THE RIGHT TO TRIAL BY JURY: THE GREATEST HUMAN RIGHTS CONTRIBUTION OF THE UNITED STATES

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ABSTRACT

This Article argues that the right to trial by jury, as the bulwark of liberty from government intrusion, is the greatest contribution of the United States to the field of human rights. The piece first traces the historical roots of trial by jury. By analyzing the issue both prior to the founding of the United States and in the earliest days of our nation, we can see the preeminent place our founders meant for jury trials. The piece then moves to selected Supreme Court jurisprudence emphasizing the importance of the right to trial by jury and the ways in which it protects us in the criminal and civil law spheres. However, the years have frayed the right to trial by jury as concerns with efficiency have overcome concerns on due process rights. The piece discusses these and previews future scholarship on the issue. Finally, the piece concludes with a discussion of the ways in which the American right to

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trial by jury has spread across the country, bringing with it enhanced democracy and enhanced protections for human rights.

INTRODUCTION

The United Nations defines "[h]uman rights" as "rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status."[1] Much as the Founding Fathers argued that the right to trial by jury was one of the most fundamental rights because of the protection it affords all other rights against government intrusion,[2] this Article argues that the right to trial by jury, as enshrined in the Fifth, Sixth, Seventh, and Fourteenth Amendments to the United States Constitution, is among the nation's greatest contributions to the advancement of human rights. To do so, it will first cover a historical overview of the development of the American right to trial by jury. Following this, it will discuss key United States Supreme Court cases under the Fifth, Sixth, and Fourteenth Amendments that illustrate how the refining of the right to trial by jury has enhanced the protections of the right and thus human rights in the United States. Part III briefly discusses how the civil right to trial by jury serves on a vital check against governmental, fiscal, and corporate abuses. Part IV acknowledges the flaws inherent in the system with potential solutions previewed in future iterations of scholarship. The Article then concludes by reviewing the evidence of the massive influence the American right to trial by jury has had on the spread of the right across the globe, arguing that this global increase in civic participation in judicial systems through the right to trial by jury is one of the greatest contributions of the United States to the furtherance of human rights.

I. HISTORICAL OVERVIEW

In order to understand the impact of the United States' right to trial by jury on the overall advancement of human rights, we have to look to its historical roots. The development of the right to trial by jury, alongside the right to confrontation, has roots as old as Western Civilization itself.[3] For this Article's purposes, we join the state of the law with the signing of the Magna Carta in the English common law

1. *Human Rights*, UNITED NATIONS, https://www.un.org/en/global-issues/human-rights (on file with Syracuse Law Review) (last visited Nov. 21, 2025).

2. *See infra* notes 50–54 and accompanying sources.

3. *See* Laura Anne Rose, *Protecting a Cornerstone Constitutional Right in the Age of Zoom: The History and Case Law Surrounding the Confrontation Clause*, 69 S.D. L. REV. 162, 164 (2024).

system in 1215.[4] This document, signed by King John on June 15, 1215, was signed under the threat of civil war.[5] While common law developed in the centuries since the invasion of William the Conqueror in 1066, the Magna Carta declared the sovereign subject to the rule of law and served as "the foundation for individual rights in Anglo-American jurisprudence."[6] The Magna Carta gave forth a list of liberties held by "free men[.]"[7] For the purposes of this Article, the most pivotal of these was the thirty-ninth listed right, which stated:

> No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by law of the land.[8]

From here, English common law continued to develop, with the use of the empaneled juries increasingly subject to interference from the Crown and its appointed judges.[9] In the sixteenth century, England abandoned its common law roots to move to a more inquisitorial system of justice, resulting in the trial of cases by the Privy Council.[10] This newly created Privy Council then tried Sir Walter Raleigh while denying him the ability to have representation, to question the witnesses brought against him, or to effectuate much of a criminal defense at all.[11] After what would today be considered a sham of a trial, rife with layers of double hearsay from witnesses he was not permitted to question, Sir Walter Raleigh was convicted of treason in 1603, and fifteen years later he was beheaded in the Old Palace Yard at the Palace of Westminster on October 29, 1618.[12] Scholars have long noted

4. *See* Doris Mary Stenton, *Magna Carta*, BRITANNICA (Feb. 3, 2026), https://www.britannica.com/topic/Magna-Carta (on file with Syracuse Law Review).

5. *See id.*

6. *Id.*

7. *Id.*

8. *Magna Carta, 1215*, THE NAT'L ARCHIVES, https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/ (on file with Syracuse Law Review) (last visited Nov. 21, 2025).

9. *See* David J. Siepp, *Magna Carta in the Late Middle Ages: Over-Mighty Subjects, Under-Mighty Kings, and a Turn Away from Trial by Jury*, 25 WM. & MARY BILL RTS. J. 665, 685–88 (2016).

10. *See* Rose, *supra* note 3, at 165.

11. *See id.* at 165–66.

12. *See* WILLARD M. WALLACE, SIR WALTER RALEIGH 216 (1959); 1 SIR JAMES FITZJAMES STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 332, 335 (London, MacMillan & Co. 1883).

the impact this trial and conviction had on those who made up the fledgling Colonies of what would become the United States of America.[13] Following Raleigh's conviction, the issues that had arisen during his trial were quickly changed.[14] By 1640, the right to confrontation of witnesses was no longer a question under English law,[15] and this idea quickly filtered over to the Colonies.

In Massachusetts, some of the earliest formation of the right to trial by jury is seen in the 1641 Massachusetts Body of Liberties.[16] The Body of Liberties contained particular requirements for the right to speedy and equal trial, of which, six explicitly detail the right to trial by jury, the right of counsel, and double jeopardy.[17] These requirements marked a departure from English law in that these rights were specifically spelled out in a statutory scheme.[18] By 1661, the Colonies had court systems designed to match those that took place in England, with a special emphasis placed on the right to trial by jury.[19]

In 1670, William Penn was brought to trial in the Old Bailey in London, having been indicted for illegal speech and assembly.[20] In reality, the indictment had far more to do with the contempt those in power felt about Penn's religious beliefs as a Quaker.[21] Both Penn and his co-defendant, William Mead, demanded trial by jury.[22] Penn made no dispute to the factual evidence presented by the Crown, but instead repeatedly challenged the Recorder to show the specific law they were using to claim his behavior was criminal.[23] The Recorder made no

13. *See* STEPHEN, *supra* note 12, at 319–20, 333; *see also* Harry L. Stephen, *The Trial of Sir Walter Raleigh: A Lecture Delivered in Connection with the Raleigh Tercentenary Commemoration*, 2 TRANSACTIONS ROYAL HIST. SOC'Y 172, 187 (1919); WALLACE, *supra* note 12, at viii; Rose, *supra* note 3, at 169.

14. *See* STEPHEN, *supra* note 12, at 178–79.

15. *See* Daniel H. Pollitt, *The Right of Confrontation: Its History and Modern Dress*, 8 J. PUB. L. 381, 390 (1959).

16. *See* MASSACHUSETTS BODY OF LIBERTIES (1641), *reprinted in* SOURCES OF OUR LIBERTIES: DOCUMENTARY ORIGINS OF INDIVIDUAL LIBERTIES IN THE UNITED STATES CONSTITUTION AND BILL OF RIGHTS 148, 151 (Richard L. Perry ed., 1959) [hereinafter SOURCES OF OUR LIBERTIES].

17. *See id.* at 145–46, 151–53, 156.

18. *See* David J. Bodenhamer, *Trial Rights of the Accused*, 5 OAH MAG. OF HIST. 13, 14 (1990).

19. *See* Pollitt, *supra* note 15, 390–91.

20. *See* Daihui Meng, On William Penn's Trial (Jan. 2, 2020) (unpublished manuscript), https://moglen.law.columbia.edu/twiki/bin/view/EngLegalHist/WilliamPennTrial (on file with Syracuse Law Review).

21. *See id.*

22. *See id.*

23. *See id.*

answer to his requests, but instead had him led away, where he turned and spoke to the jury, saying:

> However, this I leave upon your consciences, who are of the jury (and my sole judges,) that if these ancient fundamental laws, which relate to liberty and property, (and are not limited to particular persuasions in. [sic] matters of religion) must not be indispensably maintained and observed, who can say he hath right to the coat upon his back?[24]

The jury found Penn not guilty of unlawful assembly causing a riot.[25] Despite repeated threats by the Recorder, which included imprisoning the jury for three consecutive days and nights and denying them access to food, when they returned the next day the jury refused to find any other verdict.[26] This trial resulted in the abolition of the English practice of punishing jurors for what those in power considered to be wrong verdicts.[27] This case, while taking place in London, is essential to understanding the Founders' perspectives on the right to trial by jury, particularly given the fact that William Penn would go on to found Pennsylvania.

History professor David J. Bodenhamer noted that "[c]entral to [colonists'] understanding of liberty was the right of jury trial and the guarantee of due process of law. Jury trial was especially important. Without it[,] all other rights would ultimately fail."[28] It was not enough that a jury be assembled, but to satisfy the requirements desired by the Founding Fathers "[o]nly a jury from the neighborhood, independent in its judgments, formed an impregnable shield against arbitrary government."[29] The idea of judges being sole decision makers in cases, particularly those of a criminal nature was antithetical to the founders because in their view "[d]ependent judges who served at the king's pleasure, feigned trials, changes of venue or location to avoid local control of justice, deprivation of trial by jury—each item mocked the guarantee of due process of law."[30]

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24. *Id.*

25. *See Meng*, *supra* note 20.

26. *See id.*

27. *See* John A. Phillips & Thomas C. Thompson, *Jurors v. Judges in Later Stuart England: The Penn/Mead Trial and Bushell's Case*, 4 MINN. J. L. & INEQ. 189, 192 (1986).

28. Bodenhamer, *supra* note 18, at 15.

29. *Id.*

30. *Id.* at 16.

As tensions increased between the Colonies and England, the Crown repeatedly attempted to restrict the right to trial by jury, most notably seen in the passing of the Stamp Act.[31] The Stamp Act put duties on "all legal documents, newspapers, pamphlets, college degrees," and other necessary documents for daily life.[32] This policy shifted the financial burden of the French and Indian War onto the colonists, making them financially responsible for the government and defense of the American continent, without giving them a voice within it.[33] The Stamp Act specifically granted jurisdiction for its enforcement to the admiralty courts, meaning all cases would be decided by a single judge.[34] John Adams, in writing against the Act, railed against this injustice stating, "[i]n these Courts one Judge presides alone, no Juries have any concern there."[35] The Stamp Act was repealed in 1766 after being in effect for mere months,[36] but the Colonies' zeal for the importance of the right to trial by jury only increased.

In 1775, the colonists issued the Declaration of the Causes and Necessity of Taking Up Arms, wherein they cited deprivation of "the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property" as reasons to forcibly resist English rule.[37] In the Declaration of Independence, among those wrongs the Crown had committed against the colonists, was listed "[f]or depriving us, in many cases, of the benefits of Trial by Jury."[38]

Bodenhamer notes that "[[t]he Founding Fathers'] recent experiences also persuaded them that these fundamental rights deserved formal protection in a written constitution."[39] The Second Continental Congress passed a resolution requiring the fledgling states to set up structures to protect the rights of their constituents.[40] Virginia was the

31. *See* Stamp Act 1765, 5 Geo. 3 c. 12 (Gr. Brit.).

32. *Resolutions of the Stamp Act Congress*, *reprinted in* SOURCES OF OUR LIBERTIES, *supra* note 16, at 262–63.

33. *See* Pollitt, *supra* note 15, at 396–97.

34. *See id.*

35. John Adams et al., Instructions Adopted by the Braintree Town Meeting (Sept. 24, 1765), *reprinted in* NAT'L ARCHIVES: FOUNDERS ONLINE, https://founders.archives.gov/documents/Adams/06-01-02-0054-0003 (on file with Syracuse Law Review).

36. *See Resolutions of the Stamp Act Congress*, *reprinted in* SOURCES OF OUR LIBERTIES, *supra* note 16, at 268.

37. DECLARATION OF THE CAUSES AND NECESSITY FOR TAKING UP ARMS (1775), *reprinted in* SOURCES OF OUR LIBERTIES, *supra* note 16, at 296.

38. THE DECLARATION OF INDEPENDENCE para. 20 (U.S. 1776).

39. Bodenhamer, *supra* note 18, at 16.

40. *See* Pollitt, s*upra* note 15, at 398.

first to do so in 1776 and included in its Bill of Rights "[t]hat in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, the call for evidence in his favor, and to a speedy trial by an impartial jury."[41] Similar provisions were adopted as parts of the Constitutions of Pennsylvania,[42] Delaware,[43] Maryland,[44] North Carolina,[45] Vermont,[46] Massachusetts,[47] and New Hampshire.[48] These procedural safeguards became so important to the new states that it slowed the ratification of the Constitution until Virginia, New York, Massachusetts, New Hampshire, and other states agreed to ratify the Constitution with the understanding that the first Congress would propose a Bill of Rights to the Federal Constitution.[49]

It is no surprise, then, that with all the above discussed historical deprivation of the right to trial by jury that the writings of the Founding Fathers at this time repeatedly discuss its crucial place in the lives of the people. Richard Henry Lee wrote on it in Letter XV by the Federal Farmer, arguing "by holding the jury's right to return a general verdict in all cases sacred, we secure to the people at large, their just and rightful control of the judicial department."[50] John Adams called the right to vote and the right to trial by jury "the heart and lungs, the mainspring, and the center wheel [of our liberties], and without them, the body must die; the watch must run down; the government must become arbitrary."[51] Adams also knew that these rights were essential to protecting the people from the government being morphed "into an oligarchy or aristocracy."[52] James Madison wrote that the right to trial by jury was "essential to secure the liberty of the people as any of the

41. VA. CONST. of 1776, § 8.
42. *See* PA. CONST. of 1776, art. IX.
43. *See* DEL. CONST. of 1776, art. XIV.
44. *See* MD. CONST. of 1776, art. XIX.
45. *See* N.C. CONST. of 1776, art. VII.
46. *See* VT. CONST. of 1777, ch. I, art. X.
47. *See* MASS. CONST. pt. 1, art. XII.
48. *See* N.H. CONST. pt. 1, art. XV (amended 1784).
49. *See* Pollitt, *supra* note 15, at 399.
50. RICHARD HENRY LEE, FEDERAL FARMER NO. 15 (1788), *reprinted in* 4 THE COMPLETE ANTI-FEDERALIST 397, 397 (Herbert J. Storing ed., 1981), https://press-pubs.uchicago.edu/founders/documents/a3_2_3s14.html (on file with Syracuse Law Review).
51. JOHN ADAMS, THE EARL OF CLARENDON TO WILLIAM PYM (1766), *reprinted in* 1 PAPERS OF JOHN ADAMS 164, 169 (Robert J. Taylor ed., 1977), https://www.masshist.org/publications/adams-papers/index.php/view/PJA01dg4 (on file with Syracuse Law Review).
52. *Id.*

pre-existent rights of nature."[53] Thomas Jefferson in writing to Thomas Paine in July of 1789 said "I consider that [trial by jury] as the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution."[54]

In 1791, the first Congress ratified ten of the proposed twelve amendments to the United States Constitution with its Bill of Rights.[55] The Fifth Amendment to the United States Constitution states as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.[56]

While Article III to the Constitution already contained the guarantees to the right to trial by jury, the protections trial by jury offered to all other rights of United States Citizens was so crucial that it was the primary focus of two additional amendments, the Sixth and the Seventh.[57] The Sixth Amendment states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.[58]

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53. 1 THE DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES 454 (1789) (Joseph Gales ed., 1834).

54. Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), *reprinted in* NAT'L ARCHIVES: FOUNDERS ONLINE, https://founders.archives.gov/documents/Jefferson/01-15-02-0259 (on file with Syracuse Law Review).

55. *See* U.S. CONST. amends. I–X.

56. *Id.* at amend. V.

57. *See infra* notes 58–59 and accompanying sources.

58. U.S. CONST. amend. VI.

The Seventh Amendment extends the right to trial by jury out to civil cases, stating:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.[59]

Lastly, the Fourteenth Amendment is key to the promulgation of the right to trial by jury and states in the pertinent portion:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[60]

Through the case law stemming from these doctrines, the United States has sought to advance and refine the right to trial by jury to protect the human rights of its citizens. What follows is a case study of key cases and common law development under first the Fifth and Sixth Amendments to the United States Constitution, and then a discussion of key cases and common law development under the Seventh Amendment. These cases show that "juries . . . are antithetical to rigid authoritarian rule"[61] and the explosive spread of the jury trial in the post-Cold War era shows that the right to trial by jury is one of the foremost advances in human rights made by the United States.

II. PERTINENT U.S. SUPREME COURT CASE LAW UNDER THE FIFTH, SIXTH, & FOURTEENTH AMENDMENTS

What follows is a discussion of how the right to trial by jury has been refined and improved by the pertinent U.S. Supreme Court case law in the realm of criminal law.[62] Here, we will focus on the human rights of protections fostered by the Due Process Clause of the Fifth Amendment; those fostered by speedy and public trial by an impartial

59. *Id.* at amend. VII.

60. *Id.* at amend. XIV, § 1.

61. Richard O. Lempert, *The Internationalization of Lay Legal Decision-Making: Jury Resurgence and Jury Research*, 40 CORNELL INT'L L.J. 477, 480 (2007).

62. It should be noted, this is not a comprehensive list of cases that have advanced the causes of the right to trial by jury and thus human rights, but instead selected cases that best show how the jury trial, at law, continues to protect human rights.

jury, and assistance of counsel under the Sixth Amendment; the Equal Protection Clause of the Fourteenth Amendment; and the rights of the Fifth and Sixth Amendment being extended to the states by virtue of the Due Process Clause of the Fourteenth Amendment.

Professor Bodenhamer notes that in the first half the nineteenth century, the cases were most concerned at the state supreme court level with getting the technical protections of the right to trial by jury correct.[63] These concerns with efficiency lead to a swinging of the pendulum to cases that focused more on concerns of administrative efficiency and a lack of trust that juries could decide serious legal issues.[64] This brought about "[a]n ever-widening gap . . . emerging between due process ideals and court practices, especially for immigrants, blacks, and the poor."[65]

The first case discussed herein in advancing the right to trial by jury did not specifically seek to narrow the gap between due process ideals and court practices, but it still managed to do so, thus increasing access to justice and protecting human rights for every American. In the case of *Powell v. Alabama*,[66] nine African-American[67] men were convicted of rape of two white women.[68] The records of the case indicated that on March 31, 1931, all defendants were arraigned, entered pleas of not guilty, and, despite there being no lawyer present with them to argue by their behalf, the trial judge made particular statements that they were represented by counsel.[69] The State moved to sever the cases, trying them in three groups, each trial lasting only a day and resulting in a guilty verdict with the sentence of death by the jury to all defendants.[70] These judgments were affirmed by the state supreme court prior to the petitioners raising the case to the level of the United States Supreme Court.[71] While the petitioners brought three separate grounds for the appeal, the Court made its ruling on the basis of only one claim: that they were denied their rights to counsel and

63. *See* Bodenhamer, *supra* note 18, at 17–18.

64. *See id.* at 18.

65. *Id.*

66. Powell v. Alabama, 287 U.S. 45 (1932).

67. The author notes that the Court used the word "negroes" in this and other cases, but as our cultural competency has increased since the writing of these opinions, that language will not be used outside of when directly quoted.

68. *See Powell*, 287 U.S. at 49.

69. *See id.*

70. *See id.* at 49–50.

71. *See id.* at 50.

that denial infringed on their due process clause rights under the Fourteenth Amendment.[72]

The Court noted in all steps from the initial arrest of the petitioners until their arraignment, the sheriff called in the militia to safeguard the prisoners.[73] At the arraignment, the defendants plead not guilty and were never asked if "they had, or were able to employ, counsel, or wished to have counsel appointed; or whether they had friends or relatives who might assist in that regard if communicated with."[74] Six days after arrest, the trials began and outside of vague anticipatory appointments by the trial judge, "until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants."[75] The Court harshly criticized this move, stating:

> [T]he ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.[76]

The Court stated that, in a capital case:

> [I]t is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.[77]

The Court cited the precedent of *Holden v. Hardy*[78] to show that to do anything else would be to ignore "that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard."[79] The Court reversed the judgments against all defendants and remanded to the lower

72. *See id.* at 50, 71.
73. *See Powell*, 287 U.S. at 51.
74. *Id.* at 52.
75. *Id.* at 56.
76. *Id.* at 71.
77. *Id.* at 71.
78. *See* Holden v. Hardy, 169 U.S. 366 (1898).
79. *Powell*, 287 U.S. at 71–72 (1932) (quoting *Holden*, 169 U.S. at 389).

court for further proceedings.[80] This holding marked the first time the Court extended at least some of the protections of the Sixth Amendment to the States by virtue of the Fourteenth Amendment's Due Process Clause. This strengthens the adversarial system by providing the crucial presence of the right to an attorney at the jury trial level, ensuring that the fundamental human rights of all Americans remain protected.

The 1940 case of *Smith v. Texas*[81] advanced the right to trial by jury by ensuring the jury accurately represented the community in which the case was tried.[82] The petitioner, a young African-American man, was indicted and convicted of rape in a jurisdiction where those of his race made up twenty percent of the total population.[83] Yet despite the fact that at least 3,000 to 6,000 African-Americans qualified for grand jury service, over a seven-year period, only eighteen African-Americans were summoned for grand jury duty, and only five ultimately served on a grand jury.[84] The Court detailed how those of the petitioner's race had been systematically excluded from participation in grand jury proceedings for years.[85] These proceedings were evaluated to determine if the petitioner's rights under the Equal Protection Clause of the Fourteenth Amendment were violated.

The Court acknowledged that the established tradition was for "the jury [to] be a body truly representative of the community."[86] The Court reasoned racial discrimination which resulted in unfair exclusion from jury service "not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government."[87] The Court found little persuasive sway in the idea that the text of the Texas statutes stated there was no racial discrimination practiced in the jurisdiction was sufficient, stating "the Fourteenth Amendment requires that equal protection to all must be given—not merely promised."[88]

In evaluating the incredibly low number of African-Americans called for grand jury duty in both the petitioner's case and in the historical setting of the jurisdiction, the Court noted that "[c]hance and

80. *See id.* at 73.
81. Smith v. Texas, 311 U.S. 128 (1940).
82. *See id.* at 132.
83. *See id.* at 128–29.
84. *See id.* at 129.
85. *See id.*
86. *Smith*, 311 U.S. at 129.
87. *Id.*
88. *Id.*

accident alone"[89] could not explain either how so few had been called to serve, or how those that were called to serve were "almost invariably" assigned numbers that were nearly never called to service.[90] The Court found these actions of racial discrimination to be in violation of the Equal Protection Clause of the Fourteenth Amendment,[91] stating with particularity, "[i]f there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand."[92] The petitioner's conviction was reversed. This ruling protects human rights by ensuring that the jury functions as intended: the representative of the community of the case that has the ability to speak truth to power by virtue of their rulings.

In the case of *Ballard v. United States*,[93] the Court analyzed an instance of systemic exclusion of jurors on the basis of sex.[94] The case dealt with the conviction of Edna and Donald Ballard for using and conspiring to use the mail system to defraud individuals.[95] The case had initially been brought before the Court by the United States, but on a second rehearing the Court noted that while petitioners had not specifically argued the issue, the fact that women were "intentionally and systematically excluded"[96] from the panel of grand and petit jurors lead to an error that "appear[ed] on the face of the record."[97]

The Court concluded that this exclusion was "purposeful and systematic."[98] The Court noted that the interplay of men and women in a community and the influence they had on each other was a step too far in analysis, stating:

> To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded.[99]

89. *Id.* at 131.
90. *Id.*
91. *See Smith*, 311 U.S. at 132.
92. *Id.*
93. Ballard v. United States, 329 U.S. 187 (1946).
94. *See id.* at 190.
95. *See id.* at 188–89.
96. *Id.* at 190.
97. *Id.*
98. *Ballard*, 329 U.S. at 193.
99. *Id.* at 193–94.

The Court did not contend that the error in the lower court's ruling came from a prejudice to the defendants, but rather "[t]he evil lies in the admitted exclusion of an eligible class or group in the community in disregard of the prescribed standards of jury selection."[100] Citing to the precedent of *United States v. Roemig*,[101] the Court noted that such administrative capriciousness "is operative to destroy the basic democracy. . . [and] does not accord to the defendant the type of jury to which the law entitles him."[102] The damage of such procedures was highly damaging in the eyes of the Court, which stated "[t]he injury is not limited to the defendant—there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts."[103] These democratic ideals protect the ability of the people to speak truth to power, thus enhancing the protections of human rights for every American.

While the federal system contained the right to trial by jury under the Sixth Amendment from the ratification of the Bill of Rights, it was not until the case of *Gideon v. Wainwright*[104] that this right was fully extended to state cases by the Due Process Clause of the Fourteenth Amendment.[105] The petitioner in this case had been charged with a felony under Florida law, and when he requested counsel be appointed to him, he was denied and had to proceed with the trial pro se.[106] The Court took the case to rule on the Fourteenth Amendment due process application of the requirements of the Sixth Amendment to the states.

In so doing, the Court overturned the case of *Betts v. Brady*,[107] concluding the Court there incorrectly concluded that the right to counsel under the Sixth Amendment was not "fundamental and essential to a fair trial."[108] The Court referred to the *Betts* decision as "an abrupt break with [the Supreme Court's] own well-considered precedents."[109] The Court viewed its overturning of this ruling as a return to precedent and the restoration of long established constitutional principles, stating:

100. *Id.* at 195.
101. United States v. Roemig, 52 F. Supp. 857 (N.D. Iowa 1943).
102. *Ballard*, 329 U.S. at 195 (quoting *Roemig*, 52 F. Supp. at 862).
103. *Id.*
104. Gideon v. Wainwright, 372 U.S. 335 (1963).
105. *See id.* at 339.
106. *See id.* at 336–37.
107. Betts v. Brady, 316 U.S. 455 (1942).
108. *Gideon*, 372 U.S. at 342 (quoting *Betts*, 316 U.S. at 465).
109. *Id.* at 344.

> From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.[110]

The Court reversed the ruling of the Florida Supreme Court and remanded it for further decision.[111] In so doing, it guaranteed that lack of monetary means did not preclude Americans from exercising their right to trial by jury, thus increasing their ability to protect their access to essential human rights.

In the case of *Duncan v. Louisiana*,[112] the petitioner, after being denied a jury trial when he requested it, was convicted of a misdemeanor offense for which the maximum penalty under Louisiana law was two years of imprisonment.[113] The petitioner was denied counsel because under Louisiana law, counsel could only be appointed in "cases in which capital punishment or imprisonment at hard labor may be imposed."[114] The Court, believing in the fundamental nature of the jury trial to the American system of justice, held "the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee."[115]

In seeking to answer if petitioner's case met the requirements of such a claim, the Court went through a historical analysis of the right to trial by jury.[116] The Court took care to note that this right was embedded into the actual Constitution, citing to Article III, Section 2, stating "[it] commanded: 'The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State

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110. *Id.*

111. *Id.* at 345. The author would like to note that she had the great privilege of taking Constitutional Law I and II from Bruce Jacob, who was the young Florida Attorney General assigned to arguing this case before the Supreme Court. In full respect for him, it should be noted that he dedicated much of his career after the *Gideon* decision—both as a practitioner and as a law professor—to the defense of indigents and prison inmates. For further information, *see* Ellen S. Podgor, *Bruce Jacob: A Leading Voice in Public Defense*, 48 STETSON L. REV. 305, 309 (2019).

112. Duncan v. Louisiana, 391 U.S. 145 (1968).

113. *See id.* at 146.

114. *Id.* (citing LA. CONST. of 1921, art. VII, § 41).

115. *Id.* at 149.

116. *See id.* at 151–53.

where the said Crimes shall have been committed.'"[117] The Court noted the provision of jury trials was strengthened by the adoption of the Bill of Rights, containing the Sixth Amendment right to a trial by jury.[118] The Court continued its historical analysis by pointing out that all original states guaranteed a jury trial, as did the constitutions of every state that thereafter entered the Union.[119]

The Court went on to write:

> Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it.[120]

The Court recognized that the power of the jury trial was as an essential check on the other powers within the judiciary.[121] In order to check a fear of "plenary powers over the life and liberty of the citizen [in the hands of] one judge or a to a group of judges" the Court stated that "our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence."[122] While the State of Louisiana attempted to argue that the crime charged was only a misdemeanor, the Court was not swayed due to the lengthy two-year imprisonment sentence handed down by the lower court.[123] The Court reversed the judgment and remanded for further proceedings.[124] This holding strengthened the rights of individuals to use jury trials as

117. *Duncan*, 391 U.S. at 152–53.
118. *See id.* at 153.
119. *See id.*
120. *Id.* at 156.
121. *See id.*
122. *Duncan*, 391 U.S. at 156.
123. *See id.* at 160–62.
124. *See id*.

checks on arbitrary exercises of power by the state, thus increasing the protection of American's human rights.

In 1975, the case law concerning juries as representative cross sections of the community further developed under *Taylor v. Louisiana*.[125] The petitioner was convicted and sentenced to death on a charge of aggravated kidnapping.[126] Under the Constitution of Louisiana and Article 402 of the Louisiana Code of Criminal Procedure, unless a woman filed "a written declaration of her desire to be subject to jury service,"[127] she did not have to serve on a jury. In the petitioner's case, the combined percentage of eligible jury service members who were female in the pertinent judicial district was fifty-three percent, but despite this, only ten percent of persons subject to being called to jury service in his parish were women.[128] In his individual case, the venire called to serve was a total of 175 people, not one of whom was a woman, and his motion to quash the venire was denied the same day it was made.[129] Justice White wrote the majority opinion that the Louisiana venire section method was violative of the Sixth and Fourteenth Amendments' protections of the right to a fair jury trial.

Justice White began by detailing the historical decisions of the Court on this issue, many of which we have already discussed.[130] He went on to state that this history of opinions, since at least the 1940 decision of *Smith v. Texas*,[131] gave rise to the premise "that the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial."[132] In detailing the rationale behind the decision, White wrote that "a jury is to guard against the exercise of arbitrary power—to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in

125. *See* Taylor v. Louisiana, 419 U.S. 522 (1975).

126. *See id.* at 524.

127. *Id.* at 523.

128. *See id.* at 524.

129. *See id.*

130. *See Taylor*, 419 U.S. at 527–30. For further history, *see Glasser v. United States*, 315 U.S. 60, 85–86 (1942) (repeating the Court's understanding "that the jury be a body truly representative of the community . . . and not the organ of any special group or class" (quoting Smith v. Texas, 311 U.S. 128, 130 (1940))), Brown v. Allen, 344 U.S. 443, 474 (holding that "so long as the source [of jury lists] reasonably reflects a cross-section of population suitable in character and intelligence for civic duty," there is no reason for the Court to interfere in those processes), and Carter v. Jury Comm'n, 396 U.S. 320, 330 (1970) (quoting *Smith* on the issue of exclusions based on race).

131. *Smith*, 311 U.S. at 128.

132. *Taylor*, 419 U.S. at 528.

preference to the professional or perhaps over conditioned or biased response of a judge."[133] For White, having a representative section of the community was not just important due to the check on the power of the judiciary, but also as "critical to public confidence in the fairness of the criminal justice system."[134] The Court contrasted the case to that of *Ballard v. United States*, where the exclusionary question had been a statutory one, but noted that "women are sufficiently numerous and distinct from men and that if they are systematically eliminated from jury panels, the Sixth Amendment's fair-cross-section requirement cannot be satisfied."[135] The Court held that the Louisiana processes violated the protections of the Sixth and Fourteenth Amendments, and reversed and remanded the case to the lower court.[136] The Court once again acknowledged the crucial role jury trial play as a check on arbitrary abuses by those in power, thus using the jury trial to speak truth to power and protect human rights.

The 1986 landmark Supreme Court decision in *Batson v. Kentucky*[137] dealt with a case where a black man was indicted on felony charges, and in the first day of trial, the prosecutor used all peremptory challenges to dismiss all the black members of the venire.[138] Defense counsel moved to discharge the jury as violative of the Sixth and Fourteenth Amendment rights of the defendant, and without holding a hearing on the issue, the judge overruled the motion.[139] Writing the majority opinion of the Court, Justice Powell stated that "[p]urposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure."[140] In the Court's analysis, systems of venire which allowed the exclusion of potential jurors on the basis of race did not just undermine the rights of the individual defendant, but of the people as the whole as they "undermine public confidence in the fairness of our system of justice."[141] The Court held that peremptory challenges were subject to the Equal Protection Clause of the Fourteenth Amendment.[142] This Court articulated that the defendant

133. *Id.* at 530 (citing *Duncan*, 391 U.S. at 155–56).
134. *Id.*
135. *Id.* at 531 (citing *Ballard*, 329 U.S. at 193–94).
136. *See id.* at 538.
137. *See* Batson v. Kentucky, 476 U.S. 79 (1986).
138. *See id.* at 83.
139. *See id.*
140. *Id.* at 86.
141. *Id.* at 87 (citing *Ballard*, 329 U.S. at 195).
142. *See Batson*, 476 U.S. at 89.

could make prima facia case for the context of selection of the venire in the trial they found themselves in using the standards long existing at case law.[143] As a result of this ruling, States are required to provide a race-neutral explanation when exercising peremptory challenges against potential jurors at trial.[144] Accordingly, the Court reversed the petitioner's conviction and remanded it for further proceedings.[145]

Apprendi v. New Jersey[146] refined the right to trial by jury and protected human rights by insisting that the jury make all factual determinations which determine the range of punishment in a given case.[147] The petitioner was charged with multiple serious felonies and ultimately negotiated a plea deal to two counts of second-degree possession of a firearm for an unlawful purpose, which by statute carried a five- to ten-year prison term.[148] At the time of plea, the State's hate crime statute was listed nowhere within the count itself, though the State did reserve the right to ask for a higher enhanced sentence on one count because it was committed with a biased purpose, and the petitioner reserved the right to challenge the same as violative of the Constitution.[149] In a sentencing hearing, the trial judge took evidence and ultimately decided by a preponderance of the evidence that Apprendi's actions qualified under the hate crime statute.[150] The trial judge then sentenced to twelve years on this count, which exceeded the ten-year maximum for the offense as charged.[151]

Justice Stevens, in writing the opinion, took cause to note that the issue in this case was this expansion of sentence under one count, regardless of if the trial court could have reached the same amount of time by sentencing Apprendi to the ten-year maximum on the contested count and then adding additional years on the other two counts to which he plead.[152] He also took care to note that the problem with the ruling stemmed not from the substantive basis of the enhancement, but rather "the adequacy of New Jersey's procedure."[153] Stevens wrote that the question at hand was if a jury, rather than the trial judge,

143. *See id.* at 95–97.
144. *See id.* at 97.
145. *See id.* at 100.
146. See Apprendi v. New Jersey, 530 U.S. 466 (2000).
147. *See id.* at 490.
148. *See id.* at 469–70.
149. *See id.* at 470.
150. *See id.* at 471.
151. See *Apprendi*, 530 U.S. at 471–75.
152. *See id.* at 475.
153. *Id.*

should have been the fact finder when it came to the New Jersey hate crime enhancement.[154]

The previous year, the Court had decided the case of *Jones v. United States*[155] where, in looking at a federal statute, the Court noted:

> [U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.[156]

The Court held that the protections of the Fourteenth Amendment required the same answer when dealing with similar issues in a state statute.[157] While this case dealt with the a sentencing enhancement statute rather than an element of a crime, the Court was not persuaded that in the original eighteenth century contemplation of the Fourteenth Amendment the Founders would have seen any distinction between the two.[158] Noting that trial practice could evolve over time, Scalia reasoned those evolutions "must at least adhere to the basic principles undergirding the requirements of trying to a jury all facts necessary to constitute a statutory offense, and proving those facts beyond reasonable doubt."[159] Because the trial judge made the finding for the enhancement in a separate proceeding rather than a jury reaching that factual conclusion beyond a reasonable doubt, the Court found it to be unconstitutional and reversed and remanded the case back to the lower court.[160]

The 2002 case of *Ring v. Arizona*[161] then extended this ruling to defendants involved in capital cases.[162] At the trial level, Ring was convicted of felony murder during the course of a robbery, but the jury could not convict on the premeditated murder count with which he was charged.[163] Arizona law at the time stated that Ring could not be sentenced to death absent findings from a judge conducting a separate hearing wherein he would have to find at least one statutorily defined

154. *See id.*
155. *See* Jones v. United States, 526 U.S. 227 (1999).
156. *Id.* at 243.
157. *See Apprendi*, 530 U.S. at 476.
158. *See id.* at 478.
159. *Id.* at 483–84.
160. *See id.* at 497.
161. *See* Ring v. Arizona, 536 U.S. 584 (2002).
162. *See id.* at 589.
163. *See id.* at 591.

aggravating circumstances.[164] The trial judge did so, in part due to testimony presented by one of Ring's co-defendants who testified as part of a cooperative plea deal with the State—testimony which contradicted what he had said earlier to defense counsel and testimony which was never heard by any member of the jury in Ring's trial.[165] In fact, under the statutes of Arizona, the maximum sentence Ring could have received in this case was one of imprisonment for life.[166] The Court had to determine if aggravating factors could be found to exist by a judge's determination alone, or if the Sixth Amendment required such a determination to be made by the jury.[167]

The case highlighted a dispute in the law between the *Apprendi* decision discussed above, and the Court's previous ruling under *Walton v. Arizona*.[168] The holding of *Walton* stated the sentencing statutes of Arizona at the time "[were] compatible with the Sixth Amendment because the additional facts found by the judge qualified as sentencing considerations, not as 'element[s] of the offense of capital murder.'"[169] Justice Ginsburg, in writing the majority opinion of the Court, acknowledged that the reasoning of *Apprendi* was "irreconcilable with *Walton*'s holding,"[170] as well as noted that the Arizona Supreme Court had found a total lack of evidence in the trial record to support a conviction for first degree murder, which would have exposed Ring to the death penalty.[171] In evaluating if a capital case required a jury to determine that capital punishment was appropriate, Justice Ginsburg pointed to Justice Stevens dissent in *Walton v. Arizona*.[172] Therein, Justice Stevens focused his evaluation on how this question would be answered had it been brought to bear at the time the Sixth Amendment became law, stating, in pertinent part:

> [T]he English jury's role in determining critical facts in homicide cases was entrenched. As fact-finder, the jury had the power to determine not only whether the defendant was guilty of homicide but also the degree of the offense. Moreover, *the jury's role in finding facts that would determine a homicide defendant's eligibility*

164. *See id.* at 592–93.
165. *See id.* at 593–94.
166. *See Ring*, 536 U.S. at 597.
167. *See id.*
168. *See* Walton v. Arizona, 497 U.S. 639 (1990).
169. *Ring*, 536 U.S. at 588 (quoting *Walton*, 497 U.S. at 649).
170. *Id.*
171. *See id.* at 591–92.
172. *See Walton*, 497 U.S. at 708–11.

> *for capital punishment was particularly well established.* Throughout its history, the jury determined which homicide defendants would be subject to capital punishment by making factual determinations, many of which related to difficult assessments of the defendant's state of mind. By the time the Bill of Rights was adopted, the jury's right to make these determinations was unquestioned.[173]

Justice Ginsburg then turned her analysis to how the case of *Jones v. United States*[174] provided guidance to the overturning of *Walton* in favor of the *Apprendi* standard.[175] This was a carjacking case under a federal statute in which the statute was found to be encompassing three separate offenses, thus necessitating the jury's decision on the escalating maximum penalties.[176] While the dissent in *Jones* wanted to rely on the precedence of *Walton*, the majority wrote that if they were to read the statute as incorporating one crime rather than three separate offenses, a constitutional violation may occur, stating in pertinent part:

> [U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.[177]

These cases were used, along with the rationale and decision of *Apprendi* discussed above, to show that the jury must be the fact finder on this crucial issue.

In rendering the opinion of the majority on a six-three vote, Ginsburg wrote: "Capital defendants, no less than noncapital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment."[178] The Court cited to the fact that, contrary to Arizona's argument that the judge was the superior person to make the determination on the appropriateness of capital punishment in the instant case, "the great majority of States responded to this Court's Eighth Amendment

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173. *Id.* at 710–11 (Stevens, J., dissenting) (alteration in original) (quoting Welsh S. White, *Fact-Finding and the Death Penalty: The Scope of a Capital Defendant's Right to Jury Trial*, 65 NOTRE DAME L. REV. 1, 10–11 (1989)).

174. *Jones*, 526 U.S. at 227.

175. *See Ring*, 536 U.S. at 600.

176. *See Jones*, 526 U.S. at 251–52.

177. *Id.* at 243.

178. *Ring*, 536 U.S. at 589.

decisions requiring the presence of aggravating circumstances in capital cases by entrusting those determinations to the jury."[179] The Court reasoned that the aggravating factors statute at issue in the case were "the functional equivalent of an element of a greater offense."[180] After holding that the protections of the Sixth Amendment apply to an increase in sentencing in capital cases in addition to those contemplated in *Apprendi*, the Court reversed the lower court's decision and remanded for further proceedings.[181]

The case of *Blakely v. Washington*[182] is key in our discussions due to the language used by Justice Scalia in rendering the opinion, which highlights how key jury trials—and the factual determinations left to the jury—are to the overall advancement of human rights. Scalia was careful to note that the power of the right to trial by jury under the Sixth Amendment "is not a limitation on judicial power, but a reservation of jury power. It limits judicial power only to the extent that the claimed judicial power infringes on the province of the jury."[183] Scalia rationalized that the jury must make the factual decisions that determine the statutory maximum in the case.[184] Speaking on the importance of the right to trial by jury in the American legal system, Scalia wrote:

> That right is no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary. *Apprendi* carries out this design by ensuring that the judge's authority to sentence derives wholly from the jury's verdict. Without that restriction, the jury would not exercise the control that the Framers intended.[185]

Arguing against those who dissented in *Apprendi*, the Court wrote that allowing some facts to be considered as sentencing factors rather than elements of the crime would expose defendants to the possibility of a judge choosing to sentence them to a significantly higher crime than the jury's conviction.[186] The Court reasoned that doing so

179. *Id.* at 607–08.
180. *Id.* at 609 (citing *Apprendi*, 530 U.S. at 494 n.19).
181. *See id.*
182. *See* Blakely v. Washington, 542 U.S. 296 (2004).
183. *Id.* at 308.
184. *See id.* at 303.
185. *Id.* at 305–06.
186. *Id.* at 306.

would make the jury's verdict a mere preliminary indicator that a defendant had done something wrong while exposing the defendant to an inquisition by the judge.[187] This not only would run contrary to the history of the American jury trial as discussed in this paper, but, as the Court noted, it would mean "[t]he jury could not function as circuit-breaker in the State's machinery of justice."[188]

The Court also reasoned that to allow there to be sentencing factors within limits was entirely too subjective and contrary to the Framers' intent.[189] To allow judges leeway to make such factual determination was found by the Court to be "not plausible at all, because the very reason the Framers put a jury-trial guarantee in the Constitution is that they were unwilling to trust government to mark out the role of the jury."[190]

Scalia was not swayed by notions that their ruling should attempt to make the criminal justice system more efficient or fair.[191] The point of the jury system as intended by the Framers was not to follow the more expert led systems common in civil-law traditions, "but the common-law ideal of limited state power accomplished by strict division of authority between judge and jury."[192] Such power being reserved to the people was designed by the Framers to prevent abuses against human rights, and allowing only the jury to determine the facts that would lead to punishment furthers such by keeping power with the people rather than government actors.

Our last case for discussion is the 2020 case of *Ramos v. Louisiana*.[193] The petitioner was convicted at trial of second-degree murder, with ten jurors voting for conviction and two jurors remaining unconvinced the State had proven his guilt beyond a reasonable doubt.[194] Justice Gorsuch, in writing the opinion of the Court, noted that Louisiana and Oregon were the only jurisdictions in which a non-unanimous verdict was acceptable to deprive someone of their liberty in serious criminal convictions.[195]

Justice Gorsuch then launched into a scathing historical review of the white supremacist origins of the non-unanimous verdict law in

187. *See Blakely*, 542 U.S. at 306–07.
188. *Id.* at 306.
189. *See id.* at 308.
190. *Id.*
191. *See id.* at 310–13.
192. *Blakely*, 542 U.S. at 313.
193. *See* Ramos v. Louisiana, 590 U.S. 83 (2020).
194. *See id.* at 87.
195. *See id.*

Louisiana.[196] The initial statute was written at Louisiana's 1898 constitutional convention, where one committee chairman went so far as to state that "the avowed purpose of that convention was to 'establish the supremacy of the white race.'"[197]

Gorsuch noted that convention resulted in a state constitution which "included many of the trappings of the Jim Crow era: a poll tax, a combined literacy and property ownership test, and a grandfather clause that in practice exempted white residents from the most onerous of these requirements."[198] Knowing that the United States Senate was about to investigate if Louisiana was "systematically excluding African Americans from juries,"[199] the delegates at the convention sought to avoid having interference from the Supreme Court on the basis of their violating the Fourteenth Amendment by creating "a 'facially race-neutral' rule permitting 10-to-2 verdicts in order 'to ensure that African-American juror service would be meaningless.'"[200] Gorsuch went on to detail that the origins of non-unanimous verdicts in Oregon came from similar white supremacist roots.[201] Specifically, the 1930s rule in Oregon had roots in "the rise of the Ku Klux Klan and efforts to dilute 'the influence of racial, ethnic, and religious minorities on Oregon juries.'"[202] What's more, these origins were never in contention, with courts in both states "frankly acknowledging that race was a motivating factor in the adoption of their States' respective non-unanimity rules."[203]

In analyzing if such non-unanimous verdicts were violative of the Sixth Amendment, Gorsuch tuned to an analysis of what the Framers of the Constitution meant by "trial by impartial jury."[204] Yet whatever source was turned to the answer remained the same: "whether it's the common law, state practices in the founding era, or opinions and treatises written soon afterward—the answer is unmistakable. A jury must reach a unanimous verdict in order to convict."[205] Gorsuch went on to note that it was not as if there was not a plethora of Supreme Court jurisprudence on the issue, the Court having written on the unanimous

196. *See id.* at 87–88.
197. *Id.* at 87.
198. *Ramos*, 590 U.S. at 87.
199. *Id.* at 88.
200. *Id.*
201. *See id.*
202. *Id.*
203. *Ramos*, 590 U.S. at 89.
204. *Id.* at 90.
205. *Id.*

requirement of a jury trial verdict thirteen times over the course of 120 years.[206] The Court was not persuaded by the argument from Louisiana requesting they ignore the historic roots of trial by jury, which required unanimous verdicts, and instead only put those portions of historic common law trace into the Sixth Amendment that the Court thought served functions that were of sufficient importance to "migrate silently into the Sixth Amendment."[207] Gorsuch reasons that to do so would be to ignore entirely the initial understanding of the right to trial by jury in the eyes of the Framers.[208] The State of Louisiana presented their argument as a functional approach on the basis of *Apodaca v. Oregon*.[209] That plurality opinion, lacking any controlling force on the issue before the Court, enabled the practice of non-unanimous verdicts for the sake of functionality of cases moving through court.[210] The right to trial by jury was never meant to be abridged on the basis of cost saving, as the Court made clear when it stated:

> When the American people chose to enshrine that right in the Constitution, they weren't suggesting fruitful topics for future cost-benefit analyses. They were seeking to ensure that their children's children would enjoy the same hard-won liberty they enjoyed. As judges, it is not our role to reassess whether the right to a unanimous jury is "important enough" to retain. With humility, we must accept that this right may serve purposes evading our current notice. We are entrusted to preserve and protect that liberty, not balance it away aided by no more than social statistics.[211]

The Court reversed the judgment of the Court of Appeals.[212] Justice Sotomayor stated in her concurrence, "[w]hile overruling precedent must be rare, this Court should not shy away from correcting its errors where the right to avoid imprisonment pursuant to unconstitutional procedures hangs in the balance."[213] These in combination with the majority's opinion show the key place in the American legal

206. *See id.* at 92.
207. *Id.* at 98.
208. *See Ramos*, 590 U.S. at 100.
209. *Id.* at 98–99 (discussing Apodaca v. Oregon, 406 U.S. 404 (1972) (plurality opinion)).
210. *See id.* at 99.
211. *Id.* at 100.
212. *See id.* at 111.
213. *Ramos*, 590 U.S. at 115 (Sotomayor, J., concurring).

system that the right to trial by jury has in protecting the fundamental human rights of every American.

III. PERTINENT U.S. SUPREME COURT CASES UNDER THE SEVENTH & FOURTEENTH AMENDMENT

While the protections of human rights are far obvious under the Fifth, Sixth, and Fourteenth Amendments, there remains an argument as to the crucial human rights protected by the Seventh Amendment. The right to trial by jury under the Seventh Amendment is not a mere procedural technicality, but is instead, as Justice Black wrote in his dissent in *Galloway v. United States*,[214] a feature to protect individuals against arbitrary actions by those in power making it a "palladium of free government."[215] When the Bill of Rights was ratified in 1791, it was with the knowledge that this right was a bulwark of civil liberty.[216] The civil jury trial empowers the people to hold not only the government to account, but those in the private corporate sphere as well, thus preventing governmental, fiscal, and corporate abuse of the citizenry.

The United States Supreme Court has long recognized the centrality of the right to trial by jury in American jurisprudence. Writing in the case of *Baltimore & Carolina Line, Inc. v. Redman*,[217] the Court noted the Seventh Amendment's preservation of the "substance of common-law right of trial by jury" in order to prevent judicial encroachment and abuses of power.[218] In *Jacob v. City of New York*,[219] the Court described it as a "fundamental and sacred"[220] right of United States citizens, and that such a right "should be jealously guarded by the courts."[221] *Thiel v. Southern Pacific Co.*[222] held that a jury had to contain a cross section of the community, and that "prospective jurors shall be selected by court officials without systematic and intentional exclusion" on the basis of membership in any "economic, social, religious, racial, political, and geographical groups of the community."[223] In *Beacon Theatres, Inc. v. Westover*,[224] discussed further below as an

214. *See* Galloway v. United States, 319 U.S. 372 (1943).
215. *Id.* at 397–99 (Black, J., dissenting).
216. *See* discussion *supra* notes 50–54 and accompanying sources.
217. *See* Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654 (1935).
218. *Id.* at 657–59.
219. *See* Jacob v. City of New York, 315 U.S. 752 (1942).
220. *Id.* at 752.
221. *Id.* at 753.
222. *See* Thiel v. Southern Pac. Co., 328 U.S. 217 (1946).
223. *Id.* at 220.
224. *See* Beacon Theatre, Inc v. Westover, 359 U.S. 500 (1959).

example of the protections civil juries offer in antitrust litigation, the Court stressed that the right to trial by jury must not be lost through judicial balancing of legal and equitable claims.[225] The determination on if the Seventh Amendment right to trial by jury attaches to a particular claim has old roots in American jurisprudence, with its provision of suits as common law "consistently interpreted . . . to refer to 'suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered.'"[226] However, the mere existence of equitable issues in a case alone is not enough to dismiss with the necessity of a jury trial, as seen in *Dairy Queen, Inc. v. Wood*.[227]

Even with the creation of legislatively defined non-Article III courts and administrative agencies, the introduction of binding arbitration clauses, an increasingly high costs associated with civil litigation, the right to trial by jury under the civil amendment continues. This right has been vital in ensuring juries serve as vital checks on corporate power, preventing private equity from escaping the scrutiny of the American people.

Civil juries have historically served as critical instruments in holding corporate power to account. In cases such as *Beacon Theatres, Inc. v. Westover*, the Court emphasized the importance of preserving the right to a jury even in complex disputes where equitable claims intersect with legal ones.[228] By rejecting attempts to sideline jury determinations, the Court reinforced the principle that corporate actors, no less than individuals, must be subject to the scrutiny of citizen juries.

In *Dairy Queen, Inc. v. Wood*, the Court extended this principle, clarifying that legal claims for damages could not be reframed as equitable matters simply to avoid jury trial.[229] This doctrinal refinement underscores the jury's essential role in ensuring that corporations cannot evade accountability through procedural manipulation. The right to jury trial thus ensures that the financial arm of the country is not insulated from public judgment.

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225. *See id.* at 510–11.

226. *See* Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 41 (1989) (quoting Parsons v. Bedford, 28 U.S. 433, 447 (1830)).

227. *See* Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962).

228. *See Beacon Theatres, Inc.*, 359 U.S. at 510–11.

229. *See Dairy Queen, Inc.*, 369 U.S. at 476–77.

Allowing powerful financial entities to escape jury scrutiny risks entrenching oligarchic structures, where wealth and influence dominate at the expense of ordinary citizens. The Supreme Court has recognized in various contexts that concentrated power is inimical to democratic governance. In *Beacon Theatres*, Justice Black's majority opinion stressed that "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment . . . should be scrutinized with the utmost care."[230] This statement resonates strongly in the corporate context: if corporations could evade the jury system, they would gain an unchecked power shielded from democratic oversight.

In *Ross v. Bernhard*,[231] the Court acknowledged that even in the setting of shareholder derivative suits, the Seventh Amendment requires jury determination of legal claims.[232] This case affirms the notion that corporate disputes on a legal question implicating financial rights must remain subject to popular adjudication.[233] This decision reflects the Court's recognition that corporate accountability, on questions that satisfy the constitutional definition of a legal issue under the Seventh Amendment,[234] is inseparable from the right to a civil jury.

Law review scholarship has echoed these concerns, noting that civil juries serve as a counterweight to concentrated economic power. For instance, scholars have argued that the jury system prevents "capture" of the judiciary by elite financial interests and ensures that citizens remain central in adjudicating disputes that shape the distribution of wealth and power.[235] Others have emphasized that the jury injects community values into the marketplace, ensuring that legal norms governing corporations align with broader societal expectations of fairness and justice.[236]

This jurisprudence and commentary converge on a common theme: the civil jury trial protects democracy from the corrosive effects of oligarchy by subjecting powerful corporations to the judgment of ordinary citizens. When juries decide disputes involving monopolistic practices, consumer harms, or financial misconduct, they prevent

230. *Beacon Theatres, Inc.*, 359 U.S. at 501.

231. *See* Ross v. Bernhard, 395 U.S. 531 (1970).

232. *See id.* at 532–33.

233. *See id.* at 542–43.

234. *See id.* at 533.

235. *See, e.g.*, Suja A. Thomas, *Why Summary Judgment Is Unconstitutional*, 93 VA. L. REV. 139, 180 (2007).

236. *See, e.g.*, Stephan Landsman, *The Civil Jury in America: Scenes from an Unappreciated History*, 44 HASTINGS L.J. 579, 600–02 (1993).

economic elites from consolidating unchecked authority. In doing so, the civil jury reinforces the egalitarian commitments of the Constitution and affirms the people's role as the ultimate arbiters of justice.

Protections under the Seventh Amendment do not just prevent human rights abuses by corporate power, but they serve as an additional punitive measure when the government violates the civil rights of its citizenry. Cases brought under 42 U.S.C. § 1983 provide the public with redress should the government violate their civil rights. In *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*,[237] the Court held "a § 1983 suit seeking legal relief is an action at law within the meaning of the Seventh Amendment."[238] Specifically, the Court found that § 1983 claims create a species of tort liability, state "[j]ust as common-law tort actions provide redress for interference with protected personal or property interests, § 1983 provides relief for invasions of rights protected under federal law."[239] This confers tremendous power to the people, allowing individual litigants to have the determination of if their rights were violated, and what monetary compensation they receive, be decided by a representative jury of the location of the cause of action. This type of civic action is exactly what the Framers intended to protect with the Seventh Amendment: a continuous bulwark against overreaches and rights violations by those in power.

IV. FLAWS IN THE SYSTEM

While the ideals of the jury system ring out true, it is not without its flaws, though scholars have noted that "so many writings . . . have been devoted to criticizing [juries] that it becomes boring to recite the claims."[240] Yet in order to protect the right, we must acknowledge the strain it is under and posit potential solutions to the problems at hand.

In the criminal sphere, despite the clear historical roots of the right and strong tradition of jurisprudence exalting its importance, the criminal jury trial has withered in practice under pressures of plea bargaining, judicial fact-finding, and calls to make the American criminal justice system more efficient. Plea bargaining resolved 88.9% of the 71,866 cases adjudicated in United States District Courts in 2023.[241]

237. *See* City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999).

238. *Id.* at 709.

239. *Id.*

240. Neil Vidmar, *The Performance of the American Civil Jury: An Empirical Perspective*, 40 ARIZ. L. REV. 849, 849 (1999).

241. *See* BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., FEDERAL JUSTICE STATISTICS, 2023, at 11 tbl. 6 (2025).

The Court noted that plea bargaining had become, in practical effect, the American criminal justice system in *Missouri v. Frye*.[242] Those defendants who exercise their right to trial by jury are threatened with the possibility of higher sentences should they not take the plea, with scholars arguing this strong-arm approach not only calls into question the voluntariness of such pleas, but changes the guaranteed safeguards of the right to trial by jury into a vanishing option.[243] Scholars note that the pervasiveness of plea bargaining[244] has dramatically curtailed the actual use of juries in the United States and Britain.[245] Yet it is not just the individual defendants' rights that are threatened by such plea deals, but the structural fabric of American democracy, as the people's power to check the overreach on power in the criminal justice system wanes.

The right to trial by jury faces systemic pressures from judicial efficiency claims and the ability of prosecutors to threaten new charges if plea agreements are not reached. Even in the post-*Apprendi* world, judicial overreach in sentencing remains a concern. The case of *United States v. Booker*[246] may have extended the principles of *Apprendi* to the Federal Sentencing Guidelines, but it made those same guidelines advisory, yielding incredible judicial discretion at sentencing.[247] A prosecutor's threat to re-indict a defendant under a habitual offender statute that would carry a penalty of life imprisonment if he refused a plea deal was upheld as a valid use of prosecutorial powers in *Bordenkircher v. Hayes*.[248]

While cases like *Gideon v. Wainwright* and *Batson v. Kentucky* give jurisprudential force to the right to trial by jury, their lofty ideas find problems in the reality of the American legal system. Studies by the Brennan Center for Justice show that massive caseloads and limited resources for investigation and litigation leave many who fight the good fight of the public defender unable to adequately devote meaningful time and effort to trial preparations, adding to the coercive

242. *See* Missouri v. Frye, 566 U.S. 134, 143–44 (2012).

243. *See, e.g.*, Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463, 2538, 2546 (2004).

244. *See* Gabriel Hallevy, *Is ADR Philosophy Relevant to Criminal Justice?*, 5 ORIGINAL L. REV. 1, 3 (2009).

245. *See* Ryan Y. Park, *The Globalizing Jury Trial: Lessons and Insights from Korea*, 58 AM. J. COMPAR. L. 525, 538 (2010) (citing MIKE MCCONVILLE & CHESTER L MIRSKY, JURY TRIALS AND PLEA BARGAINING: A TRUE HISTORY (2005)).

246. *See* United States v. Booker, 543 U.S. 220 (2005).

247. *See id.* at 243–46.

248. *See* Bordenkircher v. Hayes, 434 U.S. 357, 364–65 (1978).

pressures on defendants to plead guilty.[249] Research shows that lower funds to public defense systems correlate with lower trial rates and poor outcomes for criminal defendants.[250] The *Gideon at 60* report from the National Institute of Justice makes clear that the United States still operates a fragmented, under-resourced system that fails to deliver on this promise.[251] State and local governments spend about $6.5 billion annually on public defense—just a fraction compared to $123 billion on policing and $82 billion on corrections—with per capita spending ranging from as little as $7.20 in Mississippi to a national average of $19.82.[252] In many jurisdictions, low-bid flat-fee contracts pay attorneys so little that their effective hourly rates drop below minimum wage, incentivizing rapid case dispositions over thorough trial preparation.[253] Public defender offices face overwhelming caseloads, burnout, and record attrition, with offices like New York Legal Aid and Kentucky's public defender system losing massive portions of their staff in recent years.[254] By stripping defense counsel of the time, training, and resources to try cases before juries, underfunding amounts to a structural infringement on the Sixth Amendment right to trial by jury, perpetuating inequities especially for people of color and rural communities disproportionately affected by resource scarcities.[255]

In the realm of the civil right to trial by jury, the abrogation of the right is far worse. In the modern era, the jury trial has become a vanishing institution, its scope eroded by binding arbitration clauses, procedural devices like summary judgment, and systemic barriers to court access.[256] The consequences of this erosion are particularly stark in the civil sphere, where the promise of equal justice is increasingly conditioned on wealth, bargaining power, and access to counsel.[257]

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249. *See* THOMAS GIOVANNI & ROOPAL PATEL, BRENNAN CTR. FOR JUST., GIDEON AT 50: THREE REFORMS TO REVIVE THE RIGHT TO COUNSEL 1, 4–6 (2013).

250. *See* MAREA BERMAN & CLAIRE BUETOW, U.S. DEP'T OF JUST., GIDEON AT 60: A SNAPSHOT OF STATE PUBLIC DEFENSE SYSTEMS AND PATHS TO SYSTEM REFORM 13–14, 37, 42 (2023).

251. *See id.* at 41–43.

252. *See id.* at 37.

253. *See id.* at 13.

254. *See id.* at 14.

255. *See* BERMAN & BUETOW, *supra* note 250, at v.

256. *See* Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUDS. 459, 483, 515–516 (2004); RICHARD L. JOLLY, VALERIE P. HANS & ROBERT S. PECK, THE CIVIL JURY: REVIVING AN AMERICAN INSTITUTION, CIV. JUST. RSCH. INITIATIVE 3 (2021).

257. *See* John Langbein, *The Disappearance of the Civil Trial in the United States*, 122 YALE L.J. 522, 563, 572 (2012); JOLLY, HANS & PECK, *supra* note 256,

The rise of mandatory arbitration clauses illustrates the most direct threat to the civil jury trial. In *AT&T Mobility LLC v. Concepcion*,[258] the Supreme Court held that the Federal Arbitration Act preempts state laws invalidating class arbitration waivers, effectively blessing adhesion contracts that funnel claims away from juries into private arbitration.[259] This logic was extend in the *Epic Systems Corporation v. Lewis*[260] holding that employers may enforce individualized arbitration agreements that bar collective actions under the National Labor Relations Act.[261] These rulings create contractual waivers to the right to trial by jury, and scholars have argued this effectively privatizes justice, shielding the corporate elite while depriving the public of their Seventh Amendment rights.[262] Moreover, this problem is exacerbated in the modern digital age, where the increasing pace of life and omnipresence of "terms and conditions" boxes to check before accessing the newest digital necessity mean that individuals rarely fully read the things to which they consent. A 2017 study by Deloitte of American consumers returned the fact that 91% of them agree to terms and conditions without ever reading them.[263] This statistic means that not only are Americans giving up their civil right to trial by jury, they are doing so without their full knowledge.

One of the major factors that precipitated the rise of alternative dispute resolution is the considerable cost in time and money associated with regular litigation processes. The level of resources needed to support jury trials makes them simply "too expensive and too time consuming for everyday use."[264] Civil litigation costs have risen dramatically, with discovery expenses and expert witness trials making

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at 9–19; PAULA HANNAFORD-AGO ET AL., PRESERVING THE FUTURE OF JURIES AND JURY TRIALS, NAT'L CTR. FOR STATE CTS. 3 (2024).

258. *See* AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011).

259. *See id.* at 340–41, 358.

260. *See* Epic Sys. Corp. v. Lewis, 584 U.S. 497 (2018).

261. *See id.* at 502, 525.

262. *See* Jean R. Sternlight, *Panacea or Corporate Tool?: Debunking the Supreme Court's Preference for Binding Arbitration*, 74 WASH. U. L.Q. 637, 639 n.11 (1996).

263. *See* Caroline Cakebread, *You're Not Alone, No One Reads Terms of Service Agreements*, BUS. INSIDER (Nov. 15, 2017), https://www.businessinsider.com/deloitte-study-91-percent-agree-terms-of-service-without-reading-2017-11 (on file with Syracuse Law Review).

264. Inga Markovits, *Exporting Law Reform — But Will it Travel?*, 37 CORNELL INT'L L.J. 95, 109 (2004); *see also* Steven Shavell, *Alternative Dispute Resolution: An Economic Analysis*, 24 J. LEGAL STUD. 2, 5 (1995).

jury trials prohibitively expensive for many potential litigants.[265] The more complex the case, the more discovery will be necessitated, the more the overall costs of the litigation increase.[266] The use of electronic discovery does not even guarantee a decrease in costs, but instead shows increased costs of at least thirty-seven percent.[267]

Regardless of if the diminishing use of the right to trial by jury occurs in the criminal or civil sphere, it is the responsibility of the legal profession to respond creatively to zealously defend this right. Space limitations require us to leave the in-depth discussion of potential solutions to future scholarship.[268] As a preview, the central argument is that judges, lawyers, and law professors must respond with servant leadership action in the areas of civic education of the general public, continuing legal education in the profession, legislative efforts, and embracing interdisciplinary, creative approaches to the teaching of trial advocacy at the law school level. Without a profession wide commitment to the right to trial by jury, we risk losing a long-term guardian of human rights in America.

V. THE INFLUENTIAL SPREAD OF THE TRIAL BY JURY SYSTEM

Yet, even with the multitude of flaws in the American right to trial by jury system, the spread of it across the globe underscores that it is one of the United States' greatest contributions to the development of human rights. The influence of the jury trial system reflects not only a commitment to the democratic ideals from the founding, but also that the right is adaptable to best serve the populations in other cultures and legal systems.

In Europe, the right to trial by tribunal is enshrined in the European Convention on Human Rights.[269] Article 6 guarantees the right to a "fair and public hearing by an independent and impartial tribunal."[270] Scholars have noted the insistence on the right to a fair trial in criminal cases in the post-World War II era was designed to

265. *See* EMERY G. LEE III & THOMAS E. WILLGING, FED. JUD. CTR., LITIGATION COSTS IN CIVIL CASES: MULTIVARIATE ANALYSIS REPORT TO THE JUDICIAL CONFERENCE COMMITTEE ON CIVIL RULES 2, 5 (2010).

266. *See id.* at 5.

267. *See id.*

268. *See, e.g.*, Laura Anne Rose, *Protecting Democracy Through Servant Leadership Actions on the Jury Trial System*, 71 S.D. L. REV. (forthcoming Spring 2026).

269. *See* Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, Apr. 11, 1950, 213 U.N.T.S. 221.

270. *Id.* at 228.

specifically ensure human rights protections at an international level.[271] This allows countries like the United Kingdom to use full lay juries in their criminal cases in line with their common law traditions.[272] Meanwhile, countries with a civil law tradition have been able to meld their existing traditions of decisions by professional judges with mixed jury systems that add in lay assessors.[273] While this structural difference is a departure from the American jurisdiction system, scholars have noted that the involvement of ordinary citizens in the judicial decision-making process strengthens democracies and human rights protections dating back to the juries in ancient Athens.[274] With this blend of professional and lay jurors, the European Court of Human Rights has held that the importance of secrecy in jury deliberations is trumped by the defendant's right to transparency in the decision making process of his convictions.[275]

Scholars have noted that "United States exceptionalism in the legal authority it accords ordinary citizens is no longer regarded as an anachronism that contrasts unfavorably with legal procedures in continental countries and elsewhere around the globe."[276] As the world emerged in the post-Cold War era, the United States emerged as the primary superpower of the world, particularly achieving near hegemonic dominance in the power of its post-secondary educational institutions.[277] Scholars from across the globe were coming to the colleges and graduate schools of the United States, and, as Lempert notes, one of the results of this was that "[t]he American model of citizen participation in trials became disseminated around the globe, particularly in academic circles, with admiration it previously had not enjoyed."[278]

This spread moved into Latin America as nations sought to democratize their justice systems and dismantle the authoritarian roots of their past. As an example, Argentina's Constitution has mandated jury trials since the mid-nineteenth century, but the nation has seen an acceleration of the right in recent decades.[279] This has occurred in

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271. *See* David Harris, *The Right to a Fair Trial in Criminal Proceedings as a Human Right*, 16 INT'L & COMPAR. L.Q. 352, 352–53 (1967).

272. *See* Gerhard Casper & Hans Zeisel, *Lay Judges in the German Criminal Courts*, 1 J. LEGAL STUDS. 135, 136–41 (1972).

273. *See* Lempert, *supra* note 61, at 478.

274. *See* JOHN P. DAWSON, A HISTORY OF LAY JUDGES 12–13 (1960).

275. *See* Taxquet v. Belgium, 2010-VI Eur. Ct. H.R. 145 (2010).

276. Lempert, *supra* note 61, at 479.

277. *See id.*

278. *Id.*

279. *See* Valerie P. Hans, *Trial by Jury: Story of a Legal Transplant*, 51 L. & SOC'Y REV. 471, 473–74 (2017).

provinces which maintain separate legal systems from the federal government.[280] The province of Cordoba did this through the institution of mixed-jury systems of four professional judges and eight lay judges, and was instituted by its legislators to specifically restore the citizenry's faith in the democratic institutions of Argentina.[281] The provinces of Neuquén, Buenos Aires, Rio Negro, and Chaco followed this by instituting full lay juries in their jurisdictions, and more provinces are looking to use this hallmark of democracy to improve the rights of their citizenry.[282] Hans goes on to write that in instituting these new policies, those creating the right to trial by jury in Neuquén specifically looked to learn from the lessons and problems learned by the United States over our history to ensure a fair and impartial jury, thus protecting the human rights of Argentinians.[283] This shows that the right to trial by jury as inspired by the American system is transportable to other regions of the globe, adaptable to the cultures and expectations of those reasons, and still protect its democratic hallmark of allowing individuals to speak truth to power, thus protecting human rights.

Evidence of this further exists in adaptations to the right to trial by jury made in South Korea.[284] As South Korea moved into becoming a modern democracy after 1987, the judiciary needed to gain legitimacy, and trial by jury was seen as a possible avenue to take.[285] While the influence of the American trial by jury system may have been more of one of fear of the errors made and vagaries it showed throughout history,[286] it still informed the discussion. What is more, the President of South Korea, who was responsible for introducing and propelling the participation government that encouraged trial by jury, began his career as a human rights lawyer.[287] This developed into a system borrowing from multiple legal systems, with Germany and the United States featuring most heavily in the unique model of trial by jury now enjoyed by South Korean Citizens.[288] Of note to our interests, the actual trial process mirrors what is practiced in the United States, with

280. *See id.* at 474.
281. *See id.* at 474–75.
282. *See id.* at 475.
283. *See id.* at 476–78.
284. *See* Park, *supra* note 245, at 530.
285. *See id.* at 545–46.
286. *See id.* at 546.
287. *See id.* at 546–47.
288. *See id.* at 552–53.

one of the additions being that jury members may also submit questions for the witnesses.[289]

While these democracies all have modified the right to trial by jury to fit their cultures, the fact is they have some system in place to allow for citizens to participate in the decision-making process of their judicial systems. And as Park notes, "[w]ithout engaging in an in-depth analysis of the relative robustness of different nations' democracies, a quick comparison between the lists of nations with and without jury trials suggests a correlation between juries and enduring republican governance."[290]

As John Adams wrote in his letters to William Pym, the right to trial by jury is essential to stemming off governmental take over by oligarchy.[291] History shows that he was wise in his knowledge, and we see a repeated pattern that when the people are taken out of the legal decision making process, oligarchy is allowed to rise and the rights of the individual are allowed to fall. Going back to Ancient Athens, when the powers of the state were seized between 411 and 403 B.C., the judicial powers of assemblies were taken away and were not brought back until democracy was restored.[292] When the Roman Republic ultimately fell, the powers of the court were taken from the people and placed into the hands of the learned judges only.[293] In the year 1939, the Nazi Party in Germany not only invaded Poland, but ended nearly all citizen involvement in their domestic courts.[294] Even in the instance of Argentina, discussed above as an example of where the people eventually got control of the courts back, Hans noted that "during many years, Argentina was in the grip of a dictatorial or authoritarian rule, and 'these regimes were not motivated to democratize the courts.'" [295]

This is because jury trials contain a crucially important power: the ability of the people to speak truth to power in the protection of both our constitutional rights, and the broader category of human

289. *See* Park, *supra* note 245, at 554.

290. *Id.* at 534.

291. *See* ADAMS, *supra* note 51.

292. *See* Federica Carugati & Josiah Ober, *Democratic Collapse and Recovery in Ancient Athens (413-403)*, *in* WHEN DEMOCRACY BREAKS: STUDIES IN DEMOCRATIC EROSION AND COLLAPSE, FROM ANCIENT ATHENS TO THE PRESENT DAY 25, 32–35 (Archon Fung ed., 2024).

293. *See* Max Kaser, *The Changing Face of Roman Jurisdiction*, 2 IRISH JURIST 129, 139 (1967).

294. *See* Markus Dubber, *The German Jury and the Metaphysical Volk: From Romantic Idealism to Nazi Ideology*, 43 AM. J. COMP. L. 227, 238 (1995).

295. Hans, *supra* note 279, at 474.

rights as a whole. When we denigrate and diminish access to trial, we are denying human rights. It is the job of American trial lawyers to use our rights to zealously and ethically advocate for our clients, so that we can continue to influence the international development of human rights. As we go forward as a nation, we must guard this right with zeal, and demand that the courthouse remain a place where the people can not only have their causes heard in a court of law, but that the fact finding to be done in those cases is done by a fair, impartial jury that is representative of their communities. To do otherwise is to willingly sacrifice our access to one of the greatest contributions our nation has made to the field of human rights.