

## Book Review: Paul Butler, “Chokehold: Policing Black Men”, The New Press (2017)

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For many African-Americans the mere mentioning of the term chokehold invokes unpleasant memories of the late Eric Garner, who yelled repeatedly ‘I can’t breathe,’ before dying at the hands NYPD police officers. The New York medical examiner’s office ruled Garner’s death a homicide, caused by compression of the neck (chokehold), compression of the chest, and prone positioning during physical restraint by the police.

In his latest book, Paul Butler, a former federal prosecutor and current professor at Georgetown University, also uses the term ‘chokehold,’ but explores it through the lens of black men as a euphemism to describe the lethal effects of societal racism and how American inequality is imposed. According to Butler, the *chokehold* is carried out in various steps and works through state imposed violence—such as the way communities of color are policed. As a tool of oppression, it is also reflected in the profiling of Muslim Americans, the surveillance of poor women receiving government benefits, the appropriation of Native American lands, the exploitation and deportation of undocumented Latino workers, police and private violence against transgender people of color, and sex trafficking of Asian women.

Comprised of eight substantive chapters, preceded by an introduction (*Broke on Purpose*), Butler lays out the legacy of how our criminal justice system has treated people of color, especially young black males. Chapter 1: *Constructing the Thug*, explains the first step in the chokehold, where American society falsely assumes that every black male is a criminal. Given the proliferation of racial stereotypes, implicit biases, and public perceptions of crime and violence, Butler is apt to remind readers that the vast majority of African-Americans are law-abiding and not nearly as dangerous as perceived.

Chapter 2, titled *Controlling the Thug*, is what Butler describes as the second step in the chokehold. This step represents the transformation of anxiety about black men into law

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and policy intended to contain and control them. Moreover, Butler maintains that the *chokehold* is the reason why the United States has one of the largest and most punitive criminal justice systems in the history of the world, as its methods of defining, investigating, and punishing are centered on African-American men. Whether through hard stares, beat downs, or the continuum of force, police have been given what Butler refers as ‘super powers’ (resulting from various court decisions). Included among these ‘super powers’ are powers to kill (*Scott v. Harris*), arrest (*Atwater v. Largo Vista*) and racially profile (*Whren v. United States*). While praising Michele Alexander and others who have focused on mass incarceration, Butler notes that an arrest *precedes* incarceration and is an even bigger focal point, adding that the purpose of an arrest is not necessarily to establish guilt—but to place someone under government surveillance (p. 61).

Perhaps Chapter 3, *Sex and Torture: The Police and Black Males*, is most controversial and strains credibility. The central thesis originates from a 1954 police manual which reads:

‘the officer must feel with sensitive fingers every portion of the prisoners’ body. A thorough search must be made of the prisoner’s arms and armpits, waistline, and back, and groin areas about the testicles, and entire surface of the legs down to the feet’ (P. 81).

These searches are possible through stop and frisk practices, described by Butler as brutal assertions of police dominance on the streets, communicating to African-American men through ‘the ways of feeling a black man—sexual harassment, torture, and even terrorism—that they are objects of disdain by the state.’ Rationalized through the war on drugs and promoted through promises of increased public safety, these searches are court sanctioned and defended under the guise of reasonable suspicion. The intersectionality of race, gender, implicit bias, and the widespread availability of guns tends to insulate police from claims of excessive force, and illegal seizures—whether detentions or killings—from judicial scrutiny. Consequently, U.S. cops are allowed to shoot and kill if they reasonably believe that someone is about to shoot them, and police in the United States probably face deadly force more than cops on some other countries (p. 56). Consequently, police searches and seizures—including those characterized as harassment, sexual assaults, and torture,—are sanctioned under an officers’ perception of imminent danger. Sadly, black males are more likely perceived as dangerous. Perhaps Butler could have simply stated: show me a cop whose perceives himself in imminent danger by a black man and I will show you a cop prone to use deadly force.

Despite objections by some African-Americans, in fear of airing [our] dirty laundry, Butler felt compelled to highlight the complicity of black-on-black crime in Chapter 4: *Black Male Violence: The Chokehold Within*. Butler argues that black male violence is a much a symptom of the chokehold as brutal police violence and mass incarceration. While *black-on-black crime* is a problematic term for Butler, he regards it as legitimate and important to address because it feeds into mass incarceration. Although less likely arrested for rape, African American males are disproportionately over-represented as both murders and homicide victims. Still, in a section titled: *False equivalence: police violence versus black male violence*, Butler refuses to play the ‘violence card’ by equating the two. He notes that cops are agents of the state and when police shoot unarmed blacks, they almost always get away with it. Conversely, when African-Americans commit homicide, they are usually prosecuted, convicted, and sentenced to long years in prison, which adds to the chokehold and is one of the main reasons U.S. prisons are filled with black men. For Butler, there is

a categorical moral difference between antisocial conduct that is harshly punished on the one hand and authorized violence by the state committed with impunity, on the other hand (p. 126). Although well intentioned, one problem with this argument is that most would not diminish violent crime as merely 'antisocial conduct.' Even more, Chapter 4 fails to adequately address the magnitude and complexity of domestic violence within the black community, which is also mostly intra-racial. Like sexual assault in general and intimate partner violence in particular, many of these crimes are not reported. And when reported, they do not necessarily result in prosecution and conviction, as these crimes are classified as either first or second-degree misdemeanors and are frequent subjects of deferred prosecutions. However, if penalties for domestic battery were enhanced, it would considerably strengthen Butler's chokehold thesis.

Chapter 5: *Do The Brothers Need Keepers: How Some Black Male Programs Perpetuate the Chokehold?* is more on an indictment on existing efforts to address crime within the black community. Moreover, even programs endorsed by former President Obama and the federal government focused almost exclusively on black men and tended to render invisible the plight of African-American women. He argues that these programs embrace the concept of 'black male exceptionalism' (where they are worse off than others) and rest on a false premise that reinforces the chokehold. Refusing to embrace the label of black males as endangered species, given its corollary to animal like tendencies, Butler argues that Black women are also in a state of crisis as well since most share the same environment as black males (152-153).

Appreciating the oppressive and unrelenting effects of the chokehold, Chapter 6 is pessimistically titled *Nothing Works: Why the Chokehold Cannot be Reformed*. Here, Butler presents a number of interventions, policies, and approaches to alleviate the vice-like grip of the *chokehold*. But in doing so, he identifies considerable 'tensions' between how to define the problem and where solutions lie. Should we focus be on black male behavior, police under-enforcement and over-enforcement, police community relations, anti-black racism and white supremacy, or civil rights versus Black Lives Matter Movement? To appreciate the complexity and inter-connectedness of these issues, Butler introduces a few elements of critical race theory to further illustrate the reality of the chokehold, concluding that the country must be 're-made' if it is to achieve racial equality. In a section titled '*racism is never going away*' Butler quotes critical race theorists Devon Carbado and Daria Roithmayr as saying 'racial inequality is hardwired into the fabric of our economic and political landscape.' Butler also cites Derrick Bell and others to emphasize that racism represents an integral, permanent, and indestructible component of American democracy. These messages are certainly counter to the optimism of former President Obama's vision of a post-racial or color-blind society. The last two chapters take readers in a direction where change is possible.

Chapter 7 (referred to by Butler as the nightmare chapter) is titled *If You Catch a Case, Act Like You Know*. Speaking as a former prosecutor, Butler offers learned advice on how to manage the criminal process. His warning to black males is that 'cops are eager to catch you and looking for reasons to stop you' (p.201). He identifies things police are looking for, including some that are obvious and others that are not so obvious. His advice includes what to do if stopped and arrested, who to call, public versus private defenders, communicating with attorney, going to court, whether to snitch, and whether to plea. Like any responsible parent, Butler provides some useful and thoughtful advice to help prevent one's daydreams from becoming a living nightmare. For example, to lessen chances of a

police encounter, he advises not to drink alcohol or smoke weed in public and communicate respect when stopped by police. Interestingly, Butler notes that 'a stop is [really] a masculinity contest between you and the police. You must let the cop win' (p. 205). When arrested, do not talk. Do not admit to anything other than what can be found on your driver's license. Other advice includes the usual: if possible, call a lawyer right away, gather witnesses to the incident, and have your love ones show up for your arraignment. While some might regard this advice as common sense, Butler appears reasonably convinced that most (first-time arrestees) would not know how to handle themselves in these situations. Overall, some of this advice is a carryover from his earlier work "*Let's Get Free: A Hip-Hop Theory of Justice*," which detailed his being falsely arrested and charged—but ultimately acquitted.

The concluding chapter titled *Unlocking the Chokehold* promotes and espouses a type of revolution that must occur if 'the bothers' (for the most part) are to break the chokehold. To that end, Butler proposes a number of ideas (mostly recycled ones) along the lines of abolishing prisons, 20-year maximum sentences, alternatives to incarceration, not calling police when surviving a violent incident, decriminalizing low-level offenses, continued use of civil rights legislation, and supporting the Black Lives Matter Movement.

As an African-American reader of *Chokehold: Policing Black Men*, one cannot help but to emerge with an increased sense fear for their children, having to be ever vigilant and mindful of how the system targets people of color. When certain people are caught up in a system that is both suffocating and inescapable, '*chokehold*' is certainly a suitable and appealing description for this state of affairs. However, despite its appeal, this book has a few glaring shortcomings; the most noticeable is that it really speaks more so to the plight of African-American males, with only occasional references to other 'people of color' who are also caught in this chokehold. In addition, there are many other paradigms, concepts, and practices that could have been used in lieu of '*chokehold*,' to describe this state of affairs. Butler could have easily substituted 'chokehold' with critical race-theory, critical legal studies, structural inequality, societal oppression, the prison industrial complex, mass incarceration, or perhaps peculiar exceptions to the 13<sup>th</sup> Amendment. In a sense, the term '*chokehold*' captures some of these terms and practices, but each is neither thoroughly explored nor given the attention each deserves.

As a law professor, it is not surprising that much of Butler's research results from criminal cases and law journals (spiced with heavy doses of rap music and popular culture as an overture to a much younger generation who might comprise his intended audience). However, much of the literature, landmark cases, and system's data (though widely scattered) are already well known by most scholars of race, crime, and justice. For instance, the literature on racial disparities in the criminal justice system have been a focal point of race, crime, and justice literature over the last 40 years. There are myriad scholars within the disciplines of criminology and criminal justice (i.e., African-American Criminologists and Sociologists) whose contributions would have added much needed scholarly rigor to Butler's thesis. This would include the works of W. E. B. Du Bois, Daniel Georges-Abeyie, Darnell F. Hawkins, Helen Taylor Greene, Shaun Gabbidon, Coramae Richey Mann, William Julius Wilson, Boko Agozino, and Vernetta D. Young, among countless others. Surprisingly, none of these criminologists are cited in this book, which is disappointing.

Aside from this missed opportunity, somewhere along the way, Butler forgets that blacks are not a monolithic entity and that bi-racial and multi-racial are real constructs. Yet,

there is no mentioning of how multi-racial (or even bi-racial) blacks fare in the system. Moreover, Butler fails to critically analyze the complicity of black officers, black defense attorneys, black prosecutors, and black judges who also feed into the 'chokehold' that results in mass incarceration? Their obvious complicity appears overlooked, ignored, and perhaps unwittingly condoned—but for no apparent good reason.

Overall, the spirit of this book is alive and well and it is certainly a thought-provoking and interesting read. However, *Chokehold: Policing Black Men* appears to cater to a specific audience and might fall short of the transformation the author envisions. For all the discourse about diversity and shared oppression with other persons of color, the mentioning of Latinos, Muslims, and women gradually lessens with each succeeding chapter and detracts from Butler's complex concerns of creating revolutionary change. At times, even his reliance of rap and hip-hop artists demonstrates great intent and social consciousness—but some of the chosen lyrics are impractical to implement. For instance, Butler includes the lyrics of Nas and Lauryn Hill who sang:

*"If I ruled the world, I'd free all my sons. I'd open every cell in Attica and send them to Africa."*

Undoubtedly, these lyrics are well intentioned and idealistic—but are potentially problematic as they offend the families of back-on-black homicide victims. Realistically speaking, these artists would not want *to set free* someone who killed their relative. But readers get the point. These exceptions are but one example of Butler's failure to appreciate the complexity of criminal justice reform required to achieve the change and desired transformation that he and the rest of us so desperately seeks. Nonetheless, I believe *Chokehold: Policing Black Men* merits the status or 'required reading.' However, such readings should be done through a critically objective lens.