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WHAT'S NEEDED FOR EQUALITY OF CONDITION? Comment on M. Sandel's *The Tyranny of Merit*

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In *The Tyranny of Merit: What's Become of the Common Good?*, Michael Sandel offers a powerful critique of the meritocratic ideals that have shaped public culture and recent political discussions, both in the United States and in other democratic societies.¹ I am in strong agreement with many of Sandel's arguments and many of his conclusions, so the suggestions I am going to make here are offered as friendly amendments to a deeply worthwhile project, not as a set of objections to the project itself.

I shall start with two suggestions, one about discrimination law and one about class-based societies. First, I think the book underestimates the power of discrimination law to help raise subordinated groups to a position of equal status in society and thereby to help achieve the kind of equality of condition for which Sandel advocates. If the goals of discrimination law are understood more broadly—as they are in many countries other than the United States—then discrimination law can be a useful tool for helping to give underprivileged groups the kinds of resources and recognition that they need in order to live lives of dignity. Second, it seems to me that the book's discussion of class-based societies, which borrows from the work of Michael Young, follows Young in painting an overly idealized picture of them. Such societies, I shall argue, are no better than meritocracies at recognizing the moral arbitrariness of privilege. They too work to reinforce the mistaken belief that the privileged deserve their privileges.

After developing these points, I shall turn to some questions about Sandel's preferred alternative to meritocratic ideals, an ideal of equality of condition achieved in part through public dialogues about difficult moral issues and a sense of solidarity with one's fellow

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

citizens. I think we need to be honest about just how far out of reach such public political dialogues are at the moment, both because a large percentage of our populations lack basic literacy skills and because of the emergence of “post-truth politics.” Moreover, Sandel’s ideal of solidarity with our fellow citizens seems to me to be glossed in two very different ways at different points in the book. One version of the ideal seems to me too self-focused to constitute real solidarity: this is the idea that we should feel for those who are less privileged because *we* might end up in their position. The other version of solidarity emphasizes a shared vision of the common good, and so does seem capable of generating real bonds between those more fortunate and those less fortunate. But I wonder whether a shared vision of the common good is practically attainable in democratic societies where people differ so deeply in their visions of what matters in life. I do think there is an alternative, however—one that is entirely in the spirit of Sandel’s rejection of meritocratic ideals and his advocacy of equality of condition. I shall conclude with some remarks about what this alternative might involve.

I. THE POWER OF DISCRIMINATION LAW

Sandel repeats, at several points in the book, that “true equality of opportunity require[s] more than rooting out discrimination.”² He goes on to argue that even true equality of opportunity is inadequate as a social and political ideal. It isn’t enough just to level the playing field between different individuals, because even if a State is actually successful in doing so, this will still permit vast inequalities between people, provided that they are due only to differences in people’s efforts and talents. And this, in turn, will prevent those less fortunate from living lives of dignity.³

Although I agree with Sandel’s critique of equality of opportunity, it seems to me that his dismissals of attempts to “root out discrimination” are too hasty. Throughout the book, he seems to identify discrimination with a quite narrow set of acts—in particular, the deliberate exclusion of people marked out by some protected trait, such as race or gender, usually on the basis of prejudice. It is true that, in the United States, discrimination law is paradigmatically thought of as targeting such acts, acts that are seen as problematic precisely because they hinder equality of opportunity. But I think it is important to note that American law is an outlier in this regard. Much of the rest of the world is developing antidiscrimination laws that protect not just against policies that hinder some people’s equality of opportunity but against policies that perpetuate social hierarchies and entrench the hardships suffered by underprivileged social groups. Canada, for instance, has abolished all formal legal distinctions between disparate treatment and disparate impact: its

2 *Id.* at 85, 120–21.

3 *Id.* at 121–25.

discrimination laws target any policy that “has the effect of reinforcing, perpetuating, or exacerbating [the] disadvantage” suffered by a group marked out by a protected trait or a set of intersecting such traits.⁴ The purpose of eliminating these disadvantages is not to pave the way for a merit-based form of equality of opportunity. It is, rather, to pave the way for a genuine equality of status for every member of society, regardless of their backgrounds and their choices. Discrimination law, in this view, is one tool that brings us closer to a society in which every person’s life is seen as equally valuable and in which each person has the conditions necessary for a life of dignity.

So, although history and current circumstances may mean that it is not possible for this vision of antidiscrimination law to be a reality in the United States today, it is certainly a vision that is guiding other countries, countries who are also trying to build a genuine society of equals.

II. HIERARCHICAL SOCIETIES AND THE VALUE OF A LIFE

In explaining what he calls “meritocracy’s dark side”—its tendency to generate hubris in the successful class and humiliation in the lower classes—Sandel contrasts meritocracies with class-based societies.⁵ He suggests, following British sociologist Michael Young, that in at least one respect, class-based societies have a certain advantage over meritocracies. Although both types of society permit differences in status between different members of society, class-based societies are “clear-eyed” about the moral arbitrariness of the status of privileged groups.⁶ And this “prevents both the winners and the losers from believing they deserve their lot in life.”⁷

But Young’s picture of class-based societies such as pre-war Britain seems to me to be somewhat naïve. Even if it is true that, in such societies, people regard it as morally arbitrary which class one is born into, it does not follow that all adults in such societies are regarded as morally on par. Nor does this seem borne out by history. Consider the children who grew up as members of aristocratic families in Victorian England. Because of their superior opportunities, these children were taught the right manners, trained in the sports and pastimes that were a hallmark of superiority in their society, and educated to become social and political leaders. In other words, they became what their society regarded as *better people*. Hence the term that the lower classes used when referring to the upper classes: “your betters.” How could a member of the so-called “sunken classes” possibly

4 See *Fraser v. Canada (Attorney General)*, [2020] S.C.C. 28, para. 76 (Can.); *Quebec (Attorney General) c. Alliance du personnel professionnel et technique de la santé et des services sociaux*, [2018] 1 S.C.R. 464, para. 25 (Can.).

5 SANDEL, *supra* note 1, at 115–20.

6 *Id.* at 117.

7 *Id.*

compare with his “betters,” as a person? How could he, in his impoverished state and with virtually no education, think that he as a person deserved the same privileges as the upper classes?

In my view, class-based societies, no less than meritocratic societies, reinforce the belief that the privileged deserve their privileges. They just do so in a different way from meritocratic societies. Rather than appealing to the effort and striving of those at the top and claiming that these people have earned their privileges, class-based societies appeal to the kind of person that one becomes when one grows up as an aristocrat in such a society, and they implicitly claim that only such persons are deserving of the privileges that their class enjoys.

So, rather than thinking that there is any advantage to class-based societies, we ought to look away from *both* meritocratic and class-based societies, toward a social order that distinguishes between the achievements, appearance, talents, and manners of a person, on the one hand, and the value of their life on the other. We need to strive for a social order that affirms the equal value of every person’s life and that does not assign anyone an inferior or a superior status to others, whether because of some alleged achievement or failure of theirs or because of the family or class that they were born into.

III. WHY WE CAN’T ALL ENGAGE IN DIALOGUE ABOUT THE COMMON GOOD

One of the many appealing features of Sandel’s book is that, instead of simply laying down a set of solutions or policies that could move us away from a meritocracy and toward the kind of society that grants everyone equality of condition, Sandel argues that the ideal set of policies for each society really needs to be worked out collectively by the members of that society. He envisions this happening through an ongoing public dialogue in which people share their views on the difficult moral questions underlying particular economic and political arrangements and debate each other’s proposals.⁸

Although this is a noble ideal, I find myself wondering how realistic it is, for two important reasons. The first concerns the failure of many of our education systems. In my country, Canada, *half* of all adults cannot read at a high-school level—at a level that would enable them to engage critically with something that had been alleged as a fact in a news report—and one in six is functionally illiterate.⁹ In the United States, the numbers are even more bleak. These groups are not primarily made up of immigrants; on the contrary, they are disproportionately composed of adults who were born here. And

8 *Id.* at 29–31, 112, 226–27.

9 For data on Canada and the United States, see the International “Survey of Adult Skills” administered by the Programme for the International Assessment of Adult Competencies (PIAAC), <https://www.oecd.org/skills/piaac/>. For additional Canadian data, see the literacy statistics published by the Government of Canada, <https://www150.statcan.gc.ca/n1/pub/89-555-x/2013001/t/tbl1.1-eng.htm>.

interestingly, what has apparently prevented many of them from seeking help as adults is one of the very evils of meritocracies that Sandel writes about: shame. Those who are illiterate describe feeling as though their condition is their fault.¹⁰ Many spend their lives hiding their inability to read from their employers and even their families.

Against this background, it seems somewhat utopian to suggest that we should decide on a set of shared moral priorities through public political dialogue. Fifty percent of us cannot even critically analyze a news report. How can we then critically analyze each other's views in public political argument? There could, I think, have been more emphasis in the book on the educational policies that we need urgently to put in place in order to make such a collective political dialogue possible. I imagine that there were strategic reasons why Sandel did not want to discuss education as a necessary part of the solution in this connection: most of the discussion of education in the book has to do with the valorization of a college education in the United States, which has become a badge of merit, when it is really little more than a sign of privilege. So, it is possible that Sandel felt that our education systems are simply too bound up with meritocratic ideals to be a helpful part of a push toward a genuinely egalitarian society. But it seems to me that a precondition for the kind of society that Sandel envisions is the recognition that each person has a right not just to the kind of education that will give them basic literacy skills, but the right to the kind of education that will give them the critical skills necessary to engage with other people's arguments. Otherwise, any truly inclusive political dialogue will simply not be possible.

The second reason that Sandel's vision of an inclusive public political dialogue seems troublingly beyond our reach has to do with a certain kind of politics that has gained traction in recent years, and that seemed to reach its zenith during Donald Trump's presidency in the United States. It is a politics that permits whatever statements will garner votes, regardless of their truth, and that licenses efforts to undermine the credibility and the visibility of those individuals (including scientists or experts) who care about revealing the truth. It has sometimes been called "post-truth politics."¹¹ This problem may be even more difficult to address than the problem of mass illiteracy. Literacy problems can be tackled through educational reforms, and although these may be difficult to implement, we have at least a sense of what such reforms would involve. But the proponents of

10 Michael Wolf et al., *Patients' Shame and Attitudes Towards Discussing the Results of Literacy Screening*, 12 J. HEALTH COMMUN 721 (2007).

11 The term "post-truth politics" was originally coined by Steve Tesich in his article *Government of Lies*, which appeared in *The Nation* on January 13, 1992. It has since been used by both journalists and academics to describe contemporary politicians who not only care little for the truth of their statements but use falsehoods strategically to mobilize voters. It is regarded by many as characterizing both the Brexit movement in the United Kingdom and the rise of Donald Trump in the United States. See, e.g., Hannah Marshall & Alena Drieschova, *Post-Truth Politics in the UK's Brexit Referendum*, NEW PERSPS., Feb. 27 2020; Robin Lakoff, *The Hollow Man: Donald Trump, Populism, and Post-Truth Politics*, 16 J. LANGUAGE & POL. (June 2017).

post-truth politics do not suffer from a lack of education. Nor is this a problem that we can discuss our way out of—precisely because the proponents of post-truth politics make reasoned discussion impossible by rejecting traditional epistemic norms and denying the authority of those who seek to abide by them.

IV. TWO INTERPRETATIONS OF OUR CONCERN FOR THE COMMON GOOD, AND AN ALTERNATIVE

I want to conclude with some thoughts about Sandel's ideal of solidarity with our fellow citizens—an ideal that appears in his subtitle, *What's Become of the Common Good?* I think there are two rather different interpretations of this ideal that the book vacillates between. One of them is connected with an awareness of the contingency of our own circumstances. Sandel rightly emphasizes that we ought to be more aware of the accidents of our birth and our lack of control over our fortunes, and at the end of the book he quotes the proverb "There, but for the grace of God . . . go I."¹² This particular interpretation of solidarity, taken on its own, seems too weak. A form of solidarity that is rooted only in my fear that your situation might become mine is not really a form of solidarity with *you*. It is really just a continued preoccupation with *me*. So, it is too self-focused to offer us what Sandel really wants. The second, stronger interpretation of solidarity that we see in the book does offer this. It involves an appeal to a shared vision of the common good.¹³ Such a shared vision would, I think, enable us to truly sympathize with and advocate for our fellow citizens. But I wonder whether a shared vision of the common good is practically attainable in democratic societies where people differ so deeply in their visions of what matters in life.

I think, however, that there is an alternative. It is entirely in the spirit of Sandel's rejection of meritocratic ideals. But it does not require us to develop a shared conception of the common good. We can agree, instead, on two basic principles that arguably ground democratic societies: (i) every person's life has some positive value (rather than no value), and (ii) no person's life is more valuable than anyone else's. Certain obligations follow from these basic principles. If every person's life is just as valuable as every other person's life, then each of us has an obligation to change those social and political institutions that perpetuate social hierarchies and place others below us in social status. This, as I suggested earlier, is part of what discrimination laws aim to accomplish in some countries. Moreover, if every person's life has some positive value, then each of us has an obligation to do what we can, given the institutions that we have the power to influence, to ensure that

12 SANDEL, *supra* note 1, at 227.

13 *Id.* at 224–27.

everyone has the conditions necessary for a dignified life. And our governments have an obligation to do the same.

We can accept these two basic principles and the obligations that flow from them without supposing that we will be able to agree upon a conception of the common good. All that we need to agree on is that nobody should be treated as though they were below others, and everybody deserves to live a dignified life. And we can agree upon this even if we give very different answers to the moral questions that underlie particular political issues, and even if we do not have a shared understanding of what is best for us, as a community or a city or a country.

This ideal is more modest than Sandel's. Like his ideal, it is genuinely egalitarian. But because it does not appeal to a more ambitious conception of the common good, it may have more of a hope of being politically attainable.