

The belief in the moral and intellectual inferiority of poor children in Portugal: a turning point

A crença na inferioridade moral e intelectual das crianças pobres em Portugal: um ponto de viragem

Joana Vale Guerra*

<https://orcid.org/0000-0001-7426-5579>

Abstract

In Portugal, the fight against poverty in childhood was considered essential not only to combat “social ills”, and consider new hygienist precepts, but as a defence, a concept of race improvement. The moralization of the poor from childhood was then imposed a State responsibility which forced to create social and hygienic educational assistance institutions based on scientific and pedagogical concepts which did not escape Darwinist and eugenic influences. The then dominant adopted the same corrective pedagogy as responses focused on the field of moral and therapeutic education to curb childhood poverty, mainly when of their shortcomings were social and environmental. This study aims to explain the urgent social policy and trajectory to tackle poverty in childhood, invoking the central role of policymakers receive ideas, science, and knowledge produced about childhood during the First Republic in Portugal. Specifically, the aim here is to highlight the social, political, and cultural context of the urgent Child Protection Law of May 27, 1911. We intend to establish convergences or divergences between the theoretical influences of Herbert Spencer’s social Darwinism and the opportunity to create a Law that is still considered significant and a historic landmark in terms of children’s rights and protection.

Keywords: Poverty in Childhood. Hygiene. Social Darwinism. Family Regeneration.

Resumo

Em Portugal, o combate à pobreza na infância era entendido como essencial, não só para debelar os “males sociais”, à luz dos novos preceitos higienistas, mas também como defesa de uma conceção de aperfeiçoamento da raça. A moralização dos pobres desde a infância impunha-se, então, como uma

* PhD in Social Work from the Catholic University of Portugal. Professor at the Faculty of Psychology and Educational Sciences of the University of Coimbra, specialising in Social Work. Email: joanaguerra@fpce.uc.pt.

responsabilidade do Estado, obrigando à criação de instituições de assistência educativa social e higiénica, tendo por base concepções cientistas e pedagógicas que não escapavam às influências darwinistas e eugénicas. Vão no mesmo sentido as pedagogias corretivas então dominantes, centradas em respostas no domínio da educação moral e terapêutica para crianças em situação de pobreza, quando muitas das suas insuficiências eram sociais e ambientais. O propósito deste trabalho pretende explicar a emergência e a trajetória das políticas sociais de combate à pobreza infantil invocando o papel central dos políticos na receção das ideias, da ciência e do conhecimento produzido sobre a infância durante a I República em Portugal. Concretamente, pretende-se aqui colocar em evidência o contexto social, político e cultural de emergência da Lei de Proteção da Infância de 27 de maio de 1911. É nossa intenção estabelecer convergências ou divergências entre as influências teóricas do darwinismo social de Herbert Spencer e a oportunidade de criação de uma Lei que ainda hoje é considerada significativa e um marco histórico em matéria de direitos e proteção das crianças.

Palavras-chave: Pobreza Infantil. Higienismo. Darwinismo Social. Regeneração da Família.

Introduction

Poverty and the welfare practices developed in Portugal from the modern period to the present and have received many researchers' attention, yet this topic remains far from fully be explored. The social and political perspectives underlying most of the studies are an important anchor for understanding the user profile to institute resources — in the form of the deserving and undeserving poor — and for highlighting the plans of the central government to combat poverty and their contrast with the intervention of civil society.

The searches for solutions to put an end to poverty has marked several centuries of history, bringing to prominence intellectuals and personalities from different fields, such as Thomas Chalmers, Jeremy Bentham, Robert Owen, William Pitt (18th-19th centuries), and more recently, Jane Addams (USA), Alice Salomon (Germany), Ilse Arlt (Austria), Marie Muller-Louis (France), and more recently, Jane Addams (USA), Alice Salomon (Germany), Marie-Thérèse Vieillot (France), Ilse Arlt (Austria), Marie Muller-Lulofs (Holland), Kalliopi Pouboura (Greece), among many others (19th and 20th

centuries)¹ whose debate has made society aware on the problem of poverty in capitalist societies. Charity and philanthropy also evolved through the creation of *Charities Organisations Societies* and the *Settlements* movement. In the political sphere, landmark legislative measures emerged, such as the Speenhamland Act² (1795) or the *Allowance System*, regarded by Karl Polanyi as a significant social innovation with which they defend the right to life³.

On the Portuguese scene, the historical support for conceptions of poverty and the social devices that assist in an institutional context emerges in the work of several authors such as Maria Antónia Lopes⁴, Laurinda Abreu⁵, Alcina Martins⁶ e Rosa Tomé⁷. Based on the results of many of these investigations, we intend to explain the urgent and trajectory social policies on poverty childhood, invoking the central role of politicians in the reception of ideas, science, and knowledge produced about childhood during the First Republic in Portugal. Specifically, the aim is to highlight the social, political, and cultural context in which the Law for the Protection of Children (LPI) of 27 May 1911 emerged. The theoretical influences of Herbert Spencer's social Darwinism convergence and divergence and the opportunity to create a law that, still today, is considered significant and a landmark in terms of children's rights and protection will be addressed. This law represents a paradigm shift in our understanding of child poverty, impacting the intervention models and welfare practices adopted by governments. The moralization of the poor from childhood onwards was then imposed as a responsibility of the state, forcing

¹ The decision regarding the selection of the personalities listed as examples was based on the following readings: POLANYI, Karl. *A Grande Transformação*. Lisboa: Edições70, 2012 [1944]; SOTELO, Ignacio. *El Estado Social. Antecedentes, origen, desarrollo y declive*. Madrid: Editorial Trotta, 2010; HERING, Sabine; BERTEKE Waaldijk (Eds.). *History of Social Work in Europe (1900-1960). Female Pioneers and their influence on the development of International Social Organizations*. Opladen: Leske+Budrich, 2003.

² On 6 May 1795, during a period of widespread poverty, the judges of Berkshire convened in Speenhamland and decided to implement supplementary subsidies to wages. These subsidies were distributed according to a table indexed to the price of bread, aiming to ensure a minimum income for the poor that was not dependent on their earnings. The poor were entitled to assistance, even if employed, provided their wages were below the guaranteed household income assigned to them by the table. POLANYI, op. cit., p. 222.

³ Idem, *Ibidem*.

⁴ LOPES, Maria Antónia. "Pobreza, Assistência e Política Social em Portugal nos sécs. XIX e XX - perspectivas historiográficas" In *A Cidade e o Campo. Colectânea de estudos*. Coimbra: Centro de História da Sociedade e da Cultura, 2000, pp. 63-83.

⁵ ABREU, Laurinda. *O Poder e os Pobres. As Dinâmicas Políticas e Sociais da Pobreza e da Assistência em Portugal (Sécs. XVI-XVIII)*. Lisboa: Gradiva, 2014.

⁶ MARTINS, Alcina. *Génese, Emergência e Institucionalização do Serviço Social Português*. Lisboa: Fundação Calouste Gulbenkian e Fundação para a Ciência e Tecnologia, 1999.

⁷ TOMÉ, Maria Rosa. *A Criança e a Delinquência Juvenil na Primeira República*. Lisboa: Centro Português de Investigação em História e Trabalho Social, 2003.

the creation of social and hygienic educational assistance institutions, based on scientific and pedagogical concepts that did not escape to Darwinist and eugenic influences.

This article is divided into two parts considered central to understand the subject. At first, we will take a depth look at the influence that the social Darwinism and eugenics may have had on the construction of ways of fighting poverty in childhood in the early 20th century, during a republican government. Secondly, we detail the innovative features of the law for that time and identify similarities or dissonances between these theoretical orientations and the letter of the law.

Social Darwinism and eugenics determined ways to fight poverty in childhood

In 1883, Eugenics, a term introduced by the British statistician Francis Galton, from the Greek *eu + genēs*, meaning “well-born”, as defined by the American Charles Davenport “in 1911” as the science of perfecting the human race through a better reproduction. In terms of social and economic change, eugenics was raised because of issues of race, class, and sexuality, reflecting an optimistic faith in science that would solve complex problems of heredity and human behavior, in rational planning in order to wonder a better society and in state action with programs implementations, would guarantee public welfare and national progress⁸.

Eugenics is often portrayed as an elitist ideology aligned with nazi racial hygiene, in which some saw themselves as fit and defined the unfit as “the others” in terms of race, ethnicity, and social class. The opposition would be between a superior race based on the Nordic, blond, and blue-eyed ideal that the eugenics movement glorified and urban immigrants, poor whites, blacks, Mexicans, Jews, criminals, alcoholics, the mentally ill and anyone else who did not look like a dominant race⁹. As historian Frank Dikötter wrote in 1998, eugenics was not so much a clear set of scientific principles as a modern way to approach social problems in biologizing terms¹⁰. It took on different expressions according to regional and national contexts, but all over the world,

⁸ LADD-TAYLOR, Molly. *Fixing the poor: eugenic sterilization and child welfare in the twentieth Century*. Baltimore: Johns Hopkins University Press, 2017, p. 4.

⁹ Idem, *Ibidem*.

¹⁰ Idem, *Ibidem*.

it was a crucial element of modernization and nation-building¹¹. However, in Portugal, the manifestation of eugenic precepts to improve the genetic quality of the human population or attempts to prevent people reproduction with undesirable features were not extensive or institutionalized, namely through government policies and systematic practices. Eugenic ideas in Portugal were more closely associated with academic debates and public health policy proposals, to emphasize hygiene and disease control rather than to implement coercive eugenic measures¹².

The social Darwinism perspective, advocated by Herbert Spencer, poverty in childhood was often seen as the result of children and their families' "inferiority" or "weakness"¹³. The idea was propagated that many of the features linked to unfitnes — the propensity to idleness, criminality, prostitution, and alcoholism — were transmitted from generation to generation by heredity, (such as hair and eye colour) and would lead to more serious forms of crime or delinquency unless measures were taken to prevent it.

Social Darwinism and eugenics significantly influenced the approach to poverty in childhood policies in the 19th and 20th centuries. Both movements had visions of society that influenced social policies and practices, often in harmful and discriminatory ways. There are many examples in which the defense of these ideologies allowed for situations of justified discrimination and abuse, such as the people mentally or physically incapacities forced sterilization, eugenic marriage laws, genocide, and embryo selection, among other human rights violations¹⁴.

Although it could be argued that we are dealing with ideologies that are considered obsolete nowadays, the interest to study the relationship between these theories and the development of public policies lies, recognise and reflect on the policies evolutionary trajectory been linked to precepts that have acted as determinants of the success or failure of childhood protection measures. In other words, policy measures arise from a decision-making process that determines the choices for a particular government action program, which unfolds within a specific context and timeframe that begins

¹¹ TURDA, Marius. "Legacies of eugenics: confronting the past, forging a future" In *Ethnic and Racial Studies*, v. 45, n. 13, 2022, p. 2471.

¹² CLEMINSON, Richard Mark. "Entre a eugenia germânica e a latina: Portugal, 1930-1960 Analysis" In *Hist. Ciências da Saude-Manguinhos* 23 (Suppl1), Dez 2016.

¹³ MARTÍNEZ, Manuel Moix. *Introducción al Trabajo Social*. Madri: Trivium, 1991, pp. 177-188.

¹⁴ Idem, *Ibidem*.

before the formulation or policies implementation. Government decisions are based on the need to establish priorities within the set of problems detected. In this way, at least two factors can interfere in this decision: ideological criteria, which establish a kind of “should be” or desirable, according to the politically prioritized ends or those considered philosophically more valuable, and technical decisions that guide decision-making, also taking into account the fact that resources are scarce or limited¹⁵.

It is our central aim, with this revisit, to breathe new life into the construction of the of Portuguese policies’ history to assist poor children and families, reviving the commitment to the values of equality, justice, and respect for human dignity, in a continuous and vigilant effort against discriminatory ideologies and practices. Social history is fertile with examples of attitudes that blamed poor people for their situation and justified policies or practices aimed at reducing poverty through eugenic selection, approaches that prioritized assistance only for the most “fit” or “deserving” and discriminated against those considered less capable or worthy of help, including poverty in childhood, or even to create policies that limited access to education for certain groups considered less fit or less able to contribute to society, such as children with intellectual or physical disabilities who were segregated and received limited or inadequate education¹⁶.

Positivist republican scientism recognized the child as a careful subject and then education needed, therefore made it compulsory to guarantee them through the vigilant action of their family, a tutor, or, ultimately, the state. As a preventive and regenerative ideology for with care of needs, monitorization, protection, and education these aspects of children’s rights and public and private duties’ relationship to organize the “construction” of the citizen¹⁷. Children became the social and political concern of crucial importance for the regeneration of the Portuguese nation, both to promote their development and to control the danger that any deviations could pose to social order and peace¹⁸.

According to Fernando Catroga¹⁹, the Portuguese republicans, influenced by positivism and social Darwinism, built a new type of nationalism

¹⁵ GUERRA, Joana. “Sinergias entre a Intervenção Social e as Metodologias de Análise de Implementação de Políticas Sociais” In FIALHO, Joaquim (Org.). *Manual de Intervenção Social*. Lisboa: Sílabo, 2021, pp. 121-140.

¹⁶ LADD-TAYLOR, op. cit., pp. 1-10.

¹⁷ TOMÉ, op. cit., pp. 27-36.

¹⁸ Idem, *Ibidem*, p. 33.

¹⁹ CATROGA, Fernando. *O Republicanismo em Portugal. Da formação ao 5 de outubro de 1910* (I e II vols. Coleção

based on a collective, an altruism, and a solidarity sense. It was based on the belief of a people's history and culture ability to regulate itself when facing the rules of life struggle or the natural selection of the fittest. Far from leading to racist doctrines, the most influential Portuguese doctrinaires, such as Bernardino Machado, Miguel Bombarda, and Afonso Costa, increased Darwinism, built a nationalism with a universalist tendency towards the evolution and progress of humanity, which integrated the nation into the civilized world, into humanity, giving a genuinely Portuguese stamp to the formulation and justification of their programs²⁰.

Afonso Costa invokes the work of Herbert Spencer, entitled *De l'éducation intellectuelle, morale et physique* (1888), to affirm that

[sic] the power of education, which encompasses instruction at all levels, is unlimited. It teaches us to follow the best line of behavior in all of life's situations; to look after the body, to direct the intellect, to govern business, to lead the family. It teaches us the duties of a citizen. It teaches us to take advantage of the pleasures that nature has placed within our reach, to use our faculties to achieve our happiness and the happiness of others, in short, to live a complete life²¹.

Patriotism, duty, solidarity, and responsibility appear as the result of a pedagogical practice aimed at the child's intelligence and emotions, in such a way that citizen is the subject of rights become an object of duties.

[sic] Now, if the loaves do not and cannot know how to educate, if the individuals themselves do not and cannot carefully complete their education, is it because of a lack of will, or because the sloppiness of the public authorities has spread throughout the social body, insinuating dangerous pedagogical norms and letting all the criminal causes run amok against the unfortunate, already deprived of the bread of the body, and thus also deprived of the bread of the spirit?²²

It is very well mentioned in chapter II – The principles of the Socialist School, as outlined in Afonso Costa's aforementioned work, clearly

Estudos). Coimbra: Faculdade de Letras, 1991.

²⁰ Idem, *Ibidem*, pp. 41-58.

²¹ COSTA, Afonso. *Commentario ao Código Penal Portuguez. Introdução: escolas e princípios de criminologia moderna*. Coimbra: Impr. da Universidade, 1895, p. 255.

²² Idem. *Ibidem*, p. 256.

emphasize the importance of education and instruction, while advocating for socialist reforms that call for the establishment of legislation to protect the ‘underprivileged’, with a significant role for the state.

The defense of intervention possibility with poor populations is much more oriented to ethical and moral education from childhood; the promotion of family and community environments that reinforce ethical behavior; the adoption of public policies that encourage the moral virtues practices and train moral development programs to individuals of any age, than the defense of interventions on physical factors related to heredity.

Education for a job and education through practice was the guide-line behind the support programs for the most disadvantaged, abandoned, and delinquent. As bourgeois virtues, the child should learn to be a “sober, active and clean citizen, not proud, irascible or frivolous, while should have good feelings, virtues, and character, respect the environment, preserve the health of body and soul and foster the cult of work and energy and the socialization of an optimistic and Promethean ethic”²³.

The social, hygienic, and educational assistance schemes aimed at poor children developed with a dual purpose: on the one side, as a matter of law and social justice, and on the other side, as the only mean to face disease and crime. In Rosa Tomé’s view, the centrality of poverty issues as the cause of social ills made poor families in cities a privileged object of intervention that was now required not only on political grounds but also on scientific ones²⁴.

Children’s education then had the dual function of prevention and scholastic, ethical, and aesthetic training, subsidized by the development of pedagogy and experimental psychology. The end of repressive and punitive educational practices was called for, replaced by indications of the duty to love, protect, treat, instruct, and stimulate, with the total exclusion of inhumane punishments. At this stage, the importance of the pedagogues contributions, such as Friedrich Fröbel and Maria Montessori spread with new precepts and methods of children’s education. In Portugal, the work carried out by Father António Oliveira took the risk of proclaiming the removal of children from the Penal Code and their rightful place in the Portuguese education system.

The Republicans’ concern led to a strong investment in working-class families and children who interpreted, in terms of social danger, had become

²³ CATROGA, Fernando. “A Importância do Positivismo na consolidação da Ideologia Republicana em Portugal” In *Biblos*, 1997, p. 263.

²⁴ TOMÉ, op. cit., pp. 61-86.

the favored target of a surveillance and control policy, marked by a strong institutional presence, aimed to protect those most deprived as early as possible. Education and pedagogy were the flagships of regeneration²⁵, in the case of poor children by a system of surveillance underlying their school career. In all the measures presented below, the expression of pedagogical optimism is the cornerstone that supports the ideological dimension of the children protection measures.

Historical and legal background for the creation of the 1911 Child Protection Act

The historical and legal background that we intend to present is a contribution to understand the social and political relevance that poverty in childhood and childcare represented in Portugal. It is a question to recognize the decision-making process regarding the choices made for a given government action program, which took place in a period before the formulation of the law in question. Exposing the genesis of the Child Protection Law²⁶ takes us back to forums other than the public sphere, since the background of this law in terms of children's protection is practically non-existent. Even so, in the public sphere, we are left with a mention of the Constitutional Charters of 1826 and 1836, since they refer charity to the state administration, as a public and municipal service. It was the Constitutional Charter of 1826 that laid down the right to public assistance under the heading "The provisions and guarantees of the civil and political rights of Portuguese citizens": "The Constitution also guarantees public assistance" (art. 145 § 29), also stating that "Primary education is free to all citizens" (§ 30)²⁷. The Portuguese Constitution of 1838 (1838-1842) once again included public assistance in the "Rights and Guarantees of the Portuguese": "Article 28 — The Constitution also guarantees: 1. Free primary education; 2. Establishments where the sciences, letters, and arts are taught; 3. Public assistance; [...]"²⁸.

On 6 April 1835, a decree created by the General Charity Council, responsible for a national program to eliminate begging, with the fundamental

²⁵ See the preamble of the Law. PORTUGAL. *Decreto com força de lei de 29 de março, reforma o ensino infantil, primário e normal*. Diário do Governo n.º 73. Ministério do Interior, Lisboa, 1911a.

²⁶ PORTUGAL. *Decreto com força de lei de 27 de maio, cria instituições de protecção às crianças e regula a respectiva organização*. Diário do Governo n.º 137. Ministério da Justiça, Lisboa, 1911b

²⁷ LOPES, Maria Antónia. "Os socorros públicos em Portugal, primeiras manifestações de um Estado-Providência (séculos XVI-XIX)" In *Estudos do Século XX*, v. 13, Coimbra, 2013, p. 260.

²⁸ Idem, *Ibidem*.

principle of the value of work as a regenerator of character. It aimed to centralize and coordinate all charitable and social assistance activities, creating a unified structure to manage charities, hospitals, and other assistance organizations. Recognizing the need to protect the “indigent”, organizations such as asylums, Kindergartens, nursing homes, and night shelters were set up^{29 30}. This program managed to help hundreds of “indigents” across the country, but in light of the seriousness of the poverty problem in Portugal, it was far from being extinguished. Beggars were arrested, and the disabled were supported, but the root causes of poverty and begging were not tackled, so this serious social problem lasted. The infant mortality rate was extremely high, with approximately 19 percent of newborns being abandoned or left orphaned, often placed in the care of charities or public institutions³¹. During this period, Portugal had one of the highest rates of illegitimate births in Europe and the scenario of the breakdown of preorganized public and private assistance revealed a lack of child protection^{32 33}.

In 1851, the General Charity Council was reorganised and given the task of running pious establishments and hospitals. By decree of 4th October 1899, it was incorporated into the General Directorate of Health and Beneficence, reorganised and regulated. In this context, in 1901, the General Regulation of Public Health and Charity Service had to supervise and administer health and charity services assigned to the state. Regarding this regulation, the Superior Council of Charity was tasked to study the organization and improvement of public assistance services and institutions, proposing reform plans, organizing medical and charitable home care, and leaving the state with the role of supervisor³⁴.

We cannot fail to note that it was during this period that began political incursions into the field of public health. The frequent confrontation with serious epidemic outbreaks of infectious and contagious diseases and the proliferation of epidemiological studies on social diseases highlighted the importance of hygienic conditions and environmental sanitation

²⁹ LOPES, Maria Antónia. “Políticas assistenciais em Portugal no ‘Despotismo Iluminado’ e na Monarquia Liberal”. Comunicação apresentada no IX Congresso da Associação de Demografia Histórica. Ponta Delgada, 2010, p. 16.

³⁰ MARTINS, op. cit., p. 90.

³¹ Ibid, p. 57.

³² TOMÉ, op. cit., p. 70.

³³ LOPES, Maria Antónia. *Crianças e jovens em risco nos séculos XVIII e XIX. O caso português no contexto europeu*, 2002, p. 7.

³⁴ MARTINS, op. cit., p. 95.

in substantially reducing morbidity and mortality³⁵. In this process, the configuration of the hygienist state became clear, it represented a turning point in relations between society and the state. The hygienist state aimed to protect society as a whole in the name of the collective interest or public good³⁶. The public authorities did not hesitate to intervene in situations of epidemic outbreaks, even though liberalism was theoretically suspicious of state intervention in different sectors of society.

A new attempt to regulate and reorganize public assistance came about in 1903 with Bill 32-B. One of the main features of this proposal was the decentralization of the organization of public assistance and the mandatory collaboration between public and private assistance. Assistance included children's protection and the elderly home care. Its functions were limited to give advice and promote compliance with laws related to education, vaccination, health, and hygiene. Those who did not want to work, alcoholics, professional beggars, and prostitutes were excluded from this support. According to Alcina Martins, "assistance is associated with a function of surveillance of the poor, counselling, education of customs and moralization of behavior"³⁷. This law never got off the drawing board and in 1905, Lisbon's public charity services were created, tasked with organising requests for help and formulating, by means of the most rigorous enquiries, an opinion on whether each applicant deserved help.

On 25 May 1908, the Chamber of Deputies was asked to reintroduce the bill aimed to protect pregnant women and early childhood. Responsibility to implement this legislation on the ground lay with the government, but also with local councils, with the direct collaboration of the health and administrative authorities. The proposed measures included free medical care, the creation of maternal and child dispensaries, subsidies and financial benefits for poor mothers and families, helping to guarantee minimum living conditions and nutrition for children, and health education programmes for mothers, teaching good hygiene, nutrition, and childcare practices. Despite the good intentions and the obvious need for such measures, the 1908 bill faced several barriers that prevented its enactment. The political instability of that time in Portugal, the resistance of conservative sectors who did not

³⁵ GUERRA, Joana. "Políticas de Saúde em Tempos de Crise(s)" In ALBUQUERQUE, Cristina (Org.). *Políticas Sociais em Tempos de Austeridade*. Lisboa: Pactor, 2016, p. 179.

³⁶ GARNEL, Maria Rita, "Os médicos, a saúde pública e o Estado improvidente (1890-1926)" In *Estudos do Século XX*, v. 13, pp. 281-308, 2013.

³⁷ MARTINS, op. cit., p. 97.

see public health and social assistance as a priority for the state and the country's economic limitations were all factors that once again led to the postponement of government action in line with the social and economic reality of the early 20th century. Despite everything, it can be considered that the foundations were laid for future political initiatives to create measures and reforms to improve maternal and childhood care and their conditions of living for children and mothers in Portugal.

It is therefore worth noting that the state and the monarchical-liberal regime played an important role in public assistance and that the charitable institutional network was not only not supervised or funded by the Catholic Church, but that it practically did not employ members of the clergy and that private charities were subsidised by the central government³⁸. In fact, as far as children's protection is concerned, it is within civil society that we can find actions with the greatest capacity to intervene on poor children's realization. The illustrative example, we can allude to the French-inspired Casas de Asilo movement in Portugal (*salles d'asile*, founded by Jean-Frédéric Oberlin from 1769), which aimed to provide children with both protection, education and instruction³⁹. Since the constitutional monarchy, the Sociedade das Casas de Asilo da Infância Desvalida de Lisboa (SCAID) has been an example of this welfare⁴⁰. SCAID's aim was to:

to protect, educate and instruct poor children of both sexes, from the time they left the mother's milk diet until the age of 7, thus allowing their parents to freely indulge in their daily occupations, indispensable for earning the pecuniary means with which they had to meet the expenses that their daily needs obliged them, convinced that their children were under the shelter of an institution that would advantageously replace their care⁴¹.

In fact, the Portuguese Asylum Houses were distinguished from their French and English counterparts by the dual purpose of combining social or welfare purposes on pedagogical or educational goals.

³⁸ LOPES, op. cit., "Os socorros públicos em Portugal...", pp. 259-280.

³⁹ FERNANDES, Rogério. "Orientações Pedagógicas das 'Casas de Asilo da Infância Desvalida' (1834-1840)" In *Cadernos de Pesquisa*, n. 109, 2000, pp. 89-114.

⁴⁰ GOMES, Joaquim Ferreira. *A Educação Infantil em Portugal*. Coimbra: Instituto Nacional de Investigação Científica. Centro de Psicopedagogia da Universidade de Coimbra, 1986.

⁴¹ Internal regulations of the Asylum Houses for Destitute Early Childhood, 1851, art. 1, p. 3, taken from FERNANDES, op. cit., p. 99.

This extract refers the entry of poor children up to the age of 7 as the favoured recipients of these Asylum Houses. This determination is significant if we remember that child labour was a common practice and widely accepted due the economic need, families and educational lack alternatives. In 18th century Europe, there were no official regulations or minimum age for child labour. Children started working at a very young age, often as young as 5 or 6, in hard working conditions and with no access to formal education. It was not until the 19th century that the first legal stipulations began to appear and decreed a minimum age for starting work, as in the case of the Factory Act of 1833 in the United Kingdom. The definitive ban on child labour came in 1973, decreed by Convention 138 on Minimum Age for Admission to Employment, convened by the Governing Body of the International Labour Office⁴².

A second comment on this excerpt expresses the legitimacy of the intervention of these welfare and educational institutions, arguing that the aim is to create opportunities so that parents could to work fully and both guarantee their family's livelihood. Parents, fearful but attracted by the offer of protection and food for their children while they were at school, gradually joined the new educational and welfare project.

In Lisbon, the first Casa de Asilo (Asylum House), the Escola de Ensaio (Rehearsal School) was home to just 21 children, who had been recruited from poor neighbourhoods thanks to the efforts of Ana Mascarenhas de Ataíde, who had knocked on doors to convince needy families to hand over their children to this charitable establishment⁴³.

The asylums provided them free hospitality, education, and instruction to the poorest children of both sexes, who were of the age and in the circumstances determined by special regulations (Article 2 of the Statutes of the Coimbra Charity Society for Asylums for Destitute Children). The Casas

⁴² Legal antecedents of Convention No. 138 — Minimum Age for Admission to Employment: the Minimum Age (Industry) Convention of 1919, the Minimum Age (Sea Work) Convention of 1920, the Minimum Age (Agriculture) Convention of 1921, the Minimum Age (Trimmers and Stokers) Convention of 1921, the Minimum Age (Non-Industrial Employment) Convention of 1932, the Revised Minimum Age (Sea Work) Convention of 1936, the Revised Minimum Age (Industry) Convention of 1937, the Revised Minimum Age (Non-Industrial Employment) Convention of 1937, the Minimum Age (Fishermen) Convention of 1959, and the Minimum Age (Underground Work) Convention of 1965. PORTUGAL. 58th General Conference of the International Labour Organization: Convention No. 138 - Minimum Age for Admission to Employment. Geneva, International Labour Office Governing Body, 6 June 1973. Available at: https://gddc.ministeriopublico.pt/sites/default/files/documentos/instrumentos/convencao_138_oit_idade_minima_admissao_emprego.pdf

⁴³ FERNANDES, op. cit., p. 95.

de Asilo's educational and welfare project was forged under the precepts to protect, educate and instruct. The Houses' Internal Regulations set out what was meant by each of these actions:

Protection meant supporting and sheltering children, keeping them clean, and promoting the progressive development of their faculties, keeping them away from all dangers through continuous vigilance. Education, on the other hand, would consist of strengthening in children the habits of cleanliness, order, obedience, decency, and respect, considered to be the mainstays of life in all social classes, and developing in their hearts, through a childhood habit, the fundamental bases of the Christian virtues; namely, love for God, continuous respect for his presence, and brotherly love for other people. Finally, the instruction would center on teaching pupils the fundamental truths of Christian doctrine, elements of sacred history, elements of reading and arithmetic, as well as a "stockpile" of useful and customary notions, especially maxims and moral precepts "within the reach of the first age". As for the girls, they would also be taught the manual labour considered appropriate for their sex and age⁴⁴.

In the 1910-1911 school year, there were 12 Asilos in Lisbon (Menino Deus, Junqueira, Calafates, Sant'Ana, Lapa, Santa Quitéria, Ajuda, Arroios, S. Vicente, Esperança, Santa Engrácia, Olivais) that cared for 1,520 children. In Lisbon, Asilos da Infância Desvalida were set up in various cities across the country, such as the Asilo da Infância Desvalida in Coimbra, founded on 10th April 1836. In effect, the Asylum Houses for poor children played a vital role in the structure of social assistance in Portugal, offering an institutionalized solution to the problem of child neglect and extreme poverty among children. Their work was guided by the principles of Christian charity, which emphasized the importance of formal education and discipline as vital tools for character development and preparation for adult life. They encouraged to work as a means to achieve self-sufficiency and promoted moral values and good manners and cultivate morally responsible citizens. These institutions played a significant role in the context of social welfare, before the implementation of more comprehensive public policies and structured social protection systems that would emerge throughout the 20th century.

⁴⁴ Idem, *Ibidem*, pp. 100-101.

The fall of the monarchy and the establishment of the republic brought with it a series of social and political changes in Portugal. Among these changes was the need of a reform in institutions and laws, including those related to child protection.

In the social field, the legislation enacted by the Minister of the Interior, António José de Almeida, aimed to restructure public assistance services, creating a national fund aimed primarily to help the indigent and reduce begging. Thus, the 1911 legislation established official and free education for all children at infant and primary level and compulsory schooling between the ages of 7 and 10, with up-to-date methods and subjects compared to other European countries. Temporary mobile schools were also created, especially for teaching adults⁴⁵. A new regime required far-reaching changes considered essential for the modernization of the country and their impact on building a psychological barrier between the monarchical past and the republican present.

In 1911, two significant milestones in legislation contributed to the expansion of state intervention in the fields of health and social assistance: the right to public assistance was recognized in the Constitution of the Republic, by Article 29, and the creation of the Directorate-General for Health. The 1911 Child Protection Law was a significant step for Portugal in aligning itself with international concerns about the children's rights and welfare. Portugal took an European legislation as examples [the Guizot Law in France (1833), the Factories Act in the United Kingdom (1833), and the Patronage of Children Act in Spain (1904) to enact its child protection law.

A new period in the fight against poverty in childhood in Portugal

Shortly after the proclamation of the Portuguese Republic on 5 October 1910, it was the 1911 Child Protection Law that significantly marked a fundamental change in the country's approach to children's rights⁴⁶ and protection and was presented as "the broadest and easiest path to the patriotic dream of regenerating the Portuguese family, which aims to educate, purify

⁴⁵ SOUSA, Fernando de.; PEREIRA, Conceição Meireles. *Os Primeiros-Ministros de Portugal 1820-2020*. Imprensa Nacional, 2021, p. 51.

⁴⁶ CASTRO, José; FERREIRA, Jorge Manuel Leitão; CAPUCHA, Luís. "Uma análise histórica do sistema de proteção de crianças portugueses: que lições para o futuro?" In *Sociologia, Problemas e Práticas*, n. 102, pp. 59-78, 2023.

and harness the child”⁴⁷. We are facing a new period in the evolution of the fight against poverty in childhood in Portugal, with reforms that introduced regenerative policies inspired by reason, equity, and science and distinctive of the constitutional monarchy era.

Afonso Costa, in charge of the Ministry of Justice in the Provisional Government, commissioned Father António de Oliveira to draw up draft laws for the protection of minors in moral danger, perverted or delinquent, in order to preserve and reform⁴⁸. Recognizing Father António d’Oliveira’s experience and his astute pedagogical vision of destitute, abandoned or delinquent children turned him into the mentor and main proponent of the 1911 Child Protection Law. The jurist and the writer Sousa Costa was appointed by Afonso Costa to help draft the bill and in one of his works, he describes Fr António Oliveira’s powers as follows:

[...] [sic] But he knew everything that, in the family unit, causes the infection and illness of the members in physical and moral formation; but he knew everything that, in the meanderings of the city, drags minors devoid of soul goods, education and will, to the scoundrel and crime; but he knew everything, from science acquired in the laboratory and in the infirmary, which should be applied to them as a preventive resource and as a curative medication. He was a free master and a chaplain at the University of Life. So when he had to climb Mount Sinai to pass on the Law to his people, he, who knew nothing of what was in the codes and grammars, saw it, grasped it, absorbed it overnight in the light of the burning bush of genius⁴⁹.

On the occasion of his death in 1923, Catanho Meneses asked the Senate of the Republic for a vote of regret, saying the following:

[...] [sic] dedicated himself extraordinarily to the protection of destitute children. Until 1911, little attention had been paid to childcare in Portugal, and it was Father Oliveira who drafted the decree, or at least provided the necessary elements for the drafting of the first decree, which was of 27 May 1911, which

⁴⁷ PORTUGAL. *Diário do Governo*, n.º 137, de 14 de junho de 1911, p. 2530.

⁴⁸ GOMES, Joaquim Ferreira. “O Padre António de Oliveira (1867-1923), Grande Educador” In *Interações Sociedade e as novas modernidades*, n. 1, 2002, p. 114.

⁴⁹ Idem, *Ibidem*, p. 121.

created this remarkable institution called the Tutoria da Infância (Tutiring of Childhood)⁵⁰.

It is undeniable that the construction of this law was the responsibility of a recognized man, a priest, and a pedagogue, with a vast experience in children's protection contexts. His legacy became a timeless and a very important contribution to the humanization of educational institutions and legal institutions. Perhaps that is why Sousa Costa ends his description by saying: "Father António makes his Love Poem, the Law of 27 May..."⁵¹

While reading the preamble to the LPI⁵² carries with it the expression of the scientific principles of Law and Pedagogy that could lead to the improvement of children, increasing their knowledge, capacity for work, discipline, and morality. But "it is a decree in which, in many of its articles, the heart replaces intelligence – the heart, aided by the memory of facts, carefully analyzed and thought about"⁵³.

The justification to put child protection on the political agenda was the horror of the extreme poverty experienced by families begging on the streets of Portuguese cities:

Every night, as we leave the theatres, and especially on cold and rainy nights, we find on the street corners, slumped on the ground, ragged women with five or six little children around them, crying and begging - they are, in most cases, rented children, whose display each night provides a living for two families⁵⁴.

Because of the high infant mortality rates, the high number of children abandoned and left to their own devices, involved in prostitution, vagrancy, and begging, and children left to parents who, due to their poverty, were unable to educate them and provide a healthy physical and moral environment.

The 1911 IPL proposes normative solutions based on the following precepts:

⁵⁰ REPÚBLICA PORTUGUESA. *Diário do Senado*, Sessão n.º 75 (Extraordinária), em 26 de setembro de 1923, p. 3.

⁵¹ Idem, *Ibidem*, p. 121.

⁵² PORTUGAL. *Diário do Governo*, n.º 137, de 14 de junho de 1911, p. 2530.

⁵³ Idem, *Ibidem*.

⁵⁴ Idem, *Ibidem*.

[sic] Only with children educated in a disciplined school system, with scrupulous moral hygiene, instructed in the knowledge of things and in the practice of the sentimental laws that form characters, of the social laws that form positive activities, will it be possible to constitute a society that joins the salubrity of customs with the fruitful anxieties of knowledge and work⁵⁵.

The triple purpose to protect, regenerate, and make it useful will be the foundation of a decree made up of 184 articles and which essentially created the following institutions: the Children's Guardianship⁵⁶ (or Juvenile Court) (articles 1 to 16) and the National Federation of Friends and Defenders of Children (articles 112 to 131). Inherently, the remaining articles are dedicated to the different forms of disqualification from parental or guardianship powers (Articles 17 and 25); minors in moral hazard (Articles 26 and 27); abandoned minors (Articles 28 and 38); poor minors (Articles 39 and 40); ill-treated minors (Articles 41 and 57); unloved minors (Articles 41 and 57). Art. 41 and 57); destitute: idle, vagrants, beggars, or libertines (Art. 58 and 61); juvenile delinquents, miscreants, or criminals (Art. 62 and 68); undisciplined (Art. 69 and 72); pathological abnormalities (Art. 73 and 75)⁵⁷.

The creation of children's guardianships is a historic milestone, as it essentially removes poor, destitute, or abandoned children from a legal environment (sentences, sanctions, and enforcement of penalties) intended for adults, under the Civil and Criminal Procedure Codes, which did not include an interpretation of childhood as distinct from adulthood. "This new body behaves like a good family father, in love with truth and justice, and always in the children's interest [sic]"⁵⁸. The idea is reinforced that the purpose of child tutoring is more to prevent, and heal, than to punish in the true sense of the word. "It prescribes a process of a moral therapy to prevent hygiene

⁵⁵ Idem, *Ibidem*.

⁵⁶ For a more specific reading on the influence of hygienic and eugenic thought on the actions of the Porto Children's Tutelage, consult WEBER, Maria Julieta.; MATOS, Patrícia Ferraz de. "Melhorar a Espécie Humana desde a Infância: eugenia e higiene mental no Brasil e em Portugal (primeira metade do século XX)" In *Zero-a-Seis*, Florianópolis, v. 25, n. 47, Universidade Federal de Santa Catarina, jan/jun., 2003, pp. 16-40..

⁵⁷ POIARES, Carlos Alberto. *Edição Comemorativa da Lei de Protecção da Infância*, 27 maio 1911. Lisboa: Instituto da Segurança Social, 2010.

⁵⁸ PORTUGAL. *Diário do Governo*, n.º 137, de 14 de junho de 1911, p. 2530.

against crime, before the crime, and of curative hygiene against the consummated crime, to avoid its repetition”⁵⁹.

It is within this framework of responsibility for abandoned, poor, and mistreated children that the state’s commitment arises to protect them for as long as they are unable to declare themselves emancipated through work and responsibilities and to remove them from environments considered harmful to their development.

This decree provides solutions for each circumstance, providing measures to preserve the child, such as supervised liberty, placement in foster families, internment by sentence, and promotion and education services choice; punishment to adults responsible for causing any children’s harm; participation of legal guardians in the process to approach educational and corrective action, the inhibition of parental authority more broadly, thus minimizing the damage caused by family environments. This decree marks a decisive shift towards a differentiated right, of a preventive, tutelary and an eminently subjective nature, but essentially rescues the condition of a poor child justified by family, social, and environmental conditions, making any reference to physical factors or heredity disappear⁶⁰.

To finalize, it should be said that the enthusiasm with which the 1911 Child Protection Law was received led to a subsequent effect on Portuguese legislation. The number of pieces of legislation that, from 1911 onwards, regulated the organization and competence of children’s courts, the measures applicable to minors, the exercise of parental authority and related institutes, the constitution and functioning of both the central services and the establishments dependent on the Directorate-General, the ways of filling the various posts on the staff lists, among others, multiplied⁶¹.

Although this decree represented a breakthrough in the chapter on criminal law for minors compared to the previous period, the subsequent legislation failed to completely emancipate itself from the repressive spirit that animated the old institutions, making suffering, the feeling of social disapproval, or moral responsibility where the minor prevail⁶².

⁵⁹ Idem, *ibidem*.

⁶⁰ Cf. Lei de Proteção à Infância, Menores em perigo moral - artigo 26º in POIARES, op. cit..

⁶¹ Preamble of the Decree-Law n.º 44287, 20 de abril de 1962. PORTUGAL. *Decreto-Lei n.º 44287, promulga a reforma dos serviços tutelares de menores*, Diário do Governo n.º 89/1962, 1º Suplemento, Série I de 1962, pp. 479-512.

⁶² Idem, *ibidem*

Conclusion

The implementation of the entire republican legislative apparatus in favor of the regeneration relied on a bureaucratic and judicial apparatus built up throughout the 19th century. In the case of the Child Protection Law, it was possible to see that the role of the State when determined public intervention benefited from the experiences of civil society and private institutions supporting poor children and families. Although eugenic measures appeared to be the solution to the social problems caused by the degeneration of the race, the Portuguese political decision-makers of the First Republic defended the idea of a preventive function of intervention in children, the power of education for regeneration and the existence of differentiated institutions according to the case-by-case nature of the problems. We had the opportunity to analyze a law that, despite the enormous advance it represented in legal and pedagogical terms regarding the child's conception, persisted, in the look of the present eyes, with a stigmatizing dimension to poverty, since it was seen as a determinant of misconduct and crime. Although there was an understanding that the reasons for poverty were environmental, the subject (children and families) was always the epicentre of the diagnosis and treatment of the effects of that same poverty, and so the focus of intervention on the real causes of poverty of a macro-social nature very weak. In addition, the process of categorizing children, enshrined in the law and intended to define the predictability of phenomena, ended up to standardize intervention scenarios. Many other study variables about the situation of the child and their family would be dispensed with, jeopardizing an adequate diagnosis of poverty in childhood conditions at the beginning of the 20th century in Portugal.

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Article received for publication on 31/07/2024

Approved on 21/10/2024.