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RAGE TO DISSENT

By Karen Guth

A Furman graduate's new book about the civil rights movement highlights the contributions of lesser-known agents of change — and reveals the capacity of every citizen to shape the law.

THE CIVIL RIGHTS ERA is one of the most studied — and celebrated — periods in U.S. history. To narrate the events of those decades is, after all, to tell a story of redemption.

The story begins with the sins of slavery and Jim Crow, reaches a high point with groundbreaking court decisions and legislation, and concludes with the promise of never-ending progress. As Tomiko Brown-Nagin '92 puts it, "It's a narrative of black progress and uplift, and it makes us feel good."

But is it accurate? And perhaps more important, does it help us respond to challenges we face today? In both instances, Brown-Nagin thinks not.

In her new book from Oxford University Press, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement*, this Furman graduate — now the Justice Thurgood Marshall Distinguished Research Professor of Law and Professor of History at the University of Virginia — tells a more complicated story about historic civil rights struggles and what they mean for us now.

Challenging the standard narratives in both legal and social history, Brown-Nagin blends the two to provide a richer picture of the civil rights era in Atlanta. Rather than placing lawyers, the courts, and landmark legislation front and center, or focusing solely on the activists on the ground, Brown-Nagin's "bottom-up" approach to legal history looks carefully at the important relationship between ordinary people and the law.

This approach reveals, as she writes in *Courage to Dissent*, how "local black community members acted as agents of change — law shapers, law interpreters, and even law makers." The narrative brings into view less well-known but important figures and illuminates the diversity of often-conflicting responses to desegregation within the black community.

But why? Why would an accomplished professor at one of the most distinguished law schools in the country tell a story that takes the U.S. Supreme Court and the lawyers of the NAACP Legal

Defense Fund out of the limelight? Why tell a narrative highlighting the role of local lawyers and other black leaders often labeled "Uncle Toms" for advocating a more cautious and gradual approach to ending segregation? Why bring into relief the intraracial conflict among black activists?

According to Brown-Nagin, "When we remember the past in a way that makes the activism of this wider collection of lawyers and activists visible, it makes a crucial difference in how we view both the past and the world today. It is the difference between seeing and not seeing possibilities, avenues, and tools for change."

ORIGINALLY FROM TROY, S.C., and among the first generation in her family to attend a desegregated high school, Brown-Nagin's own keen ability to "see possibilities" proves central not only to the civil rights story she tells, but to her own.

Her parents, Willie J. and Lillie C. Brown, grew up in poverty as a result of the disadvantages associated with Jim Crow, and attended segregated schools in South Carolina. Unable to pursue higher education themselves, Brown-Nagin's parents "emphasized the importance of education" and the idea that "knowledge was power."

It was a lesson their daughter took to heart. After graduating at the top of her class from Greenwood High School, she attended Furman on a Lay Scholarship, the university's highest academic award. While at Furman, she made the most of every opportunity presented to her. In addition to her full scholarship, she received a Truman Scholarship (a highly competitive national award for students planning careers in public service), graduated *summa cum laude* and Phi Beta Kappa, won numerous history department awards, and received the Donaldson-Watkins Medal for General Excellence as the top woman graduate.

As professor emerita Judy Bainbridge says, "Even in the quite remarkable galaxy of seniors" that constituted the Furman Class

Constance Baker Motley is the subject of a forthcoming biography by Brown-Nagin. Motley, a key NAACP attorney, was lead counsel for James Meredith (beside her) during Meredith's successful 1962 battle to enroll at the University of Mississippi.



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of 1992, “Tomiko was the brightest star. What I remember best about her is her absolute determination to excel and her inability to give anything less than 105 percent. She expected so much of herself.”

Brown-Nagin remembers Bainbridge as the “den mother of the high flying students” and cites her encouragement as playing an important role in shaping her career. “She was a real cheerleader and pushed those of us she thought had potential. And she was a real cheerleader for Furman — always trying to make Furman a better institution.”

But encouragement or not, from Brown-Nagin’s perspective, striving for excellence was simply the appropriate response, given all that her parents and others who fought against Jim Crow had sacrificed. “I owe a debt to those who worked to change the world for me,” she says. “The least I can do is be worthy of their efforts by working to the best of my ability. . . . I want to show by example that it is in society’s interests to nurture the talents of students not born into privilege. Exclusion costs not just the individual subject to it, but also costs society in terms of lost human capital.”

Initially, Brown-Nagin planned to direct her efforts toward becoming a civil rights lawyer like her childhood hero, Thurgood Marshall. But after taking courses in Western Civilization and modern U.S. history with Furman professor Marian Strobel, Brown-Nagin discovered her love for history. Brown-Nagin was impressed by Strobel, who she describes as “smart and passionate. As one of the few women in the department, she stood out and made a positive impression upon me.”

The feeling was mutual. Strobel remembers that Brown-Nagin sat in the front row in Western Civilization and, even as a freshman, knew everything. “I thought this young woman was a keeper,” says Strobel, “and I desperately wanted her for a history major.”

Brown-Nagin did declare a history major, but choosing whether to pursue graduate work in history or stay true to her goal of becoming a lawyer proved difficult. “I came to this moment where I was at a crossroads,” she says. “For so many years I had assumed that I was going to law school, but then I developed this interest in history and just didn’t know what I should do. Should I go along with this newfound love? Or should I continue along the path that I had always thought I would pursue?”

Although her Truman Scholarship application demanded more clarity than she had at the time, Brown-Nagin soon saw a possibility

that turned this seemingly “either/or” decision into a “both-and” decision: She would pursue a law degree and a Ph.D. in history at the same time. “The long and short of it is that, over time, I realized I could have my cake and eat it too,” she says.

Of course, having one’s cake and eating it too is usually easiest if the “cake” is in the same place. But for Brown-Nagin, the best history “cake” was at Duke University, where she wanted to study with Strobel’s doctoral advisor, social historian William Chafe. The best law school “cake,” however, was at Yale University.

So began what Brown-Nagin describes as “the longest commute.” After applying and gaining admittance to both programs, Brown-Nagin deferred her admission to Yale to complete her first year at Duke. For the next several years, she attended Yale and simultaneously completed her doctoral requirements at Duke.

After finishing her law degree in 1997 and her doctorate in 2002, she went on to hold fellowships at New York University School of Law and at Harvard Law School, where she has also served as a visiting professor. From 2003–06 she was an associate professor of law and history at the University of Washington School of Law in St. Louis. She then joined the law faculty at Virginia where, while directing the law and history program, she teaches American social and legal history, constitutional law, education law and policy, and public interest law.

AS HER ACHIEVEMENTS INDICATE, Brown-Nagin did not simply see possibilities; she turned them into realities. But she had doubts about whether opportunities were truly available to everyone. While in high school she noticed that not everyone was as prepared as she was to take advantage of the opportunities formal equality afforded them. Desegregation had worked out well for her, but what about other students of color?

“What was troubling for me about that experience,” she says, “was that the schools, though integrated overall, were internally segregated. As I went through school I was easily always the only person of color in advanced classes, and I had pretty hard questions about whether the experience overall had been fruitful for the vast majority of students of color. It was great for me and has been great for me, but I wonder if that’s true at large.”

In addition to helping Brown-Nagin understand the perspective

of those such as Atlanta lawyer A.T. Walden, whom she refers to as a “pragmatist” for advocating a more gradualist response to school desegregation, these questions fueled her graduate studies. They prompted her to reflect on the achievements of the civil rights era, the difference between *de jure* (imposed by law) and *de facto* equality, and how social policy should function.

“I wonder about what we should think about *Brown v. Board of Education* overall if it had such a disparate impact,” she says. “The decision was very useful in that it changed our society and cleansed our social law of the sins of Jim Crow, and it was fruitful for people like me, for people who were the best prepared to take advantage of the opportunities that were opened up. But it strikes me that in the ideal world, we would want our law and our policy to be able to make change for those who are not the best prepared.”

The combination of her training in both legal studies and social history provided a distinctive vantage point from which to reflect on these questions. It enabled Brown-Nagin to consider the importance of context and, in particular, the roles that poverty and class played in shaping black communities’ diverse strategies and tactics during the movement. “Studying in the history department with Chafe and with the social historians,” Brown-Nagin says of her time at Duke, “was really critical for developing my perspective on constitutional history.”

So was clerking for Judge Robert Carter from 1997–98. Carter, a U.S. district court judge in southern New York, was one of two litigators of *Brown v. Board of Education* and general counsel for the NAACP. According to Brown-Nagin, Carter “encouraged a critical perspective which made quite an impact on me because he had been right there doing the work of the movement.” She saw that “if someone who had a hand in the movement was not interested in telling a unitary, simple narrative,” then she need not feel pressured to do so.

Indeed, one comes away from reading *Courage to Dissent* realizing that had Brown-Nagin told another version of the standard civil rights narrative, many of the moral and political lessons would be lost. The book is just as much about the importance of a participatory democracy now as it is about the civil rights struggles of the past. At its heart lies an argument for “thick engagement in a meaningful democracy.”

“Often, when one reads narratives about the law, one gets the sense that the only actors who are important are people who already have power — justices, lawmakers, legislators — and that average, everyday people are powerless,” says Brown-Nagin. “I think that’s just false.

“In our recent history there’s nothing that belies that point of view better than the civil rights movement. This is why I want to tell a story about the law and the movement that makes clear that everyday people — not elites — working with lawyers, have a hand in change. I think that’s an important lesson for people today to be reminded of, because

there’s so much cynicism about the ability of the average American to participate and do so meaningfully. All of the laws that were transformative did not happen because some Supreme Court justice thought that it was a good idea, but because people demanded change.”

WHAT MIGHT HAVE SEEMED like a counter-intuitive narrative for a law professor to tell now seems straightforward. In de-emphasizing the role of the U.S. Supreme Court and elite lawyers, *Courage to Dissent* reveals the capacity of every citizen to shape the law. Although most view the law as an elite (and mostly white) profession, Brown-Nagin’s approach reveals that “lots of different actors can find inspiration in the law and in constitutional concepts and the notion of equality.” Even those excluded from the political community “can call upon the ideas and concepts and invoke them as they’re trying to make change outside of the courts.”

As a teacher, Brown-Nagin stresses the importance of this tradition that she calls “lay lawyering.” In a recent team-taught course, “What Lawyers Can Learn from the Life of Dr. Martin Luther King,” she and

her students explored the relationship between average citizens and the law during the civil rights movement. She notes that even King, who is “traditionally thought of as a minister,” was interested in more than the moral law.

“In point of fact, he was quite interested in constitutional law and the Declaration of Independence.

In the course, we talked about how he relied on constitutional precepts in all of the signal campaigns of the civil rights movement to rally people and activists around the cause of desegregation.”

Brown-Nagin’s next book, *The Only Woman in the Courtroom: Constance Baker Motley and Twentieth-Century Struggles for Equality*, will continue to explore the role of lesser known activists and lawyers in the battle against segregation. In what will be the first biography of Motley, one of the main litigators in Atlanta desegregation cases and the first African-American woman appointed to the federal bench, Brown-Nagin hopes to “shed new light on the process of judging, including how socio-economic and professional background impact judging.”

But while she enjoys producing books and articles that are well-received, the most rewarding aspect of her work, she says, is interacting with students. She credits her approach to her own experiences at Furman, where she had close, personal relationships with professors. “I love mentoring,” she says. “It’s just a joy to touch and shape the lives of students. I think that’s because I had such wonderful mentors myself.” [F]

Karen Guth, a 2001 graduate, recently earned a Ph.D. in religious ethics at the University of Virginia. She will begin a postdoctoral fellowship at Emory University this fall.