Understanding Standing

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I. INTRODUCTION

Spokeo, Inc. v. Robins, which is before the Supreme Court this term, poses a fundamental question of Article III standing: Does a person have standing to sue to seek redress for the violation of a substantive statutory right, even if he did not suffer any factual harm from the violation of that right?

Standing is one of the doctrines that define the power of the federal judiciary. Federal courts cannot hear all disputes.[1] Instead, Article III authorizes them to resolve only "cases" and "controversies."[2] The Supreme Court has interpreted those terms to authorize federal courts to resolve only those disputes that were "traditionally amenable to, and resolved by, the judicial process."[3] This restriction, the Court has said, is critical to maintaining the separation of powers.[4]

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1. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006).

2. U.S. CONST. art. III, §2, cl. 1.

3. Vt. Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765, 774 (2000) (internal quotation marks omitted).

4. *Cuno*, 547 U.S. at 341 ("[N]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.").

According to the Court, standing enforces these limits on the judicial power.[5]

Despite standing's importance to maintaining the federal judiciary's proper role in the federal government, the Court has been inconsistent on what a plaintiff must show to establish standing. Some cases say that the violation of an individual right is enough; others suggest that a factual harm is required. That inconsistency underlies the standing dispute in *Spokeo*. If the purpose of Article III standing is to protect the separation of powers by restricting federal courts to resolving only those disputes that courts historically could hear, the answer to that question is clear: the violation of a legal right alone should support Article III standing.

II. THE STANDING BACKDROP

The basic test for standing is that the plaintiff must demonstrate that he has suffered an "injury in fact."[6] The phrase "injury in fact" suggests a factual injury like a broken bone or the loss of money.[7] But the Court has not always followed that literal definition. Instead, it has sometimes defined an "injury in fact" as "an invasion of a legally protected interest" that is "concrete" and "particularized."[8] That definition suggests that what matters is whether the plaintiff suffered a violation of a personal right, rather than a factual harm. Consistent with that understanding, a number of cases say that standing can rest on the violation of "statutes creating legal rights."[9] Under this "rights position," Congress can confer standing on individuals by creating rights, the violation of which is an injury supporting standing, even though that injury is purely legal.[10]

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5. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) ("[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III.").

6. *E.g.*, Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009).

7. Sierra Club v. Morton, 405 U.S. 727, 734 (1972) (defining injury in fact to include injuries to "aesthetic and environmental well-being" and "economic well-being").

8. *Lujan*, 504 U.S. at 560 (internal quotation marks omitted); *accord* Arizona State Legislature v. Arizona Indep. Redistricting Comm'n, 135 S. Ct. 2652, 2663 (2015).

9. Warth v. Seldin, 422 U.S. 490, 500 (1975) (quoting Linda R. S. v. Richard D., 410 U.S. 614, 617, n.3 (1973)).

10. Massachusetts v. EPA, 549 U.S. 497, 516–17 (2007) ("Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before."); *Vt. Agency,* 529 U.S. at 773 (suggesting Congress may "define new legal rights, which in turn will confer standing to vindicate an injury caused to the claimant."); Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U.L. REV. 881, 885 (1983) (arguing that standing depends on "legal injury," which is "no more than the violation of a legal right, [which] can be created by the legislature").

But in *Lujan v. Defenders of Wildlife*,[11] the Court intimated that "injury in fact" really means a factual injury. The Court said that its decisions stating that standing may rest on the violation of congressionally created rights stood for the principle that Congress may confer standing by making legally cognizable "*de facto* harms that were previously inadequate at law."[12] In other words, *Lujan* says that not all factual injuries support standing; but Congress can declare that these otherwise inadequate factual injures do support standing. That reasoning suggests that the violation of a legal right alone is not enough to support standing; rather, there must be a factual injury for the judiciary to intervene.

Further muddying the waters is that in many, though by no means all, cases in which the Court has said the violation of a right may confer standing, the Court's standing analysis has focused on the factual harm that the plaintiff suffered.[13] A recent example is *Massachusetts v. EPA*.[14] There, Massachusetts sued the EPA for not promulgating rules regulating greenhouse-gas emissions from new vehicles. Although stating that "Congress has the power to define injuries . . . that will give rise to a case or controversy where none existed before,"[15] the Court did not base its finding of standing on the fact that Congress had conferred a cause of action on Massachusetts or defined the effects of global warming to be an injury. Instead, it found standing based on a potential factual injury: global warming could cause flooding of Massachusetts land.[16]

Although *Lujan* and the rights position are conceptually different, they significantly overlap. Some factual injuries do not seem like factual injuries until the law says they are injuries. For example, if I demand money from the government, yet it refuses to give the

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11. 504 U.S. 555.

12. *Id.* at 578.

13. One example of the Court basing standing on the violation of a right alone is *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). There, a black woman sued a real estate company after she received false information about the availability of housing, alleged violations of the Fair Housing Act, which makes it unlawful to misrepresent to any person because of that person's race that an apartment is not available for sale or rental, 42 U.S.C. § 3604(d) and which confers an explicit cause of action to enforce this prohibition, *id.* § 3612(a). Although the plaintiff did not intend to rent the apartment, the Court nonetheless held that she had standing because she had alleged injury to her "statutorily created right to truthful housing information." 455 U.S. at 373–74; *see also* Heckler v. Matthews, 465 U.S. 728, 737–40 (1984) (recognizing standing for a male social security beneficiary who challenged a provision granting higher benefits to females based on the violation of his "right" to receive benefits without regard to his sex).

14. 549 U.S. 497 (2007).

15. *Id.* at 516 (quoting *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring in part and concurring in judgment)).

16. *Id.* at 522–23.

money to me, I have been factually "injured" because I did not get what I wanted. But most people probably would say that I had not suffered a factual harm supporting standing, unless there was a statute entitling me to the money that I demanded.[17] Likewise, some things that seem like obvious factual injuries today are injuries only because the law says so. I am hurt when you take my watch without permission, but I own the watch only because the law says I own the watch. That the law can make us recognize factual injuries where we didn't see them before might mean that *Lujan*'s injury-in-fact test is not so different from the rights position.

Still, the overlap between the two positions is not complete. A person can suffer a legal injury because his rights were violated but no factual harm from that violation. And that is apparently what happened in *Spokeo*.

III. *SPOKEO, INC. V. ROBINS*

Spokeo operates a website that provides information about people. The information it provided about Thomas Robins, though, was inaccurate. For example, it overstated Robins's wealth and education. These inaccuracies prompted Robins to file a putative class action in federal district court against Spokeo for willfully violating the Fair Credit Reporting Act. That Act requires consumer credit reporting agencies—agencies that gather and provide information about consumers—to take reasonable measures to make sure that the information they provide is accurate.[18] The Act confers a private right of action against reporting agencies that fail to comply with these provisions. For "willful" violations of these provisions, the consumer whose rights have been violated may receive "actual damages" or, in the alternative, he may receive statutory "damages of not less than $100 and not more than $1,000."[19] According to Robins, Spokeo willfully failed to take measures to ensure the accuracy of its information and to comply with other procedures prescribed by the Act.[20]

The district court dismissed the case for lack of standing. It found that, even if Spokeo violated Robins's rights by providing inaccurate information about him, the inaccuracies had not factually harmed Robins. The Ninth Circuit reversed. It concluded that, even if

17. *See* William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221, 231–32 (1988).

18. 15 U.S.C. § 1681e(b).

19. *Id.* § 1681n(a)(1).

20. The other alleged violations involve procedures for issuing reports, *id.* § 1681b(b)(1), providing various notices, *id.* § 1681e(d), and posting telephone numbers, *id.* § 1681j(a)(1)(C).

Robins didn't suffer any factual harm, the violation of his rights alone supported standing.[21]

IV. FASHIONING THE STANDING TEST

Spokeo thus raises the question whether factual injury is a necessary prerequisite to standing or whether the violation of rights alone may support standing. Resolving that question requires one to identify the basis for standing. The Supreme Court has said that the "single basic idea" underlying standing is "the idea of separation of powers."[22] Plenty of scholars and justices have disagreed with this view. For example, many have argued that standing should be a prudential doctrine, meant to ensure that the parties have an adequate stake to litigate vigorously, as well as to provide the courts with a way to avoid conflict with the other governmental entities.[23] But if we accept the Court's premise that the function of Article III standing is to protect the separation of powers by confining the judiciary to resolving disputes that courts historically resolved, a factual injury should not be required for Article III standing.

A. History

Start with history. Historically, a person could seek a judicial remedy by bringing the appropriate form of action, such as a writ of trespass. Factual injury alone was not sufficient to support a cause of action; rather, a person could maintain a cause of action only if he

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21. Robins v. Spokeo, Inc., 742 F.3d 409, 412–13 (9th Cir. 2014).

22. *Raines v. Byrd*, 521 U.S. 811, 820 (1997) (quoting Allen v. Wright, 468 U.S. 737, 752 (1984)); *see also, e.g.*, Susan B. Anthony List v. Driehaus, 134 S. Ct. 2334, 2341 (2014) ("The law of Article III standing . . . is built on separation-of-powers . . . ." (quoting Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138, 1146 (2013)). It is not clear that separation of powers has always been the basis for standing. Some have argued that separation of powers drove its creation. *See, e.g.*, Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371, 1374 (1988) (arguing that standing developed to protect progressive regulatory programs from the federal courts). Others have argued that standing more likely began as a tool to manage caseloads. Daniel E. Ho & Erica L. Ross, *Did Liberal Justices Invent the Standing Doctrine? An Empirical Study of the Evolution of Standing, 1921-2006*, 62 STAN. L. REV. 591, 638 (2010). Whatever the original motivation for standing doctrine, separation of powers has been the "single" basis for standing since at least 1984. *Allen*, 468 U.S. at 752.

23. *See, e.g.*, Baker v. Carr, 369 U.S. 186, 204 (1962) (stating that the "gist" of standing is whether the plaintiff "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions"); F. Andrew Hessick, *Probabilistic Standing*, 106 NW. U. L. REV. 55, 91–101 (2012); Heather Elliott, *The Functions of Standing*, 61 STAN. L. REV. 459, 510 (2008); Louis L. Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265, 1296 (1961).

suffered a legal injury.[24] The reverse was not true, however: the violation of a legal right, without any corresponding factual injury, was an adequate basis for some actions.[25] For example, a plaintiff could bring a writ for trespass, which was the action to remedy a direct, forceful invasion of rights, even if the invasion of rights did no harm.[26] Thus, it was established by the mid-fourteenth century that a woman could recover against a man who tried to hit her with a hatchet but missed, even though the woman suffered "no other harm" than the trespass itself.[27]

To be sure, to maintain some actions, such as writ of trespass on the case,[28] the plaintiff had to prove factual injury. But factual injury was not required for all actions. In any event even the requirement of factual harm for an action on the case was largely abandoned by the mid-eighteenth century.[29] It was against this backdrop that Blackstone wrote that it was "a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded"[30]—a principle that the Supreme Court adopted in *Marbury v. Madison*.[31]

A person could maintain an action only to vindicate his own, individual rights. He could not bring suit to vindicate the rights of other individuals. Nor, as a general matter, could an individual bring suit to vindicate public rights—that is, rights held collectively by the

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24. *See* F. Andrew Hessick, Standing, *Injury in Fact, and Private Rights*, 93 CORNELL L. REV. 275, 280–81 (2008); *see also* Ala. Power Co. v. Ickes, 302 U.S. 464, 479 (1938) ("[I]njury, legally speaking, consists of a wrong done to a person, or, in other words, a violation of his right. It is an ancient maxim, that a damage to one, without an injury in this sense (*damnum absque injuria*), does not lay the foundation of an action; because, if the act complained of does not violate any of his legal rights, it is obvious, that he has no cause to complain." (quoting Parker v. Griswold, 17 Conn. 288, 302–03 (1845)).

25. *See* HERBERT BROOM, COMMENTARIES ON THE COMMON LAW 101 (T. & J.W. Johnson & Co. 1856) (observing that "*injuria sine damno* . . . does very frequently suffice as the foundation of an action" and providing a number of examples).

26. *See* RALPH SUTTON, PERSONAL ACTIONS AT COMMON LAW 57 (1929) ("[I]f trespass lies the plaintiff has only to prove the commission of the wrong . . . [and] is entitled to succeed, even if he proves no actual damage, as in trespass damage is presumed.").

27. I de S et ux. v. W de S, Y.B. Lib. Ass. folio 99, placitum 60 (Assizes 1348), *reprinted in* WILLIAM L. PROSSER & JOHN W. WADE, CASES AND MATERIALS ON TORTS 36 (5th ed. 1971).

28. A writ of trespass on the case was the appropriate action for the indirect invasion of a right. *See* W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 6 (5th ed. 1984).

29. *See* Hessick, *supra* note 24, at 284; *see also* Wells v. Watling, 96 Eng. Rep. 726, 727 (C.P. 1778) (De Grey, C.J.) (stating in an action on the case that "[i]t [was] sufficient if the right be injured");

30. 3 WILLIAM BLACKSTONE, COMMENTARIES *23.

31. 5 U.S. (1 Cranch) 137, 163 (1803).

community,[32] such as the right to be free from violations of the criminal law.[33] Instead, because a violation of a public right was a public wrong, a public official was usually the appropriate prosecutor.[34]

Consistent with this historical practice, early standing cases held that whether a plaintiff had standing turned on whether he alleged a violation of a personal legal right, not a factual harm. For example, in *Tennessee Electric Power Co. v. Tennessee Valley Authority*, the Court denied standing to power companies who sought to prevent the Tennessee Valley Authority from competing in the energy market, stating that the mere loss of revenue from competition was an insufficient basis for standing. Rather, the Court said, standing required the invasion of a "legal right."[35]

Early standing cases also denied standing to individuals who alleged violations of public rights. For example, in *Fairchild v. Hughes*, citizens of New York brought suit seeking to invalidate the Nineteenth Amendment on the grounds that it had not been properly adopted.[36] The Court dismissed the suit for lack of standing, stating that the plaintiffs had alleged the violation of "the right, possessed by every citizen, to require that the government be administered according to law and that the public moneys be not wasted," and "this general right does not entitle a private citizen to institute . . . suit."[37]

It was only in 1970 that the Court adopted the factual injury requirement in the case of *Association of Data Processing Services Organizations, Inc. v. Camp*.[38] The shift to that test was not meant to confer standing in some cases while restricting it in cases where standing had existed before. Instead, the Court explained two years later, the injury-in-fact test expanded standing "more broadly" by allowing standing to rest on an injury in fact instead of only on the violation of a legal right.[39] Thus, the Court said, standing could rest *either* on a "specific statute authorizing invocation of the judicial

32. *See* 4 BLACKSTONE, *supra* note 30, at *5 (referring to "the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity").

33. *Id.*; Caleb Nelson, *Adjudication in the Political Branches*, 107 COLUM. L. REV. 559, 566 (2007) (listing types of public rights).

34. *See* 4 BLACKSTONE, *supra* note 30, at *2. The one notable exception was the qui tam action, in which a private individual could bring suit to prosecute fraud on the government. *See Vt. Agency*, 529 U.S. at 768-69 & n.1.

35. 306 U.S. 118, 137–38 (1939).

36. 258 U.S. 126, 127, 129 (1922).

37. *Id.* at 129–30.

38. 397 U.S. 150 (1970).

39. Sierra Club v. Morton, 405 U.S. 727, 732 (1972).

process" *or* on a "personal stake in the outcome." [40] In other words, litigants no longer had standing to vindicate only their private rights; they also could sue to vindicate public interests so long as they identified a factual injury that they suffered.[41] History therefore does not provide a sound foundation for requiring a factual injury to establish standing.

B. Separation of Powers

Although history doesn't establish a factual injury requirement for Article III standing, one might still argue that requiring a factual injury protects broader principles of separation of powers. But it is hard to see how that is so.

The separation of powers concern that has driven the development of Article III standing is that the judiciary will usurp the role of the political branches.[42] Figuring out when a court exceeds its powers and usurps the powers of another branch requires one to define the scope of the judicial power.

Although there is disagreement on the precise contours of the judicial power, it is clear enough that the role of the courts is not to remedy factual injuries. Courts may award relief only if authorized by law.[43] The violation of a right provides the basis for relief. If A punches B in the nose, the injury to the nose is not the basis for recovery. B could not recover if, for example, he hurt his nose by his own negligence. Rather, B can recover against A because B has a legal right not to be touched in a harmful way by A.[44]

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40. *Id.*; *see also* Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 39 (1976) ("Reduction of the threshold requirement to actual injury redressable by the court represented a substantial broadening of access to the federal courts over that previously thought to be the constitutional minimum under this statute."); Linda R.S. v. Richard D., 410 U.S. 614, 616–17 (1973) (stating that *Camp* "greatly expanded the types of personal stake(s) which are capable of conferring standing on a potential plaintiff"). Some states, which are not bound by Article III standing doctrines, *see* ASARCO Inc. v. Kadish, 490 U.S. 605, 617 (1989), have followed likewise adopted the rule that standing may be based on either a factual injury or the violation of legal right, *see, e.g.*, In re Custody of D.T.R., 796 N.W.2d 509, 513 (Minn. 2011) ("Standing to appeal may be conferred by a statute or by the appellant's status as an aggrieved party."); Harrison County. v. City of Gulfport, 557 So. 2d 780, 782 (Miss. 1990) (granting standing based on "adverse effect" or as "otherwise authorized by law"); Youngblood v. S.C. Dep't of Soc. Servs., 741 S.E.2d 515, 518 (S.C. 2013) (requiring injury in fact only "[w]hen no statute confers standing"); Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 556 (Tex. 2000) (requiring injury "absent a statutory exception" (internal quotation marks omitted)).

41. Hessick, *supra* note 24, at 295.

42. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 340–341 (2006).

43. *See* David P. Currie, *Misunderstanding Standing*, 1981 SUP. CT. REV. 41, 42–43.

44. Although a factual harm does not establish a right to relief, factual harm is relevant to determine how to make the plaintiff whole for the violation of his rights. *See* John C.P. Goldberg,

Of course, many private rights exist to protect against factual harms. But the basis for judicial intervention in those cases is the violation of the right, not the factual harm. Thus, the salient question for standing should be whether the plaintiff has alleged the violation of a right.

The Supreme Court has endorsed that view. Its standing cases have emphasized that the "province" of the judiciary is to "decide on the rights of individuals."[45] Even *Lujan*, the case that most strongly supports a factual injury requirement, made clear that the purpose of the injury-in-fact requirement is to ensure that the judiciary only decides on rights of individuals.[46]

The real question before the Court has been defining which rights individuals have standing to enforce. For the most part, the Court has said that individuals have Article III standing to raise only their private rights and not public rights generally shared by the community. That is because "vindicating the public interest is the function of Congress and the Chief Executive."[47]

One might reject that view of the judicial power as too narrow. For example, various scholars have argued that one role of the federal courts is to provide a forum for private individuals to protect the public interest in ensuring government compliance with the law.[48] Under this so-called "special functions" model, individuals should have standing to vindicate not only their private rights but also at least some public rights.

But if one accepts the prevailing view on the Court of the appropriate role of the judiciary, allowing individuals to enforce public rights if they suffered factual injuries does not remove the separation

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The Constitutional Status of Tort Law: Due Process and the Right to a Law for the Redress of Wrongs, 115 YALE L.J. 524, 548–49 (2005) ("The immediate purpose of the typical common law suit was to permit the victim to obtain a pecuniary satisfaction from the wrongdoer as an 'equivalent' to a literal restoration of his rights. The equivalence here concerns rights rather than harm or loss. The point of these actions was not (or not only) to compensate for the loss suffered by the victim, although the loss was usually compensated. Rather, the aim was to provide the victim with satisfaction—a payment that, from the perspective of an objective observer, would permit the victim to vindicate himself as against the injurer." (footnotes omitted)).

45. Lujan v. Defs. of Wildlife, 504 U.S. 555, 576 (1992*)*; *accord* Hein v. Freedom From Religion Found., Inc., 551 U.S. 587, 598 (2007) (plurality); *id.* at 636 (Scalia, J., concurring in the judgment).

46. *Id.* at 577 (stating that "the concrete injury requirement" enforces the "fundamental principle of confining courts to the "province" of "decid[ing] on the rights of individuals").

47. *Id.* at 576.

48. RICHARD H. FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 73 (6th ed. 2009); Henry P. Monaghan, *Constitutional Adjudication: The Who and When*, 82 YALE L.J. 1363, 1368–71 (1973).

of powers concern.[49] A factual injury does not convert a public right into a private one. A person whose claim is based on the violation of a public right is still claiming the violation of a public right even if he has suffered a factual harm, and to grant him standing would be to allow him to use the judiciary to interfere with the executive's or legislature's exercise of their powers.[50]

Of course, there are private rights that parallel public rights for individuals who have suffered factual harms. For example, the right against public nuisances is a public one, but a person may nonetheless sue to stop a public nuisance if it caused him "special" harm.[51] But that person's suit is not seeking to enforce the public right; it is enforcing his private right, albeit a private right that parallels the public one. The violation of the public right carries criminal sanctions; the suit by the individual is a tort action for damages.[52] Maintaining the distinction is critical if one is worried about individuals using the federal judiciary to resolve disputes that should be left to the political branches.

V. CONCLUSION

Spokeo presents an opportunity for the Court to resolve the tension in its cases about whether Article III standing can rest solely on the violation of a private purely legal right, or whether the violation of a right can support standing only if that violation resulted in additional factual harm. If the function of standing is to limit the federal judiciary to its historical role and to protect the separation of powers, standing should not require a factual harm. Instead, the violation of a right alone should suffice.

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49. Factual injury also should not be required for standing under the "special functions" model. That model rests on the idea that people should generally be able to invoke the courts to guard against government abuses. Limiting standing to those who have suffered a factual injury would undermine achieving that goal.

50. *See* Gene R. Nichol, Jr., *Justice Scalia, Standing, and Public Law Litigation*, 42 DUKE L.J. 1141, 1164–65 (1993); Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, 'Injuries,' and Article III*, 91 MICH. L. REV. 163, 211–14 (1992). Thus, even a person who has been hurt by a criminal law violation should not have standing to compel the executive to enforce the criminal law, because enforcement of the criminal law is a public right entrusted to the executive. *See* Linda R.S. v. Richard D., 410 U.S. 614, 618 (1973) (holding that a woman, while injured by her child's father not paying child support, did not have standing to sue to compel enforcement of the child support statute).

51. *See* Pennsylvania v. Wheeling & Belmont Bridge Co., 54 U.S. 518, 566 (1851) ("[A] public nuisance is also a private nuisance, where a special and an irremediable mischief is done to an individual.").

52. William L. Prosser, *Private Action for Public Nuisance*, 52 VA. L. REV. 997, 1005 (1966).

This means, of course, that Congress should be able to create rights whose violation supports standing. There are obviously limits on that power. Congress cannot confer rights if doing so violates some other constitutional provision. For example, Congress cannot tailor that right in a way that violates other individual rights (for example, by conferring the right on only one racial group), nor can Congress create a private right that authorizes individuals to exercise a power assigned to another branch (for example, a right to compel the House of Representatives to launch impeachment proceedings). But those should be the only limits on Congress's power to confer Article III standing. If Congress has created a privately enforceable right, an individual should be able to go to federal court to seek redress for a violation of that right, irrespective whether that violation results in factual harm.