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POWER STRUGGLES—THE TYRANNY OF MERIT
AND THE DEGRADATION OF WORK
Comment on M. Sandel’s *The Tyranny of Merit*

Kate Andrias*

The ideal of meritocracy is attractive: individuals obtain wealth, leadership roles, and social status based upon talent and hard work, rather than by virtue of their position in the aristocracy or their family connections. Sometimes framed as “equality of opportunity” or even “the American Dream,” meritocracy has for decades garnered widespread popular support in the United States, becoming more embedded over time. Yet, mounting empirical evidence from social scientists demonstrates that our country is not really a meritocracy. Some wield massive advantages from the beginning; others, no matter how talented and hardworking, have little hope of obtaining a coveted spot at an Ivy League institution or even a decently paying job.¹

In *The Tyranny of Merit: What’s Become of the Common Good?*, Michael Sandel argues that the commitment to meritocracy is at the core of our nation’s problems.² In his view, meritocracy has unraveled our social bonds, produced resentment among nonelites, and even brought the nation to the brink of autocracy. Sandel is not the first to take issue with meritocracy. Several years back, Professor Lani Guinier, of Harvard Law School, focused

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- 1 See, e.g., Michael D. Carr & Emily E. Wiemers, *The Decline in Lifetime Earnings Mobility in the U.S.: Evidence from Survey-Linked Administrative Data* 1–40 (Washington Center for Equitable Growth, 2016), https://equitablegrowth.org/wp-content/uploads/2016/05/carr_wiemers_2016_earnings-mobility1.pdf; Raj Chetty, Nathaniel Hendren, Patrick Kline & Emmanuel Saez, *Where Is the Land of Opportunity: The Geography of Intergenerational Mobility in the United States*, 129 Q.J. ECON. 1553 (2014).
- 2 See MICHAEL J. SANDEL, *THE TYRANNY OF MERIT: WHAT’S BECOME OF THE COMMON GOOD?* 17 (2020).

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on how universities that purport to recognize merit systematically advantage elites; she proposed to redefine educational merit to value democratic participation and collaboration.³ Professor Daniel Markovits, of Yale Law School, more recently warned that the meritocracy leads to anxiety and stress for everyone, in part because the winners take so much, and the losers are left with so little.⁴

Sandel, however, offers perhaps the most forceful and compelling critique of meritocracy to date. The problem, in his view, is not just that some are given unfair advantage in developing their merit (although, of course, they are); or that, in practice, the wrong traits are valued as meritorious (although this is true as well); or even that meritocracy produces anxious winners and losers (although it does). Sandel contends that, even if perfected, meritocracy would fail, because it undermines the possibility of a common good.

Sandel shows that the very concept of meritocracy produces self-satisfied elites who “come to believe that they deserve their success,”⁵ and who look down upon the less educated.⁶ Even worse, Sandel demonstrates, meritocracy tells nonelites—ordinary workers—that they deserve their fate, that the work they do is a lesser contribution to the common good, and that they are less worthy of social recognition and esteem.⁷ Meritocracy—and the devaluing of the worker—thus diminishes “our capacity to see ourselves as sharing a common fate. It leaves little room for the solidarity that can arise when we reflect on the contingency of our talents and fortunes.”⁸ Ultimately, meritocracy leaves us incapable of pursuing a shared democratic project. In order to find our way to a “politics of the common good,” Sandel argues, we must affirm the “dignity of work.”⁹ As he puts it, the crisis of the COVID-19 pandemic has highlighted the importance of “work performed by grocery store clerks, delivery workers, home care providers, and other essential but modestly paid workers,”¹⁰ creating an opportunity to restore the dignity of work and “to seek a common good beyond the sorting and the striving.”¹¹

Sandel has accomplished a remarkable feat in pushing beyond arguments for a more perfect meritocracy and in elucidating the perniciousness of deeming some people fundamentally more meritorious than others. The book is an important and timely contribution to the national debate, considerably deepening existing critiques of meritocracy. Yet, the choice to focus on an abstract concept, even one as important as merit, leads to limitations

3 LANI GUINIER, *THE TYRANNY OF THE MERITOCRACY: DEMOCRATIZING HIGHER EDUCATION IN AMERICA* (2015).

4 DANIEL MARKOVITS, *THE MERITOCRACY TRAP: HOW AMERICA’S FOUNDATIONAL MYTH FEEDS INEQUALITY, DISMANTLES THE MIDDLE CLASS, AND DEVOURS THE ELITE* (2019).

5 SANDEL, *supra* note 2, at 5, 226.

6 *Id.* at 95–96.

7 *Id.* at 5, 198.

8 *Id.* at 25.

9 *Id.* at 6, 208.

10 *Id.* at 213.

11 *Id.* at 14–15.

in the book's analysis, for the problems facing the nation do not stem solely or primarily from an abstract idea, but also from institutionalized exercises of power. To understand how work came to be treated with so little dignity, and to envision a different reality, a richer account is needed: one that examines the collective efforts of workers to bring about dignity at work, the contrary efforts of powerful elites, and the racial and gender dimensions of these struggles.

Sandel harkens back to a better time for work and workers. He writes that “[f]rom the end of World War II to the 1970s, it was possible for those without a college degree to find good work, support a family, and lead a comfortable middle-class life.”¹² Subsequent globalization, Sandel contends, brought great rewards to the well-credentialed, but it did little for most workers, particularly white, male workers whose wages have stagnated, who have dropped out of the labor force, and whose life expectancy and health have declined.¹³ According to Sandel, the result of these dynamics is not only mounting economic and physical hardship, but the loss of social esteem for the worker, which then leads to resentment of elites and support of right-wing populist policies.¹⁴

All this is true. But the picture Sandel hastily paints of the elusive “comfortable middle class life” would benefit from an account of the struggle that produced that middle class life (for some) and then destroyed it (for almost all). Contrary to Sandel's suggestion, dignity was not bestowed on the autoworkers and steelworkers of the mid-twentieth century by the grace of the governing elites.¹⁵ Rather, workers fought for it: in the first half of the twentieth century, they engaged in decades of mass protests and strikes, suffering injunctions, jail, and often violent repression by both employers and the State.¹⁶ Only through their collective action did workers achieve higher wages, decent working conditions, and, ultimately, more dignified work.

Yet, industries dominated by African Americans were almost entirely excluded from the New Deal promise of dignified work, as was much of women's labor.¹⁷ In the decades following World War II, people of color and women demanded that their work also be treated fairly. Recall the Memphis, Tennessee, sanitation strike during which Martin Luther

12 *Id.* at 197.

13 *Id.* at 197–202.

14 *Id.* at 202–05.

15 *Id.* at 29.

16 CHRISTOPHER L. TOMLINS, *THE STATE AND THE UNIONS: LABOR RELATIONS, LAW, AND THE ORGANIZED LABOR MOVEMENT IN AMERICA, 1880–1960*, at 11–59 (1985); William E. Forbath, *Law and the Shaping of the American Labor Movement*, 102 HARV. L. REV. 1109, 1185–95 (1989); NICK SALVATORE, *EUGENE V. DEBS: CITIZEN AND SOCIALIST* 131–38, 148–50 (1982).

17 IRA KATZNELSON, *FEAR ITSELF: THE NEW DEAL AND THE ORIGINS OF OUR TIME* 127–29, 161–94 (2013); ALICE KESSLER-HARRIS, *IN PURSUIT OF EQUITY: WOMEN, MEN, AND THE QUEST FOR ECONOMIC CITIZENSHIP IN 20TH-CENTURY AMERICA* 106 (2001).

King, Jr., was assassinated: “I am a Man,” the strikers’ signs read.¹⁸ In Charleston, South Carolina, striking African American healthcare workers demanded “Human Dignity for Hospital Workers.”¹⁹ But to this day, agricultural and domestic work remain largely without the protections of the National Labor Relations Act, the Fair Labor Standards Act, and other labor laws that assure workers a measure of dignity on the job; care work remains woefully undercompensated; and the racial wealth gap is a chasm.

Meanwhile, the degradation of industrial work upon which Sandel focuses was not an accidental byproduct of elites’ misplaced faith in education, technocracy, and market. Beginning in the 1970s, employers aggressively moved capital overseas and fissured employment relations, turning to subcontractors and independent contractors in a concerted effort to reduce labor costs, evade responsibility to their workers, and eliminate workers’ collective voices in their jobs.²⁰ Workers fought to maintain their dignity: They held protests. They went on strike. They sought to engage in civic discussion about the implications of globalization and financialization. But they lost these battles—with legal and political elites frequently weighing in against them. Consider *First National Maintenance v. NLRB*, in which the Supreme Court held that employers need not bargain with unionized workers about whether to close operations.²¹ Or the *MacKay Radio* doctrine, which allows workers to be permanently replaced, without any shred of dignity, for exercising their legally protected right to strike.²² Or President Reagan’s decision to replace the striking air traffic controllers in 1981.²³

To envision a world in which work is treated with dignity also requires a closer look at what work is like today. The lack of dignity afforded to contemporary workers goes far beyond the low wages and rising illness among the white working class that Sandel highlights. Most workers have no right to deliberate collectively over the terms and conditions under which they labor. Employers can change work assignments and schedules at any time and without explanation. They can monitor workers’ every move using new technologies.

18 DeNeen L. Brown, “I Am a Man”: The Ugly Memphis Sanitation Workers’ Strike that Led to MLK’s Assassination, WASH. POST, Feb. 12, 2018, <https://www.washingtonpost.com/news/retropolis/wp/2018/02/12/i-am-a-man-the-1968-memphis-sanitation-workers-strike-that-led-to-mlks-assassination/>.

19 Adam Parker, *Local Hospital Workers’ Courage Changed Workplaces Forever*, POST & COURIER, Sept. 30, 2013, https://www.postandcourier.com/archives/local-hospital-workers-courage-changed-workplaces-forever/article_06e8c27e-6362-5734-9f68-60452286c0d7.html; see also LEON FINK & BRIAN GREENBERG, UPHEAVAL IN THE QUIET ZONE: 1199/SEIU AND THE POLITICS OF HEALTHCARE UNIONISM (2d ed. 2009).

20 See Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 21–32 (2016); JEFFERSON COWIE, CAPITAL MOVES: RCA’S SEVENTY-YEAR QUEST FOR CHEAP LABOR 2 (1999); DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT 10 (2014).

21 452 U.S. 666 (1981).

22 NLRB v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938).

23 JOSEPH A. MCCARTIN, COLLISION COURSE: RONALD REAGAN, THE AIR TRAFFIC CONTROLLERS, AND THE STRIKE THAT CHANGED AMERICA (2011).

They can force workers to sign away their rights to go to court. They can terminate workers who complain. Indeed, they can terminate workers for any reason or no reason at all (save legally proscribed reasons, such as race or sex discrimination).²⁴

Drawing from proposals offered by both conservatives and progressives, Sandel suggests a set of policy reforms including income subsidies; restrictions on trade, outsourcing, and immigration; and a new tax policy that would discourage financial speculation and honor productive labor.²⁵ Understandably for a book of this sort, the policy recommendations are thinly developed. But even if further elaborated, the prescriptions would not match the normative ambition of the book—nor would they do enough to address problems of inequitable resource allocation, labor exploitation, and economic dispossession that undermine our politics of a common good.

Ultimately, Sandel is right to call for ending a regime in which most workers are told the work they do is a lesser contribution to the common good, that they are less worthy of social recognition and esteem, and that they are of lesser merit. He is right to recognize that work produces great value and, in turn, should be valued. And he is right to call for “a broad equality of condition that enables those who do not achieve great wealth or prestigious positions to live lives of decency and dignity.”²⁶ But Sandel leaves for other scholars—and for workers themselves—the task of understanding past and present struggles over the dignity of work and of elaborating what work with dignity could look like.

24 See, e.g., ELIZABETH ANDERSON, *PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT)* (2017); KATE ANDRIAS & ALEXANDER HERTEL-FERNANDEZ, *ENDING AT-WILL EMPLOYMENT: A GUIDE FOR JUST CAUSE REFORM* (2021), https://rooseveltinstitute.org/wp-content/uploads/2021/01/RI_AtWill_Report_202101.pdf.

25 SANDEL, *supra* note 2, at 214–21.

26 *Id.* at 224.