

Rachel Harmon – Written Materials

Police commands are the cornerstone of law enforcement, at once projecting the authority of the state and creating very real legal obligations for which the failure to comply can result in arrest, detention, or even the use of deadly force. But what are the limits of police commands? When are they lawful and what rights do we have to disobey them when they are unlawful? Professor Rachel Harmon, a leading scholar on police law explains how police commands are the building blocks of police authority, the limits of such commands, and how regulating police commands can play a critical role in reducing police abuse and unnecessary police force.

In the Talks on Law episode, Joel Cohen and Professor Rachel Harmon delve deeper into the role of police commands in encounters with the public. The discussion reveals that police commands can play a significant role in justifying the use of force and can impact the severity and the legality of the force used in various situations.

One interesting point brought up by Professor Harmon is that there are three main categories of commands issued by officers: commands to do something (e.g., move along, show identification), commands not to do something (e.g., don't move, stay in the car), and commands to stop doing something (e.g., freeze, stop resisting). Understanding these different types of commands can help shed light on how police interactions unfold and how citizens are expected to respond.

Furthermore, Professor Harmon emphasizes the idea that police commands are often a precursor to the use of force. In many cases, officers cannot legally use force unless they have first issued a command. This suggests that focusing on police commands and how they are governed could be a critical step in preventing improper coercion and negative outcomes in police encounters. While some obligations are known and established in law (e.g., not trespassing), others are created when an officer issues a specific command (e.g., put your hands behind your back). This highlights the importance of communication in police encounters and the need for officers to clearly express the obligations they expect citizens to follow.

The conversation also explores the concept of police discretion in giving citizens the opportunity to comply with the law or face arrest. Officers have the choice to allow individuals to rectify their actions (e.g., pick up litter, leave private property) or to arrest them without offering that chance. This highlights the role of police judgment in determining the course of action in various situations.

1. An individual cannot be prosecuted for failing to comply with an illegal order: If a police officer issues an unlawful command and an individual refuses to comply, the individual

cannot be prosecuted for their refusal. In some cases, the individual may be able to sue the officer for damages resulting from the officer's attempts to enforce the illegal command. This could involve situations where the officer uses excessive force or violates the individual's constitutional rights.

2. Difficulty in knowing whether an order is legal or not: Both citizens and police officers can have trouble determining whether a given order is legal. Officers may be uncertain about the scope of their own authority or the specific circumstances under which they can issue a command. Citizens may lack knowledge about their rights and obligations, making it difficult to know if a command is lawful or not.
3. "Comply now, complain later" approach: Police organizations often advocate for a "comply now, complain later" mindset, encouraging citizens to comply with police commands first and address any grievances afterward. However, this approach can be problematic, as there may be no effective way for citizens to complain later, especially if their rights were violated or they suffered harm during the encounter.
4. Lack of clarity in state laws and departmental policies: There can be a lack of clarity in state laws and departmental policies regarding the authorization and scope of police commands. This ambiguity can lead to confusion and potentially dangerous situations for both officers and citizens. Officers may issue commands that exceed their authority, and citizens may not know their rights, which can lead to conflicts and misunderstandings.
5. Police commands as requests or orders: Police commands can sometimes be phrased as requests or orders, contributing to ambiguity and misunderstandings between officers and citizens. This can cause conflicts, as citizens may not know whether they are obligated to comply with a seemingly polite request or if they are being given a command backed by the officer's authority.
6. Improving clarity and safety: Clearer state laws, departmental policies, and public education regarding the scope of police authority could help improve interactions between officers and citizens. By providing better guidance on the limits of police authority and educating the public about their rights and obligations during encounters with law enforcement, safety can be promoted for all parties involved, and potential conflicts can be minimized.
7. An individual cannot be prosecuted for failing to comply with an illegal order: If a police officer issues a lawful command and an individual disobeys it, the individual can be arrested,

and potentially face penalties. However, this depends on the specific situation and context. For instance, some statutes limit the situations where failing to follow a command is a crime, such as in traffic situations or around an emergency area. If an individual resists a lawful arrest, they can be prosecuted for resisting arrest, but whether passive resistance is considered criminal varies by state law.

8. Police request vs. police command: A police request is an invitation to cooperate with the officer's wishes, giving the individual the choice to comply or not. A police command, on the other hand, requires compliance due to the officer's authority. The officer is invoking their state authority to enforce the command, which means the individual is obligated to comply.
9. Ambiguity between requests and commands: There can be confusion when officers phrase requests as commands or vice versa. Sometimes, the politeness of an officer when issuing a command can create ambiguity. Additionally, officers might issue requests that sound like commands, which can contribute to a gray zone in interactions with police and cause feelings of alienation.
10. Commands and people with disabilities. Prof. Harmon explained that certain police commands might be difficult or impossible for people with disabilities to comply with due to their physical or cognitive limitations. For example, someone with a hearing impairment may not hear an officer's command, while a person with mobility issues might struggle to comply with a command to move quickly or get down on the ground.
11. Clarifying whether something is a request or a command: Individuals are allowed to ask for clarification on whether an instruction is a request or a command. This can help both the individual and the officer to understand their obligations in the interaction. However, some courts have allowed this question to be treated as part of the individual's suspicious behavior, which is problematic as it should serve as a way to clarify the legal relationship between the individual and the law.
12. Consequences for officers who issue unlawful commands: Issuing an unlawful command is not a crime in itself. However, if an officer attempts to enforce an unlawful command using force or by making an arrest, they could face legal consequences such as being sued or criminally prosecuted.

13. Criminal consequences for issuing an unlawful command: Prof. Harmon does not provide specific cases where an officer faced criminal consequences solely for issuing an unlawful command. However, she does mention that if an officer attempts to enforce an unlawful command with force or by making an arrest, they could face legal consequences. This reinforces the importance of understanding the distinction between requests and commands, as well as being aware of one's rights and obligations during interactions with law enforcement.

The Path Forward. It's clear that police commands play a crucial role in many law enforcement situations, and can often result in better outcomes for both officers and civilians when used appropriately. However, the current system could benefit from clearer regulation and guidance regarding the use of commands. This can be achieved through several avenues:

1. Developing better policies: Police departments should establish policies that guide officers in issuing commands, taking into account the different situations that can arise when commands aren't followed immediately. Training should then be based on these policies.
2. State statutes: States should consider enacting laws that clarify the authority police have to issue certain types of commands, particularly those relating to officer safety. This could involve revisiting the power of officers to order individuals out of their cars during traffic stops without reasonable suspicion of a threat.
3. State courts: Courts could play a role by being more diligent in examining the state authority behind certain types of commands, ensuring that the law is being applied appropriately.
4. Accessibility and clarity of the law: It's crucial that individuals understand the laws that apply to them during police encounters, and that officers are also aware of the legal limits of their actions. Making the law more accessible and clear can help achieve this.

In the interview with Prof. Rachel Harmon, the conversation centered around the role of police commands in law enforcement and the legal implications surrounding them. Prof. Harmon emphasized that while commands are often necessary for officers to maintain control and protect themselves or the public, there needs to be a clearer governing structure surrounding the issuance of commands. She suggested that better policies, state laws, and state court decisions could help provide clarity on when officers have the authority to issue certain commands. Prof. Harmon also discussed the challenges faced by individuals with disabilities or unique circumstances during police

encounters and the need for police policies and training to address these situations. The goal is not to ban all commands but to ensure that they are adequately governed, expectations are clear, and people have access to the law that applies to them.