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Drug regulation and criminalization in Brazil

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Abstract

Objective

The present study aims to evaluate, through a narrative review of the literature, how State's control has exercised regulation of drug use throughout the history of Brazil.

Method

Books, articles from indexed academic journals, complete works presented at conferences and historical documents available on the internet relating to the topic were consulted.

Results

The first criminal legislation related to drug use only appeared in Imperial Brazil. During this period, the first problems due to drug use also begin to appear. The creation of higher education courses in the areas of health and natural sciences resulted in the training of professionals capable of handling and supervising chemical and pharmaceutical products. Over time, observing the effects, some substances become proscribed.

Conclusion

Throughout the country's history, the use and regulation of drugs has permeated all eras, influencing culture, education and the population's way of life. There is currently a great debate about drug policies in Brazil, mainly regarding marijuana and its therapeutic uses, once again showing the influence of the State on the health and safety of the population.

Keywords: Illicit drugs; Legislation, drug; Toxicology; Brazil; Recreational drug use.

The modern State is sustained by rational-legal domination through the establishment of a set of norms and limits that legitimize its power of control. According to contractarian thinkers like Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, this power is determined by the relationship between the state and civil society, guaranteeing all individuals fundamental and inalienable natural rights (Hobbes, 2008; Locke, 2008; Ribeiro, 2017).

Civil society emerges alongside the State through the social contract, which represents a collective consent that establishes a political body aimed at safeguarding the inviolability of natural rights (Rousseau, 2006). From an ontological perspective, civil society is founded upon the State. The State enjoys absolute sovereignty, and questioning it would be to challenge its sovereignty, thereby undermining its absoluteness and leading to a return to the state of nature and, consequently, to war.

In the state of nature, each individual is the arbiter of their actions, giving rise to constant conflicts that threaten the preservation of the species. The questioning of the State should only occur when it fails in its primary function of preserving the lives of its citizens (Souza, 2010).

However, according to Georg Hegel, the social contract does not enable the transition from the state of nature to civil society. In societies where the State does not exist, contradictions and conflicts arise among different groups. The State, therefore, involves the introduction of rational and universal principles into the political sphere, allowing for the resolution of conflicts of interest among diverse groups. The State would thus be responsible for preventing social disintegration, as without it, civil society would collapse under the weight of class struggles (Decothé-Junior & Heldt, 2021).

In Karl Marx's perspective, the State arises from the interests of a particular social class, with civil society existing prior to the State. Thus, the State appears as a stranger to society, with its internal laws, bureaucracy, and structure, often appearing as something independent. It undergoes a constant process of bureaucratic, police, and military centralization, exerting oppression on society while simultaneously expressing the interests of the ruling class. Therefore, the State acts as an alienator of social relations (Harvey, 2013).

The State is therefore a product of human reason, emerging as a means to escape the animalistic state of fear of violent death, desiring peace and security. Obedience to the State is a consequence of its creation. Human beings enter into this commitment by relinquishing their liberties of natural law to ensure their subsistence. They delegate to the State the absolute right to govern them (Lopes, 2012).

The general will conception finds support in Rousseau's ideas, where the social contract establishes the limits of government. Individuals establish the rules of the contract, and within it lies the power. The contract represents the will of the majority, and the ruler is merely an instrument authorized to implement that will of the majority, which stifles or supplants individual will. This demonstrates a rationalized dynamic of the state anchored in its own laws and regulations (E. S. Silva, 2020). "The State governs itself according to the rational rules that lie within, which are not deduced from natural or divine laws, nor from the precepts of wisdom or caution; the State, like nature, has its own rationality, albeit of a different kind" (Foucault, 1979, p. 168).

The use of certain substances brings intoxication and has been utilized for millennia in festive, therapeutic, and sacramental contexts. Due to these uses, they have become complex scientific entities that began to concern religion and disrupt the State, while also engaging with the economy and challenging art. The opposition to an established social system constitutes a political operation with complex social functions, where what is displayed goes against existing power structures. Within the horizon of anxieties that accompany any profound change in life, the machinery of the sciences attempts to clarify these problems by creating something described as "drugs" and their contact with the broader question of the contemporary human's relationship with their real freedom. It would be naive to expect that changes in moral criteria, cultural stereotypes, and slogans in any form of advertising are subjected to the scrutinizing pursuit of science. However, one way to form concepts instead of dogmas and myths about this subject is to delve into its own genesis (Escohotado, 2008).

The problems arising from the excessive consumption of certain substances were already observed during the Renaissance by Philippus Aureolus Theophrastus Bombastus von Hohenheim, known as Paracelsus. In one of his postulates, he commented that all substances in nature could exert positive influences (*essentia*) or negative influences (*venena*), and the difference between *essentia* and *venena* lies in the dose, hence the phrase "the dose makes the poison" (*dosis sola facit*

venenum) (Schmidt, 2019). The word “poison” originates from the Latin word *venenum*, which means “remedy” or “potion” and is linked to the “love potion” created by the goddess Venus. Later, the term *veneno* came to be associated with “toxic substances”, and the term “toxic” originates from the Greek word *toxikos* (τοξικός), referring to substances used to poison the tips of arrows for warfare or hunting purposes, that is, to kill the target (Fukushima & Azevedo, 2008).

In Brazil, even before its discovery, various indigenous tribes extracted materials from plants for use in hunting and warfare. Brazilian indigenous peoples also daily used other plants with psychoactive properties. Even in these primitive indigenous societies, there was already the concept of living in society, despite individual freedom being limited due to individuals being subject to those who were stronger, such as the figure of the chief. Physical strength determined who would dictate human relations based on their interests and instincts, making the weaker individuals victims of the brutality and arbitrariness of the stronger ones, especially in conflicts between tribes. The restrictions on individual freedoms allowed for the existence of tribes. Thus, the majority, the collective, became stronger than any individual.

Based on the above, this work aims to analyze the process of regulation and criminalization of drugs in Brazil throughout its history. For this, books, articles from indexed academic journals, complete papers presented at conferences and historical documents available on the internet related to the subject were consulted. This work aims to reflect on how the State generated regulatory mechanisms for drug use during the history of Brazil, from the pre-colonial period, through the colonial, empire and republic periods. It will be investigated whether this regulation dialogues with the scientific knowledge produced in the country in the course of its history.

Drugs in Brazil's Pre-Colonial period

The various pre-colonial indigenous tribes in Brazil already made use of many psychoactive and toxic substances. Curare, a word of indigenous origin derived from the terms *woorari*, *woorali*, and *urari*, which mean “poison”, was extracted from plants of the *Strychnos* genus and the Menispermaceae family. It was used on the tips of arrows for hunting. These arrows were propelled through blowguns made of hollowed bamboo, targeting birds and small mammals. Curare contains alkaloids such as tubocurarine, which causes paralysis of skeletal muscles, as well as strychnine, which causes strong muscular contractions. When ingested orally, tubocurarine is metabolized in the liver, losing its effectiveness in muscle paralysis. Therefore, it only produces effects when administered directly into the bloodstream rather than orally. The concentrations of strychnine in the plants are too low to cause observable effects in humans. Despite its almost immediate effect (around 10 minutes on average), the extraction of curare was laborious, making it less commonly used in warfare and more commonly used in hunting (Schvartsman, 1992).

Tobacco (*Nicotiana tabacum*) is native to the American continent and was known by the Tupi tribes as *petyn*. The plant was used in religious rituals in which warriors of the tribe were smoked to gain strength when facing the enemy. There was also a habit of drinking *petume*, another name for tobacco, which was a stimulant and appetite suppressant (Mello-Jr & Kockel, 2010).

Different Amazonian tribes used a snuff called *cohoba*, which was inhaled through a Y-shaped tube primarily made from the plants angico (*Anadenanthera peregrina*) and tobacco. These snuffs were taken daily as stimulants and used by shamans and healers to make prophecies and predictions. Powdered barks of plants from the *Virola* genus were used to make *paricá*, a type of smoked snuff. These plants contain N,N-dimethyltryptamine (DMT), a potent hallucinogen. *Paricá* was blown by a partner through a tube into the nostrils of the person inhaling it due to the

inactivation of DMT when taken orally. The use of *paricá* is associated with indigenous religious celebrations, where people gathered, sang, and invoked spirits. The shamans who used *paricá* would contort their muscles in their body and face, become agitated, and enter into a trance, experiencing visions that would bring knowledge to their people. This state was due to the effects of DMT and lasted for 30 minutes to 1 hour (Martinez et al., 2009).

Other plants used by indigenous peoples also contain DMT in their composition, such as *Jurema preta* (*Mimosa hostilis*) among the tribes of northeastern Brazil. *Jurema* was consumed by smoking its roots or through a wine made from its leaves macerated in water. There are more than 19 species of *Jurema*, with *M. hostilis* and *M. tenuiflora* being the most commonly used in the preparation of *Jurema* wine. For some indigenous tribes like the *Kariri-Xoko*, only the older and wiser individuals were allowed to collect and prepare *Jurema* wine (Souza et al., 2008). The dried *Jurema* roots were smoked in a pipe along with tobacco.

As seen above, various plants and herbs with psychoactive and toxic properties were known to Brazilian indigenous tribes. The use of coca by Brazilian Indians can also be mentioned. Referred to as *ipadu* by the tribes in the Amazon basin bordering Venezuela and Colombia, the leaves of *Erythroxylum coca* were dried, ground into powder, and mixed with ashes to form small balls that were ingested multiple times a day, particularly by the elderly, due to their nutritional value and the feelings of well-being and stimulation they produced (Ferreira & Martini, 2001).

There was also *cauim*, a beverage made from cassava roots, or cashew juice, or corn, but *cauim* made from cassava was the most appreciated. The process of obtaining the beverage involved boiling cassava in water in clay pots. Once cooked, they were transferred to other pots or containers to cool down. Then, women would chew the cooked cassava and place the chewed material into a vessel, which was then cooked again in water. These vessels were covered and partially buried in the ground. The vessels were left to rest for two days, during which fermentation and ethanol production occurred. The beverage was prepared solely by the women of the tribe, regardless of whether they were single or married, as they believed that if men prepared the beverage, it would not be enjoyable (Mello-Jr & Kockel, 2010). A variety of cassava known to the indigenous people as *inaze* or more recently as *mandioca-brava* contains hydrocyanic acid (HCN), which is extremely toxic. Therefore, cassava needs to be washed or heated before consumption, as HCN is soluble in water and has a low boiling point.

Not only from plants did indigenous people extract psychoactive substances. Toads of the *Bufo* genus had their skin removed to obtain a liquid that contained bufotenine, a potent hallucinogen with effects similar to DMT (Martinez et al., 2009).

It is observed that the use of various psychoactive substances was done only under the guidance or supervision of someone with greater knowledge, in the case of indigenous tribes, the shaman. Due to their many years of experience and the knowledge passed down through generations, shamans were familiar with the powers of plants, knowing which ones were lethal and which ones brought healing for wounds and illnesses. The use of plants without consulting the shaman or an elder could often have negative consequences, such as intoxication.

The knowledge about poisonous plants and animals, as well as plants used as healing agents or in religious rituals to induce trance, was held by only a few individuals. In indigenous tribes, this knowledge was consuetudinary, which is why there are multiple common names for a particular plant and no systematic classification existed. It was common for a certain herb to be used by one tribe while being prohibited in another. In these civilizations, much of the experimentation to understand the effects of certain substances or plants was based on trial and error, or based on experiences

passed down by ancestors or the elderly. The use and consumption of these substances were, to some extent, regulated by the shamans, and the study of their effects was surrounded by mysticism and linked to deities and the forces of nature (Gaudêncio et al., 2020).

Indeed, in these civilizations, the power exerted by the State shapes and maintains a hierarchical social structure. However, power is not necessarily a repressive apparatus of the State (Danner & Oliveira, 2009 link da referência adicionado). Power can create domains of objects and rituals of truth. The individual and the knowledge that can be derived from them originate from this production (Foucault, 1975).

The Colonial period and the first apothecaries

The period when Brazil was under Portuguese rule, from 1500 to 1822, is known as Colonial Brazil. To understand the judicial structure of Colonial Brazil, it is necessary to have some knowledge of the Portuguese legal system at the time (Cezario, 2017).

The administration of justice was the responsibility of the king, and it was considered a primary duty reflected in numerous documents and laws. The legal system and its entire structure in Portugal were encompassed by the Ordinances (Cezario, 2010):

Three major compilations formed the Portuguese legal structure. The first to order a codification was D. João I, who reigned from 1385 to 1433. The elaboration went through the reign of D. Duarte, the regency of D. Leonor, being enacted by the newly crowned Afonso V, who, despite having nothing to contribute to the work, gave it its name: Afonsine Ordinances, which were in force from 1446 to 1521, the year in which D. Manoel promulgated the one that bore his name: Manoeline Ordinances, the result of the revision of the Afonsinas and the recompilation of extravagant laws. After the Manoelinas, Duarte Nunes de Leão recompiled new extravagant laws, until 1569, a publication well known as the Sebastian Code, although there was no active participation of D. Sebastião. A new revision of the Ordinances was commissioned by King Philip II to a group of jurists led by Damião de Aguiar, who presented them and obtained approval in 1595, only printed and entered into force in 1605 under the name of Philipines Ordinances. (Carrilho, 1997)

The Ordinances were not only applied to the metropolis but also to its colonies. However, not all the Ordinances were easily applicable in Brazil due to cultural peculiarities or lack of suitable conditions, requiring adaptations (Brasil & Meneguel, 2021).

Therefore, the first criminal legislation in Brazil that punished the use and trade of toxic substances was included in the Philippine Ordinances, which were in effect in Brazil from 1603 until 1830, until the creation of the Imperial Penal Code. The text of the Philippine Ordinances that dealt with the use and trade of toxins was described in Book V, Title LXXXIX:

Que ninguém tenha em sua caza rosalgar, nem o venda, nem outro material venenoso.

Nenhuma pessoa tenha em sua casa para vender, rosalgar branco, nem vermelho, nem amarelo, nem solimão, nem agua delle, nem escamonea, nem ópio, salvo se for Boticario examinado, e que tenha licença para ter botica, a usar do Officio.

E qualquer outra pessoa que tiver em sua caza alguma das ditas cousas para vender, perca toda sua fazenda, a metade para nossa Camera, e a outra para quem o accusar, e seja degradado para Africa até nossa mercê.

E a mesma pena terá quem as ditas cousas trouxer de fora, e as vender a pessoas, que não forem Boticarios (Diário das leis, 2023)

With the arrival of the Portuguese on the Brazilian coast, marijuana was brought among other things. The cords and sails of the ships were made from hemp fiber, which was stronger

compared to cotton fibers and considered permitted at the time. The first seeds of *Cannabis sativa* were brought around the mid-16th century by African slaves, hence the denomination *fumo d'Angola* (Carlini, 2006).

Through their interaction with the indigenous people, Europeans assimilated knowledge about the native plants. Additionally, they brought knowledge of plants from the Old World. The African slaves also contributed their knowledge of herbs and plants. The combination of these three sources formed the understanding of medicinal and toxic plants (Braga, 2011).

Only in 1530 the first colonization expedition arrived in Brazil, led by Martim Afonso de Sousa, who was granted full powers, both judicial and police-related. Similarly, the hereditary captains of the captaincies were also granted the same powers (Cezario, 2010).

Due to abuses in the judicial functions committed by some individuals, a structuring of the judiciary took place. In 1549, Thomé de Sousa was appointed as the governor-general of Brazil. His fleet, composed of three ships, two caravels, and one brigantine, brought over a thousand people who settled in Bahia. Among these individuals were six Jesuits, led by Manuel da Nóbrega. One of the Jesuits was José de Anchieta, considered the country's first pharmacist, who was assigned to the southern region of Piratininga. Due to the intense piracy experienced in the 16th century, the medicines that were previously prepared in the metropolis became scarce and ended up being prepared with native plants and through the therapeutic practices of the *pajés* (shamans) and *raizeiros* (herbalists). Several apothecaries were established in the regions of Bahia, Olinda, Recife, Maranhão, Rio de Janeiro, and São Paulo (Spada et al., 2006).

The social contract establishes the limits of government by regulating not only the relationship between the sovereign state and the population, but also all social relations. Power is exercised through governmental practices by the sovereign (Harvey, 2013), in this case, the holder of judicial powers.

The indigenous people and the enslaved black people, forbidden from worshipping their own gods due to the religious imposition of the white colonizers, ended up conducting their religious ceremonies away from the eyes of the Portuguese. Despite this, many elements of the Christian religion were absorbed, especially by the black population through syncretism, giving rise to Afro-descendant religions. In the 17th century, the figures of *benzedeiros* (blessers) and *raizeiros* (herbalists) emerged as a result of this religious syncretism. Deeply knowledgeable about herbs and plants, they indicated the best ones for curing diseases or as amulets for good luck. The *benzedeiros* were considered intermediaries between the earth and the divine and communicated with the sacred through prayers and the use of substances that induced deep trance states. They also prescribed formulas, teas, and poultices made from herbs and plants (Maciel & Guarim-Neto, 2006). The contact between the indigenous and black populations led to the assimilation of cultural aspects such as the worship of *Jurema* by the latter. However, the preparation of *Jurema* by the black population differs from the indigenous method, often incorporating ingredients such as honey and alcoholic beverages like wine and cachaça, the latter becoming more prevalent with the establishment of sugar mills in Brazil (Martinez et al., 2009).

In the first half of the 17th century, the *casas de cozer méis* (houses for cooking honey) emerged in Bahia, which were the first sugar mills and later became locations with distilleries for the production of cachaça. In addition to cachaça, the sugar mills produced other alcoholic beverages derived from sugarcane, such as rum and *tafia* (Cavalcante, 2011).

The enslaved African women were often sexually abused by the plantation owners, and as a form of retaliation against these abuses, they would add the powder of the *amansa-senhor*

(landowner-tamer) root (*Petiveria alliacea*) to the masters' food. This plant caused dementia, aphasia, and even death, representing a mechanism of micro-resistance by the enslaved individuals against such mistreatment. The *amansa-senhor* received various other names in the country, such as *guiné*, *pipi*, and *cangambá* (Camargo, 2007).

The study of the effects of the various utilized substances became somewhat more systematic due to the knowledge brought by the Europeans, although still very limited. There was no effective regulation, except for the Philippine Ordinances, and much of it still relied on trial and error and the knowledge of the elders. Many *benzedeiros* (healers) and *raizeiros* (*herbalists*) absorbed the knowledge from ancient *pajés* (shamans), and it was now their responsibility to oversee the use of plants and other substances.

The first official pharmacies (*boticas*) emerged in the year 1640 and multiplied throughout the country. To obtain authorization to operate, it was only necessary to obtain approval from the *físico-mor* (the designation given to the physicians of the time) in Coimbra or from the delegated commissioner of the captaincy. Due to this ease, many pharmacists with limited knowledge received authorization to operate their pharmacies. They usually were professionals with empirical and prosaic knowledge, often illiterate. Merchants of various goods often associated themselves with these pharmacists in order to increase their personal profits, as the pharmacists were the only ones allowed to trade drugs and medicines. In 1744, there was an intensification of the inspection of the pharmacy profession in relation to the illegal trade of drugs and medicines, with heavy fines and confiscation of illegal stocks by the government, through the "*Regimento do que devem observar os Comissários Delegados do Físico-mor do Reino do Estado do Brasil*" (Regulation on the Duties of the Delegated Commissioners of the Royal Physician of the State of Brazil) (Spada et al., 2006).

In the year of 1760, the Jesuit college in Bahia was looted and seized. In this location, one of the main pharmacies (*boticas*) in the country was situated, which held several prescriptions, including the *tríade brasílica* used against venomous animal bites and various febrile diseases. As a result of this event, Marquis of Pombal ordered investigations to recover the college (Assunção, 2019).

Built in 1796, the Royal Pharmacy of São Paulo is considered the first official pharmacy in the country. It was established in the Anhangabaú Valley, where the central office of the Post Office now operates. The main products available were native medicinal plants and imported substances from Europe such as mercury, arsenic, and opium (Conselho Regional de Farmácia do Estado de São Paulo, 2016).

In the year of 1798, Bishop José Joaquim de Azeredo Coutinho founded the Seminary of Olinda, where disciplines such as philosophy, Latin, ecclesiastical history, and sciences including chemistry, draftsmanship, geometry, natural history, geography, and French were taught. This curriculum was the first in the country to emphasize science, and marked the first time that chemistry and experimental physics, within the field of natural history, were taught at a higher education level (Maar, 2004).

According to Max Weber, the State is an administrative and political apparatus of domination. Without a strong State, there would be a return to anarchy, which justifies the repression of private interests in favor of the interests of the State. Therefore, the State consists of the relationship of domination of man over man, existing under the condition that the dominated individuals submit to the authority claimed by the dominators (Santos-Filho, 2022).

The establishment of *boticas* (pharmacies) was a way to attempt the regulation of the use and acquisition of certain substances. Despite the fact that *boticários* (apothecaries) possessed more scientific knowledge than *benzedeiros* (healers) and *raizeiros* (healers), many of them were charlatans

and were only interested in making money from the sale of their products. Portugal tried to oversee this trade, but they lacked qualified professionals to carry out this task, resulting in a shortage of skilled personnel. As the teaching of natural sciences gained strength in the country, the first more in-depth studies of many substances began to emerge, along with the first attempts at regulation.

The royal family and the creation of the first higher education courses

With the arrival of the Portuguese royal family in Brazil in January 1808, several structural reforms were implemented to accommodate the court and fulfill the desires of the delegation. The judges, known as civil and criminal auditors, also arrived. These auditors formed what was called the Court's House of Justice. In addition to the Philippine Ordinances, the normative sources used by the judiciary at the time were: "*Lex Romana Wisigothorum* – common law of the Germanic peoples; Privileges – rights ensured to the nobility by the kings; *Forais* – local particular laws, guaranteed by the kings" (Martins-Filho, 1999).

The state and power do not show distinction. According to Foucault, there is no power, but rather relations of power, meaning different, heterogeneous forms that are constantly transforming. Power is not a natural object, a thing; it is a social practice and, as such, historically constituted (Foucault, 1979). Because of this, power functions as an apparatus throughout society from which no one escapes, characterized as something that concerns law and repression. Power structures society and maintains it in a hierarchical and organized manner (Danner, 2009).

The court was initially established in the colonial capital, Salvador, where the Prince Regent D. João de Bragança (future King D. João VI) founded the first higher education institution in the country, the School of Surgery of Bahia, in February 1808. It was located in the Royal Military Hospital and had dependencies in the Jesuit College at *Largo do Terreiro de Jesus*. However, due to precarious conditions, medical examinations were not yet being conducted on-site, and it was only in 1824 that the first pharmacy studies began. The royal family spent only 36 days in Bahia before heading to Rio de Janeiro, where they settled permanently. In November of the same year, the Anatomical, Surgical, and Medical School of Rio de Janeiro was founded as the second higher education institution in the country. It was located in the Royal Military Hospital on Morro do Castelo, and disciplines such as medicine, chemistry, *materia medica*, and pharmacy were taught there (Fenelon, 2022; Miziara et al., 2012).

In 1810, the Minister of War, Count of Linhares, founded the Royal Military Academy of Rio de Janeiro, where the discipline of chemistry was taught by the Englishman Daniel Gardner. Gardner wrote the "*Syllabus* or Compendium of Chemistry Lessons", the first chemistry book published in the country. Two other military institutions would later teach chemistry in Brazil: the Practical Chemical Laboratory of Rio de Janeiro, founded in 1812, and the Chemical Laboratory of the National Museum, created in 1818, with a focus on practical and industrial chemistry. In 1817, a chair of chemistry was established at the School of Surgery of Bahia. Transformed into the Faculty of Medicine of Rio de Janeiro in 1832, the former Surgical, Anatomical, and Medical School of Rio de Janeiro regulated pharmacy education in the country with the creation of the Faculty of Pharmacy. In 1854, the discipline of chemistry was divided into two: inorganic chemistry and organic chemistry (Maar, 2004).

The first law regarding drugs in Brazil dates back to October 4, 1830, issued by the Municipal Chamber of Rio de Janeiro, which regulated the sale of goods and remedies by apothecaries. This law prohibited the sale and use of the *pito de pango*, a term used to refer to a pipe used for smoking

marijuana, which also became a nickname for the drug itself. The law stipulated fines for the sellers and three days of imprisonment for those who used it, specifically mentioning slaves and other individuals. The criteria, particularly the explicit mention of slaves, was undoubtedly a form of social control, indicating that the law may have had a discriminatory bias (Pelli, 2011).

The purpose of the State, according to Cesare Beccaria, is to provide the greatest happiness divided among the greatest number of people. Laws enable and affirm the protection of political liberties. These liberties are equally granted by the State, which should be respected and act as their defender. Laws, therefore, are the corollaries of free will, allowing life in society, and their legitimacy lies in their coherence with the objective of the social contract, which is to safeguard the common good (Andrade, 2021).

Despite the kingdom's initiatives to control the disorder in the production and dispensing of medications, such as the supervision of *boticários* (pharmacists), these efforts were frustrated, mainly due to the lack of specialists in the field (Brandão, 2012). It is interesting to note the popularization of non-medical use of marijuana at the time, especially among slaves and indigenous people who cultivated it for personal consumption. This did not draw the attention of the rulers as these were less privileged segments of society, with the exception of Queen D. Carlota Joaquina, who was known to appreciate marijuana tea (Carlini, 2006).

With the establishment of higher education courses in the healthcare field, the teaching of chemistry and pharmacy became more systematic. However, the training of a professional takes time, and until these professionals were ready to practice, many apothecaries continued to make prescriptions and sales without effective regulation. Despite the studies in chemistry and pharmacy, there was still a deficiency in the study of toxic substances and drugs in Brazil. However, this gap was about to be filled, and stricter regulations for the commerce of certain substances were emerging.

The Empire and penal legislation

The breach of the social contract becomes the political foundation for the right to punish. The need for punishment arises from the nature of human beings. The ethical basis for the right to punish lies in the defense of political freedoms, as the State is the defender of these freedoms against private oriented thefts. Coercion is justified to prevent man from returning to a state of nature, as in that situation there are no guarantees of political freedoms (Gerhard, 2010).

The first Brazilian penal code dates back to 1830 and became known as the Imperial Code. However, it did not contain any provisions regarding the consumption and trafficking of narcotic substances. It was not until 1851 that Article 51 was added, which dealt with the irregular sale of poisonous products (Góis & Amaral, 2009), but it did not touch on the issue of prohibition or regulate the use and sale of medications. There was no reference to substances such as marijuana, cocaine, or opium. The decree focused on the term "poisonous substances", primarily in relation to sanitary practices (Pelli, 2011). In the same year, Imperial Decree No. 839 regulated the profession of the pharmacist as a technical role in the preparation of medications. Article 28 made it clear that "physicians, surgeons, pharmacists, dentists, and midwives shall present their diplomas".

With the Decree No. 2,055 of 1857, it was established that unqualified pharmacists would still be granted licenses to operate their pharmacies. This was an ironic fact, as the legislator did not differentiate between a *boticário* (apothecary) and a pharmacist. It was only in 1886 that the profession of *boticário* ceased to exist, giving way to the pharmacist and its responsibilities (Spada et al., 2006).

The branch of Criminal Procedure was established in 1832, and the performance of forensic medical examinations became mandatory for judges to state their judgments. In the same year, the discipline of Forensic Medicine began to be taught in the medical schools of Bahia and Rio de Janeiro. In 1854, José Martins da Cruz Jobim, the oldest professor of Forensic Medicine at the Rio de Janeiro Medical School, was appointed by the Ministry of Justice to coordinate the commission for the standardization of forensic medical examination practices. Finally, in 1856, through Decree No. 1,746, the profession of forensic physician was regulated in the country (Coêlho, 2010).

An imperial decree enacted in 1835 transformed the Society of Medicine into the Imperial Academy, establishing the pharmacy section and elevating the profession to a scientific category, equal to the medical sciences (Spada et al., 2006). In April 1839, Law No. 140 was sanctioned, creating two schools of pharmacy, one in Ouro Preto and another in São João Del Rey, both in the state of Minas Gerais. These schools were intended for the teaching of pharmacy and *materia medica* (Brandão, 2012). In 1897, the Free School of Pharmacy and Industrial Chemistry began operating in the city of Porto Alegre, where the disciplines of Analytical and Toxicological Chemistry were taught. The following year, in 1898, the boards of the Free School of Pharmacy and the Course of Midwifery merged, leading to the foundation of the Faculty of Medicine and Pharmacy of Porto Alegre, the third medical school in the country (Velloso, 2007).

With the establishment of pharmacy courses and the teaching of toxicology, the study of toxic substances and drugs became more in-depth and systematic. As a result, professionals capable of supervising and guiding the consumption and sale of these substances emerged. The first regulatory laws were also a product of this more analytical and precise scientific knowledge, particularly in the field of toxicology.

In 1836, in the region of Pedra Bonita in the countryside of state of Pernambuco, the Kingdom of Enchantment, created by João Antônio, emerged. It was founded after he had visions of D. Sebastião, also known as the Kingdom of Stones, with the ideal of eliminating poverty and becoming a peaceful kingdom. João Ferreira, João Antônio's successor, distributed an enchanted wine among his followers, made from a mixture of *Jurema* and *Manacá*. *Manacá* refers to plants of the species *Brunfelsia hopeana* and *B. latifolia*, which contain the alkaloids hopeanine, brunfelsine, and manacine. These substances can cause hallucinations, delusions, and mood changes, with the last two having structures that are still not fully understood. After consuming the wine, orgies would take place, and during Sunday sermons, João Ferreira would instruct his people to water the sacred stones with blood, as this was believed to bring about the rebirth of D. Sebastião and bring wealth to all. It was also believed that black individuals would become white, and the elderly would become rejuvenated. In 1838, João Ferreira, in one of his visions, communicated to the people that D. Sebastião was unhappy with the lack of sacrifices, leading the entire population of the area to engage in collective self-sacrifice (Martinez et al., 2009).

In 1851, the Proto-Medical Board, established in 1782 to oversee and apprehend individuals practicing medicine without authorization and to detect adulterated drugs, expanded its responsibilities to include inspections of ships, food, pharmacies, warehouses, restaurants, butchers, schools, jails, cemeteries, workshops, laboratories, factories, and vaccines. However, the board was unable to fulfill even its original functions, let alone the new ones, due to the diversity of its tasks, and problems persisted (Campos et al., 2011).

Despite the early regulations and penal laws, government oversight was still insufficient to control the trade of toxins and drugs. Much of the focus was on physicians and the few trained pharmacists. The use of drugs began to intensify, and issues like the case of the Enchanted Kingdom

started to draw the attention of the government and the public opinion. The fear of certain substances prompted the government to impose stricter regulations through new laws. There was an expansion of higher education programs in the health and chemistry fields aiming to conduct more studies on the problems caused by the use of toxic substances and drugs.

The Republic and the rise of prohibition

A mechanism of power that enables the meticulous control of bodily operations is discipline. It operates directly on the individual's body, manipulating their gestures and behavior, shaping them and training them. This is closely tied to the political domination over the body, where a specific type of individual is required for the proper functioning of the State (Danner, 2009).

Two complementary and interconnected mechanisms are established in different spheres as a means of exerting control over individuals. Disciplinary power operates at the level of the body, while biopower operates at the level of the population. Biopower can be understood as a power that applies to the lives of individuals and operates through regulatory mechanisms. The individual subjected to biopower subordinates their body to societal control, meanwhile society itself is governed by the State (D. R. Silva, 2018).

With the establishment of the Republic, the country now also has a new penal code instituted in 1890, based on Roman law (Miziara et al., 2012). Starting in 1891, the discipline of Forensic Medicine became mandatory in all law courses in the country (Coêlho, 2010). The republican penal code explicitly includes the prohibition of psychoactive and poisonous substances; however, it was a "blank penal norm", as it needed to be supplemented with sanitary regulations by the executive power.

Until then, in Brazil, the penalties imposed for those who consumed or sold poisonous or psychoactive substances without authorization involved the confiscation of assets. This remained in effect until the country joined the International Opium Conference in 1912. The notion that drugs were both a health and public security issue, developed through international treaties in the first half of the last century, was gradually incorporated into national legislation (A. F. Silva, 2019)

With the increase in neuropsychiatric complications associated with the use of cocaine, observed from the late 19th century to the early 20th century, the United States enacted the "Harrison Act" in 1914, which restricted the use of the substance. In Brazil, it was not until 1921 that Federal Decree-Law No. 4,292 was enacted, imposing restrictions on the use of cocaine, opium, and morphine (Ferreira & Martini, 2001). The topic of opium and cocaine was discussed at the Second International Opium Conference held in Geneva, Switzerland, in 1924. However, the representative of Brazil at the conference, Dr. Pernambuco Filho, along with the Egyptian representative, raised questions about marijuana, describing the plant as "more dangerous than opium". As a result, marijuana was added to the list of prohibited substances (Carlini, 2006).

Despite the establishment of research laboratories and pharmaceutical manufacturing facilities, the regulatory laws faced strong public pressure, often based solely on myths. Even some professors were apprehensive about the use of certain substances, leading to the imposition of laws and penalties without thorough debate and analysis.

The Brazilian criminal policy began to take on the characteristics of a "sanitary model", characterized by the incorporation of hygienic knowledge and techniques. Police, legal, and health authorities assumed continuous and sometimes interchangeable roles. Drug addicts were treated as patients, using techniques similar to those employed for controlling the spread of diseases like yellow fever and smallpox. They were not criminalized but subjected to compulsory notifications for

internment, with judicial decisions informed by medical opinions. The drug trade itself thrived on the diversion of drugs from authorized channels, often involving pharmacists and customs officials. Drug consumption was not widespread but associated with exotic groups and a mysterious universe, lacking economic significance (Guadanhin & Gomes, 2017).

Due to the increase in the consumption of psychoactive substances, the legislation of the time was not effective enough. As a result, Article 159 was created in the Consolidation of Penal Laws in 1932. On January 11, 1932, Decree No. 20,930 was enacted, considering toxicomania as a compulsorily notifiable disease. Among other provisions, it stipulated that the list of toxic substances should be periodically revised (A. F. L. M. Silva, 2011). In 1938, Decree-Law No. 891 was created, establishing prohibitive rules for production, trafficking, and consumption, as well as a list of toxic substances (Góis & Amaral, 2009). Two years earlier, in 1934, Decree No. 24,114 was promulgated to regulate the production of organosynthetic compounds considered pesticides. This decree remained in effect for 55 years until it was replaced in 1989 by Law No. 7,809, known as the “Pesticide Law”. (Garcia et al., 2005)

In the 1930s, the first records of arrests for the now considered clandestine trade of marijuana emerged in Rio de Janeiro. By the 1940s, the police in Bahia began making their arrests for the illegal drug trade (Carlini, 2006). In 1942, Decree-Law No. 4,720 was enacted, imposing penalties for the cultivation of plants such as marijuana (Góis & Amaral, 2009).

The realization of the Single Convention on Narcotic Drugs in New York, United States, in 1961 demonstrates how the issue of drug use was gaining global attention, with Brazil being one of the signatories. In this convention, marijuana is considered as harmful to health as heroin (C. H. P. Rodrigues & Bruni, 2023). In 1967, Decree-Law No. 159 equates substances capable of causing physical and psychological dependence to narcotics, and in 1968, Decree-Law No. 385, originating from Institutional Act No. 5, adds the terms “prepare” and “produce” to Article 281 of the Penal Code, which regulated the drug issue in Brazil, and equated traffickers and dependent users, subjecting both to the same penalties (Góis & Amaral, 2009).

The enactment of Law No. 5.726 in 1971 removed drug addicts from the criminal scope; however, it did not distinguish between occasional users, experimenters, and traffickers, subjecting them all to the same penalties. Law No. 6.368 of 1976 added the terms “to forward”, “acquire”, and “prescribe” in relation to substances listed as illicit, and established penalties for anyone found in possession of drugs in any quantity (Greco-Filho & Rassi, 2020). In 1972, the Brazilian Society of Toxicology was founded, and in 1977, the first Brazilian Congress of Toxicology was held in Guarujá, São Paulo (Fukushima & Azevedo, 2008).

In 1980, the Ministry of Health created the National System of Toxic-Pharmacological Information (Sinitox) in response to the need for national-level documentation and information on major medications and toxic substances for healthcare managers, professionals, and the general population. The aim was to provide comprehensive information and resources in the field of toxicology (Leoni, 2008).

Originating from the Bahamas, a new form of cocaine presentation called crack emerged in 1985. The drug quickly gained popularity in the United States and reached Brazil in the same decade. However, it was only in 1989 that the first records of crack seizures were reported in the state of São Paulo (Dunn et al., 1996).

Since 2002, various debates have been held in the Brazilian National Congress and the Executive Branch in an attempt to renew the legal framework regarding the issue of drugs. It was only in 2006 that Law No. 11,343, known as the “Drug Law”, was enacted. This law addresses the

import, export, shipment, preparation, production, manufacturing, acquisition, sale, exhibition for sale, offer, possession, transportation, carrying, storage, prescription, administration, consumption, or supply of drugs, establishing legal penalties for those who engage in any of these activities. The law is currently in effect (Machado, 2022).

In November 2014, the Federal Council of Medicine authorized doctors to prescribe cannabidiol (CBD), a substance found in marijuana that does not cause hallucinogenic or psychotropic effects, for the treatment of severe neurological diseases. In January 2015, the National Health Surveillance Agency (Anvisa) reclassified CBD from a prohibited substance to a substance subject to special control in Brazil (Agência Nacional de Vigilância Sanitária, 2015; A. Rodrigues, 2014). In 2017, marijuana was included in the Brazilian pharmacopoeia (Ministério da Saúde & Agência Nacional de Vigilância Sanitária, 2017), the importation of marijuana-based medicines was permitted (Ministério da Saúde & Agência Nacional de Vigilância Sanitária, 2020), the sale of these medicines in pharmacies was authorized, and the production of marijuana-based medicines in Brazil was allowed (Ministério da Saúde & Agência Nacional de Vigilância Sanitária, 2019). The establishment of these regulations has facilitated the importation and commercialization of medical marijuana in the country.

Recently, in 2022, the National Health Surveillance Agency (Anvisa), during a meeting of its collegiate board, granted a Simplified Special Authorization for Education and Research (AEP) to the Federal University of Rio Grande do Norte (UFRN) to cultivate and conduct scientific experiments with the Cannabis sativa plant. This is the first time such authorization has been granted in the country (Leal, 2022).

In 2022, modifications to the Pesticide Law were made. The Chamber of Deputies approved a bill that “establishes a deadline for obtaining pesticide registration in Brazil, centralizes the tasks of inspection and analysis of these products for agricultural use under the Ministry of Agriculture, and provides for the granting of temporary registration if the deadline is not met”. Currently, registration requests can take about seven years. With the new bill, it is sufficient for the product to be used in at least three member countries of the Organization for Economic Cooperation and Development (OECD) for the registering agency to request temporary registration or authorization if no conclusive opinion is reached within two years (Piovesan, 2022).

Moreover, the Agriculture and Agrarian Reform Commission approved bill 1,459/2022, which repeals the current Pesticide Law. The proposal was approved in the Senate and now awaits the President’s sanction. The text is controversial and has sparked opposition between ruralist and environmentalist entities. The proposal allows for the release of new pesticides with the decision resting solely with the Ministry of Agriculture, Livestock, and Food Supply (MAPA), without the involvement or consultation of the Anvisa and the Brazilian Institute of the Environment and Renewable Natural Resources (Ibama). This could lead to an increase in the use and, consequently, the consumption of pesticides, which may have undesirable effects on the environment, rural workers, and consumers (Pimenta, 2022).

Despite the expansion of health and chemistry courses, there is still prejudice regarding the use of certain substances and their effects. When legislators develop norms, they theoretically rely on scientific knowledge from experts as well as public opinion. The process of knowledge production has become broad and accelerated; however, often this knowledge is disseminated questionably to the public. Although the current Brazilian legislation on drugs differentiates between users and traffickers, in practice, this differentiation becomes complicated, with users often being treated as traffickers. There is an aggravating factor as well: initially, policies for the treatment of drug dependents used to follow a harm reduction approach. However, in recent years, an update to Law

No. 11,343/2006 by Decree No. 9,761, dated April 11, 2019, favors treatment policies for drug users based on abstinence models (Presidência da República 2019), and repressive policies are becoming increasingly uncompromising.

Conclusion

The history of Brazil is intimately linked to the history of drug use. The first inhabitants of the land already made use of substances capable of altering their senses, causing agitation, stupor, or hallucinations. Many of these substances were plants, consumed randomly to satisfy hunger, and over time, associations were made with the sensations obtained. The use of alcoholic beverages was already reported, initially made by accident and later developed through specific production methods. Animal and plant poisons were widely used in hunting and warfare. Only a portion of the population possessed the knowledge of which plant or animal could be used to extract a poison or a substance to cure ailments; usually, these people were priests, healers, and later alchemists and apothecaries.

The process of colonization brought about a new social dynamic and the need for regulation. Governance involves making agreements and subordinating oneself to a greater will, the will of the population. Power is not exercised in isolation, as the power to govern is based on the consensus granted by others. The purpose of power for the government is to align the objectives and interests supported by the collective will. Thus, the government gathers and guides its subjects towards the well-being of living in society.

The guarantee of this organization is provided by the State, which acts as the mental center of organization for the various groups that reflect the collectivity. According to Émile Durkheim, the individual is a product of society as a whole, and their existence is only real due to the action of the State. These individual holds rights and obligations. Two faculties are essential to them: the capacity to be in judgment and the right to create norms to which they must obey. Compliance with the law constitutes the fulfillment of the social contract.

The debate regarding the use of drugs and other substances is broader than simply prohibiting or regulating them, as substances like tobacco and alcohol are regulated and yet illegal products made from them are still trafficked. Understanding the history of drug use can demonstrate how these substances were once permitted and now some may be prohibited due to state control. These prohibitions are often linked to prejudices without any academic basis.

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