Cooperation with Police as Non-Cooperative Pragmatics

Marina Weinstein, Danielle Dionne, Nathanial Graham, Dylan Pato, and Elizabeth Coppock

Solan and Tiersma (2005) note, with puzzlement, that individuals often provide consent for property searches even when it is apparently contrary to the individual's self-interest. *Schneckloth v. Bustamonte*, for example, concerned an episode in which a man consented to a search of the trunk of a car even though he knew it contained stolen checks. Does provision of consent serve as a reliable indicator of actual consent? In other words, do individuals in these situations feel forced to give consent, or is consent given freely? Cowart (2004) argues that power differentials must be taken into consideration in the evaluation of whether or not the speech act of giving consent has occurred. The present study addresses these questions through a survey probing how individuals would respond to a hypothetical search request from a police officer, depending on whether or not they are informed of their right to refuse the request. Our findings show that under risk of being charged with a crime, participants behave differently depending on whether they are informed of their right to refuse consent by a law enforcement officer. Thus a speech act of giving consent is often insincere---in a Gricean sense uncooperative---when cooperation with police is imperative.

The survey was conducted with 120 Prolific users with a United States IP address, employing attention checks to exclude inattentive participants. Participants were presented with a series of scenarios where they were asked to imagine a personal encounter. In the three target trials, the encounter was with law enforcement, and participants were asked for consent to a search of their person or their property (e.g. in the roadside search scenario: "You are driving your friend's car, and you are stopped by a police officer."). All scenarios included a request for consent ("After taking your license and registration, the police officer asks, 'May I look in the trunk?'"). The scenarios varied according to two factors, both with three levels. The first factor was *risk*, with the following levels: *low* (e.g. "You know the trunk is empty"), *medium* (e.g. "You think it's possible that your friend may have illegal drugs in the trunk, but you are not sure") and *high* (e.g. "You know that your friend has illegal drugs in the trunk"). The second factor was *information:* whether the protagonist was informed of their fourth amendment rights (i.e. their individual right to refuse a search), and by whom. This factor had three levels: *yes,* in which the law enforcement officer informs the protagonist of their rights ("He adds, 'You have the legal right to refuse'"); *reminder*, in which the same information was given by the narrator ("Remember: You have the right to refuse"); and *no*, where to keep the length and structure constant, we inserted an irrelevant contribution from the law enforcement officer (e.g. "By the way, your tail light is out"). As a dependent measure, participants were asked whether they would accede to the police officer's request, and how confident they were about their answer, on a 5-point Likert scale. If being informed of one's rights reduces the rate of consent, then consent is not always freely and sincerely given. We hypothesize that insincere provisions of consent will be most prevalent in high-risk scenarios.

Results are summarized in Figure 1, with higher values representing higher rates of "yes" answers. With "yes" coded as 1 and "no" as -1, the response was multiplied with the confidence level, ranging from 1 to 5, to yield the graded response measure shown.
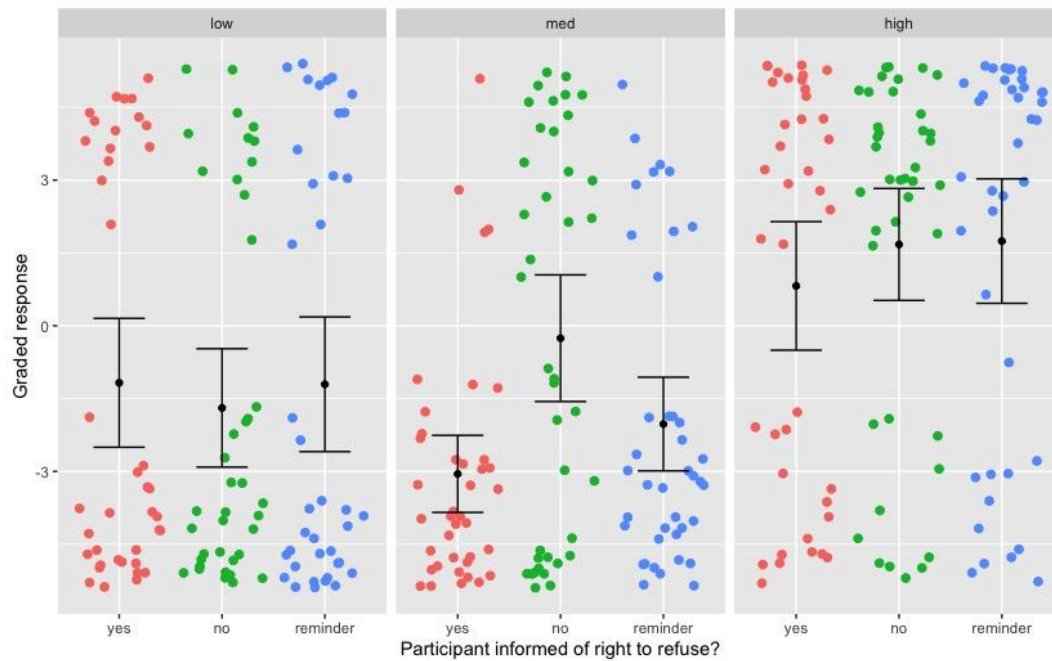
Figure 1. Results. Panels correspond to levels of *risk*. Points (=individual responses) jittered.

In the low-risk scenarios, participants tended to refuse the request, although the tendency was not strong. In the medium-risk scenarios, the rate of consent significantly decreased when information about rights was communicated by the police officer or the narrator. In the high-risk scenarios, participants tended to consent to the search, regardless.

We use our findings to specify parameters for an approximately rational agent, i.e. one who maximizes her utility. We assume that our participants' behavior is guided both by social considerations, in particular (i) appearing cooperative, and by practical considerations, namely (ii) saving time and (iii) avoiding punishment. In the low-risk condition, the chance of punishment is negligible, so the behavior in the low-risk condition suggests that saving time is more important than appearing cooperative *per se*. In the high-risk scenarios, participants judge their expected utility to be *worse* if they refuse the search, even though a search will probably lead to potentially harsh punishment. The reasoning behind this is articulated in several of the comments provided by our participants, e.g: "It doesn't seem prudent to aggravate the police officer, even though this may not be a legal search." We then implement a Bayesian listener in the style of Rational Speech Act theory, who understands that a "yes" answer in response to a request for a search is uninformative, in the same way that polite speech is (Yoon 2018): the sincere alternative is blocked, not by taboo in this case, but by practical fear. We conclude that in risky circumstances, a speech act giving consent does not signify that consent is freely given.

References. Cowart, M. (2004). Understanding acts of consent: using speech act theory to help resolve moral dilemmas and legal disputes. *Law and Philosophy*. **Frank, M., & Goodman, N. (2012).** Predicting pragmatic reasoning in language games. *Science* 336. **Solan, L., & Tiersma, P.(2005)**. *Speaking of crime: the language of criminal justice*. Chicago: University of Chicago Press. **Yoon, E., M.H. Tessler, N. D. Goodman and M. C. Frank (2018).** Polite speech emerges from competing social goals. Psyarxiv. DOI: 10.31234/osf.io/93fyg.