

# Commentary: Thereby Hangs a Tale—The Creation of Tragic Narratives in Forensic Psychiatry

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In my commentary, I suggest that the criminal court is a place where justice examines tragedy, as described by Aristotle in his *Poetics*. I suggest that there are strong parallels with Aristotle's account of tragic narratives and the concepts of representation and performance of forensic expert testimony, as described by Griffith and Baranoski—especially in relation to the creation of voice. On this account, the forensic expert's psychiatric court report acts as a tragic narrative that makes defendants come alive as people. Such performance is crucial for the criminal justice process, where there are competing accounts of the truth, and the expert narrative can articulate the voice of different parties. However, there are other legal fora where the role of the forensic psychiatric voice may be less clear. I close by suggesting that we continue to need rich and subtle exploration of these topics, as exemplified by the work of Griffith and Baranoski.

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I was honored to be asked to deliver a response to Professor Griffith's Isaac Ray lecture in 2010,<sup>1</sup> and I am grateful for an opportunity to offer a commentary on his article with Dr. Baranoski<sup>2</sup> on forensic testimony as performance and identity. I want to argue that a key role for the psychiatric expert in criminal trials is to make the defendant come alive as a human being—an actor in a drama. In this sense, therefore, both the expert's report and testimony address tragedy, as described by Aristotle in his *Poetics*.<sup>3</sup> Tragic narratives have been important in human culture and experience since antiquity. Examples can be found in the Old Testament as well as the more familiar Greek dramas over which Aristotle argued with Plato. George Steiner contrasts the Jewish and the Greek approach to tragedy<sup>4</sup> and notes that, while the protagonists of dramatic Old Testament stories often survive and learn from them, a key feature of Greek tragedy is that the protagonists are caught up in something violent and unreasonable.

Not only is Hellenic tragedy unreasonable, it is also irreparable (Ref. 4, p 8). Perhaps it is because tragedies bring about irreparable change in human

lives that Aristotle suggested that the purpose of tragedy is to arouse pity in the audience as well as horror.<sup>3</sup> In this way, the dreadful but ordinary emotions associated with tragedy are engaged and experienced in ways that are healthy. The translation of the complex word catharsis is a matter of some debate (Ref. 3, p xxxvii), but it may not be too far off the mark to say that there is something therapeutic about the emotional engagement that Aristotle perceives to be a key function of tragic performance.

Like Griffith and Baranoski, Aristotle sees the tragic narrative as a re-presentation of events and actions that attempts to create meaning out of otherwise meaningless suffering. To achieve this, says Aristotle, the narrative must have tripartite structure: the classic (and original) beginning, middle, and end. In the beginning, the causes of tragic actions are minimized and the effects emphasized, and in the end, the process is reversed: effects are minimized and causes and understanding are explored in detail. The middle section of the tragic narrative is the crisis or (in Greek) catastrophe: the sudden reversal of fortune.

In classical Greek drama, the character of the protagonist is brought alive by his actions, which are set out in the plot or subplots. The protagonist engages with adversity (the antagonist), which may be human or divine, and the audience and the chorus observe

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and comment on the struggle. It is often the chorus that expresses the feelings aroused by the action and that discusses the tragic errors and misperceptions of the protagonists. And, of course, it is the chorus that usually has the last word.

### The Criminal Court as a Dramatic Stage

It is therefore no accident that Griffith and Baranoski<sup>2</sup> begin their article with an account of a court case in a murder that itself resembled a classic Greek tragedy: *Iphigenia* by Euripides. Incest, family homicide, and bereavement by murder have been human preoccupations for thousands of years, and the ancient tragic narratives described by Aristotle were arguably the first forensic examination of the psychology of human cruelty and misfortune. Their form and structure still influence the contemporary criminal courts that investigate the terrible events that occur between people and decide what to do with the perpetrators.

It is arguable that forensic psychiatrists are asked to become involved when events take place that are sufficiently terrible to demand an explanation, but appear inexplicable. The worse the violence, the more likely it is to be seen as inexplicable, especially if it involves family ties and relationships associated with closeness and love. Just as in a play, forensic psychiatrists, on both sides of the adversarial divide, are invited to make the character of the accused known to the court, to give an account of the defendant's actions and words that helps the audience understand his mind. (I use "him" only for ease of comment; as both the ancient Greeks and we know well, there are plenty of tragedies perpetrated by women). The report humanizes the defendant, and makes him real. Both the defense and prosecution take part, although the narrative line and affective tone will clearly be different.

As suggested by Griffith and Baranoski, the voice of the accused will be represented in the narrative of the psychiatric report and its performance in oral testimony. In the beginning, the psychiatric history is constructed from different sources, and that history goes to build up a narrative picture of either a tragic hero whose actions are caused by irrational forces of mental disorder or a cruel villain whose vicious identity is clear before the crisis. I agree with Griffith and Baranoski that the forensic expert's report and testimony give voice to that history,

although how this voice is to be ethically weighted against other voices seems to me less clear.

I say this because the essence of a narrative is the creation of a story, and stories articulate values and choices about values. In a story, a person acts (literally, an actor) and makes choices based on his point of view, his construction of the world, and his values. The storyteller reveals the voice of the actor, often adding layer after layer of nuance and meaning. Details of diction and language, especially metaphor, may be crucial for creating character. So, too, the forensic psychiatrist builds up a story of a defendant and his values. Most psychiatric reports are formally structured according to Aristotelian principles: with a beginning, working up to the crime; the middle, the crisis of the crime itself; and then the end (or perhaps, more accurately), the end of one tragic story and the beginning of another for all those affected. Only the plot line may be different, depending on whether the defendant is a hero or a villain.<sup>5</sup>

The index offense is the crisis point in the narrative that fixes the identity of the defendant. McAdams and Pals<sup>6</sup> have discussed the importance of narrative for the construction of personal identity, and the construction of offender identity is a key process in the drama of the criminal court. The defendant whose mental illness causes his offense is truly a tragic figure, whose mistaken and damaged mind has brought about his own downfall, as it has created terror and suffering for others. His offender identity may then be combined with a patient identity—that is, one who suffers. The Greek word *pathos* means suffering and is the root of the word, patient. As an expert in mental disorders and their relationship with violence, the forensic psychiatrist gives voice to this patient identity.

However, it is equally possible that the forensic psychiatric expert's narrative can cast doubt on this identity. There are forensic experts who specialize in creating narratives of evil: of drawing a picture of a defendant who chose to act in ways that are cruel and unusual but fundamentally normal. These experts create monsters with their narratives, classic monsters of story who threaten the community.<sup>5</sup> But if the prosecution depicts the defendant as a monster who threatens the community, the defense will try to portray him as a person who lost his way in life's dark wood—who, on a quest, made mistakes and metaphorically, lost sight of what was happening or the true import of what he was doing.

The adversarial system acknowledges different stories and voices. It recognizes that we do not all experience or perceive reality the same way; that our emotional realities are mediated by our individual experience of empathy, sympathy, and antipathy (thalamus, mirror neurones, and amygdala) and also our social identity. The essence of the adversarial system is that there is no single truth of any set of events. Such a philosophical position is based on general theories of history—the acknowledgment that different facts can be and are appraised and understood from different perspectives.

Griffith and Baranoski emphasize that the use of concepts such as narrative or performance does not undermine attention to professional ethics in terms of objectivity, veracity, and honesty. If both sides are creating stories and performing, there is no additional concern about ethics, so long as both sides get to tell their tale. The concern lies in those circumstances in which only one story is told or the storyteller fails to communicate his voice.

### Two Truths Are Told: Competing Narratives in the Courtroom

Griffith and Baranoski describe how the expert narrative transforms information (facts) into knowledge (with meaning and value). This transformation of facts into evaluations is crucial in the criminal court, where we want to evaluate a man's intentions, not just his actions. It is the conflicting accounts that bring a sense of drama and differing emotions to the courtroom. A homicide in the presence of mental illness generates awe and pity; a sustained and vicious homicide in the absence of any mitigation generates hatred, disgust, and fear and, in some countries, death for the perpetrator. So the expert too, especially the psychiatric expert, creates competing truths in the courtroom.<sup>7</sup>

The examination of competing tragic narratives by the criminal court has itself become the basis of dramatic narratives in theater, novels, and film. Take for example, Kurosawa's 1950 film, *Rashomon*, which tells the story of a murder and rape from the different perspectives of the surviving victim, the perpetrator, the witness, and the ghost of the murder victim. Although many movies deal with murder trials, it is rare to find a movie that invites the audience to confront ambiguity and uncertainty in assigning blame and condemnation to a crime.

The *Rashomon* aspect of competing psychiatric expert witness testimony was first explored by Irwin Perr,<sup>8</sup> who compares and contrasts the reports of four different psychiatric experts who were invited to examine a young man (John) who shot his father. Two were for the prosecution (psychiatrists B and C), and two for the defense (psychiatrists A and D). Psychiatrist A presented John as a wounded soldier for whom this offense was out of character, and Psychiatrist D took a similar view. Psychiatrist B placed more emphasis on who John was before the offense and included a developmental history; Psychiatrist C said that John was a normal guy. All offered some perspective on the sort of person John was at the time of the killing; but the different narratives have different crisis points, in terms of how they saw the offense unfolding. They also differed in the degree to which they accepted John's account as true; none appeared to have considered any evidence against his own position.

Perr comments on the striking differences between the expert narratives of John's tragic actions, especially on the different accounts of John's agency for his offense. He concludes that psychiatric experts need to have a "maximum of neutral judgmentalism (*sic*) and impartial application of science." He also comments that psychiatric experts need to know themselves and where their values and loyalties lie and gloomily concludes that the American legal system is heading for "evidentiary chaos" (Ref. 8, p 97).

I do not think there is much support for the notion of evidentiary chaos in the adversarial criminal court as a whole. The work of forensic psychiatrists such as Paul Appelbaum and Thomas Gutheil in the United States and Nigel Eastman in the United Kingdom has ensured that forensic psychiatrists pay attention to the problems of impartiality and objectivity and has resulted in the provision of both excellent training programs and continuing professional engagement with the ethics-related tensions inherent in this role. It would surely be hard now for any forensic psychiatric expert to claim that there are no ethics-related tensions in the provision of testimony or that he is confident that he is always impartial and objective. It might be argued that the pendulum has swung too much the other way and that the validity of an expert's opinion can be killed off when their characters are assassinated in unreliable and unjust ways.<sup>9</sup>

Still, Perr's concerns about how courts are to choose between different experts are alive and kicking. He recognizes that we "do things with words" (in J. L. Austin's famous phrase<sup>10</sup>) when we are constructing our reports for the criminal court. For example, just the use of the passive voice in a report can remove agency (and any owned intention) from a narrative. Sharon Lamb<sup>11</sup> describes this in relation to reports on victims of domestic violence seeking compensation or bringing criminal charges. She notes that the language of the reports in terms of subjective voice can substantially alter the agency of victim and perpetrator. Consider the difference of implied agency between sentences A and B:

A: She received several blows to the head, and her jaw had multiple fractures.

There is no suggestion here of any human agency behind the blows or any intention to be violent or hostile. The victim "received" something (which implies some acceptance on her part), and she was not damaged. Only the apparently independent jaw had fractures. There is no account here of anyone's subjective fear, suffering, or pain.

B: He struck her head several times and shattered her jaw.

Here, we have an actor/perpetrator whose actions are described and a hint of possible agency. He acted, and his actions had consequences. There is no account of emotions, but the victim is no longer the subject of the sentence.

So, if experts can create different narrative realities of cruelty and tragedy that affect perceptions of agency, then we had better be thoughtful about what we are doing and why we are doing it. Not only will we want to consider our consciously held values and beliefs, but we may also want to consider our less conscious values and beliefs, including the ones that we really might be rather ashamed of expressing but hold nonetheless.

### Cover Stories and Changing Narratives

In reading Perr's paper, I was also struck by the extent to which his psychiatric experts claimed to be able to make inferences not only about the defendant's mind, but also the minds of the witnesses or dead. This made me think about my other forensic work as a psychotherapist working with forensic patients detained in secure hospitals.

The concept of narrative as essential for transforming mere information into knowledge that has

value and meaning has been influential in psychodynamic psychotherapy for some time.<sup>12</sup> The narrative turn in psychotherapy arguably begins as a response to computational models of mind: the concern that disembodied cognitive models of mind leave out agency, voice, and other human aspects of the psyche. Narrative approaches to psychotherapy are now extensively practiced and described.<sup>13</sup>

I have already mentioned the account by McAdams and Pals<sup>6</sup> of personality and the relationship between narrative and identity in personality structure. This narrative level articulates meaning and value and changes in response to events across a life span.<sup>14</sup> It therefore gives us our identity—an identity that interacts with other people's identities and can be recognized by them as such. It is identity that is often suddenly altered by traumatic events, and recovery after such events is often associated with accommodation to the new identity.<sup>15</sup>

A narrative approach based on the work of McAdams and Pals has been used in the study of criminal offenders or more particularly desistance from crime and the creation of a new noncriminal identity.<sup>16</sup> What is interesting about this work is that it finds that the narratives of those who desist from crime contain more material referring to agency and a new sense of self than the narratives of those who persist in crime. This mirrors more general research about effective psychological therapies, which indicate that success in therapy is related to an enhanced sense of agency and more coherent self-narrative.<sup>17</sup>

In the secure hospital where I work as a therapist, I am conscious of the different stories told about any single patient. The story that is told in the criminal depositions may not be the story that is told by nurses, therapists, or fellow patients. There may be fundamental conflicts between the narratives told about a man and his intentions at different times and in different contexts.<sup>18</sup>

I have come to believe that most of our patients come to the hospital with a "cover story" and that the purpose of their being in the hospital is to examine that story and thicken and deepen it.<sup>19</sup> We examine all the other versions of the story, but we want to hear the offender's own account and explore it with him. We think that if a person can find a voice, he may be able to acknowledge the dark matter that caused him to become violent, and once his motivation is acknowledged, this cruel and unusual part of the self can be worked into a personal narrative of

experience. It is at the level of personal narrative that we also meet the moral identity, the voice of the “kind of person I want to be.” As one man in a therapy group said about his time in the hospital:

The story I tell about myself now is not the one I told then. . . . It has taken me years to understand this.

### Other Courts, Other Stories

So far I have argued that tragic narratives are found and even sought in the criminal court. There is drama there insofar as drama has always been about conflicts between the individual and the social group and the moral dilemma about how to deal with those who have wronged and harmed us. The adversarial nature of the criminal court seems to demand performance, and I think forensic experts have always known this.

But in relation to other courts, I am not so sure that the explication of a tragic narrative assists the court. I am thinking here of the family court, where the judge has to decide who is best equipped to care for a child, a child who may have been harmed by his parents. It might be argued that forensic narratives are especially necessary because of the multiplicity of voices in the court: the voice of the parents (together or separately); the voice of child protection services; and the voice of the child through his formal representative (at least in the U.K. courts). However, I take the view that the narrative voices of the expert (including the performative aspect of the narrative) work best in an adversarial forum where the *polis* cries out for justice. In the family court, what is not at stake is wrongdoing and justice for the wronged, but a child’s future and a lifetime identity. The humanity (and tragedy) is very plain to the court: what the judges need help with is the best-quality empirical evidence about what helps children grow and develop and what puts them at risk. Ritual and drama may even distract from the seriousness of the task at hand.

Similarly, in the immigration courts, expert testimony is used to confirm that an asylum seeker is telling the truth. Here we have individuals pitted against the state whose immigration laws usually start from a default negative. Ironically, many political asylum seekers flee one hostile state only to find themselves in another when they seek to remain in residence. It seems to me that the expert’s own personal view on immigration must have an influence

here, since expert psychiatric knowledge is not really relevant to immigration decisions. What is relevant is whether the expert wants and feels able to express a view about the credibility of the refugee in question; this, I submit, is not simply a matter of psychiatric expertise.

### Conclusions

The tragedy is not played out until we have looked the whole matter squarely in the face and commented on it, as far as it lies in us, truthfully, impartially, and without passion, bias, or self-deception (Ref. 20, p 11).

This quotation, from a classical commentary on Sophoclean tragedy, contains good advice for those experts who are preparing written and oral narratives for the criminal court. It takes training and skill to make sure that the performative aspect of oral testimony, which transforms information into knowledge, does not stray outside the bounds of professional ethics. The inevitable conclusion is that we as experts do perform in the criminal court, and it is an illusion that our work is value free. This suggests to me that we must keep trying to improve on our storytelling abilities as experts. Lady Justice may be blind, but she’s not deaf.

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