

# The Jail



Managing the Underclass in American Society

**John Irwin**

WITH A NEW FOREWORD BY JONATHAN SIMON

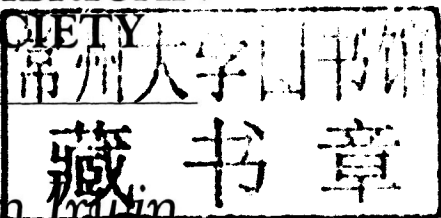
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*To Erving Goffman,  
who tried to teach me,  
but I wouldn't learn*

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# Foreword

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John K. Irwin was the leading social scientist of the American carceral enterprise from the middle of the twentieth century through the first decade of the twenty-first (and the most successful former prisoner in American social science in the same period). Each of Irwin's five books on American incarceration is a superb study of distinct topics in the scholarly study of punishment, law, and society; for example, the status hierarchy among American convicts at mid-century in *The Felon* (1970), or the impact of civil rights on the racial order of prisons during the 1960s and 1970s in *Prisons in Turmoil* (1980). Cumulatively they document the changing nature of American carceral practices from the postwar medical model, with its large rehabilitative promises and relatively small prison populations, through mass incarceration from the late 1970s on, with its seemingly modest promises to confine (or warehouse) prisoners and its supersize prison populations.

Nearly thirty years after its initial publication, John Irwin's *Jail: Managing the Underclass in American Society* (1985) stands out for three reasons that make this reprinting particularly timely.

1. In *Jail*, Irwin identifies the underclass—an emerging social category of young, minority urban residents isolated from the social mainstream both by persistent unemployment and by a subjective sense of alienation from the labor market and its normative order—as a primary concern for the criminal justice system in general and jails in particular. Today the emergence of this kind of hardened urban marginality, and the political choice to rely on law en-

forcement as a primary form of governance over such economically marginal populations, is viewed as one of the primary causes of mass incarceration (Wacquant 2009).

2. Irwin argues that the major role of jails with respect to the underclass (or *rabble*, as he provocatively calls this class as a target of state coercion) is not to enforce laws or punish crimes but to govern a population of extreme marginality, a “precariat” living in a zone of permanent uncertainty as to basic life needs. Today the idea that the criminal justice system is primarily a way to manage risk rather than do justice is widely if cynically accepted (Feeley and Simon 1992).
3. At a time when attention was beginning to turn to the rapid increase of prisons and prisoners, the dawn of mass incarceration, Irwin identified jails as an enduring part of the modern carceral state and not an archaic survivor of the common-law past. While many of us who have worked to make sense of mass incarceration followed Irwin’s lead in considering the production and maintenance of the underclass, few, if any, took his hint to keep our eye on jails. Today, as many states seek to tame their overextended prison systems by channeling felony offenders and technical parole violators toward jails, the features of the jail that Irwin identified—its low visibility, discretionary decisions by low-level justice officials, and cruel conditions—raise troubling questions about the use of this strategy, which California governor Jerry Brown and others have dubbed “realignment,” in attempting to provide a productive solution to the crisis of mass incarceration.

As Irwin recognized, jails have long operated as a shadowy margin to our celebrated institutions of what Max Weber famously called “legal rational authority,” particularly the court and the prison. To the courts, jails function as depositories, holding those charged with crimes who have not been able to secure pretrial release (generally through bail) until the disposition of their case by trial or plea, and as threats to those who have been granted release. Against the prison, the jail has either been a preliminary stage of custody prior to incarceration in state prison or a parallel system of carceral punishment lacking many of the correctional programs and legal protections available to prisoners in modern prisons. With prescient insight, Irwin recognized that the failure of the legal revolution to reach the zone of discretionary justice, of which jails form the very core, had created the conditions for the expansion of criminalization on an unprecedented basis.



## The Underclass

The leading sociologists of race and inequality in the 1980s, such as William Julius Wilson and Troy Duster, were just beginning to develop the idea of the underclass when Irwin published *Jail* in 1985 (Wilson's seminal *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* was not published until 1987). The term was controversial from the start, with its ambiguity about whether moral or economic factors most defined the group's low status. While Irwin was closer to Wilson and Duster in formulating the concept as primarily economic, his use of the term *rabble* to describe the members of the class captured precisely the sharp edge the concept carried for some on the political right (note the endorsement on *Jail*'s original back cover of by Charles Murray, who used the concept of the underclass in his 1984 book *Losing Ground*, on the conservative and moralistic side of the controversy).

A long tradition of critical criminology and sociology, dating back to Prince Pyotr Kropotkin and Karl Marx, observed the role of criminal law and the police in class control. The sociology of the early 1980s suggested that the class nature of American society was changing, with the underclass forming a distinctively hardened layer of poverty: no longer a "reserve labor army" (for that implies some potential to enter the labor market when needed) but a category of internal outcasts for whom the legacy of racialized slavery and apartheid in the United States lingered in the vacuum of social capital that deindustrialization had left in many American cities.

*Jail* was the first sociological and criminological monograph to analyze the underclass in relation to the activities of law enforcement and to foresee how the targeting of this class could reframe the purposes and logics of criminal justice. Influenced by reading *Jail* as a graduate student working on my dissertation, I began to observe parole agents in California (indeed operating in some of the same San Francisco neighborhoods where Irwin's field work had taken place) using their largely unchallenged discretion to return ex-prisoners to prison for technical violations of their administrative parole conditions (rather than crimes). Like Irwin, I soon found strong evidence that this power heavily targeted those parolees who most fit the cluster of identities (of race, youth, neighborhood, and gender) he associated

with “the rabble,” which were also coming to characterize more and more of the swelling correctional population (Simon 1993).

Irwin’s focus on the jail for its targeting of a racialized class of urban minority youth was early, and his sociological imagination of where those trends would go was astoundingly and sadly accurate. Today the racial disproportionality among prisoners and the formerly incarcerated is recognized as one of the defining characteristics of mass incarceration and is its most serious challenge to American democracy (Tonry 1996, Garland 2001, Western 2007, Alexander 2010). Five years into the great prison buildup, Irwin had made the crucial sociological move, associating the new aggressive criminal justice policies not with heightened crime levels but with an increasingly negative portrait of the urban poor.

As suggested by his provocative discussion of the underclass as a “rabble,” Irwin appreciated the Durkheimian undercurrents at work in criminal justice, the need for “folk demons” to help mobilize social solidarity, especially in times when wrenching social dislocations and increasing inequalities test that solidarity. Like few others writing at a time when progressive penal reform still seemed obtainable to many and critics tended to see the system largely in criminal justice policy terms, Irwin saw in jails the marriage of class-based social control and emotion-based moral panics. This view proved remarkably fruitful in analyzing the coming tidal wave of repression, and its influence is clear in a great deal of subsequent work.

*Jail* is the product of Irwin’s classic mid-twentieth-century tool kit of microsociological analysis of institutionalized schemas of action, based on firsthand field work and structural-functional analysis. You will not find here direct efforts to tie the analysis to the age of Ronald Reagan or the transformations in political economic governance now often abbreviated as *neoliberalism*, but for those of us who read it at the time, the fit was unmistakable. The pattern of intensive policing along well-defined urban corridors that Irwin found in his field work was part of a new order that geographers such as Mike Davis (1990) and Saskia Sassen (1991) would soon define. It was a landscape of growing inequalities in which the once-bridging structures of industrial society—unions, political party machines, and churches—had fallen away, leaving cities increasingly divided between a steeply hierarchical sector of knowledge workers and a service class (often composed of immigrants) working to meet their material needs. The

remaining poor, Irwin's rabble, were rapidly falling back toward the state of a nineteenth-century, preindustrial "dangerous class" (Chevalier 1973). San Francisco, Irwin's primary research site, with its global technology industry and flows of both highly and low-skilled immigrants, was at the cutting edge of these general changes in American cities, whose implications for criminal justice institutions Irwin saw with clarity and precision.

## The New Penology

In addition to recognizing the underclass's crucial role in making sense of the jail and other aspects of contemporary criminal justice, Irwin saw and highlighted the management function of jails: the way police and the courts use them to sort, manage, and maintain rather than reform or even morally condemn members of the underclass. This marked an important change. Historically, repressive institutions, whether the prison or the workhouse, were envisioned as tools to eliminate, through reform or deterrence, the danger that crime or immorality posed to society. Irwin saw the jail as maintaining and even expanding the underclass (while also disciplining it and keeping it within geographic boundaries). A few years later, Malcolm Feeley and I cited his account of the jail in our more general argument that criminal justice in the 1990s was pivoting from a legal and moralizing enterprise to one of group-based risk management and actuarial judgments, something we called "the new penology" (Feeley and Simon 1992).

The legal perception then and now is that jail is primarily a sort of antechamber to the main events of criminal trial and, if the defendant is found guilty, punishment (with serious punishment taking place in prisons). In this view of the justice system, legislators play the most important role, by defining the criminal laws, and then local courts do much of the rest, by applying those rules to individuals and their behaviors. In this world, jail is only a preliminary step, and one whose main role is simply to preserve options for the more relevant institutions, which lawyers and judges dominate.

Irwin's field work revealed that jails function as the center of their own, less-visible system, whose aim is not adjudication and eventually resolution but the marking and selective disciplining of a disrepu-

table class of people within geographic and behavioral limits imposed by the police. Police are the key actors in the jail world. By using their arrest powers to temporarily remove certain individuals to the jail and to threaten others with removal, police determine where people in this class will be allowed to concentrate and what kinds of behaviors will be tolerated there.

In a remarkable part of his analysis, Irwin called out James Q. Wilson and George L. Kelling's recently published *Atlantic Monthly* article "Broken Windows" (which appeared in 1982) as reflecting the potential for a dangerous extension of the jail's exclusionary class logic. Wilson and Kelling's article argues that police can effectively reduce crime by aggressively enforcing low-level criminal laws against minor antisocial behavior (as the police saw it). This approach, which they misleadingly characterized as "fixing broken windows" (in fact it does nothing to repair or restore troubled neighborhoods), has become one of the most famous and consequential in modern crime policy history.

"Broken windows," despite remaining controversial among police experts, has been crucial in encouraging and legitimizing the expansive use of criminal law against the urban poor beyond the context of violent or serious crime. Combined with the parallel hardening of sentencing laws and prosecutorial discretion, broken windows policing has been a key input to mass incarceration since the 1990s. With almost uncanny prescience, Irwin recognized the specific danger that this article would shape policy, and based on his field work identified in *Jail* the precise way in which this would happen:

Wilson and Kelling argue that the skilled foot patrolman makes intelligent distinctions and keeps the merely bothersome or repulsive behavior within acceptable limits and scares off or arrests the persons who are real threats. My study has convinced me otherwise. Police officers consistently overextend the disreputable categories, and they gather up many persons who are merely bothersome or offensive and subject them to the harsh and alienating experiences of arrest, booking, and jail. (111)

This perspective reveals one of jail's great and enduring anomalies—that many if not most of the people confined there remain legally innocent, having been found guilty of no crime—to be absolutely central to its role in maintaining and managing the underclass. Since

the great majority of those in jail have been arrested because they are perceived as a threat, rather than because they have committed particularly blameworthy crimes, criminal convictions and carceral punishments might frequently fail to follow arrest. This would be true if, as the law imagines, most arrested people were released pending their trial, able to assist their attorney and enjoy the relative comfort of home while seeking to put the state to the full burden of proof (if not seeking delays that often undermine the state's case). But through the foreseeable fact that members of "the rabble" are unable to afford bail or to qualify for alternative forms of relief (which tend to require evidence of a stable lifestyle and respectability), a greater portion of them face prolonged incarceration while awaiting trial, and thus maximum pressure to plead guilty.

Irwin's analysis also draws us into what sociologists might think of as the "secondary deviance" effect of jails. The events that lead to arrest are often part of an experience of conflict with or alienation from the community. While incarcerated, arrested individuals are likely to experience further wanings of their social ties to the community. If they had a job, they are likely to lose it. If they had housing, or a relationship, they are also in danger of losing that. Meanwhile, jail is a conducive setting for the recruitment of individuals into criminal lifestyles, and assuring that the selective targeting of minority urban youth will produce more of the same, as an expanding range of people targeted and punished, reinforces perceptions that the community is dangerous and disorganized and thus must be aggressively policed.

For Irwin in 1985, the function of jails as rabble maintenance was linked to their distinctive administrative structure, associated with local government and imbued with extensive administrative discretion. Most sociologists at the time assumed that prisons were quite different, more bound by legal-rational forms of legitimation and more visible to courts and public monitoring (Jacobs 1977). In the subsequent decades, however, prisons have become decidedly more jail-like, in precisely the way that concerned Irwin. First, the hardening of sentencing laws that had already begun in the period of his research made it easier for the cycling of underclass people into jails to result in their longer-term incarceration in state prisons. Second, as the prison population has rapidly expanded because of these changes, prisoners are less and less likely to be professional criminals (the type whose social

order Irwin studied in *The Felon*) and more and more likely to be members of the ordinary underclass whose repeated arrests and confinements in jails have increased their vulnerability to further incarceration. As a result, prisons, even when they have not deliberately abandoned the goal of rehabilitation, have increasingly found themselves engaged in the same sort of “rabble management” that Irwin saw in the jails of the 1980s.

Third, as they become overcrowded with high-need prisoners who often suffer from chronic physical and mental illnesses resulting from their lifestyles, prisons are the sites of experiences more and more like those that Irwin documented in jails: chaotic, dangerous, and inhumane. Finally, seeking to maintain control in the face of an increasingly volatile situation, correctional administration in prisons has become more jail-like in its reliance on administrative discretion. Thus the routine punishment in supermax prisons of twenty-three-hour-a-day solitary confinement, one of the harshest, most isolating forms of imprisonment ever used on a large scale, is generally imposed not by a court nor based on violations of legal prohibitions but at the largely unreviewable administrative discretion of prison managers, who classify prisoners according to risk and can keep them indefinitely in this setting based on simple suspicions that they are involved with prison gangs.

### **The Prison Crisis, Jails, and the Future of Incarceration**

Largely as a result of having become more jail-like both in the populations they hold and in the form of institutional order they maintain, American prisons in the twenty-first century are undergoing a profound fiscal, administrative, and humanitarian crisis. California (Irwin’s home state and the site of most of his research) is an extreme but telling example of this. Decades of indiscriminate imprisonment of low-level offenders led California prisons to experience some twenty years of chronic hyperovercrowding, with the system at more than 200 percent of design capacity and some prisons closer to 300 percent of capacity. Despite nearly two decades of federal court oversight, these conditions continued, with constitutional violations of health care provision causing prisoners to experience torturelike pain and death from all manner of readily treatable chronic mental and

physical conditions (see *Plata/Coleman v. Brown, Opinion and Order Requiring Defendants to Implement Amendment Plan, June 20, 2013*). In 2009 a special three-judge court handed down an unprecedented injunction ordering California to reduce its prison population by more than forty thousand. After the state appealed, in 2011, the Supreme Court affirmed the injunction (in *Brown v. Plata*), noting that prisons that fail to provide adequate health care are incompatible with respect for prisoners' inherent "human dignity" and with "civilized society."

As a result of *Plata*, California has adopted a reform policy known as realignment, which relies heavily on channeling people convicted of low-level (nonserious, nonviolent, nonsexual) felonies and parole violations into county jails rather than prisons. While this policy aims at reversing the tendency, discussed above, of making prisons more jail-like in their practices and populations, it places even more trust in institutions whose basic flaws remain much as Irwin described them more than a quarter of a century ago. This is a national trend, as many states find themselves rapidly shifting excess populations from prisons to jails. Another high-profile example is New York, where aggressive policing is credited with diminishing crime while not growing the prison population, but at the cost of sending more minority youth to jails (Zimring 2011).

Thus, as a factor in the reach of criminal justice power and despite nearly three decades of expanding imprisonment, jails loom as large as or larger than they did when Irwin conducted his pathbreaking study. As reform proposals place ever more reliance on jails as sites of justice and social control, his call to examine the jail sociologically is ever more vital.

## **Conclusion: Jails and the Way Forward**

The path away from America's prison crisis may lead through jail. While jails may have many positive aspects as sites of confinement, especially when compared with the prisons of mass incarceration, Irwin's analysis points to features that could make the new, jail-based version of mass incarceration even worse. The local nature and relative obscurity of jails mean that legal review and due process, obtainable in prisons through the persistent efforts of civil rights lawyers, may be even harder to maintain in them. The historic focus of

jails on what Irwin called “rabble management” threatens to undermine the opportunity presented by the present prison crisis to rethink America’s overreliance on confinement of all kinds (whether in prisons, jails, or immigration detention centers). It is vital that those of us committed to reversing the destructive effects of mass incarceration on American democracy and social equality expand our concern and our research from prisons to the jails that may replace them. More broadly, if the social damage of mass incarceration is to be undone, a commitment to conserving human dignity must replace the pessimistic posture of criminal justice toward “rabble management.” The republication of John Irwin’s *Jail: Managing the Underclass in American Society* is a most timely aid to that mission.

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