Women, law and legal intervention in early modern Portugal

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Abstract
Early modern Portuguese women had the legal right to engage in a number of official transactions, including granting and receiving sureties and powers of attorney. This was not the case for women in many other parts of western Europe, making the Portuguese example worthy of scrutiny for comparative purposes. This article looks at the unique position of women in early modern Portugal, and shows that upon close examination of the archival sources, the evidence points to a significant gap between women’s legal rights and the cultural limitations that were imposed on women.

1. Introduction
On 22 August 1656, Joana de Sousa, a resident of Porto, went to the office of a local notary to register her approval of a contract that her husband had negotiated with Isabel do Couto. The contract involved some family property to which Joana had a claim, and she thus declared that she had full knowledge of her husband’s intentions, and that she acquiesced to the terms of the contract. The notary dutifully produced the necessary document, and the agreement over the piece of property presumably worked to everyone’s satisfaction. Three adult individuals, two married to each other and the third – a woman who had never married – the scribe explained, were implicated in that contract, but did all three have an equal measure of legal agency? Can such a thing be measured? One could argue that, of the three participants, Isabel enjoyed a greater degree of legal autonomy for she entered into that property transaction seemingly on her own, whereas the wife and husband needed each other’s approval.

The present article looks at the nature of that approval, analyses the ways in which such approvals were recorded, and scrutinises what those records say about gender relations in early modern Portugal. The discussion focuses on the use of the fiança (surety) and procuração (power of attorney), two key legal procedures that allowed individuals to deal with a variety of public and private matters in early modern Portugal. These two sets of notarised documents allow for an assessment of a unique facet of early modern Portuguese women’s lives. The disjunctions of patriarchy are especially visible in the registered fiança and procuração, for these transactions highlight the shades of power between women and men, wives and
husbands, mothers and fathers. Legally, women of the Iberian Peninsula were entitled to relative equality with their menfolk in terms of inheritance of family property, but as has been shown elsewhere, this legal precedent did not necessarily lead to an equal division of property between the sexes.\(^2\) Nevertheless, in most parts of Iberia, including Portugal, women of property enjoyed a legal status that was distinct from that which most women experienced elsewhere in pre-modern Europe.

Portuguese women of age of majority (25 and over) – whether single, married, or widowed – were legally capable of acquiring and disposing of their own properties, movable or immovable. In many other parts of Europe, by contrast, women – especially married women – faced a number of legal obstacles in relation to property ownership. However, there were considerable regional differences in the ways those obstacles manifested, sometimes even within shared national borders. In Sweden, for instance, discernible distinctions existed in inheritance practices between town and country; in Ghent, women’s legal identities, and capacity to enter into legal acts, diminished over time; and in German-speaking areas, women’s legal autonomy varied substantially, depending on marital status and regional practices.\(^3\)

No such legal limitations existed in early modern Portugal. In fact, Portuguese women’s distinct status extended to other legal and commercial matters. As owners of property in their own right, Portuguese women had social and financial capital; they had credit and could grant credit. Moreover, unlike many of their counterparts in other parts of Europe, women in early modern Portugal had rights of legal intervention, and women exercised those rights most readily through the fiança (surety) and the procuração (power of attorney). The archival evidence reveals that the legal operations that involved such mechanisms as sureties and powers of attorney were commonly the domain of men but, on numerous occasions, those transactions necessitated women’s input. The reasons for women’s input were multifaceted, however women were involved most clearly because women had a legal stake in that on which those operations depended – property. Yet, as will be shown, women’s involvement was not unhindered, or without socially constructed limitations. The aim of this article is to examine those limitations and to shed light on the differences between legal status and social reality.

Of particular interest for the present discussion is the significant number of sureties registered by local notaries. Individuals of various social strata and financial means sought or offered pledges to one another for a variety of reasons, but people involved in lawsuits and other legal entanglements, including criminal accusations and convictions, were in particular need of guarantors to deal with their cases. Consequently, this article focuses on a sample of legal arrangements made between people seeking bail and those who agreed to assist them. The records under examination do not reveal much about those seeking bail. Rather, the notary focused on recording the financial means through which the guarantors proposed to secure the pledges they offered. For the most part, these were individuals of good social and economic standing, who Julie Hardwick termed ‘gens de biens’.\(^4\)

Hundreds of notary records were gathered for this study, but since many of those documents resemble each other in formula and content, a few key examples from the sixteenth and seventeenth centuries were chosen for evaluation. Not surprisingly, the majority of cases were found in the larger urban centres, such as
Porto, Lisbon, and Évora, although similar conventions were practised in smaller communities. With occasional references to the royal ordinances for contextualisation, the analysis of these notarised agreements provides unique insights into Portuguese women’s legal status, for women were both grantors and recipients of the fiança (surety) and the procuração (power of attorney). However, the way in which women were noted in those records says something about women’s social standing, as a few notaries emphasised women’s particularity by hinting at an old, oppressive Roman law.

The discussion begins with a look at that Roman law – the Senatusconsultum Velleianum – a law that made its way to the Portuguese law books of the sixteenth and seventeenth centuries, and occasionally to the notarised document. As it will be shown, references to the Velleianum were inconsistent – that is, such references appear only sporadically – and incongruent with the contents of the narratives in which those references were recorded. Of the 43 cases evaluated for the present discussion, only eight made reference to the Velleianum. In addition to the examples discussed below, the infamous Roman law was applied to women in a variety of situations: a widow who provided a surety for her nephew;5 a woman who received power of attorney from her husband;6 a widow who pardoned a neighbour for his assault;7 a young servant woman who pardoned a neighbour for his assault;8 and a widow who pardoned those who killed her husband.9 As will be shown, the references to the Velleianum were not widespread, but any mention of the old Roman law served to undermine a woman’s legal status, and provided a not-so-subtle reminder that in the eyes of the legislators, she was not on par with her male counterparts. She was the other, the one who needed special consideration. This article examines a number of documents that raise questions about the applicability of that notorious law, and the social conventions such a law served to maintain.

Following the brief appraisal of that ancient Roman decree, the process for granting and receiving sureties and securities is assessed, after which a number of sureties and powers of attorney are examined. To facilitate the presentation, the narrative is divided into five sections (after this introduction): 2. Old law, new realities; 3. The guarantor and the guarantee; 4. Women and the law; 5. Women’s legal intervention; 6. Conclusion. More specifically, section 4 deals with a sample of cases that allude to the Velleianum, while section 5 evaluates a few examples that contain no such allusion. The objective is to compare and contrast the ways in which different notaries framed their narratives, what those frameworks reveal about attitudes towards women, and the nuances between Portuguese women’s distinct legal status and the cultural limitations therein.

2. Old law, new realities

The document that brought Joana de Sousa to our attention, discussed at the opening of this article, contains the usual amount of written legal formalities, with several references to wide-ranging observances and renunciations. In particular, the notary recorded that by approving her husband’s contract, Joana renounced all future claims, including (as the notary pointed out), the Ley Veleiano – the Senatusconsultum Velleianum – an ancient law that favoured women. Such an assertion calls for some explanation, but the explanation is not to be found in
the notarised documents. Indeed, although the thousands upon thousands of notarial collections stored in Portuguese archives make references to broad-based renunciations, only a small fraction of those records hint at any actual existing laws, and those hints are vague at best. Nevertheless, any remark about a law that ostensibly ‘favours women’ is worth investigating.

The *Senatusconsultum Velleianum* was a Roman decree from the first century of our common era that professed to ban women from all intervention on behalf of anyone. Thus, legal contracts involving women acting on their own were considered invalid because women were deemed incapable of understanding the complexities and implications involved. More specifically, women could not intercede between a creditor and a debtor and offer a guarantee for the debt. The necessity for this ban, as Jane Gardner has explained, was based on the perceived weakness of the female sex and was applied widely, though the initial application was primarily concerned with sureties and pledges, and ‘arose from a feeling that such matters were properly the preserve of men’.10 Some Roman jurists, in fact, thought women too easily led and manipulated, and felt that women’s legal liability needed to be curtailed for their own protection. As Roman legal systems spread through most of medieval Europe, the *Velleianum* made its way into a number of regional law codes.

There was great variation in the extent to which the *Senatusconsultum Velleianum* was enforced in the early modern period, but Thomas Kuehn found that a number of Italian jurists were concerned with the possible implications of this law. At the heart of their unease, he informs us, was the fear that a woman could take advantage of her presumed weakness and deliberately commit fraud under this alleged protection.11 The *Senatusconsultum Velleianum* also stipulated that a woman could waive this protection, and it is this clause that occasionally showed up in some Portuguese documents. Calling it the *Ley Veleiano*, or a variation thereof, the Portuguese notary who inserted this reference to the text usually explained it in the context of women renouncing all laws that could have protected them as women, including the Roman law that privileged women, especially widows and young maidens.

This stipulated waiver in the Portuguese documents raises a number of questions. First, as already mentioned, the majority of documents found in notarial collections did not make any reference to the *Velleianum*, even those documents that pertained to widows and single women, women who, according to that ancient decree, were especially vulnerable to exploitation because they did not have a man to protect them. Second, occasionally a reference to the *Velleianum* was included in a contract where its inclusion defied logic, such as the case of Joana de Sousa noted earlier. According to that record, a married woman, whose husband was alive and well, needed to waive the *Ley Veleiano* in order that her husband be able to conduct business with a third party, a single woman, whose stereotypical vulnerability was seemingly not an issue. What motivated that notary to insert the *Velleianum* clause into that particular text?

Given the ways in which Portugal’s national ordinances referred to the *Ley Veleiano*, the apparent confusion displayed by a few notaries regarding that provision is understandable. The three sets of national ordinances compiled in the early modern period acknowledged that this ‘privilege’ was accorded to women because of their ‘weakness of understanding’. Yet, the respective sections in those royal
ordinances outlined a number of exceptions wherein women could be guarantors and procurators, and held responsible for their legal and financial agreements conducted on their own or on behalf of others – exceptions that allowed women much room to manoeuvre, and, for all intents and purposes, made the gender-based protection redundant, if not ridiculous. Nor did the Portuguese law say anything about widows, though it stipulated that women under the age of majority of 25 could rely on the protections accorded by the beneficio de Veleiano, a benefit accorded to all minors. Furthermore, while the earlier compilation of the fifteenth century allowed for a woman to renounce the benefits do Beneficio do Valleano, the subsequent editions stipulated that such a renunciation was invalid for obvious reasons: if a woman needed protection because she was weak, the same weakness made her incapable of renouncing that very law that aimed to protect her.12

The clause with the Velleianum prerogative in the royal ordinances contained a number of explanatory notes outlining the varying opinions on the meaning and applicability of this Roman law, a debate that echoed through the centuries in much of western Europe.13 What is less ambiguous is the stipulation in the Portuguese ordinances that no married man could provide a surety without his wife’s consent if his obligation concerned her half of the family estate, otherwise the surety would be null and void. This was in accordance with another clause in which the law determined that in all matrimonies of the realm, wife and husband had an equal share of their joint estate unless there was a prenuptial agreement that the parties determined otherwise.14

As scholars have pointed out, the alleged privileges of the Senatusconsultum Velleianum for women can be explained as a poorly disguised attempt to limit women’s access to and management of family property, and other financial dealings. Under the guise of protection, the Velleianum left women in ancient Rome under men’s tutelage and promoted women’s inferior status. Finding reference to it in some records from early modern Portugal is perplexing indeed, for the Senatusconsultum Velleianum contradicted the overwhelming evidence found in Portuguese archives. Women were involved in all kinds of legal contracts, on their own or accompanied. A possible explanation for the inclusion of a waiver to the Ley Veleiano in some Portuguese documents is that some notaries were less familiar with the law than others, and that in the minds of perhaps more than a few of them, there was something peculiar about women that needed to be specified, just in case. Indeed, one study found that graduates from Portuguese universities in the early modern period were better acquainted with Roman law than with the law of the land.15 This may explain why some notaries still made reference to the Velleianum when clearly it was of little consequence.16 That is, in early modern Portugal, that old Roman law had little legal effect, but it is conceivable that the law served more than a few men – husbands and notaries alike – to maintain the appearance of men’s legal superiority.

It is difficult to know how the local notary informed his female clients of the Senatusconsultum Velleianum, or how women understood that ancient law, but the exercise alone of bringing it forth surely had an impact on how women were viewed and on how they viewed themselves. Women were made aware that their male counterparts did not have to renounce anything connected to the specificity of the male sex. This was a potent message, however legally insignificant the
Velleianum might have been by then. In essence, the Velleianum was the equivalent to the ‘dragon of social theory’ that Sarah Hanley found for pre-modern France. In her examination of the public discourse that limited women’s civil liberties, Hanley noted that ‘in legal theory, women contracted into marriage, then lost the capacity to contract’. In reality, French women were involved in a variety of legal contracts, and found the means to circumvent the theoretical norms. In early modern Portugal, too, perceptions mattered, yet, as this article will explore next, the incongruity of the Velleianum may have struck more than a few women who were called upon to offer sureties, following a common formula that was entrenched in Portuguese law.

3. The guarantor and the guarantee

Women and men alike were called upon to offer sureties and pledges for a variety of reasons, but especially for those individuals who were accused of committing a crime. In early modern Portugal, a prisoner seeking bail had to obtain a fiança e abonação (surety and security), a legally binding financial guarantee that the prisoner had to present to judicial authorities. This bond was provided by someone who was called a fiador e pagador e abonador (guarantor and payer and warrantor), an individual who guaranteed that the prisoner would fulfil the terms of bail in the allotted time, and who pledged to cover all costs and penalties if the prisoner failed to do so. The need for a fiador meant that a prisoner had been charged with a crime and needed to seek a livramento – a release on bail to deal with the case. The best available evidence for the surety system in early modern Portugal is found in notarial collections where these sureties, commonly called a carta de fiança, were registered. Sometimes a carta de fiança had more than one fiador, or guarantor, one of whom was the principal pagador, or principal payer, the guarantor who shouldered the bulk of the responsibility for the undertaking. Often the fiador also needed a guarantor for her or his pledge, and this person was usually called an abanador, an individual who not only offered an additional security to guarantee the first, but also sometimes vouched for the existence and value of the assets put forth by the first fiador.

The primary purpose of the notarised fiança was to outline what and how much the fiador pledged, and the estimated values of the real estate and landed properties used as collateral. In cases of a guarantor who was married, a pledge of assets that were joint-owned necessitated the agreement of the surviving spouse. Most fianças found in the Portuguese archives were granted by men to other men, and many of those documents contained the approval of their wives, yet a significant number did not make any references to women, a phenomenon that raises questions about the applicability of the law in the construction of these documents.

The sample of 43 cases chosen for this study reflects the emphasis on women’s agency, and thus the majority (32) deal with women, 15 of which deal with wives and husbands. Of the 43, at least 24 cases show men as recipients or grantors of sureties, powers of attorney, or other related contracts, including one case of 48 male shoemakers who gave their power of attorney to several men to handle a feud with local authorities. None of those men was linked to a woman from whom consent had been received – a curious omission, for even in the male-
dominated trades wives were required to acquiesce to contracts that impinged on family property. This can be seen, for instance, with the legislation of 1602 that required a carceireiro (jail guard) to provide a fiança of 5,000 cruzados upon taking his post, or pledge his property of equal value, com consentimento de sua mulher – with the consent of his wife.20 Another intriguing example was found in a contract for work with the city of Porto, when the businessman António de São Paio provided written confirmation that his wife, Caterina de Rocha e Barros, agreed with her husband’s commitment.21 Finally, similar expectations were noted in a settlement between two men who had a feud over water rights along their adjoining properties, at the end of the text, one of the parties declared that his wife would have to approve the agreement, although she was never identified in the document, and her approval was not recorded in the document.22

Given this evidence, one wonders about the many securities provided by men that did not include the respective wife’s consent, unless those male guarantors were single or widowed, or, if married, they pledged their own assets and not joint property. Another possibility is that more than a few (male) notaries and (male) clients were unscrupulous and did not bother with any extra ‘preliminaries’, trusting that few wives would have had the temerity to sue their husbands for fraud.23 For example, Pero Alvares Paredes negotiated a fiança with two men on 8 July 1570, but the document makes no reference to any woman, although we know that at least one of them was married. Pero’s wife, Ines da Costa Samde, granted him power of attorney on 1 September 1570 so that he could raise funds to help with his two-year exile to Africa.24 Likewise, Caterina Lopes joined her husband on a property sale, the funds from which he undoubtedly needed to finance his one-year exile to Africa, the fiança for which made no mention of Caterina.25

The carta de fiança followed a common formula that comprised the identity of those who offered the fiança, to whom it was offered, for how much, and for what purpose. The notarial collections contain fianças for a wide range of financial transactions, but time constraints in the archives meant that use made here of those sources was limited to sureties that dealt with criminal or other related legal procedures. In many cases, the individual who required the fiança was incarcerated, and needed to leave jail to appeal her or his case, or to prepare for a term of exile. The fiança invariably made reference to the penalty that would be levied on the guarantor if the terms of the bail certificate were not respected, usually a substantial fine of the amount pledged in the fiança or more, to be paid to a charitable organisation such as the Hospital de Todos os Santos in Lisbon.26

Sometimes a procuração or power of attorney also required the procurator to provide a fiança, but most procurações were straightforward arrangements to allow an individual (or a number of individuals) the capacity to act on behalf of someone else. Nevertheless, the power of attorney also placed a lot of responsibility on the procurator. This was demonstrated most vividly in a procuração from a married couple living in Faro who appointed their brother-in-law to look after their affairs in Lisbon, and the procurator’s wife had to approve the agreement.27 The following discussion examines a number of cases that highlight the place of women in the process of granting and receiving sureties and powers of attorney, and the undercurrents that existed to undermine women’s agency. First we look
at a sample that contains references to the *Velleianum*, and then we proceed to a few cases that make no mention of that notorious law.

### 4. Women and the law

As already mentioned, only a small percentage of Portuguese archival sources contain references to the *Senatusconsultum Velleianum*, and the contexts in which women were sometimes linked to that law are in fact oxymoronic. Nevertheless, those few references are not inconsequential. In an attempt to unravel the underlying assumptions that such references imply, we will look at four examples where the *Velleianum* reared its ugly head: a straightforward surety, a combined surety and loan, a manumission, and a combined surety, power of attorney, and transaction of a quittance. All four cases serve to underscore the arbitrariness of the situations under which the *Velleianum* was applied.

The first example under review deals with Joana Lopes, *dona viúva* (widowed lady), who on 11 July 1570 had a notary visit her home in Évora where he finalised a *fiança e obrigação* (surety and obligation) that she granted to Miguel Garcia, a *mercador* (merchant) who had been arrested by the local bailiff. Miguel had been charged under the sumptuary laws of the time, which prohibited commoners from wearing silk. Consequently, he needed a bond of 100 *cruzados* to leave jail and deal with the accusation.28 Joana Lopes agreed to be his guarantor, indeed his *fiador e principal pagadora* (guarantor and principal payer). In her *fiança*, Joana mortgaged a real estate property valued at 100,000 *réis*, leased for 8,000 *réis* per annum,29 and she renounced all laws, rights, privileges, liberties, or declarations that could have countered the agreement, including the *Velleianum* law ‘that favoured women’.30

In the above case we have an example of an elite woman whose widowhood rendered her legally autonomous in all financial matters pertaining to her own estate.31 Indeed, the notary underscored her autonomous status by referring to Joana Lopes as the *pagadora*, the female version of *pagador* or payer, thus acknowledging her individuality. The gendered term was arguably an indication that the notary recognised her agency and perhaps the agency of women overall. To call a woman a *pagadora* was to say that she was on the same level as a *pagador*, but maybe not quite. After all, this *pagadora* had to renounce an ancient law that protected her weakness, whereas no *pagador* was ever stained with that presumption. How much weight should we give to this linguistic turn? Perhaps it was a slip of the quill, or a predilection of this particular notary, or of that specific moment. One can hardly maintain that one example is representative of a trend in the second half of the sixteenth century, especially when other *fianças* from that time did not refer to women as *pagadoras*.

Whatever the circumstances, a notary from Évora in the second half of the sixteenth century found it appropriate to provide a woman with a legal identity that recognised the female gender. Perhaps Joana Lopes was well known in her community for her financial dealings. Certainly it is significant that a male merchant went to a woman for a surety and pledge, especially since there was no indication that Joana and Miguel were related. Nor was Miguel a small itinerant trader, but a merchant of some standing who had the means to buy silk, and the audacity to wear it.
Was Miguel unaware of the *Senatusconsultum Velleianum*, or did he and everyone else ignore it? Joana Lopes’s legally binding pledge suggests that such was the case. For reasons of his own, the notary was compelled to note that there was an old law, still in the books, that proclaimed women to be weak, but if women were willing to forgo their weakness, they could participate in business as usual. And so Joana did.

Yet, according to another notary, this one in Viana do Castelo in Portugal’s northern coast, even the presence of a husband did not nullify the weight of that old Roman law. This second example deals with a loan for a small business, a loan that Margarida Tourinha provided to Maria Francisca and Gregório de Freitas, a married couple who needed 50,000 réis to maintain their shop with supplies and merchandise. Margarida also was married, but her husband was away in Brazil. In the terms of her loan, Margarida agreed to lend the money at a rate of 6.25 per cent per annum (the common interest rate at the time). She also pointed out that this was money with which she traded with Brazil and other regions, an indication that she wished to highlight her commercial prowess. Maria and Gregório agreed to pay the principal and interest to Margarida within a year of the day of this contract, that is, on 26 November 1647.

Although Margarida claimed that she made the loan as a good deed and in friendship, she was also a businesswoman. As such, she required the borrowers to provide a guarantee for their substantial loan and her investment. Consequently, Maria Francisca’s parents agreed to be the guarantors and *principal pagadors* for their daughter and son-in-law. The notary recorded that Maria and her mother, because they were women, renounced what he called ‘the laws of the emperors which favoured women’ – the *Senatusconsultum Velleianum* by any other name. Here, then, we have two married women whose husbands were present, yet the notary felt it necessary to highlight the *Velleianum* law, while the same renunciation was seemingly unnecessary for Margarida, also married but whose husband was absent. Of the three married women involved in this transaction, Margarida was ostensibly the most susceptible to chicanery because her husband was not present to prevent her alleged gullibility.

It is also worth noting that, in the above case, a woman was associated with the *Velleianum* even though she was the borrower, not the guarantor for the loan in question. In the minds of a few notaries, therefore, the *Velleianum* applied to a wide range of situations, and one of the strangest examples of this phenomenon was found in connection to a manumission dated 9 August 1660, in which Maria Martins of Évora, widow, enfranchised Martha Tavares, a 20-year-old slave who Maria had raised ‘as a daughter’. While many manumissions found in the Portuguese archives stressed the religious motivations that led individuals to liberate their slaves, this document made no such assertion. Instead, the notary listed all the laws and privileges that Maria renounced, including the *Ley Veleiano* – the only such example found to date in a manumission document. The notary also felt compelled to certify that Maria had all her mental capacities and was of perfect understanding, a clause that suggests that the parties involved in this transaction anticipated some difficulties, possibly from other heirs, for the same record also mentioned a dowry that the manumitted slave had received from her mistress. Again, no manumission has been found that refers to the mental state of a male slave owner.
One wonders, as well, about the fate of Martha, the manumitted young woman. Would her liberated status render her a donzella (young maiden) who ostensibly needed the protection of the old Roman law, or did such protection only apply to unmarried women of a certain socio-economic rank, and of the dominant race? One hint was found to that effect in a surety granted to Caterina de Valadores, identified as an unmarried woman, who obtained a loan of 60,000 réis. Similar to the examples already discussed, here too we find a renouncement of the Velleianum, which in Caterina’s case the notary amplified by stating that she renounced ‘the law of Velleianum Roman Senator who made it [the decree] in favour of virtuous [honésta] maidens and widows’. Thus, according to that notary, not all women were worthy of the gender-specific protection against women’s inherent weaknesses, or perhaps not all women were inherently weak?

The ways in which such textual intrusions were inconsistent and paradoxical can be seen most clearly in the case of Maria de Mattos for whom three separate documents exist: a contract for a loan, a power of attorney, and a quittance, recorded in Porto in 1658, 1663, and 1667, respectively. In all three documents, Maria was identified as a single woman, her status expressed in one case as a molher donzella que nunca cazou (a maiden woman who never married), and in another as a molher donzella (maiden woman). Her deceased parents were also named in two of the three records, in 1658 and 1667, but curiously not in 1663. Maria lived on her own, on Rua da Fonte Aurina, the same street where her brother also lived, but seemingly in separate residences. While her maiden status was highlighted, Maria’s age was never indicated, suggesting that she was at least 25 years old by the time she initiated her first notarised contract, a loan for 100,000 réis that she obtained from Bento Gonçalves, a merchant who lived on the same street. The document does not reveal the reasons for that substantial loan except to hint euphemistically that Maria needed the money ‘to settle her affairs’.

Although the nature of those affairs was not disclosed, the loan may have been connected to legal difficulties that Maria de Mattos had with Carlos da Silva, also of Porto, difficulties that forced her to grant power of attorney in 1663 to two lawyers, to a judicial investigator, and to her brother, Amador de Mattos, a cloth merchant, the same brother who had guaranteed her loan nearly five years earlier. All four procurators were given wide-ranging legal powers to act on her behalf, and to use her estate as needed to resolve the legal battle, the depth and duration of which are not known. What is clear is that Maria did not repay that initial loan within a year as promised, though she wisely had negotiated a clause that allowed her more time as needed, with the requisite interest payments accounted for over time. By the time she repaid her loan, in 1667, the lender had died.

From 1658 to 1667, therefore, Maria de Mattos was engaged in a series of deals and negotiations that underlined her legal agency, yet the notary who wrote up the loan document felt it necessary to mention that she renounced ‘the Velleianum law that favours widowed women and maidens’. However, that decree did not come up in the other two documents, including the power of attorney that was written up by the same notary, a document that left her most exposed as she entrusted all her person and estate to four men. Nor did that notary refer to Maria’s honestá or virtue.

The circumstances under which a notary deemed it necessary to allude to the Velleianum, and the ways that ancient law were expressed, are difficult to pinpoint.
One could argue that there was no rhyme nor reason for the occasional notarial citation of a Roman senator from many centuries earlier, but a closer look at those seemingly haphazard insertions reveals that it would be imprudent to dismiss those insertions altogether. The implications and insinuations were important, for the *Velleianum* served to underline women’s specificity. Whether deliberate or not, through that specification, the notary undermined women’s agency. We have looked at a sample of women’s legal acts shrouded under the *Velleianum* veneer; next we examine a sample of women’s legal transactions that do not refer to that ancient Roman law as a means to explore the nuances between those legal contracts.

5. Women’s legal intervention

One of the best ways to gauge the dimensions of women’s legal intervention is to look at women who gave and received sureties and powers of attorney, for these legal contracts speak to a level of involvement in legal affairs that belies what is commonly known about women in pre-modern Europe. Jamie Smith’s study of late medieval Genoa, for example, shows the extent to which married women were critically disadvantaged when their husbands were away because, in Genoa, a woman needed her husband’s permission ‘to allow her to manage her own affairs’. Through an examination of a number of notarial records, Smith demonstrated how the local statutes that aimed to give women some legal agency also reinforced significant restrictions on women. In London, likewise, where married women could manage their own affairs under the particularised status of *feme sole*, judicial decisions attempted to limit women’s independent legal position.

This is a far cry from the case of Margarida Tourinha, noted earlier, who was legally capable of lending money from funds that she had earned by engaging in overseas trade. Although Margarida was married, no reference was made to her husband’s permission because such permission was unnecessary. In fact, occasionally an example is located in the Portuguese archives that portrays women as autonomous agents, much as their male counterparts. Such was the case of Francisca Henriques, a resident in the outskirts of Lisbon, who in 1586 agreed to be the *fiador e principal paguador* (guarantor and principal payer) for Grafeo Bello, who was incarcerated in the city prison. As Grafeo’s guarantor, Francisca offered him a bond for 500 *cruzados*, the same amount for which a third party, Isabel de Lapenha, had sued Grafeo. Francisca’s original *fiança* had been written in November, but it needed to be guaranteed with further financial backing. Afonso Henriques thus provided a security for the original *fiança* from Francisca Henriques, and for the 500 *cruzados*. The terms of this *abonação* (warranty) stipulated that if Isabel de Lapenha won her lawsuit against Grafeo Bello, and Francisca did not meet her obligations to Isabel, then Afonso would pay all that was owed Isabel.

By signing the document, Afonso Henriques was prepared to cover all costs, expenses, losses, and damages to Isabel, for which he pledged all his properties, present and future, and he mortgaged ten properties with a combined worth of 615,000 *réis*. There was no reference to Afonso Henriques’s wife, perhaps because he was single or widowed, or all of those mortgaged properties were his alone. Typical for documents from the period, the man’s marital status was not indicated,
but the notary failed to mention Francisca Henriques’s and Isabel de Lapenha’s marital status as well. Given their shared last names, it is possible that Francisca Henriques, fiador, and Afonso Henriques, abonador, were related, and perhaps both were unmarried or widowed.

What needs to be stressed in the above-noted case is that Afonso Henriques’s security for Francisca Henriques’s surety was not necessary because of the inferior legal position of the female guarantor, but due to the enormity of the pledge. Indeed, in this case, the notary did not even mention the Velleianum law. Male guarantors, too, often needed extra endorsement to validate their pledges, and the endorsement of their wives when applicable, as seen in an example from Porto. On 9 April 1573, a notary met up with Gaspar de Sequeira, cavaleiro fidalgo da Casa del Rey e cidadão, and Gaspar’s wife, Maria de Calvos, to write up a fiança that Gaspar offered to Cristovão de Mendonça. Cristovão had been sentenced to a year of exile, and, per custom, he first needed to get out of jail to prepare for his departure, for which the law allowed him three months of bail time, once he provided a bond for 20 cruzados, a bond Gaspar guaranteed.

For collateral, Gaspar pledged all his belongings, including his home that he had inherited, valued at 500 cruzados. His wife Maria consented to this security and to the mortgage of her home, but that was not sufficient to seal the contract. An addendum was registered indicating that the next day, 10 April, the notary went to the home of Luís Mendes de Vasconselhos, a judge, who agreed to be Gaspar’s guarantor, and who vouched to cover the bond of 20 cruzados. The house in which Gaspar lived had been part of his own inheritance, but legally it also belonged to his wife, and she had to agree to a decision that potentially put their home in jeopardy. Gaspar was an elite male with substantial capital, but his surety had to be guaranteed by another person.

We have no way of knowing whether the judge had a wife who legally would have needed to ratify his commitment. Given that government officials had to be married before or soon after they took up their posts, he was likely married or widowed. Again, it is possible that even if the wife existed, her permission was not necessary if her husband’s pledge did not affect her portion of the family assets. The absence of other details hinders any further speculation about his marriage or widowhood, but the question of a man’s marital status ought not to have been insignificant in these cases. Indeed, the significance of men’s marital status was emphasised in the Caterina de Valadores fiança, noted above; in that case, the moneylender initially rejected the proposed guarantor because the latter was solteiro – unmarried.

Furthermore, numerous examples were found in the Portuguese notarial archives of legal contracts, including fianças (sureties) and procurações (powers of attorney), which were ostensibly initiated by husbands who needed endorsement and ratification from their respective wives. One strikingly elaborate example was located in the Porto district archives, in a complex, multi-faceted, and intertwined set of documents called an instrumento de obrigação e fiança depositora abonação e hipoteca (a contract of obligation, surety, deposit, security, and mortgage), the first of which was dated 20 June 1657. From that first entry we learn that André Ferreira Banhos visited a notary’s office in Porto to provide a fiança for his in-laws, Catarina Monteiro Osorio and Luís da Silva Maldonado, both of whom had been found
guilty of beating António Coelho da Cunha, for which crime Luís had been condemned to four years of exile in Africa, and to pay 40,000 réis, while Caterina was sentenced to pay 20,000 réis. Thus, combined, André’s in-laws owed their victim 60,000 réis, plus 2,450 réis for expenses, which amount André paid on behalf of the accused.

In addition to paying off his in-laws’ pecuniary penalties, André also offered the necessary fiança so that his father-in-law could leave prison and serve his term of exile. As usual, the guarantor needed a guarantor of his own, and thus João Pinto de Azevedo, cidadão (honoured citizen), declared that he knew André to be pessoa rica e abonada – a rich and trustworthy person – the only such allusion found that speaks directly to a man’s financial worth and credibility. João placed all his estate as collateral, but specifically a property in the outskirts of Porto, valued at 400,000 réis. Still, the deliberations were not over, for two days later the same notary went to the home of Domingos Cardoso and his wife Isabel Ferreira, and finalised their fiança for André’s mother-in-law, Catarina Monteira Osorio, who had to pay 20,000 réis for her role in the beating. André and Domingos were guarantors of good standing, but they still needed a guarantor of their own, and again João Pinto de Azevedo agreed to support this surety. Finally, an addendum to Isabel Ferreira and Domingos Cardoso’s fiança informs us that the notary went to João’s home as well, to meet up with Maria da Fonseca, his wife, to whom the document was read and explained. Maria declared to have been informed by her husband, and that she approved and consented to its contents, after which she signed the document because, the notary stipulated, she knew how to do so.

The ways in which the notaries constructed the texts under examination reveal something about the legal and cultural context of the time. In the latter two cases discussed above, for instance, the narrative was presented as if the male protagonists did all the negotiating, made all the necessary arrangements, provided all the essential details, drew up all the important documents, and then the women were brought into the picture, minor characters on the edges of the momentous occasion, almost as an afterthought – indeed, an addendum. The men, in the meantime, were portrayed as the active agents, especially André Ferreira Banhos, the much-involved son-in-law, and João Pinto de Azevedo, his guarantor, both of whom performed the public rituals of going to the notary’s office, and visiting the other concerned parties. Particularly peripheral was André’s wife, who was conspicuous by her absence, and, in fact, never mentioned. Seeing that the other principal men involved in that fiança had their wives identified and consulted, the lack of reference to André’s wife suggests that he was a widower with no minor children.

The legislation in early modern Portugal stipulated that upon the death of a spouse, the inheritance of minor children had to be protected, and this protection was provided through the input of the Juiz dos Orfãos (Orphan or Probate Judge). The nature and magnitude of André’s commitment to his in-laws would have necessitated the approval of the Orphan Judge if ‘orphans’ of minor age existed.

Given that André mortgaged a rental property that he had inherited from his own parents, a property he mortgaged for the sake of his in-laws’ well-being, it is possible that his wife, if still alive, agreed to everything informally, and that André ran little risk of a legal challenge from the daughter of the accused and condemned. More likely, though, she was deceased, and the cultural norms of the
period dictated that André’s widowhood was not important enough to be noted. By contrast, a woman’s marital status was customarily well accounted for, though there were exceptions, as already seen with the examples of Francisca Henriques and Isabel de Lapenha. The law did not require that a woman’s marital status be highlighted. Unlike the situation in early modern England, the legal categories of feme sole and feme covert did not exist for Portuguese women. Thus, legally, a woman in early modern Portugal was not an appendage of her father, husband, or other male in the family. Socially, however, she generally was viewed as such, and this social construct was perpetuated by many public officials, including notaries, and certain outdated laws such as the Velleianum.

Another important social construct that comes through these records is related to people’s rank, as seen in the fianças that André Ferreira Banhos orchestrated for his in-laws. In that case, the notary went to meet with the two female guarantors, instead of having them go to his office. Women could and did conduct business in notary offices, but Isabel Ferreira and Maria de Fonseca had the documents brought to them, to be discussed in the privacy of their respective homes. Isabel’s husband was also consulted at home, an indication that the home visits were as much to do with social rank as gender. As already mentioned, what was clearly gendered was the ways in which the notary recorded the proceedings. Isabel and Maria were guarantors along with their respective husbands, but the documents maintained a social convention by indicating that the two women consented to the agreements, as if those agreements had been designed by their husbands, a process in which the wives had had little direct input. Whether or not this was a fair representation of how events unfolded is difficult to determine, but note that the notary went to visit Maria da Fonseca to whom the document was read and explained. Seemingly her role was to acquiesce to something that was a fait accompli.

Nevertheless, despite appearances, the consent of both surviving spouses was more than a formality, and a few documents depicted wives and husbands as equal participants in the surety-granting process. How much the narrative in a text reflects the propensity of the scribe or the client is impossible to gauge, but in a fiança dated 13 August 1654, Porto residents Agostinha de Oliveira Teixeira and her husband, Jacinto da Sousa, were both noted as guarantors for João Coelho Ferros. João was at that time in the local jail for homicide, for which he had been sentenced to five years of exile in Africa and a fine of 40,000 réis. In the meantime, João had fallen ill and needed to leave the prison for treatment, for which reason he was granted leave on condition that he provide a security of 100 cruzados.

When the notary came to their home, Agostinha and Jacinto showed him a copy of that provision, which the notary vouched, and the couple offered João the necessary security. As collateral for this fiança, Agostinha and Jacinto mortgaged their house, and both spouses renounced all laws, privileges, rights, liberties, ordinances. As a married couple, Agostinha and Jacinto were atypical for early modern Portugal for they both knew how to write, and they both signed the document. Was Agostinha’s literacy a reflection of her independent nature, a factor that played into the way in which she presented herself to the notary, and which he could not ignore? Whatever the reason, in this case the wife and husband were portrayed together as fiadors, an indication that such a partnership was within the accepted
parameters of early modern Portuguese society, and perhaps was a more accurate representation of the legal place of wives and husbands, and their joint property. Be that as it may, in the construction of these and other documents, the customary practice was to name the male head of the household first, followed by his wife who was identified as his wife, not he as her husband, and to insinuate that he had been part of the production of the document. In reality, the notarised document was often formulaic, written up in advance by the notary or his assistants in the notary’s office, and the concerned parties were summoned or visited in their homes to ratify the completed text.\footnote{For the sake of appearances, though, the text was written up as if it had been dictated by the man of the house, even if the man was in the jail house.}

Such a scenario was recorded in a case that featured another important component of the fiança, the obligations of those who needed the surety in the first place, for which reason the recipients of a fiança also pledged their assets to protect their guarantors’ investments. While that clause was frequently inserted in the text of the fiança, only one example was found that showed the prisoner’s wife acquiesce to a contract that touched upon her share of the family property. According to that notarised narrative, Maria Francisca met the notary at the gate of the public prison in Porto to approve the fiança e obrigação written up for her husband, Agostinho Fernandes, in jail for an unspecified crime. Agostinho had received permission to leave jail upon meeting the requirements for bail of 100,000 réis, for which reason Belchior Pereira agreed to be Agostinho’s guarantor, and António Coelho agreed to be Belchior’s. Maria Francisca, in the meantime, had to agree to the financial arrangement because her imprisoned husband had to pledge their joint-family property as collateral for the contract with the two guarantors. The two guarantors also had wives, Antónia Francisca and Madalena Antónia, respectively, and they, too, adhered to the contract.\footnote{It is difficult to gauge the extent to which Maria Francisca, Antónia Francisca, and Madalena Antónia were pressured by their husbands to acquiesce to these sureties. Possibly the pressure was the other way around, for it is conceivable that Maria Francisca, for instance, orchestrated the transaction to ensure that her husband was released from jail, but such initiatives were left unrecorded. The fiança document only speaks to the legal procedure that took place in its creation, not to the circumstances that led to the final agreement, or the aftermath. In her work on household credit in seventeenth-century France, Julie Hardwick found compelling examples of women who ‘complained over and over again that their husbands had beaten them to force them to sign loans’.\footnote{There is no reason to believe that such conflicts did not exist in early modern Portugal, but no evidence has been found that records those conflicts. What we know is that, as was the case with the majority of notarised contracts, the fiança typically gave the male actors an active voice, and less so to the female. Note that Agostinho Fernandes, though in jail, was the one who pledged the joint-family property, while Maria Francisca agreed to his pledge. The public display of gender relations according to a patriarchal ideal mattered, and Portuguese lawmakers knew it, as did law agents such as notaries. This was not unique to Portugal, nor to the early modern period.\footnote{Not surprisingly, gendered constructs that favoured men were less visible when women engaged in legal interventions on their own, such as when Maria Gonçalves...}...}...}
granted a *procuração* (power of attorney) to Bartolomeo Gill. Dated 8 July 1575, the record indicates that Maria, a widow, was incarcerated in the Porto jail, that she was engaged in another legal battle, and that she appointed a third party to deal with that additional dispute. In fact, that legal battle was connected to a *fiança*, for Maria was suing António Coelho because he had been the guarantor for two men she had contracted to build her a dwelling, which they had failed to do. Through her *procuração*, Maria outlined her claim for damages, including the costs of the rental of another house, and she engaged Bartolomeo to deal with her case against António, the guarantor for the reneging contractors. Three male witnesses signed the document on her behalf, all inmates in the same jail.

There is no denying Maria Gonçalves’s agency in this case, and all the verbs in her document portray her as an actor. She issued the power of attorney, she contracted the workers, and she sued their guarantor. However, it is worth noting that Maria had male prisoners witness her legal document, not other female prisoners. Indeed, the absence of women as witnesses in the *fianças* and *procurações* was almost universal, and the practice underscored the perception of women’s inferiority. Women could and did grant and receive sureties and powers of attorney, but generally women did not act as witnesses to notarised acts. It is worth noting, for instance, that the royal ordinances stipulated that five male witnesses were required to validate a testament; women were acceptable witnesses only in oral testaments, and in cases of testaments from soldiers engaged in battle – that is, in dire circumstances. Thus, the legal transactions under discussion were open to women as property owners, not as citizens.

The vast majority of cases reviewed for this study showed that most people’s source of financial security was based on real estate and landed property, and this was true regardless of the sex of the guarantor, or marital status. Nonetheless, most women were referred to in connection to their men. The norm was to refer to a husband, even if deceased, for his former occupation validated a woman’s social standing. In this regard, social prerequisites were more potent than actual law – that is, cultural norms, not legal strictures, mandated that the male head of a household take precedence in the proceedings, either in person or in memory.

There were limitations to women’s participation in legal transactions and this is most apparent in the types of *procurações* that women received. For instance, because women lacked legal training, few women were given power of attorney to investigate and proceed with a judicial process. Women could initiate a judicial process on their own, but when women or men needed a procurator for those purposes, they chose a male procurator. Women were named procurators by women and men alike, but, overall, the powers of attorney granted to women dealt with a more limited geographical and judicial range. In most cases women were entrusted to handle affairs close to home, such as conducting property transactions for other family members, as exemplified with the *procuração* initiated by Alvaro Veloso Figueiredo who was incarcerated in Porto’s local jail. In order to raise money for his case, he gave power of attorney to his brother and mother, both of whom were entrusted to sell a property on his behalf.

With the exception of the occasional references to the *Senatusconsultum Velleinum* – the applicability of which remains unclear – no law was found that
prohibited women from being procurators for matters further afield. The most likely reason for women’s more restricted sphere of participation in the world of sureties and powers of attorney was that – culturally – it was deemed more appropriate for men to confront debtors, for instance, and to travel long distances to engage in business transactions, especially with strangers.

6. Conclusion

The overwhelming evidence from Portuguese archives is that women could assume legal responsibility and liability for themselves and for others, and many of them did. While ostensibly out of reach of women, the notarised fiança (surety) and procuração (power of attorney) point to numerous occasions when women engaged in legal interventions with their husbands, or on their own. Despite women’s legal rights, however, ideologies advanced in legal prescriptions had an impact on the ways those rights were carried out. As has been shown, in the presence of men, women were customarily overshadowed by that presence, or expected to be overshadowed. Whenever possible, the man’s name, title, or occupation, came first, and then the record nodded a quiet recognition of the wife – the husband’s partner in many instances, but seldom acknowledged as such in a public forum.

While it is difficult to gauge the effect of the Senatusconsultum Velleianum, the fact that the Roman decree was part of the Portuguese legislation of the sixteenth and seventeenth centuries was significant for the maintenance of perceptions, if not in shaping certain realities. It is worth remembering that the law concerning sureties, noted earlier, addressed men and aimed to curtail men’s abuses. Lawmakers assumed that men handled most legal affairs, and thus the law stipulated that husbands needed their wives’ consent, not the other way around. Indeed, no fiança was found that had a husband offering consent to his wife, the fiador. In essence, men were the default, women their escape clause.

The archival evidence points to several significant contradictions, or, at the very least, confusing trends. On the one hand, Portuguese law maintained that a woman of age of majority could engage in any number of legal transactions on her own, much as a man could. On the other hand, the same series of national laws included a clause on the ancient Roman law, the Senatusconsultum Velleianum, a law that attempted to hinder women’s legal intervention. While that reference in the royal ordinances was modified between the fifteenth and sixteenth centuries, the Velleianum remained in the revamped series of legislation in the seventeenth century, and was not eradicated entirely until the nineteenth. Was this a case of the plodding ways of legislation or the plotting ways of legislators? Such a discussion is well beyond the scope of the present study, but it is worth reflecting on the difficulties that a few (if not many) male lawmakers may have had in letting go of a concept that was entrenched in the very marrow of a sense of male superiority – in law and in all other public matters.

Another perplexing phenomenon that emerges from the evidence examined here is the overwhelming presence of men who granted and received sureties without any reference to their womenfolk. For example, a random sample of 17 notarised sureties recorded in Lisbon in 1586–1588 consists of 16 documents that contain male names only, and one with a reference to ‘the wife of’. In Évora, likewise,
out of 12 sureties recorded from 1545 to 1568, only two refer to women. It is highly unlikely that all of those men conducting business in the notary’s office were unmarried or widowed. Indeed, only one document was found in Lisbon with the stipulation that the grantor of a power of attorney ‘declares he is not married’.\textsuperscript{61} It is also highly unlikely that all those solo men dealt with their own properties only, and not with joint marital property. Such an improbable scenario raises questions about the elevated number of women whose sureties make references to their husbands, dead or alive.

This is a case that goes well beyond the question of women’s marital status taking precedence in conventional record keeping. Rather, what the archival sources show is that despite the law that necessitated the approval of both surviving spouses for the alienation of family property to be legally binding, despite the law that permitted women to engage in such property alienations as much as men, significantly fewer women than men actually did, and many husbands conducted business on their own, possibly with their wives’ informal consent, but without going through the proper legal formalities. It remains to be seen how many women were aware of these discrepancies, and if those women who show up in the records – in person or via a deputy – represent a segment of the female population that was more self-assured and better informed of their rights.

The \textit{Senatusconsultum Velleianum} may have been anachronistic even in the early modern period, but it served as a mirror of some cultural presuppositions. Obsolete, perhaps, but handy when needed, and it would be wrong to dismiss its residual impact in the long term, in Portugal and elsewhere. After all, the \textit{Velleianum} remained part of the South African Roman-Dutch legal system until 1969.\textsuperscript{62} The public display of male dominance differed according to regional cultural practices, but women’s rights to legal intervention in early modern Portugal did not hinder male dominance; they complemented it. This is evident in the ways notaries couched women’s participation in the business of sureties and powers of attorney, particularly in the context of an ancient Roman law. In essence, the \textit{Velleianum} reminded women that they were a part but apart.

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\textbf{Notes}

1 Arquivo Distrital do Porto (ADP), Fundo Notarial, Po. 4, 1º Sº, No. 47, fo. 53v.
3 Mia Capiola, ‘Spousal disputes, the marital property system, and the law in later medieval Sweden’; Shennan Hutton, ‘Property, family and partnership: Married women and legal capability in late medieval Ghent’; Sheilagh Ogilvie, ‘Married women, work and the law: evidence from early modern Germany’, all in


5 Arquivo Distrital de Évora (ADE), Fundo Notarial, Domingos Pires (notary), Séries 174, fos. 80–3, Lianor Dangas, 18 November 1568.

6 Arquivo Distrital de Viana do Castelo (ADVC), Fundo Notarial, Manuel Martins da Costa (notary), No. 4.32.4.1, fols. 118v–121v, Madalena Gonçalves, 14 June 1661.

7 ADP, Fundo Notarial, Po. 4, 1ª S, No. 52, fols. 211v–212v, Luzia, 4 March 1666.

8 ADP, Fundo Notarial, Po. 4, 1ª S, No. 56, fols. 178v–179, Maria de Sousa, 14 February 1656. It should be noted that the vast majority of victims’ pardons found in notarial collections did not include a reference to the *velleianum*, whether those pardons were granted by women or men. See Abreu-Ferreira, *Women, crime, and forgiveness*.


12 *Ordenações Afonsinas* (1446), Livro 4, Título 18; *Ordenações Manuelinas* (1521), Livro 4, Título 12; *Ordenações Filipinas* (1603), Livro 4, Título 61. Henceforth, these collections shall be referred to as OA, OM, or OF, respectively.


14 OF, Livro 4, Título 46 and 60; OM, Livro 4, Título 7 and 13.


16 For references to the *Senato Consulto Veleiano* in some Spanish documents, see Francisco Tomás Valiente, ‘El perdon de la parte ofendida en el derecho penal castellano’, *Anuario de Historia del Derecho Español*, Serie 1a, No. 1, Tomo XXXI (Madrid, 1961), 91, here 55–114; Grace E. Coolidge, ‘“Neither dumb, deaf, nor destitute of understanding”: women as guardians in early modern Spain’, *The Sixteenth Century Journal* XXXVI, 3 (2005), 681–2, here 673–93.


18 OF, Livro 5, Título 131.

19 For examples of guarantees of mortgaged property values, see ADE, Fundo Notarial, Domingos Pires (notary), Séries 175, fols. 105–06v, 1570; Instituto de Arquivos Nacionais / Torre do Tombo (IAN/TT), Fundo Notarial (Lisbon) Caixa 4, No. 20, fols. 40–1, 1588.

20 OF, Livro 1, Additamentos, ‘Lei de 10 dezembro de 1602’, 256.


22 ADE, Fundo Notarial, Po. 4, 1ª S, No. 23, fols. 256–8, Alexandre Pinto Machado, 5 December 1633.

23 No such examples were found for Portugal, but for an example of a wife’s struggles with her husband’s fraud in early modern England, see Danaya C. Wright, ‘Coverture and women’s agency: informal modes of resistance to legal patriarchy’, in Tim Stretton and Krista J. Kesselring eds., *Married women and the law: coverture in England and the common law world* (Montreal and Kingston, 2013), 242–3.

24 ADE, Fundo Notarial, Domingos Pires (notary), Séries 175, fols. 129v–131; Séries 177, fols. 97v–99.

25 Arquivo Distrital de Faro (ADF), Loulé, No. 1–1-4, João Mendes (notary), fols. 154–7v, 21 April 1604, and fols. 208–10v, 15 July 1604.

26 For the law governing the recuperation of that to which the guarantor pledged, see OF, Livro 3, Título 92.

27 ADF, Fundo Notarial (Loulé), Joo Mendes (notary), No. 1-1-6, fols. 142–5v, 22 April 1608.

28 For references to Portugal’s sumptuary laws, see OF, Livro 5, Título 60 and 100, for instance.

29 The monetary unit in early modern Portugal was the *réis* (plural) and the *cruzado*, and for most of the period under discussion, a *cruzado* was worth approximately 400 *réis*. An English source from the early seventeenth century reported that 1,000 *réis* was equivalent to 12 shillings and 6 pence. A. A. Marques

A DE, Fundo Notarial, Domingos Pires (notary), Séries 175, fols. 139v–141, 1570.


IAN/TT, Fundo Notarial (Lisbon), Caixa 3, No. 17, fols. 14v–16, 1 December 1586.

The long title means that Gaspar de Sequeira was an knighted nobleman, member of the royal court, and an honoured citizen of Porto.

ADP, Fundo Notarial, Joao Baptista de Carvalho (notary), Séries 662, fols. 188–9v, 1660.

For the laws requiring office holders to be married, see OF, Livro 1, Título 94. For a study about women and office holding, see Darlene Abreu-Ferreira, *Women and the acquisition, transmission, and execution of public offices in early modern Portugal*, *Gender & History*, forthcoming, and Darlene Abreu-Ferreira, ‘Female foul language and foul female agents in pre-modern Portugal’, *Ler História* 71 (2017), 9–32.

See note 36.

For a discussion of the link between credit and masculinity, see Alexandra Shepard, ‘Manhood, credit and patriarchy in early modern England c. 1580–1640’, *Past & Present* 167 (2000).

ADP, Fundo Notarial, Po. 4, 1° Sº, No. 47, fols. 225v–228, 1657. The signature by a woman was rare, due to the low literacy rate among women in early modern Portugal.

OF, Livro 1, Título 88, Nos. 4–9. In early modern Portugal, a child was considered an orphan upon the death of one or both parents.


ADP, Fundo Notarial, Po. 4, 1° Sº, No. 45, fols. 18v–19, 1654. For the legislation on the grace period allowed in cases of civil suits and illnesses, see OF, Livro 3, Título 9, Nos. 8–10.

For an examination of the key role played by notaries in credit transactions, see Julie Hardwick, *The practice of patriarchy: gender and the politics of household authority in early modern France* (University Park, PA, 1998), especially ch. 2.

See, for example, a power of attorney document ordered by Briatis Afonso and on behalf of her grandchildren, written as if everyone implicated was present, but the document was left unfinished, and unsigned, because ‘it was no longer necessary’. ADF, Fundo Notarial, Jacinto José dos Santos e Melo (notary), No. 1056, Castro Marim, fols. 52–4v, 6 December 1685.

ADP, Fundo Notarial, Po. 4, 1° Sº, No. 36, fols. 182–3v, 22 March 1646.

Hardwick, *Family business*, 201.

The royal ordinances stipulated that, in cases of the power of attorney, the only restrictions that existed were those placed on minors: boys under 14 and girls under 12 could not grant power of attorney. OF, Livro 3, Titulo 29.

A significant exception to this rule was the case of nuns in Portuguese convents, many of whom were called to witness notarised documents related to convent matters.

OF, Livro 4, Título 80–6.

ADP, Fundo Notarial, Po. 4, 1ª Sº, No. 53, fols. 26–26v, 13 September 1660.

AIN/TT, Fundo Notarial (Lisbon), Caixa 3, Livro No. 13, fols. 103v–105, 21 January 1586.


Frauen, Recht und juristische Intervention im frühneuzeitlichen Portugal

Im frühneuzeitlichen Portugal hatten Frauen einen Rechtsanspruch auf bestimmte Rechtsgeschäfte wie zum Beispiel die Stellung oder den Empfang einer Bürgschaft oder von Vollmachten. In vielen anderen Teilen Europas war dies nicht der Fall, weshalb es sich lohnt, das portugiesische Beispiel zu Vergleichszwecken genauer zu untersuchen. Dieser Beitrag wirft einen Blick auf die einzigartige Stellung der Frau im frühneuzeitlichen Portugal und unterzieht das Archivmaterial einer eingehenden Prüfung. Die Befunde deuten darauf hin, dass zwischen den Rechtsansprüchen von Frauen und den kulturellen Einschränkungen, denen Frauen unterworfen waren, eine beträchtliche Kluft bestand.