

The dangerous doctrine of qualified immunity for police

When officers can duck consequences for civil rights violations, policing is more dangerous for everyone.

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During a Freedom Ride in 1961, 15 Episcopal priests—12 White and three Black—were arrested for breach of peace when they entered a segregated section of a Mississippi bus terminal. They sued the police officers for violating their civil rights, and the case went to the Supreme Court, which ruled against the priests in 1967. Chief Justice Earl Warren’s decision maintained that while the police do not enjoy “absolute and unqualified immunity” from civil liability, they are protected for any

actions taken “in good faith.”

Thus was the doctrine of qualified immunity born. In the decades since, the courts have tried to define a clear test for what counts as good faith on the part of police. The answer has grown to encompass almost anything. Today, qualified immunity applies in all cases where no precise civil precedent exists: If an officer violates someone’s civil rights in an incident nearly identical to one already judged unlawful in a prior suit, that officer can be sued. Otherwise they cannot. Recent high-profile cases include unwarranted attacks by police dogs, inappropriate seizure of property, and fatal shootings of unarmed citizens.

Qualified immunity is not popular. Two-thirds of Americans are against it. Justices Clarence Thomas and Sonia Sotomayor have each publicly opposed it. The Cato Institute and the American Civil Liberties Union are working together to fight it. In 2018, federal judge Don Willett (a Trump appointee) wrote that “qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the first to behave badly.”

Police officers sometimes need to make split-second decisions in dangerous situations, and qualified immunity aims to protect them from financial ruin when they make the wrong one. But as a recent *New York Times* investigation of fatal traffic stops found, such dangerous moments in police work are hardly the norm—and when they do happen, they are often the result of an officer’s own choices that escalate a situation. Qualified immunity protects the officer anyway.

What’s more, individual officers bear little of the financial risk of being sued. Civil damages against officers are almost always paid instead by the government. After the 2019 police killing of Elijah McClain, Colorado passed a law that both ends qualified immunity and limits how much an individual officer can be required to pay in damages. Other states have struggled to curtail qualified immunity. Since George Floyd’s death last year, many have introduced bills, but police unions have successfully lobbied against them. Federal bills, including the George Floyd Justice in Policing Act, have stalled as well.

Qualified immunity doesn’t just harm those whose rights are violated by police. It disincentivizes departments from holding individual officers accountable. It prevents judges from deliberating on new situations that arise as technology changes. It

undermines public trust in police officers, which makes policing more dangerous for officers and citizens alike. It undermines the healthy functioning of our justice system.

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