

EU Gender Policy: Trapped in the 'Wollstonecraft Dilemma'?

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ABSTRACT This article explores EU gender policy through the lens of the 'Wollstonecraft dilemma', a guiding conceptual device that helps to summarize women's difficult path towards equality in a patriarchal system. EU gender policy reflects the contradictions women must face in their struggle for equality, which are common to most public gender policies. All provisions devised to progress in gender equality have negative retroactive effects on women, due to the patriarchal context in which they are applied. Empirical evidence from the Spanish case offers further support to the argument, showing how EU gender policy is still trapped in the 'Wollstonecraft dilemma'. A more holistic approach to EU gender policy, able to tackle all the areas of which patriarchy is composed, and an improved monitoring of EU gender policy implementation in the member states, could both generate a more effective gender policy in the EU and make further progress in solving the dilemma.

KEY WORDS EU gender policy ♦ feminist political dilemmas ♦ Spanish gender policy

GENDER POLICY THROUGH THE LENS OF THE 'WOLLSTONECRAFT DILEMMA'

European Union gender policy can be usefully analysed through the conceptual lens of the 'Wollstonecraft dilemma'.¹ According to this dilemma, the two routes that women have followed in their struggle for a full citizenship have been revealed as problematic. One route involved asking for the extension to women of the rights enjoyed by male citizens (i.e. the struggle for equality); the other route consisted of claiming that women 'as women' have specific capacities, interests and needs which would require a differentiated citizenship from that of men (i.e. the

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struggle for difference). However, both paths, although progressive, have negative retroactive effects on women: 'The dilemma is that the two routes toward citizenship that women have pursued are mutually incompatible within the confines of the patriarchal . . . state, and, within that context, they are impossible to achieve' (Pateman, 1989: 196–7).

On the basis of this dilemma, extending to women citizenship as it is today, that is, including female subjects as if they were equal to men, would mean accepting a patriarchal² citizenship, based on male characteristics. In this case, women could not be defined as full citizens, since citizenship would be extended to them as 'inferior men' (Pateman, 1989: 197). However, asking for a recognition of female differences, in a patriarchal society based on a hierarchical division between the sexes, means including women *as women*, not as full *citizens*: that is, as different members who need a *special* legal treatment. As MacKinnon points out, the problem with law for women is that it is based either on the concept of equality or on the need for special rights: in each case the male life-pattern is regarded as the norm to which women must either aspire or be compensated for not attaining (MacKinnon, 1987).

At the origin of the 'Wollstonecraft dilemma' is the reality of women's oppression. If, on the one hand, women ask for equal rights with men, they are not included 'according to a real principle of equality', because 'the content of citizenship has not been transformed in order to include the socio-historical experience of women as well as that of men' (Lamoureux, 1996: 76). If, on the other hand, the female difference in capacities and needs is highlighted, this difference is understood as a deviance or lack, as the norm is based on the privileged groups in relation to which the oppressed represent the exception (Young, 1990). The question, then, is the following: should women ask for equal rights, if, in a patriarchal society, equality means assimilation to the rights of men, or should they fight for a differentiated citizenship, 'as women', with the risk of stigmatizing their condition of difference as deviance from the male norm? At the basis of this question is the ongoing equality vs difference debate, which has been at the core of feminist challenges since the origins of the movement. However, this is not the context to deepen a debate that would take us far from the main argument. At this stage, instead, it is interesting to see how the 'Wollstonecraft dilemma' can be usefully applied to the analysis of the forms taken by one of the emergent public gender policies, namely EU gender policy.

**GENDER STRATEGIES IN THE EU: STILL IN THE
'WOLLSTONECRAFT DILEMMA'?**

European Union gender policy can be seen as an illustration of the problems that the 'Wollstonecraft dilemma' has highlighted and public policies have hitherto failed to address effectively. Reflecting the paths that women have followed in their struggle towards an equal or differentiated citizenship, the EU political strategies in the area of gender, i.e. equal opportunities, positive actions and mainstreaming, embed the contradictions that feminists have identified in all public gender policies. However progressive these can be, they often contain elements of regress, due to the structural limits imposed by the patriarchal social context.

EU gender policy has followed the first route to equality described in the 'Wollstonecraft dilemma', that of extending to women the *same* opportunities already enjoyed by men. As a matter of fact, EU gender policy has indeed been predominantly based on the strategy of equal opportunities. Only in recent years have other types of political strategies such as positive action measures and gender mainstreaming also been introduced. From Article 141 (ex 119) EEC onwards (on equal pay for women and men for equal work), the trend of Community policy in the field of gender has been that of ensuring equal opportunities between women and men within the labour market. Equal pay, equal treatment in employment and working conditions, and equal treatment in social security are the main areas covered by EU gender directives.³ This has indeed guaranteed the creation of a legal framework for equality from which European women have been able to benefit. The main advantage of the equal opportunities strategy is that it establishes the principle that individuals must be granted the same opportunities with regard to their access to certain fundamental goods (rights, freedoms, income, welfare and so on). Thus, it has set the legal basis for the elimination of discrimination against women in the field of employment. On the grounds of this principle, for example, governments initiated a process of revision of their country's legal frameworks, in which open discrimination towards women was still a reality.

However, the main limit of this perspective is that it tackles the symptoms but not the causes of gender inequality. Giving equal opportunities to everybody does not mean that everybody will be capable of enjoying and exercising her formal rights in the same way. The equal opportunities policy fails to consider the existence of material conditions which prevent women from exercising their rights and from having equal access to the opportunities they are offered (such as women's main role as caretaker in the household and family, violence against women, sexist education, traditional culture that sees women and men as more suitable for certain jobs or activities and so on). Thus, it cannot tackle the roots of gender discrimination that lie behind those material conditions. If the

equal opportunities policy has had the merit of targeting some of the symptoms of sexual inequality, it has, on the other hand, failed to effectively address core issues of sexual discrimination such as the sharing of family and work responsibilities between the sexes, violence against women and reproductive rights.

Positive actions were devised to solve some of the limits of equal opportunities policies as they try to correct the initial disadvantage of women, taking gender into account in establishing the criteria for employment, promotions and participation in decision-making institutions. In all of these situations, the application of a compensatory measure means favouring, in cases of equal merit, a woman over a man. They reflect the other side of the 'Wollstonecraft dilemma' attested to by feminists in their struggle for gender equality, namely the need to emphasize the difference between women and men. Positive actions were introduced to avoid, due to the differences existing among individuals, the strict application of the principle of equal treatment generating further inequality for women. In the European context, the Kalanke⁴ and the Marschall⁵ cases represented milestones in the road towards Community positive action measures, as they highlighted the need to consider provisions that would address the actual disadvantages women must face in accessing the equal opportunities formally offered to them, and they were capable of involving the different sides in the debate. Both cases questioned the lack of legal clarity on issues of equal opportunities and expressed the need to introduce new political strategies to overcome women's structural discrimination. Furthermore, a new provision of the Amsterdam Treaty (Article 141(4)) has begun to open the way to positive action measures, although the form in which the concept of positive discrimination is expressed is rather weak.⁶

The advantage of this strategy is that positive actions recognize that conditions are not the same for everyone and try to re-establish a situation of equality by favouring the most disadvantaged sex in different situations. The limit is that affirmative actions stigmatize women's inferior condition. Measures created for the special protection of women may also deprive them from advantages enjoyed by men. Moreover, it is still a strategy that tackles the symptoms and not the causes of gender inequality.

The latest strategy in EU gender policy comes under the name of 'mainstreaming'. Gender mainstreaming refers to the introduction by governments and other institutional actors of a gender perspective into all policies and programmes, in order not only to analyse their effects on women and men before decisions are taken, but also to implement, evaluate and review policies taking gender into account. Mainstreaming was introduced in the new Articles 2 and 3 of the Treaty of Amsterdam and has been reflected in the Commission's Fourth and Fifth Action

Programmes for Equal Opportunities between women and men (1996–2000 and 2001–5). The fact that the term ‘gender’ has recently appeared in the official acts of the EU, namely in the Fifth Action Programme for Gender Equality (2001–5),⁷ shows that a shift is taking place from an equal opportunities approach to a more global and comprehensive one. The main advantage is that the EU can be given more competence in new policy areas, which means that a much broader range of initiatives can be proposed in areas not strictly employment related, such as violence against women and trafficking. Furthermore, according to the dictates of the principle, all Commissioners should be involved in equal opportunities’ issues, so there is a wider responsibility for gender issues.

The limit is that it may make EU gender policy ‘broad and shallow’ instead of ‘narrow and deep’, that is, more focused, as in the past (Hoskyns, 1999). The risk is that mainstreaming could be taken as a good excuse for diluting gender expertise and dismantling the infrastructures created to support women’s policies in the EU. As regards the dilution of expertise, gender mainstreaming could become, in Gregory’s words, ‘everyone’s responsibility but no-one’s job’ (Gregory, 1999). This means that gender experts could cease to be required, as everyone suddenly became an expert in gender. This could also lead to the possible dismantling of gender infrastructures. The fact that gender equality is now included in the mainstream policy may lead to the wrong assumption that special funds and specific programmes for women should now disappear as there is no further need for them.⁸

This overview of EU gender policy, which by no means claims to be exhaustive, was aimed at showing that the EU has followed different routes towards gender equality that have opened up opportunities as well as revealed their structural limitations. While it has prioritized the first path of the ‘Wollstonecraft dilemma’ towards equality of opportunities, the EU has also begun to consider the second route of differential treatment, and has devised a new mainstreaming policy in the attempt to reduce discriminations. However, the risk is either to devise policies that combat the symptoms but not the causes of gender inequality, as the problems with equal opportunities have highlighted, or of treating women as ‘special’ subjects, as doubts about positive actions reveal, or of weakening the structures created to advance in gender equality, as in the case of mainstreaming. It seems that, notwithstanding the undeniable advancements achieved, EU gender policy is still trapped in the ‘Wollstonecraft dilemma’, as it generates policies which, albeit progressive, have always some negative effect on women. To further support my argument, I provide empirical evidence drawn from the Spanish case study that will enable me to explore in more detail the effectiveness of EU gender policy in promoting equality in the member states. This empirical

approach privileges an analysis that is based primarily on interviews, rather than on a more deep examination of EU official policy documents, which can be found elsewhere (see, among others, Hoskyns, 1996; Beveridge et al., 2000; Duncan, 2000).

EU GENDER POLICY IN SPAIN: OPPORTUNITIES AND LIMITS

I have argued so far that the three main strategies adopted by EU gender policy have opened up opportunities for women, but have also highlighted the limits that all equality policies face in a patriarchal context. In this section I consider more in-depth both advantages and disadvantages of equality policies in the EU, focusing in particular on the implications of these policies for the Spanish case. The assessment of the effectiveness of EU policies may indeed benefit from an analysis of the impact that these have had on the national level, thus helping us to identify opportunities and limits embedded in those policies. The analysis of EU gender policy impact on Spain included an empirical investigation I recently conducted both in Spain, interviewing women activists of governmental and non-governmental organizations, and in Brussels, addressing officials from the Commission and MEPs who work in the area of gender policies.⁹ Tables 1–3 summarize the results of the research, highlighting both the opportunities opened up for Spanish women by EU gender policy and the EU in general, and at the same time the limitations of the policy.

In Table 1, evidence gathered from the findings shows that the EU is perceived by women activists at the most general level as providing legal, politico-cultural and social kinds of inclusion. These are all signs of a positive impact of the EU on Spanish gender policy. As concerns the 'legal inclusion', the EU provides a legal framework on gender equality at work that is a support and a reference point for Spanish women. This framework gives legitimacy to Spanish women's demands to their national decision-makers, accelerates reforms of Spanish gender policy via the translation of EC gender legislation into national law, encourages the creation and development of women's governmental and non-governmental equality organizations and, finally, ensures the continuity of equality policies in Spain even during times of conservative governments. The EU also provides Spain with a 'politico-cultural inclusion' due to its contribution to the democratization and modernization process that characterized the Spanish transition from dictatorship to democracy. Entering the Community also meant the abandonment of the historical isolation of Spain due to Franco's regime and the enjoyment of a 'social/human resources inclusion'. Transnational exchanges, encouraged through the 'partnership' principle of EU programmes, promote 'contacts'

TABLE 1
EU gender policy: opportunities for Spanish women

Legal inclusion:	<ul style="list-style-type: none"> • EU legal framework on gender equality is seen as a support and reference point • EU gave continuity to equality policies in Spain, forcing even conservative governments to maintain equal opportunities policies
Politico-cultural inclusion:	<ul style="list-style-type: none"> • EU has contributed to the democratization of Spain • EU has contributed to the modernization and acceleration of change • Due to membership in the EU Spain has gained a more central role in Europe
Social/human resources inclusion:	<ul style="list-style-type: none"> • EU has promoted contacts through the 'partnership principle' > learning ('upskilling') and moral support (transnational networking): EU impact on mobilization

among women's associations. These are a source of both learning, i.e. exchanges of knowledge and 'good practices' have 'upskilling' consequences (as contacts improve women's political strategies and the content of their demands) and moral support that arises from being part of a network. This is particularly important for an issue such as gender equality where, in the context of politics, women often feel outnumbered and not taken seriously in their political demands. Furthermore, it is a sign that the EU has promoted women's transnational mobilization in Europe.

However, EU gender policy has also shown limits, due to both EU and national responsibilities, as Tables 2 and 3 illustrate.

As concerns the first two criticisms listed in Table 2, it must be noted that the explicit targets of EU policies are not the structural causes of gender inequality, that feminist literature has identified in the system of patriarchy. Instead, consensus on gender policy has often been found around 'functional' objectives necessary for the development of the market (Hoskyns, 1996). These are, for example, the promotion of free movement of labour or the elimination of obstacles to unfair competition. The case of Article 141 (ex 119) EEC is paradigmatic: its unexpected inclusion in the Treaty of Rome is due to the fact that France, a pioneer with respect to other European countries for having introduced laws on equal pay between women and men, was worried that the higher pay of French women would compromise France's economic competitiveness in comparison with other member states that were still saving on wages to their female employees (Hoskyns, 1992). The roots of EU gender policy reveal that any real interest for progressing in gender equality appears somewhat unintentional, due to its subordination to the defence of market

TABLE 2
Limits of EU gender policy: EU

- 1) EU gender policy includes an excessively formal and narrow concept of equality that takes little account of the difference in the social and material circumstances of women and men, and cannot effectively tackle the structural origins of women's discrimination. In particular, the sole EU 'equal opportunities policy' does not target the structural causes of gender discrimination that are rooted in the patriarchal relations between the sexes
- 2) EU gender policy is mainly focused on employment. On other areas not strictly related to the market, such as the sharing of family and work responsibility between the sexes, childcare, or sexual violence there is almost no binding provision > EU employment-related gender legislation does not match many of the main concerns of Spanish women (work; sharing of work and family responsibilities; welfare; child-care; violence against women)
- 3) In equal opportunities provisions a male norm is often used, as in the case of earnings-related social benefits. EU law is often based on the norm of the (male) citizen as 'mobile-(paid) worker' compared to which all treatments which refer to women become 'special'ⁱ
- 4) The Commission insufficiently monitors implementation in the member states. Reasons: 1) objective limits to what the Commission is allowed to do by the Treaty as regards the monitoring of implementation; 2) lack of personnel and resources; 3) resistance of MS to Commission's intrusion in their national affairs

interests. This 'ulterior motive', deeply inscribed in the Community gender policy from its beginnings, has had serious implications for the EU approach to sexual discrimination and the effectiveness of its outcomes.

Moreover, if this market-oriented equal opportunities strategy has had the merit of targeting some of the symptoms of sexual inequality, it has, on the other hand, failed effectively to address core issues of sexual discrimination such as the sharing of family and work responsibilities between the sexes, violence against women and reproductive rights. This is not to say that legislation in these areas is completely lacking. For example, childcare,¹⁰ violence against women¹¹ and trafficking in women and children¹² are all issues that are emerging on the EU policy agenda. However, the fact that these areas are not covered by binding legislation renders progress slow and difficult, leaving to the member states' goodwill the decision on whether to adopt soft legislation in areas of sex discrimination that go beyond the labour market. To do justice to the great number of soft law provisions in the area of gender equality, which include recommendations, resolutions, decisions, action programmes and communications, it must be admitted that most of this legislation is rather advanced in the protection of women's rights and does have practical effects in the member states. In particular, Community action programmes on equal opportunities between women and men and gender

programmes such as NOW (recently replaced by EQUAL) and DAPHNE have in some cases had a strong impact on national policies, in spite of being soft law provisions.¹³ Moreover, some of these provisions might over time evolve from soft to hard law (Shaw, 2000).

The significant finding emerging from Table 2 is the EU's failure to match women's main demands regarding specific socioeconomical goods, such as work and social services. Work is still the biggest problem for Spanish women, despite the fact that EU gender policy has directed its efforts towards it. There are certainly great responsibilities on the part of the Spanish government as regards the implementation of the EU employment provisions (see Table 3). However, EU gender policy shows a number of problems that have to do with its narrow focus on employment, a focus that is not only limiting the possibility of achieving a broader equality (i.e. economic, political and social), but also undermines the effective achievement of gender equality at work. As a matter of fact, the women interviewed never discussed work as an isolated problem. They always make the link between work and issues concerning social services, childcare, the sharing of responsibilities between the sexes, male violence, education, culture and women's image portrayed by the media. These are the main concerns of Spanish women that the EU is accused of not answering.

Despite the fact that the EU has promoted policies in the area of employment, it has not removed the obstacles that are hindering women's access to full employment because it leaves out of its jurisdiction the aforementioned areas, which are of extreme importance to Spanish women. Due to the limited connection between Spanish women's concerns and EU legislation, the EU's impact is weaker than it could be if gender issues other than employment were covered. Insofar as EU gender policy is not extended to all the areas in which gender discrimination occurs, it has little chance of achieving substantive equality even in the area of employment, due to the interconnection between work and all other social areas that affect women's enjoyment of substantive equality.

The third criticism, i.e. equality as assimilation to the male's norm, shows rather effectively to what extent EU gender policy is still trapped in the 'Wollstonecraft dilemma'. EU policy often treats women's situation as the exception to the norm decided on the basis of the male subject.¹⁴ Women are required to conform to the male norm in order to be *equal*. A typical example is the EU system of social protection, based on earnings-related social benefits. In such a system, the work of care, predominantly performed by women, is not considered as liable of receiving social benefits¹⁵ since it is not considered real work. Furthermore, this social protection system is based on full-time working patterns that are more likely to be achieved by men, as the majority of women must work part-time to make their work compatible with family responsibilities.¹⁶

TABLE 3
Limits to EU gender policy impact: Spain

Political:	<ul style="list-style-type: none"> • The Spanish government does not invest in gender policies as they are considered a second-class issue • The Spanish government partially or incorrectly transposes gender Directives (e.g. parental leaveⁱⁱ & burden of proofⁱⁱⁱ) into national law • The Spanish government applies minimal legislation on gender, not planning active policies to promote gender equality
Legal:	Poor application of EC gender law by Spanish Courts and legal practitioners (due to ignorance) de facto reduces the scope of EC law
Cultural:	<ul style="list-style-type: none"> • Patriarchal culture and political interests hinder a correct implementation of EU gender directives • EU employment-related legislation on gender is ineffectively implemented in Spain due to the resistance opposed by the national structure: the Spanish economy is based on the unpaid work of housewives • Implementation of the most radical EU provisions (those questioning the Spanish 'gender order'^{iv}) has been contested and made more difficult

Notes:

ⁱ Craig and De Búrca, 1998; Sohrab, 1994; Hantrais, 1995; Fredman, 1992.

ⁱⁱ Whereas the directive prescribes that the parental leave should be a *non-transferable right*, Spain does not comply with the obligation: parental leave is mostly granted to the mother and she may then transfer it to the father. Thus, Spanish legislation does not comply with the spirit of the directive, which is to encourage the sharing of family responsibilities. Directive 96/34/EC was transposed in Spain by the Ley 39/1999 de 5 noviembre, para promover la conciliación de la vida familiar y laboral de las personas trabajadoras (BOE N. 266, p. 21568 6/11/99).

ⁱⁱⁱ Although the Spanish law precedes the burden of proof directive, this was incorrectly transposed into national legislation as it lacks the concept of 'indirect discrimination' which is stated in the directive 97/80/EC. This was transposed in Spain by the Real Decreto legislativo 2/95 por el que se aprueba el texto refundido de la Ley de procedimiento laboral, 7/4/95 (BOE N.86 p.10695, 11/4/95).

^{iv} 'Gender order' means the socially shared system of norms, principles, and policies establishing the allocation of rights, tasks, and life opportunities to both sexes. The division of roles between those who engage in paid work and those who perform the unpaid work of care is part of a complex social system of precedence and subordination. One of the main norms of a gender order is the decision on who should be the primary breadwinner and who should be the primary care giver (Ostner and Lewis, 1995).

The fourth point of Table 2 highlights the problems that have to do with ineffective EU monitoring of gender policy implementation, which are mainly due to the limitations imposed by the Treaty to what the Commission can do, and to lack of resources of the Commission. The Commission has no legal powers (except in CAP, fishery and competition policy) and no resources to check whether EU legislation is actually applied in the member states and how this is done. The problem of

insufficient monitoring of implementation in the member states, then, is not limited to gender but to most EU policy areas.

The impact of EU gender policy in the member states is also limited by obstacles to an effective implementation created by the national socio-political context, which varies across the different countries. Table 3 presents some of the limits to the impact of EU gender policy within the Spanish national context.

A significant finding emerging from Table 3 is that while the EU had an impact on the mobilization of women's groups (see Table 1), it did not have a consistent impact on changing the attitude of the Spanish government and the Spanish courts and legal practitioners towards gender issues. The result is a negligent transposition and implementation that translates into a limited impact of EU gender policy on the national level. The Spanish government tries to apply minimal legislation in the area of gender, i.e. by making the minimum changes to transpose and implement EU gender legislation and sometimes also incorrectly transposing it. Its goal is to comply with the EU obligations but not really to achieve a substantive equality between the sexes. Thus, EU gender policies have not managed to push the Spanish government to make active policies for gender equality. Spanish courts and legal practitioners prove ignorant about EC gender law and scarcely or incorrectly apply it. This *de facto* reduces the scope of EC law. It shows that the existing gender equality rights conferred by the EU are often not exercised by citizens. As a result, women's empowerment is not particularly increased by the mere possession of rights if they cannot fully enjoy and claim them. By not properly monitoring the application of its legislation by national courts and legal practitioners, the EU is partially wasting the beneficial potential of its provisions.

The existence of a strong patriarchal culture resisting changes aimed at by EU gender policy is a further obstacle to the effective implementation of EU gender directives in Spain, and thus an obstacle to impact. In particular, this cultural context opposes those directives and EU provisions that threaten the existing gender order where man is the primary breadwinner and woman the primary care-giver. Thus, an effective implementation of the EU gender directives would involve a radical reorganization of the Spanish society with more women entering paid work and the creation of public social services to replace the work that is currently performed by women.

Although EU gender policy has opened up opportunities for Spanish women due to the legal, political and social inclusion that it has provided, there exist limits to the impact it may have on Spanish gender policy which are due to both European and national factors. At the national level, the negligence of government, courts and legal practitioners affects an effective implementation of EU gender policy, while patriarchal culture increases the difficulties of applying equality legislation to such a context.

At the European level, EU gender policy is limited by the market-oriented character of the EU that determines the policy's main focus on employment, and this approach is unable to tackle the structural causes of gender inequality that do not only concern the area of work but also the other areas of which patriarchy is composed.

Evidence drawn from the Spanish case shows that, due to its inability to tackle with the same level of commitment all the different areas of which patriarchy is composed, EU gender policy remains trapped in the 'Wollstonecraft dilemma'. Its provisions are indeed progressive, but at the end of the day too weak to effectively generate equality between the sexes in the 'strongly patriarchal' Western European society (Hoskyns, 1988: 34). The next section draws implications from the analysis of EU gender policy conducted so far, suggesting possible ways out of the 'Wollstonecraft dilemma'.

A HOLISTIC APPROACH TO EU GENDER POLICY: A WAY OUT OF THE 'WOLLSTONECRAFT DILEMMA'?

Despite the undeniable advancements for women that EU gender policy has contributed to bring about, there exist structural obstacles hindering a stronger impact of the policy in the member states. EU gender policy and its political strategies reflect the difficulties of achieving equality in a patriarchal system. All progressive provisions for women seem to have their side-effects, as equal opportunities, positive actions and mainstreaming have shown. Most of these provisions are more effective to combat the symptoms of gender inequality rather than its causes. Furthermore, the EU gender policy's main focus on employment hinders a more effective impact of the EU on the national level. This impact is further limited by the often ineffective implementation of gender policy in the member states.

As regards the narrow focus of EU gender policy, since there is no binding legislation on making work and family compatible for both sexes, on public childcare and social services, or against violence against women, women are not able to enjoy the equality at work that is granted by the EU and national legislation. As a result, even the employment directives are not effective. It is paradoxical that EU gender policy, whose binding legislation has been focused on employment, was not able to answer women's work-related needs, as emerged in the voices of the Spanish interviewees.¹⁷ This paradox shows very clearly that it is not only by opening up opportunities in the labour market that the problem of women's unemployment and poor working conditions will be solved. The solution lies in dismantling the structural obstacles that prevent women from working equally with men. Employment policy must be

restructured at the EU and national level to include not only provisions limited to employment but also provisions beyond employment, such as the sharing of responsibilities, childcare and other public social care services, eradicating sexist culture, and combating sexual violence.

I argue that to combat both the symptoms and the causes of gender inequality, EU gender policy should adopt a more *holistic* approach that considers how the socially constructed difference between women and men negatively affects women in all areas of society. This approach should explicitly target *patriarchy*, focusing on the multiple interconnected causes which create such an unequal relation between the sexes to the disadvantage of women in different areas, i.e. family, paid work, politics, sexuality, culture, male violence. It should aim not only at introducing measures 'for women', but also at targeting the existing consolidated spaces of male power at all levels. This type of policy would require changes in men's lifestyles to achieve gender equality, for example by actively promoting the sharing of work and household responsibilities between the sexes. It is ultimately a proposal of reform of the EU gender policy in the sense of a more global approach to problem-solving.

This would require the extension of EC gender legislation to cover areas of welfare and social care with binding provisions that would oblige member states to implement them. It would also entail the promotion of active employment policies for women that aim to incorporate them in the labour market in full-time stable jobs that will favour the sharing of household and family responsibilities between the sexes (unlike part-time jobs which maintain women as the primary carers). The aim of this type of policy is to reorganize the public/private spheres by taking into account the changed role of women in society, with more of them entering the public sphere, and by promoting the involvement of men in the private sphere of household and family care. An important part of this type of policy aims at reconsidering the relationship between paid and unpaid work, by giving the unpaid work of care the same recognition granted to productive work. As Linda Hantrais points out, 'Nowhere in the member states has the unpaid work done in the home in the form of caring by women as providers of services been given the same recognition as paid work in gaining entitlements to benefits. As marginal workers, women have thus been prevented from achieving full social citizenship rights' (Hantrais, 1995: 119). A careful examination of the relationship between productive and reproductive work can highlight the strict interconnection between them and the equally vital contribution that they make.

Unfortunately, the neoliberal trend that has characterized the EU in the last two decades strongly opposes the more active EU role in social policy that is implicit in my recommendation in favour of a more holistic approach to EU gender policy.¹⁸ Despite the existence of arguments on how the reinforcement of a European level social policy has the potential

to 'rescue' national welfare states from the threats imposed by globalization and EU market-making measures, a neoliberal ideology is currently challenging the notion of social rights as such all over the developed world (Castle-Kanerova and Jordan, 2001; La Torre, 1998; Hervey, 1998; Budge et al., 1997; Room, 1997; Scharpf, 1996; Leibfried and Pierson, 1995; Majone, 1993; Leibfried, 1991; Nielsen and Syzszczak, 1991). Postwar European and North American welfare states were grounded in principles of entitlements, universality and solidarity, but in the last 20 years, measures such as privatization, devolution to new agencies, decentralization and an emphasis on the obligations of citizenship have transformed social policy (Cox, 1999).

In the context of the EU, the European Commission's attitude is ambivalent regarding the balance between 'the Anglo-American agenda of labour market flexibility, work incentives, and welfare retrenchment' on the one hand, and the defence of the 'European social model' with its protection of social rights, on the other (Castle-Kanerova and Jordan, 2001: 189). At the level of member states, the defence of neoliberalism vs social solidarity is influenced by the pressures of market competition, which push member states to cut social, environmental and safety regulation of the processes of production that increases the costs and limits the member state's competitive position (Scharpf, 1996). Due to the aforementioned market pressures and the political choices of European decision-makers, the neoliberal minimalist approach to social policy has currently prevailed in Europe, pushing EU policy to favour negative over positive integration.¹⁹ This political context hinders the feasibility of a proposal that aims at the adoption of a more global approach to EU gender and social policy.

In spite of these 'antisocial policy' trends, there are growing signs that the EU's lack of a social identity has created a gap between the Union and *its* citizens, increasing the EU's legitimacy crisis. The EU has become, together with other international financial and trade institutions such as the WTO, the target of 'anti-globalization' movements,²⁰ which represent the feelings about and expectations from politics of a growing number of people. These include a sense of unease in identifying with institutions that prioritize the market before society and treat individuals as consumers rather than citizens, a feeling of betrayal on the part of political leaders who seem to follow and defend the rules of free trade before those of democracy (Barber, 1984), and demands addressed to European democratic governments to protect the public interests of persons rather than the private interests of corporations (Klein, 2000). This growth of social demands by the citizens of the different member states requires an adequate response from national and European institutions. A more active EU role in social policy could create a climate less prone to accept the *diktat* of neoliberal ideology, thus reducing a further extension of the EU legitimacy deficit.²¹

As concerns the application of EU gender policy in the member states, another recommendation to make concerns the improvement of EU monitoring and enforcement of gender policy implementation in the member states. The EU has provided some strategies for politicized groups to 'upskill' their action through the promotion of networking and the exchange of 'best-practices'. However, EU gender policy did not have as great an impact on changing national governments' agenda and policy-making as it had on women's politicized groups. Women activists are undoubtedly more open to taking advantage of the opportunities that the EU is providing them and are thus more affected by the EU provisions and strategies. National governments instead show a stronger resistance to reform both the content and strategies of their policies in order to comply with EU obligations in the area of gender (as these are often perceived as an intrusion in their domestic affairs). The result is that the EU impact in this policy area is always going to be limited if a similar 'upskilling' process does not take place within national governments. National responsibility in limiting the process of Europeanization is particularly evident in the poor application of EU gender law by Spanish courts and legal practitioners, which is hindering female citizens' ability to exercise the rights conferred to them by the Union.

To overcome national resistance to the application of particular EU policies, the EU should invest more efforts in ensuring governments' and national courts' awareness of EC law and, simultaneously, have more powers to ensure implementation. With regard to education, an improvement in the Commission's activities of information and training of national officials, politicians, courts and legal practitioners about EU gender legislation and the application of a gendered approach to law and policy-making would promote a better policy implementation. This, of course, would require an increase in the budget and personnel destined to this educational activity.

Finally, it is argued that an increase in the Commission's activities of monitoring implementation and feedback in the member states could promote a more effective enforcement of policies and prevent national governments, courts and legal practitioners from carrying out incorrect or partial implementations. Reform to current Treaties would be required to increase the Commission's powers to monitor national implementation of EU legislation in a greater number of policy areas than those currently envisioned (i.e. CAP, fishery and competition). To support the Commission's new competence in activities of monitoring, evaluating and bench-marking, more resources and personnel would be required. In particular, it would be advisable to increase funding to groups of national experts and NGOs in order to facilitate their monitoring of the application of EU gender law by courts and legal practitioners. This could be a way to

exercise pressure on national governmental and judicial systems for providing a correct implementation of policies.

The feasibility of this second recommendation is also hindered by the EU's political and institutional context. The Commission claims the existence of objective reasons which explain its limited intervention in the area of implementation: lack of powers to check on implementation in all areas of EC law and lack of resources and personnel. Moreover, member states resist an increase in the Commission's competence in the field of implementation, due to concerns about the protection of their sovereignty and their economic interests. For these reasons, prospects for an improved process of implementation and monitoring of the latter seem rather discouraging.

However, this picture would not be complete if it did not mention the forces, both inside and outside EU institutions, which are pushing towards a better implementation. First on the list, the European Parliament, through the Committee on Women's Rights and Equal Opportunities and the Committee on Employment and Social Affairs, is pressuring the Commission to improve its activities of policing the implementation of gender directives in the member states. In the Parliament's view, checking on the transposition of gender directives into national law is a necessary but not sufficient condition for obtaining information on the process of implementation of EU gender legislation by member states. Equally important is the control of the actual application of gender directives.²² On the external front, European women's governmental and non-governmental organizations who participated in Beijing+5 (a follow-up to the UN World Conference on Women which took place in Beijing in 1995), held in New York in June 2000, have referred to European institutions and the member states the UN appeal to develop a system of indicators, bench-marking and evaluations, in order to monitor and assess the implementation and the impact of gender policies.²³ Pressured both by internal and external forces, the Commission is beginning to provide some, though still feeble, answers, such as the Legal Experts Group on Equal Treatment of Men and Women and the Fifth Framework Programme on Equal Opportunities between women and men (2001–5). However, these signs are too weak to provide assurance that a major shift in emphasis towards implementation is taking place in the Commission.

To conclude, it must be conceded that obstacles posed by the patriarchal context in which gender policies are applied, the EU political and institutional context, and its general priorities for reshaping the welfare state and labour market limit the feasibility of proposals such as a holistic and implementation-aware approach to produce a significant advancement in women's rights. Progress towards gender equality is part of a complicated process of interaction among different social and institutional forces,

where feminist battles, either at EU or national level, must face gendered contexts and practices both in cultural and decision-making structures, which will influence policy outcomes and not always in the intended direction. The Wollstonecraft dilemma's scenario of achievements which backfire will probably not disappear as rapidly as women's expectations would wish. However, the holistic approach to EU gender policy remains a normative ideal that should be aimed at in order to gradually overcome the multiple political dilemmas which hinder the path towards gender equality in Europe.

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NOTES

1. The dilemma, first formulated by Carole Pateman, takes its name from Mary Wollstonecraft, the English writer who lived between 1759 and 1797, and, who, during the period of intense debates following the French Revolution, wrote one of the first feminist works, titled *Vindication of the Rights of Woman* (1792). The book concerns the question of extending citizenship rights to women. Wollstonecraft's position contrasts with that of feminists of her time, who asked for a citizenship equal to that of men. According to her, women are specifically different from men: as a result, their difference must be recognized by law. The unpaid work of wives-mothers is the equivalent of their husbands' paid work. Both roles are essential to society, thus, both must be recognized through the granting of citizenship rights to men as well as to women.
2. According to the feminist interpretation of the concept, patriarchy is a system of social structures and practices in which men dominate, oppress and exploit women. It must be stressed that social structures, not individuals, are made responsible for this systematic oppression. The enemy is male power as socially constructed, not men as single individuals. Six elements characterize patriarchal social systems. They are the following: patriarchal relations in the family, in paid work, in the state, male violence, sexuality and culture. The analysis of each of these structures reveals the domination of men over women (Walby, 1990).
3. See Council Directive 75/117/EEC, *OJ L* 45, 19 February 1975; Council Directive 76/207/EEC, *OJ L* 39, 14 February 1976 amended by the recent Directive 2002/73/EC, *OJ L* 269/15, 5 October 2002; Council Directive 79/7/EEC, *OJ L* 6, 10 January 1979; Council Directive 86/613/EEC, *OJ L* 359,

- 19 December 1986; Council Directive 86/378/EEC, OJ L 225, 12 August 1986 amended by Council Directive 96/97/EC, OJ L 46, 17 February 1997; Council Directive 92/85/EEC, OJ L 348, 28 November 1992; Council Directive 96/34/EC, OJ L 145, 19 June 1996; Council Directive 97/80/EEC, OJ L 14, 20 January 1998.
4. Case C-450/93 *Eckhard Kalanke v. Freie Hansestadt Bremen* (1995) ECR 1995.
 5. Case C-409/95 *Hellmut Marschall v. Land Nordrhein-Westfalen* (1997) ECR I-6363.
 6. The term 'positive action' is not mentioned in the paragraph of the Treaty of Amsterdam, leaving a legal uncertainty which needs to be further clarified.
 7. COM(2000) 335 final.
 8. Both of these threats have already materialized, as the proposal for abolition of the Committee on Women's Rights in 1998 and the recent replacement of the NOW (New Opportunities for Women, a specific programme for promoting women's employment) with the EQUAL programme (a general initiative to combat discrimination which does not make any specific reference to women as a discriminated-against group) show.
 9. The interviews in Spain were undertaken in the months of November–December 1999 and of June–July 2000. The interviews in Brussels were undertaken in February 2000.
 10. See Council Recommendation OJ L 123 8 May 1992.
 11. See Commission's DAPHNE programme to combat violence against children, young persons and women.
 12. See COM(2000)854 final; Decision No. 293/2000/EC OJ L 034 09 February 2000, p.1; COM(1998) 726.
 13. Spanish gender policy is predominantly based on Equality Plans shaped on the example of the Commission action programmes. NOW and DAPHNE programmes are applied throughout all member states.
 14. Two exemplary cases of the use of a male norm in EC equal opportunities legislation which have to do with pregnancy are respectively the Hertz and Larsson cases. Case C-179/88, *Handels v. Dansk* (1990) ECR I-3979. Case C-400/95 *Handels acting on behalf of Larsson v. Dansk Handel & Services, acting on behalf of Fotex Supermarked A/S* (1997) ECR I-2757.
 15. See Johnson I and Züchner cases. Case C-31/90 *Johnson v. Chief Adjudication Officer* (1991) ECR I-3723. Case C-77/95 *Züchner v. Handelskrankenkasse (Ersatzkasse) Bremen* [1996] ECR I-5689.
 16. See Hantrais (1995), Sohrab (1994, 1996).
 17. 'The problem', said one of my interviewees, 'is that the Spanish economy is based on the work of the house-wives. The EU should introduce reforms to create public childcare facilities, make times of shops compatible with times of work, and provide social care for elderly people, people with physical and mental disabilities, drug-addicts, etc. How can a woman go to work outside the household if she has to take care of husband, children, ill relatives, old people etc.?' (Falcón, 16 December 1999).
 18. I am grateful to my anonymous referee for suggesting to place my proposals in the context of the EU's main political and economic priorities.
 19. The distinction between 'negative' and 'positive' integration is that the former refers to the process of advancing market integration by weakening the state's control over trade and distortions of competition, and the latter refers not only to market-making provisions but also to the Community measures for shaping and correcting the conditions in which markets take place (Majone, 1993; Scharpf, 1996).

20. See the 'anti-globalization' movements in Seattle (WTO meeting, 29 November–3 December 1999), Prague (World Bank and International Monetary Fund meeting, September 2000), Nice (EU summit, 7–8 December 2000), Gothenburg (EU summit, June 2001), Genoa (G8 meeting, 20–21 July 2001).
21. It is arguable that the acquisition of more competencies by the EU in the gender and social policy area violates the principle of subsidiarity. Studies on the legitimacy of the scope of European decision-making indicate that legitimacy is usually 'bounded in the sense of being specific to particular policy sectors and even to specific issues' (Blondel et al., 1998: 65). Responses in the 1996 Eurobarometer (*source*: Eurobarometer 4) reveal that the issues that have a higher Euro-legitimacy (i.e. people believe that these areas should be decided by the EU) are, first, the fight against drugs and cooperation with developing countries (both 77 percent) and, second, equality for men and women (71 percent). However, all the other social policy issues have a low Euro-legitimacy. The finding about the relatively high Euro-legitimacy of equality provisions vs the low Euro-legitimacy of the remaining social policy issues could confirm that there is space for a stronger intervention of the EU in the gender policy area (which is encouraging for my proposal to reinforce the existing policies) but that there is still resistance to the idea of a whole social policy decided by the EU (which instead limits the feasibility of a more holistic approach to the policy).
22. An example of the Parliament's commitment to improve the implementation process in the area of gender policy is the Committee on Women's Rights' 'Draft Opinion on the Report from the Commission Concerning the Implementation of Council Directive 92/85/EEC on the Introduction of Measures to Encourage Improvements in the Health and Safety at Work of Pregnant Workers and Workers Who Have Recently Given Birth or Are Breast-Feeding', 2 March 2000, PE 286.984.
23. At www.unifem.undp.org/

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