
MICHAEL SANDEL'S NEO-ARISTOTELIANISM

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Reading the works of Michael Sandel I often react quite sympathetically. For example, I find the following statements, culled from three of his books, to be quite attractive.

(1) In *The Case Against Perfection*, Sandel argues against the “Promethean aspiration to remake *nature*, including human *nature*, to serve our purposes and satisfy our desires.”¹ So, for example, about the technological enhancement of athletes, he says: “The real problem with genetically altered athletes is that they corrupt athletic competition as a human activity that honors the cultivation and display of *natural* talents.”²

Genetic engineering represents the “boundless bid for mastery and dominion.”³ By contrast, Sandel endorses the proper use of medicine, which he argues both can and should be “governed, or at least guided, by the norm of restoring and preserving the *natural* human functions that constitute health.”⁴ He counsels us “[t]o acknowledge the giftedness of life” by “recogniz[ing] that our talents and powers are not wholly our own doing, nor even fully ours.”⁵

(2) In *Democracy's Discontent*, Sandel asserts that contemporary civic life in our country has become “impoverished.”⁶ Americans, he says, suffer from the justifiable “fear that, individually and collectively, we are losing control of the forces that govern our lives.”⁷ Such forces are enormous, distant, thoroughly impersonal, and, because they are indifferent to the particularities of the local, politically enervating.⁸ As a result, Sandel worries that “the moral fabric of community is unraveling around us.”⁹ He argues that what is needed

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¹ MICHAEL J. SANDEL, *THE CASE AGAINST PERFECTION* 26-27 (2007) [hereinafter SANDEL, *CASE AGAINST PERFECTION*] (emphasis added).

² *Id.* at 29 (emphasis added).

³ *Id.* at 46-47.

⁴ *Id.* at 47 (emphasis added).

⁵ *Id.* at 27.

⁶ MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* 6 (1996) [hereinafter SANDEL, *DEMOCRACY'S DISCONTENT*].

⁷ *Id.* at 3.

⁸ *See id.* at 317 (pointing out that we live in a “global economy whose frenzied flow of money and goods, information and images, pays little heed to nations, much less neighborhoods” unlike the republican “conception of freedom [that] found its home in small bounded places”).

⁹ *Id.* at 3.

as a remedy is a restoration of community, of the local.¹⁰ Without it political engagement will evaporate. As he puts it, “[p]eople will not pledge allegiance to vast and distant entities, whatever their importance, unless those institutions are somehow connected to political arrangements that reflect the *identity* of the participants.”¹¹ Sandel also says:

The global media and markets that shape our lives beckon us to a world beyond boundaries and belonging. But the civic resources we need to master these forces, or at least to contend with them, are still to be found in the *places* and stories, memories and meanings, incidents and identities, that *situate* us in the world and give our lives their moral *particularity*.¹²

A local institution or community, the sort to which Sandel believes people will genuinely pledge allegiance, is one in which we genuinely belong, have a stake, and can influence.¹³ It has a particularized identity expressed in “stories, memories and meanings” that differentiate it from other communities.¹⁴ As such, its boundaries must be reasonably fixed and recognizable; they must be within reach.¹⁵

In *Democracy’s Discontent*, Sandel, in opposition to the prevailing theory of government – which he labels “procedural” liberalism¹⁶ and identifies with John Rawls¹⁷ – advocates a return to “a version of republican political theory.”¹⁸ Its central idea is “that liberty depends on sharing in self-government. . . . To share in self-rule . . . requires that citizens possess, or come to acquire, certain qualities of character, or civic virtues.”¹⁹ In turn, this process of character formation requires the exercise of “soulcraft” on the part of the government.²⁰ To this end the local is again essential: “Statecraft could be soulcraft without big government, provided that families, schools, and churches” – institutions that are particularized and small – “served as the primary agents of character formation.”²¹ In this context, Sandel favorably cites Tocqueville’s remarks on self-governance in New England towns: their

¹⁰ *Id.* at 346 (“A . . . promising basis for democratic politics that reaches beyond nations is a revitalized civic life nourished in the more particular communities we inhabit.”).

¹¹ *Id.* (emphasis added).

¹² *Id.* at 349 (emphasis added).

¹³ *See id.* at 350.

¹⁴ *Id.* at 349.

¹⁵ *See id.*

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 321.

²¹ *Id.* at 326.

“[t]own meetings are to liberty what primary schools are to science; they bring it *within the people's reach*, they teach men how to use and how to enjoy it.”²²

(3) In the book we are gathered here to discuss today, *Justice: What's the Right Thing to Do?*, Sandel first identifies three philosophical approaches towards answering the question of what justice and a just distribution of goods might be: “welfare, freedom, and virtue.”²³ He then rather quietly advocates a version of the third: the view that “justice involves cultivating virtue and reasoning about the common good.”²⁴

It is easy for me to explain why I react sympathetically to this and the prior two claims: I am a card-carrying Aristotelian. While this description would not fit Sandel, he nonetheless clearly seems to have Aristotelian proclivities. He makes this explicit when he straightforwardly says, “it may be worth reconsidering Aristotle's way of thinking about justice.”²⁵ I could not agree more. Indeed, each of the three examples I have just cited from Sandel's works can be usefully reformulated in Aristotelian terms.

(1) Sandel's argument against the genetic engineering of athletes relies on his claim that it “corrupt[s] athletic competition as a human activity that honors the cultivation and display of natural talents.”²⁶ He continues: “Arguments about the ethics of enhancement are always, at least in part, arguments about the *telos*, or point, of the sport in question”²⁷ In turn, that *telos* is determined by “the nature of the sport,” which in turn is derived from our “natural talents.”²⁸

The language is strikingly Aristotelian. In fact, Sandel invokes a teleological sense of nature, one that is basic to the Philosopher's worldview, throughout *The Case Against Perfection* in order to make what for him is the crucial distinction between medicine and genetic engineering.²⁹ The former is commendable because it intervenes in nature but is respectful of and constrained by the *telos* of normal human health.³⁰ By contrast, genetic engineering is problematic precisely because it knows no restraints. Instead, it

²² *Id.* at 27 (emphasis added) (quoting 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 61 (Phillips Bradley ed., Alfred A. Knopf 1945) (1835)).

²³ MICHAEL J. SANDEL, *JUSTICE: WHAT'S THE RIGHT THING TO DO?* 19 (2009) [hereinafter SANDEL, *JUSTICE*].

²⁴ *Id.* at 260.

²⁵ *Id.* at 242.

²⁶ SANDEL, *CASE AGAINST PERFECTION*, *supra* note 1, at 29.

²⁷ *Id.* at 38.

²⁸ *Id.* at 37.

²⁹ See, e.g., *id.* at 47 (suggesting that whether a condition, such as deafness, is a disability to be cured by medicine or a trait of identity to be valued is informed by the *telos* of medicine).

³⁰ See *id.* at 47, 101.

represents “an unbridled act of hubris or bid for dominion;” namely, the domination and transformation of our own bodies.³¹

As far as I can see, then, Sandel’s “case” relies on a specific conception of nature, one which generates norms. This is precisely in line with Aristotle’s teleological thinking.

A brief digression: if the above is accurate, then the title of Sandel’s book, *The Case Against Perfection*, is misleading. For Aristotle the “perfect,” which translates the Greek *teleion* (derived from *telos*) is synonymous with the “complete.” This concept requires that of a limit, an end. As Aristotle puts it, “nothing is complete unless it has a *telos*. And a *telos* is a limit.”³² A mature, healthy, flourishing animal, for example, is a complete (*teleion*) set of well-functioning and well-coordinated parts. But *teleion*, like the English “perfect,” also has a second, normative, sense. What is “perfect” is not only complete or that from which nothing is absent but it is also maximally good and “cannot be exceeded in its kind. For example, a perfect doctor or flutist are those who, according to the form of the excellence that belongs to them, lack nothing.”

In short, the very notion of Aristotelian perfection (in both its senses) requires a limit. A doctor can be perfect because “being a doctor” is a determinate condition that can be attained. But limit is precisely what is missing in the Promethean project of genetic engineering, which Sandel characterizes as “a boundless bid for mastery and dominion.”³³ As such, genetic engineering does not aim for “perfection” at all, at least not as the word would be understood by Aristotle.

This brief foray into Aristotelian semantics was designed to prefigure the major point of this Essay: in order to make his case against genetic engineering, Sandel must rely on what appears to be an Aristotelian conception of nature, one which generates norms in the form of its essentially related concepts such as *telos*, limit, wholeness, and perfection. But, as will be elaborated shortly, Sandel himself is unwilling to accept this conception of nature. Unfortunately, he may well need it.

(2) Turning to my second example, consider Sandel’s characterization of the civic-republicanism that he champions in *Democracy’s Discontent*. As he puts it: “From Aristotle’s polis to Jefferson’s agrarian ideal, the civic conception of freedom found its home in small and bounded places, largely self-sufficient, inhabited by people whose conditions of life afforded the leisure, learning, and commonality to deliberate well about public concerns.”³⁴

Again, the language is strikingly Aristotelian and not just because the Greek word *polis* appears above. More importantly, it is also true of the phrases

³¹ *Id.* at 101.

³² ARISTOTELIS, *PHYSICA*, at bk. III, 207a15 (Oxford Univ. Press reprt. 1966) (c. 384 B.C.E.) [hereinafter ARISTOTLE, *PHYSICS*]. All translations from Aristotle will be my own.

³³ SANDEL, *CASE AGAINST PERFECTION*, *supra* note 1, at 46-47.

³⁴ SANDEL, *DEMOCRACY’S DISCONTENT*, *supra* note 6, at 317.

“small and bounded places” and “self-sufficient.” These are the essential features of what Aristotle deems the ideal city in Book VII of the *Politics*.³⁵

For, above all else, the best city knows its limits. So, for example, it vigilantly monitors its population, making sure there are neither too many citizens nor too few. A city must not be excessively populous, since it should be ruled by law, and this becomes unmanageable if it gets too big. Furthermore, procreation must be limited because too many people will lead to more poverty, which in turn leads to instability. Nor must a city be too small, for like a work of art, it must be beautiful and fine, qualities it cannot achieve if it does not have sufficient magnitude. In general, a city does not become great “by number,” which is of course without limit and hence unable to generate a meaningful *telos* (or the concept of perfection), but by its “capacity” (*dunamin*); specifically, its capacity for excellent activity.³⁶

Aristotle offers a richly suggestive comparison: “[A]s is the case with animals, plants and tools, when it comes to the magnitude of a city there is a certain proper measure (*metron*). For each of these will not achieve its own potentiality if it is too small or too big.”³⁷ A ship only a few inches wide or ten miles long is not really a ship. Similarly, living beings are big enough when they have matured, are flourishing, and have attained their proper form. Analogously, a city is big enough when it is “self-sufficient” – a term Sandel uses in the passage cited above³⁸ – and, most important, able to provide the conditions that allow the citizens, or at least some of them, to achieve their excellence, to live “in leisure and freely and with moderation.”³⁹ To reformulate: a good city must be of such a size that it can be “easily seen as a whole” (*eusunopton*).⁴⁰ Again, the word is notable because it suggests a comparison with a basic metaphysical concept; namely, *eidos*, which is usually translated as “form,” but because it is derived from the verb “to see,” literally means the “look” of a thing as a whole. A properly scaled city should be form-like. Its boundaries must give it shape by limiting it to a specific place – not too big, not too small, but just what is needed to be easily seen as a whole.

The point of these remarks is this: Aristotle relies on a teleological conception of nature and thus a metaphysically saturated background theory – one in which *telos*, “form,” and limit are essential – in order to give his political claims traction. He can argue on behalf of what Sandel calls “small and bounded places”⁴¹ because the world he studies (or thinks he is studying)

³⁵ ARISTOTELIS, *POLITICA*, at bk. VII, 1323a14-1337a7 (Oxford Univ. Press reprint, 1980) (c. 384 B.C.E.) [hereinafter ARISTOTLE, *POLITICS*].

³⁶ *Id.* at bk. VII, 1326a10-14.

³⁷ *Id.* at bk. VII, 1326a25-28.

³⁸ See *supra* note 34 and accompanying text.

³⁹ ARISTOTLE, *POLITICS*, *supra* note 35, at bk. VII, 1326b31-32.

⁴⁰ *Id.* at bk. VII, 1327a1.

⁴¹ SANDEL, *DEMOCRACY'S DISCONTENT*, *supra* note 6, at 317.

is filled with them. Indeed, “place” (*topos*), whose very definition requires the concept of limit, is central in Aristotle’s physics as well as his politics. One could thus argue (as I have elsewhere) that his political concepts are isomorphic with and even dependent upon his cosmological principles.⁴² Aristotle’s claim that a good city should be “easily seen as a whole” is nearly equivalent to the claim that it should be natural, which in turn is buttressed by his conception of nature in which “form is nature more so than matter.”⁴³

To ask again the animating question of this Essay: Can Sandel, or anyone else, truly make sense of the political priority of “small and bounded places” without a robust conception of place itself?

(3) In *Justice: What’s The Right Thing to Do?*, Sandel offers a quiet nod to Aristotle. He asserts that “[d]espite our best attempts to make law neutral on such questions, it may not be possible to say what’s just without arguing about the nature of the good life,”⁴⁴ an anti-Rawlsian view which again is thoroughly Aristotelian. In fact, at the outset of Book VII of the *Politics*, Aristotle straightforwardly asserts that one must understand the best kind of life in order to engage in political theorizing about the best kind of city.⁴⁵

Perhaps the greatest benefit I have gleaned from reading Michael Sandel is that he has forced me to ask what I think is the most difficult question a card-carrying Aristotelian must face. What sort of philosophical argument is required in order to support the sort of Neo-Aristotelian political views that Sandel and I seem to share? More specifically, how deep do these arguments have to go? Let me clarify and elaborate this question by again reverting to examples.

Recall that Sandel’s argument against the genetic enhancement of athletes seems to rely upon a teleological conception of nature.⁴⁶ How else could he distinguish bioengineering from the proper practice of medicine, which he says is “guided . . . by the norm of restoring and preserving the natural human functions that constitute health?”⁴⁷ But what if there were no natural human functions? What if nature gave us no norms? Human “nature” would then be inherently plastic and contingent. The only “nature” we would have is the one that we, or the engineers, would make for ourselves. Although this is a view that I, like Sandel, think is both false and ultimately pernicious, it is anything but foolish. It therefore requires a rebuttal. In other words, a competing conception of nature must be articulated and some form of teleology must be reinvigorated.

⁴² See David Roochnik, *Substantial City: Reflections on Aristotle’s Politics*, 27 *POLIS* 275 (2010), for elaboration and defense of this assertion.

⁴³ ARISTOTLE, *PHYSICS*, *supra* note 32, at bk. II, 193b7.

⁴⁴ SANDEL, *JUSTICE*, *supra* note 23, at 207.

⁴⁵ See ARISTOTLE, *POLITICS*, *supra* note 35, at bk. VII, 1323a14-23.

⁴⁶ See *supra* notes 26-31 and accompanying text.

⁴⁷ SANDEL, *CASE AGAINST PERFECTION*, *supra* note 1, at 47.

Sandel, however, appears to reject this approach. He states: “Today, no scientist reads Aristotle’s works on biology or physics and takes them seriously.”⁴⁸ It is not clear whether he agrees with today’s scientists, but he seems to. Echoing a sentiment that an early modern like Spinoza would eagerly embrace, he even says this: “[T]he temptation to see the world as teleologically ordered, as a purposeful whole, is not wholly absent [even today]. It persists, especially in children”⁴⁹

Nonetheless, Sandel maintains that it is still possible for “students of ethics and politics to continue to read and ponder Aristotle’s moral and political philosophy.”⁵⁰ But if Aristotle’s practical philosophy depends upon his theoretical philosophy (as I think it does), then this would not be possible.

Another example: Sandel argues that it is impossible to resolve the question of affirmative action as practiced in American higher-education without understanding “the purpose, or telos, of a university.”⁵¹ So too does he think that it is impossible to answer the question, what is justice?, without confronting the question, “[w]hat is political association *for*?”⁵² Now, Aristotle has an answer to the latter question and it is the very one with which Sandel eventually aligns himself: “to form good citizens and to cultivate good character.”⁵³ But to repeat the point, Aristotle, unlike Sandel, has an entire worldview to back up this teleological understanding of political association, and he offers a glimpse of it in Book I of the *Politics* when he sketches the development of the *polis*.⁵⁴ From the original, entirely natural, coupling of male and female, through the development of the “household” and the “village” (the union of a multitude of households) – both of which are primitive communities that are for the sake of the preservation of life – the *polis* emerges as

a complete community (*koinonia teleos*) composed of many villages that has, so to speak, reached the full limit of self-sufficiency. It comes into being for the sake of living, but is for the sake of living well. Therefore, the city is entirely natural, if the primitive communities are natural. For it is the end (*telos*) of these, and nature is telos.⁵⁵

While the household is for the sake of meeting the “daily needs,”⁵⁶ and the village is for the sake of meeting a long-range set of “nondaily”⁵⁷ but still

⁴⁸ SANDEL, *JUSTICE*, *supra* note 23, at 190.

⁴⁹ *Id.* at 189.

⁵⁰ *Id.* at 190.

⁵¹ *Id.* at 191.

⁵² *Id.* at 192.

⁵³ *Id.* at 193.

⁵⁴ See ARISTOTLE, *POLITICS*, *supra* note 35, at bk. I, 1252a1-1260b24.

⁵⁵ *Id.* at bk. I, 1252b27-33.

⁵⁶ *Id.* at bk. I, 1252b13.

⁵⁷ *Id.* at bk. I, 1252b16.

largely biological needs, the city, which is the “the most authoritative” (*kuriotatos*)⁵⁸ community of all and is composed of these simpler communities, is required for citizens to live an excellent and fully human life. Unlike the household and village, the city is “self-sufficient;” by itself a city makes it possible for citizens to live a life of virtue. As a result, to quote Sandel, who here does a fine job paraphrasing Aristotle, “[o]nly by living in a polis and participating in politics do we fully realize our nature as human beings.”⁵⁹

These brief citations are meant to again suggest that Aristotle relies on his conception of nature to ground his political teleology. But what grounds Sandel’s version of political teleology? As mentioned above, he seems to share the views of contemporary scientists who dismiss Aristotle’s teleological physics. Perhaps then he would embrace some non-Aristotelian version of teleological nature. If so, he does not tell us what this might be.

In his early book, *Liberalism and the Limits of Justice*, in which he criticizes Rawlsian or deontological liberalism, Sandel seems to acknowledge my point: “Only in a universe empty of *telos*, such as seventeenth-century science and philosophy affirmed, is it possible to conceive a subject apart from and prior to its purposes and ends.”⁶⁰ It is precisely this conception of a “subject” to which Sandel objects and, to reiterate the key point, he here – rightly in my view – affiliates it with a background theory: namely, the indefinite space of modern physics. Indeed, he goes further and, with his use of “only,” seems to declare that the modern universe is a necessary condition for the emergence of deontological liberalism. Presumably, then, some alternative background theory and conception of nature is needed to buttress the non-liberal, civic-republican ideal that Sandel himself promotes. But he does not seem to want to acknowledge this need.

Since Sandel does not rely on anything like an Aristotelian background theory to support his Neo-Aristotelian political arguments, how does he back up his claims? In general, he deploys the following argumentative strategies.

First, Sandel offers an internal critique. By Sandel’s lights, for example, Mill smuggles in “a moral ideal of human dignity and personality independent of utility itself.”⁶¹ In other words, he is not consistent. Also consider this criticism of Rawls: “[H]is theory of justice depends ultimately for its coherence on precisely the intersubjective dimension he officially rejects.”⁶²

Second, Sandel appeals to our moral intuitions. For example, there is this *reductio*: “If the libertarian claim is right, banishing consensual cannibalism is unjust, a violation of the right of liberty.”⁶³

⁵⁸ *Id.* at bk. I, 1252a5.

⁵⁹ SANDEL, JUSTICE, *supra* note 23, at 195.

⁶⁰ MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 175 (2d ed. 1998) [hereinafter SANDEL, LIBERALISM] (footnote omitted).

⁶¹ SANDEL, JUSTICE, *supra* note 23, at 56.

⁶² SANDEL, LIBERALISM, *supra* note 60, at 150.

⁶³ SANDEL, JUSTICE, *supra* note 23, at 74.

Third, and related to the second strategy, Sandel deploys what might be termed “moral phenomenology.” He regularly appeals to what he calls “moral experience.” For example, in concluding his criticism of Rawls, he says: “[T]he deontological vision is flawed, both within its own terms and more generally as an account of our moral experience.”⁶⁴ In a similar vein, Sandel argues that the conception of the human self that underlies the procedural liberalism is flawed for “[i]t cannot make sense of our moral experience, because it cannot account for certain moral and political obligations that we commonly recognize.”⁶⁵ Furthermore, Sandel states that, “[u]nless we think of ourselves as encumbered selves, open to moral claims we have not willed,” – in other words, unless we think of ourselves in a fashion radically opposed to the liberal – “it is difficult to make sense of these aspects of our moral and political experience.”⁶⁶ Finally, consider the following. In asking how one could possibly decide between “MacIntyre’s narrative conception of the person” and “the voluntarist conception of persons,” Sandel suggests that “[w]e might ask ourselves which better captures the experience of moral deliberation.”⁶⁷ On this basis he opts for the former.

Fourth, and closely related to the previous two, Sandel tells stories. In *Justice*, we hear about the French resistance pilot who will not bomb his own village,⁶⁸ the Israeli airlifting of Ethiopian Jews,⁶⁹ and the civil war travails of Robert E. Lee.⁷⁰ Since Sandel argues along MacIntyre’s line, namely that stories “reflect our nature as storytelling beings, as situated selves,”⁷¹ he certainly passes the test of self-reference by telling his own.

What is striking about these argumentative strategies is, once again, how Aristotelian they are. Aristotle may not do much storytelling, but the concept of the *muthos*, the narrative, is crucial not only in his *Poetics*,⁷² but also (more implicitly) in his conception of moral education as articulated in both the *Nicomachean Ethics* and the *Politics*. Indeed, as Silvia Carli has recently argued, Aristotle may well hold what we would today call a narrative conception of the self.⁷³

Aristotle understands the power of moral intuition. Indeed, he describes *phronesis*, “practical wisdom” or “judgment,” as a kind of “perception” of

⁶⁴ SANDEL, LIBERALISM, *supra* note 60, at 177.

⁶⁵ SANDEL, DEMOCRACY’S DISCONTENT, *supra* note 6, at 13.

⁶⁶ SANDEL, JUSTICE, *supra* note 23, at 220.

⁶⁷ *Id.* at 223.

⁶⁸ *Id.* at 226-27.

⁶⁹ *Id.* at 227-28.

⁷⁰ *Id.* at 236-37.

⁷¹ *Id.* at 241.

⁷² ARISTOTLE, POETICS (Oxford Univ. Press 1968) (c. 384 B.C.E.).

⁷³ See Silvia Carli, Aristotle on the Nature of the Self (Jun. 2007) (unpublished Ph.D. dissertation, Boston University) (on file with author).

particulars.⁷⁴ Navigating fluently amidst the particulars, the *phronimos* “sees” what the right thing to do is (i.e., the mean).

Finally, and most important, Aristotle, like Sandel, relies on “moral experience” or phenomena. Indeed, Aristotle’s methodological remarks in Book VII of the *Nicomachean Ethics* show that in some important sense he is a “phenomenologist”:

It is necessary, just as in the other studies, to set down the phenomena (*tithentas ta phainomena*) and first of all to run through the puzzles. In this way, the reputable beliefs (*ta endoxa*) about these affections will be shown; ideally, all the reputable beliefs, but if not all, then most and the most authoritative. For if the difficulties are dissolved and the reputable beliefs are left intact, then the showing will have been adequate.⁷⁵

What exactly these much discussed lines mean, and therefore in what sense Aristotle is a phenomenologist, is far from obvious. The first order of business is to clarify the relationship between the “phenomena” and the “reputable beliefs.” On this issue, G.E.L. Owen’s 1961 paper remains pivotal.⁷⁶ He convincingly showed that “*phainomena*” refers to more than empirical observations, and that, as such, the word can even embrace the *endoxa*, or what he calls “the common conceptions on the subject.”⁷⁷ More generally still, it can include the *legomena*, the “things said,”⁷⁸ which Owen described as “often . . . partly matters of linguistic usage or . . . of the conceptual structure revealed by language.”⁷⁹ In other words, the *endoxa* or *legomena* are themselves phenomena; they are aspects of the way the world shows itself to us. A successful theory must leave the *endoxa* intact; it must “save the phenomena” – a phrase Aristotle does not use, but has long been associated with him – rather than contradict or negate them. It must account for and harmonize with not only the way human beings register the world through sense perception, but also with the way human beings – especially those who are counted as *endoxos* or “reputable” – have spoken about the world.

As just indicated, Sandel often deploys argumentative strategies that are strikingly Aristotelian, especially in his reliance on “moral experience.” But where the great difference between the two falls is precisely on the question posed by this Essay: how far should, how far must, these strategies be extended? Sandel uses them only as far as the practical sphere. In other words, he is willing to be a phenomenologist, but only when it comes to human phenomena. For example, he attributes teleology to a university – a move he

⁷⁴ ARISTOTELIS, *ETHICA NICOMACHEA*, at bk. VI, 1142a27 (Oxford Univ. Press reprint, 1984) (c. 384 B.C.E.).

⁷⁵ *Id.* at bk. VII, 1145b2-7.

⁷⁶ See G.E.L. Owen, ‘*Tithenai ta Phainomena*’ (1961), reprinted in 1 ARTICLES ON ARISTOTLE 113, 113-18 (Jonathan Barnes et al. eds., 1975).

⁷⁷ *Id.* at 114.

⁷⁸ *Id.* (quoting from Aristotle’s *Nicomachean Ethics*, bk. VII, 1145b8-20).

⁷⁹ *Id.*

supports through recourse to our “moral experience” – but not to nature itself.⁸⁰ Aristotle, of course, goes much further, much deeper. As I have argued elsewhere, he deploys his phenomenological method in his investigation of the cosmos itself. To give one very brief example:⁸¹ in *De Caelo*,⁸² the Philosopher offers a three-pronged argument on behalf of the eternity of the heavenly bodies. First, he summons straightforward empirical observation. Unlike all objects found on earth, the planets’ orbits do not appear to change, nor do stars fall down. As he puts it:

By appealing to perception, this conclusion [that the heavenly bodies are eternal] follows in a manner sufficient in order to generate human conviction. For in all time past, according to the memory that has been passed down, nothing has appeared to have changed either in the whole of the outermost heaven or in any one of its proper parts.⁸³

Second, he offers carefully crafted, logical arguments investigating the implications of the natures of simple bodies and lines. The second prong is not germane here, but the third prong of the argument is. Aristotle confirms his argument that the stars are eternal by summoning the putative fact – or experience, or phenomenon – that all human beings worship a god located in the sky. “All human beings,” he says (no doubt incorrectly), “assign the highest place to the divine.”⁸⁴ In other words, in most religious traditions, gods live forever in the heavens. Aristotle then treats this religious belief as a “phenomenon” that carries evidentiary weight. *Because* people believe that gods live upstairs, it is reasonable to suppose – at least when coupled with empirical and logical argument – that the observable heavenly bodies are eternal.

In a similar fashion, Aristotle offers another linguistic observation. The traditional name for the “highest place” is “*aither*,” which Aristotle takes (in what may be a false etymology) to have been derived from *aei thein*, “always running.”⁸⁵ By his lights, ordinary language – or more generally, storytelling – is offered as a “witness” to scientific truth: the heavenly bodies *are* eternal.⁸⁶ Thus, the beliefs of ordinary people, who are not scientists and who speak and think in mythic and pictorial rather than conceptual terms, are not entirely wrong.

The key point is that Aristotle places these phenomenological arguments (or anthropological data) on an evidentiary par with empirical observations.

⁸⁰ See SANDEL, JUSTICE, *supra* note 23, at 191.

⁸¹ For a thorough elaboration, see David Roochnik, *Aristotle's Commonsensical Cosmology*, in LOGOS AND EROS: ESSAYS HONORING STANLEY ROSEN 134 (Nalin Ranasinghe ed., 2006).

⁸² ARISTOTELIS, DE CAELO (Oxford Univ. Press reprint, 2005) (c. 384 B.C.E.).

⁸³ *Id.* at bk. I, 270b14.

⁸⁴ *Id.* at bk. I, 270b5-7.

⁸⁵ *Id.* at bk. I, 270b23.

⁸⁶ See *id.* at bk. I, 270b5-10.

Aristotle summons ordinary religious convictions, as well as ordinary language, as witnesses for the truth of what he claims is a scientific argument.

Of course, such reasoning is utterly distasteful to a modern sensibility. As Sandel rightly says, “[t]oday, no scientist reads Aristotle’s works on biology or physics and takes them seriously.”⁸⁷ And yet, this much must be acknowledged: Aristotle is a superbly coherent philosopher who thinks through the entire world from top to bottom using the same rational procedures and principles. That is why his practical philosophy is of a piece with his theoretical one. That is why his political convictions, which are appealing to some thinkers even today, are so well-grounded in his conceptions of nature and reality in general.

But how does Michael Sandel ground his political convictions? Despite the fact that they are (to me) appealingly Aristotelian, he makes no recourse to anything like the Philosopher’s background theory. It thus remains quite unclear on what else he relies.

⁸⁷ SANDEL, *JUSTICE*, *supra* note 23, at 190.