



**THE USE OF ILLICIT DRUGS UNDER DEBATE  
IN THE NATIONAL CONGRESS: THE POLITICAL ORIENTATION OF  
PARLIAMENTARIANS (1999-2015)**

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**Abstract:** This work uses the legislative proposals on drug policy presented at the first calendar year of the last five legislatures to develop a case study in order to understand whether the members of the Nacional Congress has been oriented by political conception predominantly liberal or communitarian and observe the changes in their orientation over the studied period. Some critical remarks are also made about the actions and omissions embedded in legislation and legislative proposals. It concludes that the communitarianism, predominant orientation in all periods analyzed, strengthened after the adoption of the current national drug policy.

**Keywords:** Drugs Policy; Legislative Power; Liberalism; Communitarianism; Public policy.

## **1 Introduction**

In this work a case study on the national drug policy was carried out, understanding this theme as one of the fields in which the debate about the public and private autonomies are manifested in the contemporary world. Discussions on the appropriateness and efficiency of maintaining prohibitionist policies, in contrast to the tendency of some countries to release the use and sale of light drugs by adopting a policy of harm reduction, are fertile ground for the debate on the role of the State in the regulation of private life, as well as on the political conceptions prevailing in each country. Despite not ignoring the importance of understanding the international scenario, the academic effort is to understand the position of the Brazilian federal legislative branch in relation to drug policy and, consequently, the predominant alignment of the deputies and senators according to a liberal political conception or communitarian.

The definition of which substances should be considered illegal by the State and its restricted consumption and trade is not a peaceful subject in the Brazilian parliament. The way of

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treating those who are caught using, using or marketing illegal drugs also generates conflicts between members of the public power. The current criminal drug policy was established by the Brazilian State in 2006, through the approval of Law number 11,343, of 2006, which replaced the previous Law number 6,368, of 1976. The publication of the legal document, however, did not put an end to the discussions in the society, nor in the National Congress. Law Drafts are often presented, sometimes to increase the rigor of anti-drug policies, sometimes to humanize the treatment of users and dependents, sometimes to reduce prohibitionism.

The central question that permeates this research is: how have the Brazilian National Congress parliamentarians positioned themselves on drug policy in the country? Knowing that the current legislation extinguished the sentence of private jail for the drug user, it is questioned whether the legislative branch would be moving towards a more liberal political view than the one previously adopted, seeking to remove public power from the scope of individual self-determination. Through the analysis of the legislative propositions presented in the first calendar year of the last five legislatures, this research seeks to understand the predominant political orientation in the legal treatment of drug users, in addition to the tendencies and strengths or weaknesses of the policies proposed by the Legislative. As a guiding line for this analysis, liberal and communitarian political conceptions are used, starting from the hypothesis of research that the federal legislative branch would be oriented predominantly by the communitarian conception, but would be opening space for liberal policies.

The present work was developed under a qualitative methodology, such as a case study on the position of parliamentarians in relation to drug policy in Brazil. It seeks to understand what are the decisions made on the subject and what motivates them. The chosen unit of analysis includes the two houses of the National Congress, in order to understand the legislative process at the federal level. As for the temporal delimitation, the option for the first year of the last five legislatures (1999, 2003, 2007, 2011 and 2015) aims to increase the scope of the research and try to observe possible changes in the ideological orientation of the National Congress regarding drug policy at the over the last few years. In addition, from the verification of the procedure and the appendages made between the propositions, it is possible to identify drafts proposed in

other years, but that have centralized the legislative debate. Although some legislative proposals for the development of research are identified, the case study developed has a holistic approach, since it is directed to the examination of the global nature of the public policies proposed by the parliamentarians, and not to the analysis of one or some particular propositions (YIN, 1994).

In the course of the research, some points of the drug policy proposed by the federal parliamentarians drew attention, and deserved a closer look. Thus, the survey on the legislative proposals was not restricted to the classification of the alignment of the projects with regard to liberal or communist political conceptions. It has been identified that some aspects have gained

prominence among the prevailing concerns of parliamentarians in certain periods, such as criminal or civil liability of drivers causing accidents while driving a motor vehicle under illicit drug use - the subject matter was the merit of about 20% of the proposals selected in the year 2011. As a result of these observations, some recurrent themes were highlighted during the analysis of the propositions, in order to help the elaboration of the conclusions of this research. Similarly, the absence of legislative manifestations on certain aspects of drug policy has also been timely mentioned, such as the lack of distinction between the user and the drug dependent, for example. The lack of current and reliable research and information on drug use in Brazil also drew attention throughout this research.

Based on the collected data, it was observed that, although Law No. 11,343, of 2006 (BRASIL, 2006), showed signs of liberal alignment of the National Congress from the disfigurement of the drug user, the profile of federal parliamentarians in the following years after the adoption of that act, on drug issues, has been increasingly sensitive to the communitarian position. The legislative proposals, in their vast majority, reinforce the prohibitionist model and seek to reinforce the state orientation regarding the way of life considered adequate by the public power.

## **2 Political Conceptions: Liberalism and Communitarianism**

It is interesting to the purpose of this research the discussion about the limits of the freedom of self-determination brought by communitarian and liberal political philosophies. Focusing on what matters for the present work, one can say that the main difference between the two theories is the interpretation of the role of the State in guaranteeing a "good life" to citizens, as well as in the understanding of what can be considered a "good life" and, therefore, protected by the State.

In a very simplified way, liberalism argues that it is up to each individual to define how he will lead his life. Each should be free to choose and seek what he considers a "good life," and it is not up to the State to encourage or repress those choices. It is presumed that an attempt to direct these choices would be an offense to self-determination, and that no one would be better able to define the course to follow than the very person who is to follow them. Coherently with this freedom of self-determination, liberalism attributes to each one the responsibility for his or her choices. A prime premise of liberal theory is to understand that all individuals in a given society must have the same freedom of self-determination and bear responsibility for the decisions made. The State therefore has to try to guarantee an equality of freedom, so that all have, *a priori*, the same opportunities of choice, and this freedom should not be restricted by factors outside the control of people, such as the social class of the family in which it was born, sex, or skin color. Thus, the liberal state must treat everyone equally, allowing everyone to be able to live according to their personal ideals, and assuming that the differences that result from these choices must be

the responsibility of each individual, not the public power (KYMLICKA, 2002).

Communitarians, on the other hand, are more concerned with social unity and the ability of social groups to pursue common goals. It is feared that a very big array of ideals of life will undermine the sense of community unity, and will impair interpersonal relations. For the adherents of communitarian theory, the identity of a way of life would be the element capable of keeping the nations united, and not a common sense of justice, as the liberals think, or even a sense of nationalism, as defended by the liberal-nationalists (KYMLICKA, 2002). Thus, the aims and practices of the cultural tradition of each people gain importance in the formation of the political basis of the concept of the common good, and must therefore be promoted by the State. Contrary to liberalism, therefore, communitarianism understands that the state would be responsible for promoting a particular way of life, encouraging individuals to adopt common ideals and reject conceptions of life that deviate from those seen as appropriate by a particular society (KYMLICKA, 2002).

The differences between the two political conceptions are evident in the face of personal choices that may bring harm to the individual. This paper discusses the public policy on illicit drugs in the country. Drug use, as long as it is motivated by the free will of the person who uses it, is a choice of life that falls within the individual's private sphere. Nonetheless, a society aligned with the communitarian profile will be dedicated to preventing its individuals from using drugs if society sees such substances as something nefarious, which departs from the concept of a culturally constructed good life. A liberal society, however, would expend less effort in its attempt to dissuade its citizens from consuming drugs, only to ensure that the private use of drugs does not affect the freedom of self-determination of other individuals.

### **3 National Policy on Drugs**

The National Policy on Contemporary Drugs is regulated by Law No. 11,343 of 2006 but it has origins in the early twentieth century, having been strongly influenced by the US prohibitionist model of war on drugs. Over the years, the criminal treatment given to combat drug use has undergone some modifications, culminating in the proposal of decertification of the user, currently in force.

For the proper contextualization and understanding of the debates, a brief history is taken of the Brazilian norms about drug policy. Next, notes are made on the legislation currently in force, as well as some of its effects.

At the constitutional level, repression of drug trafficking is provided for in article 144 of the Constitution of the Federative Republic of Brazil, which includes, among the powers of the federal police, the prevention and repression of "illicit traffic of narcotics and related drugs." In addition, Article 243 provides for the expropriation of land used for the illegal cultivation of psychotropic plants, as well as for any goods of economic value seized as a result of illicit drug

trafficking. The values obtained from the expropriation of these assets must be reverted to the "treatment and recovery of addicts" and to the provision of supervision, control, prevention and repression of drug trafficking activities.

The legal system also has several legal and infralegals that regulate the treatment of drug use and trafficking. Law No. 11,343 of 2006 (BRAZIL, 2006) plays a central role in establishing the National System of Public Policies on Drugs (SISNAD), prescribing measures for the prevention of misuse, attention and social reintegration of users and drug addicts, as well as rules for repressing trafficking. This law innovated when adopting a policy of treatment and resocialization of the user or dependent of drugs, seeking to avoid imprisonment in these cases. On the other hand, it tried to perfect the systems of combat, repression and punishment to the drug traffic.

Complementing the legislation introduced by Law 11,343, of 2006, Law 10.357, of 2001, establishes norms of control and control on the chemical products that directly or indirectly can be destined to the illicit production of substances narcotic, psychotropic or that determine physical dependence or psychic. Law No. 7.560 of 1986 creates the Fund for the Prevention, Recovery and Fight against Abuse Drugs, which resources should be used to finance, among other things, preventive technical and scientific education programs on drug use and public awareness campaigns, including education and community action campaigns, and the re-equipment and costing of activities to control, control and repress the illicit use and trafficking of drugs and controlled products (article 5 of Law 7,560 / 86).

Decree No. 5.912 of 2006, in turn, regulates the functioning of the organisms of the National System of Public Policies on Drugs, instituted by Law No. 11,343 of 2006. Decree No. 4,345, of 2002, establishes the National Antidrug Policy and provides in its introduction, that "drug misuse constitutes, today, a serious and persistent threat to humanity and to the stability of the political, economic, social and cultural structures and values of all states and societies," and seeks "to achieve ideal of building a society free of illicit drug use. " In addition, several other pieces of legislation regulate the fight against illicit drug trafficking.

#### **4 Legislative Proposals in the National Congress**

The proposals presented in the years 1999, 2003, 2007, 2011 and 2015 that presented in their menu, indexation or text were selected keywords, which are: drug ( s), narcotic (s), narcotic (s), marijuana, and cocaine. As already mentioned, the selection of the first year of each of the last five legislatures for the research was intended to increase the scope of the research from a sample of the proposals presented shortly after the renewal of the parliamentary body. In this way it was possible to reach propositions presented during seventeen years.

The following types of legislative proposals were specifically investigated: bills, supplementary bills, proposed amendments to the constitution, provisional measures and

conversion bills.

Among the propositions resulting from this first research, those that would be most appropriate for the current research were selected. In this way, propositions dealing exclusively with drugs were rejected (since the term "drugs" does not refer only to illicit drugs, many of the propositions found on issues related to medical drugs, which are not directly concerned with this study), drug trafficking, criminal proceedings and other matters that were not directly related to the purpose of this work. Thus, the propositions raised were classified as "useful" to research and "not useful", according to the criteria already mentioned. Those identified as useful were analyzed individually for the following aspects: focus on public health; focus on education or prevention; focus on public safety; criminal or non-criminal character; civil liability of the user; policies aimed at children or schools; inspection; funds, benefits, funds and investments; liberal, community or indefinite political alignment<sup>3</sup>; proposals to release drug use, release for medicinal use or increase ban; and propositions related to traffic.

#### 4.1 Global analysis of propositions

For the analysis of the data presented in this paper, it is important to bear in mind that not all the proposals presented during the last seventeen years have been raised, but only those presented during the first year of each legislature, as explained previously. In addition, due to the purpose of the research, not all the propositions were used, but only those considered compatible with the research theme, according to the criteria presented previously. Thus, the numbers brought in should not be considered in an absolute way, but as indicative of the trends observed among national congressmen in recent years.

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<sup>3</sup> The propositions were classified according to their predominant alignment with a liberal or communitarian political ideology.

**Chart 1:** number of propositions considered useful by year researched

## Propositions pertinent to the research.

year:

number of propositions:

Total:

Proposições pertinentes à pesquisa					
Ano	1999	2003	2007	2011	2015
nº de proposições	9	11	18	47	25
total	110				

Source: prepared by the authors

In total, 658 proposals were presented in 1999, 2003, 2007, 2011 and 2015. Of these, 110 were considered useful to the research for presenting a focus on the drug user, and analyzed in a more detailed way. It can be seen that the number of proposals concerning drugs in the last two years analyzed has increased considerably: while in 1999 only 44 drug proposals were identified, in 2003 and in 2007 this number rose from 100, and in 2011 and in 2015 it approached two hundred. The proposals useful to this research also increased over the years, being only nine in 1999 and increasing until 2011, when 48 normative suggestions related to the use of drugs were presented in the National Congress. In 2015 this number was reduced to 25 propositions, still higher than the years from 1999 to 2007.

**Chart 2:** division by theme of the propositions analyzed

Comparative table of the propositions presented in the first year of each legislature on the theme "drug use" or related												
	1999		2003		2007		2011		2015		TOTALS	
<b>TOTAL</b>	44		119		103		202		190		658	
<b>USEFUL</b>	9	100,0%	11	100,0%	18	100,0%	48	100,0%	25	100,0%	111	100%
<b>HEALTH</b>	2	22,2%	1	9,1%	2	11,1%	6	12,5%	4	16,0%	15	13,5%
<b>EDUCATION / PREVENTION</b>	3	33,3%	6	54,5%	9	50,0%	11	22,9%	9	36,0%	38	34,2%
<b>PUBLIC.SEC</b>	1	11,1%	0	0,0%	0	0,0%	2	4,2%	0	0,0%	3	2,7%
<b>PENALTY</b>	1	11,1%	1	9,1%	7	38,9%	12	25,0%	2	8,0%	23	20,7%
<b>NOT PENAL</b>	8	88,9%	10	90,9%	11	61,1%	36	75,0%	23	92,0%	88	79,3%
<b>CIVIL LIABILITY</b>	1	11,1%	2	18,2%	1	5,6%	1	2,1%	3	12,0%	8	7,2%
<b>CHILDREN / SCHOOLS</b>	3	33,3%	1	9,1%	3	16,7%	4	8,3%	10	40,0%	21	18,9%

<b>SUPERVISION</b>	1	11,1%	2	18,2%	0	0,0%	3	6,3%	4	16,0%	10	9,0%
<b>FUNDS</b>	1	11,1%	0	0,0%	0	0,0%	6	12,5%	4	16,0%	11	9,9%
<b>LIBERAL</b>	3	33,3%	0	0,0%	2	11,1%	0	0,0%	1	4,0%	6	5,4%
<b>COMMUNITARY</b>	5	55,6%	7	63,6%	15	83,3%	43	89,6%	24	96,0%	94	84,7%
<b>UNDEFINED</b>	1	11,1%	4	36,4%	1	5,6%	5	10,4%	0	0,0%	11	9,9%
<b>RELEASE</b>	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%	0	0,0%
<b>RELEASE FOR MEDICINAL USE</b>	0	0,0%	0	0,0%	0	0,0%	0	0,0%	1	4,0%	1	0,9%
<b>INCREASE OF BAN</b>	0	0,0%	1	9,1%	0	0,0%	4	8,3%	3	12,0%	8	7,2%
<b>TRAFFIC</b>	0	0,0%	1	9,1%	7	38,9%	10	20,8%	3	12,0%	21	18,9%
<b>APPROVED</b>	1	11,1%	0	0,0%	2	11,1%	0	0,0%	0	0,0%	3	2,7%
<b>TRANSFORMED INTO LAW</b>	0	0,0%	0	0,0%	2	11,1%	0	0,0%	0	0,0%	2	1,8%
<b>REJECTED</b>	0	0,0%	4	36,4%	0	0,0%	2	4,2%	0	0,0%	6	5,4%
<b>FILED (WITHOUT REJECTION)</b>	7	77,8%	5	45,5%	12	66,7%	26	54,2%	1	4,0%	51	45,9%
<b>PROCESSING</b>	1	11,1%	1	9,1%	4	22,2%	19	39,6%	24	96,0%	49	44,1%

Source: prepared by the authors

From the data presented, it is possible to identify a strong prevalence of the communitarian political vision among the proposals presented: almost 85.5% of the propositions were guided by a vision according to which it is the responsibility of the public power to avoid that citizens make life choices considered harmful. In this case, most parliamentarians proposed norms that aimed to "protect" citizens against drug use, considered self-destructive behavior, which does not conform to the state-accepted way of life, or to punish the individual who deviated from the conduct socially expected, i.e. abstention from drug use. Throughout the reporting period, 5.5% of the proposals presented liberal trend through decriminalization policies or harm reduction programs, such as the free replacement of syringes for injecting drug users, for example. It is also observed that the communitarian tendency seems to be strengthened during the legislatures, with an increase in the proportion of propositions that fall within this profile: in 1999, only 55.6% of the normative proposals were clearly communitarian. 96 per cent in 2015. At the same time, proposals to increase prohibitionism have also become more common in recent legislatures, from 0 per cent in 1999 to 12 per cent in 2015. Throughout the reporting period, there



were no proposal to release the recreational use of no drugs. Only one bill was introduced in 2015 for the release of marijuana use for medical purposes.

The concern with the establishment of preventive policies also stands out. However, what is observed is that most of the proposals involve forms of "education" of the population or children of school age. There are several bills to insert messages about the harmful effects of drugs in public institutions, radio and television programs or school notebooks, or to insert disciplines on drug dangers in the compulsory school curriculum. There is a concern of the national parliamentarian to "teach" the population about the dangers of illicit drugs. All these proposals were framed as "communitarians" for demonstrating the purpose of adjusting the thinking of the population according to an ideal considered more adequate by society. It should be noted that the proposals did not provide in their texts or justifications for the purpose of stimulating debate or raising the level of information about the population on drugs, but instead pointed to the need to "teach a truth", That is, that drugs are perverse and must be combated through abstinence.

The years 2007 and 2011 are notable for the large number of proposals concerning the use of drugs in traffic, accounting for 38.9% of the projects presented in 2007. These proposals sought to hold civil, administrative or criminal responsibility for the driver who was driving a vehicle or causing accidents under the influence of drugs. In 2015 the number of proposals with this concern fell, probably due to the approval of Law No. 12,760, of 2012, which typified the crime of driving a motor vehicle with reduced capacity due to the influence of alcohol or another psychoactive substance that determines dependence.

Soon after the approval of Law 11,343, of 2006, which removed from the legal system the possibility of imprisonment for the possession of drugs for personal use, there was an increase in the number of propositions related to drugs for criminal purposes in 2007. In that year, 38.9% of the proposals dealt with the issue of drug use under criminal law. All these propositions, however, turned to the punishment of drug use in traffic. None of that year's proposals attempted to reinstate the prison sentence for the possession of drugs for personal use, but efforts were made to punish more severely the drugged driver.

Proposals focused on health issues were less frequent than initially expected. Considering that one of the main arguments against the release of private drug use stems from the hazards that these substances pose to health, it would be expected that measures to treat and reduce harm to health would be frequent between the proposals put forward. However, only 13.6% of the proposals analyzed turned to this theme.

Even less significant was the percentage of propositions related to public safety issues: only 2.7% of projects presented this focus. Public safety projects were mostly discarded in the analysis group because they referred to drug trafficking, not drug use. Thus, it is perceived that the greatest offenses against public order would not be, in the parliamentarians' view, linked to drug use, but to trafficking. The propositions dealt little with safety hazards related to the criminal

behavior of drug addicts, for example. Only three projects referred to the subject. PL 1,183 / 1999 provided for the supply of drugs to addicts, in order to, among other things, prevent them from resorting to trafficking in order to obtain the substance of the addiction, in order to weaken the economic power of the traffickers and, consequently, their danger to society. PLS No. 763/2011 attempted to establish as an aggravating circumstance the commission of crimes under the preordained effect of drugs, that is, sought to increase the penalty when the perpetrator used drugs for the purpose of committing the offense. Finally, PEC 127/2011 attempts to add a mechanism to the Federal Constitution to standardize actions to combat the use and trafficking of narcotics carried out by states and municipalities - but the arguments related to public security in this SGP refer to combating drug trafficking. drugs and not to consumption.

There is also an increase in the number of proposals that seek to guarantee funds or financial incentives to combat drug use or to encourage the withdrawal of dependents. In 2015, 16% of the projects suggested increasing funding for the National Anti-Drug Fund or tax incentives for drug treatment institutions. The years 2011 and 2015 totaled ten propositions (13.7%) related to financial matters, whereas in 1999 only one proposition of this kind was presented (11.1%), and in 2003 and 2007 there was no proposal in this regard.

Finally, the increase in the number of propositions, especially in the years of 2011 and 2015, calls for attention with the intention of instituting compulsory treatment for the user or dependent on drugs. The referral situations for treatment vary according to the proposition, but the theme has gained strength and was inserted in PL n° 7.663 / 2010.

In the next items, the proposals will be handled according to their authorship, and a comparative study will be carried out per party and region of origin of the parliamentarian who proposed each of the projects studied. Next, we will analyze two propositions that centralized the debates on the use of drugs in the National Congress during the last legislatures. Of the proposals analyzed so far, 51.4% were archived due to rejection or the passage of time, and 44.1% are still in the pipeline. Only three projects, out of 110 analyzed, were converted into law. Many of the proposals have not even been debated in the thematic committees of the Legislative Houses, so that the presentation of the proposals represents the thinking of the parliamentarians who propose it, but they can not be confused with the norms effectively approved by the National Congress. The following projects were selected for their importance during the process: the first one, PLS 115/2002, gave rise to Law No. 11,343, of 2006, responsible for drug policy currently in force. The second, the PL 7,663 / 2010, proposes changes in the system brought by the National System of Public Policies on Drugs, and has already been approved by the Chamber of Deputies, and it is currently in process at the Review House. For these reasons, there is a separate analysis of the two propositions.

#### 4.2 Distribution of propositions according to the region of origin of the parliamentarian

Seeking to identify if the concern with the subjects related to the drug user preponderates among the parliamentarians of a certain region of Brazil, a brief analysis was made on the distribution of the propositions studied among the different parts of the country.

For that, the number of parliamentarians (deputies and senators) of each geographic region was taken into account, as well as the number of propositions presented by parliamentarians from each of these regions. Proposals authored by the Executive Branch or by committees of the Houses of the National Congress were not taken into account. Finally, the proportion of propositions presented by region was calculated, dividing the number of propositions taken into account by the number of parliamentarians. Since the representation of states in the federal parliament is not homogeneous, it would not be possible to compute only the absolute number of projects presented, otherwise the results would be distorted. The table below was organized according to the coefficient found, from highest to lowest:

**Chart 3:** coefficient of propositions presented by region of Brazil

Number of Deputies + Senators | number of propositions | coefficient: number of propositions/number of parliamentarians

Midwest:

Southeast:

South:

Northeast:

North:

	nº de Deputados + Senadores	nº de Proposições	Coefficiente: nº de proposições / nº de parlamentares
<b>CENTRO-OESTE</b>	53	14	0,264
<b>SUDESTE</b>	191	36	0,188
<b>SUL</b>	86	16	0,186
<b>NORDESTE</b>	178	26	0,146
<b>NORTE</b>	78	10	0,128

**Source:** prepared by the authors

As can be seen, the Southeast is the absolute champion of propositions presented on the subject studied. However, there is also a large number of parliamentarians representing the region. Considering the number of propositions per parliamentarian, the Center-West region stands out, since its 53 congressmen (41 deputies and 12 senators) were responsible for the presentation of fourteen of the 102 projects of individual parliamentarian authorship about issues related to drug users in Brazil. All fourteen propositions were characterized as communitarian, with five (35.71%) dealing with issues related to education or prevention against drug use, two (14.29%)

involved public health concerns and four (28.57%) referred to proposals with a financial background, such as tax benefits or resource allocation for public drug policies.

When trying to identify which would be the main line of concern of the parliamentarians of each region from the proposals presented, it is possible to point out some points. Issues related to health, education and public security appear to be concerns raising the same level of concern among representatives of different regions of the country. When observing the number of projects presented on each of these themes in proportion to the total of propositions of each region, it is possible to notice that the indexes present little variation, indicating that these subjects would not represent problems concentrated in a certain geographic location.

Within the liberal / communitarian spectrum, 20% of the proposals put forward by parliamentarians from the North region aligned themselves with liberal concepts. Although most of the projects still present a communitarian vision (60%), the congressmen from the North seem to be less aligned with communitarianism than the representatives of the other regions of Brazil. Meanwhile, the deputies and senators of the Central-West region would be the most adept of the communitarian political position on drugs: 100% of the proposals presented by these congressmen aligned themselves with communitarianism.

Finally, it should be noted that most of the proposals to increase the prohibition of drug use were proposed by parliamentarians from the Southeast region. The South, North and Central-West regions did not present any proposal to change the level of prohibition in the country, nor to increase or reduce the prohibition of drug use. The only proposal to free the use of drugs (marijuana) for medical purposes was proposed by a parliamentarian from the Northeast region.

In all regions, the number of proposals essentially focused on education and prevention against drug use stands out. In addition, propositions aimed at avoiding or punishing drug use while driving motor vehicles were presented by parliamentarians from all regions of the country. The financial proposals stand out among the projects presented by representatives of the Center-West region, and have not been the object of any proposal by deputies and senators from the North and Southeast regions.

#### 4.3 Distribution of propositions according to the political party of origin of the parliamentarian

In a last fragmented approach of the obtained data, the legislative proposals focused on the user of drugs presented by parliamentarians of each of the parties with representation in the National Congress during the studied period were analyzed. Only those parties whose parliamentarians presented at least one project in any of the years surveyed were considered, according to quantitative data available in the table below. The cells marked with an "x" represent the years in which the party did not have any representative in the National Congress, for any reason: no candidate was elected, the party had not yet been created or had already been extinguished. The parties that have changed their name over the years, such as the Progressive

Party of Brazil (PPB), which changed its acronym for the Progressive Party (PP), as well as those that have merged, such as the Liberal Party - PL the Republican Party of the Social Order - PROS, who came together to create the Party of the Republic – PR.

**Chart 4:** propositions by political party

	Proposições	2015	2011	2007	2003	1999
PMDB	16	4	8	2	0	2
PP / PPB	12	3	7	1	1	0
PT	11	2	2	3	2	2
PSDB	9	2	6	1	0	0
PSD (criado em 2011)	7	5	2	X	X	X
PRB	7	1	6	0	X	X
PDT	6	2	1	1	0	2
PTB	6	0	1	3	1	1
PR / PL / PRONA	6	0	1	2	3	0
DEM / PFL	5	0	2	1	1	1
PHS	3	3	0	0	X	X
PPS	3	1	0	2	0	0
PSB	3	0	1	0	2	0
PSC	2	0	2	0	0	0
PSD (extinto em 2003)	1	X	X	X	1	0
PCdoB	1	0	0	1	0	0
PRTB	1	0	1	0	0	0
PST	1	X	X	X	X	1
PV	1	1	0	0	0	0
SD	1	1	X	X	X	X

**Source:** prepared by the authors.

Due to the variation of the size of the party seats throughout the legislatures, the analyzes were not made taking into account the size of the political party. Only the themes that have taken on greater importance within each party will be identified. In addition, it was decided to exclude from the investigation the parties whose parliamentarians presented less than three bills during the period of analysis, since it was considered that the low number of propositions would not allow a more precise evaluation of the preponderant interests within the party. A small number of projects submitted may mean a small number of representatives of the party in the National Congress, or a low interest of these representatives in relation to the theme. In any case, it was considered more appropriate to analyze the political parties whose members proposed three or more projects focused on the drug user. Thus, the following political parties will not be studied: Solidarity - SD, Green Party - PV, Labor Social Party - PST, Brazilian Labor Renovation Party - PRTB, Communist Party of Brazil - PCdoB, former Social Democratic Party - PSD (extinguished in 2003, is not confused with PSD created in 2011 that, despite having the same acronym, does not constitute the same party) and Christian Social Party – PSC.

In calculating the proportion of propositions presented on the topics of public health, public security and education, when considered in relation to the total number of propositions presented by the members of each political party, the following data were obtained:

Members of the PSD and DEM were those who proportionally devoted more projects to issues related to public health problems related to drug users. Of the seven propositions presented by the members of the PSD in the analyzed period, three (42.86%) had health content. The members of the PRB, PR, PPS and PSD did not present any project with this focus. Congressmen affiliated to the PDT, PTB and PR showed a preponderant preoccupation with drug education. As for public safety issues arising from the use of drugs, only the members of the PMDB and PT presented some proposal on the subject.

Regarding the criminal or non-criminal alignment of the propositions, PSDB members demonstrated the highest proportion of projects with a penal code, while PT, PDT, PR, PHS and PSB parliamentarians did not present any project that sought to provide criminal treatment to drug users .

As already commented, no proposition presented in the analyzed period was intended to allow the use of drugs. Only one bill, presented by a PSD affiliate, sought the release for medical use of marijuana. The five projects that sought to increase prohibitionism were presented by members of the PSD, PRB and PSB.

As for the ideological alignment of the parties in relation to drug use, it is perceived that all parties could be classified as predominantly communitarian. Even in the more liberal parties, communitarian proposals accounted for at least 77.78% of the projects presented. For this analysis were disregarded the projects that could not be aligned according to a liberal or communitarian perspective of politics. With these parameters, it can be seen that liberal propositions were presented by parliamentarians of only three parties: PT, PSD and PMDB. All other parties mentioned below could be considered communitarian when it comes to individual freedom for private use of drugs. It should be noted that, for PSD, the only proposition presented that was considered liberal referred to the release of marijuana use for medicinal purposes.

In analyzing the party programs and guidelines of political parties with representation in the National Congress, it is perceived that the Green Party - PV explicitly addresses the issue in its party program, positioning itself in favor of marijuana decriminalization and state control of production and supply. The party presents liberal and communitarian arguments for its position: on the one hand, it defends a greater information of the population on the types and effects of each one of the drugs; on the other hand, argues that state regulation of production and distribution would be the best way to combat the use and trafficking of these substances (SENADO, 2014a). Despite being the political party with the closest ideology of liberalism in this subject, the only proposal presented by one of its members was intended to increase prohibitionism, trying to establish in law the list of drugs that could not have their consumption released by the act of

Anvisa<sup>4</sup>.

PCdoB does not have a specific program on drug policy, but merely states that it is of the utmost priority to implement repressive measures at borders, ports and airports in order to curb drug trafficking, as well as to create support and treatment mechanisms to those who are its users, victims and their families." (Senado, 2014a, 235). PR and PSDB party programs only mention the need to combat drug trafficking and punishment of the criminals involved, without addressing user issues. The programs of the other political parties do not mention any drug-related topic. In this way, it is not possible to make a comparison between what the parties preach and what their members propose, since the theme has little visibility in party documents. The members of the party that has a formal positioning have presented a single proposition, in the opposite direction to that provided for in the party guidelines, and the other parties whose members have effectively presented propositions on the subject do not count on ideological direction in their programs.

Finally, it should be noted that among the fourteen parties considered in this analysis, the members of nine of them proposed some project to hold the driver responsible for driving a motor vehicle under the influence of drugs. The relationship between drugs and traffic seems to have been the theme that most mobilized parliamentarians in the same direction throughout the studied period.

#### 4.4 PL n° 7.663, of 2010

Bill No. 7,663 / 10, with the origin of the Chamber of Deputies, proposes some significant changes in the text of Law No. 11,343 of 2006. Proposed in July 2010, it had twelve projects directly or indirectly linked (some were members of PL 7,665 / 2010 which, in turn, was attached to PL 7,663 / 2010). The text was approved by the CCJ, by the Special Commission of the National System of Public Policies on Drugs and by the Plenary of the Chamber of Deputies, and was sent to the Federal Senate in May 2013, where it received the identification of PLC n° 37/2013. In October 2014, the project was approved by the CCJ of that House and currently awaits the analysis of the Education, Culture and Sport Commission.

The text initially presented by Representative Osmar Terra proposed a classification system for drugs according to their mechanisms of action, their forms of administration and their potential to cause dependence, varying between low, medium and high. It also proposed guidelines on professionalism, work and income, seeking policies for insertion of the user into recovery in the labor market, including through special working hours conditions and priority in government programs such as first job. The main focus of the project would be to create a federal, state and municipal structure for Sisnad, since several of the devices that referred to this structure

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<sup>4</sup> PL n° 158/2015, Authored by Deputy Roberto de Lucena – PV/SP, Which inserts the following device into the legal system: "Illicit drugs are considered to be marijuana, cocaine, crack and ecstasy that cannot be released for consumption by the competent federal body".

in Law 11,343 of 2006 were vetoed. Suggested new goals for the attention to the user or dependent on drugs, among which: to adequately hold the user or drug dependent on the harmful consequences of using drugs for themselves and for society and to disapprove of drug use, even if occasional, cooperating with the will of the users, of the relatives or with the dispositions of judicial sentence with respect to the submission to the treatment.

The project also introduced new provisions regarding the hospitalization of users or drug addicts, stating that it should be performed by a duly registered physician and could occur in three forms: voluntary; involuntary, that is, without the consent of the user, at the request of a third party; or compulsory, when determined by Justice. In the case of postage for personal use, it sought to increase the time provided for penalties for providing services to the community and attending a program or educational course, from "up to 5 months" to "6 to 12 months." These penalties would double in case of recidivism. It tried again to institute the penalty of restriction of rights related to attendance at certain places or compliance with schedules for those who do not voluntarily comply with the sentences imposed by possession of drugs for personal use.

After deliberation in the Chamber of Deputies, the text sent to the Federal Senate does not include drug classification systems. The PL states that bids for public works that generate more than 30 jobs should provide, in its contracts, that 3% of the total vacancies are destined to the economic reintegration of people served by drug policies. Despite predicting involuntary hospitalization in some cases, the final text does not present provisions changing the penalties applicable to the crime of possession of drugs for personal consumption. Involuntary hospitalization may last up to ninety days. The prevention activities are also included in proposed amendments to the Statute of the Child and Adolescent (article 16 of the PL) and to the Law of Guidelines and Bases of National Education (article 17 of the PL), to institute the duty of educational institutions, clubs and recreational clubs to adopt measures of awareness, prevention and coping with drug use or dependence.

Already in the Federal Senate, the text was discussed in the scope of the CCJ. According to the rapporteur, the prediction of involuntary hospitalization, although undesirable, would be necessary in some cases. In the words of the rapporteur, "from a medical point of view, placing a chemist against his will is a questionable measure regarding therapeutic effectiveness and is one of the main reasons pointed out by mental health specialists to counterindicate such a measure" (BRAZIL, 2013a). Senator Antonio Carlos Valadares states in his report that state intervention is only permissible when the drug dependent is in the stage of serious impairment of his cognitive functions and may act to the detriment of his own physical integrity. For him, the drug dependent who needs to be hospitalized compulsorily is one who "is in the stage of serious impairment of their cognitive functions, and may act to the detriment of their own physical integrity. Only then can the exceptional intervention of the State in the sphere of the individual be justified" (BRAZIL, 2013a). The rapporteur affirmed that compulsory hospitalization that does not confront this



situation ends up by "imposing on the user a legal consequence equivalent to the custodial sentence" (BRAZIL, 2013a), affecting the right of self-determination of the individual, in addition to the principle of legality, the right to privacy, privacy and honor and the guarantee of due process (BRAZIL, 2013a).

The report attempts to legally define the concept of small amount of drug for personal use, suggesting that it matches the amount sufficient for five days of drug use. In spite of reinforcing the reprehensibility of conduct of conduct and use of drugs, the suggestion of definition of quantity for personal use was intended to provide objective criteria for justice to differentiate the user from the trafficker according to the volume of drug that the individual carries. The suggestion is in line with that proposal in PLS n° 236/2012, which reforms the Brazilian Penal Code. According to article 212, paragraph 2, I, of the bill of the Senate, there is no crime if the agent acquires, guards, holds, transports or brings with it drugs for personal consumption, presuming that the quantity sufficient for consumption for five days is for personal use unless otherwise proved. PLC 37/2013, however, unlike the project of reform of the Penal Code, does not propose the decriminalization of the size for personal use.

The project has been the subject of public hearings and debates within the Federal Senate and awaits the deliberation of the Committee on Education, Culture and Sport, Economic Affairs, Social Affairs and Human Rights and Participatory Legislation before submitting to the Plenary.

## **5 Society**

Just as the data on drug use and trafficking in Brazil are scarce and out of date (the last national survey was conducted in 2005), public opinion surveys on drugs need to be given more attention. The available surveys point to inconsistent results and often show little representativeness of the Brazilian population, and cannot be used conclusively to define the predominant opinion on the subject in the country. Nevertheless, the results of two recent surveys by the Brazilian Federal Senate (BRASIL, 2014a) and the Ibope Institute (MAIORIA ..., 2014) should be brought forward, with the purpose of subsidizing, albeit precariously, the identification of public opinion in the country. It should be noted that both searches were restricted to marijuana, not dealing with other drugs.

In 2014 the Federal Senate (BRAZIL, 2014a) conducted research with just over a thousand people to subsidize the discussions on the legalization of marijuana. As a result, it was concluded that 57% of respondents would favor the medicinal use of the drug, but only 9% would support their release for any purpose. In addition, 82% of those surveyed felt that marijuana would be a "gateway" to other drugs and 77% believed that drug clearance would increase the number of users. Only 32% think that trafficking would decrease with legalization. Concerning the potential for harm to health, 25% think that marijuana is more harmful than tobacco and 22% believe that levels of harm to health are equal for these two drugs. In comparison to alcohol, 22%

believe that marijuana is more dangerous to health and 17% believe that damages are equivalent. The survey also found that approval ratings for marijuana use for medical use are higher among people who claim to have no specific religion, of whom 77 percent approve of the therapeutic use of the drug, while only 44 percent of evangelicals advocate such use. These data allow us to conclude that among the interviewees, the rejection of marijuana legalization is still high. However, the survey can not be used indiscriminately because of the relatively small number of respondents.

Also in 2014, on the eve of presidential elections, Ibope conducted research on the order of TV Globo, reaching 2,506 voters in 175 counties in the country. The research involved several issues, but concluded that 79% of the population would oppose marijuana legalization (MAJORITY ..., 2014). Despite the lack of broader and more specific research, the surveys so far suggest that the Brazilian population, in a majority way, still opposes the legalization of marijuana and, consequently, other drugs considered to be more "heavy".

## **6 Advances and Limitations in the Drug Policy Debate in the National Congress: a Critical Analysis**

In this chapter some considerations will be made on the national policy on drugs developed within the Legislature. From the data and information brought beforehand, it is possible to identify some important changes and characteristics in the way that parliamentarians have faced the issue of drug use, as well as some points that deserve more attention from the public power. Some inconsistencies between the parliamentarians' discourse and verified reality are also identified.

In general, it can be understood that the predominant position among the parliamentarians of the federal legislative branch is oriented towards the maintenance of prohibitionist policies and predominance of communitarian positioning. This does not mean, however, that the issue is peaceful in society or that it can not undergo major changes in the coming years, as the positive or negative results of the liberal policies adopted by Uruguay and some US states,.

### **6.1 Drug user decertification and indeterminacy of the concept of "postage for personal use"**

With the promulgation of Law No. 11,343 of 2006, the Brazilian legal system no longer provides for the penalty of private jail for those identified with drugs for personal use. The differentiation between users and traffickers and the separation between the penal treatments given to each of them are celebrated to this day by parliamentarians and scholars. Much is said about the importance of reducing the stigma on the drug user as a factor of resocialization and promoting the recovery of the dependent. However, the social reality is not as pleasant as that anticipated by the legislators when the law was published.

As already stated above, the legislation does not define the amount of drug presumed to

be for personal use. It is delegated to the Judiciary to verify the character of the drug, if it is intended for personal use or commercialization (trafficking). However, the practical consequences of this legal uncertainty are criticized: as observed by Luiz Guilherme Paiva (PAIVA, 2016), it is common for a single quantity of drugs to be considered strictly for personal use, when carried by an accused, and identified as trafficking, when in possession of another accused. According to him, most people arrested for "trafficking" in the country are young, black and were arrested alone, disarmed and with "tiny amount" of drugs.

The difficulty in differentiating the user from the micro-trafficker persists and it was the subject of concern at the presentation of PL No. 7,663/2010, through a proposal to define assumption of postage for own use when the amount of drug seized was equivalent to up to five days of use. However, the text currently being processed no longer meets this criterion of identification and continues to leave to the Judiciary Branch the identification of the user or the trafficker in each case. Faced with this legislative vacuum, some justices of the Federal Supreme Court have suggested that the Court should define (or determine to be defined) the parameters of classification of use or trafficking, with the objective of reducing the number of arrests of users.

The former National Secretary of Justice, Pedro Abramovay, also understands that the current rules are applied in different ways according to the economic and social conditions of the individual caught with drugs. According to him, the "practical result is that poor people are trapped as traffickers and the rich end up being classified as users. Such a system is not good for anyone "(D'Agostino, 2015).

According to data from the Ministry of Justice (BRASIL, 2014), Brazil had 607,731 prisoners in 2014 (of which 41% were imprisoned without a final conviction). Of this total, 35.1% were deprived of their liberty due to crimes related to the Drug Law. The criticisms brought by Pedro Abramovay and Luiz Guilherme Paiva refer to the same question: most people arrested for drug-related crimes would be users or micro-traffickers, people who move a small amount of drugs and have little importance for the real fight against drugs. drug trafficking.

Just as an example, in a report of 2015, G1 news portal (D'AGOSTINO, 2015) listed some cases of arrests due to the possession of small amounts of drugs, including cases of flagrante delicto of persons with 1.5 grams of marijuana or 1.46 grams of crack. For comparison, Uruguay currently allows the possession of up to 40 grams of marijuana, and Minister Edson Fachin suggested in his vote that the possession of quantities of less than 25 grams of cannabis should be considered an atypical event (no longer a crime). According to a survey carried out by the Sou da Paz Institute, with data from the Department of Police Inquiries and Corregedoria of the Judiciary Police and the Nucleus of Violence Studies of the University of São Paulo (USP), 67.7% of marijuana traffickers in the country were caught with less than 100 grams of the drug, and 14% had less than 10 grams of cannabis (SHALOM, 2014).

In summary, although the legal differentiation between user and trafficker is a considerable advance in the national normative field, the difficulty of effectuation of user decertification has generated a separation between what was proposed in the law and Brazilian prison reality. Little did the practical problem arise in the scope of the federal Legislative Power, and the proposal of regulation of the quantities was still abandoned in the Initiating House. This point deserves more attention and debate on the part of the national legislature, since the delegation of powers to the judiciary for the separation of the two figures in this case has not presented results that are in line with what was initially expected by parliamentarians who took part in the debates during the drafting of the current Drug Law.

## 6.2 Users, dependents and compulsory treatment.

As already mentioned, the country legislator was concerned with differentiating the drug trafficker from the drug user. Despite this, there is another distinction that is gaining in importance in some European countries and that could attract the attention of the members of the Legislative Power: the separation between the user and the drug dependent. Although there is a certain popular belief that drug use necessarily leads to dependence, data on use in life and use in the last year or the last month brought by various national and international surveys suggest a different conclusion. According to data from 2005, brought by II National Survey of Alcohol and Drugs (LARANJEIRA, 2014), 8.8% of the Brazilian population had used marijuana at some point in their lives, while only 2.6% had used the drug in the last year. Among those who have used the drug, the survey found that 37% would be considered dependent on marijuana. This means that 63% of people who are or were users of the herb are not dependent, and therefore, use does not necessarily lead to dependence. In addition, some drugs do not have the potential to cause chemical dependence: it is the case of LSD that, not acting on the brain's rewards system, is not related to cases of chemical dependence (CAMPOS, 2014). All illicit drugs (as well as licit substances), however, can cause psychological dependence.

The drug dependent loses control of his or her own volition and can take risky behavior to himself and the people around him. The mere user, although he or she presents / displays changes of behavior during the use of certain drug, is still lord of himself, and manages to lead a socially acceptable life, at least when it is not under the effect of drugs. As shown earlier, some European countries differentiate the two characters, guaranteeing dependents access to help and treatment.

In Brazil, the differentiation between the user and the dependent is still subtle in current legislation. In case of flagrant possession of drugs for personal use, both are subject to the same penalties, including educational measure of attendance at a program or educational course. Only in the case of a crime committed by a dependent under the influence of drugs is there provision, in article 45 of Law 11.343, of 2006, for the agent, free of penalty, to be referred for treatment.

Due to the lack of differentiation, both the occasional user and the dependent user are treated in the same way. Recent bills have proposed the insertion, in the legal system, of the possibility of compulsory hospitalization of the drug dependent. Not all propositions, however, suggest ways of differentiating user-dependent, which would, in practice, allow the internment of any individual caught with illicit substances. The PL 7,663/2010, already discussed in the previous chapter, provides for the possibility of compulsory hospitalization when the Judiciary considers it necessary, adopting a policy of therapeutic justice in relation to drugs. The downside of this type of policy is several. On the one hand, one can point to the inefficiency of forced treatment. In addition, the lack of objective criteria for the identification of hypotheses of hospitalization can cause the same problems identified in the previous item, regarding the differentiation between users and traffickers: it is feared that any occasional user may be compulsorily sent for treatment depending on the evaluation of the judge of the case. In addition, such a measure would constitute a new form of custodial sentence, even if it bears another name, since the user could not leave the establishment where he voluntarily carries out the treatment. The dangers of adopting the model of therapeutic justice stand out in any hypothesis, but are aggravated by a scenario in which there is no differentiation between the dependent, who needs help, and the user.

This lack of clear identification of the characters leads to another pernicious effect: Brazil spends money, efforts and vacancies in penitentiaries to persecute, judge and punish the user and the dependent, while failing to repress the great agents of drug trafficking. Some countries have previously chosen to stop pursuing and punishing drug users and even small traffickers as a means of enabling the police system to allocate the necessary efforts and funds to break up large drug trafficking networks. According to former Rio de Janeiro Secretary of Security, José Mariano Beltrame, the "drug war is lost, irrational. [...] It seems that Brazilians do not wake up to the waste of this war. There are no victories" (BERTRAME, 2015). Although the use of drugs is not approved by the Brazilian population or by the public authorities, it would be interesting to analyze the efficiency of the system adopted in view of the national reality of overcrowding of the prison system and inefficiency of the drug war currently adopted.

### 6.3 Public health and safety

The issue of health and public safety is commonly referred to as arguments for combating drug use. Nevertheless, as noted, few legislative proposals have sought specific solutions for these two sensitive areas. The number of propositions related to public security is significantly low, only 2.7% of the proposals analyzed - not because parliamentarians do not present security-focused propositions, but because these projects are related to the threats caused by drug trafficking, and not by the use of these substances.

As previously mentioned, illegal trade in illicit substances develops a network of parallel economy and power that undermines state power and strengthens criminal organizations. However, the main offense to public safety relates only indirectly to the user of drugs: although it can be said that when the user buys the drug, the user finances that parastatal power, the drug consumer does not constitute a danger of the same level to society. Their behavior may create public safety risks when there is a need to commit crimes to finance their own dependency, or when the use of certain substances results in aggressive behavior on the part of the user, for example. These dangerous behaviors, however, are not only found among illicit drug users. The dependent of licit drugs, such as alcohol, can behave as dangerous and aggressive behavior as that of an individual who is addicted to an illicit drug. Just to illustrate, data from the Ministry of Health, indicate that alcohol would be associated with 24% of domestic violence against women over the years 2009 and 2010 (BRAZIL, 2013).

The data seem to indicate that the drug user would not be at the center of federal parliamentarians' concerns about public safety offenses. Although this argument is occasionally used as justification for prohibitionist propositions, few projects deal with public safety problems caused or related to drug use.

The numbers are most significant when it comes to propositions focusing on public health issues arising from drug use. Nevertheless, only 13.6% of the proposals studied turned to the theme, which ranked fourth in the list of predominant focuses among the projects analyzed. That the use of drugs can lead to damages to the health of the individual, there is no discussion. Nevertheless, few studies have examined the real consequences of substances in the human body and therefore it is not a simple task to understand the effects of drug use on the public health system. Health-related projects have included proposals for free distribution of disposable syringes and needles to prevent drug addicts from being aggravated by diseases associated with the sharing of infected needles; authorization of the use of marijuana for medical purposes; of compulsory supply of free treatment to the drug user, either by the public or private health system; of compulsory treatment for the dependent; among others. It can be seen that many of the proposals focused on public health have the merit of being directed towards harm reduction policies, but none of them have been approved by the National Congress to date.

In summary, public health is believed to be a more drug-related issue than public safety, although the two points are often used as arguments for anti-drug policies. The eloquent arguments used to combat drugs, that substances pose a danger to public health and safety, do not find the expected reflection among legislative propositions, representing a lower than expected percentage of the total number of projects presented.

#### 6.4 Predominant themes among the propositions analyzed

From the data already presented, it is possible to conclude that, although the arguments related to health and public safety issues are commonplace in the justifications of legislative propositions, proposals for changes in legislation have other focuses. No subject has received more attention from congressional parliamentarians than education and drug prevention policies. Most of the proposals turned to the goal of teaching children and adolescents about the harm caused by drug use. More than half of these propositions have tried to carry out these educational policies through the insertion of messages in public places or through the inclusion of specific discipline in the school curriculum.

Although drug use is, in the eyes of most parliamentarians, something to be combated, the main form of combat identified among propositions has been characterized by simplistic or shaping methods. The inclusion of anti-drug boards and messages in school books, on buses, in places near bars and supermarkets, in the commercial radio and television range, or elsewhere seems to be a simplistic solution to the problems that project authors propose to solve. The list of obligatory messages that commercial establishments must expose to the boxes grows at all times, so that a new "board" inserted there is subject to even being perceived amid so many other messages. On the other hand, the insertion of disciplines in the curriculum of schools with the specific intention of teaching children and adolescents about the dangers of drug use is also objectionable. If the government itself lacks information about the ills arising from drug use, teachers would hardly have a clear orientation on what to teach their students, merely repeating the phrases already known to all, reinforcing generic concepts such as "drugs kill", for example. There is no criticism of the need to discuss the issue with children and adolescents, and schools can be a suitable environment for the subject. However, the bills analyzed were justified by the need to teach young people that drugs are dangerous, not by the need to overcome eventual ignorance on the subject. The discussion about how the topic should be addressed in schools would involve a deeper debate on the role of educational institutions in the moral and political formation of citizens, a theme that would not be appropriate in this work. For this reason, the current critique of the models of drug prevention proposed by parliamentarians is limited to questioning the effectiveness of the suggested methods, since the suggestion of alternative means of prevention would extrapolate the scope of this research.

The issue that most mobilized parliamentarians regarding drug use was, after the prevention and education policies already commented on, the means of prevention of drug use in traffic and of the responsibility of the driver who was driving a motor vehicle under the influence of these substances. Of the 110 proposals analyzed, 21 (19.1%) had the intention of instituting toxicological tests for drivers with preventive or punitive purposes. Punishments for driving vehicles under the influence of drugs ranged from civil, administrative or criminal penalties. Some projects sought to increase the penalty for the murder caused in transit when the driver was in

these conditions. In general, it was noticed that the issue of drug use in traffic was significant for the congressmen, having mobilized representatives of eleven parties with proposals on the subject, and concluding with the approval of Law No. 12,760, of 2012, Lei Seca, which typified driving under the influence of drugs or alcohol. It is interesting to note that, at this point, the use of illicit drugs or alcohol (licit drug) was considered to be equally dangerous for traffic, generating the same penalties.

**Chart 5:** preponderant themes between the propositions analyzed

Propositions analysed

1. Education/Prevention
2. Children/Schools
3. Transit
4. Health
5. Funds
6. Supervision
7. Civil accountability
8. Increased prohibition
9. Sec. Public
10. Release for medicinal use
11. Release

TEMAS PREPONDERANTES ENTRE AS PROPOSIÇÕES ANALISADAS			
PROPOSIÇÕES ANALISADAS		110	
1º	EDUCAÇÃO / PREVENÇÃO	38	34,5%
2º	CRIANÇAS / ESCOLAS	21	19,1%
3º	TRÂNSITO	21	19,1%
4º	SAÚDE	15	13,6%
5º	FUNDOS	11	10,0%
6º	FISCALIZAÇÃO	10	9,1%
7º	RESPONSABILIZAÇÃO CIVIL	8	7,3%
8º	AUMENTO DA PROIBIÇÃO	8	7,3%
9º	SEG. PÚBLICA	3	2,7%
10º	LIBERAÇÃO PARA USO MEDICINAL	1	0,9%
11º	LIBERAÇÃO	0	0,0%

Source: prepared by the author.

The themes that motivated most propositions about the issue of drug use were, in decreasing order: prevention and education policies; policies aimed at prevention of use by children and adolescents in the context of school education; prevention or punishment of drug use in transit; public health policies; allocation of resources or tax benefits for the prevention, treatment or reinsertion of drug users in the labor market; drug control programs; proposals related to civil liability for damages caused by a person under the influence of drugs; proposals to increase the ban; public security policies; and release of marijuana use for medical purposes. There was no proposal to decriminalize the use of any drugs. Some propositions fall into more than one classification.

### 6.5 Party Programs

It is striking that among the parties represented in the National Congress, only the Green Party - PV has in its program a clear position on how to treat drug policy in the country. The programs of other parties are silent or, at the most, they cite the need to combat drug trafficking quickly.



Lack of positioning on the subject may have more than one reason. On the one hand, it is not necessary to include in the list of proposals the desire to maintain a policy already in force. A party that is aligned with the prohibitionist ideal would have no reason to propose something that is already in force. Thus, the absence of an official position on the part of the political parties may represent a concordance with the legislation already approved. This interpretation is reinforced by the fact that the only party that includes the subject in its party program did it to defend a change in the drug policy in the country, from the legalization and state regulation of the production and commercialization of the same.

It may also mean that the issue does not occupy the list of priority issues for party members. Finally, another explanation could be a fear of taking a stand on a potentially controversial issue, affecting the party's electoral base. With regard to these last two hypotheses, the previous criticism of the lack of reliable information on the drug policy in force in the country is reinforced. Stimulating research, debate and information on the topic could make discussion richer, enabling citizens to develop informed positioning on drug use issues, and encouraging political parties to include responses to these demands in their party programs.

## **7 Conclusion**

This case study started from the analysis of the legislative proposals presented in the National Congress to analyze the predominant political orientation in the Legislative Power in relation to the policy on the use of drugs in the country. Despite adopting a liberal stance in ending the deprivation of liberty for the drug user, federal parliamentarians have increasingly aligned themselves with the communitarian view of politics, according to which choices of life disapproved by society must be actively discouraged by the State.

As for the legislation already approved, it can be seen that the policy of decertification of the user did not fully produce the expected effects, since users are still arrested on charges of drug trafficking, since there are no objective parameters that differentiate the two characters. The orientation of decriminalization brought by the legislation was not fully supported by society and by the Judiciary.

It is also possible to perceive that the population has a predominantly communitarian orientation (BRASIL, 2014a, MAIORIA ..., 2014), and therefore, the Legislative Power would be acting in a coherent way with this positioning. However, given the notable lack of reliable and up-to-date information on the issue, it is not known if this position would persist if there was an in-depth and well-informed debate in the social sphere.

It was also observed that the prohibitionist position predominates among federal parliamentarians. Among other proposals, the suggestions for predicting compulsory treatment for the drug user through a model of therapeutic justice have become more common and have been gaining space in the legislative debate, having been included in the text of PL No. 7,663 /

2010, approved in And sent to the Federal Senate.

One point observed in the analyzed content is that neither the legislation nor the proposals presented sought to differentiate the user from the drug dependent. As explained, drug use does not necessarily result in addiction: addiction is related to various factors of chemical and psychological origin, which vary according to the biological and social conditions of the individual subject to the substances, as well as with the effects of each drug. The lack of differentiation between the two figures leads to an inadequate treatment of the characters. While the dependent may need treatment and help to overcome the addiction and regain control over one's life, the user has not, in principle, lost his power of self-determination, and does not necessarily have to undergo recovery programs. Even the danger from the deviant behavior of the two characters is different. While the user may present some unpredictability during the use of certain drugs, the dependent sometimes acts violently even when not under the effect of any substance, motivated by abstinence or despair. It is thus perceived that the lack of adequate separation between the user and the dependent in the drug policy thinking can lead to distortions in their application.

In the comparative analysis of drug positioning, it has been observed that some countries have adopted policies to reduce harm and reduce prohibition, focusing on police efforts to combat the illegal drug trade. Policies are still relatively recent, but some European countries already have measurable results. However, considering the differences in cultural, social, political and economic situations between the countries of Europe and Brazil, it is necessary to observe with caution the results of the foreign experiences. In the Americas, Uruguay and some US states have more liberal positions that can serve as a model for other countries according to the consequences to be observed in these places.

Based on all the above, it is concluded that the initial hypothesis of the research, according to which the congressmen would have a predominantly communitarian profile, but would be opening space for liberal policies, was not confirmed. Although some proposals with liberal tendencies were presented in the first years of the period studied, since the adoption of Law 11.343 of 2006, legislative proposals have been increasingly communitarian, with less suggestions of liberal policies.

It is not exactly an increase in prohibitionism, but rather a strengthening of the communitarian bias in drug policy: legislative proposals have sought to treat the user, albeit against his will, and to reinforce the conception that drugs pose a danger to the human being and to society. During the analyzed period, the idea that it is for the State to "teach" the population about the need to abstain from drugs and to "save" users from addiction seems to be strengthened during the analyzed period.

In summary, the legislative proposals analyzed indicate that the communitarian model that has been guiding public drug policies for years has been maintained, and there is no indication

of openness to a liberal position within the National Congress. Despite the number of projects presented on the subject studied, the legislative process is slow and few have been converted into law or expressly rejected. Many have been filed over time. The absence of a consistent and organized demand for changes in drug policy may be one of the factors by which a movement in this direction is not observed within the National Congress. However, the debate on the subject in society, the judiciary and the international community indicates that the issue is not pacified and could affect the treatment of the issue in the federal Parliament in the coming years.

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