

Although often interpreted differently by individuals, legal rights, human rights and the jury system are essential features of the legal system. Nielsen believes that the main purpose of rights is to protect individuals, while Hajjar portrays the objective of the legal system as recognizing and respecting certain inherent human rights. Further, Dooley understands the jury system as essential for ensuring a democratic and fair trial procedure. As rights and the jury system are viewed according to these varying objectives, it seems there is a general assumption that the legal system is intended to protect individuals from the power of the government. However, individuals' abstract idea of how the law works can be contrary to the actual workings of the legal system. Rights and the jury system create the expectation in people that they will be protected from the power of the government, and yet these expectations often remain unfulfilled, creating a disconnect between the idea of protection and the reality of the legal system.

In her article "The Work of Rights and the Work Rights Do," Laura Beth Nielsen asserts that "legal rights are important for protecting individual autonomy and resisting the arbitrary or tyrannical imposition of state power" (Nielsen 63). In the case of traditionally disadvantaged groups, rights have provided a sense of power as a direct result of their nature. Nielsen explains, "Rights' are said to apply equally to everyone, they are 'neutral,' and are backed by the legitimate authority of law and the state," and that "Rights are often thought of as naturally inhering in persons" (66, 68). Because many minority groups view rights as inalienable, absolute, and supported by the government, they believe these legal rights will act as a form of protection from "the illegitimate exercise of state authority" (63). Nielsen claims that although rights may be a significant tool for weaker individuals or groups to guard against the more powerful government, the less powerful are actually less likely to know what rights they have and when these rights have been violated (69). Nielsen also notes that it is their perpetual

position of disadvantage that makes these individuals less likely to exercise their rights, as they feel their rights will not be recognized or that their claims will not be addressed (75). The very nature of legal rights generally leads these individuals to perceive them as instruments for challenging the power of the government. However, the inability of the less powerful to understand or execute their rights demonstrates the divide that exists between the expectations these individuals have of their legal rights and their lived experiences with the legal system.

The Supreme Court case *Korematsu v. United States* is a clear example of the divide between individuals' expectation of their rights and the reality of the legal system. After the bombing of Pearl Harbor by Japan, the United States government felt that Americans of Japanese descent were a threat to national security. In turn, the administration created the Civilian Exclusion Order No. 34 requiring all Japanese Americans to register for internment and evacuate the area of San Leandro, CA in order to guard against espionage and sabotage (Korematsu 91). The constitutional questions in this case were whether Korematsu's 5<sup>th</sup> amendment rights to due process had been violated, as he was excluded without a determination of his connection to the enemy, and whether his 14<sup>th</sup> amendment rights to equal protection had been violated, as the order applied only to those of Japanese descent. Korematsu presumed because of the fundamental nature of legal rights that Nielsen acknowledges, that of being absolute and applied equally to all, that the Order would be overturned on constitutional grounds. Ultimately, though, his expectations were inconsistent with the reality of the situation. Justice Black in delivering the opinion of the court claims that, "Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions (Korematsu 92)." Because the threat to security was viewed as so grave and imminent, the United States felt that individual rights had to be overlooked.

Korematsu expected that his legal rights would be respected and adhered to regardless of context, and yet his expectations remained unfulfilled, demonstrating the separation between Japanese Americans' anticipation for the legal system and their lived experiences.

Lisa Hajjar in her article "Human Rights" depicts the disparity between individuals' expectations of and the actuality of the legal system in terms of human rights. Like Nielsen, Hajjar believes that expectations of our human rights come from our understandings of the nature of human rights, as it accepts that all human beings are equal in terms of their humanity (Hajjar 593). After the grievous acts committed during World War II, postwar tribunals were created and conventions and treaties were enacted in response. One product of this post-war transformation was the signing of the Torture Convention in 1984. The prohibitions on torture and inhumane treatment under this convention extend to every individual regardless of one's identity (597). Thus, the Convention seems to imply that human rights exist simply as a result of one's humanity. This aspect of human rights creates the expectation that every individual in every circumstance has the ability to exercise his or her rights against the power of the government on account of their being human. Hajjar goes on to say that these expectations are often frustrated. She notes, "... the availability of human rights was contingent upon the willingness of individual states to behave and conform" (594). Ultimately, many states did not fulfill individuals' expectations regarding the recognition of human rights, and often times the postwar prohibitions were ignored. While individuals expected that their human rights would remain absolute, the reality of the legal system was at times inconsistent with their anticipations.

With regards to the availability of human rights law, Hajjar also notes, "most [states] refused to regard human rights law as binding and enforceable, especially if the implications would compromise vested interests" (Hajjar 595). Joseph Margulies, in his article "A Prison

Beyond the Law” demonstrates the United States’ failure to comply with universal human rights law post September 11<sup>th</sup> because it was seen as interfering with their purpose. The dire need for intelligence from prisoners believed to be associated with the war on terror coupled with the need for a facility where these prisoners could be held indefinitely led to the creation of a facility which Margulies terms “a prison beyond the law” (Margulies 46). The Bush administration felt that compliance with any law, whether domestic, foreign or international, would hamper their efforts to acquire intelligence. The prison at Guantanamo Bay, Cuba, allowed the United States in theory to create a system in which no laws applied because of its physical location. The Bush administration believed it was then in a position to discount international law, including humanitarian law. For example, the Geneva Convention, one of the products of the transformation of human rights, explicitly states that all prisoners of war have a right to a hearing regarding their status (Hajjar 596). This law, intended to protect innocent prisoners, was completely bypassed at Guantanamo, as the prisoners were held indefinitely without determination of their status (Margolies 51). According to the United States, human rights law did not apply here because there was essentially no law. For Hajjar, though, human rights law is universal and is not dependent on who or where one is. One sees that the expectation created by human rights law is often frustrated when states feel it conflicts with their interests, in this situation the need for intelligence. Ultimately, there is a dichotomy between individuals’ anticipation of their human rights, and the enacted aspects of the law itself.

This separation between expectations for and the reality of the law is also seen within the jury system. In her article “Our Juries, Our Selves: The Power, Perception and Politics of the Civil Jury,” Laura Dooley describes the jury system as “a cultural icon... its contribution to democracy equated to voting” (Dooley 450). As courts began to recognize the meaning of equal

protection and recognized the need for impartial juries, the jury system began to include women and minorities, groups that had consistently been excluded by the legal system (450). This inclusion created a more diversified jury, and created an expectation that the jury system would be more balanced and equal by allowing for a broader range of opinions and perspectives. Dooley notes, though, that “as this jurisprudence of inclusion developed, so did restraints on jury power,” as the legal system began to compensate for their inclusion by subtly curbing their power (450, 452). Now, Dooley explains, “the jury’s power is held in check by procedural devices which ensure that judges will have the last word,” thereby providing a safeguard against the anticipated incorrect decisions of juries (451). The dual movement towards inclusion in the jury system and restraint on their abilities has left individuals’ anticipations for the jury system frustrated in two ways. Individuals who believed their legal rights were being recognized by being allowed to participate soon came to find that their participation was limited. Also, those who felt a more inclusive jury system would lead to a more balanced verdict found only that the jury’s decision could now be more easily overturned. Many individuals believed that a more inclusive jury system held the promise of a fairer and more democratic trial procedure, but ultimately there was a divide between peoples’ anticipations and the reality of the jury system.

While there is a consistent notion of how the legal system is supposed to work, specifically in terms of protecting people from the power of the government, the actions of the government seem to be sending the message that rights are ultimately limited, thereby undermining the very ideal that rights seem to stand for. The inconsistency between expectations and individuals’ lived experiences seems to show that rights and the jury system are fundamental to our democratic society, but only when the government feels they should be so.

## Works Cited

### MLA Citation

Dooley, Laura Gaston. "Our Juries, Our Selves: The Power, Perception and Politics of the Civil Jury." Before the Law: An Introduction to the Legal Process. Ed. John J. Bonsignore., et al. Boston: Houghton Mifflin Company, 2006. pp. 450-453.

Hajjar, Lisa. "Human Rights." Reader: 55-62.

Margulies, Joseph. "A Prison Beyond the Law." The Virginia Quarterly Review. Reader: 119-128.

Nielsen, Laura Beth. "The Work of Rights and the Work Rights Do: A Critical Approach." Reader: 45-79.

Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944). Reader: 91-102.