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Book Review & Essay: Let's Get Free

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BOOK REVIEW & ESSAY: LET'S GET FREE

By: Camille Jones¹

INTRODUCTION

Paul Butler's recent book, *Let's Get Free: A Hip-Hop Theory of Justice*,² is a powerful exploration into the conditions surrounding today's criminal justice system. Butler, a law professor, former prosecutor, and black man who has personally encountered the criminal system, offers a unique perspective about American crime and punishment. He has seen the good, the bad, and the ugly of the criminal system, and he provides valuable insight into its flaws. *Let's Get Free* is inspired by the burgeoning hip hop political movement—a movement fed by hip hop music's criminal justice critiques and reality-driven perspectives on the legal system as a whole. The book provides a refreshing narrative that critically explores America's obsession with extreme punishments for its most disadvantaged people.

A RUN-IN WITH INJUSTICE

Butler begins by explaining his personal encounter with the criminal system which resulted from an escalated dispute with a neighbor. He found himself an accused criminal after a volatile neighbor, who claimed to have legal ownership over his parking space, called the police during a heated argument. This experience demonstrates why Butler is the ideal person to de-construct the state of the so-called criminal justice system because he has personally witnessed multiple sides of the system. He has represented the State when attempting to prove a person's guilt and he has also had his own freedom imperiled by the State. Combining Butler's explanation of how he carried himself at trial as a black prosecutor with his description of how he felt in the police cruiser as another anonymous (alleged) black criminal, creates a fascinating tension and contributes to the nuanced tone that is carried throughout the book.

Let's Get Free is essentially divided into two sections. The first part contains his interpretation of some of the major issues within the criminal justice system. In the second part, he offers recommendations on how to fix these problems. Butler discusses several important issues, including mass incarceration, harsh criminalization of drug offenders, juror and prosecutor ethics, controversies surrounding government informants or "snitches," and finally the influence of hip-hop on society's impression of convicts. Butler then explores the ways in which the criminal system can become more productive and contribute to a safer country.

One major issue Butler examines is the effect of mass incarceration on society. America's "lock em up" mentality has put 7.3 million Americans on probation, in jail, in prison, or on parole as of 2008.³ Incarceration is such a pervasive phenomenon that there is mass overcrowding in prisons, which

leads to more traumatized, formerly incarcerated people once they are released.⁴ The "lock 'em up" mentality thrusts people who commit non-violent crimes into prison, leaves them with fewer options once released, and thus increases the likelihood of recidivism. This is just one of Butler's many examples of how the current system is counter-productive.

Another major issue Butler discusses is the impact of draconian drug laws on marginalized communities. He argues that non-violent drug penalties are disproportionate to the crimes committed and that they do not achieve the goals for which they were created. This chapter, generally speaking, debunks myths about the criminalization of certain drugs. Particularly, he argues for less harsh penalties for non-violent drug offenses involving personal drug use. Although this line of argument is familiar to criminal justice advocates, its importance to a hip-hop theory of justice is indispensable, and strikes at the heart of the contradictions within our criminal system.

The book's final chapters examine certain groups' influence on America's justice outlook. Butler looks at a wide range of actors from government informants, sometimes called "snitches," to celebrities. Butler discusses the impact of these actors on trials, sentencing, and the overall opinion society forms of people who serve time. Butler's contribution, perhaps, is the hip-hop theory of justice, which is a critical legal analysis of how hip hop's critiques of the criminal justice system are instructive for society at-large. Butler delves into how rappers have supported those currently in jail and challenged the view that those who have been to jail are "bad" people. This analysis explores how the justice system could change in the future based on an evolved perception of criminals and how they should be treated by society once released to the outside.

The second part of *Let's Get Free* offers solutions to the book's critiques. Butler discusses how alternative sentencing would help rehabilitate people within the criminal system and ultimately, create safer communities. He examines the use of monitoring technology for certain non-violent convicts to allow them to return to their homes and communities. Such a reform would reduce recidivism for certain crimes, especially non-violent drug crimes. Most significantly, however, Butler proposes seven specific ways in which justice can better be served within the United States from cradle to grave: reducing the amount of lead ingested by poor communities, paying students to complete high school, ending racial profiling, sending convicts to their communities rather than jail for certain crimes, imposing punishments that are more proportional to crimes (especially non-violent crimes), encouraging citizens' involvement in local justice reform, and reducing the prison population by half a million people. Butler contends that if these changes are made in the United States, they will ultimately

lead to a safer and more productive society.

CONSTITUTIONAL CIVIL DISOBEDIENCE

Jury nullification, for which Butler is a long-time advocate, is one issue that warrants discussion in greater detail. Jury nullification provides citizens with the opportunity to tell a prosecutor and the federal government that they are opposed to a criminal statute with which the defendant is charged. Motivations vary from a person's disapproval of the particular law at issue to a disagreement with the punishment that will be handed down to the defendant. Butler argues that jury nullification should be exercised in cases involving non-violent drug crimes because the punishment does not serve any of the parties involved. While the State is successful at locking up more drug users, society does not benefit more people from going to jail. Incapacitation does not prevent recidivism. However, if the defendant were acquitted despite the evidence Butler suggests that it is likely that the experience of being on trial would be enough to keep them from committing the same crime again. In this way, jury nullification may be an effective recidivism deterrent. However, for jurors to exercise their right to jury nullification they must be aware of it.

Many people view jury duty as a nuisance that forces them to be away from work, loved ones, or other things that they feel are more important. However, many of these people do not realize the power that they possess when serving on a jury. Even though lawyers argue to the best of their ability to prove a person's guilt or non-guilt, in the end, the power lies in the hands of the jury. Each juror must examine the evidence and instructions provided on one hand. On the other, each juror also reserves the constitutional right to decide acquit despite the evidence. This is the essence of jury nullification. Jury nullification is:

a jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law to the jury's sense of justice, morality, or fairness.⁵

Butler argues that citizens should exercise this constitutional right more often. The greatest obstacle to jury nullification is that the public is generally unaware of it. In some situations, juries exercise this power without being aware that they have actually done so. Popular television shows have given this issue visibility with story lines centered on an underdog who wins a case purely because the jury reached a decision outside the scope of the legal definition of the alleged crime. Though viewers cheer for the underdog, they remain unaware of the power that they hold to do exactly what they are seeing—they have the right to choose not to convict despite the evidence if they disagree with the law.

Jury nullification is rooted in the Sixth Amendment right for an accused person to be judged by a jury of peers⁶ and has a long history in America. It was supported by many of the Founding Fathers as falling within their democratic vision of justice, though in recent times it has reached somewhat of an impasse.⁷ John Adams stated that “it is not only his (juror's) right, but his duty . . . to find the verdict according to his own best understanding, judgment and conscience, though in direct opposition to the direction of the court.”⁸ However, this right is not always communicated to citizens. Although courts have ruled that jury nullification is allowed, judges do not have to tell juries about it.⁹

General verdict standards support jury nullification, this is because jurors are not required to explain how a verdict was reached, and they can decide guilt based on any reason.¹⁰ Jury nullification is strongly polarizing, with a small number who see both its pros and cons.¹¹ Supporters view jury nullification as a safety valve—a way in which citizens may express their opinion about a law particularly if they feel estranged from the law-making process.¹² Critics see it as a means by which a jury takes on the role of the judge and legislature.¹³ Although Butler promotes increased use of jury nullification, his position best falls into this middle category. Those in this category see jury nullification as a practice that should be used only in extreme situations and recognize that it can create efficiency and justice problems within a fundamentally fair system if used too often.¹⁴ Butler, therefore, supports jury nullification in very limited circumstances.

Butler supports jury nullification in criminal cases that involve non-violent drug offenses because neither the State nor defendant benefit from mass incarceration. John Jay, the first Chief Justice of the Supreme Court, found great importance in the public's right to judge laws. In *Georgia v. Brailsford*, he wrote, “juries have the right to take upon themselves to judge both the law as well as the facts.”¹⁵ If society agrees with Butler's opinion that non-violent drug crimes do not deserve jail time, then jury nullification would be in direct agreement with both John Adams and John Jay who are influential figures in the formation of the American legal system.

Jury nullification has met court opposition throughout history. A number of rulings have upheld the jury's right to nullify a decision. However, none of these rulings obligate courts to instruct jurors about nullification. In an 1895 Supreme Court case, *Sparf v. United States*, the Court held that judges are not required to inform jurors of their de facto right of juror nullification, although jurors' inherent right to judge the law remains undisturbed.¹⁶ This standard was recently upheld in *United States v. Moylan* (1971)¹⁷ and *United States v. Dougherty* (1972).¹⁸ In *Moylan*, the Court clearly states its belief that a jury may acquit despite evidence proving guilt:

We recognize, as appellants urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge, and

contrary to the evidence. This is a power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of the jurors to find the basis upon which they judge. If the jury feels that the law under which the defendant is accused, is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision.¹⁹



Today, jury nullification is also an issue that polarizes judges. Some judges have elected to explicitly instruct juries that they may convict if the evidence supports that decision, not that they must convict.²⁰ However, in other instances, judges have refused to include information that informs jurors about jury nullification.²¹ While the rhetoric seems minimal, it delivers a very different call to action for jurors. Judges should at least more clearly inform jurors about their constitutional right to nullify.

CONCLUSION

An educated citizenry is an integral part of a successful democracy and legal system. Defendants need to be aware of their rights. However, jurors must also be aware of their right to determine the validity of the law and the manner in which it is applied. Jury nullification is one example of how an educated citizenry may stand in opposition to the government and send a message to law-makers that the people do not support the current laws. By accessing information about jury nullification, individuals put themselves in powerful positions. This is very important in minority communities because it delivers the message to law-makers that laws that are unfairly applied to certain racial or class groups will not be tolerated. In a letter to Thomas Paine, Thomas Jefferson said, “I consider trial by jury as the only anchor ever yet imagined by man, by which a Government can be held to the principles of its constitution.”²² Jury nullification is a perfect example of how people can hold law-makers to the Constitution.

Let's Get Free is a thought-provoking book that forces the reader to examine controversial, and sometimes little-known issues in the criminal system. Jury nullification is only one issue that is examined in Butler's book but it is among the more eye opening ones. *Let's Get Free* should be read by any person involved in the criminal system. Regardless of whether or not the reader agrees with Butler's positions, *Let's Get Free* will force readers to critically examine the system's current state. This book provides vital information for people as informed citizens, too. To hold the legislature accountable for protecting the Peoples' constitutional rights, the People must know what their rights are in the first place.

Endnotes

¹ Camille Jones is a second-year student at American University Washington College of Law.

² PAUL BUTLER, *LET'S GET FREE* (2009).

³ Office of Justice, Bureau of Justice Statistics, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=11> (last visited April 7, 2010).

⁴ COMM'N ON SAFETY AND ABUSE IN AMERICA'S PRISONS, PUBLIC HEARING ON OVERCROWDING IN PRISONS (2005) available at http://www.prisoncommission.org/statements/haney_craig.pdf (citing written testimony of Craig Haney, Professor of Psychology at California University Santa Cruz).

⁵ BLACK'S LAW DICTIONARY (8th ed. 2004).

⁶ Case Comment, Jury Nullification – Federal Court Dismisses Juror Refusing to Apply Law as Instructed: *United States v. Luisi*, 122 HARV. L. REV. 990, 996 (2009).

⁷ *Id.*

⁸ John Adams' Diary Entry (Feb. 12, 1771) re-printed in THE WORKS OF JOHN ADAMS at 2, 3, 255 (Charles Francis Adams ed., AMS Press 1971) (1850).

⁹ *Sparf v. United States*, 156 U.S. 51 (1895).

¹⁰ Richard Myers, *Requiring a Jury Vote of Censure to Convict*, 88 N.C. L. REV. 137, 165 (2009).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Myers, *supra* note 9, at 165.

¹⁵ 3 U.S. 1, 4 (1794).

¹⁶ 156 U.S. at 51.

¹⁷ 417 F. 2d 1002 (4th Cir. 1969).-

¹⁸ 473 F. 2d 1113 (D.C. Cir. 1972).

¹⁹ Moylan, 417 F. 2d at 1006.

²⁰ See BUTLER, *supra* note 2 at 65-66.

²¹ Fully Informed Jury Association, A One Hour/Week Project to Preserve Liberty, fija.org/download/116/ (last visited March 13, 2010) (documenting instances when jurors were denied jury nullification materials).

²² Letter from Thomas Jefferson to Thomas Paine (July 11, 1789) available at <http://etext.virginia.edu/jefferson/quotations/jeff1520.htm>.