Qualified Tyranny

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- What is the purpose of qualified immunity?
- Do government actors deserve special treatment under the law?
- What happens when courts place their opinions above the supreme law of the land?

Governments protecting their own with a mock trial is nothing new. When our Founding Fathers published the Declaration of Independence, they listed 27 specific grievances against the king, including:

For protecting [the military], by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

Declaration of Independence

Today, courts are protecting law enforcement by mock trial from punishment for violating the law and our rights based solely on their opinion of what is "clearly established statutory or constitutional rights". The Supreme Court recently opined on two cases where the question of a law enforcement officer's "qualified immunity" was in question, but we really have to ask ourselves two questions. First, is it constitutional to provide government officials special treatment under the law? Second, do the courts have the legal authority to determine when "statutory or constitutional rights" have been established?

One of the most important rights we have is the right to petition our governments for a redress of grievances. While there are many ways to petition, one of the most common is to sue. After all, courts are one of the three branches of government. So when you sue someone, you are petitioning your government for a redress of some grievance. What happens though, when those courts shield government actors from the consequence of their bad behavior? That's exactly what's happening with the doctrine of "qualified immunity".

In the United States, qualified immunity is a legal principle that grants government officials performing discretionary functions immunity from civil suits unless the plaintiff shows that the official violated "clearly established statutory or constitutional rights of which a reasonable person would have known".

Qualified Immunity – The Free Legal Dictionary

Like so much of what goes on in the judicial branch of our governments today, "qualified immunity" is not a law. Rather, it is a standard made up by the courts for their own reasons. Originally, the idea of "qualified immunity" was based on two factors; the good faith and the reasonableness of the conduct in question. For example, if a law enforcement officer is given a warrant to arrest someone, most would generally believe that it has been legally issued. Therefore, if they executed the warrant and then it was found out at trial that the warrant was not legally issued and the defendant sued the officer for false arrest, "qualified immunity" would protect the officer. In this case, the officer made the arrest in good faith, with the reasonable belief that the warrant was valid.

In the 1982 Supreme Court case Harlow v. Fitzgerald, the court was concerned about the subjective aspects of a person's state of mind. How are we to know if the agent was acting in good faith? That would require a trial, probably by a jury. The court expressed concern that these trials "[diverted] official

energy from pressing public issues, and [deterred] able citizens from acceptance of public office". So the court decided to change the standard for "qualified immunity" to the one quoted above. While the language used seems pretty straightforward, the problem comes with who the courts use to determine what is "clearly established statutory or constitutional rights of which a reasonable person would have known". The answer is not the Constitution or laws of the United States, but rather the opinion of judges. This has not only led to some truly crazy and bizarre decisions, but some horrendous violations of the rights of the American people. Which leads me to the two cases the court recently opined upon. While the outcomes in both of these cases are reasonable, they show how the courts have replaced the supreme law of the land with their own opinions.

City of Tahlequah, OK v. Dominic Rollice

Officers were called to the home of Dominic Rollice's ex-wife Joy after she called 911. Mr. Rollice was in her garage, intoxicated, and refused to leave. Joy led the offices to the side entrance of the garage, where they began speaking with her ex-husband. Mr. Rollice expressed concern that they were going to take him to jail. The officers assured him they only want to get him a ride. One officer asked Mr. Rollice if he could pat him down for weapons, which Mr. Rollice refused. Body-cam footage shows Officer Girdner gesturing with his hands and taking one step toward the doorway. Mr. Rollice reacted by taking a step back, turned around, and walked toward his tools, which were in the back of the garage. The officers followed Mr. Rollice, but maintained a distance of at least six feet. Mr. Rollice picked up a hammer, turned, and held the hammer as if preparing to swing or throw it at them, which prompted the officers to draw their weapons and yell at Mr. Rollice to drop the hammer. Instead, Mr. Rollice moved from behind a piece of furniture, giving him an unobstructed path to one of the officers, raised the hammer as if to charge

or throw it. In response, two of the officers fired, killing Mr. Rollice. Mr. Rollice's estate sued the two officers in federal court, claiming they violated his right protected by the Fourth Amendment to be free from excessive force. The officers moved for summary judgment on the grounds of "qualified immunity".

At issue before the court was if the Tenth Circuit's overturning of the District Court's granting of "qualified immunity" was valid. In the court's opinion the answer was "no". Not because they believed that Mr. Rollice was the victim of excessive force or because they saw a violation of the Fourth Amendment. The court specifically stated in their opinion that they were not deciding either of those issues. The Supreme Court overturned the Circuit Court because they didn't use the right precedent.

The Tenth Circuit contravened those settled principles here. Not one of the decisions relied upon by the Court of Appeals […] comes close to establishing that the officers' conduct was unlawful.

City of Tahlequah, OK v. Dominic Rollice

Notice, it was not the law that determined if the actions of the officers was lawful or not, but the opinions of previous courts. And because the Supreme Court doesn't think that the law clearly establishes the rights of the people, the estate of Mr. Rollice is denied his right to petition the government for a redress of grievance.

Daniel Rivas-Villegas v. Ramon Cortesluna

Union City, CA police officer Rivas-Villegas responded to a 911 call reporting that a woman and her two children were barricaded in a room fearing that the woman's boyfriend, Mr. Cortesluna, was going to hurt them. Officer Rivas-Villegas and other officers commanded Mr. Cortesluna outside and on the ground. While handcuffing Mr Cortesluna, officers noted a

knife in his pocket. While removing the knife, Rivas-Villegas briefly placed his knee on the left side of Cortesluna's back. Cortesluna sued in federal court, claiming Officer Rivas-Villegas used excessive force in violation of the Fourth Amendment. The issue before the Supreme Court was whether Officer Rivas-Villegas was entitled to "qualified immunity".

Interestingly, the District Court granted "qualified immunity", but was overturned by the Circuit court.

The Court of Appeals held that "Rivas-Villegas is not entitled to qualified immunity because existing precedent put him on notice that his conduct constituted excessive force."[…] In reaching this conclusion, the Court of Appeals relied solely on LaLonde v. County of Riverside

Daniel Rivas-Villegas v. Ramon Cortesluna

One judge dissented, stating the there was insufficient details in the LaLonde case to make it clear to every reasonable officer that what Officer Rivas-Villegas did was excessive force. The Supreme Court agreed with this dissent.

We agree and therefore reverse. Even assuming that controlling Circuit precedent clearly establishes law for purposes of §1983, LaLonde did not give fair notice to Rivas-Villegas. He is thus entitled to qualified immunity.

Daniel Rivas-Villegas v. Ramon Cortesluna

Qualified Immunity

In both cases, the issue before the court was not the use of excessive force, but whether or not the officers were shielded by "qualified immunity". Looking at it from the other side, the Supreme Court was deciding if the original petitioners would be granted their right to petition the government for a redress of their grievances. In both cases, the court sided with the government. And, in both cases, the court based its

decision not on the law or the Constitution, but whether prior courts had decided what the officers did was wrong in a sufficiently plain manner. Does that sound like the rule of law? Or the rule of a few?

That's not all. How many of you have heard the phrase "ignorance of the law is no excuse"? Can you get out of a speeding ticket because you didn't see the sign? Can you avoid the penalties or possible jail time because the IRS regulation you violated was not "clearly established"? Can you avoid a trial by simply claiming you had not been informed of some court opinion that found what you were doing was illegal? The answer to all of these question is "No" unless, of course, you are a government agent. Article VI, Clause 3 of the Constitution requires that the oath taken by all executive and judicial officers include that they support the Constitution of the United States. Yet the courts have claimed they only need to follow that oath if a previous court had clearly found that the specific actions of those in government clearly violated that document. Article VI, Clause 2 of the Constitution states that it, and the laws of the United States made pursuant to it, are the supreme law of the land. However, the courts have placed their opinions above the Constitution, and established themselves as the supreme law. And just to add insult to injury, how is a court supposed to establish that the specific actions of government actors are a clear violation if those cases are never heard by a court?

Conclusion

These two cases are more proof that the government in Washington, D.C. is now filled with criminals. Going to federal court for a redress of grievance today seems more like going to the Corleone house than a court of law. Your fate is no longer decided by the laws of the nation, but the the opinions of oligarchs in black robes. Once again, we see a government protecting their own from punishment by mock trial. So when do we redeclare our independence from tyranny? When

will We the People realize that the people we hired to represent us in Congress have the legal authority to deal with this gross miscarriage of justice?

Not until We the People realize, as Abraham Lincoln said:

The people — the people — are the rightful masters of both Congresses, and courts — not to overthrow the Constitution, but to overthrow the men who pervert it

Abraham Lincoln, [September 16-17, 1859] (Notes for Speech in Kansas and Ohio)

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[**BIO:** Paul Engel founded The Constitution Study in 2014 to help everyday Americans read and study the Constitution. Author and speaker, Paul has spent more than 20 years studying and teaching about both the Bible and the U.S. Constitution. Freely admitting that he "learned more about our Constitution from School House Rock than in 12 years of public school" he proves that anyone can be a constitutional scholar. You can find his books on Amazon and Apple Books. You can also find his books, classes and other products at the Constitution Study website (https://constitutionstudy.com).