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Law School News

Should Prison Be Abolished?

‘Most of the world doesn’t use prison in nearly the same way that we do in the US,’ says Georgetown Law Professor Paul Butler. ‘Yet most of those countries are least as safe as the US—and many are much safer.’

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| Michael M. Bowden



Professor Paul Butler during his recent lecture at RWU Law.

Image Credit: RWU Law/Andrea Hansen

When it first opened in 1829, the Eastern State Penitentiary outside Philadelphia was touted as the future of criminal justice. Within little more than a decade, it had degenerated into a hellhole of madness and abuse, sparking public outcries—both for its closure (which did not occur for nearly 150 years), and for the abolition of prisons in general.

Those cries have only grown louder in the United States in recent years, Professor Paul Butler noted during a recent visit to Roger Williams University School of Law. A Georgetown law professor and legal analyst for MSNBC, Butler is one of the nation's most frequently consulted scholars on issues of race and criminal justice. His provocative, deeply informed book, *Chokehold: Policing Black Men* (the New Press, 2018) is essential reading in the field.

Butler was at RWU Law to address students on the prison abolition movement, as part of the school's groundbreaking new required course on the impact of race on the development and application of American law.

"A lot of people believe that the problems with prisons have become too entrenched to be reformed," Butler said in an interview preceding his lecture. "These are people who are now more focused on transformation; people who are leading this new movement for prison abolition."

His RWU Law lecture, Butler said, was intended "to explain why something that sounds crazy really isn't," and "to talk about why—if we don't use prison to punish people who cause harm—we can actually be safer *and* treat people in a more humane way at the same time."

Butler added that he was excited to take part in RWU Law's new required course, fully titled "[Race and the Foundations of American Law.](#)"

"It's an extremely important asset for a student to understand how law works in the US," Butler said. "The fact is that law has sometimes acted as a force for justice, liberation, and fairness—but at other times, has actually been used to entrench ongoing divisions. For example, sometimes law has helped to enforce racism, sexism, and homophobia. And students who understand how the law does that will be better attorneys."

"Our job is to train our students to think critically about the law," agreed Dean Gregory W. Bowman. "But if we train them without providing essential information about our system of justice—which includes exploring structural features that are damaging to some because of their race—then their education is incomplete. And that would be a serious disservice, both to our students and the communities they will serve."

Abolition isn't just restructuring the criminal legal system; it's restructuring society in ways that allow the people who've been left out to succeed.

As a result, "we were thrilled when Professor Butler accepted our invitation to speak to the 'Race and the Foundations of American Law' class," said RWU Law Professor Bernard Freamon, who teaches the class and helped draft the course syllabus. "He is a leading academic commentator in addressing the mass incarceration of African American men in our criminal justice system, and a groundbreaking, forward-thinking theoretician in seeking to devise concrete strategies for dealing with implicit bias, both in our legal system and in policing. Our students were very lucky to have heard his latest thoughts on these issues, and been able to engage him in critical dialogue after his talk. We owe him a large debt of gratitude."

“Having the author of one of our textbooks [*Let's Get Free: A Hip-Hop Theory of Justice* (The New Press, 2010)] come and speak to our students was a once-in-a-lifetime opportunity,” added Nicole Dyszlewski, RWU Law Director of Special Programs and Academic Affairs. “It allowed students to starkly see the injustices involved and hear about prison abolition, one possible solution to address the dehumanization of mass incarceration and the prison industrial complex. I’m proud and humbled by the work we are doing here.”

“I don’t think [the “Race and the Foundations of American Law” class] is about Kumbaya or wokeness or political correctness. I think it’s a very smart and effective move by the RWU Law faculty to help make their students the most effective lawyers they can be.”

‘A Man Buried Alive’

Butler began his discussion of prison abolition by looking at history.

“The abolition of prison is not a new movement,” he said. “People have been talking about it since prison was invented.”

Originally, however—in theory at least—the idea of prison was conceived as a forward-looking development.

“Prison actually started as a liberal reform; a kind of humane, progressive alternative to the way that people were punished *before* there were prisons—that is, by killing them, or hurting their bodies, usually in public,” Butler said. “The idea with prison, by contrast, was that people would be put into these individual cells by themselves, and they’d have to be quiet all day—what we would now refer to as solitary confinement.”

The Eastern State Penitentiary model was in fact inspired by Quaker religious ideals, with cells that featured vaulted ceilings lit from above by skylights, symbolizing the light of heaven. Each prisoner had only a bible—and perhaps some simple tools for weaving, shoemaking, or other useful tasks—for company.

“The idea was that that silence and solitude would force them to be penitent,” Butler noted. “That’s where the word penitentiary comes from.”

Unfortunately, things didn’t work out that way. The silence and isolation was soon causing inmates to suffer severe emotional and physical ailments, often exacerbated by the actions of sadistic guards. Famed British novelist Charles Dickens aptly diagnosed the situation in his 1842 travelogue, *American Notes for General Circulation*.

Every inmate at Eastern State, Dickens wrote, was essentially

- *a man buried alive.... I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers.... I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body.*

“In a sense, Dickens was actually the first prison abolitionist,” Butler noted. “And since then, there have been important waves of prison abolition.” Most recently, he noted “there were reform movements in Norway and other Scandinavian countries in the 1990s; in Argentina in the 2000s.”

Restorative Justice

Many if not most people today can readily agree that prisons are not the ideal solution to criminal justice. But if they are abolished, what is the alternative? That, Butler replied, is a matter for serious societal debate. But one possible approach involves the idea of “restorative justice.”

“Most of the world doesn’t use prison in nearly the same way that we do in the US,” Butler explained. “Yet most of those countries are least as safe as the US, and many are much safer. So, the idea is to look [for models] in other places that don’t rely so much on cages, but are still very safe.”

Restorative justice, Butler continued, implies a more victim-centered practice.

“It’s where you go to people who’ve been harmed,” he explained, “and you say, ‘We know that you can’t be made whole, but what can we do that would make things better for you?’ And the answer might be, ‘I want the person who hurt me to acknowledge what he did to me, and to make sure that he doesn’t hurt anybody else.’”

“We know that this is often the most important thing to victims and survivors,” Butler said. “And that’s not something they get when the offender just gets arrested, gets prosecuted, and goes to prison. Locking the guy up in a cage isn’t what they want. That’s not going to do anybody any good. But there lots of other governmental interventions that could accomplish something more—something that could help the person who suffered harm feel better, while also responding to the problems of the person who caused the harm, in a way that would help him stop that conduct. We don’t get that from prisons.”

Community justice systems may offer an alternative in some cases.

“In the US and most other (mainly) Western countries, when you’re faced with a situation where someone has caused harm in the community—where they’ve physically hurt someone or they’ve stolen from somebody—you can call 911 and summon people with guns to respond,” Butler said. “But most of the world doesn’t have that capability. Instead they rely on respected people in the community, often elders, to mediate the situation.”

Such a system might be the best solution for undocumented immigrants, or in communities of color where “folks don’t trust the police, but also need to be safe.”

Whatever alternative may work, the most important requirement for successfully abolishing prisons, Butler said, is that it be a “positive project” for society as a whole—and not a missed opportunity, as happened during the abolition of slavery, when former slaves were promised “40

acres and a mule,” enabling them to begin their new lives of freedom from at least a minimally realistic and competitive stance.

“But that never happened,” Butler noted. “And as the famous African American philosopher, W. E. B. Du Bois, said, for abolition to work, it has to be a positive project. If all you do is tell enslaved people, ‘You’re free to leave the plantation, good luck!’—that’s not going to work; they’re not going to be free.

“And the same thing is true for prison abolition,” he concluded. “If all you do is tell people who are locked up, ‘Okay, you are free to go home now,’ that’s not going to work either. Abolition isn’t just restructuring the criminal legal system; it’s restructuring society in ways that allow the people who’ve been left out to succeed.”