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## Critical theories of law and the formation of labor rights of women

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### Summary

Feminism as a social movement presents countless expressions and forms of action and it is seen in its relationship to Law. The feminist critique of the Law is vast and plural, presenting different ways of interpreting it, whether as a tool of struggle for women, or as the maximum expression of women's subordination in patriarchal logic. Thus, taking into account the different points of view observable in the development of feminism, from the beginning of the 20th century, we will seek to identify the ways in which the Brazilian feminist movement acted in relation to the labor standards in formation at the time, bringing to light women and their actions that disputed the meanings of the regulation of labor relations proposed by Getúlio Vargas from 1930 onwards.

**Key words:**Feminisms. Feminist critique of Law. Labor rights.

### Abstract

Feminism as a social movement presents countless expressions and forms of action and the same is seen in its relation to Law. The feminist critique of the Law is vast and plural, presenting different ways of interpreting it, either as a tool of struggle for women, or as a maximum expression of women's subordination in the patriarchal logic. Thus, in view of the different points of view observable in the development of feminism, from the beginning of the 20th century, we will seek to identify the forms of action of the Brazilian feminist movement in relation to the labor norms in formation at the time, bringing up women and their actions that disputed the meanings of the regulation of labor relations proposed by Getúlio Vargas from 1930 onwards.

**Keywords:**Feminisms. Feminist critique of law. Labor rights.

### 1. Introduction

This article is based on feminist criticism of Law, seeking to understand how different expressions of feminism also correlate in different ways with the

Law, whether using legal means as instruments to improve women's lives, or denying this capacity.

Once we understand the ways in which the Law is interpreted and used by the different feminist currents, we will seek to identify, from the history of Brazilian feminism, in which moments women's actions were felt in the construction of labor rights, with special attention to the beginning of the century XX, until 1937, a period of great urbanization and industry consolidation and, therefore, of disputes around labor legislation.

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## 2 Law and feminism

In "*Right sex*", Olsen (1990), presents us with an important contribution to thinking about Law, arguing that, since Western thinking is based on dualisms (rational/irrational; reason/emotion; objective/subjective; among others), Law can also be thought through dualistic systematics.

It turns out that these dualisms are sexualized, with a distinction between the feminine part and the masculine part, and a hierarchy, privileging the masculine half, with Law being identified as the masculine side of the dualisms (OLSEN, 1990).

Thus, he argues that Law is supposed to be rational, objective, abstract and universal, just as men are supposed to be; in opposition to women who, historically, are considered irrational, subjective, sentimental, and who were excluded from the constitution of modern Law:

The social, political and intellectual practices that constitute law were, for many years, carried out almost exclusively by men. Given that women have long been excluded from legal practices, it is not surprising that characteristics associated with women are not highly valued in the law. On the other hand - in a kind of vicious circle - law is considered rational and objective, among other things, because it is valued and, in turn, it is so valued because it is considered rational and objective.<sup>1</sup>(OLSEN, 1990, p. 3, our translation)

This is why Law becomes one of the main focuses of feminist criticism, since, constructed by men, it reflects and serves to protect masculine values and interests (JARAMILLO, 2000).

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<sup>1</sup>The social, political and intellectual practices that constitute the right were, for many years, carried out exclusively by men. Given that women were excluded from legal practices for a long time, it is not surprising that the characteristics associated with women are not very valued in the law. On the other hand -in a kind of vicious circle-, it is considered that the right is rational and objective, among other things, because it is valued and, in turn, it is valued because it is considered rational and objective. (OLSEN, 1990, p. 3)

Thus, for the feminist movement, Law constitutes a controversial object, seen either as an instrument for improving the condition of women, or as a dangerous expression of masculine culture (FACCHI, 2005).

In the article "*Feminist thought about the right*", Alessandra Facchi (2005) teaches that, just as the development and current configurations of the feminist movement are vast and plural, so is feminist thought in relation to Law, "in whose sphere we find it again with epistemological assumptions, languages, perspectives, different ethical and political choices"<sup>two</sup>(FACCHI, 2005, p. 27, our translation).

Olsen (1990) shows that, among the plurality of the feminist movement, the positions of the different aspects in relation to Law are different. This is the case of legal reformism, which aims to correct the Law to meet women's demands, in an optimistic view of its potential for improving women's lives.

Another point of view, different from reformism, identifies the Law as ideologically oppressive to women, since it is part of the structure of male domination and does not believe in its potential to benefit female demands (OLSEN, 1990).

From this perspective and, seeking to break with male hegemony, studies on gender represent forms of analysis and investigation with a new perspective of reading, based on gender:

The adoption of feminine points of view, as well as the interests and values linked to them, had wide application even in legal science. In this area, theoretical reflection is constantly confronted with instances that originate from the women's movement and move in a continuous relationship with judicial and legislative measures, influencing them and receiving stimuli from them.<sup>three</sup>(FACCHI, 2005, p. 30, our translation).

Thus, from this perspective, we will investigate the figures of militant women in the period and the movements of the feminist movement that occurred in the formation of Brazilian legislation.

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<sup>two</sup>(...) in this context we find them again with different epistemological assumptions, languages, ethical and political perspectives" (FACCHI, 2005, p. 27).

<sup>three</sup>The adoption of female points of view, as well as the interests and values linked to them, has broad applications even in legal science. In this context, theoretical reflection is constantly confronted with instances that come from the women's movement and continues to evolve in relation to judicial and legislative measures, influencing them and receiving stimuli from them (FACCHI, 2005, p. 30).

## 2.1 Feminisms and Brazilian labor law

Our interest in finding clues about the feminist movement in the period of formation of labor rights in Brazil takes us, firstly, to the beginning of the 20th century, more specifically from the 1920s, marked by the emergence of the first feminist wave.

In the work “A history of feminism in Brazil” Céli Regina Jardim Pinto (2013) presents that this first phase was characterized by having been an elitist movement, formed by upper-class women who, in their privileged condition, were able to come into contact with the feminist agendas of the United States and Europe, with Bertha Lutz, founder of the Brazilian Federation for Women's Progress, as its main representative.

With female suffrage as its main agenda, this first stage of Brazilian feminism uses Law as a tool, seeking legal reform for equality between men and women, and, as Lino (1986) explains: “Bertha Lutz opts for a fight for the vote feminine for believing that through the achievement of political rights, women would be able to instrumentalize their personal progress and the social recognition of their actions”. (LINO, 1986, p. 56).

In *Feminist ideas in Brazil (1918-1932)*, Sonia Cristina da Fonseca Machado Lino (1986) elucidates that, although the Brazilian feminist movement did not identify with any ideological and political current, it approached liberal discourse, in search of his self-justification. Thus, it can present its proposals in a broad and globalizing way, coated with an apparent neutrality (LINO, 1986).

According to Olsen (1990), this reformist strategy is based on the acceptance of Law as rational, objective and universal, which ceases to be so when it denies rights to women, since it establishes irrational distinctions between men and women.

It turns out that, at the same time, there are many feminist criticisms of liberal culture and its false ideas of universality and neutrality, since the “universal subject” corresponds to the dominant group and, therefore, the male perspective (FACCHI, 2005).

Despite this, Facchi (2005) shows that, in general, this first stage of feminism in the 20th century is characterized by the search for equality between men and women, guided by the elimination of formal discrimination between the sexes and thus, equal treatment would be the final goal (OLSEN, 1990).

In economic and political terms, the beginning of the 20th century was characterized, among other factors, both by social misery, high inflation and the scarcity of living, as well as by the strong modernization of the economy and the absorption of rural workers by industry.

Furthermore, the 1930s were marked by the rise of the corporatist and class conciliation government of Getúlio Vargas, which set out to regulate labor relations in the country, with one of its first actions being the founding of the Ministry of Labor, Industry and Commerce.

Still in the Provisional Government, through Decree no. 19,770, Vargas regulated the rights and duties of the collective organization of workers who could now “defend (...) their economic, legal, hygienic and cultural interests, all employers and working classes, who, in the national territory, exercise identical, similar or related professions, and which are organized in unions”.

At this point, a fact that is quite exemplary of the feminist critique of law, created and applied by men, often to protect male interests, stands out. This is because, as presented by Gláucia Fraccaro (2016), in the 1930s, the Union of Workers in Fabric Factories (UOFT), was represented by the leader José Righetti, who had as one of his agendas “that the places occupied today by women in industries were, in an increasing percentage, from month to month, occupied by men, until the total extinction of the female element in industries” (FRACCARRO, 2016, p. 55).

It should be noted that the textile sector was considered a niche market for female labor, as women held up to 85% (eighty-five percent) of jobs. However, the situation was understood in a way that was harmful to working men:

Taking into account also that the weaving sections only accept women, thus contributing to increasing the number of unemployed men, thus offering a spectacle that is at once ridiculous, shameful and revolting: seeing the woman in the factory and the husband at home taking care of domestic chores and taking children to the factory gates to be breastfed (FRACCARRO, 2016, p. 54)

Also at this time, contemporary with Bertha Lutz's liberal feminism, the existence of a feminist current made up of working women, left-wing ideologues, with the exploitation of work as a central role stands out, intersecting feminist theses with anarchist and communist ideologies.

In this aspect, unlike liberal feminism, for workers and women from left-wing movements “the issue of gender was perceived as an organizing aspect of the structuring elements of inequalities present in work relations” (PINTO, 2003, p. 34), as explained by this manifesto from the Union of Seamstresses, Hatmakers and Attached Classes of Rio de Janeiro, in 1920:

You who are the precursors of an era where equality can reign for all, listen: everything you do for progress, fighting within our class associations, is not enough!

There is still something missing, which is absolutely necessary and which will contribute more effectively to the end desired by all sufferers. It's the Emancipation of Women, Conscious Men!

If you reflect for a moment, you will see how painful the situation of women is, in factories, in workshops, constantly belittled by repellent and vile beings. Workers!

The work of the Union of Costureiras, Hattereiras e Classes Anexas is the work that initiated the emancipation of women (União das Costureiras, Hattereiras e Classes Anexas do Rio de Janeiro, 1920)

Interpreting this manifesto of women, who already identified the particular inequality in the case of working women, Pinto (2003) elucidates that “these anarchists, going against the libertarian movements of the time, drew attention to the differences” and, in doing so, brought the first signs of “a struggle that only gains space and legitimacy at the end of the century, that of recognizing the specificity of oppression, that is, that the oppressed are not oppressed in the same way” (PINTO, 2013, p. 35). Unlike the movement proposed by Bertha Lutz, for female workers, the reformist discourse did not have the meaning proposed by upper-class feminists.

Especially in relation to political rights, already exercised by male workers, they would have little influence on their material living conditions, since, before the right to vote, they fought for “economic survival and maintenance of employment within largely unfavorable working conditions and without any legislation that would give them a minimum of guarantees” (LINO, 1986, p. 85).

According to Revoredo (2006), socialist feminism finds in the relationship between capitalism and patriarchy the emergence of conditions for the exploitation of women and even though:

In this conception, women's reproductive work in the family environment - preparing food, caring for children, etc. -, which serves to reproduce the workforce

productive, is a determining element of the subordinate status of women.<sup>4</sup>  
(REVOREDO, 2006, p. 360, our translation).

As Brazilian representatives of classist feminism, the work of Maria Lacerda de Moura stands out, a feminist writer who collaborated with the working-class press, through the newspaper A Plebe, in which she denounced the subordinate role of working women. Maria Lacerda identified potential in legal reformism to improve women's lives, and for this reason, she was close to the work of the Brazilian Federation for Women's Progress and Bertha Lutz for some time, until she moved away due to the elitist nature of the movement headed by Bertha (LINO, 1986).

Patrícia Galvão (Pagu) also stood out at the time as a representative of class feminism. A militant close to workers and unions, Patrícia Galvão was the first political prisoner in Brazil, in 1931, during a strike that took place in Santos, São Paulo.

He also wrote to the alternative press, in the column "A Mulher do Povo" in the newspaper "O Homem do Povo", organized by Oswald de Andrade, opposing movements that excluded the working class:

Excluding the vast majority of petite bourgeois women whose instruction is given in beauty books, in the studied words of cheap boys, in the gestures of the most fashionable film artists or in the semi-familiar environment of modern cocktail parties – we have to hinder Brazil's revolutionary movement a Little elite from "João Pessoa" who, supported by the name of avant-garde and feminists, scream in favor of sexual freedom, motherhood, aware of the right to vote for "educated women", thinking that old Maltus' guidance solves all the world's problems.

These elite feminists, who deny the votes to uneducated workers because they have no time left over from the forced work they have to do to support their children, forget that the birth rate limitation has almost already exists even in the poorest classes and that the problems of economic and social life are yet to be resolved. (Newspaper O Homem do Povo, 03/27/1932)

In Patrícia Galvão's writings, the recognition of different women, with different needs, can be identified. In this sense, Facchi (2005) elucidates that criticism of dominant models has contributed to the need to take into account not only gender differences, but also differences between women, also demystifying the existence of a "universal woman", falsely universal and neutral, devoid of culture, religion, sexual orientation, race or class.

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<sup>4</sup>Under this conception, the reproductive work of women in the family environment – preparing food, caring for their children, etc. -, which serves to reproduce the power of productive work, is a determining element of the subordinate condition of those women (REVOREDO, 2006, p. 360).

As previously reported, the first wave of the feminist movement in Brazil, which emerged in 1920, had as its main exponent Bertha Lutz and the Brazilian Federation for Women's Progress, and the fight for female suffrage was the gateway for women in the fight for rights. Despite this, it is certain that the issue of women's labor rights cannot be left aside from its manifestations. In this sense, it is the wording of one of the objectives pursued by the Brazilian Federation for Women's Progress, which in its statute proposes "obtaining legislative and practical guarantees for women's work" (LINO, 1986).

However, especially in the initial phase of the movement, the feminists' view in relation to female workers had a perspective of inferiority, of differentiation between intellectual work and manual work and thus "despite the concern expressed in the FBPF statutes with women workers in legal terms and educational, what set the tone of the organization's discourse was a paternalistic view towards working women." (LINO, 1986, p. 60).

Furthermore, Lino (1986) informs us that, at least in the initial phase of the feminist movement, the possible need for protection for the worker was justified by her victimization as a worker, since forced to work, she moved away from her natural mission as a mother and wife. Thus, one of the characteristics of this first stage of feminism is identified, which, as mentioned by Facchi (2005), rejects the roles that are traditionally attributed to women as a factor of oppression.

An example of this vision regarding female work is Bertha Lutz's participation in the 9th Congress of the International Women's Suffrage Alliance, held in Rome in 1923, in which Bertha presented a report on the condition of women in Brazil, and, when dealing with the issue of work, identified the existence of "a condition of equality between men and women', despite assuming that they could not carry out professional activities without their husband's consent" (FRACCARO, 2016, p. 70).

In this statement, Bertha Lutz's liberal feminism is characterized by the absence of confrontation and confrontation with the oppression exercised by men. However, since the Civil Code of 1916, in force at the time, required the husband's consent for a married woman to work, the difference in the female workforce was already assumed.

It turns out that, once the female vote was won in 1932, the problems that arose in the labor sphere and that had been left aside from the concerns of many feminists until now, began to take up important space.



The new position taken especially by Bertha Lutz, follows the steps taken by the government of Getúlio Vargas, since “the demands of the labor movement were in full discussion in society, strikes and political organizations were in evidence, as well as the Brazilian State was developing policies specific to resolve 'social issues'” (FRACCARO, 2016, p. 120) and thus, from 1930 onwards, feminist action turned to labor terrain.

Proof of this was the memorial sent to the minister of labor, Lindolpho Collor in 1931, containing hundreds of signatures from female workers, which called for “measures to protect women who work in industry, measures which, despite our most valiant efforts, in ten years of struggle, we still have not managed to achieve it” (FRACCARO, 2016, p. 123).

In this aspect, it is important to highlight that Facchi (2005) shows us that, right at the beginning of the feminist movement, it was found that mere formal equality was capable of producing negative effects, by not taking into account women's living conditions, in addition to “ the economic resources at their disposal, the cultural conditions to which they are subject, power relations and the division of labor within the family”<sup>5</sup>(FACCHI, 2005, p. 31).

Thus, we seek not only formal equality with the granting of the exact same rights to men and women, but norms that take into account the existence of differences between the sexes, characteristic of the so-called social liberal feminism (JARAMILLO, 2000) .

On May 17, 1932, Decree 21,417 was signed, regulating the work of women in industry and commerce, representing a quite contradictory document, since, among other points, providing for maternity leave and the return to the workplace at the end of leave, an agenda widely pursued by women, allows for a reduction in salary during this period, therefore:

The Women's Statute therefore provided support for business justifications for low wages and female unemployment, legitimizing behavior by entrepreneurs that feminism aimed to destroy through the principle of equal pay for equal work and through the general equality of the sexes. (PENA, 1981)

In 1934, the new Constitution provided for equal pay without distinction of sex or age, however, it did not repeal the Civil Code of 1916 which, as previously reported, prohibited women from practicing professional activities, receiving inheritances or disposing of assets without the

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<sup>5</sup>(...) the economic resources of those who are available, the cultural conditioning of those who are subject, the power relations and the division of work within the family (FACCHI, 2005, p. 31).

husband's authorization. Therefore, in 1936, Bertha Lutz, who assumed the seat of deputy after the death of its holder Cândido Pessoa, made twenty-two legislative amendments, many of them denouncing the legal distortion with the maintenance of the Civil Code and others for the revision of the Statute of Women (FRACCARO, 2016).

However, through the coup to implement the Estado Novo in 1937, the Vargas dictatorship resulted in the loss of strength of both workers' social movements and feminists close to power, as Lino (1986) explains:

in a coup d'état, Congress closes and establishes the Estado Novo, suffocating among the workers, artistic, liberal and communist voices, the feminist voices whose work of more than a decade of organization had focused on obtaining a citizenship so fragile that a single coup drew from men and women from different social sectors. (LINO, 1986).

Thus, after the ebb of social movements and the feminist movement, in 1943 the Consolidation of Labor Laws was approved, which, like other previous legal documents, proved to be contradictory to the interests of working women.

This is what was presented, for example, with salary equality, not only required in positions with the same function, but also taking into account criteria such as income and quality of work, which, obviously, ended up opening the doors to salary discrimination. (PENA, 1986).

In this same sense, night work, authorized for workers in some segments (telephony, radiophony or radiotelegraphy, in nursing services, in entertainment establishments, bars, hotels, restaurants or for those in management positions), upon presentation of a certificate of good antecedents, provided by the competent authority, and of physical and mental capacity, approved by an official doctor. Thus, Maria Valéria Junho Pena (1986) warns that, "in other words, women had to prove that they were not crazy or prostitutes in order to work at night".

### **Final considerations**

The present work aimed to investigate the actions of the Brazilian feminist movement at the beginning of the 20th century, especially in relation to labor legislation, which was being formed at the time.

According to studies that deal with feminism and Law, the relationship between feminist criticism and Law is long-standing, characterized by different perspectives and modes of action,

sometimes understanding the Law as a tool in the fight for women's equality, sometimes understood as the maximum expression of the oppression exercised by men.

Through our investigations into the feminist movement at the beginning of the century, it was possible to identify that in the Brazilian scenario the existence of different perspectives was also observed. This is the case of classical liberal feminism, with Bertha Lutz and the Brazilian Federation for Women's Progress as the main representation, since they credited the need for formal equality to the situation of women, including working women, their recognition (as in the case of freedom to work independently from her husband) as the solution to their unequal conditions.

It turns out that, following classical liberal feminism, social liberal feminism identifies that formal equality alone is not enough to account for the differences between men and women, requiring different treatment taking into account the situation of women.

This is what Bertha Lutz's change in feminist stance is approaching, after winning the female vote in 1932 and taking into account the effervescence of labor issues on the political scene, she began to act in favor of labor laws that respect the specific conditions of the working woman, as is the case with maternity leave.

Furthermore, the existence of so-called socialist feminism can also be identified, with its main exponents being Maria Lacerda de Moura and Patrícia Galvão (Pagu), women who, aligned with the workers' struggle, identified bourgeois and masculine expression in law committed to subordination. of working women. It is therefore noted that there are different understandings and forms of action in relation to labor rights for working women.

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