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In the past, Michael Sandel has inveighed against modes of debate that bracket moral questions and exhorted Americans to discuss controversial issues in openly ethical terms, without telling us whose moral conception should prevail. His inviting and probing style, coupled with his insistence that you couldn't have a just society without being judgmental, has made him an academic sensation.[1] The title of his new book, *The Tyranny of Merit,*[2] disparages merit, but is coy about whether the idea is problematic in the abstract or in practice. About halfway through the book, I felt that he had finally slipped off the fence on the question under consideration. Merit was not a laudable concept that should be saved. As the pace of the book quickened, so Sandel became more urgent in trying to persuade us there is something intrinsically corrosive about the idea itself.

Sandel contends that a meritocratic manner of approaching the important things in life is objectionable for two reasons. First, it may actually lock-in inequality rather than ameliorate it by layering a sense of unjustified desert on top of existing inequities. Second, obsession with merit

[1] MICHAEL J. SANDEL, THE MORAL LIMITS OF MARKETS (2013); MICHAEL J. SANDEL, JUSTICE: WHAT'S THE RIGHT THING TO DO? (2010); MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1998).
[2] MICHAEL J. SANDEL, THE TYRANNY OF MERIT: WHAT'S BECOME OF THE COMMON GOOD? (2020).

fosters "hubris" among society's winners and "humiliates" the losers through a series of ultracompetitive social experiences.

Sandel is at his best when he painstakingly unpacks the idea of merit into its component parts, illuminating both its appeal and why its "logic is corrosive of commonality" (p. 59). He also fruitfully shows how philosophy has accommodated the rise of meritocracy by valorizing higher education, which he says has worsened credentialism and paved the way for governance by technocrats. He argues, for instance, that Hayekian economic libertarianism and Rawls-inspired social welfare liberalism tiptoe around the myth of merit even though both "reject the idea that economic rewards should reflect what people deserve" and both deny that principles of justice should reward merit (p. 133). Despite laudable beginnings, meritocratic attitudes "are not necessarily softened or displaced" by either philosophy (p. 144).

I applaud Sandel's success in demonstrating that the *ideology* of merit has metastasized into a serious obstacle to equality, though Sandel himself does not speak in quite this way, preferring the discourse of ethics that is a staple of moral philosophy. Ideology may be a superior method of conceiving of the dilemma, however, because meritocracy is a belief system sustained by "pull yourself up by your bootstraps" mythology, waves of immigration built on the American Dream, and many institutions that reward educational attainment and credentialism.

If we make this turn, we will realize that it's not merely a matter of selecting a better way of talking about a social issue and avoiding less ideal ones, but instead a problem that requires reprogramming interlocking systems of thought and fostering alternative ways of life. Instead of a single ethic that's the culprit, the problem reveals itself to be an entire network of complicated and nested values, institutions, norms, policies, and habits.[3] Ideologies can inspire people to

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[3] CASS R. SUNSTEIN, HOW CHANGE HAPPENS (2019); CRISTINA BICCHIERIA, THE GRAMMAR OF SOCIETY (2002).

commit to grand visions, but they can also block productive forms of solidarity by leading people to act against their own self-interest.

Treating meritocracy as an ideology rather than an ethic also teaches that it's never enough to offer stand-alone solutions; reform must come in packages. Even the way we approach politics can't be reduced to a global moral discourse; instead, we make more progress by showing facility with a suite of discourses. Another valuable lesson is that there will surely be unintended consequences. Tugging on one part of the social fabric may make the area where we've momentarily trained our eyes more beautiful, but it could also rip open seams in other, neglected sections of the tapestry. Sometimes it's worth pressing on despite the risk of introducing imperfections; other times, change won't be worth the candle.

With these thoughts in mind—that meritocracy is a tenacious ideology, that meaningful change comes not from persuasion but something closer to conversion, and that reformers must be on guard for unintended effects of laudable proposals—I take up Sandel's more specific arguments. First, I reveal the underlying tensions in Sandel's logic, which accords primary moral value to the form of politics over outcomes, and status over materiality. Given the complex culture of meritocracy, I question whether its excesses can be curbed, or gross inequality reduced, with an approach that fails to emphasize material outcomes.

Second, I assess Sandel's proposal to reform university admissions by introducing a lottery system. Because the proposal could be realistically implemented only at a handful of highly selective institutions, its impact on meritocratic faith or tangible inequality is likely to be modest. Worse, randomizing distribution may cause a backlash among communities that have (over)invested in the means to compete for scare slots at elite institutions, which would undermine Sandel's objectives.

Third, while Sandel rightly observes that meritocracy is contributing to the politics of resentment roiling our country, his approach to emotions in politics is incomplete, for it focuses too narrowly on white grievances in a single election. Instead, we need to get better at evaluating historical claims of anger and disillusionment from multiple communities across time.

I conclude by suggesting that Trumpism wasn't a coherent attack on meritocracy, but one that tried to harness resentment so as to introduce meritocratic logic into new domains, such as immigration and refugee policy. If we want to reduce meritocracy's dominance in particular social domains, we must offer a potent substitute that can bring elites and ordinary citizens together. When it comes to university admissions or border control where the politics are fraught and issues sensitive, that alternative may be the rhetoric of fairness.

I. Two Distinctions: Form v. Outcomes, Materiality vs. Emotions

There are two basic tensions that course like lightning throughout *Tyranny of Merit*. The first arises from the author's general philosophical orientation and manifests as a difference between the terms of political debate and actual outcomes, with Sandel characteristically choosing to imbue the former with primary moral significance, and the latter with only occasional, or secondary, moral significance. This strategy stems from Sandel's telos-based methodology to resolving matters of distributive justice.

The other tension is found in Sandel's more specific criticism of merit: between the unequal material conditions he acknowledges (with respect to income, access to resources, diminished social mobility) and the status-based consequences of a meritocratic ethic with which he is especially troubled (the marking of some individuals, and at times whole groups, as deserving and others as undeserving). Most of the time, he does his best not to choose between

these two kinds of injuries. Of course, reaching wise and just decisions will inevitably require us to make tradeoffs.

If Sandel's correct that how we engage in politics is more critical than the actual decisions we make, adhering to his insightful approach should lead to the revitalization of our politics. Heeding his advice may also reduce feelings of inferiority and helplessness that plague our society. We could even begin to imagine living together differently.

But if Sandel's wrong, and outcomes matter more than how members of a society talk about their problems, then he may be focused on symptoms at the expense of causes. And if he is wrong to value the emotional harms consistently over material differences, then his solutions may unwittingly reproduce some of the vices he strives to lessen.

Specifically, meritocracy could be a byproduct of gross inequality rather than one of its causes. If meritocracy is not the cause of inequality but instead one of several belief systems and mindsets that lock-in inequality (along with racism, misogyny, aporophobia), then getting rid of visible meritocratic practices could still leave other forms of inequality in place. Worse, attacking certain policies labeled "meritocratic" could waste precious time and resources, and actually trigger more resentment that fuels policies setting back some groups even further.

What sustains notions of opportunity and competition that can themselves be corrupted into an unhealthy meritocratic sensibility? The market, for one. It's not an institution but an organized practice of economic exchange and planning for prosperity. Yet when the basic economic structure of a polity underwrites unhealthy ways that human beings relate to one another, then the problematic features must become the focus of reform. While Sandel's not opposed to major structural changes, he doesn't propose any either. That silence suggests he

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would find it acceptable if capital and labor remain in existing alignments, along with unequal power relations, so long as discussions continue apace in transparently ethical terms.[4]

This may be why he has comparatively more to say about the benefits of rhetorically emphasizing "the dignity of work" than the specific policies that might transform the nature of work in a time of rapid technological and cultural change. This advice will strike few as objectionable, given that a number of prominent politicians on both sides of the aisle, including Democrat Senator Sherrod Brown and Republican Marco Rubio, have in recent years extolled the "dignity of labor." Now, Joe Biden, whose life personifies the idea, has made it the centerpiece of his administration.[5]

It's possible that Sandel is not as concerned with questions of material inequality because he thinks it's not fruitful to engage them at the appropriate level of moral probity without first clearing away the detritus of merit. That would make the absence of sustained focus on materiality merely a matter of practical calculation rather than moral priority.

Still, at times, Sandel writes as if the form of our politics is logically prior to and more vital than the policies we settle upon. He also treats emotional harms that flow from the way we engage in public discourse as equivalent to material deprivations. For instance, Sandel says that "proposals to compensate for inequality by increasing the purchasing power of working- and middle-class families, or to shore up the safety net, will do little to address the anger and

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[4] By comparison, Daniel Markovits, who has also taken on meritocracy, connects the value system with a particular kind of economic order. He faults it for creating a form of labor among elites that's prized from afar, but actually loathed by those who win the meritocratic tournament. Markovits pays somewhat more attention to what meritocracy does to its own adherents, which is to funnel them into "shallow" and "merciless" work conditions that "engulf[]" their existences. "Meritocratic production 'devours' meritocrats, 'converting' them from 'one kind of matter (people) 'into another' (human capital)." DANIEL MARKOVITS, THE MERITOCRACY TRAP 32-33, 39 (2019). It is "built to valorize the exploitation of human capital, and in this way, to launder an otherwise offensive distribution of advantage," he says. *Id*. at 73. Sandel's treatment generally focuses on the loss of a sense of overall status and dignity from the work done by the perceived losers of the meritocratic tournament.
[5] Michael Sean Winters, "Biden and the Dignity of Work," *America: The Jesuit Review*, Aug. 28, 2008.

resentment that now run deep. This is because the anger is about the loss of recognition and esteem" (p. 208).

Sandel's insistence that there is a moral imperative to anticipate emotional harms that flow from political debate itself highlights another difficulty: how to weigh claims of social insult and determine appropriate responses. If we were go down this road, we would have to become more skillful at judging among assertions of status-based injury. First, questions related to social status are inherently more malleable and vexing compared with decisions involving the allocation of social goods. We would have to come up with ways of distinguishing status-based harms that matter from those that don't raise questions of justice, without inhibiting robust debate.

Second, a certain degree of social conflict and status anxiety are natural byproducts of the search for justice. After all, equality is a liberationist idea whose potency even its own proponents cannot contain completely.[6] Whether we consult the emancipatory lessons in our religious texts or America's own fitful history of egalitarian progress, we discover that lifting some people up will cause others who had previously enjoyed a more prominent seat at the table and a larger slice of the pie to experience anger and demand satisfaction.

This means that we will be awash in genuine grievances about loss of dignity and status, as well as less significant, though heartfelt, complaints that accompany just forms of equalization. Sandel seemingly treats secondary harms flowing from the nature of our discourse as equivalent to the primary material- and status-based harms caused by actual policies.

But that would be a mistake. The first kind of claim might lead us to alter our proposals or change how we talk to fellow citizens; the latter might not warrant any recognition at all, or

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[6] *See generally* ROBERT L. TSAI, PRACTICAL EQUALITY: FORGING JUSTICE IN A DIVIDED NATION (2019).

else a minor accommodation. We can't be deterred from making hard decisions for fear it will upset those invested in the status quo. After all, there will always be people who prefer that their perceived enemies wallow in the same misery that they are trapped by, rather than imagine how changed circumstances can increase opportunities and improve status for all.

II.   Will Reforming Elite Institutions Reduce Meritocracy's Grip on American Life?

Sandel singles out the university for sustained discussion in chapter six. One might ask why he neglects other institutions that promote "the rhetoric of rising"[7] and perpetuate the logic of sorting, such as the media or political parties or most high schools, but let us leave such missed opportunities to one side. There is ample justification for rethinking the role of the university, given its central place in the master narrative of American success. Sandel reserves his greatest scorn for the admissions process, which he vividly describes as a giant sorting machine, because the university has wrongly internalized the idea that sifting human beings from one another is its central goal rather than expanding access to education.

Sandel proposes using standardized tests and grades only to cull out those who truly would not make it in a given institution, and then employing a lottery to decide who among the qualified gets a seat in the incoming class. There is much to recommend this plan, for Sandel is correct that institutionalizing an element of chance can signal merit's limits and help break up concentrated patterns of wealth and heredity.

On the other hand, this might work only at the handful of most selective universities and colleges. And if that's the case, manipulating admissions policies will have only a limited effect in reshaping meritocratic beliefs.

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[7] SANDEL, *supra* note 2, at 22.

Randomness has a way of undermining organizational function unless the inputs are virtually indistinguishable and variations in outcomes can be overcome. Winding up with very few students interested in the sciences or too many who want to play quarterback one year might be balanced by better lottery outcomes in subsequent years. A large, rich institution can ride out extreme variability. Less wealthy or smaller colleges, particularly those that rely on a handful of specialized programs or athletics to keep the lights on, will have a harder time weathering the chaotic forces unleashed by Sandel's proposal.

As to restoring a sense of esteem among meritocracy's losers, I have doubts whether modifying admissions policies at Harvard or Yale will reduce the heavy investments by meritocrats in trying to win admission to selective schools or reduce a sense of skepticism and exclusion on the part of those who don't already value higher education. Nor would doing so likely instill a stronger belief in the common good among recent immigrants and upper middle-class families, who are among the most vocal defenders of individualism and academic achievement. In fact, making admissions even more of a crapshoot than it already is could very well have the opposite effect, by promoting resentment among those who see entrance to a selective university as integral to the American Dream.

The outsized sacrifices made in the quest for prestige is unquestionably unhealthy, but tackling university admissions head-on, rather than other priorities, is sure to produce a tricky form of backlash politics. That said, even a modest shift in patterns of those who get into the top range of selective schools could be reason enough to give it a try, despite uncertainty in how it would affect feelings of status. The proposal might expand material outcomes for those who get shuffled upward, even if it does little to convince them of the downsides of praise-seeking as a way of life.

The realization that some disharmony is inevitable is even more apparent when we ponder further that Sandel's critique of merit—that it is an elitist concept—gives short shrift to a populist perspective on merit. Popular defenders of merit don't necessarily have a problem with the most talented people having more influence in society, whether it is in industry, sport, or politics. They don't wish to dethrone excellence, though they differ from technocrats about what excellence means. But they are suspicious of elites who would cynically take advantage of their anger at the vagaries of life to present superficial changes; many would also oppose broad reforms that radically alter the nature of institutions they cherish.

For a populist meritocrat, the answer to the calcification of social mobility isn't to introduce luck into the calculus and thereby destroy incentives to improve oneself, or to water down the standards of institutions so as to call their quality into doubt. Rather, the solution is to offer subsidies to those who don't start out with as many advantages and to increase investments in schools and experiences that might set people up for a better shot at selective opportunities.

III.   **Recent Elections vs. Deeper Trends: Reducing Undesirable Emotions on the Way to Doing Justice**

Sandel's warning that meritocracy can fuel a politics of recrimination that undermines egalitarian projects when it has "hardened into a hereditary aristocracy" (p. 24) should be taken seriously. Promising, too, is a stronger turn in his work toward integrating study of the senses with his long-standing approach to moral philosophy. Indeed, both parts of this thesis deserve more attention than he gives them. Focusing on white resentment, without bringing into the picture emotions such as despondency and anger on the part of perennially disfavored social

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groups, presents an incomplete portrait of what justice requires when there are competing complaints of deprivation and insult.[8]

Part of the difficulty may be Sandel's preoccupation with a single election rather than the trajectory of politics over time, which has long been characterized by cycles of egalitarian gain and resentful regression. He seems genuinely shaken by the 2016 election and the book is shaped by his efforts to puzzle its meaning—principally for white Americans. But was it really a revolt against meritocracy as he suggests?

Trumpism was a popular reaction to many things, such as globalization and the enhanced influence of racial minorities over public affairs,[9] but it was never a concerted effort to dismantle rule by the talented. While he was skillful at stoking a sense of grievance, Trump was never all that interested in policies that might actually disrupt the means by which elites of one generation pass on their advantages to the next generation. Moreover, while he often displayed contempt and suspicion for experts, his actual approach to governing toggled between an appreciation of meritocratic signifiers like fancy degrees and an aristocratic reliance on the counsel of close family members and friends, rather than modeling an alternative to rule by the talented. His anti-elitism was usually more aesthetic than substantive.

If Trumpism represented a collective statement about meritocracy at all, one of its achievements may have been to extend the mindset into new contexts, such as immigration and refugee policy. On these signature issues, his rhetoric consisted of not only demonizing foreign

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[8] PANKAJ MISHRA, AGE OF ANGER (2020); MARTHA MINOW, WHEN SHOULD LAW FORGIVE? (2019); MARTHA C. NUSSBAUM, ANGER AND FORGIVENESS: RESENTMENT, GENEROSITY, JUSTICE (2018); SUSAN A. BANDES, THE PASSIONS OF LAW (2000).
[9] JENNIFER M. SILVA, WE'RE STILL HERE (2019); RANDALL KENNEDY, THE PERSISTENCE OF THE COLOR LINE: RACIAL POLITICS AND THE OBAMA PRESIDENCY (2011).

countries and non-citizens, but also promising to inject the question of moral worth into deciding who may enter the country.

As Sandel himself acknowledges in discussing the work of Arlie Russell Hochschild,[10] white Americans have directed much of their resentment toward perceived "line cutters": foreigners and racial minorities, some of who could use some extra help from the government through social welfare programs. Sandel largely takes these complaints at face value, rather than trying to separate legitimate grievances from a desire for payback. That's a shame, because there are righteous forms of anger and selfish ones, just as there is bitterness worth assuaging and envy of neighbors that should not be countenanced. Not all resentment is alike.

What's also fascinating, though, is that Trump saw discontent as an opportunity to expand the rhetoric of merit into new domains. He did so by advancing wide-ranging changes to immigration and refugee policy as part of a "merit-based, high security plan." In fact, he singled out the high number of legal immigrants who "come here on the basis of random chance," and pronounced that "[r]andom selection is contrary to American values and blocks out many qualified potential immigrants from around the world who have much to contribute." For Trump and his allies, the goal was to "create a clear path for top talent" and reduce the number of "low-wage and low-skilled" workers who "compete for jobs against the most vulnerable Americans and put pressure on our social safety net."[11]

Turning to merit-speak narrowed the conversation over immigration reform to a single objective: sorting more deserving foreigners into America, and barring the rest, who are deemed undeserving. In this context, the internal logic of desert fused together notions of white

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[10] ARLIE RUSSELL HOCHSCHILD, STRANGERS IN THEIR OWN LAND (2016).
[11] Remarks by President Trump on Modernizing Our Immigration System for a Stronger America, May 16, 2019.

supremacy, cultural nationalism, and resource scarcity. And it did so by giving policymakers a superficially pleasing, race-neutral way of pursuing any or all of these goals.

As this example illustrates, meritocracy is made up of an ideology that can leak into a variety of social domains, including those far afield from the primary areas of economic concern. The lesson is that defeating meritocracy can't just be about opening more doors, it also must be about policing the logic of desert in multiple settings so as to produce meaningful outcomes.

An alternative approach to Sandel's global anti-meritocracy discourse would entail calibrating the way we talk depending on the issue, the domain, and the political climate. It would also be concerned with facilitating a broad range of emotions, rather than devoted to the reduction of resentment. The question would become: which social values and emotions should be fostered in a particular domain?

Sandel's objections to merit can thus be recapitulated as a concern that the ideology of desert has unjustifiably dominated policy in certain domains. But the most effective way of beating back an undesired kind of discourse may be to replace it with another. What, then, should replace the corrosive language of merit?

The trouble with the rhetoric of merit has always been that asking *who* deserves *what* turns every question into one about the dues a person has paid and transforms every policy choice into a reflection of the moral worth of the individuals involved. This approach magnifies the advantages of those who possess more resources to invest.

Yet equality may not be the best fit either. For egalitarians, the language of desert isn't just inappropriate in many non-criminal contexts; it can also degenerate into pernicious stereotypes and outright hostility against disfavored groups. Even so, in a pluralistic environment, full-throated equality discourse approaches the apex of its utility when there is

consensus that a social good at stake is both valuable and should be widely available. By contrast, it fares less well when non-citizens or access to higher education is involved, for equality's hard-edged insistence on entitlement can feel out of place. After all, is there really a right to enter another country? Are the rights of citizenship really implicated by who gets into a selective school?

The situational factors reducing equality's potency explains why when the rhetoric of equality clashes with that of merit, merit often wins. And on those occasions when equality prevails over merit, as with affirmative action, a certain amount of resentment is to be expected.

If the logic of merit must be displaced, but equality's too strident for the task, the best option might be fairness. Fairness can work well when many stakeholders are resistant to universalist claims to a particular social good. Substituting the discourse of fairness when it comes to debating university admissions or immigration policies retains focus on social purpose, but it may do a better job of beating back meritocracy's excesses. Fair play captures just enough of the meritocrat's belief that individual hard work is good for its own sake and should be encouraged. At the same time, it could also keep at bay overly wrought judgments about what kinds of people deserve to get in, and which ones don't.

The rhetoric of fairness trains more attention on policies, systems, and communal needs compared with merit's emphasis on striving individuals (or even equality's focus on entitlements). This is a subtle change, but one that could promote less obsession over cashing out one's own personal investments to get ahead, and greater attention on how a well-ordered community might give each person a realistic shot at the important things in life.

A wonderful example of this strategy can be found in Teddy Roosevelt's famous 1903 speech that extolled the virtues of "The Square Deal for Everyman." "There are good citizens

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and bad citizens in every class as in every locality," he reminded his audience, at another moment of rising inequality and social tumult in America. T.R. inveighed against both "envy and arrogance" as traits that are destructive of society. He would later explain that a square deal represented "an attitude of kindly justice as between man and man, without regard to what any man's creed or birthplace or social position may be."[12]

For T.R., the principle of fairness ensured that each individual got an equal shot at what he needed, and perhaps even deserved, but not at the expense of society. As he pointed out, "in the long run, we all of us tend to go up or go down together." According to the "community of interest among our people… The welfare of each of us is dependent fundamentally upon the welfare of all of us." By emphasizing themes of fairness rather than equality, he shrewdly avoided attacks that he promoted "class hatred" and bridged differences between the capitalist and the wage-worker, "[m]en sincerely interested in the due protection of property, and men interested in seeing that the just rights of labor are guaranteed."

While T.R. occasionally used the language of moral worth, the concept of merit was always disciplined by the overarching notion of fairness: "We must see that each is given a square deal, because he is entitled to no more and should receive no less." In how T.R. deployed the logic of fairness, there is room both to preserve opportunity and to offer aid to those who need it to get to the starting line.

My point isn't that fairness is a global solution. Rather, the challenge for meritocracy's critics is to provide an alternative belief system that's sufficiently rousing it can bring together outcasts and insiders, people who are struggling and those who are doing just fine under the existing rules. Meritocracy's defenders can be found in every social class. Loosening the

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[12] Letter from Theodore Roosevelt to Paul H. Lacey, Jan. 16, 1904.

ideology's grip on the public imagination will require clarion calls at times, but also quiet conversations. Or else meritocrats will not become converts to a new way of life, but rather the faith's bishops and foot soldiers for the next generation.

If this insight is correct, the sort of facility with a multiplicity of discourses sketched here—a kind of code-switching based on issue, domain, and social plausibility—represents the direction in which we must head. It may not prove to be fully satisfying to Sandel, who above all, prefers that citizens debate matters with moral clarity. But constant, rollicking discussions conducted in the same moral register can exhaust participants, inure them to the suffering of others, and make them less open to legitimate grievances. It's possible that a layered approach to inequality can lead to more progress on multiple fronts, with fewer setbacks. And that's something to celebrate in a society that aspires to justice.