

The System Is Rigged: Qualified Immunity Is How the Police State Stays in Power

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Global Research, June 17, 2020

Region: [USA](#)

Theme: [Law and Justice](#), [Police State & Civil Rights](#), [Poverty & Social Inequality](#)

“What’s been most striking to me is just how one-sided the rules are when Americans take on their own government.... It has been dismaying to learn the extent to which rules and laws shield the government from accountability for its abuses—or even lawbreaking.... It’s been a long and frightening lesson.... The rules seem rigged to protect government lawlessness, and the playing field is uneven. Too many processes favor the government. [The deck is still stacked.](#)” — Journalist Sharyl Attkisson

The system is rigged.

The system is rigged, the government is corrupt, and “we the people” continue to waste our strength by fighting each other rather than standing against the tyrant in our midst.

Because the system is rigged, *because* the government is corrupt, and *because* “we the people” remain polarized and divided, the police state will keep winning and “we the people” will keep losing.

Because the system is rigged and the U.S. Supreme Court—the so-called “people’s court”—has exchanged its appointed role as a gatekeeper of justice for its new role as maintainer of the status quo, there will be little if no consequences for the cops who brutalize and no justice for the victims of police brutality.

Because the system is rigged, there will be [no consequences for police](#) who destroyed a private home by bombarding it with tear gas grenades during a SWAT team raid gone awry, or for the cop who mistakenly shot a 10-year-old boy after aiming for and missing the non-threatening family dog, or for the arresting officer who sicced a police dog on a suspect who had already surrendered.

This is how unarmed Americans keep dying at the hands of militarized police.

By [refusing to accept any of the eight or so qualified immunity cases before it this term](#) that strove to hold police accountable for official misconduct, the Supreme Court delivered a chilling reminder that in the American police state, ‘we the people’ are at the mercy of law enforcement officers who have almost absolute discretion to decide who is a threat, what constitutes resistance, and how harshly they can deal with the citizens they were appointed to ‘serve and protect.’

This is how qualified immunity keeps the police state in power.

Lawyers tend to offer a lot of complicated, convoluted explanations for the doctrine of

qualified immunity, which was [intended to insulate government officials from frivolous lawsuits](#), but the real purpose of qualified immunity is to rig the system, ensuring that abusive agents of the government almost always win and the victims of government abuse almost always lose.

How else do you explain a doctrine that requires victims of police violence to prove that their abusers knew their behavior was illegal because it had been deemed so in a nearly identical case at some prior time: it's a setup for failure.

Do you know how many different ways a cop can kill, maim, torture and abuse someone without being held liable?

The cops know: in large part due to training classes that drill them on the art of sidestepping the Fourth Amendment, which protects us from being bullied, badgered, beaten, broken and spied on by government agents.

This is how "we the people" keep losing.

Although the U.S. Supreme Court recognized in *Harlow v. Fitzgerald* (1982) that suing government officials for monetary damages is "the only realistic avenue" of holding them accountable for abusing their offices and violating the Constitution, it has ostensibly given the police and other government agents a green light to shoot first and ask questions later, as well as to probe, poke, pinch, taser, search, seize, strip and generally manhandle anyone they see fit in almost any circumstance, all with the general blessing of the courts.

Whether it's police officers [breaking through people's front doors](#) and shooting them dead in their homes or [strip searching motorists](#) on the side of the road, these instances of abuse are continually validated by a judicial system that kowtows to virtually every police demand, no matter how unjust, no matter how in opposition to the Constitution.

Make no mistake about it: [this is what constitutes "law and order" in the American police state](#).

These are the hallmarks of a police state: where police officers, no longer mere servants of the people entrusted with keeping the peace, are part of an elite ruling class dependent on keeping the masses corralled, under control, and treated like suspects and enemies rather than citizens.

Unfortunately, we've been traveling this dangerous road for a long time now.

A review of critical court rulings over the past several decades, including rulings affirming qualified immunity protections for government agents by the U.S. Supreme Court, reveals a startling and steady trend towards pro-police state rulings by an institution concerned more with establishing order, protecting the ruling class, and insulating government agents from charges of wrongdoing than with upholding the rights enshrined in the Constitution.

Indeed, as Reuters reports, qualified immunity "has become a [nearly failsafe tool to let police brutality go unpunished](#) and deny victims their constitutional rights." Worse, as Reuters concluded, "the Supreme Court has built qualified immunity into an often insurmountable police defense by intervening in cases [mostly to favor the police](#)."

The system is rigged.

Police can claim qualified immunity for warrantless searches. In [*Anderson v. Creighton*](#), the Supreme Court ruled that FBI and state law enforcement agents were entitled to qualified immunity protections after they were sued for raiding a private home without a warrant and holding family members at gunpoint, all in a search for a suspected bank robber who was not in the house.

Police can claim qualified immunity for warrantless arrests based on mere suspicion. In [*Hunter v. Bryant*](#), the Court ruled that police acted reasonably in arresting James Bryant without a warrant in order to protect the president. Bryant had allegedly written a letter that referenced a third-party plot to assassinate President Ronald Reagan, but police had no proof that he intended to harm Reagan beyond a mere suspicion. The charges against Bryant were eventually dropped.

Police can claim qualified immunity for using excessive force against protesters. In [*Saucier v. Katz*](#), the Court ruled in favor of federal law enforcement agents who forcefully tackled a protester as he attempted to unfurl a banner at Vice President Gore's political rally. The Court reasoned that the officers acted reasonably given the urgency of protecting the vice president.

Police can claim qualified immunity for shooting a fleeing suspect in the back. In [*Brosseau v. Haugen*](#), the Court dismissed a lawsuit against a police officer who shot Kenneth Haugen in the back as he entered his car in order to flee from police. The Court ruled that in light of existing case law, the cop's conduct fell in the "hazy border between excessive and acceptable force" and so she did not violate clearly established law.

Police can claim qualified immunity for shooting a mentally impaired person. In [*City of San Francisco v. Sheehan*](#), the Court ruled in favor of police who repeatedly shot Teresa Sheehan during the course of a mental health welfare check. The Court ruled that it was not unreasonable for police to pepper spray and shoot Sheehan multiple times after entering her room without a warrant and encountering her holding a knife.

Police officers can use lethal force in car chases without fear of lawsuits. In *Plumhoff v. Rickard*, the U.S. Supreme Court declared that [police officers who used deadly force to terminate a car chase were immune from a lawsuit](#). The officers were accused of needlessly resorting to deadly force by shooting multiple times at a man and his passenger in a stopped car, killing both individuals.

Police can stop, arrest and search citizens without reasonable suspicion or probable cause. In a [*5-3 ruling in Utah v. Strieff*](#), the U.S. Supreme Court effectively gave police the go-ahead to embark on a fishing expedition of one's person and property, rendering Americans completely [vulnerable to the whims of any cop on the beat](#).

Police officers can stop cars based on "anonymous" tips or for "suspicious" behavior such as having a reclined car seat or driving too carefully. In a 5-4 ruling in [*Navarette v. California*](#), the U.S. Supreme Court declared that police officers, under the guise of "reasonable suspicion," can [stop cars and question drivers based solely on anonymous tips](#), no matter how dubious, and whether or not they themselves witnessed any troubling behavior. Then in [*State v. Howard*](#), the Kansas Supreme Court declared that [motorists who recline their car seats are guilty of suspicious behavior](#) and can be subject to warrantless searches by police. That ruling, coupled with other court rulings upholding warrantless searches and seizures by

police renders one's car a Constitution-free zone.

Americans have no protection against mandatory breathalyzer tests at a police checkpoint, although mandatory blood draws violate the Fourth Amendment (*Birchfield v. North Dakota*). Police can also conduct sobriety and "information-seeking" checkpoints (*Illinois v. Lidster* and *Mich. Dep't of State Police v. Sitz*).

Police can forcibly take your DNA, whether or not you've been convicted of a crime. In *Maryland v. King*, a divided U.S. Supreme Court determined that a person arrested for a crime who is supposed to be presumed innocent until proven guilty must submit to forcible extraction of their DNA. Once again the Court sided with the guardians of the police state over the defenders of individual liberty in determining that [DNA samples may be extracted from people arrested for "serious" offenses](#). The end result of the ruling paves the way for a nationwide dragnet of suspects targeted via DNA sampling.

Police can use the "fear for my life" rationale as an excuse for shooting unarmed individuals. Upon arriving on the scene of a nighttime traffic accident, an Alabama police officer shot a driver exiting his car, [mistakenly believing the wallet in his hand to be a gun](#). A report by the Justice Department found that half of the unarmed people shot by one police department over a seven-year span were ["shot because the officer saw something \(like a cellphone\) or some action \(like a person pulling at the waist of their pants\) and misidentified it as a threat."](#)

Police have free reign to use drug-sniffing dogs as "search warrants on leashes." In *Florida v. Harris*, a unanimous U.S. Supreme Court determined that [police officers may use highly unreliable drug-sniffing dogs to conduct warrantless searches of cars](#) during routine traffic stops. The ruling turns man's best friend into an extension of the police state, provided the use of a K-9 unit takes place within a reasonable amount of time (*Rodriguez v. United States*).

Not only are police largely protected by qualified immunity, but police dogs are also off the hook for wrongdoing. The Fourth Circuit Court of Appeals ruled in favor of a [police officer who allowed a police dog to maul a homeless man innocent of any wrongdoing](#).

Police can subject Americans to strip searches, no matter the "offense." A divided U.S. Supreme Court actually [prioritized making life easier for overworked jail officials over the basic right of Americans](#) to be free from debasing strip searches. In its 5-4 ruling in *Florence v. Burlington*, the Court declared that any person who is arrested and processed at a jail house, regardless of the severity of his or her offense (i.e., they can be guilty of nothing more than a minor traffic offense), can be subjected to a strip search by police or jail officials, which involves exposing the genitals and the buttocks. This "license to probe" is now being extended to roadside stops, as police officers throughout the country have begun performing roadside strip searches—some involving anal and vaginal probes—without any evidence of wrongdoing and without a warrant.

Police can break into homes without a warrant, even if it's the wrong home. In an 8-1 ruling in *Kentucky v. King*, the U.S. Supreme Court placed their trust in the discretion of police officers, rather than in the dictates of the Constitution, when they [gave police greater leeway to break into homes or apartments without a warrant](#). Despite the fact that the police in question ended up pursuing the *wrong* suspect, invaded the *wrong* apartment and violated just about every tenet that stands between us and a police state, the Court

sanctioned the warrantless raid, leaving Americans with little real protection in the face of all manner of abuses by police.

Police can use knock-and-talk tactics as a means of sidestepping the Fourth Amendment. Aggressive “knock and talk” practices have become thinly veiled, warrantless exercises by which citizens are coerced and intimidated into “talking” with heavily armed police who “knock” on their doors in the middle of the night. Andrew Scott didn’t even get a chance to say no to such a heavy-handed request before [he was gunned down by police](#) who pounded aggressively on the wrong door at 1:30 a.m., failed to identify themselves as police, and then repeatedly shot and killed the man when he answered the door while holding a gun in self-defense.

Police can carry out no-knock raids if they believe announcing themselves would be dangerous. Police can perform a “no-knock” raid as long as they have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile or give occupants a chance to destroy evidence of a crime (*Richards v. Wisconsin*). Legal ownership of a firearm is also enough to justify a no-knock raid by police (*Quinn v. Texas*). For instance, a Texas man had his home subject to a no-knock, SWAT-team style forceful entry and raid based solely on the suspicion that there were legally-owned firearms in his household. The homeowner was actually [shot by police through his closed bedroom door](#).

Police can recklessly open fire on anyone that might be “armed.” Philando Castile was shot and killed during a routine traffic stop allegedly over a broken tail light merely for telling police he had a conceal-and-carry permit. [That’s all it took for police to shoot Castile four times](#) in the presence of his girlfriend and her 4-year-old daughter. A unanimous Supreme Court declared in [County of Los Angeles vs. Mendez](#) that police should not be held liable for recklessly firing *15 times* into a shack where a homeless couple had been sleeping because the grabbed his BB gun in defense, fearing they were being attacked.

Police can destroy a home during a SWAT raid, even if the owner gives their consent to enter and search it. In *West v. Winfield*, the Supreme Court provided cover to police after they [smashed the windows of Shaniz West’s home, punched holes in her walls and ceilings, and bombed the house with so much tear gas that it was uninhabitable for two months](#). All of this despite the fact that the suspect they were pursuing was not in the house and West, the homeowner, agreed to allow police to search the home to confirm that.

Police can suffocate someone, deliberately or inadvertently, in the process of subduing them. “I can’t breathe” has become a rallying cry following the deaths of Eric Garner and George Floyd, both of whom [died after being placed in a chokehold by police](#). Dozens more have died in similar circumstances at the hands of police who have faced little repercussions for these deaths.

As I make clear in my book [Battlefield America: The War on the American People](#), we are dealing with a nationwide epidemic of court-sanctioned police violence carried out with impunity against individuals posing little or no real threat.

So what’s the answer to reforming a system that is clearly self-serving and corrupt?



Abolishing the police is not the answer: that will inevitably lead to outright anarchy, which will give the police state and those law-and-order zealots all the incentive it needs to declare martial law.

Looting and violence are not the answer: As Martin Luther King Jr. recognized, “A riot merely intensifies the fears of the white community while relieving the guilt.” Using the looting and riots as justification for supporting police brutality is also not the answer: As King recognized,

“It is not enough ... to condemn riots... without, at the same time, condemning the contingent, intolerable conditions that exist in our society. These conditions are the things that cause individuals to feel that they have no other alternative than to engage in violent rebellions to get attention. And I must say tonight that a riot is the language of the unheard. And what is it America has failed to hear? It has failed to hear that the plight of the negro poor has worsened over the last twelve or fifteen years. It has failed to hear that the promises of freedom and justice have not been met. And it has failed to hear that large segments of white society are more concerned about tranquility and the status quo than about justice and humanity.”

Police reform is necessary and unavoidable if we are to have any hope of living in an America in which freedom means something more than the right to stay alive, but *how* we reform the system is just as important as getting it done.

We don’t need to wait for nine members of a ruling aristocracy who primarily come from privileged backgrounds and who have a vested interest in maintaining the status quo to fix what’s broken in America.

Nor do we need to wait for 535 highly paid politicians to do something about these injustices only when it suits their political ambitions

And we certainly don’t need to wait for a president with a taste for totalitarian tactics to throw a few crumbs our way.

This is as much a local problem as it is a national one.

Be fair. Be nonviolent. Be relentless in your pursuit of justice for all.

Let’s get it done.

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This article was originally published on [The Rutherford Institute](#).

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Featured image: Brutal: A Minnesota police officer sprays protesters with pepper spray at the weekend (Source: Morning Star)

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