

## A DEFENSE OF NATURAL PROCEDURAL RIGHTS

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*ABSTRACT:* In this essay, I argue that we should believe that agents have what I call natural procedural rights. On the one hand, agents have rights to prevent their rights from being violated, rights to stop those who are violating their rights, and rights to rectification when their rights are violated. In pursuing these rights, I argue that—at least under some conditions—agents have an obligation to inform others of the extent to which they are prepared to go in enforcing these rights. This obligation is grounded in an agent’s right to know if he is a rights violator in the first place. There is broad agreement that, in most cases, a knowing rights violator is rightly subject to penalties that unknowing rights violators are not. These procedural rights thus target the epistemic space between a knowing rights violator and an accidental rights violator.

*KEYWORDS:* procedural rights, Barnett, Block, Nozick, natural rights, rights

In this essay, I argue that we should believe that agents have what I call natural procedural rights.<sup>1</sup> On the one hand, agents have rights to prevent their rights from being violated, rights to stop those who are violating their rights, and rights to rectification when their rights are violated. In pursuing these rights, I argue that—at least under some conditions—agents have an obligation to inform others of the extent to which they are prepared to go in enforcing these rights. This obligation is grounded in an agent’s right to know if he is a rights violator in the first place. Rights, after all, are a two-way street. I have a right to kick you off my

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<sup>1</sup> I will drop the “natural” henceforth. I just want to be clear that I am not discussing legal or conventional rights, though.



property, but you have a right to resist that kicking if you're not actually on my property. I argue that you may resist my eviction if you have no reason to believe that you are trespassing. Similarly, if you graze the edge of my lawn, you do not expect me to engage in an eviction of any sort, let alone a violent one. I argue that before I engage in any sort of eviction, I have to inform you that I will evict you. This is because you have no reason to expect me to enforce my eviction rights in cases such as this. There is broad agreement that, in most cases, a knowing rights violator is rightly subject to penalties that unknowing rights violators are not (Nozick 1974; Mack 2006; Block 2011; Werner 2015). These procedural rights thus target the epistemic space between a knowing rights violator and an accidental rights violator.

Three bits of clarification are in order before I begin the central argument of this paper. First, I will assume here that individuals have robust rights over their own persons and over the private property that they legitimately acquire. I will also assume that these rights entail the right to exclude others from accessing the property in question. If I own my belly, I may stop you from touching it. Similarly, individuals have rights to stop rights violators. If I own my house and you enter it without my permission, I may throw you out. Finally, these rights entail the right to seek rectification. If you take my prized garden gnome, I have a right to see that you return it. I will not defend any of these positions here.

Second, the central argument of this paper is focused only on showing that there are cases in which individuals have procedural rights. I do not deny that there may be concerns of urgency, history, or the like that excuse agents from abiding the procedural rights of others. If someone is throttling me, I do not need to croak out a warning before, say, shooting that person. Similarly, if a person is a serial rights violator, I might not have good reasons to warn him before using force against him. Of course, it seems that all natural rights are contingent upon factors like this.

Finally, I do not offer a full account of the necessary and sufficient conditions under which individuals' procedural rights hold. Instead, my interest here is in presenting an argument to show that such rights exist in some cases. The necessary and sufficient conditions for the existence of those rights is beyond the scope of this article.

## SKEPTICISM ABOUT PROCEDURAL RIGHTS

Robert Nozick observes a practical problem with the natural rights tradition. The problem is that it focuses only on rights themselves and not what evidence we owe to individuals subject to punishment for violating rights. He holds that the natural rights tradition “offers little guidance on precisely what one’s procedural rights are in a state of nature, on how principles specifying how one is to act have knowledge built into their various clauses, and so on.” He holds that “persons within this tradition do not hold that one may not defend oneself against being handled by unreliable or unfair procedures” (Nozick 1974, 101). This is a problem for the natural rights tradition, because we often do not know if someone has violated our rights, or if we have violated theirs.

In response to this, Randy Barnett argues that “the natural rights tradition does hold or, at least, should hold...that there are no natural procedural rights.” His argument for this focuses on the distinction between the metaphysical question of whether someone has violated a right and the epistemological question of how we can know that someone has violated a right.

Though only the innocent party may rightfully use self-defense, it is often unclear to neutral observers and the parties involved just who is innocent. As a result there exists the practical problem of determining the facts of the case and then the respective rights of the disputants. But I must stress here that this is a practical question of epistemology not a moral question. The rights of the parties are governed by the objective fact situation. The problem is to discern what the objective facts are, or, in other words, to make our subjective understanding of the facts conform to the objective facts themselves. (Barnett 1977, 17)

What Barnett wishes to show is that a procedure’s reliability is irrelevant to the question of whether a right has been violated. Instead, all that matters is that the procedure, whatever it is, gets the right answer. When it does, no rights are violated. When it does not, rights are violated. He then argues, contra Nozick, that “You have the right to defend yourself against all procedures if you are innocent, against no procedures if you are guilty.”

The actual rights of the parties, then, are unaffected by the *type* of procedure, whether reliable or unreliable. They are only affected by the *outcome* of the procedure in that enforcement of an incorrect judgment violates the actual rights of the parties however reliable the procedure might be. (Barnett 1977, 17)

I confess that Barnett's remarks just seem to grant Nozick's point. For the natural rights tradition to be useful in lots of real-world cases, it needs to provide guidance when we do not know if we have right to defend ourselves against a particular procedure or if our rights have been violated. In the following section, I make three arguments in favor of procedural rights. The first two are that there are rationales—or motivations—for such rights already in the natural rights tradition. The third is that belief in procedural rights explains our reactions to several thought experiments in which epistemic considerations bear on the permissibility of rights enforcement.

### MOTIVATING PROCEDURAL RIGHTS

In this section, I offer three considerations in favor of procedural rights. The first is that such rights preserve the practical advantages of compossibility. Proponents of natural rights often lament the proliferation of rights that has occurred since the middle of the twentieth century (Steiner 1977, 1995; Lomasky 1987, 4; Block 2011). One of the many criticisms these theorists make of “new” rights, such as the right to healthcare, paid vacation time, and so on, is that they seem to introduce tension into a system of rights. If you have a right to healthcare and I am the only person who can administer it, do you have a right to force me to provide it? If you do, this seems to impinge on my right to self-determination. I do not mean to say (here, at least) that there is no way of squaring self-determination with the enforceable obligation to provide a service. Rather, the point is that natural rights theorists tend to oppose rights to services in part because such rights *seem* to make a set of rights incoherent. Part of the appeal of a coherent system of rights is that it makes exercises of rights compossible, as Hillel Steiner puts it (Steiner 1977, 1994).

A possible set of rights is such that it is logically impossible for one individual's exercise of his rights within that set to constitute an interference with another individual's exercise of his rights within that same set. (Steiner 1977, 769)

Systems that see individuals as having rights that can come into conflict are *prima facie* incoherent. Insofar as moral claims are to be true, these systems cannot be right, for contradictions cannot

be true.<sup>2</sup> However, for a set of compossible rights to celebrate the fact that its rights can be exercised without contradiction, I contend that advocates of those rights should not throw their hands up when epistemic questions arise.<sup>3</sup> Otherwise, it may be true that in lots of cases only one person has a right to do something, but multiple agents may justifiably believe that they are acting on their rights given the information available to them. This may happen even when the agents are thwarting each other's actions. The victory of compossibility is thus somewhat hollow. I think that the natural rights tradition can extend its advantage over rivals if it can say something more about these epistemic questions. I think that procedural rights can make a great deal of headway in that regard.

The second argument I want to press is related to cost. Part of the rationale for attributing rights to others is that rights, as typically understood within this tradition, are the least costly means of respecting the fact that others rightly pursue their own ends (Nozick 1974, 110–11; Lomasky 1987). If one agent must as a matter of course perform services for another, the agent typically endures a cost greater than if the agent simply had to leave the other alone. However, this is an empirical question, and although it may be true in general, there are exceptions (Mack 2006).

To illustrate the sort of case I have in mind, consider this scenario: we are in the state of nature. You have no reason to believe that anyone owns a particular section of the woods. You enter this area to enjoy its beauty. I own this section of the woods, however. When you trespass, I, without warning, set my hounds on you. They severely injure you.

It is difficult to say that you endured less cost here than if I had had to warn you that the land in question was my property and that I was prepared to engage in a violent eviction. Although the cost might have been greater for me if I had had to call out a warning and/or post some signs, the cost to you in the original scenario is substantial. This sort of thing is not a strange one-off, or so I

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<sup>2</sup> For a contrary view, see Kramer (1998). Steiner (1998) offers a response to Kramer.

<sup>3</sup> I am not claiming that this is what Steiner does.

contend.<sup>4,5</sup> I think that there are plenty of real-world cases in which rights violators are innocent enough that we should say that they have a right to a warning before enforcement rights are exercised. If we may, without warning, harm those who unwittingly violate rights, the cost to them in attributing those rights to us is severe. Although the right to enforcement is a vital part of having a right in the first place, the price of allowing others to enforce their rights in certain ways is too great. Modest requirements of warning and evidence reduce that cost. My claim, then, is that in order to keep the costs of respecting those rights down, we should believe that agents have procedural rights.

The third argument I want to offer is explanatory. I argue that procedural rights explain our reactions in two sets of cases. First, we often do not expect people to enforce some of their rights. In these cases, we might admit that individuals ultimately have a right to take certain courses of action against others, but we deny that they may do so without proper warning. Indeed, those who do not expect to be harmed may defend themselves. Second, I argue that if we are going to enforce our rights against agents who are innocently (or innocently enough) unaware that they have violated our rights, then we must have evidence that those individuals have done so before we may seek rectification. Epistemic issues play a crucial role in both of these cases.

To begin this argument, I want to discuss cases in which epistemic issues appear only to be at the periphery. Consider the following scenario:

Judo 1: Norm does not like to be touched by other people. He is seated at the end of the bar when Frasier, a newcomer to the saloon, puts his hands on Norm's shoulders. Norm

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<sup>4</sup> It will not do to say that posting signs just is part and parcel of coming to own property. This convention need not hold in all conceivable systems of private property. See Mack (2010) for a discussion.

<sup>5</sup> Travis Rodgers informs me of an incident involving Danny Bonaduce and John Fairplay. Both were appearing at an awards show. When Bonaduce entered the stage, Fairplay jumped on Bonaduce and wrapped his legs around him. Bonaduce slammed Fairplay to the ground, knocking out several of his teeth and concussing him. Fairplay sued Bonaduce. Although Bonaduce did not face criminal charges, he settled the lawsuit out of court. Perhaps this shows (a) that our criminal justice system believes that Bonaduce had the right to prevent Fairplay from touching him, but that (b) he should have warned Fairplay of his willingness to hurt him before doing so. I am not fully confident that this is right, though.

initiates a judo throw, but Frasier blocks it and sends Norm crashing to the floor.

I think that most will have the intuition that Norm's action was impermissible but Frasier's was not. Norm was not merely a jerk; he did something that he had no right to do. However, Norm surely has a right to stop others from touching his body—his personal property. Yet, I think that Norm's action is impermissible in Judo 1. To get at why, consider Judo 2.

Judo 2: Norm does not like to be touched by other people. He is seated at the end of the bar when Frasier, a newcomer to the saloon, puts his hands on Norm's shoulders. Norm informs Frasier of his desire not to be touched and warns Frasier that he will violently enforce his right not to be touched. Frasier does not move his hand. Norm initiates a judo throw, but Frasier blocks it and sends Norm crashing to the floor.

The vast majority of people that I have run this case by have deemed *Norm's* action to be permissible, while Frasier's was not. What is the difference between Judo 1 and Judo 2? Surely, it is the warning Norm gave Frasier. Norm improved Frasier's epistemic situation so that Frasier had reason to expect a method of prevention that he previously had no reason to expect.

This point also seems to apply to preventing others from accessing one's extrapersonal property. To see this, consider a modified version of a thought experiment offered by Walter Block (2011).

Shotgun 1: Jeremiah owns some acres of woods. He has laid claim to the land according to all the local rules. However, Alexander Supertramp manages to enter those woods without seeing Jeremiah's signs. When Jeremiah sees Alexander trespassing, he shoots him without calling out any sort of warning.

Most people think that Shotgun 1 is impermissible. Yet they have precisely the opposite judgment in the following case.

Shotgun 2: Jeremiah owns some acres of woods. He has laid claim to the land according to all the local rules. However, Alexander Supertramp manages to enter those woods without seeing Jeremiah's signs. When Jeremiah sees Alexander trespassing, Jeremiah calls out a warning that if Alexander does not leave he

will be shot. Alexander refuses to leave, so Jeremiah shoots him.

If Shotgun 2 is permissible, but Shotgun 1 is not, what is the difference?<sup>6</sup> I think the explanation is that in Shotgun 2, Jeremiah makes Alexander aware that he is violating Jeremiah's rights.

If we agree with Barnett that the epistemological question does not matter, then we should say that Judo 1 and 2, along with Shotguns 1 and 2, are all equally permissible. Norm had the right to stop Frasier from touching his shoulder and Jeremiah had the right to prevent Tom from entering his property. So, the warnings should not matter. Yet that is not what most people say. This reaction suggests that Barnett is wrong when he says, "You only have a right to a procedure, like any other service, if someone, e.g. your protective association has contracted to provide you with it" (Barnett 1977, 17). I might have to give you sufficient reasons to believe that you are violating my rights before I may enforce those rights.

I want to push this argument a step further. I think there is a strong case to be made that procedural rights bear on cases in which one agent seeks rectification but the other does not have good reason to expect to owe it. To get at this case, consider Azaleas 1 and 2.

Azaleas 1: Bob awakes to find that someone trespassed in his garden and trampled his prized azaleas. He will lose \$500 because of this. However, Bob made a list of twenty people he suspects and rolled a twenty-sided die. He then decided that the guilty party was the person whose name corresponded to the number on the die. Tom, who was drunk when the azaleas were

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<sup>6</sup> One further explanatory advantage of the position I am pushing is that it elucidates a judgment from the natural rights theorist Eric Mack. He presents a version of Shotgun 1 in which the trespasser breaks into the cabin to find that the owner has rigged a shotgun to kill trespassers. The trespasser finds this out just as he dies from the blast. Mack agrees that the action in his version of Shotgun 1 would be impermissible. However, he says that he does "not have a confident account of that judgment." (Mack 2006, 125) If people have a right to be put in the epistemic position to understand the harm they face in violating rights, this may account for Mack's judgment. No hiker expects to be shot to death just for breaking into an uninhabited cabin. Once the hiker/graffiti artist knows that his expectation is mistaken, he is subject to enforcement of the right of exclusion. (He may be shot.) I do not wish to defend this judgment here, so, I note only that explaining Mack's judgment *might* be an advantage of my position.



trampled, has no idea if he is guilty. Bob knows that Tom keeps \$500 on his kitchen counter. Bob takes \$500 from Tom.

Is Bob's action permissible or impermissible?

Azaleas 2: Bob awakes to find that someone trespassed in his garden and trampled his prized azaleas. He will lose \$500 because of this. However, Bob has a set of reliable security cameras near his garden. He sees Tom from both a bird's eye view and several street angles. He even compares the footprints in the mud to Tom's shoes and discovers that they are a match. Bob shows Tom all the evidence, but Tom refuses to compensate Bob. Bob knows that Tom keeps \$500 on his kitchen counter. Bob takes \$500 from Tom.

Is Bob's action permissible or impermissible?

In the first case, it sure seems that Bob has done something impermissible. In the latter, it might not seem that way. The difference is that in the latter case, Bob shows Tom that the enforcement of the right was permissible. Putting Tom in the epistemic position to see that he violated a right appears to be the reason why the extraction of the \$500 was ostensibly permissible. Otherwise, Tom would have had no reason to expect Bob to extract anything from him.<sup>7</sup>

I do not think that this should be surprising at all. From the first two thought experiments, it seems that I have to warn someone that he is going to suffer a much harsher penalty than he had reason to expect in order to ensure that he is not an accidental rights violator. Why, then, should I not have to warn someone who has no reason to believe that he violated any rights that he is about to suffer a penalty for doing so? One who denies that we have procedural rights would need to explain away this asymmetry. Once we grant that people have procedural rights, there is no asymmetry.

It is in cases like this that the motivation for procedural rights becomes important. If Tom may resist Bob, but Bob may try to extract damages from him in Azaleas 1 since Tom is guilty, the advantage of compossibility falls away—at least at the practical

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<sup>7</sup> This case is a complicating factor for Wellman (2012). I do not endorse Wellman's views, but I also do not claim to be offering a refutation of them here. This is just a complication.

level. I think that we can say that Bob may not extract damages from Tom in *Azaleas 1*, even though Tom violated his rights. This is because Bob lacks sufficient evidence to enforce his right to rectification. This preserves the compossibility of rights.

## THE SHADOW OF POSITIVE RIGHTS

As I hinted earlier, I suspect that part of the reason that people within the natural rights tradition are leery of procedural rights is that they come very close to being positive rights. Briefly, a positive right is usually treated as something like the right to be supplied with some good or service. Rights to free healthcare, a job, or free college would be positive rights, for example. Negative rights are rights against interference.<sup>8</sup> The right not to be murdered, raped, falsely imprisoned, and so on are all negative rights. It seems that this concern lurks behind some of Barnett's remarks. When he says that you "only have a right to a procedure, like any other service, if someone, e.g. your protective association has contracted to provide you with it," I suspect that he means that we cannot have a noncontractual right to have someone perform a service for us (Barnett 1977, 17).

I think that general skepticism about positive rights is well founded. However, there are at least two reasons why that skepticism does not undermine the case for procedural rights. First, if one makes the judgment that *Judo 1*, *Shotgun 1*, and *Azaleas 1* were impermissible, the most obvious explanation within the natural rights tradition for that impermissibility is that it violates someone's rights. Otherwise, one should say that the actions are blameworthy, irresponsible, mean, and so on, but *permissible*. Proponents of natural rights are willing to admit that not all exercises of rights are free from blame. A landowner who forces someone to walk the perimeter of his field rather than pass unobtrusively through is, or at least might be, a jerk. However, once we say that this sort of behavior is impermissible, we open the door for all kinds of impermissible actions not constrained by the rights of others. Once that happens, at least some of the freedoms that natural rights theorists defend become imperiled. Perhaps legal paternalism, which many natural rights theorists oppose, becomes permissible.

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<sup>8</sup> For a defense of the importance of the distinction between positive and negative rights, see Rodgers (2018).

Another reason why the concern with positive rights does not need to arise here is an analogy between procedural rights and things that proponents of natural rights have no problem accepting. Walter Block, who opposes both positive obligations and positive rights, presents a thought experiment identical in spirit to the ones I have considered thus far. He writes, “if A sees B stepping on his lawn, as a first step A may not blow B away with a bazooka. Rather, A must notify B of his trespass, and if B immediately ceases and desists, perhaps even with an apology thrown in, that is the end of the matter. It is only if B turns surly, hostile and aggressive, and refuses to budge, that A may properly escalate” (Block 2011, 5). He concludes that one must enforce eviction rights in the “gentlest manner possible” (1, 7). He holds that “in countering a rights violation, we want to ensure that we stop just on this side of violating the rights of the rights violator” (5). Indeed, in cases of abortion, Block argues that a mother may evict a fetus provided that she notifies “an appropriate agency, such as new adoptive parents, a church, a monastery, an orphanage, Craig’s List, etc.” (6).<sup>9</sup>

My position and Block’s align in holding that people might have to perform actions before exercising their rights. In that sense, the *implications* of my argument should not be problematic. The difference, *if there is one*, is that I am openly linking this requirement to the rights of others. However, it might be the case that Block also acknowledges natural procedural rights and that his gentleness requirement is a means of codifying them in practice. (I am uncertain about whether Block thinks this requirement is linked to rights, however.) His position seems to be that we must evict in the gentlest manner possible in order to avoid violating rights (Block 2011, 5). We must do this in order not to violate rights ourselves. This is a reasonable position and I have no problem with it as far as it goes. It seems, for example, to explain the difference between Judo 1 and Shotgun 1, on the one hand, and Judo 2 and Shotgun 2 on the other. Perhaps one may not enforce one’s rights against accidental rights violators in the same manner that they may against intentional rights violators. So, to turn to aggression before knowing that Frasier and Alexander are knowingly violating rights is itself a rights violation. I think that requirement is a procedural right.

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<sup>9</sup> Obviously, the sort of actions one must take is shaped in part by the available technology.

Block's position also explains the Azalea cases. If one must not risk being a rights violator, then surely Bob should not extract payment from Tom with the flimsy evidence he has in Azaleas 1. However, if we suppose that Tom was guilty of trampling Bob's azaleas, then it seems that Bob had a right to extract payment from Tom, even if Bob did not really know that he did. Here, Block has to claim one of two things. One option is to say that Bob's behavior was blameworthy, since he risked violating Tom's rights, but was *not* a rights violation, since Tom did owe Bob the \$500. If this is Block's position, he parts ways with his own characterization of libertarianism: "the individual can do whatever he wants to do. In the libertarian society, he has complete freedom. Except; he cannot violate the equal rights of all others, by attacking their bodies (murder, rape, assault and battery), or their property (theft, fraud, counterfeiting), or even threaten such activities" (Block 2004, 128). Alternatively, Block can say that Bob's behavior was a rights violation and that that is why it is blameworthy. If his position is the latter, then our arguments are not in tension.

Although it is possible that my view and Block's are coextensive in their requirements in the cases canvassed so far, I want to argue that Block's requirement that we enforce rights in the gentlest manner possible does not go far enough. It does not cover all cases in which we might believe that someone has procedural rights. Consider Azaleas 3.

Azaleas 3: Bob awakes to find that someone trespassed in his garden and trampled his prized azaleas. He will lose \$500 because of this. However, Bob has a set of reliable security cameras near his garden. He sees Tom from both a bird's eye view and several street angles. He even compares the footprints in the mud to Tom's shoes and discovers that they are a match. Bob knows that Tom keeps \$500 on his kitchen counter and Bob is very good at sneaking undetected into people's homes (for reasons that are fully legitimate, pretend). Bob studies Tom's habits, waits for the propitious moment and sneaks into Tom's house to seize his money. Despite Bob's best efforts, Tom sees Bob enter his house. Tom calls out for Bob to leave and draws his pistol. Bob grabs the money and makes a break for it.

Now, I do not think that I need to finish the story for us to see that at least one of the individuals will violate the other's rights here. It seems to me that we have to blame Bob for all of this, even though he had a right to rectification. Bob acted as gently as possible, at least as the word functions in common language. Yet, given Tom's epistemic position, he would rightly take himself to have a right to shoot the fleeing Bob. If natural rights are to be compossible and practical, then it seems that we should argue that Bob was obligated to let Tom know that he had violated Bob's rights before seeking rectification. Bob has a right to rectification; Tom has a right to defend his possessions. What we need is a means of allowing agents, when possible, to determine what courses of actions are and are not rights violations. I do not see how Block's gentleness requirement achieves this goal.

One might contend that Tom has a right not to be made a rights violator. Perhaps Bob has made Tom a rights violator by putting him in the position to kill or injure someone to whom he owes damages. I think this is right; I would simply call this a procedural right. Nozick suggests that the natural rights position does not tell us what individuals may do when subjected to unreliable procedures for detecting guilt. There is no obvious reason not to extend this to unreliable methods of recovering one's property. I also think that this is not how the word *gentle* functions in ordinary language. (I can gently steal, for example.) Bob is being gentle; he is not going to do physical harm to Tom. But any well-functioning court system would acquit Tom in the case I have described.

## CONCLUDING MATTER

It might be that the content of procedural rights is to a degree culturally informed. If people in an area do enforce their property rights violently and with no more warning than, say, a sign indicating that it's private property, then others have good reason to expect that enforcement. In that regard, they have no procedural rights *against that kind of enforcement*. However, this does not change the point that when individuals either have no reason to expect enforcement or a particular level of severity in enforcement, then there are good reasons to believe that they have procedural rights. Local habit can only inform what one has good reason to expect. Thus, these rights are not cultural or political rights; they are rights that all agents have.

Along these same lines, it is important to see what I am, and am not, saying. I am not arguing that one has a right to see video evidence that one is guilty before others may enforce their rights to rectification. Such a principle would have precluded most people in human history from enforcing their rights. I am arguing that there must be some sufficient level of evidence offered to the person subject to punishment, at least when the person is innocently (or innocently enough) ignorant of whether he violated rights. The form that evidence might take may vary, but that is not surprising. After all, Nozick tells us that principles of justice in transfer may vary across different societies (Nozick 1974, 150). He also tells us that social rules may take sundry forms (322–31). I do not see why something similar could not happen with procedural rights.

This article has argued that we have rights not merely against certain types of behavior, but to be informed that we are rights violators and subject to rights enforcement. In order to protect the compossibility of rights, to keep down the cost of respecting rights, and to explain our reactions to the vignettes I constructed, I have argued that we should extend the scope of rights to include two things. First, individuals have rights to be informed that they are subject to rights enforcements that they have no reason to expect from others. Otherwise, individuals may resist, having insufficient reason to expect anyone to enforce those rights. Second, individuals have a right to be warned that they are subject to more severe penalties than they have reason to expect. These are natural procedural rights.

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