

## Legal Pluralism and customary law in Andean communities: The case of the Casaorcco community, Ayacucho, 2020

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**Abstract:** In the community of Casaorcco, Ayacucho, customary law remains the primary mechanism for conflict resolution, coexisting with state law within a framework of legal pluralism. This study examines its role in the administration of justice, its theoretical foundations, and its impact on social cohesion and communal autonomy. Through a qualitative and ethnographic approach, including interviews with 62 community members (among them 8 leaders) and documentary analysis, it was found that the communal assembly is the main authority, imposing sanctions such as cold-water baths with nettles and communal labor. While these practices reinforce cultural identity and social order, they also spark debates regarding the proportionality of punishments and their compatibility with human rights. Communal justice, based on collective participation, lacks written regulations, leaving room for arbitrariness and tensions with state law. In this context, it is essential to articulate both systems through intercultural dialogue that balances communal autonomy with respect for fundamental rights, ensuring fair and culturally relevant justice.

**Keywords:** *Communal justice, Community sanctions customary law, Legal pluralism, Social conflicts.*

### 1. Introduction

This research analyses the perception of justice and its everyday application among community members within the framework of the Peruvian legal system, considering its advances and limitations. In Andean communities, judicial processes have revealed tensions between Customary Law, based on unwritten practices recognised by the community, and Positive Law, derived from a legally constituted authority. At times, these tensions have led to extreme acts of violence, such as "popular trials," with historical precedents in events like Uchuraccay, Huayanay, Ilave, and the Baguazo. Traditions, expressed through dances, festivities, gastronomy, language, and craftsmanship, are passed down from generation to generation, gradually acquiring the force of law to regulate social coexistence. However, unlike Positive Law, their validity depends on communal recognition. To prevent conflicts between what is just and what is legitimate, it is essential to understand the general principles of law, as they guide the legal organisation of a country and give meaning to both statutory and customary norms, whose disregard can lead to social disorder, insecurity, and a loss of values. Although custom, as a source of law, arises from spontaneous and collective practices, it is subordinate to legislation; however, in some cases, the legal system recognises it as a regulatory criterion, allowing certain unwritten norms to adapt to the dynamics and needs of the community.

The testimony of Ezequiel in Santa Rosa de Chopccas, Huancavelica, illustrates the tension between Customary Law and Positive Law in Andean communities. In 1970, he was unjustly accused of cattle rustling based on the interpretation of a *Qayaq*, and although the district judge acquitted him after two years of legal proceedings, he continued to bear suspicion within his community. His experience

demonstrates how formal justice delegitimises traditional practices, generating conflicts in communities that have historically relied on both the state legal system and communal justice. This study examines this duality in Casaorcco, De Ayacucho [1], exploring its impact on conflict resolution and the structural exclusion that persists despite the legal recognition of Customary Law.

Anthropological studies on law have analysed the relationship between norms, social cohesion, and justice in non-Western societies. Malinowski [2] highlighted the role of punishment in maintaining tribal order, while Radcliffe-Brown argued that all societies possess law, questioning the application of Western legal categories to their study. In Latin America, legal anthropology emerged in the 20th century alongside indigenous movements, consolidating itself in Stavenhagen [3]. Although indigenous customary law has gained recognition in academic and political spheres, it remains in tension with state legal frameworks. The debate between Western categories and native concepts persists, reflecting structural inequalities in access to justice.

Various studies have analysed the relationship between customary law and state law, highlighting its impact on conflict resolution and the administration of justice. Research in Galicia, Madagascar, and indigenous communities in Peru has explored its coexistence with constitutional law [4-7]. Gender-related aspects have also been examined [8] as well as the recognition of indigenous law in Latin America [9]. Other studies have focused on its application in local conflicts [10, 11] and its interaction with international law [12, 13]. A key point in the debate is its limited presence in formal legal education, which has led to proposals for its integration into curricula and regulatory frameworks [14-16]. Collectively, these studies underscore the importance of customary law and the need to articulate it with state law to strengthen a more equitable and intercultural justice system.

In Peru, customary law remains fundamental in various communities, influencing land tenure and property access, according to Meza, et al. [17]. However, many of these practices are not fully incorporated into national legislation. On the other hand, Arevalo [18] studied the *rondas campesinas* of Chazuta and found that their sanctions, such as physical punishments (49%) and imprisonment (20%), violate human rights, including freedom and personal integrity. Both Meza and Arévalo emphasise the importance of recognising customary law but warn of the risks that some practices may infringe on fundamental rights. It is necessary to find a balance between both legal systems, ensuring cultural autonomy without violating human rights, through a legal framework that allows their coexistence while safeguarding human dignity.

The objective of this research was to analyse customary law and its role in conflict resolution in the community of Casaorcco, De Ayacucho [1]. It considers the theoretical foundations of punishment enforcement, the causes and effects of its implementation in internal conflicts, and its impact and authority within Ayacuchan society.

## 2. Methodology

This research is classified as basic and descriptive. According to Hurtado [19] this type of study is characterised by generating knowledge about the variables under examination, with the aim of enriching, recreating, or replicating existing knowledge. The research adopts a qualitative approach, allowing for an in-depth and detailed analysis of the studied phenomenon beyond numerical data or statistical figures. This qualitative approach is essential for understanding the underlying dynamics that shape behaviours and interactions within the Peasant Community of Casaorcco, enabling full immersion in the social context [20].

According to Hernández [21] this research is exploratory in nature, as it seeks to identify issues without generating generalisations or predictions. Denzin and Lincoln [22] highlight that its phenomenological approach facilitates an understanding of social experiences and meanings. An ethnographic and inductive method is adopted, which, as stated by Sautu, et al. [23] draws conclusions based on direct observation without imposing external categories [24]. The non-experimental design, following Hernández [21] allows for the description and analysis of the Peasant Community of Casaorcco without manipulating variables, observing phenomena in their natural context [25].

According to Hernández [21] qualitative observation goes beyond merely contemplating facts; it requires active participation in the studied environment. This approach enables deep reflection on events, interactions, and social norms within the community, capturing both visible and implicit aspects of power relations and conflict management [26]. Similarly, Flick [27] emphasises that the researcher's active engagement facilitates a more contextualised and enriched understanding of social phenomena.

According to Maxwell [28] the studied population included eight community authorities and 54 residents of Casaorcco, strategically selected for their knowledge of customary law and their role in conflict resolution. These leaders were key to understanding the social structure and the application of the traditional legal system in the community. A sample of 62 individuals (eight leaders and 54 community members) was selected through non-probabilistic voluntary sampling, based on invitations extended by community authorities. For data collection, Content Analysis and Documentary Analysis were employed, using an interview guide and bibliographic sources. The data were processed through descriptive tables and graphs, without statistical tests, in alignment with the qualitative approach of the study.

### 3. Results

#### 3.1. Economic and Social Status of the Casaorcco Community Members

The community of Casaorcco, in Ayacucho, bases its economy on agriculture and livestock farming, with 35% of the community members engaged in both activities, 34% dedicated exclusively to livestock farming, and 31% focused solely on agriculture. The community's 650 hectares of arable land produce potatoes, maize, peas, and broad beans, in addition to pasture for livestock. However, production is highly dependent on climatic conditions and traditional tools. Some community members supplement their income by working as day labourers, earning an average of S/ 40.00 per day.

Primary education is available within the community, but secondary education requires commuting to Yanama, while higher education is only accessible in Ayacucho. In terms of healthcare, the lack of a local medical post forces residents to seek treatment in Carmen Alto or the regional hospital, which particularly affects vulnerable populations. Despite these limitations, the community has access to potable water, electricity, and internet at the communal house, facilitating access to information and education.

The residents of Casaorcco rely on *Chiara Tours* for transportation to Ayacucho, though many opt to purchase motorcycles for greater flexibility. Mobility is not only an economic necessity but also reinforces communal identity and local justice practices [6]. With approximately 1,000 inhabitants, the community maintains a strong sense of belonging, evident in temporary migration patterns and the return of members during festivals such as *Yarccaspi*, which strengthen social cohesion [29]. Communal organisation is based on customary norms for justice administration and conflict resolution, which remain effective mechanisms in Andean communities [7]. However, customary law interacts with state regulations, posing challenges in terms of gender and equity [30].

In Casaorcco, livestock farming is the primary economic activity, with 35% of the population engaged in this practice and 34% dedicated to it exclusively. Agriculture, though also significant, is the sole occupation of 31% of community members. These figures highlight the importance of both activities, with a slight predominance of livestock farming in the local economy.

**Table 1.**  
Main Activities in the Community of Casaorcco.

Occupation	Count	Percentage
Farmer	19	31%
Livestock herder	21	34%
Both herding and farming	22	35%
Total	62	100%

In Casaorcco, the learning of punishment occurs primarily through communal justice (49%), followed by intergenerational transmission between grandparents and parents to children (32%) and teaching within the nuclear family (19%). Mamani-Hanco, et al. [7] highlight that customary law in Andean communities reinforces social norms through collective sanctions, while Vilcas [29] emphasises the role of ancestral memory in preserving these practices. These data reflect that punishment is a mechanism of social cohesion, sustained by both the community and the family.

**Table 2.**  
Punishment in Casaorcco.

Responses	Quantity	Percentage
Grandparents	20	32%
Parents	12	19%
Community	30	49%
Total	62	100%

In Casaorcco, internal conflicts are usually resolved within the community. Fifteen per cent of respondents mentioned theft, highlighting the preference for customary law, as noted by Mamani-Hanco, et al. [7]. Twenty per cent reported domestic violence, emphasising communal intervention, although Gonzales [8] warns of challenges in incorporating a gender perspective. Disputes over crop damage and debts were each mentioned by 24 per cent, while only 8 per cent referred to land conflicts. These data reflect the prevalence of communal justice in the daily life of Casaorcco.

**Table 3.**  
Internal Conflicts in the Community of Casaorcco.

Responses	Quantity	Percentage
Theft	15	24%
Domestic violence	12	20%
Animal damage	15	24%
Land disputes	5	8%
Debts	15	24%
Total	62	100%

In Casaorcco, the general assembly is the main authority in imposing sanctions, according to 73 per cent of respondents, highlighting a democratic approach to communal justice. Flores and Condori [15] point out that in many Peruvian communities, this body plays a key role in the application of customary law. Eight per cent mentioned the lay justice of the peace, while 5 per cent referred to the communal president and 6 per cent to the aggrieved party. Another 8 per cent attributed this role to the vice president. Calderon and J. [10] emphasise that this system fosters trust, although serious cases are usually referred to the state justice system.

**Table 4.**  
Sanctions and Punishments in the Community.

Responses	Quantity	Percentage
Lay justice of the peace	5	8%
Community president	3	5%
Aggrieved party	4	6%
Vice president	5	8%
General assembly	45	73%
<b>Total</b>	<b>62</b>	<b>100%</b>

In Casaorcco, sanctions vary depending on the offence committed. The most common punishment is a cold water bath with nettles (40%), followed by whipping (20%) and communal work (16%), highlighting the role of communal justice in social reintegration [7]. Thirteen per cent mentioned exile, an extreme measure aimed at preserving harmony [29]. Eight per cent indicated economic sanctions,

while three per cent referred to other punishments. These practices reflect a justice system based on correction, social cohesion, and reparation of harm.

**Table 5.**  
Punishments in the Community of Casaorcco.

Responses	Quantity	Percentage
Whipping	12	20%
Communal work	10	16%
Exile from the community	8	13%
Economic sanction	5	8%
Cold water and nettle bath	25	40%
Others	2	3%
Total	62	100%

In Casaorcco, perceptions of the severity of punishments are divided: 68% of respondents consider them excessive, suggesting concerns about the harshness of physical sanctions such as the cold water and nettle bath or whipping. Mamani-Hanco, et al. [7] warn that the legitimacy of customary law may be affected when sanctions are perceived as arbitrary. In contrast, 32% believe that the punishments are justified and necessary for communal order. Calderon and J. [10] highlight that while communal justice reinforces social cohesion, it must be balanced with principles of justice and proportionality. These findings reflect an internal debate on the fairness and legitimacy of sanctions.

**Table 6.**  
Excesses in Punishments.

Opinion	Quantity	Percentage
It is excessive	42	68%
It is not excessive	20	32%
Total	62	100%

In Casaorcco, preferences regarding conflict resolution through customary law are divided. Fifty-five per cent of respondents believe it is not ideal for the community to handle all conflicts, possibly due to a lack of clear regulation or perceptions of excessive sanctions. Luna and Toro [31] warn that customary law must be decolonised to prevent disproportionate punitive practices. In contrast, 45% believe that minor conflicts can be resolved internally, highlighting the importance of communal justice. Sierra [9] argues that customary law should ensure autonomy without violating fundamental rights. These findings suggest the need to complement communal justice with legal mechanisms that balance fairness and tradition.

**Table 7.**  
Conflict Resolution Through Punishments.

Opinion	Quantity	Percentage
Yes	28	45%
No	34	55%
Total	62	100%

En Casaorcco, el 44% de los encuestados considera el castigo un derecho comunitario, mientras que un 16% lo percibe como justicia comunal y un 11% como diálogo intercultural [15]. Sin embargo, un 10% lo califica como tortura, cuestionando su severidad [32]. Estos resultados evidencian la necesidad de debatir su legitimidad y equilibrar la justicia consuetudinaria con el respeto a los derechos humanos.

**Table 8.**  
Punishment as a Means of Conflict Resolution.

Opinion	Quantity	Percentage
Community right	27	44%
Community justice	10	16%
Intercultural dialogue	7	11%
Conciliation	5	8%
Torture	6	10%
Punishments	7	11%
Total	62	100%

In Casaorcco, 73% of respondents indicate that sanctions are applied without written regulations, relying on communal deliberation and customary practices [4]. Meanwhile, 27% believe that there are guidelines set by elders and leaders, who decide based on the severity of the conflict [33]. This reflects a flexible system but one that may raise concerns about fairness and transparency, potentially leading to the formalisation of guidelines in the future.

**Table 9.**  
Parameters Regulating Sanctions.

Opinion	Quantity	Percentage
Parameters exist	17	27%
No parameters exist	45	73%
Total	62	100%

In Casaorcco, Quechua is the primary language and is spoken in 100% of households, reflecting a strong cultural identity. However, most residents also speak Spanish, facilitating communication with outsiders. 35% of respondents experienced linguistic difficulties during the research, possibly due to dialectal differences or limitations in Spanish proficiency, while 65% faced no issues. This suggests functional bilingualism within the community, although challenges remain in the recognition of Quechua in educational and administrative spaces [6, 14].

**Table 10.**  
Difficulties in Conducting the Research.

Opinion	Quantity	Percentage
Experienced difficulties	22	35%
Did not experience difficulties	40	65%
Total	62	100%

#### 4. Discussion

Customary law in Casaorcco is an essential mechanism for conflict resolution, ensuring its continuity in the daily life of the community. Although based on ancestral norms and values, it does not operate in isolation but coexists with positive law, shaping a scenario of legal pluralism Trelles [34]. Jiménez, et al. [6] highlight that this system not only resolves disputes but also reinforces cultural identity, adapting to social changes and preventing the delegitimation of its practices. In this regard, Hoagland [30] emphasises that customary law is dynamic and can be strategically used, particularly by women, to transform power relations within the community.

From a decolonial perspective, Luna and Toro [31] stress the need to value ancestral knowledge in the administration of justice, integrating it into state law in contexts where the latter proves ineffective. Meanwhile, Mamani-Hanco, et al. [7] demonstrate that while state law regulates serious cases, customary law remains the primary tool for resolving minor conflicts, strengthening social cohesion and the legitimacy of communal authority.

In Casaorcco, state law and customary law coexist, adapting to the social and economic changes brought by globalisation. Nevertheless, customary law remains fundamental in community regulation

and conflict resolution. Laurente [35] argues that community norms, by differing from urban ones, reflect a stronger cultural identity that is less influenced by modernity. Furthermore, communal justice is characterised by its speed and efficiency, avoiding state bureaucracy and enabling swift solutions. While in urban contexts community ties tend to weaken, in rural areas traditions continue to be the foundation of social cohesion.

Cultural identity in Casaorcco is expressed through its gastronomy, folklore, traditional clothing, and the management of natural resources, reinforcing both identity and social cohesion. Mamani-Hanco, et al. [7] point out that customary law not only regulates communal life but also strengthens traditional authority and the continuity of ancestral values. Luna and Toro [31] highlight that the indigenous management of common goods should be approached from a legal decolonisation perspective, allowing ancestral knowledge to guide territorial governance. Hoagland [30] underscores that these legal systems evolve without losing their essence, adapting to change while maintaining their traditions, ensuring their continuity in an ever-transforming context.

In Casaorcco, communal authorities maintain their legitimacy through mutual respect and their autonomy, as recognised in the 1993 Political Constitution of Peru (Articles 88 and 89). However, Jiménez, et al. [6] warn that this legal recognition does not always ensure the effective implementation of communal rights due to tensions with state law. Communal records reflect the constant involvement of local authorities in conflict resolution, strengthening the trust of approximately 250 registered community members. Nevertheless, the lack of state support and judicial bureaucracy has led to distrust in national institutions, prompting the community to handle its own conflicts without effective state intervention.

Faced with mistrust in state institutions, the inhabitants of Casaorcco rely on their democratically elected authorities, such as the community president and the lieutenant governor, who act as judges in conflict resolution. This leadership structure enhances security and social cohesion, as these authorities are perceived not only as figures of power but also as guides and protectors. Jiménez, et al. [6] document similar dynamics in southern Andean communities, where customary law reinforces trust in communal leaders, legitimising their decisions. Additionally, the youthfulness of these authorities, averaging 34 years of age, brings dynamism and commitment to communal governance. Hoagland [30] highlights that leadership in indigenous communities is not exclusive to elders, as younger generations combine ancestral knowledge with innovative approaches, ensuring both continuity and adaptation of traditional structures.

The authorities of Casaorcco have demonstrated efficient governance by promoting infrastructure projects for the benefit of the community. Among their key achievements are the construction of an irrigation canal to optimise water use in agriculture and the expansion of the communal house, improving spaces for collective activities. Mamani-Hanco, et al. [7] highlight that the implementation of projects from a customary perspective strengthens self-management and communal autonomy, as seen in Macusani, where rural patrols also oversee development initiatives.

Additionally, Casaorcco has promoted ecotourism through the Qusni Paccha waterfall, generating income while preserving the natural environment. Luna and Toro [31] argue that customary law encompasses the management of common goods and natural resources, fostering sustainable development without compromising cultural values. The young leadership in Casaorcco has not only ensured order and peace but has also driven projects that reinforce local identity and development, consolidating a cohesive community centred around its traditions and growth objectives.

## 5. Conclusions

The community of Casaorcco maintains its system of communal justice based on traditional norms and sanctions, reflecting the resilience and adaptability of customary law within legal pluralism. Although positive law is present, community members continue to apply ancestral mechanisms to resolve conflicts, reinforcing their cultural identity and social cohesion. However, this coexistence is not without tensions with the state legal framework.

While communal justice is valued for its effectiveness, its application raises debates regarding the proportionality of sanctions and their compatibility with human rights. While some view measures such as stinging nettle baths or whippings as excessive, others consider them necessary for maintaining social order. This divergence highlights the need to establish clearer and more equitable criteria in the administration of communal justice. The communal assembly serves as the main decision-making body, promoting a model of participatory democracy where community members deliberate and establish corrective measures without resorting to external authorities. However, the absence of written regulations allows for a degree of discretion that could lead to arbitrariness. In this context, it is essential to integrate communal justice with the state legal system to balance community autonomy with respect for fundamental rights. The recognition of customary law does not imply absolute permissiveness but rather an intercultural dialogue that harmonises both jurisdictions, ensuring justice that is fair, legitimate, and culturally appropriate for Casaorcco.

### Transparency:

The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

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