

“Scholars have noted that the doctrine of qualified immunity is not supported by the empirical evidence”

The Bethlehem Gadfly George Floyd killing, Ochs, Holona, Police August 10, 2020

 Latest in a series of posts responding to the George Floyd killing 

Scholars have noted that the doctrine of qualified immunity is not supported by the empirical evidence.

Prof Holona Ochs

from Hailey Fuchs, “Qualified Immunity Protection for Police Emerges as Flash Point Amid Protests.” New York Times, June 23, 2020.

Mr. Jones’s brothers, Robert and Bruce, have tried for years to hold the police accountable for Wayne’s death but have repeatedly run into hurdles: Most recently, the officers claimed they could not be held liable under so-called qualified immunity, an esoteric legal doctrine invoked by police departments across the country for decades in response to allegations of excessive force. It provides legal protections for officers when they are accused of violating others’ constitutional rights.

Once a little-known rule, qualified immunity has emerged as a flash point in the protests spurred by Mr. Floyd’s killing and galvanized calls for police reform. In the vast majority of cases of police brutality, officers are never criminally prosecuted. For families of victims seeking some sort of relief through the justice system, qualified immunity presents another obstacle to obtaining financial or other damages. Even in the rare cases where the officers are charged, as in Mr. Floyd’s death, the police can still claim qualified immunity if relatives or victims sue them.

Activists have seized on qualified immunity as what they see as one of the biggest problems with policing and argued that it shields officers from being held accountable in cases of misconduct. Police leaders said it was essential for officers’ ability to respond to calls and to make split-second decisions.

Qualified immunity is a focal point of the new debate on Capitol Hill over how to address systemic racism in policing and use of excessive force. House Democrats unveiled a bill that would allow victims of police brutality to seek damages from their assailants. A competing Senate Republican bill made no mention of qualified immunity, and the White House press secretary, Kayleigh McEnany, called it a “total and complete nonstarter.”

Though the doctrine is intended to protect officers from paying for the damages they cause, he said the result is that officers are more likely to abuse their powers.

Advocates on behalf of the police insisted that qualified immunity was necessary for officers to protect the public. Its protections allow officers to make life-or-death decisions in a matter of seconds, they said, and without it, fewer people might be willing to join police forces.

The doctrine does not apply in criminal cases like those pending against the officers involved in the death of Mr. Floyd.

In the vast majority of cases where officers are not charged, victims can pursue justice only in the form of financial or other damages through lawsuits. Qualified immunity can block them from obtaining relief.