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## (Un)Qualified Immunity: An Analysis on Qualified Immunity and Civilian Sentiments

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(UN)QUALIFIED IMMUNITY: AN ANALYSIS ON QUALIFIED IMMUNITY AND  
CIVILIAN SENTIMENTS

by

GUY HODGE II

(Under the Direction of Amanda Graham)

ABSTRACT

Recent events involving the deaths of unarmed, African American citizens have brought forth an increased attention to the application of qualified immunity to law enforcement. This study aims to gain a civilian perspective on qualified immunity. Qualified immunity, as defined by the Supreme Court case *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), 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.” Through a national-level survey, this study captures an overall favorability of qualified immunity as well as explores the impact of race and situational elements using an experimental vignette that had three manipulated parts randomly assigned to participants ( $N = 840$ ). Results showed that overall support for qualified immunity is split down the middle, but after accounting for other sociodemographic factors, support is significantly more prominent in White respondents. In an experiment manipulating race of the officer, race of the driver, and the situation, the situational elements held more weight in influencing the responses than race. This split in support points to a possible tipping point towards its abolition, as supported by recent abolition in select jurisdictions.

INDEX WORDS: Qualified immunity, Policing, Thesis, Criminal justice

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GUY HODGE II

B.S., Georgia Southern University, 2019

A Thesis Submitted to the Graduate Faculty of Georgia Southern University in Partial  
Fulfillment of the Requirements for the Degree

MASTER OF SCIENCE

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## CHAPTER 1: INTRODUCTION

### **Introduction**

Since the latter part of the last decade, there has been an increasing concern about the disproportional amount of unarmed African American men, women, and children being killed by the police. To make matters worse, the officers involved in the shootings rarely face criminal charges nor are they able to be sued in civil cases because they were protected under qualified immunity. Such killings have sparked outrage that has fueled movements such as Black Lives Matter (henceforth BLM) and hashtags on social media such as #HandsUpDon'tShoot, #ICan'tBreathe, #BreonnaTaylor. When one breaks down the events that have taken place, it is not difficult to identify the source of this outrage.

The year 2014 seemingly started it all. In July, while on the street in New York City, Eric Garner, a particularly large (6'2", 395lbs), African American man, was allegedly selling loose cigarettes (Baker, Goodman, & Mueller, 2015). When NYPD officers confronted and attempted to arrest him, he was put in a chokehold and pinned down by multiple officers (Baker, Goodman, & Mueller, 2015). The ordeal was caught on cell phone video, and viewers can clearly hear Garner repeatedly (11 times) exclaim, "I can't breathe!" (Baker, Goodman, & Mueller, 2015). Garner eventually lost consciousness and died at the hospital (Queally, 2014).

In August 2014, the shooting of Michael Brown occurred in Ferguson, Missouri (Mejia, 2014). According to Officer Darren Wilson of the Ferguson Police Department, while responding to a theft in process, Brown was reaching for his gun while Wilson was in his police car (Mejia, 2014). Wilson alleges that Brown charged at him, leading him to shoot his gun at Brown several times (Mejia, 2014). Dorian Johnson, who was with Brown, disputes this

narrative and says that Wilson started the altercation by grabbing Brown's neck when he was next to the vehicle, prompting Brown to flee, turn around, and raise his hands in surrender before Wilson shot at him multiple times (Mejia, 2014). In the investigation of the incident, there were several conflicting eyewitness statements with a Federal Bureau of Investigation (FBI) and Department of Justice (DOJ) investigation finding that Officer Wilson acted in self-defense—even though Brown was unarmed— (Berman, 2014). The incident sparked protests and civil unrest in Ferguson, repeating the phrase “Hands Up, Don't Shoot,” which was met with a militarized response from area law enforcement (Tribune wire reports, 2014). Wilson was later called to a grand jury where he was not indicted (Sneed, 2014); this was only the beginning.

A mere two months later, in Cleveland, Ohio, Tamir Rice, a 12-year-old African American boy was killed by Officer Timothy Loehmann of the Cleveland Police Department (McCarthy, 2014). Initially, Loehmann, along with his partner, Frank Garmback, were dispatched to the call being advised that there was a male pointing a pistol at random people (McCarthy, 2014). The 9-1-1 caller said that the gun was “probably fake” and that it was “probably a juvenile”, although none of that was revealed by the dispatcher on the original call for service. As seen by surveillance footage, Loehmann shot at Rice almost immediately after arriving at the scene (McCarthy, 2014). Rice was not pointing the gun at the time of the officers' arrival; his hands were in his jacket pockets, and the toy gun was in his waistband (McCarthy, 2014). When responding to a command to show his hands, Rice took his hands out of his pockets and, before he had a chance to finish the motion, he was shot (McCarthy, 2014). He died the next day in the hospital (McCarthy, 2014). When the case was brought to a grand jury, they declined to indict the officers (Fantz, Almasy, & Shoichet, 2015).

As Table 1 shows, the cases only continued to increase in frequency and inconsistency in

Table 1: Notable Cases from 2015-2019

Year	Victim	Location	Situation	Punishment
2015	Deven Guilford	Eaton Co., MI	Shot by Sgt. Jonathan Frost in a traffic stop over Frost's headlights <sup>a</sup>	No charges
2015	Walter Scott	North Charleston, SC	Shot in the back while fleeing from by Ofc. Michael Slager (caught on camera) <sup>b</sup>	20 years in prison (second-degree murder)
2016	Daniel Shaver	Mesa, AZ	Shot in hotel hallway by Ofc. Philip Brailsford. Shaver was on his knees pleading for his life when he was shot <sup>c</sup>	Acquitted (second-degree murder)
2016	Alton Sterling	Baton Rouge, LA	Shot by Ofc. Blane Salamoni while he and Ofc. Howie Lake II had him pinned down. Sterling was thought to be reaching for a gun (caught on camera) <sup>d</sup>	No charges <sup>e</sup>
2016	Philando Castile	Falcon Heights, MN	Shot by Ofc. Jeronimo Yanez while performing a traffic stop. Castile was thought to be reaching for a gun. (incident was broadcasted on Facebook Live) <sup>f</sup>	Acquitted (manslaughter, two counts endangerment)
2016	Terence Crutcher	Tulsa, OK	Shot by Ofc. Betty Shelby after Crutcher approached his stalled SUV and not complying to Shelby's commands <sup>g</sup>	Acquitted
2018	Botham Jean	Dallas, TX	Was shot in his own home by neighbor, Ofc. Amber Guyger, who was off duty, but still in uniform. Guyger alleged that she had mistaken him for an intruder in her apartment <sup>h</sup>	10 years (murder)
2019	Atatiana Jefferson	Fort Worth, TX	Was shot in her own home through a window by Aaron Dean after Dean was responding to a non-emergency call about Jefferson's door being open. Jefferson was armed but acted in self-defense. <sup>i</sup>	Indicted (murder)

Notes: (a) Balko, 2015; (b) Dwyer, 2017; (c) Friedersdorf, 2018; (d) Belinger, Valencia, & Almasy, 2016; (e) Fausset & Blinder, 2018; (f) Berman, 2017; (g) Karimi, Levenson, & Gamble, 2017; (h) Ortiz, 2019a; (i) Ortiz, 2019b

punishment.

Concern over the deaths of unarmed Black people at the hands of the police came back to the forefront in 2020 following the deaths of Breonna Taylor and George Floyd. In March, Taylor, 26, who was an emergency room technician in Louisville, KY, was shot to death in her home after Louisville police executed a no-knock warrant searching for her ex-boyfriend, who was allegedly using her home to sell drugs (Oppel Jr., Taylor, & Bogel-Burroughs, 2021). Taylor was lying in bed with her boyfriend, Kenneth Walker, when they heard a battering ram strike their front door (Oppel Jr., Taylor, & Bogel-Burroughs, 2021). When they both called out to see who it was at the door, no one answered, so when the door was broken down, Walker fired his gun, striking an officer in the thigh (Oppel Jr., Taylor, & Bogel-Burroughs, 2021). In response to the initial gunshot, several gunshots were fired into the residence, hitting Taylor; she died shortly thereafter (Oppel Jr., Taylor, & Bogel-Burroughs, 2021). The man in question, Jamarcus Glover, was later arrested (unrelated to Taylor's death) and said that Taylor was not involved with the operation, further purporting her innocence (Oppel Jr., Taylor, & Bogel-Burroughs, 2021).

Since the incident, there have been protests and outcry on social media and in-person demanding the officers involved be held accountable. In June, the Louisville council passed a law that banned no-knock warrants in the city and named it after Taylor (Reiss & Waldrop, 2020), but that was before any charges were brought before the officers involved. It was not until September that the officers were brought before a grand jury, only for one of them to be charged with wanton endangerment (Miller & Tobin, 2020). In accordance with Kentucky state law, "A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct

which creates a substantial danger of death or serious physical injury to another person” which is a Class D felony (Miller & Tobin, 2020). In short, the officer was only being charged for the rounds that missed Taylor. It was not until January 2021 that Officer Joshua Jayne (who secured the no-knock warrant) and Detective Myles Cosgrove (the shooter) were fired from the department (Booker, 2021).

Two months following Taylor’s death, George Floyd was killed. The event took place in Minneapolis, MN, after Floyd was accused of using a counterfeit \$20 bill (Hill et al., 2020). Multiple cell phone videos displayed the ever-escalating ordeal of his arrest. Floyd appears cooperative and was handcuffed but a struggle ensued when he was being put inside the car (Hill et al., 2020). Eventually, Floyd was pulled out of the car onto the street and laid face down, still handcuffed (Hill et al., 2020). Bystanders were still filming the arrest mere feet away and witnessed three officers holding down a defenseless Floyd while one stood by and watched (Hill et al., 2020). The arrest concluded with Officer Derrick Chauvin’s knee on Floyd’s neck for eight minutes and forty-six seconds, all while Floyd is pleading for the officer to get off of him, exclaiming multiple times that he could not breathe (Hill et al., 2020)—a call back to Eric Garner. As bystanders are watched and filmed, they too pled with Chauvin to take the knee off, even trying to physically intervene before being blocked off by the assisting officers standing idly by. Floyd eventually lost consciousness (around the seven-minute and twenty-six second mark) and died with a knee in his neck; he was 46 (Hill et al., 2020). The video of the incident went viral on social media and news outlets alike, with outrage felt worldwide.

However, police relations among minority communities did not worsen overnight. From the inception of slave patrols to the Civil Rights era, relations between the police and the African American community has been contentious at best and shrouded in violence at worst.

Furthermore, one mainstay of this tumultuous relationship has been the lack of accountability faced by officers who “sadistically and maliciously” use force during arrests. The year 2014 was not the start of this behavior—and subsequent acquittal—for law enforcement. Of the more notable incidences, perhaps the most similar in response to those mentioned earlier would be that of Rodney King. In 1991, King was driving under the influence in Los Angeles, CA, and led police on a high-speed chase (Sastry & Bates, 2017). When the police finally stopped him and attempted to arrest him, they “kicked him and beat him with batons for a reported 15 minutes” while more officers stood by instigating the incident; the ordeal was also caught on camera (Sastry & Bates, 2017). King suffered numerous injuries from the beating, including permanent brain damage (Sastry & Bates, 2017). When it came time to discipline the officers involved over a year later, the four officers involved were all acquitted (Sastry & Bates, 2017). That decision left Los Angeles in shambles as a result of riots and unrest that occurred throughout the city (Sastry & Bates, 2017). Although King survived to tell his story, unfortunately, others in his position have not. Names like Amadou Diallo—a man who was shot at 41 times by four plain-clothes officers of the New York Police Department in 1999 (Fritsch, 2000)—Kathryn Johnston—an elderly woman who was shot in the execution of a no-knock warrant in Atlanta, GA, (similar to Breonna Taylor) in 2006 (CNN, 2008)—and Sean Bell—who, among two other friends, was shot at 50 times by New York Police Department after leaving his bachelor party in 2006 (Johnson, 2019)—have been immortalized in history as victims of police misconduct.

Although these cases are tragic, a partnering source of outrage is the lack of consistency in holding the officers accountable. In the Diallo case, the four officers involved with second-degree murder but were acquitted at trial (Fritsch, 2000); the officers involved in the Bell incident met a similar fate and were also acquitted (Johnson, 2019). However, the cases of

Kathryn Johnston and Breonna Taylor show the most inconsistency across parallels. Aside from the shootings occurring in different states over a decade apart, the circumstances are nearly identical. Yet, the officers involved in the Johnston case were tried and convicted, while those of the Taylor case were charged with crimes unrelated to her death and only recently fired from their department (Booker, 2021). Officers being fired, albeit a step in the right direction, is not enough for many community members. In incidents that involve the officer drawing and firing his/her gun, the common first step is to suspend them while the investigation is conducted. This is meant to ensure the officer's due process; however, it can appear to the public as leniency or even a reward for the officer.

As much as the knee-jerk reaction desires for immediate termination, the removal of the officer is only partially helpful. Often, the officers involved can be hired by another department. For example, Officer Loehmann (shot and killed Tamir Rice) was hired by another Ohio department four years after the incident (Vera, 2018). Perhaps the solution lies within the standard operating procedures. If officers are trained under policies that better outline the proper procedure, perhaps it could lessen the frequency of the incidences in the future. Unfortunately, it is incredibly difficult to proactively outline every possible scenario that an officer would encounter, and policies are often updated *after* an incident occurs (see e.g., Breonna's Law; Reiss & Waldrop, 2020).

As we scramble to find the solution, one that has emerged is the removal of the application of qualified immunity from law enforcement. Qualified immunity, as defined by the Supreme Court case *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), 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.” This legal principle is not exclusive to law enforcement nor is it meant to intentionally stifle compensation for victims of police brutality. As it applies to law enforcement, when officers are not found to have violated their protocol, they are protected from being sued. The department itself can still be sued and often settle, but should they choose not to settle, the officer would be protected. If qualified immunity is amended to no longer apply to law enforcement, the threat of monetary loss on the part of the officer may serve as a powerful deterrent to the unreasonable use of force.

### **Problem Statement**

As cases of unarmed Black men and women being shot and/or brutalized by law enforcement pile up, the lack of accountability creates an exponential cycle of injustice. When combined with vague policies and officer discretion, qualified immunity protects officers from personally being held accountable for their actions. To increase accountability, some have called for doing away with such immunity policies; but it is unknown the breadth of the support for such actions as well as the potential conditional nature of support for such efforts.

### **What to do with Qualified Immunity**

There are credible concerns with retaining qualified immunity as well as with doing away with it. On the one hand, outside of reform occurring elsewhere in policing, the pattern of unaccountability would continue, and justice would constantly fall short. However, if qualified immunity protections were stripped from law enforcement, the floodgates could open to the frivolous lawsuits that such immunity was designed to prevent. For example, if in the execution of a foot-chase, an officer runs through a prized garden and ruins it, the gardener could sue the officer for damages, even if the officer was acting in the bounds of his duties. As it stands now,



that officer would and should be protected from a suit such as that; but the problem arises when officers are acting outside of their role as a law enforcement officer and their conduct is not (a) explicitly codified or (b) the codified behavior is detrimental to those who are being policed.

### **Purpose of the Study**

This study is meant to understand the support for removing qualified immunity as well as consider how race may play a factor in the application and perception of qualified immunity. Because qualified immunity is rarely discussed (and less so in social science publications), gauging public opinion would assist in deciding how to deal with qualified immunity moving forward.

## CHAPTER 2: LITERATURE REVIEW

### **Police Accountability**

As civilians, we are held accountable by police officers; if a law is broken, the expectation is that those responsible suffer the consequences, but from the appropriate source. When the lawbreaker is a member of law enforcement, they also must be held accountable, whether it be from their superiors, the community, a court of law, or a combination thereof. Notable methods of police accountability include civilian review boards, Internal Affairs Units, body-worn cameras, and criminal lawsuits.

#### *Civilian Review Boards*

As described by Udi Ofer in the Seton Hall Law Review (2016), “the concept behind a civilian review board is a simple one: civilians and not police personnel should have the power to investigate and make findings on police officer wrongdoing” (p. 1039). As the name suggests, officers are reviewed by community members to hold them accountable. This method originated in the 1940s but did not gain ground until the 1960s and 1970s, during the height of the Civil Rights Era (Ofer, 2016). The Civil Rights Era was a period of increasing concerns about police brutality and having a civilian review board was a way that community members believed they could address this problem. Today, four different types of civilian review boards exist: (1) those that investigate allegations and suggest discipline to the appropriate source, (2) those that review the findings of internal investigations, (3) those that allow civilians to appeal the findings of internal investigations and a board to review the process itself, and (4) those that serve as auditors of police complaints (Ofer, 2016). To conclude his article, Ofer emphasizes the importance of an *effective* civilian review board:

Arguably, a weak civilian review board is worse than no civilian review board because it gives the illusion of independent accountability but provides little to no accountability. A weak civilian review board can lead to an increase in community resentment, as residents go to the board to seek redress yet end up with little (p. 1052).

In an analysis of civilian review boards in Newark, NJ, Alecia McGregor (2016) shows how politics may influence civilian review boards and, more broadly, police accountability. Historically, Newark law enforcement has a tarnished past involving civil rights violations. McGregor (2016) notes:

By most accounts, police-community tensions in Newark peaked in July of 1967, after taxi driver John Smith was beaten and dragged into a police station by Newark police officers. This event sparked a 5-day uprising that ultimately resulted in 26 deaths, 24 of whom were African American civilians, and most were killed by police firearms (p. 144).

When met with advocacy for a civilian review board, then-mayor Hugo Addonizio (who was Italian-American) was opposed to the idea (McGregor, 2016). Even as Addonizio was unseated by Kenneth Gibson (African American) in 1970, there was still political opposition to a civilian review board (McGregor, 2016). It was not until 1997, following the Rodney King incident and a local incident involving Newark police, that there was political advocacy, when Mayor Sharpe James endorsed civilian review boards only to walk it back in the face of police opposition (McGregor, 2016). As racial tensions in Newark grew throughout the 1990s into the 2010s, a civilian review board remained absent until 2015, when Mayor Ras Baraka implemented it via executive order (McGregor, 2016). The 38-year gap across mayors between peak desire and civilian review boards' implementation reveals the struggle to change policies due to political influence.

### *Internal Affairs Units*

As the name suggests, internal affairs units are designed to conduct investigations of police officers from within. As defined by The Balance Careers' Timothy Roufa (2019):

“In law enforcement, [Internal Affairs] is the department that investigates allegations of wrongdoing by police currently serving on the force. Because they are investigating fellow officers, the department is separated from the force-at-large and report to an investigative board or the agency's chief. Law enforcement officers must be held to the highest ethical standards. So, sometimes mistakes can rise to a level that requires a full internal investigation and possibly severe discipline” (n.p.).

Theoretically, internal affairs units are an effective way for police to police themselves.

However, as Rachel Moran purports in her article in the *Buffalo Law Review* (2016), the concept of internal affairs is a “farce” created by a combination of five elements: (1) citizens being deterred by police departments to report misconduct, (2) failure to investigate reports, (3) biased investigations that favor the officer, (4) reproachable excessive force investigations, and (5) resistance to requiring serious discipline. A design flaw with internal affairs units is that the officers conducting the investigation are not present during the precipitating incident. Before the possibility of recording the police, filing a complaint with these investigative bodies often created a case of the officer's word against that of the complainant. However, Moran (2016) provides an example of how video evidence expedites the investigation process:

The Seattle Police Department has also had a number of incidents in which police officers used racial slurs against minorities, including one in which an officer was recorded threatening to ‘beat the f'ing Mexican piss out of a suspect.’ Although multiple

officers at the scene witnessed this incident, none reported it, and the police department did not discipline the officer until a civilian bystander made public a video of the incident (p. 866).

A common theme among most of the incidents mentioned in Chapter 1 of this thesis is that they were caught on camera. Video evidence serves to fill the gaps in the narrative of police misconduct and provide a clearer explanation as to why a complaint was filed. However, not everyone has access to a recording device nor should they be expected to record every instance of their daily lives. This issue is meant to be solved by body-worn cameras.

### *Body-Worn Cameras*

After the events of 2014, there was an increase in support for police wearing body cameras from officers, community members, and the courts (Coudert, Butin, & Le Métayer, 2015). The recent increase in the use of body-worn cameras is one that is felt internationally, as departments in the United Kingdom, Spain, Belgium, and France have all tested the use of these cameras prior to 2015 (Coudert, Butin, & Le Métayer, 2015). Regarding accountability, body-worn cameras are, as Coudert, Butin, and Le Métayer explain:

They act as a transparency mechanism, subjecting to scrutiny that so far was limited to the parties to the interaction. Video surveillance is here targeted to specific events, places, and people. Because it is mobile, it can happen everywhere, anytime. Its use is thus highly intrusive into the privacy of both citizens, who see their encounters with police documented, and police officers, who are being placed under (constant) monitoring during the performance of their task (p. 754).

Body-worn cameras have shown positive effects in reducing civilian complaints, as observed in a 2015 study conducted by Barak Ariel, William A. Farrar, and Alex Sutherland in the *Journal of Quantitative Criminology*. The experiment was conducted in Rialto, California, and divided the officers into control and experimental groups, with the latter wearing cameras (Ariel, Farrar, & Sutherland, 2015).

The outcomes suggest a reduction in the total number of incidents of use-of-force compared to control-conditions. We have also observed nearly ten times more citizens' complaints in the 12-months prior to the experiment, compared to any of the three years prior to the experiment (p. 25).

### *Criminal Lawsuits*

Unfortunately, the footage from body-worn cameras is not a guaranteed smoking gun. Often, the camera is not on or is only turned on at a time after contextual events have occurred. Take the shooting of Samuel DuBose, for example. This incident happened in 2015 at the University of Cincinnati. After Officer Ray Tensing pulled over DuBose for driving without a front license plate, he asked for DuBose's driver's license, which he did not show (Coolidge, Grasha, & Horn, 2016). When Tensing tried to open DuBose's car door, DuBose pulled it shut with his left hand while starting the ignition with his right hand while exclaiming, "I ain't even do nothing!" (Coolidge, Grasha, & Horn, 2016). In response, Tensing reached into the car with his left hand, yelled, "Stop!" and fired a single shot into DuBose's head (Coolidge, Grasha, & Horn, 2016). The entire stop was caught on Tensing's body-worn camera (Coolidge, Grasha, & Horn, 2016). When the case came under adjudication, Tensing said that he was scared he was going to be run over by DuBose when the car was started (Sewell, 2017)—despite the video showing him on the side of the car (Coolidge, Grasha, & Horn, 2016). The case against Tensing

was eventually dropped after multiple trials (Sewell, 2017). The University of Cincinnati eventually settled for \$5.3 million to DuBose's family (Sewell, 2017).

While settling outside of court can provide a healthy compensation, the accountability of the officer (or the lack thereof) is not addressed. It should not be in a police department's best interest to pay out millions of dollars each time one of its officers kills someone. Even when all else fails (see previous methods of accountability), a judge and/or jury can determine the punishment for the officer. However, as Kate Levine's article in *The Georgetown Law Journal* (2016) explains, criminally charging police officers rarely results in a conviction.

Prosecutors decline to charge officers who kill (often unarmed) suspects at an extremely high rate. Although recordkeeping by the federal government has been extremely poor, academics, citizens, and media outlets have begun their own collection of reports. A thorough analysis by the *Washington Post* and researchers at Bowling Green State University uncovered that, out of thousands of fatal shootings by law enforcement officers since 2005, only fifty-four had been charged or indicted (pp. 763-764).

Given the close relationship between law enforcement and prosecutors, it can be incredibly conflicting for the latter to pursue charges (Levine, 2016). Often, charges are not applied unless in egregious offenses (Levine, 2016). Furthermore, those seeking justice through civilian litigation of officers are met with a similar fate due to qualified immunity.

### **Legal History of Qualified Immunity**

As previously iterated, qualified immunity is the legal protection from lawsuits granted to government officials acting within their duties and its origins date back to 1896. In the case of *Spalding v. Vilas*, 161 U.S. 483 (1896), the authority of the Postmaster-General was called into

question when he “was directly in the line of duty when...he informed claimants that they were under no legal obligation to respect any transfer, assignment or power of attorney, which section 3477 of the Revised Statutes declared to be null and void.” The case established the following:

The same general considerations of public policy and convenience which demand for judges of courts of superior jurisdiction immunity from civil suits for damages arising from acts done by them in the course of the performance of their judicial functions apply to a large extent to official communications made by heads of Executive Departments when engaged in the discharge of duties imposed upon them by law.

From there, qualified immunity was argued thrice more. The first of which was the case of *Barr v. Matteo*, 360 U.S. 564 (1959), where the petitioner was the Acting Director of the Office of Rent Stabilization, William G. Barr (not to be confused with the former Attorney General) and issued a press release about the respondents, Matteo and Madigan, that received massive media attention. Matteo and Madigan sued for libel and alleged malice on the part of Barr, but the Court held that the petitioner's plea of absolute privilege in defense of the alleged libel must be sustained (pp. 360 U. S. 564-578).

The second case of *Butz v. Economou*, 438 U.S. 478 (1978) involved the Department of Agriculture. The respondent of this case alleged that individual members of the Department, “by instituting unauthorized proceedings against him, they had violated various of his constitutional rights.” The following is what happened through the lower courts:

The District Court dismissed the action on the ground that the individual defendants, as federal officials, were entitled to absolute immunity for all discretionary acts within the scope of their authority. The Court of Appeals reversed, holding that the defendants were



entitled only to the qualified immunity available to their counterparts in state government.

Furthermore, the case established that neither the *Barr* case nor the *Spalding* case supported the petitioner's contention of absolute immunity.

The case of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) is how the current definition of qualified immunity came about. The case itself involved President Nixon's presidential aides (represented as Harlow) who were alleged to have conspired to violate Fitzgerald's rights involved in the case of *Nixon v. Fitzgerald*, ante, 457 U.S. 731 (1982). Fitzgerald, a management analyst within the Department of the Air Force under the Lyndon B. Johnson administration, had testified before Congress about "cost overruns and unexpected technical difficulties concerning the development of a particular airplane." Following Nixon's inauguration, Fitzgerald was dismissed and alleged his dismissal as retaliation for his testimony. The case was heard well after Nixon's resignation and the Court found that Nixon had absolute immunity for the actions alleged by Fitzgerald. When the case against Harlow was heard, the Court found that qualified immunity applied to presidential aides as well as they did not clearly violate Fitzgerald's rights.

It is also worth distinguishing between absolute immunity (which the *Butz* case was arguing) and qualified immunity. The former provides immunity regardless of the lawfulness of the actions, while the latter only protects actions that followed the protocol. Law enforcement officers are granted qualified immunity as their departments are operated under a codified set of procedures. However, an issue arises when the protocols the officers follow are not specific enough to provide a unanimous interpretation. For example, in 2004, Malaika Brooks, an African American woman in Seattle, WA, was pulled over for speeding in a school zone. After

refusing to sign her ticket, she was tasered three times and arrested. After the incident, Brooks' case eventually was brought to the 9<sup>th</sup> Circuit panel, and “[t]hat court eventually sided with Brooks, but also said the officers were immune to Brooks’ constitutional claim because the law was ‘not sufficiently clear at the time of the incident’” (KOMO Staff, 2014). Incidents like that show that even when the officers have been found to have acted unconstitutionally, qualified immunity can tie the hands of the courts when assigning punishment.

## CHAPTER 3: REVIEW OF RELEVANT THEORIES

### **Conflict Theory**

Conflict theory might best be applied to help understand the use of qualified immunity in policing. At its core, conflict theory assumes an unequal and coercive society. The power dynamics that characterize this stratified system are reinforced by social institutions, such as law and the police (Althusser, 1971). “Conflict theory holds that law and the mechanisms of its enforcement are used by dominant groups in society to minimize threats to their interests posed by those whom they label dangerous, especially minorities and the poor” (Petrocelli, Piquero, & Smith, 2003; p. 1). In other words, theoretically, the laws are made to benefit those who write them and to damage those “below them.” These are also the same groups who are likely to experience force by the police (Jacobs & O’Brien, 1998). Thus, these groups are most likely to be the subjects of police abuse of power (Harrington, 1983). Therefore, they are also the most affected by the (mis)use of qualified immunity.

“Class, race, sex, age, ethnicity, and other characteristics that denote social positions in society determine who gets apprehended and punished. Thus, the economically and socially disadvantaged groups of lower class, minorities, youth, women, and others will be similarly disadvantaged and differently processed through the criminal justice system” (Akers, Sellers, & Jennings, 2017; p. 212).

The laws that conflict theorists point to are not explicitly against a certain group of people but instead set parameters that impact only a specific group of people. As early conflict theorist George Vold proposed in his book *Theoretical Criminology* (1958):

[T]he whole political process of law making, law breaking, and law enforcement becomes a direct reflection of deep-seated and fundamental conflicts between interest groups and their more general struggles for control of the police power of the state.

Those who produce legislative majorities win control over the police power and dominate the policies that decide who is likely to be involved in violation of the law (pp. 208-209).

Furthermore, the verbiage of the laws that are passed does not explicitly target a certain population but rather appears neutral and equitable. For example, a policy that is meant to target those of lower socioeconomic status would not contain rhetoric like, “If you make less than \$X, you can only vote at times your employer will require you to work.” Instead, the policy would say, “Based on your address, the only polling place you can cast your ballot is here,” which, superficially, is equal, but when applied across all socioeconomic statuses, the policy is applied differently; socioeconomic status and convenience of polling places share a positive relationship (Barreto, Cohen-Marks, & Woods, 2009). While voter suppression is an oasis for conflict theorists, there are other ways the theory can apply.

As applied to modern American government, conflict theory would classify the laws written by the legislature as detrimental to those who do not write them. For example, in 2017, then-President Donald Trump and his administration passed the Tax Cuts and Jobs Act (TCJA). The act was designed to lower the taxes of Americans but also had a built-in delayed tax increase—set to trigger in 2021—that would adversely affect those who make under \$75,000 a year (Stiglitz, 2020). At the time of Stiglitz’s (2020) opinion piece, about 65% of taxpayers fall under that threshold. As conflict theory explains, Trump’s policy is meant to target those lower on the socioeconomic ladder by taxing them more and effectively allowing the rich to get richer. Since the act was passed in 2017, as Stiglitz (2020) theorizes, “They [Trump and his allies]

surmised—correctly, so far—that if they waited to add the tax increases until after the 2020 election, few of the people most affected were likely to remember who was responsible” (n.p.), effectively dodging responsibility from a court of public opinion.

Turning back to policing, as Chambliss and Seidman (1971, p. 269 quoted in Petrocelli, Piquero, & Smith, 2003), summarize, conflict theorists view law enforcement through the following propositions:

1. The agencies of law enforcement are bureaucratic organizations.
2. An organization and its members tend to substitute for the official goals and norms of the organization’s ongoing policies and activities that will maximize rewards and minimize the strains on the organization.
3. This goal substitution is made possible by:
  - a. The absence of motivation on the part of the role-occupants to resist pressures toward goal substitution;
  - b. The pervasiveness of discretionary choices permitted by the substantive criminal law and the norms defining the roles of the members of law enforcement agencies; and
  - c. The absence of effective sanctions for the norms defining roles in those agencies.
4. Law enforcement agencies depend on political organizations for resource allocation.
5. Organizations will minimize strains on themselves by processing those who are politically weak and powerless, while refraining from processing those who are politically powerful.

6. Therefore, it may be expected that law enforcement agencies will process a disproportionately high number of the politically weak and powerless, while ignoring the violations of those with power (p. 2).

These propositions argue that law enforcement officers give those who do not hold power over them more attention than those who do hold such power. Often, the placement of power aligns with the races of the officer and suspects, with white people historically holding more power (Petrocelli, Piquero, & Smith, 2003). “[T]he police have a lower threshold of suspicion for Blacks as opposed to Whites, which manifests itself in the police having ‘one trigger for Whites, another for Blacks’” (Petrocelli, Piquero, & Smith, 2003; p. 3).

As it pertains to qualified immunity, conflict theory would posit that laws surrounding qualified immunity are written by those in power and benefit civil servants, who hold power over the general public, in such a way that if something goes awry, qualified immunity protects these civil servants, arguing that these actors were merely “doing their job.” Since qualified immunity protections are given to those who have followed the written protocol (or rather “not to have violated it”), problematic and unspecific verbiage can afford protections for actions that would appear otherwise improper. Furthermore, in cases without precedent, such protections are granted as well.

The issue is further exacerbated when qualified immunity is applied to law enforcement. For example, in the case of *Corbitt v. Vickers*, No. 17-15566 (11<sup>th</sup> Cir. 2019), the defendant, Vickers, was a deputy sheriff in Coffee County, Georgia, who intentionally fired his gun at a dog and inadvertently shot Corbitt’s ten-year-old son, SDC, wounding him. As the officers approached the residence, they instructed all those in the area to get down on the ground.

Then, “while the children were lying on the ground obeying [Vickers’s] orders . . . *without necessity or any immediate threat or cause*, [Vickers] discharged his firearm at the family pet named ‘Bruce’ twice.” The first shot missed, and Bruce (a dog) temporarily retreated under Corbitt’s home. No other efforts were made to restrain or subdue the dog, and no one appeared threatened by him. Eight or ten seconds after Vickers fired the first shot, the dog reappeared and was “approaching his owners,” when Vickers fired a second shot at the dog. This shot also missed the dog, but the bullet struck SDC in the back of his right knee. At the time of the shot, SDC was “readily viewable” and resting “approximately eighteen inches from . . . Vickers, lying on the ground, face down, pursuant to the orders of [Vickers]” (p. 3; italics added).

When the case was initially heard in 2014, Vickers filed a motion for dismissal on the grounds of qualified immunity but was denied. However, when the case was eventually heard by the 11<sup>th</sup> Circuit Court of Appeals, the decision was reversed, and Vickers was granted his qualified immunity; the argument being that Vickers had not violated any clearly established rights. Vickers was granted qualified immunity because there was nothing established that could condemn his actions. This case is similar to what happened to Malaika Brooks (mentioned in Chapter 2 of this thesis) in that an officer was granted qualified immunity due to a lack of a policy condemning such actions.

Considering cases like that of *Corbitt*, conflict theorists could hypothesize that qualified immunity is written in a way that provides loopholes for officers, while also providing minimal effort to correct or hold the officer accountable for their behavior. The added clause of specificity also provides a loophole, as changing a detail in the slightest can trigger a new precedent. If another officer was involved in an incident similar to that of Vickers, but instead of

the gunshot hitting a minor adjacent to him, the shot entered a neighboring yard and struck someone. That officer could then argue that since his actions did not match Vickers's actions to the letter, he should be protected by qualified immunity.

In sum, conflict theory might be best used to understand not only the creation of the qualified immunity law but also its use and support for its use, specifically as it pertains to race and in the context of law enforcement. This is the matter at hand that this thesis will attend to in the subsequent chapters.



## CHAPTER 4: METHODOLOGY

### Methods

#### *Current Study*

Considering the recency of the qualified immunity debate, literature from a social science standpoint is close to nonexistent. Qualified immunity is more of a legal concept applicable to entities outside of law enforcement, so it is understandable that the literature surrounding it is lacking. As a pioneer of this research, I am presented with a tremendous opportunity to expand research on qualified immunity from a social sciences point of view; especially addressing how it is implied empirically. This study seeks to answer the following questions:

Research question 1: What is the current level of support for qualified immunity in the context of policing?

Research question 2: Does the race of the officer or civilian in a traffic interaction affect public opinion on the applicability of qualified immunity to law enforcement?

Research question 3: What matters more to the public: the race of the officer or the race of the driver in a traffic interaction?

Based on how the experiment is designed, I have developed the following hypotheses:

H<sub>0</sub>: Manipulating the races will have no significant effect on participants' opinions on the scenarios.

H<sub>01</sub>: Overall, qualified immunity for law enforcement will be viewed with support by the public.

H<sub>02</sub>: Those with a *white driver* will significantly *condemn* the actions (i.e., deem these actions as more unacceptable, more likely to view the actions as criminal, more likely to view the actions as warranting of a lawsuit by the driver/family of the driver) of the officer compared to that of a black driver.

H<sub>03</sub>: The presence of a *white officer* in an encounter, as opposed to a black officer, will result in greater support for the officer's actions (i.e., deem these actions as more unacceptable, more likely to view the actions as criminal, more likely to view the actions as warranting of a lawsuit by the driver/family of the driver).

H<sub>04</sub>: The race of the respondent will significantly affect the support for qualified immunity.

### *Data*

The data used in this thesis came from a national-level survey carried out between October 3 and 4, 2020, using Amazon's MTurk program. As part of a larger project, the survey included questions pertaining to several criminal justice topics, including qualified immunity. Furthermore, this convenience sample contained an experimental vignette, which included random assignment to elements within the experiment. Participants were given a scenario in which an officer pulls over a male community member and asks the driver to step out of the vehicle. The race of the officer, the race of the community member and what happens after the driver is asked to step out of the vehicle are randomly assigned. A total of  $N = 923$  respondents completed this survey.

### *Dependent Variables*

The first dependent variable contained the definition of qualified immunity established by *Harlow v. Fitzgerald* (1982), along with the arguments for those who favor it or oppose it, to ensure all participants have a working knowledge of the concept. The question associated with this asked the participants whether they favor or oppose qualified immunity and included a “don’t know” option.

Following the experimental manipulation described above, a series of follow-up questions were asked. The first question asked the participants if they deemed the officer’s behavior acceptable using a 5-item continuous scale ranging from 1 = “acceptable” to 5 = “unacceptable.”

The second follow-up question asked if they thought the officer’s behavior should be a crime in a dichotomous “yes” (= 1) or “no” (= 0). This also contained a contingency question. If participants answered “yes,” they were instructed to indicate what the punishment should be for the officer. Response options to this contingency question used a 5-item scale ranging from a fine/probation (= 1) to more than 10 years in prison (= 5).

The final follow-up question asked all participants if they thought the driver/his family should be able to sue the officer, with response options of “yes” (= 1) or “no” (= 0). This is an especially necessary question because qualified immunity is what can block the driver/his family from filing such a lawsuit.

### *Independent Variables*

Preceding the question about qualified immunity are two questions meant to gauge the participants’ opinions of police legitimacy and willingness to call the police. The former is

measured by a series of 6 statements about police legitimacy in a random order in which participants indicated their agreement on a 5-item scale ranging from “strongly agree” (= 5) to “strongly disagree” (= 1); the latter is measured by a series of 8 statements in a random order in which indicated their likeliness to call the police on a 4-item scale ranging from “extremely unlikely” (= 1) to “extremely likely” (= 4).

Participants were then presented with the experimental vignette with three key elements manipulated. The experimental question reads as follows:

A [**Manipulation A**] male officer conducts a traffic stop in which the driver, a [**Manipulation B**] male community member, was speeding 10 miles over the speed limit. When the officer asks the driver to step out of the vehicle [**Manipulation C**]

All three manipulations were filled in randomly for the participants. Manipulations A and B indicated whether the individual was either “white” or “black” while Manipulation C presented one of four different outcomes:

- (1) the driver complies and verbally consents to a search of their vehicle. While searching, the officer discovers cocaine in the vehicle and arrests the driver
- (2) the driver resists leading to the officer trying to remove the driver from their vehicle. In the midst of the scuffle the officer ends up shooting and killing the driver
- (3) the driver complies but is then thrown to the ground by the officer, placed in handcuffs, and taken to jail for resisting arrest; or
- (4) the driver resists the request and instead reaches for a handgun that is visibly laying on the passenger seat. The officer reacts by shooting and killing the driver.

In all, there were 12 possible combinations participants were presented with; each combination was potentially shown approximately 77 times.

### *Control Variables*

At the conclusion of the survey, participants were asked a series of personal questions. They were first asked their year of birth, which was used to determine the participants' age by taking the difference between their answer and 2020. Next, they were asked about their highest level of education with options ranging from "less than high school" (= 1) to a "doctoral degree" (= 7). They were then asked about their race. Initially, the response options were White, Black or African American, American Indian or Alaskan Native, Asian, Native Hawaiian or Pacific Islander, Hispanic/Latino, Middle Eastern, Mixed Race, or Other, but based on the data, the responses were consolidated to [white, black, Hispanic and other; or white and non-white]. Sex is the final question, with options of male, female, and other.

Following the sex questions, participants were asked to indicate their income from the previous year (or their best guess) before taxes, measured on a 7-item scale with ranges spanning from 0 to \$9,999 (= 1) to \$100,00+ (= 7). Additionally, respondents were asked about their level of employment, which was initially measured as full-time, part-time, temporarily laid off, unemployed, retired, permanently disabled, homemaker, student, or other, but they were consolidated to full-time vs everything else. These questions were included because the level of police interaction can vary across different tax brackets and sociodemographic characteristics.

Participants were also asked if they were employed within the criminal justice (i.e., law enforcement, courts, corrections) using response options of "yes" (= 1) or "no" (= 0). As one can gather, being an employee of the criminal justice system can alter one's opinions of law enforcement and their behavior. Similar logic can be applied to the next question, which asked the participants if they had (1) taken college classes about criminology or the criminal justice system, (2) been a victim of a crime, (3) been arrested, (4) been convicted of a criminal offense,

and (5) to carry out a sentence in a jail or prison; all of these provided response options of “yes” (= 1) or “no” (= 0).

Participants were also asked about their marital status. Originally, the options presented were single, never married; married, living with spouse; cohabitating, separated, divorced, widowed, and domestic partnership, but these will be consolidated to married vs everything else.

Perhaps the most telling of the control variables is the question about the racial composition of the participants’ neighborhoods (primarily, the percentage of African American residents). Respondents self-identified their neighborhood’s racial composition as nearly all residents are Black ( $\geq 90\%$ ; = 1), a majority are Black ( $> 50\%$ ; = 2), the neighborhood has a mix of people (between 25% and 50%; = 3), and nearly all residents are non-Black ( $\leq 10\%$ ; = 4).

Finally, participants were asked about their political viewpoint and affiliation. The former was measured on a 6-item scale ranging from very liberal (= 1) to very conservative (= 5) (with a “not sure” option; = 6); the latter was also asked on a 6-item scale with the options Republican, Democrat, Independent, Not sure, No preference, Other. Going forward, the latter variable will be consolidated to Republican vs everything else as, lately, there has been division in the support for the retention of qualified immunity from within the Republican party (Carney, 2020).

### *Analytic Plan*

The analysis will begin with a descriptive look at the dependent variables. Next, I will look at the bivariate relationship between the dependent variables and independent variables with specific attention to the impact of the respondent’s race on the four dependent variables. Finally, I will conduct a multivariate analysis. Because the first follow-up question and the contingency

question are measured as continuous variables, multivariate analyses of these questions will be analyzed through an OLS-regression, while follow-up questions 2 and 3, which were dichotomous in nature, will be examined through logistic regression.

## CHAPTER 5: RESULTS

### Results

To determine the support for qualified immunity and the role race plays in its support, the data was analyzed in three phases. First, I assess the descriptive statistics of the sample, specifically attending to its sociodemographic characteristics. Second, bivariate statistics explore the relationship between race and the key dependent variables. Finally, using multivariate modeling (Ordinary Least Squares (OLS) and logistic), I examine the relationship between race and the key dependent variables after accounting for sociodemographic characteristics and related experimental manipulations.

#### *Descriptive Statistics*

After listwise deletion of those who answered “Don’t Know” to whether they support qualified immunity, the  $N$  was reduced from 924 to 840 participants. Of those 840, about half (49.76%) answered that they favored qualified immunity (see Table 2). Before participants were presented with the information about qualified immunity, they were first asked questions to gauge their existing level of police legitimacy and cooperation with police. The average response for police legitimacy (3.41) indicates an indifference or slight agreement in police legitimacy, with a standard deviation of 0.99. Responses for cooperation with police follow a similar pattern. With a mean of 3.12 and a standard deviation of 0.56, the average participant is somewhat likely to call the police.

Demographically, respondents were in between the ages of 20 and 75 (mean=38.81; SD=11.26), were, on average, college educated (mean=4.78; SD=1.16), earned an average of \$40,000-\$59,999 a year (mean=4.14; SD=1.38), and expressed a liberal-to-moderate political



Table 2: Descriptive Statistics

VARIABLES	MEAN %	STANDARD DEVIATION	RANGE
Favored qualified immunity?	49.76%	--	0-1
Acceptable behavior?	3.34	1.56	1-5
Acceptable	22.5%	--	
Slightly Acceptable	10.95%	--	
Neither Acceptable nor Unacceptable	8.57%	--	
Slightly Unacceptable	25.95%	--	
Unacceptable	32.02%	--	
Crime? (yes)	66.19%	--	0-1
If so, punishment?	2.47	1.2	1-5
Fine/probation	25.72%	--	
1 year	27.52%	--	
5 years	29.14%	--	
10 years	9.35%	--	
10+ years	8.27%	--	
Lawsuit? (yes)	70.68%	--	0-1
Age	38.81	11.26	20-75
Education	4.78	1.16	2-7
Race (white)	71.67%	--	0-1
Sex (female)	36.07%	--	0-1
Income	4.14	1.38	1-7
Employment (full-time)	83.81%	--	0-1
CJS Employment	28.92%	--	0-1
Marital Status (married)	64.44%	--	0-1
Residential Race Composition			0-1
Nearly All Black (90+%)	10.12%	--	
Majority Black (> 50%)	17.26%	--	
Mix (25% < x < 50%)	34.88%	--	
Non-Black (< 10%)	37.77%	--	
Political Viewpoint	2.94	1.29	1-5
Political Affiliation (Republican)	39.17%	--	0-1
Police Legitimacy	3.41	0.99	1-5
Cooperation with Police	3.12	0.56	1-4

viewpoint (mean=2.94; SD=1.29). Moreover, the population was 71.67% white, 36.07% female, 83.81% employed full-time—28.92% employed in the criminal justice system—64.44% married, and 39.17% self-identified as Republican. In terms of residential race composition, 10.12% lived in a “nearly all black” neighborhood, 17.26% lived in a majority black neighborhood, 34.88% lived in a mixed neighborhood, and 37.77% lived in a non-black neighborhood.

The vignettes had 12 possible combinations, all assigned at random. Table 3 shows a full breakdown of the frequency in which each combination was answered. When presented with the experimental vignette and subsequent follow-up questions, the average participant found the officer’s behavior to be neither acceptable nor unacceptable (mean of 3.34; SD = 1.56), but 32.02% found the behavior unacceptable. The following question—asking if the officer’s behavior should be criminal—yielded a “yes” from 66.19% of the population. Of that sample, the average participant thought the behavior warranted a punishment of 5 years in prison (mean of 2.47), with only 18.62% choosing a sentence greater than or equal to 10 years in prison. After consideration of the scenarios, 70.68% thought the officer should be sued by the driver or his family.

### *Bivariate Statistics*

To answer how respondent race affects favoring qualified immunity and the answers to the vignette follow-up questions, responses to each question was compared for white and non-white respondents. In response to favoring qualified immunity, just under half of white and non-white respondents (49.83% and 49.58% respectively) favored qualified immunity (see Table 4). These differences were not statistically significantly different.

In response to acceptability of behavior, white respondents answered “acceptable”

Table 3: Sample Size for Intersection of Vignette Variables

<b>Officer/Driver Combination</b>	Scenario 1	Scenario 2	Scenario 3	Scenario 4
White Officer/White Driver	45	44	58	63
White Officer/Black Driver	55	54	47	62
Black Officer/White Driver	50	37	50	56
Black Officer/Black Driver	54	53	55	57

Note: Scenarios

1. the driver complies and verbally consents to a search of their vehicle. While searching, the officer discovers cocaine in the vehicle and arrests the driver
2. the driver complies but is then thrown to the ground by the officer, placed in handcuffs, and taken to jail for resisting arrest
3. the driver resists leading to the officer trying to remove the driver from their vehicle. In the midst of the scuffle the officer ends up shooting and killing the driver
4. the driver resists this request and instead reaches for a handgun that is visibly laying on the passenger seat. The officer reacts by shooting and killing the driver

Table 4: Bivariate Relationship between Favoring Qualified Immunity and Respondent Race

<b>Race</b>	<b>No</b>	<b>Yes</b>
Non-White	120 (50.42%)	118 (49.58%)
White	302 (50.17%)	300 (49.83%)

Note:  $\chi^2=0$ ;  $p = 1$

22.42% of the time, “slightly acceptable” 12.13% of the time, “neither acceptable nor unacceptable” 8.97% of the time, “slightly unacceptable” 24.42% of the time, and “unacceptable” 30.06% of the time. Non-white respondents answered “acceptable” 17.65% of the time, “slightly acceptable” 7.98% of the time, “neither acceptable nor unacceptable” 7.56% of the time, “slightly unacceptable” 29.83% of the time, and “unacceptable” 36.97% of the time (see Table 5). The differences in response are statistically significant with a 99% confidence interval.

Over half of white and non-white respondents (64.12% and 71.43%, respectively) indicated that they believed the officer’s behavior to be a crime, which were not statistically significantly different (see Table 6). In response to what the punishment should be, white respondents answered “fine/probation” 27.46% of the time, “1 year incarceration” 25.13% of the time, “5 years incarceration” 27.20% of the time, “10 years incarceration” 11.92% of the time, and 10+ years incarceration” 8.29% of the time. Non-white respondents answered “fine/probation” 21.76% of the time, “1 year incarceration” 32.94% of the time, “5 years incarceration” 33.53% of the time, “10 years incarceration” 3.53% of the time, and 10+ years incarceration” 8.24% of the time. The differences in response are statistically significant with a 99.9% confidence interval (see Table 7). Regarding whether a lawsuit should be filed, over half of white and non-white respondents (67.39% and 78.99%, respectively) said that the officer should be sued for his actions. These differences were also significant with a 99.9% confidence interval (see Table 8).

### *Multivariate Statistics*

For this part of the analysis, each dependent variable (favoring qualified immunity and the vignette follow-up questions) was examined across each independent and control variable to

Table 5: Bivariate Relationship between Acceptability of Officer Behavior and Respondent Race

<b>Race</b>	<b>Acceptable</b>	<b>Slightly acceptable</b>	<b>Neither acceptable nor unacceptable</b>	<b>Slightly unacceptable</b>	<b>Unacceptable</b>
Non-white	42 (17.65%)	19 (7.98%)	18 (7.56%)	71 (29.83%)	88 (36.97%)
White	147 (24.42%)	73 (12.13%)	54 (8.97%)	147 (24.42%)	181 (30.06%)

Note:  $t = -46.8$ ;  $p < .001$

Table 6: Bivariate Relationship between “Should it be a crime?” and Respondent Race

<b>Race</b>	<b>No</b>	<b>Yes</b>
Non-White	68 (28.57%)	170 (71.43%)
White	216 (35.88%)	386 (64.12%)

Note:  $\chi^2 = 3.752$ ;  $p = 0.053$

Table 7: Bivariate Relationship between Punishment and Respondent Race

<b>Race</b>	<b>Fine/probation</b>	<b>1 year incarceration</b>	<b>5 years incarceration</b>	<b>10 years incarceration</b>	<b>10+ years incarceration</b>
Non-White	37 (21.76%)	56 (32.94%)	57 (33.53%)	6 (3.53%)	14 (8.24%)
White	106 (27.46%)	97 (25.13%)	105 (27.20%)	46 (11.92%)	32 (8.29%)

Note:  $t = -32.838$ ;  $p < .001$



Table 8: Bivariate Relationship between Ability to Sue and Respondent Race

<b>Race</b>	<b>No</b>	<b>Yes</b>
Non-White	50 (21.01%)	188 (78.99%)
White	196 (32.61%)	405 (67.39%)

Note:  $\chi^2 = 10.524$ ;  $p = 0.001$

see which variables affected the answers to those questions. This was done over a series of models for each dependent variable, with each model adding more variables to the equation. Model 1 (except for “favoring qualified immunity,” which skips to Model 2) only considers the vignette manipulations (race of the officer, race of the driver, and the scenario) and how each option affected the answer. Model 2 adds the race of the respondent to the equation along with the vignette manipulations. Model 3 adds in the rest of the control variables.

For the dependent variable of favoring qualified immunity, the models show respondent race becoming significant when moving from Model 1 to Model 2 (see Table 9). When considering every variable (Model 2), the following variables showed a significant effect in how one favored qualified immunity: race, education, income, CJS employment, marital status, political viewpoint, political affiliation, police legitimacy, and cooperation with police. Of note, those married, compared to all others, were over twice as likely (odds ratio [OR] = 2.132) to favor qualified immunity, which was the largest effect in this model.

For the dependent variable of acceptability of the officer’s behavior in the vignette, neither the race of the officer nor the race of the driver significantly affected the results; only scenarios 2 and 3 compared to scenario 1 were statistically significant (99.9% confidence) in the first model (see Table 10). Compared to scenario 1, those viewing the other scenarios found the officer’s behavior more unacceptable. When race of the respondent was added, it too was statistically significant (95% confidence)—along with scenarios 2 and 3—and had a negative relationship with acceptability. However, respondent race is no longer significant when the remaining variables are added to the model (Model 3). The following variables showed significance in Model 3: age, sex, income, CJS employment, marital status, residential race composition, political viewpoint, police legitimacy, and cooperation with police. Notably, it can

Table 9: Multivariate Analysis: Favoring Qualified Immunity

	MODEL 1			MODEL 2		
	b	SE	OR	b	SE	OR
Race						
White	0.010	0.153	1.010	0.570	0.196	1.768**
Non-White (ref.)	--	--	--	--	--	--
Age	--	--	--	-0.010	0.007	0.990
Education	--	--	--	0.214	0.082	1.250**
Sex (female)	--	--	--	-0.202	0.170	0.815
Income	--	--	--	-0.142	0.066	0.871*
Employment	--	--	--	-0.294	0.247	0.743
CJS Employment	--	--	--	0.481	0.202	1.625*
Marital Status	--	--	--	0.761	0.192	2.132***
Residential Race Composition	--	--	--	-0.184	0.097	0.834
Political Viewpoint	--	--	--	0.249	0.070	1.277***
Political Affiliation	--	--	--	0.457	0.178	1.586**
Police Legitimacy	--	--	--	0.559	0.096	1.744***
Cooperation with Police	--	--	--	0.409	0.168	1.511*
Constant	-0.017	0.130	0.983	-4.369	0.768	0.012***
McFadden R-Squared		3.782x10 <sup>-6</sup>			0.193	

Note: \*\*\*  $p < .001$ ; \*\*  $p < .01$ ; \*  $p < .05$

Table 10: Multivariate Analysis | Acceptability of Police Behavior

	MODEL 1			MODEL 2			MODEL 3		
	b	SE	$\beta$	b	SE	$\beta$	b	SE	$\beta$
Manipulation A									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	0.129	0.097	0.041	0.121	0.096	0.039	0.145	0.087	0.047
Manipulation B									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	-0.047	0.097	-0.015	-0.038	0.097	-0.012	-0.037	0.087	-0.012
Manipulation C									
Scenario 1 (ref.)	--	--	--	--	--	--	--	--	--
Scenario 2	-1.431	0.142	-0.382***	-1.423	0.141	-0.380***	-1.413	0.127	-0.378***
Scenario 3	-1.566	0.138	-0.435***	-1.535	0.138	-0.426***	-1.455	0.124	-0.403***
Scenario 4	-0.224	0.134	-0.065	-0.213	0.133	-0.061	-0.200	0.120	-0.058
Race									
White	--	--	--	-0.258	0.107	-0.074*	0.120	0.103	0.035
Non-White (ref.)	--	--	--	--	--	--	--	--	--
Age	--	--	--	--	--	--	-0.008	0.004	-0.058*
Education	--	--	--	--	--	--	-0.021	0.044	-0.016
Sex	--	--	--	--	--	--	-0.382	0.092	-0.117***
Income	--	--	--	--	--	--	-0.083	0.035	-0.073*
Employment	--	--	--	--	--	--	0.091	0.130	0.022
CJS Employment	--	--	--	--	--	--	0.493	0.114	0.143***
Marital Status	--	--	--	--	--	--	0.295	0.106	0.091**
Residential Race Composition	--	--	--	--	--	--	-0.245	0.053	-0.153***
Political Viewpoint	--	--	--	--	--	--	0.111	0.038	0.092**
Political Affiliation	--	--	--	--	--	--	0.034	0.102	0.011
Police Legitimacy	--	--	--	--	--	--	0.164	0.052	0.104**
Cooperation with Police	--	--	--	--	--	--	0.269	0.089	0.096**
Constant	4.077	0.121	--	4.248	0.140	--	3.418	0.396	--
Adjusted R-Squared		0.196			0.201			0.360	

Note: \*\*\* $p < .001$ ; \*\* $p < .01$ ; \* $p < .05$ ; scenario 1: the driver complies and verbally consents to a search of their vehicle. While searching, the officer discovers cocaine in the vehicle and arrests the driver; scenario 2: the driver complies but is then thrown to the ground by the officer, placed in handcuffs, and taken to jail for resisting arrest; scenario 3: the driver resists leading to the officer trying to remove the driver from their vehicle. In the midst of the scuffle the officer ends up shooting and killing the driver; scenario 4: the driver resists this request and instead reaches for a handgun that is visibly laying on the passenger seat. The officer reacts by shooting and killing the driver.

be said with 99.9% confidence that being a CJS employee leads to a 0.143 increase in the acceptability of the officer's behavior.

When determining the criminality of the officer in the vignette, once again, the race of the officer and driver were not statistically significant (see Table 11). Scenarios 2 and 3, compared to scenario 1, remained significant across all three models (99.9% confidence) while scenario 4 was slightly significant (95% confidence) in Model 2. By Model 3, those that viewed scenario 2 were 9.629 times more likely than those who had scenario 1 to find the officer's behavior to be a crime; those that had scenario 3 were 7.336 times more likely. Like the previous dependent variable, the race of the respondent was significant in Model 2 (99% confidence), but not for Model 3. The following variables were also significant in Model 3: education, sex, CJS employment, and residential race composition. Once again, CJS employment stands out the most, because those employees were 3.104 times more likely to find the officer's behavior to be a crime.

For the dependent variable of punishment, the pattern of nonsignificant values for Manipulations A and B continues across this variable as well (see Table 12). Scenarios 2, 3, and 4, compared to scenario 1, were all statistically significantly different (95%, 99.9%, and 99% confidence) with scenario 2 gaining an increase in significance in Model 3 (97.5%). Notably, compared to scenario 1, scenario 2 was the only one to have a negative odds ratio, suggesting a preference for less punitiveness than the officer in scenario 1. With this dependent variable, race of the respondent was not significant in either model it was included. Of the control variables in Model 3, only residential race composition and cooperation with police were statistically significant. Moreover, residential race composition carries a positive relationship while

Table 11: Multivariate Analysis | Is it a crime?

	MODEL 1			MODEL 2			MODEL 3		
	b	SE	OR	b	SE	OR	b	SE	OR
Manipulation A									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	-0.003	0.156	0.997	-0.019	0.157	0.981	-0.081	0.174	0.922
Manipulation B									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	-0.074	0.157	0.928	-0.064	0.158	0.938	0.113	0.174	1.119
Manipulation C									
Scenario 1 (ref.)	--	--	--	--	--	--	--	--	--
Scenario 2	2.055	0.257	7.806***	2.093	0.259	8.106***	2.265	0.279	9.629***
Scenario 3	1.621	0.225	5.057***	1.696	0.228	5.454***	1.993	0.254	7.336***
Scenario 4	0.360	0.192	1.433	0.387	0.193	1.472*	0.409	0.216	1.505
Race									
White	--	--	--	-0.505	0.180	0.603**	-0.016	0.210	0.984
Non-White (ref.)	--	--	--	--	--	--	--	--	--
Age	--	--	--	--	--	--	-0.010	0.008	0.990
Education	--	--	--	--	--	--	0.336	0.084	1.399***
Sex	--	--	--	--	--	--	0.568	0.186	1.765**
Income	--	--	--	--	--	--	-0.021	0.067	0.979
Employment	--	--	--	--	--	--	-0.189	0.255	0.828
CJS Employment	--	--	--	--	--	--	1.133	0.245	3.104***
Marital Status	--	--	--	--	--	--	0.115	0.204	1.123
Residential Race Composition	--	--	--	--	--	--	-0.388	0.111	0.679***
Political Viewpoint	--	--	--	--	--	--	-0.091	0.079	0.913
Political Affiliation	--	--	--	--	--	--	0.097	0.207	1.102
Police Legitimacy	--	--	--	--	--	--	-0.189	0.104	0.828
Cooperation with Police	--	--	--	--	--	--	-0.251	0.174	0.778
Constant	-0.136	0.181	0.873	0.202	0.219	1.224	1.041	0.772	2.832
McFadden R-Squared		0.106			0.114			0.231	

Note: \*\*\* $p < .001$ ; \*\* $p < .01$ ; \* $p < .05$ ; scenario 1: the driver complies and verbally consents to a search of their vehicle. While searching, the officer discovers cocaine in the vehicle and arrests the driver; scenario 2: the driver complies but is then thrown to the ground by the officer, placed in handcuffs, and taken to jail for resisting arrest; scenario 3: the driver resists leading to the officer trying to remove the driver from their vehicle. In the midst of the scuffle the officer ends up shooting and killing the driver; scenario 4: the driver resists this request and instead reaches for a handgun that is visibly laying on the passenger seat. The officer reacts by shooting and killing the driver.

Table 12: Multivariate Analysis | Punishment

	MODEL 1			MODEL 2			MODEL 3		
	b	SE	$\beta$	b	SE	$\beta$	b	SE	$\beta$
Manipulation A									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	-0.135	0.092	-0.056	-0.139	0.092	-0.058	-0.141	0.091	-0.059
Manipulation B									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	0.051	0.092	0.021	0.054	0.092	0.023	0.090	0.091	0.037
Manipulation C									
Scenario 1 (ref.)	--	--	--	--	--	--	--	--	--
Scenario 2	-0.306	0.140	-0.116*	-0.296	0.141	-0.112*	-0.386	0.141	-0.146**
Scenario 3	1.029	0.139	0.394***	1.045	0.141	0.400***	0.943	0.142	0.360***
Scenario 4	0.430	0.147	0.151**	0.435	0.147	0.153**	0.408	0.144	0.144**
Race									
White	--	--	--	-0.067	0.101	-0.026	-0.205	0.106	-0.078
Non-White (ref.)	--	--	--	--	--	--	--	--	--
Age	--	--	--	--	--	--	-0.005	0.004	-0.043
Education	--	--	--	--	--	--	-0.002	0.051	-0.001
Sex	--	--	--	--	--	--	-0.007	0.094	-0.003
Income	--	--	--	--	--	--	0.035	0.037	0.038
Employment	--	--	--	--	--	--	0.173	0.142	0.050
CJS Employment	--	--	--	--	--	--	-0.138	0.110	-0.055
Marital Status	--	--	--	--	--	--	-0.026	0.114	-0.102
Residential Race Composition	--	--	--	--	--	--	0.114	0.055	0.095*
Political Viewpoint	--	--	--	--	--	--	-0.052	0.038	-0.057
Political Affiliation	--	--	--	--	--	--	-0.012	0.106	-0.005
Police Legitimacy	--	--	--	--	--	--	-0.088	0.056	-0.071
Cooperation with Police	--	--	--	--	--	--	-0.213	0.095	-0.096*
Constant	2.184	0.130	--	2.222	0.142	--	3.122	0.431	--
Adjusted R-Squared		0.195			0.194			0.235	

Note: \*\*\* $p < .001$ ; \*\* $p < .01$ ; \* $p < .05$ ; scenario 1: the driver complies and verbally consents to a search of their vehicle. While searching, the officer discovers cocaine in the vehicle and arrests the driver; scenario 2: the driver complies but is then thrown to the ground by the officer, placed in handcuffs, and taken to jail for resisting arrest; scenario 3: the driver resists leading to the officer trying to remove the driver from their vehicle. In the midst of the scuffle the officer ends up shooting and killing the driver; scenario 4: the driver resists this request and instead reaches for a handgun that is visibly laying on the passenger seat. The officer reacts by shooting and killing the driver.

cooperation with police carries a negative relationship; neither were substantively large in magnitude.

The final dependent variable in this analysis involved whether the driver or his family should be able to sue the officer. As with the previous models, Manipulations A and B were not statistically significant. Scenarios 2, 3, and 4, compared to scenario 1, consistently showed statistical significance across all 3 models (see Table 13). The odds that those who had scenarios 2-4 favored the driver/his family being able to sue the officer show a positive relationship with tremendous difference. In Model 3, it is said with 99.9% confidence that those who had scenario 2 were 12.198 times more likely than those with scenario 1 to favor the driver/his family being able to sue the officer; scenario 3 carried an odds ratio of 9.885. Race of the respondent follows the pattern of being significant in Model 2 (99.9% confidence) but not Model 3. The remaining significant variables are age, education, CJS employment, marital status, residential race composition, and police legitimacy. CJS employment continues to stand out as employees were 3.608 times more likely to favor the ability to sue.

## **Conclusion**

In sum, it was found that about half of the population favored qualified immunity, but when applied to the vignettes, over 70% believed that the driver/his family should be able to sue the officer for his actions during the traffic stop. Moreover, it was shown that neither the race of the officer nor the race of the driver significantly affected responses for any of the dependent variables. An especially significant finding comes from CJS employment, as the impact of such employment continued to stand out among the control variables. The next chapter will discuss these findings and the possible implications of this data.



Table 13: Multivariate Analysis | Ability to Sue

	MODEL 1			MODEL 2			MODEL 3		
	b	SE	OR	b	SE	OR	b	SE	OR
Manipulation A									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	-0.087	0.162	0.917	-0.114	0.164	0.892	-0.205	0.186	0.815
Manipulation B									
White (ref.)	--	--	--	--	--	--	--	--	--
Black	-0.229	0.163	0.796	-0.220	0.165	0.802	-0.046	0.186	0.955
Manipulation C									
Scenario 1 (ref.)	--	--	--	--	--	--	--	--	--
Scenario 2	2.115	0.271	8.286***	2.192	0.275	8.952***	2.501	0.307	12.198***
Scenario 3	1.703	0.236	5.490***	1.838	0.242	6.285***	2.291	0.277	9.885***
Scenario 4	0.536	0.194	1.710**	0.590	0.198	1.804**	0.691	0.228	1.995**
Race									
White	--	--	--	-0.815	0.195	0.443***	-0.283	0.228	0.753
Non-White (ref.)	--	--	--	--	--	--	--	--	--
Age	--	--	--	--	--	--	-0.021	0.009	0.979*
Education	--	--	--	--	--	--	0.241	0.087	1.273**
Sex	--	--	--	--	--	--	0.240	0.197	1.271
Income	--	--	--	--	--	--	-0.095	0.072	0.910
Employment	--	--	--	--	--	--	-0.022	0.265	0.978
CJS Employment	--	--	--	--	--	--	1.283	0.282	3.608***
Marital Status	--	--	--	--	--	--	0.617	0.217	1.853**
Residential Race Composition	--	--	--	--	--	--	-0.420	0.121	0.657***
Political Viewpoint	--	--	--	--	--	--	-0.133	0.087	0.876
Political Affiliation	--	--	--	--	--	--	0.356	0.227	1.428
Police Legitimacy	--	--	--	--	--	--	-0.345	0.113	0.708**
Cooperation with Police	--	--	--	--	--	--	-0.340	0.186	0.712
Constant	0.137	0.184	1.146	0.690	0.231	1.994**	3.278	0.842	26.511***
McFadden R-Squared		0.106			0.124			0.276	

Note: \*\*\* $p < .001$ ; \*\* $p < .01$ ; \* $p < .05$ ; scenario 1: the driver complies and verbally consents to a search of their vehicle. While searching, the officer discovers cocaine in the vehicle and arrests the driver; scenario 2: the driver complies but is then thrown to the ground by the officer, placed in handcuffs, and taken to jail for resisting arrest; scenario 3: the driver resists leading to the officer trying to remove the driver from their vehicle. In the midst of the scuffle the officer ends up shooting and killing the driver; scenario 4: the driver resists this request and instead reaches for a handgun that is visibly laying on the passenger seat. The officer reacts by shooting and killing the driver.

## CHAPTER 6: DISCUSSION

### **Discussion**

The data collected from this survey has provided information that can provide a new perspective on qualified immunity. As the concept is primarily discussed in law reviews, data on the applicability to real-world situations was lacking. In this section, I will discuss these findings in more detail and show just what the population had to say about it.

### *Research Questions*

To reiterate, the first research question asked, “What is the current level of support for qualified immunity in the context of policing?” Based on the data, the population is split on favoring qualified immunity in that context (see Table 2). When examined with multivariate models, every sociodemographic characteristic, with the exception of income (negative and significantly related), age, sex, employment, and residential racial composition, signified an increase in favorability, with the respondents’ race, marital status, and views on police legitimacy being the most significant (see Table 9). This suggests that race plays a role in support for qualified immunity as White respondents favored it more than the non-White respondents.

The second research question asked, “Does the race of the officer or civilian in a traffic interaction affect public opinion on the applicability of qualified immunity to law enforcement?” To answer this question, one must break down the applicability of qualified immunity into the variables of acceptability of officer behavior and that of the driver/his family being able to sue the officer. In both cases, the race of the officer (Manipulation A in the vignette) was not statistically significantly different. This means that the opinions of those assigned to a black

officer vignette did not vary enough from those assigned to a white officer to say that the officer's race affected them (see Tables 10 and 13).

The final research question reads, "What matters more to the public: the race of the officer or the race of the driver in a traffic interaction?" Due to a lack of significance from either variable in any of the multivariate analyses, it is difficult to say which matters more. Moreover, the race of the driver and the race of the officer coefficients across all models were not statistically significantly different from each other per Paternoster et. al.'s (1998) equality of coefficients test.

### *Hypotheses*

Throughout this study, I have been working under the null hypothesis that manipulating the races of the officer and driver will have no significant effects on participants' opinions on the scenarios. Based on multivariate analyses, I can conclude that the data supports the null hypothesis. Neither Manipulation A (race of the officer) nor Manipulation B (race of the driver) yielded significant results for any of the follow-up question/dependent variables (see Tables 10-13).

The next hypothesis addresses the support for qualified immunity. I hypothesized that there would be an overall support, however, the data does not support this hypothesis. As Table 2 shows, there is only a 49.76% support for qualified immunity applying to law enforcement. However, it is worth noting that White respondents were 1.768 times more likely to favor qualified immunity than their non-White counterparts, which can be said with 99% confidence. (see Table 9). Given that White respondents were almost twice as likely to favor qualified immunity (see Table 9), the connection to conflict theory is strengthened, as those who are in power (i.e., Whites) are favoring a policy that benefits them (or rather hinders someone other

than them). Relatedly, those working in the CJS system stand to gain the most from the qualified immunity and are 1.65 times more likely to favor it, which is statistically significant (another nod to conflict theory). Yet, in conflict with the principles of conflict theory, they were also more likely to favor allowing the driver or the driver's family the ability to sue the officer. It is possible that their intimate knowledge of law enforcement has given them a different expectation of what an officer is supposed to do. However, future research should explore this supposed paradox.

The second and third hypotheses address whether having a white driver will lead to more significant condemnation of the officer's behavior and that having a white officer would result in more significant support for the officer's behavior. Based on the data, neither hypothesis is supported. As shown previously, across all follow-up question/dependent variables, there is no significant difference between the races of the officer and driver and how they viewed the officer's behavior. There is, however, a significant difference in how what the officer did as part of Manipulation C and how respondents reacted. Since the scenarios were designed to vary in levels of justifiability and legality, there were expected differences based on how they were assigned, and it was made abundantly clear that the (often cop-out) answer of, "It depends on the situation," legitimately applies here. Moreover, the differences between scenario 1 and scenarios 2 and 3, especially when determining if the officer's behavior was a crime (see Table 11) and if the driver/his family should be able to sue (see Table 13) showed that those who were assigned scenarios 2 and 3 yielded an OR of at least 7 for both variables. However, the ORs for scenario 3 were less than those of scenario 2, despite scenario 3 involving the driver dying. This means that the participants were less likely to find the officer shooting the suspect as a crime than they would if the officer threw down the driver and arrested him for resisting.

The final hypothesis addresses whether the race of the respondent significantly affects support for qualified immunity. Based on the data shown in Table 9, race alone does not significantly affect support, however, when the control variables are added, race then becomes significant. Conversely, the race of the respondent developed a pattern of being significant when examined alongside only the experimental manipulations when used as a predictor for the follow-up question/dependent variables, but loses its significance when the rest of the control variables are accounted for (except for the dependent variable of the officer's punishment in which race was nonsignificant).

### *Limitations*

The first limitation to this study involves the vignette scenarios from Manipulation C. Due to the unpredictable nature of policing, it proved impossible to capture every police interaction within just four pre-made scenarios. Such a limitation has hindered the level of generalizability of this study.

Along the same line, the vignettes were designed to mirror real-world situations. This, coupled with the timing of the distribution of this survey (five months following the death of George Floyd), could have emotionally charged the respondents and altered their responses. However, it is impossible to determine this role of emotions in rating these scenarios. At best, it can be presumed that, based on the random assignment of these scenarios to respondents, the emotional responses from such historical events were evenly distributed across scenarios and thus likely played not significant role.

As shown in the analyses, the most significant variable from the vignette was Manipulation C; the scenarios mattered the most to respondents when they answered the follow-up questions. The limitation comes in when considering if the vignette affected respondents'

opinions on qualified immunity after the fact. A preliminary opinion was gathered but there was no explicit question addressing how the vignette may have changed their minds. Future research may wish to explore this impact.

### *Implications*

With the recent attention given by lawmakers to qualified immunity (Lacy, 2021), this study can be used to gain a better perspective on the state of the civilian's support for the policy. The near 50/50 split in support for qualified immunity, as shown in this survey, points to a possible inflection point in a possible abolition of the protections of qualified immunity. Recent events have shown that the scales are being tipped towards abolition as New York City (Romine, 2021) and New Mexico have joined Colorado in ending qualified immunity for law enforcement (NM ended it altogether; Williams, 2021). Moreover, the multivariate analysis point to a potential racial division after accounting for other theoretical and sociodemographic factors. Thus, policymakers may wish to be attuned to such differences.

While being sued is one form of accountability for law enforcement, the other side (or addition) to that is criminal punishment. The important aspect of that is how long they are punished for. The data from this study shows that the population averages a support for the officer to be punished for up to 5 years in prison, with statistically significant movement towards the 10-year option in scenario 3 (see Table 12). Keeping with that scenario, the driver was killed by the officer in that scenario, and the data shows that those who were assigned to that scenario were over 7 times as likely to find his actions criminal, yet they only recommended 5-10 years in prison. That is less time than the average prison sentence for a manslaughter charge. This level punitiveness could come off as leniency because they are police officers.

Additionally, future researchers find it fruitful to examine how Criminal Justice System employees view qualified immunity. In this study, they were 1.65 times more likely to favor it but were also more likely to favor allowing the driver or the driver's family the ability to sue the officer.

### *Future Research*

As it pertains to qualified immunity, this study is only the beginning. There are several avenues that have been opened because of this research.

The CJS employees' responses stood out to me as I conducted the analysis. Less than 30% of the respondents were employed by the CJS, yet that sample yielded statistically significant differences in all but one multivariate analysis. In the future lies the potential to gather the thoughts of exclusively CJS employees to gain a better perspective, perhaps through a qualitative or mixed methods study.

Now that it has been revealed that is really does depend on the situation, finding out why would be a logical next step, inquiring on a more intimate level to understand what about the situations led to the data from this study. Possible studies could include examining the connection between the punitiveness (or lack thereof) applied to these officers and the level of support for an officer's behavior or eliminating race from the vignette altogether and repeating the experiment.

Taking it a step further, providing video vignettes and comparing the reactions to them to those of the written vignettes would possibly provide a clearer explanation as to how the situation affects one's support for qualified immunity. Since most of the incidents I referenced in Chapter 1 were caught on video, meeting them on that same level would take the respondent's

own imagination out of the equation. Emotion may still play a factor, but a qualitative study can account for that.

### *Conclusion*

As noted above, the policy of qualified immunity poses a complex problem in law enforcement, especially when examining this policy through the lens of conflict theory. Although there may be somewhat mixed support for this policy, the data collected can provide a clearer picture as to who is supporting it and why. Pioneering a social science point of view on qualified immunity has given me the opportunity expand on a whole new debate among criminal justice scholars. Moving forward, I hope to explore other avenues presented by this study to further understand how the public views qualified immunity.



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