

Legislation and Working Women in Portugal—Since the End of Nineteenth Century to the 1940s

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Abstract: The aim of this paper is to discuss the State legislation concerning Portuguese working women, especially mothers. Working women, mostly in their reproductive age, were a significant reality in the labour market in Portugal during this period. We have the objective to reflect upon the political and social role of the State in what concerns daily working hours and working mothers and children protective legislation. We want to answer two main questions: what were the social and economic consequences of these laws for women? Did the State legislation benefit or discriminate women? Both workers and women's organizations highlighted these questions in congresses, conferences, newspapers and academic dissertations. Following the Marshall study about the citizenship evolution process we conclude that only in the thirties women achieved restricted social rights which were at the origin of the Welfare State for women in Portugal.

Key words: working women; “protective” labour women legislation; maternity, origins of welfare state for women in Portugal

JEL codes: H75, H76

1. Introduction

The intent of this paper is to analyze the evolution of legislation regarding working women in Portugal, with particular attention to working mothers.

Our primary objective is to follow the intervention of the State in the regulation of social politics concerning working women. In this specific context we will also consider bills presented to the Parliament, claims of workers' associations, and women's organizations about working women “protective” legislation.

Methodologically we will report the main published laws in the studied period, and discuss their social and economic impact on working women.

As the Welfare State inherently enables social rights, we will refer to the proposal of the British sociologist T. H. Marshall about the citizenship status (civil, political and social), achieved between the eighteenth and the twentieth century (Marshall, 1964; Cova, 2005)¹. We want to verify if this citizenship evolution is also valid for women in Portugal.

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¹ T. H. Marshall proposed an evolution of citizenship with rights achieved in three successive phases: civil rights in the Eighteenth century, political rights in the Nineteenth century, and social rights in the Twentieth century. Civil rights correspond to the rights required for free expression and thought; political rights refer to the rights of participating in policy making, and social rights are consistent with economical and social well-being.

Also, we will keep in mind the concept of “de commodification” proposed by Danish sociologist Gøsta Esping-Andersen ((Esping-Andersen, 1990). According to this idea, individuals are granted some services which are assumed as social rights. Furthermore, Gøsta Esping-Andersen’s theory explained the different origins and evolution of the three Welfare State models: liberal, continental or corporatist, and social-democratic². We aim at reaching a conclusion about the condition of working Portuguese women that allows their inclusion in one of these models. Lastly, we will try to answer the question of whether the social legislation, which is one of the origins of the Welfare State for women in Portugal, actually benefitted or discriminated women. Also, we will identify the dominant socio-political vision existing at the time when these measures were elaborated and defended (Baptista, 2012b).

First, we must report that the Civil Code in force between 1867 and 1965, named Seabra (name of the principal author of the Code), established a juridical reference that underestimated women, especially the married ones. As the feminist writer and jurist Elina Guimarães stated, husbands managed couple’s assets including women’s salaries (Guimarães, 1986).

2. Women in the Portuguese Labour Market (1890-1940)

According to the Census of 1890 (Recenseamento Geral da População, 1890), at the national level, women were 36.4 percent of the active population and 22.8 percent in 1940. In 1890, in the industry, women were 35.2 percent of the factory workers, rate that decreases to 23.5 percent in 1940 (Table 1). This is due to the invisibility of female work, in other words, many women who worked in agriculture, family workshops, and at home have been excluded by not being counted in the Census.

Table 1 Working Women in Manufacturing

Years	Manufacturing and Public Works		
	Men and Women	Women	
	Total	Total	%/ MW
1890	447,620	157,747	35.2%
1900	455,296	135,298	29.7%
1911	547,751	155,197	28.3%
1930 (a)	668,621	300,336	44.9%
1930 (b)	467,805	100,503	21.5%
1940	566,055	133,085	23.5%

Note: (a) Including “auxiliary workers”, women assisting the head of the family; (b) Excluding “auxiliary workers”.

Within each census, the professional nomenclature and the socio-professional series changed. Furthermore, the numerical data expressed in each census highlight values of female labour that do not always coincide with the reality of women’s work. The census gradually registers as effective labour only work carried out by the “head of the family” and women were registered as working auxiliaries and as domestics. These criteria of classification reflect both a political and cultural vision about women’s labour, leading to the social representation of the family caretaker function at home.

² Gøsta Esping-Andersen defined three models of welfare state: in “liberal” welfare states countries (England, United States of America) means-tested assistance offering modest benefits predominates and state dependents are mainly women and children of low-income; in “corporatist” welfare states countries (Germany, Italy, France) rights and benefits are attached to family status and encouraging household work of women; in “social-democratic” welfare state countries (Denmark, Sweden, Finland) the principle of universalism prevails, granting day care for children and allowing women to work.

Yet, according to the Censuses available between the given dates of this research, the number of women who worked in factories increased from 14.6 percent to 23.7 percent in Lisbon, the capital, and from 30.1 percent to 36.9 percent in Oporto, the main city in the north of the country (Baptista, 1999).

This reality of Portuguese women in the labour market, mainly in the cities, being the majority in all activity sectors, between 20 and 40 years old (as Table 2 demonstrates in the industry), and therefore women of reproductive age, led the governments to legislate and workers and women organizations to think over and to propose social measures about female work and maternity (Baptista, 2012b).

Table 2 Working Women in the Industry and Public Work

Ages	1890		1900		1911		1940	
	Women	%/ TW (1)	Women	%/TW	Women	%/TW	Women	%/TW
< 20	34,791	22.1%	37,951	28.0%	39,902	25.7%	31,251	23.5%
20-40	66,623	42.2%	62,832	46.4%	74,628	48.1%	67,821	51.1%
40-60	39,220	24.9%	25,362	18.7%	30,663	19.8%	26,153	19.7%
> 60	17,113	10.8%	9,153	6.8%	10,004	6.4%	7,553	5.7%
Total	157,747		135,298		155,197		132,778	

Note: (1) Percentage resulting from the division of the total number of working women in each year by the number of women from each age group. No data are available for 1930.

3. Measures about the Female Work and Maternity in the End of the Monarchy: Legislate to Protect or to Discriminate?

In April 1888, a governmental proposal about the new organization in the tobacco industry was discussed in Parliament. Several measures were presented to cope with the new order by Augusto Fuschini, a civil engineer, member of the Parliament and defender of the socialist ideology. He defended these ideas: “In the factories there will be milk dispensaries for working women’s babies until 12 months old, allowing mothers to breastfeed, according to the regulations, in the established hours”; also, “In the factories there will be nurseries for children, from the age of one to six years of age”; “Every woman will be allowed to return to work only fifteen days after her baby’s birth” (Santos, 1974). All of these proposals were never carried out. It is important to point out that in the tobacco industry in Lisbon, working women were a striking majority of 72.2 percent of the labour force, according to the *Inquiry About the Conditions of Manual Work in the Tobacco Factories and Related Situation of the Working Class* (Inquérito Sobre as Condições do Trabalho Manual nas Fábricas de Tabaco e Situação dos Respective Operários).

On March 15, 1890, the Berlin’s Conference took place, regulating the limitation of women’s work in factories and mines, by action of fourteen countries delegates. In Portugal, soon after, on April 14 of the following year, a decree regulating women and minors’ work in factories and workshops, was published by the Ministry of *Public Works, Trade, and Industry* (Ministério das Obras Públicas Comércio e Indústria) and signed by the Minister Tomás Ribeiro. The decree intended to “protect” working women and the maternity; and with such intend, Chapter V of this legislation, curiously titled *Nurseries*, prohibited work after childbirth and decreed the protection of mothers and children:

“Any factory employing more than 50 working women in a single day, shall have a nursery with the accommodations and hygienic conditions defined by the regulations. The distance between the nursery and the factory cannot exceed 300 meters” (21st article).

“Women working in the industry can only return to work 4 weeks after childbirth” (22nd article).

“Mothers can go to the nursery to breast-feed their children at the given hours and according to the regulations” (23rd article), (Diário do Governo No. 82, of April, 22, 1891).

Certainly, this law had demographic and ideological objectives, associated with the Portuguese “race regeneration”, addressing the fear of the threat of depopulation caused by emigration and high infant mortality rates, especially in Oporto and Lisbon³. There were also high rates of disabilities, mental diseases and syphilitics in the army corps, according to military censuses, which encouraged a natality increase discourse (Vaquinhas, 2000).

Later, starting April 10, 1893, the *Regulation on Minors and Working Women in the Industrial Establishments of any Kind or under all Direction* (Regulamento para o Trabalho dos Menores e das Mulheres nos Estabelecimentos Industriais de Qualquer Espécie ou sob Qualquer Direcção), dealt with minors’ work essentially (Diário do Governo No. 79, of April 10, 1893).

In 1900, Adelaide Cabette, doctor and feminist, graduated with a dissertation titled *Protection of Poor Pregnant Women as a Way to Promote the Physical Development of New Generations* (Protecção às Mulheres Grávidas Pobres como Meio de Promover o Desenvolvimento Físico de Novas Gerações) (Cabette, 1900). The thesis presented to the Lisbon Medical-Surgical School, denounced the infringement of work legislation after childbirth, since the four weeks maternity leave was not compensated, and demanded the observance of the law about the creation of factory nurseries, among other measures. Also, the legislation had not been well accepted by some factories. Historian Maria Filomena Mónica reports that after the great textile strike of 1903, in Oporto, a very tense situation arose. A worker who had left the workshop to breast-feed her baby was fined, and the supervisor advised her “to go on strike for the child” (Mónica, 1986). Jurist Rui Ulrich, reports that in 1905, at the time of the Tuberculosis National Congress (Congresso Nacional de Tuberculose) in Coimbra University, the engineer José de Oliveira Simões, was one of the defenders of maternity leave in the industry: four weeks before and four after childbirth, women should be remunerated with, at least, half of their usual salary (Ulrich, 1906). These positions show the clear-sightedness about the contradiction of the law elaboration: women’s work prohibition after childbirth, without any benefit, obviously caused serious economic consequences for women and their families.

Precisely, in 1909, José de Oliveira Simões, in a Conference about working women’s assistance, and José Lobo d’ Ávila Lima, a Law Professor at the University of Lisbon, introducing the subject of mutual benefits and social insurance, both used for the first time in Portugal the term *Welfare-State* (Estado-Providência), making reference to the social condition of under privileged classes, questioning the limits of State intervention (Simões, Lima, 1909).

4. The Republican Politic: A Change in the Measures “Protecting” Working Women-childbirth Compared to Illness

We must stress that during the First Republic (1910-1926), *The Family Laws* (Leis da Família), promulgated on Christmas of 1910, were a legislative milestone; decree No. 1, *Marriage law as a civil contract* (Casamento como um contrato civil), 39th article stated that: “Conjugal society is based on liberty and equality, the husband

³ At the time, across Europe, the concept of “race degeneration” was used due to hygienists States’ concerns to reduce infant mortality rates, diseases, and to increase birth-rate.

must specially take up the obligation of defending his wife's and children's property, and the wife must take care mainly of the domestic management and the moral assistance leading to the strengthening of the family unity". (Diário do Governo No. 70, of December 27, 1910). The law clearly assigned first and foremost to women the domestic private space.

At a labour level, the decree of June 24, 1911, prohibited night work for women, (from 10:00 pm until 5:00 am), in places where more than ten men and women worked, (Diário do Governo No. 194, of June 29, 1911). Also, laws No. 296 and No. 297, of January 22, 1915, defined various propositions, such as how public and private establishments can employ women; a maximum of 10 hours of work was allowed in companies and industries during the day; 8 hours for the night to be scheduled between 9:00 pm and 5:00 am (Diário do Governo No. 16, of January 22, 1915).

A situation that we must point out is the one regarding maternity among primary school teachers, who on January 9, 1911 obtained a maternity leave of two months receiving the whole salary. A similar situation occurred in France, in 1910, when the public school teachers, after the Engerand law approved in 1909, were allowed a not compulsory maternity leave of eight weeks without compensation (Adão, 1984; Bock, 1992; Cova, 1997)⁴.

The Third Thesis presented at the *Second National Mutuality Congress* (Segundo Congresso Nacional de Mutualidade) in Lisbon, in 1916, was related to the reorganization of the mutual societies, and was immediately converted into a law-project. Of specific interest for this study is the 13th article, 3rd clause: "The women members, during the normal childbirth period, are considered patients for the purpose of receiving benefits for the days in which they didn't work, which cannot exceed 30 days. These benefits are specified for the first period of illness in the respective list". We confirm that delivery wasn't yet considered a normal act, but a disease (in spite of sketching a shy maternity leave). The mutual associations were free to decide the integration of the maternity modality in its status. The bill was elaborated by group, appointed by the *Minister of Internal Development* (Ministro do Fomento) Estêvão de Vasconcelos in 1911. It had already been presented by the Minister for Internal Development (Ministro do Fomento) António Maria da Silva at the Parliament Section on April 25, 1913, but was not approved. At this Congress, in 1916, there was only a change, the days of the "maternity leave" (not paid) increased from 20 to 30 days.

In 1919, the socialist minister of labour (ministro do trabalho), Augusto Dias da Silva, elaborated a legislative package establishing the *Institute of Compulsory Social Insurance and General Security* (Instituto de Seguros Sociais Obrigatórios e de Previdência Geral, ISSOPG). The compulsory social insurances, were compulsory for both sexes, from 15 to 75 years old, and included health, work accidents in all professions, disability, old age and survival (Diário do Governo No. 98, of May 10, 1919; Pereira, 2010; Baptista, 2012a). Workers were subjected to an inquiry and only workers earning up "900 escudos" a year were considered (the most underprivileged workers). Despite the reduced benefits, if the legislation had been applied, they would have acquired social rights which were given only to workers insured against accidents. However, due to the social and economic context, inflation, currency evaluation, workers resistance, and lack of interest among employers, the

⁴ In Portugal, in 1919, the maternity leave was only applied to married teachers. Due to workers' associations' protests, this restriction was revoked in 1921, and applied to all teachers regardless of their marital status. In 1931, when the dictatorship was already established, the law conceded only to married teachers a maternity leave of 23 days with compensation. In France, Engerand was a right wing member of Parliament. The Engerand Law of November 27, 1909, established that women could have a maternity leave of eight weeks during the period before and after delivery, and workers had the right to keep their posts (with no compensation).

insurances were not applied⁵. We must stress that according the decree the 33rd article of *Social Health Insurance* (Seguros Sociais na Doença), explained: “Associated Parturient have the right to hospitalization or to medical and pharmaceutical assistance, and to the usual money benefits during the time that are unable to work, which will never be less than two months”.

A bill of 1921 about maternity, presented by the work minister José Domingos dos Santos, proposed a paid maternity leave of 6 weeks before childbirth, but it wasn't carried out (Diário do Governo, II Série, of January 29, 1921). In 1924, Francisco Grilo, an ISSOPG member of the board of directors, integrated maternity into a project for the public assistance reform in Portugal: “Every pregnant working woman has the right to rest one month before childbirth and one after it always keeping her post” (Boletim da Previdência Social No. 15, 1924). If this proposal had been approved it could not have been compared to the French Strauss law of June 17, 1913, because it didn't include a pay benefit⁶ (Cova, 1997).

5. In Dictatorship Times: Restrict Citizenship Rights for Women Workers

In the beginning of the dictatorship, in 1927, during the government of the minister of the Secretary of the Interior (*Ministro do Interior*), José Vicente de Freitas, the decrees of October 29 and October 31, listed the 65 forbidden jobs for women (especially those involving acids, chemicals, sulphates), and regulated work related activities for pregnant workers, moderating some of them (Diário do Governo No. 240, of October 29, 1927; Diário do Governo No. 245, of November 5, 1927). Also these decrees set the terms for assistance before childbirth, through medical or midwife appointments (presuming their existence) and, in the maternal and childhood area, milk dispensaries, nurseries and maternities. Maternities were founded in factories employing more than 400 women. Still, the prohibition to work before four weeks after childbirth remained, without any benefit conceded to women during the time off.

In the following year, in 1928, *the 2nd Feminist Congress on Education* (Congresso Feminista e de Educação) in Lisboa, presented the jurist Elina Guimarães' thesis on working women protection. The great innovation of her proposal was the idea to have the employer retaining a certain amount of a woman's salary, to be delivered to the worker during her maternity leave, as a benefit instead of a charity act. That is, having a contribution from the worker to be used by the worker in a time of need, we move towards the social security system that leads to achieved rights, remaining the assistance granted only to poor women (Guimarães, 1928).

Dr. Manuel de Vasconcelos Carneiro e Menezes, *Hygiene Inspector of Labour and Industries* (Inspector de Higiene do Trabalho e das Indústrias), resumed the idea of a maternity insurance in the celebration of the 57th anniversary of The Mutual Association of Trade Employees of Lisbon (Associação de Socorros Mútuos de Empregados no Comércio de Lisboa). For mothers working in trade, he proposed an equal monetary contribution by women, employers and the State, allowing a pay subsidy to a maternity leave of forty days (Menezes, 1929).

In the 1933 Constitution, which marks the beginning of Estado Novo (1933-1974), the 11th article exalts the

⁵ Diário de Governo No. 98, of May 10, 1919: Decree No. 5,637 organized National Compulsory Social Health Insurance (Seguro Social Obrigatório na Doença); Decree No. 5,637 regulated Compulsory Insurance for Work Related Accidents in all Professions (Seguro Social Obrigatório Contra Desastres no Trabalho em todas as Profissões); Decree No. 5,638 organized Disability, Old Age and Survival Compulsory Insurance (Seguros Sociais Obrigatórios na Invalidez, na Velhice e Sobrevivência); Decree No. 5,640 created and organized the Institute of Compulsory Insurance and General Security (Instituto de Seguros Sociais Obrigatórios e de Previdência Geral, ISSOPG).

⁶ Strauss was a French radical senator. With Strauss law of 1913 the compulsory maternity leave of four weeks after childbirth was paid.

family as the pillar to ensure “the vitality of the race”: “The State assures the constitution and defence of the family, as a source of race preservation and development” and the State has the task of protecting maternity and supporting the family wage (13th article, 2nd and 3rd paragraphs). We must point out that the idea of family wage coincides with the salary paid to the husband, payable to the family, since the woman is considered as domestics or working auxiliary of the “head of the family”. In 1934, in the context of legislation promoting maternity, a member of the Parliament, probably Shiappa de Azevedo, according to Irene Pimentel, proposed a National Family Subsidy (Subsídio Nacional de Família) to families with more than five children (Flunser, 2011).

The *Estado Novo* decreed the right for some women to vote, allowing women to achieve “political citizenship status”, as Marshall defined it, but with many restrictions for women⁷. In 1933 only single women older than 21 years old, with a secondary school diploma or higher, could vote in local elections for the Parish (Juntas de Freguesia) and City Hall (Câmaras Municipais) (Decreto-Lei No. 23,046, of December 27, 1933). The following year, in 1934, single women with incomes of their own, having a job, older than 21 years old, “heads of families” (because of husband’s disabilities or absence, for example due to emigration) and married women, with at least secondary school diploma and paying local property taxes could vote in legislative elections (Decreto-Lei No. 24,631, of November 6, 1934).

On March 16, 1935, law 1,884, started Social Security in Portugal (Diário do Governo No. 61, of March 16, 1935; Cardoso, & Rocha, 2003); it was established by an authoritarian regime, defending the existing social status, while promoting maternity and housework for women. Institutions offering public assistance and insurance were promoted (mutualism among workers and assistance and medical care by employers), based on the ideal of “subsidiarity” state intervention—the State only intervened when other institutions failed to support families and people at large. This law did not consider maternity insurance, instead it provided only medical care during childbirth, which was still compared to an illness. Only with law 2,115, of June 16, 1962, maternity became an independent insurance (Leal, 1970).

In this same year, by decree of the Minister of Secretary of the Interior (Ministro do Interior) Henrique Linhares de Lima, special days to celebrate Mothers’ Days (Jornadas das Mães de Família), were instituted with the purpose of spreading political propaganda, and the Organization for the Defence of the Family (Organização da Defesa da Família) was founded. Both initiatives were the theoretical axis to protect maternity and childbirth at home, promoting childcare, preventing causes of physical degeneration, like infant mortality, gastro-intestinal diseases, syphilis, tuberculosis, and the combat to the practices opposed to procreation such as contraception and abortion (“Defesa da Família”, 1936).

The ambiguity concerning women’s work was clearly recognized, in 1937 by the feminist Elina Guimarães in an article titled The Female Work (O Trabalho Feminino). She wrote: “Until now we thought that this regulation [all existing laws and regulations about women’s work] represented the ideal system to women—so much so, that feminists associations included it in their programs.... However, beyond the supposed benevolence of this regulation, the limitations imposed to female work damaged women, making it difficult for them to perform their jobs and forcing women into extreme poverty which causes more disastrous consequences than those of the unregulated work” (Guimarães, 1937).

In this same year, Cândida Parreira, a lawyer, member of the Parliament, presented a bill about granting a maternity leave to women working in factories. Law 1,952, of March 10, 1937 stipulated that: “Employees, both

⁷ Men had the right to vote since they could read and write.

temporary and permanent, for either a definitive or indefinite period of time, are excused from work for 30 days after childbirth... they will also have the right, during this period, to a subsidy, equivalent to at least a third of their salary”, subject to the employer evaluation of whether the employee either needed the benefit or deserved it (Diário do Governo No. 57, of March 10, 1937).

The Family Allowance (*Abonos de Família*), in the context of supporting large families, and the family wage, expressed in the 1933 Constitution, was legislated only in 1942 in Portugal (Diário do Governo No. 188, of August 13, 1942). As a matter of fact France was the leading country in this matter, and starting on March 11, 1932, ten years before Portugal. France establishes “*Allocations Familiales*” (*Family Allowances*) given to either fathers or mothers (Cova, 1997). In Portugal, Family Allowances were given to employees in the industry, trade, and liberal professions. In the following year, these allowances were extended to civil servants, civil and military and to other governmental employees (Diário do Governo No. 41, of February 20, 1943). The family allowance was paid to the men, lawfully married “heads of the family”, to single men workers, widowers, divorced or separated men with family responsibilities, but to women only if they were married with disabled husbands. Also, single mothers were not included.

6. Conclusion

We intended to present a diachronic view of women legislation in Portugal, with particular attention to working mothers.

Since the end of the Portuguese Monarchy, which marks the beginning of the time period we are studying, we can verify that women were substantially integrated in the labour market, mainly in factories and workshops. A great amount of these female workers were mothers, therefore the discussion about women’s work and maternity pervaded the whole society, leading the State to legislate about these issues, since they were trying to combat the so called “race degeneration”.

The first legislative measures focused on the limitation of working hours for women and a compulsory four weeks time off before or after delivery without monetary compensation. These regulations were ambiguous and punitive for women, and undoubtedly caused them to become poorer.

Consequently “protective” women’s work legislation, warmly debated by governments, workers and women’s organizations alike, led to numerous discriminations against women. In fact, this legislation removed women from the best paid jobs, including night work, forcing them to circumvent the law often, and integrated them in the sweating system at home which severely exploited women by increasing the working hours, while relegating them into the private sphere.

Following the Marshall study about the evolution of the citizenship process, we realize that Portuguese women were granted limited political and social rights since the 1930s. So, his proposal of citizenship phases does not apply to Portuguese women. As many contemporary historians and feminists point out, the idea that Marshall had in mind was about working men with dependent family members (Lewis, 1993, 1997; Orloff, 2003).

We also verified that in Portugal the principle of “subsidiarity” prevailed integrating Portugal in the continental model proposed by Esping-Andersen—The State only intervened after the failed action of social assistance institutions and the family based on the man breadwinner dogma, identifying husbands as the “heads of the family” and women as housewives.

We concluded that the legislative measures promulgated after the social security law established in 1935,

such as the maternity leave with reduced benefits, are based on principles that must be criticized because only the employer decided whether women deserved it or not. Also, the family allowance payable to the father, but only exceptionally to the mother, and never to the single woman, reflect the dominant vision of the authoritarian regime about the subordinated role of women. However, it was impossible for the State to be unaware of the fact that women and mothers were a reality in the labour market in Portugal, although, many women were included in the census as auxiliaries of the “head of the family”.

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