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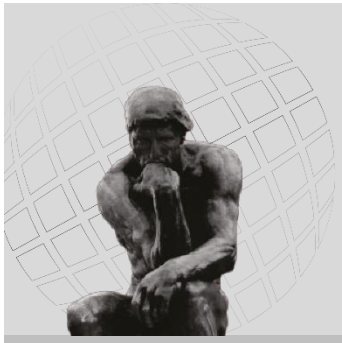

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Comprehensive analysis of proposed legislation regarding associated traditional knowledge in Brazil: 1988-2022

Análise dos projetos de lei relacionados ao conhecimento tradicional associado no Brasil: 1988 – 2022

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Abstract

This article analyses how the Brazilian House of Representatives addressed, between 1988 and 2022, bills relating to associated traditional knowledge, genetic heritage, and the rights of traditional peoples and communities. The research problem is to understand which legislative proposals were introduced during this period, which rights they sought to regulate, and how they were handled legislatively. The study aims to map and examine these proposals, identify their legislative status in 2024, and construct analytical categories concerning their main regulatory axes. The research adopts a qualitative documentary approach, analysing 71 bills through Grounded Theory, operationalised by means of microanalysis of the legal provisions and axial coding for the formation of broader categories. Of the total, 32 bills have been archived, 36 remain under consideration, and 3 have been enacted into law. Categories identified include ownership and management of territories, rules of access, rights, obligations and conditions of use, as well as benefit-sharing. It is concluded that the legislative agenda analysed reproduces regulatory patterns rooted in a colonial matrix by subordinating traditional knowledge to state forms of control and by allowing, in specific situations, access without prior informed consent, thereby revealing power asymmetries in the regulation of these rights.

Keywords: traditional knowledge. legislative analysis. traditional communities. grounded theory. colonialism.

Resumo

Este artigo analisa como a Câmara dos Deputados tratou, entre 1988 e 2022, os projetos de lei relativos ao conhecimento tradicional associado, ao patrimônio genético e aos direitos de povos e comunidades tradicionais. O problema de pesquisa consiste em compreender quais proposições foram apresentadas nesse período, quais direitos buscaram regular e qual tratamento legislativo receberam. O estudo objetiva mapear e examinar essas proposições, identificar sua situação legislativa em 2024 e construir categorias analíticas sobre seus principais eixos regulatórios. A pesquisa é documental e qualitativa, com análise de 71 projetos de lei por meio da Teoria Fundamentada nos Dados, operacionalizada mediante microanálise dos dispositivos e codificação axial para formação de macrocategorias. Do total, 32 projetos estão arquivados, 36 em tramitação e 3 foram convertidos em norma jurídica. Emergiram categorias como titularidade e gestão de territórios, regras de acesso, direitos, obrigações e condições de usufruição, além de repartição de benefícios. Conclui-se que a agenda legislativa analisada reproduz padrões regulatórios de matriz colonial ao subordinar o conhecimento tradicional a formas estatais de controle e admitir, em situações específicas, o acesso sem consentimento prévio informado, evidenciando assimetrias de poder na regulação desses direitos.

Palavras-chave: conhecimento tradicional. análise legislativa. comunidades tradicionais. teoria fundamentada em dados. colonialismo.

Summary

1. Introduction

Traditional knowledge (TK) associated with biodiversity is defined as knowledge and information transmitted from one generation to another within a given community. These practices, developed over time, contribute to the formation of the people's cultural identity (Cunha, 2017). Furthermore, TK has attracted the attention of both the private sector and the state due to its potential to streamline the range of hypotheses in scientific research, thereby offering significant untapped economic potential.

A conspicuous lacuna exists within the ambit of Brazilian socio-legal research concerning the underlying legislative dynamics associated with biodiversity and traditional knowledge (TK). This lacuna pertains specifically to the processes by which bills are prioritized, deliberated, and transformed (or not) into legal norms within the National Congress. For instance, an analysis of 60 theses and dissertations defended between 2013 and 2002 focusing on Brazilian legislation regarding sociobiodiversity, genetic heritage, and traditional knowledge (Cuco; Feres; Costa, 2022) revealed a predominance of bibliographic and documentary research. These studies are predominantly characterized by a series of overarching themes, including the (in)compatibilities between national and international norms; the inadequacy of criminal law in addressing biopiracy and the misappropriation of genetic heritage; the impact of regulation on research and innovation development; the situation of traditional peoples and communities in the context of capitalist expansion; and the role of biodiversity in national sovereignty. Despite this thematic variety, the aforementioned analysis notes that the majority of these studies concentrate on evaluating the current configuration of biodiversity legislation within the legal system.

In light of these considerations, the present study endeavors to make a meaningful contribution to the extant body of knowledge on the subject by conducting empirical research on Brazilian legislative propositions and evaluating the treatment accorded to the rights of traditional peoples and communities. Despite the existence of studies addressing specific regulations, such as Act No. 13,123/2015, a lacuna persists in the systematic analysis of the entire legislative agenda (1988-2022) concerning the manner in which the National Congress addresses the rights of this demographic.

This article provides an overview of the legislative debate on traditional knowledge from 1988 to 2022, with the aim of understanding the legislative dynamics of traditional knowledge based on public policy agendas. The central question guiding this study is to identify and examine the specific bills related to traditional knowledge that were processed by the House of Representatives between 1988 and 2022. In addition, the study seeks to analyze the rights that these bills sought to regulate and their current legislative status. Given that a significant portion of the legislation applicable to traditional knowledge or traditional peoples and communities stems from international treaties or infralegal regulations (such as decrees, resolutions etc.), a low number of bills was expected. This study offers, consequently, a comprehensive overview of the legislative discourse surrounding the matter.

This research also seeks to elucidate the legislative agenda of the House regarding traditional knowledge. These inquiries will be addressed by establishing specific analytical criteria, including the frequency of bills over time, the content of the proposals, and the status of each bill.

The proposal of a bill is permitted to any member of Congress or the President of the Republic. Subsequently, the proposals are subjected to review by technical committees. These committees may choose to either dismiss the proposals or forward them to the entire assembly for further consideration. Subsequently, the bill is transmitted to the Federal Senate and then to the President of the Republic for final approval. The President's decision regarding the bill is twofold: he may either approve the bill, thereby enacting it on a specified date, or veto it in part or in its entirety. In the event that the President exercises his right of veto, Congress is empowered to either uphold or overturn the veto. This is the general process through which bills are subjected to analysis.

This article will begin with an examination of fundamental theoretical concepts, including traditional knowledge and genetic heritage, public policy agendas, the legislative process, the sociology of absences, and

appropriation processes. The second section will concentrate on the methodology and any constraints based on empirical research and grounded theory. The third section will present the results of the analysis, which will entail the coding and categorization of the contents of the bills. The fourth section will offer a synthesis of the findings and present the final considerations.

2. Theoretical concepts

In accordance with item I of article 1 of Decree 6,040/2007, traditional peoples and communities are culturally differentiated groups that self-identify as such, possess distinct forms of social organization, and occupy and utilize territories and natural resources to sustain their cultural, social, religious, ancestral, and economic practices. These groups rely on knowledge, innovations, and practices that have been generated and transmitted through traditional means (Brasil, 2007).

As per item II of article 2 of Act 13,123/2015, traditional knowledge is defined as "information or practice of an indigenous population, traditional community, or traditional farmer regarding the properties or direct and indirect uses associated with genetic heritage" (Brasil, 2015).

In 2006, official statistics indicated that approximately 4.5 million individuals self-identified as traditional peoples and communities, occupying roughly a quarter of the national territory (Observatório Quilombola, 2006). It is estimated that 256 indigenous peoples currently reside in Brazil, speaking approximately 150 distinct languages (Instituto Socioambiental, s. d.). Concerning the remaining Quilombo communities, it is estimated that there are at least 2,847 groups in 24 federal units, with the potential for this number to reach 3,500 communities (Santos; Tatto, 2008). A census conducted by the IBGE in 2022 identified a Quilombo population of 1.32 million individuals (IBGE, 2023). Almeida (2011) posits that the collective identity attributed to these peoples and communities may be shaped by various processes of territorialization, including flight, abandonment, and occupation. However, the term "traditional" is polysemic, encompassing distinct processes of territorial constitution and socially differentiated circumstances (Almeida, 2011).

Public policies related to Brazilian biodiversity must be considered in light of the country's distinctive circumstances. Brazil is home to the most extraordinary biodiversity of fauna and flora on the planet, with a vast number of species endemic to the country. Brazil hosts four of the richest ecosystems in terms of species diversity: the Amazon Rainforest, the Atlantic Rainforest, the Pantanal, and the Cerrado. Furthermore, Brazil is estimated to be home to 1.8 million species, with only 11% of these being cataloged (Brasil, s. d.).

Soejarto postulates that natural products possess greater potential for the discovery of new drugs in comparison to synthetic products. Once the pharmacological use of a species has been identified, it is reasonable to assume that the family of that species also holds promise. A substantial proportion of clinically utilized pharmaceuticals are derived from natural sources, thereby enhancing the probability of developing efficacious drugs (Soejarto, 1996). The benefits of producing natural substances instead of synthetic ones, when coupled with associated traditional knowledge, serve to further facilitate the identification of promising species.

The pursuit of traditional knowledge has given rise to a competitive environment among scientific and corporate sectors, driven by the potential to significantly reduce the time and resources required for researching and developing new medicines and cosmetics (Resende; Ribeiro, 2005). This phenomenon can be attributed to the fact that scientific hypotheses are more likely to be successful when based on species that have already been identified and utilized. In the majority of instances, the purification of a substance derived from a species is a more straightforward process than the synthesis of the substance in a laboratory setting. Moreover, it is imperative to elucidate the manner in which synthetic substances interact with the human body to determine their viability for utilization. Conversely, products de-rived from traditional knowledge are centered on the utilization of natural components. Furthermore, an increasing number of companies are incorporating biodiversity, sustainability, and traditional knowledge into their marketing strategies with the intention of enhancing the appeal of their products. However, these principles are not always reflected in practice.

3. Methodology

The bills selected for analysis were obtained from the website of the House of Representatives[1], "PL – Draft Bill" was selected as the category of proposal. The "All" option was selected under the "Status" tab for the "In progress" item. In the "Subject" field, the option "Any of these words" was selected, and the terms "knowledge* traditional*", "people* traditional*", "population* traditional*", and "community* traditional*" were entered. Subsequently, the search parameters were specified as follows: "Where to look?" was set to "Sentence", "Indexing", and "Full text". All other fields and options were left blank.

In accordance with the House's guidelines, the asterisk should be employed to obtain variations of words with the same structure up to the aforementioned point. For example, the term "traditional knowledge" may be interpreted in two ways, depending on how the author(s) wrote the bill. The survey was conducted on May 9, 2021 and yielded 271 propositions. On May 21, 2024, the survey was updated to include 368 propositions.

The analytical process commenced with the formulation of a grounded theory (Cappi, 2017; Laperrière, 2008; Strauss; Corbin, 2008). In the initial phase of the review process, 71 bills were selected for further analysis following a comprehensive examination of the full text. However, Draft Bills 4751/1998 and 1953/1999 were exceptions to this rule, as they did not contain a link to download the complete text. Conversely, the information was derived from the attached document, which is labeled "Digitalized Dossier." Moreover, the analysis of Bill 4842/1998 was constrained by the substandard quality of the scan, which precluded the evaluation of specific sections of the document.

The document was excluded for the following reasons: 1) the document only mentioned key search words without the bill explicitly addressing the subject of the study; 2) the bill was related to honoring or granting titles; 3) the bill was focused on other policies aimed at traditional peoples and communities.

Strauss and Corbin (2008) define phenomena as "important analytical ideas that emerge from our data". They posit that a concept is a "labeled phenomenon", which is an abstract representation of facts, objects, or actions/interactions identified in the research process. The observed phenomena are those provisions that aim to establish, alter, or consolidate a new legal relationship through the enactment of laws (Strauss; Corbin, 2008).

The selected documents underwent microanalysis, which entailed a meticulous line-by-line examination. This process was essential for establishing preliminary categories with their defining characteristics and dimensions, as well as for suggesting relationships between categories (Strauss; Corbin, 2008). The material thus subjected to analysis was then subjected to axial coding, which involves regrouping the data that was divided during the open coding stage. Axial coding contextualizes phenomena by placing them into "macro-categories", which group together concepts that manifest themselves similarly (Strauss; Corbin, 2008).

The process entails the generation of phrases from each code, which serve to encapsulate the content identified within the provisions of the studied bills. Once the phenomena have been labeled, a process of generalization and abstraction is required to group the provisions of the studied bills based on their similarities. By naming these phenomena following their properties and dimensions, it becomes possible to classify them into standard groups.

By the conclusion of this phase, the concepts had been organized into tables under the categorization established following the analysis of all the documents. This approach facilitated the creation of a comprehensive information repository that can be leveraged to address additional research questions and enable the collective construction of knowledge (Epstein; King, 2013).

The methodology employed in this article is subject to a potential limitation concerning the selection of keywords used for searching on the House of Representatives website. As a result of this limitation, some bills may have been excluded from the study. These bills could impact the legal relations between traditional peoples and communities and their traditional knowledge, even if they do not explicitly include the specific terms used in the search.

Prior to 1998, the poor quality of scanned documents likely prevented the availability of bills for analysis, as document processing was primarily conducted manually until the early 2000s. Furthermore, this study did not

[1] The detailed path followed on the website was: (https://www.camara.leg.br/) via the Legislative Activity/Legislative Proposals tab, followed by the Advanced Search option (https://www.camara.leg.br/buscaProposicoesWeb/pesquisaAvancada).

differentiate between the concepts of “peoples”, “communities”, and “traditional populations”. Additionally, it did not consider the specific terminology used by the proposers to be irrelevant unless it was intended to provide disparate legal treatment to each holder. Similarly, terms with identical or similar meanings were consolidated based on the context in which they were used. For example, terms such as “the State”, “public domain”, “public power”, and “state body” were all considered to be synonymous with “the State”.

4. Discussion of results

In order to gain insight into the situation on May 21, 2024, it is essential to refer to Table 1, which outlines the status of the draft bills. Draft bills lacking pertinent information were initially left blank in the database. Bills designated as “in progress” evinced movement within the House of Representatives. Information pertaining to bills that were subsequently archived was incorporated into the database along with data on bills that were formally withdrawn by their authors. However, the majority of these bills were ultimately archived. A bill is transformed into a legal norm when it is approved by both the Federal Senate and the Presidency of the Republic.

Legislature	Archived	In progress	Transformed into a legal norm	Total
1995-1998	3	-	-	3
1999-2002	2	-	-	2
2003-2006	3	-	-	3
2007-2010	5	1	-	6
2011-2014	6	1	2*	9
2015-2018	7	4	1	12
2019-2022	6	30	-	36
Total	32	36	3	71

Source: Authors (2026)

It is noteworthy that three acts have been transformed into legal norms. The following acts have been transformed into legal norms: Act No. 13,123/2015 (Legal Framework for Biodiversity), Act No. 13,243/2016 (Legal Framework for Science, Technology, and Innovation), and Act No. 14,119/2021 (National Policy for Payment for Environmental Services).

Act No. 13,123/2015 constitutes the main legislation governing access and benefit-sharing activities on products derived from genetic resources and associated traditional knowledge. This regulatory measure originated from Draft Bill No. 7,735/2014, which was introduced on June 26, 2014, by the Federal Government during the presidency of Dilma Rousseff with the support of the Labor Party (PT). The bill was subject to an expedited procedure mandated by the Presidency of the Republic, resulting in a condensed consideration period by the Federal Senate and the House of Representatives. Moreover, certain requirements, deficiencies, and procedural formalities were streamlined to facilitate the expeditious review of the bill by the National Congress. The analysis revealed that the Biodiversity Legal Framework failed to consider several related bills previously submitted (Cuco, 2019).

Act No. 13,243/2016 was originally intended to deal with the issue of access to genetic resources and associated traditional knowledge. However, these topics were not addressed due to the prior approval of the Biodiversity Act. It is noteworthy that this act was approved a full five years after it was initially proposed.

Act No. 14,119/2021, established the National Policy for Payment for Environmental Services. This policy establishes the conditions under which financial resources or other forms of remuneration may be provided to providers who maintain, recover, or improve ecosystem ecological conditions.

This section is organized around four tables, each containing a set of codes extracted from the aforementioned group of bills. It is important to note that the codes were identified based on the recurring structures present in all the analyzed bills.

Moreover, the same category can be represented by different codes, contingent on the choices made in the other bills. In conclusion, the objective of each table is to present the various options in a concise and structured manner, facilitating an understanding of the logic underlying the legislative formulation regarding the protection of biodiversity and traditional knowledge.

Table 1, entitled "Ownership and Management of Territories", presents the codes that were devised to establish a legal relationship of ownership over territories, genetic heritage, or traditional knowledge. The aforementioned codes were vested with the authority to alter the governing rules pertaining to the territories or the utilization of genetic heritage or traditional knowledge. The analysis of territory was included due to the close connection between traditional knowledge and the territories. Any limitations on the use of the territory would have an impact on the protection of traditional knowledge.

Table 1 – Relationship between ownership and management of territories
1.1 Genetic heritage or traditional knowledge or territory belongs to the state.
1.2 The territory where the genetic heritage or traditional knowledge is located is managed by a government agency.
1.3 Traditional peoples and knowledge make up a minority of the decision-making government agencies for land or activity management.
1.4 The composition of the public institution responsible for monitoring and using traditional knowledge is not defined by law.
1.5 Legal treatment is differentiated for certain biomes/regions/geographical locations or by purpose of use.
1.6 The regulations are aimed at only one group of traditional peoples and communities and do not apply to the others.

Source: Authors (2026)

As illustrated in Table 1.1, legislative proposals have been put forth to designate the state as the proprietor of traditional knowledge, genetic heritage, or territories, either directly or indirectly. One potential interpretation of this item, based on the presented theories, is that it imposes the concept of private property on traditional peoples and communities, both legally and morally. This imposition of legal norms represents a distinct mode of production compared to that of traditional peoples and communities. The act of residing on another individual's property, regardless of whether it is state-owned, gives rise to several obligations that the proprietor may seek to enforce.

The provisions can be viewed as a form of non-existence (Santos, 2002) insofar as traditional peoples and communities are not even mentioned as owners. In essence, the assertion that these entities are the state's property has minimal practical implications. Nevertheless, this debate illuminates the expansion of capitalism and the state, whereby genetic heritage, territories, and traditional knowledge are increasingly being appropriated, becoming commodities.

This code can also be interpreted as an attempt to increase the state's responsibilities with regard to the protection of territories, genetic heritage, and traditional knowledge. The objective is to engage the state in the formulation of tailored public policies for this context. The code's institutionalization of state property aims to safeguard these assets. However, it may not fully consider the dynamic interaction with the land and nature that is fundamental to the cultural and spiritual aspects of traditional knowledge (Moreira, 2007).

Section 1.2 elucidates the role of the state, primarily through collegiate public institutions such as councils and committees, in the administration and regulation of activities within designated areas. These stipulations were frequently linked to the creation of conservation areas, which were then governed by distinct regulatory frameworks

based on the specific conservation unit in question. In certain cases, these agencies were even constituted in regions where traditional peoples and communities are situated.

It is recommended that this item be analyzed in conjunction with items 1.3 and 1.4. An analysis of the projects in question revealed that none exhibited a majority composition of traditional peoples or communities. The document did not specify the composition of the government agency in question, nor did it indicate that an infralegal provision could define it or that representatives of traditional peoples and communities could constitute an explicit minority.

The primary focus of the analysis is on instances where residents of specific regions are compelled to adhere to decisions made by a newly established government agency that does not formally guarantee a majority to determine local policy. This is another example of the absence of a subject (Santos, 2002). It can be inferred that the absence of legislation conferring majority status is predicated on ideological assumptions about the capabilities of these groups of people, particularly traditional peoples and communities. This is predicated on the dominance of the monoculture of knowledge and the logic of social classification (Quijano, 2005).

The text below observes that in some projects, minority groups, including traditional peoples and communities, have been afforded a diminished voice by proposing a parity formula that groups them with artificially divided sectors. This implies that the most adversely affected by the actions of the government agency are accorded the same representation as those whose interests are not necessarily aligned with genetic heritage and traditional knowledge.

Section 1.5 addresses instances wherein the distinctive attributes of a given territory give rise to disparate legal treatment. It is crucial to acknowledge that certain regions are more susceptible to human impact for a multitude of reasons. In some observed projects, the protection of the biome/region is contingent upon restrictions on usage by the native inhabitants. This places a greater legal burden on traditional peoples and communities, as they must comply with new usage conditions. Furthermore, biodiversity is more effectively preserved in areas occupied by traditional peoples and communities than in areas occupied by other groups (FAO; FILAC, 2021). Additionally, it is important to note that traditional peoples and communities have historically inhabited territories that are now preserved as a result of their active efforts and intentional coexistence with nature. Recent research on the Amazon Rainforest lends support to this notion (Pardini, 2020).

Table 2, entitled “Need for Authorizations from the State and Holders”, provides a summary of the requirements set forth in the bills for obtaining consent from the state, holders of genetic heritage or traditional knowledge, or inhabitants of a specific territory. It is crucial to recognize that the group of biodiversity holders may encompass individuals beyond those traditionally designated as indigenous peoples and communities. Furthermore, several bills addressed territories where traditional peoples and communities coexist with non-traditional populations. Accordingly, the term “inhabitants” was employed to encompass the full scope of the bills.

It is important to note that “access” and “collection, research, or technological development” are not synonymous. This is because some bills define access exclusively in terms of research or technological development based on genetic heritage or traditional knowledge. In other words, some bills do not consider the collection of genetic heritage or traditional knowledge to be an act of access, but rather as a process of research or technological development.

Table 2 – The need for authorizations from the state and holders
2.1 State authorization is not required for the collection, research or development of technologies based on genetic heritage or traditional knowledge.
2.2 State authorization is required for the collection, research, or development of technologies based on genetic heritage or traditional knowledge.
2.3 Authorization from the holders of genetic heritage or traditional knowledge or inhabitants of the territory is not required for the collection, research, or development of technologies based on genetic heritage or traditional knowledge.
2.4 Authorization from the holders of genetic heritage or traditional knowledge or inhabitants of the territory is required for the collection, research, or development of technologies based on genetic heritage or traditional knowledge.
2.5 State authorization to enter territories to access genetic heritage or associated traditional knowledge is not required.

2.6 State authorization is required to enter territories to access genetic heritage or associated traditional knowledge.
2.7 Authorization from the inhabitants to enter territories to access genetic heritage or associated traditional knowledge is not required.
2.8 Authorization from the inhabitants is required to enter territories to access genetic heritage or associated traditional knowledge.

Source: Authors (2026)

Sections 2.3 and 2.7 highlight several pieces of legislation that either did not require the consent of the affected parties or, if they did, did not afford them the power to refuse. For example, some bills required consultation with indigenous peoples, yet ultimately granted the state the authority to make the final decision. Furthermore, the necessity for consent was circumvented by defining the purpose of the proposed access as research. Some provisions stipulated that consent was required for certain purposes, such as commercialization while exempting others. Ultimately, the sole approved bill addressed "traditional knowledge of unidentifiable origin" without requiring consent due to uncertainty about its origin.

At this juncture, it can be reasonably inferred that Santos (2002) critically points out how the idea of the superiority of scientific knowledge over other forms of knowledge fails to acknowledge that all knowledge is in fact constructed through collective, non-scientific research. In the name of advancing research and science, some may disregard the consent of traditional peoples and communities. This is despite the fact that research and science are not operating independently and are influenced by the appropriative logic of modern Western society.

Consequently, this also applies to traditional knowledge of unidentifiable origin, as it enables the legal appropriation of knowledge that has been collectively developed by a traditional people or community and is part of their culture. Traditional knowledge of unidentifiable origin, incorporated in the legal act, can be viewed as a manifestation of biopiracy and a perpetuation of colonial power dynamics (Quijano, 2002, 2005). The issue with official organizations focused on indigenous people is twofold. Such organizations may either perpetuate a colonial or paternalistic approach. By conferring upon the state the authority to regulate access to traditional knowledge, it effectively permits the appropriation of this knowledge and places the state in a position of power. Even if we consider the state to be a guardian or advocate for traditional knowledge, it nevertheless assumes control over the autonomy of traditional communities concerning access to that knowledge.

The stipulations set forth in items 2.4 and 2.8 are more consistent with a non-colonizing policy, as they require the prior consent of the holders of genetic heritage, traditional knowledge, and the inhabitants. Although the legislation in question does not guarantee the effectiveness of the prior consent requirement, it does demonstrate respect for the autonomy of traditional communities in managing their traditional knowledge during the bill's design phase. Nevertheless, such a regulation should have practical implications, such as notifying the supervisory authority of whether a specific traditional community has consented to the utilization of their traditional knowledge or genetic heritage, and whether their consent was obtained freely. In light of the epistemological diversity among traditional peoples, it is crucial to acknowledge the multifaceted ways in which consent may be expressed, contingent on social, cultural, and political nuances. The assertion of absolute certainty and clarity in the legal norms cited by Bańkowski (2007) is undermined by the fact that the requirement for consent is not automatically enforceable, and the terms of consent are not regulated in the majority of bills. The lack of specificity in these provisions may render the rights of traditional peoples ineffectual.

Items 2.1 and 2.5 indicate provisions that eliminate the necessity for prior state authorization to access genetic heritage, traditional knowledge, or entering territories. In many instances, this constitutes a partial exemption, contingent upon the intended purpose of the access. In several instances, the exemption from authorization applies to the traditional peoples and communities that inhabit the regulated area. Consequently, the issue of ownership also arises, as traditional communities are permitted to access the areas and biodiversity associated with their traditional knowledge.

The present circumstances suggest an effort to modify the relationship between facts and the legal system. It is now necessary for traditional communities to obtain permission, even formal authorization, to access and utilize their

knowledge. Such permission can be revoked, which has the effect of undermining the genuine and legal connection between traditional communities and their land and natural resources. Traditional communities must be granted the ability to access biodiversity, not merely as a legal matter, but as the rightful owners of the land in question, with a profound historical, spiritual, and cultural bond to it. This approach may appear to be overly controlling, but it could also serve as a means of safeguarding traditional ways of life before any projects are approved. The frequency of conflicts involving traditional communities is increasing to such an extent that it is becoming necessary for legislation to explicitly articulate their rights.

From another perspective, scientific research conducted for specific purposes does not require authorization from the state. These regulations must be subjected to careful consideration, as scientific research is not an end in itself but rather a vital component in the preservation of non-existent expressions. The state can function as a forum for individuals affected by specific forms of research or activities to share their experiences and exert influence over decisions that are more closely aligned with their interests. Moreover, in certain instances, the proposed regulations appear to neglect the due of the state in formulating public policies, instead conferring upon it the sole responsibility of monitoring the utilization of traditional knowledge and Brazilian genetic resources by other parties.

Sections 2.2 and 2.6 delineate the content of proposals that require state approval for access, primarily through designated entities. In certain instances, dual approval may be required, as there are legislative proposals that mandate prior authorization for general access to traditional knowledge (TK) and those that establish conditions for accessing TK in specific territories. The state can be conceptualized as a multifaceted entity, historically implicated in the colonization and subjugation of traditional communities. However, it also serves as a potential counterbalance to the actions of dominant social groups. This is evident in the transformation of certain state sectors into spaces where traditional peoples can challenge the denial of access to certain types of biodiversity. The necessity for state authorization for access may represent an additional road for subaltern resistance. Such resistance would begin by examining the particulars of each case in order to exert pressure for the legal norm to be adapted in pursuit of a middle ground, as proposed by Bańkowski (2007). The narrative could be integrated into the administrative decision-making process, thus extending beyond the established legal norm, in a manner analogous to the formulation of the access regulations by the relevant entities. It can be argued that the provisions requiring prior state authorization for access are appropriate, provided that concerned people are actively involved in the administrative decision-making process. However, it would appear that this did not occur during the discussion of these projects (Filho, 2017). Consequently, the legislative origin of engagement with traditional peoples is inherently compromised.

There appears to be a discrepancy in the proposed approaches to accessing traditional knowledge (TK). Some legislators are receptive to the notion of requiring authorization from traditional peoples and communities, as well as from the government. However, this approach alone is inadequate to guarantee this right for traditional populations. The pursuit of universal standards may ultimately result in the safeguarding of specific traditional communities while leaving others without protection. Upon examination of the legislative body's performance and the resulting legal norms, it becomes evident that certain rules have been omitted. This is because the regulations about access do not necessitate the prior authorization of the state.

Furthermore, the concept of knowledge with an unidentifiable origin was approved, while the requirement for knowledge with an identifiable origin was maintained. This creates another potential avenue for the exploitation of traditional knowledge. While one provision formalizes a right, another opens the possibility of revoking the same right. It is evident that the House's normative action is more focused on formal guarantees than on material ones, which could ultimately result in a lack of protection and guarantees for the rights of traditional communities.

Table 3 elucidates the usufruct rights on associated traditional knowledge, genetic heritage, and territories, in addition to the subject of benefit sharing. A notable aspect of this legislation is the consolidation of references in the bills that establish legal relations for the use of rights, define obligations and benefits, and address intellectual property rights.

Table 3 – Usufruct rights over associated traditional knowledge, genetic heritage, and territories and benefit sharing
3.1 Traditional peoples and communities may have restrictions on the management of the territory where they live, due to the use of certain species, traditional techniques, or the performance of economic activities.
3.2 Economic activities carried out by traditional peoples or communities or in their territories have special regulations.
3.3 Restrictions on traditional peoples and communities are exempt from obligations imposed on other types of users.
3.4 Holders are guaranteed the right to fair sharing of the benefits derived from their products.
3.5 Exceptions are made for holders to receive benefits.
3.6 The consent of the holders of traditional knowledge is required for the commercial use of products derived from traditional knowledge.
3.7 The consent of the holders of traditional knowledge is not required for the commercial use of products derived from it.
3.8 Environmental services are created by paying for activities that help preserve the environment.
3.9 Traditional peoples and communities are guaranteed the right to recognition of authorship.
3.10 The granting of intellectual property rights over traditional knowledge is prohibited.

Source: Authors (2026)

In Section 3.1, we examine legislative proposals that could impose restrictions on the use of local biodiversity. These legislative proposals frequently cite justifications such as the risk to specific species or the use of a particular technique or management strategy for carrying out economic activities. A significant number of these legislative proposals advance a tactical conservationist agenda, attributing environmental degradation to individuals and communities that have historically played a role in biodiversity conservation.

Item 3.2 addresses legislative proposals that would establish regulatory frameworks with implications for the economic and social well-being of traditional communities and indigenous peoples. The regulations in question pertain to matters of marketing rights, technology transfer, and forms of benefit sharing. A significant number of the provisions lack sufficient respect for the autonomy and self-determination of local communities in the management of their traditional knowledge (TK). Furthermore, the legislation does not include minimum requirements or general clauses that should be included in regulations and contracts. The situation is further complicated by contracts, which can result in the exploitation of traditional knowledge (TK) providers by what Santos (2009) termed “contractual fascism”. This occurs when unequal parties are treated as equals in an exchange, leading to imbalances in traditional communities. Bańkowski (2007) put forth an interpretation of market relationships that sustains the capitalist system, wherein the commodity and the subject of rights are considered to be one and the same. This is not to undermine the traditional peoples' ability to express their will or enter a contract. Rather, it is to recognize that the contractual figure exists in a world that is distinct from that of specific traditional communities. This distinction has the potential to lead to imbalances and inequality in contract negotiations and execution. The cultural dissimilarities among the parties may even result in deficiencies in the expression of free will, which is pivotal for the contract to authentically reflect the will of both parties without any illicit coercion.

Item 3.3 pertains to legislation that exempts traditional peoples and communities from certain obligations when engaging in their activities. Such exemptions include those of health permits for small-scale production, freedom from obligations for personal use and exchange, and the waiver of authorization for occasional use of local biodiversity. These initiatives illustrate the integration of the particular requirements of traditional peoples and communities into legal texts. The implementation of stringent health regulations could impede the ability of traditional communities to utilize their knowledge as a primary source of income on a commercial basis. It is crucial to examine how health regulations are imposed on society at large, with particular attention to their impact on traditional communities. The regulations may present obstacles for communities by imposing scientific standards. This issue concerns the ownership

of traditional knowledge and the requisite permissions for communities to engage in traditional activities. These stipulations must be enshrined in legislation to safeguard traditional knowledge holders from external influences.

In Section 3.4, we examine the legislative proposals that permit various forms of benefit sharing, including non-monetary forms. These provisions permit the incorporation of the diverse narratives presented by traditional peoples, thereby facilitating a more dynamic and balanced distribution.

Section 3.5 delineates the stipulations on legal scenarios in which users of biodiversity are not obliged to share benefits. In such instances, the right to the benefits is transferred to the user for specified reasons, thereby exempting them from the obligation to share.

Item 3.6 describes the bills that require the creation of a benefit-sharing agreement before commercialization, while item 3.7 pertains to bills that permit commercialization before the benefit-sharing agreement is established. The potential for benefit-sharing agreements or contracts to benefit or harm traditional peoples and communities is contingent upon transparency being maintained for the holders, regardless of whether they are established before or after commercialization.

Item 3.8 addresses the concept of environmental services, which is a broad term encompassing a range of activities that contribute to environmental conservation. The bills that incorporate this concept establish a form of remuneration for these activities, which serves as an incentive for environmental protection and an alternative to penalizing ecological policies.

The optimal approach to addressing these concerns is for public administrators to collaborate with traditional communities to recognize their contributions to biodiversity conservation. These circumstances may be regarded as illustrative of the formulation of the concept of rights, as postulated by Bańkowski (2007). The application of this universal concept to traditional peoples effectively reduces them to commodities, defined by the resources they possess and can trade. All relationships are subsequently quantified and monetized, whereby the greater the financial value involved, the greater the environmental benefits are considered to be generated.

Section 3.9 delineates the projects that necessitate prior approval from the traditional knowledge (TK) holder to utilize their rights. Additionally, it specifies the obligation to indicate the origin in cases of intellectual property rights and labeling products derived from the TK. The necessity of labeling is paramount for the effective enforcement of these obligations. While the approval of new provisions is of significant importance, it is of even greater consequence to acknowledge the rights associated with products that lack reliable approval from the traditional peoples who possess them. As Bańkowski (2007) notes, legalism attempts to present the law as a fixed and unchanging entity. Section 3.9 also addresses projects that facilitate the securing of copyrights for individuals and communities who have created a work based on traditional knowledge. It is crucial to highlight that the objective of these stipulations is not to appropriate traditional knowledge; rather, it is to acknowledge the creations that originate from the cultural heritage embodied in this knowledge.

Item 3.10 delineates the projects that impose constraints on any intellectual property rights pertaining to traditional knowledge (TK). These provisions should be regarded as limitations on the government and other relevant parties. However, they should be interpreted in a manner that does not require traditional communities to exclusively retain historical knowledge within their own communities. Nevertheless, these restrictions should not impede the utilization of legal instruments for the protection of TK, should the community express a desire and consent to such an action.

Table 4 presents additional legislative proposals that, while potentially affecting the relationship between traditional peoples and communities, did not fall within the categories delineated in the preceding three tables.

Table 4 – Generic legal and economic aspects
4.1 The legal concept of traditional peoples and communities is restrictive to some of these groups, with additional requirements for state recognition.
4.2 Professionals whose area of activity specifically involves traditional peoples and communities are regulated.
4.3 The rights of traditional peoples and communities cannot be seized and cannot be waived.

4.4 The use of associated traditional knowledge and genetic heritage for environmentally harmful purposes is prohibited.
4.5 Tax incentives are guaranteed for products from traditional peoples and communities.

Source: Authors (2026)

Section 4.1 presents an analysis of legislative proposals that aim to restrict the recognition of traditional peoples and communities. These limitations are frequently subtle, aiming to depict the relationship between these groups and nature in an idealized manner, as described by Diegues (2008). It is anticipated that these amendments will result in a reduction in the number of individuals covered by the legislation, which will consequently impact the establishment of new rights and obligations. In essence, the establishment of new entitlements or the relaxation of prospective obligations will likely compel members of traditional communities to adapt their way of life to align with the emerging standards. Conversely, the combination of limiting traditional peoples and communities while imposing new obligations is perceived as the sole means of conferring benefits upon them. It is, however, noteworthy that the vast majority of the bills under review employ the legal concept of traditional peoples and communities as a means of compelling them to adapt to new requirements.

Section 4.2 presents a series of bills designed to regulate professions with close ties to traditional peoples and communities, including para-taxonomists, popular educators, health workers, and anthropologists. These professions may be performed by members of the communities themselves or by external actors when providing services to traditional peoples and communities. The regulation of these professions indicates that the state is beginning to acknowledge the existence of professional activities that involve contact with, or membership in, traditional peoples and communities.

Item 4.3 addresses legislation that establishes the irrevocable and inalienable nature of rights on traditional knowledge (TK) and precludes the enforcement of such rights. A reasonable interpretation of these provisions would be to impose restrictions on the state and the private sector, ensuring that no reasons are permitted to justify the infringement of these peoples' rights over their knowledge.

Section 4.4 delineates the legislative proposals that prohibit the utilization of traditional knowledge (TK) for practices that are detrimental to the environment and human health. It is of great importance that the scientific, business, and government communities maintain close observation and adherence to this prohibition, as the objectives of scientific research may be misrepresented to serve the economic interests characteristic of the capitalist model of society.

Item 4.5 examines projects that provide tax incentives. These incentives are designed to encourage the utilization of traditional knowledge by offering tax benefits, given that traditional communities are typically not subject to taxation on the use of their knowledge.

5. Conclusion

The initial legislative proposals regarding this subject were introduced towards the conclusion of the 1995-1999 legislative term. Subsequent to that period, the number of bills introduced on this topic exhibited a gradual increase until 2015. In 2015, a significant shift was observed in the approach of the House of Representatives towards traditional peoples and communities. This transformation was precipitated by the endorsement of Draft Bill 7,735/2014, which culminated in the enactment of Act No. 13,123/2015, accompanied by a discernible surge in the number of legislative proposals concerning this subject. The number of bills introduced between 2015 and 2022 exceeded the total number introduced between 1988 and 2014.

A systematic analysis of the bills reveals that the National Congress has effectively reinforced colonial dynamics regarding traditional peoples and their knowledge. The empirical categories identified in the study range from the ownership and management of territories, which frequently grants the state possession of resources and knowledge, to access rules that often dispense community consent, and usufruct rights and benefit sharing that tend to shape traditional knowledge (TK) according to a mercantile logic. These categories collectively demonstrate a persistent imposition of Western structures. Legislative patterns such as these, rather than ensuring the safeguarding of autonomy and self-determination, tend to establish frameworks that entrench forms of appropriation and control. This, in turn,

has the effect of eroding the capacity of communities to effectively manage their own knowledge and territories. The National Congress has been identified as a key actor in the reinforcement of coloniality, with its actions leading to the transformation of TK into a commodity. This transformation is characterized by the establishment of norms that prioritize commercial access over communal autonomy and shared usufruct.

Nevertheless, it is imperative to acknowledge that even in the presence of such constraints and the absence of comprehensive material guarantees, legal norms—even if formally established—can serve as potential instruments of struggle for these populations. These legal instruments empower these populations to claim rights, contest narratives, and seek spaces for self-determination. The failure to incorporate and acknowledge the historical and structural disadvantages of these communities within the legal system is a manifestation of coloniality, perpetuating the subalternization of their voices and perspectives. The findings of this study carry significant implications for the regulation of traditional knowledge and the protection of communities. It is imperative that a deliberate effort be made to establish an anti-colonial pact that acknowledges the plurality of knowledge and rights.

Subsequent research endeavors may extend this inquiry to encompass the Federal Sen-ate or utilize the extant findings to specific agendas driving these bills. Moreover, it is imperative to examine whether indigenous peoples and communities possess an active voice in the drafting, negotiation, and legislative processing of these projects. In the event that such participation is not currently established, it is essential to explore the mechanisms through which such involvement could be facilitated.

The approval of bills pertaining to traditional knowledge has been a challenging process, particularly in light of the robust opposition mounted by various sectors with ties to traditional communities and peoples. These sectors include organizations in defense of Indigenous and traditional communities, NGOs, and environmental institutes and entities. This phenomenon underscores the profound influence exerted by the House on the perpetuation of colonial perspectives concerning traditional peoples and their intellectual pursuits. A discrepancy has been identified among the bills that have been approved, those that have been rejected, and those that have not been given significant consideration in terms of public policy agendas. Conversely, legislative initiatives pertaining to genetic heritage and traditional knowledge that ostensibly align more closely with the interests of traditional communities have faced impediments. In contrast, the sole bill to be approved with undue haste encountered considerable resistance from traditional peoples and communities.

However, it has been observed that there are points of tension that can be regarded as constraints on the expansion of capitalist production logic. Additionally, the text indicates the presence of a divergence within the House, with certain sectors demonstrating a willingness to engage in discourse concerning norms that acknowledge the unique histories of traditional peoples and communities. However, it is important to note that only those bills that support the appropriation and colonization of indigenous lands have been enacted as legal norms. Furthermore, the text emphasizes the numerous actors and legislative proposals within the House of Representatives.

The approved guarantees have been demonstrated to be insufficient in addressing the issue of biopiracy. Even the unapproved ones are often vague and lack specificity, and they frequently delegate the regulation of these issues to infralegal laws.

Nevertheless, the revocation of rights has been abrupt and has generally limited the scope for challenges by the affected parties. This situation does not adequately consider the perspectives of a significant segment of the Brazilian population. Instead, it functions as a means of domination and the perpetuation of a colonialist and unequal socio-political order, as demonstrated in Quijano's concepts (2002, 2005).

In addition to modifying existing legislative commands, it is essential to develop a strategic approach to this process. It would be beneficial to adopt a more propositional tone to establish post-abyssal (Santos, 2002, 2007) thinking based on an ecology of knowledge. The overcoming of abyssal thinking cannot be achieved merely through discussions of rationality, as evidenced by the inferences presented in this paper. The colonial logic inherent in Brazil's institutions and legal system cannot be effectively challenged solely through the actions of its internal agents. Instead, it necessitates a collective effort from the broader population and communities situated beyond the abyssal lines.

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