

International Journal for Crime, Justice and Social Democracy



Imposed Stories: Prisoner Self-narratives in the Criminal Justice System in New South Wales, Australia

Maggie Hall

Western Sydney University, Australia

Kate Rossmanith

Macquarie University, Australia

Abstract

This article examines the ways in which offenders¹ are required to provide very particular accounts of themselves and to self-narrate in confined ways. Drawing on ethnographic fieldwork and interviews conducted in the New South Wales justice system, it explores how the stories that offenders are made to accept and tell about themselves often bear little relationship to their own reflections. It analyses how, despite the expectations of judges and prison authorities, these self-narratives are not products of an offender's soul-searching concerning his² past actions and experience; rather they are products of an official legal narrative being imposed on an offender whose capacity to own and enact such a narrative is already seriously compromised.

Keywords

Prisons; narratives; ethnography; rehabilitation; parole.

Please cite this article as:

Hall M and Rossmanith K (2016) Imposed stories: Prisoner self-narratives in the criminal justice system in New South Wales, Australia. *International Journal for Crime, Justice and Social Democracy* 5(1):38-51. DOI: 10.5204/ijcjsd.v5i1.284.



This work is licensed under a [Creative Commons Attribution 4.0 Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use, with proper attribution, in educational and other non-commercial settings. ISSN: 2202-8005

Introduction

Several years ago, a young man in a prison in New South Wales was re-applying for parole.³ He had recently had it revoked for breaching the conditions of his release, namely missing meetings with his parole officer and failing to attend a therapeutic program. Now, at a public court hearing, he appeared (via audio-video link from prison) before the State Parole Authority of New South Wales, while his counsel argued for his re-release. Through his lawyer, the court learnt that the inmate arrived to meet his parole officer, waited for several hours, but the officer never appeared. It also learnt that he did not attend the *Managing Emotions* therapeutic program because, on one day, his car broke down, and on another, he had to attend a funeral. At the end of the evidence, the parole chairperson asked the man if there was anything he would like to add. 'Um...', the man said, with the look of panic people get when they know something is expected of them, but they are not sure what. 'I'm really sorry for what I done?', he offered, meekly. The parole board retired for a few minutes before returning to court and announcing that the man's application for re-release was rejected.

At the time this prisoner was applying for parole, another inmate in another prison in New South Wales was reflecting on his own sentence.⁴ Ten years earlier, in a sentencing hearing before a District Court judge, he had been sentenced for a serious offence involving ethnic, cultural and class dimensions. Two gangs of young people had clashed, an echo of the cultural clashes happening elsewhere in Sydney at the time. A man was critically injured. The young man who was sentenced was seen as a ringleader and accordingly received a harsh punishment, in comparison to his co-offenders who had accepted a plea and cooperated with police. The young offender's oppositional stance and non-acceptance of responsibility did not endear him to the court. The judge announced: 'You are a violent young man and I see no potential for rehabilitation at all.' The prisoner was 19 years old. A decade on, he reported that the judge's words sent him into a deep despair. The picture painted of him in the sentencing comments in no way reflected the complexity of the offence and his feelings about it. 'I'm not that man, not at all', he said. The narrative of him and the offence, crafted to obtain a conviction, and to fit a chaotic incident with conflicting and complicated evidentiary elements into the constraints of the court environment, had become a barrier to him accepting any responsibility for the incident. And yet in prison, he had been repeatedly pressured to provide authorities with an account of himself that fitted an acceptable legal narrative that he did not accept.

This article critically analyses the ways in which constructed narratives about the offender become central and determining factors during in-court processes, throughout prison, and in the overall lived experience of offenders. It contends that the narratives that offenders are made to accept and tell about themselves in the criminal justice system often bear little relationship to their own memories and reflections. It shows how, despite the expectations of judges and prison authorities, these offender self-narratives are not products of an offender's own soul-searching concerning his past actions and experience: rather, they are products of an official legal narrative being imposed on an offender whose capacity to own and enact such a narrative is already seriously compromised.

The article draws on ethnographic fieldwork and interviews carried out by both authors in separate contexts in the New South Wales criminal justice system between 2009-2013: Hall with prisoners⁵ and Rossmanith with judges, lawyers, victims, post-release prisoners, and parole authority members.⁶ We argue that the justice system is replete with expectations for offenders to provide very particular accounts of themselves: that is, to self-narrate in confined ways. Consider the two opening accounts: in the first example, the prisoner was expected to produce an acceptable account of himself, of what he had done, and of his accompanying remorse. 'Acceptable', in this context, involved a properly performed self-narrative founded on the legally agreed-upon facts of his case. In the second, the man spent his whole prison sentence

fighting against a definition of himself that gave the prison system no incentive to rehabilitate him.

From the police investigation onwards, 'the offence' and the psychosocial narrative about the offender is constructed and imposed on the offender for the duration of his 'journey' through the criminal justice system. Drawing on the concept of the 'lived sentence' (Hall 2014), we demonstrate how this constructed narrative is imposed on the offender through in-court processes and throughout their time in prison. These stories – what we call 'imposed stories' – are sutured to the offender. McConville et al. (1991) have shown how the facts of a case are created outside the offender, separate from him or her, as a document to gain a conviction. We build on this notion to show how the offender is then expected to attach themselves to – in other words, to *own* – the official narrative of police facts. On sentence, further psychosocial narratives about the offender help solidify the account to form the official story to which the prisoner must adhere. For prisoners, some of whom have negotiated the welfare and criminal justice system since they were children, their personal history becomes a collection of acceptable narratives.

Furthermore, the criminal justice system expects a level of narrative competence on the part of defendants and offenders. An offender's 'successful journey' through court and prison is largely based on their capacity to self-narrate. Offenders must not only accept the stories imposed on them; they must *perform* these stories. Once incarcerated, for instance, offenders are persistently required to 'give good narrative'; that is, to successfully achieve release they must fully accept the official account of the offence and the psychosocial account which has been constructed about them as people. For those offenders engaged in offence-specific programs, the enactment of acceptance of responsibility, remorse and redemption is strongly related to their success in getting parole. We examine the ways the inmate's adoption of acceptable narratives plays out in the passage of that prisoner through the criminal justice system, and consider how prisoners see these obligations and the difficulties they experience in determining and negotiating the expectations placed upon them by criminal justice processes.

Throughout this article, we explore examine the ways in which narratives are co-constructed by those who listen to them, asking: how are they received by judicial decision-makers and parole authority members? And what are the qualities that resonate with the feelings of judges (Rossmannith 2015) in matters such as remorse or attitudes towards the offence? We argue that, when it comes to authorities making decisions about offenders, those offenders' own stories and story-telling tactics are crucial factors. As Arthur Frank (2010: 3) writes in his book on socio-narratology: 'Stories work with people, for people, and always stories work *on* people, affecting what people are able to see as real'. Scholars, mainly in philosophy and psychology, have examined the role of autobiographical memory in the construction of a narrative of self (see MacKenzie 2010). What happens, though, when a person is forced to produce a self-history that is not really his?

Background: Researching 'offender narratives' in the justice system

Despite community and institutional consternation about offender rehabilitation, there remains a paucity of research concerning offenders' actual experiences in the criminal justice system. This article contributes to that slowly growing body of socio-legal and criminology scholarship concerned with examining the daily practices, and experiences of people who work in, and who find themselves caught up in, the justice system (see Crewe 2009, 2013; Hall 2014; Schinkel 2014). The concept of the 'lived sentence' as a challenge to a narrow, legalistic view of sentencing highlights the experience of the sentenced person and focuses on the continuous nature of the expectations derived from the sentence (Hall 2014).

Our work builds on that empirical research involving 'offender narratives': for instance, the ways in which legal narratives about people get constructed and deployed. Drawing on ethnographic observation of police practices, McConville, Sanders and Leng (1991) have shown how police construct the legal narrative through the process of investigation. They argue that police facts are versions of events constructed to present the narrative most favourable to a finding of guilt, and the majority of defendants plead guilty on the basis of these 'agreed facts' (McConville, Sanders and Leng 1991: 65). The complex negotiations between prosecution and defence counsel in order to attain a plea are an important but largely uninterrogated part of the construction of narrative. Significant incentives exist to plead guilty and the fact that the vast majority of matters proceed by way of a plea of guilty highlights the significance of the police facts, or the version ultimately accepted by the court (Flynn 2012).

While it is often assumed 'that these primary facts exist, [instead] they are the outcome of a process of construction ... Facts are not elicited, they are created' (McConville, Sanders and Leng 1991: 65-66). The typology of interrogative questions demonstrates how the expert investigator, creating a case against the defendant, does not allow the development of the suspect's narrative, but produces answers compatible with the need for the elements of the offence to be satisfied: 'these [types of questions] have one other crucial property: they are almost never followed by "neutral" questioning designed to elicit the suspect's own story'. Indeed, McConville, Sanders and Leng (1991: 71) assert, the whole interview is designed 'to suppress any attempt to introduce exculpatory material into the interview'. Kate Haworth (2009) has developed these insights to argue that the police interview constitutes an interaction where only one side is truly prepared for the 'multi-audience' nature of the contact. Unbeknownst to the defendant in the police station, the official, legal narrative being constructed there and then will be later subjected to the multiple audiences of court, prison and parole authorities and, in many cases, wider public opinion.⁷ We build on these studies, examining how, throughout justice system processes, including decades in prison, offenders are required to offer up very particular accounts of themselves.

Over the past several decades, a significant body of work has emerged, particularly in the US, but also in civil law countries, on the importance of narrative in the reception of evidence during the trial process (see Brooks and Gewirtz 1996). As has been acknowledged in relation to the way trial judges receive evidence in the Netherlands, 'a good story is worth half the proof' (Wagenaar, van Koppen and Crombag 1992: 44). Such work has traditionally focused on narrative strategies employed by lawyers to prove crimes or defend defendants. Far less examined, however, are the stories expected from offenders during sentencing matters, parole hearings and incarceration. Our work builds on very recent criminological research concerning offender narratives in court and in prison. For example, Diana Eades (2008), in a sociolinguistic examination of courtroom language, has shown that cultural assumptions about how language works can affect the way Indigenous defendants understand what is going on, and how they are understood by fact-finders and arbiters of law. She has also shown how the process of segmenting or fragmenting the narrative by questioning begins in the police interview (Eades 2008: 210). Weisman (2004, 2009), Hall (2014) and Rossmanith (2015) have similarly illustrated how sentencing and other criminal justice processes contain implicit expectations of offenders to act and speak in certain ways (including, for instance, the construction of an acceptable remorse narrative).

In this article, we not only acknowledge that courts and prisons implicitly expect a degree of narrative competence on the part of defendants and offenders; we also go a step further and show that offenders are expected to perform a very particular, constrained self-narrative with which they do not personally identify. In prison, the official narrative follows the prisoner and is embellished by program and custodial staff. We build on the important work of Maruna (2001), McKendy (2006), Waldram (2007, 2012), Ugelvik (2014) and Schinkel (2014) – studies concerning the types of narratives expected of offenders in prison and in cognitive behavioural

programs – in order to examine the way that prisoners are further distanced from attaching themselves to a self-narrative that they feel more closely ‘belongs’ to them. Our work extends these insights to maintain that these constrained narratives actually work against offender rehabilitation by denying opportunities for authentic self-reflection.

Our article also contributes to research concerning judicial decision-making. For more than two decades, it has been increasingly acknowledged that judicial decision-making can no longer be properly constructed in terms of a ‘rational’ and ‘emotional’ binary, as if those were separate domains (see Bandes and Blumenthal 2012). In particular, our work builds on the growing scholarship concerned with examining the range of factors influencing judges’ judgments, including the affective dimension of human exchanges (see Bandes 2009; Rossmanith 2015), and the ways in which narratives affect reasoning at a neurological level (Barraza and Romero 2014). In so doing, we show how offender self-narratives are critical factors when it comes to authorities making decisions about those offenders.

Over the last decade, scholars have identified what they see as a move away from the narrative form in criminal sentencing to a more technocratic, impersonal way of dealing with information. Jacqueline Tombs (2008) has expressed concerns that judges are moving away from ‘imaginative’ sentencing to ‘imaginary’ sentencing (see also Rossmanith 2013); and Katja Franko Aas (2005) has critically analysed the rise of technocratic instruments in sentencing practices. We do not see any contradiction in the identification of these factors and our contention that expectations to provide acceptable narrative form another type of discursive constraint on the prisoner/offender. That the increasing reliance on risk-based thinking constrains the acceptable narratives available to offenders only supports our argument that the offender is unable to present an alternative narrative that will be consonant with the demands of the criminal justice system. Technocratic justice requires stories that can be easily categorised, sorted and stored.

All the scholarship cited above has adopted various methodologies in order to investigate the relevant objects of study. Among these, ethnographic approaches are emerging as especially rich ways to reveal otherwise hidden dimensions of people’s practices and experiences in the justice system. Spending extended time with people – through, for example, participant observation and lengthy interviews – allows for unique insights into those people’s daily lives. It accesses aspects of those people’s lives and working practices that are most meaningful to them. Both authors of this article carried out significant ethnographic fieldwork: in 2010 and 2011, Hall conducted 30 lengthy interviews with male prisoners serving more than three years in seven medium and maximum security prisons in NSW; between 2010-2013, Rossmanith conducted 50 formal interviews, and many dozen informal ones, with Supreme Court and District Court judges, with Local Court magistrates, and with lawyers, forensic psychologists and psychiatrists, court chaplains, members of the parole board, caseworkers, victims and offenders. Rossmanith also attended more than 100 court and parole hearings and private meetings of the NSW State Parole Authority. Together, we have identified the curious ways in which offender narratives ‘work’ through court processes and prison. It is to these narratives that we now turn.

From police interrogation to the courtroom: Imposed stories during in-court processes

Beginning with the police investigation, the construction of the legal story, which will initially provide the case against the defendant, is solely in the hands of police and often occurs in the context of police interrogation (Haworth 2009; McConville, Sanders and Leng 1991). Peter Brooks, in his scholarship on confession, similarly identifies the way that the police narrative is constructed, drawing on the critical writings of US Chief Justice Warren (who offers an analysis of police interrogation manuals): ‘The idea [behind the “chilling” tactics in such manuals], says Warren, is to compel the suspect to confirm the “preconceived story the police seek to have him

describe" [Miranda v Arizona 1966 the Supreme Court, at 455]. At this point, one must ask of the confession made: Whose story is it?' (Brooks 1996: 117).

Developing the argument from these studies, we suggest that, as a summary of the police case at its highest, this legal narrative becomes the account of the offence to which the individual must subscribe. The reliance from this day forward on the official record as 'truth' does not allow for offenders to have their own version of events at all. If the facts are relied upon, as they are in the vast majority of criminal cases, the privileged legal narrative becomes reified.⁸

If, at the time of the police investigation, the official legal narrative is constructed, it is during court processes that this story is sutured to the offender. It is at this stage when the story, moulded though it will be by in-court processes, is forcibly accepted and performed by that offender.⁹ These processes involve pressure for offenders to offer up a confined narrative of themselves. For example, increasingly in the NSW criminal courts there is a veiled expectation for, and pressure on, offenders to give sworn evidence at sentence that indicate remorse. As Rossmanith (2015) points out, recent legislative changes to the *Crimes (Sentencing Procedure) Act 1999 No. 92* (NSW) concerning evidence of remorse, have raised questions about whether or not offenders who make claims of remorse are required to give sworn evidence. Rossmanith shows how the NSW Court of Criminal Appeal concluded:

... first, that 'there is no statutory requirement that an offender give evidence before remorse can be taken into account in the calculation of sentence'; and second, 'in assessing the weight of evidence of remorse [the judge was] entitled to take into account the fact that the [offender] did not give evidence'.¹⁰ In other words, in order to argue you are remorseful, you don't *have* to get into the witness box and speak of your remorse, but you are probably disadvantaged if you don't (Rossmanith 2015: 169).

In giving this sworn evidence, offenders must accept the official legal narrative – the agreed-upon facts – and try to make it their own through (enacted) self-narration. For example, when asked if he had encountered remorseful offenders in court, one NSW District Court judge explained:

Oh yes. Absolutely. ... If the causes of their offending are identified, that is often a good sign of remorse. You know, if they actually face up to the underlying causes of their offending. [For example, if] somebody who embezzles three or four-hundred thousand dollars from their employer says: 'My life was falling apart. My wife had left me. My business fell apart. But I wanted to keep the lifestyle that I was living. I wanted to put on this pretence, so I started embezzling money from my clients'. That's genuine remorse, because they're saying 'My motivation for committing the offence was totally immoral. That is, I wanted to pretend to [my] work that I was still this affluent' – and they actually come out and tell you that, and you know that that's genuine remorse.

A NSW Supreme Court judge, when asked the same question, pretended to be a male offender in the witness box. She said:

Look, to be honest with you, up until six weeks ago I hadn't really thought about what I'd done. Then I suddenly thought 'Wow! What if someone had hit *my* sister? What if it was *my* mother who was robbed and knocked over and her handbag was snatched? And I thought to myself: What have I *done*?'

These judges are offering the types of offender self-narratives required *and* how such narratives should be performed. It has been acknowledged that courts and restorative justice processes

implicitly expect a degree of narrative competence on the part of defendants and offenders (Bartels and Richards 2013; Eades 2008; Martin, Zappavigna and Dwyer 2007; Rossmanith 2014). We argue, however, that in sentencing matters, it is not simply any sort of self-narration that is required from offenders in court. It is not simply that offenders require competence in telling their own stories; rather they are expected to perform a very particular, constrained self-narrative that most likely does not feel to them like 'theirs' at all.

To an extent, these judges are offering what Richard Weisman would recognise as a remorseful acknowledgment of the offence (2009: 52).¹¹ Weisman points out that, when it comes to enacting remorse, an offender's admission of responsibility ('acknowledgment') for the offence is far more complex than merely a plea of guilty; there is 'the expectation that the remorseful offender acknowledge their agency in perpetrating the offense' (2009: 52). We suggest, however, that this acknowledgment by the offender of his transgression involves the offender having to take on, and own, in court, the facts as they were constructed at the time of the police investigation, and further subjected to the unofficial negotiation which goes on between defence counsel and prosecution. In other words, while overtly the remorse discourse in court is one of internality – 'on the inner life of the transgressor' (Weisman 2009: 48) – we suggest that offender stories are imposed on offenders from the outside. Such self-narratives are not products of soul-searching but rather an awkward suturing together of official legal narrative and an offender whose capacity to perform such a narrative is seriously compromised.

When it comes to remorse assessment and to sentencing matters more generally, the court's preoccupation with the inner life of the offender results in further psychosocial narratives becoming part of the prisoner's story. For example, a NSW senior crown prosecutor and former defence counsel explained how he would encourage a remorse narrative-enactment from his client:

If I was defence counsel, what I'd be inclined to do is to say [to the offender], 'Look, you're going to have to explain to the judge why you did it and how you feel about it now, and you'll have to show some understanding of the impact that it's had on the victim, how you feel about the victim now, and how you see your future, what you'd like to do in your future. And how you think you've developed in the meantime'. Things like that. I'd give them topics; a list that they can go away and think about.

This legal counsel is introducing the offender to the aims of sentencing,¹² and to what Weisman (2009: 64) has identified as a narrative of acknowledgment, suffering and personal transformation that is expected from the courts. And yet to what extent does such a narrative emerge from *within* the offender through a process of so-called internal reflection (even a form of *coerced* reflection), and to what extent is it an external cobbling-together? We suggest it is the latter.

In court, the judiciary, without even necessarily realising it themselves, expect a particular narrative performance from offenders: a 'remorse habitus' (Rossmanith 2014: 21-22) that involves a whole-hearted acceptance of, and performance of, the official legally agreed-upon facts, together with a personal story. A NSW magistrate went so far as to say that, when an offender gets into the witness box and tells his story (that is, when an offender gives evidence of his remorse), he ceases to be 'other' and instead becomes 'like us'. The offender's self-narrative allows the magistrate to identify with that offender. Drawing on her interviews with the judiciary, Rossmanith has written of so-called 'successful' remorse narrative-enactments of offenders, and the profoundly affective dimension of them. She argues that, when it comes to offenders getting into the witness box and 'giving voice' to their remorse, 'something often gets felt by the judges at the level of embodied affect that then enables judges to declare: "This person is remorseful"' (Rossmanith 2015: 171).

In other words, people's stories – the self-narration they enact – are co-constituted. Eades writes that 'it is problematic to view the stories which emerge in these [legal and courtroom] contexts as the sole product of the storyteller' (2008: 214; see also Baldwin and McConville 1977; McConville, Sander and Leng 1991; Rossmanith 2014). And yet, as was illustrated in example one at the start of this article about the young man's parole hearing, many (if not most) offenders simply cannot execute the cognitive gymnastics required to accept the legal narrative that has been imposed on them and, in turn, to successfully perform it back to the courts.

There are, of course, exceptions. The account at the start of this article about the inmate's parole hearing ('I'm sorry for what I done?') can be juxtaposed with the following account. In the 1980s, David appealed a sentence for heroin possession and supply.¹³ He wrote a letter to the court. There was a 10-minute silence while the judge read it.

'Looking back I think it was a bit of psychobabble,' David explained to Rossmanith during an interview:

But the line I ran [in the letter] was: 'Looking at all this now, I've always been emotionally independent. When I started using drugs I thought it was just a choice, a hedonistic thing and a matter of my own sovereignty. But now, in response to it being put to me by people in the therapeutic community, I realise that cannot be right because normal people don't end up with smack habits and nearly dead'. I wrote that maybe something else was wrong with me that I'd never acknowledged. 'My mother died when I was young and I closed off for a bit. I was the kind of kid who was the least problem. But then my marriage broke up and I found myself using'. I wrote that I didn't want to be in that state anymore, that I've been drug and alcohol-free for eight weeks, that I'm going to NA meetings and that I'm taking one day at a time. As the judge read it, I knew he was impressed. I knew the letter would play well. But it also happened to be true. When the judge read it, he looked at me – really looked at me – for the first time. I thought 'Gotcha'. I even got the prosecutor. I could see a softening in him somehow.

While David's story is not 'imposed' on him in the same sense as the young man in example two in our introduction, David recognises that the narrative he tells is an acceptable one. He knows that it makes sense to the judge and fits with the range of redemptive narratives available to offenders. While David's constructed self-narrative and the official legal one are congruent, his case shows how the offender's acceptance of a self-narrative which fits the ideal 'connects' with the judge and even with the prosecutor. Calling it 'the line I ran' contributes to the impression that, although not totally 'inauthentic', David's self-narrative has been carefully crafted and honed for the purpose of getting the judge to identify with him as a person.

Constructed self-narratives in prison

During modern trial and sentencing procedures, the prisoner is often silent, speaking only through his legal representative, rarely exposing himself by giving evidence in the witness box, with the significant exception being that of the enactment of remorse. As soon as they enter the prison and are subject to the therapeutic gaze of prison rehabilitation, prisoners must immediately accept and enact the definition of the offence and the definition of themselves contained in the psychosocial narratives of the sentence. This involves a complex range of internal and external processes for the prisoner who is already adapting to the vagaries of prison life. He must accept and endure the denunciatory and punitive effects of the sentence, and simultaneously accept the official version of the offence and perform the version of rehabilitation most suited to this account

When a person is committed to prison, the accompanying court documentation ends up in the hands of prison authorities. This material can be limited to a summary of the judge's comments on sentence. One prisoner in Hall's study said that the prison had only a small extract of what were his judge's lengthy sentence comments (Hall 2014). The authorities use such documents to inform their dealings with prisoners: risk assessment instruments are administered; case-plans are developed. Most importantly, the facts about the offence (via the 'fact sheet' or the comments made on sentence) are treated as 'the truth' (Hall 2014). In other words, the 'imposed narrative' that has been sutured to the offender during in-court processes travels with that offender into prison.

Prisoners often do not accept the official legal narrative to begin with, and yet they are trapped into re-telling it. From the very beginning, they have the dilemma of 'narrative authenticity' (Frank 2010: 11); according to them, 'their' story isn't, and was never, *theirs*. Moreover, there is little opportunity for 'narrative ambush',¹⁴ as the circumstances in prison do not afford prisoners the opportunity to develop a self-narrative that they feel more accurately represents who they feel they are, what they've done, and why they've done it. At stake, of course, is a prisoner's parole date.¹⁵

In her interviews with prisoners, sociolinguist Patricia O'Connor was particularly affected by one man's plea to her to come back to the prison and speak with him because 'there are no new conversations here' (2001: 1). This exemplifies the limits on the opportunities for the kinds of conversations conducive to the formation of new offender narratives. As McKendy points out: 'Even as demands are placed on them to take on the project of making themselves over into rational, self-possessed responsible agents, opportunities to actually do that are sorely lacking' (McKendy 2006: 496). Offenders who are in solitary confinement, for instance, are denied the intersubjectivity critical to the development of self-narratives. Hall found this in her interview with 'Chris' who had spent four years in a 'supermax' prison:

Chris: Um, the isolation ... is exhausting.

Interviewer: That's an interesting way to describe it ... 'exhausting'. Because you're with yourself all the time?

Chris: You don't know what's going on around you so you're constantly battling with yourself trying to describe what it might be or might not be ... but it's ... exhausting, because I don't care how tough you are, or how you want to portray yourself being a hard person, you still need that contact verbally or whatever ... When you don't know what's going on around you and you've got no control, even more so, it is exhausting 'cause it's a constant battle to try and reassure yourself.

Chris's description of his experience of the High Risk Management Unit in the Goulburn Correctional Centre (or 'supermax' prison), which involved long periods of solitary confinement, highlighted his inability to provide an acceptable explanation to himself of what was going on around him. This speaks to the profoundly interpersonal aspect of narrative construction.

The prison system is a site that not only enforces physical control on the prisoner but also imposes 'discursive confinement' (McKendy 2006: 496). Chris spoke of the *lack* of talk, but even talking itself has consequences in prison (for example, unstructured interactions on the wing can be reported and discussed by staff). The discursive confinement of the prison is arguably deepened by the role of prison officers as 'case managers': pseudo-psychosocial assessments by untrained prison officers are viewed with much hostility and suspicion by prisoners but often accepted as evidence by prison and parole authorities (Hall 2014). For example, in interviews with Hall, one prisoner whispered, 'I can slip my guard with you because you're not part of the system'; another prisoner said, 'I watch everything I do'. Assessed and evaluated constantly, and aware of 'the power of the pen' (Crewe 2009; Hall 2014), prisoners are often careful of saying

anything which could compromise their situation. Moreover, the prison experience, together with the quality of prisoners' lives *before* prison, makes it difficult for them to speak directly about their situation.

Particular offender narratives are considered so important, so *central* to the offender's rehabilitation (and by extension to his parole release), that prisoners who refuse to give an acceptable narrative in relation to their crimes are viewed with much suspicion. Weisman (2004) has written of the sorts of remorse expectations placed on offenders and how, in cases of wrongful conviction, prisoners who maintain their innocence are severely disadvantaged. But even those prisoners who have pleaded guilty are still expected to offer particular, constrained self-narratives, and are further punished for not so doing. For instance, 'Mario', serving a sentence for attempted murder, refused to give an account of the offence. In his view, he pleaded guilty and he did not see why he should divulge any further information about himself. His oppositional attitude had not endeared him to prison authorities and, despite the absence of violent or criminal behaviour in custody, his classification was still high considering the length of time he had served. The absence of a convincing narrative of himself and of his offence placed him in a 'high risk' category.¹⁶

Offenders need to be able to tell a positive story about themselves in order to build a narrative that assists desistance from crime. This often conflicts with the expectation that they enact remorse in a self-denunciatory manner. As Maruna (2001) and Ugelvik (2012) have pointed out, prisoners' denial and disagreement with the official narrative may indeed be an essential part of the formation of the redemptive narrative most consistent with desistance.

The official narrative is thus separate from, but comes to have power over, the prisoner, as he is required to self-narrate according to the rules. In cognitive behavioural programs, prisoners are given a format and are forced to produce an 'autobiography', which must match the official record held by staff. Held to an account that is seen to embody 'truth', any deviation will be seen as a failure to accept responsibility. Subjective meaning and affect are excised from their past life leaving a collection of dates and events (see Waldram 2007). The way that the life story of the offender is moulded and finessed to fit the habitus of the therapeutic program by other prisoners and staff produces an account which the offender must be seen to identify with and own, as much as it may be an uncomfortable fit with their sense of reality.

Take for example, 'Matty'. Of the five years Matty spent in prison, the final two were at a drug treatment centre in a NSW jail. He undertook an intense rehabilitation program during which 'honesty and consequences were drilled into you,' Matty told Rossmanith. The whole program 'felt stupid at the time', but in hindsight it changed his life. He had to write his own autobiography 'from my earliest childhood memory, through school, through all my criminal behaviour, explaining how I got where I am,' he says. The psychologists were looking for his 'core belief', why he thought it had all gone wrong.

Matty explains:

There were twelve guys in our group, and ten of them came up with 'unloved'. [The psychologists were] trying to say that there's a reason why things went the way they did. I tried to tell everyone that I went the way I did because, when I was young, I saw [that] my friends had everything because they were stealing, and I had nothing. I saw how easy they were getting it and I just wanted it. There was no reason behind it. [The psychologists] were trying to tell me that it was because I didn't have a father figure and that I was unloved – so I said to them, 'Okay, I was unloved'. But I get on good with my family. [My offending had] nothing to do with love. It's just that we were poor and we had nothing.

The fact that cognitive behavioural therapy¹⁷ is a perfect fit for the managerialist, risk obsessed modern correctional system has been commented on elsewhere (Hall 2014; McKendy 2006; Waldram 2007). That it works to further the ideological apparatus of individual responsibility makes it a natural fit with the modern version of rehabilitation. We suggest that the ease with which the correctional therapeutic milieu produces imposed, manufactured stories lends itself to the effacement of the socioeconomic reality of many prisoners in favour of the privileged psycho-narrative of personal responsibility.

The lack of control prisoners feel over stories of their lives is expressed by a prisoner who pointed out that the program staff in the prison used the official narrative to 'catch him out'. John said to Hall:

But what I can't understand is [that] when I go to CUBIT¹⁸ to do my course they say, 'Oh we've just been reading through your judge's remarks'. See, they've got access to it. And they're at an advantage to work against you, not with you, when you're trying to really refresh your memory and work out what really happened. I'm saying, 'I don't remember that, but if you're saying this is what the judge said it must have happened because I can't remember'.

John found it unnerving that program staff had more information than he did about himself.¹⁹ Information is power, made explicit by the use of the official narrative as a disciplinary tool (see Crewe 2009). Here the prisoner, without having access to it, must enact the version of himself and the offence that is present in the accounts of court and correctional authorities. Another former inmate, Ben, who went through the same program as Matty (writing an autobiography), expressed anger because he had no control over where the document ended up. He explained to Rossmanith:

[I asked them] what are you going to do with it? [They say], 'Oh no, we give it straight back [to you]'. Bullshit. You take it into that room, you read it. Do you photocopy [it]? [They say], 'Oh no, we promise we don't photocopy it'. I still, today, don't believe it. They have to have some sort of record or history, I don't know.

The prisoner's story comes to represent a sort of cultural meme that will never really 'belong' to that offender. Much like the imposed narratives of the police, prosecution and the courts, this has the effect of seriously re-scripting offenders' life stories, thereby compromising their capacity to form self-narratives with which they can identify.

Conclusion

In this article we have shown how the pressure on the offender to 'give good narrative' can be traced through the development of the official legal narrative of the offence, and through the development of a psychosocial narrative in prison that will enable the prisoner to negotiate conditional release. The way this narrative is attached (sutured) to the offender highlights offenders' lack of agency in the presentation of personal and offence data. Personal details of motivation and life history are presented in a format that suits the legal purpose.

The way judicial officers and parole decision-makers receive and interpret the information in turn shapes the way this information is presented. The co-creation of the story of the offence and the offender continues throughout the sentence. His story will always be told in compliance with the institutional limitations of the form of information presentation set up by the rules of evidence and the psycho-correctional apparatus. This article has shown how the expectation to provide an acceptable narrative can obscure and distort offenders' abilities to display the types of remorseful and redemptive behaviour expected of them.

Correspondence:

Maggie Hall, Lecturer, School of Social Sciences and Psychology, Western Sydney University, Bullecourt Ave Milperra NSW 2214, Australia. Email: m.hall@westernsydney.edu.au

Kate Rossmanith, Senior Lecturer, Faculty of Arts, Macquarie University, North Ryde NSW 2109, Australia. Email: kate.rossmanith@mq.edu.au

¹ The words used to describe the subjects of criminal justice dispositions depend on the stage of the proceedings being examined. In this paper, the term 'offender' is used as a descriptor, and 'defendant' is used for those who have not yet been convicted. 'Prisoner' and 'inmate' are used interchangeably to describe those who have been convicted and sentenced to a term of imprisonment.

² We have elected to use the male pronoun throughout this paper, as only male prisoners were interviewed. Women suffer from particular disadvantage in the criminal justice system and this paper does not address their specific concerns.

³ This account is drawn from Kate Rossmanith's fieldwork.

⁴ This account is drawn from Maggie Hall's fieldwork.

⁵ Information which could identify participants has been changed.

⁶ Pseudonyms are used for offenders. While several judges and lawyers interviewed were willing to be identified, most were not, so participants have been de-identified.

⁷ In her discourse analysis of police interviews, Kate Haworth uses Watson's distinction between invited and uninvited stories: 'the teller of an invited story has to tell the story the recipient wants and has asked to hear' (Haworth 2009: 40).

⁸ In the small minority of cases where there is a plea of not guilty (more likely where the offence is serious), the narrative of the offence is contained in the trial transcript, and where a guilty verdict results, summarised in the sentencing comments of the judge.

⁹ We refer here to sentencing matters, which comprise the bulk of criminal court processes. During trials, defendants often only 'speak' through their legal representative. Mostly, however, people plead guilty and the matter goes straight to sentence.

¹⁰ McClellan CJ at CL, Fullerton J, McCallum J, *Butters v R* [2010] NSW CCA 1 at para [16] and para [18].

¹¹ Drawing on an analysis of the judicial discourse about remorse in 178 Canadian cases, Weisman (2009) examines how judicial speech shapes the form that expressions of remorse are expected to take.

¹² Hall (2014) argues that the aims of sentencing must be operationalised by the prisoner by demonstrating or performing that they are punished, denounced, aware of the impact on the victim, rehabilitated, deterred etc. Defence counsel must therefore instruct their clients accordingly, while keeping in mind that spontaneity is highly valued.

¹³ For a fuller account of this interview, see Rossmanith 2014.

¹⁴ Frank refers to what he calls 'narrative ambush': 'Vital, breathing stories can break through the filters and grids. Stories can make themselves heard whether or not they fit a narrative habitus' (2010: 59).

¹⁵ Tellingly, the way that a prisoner's parole date is expressed is now 'Earliest Possible Release Date'.

¹⁶ In addition, the types of narratives commonly produced by prisoners and previously viewed as evidence of denial and lack of remorse are increasingly being reconceptualised as an all too human attempt to regain a measure of moral self-worth in an environment where 'the prison positions prisoners as unethical others in need of change' (Ugelvik 2012: 273).

¹⁷ Cognitive behavioural therapy is the most widely used treatment in both general and correctional psychology and usually consists of a short series of learning based sessions focused on changing behaviour.

¹⁸ CUBIT stands for Custody Based Intensive Treatment program for serious sex offenders.

¹⁹ Hall (2014) has argued that prisoners have difficulty getting hold of the official record of their sentencing and other important documents such as risk assessment.

References

- Aas KF (2005) *Sentencing in the Age of Information: From Faust to Macintosh*. London: Cavendish/Glasshouse Press.
- Baldwin J and McConville M (1977) *Negotiated Justice: Pressures to Plead Guilty*. London: Martin Robinson.
- Bandes S (2009) Empathetic judging and the rule of law. *Cardozo Law Review de Novo*: 133-148.
- Bandes S and Blumenthal J (2012) Emotion and the law. *Annual Review of Law and Social Science* 8: 161-181. DOI: 10.1146/annurev-lawsocsci-102811-173825.

- Barraza J and Romero V (chairs) (2014) Narrative neuroscience: Neurologically based impacts of narratives on emotions, reasoning and behaviour. Symposium conducted at the *Association for Psychological Science 26th Annual Convention*. San Francisco USA, 22-25 May.
- Bartels L and Richards K (2013) Talking the talk: Therapeutic jurisprudence and oral competence. *Alternative Law Journal* 38(1): 31-33.
- Brooks P (1996) Storytelling without fear? In Brooks P and Gewirtz P (eds) *Law's Stories: Narrative, Rhetoric and the Law*: 114-134. New Haven and London: Yale University Press.
- Brooks P and Gewirtz P (eds) (1996) *Law's Stories: Narrative, Rhetoric and the Law*. New Haven and London: Yale University Press.
- Crewe B (2009) *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*. Oxford: OUP, Clarendon.
- Crewe B (2013) Writing and reading a prison: Making use of prisoner life stories. *Criminal Justice Matters* 91(1): 20. DOI: 10.1080/09627251.2013.778750.
- Eades D (2008) Telling and retelling your story in court: Questions, assumptions, and intercultural implications. *Current Issues in Criminal Justice* 20(2): 209-230.
- Flynn A (2012) Bargaining with justice: Victims, plea bargaining and the *Victims Charter Act 2006* (Vic). *Monash University Law Review* 32(3): 73-96.
- Frank AW (2010) *Letting Stories Breathe: A Socio-Narratology*. Chicago and London: The University of Chicago Press.
- Hall M (2014) The lived sentence. Phd Thesis. Sydney: University of New South Wales.
- Haworth K (2009) An analysis of police interview discourse and its role(s) in the judicial process. Phd Thesis. Nottingham University.
- Martin J, Zappavigna M and Dwyer P (2007) Negotiating narrative: Story structure and identity in youth justice conferencing. *Linguistics and the Human Sciences* 3(2): 221-253. DOI: 10.1558/lhs.v3i2.221.
- Maruna S (2001) *Making Good: How Ex-Convicts Reform and Rebuild their Lives*. Washington DC: American Psychological Association.
- MacKenzie C (2010) Imagination, identity and self-transformation. In Atkins K and MacKenzie C (eds) *Practical Identity and Narrative Agency*: 121-145. London: Routledge.
- McConville M, Sanders A and Leng R (1991) *The Case for the Prosecution*. London and New York: Routledge.
- McKendy J (2006) 'I'm very careful about that': Narrative and agency of men in prison. *Discourse & Society* 17(4): 473-502. DOI: 10.1177/0957926506063128.
- O'Connor PE (2001) *Speaking of Crime: Narratives of Prisoners*. Lincoln and London: University of Nebraska Press.
- Rossmanith K (2013) The magistrate and Mr Moore: Storytelling, narrative forensics, and a judge's experience of sentencing. *TEXT* 18: 1-13.
- Rossmanith K (2014) Getting into the box: Risky enactments of remorse in the courtroom. *About Performance* 12: 7-26.
- Rossmanith K (2015) Affect and the judicial assessment of offenders: Feeling and judging remorse. *Body & Society* 21(2): 167-193. DOI: 10.1177/1357034X14558073.
- Schinkel M (2014) *Being Imprisoned: Punishment, Adaptation and Desistance*. London: Palgrave MacMillan, Palgrave Studies in Prison and Penology.
- Tombs J (2008) Telling sentencing stories. In Carlen P (ed.) *Imaginary Penalties*: 84-112. Devon and Oregon: Willan.
- Ugelvik T (2012) Prisoners and their victims: Techniques of neutralisation, techniques of the self. *Ethnography* 13(3): 259-277. DOI: 10.1177/1466138111435447.
- Wagenaar WA, van Koppen PJ, Crombag HFM (1992) *Anchored Narratives: The Psychology of Criminal Evidence*. New York: St Martin's Press.
- Waldram J (2007) Narrative and the construction of truth in a prison based programme for sex offenders. *Ethnography* 8(2): 145-167. DOI: doi: 10.1177/1466138107078631.
- Waldram J (2012) *Hound Pound Narrative: Sexual Offender Habilitation and the Anthropology of Therapeutic Intervention*. Berkeley, California: University of California Press.

Weisman R (2004) Showing remorse: Reflections on the gap between expression and attribution in cases of wrongful conviction. *Canadian Journal of Criminology and Criminal Justice* 46(2): 121-138. DOI: 10.3138/cjccj.46.2.121.

Weisman R (2009) Being and doing: The judicial use of remorse to construct character and community. *Social & Legal Studies* 18(1): 47-69. DOI: 10.1177/09646663908100333.

Legislation

Crimes (Sentencing Procedure) Act (1999) NSW

Evidence Act (1996) NSW