

CONCENTRATED CONTROL IN THE FRAMEWORK OF THE CULTURAL DIVERSITY OF THE RONDAS CAMPESINAS

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Abstract

The general purpose of this research is to analyze whether the focus of concentrated control affects the cultural diversity of the peasant patrols in Peru. To do this, a methodology of qualitative type and phenomenological design has been used, where the sample was formed by legislation, doctrine and jurisprudence in criminal and constitutional matters concerning Concentrated Control and the cultural multiplicity of the peasant patrols, which was determined at the convenience of the author; as well as by 08 lawyers specializing in Constitutional Law of the city of Trujillo; and the documentary analysis and interview guide were applied as instruments. It is concluded that the concentrated control approach affects the cultural diversity of the peasant patrols in view of the fact that it restricts communal justice, violates customary law and ignores cultural pluralism in Peru, which affects the fundamental rights of individuals and generates a framework of protection against ordinary justice.

Keywords: Concentrated Control; Cultural Diversity; Peasant Patrols.

Resumen

La presente investigación tiene como propósito general analizar si el enfoque del control concentrado afecta la diversidad cultural de las rondas campesinas en el Perú. Para esto, se empleó una metodología de tipo cualitativa y de diseño fenomenológica, en donde la muestra quedó conformada por legislación, doctrina y jurisprudencia en materia penal y constitucional referente al Control Concentrado y la multiplicidad cultural de las rondas campesinas, la misma que fue determinada a conveniencia del autor; así como por 08 abogados especialistas en Derecho Constitucional de la ciudad de Trujillo; y se aplicaron como instrumentos el análisis documental y la guía de entrevista. Se concluye que, el enfoque del control concentrado afecta la diversidad cultural de las rondas campesinas en vista a que, restringe la justicia comunal, vulnera el derecho consuetudinario y desconoce el pluralismo cultural en el Perú, lo que afecta los derechos fundamentales de los seres humanos y genera un marco de desprotección frente a la justicia ordinaria.

Palabras clave: Control Concentrado; Diversidad Cultural; Rondas Campesinas.

Introduction

From the vantage point of the social sciences and law, the initial step in addressing the transformation of a problem is to conduct a study and obtain scientific knowledge about the legal-social problem in question. This can only be achieved through an interdisciplinary approach.

In this regard, it is proposed that the protection and defense of human faculties, as well as the security of a society, are shared objectives that are pursued through social control. The State upholds Constitutional law, informed by the adjudication of fundamental rights, thereby facilitating the practical implementation and articulation of these rights on a global

scale. The legitimate violence of the State, which is employed to protect the most fundamental interests of the community, such as life, liberty, property, and honor, is an expression of its power.

However, in societies emerging from a cultural clash and exhibiting ethnically and culturally diverse characteristics, formal law appears to be only partially effective. Frequently, conflicts are resolved through customary law or custom, where alternative values influence decision-making. This situation is further exacerbated in the extensive areas of the Andean and Amazon regions, where the State's presence is perceived as minimal and its authority is regarded as distant. These assessments are made from a cultural perspective, based on the exercises and interests of society and its natural environment (Valdivia, 2010).

Conversely, the notion of legal pluralism signifies the utilization and implementation of disparate systems for problem resolution by various indigenous groups within a single state. In this sense, the existence of cultural groupings different from the majority society is recognized; their rights and interests are guaranteed, and their conflict resolution systems are acknowledged through the recognition of their operation as jurisdictional systems in parallel to the state jurisdiction. This notion underscores the acceptance of legal pluralism within the nation's jurisdiction, signifying a harmonious coexistence of diverse legal systems (Ron, 2015).

In this regard, some scholars designate indigenous legal systems as customary law, given their operation with unwritten conventional regulations stemming from a collective of traditions shared and recognized by a community. These traditions are intricately intertwined with the social structure. However, it is crucial to note that these systems are not static but rather dynamic, susceptible to influence by external factors. However, there are other experts who prefer to avoid the term customary law, as it was used during the colonial time to differentiate it from Western law and minimize its importance vis-à-vis the legal structure of Europe, which was taken into superior consideration (Erráez, 2015).

International research has observed that indigenous peoples seek recognition and respect for their cultural diversity and the establishment of a more effective justice system than the ordinary justice system, which would allow for the preservation of their customary law. Additionally, there is a call for the acknowledgement of communal systems of organization, such as peasant or indigenous communities. These systems are characterized by their unique value systems and conflict resolution processes that do not align with the principles of their own nature and worldview. It is imperative to acknowledge that this system of values and beliefs plays a pivotal role in the identity and protection of community members. Its implementation can result in significant violence for those who do not adhere to these values (Yrigoyen, 2002).

In any case, Tornero (2013) states that the presence of pre-colonial indigenous legal systems that continue to be applied by native peoples in contemporary nations is undeniable; these systems are currently recognized by countries that accept the existence of legal plurality and have been given various names, such as: customary law (in Peru); ancestral traditions (in Venezuela); own procedures and norms (in Bolivia and Colombia); or simply own law (in Ecuador).

Continuing with this, it is necessary to note that the Peruvian nation is home to diverse cultures and subcultures, which has generated a cultural clash in the setting of a complex

economic and social system. Hence, legal pluralism represents a great challenge for positive law in the sense of recognizing that there are other cultural modes of imparting justice through agreements and laws, without generating contradictions; that is, incorporating these alternative forms of justice within the scheme of positive justice.

In this sense, this pluriculturalism allows the right to cultural and ethnic identity that has been included in art. 2, paragraph 19 of the 1993 Constitution. The constitutional recognition of Peruvian society as multiethnic implies that the State is obliged to respect, promote, defend and reaffirm cultural pluralism in the country. Hence, the constitutional will be expressed in referred article is strengthened by art. 89 when in its final part it determines that “the State respects the cultural identity of Native and Peasant Communities” (Tassara, 2013).

Apart from this recognition of cultural variety, the Constitution has a set of norms that seek to ensure the protection of the faculty of diversity, autonomy and participation of cultural minorities, particularly peasant and native groups. Hence, art. 89 of the Constitutional Norm recognizes peasant and native groups as legal entities and article 149 grants them jurisdictional power to solve their problems in accordance with their customary law, while recognizing their autonomy in economic and administrative matters, and with respect to their disposition and organization of lands (Tassara, 2013).

In this sense, Peña (2009) refers that the peasant patrols were formally recognized on November 7, 1986 through the publication of Law No. 24571, which describes them as organizations whose purpose is to serve the community, collaborate with the authorities in the eradication of any crime, and contribute to peace and development. This formal recognition was later elevated to constitutional level through art. 149 of the Constitution, which establishes that these communities have a communal jurisdictional area in accordance with customary law within their territory and in respect of basic rights. However, it was the Peasant Patrols Law, Law No. 27908, published on January 7, 2003, together with its regulations approved in D. S. No. 25-2003-JUS of December 30 of the same year, which granted a complete and coherent legal regime to these communal organizations.

Accordingly, it can be stated that there is a general agreement that both native and peasant groups have the authority to resolve disputes within their territory through their communal jurisdiction, as established in art. 149 of the Magna Carta; however, the question of whether peasant patrols have judicial power has been the subject of debate; this question was resolved with Plenary Agreement No. 1-2009/CJ-116 of the Supreme Court of Justice, which recognizes that peasant patrols have jurisdiction since, otherwise, it would be denying their existence.

Constitutional Jurisdiction refers to the solution of problems and cases that involve constitutional issues, which require specialization in this area; such conflicts may arise due to laws or actions that threaten or violate constitutional rights. The importance of the Constitutional Jurisdiction does not only lie in protecting the supremacy of the Magna Carta and carrying out a correct jurisdictional control of a constitutional nature, but also in the fact that it is developed by an institution independent and distinct from the Judicial Power: the Constitutional Court (Piccoli, 2008).

It is noteworthy that the various indigenous, peasant or native groups of the country commonly use Communal Justice as a customary legal foundation, with a strong Andean base. However, the Peasant Patrols lack an explicit set of regulations to regulate and sanction conduct. In general, the patrols could not detail either the powers or the obligations of peasant justice, although they apply it on a regular basis. However, this does not imply that there are no social regulations that are considered in the decisions. On the other hand, the regulations usually remain implicit and are not fixed, and can be the subject of discussion in each assembly (Ombudsman's Office, 2006).

For its part, the Constitutional Court has a very unique characteristic compared to countries such as Colombia or Bolivia, since the justice system of the Peasant Round is dual, with two systems of jurisprudential production: the Judiciary as an ordinary jurisdictional system and the Constitutional Court as a system of justice of legitimacy. One developed diffuse control and the other concentrated control. It is important to highlight that the jurisprudence of the Constitutional Court in indigenous matters is characterized by a sinuous argumentative line and a tendency towards liberal multiculturalism as an ethical-political basis for its action. However, this type of multiculturalism is rhetorical and restrictive at the same time, since it barely manages to separate itself from the parameters of integrationism and tries to maintain a prospective discourse that does not fully materialize (Bazán, 2012).

Behind the pronouncements of the TC, the work of the peasant patrols and communal justice is recognized, but its jurisdiction is limited to the plural review of constitutionality, which is governed by intercultural interpretation guidelines. The main objective of this control is the protection of the fundamental faculties and the Magna Carta (Ruíz, 2010). Along the same lines, it is relevant to interpret the elementary rights in intercultural contexts to guarantee fulfillment and reinforcement of "living well", which is the primordial value and the main purpose of the State in question. Therefore, the communal jurisdiction adjusts to this approach, where the so-called plural control of constitutionality must follow the following rules: a) logical coherence, b) decision based on one's own worldview, c) harmonious procedures with rituals and d) strict necessity and proportionality (Martínez, 2012).

There are recognized authors who are dedicated to researching the Peasant Patrols, such as Peña and Ruiz, who maintain that art. Article 149 of the Magna Carta does not fully recognize the Customary Law of the Rondas. According to Peña (2009), the cultural variety that exists in Peruvian nation is unquestionable; otherwise, the State would not have considered the need to include an article that addresses Customary Law; however, the controversy surrounding this article lies in fact that, by establishing the consideration of elementary Rights as a limit, said multiculturalism is annulled, and consequently, Customary Law.

Unfortunately, the rulings of the TC have the tendency to maintain a state of affairs that is detrimental to the basic rights of indigenous populations. It has already been mentioned that the multicultural approach of the TC is restricted and merely rhetorical. As an illustration, in the incessant implicit weighing carried out by the Court between human dignity, expressed in basic rights differentiated by ethnic reasons, and the legal rights of a constitutional nature that consolidate central and unitary condition of state power, such as the legal security of private investments or the formal legitimacy of legal mandates with

rank of law, the TC opts for the latter, often in contradiction with the international regulations on human rights and lacking specific motivation (Verona, 2012).

A relevant example of this matter is the Cordillera Escalera case, which refers to File No. 03343-2007-PA/TC. In this ruling, the Court defends diversity and tolerance, and in this context, maintains that prior consultation is necessary in cases of extractive activities, however, it then indicates that the information workshops offered by the companies themselves are sufficient as consultation, and opinion of indigenous populations is merely referential. In other words, the Court recognizes guidelines for plurality, but limits them to their minimum content and does not question hegemony, moving away from the most protective international standards.

Other relevant decisions that reflect the above include Tuanama I, in which argument 36 establishes central idea of including indigenous populations in the discussion of the draft of a legislative or administrative measure is to allow them to present their cultural criteria so they can be considered (Verona, 2012).

In practice, indigenous justice has been relegated to a subordinate level in relation to state justice. In addition to altering the constitutional prototype of indigenous justice, constitutional interpretation has changed the link between state justice and communal justice. This means we have gone from a scheme in which both justices were coordinated on equal terms, as established in article 149, to a model in which indigenous justice is subordinated to the state judicial system, and its scope of application is limited to residual and domestic cases, practically equating it to justice of peace (Yrigoyen, 2010).

In this way, the concentrated control exercised by Constitutional Court restricts indigenous justice, by denying the existence of cultural pluralism and the importance of customs as an expression of ethnic identity; hence, this contradicts constitutional duty of the State to recognize and respect cultural differences. If the State ignores or even punishes the conventional exercises of groups, as long as these practices do not violate elementary rights, it would be violating the right of communities to be different and to have their own cultural identity, as defined in art. 2, paragraph 19 of the Magna Carta, which, according to its interpretation, recognizes the right to variety and difference, including identity, customs, culture, and ethnicity. Therefore, ignoring these cultural differences is a violation of the right of groups to maintain their own cultural identity.

Thus, the Constitutional Court, by limiting issues that indigenous justice can resolve, does not respect principle of interculturality, even though dialogue between indigenous justice and state justice is essential for interculturality, not the imposition of the State's conception of justice. In other words, by deciding for indigenous populations which issues they can resolve and judge, the State is depriving communities of their right to self-determination and intervention in decision-making in relation to matters that affect their own lives.

Hence, the lack of recognition of cultural and legal variety has led to the marginalization and oppression of differences, such as the prohibition of normative structures of indigenous and peasant peoples, as well as other groups, the penalization of cultural exercises that differ from official law, and repression of communal and indigenous authorities who apply justice according to their own norms, principles and values.

This study is justified because an analysis was carried out on concentrated control approach, in order to know if cultural diversity of the Peruvian peasant patrols is affected, due to its legal and social importance, since it refers to a concrete reality, where the Peasant

Patrols are an institution of the rural community that has been recognized by the State of Peru, which contribute to valuing cultural diversity, since it has been established as a space for the administration of justice in a particular way, considering its organization, rituals and norms. However, the different pronouncements of the TC restrict communal justice, ignoring cultural pluralism, in view of this, the peasant patrols demand that they be granted full recognition both in Constitution and in the law to be able to exercise functions of local communal authority and jurisdiction, within a democratic and pluricultural State model.

Likewise, negative factors can be identified influence social, legal and cultural reality, and that originate from an inadequate application of art. 149 of the Magna Carta, which causes an adverse social impact on Peasant Patrols; hence, it is crucial to establish coordination rules with appropriate criteria to correct this situation

-Theoretical value; it provided a broader and more comprehensive perspective to the legal authorities of the State on importance of the peasant patrols in society, in order to establish constitutional provisions that regulate the relationship between indigenous jurisdictional powers and the control of state justice; being that, this regulation should not be seen as a limitation of the powers, but as a collaboration to resolve the tensions of a cultural nature that arise at the intersection of legal systems.

-Social relevance; because currently the presence of the peasant patrols is gaining more and more relevance. In that sense, this study and its result, allowed us to know if the recognition of the peasant patrols by the action of constitutional control contributes to the improvement of cultural diversity. It also helped society to understand that the existence of peasant patrol is a manifestation of the right to cultural identity and that its jurisdictional activity was granted by the State as defined in art. 149 of the Constitutional Norm.

-Practical implications; the research enabled a broader understanding of the functioning and context in which the peasant patrols operate as a community means of cultural diversity; in addition, it was important to generate proposals that enrich original peasant-indigenous law, through interpretation from point of view of customary law and human faculties.

-Methodological utility; a scientific process has been followed, where the type of research was designed, linked to objectives and the hypothesis raised, where research methods were applied, as well as techniques for data collection that allowed reaching conclusions and recommendations.

The objective of the research is to analyze whether focus of concentrated control affects the cultural diversity of the peasant patrols in Peru.

Methodology

Research design

This study has a phenomenological approach, aiming to understand the complex lived experience. This approach focuses on awareness and exploration of the meanings associated with the phenomenon in question.

Population and sample

Population

This is the complete presentation of objects, individuals or measures that exhibit particular common characteristics at a specific time and place, and it is in that context that the detailed analysis will be carried out (Tamayo, 2012). In this study the population universe was formed by legislation, doctrine and jurisprudence in criminal and constitutional matters; as well as by lawyers whose specialty is Constitutional Law in the city of Trujillo.

Sample

The sample refers to a selected part of the population, a subset of all the components, which must be representative of the population under study (Salkind, 2002). In this research the sample is constituted by legislation, doctrine and jurisprudence in criminal and constitutional matters referring to Concentrated Control and the cultural multiplicity of the peasant patrols, which was determined at the convenience of the author; as well as by 08 lawyers specialized in Constitutional Law in the city of Trujillo.

Techniques and instruments for data collection, validity and reliability

Techniques

Case study: it is a technique that provides a succession of cases that represent different problematic contexts in the usual world, so that they can be studied and analyzed. Basically, a case involves a written correspondence that represents a scenario of the experience of an individual, family group or organization.

Documentary analysis: is a scientific process that provides an auxiliary tool or secondary result that acts as an intermediary or necessary research instrument between the interested party and the original document that seeks that information. This makes it possible to study and understand the content of written documents (laws, jurisprudence and doctrine), since they constitute an important source for literal analysis, involving the drawing of inferences and qualitative evaluations of the variables addressed.

Interview: involves a strategy aimed at establishing immediate communication with those involved who are recognized as data providers. Hernández, et al. (2021) considers that it involves obtaining data through a method of real-time interaction between the researcher(s) and the research participants, in which the participants provide answers to previously elaborated questions following the thematic areas to be analyzed, which are presented by the individual conducting the interview.

Instruments

Documentary analysis guide: this is one of the essential procedures in the document management process. Document analysis is a mental activity that results in the creation of a secondary document or by-product that acts as a necessary intermediary between the original document and the users seeking data. The term “intellectual” is due to the fact that the documentation professional carries out a procedure of analysis and interpretation of the information contained in the documents, and then synthesizes it. Documentary analysis involves the structured representation of the information in a document, condensing the content and physical descriptive data into a clear and precise scheme (Báez & Sequeira, 2006).

Interview guide: León (2006) indicates that it is a means that facilitates a reflexive approach for the institution of the possible topics to be addressed during the interview. It is not a rigid protocol of questions, but rather a list of themes and general areas from which the topics to be addressed in the questions are structured. In this research, a semi-structured interview guide will be developed based on open-ended questions in accordance with the proposed objectives.

Data analysis methods.

Deductive - Inductive: it is used with the purpose of providing a broad and general explanation of the problem, in order to proceed to the concrete analysis and the systematic elaboration of the results obtained in the present research.

Analytical - Synthetic: it is used to achieve the desired results, in this case, to test the hypothesis and fulfill the established objectives.

Hermeneutic - dialectic: method that provides an approach and methodological instrument that allows understanding and explaining the phenomena and procedures of society, nature, and thought; the same that, is used to interpret and study the Concentrated Control and the cultural diversity of the Rondas Campesinas, penetrating its essence and offering levels of understanding and explanation.

Results

Study the normative and jurisprudential content of the communal jurisdiction of the peasant patrols in the national legislation.

The recognition of communal justice is prescribed in art. 149 of the Constitutional Norm, so that, by making a systematic interpretation, it can be established that the peasant patrols can develop jurisdictional activities for the resolution of conflicts within their territorial scope and applying their customary law, since they have an autonomous and independent jurisdiction from the peasant communities. Based on this, there is a conventional, international and national recognition, which has guaranteed the protection of cultural variety and legal pluralism, since the indigenous or native populations based on their customary law apply their own traditions and organizations, as long as they are not contrary to the fundamental powers included in the Constitutional Norm and in the international justice system.



Figure 1. Normative sources of the communal jurisdiction of the peasant patrols
Source: Prepared by Ourselves

Figure 1 shows the various national and international standards related to the communal jurisdiction of peasant patrols in national legislation; this is due to the conception of legal pluralism as the coexistence of various legal systems or forms of administering justice, respecting the existing ethnic multiculturalism. In this way, the path that initiates legal pluralism in Peru is the Constitution of 1993, since it establishes the exercise of

jurisdictional functions by community authorities with the support of the patrols, based on their own customs (customary law).

Table 1
Normative study of the communal jurisdiction of peasant patrols

Rule	Relevance	Main criteria
United Nations Declaration on the Rights of Indigenous Peoples	The relevance of this document lies in the fact that it defines that indigenous populations have the right to make decisions on issues that affect their fundamental rights, represented by individuals elected by the community, through their own procedures; as well as to preserve and develop their own institutions for decision-making.	<ul style="list-style-type: none"> • Right to make decisions • Respect for fundamental rights • Representation • Procedures and institutions
ILO Convention 169 on Indigenous and Tribal Peoples	The Convention presents two essential aspects: the right of indigenous populations to preserve and strengthen their culture, way of life and individual entities; but also their right to participate effectively in decisions that may affect them. These premises are the basis on which each provision of the Convention must be interpreted.	<ul style="list-style-type: none"> • Preservation and strengthening of culture, way of life and entities • Right to participation
American Declaration on the Rights of Indigenous Peoples	The relevance of this declaration is that it establishes that indigenous peoples have the right to participate fully and effectively through their representatives in those provisions that affect their rights and that these are linked to the development and execution of laws, public policies, plans, programs and actions related to indigenous issues.	<ul style="list-style-type: none"> • Right to participation • Representation • Development and implementation of rules and policies
Political Constitution (art. 149)	The Constitution explicitly and formally recognizes legal pluralism, granting special jurisdiction to communal justice based on customary law and administered by its own authorities, but establishes that peasant patrols are a support for peasant and native communities. Thus,	<ul style="list-style-type: none"> • Recognition of legal pluralism • Special jurisdiction • Customary law • Peasant patrols as part of the Community.

	the RCs would form part of the communities, in a dependent manner.	
General Law on Peasant Communities Law No. 24656 (art. 1)	The law seeks to guarantee the integral development of peasant communities, and to strengthen the right to territorial property and the participation of its members.	<ul style="list-style-type: none"> • Comprehensive development of CC • Strengthening the right to property • Participation of its members.
Law on Peasant Patrols Law No. 27908 (art. 1)	The relevance lies in the fact that this law establishes that peasant patrols contribute to security, justice, social peace and conflict resolution within the communal setting and must always act respecting the fundamental rights of people, without committing excesses or abuses, hence, this is the essential limiting foundation for the application of communal justice.	<ul style="list-style-type: none"> • Recognition of legal personality • Autonomous and democratic communal organization • Contribution to the jurisdictional function of the CC • Collaboration in conflict resolution • Functions of extrajudicial conciliation • Functions of communal security and peace
Regulation of the Peasant Patrols Law - Supreme Decree No. 025-2003-JUS (art. 3)	This law establishes the norms and procedures that govern the organization and functions of peasant patrols, thus establishing that those that are constituted within peasant or native communities collaborate with them in the performance of their jurisdictional functions.	<ul style="list-style-type: none"> • Contribution to community development • Collaboration in conflict resolution Funciones de conciliación extrajudicial • Colaboración a las comunidades

In relation to the results, it can be seen that the legislation has been responsible for recognizing the jurisdictional power of the peasant patrols to resolve conflicts within their territorial scope, applying their customary law and their customs, as long as they respect the fundamental rights of the people, which is the limiting basis for such recognition. Hence, a

jurisdictional power is granted that recognizes the cultural and ethnic diversity existing in the country, but also the right to self-determination of indigenous peoples, which encompasses the legal framework that supports the right that the peasant patrols have to exercise communal justice. Likewise, to apply the communal jurisdictional function, certain limitations are pointed out, such as that the exercise is carried out within the territorial scenario of the community, is based on customary law, is carried out without violating the fundamental rights of the people and is applied in coordination with ordinary justice.

Table 2
Jurisprudential study of the communal jurisdiction of peasant patrols

File	Sentence	Criteria
Nullity Appeal No. 4086-2001-Cajamarca	They declared that there is no nullity in the sentence that acquits the defendant.	Recognition of jurisdictional powers
Nullity Appeal No. 975-2004-San Martín	They declared that there is nullity in the sentence that condemns the defendants, so they are acquitted.	Legitimate and constitutional action
Nullity Appeal No. 1523-2004-Cusco	They declared that there is no nullity in the order that declares there is no merit to proceed to oral trial against the defendants	Recognition of jurisdictional powers
Nullity Appeal No. 764-2005-Cusco	They declared that there is no nullity in the order that declares there is no merit to proceed to oral trial against the defendants	Legitimate and constitutional action
Nullity Appeal No. 3285-2005-Cajamarca	They declared that there is nullity in the sentence that condemns the defendants, so they are acquitted.	Recognition of jurisdictional powers
Nullity Appeal No. 2174-2005-Cajamarca	They declared that there is no nullity in the order that declares there is no merit to proceed to oral trial against the defendants	Legitimate and constitutional action
Nullity Appeal No. 1746-2007-Lambayeque	They declared that there is nullity in the sentence that condemns the defendant, so he is acquitted.	Recognition of jurisdictional powers
Nullity Appeal No. 3266-2011-Junín	The sentence is declared null and a new oral trial is ordered to be held by another Collegiate. The habeas corpus petition is declared unfounded and declared inadmissible.	Legitimate and constitutional action
File No. 7009-2013-PHC/TC	The petition for protection is declared well-founded, since the violation of the right to due	Recognition of jurisdictional powers

	process has been proven.		
File No. 02765-2014-P/TC	The petition is declared well-founded and the summoned party is ordered not to incur in the same acts again.	Legitimate and constitutional action	
Exp. No. 04417-2016-PA/TC	The petition for protection is declared unfounded and Congress is urged to issue a norm of coordination between the indigenous and ordinary jurisdictions.	Recognition of jurisdictional powers	
Exp. No. 03158-2018-PA/TC	The criteria set forth in the grounds 7 to 16 are established as legal doctrine.	Legitimate and constitutional action	
Plenary Agreement 1-2009/CJ-116	They declared that there is no nullity in the sentence that acquits the defendant.	Recognition of jurisdictional powers	

According to the jurisprudential analysis, it can be observed that the jurisprudence recognizes the legitimacy of the communal and peasant jurisdiction, including in some cases, the ronda, in the case of the so-called autonomous peasant patrols; however, according to what is established by the Constitution, this special jurisdiction must be exercised within the limits established by fundamental rights, so there must be a minimum level of objectivity on the part of the judging communal authorities, which must be determined and recognized, have jurisdiction and apply their customary law. Likewise, a minimum guarantee of the right to defense, the right to evidence, and due process is required so that communal decisions can be materially implemented.

Table 3
Interview results, first question

Could you indicate whether there is adequate regulatory treatment of the communal jurisdiction of peasant patrols in national legislation?		
E1: No, because in most cases, the peasant patrols, despite having constitutional recognition, are relegated to a subsidiary role when exercising jurisdictional functions.	E2: To date, in many cases, the importance of the role played by peasant patrols in matters of security and communal justice has not been fully understood.	E3: No, because despite this recognition, there are times when attempts are made to deny these organisations any kind of competence in these areas, classifying their actions as criminal and prosecuting their leading

members.

E4: There is poor treatment, as it is evident that granting them constitutional recognition and autonomy has been of no use, as their possibilities of action have always been restricted to the maximum, weakening their functions to provide security and prompt and rapid justice in their communities.

E5: No, because it is observed daily and in various media that the peasant patrols are dealing with difficulties typical of any organization, in an environment of multiple deficiencies and challenges, especially those derived from the faults or deficiencies of state institutions in relation to the guarantee of security and rural justice.

E6: Communal jurisdiction does not have a timely relevance within the national legal system; on the contrary, it is in constant conflict with ordinary justice, because the authorities and jurisdictional operators do not want to accept its constitutional recognition.

E7: Regulatory efforts are not sufficient.

Despite significant progress, many judicial, fiscal and police authorities continue to fail to recognize communal justice, producing situations that violate the rights of the ronda members, making it difficult to maintain public safety in communities, hamlets, districts or provinces, as well as access to justice for their inhabitants.

E8: No, because there is no process of consolidation of the peasant patrols in their state recognition, as agents of communal security and justice, and in their relationship with official agencies, especially in the scenario of the prosecution of crimes and misdemeanors in their territorial area.

The results of the interviews show that there is a unanimous position on the part of the specialists in indicating that there is no adequate normative treatment of the communal jurisdiction of the peasant patrols in national legislation, because, despite having constitutional recognition, they are displaced with a subsidiary role in relation to formal justice, when exercising their jurisdictional functions, which causes a constant conflict, since their possibilities of action are restricted to the maximum, weakening their functions to provide security and swift justice in their groups, as well as limiting their competence and classifying their actions as criminal. In addition, various judicial, fiscal and police authorities do not recognize communal justice, which makes it difficult to maintain public security and access to justice for its inhabitants, but there is also no process of consolidation as agents of communal security and justice, especially in the scenario of the prosecution of crimes and misdemeanors in their territorial area.

Table 4
Interview results second question

Do you believe that the jurisprudential development of the content of the communal jurisdiction of peasant patrols guarantees the protection of cultural diversity? Explain.

E1: To a certain extent, since in some cases, it has adopted an extensive interpretation of Article 149 of the Constitution, including peasant patrols in the event of exercising jurisdictional functions autonomously, which guarantees the protection of cultural diversity; however, this is not evident in all cases.

E2: The jurisprudence on peasant patrols and their jurisdictional function has generated impacts on the Judiciary and on the structure of our legal system, although it has also provided decisive steps to expand the content of the right to access justice that various people have seen restricted, but it is important to give greater importance to this function, so that it is not relegated by the ordinary administration of justice.

E3: There is a panoramic view of positive changes in jurisprudence, but there are still shortcomings in access to justice and the protection of legal pluralism and, therefore, of cultural diversity, which has not allowed us to achieve an inclusive and plural justice system.

E4: Progress has been made that has allowed for greater recognition of peasant patrols in the national legal arena, however, the central objective established by the constitutional norm has not yet been achieved: respect for legal diversity as part of the fundamental right of people to have the State recognize and protect cultural and ethnic diversity and identity.

E5: It is clear that there is resistance within the administration of justice to recognize that the judicial system and the law itself are not the exclusive heritage of a single cultural pattern.

E6: On a regular basis, because there are still problems in the quality of the arguments, but these rulings, due to their binding nature, are paths that are recognized in the legal system, and provide essential notions for the protection of cultural diversity.

E7: Jurisprudential development constitutes an attempt to advance in the recognition of legal plurality, an advance that must be followed through other actions that grant the interpretation of the constitutional text real validity and that the inhabitants of different cultures are recognized on an equal footing.

E8: There is a contradictory scenario regarding jurisprudence, since the Supreme Court has shown greater real interest in addressing the situation regarding cultural diversity and the relevance of peasant patrols, an assertion that cannot be established by the Constitutional Court, which until now shows a worrying silence, unlike comparative jurisprudence.

Based on the results presented, it is observed that all those interviewed agree in indicating that the jurisprudential development of the content of the communal jurisdiction of the peasant patrols has regularly guaranteed the protection of cultural diversity, since in some cases, it has accepted an extensive interpretation of art. 149 of the Magna Carta, including the peasant patrols in the event of exercising jurisdictional functions autonomously, as well as, it has provided decisive steps to expand the content of the right to access to justice of indigenous peoples and the protection of cultural diversity; however, there are also pronouncements that ignore communal justice or subordinate it to ordinary justice, with deficiencies in access to justice and in the protection of legal pluralism being noted, which has not allowed for the achievement of an inclusive and plural justice system.

3.2. Establish the institutional interrelationship that peasant patrols have with the Concentrated Constitutional Control in Peru.

The right to self-determination of indigenous peoples is established as the articulating principle and right, as well as the ultimate foundation of the recognition of each of the collective rights, specifically including their right to choose their own forms of government, their right to seek their social, economic and cultural development in relation to their own worldviews and priorities; and their right to organize themselves freely without extreme interference. Hence, peasant patrols are recognized as exercising jurisdictional functions, in accordance with their customary law, in order to guarantee respect for cultural diversity and legal pluralism, as indicated by the Constitutional Norm.

In this way, national and international standards become legal instruments of unavoidable direct application by the Constitutional Court, a body that must guarantee the constitutional recognition of cultural diversity and legal pluralism, which implies a role in the area of normative development, institutional implementation and legal culture, since, according to Yrigoyen (2016), only by fully assuming said recognition can we begin to build a model of a Democratic and Pluricultural State of Law, where peasant patrols have a more active role in the recognition of their fundamental rights.

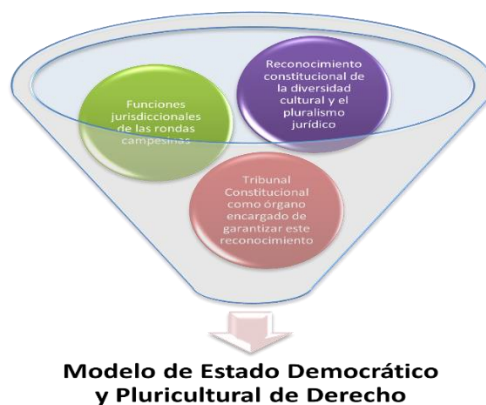


Figure 3. Institutional interrelation

Source: Own elaboration

Peruvian jurisprudence has a unique characteristic in relation to other nations, and that is that it is constituted by a dual system of jurisprudential production; on the one hand, the ordinary jurisdictional system, which is made up of the Judicial Branch, and on the other hand, the legitimacy of the Constitutional Court. One is in charge of exercising diffuse control and the other, concentrated control, so two systems coexist that guarantee the conventionality of a Constitutional State of Law, which controls and limits power, the use of checks and balances and protects the fundamental rights of people, always preserving constitutional supremacy, but at the same time, recognizes autonomous organizations and the presence of the Peasant Patrols as a special jurisdiction in the administration of justice.

Table 5
Interview results third question

What reasons justify subjecting the communal justice of the Peasant Patrols to concentrated constitutional control?

E1: When the fundamental rights of the inhabitants are violated, regulations are promoted that restrict the jurisdictional function of the patrols or attack cultural diversity, and when there is a lack of knowledge of the congruence factor, which requires that the actions of the peasant patrols do not violate the essential core of fundamental rights.

E2: Lack of knowledge of the customary law applied by the peasant patrols and interference in their administration of justice, since the rights of the members of the community are violated, despite the fact that the Constitution protects and enshrines the right to cultural diversity and thus the legitimacy of communal justice.

E3: Here it is important to bear in mind that fundamental rights are binding not only on each public authority, but also on individuals, whether public or private. Therefore, any type of infringement on their content is susceptible not only to constitutional review, but also to protection in circumstances where such violation or threat is clearly proven, respecting and guaranteeing at all times the recognition of communal justice.

E4: I believe that any regulatory provision that limits communal justice and ignores the legal pluralism of indigenous peoples requires a ruling by the Constitutional Court.

E5: Any law that violates the rights of indigenous peoples and does not respect the powers of the communal jurisdiction requires concentrated constitutional control, since, if it violates the rights, it is unconstitutional.

E6: When human rights are violated, rules are applied that violate or ignore customary law, and abuses are committed by authorities that put cultural and ethnic diversity at risk in our country.

E7: In the Peruvian constitutional system, fundamental rights relate the State and individuals, therefore any attempt to organize zones exempt from influence or any type of constitutional control in the public arena, such as in the case of peasant communities, native communities and peasant patrols, is inadmissible; therefore, constitutional control constitutes an obligation to guarantee respect for the Constitution and the fundamental rights of individuals.

E8: In the event that the introduction of a rule seeks to limit or violate the rights of indigenous peoples, ignoring legal pluralism and the application of their customary law in the resolution of conflicts, since it results in unconstitutional decisions that seriously affect the rights of people; although it is necessary to establish that from a practical level, communal justice is relegated to ordinary justice.

According to those interviewed, the reasons justifying subjecting the communal justice of the Peasant Patrols to concentrated constitutional control are: promotion of norms that restrict the jurisdictional function of the patrols or undermine cultural diversity, ignorance of customary law and legal pluralism, violation of the fundamental rights of the inhabitants, ignorance of the factor of congruence that requires that the actions of the peasant patrols do not violate the essential core of fundamental rights, as well as the commission of excesses and abuses by the authorities that put cultural and ethnic diversity at risk.

Table 6
Interview results fourth question

Why do you think the institutional interrelation between peasant patrols and Concentrated Constitutional Control in Peru is important?

E1: In our country, the analysis carried out by the Constitutional Court has focused on the jurisdictional function, that is, the jurisdictional control of the laws and on the determination of legal categories and concepts that are specified in its rulings. In this way, it guarantees that the fundamental rights of people are duly protected and guaranteed.

E2: Because it ensures the materialization of the Constitution, respect for the fulfillment of rights and guarantees the full enjoyment of fundamental rights, which allows for greater protection of cultural diversity and the jurisdictional function of peasant patrols.

E3: Because indigenous jurisdiction exists, is exercised and is legally recognized by the constitutional norm, which implies a coordination between systems that demands respect for the institutions and practices of each legal system and not the subordination of one system to another.

E4: This allows for a more active role for peasant patrols in the administration of justice and respect for cultural and ethnic diversity, since it covers the complex issue of indigenous peoples' rights, attempting to leave behind reductionist and simplistic conceptions. However, there are also rulings that do not provide a deep analysis and protection of the special indigenous jurisdiction.

E5: This provides comprehensive recognition of customary law and indigenous jurisdiction as manifestations of the ethnic and cultural diversity and plurality of the State, as well as the different prerogatives that such recognition entails.

E6: This is because it includes the recognition of a special jurisdiction as a concretization of the right to self-determination of indigenous or native peoples, which is not a mere prerogative or political concession granted by the State, but is an unavoidable consequence or practical manifestation of their right to self-determination. In this regard, concentrated control must guarantee the protection of cultural diversity and the fundamental rights of members of peasant patrols, in order to comply with the provisions of the Constitution.

E7: Because it allows for the resolution of conflicts that arise in the exercise of communal justice and for a timely interpretation of Article 149 of the Constitution, since in recent years it has been shown that detainees do not commit sedition when detained in the exercise of communal justice. There are also rulings in which the Constitutional Court has reaffirmed the constitutionality of communal justice and has resolved cases of conflict between customs and fundamental rights such as physical integrity or due process.

E8: It is important to ensure the full exercise of the right and power of the peasant patrols to exercise their own jurisdiction. Although it seems that recognition does not have a significant relevance in supporting the viability of the application of concentrated control, I consider that it is a presupposition from which it is possible to fully understand the legal nature and prerogatives of indigenous jurisdiction, as well as the inestimable importance of the jurisdictional function in the scenario of the interculturality process in our country. Having said that, I consider it pertinent to point out that, concentrated control in recent years, except in some cases, has not been fulfilling a true role as a guarantor of the Constitution and fundamental rights, since on the contrary, it has protected the interests of private companies to the detriment of the full validity of the rights of indigenous or native peoples.

The results show that the institutional interrelationship between the peasant patrol and the Concentrated Constitutional Control in Peru is important because: it focuses on the jurisdictional control of laws and the determination of categories and legal concepts of sentences; it allows ensuring the materialization of the Constitution, respect for compliance and guarantee of the full enjoyment of fundamental rights; it grants a more active role to the peasant patrols in the scenario of their administration of Justice and respect for cultural and ethnic diversity; it provides comprehensive recognition of customary law and indigenous jurisdiction; it leads to the understanding of the legal nature, the prerogatives of indigenous jurisdiction and the relevance of the jurisdictional function in the scenario of the intercultural process; which would guarantee a coordination between systems that demands respect for the organizations and practices of each legal system and not the subordination of one system to another. It should be noted that two of the interviewees agree that there are rulings that do not provide a deep analysis and protection of the special indigenous jurisdiction, as well as that concentrated control has not been fulfilling a true role as a guarantor of the Magna Carta and fundamental rights.

3.3. Explain doctrinally the jurisdictional power of the Peasant Patrols from the perspective of concentrated control.

The doctrine indicates that the special or community jurisdiction implies that constitutional faculty of the peasant authorities, native groups and peasant patrols to administer justice within their territorial scope and in each of the branches of law, in an autonomous, integral and independent manner in accordance with their Customary Law and the special legislation in force, provided that they do not violate the fundamental rights of the people. In this sense, the existence of different normative structures is recognized, such as the state normative system and the ancestral legal normative system of the peasant and native groups that come from their ancestral customs and the Andean worldview, called customary law. Likewise, forms of coordination with the ordinary jurisdiction have been established, which is of enormous importance, since it reflects respect for cultural and ethnic diversity. However, to this day the scope and functions of the peasant patrols are still being discussed, because there are different approaches to their recognition in the national legal system, since extremely formalistic, relativist positions and intermediate positions are reflected that reflect the coexistence of both systems for a better guarantee of the fundamental rights of all humanbeings.



Figure 4. Jurisdictional power from the doctrine

Source: Own elaboration

Based on the figure described in various jurisprudences, the Constitutional Court has specified that the fundamental rights that comprise due process and effective jurisdictional protection are enforceable to all bodies that have a jurisdictional nature and that they can be extended, as applicable, to all acts of other state bodies or private individuals. In an extensive manner, the special jurisdiction of rondas must also be considered, by virtue of article 149 of the Constitution. From this perspective, it is necessary to understand its cultural approach, which must have the following guarantees: communal authorities for the exercise of jurisdiction and decision-making of an administrative nature; the power of competence for the resolution of the legal conflict that occurs in its jurisdiction, in accordance with its historical and cultural development, its customary law, and in general, with its particular normative system; procedures that allow a minimum guarantee of the fundamental rights of the accused and aggrieved; the power to ensure that their decisions are effective and defined, with full observance of fundamental rights.

Table 7
Doctrinal study of jurisdictional power

Author	Criteria	Relevance
Robles (2003)	Disputes Resolution by the subjects themselves	For authors such as Robles and Ovalle, the jurisdictional function is intended to resolve conflicts and must be supported by the Constitution. For Diez, La Madrid, as well as Silva and Péreznieto, the Constitutional Norm recognizes the jurisdictional function of the peasant patrols, which is based on custom and legal pluralism, with the purpose of providing a service to the community and contributing to the peasant authorities, and which is limited by the non-violation of fundamental rights. Peña points out an essential characteristic when referring to the generation of two interpretive positions of article 149: one that establishes that the peasant patrols are simply a support and do not have recognition to administer justice and another that establishes that they can exercise jurisdictional functions.
Diez (2011)	Recognition of jurisdictional functions Limited interpretation Subsidiary role Legal pluralism	
Ruiz (2012)	Constitutional and criminal review Restitution of rights Applicability of illegal conduct	
Peña (2012)	Recognition of jurisdictional functions Interpretative positions Lack of recognition of powers to the RC Power to exercise jurisdictional functions	
Ovalle (2016)	Conflict resolution Constitutional and regulatory basis	
La Rosa (2017)	Analysis of violation of rights Analysis of criminal offences There is no subordination between justices	
La	Customs	

Madrid (2018)	Roles Community service Contribution to jurisdictional functions	Finally, Ruiz and la Rosa take similar positions by establishing that communal justice is not subordinate to ordinary justice, since it would be a violation of cultural diversity, but it can be reviewed if illegal acts are committed or the fundamental rights of individuals are violated.
Silva y Pereznie to (2020)	Procedures and instances for resolving conflicts Respect for fundamental rights	

According to the results, it can be seen that from a doctrinal perspective, various authors agree on the recognition of the jurisdictional power of the peasant patrols, which must be practiced within the territorial scope of the community and without violating the fundamental rights of individuals, which is the limitation established in the constitutional norm so that ordinary justice does not interfere in the decisions and sanctions of communal justice. In this sense, actions are carried out aimed at the solution of conflicts to guarantee coexistence, communal well-being and social peace within the community, since these practices configure forms for the administration of justice, based on customs and customary norms.

Table 8
Interview results fifth question

What do you consider to be the relevant doctrinal approaches regarding the jurisdictional power of the Peasant Patrols?	
<p>E1: There is a positivist doctrinal position that establishes that the cultural differences existing in a country are not an element that the law should take into account, ignoring legal pluralism. There is also relativism that maintains that cultural diversity is the main value to be respected and that fundamental rights and democracy are developed in a cultural setting that cannot be exported to other different societies. Finally, there is community pluralism, which recognizes legal pluralism and perceives it as a positive alternative so that the population of rural areas can</p>	<p>E2: Here it can be established that the peasant patrols resolve conflicts protected by their uses and customs or customary law, using their own methods and strategies in their investigations, always respecting due process.</p> <p>E3: One approach to the doctrine establishes the importance of Article 149 of the Constitution, which recognizes the jurisdictional functions of the peasant patrols, making an extensive interpretation of the article, placing Customary Law as the normative framework of said special jurisdiction with the limit of fundamental rights. On the other hand, there is a sector of the doctrine that denies this power to the peasant patrols, establishing that they fulfill a subsidiary and</p>

achieve the satisfaction of their demand for Justice, since it has a critical view of the formal system of administration of Justice, noting the existing barriers in access to justice and the difficulty of eradicating it in the short or medium term.

supporting role.

E4: In the justice administration system there is no homogeneous attitude towards the community mechanisms for the administration of justice existing in rural areas, so that various tendencies can be observed that sometimes coexist within the same judicial district. Thus, there are officials who present favourable behaviours regarding the jurisdictional functions applied by the peasant patrols, but also those who present hostile attitudes towards them, since they perceive their role of defending legality in a highly positivist way.

E5: One of them is that the special jurisdiction of the patrols not only has constitutional protection and recognition, but also in ILO Convention 169; however, there is also a doctrinal position that ignores the jurisdictional power that the peasant patrols have.

E6: One of them is the formalist approach, which considers that structural barriers to access to justice are external circumstances that should not be taken into consideration either when analyzing the facts or when making a decision; another is the relative intermediate approach, which indicates that ordinary justice should refrain from intervening in conflicts that occur within peasant and native communities, even if their own members turn to the authorities; and in the same way, there is a plural community approach, which accepts the existence of community mechanisms, considering them indispensable to protect social peace in the communities and to resolve conflicts in which the state administration of justice tends to fail.

E7: There is a purely formalistic approach, which establishes that only those who have adequate training to understand the rules can assume functions, since they can make decisions based on a criterion similar to the legislation, therefore, community mechanisms for the administration of Justice are not perceived as the exercise of a right of the population, but as situations of illegality. There is also a relative approach, through which the administration of Justice by the communal authorities is recognized, so that even if a violation of human rights occurs, judges should not intervene because it is an expression of a cultural nature. Finally, the pluralist community approach considers that given the State's inability to fulfill the satisfaction of human rights to the rural population and provide it with effective jurisdictional protection, community mechanisms arise and are maintained.

E8: There are three quite marked approaches: a formalist positivist tendency, which denies the existence of other jurisdictional systems in our country, considering that the administration of justice is simply equivalent to the application of the law; a relativist tendency, which recognizes the existence of various legal systems within our country, and at the same time points out that it is impossible to raise moral assessments in this regard; as well as a community pluralist tendency, which, like the previous one, recognizes the existence of legal pluralism in our country, but the main distinction is that it seeks to reconcile respect for the autonomy of the peasant and native population with respect for human rights, proposing a possible intervention of formal justice to provide timely protection of these rights.

According to the results presented, a large part of the interviewees consider three relevant doctrinal approaches on the jurisdictional power of the Peasant Patrols: formalist positivist, relativist and community pluralist; the first, denies the existence of other jurisdictional systems considering that the administration of justice is equivalent only to the application of the law, ignoring legal pluralism, establishing that only those who have adequate training to understand the norms can assume functions, since they can make decisions based on a criterion similar to legislation; the second recognizes the existence of diverse legal systems, maintaining that cultural diversity implies that main value that must be respected, since fundamental rights and democracy develop in a cultural setting, where ordinary justice must abstain from intervening in conflicts produced within peasant and native groups; Finally, the third recognizes the existence of legal pluralism and community mechanisms to protect social peace in communities and resolve conflicts, seeking to reconcile respect for the autonomy of the peasant and native group with respect for human rights, proposing a possible intervention of formal justice to provide timely protection of these rights.

Table 9
Interview results sixth question

Do you consider the focus on concentrated control over the jurisdictional power of the Peasant Patrols to be appropriate? Fundamentally.

E1: As I have mentioned, I **E2:** Concentrated control **E3:** There are

believe that to a certain extent, since the Court has provided significant scope and protection regarding the jurisdictional power of the peasant patrols, however, there are also jurisprudential decisions that have caused an impact on the rights of indigenous or native peoples, ignoring their jurisdictional powers.

requires guaranteeing the fundamental rights of people, respecting the Constitution. In this sense, conflicting criteria are evident from the Constitutional Court, since there are decisions that respect legal pluralism, others that simply fail to make a pronouncement on the jurisdictional power of the peasant patrols, and also those that basically deny this type of power.

contradictions surrounding the decisions taken by the Constitutional Court, since on the one hand it constitutionally recognizes the jurisdictional power of the peasant patrols in various rulings, however there are also rulings that ignore these powers and that seriously affect the cultural and ethnic diversity in our country.

E4: I do not consider it to be entirely appropriate, since it has not fulfilled, in all cases, its functions as the highest interpreter and guarantor of the Constitution, the purpose of which is to guarantee the effective validity of fundamental rights.

E5: The decisions adopted by the Constitutional Court constitute a source of law and are linked to each of the branches of the State, as they require strict adherence to the constitutional norm by making interpretations that allow for timely protection of fundamental rights. However, in many cases the court has adopted decisions that limit the jurisdictional power of the peasant patrols or simply ignore legal pluralism, safeguarding interests that put at risk the self-determination of indigenous or native peoples.

E6: Although there has been great progress in the recognition of the jurisdictional power of peasant patrols by the Constitutional Court, there are also decisions that have caused a regression in the protection of the rights of indigenous or native peoples, which have caused an unequivocal symptom of institutional weakening of peasant and native communities, as well as of peasant patrols.

E7: There is only regular protection, because the role of guarantor of the Constitution and fundamental rights has not been fulfilled, since on many occasions the interests of large private companies have prevailed to the detriment of the validity of the rights of indigenous peoples.

E8: Regularly, because in our country we appreciate that the Constitutional Court has been responsible for ensuring the fundamental rights of people and respect for cultural and ethnic diversity, however, in recent years the role it performs has been denatured due to eminently political factors. Consequently, constitutional jurisprudence within the scenario of concentrated control does not demonstrate compliance with the

function conferred on the court by the
Constitution.

Based on the results, the interviewees consider that there is no opportune approach to concentrated control over the jurisdictional power of the Peasant Patrols, because although significant scope and protection have been provided to the jurisdictional power of the Peasant Patrols, there are discordant criteria or lack of pronouncement on this power, which cause an impact on the rights of indigenous or native peoples, their customary law and cultural and ethnic diversity, despite the fact that concentrated control must strictly adhere to the Constitution, making interpretations that allow for timely protection of fundamental rights, since decisions constitute a source of law and are associated with the powers of the State, therefore, there is a due fulfillment of the function conferred to the Constitutional Court.

3.4. Determine the causes that determine the conflict between the application of communal justice by the Peasant Patrols and Concentrated Control.

In groups born from cultural clashes, cultural and ethnic diversity, it seems that the formal criminal law scheme does not work completely, since in these spaces the problems are solved based on customary law or the use of custom, other values tend to govern their destinies and this tends to deepen because in extensive poor Andean and Amazonian sectors of the nation, the State does not seem to have a presence and feels distant. These assessments are developed, not from a plane of justice or unique equality, understood in a Western way, but primarily according to the culture, practices and other interests of the group and its nature. In this way, the different peasant, indigenous, native communities or peasant patrols organize their punitive law in their own way, but with several common peculiarities among themselves, because they start from the same worldview. Therefore, there is constitutional recognition of communal justice, however, conflicts are observed in the jurisdictional action between the justice administration networks of peasant patrols and ordinary justice.

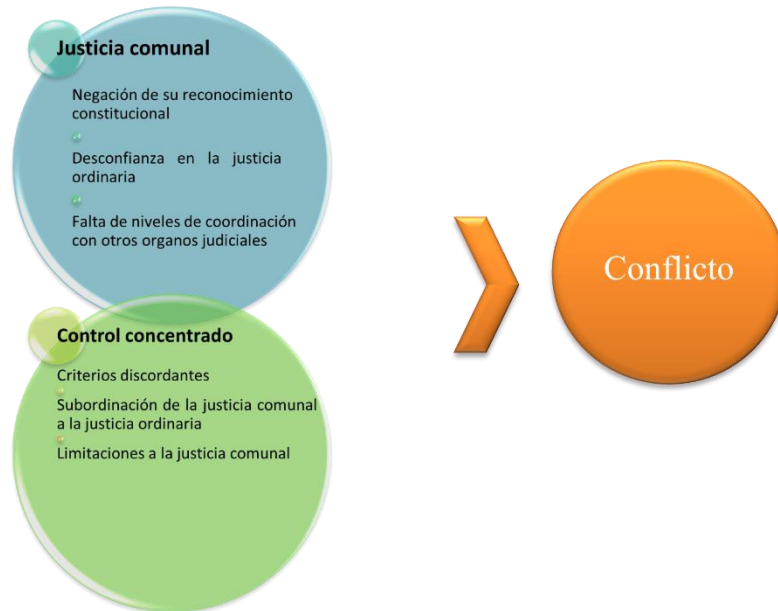


Figure 5. Conflicts of communal justice and concentrated control

Source: Own elaboration

The figure shows the conflict that arises around communal justice and concentrated control, where it is essential to point out that article 149 of the Constitutional Norm establishes limits to the competence of the ordinary jurisdiction, when a case is being heard in the peasant, indigenous or ronda jurisdiction, which must also be understood in reverse, that is, the peasant patrols are an incompetent jurisdiction to hear a case that is being seen in state bodies. However, when the peasant patrols intervene, investigate and make decisions, these are often not respected by state institutions and justice operators, marginalizing and ignoring an institution with constitutional recognition in the administration of justice. In this sense, the peasant patrols ignore and do not accept judicial justice, reviving processes that ended in another jurisdiction. In this way, the confrontation, competition and lack of coordination between the special jurisdiction of the Rondera and the ordinary justice system not only produces disagreements as entities, but also causes the collision between the special Rondera decision and the judicial *res judicata*, which violates legal stability. Likewise, discordant decisions in the concentrated control system, which centralizes the exercise of constitutional control in a single body, the Constitutional Court, and which leads to serious consequences regarding the recognition of the jurisdictional functions of the Peasant Patrols.

Table 9
Interview results seventh question

Do you think there is a conflict between communal justice and formal justice in the country?

E1: Yes, and it occurs when the legal system does not recognize the validity of the traditional norms and practices of indigenous peoples, ignoring customary law and the constitutional recognition of the jurisdictional function exercised by peasant patrols.

E2: Yes, because many times communal justice is subordinated to formal justice, altering the constitutional model that recognizes the jurisdictional powers of the peasant patrols, as well as the coordination and relationship that communal justice has with state justice.

E3: Despite the constitutional recognition of communal justice, there are institutions that do not recognize the exercise of jurisdictional functions carried out by peasant patrols, by making a restrictive interpretation that has no binding effects on institutions such as the Public Prosecutor's Office, the Judiciary and even the National Police of Peru itself,

E4: To date, there is a restrictive and limited position regarding communal justice and the jurisdictional functions of the peasant patrols, since a restrictive interpretation of article 149 is made, ignoring these powers, which causes harm to thousands of citizens who find in these institutions a cultural expression that represents them and one of the few effective means of access to justice.

E5: I believe that there is a serious conflict between both courts, due to the lack of recognition of communal justice by formal justice, between which there is a dispute of material competence, since both can operate in the same geographical area and also resolve the same matters. Likewise, it is noted that in many cases, formal justice does not value the evidence obtained by communal justice, which leads to a serious violation of customary law and due process.

E6: The exercise of communal justice carried out by the authorities of the peasant patrols, in various cases, has been ignored and limited by ordinary state justice, and serious conflicts are seen between both types of justice, which put the fundamental rights of the patrol members at risk, and more than anything in a situation of lack of protection and abuse, since when applying communal justice, they can be prosecuted for exercising their jurisdictional functions.

E7: Although Article 149 of the Constitution establishes a relationship of coordination between communal justice and formal justice, so that there is coordination and relationship between the two, it is observed that there has been a shift from a model of autonomy and coordination between the two to a model where indigenous justice is relegated and subordinated to state justice, with communal justice being applicable to

E8: Yes, because sentences are issued that call into question the jurisdictional power of the peasant patrols, that is, of communal justice, which is worrying because it represents a step backwards in the recognition of their rights, and because a restrictive interpretation of the Constitution is made, denying the special judiciary to the patrols and considering them only a mere auxiliary support of communal justice.

domestic or residual cases.

There is a unanimous position on the part of the interviewees regarding the existence of conflicts between communal justice and formal justice in the country, as they have considered that there is a restrictive and limited position of communal justice, customary law and constitutional recognition of the jurisdictional function of the peasant patrol are unknown; there is a subordination of communal justice to formal justice; a restrictive interpretation of art. 149 is made, denying the special judiciary to the patrols and considering them a mere auxiliary support of communal justice; the actions carried out by the peasant patrols do not have binding effects on institutions such as the Public Ministry, the Judiciary and the PNP; which puts at risk the fundamental rights of the members of the groups who find in communal justice a cultural expression that represents them and an effective means of access to justice, but also of the patrolmen, as they are immersed in a scenario of lack of protection against criminal prosecution by formal justice.

Table 10
Interview results eighth question

In your opinion, what are the causes that determine the conflict between the application of communal justice by the Peasant Patrols and Concentrated Control?

<p>E1: The subordination and limitation of the jurisdictional functions carried out by the peasant patrols in application of their customary law, since they cannot act freely and autonomously, without opposition to formal law.</p>	<p>E2: It can be said that communal jurisdiction has not yet deployed in our country each of its prerogatives and powers inherent to its special condition, that is, being a concrete manifestation of the exercise of the right to self-determination and the right to autonomy of indigenous peoples.</p>	<p>E3: It can be said that communal jurisdiction has not yet deployed in our country each of its prerogatives and powers inherent to its special condition, that is, being a concrete manifestation of the exercise of the right to self-determination and the right to autonomy of indigenous peoples.</p>
<p>E4: The lack of a regulation that establishes a balance between both jurisdictions, since in many cases the constitutional recognition of communal justice carried out by peasant patrols is unknown, which violates legal pluralism and cultural</p>	<p>E5: There is no adequate coordination between ordinary justice and communal justice regarding the competence to resolve conflicts that arise in communities, since on many occasions the intervention of the judicial</p>	<p>E6: It is worth mentioning the lack of timely and official recognition of decisions by the communal justice system, since they do not come into force like rulings by the state justice system, and the result of these institutional conflicts</p>

and ethnic diversity in our country. function has been arbitrary and violent, ignoring the jurisdiction and competence of the authorities over their territories, violating their collective rights and attacking the rights recognized in the Magna Carta and in international human rights instruments. generates criminal prosecutions against members of the peasant patrols, which violates their fundamental rights, their customary law and cultural diversity, and there is no legal security for those convicted or users of the communal justice system, since the resolutions do not acquire the force of *res judicata* and may be subject to constitutional control review.

E7:One of the causes that could be considered is the resistance to consider the recognition of the jurisdictional powers of the peasant patrols, since the judicial bodies have the conception that it is subordinate to ordinary justice; so that the concentrated control applied by the Constitutional Court often includes decisions that violate the rights of indigenous peoples, surpassing communal justice, relying on the limits that the Constitution itself has established for this type of jurisdiction.

E8: The existence of legal gaps and deficiencies, since up to now there are two parallel jurisdictions in the legal system without clarity regarding the delimitation of competences, so that both systems intervene in the same kind of disputes, frequently with opposite objectives and resolutions; therefore, there are jurisprudential decisions that provide clearer and more precise protection to ordinary justice, since many times the jurisdictional powers of the peasant patrols are not fully recognized.

According to the results, the interviewees considered that the causes that determine the conflict between the application of communal justice by the peasant patrols and concentrated control are: subordination and limitation of the jurisdictional functions of the peasant patrols, poor knowledge and recognition of communal justice, non-existence of a norm that establishes a balance and coordination between both jurisdictions, decisions that violate the rights of indigenous peoples, existence of legal gaps and deficiencies regarding the delimitation of powers; which violates the fundamental rights of the patrol members, their customary law and cultural and ethnic diversity, since there is no concrete manifestation of the exercise of the right to self-determination and the right to autonomy of indigenous peoples.

Discussion

This section presents the discussion of the study's results, aiming to establish a theoretical and legal foundation that can counteract the study's findings. The objective is to verify the hypothesis that the concentrated control approach affects the cultural variety of the peasant patrols. This is due to the fact that the approach restricts communal justice, violates

customary law, and ignores cultural pluralism in Peru. In this regard, Escudero (2019) observes that there is an absence of proper organization between indigenous and ordinary justice with respect to the capacity to address issues that arise in the populations. Consequently, in instances where the state exercises its judicial or constitutional court functions within these communities, it does so in an arbitrary and violent manner. This disregard for the capacity and jurisdiction of the authority over their territories constitutes a transgression of their collective faculties and an infringement on faculties recognized in the Constitutional Norm and in International Human Rights Instruments. Accordingly, Hernández (2019) has indicated that the endeavor to establish an inclusive multicultural world necessitates the formulation of an appropriate judicial framework that guarantees the powers of indigenous populations and groups, in addition to the instruments required to implement those powers.

In relation to the results on the study of the normativity and jurisprudence of the content of the communal jurisdiction of the peasant patrols in the national legislation, the following has been obtained: the legislation has been responsible for recognizing the jurisdictional power of the peasant patrols to resolve conflicts within their territorial area, applying their customary law and customs, as long as they respect the fundamental rights of human beings, which is the limiting basis for such recognition. Results that find foundation in the research of Hurtado (2018), who points out that, various doctrinarians continue to discuss about the legitimacy of the peasant patrols when developing their jurisdictional activities, which is key to understand the limits of the sanctions executed by the peasant patrols, their constitutional support and the scenario in which it occurs. If a literal interpretation of the article is carried out, it recognizes the jurisdictional functions of the native and peasant groups, however, the peasant patrols are merely a support to these; furthermore, it explains that they have to be developed within the region of the group and considering the fundamental faculties of the human being.

Likewise, the jurisprudence recognizes the legality of the peasant and communal jurisdiction, including in some cases, the *rondera*, in the situation of the so-called autonomous peasant patrols; however, according to what the Magna Carta establishes, this particular jurisdiction must be exercised within the limits defined by the fundamental powers, so that there must be a minimum degree of objectivity by the judging communal authority, which must be determined and recognized, have competence and apply its customary law. Such is so, the Constitutional Court, by means of judgment No. 04417-2016-HC, established a controversial argument that rejected the jurisdiction of the autonomous peasant patrols, by contemplating that the constitutional norm only refers to the authorities of native and peasant groups as holders of communal jurisdiction and not to the peasant patrol, whom it considers a simple aid of the authorities. In this way, by means of this determination, the legitimacy of the peasant patrol was stripped, since, according to a literal interpretation of the Constitutional Norm, the power to carry out customary justice in the territory did not correspond to them.

However, contrary to this ruling, the TC issued a decision (STC N.º 03158-2018-AA) in which it recognized the jurisdictional competences of the autonomous peasant patrol, those that exist where there is no peasant or native group, being that, it makes an extensive interpretation of art. 149 of the Constitution, emphasizing that the round does not usurp jurisdictional powers and clarifying that the probability that the native and peasant groups

impart justice relying on the peasant round, does not close the probability that the latter act independently or complementing the role performed by the former.

The results also showed that there is no adequate normative treatment of the communal jurisdiction of the peasant patrol in national legislation, because, despite having constitutional recognition, they are displaced with a subsidiary role to formal justice, when exercising their jurisdictional functions, which causes a constant conflict, as their possibilities of action are restricted to the maximum, which weakens their functions, to provide security and justice speed in their community, as well as limiting their competence and qualifying their actions as criminal. While the jurisprudential development of the content of the communal jurisdiction of the peasant patrol has regularly guaranteed the protection of cultural diversity, since in some cases, an extensive interpretation of art. 149 of the Magna Carta is adopted, including the peasant patrol in the assumption of developing jurisdictional activities autonomously, nevertheless, there are also pronouncements that ignore communal justice or subordinate it to the ordinary justice system.

In this regard, the Ombudsman's Office (2019) points out that the jurisprudential recognition of communal justice, basically that exercised by the peasant patrols, not only implies an advance in the development of the principles of justice that guide the legal system, as well as a relevant interpretative growth of the constitutional and legal regulations in force, but it also allows a more precise control of each of the excesses that may be committed in this scenario, and consequently, in the effective enforcement of fundamental rights in the rural scenario, and of the existing cultural diversity, which implies the will of different instances of the justice administration system.

Following this line, Carbonell (2015), states that neoconstitutionalism implies a relatively new phenomenon, scarcely analyzed and in which jurisprudence plays a quite relevant role. In the territory, the jurisprudence has not only defined the scope of the collective powers of indigenous groups, but has also provided solutions to each conflict formulated between these rights and the powers of individual character of its members, being that its reading is mandatory when multiculturalism is addressed. However, the high courts of justice have not ruled on any case of conflict between the right of indigenous groups to maintain a certain cultural practice and the powers of indigenous women. The exercise or conventional norms that some indigenous groups have to confront each denunciation of family and sexual aggression, reflect that, if the courts do not pronounce on this problem, it is not because it does not occur.

In regard to the findings concerning the establishment of institutional interrelation between the peasant patrols and the Concentrated Constitutional Control in Peru, the following conclusions were derived: the communal justice of the peasant patrols should be subject to the concentrated constitutional control due to the promotion of norms that restrict the jurisdictional function of the patrols or attempts against the cultural variety; the patrols' ignorance of customary law and legal pluralism; the violation of the fundamental rights of the population; and the patrols' ignorance of the congruence factor. The findings are corroborated by the research of Luzuriaga (2017), who concludes that the Ecuadorian Constitution acknowledges the plurinational character of the State and the indigenous justice system as a discrete legal framework. The manner in which indigenous justice is administered is of paramount importance for the coexistence of the nation's diverse legal

systems. Consequently, a comparative analysis of experiences is imperative to fortify the justice system in Ecuador and achieve a genuine integration of indigenous and state justice. Conversely, the findings indicated that this association is significant because it emphasizes the jurisdictional oversight of legislation and the delineation of categories and legal principles of sentences. It facilitates the realization of the Constitution, ensures compliance, and guarantees the comprehensive enjoyment of fundamental rights. It is noteworthy that this framework enables the peasant patrols to assume a more active role in the administration of justice and the consideration of cultural and ethnic diversity. It is equally important to recognize that this framework provides full recognition of customary law and indigenous jurisdiction. Furthermore, it leads to the understanding of the legal nature, the prerogatives of indigenous jurisdiction, and the relevance of the jurisdictional function in the context of the intercultural procedure. Consequently, the interpretation of the Theory of Juridical Pluralism, which, according to Guevara (2009), addresses the issue of the integration of the democratic exercises of the most visionary social groups, such as the Rondascampesinas, in political procedures, is timely. Thus, it discusses the difficulties and possibilities of achieving this integration, maintaining and strengthening cultural and ethnic differences as relevant dimensions in revolutionary and democratic processes that seek to reorganize society.

Regarding the doctrinal results on the jurisdictional power of the RondasCampesinas from the concentrated control approach, it was found that various authors agree on the recognition of the jurisdictional power of the RondasCampesinas, which must be practiced within the territorial scope of the community and without infringing on the fundamental rights of individuals, which is the limit established in the Constitution so that the ordinary justice system does not interfere in the decisions and sanctions of communal justice. Therefore, most of the interviewees consider three relevant doctrinal approaches on the jurisdictional power of the RondasCampesinas: formalist positivist, relativist and communitarian pluralist. Thus, Diaz (2019), establishes that there is a legitimate legal justification for granting the judicial competence contemplated in art. 149 of the Peruvian Magna Carta, which is based on the cultural diversity present in the nation, which makes it necessary to apply justice according to the cultural perspective of the regions to achieve the satisfaction of the communities and adequate social control.

A similar situation was identified in the case of the RondasCampesinas, where there is an absence of a timely approach to concentrated control over the jurisdictional power. Despite the provision of significant and protective scopes to the jurisdictional power of the RondasCampesinas, there are discordant criteria or a lack of pronouncement on this power. This has had an adverse effect on the rights of indigenous or native populations, their customary law, and the cultural and ethnic diversity. Guamán's (2015) research findings underscore this issue, highlighting the recognition of indigenous jurisdiction as a distinct legal system, separate from conventional justice. This recognition is accompanied by the conferral of authority to resolve conflicts within indigenous communities. Nevertheless, the La Cocha II ruling of the Constitutional Court in 2014 imposes limitations on the jurisdiction of indigenous justice, particularly in instances involving violations of the right to life. This outcome positions indigenous justice in a disadvantaged and subordinate position relative to the state justice system.

The results of the study indicated a unanimous position among the interviewees regarding the existence of conflicts between communal justice and formal justice in the country. The interviewees considered that communal justice is restricted and limited in its application. This is evidenced by the disregard of customary law and the lack of recognition of the constitutional mandate for the peasant patrols' jurisdiction. The analysis identified several factors contributing to these challenges, including the subordination and limitation of the peasant patrols' jurisdictional functions, limited awareness and recognition of communal justice, the absence of a regulatory framework that ensures balance and coordination between both jurisdictions, decisions that infringe upon the rights of indigenous peoples, and the existence of legal gaps and deficiencies in the delineation of competences.

These findings are consistent with the study by Ardila (2016), who concluded that conflicts and conflictivity are beyond the regulatory scope of the judicial system, rendering them irrelevant from a legal perspective. This finding suggests that the judicial system is ineffective in its management and is not satisfactory for the parties involved or the necessary guiding social patterns. Conversely, it is the social norms and institutions present in the domestic, productive, and mercantile spheres that are responsible for regulating these matters, even if they do so through dynamics considered extra-legal.

Conclusions

First: It was proven that the concentrated control approach affects the cultural variety of the peasant patrols in view of the fact that it restricts communal justice, violates customary law and ignores cultural pluralism in Peru, which affects the fundamental rights of individuals and generates a framework of lack of protection in the face of ordinary justice.

Second: Legislation has recognized the jurisdictional power of the peasant patrols to resolve conflicts within their territorial scope, applying their customary law and customs, as long as they respect the fundamental faculties of human beings, which is the limiting basis for such recognition. Meanwhile, the jurisprudence recognizes the legality of the peasant and communal jurisdiction, including in some cases, the *rondera*, which must be exercised within the limits defined by the fundamental faculties. However, there is no adequate normative treatment of the communal jurisdiction of the peasant patrols in national legislation, because, despite having constitutional recognition, they are displaced with a subsidiary role *vis-à-vis* formal justice.

Third: The institutional interrelationship between the peasant patrols and the Concentrated Constitutional Control in Peru is important because it focuses on the jurisdictional control of legislation and the determination of legal categories and concepts in sentences; it makes it possible to ensure the materialization of the Constitution; it grants a more active role to the peasant patrols in the administration of justice; it provides full recognition of customary law and indigenous jurisdiction. Thus, the reasons justify submitting the communal justice of the *Rondas Campesinas* to concentrated constitutional control are: promotion of norms that restrict the jurisdictional function or threaten cultural variety, disregard for customary law and legal pluralism, violation of fundamental rights, disregard for the factor of congruence, as well as the commission of excesses and abuses by the authorities.

Fourth: The jurisdictional power of the peasant patrol must be practiced within the territorial area of the population and without violating the fundamental faculties of the people, so that, there are three relevant doctrinal approaches: The first denies the existence

of other jurisdictional systems, considering that the administration of justice is simply equivalent to the use of legislation, ignoring legal pluralism; the second recognizes the existence of diverse legal systems, maintaining that cultural variety is the primordial value to be considered and that the fundamental faculties and democracy are realized in a cultural scenario; finally, the third recognizes the existence of legal pluralism and community tools to protect social peace in the communities and resolve conflicts, seeking the interrelation of communal and ordinary justice.

Fifth: The reasons that define the problem between the use of communal justice by the peasant round and the concentrated control are: subordination and limitation of the jurisdictional functions of the peasant patrols, scarce knowledge and recognition of communal justice, inexistence of a norm that establishes a balance and coordination between both jurisdictions, decisions that violate the rights of indigenous peoples, existence of legal gaps and deficiencies regarding the delimitation of competences; This violates the fundamental rights of the ronderos, their customary law and cultural and ethnic diversity, since there is no concrete manifestation of the practice of the right to self-determination and the right to autonomy of the indigenous populations.

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