



Original Article

Enforceable and unenforceable laws in agribusiness systems

Leis que Pegam e leis que não Pegam em Sistemas Agroindustriais

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Abstract

The statement that there are laws that are simply “unenforceable” is quite common in Brazil. This study aims to analyze how incentives contribute to the enforcement of formal rules. The laws chosen in this study are: land use and conservation law and agrochemicals law, focused on the storage and return of containers. The theoretical framework is based on transaction and measurement costs, and property rights. Five propositions were developed for this study related to the incentives for the enforcement of formal rules, namely: the alignment of the formal rule with the social norms; the influence of private interest; the influence of the State’s interest; monitoring costs; and adoption costs to formal norms. For the empirical part, we opted for the multiple case study method, contemplated by analyses of descriptive statistics. It is worth noting that a cut out was made in relation to the agricultural crops and regions selected. The results support four of the five propositions of this study. The exception was due to the effect of the cost to adopt the rule. It was concluded that rules addressing assets of common ownership are characterized by a more complex enforcement mechanism, since it does not involve a purely economic issue. Actions that raise the awareness on these rules and the awareness regarding the scope of the subject are important so that the social rules, which do not change rapidly, can be in line with the formal rule, thus promoting its enforcement.

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Keywords: Law enforcement; Unenforceable law; Agribusiness rules

Resumo

É comum a afirmação de que existem leis que “não pegam”. No presente estudo foi feita uma análise acerca dos incentivos que contribuem para o cumprimento das normas formais. As leis escolhidas foram: a lei de uso e conservação do solo, e a lei dos agrotóxicos, com ênfase no armazenamento e retorno das embalagens. Como base teórica custos de transação e mensuração, e direitos de propriedade são utilizados. Foram fundamentadas cinco proposições de trabalho, que consideram os incentivos ao cumprimento das normas formais, a saber: alinhamento da norma formal às normas sociais; a influência do interesse privado; a influência do interesse do Estado; custos de monitoramento; e custos de adesão às normas. Para a parte empírica optou-se pelo método de estudo de casos, contemplados por análises de estatísticas descritivas. Destaca-se que foi feito um recorte com relação às culturas agrícolas e regiões selecionadas. Os resultados dão suporte a quatro das cinco proposições de trabalho. A exceção ficou por conta do efeito do custo de adesão à norma. Concluiu-se que normas que tratam dos bens de propriedade coletiva se caracterizam por um mecanismo de cumprimento mais complexo, já que não se trata de uma questão puramente econômica. Ações que promovam o conhecimento de tais normas e a conscientização da amplitude do tema são importantes para que as normas sociais, que não se modificam rapidamente, estejam alinhadas à norma formal promovendo o seu cumprimento.

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Palavras-chave: Cumprimento da lei; Lei que não pega; Normas no agronegócio

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Introduction

The Brazilian environmental legislation is one of the most advanced in protecting the environment. However, its enforcement represents a challenge. According to Lunardi (2011, p. 67), “the mismatch between the elaboration and implementation of laws and the official policies in the Brazilian state have proved to be a major problem [...]”. Freitas (2008), in turn, emphasizes that in terms of environmental laws Brazil has one of the most advanced legislations in the world. What is necessary, in fact, is to enforce them. Starting from this point and observing the agribusiness systems (SAGs), it is noted that legal and regulatory issues have always had relevance for dealing with activities that involve food safety, sustainable management, preservation and recovery of the environment. In this sense, the present work focuses on the legal subject that deals with the environment and agriculture.

Following this notion, the objective of this study is to *analyze how incentives influence the enforcement of positive norms in agribusiness systems*. This way, it discusses propositions which present evidence and translate the different types of incentives for enforcement of the chosen laws in the scope of agribusiness systems. These incentives are divided into: alignment of the formal rule with social norms, interest of the State and private agents, costs to comply with the formal rule and the coercive effort of the State. The focus of this study and its innovative effort is to identify the incentives to enforce the rule *ex ante*, that is, before reaching the judiciary. Within the universe of legal rules relating to the agribusiness systems, we selected environmental legal rules. This choice is explained by the importance of the environment, as a subject, and the growth of its strictness as of the 90s.¹ By analyzing the activities related to agribusiness systems, it is possible to note that they are based on natural resources or environmental assets.²

The balance between the preservation of environmental conditions and agricultural development is an issue of great importance. In 1981, Romeiro and Abrantes postulated that the accelerated modernization of the sector, through the intensive use of supplies and equipment, encouraged by the official policy, had a negative impact on the environment. They also mentioned that, in terms of productivity, these changes indicated no significant results at that time (Romeiro & Abrantes, 1981). While the productivity mentioned by the authors has since made significant progress, the other aspect that they highlight still lacks, however, effective improvement. It is a challenge for which the environmental legislation tries to establish the guidelines, in the form of rules, but that faces problems in the implementation phase.

¹ The study does not address the Forest Code because it is in the implementation phase.

² According to the Brazilian Law, environmental assets are those of general public interest, essential for the maintenance of the environmental quality. Thus, it overrides the public or private legal nature that an asset may have (Direito ambiental, 2002). The holders or owners of the environmental asset shall be at the same time the government and civil society. Thus, there is the possibility of having a private asset of general public interest and public asset of general public interest (Direito ambiental, 2002).

From a theoretical point of view, this work falls in the scope of the New Institutional Economics (NIE). Within the NIE there are studies that focus on the subject of enforcement, among which the works of Rubin (2005), Libecap (2005) and North (1990, 1992) stand out. In this logic, a non-positive norm can become a positive norm depending on the incentives and interests involved, much in the same way a positive norm can be adopted in order to modify habits and customs.

It is reasonable to assume that institutions do not always evolve in an efficient manner (Zylbersztajn & Sztajn, 2005). Williamson (1996) addresses intentionally inefficient institutions by stating that, in many cases, these intentional failures are motivated by the capture of value from groups organized in society. Organizational failures arise when the organizational structure implemented is less efficient than the best feasible structure. Thus, there is an intentional inefficiency, inefficient by design, as the author classifies it. In addition, North (p. 05, 1992) states that “institutions and the way they evolve shape economic performance. Together with the technology employed, they determine the cost of transacting and producing.” Based on this guidance, the regulatory environment in which agents are inserted has to be considered to avoid the risk of misleading or inaccurate conclusions (Zylbersztajn & Sztajn, *op. cit.*).

Ronald Coase, in the article *The problem of social cost* (1960), highlights the third-party effects that occurs in exercising the right to perform certain actions. According to the author, the rights of use production factors may be limited by the institutional rules or may be negotiated privately. In this way the exercise of the right to use a production factor may generate cost to the other party (externality³). In this logic, considering the transaction costs, the reallocation of rights will occur when the increase in the social value generated is greater than the costs incurred to implement it. Thus, the initial delimitation of the legal rights influences market efficiency (Coase, 1960). Public regulation, as it stands, does not operate cost-free and it not always increases the efficiency of social arrangement (Coase, 1960). The State through governmental action can also seek to correct negative externalities caused by the incorrect or imperfect definition of property rights (Rubin, 2005). It is in this field that we find the laws of environmental preservation and of natural resources, the focus of this study. The purpose of such rules is to control externalities and allocate property rights.

Transaction costs, which are related to the costs of transfer, capture and protection of property rights (Barzel, 1997), or, from the perspective of Arrow (1969), represent the costs of making the economic system work, are presented as a central item in the analysis of the state regulation’s impact on economic activity, as well as on the efficiency of the social arrangement. Alston and Mueller (2005) define property rights as a set of formal and informal rights regarding the use and transfer of resources. They determine the incentives for using the resources. Alchian (1977) states that the rights of individuals to use the resources in a given

³ According to Milgrom and Roberts (1992), externalities are positive or negative effects that the actions of an economic agent have on the welfare of others, and which are not regulated by the price system.

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