

Submitted to NYT and Wall Street Journal, rejected from both :(

Immoral and unconstitutional behavior has been exhibited by police for decades. But now, after the 2016 presidential election and with a new generation of people, George Floyd's death has reenergized the fight for change in America's policing. Police brutality and police who murder, abuse, and terrorize people, can not be ignored and normalized after happening for decades. They must be exposed to justice. However, there is legal doctrine that has excused them justice; qualified immunity.

In the 1860s in the aftermath of the Civil War, while Black Americans were legally free under the three Civil War amendments, in reality they were anything but that. The Ku Klux Klan used a system of surveillance to control black voters through terrorization and intimidation. But in order to combat it directly, people, especially public officials, had to be held accountable for abusing the civil rights of others. Following this reasoning, the Ku Klux Klan Act (1871) was passed to give people the right to sue public officials that violated their rights, all in order to ensure black people receive justice, especially when the racist and malicious intentions are held by people of the government.

An idea raised in Congress, this system, in theory, leaves cops, who mistakenly violate people's rights, eligible to be sued. The KKK Act alone would leave cops like Jeff Groh's, a special agent for the U.S. Bureau of Alcohol, Tobacco, and Firearms, freedom at risk. Groh "mistakenly left out the items he was seeking from the Ramerizes on his search warrant. However, he did list them on the application itself. Because the Ramerizes were victims of an improperly filled out search warrant, they tried to sue Groh to no avail. The qualified immunity doctrine prevented this from happening. Even though their fourth amendment right, protecting them from unreasonable search and seizure, was violated, they were unable to seek justice.

In 1967, the Supreme Court would exempt officials who acted in "good faith", especially without racially charged ideologies, like Officer Groh, who thought he was abiding by the law with his search warrant, regardless of his mistake.

But after the case Harlow v. Fitzgerald, the bases of qualified immunity were fundamentally reshaped. The burden of proof no longer was on the law enforcement officials to prove that their actions, but on the victims. Qualified immunity could now not be for those who acted in good faith, but for those with malicious intent, since court has required the victim to use precedent cases with similar circumstances to prove their right was clearly established and violated.

The FBI, whose officers are eligible for qualified immunity, makes the case for the doctrine, saying, "Law enforcement personnel expose themselves to risks every day. Those risks include the possibility of being sued civilly for something they did while performing law enforcement duties. While acting in the scope of their employment, federal, state, and local officers can be sued for intentionally violating a person's constitutional rights." The bureau argues that their officers risk their lives everyday and they should not have to worry about risking their freedom in

addition to that. This viewpoint is also the same one that excuses cops for their behavior even when it is carried out with malicious intentions. The officers do risk their lives, however by arguing that they should not be afraid of being sued and their freedom being at risk, it is an argument that cops should be above the law. And that the officers do not need to hesitate before they shoot because they have no incentive to. Because no matter what they do, they will not receive justice. This statement is not meant to say that officers as a collective whole have bad intentions and no thirst for justice, however the doctrine of qualified immunity sets the way for public officials with the intents and actions of the KKK to never be exposed to justice.

It would be best for qualified immunity to be completely abolished.

The fundamental issues with qualified immunity are the behaviors that it defends.

1. It protects public officials who thought their actions were necessary.
2. It protects public officials who thought their acts were law abiding.

So to combat these two mistakes by public officials, it starts with training and recruitment.

Let's start with the former.

Police shootings are of unarmed civilians far too many times. Recently, Jacob Blake was shot several times, while peacefully walking back into his car. The fact that the police officers, thought it would be necessary to use lethal weapons in the face of unarmed civilian means that there needs to be better systems in place to help cops assess situations and deescalate situations. Michael German, a Brennan Center national security fellow and former FBI agent, says, "The effort to prevent him from getting into his car and driving away is what led to the violence...they had his license plate number, if they needed to go arrest him later, he would be easy to find." It is indisputable that the career is a difficult one, and this encounter only allowed for seven seconds to assess the situation. By abolishing qualified immunity would make the use of lethal weapons less of instinct and additional teachings give them the knowledge, key to making the best decision.

Cops need to have more of an understanding of law to prevent so many cases of them falsely believing their decisions were law abiding. In *Groh v Ramirez*, Officer Groh made a mistake on the search warrant and the Ramirezes were victims to it. It could be dismissed as an innocent mistake, but it is easily preventable. If Officer Groh was properly enforced if they took close attention to their work it would've been prevented. But I believe that when qualified immunity is abolished, that the cops will be forced to pay closer attention to their work. And with proper teaching, cops like the ones who shot and paralyzed Jacob Blake could understand the other ways they could find him, instead of preventing him from getting into his car through extreme force and unnecessary measure.

But no amount of training can correct the prejudices and characteristics of person unwilling to learn. And it has been proven that police officers act towards the need of the people if they share the same characteristics as the people they patrol. In the court of law, a civilian is entitled to a jury of their peers since they will understand the civilian's struggles if they share the same racial, gender, and/or geographical identity. With the police department, it should be no different. Only 18% of the NYPD is female, compared to the 52% female population in New York City. There is a 26% black population in New York City, 11% more than that of the rest of America, however 15% of NYPD is black. By hiring more diverse officers there would be a decrease in complaints. Out of the 57% of officers with complaints, 87% of them are male and 13% are female, with male officers having a proportionally higher rate of complaints.

Defenders of qualified immunity argue that everyone makes mistakes and it is unfair that a mistake comes from a place of "good faith." However when it comes to peoples' rights, and even lives, being threatened, this is not enough.