BETWEEN PROHIBITIONISM AND RELIGIOUS FREEDOM

The Legal Disputes Concerning an Ayahuasca Church and the United States Government[1]

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ABSTRACT

This article focuses on the legal disputes between the U.S. government and the Centro Espírita Beneficente União do Vegetal (UDV), as well as on the regulation of the religious use of ayahuasca by the Drug Enforcement Agency (DEA). Our aim is to present the main issues that were at stake throughout the dispute, especially the relationship between the limits of religious freedom when associated with the use of controlled substances.

KEYWORDS: *Ayahuasca; Regulation; State; Religion; Drugs*

Entre proibicionismo e liberdade religiosa: as disputas legais entre uma igreja de Ayahuasca e o governo dos Estados Unidos

RESUMO

Este artigo centra-se nas disputas legais entre o governo federal dos Estados Unidos e o Centro Espírita Beneficente União do Vegetal (UDV), bem como na regulamentação do uso religioso da ayahuasca naquele país. O nosso objetivo é apresentar as principais questões que estiveram em jogo durante as disputas, especialmente a relação entre os limites do princípio de liberdade religiosa quando associado ao uso de substâncias controladas.

PALAVRAS-CHAVE: *ayahuasca; regulação; Estado; religião; drogas*

Although not new, interest in the ritual use of hallucinogens has acquired renewed importance and visibility as the religious use of psychoactive substances is now reaching a global scale (Labate; Jungaberle, 2011; Labate; Cavnar, 2014, 2016, 2018; Labate *et al.*, 2017). This is the case of the religious use of ayahuasca,[2] which spread from the Amazon Forest to the cities of Brazil, and later to other parts of the world, becoming established throughout Latin America, Europe, and North America, and in countries such as South Africa, Australia, and Japan (Sáez, 2018).

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[2] Ayahuasca is a beverage produced from two plants native to the Amazon region. It has psychoactive

As well as studies carried out on rituals and religious practices, and the more controversial debate on the risks and benefits — in economic, political, and cultural terms — that this expansion may present for traditional communities, there are a number of legal issues that emerge when the religious use of a controlled substance crosses geographical boundaries and becomes internationalized, as in the case of the expansion of Brazilian ayahuasca religions. It is important to highlight that the anthropological category of "Brazilian ayahuasca religions" is relatively new in public debates. It first appeared in the book *O uso ritual da ayahuasca* [The Ritual Use of Ayahuasca] (Labate; Araújo, 2002) referring to three groups from the Brazilian Amazon whose origins were based on the ritualized use of ayahuasca: Santo Daime, Barquinha, and União do Vegetal (UDV) (Labate *et al.*, 2008). In the 2000s, after more than two decades of debates, the Brazilian government reaffirmed the recognition of Santo Daime, União do Vegetal and Barquinha as legitimate Brazilian religions (Antunes, 2019a; 2019b).

As Labate and Feeney (2014) state, the reaction to the growth of this phenomenon has been one of unease among countries where the religious use of ayahuasca has surfaced. Responses to these groups — often based on "illicit drug use and drug trafficking" accusations — raise complex questions about law, culture, and religion in a worldwide context increasingly marked by transnational cultural flows (Labate; Feeney, 2014, pp. 111-2).

In light of this, we will focus on one aspect which is often overlooked in studies regarding the religious use of psychoactive substances, the legal one. Thus, this article analyzes the legal disputes between the U.S. federal government and a Brazilian ayahuasca religion, the Centro Espírita Beneficente União do Vegetal (hereinafter UDV), which led to the regulation of the religious use of ayahuasca for this particular institution in that country. Our aim is to problematize the legal strategies adopted both by UDV and the federal government, as well as the courts' decisions. We also highlight the repercussions of UDV's victory as it provided the blueprint for the legal case of a Santo Daime church against the federal government. In a broader perspective, our goal is to demonstrate that these disputes involved the clash between two major political principles and paradigms in the United States, the prohibitionist stance on drugs and the religious freedom right.

properties such as DMT (n,n-dimethyltriptamine), a controlled substance according to the 1971 United Nations Convention on Psychotropic Substances (CPS).

UDV IN THE UNITED STATES AND THE BEGINNING OF TENSIONS WITH THE FEDERAL GOVERNMENT

UDV started its ceremonies in the United States in 1987 at the request of an American citizen who had met the group while visiting Brazil and later invited two UDV "*mestres*" [masters] to visit his

country. Despite this first initiative, an effort to solidify the institution's presence in the United States only took place in the following decade. In 1990, Jeffrey Bronfman[3] made his first trip to Brazil and began to organize the visit of a greater number of UDV *mestres* to the U.S. in order to inaugurate the institution's ceremonies in the country, which he described in several articles (Bronfman [2004] 2006, 2005, 2011a, 2011b, 2013, 2015). Three years later, the UDV officially became a church in the state of New Mexico.[4]

According to Bronfman, UDV held meetings and ceremonies for six years. During this period, it expanded throughout different cities in the United States. However, the late 1990s would mark the beginning of tensions between the institution and the United States federal government. In May 1999, agents of the U.S. Customs Service and the Federal Bureau of Investigation (FBI) went to Bronfman's office to conduct a "controlled drop". After Bronfman accepted and signed the delivery of a shipment of *hoasca*[5] sent from Brazil, a SWAT team of twenty to thirty armed agents entered his office, confiscating computers, personal records and a series of documents (Bronfman, [2004] 2006, p. 12).

Although no one was arrested, UDV members were informed that the government was considering suing them for violation of the Controlled Substances Act (CSA)[6] regarding the import, distribution and consumption of Dimethyltriptamine (DMT), a controlled substance under the CSA. According to UDV representatives, the seizure of the shipment of *hoasca* and the threat of legal action caused them to suspend their activities. Later, some UDV members met with representatives from the Department of Justice to try to reach an agreement.

After eighteen months of contacts with the U.S. Attorney's office, UDV decided to file a lawsuit in the 10th Circuit Court — which has jurisdiction over the state of New Mexico — against the U.S. Customs Service, the Department of Justice and the Drug Enforcement Agency (DEA). According to Bronfman (2005, p. 190), "their failure to respect our most basic human right to freely exercise our religious practice and their neglect of their own sworn duty to uphold the U.S. Constitution necessitated our decision to bring the offending agencies into court". Thus, UDV accused the federal government and its agencies of violating their religious freedom rights. In opposition, the government claimed that the religious use of ayahuasca was, in fact, a criminal activity that violated both domestic and international drug statutes (United States, 2000, pp. 9-10).

UDV'S COMPLAINT AGAINST THE U.S. GOVERNMENT

On December 22, 2000, UDV representatives filed a legal action against the federal government arguing that there had been an arbi-

[3] Jeffrey Bronfman is an educator and environmentalist. His first experience with UDV took place on a trip to the Amazon to create an environmental protection reserve. He joined UDV in 1992 and, in 1994, Bronfman became the first UDV *mestre* [master] outside Brazil (Bronfman, 2015, p. 3). He currently serves as vice president of the institution in the U.S. and a member of the board of directors. In addition to participating directly in the disputes surrounding *hoasca*'s regulation in New Mexico, Bronfman was responsible for coordinating all UDV institutional relations in the country. Bronfman describes himself as "one who (through circumstance and choice) has had the necessity of carefully studying and working to redefine the laws that govern the use of substances that I have found to be sacred; where severe legal prohibitions have existed around their use" (Bronfman, 2013, p. 1).

[4] With over 21,000 members, UDV has branches in over one hundred cities throughout Brazil. Currently, approximately 600 UDV members live in the United States. There are active *núcleos* [churches] in Colorado, New Mexico, California, Connecticut, Florida, Texas, and Washington.

[5] *Hoasca* is the term used by UDV members to refer to ayahuasca.

[6] The Controlled Substances Act (CSA) is the federal statute that regulates the use of psychoactive substances in the United States.

trary application of the CSA, infringing, thus, the religious freedom of its members. In the complaint, UDV presented itself as a Brazilian Christian religious organization and requested a declaratory junction that the government's interpretation of ayahuasca as a controlled substance was illegal and unconstitutional. According to UDV, the government acted beyond its legal authority, creating a burden for the religious use of ayahuasca. In addition, UDV requested an order declaring that *hoasca* should not be classified as a controlled substance and barring the federal government of pursuing legal actions against the religious use of *hoasca* (United States, 2000).

UDV also accused the United States government of violating a number of constitutional rights, including the free exercise of religion as set forth in the First Amendment of the United States Constitution. UDV's claim was also based on the Religious Freedom Restoration Act of 1993 (RFRA),[7] which prohibits any United States agency, department or official from substantially burdening the free exercise of one's religion, unless the government is successful in demonstrating that the application of the burden promotes a compelling government interest, and it is the least restrictive means of promoting that interest. Finally, UDV accused the federal government of violating a series of international treaties on the principle of religious freedom (Bronfman, [2004] 2006, p. 14).

The complaint indicated that *hoasca* is a "sacrament" produced exclusively in a "ritual context". UDV members claimed that *hoasca* ceremonies constituted the core of their religion, arguing that the prohibition would prevent its members from freely exercising their religious rights (United States, 2000, pp. 6-7). As for the charges related to the federal government, UDV claimed that the government's mistaken interpretation of the CSA created a burden on the free exercise of religion of its members. Therefore, UDV argued that the criminalization of ayahuasca did not represent a compelling governmental interest (United States, 2000, pp. 10-1).

On the other side of the dispute, the federal government argued that "surely neither the Controlled Substances Act nor the Religious Freedom Restoration Act required the government to wait until it had 'a full-blown drug epidemic' on its hand before it attempted to stem the tide of usage" (Bronfman, [2004] 2006, p. 14). One can note that the government's stance is based on the prohibitionist paradigm,[8] which is composed of two fundamental premises: the use of drugs is intrinsically harmful and, therefore, it cannot be allowed; and that the best way for the state to do this is to prosecute and punish producers, sellers, and consumers (Fiore, 2012, p. 10).

To support this prohibitionist standpoint, the federal government declared that it was its responsibility to protect public health, claiming that there were not enough studies on the subject, and that there

[7] The enactment of the Religious Freedom Restoration Act (RFRA) by the U.S. Congress was a response to the Supreme Court's decision in the 1990 case Employment Division, Department of Human Resources of Oregon vs. Smith. In the Smith case, the Supreme Court stated that a law establishing a burden on a religious practice did not need to be justified, as long as the law was neutral and generally applicable. In this case, Al Smith, a Native American who worked in a drug rehabilitation clinic, was fired after refusing to stop using peyote in Native American Church (NAC) ceremonies. Smith argued that the state of Oregon violated his constitutional right to the free exercise of religion by using the ban on peyote to restrict religious practices. The Supreme Court's decision was unfavorable to Smith, maintaining that the right of free exercise of religion does not exclude an individual from the obligation to comply with a valid, neutral, and generally applicable law. In Smith's case, the Supreme Court held that the Oregon State Drug Law, which prohibited the possession of peyote, among other substances, had no exception for the religious use of controlled substances. Thus, Smith was fired and had no access to labor benefits because his dismissal involved the use of a controlled substance, even if it took place in religious ceremonies (United States, 2002, p. 8). The Smith case gained notoriety and shortly thereafter Congress passed the Religious Freedom Restoration Act (RFRA) of 1993, as a response to the Supreme Court's decision.

[8] According to Fiore (2012, p. 9), the emergence of the prohibitionist paradigm occurred due to a conjunction of factors, such as the political radicalization of American puritanism, the interests of the rising pharmaceutical industry in monopolizing drug production, the new geopolitical conflicts of the 20th century, and the commotion of elites frightened by urban disorder.

might be risks associated with the use of ayahuasca that had not yet been considered. Specifically, the federal government based its defense on three arguments: the respect for international treaties and conventions; the alleged risks of ayahuasca use to the health of UDV members and to public health; and the dangers of the recreational use.

THE CENTRO ESPÍRITA BENEFICENTE UNIÃO DO VEGETAL VS. ASHCROFT

Between October 22 and November 2, 2001, the Court of the 10th Circuit held hearings in which the interested parties presented their expert witnesses and arguments. On August 12, 2002, Judge Parker, Chief Justice of the Federal District of New Mexico, issued his decision. In the ruling, the Court of the 10th Circuit recognized UDV as a religion, considering it to be a church that combines aspects of Christian theology with religious beliefs of traditional indigenous, and attesting that the use of *hoasca* played a central role in the group's religious ceremonies. However, this recognition was only the initial step in the ruling on the legal dispute between UDV and the federal government.

The district court focused, initially, on UDV's stance that there was an arbitrary application of the CSA that infringed the right of its members to practice their free exercise of religion in accordance with the First Amendment. UDV argued that the CSA was not neutral nor generally applicable, as it allowed an exemption to the Native American Church (NAC) (Maroukis, 2010; Urban, 2015; Feeney, 2016)[9] and other series of exemptions and licenses allowing the use of a controlled substance in non-religious settings, such as the medical use or the use of controlled substances in academic research. In this regard, the court argued that any action involving the clause on the free exercise of religion should begin by proving that a particular government action caused a burden to a specific religious practice.

Initially, the court did not challenge UDV's argument that the CSA's interpretation prohibiting *hoasca* caused a burden to its members. However, the court assessed the application of the CSA regarding *hoasca* based on the following question: did the law fail to restrain non-religious conduct that endangers the interests of the state in the same way that it prohibits the ceremonial use of controlled substances? Thus, J. Parker was not convinced by UDV's argument that the use of controlled substances in research, medical and industrial activities demonstrated an arbitrary application of the law. His position was based on whether such exceptions implied a risk to the same interests that the government intended to curtail by prohibiting the religious use of controlled substances.

[9] The Native American Church (NAC) is a religion recognized by the United States government which, in its ceremonies, makes use of peyote, a cactus that also contains a controlled substance according to the CSA, mescaline. For studies focusing on the NAC, see Maroukis (2010), Urban (2015), and Feeney (2016).

The court held that some uses of controlled substances in scientific research or medical treatment did not compromise the government's interest in promoting public health, as opposed to the unregulated use of controlled substances in a ceremonial context, which could present health risks. Following this argument, the court concluded that the CSA complied with the general application requirement because the law focused on all uses of controlled substances that posed a risk to public health, whether secular or religious (United States, 2002, pp. 12-3). One can note that the judge's position also incorporates elements of the prohibitionist discourse, making use of notions such as "health risks" and reaffirming the legitimate role of the state in fighting drug use. It is worth stressing that the prohibitionist paradigm is related to the historical background of the birth of biopolitics[10] and the growing role of the modern state in the regulation of bodies, behaviors, and conducts (Foucault, 2008).

Nonetheless, as it will be discussed below, the issue of biopolitics and the prohibitionist paradigm clashed with the principle of religious freedom, one of the historical political pillars of American society.[11] Regarding the latter, it is important to highlight that the United States government did not challenge J. Parker's view that UDV was, in fact, a religion, that its members sincerely believed in its principles, and that the application of the CSA to the ceremonial use of *hoasca* caused a substantial burden to their free exercise of religion. Thus, according to the RFRA, it was up to the government to prove that the prohibition of the religious use of ayahuasca served a compelling government interest and that it was the least restrictive means of dealing with UDV (United States, 2002, pp. 26-7).

Regarding health and safety issues, the court pointed out the lack of a considerable number of studies on the physical and psychological effects of the religious use of ayahuasca. According to J. Parker, the lack of knowledge on ayahuasca had made it an object of dispute, as experts were presented by both parties, defending different interpretations in several topics, especially regarding its alleged risks. On the one hand, UDV argued that there were no proven health risks related to the ceremonial use of ayahuasca. On the other hand, the government maintained that it had evidence that it presented substantial health risks (United States, 2002, pp. 33-4).

During the hearing, UDV presented the testimony of Dr. Charles Grob, professor of psychiatry at the University of California, Los Angeles. In 1993, Dr. Grob led a team of researchers on the Hoasca Project. The study compared fifteen long-term UDV members who drank *hoasca* for several years, and fifteen individuals who had never consumed the drink (Grob *et al.*, 2002; Andrade *et al.*, 2002; Callaway, 2011). According to Dr. Grob's statement, despite its limitations, the project

[10] Foucault (2008, p. 317) defines "biopolitics" as "the attempt, starting from the eighteenth century, to rationalize the problems posed to governmental practice by phenomena characteristic of a set of living beings forming a population: health, hygiene, birthrate, life expectancy, race". According to Foucault (*id*., p. 328), biopolitics refers to the construction of the subjects of right on which political sovereignty is exercised as a population that a government ought to manage.

[11] In an article about Tocqueville's work on the political role of religion and the importance of freedom of religion in the United States, José Casanova (2011) highlights the statement of the former that in the United States, unlike France, religion and freedom were not seen as incompatible; on the contrary, they were closely associated. According to Casanova, Tocqueville was struck by the fact that the separation between Church and State did not mean the separation between religion and politics, highlighting the importance of religion as the first of the American political institutions.

concluded that no harmful effects due to the use of ayahuasca were detected. On the contrary, Grob argued that the research team noted the consistency of the data in regard to the high functional status of subjects who had made a prolonged use of ayahuasca (United States, 2002, p.34).

In response, the government questioned the Hoasca Project's reliability in demonstrating the safety of ayahuasca. Government experts argued that the study had many limitations, particularly from a methodological point of view. They criticized the fact that the survey used a small sample size, including only males. They also criticized the fact that the study did not provide basic data that could be used to compare information on those surveyed before and after participation in UDV rituals (United States, 2002, pp. 35-6).

After considering the arguments presented by both parties, J. Parker decided that, in other contexts, the risks that the government identified would be sufficient to support its position until further studies were made on the subject. In this regard, J. Parker highlighted that even UDV's scientific experts recognized the need for additional research on health issues concerning the religious use of *hoasca*. The court, however, decided that the government did not successfully present evidence of a compelling interest concerning the health risks of ayahuasca (United States, 2002, pp. 44-5).

Regarding the recreational use topic, the government representatives argued that the federal government also had a compelling interest in ensuring the safety of individuals who wanted to ingest *hoasca* in a non-ceremonial environment. The government stated that, if UDV were allowed to use *hoasca* in its religious ceremonies, the brew could eventually be diverted to potentially harmful, non-religious settings, without proper supervision.

In response, UDV reaffirmed that *hoasca* did not have the significant potential for abuse attributed by the government. To support their point of view, UDV presented the testimony of Dr. Kleiman, professor of Policy Studies at University of California, Los Angeles (UCLA), who argued that the demand for ayahuasca was relatively low, mainly because of the negative side effects associated with its use. Kleiman also emphasized that the wide availability of pharmacologically equivalent substitutes to ayahuasca, some of them with less undesirable side effects and less apparent legal risks, would contribute to substantially reducing the motivation for its recreational use (United States, 2002, pp. 50-1).

After reviewing both positions, the court decided that the government failed to show a compelling interest. Thus, the government was defeated in the first two fronts in which it sought to impose the prohibition of the religious use of ayahuasca. It remained, however, the third topic alleged by the government (United States, 2002, p. 52).

The final argument of the government to support the ban of ayahuasca was based on the 1971 United Nations Convention on Psychotropic Substances (CPS).[12] The government stated that the CPS required the United States to ban the ceremonial consumption of *hoasca*. According to the government, respecting the terms of the convention would be a compelling interest because, in general, nations must honor the principles of international law, as well as treaty obligations.

In light of this, the federal government highlighted the centrality of the position occupied by the United States in the drug war and its particular interest in complying to the convention, especially in regard to obtaining cooperation from other nations in the fight against international drug traffic. Ultimately, the federal government stated that violating the obligations set forth by the United Nations would undermine the country's efforts to encourage other nations to comply with the agreement and could interfere in the position of other nations on the development agreements with the U.S. in the future (United States, 2002, p. 54).

Even recognizing the government's position, the court concluded that the government failed to comply with the first criterion stipulated by the RFRA, i.e., to prove that there was, in fact, a compelling interest in banning ayahuasca on the three fronts argued: the possible health risks for UDV users; the risk of diversion for recreational use; and the adherence of the U.S. to international treaties. The court determined that the government's measure regarding the religious practices of UDV members also failed to meet the second RFRA requirement, which demanded the least restrictive approach to deal with the issue of the religious use of ayahuasca (United States, 2002, p. 58).

In the ruling's conclusion, J. Parker argued that there would be irreparable harm if the injunction were denied, considering, thus, that the burden on UDV's religious practices outweighed the possible harms alleged by the federal government. The judge established that granting the preliminary injunction to UDV was in the public interest, given the position that violations of the rights of religious freedom protected by the RFRA represented irreparable harm to UDV and its members (United States, 2002, p. 59).

Despite UDV's victory, in which the principle of religious freedom overrode the prohibitionist paradigm, one can note the hegemonic force and centrality that the latter has in the regulation of American society, representing the cornerstone of the federal government's position. Paradoxically, in order to have its right to religious freedom guaranteed, UDV also had to adopt a biomedical approach and vocabulary demonstrating, through the consulta-

[12] The United Nations Convention on Psychotropic Substances marks an international effort to set out parameters to prevent and fight drug abuse and illicit trafficking of psychotropic substances. It is worth noting that the court drew attention to the fact that more than 160 nations were part of the treaty, including Brazil and the United States, which has a classification system for controlled substances similar to that found in the Controlled Substances Act. In the CPS, as in the CSA, DMT is framed in List I, the category subject to the most severe controls (United States, 2002, p. 53).

tion of a variety of specialists, that there was no scientific proof that there were side effects related to the use of ayahuasca, nor that it posed health risks to its users.

THE POSITION OF THE COURT OF APPEALS AND THE SUPREME COURT

In 2002, the 10th Circuit Court issued an injunction prohibiting the government and its agents from interfering with the import, distribution and religious use of *hoasca*. The government appealed the decision to the Court of Appeals. Despite divided opinions, the Court of Appeals upheld the initial decision of the 10th Circuit Court. The majority of the justices decided that, due to the balance of evidence presented before the 10th Circuit Court, the government failed to meet the necessary requirements in accordance with the criteria established by the RFRA.[13]

[13] For a detailed analysis of the Court of Appeals decision, see Meyer (2005).

After the loss in the Court of Appeals, the United States government appealed to the Supreme Court to review the decision, questioning the application of the RFRA. According to government representatives, the ban on *hoasca* involved not only health risks for its users, but also the country's efforts to implement international anti-drug legislation, undermining intergovernmental relations and weakening the country's ability to put pressure on other countries (United States, 2005, pp. 19-29).

The Supreme Court stated that the decision considered, on the one hand, the implications of a government measure that caused actual irreparable harm to a religious group, and, on the other hand, the potential risks alleged by the government. Thus, although recognizing the relevance of the CSA, the Supreme Court highlighted the importance of RFRA to the case. The Supreme Court's decision emphasized that the RFRA requires the government to demonstrate that the compelling interest test has been met by applying a law that burdens the sincere exercise of one's religion (United States, 2006, pp. 7-10).

In addition, the Supreme Court argued that the exemption established for the religious use of peyote also jeopardized the government's position that the CSA established a closed regulatory system that did not admit RFRA-based exceptions. The Supreme Court indicated that the exemption for peyote dated back to the beginning of the CSA, and that there was no evidence that it had compromised the government's ability to enforce its role regarding drug policies. Thus, the Supreme Court did not question the validity of the interests presented by the government, as well as its general interest in promoting public health through the application of the CSA, but that the mere proposition of such interests was not sufficient to win the case (United States, 2006, p. 17).

In that regard, the Supreme Court held that the RFRA clearly contemplated the possibility of courts recognizing exceptions, so that a person or institution whose religious practices have been hindered could file a complaint or lawsuit and obtain appropriate compensation from the government. In addition, the court stressed in its conclusion that Congress's position in this regard was based on a recognition that religion-neutral laws could create a burden to religious freedom, which is why Congress legislated the compelling interest test as a device for courts to balance the principle of religious freedom and competing government interests. Hence, the Supreme Court upheld the decisions of the District Court and the Court of Appeals and rejected the federal government's appeal (United States, 2006, pp. 18-9).

THE UDV-DEA AGREEMENT: REGULATING THE RELIGIOUS USE OF A CONTROLLED SUBSTANCE

The Supreme Court's decision, however, did not resolve the dispute between UDV and the federal government, as the question of how the religious use of ayahuasca should be regulated remained open. The need to establish an agreement was due to the framing of ayahuasca as a controlled substance, whose import, distribution and use was subject to DEA regulations, procedures and controls. According to Bronfman (2013, p. 4), UDV chose not to contest the court's position, opting to seek a cooperative relationship with the federal government and government agencies responsible for compliance with the country's drug laws.

The agreement between UDV and the DEA was established in 2010, culminating in a twenty-one-page document that defined which regulations related to the use of controlled substances applied to UDV (United States, 2010, pp. 3-4). As part of the agreement, UDV had to obey certain practices required of pharmacies and researchers when importing, distributing and storing controlled substances. On the other hand, the DEA agreed not to impose or expect UDV to adapt its practices to other regulations applied to non-religious licensees.

One example cited by Bronfman (2013, p. 5) is related to the Code of Federal Regulations, which requires importers and distributors of controlled substances to record the "potency dose" of each batch of drug being imported, based on the levels and concentrations of active compounds. This requirement did not apply to UDV. Another significant example provided by the UDV leader refers to the fact that federal regulations grant the DEA authority for the licensing of those who distribute controlled substances within a narcotic treatment center. According to Bronfman, it would be inadmissible for UDV to

extend the same power to the DEA, because it would give the federal agency the authority to determine who could or could not be an UDV *mestre*, the religious leader who ministers the sacrament to church members during ceremonies. Consequently, it was determined that the licensing authority for distribution by the DEA would be inapplicable to UDV religious activities.

In light of this, one can argue that the exemption for the religious use of ayahuasca granted by the Supreme Court forced the anti-drug agency to accommodate UDV's practices throughout an agreement in which some elements were negotiated according to the needs and positions of both parties. While the DEA tried to ascertain previously established controls and enforcement mechanisms, it had to abandon some measures, such as the choice of who would administer ayahuasca, and also to adapt the language used in its norms, given that notions such as "potency" and "concentration" were devoid of their applicability. Nevertheless, what seems like a friendly mutual compromise should be understood as the result of the practical need to establish a normativity when two parties differ on the essential points of the quarrel, not only in terms of how the norm is complied with, but also in the semantic level, and in the very applicability, or not, of certain categories. The particularity of this agreement highlights the difficulties of the prohibitionist paradigm and biomedical discourse to equate and encompass the ritual use of psychoactive substances in contemporary democracies.

THE CASE OF A SANTO DAIME CHURCH AGAINST THE FEDERAL GOVERNMENT

As in the UDV case, a shipment of ayahuasca addressed to Jonathan Goldman — the leader of a Santo Daime church called the Church of the Holy Light of the Queen (CHLQ), based in Ashland, Oregon — was seized, triggering a legal dispute between the federal government and the members of the CHLQ.[14] With the support of the Treasury and Justice Departments, the DEA obtained a warrant to search Goldman's home. The agents entered his house carrying firearms, they searched his residence, and confiscated a quantity of Santo Daime (ayahuasca) and several personal items. At the time, Goldman was arrested, remaining in custody for twelve hours until he was released on bail (Antunes, 2018).

[14] For a detailed analysis of the legal disputes between the CHLQ and the federal government, see Antunes (2018).

It is worth noting that both Santo Daime and UDV groups had their shipments seized in the same period. However, while UDV moved quickly, the Santo Daime church only decided to file a lawsuit against the federal government in 2008, two years after the UDV's victory in the Supreme Court. According to Goldman, the time gap between the beginning of tensions with the government and the formalization of

the complaint was due, among other factors, to differences between the CHLQ and other Santo Daime churches in the country, which did not agree with the idea of suing the government. In order to carry out their wish to pursue legal action, the CHLQ dissociated itself from CEFLURGEM, the United States branch of the Brazilian group Igreja do Culto Eclético da Fluente Luz Universal Patrono Sebastião Mota de Melo (ICEFLU), becoming an independent ayahuasca church (J. Goldman, personal communication, December 9, 2016).

In the CHLQ case, as in the UDV's, the federal government questioned the possible health risks posed by ayahuasca and the potential for recreational use. Once again, the government claimed that possible exceptions could call into question the ability of its agencies to implement drug policies, as well as its leadership role in the war on drugs vis-à-vis other nations. Although the district court found ayahuasca to be a controlled substance, the CHLQ was successful in following the UDV's legal strategy, resorting to the RFRA, and the government was defeated on all fronts. The representatives of the federal government decided not to appeal the decision. It should be noted that the final resolution of both disputes was based on the same principles. Despite recognizing that ayahuasca should be classified as a controlled substance, the preeminence of the RFRA over the CSA was upheld in both legal disputes.

As with the UDV case, there was never a consensus between the federal government and ayahuasca religions. Throughout the unfolding of the legal disputes, the government insisted on defending the classification of ayahuasca as a controlled substance that posed serious health risks to its users, claiming that both groups had no right to demand an exception for the religious use of ayahuasca. In contrast, both the UDV and the CHLQ stressed that ayahuasca was a sacrament whose health risks were negligible as long as its consumption was made in a controlled religious context. Both groups also argued that ayahuasca should not be classified as a controlled substance and that the government had no legitimacy nor adequate legal mechanisms to properly regulate their religious practices.

A BALANCE BETWEEN RISKS AND RIGHTS: PROHIBITIONISM VS. RELIGIOUS FREEDOM

These cases help us understand the ways in which the religious use of ayahuasca has taken the form of a public problem in the United States. At all stages of the disputes, an effort was made by federal government agencies and representatives to classify ayahuasca as a controlled substance and to curtail the actions of ayahuasca groups in the country. The government repeatedly questioned the possible

health risks presented by ayahuasca, the potential for diversion to recreational use, and claimed that possible exceptions would undermine the capacity of its institutions to implement drug policies, as well as its leadership role in the war on drugs in relation to other nations. At all occasions, the government insisted that these groups did not have the right to claim an exemption for the religious use of ayahuasca.

On the other side of the dispute, the ayahuasca religions UDV and Santo Daime maintained that ayahuasca should not be considered a controlled substance and that the government did not have the legitimacy nor the appropriate legal mechanisms to adequately regulate their free exercise of religion. The decision of the courts, in turn, was distinct from both positions. All courts classified ayahuasca as a controlled substance according to the CSA. However, they all concluded that the RFRA had precedence over the CSA. Notwithstanding considering *hoasca* as a drug, the courts decided that the government had to prove that it had a legitimate and compelling interest, demonstrating that the religious use of ayahuasca posed a real risk.

These cases and their developments are the result of the particular way in which the legal framework of ayahuasca was established in these disputes, based both on the prohibitionist stance of the federal government and its agencies, and on the way that standpoint was incorporated by the courts of the country. Ayahuasca is a controlled substance in the federal agencies and courts' eyes, but that enjoys an exemption from the application of the CSA, provided that it is consumed in a religious context.

Ultimately, the problem of the religious use of ayahuasca in the United States can best be described by a metaphor of a scale in which weighed, on one side, the burden imposed on the exercise of religious freedom and, on the other, the potential risks that ayahuasca presented to its users and the federal government. In the judgement of all courts, the scale tilted towards the religious rights of ayahuasca religions'. In this scenario, a number of elements were in dispute, such as the meaning and applicability of certain categories. However, not only have categories and terminologies been put into play and operated in different ways by experts on both sides, but also different legal strategies were established. Nonetheless, both sides had to employ the biomedical discourse of drugs and its categories, such as controlled substances, side effects, health risks, etc., and to address drug related issues, for instance the dangers of recreational use and the risks of abuse. This requirement attests the hegemonic power of the prohibitionist discourse and the weight of biopolitics in the United States public arena.

Nevertheless, one of the main issues in the disputes was the preeminence of certain laws and their applicability. In light of this, it is possible to argue that the establishment of the RFRA in 1993 by the

U.S. Congress presented a new direction for the courts of the country, reaffirming the importance of religious freedom as a fundamental right. This position, which bestows the RFRA with preeminence over the other statutes, made it possible for UDV, and later to the CHLQ, to gain the right to consume a controlled substance in a religious context.

It can be argued that the problem of religious use of ayahuasca orbited around a central question: what is the scope and, in contrast, the limits of the state in imposing restrictions based on drug laws that interfere with the fundamental rights of its citizens, in this case, religious freedom? Ultimately, these cases seem to underline that, despite the prominence of the prohibitionist paradigm, the preeminence of the RFRA over the country's other statutes indicates the relevance that the right to the free exercise of religion has within its legal system, constituting a central element that guides the way in which the hierarchy between normativities is established.

In a broader perspective, these disputes highlight the tensions between a prohibitionist paradigm that dictates the shape of drug policies and the principle of religious freedom associated with the traditional use of psychoactive substances. Despite the victories of UDV and Santo Daime in the United States and the advance of these groups throughout Latin America, Europe and Asia, the legal future of the ayahuasca religions is still uncertain. It is too early to proclaim that, as they expand to new countries, these groups will successfully plea to the principle of religious freedom as a way to obtain legal recognition of their practices, given, for example, the decisions of countries such as France, which banned ayahuasca, or the Netherlands, whose Supreme Court reversed, in 2019, the 2001 decision that allowed the religious use of ayahuasca in the country. For the time being, it seems that the tensions between prohibitionism and the religious use of controlled substances will remain constant.

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