Prison Rape, by Richard Evans

Is it OK to make jokes about rape in prison?

The trivialisation of sexual violence through what passes as humour is much less common than it once was. Jokes about rape are not innocent, are not harmless fun, are not unconnected to the horrible crime they make light of. Their gradual marginalisation represents social change of real importance.

But there is one last refuge of the rape joke in mainstream popular culture, and its continued presence reflects a shameful blind spot in our society. It is a joke which conceals a horrible and damaging reality which is somehow both a taboo topic and a truth universally acknowledged.

A picture that circulated widely on Facebook and other social
media last year captures the horror in the humour. It is a picture of a man's back, decorated with a huge image of an alluring, naked woman, with the man's buttocks marked to look like breasts. The caption: This man had what he thought was the best tattoo in the world . . . until he went to prison.

How can a gag about a man being anally raped while in prison be widely popular, seen as funny, a giggle to share? Were the prospective victim a child or a woman, or were the rape in almost any other setting, the reaction would surely be revulsion and anger. Jail rape, though, somehow remains funny.

This article is not about homosexuality. If men who are in custody turn to each other for sexual comfort and pleasure with genuine consent, there is no issue. On the contrary, recognising that such sexual relationships are common in the prison environment, it is outrageous that prisoners in some Australian jurisdictions are not provided with condoms and dental dams so they can have safe sex. Also, I will only be discussing male prison rape. Female prisoners are at great risk of sexual abuse, and the number of women in Australian prisons continues to increase. But there are scholars and activists with an interest in the welfare of female prisoners. I am glad that this is so, and I support their work. However, the overwhelming majority of prisoners—92 per cent—are men, so it is among men that the greatest number of victims will be found. And it is also male prison rape which is the subject of deafening silence, and the occasional appalling ‘joke’.

I first learned about prison rape twenty years ago, when I was a cadet journalist on a tabloid newspaper. I had been given the job of driving a senior journalist, a legendary figure in the Australian press, to a distant country town. It was a long drive, and my passenger told the war stories which old hands tell. He boasted how he had connections in the prison system and that people regularly asked him for help. If a young man in the family was going to jail, the old journalist would be able to have a word to some criminals he knew ‘and they'll look after him, make sure he doesn't get raped'. Being a naïve young
reporter, I was desperate not to seem naive and so said nothing. But over time, as my work gave me reason to speak to police, court staff, lawyers and other journalists, I learned that yes, everybody knew. A physically weak man, especially if he was young and good-looking, would almost certainly be raped if he were sent to prison.

Everybody knew. But no one seemed to care.

Popular culture confirmed it. One example of many is the 1992 comedy film My Cousin Vinny. Two young men are wrongly arrested in the south of the United States. Desperate, they send for a lawyer, the Cousin Vinny of the title. One of the young men, Stan, is terrified of being raped in prison. Vinny visits Stan, who doesn’t know him, in jail.

Stan: I don’t wanna do this . . .
Vinny: Look, it’s either me or them. You’re getting fucked, one way or the other . . . I mean it’s your ass, not mine. I think you should be grateful. I think you should be down on your fuckin’ knees . . . I did not come here just to get jerked off . . .

It is a ‘talking at cross purposes’ scene. The foul-mouthed but well-intentioned Vinny is getting frustrated because the boy seems scared of him. Stan thinks Vinny is a sexual predator who will literally fuck him in the arse. Hilarious.

But while prison rape is well enough known to be exploited for laughs, it is also the subject of official denial amounting to wilful blindness.

In the same year that My Cousin Vinny was released—it later won an Oscar for best supporting actor and the American Comedy Award for funniest actor in a motion picture—a lawyer, David Heilpern, appeared in a New South Wales criminal court representing an 18-year-old man on a serious charge. The young man had pleaded guilty and faced a jail sentence. Heilpern later wrote:
In the course of my plea for leniency, I referred to his age, his build and his looks, and expressed the view that he would be at substantial risk of sexual assault if incarcerated, and may not be safe even in protective custody. The judge stopped me and asked me for proof—‘I have yet to see any evidence of sexual assault within our prisons; where is the proof?’

Given twenty-four hours to find some proof, Heilpern found what all social-science researchers dread finding: some out-of-date data from America, and ‘nothing from Australia’. As Heilpern wrote: ‘Every criminal lawyer has their own horror story regarding young raped prisoners, but that evidence is neither available nor admissible’.

This experience motivated Heilpern to research the issue himself. His work resulted in the book Fear or Favour: Sexual Assault of Young Prisoners (Southern Cross University Press, 1998). A groundbreaking study based on 300 interviews with male prisoners, Fear or Favour is completely convincing in its finding that sexual abuse in New South Wales prisons is routine and systemic. Just over a quarter of those interviewed reported that they had been sexually assaulted. Half said that they had been assaulted in other, non-sexual ways. More than half said that they had been threatened with sexual assault. Extrapolating from this data, which was broadly consistent with overseas studies, Heilpern estimated that roughly 25,000 incidents of sexual assault were occurring in the New South Wales correctional system each year.

More than a decade has passed since, but Fear or Favour remains almost the only piece of detailed research into male prison rape in Australia. There was some media attention and responses from corrective services at the time, but that soon died down, and the issues faded again from public discussion. There is no reason to believe that the rapes also faded away.
A section of the modern political elite likes to smear any attempt to address problems in the corrections system as being somehow ‘soft’ on crime, wanting to ‘hug a hoodie’ as a British Conservative Party electoral campaign put it. The Liberal Party in Australia has not resorted to the same form of words, but it exploits the same trope: concern for the welfare of prisoners equals soft on crime, equals ‘Left’. But such callous populism actually betrays core principles of conservatism and liberalism.

When a person commits a serious offence—murder, rape, violent assault—there are two sets of victims: those directly affected by the crime, and the community as a whole. In old Tory terms, serious crime was a breach of ‘the King’s peace’, the obligation on the monarch to protect his people from fear as well as harm, as a good father would his family. Liberalism insists that this punishment cannot be random: the agencies of the state must detect the offender, who can only be punished after an impartial tribunal has found him or her guilty, on the evidence and following due process. And the punishment must be lawful and proportionate to the gravity of the offence, and cannot be cruel.

Of course, things never work so neatly, and this liberal-conservative view ignores the myriad social and economic forces working to push the black, the poor and the traumatised into ‘crime’, while allowing corporations to devour widows’ houses. Even so, these core principles are the bedrock of our system of criminal justice, and of the punishment it inflicts on offenders.

The only legitimate punishment is the loss of liberty, through a term in prison, set by a court after a fair trial. A person cannot legally be punished by being beaten, by being infected with a disease, by being driven mad,
by being killed, or by being raped. This is not a radical left position. It is the law of the land, enshrined in legislation and the official Revised Standard Guidelines for Corrections in Australia. The Guidelines, by which every state and territory is bound, make clear that prisoners are ‘owed a duty of care’ by those in authority over them, and are to be ‘treated with respect as human beings and not to be subject to harsh or degrading treatment, physical or psychological abuse’. Specifically, ‘Prison should provide for the personal safety of staff and prisoners by ensuring a prison environment that protects the physical, psychological and emotional well-being of individuals’. To this end ‘Prisons should identify, minimise and manage risk’.

It is not too harsh to describe the Guidelines as a fantasy document. Whatever the good intentions of corrections staff, the factual outcomes of imprisonment in Australia are appalling. A high proportion of prisoners arrive in the system already unhealthy, with high levels of infectious disease, drug and alcohol addiction and mental illness. They leave, if they ever do, in an even worse state. Ex-prisoners have very high levels of self-harm, suicide, depression, alcoholism and violence towards others. There are many reasons for this, but one significant cause is not mentioned even once in the Guidelines: rape.

In my home state, Victoria, the conservative state government has decided, as a matter of policy, to increase the prison population. A 500-bed prison in Melbourne’s west was already under construction when it was decided it was necessary to double capacity. So in a few years we will have a 1000-bed prison which will quickly be filled and, if history is any guide, over-filled. At any one time some 1000 men will be crowded in together. And we know that an
unknown but large number of these prisoners—about 250, maybe more—will be sexually abused by other inmates. The victims will predominately be younger, physically weak prisoners who are not protected by having existing connections to criminal gangs. Gay and transgender prisoners, or those with a disability, will be especially likely to become victims. These rape victims are at high risk of being infected with life-threatening transmissible diseases, including HIV. They will, sooner or later, be asked to rejoin society. They will do so having been subject to degrading abuse which is to them a shameful secret, and to wider society a laughing matter. Fear and shame will drive some to suicide. Many will be unable to form lasting relationships and will enter a downward spiral of increased drug use. Some will become sexually violent themselves. Odds are, they will be soon be back in prison, or dead.

It is a deep irony that the United States, the model for so much of the punitive thinking which drives the growth of our prison system, is light years ahead of Australia in honestly facing and dealing practically with the horror of prison rape. This is partly due to the work of a remarkable organisation, Just Detention International (originally known as Stop Prison Rape), which has tirelessly advocated for reform to prison management. In 2003, the US federal government passed the Prison Rape Elimination Act (PREA). Passing a law does not magically change the world, of course, but it has helped force governments and prison officials to take the issue seriously. In 2012 PREA was strengthened by the introduction of enforceable standards, requiring every prison to develop a written policy affirming zero tolerance for all forms of sexual abuse and harassment. Under the standards, every inmate ‘must be
informed about their absolute right to be free from sexual abuse, how to report abuse, and how to get help.

The contrast with Australia is lamentable. A 2009 report on the Western Australian prison system tells this story. One of the researchers received a phone call from the mother of a teenager on remand.

This was his first time in prison. The mother was extremely distressed... her son had been raped in prison by a known sexual predator. He had phoned his mother, crying and telling her that he was terrified and wanted to kill himself. He had been taken to the infirmary briefly and then sent back to his unit, where the perpetrator was still held... Frantic for her son’s safety, the mother rang the prison but was given no help, basically being told nothing was wrong and that she was being a nuisance... The assault had been reported to the prison authorities and the young man was seen by a sexual-assault counsellor. Nevertheless, against the counsellor's advice, he was sent back to the unit where his assaults had occurred. (Brian Steels and Dot Goulding, Predator or Prey? An Exploration of the Impact and Incidence of Sexual Assault in West Australian Prisons, Centre for Social and Community Research, 2009)

The researcher alerted the independent Inspector of Custodial Services WA, who was able to intervene. However, that such fortuitous outside help was necessary, that prison authorities would place a vulnerable young man with a known sex offender and would not take
seriously complaints of rape: these are an unacceptable reality in modern Australia. That case came to light, and belated help was provided, but how many other cases pass unnoticed, the screams of the victims unheard?

Australian society has enthusiastically embraced the prison as a cure for our social problems. When David Heilpern was conducting his research in 1997, Australia's national rate of imprisonment was 136 prisoners per 100,000 of population. This rate, already high by international standards, has soared to 170 per 100,000. The raw numbers which underlie this figure are horrifying. In 1997 there were just over 19,000 prisoners in Australia. Last year we broke a record of sorts: Australia's prison population reached 30,775, the first time the figure has exceeded 30,000.

This historic ‘achievement’ is a national disaster. Australia needs more prisons like we need more bushfires. But this punitive folly is policy, and realistically there is no prospect of a significant change in the foreseeable future. However, one thing on which the most progressive and the most conservative person in public life should be able to agree is that for even the vilest crime, rape is not part of the penalty. This requires an Australian equivalent to PREA, and that in turn requires that we break the taboo, and start talking openly and honestly about prison rape, where and how it happens, and how it can be prevented.

And let’s stop making jokes about it.
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