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There is a growing sense in the United States that police have become too powerful and too unaccountable. The latest manifestation of this came about when a nurse in Salt Lake City, [Alex Wubbels](#), refused to draw the blood of an unconscious emergency room patient on the orders of Detective Jeff Payne. Wubbels explained that she was only permitted to draw blood if the police had a warrant, the patient were under arrest, or the patient gave his consent.

Detective Payne responded like a man who rarely hears the word “no,” and a full-blown incident ensued. Both the detective and the nurse were in communication with their superiors throughout, and Detective Payne ultimately admitted that none of the necessary preconditions for a blood draw were met. Nonetheless he insisted, saying, “I either go away with blood in vials or a body in tow.” Wubbels stood her ground and Payne promptly arrested her for “interfering.”

In the days that followed, Payne and another officer were placed on leave, and Mayor Jackie Biskupski and Police Chief Mike Brown issued apologies. Talking heads came at the topic from every angle. But an important question remains unaddressed: How should police be held accountable to the public they serve?

The topic of accountability arises against the backdrop of two Supreme Court decisions, one from 1982, and the other from 2014. In [Harlow v. Fitzgerald](#), the Court decided that public servants, including police officers, enjoy “qualified immunity,” which means that an officer cannot be held civilly liable for violating a person’s rights unless the person’s right is established “beyond dispute,” and the officer violates a clearly established law that a “reasonable” officer should know.

This raises an interesting point: How deeply should police officers know and understand the laws they are sworn to uphold? The Supreme Court’s 2014 decision in [Heien v. North Carolina](#) provides an unfortunate answer. In that case, the Court held in an 8-1 decision that the police needn’t actually know the law—that they can enforce a mistaken understanding of the law, again, as long as their mistakes are “reasonable.” So, in a colossal twist of irony, the people charged with enforcing the law are not required to know what the law is and may even use ignorance of the law as a defense.

In this context, Detective Payne’s only real mistake was that he admitted knowing that the necessary preconditions for demanding a blood draw had not been met. Payne admitted that he knew what the law was, that he knew what he was demanding was illegal, and that he was

going to demand it anyway. Under similar circumstances a citizen without a badge would have spent that night in a jail cell.

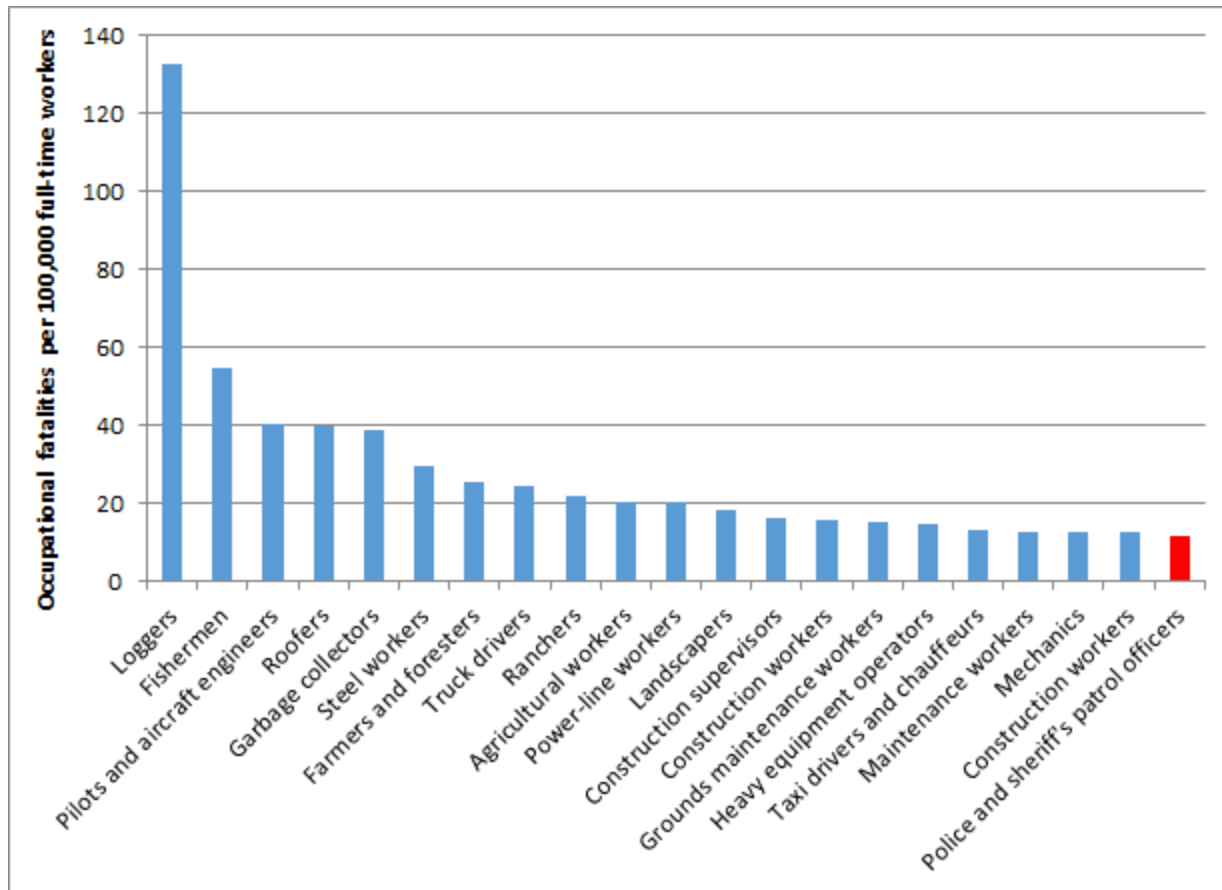
So what limits police authority? In the end, not much. Police can claim reasonable ignorance of the law, and once that claim has been satisfied, they are utterly immune.

The only thing that appears to limit police authority is public opinion. And while there remain both those who defend the police no matter what heinous crimes they commit, and those who damn the police no matter how much good they do, the tide of public opinion is clearly turning. This is true in no small part because of the smartphone and body cam video evidence that people see on a daily basis. With modern technology, we now have actual recordings where before there were only reports. And it is no accident that some police look upon citizens recording their public activities with great suspicion.

[Related: [Pennsylvania law seeks to avoid police accountability](#)]

The fall-back defense that typically emerges is that we need to give police the maximum benefit of the doubt because they put their lives on the line to protect us, which is true. But what's relevant is the extent to which they do so compared to others who are not extended this maximum benefit of the doubt. Police work is dangerous. But by the numbers, it is not nearly as dangerous as many other jobs.

According to the Bureau of Labor Statistics, the on-the-job [fatality rate](#) for police work isn't even among the top 20 for U.S. civilian jobs. The fatality rate for loggers is more than 10 times that for police. The fatality rate for truck drivers is twice as high as that for police. Even taxi drivers and groundskeepers have higher on-the-job fatality rates than police.



Source: Bureau of Labor Statistics, 2015

And if the low fatality rates weren't enough, the number of citizens killed by police rivals the number of police killed by citizens. In 2015, police killed [995 people](#). Of these, 49 were unarmed, not attacking, and not exhibiting signs of mental illness. The [number](#) of police who were killed by shootings, stabbings, and vehicular assault in the same year? Also 49.

And that brings us back to the unanswered question: How should police be held accountable to the public they serve? It turns out that there is an obvious answer staring us in the face.

First, we should do away with qualified immunity. If anything, police should be held to a higher standard of conduct than the people they purportedly serve. Second, police can, and should be required to protect themselves from claims against poor behavior in the same way other professionals do. Physicians, nurses, and lawyers all maintain malpractice insurance, which protects them from liability associated with their doing their jobs. Unlike qualified immunity, malpractice insurance doesn't only protect the professional; it also compensates victims. And insurance companies have a strong profit incentive to monitor professionals. Those who exhibit patterns of reckless or abusive behavior would see their insurance premiums rise proportionally. The result would be that the "bad apples" would simply become too expensive to insure, and they would have to find work in other industries more in keeping with their capabilities.

As public opinion continues to shift on this issue, there will be increasing pressure to come up with solutions. As usual, politicians and bureaucrats will propose more Byzantine regulations. But a market response like malpractice insurance is cleaner, simpler, and likely a lot more effective.

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