The construction of a right: the regulation of medicinal cannabis in Argentina and Brazil

A construção de um direito: A regulamentação da Cannabis medicinal na Argentina e no Brasil

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Abstract

Cannabis regulation has been constructed and shaped according to local conditions in each country. The role of social movements is fundamental in constructing public policies that overcome the prohibitionist paradigm. The comparison between the normative path of the therapeutic use of cannabis in Brazil and Argentina offers a contrasting example that shows differences in the models adopted in regulation. This study analyzes how activism interferes in the construction of public policies and rights around cannabis, focusing on public health. The methodology used in-depth interviews with activists and professionals who actively participate in institutional debates seeking to expand regulation. The interviews were guided by a semi-structured questionnaire aimed at understanding how interlocutors interpret aspects of each regulation/implementation model and its practical effects. Interviewees' arguments and reasons for their actions were descriptively analyzed. Results show the advancement of the legal use of medicinal cannabis and the effective participation of cannabis activism, in which the access to medicines is being built as a collectively right. The relationship established between activists from the Cannabis March and patients furthered the advancement of the regulation of cannabis use and increased the number of its users.
Keywords: Medical cannabis, Regulation, Social movements, Cannabis Associations, Public health.

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Resumo

A regulamentação da cannabis vem sendo construída e moldada segundo condicionantes locais de cada país. O papel dos movimentos sociais é fundamental na construção de políticas públicas que superem o paradigma proibicionista. A comparação entre o percurso normativo do uso terapêutico da Cannabis, no Brasil e na Argentina, é exemplo contrastivo que demonstra diferenças nos modelos adotados na regulamentação. O artigo analisa como o ativismo interfere na construção de políticas públicas e direitos em torno da Cannabis focando na saúde pública. A metodologia empregada foi o emprego de técnica de entrevistas em profundidade com ativistas e profissionais que participam ativamente dos debates institucionais buscando ampliar a regulamentação. As entrevistas foram guiadas por questionário semiestruturado orientado para saber como interlocutores interpretam aspectos de cada modelo de regulação/implementação e seus efeitos práticos. Foi realizada análise descritiva dos argumentos e motivos dos entrevistados para suas ações. Como resultado percebe-se o avanço da utilização legal da cannabis medicinal e a participação efetiva do ativismo cannábico, sendo o acesso aos medicamentos a construção de um direito moldado coletivamente. A relação estabelecida entre os ativistas da Marcha da Maconha (MM) e pacientes foi um catalisador para o avanço da regulamentação do uso da Cannabis, cujo incremento de usuários vem sendo percebido.

Palavras-chave: Cannabis medicinal, Regulamentação, Movimentos sociais, Associações Canábicas, Saúde Pública.

Introduction

National laws on drug policies have undergone important changes in recent years, especially regarding marijuana. Since the early 2000s, countries such as Portugal, Argentina, the Netherlands, Uruguay, several states in the United States, among others, have chosen new approaches toward drugs, allowing their use for recreational and medicinal purposes. These countries have regulated production and implemented reparation policies, among other measures, enabling greater access and lesser police and criminal repression to those who manipulate psychoactive substances classified as illegal. However, some contexts include revisions of such measures.

However, other countries, such as Brazil, resist any significant changes in their legal framework toward decriminalization and continue to adopt drug policies that emphasize public security to deal with illegal psychoactive substances. Recently, the Brazilian Senate approved a constitutional amendment, authored by its president, which seeks to insert the principle of drugs criminalization in the Brazilian Constitution. The proposal brings nothing new in relation to the current law but inserts prohibitionist principles into the Constitution. If approved, Brazil would be the first country to have such a principle in its Constitution. This initiative seeks to challenge the decision of the Federal Supreme Court, which, in June 2024, after years, decided to decriminalize the possession of marijuana and move toward differentiating users from dealers according to the amount of the drug in possession.

Brewster (2023) finds that the new governance of drug consumption is fragmented, as some contexts have replaced or reformed prohibitive regimes, whereas others have renewed tougher policies toward criminalized control. Brewster (2023) also states that political and cultural contexts and corporate interests continue to be relevant determining factors in the agenda of the debates and trajectories of drug policy governance.

The Netherlands exemplifies a country that profoundly changed its drug policies, with innovative and pioneering revisions toward prohibitionism, framing drugs as a public health problem and

deeming cannabis as a drug of acceptable risks. Its drug governance has shifted from public security to health and social assistance (Brewster, 2023).

Brazil faces great resistance to legally and substantially change its drug policies, having in force a law enacted in 2006 that, despite some advances in relation to the previous law toward further emphasizing health, still criminalizes users. The legal efforts toward a new approach that recognizes the therapeutic properties of plants classified as illegal for consumption and decriminalizes the adult use of certain substances has evinced the recent emergence of social movements, association organizations, and cooperatives that have turned political activism into an important factor in legal and moral changes on drugs (Policarpo et al. 2017; Brandão, 2017; Castro; Fraga, 2022). Cannabis activism (Policarpo et al. 2017; Brandão, 2017) has configured an important actor in this change, pressuring governments, parliaments, medical associations, and health professionals to review laws, administrative norms, and practices (Brandão, 2023).

Argentina and Brazil have recently made progress toward guaranteeing access to cannabis-based medicines by political struggle means. Several of their legal and administrative instruments have provided the right to access. However, the trajectories of the political struggles for access to the benefits of cannabis differ, with more significant institutional progress in Argentina, whereas that in Brazil stems from its constitutional recognition of the right to health as a fundamental clause of the Brazilian Constitution.

The role of social movements and political activism has been fundamental in advancing rights in contexts that remain greatly hostile to changes in drug legislation. These changes reposition the debate regarding the relationship between social movements and public policies, recognizing that the production of the latter exceeds public managers, epistemic communities, and specialists. However, as Dowbor, Carlos, and Albuquerque (2018) state, social movements concomitantly challenge the status quo and lead the filing and formulation of public policy agendas (Dowbor; Carlos; Albuquerque, 2018). Political activism promotes social innovation, proposing public policy instruments as a strategy for public actors.

Thus, despite the advance and pressure of cannabis activism toward legal changes to reduce repression and increase access for people who need medical cannabis, achievements have only occurred in lawsuits in favor of patients' access to the benefits of cannabis.

Methodology

This study is based on data from a survey with activists and experts on the issue of cannabis in Brazil and Argentina. Qualitative collection and analysis techniques were used. Interviews were conducted with five key political/social activists from each country and with experts from both countries who continue to be important in the process of legalization and struggle for patients' access to medical cannabis. Of the total number of people interviewed in each country, four were activists and/or cannabis associations and one was an expert/academic. This study aims to find the main differences and similarities between activists' strategies to ensure rights around Cannabis sativa spp. for therapeutic purposes (hereinafter "cannabis"). Content analysis of documents regulating the consumption and prescription of cannabis in both countries was carried out as part of its methodology. Interviewees were chosen by the indication of other activists. We used messaging apps, e-mail, and phone calls to contact those who had been referred by people who are recognized, by activist and people linked to the cause, as important in the political struggle for access to cannabis in both countries. Thus, five people from each country who directly act as moral entrepreneurs to expand regulation and as professionals who work within the current regulatory framework were chosen.

The comparison between the legislative path and the implementation of the regulation of the medicinal use of cannabis in the two countries shows the decisive local contexts and knowledge (Geertz, 1997) required to elaborate different policies, even in contexts with a similar history. Note that, in addition to being located in the same American region, Latin American countries share a history of interventions

by diplomatic, economic, and militarized means that were legitimized by prohibitionism (Rodrigues, 2012; Carvalho, 2015, Marin; Fraga; Arellano, 2024). On the other hand, these actions enable an important dosage of social innovation, being fundamental in specific contexts to advance legal changes and public policies.

The interviews were guided by a semi-structured questionnaire that aimed to evaluate how our interlocutors interpret aspects of each regulation/implementation model and its practical effects. Data from the interviews were compared with the regulations in force. The perceptions of interviewees that were transcribed throughout the sections aimed to illustrate each scenario beyond their normative framework.

The interviewees were informed of the objectives of this research and its minimum risks and ensured of the anonymity of their identities within the scope of Resolution 01/88 regarding free and informed consent.

Despite the persistence of prohibitionism, a currently ongoing change enables both the regulation of medicinal use and the decriminalization of possession for the personal consumption of cannabis in Latin American countries within the established legal parameters.

The Brazilian National Health Surveillance Agency has regulated medical cannabis since 2015. Activists and patients still criticize the difficulty of accessing treatment.

Comparing the path and implementation of regulatory frameworks in Brazil and Argentina based on the perspective of activists and professionals engaged in this process seeks to explain the singularities that bring these experiences closer and further apart and develop the debate on the topic based on the perspective of health.

Results and analysis

Argentinian regulations

According to Labiano (2018), actors such as activists of the Cannabis March (CM) have tried to modify the Argentine drug law no. 23,737/1989, obtaining no great success in overcoming prohibitionism. However, the demand to regulate the therapeutic use of cannabis culminated in the approval of Law no. 27,350/2017, which addresses the promotion of research and the availability of medicines to patients.

Therefore, the "Medical Cannabis Law," as it became known, consolidated the necessary legal basis to promote medical and scientific research on cannabis by creating a national program to investigate the medicinal use of cannabis, its derivatives, and non-conventional treatments within the scope of the Argentinian Ministry of Health1 and mechanisms to guarantee free access to treatment for people incorporated into its Cannabis Program (Reprocann).

Labiano (2018) and Días et al. (2021) consider that this political mobilization from 2015 onward "hybridized" expertise and activisms that configure networks in a co-production of knowledge, which has impacted the production of scientific knowledge about the plant and the understanding of how to act in favor of regulatory reforms. Beyond a moral appeal, the primary role of cannabis associations is to gather, formalize, and circulate their experiences by what the authors call "experimental expertise."

Notably, the Law created an advisory council composed of public and private non-governmental institutions and professionals (without commercial sponsorship) to facilitate dialogue between the government and civil society. An interviewee, Dr. Elena, participated in this construction as a counselor representing an association. Her role was to:

> Offer feedback regarding the regulations that were being implemented and generate constant advice to make them viable; regarding REPROCANN, for example, in which the number of plants and the different access routes were contested. Then, there was a big discussion about the number of people that organizations can supply; at that time, the limit was 150. The Ministry of Health wanted to put a much lower limit, but we managed to leave a clause that says that if this amount is exceeded, you can, via affidavit, ask for an authorization so that more people can be supplied. Well, in this case, nine plants per person are allowed.

1 Authors' translation.

The objectives of the Law also included the professional training of health agents for treatment and the investigation of therapeutic efficacy and its possible adverse effects. The Law enabled the importation and cultivation of the plant by the National Council for Scientific and Technical Investigations and the National Institute of Agricultural Technology to ensure access to raw material for research and preparation of oils for patients registered in the program. There also exists the promise of a large-scale production of the plant by the Argentine government exclusively aimed at health and research by its National Agency of Public Laboratories. However, Hector, a cannabis cultivator in an association with about 2,500 members, considers that large-scale production is yet to be carried out and may face short- and medium-term implementation difficulties.

The interviewees highlighted the importance of the Argentinian CM in this process as it provides meetings between people with greatly different interests and knowledge about the plant in addition to having boosted the discussion on medicinal use by their struggle. According to Jimena, a member of an association:

> It turned out that, at the national level from 2015 onward, the strategy of the marches was to put the mothers of patients at the forefront of the movement to generate political pressure. It's not that the mothers came out of nowhere, it was a strategy of the movement, and I bring this up because sometimes it seems that the mothers saved the movement and that's not the case, the mothers are emerging from the movement because it was a strategy to make visible one issue and not another because we needed to start opening up the parliamentary possibility. So, there was a really very important group of mothers, who started to put pressure on parliament, which ended up creating this first law in 2017.

Although one of the main objectives of the Law is access to oils, seed ownership and home cultivation are yet to be regulated, creating a legal gap and insecurity for growers. Thus, Jimena states that the 2017 Law was "a blow to the cannabis movement," which she attributes to malicious parliamentary intent during the negotiation between the mothers and the government of Argentinian president Mauricio Macri.

This situation pressured activists, patients, and family members to commit themselves to the right to home cultivation, resulting in the approval of Decree no. 883/2020 (which President Alberto Fernández sanctioned), regulating home cultivation to promote the implementation of the "Cannabis Law." Thus, despite the restrictions of the 2017 Law, it functioned as "a small window of opportunity in the prohibitionist ideology that dominates the political perspective on the subject" (Labiano, 2018, free translation).

With the decree, the Argentinian Ministry of Health presented a draft regulation providing for sale in pharmacies, home cultivation for patients registered in Reprocann, and free access to medicines for people living with disabilities, which helped to get patients out of illegality since the oil could only be purchased on the illegal market or be cultivated clandestinely.

María, a lawyer, activist, and member of an Argentine political party that defends regulation considers Reprocann a great achievement, despite being challenged in court even before the Supreme Court of Justice by opposing groups. However, the decision by the Court favored the measure. The lawyer defines Reprocann as follows:

> [...] an appropriate way to guarantee people's access to cannabis and domestic cultivation because it puts a cloak of protection on those who have it in their possession since what the court pointed out is that the registration in REPROCANN repels or should repel any intervention of the penal code. Anyone who has the record should not be charged or arrested. [...] That is, all people with a medical indication can grow at home, make the oils, and supply them either for themselves or for a family member. For example, my grandmother needs the oil, well, I register in the national registry because the doctor prescribed it, and I am safe from state persecution.

Its medicinal issue has greatly influenced the progress of cannabis regulation, but activists have mobilized the fight for home cultivation, remaining active for years in constructing the CM and elaborating magazines that propagate cannabis culture, such as THC and Haze (Veríssimo, 2017). Cultivators disseminate important knowledge about the plant to patients and families.

In 2020, this regulation of cultivation for medicinal purposes reverberated in the Brazilian media, and many activists contrast the Argentine model with Bill no. 399/2015, which seeks to regulate the cultivation of cannabis for various purposes in Brazil, except for domestic cultivation. In his comparative study of Argentinian and Brazilian cannabis culture, Veríssimo (2017) noted that the difference in the way anti-prohibitionist movements in both countries operate is related to more general aspects of the culture of each one, such as the habit of political education by reading in Argentina and the use of charangas in Brazilian marches.

This helps explain the importance of anti-prohibitionist magazines in Argentina, whereas Brazilian activists in Rio de Janeiro engage more in following a carnival block that questions the ban in the topic. Note that, in both cases, the middle class constituted the social segment that gives visibility toward the regulation of adult use. Moreover, patients' demand for access to treatment advanced the issue in the legislature despite the historical stigma of use and its association with the culture and resistance of Black people and residents of favelas and peripheries (Saad, 2019).

Still, Corbelle (2020) states that the movements have many disputes with each other. The author considers this to be one of the reasons preventing the modification of the Drug Law in Argentina, a problem that also occurs in Brazilian activism. However, associations such as Associación de Usuaries y Profesionales para el Abordaje del Cannabis y otras Drogas (Association of Users and Professionals for the Approach to Cannabis and Other Drugs), Cannabis Medicinal Argentina (Argentine Medicinal Cannabis), and Mamá Cultiva Argentina have become great allies in the fight against the stigma of the plant and its consumers. These associations have proposals that closely resemble the Brazilian associations that defend the regulation of domestic cultivation as a strategy to ensure the autonomy of patients and to end police violence against other consumers. These actions help to reduce public opinion resistance to the debate on broader regulation.

Between advances and setbacks: the regulation underway in Brazil

The Brazilian regulation initially took place by the collegiate board resolutions (RDC – resolução da diretoria colegiada) of the Brazilian National Health Surveillance Agency after an intense mobilization of mothers of patients and cultivators. The main ones include RDC no. 17/2015, on the importation of cannabidiol-based products by individuals; RDC no. 306/2019, which amends RDC no. 17/2015; RDC no. 327/2019, which regulates the manufacture, importation, sales in pharmacies and provides other provisions; and RDC no. 660/2022, which defines new criteria for importation.

In addition to these resolutions, the Chamber of Deputies currently processes federal bill (PL) no. 399/2015, which addresses the cultivation of cannabis for industrial, medicinal, veterinary, and research purposes and the supply of medicines by the Brazilian National Health System (SUS). The Chamber has another project that only addresses SUS supply, PL no. 481/23, as well as PL no. 89/2023 (currently under consideration in the Senate).

At the state level, Pernambuco was a pioneer in approving Law no. 18,124/2022, which authorizes cultivation by cannabis associations for medicinal purposes, whereas São Paulo and Rio de Janeiro approved Laws no. 17,618/2023 and no. 10,201/2023, which address SUS supply, respectively. Note that Rio de Janeiro was also a pioneer in approving Law no. 8872/2020, which seeks to promote research with cannabis, a proposal that was replicated in other states.

The municipal level also includes supply regulation at SUS in the municipality of Goiânia by Law no. 10,611/2021; in Búzios by Ordinance no. 002/2021, which included cannabis in the Municipal

List of Essential Medicines; in Volta Redonda by Law no. 6,085/2022; and in Salvador, Law no. 172/2021.

However, despite these apparent advances, many activists criticize this movement for lacking a real implementation of state and municipal laws. To exemplify the reason for such an impression, the first Law to promote research with cannabis, approved in Rio de Janeiro, has been implemented at a slow pace. Reasons include the lack of investment by state research funding agencies. Due to the persisting ignorance about the subject and the scarcity of resources for science, the prioritization of the allocation of funds for public notices on this topic is unlikely.

As for the Laws on the supply of cannabis (a more complex issue), the Ministry of Health generally constitutes the body to include new medicines to be provided by SUS. Thus, the challenge far exceeds implementation in states and municipalities. Milton, a lawyer who is a member of a network of jurists in favor of the regulation, states the following regarding these state and municipal laws:

> [...] a common trait between these laws can be understood as the difficulty of access, acquisition, and treatment via public mechanisms and involvement in the supply of THC oils in addition to the high value of imported medicines. There is great hypocrisy in this because it is a treatment that is based on an herbal medicine. It is something the price of which does not reflect reality. So much so that association oils are cheaper. For example, the one my mother takes, costs R$ 180. And the oil at the pharmacy is very expensive.

The case of Búzios deserves mention for being the first Brazilian municipality to have undergone a bidding process based on RDC no. 660/2022, with the lowest price being one of the criteria for the companies to be chosen. However, this process is yet to be completed due to bureaucratic obstacles that hinder the arrival of these medicines at SUS. Dandara, president of a cannabis association closely following this construction finds that:

> In dialogue with the city of Búzios, we gave exemption to 100 families for a year, enough time for this program to guarantee access, but this did not happen. There were problems with the purchase of the product. Today, it seems that they are giving social aid for purchases. So, I think it is an advance to have a cannabis program but I believe it has to improve. Volta Redonda is more advanced, but it saddened me to realize that the association that started this work with the municipality was left out when it was time for the business to move forward. (...) And when I say excluded, I am not meaning the fact of having to buy from the association and make a partnership; it is not that. It is allowing it to participate in this construction because no one in Brazil today understands more about planting, producing, and supplying marijuana than cannabis associations.

Another point about the Brazilian case that differs from the Argentinian one refers to the number of laws approved and projects in progress in municipalities and states (Rezende; Fraga; Sol, 2022). The National Committee for Health Technology Incorporation, responsible for including medicines at SUS, failed to act in this sense. Moreover, no federal law on the subject received approval, leading state deputies and councilors to legislate on the subject. These parliamentarians officially claim that they are based on the fundamental right of access to health provided for in Art. 6 of the Brazilian Constitution. Note that the associations receive great support as they constitute groups of interest for electoral support.

Therefore, these bills stem from parliamentarians responding to the social pressure of associations and collectives that take a stand on the subject in public hearings (Rezende; Fraga; Sol, 2022) and demand initiatives on social networks and in the media. These legislative initiatives show that Brazil has followed a legislative path similar to the US, in which municipalities and states seek to create regulations according to their specificities. Another example involves São Paulo, which, after approving Law no. 17,618/2023, created a Work Commission in its State Department of Health with "32 agencies and entities, technicians, and associations" to assist the implementation of the Law, as proposed in the Argentinian Commission.

Activists working in public office also create "windows of opportunity" that help bring the debate to legislative houses, secretariats, universities, and research institutes, helping to promote effective public policies. In cases without such support from people in strategic positions, social movements face difficulties.

Still, the lack of regulation that supports the cultivation of associations and setbacks by Brazilian Health Regulatory Agency renders the scenario unstable and harms access to those who need it most. In July 2023, the agency issued a technical note informing that the importation of flowers would no longer be allowed due to lack of scientific evidence and misuse, a position that was supported by the Federal Council of Medicine, which tends to take conservative positions on the subject. This received heavy criticism from professionals who argue that the consumption of flowers is absorbed faster by the body.

Thus, the acceptance of the discussion surrounding the legislative and judicial regulation of cannabis in Brazil oscillates between advances and setbacks at a slower pace than in Argentina.

Talking about regulation

The conducted interviews serve as a resource to better understand the points of convergence and differences between the normative models around the medicinal use of cannabis in Brazil and Argentina. Due to the limits of the elaboration of this study, we chose to reduce the number of interviews that will be analyzed without, however, logically compromising its content.

Among Brazilians, two people were Black, three identified with male pronouns and two with female pronouns, and their ages ranged from 41 to 46 years at the time of the interview. Among the Argentinians, all were White, three identified with female pronouns and two with masculine, and their ages ranged from 33 to 45 years. This study avoided using interviewees' real names and states of origin to preserve their anonymity.

The interviews show many similarities between the strategies of the Argentinian and Brazilian activists, unlike the regulatory models in their countries. In summary, the role of mothers of children with rare diseases and the appearance of these cases in the media was decisive for regulation in both countries (Motta, 2019; Policarpo, Veríssimo; Figueiredo, 2017; Prado, 2023), as were the role of CM activists as moral entrepreneurs in this process (Reed, 2014; Brandão, 2017; Leal, 2017; Veríssimo, 2017; Castro; Fraga, 2017; Prado, 2019; Prado, 2022).

Another important point of convergence refers to the legal strategy of preventive habeas corpus to prevent patients from being arrested for growing the plant. In Brazil, activists from Rede de Advogados pela Reforma da Política de Drogas (Network of Lawyers for Drug Policy Reform) developed this strategy. Currently, hundreds of patients and cannabis associations have judicial authorization to cultivate (Policarpo; Veríssimo; Figueiredo, 2017; Figueiredo, 2021) despite no law regulating domestic cultivation.

In Argentina, patients registered in Reprocann can cultivate the plant for medicinal purposes, which was only possible after long work of political articulation between social movements and parliamentarians. The judicial sphere also shows an important precedent that helped this process, according to the report of Argentinian lawyer María, who followed this case closely.

> There we met a group of mothers who wanted the possibility of receiving permission from the State to cultivate in their homes, produce oils, and supply them to their children. This was not included in national legislation. And, well, we started this approach in court. First, at the criminal headquarters, we filed a habeas corpus asking the judges to order the security forces not to intervene in these homes because we understand that their behavior is protected by rights superior to those established by the regulations, which is access to health and the guarantee of the quality of life of their children. That filing was a success and later we filed in the civil court.

Note that these legal arguments are the same as those Brazilian lawyers support, the success of these strategies is related to the fact that both countries

are conservative, as per some of the interlocutors in the interviews. Therefore, only the mobilization of mothers in favor of their children's right to health had sufficient strength to receive such authorization.

Among Brazilians, only two neither consumed nor favored regulation before they started getting involved with cannabis. Dandara, president of an evangelical association, only began to have contact with the plant after learning that it could benefit the treatment of her son, who has a serious illness. A reality for many patients' families. On the other hand, Itamar, a family doctor, only started to study the use of the plant as an herbal medicine after his students questioned him about it.

> I was a professor and family doctor; I was teaching a class on pain in primary care at a Medical Congress in 2015. Then a resident doctor stood up and asked "oh, doctor, you're not going to talk about cannabis in the treatment of pain, are you?" And I had no idea that it was good for anything other than to get high. So, I looked at this guy, and I gave a very pro forma answer. Which is very funny because today I see in the debates doctors who did not study doing exactly the same thing. I replied "no, it's because the studies are still very incipient, there is a lack of data, I don't know what, and blah blah blah" but then, more and more questions came, and I started studying.

The deficit of professionals who can offer patients prescriptions is an issue for most interviewees, who believe that the solution to this problem lies in disseminating information and research that helps to guarantee access to treatment. This explains why the Argentinian association Jimena highlights the training of health professionals by technical courses on the subject.

Diego, a pharmacist and professor of organic chemistry at a university, works in the analysis of the associations' oils and was the only one among the Argentinian interviewees who said he had no history of militancy or previous link with cannabis. Diego highlighted his care in avoiding occupying the space of activists and recognizing them as protagonists and those responsible for ensuring research by donating their plants to universities since, although the law allows cultivation in them, no human resources have been allocated for this.

> In 2020, we had the regulation of this Law, which, in its Article 5, allows universities to work together with associations and other research centers. So, for the first time, we have a regulatory framework that allowed us to introduce cannabis flowers into the laboratory, which, until then was absolutely prohibited and which generated a huge delay in terms of basic research on the plant because we could not have access to it to be able to analyze it legally.

Brazilian researchers still face this legal barrier to research before regulation, despite the legal frameworks that support scientists. The Drug Law, no. 11,343/2006, provides for the authorization of the cultivation of prohibited substances for medicinal and scientific purposes in the sole paragraph of its Article 2, for example. Anelis (a pharmacist and university professor at a Brazilian public university who has coordinated a research project on the analysis of cannabis oils for years) was prevented from researching the plant as an inhalant (which was subjected to a public notice).

> [...] The project was granted because they considered it unethical and unfeasible and that I did not have the capacity to coordinate myself based on a serious methodological problem due to the fact that the inhalation route was prohibited. So, we get into this issue because it is a regulatory discussion. So, they understand that, as it is prohibited, one should not research it. So, we see that mediocrity is also within research because science cannot be hampered, it cannot be tied to the regulation of an era because it is linked to a historical moment. Just think of the case of Galileo Galilei.

This issue is present in the discourse of physicians from both countries, regarding use motivation, whether it is for adult/recreational or medicinal use, since medicinal use currently receives social acceptance and regulation, whereas adult use has no such support. For Itamar, all uses are therapeutic and ritual (rather than recreational), and a distinction sounds harmful to him.

The physician cites a survey carried out in Canada in dispensaries for adult use, which showed that most consumers who used it daily, consumed the herb to improve sleep, calm themselves, etc., adding that:

> It's like saying that I went to the pharmacy and made recreational use of pyromania. So, this is not recreational use, this is therapeutic use. Now, do I also use it for fun? It's a good thing that medicine doesn't just have to do harm, right? I can use medicine to avoid vomiting caused by chemotherapy. Now, why if it gives me pleasure it doesn't work?! What do you mean?!

On the other hand, pharmacist Aneli considers that research is necessary to assist in this differentiation by analytical data due to the thin line in this issue; only chemical instrumentation can help to understand. Moreover, Argentine physician Elena recognizes the varieties of uses to obtain new rights for people who refuse to describe themselves as carriers of a disease to avoid legal prosecution.

> We are still trying to regulate cannabis for all its uses. Well, recently we had a law on the production of industrial and medical cannabis that still does not contemplate adult use. In other words, at this moment in Argentina, to use marijuana, you have to say: 'I have a disease and that's why I need to use it.' But, well, although this law 27.669 is almost two years old, it has not yet been implemented. It is evident that where the possibility of generating commercialization and industrialization appears, there was interest but there is a lack of political decision to apply it.

Elena addresses an interesting point in the excerpt above, a demand our Argentinian interlocutors have echoed, which is the need to enforce the Cannabis Law for industrial purposes, which causes a certain discomfort. Cultivator Hector considers that "although the private sector is acting as if they were the experts in this field, the only ones who have guaranteed access at all this time are the NGOs". He adds:

> I think what happened at the regulatory level was very important, but it seems to me that the State was not up to the task of improving this. I think it is easier that if someone wants to produce and regulate production, that taxes are charged to obtain licenses at each stage. Today, as a producer, I am not protected, I do not have a cultivation license. And that's a problem because the government changes and if the government is anti-cannabis, I can go to prison. So, I'm fighting for that, for cultivation licenses and production of organic and pharmacological-grade practices and I'm thinking about dispensaries where I can sell that.

As Brazil still has no regulation on associations, many operate clandestinely at the risk of having their work interrupted or suffering criminal sanctions. This generates social pressure in defense of the work of associations, as many consider that projects such as PL no. 399/2015 fail to create adequate rules for their specificities by placing them on the same list as companies. However, three interlocutors criticized the actions of some associations and the authorizations courts granted, whereas the Argentinians made no such judgment.

Daniel, a Brazilian cultivator who has worked in different associations, dislikes that the current regulation privileges companies to the detriment of associations. He considers that members are vulnerable in the current model, facilitating "many associations becoming family businesses."

> I think that this type of path makes what marijuana can do unfeasible, which is a social, economic revolution within the structure of a country that can be the productive pole in the world. So, I'm scared of the kind of cultivation we're talking about. We are talking about health, we are talking about well-being, we are talking about net profit and commodity. If we continue to treat the third sector as a large industry, [...] the association will not be able to pass the benefit to its member with a reduction in the cost of oil, it will not be able to pass the benefit to its employee. [...] So, a neoliberal logic is presented [...], there is no way to think about a social policy within a structure that moves so much, you know?

Pharmacist Anelis also believes in "companies disguised as associations," which makes her fear for the safety of such products, which she believes can be solved with a regulation that imposes rules with greater sanitary rigor and inspection to preserve public health.

> I understand cannabis extract as an herbal product that can be produced by a compounding pharmacy that needs to meet sanitary requirements because it is necessary to differentiate in terms of public health risk a family production when a person makes a medicine, such as a syrup, for example. It is a preparation for domestic use that cannot be sold or distributed. So, some say they don't sell, but the question is not selling, the question is the number of people who use it. So, the negative side of this issue of NGOs is the lack of sanitary regulation in terms of inspection.

Finally, pharmacists and cultivators in both countries are concerned about tolerance to cannabis oils, which they believe constitutes a problem that should be anticipated by studying and using herbal medicines associated with cannabis. Brazilian pharmacist Anelis and Argentinian cultivator Hector have researched this topic.

Final considerations

Without aiming to offer a complete overview of the models of regulation of cannabis derivatives in Argentina and Brazil, this study sought to illustrate these two realities beyond norms based on the perspective of the social actors who act to construct and maintain these rights. There remains a long way toward greater accessibility to patients who need medicines. However, this picture has undergone considerable changes.

These interpretations include several sensibilities and lenses on the issue, which provoke disputes, contradictions, and criticisms that shape a regulation that constantly undergoes revisions in both countries. In conservative countries such as Brazil and Argentina, marked by a history of violence and the fight against drug trafficking, no rights conquered around cannabis are permanent, requiring continuous maintenance.

This text evinces that the progress in both countries stems from local activism as building a right requires many hands. The contact between CM activists and patients configured a catalyst to advance the regulation of the use of cannabis, which receives more and more supporters and enthusiasts.

However, we must highlight the importance of regulation. Unlike the Argentinian case, Brazil is yet to approve a federal law that democratizes access to treatment by patients and guarantees the safety of associations, forcing them to act clandestinely or with the support of court injunctions that can be overturned at any time. The Argentinian regulation clearly crosses fewer obstacles than the Brazilian one, but its limitations still engage people to fight to expand rights regarding the plant.

In one way or another, the instability of these policies falls on the population of both countries, who finds it difficult to obtain information about the therapeutic potential of the plant and to have access to treatment.

Confrontation remains very important in Brazil as threats of setback of the little that has been achieved as Senate may edit the constitutional amendment. Progress in access to medical cannabis in Brazil took place in the wake of legal loopholes and in the political struggles of activists and the parents of children who needed treatment. Regarding the constituted powers, the judiciary has played a more protagonist role in enabling access to derivatives. The composition of a conservative Chamber makes it difficult to make legal changes to access. In Argentina, in turn, the enactment of the Law enabled important advances such as the professional training of health agents aiming at greater knowledge about treatment, the possibility of investigating the therapeutic efficacy of plant derivatives and their possible unwanted effects, and other achievements due to the law. However, there remains the challenge of expanding access and avoiding setbacks in a new scenario of a conservative government.

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Authors' contribution

All authors contributed equally to the article.

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