

EXHORTATION, TRANSFORMATION, AND POLITICS
Comment on M. Sandel's *The Tyranny of Merit*

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More than most books, Michael J. Sandel's *The Tyranny of Merit: What's Become of the Common Good?*¹ presents special challenges for reviewers. The reason, frankly, is that he is writing about "us" (i.e., the likely audience)—and even more certainly those invited to offer systematic reviews. That is, we are, by any measure, "successes" in the American academy (and, perhaps, even elsewhere), whether measured by the institutions in which we teach, the salaries we make, or the more general recognition that we have been privileged to receive at least from people or groups with which we specially identify. What accounts for this success? One flattering response, of course, is that we "deserve" it because of our own inherent capacities and efforts—our own "merit"—however we choose to define that often slippery term. This also entails, whether we wish to acknowledge it or not, the proposition that those "below" us in the pecking order have no real justification for any complaints they might have. They are merely envious—and, recall, envy is one of the seven deadly sins—of the success we have rightfully achieved by excelling them in a variety of relevant capacities, ranging from raw intelligence to a willingness to work hard and defer mundane gratifications. And, incidentally, that is true as well if "we" are tempted to demean instead of honor those above us in the relevant pecking order. Not everyone can make (or deserves to make) the all-star team, and we should be grateful for the opportunity to play in the major leagues.

Any other responses cast a shadow not only on our professional positions but also on our own personae. Most of us, I suspect, sometimes (often?) worry that we will be exposed as the frauds we are, thoroughly undeserving of the symbols (and hard realities, such as

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1 MICHAEL J. SANDEL, *THE TYRANNY OF MERIT: WHAT'S BECOME OF THE COMMON GOOD?* (2020).

hefty salaries) attached to our success. And now Sandel, himself at the top of several hierarchies—ranging from tenure at Harvard to being a certified “rock-star political theorist” capable of filling arenas from Boston to Beijing—comes along to write about “the tyranny of merit” and the falsities of the ideology underlying what Michael Young many decades ago castigated as “meritocracy.”

Although Young coined the term only in the 1950s, the basic ideology underlying it has obviously been around far longer. Some version of “meritocracy” is at the core of the American version of liberalism, going back at least as far as Benjamin Franklin’s advice, based on his own rise. Consider only David Blight’s description of Frederick Douglass’s oft-delivered speech, following the Civil War, on “the self-made man.” To be sure, Douglass castigated the discrimination visited upon African Americans and called for fair treatment. But this is simply the notion of “equal opportunity” offered to all individuals to rise (or fall) based on their own efforts. Blight tells us,

Douglass rejected . . . the idea of “genius,” abhorred the “accident or good luck theory” of human achievement, and above all exalted hard work. -Winners and achievers in the race of life could be comprehended by “one word, and that word is WORK! WORK!! WORK!!! WORK!!!!” “Chance” could never explain greatness or even professional accomplishment; only a sense of “order,” trained “habit,” and “systematic endeavor” could lead to world-changing ideas.²

In Frederick Douglass’s idealized America, Blight writes, “men were not judged by their ‘brilliant fathers,’ but merely on their own merits.”³ It is this aspect of Frederick Douglass that has appealed to Justice Clarence Thomas in his bitter castigation of “affirmative action,” inasmuch as, he believes, it rejects meritocracy in favor of emphasizing instead the importance of one’s race or other ultimately irrelevant factor. Similarly, many have quoted for similar purposes Martin Luther King’s famous wish that individuals be judged on “the content of their character” rather than the color of their skin. If our “character” is, in important ways, the product of our own, freely willed, choices, then why should we not take pride, as autonomous selves, in what we have done with ourselves?

Encomia to meritocracy abound in contemporary America (and elsewhere). Consider, for example, a heartfelt appreciation by Carina Chocano of the extraordinarily popular *The Queen’s Gambit*.⁴ She described the series as “a story of affirmation: a world in which a girl can move freely, in control, and be respected for her strategy and skill.” The lead

2 DAVID BLIGHT, *FREDERICK DOUGLASS: PROPHET OF FREEDOM* 565 (2018).

3 *Id.* at 567.

4 Carina Chocano, *I Want to Live in the Reality of “The Queen’s Gambit,”* N.Y. TIMES MAG., Dec. 2, 2020, <https://www.nytimes.com/2020/12/02/magazine/queens-gambit-netflix.html>.

character was allowed to “succeed[] in a man’s world without being harassed, assaulted, abused, ignored, dismissed, sidelined, robbed or forgotten.”⁵ Chocano describes it as “utopian,” a “fantasy . . . we rarely see depicted—the fantasy of a functioning meritocracy for women, in which they are free to do what they want.”⁶

And, of course, the notion of meritocracy is scarcely restricted to America, even if, for reasons suggested by Louis Hartz in *The Liberal Tradition in America*,⁷ it has taken especially deep roots here. So, consider also the takeaway in a recent story on the purchase of a fifty percent stake in the Jerusalem soccer team Betar by an Arab sheikh. Betar (and its fans) are notorious for being virulently anti-Arab; it is the “only Israeli team,” we are informed by the reporters for the *New York Times*, “that has never fielded an Arab player.”⁸ That presumably would change as a result of the new ownership. “Sheikh Hamad . . . suggested that Betar could soon have an Arab member on its squad. ‘The door’s open to anyone, for any talented player, no matter where he is from or what his religion is,’ he said. ‘It should be based on merit.’”⁹ I suspect that most readers found the story—and its vision of meritocracy—inspiring,¹⁰ and, therefore, I was disappointed when the sale was withdrawn.

“Merit,” of course, is subject to multiple definitions. It is easier to define it by what it is not—e.g., as Douglass suggested, birthright aristocracies where fathers, “brilliant” or not, pass down their multiple advantages—than by exactly what it is. In my own case—and I’m certain that I’m not unique—part of my “merit” was the ability to do well on the Scholastic Aptitude Test (SAT) in 1957, when I was a senior at Hendersonville High School in a North Carolina town of about 6,000 people. No doubt that contributed to my winning a scholarship to Duke University (which overlooked the fact that I had been denied membership in the National Honor Society because I was a disciplinary problem). Similarly, my grades at Duke and my performance on the Graduate Record Examination contributed to my winning a Woodrow Wilson Fellowship that made it possible for me to go to Harvard for graduate school. But my grades at Duke were, in fact, a function of the fact that transcripts registered only As, Bs, and other letters; the pluses and minuses that professors in fact gave were irrelevant so far as the registrar was concerned. So, it was not apparent that, in my four years at Duke, I received ten grades of A– and only one B+. And, when I

5 *Id.*

6 *Id.*

7 LOUIS HARTZ, *THE LIBERAL TRADITION IN AMERICA* (1955).

8 David Halbfinger & Adam Rasgon, *Sheikh Buys 50 Percent Stake of Israeli Soccer Club with Arab-Hating Fan Base*, *N.Y. TIMES*, Dec. 8, 2020, at B7.

9 *Id.*

10 Itsik Itzhaki, *Beitar Jerusalem FC Withdraws Sale to UAE Sheik Hamad bin Khalifa*, *JERUSALEM POST*, Feb. 11, 2021, <https://www.jpost.com/breaking-news/beitar-jerusalem-fc-sale-to-uae-sheik-hamad-bin-khalifa-placed-on-hold-658655>.

became disillusioned with academic political science and the American academy in the late 1960s, a stellar performance on the Law School Aptitude Test helped pave the way for me to be admitted to Stanford; of course, that Ph.D. from Harvard contributed to my receiving a fellowship from the Russell Sage Foundation that made admission to and attendance at Stanford unproblematic.

As it happens, I define myself as a secular Jew with an almost Calvinist view of the world (save predestination). That is, I do not, in fact, believe that I particularly “deserve” my success; were I religious, I would probably assign it to divine grace. Instead, I am inclined to emphasize the element that Douglass rejected (i.e., sheer luck or, perhaps, emanations of gracious love from my family or, for that matter, the support of a number of deans and colleagues who have given me opportunities that cannot plausibly be explained by reference to “merit” alone if at all). I am fully cognizant of the presence of many “mute, inglorious Miltons,”¹¹ who could well inhabit my positions and enjoy my good fortune had they been as lucky as I have been throughout my life.

But does awareness of the vagaries of fate necessarily prove “the tyranny of merit”? After all, one might unpack the notion of “merit” and “meritocracy” into two quite different threads. The first simply suggests that positions should be allocated on the basis of what one might call “best fit” with their overall purposes. Whether we are talking about brain surgeons, airline pilots, or professional athletes, we want those with the highest set of relevant skills, and we often use a variety of tests to measure the degree of those skills. Even if one supports, as I would be tempted to do, more or less random admissions to “selective” undergraduate schools, I would scarcely be so cavalier with regard to admitting people to medical school or, for that matter, building a sports team. And, if truth be known, I’d probably reject randomized admissions to graduate programs in government or law, although the latter is a closer case. Nor do I detect in Sandel a desire to move to generalized random selection. He seems to fully acknowledge the proposition that some people are better suited to perform certain tasks than others; most obviously, when we are sick, we seek out the “best” doctors instead of simply throwing a dart at a list of all certified MDs in the area.

Instead, what Sandel most vigorously objects to is what might be termed the sin of pride, in which we indeed see our own success as “merited” and, concomitantly, expect those who do not enjoy our success in essence to blame themselves and to accept “our” positions of superiority without complaint. It is our own sin, in effect, that leads us to condemn as sinners those described as expressing “envy” or, should one prefer a less theological vocabulary, “ressentiment.” Sandel sympathetically quotes from Michael Young’s seminal critique of “meritocracy”: “One of our characteristic modern problems” is the

11 Thomas Gray, “Elegy Written in a Country Churchyard” (1751).

propensity of “some members of the meritocracy” to “become so impressed with their own importance as to lose sympathy with the people whom they govern” or otherwise relate to from a position of structural superiority.¹² Sandel is particularly critical of his fellow elite academics, who confuse possession of degrees with entitlement. He writes that

[t]he tyranny of merit consists in a cluster of attitudes and circumstances that, taken together, have made meritocracy toxic. . . . [I]nsisting that a college degree [or, indeed, a post-graduate degree] is the primary route to a respectable job and a decent life creates a credentialist prejudice that undermines the dignity of work and demeans those who have not been to college.¹³

If, as it sometimes suggested, lawyers are people who cannot stand the sight of blood (and, therefore, reject their parents’ desire that they become doctors), one might suggest even that academics and professionals more generally are people who have no desire to expose their bodies to the demands of hard physical labor or even to have to stand up all day serving others, whether as store clerks or waiters. Even if we can express abstract appreciation for the work they do—perhaps even describing them, during a pandemic, as performing “essential” tasks in stocking and delivering groceries—that may still not translate into a genuine respect and fellow feeling for them, especially with regard to making fundamental decisions about governing the polity or dividing the economic pie or, as we are discovering, even giving them priority for access to vaccines. Sandel thus goes on to attack the insistence “that social and political problems are best solved by highly educated, value-neutral experts,” a “technocratic conceit that corrupts democracy and disempowers ordinary citizens.”¹⁴

To some extent, Sandel pulls his punches by refusing to name names and assess arguments presented by those one might assume are his targets. After all, Harvard has as one of its major divisions the John F. Kennedy School of Government, not to mention the Harvard Law and Business Schools, all of which can be viewed as the belly of the beast of contemporary American credentialism and technocracy. Interestingly enough, though, Sandel *does* engage in a variety of critical remarks directed at the Harvard Law School’s probably most-famous alumnus, former President Barack Obama. Sandel treats him, probably accurately, as ultimately far more of a technocrat than the more populist “community organizer” that he presented himself as being when running for the presidency in 2008.

Perhaps reflecting the influence of his wife, Kiku Adatto, an academic who studies mass communications, Sandel very effectively examines certain political memes and tropes

12 SANDEL, *supra* note 1, at 118.

13 *Id.* at 73.

14 *Id.*

that constitute our working ideology. One of them is the definition of the American dream as the ability of people to rise “as far as their talents and hard work will take them.” Noting that Ronald Reagan was “the first U.S. president to make it a mainstay of his political rhetoric,” Sandel goes on to note that it was Obama “who used it more than all previous presidents combined. In fact, it was arguably the central theme of his presidency.”¹⁵ This is not meant as a compliment. Instead, Obama is almost castigated for being “glad that everybody wants to go to college.”¹⁶ What this translates into, Sandel fears, perhaps rightly, is that anyone who does not want to go to college is in some sense inferior, deserving the disdain that elites often direct at the “uneducated.” Perhaps Obama was referring only to highly vocational programs at community colleges, but that is certainly not clear. And, incidentally, we are entitled to wonder exactly what is thought to be the central benefit of college attendance. Is it the increased access to good jobs, however defined, because of certain skills taught at colleges? Even if that is the case, I suspect that many of “us” are critical of the strong embrace by even elite universities of a STEM orientation that leaves traditional humanities gasping for support (and, even more certainly, losing majors). Perhaps even more relevant is the extent to which civic education is also a victim of the move toward STEM. Thus, a recent article in the *Washington Post* focused on a report by a national citizens’ group stating that “[m]ajorities are functionally illiterate on our constitutional principles and forms. The relative neglect of civic education in the past half-century—a period of wrenching change—is one important cause of our civic and political dysfunction.”¹⁷ So even devotees of increased educational opportunity must perhaps address more specifically the *kinds* of education that are most needed, not only by striving individuals seeking to get ahead but also by a liberal democratic society desperately seeking to maintain itself.

Donald Trump was rightly ridiculed for his expression of “love” for the “poorly educated,” but Sandel can be read as suggesting that this profession, however insincere, helps to account for his victory over the tone-deaf Hillary Clinton (another target of Sandel’s criticism) and her expressed disdain for the “deplorables” who constituted much of Trump’s vaunted “base.” To be fair to Clinton, she did not offer this as a blanket description of all of Trump’s supporters, and she offered a variety of policies that were designed to appeal to the “non-deplorable” part of Trump’s base; but the damage was done by the phrase itself and the way it fit into a general view that it was precisely the way that elite-educated folks like Clinton (or, previously, Obama) viewed those we are quick to describe

15 SANDEL, *supra* note 1, at 67.

16 *Id.* at 68.

17 Joe Heim, *Massive Investment in Social Studies and Civics Education Proposed to Address Eroding Trust in Democratic Institutions*, WASH. POST, Mar. 1, 2021, https://www.washingtonpost.com/education/civics-social-studies-education-plan/2021/03/01/e245e34a-747f-11eb-9537-496158cc5fd9_story.html.

as “uneducated,” deserving, and perhaps to be pitied but not really to be viewed as equals.

Although Sandel certainly identifies the ever-spreading income inequality in America—and worldwide—as deep problems, he is more concerned with what might be described as “dignitary inequality,” by which those who view their own success as “merited” look down, in all sorts of ways, at those beneath them in the relevant hierarchies. What I discern as the essence of critical “Sandelianism” was remarkably well expressed in a December 2020 column on Brexit by the British comedian Russell Brand, who has also emerged as an incisive analyst of contemporary politics. Brand wrote that

Perhaps even before the virus, before Brexit, we had all been quarantined in our own naked individualism — an isolation far more toxic. There we were, incarcerated and alone inside the penitentiary of our temporal identities with no faith or care for anything other than the fleeting fulfillment of our wayward wants. This is the divide that British people have to reach across for there ever to be any real sense of unity among us. Ultimately, it is the island of self that we must either leave or remain trapped within.¹⁸

It is, I think, “naked individualism” that is really the target of Sandel’s critique, as was true, of course, in his famous first book,¹⁹ a critique of John Rawls and his allegedly hyper-individualist notion of political identity behind a veil of ignorance. It is worth noting, however, some profound similarities between Rawls and Sandel. Sandel’s Harvard colleague Eric Nelson, in his recent *The Theology of Liberalism: Political Philosophy and the Justice of God*,²⁰ demonstrates that Rawls himself was an extremely harsh critic of theories of “desert” that underlie much of the ideology of meritocracy. For Nelson, the roots of Rawls’s concern lie in the conservative Christianity of his relative youth and the rejection of Pelagianism and its theory of free will (and concomitant dismissal of original sin). Whatever differences there may be between Rawls and Sandel, one should be aware of their deep similarity with regard to whether those at the top of hierarchies “deserve” their positions because of their own talents and hard work. Consider only the passage from *A Theory of Justice*,²¹ where Rawls described as one “of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society.”²² To be sure, one can limit “native endowments” to certain physical characteristics—think, for example of perfect pitch in recognizing musical

18 Russell Brand, *Brexit: What Were We Thinking?!*, N.Y. TIMES, Dec. 7, 2020, <https://www.nytimes.com/2020/12/07/opinion/brexit-britain-covid-labour.html>.

19 MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982).

20 ERIC NELSON, *THE THEOLOGY OF LIBERALISM: POLITICAL PHILOSOPHY AND THE JUSTICE OF GOD* (2019).

21 JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

22 *Id.* at 103.

tones, or of whatever component of “raw intelligence” might be ascribable to genetic inheritance—let alone the fact that one might be born into riches rather than squalor. But Rawls immediately goes on to write that “The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic: for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit.”²³ It is a notorious truth about most selective elite colleges, including Harvard, that most of the small minority of applying students who are actually accepted and attend come from the top echelons of the class structure. Sandel spends several pages assessing James Bryant Conant’s transformation of Harvard into a “meritocracy.” As with Obama, Sandel is more critical than celebratory of Conant’s legacy, insofar as it rewards ambitious strivers who often benefit from a variety of class privileges.

However, as already suggested, one can accept at least some of the emphasis on “merit” with regard to allocating certain roles or positions, without necessarily accepting the view that one’s “merit” is the result only, or even mainly, of one’s own virtues or agreeing that tests like the SAT should play the role they do in identifying purported merit.²⁴ And, even more to the point, one can view one’s privileged positions as requiring a genuine concern for what Sandel calls “the common good,” instead of providing a launching platform for attainment of one’s most selfish desires. One might be suspicious of those who appoint themselves “stewards” over the welfare of others but, at the very least, an ethic of stewardship and service is altogether different from embracing the message of Gordon Gecko and his real-life counterparts that “greed is good,” and that one is entitled to a sybaritic life as a reward for one’s cleverness in applying quantitative analysis to the movement of financial markets. To be sure, in the eighteenth century, Bernard Mandeville notably argued that “private vices” could, through the glories of what Adam Smith would label the “invisible hand” of market choices, create “public benefits,” so that everything would work out splendidly in the end. But I take it that unrestrained free-market capitalism, or the more general philosophy of “libertarianism,” has come on hard times over the past two decades. Margaret Thatcher might (in)famously have declared that “there is no such thing as society,”²⁵ that there was *only* what Brand describes as *the “penitentiary” of a*

23 NELSON, *supra* note 19, at 62 (quoting RAWLS, *supra* note 20, at 103–04).

24 It might be worth noting that COVID-19 has generated a “natural experiment,” inasmuch as Harvard has apparently suspended any requirement that applicants take standardized tests. That might help to account for the fact that the applications to Harvard have skyrocketed. See, e.g., Janet Lorin, *Harvard Applications Surge as Students Flock to Top Names*, BLOOMBERG (Jan. 25, 2021), <https://www.bloomberg.com/news/articles/2021-01-25/harvard-applications-surge-as-students-flock-to-biggest-names>.

25 Douglas Keay, *AIDS, Education, and the Year 2000: An Interview with Margaret Thatcher*, WOMAN’S OWN, Oct. 31, 1987, at 8.

“*naked individualism*” that corrodes any notion of membership in a common venture, with duties toward one another. But Sandel rightly argues otherwise.

I think it’s fair to say that, for Sandel, society includes (almost) all roles, occupations, and offices, each making their own contributions and, therefore, entitling their inhabitants to be viewed and treated with dignity. Whether one is working exclusively with one’s brain or with one’s hands is irrelevant. And the brain work attached to understanding and selling insurance is worthy of recognition and respect from those of us who wish to contemplate the great works of philosophy or literature. All are contributing. We should be disdainful of (almost) no one. The parenthetical does suggest the possibility that Sandel is less than respectful of those who, for example, construct casinos in order basically to prey on unsophisticates hoping to “hit the jackpot” or simply to amass even greater wealth than they already enjoy in order to purchase ever more luxury goods. The late Sheldon Adelson is selected out for specific mention by Sandel; it is clear that Sandel doubts that his status as a billionaire, derived largely from the profits generated by casinos, reflects his level of actual contribution to society. But is the complaint only that Adelson has been able to reap such unduly lavish rewards, as have, say, hedge-fund managers or rapacious entrepreneurs like Mark Zuckerberg? Instead, one might argue that a well-organized society would not have within them casinos, hedge funds, or Facebook, even if those behind them received much more modest rewards. A critique of inequality is far different from a substantive critique directed at how people in fact choose to live their lives.

Most of the book is a quite effective critique of the moral egotism generated by a culture of meritocracy and credentialism. Only toward the end does Sandel really begin addressing what might be meant by a politics of “the common good.” However, his comments are at most suggestive rather than genuinely worked out. He offers, for example, the notion of what he calls “contributive justice,” in which we allocate “honor and recognition” (and salaries?) on the basis of “*what* counts as a contribution to the public good.”²⁶ He describes as his “broader point” that renewal of “the dignity of work requires that we contend with the moral questions underlying our economic arrangements, questions that the technocratic politics of recent decades,” including those of the Obama Administration, “have obscured.”²⁷ He goes on to say that

only insofar as we depend on others, and recognize our dependence, do we have reason to appreciate their contributions to our collective well-being. This requires a sense of community sufficiently robust to enable citizens to say, and to believe, that “we are all in this together”—not as ritual incantation in times of crisis, but as a plausible description of our everyday lives.²⁸

26 SANDEL, *supra* note 1, at 221.

27 *Id.*

28 *Id.* at 221–22.

One is reminded of Elizabeth Warren’s famous speech in which she reminded successful entrepreneurs of all of the ways they benefitted from various social policies and institutions. Without demeaning their often impressive accomplishments, she denied their own favored description as “self-made” successes who deserved to hoard their gains against demands for, say, taxes to pay for redistributive policies. Mitt Romney’s (in)famous distinction between the “makers” and the “takers” rested on a fundamental inability to understand the actualities of the debts owed to nameless people whose toil made the success of the self-described “makers” possible.

Sandel literally concludes the book only pages later as follows:

But if the common good can be arrived at only by deliberating *with our fellow citizens* about the purposes and ends worthy of our political community, then democracy cannot be indifferent to the character of the common life. [What is required is that men and women] from different walks of life encounter one another in common spaces and public places. For this is how we learn to negotiate and abide our differences. And this is how we come to care for the common good.

The meritocratic conviction that people deserve whatever riches the market bestows on their talents makes solidarity an almost impossible project. [We must recognize] that, for all of our striving, we are not self-made and self-sufficient; finding ourselves in a society that prizes our talents is our good fortune, not our due. [H]umility is the beginning of the way back from the harsh ethic of success that drives us apart. It points beyond the tyranny of merit towards a less rancorous, more generous public life.²⁹

This is eloquent, perhaps even inspiring. But frankly, it does not really count as a serious “treatment plan” for the disease that Sandel has diagnosed, even assuming, which is not itself uncontroversial, that everyone will agree that Sandel has diagnosed a genuine pathology needing treatment. To put it mildly, political theorists and ordinary politicians have been arguing about what counts as “the public good” for centuries. Going back to Thrasymachus, there have always been “realists” (or cynics) willing to dismiss such language as simply the self-serving ideology of any given ruling elite. In our own times, perhaps the most thoroughgoing critique of notions of “common good” has been offered by economists, who emphasize the incommensurability of various preferences that may be held by discrete individuals. And many economists go on to look at “revealed preferences” indicated by the willingness of ostensibly “sovereign consumers” to spend their own money for A (perhaps gambling in one of Sheldon Adelson’s casinos) rather than B (attending a

29 *Id.* at 227 (emphasis added).

morally edifying production of *King Lear*). Bentham (in)famously suggested that there is no real way to distinguish “on the merits” between “pushpin” and “poetry,” and many (most?) economists would agree. Lest this be read as yet one more attack on obtuse economists, it is worth noting that a political theorist like Isaiah Berlin emphasized the plurality of ends that reasonable individuals could seek as well as the concomitant dangers presented by those who would ignore this plurality in the name of an ostensibly common or universal good. Rawls himself was acutely aware of the reality of pluralism, as manifested in his desire to discover an “overlapping consensus” that might join “comprehensive views” that were, in fact, very different and even antagonistic to one another.

At the least, one would like to see a more fleshed-out argument as to how we identify what is truly “the common good.” I am put in mind of the famous conclusion of Philip Roth’s *Portnoy’s Complaint*,³⁰ when the psychiatrist to whom Portnoy has offered his many complaints suggests that “[n]ow, we may begin” the serious work of analysis and, who knows, even cure for the neuroses that have been revealed. Sandel offers exhortation when really hard analysis is called for. After all, what we are really talking about, at the end of the day, is under what conditions it is legitimate for society or, even more to the point, the organized state, to use its coercive power, whether of taxation or criminal punishment, to require behavior that given individuals, left to their own choice, would reject. If we define “common good” as something like Rousseau’s “general will” (i.e., something that would be embraced by all rational individuals untainted by their own individual selfishness, their *amour propre*), then there might be relatively little problem. We could simply dismiss holdouts as irrational or narcissistic. But I daresay that relatively few of us are willing to accept such a view. Most of us, I suspect, accept the reality of a social and political world that includes quite different “comprehensive” views of how best to live one’s life. Even if we join Rawls in seeking an “overlapping consensus,” there is ever greater worry that no such consensus might, in fact, be achievable—that we increasingly look at one another across what Matthew Arnold many decades ago called “a darkling plain/ Swept with confused alarms of struggle and flight, / Where ignorant armies clash by night.”³¹ The “ignorant armies” are often described today in terms of “polarization,” “identity politics,” or “tribal loyalties,” but it is difficult to identify a path away from the “plain.”

Joe Biden ran, in his own way, in imitation of his predecessor a century ago, Warren Harding, promising to restore a sense of “normalcy” following the convulsions of the prior decade. He promises to be president of “all Americans”; he, too, is devoted to “making America great again” through an evocation of common purpose coupled with the reality of a diverse mosaic that he, unlike Donald Trump, embraces. But, for a variety of reasons, even those most elated by Biden’s victory—not least because he freed us of the sociopathic

30 PHILIP ROTH, *PORTNOY’S COMPLAINT* (1969).

31 Matthew Arnold, “Dover Beach” (ca. 1848).

governance of Donald J. Trump—may doubt that such rhetoric will prove availing. Barack Obama, after all, burst onto the national scene with his vision not of technocracy but, instead, of an America that was not divided between red states and blue states or, indeed, fundamentally divided in any other way. *E pluribus unum* might have been Obama's own motto for his successful run for the White House. But we all know that winning is not the same thing as being able to govern effectively or, more fundamentally, to achieve the kind of national unity—and commitment to a politics of the common good—that Obama at his best might have instantiated. After all, technocrats are fully committed to achieving the common good; it is simply that they are suspicious that the rough-and-tumble of political conflict will be as effective as decisions imposed by what David Halberstam so unforgettably labeled “the best and the brightest.”

I earlier quoted Frederick Douglass and his own flirtation with the psychodrama of the “self-made” person. But it was Douglass who also reminded us that “[p]ower concedes nothing without a demand. It never did and it never will.”³² And “demand” may be too anodyne a word, for Douglass, once he broke with William Lloyd Garrison, was willing to accept violence as one way of achieving one's demands. Although he refused to join John Brown in what we may well regard as his crazed attempt to spark a slave rebellion in 1859, Douglass scarcely dismissed Brown as a moral exemplar. Douglass, the most prominent orator of the nineteenth century, did not believe that exhortation alone could bring about needed changes.

The “original meaning,” as it were, of “slavery” in seventeenth- and eighteenth-century political discourse was illegitimate domination. This is why presumably serious Bostonians could object that the British were trying to “enslave” them by the imposition of illegitimate taxes. What ensued, of course, was the violent secession of the American colonies from the British Empire in the name of government by “consent of the governed” and, one might have hoped, the recognition of the equal dignity of all members of a nonaristocratic liberal society. As we all know, it didn't quite turn out that way, given the “original sin” of “chattel slavery,” the protection of which was the price willingly paid to get a constitution and a ruling elite of self-styled “natural aristocrats,” where skin color and nothing else was often enough to distinguish the “aristocracy” from the underlings. It took 750,000 deaths to eradicate chattel slavery, but, of course, that was not enough to eradicate the ideology of white supremacy—the assignment of special “merit” to racial identity—as an informing ideal of American politics. And Sandel is not truly heartened by the substitution of “meritocracy,” even if it softens the ravages of racial discrimination.

I do not think it is a complete stretch to submit that Sandel suggests that “meritocracy” produces its own form of slavery, at least if we return to a now forgotten use of that term

32 Frederick Douglass, *Is It Right and Wise to Kill a Kidnapper?*, FREDERICK DOUGLASS' PAPER (Rochester, N.Y.), June 2, 1854, reprinted in *THE ESSENTIAL DOUGLASS: SELECTED WRITINGS AND SPEECHES* 76 (Nicholas Buccola ed., 2016).

to identify *all* systems of unjustified domination. All systems feature elites, secure in the propriety of their own prerogatives, who feel entitled to lord it over those they view as their inferiors. And this is true even if technocrats within the elites are genuinely motivated by a desire to dispense certain goods to the lower orders. In its own way, *The Tyranny of Merit: What's Become of the Common Good?* is like a tract written by an abolitionist, setting out the reality of an indefensible social order and calling for its replacement by a radically different one. There is nothing innocent in the use of the word “tyranny.” The *Declaration of Independence*, after all, justifies what became a five-year-long violent struggle by claiming that King George III was indeed presiding over a “tyranny.” Tyrannicide is a (justified) practice going back to ancient times; we might recall that John Wilkes Booth shouted “*Sic semper tyrannis*” immediately after assassinating Abraham Lincoln. I presume that all of us disagree with Booth’s assessment of Lincoln, but what if we did not? Would we then reprove him for resorting to extreme measures? Would we not have rejoiced if the White Rose conspiracy had in fact killed Hitler?

But Sandel denounces “tyranny” without naming any particular “tyrants,” even if, as in his critique of former Harvard President James Bryant Conant, he lays some particular blame for the rise of the American meritocracy. It is telling, I believe, that in a presentation of his argument at the American Academy of Arts and Sciences, he stated that “merit becomes a tyrant.”³³ But this is obvious reification. Merit is a concept, nothing more, nothing less. Its use can become an agent of tyranny if, and only if, powerful individuals are able to create an ideology that justifies, both to themselves and to subordinate others, their place in hierarchies of status, power, and the economy. So, one wants to know more precisely who are the principal tyrants and what DESERVED fate awaits them if they do not give up their powers voluntarily.

No doubt Sandel’s book would have received much less notice had it been titled more modestly “The Problems of Meritocracy.” But that is part of the point: is “tyranny” being used basically for marketing purposes, or does Sandel genuinely believe that meritocracy is in the same league as other widely recognized “tyrannies,” with whatever implications are attached to identifying an ideology or the concrete individuals who instantiate it as “tyrants”?

It is telling that Sandel approvingly quotes R.H. Tawney’s *Equality*,³⁴ written in 1931, that warns us that the “opportunities to rise are not a substitute for a large amount of practical equality, nor do they make immaterial the existence of sharp disparities of income and social conditions.”³⁵ Instead, Tawney writes, and Sandel apparently agrees, “Social well-being . . . depends upon cohesion and solidarity. It implies the existence,

33 *Does Meritocracy Destroy the Common Good?*, BULL. AM. ACAD. ARTS & SCIS. 50 (Winter 2021).

34 R.H. TAWNEY, *EQUALITY* (1931).

35 *Id.* at 224–25.

not merely of opportunities to ascend, but of a high level of general culture, and a strong sense of common interests.”³⁶ Ironically or not, a major point of the earlier quoted column written by Russell Brand is the betrayal by the British Labour Party of the vision articulated by Tawney. “New Labour” turned out to be Thatcherism with a human face, precisely the neoliberalism that Sandel spends much of his book attacking.

But a call for “solidarity” raises important issues of its own. With *whom* are we expected to express fellowship and embrace as being within a “commons” whose good we seek? Note Sandel’s own telling use of the term “citizens” when describing those whose welfare we ought to be particularly concerned with and with whom we should take care to consult and deliberate. A distinct subdivision of the Rawls industry involves a critique of the degree to which he devised his famous “original position” and “veil of ignorance” *within* a given society (much like the United States) and not the world more broadly. *Should* we be indifferent, when defining the “common good,” to implications of any such definitions for the lives of those defined as outsiders? To return to Brand once more, he suggests that one impetus behind Brexit is a nostalgic, perhaps thoroughly reactionary, desire to return to a stable sense of British (or even English) identity unfettered by any felt commitments to the welfare of millions of outsiders in the European Union, let alone those residing in yet more distant climes and places. Indeed, many of these “outsiders” have been able, because of the practical demise of political borders within the Union, to emigrate from Poland and elsewhere to become important—and for some, disturbing—members of British society.

Early on in the book, Sandel notes that many members of Donald Trump’s base share an “animus” against immigrants. They are viewed not only as competitors for scarce jobs but, at least as importantly, as threats to older and well-established social hierarchies predicated on ascribed characteristics of race, ethnicity, and religion. One might join Sandel in denouncing this as exhibiting “nativism, misogyny, and racism,”³⁷ but that is only to beg the question of the degree to which many of “us” can be described, pejoratively or not, as embracing far more an ideal of “rootless cosmopolitanism” than its opposite, which “we” fear will inevitably become a form of nationalistic solidarity. It is not irrelevant that a number of books have recently been written defending nationalism, including *Why Nationalism?*,³⁸ by the distinguished Israeli political philosopher Yael Tamir. At a far more mundane level, one should wrestle with the fact that Bernie Sanders’s political vision, whatever one thinks of it—Sandel describes him as a “social democratic populist”—was far more of a distinctly national socialism than a call for the American working class to identify with its counterparts around the world and to accept, say, the proposition that

36 *Id.*

37 SANDEL, *supra* note 1, at 18.

38 YAEL TAMIR, *WHY NATIONALISM?* (2019).

there might be a need for significant redistribution of resources from the wealthy (and imperialistic) United States to the downtrodden around the world.

Michael Sandel is, to be sure, one of the major political theorists of our time. But what is ultimately missing from this important book is a genuine sense of politics. Are we expected to believe that the answer to the problems he identifies is a kind of mass moral catharsis, perhaps led by visionary political leaders? Or will it involve the possibility, as significant social change so often does, of social disorder and the kinds of Machiavellian “tumults” that directly challenge the hope for “domestic tranquility” expressed by the elite drafters of the U.S. Constitution who feared democracy and the kinds of mass political movements typified by Shays’ Rebellion? Should we expect an uprising from the victims of meritocratic “tyranny”? And, if so, who might lead it, to whom would they direct their wrath, and what will their proposed remedies look like? I would be shocked if they stopped with a call for randomized admission to Harvard College. In any event, perhaps these will be the topics of his next book.