

HISTORICAL RESEARCH ARTICLE (ORIGINAL) 

Legislate to protect: *Lei Sena*, the first mental health law in Portugal (1889)

Legislar para proteger: Lei Sena, a primeira lei de saúde mental em Portugal (1889)

Legislar para proteger: Ley Sena, la primera ley de salud mental en Portugal (1889)

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Abstract

Background: Psychiatry gained ground as a science in the 19th century, in Portugal, and important laws were created in this context. Although nurses were care providers in various health institutions, it was also at this time that nursing was born as a profession.

Objectives: To analyze the law presented; to explain its importance in the development of psychiatry and mental health in Portugal; to identify its contributions to the history of Portuguese psychiatric and mental health nursing.

Methodology: Historical research, using as source the Law of 4 July 1889, Government Gazette No. 155 of 15 July 1889.

Results: In Portugal, there was a need for the legislation and organization of care provision to the insane, creating structures suitable for this purpose. However, the legislative interventions planned were never implemented, and thus poor care was provided to the insane in Portugal until the end of the 19th century.

Conclusion: This law was important for the development of mental health and psychiatry in Portugal because it was the first legal document issued in this domain.

Keywords: history of nursing; psychiatry; mental health; legislation

Resumo

Contexto: A psiquiatria em Portugal ganhou relevo como ciência nos anos de oitocentos, sendo criada legislação importante nesse âmbito e, embora os enfermeiros fossem praticantes da assistência nas diversas instituições de saúde, foi igualmente nessa época que a enfermagem nasceu como profissão.

Objetivos: Analisar a lei em apreço; indicar a sua importância no desenvolvimento da psiquiatria e da saúde mental em Portugal; identificar contributos para a história da enfermagem de saúde mental e psiquiátrica portuguesa.

Metodologia: Investigação histórica, utilizando-se como fonte a Lei de 4 de julho de 1889, Diário do Governo n.º 155 de 15 de julho de 1889.

Resultados: Pretendia-se que a assistência dos alienados em Portugal fosse legislada e organizada, criando-se estruturas próprias para esse efeito. Contudo, as intervenções previstas a nível legislativo nunca foram concretizadas e o país manteve défices na assistência dos alienados até ao final do século XIX.

Conclusão: A lei analisada foi importante para o desenvolvimento da saúde mental e da psiquiatria portuguesa, visto ter sido o primeiro documento legal emanado nesse domínio.

Palavras-chave: história da enfermagem; psiquiatria; saúde mental; legislação

Resumen

Contexto: La psiquiatria en Portugal se desarrolló como ciencia en el siglo XIX, se creando una importante legislación en esta área y, si bien los enfermeros eran practicantes de asistencia en las instituciones de salud, fue también en ese momento cuando nació la enfermería como profesión.

Objetivos: Analizar la ley presentada; mostrar su importancia en el desarrollo de la psiquiatria y de la salud mental en Portugal; identificar contribuciones para la historia de la enfermería de salud mental y psiquiátrica portuguesa.

Metodología: Investigación histórica, utilizándose como fuente la Ley del 4 de julio de 1889, Diario do Governo n.º 155 de 15 de julio de 1889.

Resultados: Se pretendía legislar y organizar la asistencia de los enajenados en Portugal, mediante la creación de estructuras para tal fin. Sin embargo, las intervenciones previstas a nivel legislativo nunca se llevaron a cabo y el país mantuvo déficits en la asistencia a los enajenados hasta finales del siglo XIX.

Conclusión: La ley analizada fue importante para el desarrollo de la salud mental y la psiquiatria portuguesa, ya que fue el primer documento legal emitido en esta área.

Palabras-clave: historia de la enfermería; psiquiatria; salud mental; legislación



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Introduction

The investment in the study and development of psychiatry has a recent history in Portugal. Humanization of care within the institutions that housed the insane in Portugal occurred throughout the 19th century (Barahona, 1984; Esteves, 2018), being influenced both by the travels through Europe and avant-garde ideas of several physicians, such as Bernardino Gomes, Francisco Martins Pulido, or António Maria de Sena and the political movements in the face of the harsh realities experienced in the institutions housing the insane (Pereira, 1986).

As a science, psychiatry only gained ground in Portugal in the last decades of the 19th century, although it affirmed itself as such more vigorously after the first decade of the 20th century (Esteves, 2018). It was also in the 19th century that nursing was born as a profession in Portugal, as reflected by the first course developed by António Augusto da Costa Simões in the *Hospitais Universitários de Coimbra* in 1881 (Lopes & Rodrigues, 2009a).

However, it is known that, as early as 1539, the *Hospital Real de Todos os Santos* housed the insane in the care of Father Pedro Fernando de Gouveia. Also, after the 1755 earthquake, the insane who roamed the city of Lisbon were housed in a temporary hospital, in the Infirmary of São João de Deus (Direção do Hospital Miguel Bombarda, 1949). Subsequently, they were transferred to the infirmaries of São Teotónio (for men) and Santa Eufémia (for women) at the *Hospital de São José* (Barahona, 1984). A part of the Portuguese insane was housed in this hospital (Pereira, 1986), and, as a result of that overcrowded infirmaries, the care and treatment of these patients, which were usually performed by nurses, became poor and scarce. In a report commissioned by the Crown, Bernardino António Gomes described, in 1843, the poor conditions of the women's infirmary of *Hospital de São José*:

those who have once entered the infirmary for the insane in São José, especially where women are, should feeling heartbroken for seeing such misery: crazy women, naked and disheveled, left to their deranged selves, screaming and gesturing, sometimes closed in a dark and infected cubicle, where they can hardly get a bundle of straw to lie on. (Gomes, 1999, p. 143)

Gomes added that the place was small, with poor light and improper ventilation, and 150 insane people cohabited in this place, assisted by three servants, a low ratio for the assistance required.

In 1848, after several political and administrative divergences, the Duke of Saldanha played an essential role in the defense of the insane (Barahona, 1984; Sena, 2003). Then, the insane started being transferred from the *Hospital de São José* to the *Convento de São Vicente de Paulo* [Convent of Saint Vincent de Paul], former *Quinta de Rilhafoles*, at the time named *Hospital de Rilhafoles*. This was the first national psychiatric hospital, considered one of the first measures implemented in psychiatry and mental health care in Portugal. In the same year, the insane women hospitalized in the Infirmary of Santa Eufémia were the first to be transferred, and later, in 1850, the insane men who

were housed in the Infirmary of São Teotónio. However, in 1851, Rilhafoles already housed 322 insane people: 159 men and 163 women from all Portuguese districts (Pulido, 1851). Soon, this hospital, which remained under the administration of the *Hospital de São José* throughout this period, became overcrowded and overloaded. The patients were assisted by nurses, nursing assistants, and servants who integrated the nursing team of Rilhafoles. Portugal needed an institution that would expand the care provided to the insane in Portugal, so it was urgent to build one. The construction of structures dedicated to the assistance for the insane was an international trend - see, for example, the opening dates of the institutions in the work *Lunacy in Many Lands* by George A. Tucker (Tucker, 1887). Even though the country lagged behind in the attention paid to psychiatric science, it followed the tendency of other countries, considered even more advanced in this area. It founded a brand-new institution to provide this specific type of care, the *Hospital de Alienados do Conde de Ferreira*.

Joaquim Ferreira dos Santos, known as Count of Ferreira, died in 1866 and, at the time of his death, part of his personal fortune was bequeathed to build a structure for the assistance to the insane in Oporto, under the administration of the local *Santa Casa da Misericórdia*. Like in Lisbon, the insane in the city of Porto were housed in a general hospital, the *Hospital de Santo António* (Pereira, 1986), which was also under the administration of the *Santa Casa da Misericórdia*, in a space designated as basement (Barahona, 1984).

This building - the *Hospital de Alienados do Conde de Ferreira* - was inaugurated in 1883, and António Maria de Sena was its first clinical director. Born in Seia in 1845, this physician graduated in Medicine in 1876, having already at that time higher education studies in Theology, Philosophy, and Mathematics (Cardoso, 2008). He was a professor at the University of Coimbra and, in 1878, he was awarded a scholarship that allowed him to travel around Europe and learn about pedagogical methods used in other countries (e.g. France, Germany, Austria), as well as the reality of their hospitals and the innovations in care provision to the insane.

António Maria de Sena became clinical director of this hospital in Oporto in 1881, although it was still being built at that time, and its construction was influenced by the innovations that the alienist assimilated from his journeys around Europe. In 1887, Sena was elected a parliament member for Viana do Castelo (Barahona, 1984; Cardoso, 2008), and his intervention at the House of Peers aimed to improve care and extend protection to the insane and the criminally insane. A law elaborated by António Maria de Sena, commonly called *Lei Sena*, was approved in 1889, and aimed to organize health services for the insane. Considered the first legislative document in Portugal in the scope of psychiatry and mental health, it provided legal support to the organization and improvement of assistance to these patients.

Given this phenomenon, it is important to study the *Lei Sena* from a historical perspective and give it visibility, because it was considered a pioneering initiative at the

time and a starting point for the development of specific laws to care for the insane in Portugal. This study was conducted based on the following stages of historical research: reconstruction of the historical circumstances based on the sources, the relationship between these circumstances and an comprehension of these circumstances. The general aim of this study is to give visibility to this legal document. The specific aims are to analyze the Law of 4 July 1889, published in the Government Gazette No. 155 of 15 July of 1889 (*Lei Sena*), presented at the House of Peers, and approved by King Luiz I, to explain its importance in the development of psychiatry and mental health in Portugal and to identify its contributions to the history of Portuguese psychiatric and mental health nursing.

Methodology

Developing the present and preparing the future means knowing and learning from the past and respecting the evolution that has occurred. When preparing a historical research study, we must consider not only what is most pleasing to us but also what questions our interpretations of reality (Mattoso, 1997). Thus, this type of research can also be seen as a challenge because the study of the growth of the profession and the laws that influenced it allows an internal development of what nursing is or might be (Ferreira et al., 2013) and, in this concrete sphere, of what mental health and psychiatric nursing is or might be. Therefore, this article derives from a historical study with a qualitative approach based on document search and analysis (Junior, 2011), following the stages of historical research and the aims presented above. The source for this research was the Law of 4 July 1889 published in the Government Gazette No. 155 of 15 July 1889. It is available in PDF format on the website of the Royal Legislation of the Portuguese Assembly of the Republic (in <https://legislacaoeregia.parlamento.pt/>), and was accessed on 1 May 2020 and downloaded for analysis. This analysis was carried out taking into account that, today, “all traces of the past that can be subject to historical analysis are considered documents” (Junior, 2011, p. 339). For this reason, nurses should be encouraged to know the key documents for understanding their profession, including legislative manifestations, such as the law under analysis. These health professionals should have the scientific knowledge necessary to identify them, that implies a pathway of maturation in historical research in nursing, which has been conducted in a much broader way in recent years.

Results and Discussion

Before presenting the results of the analysis of the Law of 4 July 1889, it is necessary to make a brief overview of the historical circumstances based on the sources of that time about care to the insane, following the stages of historical research. We may begin with António Maria de Sena, who highlighted the lack of conditions at

the assistance institutions in Portugal and defended the government’s obligation to create buildings to house the insane spread all over the country, including the criminally insane (Sena, 2003). Sena also stated that the insane suspected of committing crimes or those already convicted, who were housed in *Hospital de Rilhafoles*, should be “those in worse conditions. The house is very old. There is no comfort, no heating. The furniture is just a *tarimba* [platform] made of old wood planks on iron feet, everything is rough, old and dirty” (Sena, 2003, p. 142). Thus, according to Sena, these patients needed extraordinary support and specific care and should be monitored and surveilled continuously, a task usually taken on by nurses in the health institutions that assisted them.

The debate over the affinity between alienation and criminal responsibility was not a novelty that emerged in the 1800s. On the contrary, this debate had existed for years but took new forms at that time, having as protagonists in the health field Júlio de Matos and Miguel Bombarda (Esteves, 2018). However, it was with António Maria de Sena that Portugal approved the first legislative act that clarified the relationship between medicine and law. Nonetheless, articles 42 and 43 of the Portuguese Penal Code of 1886, for example, already determined that the insane without lucid intervals and the insane who, despite having lucid intervals, committed a crime in a state of madness were exempt from criminal liability (República Portuguesa, 1919).

After the mid-19th century, the insane received assistance in the *Hospital de Rilhafoles* and the *Hospital de Alienados do Conde de Ferreira* (Lopes & Rodrigues, 2009b). In both institutions, nurses were considered essential for maintaining excellence in the quality of assistance and providing good care (Sena, 1887; Pulido, 1851). The different general hospitals could also have beds or infirmaries available for these patients. Health houses or private homes also housed the insane who were often rich people or from families who paid for these services, thus being able to stay hidden from the bourgeois society of the time that dictated the accepted morals and condoned social or public scandals. Prisons also housed the insane, although the other prisoners did not welcome these individuals who usually caused trouble. In 1893, the *Casa do Sagrado Coração de Jesus* opened, belonging to the Brothers Hospitallers of Saint John of God, and, in 1894, the Casa de Saúde da Idanha also opened, belonging to the Sisters Hospitallers of the Sacred Heart of Jesus, two religious institutions that facilitated the delivery of care to the insane in Portugal.

Like Rilhafoles, the nursing staff of the *Hospital de Alienados do Conde de Ferreira* was secular and composed hierarchically by nurses, nursing assistants and servants (Sena, 1887). The functions of the nursing staff included monitoring and controlling the insane, as well as promoting their daily routines based on their treatment, meal, and rest schedules. They were also responsible for managing the infirmaries and their adjacent spaces. In the religious institutions, these patients were cared for by the brothers and sisters, that is, holy people who had dedicated themselves to this service. These care workers

were essential in the institutions that housed exclusively the insane because they were responsible for surveillance, rule compliance, maintaining the balance of care and ensuring the quality of assistance.

In the second half of the 19th century, António Maria de Sena conducted a national statistical study on the number of insane people in Portugal, their antecedents and the place where they were housed (Sena, 2003). Although we did not include all Portuguese districts in this paper, it should be noted that the district with the highest number of insane people was Porto, with 1078 patients, followed by Viseu, with 775, and Lisbon, with 727. Sena also proved that the majority of admissions in Rilhafoles, which was initially designed to house the insane from all over the country, came from the district of Lisbon (Sena, 2003). Furthermore, between 1883 and 1885, the population of mental patients of the *Hospital de Alienados do Conde de Ferreira* was mainly from the northern region, particularly the districts of Porto, Braga and Viseu, with the district of Lisbon having a small representativeness (Sena, 1887). Thus, it is evident that the delivery of care to the insane was disorganized and the specific support for these patients was provided mainly in two cities, Lisbon and Porto. Those who lived further away from these geographical areas had to travel across the country so they could benefit from better care specifically directed to their health problems.

We now move on to presenting the results of the analysis of the *Lei Sena* and continue to describe our historical research concerning the relationship between the historical circumstances and their comprehension. This law was approved on 4 July 1889 and published in the Government Gazette no. 155 of 15 July 1889, therefore becoming the first national piece of legislation on psychiatric care. As mentioned before, this law was elaborated by António Maria de Sena, who advocated the need for a document to organize psychiatric care in Portugal. This law foresaw the division of Portugal into four circles of assistance: i) the first including the districts of Viana do Castelo, Braga, Bragança, Vila Real, Porto, and Aveiro; ii) the second including the districts of Coimbra, Viseu, Guarda, Castelo Branco, and Leiria; iii) the third including the districts of Santarém, Lisbon, Portalegre, Évora, Beja, Faro, and Funchal; iv) and the fourth including the districts of Horta, Angra do Heroísmo, and Ponta Delgada. Compared to Portugal, some European countries had already drawn up this type of legislative document during the first half of the 19th century. For instance, in 1845, the United Kingdom passed a law *specifically* in this scope, known as the Lunatics Act (Brimblecombe, 2005).

According to the law under analysis, the Portuguese government was authorized to build and equip several institutions for the insane and, in accordance with article 2 on the implementation of the circles of assistance, a hospital should be built in Lisbon for 600 people, with two infirmaries for the criminally insane (one for men and one for women). Moreover, there should also be created conditions in Lisbon for the teaching of clinical psychiatry. Following the capital's model, a hospital should be built for 300 people in Coimbra and another for 200 people on the

island of S. Miguel. Given the reality of Rilhafoles and the *Hospital de Alienados do Conde de Ferreira*, it was evident that nurses were the most important assistant practitioners in the functioning of the infirmaries at these institutions. In the 19th century, the construction of large buildings to accommodate a high number of mental patients became common practice worldwide (Tucker, 1887), and those institutions rapidly became overcrowded. One example is the case of the Malta asylum in the 19th century, where the overcrowding led to the accommodation of mental patients in bathrooms, mortuary houses, or even stairwells (Chircop, 2013).

In Oporto, the same article 2 determined that a building should be built (or found) to establish an asylum for “two hundred idiots, epileptics, and harmless demented people of both genders” (Lei de 4 de julho de 1889 do Diário do Governo n.º 155 de 15 de julho de 1889). The *Hospital de Alienados do Conde de Ferreira*, founded six years before this law was passed, could accommodate about 300 people. In 1889, 392 insane were hospitalized in this hospital (203 men and 189 women) and only 15 patients were considered healed and discharged between 1888 and 1889 (Santa Casa da Misericórdia do Porto, 1889). Finally, although this article 2 also recommended the construction of infirmaries adjacent to the country's central prisons for the treatment of the insane, they had not been built by the end of the 19th century (Esteves, 2018). In accordance with *Lei Sena*, the overcrowded *Hospital de Rilhafoles* should be converted into an asylum for 300 insane people, with similar characteristics to the asylum that was to be built in Porto.

Considering the legislative act under analysis, if an insane person was diagnosed or found in any of the circles of assistance other than that of their residence area, they were considered indigent or vagrant and should be transferred to their region of assistance. If they were hospitalized outside their circle of assistance, the treatment should be paid by the institution that was supposed to have admitted them. Insane boarders, that is, those who paid for their own treatment (or whose families paid for it), could be admitted in circles other than that of their residence area. However, it was not possible to dislodge, in the institutions of the defined circles, those who needed treatment and could not afford it. Although the revenue of the insane's payments for their hospitalization increased the financial capacity of the institutions that housed insane people and helped to bear the costs (Sena, 1887), these institutions, because they admitted the indigents, fulfilled their social role of caring for the insane who could not find a place in society. This duality of care, which included paid assistance and charity, was common to Portuguese psychiatric hospitals in the 19th century and went on throughout the 20th century.

Returning to the topic of the insane, they should be housed in the infirmaries of the central prisons and the two infirmaries of the hospital that would be built in Lisbon. According to the *Lei Sena*, the prisons' infirmaries would accommodate:

1. Convicts with longer sentences who presented a state of alienation or the condition of epilepsy

during the duration of their sentence; 2. Those indicted or convicted for crimes corresponding to longer sentences, when a legal medical examination has been ordered (...); 3. All those indicted or convicted for crimes corresponding to longer sentences when they present a state of alienation in the period between the beginning of legal proceedings and trial. (Lei de 4 de julho de 1889, p. 318).

According to the law under analysis, the infirmaries of the hospital to be built in Lisbon could accommodate acquitted individuals, individuals whose process had been suspended for grounds of mental disease., and individuals who were in the infirmaries of the central prisons at the end of the sentence but were considered dangerous and could not be sent to the respective circle of assistance. The legal-medical examination should be carried out when the defendant was suspected of mental alienation to resolve the crime or suspend the legal proceedings. In this case, the evaluation would be carried out by experts in a specific institution for the insane. Even though the law under analysis was not implemented in the years following its approval, the truth is that these examinations continued to be performed in the institutions that assisted the insane (Esteves, 2018; Sena, 1887), particularly by the alienists who managed these spaces.

According to the *Lei Sena*, a public charitable fund would be created for the insane in Portugal, regarding the financing of the creation of the circles of assistance and the construction of asylums and hospitals. This fund was financed by a special stamp duty of 4\$500, 15\$000, 12\$000 and 1\$000 réis [former Portuguese currency], respectively, on the documents relating to consanguineous marriage licenses, certificates of noble titles, licenses for pawnshops, budgets for religious sisterhoods or brotherhoods, and bylaws of associations to be approved by the civil governor, except for the *Misericórdias* and institutions with annual revenues under 50\$000 réis. The fund was also expected to be financed by special taxes on foreign lotteries collected by the Portuguese Treasury, the amounts collected in prohibited gambling houses, half of the assets of the convents to be extinguished after the approval of the Law, and one-third of the profits of prisoners' work. In the *Lei Sena*, the government was also authorized to borrow money from the banking system to build and equip the hospital in Lisbon. Although the money was raised, it was allocated to meet other needs of the Kingdom given the political instability at the governmental level in the transition from the 19th to the 20th century.

After the approval of the *Lei Sena*, an organic law should have been drawn to determine the administrative and clinical management regulations for these institutions and the circles of assistance and define the nursing staff of each institution. This organic law was never created, nor were the recommended circles of assistance, the hospitals or the asylums. Regarding the creation of new structures, the *Hospital Júlio de Matos* only opened in 1942, the *Hospital Sobral Cid* opened in 1946, and the *Hospital do* and the *Hospital Magalhães de Lemos* opened only in the second half of the 20th century. It was only in 1911 that new legislative documents were published for the

reorganization of psychiatric care.

However, in 1892, the administration of the *Hospital de Rilhafoles* passed on to Miguel Bombarda and this institution improved significantly under this clinician's direction, although it was constantly overcrowded. After his death in 1910, Rilhafoles was renamed *Hospital Miguel Bombarda*, without the legislation being enforced. At the beginning of the 20th century, the *Hospital de Alienados do Conde de Ferreira* also had overcrowding problems and financial difficulties, which negatively impacted the treatment of the insane and, consequently, set back its evolution as an institution. In the Portuguese islands, in the transition from the 19th to the 20th century, the insane were mainly cared for members of Brothers Hospitallers of Saint John of God and the Sisters Hospitallers of the Sacred Heart of Jesus, although these institutions were not included in the terms laid out in the law of 1889.

Regarding the development of psychiatry and mental health in Portugal, the law under analysis is of great importance: it provided the first legal framework that allowed the organization of care to the insane in Portugal, even if it was never implemented. The reasons for this non-implementation are unclear, although it can be assumed that the full affirmation of psychiatry as science only in the first years of the 20th century may have contributed to this stagnation, as well as the cultural adaptation of psychiatric institutions to the Portuguese context, which occurred differently from the systematization promoted in other countries such as England.

Still, because it was the first law created in this context, it served as a foundation for the law created in 1911, already mentioned, whose architect was Júlio de Matos. This law contributed to the creation of the institutions that were established in the first half of the 20th century, presented above. As far as nursing is concerned, the law of 1889 did not explicitly consider it in its terms. However, in the law of 1911, the teaching and preparation of nurses in psychiatric care settings was proposed, with courses taking place at the *Hospital Miguel Bombarda* and the *Hospital de Alienados do Conde de Ferreira*. These courses were the precursors of Portuguese mental health and psychiatric nursing education that was developed in the 20th century.

Conclusion

The law analyzed in this study was an innovative initiative in Portugal because it was the first law on assistance to the insane in the country, following European trends and taking into account progressive ideas related to this type of care. Wherefore, from a legislative perspective, the analysis of the Law of 4 July 1889 in the Government Gazette No. 155 of 15 July of 1889, presented at the House of Peers and approved by King Luiz I, shows that Portugal was in a position to take the first step toward the improvement of the living conditions of the insane while considering the relationship between crime, alienation and investment in the study of mental illnesses.

The 19th century was a very important period for the assistance of the insane in Portugal. It was in this century

that psychiatry affirmed itself as a science, although it was only consolidated as such in the early years of the 20th century. Laws were also approved on aspects related to the delivery of psychiatric care in specific structures nationwide, which were important to the development of psychiatry and mental health in Portugal.

Besides bringing to the fore personalities that contributed to the advancement of psychiatry, the 19th century was a crucial period for the birth of nursing as a profession in Portugal. This century was also essential for the development of specialized nursing in the field of psychiatry and mental health that occurred in the 1900s, since nurses, although not explicitly included in the law analyzed, played a key role in the provision of care to the insane in the hospitals created exclusively for this purpose. This law served as the foundation for other legislative acts that were vital to specialized nursing courses in the 20th century, therefore contributing to the development of the profession.

Author contributions

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