Dropping Jokes about Dropping the Soap: Legal and Societal Shortcomings to Eliminating Prison Rape

Meredith Dietz

Northeastern University
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Introduction

During the 2018 Super Bowl, the Kentucky State Police department tweeted a picture of a bar of soap captioned, “Enjoy watching Rob Gronkowski (TE) play but if you drink & drive … your tight end may end up in jail!” (Bever, 2018). The account deleted the tweet, but the message was clear: commit a crime, and expect the fate of prisoner sexual violation. Even in the #MeToo era of confronting systemic sexual assault, jokes about rape remain permissible when at the expense of prisoners. The dehumanization built into a punchline about “dropping the soap” is a reflection of mythologies about what convicted people “deserve” in prisons. These jokes about prison rape are not merely tolerated, but reflect a larger societal indifference to the moral and legal crime of prison sexual assault. Furthermore, such moral acceptance feeds into the limitations inherent in the justice system, despite legal action that appears to work against prison rape. The most visible legal step for this purpose, the Prison Rape Elimination Act (PREA), cannot compete with the reality of media saturated with the tolerance, justification, and even expectation of sexual violence in prisons. PREA has required data on prison sexual victimization, which in turn reveals a greater need for more effective rape elimination enforcement. Instead, across media and inside prison walls, sexual assault ceases to be an abhorrent wrong, as long as it demonizes incarcerated persons. The disconnect between law and society, demonstrated in the shortcomings of PREA and the widespread tolerance of prison rape jokes, reveals the inability or unwillingness to actually combat sexual violence in prisons.
Failure of the Prison Rape Elimination Act

Awareness of sexual violence in prison permeates into society, and calls for reform like the Prison Rape Elimination Act (PREA) signal an appearance of progress. Congress unanimously passed PREA in 2003, which supposedly established a “zero tolerance” standard for prevention and punishment of sexual abuse perpetrated by prisoners or staff (Arkles, 2014). On both the prevention and punishment fronts, PREA has not proven effective. PREA has not only failed to reduce rates of prison sexual violence, but may even work against some prisoners when applied legislative tool.

Before exploring how PREA is insufficient to transform a prison culture that accepts sexual abuse, PREA must first be understood as a judicial disappointment. PREA has repeatedly manifested in the courts to harm the prisoners it was purported to protect. Courts have applied PREA in ways that raise the standards for supporting plaintiffs’ claims of abuse, demanding that allegations of sexual assault must abide by the technicalities of PREA regulations (Arkles, 2014). Likewise, courts tend to rule in favor of defendants if they manage to prove technical compliance with PREA guidelines (Arkles, 2014). When prisoners attempt to wield PREA, its function in litigation does not uphold the proposed intent to protect prisoners. Such a shortcoming aligns with the findings of Jenness & Smyth (2011), which analyze the legal and social developments that reveal PREA to be “symbolic law,” rather than a tool for prisoners to regain their humanity (Jenness & Smyth, 2011, p. 489). For instance, the researchers claim that PREA’s use of corrections-based language makes it unproductive for reclaiming individual prisoner’s rights. Moreover, they identify the disconnect between law and society; though the legal branch might be responsible for constructing policies like PREA, it lacks the ability to enforce implementation.
As a result, when PREA arrived in the very facilities it was designed to regulate, it was already laden with inherent limitations.

Out of the courts and in the actual prisons, PREA still proves insufficient against the persistence of sexual violence. According to Bureau of Justice Statistics (BJS), 4 percent of federal and state prisoners reported being victims of sexual abuse by both prison staff and fellow prisoners from 2011-2012 alone (Beck, Berzofsky, Caspar, & Krebs, 2013). Allegations of sexual victimization tripled between 2011 and 2015, with substantiated allegations rising 63 percent in those years (Bureau of Justice Statistics, “PREA Data Collection Activities,” 2018). The collection of data on sexual victimization in prisons and jails is a hopeful mandate of PREA, but the data itself ironically exposes the need for more effective action. For example, the rise in substantiated allegations is progress for reporting sexual assault, but at the same time, it exposes the act’s failure to actually enforce rape elimination. When the data required per PREA is gathered, it highlights the inadequacy of the act to enforce any meaningful prison rape elimination (Bureau of Justice Statistics, “Prison Rape Elimination Act”). This lack of enforcement must be tied to dominating mythologies that posit sexual assault as an inevitable, and perhaps endorsed, part of the prison experience.

**Reality Versus Mythology of Sexual Violence in Prisons**

In contrast to a supposed legal condemnation of rape, mass media feeds into a perception of sexual violence in prison as inevitable, acceptable, and even funny. From the tweet by the Kentucky Police Department, to lazy writing on Law and Order: Special Victims Unit, to countless comedians, a punchline like “don’t drop the soap” translates to, “don’t find yourself in prison.” In Queer (In)Justice, Mogul, Ritchie, & Whitlock (2011) point to the trope of a prisoner, often big and black, who makes others their “bitch;” such an image appears in movies and TV
shows as a deterrent or threat for law enforcement characters to use against prospective criminals (Mogul et al, 2011, p. 105). The authors go on to offer deeper focus into the homophobic underpinnings of these conventions, citing how “judicial decisions, newspaper and magazine stories, and even some scholarly articles describe the threat of ‘predatory homosexuals’ in prison and the problem of ‘homosexual rape’” (Mogul., Ritchie, & Whitlock, 2011, p. 105). For this consideration of the forces that fuel prison rape jokes, Turchik & Edwards (2012) outline the significance of examining homophobia in the discourse on male rape in general: homophobia allows for a perception that “real (heterosexual) men” cannot be victims of true rape (Turchik & Edwards, 2012). The true harm of this false framing is that LGBT people are disproportionately the victims, not the perpetrators, of prison rape: A BJS survey in 2003 found that the great determinant of sexual abuse in prisons was the inmate’s reported sexuality, with 18.5 percent of victims identifying as homosexual compared to 2.7 percent of heterosexual victims (Catalano, 2004). Prisons are no exception to a society where masculinity is currency for power. Regardless of homophobic intent behind jokes about prison sexual violence, the tropes of “predatory homosexuals” and becoming someone’s “bitch” exemplify how mythology prevails over reality. These myths succeed where something like PREA fails in terms of impacting public perception. The reinforcement of tropes and jokes about prison rape contribute to a widespread justification of the additional suffering found inside prison cells. Classic rape joke punchlines further reflect a societal complacency with these dehumanizing mythologies.

Published the same year as PREA, Eigenberg & Baro (2003) analyze various film portrayals of male prison experience; they find that the constant fear of rape is a defining aspect of prison life, regardless of actual sexual violence statistics (Eigenberg & Baro, 2003, p. 86). This study demonstrates how the threat of prison rape can be dually sensationalized and
normalized. Moreover, the researchers conclude that media depictions of sexual violence in prisons can contribute to a societal acceptance and justification of rape as “part and parcel of the incarceration experience” (Eigenberg & Baro, 2003, p. 87). Mythologies of “inevitable” sexual violence in prisons leads to a bleak outlook for how law and policy can protect prisoner rights, assuming that so much of society has accepted rape as a part of our punitive system. The conflict between myths about “real” or “deserved” rape, versus the realities lived by incarcerated people, exposes a current societal shortcoming to the elimination of sexual assault against human beings, so long as they are inside of our prisons.

Why PREA Fails and Rape Jokes Persist

Further demonstrating the pervasiveness of prison rape in pop culture, a 2015 article from The Guardian effortlessly lists examples of prison rape as a staple of American comedy, from Saturday Night Live, to the blockbuster Get Hard, to even Nickelodeon’s SpongeBob Squarepants (Thrasher, 2015). The list could also include liberal Bill Maher, local radio hosts, respected comedians Steven Martin and Martin Short, or beloved sitcoms like Friends (LastWeekTonight; Full Frontal with Samantha Bee). Where traditional “rape jokes” might receive backlash, “prison rape jokes” have yet to become too taboo, as long as male inmates are the punchlines. Incarcerated people do not receive the same humanization that might otherwise prevent the public from tolerating jokes about sexual violence (Minogue, 2011). The dominating purpose of punchlines about prison sexual violence does not seem to be laughing at rape itself; instead, audiences accept how these jokes endorse sexual violence as an additional punishment or someone who has already been criminalized. Even if rape is not what generates the laughs, the dehumanization of someone who “deserves” it is tolerated. Joking about prison rape belies a
belief in the rehabilitative function for certain victims of our prison system. Once behind prison walls, rape transforms from an abhorrent crime to an expected feature of someone’s sentence.

The disconnect between litigation like PREA and the continued sexual violence in prisons is entrenched in the mythology that prison rape is inevitable and even deserved. The media’s validation of prison sexual assault is deepened by the state’s inability, or reluctance, to effectively eliminate sexual violence against prisoners. While segments by satirists like John Oliver and Samantha Bee begin to raise awareness, the moral distortion of prison rape continues in the media and in the courts. Prison rape has not qualified as real rape amidst the current political and social reckoning of structural sexual abuse found in the #MeToo moment. Even the term “prison rape” illustrates a qualification, a modification of true “rape.” The threat of a violent, dehumanizing crime is reduced to a punchline. In order to combat sexual violence in prisons, society must see overcome two hurdles in perceptions: seeing prisoners as people, and rape as rape. A social push, maybe connected to the #MeToo movement, is necessary to fill the gap between moral indifference and effective legal action in prisons. Meanwhile, the media’s perpetuation of acceptable rape enables an environment that dooms something like PREA enforcement to fail.
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