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HOW MERITOCRACY FUELS INEQUALITY—PART II Reply to Critics

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I am grateful to the participants in this symposium for engaging so thoughtfully with my book *The Tyranny of Merit: What's Become of the Common Good?*¹ I want to congratulate the editors of this new journal on launching a venue for fresh thinking about inequality and thank them for commissioning this symposium for the inaugural issue.

I have learned a great deal from the essays gathered here and the rich array of challenges they offer. In considering my response, I am struck by the fact the none of the fifteen essays defends meritocracy against the principled objections that I (and many others) have raised against it. No one argues, at least not explicitly, that the successful deserve the rewards the market bestows on them, or that they would deserve such rewards if opportunities were truly equal. The essays focus instead on my diagnosis (i.e., my claim that meritocracy gives rise to grievances that fuel backlash against elites) and on the alternatives to meritocracy, as an ideal and as a political project, that I propose.

I will address the challenges posed by my colleagues by identifying four themes that appear in the essays: (1) meritocracy and work, (2) meritocracy and race, (3) meritocracy and capitalism, and (4) meritocracy and liberalism. Organizing my reply according to these themes inevitably means that I am unable to address all of the arguments and insights contained in the essays. But I hope this thematic focus enables me to draw together and respond to some of the most important critical reflections the commentaries offer.

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

I. MERITOCRACY AND WORK

Several of the essays raise probing questions about the dignity of work: what constitutes the dignity of work, does it offer a promising basis for an alternative political project, and if so, what would be required to achieve it? Kate Andrias finds my critique of meritocracy forceful and compelling and agrees that a politics focused on the dignity of work is a desirable alternative. But she observes that I do not adequately specify the policies that could achieve this, and that I neglect the ways that corporate interests have deliberately and systematically undermined unions and collective bargaining. In her essay, Andrias points out that the degradation of industrial work was “not an accidental byproduct of elites’ misplaced faith in education, technocracy, and market.”² Beginning in the 1970s, she writes, “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 voice in their jobs.”³

Workers fought back, but lost. Andrias makes the important point that the degradation of work is bound up with political power. Just as New Deal labor reforms were achieved through political struggle, any attempt to renew the dignity of work in our time will require organization, alliances, and a new struggle to wrest economic and political power from corporate interests and their political allies. I agree. Andrias’s account is a necessary elaboration of any project to renew the dignity of work. She is right to conclude that my book “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”⁴ today.

Patricia A. Cain “needed no convincing” about the problems created by meritocracy and about the political pathologies it inflames. She considers it “abhorrent for any of us to think that we made it to the top because we deserve it”⁵ and offers a moving litany of instances of luck in her own life. But Cain is less convinced by the solutions I propose. She worries that my discussion of the dignity of work focuses more than it should on paid work. This raises an important point. Any attempt to strengthen social recognition of and esteem for those who make valuable contributions to the common good must look beyond paid labor, which neglects some of the most valuable work of all—raising and caring for

2 Kate Andrias, *Power Struggles—The Tyranny of Merit and the Degradation of Work: Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 18 (2021).

3 *Id.*

4 *Id.* at 19.

5 Patricia A. Cain, *Getting to the American Dream in 2021: Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 22 (2021).

children and families, as well as the many forms of public service and civic participation that make for flourishing neighborhoods and communities.

Cain also worries that I may be too ready to accept the underpayment of essential workers and want simply to bolster their confidence in the importance of their work. This is a misreading. The dignity of work is not only or mainly a subjective matter of individual morale; it requires that the economy be reconfigured in a way that confers material support and social esteem that honor the value of the contributions people make. For sanitation workers and home health care workers, this includes appropriate pay, health benefits, sick leave, pensions, and the like. For those who care for their children and families outside the framework of the labor market, this may include material support of other kinds (e.g., child subsidies or tax credits, publicly funded health care, education).

Cain comments that, as much as she believes we need a stronger safety net, *The Tyranny of Merit* convinced her “that a safety net is not enough,”⁶ that we also need to find ways of recognizing people’s contributions to the common good. In different ways, Deborah L. Rhode and Daniel Hemel are less convinced by this idea.

I should say, first of all, that reading Rhode’s generous commentary is a poignant experience, knowing that she completed it shortly before her untimely death. Deborah was a prolific and pathbreaking scholar in legal ethics who, by the force of her arguments and her example, broke down barriers in legal academia and the legal profession. Her essay in this symposium, like her forthcoming book *Ambition: What For?*,⁷ displays her fierce opposition to inequality and the attitudes that sustain it. In her essay, Rhode writes that, although she agrees with my critique of meritocracy, she thinks meritocratic ideals are so deeply engrained that we should seek practical, “cost-effective strategies for promoting a more equitable future.” She proposes reducing child poverty and providing quality child-care and preschool programs, investing in underfunded public schools and vocational education, reducing preferences that favor white and wealthy students in college admissions, and generally shoring up the safety net for the least well-off.

I am certainly in favor of these policies. But I do not believe they constitute a sufficient response to inequalities of recognition and esteem. This is why I emphasize contributive justice and the dignity of work. Hemel strenuously disagrees. He is wary of a politics that affirms the dignity of work, fearing that it leads to punitive work requirements for welfare, as in President Clinton’s welfare reform. As Hemel acknowledges, I reject this approach. In fact, I criticize the punitive conception of individual responsibility that led many conservatives and some liberals (including Clinton) to condition public assistance on showing that those in need are needy “through no fault of their own.” This way of thinking reflects

6 *Id.* at 24.

7 DEBORAH L. RHODE, *AMBITION: WHAT FOR?* (2021).

the meritocratic tendency to parse the distinction between “deserving” and “undeserving” poor.⁸

Hemel argues, more broadly, that our dignity should not be tied to what we produce or contribute but simply to our humanity. We should “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 salaries they command, or the marketable goods and services they produce.”⁹ He favors a universal basic income as the best expression of respect for human dignity and for the sake of respecting “individuals’ own allocative choices.”¹⁰

I am ambivalent about a universal basic income. The best argument in its favor is that it helps low-income citizens meet their basic needs. But it is no substitute for policies ensuring food security, health care, housing, education, and decent public services. Nor can it substitute for work (paid and unpaid) as a system of mutual contribution and recognition.

Some Silicon Valley entrepreneurs promote a universal basic income in hopes of buying off resistance to the world without work they imagine their robots and algorithms will bring.¹¹ Hemel does not make his proposal in this spirit. But respecting “individuals’ own allocative choices” is not enough to draw us together as citizens engaged in a common life. It is a consumerist ethic that misses the importance of contributive justice. In practice, work often fails as a source of social recognition and esteem. But this is not a reason to give up on the dignity of work; it is a reason to empower workers and to enlarge the rewards and esteem accorded those whose contributions are undervalued by the market.

II. MERITOCRACY AND RACE

Several of the essays pose questions about how race figures in my critique of meritocracy. Echoing Frederick Douglass’s rhetorical question “What, to the American slave, is your 4th of July?,” Ifeoma Ajunwa asks, “What, to the Black American, is the meritocracy?”¹² She notes that one aim of *The Tyranny of Merit* is to diagnose the populist backlash that

8 See SANDEL, *supra* note 1, at 64–66, 146–50.

9 Daniel Hemel, *Beyond the Dignity of Work: Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 36 (2021).

10 *Id.* at 37.

11 Jathan Sadowski, *Why Silicon Valley Is Embracing Universal Basic Income*, THE GUARDIAN (June 22, 2016), <https://www.theguardian.com/technology/2016/jun/22/silicon-valley-universal-basic-income-y-combinator>; Douglas Rushkoff, *Silicon Valley’s Push for Universal Basic Income Is—Surprise!—Totally Self-Serving*, L.A. TIMES, July 21, 2017, <https://www.latimes.com/opinion/op-ed/la-oe-rushkoff-universal-basic-income-silicon-valley-20170721-story.html>.

12 Ifeoma Ajunwa, *What to the Black American Is the Meritocracy? Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 39 (2021).

led to Trump's election, and she finds my diagnosis compelling. But she also reads the book "as reflecting the debates around affirmative action and as offering an indirect explanation for our societal acquiescence to continued racial inequality in the United States."¹³

Ajunwa elaborates her reading, which I fully accept, by observing that meritocratic arguments have animated the most prominent objection to affirmative action in college admissions. Those who oppose considering race as a factor in admissions often argue that doing so violates the right of applicants to be considered according to merit. This argument asserts that applicants should be considered on the basis of academic promise alone, and that those with the highest grades and SAT scores deserve to be admitted. But this argument is flawed in two ways. First, grades and SAT scores reflect differences in family background and educational opportunity, including differences of class and race. Second, even if these metrics were true measures of academic promise, and even if everyone had an equal chance to achieve them, those admitted would still be mistaken in believing they deserved to win admission, and that those turned away deserved to be rejected. Believing that admission is earned as a matter of individual merit makes it hard for the winners to acknowledge an obligation to redress historic (and continuing) injustices of race and class, especially if this means accepting that their success is not wholly their own doing, but is instead the result of various sources of luck and good fortune.

Khiara M. Bridges offers another important example of how individualistic notions of merit entrench inequality: by leading us to neglect structural explanations of poverty. She agrees with my "basic diagnosis of our social and political malaise: the winners in our society have wrongly concluded that they are self-made [and] that those who have *not* succeeded have only themselves to blame."¹⁴ And she shows how the mistaken notion that the winners are self-made supports a morally blinkered view of poverty. Rather than acknowledge and address the structural, systemic sources of poverty—policies that replace middle-skill, middle-wage jobs with low-skill, low-wage jobs; a system of public-school finance that produces good schools for wealthy kids and underfunded schools for poor kids; a racialized system of criminal justice that leads to mass incarceration—Americans tend to believe that poverty is the fault of the poor.

Drawing on her book *The Poverty of Privacy Rights*,¹⁵ Bridges argues that the appeal of the individualistic account of poverty is that it enables the winners to interpret their success as their own doing. Structural accounts of poverty, by contrast, would threaten the self-satisfaction of the successful: "That our achievements may not be entirely *earned*—but

13 *Id.* at 43.

14 Khiara M. Bridges, *The Tyranny of Race Blindness: Comment on M. Sandel's The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 47 (2021).

15 KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017).

may have been gifted to us, in some important sense, by forces outside of our control—is a discomfiting reality that many people, even progressive ones, may reject.”¹⁶

Bridges’s analysis helps us see how our failure to address the structural sources of poverty is connected to the meritocratic conception of success. Moreover, she shows that this way of thinking about success is found not only among conservative critics of the welfare state, but also among many liberals. This is a powerful illustration of the main argument of *The Tyranny of Merit*.

Notwithstanding this agreement, Bridges takes me to task for what she calls my “underestimation of the significance of race in the story of Trump’s rise to power.”¹⁷ My book acknowledges, of course, that many voters were attracted by Trump’s racist appeals. My argument is simply that racism is not the whole story. Focusing only on the “basket of deplorables” account of Trump’s triumph misses something important: mainstream elites of both political parties were tone deaf to the anger and resentment of white working-class voters, who had been left behind by four decades of neoliberal globalization, deregulation, wage stagnation, inequality, and diminished social esteem. For meritocratic elites, attributing the disaffection of white working voters entirely to racism is a way of letting themselves off the hook. It spares them the need to reflect critically on how their globalization project, and its meritocratic way of flattering the winners, produced the inequalities and indignities that paved the way to Trump.

Bridges is no apologist for meritocratic elites. But she thinks I am too sympathetic to the plight of the white working class. In a rhetorical flourish, she describes *The Tyranny of Merit* as “a love letter of sorts”¹⁸ to the people who supported Trump and brought democracy to the brink. I would put it differently. My book is not a love letter to Trump supporters; it is tough love for liberals. It brings liberals the hard news that their rhetoric of rising and offer of individual mobility through higher education is an inadequate response to the inequalities their policies produced. It is also self-serving, for reasons Bridges analyzes well.

I do think it is important to try to understand the economic and cultural grievances of white working-class voters. A number of recent works do this well, without excusing the racist sentiments with which these grievances are often entangled: Arlie Russell Hochschild’s *Strangers in a Strange Land: Anger and Mourning on the American Right*,¹⁹ Katherine J. Cramer’s *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker*,²⁰ and Joan C. Williams’s *White Working Class: Overcoming Class*

16 Bridges, *supra* note 14, at 48–49.

17 *Id.* at 49.

18 *Id.* at 51.

19 ARLIE RUSSELL HOCHSCHILD, *STRANGERS IN THEIR OWN LAND: ANGER AND MOURNING ON THE AMERICAN RIGHT* (2016).

20 KATHERINE J. CRAMER, *THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER* (2016).

Cluelessness in America.²¹ These studies in sympathetic understanding can help us imagine ways of addressing the legitimate grievances that fuel authoritarian populist backlash, a danger that has not disappeared with the departure of Trump.

Camille Gear Rich and Omar Nouredin also fault me for failing to take adequate account of race, although in a different domain. Their focus is not my analysis of the forces that led to Trump's election, but rather my account of how we conceive the value of work. I do not "reckon with how America's race and gender history and current racial strife fundamentally shape our valuation and recognition of work. . . . True escape from the 'tyranny of merit' requires an inquiry into how race and gender shape the meaning of merit."²²

Rich and Nouredin observe that "work's value, historically, has been tethered to the race and gender of those who perform it."²³ This has a direct bearing, they suggest, on my proposed solution, which is to focus less on arming people for meritocratic competition and more on affirming the dignity of work. Putting the dignity of work at the center of public discourse, I argue, requires rejecting the assumption that the money people make is the measure of their contribution to the common good; we should not outsource to markets the moral question of what counts as a truly valuable contribution. Instead, we should reclaim this question for democratic deliberation.

Rich and Nouredin are sympathetic to this project, but they argue that it requires a more direct engagement with the decisive roles of race and gender than I have offered. "Although Sandel gestures generally at race being a relevant social consideration, he has not fully reckoned with how it shapes his proposed solution. . . . What he misses is how gender and racial bias have fundamentally structured our understanding of normal wage work, dignified conditions, and social status."²⁴

Rich and Nouredin point out that the COVID pandemic revealed to many Americans

how our understanding of merit, deservingness, and value continue to be shaped by unfair race and gender considerations. . . . The pandemic ushered in a great cultural and social reckoning about how the sometimes invisible low-status service work performed by female Black and brown bodies, in fact, has extraordinary value, and often does not occur in spaces that affirm dignity.²⁵

21 JOAN C. WILLIAMS, *WHITE WORKING CLASS: OVERCOMING CLASS CLUELESSNESS IN AMERICA* (2019).

22 Camille Gear Rich & Omar Nouredin, *A 2020 Perspective on Merit—One Intersectional Vision of a Racially Just Society: Comment on M. Sandel's The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 53 (2021).

23 *Id.*

24 *Id.* at 57.

25 *Id.* at 58.

Elevating and acknowledging “the socially valuable labor performed by Black and brown women will be critical if we are to dismantle traditional status hierarchies that shape our views about merit.”²⁶

I agree with this analysis and see it as an important aspect of any articulation of the dignity of work. The frontline workers we celebrated as “essential workers” during the pandemic had little choice but to expose themselves to risk, performing jobs for pay hardly commensurate with the “essential” contributions they were making. In New York City, seventy-five percent of frontline workers are people of color.²⁷ Nationally, women of color predominate in jobs, such as childcare and home healthcare, that are poorly paid and that exposed them to substantial COVID risk. Nearly one-third of nursing assistants and home healthcare workers are Black women. Nearly forty percent of childcare workers are people of color, many of them women.²⁸ Not surprisingly, people of color bore a disproportionate share of COVID deaths. Among African Americans, the COVID death rate was forty-four percent higher than among whites.²⁹

Against this background of racial and gender inequality, heaping praise on frontline workers for their sacrifice and devotion can be fatuous and insulting. As Rich and Noureldin observe, “these workers were represented as patriotically desiring to go out and save us all,”³⁰ even as they were not being provided with basic protective gear. Reading their essay brought to mind a statement of New York Governor Andrew Cuomo, who described a “nightmare” he had early in the pandemic:

What if the essential workers don’t show up? You have to have food, you have to have transportation, the lights have to be on, someone has to pick up the garbage, the hospitals have to run. . . . What if they said, “You don’t pay me enough to put my life in danger? I’m not doing it.” They showed up. They didn’t show up for a paycheck. . . . They showed up out of their honor, out of their values, out of their dignity. That’s why they showed up.³¹

The pandemic made vivid the gap between the contributions of essential workers, especially women and people of color, and the way we honor and reward them. It scrambled

26 *Id.*

27 Quentin Fottrell, *The Coronavirus Pandemic and Juneteenth: Black Americans Are Twice as Likely to Be Hospitalized from COVID-19*, MARKETWATCH, June 19, 2020, <https://www.marketwatch.com/story/75-of-frontline-workers-in-new-york-the-epicenter-of-coronavirus-are-people-of-color-and-black-americans-are-twice-as-likely-to-die-from-covid-19-2020-06-01>.

28 Jocelyn Frye, *On the Frontlines at Work and at Home: The Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color*, CTR. FOR AM. PROGRESS, Apr. 23, 2020, <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/>.

29 *The COVID Tracking Project*, ATL. MONTHLY GRP., Mar. 7, 2021, <https://covidtracking.com/race>.

30 Rich & Noureldin, *supra* note 22, at 63.

31 Fottrell, *supra* note 27.

our conception of whose contributions matter most. The surge in public support for the Black Lives Matter movement that occurred in the midst of the pandemic may reflect this. As Rich and Noureldin suggest, many now seemed to recognize “that Black and brown people who worked to keep society functioning through service jobs required more from their fellow citizens in the form of dignity. This was a proposition that exceeded market logic and exceeded their role as workers.”³²

Whether this proposition leads to a more just valuation of the work performed by women and people of color remains to be seen. But Rich and Noureldin help us see that social value and market value do not necessarily align, especially when markets are embedded in racial and gender hierarchies. How to value work is fundamentally a political question.

III. MERITOCRACY AND CAPITALISM

The Tyranny of Merit offers an interpretation of our political condition. Like all interpretations, it has a normative bent. It explains and criticizes, both at the same time. It shows how meritocratic ways of thinking about success have gone hand in hand with the neoliberal version of capitalism that has unfolded in recent decades, and how meritocratic attitudes toward success have rationalized the inequalities this capitalism has produced. It also argues that meritocracy is a flawed ideal and that understanding its defects can help us understand the political backlash against mainstream parties and credentialed elites.

Some contributors to this symposium argue that I misidentify the beliefs that animate the populist backlash. Others take issue with my account of the dignity of work and do not see it as a promising political project. But a few contributors raise a different kind of objection—that I wrongly focus on political discourse, attitudes, and rhetoric rather than on material interests.

Robert L. Tsai sees a tension between two different criticisms of merit running throughout the book—criticism of “unequal material conditions” and criticism of “status-based consequences of a meritocratic ethic.”³³ He thinks that most of the time, I do my best “not to choose between these two kinds of injuries.”³⁴

Tsai is right that I do not choose between them. The reason is that, in a market-driven, meritocratic society, material inequalities are bound up with status inequalities. Tsai wants to sort out the causal connection between the two: does income inequality give rise to meritocratic justifications, or does meritocracy encourage and entrench income inequality?

32 Rich & Noureldin, *supra* note 22, at 64.

33 Robert L. Tsai, *Can Sandel Dethrone Meritocracy? Comment on M. Sandel's The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 72 (2021).

34 *Id.*

My answer is both. Meritocratic attitudes and economic inequalities are mutually reinforcing. In recent decades, they have become a package deal. Any serious attempt to reduce inequalities of income and wealth would need to challenge the notion that the rich are rich because they are more deserving than the poor. And any serious attempt to diminish the hold of the meritocratic success ethic would need to reconfigure the economy, not only through redistribution but also by making money matter less. This would require, among other things, the creation of class-mixing public spaces and institutions (possibly including universal national service) that would draw the affluent from their privatized isolation into the common life of democratic citizenship.³⁵

Mark Kelman offers another version of materialist critique. He redescribes the anger and resentment of white working-class men as “negative feelings” that are “superstructural” and simply “derivative of underlying economic conditions.”³⁶ He prefers a “materialist” account of white men’s support for Trump to an “idealistic” account of resentment. According to Kelman’s materialist account of politics, viewing Trump supporters as angry and resentful, whether for reasons of elite condescension, white supremacy, cultural exclusion, or lost privileged status, misses their fundamentally economic motivations.

Even if purely materialist considerations could explain white working-class voters’ support for Trump in 2016, it is hard to see how materialist motivations could explain their continued support for him in 2020 (after it became clear that his policies did little if anything to improve their economic condition). And it is implausible, to say the least, to think that the Trump supporters who attacked the U.S. Capitol were motivated only by “materialist” considerations, rather than by a toxic brew of ideas, attitudes, and beliefs. The chilling iconography of the Confederate flag inside the Capitol building and a gallows and noose outside it left little doubt that this was something darker than a protest against wage stagnation.

Daria Roithmayr does not dismiss the significance of political rhetoric or insist on the distinction between materialist and idealist explanation. But she argues that I “misdiagnose the problem as meritocracy rather than neoliberal capitalism.”³⁷ The core problem is “capitalism and . . . job loss. Meritocracy is just the sideshow.”³⁸

I think this distinction is too sharply drawn. Meritocracy and neoliberal capitalism today are integrally connected; meritocracy rationalizes and entrenches the inequalities neoliberal capitalism produces. I do not claim that this connection is necessary, as a matter

35 SANDEL, *supra* note 1, at 224–27.

36 Mark Kelman, *Shaky Diagnoses and Ambiguous Treatments: Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 91 (2021).

37 Daria Roithmayr, *Humble Pie Is Cold Comfort: Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 104 (2021).

38 *Id.* at 105.

of abstract logic. But for the past four decades, the market faith and the meritocratic faith have emerged together, dialectically, as the defining project of mainstream American politics. Neoliberal capitalism made some people rich and others poor, but meritocracy created the divide between winners and losers. And it is this divide, not income inequality alone, that gives rise to the demoralization, resentment, and humiliation that Trump and other authoritarian populists are able to exploit.

One of the most telling signs of this demoralization is what the economists Anne Case and Angus Deaton call “deaths of despair.”³⁹ They coined this term to describe the mounting incidence of death caused by suicides, drug overdoses, and alcoholic liver disease. Among white men and women aged 45 to 54, deaths of despair increased threefold from 1990–2017.⁴⁰

What might account for this grim epidemic? A revealing clue can be found in the educational background of those most vulnerable to it. Case and Deaton discovered that “the increase in deaths of despair was almost all among those without a bachelor’s degree. Those with a four-year degree are mostly exempt.”⁴¹ Here then is another advantage of the well-credentialed. By 2017, men without a college diploma were three times more likely than college graduates to die deaths of despair.⁴²

Those who attribute white working-class unhappiness to material privation might suspect that the underlying cause of deaths of despair is poverty, not humiliation and the loss of social esteem. But Case and Deaton have found that the dramatic increase in deaths of despair is not explained by an increase in poverty. Something more than material deprivation is inciting the despair, something distinctive to the plight of people struggling to make their way in a meritocratic society without the credentials it honors and rewards: “A four-year degree has become *the* key marker of social status, as if there were a requirement for nongraduates to wear a circular scarlet badge bearing the letters BA crossed through by a diagonal red line.”⁴³

Roithmayr insists that Case and Deaton “attribute these deaths to the flaws in capitalism”⁴⁴ and that “[t]hey say little about meritocratic rhetoric or even humiliation at the hands of elites as an underlying cause.”⁴⁵ In fact, however, the demoralization a meritocracy inflicts on those without a college degree is central to their account. In explaining deaths of despair, they repeatedly cite Michael Young’s critique of meritocracy, as well

39 ANNE CASE & ANGUS DEATON, DEATHS OF DESPAIR AND THE FUTURE OF CAPITALISM (2020).

40 *Id.* at 40, 45, cited by SANDEL, *supra* note 1, at 199–200.

41 *Id.* at 3.

42 *Id.* at 3, 57–58; SANDEL, *supra* note 1, at 200.

43 CASE & DEATON, *supra* note 39, at 3, 133, 146; SANDEL, *supra* note 1, at 200–01.

44 Roithmayr, *supra* note 37, at 104.

45 *Id.*

as the more recent critiques that Daniel Markovits and I have offered.⁴⁶ For example, they write that “there is a dark side” to meritocracy “that was long ago predicted by Michael Young, . . . who invented the term in 1958 and who saw meritocracy as leading to social calamity.”⁴⁷

The elite can sometimes be smug about their accomplishments, attributing them to their own merit, and dismissive of those without degrees, who had their chance but blew it. The less educated are devalued or even disrespected, are encouraged to think of themselves as losers, and may feel that the system is rigged against them. When the fruits of success are as large as they are today, so are the penalties of failing the tests of meritocracy.⁴⁸

Unlike Roithmayr, Case and Deaton do not see a clear separation between the damaging effects of neoliberal capitalism and the demoralizing effects of meritocracy: “Being left behind financially is a key part of the story, but it is only the beginning. When we use the term *deaths of despair*, the despair is much broader, and much worse, than just material deprivation.”⁴⁹

If Case and Deaton are right, as I believe they are, meritocracy is not a “sideshow” but at the heart of the problem. Contending with inequality requires both reconfiguring the economy and reconsidering the harsh ethic of success that divides us into winners and losers.

IV. MERITOCRACY AND LIBERALISM

Several of the commentaries take up, from different points of view, the relation of meritocracy to liberalism. Jennifer Hochschild illuminates the complex ways that meritocratic arguments find expression in politics. She begins by identifying the audience the book

46 CASE & DEATON, *supra* note 39, at 3–4, 53–55, 68, 148, 252, 265 n.3, 265 n.14, 269 n.9, 269 n.10, 269 n.11, 269 n.15, 290 n.33. They have also discussed meritocracy in explaining deaths of despair in articles and interviews subsequent to the book. *E.g.*, Anne Case & Angus Deaton, *Life Expectancy in Adulthood Is Falling for Those Without a BA Degree, but as Educational Gaps Have Widened, Racial Gaps Have Narrowed*, 118 PROC. NAT'L ACAD. SCI., e2024777118 (2021), <https://doi.org/10.1073/pnas.2024777118>; Anne Case & Angus Deaton, *Deaths of Despair and a Nation in Crisis*, AM. INT. (June 3, 2020), <https://www.the-american-interest.com/2020/06/03/deaths-of-despair-and-a-nation-in-crisis/>; Angus Deaton, *Republic of Equals*, PROSPECT (Jan. 4, 2021), <https://stag.prospect.pbc.io/economics-and-finance/us-inequality-wealth-divide>; Princeton University Press Ideas Podcast Interview with Anne Case, March 2021, <https://press.princeton.edu/sites/default/files/files/2021-03/Ann%20Case%20Transcript.pdf>.

47 CASE & DEATON, *supra* note 39, at 3.

48 *Id.* at 3–4.

49 *Id.* at 149.

seeks to challenge, even if against the current: well-educated elites, especially liberals and Democrats, who alienated many working-class supporters of the Democratic Party by embracing a meritocratic solution to the inequality and wage stagnation their neoliberal economic policies produced. Hochschild rightly points out that “meritocracy is the province of neither left nor right,”⁵⁰ but can be found, in different versions, across the political spectrum. And not all Democrats see a fair meritocracy as the primary answer to inequality; Bernie Sanders (and, for the most part, Elizabeth Warren) did not embrace the rhetoric of rising, but contended directly with inequalities of income, wealth, and power.

Although she does not put it in quite these terms, Hochschild’s analysis suggests that one way of distinguishing liberals from progressives in contemporary American politics is that liberals see individual upward mobility as the answer to inequality (hence, their emphasis on perfecting equality of opportunity), whereas progressives address inequality by proposing structural reform of the economy. Hochschild also raises the important question whether, in the long-standing struggle against inequality, meritocracy has switched sides. An ethic that began its career as a “left-wing challenge to traditional methods of and justifications for inequality—ancestry, race, gender, priestly anointing”⁵¹—has now lost its radical impulse and become a source of hierarchy and complacency.

Of the fifteen contributors to this symposium, Sarah Song comes closest to defending meritocracy as a principle of justice. Against my argument that the meritocratic ideal is flawed, Song writes: “Perhaps the real problem is our failure to live up to the ideal.”⁵² I agree that we fail to live up to the meritocratic principles we profess, most notably in higher education. As I point out in the book, more than seventy percent of those who attend the hundred or so most competitive colleges in the United States come from the top quarter of the income scale; only three percent come from the bottom quarter.⁵³ “Faced with such facts,” Song asks, “why not renew our commitment to the meritocratic ideal and work harder to ensure more qualified students from low-income families can go to college?”⁵⁴

50 Jennifer Hochschild, *Left, Right, and Meritocracy: Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 108 (2021).

51 *Id.* at 109.

52 Sarah Song, *Diagnosing Democracy’s Discontent: Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 112 (2021).

53 SANDEL, *supra* note 1, at 166. A study of the top 146 highly selective colleges and universities found that seventy-four percent of students came from the top quarter of the socioeconomic status scale. Anthony P. Carnevale & Stephen J. Rose, *Socioeconomic Status, Race/Ethnicity, and Selective College Admissions*, CENTURY FOUND. 106 tbl.3.1 (Mar. 31, 2003), <https://tcf.org/content/commentary/socioeconomic-status-raceethnicity-and-selective-college-admissions/>. A similar study of the 91 most competitive colleges and universities found that seventy-two percent of students came from the top quarter. Jennifer Giancola & Richard D. Kahlenberg, *True Merit: Ensuring Our Brightest Students Have Access to Our Best Colleges and Universities*, JACK KENT COOKE FOUND., fig.1 (Jan. 2016), <https://www.jkcf.org/research/true-merit-ensuring-our-brightest-students-have-access-to-our-best-colleges-and-universities/>.

54 Song, *supra* note 52, at 112.

We should certainly work harder to broaden college access for students from low-income families. Everyone should be able to cultivate their intellectual gifts and aspirations, and no one should be held back due to poverty or prejudice. But the meritocratic ideal is about more than removing barriers to achievement; it is about attributing moral desert to those who prevail in a fair competition. According to the meritocratic ideal, if chances are equal, the winners earn, and therefore deserve, their winnings. It is this presumption of desert that makes meritocratic societies prone to hubris and humiliation, and that deepens the divide between winners and losers.

Song, it turns out, does not defend meritocracy in this sense. Instead, she endorses John Rawls's theory of justice, which, as Song acknowledges, "is premised on a rejection of moral desert."⁵⁵ Rawls rejects meritocracy on two grounds: first, my having the talents that enable me to succeed is not my doing but my good fortune; and second, that I live in a society that values the talents I happen to have is a happy coincidence, not something for which I can claim credit. My critique of meritocracy draws upon both of these considerations, and is indebted, in this respect, to Rawls (and to Hayek, who also rejects meritocracy on these grounds).⁵⁶

Despite her sympathy for meritocracy, Song seems to accept these principled arguments against it. What she cares about more, if I read her correctly, is equality of opportunity and the chance to rise, although she uses these terms interchangeably with meritocracy. For example, she writes that, if we consider public universities such as the University of California, Berkeley, where she teaches, "we can see what is good about the meritocratic ideal."⁵⁷

The students from low-income families that graduate from Berkeley exemplify true meritocracy in action. Through hard work and effort, they are indeed rising and improving their prospects in life. Instead of jettisoning equality of opportunity, we need to renew our commitment to it, reinvesting in public education so more students from disadvantaged backgrounds can rise.⁵⁸

UC Berkeley and some other public colleges and universities do a better job than many private universities of enrolling low-income students and propelling them up the income scale. But this achievement does not vindicate the widely held view that higher education—public or private—is an engine of upward mobility so potent that it can serve as society's primary response to inequality. For example, although UC Berkeley is less class-skewed

55 *Id.* at 113.

56 *See* SANDEL, *supra* note 1, at 125–46 (discussing Rawls and Hayek).

57 Song, *supra* note 52, at 114.

58 *Id.*

than Stanford (its wealthy, privately endowed neighbor), low-income students are not plentiful on either campus. At Berkeley, 7.3% of students come from the bottom quintile compared with 4% at Stanford. Berkeley's mobility rate is higher than Stanford's, but both are surprisingly modest. At Berkeley, 4.9% of students arrive poor and rise to affluence as adults (compared to only 2.2% at Stanford).⁵⁹

I agree with Song that we should not “jettison” equality of opportunity. Breaking down barriers is a morally necessary corrective to injustice. But it is important to recognize that equality of opportunity is a remedial principle, not an adequate ideal for a just society. Nor is mobility an adequate answer to inequality. Colleges and universities propel only a tiny fraction of their students from poverty to affluence, and most Americans do not attain a four-year degree.⁶⁰ Even a society more successful than ours at providing upward mobility would need to find ways to enable those who do not rise to flourish in place and to see themselves as valued contributors to the common good.

Sanford Levinson and Sophia Moreau offer generous yet challenging commentaries that question my call for a politics of the common good. Although sympathetic to my critique of meritocracy, they worry that my alternative to market-defined merit is at odds with the value pluralism that liberalism affirms. Levinson points out that notions of the common good have long been disputed. In our own time, economists deal with the apparent incommensurability of people's preferences by asking how much they are willing to pay for this or that good. Rather than conceive the common good as an ideal independent of people's preferences, economists focus on “revealed preferences,” the willingness of consumers to spend their money to gamble in a casino, say, rather than to attend “a morally edifying production of *King Lear*.”⁶¹ To second-guess such revealed preferences in the name of virtue or the common good, Levinson suggests, runs the risk of coercion. If we “accept the reality of a social and political world that includes quite different ‘comprehensive’ views of how best to live one's life,”⁶² we should not embody any particular

59 Raj Chetty et al., *Mobility Report Cards: The Role of Colleges in Intergenerational Mobility* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 23618, July 2017), <https://www.nber.org/papers/w23618>; see also *Economic Diversity and Student Outcomes at America's Colleges and Universities: Find Your College*, N.Y. TIMES (interactive tool, data on University of California, Berkeley, <https://www.nytimes.com/interactive/projects/college-mobility/university-of-california-berkeley>; data on Stanford <https://www.nytimes.com/interactive/projects/college-mobility/stanford-university>).

60 SANDEL, *supra* note 1, at 89, 168–69; Chetty et al., *supra* note 59, at Table II. In 2020, 37.5% of Americans twenty-five years and over had completed four years of college, up from 25% in 1999 and 20% in 1988. U.S. Census Bureau, *CPS Historical Time Series Tables*, 2021, Table A-2, <https://census.gov/data/tables/time-series/demo/educational-attainment/cps-historical-time-series.html>.

61 Sanford Levinson, *Exhortation, Transformation, and Politics: Comment on M. Sandel's The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 126–27 (2021).

62 *Id.* at 127.

conception of the good life in public policy or law. Levinson worries that too robust a notion of the common good would violate this liberal precept.

In a similar vein, Moreau wonders whether a shared vision of the common good is “attainable in democratic societies where people differ so deeply in their visions of what matters in life.”⁶³ She cites two daunting practical obstacles to public deliberation about contested moral questions. One is the lack of the widespread civic education that would be needed to equip large numbers of people to engage seriously with one another’s arguments. The other is the prevalence of “post-truth politics,” a willful indifference to facts that makes reasoned discussion impossible.

Beyond these practical obstacles, Moreau raises the principled objection that bringing contested moral questions into public discourse may be at odds with value pluralism. She therefore proposes a more modest alternative: the idea that “every person’s life is just as valuable as every other person’s life.”⁶⁴ (This is similar to Hemel’s proposal to substitute human dignity for the dignity of work: we should consider “all human beings [as] worthy of our respect and our concern,”⁶⁵ regardless of what they produce or what they contribute to the common good.) “All that we need to agree on,” writes Moreau, “is that nobody should be treated as though they were below others And we can agree upon this even if . . . we do not have a shared understanding of what is best for us, as a community or a city or a country.”⁶⁶

Levinson and Moreau rightly detect that my case against accepting the market’s definition of merit runs afoul of the liberal resolve to set aside contested notions of the good. I have long argued that it is not possible or desirable for government to be neutral toward competing conceptions of the good life. This argument has special force when it comes to asking how we should value people’s various contributions to the common good. If we want to question the market’s verdict on the social value of this or that job, how can we possibly avoid asking what contributions matter most? And how can we answer this question, or even debate it, without touching on contested conceptions of “what is best for us, as a community or a city or a country”?

If we want to say the market is wrong to attribute greater value to a hedge fund manager than to a nurse or a schoolteacher, we can’t be nonjudgmental. We have to show why healing the sick or teaching the young is worthier than betting on the future prices of derivatives. Such judgments are contestable and open to argument. Some will argue, for example, that financial speculation helps the real economy by deepening the liquidity of

63 Sophia Moreau, *What’s Needed for Equality of Condition? Comment on M. Sandel’s The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 133 (2021).

64 *Id.* at 137.

65 Hemel, *supra* note 9, at 36.

66 Moreau, *supra* note 63, at 138.

credit markets or improving information about future prices; or that hedge fund managers invest the hard-earned pensions of nurses and schoolteachers and so make a vital contribution after all. But these are the questions we need to debate, and decide, democratically. And these are questions about the common good.

Daniel Markovits, one of the most trenchant contemporary critics of meritocracy, resists this conclusion. His important book *The Meritocracy Trap: How America's Foundational Myth Feeds Inequality, Dismantles the Middle Class, and Devours the Elite*⁶⁷ shows how meritocratic hierarchy perpetuates itself, and how well-educated elites have bent the direction of innovation and technology to make their high-skilled labor all the more remunerative. But Markovits thinks I underestimate the appeal of a market meritocracy as a response to the problem of value pluralism. Like Levinson and Moreau, he worries that my politics of the common good would challenge market definitions of merit at the price of bringing intractable disagreements about values into public discourse. A market meritocracy, despite its flaws, avoids this problem by establishing “a shared frame of value that fixes what things are worth.”⁶⁸

Markovits observes that I reject “the idea that prices reflect value or measure any meaningful sense of worth.”⁶⁹ And he aptly identifies the heart of my argument:

Market meritocracy fails to rationalize [I would say “fails to justify”] hierarchy not just for the familiar reason that people don't deserve their merit but also for the less familiar, but more sweeping, reason that the market's conception of merit is itself ungrounded—that the price of things tells us nothing about what they are really worth.⁷⁰

Markovits proceeds to challenge this position, sort of: “Although Sandel is not wrong to think that market prices fail to measure moral worth, his target is considerably more ideologically compelling, and also more resilient, than he credits.”⁷¹ In explaining the ideological appeal of markets, Markovits reveals the deep affinity between market thinking and liberalism:

Market prices command allegiance because they address a profound and troubling problem. People value different things for different reasons, and the depth of their

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

68 Daniel Markovits, *The Common Good or the Good of All? Comment on M. Sandel's The Tyranny of Merit*, 1 AM. J.L. & EQUAL. 141 (2021).

69 *Id.*

70 *Id.*

71 *Id.* at 142.

disagreements about ultimate value—what Rawls has called the fact of reasonable pluralism—means that they cannot turn to deliberation to resolve this value conflict by weighing the reasons behind it. Markets owe their ideological power to the fact that they sidestep this difficulty, establishing prices as a shared frame of value by aggregative rather than discursive mechanisms that operate not through judgment so much as will. Sandel’s critique of market value neglects this fundamental contribution. It is one thing to unmask the inadequacies of market valuations, but quite another to elaborate a credible alternative that is a moral match for the pluralism that gives market measures of value their enduring charisma.⁷²

This is a powerful account of the deep appeal of markets; beyond their ability to deliver the goods, markets seem to spare us the need to engage in controversial debates about how to value goods and social roles. Like liberal principles of justice, markets let us to agree to disagree.

Before addressing this argument, a small word in my own defense: Although Markovits is right that I don’t address this alluring aspect of markets in *The Tyranny of Merit*, I do so in my previous book, *What Money Can’t Buy*.⁷³

Part of the appeal of markets is that they don’t pass judgment on the preferences they satisfy. They don’t ask whether some ways of valuing goods are higher, or worthier, than others. . . . They don’t discriminate between admirable preferences and base ones. Each party to a deal decides for himself or herself what value to place on the things being exchanged. This nonjudgmental stance toward values lies at the heart of market reasoning and explains much of its appeal.⁷⁴

So Markovits and I agree that markets promise to enable us to contend with value pluralism without bringing our moral differences into public discourse. But can markets deliver on this promise? And would a public life that gave up on deliberation about contested values be desirable? My answer to both questions is “no.” Markovits’s answer seems to be a hesitant “yes.”

“[W]here intractable pluralism renders discursive agreement impossible,” he writes, “price commensuration is the best—the most public—account of the good on offer.”⁷⁵ He elaborates this view with an ode to the price system, ideally conceived. Price commensuration, by which he means aggregating and coordinating preferences without assessing or discussing them,

72 *Id.*

73 MICHAEL J. SANDEL, *WHAT MONEY CAN’T BUY: THE MORAL LIMITS OF MARKETS* (2013).

74 *Id.* at 14.

75 Markovits, *supra* note 68, at 142.

implements an important conception of the formal equality of persons, really a conception of equality of status. Prices reflect an egalitarian balance among all persons' values. . . . Money becomes a universal measure of value: each person values money for what it can buy them at prevailing prices, and prices are set from everyone's perspective. . . . Price commensuration thus constitutes a freestanding value frame.⁷⁶

Markovits calls this seemingly nonjudgmental feature of markets “price commensuration’s moral achievement.”⁷⁷ The achievement, as he sees it, is “that it can establish a formally egalitarian resolution to otherwise intractable value disagreement—a shared public perspective on commercial exchange.”⁷⁸

This highly moralized notion of markets goes well beyond their service to utility and efficiency. Markovits connects the “moral achievement” of markets to “the familiar ideal of freedom of contract. That ideal affirms the broad scope of markets as a matter of principle, often grounded in anti-paternalist ideas about individual sovereignty.”⁷⁹ In short, abiding by the valuations that competitive markets generate is an expression of freedom, a way of respecting everyone’s right to live according to their own values.

But what about the fact that markets often seem to get it wrong, as when they tell us that what hedge fund managers do is hundreds of times more valuable than what nurses and teachers do? Or when they tell us that a high-frequency trader, or a billionaire casino mogul, contributes far greater value to society than a physician? Or that those who raise and care for their children (outside of paid employment) contribute little if any value at all? Or else that the value of their contribution corresponds to the paltry pay of a childcare worker? And what about the fact that, among full-time workers, for every dollar earned by white men, Hispanic women earn only 54 cents and Black women only 62 cents?⁸⁰ Does this mean that their value to society is less?

Markovits would say no; he readily acknowledges that actual markets misjudge merit. But he accounts for these misjudgments as distortions of the valuations that a “perfectly competitive pure exchange economy”⁸¹ market would reveal. He enumerates the distortions:

Actual markets, of course, depart from the ideal and price things in ways that reflect investment and production and also, critically, politics and power. Regulations fix

76 *Id.* at 143.

77 *Id.*

78 *Id.*

79 *Id.* at 144.

80 Jocelyn Frye, *On the Frontlines at Work and at Home*, CTR. FOR AM. PROGRESS, <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/>.

81 Markovits, *supra* note 68, at 144.

what qualities and quantities of goods may be traded, for example; unions and capitalists insert themselves in exchange relations to exercise pricing power; and central banks fix the price of money and hence of all else, including, critically, the wage.⁸²

But this litany does not describe distortions of an economy; it describes what an economy is. Markets, especially markets that define the value of work, are inescapably political, which is to say they are also inescapably discursive. The valuations they produce are, and should be, open to political argument and contestation.

The reason for this is not only that monopolies, regulations, and central banks distort prices; it is also that the raw material on which the price system does its work consists of preferences and desires that are themselves susceptible of critical evaluation. Some people make a fortune catering to the demand for casinos, or producing mind-numbing reality television shows, or persuading people to consume copious amounts of sugary sodas. Others make a modest living caring for the elderly. The market misjudges the social value of these contributions because it takes no account of the qualitative worth of the wants and desires that prices “commensurate.”

Consider too the insight of Rich and Noureldin: the way we value various jobs often depends less on the services they provide than on the race and gender of those who historically have performed them. Janitors made more than maids because janitors were men and maids were women. The distinction between custodians and janitors often signaled differences in race that accounted for differences in pay and respect. Care work, a growing part of the service economy, is underpaid because it has historically been considered women’s work.

Challenging the market’s definition of value requires what Rich and Noureldin call a “discursive shift.”⁸³ Possibilities that seem beyond the pale in one discursive frame may be conceivable in another. The idea that markets are not the measure of our merit is one such possibility. Rich and Noureldin cite the Black queer theorist Audre Lorde, who “tells us that the master’s tools . . . will never destroy the master’s house, but only lead to more oppression. Sandel, it appears, agrees.”⁸⁴ I do.

Markovits writes that, for all its defects, “the ideological power of market valuation endures . . . and continues to cast a wide spell.”⁸⁵ He is right, but it is time to break the spell.

Although he concedes that market valuations are mistaken, Markovits worries that our disagreements about values are too intractable to debate in public; market-defined merit,

82 *Id.*

83 Rich & Noureldin, *supra* note 22, at 61.

84 *Id.* at 59.

85 Markovits, *supra* note 68, at 144.

however flawed, is the only game in town. But this gives up on deliberation too quickly. The fact that people disagree about moral questions does not mean that persuasion is impossible. Sometimes, an argument—or an experience like a pandemic—can change our minds. We cannot know until we try.

In any case, nothing is more intractable than the partisan rancor and polarization we now face. The market meritocracy has created a society of winners and losers, poisoned our politics, and set us apart. Perhaps it is worth seeking an alternative, even if this means trying to reason together about contested conceptions of merit, value, and the common good.