

COMMENTARY

My rights, their rights, our rights: a response to Laura Beth Nielsen on relational rights, gun politics and the struggle over community

Jennifer Carlson 

Sanford School of Social and Family Dynamics, Arizona State University, Tempe, AZ, USA
Email: jenniferdawncarlson@asu.edu

(Received 11 December 2023; accepted 20 December 2023)

Today's seeming crises in US law's legitimacy – spanning the political spectrum with respect to the rule of law, democratic process, the criminal justice apparatus, jurisprudential overreach and congressional inaction, alongside the plummeting levels of trust in US institutions more broadly – feel unprecedented. In many ways, they are unprecedented – but they also reflect core sociolegal dynamics that have been baked from the beginning into the American political project.

In the US context, law has often been called upon to strike an impossible deal: a tenuous balance between an investment in shared notions of citizenship and an assertion of rugged, even ungovernable, individualism as the bedrock of those shared notions. Historically, this impossible deal has entailed the celebration of equality, but largely for white, property-owning men. It has protected freedom of choice but not the choices of those marginalized along gender, race, class and other axes of inequality. It has emboldened some people – disproportionately white men – to claim impunity by transforming otherwise criminal acts into defenses of American values. It is evident in politicians who stake their platforms on anti-statist sentiment; in policies that assert the private sphere as the solution to public problems; and in those who see the law not as confined to the state but as a tool to transcend the state – a tool that beacons us to remake our relationships not just with the state but also with one another. Yet, this American dream – to assert society beyond the real or imagined shackles of the state – animates not just regressive movements but also progressive projects. After all, abolitionism – of slavery, and of the American carceral apparatus – is fundamentally an assertion of human possibility beyond the constraints of law as we (at least in the US) know it.

As popular cohesion feels ever-more shaky surrounding what law means, what it does and what it's even good for, Laura Beth Nielsen asks us as sociolegal scholars to reconsider our commitments to law through the concept of “relational rights.” Rather than offer a counterpoint to “individual rights” (the perspective that dominates US thinking), “relational rights” represent a synthesis of sociological and legal

sensibilities that go beyond either the “liberal communitarian” or the “conservative individual.” In doing so, she advances both an analytical and a normative project: relational rights represent a framework that highlights how law “emphasizes, values, privileges, and protects important social *relationships*.”

Analytically, she asserts that rights are only as good as the social relations within which they are embedded. Not all rights are not created equal – but not necessarily because of the substance of the right itself (i.e., free speech versus the right to keep and bear arms). Rather, the quality of the right depends on the relations in which it can be exercised. Consider the sociolegal politics of guns in the USA, my area of expertise. From Nielsen’s perspective, whether, how, and for whom the right to keep and bear arms contributes to, rather than detracts from, a vigorous, engaged and responsive political culture – reflected in both the macro-level machinations of government as well as the everyday practices of citizenship – that has far less to do with the verbiage of the Second Amendment and much more to do with the relations within which that right becomes exercised as real.

This leads to Nielsen’s normative claim: that the full promise of rights – both as instruments of responsive political outcomes and as ends of civic engagement in and of themselves – cannot be realized without the social relations that make rights worth engaging – what Nielsen refers to as “healthy relationships,” grounded in “mutual support, obligation, and a redistribution ethic of shared interests.” *Rights worth exercising necessarily entail mutual recognition and mutual obligation*. This is actually a familiar claim in the US context, but its popular formulation typically collapses recognition and obligation: *our* rights require that we (i.e., obligate us to) recognize *their* rights as the primary limitation on rights at large. The problem with this live-and-let-live approach is that it not only sets up rights as antagonistic to relationships but also undermines the power of rights by taking away the basis for their worth: disconnected from relationships, rights are poorly positioned to remind us of our mutual vulnerability, to assert to us the intrinsic value of cooperation and to allow us a means of practicing, prioritizing and protecting human dignity.

Rights hold value to us *as human beings* to the extent that they are exercised *in relation*. Cut out from relations, rights may hold value to workers, entrepreneurs, politicians, activists, artists, intellectuals or even citizens – but they cannot help us flourish as human beings. Nielsen’s normative project, then, reminds us that we are more than any of the roles we may inhabit. To that end, we must not only resist the marginalizing, disempowering and deeply dehumanizing consequences of the institutions and projects – settler colonialism, neoliberalism, mass incarceration, patriarchy and populist-authoritarianism – that law and society scholars foreground in our analyses; we must also remember that societies risk simply rebuilding what we have torn down (hence, the New Jim Crow; Alexander 2010) without fundamentally rebuilding a new ethics – that is, an ethics of relational rights – to provide the foundation for a differently, and more humanely, structured lifeworld.

In this regard, Nielsen’s project draws deeply from the abolitionist imaginary forged by public intellectuals such as Mariame Kaba and Andrea J. Ritchie who, in *No More Police*, clarify that abolitionism is as much a project of *demolishing* harmful institutions as it is about *building up* community capacities for “non-coercive and consensual care” based on “an ethic of mutual responsibility” (2022: 282). In doing so, Nielsen’s normative move speaks to a question often raised of abolitionism: what happens to law in an

abolitionist framework? Relational rights get at how that law can be reclaimed as an abolitionist practice: no longer an institutionalized, external mechanism of top-down accountability, law might instead manifest as a bottom-up practice of care-work that links *my* freedom to be fully human to *yours* – a freedom actualized not only in the grand rise and fall of social structures and systems but also in the micro-politics that constitute, as Ruha Benjamin's (2022) titular concept goes, "viral justice." Imagined as a guide for building a better society amid exclusionary populism, authoritarianism and the violation of refugees, sexual and racial minorities, the framework of relational rights reminds us that rights sustain community life, and community life sustains rights.

But community for whom?

Despite its persistent apparition as the antidote to exclusion, communities have always had boundaries, norms and orders of their own – and historically have not always been in the service of the kinds of political projects Nielsen imagines under the purview of relational rights. Consider Alexandra Filindra's fresh history of the culture of guns in the USA. In *Race, Rights, and Rifles* (2023), Filindra invites us to break with the notion that the debate about guns rights is fundamentally a debate between individualists (those who favor gun rights and read the Second Amendment as protecting an individual right to keep and bear arms) and communitarians (those who favor gun control and read the Second Amendment as protecting a collective right to strike a militia). Filindra argues that gun rights have always been aligned with community as tools of republican civic engagement (small "r" republican, not today's contemporary Republican Party). In contrast to the liberal individual, the republican polity – as Wendy Brown puts it in her writing on the Second Amendment – is characterized by "the existence of responsible, active, and public-minded citizens bound together in at least a modicum of civic solidarity" (1989: 665). From this perspective, framing gun rights as individual rights totally misconstrues the value of guns as vehicles of rights in the service of a larger politics: guns matter not simply as tools of individual empowerment or personal self-defense but also as vehicles of solidaristic freedom and civic virtue. Individual rights alone cannot bear the weight of the republican project of which guns are imagined to be a part.

Though this may not sound too far afield from relational rights, its compatibility with the vision that Nielsen offers depends not simply on the embeddedness of rights in community but also on the quality of community within which such rights are embedded. As Filindra and Brown detail, whatever freedom or virtue that gun rights promise is fundamentally limited by the exclusionary vision of community that undergirds the republican political project of which guns have historically been a part. As Brown writes, "might the republican formulation of freedom, for all its appeal next to individualism, contain some ills in its gender-biased, imperial, and propertied moments, and might the express link between guns and freedom betoken such moments?" Filindra similarly brings political theory into conversation with historical and legal scholarship in order to examine guns as totems of white male citizenship. Gun rights, in her analysis, are simultaneously relational (in that they are made meaningful in community of others also engaged in the same republican project) and exclusionary (in that they serve to symbolically signal and also to coercively police the boundaries of that community of rights-bearers). The recent cases of George Zimmerman and Kyle Rittenhouse demonstrate the ongoing relevance

of Filindra's point: these high-profile self-defense trials legitimated (legally) the murders of Trayvon Martin, Joseph Rosenbaum and Anthony Huber as "justifiable" acts of violence, and as such, they were as much about an individual right to keep and bear arms as about coercively asserting the racial boundaries of community, whether that meant residential belonging (i.e., George Zimmerman "policing" of his gated neighborhood) or political belonging (i.e., Kyle Rittenhouse's "policing" of a Black Lives Matter protest).

Beyond these high-profile cases, gun rights have come to matter because they are co-extensive with and co-constitutive of citizenship: to bear guns signifies both your full inclusion in the polity and your political capacity for that inclusion – as the term "citizen-protector" intimates (Carlson 2015). Those who won't or can't fully exercise this right to keep and bear guns (whether because they are members of a marginalized group, have a criminal record, are a pacifist, or any other formal or informal reason, whether well-justified or totally bigoted) are not only not fully included in the polity – they are deemed politically deficient as a result. As Max Weber (cited in Bologh 2009: 44) wrote of warriors in early state development (but could have been writing of contemporary US gun culture), "the bearer of arms acknowledges only those capable of bearing arms as political equals" – a mutual recognition that, as Roslyn Wallach Bologh (2009: 45) notes, brings together "freedom and manliness ... with a 'right' to bear arms." US history is dominated by the kind of exclusionary republicanism that Filindra and Brown excavate and that Weber and Bologh intimate. To the extent that they are rooted in exclusionary republicanism, gun rights often make their appearance as incompatible with inclusive, multiracial democracy.

Yet, that does not erase the other moments – no matter how fleeting or localized – in which gun rights do function in the service of asserting citizenship in ways that shake the exclusionary confines of white supremacy, heteronormativity and other systems of oppression. Ask the Black Panthers and the Deacons for Defense of the 1960s, the members of the Reconstruction-era Black Militias, or today's Huey Newton Gun Club. Or consider the Pink Pistols, Armed Equality, A Better Way 2A and other groups, activists and social media influencers advocating that minorities embrace gun rights as an emancipatory politics – if for no other reason than that is the only option left to resist violence, hate and domination. Then there are the liberals and other "non-traditional" gun buyers who purchased their first firearms in 2020 and 2021. While they subverted the orchestrated affinity between conservative politics and US gun culture (on that orchestration, see Matthew Lacombe's 2021 book *Firepower*), other gun advocates – such as most of the gun sellers I interviewed in 2020 for *Merchants of the Right* (Carlson 2023) – were finding new ways to reinvent the boundaries of the gun-bearing community in ways that expanded it (by celebrating the increasing demographic diversity of gun owners) while simultaneously policing it (by using political ideology – specifically, an anti-elitist rejection of all things liberal – as a means of evaluating the fitness of would-be gun owners as fellow rights-bearers). Whether we consider gun rights as instruments of exclusion or inclusion, though, all instances represent moments when gun rights are made sensible, meaningful and politically consequential only because *they are exercised in relationality* – whether that is Black Power or white supremacy, LGBTQ + self-determination or transphobia, or any number of variations on republicanism, whether exclusionary or inclusionary.

What does this mean for the concept of relational rights? In my view, the concept of relational rights changes the conversation about rights at a more fundamental level – by asking us to move beyond the worn-out prism of the “individual-versus-collective” as the hegemonic binary that too readily describes our deepest disagreements about rights and too often misconstrues them (as I would argue happens often in the debate on guns). Rather, the concept of relational rights forces us into gnarlier territory beyond this binary, namely, that what is at stake is oftentimes warring ideas about community. Its utility, for example, is not that the concept clarifies that rights are “really” about community (as opposed to the individual), but that the concept allows us to more fully appreciate the complex and complicated social relations in which rights are embedded, rights become actionable and rights become worthwhile – or not. As such, the concept of relational rights resonates with the existing scholarship – particularly on race, inequality and law – that appreciates the ideology of individual rights as a sociolegal masquerade: that is, a self-serving delusion (that coheres community on the premise that society does not exist) or an exclusionary nightmare (that, for those outside of the charmed community of rights-bearers, renders rights as assertions of raw power).

But Nielsen asks us to do more than re-envision the world we live in – she also asks us to re-envision who *we are* to live in it. The analytic grist of relational rights necessarily brings us back, then, to one of the most normatively challenging calls that Nielsen issues: “[T]his kind of scholarship and world view requires us to welcome those we fear, empathize with those who hurt us, and advocate the least of these.” Just like gun rights appearing in all sorts of messy sociolegal projects across the political spectrum, I want to emphasize that this kind of call – for an awakening, for a spiritual revolution, for a remaking of civic culture – is also being issued throughout American political life, and not just from the intellectual Left. In my interviews with gun instructors and gun carriers, with police chiefs and gun sellers, and with gun violence survivors, I have heard calls for a “spiritual fix,” for a political shift that goes beyond right or left, for a “wake up” that subverts the current terms of our political orientations. Heck, even as I write this, I’m reading a book on why we need a spiritual revolution – by Rainn Wilson (2023), the guy who plays Dwight in *The Office*. Even in my own work, I have tried to think through what a different civic culture surrounding gun rights might look like, one focused on political equanimity, civic grace and social vulnerability. It is one possibility – and far from the only one – that could begin to fill out the normative project that Nielsen calls for.

But rather than nail down a normative project, I want to pause on a slightly different observation: namely, that so many of us seem to be searching – even if we are using very different, even fundamentally incompatible, legends for our journeys. Why are so many of us setting off in the first place, and how might the concept of relational rights equip us accordingly? The compulsion to search seems rooted in the resentment, frustration, alienation, disappointment and yes, anger that inflect our contemporary political landscape in response to many fronts: staggering inequality, intergenerational trauma, deindustrialization and socioeconomic decline, the withering of the social safety net, and more, so much more that it goes well beyond the scope of this short essay (but see Mishra 2017 for a capacious overview). Amid this disaffection is a growing distrust of institutions, experts and the powers that be (including higher education), which, when considered on the whole, demonstrates rising alienation and

anomie across social, economic, cultural and political divides (Brenan 2023; Jones 2022; Kennedy et al. 2022). Perhaps this collective, if cacophonous, search reflects a nagging sense that we all have spent too much time wishing on decision-makers and looking up toward institutions and not enough on our own “viral” power (again, see Benjamin 2022) as rights-bearers to transform the sociopolitical grid in which we maneuver – a power that, again, can only be appreciated if rights are fully appreciated as relational.

The more we depend on those top-down mechanisms, the more we undermine our own capacities as citizens, and I’d wager that those top-down mechanisms will never alone close the difficult gap that Nielsen recognizes when she calls on us to “welcome those we fear, empathize with those who hurt us, and advocate for the least of these.” This is why, I think, rights remain indispensable, at least in the US context: even as they carry so much baggage, they also frustrate that baggage insofar as they call upon us to not just imagine the world differently but also imagine ourselves differently – and not just as individuals but also in our relation to one another. Yes, rights are exercised in relation, and yes, they only become worthwhile in relation; but more than that, rights provide a vehicle for expressing, contesting and struggling over the kinds of relations – the kind of community – we want. Relational rights remind us that *this* is the struggle we are almost always having – even if we fail to grasp it as such.

Conflicts of interest. The author has no conflicts of interest to declare.

References

- Alexander, M. 2010. *The New Jim Crow*. New York, NY: The New Press.
- Benjamin, R. 2022. *Viral Justice*. Princeton, NJ: Princeton University Press.
- Bologh, R. 2009. *Love or Greatness*. New York, NY: Routledge.
- Brenan, M. 2023. “Americans’ Confidence in Higher Education Down Sharply.” *Gallup*. <https://news.gallup.com/poll/508352/americans-confidence-higher-education-down-sharply.aspx> (accessed December 11, 2023).
- Brown, W. 1989. “Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism.” *The Yale Law J.* 99 (3): 661–67.
- Carlson, J. 2015. *Citizen-Protectors*. New York, NY: Oxford University Press.
- Carlson, J. 2023. *Merchants of the Right*. Princeton, NJ: Princeton University Press.
- Filindra, A. 2023. *Race, Rights, and Rifles*. Chicago, IL: University of Chicago Press.
- Jones, J. 2022. “Confidence in US Institutions Down; Average at New Lows.” *Pew*. <https://news.gallup.com/poll/394283/confidence-institutions-down-average-new-low.aspx> (accessed December 11, 2023).
- Kaba, M. and A. J. Ritchie. 2022. *No More Police*. New York, NY: The New Press.
- Kennedy, B., A. Tyson and C. Funk. 2022. “Americans’ Trust in Scientists, Other Groups Declines.” *Pew*. <https://www.pewresearch.org/science/2022/02/15/americans-trust-in-scientists-other-groups-declines/> (accessed December 11, 2023).
- Lacombe, M. J. 2021. *Firepower*. Princeton, NJ: Princeton University Press.
- Mishra, P. 2017. *Age of Anger*. New York, NY: Macmillan.
- Wilson, Rainn. 2023. *Soul Bloom*. New York, NY: Hachette.

Cite this article: Carlson, Jennifer. 2024. “My rights, their rights, our rights: a response to Laura Beth Nielsen on relational rights, gun politics and the struggle over community.” *Law & Society Review* 58(1): 26–31. <https://doi.org/10.1017/lsr.2023.5>