

Two Arguments from Human Dignity

Since World War II, it has been increasingly common for fundamental international and European documents to begin with ascriptions of human dignity.¹ In some of these documents, human dignity is said to be *concomitant* with important human entitlements, such as rights. Thus Article 1 of the Universal Declaration of Human Rights says that “All human beings are born free and equal in dignity and rights.”²

Sometimes, however, these documents seem to make a stronger claim. They sometimes seem to imply that human dignity *entails* entitlements. For example, Article 1 of the “Charter of Fundamental Rights of the European Union”, says that “Human dignity is inviolable. It must be respected and protected”. The Charter proceeds immediately, in the subsequent articles, to enumerate rights and liberties that are to be accorded citizens of the member states.³ The immediacy of the Charter’s move from Article 1’s assertion of dignity to the enumeration of rights creates the clear impression that the dignity ascribed to human beings in Article 1 entails, or is the basis for asserting, the rights listed immediately afterwards. The German Basic Law says explicitly that the ascription of dignity is the basis for inferring rights-claims. The first clause of Article 1 in the Basic Law says “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.” The second clause of the Article says “The German people *therefore* [*darum*] acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.”⁴

I want to examine arguments of the kind that are presupposed by the EU’s Charter and the German Basic Law, arguments *from* assertions of human dignity *to* claims about human entitlements. The entitlements I shall discuss will be entitlements to so-called “second generation rights”, such as welfare rights. I shall focus here on one especially popular and attractive argumentative strategy for establishing these rights, which I call the *via negativa*. Proponents of the *via negativa* try to show that they can move from the assertion that human beings have dignity to claims about entitlements by showing that the denial or withholding of those entitlements is inconsistent with or violative of human dignity. As I shall explain in section I, I want to show that even if these arguments succeed, they ultimately depend upon the conclusions of *other* arguments for basic

¹ I am grateful to Elizabeth Anderson and Robert Audi for helpful comments on an earlier draft.

² See <http://www.un.org/Overview/rights.html>

³ The charter is available via a link at http://www.europarl.europa.eu/charter/default_en.htm

⁴ Emphasis added; for an English-language translation of the Basic Law: <http://www.iuscomp.org/gla/statutes/GG.htm>

entitlements – arguments to which the arguments from human dignity are often thought to be independent alternatives. Arguments from human dignity therefore do not provide the independent route to human entitlements that they are sometimes thought to promise.

The President's Council on Bioethics has frequently appealed to the value of human dignity in its published reports. I shall not discuss the arguments of the Council in any detail here, though I shall occasionally call attention to some of them. Though this attention is not concentrated or sustained, my analysis of arguments from human dignity underlines the importance of confronting some of the criticism the Council's work has received and of pursuing one of the questions that its work raises.

One objection can, I believe, be dispensed with quickly. It is sometimes assumed that the value of human dignity is an irreducibly theological value that, as such, ought not be given any weight in the formulation of public policy. The fact that dignity is sometimes said to depend upon our being images of God, and the frequent appeal to the value in Catholic moral thought, are sometimes taken to confirm this assumption. I believe the assumption to be mistaken, and that a careful reading of history would show the value of human dignity to have a home in secular as well as in religious thinking.⁵ So the allegation that human dignity is a theological value cannot sustain an objection to the Council's use of it.

Ruth Macklin has famously criticized the Council's appeal to dignity by arguing that, while dignity is frequently appealed to in human rights documents and in Catholic social teaching, it is "useless" -- and therefore -- dispensable concept. She concludes that it is a dispensable concept because, she says, dignity "means no more than respect for persons and their autonomy"⁶. I do not contend that the concept of human dignity is dispensable. On the contrary, I believe the concept of dignity can very helpfully be used to call attention to the fact that we human beings have features in virtue of which we are worthy of great respect. Furthermore, the fact that the notion of human dignity is at home in a number of moral traditions makes it an especially useful "second-level concept" -- a concept for expressing moral agreement among those who may differ about what first-order ethical vocabulary best describes *why* human beings merit respect. It is therefore just the concept one would expect to find in public documents -- such as international charters and the reports of Presidential commissions -- in which signatories from diverse traditions and schools of thought express such agreement.

⁵ For a splendid and concise discussion of the historical sources of the notion of human dignity, see Adam Schulman "Bioethics and Human Dignity"; Schulman's paper originated as a "Staff Working Paper" on human dignity commissioned by the President's Council on Bioethics. The paper can found on-line at: http://bioethics.gov/background/human_dignity.html. It is reprinted in this volume at pp. ---

⁶ Ruth Macklin, "Dignity is a Useless Concept", *British Medical Journal* 327 (2003): 1419-20. Macklin's article can be found on-line at <http://bmj.bmjjournals.com/cgi/content/full/327/7429/1419?etoc>.

But the conclusion advanced here about the dependence of dignity arguments on other arguments raises what should be a troubling question for those who rely on arguments from dignity: the question of how much of the work thought to be done by arguments from dignity is in fact be done by the prior arguments on which dignity arguments depend. If the conclusion advanced here is right, then the Council needs either to take up this question or to distinguish its dignity arguments from dignity arguments of the sort considered here. Furthermore, as we shall see at the end of this paper, the argument I offer for my conclusion suggests that the Council needs to give considerably more attention to questions on which it has touched all too briefly, questions about the bases and equality of human dignity.

I. Why Argue from Dignity?

I said that I shall focus on arguments for basic entitlements that follow the *via negativa*. I believe that arguments of the sort I take up have considerable intuitive appeal. The claim that human beings are possessed of a dignity unique to our kind has long exercised a powerful hold on secular and religious moral consciousness, at least in the west.⁷ That claim may therefore seem a natural starting point for arguments about what human beings are owed as such. Furthermore, offenses and conditions that strike us as denials or violations of dignity are all too familiar in the contemporary world. They run a lamentable gamut that includes religious coercion, human trafficking, the torture and degradation of prisoners, and the squalor of urban slums in which human beings condemned to live without minimal sanitation or modesty. What has gone wrong in such cases, we may think, is that those in power have not honored the entitlements of those whose dignity is denied or violated. And it may be appealing to think that we can argue *to* those entitlements *from* the claim that human beings have a dignity which is denied or violated in cases such as these.

Arguments from human dignity to human entitlements have proven especially appealing to some of those who are dissatisfied with social contract arguments. The critics I have in mind object to these arguments because they think that the conception with which these arguments begin – the conception of the individual contractor -- is an illegitimate abstraction. This objection takes at least two forms.

Some thinkers in the Aristotelian-Thomist tradition have argued that social contract theorists can begin with apolitical or pre-political individuals, and ask what kind of society they would live choose to live in, only by abstracting away from the embeddedness or sociality of human beings. Since sociability is essential to us, the philosopher who idealizes it away in order to set up the fundamental question of contract theory begins his argument for human entitlements in the wrong place. The basic

⁷ See Schulman, "Bioethics and Human Dignity".

entitlements at which he arrives from there are therefore inadequate to provide political guidance.⁸ For some thinkers in the Aristotelian-Thomist tradition, our social nature is one of the grounds of our dignity. An argument that begins with ascriptions of human dignity promises to avoid the individualism that allegedly undermines contractualist arguments.⁹

According to other thinkers, including others in the Aristotelian tradition, the contract theorist's abstraction goes wrong in a different way. Social contract theorists, it is said, typically ascribe human powers within the normal range to all the contracting parties and to all those to whom the terms of the social contract apply. This ascription abstracts away from human variability. It therefore leads contracting parties to choose norms that are insufficiently sensitive to morally relevant differences in the use human beings can make of the resources distributed under the terms of the contract. For these critics, human dignity depends upon the fact that human beings can develop certain distinctively human capacities. Beginning an argument for human entitlements with an assertion of dignity so understood makes it possible, they believe, to arrive at norms which are sufficiently sensitive to morally significant human differences.¹⁰

Thus those who offer both forms of criticism treat arguments from human dignity as desirable alternatives to contractualist arguments. The first form of criticism is of considerable interest. As we shall see, the second form now enjoys some currency in the philosophical literature. Partisans of contract theory should eventually confront both. Here I shall concentrate on the second.

I want to show that arguments from human dignity of understood in the second way – as grounded in our potential for distinctively human capacities -- are not really alternatives to social contract arguments after all. Rather, they presuppose contract arguments of some form in order to sustain their conclusions about entitlements. This is because – to put it crudely -- the grounds of human dignity include capacities which are properly respected only by consulting those who have those capacities about their own basic entitlements. I shall defend these conclusions in section V, where I assess what I call the *Aristotelian Argument from Dignity*. The *Aristotelian Argument* depends upon considerations which are complex and sophisticated, and it has considerable force. The strength of the argument is best appreciated by looking in some detail at how the

⁸ See, for example, Louis Dupre and William O'Neill, SJ "Social Structures and Structural Ethics", *The Review of Politics* 51 (1989): 327-44, especially pp. 336 and 342.

⁹ See Jacques Maritain, *The Person and the Common Good* (University of Notre Dame Press, 1966) trans. Fitzgerald, p. 13: "Our desire is to make clear the personalism rooted in the doctrine of St. Thomas and to separate, at the very outset, a social philosophy centered in the dignity of the human person from every social philosophy centered in the primacy of the individual and the private good."

¹⁰ This paragraph summarizes a line of criticism pursued in detail in Martha Nussbaum, *Frontiers of Justice* (Harvard University Press, 2006).

Aristotelian Argument improves on other arguments from dignity that have some initial appeal.

II. The Fittingness Argument: Initial Statement and Clarification

The entitlements supported by the arguments in which I am interested are, as I said, so-called “second-generation rights”, though for my purposes I do not believe anything essential turns on whether the rights at issue are first- or second-generation. Consider what I shall call the *Simple Argument from Dignity* for such rights:

- (1) Human beings have dignity.
- (2) A human being who lives in conditions of gross material deprivation is living a life that, for that reason, is lacking in human dignity.

But it seems obvious to some people that if human beings have dignity, then they should not have to live lives which lack dignity. Since they do have dignity by (1),

- (3) Human beings should not have to live lives that are lacking in human dignity.

From these claims, a claim about basic entitlement follows, since (2) and (3) seem to support the conclusion that:

- C: Human beings are entitled to access to material conditions that are not conditions of gross material deprivation.

If we assume that national governments are obliged to guarantee that people live in a dignified way, then national governments are obliged to guarantee that people do not live in conditions of gross material deprivation.

If the assumption about national governments is sound and if the *Simple Argument* is a good argument, we can see why fundamental documents -- laying out the claims people can make on their governments -- should move from claims about human dignity to conclusions second-generation rights. But is the *Simple Argument* a good one?

I believe that the *Simple Argument* is often taken to be a good one. Although the argument may not often be laid out explicitly, premises (1) and (2) express claims that are frequently heard in discussions of human rights. These claims are taken to support a conclusion like C. Presumably they are thought to support that conclusion by way of a premise like (3).

Yet on its face, the juxtaposition of (1) and (2) is bound to cause some puzzlement. How can a human life be lacking in dignity, as (2) alleges, if dignity is something every human being has, as (1) says? The juxtaposition is especially puzzling if dignity is

something human beings have inherently. For if human beings have the dignity asserted in (1) inherently, then it is not immediately clear how they can lack it. That it can be absent from the lives they lead, as (2) says it can be, requires some explanation.

Similar puzzlement can be engendered by juxtaposing various claims from the reports of the President's Council. The Council has asserted in some places that all human beings have dignity¹¹ equally¹² and inherently¹³, and that "every human life" has dignity "from start to finish"¹⁴. Yet the Council has also said that human dignity can be "violated"¹⁵, "threatened"¹⁶ and "encroach[ed] upon"¹⁷. One of the reports suggests that dignity can be traded off or sold in return for athletic achievement.¹⁸ But how can a quality which human beings have inherently and at all stages of their lives regardless of their condition also be one of which they could be deprived or one which they can alienate in these ways?

These puzzles show the need to distinguish dignity as a quality of persons and dignity as a quality the way they live their lives. That is, they show the need to distinguish 'dignity' understood *adjectivally* -- as applied to persons -- from 'dignity' understood *prepositionally* -- as describing either a quality with which persons live their lives or a condition in which the living is done.

Having drawn this distinction, I want to return to the *Simple Argument from Dignity* and modify the steps. The modifications yield an argument from dignity that avoids the puzzles raised by the *Simple Argument* and that says more clearly that the *Simple Argument* does just how lives can lack dignity. The argument that results from these modifications is the *Fittingness Argument from Human Dignity*.

Premise (1) of the *Simple Argument* said "Human beings have dignity". I shall follow the OED in taking 'dignity' to mean 'worthiness', 'worth' and 'excellence'. Let's therefore reinterpret (1) to say that (1f) "Human beings have worth". Though this may

¹¹ *Human Cloning and Human Dignity*, p. 89; *Taking Care*, p. 104.

¹² *Taking Care* pp. 103, 126, 127, 129.

¹³ *On Being Human*, Introduction to section x.

¹⁴ *Taking Care*, p. x.

¹⁵ *Human Cloning and Human Dignity*, p. 87; *Monitoring Stem Cell Research*, p. 92.

¹⁶ *Alternative Sources of Pluripotent Stem Cells*, p. 43; *Human Cloning and Human Dignity*, p. ix

¹⁷ *Human Cloning and Human Dignity*, p. 14.

¹⁸ *Beyond Therapy*, p. 103.

sound a bit awkward, what needs to be borne in mind is that – because of the OED’s equation of ‘worth’ and ‘excellence’ -- what is really being ascribed is *relative worth*. What is being asserted is that human beings have a worth or value that is high relative to the worth or the value of the things that human beings excel or surpass.

What is characteristic of the *Fittingness Argument* are the way it interprets premise (2) and the way it moves from there to the entitlement alleged in the conclusion. The *Fittingness Argument* relies on the intuitively appealing idea that if something has worth or excellence or worthiness, then there are some things – including some conditions – that it is worthy of and some things that are not worthy of it. According to the *Fittingness Argument*, a life is lacking in dignity – or is an undignified life – just in case it is a life that is not worthy of human beings or, as I shall say, is a life that “does not befit their worth”. One of the things that can make a life one that does not befit human worth is the condition under which it is lived. So premise (2) of the *Simple Argument* can be reinterpreted to say that (2f) “A human being who lives in conditions of gross material deprivation is living a life that, for that reason, does not befit human worth.”

The *Fittingness Argument* moves from (1f) and (2f) to an entitlement to relief from conditions of gross deprivation via the claim that human beings are entitled to live as befits their worth. So what I am calling the *Fittingness Argument* can initially be stated as follows:

(1f) Human beings have worth.

(2f) A human being who lives in conditions of gross material deprivation is living a life that, for that reason, does not befit human worth.

Assume that if human beings have worth, then they should not have to live lives which do not befit their worth. Since human beings do have worth by (1f):

(3f) Human beings should not have to live lives which do not befit their worth.

From (3f) and (2f) we get the claim that human beings should not have to live in conditions of gross material deprivation. And so the *Fittingness Argument* concludes:

C: Human beings are entitled to access to material conditions which are not conditions of gross material deprivation.

And if we assume – as I did when I laid out the *Simple Argument* -- that national governments are obliged to guarantee that people do not have live in ways that do not befit their worth, then the argument shows why national governments are obliged to guarantee that people do not have to live in conditions of gross material deprivation. The *Fittingness Argument* thus purports to show how fundamental documents could move from claims about human dignity to second-generation rights.

Like the *Simple Argument*, the *Fittingness Argument* may not often be laid out explicitly. Like the *Simple Argument*, it raises questions. Among the most pressing of these are questions about premise (1f), questions about human worth and its grounds. These questions will eventually have to be confronted, but I want to put them off for now. For looking at the rest of the argument enables us to appreciate its appeal.

To begin to see that appeal, note that there is an immediately apparent difference between the *Simple Argument* and the *Fittingness Argument*. If we modify premise (2) of the *Simple Argument* in the way that the *Fittingness Argument* does, then the juxtaposition of (1f) and (2f) does not raise the same puzzlement that the conjunction of (1) and (2) did. That juxtaposition was puzzling because (2) seemed to suggest that humans could lack the dignity that (1) said they have. By contrast, it does not seem nearly so problematic to say, as (1f) does, that human beings have dignity or worth but that they can live lives that lack dignity, understood in the sense of (2f) as “lives which do not befit their worth”.

The advantage the *Fittingness Argument* enjoys over the *Simple Argument* may, however, seem to come at a considerable price. For premises (2f) and (3f) rely on the notion of “fittingness” or “befittingness”. This notion itself raises a number of questions. What, we might wonder, is befittingness? Why should we think that some lives befit human worth but others don’t, as (2f) implies? And even if some lives do befit human worth and others don’t, why is that human beings should not have to live lives which do not befit their worth, as (3f) says?

To answer these questions and to see the appeal of the *Fittingness Argument*, it helps to recall something that is sometimes said by those who appeal to human dignity to ground entitlements. A society in which someone is able to live a life which is not lacking in human dignity is sometimes said to be one in which he can live “a life *commensurate* with human dignity”. Martha Nussbaum, for example, uses this locution in her recent work on human entitlements and human dignity¹⁹. The phrase was also used by Pope John Paul II, who frequently appealed to human dignity, when he spoke of the need for a world order “commensurate with human dignity”.²⁰ Talk of commensuration, taken literally, suggests that there are measures of human dignity and of human lives, and that some correlation between the measures is possible.

I believe that if we take talk of commensuration literally, and press on it very hard, we get a picture with the following elements:

¹⁹ Nussbaum, *Frontiers of Justice*, p. 44 (emphasis added). I hasten to add that, as will be apparent in the next section, I do not take Nussbaum to be a proponent of the *Fittingness Argument*. The quote here is simply a prominent and readily accessible example of a popular locution.

²⁰ See <http://www.zenit.org/english/visualizza.phtml?sid=49511>

- Items in the world, including human beings, have worth.
- The worth of these items can be measured.
- The measure of worth is scalar.
- Human beings can be located on the scale of values with some precision.²¹
- Living conditions can be located on a scale which, because it is commensurable with the scale of worth, can be correlated with it.

If we suppose that the proponent of the *Fittingness Argument from Human Dignity* is operating with this picture in the background, then we can read premise (2f) as asserting a “mismatch” between conditions of gross material deprivation and the place of human beings on the scale of worth. And we can read premise (3f) as asserting that human beings must have access to conditions which match their worth.

But why think that anyone who offers arguments from human dignity accept this picture? Why think that any of them believe that worth is scalar? And why think they believe there can be matches and mismatches of the sort asserted by (2f)? In sum, why think anyone endorses these critical assumptions of the *Fittingness Argument*?

Note first that it is common enough to speak as if we can locate human beings somewhere on a scale of value, as if we should be placed higher on the scale than some other things because we excel those things, and as if our placement on such a scale is a matter of our dignity or worth. For example Leon Kass, the former chairman of the President’s Council, has said:

Although the term ‘human dignity’ has a lofty ring, its content is quite difficult to define. To be more precise, different authors and traditions define it differently, as the readings in this chapter make abundantly clear. Yet all are struggling to reveal that elusive core of our humanity, *those special qualities that make us more than beasts yet less than gods*.²²

²¹ Note that for purposes of understanding the *Fittingness Argument*, it does not matter whether the scale of values has many or few gradations. The scale could be a finely graded “Great Chain of Being” or it could be a two-value scale which simply distinguishes – as Kant did – between items that have dignity and items that have fancy price.

²² Leon Kass, “Reflections on Public Bioethics: A View from the Trenches”, *Kennedy Institute of Ethics Journal* 15 (2005): 221-50, p. 240 (emphasis added).

Furthermore, conditions of deprivation are often described as “beneath human dignity” or as “subhuman”. This description may initially seem metaphorical. But if someone operates with the picture I have sketched, then he can give what looked like spatial metaphors a more straightforward reference. So the description of conditions of deprivation as “subhuman” and “beneath human dignity”, taken in conjunction with the scalar picture suggested by talk of “commensurability” and seemingly endorsed by Kass, suggests that some people may indeed accept (2f). This suggestion gets some support from the way we may be inclined to give voice to the instinctive revulsion we feel when we see pictures of human beings living in squalor. In my case, the revulsion is accompanied by the thought that “Human beings do not belong there” or “That is no place for something as great as a human being”.

That some conditions are a “match” and others a “mismatch” for human value is also suggested by a different metaphor that is used to describe human value in western religious and philosophical traditions, and in contemporary discussions of human rights. In the *King James Version*, God speaks of righteous human beings as “jewels”. (Mal. 3:17). In section 1 of the *Groundwork*, Kant echoes this description by famously describing the good will as a “jewel”. And one contemporary scholar says of the German Basic Law “Article 1 is the Basic Law's crown. The concept of human dignity is this crown's jewel”.²³ The use of the “jewel” metaphor in three such different sources at least suggests that the metaphor expresses a widely held way of thinking about human worth. If we think that the value of human beings is aptly likened to the value of a jewel, then we might think that some settings are appropriate for it but other settings are not. There are some settings, we might think, that naturally suit an item of such value, while others are incongruous with it.

Suppose, then, that familiar ways of speaking suggest the picture whose elements are laid out above, and that we can use that picture to make (2f) clear and acceptable. Even so – and despite the fact that the *Fittingness Argument* provides an interesting and perhaps a surprisingly rigorous elaboration of familiar ways of thinking about human worth -- the real interest of the *Fittingness Argument* lies in where it goes wrong. For by seeing where the argument goes wrong, we can bring to light conditions an argument from human dignity must meet.

To see where the *Fittingness Argument* goes wrong, we need to look more closely at how the argument moves from the lack of fittingness or the incongruity alleged in (2f) to the entitlement alleged in the conclusion. In the *Fittingness Argument* as laid out so far, that move depends upon (3f), the claim that human beings should not have to live in conditions that do not befit their worth. But why shouldn't they? Why should the lack of fittingness asserted in (2f) matter? And even if it matters, why should the lack of fittingness ground a basic entitlement to conditions that befit us or befit us better?

²³ Craig Smith, “More Disagreement Over Human Dignity: Federal Constitutional Court's Most Recent Benetton Advertising Decision” *German Law Journal* Vol. 4 No. 6 - 1 June 2003.

The proponent of the *Fittingness Argument* clearly thinks that the state of affairs in which human beings must live in conditions that do not befit their worth is bad. As I originally laid out the *Fittingness Argument*, its proponent asserts:

(3f) Human beings should not have to live lives which do not befit their worth.

But now we can see that part of what he means by (3f) is:

(3f.1) That humans should have to live lives which do not befit their worth is bad.

This claim, when taken together with (2f), implies that it is bad for human beings to have to live in conditions of gross material deprivation.

But how does this ground an entitlement to access to better conditions? Perhaps the idea is that if human beings have worth, then the lack of “fit” alleged in (2f) and in (3f.1) – the incongruity of someone’s having to live in a setting that does not befit one’s worth -- is a bad state of affairs that must be averted. If this hermeneutical suggestion is correct, then when the proponent of the *Fittingness Argument* asserts (3f), he also means to say:

(3f.2) The bad of a human being’s having to live in conditions of gross material deprivation must be averted.

Reading (3f) as the conjunction of (3f.1) and (3f.2) seems to get us from (2f) to the conclusion of the *Fittingness Argument*.

Reading (3f) this way is, however, misleading. Note first that the entitlement to live as befits one, the entitlement asserted in the conclusion of the *Fittingness Argument*, is an entitlement held with respect to someone else. It is an entitlement in virtue of which other agents have duties toward the person whose entitlement it is – in this case, duties to avert the bad alleged in (3f.1). The *Fittingness Argument* as I have now elaborated it moves from the bad to that entitlement by alleging an imperative – a “must” – in (3f.2).

This way of reading the argument, with the impersonal ‘must’, seems to suggest that the agents on whom the duty falls must avert the bad alleged in (3f.1) *because* – by (3f.2) -- that bad must be averted. But this is surely a mistake. The badness of a state of affairs does not generate a free-floating imperative which explains why agents are obliged to avert it. Rather if some bad state of affairs must be averted, it is surely because some agent or agents – maybe even all agents -- have a duty to avert it. So to see whether the move from (3f.1) to the entitlements is justified, we need to see whose duty that is and where the duty comes from.

Because I began by talking about the EU Charter, the UN Declaration (which are signed by governments) and the German Basic Law (which establishes a government), I shall assume that the agents on whom the duty falls are governments. It falls to governments to avert the bad in question. Moreover, the proponent of the *Fittingness Argument* thinks it falls to government to avert that bad because government is supposed to be appropriately responsive to or respectful of the worth of human beings. So when the proponent of that argument asserts (3f), I believe what he means is not (3f.1) and (3f.2), but rather (3f.1) together with:

(3f.2.1) The bad of a human being's having to live in conditions of gross material deprivation is one that government must avert if it is to be appropriately respectful of human worth.

(3f.2.2) Government must be appropriately respectful of human worth.

(3f.2.3) So the bad of a human being's having to live in conditions of gross material deprivation is one that government must avert.

With this elaboration of (3f) in hand, it is possible to elaborate the initial statement of the *Fittingness Argument*.

III. The Fittingness Argument: A Fuller Statement and Assessment

As we saw, the *Fittingness Argument* begins with the assumptions that:

(1f) Human beings have worth.

and that

(2f) A human being who lives in conditions of gross material deprivation is living a life that, for that reason, does not befit human worth.

As we also saw, it assumes that if human beings have worth, then it is bad that they should have to live lives which do not befit that worth. This assumption, together with (1f), implies:

(3f.1) That humans should have to live lives which do not befit their worth is bad.

The *Fittingness Argument* also assumes that if having to live as does not befit one's worth is bad, then that bad is one that government must avert if it is to be appropriately respectful of human worth. It follows from this assumption, together with (2f) and (3f.1) that:

(3f.2.1) The bad of a human being's having to live in conditions of gross material deprivation is one that government must avert if it is to be appropriately respectful of human worth.

The proponent of the argument takes for granted that:

(3f.2.2) Government must be appropriately respectful of human worth.

So it follows from (3f.2.1) that:

(3f.2.3) The bad of a human being's having to live in conditions of gross material deprivation is one that government must avert.

From (3f.2.3), it seems to follow that human beings have a basic entitlement against their governments:

C: Human beings are entitled to access to material conditions which are not conditions of gross material deprivation, and that entitlement is one their government must honor.

Is the *Fittingness Argument* thus elaborated a good argument? I have already discussed (1f) and (2f), so I shall concentrate on (3f.1), (3f.2.1), (3f.2.2) and (3f.2.3).

(3f.2.2) says that government is bound to be appropriately respectful of human worth. This claim certainly seems to be right. But whether this gets us to (3f.2.3) and to C depends upon the forms of respect for human worth that government is bound to show. It depends, therefore, on whether (3f.2.1) is true.

To see whether (3f.2.1) is true, let's recall what the "bad" in question is. By (3f.1), the bad is an incongruity or lack of "fit" between human worth or human value and its setting, a lack of "fit" which I have supposed can be made clear by pressing on the language of "incommensurate". The guiding idea of the *Fittingness Argument* thus seems to be that when human beings live in conditions of gross material deprivation, there is a lack of due proportion or correlation in the world that needs to be averted. (3f.2.3) claims that government must avert it.

The problem with this idea is that it is hard to see that a bad of this kind is one it falls to government to avert. If we are to move from claims about human worth to claims about human entitlements, *via* the claim that government must respect human worth, the argument must plausibly connect human entitlements with forms of respect that government is supposed to show. But (3f.1) fails to draw such a connection because the bad it asserts – the bad that government is to address by (3f.2.1) – does not have the right kind of connection with the interests of citizens.

This may seem a surprising claim. For it is certainly contrary to the interests of citizens to have to live in conditions of gross deprivation. But the fact that having to live in such conditions is contrary to the interests of citizens is not the reason the *Fittingness Argument* provides for the government action required by C. Rather, the reason for government's action is the incongruity or lack of "fit" asserted in (3f.1). In this case, government's failure to take citizens' interest as its reason for action is a failure to be appropriately respectful of human worth. For if government acknowledges that living in gross deprivation is bad, but alleviates that bad to correct a cosmic imbalance²⁴, then it is not showing appropriate respect to the citizens who would otherwise have to endure those conditions. When government is moved by the incongruity or lack of fit caused by poverty, rather than by the fact that poverty is bad for the people who suffer it, government at best treats its citizens as valued *objects*. It does not treat them as human *agents*, as beings capable of action and are liable to suffering. But a government which treats its citizens as objects – even as valued objects – rather than as agents is not showing respect for human dignity, the *Fittingness Argument* fails. It fails because, given what is meant by 'befit' in (3f.1), (3f.2.1) is false.

IV. The Aristotelian Argument: Initial Statement and Clarification

The argument from human dignity that I now want to explore promises to avoid the difficulty of the *Fittingness Argument* by showing that respect for human dignity requires government to advance certain identifiable human interests. It is an argument with some currency in the philosophical literature. I believe it is roughly the argument recently put forward by Martha Nussbaum, though I shall not be primarily concerned with tying the argument I consider to the texts of any particular author. For reasons that shall become clear, I refer to it as the *Aristotelian Argument*.

How does the *Aristotelian Argument* go?

Like the *Simple Argument from Dignity*, the *Aristotelian Argument* begins with the claim that "Human beings have dignity". Like the *Fittingness Argument* it interprets that claim as

(1a) Human beings have worth.

²⁴ Joel Feinberg has suggested that ideas about injustice to the cosmos – consisting in acts and states of affairs which throw the cosmos "out of kilter" – persist in modern moral consciousness. Feinberg associates these ideas with what he calls "Platonic justice"; see his "Non-Comparative Justice", *The Philosophical Review* 83 (1974): 297-338, pp. 307ff. My own opinion is that what Feinberg calls "Platonic justice" is one member of a larger family of "Fittingness Views of Justice"; see note 28 below.

I do not mean to deny Feinberg's suggestion about modern moral consciousness. Indeed, I believe my discussion of commensuration confirms it. But I do question – as I believe Feinberg would -- whether putting the cosmos back in "kilter" is a proper aim of liberal democratic government.

And like the *Fittingness Argument*, the *Aristotelian Argument* tries to support entitlements by exploiting the claim that having to live in certain conditions is unworthy of human beings. What is distinctive of the *Aristotelian Argument* is the way it supports that claim.

The proponent of the argument starts with the Aristotelian observations that there are some activities which are exclusively human, such as the discursive exercise of theoretical and practical reason, and that even those activities which are part of our animal life, such as eating, procreating and associating with others, are activities which human beings perform in a characteristic way. When human beings engage in the characteristically human activities, and when they perform activities in a characteristically human way, we act from affective and intellectual habits, and exercise a repertoire of skills. We may choose not to engage in various of these activities – we might, for example, choose a friendless life. But if engaging in these activities is to be a live option for us, then we must have the developed capacities on which these activities draw, at least to some minimum degree. We must have, as I shall say, certain *threshold capacities*. And so, the proponent of the *Aristotelian Argument* observes, a life without the threshold capacities would be a life in which we cannot behave ways which are characteristically human.

The proponent of the *Aristotelian Argument* then claims that the life of a person who cannot conduct herself in a characteristically human way – the life of someone who cannot associate with others, eat in a human way, converse, and so on – is not a life which is worthy of human beings. These considerations support the second premise of the *Aristotelian Argument*:

- (2a) A life in which someone lacks the threshold capacities is not a life worthy of human beings.

Thus a life in which someone lacks the ability to play or to be sociable, for example, is not a life worthy of a human being.

Like the *Simple Argument from Dignity* and the *Fittingness Argument*, the *Aristotelian Argument* assumes that if human beings have worth, they should not have to live lives that are not worthy of them. Since human beings have worth by (1a), it follows that:

- (3a.) But human beings should not have to live lives that are not worthy of them.

And from (3a) and (2a), it follows that human beings should not have to live lives in which they lack the threshold capacities. And so it would seem to follow that:

- C: Human beings are entitled to develop the threshold capacities.

If living in conditions which are not conditions of gross material deprivation is necessary for the development of their threshold capacities, then human beings are entitled to access to living conditions which are not conditions of gross material deprivation. And if we assume – as we did when considering the *Fittingness Argument* -- that national governments are obliged to guarantee that people can live in ways that befit their worth, then national governments are obliged to guarantee that people do not live in conditions of gross material deprivation. And so, proponents of the *Aristotelian Argument* conclude, we can see why fundamental documents, laying out the claims people can make on their governments, should include second-generation rights.

I said that the *Aristotelian Argument* I want to look is of interest in part because it resembles a line of argument pursued by Martha Nussbaum in her recent work. The assertion of resemblance gains some confirmation from Nussbaum's emphasis on developing the basic capabilities and from her explicit endorsement of what I have called premise (2a)²⁵. It gains further support from her remarks on her own methodology. The *Aristotelian Argument* as I have laid it out follows what I called the *via negative*, which Nussbaum follows as well. Thus after listing the capacities which she says people are entitled to develop to a minimum degree, Nussbaum writes "The basic idea is that with regard to each of these, we can argue, by imagining a life without the capability in question, that such a life is not a life worthy of human dignity."²⁶ Even aside from its intrinsic interest, then, this currency gives the *Aristotelian Argument* some claim on our attention.

The *Aristotelian Argument* attempts to support the same basic entitlements as the *Fittingness Argument*, while eschewing the reliance on "fittingness" or "incongruity" that ultimately undermined that argument. Does the *Aristotelian Argument* succeed where the *Fittingness Argument* failed?

Like the *Fittingness Argument*, the *Aristotelian Argument* enjoys one clear advantage over the *Simple Argument from Human Dignity*: the juxtaposition of its first and second premises does not raise the puzzles raised by the first and second premises of the *Simple Argument*. For the conjunction of these premises does not imply or suggest that people can have dignity while their lives lack them. Instead the two premises say that people have worth but can, under some circumstances, live lives which are not worthy of human beings.

The first premise of the *Aristotelian Argument* – (1a) Human beings have worth – clearly raises a number of questions, just as did the first premise of the *Fittingness Argument*. Is the worth of human beings different from the worth possessed by valuable objects that

²⁵ Cf. Martha Nussbaum, *Frontiers of Justice* (Harvard, 2006) pp. 82, 155, 161.

²⁶ Nussbaum, *Frontiers of Justice*, p. 78.

have intrinsic worth, say? If so, is the difference a difference in kind? How is that difference to be understood? What are the properties of human beings in virtue of which they have it? But when I looked at the *Fittingness Argument*, I put these questions aside. Since I am trying to determine whether the *Aristotelian Argument* is more successful than that argument, I shall put them aside here as well, though I shall return to them later. The considerations supporting (2a), the distinctively Aristotelian premise of the argument, seem to me to be very powerful. I am inclined to grant (2a) for the sake of argument. I therefore want to focus attention on the move from (2a) to basic entitlements.

In the previous two sections, we saw that the third premise of the *Fittingness Argument* as initially stated -- (3f) Human beings should not have to live lives which do not befit their human worth -- had to be interpreted as conjoining a number of claims to support the move from the first and second premises to the conclusion. The same is true of the *Aristotelian Argument*. The third premise of that argument is:

(3a.) But human beings should not have to live lives that are not worthy of them.

But without some further argument, it is not clear why this is so. The critical move in the *Aristotelian Argument* is, I believe, like the critical move in the *Fittingness Argument*: both appeal to the need to avoid some bad state of affairs. So I take it that part of what the proponent of the Aristotelian argument has in mind in asserting (3a.) is:

(3a.1) That human beings should have to live lives that are not worthy of them is bad.

It may be tempting to move from (1a), (2a) and (3a.1) to basic entitlements by appealing to:

(3a.2) The bad of someone's having to live a life in which she lacks the threshold capacities must be averted.

In the discussion of the *Fittingness Argument*, we saw how misleading such a premise can be. It can suggest that the badness of a state of affairs generates what I called a "free-floating" imperative that explains or ground the duties of those against whom the entitlement asserted in C is held. It can suggest, that is, that the badness of a state of affairs generates two imperatives, one immediately and the other mediately: (i) a free-floating and impersonal imperative that the bad is to be averted and (ii) a duty to honor the entitlement which is binding on some or all agents and which follows from the free-floating imperative. But at best this gets things the wrong way 'round. If the badness of someone's having to live without the threshold capacities is to be averted, that is surely a consequence of -- and not the reason for -- the obligation some agent or agents are under to avert it. The obligation of these agents is what is grounded immediately on the badness of the state of affairs. Since the entitlement in question is held against

government, it must be that the bad is one that government is under an obligation to avert. And, the proponent of the *Aristotelian Argument* thinks, it must be a bad that government is obligated to avert if it is to be properly respectful of human dignity.²⁷

Instead of supposing that the proponent of the Aristotelian Argument relies on (3a.2), I shall therefore suppose that he would move from (1a), (2a) and (3a.1) to basic entitlements by appealing to claims that are, in relevant respects, like those on which the *Fittingness Argument* relies:

(3a.2.1) The bad of a human being's having to live a life in which she lacks the threshold capacities is one that government must avert if it is to be appropriately respectful of human worth.

(3a.2.2) Government must be appropriately respectful of human worth.

and

(3a.2.3) The bad of a human being's having to live a life in which she lacks the threshold capacities is one that government must avert.

V. The Aristotelian Argument: A Fuller Statement and Assessment

Let me recapitulate the *Aristotelian Argument* so that all the steps are before us. The argument begins, as we saw, with the claims that:

(1a) Human beings have worth.

And that

(2a) A life in which someone lacks the threshold capacities is not a life worthy of human beings.

It assumes further that if human beings have worth, then it is bad that they should have to live lives which are unworthy of them. Since (1a) says that people have worth, (1a) – together with this assumption – implies that:

(3a.1) That human beings should have to live lives that are not worthy of them is bad.

²⁷ Writing of her “capabilities approach” to justice, Martha Nussbaum says: “The aim of the project as a whole is to provide the philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires.” See her *Women and Human Development* (Cambridge University Press, 2000), p. 5

The *Aristotelian Argument* also assumes that if someone's having to live a life that is not worthy of her is bad, then – if government is to be appropriately respectful of human worth -- that bad is one that government must avert. This assumption, when conjoined with (2a) and (3a.1), implies that

(3a.2.1) The bad of a human being's having to live a life in which she lacks the threshold capacities is one that government must avert if it is to be appropriately respectful of human worth.

The proponent of the argument takes for granted that:

(3a.2.2) Government must be appropriately respectful of human worth.

So it follows from (3a.2.1) that

(3a.2.3) The bad of a human being's having to live a life in which she lacks the threshold capacities is one that government must avert.

(3a.2.3) seems to imply the conclusion of the *Aristotelian Argument*, now stated so as to make explicit that the entitlement in question is one they can press against their government:

C: Human beings are entitled to develop the threshold capacities, and that entitlement is one their government must honor.

I do not want to linger over what it is to "honor" an entitlement. One natural way to take C is as providing the basis for at least some second-generation rights. For if living in of gross material deprivation makes development of the threshold capacities impossible, then it seems to follow from C that human beings have a right against their government to access to living conditions that are not conditions of gross material deprivation.

Recall that the *Fittingness Argument* came to grief because the bad that it said need to be averted – the bad asserted in (3f.1) -- was the bad of an "incongruity" or lack of "fit" between human worth and conditions of gross material deprivation. I argued that because this bad is not appropriately connected to human interests, it was hard to see why a government that is supposed to be appropriately respectful of human dignity is bound to avert it.

What is the bad on which the *Aristotelian Argument* turns? The bad asserted in (3a.1) is that of having to live a life in which one lacks the threshold capacities -- the capacities needed to conduct oneself in a characteristically human way, developed to a minimum degree. Since this is truly bad, (3a.1) is correct. Moreover – unlike the bad asserted in (3f.1) – the bad asserted in (3a.1) is bad *for the human beings who have to live that*

way.²⁸ It is this bad that (3a.2.1) says government must avert if it is to be appropriately respectful of human worth. Since the bad the *Aristotelian Argument* says government must avert is connected with human interests, the *Aristotelian Argument* seems to avoid the problem that undid the *Fittingness Argument*, at least if (3a.2.1) is true.

Is (3a.2.1) true?

(3a.2.1) is a claim about what government must do if it is to be “appropriately respectful” of human worth. Human beings are agents – that is, we are purposive beings who can exercise practical reason to plan and lead our lives. In doing so, we draw on the skills and qualities that I have labeled the “threshold capacities”. That we can live in a distinctively human way and are capable of distinctively human excellences seems to be – or to be important part of – what gives us our dignity or worth. And so it seems that if any agent – including our government -- is to be appropriately respectful of our dignity or worth, that agent must respect and treat us *as* agents who can live in this way. How such respect is to be shown may vary depending upon who is showing the respect. But it seems plausible that one of the ways that government -- with the resources, responsibility and authority to serve the interests of its citizens – should show respect is by averting the bad state of affairs that occurs when its citizens have to live without the threshold capacities. Since this is just what (3a.2.1) says, that (3a.2.1) may seem to be true.

The introduction of (3a.2.1) is clearly the critical move in the *Aristotelian Argument*. According to the line of reasoning just offered, that move depends crucially upon a claim about what a government must do if it is to respect and treat its citizens as agents. The requirement that government treat its citizens as agents is one that the proponent of the *Fittingness Argument* overlooks, since the *Fittingness Argument* came undone precisely because its crucial premise – (3f.2.1) -- was compatible with a government’s treating citizens merely as valued objects, somewhat like jewels, and not as agents. But

²⁸ Nussbaum clearly accepts (3a.1). Of course, one could accept (3a.1) but insist – with the proponent of the *Fittingness Argument* -- that what is bad about someone’s having to live without the threshold capacities is that it throws the universe “out of kilter”. Indeed, according to what Feinberg calls “Platonic justice”, “when functions ...are not performed by the thing of person best fitted by its (his) own nature to perform them, there is injustice done, at least from a cosmic point of view”; see Feinberg, “Non-comparative Justice”, p. 308.

Nussbaum does not, however, defend Platonic justice and she avoids the difficulties I have associated with it and other versions of the *Fittingness Argument*. That she thinks the bad (3a.1) asserts is bad for the persons who lack the threshold capacities is vividly confirmed by the fact that she likens having to live without those capacities to “a kind of premature death”; see Nussbaum, *Frontiers of Justice*, p. 347. Nussbaum’s endorsement of (3a.1) and her remark about premature death are what incline me to think that her argument for the right to develop threshold capacities follows the line plotted in the text; see also pp. 228-29 of her “Human Functioning and Social Justice”, *Political Theory* 20 (1992): 202-46. The passage at the top of p. 169 of her “Nature, Function and Capability”, *Proceedings of the Aristotelian Society* (1988), supplementary volume: 145-84 is harder to interpret and may lay out a different line of argument.

what exactly is it to respect and treat citizens as agents who can develop and exercise the threshold capacities? Which capacities are relevant?

Among the capacities most human beings can exercise with proper nurture and training are the capacity to develop, articulate and exchange ideas about how they should live and about the material conditions under which they pursue their ends, and the capacity to live with others on mutually acceptable terms. More specifically, we can reason together about whether we are conducting ourselves justly, about what our own basic entitlements are, and about whether the conditions under which we live are just. We are, we might say, capable of developing and exercising a sense of justice²⁹. Because human beings can develop and exercise a sense of justice, we can reflect on their own dignity or worth, and we can develop, articulate and exchange ideas about what conditions are and are not worthy of us.

This capacity for a sense of justice is a characteristically human capacity, hence a capacity for living in a distinctively human way. A life in which someone lacks the ability to reason about justice is a life lacking in human dignity, at least to that extent. This point is one that proponents of the *Aristotelian Argument* are well-positioned to appreciate, since it is a point that Aristotle pretty clearly implies in the first book of the *Politics* (1253a17). If government is to respect human worth, it must respond appropriately to the fact that people can develop and exercise a sense of justice. How is it to do that?

I suggest that if human beings can reason well about their own basic entitlements, then – if government is to respect its citizens as beings who can develop this capacity – it must foster the development of the capacity. This in itself is a significant conclusion, one which does not seem to have been reached by all proponents of the *Aristotelian Argument*.³⁰ But government must also do something more. If it is to be appropriately respectful of human worth, it must take as normative the conclusions its citizens would reach about their own basic entitlements when they reason well about them.

The requirement that government take those conclusions as normative is vague. One way to take those conclusions as normative would be to take them as dispositive. Taking the requirement this way implies that government must take the conclusions citizens would reach about basic entitlements as defining those entitlements. Another way to take them as normative would be to hold that while the agreement would reach does not automatically define basic entitlements, there is a rebuttable presumption that it defines them. There are other, still weaker ways we can imagine of taking the conclusions as normative. For my purposes, I do not need to be specific. I shall simply

²⁹ The phrase “sense of justice” is, of course, taken from Rawls; see John Rawls *A Theory of Justice* (Harvard University Press, 1999) p. 41.

³⁰ It is difficult to see where the capacity for a sense of justice is included on Martha Nussbaum’s list of basic capabilities; it is not included on her list as such. See *Frontiers of Justice*, pp. 76ff.

say that in arriving at what government must do if it is to be appropriately respectful of human worth, the conclusions human beings would reach about their own basic entitlements must be taken into account. This is a very weak requirement, but it is as strong as I need for the points about human dignity arguments that I wish to make.

What do I mean by “the conclusions citizens would reach about their own basic entitlements”? First of all, as I said above, I mean the conclusions citizens would reach when reasoning *well* together about their own entitlements. Determining what those conclusions are may require a fair amount of idealization and abstraction, since we do not always reason well about such matters in ordinary life. The conclusion to which my suggestion refers is therefore a hypothetical rather than an actual conclusion, as the word ‘would’ in the suggestion implies. Various works in the social contract tradition offer different ways of modeling good reasoning about human entitlements and so offer different ways of determining what the content of the hypothetical conclusion would be. I shall not try to adjudicate among them. I simply note that some contractualist argument is needed to give substance to the idea of “conclusions citizens would reach”.

My suggestion therefore comes to this. If human beings are capable of a sense of justice, then – if their government is to respect them as beings who can develop and exercise that capability – what states of affairs government must avert to show respect cannot be determined without taking into account the conclusions citizens would reach when reasoning well about their own basic entitlements.

Why accept the suggestion?

If human beings have the potential for a sense of justice, then the fact that we can is a very important fact about us. A government which is bound to be appropriately respectful of human worth must therefore respect human beings as beings who can develop and exercise this capacity. It is bound, that is, to respect us as beings who can arrive at conclusions about our own basic entitlements. Now suppose that a government determined how it was bound to show respect – and what, if any, basic entitlements it was bound to honor -- without taking any account of at all of what conclusions human beings would reach about their own entitlements. Then it is hard to see how could be respecting its citizens as beings capable of reaching such conclusions. For to respect persons as beings who are capable of reaching conclusions is surely to take some account of the conclusions they would reach. If government is to respect its citizens as such beings, it must therefore take the object of their hypothetical consensus into account.

What does this suggestion imply about the structure of the *Aristotelian Argument*?

(3a.2.1) is the premise of the argument that says “The bad of a human being’s having to live a life in which she lacks the threshold capacities is one that government must avert if it is to be appropriately respectful of human worth”. I sketched a defense of that

premise that turned on a claim about what a government must do if it is to respect and treat its citizens as agents. If the suggestion I have just argued for is correct, then one of the things it must do to treat them as the kind of agents they are is take account of the conclusions they would reach about their basic entitlements and about what they are due from their government. (3a.2.1) must therefore be the last step of an argument one of the premises of which is a claim about the conclusion that would be reached when human beings capable of a sense of justice reason well together about their basic entitlements.

What the other premises are depends upon what we make of hypothetical reasoning, and upon what it is to take the conclusions of that hypothetical reasoning into account. I shall not pursue those questions here. What matters for my purposes is this. (3a.2.1) depends upon the content of a hypothetical consensus among citizens, and the conclusion of the *Aristotelian Argument* depends upon the truth of (3a.2.1). So – if human beings can develop and exercise a sense of justice -- the basic human entitlements which the *Aristotelian Argument* is said to support cannot ultimately be determined without a hypothetical consensus about basic entitlements reached by those whose entitlements they are.

VI. Conclusion

As I noted in section I, arguments from human dignity are often presented as alternatives to arguments that rely upon a social contract. Even when arguments from dignity support the same entitlements as contractualist arguments, do arguments from dignity are often thought to provide an independent route to those entitlements. Sometimes, as we saw, arguments from human dignity are said to be not just independent of contractualist arguments, but preferable to them. They are said to provide a justification for basic entitlements that does not suffer from the various defects that are alleged to afflict social contract theory.

I have examined two arguments that appeal to human dignity to ground basic entitlements. One, the *Fittingness Argument*, fails because it requires government to avert a bad which is not properly connected with the human interests government is supposed to advance. The argument therefore misconstrues the ways in which government must respect human worth. The *Aristotelian Argument* avoids the difficulties that undermine the *Fittingness Argument*. But if the arguments of the previous section are correct, then -- if human beings can develop and exercise a sense of justice -- the conclusions of the *Aristotelian Argument* need to be reached *via* conclusions about the content of a hypothetical agreement. In that case, the *Aristotelian Argument* depends upon a contractualist argument to support the basic entitlements asserted in its conclusion. This suggests that if human beings can develop and exercise a sense of justice, then the contrast between contractualist arguments and the *Aristotelian Argument from Human Dignity* is a false contrast. The claim that the *Aristotelian Argument* can avoid the defects of contractualist arguments because it is independent of those arguments is mistaken.

I have not argued that the value of human dignity is dispensable or that it does not play an essential role in arguments from human dignity. Indeed, I have granted here that government must respect those features of human beings that are thought to ground human dignity. I said at the outset that I think the concept of human dignity can be used to draw attention to those features and to expressing agreement about their moral significance. ‘Dignity’ is, I said, a useful second-level concept. And I have assumed that the duty to respect those features of human beings entails the duty to respect human beings as capable of a sense of justice when the ability to develop a sense of justice is present.

What I have been concerned to show here is that it is this latter duty which leads to the dependence of human dignity arguments on contractualist ones. Thus government’s duty to respect human dignity or human worth is what, as it were, gets arguments for basic entitlements off the ground. But what that duty entails must spelled out by reference to people’s hypothetical reasoning about what their basic entitlements are. In defending this conclusion I am, of course, merely defending a claim that social contract theorists themselves have recognized.³¹

Note, finally, that the conclusion for which I have argued is conditional. I have argued that *if* human beings can develop and exercise a sense of justice, *then* their basic entitlements against government can be identified only by taking account of a hypothetical agreement among them.

I have assumed that most human beings can develop and exercise a sense of justice. If *all* human beings can do so, then *everyone’s* basic human entitlements against government must identified this way. But what if there are some human beings of whom the antecedent of the conditional does not hold? What if there are some who cannot develop and exercise a sense of justice, or some of whom it makes no sense to suppose that they enter into a hypothetical agreement – perhaps because of severe handicaps? Do such persons, if such there be, have basic entitlements? If so, what are the grounds of those entitlements and how are those grounds connected to human dignity?

As I note earlier, the President’s Council appeals frequently to the value of human dignity. In one passage, the language of the Council raises the possibility that human beings may have different kinds of dignity, depending upon their stage of

³¹ See John Rawls’s discussion of human dignity at *Theory of Justice*, p. 513; that discussion concludes with the remark “There is no way to avoid the complications of the original position, or of some similar construction, if our notions of respect and the natural basis of equality are to be systematically presented.” See also Ronald Dworkin’s very interesting interpretation of Rawls’s view as a natural rights view in “Justice and Rights”, *Taking Rights Seriously* (Harvard, 1977), pp. 150-83, especially pp. 180ff.

development.³² Other passages seem to foreclose this possibility by asserting that all human beings have dignity equally³³. In one critical place at which the Council tries to draw normative conclusions from ascriptions of dignity, the argument for those conclusions seems to depend, not just upon the claim that all have dignity equally, but also on the claim that the basis of human dignity is the same for all.³⁴

It does not follow from anything I have said that human beings who are incapable of a sense of justice do not have basic entitlements, or that they do not have the same entitlements as those who can develop and exercise a sense of justice. But if they cannot develop and exercise a sense of justice, then it is hard to see how their government's respect for their dignity or worth requires it to respect them as beings who can develop and exercise that capacity. And it is hard to see how government could be bound to show respect for their worth by taking account of hypothetical reasoning into which they could or would enter. The grounds for the entitlements held by those who can and those who cannot develop a sense of justice would therefore seem to be different, even if the entitlements enjoyed by both groups turn out to be the same. If this is so, then the hope that some unitary account of human dignity can provide a single foundation for the basic entitlements of all human beings would seem to be misplaced.

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³² See the enigmatic remark about "primordial dignity" in the introduction to chapter x of *On Being Human*.

³³ *Taking Care*, p. 103.

³⁴ See the argument against cloning at *Human Cloning and Human Dignity*, p. 105f.