Introduction

But I have been trying to classify all prisoners and that is hardly possible. Real life is infinite in its variety in comparison with even the cleverest abstract generalization and it does not admit of sweeping distinctions. The tendency of real life is always toward greater and greater differentiation. We, too, had a life of our own sort and it was not a mere official existence but a real inner life of its own.

—Fyodor Dostoyevsky, *House of the Dead*¹

In December 2014, Ismaaiyl Brinsley left Baltimore, Maryland, after shooting his girlfriend in her apartment. Arriving in New York City, he approached two police officers sitting in a patrol car in Brooklyn. Apparently angry at recent instances of police violence in Ferguson, Missouri, and New York City, Brinsley produced a handgun and fatally shot officers Wenjian Liu and Rafael Ramos. He then fled into a subway station and shot himself in the head. He was taken to a Brooklyn hospital and pronounced dead. The death of officers Liu and Ramos created a storm of controversy about policing. The head of the police union blamed New York City’s mayor, Bill de Blasio, for inciting the police killing because he had expressed worries about his son and the police. The mayor responded by denying any causal connection between his remarks and the murder. A bitter dispute erupted between Mayor de Blasio and police officers.

These disagreements masked important facts about Ismaaiyl Brinsley. Initially, he seemed like a young man angry at police brutality. However, as journalists investigated his life they discovered a more complex picture. Born in Brooklyn but spending most of his life in Atlanta and Baltimore, Brinsley had a long and troubled history with the criminal justice system. He had been arrested twenty times, sometimes for petty crimes, other times for more violent ones. He failed to complete high school,
had difficulties holding a steady job, and for a while lived a transient existence in different U.S. cities. Brinsley also seemed to suffer from mental illnesses that led to clashes with the police. He was alienated from family members, and came from households where he suffered from violence and sexual abuse. He frequently ranted on social media, revealing a grandiose sense of himself. He also served time in various jails, and had outstanding warrants and parole violations. In sum, he was a troubled person who cycled in and out of penal institutions.

People who paid attention to this disturbing history responded in predictable ways. Those on the political right called for tougher law enforcement and greater restraint of those suffering from mental illness. Progressives and liberals condemned the police shootings, but also decried the broken condition of the U.S. mental health system and called for greater funding for it. All these facile responses ignored deep social problems. In particular, they disregarded the role that jails play in controlling people like Ismaaiyl Brinsley. They often go in and out of jails where they are dehumanized and degraded. They receive little or no help for their mental illness. Most are nonviolent, but some present a danger to themselves and others.

This is a book about U.S. jails that highlights the plight of inmates and considers philosophical questions about human dignity. Annually, millions of Americans have contact with jails. Those arrested for bar fighting, driving while intoxicated or without a license, parole revocations, drug use, domestic violence, and other law violations find themselves in jails. Those who can afford bail quickly exit them, but many wait months for a trial in horrific conditions. How do these experiences affect them? Do jails violate their dignity? How do these institutions deal with those with mental illness? What role does the contemporary jail play in controlling troubled people in the United States? What kind of power do jails exercise in U.S. society? Are they morally legitimate institutions? This book examines these questions primarily from a philosophical perspective that focuses on the dignity of the person.

Jails or Prisons?

In common parlance, people often use the terms “jail” and “prison” interchangeably, but the U.S. penal system distinguishes between them.
A prison is a state or federal institution, and generally houses inmates who have been convicted of a crime. In contrast, local governments usually run jails, and most jail inmates have yet to be tried or sentenced. Others have received short sentences for relatively minor offenses, or are immigrants waiting for deportation hearings. Finally, some jail inmates are convicted, and are waiting to be transported to prison or are state prisoners being housed by the jail. Many Americans experience life in jail, but never find their way into a prison. Despite the powerful presence of jails in U.S. society, however, few scholars have explored life in them (except for sociologists like John Irwin). In fact, it was not until well into the twentieth century that in the United States we knew “the total jail population, annual committals, and even the number of jails” (McConville 1995, 312). Most scholars focus on prisons because in them they find a stable population that is easy to study. Jail populations are transient, with inmates coming and going. Life in a jail, particularly in a big one, can be disorderly and unstable, presenting safety challenges to researchers. Like prisons, jails are often secretive institutions that restrict access to visitors, scholars, and lawyers. For these reasons, we have little knowledge of what really happens in them.

Approaching the Jail

Scholars approach penal institutions in different ways. A few have been inmates or corrections officers, and have combined memoir with social-scientific research. Others have developed surveys they distributed to staff and inmates. Finally, some have performed participant observation, adhering to research methods for interviews while participating in the life of the jail or prison. I am neither a sociologist nor a criminologist, and will therefore offer no original social-scientific research in this book. Instead, I am a professor of religion and philosophy who believes it’s important to engage with social-scientific and historical approaches to punishment. Mass incarceration presents so many challenges that no academic discipline alone can understand all of them. This book is an attempt to encourage an interdisciplinary conversation about the jail.

I also think my experiences add something to discussions of the jail. For more than seven years, I gave volunteer philosophy and religion lectures in a maximum-security prison. I have offered similar lectures
in a county jail for more than three years. I have spent hours teaching inmates, and have had wonderful discussions with them about religious and philosophical topics like evil, anger, and love. I have been a volunteer in the prison chapel, giving me time to talk to staff and inmates. I have also visited various prisons and jails in Wisconsin and overseas. For this book, I was granted access to the Cook County Jail by Sheriff Thomas J. Dart. I spent time in some of the jail’s divisions, and freely talked to both inmates and staff. I have also spoken to advocacy groups in Chicago who work with inmates and who are involved in legal work on jail issues. I recognize the dangers of drawing on personal experience to generalize about jail conditions. However, I have learned a great deal from the inmates I have taught and known. I hope that what I have learned, when linked to research, will provide some insight into life in American jails.

This book differs from other approaches to penology because it focuses primarily on dignity. With good reason, contemporary thinkers often emphasize race, noting the deep racism that pervades our criminal justice system. African Americans are incarcerated at disproportionate levels throughout the United States, often because of policies going back decades. For example, my home state of Wisconsin incarcerates a higher proportion of African Americans than almost any state in the union. Throughout this book, I will highlight how race affects jail life, but will not make it central to my analysis. Other scholars have done this work better than I can, and I want my focus to remain on human dignity.

Additionally, some contemporary scholars explore the inefficiency and wastefulness of our penal system. In jails, we spend an extraordinary amount of money incarcerating hundreds of thousands of people for nonviolent offenses. In prisons, we impose exceptionally long sentences, and our incarceration system wreaks havoc on the lives of young people, their families, and their communities. We find a growing consensus on the U.S. political left and right that we need to back away from a counterproductive and damaging penal system. I endorse this idea entirely, and support it in this book. However, I will not focus particularly on economic issues. Instead, I will highlight the dignity of the person, and how our penal system degrades and damages it.
John Irwin and the Jail

To buttress my philosophical attention to dignity, I develop an argument that appeared in the work of the sociologist John Irwin. A self-styled “convict-sociologist,” Irwin served prison time in California in the 1950s before earning a doctorate in sociology under Erving Goffman. He devoted a career to exploring jails, prisons, and the experiences of inmates. In his seminal book, *The Jail: Managing the Underclass in American Society* (originally published in 1985), Irwin defended the “rabble hypothesis” (Irwin 1985/2013). He maintained that the official purpose of the jail clashes with its basic purpose. Officially, the jail exists to hold dangerous people for trial or people who may pose a flight risk and never appear for trial. The basic purpose of the jail, Irwin maintained, is to control portions of the population that society deems unpleasant, undesirable, threatening, or different. These people, Irwin called, using an awkward phrase, “the rabble.”

I don’t endorse all Irwin’s ideas, but in this book, I maintain that he was right in focusing on the jail’s different purposes. Although jails “serve their historical purpose of detaining those awaiting trial or sentencing those who are either a danger to public safety or a flight risk, they have come to hold many who are neither. Underlying the behavior that lands someone in jail, there is often a history of substance abuse, mental illness, poverty, failure in school, and victimization” (Vera Institute 2015, 5). Jails hold hundreds of thousands of people who pose no danger to society, but cannot afford to pay the bail necessary for release. The collapse of our mental health care system has led to hundreds of thousands of people with mental illness cycling in and out of jail. For these reasons, I still find Irwin’s “rabble hypothesis” illuminating. Rather than using the word “rabble,” I employ the term “marginalized” to refer to those whom the jail targets. I use it in a moral and nonmoral sense to include a variety of people. It can refer to those who commit terrible crimes and evil acts that endanger others. Or it can denote those whom a community finds (with or without good reason) problematic, different, risky, or annoying.7

The contemporary jail targets marginalized people on a scale that was unimaginable when Irwin wrote his book. Since his day, we have become far more sophisticated in identifying people we think might commit a
crime, and holding them in jail before trial. Thinkers like Jonathan Simon, Bernard Harcourt, and Issa Kohler-Hausmann have discussed techniques in criminal justice that aim at controlling large numbers of people and minimizing risk. The population of U.S. jails has skyrocketed in the past three decades. From 1983 to 2013, it grew from 6 to 11.7 million annual admissions (Vera Institute 2015, 7). The U.S. inaugurated a “war on drugs” that populated jails with drugs users and dealers. It enacted domestic violence and other legislation that mandated that jails handle a variety of crimes. Finally, in the 1960s and 1970s the United States closed many of its mental institutions, but failed to provide adequate mental health care for many citizens. Today, we have over three thousand jails operating in the United States that hold over seven hundred thousand people in them on any given day. Annually, there are close to twelve million jail admissions. Although subject to federal oversight, jails are surprisingly decentralized, and depending on their location, citizens can find themselves under the power of either autocratic or benevolent officials. Today’s jails do incapacitate dangerous people and hold alleged offenders for trial. However, they also brutally control the lives of hundreds of thousands of people who are too poor or mentally ill to escape the jail’s domination.

Demonizing the Captors

In this book, I highlight many disturbing abuses that occur in U.S. jails. When learning about them, people are tempted to seek a villain they can blame. Movies and television programs about jails reinforce this inclination by featuring sadistic wardens and malevolent corrections officers. Undoubtedly, the U.S. penal system contains no shortage of abusive personnel: corrupt judges, power-hungry sheriffs, pandering prosecutors, and violent and abusive corrections officers. However, I resist the temptation to demonize those working in corrections. Corrections officers have a very difficult job, and on daily basis deal with troubled and violent people. I have met many corrections personnel who struggle to make positive changes in a broken criminal justice system. In this book, I will feature people who accomplish remarkable things in horrible circumstances. They enable us to see the good people can do, but also point to the complexity of the problems confronting anyone trying to change our penal system.
Dignity, Values, and the Emotions

The central philosophical issue I discuss in this book is human dignity. Jails are dehumanizing, degrading places where inmates experience repeated assaults on their dignity. They often live in filthy and overcrowded conditions, are subjected to demeaning whole-body searches, and suffer violence and sexual assault from inmates and jail staff. Although they are often legally innocent, they may spend weeks or months in jail and are often assumed to be guilty by supervising staff. While sitting in jail, their financial situations can completely collapse because they lose their jobs, apartments, and familial ties. Finally, in captivity many inmates experience terrible despair, a sense of devaluation that leads them to engage in self-destructive behavior.

Although dignity seems to disappear in jails, what exactly is it? Contemporary historians, sociologists, and activists writing about mass incarceration employ ethical concepts like dignity, justice, and human rights. Yet, they often mistakenly presuppose that their meaning is clear or self-evident. When people morally condemn our society for its high level of incarceration, what principles of justice are they employing? When they maintain that jail and prison conditions violate human rights, how do they understand the controversial concept of a human right? Philosophers and theologians have discussed ethical and political concepts like human rights and justice for centuries, yet contemporary activists and historians of mass incarceration seem blissfully unaware of this rich debate. Too often, their discussions seem convincing only to those who share their unexamined philosophical ideas.10

To deepen the contemporary ethical conversation about mass incarceration, this book provides a philosophical analysis of the concept of dignity. Recently, scholars in philosophy and religion have vigorously debated its importance for ethics. Some see it as a useless idea that does little to help us think through ethical issues. Others maintain that dignity is an essential concept that we must continually affirm. Engaging this discussion, I maintain that all persons possess inherent dignity, dignity that exists simply by virtue of being a person. For this argument, I draw heavily on phenomenology of the Husserlian variety (Edmund Husserl, Max Scheler, and Dietrich von Hildebrand). Phenomenology is an approach to philosophy that originated in the twentieth century,
and emphasizes careful analysis of our consciousness and experience. Many people associate it with the work of German philosopher Martin Heidegger, but in this book, I draw attention to a rich tradition of phenomenology that predates and differs from Heidegger’s work.

This early phenomenological tradition emphasizes that we come to realize the dignity of other people through a personal encounter with them. Influenced by Husserl, phenomenologists like Max Scheler, Dietrich von Hildebrand, and Edith Stein write astutely about how reason and the emotions relate us to values, including the value of the person. For these thinkers, ethics involves both reason and emotion. Recent work in ethics from thinkers like Martha Nussbaum, Sara Ahmed, and Jesse Prinz has revived an interest in the emotions. They have moved away from a twentieth-century prejudice that emotions have no normative significance. However, contemporary philosophers often ignore the contribution of the early phenomenological tradition. By drawing attention to it, this book will emphasize the significance of what happens to us emotionally and cognitively when we encounter another person.

Dignity and Stigma

By focusing on the emotions, phenomenology also helps us understand why we deny that some people possess inherent dignity. For those who have been incarcerated, dignity relates closely to stigma. In the United States, those with criminal records receive public disapprobation; they are barred entirely from holding some jobs, often can’t vote, face employment discrimination, and may be prohibited from receiving public assistance. Those suffering from mental illness face a double stigma from their illness and incarceration. They must answer harsh questions about their mental illness and their crimes. Unless a person commits a crime as a juvenile, her criminal record can remain with her throughout her entire life. In some states (like my own state of Wisconsin), this record is public, and easily available to anyone with access to the Internet. Thus, former inmates face a stigma that haunts them for years.

Yet, stigma is a puzzling phenomenon. How does it relate to dignity? If we grasp the dignity of others, why do we stigmatize them? Philosophers discussing dignity rarely consider stigma, assuming it is a topic
best left to sociologists and psychologists. However, this is a mistake because stigma presents philosophical puzzles. I will explore them because they help us understand the experiences of inmates and former inmates.

One of the most famous accounts of stigma appears in the work of the American sociologist Erving Goffman. In the 1960s and 1970s, Goffman brilliantly analyzed how institutions like asylums and prisons shape their denizens’ identities. He wrote an important book on stigma that has shaped many contemporary discussions of the idea. Critics have leveled sound criticisms of Goffman; he often disregarded biological contributions to mental illness, excessively celebrated those who deviated from social norms, and lacked an adequate conception of the human person. Nevertheless, I believe some of Goffman’s insights remain important for understanding how stigma plagues the lives of jail inmates.

To explore how stigma blinds us to the dignity of inmates and ex-offenders, I focus on emotions like disgust, contempt, and fear. Following philosopher Dietrich von Hildebrand, I develop the concept of “value-blindness,” the incapacity to perceive a value (in this case, the value of the person). We can fail to perceive values for many reasons, such as self-interest, an attachment to bad arguments, or pride. In this book, I show how disgust, contempt, and fear blind us to the person’s dignity. We often use jails to house those we find disgusting, and the horrible conditions in these institutions can evoke further disgust among staff and the public. Disgust often breeds a contempt that further blinds us to the dignity of persons. Outside the jail, fear often distorts our response to other people, leading us to ignore their dignity. We fear certain kinds of people, and want them removed from our presence. The police take them to a jail, and we ask few questions about what happens once they have been removed. Public policies also promise to reduce our risk of encountering threatening people, thus reinforcing fears of whole classes of people. In recent decades, we have seen new approaches to risk assessment and crime that promise to reduce risk and completely incapacitate criminals. For example, we have developed a bail system that assumes the worst of people and incarcerates hundreds of thousands of poor people. In these policies, we see how disgust, contempt, and fear combine to produce a stigma that deeply damages the lives of jail inmates and ex-offenders.
The Jail and American History: A Different Narrative

Throughout this book, I will discuss the jail in the light of the long American practice of institutionalizing marginalized people in mental hospitals, jails, prisons, and other coercive institutions. Since the early part of the nineteenth century, we have segregated people in places where we have often tortured and abused them. Patterns of abuse and reform have characterized our penal and mental health systems since their inception. We have seen multiple attempts to apply evidence and data to change broken institutions. Some succeeded in bringing about short-term change, while others failed miserably to alleviate human suffering.

Because U.S. jails have rarely treated inmates humanely, studying them provides an opportunity to reevaluate some familiar narratives about U.S. penal history. We now imprison an extraordinary number of people in what has become known as mass incarceration. Over the past several decades, we have seen a growth in our inmate population that is truly astounding. This is a new development that departs in many ways from earlier approaches to crime and punishment. I will not contest this thesis in this book. However, too often scholars and activists fail to locate mass incarceration within a larger historical framework. For example, some contrast our current punitive system with an earlier era in which our society sought to rehabilitate inmates. I will suggest, however, that this thesis is far too simplistic. It ignores important regional differences in penal practices, often confuses rhetoric with the reality of the lived experience of inmates, and disregards our long history of using coercive institutions like mental health facilities to control people. I will draw attention to this history, emphasizing issues of powerlessness, vulnerability, and institutions that have often existed in U.S. history.

Reform or Abolition?

A final theme I explore in this book involves the limits of change in our jail system. I will propose policies to prevent the ongoing neglect and abuse of inmates in jails. Additionally, I will consider ways to reduce the
size of our jail population, which has reached obscenely high levels. It is important to respond to the immediate crises we confront in our jail system, and I think the proposals I offer have a chance of gaining some political support.

However, as I will make clear in the conclusion, I see these reforms as short-term solutions to problems in a failed institution. Criminologists, sociologists, and activists sometimes adopt one of two approaches to penal institutions, a “reformist” model and an “abolitionist” approach.\(^\text{11}\) Abolitionism is an umbrella concept that covers thinkers and activists with diverse and sometimes conflicting goals.\(^\text{12}\) However, it unites those who think jails and prisons are not only unjust but also unreformable. Reformists agree about the injustice of our current penal system, but maintain that with proper reforms, we can make it just. Because I’m not a criminologist, I don’t follow all the debates about reform and abolition, but I have learned a great deal from them. I don’t call myself an “abolitionist” because I think we will likely need some institutions to contain violent people. However, I endorse much of the “abolitionist” agenda. Given our history of brutality toward marginalized people and the emotional dynamics the jail creates, the jail is unlikely to be a just institution. Given its power in our society, it will remain with us for some time. However, we can think about how to move away from it in the long run. I don’t pretend to have a complete blueprint for replacing the jail, but will end the book by reflecting on what it might mean to reject its moral legitimacy.

The Book’s Structure

In chapter 1 (“Degradation and Disorientation: A Glimpse into the Cook County Jail”), I provide an account of aspects of life in the Cook County Jail in Chicago. By considering this enormous jail, I will be able to identify problems confronting other U.S. jails. After discussing the jail’s violent history, I describe how people end up confined there. I begin with the encounter between law enforcement officers and disruptive people or those who have allegedly committed crimes. I then describe the horrors inmates experience in the Cook County Jail. I highlight how committed but overworked mental health officials struggle to help
inmates with mental illness. I demonstrate, however, that inmates suffer profound attacks on their dignity. This chapter provides a look at a large urban jail at a moment in time. I will also return to the Cook County Jail later in the book to explore how its officials have tried to improve its conditions.

In chapter 2 (“What Is the Purpose of a Jail?”), I consider the role jails play in U.S. society, exploring how they control the lives of millions of Americans. I devote much of this chapter to showing how jails throughout the United States often contain inmates in intolerable conditions. They live in repulsive environments, suffer brutality from staff and other inmates, and receive inadequate medical care. I then maintain that jails also house people who desperately need mental health care. I also explore how bail systems keep poor inmates in jail, and discuss how some county jails exploit them as a means of raising revenue. I conclude that jails exercise an extraordinary but often hidden power in our society.

In chapter 3 (“A Matter of Dignity”), I explore human dignity. After discussing ways to consider this topic, I distinguish between diverse kinds of dignity. I then examine contemporary thinkers who believe the concept is useless and unilluminating. Drawing on the work of early phenomenologists, I defend the idea that we possess inherent dignity because we exhibit both the capacity for self-transcendence and an individual nature. I also use Dietrich von Hildebrand’s account of value perception to explain how we apprehend the person’s dignity affectively. I then respond to arguments against dignity, maintaining that they are philosophically shallow. Finally, returning to the jail I describe general ways people denigrate inherent dignity in jails.

Chapter 4 (“Why Do We Stigmatize Inmates? Disgust, Contempt, and Fear in American Jails”) examines why we often fail to perceive the dignity of others. Critically retrieving Goffman’s idea of stigma as a “spoiled identity,” I first describe its nature. I then turn to disgust, contempt, and fear, using philosopher Aurel Kolnai’s work to carefully analyze their structure. I argue that these reactions can produce a value blindness to the dignity of the person. I then maintain that within the jail, disgust and contempt often blind staff to the person’s dignity. Outside the jail, I show how fear contributes to narrow forms
of risk assessment and a goal of total incapacitation of those accused of crimes. Finally, I consider the money bail system that dominates the U.S. penal system. I maintain that it reflects a fear of the risk of crime, and creates an unfair system that penalizes low-income citizens who cannot afford the money necessary for bail.

In chapter 5 (“What Can We Do? Responding to a Crisis”), I consider policy questions, proposing ways to minimally protect inmates and reduce the size of jail populations. I see these measures as short-term responses to emergencies, rather than as long-term reforms to the jail. I first note how decentralization of political power in the United States poses significant problems for improving jail conditions. I then recommend greater jail monitoring, more federal oversight of jails, investigative journalism, and legal challenges from organizations like the ACLU. I call for better mental health care and clear use of force policies within jails. I note that we won’t be able to address the mental health crisis in our jails unless we deal with it in society. I then explore reforming the bond process, examining current attempts to make it more “evidence-based.” These risk-assessment tools will likely reduce jail populations, but I express concern that they ignore individual dignity. I maintain that we would be better served by guaranteeing that all defendants have good legal counsel at bond hearings. Finally, I consider the moral transformation necessary for recognizing the dignity of inmates. I argue that we cannot directly control our affective responses, but can indirectly respond to them. In this way, we need not be trapped by disgust, contempt, and fear, and can try to treat inmates more humanely.

In the conclusion, I reflect on the long-term future of the jail. I maintain that anyone who cares about human dignity cannot defend the moral legitimacy of the contemporary jail. I then consider the prospect for long-term reform. I return to the Cook County Jail, highlighting its efforts to improve conditions for inmates. Under the leadership of Sheriff Thomas J. Dart, the jail has taken steps to reduce its population, decrease officer violence, and help those with mental illness. Although I commend these reform attempts, I argue they are precarious, and long-term attempts to make the jail more humane are unlikely to succeed. To support this claim, I describe failed attempts to reform the Cook County Jail in the 1920s. I reaffirm John Irwin’s thesis
that the American jail has often aimed to contain marginalized people. I then entertain the abolitionist thesis that jails cannot be reformed. I endorse the abolitionist call to find alternatives to the jail, but recognize the need to control violent offenders. I end the book with a call to inner change, featuring someone who exemplifies a commitment to enhancing human dignity.