

The Legality Nexus: the legal endogeneity of Brazilian labor rules

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RESUMO

This paper unpacks the process of legal endogeneity in the Brazilian field of labor relations. We analyze how the engagement of public and private social actors in the social construction of law produces a temporary nexus among actors' positions, practices, and interpretations that brings together co-created notions of authority, legitimacy, and responsibility. We define the law as a projection of networked relations among actors, actions, and understandings. Our focus was on the regulatory changes on the use of electronic devices for controlling working hours. These changes brought about new obligations to employers, employees, and labor inspectors as well as new organizational practices. We collected the data from three different sources: (1) interviews with 26 individuals from the legal and organizational fields to understand the legal ambiguity in the field, (2) legal documentary data from federal labor courts (136 court cases), to illustrate judicial deference to new procedures, and from Federal Ministry of Labor and Employment and other official agencies, to illustrate legal prescriptions, and (3) survey data, to capture perceptions from different labor unions, understood as legal interpreters and collective mobilizers. These findings add two major contributions. First, we introduce the concept of legality nexus as a temporary field articulation among actors' positions, practices, and interpretations, looking at the social construction of legal content intrinsically attached to the construction and legitimation of actors, authorities, and formal acts. Second, we identify three mechanisms involved in the structuration of the legality nexus: (i) legal downgrade, (ii) legal empowerment, and (iii) enforcement outsourcing.

Palavras-Chave: legal institutions, social construction of legality, legal structure

Introduction

This paper unfolds the process of legal endogeneity in the Brazilian field of labor relations as the result of the collective engagement of actors in shaping institutional creation. More specifically, it analyzes how the collective action of public and private social actors in the social construction of law produce a temporary nexus amongst actors' positions, practices, and interpretations that brings together co-created notions of authority, legitimacy, and obligation/responsibility. We define law as a projection of networked relations amongst actors, actions, and understandings, and we identify several mechanisms attached to the creation of the legality of the law within cycles of networked interactions.

The constitutive view of legal environment (Edelman & Suchman, 1997) approaches law as an "evolving institution that is shaped and given meaning through its interaction with organizations" (Edelman, Leachman, & McAdam, 2010, p. 656) and is implemented by social actors through the process of interpretation and meaning that leads to the construction of legality (Ewick & Silbey, 2002). Spaces of legal ambiguity favor endogenous legal change (Edelman & Suchman, 2003), which allows organizations that seek public legitimacy to respond and co-construct the legal environment. The notion of legal endogeneity recognizes that legal

institutions do not evolve away from the range of organizations, but is in fact a result of the collective efforts of multiple actors within the overlapping boundaries of various fields as the one of law, organizations, and professions.

The case study is the legal change on the control of Brazilian working hours through electronic device, evidenced from the publication of Resolution N. 1.510/2009. With this change, new obligations arose for companies. Thus, any electronic device used to identify, treat, store or send any kind of employee's workday information should comply with the requirements of Resolution N. 1.510/2009, which included new rules for routines and acquisition of specific device and software. Since then, new obligations have arisen for companies considering any electronic device used to identify, treat, store or send any type of employee's workday information should comply with the requirements of new resolution.

As soon as this legal rule was published, movements of social actors like companies, unions and manufacturers began with the intention of changing the legal rule and promoting changes in favor of their interests. In this context, we seek to analyze how social actors, from legal and organizational fields, and participated in the process of constitution of the nexus legality of the electronic point record. Moreover, we intend to identify the mechanisms that characterized the legal change.

The work is organized considering, followed by this introduction, the presentation of the theoretical aspects that underpinned the research, following the methodological choices that guided the collection and analysis of data. In the fourth section we present the obtained data and in the fifth section we present the main findings of the research, followed by the conclusions and references.

Organizational institutionalism

The institutional environment consists of institutions that deal with cognitive, normative and regulative structures and activities that give stability and meaning to social behavior (GREENWOOD et al., 2008). Mahoney and Thelen (2010) point to the understanding of institutions as enduring characteristics of political and social life (rules, norms and procedures) that structure human behavior and do not change easily.

In organizational institutionalism perspective, according to DiMaggio e Powell (1983), organizations in a field can adopt institutionalized practices as a reflection of the mimetic, normative and coercive processes that channel the diffusion of practices in that field. These processes are responsible for organizational change and the diffusion is the concept that operates in all three processes. However, the diffusion can happen more intensively (or less) depending on the legitimacy of the institutional source. This view is obtained from the authors Tolbert and Zucker (1983), who observed in a research on the diffusion of civil service reform that when a procedure is required by the State, the diffusion occurs quickly and hierarchically. This demonstrate the diffusion by regulatory pillar and through coercive mechanisms. On the other hand, when there is no clarity of legitimacy in the elements, the diffusion takes place gradually. This lead to the understanding that the diffusion of a new policy by the organizations is determined by the level of institutionalization of of the measure, including both legal aspects and legitimacy (Tolbert and Zucker, 1983).

This paper emphasizes the notion of Hoffman (1999, p. 5), accepting that a field is formed “around the issues that become important to interests and objectives of a specific group

of organizations”. This comprises the action of several constituents, each with the most different purposes. This conceptual delimitation is consistent with the notion of legal field proposed by Edelman *et al* (2001), which in Edelman, Leachman and McAdam’s essay (2010, p. 656, free translation) refers to the “structured social spaces that revolve around legal actors and legal institutions, as well as informal practices and norms regarding the use, non-use and evasion of law; ideas about the meaning of law and compliance with the legislation; and the broad set of principles, ideas, rituals, and norms that can evolve beyond the legal system.” Thus, in agreement with Edelman (2007), in this article, the legal environment of organization comprises the areas in which the legal field and the organizational field overlap, being the spaces of organizational compliance construction (Edelman, Leachman & McAdam, 2010).

Organizations are constituted by an environment called ‘legal’ through institutionalized elements, while actively participating in the elaboration of other elements in the process of institutionalization (Edelman & Suchman, 1997). Given that laws based on the organizational behavior are subject to various interpretations and constructions of meanings on the part of the actors (Mahoney & Thelen, 2010), we understand the recursion between organizations and institutions. Legal environments create, constrain, shape, activate, define, empower organizations and provide a space for interactions. On the other hand, organizations make interpretations of legal norms and participate in the social construction of legal environments (Edelman & Suchman, 1997). In this context, legal, professional and organizational fields constitute the meaning of the law that regulates organizations.

The social field of regulation of the law encompasses organizational actions in the sense of influencing the law itself, culminating in corporate interests that impact on the construction of the law (Edelman, Uggen & Erlanger, 1999), characterizing a sphere of legal endogeneity. Mahoney & Thelen (2010) point out that, despite the formal structure of the laws, there is a space for ambiguity where the social actors emit interpretations and, this way, possibilities are found for the articulation that constitutes the social construction of the legal environment.

In this context, the ambiguity of the law is not accidental. The practical meaning of any law arises only from a highly interactive process of social construction, involving not only official agents of the legal system (regulators, judges, litigants and the like) but also actors involved in the organizational field (including individual firms, professional associations, trade associations, media observers and legal advisers). These actors jointly collaborate to enact the law and its meanings, the nature of the sanction and options for compliance, contributing to the social validity of the legal rule (Edelman & Suchman, 1997).

Thus, the notion of legal environment defended here goes beyond its regulatory and facilitator function (Suchman, 1995). It also involves a constitutive conception culturally based by which it is assumed that legal environment, on the one hand, create, restrict, shape, activate, define, enable and provide a space for the interaction of organizations and, on the other hand, organizations interpret legal norms and participate in the social construction of legal environments (Edelman e Suchman, 1995). Under this conception, the notion of legality refers to “meanings, sources of authority and cultural practices recognized as legal, regardless of who is responsible or what is intended to be used”, or even that formal law or legal agents officials do not approve or accept these understandings (Ewick and Silbey, 2002). In the face of formal law, therefore, legality is analytical and can present in three scenarios: ignoring, confronting directly or acting in a war unknown to the law (Silbey, 2002, Ewick & Silbey, 2002).

To admit that organizations participates actively in the construction of legal meaning and compliance is to recognize that the change in the institutional context, in your legal aspect,

may be endogenous in nature, since the ambiguity inherent in the legal text and the social situation may give rise to different organizational answers. It's may be, eventually, institutionalized and accepted as legitimate by the courts. The notion of endogenous legal "focus more on how organizations influence the meaning and legal content of their implementation and compliance efforts" (Funk & Hirshman, 2014). Thus, the social field of regulation of law also encompasses organizational actions in the sense of influencing the law itself, culminating in corporate interests and impacting on the construction of the law (Edelman, Uggen & Erlanger, 1999)

As a component of the structure of society, legality is constituted from daily practices and actions. Thus, cultural schemas and resources define parameters for social life and, thus, social relations are delineated considering the set of interpretive schemas and material resources, continuously produced by individual actors and groups (Ewick & Silbey, 2002, Silbey, 2005). In this sense, this article admits that the process of stability and change of the legal order is a recursive process, roughly represented by the articulation between two poles. On the one hand is the legal formalism (law and books), associated with formal codification in statutes, regulations and cases, on the other hand the legal system as a social practice, related to the behavior and institutions that constitute and promulgate the legal content as it is experienced by those subject to its regulation. However, one can not be understood without the other.

The unit of analysis of recursion, therefore, occurs in a dynamic relation between them (Halliday & Carruthers, 2007). The analysis of recursion, in turn, considers several classes of actors, capable of political and legal mobilization, managing tensions between the poles in circumstances around legal uncertainties, contradictions, gaps and implementation (Halliday & Carruthers, 2007).

For Tolbert and Zucker (1983), the process of diffusion is what precedes the changes in the formal structure. Thus, institutionalization can be understood in the process of accepting components of the formal structure as adequate and necessary to legitimize organizations. The change is adopted from two contrasting dimensions: on the one hand, as it improves or not the internal process of the organization; On the other hand, can be adopted as a function of the search for social legitimacy - and this is independent of how much it can influence or not in the internal process of the organization. In this sense, for Meyer and Rowan (1977) some elements are institutionalized when they are seen as adequate and necessary for the legitimacy of organizations.

Thus, the actors' interpretation and meaning of the legal rule leads to the notion of legality as a constructed process through which legitimate responses to the law are achieved. Legality refers to meanings, sources of authority and cultural practices recognized as legal, regardless of who is responsible or what the intended purpose in using it. "Legality is an analytical term, rather than a state of things, sanctified by law," not necessarily requiring recognition for any kind of law (Ewick & Silbey, 2002: 152). Meanings associated with law translate the notion of legality, even if formal law or official legal agents do not endorse or accept such associations. In the face of formal law, legality can present itself in three scenarios: ignoring, confronting directly or acting in ways unknown to the law (Silbey, 2002, Ewick & Silbey, 2002).

In this context, legal endogeneity is signaled as a process in which regulated organizations act in spaces of ambiguities of the law producing interpretations and meanings in order to bring about changes to the very law under which they are subject. In the words of

Edelman, Uggen and Erlanger (1999, p.3) "the content and meaning of the law is determined within the social field it is intended to regulate." The ambiguity of the law is not accidental. The practical meaning of any law arises only from a highly interactive process of social construction, involving not only official agents of the legal system (regulators, judges, litigants and the like) but also the actors involved in the organizational field (including individual firms, Professional associations, trade associations, media observers and legal advisers). These actors jointly collaborate to enact the law and its meanings, the nature of the sanction and the options for compliance, contributing to the social validity of the legal rule (Edelman and Suchman, 1997).

Metodology

The focus of this study is on the implementation of the electronic point record, with Resolution N. 1.510 being the legal device published with the intention of regulating the practices of point record control from electronic means. It adopts a qualitative, exploratory-descriptive and inductive approach. It was sought to identify and understand the participation of social actors and the relationship between organizations and the legal environment from a sociological perspective, and how organizational practices and legal rules were manifested in the process of social construction of the legal environment of Electronic Registration Of Point.

The research strategy used was a case study, with retrospective sectional retrospective perspective. When analyzing the case of the Electronic Point Record in Brazil, regulated by Resolution N. 1.510, the objective was to theorize on the subject, with a view to understanding relevant aspects in the process of institutional change. The analyzed period comprised the years from 2009 to 2016, defined from the publication of the resolution that regulates the practice object of study and its successive changes. The collected data were organized by historical landmarks and critical incidents that were part of the process and that impacted on the current configuration of the electronic practices of control of electronic point registration, as indicated by Vieira (2006).

The level of analysis was the field, delineated around social actors who participated in the central issues, and who fostered the identification of a space of dialogue and interests, according to Hoffman (1999), related to each other by symbolic orders created in the period in analysis. In this scenario, the following social actors were visualized as active participants in the constitution of the field: institutes, associations, union federations, federations, confederations, software manufacturers, hardware and users themselves, companies that do not manufacture device regulated by Resolution N. 1.510, Ministry of Labor and Employment-MTE, Labor Ministry-MPT, Regional Labor Court-TRT, lawyers and researchers.

Data collection was done through documentary sources and interviews that allowed access to historical clippings (LEGOFF, 2003) and supported the understanding of the social construction of the legal environment. As documentary sources, the laws associated to the control of working hours, official orders and communiqués issued by the legislature, trade union agreements, technical notes and normative instructions were used, totaling 58 documents, as presented in Table 1. The reading of these documents was done From the summary or introduction and, having a strong relation with the theme of this research, were analyzed in full in more depth.

Table 1: Secondary search sources

Sources	Relevance of source	Number of sources
Legal Rule	Laws, draft laws and ordinances published related to the subject.	1 Law - CLT 30 Ordinances 1 Technical Cooperation Agreement 1 Normative Instruction 4 Projects of Legislative Decree
Official Announcements	Publications of the Ministry of Labor with explanatory, informative and in response to the diverse pressures of the social actors.	3 Thecnical notes 11 publications 1 Report of conclusion of working group
Union Documents	For analysis of trade union responses, including minutes of meetings, collective bargaining agreements and other documents	1 Thecnical notes 3 Publications 2 Agreement Union

Source: Prepared by the authors.

As a primary source, following Stake (2011), 26 hours of interviews were carried out with 24 actors, focusing on the individual interview in the interviewee's work environment. The interviews were conducted from a semi-structured prior script, which Ensured greater flexibility during the conduction of interviews, and were recorded only when authorized by the interviewee. The interviews were recorded through audios, interview notes and transcripts, based on what Duarte (2004) recommends. The interviewees were intentionally selected, with the delimitation of the organizational field as an analytical cut, based on the identification of the actors' relationships with the studied subject, as directed by Silverman (2009) and Rowley (2012).

As a tool to support data analysis, NVivo software was used, considering the possibilities offered by the program for data coding and categorization, management of information sources, search mechanisms, systematization and organization of analytical categories, as suggested by Lage (2011) and Rowley (2012). The markings signaled by theory were parameters for identifying the context and understanding of the sense units. The analysis of the collected data, however, privileged the qualitative analysis of content by the viability of interpretation resulting from the coding processes, as approached by Morgan (1993). The content analysis had a thematic orientation, following Bardin (2010), but focusing on the inferences obtained from the analyzed sections and the search for patterns of responses and senses, than in word counting.

Obtained data

This study is anchored in a change in the ways of working day control in Brazil, which emerged from 2009 with the implementation of electronic timecard record, regulated by the Resolution N. 1.510/2009. Since then, new obligations have arisen for companies considering

any electronic device used to identify, treat, store or send any type of employee's workday information should comply with the requirements of Resolution N. 1510/2009.

Historically, the working day has been the target of several controversies and struggles involving the reduction of working hours and its implications for the country's economy and labor relations (Dieese, 2012). With a view to ensuring a balance between paid work and other social occupations and family obligations of the worker, limiting working hours is, for many, an important achievement beyond what is not only a question of labor legislation, but also A human right (Lee, McCann and Messenger, 2009). In Brazil, the last amendment, in this sense, occurred in the 1988 Constitution, when the legal limit went from 48 hours a week to 44 hours a week.

The working day in Brazil follows the determinations of the CLT (Consolidation of Labor Laws) and resolutions that have been published over time. Despite the current legislation, companies were adopting practices that, in face of labor inspection, were characterized as fraud, did not comply with the legal practice, and placed employees and employers in legal spheres for negotiations that ensure compliance with the law. In this scenario, the MTE (Ministry of Labor), supported by article 74, § 2 of the CLT, published on August 21st, 2009 the Resolution N. 1510/2009 with the objective of disciplining the record of timecard by electronic means. And, although the purpose of this resolutions is to comply with something established by the larger law, the CLT, this new rule did not show adherence to the reality presented by several actors in the years that followed.

Legal Change

As soon as the resolution was published, movements of social actors like companies, unions and manufacturers began with the intention of changing the legal rule and promoting changes in favor of their interests. Such actions were based on complaints that cover issues such as costs to companies due to the replacement of the device that was used until then, environmental issues, since the new device should issue a timecard recording receipt for each hour registered by the employee.

The legal change has also impacted on diverse positions of media players. This made the MTE manifest through its press office on July 29th, 2010, providing explanations that aimed at refuting such news that was based on items such as: onerosity for companies, mainly the small ones, sustainability in the issuance of the receipt, high cost of the device and the time the employee waits for the issuance of the receipt. According to the MTE, such claims stemmed, for the most part, from misinterpretations of news reports by the media opposing legal change.

In the next frame, we present the meal changes that occurred in the context of legal change on the organizational practices of electronic record of point.

Table 3: Main legal frameworks

Source	Milestone	1943	1995	2009	2010	2011	2012	2013	2014	2015	2016	Total
CLT	Regulation of practice	1										1
MTE	Complementation to practice regulation		1									1
	New complementation to practice regulation			1								1
	Accreditation of technical bodies			2	2							4
	Changes in the legal rule			1	1	2						4
	Prorroga prazo de exigibilidade				1	3						4
	Extension of time of enforceability				2							2
	Complementation of the rule of law					1						1
	Flexibility of the legal rule (through collective labor agreements)					1						1
	Extension of time of enforceability					1						1
	Insertion of INMETRO into the certification process					1						1
	Extending the role of INMETRO in the context of the legal rule (new role: define specifications of the REP and oversee the adequacy of organizations)							1				1
	Opening of public dialogue for alternatives to the device model assumed as standard								2			2
	INMETRO	Change in the legal rule					2					
Organization of public consultations to define specifications of the legal rule						2	1					3
Publication of formal statements for clarification on the legal rule							1					1
Redefinition of specifications for the legal rule								1				1
Conducting studies on alternative device proposals								1	1			2
Extension of time for manufacturing and marketing of device									1	1	1	3
Execution of tests for a new device model										1		1
Total		1	1	4	6	12	3	4	2	2	1	36

Source: Prepared by the authors.

In this scenario, the following social actors were visualized as active participants in the constitution of the field: institutes, associations, union federations, federations, confederations, software manufacturers, hardware and users themselves, companies that do not manufacture device regulated by Resolution N. 1.510, Ministry of Labor and Employment-MTE, Labor Ministry-MPT, Regional Labor Court-TRT, lawyers and researchers.

In addition, trade unionists representing the six largest trade union federations in the country, although favorable to the new resolution, have demanded that the new rule recognize the collective agreements signed between unions and companies regarding the working day, seeking the maintenance of some practices already adopted by the organizations. Thus, there

was a strong reaction from both employers' and workers' unions, as well as from other social entities that emerged in the field, forcing the legal rule to be a kind of coupling with the practices of working day control considered adequate in the view of many social actors.

Organizational Practices

In the organizational sphere, it was observed that several means of control of the working day, adopted by the companies, were consolidating, and in many cases, according to the possibilities and financial conditions. However, these methods were not always supported by the legal rule - which is evidenced by the speech of the social actors interviewed. For example, it was mentioned by respondent E2 that it was very difficult to gain access to employee journey data, and there was often no guarantee that the data were reliable. In the view of labor union representatives and employers at the regional, state or national level, one of the interviewees says that despite all the legislation of day-to-day control in Brazil, the forms of point registration have always been subject to fraud and exemplifies one of these Possibilities

In this sense, the interviewee E10 mentioned the entry of the electronic system, which also allowed fraud, and this was reportedly present in the advertisements of products on the internet. This was one of the main subsidies for studies that preceded the legal change. In the view of the interviewee E3, the practices adopted in the organizations were different from what was regulated in the law. He mentions that when working in a bank, the point controls were made by recording on paper, out of any device, and noncompliance with the legal rule was commonplace. The interviewee also comments on how the lack of registration also implied the registration of clearances that, in fact, did not happen. They were only registered for security in case of an inspection, but in fact, it was only in the register in manual means, in paper.

Another form of fraud was the british journey in which, according to the interviewee E3, the point was always registered at the same time, that is "... it seemed that every day people arrived at the same time and left At the same time. It stands to reason that no one does that, exactly eight hours, so it was recorded that way". This implied a gain of cause when the employee filed a lawsuit. Respondent E11 says that the normality of the fraud situation was assumed both by the organizations that use the electronic device and by the manufacturers and sellers in the process of publicly offering and publicizing the possibilities of changing the employee's journey provided by the configuration of the device.

Moreover, one of the interviewee from the financial sector mentions that the biggest problem of fraud was in the very management of companies when planning the activities to be performed by the employee. And, according to interviewee E9, it was very common for the employer to falsify the electronic record of the point, according to complaints filed in unions, the Ministry of Labor and the Regional Superintendence of Labor and Employment (SRTE). Many controversies between workers and employers.

Debates to change the legal rule

The debates to adapt the legal rule, give meaning to the third clipping of the data that refers to the debates that emerged in the organizational field. The legal change of the electronic point record has resulted in several positions of social actors through the media, official communiqués, legal processes and social movements. At this moment, there was a strong reaction from both the employers' and labor unions and social entities that emerged in the field, forcing the legal rule to a kind of coupling with the practices of working day control considered adequate in the view of many social actors. It is worth noting the action of trade unionists representing the six largest trade union federations of the country (CUT, CTB, CGT, NCST,

UGT), which, despite being in favor of the new resolution, demanded that the new rule should recognize collective agreements signed between trade unions and companies related to the working day, thus seeking the maintenance of some practices already adopted by the organizations, seen as achievements obtained by employees over time. Also noteworthy are the participation of manufacturers of device for the electronic registration of points and associations, with the intention of weakening the legal proposal and directing it to a model that adheres to the interests of social actors. The debates presented circulated around the themes presented in the following figure:

Figure 1: Main debates

Structure of the legal rule	Point voucher	Devices	Conflict of Practice	Employee resilience
<ul style="list-style-type: none"> • Elaboration and sudden publication • Legal device used (legal uncertainty) • Interpretation of the legal rule (ambiguities) • Changes from the beginning of validity • Scope of the rule of law • Inspection routines 	<ul style="list-style-type: none"> • Time spent • Information security • Bilateral information • Reversal of the burden of proof • Environmental issues 	<ul style="list-style-type: none"> • Cost • Unique model • Unavailability in the market • Possible violation • Elimination of locks • Single ownership (no possibility of reuse) 	<ul style="list-style-type: none"> • Systems in use by companies (recent update) • Current collective agreements 	<ul style="list-style-type: none"> • Queue time to record the point • Save the registration voucher

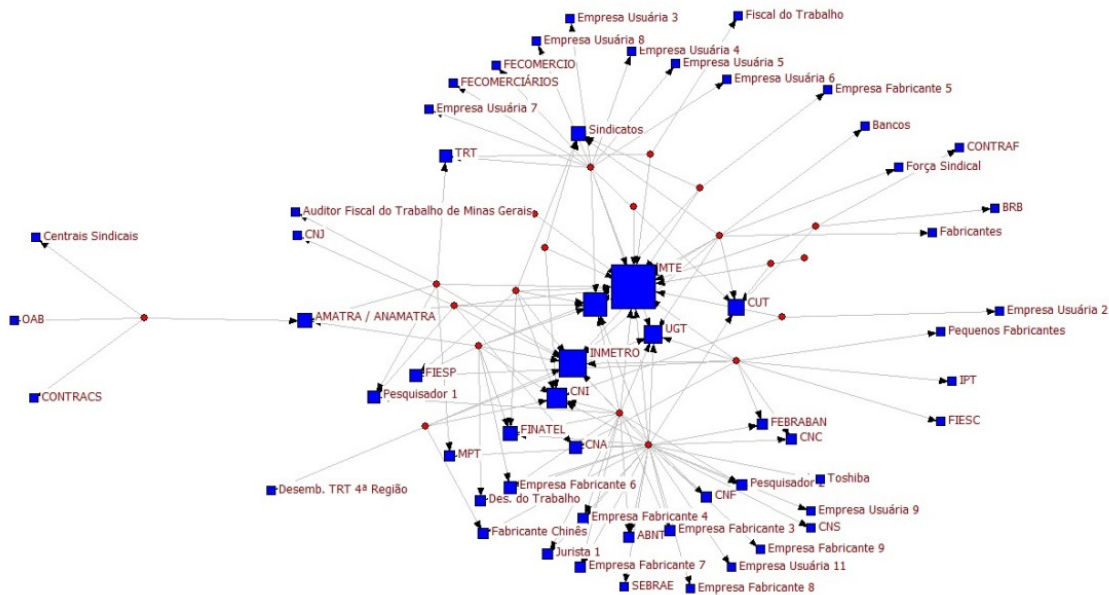
Fonte: Elaborado pelos autores.

Since the appearance of Resolution N. 1.510, it has been observed that the legal environment constituted brought restrictions to the actions of the organizations in general, but, on the other hand, over time, the organizations also issued their interpretations of the new legal norm and participated actively in the construction of an thematic organizational field in a recursive way, that will be presented in the next section.

Organizational field formation

This constitution of the field was visualized from the interviewed social actors who participated in an arena of debates in which rules and practices were impacted in the process of legal change. From the table of social actors interviewed and the mentions that linked them, perceived during the interviews, a network chart was elaborated considering questions such as: who were the actors interviewed, who these actors indicated as a participant in the field and whom the actors interviewed more quoted in their lines.

Figure 2: Organizational field of electronic point record



Source: Prepared by the authors.

It was observed that some social actors occupy central places and participate in the debate in favor or disfavor of the legal rule, among which stand out: the MTE, as legislative body that fomented the legal change; the INMETRO, like technical organ that participated in the definition of the conformity of the legal rule and also acted as supervisory organ; the trade union centrals, such as CNI, CUT and UGT, which, due to their centrality and union representation, gave persistent and continuous force to the debates. Secondly, we observe device manufacturers and associations relating, sometimes in a more isolated, but keeping the debate high, once they were large impacted by legal change and its main way of acting was by legal actions for revocation or relaxation of the Resolution N. 1.510/2009.

Findings

The context of Addendum N. 1510/2009, according to the research, allows a characterization of institutional analysis of the field and of the social actors related to it and who participate in institutional change. Faced with a notion of the legality of decoupled timecard electronic recording devices that was provided for in the legal rule, Resolution N. 1510/2009, restrictions on the actions of organizations in general, but, on the other hand, over time organizations issued their interpretations of the new legal norm and actively participated in the construction of this environment, forming a framework of recursion in this analyzed process.

The action of social actors to legal compliance was seized from the three scenarios. The first is the publication of Addendum N. 1.510 in 2009, in a context of fraud, perceived by the MTE as detrimental to the health of the worker, the payment of the appropriate charges and also the reduction of the possibilities of new jobs, due to conceal overtime. In this frame, the legal rule came suddenly to regulation at the national level and without considering, in its formulation and publication, the participation of relevant social actors who would suffer much of the impact of the change.

The second scenario of this research was visualized when the Resolution N. 373/2011 was published, seen as a solution to the environment of conflicts that followed the publication of Resolution N. 1.510. From this new rule, companies started to have the possibility of adopting alternative systems of working day control, provided that these systems were agreed and validated in a collective bargaining agreement, did not allow the restriction of point marking, automatic marking or require prior authorization to mark over day.

Other answer to the social actors, from the publication of Resolution N. 373/2011, it was the creation of tripartite working group. From then on, a channel of dialogue between legislative actors and legislated actors was characterized with the objective of to improve the current legal rule. Through this group, the social actors began to have more voice in the legal process and, thus, participated more actively in the social construction of legal environment.

The debates in organizational and legal spheres was impacted by institutional changes in an evolutionary way (Campbeel, 2004) and it was possible to identify some organizational responses in the field. On the one hand, the search for compliance with the legal rule established by Resolution N. 1.510, on the other hand resistance to the new legal rule, manifested mainly by the impetration of lawsuits. In parallel, it was observed a promotion of collective debates with a view to achieving greater flexibility in the legal rule; this culminated in the publication of a new resolution, to 373/2011, which partially relaxed the first resolution. Finally, we highlight the change in organizational practices of working day control for manual and mechanical systems, leaving the surveillance radar of the legal rule. These behaviors implied on a rational choice of social actors who, when considering the application of the law in the light of their own interests and understandings, accepted the legal rule insofar as it improved its organizational processes and results.

Finally, the third scenario in this research it was the insertion of INMETRO, almost two years after the publication of Resolution N. 1.510, as the body responsible for developing and implementing REP conformity assessments, according to a technical cooperation agreement signed in 2011. In this way, INMETRO began issuing resolutions for public consultations and approval of the specifications of the conformity assessment requirements for REP and the technical quality regulation for REP.

The organizations sought to generate stability in the environment by using means that would result in adequacy of the legal rule in the interests of relevant social actors. The debates strength impacted on changes in the course foreseen for the legal rule, since observed in the interviews and documentary analysis, the legal rule went through five extensions and the MTE itself constantly reinforced, through official publications, the importance of the legal rule and the justifications for the postponements. In addition, the possibilities for interpreting legal rule text placed spaces of conflict between employers, manufacturers, certifiers, the legislature and impacted on fees for them. Legal ambiguity fostered interpretations that allowed actors to apply the law differently from each other and from what was envisaged by the legislator (Mahoney & Thelen, 2010) through endogenous mechanisms (Edelman, Uggen & Erlanger, 1999).

The changes that occurred in the organizational field of electronic registration signaled the need for legitimacy of change and related aspects. Organizational actors pointed to several shortcomings in the elaboration of technical specifications and possibilities of interpretation of the law. With this, they affirmed that the MTE did not possess the technical knowledge that made possible to describe a rule suitable and understandable by the manufacturers and users, in a symmetrical way. The active participation of social actors on the construction of legality was evidenced on legal changes also through a process of contesting the legitimacy of the legal rule

in the following ways: (i) the actor, in this case the MTE, while practitioner of the formal act; (ii) of the legal instrument, in the case a resolution, used for publication and implementation of the legal rule; (iii) and of the content, described for understanding and use, by the social actors, which became effective as of Resolution N. 1510/2009.

In the context studied, some mechanisms have been identified that characterize the legal change related to legal downgrade, legal empowerment and enforcement transferring, detailed in the following. The legal downgrade, or the deliberation to the MTE to regulate the organizational practice, it was a delegation fomented discussions on the role of the MTE, as a body belonging to the executive branch. According to the interviews, a law change should emanate from executive branch bodies, which would include a more rigorous analysis of the possible social impacts and the voting of representatives from different sectors of society.

In the mechanism of legal empowerment, observed in the process of power transfer to definitions by legal rule to INMETRO. This change was one of the answers of the social actors of the legal field to the questions to the legitimacy of the MTE in elaborating such regulation. The changes lead to a new legality nexus, since INMETRO allowed the legal rule to be described more closely to the needs of the organizational actors. In addition, the new body began to consider the public consultation stage to redefine technical specifications, creating a new legality of electronic point.

And, as a third mechanism, the enforcement transferring has been identified from the responsibility assigned to INMETRO to oversee the compliance of organizations with the legal rule. The role of this body in the process of legal change was strengthened by Resolution N. 101/2012, at which time the MTE delegated to INMETRO not only the creation of the technical specifications for evaluation and compliance, but also the supervision of compliance with these specifications. Thus, it is now possible to have a certification standard of Brazilian device possible from two models: the device regulated by the MTE and the device regulated by INMETRO, since the latter does not invalidate the first one. This is a process still contested by the social actors, as the legal rule underwent drastic changes during its course, causing legal insecurity for all. It is noted that what was valid at the beginning of the period under analysis, in addition to no longer valid in 2016 and have changes of the body responsible for legislation, the CLT delegates responsibility to the MTE, which delegates it to INMETRO. The latter invalidates the specifications of the MTE and then cancels the invalidations, and so on.

Considerations

In this paper we analyze the changes in labor rules in Brazil as a co-constructed process of distributed action. Specifically, we focus on the regulatory changes on the use of electronic devices for controlling working hours. We approach the construction of the law as a dynamic process of collective engagement that brings together the overlapping of three exchange fields (organizations, law, and labor workers) around the common issue-field of working-hours control.

More specifically, we analyze how social demands for more flexibility at work interact with the emergence of new technology for recording working-time, and courts' interest in establishing new legislation for labor relations in Brazil to constitute a new issue-field around the electronic control of working-hours. The emergence of this field sets the stage for interaction and collective engagement of producers of technological devices for controlling

working hours, corporate owners and managers, lawyers and the courts, as well as unions and the labor force in defining the means for the law-in-books and law-in-practice.

These changes brought about by collective action established new obligations to employers, employees, and labor inspectors as well as new practices for recording and controlling daily worked hours and were associated to changes in organizational systems and conceptions ensuring the inviolability and standardization of information and promoting the reduction of frauds and litigations.

The constitutive view of legal environment consider law as an institution that emerges from the interaction with organizations and is implemented by social actors through process of interpretation and meaning that lead to the construction of legality. Spaces of legal ambiguity favor endogenous legal change, which allow organizations that seek public legitimacy to respond and co-construct the legal environment.

The analysis shows that the construction of legal endogeneity works through a legality nexus that brings together interested actors into a temporary field formed around a common issue. In this field, the various social actors actively engage in establishing positions and assuming different roles, as well as promulgating understandings about the legal reality and the issue at hand in the elaboration, implementation, and enforcement phases of the social construction of the law.

We identify three mechanisms involved in the structuration of the legality nexus: (i) legal downgrade, by authorizing legal mandate to formal acts not presumed to have wide juridical effects, (ii) legal empowerment, by attributing legislative competence to technical agencies, and (iii) enforcement outsourcing, by transferring to third parties the responsibility to validate legal compliance.

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