

Theoretical Challenges of “Reparations” Theory: According to Prof. Yoshida’s Work

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Abstract

This article describes the significance and challenges of Professor Kunihiro Yoshida's “reparations” theory. While many Japanese scholars and practitioners work on just technical and technical issues such as laches/prescription, state immunity doctrine, and waiver clause in the East Asia related reparations lawsuits regarding comfort women, slave labour, Nanjing massacre, Chongqing bombings, Unit 731 and its related bio wars etc., Professor Yoshida has tackled with theoretical challenges of how vicious cycles of hatred could be got back to normal as reconciliation: He tries to change theoretical framework about past injustice from retributive justice to restorative justice. According to Yoshida’s theory of four-step process of reconciliation, it goes along, first, the detailed recognition of past injustice by perpetrators; second, the recognition of historical responsibility from perpetrators’ side, third, sincere apology and supplementary monetary damages based on the first two stages. Then finally, he argues that the real reconciliation could be attained by victims’ forgiveness in some cases, based on Professor Minow’s and more originally Hannah Arendt’s work. However, authors argue that Yoshida’s approach could be critically analysed by juxtaposing Jacques Derrida’s work on unilateral pardon(forgiveness) and don(gift) theory. According to Derrida, unconditional forgiveness should be focused to deconstruct Yoshida’s linear reconciliation process. Challenges of the reparations process could be outside of legal solution as he might admit. Thus, his theoretical discussions are worth more attention as civil law theoretical developments.

Keywords

Reparations, remedy, apology, forgiveness, civil law theory