

BEYOND THE DIGNITY OF WORK

Comment on M. Sandel's *The Tyranny of Merit*

Daniel Hemel*

In starkly polarized times, the “dignity of work” has emerged as the rare catchphrase with resonance on both the right and the left. “[T]he dignity of work—it’s really a good term,” said President Trump, in June 2017, upon signing an executive order promoting apprenticeships and vocational training.¹ His successor, President Joe Biden, agrees. “[T]he dignity of work,” Biden recently remarked, “is really important to me and to all of us.”² And it’s not just the figures at the top of the ticket. Republican Senator Marco Rubio of Florida recently penned an essay entitled “America Needs to Restore Dignity of Work,”³ while across the aisle, Democratic Senator Sherrod Brown of Ohio criss-crossed the country on a “Dignity of Work” tour.⁴ Republicans and Democrats can’t

Author: *Daniel Hemel is a Professor of Law and Ronald H. Coase Research Scholar at the University of Chicago Law School, where he teaches courses on tax, nonprofit organizations, and torts. He is a graduate of Harvard College, University of Oxford, and Yale Law School and has taught as a visiting professor at Harvard Law School and Stanford Law School. Before joining the Chicago faculty, he clerked for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit, Judge Sri Srinivasan of the U.S. Court of Appeals for the D.C. Circuit, and Associate Justice Elena Kagan and served as visiting counsel at the Joint Committee on Taxation. Thanks to Martha Minow and Shishene Jing for thoughtful comments on an earlier draft.

- 1 President Donald J. Trump, Remarks at the White House upon signing an executive order on apprenticeships and workforce development (June 15, 2017), <https://www.c-span.org/video/?430049-1/president-trump-steve-scalises-condition-hes-trouble>.
- 2 Geoff Bennett, Adam Edelman & Rebecca Shabad, *Biden Formally Introduces Economic Team, Including Yellen for Treasury Secretary*, NBC NEWS (Dec. 1, 2020), <https://www.nbcnews.com/politics/white-house/biden-formally-introduce-economic-team-including-yellen-treasury-secretary-n1249497>.
- 3 Marco Rubio, *America Needs to Restore Dignity of Work*, THE ATLANTIC (Dec. 13, 2018), <https://www.theatlantic.com/ideas/archive/2018/12/help-working-class-voters-us-must-value-work/578032>.
- 4 SHERROD BROWN: THE DIGNITY OF WORK, <https://dignityofwork.com> (last visited Dec. 20, 2020). For a thoughtful critique of “dignity of work” rhetoric that appeared while this essay was in the publication process, see Ezra Klein, *There’s No Natural Dignity in Work*, N.Y. TIMES, Feb. 18, 2021, <https://www.nytimes.com/2021/02/18/opinion/theres-no-natural-dignity-in-work.html>.

© 2021 Daniel Hemel. Published under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International license (CC BY-NC-ND).
https://doi.org/10.1162/ajle_a_00007

agree on basic facts about the world, but they can—apparently—agree on the dignity of work.

Below this surface-level agreement, though, is a deep fissure as to what exactly the “dignity of work” entails. In one iteration, the “dignity of work” refers to the claim that all work is worthy of appropriate respect and remuneration. And with a few exceptions (e.g., contract killer, narcotics dealer, tobacco-industry lobbyist), this claim is both powerful and sound. But there is a darker side to the “dignity of work” that emerges when the phrase is used to refer to the claim that individuals are worthy of respect *because* they work and, correspondingly, that nonworkers deserve relatively less respect. That devaluation of nonworkers is pervasive, it is pernicious, and it ought to be rejected resoundingly.

The “dignity of work” plays a central role in Michael Sandel’s thought-provoking new book, *The Tyranny of Merit: What’s Become of the Common Good?*⁵ It lies at the heart of both his critique of meritocratic institutions and his vision for renewal. Sandel argues that a “credentialist prejudice” has infected America’s educational and economic elites, undermined the “dignity of work” for those lacking college degrees, and stoked the resentment that propelled Donald Trump to power.⁶ His alternative to the “meritocratic ethic” is a “producer-centered ethic” that extolls the ordinary workingman and workingwoman instead of the Ivy League degree holder.⁷ “Only a political agenda that . . . seeks to renew the dignity of work can speak effectively to the discontent that roils our politics,” Sandel concludes.⁸

Despite the centrality of the “dignity of work” to Sandel’s argument, it is not always clear what Sandel means by the term. Sometimes, he uses the phrase to refer to the idea that all work—including low-wage work of noncollege graduates—merits respect and remuneration. Elsewhere, though, Sandel comes much closer to implying that dignity *depends* upon work. For example, in the book’s final chapter, Sandel suggests that “we are most fully human when we contribute to the common good and earn the esteem of our fellow citizens for the contributions we make.”⁹ Appealing to Aristotle, Hegel, Catholic social teaching, and the American republican tradition, Sandel says that “the fundamental human need is to be needed by those with whom we share a common life.” “The dignity of work,” Sandel writes, “consists in exercising our abilities to answer such needs.”¹⁰

What exactly Sandel means when he says that we are “most fully human” when we answer the needs of others is opaque. We are, of course, *Homo sapiens* all day long—when we eat, sleep, and brush our teeth just as much as when we work. Interpreted less literally,

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

6 *See id.* at 73.

7 *See id.* at 24–25, 211.

8 *Id.* at 208.

9 *Id.* at 212.

10 *Id.*

though, Sandel seems to be saying that we are most worthy of human dignity when we engage in something describable as work. Work may not make us free, but it does—Sandel suggests—make us human.

There are at least two fundamental problems with such a claim. The first is that this crimped conception of full humanity omits large swaths of the population and significant segments of human life. It overlooks children, who are no doubt fully human even though they are not yet endowed with the dignity of work. It gives short shrift to retirees, who do not cede their full humanity when they cease to work full time. It omits more than 22 million nonworkers between the ages of 25 and 54—over two-thirds of whom are female and more than three-quarters of whom have left the workforce due to family responsibilities, illness, or disability.¹¹ All in all, it leaves out—in addition to children—more than 110 million U.S. adults (forty-three percent of the adult population) who are not currently employed.¹²

Sandel might respond that the “dignity of work” need not be limited to individuals who engage in paid labor. My two-year-old son, for example, “contribute[s] to the common good” by being absolutely adorable, and he thereby “earn[s] the esteem of [his] fellow citizens” (i.e., his parents and grandparents). But to describe his daily activities as “work” honors neither the dignity of paid labor nor the dignity of child’s play. Childhood merits honor and respect not because it is like paid labor or because it is a prelude to paid labor, but because it is a life stage with an intrinsic worth of its own.

As the previous paragraph suggests, we could perhaps salvage Sandel’s argument from some of its uncomfortable implications by developing a definition of “work” that includes, for example, children growing up, adults growing old, full-time caregivers, and others outside the formal labor force. But the phrase “dignity of work” inevitably brings to mind paid labor as its paradigm case. Valuing, for example, stay-at-home parenting by analogy to the factory floor blinds us to the aspects of parenting and caregiving that make these activities distinct from—yet as important as—work remunerated with wages.

The linkage between full humanity and the dignity of work would be objectionable even if the policy implications were innocuous. But they are in fact quite injurious. The second fundamental problem with the linkage between full humanity and the dignity of work is that it all too easily serves to justify policies that are quite inhumane. Once we accept that work is essential to human dignity, then policies that condition public benefits upon labor force participation—and cut off benefits to nonworkers—can be rationalized as helping the very people they harm.

11 See Steven F. Hipple, U.S. Bureau of Lab. Stat., *People Who Are Not in the Labor Force: Why Aren’t They Working?*, 4 BEYOND THE NUMBERS, Dec. 2015, at 4 tbl.1 (Dec. 2015), <https://www.bls.gov/opub/btn/volume-4/pdf/people-who-are-not-in-the-labor-force-why-arent-they-working.pdf>.

12 See U.S. Bureau of Lab. Stat., *Employment Situation Summary*, USDL-21-0365, tbl.A-1 (Mar. 5, 2021), <https://www.bls.gov/news.release/empstat.nr0.htm>.

President Trump and his advisers were especially opportunistic in their use of “dignity of work” arguments to justify benefits cutoffs. In December 2019, the U.S. Department of Agriculture finalized a rule that would have dropped approximately 700,000 adults from the food stamp rolls “so that they can know the dignity of work,” as a top Trump administration official explained at the time.¹³ Fortunately, a federal judge ultimately blocked the rule, expressing astonishment that the Trump administration had not renounced the initiative on its own after the COVID-19 pandemic struck.¹⁴ But other benefits cutoffs justified on “dignity of work” grounds have taken full effect. The 1996 welfare reform legislation is an especially consequential example. Although President Clinton praised the law for encouraging parents to “teach[] their children to honor the dignity of work,”¹⁵ in all too many cases it left single mothers and their children to face the indignity of poverty without the support of a welfare check or a paycheck.¹⁶

Sandel, for his part, does not advocate work mandates or benefits cutoffs. Instead, he suggests that we should “lower or even eliminate payroll taxes” and “raise revenue instead by taxing consumption, wealth, and financial transactions.”¹⁷ But the net effect of this proposal—like the Clinton-era welfare reform and Trump’s attempted food stamps rollback—would be to harm the very worst-off members of society, who do not earn wages (and thus would not benefit from the payroll tax cut) but who do purchase goods and services (and thus would bear part of the burden of the consumption tax).

Sandel, to be sure, is quite right to reject the idea that our worth as human beings depends on how much we are paid for our labor. But he ought to go a step further and discard the idea that our worth as human beings depends on whether we are paid for our labor at all. The choice he presents between a market-oriented meritocratic ethic and a producer-centered ethic fails to exhaust the available alternatives. We can instead construct an economic agenda oriented around the widely shared intuition that all human beings are worthy of our respect and our concern—regardless of the degrees they attain, the salaries they command, or the marketable goods and services they produce.¹⁸

13 See Laura Reiley, *Trump Administration Tightens Work Requirements for SNAP, Which Could Cut Hundreds of Thousands from Food Stamps*, WASH. POST (Dec. 4, 2019), <https://www.washingtonpost.com/business/2019/12/04/trump-administration-tightens-work-requirements-snap-which-could-cut-hundreds-thousands-food-stamps/>.

14 *District of Columbia v. U.S. Dep’t of Agric.*, No. 20-cv-00119 (BAH), 2020 U.S. Dist. LEXIS 192508 (D.D.C. Oct. 18, 2020).

15 The President’s Radio Address, 2 PUB. PAPERS 2207 (Dec. 4, 1999).

16 See, e.g., Lesley J. Turner, Sheldon Danzinger & Kristin S. Seefeldt, *Failing the Transition from Welfare to Work: Women Chronically Disconnected from Employment and Cash Welfare*, 87 SOC. SCI. Q. 227 (2006).

17 See SANDEL, *supra* note 5, at 218.

18 For a step in this direction, see Almaz Zelleke, *Institutionalizing the Universal Caretaker Through a Basic Income?*, 3 BASIC INCOME STUD. (2008). The claim that all human beings are worthy of respect and concern is not intended to imply that nonhuman animals are unworthy of respect and concern.

What would an economic agenda oriented around the dignity of all human beings—and not only the dignity of workers—entail? Most centrally, it would seek to ensure that all members of society—adults and children—have access to adequate health care, housing, and nutrition, whether or not they or their parents can secure a paying job. It would provide at least a thin cushion so that parents could exit the workforce temporarily to care for a child—and so that children could exit the workforce temporarily to care for a dying parent—without suffering financial ruin as a result. It would ensure that all Americans have access to job-training opportunities, but it would also recognize that paid work is not the be all and end all of life.

Programmatically, an economic agenda oriented around human dignity could take any number of shapes, but the idea of a basic income offers one particularly attractive instantiation. Elsewhere, Miranda Perry Fleischer and I have proposed a basic income of \$500 per month per person in the United States layered on top of existing income supports for the aged and disabled. By providing aid in the form of cash, a basic income would reflect the idea that individuals' own allocative choices are at least *prima facie* worthy of our respect. And the program's universality would avoid the stigmatic harms that sometimes accompany the receipt of targeted welfare benefits.¹⁹

The United States already has the economic resources to realize this vision.²⁰ The primary obstacle is not a budget constraint but a political constraint. Basic income proposals poll reasonably well—with somewhere between forty-five percent and fifty-five percent of Americans expressing support in recent surveys²¹—but sizeable numbers still see a basic income as, in the words of former Council of Economic Advisers chair Jason Furman, “giving up on work and giving up on people.”²²

The rhetoric of the “dignity of work” risks reinforcing these objections. A subsistence-level basic income coupled with a corresponding increase in tax rates might depress

19 See Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 626 (2020). Although the \$500-per-month figure appears to be less than the \$1000-per-adult proposal popularized by 2020 Democratic presidential candidate Andrew Yang, our proposal (unlike Yang's) includes children, and our proposal largely maintains existing Social Security programs for the aged and disabled. See *id.* at 668, 673–75, 697–98.

20 See *id.* at 669 (observing that a \$500-per-month basic income would—with various offsets—amount to approximately seven percent of gross domestic product and noting that “[w]e could thus afford a basic income of \$500 per person per month while keeping our government spending-to-GDP ratio below Nordic levels”).

21 See Hannah Gilberstadt, *More Americans Oppose than Favor the Government Providing a Universal Basic Income for All Adult Citizens*, PEW RSCH. CTR. (Aug. 19, 2020) (forty-five percent support among U.S. adults), <https://www.pewresearch.org/fact-tank/2020/08/19/more-americans-oppose-than-favor-the-government-providing-a-universal-basic-income-for-all-adult-citizens>; Gabriela Schulte, *Poll: Majority of Voters Now Say the Government Should Have a Universal Basic Income Program*, THE HILL (Aug. 14, 2020) (fifty-five percent support among registered voters), <https://thehill.com/hilltv/what-americas-thinking/512099-poll-majority-of-voters-now-say-the-government-should-have-a>.

22 Kathleen Pender, *Why Universal Basic Income Is Gaining Support*, S.F. CHRONICLE (July 15, 2017).

employment a bit, though the best available evidence suggests that these effects would be modest.²³ If social welfare is our policy maximand, then these labor participation effects would be balanced against the upsides, including improved health and educational outcomes for children in recipient families.²⁴ But if full humanity depends upon work, and a basic income might deter some individuals from working, then the justificatory burden for proponents rises significantly. A basic income is entirely compatible with a society that respects work, but it is harder to square with a society that accords paid work an exalted status.

There are, to be sure, seeds in Sandel's book of an ethical and economic agenda that encompasses nonworkers and that affirms life activities other than paid labor. Most significantly, Sandel effectively dismantles the idea that labor market outcomes reflect anything approximating moral desert. He also points to and draws upon arguments that affirm the dignity of work without denying the dignity of nonworkers. For example, Sandel quotes from one of Martin Luther King's last speeches, addressing the striking sanitation workers in Memphis, in March 1968:

One day our society will come to respect the sanitation workers if it is to survive, for the person who picks up our garbage is, in the final analysis, as significant as the physician, for if he doesn't do his job, diseases are rampant. All labor has dignity.²⁵

All labor had dignity in King's eyes, but dignity did not depend upon paid labor: dignity, according to King, was a quality of "all human personality."²⁶ And later in the same speech, King declared that "[n]ow is the time to make an adequate income a reality for all of God's children."²⁷ Not only for all workers: King was quite clear, by the end of his life, that a society as rich as America had a moral obligation to provide an unconditional minimum income to everyone.²⁸

Sandel's book has within it the resources to support a similar move: a rejection of a politics that divides society into "makers" and "takers" and an embrace of an economic ethos that values individuals not for their productivity but for their humanity. He powerfully urges his readers to look "beyond the tyranny of merit toward a less rancorous, more generous public life."²⁹ But it is not enough to topple the tyranny of merit if the successor is a regime that honors only the fifty-seven percent of adults who engage in paid labor. The "less rancorous, more generous public life" that Sandel envisions will require us to look not only beyond the tyranny of merit, but beyond an ideology that anchors dignity to paid work.

23 See Fleischer & Hemel, *supra* note 19, at 658–60 (summarizing literature).

24 See *id.* at 651–52, 651 n.90.

25 See SANDEL, *supra* note 5, at 210.

26 MARTIN LUTHER KING, JR., *THE RADICAL KING* 39, 48 (Cornel West ed., 2015).

27 *Id.* at 250.

28 See *id.* at 94, 172–73.

29 See SANDEL, *supra* note 5, at 228.