

Negotiated Legality and Political Work – The Social Constructions of the Legal Environment around Breastfeeding in Brazil

Legalidade Negociada e *Political Work* – A Construção Social
do Ambiente Legal em Torno da Amamentação no Brasil (PT: 209-229)

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DOI: 10.33167/2184-0644.CPP2019.VVN1/pp.189-208

ABSTRACT

This research discusses how the legal environment around breastfeeding had been constructed in Brazil starting at the xx century: from the time Europeans arrived in the country, the breastfeeding was being abandoned, as it started to be seen as a practice of small nutritional and affective value, going through moments when the food industry was seen as the one able to solve more effectively the nutritional needs of babies and also of convenience for mothers. However, in the decade of 1970, a strong social movement started proposing the rescue of (natural) breastfeeding. This movement decisively marks the country history around breastfeeding, with impacts in the social and regulation aspects. In this sense, the paper discusses how interested social actors played the political work process, articulating and using their social skills in order to influence the social construction of the legal environment around breastfeeding and how the negotiated legality is set, the process where actors interpret and signify the laws in force, giving them (or not) social validity.

Keywords: legal environment, legality, social construction, meaning

RESUMO

Essa pesquisa discute como se construiu o ambiente legal em torno da amamentação no Brasil a partir do século xx: com a vinda dos europeus para cá, o aleitamento materno foi

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sendo deixado para trás, como uma prática de pouco valor nutricional e afetivo, passando por momentos em que a indústria alimentícia era tida como capaz de resolver de forma mais eficaz as necessidades nutricionais dos bebês e de comodidade de suas mães. Na década de 1970, no entanto, um forte movimento social procurou resgatar a importância da amamentação natural. Essa movimentação marca de forma decisiva a história do país em relação à amamentação, com impactos sociais e na legislação. Assim, discute-se de que forma atores sociais interessados desempenharam o processo de *political work*, articulando-se por meio de suas habilidades sociais no sentido de influenciar a construção do ambiente legal em torno da amamentação, e como se dá a legalidade negociada, processo pelo qual os atores interpretam e dão significado às leis vigentes legalmente, conferindo-lhes (ou não) vigência social.

Palavras-chave: ambiente legal, legalidade, construção social, significado

1. Introduction

It is traditionally understood that laws determine the possibilities of social activity and penalize actions in breach of the letter of the law. In the study of organizations, the sociological dimension of institutional theory made progress as from the 1970s by looking at how legal instruments compel organizational actors to act in given ways and can contribute to organizations in the field taking on similar characteristics, insofar as they are all subject to the same pressure and tend to respond in similar ways. Discussions such as this are organized under what Scott (2008) called the regulative pillar, which has a characteristically coercive effect on the field.

Although those studies have understood that the social structure is not solely defined by its coercive powers, and have started, in a certain way, to discuss normative and cultural elements, priority has been given to top-down movements, where the structure constrains action. However, more recent research efforts have returned to the notion of the duality of structure and action, seeking to show that whilst the structure does indeed constrain action, it also empowers action. At the same time, action maintains, creates or deconstructs institutions. Along these lines, many studies have been undertaken using concepts such as those of institutional entrepreneurship (DiMaggio, 1988) and institutional work (Lawrence & Suddaby, 2006).

Even though that duality is very clear for the majority of studies that operate under the understanding that reality is socially constructed, little research has been done into the relations of construction and negotiation of meaning in the legal environment.

Starting out from organizational studies of institutions based on sociology and the sociological traditions of law, we have therefore sought to instigate debate on

the idea that legality is negotiated and that there is also a social construction in that which is understood as the legal environment.

Legality is associated with meanings assigned by organizations to legal prescriptions (Ewick & Silbey, 2002; Talesh, 2009) whilst the legal environment encompasses (a) legal spaces, as arenas that facilitate organizational interaction; (b) legal provisions, in the form of codes that regulate organizational conduct; (c) legal definitions, as typologies that constitute organizational experience (Edelman, 2004; Edelman & Suchman, 1997).

This theoretical corpus provides parameters for discussing the social construction of the legal environment surrounding breastfeeding in Brazil. In this study we look at how that legal environment — which can most objectively be delineated by the legislation in force — was constructed, whilst considering that there has been negotiation of meaning, which influences legality in the field and the way in which regulative institutions remain current, or not, as well as one further issue: how and whether they correspond to social practice.

2. Legal Environment, Legality and Political Work

An order exists. This is the framework for transactions to be concluded, and agreements to be reached. An expectation in relation to the attitude of the other, agreements whereby people ‘gain’ a degree of security for living their daily lives. We generally call this a structure, a set of rules and/or laws that govern the field (Giddens, 2003). However, this structure is not a given. At certain times it appears to us as certain, taken for granted, immutable, “that’s how things are”, “it’s always been that way”. But it acquires this status of permanence precisely because it is being maintained socially: the actors are reproducing it and, in a way, maintaining those settlements. Accordingly, both for permanent and for change, action needs to be recognized.

Scott (2008) discusses the institutional pillars of this structure as the regulative, normative and cultural-cognitive pillars. He also defines the regulative pillars as “regulatory processes that involve the capacity to establish rules, inspect others’ compliance with them and, if necessary, to exert sanctions — rewards or punishments — in order to influence future behaviors” (Scott, 2008, p. 52). For this author, the indicators in that pillar are rules, laws and penalties and the mechanism related to it is coercive.

Scott (2008) argues that it is possible to identify institutions under the regulative pillar when objects are in compliance with ordered specifications, at the same time as it is observed that these specifications are promulgated in the form of rules and law and are able to impose penalties in the event of non-compliance.

Taking a broader view and recognizing the duality of structure and action (Giddens, 2003), it is understood that a legal environment exists, a space where the legal field and the organizational field overlap (Edelman, 2016) and where organizations, collectively, construct the meaning of that which structures the field, in other words, when we speak of the regulative pillar we are also speaking of normative and cultural settlements. The legal environment is constituted not only by laws and the associated penalties, but also by the cultural rules and schemas associated with those laws (Edelman & Suchman, 1997).

This means that the rationality of the legal environment is not entirely the product of the law, but also of its resonance in organizational practices (Edelman, 2004; Ewick & Silbey, 2002), and so there is an endogenous and subjective character in this process (Edelman, 2004; Ewick & Silbey, 2002; Talesh, 2009).

This endogeneity indicates that organizations are not mere receptors, but also active producers of the legal environment. Organizational responses and institutionalized standards express this endogeneity that arises out of collective sense-making and interpretation of the legal environment (Edelman, Uggen, & Erlanger, 1999; Scott, 2008). Edelman et al. assert that “the law is not a fixed set of commandments but rather a continuous process of institutional evolution that is being formed and receives meaning through interaction with organizations” (Edelman, Gwendolyn, & McAdam, 2010, p. 656).

In this way we reclaim the concept of legality. It “refers to the meanings associated with the law, even if the formal law or law enforcement agents do not approve of or accept those associations [of meaning]” (Ewick & Silbey, 2002, p. 155). This is the sense that in this study we have preferred to use the term “negotiated legality”, precisely to indicate and insist that it is (i) a process, (ii) that involves negotiation of meanings and (iii) it is a social construct that recognizes that there are interests, but does not subjugate meaning only to the interested actors.

Accordingly, in order to understand the normative patterns of organizational practices when these are interpreting the legal environment and constructing meanings concerning the legal prescriptions that define the meaning assigned to legality, it is essential at the same time that it makes sense to discuss the mechanisms whereby the legal environment is institutionalized.

Although it is acknowledged that social constructs are not solely and exclusively the result of interested action, it is considered important to study and understand how processes where there are interested actors take place, working in the field in order to influence the construction of meanings, whether to maintain something of interest to them, or else to dissolve or create it.

Research into institutional entrepreneurship (DiMaggio, 1988) and institutional work (Lawrence, Suddaby, & Leca, 2009) has made progress in this direc-

tion, discussing the mechanisms whereby interested social actors seek to create frames (Campbell, 2005), look for support and use their social skills (Fligstein & McAdam, 2012) to do this. Following the same reasoning, we prefer to use here the term *political work*, because it evinces more clearly the political movement of negotiation of meanings around specific ideas which are on the agenda, something very relevant to the study we here seek to carry out.

3. Methodological Procedures

The construction and negotiation of meanings around the phenomenon proposed in this research requires us to trace the intersubjective aspects present in those relationships. There are several actors, constructing and negotiating the legal environment in which they find themselves and, for this reason, we opted to conduct qualitative research (Miles, Huberman, & Saldaña, 2014).

Given that the construction (and maintenance) of the legal environment is something that happens in a given time and space, the research will be conducted on a longitudinal basis. The data are essentially secondary, meaning that this study can be more aptly characterized as documentary research. Even so, a number of interviews were conducted to triangulate information and clarify a number of points raised in the documents consulted.

Care was taken for the documents used for analysis to be characterized as the product of different periods of time and places. This is because our interest was in understanding what happened and how in the process of negotiation of meanings, creation, maintenance and fall of Brazilian legislation around the subject of breastfeeding.

From a prior selection of 475 documents, it was considered that 51 (fifty-one) were the most relevant for our proposed discussion. These were: two MA dissertations, one thesis, one monograph, three books, nine academic articles, one procedures handbook, twenty-six legal documents (15 *portarias* – administrative orders), one convention, three laws, three resolutions, one international agreement, one statute and two ‘Brasilia Charters’) and eight videos with a total of 288 (two hundred and eighty-eight) minutes) consisting of documentaries, conferences, TV shows and recorded talks. In addition, we also consulted the websites of a number of Brazilian human milk banks and that of the Ibero-American Network of Human Milk Banks, from which we took news items, administrative and other reports (65 pages).

The primary data included five interviews conducted with three individuals. Two interviews were conducted with a director of the Fundação Oswaldo Cruz – Instituto Carlos Chagas, with a duration of 53 and 46 minutes, respectively, of exploratory interest, in order to understand something about the public health

scenario in Brazil and the question of breastfeeding, closely associated with one of the foundation's activities, through its human milk banks.

Another two interviews were conducted with the current director of the Iberian-American Network of Human Milk Banks, identified as a key-actor, due to having taken an active part in the process of this research since the outset. The first interview was unstructured and exploratory, conducted at the start of the research, with a duration of 30 minutes. The first was semi-structured and confirmatory, and conducted at the end of the research, with a duration of 32 minutes. The research findings were presented to the interviewee, who helped in putting together our understanding of the phenomenon.

Another semi-structured interview, which was exploratory in some regards, and confirmatory in others, was conducted with a State coordinator of the Human Milk Bank Network, with a duration of 190 minutes.

The data were analyzed through thematic content analysis, as suggested by Gioia et al. (2013), where in the first phase the content is reviewed allowing categories to emerge more freely, and then in the second stage those categories are grouped by themes and given labels. The process concludes by relating those groups to theoretical explanations.

Another relevant aspect of the analysis is that it was conducted on an abductive basis, with a rationale that uses the powerful inductive characteristic, which is such an important part of qualitative methods, but also with moments of deduction. This means that the analysis does not occur only when the data has all been collected; the researchers come and go between analysis and the field, one influencing the other, as suggested by Czarniawska (2014).

4. Presentation and Discussion of Findings

It is clear that the meaning of breastfeeding in Brazil has changed over time. A contextualization is accordingly provided that takes into account the social standards prevailing at the time, including the relationship between society and what people understood by breastfeeding and its consequences, legislation and pressure brought to bear both at home and internationally.

Almeida (1999) discusses the relationship between Brazilian people and breastfeeding since the pre-colonial period. The relationship that the indigenous peoples of Brazil had with breastfeeding was alien to the behavior of recently-arrived Portuguese women. He states that indigenous women breastfed on demand, combined the role of women-worker with that of breastfeeding mother, and often breastfed their children beyond the age of two years, at the same time as incorporating solid food in the child's diet.

For European women from the dominant classes at the time, breastfeeding was regarded as below their dignity, insofar as maternal love had no social or moral value. Accordingly, when they arrived in Brazil, they imported the culture of using wet nurses (then known as *saloias* in Portugal) and the culture of weaning (Almeida, 1999; Pontes, Lira, & Marques, 2005).

However, the use of slaves as wet nurses in place of the mother later became regarded as harmful to health and was severely condemned by the State, through family hygienists (profession linked to the State). As a result, breastfeeding was then seen as a merely biological act, and one related to the expectations of the State (Almeida, 1999; Souza & Almeida, 2005). However, not all mothers were able to nourish their own children, which brought a new problem: it was no longer possible to use slaves, and a solution had to be found.

Looking towards European countries, in the mid-nineteenth century, Brazil imported a number of practices related to breastfeeding, especially from France and Germany, such as: regulated times, setting the interval between feeds and the duration of each, feeding from both breasts, the lateral decubitus practice, use of dummies, breastfeeding after birth, condemnation of water with sugar for babies and dietary restrictions for breastfeeding mothers. These imports were accepted so readily that some of these practices are still observed by health professionals, although some of them are regarded as outdated. Almeida (1999) then observes that, with the new rules, new exceptions arose. “Weak milk then became the ‘rule for exception’” (Almeida, 1999, p. 36). In other words, weak milk became the accepted excuse for not being able to breastfeed. Weak milk is referred to as a milk unable to sustain the infant, or only a small quantity of milk produced by the mother, or else the fact of the milk drying (Almeida, 1999; Souza & Almeida, 2005).

Because it admitted the ‘weak milk’ argument, medicine then had to deal with the problem of mothers unable to breastfeed, and so once again accepted a socially justifiable need: the wet nurse. Without slavery, however, wet nurses were then women from lower social classes, who used this as a way of supplementing their income. The Institute for the Protection and Assistance of Infants was founded in order to conduct strict examinations of the health of the mercenary wet nurses (Almeida, 1999).

In the early twentieth century, imports started of feeding bottles, condensed milk and powdered milk (1912), offering an alternative for those unable to breastfeed. Production started of the Ninho and Lactogeno milks in Brazil in 1921. The medical community moved from a discourse of condemnation of weaning to one of encouraging artificial feeding, albeit without renouncing the superiority of the mother’s milk (Almeida, 1999; Pontes et al., 2005).

Manufacturers conducted advertising campaigns for processed milk and physicians took on board the idea that the mother's milk needed to be complemented, even then hypogalactia (insufficient milk supply from the mother) was not diagnosed (Almeida, 1999; Souza & Almeida, 2005).

From the nineteen forties to the seventies, artificial feeding came to be seen as the answer to all needs: it allowed mothers to return to work without worry, it provided an option for mothers with "weak milk", whilst marketing campaigns educated the population and the medical class that powdered milks were even more satisfactory in nutritional terms than breastfeeding. The government started to distribute industrialized milk to needy sectors of the population (Almeida, 1999; Souza & Almeida, 2005).

However, with the publication of *The Baby Killer* by Mike Muller (1974), a controversy broke out between the milk manufacturers and certain social groups. In that text, the author brought to light the high rate of infant morbi-mortality in poor populations due to malnutrition and diarrhea, associated especially with the use of formula milk, as the result of what was called commerciogenic weaning. Alarmed, UNICEF (*United Nations Children's Fund*) and the WHO (World Health Organization) joined forces to reassert the value of natural breastfeeding (Almeida, 1999).

These organizations put pressure on the Brazilian government to make pronouncements and take action to reduce infant mortality, especially among newborns. The scientific community also took sides, stating that indiscriminate use of formula milk appeared to be facilitating these deaths.

Brazil appeared to be swimming against the tide of the findings concerning formula milk. At this time, on the basis of previous studies that argued that formulas were the most appropriate response to infant nutrition, pediatricians throughout the country prescribed powdered milk, whilst the government maintained programs for distributing these milks to needy sectors of the population (Almeida, 1999).

However, as the international pressure grew, the Brazilian government began to think of programs which might reverse the situation, as official documents shown that Brazil was in fact one of the countries with the worst rates of infant mortality. On the basis of a report from INAN (National Institute for Diet and Nutrition) (1991), Almeida paints a picture of the grievous situation in the country:

An official document from the Brazilian Ministry of Health stated that infant mortality stood at 88 in every 1,000 in Brazil, 124 in per 1,000 in the north-east and that 48% of the population suffered from chronic malnutrition. 54% of infants were weaned in the first month in the city of São Paulo, and 80% in Recife. 50% of pediatricians pres-

cribed feeding bottles and 90% advised the use of water between feeds (Almeida, 1999).

The Ministry of Health held meetings with international health and child welfare organizations to assess the question and to design action plans to resolve the problem. It was fundamental to turn around this situation and the main strategy was to encourage breastfeeding. Acting through INAN, and with support from UNICEF and OPS, the Ministry of Health organized two major events on the issue in 1979. In Brasília, specialists discussed the situation regarding breastfeeding in the country, whilst in Curitiba a nationwide plan was drawn up with targets and overall strategies for action (Almeida, 1999).

This gave rise to PNIAM (National Program for Encouraging Breastfeeding). In response to renewed international pressure and targets, the Ministry of Health made use of its legislative powers to issue orders that would help in combating infant mortality. Almeida (1999) cites the words of Monson (1991), when he recalled the activities of the federal government in favor of breastfeeding:

Early weaning is now a State concern and is included on the public health agenda. In 1981, this concern gave rise to a State policy in favor of breastfeeding, implemented through PNIAM (Almeida, 1999).

Set up in 1981, PNIAM comprised representatives from the following bodies and institutions: INAN, UNICEF, OPS, National Department for Maternal and Infant Health, National Department for Education and Health, Brazilian Assistance Legion (LBA), National Institute for Healthcare and Social Welfare (INAMPS), Brazilian Movement for Literacy Foundation (MOBRAL), Rondon Project Foundation, Department for Labor Relations, Brazilian Nutrition Society, Brazilian Society of Pediatricians and the Brazilian Gynecological and Obstetrics Federation.

This integrated program (PNIAM) marked out the 1980s as a period of social mobilization in favor of breastfeeding. The superiority of breast milk became incontestable in the scientific community and was widely publicized. The nutritional and immunological benefits were the central topic in the marketing messages in favor of breastfeeding.

This highly social process therefore involved not only mothers and their babies; also present were the federal government, organizations with an interest or some form of involvement, such as human milk banks, hospitals and maternity units, the medical profession and the health sector in general, international organizations such as the UN and UNICEF, the food industry and even organizations with an influence on employment regulations such as trade unions,

So although it can be said that there is interested action by certain actors at specific moments in order to influence the creation, maintenance and/or fall of institutions and shared agreements on meanings surrounding breastfeeding in Brazil, we acknowledge that there is also the action of subsidiary actors who provide support and assistance in the process of constructing meaning.

We will now discuss the social construction of the legal environment from two standpoints: from that of what we here call *political work*, without losing sight of the absolutely fundamental concept of intersubjectivity manifest in the articulation between actors in the field, and from that of negotiated legality.

5. Negotiated Legality

We contend that legality is negotiated indeterminately in time and space. The interpretation of legal instruments and the manifestation of this in practice in the field are constant. Of course, in certain periods this is more intense and controversial and in others it is more discreet, to the extent that, to less observant eyes, legality appears a given and totally accepted, in a process very similar to that which Berger e Luckmann (2003) called objectified reality.

Here we discuss the process whereby the body of legislation relating to breastfeeding underwent change and how its meanings and the practice of what lies in the letter of these legal documents was manifested in the field.

In summary form, Table 1 presents the main legal documents published as from 1953 in Brazil which refer, in some way or other, to breastfeeding,

It can be noted that, in the fifties, sixties and seventies of the last century, only one legal document is included in the timeline, and before this there was no State pronouncement on breastfeeding. Convention 103/1953 discusses the question of maternity leave, thinking especially of mothers who are breastfeeding. However, the social context in which this instrument took effect did not view breastfeeding as a preferable option. Although women who had recently given birth were awarded the right to absent themselves from work in order to breastfeed, artificial breeding was held to be preferable, and recommended by the medical profession as more complete in nutritional terms as well as by the food industry, through advertising campaigns and lobbying of health professionals with a view to reinforcing this preference (Almeida, 1999; Souza & Almeida, 2005). This meant that one of the objectives of the legislation was not reflected in social practice.

TABLE 1. Legislation relating to the topic of breastfeeding

YEAR	LEGISLATION
1953	▪ Convention 103 of the International Labor Organization - Protection of Breastfeeding
1981	▪ MH Orders (portarias) 42 and 198 – Institution of the technical-executive working party for PNIAM
1982	▪ MH Order (portaria) 298 – Institution of the PNIAM working party
1988	▪ MH Order (portaria) 322 – 1st federal legislation standardizing HMBs ▪ Resolution 05 – International Code of Marketing of Breastmilk Substitutes
1990	▪ Consumer Protection Code – Rules on marketing of breastmilk substitutes ▪ Order (portaria) 1.390 – Creation of Central HMB Board
1992	▪ Resolution 31 – provisions on baby bottles and nipples ▪ UNICEF and World Health Organization Agreement: ends supply of formula milks to maternity units
1999	▪ MH Order (portaria) 812 – HMB network ▪ MH Order (portaria) 50 – National HMB Board
2001	▪ MH Order (portaria) 2051 – Marketing of infant foods
2002	▪ MO/MS Order (portaria) 698 – Functional structure of HMBs
2003	▪ MO/MS Order (portaria) – National breastmilk donation day
2005	▪ Brasília Charter
2006	▪ CBR Resolution 171 – technical functioning of a HMB ▪ MO/MS (portaria) 2.193 – Structure and functioning of HMBs ▪ Law 11.265 – Sale of infant foods ▪ Ministry of Health Order (portaria) 618 – institutes the national committee for breastfeeding
2007	▪ Law 11474 – amends Law 11.265 ▪ MH Order (portaria) 2.160 – alters the national committee for breastfeeding
2008	▪ MO/MS Order (portaria) 2.799 – institutes the Brazilian Breastfeeding Network ▪ Law 11770 – Maternity Leave
2009	▪ MH Order (portaria) 2.394 – institutes world breastfeeding week and the partnership with the Brazilian Society of Pediatricians
2010	▪ NHI Order (portaria) 193 (jointly with Ministry of Health) – provides guidance on setting up breastfeeding support rooms and oversight of health checks ▪ Brasília Charter

Note: PNIAM: National Program for Encouragement of Breastfeeding; HMB: Human Milk Bank; MO: The Minister's Office; MH: Ministry of Health; NHI: National Health Inspectorate; CBR: Collegiate Board Resolution.
Source: the authors.

In the early eighties, two ministerial orders were issued on basically the same subject: PNIAM (the National Program for the Encouragement of Breastfeeding). This was a response to international pressures warning of the dangers of mothers not breastfeeding and the need to show real movement towards reducing the infant mortality figures. The orders issued in 1981 established working parties comprising various professionals who were appointed as legitimate representatives to take action in proposing activities to encourage breastfeeding. In 1982, this group realized that a further ministerial order was needed, in order to make the arrangements needed for them to act as a working party. A strong grassroots movement allowed other groups and movements to gain strength and so, although legally PNIAM remained in force until 1997, when it was officially closed down, the space was created for new forms of action.

With the work undertaken by PNIAM, a new understanding gradually took shape around breastfeeding and certain needs began to rise to the surface: insofar as breast milk was essential for babies' development, support needed to be offered to those whose mothers were unable to feed them or who, for special reasons, such as being born prematurely, could not be directly breastfed. Attention therefore turned to human milk banks, and the need to set up new units around the country (Almeida, 1999).

However, the situation of the HMBs in operation was not favorable, insofar as the way they worked entailed a margin of risk to the health of the baby, through contaminated milk. This led the Ministry of Health to mobilize efforts, coordinated by PNIAM, to change this situation. Almeida (1999) reports that, at a meeting in March 1984 with the directors of the main HMBs operating in Brazil and professionals from related areas, it was concluded that: the operational structure of existing HMBs posed a threat to the health of the babies being fed, they served to discourage breastfeeding, they lacked a legislative framework that set rules and procedures for this sector and a pilot project was needed to seek alternatives.

In July 1986, in the light of the results achieved by the IFF (Instituto Fernandes Figueira) HMB in reformulating its operational model, an agreement was signed between INAN (National Institute for Diet and Nutrition) and FIOCRUZ, for a National Reference Centre for Human Milk Banks to be set up at IFF. The aim of this initiative was to lay the foundations for a sub-program run by PNIAM, to achieve technical progress and advance the cause of milk banks in Brazil. With this in view, work proceeded on laying the foundation for drafting the first legislation regulating the establishment and workings of Human Milk Banks throughout Brazil, making it possible to standardize procedures in this area (Almeida & Novak, 2004).

So the human milk bank movement can be observed as from the early eighties, with trials, cooperation agreements and creation of a framework for action, but only in 1986 were the lessons learned from this “practical work” incorporated into legislation, in a bottom-up process of institutionalization.

As a result, there has been a legal framework for the operation of human milk banks since 1986, containing clearly defined rules and protocols, indicating what a human milk bank can and cannot do. It is known that, since the start of that decade, and more significantly from 1984 onwards, there were actors working to produce these protocols, and that these were implemented in the country's first human milk bank. The content of the law, which thereafter regulated the field and all subsequent milk banks, is a reflection of the ideas and organization that grew up at the first bank, in Rio de Janeiro.

As we have argued, that process of influence is always recursive and non-static. What later became the governing structure, in the form of legislation, stripped of its personal points of reference, was then practiced in the field and — what is more — interpreted. As the number of banks grew and these rules were manifested in everyday practices, we can see the reverse occur again: In 2002 and 2006, new legislation was published on how human milk banks should function, revising the rules to as to better reflect the actual practice in the field, itself an interpretation of the original legislation.

The work of actors in the field continues to be impacted by and to have an impact on the legal system relating to breastfeeding. The legal system gradually changes, renews itself, in line with this movement, and at the same time the movement itself is sometimes constrained and sometimes empowered by the legal structure in place.

This attempt at organization around a well-established aimed can be observed since the nineteen nineties. Up to this time, PNIAM was all that existed, but this program brought together organizations which, in fact, had little to contribute when the question was one of breastfeeding, such as MOBRAL and INAMPS (neither of these is mentioned at any time as organizations that effectively played a significant part in disseminating the new social settlements concerning the meaning of breastfeeding). This opened the way for committees that brought together different organizations doing similar work (Souza, 1996). A specific board was set up for human milk banks in 1990, the Central Human Milk Bank Board, as indicated in the summary of Ministry of Health Order 1390/1990:

[this order] Institutes at INAN the central human milk bank board (CCBLH), to provide technical advice and define powers for exercising control and oversight of human milk banks (Brazil, 1990)

As regards the use of formula milk, the legal environment around breastfeeding also underwent changes and its meanings were redefined over time. As discussed in the background to the case, the Brazilian food industry started to produce powdered milk for babies in the 1920s. It was introduced to the country as a highly scientific and technological product, and was found on market stalls, indicated in medical prescriptions and even freely stocked by human milk banks and maternity units until 1988, when Brazil became the seventh country in the world to adopt rules on the marketing of formula milks. In 1990, the Consumer Protection Code established new rules on the marketing of formula milk, in 1992 a resolution regulated the sale and use of baby bottles and nipples and then in 2001 a ministerial order also dealt with the marketing of infant foods.

The impact of these regulations was felt not only by mothers and babies. The market was also affected: today, food manufacturers that sell products for infants are required to comply with very clear prohibitions:

The following are prohibited (...) I – use of photographs, drawings or other graphical representations other than those required to illustrate methods for preparing or using the product, except for the use of trademarks or logos, provided these do not use an image of an infant, small child or other humanized figures; II – use of names or sentences intended to suggest that the product is highly similar to breast milk, as established in regulations; III – use of sentences or expressions that serve to raise doubts as to the ability of mothers to breastfeed their children ; IV – use of expressions or names that identify the product as the most appropriate form of food for infants, as established in regulations; V – use of information that might induce the use of products out of a misconception of their advantages or safety; VI – use of sentences or expressions that indicate the health conditions for which the product is appropriate; VII – promotion of the products of the manufacturer or other establishments (Brazil, 2006)

We do not have data to discuss how these rules are interpreted and practiced in the infant food market, but it is possible to assert that these rules have been institutionalized through vigorous work by interested actors and advocates of breastfeeding, and here again we draw attention to the bottom-up process and will organize our discussion of this in the next section, where we call it political work.

5.1 Political Work

In this section we discuss the actors and their interested action with a view to creating, maintaining and bringing down institutions in what is called the regu-

lative pillar (Scott, 2008). As we are dealing specifically with this pillar, we have opted to use the expression *political work* and not *institutional work*, as these are arrangements where political articulation can be observed, in the sense of persuasive negotiation between actors.

Speaking about the successes that pro-breastfeeding actors rapidly achieved, Monson wrote:

from then on [mid-1980s], what was achieved? I think that... the great causes, that depended on legislation, that depended on larger struggles, it was possible to win (...) Brazil became the first country with rules for the establishment and functioning of milk banks and the seventh to have rules on the marketing of infant food. I will repeat again: none of this came from a single endeavor. We always had very effective fellow campaigners, at the right time, to achieve this type of success (Monson, 1991)

We will here draw attention to two important issues: the first is the awareness among the interested actors that political coordination was needed, bringing together the micro- and macro-levels in order to regulate, restrict and empower practice in the field. The second was the need for different actors, with social skills (Fligstein & McAdam, 2012) specifically geared to carrying out the *political work*.

Concerning this perception of the need for integration, interviewee 2 says at a given point that this process of standardization and creating protocols would be necessary if the aim was for the idea of human milk banks to be adopted in that field:

as we got to work, we saw that it was necessary to design a protocol, and to draw up technical rules for each little piece of this story because if I wanted to do this, if I wanted to replicate this, that would have to be the way, you see? (Interviewee 2)

The movement of actors in the field, seeking to coordinate relations, influence the content of the law and seeking federal investment, continued to constitute this process that we here call political work. Maia et al. (2006) and ANVISA (2007) recall that, at the first National Meeting of Human Milk Banks, in 1992, the participants thought of creating an integrated management system, along the lines of what today is the Brazilian Human Milk Bank Network. At the second National Meeting of Human Milk Banks in 1995, this idea was again widely shared, but it waned as a result of the failure to secure funding from the Ministry of Health. But in 1998, the meetings were restyled as conferences and were instrumental in making the ideas of a HMB Network a reality: one year later, the Ministry of Health

allocated funds for this purpose. Maia et al. (2004) also recall that, one year before the legislation was created, the IFF was already gearing up to create a network:

In 1998 the Oswaldo Cruz Foundation, acting through the IFF Human Milk Bank, took on the role of coordinating work to plan and establish the National Human Milk Bank Network, the aim of which was to guide the formulation, implementation and follow-up of State policy on the work of human milk banks throughout Brazil. In coordination with the Ministry of Health, the project pointed to gradual extension of the network in order for all the units involved to interact and take joint action. From then on it is possible to observe significant qualitative and quantitative growth in HMBs, combined with an increasingly distinctive line of action. The first steps to set up the network were successful (MAIA et al., 2004, p.298)

In 1999, another ministerial order approved funding for extending the work of the milk banks, as follows:

Approves the action plan allocating funding from the ministry of health budget (...) in order to support health work, with the aim of establishing and disseminating the process of standardization in human milk banks in the country (Brazil, 1999)

It may therefore be seen that the publication of these ministerial orders, one creating the HMB Network and the other allocating funds for setting up human milk banks around the country, can be traced back to the ability of the interested actors to create frames and mobilize resources to achieve cooperation (Fligstein & McAdam, 2012).

Another important aspect to be discussed is the centrality of the actors as the process unfolded. Certain actors are key (Edelman et al., 1999) at given moments, precisely because of their social skills and ability to mobilize resources (Fligstein & McAdam, 2012). The impact of these actors made a significantly effective contribution at a given time. This centrality may have subsequently diminished, but this made room for the action of another or other key-actor(s). In 1992, for instance, an agreement between the government and UNICEF and the WHO put an end to supplies of breastmilk substitutes to hospitals and maternity units (Ministério da Saúde, 2011). The political work was here centered on international organizations, that brought pressure to bear on countries to deliver better outcomes in human development and proposed measures which had an impact in some way on achieving those goals.

Legislation on breastfeeding continued to be approved over subsequent decades. The Brazilian Network of Human Milk Banks had a crucial influence on the

content of these laws, ministerial orders and resolutions and because a central actor in this process.

The Network does not operate only in its own name, but as a body bringing together the ideas and needs of all the milk banks being set up. The legislation that followed concerning the structure and technical functioning of HMBs was based on the experiences of the banks and shaped in accordance with the needs that arose. These ministerial orders are: MO/MH Order (*portaria*) 698/2002; CBR Resolution 171/2006; MO/MH Order (*portaria*) 2.193/2006.

Almeida (1999) demonstrates the tendency shown by IFF/FioCruz — the first human milk bank in Brazil and the unit taken as a model for other banks — to become a kind of hub and administrator for situations relating to breastfeeding and HMB procedures:

BLH IFF took on the role of a center for production, absorption and dissemination of knowledge in its field of action, by generating actions, methodologies, technologies and alternative solutions, compatible with the different types of need of the units providing this type of service (Almeida, 1999)

In that analysis, attention may be drawn to what Edelman et al. (1999) the professions, and legal institutions. It suggests that organizations and the professions strive to construct rational responses to law, enabled by those actors.

Table 2 provides an overview of the history of breastfeeding in Brazil. Taking an analytical approach, we organized periods into eras that identify the focus at each moment in history, and then we present the main key-actors in each of these eras — actors that contributed decisively to constructing that focus on breastfeeding and, lastly, as summary of the rationale in each era.

TABLE 2. Eras: the history of breastfeeding in Brazil

ERAS	CENTRAL ACTORS	FIELD RATIONALE
Formula Milk Era – 1940 to mid-1970s	Food manufacturers producing formula milk, Government, science/medicine	Formula milk as response to nutritional needs and for mothers who needed to work
Pro-breastfeeding and Proliferation of HMBs Era – 1980 to 1997	Science/medicine, UN, UNICEF, PNIAM, Government, INAN, OPS, IFF.	Efforts for natural breastfeeding to be perceived again as essential, laws create programs to encourage breastfeeding and rules restricting sale of breastmilk substitutes
Consolidation Era – 1997 to 2002	Government, IFF, HMB Network, National and State Reference Centers	Natural breastfeeding once again accepted in society and by health professionals, human milk banks throughout the country and concern to produce science relating to breastfeeding
Internationalization and Regulation Era – 2002 to the present	Government, IFF, HMB Network, National and State Reference Centers	Era marked by quantity of legislation helping to shape the field. Contextual pressures (coercive, normative, mimetic) govern the structure.

6. Conclusions and Recommendations

This study has sought to instigate debate on the understanding that the legal environment is a social construct. This understanding holds that processes of signification and creation of interpretative frameworks are factors that explain the maintenance, alteration and downfall of systems in force.

Starting out from the concept of duality between structure and action (Giddens, 2003), we are arguing that there exists in the legal environment a process of negotiation and interpretation of meanings and that, sometimes, that process is influenced by interested social actors. We accordingly discuss negotiated legality, where it is considered that it is not enough for a law to be promulgated and legally in force: the actors who are affected by that legislation are not entirely passive in relation to it and, through social practice, interpret, reshape and transform — sometimes abruptly and sometimes incrementally — that which the letter of the law prescribes.

This process of interpretation may involve socially interested actors, working intentionally to give meaning to those laws, seeking to cause other actors in the field also to adopt that interpretation and/or coordinating their efforts to as to create, maintain or bring down legal institutions, in what we here call political work.

It should however be noted that we do not here adopt a voluntarist vision of social actors. Whilst admitting that interest exists, that such coordinated and socially interested movement exists, we also contend that (i) there is a structure, which not only constrains action, but also empowers it — and in this sense it is not detached from the prevailing social settlements and (ii) interested action will not necessarily find fertile ground and will not necessarily be understood and adopted in the way that is expected. The other actors who make up this field may therefore not care about the interest of these political workers and even so adopt and practice those frames, just as they may do as they see fit, because in our view actors are more than just objects of social pressure.

Following this line of reasoning, we present the process whereby the meaning of breastfeeding has changed in Brazil over the years. New laws have been created, with a structural impact on the field, and have been interpreted by social actors. However, those laws do not arise in a social vacuum: there is a context and a process of negotiation which allows them to be created and promulgated.

We argue that they do not take social effect as from the moment they enter into legal force; instead they govern and exert force over the field for which they were created, but their acceptance is manifested in social practice and this practice is not merely passive: the actors interpret and negotiate the meaning of those new institutions.

And in this dual process between structure and actions we may observe actors acting as political workers, seeking to influence the maintenance, downfall and creation of legal instruments that recognize and directly influence the way in which breastfeeding is understood in Brazil, at the same time as we identify the process whereby the actors gradually interpreted and assisted in change in the field, through practice.



