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EXPLOITATION AND RESISTANCE: HOW OLD PROBLEMS CHANGE OVER TIME

Jennifer Hochschild*

AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* (Harvard Univ. Press 2010). Pp. 432. Hardcover. \$29.95.

TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* (Oxford Univ. Press 2011). Pp. 608. Hardcover. \$34.95.

It is not obvious at first glance (or second or third) why these two books should be reviewed together. *The Two Faces of American Freedom* (hereafter, *Two Faces*) is a broad, sweeping history of Americans' views and actions with regard to freedom and imperialism from the seventeenth through the twentieth centuries. It focuses largely, though not entirely, on political philosophies, legal decisions, *mentalités*, and belief systems. It is a work of "social criticism, in which history is presented in the service of today's problems as well as tomorrow's latent possibilities."¹ In the best tradition of the American jeremiad, it is largely an argument about decline and fall; starting from a not-fully-admirable position with regard to freedom and the settler mentality, "the United States' orientation to the world [now] combines some of the most problematic ideological features of the settler past without its emancipatory aspirations."² *Two Faces* focuses on the views and actions of the dominant population, examining non-whites and non-settlers (and women) only from the vantage point of white settlers and their descendants.

In contrast, *Courage to Dissent* is a local history, covering a few decades of one group in one city. It focuses on the actions and speeches of its protagonists, spending relatively little time on broad philosophical, legal, or political trends in the society at large. It "tells [a] story," seeking to bring particular forces "into clearer focus," with the aim of "bridg[ing] legal and social history, and national and local history."³ It includes no overt social criticism. *Courage to Dissent* is not a history of decline; on balance, black Atlantans, or at least many of them, are better off at the end of the narrative than they were at the beginning. Finally, *Courage to Dissent* pays almost no attention to the dominant population except insofar as they impinge on blacks in Atlanta; it focuses

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1. AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* 17 (2010).

2. *Id.* at 329.

3. TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* 7-9 (2011).

tightly on African American civil rights activists, broadly defined.

Nevertheless, the two books have important similarities beyond the fact that they are both histories written by law professors. I will first describe the books, then address a set of questions that both raise and that neither satisfactorily answers. That is not a criticism; it is a token of the significance and difficulty of the issues they point us toward.

Two Faces revolves around a paradox that arose soon after Europeans settled the purportedly New World and that has persisted, in various incarnations, ever since. The paradox centers on the relationship between freedom and domination; is it possible for a large group of people to be politically, economically, morally, and behaviorally free without imposing control over, or even engaging in genocide against, other groups of people? More simply, can republican freedom persist without being embedded in a settler or colonial society? And if they do coincide, must the imperatives of control dominate opportunities for individual or collective freedom?

Rana develops answers to these questions through a series of dense but well controlled chapters focusing sequentially on colonists' relations with England prior to and during the American Revolution, the rise and distortion of Jacksonian populism, the resurgence of populism in the Gilded Age, the transformations of Progressivism and the New Deal, and more briefly, the contemporary political scene. One cannot really summarize his complex and subtle arguments briefly, but I can perhaps convey their flavor while urging readers to engage with the book itself.

During the early colonial period, Rana tells us, England treated colonists more like the Irish and Native Americans than like Englishmen — that is, almost as slaves and certainly as second-class citizens. The settlers, however, eventually asserted their rights as Englishmen, while “reinforcing the dichotomy between friend and enemy, between those included as free citizens and those excluded as threats to settler freedom.”⁴ The growing British empire's effort to treat all subjects — white Americans, nonwhite Americans, and nonwhites around the world — similarly became unacceptable to the Americans, who had been developing “a remarkably robust account of freedom, one that saw self-rule as requiring economic, political, and spiritual independence.”⁵ Hence, revolution.

During the period of Constitutional framing, western farmers further developed a robust sense of republican freedom. Westerners claimed “an identity between the common good and the interests . . . of the laboring community” and required that governments be “local producerist democracies” run by energetic and accountable legislatures.⁶ However, over the first few decades of the nineteenth century, “this populist account of empire and freedom . . . slipped into . . . xenophobia and anti-governmentalism.”⁷ That distortion occurred because of rulers' perceived need for a strong central government to protect the nation against the political powers of England and France, and because of the economic forces of international mercantilism. “Coastal

4. RANA, *supra* note 1, at 22.

5. *Id.*

6. *Id.* at 102.

7. *Id.*

elites” took political control, reducing republican populists to “policing state activity.”⁸ At the same time, the construction of an external empire “became synonymous with the internal application of a coercive authority properly applied only to those outside the bounds of social inclusion, such as natives and blacks.”⁹

And so it went. A robust, egalitarian, democratic form of republican populism re-emerged after the Civil War, only to be distorted once again into racism and hostility to Indians under the pressure of settlers’ desire for western lands and an “external imperial prerogative.”¹⁰ And once again, elite politicians and corporate leaders responded to populist claims by asserting national authority, both political and economic. By the turn of the twentieth century, the United States was becoming more bureaucratic, less sharply distinguished “between free citizen and stratified subject” (at least for white immigrants), and yet further removed from “the emancipatory promise implicit in settler society.”¹¹

The twentieth century was even worse; by now, politics “deemphasized the very ideal of freedom as self-rule — reducing it from a central role in collective discourse to a voice of increasingly isolated dissent.”¹² Stratification rose: Asians were forbidden to immigrate; even white immigrants were treated as outsiders, at least until naturalization; Indians were stripped of their land; women were admitted to only a thin and largely meaningless enfranchisement. More broadly, “full membership in the community lost its ethical basis in either economic independence or democratic self government” while elites promoted American assertiveness around the world, “imagining that this power could provide Americans with a sense of shared purpose and collective meaning.”¹³ The search for security replaced “participatory control” as “society’s guiding commitment,” to the cost of people and countries outside as well as within American borders.¹⁴

And that, roughly, is where the United States now rests: “plebiscitary politics takes place against a backdrop in which basic decision making is . . . centralized at the top in state and corporate entities, with most Americans enjoying few of the practical experiences that were meant to mark free citizenship.”¹⁵ Despite this dour conclusion, Rana wants to end on an optimistic note, so he turns to the 1960s civil rights movement as a model for reinvigorating a commitment to republican freedom without the distortions and harms of imperialist land-grabs and subordination of some members of the polity. He reminds readers that civil rights activists in the 1960s endorsed not only racial equality but also class equality and an end to American imperialist adventures abroad. “The concerted activity of men and women deemed unfit” — that is, African Americans, new immigrants, and feminists — could once again lead to “the revival of emancipatory ambitions.”¹⁶

Two Faces is powerful, provocative, deeply researched, and sometimes irritating.

8. *Id.* at 103.

9. *Id.* at 104.

10. *Id.* at 178.

11. *Id.* at 182.

12. *Id.* at 235.

13. *Id.* at 240.

14. *Id.* at 240.

15. *Id.* at 326.

16. *Id.* at 348.

What Rana calls “social criticism” in the service of “tomorrow’s latent possibilities” has a whiff of law office history.¹⁷ That is not quite fair to this book; Rana is a much better historian than that pejorative phrase implies. However, he does emphasize some features of American history while ignoring others. To cite a few examples: Rana does not discuss northern states’ (slow and halting) abolition of slavery around the time of the Revolution, or efforts at the same time by some southern states to find ways to reduce or eliminate enslavement. He discusses Thomas Jefferson’s philosophy of minimal central government but not his presidency, which considerably expanded the central government’s power. He tends to treat incorporation of European immigrants as a fairly smooth, foreordained, uncontested process (“immigrants have gone from being the engine of settler expansion and thus worthy of full incorporation to . . . dependent labor”), underplaying the intense hostility to Catholics, the denigration of Eastern and Southern European immigrants, and the draconian 1924 immigration law that prohibited most white Europeans from moving to the United States.¹⁸ Rana also ignores the fact that until a few decades ago, isolationism was the province of the right, while intervention in other states’ affairs in order to promote a set of values was the province of the left. It was liberals who felt the necessity of becoming involved in European battles in 1940, and conservatives who wanted nothing to do with foreign affairs. So this book needs to be weighed against other histories of American political development, both to correct its flaws and to show off its insights.

In contrast to *Two Faces*, Brown-Nagin’s *Courage to Dissent* pays little attention to the settlers and focuses almost entirely on one subordinated group — black political activists in Atlanta, Georgia. The tension driving its narrative arc is not between two powerful normative ideals uneasily yoked together, but rather among strategies and tactics all aimed at pursuing the same ideal, racial equality and justice.

Brown-Nagin seeks to show how “local black community members acted as agents of change — law shapers, law interpreters, and even law makers. . . . This bottom-up narrative makes intraracial conflict central to the legal history of the civil rights movement.”¹⁹ Her first period is that of “pragmatic civil rights lawyering” in the decades after World War II; it focuses on A.T. Walden. The attorneys leading Atlanta’s civil rights community were committed to racial justice. They were also committed to slow, careful negotiations with powerful whites so as to preserve whatever status Atlanta’s black elites had acquired, and to enable more blacks to attain “political influence . . . and . . . personal autonomy.”²⁰ Pragmatic lawyering “privileged politics over litigation, placed a high value on economic security, and rejected the idea that integration (or even desegregation) and equality were one and the same.”²¹ Walden and his allies negotiated tenaciously but carefully for voting rights and the right to practice law on equal terms with white litigators (as well as access to a golf course); they also gingerly took on the questions of segregated housing, schools, and public facilities. Brown-Nagin concludes

17. *Id.* at 17.

18. *Id.* at 342-43.

19. BROWN-NAGIN, *supra* note 3, at 7-8.

20. *Id.* at 2.

21. *Id.*

in this section that, even though Walden and his associates achieved “measurable improvements” in a few arenas, “Atlanta’s white elites ceded very little ground.”²²

By the early 1960s, two different groups had pushed aside pragmatic lawyering in favor of “legal liberalism” through litigation by the NAACP and LDF, and direct action by college students. Although both groups agreed that Walden’s strategy of elite negotiation was insufficient — some students called him an Uncle Tom — they disagreed on what should be done instead. The litigators sought to follow the dictates of the national NAACP in pursuing school and housing desegregation as the path to racial justice and equality. But for the students, “the NAACP’s litigation campaign had a negative, rather than a positive or inspirational, relationship to the civil rights movement;”²³ they promoted sit-ins and disruption of politics as usual. Brown-Nagin traces the complicated three-way dance among the pragmatic elite negotiators, the intense but cautious litigators, and the passionate but inexperienced students. Sometimes the groups worked together to their mutual benefit; sometimes they fought each other to a standstill; and eventually the maturing student movement developed a fairly radical strategy of “movement lawyering.”

The history took a fascinating turn in the 1970s. A set of poor black mothers in Atlanta’s ghetto accused the leaders of the former student movement of being cautious and complacent, just as the latter had accused the pragmatic lawyers a decade earlier. The issue of class came to the fore. Movement lawyers turned out to be primarily committed to protecting the jobs of black middle class teachers and school personnel through a strategy of negotiating for black-controlled schools rather than desegregation. The welfare rights activists, in contrast, were primarily committed to improving the quality of schooling for deeply poor children. They believed this goal was more attainable through desegregation than through black-controlled separate schools. By 1980, when *Courage to Dissent* ends, the advocates for the poor had mostly lost; their white lawyer, Margie Hames, took the loss “hard; [s]he knew it hadn’t happened to her, it had happened to the children.”²⁴

Like Rana, Brown-Nagin wants to end on an upbeat note, and the effort to do so is less jarring in her case given that the book eschews the tone of a jeremiad. *Courage to Dissent* maintains that all of the quarreling actors had plausible reasons for their choices, and that dissent within the black community is to be admired rather than deplored; “[t]he gift they pass to the present generation is not a doctrinaire set of goals or methods but the tradition of protest itself, the will to object to injustice, in some way.”²⁵ That slightly bland conclusion may seem thin gruel to those who prefer Rana’s more insistent critique. But it is sharpened by another of Brown-Nagin’s summary observations: her analysis “has revealed a remarkable point of convergence among lawyers and activists for racial change. They seldom gave high priority to the concerns of the black working class.”²⁶ That conclusion sits ill with the former one, but it is in my view more powerful, even if

22. *Id.* at 128-29.

23. *Id.* at 134.

24. *Id.* at 426 (internal quotation marks omitted).

25. *Id.* at 432.

26. *Id.* at 434.

not upbeat.

Courage to Dissent lacks the occasional tendentiousness of *Two Faces*, but it does share an irritating flaw. Both authors, especially Brown-Nagin, apparently believe that they must diminish the work of predecessors in order to enhance the significance of their own book. Earlier work on similar subjects is described repeatedly as shallow, wrongly focused, too celebratory, too narrow, or inadequate in some other way. In such mature works of scholarship, this tendency to set up straw men in order to knock them down is not only annoying but also unnecessary. These books stand on their own, even if earlier works are just as good.

I have described these books in some detail for two reasons. First, they both make rich, complex, subtle arguments that are well-grounded in research and will reward careful reading. Second, the set of questions that they raise when placed in conjunction with one another are only intelligible if one has a good idea of what each author is arguing.

The first and perhaps most urgent question that *Two Faces* and *Courage to Dissent* point us toward is whether it is possible to promote a robust practice of freedom and democracy for some without also promoting or permitting the exploitation of others. That is Rana's central theme, and it emerges with increasing force as Brown-Nagin's narrative develops. It is not a new question; the superb historian Edmund Morgan developed it in *American Slavery, American Freedom*,²⁷ and I followed his lead in my own work on *The New American Dilemma: Liberal Democracy and School Desegregation*.²⁸ However, each book explores it with integrity and insight. The force of Rana's analysis is that, at least in the history of the United States, exploitation not only goes hand in hand with republican freedom but also trumps it. The force of Brown-Nagin's analysis is that even those with the strongest commitments to justice and equality end up chiefly promoting their own interests and the interests of people like them; inadvertence may not feel very different from exploitation if one lives in a ghetto with no chance of mobility.

A second theme of both books is generational change. This too is not a new point, nor do the authors claim that it is, but again both books contribute effectively to an old stream of research. *Courage to Dissent* is largely structured around the theme of almost Oedipal succession. At intervals of roughly a decade apart, a new set of civil rights activists scorns the choices of the previous set, only to be scorned in turn when they have fought their way to prominence. Nonetheless, no generation completely replaces the choices of its predecessors, so the array of potential strategies for activism expands over time. Some later generations are more effective than earlier ones in promoting racial freedom and justice, but one cannot claim that wisdom or generosity of spirit also expands over time. *Two Faces* pays less attention to explicit generational challenges, although Rana shows how actors sometimes react against paths laid out by their predecessors. In his book, wisdom and generosity of spirit are on a downhill slide; he never fully explains how the early Americans were able to develop a robust sense of

27. EDMUND MORGAN, *AMERICAN SLAVERY, AMERICAN FREEDOM* (1975).

28. JENNIFER HOCHSCHILD, *THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION* (1984).

republican freedom, given how readily their successors succumbed to distorting and narrowing the views they inherited. A third question is related to the second: over decades or centuries, has the United States become less racially hierarchical, or more racially fair, than at some earlier point? I think Brown-Nagin would say yes; even though the working class and poor never receive their due, the black Atlanta population as a whole is better off in 1980 than it was in 1945. Does that imply that generations are in fact successively more wise or generous of spirit, or that Americans may figure out how to promote freedom and democracy without having to exploit others or deny them freedom and democracy? Since these are my questions and not Brown-Nagin's, she does not answer them. It is less clear that Rana believes the United States to have become less hierarchical and more fair over time. He points to the indisputable facts that women gained the franchise, white immigrants were incorporated, blacks were freed from enslavement, and colonies such as the Philippines were given up. But, in an eerie and perhaps unintentional echo of de Tocqueville's marvelous passage about a nation of sheep with a governmental shepherd, he also concludes that Americans have abandoned republican self-government and public engagement in favor of security. Non-white immigrants have become a new source of dependent and unfree labor, and perhaps the cycle of settler exploitation is beginning again.

Whatever is happening to American exploitation and freedom, these books are evidence that something good is happening in law schools and history departments. Seldom is a scholar's first book as important and compelling as these two are; I look forward to reading whatever they produce in the future.

