

JUST CULTURE DONE TO YOU OR WITH YOU? AN ALTERNATIVE TO PROSECUTION IN GENERAL AVIATION

Dutch public prosecutors for aviation have been offering a radically different alternative to fines or prosecution for some general aviation pilots in cases of breaches of the law. This approach, rooted in restorative justice principles, has shown promising results for justice and safety as **Bram Couteaux** and **Anthony Smoker** report.



KEY POINTS

- In recent years, the Dutch public prosecutor for aviation began to offer some general aviation pilots suspected of having committed an offence an alternative to a fine or prosecution. The alternative took the form of the pilot involved giving a presentation about their experience, followed by an open discussion with the pilot audience in a plenary session.
- The experiences of the pilots and prosecutors involved indicate that such an approach can be experienced as more 'just' and yield more opportunities for safety improvement, compared to orthodox approaches.
- Studying this approach revealed that when the public prosecutor incentivises a pilot to take responsibility for their actions, as opposed to handing out traditional punishment, it can invoke repentance, possibly leading to forgiveness. This facilitates healing the hurt caused by an occurrence to both victims and those held accountable.
- The pilots' experiences reveal how being treated respectfully by the public prosecutor, with understanding and compassion, was paramount to the success of these judicial proceedings, which ended with the cases being dismissed.

A Narrowly Avoided Collision in the Circuit

In the summer of 2019, an aircraft made a straight-in approach to perform a low pass over the runway at an uncontrolled airfield in the Netherlands while a student with their instructor was on base leg. A collision was narrowly avoided and eventually reported to the aviation police. After the criminal investigation, the public prosecutor initially considered this a clear case of gross negligence, requiring a judicial response. However, the public prosecutor urged the pilot who flew the straight-in approach to first reach out to the other pilot. The pilots had a conversation where the pilot who had made the straight-in approach expressed sincere regret and, in a gesture of compensation, organised an instruction flight for the other pilot whose self-confidence had suffered. The prosecutor therefore offered an alternative: share your lessons learned at your aeroclub in a presentation, and the case would be dismissed. Is this an example of restorative justice in a Just Culture?

What Does Just Culture Facilitate in This Type Of Occurrence?

Just Culture is an approach that strives to elicit knowledge about occurrences and episodes that can inform our understanding of safety. EU376/2014 refers to the identification of potential safety hazards from "all relevant

safety information". Achieving the ideals of "all relevant safety information" requires that aviation actors disclose their involvement in occurrences.

The implications of this can be profound, and the essence of Just Culture is to balance these consequences of disclosure in the interest of unlocking knowledge that could enhance safety. Consequences of disclosure can take the form of internal organisational processes that invoke sanctions or, in some cases, criminal charges leading to prosecution. This is an approach to justice based primarily on punishment (i.e., retribution) to signal to the offender and the community that the judged behaviour is unacceptable and will not be tolerated.

There are wider consequences to pursuing retributive justice when dealing with aviation occurrences and safety-related episodes. One is the reluctance or dissuasion of practitioners to disclose the episodes and occurrences that may provide new insight into safety. Why would anyone voluntarily subject themselves to retribution for altruistic reasons?

The Experience of Being a 'Suspect'

The rest of this article describes a study into the lived experiences of three general aviation pilots who accepted the prosecutor's offer to give a presentation about their lessons learned to their peers. Being criminally investigated as a general aviation pilot was an experience they lived through very consciously, dealing with the uncertainty of the outcome in a lengthy process. It can be described as entering a different realm: suddenly, one goes from being an ordinary pilot to being a suspect in a criminal investigation where one's professionalism as a general aviation pilot is questioned.

"Why would anyone voluntarily subject themselves to retribution for altruistic reasons?"

Especially in the beginning, the pilots felt criminalised for an outcome that was neither chosen nor desired. But later in the process, during informal hearings with the public prosecutor (and occasionally when questioned by the aviation police), the pilots experienced empathy and respect. There was relief in explaining their story to someone who understood them and did not second-guess them. One pilot expressed that the aviation community should "cherish" the public prosecutor because the concept of Just Culture "lives with them".

Just Culture: Two Perspectives on Achieving Justice

From its conception, Just Culture was enacted to balance learning and accountability: were one to cross a 'line of gross negligence' determined post hoc, certain consequences could be appropriate, including punishment. However, some safety scholars argue for a more restorative-oriented form of Just Culture, focused solely on preventing recurrence and healing the hurt suffered by those involved. This applies to victims (if any) and also practitioners involved and affected by the

events. Pilots' actions may lead to an outcome they did not intend nor desire, in which they may have had limited agency, and the possible consequences of which may have been difficult to foresee because of the complexity of the (general) aviation system.

The difference between a restorative and a retributive Just Culture concerns the theoretical concept of prospective and retrospective accountability introduced by Sharpe (2003). The distinction between these two forms of accountability is what one aims to achieve and how one attempts to do so. Retrospective accountability is explained as holding someone accountable by praising or blaming their past actions. In contrast, prospective accountability is explained as holding people accountable for their future actions by contributing to preventing recurrence and seeing to the needs of those who suffered.

A Restorative Just Culture in Practice?

The ideas that underpin restorative Just Culture influenced the Dutch public prosecutor for aviation's approach to these cases. The public prosecutor also intended to offer other pilots the possibility of negating the need for prosecution. However, since they denied responsibility for their occurrences, this was deemed neither appropriate nor fruitful.

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Regardless, taking this option is not easy: sharing and disclosing one's experience of an event in the first person – giving an account to others in the GA pilot community – potentially exposes pilots to critique. However, this was not what these pilots experienced. There was a recognition of the complex nature of flying, which places pilots in challenging situations. Pilots received praise from their peers for sharing their lessons learned, and others shared how they had found themselves in similar situations.

The Dutch public prosecutor staff experienced the handling of these cases as positive and considerably more rewarding than handing out a fine or prosecuting a pilot in court.

Insights From These Experiences

Firstly, these cases showed the importance and undervalued role of repentance and forgiveness in Just Culture. The pilot whose self-confidence had suffered from the occurrence described in the introduction changed his opinion about the pilot who had neglected to fly the circuit, from "that pilot deserves a fine and a strong conversation" to "for me, this issue has been resolved among pilots". Hence, this resolution yielded more value to all parties involved than a fine ever could have – and the pilot later gave a presentation to his peers.



Next, the pilots' experiences show how being treated respectfully, with understanding and compassion, was paramount to incentivising them to participate in these restorative proceedings. The pilots felt treated as professionals who had made a serious but unintended mistake and were given the opportunity to remedy that mistake and contribute to preventing recurrence. As one of the pilots said:

"I felt this was a much better punishment, a much better approach, much more mature. 'Mature' sounds a bit strange, perhaps. But what counts in the end? It does not concern punishing; it concerns preventing that it happens again and that you learn."

Treating professionals involved in unwanted events with respect and compassion serves many purposes, as has been argued by researchers and practitioners in domains ranging from healthcare to construction (e.g., Dekker, Oates and Rafferty, 2022). Furthermore, growing research (e.g., Heraghty et al., 2020, 2021) indicates that doing the opposite leads to mistrust between employees and managers, degradation of safety and efficiency and increased employee turnover.

Conclusion

This article reflects on a different way to pursue the ideas and values of Just Culture in practical terms. By adopting a path that draws from the ideals of prospective accountability, an alternative to prosecution was offered by the public prosecutor and was found to be feasible and viable. For some situations, this option provides a way to balance accountability with meaningful learning that contributes to safe operations in the future. It makes available the means for sharing the experience through different perspectives with fellow professionals. Finally, this expression of Just Culture goes some way to facilitating repentance and forgiveness. 

"The pilots' experiences show how being treated respectfully, with understanding and compassion, was paramount to incentivising them to participate in these 'restorative' proceedings."

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