Paper 10

Working with bad men: TA approaches to the discursively constructed criminal self

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Abstract

This paper is based on experience working with criminal men, a population of whom it is said, with some justification, that 'nothing works' (Newbold, 2008, p. 385). Yet over and over, we see people change, and we wonder what makes this happen. The conclusions presented here are based on over three decades of group and individual psychotherapy in prison, in a therapeutic community, and in a community-based Stopping Violence programme.

In this paper I reference the writings of Michel Foucault, Judith Butler, and Nikolas Rose, with certain transactional analysis concepts. The developing thesis uses the notion of two voices exploring the origin of things, but not in the individual. Everything we do, feel, and think arises out of relations of power and resistance. This applies to the deployment of ideas, the structure of institutions, to customs, to ways of understanding that control, produce, and distribute knowledge in a society. This apparatus that allows and inhibits ways of thinking, feeling, and doing things is known as discourse and *dispositif* (Foucault, 1978).

If discourse is identified with language (M. G. Kelly, 2020), then when we enter into dialogue, we can 'exercise upon language, with every word… a sort of constant interior pressure which makes it shift imperceptibly upon itself at any given moment in time' (Foucault, 1966/1989, p. 403). History is all around us, in everything we do, feel, think, and say, given form by language. This thesis suggests that dialogue, in other words the interaction of two voices, shifts discourse, imperceptibly changing our phenomenology and the world we live in. While we cannot escape power, that is to say, our autonomy is an illusion, we can produce change, though unpredictably and almost certainly not by contracting for it, a popular strategy in transactional analysis psychotherapy and counselling (Manning, 1995, 1997; Manning et al., 2024; Manning & Nicholls, 2020; Manning et al., 2025).

Introductory remarks

This paper contains reflections on psychotherapy with men who have considerable experience of imprisonment, a population concerning whom it is said, with some justification, that 'nothing works' (Newbold, 2008, p. 385). The conclusions presented here are based on over three decades of group and individual psychotherapy with men

who have histories of serious criminal offending, working in prison as a visiting psychotherapist, in a therapeutic community treatment facility that specialises in treating parolees under orders from a court or Parole Board, and in a community-based Stopping Violence programme to which men and women are referred by the criminal and family courts and by themselves.

The conclusions presented here are derived from working with men. The consequences of the imprisonment of women are unlikely to be the same. However, it may be that the perspective of this chapter, particularly the theory of subjectification derived from Foucault (2002, 2010), Foucault et al. (1988), Rose (1998, 1999), and Butler (1990, 1993) and applied to psychotherapy, has some value for work in a wider field.

The impetus for this work has been guided by a simple, practical observation, gained from facilitating groups in a therapeutic community and in a community-based Stopping Violence programme. It is this: if we can get a group of men together for a couple of hours or more each week, if we can guide the conversation towards talking about the experience of living and being in relationship, and if we can keep doing that for a year or more; then the lives of those men and those around them will reliably change for the better (Manning et al., 2017). They will abandon violence as a way of being in the world and in their families, they will reduce or cease their use of intoxicating substances, and if they engaged in other criminal offending, they will stop. They will sometimes become mentors, continuing to attend the meetings, becoming a resource for the other men attending and being paid for doing so. Of course, these conclusions are unreferenced, and largely unresearched. We suspect that the 2017 report in the primary author's name is a rare exception, as research on similar programmes has been hard to find. Nevertheless, these ideas are widely held among experienced clinicians working in the field, hence this paper and other papers in the same body of work (Manning, 1995, 1997; Manning et al., 2024, 2025; Manning & Nicholls, 2020).

In this paper we introduce some ideas concerning what is known as *discourse* (Foucault, 1981), *dispositif* (Foucault, 1978), and Judith Butler's *performativity* (Butler, 1990) to explain some observations made in the course of my work. There is then an attempt to work with certain transactional analysis concepts, introducing a critique based on *discourse* and *dispositif* but hopefully without undermining TA theory.

Discourse

It is difficult, and perhaps impossible to any high degree of detail, to examine or describe discourse as it affects us in the present, since we are likely to be conducting such an analysis from a perspective, and within a system of truth, determined, or at least influenced by the discourse we are trying to describe. Readers who are familiar with the work of Michel Foucault will need no introduction to discourse. For those who have yet to encounter him, it is recommended that the reader start with his later interviews

(for instance, Foucault, 2019) or with Veyne's (2010) summary of his thought, or Macey's (1993/2019) biography, rather than Foucault's books, which can be challenging.

For the purposes of this paper, discourse can be thought of as a heterogeneous system of ideas, beliefs, and practices that shape and govern knowledge and social relations within a particular historical context. Its rules, norms, and practices determine what can be said, thought, and understood within a given society or institution. Discourse plays a crucial role in the construction and regulation of social reality, but it is not conscious, and can, in Veyne's view, be compared to the psychoanalytic unconscious, though operating not just at the level of the individual subject, but subjectifying large groups, even entire societies.

Discourse limits the categories of our thought, applying *type* to people, groups, and many phenomena. The idea of non-Christian, for instance, referring to an obviously heterogeneous set of groups, becomes a distinct homogeneous set under a Christian discourse, a way of determining the important social dualism of *them* and *us*. In the primary author's original home, Northern Ireland, a place where the distinction between Roman Catholic and Protestant is vitally important, there is a joke: a dark-skinned person is asked their religion, and responds that they are a Buddhist, resulting in some confusion in the questioner, who then asks whether they are a Protestant Buddhist or a Catholic Buddhist. The humour is heightened by the reality of a discourse which sets out and limits available categories, determining what can and cannot be thought, and by the questioner's ignorance of the unconscious actuarial script that determines what can and must be asked, what can and cannot be thought, what can be known, what is acceptable.

Discourses, in Foucault's philosophy, are shaped by power relations. Discourse and power are two aspects of the same schemata. In the example above, power relations exist between the church(s) and their members, between the priests and parishioners, between secular political and military power and that of the church, and it is a two-way influence. The priest only has power as long as the parishioners permit it, and many a politician has been ousted by dissatisfied voters and revolutionaries. Secular government and military authority co-exist in often uneasy alliances, with, in a seemingly increasing number of cases internationally, the paramilitaries (revolutionaries or terrorists, depending on one's point of view) adding a third, fourth, and fifth authority, while the churches maintain an equally uneasy series of partnerships with them.

The everyday influence of such power relations is discourse, a mostly invisible, out-of-awareness script operating through language, knowledge, and social practices, shaping our understanding of ourselves and the world around us. The institutions, disciplinary practices, and social norms we take for granted are expressions of both power relations and discourse. Neither power relations nor discourse are fixed or

homogeneous. They can be contradictory and multiple. Finally, we must accept that one cannot be outside of power (Foucault, 1978). Similarly, we cannot examine discourse except from within discourse. We might mention here, anticipating questions about clinical or rehabilitative work, that if one asks, how can we change the discourse that determines us as individuals, the question itself is determined by the discourse on individualism that determines us.

Discourse and the self

In her memoire, Kim Chernin (1995) writes:

> the sequence of provisional selves through which we pass in the course of our lives, each lived for its season then sloughed off, leaving behind fossil traces (memory), but no immediate, felt sense of the living being who once occupied one's life… This sense of fragmentation, this discontinuity, may or may not be a condition peculiar to me. (p. 10)

Examining a past in which we were never, or are no longer, involved, is difficult, because we can only do so from within a discourse affecting us in the present. One can perhaps get an idea of how discourse operates, however, by asking certain questions about one's own past, as Chernin was doing. For instance, if we focus on a decision we made 10 years ago, or, depending on one's age, 20, 30, or 40 years ago, a decision that at the time seemed reasoned and adult, we may today wish we had done it differently, made a different decision. We might be able to identify social forces, fashions, ways of thinking, particular people and institutions whose ideas or relationships with ourselves account for the decision. It can then be asked what were the influences, the powers, or power relations that created those social forces, fashions, ways of thinking and relationships, and which influenced the way the subjects in those relationships thought and felt. In the language of this paper, we might get a glimpse of the operation of discourse in the creation of those power relations, social forces and fashions, and the way we have been subjectified by it, the way we become subjects.

In other words, we can consider the sense of self, to use a formulation proposed by Stern (1985), as a *sense* rather than imagining the self as a reified object, if not entirely a consequence of discourse, as being significantly influenced by it. Veyne (2010) puts it quite definitively:

> Whatever a person's social or individual motives and motivations that, as we say, 'push' him or her, that person has to be free to allow himself/herself to be thus 'pushed' to create something new, instead of remaining trapped inside his/her discursive fishbowl… far from being sovereign, a free subject is constituted in a process that Foucault dubbed 'subjectivization': a subject is not 'natural'; in each age he is modelled by the 'discourses' and set-up of the day, by the reactions of his individual liberty and by whatever 'aestheticizations' he may undergo. (pp. 141–148)

Foucault (1984/1994) himself is considerably more cautious, suggesting that while we can work on ourselves as 'free beings', the possibilities are 'limited and determined' (p. 54), because there is no *outside* to subjectifying power relations. In saying that we can work on ourselves in a manner reminiscent of freedom or individual agency, Foucault is clear that we cannot know the extent to which what we are doing is already determined. Some, like Sapolsky (2023) would go further, suggesting that we should consider everything we do, think, or feel as determined. The argument in this paper does not go quite so far, but Sapolsky's view is useful, it can keep us humble, keep us wondering, what if …?

In answer to Chernin, then, we can fairly confidently respond, no, the sense of fragmentation and discontinuity is not peculiar to her, or to anyone. We could even argue that a sense of coherence and continuity, perhaps experienced or claimed by some, is as much a consequence of discourse as its opposite. Memory, we know, and as Chernin intimates, is a fragile thing, an unreliable archive at best (Genova, 2021) and deeply indebted to discourse. The question that arises, then, is, to what extent is the way we are, our sense of self, our range of feeling, the way we think – things we feel to be deeply personal, perhaps even original – to what extent is all this a creation of discourse? The ways we have understood ourselves and the world throughout our lifespan to date provides one lens through which we can observe and speculate.

The way we see ourselves over historical eras is another. There is good reason to consider, for instance, that the centrality we give to our phenomenology, our inner experience of ourselves, others, and the world, though foreshadowed by a small and largely ignored cadre of psychoanalysts and by philosophers such as Husserl, Heidegger, and Habermas, was not much in our awareness until about 1960. Prior to that, few people considered the inner world to have any importance at all until Bowlby (Kahr, 2015). The notion of childhood as it is widely understood today as extending at least until the teen years, and a picture of the family as responsible for the emerging nature of children is arguably just as recent (Ariès, 1960/1962). Foucault's (1966/1989) *The Order of Things* describes how each historical era is governed by what he called an *épistémè*, a concept overlapping with discourse, a set of conditions that define what is considered knowledge and truth, so that what is true in one era is not necessarily true in others. We tend to think of a kind of historicity of progress, such that truth advances from one era to another, but Foucault cautioned against this idea, suggesting that change is discontinuous and somewhat random, so what we think of as truth today is different, but not necessarily more correct, than what was truth in previous eras.

Looking at our own experience, then, and also taking a long historical perspective, we can see that our experience, our sense of what is, our definition of what is true, is defined, wholly or in part to a much greater extent than our neoliberal sense of individual autonomy (Harvey, 2005; P. Kelly, 2013) would predict. As Veyne (2010)

puts it, "'Discourse" cannot be sidestepped, even if we are particularly fortunate, we cannot perceive the true truth or even a future truth, or what purports to be one' (p. 40).

Criminality, prison, and discourse

Two observations underpin this paper. They are not exactly the starting point because this body of work with criminality began before these two events occurred (Manning, 1995, 1997), but they seem like the departure point for the current Foucauldian approach, so we briefly describe them here.

A psychotherapist was talking with a man in prison. They had been working together for almost a year, and both psychotherapist and inmate looked forward to the visits. On the occasion in question, the man was dressed in the regulation uniform for the Visits facility, a one-piece bright orange heavy cotton garment fastened at the rear of the neck by a plastic tie that could only be removed by the cutter kept in the officers' station across the hall. They were in a glass-walled room with a camera in the ceiling, observed by the officers, visitors, and other prisoners as they passed. After a moment's silence, the inmate said to the psychotherapist, 'There is something you do not understand. There are two worlds out there, and in mine, I'm normal.'

The second event took place shortly afterwards, on another visit. A man who was scheduled for a visit from the psychotherapist could not be found. He was not on the muster (the list of resident prisoners). This was not a frequent event, but also not unusual. Prisoners were, and are, are transferred between facilities for a number of reasons – available programmes, space, discipline – at short notice, for security reasons. An officer indicated a number of orange-clad men sitting in the visits area just down the hall from the allocated glass-walled room, and said, 'It's OK, look, they are all the same. Just pick another one, any one.'

The clumsy attempt at humour notwithstanding, from that point on, two things came into focus; there was a *sameness* among the inmates, and they were in some way, common to all or most, *different from us*, from the world of officers and professional visitors. There was a way of walking, a way of holding the body, a set of gestures using the head, a way of looking, a tone of voice, a series of rapid, jerky salutes using the hands and arms, involving at times signals indicating allegiance to a particular gang. These phenomena and their effects are described at greater length elsewhere (Manning et al., 2024; Manning & Nicholls, 2020; Manning et al., 2025), so we will not elaborate further on the details, save to say that the impression, confirmed by many conversations, is one of rebellious pride, of functional roles, of, borrowing a term from Judith Butler (1990), *performativity*, a statement of identity, a *criminal subjectivity* defined and created by its own discourse. There is an important distinction in this. It is not that the men *perform* a certain subjectivity. It is not some kind of act. The discourse precedes them, and the subjectivity *performs them*. These men, arguably existing on the lowest tier of

socioeconomic status, having lost their basic freedoms, many of them having lost much more, have adopted a stance toward their experience that is functional. These are men who have nothing, yet, because of a set of behaviours, mannerisms, ways of talking, gestures that are practised every day, have achieved friendships, many of which will last a lifetime, they have a society which welcomes them, they have a career of sorts, and they have mentors who will help them perform it better. If they were ever afraid of retribution, of punishment, they have lost that fear, so that it will be easier to return to prison than it was to go there the first time, just one reason why prison does not function well as a deterrent. The chances of return are high. For first offenders, 30% will be re-imprisoned within four years of release; after that the figure rises to 60%, and keeps on rising the longer the follow-up period (Nadesu, 2008, 2009).

In order to understand these phenomena on such a large scale, we need another Foucauldian concept. The *dispositif*, often translated, as in the title of a recent essay by Agamben (2023) and in a translation of a 1977 interview with Foucault (1980), as *apparatus*, is the way things are organised – an assemblage of discourses, ideas, institutions, and customs including 'the said as well as the unsaid,' (p. 194), which is responsible for what he calls a 'strategic elaboration' (p. 195) which can have unexpected consequences. Although an assemblage like the prison can be consciously designed for a specific purpose, the emergent *dispositif* has a completely different strategy. Foucault (1980) suggested that the prison is designed as 'the most efficient and rational method that could be applied to the phenomenon of criminality', which may be how many, or most, subjects in society think about it, but, as Foucault adds, it results in 'the constitution of a delinquent milieu' (pp. 195–196). That prisons create, rather than reduce, crime, has been suggested by others (Newbold, 2000, 2007, 2008; Reiman & Leighton, 2020), and the statistics on recidivism lend support to that conclusion (Manning & Nicholls, 2020; and below).

So here, in the prison, we have a very clear picture of lives driven by discourse – in this case the discourse about imprisonment and criminality *from the inside* – from the perspective of the *subject*, a term we use for an individual to suggest that we are the creation of *discourse* and *dispositif* – as opposed to the discourse about imprisonment and criminality among people who support tough-on-crime policies (for instance, Hanly, 2025), in which imprisonment is thought to be useful as punishment, rehabilitation, and/or deterrence.

As intimated above, there is good reason to believe that prisons do not deter. They do not rehabilitate, they do not serve victims (Courtney & Pelletier, 2016), they do not reduce crime and they are expensive (Gluckman, 2018). Aotearoa New Zealand has a high rate of imprisonment, and we seem to have a liking for locking up Māori, the poor, the dyslexic, the mentally unwell, the abused, the traumatised, and the neglected (Gluckman, 2011, 2018; Lambie, 2018a, 2018b, 2020). In Aotearoa New Zealand about

52% of prisoners, and a scandalous 69% of women prisoners (Johnston, 2020) are Māori, compared to 16–18% of the population.

The overall *dispositif* surrounding prisons produces conflicting discourses. One operates to drive the sentencing, particularly of young men and more particularly young Māori men, to prison, in the name of the victim and the public approval that accompanies such sentencing. Another operates in prison to turn those young men from troublesome boys into gang members and repeat offenders (Manning et al., 2024). The transition of Māori through educational institutions, through a child welfare system which has always disproportionately removed Indigenous children from their families, placed them in abusive institutions, and subsequently sent them to prison, has been convincingly and horrifyingly documented (Gluckman, 2011, 2018; Little, 2023). The persistence of such an illogical and ineffectual system can only be explained by a racist discourse so deeply embedded in the apparatus of government that it can be denied over the entire colonial history of Aotearoa New Zealand. Such is the power, and, in this case, the malignancy, of discourse.

It is important to note that, although in the latter example it underpins an oppressive apparatus, there is nothing inherently positive or negative about discourse. Racist discourse that creates the *pipeline* (Gluckman, 2018) known as *care to cages* (People Against Prisons Aotearoa, 2024) is clearly oppressive, but in prison, the transition from misfit to criminal is a move from powerlessness to identity, to a sense of place, a status among peers. Perhaps at this point it is clear why the idea of discourse seems apt to describe the lives of prisoners, and why it illuminates our observations about them. The rest of this chapter will explore the extent to which transactional analysis theory can incorporate this kind of thinking.

Discourse and TA

Tempting though it is to review transactional analysis theory in the light of discourse theory, the task would be enormous, and probably not very functional, so we will confine the discussion here mainly to two foundational concepts: ego state theory and the idea of contractual treatment.

Ego state theory

There is no difficulty in identifying discourse with the Parent ego state. Drego's (1983) *Cultural Parent* makes this clear, even extending the notion to second order structure, with internalised Parent in the Parent equivalent to cultural values, the Adult in the Parent to cultural technologies or practices, and the introjected Child to culturally supported patterns of emotional expression. (The idea that felt emotions, rather than being somehow universal or natural, are a product of culture is supported in literature on affective economies [Ahmed, 2014] and, with a particular eye on the carceral, affective arrangements [Wüschner, 2017].) Discourse, which prescribes values,

technologies, and means of expression that are permitted and not permitted, adds depth to Drego's model, extending the idea of the Parent beyond defining it as introjected aspects of an actual person.

The Child ego state(s) similarly can be seen, not only as the remnants of the child's responses to the world, but as responses within the limits prescribed by discourse. We might need to set aside the Natural Child, described as an archaic ego state which is free from Parental influence (Berne, 1961), as it implies that there is a 'natural' way to be a child, an idea that is questioned by discourse theory and by literature on affect (Barrett, 2017; Emre, 2021; Leerkes et al., 2020). The functional Adapted Child becomes, then, the only possible model for a Child ego state.

Concerning the Adult, in his first book on transactional analysis, Berne (1961) writes, perhaps cautiously: 'Typically, there was one ego state characterized by reasonably adequate reality-testing and rational reckoning (secondary process), and another distinguished by autistic thinking and archaic fears and expectations (primary process)' (p. 28).

Subjectification by discourse, as described above in the prison example, is essentially a functional process. Criminal subjectivity works, it is functional in the sense of being a useful adaptation, in a similar sense to the way transactional analysis theory speaks of personality adaptations (Joines & Stewart, 2002; Ware, 1983). Even though we might recoil at the idea that criminality can be functional, we must see it as neither good nor bad, but simply adaptive, given a certain context. The prison is a signifier for this context, referred to by Foucault (1975/1995) as the *carceral* – the network of mechanisms that operate as surveillance, that serve to discipline, categorise, and correct, encompassing operations in schools, workplaces, services, at the table and the club, and in the workplace, which prescribe acceptable behaviour, thoughts, and feelings, and exclude that which deviates from a norm. The prison, which has a real presence in its concrete and razor wire, serves as a symbol for the carceral, a threat of what can happen if one deviates.

Foucault was influenced in this by his mentor, Georges Canguilhem (1966/1991), who, beginning with physiology, discussed the establishment of norms and normative practices, the processes by which we learn and decide what is normal, what is acceptable, and therefore what is *not* acceptable. 'Every preference for a possible order is accompanied, most often implicitly, by the aversion for the opposite possible order' (p. 240) suggests Canguilhem. A few lines later he adds that there can be an inversion, 'as the ethical norm, where sincerity prevails over duplicity, can be inverted into a norm where duplicity prevails over sincerity' (p. 240). Thus, the norm changes radically, depending on the point of view. Those who, for whatever reason, cannot or will not inhabit what we might call the mainstream normative world can discover that rejection of it might seem a reasonable alternative, and the most available kind of rejection in the

surrounding world of discourse will be the most obvious choice. From the prisoner's perspective in the carceral, the most available discourse is a normative criminality. Borrowing again from Butler, the discourse will perform the prisoner, producing that sameness among prisoners mentioned earlier, and since it is functional, it forms a kind of *intoxicating performativity* (Manning & Nicholls, 2020).

The carceral not only reinforces society's prevailing normative practices, but, for those on the receiving end of its discipline, especially those who are imprisoned, there is an alternative, Canguilhem's inversion, a criminal subjectivity which rejects society's norms and enthusiastically embraces their opposite. As Foucault (1975/1995) observes, 'Delinquency is the vengeance of the prison on justice' (p. 255).

A criminal subjectivity provides a way of being, a sense of self, an Adult ego state, to people who are regarded as an inconvenient problem which needs to be locked away for a while. One source writing from a United States prison uses the metaphor of 'warehousing' people (Case, 2019), suggesting that prison is really not much more purposeful. This is supported in criminological literature, where claims of intent and design behind it are critiqued (Newbold, 2007, 2008, 2016; Reiman & Leighton, 2020). Adopting an identity as a criminal changes a man's status, resulting in a self-esteem hitherto unavailable. Accepting its functional nature, then, we must accept that it satisfies Berne's (1961) observation of an Adult ego state, characterised by 'reasonably adequate reality testing' (p. 28). It is a challenge to accepted theory to do so, since Adult functioning is implicitly (that is to say, within discourse) conformist, a function that assists the subject to fit in with societal norms. Even rebellion from an Adult perspective is driven by societal expectations of the rebel.

If we step sideways and look for evidence from other versions of the self, there are several immediately available from philosophy and neuroscience, and from combinations of the two. Damasio (2011) and Graziano (2010, 2013) provide a neuroscientist's picture of how an image of the self is constructed by the human brain. We create an image of ourselves from neural maps of the body in escalating order of complexity, starting with physiological homeostatic mechanisms and then making maps of maps of maps until consciousness is achieved (Damasio), and we construct images of the self in the same way, and with the same neural machinery, as we create images of others (Graziano). Edelman and Tononi (2000) present a convincing argument suggesting that images of the self – consciousness – arise as a quality of complexity and connectivity. In a beautifully poetic illustrated work describing how Galileo is given a tour of the brain and its functions by a guide named Frick (presumably a reference to the Nobel Prize winning Francis Crick, who concerned himself with consciousness in his later years [Koch, 2012]), Tononi (2012) explores the same mystery in fiction.

All of these illustrate cleverly how our subjectivity emerges, and all of them, with varying nuances, describe an illusion, a picture, and like all other pictures, it is something

made up, something imagined. The twin ideas of authenticity and autonomy do not have much traction in this landscape. The self is a construction. From a more philosophical perspective, Metzinger's (2009) *Ego Tunnel* is a construction of the self that imagines events as actions, creating a mythical attribution of self. Sampson's *Assemblage Brain* (Sampson, 2017) attributes cognition to a construction arising from a co-operative assemblage of brain, body, technology, and relationship. These elegant models have one thing in common – the self is something constructed, made up from available material. It is not a given, it changes, and it makes meaning of things and of itself out of whatever material comes to hand. These models are far more aligned with discourse theory than with the individualistic theories of autonomy and agency which underpin much psychotherapeutic theory, and which cause some psychotherapists to reject postmodern ideas (Frie, 2003).

Because subjectivity does not assume individual autonomy or agency, this broad theoretical agreement from philosophy and neuroscience might be considered antipathetic to transactional analysis, with the latter's emphasis on individuation. In these models, we see that the subject could not have acted otherwise. Were we to adopt a much older metaphor, that of Plato's cave – in which we are like people imprisoned in a cave, compelled to face the rear wall, where we see only shadows of the world outside – the absence of personal agency would not seem strange. A modern version of the metaphor is given by Metzinger (2009):

> If we take our own phenomenology seriously, we clearly experience ourselves as beings that can initiate new causal chains out of the blue… The unsettling point about modern philosophy of mind and the cognitive neuroscience of will… is that a final theory may contradict the way we have been subjectively experiencing ourselves for millennia… There will be a conflict between the biological reality tunnel in our heads and the neuroscientific image of humankind. (p. 127)

It is startling to consider such a worldview, but, as Metzinger (2009) continues: 'If one takes the scientific worldview seriously, no such things as goals exist, and there is nobody who selects or specifies an action' (p. 130).

There are, of course, critics of this view. Sampson (2017), in his *Assemblage Brain*, argues for cognition as a consequence of an interaction between internal and external, which avoids the criticism of Plato's cave-like models such as Metzinger's. As Sampson (2017) puts it:

> This is seeing with eyes closed, without windows. It is an outside imagined as a phantom representation, separated from the body, the other, and the environment… The projections of the world on the walls of the cave are a relation to interiority. Unlike assemblages, they have no *relation to exteriority*. (p. 165)

Both Metzinger and Sampson, despite their differences, present models that are congruent with discourse theory. That Sampson sees more relationship between the internal world and an exterior, by including relationships and technologies as determinants, does not mean he is suggesting anything like autonomy. If anything, his model is all the more congruent with Foucault because the exterior world of discourse is explicitly part of the assemblage of consciousness.

Later in his 1961 text, Berne sets in motion the identification of Adult functioning with autonomy, though his formulation is still careful: 'The Adult ego state is characterized by an autonomous set of feelings, attitudes, and behavior patterns which are adapted to the current reality.' (Berne, 1961, p. 82).

Here we can detect an ambivalence in TA theory. 'Reasonably adequate reality testing' (Berne, 1961, p. 28) is not the same as autonomy as defined in this quotation. In Steiner's model of the script matrix, which extends ego state theory in the service of understanding the origins of script, all three ego states (or groups of ego states, depending on one's theoretical preference) are programmed, and the influence from parents which forms the Adult in the child is actually called the 'program' (Steiner, 1966, 1974/1995). In Berne's (1961) second order structure of the Adult, Ethos and Pathos suggest programming of Adult functioning by Parent and Child, with Logos between them surviving as a kind of logical functioning, a core of the self that might be capable of autonomous functioning.

The contract

The contract is arguably the defining concept in transactional analysis philosophy. In a carefully crafted article situating TA among the phenomenologist philosophies of Husserl, Heidegger, Binswanger, and May, Rotondo (2020) reminds us that it is a requirement of the ethical code of the European Association for Transactional Analysis, yet there are differences of opinion about whether it is necessary for change in therapy. For Berne, contracting expressed the bilateral nature of therapeutic dialogue, a subject–subject relationship, as opposed to the Cartesian subject–object paradigm typical of psychoanalysis as practised at the time Berne was writing. Rotondo suggests that it was his inclusion of the patient in clinical discussions – for instance, the staff–patient conferences he initiated on a psychiatric ward – that alienated him from his psychoanalytic community.

There was a secondary price paid in many popular writings following Berne, in which the process of contracting was oversimplified, and in Rotondo's description, 'impoverished'. The deeper philosophical meaning of the two-person dialogue may have been lost for many, becoming formulaic as in the procedural nature of redecision therapy (Goulding & Goulding, 1979) with its 'contact, contract, change, encore' (Hoyt, 1995), where identification of early decisions, redecision, and anchoring are usually accomplished within the same session. Contract became defined as *task*, supported by

literature on task completion (for instance, Gellert & Wilson, 1978), and by Berne's (1972) definition of contract as an expression of an Adult-to-Adult partnership aimed at cure rather than progress. Cure and contract completion became conflated. In the interests of the patient, of clear, goal-directed therapy and simple language that would improve the bilaterality of therapeutic dialogue, contracting became increasingly structured, as in de Saint-Pierre's (2004) four-stage model.

Rotondo (2020) suggests that the appeal of simplified models hid potentially rich dialogues and differences within the method. One of the authors of redecision therapy, Mary Goulding (1995), revealed in a guest editorial, three years after her husband Bob's death, that she would argue over the universal necessity for contracting and anchoring.

Some writers have argued against the use of the contract as a measure of cure (for instance, Drye, 1980), suggesting that un-contracted outcomes such as an improved ability to deal with conflict, to be capable of loving and developing mature relationships with others, to have a 'firm sense of self' (p. 124), the development of self-awareness, and personality change are likely outcomes of therapy.

Two issues arise when TA-style contracting is considered alongside discourse. First, there is the practical matter of the therapist's discourse-driven inclination. The very notion of bilateral contractual treatment (Berne, 1966/1994) is driven by a certain discourse that is apparent in widespread changes in the way we thought about ourselves dating roughly from the end of the Second World War. Phenomenology and psychoanalysis had been around for about half a century, the former in narrow academic philosophical circles, the latter among a small group of men and women, both largely ignored or ridiculed by the wider society. By 15 years after the end of the war, perhaps as a spontaneous interest in ourselves following years of deprivation and discipline, the inner world had become interesting, not just among a few professionals, but in society at large. During the 1960s, people en masse enrolled in encounter groups, experiential psychological training, feminist consciousness raising groups, and what became known as humanistic therapies. We were not just openly interested in ourselves, in a way previously thought to be self-indulgent, we wanted a say in how this exploration was carried out. The notion of contracting was Berne's unique and brilliant way of combining this inward movement with phenomenology. We could not see at the time that a discourse on the self was driving this movement, but hindsight, as always, is clearer.

Discourse about psychotherapy had continued to shift with the emergence of self psychology, relational psychoanalysis, and attachment theory. Lamenting the decline of contractual regressive therapy, Jonathan and Laurie Weiss (1998) point to: (1) a backlash in the media; (2) conservative trends in acceptable practice, particularly concerning touch; and (3) managed care funding (relating to health insurance in the USA). Discourse theory would suggest that a widespread change in the ideas, beliefs, and

practices that determine our social reality, neither better nor worse than the ideas, beliefs, and practices that gave regressive therapy such energy, are responsible for the change. Changes in funding strategies and media caution regarding touch are influenced by the same shift in how we define reality that caused us to move away from regressive therapy. The one did not cause the other; they are all parts of a change in discourse. In psychotherapy, for example, a fundamental idea behind regressive therapies was that early scenes can be located in which decisions, made in childhood, drive script in adulthood. Today we are much more likely to look for attachment strategies and complex patterns of trauma that result in adult patterns of inner experience and relationship.

The beliefs that drive the therapist's ideas of what works, what is good for people, and therefore the kind of contract that is acceptable, is profoundly influenced by current discourse in psychotherapy in general and in TA in particular. That is the first difficulty with contracting seen from the perspective of discourse.

The second issue with contracting is specific to the particular context being considered here, the prison, or, more broadly, what Foucault (1975/1995) calls the *carceral archipelago*, the physical and psychological assemblage which culminates in and sustains the prison, that is, the system of ideas, professions, institutions, and buildings necessary to create the idea of the prison in society at large. Its methods include surveillance, examination, categorisation, and correction. It includes policing, the criminal courts, the idea of delinquency, of corrections, of punitive consequences as retribution, as well as the physical prison itself.

Within this carceral, the therapist exists not as an independent, autonomous professional, but as a flesh-and-blood expression of an idea of criminality as a kind of disorder, an idea and a subject who is her/himself as much a part of the carceral as the walls and razor wire. Since the purpose of the carceral is to produce, in Foucault's (1975/1995) words, *docile bodies*, the therapist is unwittingly enlisted in working toward this end. Despite the therapist's protests of independence, it is virtually impossible that they should not wish to contract with the subject to *stop offending*. One might argue that every code of ethics applying to therapists insists upon it, but clearly it would be pointless. The odds are that every prisoner we might meet has had conversations with dozens of people, many of them professionals – teachers, social workers, psychologists, judges, corrections staff – trying to persuade them to stop offending. There is no reason to suppose that the psychotherapist's contracting strategy would be more effective.

If, however, we return to the original meaning of contractual therapy as formulated by Rotondo, starting with the idea of bilateral dialogue, or a subject–subject conversation, the idea of a contract can be a philosophical position from which to start a conversation. This position is stated well by Berne, and cited early in Rotondo's article:

> Since contractual treatment is bilateral rather than unilateral, the next step is for the therapist to say something like: 'Well, why don't you come a few times and that will give you a chance to look me over and you can see what I have to offer'. (Berne, 1966/1994, p. 88)

In the same work, Berne introduced the idea of the Martian attitude, a position from which pre-existing ideas are set aside. While in a literal sense, following Foucault, this is not a possibility, since one cannot operate outside of power relations or outside of discourse it is a useful metaphor for careful listening.

What if this becomes a position from which to conduct therapeutic conversations, not just a starting point? What if we decide that a contractual conversation is defined by bilaterality, which can be merely an agreement to meet and talk, perhaps to listen to each other, rather than by an 'explicit bilateral commitment to a well-defined course of action' (Berne, 1966/1994, p. 362), a definition that appears in a glossary, and is not, as Tudor (2025) points out, discussed in the text? In his provocative, and perhaps somewhat tongue-in-cheek 1971 article, Berne wrote:

> So a real psychotherapist's problem is: What do I do when I'm in a room with a person who is called a patient if I am called the therapist? Absolutely no gadgets – no note papers, no tape recorders, no music, nothing. That's how you learn to do psychotherapy. (Berne, 1971, cited in Rotondo, 2020, p. 13)

How to proceed

In the above examples, Berne seems to explore various positions. If he is taken as doing this, adopting a philosophically bilateral stance rather than as preaching a doctrine of explicit agreement, the idea of bilaterality becomes congruent with discourse theory. If we regard later, more prescriptive writings as appropriate only in their specific time and place, and not for every time or situation, and as Tudor (2025) teases out in the case of contracts, as contextual, contestable, and restrictive, it is relatively easy to find commonality between Foucault and TA. Other metaphors not explored here, but certainly including Moiso's (1985) transference diagrams and O'Reilly-Knapp and Erskine's (2010) script system, can contribute and perhaps benefit from partnering with discourse theory. All that is necessary is to substitute *discourse* for *script* and to see ego states as their individual expressions. These are useful and aesthetically attractive metaphors. What I am advocating is just adding another layer of thought. We know just how stubborn script can be. This is what one would expect if we allow the possibility that personal script is the creation, not of early decisions, but of discourse, arising outside the subject.

Though Foucault was not writing about psychotherapy, there have been many psychotherapeutic applications of his work, particularly in the field of narrative, which

is advanced as an antidote to psychotherapy's structuralist pretentions (Besley, 2002; Epston & White, 1990). These ideas have their critics – that the change emerging is often in a predictable direction, that of neoliberal-style autonomy (Kurz, 2009) or feminism (Law, 1999). Foucault, especially his later work on the self, is misunderstood in such therapies as implying the freedom of the individual to shape their own narrative (Luepnitz, 1992). The exploration of 'discursive regimens' (Kaye, 1999) gives a privileged position to the therapist, on whose ability discourse analysis depends (Manning et al., 2025), with the difficulties mentioned above in discussing the therapist's inclinations in contracting.

Transactional analysis emerged as an expression of neoliberalism, a view of the self as self-created, as decisional. But truth changes – Foucault referred to the past as 'a cemetery of truths' (Veyne, 2010, p. 59). So, while there is much to gain from incorporating discourse theory, there is a sacrifice to be accepted. Relational (Hargaden & Sills, 2002) and co-creative (Summers & Tudor, 2000) models allow for cognition, patterns of feeling (both in intensity and content), and repeated behavioural and experiential sequences and their consequences as created in dialogue. Both, however, rest on an assumption, or seek to create, an autonomous or dialogic, relational self. Meantime, the literature that critiques the notion of free will (Sapolsky, 2023), which broadly supports deterministic discourse theory rather than the hypotheses of an autonomous or relational self, is set aside rather than incorporated.

From this perspective, when a man (or anyone, though I am here concerned with men) is talking in therapy, we are not listening to his words, or his experience; they are taken from the cultural discourse(s) in which he participates. Of course, what he is describing may have happened to him, at least in some form, that is not in question, but the way he describes it, the words he uses, the kind and degree of emotion accompanying the spoken language, are all governed by influences of which he is unlikely to be aware. As Kaye (1999) puts it, therapy 'privileges an exploration of the discursive regimes by which people are positioned' (p. 29).

Personal change is of course possible, but is not either predictable or entirely within our control. In the last year of his life, Foucault (1984/1994) writes:

> It is true that we have to give up hope of ever acceding to a point of view that could give us complete access to any complete and definitive knowledge [*connaissance*] of what may constitute our historical limits. And, from this point of view, *the theoretical and practical experience we have of our limits, and of the possibility of moving beyond them, is always limited and determined*; thus, we are always in the position of beginning again. (p. 54, emphasis added)

In this view we can work on ourselves, in a manner reminiscent of freedom, or individual agency, but we cannot know the extent to which what we are doing is determined. We can know that we are capable of something, but not of what we are

capable. There is, in an earlier work, a hint of how personal change takes place, not by changing the self, but by putting pressure on discourse by talking.

> Is it not a historicity proper to man… that enables him to exercise upon language, with every word he speaks, a sort of constant interior pressure which makes it shift imperceptibly upon itself at any given moment in time… he not only 'has history' all around him, but is himself, in his own historicity, that by means of which a history of human life… [is given its] form. (Foucault, 1966/1989, p. 403)

Change takes place in the context of certain kinds of conversations, including those we normally think of as psychotherapy, but perhaps not as we are taught. If discourse is identified with language (M. G. Kelly, 2020), then when we enter into dialogue, there will be pressure toward small shifts in the discourse. The dialogue must therefore involve two voices, though there may be more, and group discussion may in some ways be more effective in the business of shifting discourse, as the culture of the group becomes the vehicle by which discourse goes about the business of subjectification In studies of how group psychotherapy works (for example, Yalom & Leszcz, 2020), change appears to be effected, as in individual therapy (Miller & Moyers, 2021) by processes and characteristics rather than by actions or theoretical approaches. It is always important, though, when discussing discourse and how it might change, to be aware that we can only effect such change from within discourse. This is a long way from a neoliberal idea of freedom. We can never quite know what effect we have or in what direction. It is the operation or two voices – the theme of the Conference at which this paper was originally presented – that pushes discourse, not the intention or the action of one voice. Since history is all around us, in everything we do, feel, think, and say, given form by language, its impact can be assumed to produce change. However, the idea that discourse shifts under pressure from language does not imply that we can do it deliberately, anticipating what change *will* occur. We can suggest that change will occur, but not in what direction, or when or with what effect. This may be a difficult concept for psychotherapists, whose theoretical understanding generally tries to predict and deliberately manage change.

We may say, 'I know myself, I know my clients, my friends, the people who surround me, I know that life is decisional, I am in control of my life because I feel it to be so', but this belief is also a consequence of discourse. Our phenomenology, our way of interpreting our own experience is hugely influenced by discourse. Our ideas of justice, imprisonment, crime, and punishment are likewise more a consequence of discourse than of reasoned argument. Metzinger (2009) puts it thus:

> The assumption that something like free agency exists, and the fact that we treat one another as autonomous agents, are concepts fundamental to our legal system and the

> rules governing our societies—rules built on the notions of responsibility, accountability, and guilt… if accountability and responsibility do not really exist, it is meaningless to punish people (as opposed to rehabilitating them) for something they ultimately could not have avoided doing. Retribution would then appear to be a Stone Age concept, something we inherited from animals. (p. 128)

We can look back and wonder at how people thought in the past, how they interpreted their inner worlds. There have been entire populations who experienced emotion as physical, bodily sensations, or who experienced thoughts as the voices of gods. Julian Jaynes' (1982) reflections on the bicameral (two-chambered) mind suggest that up to a certain point, possibly around 600–500 BCE in European history, inner voices were those of the gods, and only then did the notion of human consciousness and inner reflection emerge. There are current societies who find the centrality of individual experience repugnant. Thus, an audience member in a Teaching and Supervising Transactional Analyst Teaching exam pointed out that in Japan, '*They are OK* comes first, then *You are OK*, and only then *I am OK*.' (M. Aonuma, personal communication, November 2024). My experience with Indigenous Māori people is similar. One of the reasons why Māori psychotherapists are not so common – an estimate of about 4% of the membership of the Association of Psychotherapists Aotearoa New Zealand (formerly the New Zealand Association of Psychotherapists [NZAP], 2023), compared with 18% of the total population – may be that a basic assumption of most psychotherapies gives the individual a central role. It is disturbing to imagine that our treasured autonomy is a neoliberal illusion. All that is asked here, without changing anything that you do, is that the reader considers the possibility.

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