

WOMEN AND STATE: BETWEEN PREVENTION AND PROTECTION (1900 - 1912): THE SCENARIOS OF THE FIRST SOCIAL LEGISLATION IN SPAIN FROM A GENDER PERSPECTIVE

MUJERES Y ESTADO: ENTRE LA PREVENCIÓN Y LA
PROTECCIÓN (1900 – 1912):
LOS ESCENARIOS DE LA PRIMERA LEGISLACIÓN SOCIAL
EN ESPAÑA DESDE UNA PERSPECTIVA DE GÉNERO¹

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Abstract

This study aims to examine the motives leading to the first social legislation in Spain that specifically and uniquely regulated women's work. With this purpose in mind, the article makes a detailed survey of the first legal provisions, with different senses and purposes, enacted in our country that entailed specific regulation of female work. Time-wise, the study spans from 1900, when the law dated the 13th of March regulating the working conditions of women and minors was enacted, to 1912, when the law dated the 27th of February entered into force, known as the *Ley de la silla* (Law of the Chair), along with the law dated the 11th of July banning women from working nightshifts in workshops and factories.

By more deeply examining this issue and basing our examination on the earliest legal-regulatory texts on social matters, the article aims to shed light on the true intent of the legislation in the early 20th century in relation to the earliest regulations on women's work; from this we proceed to a historical-legal analysis of the first social norms from a gender perspective.

Keywords: specific regulation of female work; regulatory texts; social matters; gender perspective.

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Resumen:

El presente trabajo trata de ahondar en los motivos que llevaron a la primera legislación social en España a regular de modo específico y singular el trabajo de la mujer. Se realiza un recorrido detallado por las primeras disposiciones legales que en nuestro país, y con diferentes sentidos y diversas finalidades, contemplaron una regulación específica para el trabajo femenino. El estudio se acota temporalmente entre los años 1900, año en el que se promulgó la Ley de 13 de marzo reguladora de las condiciones de trabajo de mujeres y menores, y el año 1912, momento en el que entra en vigor la Ley de 27 de febrero, Ley de la silla, y la Ley de 11 de julio, sobre prohibición de trabajo nocturno a mujeres.

Profundizando en este propósito y basándose en los primeros textos jurídico-normativos en materia social, la ponencia pretende esclarecer cuál fue la verdadera intención del legislador de principios del siglo XX en relación con la primigenia regulación del trabajo de la mujer; se procede de este modo a un análisis histórico-jurídico de las primeras normas sociales desde una perspectiva de género.

Palabras Clave: regulación específica del trabajo femenino; textos normativos; cuestión social; perspectiva de género.

“No matter how unhygienic some professions are,
there is nothing as unhygienic as hunger”
Segismundo Moret².

INTRODUCTION

Traditionally, the contemporary history of women in Spain has been studied through the most widely accepted assumptions in social history,³ whose outlines have been debated with international historiography, in which the studies by Joan Scott have been decisive⁴. The earliest studies conducted in the 1970s, right in the midst of the struggle against the Franco regime and the transition

² Cited in De Burgos, Carmen, *La mujer moderna y sus derechos*. Madrid, 1927, p. 110.

³ Borderías, Cristina (Ed.), *Joan Scott y las políticas de la historia*. Barcelona, Icaria, 2006, p. 180.

⁴ The 1986 article by Joan Scott, “Gender, A Useful Category of Historical Analysis”, published in the *American Historical Review* (vol. 91, no. 5, pp. 1053-1075) and translated into Spanish in 1990 as “El género: una categoría útil para el análisis histórico”, is crucial for understanding the linguistic and cultural shift, along with the deliberations associated with the definition of gender as a category of analysis. The Spanish edition of the collective work is Amelang, James; Nash, Mary (Eds.), *Historia y género: las mujeres en la Europa moderna y contemporánea*. Valencia, Alfons el Magnànim, Institució Valenciana d’Estudis i Investigació, 1990.

to democracy in Spain, focused on shedding light on the presence of women in the organised labour movement and examining the origins of suffragist feminism during the Second Republic and the Civil War⁵. In the 1980s, they were joined by the American debates on the so-called "new women's history". These studies extended the vantage point and included aspects from the realm of feminine experience, those that affect the private sphere which was historically relegated and excluded and contrasted to the male category of production and politics. More particularly, the studies examined traditionally invisible realms like the family and the home.

We shall see how these premises, which are possible when one applies a gender bias to the study of social history, yields consequences: women's (and also children's) salaried work is viewed as subsidiary, the pay is notably lower than what men earn, and there is little union membership among female workers, which leads to their being seen as class enemies by their male colleagues. Of course, the women who work at home or provide their services in the domestic realm are excluded from any social rights in this early stage. We believe that in this sense working women represent the lumpenproletariat.

This study was performed based on a detailed analysis of the regulatory texts and their coeval legal commentators. A critical study of these works is an indispensable tool for properly grasping the scope and meaning of the earliest social legislation, gathering the interpretative criteria and legal sensibility of the age, making the historical researcher's job easier and helping to eliminate prejudices motivated by the application of today's legal logic to historical times based on realities that are essentially different to those of today. Furthermore, this study pays particularly close attention to the contents of the *Boletín del Instituto de Reformas Sociales* (Newsletter of the Institute of Social Reforms), an indispensable source for learning about the process of how all the social legal norms were shaped during the first quarter of the 20th century, as well as the different decision-making processes by the different actors involved in social issues.

In this article, each of the precepts of these norms is clarified and interpreted, and then related to the purpose that lawmakers wanted to give these regulatory provisions in terms of women's work. The ultimate aim is to verify whether the earliest regulation of female work in Spain was an instrument aimed at excluding women from the labour market.

In any event, it is true that regulating women's working conditions implies a conflict with the established morals, one example of which is the ban on wo-

⁵ With two chief reference works: Capel, Rosa, *Sufragio femenino en la Segunda República*. Granada, Universidad de Granada, 1975 and Di Febo, Giuliana, *Resistencia y movimiento de mujeres en España 1936-1976*. Barcelona, Icaria, 1975.

men working in workshops whose ethics were dubious and the ban on certain jobs for married women. Likewise, this legislation aims to protect the biological condition of women, as we shall see in the law dated the 13th of March 1900. Therefore, the legal considerations are related to language based on biological essentialism which reduces women to the category of mother. This shall also be related to the community's lack of involvement in parenting; thus, motherhood was not viewed as a social duty but as a responsibility that primarily befell the working woman.

A GENDER ANALYSIS FOR THE INSTITUTIONALISATION OF SOCIAL UNREST

An examination of the social legislation and the processes of juridical and political institutionalisation of the different social conflicts can be performed from many diverse approaches; one of these approaches which we believe to be crucial is gender analysis, in which the sexual division of labour and power relationships between men and women are the optimal dividing line for exposing the exclusions, relegations and discriminations of paid work outside the home performed by thousands of women in Spain in the first third of the 20th century⁶.

Historical social legislation in Spain and female work serve as a vantage point from which we can glimpse many of the problems and conflicts in the so-called *social questions* in Spain around the time of the Restoration. This is so because this relationship places at the heart of the discourse both the omissions common to actions by the liberal state in the realm of incipient legislative policies and women's fraught relationship with salaried work performed outside the home⁷. We understand that this premise means that regulating women's work at its beginnings is one of the best examples for examining the "state mindset," which is ultimately liberal and male⁸.

⁶ Borderías, Cristina, "La feminización de los estudios sobre el trabajo de las mujeres: España en el contexto Internacional". *Sociología del Trabajo*, no. 48 (2003); more recently by the same author, *La historia de las mujeres: perspectivas actuales*. Barcelona, Icaria, 2008; Nielfa, Gloria, "Trabajo, legislación y género en la España contemporánea: los orígenes de la legislación laboral". Sarasúa, Carmen; Gálvez, Lina, *¿Privilegios o eficiencia? Mujeres y hombres en los mercados de trabajo*. Alicante, Servicio de Publicaciones de la Universidad, 2003, pp. 39-53; Wikander, Ulla; Kessler-Harris, Alice; Lewis, Jane (Eds.), *Protecting Women: Labor Legislation in Europe, and United States, and Australia, 1880-1920*. Urbana, University of Illinois Press, 1995; Perrot, Michelle (Dir.), *Une histoire des femmes est-elle possible?*. Paris, Rivage, 1984; and by the same author, *Mon histoire des femmes*. Paris, Ed. du Seuil, 2006.

⁷ This was a very early claim; see, among others, the utopianism of Flora Tristán in *La unión obrera* (Paris, 1843) and Louise Otto-Peters, *Das Recht der Frauen auf Erwerb* ("Women's Right to Salaried Work", Hamburg, 1866).

⁸ Several examples that complete this idea can be found in the roots of the paradigm shift from the old regime to liberalism in continental Europe. Thus, female Parisians' claims for

Working women, accustomed to a family situation of subordination, witnessed how this same schema was transferred to the factories, where they were required to labour at low wages, interminable workdays and poor hygiene conditions. This is the perfect backdrop for working women to find an environment characterised by oppression, precariousness and discrimination⁹.

If we gain perspective on this environment of pauperism that surrounded working women, we can understand the keys to the claim in the first section of this article that women represented the lumpenproletariat.

First of all, it is known that liberalism entailed a redefinition of citizenship, according to which it was attained through membership in a political community, the state, which confers both rights and responsibilities. The question that immediately arises is: did women belong to this community? If the sense of belonging implies attribution of the aforementioned rights and responsibilities, we know that the answer is negative in terms of the most important political right: suffrage. The legal system of the Spanish Restoration envisioned women as a subject with no rights of their own. The granting of political rights in the Spanish liberal context, as well as their repercussions on the other rights, omitted the fact that working women were a very important part of the core of the society's economic life, where the role of women had been forcibly inverted compared to the traditional position.

Secondly, during the first third of the 20th century, there was a profound transformation of the institutions charged with legislating and enforcing social legislation in Spain, in a process of transformation that ranged from supplying regulations in the liberal state to gradually intervening in and institutionalising labour relations.¹⁰ As historiography has demonstrated, the first social legislation developed in Spain – whose drafts date back to the First Republic – were characterised by its partiality in the scope of application and the difficulty of truly enforcing it¹¹. More generally, the origins of the social question can be interpreted

political equality and free trade for women in the 1789 National Assembly, and the parallel *Declaration of the Rights of Women and Citizenship* by Olympe de Gouges.

⁹ "In its homicidal zeal, capitalism subjugated legions of women, young girls and young children, taking the misery of the proletariat to the extreme", Zetkin, Clara, *La cuestión femenina y la lucha contra el reformismo*. Barcelona, Anagrama, 1976, p. 41.

¹⁰ See, among others, Bayón Chacón, Gaspar, *La crisis de la sociedad capitalista y el intervencionismo estatal*. Madrid, Ateneo, 1961; Martín Valverde, Antonio, "La formación del Derecho del Trabajo en España". AA.VV., *La legislación social en la historia de España. De la revolución liberal a 1936*. Madrid, Congreso de los Diputados, 1987, pp. XIII-CXIV; Montoya Melgar, Alfredo, *Ideología y lenguaje en las leyes laborales de España (1873-1978)*. Madrid, Civitas, 1992.

¹¹ Martín Valverde, Antonio, "Estudio Preliminar. La formación del Derecho de Trabajo en España", *La legislación social en la Historia de España. De la revolución liberal a 1936*. Madrid, Congreso de los Diputados, p. LI.

ted as a problem of indigence and pauperism as well as a legal problem whose solution lay in state intervention¹².

Paradigmatic in this sense are the efforts conducted by the Comisión de Reformas Sociales (Commission on Social Reform, 1883) in the early days of the institutionalisation of social reform in Spain through an examination of the problem of the working class. This took place within a context in which women's gradual, unstoppable influx into the labour market was such an unavoidable reality that the Commission's efforts, an early example of scientific interventionism, devoted some of the questionnaires through which it received information on the status of the working class to women¹³.

This is one of the aspects of the will of the lawmakers; in the letter of the law we can see the establishment of precarious rights motivated by an incipient political interventionism whose representatives, men, operate more comfortably within the discourse of philanthropy and Christian charity¹⁴.

All of this took place in a European context that was also progressive, in which levels of labour legislation and their effective enforcement were implemented, especially in the wake of the International Labour Organisation¹⁵.

The current debate on the genesis of protective legislation extends beyond the discourses on the biological protection of future generations by establishing palliative measures for women, and it centres on the dearth of a single direction in the political and legal intentionality.

In any event, the social conditions in the first third of the 20th century irremediably cast working class women into jobs outside their homes, with the conse-

¹² Suárez Cortina, Manuel, *Revista de Historia Contemporánea*, 29, 2004, p. 533, "Presentación" in the issue devoted to "La "cuestión social" in Liberal Spain. In the same issue, see Lacalzada Mateo, María José, "Las mujeres en la "cuestión social" de la Restauración: liberales y católicas (1875-1921)", pp. 691-718.

¹³ The Royal Order dated the 28th of May 1884 stated that the provincial and local social reform commissions and all the questions aimed at gathering oral and written information on the working conditions and life of the working class. The structure included 223 questions divided into 32 sections. Specifically, section 14 (questions 93-104) referred to "Women's Work".

¹⁴ Paz Torres, Olga, "¿Del parto individual a la socialización de la maternidad? Análisis de la legislación histórica androcéntrica frente a los nuevos modelos jurídicos igualitarios". Bodelón, Encarna; Heim, Daniela (Coords.), *Derecho, género e igualdad. Cambios en las estructuras jurídicas androcéntricas*. Vol. I, Barcelona, Grupo Antígona, Universidad Autónoma de Barcelona, 2010, pp. 289-303.

¹⁵ Hepple, Bob, *La formación del derecho del trabajo en Europa*. Madrid, Ministry of Labour and Social Security, 1994.

quent abandonment of the home and the family, and in this sense many voices held out hope that this was a temporary situation¹⁶.

“AND YET, SHE WORKS”: THE NECESSARY EMANCIPATION OF WORKING WOMEN

Along with the moral need for women to return to the home as the main focal point of their lives, there is another more pragmatic factor, namely economic need, which has direct effects on working class women’s real process of emancipation. Female labour inspired by the imperative of family survival was viewed as a *lesser evil* in a context in which the poverty of the working class was evident¹⁷. That is, employing women – and children – in factories rescued working class families from indigence.

It is necessary to point out that along with jobs performed by women outside the home in factories – which was the focal point of the laws analysed, characterised by their partial scope of application in the majority of cases – there were multiple spaces that lay beyond intervention. This amalgam of circumstances includes at-home work or domestic service – the “shameful workers” in Scanlon’s words. Although they are not the subject of this study, we cannot fail to mention them because of their importance in female employment during the period analysed.

We understand that working women performed their jobs outside the home in an everyday environment surrounded by dismal conditions at the same time that they questioned the undergirding of the social structures of capitalism and the patriarchy. In the information from the Commission on Social Reforms, judgements of all kinds were issued that confirm this questioning with a scope that transcends the particular and actually challenges the entire system. Examples of this include statements claiming that women perform “*jobs that women should*

¹⁶ See Alonso y Rubio, Francisco, *La mujer bajo el punto de vista filosófico y moral*. Madrid, 1863; to the contrary, we can find other discourses more in line with the society reality: “the new home must be built upon mutual work, on reciprocal recognition of rights and responsibilities, and on the couple’s conscious responsibility in their household intimacy and in their mission as concrete inhabitants of humanity”, Jiménez de Asúa, Luis, *Al servicio de la nueva generación*. Madrid, 1930.

¹⁷ “As labour history has been charged with confirming (...) through the information bequeathed by the Commission on Social Reforms, women’s working conditions outside the home were much worse than men’s (...): longer workdays (...), in less healthy and unhygienic environments, in a hostile ideological and often family milieu, and, to close this perverse circle, with 30 to 50 percent lower salaries”; Valdés Dal-Ré, Fernando, “La legislación obrera industrial sobre las mujeres (1900-1931), entre la protección y la restricción”. *Revista Relaciones Laborales, Teoría y Crítica*, no. 1. 2009.

not perform under any circumstances” yet which *“they do”*,¹⁸ as well as others claiming that the fact that women work outside the home many hours does not exempt them from their household chores, especially in the case of married women: *“I understand why single women work, but married women should always be at home to tend to their family’s needs, because otherwise you’d walk around with your clothing in tatters”*¹⁹ In any event, these two examples reveal resignation, albeit with misgivings, to female employment.

As industrialisation gained momentum²⁰, there were increasing opportunities for women to work in factories, where the atmosphere gave them some measure of independence if we compare it with the asphyxiation of being caged up at home.

This context gave rise to the appearance of the most important laws that had a specific impact on the living and working conditions of women, which we mentioned above. The following sections of these law will be the subject on an in-depth study: the law dated the 13th of March 1900 regulating the working conditions of women, as well as the regulation dated the 13th of November of the same year; the law dated the 30th of January 1900 on workplace accidents and the regulation dated the 28th of July of the same year; the law dated the 3rd of March 1904 on the Sunday break and the regulation dated the 19th of April 1905; the Royal Decree dated the 25th of January 1908 regulating jobs forbidden for women and children; the law dated the 18th of July 1911 regulating apprentice contracts; and finally, to address our chronological bias, the law dated the 27th of February 1912 known as the *Ley de la Silla* (Law of the Chair). All of them, as Fernando VALDÉS DAL-RÉ states, can be categorised into “three main thematic strands”²¹.

These laws as a whole, as well as the specific measures set forth in each of their provisions, have given rise to an intense controversy in the field of historiography regarding separate laws on women’s work²².

¹⁸ Regarding the job of bricklayer’s assistant, in *Reformas sociales. Información oral practicada en virtud de la Real Orden de 5 de diciembre de 1883, preparado por la Comisión para el mejoramiento de la clase obrera*, Madrid, 1889, p. 107.

¹⁹ *Ibid.*

²⁰ We should bear in mind that Spanish industry grew due to World War I, albeit with devastating consequences in the guise of a significant loss in purchasing power primarily due to the rise in prices, even for basic products.

²¹ “Jobs for pregnant or nursing women, jobs prohibited to women (...) and limitations on the length of the workday and workweek”, Valdés Dal-Ré, Fernando, “La legislación obrera industrial sobre las mujeres (1900-1931), entre la protección y la restricción”. *Revista Relaciones Laborales, Teoría y Crítica*, no.1. 2009, p. 22.

²² See, among others, Campos Luque, Concepción, “Los orígenes del Estado del bienestar: institucionalización de las reformas sociales, políticas de género y su aplicación en Málaga en el primer tercio del siglo XX”. Ramos, María Dolores; Vera, María Teresa (Coords.),

ANALYSIS OF THE EARLIEST SOCIAL LEGISLATION: A PROPOSAL FOR SYSTEMATISATION (1873-1912)

The emergence of social legislation entailed a retreat in the liberal *laissez-faire* ideology. The thesis of abstention of state norms in labour relations was truncated as regards women and minors for two reasons. First, the need to protect these collectives was justified based on reasons of “*physiological character*”²³, through the understanding that the massive exploitation of women and minors would seriously weaken society’s health in the middle term. Secondly, charitable-moral reasons required lawmakers to intervene in the working conditions of these workers²⁴.

The first norms regulating women’s work were oriented at shaping an incipient system to protect motherhood, both in itself and in relation to the offspring²⁵. However, coupled with this purpose, from a historical-legal analysis of the earliest social provisions we can glimpse other motives leading lawmakers from that period to particularly regulate women’s work. As has been accurately pointed out, the earliest social legislation on women’s work resulted from multiple factors and fulfilled diverse and heterogeneous functions²⁶. Still, bearing in mind this concurrence of factors and motivations, in each of the social provisions we can distinguish essential reasons that must be considered above the others as the driving forces behind the lawmakers’ desire to create regulations.

Provisions with an essentially preventative underpinning

This category includes all the regulatory provisions whose essential purpose lay in ensuring the safety and health of women in the workplace. The earliest social norms were justified by the biological differential of motherhood, endowing women with special protection in the workplace to ensure that their health did not deteriorate, which would later cause harm to their children, future generations and ultimately the national interest. Furthermore, protection during pregnancy and childbirth was necessary in order for women to fulfil their mission as mothers²⁷.

Discursos, realidades, utopías. La construcción del sujeto femenino en los siglos XIX y XX. Barcelona, Anthropos Editorial, 2002, pp. 252-285.

²³ Suárez González, Fernando, *Menores y mujeres ante el contrato de trabajo*. Madrid, Instituto de Estudios Políticos, 1967, p. 29.

²⁴ Martín Valverde, Antonio, “La formación del ...”, p. LXIV.

²⁵ Valdés Dal-Ré, Fernando, “La legislación obrera industrial sobre las mujeres...”, p. 19.

²⁶ Borderías, Cristina, “Introducción: instituciones y género en la formación de los mercados de trabajo”. Borderías, Cristina (Ed.), *Género y políticas del trabajo en la España contemporánea, 1836-1936*. Barcelona, Icaria, 2007, pp. 9 and forward.

²⁷ Studies from the late 19th century had demonstrated that certain industrial activities had negative effects on women and reproduction. Thus, for example, in the large linen-producing counties there was a considerable population depletion which revealed the rela-

Maternity leave: The earliest preventative provisions

With the enactment of the law dated the 13th of March 1900 and its regulation on the 15th of November of the same year, the role of the state as the guarantor of the weakest groups in the labour market was solidified; the state's intervention in the work of women and minors was necessary "to oppose the abuse of the freedom to hire" these two collectives²⁸. The law dated the 13th of March 1900 on the working conditions of women and minors would remain in force for many years, and much of its regulatory content would endure through its inclusion in subsequent social norms²⁹.

The main contribution of this norm should not be sought in the differential treatment of men and women, rather in the establishment of specific protection for the biological condition of women in motherhood and in their relationship with their child³⁰.

However, we should bear in mind that the ultimate purpose of this law was not to protect working-class women's motherhood; rather it was a more generic goal of regulating the work of women and children in order to provide a solution to the social situation created and to the effects it was having on the country's economic and demographic growth as measured by the child mortality rate and the number of miscarriages among working women³¹.

This norm regulated maternity leave with the job reserved intact for the woman when she returned to work, given that article 9 forbade women from working in the three weeks after giving birth. This absolute ban was later amended by article

tionship between sterility and women's work in these industries. Eleizegui López, José Ignacio, *Nociones de Higiene Industrial*. Barcelona, Sucesores de Manuel Soler, 1913?, pp. 7 and 56. In identical terms, different studies from the last quarter of the 19th century had concluded that there was an excessively high rate of illnesses and death among very young children whose mothers frequented the factories. This phenomenon was attributed to a lack of care and artificial nursing. Jay, Raul, "La protección legal de los trabajadores". *Revista de Legislación y Jurisprudencia* Madrid, 1905, pp. 18 and 19.

²⁸ Espuny Tomás, María Jesús, "Eduardo Dato y la legislación obrera". *Historia Social*, no. 43 (2002), p. 14.

²⁹ Martín Valverde, Antonio; Rodríguez-Sañudo Gutiérrez, Fermín; García Murcia, Joaquín, *Derecho del Trabajo*. Madrid, Tecnos, 1991, p. 57. Prior to this, different draft laws on the work of women and children had been submitted, notably the one developed by the Professor of Medicine Amalio Gimeno, on children's labour and the one by Vicente Santamaría, Professor of Political Law, on women's labour. Salcedo Ginestal, Enrique, *Estudios elementales de higiene industrial. Directorio de los patronos en la higienización de las industrias*. Madrid, Madrid Médico, 1904, pp. 210 and 211.

³⁰ Martín Valverde, Antonio, "La formación del...", p. LIII.

³¹ Gala Durán, Carolina, "El seguro obligatorio de maternidad", AA.VV, *Segona República i món jurídic*. Mataró, Cálamo, 2007, p. 92.

18 of the regulation dated the 13th of November 1900, which extended it one more week after prior authorised notification and made it a facultative right of working women, who were allowed to ask their bosses to quit working after giving birth. Along with this absolute prohibition, article 9 of the law was a facultative right for working class women which required the boss to reserve the woman's job from the time she requested it up to three weeks after having given birth should the woman request a leave of absence for "*forthcoming birth*". Article 18 of the regulation outlined how this law was to work in practice, as it enabled working women to submit this request after the eighth month of pregnancy.

The absence of payment during the period when work was prohibited rendered the measures of the 1900 law incomplete, consolidating the differential treatment that the incipient social legislation granted to working women. This vein shall remain in all the subsequent legislation³². Nonetheless, the law entailed a huge step towards overcoming a legislative stance that had been purely prohibitive in terms of women's work by stipulating specific rights for them that revolve around the particular needs derived from motherhood³³.

The law dated the 8th of January 1907

On the 18th of January 1906 representatives of the working class submitted to the Institute of Social Reforms a motion calling for the reform of article 9 of the law dated the 13th of March 1900 and article 18 of the regulation implementing that law, with different justifications³⁴. The request was motivated by the condition of women in the period before and after giving birth, by the pernicious conditions of work for children and through comparison with laws in other countries³⁵. It stated that women's working during pregnancy led to gynaecological problems and triggered infant death, miscarriages and premature births. All of this led to a society-wide harm that affected the very continuity "*of the race*"³⁶.

³² Nielfa Cristóbal, Gloria, "Trabajo, legislación y género en la España Contemporánea: los orígenes de la legislación laboral". AA.VV., *¿Privilegios o Eficiencia?. Mujeres y Hombres en los mercados de trabajo*. Alicante, Universidad de Alicante, 2003, pp. 37-56.

³³ Montoya Melgar, Alfredo, "El derecho del trabajo como instrumento de igualdad de mujeres y hombres". AA.VV., *La presencia femenina en el mundo laboral. Metas y realidades*. Cizur Menor, Aranzadi, 2006, p. 32.

³⁴ *Boletín del Instituto de Reformas Sociales*, no. 25. 1906, p. 1.

³⁵ Cabeza Sánchez-Albornoz, Sonsoles, "Legislación protectora de la maternidad en la época de la Restauración española". *Cuadernos de Historia Moderna y Contemporánea*, Universidad Complutense de Madrid, no. VI. 1985, p. 152.

³⁶ Different studies had associated working women with weaker children, concluding that the weight of infants born to women who had been working until soon before the date of birth was lower than that of infants born to women who did not work or who rested in the weeks prior to giving birth. Likewise, and due to the "*dangers of artificial nursing... mothers' leave of absence after giving birth, even if it is limited to four weeks, could contribute*

The upshot of this motion was the enactment of the law dated the 8th of January 1907, which amended article 9 of the law dated the 13th of March 1900, banning women from working in the four weeks after birth, which could be extended by two more weeks conditioned upon prior authorised notification. During all this time, female workers had the right to ensure that the boss saved their jobs in the factory. On this point, the Spanish laws were adopting what had been noted at the Conference on the 15th of March 1890 called by the Emperor of Germany and underwritten by 15 European countries, in which it was unanimously determined that women could not be allowed to work until four weeks after giving birth. This criterion was later ratified by France's *Société Obstreticale* in 1901³⁷.

The working class world was not pleased with this measures, as it was viewed as something that should be complemented with an indemnification system that would allow the women to pay their bills during the months when they was absent from work on maternity leave. Thus, just as the undoubted health problem was solved, likewise "*it is necessary to resolve... the economic problem, which entails a forcible drop in income in the working woman's household*"³⁸. This motion far exceeded the scope of the reform engineered by the Institute, which only managed to pledge to launch a study that would serve as the cornerstone of the organisation of one or several "maternity banks" aimed at helping working women legally required to cease receiving pay because of childbirth and thus deprived of their salaries³⁹. Despite this partial dissatisfaction among the

powerfully to lowering infant mortality". Boletín del Instituto de Reformas Sociales, no. 26 (1906), p. 89.

³⁷ Jay, Raul, *La protección legal de los trabajadores*, p. 64. After this date, and dovetailing in time with the reform in our country, different draft laws and social congresses submitted requests to extend the length of maternity leaves and social benefits for working mothers. Instituto de Reformas Sociales, *Congresos Sociales en 1907*. Madrid, Sucesora de M. Minuesa de los Ríos, 1908, pp. 98 and 50.

³⁸ Eleizegui López, J.I., *Nociones de Higiene Industrial*. p. 57. All the commentators from this period pointed out that the norm, though advanced, required the necessary complement of an economic benefit for the mother. Thus, they signalled the need for new mothers to be granted "*a small pension, even if it is just one peseta per day as they are guaranteed in many nations, along with their job being saved for them*. Yaben Yaben, Hilario, *Exposición y crítica del llamado intervencionismo del Estado*. Madrid, Establecimiento tipográfico de Jaime Ratés, 1914, p. 272.

³⁹ Marvaud, Ángel, *La cuestión social en España*. Madrid, Ediciones de la Revista de Trabajo, 1975, p. 251 and 252. The absence of benefits or payments for working women during their required leave of absence after childbirth meant in practice that what was provided for in the law dated the 8th of January 1907 was not fulfilled. It would be useless to impose leaves of absence for childbirth on working women if circumstances forced them to not miss even a single day of earnings. In this way, as long as there was no parallel economic aid for the required leave of absence, the laws protecting motherhood would not be as effective as desired. Cuesta Bustillo, Josefina, *Los seguros sociales en la España*

working class, this norm was regarded as extraordinarily advanced at the time, while it also served as an example for other countries around Spain⁴⁰.

The ban on dangerous and insalubrious jobs

Through the Royal Decree dated the 28th of January 1908, the Spanish legal system established certain jobs that were banned to minors under the age of 16 and female minors, that is, women under the age of 23, as it set the legal age of adulthood according to a legal instead of biological criterion. The statement of motives of the Royal Decree proclaimed itself to be one of the first guidelines that should be followed in our industrial legislation from the standpoint of workplace hygiene⁴¹. We should inquire into the ultimate protective purpose of this norm, bearing in mind that the danger and insalubriousness of these industries affected all workers, and that the laws, instead of establishing measures that would improve the security and hygiene conditions on these jobs as a whole, were solely concerned with excluding certain workers from them. As was mentioned above, this no doubt reflects the fact that state interventionism still had to contend with powerful social and political opposition which rendered a sweeping regulation of working conditions for all workers unfeasible. Thus, it was much less contentious to regulate the jobs of women and children based on their weaker nature, and in the case of women, on their primary role as mothers⁴².

del siglo XX. Hacia los Seguros Sociales Obligatorios. Madrid, Centro de publicaciones del Ministerio de Trabajo y Seguridad Social, 1988, volume II, p. 490.

⁴⁰ Marvaud, Ángel, *La cuestión social en España*. p. 251. Along the same lines, Perkins, Clarence, "Spanish Labor Legislation Since 1899". *The American Political Science Review*, vol. 5, no. 2 (1911), p. 251. Only Switzerland had a similar law on the books, Cabeza Sánchez-Albornoz, Sonsoles, "Legislación protectora de la maternidad...", p. 153.

⁴¹ González Sánchez, José Juan, *Seguridad e higiene en el trabajo. Formación histórica y fundamentos*. Madrid, Consejo Económico y Social, 1997, p. 96.

⁴² With this law, a line of legislation in our country was ushered in that protected women in their jobs at their own expense, making them pay for the economic effort that society did not want to shoulder in order to allow them to work under decent conditions "according to their singular features: for decades, the easiest way to protect women at work consisted of keeping them away from work, of preventing them from being able to earn the fruit of their inapplicable effort". Piza Granados, Jaime, "Prohibición de trabajos penosos a la mujer". AA.VV., *La presencia femenina en el mundo laboral. Metas y realidades*, p. 237. Along the same lines, it has been pointed out that many of the norms that have historically been drawn up to protect women were actually mere prohibitions which, more than safeguarding their physical health, aimed to prevent their insertion in the job market, relegating them socially to the sidelines and limiting their productive function at home, Miñarro Yanini, Margarita, "Acción preventiva en los colectivos especialmente protegidos: Introducción. La protección a la maternidad". García Ninet, Juan Ignacio, et al., *Curso sobre Prevención de Riesgos Laborales*. Castelló de la Plana, Publicacions de la Universitat Jaume I, 1998, p. 235.

The norm established a detailed, exhaustive list of industries that were categorically off limits for minors under the age of 16 and female minors. Along with the industries that were fully banned, the Royal Decree also contains a list of industries in which children of both sexes and female minors could not be employed in certain jobs and under certain conditions. For example, article 7 bans girls under the age of 16 from operating pedal-operated sewing machines and in general in any machines that use this kind of power system⁴³.

The Law of the Chair dated the 27th of February 1912

The laws protecting women got a major boost with this provision; healthcare advocates and sociologists were working to improve the physiological and social conditions of women in an effort to protect what they called female weakness. Regardless of the ultimate influence of international provisions on Spanish laws, the enactment of this norm obeyed clearly physiological reason; women should not stand while working but sit. Different studies on hygiene and health had proven that working while standing could lead to congestion of the ovaries and uterus, triggering miscarriages and premature births⁴⁴. Furthermore, many hours working on one's feet led to deformities in women's pelvises and feet, which could degenerate into serious illnesses⁴⁵. It was understood that all of this caused harm to society at large that affected the very continuity of the "race"⁴⁶. For this reason, the norm not only aimed to provide women with more salubrious and comfortable working conditions; rather it also ultimately sought to mitigate the consequences of women's work on their reproductive function, on the very continuity of society and on the prevailing specific social model.

The *Law of the Chair* states that at department stores, shops, offices, desks and in general any non-factory workplace where articles or objects are sold or issued to the public or any related service is provided by female employees there or at any auxiliary sites, the owner or his representative, either private or corporate, must make a chair available for every female worker. The norm states that each chair shall be used exclusively for one employee, thus excluding those made available to the public. All female employees may use their chair as

⁴³ Historically, sewing machines had been the subject of numerous criticisms that they were dangerous to women's physical health. Espuny Tomás, María Jesús, "El treball infantil i de menors: una perspectiva històricojurídica". AA.VV., *Treball infantil i de menors*. Barcelona, Càlamo, 2005, p. 80.

⁴⁴ García Oviedo, Carlos, *Tratado elemental de Derecho Social*. Madrid, Librería General de Victoriano Suárez, 2nd edition, 1946, p. 467.

⁴⁵ Falcón O'Neill, Lidia, *Los derechos laborales de la mujer*. Madrid, Editorial Montecorvo, 1965, p. 403.

⁴⁶ *Boletín del Instituto de Reformas Sociales*, no. 26. 1906, p. 89.

long as it does not hinder them from performing their jobs and during their jobs when feasible.

Provisions primarily aimed at protection or paying social benefits

Even though they have often been ignored by the doctrine, the earliest social legislation also encompassed certain institutions clearly aimed at providing benefits which granted women economic rights or social benefits unlike those granted to male workers.

Pension for widowhood as an exclusive right of women

For the first time in Spanish law, the Law on Workplace Accidents dated the 30th of January 1900 systematically shaped the legal status of workers disabled at the workplace. In this way, disability was awarded a series of rights, such as the right to healthcare and the right to indemnification. This was coupled with the correlative duty on the part of the company to provide both healthcare and the compensation for the damages to salaried workers at its own expense.

Should the workers be killed as a result of a workplace accident, article 5 of the law states that the boss is required to pay the burial costs up to a ceiling of 100 pesetas and to indemnify the widow, legitimate offspring under the age of 16 or progenitors. The indemnifications ranged between 24 months of salary for the widow or legitimate orphaned minor children or grandchildren to seven months of salary should the deceased worker only leave a parent over the age of sixty without any resources of their own. This system of indemnifications for death would not be payable when the victim was a working woman. In this way, it was impossible for a widower of a woman killed in a workplace accident to be the beneficiary of an indemnification based on the 1900 Law on Workplace Accidents⁴⁷. Should the woman be the worker who suffered from an accident, benefits were only paid to her legitimate offspring (children or grandchildren) and progenitors (parents and grandparents), albeit with stringent conditions⁴⁸.

⁴⁷ This provision was criticised by commentators of the day, as they believed that widowers could foreseeably find themselves in a situation which legitimately made the indemnification paid to him as a widower as necessary as a similar payment to a widow. González Rebollar, Hipólito, *Ley de accidentes del trabajo. Estudio crítico a la española de 30 de enero de 1900*. Salamanca, Imprenta de Calón, 1903, p. 374 and Puig Martínez, César and Mascarell Llacer, Lázaro, *Tribunales Industriales. Accidentes del Trabajo*. Valencia, F. Sempere y Compañía, 1909, p. 42, among others.

⁴⁸ Should there be descendants, they had to have been abandoned by their widowed father or grandfather or come from a marriage prior to the marriage with the deceased female worker. The same requirements applied to the progenitors as when the deceased person was a man. Rodríguez Iniesta, Guillermo, *La viudedad en el sistema español de la seguridad social*. Murcia, Laborum, 2006, p. 40.

Breastfeeding break

Article 9 of the law dated the 13th of March 1900 implemented for the first time in Spanish labour law a breastfeeding break, granting working women one hour per day which could be divided into two periods⁴⁹. This hour could not be discounted from the salary, and to use it the workers merely needed to notify their box.

Provisions without either preventative or protective justification: The legal androcentrism of the earliest Spanish social legislation

As mentioned above, during the last quarter of the 19th century and the early years of the 20th century, an interventionist movement in productive relations got underway in Spain whose main goal was to establish a specific regulatory framework to regulate women's work⁵⁰. Thus, social laws were at first sexist, as they treated the same legal subjects differently according to their different genders. In this sense, we should note that the norms targeted at protecting specific groups, namely minors and women, were often tinged with a discriminatory bias.

During the period being studied, numerous social provisions were enacted which regulated women's work in a distinct fashion with a total lack of scientific justification, based instead of cultural or ideological prejudices. Thus, there was a series of precepts which, scattered about in different regulatory texts, attempted to systematise the labour market based on principles like the supposed physical, intellectual and moral weakness of women, the purported incompatibility between work demands and the care for offspring and the household, and the indignity entailed in women entering into contact with the dirty, insalubrious environments of factories and workshops.

Limits on working women's workdays

- The Benot Law dated the 24th of July 1873 regulated the length of minors' workday according to their gender. Articles 2 and 3 limited the workday to five hours per day for boys under the age of 13 and girls under the age of the 14, and to eight hours per day for young men aged 13 to 15 and young women aged 15 to 17. This difference in the workday was soon superseded by the law dated the 13th of March 1900, which did not distinguish different limits on the workday by gender, thus eliminating the references to this that existed in the initial law. For this reason, it is clear that far from trying to segregate or exclude women from the labour market, this norm tried to foster

⁴⁹ Article 19 of the regulation dated the 13th of November 1900 allowed the nursing hour to be divided into four periods as long as the child was taken to the mother at her workplace.

⁵⁰ Regarding the earliest protective legislation in Spain, García González, Guillermo, *Orígenes y fundamentos de la prevención de riesgos laborales en España*. Albacete, Bomarzo, 2008, pp. 105-184.

their inclusion due largely to the shortage in manpower which resulted from the expansion of the Spanish economy in the early 20th century⁵¹.

- Article 6 of the law dated the 13th of March 1900 banned women from working on Sundays, foreshadowing a similar law that applied to all workers enacted four years later.
- Article 1 of the Royal Decree dated the 26th of June 1902 stated that women could not work more than 11 hours per day in the fields affected by the law dated the 13th of March 1900⁵².

Ban on certain jobs for reasons of gender

The first norm that made a wholesale ban on women working in a particular activity sector was the Mining Policing Regulation dated the 15th of July 1897, article 33 of which stated that women of any age or boys under the age of 12 would not be allowed to even enter a mine. This ban was upheld in article 14 of the law dated the 27th of December 1910 on the maximum workday for children in mines, and in article 30 of the Royal Decree dated the 29th of February 1912 which implemented this law.

In turn, article 6 of the law dated the 13th of March 1900 banned underage women (those under the age of 23) from being hired at workshops that produce writings or engravings that might besmirch their morality.

Limits on access to jobs

Article 10 of the law dated the 13th of March 1900 stated that children, youngsters and women could not be admitted to industrial and mercantile establishments without submitting certification that they had been vaccinated and that they carried no contagious disease. This precept was implemented by the Royal Decree dated the 13th of November 1900. In a period in which the hygienic conditions were sub-standard and epidemics were common, as in early 20th century Spain, the populations that were the most seriously affected by contagious diseases were the weakest, namely women and children. As a result, it was necessary to set some sort of control in order to ensure that the epidemics would not affect all the workers employed at work centres. The goal of this health

⁵¹ A conclusive study of this issue is Bengoechea, Soledad, "Los empresarios catalanas ante los proyectos de ley regulando el trabajo de las mujeres (1855-1912)". Borderías, Cristina (Ed.), *Género y políticas del trabajo en la España contemporánea, 1836-1936*, pp. 97 and forward.

⁵² It should be noted that the law dated the 13th of March 1900 excludes the primary sector, domestic service and household work from its sphere of application, meaning that it left numerous women working in these productive sectors outside its scope of influence.

certification was to prevent the contagious diseases that women and children were liable to suffer from, from being spread to the theoretically healthier adult males in mercantile and industrial establishments⁵³.

Ban on night-time work

The law dated the 11th of July 1912 bans women from night-time work in workshops and factories. The framing of this law is paradigmatic of the ideological and political reasons that came into play in the regulation of women's work in the earliest social legislation. Its article 5 stipulates that the ban on women working at night entered into force on the 14th of January 1914. However, this deadline was exempted in the case of the textile industries, where it was extended until the 14th of January 1920 in the case of childless married or widowed women and single women⁵⁴. As has been accurately proven, lawmakers' goal with this norm was to replace female with male workers, ensconcing women in their household duties once again⁵⁵.

Other working conditions

- The Benot Law set up a regime of education in favour of working minors, distinguishing the duration of the education according to the gender of the worker. Thus, certain companies were required to sustain primary education; specifically the education of workers between the ages of 9 and 13 or 14, depending on whether they were boys or girls, respectively, was required⁵⁶.
- In turn, article 3 of the law dated the 27th of July 1887 limited access to disabled workers' residences dependent on the Ministry of Governance and created by the Royal Decree dated the 11th of January 1887⁵⁷ to male workers

⁵³ The limited scope of application of this precept was partly superseded by the Royal Decree dated the 15th of January 1903 (State Gazette on the 17th of January 1903) which stipulated mandatory smallpox vaccinations for all citizens regardless of their age or sex. Article 14 of this decree required business owners and managers of workshops and factories to ensure that all of their employees were vaccinated against this disease. However, selective vaccination based on gender was reaffirmed years later by the Royal Order dated the 6th of July 1920 as a requisite for women being allowed to work in mercantile and industrial establishments.

⁵⁴ One reflection of this exceptional system was the concession that the law made to the Catalan textile industrialist' opposition to the ban on night-time work for women, Bengoechea, Soledad, "Los empresarios catalanas ante los proyectos de ley...", pp. 111-125.

⁵⁵ This pursuit varied in the textile sector due to the need for labour; in this case, the goal was to replace married women with single women and mothers with childless women. Valdés Dal-Ré, Fernando, "La legislación obrera industrial sobre las mujeres...", p. 44.

⁵⁶ Martín Valverde, Antonio, "La formación del...", p. LII

⁵⁷ *Gaceta de Madrid*, 13th of January 1887, p., 119.

who were totally incapacitated for work and who were single or widowers without minor children and with no chronic conditions. Therefore, working women's access to disabled workers' residences was formally banned.

CONCLUSIONS

The Spanish liberal project examined in this analysis entails a redefinition of female identity in the sense that an overarching political and legal axis was established that does not affect women. That is, the concept of citizenship being forged at that time implied an exclusion and deprivation of women's civil and political rights. Two respective examples of this are women's limited capacity as attributed them by the civil code and their deprivation of the right to vote through the mere fact of being a woman. We believe that the rights proclaimed by liberalism had no application among women and gave rise to a "legal universe" that thought from a male standpoint while enshrining the public and private spheres in which sex determined a clear division of roles. Thus, the statement that women were the object of discrimination on the basis of sex is completed with the idea that this maxim was socially accepted. On the other hand, it is also true that immediately "voices were raised" that questioned this situation (Emilia Pardo Bazán, Adolfo Posada, Concepción Arenal, Carmen Karr), and the so-called "new consciousness" emerged in the quest for a female identity.

In the framework of this discourse, there emerged in the social sphere the discourse of protecting women, which dovetailed in time with turn of the century. We have noted that this is not a legal policy based on non-discrimination, but the contrary: the earliest social legislation perpetuates women's traditional role as the caregiver of her family and believes that her natural place is in the home. The law dated the 13th of March 1900 is an example of this, regardless of the solutions that it relatively offers, one of them being unpaid maternity leave after childbirth.

Therefore, the earliest social legislation established a very clear tutelary and protective system towards women and children, coupled with the societal continuity of the traditional family model where males were the breadwinners and women were the caretakers *in* and *of* the home. All of this occurred despite women's gradual and unstoppable influx into the ranks of paid workers. This circumstance meant for women – on an individual basis but also on a state-wide basis, as noted above in relation to the aim of the laws – a double workday: the paid one at work and the unpaid one at home.

From this study, we can infer that there is no single motive driving the social laws to legally organise women's work in a special, segmented way compared to men's work. Rather to the contrary, the historical-legal analysis enables us to

deduce that there were multiple motives leading lawmakers to regulate the job market in a fragmentary way based on reasons of gender. In this way, in the initial configuration of the social branch of our legal system, norms with a clearly preventative purpose coexisted alongside others with a primarily protective purpose. These provisions were joined by others which, with no apparent prior legal underpinning, reflected cultural prejudices and were framed as incipient instruments for articulating the establishment of employment policies and reorganising and redistributing the labour market to the detriment of female employment.

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