

INTRODUCTION TO THE SPECIAL ISSUE: ON THE LAWS OF CAPTIVITY

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RE-VISITING THE CRIME SCENE

The subject of crime begins as a captivity metaphor and as an allegory about ontology or the human condition (Hill, 1980). This metaphor is presented in Plato's *Republic* in the form of a dialogue called "The Allegory of the Cave" (Plato, 381BC/2008; see also Santas, 1980). Among the many issues addressed in this dialogue is the nature of the good. For Plato, knowledge of the good (i.e., justice as constituted in the psyche of citizens and in the concerns of the state) is not sourced in the world of material change (i.e., the visible world; the world of senses). Instead, the good resides within consciousness or the reservoir of the mind (i.e., the invisible world; the world of ideas). Thus, for Plato, the truest and most fundamental of possible realities about the good comes from the ideas (or the ideal forms) of human existence that one can only have knowledge of if freed from the "captivity of shadows" (Arrigo, 2015a, p. 73; Santas, 1980, pp. 374–375).¹ In the allegory, several men are shackled to a wall in the cave. They are only able to know the world beyond the cave through the faint sounds of subjects and the spectral appearances of phenomena cast upon the wall by a nearby fire's light. As such, they (the enslaved men) are

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1. The Platonic passage from which this interpretation is drawn is as follows: "Picture human beings as though they were in an underground cave-like dwelling . . . They are in bonds . . . and they see nothing except the shadows cast by a fire on the wall of the cave . . . They are like us." (Plato, 381BC/2008, n. 3, pp. 514a–515a).

only able to know the good through the “whispers and glimpses” of human relatedness. These are the shadowy exchanges cast upon the cave’s wall by the flame’s brightness. For Plato, these faint and spectral exchanges represent the bondage of the good held clinically captive by (and psychically captivating for) the men in their veritable existences.²

How does the Allegory of the Cave inform and further our understanding about the metaphysics of confinement, the struggle for and about human justice, and the ontology of crime? If the good (i.e., the administration of justice) that is summoned within consciousness takes up residence within the captivity of shadows, then the reach of the good is either forestalled (limited in existence) or foreclosed (denied an existence). The former is a harm of reduction in human relatedness; the latter, a harm of repression in human relatedness. These harms consign relational existence to its predictable and static forms. These forms are the cognitive maps and summary representations into and out of which perception, choice, and action for and about the good are reasoned and grasped. Moreover, if this good that is both limited in existence and denied an existence is then reified (i.e., spoken of, practiced, and lived) and fetishized (reenacted, reproduced and ritualized) such that it (this reduced/repressed good) functions as a prescription for human affairs or an ethic by which to experience the reach of human relatedness, then a condition of recurring harm prevails. This is the harm of shared consciousness as fragmented. This is the mutual fragmentation of being in which the shadows of inter-relating (i.e., Platonic-like whispers and glimpses of humanness) territorialize knowledge, homogenize identity, and vanquish the good. Conversely, when efforts are undertaken to overcome the harm of this mutually fragmented and fragmenting false consciousness, then more and/or other possibilities for and about the awaiting or invisible good can be rendered conceivable, expressible, and inhabitable. Thus, the contested terrain over and through which knowledge about the good is traversed requires that we recognize and resist the captivity-generating shadowy exchanges of human relatedness; otherwise, the engendered pains of imprisonment that follow will be

2. It is worth noting that even when one of the enslaved men is able to escape the cave’s confines and to experience liberating existence (i.e., goodness) beyond captivity, his return to the cave and the news of an awaiting (freeing) world does not change the consciousness of those chained to the cave’s wall. For Plato, these conditions of abject captivity justify the need for the “warrior poet” (i.e., the philosopher king).

totalizing in their iterative power-to-harm. Indeed, when dwelling (i.e., perceiving, choosing, and/or acting) within a society of captives, the recurring harms of communal fragmentation have the power to eventually engulf collective consciousness through socio-cultural forms of relatedness.³ The philosophical exegeses of Hegel, Marx, and Freud reveal the harm-perpetuating cultural forms of existence sustained by inter-relationally fragmented, co-productively false, and mutually totalizing (i.e., de-vitalizing and finalizing) consciousness (Arrigo, 2011).

The power of these cultural forms of iterative existence is that they are violence-generating (e.g., harm-intensifying and injury-producing). These violence-promulgating relations of humanness are the subject of crime, the scene of bondage, the source and product of society's inhabited struggle. This is the crime of dwelling (perceiving, choosing, and acting) within the Platonic cave of bondage in which the shadows of interdependent and shared humanness consign and confine every one of us. This form of harmful and injurious (i.e., criminal) relatedness nurtures the incapacitating ontologies of alienation (Marx), anomie (Durkheim), bad faith (Sartre), insecurity (Laing), neuroticism (Adler), and vertigo (Young). These are the mind-numbing and trauma-inducing criminogenic symptoms of clinical captivity (Karstedt, Loader, & Strang, 2011).⁴ Clinical captivity is a condition in which the shadowy exchanges of human relatedness dominate the reservoir of the mind. This is the bondage of the possible (e.g., the potential

3. Gramsci (1971) describes this condition as the recurrence of "cultural hegemony." The norms of exchange are derived from and based on a dominant ideology, notwithstanding cultural diverse societal groups. These groups (unwittingly) legitimize this governance when they actively participate in and consent to such ideological dominance. Now, consider the problem of correctional treatment and offender therapy. As Polizzi, Draper, and Andersen (2014, p. 24) have noted, for patient and psychologist alike fragmented and false exchanges promulgate the social construction of "fabricated selves" and the ideological reproduction of the "rehabilitative machine" as disciplining/domesticating apparatus.

4. Consistent with this view, Flynn (2014, p. 361) recently noted the following: "A rich tradition of philosophical, social and cultural theory has demonstrated the centrality of emotion to social life, in particular collective feelings of 'estrangement', 'anxiety', 'separation' and 'isolation' engendered by materialistic conditions of capitalism." These conditions of *shared* existence represent a basis for furthering an "emotionally intelligent justice" (Sherman, 2003, pp. 1–2) in civic discourse, public life, and cultural practice, including the setting of crime control policy (e.g., Karstedt et al., 2011). We contend that in order to meaningfully establish purchase with this yet-to-be realized (i.e., invisible) set of policies, the *subject* of crime must first and foremost be revisited (Arrigo, 2015a, 2015b).

reach and depth of the good) held captive by and captivating everyone's everyday existence. This captivity is potentially totalizing in its power-to-harm; sustaining such de-vitalizing and finalizing harm is madness (Arrigo, Bersot, & Sellers, 2011)! If the nature of the good's possibilities are held bound *in* existence (a harm of reduction) and in check *as* an existence (a harm of repression) in ways that reify and fetishize this bondage, then the condition of clinical captivity hegemonically functions in its criminogenic power-to-harm. This is the hegemony of fragmented, false, and unfinished knowledge about the good (in perception, choice, and action) legitimized as the dominant cultural form about and for the totality of the good's existence in consciousness.

PROBLEMATIZING THE LAWS OF CAPTIVITY

We posit that the durability of the metaphorical crime scene as sourced in Plato's Allegory of the Cave has been (and is) evident in official and unofficial representations of culture. The recurring patterns of human relatedness that emerge from this set of official and unofficial cultural representations during any specified historical era are termed "the laws of captivity." The laws of captivity include the forces of existential and/or anthropological bondage produced within and legitimated by a given episteme. These forces are metaphysical in essential composition (Hill, 1980; Santas, 1980). This bondage symbolizes the good's (humanity's) prophetic struggle.⁵ The critique of this metaphysics and its personified struggle reveal the ontology of crime (Arrigo & Williams, 2006; Crewe, 2013; Hardie-Bick & Lippens, 2011; Millie, 2016), including its holographically encoded molecular (as opposed to phenomenal) incarnations (Milovanovic, 2014).

The laws of captivity are co-constituted; that is, they are interdependent, mutually supporting, and co-productive (Giddens, 1985; Henry & Milovanovic, 1994; Hunt, 1993). What is imprisoned is consciousness (the mind's

5. Consider, for example, the postmortem of Empire's nihilism in which the scene of the crime is the "global state of war" (i.e., Agamben's *the state of exception*) that functions as "permanent social relation" (*the condition of exceptionalism*) (Hardt & Negri, 2004, pp. 3–12). These social relations decimate the struggle of creativity and for enlightenment, territorialize the struggle of difference and for unity, foreclose the struggle of freedom and for liberty. The reach of such globalizing bondage represents the multitude's socio-political crisis in an age of Empire (Hardt & Negri, 2001).

jurisprudence) (Lacan, 1977), subjectivity (a people to come) (Deleuze & Guattari, 1987), and bio-power (technologies of the self) (Foucault, 1988). As such, these laws do not consist of the constitutional rights, ethical duties, and/or jurisprudential interests of inmates (the kept) or of correctional (including reentry) personnel (the keepers of the kept). Instead, the laws of captivity refer to a penology experienced through the *presencing* of a history in which this history's physical artefacts⁶ and its existential predicaments⁷ function as socio-cultural clues (as systems of inscribed and corporealized thought) concerning the forensic crime scene (i.e., the human condition imprisoned). As bodies of discursive knowledge, these clues (including their examined histories) begin to chart the existential topography, and they begin to trace the anthropological heritage of captivity's totalizing laws. To be clear, confinement's metaphysics (the forces that fetter consciousness, immobilize subjectivity, and shackle bio-power) revealed in the scene of bondage (the good's prophetic enslavement) co-constitute crime's ontology (the nature of inhumanity and the being of injustice). These debilitating "relations of humanness" (Arrigo, 2015b, p. 8) necessitate an awaiting philosophy. This philosophy would develop a critical approach to prison studies, to mass incarceration, and to the society of captives held bound and in check by these captivity-generating laws of relatedness.⁸

6. These artefacts consist of the apparatuses or mechanisms of confinement that bind and check consciousness, contest and territorialize intra/inter-subjectivity, and reduce/repress bio-power. In the historical present, these artefacts include the technologies of secure housing units (the SHU); mechanical and electronic restraint devices; the use of digital panoptic/synoptic surveillance systems; death row executions administered by lethal injection; and the application of crime analytics for purposes of offender management, treatment, recovery, and reentry profiling. In each instance, relations of humanness are (re)constituted within, between and among the kept and their keepers in harm-generating (de-vitalizing) and injury-producing (finalizing) ways.

7. These predicaments reveal the phenomenology of confinement, including the de-vitalizing and finalizing re-constitutive effects of its dialogical and dialectical assemblages (i.e., intrapersonal, interpersonal, and transpersonal constructions). Examples include the fabricated self-making (e.g., for therapist, incarcerate, correctional worker) of rehabilitation; the absence of relationship in the exceptional space of solitary confinement; zero tolerance educational policy and the school-to-prison pipeline; and mass incarceration as symptomatic of the social body's ontic insecurity. The co-productions and reenactments of these assemblages (re)form *the society of captives*; left unfettered, its ubiquity nurtures society's captivity (see, e.g., Arrigo, 2013).

8. Consider, for example, the insights of critical phenomenology and its emphasis on the interplay of space, temporality, and the body as forming dynamic sites of contestation,

This Special Issue of the *New Criminal Law Review* both interrogates and problematizes the thesis concerning the laws of captivity. Stated differently, this Special Issue revisits and reinterprets the subject of crime (i.e., the Platonic scene of bondage) within various cultural contexts and during distinct historical periods. It is through this reinterpretation of the subject of crime that the relational ontology which underlies all such social “encounters” may be presented and reexamined.

Pavlich, in his article, “Captive Habits of Criminalization,” explores the concept of habit as this relates to 19th century explanations concerning why individuals committed crime. From this context, the construct of habit is employed as a mechanism of social isolation, whose main function is to separate those law-abiding individuals from those ontologically configured as being in some way morally inferior. In “Virtue Jurisprudence and the Case of Zero-Tolerance Discipline in U.S. Public Education Policy: An Ethical and Humanistic Critique of Captivity’s Laws,” Sellers and Arrigo investigate the relationship between virtue jurisprudence and the process of juridical decision-making as witnessed through zero-tolerance policies as often employed in U.S. public schools. The authors examine existing case law from both state and federal jurisdictions, and offer a critique concerning the various ways in which these legal decisions problematically legitimate these harmful strategies of disciplinary control. Swiffen and French, in “Seropolitics and the Criminal Accusation of HIV Non-Disclosure in Canada,” explore the various forms of “legal violence” often contextualized within the framework of public health. By deconstructing the jurisdictional structure of this process, the authors offer a number of legal considerations as they relate to future public health legislation.

In “Identity, Imprisonment, and Narrative Configuration,” Hardie-Bick discusses the pains of imprisonment that are personified through the production of self-narratives. Though the reconstruction of these painful

territoriality, and inter-corporeality (e.g., Guenther, 2013). The constitutive effects of this dynamism reveal how the struggle against oppression and for freedom, the taking and/or claiming of identity, and the project of human relatedness and shared meaning-making are intersubjectively experienced. More specifically, consider the contributions of critical geography. Here, the relationship between space and hierarchy is reconceived as a manifestation of “site-ontology” (Woodward, Jones, & Marston, 2012, p. 204). An important feature of this theory is how “the site might initiate politics that neither presuppose nor undergird individual subject positionalities or mass identitarian categories” (ibid.).

experiences has often been viewed as a way to protect against existential despair, the author also includes in his analysis the potential destructiveness these narratives can and do evoke. In his article, “Depth in 21st-Century Prisons? European Salafi Jihadi Terrorism and Psychoanalysis in the Luciferian Age,” Lippens argues for a re-introduction of psychoanalytically oriented rehabilitative practices within the penitentiary environment. By focusing on the constructs of the Law and of taboo, Lippens asserts that such a conceptual orientation will help to better illuminate the psychological depth this process reveals to offender and practitioner alike. Polizzi and Arrigo, in “Cruel but not Unusual: Solitary Confinement, the 8th Amendment, and Agamben’s State of Exception,” examines the practice of solitary confinement from the perspective of Agamben’s configuration of the state of exception. Included in their discussion is an analysis of the applicable Supreme Court jurisprudence relative to the topic of solitary confinement, along with a critical exploration of the philosophical implications this penal practice legitimizes, given the state of exception these court decisions seem to construct. In “The Prison as Reserve: Governmentality, Phenomenology, and Indigenizing the Prison (Studies),” Struthers Montford and Moore investigate the theoretical omissions to prison studies (e.g., Indigeneity), finding deficient existing accounts that focus on either governmentality or phenomenology. In response, the authors offer a different (and from their vantage point, “critical”) approach by which to understand the political and cultural aspects of this issue. All contributors offer direct and/or indirect commentary on the relevance of captivity’s laws for public policy, human rights, offender treatment, and/or carceral justice.

As co-guest editors of this Special Issue, we invite readers of the *New Criminal Law Review* to consider where, how, and for whom the laws of captivity further the thesis on mass incarceration, the subject of crime, and the critical and humanistic dynamics that reveal their existential predicaments and anthropological supports. We are grateful to the Journal’s editor, Professor Carrie Leonetti, for her generous support and steady counsel in bringing this Special Issue to fruition. We extend our thanks to Ms. Shannon Messer for the organization and management work she undertook to ready the set of articles for journal production. And finally, we are also indebted to our reviewers, but especially Professor Heather Bersot for her invaluable insights on the Issue’s overall thesis.

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