

# Different Paths to Justice

Göran Collste, [goran.collste@liu.se](mailto:goran.collste@liu.se)

We have the last decades seen many examples of claims for justice and reconciliation after war, oppression, racial discrimination and colonial trespasses. Even when peace is restored, the soars of previous injustices are still open and there is a need for both rectification and reconciliation. In South Africa a process of truth and reconciliation started after the end of apartheid, in former Yugoslavia the international Criminal Tribunal for the former Yugoslavia (ICTY) was established with the aim of prosecuting war criminals, in Argentina court trials against those responsible for atrocities and human rights violations during the military regime has so far led to the imprisonment of at least 600 persons, in South Korea a Truth and Reconciliation Commission has investigated war crimes during Japanese occupation and human rights violations in post-war South Korea, in Britain the government in 2013 publically apologised and rectified for human rights violations in the combat against the Mau Mau-movement in Kenya in the 1950s, and in 2013 the heads of the Caribbean states claimed rectification for slavery and the slave trade from the former slave-trading nations, just to mention a few examples.

In my presentation I first make some terminological clarifications. I then present some reasons for why rectification after war and injustices is important. In the next part I discuss some requirements for rectification and whether there is a cut-off date and finally reflect on the relation between rectification and reconciliation. How rectification and reconciliation are achieved are influenced by contextual factors, such as traditional ways to process justice and reconciliation. For example are the procedures of Rwandan Gacaca courts different from the ICTY, and the procedures for reconciliation practiced in Mozambique after the civil war in the 1980s goes back to local traditions of reconciliation. This fact raises the question of what is contextual and what is universal with respect to rectificatory justice and reconciliation.

In the discussion on historical justice the terms “rectificatory justice”, “corrective justice”, “reparatory justice”, “compensatory justice” and “restorative justice” are often used in the same or at least similar meanings. Further, in some cases of historical justice, like for example former Yugoslavia and Argentina, justice is done through court trials, i.e. “retributive justice”. The aim of this part is to clarify the meaning of the different terms used in the discussion.

What then is required for rectification? To start with, we have a situation when someone is harmed. According to Renée Hill, “compensatory justice” means that a harm is compensated, and the injured party is “made whole” implying that he or she is “...as well as before the transgression occurred” (Hill 2002, p. 398). No apology is needed. Hill’s perspective is strictly legal. If we look at rectification from a moral point of view Hill’s suggestion is too narrow. The previous harm was perhaps abusive, and resulted in lasting tensions and distrust between victims and perpetrators. To overcome the tensions something more than compensation is required. Rectification also requires that the perpetrator acknowledges and apologizes for the harm done.

Why then is acknowledgement and apology required for rectification? An apology is a performative; something happens when someone apologizes. When a perpetrator acknowledges and apologizes a past injustice, the victim is assured that the perpetrator is aware of what he or she has done, that he/she regrets it and is prepared to change his/her behaviour. Often acknowledgment and apology seems to be more important for victims than compensation. In the case of political rectification, acknowledgement might include truth commissions, memorials etc.

How is rectificatory justice related to retributive justice? Both rectificatory and retributive justice are back-ward looking in the sense that they refer to some previous harm. Rectificatory justice refers to a state of affairs; a previous harm is rectified. Retributive justice, on the other hand, refers to a person or group that deserves to be punished due to some harms committed. Retributive justice then means that a perpetrator is taken to court and penalized according to national or international law. However, there is often a link between retributive justice and rectificatory justice. Retribution is normally connected to some kind of rectificatory duties. For example, a perpetrator who is convicted can be obliged to compensate the victim.

Finally, I discuss the relation between justice and reconciliation. How are different forms of justice related to reconciliation? If both justice and reconciliation are valuable and final aims; what do they require and how are they related? Is perhaps retribution an obstacle to reconciliation or does reconciliation instead require that perpetrators are put on trial?

## References

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