



Leiden University  
Medical Center

# Just Culture and Pilot Mental Health- Legal and Ethical Challenges

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# Disclosure statement

**No conflicts of interest**

# Background

## **Just Culture well established for accidents and incidents**

Aviation, oil industry, medicine etc

Safe reporting on accidents and incidents

Only punished in cases of gross negligence, willful misconduct

## **Call for Just Culture in dealing with Pilot Mental Health issues**

EASA Germanwings taskforce

European Pilot Peer-Support initiative

**Widely accepted in aviation industry → helpful to reduce stigma**

**Just Culture compatible with legal and ethical principles?**

# Outline

**Historical development of Just Culture**

**What is Just Culture?**

**The moral background of Just Culture in general**

**Legal challenges of Just Culture in general**

**Applying Just Culture in (mental) health problems**

**Legal and ethical problems of Just Culture can be overcome**

**Just Culture for balancing rights and duties**

# From Blame-free to Just Culture

## Safety-critical industries

**Historical approach to accidents: find responsible and punish**

**20th century: most accidents due to system errors**

**Blame free: people should be able to report safely**

**What to do in cases of gross negligence or willful misconduct?**

## Development of Just Culture

# Just Culture

**Only punishment in case of gross negligence or willful misconduct**

**Goal: improving future safety but at the same time justice all involved**

**Several accounts possible, not a single truth**

**Primarily looking forward**

**Meeting needs (including those of second victim)**

**Not to provide retribution**

**Morally and legally challenging**

# Why bother about moral issues?

## Moral values are universal basis of medicine

Confidentiality

Autonomy

Well-doing

Oath of Hippocrates

## Need to be compatible with medical ethical framework

## Challenge: theoretical clash

Moral rights of pilot-patient and public interest of aviation safety

# The moral challenge of Just Culture

**Individual pilot patient → fundamental (patients) rights**

Confidentiality, autonomy

**Deontology (Kant): people should never be used as a means**

→ Human dignity

**Utilitarianism (Bentham): increasing wellbeing of society as a whole**

→ Aviation safety

**Challenge: deontology vs utilitarianism (mutually exclusive)**



# The legal challenge of Just Culture

## Law is primarily looking backwards

Civil law: liability & setting damages

Criminal law: culpability & retribution

## Just Culture primarily looks forward to establish future safety

## Just Culture focusses on the needs that should be met

Retribution is not its goal

Only punishment in case of bad intentions

# Can Just Culture combine with Law?

**The two systems are fundamentally different**

Liability & retribution vs future safety

**Special regulations have to be made for Just Culture**

ICAO Annex 13

Regulation (EU) No 376/2014

Some countries: agreement between prosecutor and safety agencies

# Just Culture vs Law vs Ethics

**Combining these seems theoretically impossible**

**Due to conflicting goals:**

**Utilitarianism and future safety for society as a whole**

**Deontology and justice for the individual**

**For accident and safety investigation, this might be the case**

**For (mental) health issues, they can be combined**

# Just Culture and Mental Health

**Is not about what happened**

**Is not any more about providing *future* safety**

**But about the situation *right now***

**To provide safety *right now***

**Fundamental difference with Just Culture in accident investigation**

# Enhancing safety by balancing rights

## It's just about balancing individual rights

Of pilot-patient and other stakeholders (fellow crew, passengers etc)

## Fundamental rights of

Safety

Non-discrimination

Privacy

## Well compatible with legal systems

Civil law: balancing fundamental rights of all citizens

Criminal law: fundamental rights of suspect, retribution for victim

# Balancing rights and duties in practice

## **Pilot-patient**

Right to good care

Right not to be punished for disease (no job- or income loss)

Duty to safe operations → cooperative with examination & treatment

## **Fellow-crew, passengers, industry**

Right to flight safety

Duty to support pilot with mental illness (insurance)

## **Medical professionals**

Duty to provide good care

Duty to provide confidentiality

Duty/ right to break confidentiality when danger to others

## Just Culture means:

**Pilot should be cooperative with mental health examinations etc**

**Examinations & interventions not more intrusive than necessary**

**No risk for income loss**

**Focussing on the *needs* of all involved**

**Adequate insurance for income loss!**

**Rulemaking, collective labor agreements etc**

# Conclusion

**Just Culture seems difficult to combine with ethical and legal principles**

**Mental health: focus on safety right now!**

**Balancing rights and duties of individual pilot to those of others**

**Just Culture means that:**

**Interventions are the least intrusive possible**

**Pilots face no job or income loss due to mental health**

**Good insurance**





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