

# Mentalizing for Therapeutic Jurisprudence

## Theory and Techniques

Jill Howieson, University of Western Australia  
([jill.howieson@uwa.edu.au](mailto:jill.howieson@uwa.edu.au))

Archie Zariski, Athabasca University Canada  
([archiezar@athabascau.ca](mailto:archiezar@athabascau.ca))

# Therapeutic Jurisprudence

Encourages legal actors to interact on a common human level with people who encounter the legal system according to three central principles:

- **Respect,**
- **Personalization, and**
- **Self-determination.**

# Common factors in successful TJ interventions

- **Client** factors (background and current circumstances)
- **Relationship** factors (interactions in the legal system)
  - empathy in the relationship
  - opportunity to talk and to be heard and understood
- **Procedural justice** (treatment by legal actors)
  - acting with respect, dignity, politeness
  - facilitating voice and considering views
  - providing a level playing field - neutrality
  - earning and reciprocating TRUST

# Mentalizing and epistemic trust

Mentalizing theory, with its integral concept of **epistemic trust**, provides a theoretical basis for understanding some of the psychological processes involved in the different forms of successful TJ intervention.

Epistemic trust may be a significant element in the common factors found in positive interventions.

# Mentalizing

**Mentalizing** (verb) is a form of imaginative mental activity, namely, perceiving and interpreting human behaviour in terms of intentional mental states (e.g. needs, desires, feelings, beliefs, goals, purposes, and reasons). This basic human faculty can be exercised on a continuum:



Other descriptions of mentalizing:

*Looking at oneself from the outside and others from the inside.* (Luyten et al., 2017)

*A mental process that allows us to understand actions as meaningful events.* (Rossouw & Fonagy, 2012)

*Understanding misunderstanding.* (Bateman & Fonagy, 2016)

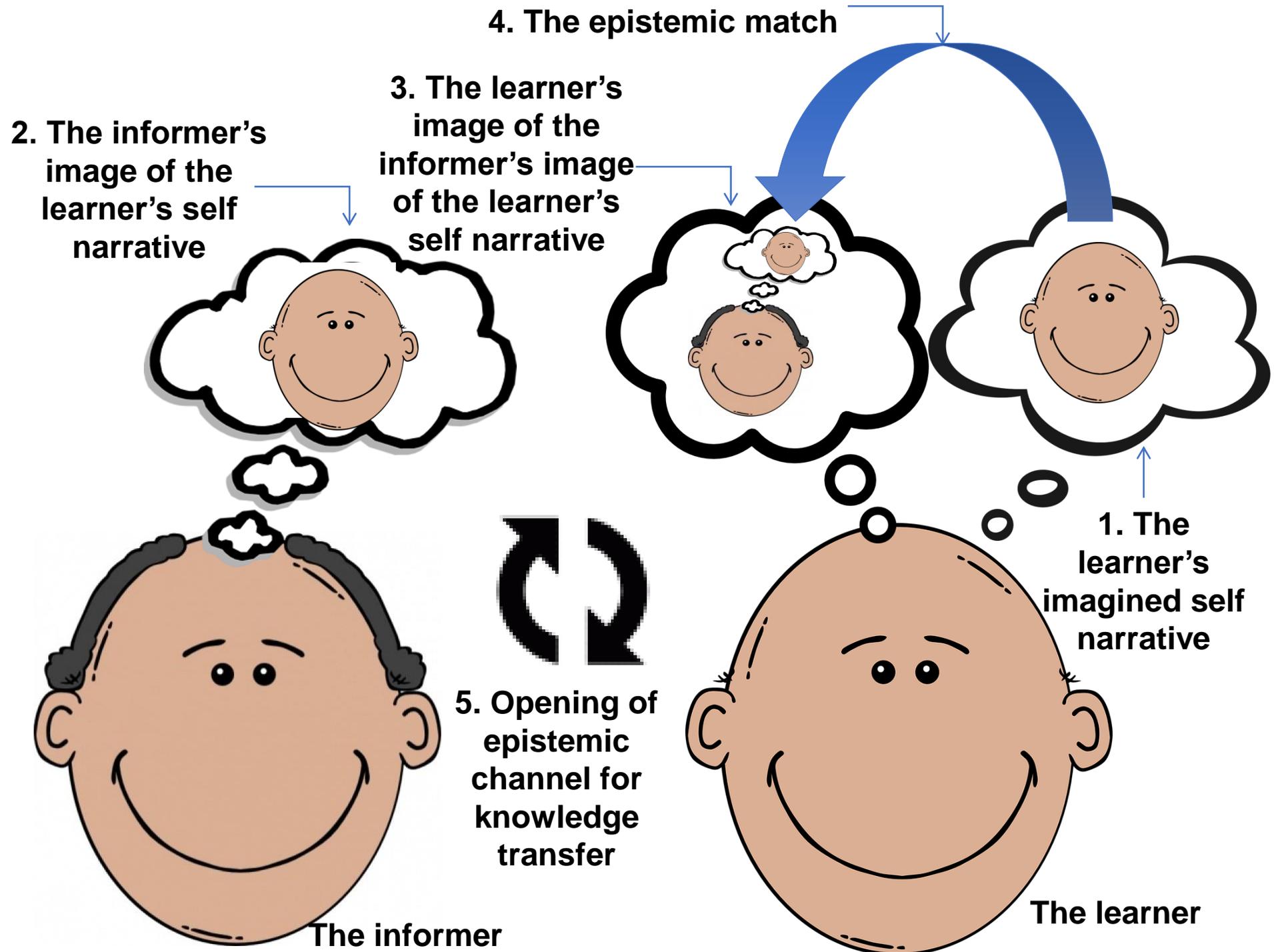
*Having mind in mind.* (Allen, 2014)

# What does good mentalizing look like?

Mentalizing is on a spectrum – a thermostat and not a switch.

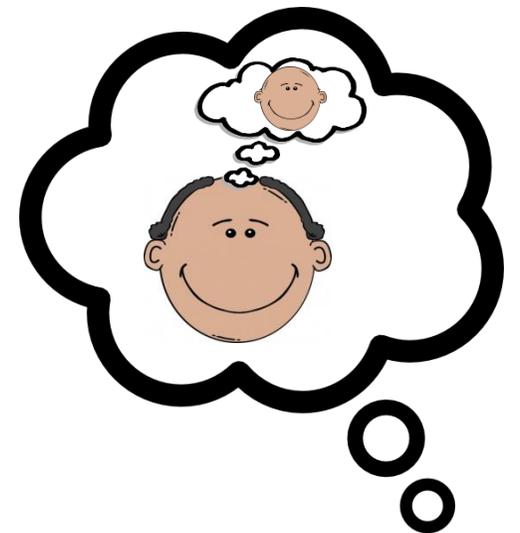
It is demonstrated in relation to other people's thoughts and feelings by:

- Acknowledgement of opaqueness
- Appropriate sensitivity
- Perspective taking
- Genuine interest in the other
- Openness to discovery
- Forgiveness
- Predictability
- Adaptability
- Contemplation and reflection



# Epistemic trust

- We all have a **personal narrative**
- The **understanding** of that narrative **by another person** creates a **potential** for epistemic **trust**
- The **perception of the understanding** by the other of the personal narrative - of being mentalized - **generates epistemic trust**



# Impaired mentalizing

Mentalizing can become impaired when we become emotionally aroused, such as when we are under stress or in conflict.

Ineffective or reduced mentalizing can lead to poor outcomes:

- inability to consider the complexity of situations
- inability to identify and manage our own emotions
- reduced ability to recognise and accept alternative perspectives
- loss of mental flexibility leading to rigid and automatic responses
- mistrust

# What does impaired mentalizing look like?

(Bateman & Fonagy, 2016)

- Narratives containing excessive detail but with an absence or reference to personal mental states
- Behaviour primarily explained with reference to external social factors
- Behaviour explained with reference to physical or structural labels
- Preoccupation with rules, responsibilities, 'shoulds' and 'should nots'
- Lack of responsibility taken for problems in self/relationships
- Expressions of certainty about thoughts or feelings of others (regardless of accuracy!)



Note the common theme: **An absence of openness, curiosity, and imagination about minds**

# Importance of attention to mentalizing

- Even for clients with few psychological problems, entering the legal system is stressful and may be traumatic, resulting in impaired mentalizing.
- A failure to mentalize, or self-mentalize, usually results in misunderstandings of motive, defensive behavioural responses, and a restricted capacity to consider alternative interpretations for observed behaviour.
- Need for generation of epistemic trust essential to successful intervention.

# TJ and Mentalizing

## Mentalizing stance: a basic TJ intervention?

A ***mentalizing stance*** is characterised by active interest in the person's internal experiences and a reluctance to foreclose into certainty.

It resembles the naïve (curious) enquirer, including:

- being ordinary and non-expert; authentic and 'not-knowing';
- listening and accepting the experiences that people relate;
- enquiring - exploring the full detail of the person's unique situation;
- being curious and clarifying what is in the mind of the person;
- having patience and taking time to identify the person's unique narrative;
- being tentative, respectful and devoid of assumptions;
- being flexible and imaginative.

# Mentalizing stance: a basic TJ intervention?

A ***mentalizing stance*** avoids:

- taking the role of the expert and presenting one's own ideas with a sense of certainty;
- using minimizing words, for example 'just, obviously, clearly...' (which are common words in a lawyer's vocabulary);
- forcing ideas onto the parties;
- focusing excessively on the content of the situation or attribute; and
- reducing the person's' experience to a general pattern rather than exploring their experiences in more detail.

# The potential of mentalizing for TJ

Could be challenging when legal actors are in “expert” mode but mentalizing offers:

- *Interventions which support people through their legal encounter without purporting to provide therapy.*
- *A useful theoretical “bridge” between disciplines such as psychology and psychiatry and TJ.*
- *Help in filling the knowledge and practice gap in procedural justice and behavioural change and the techniques currently favoured by legal actors attempting to put TJ into practice.*
- *A theoretical model that would explain why TJ and other psychosocial interventions work and which components make them effective.*
- *An evidence-based approach to TJ practices grounded in psychological research.*

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### Questions?

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