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Kathryne M. Young & Katie Billings, [Legal Consciousness and Cultural Capital](#), 54 *Law & Soc'y Rev.* 33 (2020).

Consider the following hypothetical:

One day before you leave for work, an officer knocks on your door and says that there have been drug sales reported on your block. He says you don't have to let him in, but that he's checking the homes in the suspected area, and that it will only take 20 minutes. You are already late for an important meeting. You have nothing illegal in your house. Do you let the officer search? (P. 41.)

Chances are, if you are reading this, you would say no, or ask the officer to come back at a more convenient time. In [Kathryne M. Young](#) and Katie Billings' study of people's responses to five rights assertion vignettes, only 26.7% of respondents with high cultural capital said that they would comply with police requests, compared to 55.1% of respondents with limited cultural capital. (P. 45.) People with high cultural capital also were more likely to explain their responses in terms of "entitlement," by expressing "the primacy of their own needs, rights, or desires in relation to the objective of law enforcement or the legal system." (P. 45.) People with limited cultural capital were more likely to express "futility," suggesting that "asserting a right would be useless." (P. 49.) These findings have important implications for policing and criminal procedure, as well as for the role of lawyers in civil access to justice.

The study is based on a sample of students from two academic institutions in 2008: undergraduates from a high-status, private university (n=108) and students at a community college ranked in the bottom quartile of the state's community colleges (n=247) (P. 42.) Within each group, respondents were sorted by their parents' educational attainment to enable comparison of two extremes: those with the highest amount of cultural capital (elite university students with two parents or guardians holding college degrees) (n=76) and those with the lowest amount of cultural capital (community college students without a parent or guardian who had attended college) (n=154). (PP. 43-44.) Respondents completed a survey presenting five vignettes in which "respondents were being investigated by police, were innocent of wrongdoing, and knew they possessed a particular right." (P. 41.) After each vignette, respondents were asked whether they would comply and to explain why or why not. (P. 42.) Respondents' explanations were coded for various expressions of entitlement, trust and distrust of the criminal justice system, and futility.

Respondents with high cultural capital were more likely to draw on a sense of entitlement in thinking about how to respond to the police, invoking ideas about "personal dignity, the value of their time, the urgency of competing obligations, and their mere possession of a right." (P. 50.) Overall, they expressed "a greater sense of self-efficacy in their interactions with the law." (P. 51.) People with less cultural capital expressed more hesitation about asserting their rights, for instance suggesting "if you say no then you're suspicious" or "he is going to search ... one way or the other" (P. 49) and emphasizing "their lack of agency relative to police." (P. 52.) These findings are consistent with research on cultural capital in other contexts, such as education and health care, that finds the people from more privileged backgrounds are socialized to be more proactive and perceive more control in their interactions with authority.

Young and Billings' vignette study has important implications for policing and criminal procedure. First, it suggests that people with limited cultural capital are more vulnerable to investigative authority, even in the absence of disparities in rights knowledge, police behavior, or criminal culpability. As a result, differences in cultural capital may work to

accentuate other sources of disparate outcomes in police-citizen interactions, such as racial discrimination and implicit bias. (P. 52.) Although the authors touch upon race in their analysis and both respondent pools were racially diverse, the sample size did not allow for a systematic analysis of the relationship between race and rights assertion or the interactive effects of race and cultural capital (which the authors lament as the “Achilles’ heel of our cultural capital typology”). (P. 44.) Some prior research, however, suggests that cultural capital operates in people’s lives similarly across race. (P. 44.)

Young and Billings’ study also challenges a foundational doctrinal assumption in criminal procedure: that people are equally likely to assert constitutional rights, for instance in the context of a “consent” search, or the application of the “free to leave” doctrine. (P. 59.) Instead, the vignette design suggests that “even when knowledge of a right and the opportunity to assert that right are equally distributed, meaningful constitutional access to that right remains woefully inequitable.” (P. 58.) Given such inequity, “[r]equiring a citizen to assert a right instead of making that right self-executing results in the reproduction of social inequality.” (P. 59.) In a separate paper, Young and Christin L. Munsch analyze the implications of the research for the literature on constitutional criminal procedure and suggest ways to promote rights assertion, such as taping all police-citizen encounters, as well as strategies for decreasing the importance of rights assertion in police investigations.¹

Finally, the study has important implications for the role of lawyers and legal consciousness in civil access to justice. Recent research on access to justice has emphasized ordinary people’s lack of rights knowledge and widespread disinclination to “go to law” with actionable civil legal problems², such as wrongful eviction, denial of benefits, workplace discrimination, and the like. This research suggests that simply increasing the availability of lawyers is unlikely to be the most effective solution for increasing the lawful resolution of such problems. Instead, increasing civil access to justice will require a better understanding of everyday legal consciousness and “social variation in the way people understand and navigate their legal problems.” (P. 58.) Young and Billings’ rigorous, qualitative analysis of cultural capital and legal entitlement is a rich and timely contribution to legal consciousness research.

1. Kathryn M. Young & Christin L. Munsch, [Fact and Fiction in Constitutional Civil Procedure](#), 66 **S.C. L. Rev.** 445 (2014).
2. Rebecca L. Sandefur, [What We Know and Need to Know About the Legal Needs of the Public](#), 67 **S.C. L. Rev.** 443, 448 (2016).

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