

Prison Reform and the Male Body: The Erasure of Consent

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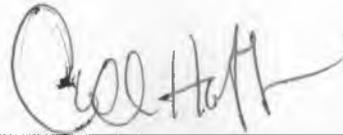
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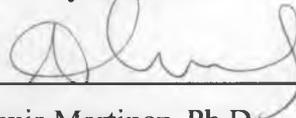
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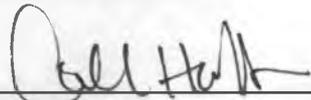
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Prison Reform and the Male Body: The Erasure of Consent

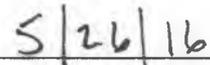
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This thesis investigates the historical and political influence of prison rape legislation in the United States and the effect of prison rape on the sexual health and well-being of male inmates. I examined a series of case studies using content analysis, quantitative data provided by the Bureau of Justice Statistics and the personal accounts of three former inmates. My findings suggest that the institutional erasure of consensual intercourse is the result of a prison rape narrative that seeks to politically eradicate the sexual autonomy of inmates through a system of violence. The analysis seeks to critique current prison reform policies and offers insight into the process of prisonization and sexual encounters. Understanding the complexities of inmate sexual assault and consensual intercourse is imperative in the implementation of prison-based sexual health reform and in the advancement of international standards of prisoner rights.

I certify that the Abstract is a correct representation of the content of this thesis



Chair, Thesis Committee



Date

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Introduction

Abstract

This thesis investigates the historical and political influence of prison rape legislation in the United States and the effect of prison rape on the sexual health and well-being of male inmates. I examined a series of case studies using content analysis, quantitative data provided by the Bureau of Justice Statistics and the personal accounts of three former inmates. My findings suggest that the institutional erasure of consensual intercourse is the result of a prison rape narrative that seeks to politically eradicate the sexual autonomy of inmates through a system of violence. The analysis seeks to critique current prison reform policies and offers insight into the process of prisonization and sexual encounters. Understanding the complexities of inmate sexual assault and consensual intercourse is imperative in the implementation of prison-based sexual health reform and in the advancement of international standards of prisoner rights.

Literature Review

In this study, I review the academic proceedings that have shaped prison sex research in the literature from the past eight decades. Prison sex is consistently pathologized as a moral loss of integrity, which has manifested itself in incidents of assault and deviancy. Prison sexual health reform, I argue, has been difficult to implement due to a focus on assault as the only possible narrative of sex within a prison framework. In order to best understand the nature of sex in prison and the effects of rape on inmates, it is necessary to first outline the historical context of prison studies—in

particular the Inmate Deprivation Model—and how this relates to the contemporary policies of the Prison Rape Elimination Act.

The Inmate Deprivation Model (1930s-1960)

In 1934, Joseph Fishman wrote a contemporary compilation of volumes exposing the nature of “deviancy” and homosexuality found throughout the U.S. prison system. The frequency of homosexual activity was brought to attention during the prison’s routine psychiatric examinations. *Prison Sex* was one of the first publications to record voluntary instances of same-sex sexual activities inside the U.S. prison system (Fishman, 1934). Inmates who chose to engage in same-sex sexual activities—as opposed to inmates who chose to engage in same-sex sexual activities out of desire and intimacy (e.g, the “true” homosexual)—were known as “situational” homosexuals and embodied what is known as the Deprivation Model. The Deprivation model suggests that the norms, language, roles, and traditions of a prison subculture are created to help prisoners adjust to the pains of imprisonment. Inmates who engaged in sexual intercourse were considered deprived of touch and would often impose acts of sexual manipulation and coercion on those who were, as Fishman describes, weak and often times younger and less experienced men (Fishman, 1934). Fishman classified these manipulated inmates as “fairies”, “fags”, “pansies”, and “girls” who exhibited effeminate traits and were seen as the root cause of moral degradation and social perversion (Fleisher and Krienert 2003; Fishman, 1934).

Present day scholars have characterized Fishman—who was known to have taken pity on inmates who were victimized and preyed upon—as a sympathetic and humanistic

scholar (Struckman-Johnson & Struckman-Johnson, 2013). Fishman argued for inmates to be allowed to participate in palpable work and vacation opportunities in order to cure them of social ailments; the idea of an able body was thought to be the cure for all inmate-related needs and was believed to be a remedy for all pathologies (Fishman, 1934). Deprivation theory, although initially not coined by Fishman, would later become the theoretical framework which would define the field of penology (prison studies) and would provide researchers with a challenging question of whether or not sexual orientation was fluid.

The deprivation model for inmate sexuality would reappear later in Donald Clemmer's 1940 publication, *The Prison Community*. Clemmer saw prison as the summation of varying social components, including the characteristics brought into the prison, an inmate's previous life, and the incarcerated effects of isolation and segregation (Fliesher and Krienert, 2003). This summation is a term most commonly referred to as "prisonization", and is commonly described as an extreme form of assimilation that can only be experienced through incarceration. Clemmer goes on to state that "acceptance of an inferior role, accumulation of facts concerning the organization of the prison, the development of somewhat new habits of eating, dressing, working, sleeping, the adoption of local language, the recognition that nothing is owed to the environment for the supplying needs, and the eventual desire for a good job are an aspect of prisonization..." (Clemmer, 1950, p. 300).

Prisonization best reflects the functional model: a model which includes the

collective and measurable application of an experienced environment. All aspects of society, according to functionalism, serve a purpose towards the survival and compatibility of a group. Prisonization thus serves as a form of functionalism, which aims to keep prisoners isolated from the general public, producing social stability. The prisoners themselves may also develop a form of functionalism via the enforcement of in-house roles and social hierarchies.

The idea of prisonization acknowledged that in an all-male environment that is deprived of social “normalcy”, “abnormal” sexual conduct could occur. These sex acts were considered perversions and were seen as a basic form of psychopathy, which could be infectiously transferred from one inmate to another (Donald Clemmer, 1940).

The Deprivation Model set the stage for the lack of proper sexual health reform in prisons, which ultimately enacted harm upon inmates by pathologizing prison sex. In addition, while it seems that the Deprivation Model framed same-sex relations within prisons as contextual and not intrinsic to the inmates themselves, it in fact relied on pathologizing narratives in which inmates were susceptible to same-sex relations due to internal deficiencies. Publications in the 1940s and 50s went to great lengths to proclaim same-sex intercourse as an unholy act of evil and paraphilia whose only cure was forcible repression (Karpman, 1948). However, overcrowding and inadequate staffing within prison systems forced staff members to avoid addressing same-sex relations. This lack of administrative intervention caused academics to fear for the nature of the prison system, with some stating that same-sex encounters were “the worst of the egoistic and

psychopathic traits” which would result in “a paranoid atmosphere charged with [...] irritability and tension” in prison settings (Karpman 1948, p. 482).

The deviancy associated with same-sex relations was frequently paired with the moral taboos of masturbatory practices as the result of sexual starvation; both were considered to be a form of mental illness (Karpman 1948; Deveureux & Moos, 1942; Lindner 1948). The architecture of the prison was considered by many to be a catalyst for the abnormalities of in-house inmate sexual activity (Karpman 1948; Akers, R., Hayner, N., & Gruninger, W. 1974). Despite the pathologies associated with same-sex intercourse, field studies began to discuss the need for post-prison treatment and intervention programs that could help inmates rehabilitate and adapt to their settings (Karpman 1948).

The Deprivation model was further fostered in the late 1950s by examining the socio-physiological effects that accompanied prisonization. These effects (e.g., a loss of liberty, sex, autonomy) deprived inmates of the necessary privileges required to maintain social acceptability and conformity and would thus result in predatory homosexual behavior (Eigenberg 2000). Predatory sexual behavior—which included sexual coercion and rape as the result of deprivation—became the main focus of research in the late 1950s (Sykes 1958; Vedder and King 1967; Davis 1968). Sykes (1958) paralleled the treatment of US inmates as a form of deprivation to those who had been subjected to the throes of WWII Nazi concentration camps; this comparison served to highlight the isolation and dis-identification that occurs during authoritative confinement (Sykes

1958).

Thus, the framework of the Deprivation Model highlighted the nature of imprisonment by situating inmates as individuals who were lacking touch and social contact. However, the Deprivation Model existed alongside pathologization literature, which presented inmates as deviant individuals who were susceptible to amoral acts of same-sex relations. Because of this, the beginnings of the Deprivation Model asserted that prisoners engage in “abnormal” sexual conduct (i.e., homosexual sex) as a way to replace “normal” social interactions. It was not until the 1970s that this model would be replaced with other frameworks.

Situational Homosexuality in the Form of Social Functionalism (1970s-1980)

During the mid to late 1970s, the Deprivation Model transformed into a functionalist approach, which switched the understanding of inmate deviancy from contextual sex acts to a form of in-facility acculturation (Simon and Gagnon 1967; Akers, Hayner, & Gruninger 1974; Akers, Hayner, & Gruninger 1977). Prison acculturation provided the basis for what would be known as “situational homosexuality” and posed a challenge to researchers who continued to maintain an essentialist approach of sexuality (Eigenberg 2000).

Functionalists believed that male inmates who engaged in situational same-sex sexual activities would return to a heteronormative state once removed from their post of deprivation (Sagarin, 1976; Hensley, Tewksbury, & Wright 2001). The “situational homosexual” was therefore seen as an adaptive response to in-house destitution and was

used to characterize all same-sex sexual activity as a desperate form of predation (i.e., violent sexual offenders were all seen as situational homosexuals whose sexual desire stemmed from the deprivations of confinement) (Eigenberg, 2000).

Groth implied that sexuality was a construct of a person's society, and that an inmate's decision to engage in sexual behavior was more indicative of the social and political hierarchies found within the confinements and structure of the prison (1979). Kassebaum pointed out that sexual relationships between inmates could be viewed as either coercive, commercial (for profit), or romantic, and needed to be analyzed in-between subjects. Kassebaum's 1972 study was highly influential and is still considered to be a landmark achievement in the field of prison research.

Narrative Change: Sex as Bartering (1980s)

The Deprivation Model and functionalism continued to be keystones in penology throughout the 70s and 80s. However, in the 1980s, academics began to question the nature of the sex acts within prison in an attempt to understand the reasons for contextual homosexuality. In the 1980s, Daniel Lockwood released his 1980 publication on inmate sexual aggression titled *Prison Sexual Violence*. Lockwood's research was considered to be one of the most influential works in the field of criminology and inmate sexuality and largely influence our understanding of sex within prisons; *Prison Sexual Violence* would later be cited by the Bureau of Justice Statistics and the Human Rights Watch Organization as evidence towards the federal enactment of the Prison Rape Elimination Act. Lockwood's research returned to the issue of sexual violence within prisons first

posited by the Deprivation Model and functionalism. However, Lockwood centered on the sexual nuances of “aggressor” and “target” inmates.

Sexual aggressors were divided into three categories: Gorillas (inmates who relied exclusively on force or threat); Players (inmates who combined force and threats with verbal tactics); and Propositions (inmates who deployed a series of nonviolent requests for sex) (Lockwood 1980). Sexual “targets” were composed of inmates who had been sexually assaulted or victimized. Aggressors who fell under the “proposition” category—despite being nonviolent—were considered threatening due to the advancement of sexual requests. Sexual advancement, regardless of intent, was thought to create a space of hostility, which could be mistaken as a form of assault (Lockwood 1980).

Lockwood later rescinded his study in 1983, and indicated that respondents had actually exaggerated incidences of assault. In 1986, Lockwood would, again, refute his research when he reported that 23% of inmates would be sexually assaulted while serving their prison sentence (Bell et al., 1999). In 1989, Tewksbury suggested that the rates of homosexual activity and sexual coercion were well below the estimations provided by Lockwood.

During this time, the academic sphere began to highlight the idea of sex as a bartering tool within prisons, and would be later analyzed in terms of profit and protection. Commissary and personal favors were among the many items that were traded in exchange for sex (Wooden & Parker, 1982). Using sex as a form of bartering and protection created an economic system of prostitution and sexual trade, which is a topic

of interest that is still examined in contemporary penology (Wooden & Parker, 1982; Sprecher, 1998; Fleisher & Krienert, 2006; Terry, 2016).

The Issue of Consent (1980s)

The focus on the Deprivation Model, functionalism, and sex as a bartering tool helped highlight contextual homosexuality within prison, but neglected to describe the actual experience of sexual violence within prisons. Further, it failed to explain consensual acts of sex between inmates. Wooden and Parker's 1982 publication, *Men Behind Bars*, was one of the first academic studies to include a series of interviews in which correctional officers were asked their opinion on homosexual interactions within prison. When asked whether officers believed homosexual acts between consenting adults was wrong, a majority of the officers thought that homosexual activity between inmates was permissible as long as force was not used. Similar to Wooden and Parker's 1982 publication, Eigenberg's 2000 publication acknowledged sex between inmates, further recognizing the existence of both consensual and nonconsensual intercourse amongst inmates within the U.S. prison system. This simultaneous acknowledgement of force and consent validated same-sex consensual intercourse within the U.S. prison system. Due to this, sex acts within prison could no longer be uniformly defined as sexual violence; instead, consensual sex acts within prison were now considered a possibility.

A more recent study done by Gibson and Hensley (2011) analyzed consent by exploring the sexual orientation of inmates who had previously identified with another sexual orientation prior to their incarceration period. Of the 142 inmates who participated

in the survey, those whose sexual orientation had changed while incarcerated (from straight to bisexual or bisexual to gay) were more likely to engage in same-sex consensual activities at a higher rate than those whose sexual orientation had remained unchanged or static.

Consent was also explored by Helen Eigenberg, who asked correctional officers whether or not they were capable of distinguishing between consensual acts of inmate intercourse and coercive ones (Eigenberg, 2000). Officers reported that they would respond aggressively to any prohibitive acts of sexual intercourse, regardless of context (i.e., officers responded to coercive and non-coercive acts equally and in the same manner). However, officers were also found to have difficulty distinguishing between the two.

While these studies highlighted the experience of officers within the prison system, other studies turned to the actual inmates in order to understand the nature of incarcerated sex acts. A 1994 study on rape within prison was conducted with over one hundred male inmates. Of the participants who responded, 5% had previously witnessed an incidence of rape occurring within the past year, 71% had no knowledge of an attempted rape case ever occurring, and 22% had only ever heard of an attempted rape incident (Saum et al., 1994). Nearly a quarter of the participants confirmed witnessing one act of consensual sexual intercourse between inmates within the previous year, while 51% reported having only heard of a consensual act of intercourse (Saum and et. al, 1994). Respondents maintained the common belief that sex in all forms was more

pervasive than what had been reported prior to the study.

Re-centering Health: HIV and Sexual Health Reform (1990s-2000s)

In the mid 1990s, sexual health among inmates became more salient. The acknowledgement of HIV and AIDS among male inmates and intravenous drug users began to take medical and academic footing in the early to mid 1990s (Inciardi et al., 1994). Researchers also began to focus on the intersectionalities of race, gender, and transmissible diseases, which were seen as tools of institutional genocide (Braithwaite, Hammett, and Mayberry, 1996). Legal decree regarding sexual permissibility and condom availability in all prisons in order to prevent HIV/AIDS and other STIs was suggested on behalf of several academic authors (Saum et al., 1994; Inciardi et al., 1994; Braithwaite, Hammett, & Mayberry, 1996; Donaldson, 1993; Scacco, 1982). Although these initiatives attempted to bring inmate sexual wellbeing to the forefront, these issues were still overshadowed by issues of inmate coercion and sexual assault.

The push for sexual assault reform was further intensified by a growing public awareness of prison rape (Struckman-Johnson & Struckman-Johnson, 1996). In 1994, the U.S. Supreme Court ruled that “prison agencies who fail[ed] to protect inmates from sexual assault [were] in violation of the Eight Amendment which forbids cruel and unusual punishment” (*Farmer v. Brennan*, 1994). In 2001, The Human Rights Watch Organization (HRW) released an eight volume report titled, *No Escape: Male Rape in U.S. Prisons*, which brought to light the actuality of sexual violence within the prison system. This report surveyed a total of thirty-four state prison systems and documented

prisoners' personal accounts of rape and assault. The HRW's report garnered widespread media coverage, was featured on the cover of the *New York Times*, and was cited during congressional testimony. The report is credited as an early catalyst for the 2003 passage of the Prison Rape Elimination Act.

In October of 2007, Governor Arnold Schwarzenegger directed the California Department of Corrections and Rehabilitation (CDCR) to evaluate the implementation of a prisoner condom access program in Solano State Prison. The Governor's directive came shortly after vetoing Assembly Bill 1334, which would have required the CDCR to allow non-profits and health agencies to enter department institutions for the purpose of providing sexual barrier protection devices (e.g., condoms) to inmates. Inmates who were eligible for the program were able to access condoms from wall-mounted dispensing machines located in prison common areas (celled housing units, communal restrooms, and a medical waiting area). The program required the prisons to provide an instructional video and informational pamphlet, both of which established inmate program protocol. Volunteer educators provided inmates with information on available counseling services, HIV/STD transmission rates, and the proper use of a condom. The peer educators were also required to remind inmates that "... sexual activity while incarcerated is still against the law" (Lucas et al., 2011, p. 9).

Section 286(e) of the California penal code states that "any person(s) who is found engaging in oral sex and/or sodomy while incarcerated can be punished up to an additional year of confinement", making the prevention of HIV transmission and the

legality of condoms inside the prison system difficult (Lucas et al., 2011). The pilot program at Solano State Prison, however, concluded that condoms and other sexual barrier protection devices did not pose an increased risk to staff and inmate safety; and sexual activity rates remained static. According to the World Health Organization, condom access programs have resulted in no serious reports of injury, and have been recommended for all prisoners during incarceration (World Health Organization 2007).

Despite this evidence, the US has not inducted a condom access program to protect the health of inmates. The resistance of a nationwide inmate harm reduction program may be due to the historically promoted erasure of inmate sexual autonomy, which results from academics being centered on assault and, prison rape. According to Foucault, prisoners are a sexless embodiment of the state; any act which goes against this embodiment does not exist within the confines of the nation and must be relegated to a formal state of criminality (1975). Because of this overarching mentality, sex while imprisoned can only exist under the pretense of an unlawful, criminal act. Thus, the induction of a sex-based harm reduction program is unattainable due to the fear of increased criminalized sexual activity. The legal preoccupation surrounding prison sex promotes an assault-centered, homophobic narrative that has manifested itself today in the enactment of the Prison Rape Elimination Act (PREA).

The Implementation of the Prison Rape Elimination Act and The Prison Rape Narrative (2003-Present)

Enacted in 2003, the Prison Rape Elimination Act (PREA) is the first United States federal law that focuses on the analysis and funding to protect inmates from rape

((Struckman-Johnson & Struckman-Johnson, 2013). The law requires the U.S. Department of Justice (DOJ) to produce an annual report on the sexual assault surveys provided to inmates and correctional staff. The law also requires The National Institute of Corrections (NIC) to produce its own annual report and to offer supplementary services (list the services here) to inmates and staff. By making data on prison rape more readily available, the legislative act aims to maintain strict accountability and hopes to decrease the likelihood of crimes that pertain to inmate sexual violence. In addition to providing an annual report, each state is required to adhere to the provisions of the act through a series of financial incentives (Friedmann, 2013). States risk losing 5% of federal prison-related funding if they fail to comply with PREA standards, but can regain funding if an assurance claim is submitted (which guarantees that such five percent will be used for the purpose of achieving full compliance. However, the cost of compliance, in some cases, may exceed 5%, making states reluctant to abide) (Friedmann, 2013). Federal-related funding is only applicable to the state and does not apply to local correctional facilities (Friedmann, 2013).

The enactment of PREA—although met with unanimous congressional support—fails to maintain the merits of a safe and untroubled prison environment. PREA’s provisions require that states collect data in hopes for accountability, but do not require states to initiate further preventive and implementation measures. The standards met by PREA are a hollow shell of what was originally envisioned by prison rights activist, and are designed to be more palatable to corrections officials while doing little to benefit the

inmate community. By strictly reporting cases of assault, inmates are depicted as malicious and sexually depraved. These accounts leave little room for interpretation and cast all sexual interactions between inmates as violent. Thus, the data provided by the BJS, promotes a prison rape rhetoric, which eradicates the sexual autonomy of inmates through an institutional system of violence. Some have argued that the standards implemented by PREA are catered towards the benefit of the prison staff rather than of the prisoners. For example, Alex Friedmann, the Associate Director of the Human Rights Defense Center, comments on the issue:

“If the intent is to provide the greatest possible protections for prisoners against being sexually assaulted and raped while in custody, then the watered-down rules proposed by the DOJ fail to reach that laudable goal. Rather, the proposed rules constitute weaker standards that are apparently designed to be more palatable to corrections officials” (Friedmann, 2013).

Through the provisions of the Department of the Bureau of Justice Statistics (BJS), correction officials are given the opportunity to report sexual acts of victimization through a collection of surveys titled *The Survey of Sexual Victimization* (SSV). However, the surveys do not offer a clear and concise definition of sexual assault and includes a broad range of sexual conduct allegations, which include nonconsensual sex acts, abusive sexual contact, staff sexual misconduct, and staff sexual harassment. Sexual conduct allegations are found to either be substantiated, unsubstantiated, unfounded, or pending (i.e., investigation ongoing). The numerical data set for the SSV, however,

regroups sexual conduct allegations as being either substantiated or alleged. Cases that fall under the unsubstantiated, unfounded, and investigation ongoing umbrella are considered to be an alleged case of assault. The regrouping of labels is problematic as it results in a misrepresentation of the data, which can lead to an inaccurate description of prison sex and sexual assault. In other words, the categorization of reported instances inflate the data, and makes it appear as if a higher rate of sexual violence is occurring within the system.

In the following section, I analyze the *Survey of Sexual Victimization* given to state and federal correctional staff for reporting sexual assault, and use a content analysis approach to deconstruct the implications of the BJS. Surveys were compared for their level of adherence to the definition(s) of nonconsensual sexual acts and abusive sexual contact formulated by the National Center for Injury Prevention and Control. To measure adherence an index of seven categories was developed and juxtaposed with the definitions of reports of consent and assault provided in the SSV1, SSV2, and the SSVIA surveys. In addition, I supplement this quantitative data with officer's reports of the nature of sexual violence with the prison system. The results suggest a need for statistical reliability across the implemented sexual violence surveys.

Methods

Analysis of the SSV1, SSV2, and the SSVIA

The definitions of nonconsensual sexual acts and abusive sexual contact in three questionnaires were analyzed: (1) the SSV1 Survey of Sexual Violence -Federal Bureau

of Prisons Questionnaire; (2) the SSV2 Survey of Sexual Violence -State Prison Systems Questionnaire; and (3) The SSVIA-Adult Incident Form Questionnaire. The surveys were obtained through the Bureau of Justice Statistics (available for download at <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=406>) and are a part of the BJS's Survey of Sexual Victimization (SSV) data collection program. The SSV1- Federal Bureau of Prisons Questionnaire is given to correctional authorities in federal prisons, penitentiaries, and/or correctional institutions, and excludes privately operated facilities and incidents involving inmates held in local jails and facilities in other jurisdictions. The SSV2- State Prison Systems Questionnaire, like the SSV1, is given to correctional authorities, but in facilities that exclude federal institutions and instead include state prisons, penitentiaries, and/or correctional institutions. The SSV2-State Prison Systems Questionnaire excludes privately operated facilities and non-state run facilities. The SSVIA-Adult Incident Form Questionnaire is a follow-up survey given to officers after completing the SSV1 and/or the SSV2, and is administered whenever a substantiated report of sexual assault has been reported. Additionally, the SSVIA describes the details of a substantiated account. The SSV1, SSV2, and SSVIA were analyzed for the 2009, 2010, and 2011 calendar year.

Survey definitions were categorized for the following: (1) conflicting reporting instructions for both staff and inmates; (2) defined population/sampling of inmates; (3) defined case allegations/incidences; (4) The BJS's definition of a nonconsensual sexual act; (5) The BJS's definition of abusive sexual contact; (6) The National Center for Injury

Prevention and Control Definition for a nonconsensual sexual act; and (7) The National Center for Injury Prevention and Control Definition for an abusive sexual act. Each survey was independently coded per item and was measured through the use of inductive categorical analysis.

Results of the SSV1, SSV2, and the SSVIA Analysis

The 2009, 2010, and 2011 SSV-1, SSV-2, and SSVIA's definition of nonconsensual sexual acts and abusive sexual contact were in accordance with the National Center for Injury Prevention and Control's definition. The two definitions, copied here, are closely related and nearly identical:

SSV: "contact of any person without his or her consent, or of a person who is unable to consent or refuse; AND Contact between the penis and the vagina or the penis and the anus including penetration, however slight; OR Contact between the mouth and the penis, vagina, or anus; OR Penetration of the anal or genital opening of another person by a hand, finger, or other object,"

NCIP: "a sexual act that is committed or attempted by another person without freely give consent of the victim or against someone who is unable to consent or refuse. It includes: forced or alcohol/drug facilitated penetration of a victim; forced of alcohol/drug facilitated incidents in which the victim was made to penetrate a perpetrator or someone else; nonphysically pressured: unwanted penetration intention: sexual touching; or non-contact acts of a sexual nature."

The definitions provided by the SSV-1, SSV-2, and SSVIA primarily focus on contact

and penetration, whereas the definitions provided by the CDC include the facilitation of drugs, alcohol, and unwanted nonphysical pressure. Both definitions include consent and unwanted contact. The definitions provided by the SSV-1, SSV-2, and the SSVIA are designed to include the personal interpretations of correctional officers.

The first question under Section 1 of the SSV-1 and SSV-2 asks correctional officers whether or not their state prison system records allegations of inmate-on-inmate nonconsensual sexual acts. Respondents are given the choice of answering 'yes' or 'no'. If the respondent answers 'yes', they are provided with the following questions: (1) Do you record all reported occurrences, or only substantiated ones and; (2) Do you record attempted nonconsensual sexual acts or only completed ones. If the respondent answers 'no' to questions 1 and 2, they are required to provide a definition of nonconsensual inmate sex used by the facility which they are employed with. However, the BJS surveys makes no attempt to verify these definitions, which could lead to a misrepresentation of of sexual encounters in the prison setting. Assault and consent become difficult to measure due to the design of the SSV, which creates limited statistical and numerical meaning. These limitations are better understood through the "allegation" outcomes of each sexual assault case.

The second question under Section 1 of the SSV-1 and SSV-2 asks correctional officers to list the number of inmate-on-inmate nonconsensual incidences. The surveys ask for the incidences which were reported and requires officers to omit the number of inmates that were involved. The following question then asks respondents to label the

nature of each incident as: (a) Substantiated: the event was investigated and determined to have occurred; (b) Unsubstantiated: evidence was insufficient to make a final determination that the event occurred; (c) Unfounded: the event was determined not to have occurred; or (d) Investigation ongoing: a final determination has not yet been made as to whether the event occurred. The numerical data set included for the SSV-1 and SSV-2, however, does not include the above categories b-d; these categories are instead regrouped and relabeled as “alleged” incidences of assault, which happen to be reported at a higher rate than cases of substantiated reports (see Appendix A). The use of the word “alleged” dismisses incidences that are unfounded or are currently undergoing investigation and inflates the perception of inmate sexual assault. Furthermore, the regrouping and relabeling of categories promote the erasure and invisibility of inmate consent and should be redefined in an effort to minimize bias

The data presented is the result of a disproportionate number of alleged nonconsensual sex acts, but may also reflect a more complex social phenomenon. Prisoners maintain a series of cultural codes inside the design of a prison that may be better understood through the use of personal narrative. Recognizing the intricacies of sexual behavior in a prison setting is essential for establishing reform. Therefore, sexual prisonization requires an in-depth analysis that goes beyond the data of the BJS. Using a series of lectures and selected publications, the personal accounts of Stephen Donaldson, Shaun Attwood, and Daniel Genis—all who experienced incarceration—were analyzed in order to deconstruct the complexities of assault, race, orientation, and social hierarchies

inside the U.S. prison system.

Methods

Analysis of Three Former Inmates

For this analysis, I collected three publications authored by former inmates Stephen Donaldson, Shaun Attwood, and Daniel Genis. Each publication was initially reviewed for common themes. Themes were developed and defined based on the material presented in each publication. Themes included: power, identity, sexual orientation, consent, assault, masculinity, and racial tension in a prison setting. The accounts provide insight into the culture of sex and how it is utilized among prison populations.

Stephen Donaldson

Stephen “Donny the Punk” Donaldson (born Robert Anthony Martin, Jr.) was an American political activist best known for his pioneering activism in LGBT rights, prison reform, and his involvement in the 1970s punk subculture movement. After being arrested for a series of anti-war-related protests and other cases of disorderly conduct, Donaldson served multiple prison sentences in and around the Washington D.C. area between 1968-1990; these arrests would subsequently expose Donaldson to the process of sexual prisonization. Taken from his 1993 Columbia University speech, *A Million Jockers, Punks, and Queers*, Donaldson claims that the penetration of a male inmate is not a sign of homosexuality, but is instead a validation of manhood that defines each man within prison, regardless of sexual status or orientation (Donaldson, 2001). Inmates who assume the active top position and maintain continuous and successful refusal of being penetrated are seen as “men”, and are thus revered as such; a single instance of being

penetrated—voluntary or not—revokes an inmate’s social identity and is considered to be an irreversible loss of manhood and power. In contrast, inmates who assume the passive role are placed at the bottom of the institutionalized hierarchy and are classified as “punks”—a colloquial and often demeaning term that refers to the sexually submissive role of a male inmate. The term “punk” was first recorded in Graham Syke’s *The Society of Captives* (1958), in reference to an inmate who had either been manipulated or coerced into an act of receptive sexual intercourse by another inmate.

The submissive role of the “punk” is not defined by sexual orientation, but is instead used as a marker to signify power. While in-house (prison), sexual orientation is secondary to the act of sexual penetration and happens regardless of identity or intent. Donaldson notes “there is no niche in the prisoner structure for a sexually reciprocal or masculine-identified gay man such as we see in our androphilic communities”, and that the desire to retain a mutually consensual and sexual relationship between two inmates must be disguised and dressed up as a formal construction of power (Donaldson, 2001, p. 120). If these power struggles ceased to exist, this could subject inmates to inherent physical harm from those who are involved in the incarceration process. The presence of a gay-identified inmate is not only abhorred by inmates, but is also discouraged by correctional staff. The fear of homosexuality plays an important role in the prohibition of same-sex sexual activities and prevents inmates from accessing resources and materials that condone such behavior. For example, the proscription of condoms is an administrative prejudice that Donaldson believes is, in part, due to staff-based

homophobia:

“A growing number of institutions are circumventing their bans on condoms. But in all but a few systems, they remain contraband and most administrators refuse to allow them, on the grounds that to do so would be to “condone homosexuality”, something they apparently consider worse than the death of prisoners” (Donaldson, 2001, p. 123).

It is important to note that this is in stark comparison to the officers featured in Wooden & Parker’s 1982 publication, who mostly approved of homosexual relations. Donaldson claims that the adverse reaction to gay identified prisoners is attributed to the AIDS epidemic during the mid to late 1980s (Donaldson, 2001).

The themes in Donaldson’s lecture are relevant to our contemporary understanding of inmate consent. For example, the “disguise” and relationship of power in the context of a mutually consensual homosexual relationship may explain why discrepancies like the statistical generalization of sexual assault are embedded in the BJS Survey of Sexual Violence data. In other words, some inmates may be incorrectly reporting sexual violence because they must present their consensual relationship under the guise of violence and rape in order to protect themselves from homophobic inmates.

The protection of an inmate’s social identity makes it difficult to quantitatively measure the frequency of assault, especially when these acts are relabeled and disguised. Sexual prisonization may help to explain why some officers, like the ones

who were surveyed in Eigenberg's 2000 Tennessee report, have difficulty distinguishing between consensual and coercive acts of intercourse. Indeed, the inmates themselves often make it impossible to distinguish between consent and coercion, and are often doing so to protect themselves from other inmates.

Shaun Attwood

The role of the “punk” continues to exist today and is regulated under the pretense of sex and race. The intersectionality of sex and race has been historically examined through a feminist lens, and is rarely explored through the experience of a male prisoner (Hemmens & Marquart, 1999; Alrid, 2000; Smith 2006; Kunzel, 2010). The intersectionality of sex and race within the context of prison was famously documented in 2002 by former inmate Shaun Attwood—an English-American stock broker now turned public speaker—who began documenting the conditions of his 6-year prison sentence through a series of letters smuggled out of Maricopa County Jail. The letters are located on an online blog (Jon's Jail Journal), and offer substantial documentation concerning the arrangement of power and racial tension within prison. The intersectionality of race was specifically demonstrated through Attwood's observation of the role of the “punk”.

According to Attwood, the “punk” maintains an irreversible and irreconcilable loss of masculinity, yet can also be utilized to induce a state of fear and racial alliance among inmates:

“One of the worst things you can call someone in jail is a punk. A punk is a sex

slave who can be traded or rented out. Being called a punk leaves a head of a race no choice but to fight. If a head doesn't fight, his own race will smash him" (Attwood, 2014, p. 74).

Attwood's account differs slightly from the one provided by Donaldson, yet manages to expose the racial antagonism that precedes inmate social interaction. Inside the prison system, race determines everything, including; who you shower with, your cellmates, who you have sex with, who you fight and who you work out with. Indeed, race is the tier of all social interactions within a prison setting (Attwood, 2014). Not representing your own race can result in punishment, and the mixing of races is only allowed if there is potential for power to be regained. Race acts as a power catalyst, and often uses sex to keep inmates subjugated (Attwood, 2014).

Among racial pretenses, Attwood observed inmate sexual orientation on several different occasions. Open homosexuality outside of inmate race relations is tolerated so long as it promotes domination, defeat, and humiliation. There are three types of gay inmates, according to Attwood:

"Those openly gay before and after their arrest, who are temporarily openly gay in jail but do not tell their wives and girlfriends, "gay for the stay", and those in the closet. The first two groups boast about their conquests and ultimately reveal the members of the latter" (Attwood, 2014, p. 201).

Unlike Donaldson, Attwood's account includes an open portrayal of inmate

sexuality. This identity is allowed to exist so long as it works in favor of producing power, yet is still disguised for those inmates who are in the closet or who are “temporarily openly gay” but refuse to tell their wives or loved ones. These identities are important to note because they have been observed through the eyes of another inmate (Attwood), but have not been publicly documented.

In theory, the concealment of an inmate’s identity may contribute to the ambiguities concerning same-sex in-house sexual assault cases and may also help to explain why consensual activity among inmates is underreported. The hidden identity of an inmate makes it difficult to measure the frequency in which prisoners are engaging in sex. Further, this makes it difficult to discover whether or not these inmates would be inclined to engage in safer sex practices if power and racial tension was absent from sexual relations within prison.

Daniel Genis

The accounts of Stephen Donaldson and Shaun Attwood are pertinent to our contemporary understanding of sexual “prisonization”, although neither accounts reflect the experience of all prisoners. Russian-American journalist Daniel Genis chronicled a radically different narrative during his stay at the Green Haven Correctional Facility:

“When I tell people that I recently finished serving a 10-year prison sentence for armed robbery, mostly in maximum-security facilities, [...] I can speak only for myself, but in my own time in the New York State system, I rarely

saw or even heard about non-consensual sex between men. Perhaps I was just very lucky. Maybe I'd been incarcerated only in the "softer" corners of the penal system. Rape does happen, and all over any prison there are signs with a number to call to anonymously report it, which I always thought was less a matter of sodomy than of legal liability.”

(Genis, 2014).

In his 2014 publication, *A Gentleman's Guide To Sex in Prison*, Genis highlights the sexual frustrations of inmates, claiming that “openly gay men are not oppressed as one might fear” and that the desire for touch and intimacy—regardless of identity or orientation—is highly valued. Genis claims that “consensual sex between incarcerated men happens all the time”. This has strong implications for narratives of resistance within the prison system. For example, according to Foucault, being a prisoner means being a “sexless thing, and much of the experience of incarceration is the prisoner's reflexive effort, as a human being, to resist that state” (2014). Penal resistance can be met in a variety of ways, and it appears that some inmates practice sexuality to resist the state. This is seen not only through the physical act of sex, but through the collection of pornography, active masturbation, prison riots, inmate misconduct, drug use, and the smuggling of contraband (Genis, 2014).

Prison research has been historically centered on prison assault. Navigating consent is complex due to the ubiquitous nature of the prison rape narrative.

Combined with the potential for biased survey data, this narrative limits the ability to promote sexual health reform inside the US prison system.

Conclusion and Recommendations for Future Research

Sex within the prison system has changed over time. Beginning with the Deprivation Model and the idea of functionalism, prison sexual violence eventually became understood as a complicated event in which violence, consent, and inmate relations are implicated. Societal and political reactions to sexual violence in prison has done very little to address these concerns, and has done even less for inmate health. The Prison Rape Elimination Act standards represent a failed attempt in the effort to stop prison rape. PREA requires the Bureau of Justice Statistics to conduct annual surveys intended for accountability but does not require states to take additional action past the collection of data. The surveys have provided a mandated nationwide estimate based on the frequency of sexual abuse in prison, but do little to prevent or understand the nature of assault. Prison reform and the provisions of the BJS have become more focused on administrative figures and less focused on a prisoner's wellbeing; through this lens, the prevalence of sexual abuse in prisons may be inflated. Specifically, the data provided by the BJS reports a disproportionate amount of alleged sexual victimization cases, which have inflated the frequency of assault thus promoting the erasure of consent while disregarding the wide array of sexual behaviors occurring in prison settings. This also eliminates the possibility of mutually consensual sexual relations between inmates and decreases the possibility

of sexual health reform and the offering of condoms in prison. Furthermore, offering no attention to the social nuances of a prison is detrimental towards the safety of a prison environment and should be further addressed. Prison sex is a widely misunderstood and complex topic embedded in the macro/microcosms of an unrecognized and quarantined subculture. The nature of the subject may never be fully understood, but should be appropriately examined in order to produce prison reform.

The Bureau of Justice Statistics and the provisions set forth by PREA constitute an immense effort to combat sexual assault inside the confinements of the US prison system. While this study has investigated the flaws of the BJS, the Survey of Sexual Victimization, and the Prison Rape Elimination Act, there remains one empirical question: What is the best solution for preventing prison rape and how can we avoid the pitfalls of perpetuating an assault-based narrative? Furthermore, how can we do so without erasing the possibility of consensual sex among inmates? Such questions have implications for prison reform and the bolstering of safer sex practices, including condom usage and HIV/AIDS education.

The National Prison Rape Elimination Committee (NPREC) has responded to these concerns with a standard that requires correctional facilities to use a screening instrument to classify inmates who may be at risk for being a victim or perpetrator of sexual assault (Struckman-Johnson & Struckman-Johnson, 2013, p. 345). However, the screening of at-risk inmates—though valiant—may accidentally create an even

more vulnerable environment within prisons, consequently making prisoners feel unsafe if classified as a potential victim. Screening instruments should only be utilized so long as an inmate's identity can be kept confidential. The NPREC also recommended requiring facility employees and inmates to attend improved trainings on sexual abuse education, as well as allowing inmates to report incidences of victimization in a prompt and indiscrete manner (Struckman-Johnson & Struckman-Johnson, 2013, p. 345). Improved educational training may help to alleviate the stigmas associated with inmate sexual assault and other sexual interactions, and may also help to establish other programs of reform (e.g., condom distribution programs, needle exchange programs, conjugal visits, and housing innovations). Sex abuse education may reduce the level of prison sexual assault; however, in a time of decreasing prison resources, I recommend that the existing standards of the BJS and PREA be restructured and reintegrated in order to look beyond the solutions of the NPREC. With an increasing prison population and the rising cost of correctional facilities, the landscape of the American Prison system should be closely monitored in order to preserve liability; without maintaining proper initiative accountability is lost and left for abandoned. By doing so, we can hopefully place inmate health—particularly sexual health—at the forefront of prison reform.

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Appendix A: Alleged and Substantiated Allegations of Sexual Victimization

Below is a set of tables containing the survey results of alleged and substantiated act of sexual violence reported by federal and state prison authorities between 2009-2011. The results were obtained from the data provided by the Bureau of Justice Statistic's Survey of Sexual Victimization (SSV). The tables display a disproportionate number of alleged allegations, which may contribute to the stigmas surrounding sexual abuse in prison.

Table 1a. Alleged allegations of sexual violence reported by Federal and State prison authorities, 2011

	Inmate on Inmate Nonconsensual Acts	Inmate on Inmate Abusive Sexual Contact	Staff on Inmate Sexual Misconduct	Staff on Inmate Sexual Harassment
Federal	77	42	230	139
State	1,925	986	1,762	1,092
Total	2,002	1,028	1,992	1,231

Table 1b. Substantiated allegations of sexual violence reported by Federal and State prison authorities, 2011

	Inmate on Inmate Nonconsensual Acts	Inmate on Inmate Abusive Sexual Contact	Staff on Inmate Sexual Misconduct	Staff on Inmate Sexual Harassment
Federal	3	1	3	2
State	130	160	204	43
Total	133	161	207	45

Table 2a. Alleged allegations of sexual violence reported by Federal and State prison authorities, 2010

	Inmate on Inmate Nonconsensual Acts	Inmate on Inmate Abusive Sexual Contact	Staff on Inmate Sexual Misconduct	Staff on Inmate Sexual Harassment
Federal	81	34	230	134
State	1,792	950	1,784	1,286
Total	1,873	984	2,014	1,420

Table 2b. Substantiated allegations of sexual violence reported by Federal and State prison authorities, 2010

	Inmate on Inmate Nonconsensual Acts	Inmate on Inmate Abusive Sexual Contact	Staff on Inmate Sexual Misconduct	Staff on Inmate Sexual Harassment
Federal	1	2	7	6
State	112	161	209	59
Total	113	163	216	65

Table 3a. Alleged allegations of sexual violence reported by Federal and State prison authorities, 2010

	Inmate on Inmate Nonconsensual Acts	Inmate on Inmate Abusive Sexual Contact	Staff on Inmate Sexual Misconduct	Staff on Inmate Sexual Harassment
Federal	58	28	197	122
State	1,321	1,242	1,860	1,269
Total	1,379	1,270	2,057	1,391

Table 3b. Substantiated allegations of sexual violence reported by Federal and State prison authorities, 2010

	Inmate on Inmate Nonconsensual Acts	Inmate on Inmate Abusive Sexual Contact	Staff on Inmate Sexual Misconduct	Staff on Inmate Sexual Harassment
Federal	0	0	2	6
State	101	153	216	40
Total	101	153	218	46