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Truth commissions and the recognition of state crime

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*Brit. J. Criminol. 582 This article seeks to analyse the conditions by which state crime comes to be recognized or mis-recognized, particularly through truth commission proceedings. Truth commissions, established in transitions to democracy, often provide the most authoritative documents on state crime. While this recognition of state crime presents an opportunity to challenge popular perceptions and power relations, this approach is commonly detached from the linked imperative of social justice. Building on the work of Nancy Fraser (1997; 2000; 2003) and the author's own primary research, the article details that while truth commissions expose a partial ‘truth’ of state crime, they inhibit recognition of status subordination that would allow a challenge to institutionalized patterns of inequality, discrimination and oppression.

Introduction

Established during transitions to democracy, truth commissions have become an increasingly popular tool to deal with severe brutality and state oppression. Such bodies have significant value, as they present a unique opportunity for transitional states (i.e. states that are emerging from authoritarian rule or violent conflict to a more democratic situation) to provide an authoritative acknowledgement of state crime. Their principal function—to record the extent and scale of serious violence through the use of testimony—is a means to challenge the denials of repressive regimes and expose the myths on which state crime comes to be distorted. As such, commissions have a key role in a new recognition of state criminality. This article examines the success of truth commissions in this task of recognition.

Initially, the article builds on the work of political theorist Nancy Fraser (1997; 2000; 2003) to develop a critical perspective on recognition during transitions to democracy. While Fraser's work is explicitly focused on using the idea of recognition to attain justice in peaceful democracies, her analysis appears resonant with debates on transitional justice. In particular, given that state crime is often hidden and that victims of state crime regularly suffer wider disadvantages that affect their ability to participate effectively within society, it is argued here that the recognition of state crime should follow the dual agenda proposed by Fraser. Thus, to provide recognition involves an acknowledgement of identity (that details who people are and what they have experienced) alongside simultaneous actions to enhance emancipation and respond to what subordinated parties need to gain parity with others.

With this backdrop, the article progresses to an examination of how truth commissions have contributed to a recognition of state crime. This is undertaken with specific regard to the author's own primary research, undertaken over the last eight years, in Chile, South Africa and Timor Leste (East Timor). It is detailed here that truth commissions are uniquely placed to expose the complexity and extent of criminality during state repression. It is also shown that they present a significant opportunity for states to upwardly revalue the disrespected identities of those who were victimized by a previous regime. Further, through their use of recommendations that highlight what victims need to gain justice, truth commissions can prime transitional states for deeper change.

Yet, despite such potential, the ability of truth commissions to provide a full recognition is hindered by significant operational, social and political factors. As a result, it is argued that truth commissions actually tend to inhibit the recognition of state crime. First, commissions always present a partial recognition of crimes, victims and perpetrators; they are not especially useful in identifying perpetrators and often struggle to recognize certain victims of state crime. Secondly, commissions tend to simplify identities and needs to fit the political landscape; as such, they can equate all victims as having similar issues or may emphasize reconciliation and forgiveness over other victims' expressions of retribution or social change. Finally, commissions are operationalized in a way that disconnects identity from the remedies required to deal with injustice, i.e. transitional states use commissions in a way that promotes the recognition of identity as the only available solution for state
crime. This approach weakens the value of truth commissions and creates a situation in which victims continue to feel that their claims for justice have not been met.

**The Politics of Recognition**

The issue of recognition is deeply associated with the work of the critical theorist Nancy Fraser (1997; 2000; 2003). Focusing on developments in Western democracies, Fraser (1997) has argued that, in the last decades of the 21st century, justice has been realigned away from questions of economic and resource inequalities to questions about the acknowledgement of difference, i.e. those involved in social struggles (such as feminist, anti-racist and gay liberation movements) have increasingly directed their political claims to the long-term harms that result from being culturally devalued or mis-recognized. Such harms, as Charles Taylor (1992: 26) notes, ‘can inflict a grievous wound, saddling its victims with a crippling self-hatred’. Consequently, claims pressed with regard to homosexual marriage, for instance, have revolved around the issue that gay or lesbian identities have been looked down on; socially, they do not enjoy the same cultural value as heterosexual identities. Thus, political claims are directed to deal with the negative repercussions of mis-recognition.

Fraser (2000), however, is critical of the insistence to only deal with harms through such cultural or identity-based forms of recognition. Although, for her, the issue of identity (who or what people are) is important, she argues that a strict focus on identity *Brit. J. Criminol. 584* is flawed because it simplifies individual experience and puts moral pressure on individuals to conform to a category or group identity (being ‘gay’, ‘black’ and so on) and it displaces or supplants struggles for social justice; who people are has become more important in struggles than what those people need to live a good life. For Fraser (1997), therefore, a critical theory of recognition must seek to counter forms of identity and socio-economic injustice simultaneously. To decouple representation from redistribution will, she proposes, ultimately lead to further injustice.

Developing this argument, Fraser (2000; 2003) has sought to redefine what it means to be recognized in terms of ‘social status’. Under her ‘status model’, when ‘institutionalized patterns of cultural value constitute some actors as inferior, excluded, wholly other, or simply invisible’, those actors suffer a distorted public identity, but they are also prevented from socially participating on a par with others (Fraser 2003: 39). Subsequently, to be mis-recognized is more than individuals being mis-identified or ignored completely; rather it means that individuals are ‘denied the status of full partners in social interaction’ and are prevented from ‘participating as a peer in social life’ (Fraser 2003: ibid).

The solution to mis-recognition is to address ‘what precisely the subordinated parties need in order to be able to participate as peers’ (Fraser 2000: 115). The remedies are diverse and dependent on what individuals require to gain parity with others. In some cases, having individuals’ distinct identities and experiences acknowledged may be enough. For others, there may be a call for changes that develop new values into institutional policies and practices (e.g. to challenge institutionalized discrimination). Alternatively, there may be a need to ensure that individuals have full access to political, legal or social structures (e.g. to enable individuals to take cases through court proceedings). In other situations, there may be a need to redistribute resources (e.g. to deal with economic inequalities through focused financial assistance or by transforming economic systems). The interventions to deal with mis-recognition are, then, made to fit. As an example, in the case of marriage laws regarding homosexuals, there is a requirement to redress the cultural injustice that ‘constitutes heterosexuals as normal and homosexuals as perverse’ alongside the need to redress social inequalities through legalizing same-sex marriage, for instance (Fraser 2000: ibid).

While Fraser’s argument on recognition is focused on attaining justice in ‘peaceful’ states, her analysis would appear to be resonant with debates on the provision of justice in ‘transitional’ states. Recognition that acknowledges cultural devaluation alongside a lack of parity is, this author argues, particularly important during a transition from widespread state criminality. The reasons for this, as detailed below, are that (i) cultural representations are central to how state crimes come to be legitimized and how those involved (as perpetrators or victims) come to be viewed and responded to; (ii) victims of state crime are also likely to face wider disadvantages within their own societies (Kauzlarich *et al.* 2001) and if these arrangements remain un-addressed, victims will be more likely to face continued injustice.

**State Crime and Recognition**

Representation is a central issue in thinking about and dealing with state crimes. There are two
principal reasons for this. First, state crimes tend to be hidden from view, as they shade ‘imperceptibly into the routine, “legitimate” activities of the state’ (Green and Ward 2000: 103). The law, for example, can provide a framework in which state *Brit. J. Criminol. 585* crimes are seen as justifiable (Barak 1991; Chambless 1989) and, as shown in Turkey and Israel, states will use legal proceedings to normalize and gain legitimacy for gross human rights violations such as torture (Green and Ward 2000; Morgan 2000). Secondly, as Stan Cohen’s (1995; 1996a ; 2001) work has so ably demonstrated, states crimes are reframed, justified and re-appropriated through sophisticated techniques of denial.

In such a mediated context, where state criminality is masked, those individuals who are involved in state crime also become misrepresented. Thus, state officials who engage in criminal activities are often not identified as offenders but as good officials, working towards organizational or institutional goals (Kauzlarich et al. 2001). Similarly, victims of state crime do not tend to be seen as ‘victims’; instead, as Cohen (1996a) and Crelinsten (2003) demonstrate, they are either depicted in danger-linked ways (e.g. as ‘subversives’) or as being outside the human experience altogether (e.g. as ‘vermin’). Through such devaluations, victims ‘are put out of sight or below the threshold of moral vision’ (Humphrey 2002: 32); their perceived dangerousness and difference make them appear ‘deserving’ of state force (Huggins et al. 2002; Kauzlarich et al. 2001).

The need to fully acknowledge and unpack such misrepresentations has become a central political claim in states dealing with a violent past. Victims of state crime, in particular, are eager to re-evaluate the identities of their perpetrators. They are also keen to challenge their own devalued identities so that they may be recognized as ‘victims’ in social, political and legal discourse. For Cohen (1996b: 15), this situation has developed to the extent that human rights victimization now emerges from ‘groups defining themselves only in terms of their claims to special identity and suffering’.

Certainly, it is evident that the focus on identities and cultural injustice does have ascendancy in the international human rights movement. This is apparent in the rise of groups that campaign on specific violations (e.g. the Families of the Detained-Disappeared in Chile or the Association of Ex-Political Prisoners in Timor Leste), as well as the surging popularity of truth commissions that seek to acknowledge and report the identities of those subject to human rights violations (Hayner 2001).

The focus on who people are and what they have experienced is an important element, therefore, in responding to victimization. However, the conditions that give rise to, sustain and follow state crime are often of equal or more concern to those who have suffered. For many victims, the need for identification is intertwined with calls for changes in their disadvantaged social status. Along with acknowledgment, it is evident that victims want to tackle the status-based factors that impede them from being able to participate fully in society (Hamber et al. 2000).

Of course, victims of state crime are not a homogenous group and the remedies required to gain parity are diverse. For example, a family of a ‘disappeared’ person may demand the retrieved body of their loved one, while a torture survivor may require medical or psychological assistance to deal with their trauma (Stanley 2004). Such disparities occur even within the same categorizations of ‘victim’. For instance, given the knowledge that women are violated in different ways from men during state violence, being more likely to face sexual violence as well as forms of physical violence (Copelon 1995; Stiglmayer 1994), it could be anticipated that female and male torture survivors would face different impediments to overcome their injustice. Notwithstanding *Brit. J. Criminolog. 586* their shared need for basic health or counselling services, tortured women may also seek a challenge to the institutionalization of patriarchy within state or civil society practices in an effort to gain parity.

For some victims, the issue of being able to participate on a par with others is defined in terms of the status of their perpetrators (see Bacic 2002). Yet, as noted above, perpetrators of state crime tend to be mis-recognized as good professionals. Torturers who are deemed to be good at their job, for instance, garner national awards, rise through the professional ranks, gain prestige within their institution and rarely face sanction or punishment (Huggins et al. 2002). The issue regarding parity, then, is that such individuals need to be unburdened of their status; a balancing-out is required. This could be achieved through shaming techniques, prosecutions and punishments (such as fines, community sentences or imprisonment). In addition, there may be a need to entrench new values into the institutions that have allowed such violations to occur unhindered (Hayner 2001).

Finally, victims of state crime are often all too aware that their obstacles to parity are connected to wider economic and social inequalities. It is evident, for instance, that states regularly prioritize economic ‘development’ over the rights of their population. While the South African apartheid system
represents this in extremis, it is clear that other countries like Nigeria (Green and Ward 2004), China (Evans and Hancock 1998) and India (Roy 1999) have forcibly displaced, violated and impoverished communities in the interests of industry. In such situations, the solution needed to address disparities may require a focus to re-establish community lands and resources, together with significant challenge to globalization practices that privilege markets over people (McCorquodale and Fairbrother 1999).

In sum, the status-based factors that can impede victims from being able to participate fully in society are complex. Indeed, the disadvantages experienced in the wake of state crime cut across personal, social, institutional and international levels (Crelinsten 2003). As the transitional justice literature repeatedly shows (Boraine et al. 1994; Hayner 2001; Kritz 1995), there are no simple solutions to deal with state repression and violence. However, as indicated here, victims of state crime cannot easily disconnect the injustice of mis-recognition from their social status. Justice, therefore, ‘entails openness of discourse’, as well as structured and flexible ‘policies to prevent future harms’ (Hudson 2003: 225).

Consequently, a critical perspective on transitional justice is centred on a recognition that involves the acknowledgment of identities (who people are and what they have experienced) alongside actions that permit individuals to redress the balance, enabling them to engage as a peer in social life (responding to what people need). Recognition involves, then, understanding the past to ‘contribute to enhanced emancipation in the future’ (Hudson 2003: 148). With this in mind, this article now turns to an examination of how truth commissions have contributed to these ends.

**Truth Commissions as Providers of Recognition**

Over the last two decades, truth commissions have become an increasingly popular tool for transitional states to deal with severe brutality and state oppression. These bodies are generally established in transitions to ‘democracy’ and, with a remit to temporarily focus on the past and investigate patterns of abuse, more than 25 commissions have been created and it appears that this number will continue to grow (Hayner 2001). Truth commissions are also formed through negotiation. They are implemented when the balance of power is such that the criminal prosecutions of offenders looks unlikely, as the previous regime still maintains the economic, political, social or forceful upperhand. Thus, while commissions seek to challenge the actions of the previous regime, the interests of violating officials are somewhat protected (Stanley 2002).

Notwithstanding the fact that truth commissions tend to signify a loss of attention to criminal justice, a number of positive benefits have been attached to them: from nation-building and ‘national reconciliation to advancing healing for individual victims, from ending impunity to putting in place protections to prevent the repetition of abuses in the future’ (Hayner 2001: 15-16). Indeed, as Teitel (2000: 110) demonstrates, commissions have often boldly linked themselves to diverse ‘creative consequences’ and made connections between truth-telling and dramatic social change. While such promises require a poetic leap of faith (Teitel 2000), truth commissions do have significant value, as they present a unique opportunity for transitional powers to recognize victims and provide an authoritative acknowledgement of state crimes (Stanley 2002).

For instance, truth commissions provide a challenge to the secrecy and denial maintained by perpetrators, their supporters and bystanders (Cohen 1995). They can also specify that an act of violence was wrong in legal terms or in relation to the basic principles of human dignity, as well as expose the previously inconceivable extent and nature of criminal acts. As Yasmin Sooka, a Commissioner at the South African Truth and Reconciliation Commission, commented on her country’s situation:

> There have been different levels of self-deception, from those saying they didn’t know these things were happening at all to those that say ‘these things were kept away from us’. A lot of people did not know that killings, torture, abduction and ill-treatment were happening on that scale. Even those that worked within the movement have an acute sense of shock.

For Sooka, the Truth Commission in South Africa ensured that no one could deny the violence of the apartheid regime again. The reframing techniques used by South African governments during repression were shown to be political and legal distortions of events (Stanley 2001).

Under the right conditions, commissions can also demonstrate that state crime is both caused by and maintained through a complex web of international, national, institutional, social and personal
decision-making (Crelinsten 2003). For example, the Truth Commission in El Salvador recognized that direct perpetrators as well as collusive bystanders (such as the judiciary) and international supporters (notably the US government) all contributed to systematic violations in that country (Kaye 1997). As *Brit. J. Criminol. 588* such, the Commission mapped the relationships of responsibilities, opportunities and pressures (Hudson 2003: 211) that sustained state crime, emphasizing that violence was institutionalized within government bodies.

Truth commissions have a function therefore in broadly indicating the involvement of perpetrators and supporters, but their main concern is to establish an official recognition of those individually victimized. The ensuing acknowledgement of victims' experiences is a means to challenge cultural injustice; it is an opportunity for the state to upwardly revalue the disrespected identities of maltreatment groups (Fraser 1997). In discussions on the Chilean ‘Rettig’ Commission, a victim's daughter explained this point, stating:

The Rettig Commission's greatest value was that it made official a set of truths that, up until that point, had been highly negated and denied in our country…. During the military government, these people [the victims of repression] were always referred to as criminals, terrorists, communists … subversives, so people did nothing. And, therefore … the truth came out, that they were not criminals, they were students, professionals, workers and that their only crime was not murder, or any other crime you or I know of, but rather being opposed to the regime. That was important.

Truth commissions can, then, make a serious challenge to the negative representations of victims espoused by the previous regime as they purge ‘depreciating self images’ (Taylor 1992: 65) and rehabilitate reputations (Teitel 2000). In doing so, they present an opportunity to turn the identity tables around in a way that constructs the former government's actions as a focus of ‘othering’ (Andrews 2003), i.e. they provide a forum in which the cultural status of perpetrators can be symbolically devalued.

This is not to argue that commissions have focused solely on the issue of cultural injustices as, in many cases, they have also tried to invoke remedies to deal with status disparities. Through the inclusion of report recommendations, for instance, truth commissions have proposed ways in which wider injustices can be handled. They suggest that transitional states should contribute to diverse acts— including exhumations; memorial ceremonies and monuments; compensation; prosecutions; medical and psychological support; reform and monitoring of the military, police force and judiciary; ratification of human rights legislation; social education on human rights; and the redistribution of resources including land (Hayner 2001)—to assist victims to gain parity with others as well as prevent further abuse. However, the problem for commissions here is that they do not have the remit or capability to undertake these responses, nor do they have powers to enforce other state institutions to do so. The provision of a status-based recognition is, as explained below, quite dependent on the abilities and political will of transitional governments.

Overall, then, the principal role of truth commissions is to prime transitional states for deeper, radical change; thus, their success is contingent on how effective they are in paving the way for remedies that can assist victims to gain parity with others. In providing this first transitional step, truth commissions need to establish a recognition based on identity (detailing who victims are and what they have suffered, who perpetrators are) as well as status (specifying what victims might need to deal with injustice). *Brit. J. Criminol. 589* However, as argued in the following section, such recognition is not often fully attained through truth commission procedures.

**Truth Commissions as Inhibitors of Recognition**

The strength of truth commissions rests largely on their ability to provide an official recognition of events and identities. Yet, it can be argued that truth commissions often inhibit the recognition of state crime and, for some individuals, this may actually create feelings of harm and injustice. The reasons for this, as detailed below, are that (i) commissions present a partial recognition of crimes, victims and perpetrators; (ii) they tend to simplify identities and needs, to fit the political landscape; and (iii) they are operationalized in a way that disconnects identity from the remedies required to deal with injustice.

The principal reason why commissions inhibit recognition is that they are always limited by a narrow mandate. Truth commissions tend to be established for short periods of time (often for less than a year) and, as a result, they can never hope to fully acknowledge all acts of state crime. In Chile, for instance, the Rettig Commission limited its investigations to cases that ended in death. This decision,
reflecting a lack of investigative time, limited money for reparations (Hayner 1998) and a perception that killings would be consensually agreed as wrong across the political spectrum (Bacic 2002), meant that the Commission did not recognize those who survived serious violations. Many survivors are embittered about the truth commission process, as one torture survivor put it, ‘In Chile, I sometimes think that you are better to be dead’; while another explained, ‘I am still a stigmatised victim, the harm continues’ (Espinoza et al. 2002: 39). The lack of official recognition of crimes where victims survived in Chile has had long-term repercussions; over a decade after the completion of the Commission, individuals remain aggrieved that the process produced an incomplete truth (Stanley 2004). From this example, it is evident that commissions will often struggle to fully recognize all those who suffered state crime.

Recognition is also hampered by the frequent inability of commissions to collate testimonies from and on groups that are relatively powerless. As such, certain victims, such as indigenous or poor populations, or women, can find that they are less likely than others to be identified and provided with a space for dialogue in the aftermath of state crime (Pérez-Sales et al. 1998; Taylor 1994). In Timor Leste, for example, it is clear that survival has often taken priority over recognition; many individuals have not participated in Commission hearings, as that would mean spending time away from the fields or from fetching water (Pigou 2004). In such situations, the official recognition of identity is significantly hindered by the victim's continued state of poverty.

Similarly, the issue of status has been central to the ways in which women have been recognized through truth commission proceedings. For instance, Regional Commissioners in Timor Leste struggled for many months to access testimonies from women. commissioner Isabel Gutierrez has proposed that community reconciliation hearings tended to reflect the dominance of men in traditional dispute resolution processes and *Brit. J. Criminol. 590* it took time for commissioners to build the idea that women could be involved. Given the socio-cultural dominance of men in the region, Commissioners also found that when they arrived at villages, they were directed to male heads of households, who would not discuss (and perhaps not know about) serious crimes undertaken by Indonesian occupying forces against female relatives or villagers. Moreover, the Commission was dependent on the testimonies of deponents to identify victims but, all too often, female victims were ‘forgotten’ in statements (JSMP 2004: 40). Quite simply, male deponents would just mention other men. Finally, Commission hearings frequently continued late into the night and women, with significant home and child-care duties, found attendance difficult (JSMP 2004).

For numerous reasons, then, women tended to be left out of Commission activities. The known status disparity between men and women in Timor Leste did not fully underpin operations that recognized victimhood and the Commission did not have enough time or resources to encourage further female participation. Such gendered bias, also illustrated through the South African Truth and Reconciliation Commission, means that women’s ‘diverse identities, activities and experiences’ (Ross 2003: 25) will inevitably be mis-recognized. As a result, the structural relations of patriarchy that give rise to the victimization of women are less likely to be challenged.

From the above discussions, it is clear that commissions can struggle in ensuring recognition for all those who might want it. This is a practical problem that future commissions may be able to pre-empt, building structures into the collation of data that ensure parity of opportunity for victims to represent their unique experiences. One more difficult problem, however, is how commissions can effectively recognize perpetrators of state crime. The frame of negotiated transitions that gives rise to commission procedures means, as highlighted above, that perpetrators of state crime tend to maintain a certain degree of power during investigations. Perpetrators often hold too much status within the community and require significant exclusionary practices to dislodge their position within societal structures.

In most truth commission procedures, perpetrators are not faced with social recognition of their activities; given debates on due process, commissions regularly choose not to engage with or name perpetrators at all (Hayner 2001). In the South African Commission, however, there was an attempt to ‘encourage’ perpetrators to come forward and share their experiences through an amnesty process, but those who did often engaged in tactical storytelling to ensure that they maintained positive public identities (Krog 1998; Stanley 2001). As such, politicians and security force officials, backed by extensive legal personnel, produced ‘tightly interlocking submissions and testimonies’ that were ‘designed to minimise fallout’ (Pigou 2002a: 49). Others, like *Brit. J. Criminol. 591* Winnie Mandela, Chief Buthelezi and FW de Klerk, limited their statements to retain their standing within South Africa, despite their involvement in brutal violations (Stanley 2001). Such activities were bolstered by the fact that the Commission’s Investigative Unit was regularly blocked from accessing
state-controlled information (Pigou 2002a)\textsuperscript{12} and gatekeeping practices ensured that further evidence of state officials' involvement in criminal activity was officially limited.

In the light of such a managed context in how truth is told, the official recognition of perpetrators and supporters will, inevitably, be incomplete. However, the actions of perpetrators also impact directly on how victims make sense of their own identity and suffering, as, for victims to feel that they are recognized, others have to engage and demonstrate ‘at least some comprehension’ of their situation (Hudson 2003: 212). Yet, powerful actors will readily disengage or show open disdain (Bauman 2001; Giddens 1994) and, in the truth Commission context, the dis-engagement of powerful perpetrators and bystanders can be clearly identified. Thus, the Indonesian forces have shown no interest at all in the Timorese Truth Commission and have recently acquitted all Indonesians from ‘Crimes against Humanity’ charges through the Ad Hoc Human Rights Court in Jakarta; similarly, the Chilean security services have consistently ignored the ‘Families of the Detained-Disappeared’ and have even held reconciliation ceremonies without them (Stanley 2002). In South Africa, most perpetrators chose not to present themselves to the Commission and, if they did, they regularly demonstrated their animosity. As Sylvia Diomo-Jele, the mother of Sicelo Diomo, who was murdered in 1988, highlighted:

These people are coming forward to ask for forgiveness, just because they want to get away with it [and] not to say they are really ... sorry for what they did. It's what I see, because you can see them smiling all over the place. You can see others chewing gum ... What does that mean? You are crying, mourning for your loved one who died in a gruesome way, but they are laughing. (Pigou 2002b : 106)

The ability of perpetrators and bystanders to disconnect from transitional processes of recognition is, then, a significant problem. Truth commissions do not often hold the capacity to fully challenge the cultural values that constitute some victims as being invisible or inferior (Fraser 2003) or to dislodge the status that perpetrators enjoy. They present, then, a partial recognition. This situation becomes more difficult in the light of the fact that commissions may also seek to quieten or simplify victims’ identities and claims, in an attempt to fit with political imperatives of reconciliation.

While the potency of truth commissions may rest with their ability to present diverse testimonies on criminality and suffering (Wilson 2001), it can be argued that truth commissions may simplify identities and emphasize homogeneity in an attempt to secure political consensus. In the midst of transitional politics, in which issues of reconciliation and nation-building take precedence, difference can be viewed as something to avoid.

As a case in point, the South African Truth and Reconciliation Commission regularly tried to uphold an idea that suffering was felt across racial divisions. To this end, the Chair, Archbishop Tutu, made frequent pronouncements that everyone in South Africa had been wounded through apartheid. For example, in response to the case of Susan van der Merwe (whose husband, an Afrikaner farmer, had been killed by MK guerrillas), he stated:

Our first witness this morning [a black man, Gardiner Majova, whose son had disappeared in 1985] also spoke of getting the remains of a body back. It is wonderful for the country to experience that--black or white--we all feel the same pain. (Wilson 2001: 112)

Through statements, Tutu negated diversity and proposed that there were no boundaries between individual experiences. In the attempt to avoid a ‘perpetual differentiation and divisiveness’ (Bauman 2001: 141) and to ‘form the moral consensus of the new South Africa’ (Humphrey 2002: 108), such statements re-iterated an idea that the political and ‘race’-based identity of victims was not of importance. Yet, these accounts run against dominant victim perceptions that there is a moral distinction between actions that supported and resisted apartheid (Asmal et al. 1997) and that individual suffering was unequal in its distribution and intensity (Humphrey 2002).

Victims’ identities can therefore be simplified to fit with a broader political agenda. In addition, it is evident that in the midst of transition, commissions may also simplify victims’ expectations or needs. For instance, Simpson (2002) details that the Commission in South Africa made frequent claims that victims were willing to forgive perpetrators and that they only sought symbolic reparation. In doing so, the Commission engaged in a subtle suppression of victims’ feelings that falsely heralded notions of forgiveness and reconciliation over views of retribution or desires for financial reparation (Simpson 2002). This argument is illustrated through research undertaken with the Khulumani Victim Support Group, in which victims argued that they felt cheated by the Commission (Hamber et al. 2000). Victims maintained that the Commission had failed to move their needs forward and that this had, ultimately, been harmful to them. As one respondent stated:
I don't think there was any point in me testifying. The TRC promised to help me and I'm still waiting for that help from them and people's perceptions haven't changed about me. As far as I'm concerned I wasted my time. I'm sure I could have spared myself the pain of talking about my life. (Hamber et al. 2000: 28)

In effect, the Commission managed victims' feelings and misrepresented their needs to make them more acceptable to transitional powers (Simpson 2002). In doing so, the Commission weakened its ability to push for radical change and to inform South African society about the complexity of victimization.

Finally, to be effective in the long term, truth commissions have to be seen as more than a single 'quick fix' that shields states from taking further, more politically difficult, action. For victims, the need for identification is intertwined with the need for disruptions to their disadvantaged status; they recognize that 'the profound implication of the revelation of knowledge is that it introduces the possibility of future change' (Teitel 2000: 111). Subsequently, it is evident that participants and bystanders do place a burden on truth commissions to deal with the issue of parity and, for commissioners, the work often revolves around managing expectations in such a climate. As Aniceto Guterres, the Chair of the Commission for Reception, Truth and Reconciliation (CAVR) in Timor Leste, explained:

Sometimes when I respond to questions [about dealing with inequalities], I kind of laugh and say, 'Look, if you're really putting so much onto the CAVR then you don't need a Parliament, you don't need a Prime Minister, you don't need a Government. You don't need a President of Timor, you just ask the CAVR to do everything!' Because, only the CAVR is the one to do everything.

Clearly, commissions cannot realistically provide a recognition that solves wider-status disparities. Such achievements rest, instead, on how transitional states respond to the status-based remedies that are proposed by commissions.

More often than not, however, the recommendations put forward by commissions are ignored (Hayner 2001). Thus, it would appear that commissions are operationalized in a way that disconnects the acknowledgement of identities from remedies to address status disparities. Hamber et al. (2000) argue that this inability of transitional states to respond to what victims need ensures that the injustice of the past remain open. This is not to indicate that victims demand too much. In South Africa, for example, most ‘had relatively realistic expectations’, such as to ‘get medical attention, a tombstone, exhumations, further investigations’ and so on (Hamber et al. 2000: 34). The lack of action by transitional states to attend to such basic needs invariably leads to feelings that truth commission procedures are incomplete or weak (Hamber et al. 2000).

Of course, the injustices that victims of state crime experience may present deeper problems. For example, it is evident that many participants in the Truth Commission in Timor Leste are desperately concerned about how the Commission process will influence economic justice (JSMP 2004). As one victim, Abel, commented:

The government has to help us to find work. We have suffered. We are very poor. We have lost our house, our possessions, our family. We sit confused. We still feel in darkness. We just wait. We want work but we don’t have work. We have no money to buy anything, to buy a buffalo or to pay for our children's schooling. (JSMP 2004: 27)

For such individuals, the problem of poverty is linked directly to the issue of justice in the region. Yet, the opportunities for economic reconstruction of Timorese society, at present, rest heavily on current negotiations regarding oil reserves between Timor Leste, the Australian government and oil companies (Scheiner 2004). At the time of writing, the Australian government and the oil companies have moved to take longterm control of the major oil fields that lie within Timorese maritime waters. If successful, this position would effectively ensure that Timor Leste would earn relatively little from oil reserves; this is a worrying issue, given that the government currently anticipates that it will not have the finances to maintain basic services over forthcoming years (La'o Hamutuk 2004). The situation that victims face, therefore, regarding their own status cannot easily be separated from global economic structures.

As a consequence of such realities, questions need to be raised about the usefulness of truth commissions to prime transitional states for change. On a cynical note, it could be argued that truth commissions, often representing the only ‘eggs in the basket’ (Rolston 2001: 324), are being used by transitional states to focus attention on what people are (their identity) rather
than on what people need (their status). This is certainly exemplified in the ways that Commissions try to minimize victims' real needs by encouraging victims to 'make do' with their revalued official identity and to be healed through revealing their experiences. The dominant focus on identity politics by transitional states moves an engagement to deal with the social status of victims off the agenda. The end result, as Bauman (2001: 147) points out, is that recognition becomes 'toothless' and 'ineffective', and justice is abandoned.

**Conclusion**

It is clear that truth commissions can offer many benefits to transitional states. As detailed above, truth commissions are uniquely placed to expose the complexity of state crime, to revalue the identities of victims and to promote suggestions on how justice can be further attained through social, legal and political measures. These benefits, without doubt, have underpinned the creation of many truth commissions over the last 20 years to the point that it is now almost expected that states, dealing with a difficult past, will consider and implement a commission.

However, given the analysis presented here, truth commissions have to be approached with a certain degree of caution, as they do not tend to provide a full recognition of state crime. Thus, as argued above, commissions present a partial recognition of victims and perpetrators, and they simplify identities and needs to connect with dominant political agendas. Moreover, it is evident that transitional states routinely fail to follow up on the remedies proposed by commissions to deal with the injustices faced by victims. With these realities, one has to question the current implementation of commissions to secure 'truth' and 'justice' in transitional states.

In the context of a critical perspective on transitional justice that develops a recognition based on the acknowledgment of identities as well as actions that enable all individuals to engage as a peer in social life, it can be argued that truth commissions must never be the only available or even dominant option for transitional states. The need for official acknowledgement, as many victims recognize, must be intertwined with changes in society if there is to be any long-term sense of justice. Thus, transitional states must work harder to ensure that truth commission bodies do not stand alone. This, inevitably, requires further commitment and resources, e.g. to develop ad hoc smaller truth-finding bodies to fill the truth gap left by truth commissions; to encourage fora that ensure that victims' diverse experiences and thoughts (including retributive emotions) can be socially expressed; to implement mechanisms that make some response to victims' needs, from small-scale memorialization programmes to larger, perhaps international, initiatives that remedy economic disparities. There are, then, many options that transitional states must pursue if the truth commission is to be widely viewed as a worthwhile exercise by victims.

In sum, truth commissions have a significant role in priming transitional states for change. Through their recognition of state crime, victims, perpetrators and bystanders, commissions often present the first transitional step to justice. Yet, the success or failure of commissions, in the long term, is heavily dependent on the way in which they are implemented and responded to by transitional states as well as the international community. Truth commissions will provide just short-term relief to the institutionalized *Brit. J. Criminol. 595* patterns that give rise to inequality and injustice, if the connections between knowing and action continue to be broken by transitional states.

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1. Regarding a definition of state crime, debates have swung from a strict interpretation of legally defined rights (e.g. Cohen 1993; 1996) to those on the ‘criminal’ social systems that uphold structured inequalities and broader social harms (e.g. Barak 1991; Schwendinger and Schwendinger 1975). This author concurs with the analysis that ‘state crime’ as a category falls somewhere in between these opposing ideas. It seems necessary that state crime should be recognized as either violations of international and national law or as practices that deviate from the fundamental premises that underlie that law and that may be viewed as being ‘subjectively deviant’ or illegitimate (Green and Ward 2000: 110).

2. While the author acknowledges the important debates on the distinction between the terms ‘victim’ and ‘survivor’, the term ‘victim’ is used throughout this article to draw attention to the way in which injustices remain in spite of truth Commission proceedings.

3. Moreover, this suffering is seen in terms of harms that result from civil or political violations. Victims of economic, social or cultural violations are rarely viewed as human rights victims at all (Evans 2001).

4. Commissions have been established in Argentina, Bolivia, Central African Republic, Chad, Chile, El Salvador, Ethiopia, Germany, Ghana, Guatemala, Haiti, Morocco, Peru, Philippines, Rwanda, Sierra Leone, South Africa, Timor Leste, Paraguay, Uganda, Uruguay and Zimbabwe. One has also been established in Greensboro, USA, to deal with Klu Klux Klan violence. Finally, a number of countries (Democratic Republic of Congo, Kenya and Northern Ireland) are undertaking serious consultations on establishing a Commission.

5. Such as creating the conditions for national reconciliation, peace building, deterring future repression, and so on (Teitel 2000).


7. Some commentators have argued that the Commission did not go far enough in reporting fully on the role of the US in supporting Salvadoran forces (Hayner 2001). More broadly, it can be argued that truth Commissions are not that effective in tracking international involvement in, and responsibility for, violations (Stanley 2002).

8. Viviana Dias in interview with the author, 30 September 1999, Santiago de Chile.

9. Thanks to Patrick Hayden for raising this point.

10. Isabel in interview with the author, 27 September 1999, Santiago de Chile.

11. Indeed, their protestations have been such that the Chilean government agreed, in 2004, to the establishment of a Commission for Imprisonment and Torture.


13. Despite having many female participants, the South African Commission strained to gather female stories. In an attempt to redress the balance, the commission drew explicit attention to women’s victimization through sexual violence. The end-result, as Ross (2003) argues, was that women’s diverse experiences of apartheid went unnoticed. In effect, the categorical focus on sexually violated women meant that diverse forms of suffering were excluded and that women’s status within wider societal power structures was disregarded.

14. This is a reversal of Hudson’s (2003) arguments on routine criminal offenders who often require integration back into the community.

15. Most perpetrators still chose not to participate, e.g. only 20 perpetrators are identified for acts of torture, yet the Commission estimates that over 20,000 detainees were tortured (TRC Final Report 2003).

16. This argument can also be directed at victims who used their testimony to fulfil the requirements for reparations (see Stanley 2001).

17. This was undertaken through gatekeeping measures, in which (i) Commission staff were refused security clearance to access documentation; (ii) documentation was vetted before release; (iii) thousands of police files were destroyed and burnt. Although contentious, this was not followed up by the Commission (Pigou 2002).

18. Umkhonto we Sizwe (MK) was the armed wing of the ANC.

