

Qualified Immunity

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The year 2020 was a year of chaos. The COVID-19 pandemic brought the whole nation under a worldwide pandemic which brought to the surface a way of life that has been the norm for many marginalized communities. In particular, mass attention was drawn to the Black Lives Matter (BLM) movement as various interactions between members of the Black community and police officials led to violence. This constant police violence towards underserved communities led many supporters to advocate for change, reform, and even abolition of the police institution. However, what the general public may be overlooking is the technical legal protections that are given to police officers that give authority to their actions and close a pathway for citizens seeking justice from unlawful police actions. One of the most heavily discussed protections that are given towards police officers is the Qualified Immunity Doctrine. In this paper, I will argue how qualified immunity creates a system that lacks accountability, disproportionately deprives historically marginalized communities from receiving justice, and leads to challenges of legitimacy within parts of the legal institution.

The federal enactment of 42 U.S.C. Section § 1983 (as part of the Civil Rights Act of 1871) provided individuals who had constitutional rights violated by local or state government officials the ability to seek legal remedies. This is the statute that provides a pathway for individuals to sue police officers for violation of their constitutional right. However, the qualified immunity doctrine is what shields officers from being held liable to § 1983 claims. Beginning ideas of qualified immunity first appeared in the case of *Pierson v. Ray (1967)*, where the petitioner brought a lawsuit against an officer for an unlawful arrest. The officer introduces the claim that “they should not be liable if they acted in good faith and with probable cause in making an arrest under a statute that they believed to be valid,” (Obasogie & Zaret, 2022). The Court holds that the “defense of good faith and probable cause...is also available to them in

action under § 1983,” (Obasogie & Zaret, 2022). This is the basis of the qualified immunity doctrine that has continued to develop well into the next century. The following cases of *Harlow v. Fitzgerald* (1982) and *Pearson v. Callahan* (2009) further expanded the qualified immunity doctrine into the model that it is today. In *Harlow*, the court established the “objective” standard which “granted immunity to government officials...insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known” (Myher, 2022). This interpretation creates a standard of reasonableness of an officer’s actions in comparison to clearly established laws. Additionally, *Pearson* altered the process of analysis in which qualified immunity is granted “by allowing courts to pursue the question of clearly established law before asking the question of whether a constitutional violation occurred,” (Obasogie & Zaret, 2022). Individuals seeking justice from government officials now must prove that there was a “clearly established” right that was violated rather than a constitutional violation. Today, qualified immunity is in place if 1) there is a claim of a constitutional right violation and 2) if the right at issue was clearly established at the time of the officer's alleged misconduct, (Jaicomo & Bidwell, 2022). As qualified immunity has been expanded, it is now further granted to officers if they were acting in good faith and laws are not “clearly established.”

To further explore the complexities of the qualified immunity doctrine, I will first begin by explaining how the preservation of the qualified immunity doctrine creates a system of unaccountability. Secondly, I will highlight how this lack of accountability further drives marginalized communities away from forms of justice. Finally, I will discuss long-term implications of this continued overprotection of government protections that can lead to challenges of legitimacy towards legal institutions.

The right to hold government officials accountable is the very foundation of the American political and legal system. This practice is established to protect the rights of individual citizens and to expect that the government will provide a redress for its wrongs. By providing a redress for violated rights, governments acknowledge the rights of the citizen but also present a method of recovery and assertion, (Jaicomo & Bidwell, 2022). In addition to providing a redress, a separation of powers is needed to hold government bodies accountable, (Jaicomo & Bidwell, 2022). The judiciary branch determines if one deserves justice by comparing individual rights to government laws. Using litigation as a form to hold other government branches accountable further creates balances and separation of power. This separation of powers allows people to understand where their rights will be protected and who will be held liable for rights violations. Through this, the government's power is limited and bounded while the individual's right is recognized and fulfilled. But, what would happen if the judiciary branch was no longer able to protect the individual rights against certain government officials?

As mentioned, qualified immunity is intended to shield police officers from “harassment, distraction, and liability,” when reasonably acting within their duty, (Qualified immunity - obviousness standard, 2021). However, the burden to overcome the protections of qualified immunity lie within the plaintiff. The plaintiff must not only show that a constitutional violation has occurred, but also that the law was clearly established so that the officer should have known not to violate the right, (Qualified immunity - obviousness standard, 2021). This clearly established rule usually is taken in the form of precedents. The issue with mainly using precedents as the basis for a “clearly established law” is that if there is any change in the circumstances then it will be argued that the law was not clear enough to address the rights

violation at hand, even if the situation is fairly similar. This “materially similar” standard grants officers with qualified immunity even if a constitutional violation has taken place because there is no previous ruling with similar facts to issue the “clearly established” law, (Schwartz, 2020). Individuals are then left with no valuable path to hold officers accountable unless there is a previous case that explicitly outlaws the officers actions in the same exact context. Qualified immunity prevents people from employing § 1983 claims because it is unlikely that the claim overcomes the meticulous protections of qualified immunity, leading to an endless cycle of constitutional violations made by police officials who cannot be held accountable, (Schwartz, 2020).

In examining the implications of qualified immunity within our system, it is important to address how these additional protections further drives away marginalized communities from seeking remedies and justice. It has been argued that the criminal legal system has historical roots of racial violence that have been made possible through intertwined state power and white supremacy designed to maintain racialized forms of social control, (Jacob, 2021). Considering the power of qualified immunity that leads to a system of unaccountability, those from marginalized communities will continue to face police officials conducting “forms of discipline formerly undertaken by white men as a customary obligation of civic life,” further enforcing forms of racialized police acts of violence, (Jacob, 2021). Qualified immunity is a judicial framework designed to protect the violent actions of police officers against underserved communities. When prioritizing the “good intentions” of government officials, the rights of marginalized communities are overlooked. Qualified immunity presents a story where violent police actions are deemed solely as “defensive and ultimately innocent measures taken out of necessity,” (Jacobs, 2021). Qualified immunity overprotects the actions of an institution deeply

rooted in preserving white supremacy. This racialized narrative has already created a distrust between marginalized communities and state institutions to protect their rights, again leading to a lack of faith in pursuing any § 1983 claims. At its core, qualified immunity only harms the most vulnerable communities from seeking justice from violent state actors.

In considering the growing power of the qualified immunity doctrine, it is vital to recognize the long-term implications within the legal system. Legal systems are only as powerful as the recognition and validation given from the people who legitimize it. The dismissal of the obvious standard across a multitude of cases over the last decade has given rise to the materially similar standard leaving for doubt within the actual limitations of qualified immunity. This unofficial change in requirement has heightened the burden placed upon the plaintiff and “in theory reduces [the] likelihood of overcoming summary judgment,” (Levine, 2021).

Additionally, the application of qualified immunity between lower courts and the Supreme Court has left room for vast interpretations and applications of the doctrine, (Levine, 2021). No matter the level of inconsistent reasoning, “courts are more likely to protect defendants (police officers) and limit plaintiffs’ ability to prevail,” (Levine, 2021). The abolitionist movement has only continued to rise since its origins in the 1960s. Calling for the abolition of prisons, these progressive movements recognize how the criminal legal system falls short, but also how the judicial sphere may not provide significant remedies to curtail the racialized effects of the criminal institution. Qualified immunity is one of the practices that limits the remedies given to individuals and leads to a distrust in the legal system as the place to receive a redress of grievances. A prolonged practice in protecting the unlawful actions of government officials over the rights of citizens could possibly lead to challenges of legitimacy of these institutions, perhaps not immediately, but definitely beginning with the continued use of qualified immunity.

“Without enforcement, there is no accountability, and without accountability, there is no rights,” (Jaicomo & Bidwell, 2022). The expanding capacity of qualified immunity has created issues of accountability within the legal system which has been possible through new standards and precedents. Additionally, marginalized communities continue to be the most disadvantaged by these various interpretations. Leading to more harm and distrust within communities that have historically been at the forefront of the deprivation of rights by government officials. As successes from § 1983 claims continue to be limited, the validity and legitimacy of the legal institution may be challenged by various movements. In all the varying controversies within the criminal legal system, the use of qualified immunity will influence how individuals interact and understand the legal system to protect their rights. Whatever the future of qualified immunity may be, the people must understand the avenues that allow for real change and accountability of government officials. Without these formal avenues of accountability, there may be a shift into other informal outlets that can bring change.

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