

The Creative Work of 'Individualisation Work' in the Criminal Process

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Individualisation

- Relevant personal & social circs info for the court to assist sentencing
- Individualisation as Context, Humanisation etc
- Seen counter-balancing mechanistic, factory

What does Individualisation DO?

Accelerate and enable case 'disposal' through expressive moral performance

Instrumental VS Symbolic

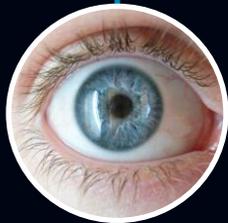
Sense of Guilt / Discomfort

- Starting point: we like to see ourselves in positive light and through how we believe others perceive us
- Justification is inherent in inter-personal encounters (Levinas)
- Finding ways of justifying changes in profile action once deemed wrong (eg Tata 2007 legal aid)
- Awkward Awareness of gap

Troubling Sense?



Justice
Prof'l



Soc self



Levinas

Relentless Parade of Human Misery

“ ‘If you’ve got any feelings at all, you’re seeing absolute misery passing in front of you day in, day out, month in, month out, year in, year out; you’re seeing women with young kids having to go to jail, you’re seeing young - you know, young men in their mid twenties who ought to be in the absolute prime of their life just raddled by drugs and alcohol and coming into court with terrible injuries from fights and teeth missing, and you see mentally affected people, people who are schizoid and paranoid through overuse of drugs, all of this misery, day in, day out.’” (Roach Anleu and Mack 2017:19)

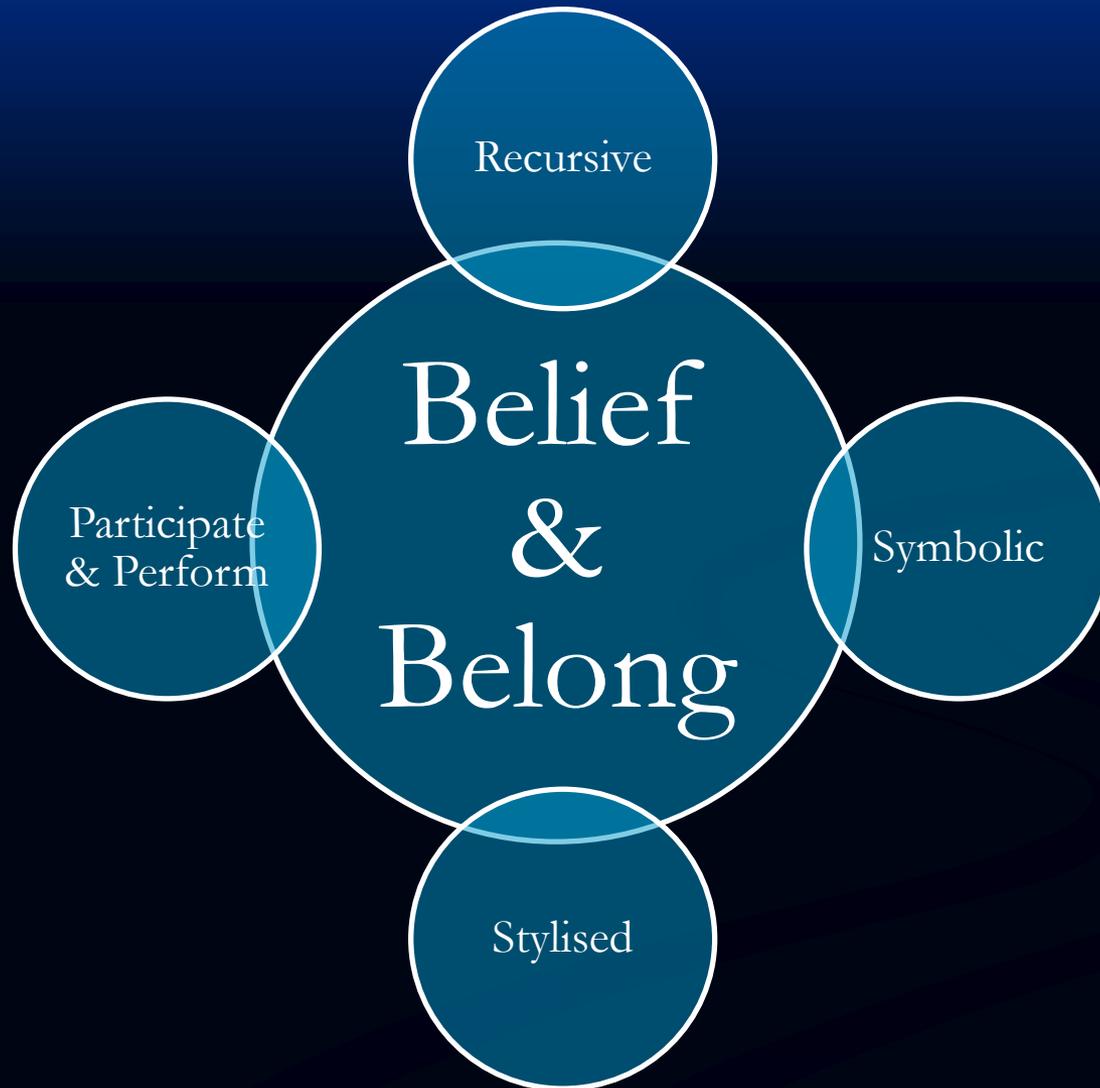
Sense of Dissonance

- “On a practical level sometimes you don’t have as much time when you’re doing summary criminal legal aid work **as you perhaps should have with individuals**” [def lawyer intv 10, psr study]
- ‘It’s just a Factory’
- ‘Not what it was’
- Could and should be better but resources
- Explanations to novices (eg also socialisation)

Ritual Individualisation

- 'Ritual' long derided in legal & crim lit (eg Garfinkel 56; Carlen 76)
- More recent rehabilitation of ritual (eg Maruna 2011; Tait)
- Ritual is and produces the social
- BUT what does it do?

What Does Ritual *Do*?



Ritual Resolves the Unbearable Stress of Doubt & Uncertainty

- Seen to test cherished sacred ideas
- Validates ideas and group
- Collective Belief & Belonging
- Energises

3 Stages of Ritual

E.g. Turner 64, Bell 97

Separation

Transition:
'liminal
pupation'

Reincorporation
– new identity
celebrated

3 Stages of Ritual Individualisation

Separation:

Blind to
Individual

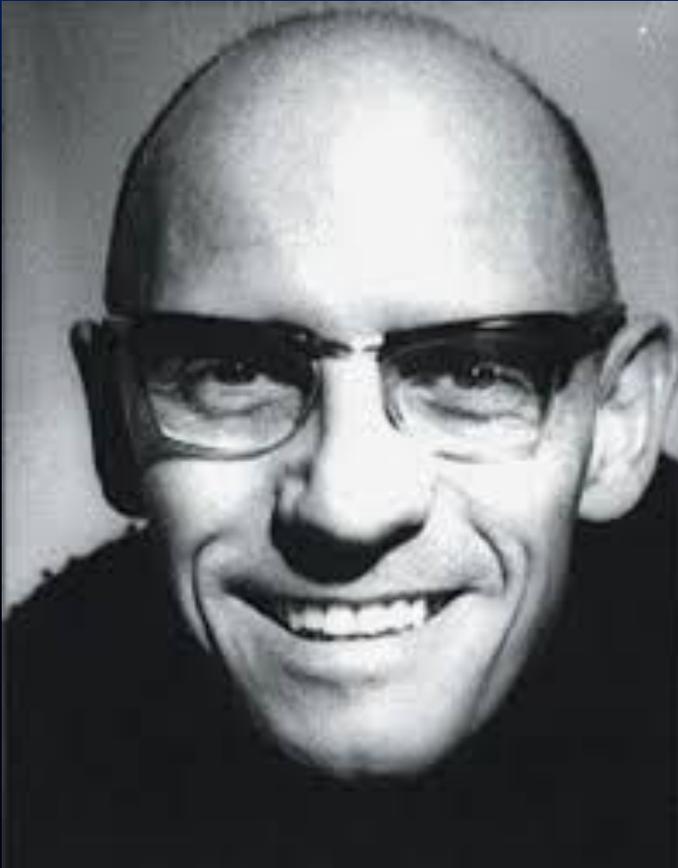
Transition: 'liminal pupation'

Anticipate
individualised
mitigation

New identity displayed:

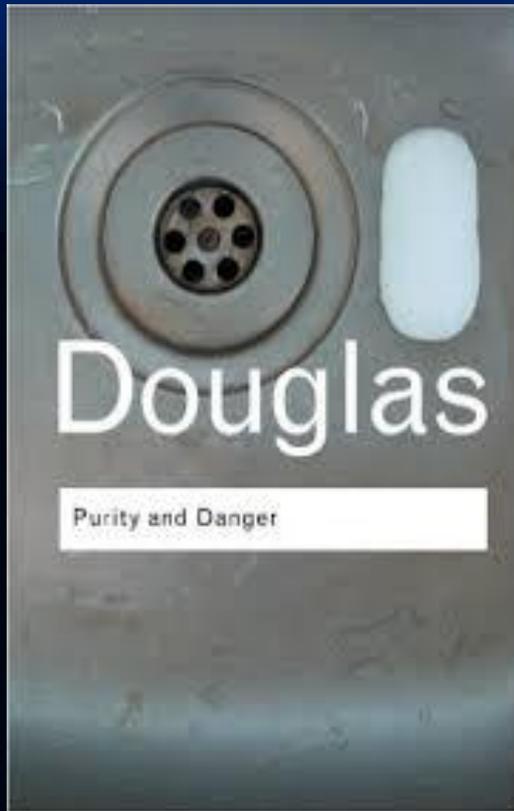
Culpable
Offender, will
her own
punishment.
shown mercy

Individualised Exam Normalises



- Comparison & Differentiation from the 'normal population'
- "It refers individuals to a whole, ...a field of comparison... an average to be respected... an optimum...(D&P 77: 182-3)

Douglas 1966 : Purity & Danger



- “Dirt is essentially disorder...
Dirt offends against order...”
- “Our pollution behaviour is the reaction which condemns any object or idea likely to confuse or contradict cherished classifications”
- Dirt is dischord

Displaying Fair Justice

- Summary process notoriously abrupt – legit gap
- Reliance on admission of guilt (plea/confession)
being seen as a free decision
- ‘Dirty work’ (Hughes 1951/58/62; Ashforth & kreiner)
 - “Visceral repugnance”
 - *But* soc constructed standards of cleanliness and purity (Douglas 1966)
 - Seen as *both* necessary *and* potentially polluting

Physically Dirty



Genius 3 **RI Converts Ambiguous into
Displayed Sincere Admission of Guilt**

“For if punishment is to be more than coercion, it must be justified *to* [sic] the person on whom it is imposed, ... *which she should come to accept and will for herself.*”

(Duff 1986: 263, emphasis added)

Display of justification & acceptance

Genius 3 RI Converts Ambiguous into Displayed Sincere Admission of Guilt

Disruptive / Resistant

- Straight denial (factual)
- Threat of worse (trial tax, remand)
- Unsure/confused
- Fatalism / Arbitrariness
- Conscious non-engagement
- Exculpation / moral challenge



- Open

Facilitating / Compliant

- Admission
- Tactical / game playing
- In denial - Work to be done
- Accepts it's Inevitable
- Responsibilised
- Transformation or implicit condemnation



- Closure

Defence solicitor:

“ [If] the client wasn't so sure [he is guilty but....] he'd instructed you to plead guilty then [...] I would say to them, 'if you say to the social worker you didn't do this or you're innocent or then that will cause you problems and it'll cause me problems[...] If you deny this offence when you speak to a social worker, it's not going to help YOU. [Interview, defence solicitor 10]

Conclusions

- ❖ **Inform, advise, *but also***
- ❖ **Generally (but not always) manage the felt gap problem enabling sense of moral closure**
- **Largely legitimating but also reopens legit problems**
- **FOR the court Community – not necessarily 'a bad thing'**

Further Questions

1. Therapeutic/Cathartic *but for whom?*
2. Are mass 'free' admissions universal?
3. A fused system – anticipate sentence 1st?
4. Judicial *Sense of* PF by diff means?
5. Does Low sense of PF lead to legit strain?
6. How is Individualisation Work done in your country?