# The Right to Know Your Rights

**Olivia Newman,** Rider University

This article defends the meta-right to know your rights, asserting that the moral right to know legal rights should be enforced by the law. All too often, state agents and private actors deceive individuals or exploit their ignorance to prevent their exercise of rights. While this injustice is familiar, the right to know your rights has not received adequate analytical attention. Here, I show that this right can be defended by many moral theories, including deontology, consequentialism, and social contract theory. While the right to know is categorical, it imposes different duties (to inform and/or not deceive) on different parties, depending upon the situation; hence, redress should vary by situation. For instance, Miranda warnings may best convey Fourth Amendment knowledge, while public service announcements may best correct voter deception and mandated disclaimers may best prevent deceptive crisis pregnancy counseling.

Keywords: moral rights, legal rights, ignorance, justice, Miranda warning, disclosure

It is commonly held that Americans are quick to demand their rights but slow to recognize their duties. What we need in the midst of all this "rights talk," according to Glendon, is more attention to the collective good and to what we owe, rather than to what we are owed.[1] Perhaps we are too individualistic and overly concerned with entitlements. But this observation obscures something equally if not more true: many individuals fail to declare their rights because they do not know or fully understand what their rights entail. Rather than criticizing a disproportionate interest in rights talk, we need to attend to those occasions when vulnerable individuals do not demand their rights because they do not know what they are.

Versions of this paper were presented at the 2014 Southern Political Science Association Annual Meeting and the 2014 Loyola University Chicago School of Law Fifth Annual Constitutional Law Colloquium. Special thanks to colloquium participant Helen Norton and organizer Barry Sullivan for their help in developing the legal and constitutional dimensions of this project. I also presented this paper to the Harvard University Social Studies workshop, where I received invaluable advice from many colleagues, including Ian Storey. I am also grateful for the insightful suggestions of my anonymous reviewers.

1. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1993).

**Published online July 27, 2017. http://dx.doi.org/10.1086/693700**
*Polity*, volume 49, number 4 (October 2017), pp. 464–488. 0032-3497/2017/4904-0002$10.00.

This article defends *the right to know your rights*. This right bears a resemblance to Hannah Arendt's right to have rights, insofar as each posits a moral right in reference to positive rights.[2] When Arendt advanced the idea of a right to have rights more than a half a century ago, she was asserting a moral right to belong to a state that could protect legal rights. The urgency of this right became apparent, she noted, when stateless persons in Europe found themselves without any guarantor for what she called the "Rights of Man."[3] Arendt put the point sharply when she said, "We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights."[4] Accordingly, rights function only if we have a *meta-right* to have rights that are enforceable and actually enforced.

The right to know your rights is a meta-right along the same lines, emerging from the observation that many individuals in the United States today (and elsewhere, to be sure) do not fully enjoy their rights because they are ignorant about the precise content of their rights. This ignorance leaves them vulnerable to a wide range of abuses. As I show momentarily, examples abound in which state agents or third parties actively deceive or intentionally exploit ignorance in order to prevent individuals from fully exercising their rights. Just as it is a matter of justice when some human beings have no recourse to a state that can protect their human rights, so it is a matter of justice when an individual's ignorance of their rights becomes an instrument in their oppression.

I begin by showing how efforts to deceive or mislead individuals about their rights prevent them from enjoying the full value of their rights. I then show how the right to know your rights should be seen as constituting an overlapping consensus among many moral and legal theories, suggesting that it can fit into and be acceptable to a wide range of perspectives. In the final section, I show how the general right to know your rights might be implemented, in the law and in civil society, taking my lead from selected legislative, judicial, and civic efforts to address rights ignorance. When we recognize the categorical right to know your rights, we will be better prepared and more inclined to mobilize legal, judicial, and social resources to further protect it in particular cases.

---

2. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Inc., 1968). See also James D. Ingram's analysis of Arendt's meta-right to have rights, "What Is a 'Right to Have Rights?' Three Images of the Politics of Human Rights," *American Political Science Review* 102 (2008): 401–16.

3. Arendt, *Totalitarianism*, 290, 301 (see previous note).

4. Ibid., 301.

## The Problem: Ignorance, Deception, and Obfuscation

All too often, ignorance of rights interferes with their exercise. Consider the following familiar scenarios:

> A concerned passerby concedes to a police officer's demand to refrain from filming an arrest on her cell phone.[5]
>
> A young man turns away from his polling place in a low-income neighborhood after seeing a flier suggesting that citizens with outstanding warrants or unpaid parking tickets could be arrested if they show up to vote.[6]
>
> An unhappily pregnant woman is misled by a crisis pregnancy counselor regarding her options for continuing or terminating her pregnancy.[7]
>
> A driver pulled over for speeding allows police to search her car, unaware of her Fourth Amendment right to refuse consent for searches without probable cause.[8]

---

5. The ACLU has documented many cases of police officers and transit officials trying to prevent or even arresting citizens for photographing or videotaping subjects and events in plain view in public spaces, which it contends is a clear violation of First Amendment rights. See Jay Stanley, "You Have Every Right to Photograph That Cop," *Know Your Rights: American Civil Liberties Union*, September 7, 2011, at https://www.aclu.org/news/you-have-every-right-photograph-cop. See also Peter Holley, "Police falsely told a man he couldn't film them. 'I'm an attorney,' he said. 'I know what the law is,'" *Washington Post*, March 20, 2017.

6. Voter intimidation can take a variety of approaches. According to the president of the election watchdog group The Committee of Seventy, prior to the 2008 presidential election, low-income, heavily Democratic neighborhoods in Philadelphia were papered with flyers suggesting that anyone with legal troubles or unpaid parking tickets would be arrested if they showed up at their polling place. See Zach Stahlberg, interview with Terri Gross, "Voter Intimidation Efforts in Philadelphia," *Fresh Air with Terri Gross: NPR*, October 8, 2008.

7. A recent "sting" operation by the National Abortion and Reproductive Rights Action League (NARAL) found that 71% of crisis pregnancy centers in Virginia give out medically inaccurate information about birth control, condoms, and abortion. For example, "One counselor allegedly told NARAL's undercover investigator that if she was a certain blood type, the abortion could cause her body to create antibodies that would attack her fetus the next time she tried to get pregnant," which is a very misleading account of Rh-factor risks, which can be easily mediated medically. See Laura Bassett, "State-Funded Crisis Pregnancy Centers Talk Women Out of Birth Control," *Huffington Post*, August 7, 2013.

8. In *Schneckloth v. Bustamonte*, the U.S. Supreme Court found that police are not obligated to inform suspects of their right to refuse searches without probable cause; the suspect's state of mind and the police officer's failure to inform, the Court determined, may be considered but are not determinate of whether a suspect's rights have been violated. See *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

In these and many other situations, the right holder's ignorance surrounding their rights makes it much easier for others to violate those rights. Of course, rights can be violated even under conditions of full knowledge. Consider, for instance, the 2015 police shooting of Walter Scott in South Carolina after a routine traffic stop. The witness who filmed the police officer fatally shooting the unarmed man in the back told reporters that he feared for his safety after making the video public.[9] Even when individuals know their rights, they may fear the consequences of acting upon them, and some will be dissuaded from doing so all together. But in many other cases, successful rights violations are simply a function of ignorance, as the above examples suggest.

There can be no principled reason for crisis pregnancy counselors to misinform patients about their medical credentials or about the medical risks attending abortion, or for worried politicians to post misleading information about voting in competitive minority districts.[10] Few people would forcibly keep an individual from entering an abortion clinic or a polling place; physically preventing the actual exercise of a right requires much more exertion and risk than most would-be violators would accept or get away with. For this reason, those who wish to prevent the exercise of rights resort to less overt and visible tactics, such as deceiving rights holders about their rights, exploiting their ignorance of their rights, or undermining their confidence in their understanding of their rights. When so many state and private actors appear committed to the obfuscation of rights, knowledge of rights becomes an urgent matter of justice. Just as "those who can afford to litigate obtain more value from their rights than those who cannot," those who know their rights obtain much more value than those who do not.[11]

Indeed, knowing one's rights is an important bulwark against the violation of rights. This is evident to every activist who distributes pocket copies of the U.S. Constitution at political rallies. This rationale also forms the basis for the well-known Miranda warning, which was introduced in 1966 to protect Fifth and Sixth Amendment rights.[12] The rationale behind the Miranda warning is so compelling

---

9. Andy Campbell, "Witness Who Recorded Shooting of Walter Scott Speaks Out: 'Police Had Control,'" *Huffington Post*, April 8, 2015.

10. There are principled courses of action open to these actors. An anti-abortion pregnancy counselor can engage in honest discussion with clients and can work to change abortion laws, and the worried politician can try to win minority voters by learning more about their interests as constituents.

11. Stephen Holmes and Cass R. Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York: W.W. Norton and Company, 1999), 21.

12. The familiar language of the Miranda warning was written by Assistant Attorney General Doris Maier and Nevada County District Attorney Harold Berliner at the behest of Cal-

that one might be tempted to wonder why similar warnings have not been established to protect other important rights. Indeed, this question is posed in the dissents to the 1973 U.S. Supreme Court case of *Schneckloth v. Bustamonte*, which determined that a suspect need not be informed of their Fourth Amendment right to refuse consent for police searches without probable cause. Brennan dissented, "It wholly escapes me how our citizens can meaningfully be said to have waived something as precious as a constitutional guarantee without ever being aware of its existence."[13] Marshall echoed this sentiment in his dissent:

> I can think of no other situation in which we would say that a person agreed to some course of action if he convinced us that he did not know that there was some other course he might have pursued. . . . When the Court speaks of practicality, what it really is talking of is the continued ability of the police to capitalize on the ignorance of citizens so as to accomplish by subterfuge what they could not achieve by relying only on the knowing relinquishment of constitutional rights. . . . The holding today confines the protection of the Fourth Amendment against searches conducted without probable cause to the sophisticated, the knowledgeable, and, I might add, the few.[14]

The Court's decision in *Schneckloth* allows police to exploit the ignorance of suspects in order to secure formal consent for searches from suspects who may not fully understand what they are consenting to, on the grounds that fully explicated rights would prevent suspects from *ever* giving their consent, thereby obstructing police activity.[15] Accordingly, suspects' right to be free of unreasonable searches evaporates into thin air. As a police officer bragged to Holmes and Sunstein: "I don't

---

ifornia's Attorney General Thomas Lynch, who recognized that the Court's decision in *Miranda v. Arizona* would require a warning. Berliner saw an opportunity to sell wallet-size cards containing this language and mailed samples to law enforcement agencies around the country. This, along with the adoption of Berliner and Maier's language by the writers of the police procedural television program *Dragnet*, led to the ubiquity of the Miranda warning as we know it; see *Miranda v. Arizona* 384 U.S. 436 (1966). See also Blair A. Robertson, "Legal Wordsmith Recalls Writing Miranda Warning," *Daily Courier* (Prescott, Ariz.,), July 14, 2000, and Jacqui Shine, "How 'You Have the Right to Remain Silent' Became the Standard Miranda Warning," *Slate*, at www.slate.com/blogs/the_vault/2014/07/02/miranda_warning_history_how_the_language_of_the_warning_became_standard.html.

13. *Schneckloth*, 277 (see note 8 above).

14. Ibid., 285, 288–89.

15. To the contrary, evidence suggests that the Miranda warning does not substantially impede police investigations, as it rarely prevents self-incrimination; see Alan C. Michaels, "Rights Knowledge: Values and Tradeoffs," *Texas Tech Law Review* 39 (2006–2007): 1355–81, at 1365. I consider the effectiveness of the Miranda warning more fully in the final section of this paper.

violate the Fourth Amendment unless I say I violated the Fourth Amendment, and I never say I violated the Fourth Amendment."[16]

Human rights discourse also recognizes something like a right to know your rights in Article 26, Section 2 of the Universal Declaration of Human Rights, which states: "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."[17] It seems obvious to many human rights activists that their project includes informing individuals of their rights, so that they may more assiduously protect them and more confidently seek redress when their rights have been violated. Spreading knowledge about rights is also a core mission of the American Civil Liberties Union.

Analytical and philosophical treatments of the form and function of rights imply that rights must be known and actionable, although this stipulation has not been fully explored or developed.[18] As Hart says, "It is hard to think of rights except as capable of exercise."[19] A right, Feinberg tells us, must "be something a man can stand on, something that can be demanded or insisted without embarrassment or shame."[20] *Exercise*, *demand, insist*, *claim*: this language reflects the active, performative dimension of rights. As Feinberg goes on to admit, though, "one might have a claim without ever claiming that to which one is entitled, or without even knowing that one has the claim. It is possible that one might simply be ignorant of the fact of being in a position to claim."[21] Being entitled—having a right on paper—is not by itself sufficient for enjoying or exercising that right. Imagine, for instance, a Last Will and Testament tossed out to sea in a bottle. Its beneficiaries may be entitled to the deceased's estate, but without knowledge of this entitlement they will never claim nor receive it.[22]

The lack of scholarly attention to the right to know your rights may be explained by the fact that this right is both superficially obvious and practically quite compli-

16. Holmes and Sunstein, *Cost of Rights*, 128 (see note 11 above).

17. United Nations General Assembly, "Universal Declaration of Human Rights," December 10, 1948, 217 A (III), at http://www.refworld.org/docid/3ae6b3712c.html.

18. Legal scholar Helen Norton has explored several concrete legal questions that address rights knowledge; I discuss her work in the final section of this paper.

19. H.L.H. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford, U.K.: Clarendon Press, 1982), 185.

20. Joel Feinberg, *Social Philosophy* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1973), 58.

21. Ibid., 65.

22. Of course, in the absence of knowledge about one's rights, one might still believe oneself to have been morally wronged. Disenfranchised young voters may believe themselves to be victims of unjust laws, for instance. But righteous indignation in the absence of real knowledge about rights is not enough to successfully press a claim.

cated. Of course individuals can better protect their rights when they know what they are, but what, specifically, would the right to know your rights require? What duties does it imply, and for whom, and how might this right be put into practice? I will explore a range of philosophical and legal perspectives that might be marshaled in support of the right to know your rights, ultimately making the case for this important right. In the final section, I consider what it would look like to enshrine this right in the law and in practice.

## The Remedy: Recognizing the Right to Know Your Rights

### *Natural Law and Legal Positivism*

Accepting the right to know your rights does not require us to settle the myriad controversies surrounding the origins, nature, and scope of rights; many different perspectives provide the resources necessary to defend the right to know your rights. For instance, there are both consequentialist and deontological reasons to support this right, as I later show. However, accepting the right to know your rights does imply a certain relationship between moral and legal rights, which is controversial. Natural law theorists rely upon the authority of what they believe is independent moral law when evaluating positive law; good laws, they tell us, are those that correspond with natural law. By contrast, legal positivists regard natural law as chimerical and insist that law is a human invention which can only be judged according to social convention or procedural criteria.

Strict legal positivism offers little comfort to those who are mistreated under a particular system of law, since it is difficult to launch a successful campaign against a particular law without appealing to moral principles that are recognized as having some authority beyond the law. Indeed, it was the disjuncture between moral principle and the law which informed Justice Kennedy's reasoning in *Obergefell v. Hodges*, which found a constitutional right for same-sex couples to marry. As Kennedy explains:

> The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.[23]

23. *Obergefell v. Hodges* 576 U.S. __ (2015).

Kennedy's landmark decision hinges upon the claim that there are values and principles beyond positive law.

Natural law theorists and their contemporary relations appear to be in a good position to address amoral laws, since they also recognize that moral rights exist independent of the law. But natural law theory runs into trouble, since the putative naturalness of laws dissipates as it becomes clear that appeals to providence or reason do not generate universally recognized and fully articulated rights, but rather seem to depend upon the specific humans who discover them. Indeed, many natural law theorists would reject my suggestion that we use natural law to defend gay rights, as they interpret natural law as forbidding homosexual acts.[24]

The right to know your rights falls in the large gray area between natural law and legal positivism, as it implies a *moral* right to know *legal* rights. This runs up against legal positivism, which insists that the idea of moral rights is, as Bentham once said, "nonsense on stilts."[25] But it also challenges natural law theory, which presumes that moral rights are easily identified and non-controversial, which is shown to be untrue by the example of homosexuality. Moral rights are not, as the American founders wished them to be, self-evident truths. In a diverse moral universe such as ours, moral rights are subject to considerable dispute.

### *The Right to Know Morally Objectionable Rights*

The moral right to know one's legal rights is vulnerable to this kind of dispute, particularly in regard to knowing about legal rights that are morally objectionable. For instance, did whites in the antebellum South have a moral right to understand their legal right to own slaves? Prior to the introduction of marital rape laws, did husbands have a moral right to know that they could force sex upon their wives with legal impunity? At various points in this nation's history, slavery, marital rape, employer discrimination, and segregation have in fact all enjoyed legal sanction, granting rights to some individuals at the expense of others.

---

24. There is an exception: Daniel Morris argues that natural law requires the acceptance of gay marriage. See Daniel A. Morris, "'Natural Law' Arguments Against Same Sex Marriage Break Down in Face of Evidence," *Political Theology Today*, July 21, 2016, at www.politicaltheology.com/blog/natural-law-arguments-against-same-sex-marriage-break-down-in-face-of-evidence/. John Finnis's natural law argument against same-sex marriage, however, is more representative of natural law thought. See John M. Finnis, "Law Morality, and 'Sexual Orientation,'" *Notre Dame Law Review* 69 (1994): 1062–76. See also Sherif Girgis, Robert P. George and Ryan T. Anderson, "What is Marriage?" *Harvard Journal of Law and Public Policy* 34 (Winter 2010): 245–87.

25. Jeremy Bentham, *Rights, Representation, and Reform: Nonsense upon Stilts and Other Writings on the French Revolution*, ed. Phillip Schofield, Catherine Pease-Watkin, and Cyprian Blamires (Oxford, U.K.: Oxford University Press, 2002).

Such laws are morally objectionable because they undermine human equality and dignity. Kant explains dignity thusly: "Everything has either a price or a dignity. Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits no equivalent, has a dignity."[26] Accordingly, since every human is unique and "admits no equivalent," every human has dignity that must be protected. This is similar to the Preamble of the Universal Declaration of Human Rights, which recognizes the "inherent dignity and . . . equal and inalienable rights of all members of the human family."

According to Kant and human rights discourse, just laws are those that accord with and protect human dignity and equality, universally. Martin Luther King, Jr. defines just laws similarly:

> Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority.[27]

As this passage suggests, the justness of a law depends upon upholding the dignity of all parties. Segregation did not merely threaten the dignity of blacks; it was shameful and undignified for whites, too. As MacDonald notes, "To say that freedom is better than slavery is not to state a fact but to take a side"—the side, I would add, that is consistent with human dignity.[28]

The case for the right to know about rights that undermine human dignity is difficult to make, for obvious reasons. And yet I submit that the moral right to know one's legal rights is in effect, even in the case of morally objectionable legal rights such as those I describe above. Indeed, morally objectionable laws that I have discussed so far, such as slavery and marital rape, are easy examples; many other rights derive from laws that are much more contentious. Furthermore, in many

---

26. Immanuel Kant, *Grounding of the Metaphysics of Morals*, with *On a Supposed Right To Lie Because of Philanthropic Concerns*, trans. James Ellington (Indianapolis, Ind.: Hackett Publishing Co., 1993 [1799]), 183. Many modern thinkers adopt a Kantian approach to ethics and human rights, including Christine Korsgaard, *Creating the Kingdom of Ends* (Cambridge, U.K.: Cambridge University Press, 1996); Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge, U.K.: Cambridge University Press, 1989); and Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge, U.K.: Cambridge University Press, 2000).

27. Martin Luther King, Jr., "Letter from Birmingham Jail," May 1, 1963, at www.thekingcenter.org/archive/document/letter-birmingham-city-jail-1.

28. Margaret MacDonald, "Natural Rights," in *Theories of Rights*, ed. Jeremy Waldron (Oxford, U.K.: Oxford University Press, 1984): 21–40, at 35.

cases, it is the very dignity of the involved parties that is in dispute. For instance, both sides of the U.S. abortion debate call upon notions of the dignity of women; even opposition to the Equal Rights Amendment was sometimes couched as protecting the dignity of women and homemakers.[29] Similarly, arguments for and against allowing (or for and against requiring) Muslim women to wear the hijab in public are often framed in terms of the dignity of women themselves. Even some Southern slaveholders justified the institution of slavery in terms of the mutual dignity of masters and slaves.[30] Happily, some of these claims, such as a pro-slavery argument, would fall on deaf ears today. But other cases are more contentious, even to this day, suggesting that it is not uncommon to disagree about what threatens human dignity in particular cases. Hence, the idea that the right to know one's rights only applies in the case of morally acceptable rights would immediately run into intractable questions about which rights, exactly, ought to be included, and about who is to decide.

Such questions and controversies would undermine the project of extending knowledge about rights more generally, by providing a rationale for *not* extending knowledge in particular cases, and by exacerbating the degree to which rights knowledge is a function of power—the very problem that this right seeks to resolve. Limiting the right to know to morally defensible legal rights introduces more problems than it solves: knowledge of legal rights must be available in the context of all legal rights. The moral response to immoral legal rights is not to obscure them or deceive their holders, but to lead a public discourse about the morally troubling aspects of the law, in an effort to change it.

That said, the right to know morally objectionable legal rights is not as strong as it is in other cases, and may trigger less far-reaching duties. I contend that the right to know one's rights in cases that threaten human dignity necessitates the duty to not deceive (which holds in all cases), as well as a limited duty to inform among those who are responsible for providing legal advice and counsel (attorneys and certain state agents). Indeed, from a practical standpoint, this requirement will likely not change much, as those who would exercise morally objectionable rights are rarely held back by a lack of knowledge. Rather, the legal right in such cases merely provides cover for those who are already inclined to that activity.

---

29. Jane Mansbridge, *Why We Lost the ERA* (Chicago: University of Chicago Press, 1986), 90–117.

30. John C. Calhoun, "Speech on the Reception of Abolition Petitions," *Union and Liberty: The Political Philosophy of John C. Calhoun (*Indianapolis, Ind.: Liberty Fund, 1992), 461–76.

So the right to know rights applies most forcefully to those rights that are consistent with human dignity and equality. This includes legal rights that have moral content but do not directly concern human dignity or equality. For instance, the right to collect rainwater has a moral dimension (laying out contested property rights), but it does not pose an intrinsic threat to human dignity. Similarly, same-day voter registration has a moral dimension (increasing turnout among historically disenfranchised populations), but allowing or prohibiting same-day registration does not directly impact human dignity. The right to know rights is robust in all such cases.

### *Deontology*

The moral right to know legal rights helps to preserve or restore human dignity when it is threatened by deception and obfuscation. When state agents or third parties exploit ignorance, intentionally deceive, or obscure knowledge about rights, their actions threaten the dignity of the rights holder. Rights knowledge helps to rectify this situation. Here we can begin to see a deontological argument begin to take shape. There are clear deontological reasons to worry when ignorance is exploited and when third parties intentionally deceive rights bearers or obscure the specific content of their rights. From a Kantian perspective, deception is always prohibited. Lying to someone denies their dignity and fails to recognize individuals as their own ends. In the cases that I have described, state and third party actors—such as police officers, dubious politicians, or crisis pregnancy counselors—treat rights bearers as mere means to their own ends, be it a smoother police investigation, a desired electoral outcome, or an anti-abortion agenda.[31] The dignity of the rights bearer is violated when their decision-making calculus is intentionally distorted to ensure certain outcomes that put someone else's interests above their own.[32]

---

31. Judith Jarvis Thomson has argued that forcing a woman to carry an unwanted pregnancy to term violates her dignity—even if we concede that fetuses have a right to life—as it treats her body as a mere means to someone else's end. See Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1 (1971): 47–66, at 48–49. The deception committed by crisis pregnancy counselors who try to prevent clients from seeking abortions by lying about their medical credentials and/or the medical effects of abortion treats women as mere means to someone else's end.

32. Helen Norton, "Secrets, Lies and Disclosure," *Journal of Law and Politics* 27 (2011–2012): 641–54; Morgan Cloud, "Ignorance and Democracy" *Texas Tech Law Review* 39 (2006–2007): 1143–69, at 1145; Michaels, "Rights Knowledge," 1363 (see note 15 above).

*Consequentialism*

There are also consequentialist reasons to defend the right to know your rights. From this perspective, deception, obfuscation, and the exploitation of ignorance often lead to obviously bad outcomes. These bad outcomes might include: a nominally voluntary but uninformed waiver of constitutional rights in which one's liberty is on the line; carrying unwanted pregnancies to term; or the violation of the expressive freedoms that enable society to police the police. It is not only that these are bad outcomes, but they are outcomes that the law purports to protect us from.

Of course, consequentialism can only be reconciled with rights through some kind of two-tier system or rule-utilitarianism, which accepts that, on balance, rights produce better outcomes than the absence of rights.[33] Without differentiating between these two levels, we would be unable to explain why a consequentialist would be willing to adhere to a rights regime if there were, in specific instances, compelling reasons not to (if, for instance, killing one would save many others). Clearly, we cannot violate rights whenever it seems likely to produce better outcomes than abiding by them, which would render rights meaningless. Rights are valuable to us not just in specific instances when they further our interests, but also by virtue of the fact that we know we can count on them in the future, for ourselves and for others. The inviolability (or near-inviolability) of rights is an integral part of what makes them valuable. Practically speaking, however, the problem with which we have to contend is not that the inviolability of rights stymies morally preferable action in a small set of cases, but rather that many actors violate the rights of others on a regular basis, with relative ease and impunity. Consequentialists would do well to recognize the right to know your rights, which empowers individuals to better control outcomes in their own lives.

*Social Contract Theory*

The right to know your rights also finds support in Rawls's social contract, which is illustrated by the famous thought experiment known as the original position, which directs us to the principles of justice that we would choose if we were ignorant of our personal circumstances, including whether we are among the best-off or the worst-off in the resultant system.[34] Rawls supposes that under these conditions, two basic principles of justice would be chosen: first, equal liberty for all, and sec-

33. T. M. Scanlon, "Rights, Goals, and Fairness," in *Theories of Rights*, ed. Waldron, 137–52 (see note 28 above).

34. John Rawls, *A Theory of Justice*, rev. ed. (Oxford, U.K.: Oxford University Press, 1999), 118–59.

ond, that inequality is only acceptable insofar as there is fair equality of opportunity and that any resulting inequalities are to the advantage of the least well-off (the difference principle). The right to know your rights seems to be a natural extension of these principles. An agent in the original position would surely want to ensure that all capable individuals know their rights (among many other things). Moreover, any society in which only some citizens know their rights violates the difference principle, as this knowledge differential cannot be construed as advantageous to the ignorant.

As the foregoing discussion suggests, the right to know your rights appears to be located within an overlapping consensus of moral and legal theories. Deontology, consequentialism, and Rawls's theory of justice as fairness all provide reasons to recognize the right to know, as does human rights discourse and the Christian worldview of Martin Luther King, Jr. At the same time, there are challenges that must be answered. First, the right to know your rights may seem to undercut the value of rights that are not known by their bearers, such as the rights of children and incompetent adults. Indeed, the vulnerability and neediness of these individuals renders them particularly fitting subjects of rights. As MacCormick insists, any theory of rights that cannot accommodate the rights of children is deficient.[35] Rights that depend upon third-party oversight do not disprove the importance of knowing rights so much as they remind us that third-party agents must also know the rights they are charged with protecting.[36]

Even so, there is not a one-to-one correspondence between ignorance and violations; sometimes rights are effective even when they are unknown by their bearers and their agents. But the risk of abuse is high and can only be obviated by rights knowledge. It is in the interest of rights holders, individually and collectively, that the greatest number of them and their agents know their rights. On an individual level, competent adults are generally in a better position than others to look out for their own interests, and knowledge of their rights is an important tool to help them do so. This synchronizes with common ideas about freedom and dignity, and is also most efficient. Collectively, all rights holders benefit as the number of knowledgeable rights holders grows. We can think of this as a kind of herd immunity,[37] in

35. Neil MacCormick, "Children's Rights: A Test-Case for Theories of Rights," in *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (Oxford, U.K.: Clarendon Press, 1982): 154–66.

36. Of course, sometimes it is these very agents who abuse the rights of their dependents. This is an important problem but it is beyond the scope of this article.

37. The National Institute of Allergy and Infectious Disease, "Community Immunity ('Herd Immunity')," at www.vaccines.gov/basics/protection.

which knowledge spreads and individuals have an increasing likelihood of encountering other people who know their rights. It is good from a civic health perspective, so to speak, to spread the knowledge around in hopes of protecting those who do not yet know, or are incapable of knowing, their rights. Additionally, rights cease to be rights when they are entirely unknown by all of their holders; it is by virtue of being claimable that a benefit becomes a right.

### *Specification of Rights*

The right to know your rights faces another perhaps more vexing obstacle in light of the fact that rights cannot be fully specified. Rights always encompass some degree of indeterminacy and are always in flux as their specification responds to challenges on the ground. If rights cannot be fully defined, one may wonder if rights can really be widely known by their bearers. While they disagree about the scope of the problem, both legal realists and critical legal theorists hold that the law is at least sometimes indeterminate, meaning that outcomes based upon known principles are unpredictable in particular legal adjudications.[38] This seems to suggest that there are many cases in which jurists and legal theorists (to say nothing of rights bearers themselves) could not predict the concrete instantiation of a particular right.

There are several potential sources of indeterminacy. Language is open-ended and subject to a range of interpretations; there are often competing legal rules that could be invoked in a given case, which might lead to different judicial outcomes.[39] And yet it also seems that there are many cases in which the law is relatively clear

---

38. Andrew Altman, "Legal Realism, Critical Legal Studies, and Dworkin," *Philosophy and Public Affairs* 15 (1986): 205–35.

39. David Wolitz, "Indeterminacy, Value Pluralism, and Tragic Cases," *Buffalo Law Review* 62 (2014): 529–98. Dworkin disputes the indeterminacy of law, arguing that even when language is vague or conflicting rules *could* be brought to bear, there is always an underlying set of relevant principles or ideals that can settle these questions. Accordingly, even if the law is sometimes vague, the spirit of the law can guide us toward the "right answer" in these cases. Critical legal theorists respond that the spirit of the law is equally confused, suggesting that there is as much conflict between philosophical principles and ethical norms as there is between legal rules. Critical legal theorists contend that these conflicts are inescapable, rendering the law fundamentally indeterminate. They point to a genuine feature of the law, and it is true that lawmakers must sometimes appeal to outside sources (such as underlying principles) in order to adjudicate specific legal questions. But the scope of this indeterminacy is overblown by critical legal theorists. In most cases, including those with which I am concerned here, the spirit and the letter of the law are clear and widely understood. See Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1978), 29–64; Duncan Kennedy, "The Critique of Rights in Critical Legal Studies," in *Left Legalism/ Left Critique*, ed. Wendy Brown and Janet Halley (Durham, N.C.: Duke University Press, 2002): 178–228, at 194–99.

and determinate. The examples I have offered in this article fall into this category and appear robust enough to withstand the challenge of indeterminacy. In each of these cases, there is a right, we know what it is, and someone is trying to prevent the right bearer from having that same information. Of course these rights may continue to be the subject of political, philosophical, or legal debate, but these disputes do not primarily concern disagreement about what the law currently requires. For instance, posting misleading flyers about voter eligibility is never construed as a good faith interpretation of the law; it is in fact a bad faith effort to subvert the law. Similarly, when crisis pregnancy counselors misrepresent the nature of their medical expertise in order to dissuade women from seeking abortions, they are not making a claim about the law; they are trying to go around the law. While indeterminacy is possible in some number of cases, the indeterminacy thesis does not seriously challenge the right to know your rights.

A much more daunting challenge arises in the face of countless secondary rights that follow from any enumerated right. We might see this as an ongoing process of specification, in light of new insights, experiences, and emerging challenges. For instance, the right to vote appears to generate a secondary right to not be deceived about voter eligibility. It seems to also include the right to not be misled about polling places and hours of operation, and to not be misled about local registration requirements, mail-in procedures, or voter identification laws.[40] The list could go on. The point is that these rights cannot all be articulated in advance, since their specification is ongoing.

This ongoing process of specification is, in part, a response to endless invention in the violation of rights. Every time a right is further developed or articulated to protect against abuse, would-be abusers find a new way to violate that right. For example, when the Voting Rights Act eliminated the vestiges of Jim Crow, new methods of voter suppression, deception, fraud, and intimidation emerged in the ongoing effort to disenfranchise blacks, including "caging"[41] and misinformation

40. For example, in the 2014 elections, it was alleged that a conservative group intentionally mailed inaccurate voter registration information to voters in North Carolina. In the same state and election cycle, the National Association for the Advancement of Colored Persons accused a state senator of running television ads which gave the false impression that photo identification would be required to vote. See Samantha Lachman, "Group With Ties To Kochs Mails Out Incorrect Voter Registration Info To . . . a Cat?" *Huffington Post*, September 6, 2014; Sue Sturgis, "NC NAACP Files Complaint over State Senate Leader's Ad for Misleading on Voter ID," in *Facing South: A New Voice for a Changing South*, Institute for Southern Studies, September 16, 2014, at www.facingsouth.org/2014/09/nc-naacp-files-complaint-over-state-senate-leaders.html.

41. A typical caging tactic is to send non-forwardable mail to targeted voters, using any returned mail to challenge voters' eligibility via residency requirements. See Project Vote, "Legislative Brief 2010: Voter Intimidation and Caging," *Issues in Election Administration* (2010), 3–5.

campaigns in Philadelphia, North Carolina, and elsewhere.[42] The take-away is that there are many ways to violate a right; wrongs are protean and rights are always in a position of catching up to new wrongs.

Because the process of specification is ongoing, ignorance of rights is easily exploited. For instance, an individual who understands the general right to vote may nevertheless not know that this right is being violated by rampant misinformation campaigns (which, if they are successful, appear to provide reliable information), just as a passerby who understands the Bill of Rights may nevertheless not know that their rights are violated when a police officer stops them from filming an arrest, which a layperson could interpret as a plausible if unjust limitation on free speech rights. It is precisely this gray area that proves to be so useful for those who wish to obscure rights—those abuses which take on the sheen of legality, or which pass as unremarkable and unnoticed. How can we inject knowledge of rights into these situations?

## Implementation: Institutionalizing the Right to Know

It seems clear that a basic understanding of the Constitution and the Bill of Rights is inadequate for fully informing individuals of their rights. It would not be possible, for instance, to read the Fourteenth Amendment and take from this a thorough understanding of voter or abortion rights. As I have discussed, the specification of rights is ongoing and lay people cannot be expected to keep up with jurisprudence and precedence. Efforts to obfuscate rights are designed to appear aboveboard; for instance, flyers suggesting that voters with unpaid child support will be arrested prevent the exercise of voting rights precisely because some voters will believe this to be credible information about limits on their rights.

Rights cannot be fully specified in advance, and those who would mislead others about their rights are continually innovating new methods for doing so. Hence, recognizing and defending the right to know your rights requires that we specifically tailor efforts to disseminate knowledge of rights to the specific situations where it is both necessary and a likely target of obfuscation. The right to know your rights does not require that individuals be informed of all of their rights all of the time—surely this would be an impossible task. Rather, it requires that individuals be informed of the specific rights that they possess in particular situations, especially those situations where state agents or third parties may be disposed to mislead

42. Stahlberg, "Voter Intimidation" (see note 6 above); also see Lachman, "Incorrect Voter Registration" and Sturgis, "NC NAACP Files Complaint" (for both sources see note 40 above).

the bearers of rights, as in the example of reproductive health counseling or criminal investigations. While the right to know is a categorical right that can and should be recognized and defended as such, its institutionalization must necessarily be situation-specific.

It would not be possible to provide a comprehensive list of situation-specific rights to know your rights. Rather, they should emerge on a case-by-case basis when it becomes apparent that ignorance is widespread and that efforts to exploit that ignorance are common. The examples I have considered in this article are suggestive of the variety of situations which demand that we institutionalize the right to know. Other situations which would seem to require a right to know include the right to refuse end-of-life medical treatment;[43] the right to film interactions between citizens and police officers;[44] undocumented workers' right to workers' compensation in the event of workplace injury;[45] and the right of trafficked persons to apply for a T-Visa to remain in the United States (and avoid criminal charges for entering the U.S. illegally).[46] As these examples show, the right to know concerns many different kinds of rights and right holders, involving different kinds of exploitation and obfuscation they face, and of informing strategies that may be effective.

---

43. California's Right to Know law gives patients the "legal right to information from their doctors, upon request, about end-of-life options, including hospice, palliative care, refusing or withdrawing life-prolonging treatments, and making the choice to refuse food and hydration." See Jane Gross, "The Right to Know, Then to Say 'No,'" *New York Times*, October 21, 2008. Such laws are being advocated across the country but face opposition from those who worry that they would give physicians undue influence over end of life decision making, and from physicians who are not willing to help withdraw patients from certain life-prolonging treatments.

44. Stanley, "You Have Every Right to Photograph That Cop" (see note 5 above).

45. In most states, undocumented workers are eligible for workers' compensation benefits, via legislative design and judicial findings, in spite of the fact that it violates federal law to employ undocumented workers; see John Annarino, Doug Hayden, and Pete Mihaly, "Illegal Aliens and Workers' Compensation," *American Association of State Compensation Insurance Fund News* (January-March 2006), at www.aascif.org/public/jan_feb_mar06/alien.htm. However, employers often resist granting undocumented workers these benefits, and even when workers are confident of their eligibility, they are sometimes reluctant to press for the rights for fear of being deported. See Shannon Firth, "Special Report: Employers Turn Their Backs on Undocumented Workers Injured on the Job," *Voices of New York*, at www.voicesofny.org/2013/04/employers-turn-their-backs-on-injured-undocumented-workers-2/.

46. "Victims of Human Trafficking: T Nonimmigrant Status," *United States Citizenship and Immigration Services*, at www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

In all of these cases, the right to know clearly implies a duty to inform. We must ask, then, upon whom this duty falls.[47] The right to know your rights raises the possibility of two kinds of duties: the duty to inform and the duty to refrain from deceiving. In moral terms, the duty to refrain from deceiving is generally regarded as perfect, in that it applies to everyone all the time (notwithstanding the possible permissibility of white lies and exceptional cases). Legally, however, much deceptive speech is protected under the First Amendment. In the rest of this section, I consider what kinds of legal principles might be mobilized to prevent or correct speech that is intended to obscure rights. I will argue that different principles will be appropriate depending on the relationship between the deceiver and the right holder. The three examples upon which I have focused in this article represent three kinds of cases: those concerning the obfuscation of rights by *state agents*, as is the case when police officers do not explain Fourth Amendment rights to suspects; those concerning deception on the part of *commercial actors*, as is the case when crisis pregnancy counselors mislead clients to prevent them from seeking abortions; and those concerning deception among *private citizens* with no legal or commercial relationship to each other, as is the case when individuals try to mislead others about voter eligibility.

We might expect that it would be the most straightforward to prevent state agents from deceiving people about their rights. If there is anyone who should be legally obligated to refrain from this kind of deception, one would expect it to be the agents of the very state which grants rights. Indeed, informing citizens of their rights is part and parcel of enforcing them, and, as such, it falls to the state as a basic obligation. For instance, the Miranda warning charges arresting officers with the duty of informing suspects of their Fifth and Sixth Amendment rights. At the moment of arrest, it is these officers who represent the state. But the Supreme Court has not been willing to extend this rationale to the Fourth Amendment right to refuse consent for unreasonable search and seizure, as I discussed in the introduction.[48] In fact, no one has ever succeeded in convincing the Supreme Court that their waiver of their Fourth Amendment rights was involuntary, that is, that they did not understand that they could refuse their consent to a police search.[49] The

47. Leif Wenar, "The Nature of Rights," *Philosophy and Public Affairs* 33 (Summer 2005): 223–52, at 229–30.

48. Cloud, "Ignorance and Democracy," (see note 32 above); Christo Lassiter, "Consent to Search by Ignorant People," *Texas Tech Law Review* 39 (2006–2007): 1171–94; *Schneckloth* (see note 8 above); *Florida v. Jimeno*, 500 U.S. 248 (1991).

49. Craig M. Bradley, "The Reasonable Policeman: Police Intent in Criminal Procedure," *Mississippi Law Journal* 76 (2006): 339–74 at 340 n5.

courts' reluctance to recognize some consent as involuntary seems to rest largely on claims by law enforcement officials that they cannot successfully conduct police business if citizens actually understand their rights. The courts, then, release state agents from the duty to inform on the grounds that their jobs require omission of rights information, if not explicit deception.[50] If we believe that the Constitution is morally correct to provide rights for the criminally accused, then this state of affairs is unacceptable. The right to know requires a Fourth Amendment warning at least as effective as the Miranda warning.

I say "at least as effective" because I am persuaded by the argument that the Miranda warning is not as robust as it should be in order to fully satisfy the right to know one's Fifth and Sixth Amendment rights. This critique rests on the fact that the Miranda warning, which warns suspects against incriminating themselves, rarely stops suspects from doing so, suggesting that they still do not understand what it is, precisely, that they are waiving.[51] Of course, it is difficult to gauge when a right is sufficiently understood by its bearer, and one might believe that self-incrimination will win the favor of law enforcement, thereby lessening penalties.[52] Overall, it would appear that the Miranda warning has little effect on outcomes, in terms of preventing confessions or other incriminating statements, or in terms of paralyzing criminal investigations.[53]

---

50. Michelle Alexander has documented the ease with which law enforcement officers violate Fourth Amendment protections, particularly when the suspects are members of racial minorities. In particular, she demonstrates that stop-and-frisk policies grant officers unconstitutionally broad authority over suspects. See Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2011).

51. It has been suggested that the widespread portrayal of the Miranda warning in crime procedural television programs, in which suspects confess despite having been given the warning, is at least partially responsible for its ineffectiveness. See Russell Dean Covey, "Miranda and the Media: Tracing the Cultural Evolution of a Constitutional Revolution," *Chapman Law Review* 10 (Spring 2007): 761–88. Indeed, most Americans can recite the warning, but very few take advantage of the protections it offers when they really need them, suggesting that they do not actually understand what it is meant to provide them. See Brian R. Gallini, "*Schneckloth v. Bustamonte*: History's Unspoken Fourth Amendment Anomaly," *Tennessee Law Review* 79 (2012): 233–88, at 236 n19.

52. Lassiter, "Consent to Search," 1177 (see note 48 above).

53. According to Michaels, "one possible effect of [*Miranda*] could be a reduction in the number of confessions or other incriminating statements the police obtain from suspects. The existence, much less the size, of this effect is contested as empirical matter. Indeed, while the empirical evidence is certainly limited, the weight of the evidence is that *Miranda*'s effects on overall outcomes is 'vanishingly small'. . . . Ultimately, the vast majority of defendants provided Miranda warnings do not successfully resist interrogation"; Michaels, "Rights Knowledge," 1364–65 (see note 15 above). Gallini's review of post-Miranda empirical evidence leads him to the same conclusion, that Miranda warnings do not prevent confessions, in part because

Michaels suggests that the Miranda warning could be much clearer and offers the following script as a somewhat serious suggestion: "In the vast majority of criminal cases, suspects are much better off not saying anything until they have spoken with a lawyer; if your case is anywhere near typical, if you answer questions now, you will worsen your prospects in this case. On the other hand, we cannot penalize you for not speaking with us."[54] While the Miranda warning is clearly "better than nothing," Michaels' revision suggests that it could be rewritten to offer a clearer understanding of the consequences of waiving one's Fifth and Sixth Amendment rights.[55] The challenge here, as before, is that the state agents who are best positioned to offer this information are precisely the people most likely to benefit from withholding it; police investigations go much more smoothly when citizens unknowingly waive their constitutional rights. While I cannot resolve this problem from the perspective of law enforcement, I insist that citizens must know their rights; we cannot trade the rights of the criminally accused for a higher conviction rate. Accordingly, state agents have a duty to inform citizens of their rights. Where this duty has not yet been recognized by the law (as with the Fourth Amendment), it should be; where it has been recognized by the law, but remains only partially effective (as with the Miranda warning), it should be strengthened.

In other cases, rights are obfuscated by individuals who have some kind of professional or commercial relationship with the bearer of the rights, as is the case when pregnant women seek counseling in crisis pregnancy centers.[56] Norton proposes requiring crisis pregnancy centers to disclose that they are not medical providers and that their counselors do not have medical training.[57] From a constitutional perspective, it is clearly preferable to require disclosures or disclaimers rather than seeking to limit speech; bad advice is, after all, generally protected speech. But those who wish to offer bad advice should be prevented from miscon-

---

interrogations are generally perceived by suspects as coercive, in spite of lip service paid to *Miranda* rights; see Gallini, "History's Unspoken Fourth Amendment Anomaly," 277 (see note 51 above).

54. Michaels, "Rights Knowledge," 1362 (see note 15 above).

55. Ibid., 1367.

56. There are roughly 4,000 crisis pregnancy centers in the U.S., which have the explicit goal of encouraging pregnant women to carry their pregnancies to term; see Elizabeth Dias, "The Abortion Battleground: Crisis Pregnancy Centers," *Time*, August 5, 2010, at content.time.com/time/nation/article/0,8599,2008846,00.html. CareNet is one of the largest organizations operating such centers in the United States; among the services they provide is "pregnancy decision coaching by trained advocates." CareNet solicits online donations. See "Because No Baby Should Die on the Abortion Table," at www.care-net.org/what-is-a-pregnancy-center.

57. Norton, "Secrets, Lies and Disclosure," 653 (see note 32 above).

struing their credentials, which disclosure requirements would address. This was precisely the objective of the Stop Deceptive Advertising for Women's Services Act, which would have granted the Federal Trade Commission the authority to investigate reports of misleading claims in crisis pregnancy centers. Representative Carolyn Maloney (D-N.Y.) has introduced this bill in each Congress since 2007; Senator Robert Menendez (D-N.J.) sponsored a companion bill from 2007 to 2014. Unfortunately, it never left committee in either chamber.[58]

It is possible in some cases that bad advice and misleading speech can be countered in civil society, and indeed many women's rights organizations endeavor to counter the misleading information disseminated by crisis pregnancy centers. But it is not enough to let the marketplace of ideas sort the good information from the bad, particularly when the rights that need knowing need to be known *immediately*.[59] In such cases, crisis pregnancy centers should be held legally accountable for misconstruing the credentials of their counselors and the services they provide. (Some crisis pregnancy centers promote themselves as "full-service" pregnancy clinics, implying that they provide abortions.) Just as the state demands truth in labeling and advertising for consumer goods, it should also demand disclosures from service providers, including those who misinform in order to hinder the exercise of rights, as would seem to be the case when crisis pregnancy center counselors exaggerate Rh-factor risks in order to dissuade women from seeking abortions.[60]

The most difficult case emerges when private citizens seek to deceive their peers. While deceptive speech is generally protected by the First Amendment, it is not protected in all cases. Because voter rights are essential to democracy, and because the history of voter rights in the United States is very problematic, there is an equal protection case to be made for prohibiting speech that is intended to impair another's rights.[61] The Supreme Court has already recognized that even political speech, which generally enjoys the strongest protections, may sometimes be limited when it conflicts with voter rights. Such free speech limits must reflect a compelling government interest, and they must be content-neutral and narrowly tailored to meet this interest. The Court found that Tennessee satisfied these conditions with

58. Pete Kasperowicz, "Dems Look to Crackdown on Anti-Abortion 'Crisis Pregnancy Centers,'" *The Hill*, May 20, 2013, at Congress.gov.

59. The urgency of rights knowledge is particularly salient in the case of options for continuing or terminating a pregnancy. At the outside, a decision must be made in nine months, but for many women the window for choosing abortion will close much sooner than that.

60. Laura Bassett, "Centers Talk Women Out of Birth Control" (see note 7 above).

61. Gilda Daniels, "Voter Deception," *Indiana Law Review* 43 (2010): 343–87, at 373.

a law barring electioneering within one hundred feet of polling sites.[62] Its rationale was that partisan electioneering in close proximity to polling places might lead to voter intimidation, which the government is legitimately interested in preventing. The significance of the decision largely focused on the size of the buffer zone around polling places and whether it was sufficiently narrowly tailored. A lower court had found that a one-hundred-foot radius was too restrictive in light of free speech rights. The Supreme Court, however, disagreed.

Laws prohibiting false speech about election administration can be justified under the same logic. But while the courts may be prepared to uphold laws that criminalize voter deception, there are few such laws on the books. Only four states—Florida, Illinois, Kansas, and Minnesota—have made it illegal to post or mail false information about voter eligibility or registration requirements.[63] Other states have laws aimed at preventing the dissemination of false information about candidates or issues, but do not directly address false information about the administration of elections. Five other states—California, Idaho, Maryland, South Carolina and West Virginia—recognize fraudulent statements as a component part of voter intimidation, although they do not explicitly recognize voter deception, not even regarding voting rules and procedures.[64]

In other states, such as Maryland, attorneys general make an explicit effort to correct voter misinformation through vigorous public information campaigns.[65] These kinds of efforts should be pursued on a broader scale. Civil society also has a role to play in voter information campaigns, as it does in voter registration drives. But when efforts to misinform are rampant, the state cannot leave it to private organizations alone to inform citizens of their rights or to correct specific misinformation campaigns; the stakes are too high and too immediate. As I have argued, informing citizens of their rights is a necessary component of enforcing them.

## Conclusion: The Costs of Justice

These examples suggest that the right to know requires different kinds of redress, depending upon the situation and the particular right that needs to be known. In some circumstances, the right to know implies a duty to inform, as police officers do with the Miranda warning. In the commercial setting, disclosures and disclaimers can be required in order to properly contextualize bad advice, as would be the

62. *Burson v. Freeman*, 504 U.S. 191, 210 (1992).
63. Daniels, "Voter Deception," 376 (see note 61 above).
64. Ibid., 370
65. Ibid., 354.

case if crisis pregnancy counselors were required to disclose their lack of medical credentials. In the case of voter rights, there is a strong case to be made for the constitutionality of limiting false speech regarding election administration. Other cases may require public information campaigns and may be bolstered by private organizations that promote knowledge about rights, such as the American Civil Liberties Union and the National Association for the Advancement of Colored People.[66] In every case, however, the state plays a vital role. Even when the state is not taking on the duty of actively informing, it should provide legal and logistical infrastructure and enforcement.[67]

Of course, the implementation and enforcement of rights impose costs. Some of the costs of implementation fall on private entities (as a crisis pregnancy center disclosure requirement would), but many others fall to the state, such as public service announcements to counter misleading voter eligibility information. The state is generally responsible for the cost of enforcing rights, since it is properly charged with adjudicating rights claims and potential rights violations. Additionally, the state must build in accountability measures for duties that rest with state agents, such as the Miranda warning. All of this is undeniably expensive; as with all rights, the right to know faces budgetary constraints.[68] We simply cannot deploy enough resources to inform citizens of *all* of their rights in *every* situation where such knowledge might prevent or rectify the violation of rights.

The familiar language of "rights as trumps," which suggests that rights cannot be truncated for consequentialist reasons,[69] obscures the fact that rights are always discharged imperfectly, if for no other reason than budgetary constraints. Under

66. These organizations both offer "Know your Rights" workshops and seminars, and also publish and distribute information sheets and wallet-sized cards. The American Civil Liberties Union offers "Know your Rights" cards on themes including "Demonstrations and Protests," "Stopped by Police, Immigration Agents or FBI," "Stopped or Detained for Photographing or Videotaping." These workshops and information campaigns could be greatly expanded, and the organizations could partner with local law enforcement and governmental agencies in order to spread rights knowledge more widely. See: American Civil Liberties Union, https://shop.aclu.org/Know-Your-Rights?a=kyrimmpg; Juliemar Ortiz, "Amid Debate Nationwide over Immigration ACLU Teaches 'Know Your Rights' in New Haven," *New Haven Register*, October 31, 2016; Melanie Burney, "Workshops Seek to Educate the Public on Dealing with Police," *Philadelphia Inquirer*, February 8, 2015; Legal Defense and Education Fund, "LDF Criminal Justice Project 'Know Your Rights Academy' Coming Soon," *NAACP*, at http://www.naacpldf.org/news/ldf-criminal-justice-project-know-your-rights-academy-coming-soon.

67. Holmes and Sunstein, *The Cost of Rights*, 52–58 (see note 11 above).

68. Ibid., 98.

69. Ronald Dworkin, "Rights as Trumps," in *Theories of Rights*, ed. Waldron, 153–67 (see note 28 above).

conditions of scarcity, difficult political decisions and trade-offs will need to be made. The moral right to know one's legal rights *should* be enforced by the law in all cases, but the reality is that it can probably be enforced only some of the time. But implementation and enforcement should be pursued as fully as possible. My hope is that recognition of this categorical right can nudge lawmakers toward recognizing the right to know and allocating resources to its defense whenever possible. Ignorance of rights is a serious problem for justice, no matter one's perspective: it violates individuals' dignity, it makes it easier to violate their rights, it is inconsistent with social contract theory, and it undermines the very function of rights. While we cannot provide perfect, full information to everyone all the time, we can do a much better job of ensuring that vulnerable individuals in particularly risky situations are made aware of the rights claims that they already possess.

A skeptic might reply that my account infantilizes citizens by assuming that they cannot look out for their best interests without guidance from a nanny state. Perhaps what I call a right to know is actually an individual responsibility to inform oneself. But rights are not self-evident; they are the result of political and legal work. Because the legal specification of moral rights is a messy, ongoing process, lay people cannot possibly be expected to keep up with, or to understand the often complicated details of, every case: they need information and instruction from experts. This is not a radical claim; it is the same principle that informs suspects' right to legal counsel. But there are many other circumstances in which individuals require knowledge about their rights, beyond those covered by the right to legal counsel, if they are to enjoy the full force of their rights.

We cannot expect citizens to always know their rights, to know where to look for their rights, or to even know what kinds of rights they are looking for. Moreover, as decades of social science and centuries of history suggest, individuals are not all equally positioned to inform themselves, and those least prepared to do so are often those most vulnerable to violations of their rights. Any system of rights which cannot account for human vulnerability and variability is inadequate to the task it has set itself. As Justice Marshall noted in his dissent to *Schneckloth*, rights are not a privilege for the "sophisticated,"[70] they are designed to protect the strong *and* the vulnerable, the informed *and* the ignorant, alike.

The meta-right to know our rights is an important bulwark against the violation of rights. While the law purports to give us many rights, they mean very little in the absence of knowledge of what they are and how to act on them. Only with specific

70. *Schneckloth*, 289 (see note 8 above).

knowledge of concrete rights can individuals protect themselves from abuse and demand redress for past abuses. Because vulnerability is so often a function of ignorance, rights knowledge can play an important role in equalizing relations among citizens and between citizens and state agents. Justice demands that we take the right to know your rights seriously.

**Olivia Newman** is Assistant Professor of Political Science at Rider University. She specializes in liberal theory and individual rights, law and society, social and political psychology, the politics of education, and the rights of children. She recently published her first book: *Liberalism in Practice: The Psychology and Pedagogy of Public Reason* (MIT Press, 2015). Her current research explores the role of ignorance in American politics, political culture, and political thought. She can be reached at onewman@rider.edu.