and “equality in competition” (ECJ 1978:4-5). The former argument was essential for the implementation of the principle of equal pay. Vogel-Polsky believed that the principles of Article 119 would not be realized until the conditions of employment were the same for men and women (ECJ 1978:4). She stated that two people doing the same work, would never receive the same amount of pay as long as the conditions of employment differ. Therefore, it was critical that the conditions of employment was the same for both genders, or else the principle of non-discrimination would never be fully realized.

The latter argument, “Equality in competition”, stated that Sabena, by operating with female workers with shorter career time, would gain a financial advantage to the other airlines

operating with the same length of employment for both men and women (ECJ 1978:5). Vogel-Polsky related this argument to the economic objectives of the Treaty of Rome. She argued for how these aims also “require the application of the general principle that there shall be no discrimination on grounds of sex” (ECJ 1978:5).

Opposing Defrenne, Vogel-Polsky and Cuveillez in Defrenne II, were the Commission, the government of the United Kingdom and the government of Italy (ECJ 1978:2). The Italian government did not disagree with the principle of non-discrimination nor the applicability of Article 119. Instead, the government argued from which date the Article would be applicable – stating that the Article should not be applicable prior to the date of the judgement in Defrenne II (ECJ 1978:6). The Italian government did therefore not support Defrenne’s compensation claim. The government of the United Kingdom, on the other hand, argued that Article 119 was only concerned with gender equality in regards to pay – discrimination based on age, the way the British regarded the case, was not addressed in the Article.

In 1976, the European Court of Justice ruled Article 119 to be directly applicable (ECJ 1978:5). This meant that the article was enforceable in national courts, which further meant it would override national legislation on the matter. In doing so, the citizens of the European Community were granted individual rights, protected by EC law (Cichowski 2001:118). The Court also stated that the “elimination of discrimination based on sex forms part of (...) fundamental personal human rights” (ECJ 1978:6).

However, the ruling gained criticism as well, especially from the Defrenne supporters. Firstly, the court ruled that Article 119 was only applicable to direct discrimination, not indirect (ECJ 1978:8). According to Gubin, this was a problem, because the concept of a law protecting female workers from indirect discrimination, could also protect women as a group (2007:93). Secondly, the Court established a deadline for invoking Article 119 (ECJ 1978:7). Even though the European Court of Justice did recognize that the Article should have been applied in 1962, the Court ruled to invoke Article 119 on the date of the judicial ruling. The only exception would be for people who already had forwarded proceedings before 1976 (Gubin 2007:93).

Regardless of the criticism, the second Defrenne case made quite an impact on gender equality within the borders of the European Community. Cichowski writes that “the Court’s judicial rulemaking in the Defrenne II judgement enabled Article 119 to become the site for an

expansive rights discourse” (2001:120). Hoskyns emphasizes that the outcome of Defrenne II “broke new ground in making European social law directly binding on relations between individuals” (1996:93). Even though the outcome of the Defrenne cases was nothing revolutionary in itself, it did however emphasize the need for a focus on issues such as gender equality and women’s rights in the European integration process. The issue of equal pay therefore became, in many ways, a starting point in the prolonged struggle for gender equality that exceeded into relating matters such as pregnancy and maternity rights (Cichowski 2001:135).

## 5. DISCUSSION

How can we understand Éliane Vogel-Polsky’s struggle for equal pay between men and women? The first part of the discussion focuses on answering this question, where I argue the topic of why Vogel-Polsky took an active role, followed by a debate on the results and consequences of Defrenne I and II. The second part consists of a discussion on Vogel-Polsky’s role through the theoretical framework of the thesis – constructivism. The third and final part presents a discussion on Vogel-Polsky’s impact on gender equality within the European integration process. Within this part of the discussion, the contemporary period of the Defrenne cases, and the driving forces of the integration, are central factors.

### 5.1. ÉLIANE VOGEL-POLSKY’S ENGAGEMENT

#### 5.1.1. Vogel-Polsky’s active role

The analysis of Vogel-Polsky’s personal and professional background suggests that she never experienced any gender-based discrimination herself. Even though she did experience losing clients to her husband, she was not restricted by her gender. She studied law, and as mentioned earlier, the female group was in a minority. However, Vogel-Polsky still graduated at the top of her class and was awarded with the greatest distinction several times. Receiving a full-time salary, equal to that of a man she had not been exposed to any first-hand experiences of gender discrimination. This sparks the intriguing question of why she took such an active role in the struggle for equal pay for men and women?

Vogel-Polsky might not have personally felt discrimination based on gender, but during the Second World War, she experienced inequality because she was Jewish. She therefore knew the familiar feeling of being treated unfairly and discriminated against for something she had

no control over. Hence, it is tempting to propose that Vogel-Polsky's experiences of inequality made it easier for her to relate to the women experiencing discrimination in the work place. Also, it would not be too bold to assume that her work on the survey of female employees, and the results that it presented, contributed to Vogel-Polsky's realization of the great gender inequalities in society and in the work force. In addition, as an aspiring lawyer in social law, she had the means to make a change. With the Treaty of Rome and Article 119, providing a legal basis that did not already exist in Belgian law, Vogel-Polsky believed that the legal framework could pave the way for women and women's rights, if only invoked through the court system.

### 5.1.2. The outcome of the Defrenne cases

For Vogel-Polsky, Defrenne I was a failure. After years of trial, the case was eventually dismissed as unfounded, as the European Court of Justice ruled that pension did not count as pay, and Article 119 was therefore not applicable. Even though the ECJ ruled against Defrenne on the case, it did however draw attention towards the lack of implementation of the Article. However, what was indeed successful about the first court case, was its ability to put women's rights on the political agenda. In other words, Defrenne I was not successful in itself, but it did lay the foundation for further development on equal pay. Also important was that the role of Article 119 became more evident after Defrenne I. The implementation of the Article had been neglected by all of the member states, even a decade after the Treaty of Rome was established. This issue became an important topic during Defrenne II and a vital part of the arguments that led to the court's ruling. In contrast to the first case, the judgement of Defrenne II stated that Article 119 was directly applicable, and should be implemented by all member states. In addition, the European Court of Justice ruled that equal pay was a fundamental personal human right. Even though Defrenne I did not make a significant impact on the issue of gender equality, it worked as a stepping-stone for Defrenne II and an increased focus on women's rights.

An important aspect of the two cases that make up Defrenne I and II, is the distinctive difference of the wording between the first and the second case. Defrenne II is centered around equal pay and discrimination on the grounds of gender. The wording of the arguments in the first case, which focused on pension, is less clearly related to pay, and therefore simultaneously less relatable to the content of Article 119. Vogel-Polsky clearly chose a more appropriate strategy for Defrenne II, compared to the first case. The arguments of equality in conditions of employment and equality in competition, related to Article 119 and the principles of equal pay

and non-discrimination, expanded the applicable scope of Article 119. Vogel-Polsky proved through Defrenne II that equal pay is not an isolated issue, and that it has to be seen in the light of social policy factors.

The deadline for invoking Article 119, and the limitation of the Article to only involve direct discrimination, were heavily criticized. Nevertheless, the consequences of the two court cases have positively affected and influenced further development of gender equality within the European integration process. As Cichowski states:

*Article 119 has become a social-justice provision which empowers women in the EU policy arena and in their national legal systems. The door has been opened to those who have historically been excluded from the EU-decision making (2001:135).*

## 5.2. A CONSTRUCTIVIST PERSPECTIVE ON THE ROLE OF VOGEL-POLSKY

The introduction of the theoretical framework for this thesis presented several arguments for how constructivists believe society is formed. This part discusses three of the arguments already presented, and applies them to the case of Éliane Vogel-Polsky. The three arguments are 1) how social structures shape actors' interests and identities; 2) the individual is more important than the state; and 3) the logic of arguing.

As already mentioned, Wendt argues that social structures play a significant role in shaping actors' interests and identities. Regarding Wendt's statement, I want to make two notions about social structures and the discrimination of women. When women are excluded from participation – or discriminated against – in most parts of society, discontent will occur. One example of this can be women striking in the 1960s and 1970s as a result of unequal pay between men and women. Therefore, the suppressed will address the inequalities and injustices – like Vogel-Polsky, through Gabrielle Defrenne and the two court cases – did. This discontent and dissatisfaction in regards to unequal pay shaped women's interests, which further lead to feminist movements and strikes. Secondly, the social structures present at the time of the Defrenne I and II, involved men in virtually all leading positions. This irregularity created – for men – a social norm that excluded women from decision making processes, in addition to many other parts of society. Men's interests were shaped by these norms, as they continued to promote male interests with little consideration for women's rights. When the call for equal rights eventually was made, a conflict of interests was created. Women who demanded rights on the

one hand, men with a norm stating that women should not participate on the other hand. This created an environment where it was hard for women to make a change, as men dominated the leading positions. The women united through the feminist movement and strikes, and in that way created a strong identity that would no longer be ignored.

The theory of constructivism argues that the individual is more important than the state – and that the individual's thoughts, ideas and interests will shape further development. In the case of gender equality within the European integration process, the individual's thoughts, ideas and interests have in fact been crucial for further development. Vogel-Polsky, as a lawyer and individual, highlighted the importance of equal pay, and her work engaged other women. The result was an increase in gender-based discrimination court cases. In that way, Vogel-Polsky encouraged women to fight gender discrimination through the law. In addition, she also managed to engage the politicians. Through her work, Vogel-Polsky actively put gender equality on the political agenda as directives were established and more women were hired. This had a spiraling effect, that created more focus on discrimination based on gender, which in turn created more awareness and promotion of gender equality.

Risse argues that the goal of a debate is to reach a mutual understanding that is based on a reasoned consensus (Risse 2000:2). A court case cannot, however, be said to be based on such reasoned consensus. The European Court of Justice ruled against Defrenne I because the argumentation did not concur with Article 119 of the Treaty of Rome. The result of Defrenne II was based on the Court of Justice's ability to find grounds for the claims presented by Vogel-Polsky. Even though the ECJ's rulings were not based on a reasoned consensus, both Defrenne I and II provided a platform for the different parties to express their opinions on the matter. All parts could be heard – which included Defrenne herself, the European Commission, and the British, Irish and Italian governments.

Another criteria in the Logic of Arguing is to have an open mind, and be ready for new inputs. After Defrenne I, it was visible that the society was not yet ready for the possible changes a victory for Vogel-Polsky would entail. However, Vogel-Polsky, female activists and women in general were all more than ready to change the perceived view on gender equality. With Vogel-Polsky's success in Defrenne II, where she used a strategy more appropriate to Article 119, she gained the support from the European Court of Justice, and slowly began to alter the gender norms in the Community.

### 5.3. VOGEL-POLSKY'S IMPACT ON EQUAL PAY

#### 5.3.1. Driving forces of the integration

The contemporary period of the Defrenne cases is an essential factor in establishing the impact Éliane Vogel-Polsky has had on gender equality in the European integration process. From the 1950s to the 1970s, a lot had changed in regards to women's rights. First of all, women had taken a more active role in society. This statement is supported by how education became more available for women and how the contraception pill helped women gain control over their own bodies. Secondly, as European integration and cooperation became increasingly intertwined, several social policies were implemented – including pregnancy and maternity rights. Even though such developments sound like natural occurrences, this societal change was achieved through the unfaltering movement of feminist activists. The leading women called for change, by enlightening women about the gender inequality found in society and in the work place, and by encouraging women to stand up for their rights.

It is important to note that there already was a call for change in the 1960s and 1970s. The feminist movement contributed to place women's rights and gender equality on the political agenda. Because women as a group already had started to mobilize, it can be argued that Vogel-Polsky was not crucial for the increased focus on women's rights. The society did promote gender equality, that affected the integration process. The call for change was omnipresent. However, Vogel-Polsky was the first person to question Article 119 and the lack of implementation. Further, Vogel-Polsky managed, by using her background as a lawyer, to expand women's rights. In addition, by adjusting the strategy from Defrenne I to Defrenne II, Vogel-Polsky contributed to an enforceable judgement. Vogel-Polsky greatly influenced the societal change that happened in the late-70s – but she also contributed to further gender equality in the integration process. Not only did the outcome of Defrenne II ensure that the applicable scope of Article 119 was extended, and equal pay established as a fundamental human right, the judgement also affected the creation of new policies and Directives on women's rights.

## 6. CONCLUSION

Today, the EU is an advocate for gender equality, not just in Europe, but world-wide. This attitude has drastically changed through the past decades, from the 1950s and 60s when gender equality was given little priority on the political agenda. This study has aimed to explore the causes behind the changing attitudes in regards to gender equality, through a female perspective. The impact Éliane Vogel-Polsky has had on gender equality within the European Union has been examined throughout this thesis, by using the theoretical framework of constructivism and the logic of arguing. Vogel-Polsky opened the doors for women to participate in the political aspect of society through the Defrenne cases – and actualized gender equality and women’s rights at the same time. Over time, Vogel-Polsky’s thoughts and ideas changed the norms of society, from the 1950s where gender equality was a non-issue, to the present day, where gender equality is one of the EU’s priority areas.

This study has focused mostly on the impact of Éliane Vogel-Polsky, with important factors, such as the feminist movement and the contemporary period of Defrenne I and II, at the base. These factors have been significant in the effort of explaining the societal change in attitudes towards gender equality. While the feminist movement emphasized women’s demand for women’s rights, Vogel-Polsky noticed an opportunity to make an impact through a concrete case – Article 119. There is no doubt that Vogel-Polsky has had a major impact on gender equality in the European integration process. However, she is not the only actor. For further study on the topic, it would be interesting to look at other actors and their impact, for example, Marie-Thérèse Cuvelliez or Gabrielle Defrenne. Other significant actors not mentioned in this study would of course also be interesting objects of study, such as leaders of feminist movements, or other advocates for gender equality.

One conclusion we can draw from this thesis is that the history of gender equality within the European integration process is complex and diverse, with manifold aspects of significance. The history of gender equality, the struggle for women’s rights, and the women paving the way for a positive change should not be forgotten. Women such as Éliane Vogel-Polsky can be characterized as pioneers of the European integration process, and should be mentioned when reciting the history of the European Union.

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