A Newly Progressive Political Economy?

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Date : January 12, 2018

Sabeel Rahman, Democracy Against Domination (2016).

In *Democracy Against Domination*, Sabeel Rahman has written a book for our time: a serious intellectual effort to grapple with the problems posed by rising economic inequality and concentration of power, and the role of democratic ideas and processes in responding to these challenges. The book is wonderfully written, impressively broad as well as deep, and offers an original and interesting thesis—the idea that the concentration of economic power in the hands of a powerful few poses an existential threat to individual freedom, and that the solution to this problem lies not in elite-driven forms of "managerial government," but rather in individual freedom itself. He argues, in other words, that the response to this increasing form of economic domination should be a call for new forms of economic policy and regulation driven and shaped by a highly popular, participatory form of democratic government which calls on the power of "the liberty of the ancients" (compare Stephen Breyer's *Active Liberty*).

This puts the book firmly in the genre of what Jeremy Waldron has called, and Rahman himself labels, "*political* political theory." Rahman links this theoretical or philosophical argument with a richly historical account of the role of populist movements responding to the "First Gilded Age" in the 1920 and 30s. He thus connects his call for a new form of progressive populism—or popular challenge to corporate power and privilege—to deep historical roots. In this way, his book is similar to another excellent recent book on a related topic, *The Crisis of the Middle-Class Constitution* (2017), by Ganesh Sitaraman. Together, one might in fact argue that Rahman, Sitaraman and others are contributing to developing a new—or at least renewed—form of *historical-political* political theory.

The book was on the top of my reading list in part because, like Rahman (and Sitaraman), I have been spending a significant amount of my time in recent months thinking about the challenge of rising economic inequality, and what it means for democracy and public law. Like other leading current progressive intellectuals, Rahman is right to point to the importance of corporate power as a threat to individual freedom, as well as individual equality. And I share Rahman's view that we need to be attentive to the connection between economic power and democracy: economic inequality tends to undermine political equality and thus also democracy, and yet democratic processes are critical to our ability to combat the creation and misuse of certain kinds of market power. Looking outside elite-driven processes of democratic control and regulation thus seems one promising way to break this vicious circle. Rahman, in turn, points to this—and a concern to help build popular support for and trust in government intervention in the economy—as a key virtue to popular modes of democratic government in the economic sphere.

Unlike Rahman and Sitaraman, however, I am ultimately a 'Chicago egalitarian' (my first academic position was at the University of Chicago Law School). This means that I think I have more ingoing sympathy than he does for the role of managerial expertise, and markets, in responding to the problems he identifies. This also left me wanting to emphasize certain qualifications to the argument, as well as to ask several questions as I read the book … by happenstance on a recent flight from Chicago.

First, it seems important to emphasize that Rahman does not mean wholly to displace what he calls "managerial"—i.e. elite, evidence-driven—responses to today's economic problems. Instead, he

envisages a form of productive engagement between experts and democrats, which can motivate and push elite processes to respond to the problems of economic domination and inequality—but still retain many of the benefits of expertise and evidence-based policy. Thus, in chapter 6, he proposes a move toward more "structuralist" modes of regulation that do a better job than current practices of balancing normative, democratic, and expert elements. And similarly, chapter 7 talks about administrative procedural structures that could better balance these elements, for example by using participation in regulation alongside expertise, as Rahman suggests the Consumer Financial Protection Bureau did for much of its early operation. This may seem a quite obvious point to many readers, but in an age in which facts and expertise are increasingly being attacked by the populist right, for quite different reasons, it seems important to make this point clear.

Second, what is the scope in Rahman's account for "managerial" government in times of crisis? Rahman averts to this issue in the introduction to the book but leaves its resolution for another day. But it seems one of the key areas where further debate is warranted, based on the intellectual structure and catalyst Rahman's own account provides: Crisis, of course, is a potentially elastic and malleable category, and Rahman would surely not want a crisis-based exception to swallow his entire emphasis on democratically mediated and participatory approaches to economic governance. But—conceptually at least—there are also certain economic problems that call for an extremely rapid response to be effective. Think about the response of the Fed and US Treasury to the 2008 financial crisis: a delayed response to saving Lehman would have had no effect. Delaying fiscal stimulus or monetary measures designed to rally the economy would have meant that such interventions, when they did happen, were far less effective. Indeed, one of the key predictors of the success of stimulus in response to the 2008 crisis was the scale and timing of the response: economies that spent too little, too late, are still effectively in recession.https://wordpress.org/plugins/redirection/ ((See e.g. Christina Romer and David Romer, *What Ends Recessions?*, 9 **NBER Macroeconomics Annual 13** (1994).)) When Rahman points to the expansion of the technocratic capacity of the Fed as a problematic response to the crisis, I therefore wondered whether he might have done more to talk about the issue of timing – is this a problematic response if it is designed to increase the capacity of institutions to true crises, rather than ongoing economic management?

Third, and perhaps most important, when Rahman talks about "economic domination" does he have any limiting principle or case in mind? Clearly Rahman is right to go beyond contexts in which firms enjoy monopoly power in the product market when thinking about economic domination. Even competitive firms may have significant market power in the labor market, which thus gives them broad power to engage in 'domination'—or what Rahman defines as the arbitrary interference with workers' freedom. (P. 66.) But does this mean that all people employed subject to domination by their employers (including law professors, for example)? Does it matter how much human capital they have, or whether they are working in a competitive labor market?

Part of the answer may ultimately lie in whether, when he talks about "domination", Rahman's target is ultimately inequality, unfreedom, or a lack of basic human dignity: the three concepts are, of course, deeply interconnected but also distinct. ((See, e.g., John Rawls, **Political Liberalism** (1993).)) If it is truly inequality we are concerned about, for example, domination will occur in almost all situations in which the marginal product of capital is higher than the marginal product of labor. In this context, domination may be less severe for high-skilled workers compared to low-skilled workers. But all workers will experience some degree of domination. (This was in fact the argument of many early 20th century economic progressives, whose thought Rahman so lucidly excavates.) The returns to capital have steadily increased, relative to returns to labor, during the 20th century, ((See, e.g., Thomas Piketty, Capital in the Twenty-First Century (2013).)), and thus it will be capital rather than labor that has the upper hand in modern employment negotiations.

If domination, in contrast, is a problem of *arbitrary* interference with individual freedom, not all workers are likely to experience this kind of interference: in a competitive labor market, employers who impose limits on worker freedom must pay a price for that interference. If they fail to compensate workers, many workers will simply leave and go to work for another employer. This also creates disincentives for employers to impose arbitrary limits on worker freedom—i.e. limits with no real value to the employer, or with benefits far outweighed by the costs to workers. For firms, only limits that have real economic value are worth paying for, and thus only those kinds of limits will be adopted in a competitive labor market. The same is simply not true, however, where the labor market is not fully competitive: firms can impose costs on workers in this kind of market, without being required to pay for it, and thus all workers will be susceptible to domination of this kind. This might also be one way of connecting the idea of domination to the longstanding emphasis of progressive economic thinkers on anti-trust law. But as Rahman notes in chapter 3, progressive-era thinkers also took a much broader view of the kinds of "structuralist" interventions that could be legitimate and appropriate as a means of combatting economic domination: they also emphasized the role of public utilities (or "stringent public oversight, requiring fair pricing and equal access" for firms producing social necessities (P. 119)), and forms of corporate governance that maintained a meaningful separation between corporate ownership and control.

Finally, domination could be understood in terms that combine a focus on autonomy and dignity. For many workers, for example, the imperatives of survival necessarily require that they engage in market labor. When individuals are working against a backdrop of economic coercion of this kind ((compare Robert L Hale, *Coercion and Distribution in a Supposedly Non-coercive State*, 38 **Political Science Quarterly** 470 (1923).)), we might also take a much broader view of what counts as an arbitrary or unreasonable interference with their autonomy: any limit that undermines the capacity of individuals to enjoy full human dignity, or the capabilities identified by scholars such as

Martha Nussbaum and Amartya Sen (e.g. rest, play, privacy, emotional wellbeing, and control over their physical environment) would likely count as domination in this context. Rahman himself does not refer to the idea of human dignity, or capabilities approach, but he clearly has strong sympathies for it: the thick conception of agency and freedom he constructs from the ideas of Dewey and Brandeis, and then again in the closing section of chapter 8 on "Democratic Freedom," has strong resonances with this kind of understanding. An understanding of this kind would also suggest that domination is extremely broad, but not universal, in the modern era: it occurs wherever employers impose limits on workers who are not wealthy, and those limits have the capacity to impinge on fundamental human dignity in the sense defined by scholars such as Nussbaum and Sen.

How one answers this question may also have some relevance for what we think the respective roles of different institutions are in responding to the problem: the great value of *Democracy against Domination* in this context, however, is that it causes us to look at these questions anew.

Rahman proposes both the creation of a new set of regulatory bodies capable of making the structuralist interventions we so urgently need today to address the 21st century version of economic domination and the kind of bottom-up democratic politics capable of generating and sustaining support for this kind of intervention. It is, in this sense, a work of both great pragmatism, as well as principle, and an important intellectual leap: in ways not seen since the progressive era, it helps bridge the gap between economic and democratic theory to propose a new—and exciting—form of (small and capital D) "democratic economics."

Cite as: Rosalind Dixon, *A Newly Progressive Political Economy?*, JOTWELL (January 12, 2018) (reviewing Sabeel Rahman, **Democracy Against Domination** (2016)), https://intl.jotwell.com/newly-progressive-

political-economy/.