

## Reply—and Gentle Dissent—to Michael Blake’s “Democracy and Deference”

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Michael Blake’s interesting and obviously heartfelt Article expresses the apprehension that many, if not most, of us feel that democratic life and institutions are under stress, even in danger of failing; and Blake wants to be fair, or at least to gesture at fairness, in accounting for the problems and in his prescriptions for what to do about it.<sup>1</sup> Yet, his suggestions are deeply at odds, I believe, with any viable democratic future, and—a little sadly—they illustrate how wide the gap is now, or the gulf, between the political cultures or tribes within our very divided society. One thing that Blake and I might agree about is that we would hope the social and political divide could be bridged or narrowed, and yet we both, perhaps increasingly, wonder how it possibly can be.

Blake notes that a degree of political trust—or one might say, solidarity and common culture—is essential for a successful liberal democracy, and that such trust or commonality is now at a low, if not at an all-time low.<sup>2</sup> As a remedy, Blake urges us to cultivate deference, specifically, two rather different kinds of deference: first, deference to other people’s reports or claims of pain, especially pain of a kind not experienced or likely to be experienced by the persons who—Blake says—ought to be doing the

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1. See Michael Blake, *Democracy and Deference: Or, Why Democracy Needs People Who Know How to Shut Up and Listen*, 56 SAN DIEGO L. REV. 905 (2019).

2. *Id.* at 906.

deferring;<sup>3</sup> and second, deference to experts, who will give us what we need to know, and ought to accept, as a guide to public policy.<sup>4</sup>

As examples of pain we should defer to, Blake's examples are (1) women's pain at sexual harassment;<sup>5</sup> (2) the 1980s pain of AIDS sufferers<sup>6</sup>—two kinds of pain toward which the political right is not respectful, Blake says.<sup>7</sup> By way of apparent balance, Blake cites the pains, or the concerns, of rural Americans, who are susceptible to Republicans whom Blake describes as “swooping”<sup>8</sup> in on them, and to the political program Blake describes President Trump as “dangling”<sup>9</sup> before them.<sup>10</sup> In particular, there is the pain or concern of rural people who believe in the right to possess firearms, which, Blake says, the political left ought to acknowledge respectfully.<sup>11</sup> Of course it is not only rural people who believe in the right to possess firearms, but perhaps Blake's empathy cannot extend unlimitedly.

Blake does say that respect or deference toward claims of suffering does not require adopting the policy demands of those in pain<sup>12</sup>—or, as I would put it, of those who say they are in pain. But he also says that politics must care about such pain.<sup>13</sup> At least when it is pain the political left cares about, Blake clearly thinks this means we ought in fact to defer to political demands, for instance to suppress—alleged—sexual harassment and to put more rather than less funding into AIDS research. Where Second Amendment rights are concerned, by contrast, Blake is quick to add that nothing he says should be read as favoring gun rights.<sup>14</sup>

Blake's second kind of deference is to experts.<sup>15</sup> Blake's example is global warming, or climate change.<sup>16</sup> According to experts, Blake tells us, it is “beyond dispute” that human activity or carbon is changing the climate.<sup>17</sup> This means the need for more international governance to address climate change.<sup>18</sup> But Blake balances, or gestures at balancing this, with the

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3. *Id.* at 910–12.

4. *Id.* at 920.

5. *Id.* at 911.

6. *Id.* at 915.

7. *See id.* at 910–12, 915.

8. *Id.* at 913.

9. *Id.*

10. *Id.* at 912.

11. *Id.* at 916–17.

12. *Id.* at 912.

13. *See id.* at 913–14.

14. *Id.* at 917.

15. *Id.* at 918.

16. *See id.* at 918–19.

17. *Id.* at 918 (citing *Scientific Consensus: Earth's Climate Is Warming*, NASA, <https://climate.nasa.gov/scientific-consensus/> [<https://perma.cc/JZ45-MJ52>]).

18. *See id.* at 919.

example of minimum wage laws.<sup>19</sup> When economists—experts—say these will mean fewer job openings, Blake says liberals and leftists should be respectful of them,<sup>20</sup> although Blake quickly adds that “most of us” would be willing to accept fewer jobs in the interest—or alleged interest—of “a slightly more just economy”:<sup>21</sup> in this case, in other words, as with Second Amendment rights, but very much unlike with global warming, Blake’s deference has little or no practical implication.

It seems to me that both sorts of deference that Blake calls for are at least in tension with liberal democracy, and under present circumstances, likely to be very much at odds with it.

In personal relations, it is true, empathy is an important virtue, although even there, not an unqualified one. In political relations—which are necessarily more impersonal and indeed ought to be so—what we owe each other first and foremost is justice, and empathy very secondarily. Certainly, in public life, one should treat everyone as respectfully as possible, and behave with as much empathy as possible, consistently with what is reasonable and just. But to “privilege” claims of pain, or to demand deference to such claims, puts a premium on grievance, justified or otherwise, and creates a strong incentive for everyone to feel aggrieved and to demand deference accordingly. Obviously, this is already happening in our society.<sup>22</sup> It can, and does, mean deferring to illiberal demands, the opposite of strengthening liberal institutions. The campus sexual harassment tribunals, without due process, rightly called kangaroo courts in many cases, are a well-known example.<sup>23</sup> It can, and does, cascade into corrosive and divisive politics of emotional bullying and moral blackmail. And it is self-defeating. If victimhood becomes the coin of the realm, it makes one’s fellow citizens—quite reasonably—more wary, not more empathetic. If it is claimed that campuses are hotbeds of rape, for example, and it turns out the applicable definition of rape is all-encompassing and hence essentially a lie, public

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19. *Id.*

20. *See id.*

21. *Id.*

22. *See, e.g.,* Roger L. Simon, *Bernie Sanders’ Heart: America in a Time of Rage*, PJMEDIA (Oct. 2, 2019), <https://pjmedia.com/rogerlsimon/bernie-sanders-heart-america-in-a-time-of-rage> [<https://perma.cc/2W77-UKHH>].

23. Susan Svrluga, *Transcript: Betsy DeVos’s remarks on Campus Sexual Assault*, WASH. POST (Sept. 7, 2017), [https://www.washingtonpost.com/news/grade-point/wp/2017/09/07/transcript-betsy-devos-remarks-on-campus-sexual-assault/?utm\\_term=.61e19e7a2959](https://www.washingtonpost.com/news/grade-point/wp/2017/09/07/transcript-betsy-devos-remarks-on-campus-sexual-assault/?utm_term=.61e19e7a2959) [<https://perma.cc/UGJ4-RDZ4>].

opinion is rightly less empathetic and far more suspicious of politicized hoaxes.

Deference to experts is also at least in tension with democratic self-government. Experts, or people for whom expertise is claimed, should get a hearing on the merits. But excessive deference tends to divert decisions and power toward unrepresentative and sometimes dubiously qualified elites. This is what Judge Learned Hand had in mind when he said, “For myself it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not.”<sup>24</sup> Experts are certainly known to engage in group-think and have been wrong in the past, even when vast sums of money and intense on-campus pressures to conform have not been present, as they are with climate change. I claim no expertise about climate, an immensely complex scientific topic. I think Blake would not claim any either. But “racial science” and eugenics had broad support in the early twentieth century.<sup>25</sup> Likewise, various psychological and psychiatric orthodoxies, Freudian and otherwise, held sway for much of the twentieth century:<sup>26</sup> most of them now widely discredited.<sup>27</sup> The Nobel Prize for medicine was conferred in 1949 on the man who created the lobotomy; and lobotomies, rather horrifyingly, were then a standard medical practice for some years afterward.<sup>28</sup> Political expertise, too, has sometimes made a poor showing in recent decades: unintended consequences have been a theme of much expert social policy. Experts have to earn their credibility in open debate. Lending their prestige to apocalyptic predictions, which regularly fail to come true, but which consistently conduce toward more power for one political faction or ideological faith, inevitably—and rightly—leads to less deference, not more.

The claim in Blake’s title is that democracy needs people to shut up: to shut up, and to defer—in practice, to defer to the political tendency or faith that Blake is obviously sympathetic to. It is an odd idea of democracy. I confess I sometimes worry that people will shut up and defer, as they

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24. LEARNED HAND, *THE BILL OF RIGHTS: THE OLIVER WENDELL HOLMES LECTURES* 73 (3d ed. 1958).

25. See Kyle Sammin, *Refusing to Believe Early Progressives Loved Eugenics Will Not Erase the Horrible Truth*, *FEDERALIST* (Apr. 25, 2017), <https://thefederalist.com/2017/04/25/refusing-believe-early-progressives-loved-eugenics-will-not-erase-horrible-truth> [<https://perma.cc/YBP9-TW78>].

26. Eugene H. Kaplan, *Ideas and Trends; How Freud Shaped the 20th-Century Mind*,

27. See Louis Menand, *Why Freud Survives*, *NEW YORKER* (Aug. 21, 2017), <https://www.newyorker.com/magazine/2017/08/28/why-freud-survives> [<https://perma.cc/7JGX-S23V>].

28. Natalie Wolchover, *Top 5 Nobel Prize Goof-Ups*, *LIVE SCI.* (Oct. 5, 2011, 11:08 AM), <https://www.livescience.com/16391-top-5-nobel-prize-goof-ups.html> [<https://perma.cc/LY37-ZJDD>].

very largely have been persuaded or compelled to do on most college and university campuses. But there are broad countertendencies, in this country and around the democratic and western world, some of them none too genteel, but quite disinclined, at least, toward abject surrender to the victim claims of identity politics or to the claims of democratically unaccountable mandarins. Like Blake, who genuinely hopes for less angry and divided politics,<sup>29</sup> I too hope that politics might look less like religious war, with more of a common political culture in which people have reason to see each other as fellow citizens, not as enemies out to deplore and crush them. But I do not think those of us, in this country and around the democratic world, who do not share the political faith that is now so orthodox on campus are about to tug our forelocks and shut up. At least I hope not.

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29. See Blake, *supra* note 1, at 927–28.

