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UNRAVELLING THE COMPLEXITIES OF JUSTICE LESSONS FROM THE EREBUS DISASTER

The Erebus accident in 1979 was one of New Zealand's worst aviation disasters. **Lea-Sophie Vink** highlights the complexities of justice, the influence of culture on the pursuit of justice, and the importance of Just Culture policies that consider cultural differences and focus on collective responsibility, transparency, and trust.

KEY POINTS

- **Conflicting investigations of the Erebus accident in 1979, one of New Zealand's worst aviation disasters, resulted in two different narratives about the accident, highlighting cultural and political influences on justice.**
- **Justice is influenced by cultural norms and values. Different cultures value and measure justice differently, making it challenging to implement universal policies.**
- **The pursuit of justice for the Erebus accident victims and their families took a long time due to legal challenges and changing political attitudes. Protracted legal battles are common in high-profile incidents worldwide, illustrating the complexities of justice.**
- **The pursuit of justice in the Erebus case was also shaped by cultural values unique to New Zealand. The country's sense of national identity, emphasis on openness and accountability, and the cultural traditions of the victims' families influenced the approach to justice, including restorative justice and healing.**

While on a recent research sabbatical in New Zealand, I listened to a great podcast series called 'White Silence'. It investigated the story of New Zealand's worst aviation disaster at Mt. Erebus (Antarctica) in November 1979. As a Kiwi now based in Vienna, I am often faced with subtle and nuanced distinctions in culture and language between English and German. For example, *'sicherheit'* can confuse even German speakers because it contains so many meanings ranging from just 'safety' through to 'security', and often combines both. As Austro Control has recently overhauled its Just Culture and human error analysis policies, this cultural difference in language – sometimes just one word – is often the cause of misunderstanding. This got me to thinking philosophically and legally about 'Just Culture'. Are our understandings and beliefs about 'justice,' 'trust,' 'blame' and 'openness' always universal? What lessons can we draw from the approaches of other cultures, even ones that seem so similar (like Austria and New Zealand)?

The 'Erebus' accident that occurred on November 28, 1979, is a tragedy that still haunts New Zealand. The crash of Air New Zealand Flight 901 on the slopes of Mount Erebus claimed the lives of all 257 people on board, making it one of the deadliest air accidents in history. The subsequent investigation and legal battles have

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raised important questions about the concept of justice, and how it is understood and pursued in different cultures. Anyone who studies or implements Just Culture should know this story since it represents one of the most enduring case studies of poor Just Culture.

What is so fascinating, and worth understanding for those not familiar with the case, is that almost immediately, two separate stories emerged. On the one hand, the official investigation led by the Transportation Accident Investigation Commission ruled – extremely quickly – that the entire accident was caused by the ‘human errors’ and incompetence of the pilots. The pilots could not establish where they were geographically and broke minimum safe altitude rules, and as a result flew into the side of a volcano. Air New Zealand was then owned by the state, and the fact that both the minister of transport and the prime minister owned shares in the airline, was not lost on the population.

On the other hand, the pilots involved were known to be some of the safest and most experienced pilots in the fleet. The families of the victims struggled to understand how ‘pilot error’ could account for this. This was the determination of the chief inspector of air accidents. A second and independent investigation led by a Justice Peter Mahon’s Royal Commission of Inquiry placed the blame on Air New Zealand. In what is now an infamous quote in NZ, he said that the airline’s witnesses “conducted an orchestrated litany of lies”, covering up evidence and painting a story that shifted blame onto the individuals who were no longer alive to stand up for themselves. Eventually, the matter came before the Privy Council in London, where Justice Mahon’s conclusion that the aircrew were misdirected as to their flight path (and not pilot error) was upheld, but no evidence of a conspiracy to perjure or cover up evidence by the airline was found.

One of the key challenges in obtaining justice for the Erebus victims and their families has been the length of time it has taken to reach any kind of resolution because of two conflicting investigations. Although the initial investigation into the crash was first published in 1981, it wasn’t until 2019, almost 40 years after the crash, that the New Zealand government formally apologised for its role in the tragedy. This delay was due to a combination of factors, including legal challenges and changing political attitudes towards the case.

This kind of protracted legal battle is not unique to the Erebus case. It is a common feature of many high-profile incidents and disasters around the world. From the aftermath of the 9/11 attacks in the United States to the Hillsborough disaster in the UK, the pursuit of justice can often take decades, and involve multiple investigations, court cases, and appeals. This can be frustrating and disheartening for those seeking closure, but it also highlights the complexities of justice and the different ways it is pursued in different societies.

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To understand these complexities, it is useful to remind ourselves of the philosophical and historical basis of ‘justice’.

For example, consider the work of two leading thinkers in the fields of psychology and history: Steven Pinker and Yuval Noah Harari. Pinker has written extensively about the human capacity for empathy and justice, arguing that these traits are innate and have evolved

over time as part of our social and moral instincts. But Pinker also points out the instinctive nature of blame as an inherently human trait. Our need to seek closure and understanding usually ends up having a human face. Harari, expanding on the individual elements, on the other hand, has explored the role of culture in shaping our understanding of justice, arguing that different societies have different norms and values that influence how they pursue justice and punish wrongdoing. So, if each culture values and measures justice differently, how can we implement policies at state and international levels that find that balance between the legal system and protecting our people?

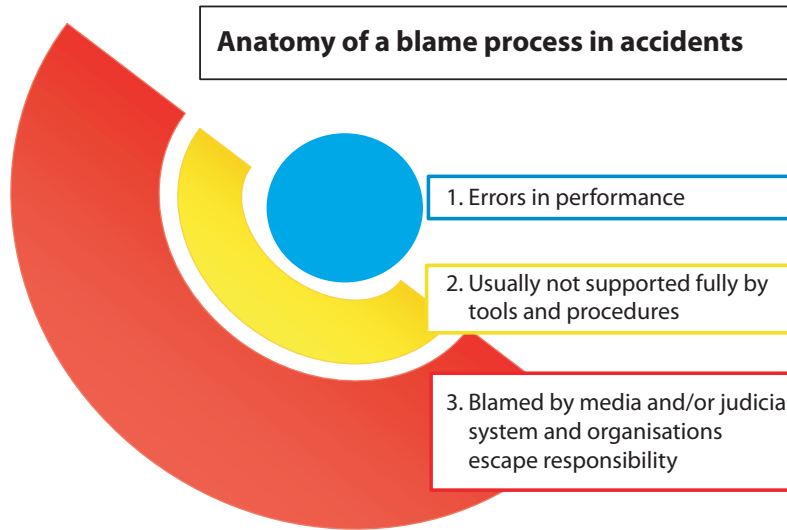
Applying these insights to the Erebus case, we can see that the pursuit of justice has been shaped by a complex interplay of factors, including legal frameworks, political pressures, and cultural values. For example, the Royal Commission of Inquiry that investigated the crash was established within the legal framework of New Zealand, which has a tradition of independent judicial inquiries into major incidents. This approach was influenced by the British legal system, which also focuses on due process. However, the pursuit of justice in the Erebus case has also been shaped by cultural values that are unique to New Zealand. The country has a strong sense of national identity and a history of valuing openness, honesty, and accountability in its institutions. This has led to a strong public demand for transparency and justice in the aftermath of the crash, and a willingness to hold powerful institutions, such as the government and Air New Zealand, to account for their role in the tragedy.

At the same time, the pursuit of justice in the Erebus case has also been influenced by the cultural norms and values of the victims’ families. Many of these families have Maori or Pacific Island heritage, and their cultural traditions place a strong emphasis on collective responsibility and reconciliation. This has led to a focus on restorative justice and healing, rather than just punishment or retribution.

Justice is not just a matter of legal frameworks or individual rights, but also of cultural values and social norms. Considering these complexities, it is important to recognise that the ‘implementation’ of Just Culture will never be a simple or straightforward process. Justice is not the same thing to everyone, and different cultures and

interests may have different ideas about what justice entails.

So, how can we as practitioners and managers try to find a common thread that allows us to speak the same language? First, we need to understand the mechanisms of Just Culture.



When overhauling the Austro Control Just Culture policy, I conducted a meta-analysis of hundreds of examples and cases of poorly implemented Just Culture following major accidents, and my results were consistent with most research in errors and accidents (e.g., Turner and Reason): specifically, there is a consistent pattern that almost always follows this order:

1. At the heart of all accidents where blame is laid – especially on individuals – is often a set of central errors. These errors are often made *without knowledge* of the errors and certainly *without intention of an outcome*.
2. Almost always, the individuals are let down by processes and tools whether directly on board in cockpits or control rooms and towers, or systematically across organisations and cultures.
3. Those individuals are subsequently blamed by the media or a legal system, or both, and usually the organisations escape responsibility.

When designing and implementing Just Culture policies, our goal must be to stop this from happening. This is the measure of a successful policy. Organisations must not escape responsibility and must try to protect their individual operators. Statistically, the operators never intend for outcomes of errors to result in catastrophe (since rare cases of sabotage are intentional, not accidental).

The Erebus case follows these three steps almost to the letter. As stated earlier, Air New Zealand and the government managed to escape responsibility for almost 40 years. It was just the last Prime Minister, Jacinda Ardern, who formally apologised for the part the government played in the accident. New Zealand is considered one of the most transparent countries on earth. Think about the three steps above in cases like the Chernobyl disaster or the Deepwater Horizon accident where the institutions and organisations have still not reckoned with their part in the systematic

failures that led to the individuals being placed in positions where mistakes could happen.

The Erebus disaster in New Zealand is a tragic reminder of the ongoing challenges and complexities of justice and the factors that will pull on a Just Culture policy if tragedy occurs. But we can remain steadfast through all these cultural differences by remaining true to the goal: that we must do our best to be unbiased when investigating, forgive the mistakes that will have occurred, and share responsibility. Crucially, we can build trust with our staff by outlining these key principles behind Just Culture. This is the recipe for bringing everyone onboard.



Reference

Wright, M. (2023, January 16). *White silence: The podcast about the disaster you think you know but probably don't.* Stuff. <https://www.stuff.co.nz/national/300772234/white-silence-the-podcast-about-the-disaster-you-think-you-know-but-probably-dont>



Lea Sophie Vink is Human Performance Lead at Austro Control and Chairwoman of the CANSO Human Performance work group. Having spent ten years in military operations, Lea is now a chartered Work and Organisational Psychologist in Austria, and an Accredited Aviation Psychologist (European Association for Aviation Psychology). She is an active researcher in cognitive psychology, focusing on computational human performance and fatigue management.