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Friends of the Court: Christian Conservative Arguments on Human Dignity Before the U.S. Supreme Court and the European Court of Human Rights

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Friends of the Court: Christian Conservative
Arguments on Human Dignity Before the U.S.
Supreme Court and the European Court of
Human Rights

*Pasquale Annicchino**

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INTRODUCTION

Litigation before national and international courts can aim at two different kinds of results: direct effects, which concern the

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concrete resolution of the legal dispute at stake; and also indirect effects, with the goal of wider social and cultural impact. As argued by Dia Anagnostou and Effie Fokas in the case of the European Court of Human Rights:

Indirect effects include the ways in which international human rights judgments may influence domestic debates in law, politics and academia, raise public consciousness, change how social actors perceive and articulate their grievances and claims, empower national rights institutions, or prompt mobilization among civil society and other rights advocates.¹

The same thing has been argued by Justices of the United States Supreme Court. Judges not only resolve disputes, but “teach.”² To this extent, an approach to the study of law that takes into account its relationships with social movements can highlight characteristics of legal developments that are otherwise not considered. Such an approach can be the key to understanding the role of law in polarized societies in the context of the culture wars,³ considering that legal arguments and doctrines contribute to cultural understandings of the law and the role of social

1. Dia Anagnostou & Effie Fokas, *The “Radiating Effects” of the European Court of Human Rights on Social Mobilisations Around Religion in Europe—An Analytical Frame 2* (Grassrootmobilise Working Paper No. 1, 2015), <http://grassrootsmobilise.eu/the-radiating-effects-of-the-european-court-of-human-rights-on-social-mobilisations-around-religion-in-europe-an-analytical-frame/>. While the authors focus their attention on the European Court of Human Rights, they also mention that “studies show that decisions of high profile and authoritative courts like the U.S. Supreme Court prompt individuals to clearly elaborate their attitudes on an issue, crystallizing their views for or against the ruling and underpinning a broad range of mobilization efforts.” *Id.*

2. According to Laurence Tribe:

Justice Kennedy’s opinions have repeatedly emphasized the notion that, through the decisions it announces and the reasons it offers for those decisions, the Court does more than resolve the particular ‘cases’ and ‘controversies’ entrusted to it for resolution. He has observed: ‘By our opinions, we teach’ . . . [t]he idea that the populace at large will actually read the Court’s opinions may seem naive. But if one reflects on how those opinions reverberate through both traditional and social media outlets, the idea’s innocence may come to be appreciated and even admired in time.

Laurence H. Tribe, *Equal Dignity: Speaking Its Name*, 129 HARV. L. REV. F. 16, 23–24 (2015).

3. Christopher McCrudden, *Transnational Culture Wars*, 13 INT’L J. CONST. L. 434 (2015). The development of the concept of dignity in adjudication is also part of a transnational exchange. See Steve Sanders, *Dignity and Social Meaning: Obergefell, Windsor, and Lawrence as Constitutional Dialogue*, 87 FORDHAM L. REV. 2069 (2019); Reva B. Siegel, *Dignity and Sexuality: Claims on Dignity in Transnational Debates over Abortion and Same-Sex Marriage*, 10 INT’L J. CONST. L. 355 (2012).

movements in developing the law.⁴ Discussion on rights, and in our case on dignity, can therefore be understood as discursive logic that “shape[s] the normative [and political] frames through which individual and collective actors conceptualise . . . social problems.”⁵ The aim of this contribution is to assess the role of arguments based on human dignity by conservative Christian groups in their litigation strategies in leading cases before the U.S. Supreme Court and the European Court of Human Rights. After the introduction, Part II offers some methodological remarks on the study, and Part III discusses the problems concerning the definition of dignity and Christian contributions to its definition. Part IV discusses the “radiating effects” of litigation; Part V analyzes the role played by arguments based on human dignity in leading cases before the two courts; and Part VI concludes that, in the cases analyzed, arguments based on dignity have only played a marginal role.

I. METHODOLOGY

This article builds on the work done in the context of three European Research Council projects in which I have been involved: *ReligioWest*, *Grassrootmobilise*, and *Postsecular Conflicts*.⁶ I have applied some limitations to the selection of cases to be analyzed: after mapping relevant cases for the purpose of this study, I limited the selection to the last ten years (2010–20). I further limited my analysis to five cases per court, for a total of ten cases: five in the U.S. Supreme Court and five in the European Court of Human Rights. The list of selected cases is provided at the end of this Part in a table. This selection of cases permits comparison between the two courts. I also decided to select these cases in order to cover different topics with direct relevance for the interests of religious

4. Douglas NeJaime, *Constitutional Change, Courts, and Social Movements*, 111 MICH. L. REV. 877 (2013).

5. Anagnostou & Fokas, *supra* note 1, at 6.

6. Information on these research projects can be found on their respective websites. *ReligioWest: The Project*, EUR. UNIV. INST., <https://www.eui.eu/DepartmentsAndCentres/RobertSchumanCentre/Research/ArchivesInstitutionsGovernanceDemocracy/Religiowest/Religiowest#:~:text=The%20project%20analyses%20how%20religions,pressure%20to%20adapt%20to%20secularism.&text=This%20'formatting'%20pushes%20many%20religions,cha plains'%20in%20the%20army> (last visited Feb. 13, 2021); GRASSROOTSMOBILISE, <http://grassrootsmobilise.eu/> (last visited Feb. 19, 2021); *Postsecular Conflicts*, UNIVERSITÄT INNSBRUCK, <https://www.uibk.ac.at/projects/postsecular-conflicts/> (last visited Feb. 13, 2021).

groups, religious non-governmental organizations (NGOs), or public-interest law firms with strong religious connections. The topics selected are same-sex marriage, abortion, collective religious freedom, individual religious freedom, and migration. I selected these topics as they usually are within the typical domain of actions and engagement for religious groups in litigation both in the United States and Europe. These cases were also selected based on their relevance in scholarly debates. Time does not allow for covering all possible cases—that would require a book—but these still illuminate relevant trends in litigation on religion and human dignity.

One basic issue to deal with has been the definition of the “Christian” or “conservative” legal movement for the purpose of this contribution. I think we can use as a working definition the one proposed by Daniel Bennett: “multi-issue organization dedicated to the interests of Christian conservatives primarily through legal strategies and tactics.”⁷ I do not equate the notion of “Christian” with the notion of “conservative.” In litigation we have often seen progressive religious groups submitting their arguments before different courts. However, for the purpose of this study, I focus only on conservative Christian groups as they have been identified by different studies as being at the forefront of transnational litigation on religion.⁸

U.S. Supreme Court	European Court of Human Rights	Topic
Obergefell v. Hodges, 576 U.S. 644 (2015)	Oliari v. Italy, 18766/11; 36030/11 (2015)	Same-Sex Marriage

7. Daniel Bennett, *The Rise of Christian Conservative Legal Organizations*, RELIGION & POL. (June 10, 2015), <https://religionandpolitics.org/2015/06/10/the-rise-of-christian-conservative-legal-organizations>. Bennett lists the following organizations as examples in the United States: Alliance Defending Freedom, American Center for Law and Justice, Center for Law and Religious Freedom, Liberty Counsel, Liberty Institute, National Legal Foundation, Pacific Justice Institute, Thomas More Law Center, and Thomas More Society. *Id.*; see also DANIEL BENNETT, DEFENDING FAITH: THE POLITICS OF THE CHRISTIAN CONSERVATIVE LEGAL MOVEMENT (2017); Daniel Bennett, *A Match Made in Heaven? Linking Christian Legal Advocacy with Conservative Politics*, in THE EVANGELICAL CRACKUP? THE FUTURE OF EVANGELICAL-REPUBLICAN COALITION 222–38 (Paul A. Djupe & Ryan L. Claassen eds., 2018).

8. See CHRISTOPHER MCCRUDDEN, LITIGATING RELIGIONS: AN ESSAY ON HUMAN RIGHTS, COURTS, AND BELIEFS (2018).

Russo v. June Medical Services LLC, 140 S. Ct. 2103 (2020)	A, B & C v. Ireland, 25579/05 (2010)	Abortion
Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014)	Fernández Martínez v. Spain, 56030/07 (2014)	Collective Religious Freedom
Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018)	Lautsi v. Italy, 30814/06 (2011)	Individual Religious Freedom
Trump v. Hawaii, 138 S. Ct. 2392 (2018)	F.G. v. Sweden, 43611/11 (2016)	Migration

Table 1: List of Selected Cases

II. WHICH DIGNITY?

The dignity of the human person has been at the center of the movement that promoted universal human rights after the Second World War. There are, of course, several intellectual sources that have contributed to the development and evolution of the notion and relevance of human dignity.⁹ As explained by Samuel Moyn, an important role in this context has been played by the Catholic Church:

The Roman Catholic Church had previously rejected the hitherto secular and liberal language of human rights. But now the pope turned to it, making human dignity its new basis. Around the same time, ecumenical formations of transatlantic Protestant elites proclaimed human rights to be the key to future world order. The communion between human rights and Christianity was therefore a novel and fateful departure in the history of political discourse.¹⁰

9. See Frederick Mark Gedicks, *Christian Dignity and Overlapping Consensus*, 46 *BYU L. REV.* 1245, 1249 (2021) (“The idea of dignity was present in antiquity, but the idea of Christian dignity arose from theology and social rank in the Middle Ages.” (footnotes omitted)).

10. Samuel Moyn, *Christian Human Rights: An Introduction*, 28 *KING’S L.J.* 1, 2 (2017).

The Catholic Church, and Christian groups in general, have often tried to advance their own understandings of human dignity. Recently, some scholars have also suggested that religious groups, and in particular the Catholic Church, should shift their focus from the protection of human rights to the protection of dignity:

The Catholic Church would be far better able to explain itself, and to explain the genuine core radicalism (after some needed theoretical pruning) of its positions in these areas, if it consistently abandoned rights in favour of dignity and criticized the abuses of justice consequent upon the hegemony of rights with respect to more political and economic issues also.¹¹

This phenomenon results from the proliferation of rights and the critique of “new rights.” Whether this enterprise will succeed will depend on how these arguments are developed and whether courts follow this line of reasoning in their adjudication. Religious groups, in particular, should always take into account the need to develop inclusive notions of dignity in order to avoid forging and supporting notions that tend to exclude.¹²

It is, however, important to underline that there does not seem to be a shared conception of human dignity across different jurisdictions and between the two courts¹³ at the core of this study. Moreover, within the same jurisdiction conceptions of dignity seem to differ and lack common ground. In the United States, the line of jurisprudence primarily influenced by Justice Kennedy that ultimately led to *Obergefell v. Hodges* seems to have been driven by the central concern for the dignity of individuals. As Yuvraj Joshi has pointed out, initially this line of jurisprudence, from *Planned*

11. John Milbank, *Dignity Rather Than Rights*, in UNDERSTANDING HUMAN DIGNITY 199, 205 (Christopher McCrudden ed., 2013).

12. See generally the critique developed in this issue by Gedicks, *supra* note 9.

13. This is underlined by Paolo G. Carozza:

[T]here is a practical consensus around a core meaning of human dignity, lesser but discernible convergences of understanding around a cluster of key questions, values, and circumstances that are related to dignity, and some sharp disagreements and even contradictions that reflect not only the variety of intellectual and moral traditions in which the concept has its roots but also differences in the specific political, social, and cultural contexts in which the very broad principle gets instantiated.

Paolo G. Carozza, *Human Rights, Human Dignity, and Human Experience*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 11, at 615, 619. On the definition of human dignity, see also Mark L. Movsesian, *Of Human Dignities*, 91 NOTRE DAME L. REV. 1517 (2016).

*Parenthood v. Casey*¹⁴ to *Lawrence v. Texas*,¹⁵ focused mainly on individual freedom of choice.¹⁶ However, this understanding started to change in *United States v. Windsor*¹⁷ and *Obergefell v. Hodges*,¹⁸ as “[d]ignity veered away from respect for the freedom to make personal and intimate choices without interference.”¹⁹ At least two notions of dignity are highlighted in this context. One is defined as “dignity as respect”²⁰ and “appeals to a person’s freedom to make personal and intimate choices without interference.”²¹ The other understanding of dignity is defined as “dignity as respectability” and “appeals to the social acceptability and worthiness of the personal choices being made and those making them.”²² It is based on this distinction that Joshi offers a critique of the *Obergefell* decision, not from a conservative standpoint, as we often have seen, but rather from a progressive position:

It is perhaps ironic that gaining “equal dignity in the eyes of the law” requires same-sex couples to establish the same love and commitment that the law takes for granted in the case of heterosexual couples. But, what is more troubling is overlooking that same-sex and unmarried relationships might adopt different forms of loving and commitment—and that these different intimacies might too be entitled to equal respect and dignity.²³

14. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

15. *Lawrence v. Texas*, 539 U.S. 558 (2003).

16. Yuvraj Joshi, *The Respectable Dignity of Obergefell v. Hodges*, 6 CAL. L. REV. CIR. 117, 117 (2015).

17. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

18. *Obergefell v. Hodges*, 576 U.S. 644 (2015).

19. Joshi, *supra* note 16.

20. *Id.* at 118.

21. *Id.* at 119. “It gives due regard to her feelings, wishes, and beliefs about personal decisions, so that she can make decisions that fulfill her sense of true self and feel a sense of personal and social worth from being her true self in public.” *Id.*

22. *Id.* According to Joshi:

It affirms decisions because and only insofar as they have and show the qualities that are deemed dignified by a normative standard of behavior. This respectable meaning of dignity is in deep conflict with the intuitive idea of dignity as respect. By demarcating the boundaries of “dignified” choices, it undercuts the freedom to make personal and intimate choices without interference.

Id.

23. *Id.* at 123. The same arguments critical of the reasoning at the basis of the decision have been raised by Gregg Strauss, *What’s Wrong with Obergefell*, 40 CARDOZO L. REV. 631 (2018).

Are the different doctrinal conflicts on the definition of a shared notion of dignity enough to declare the experiment with human dignity failed or destined to fail? Litigation before courts can further contribute to clarifying the potential of human dignity in the living experience of different realities. This does not signify that we need a global and Cartesian concept of human dignity that is applicable everywhere with the same meaning. It also does not signify that the Christian and religious understandings of dignity are the only contributions that need to be taken into account in further developing such a notion. The concept of human dignity has to be understood as the basis of a global effort for the promotion and protection of fundamental rights. As Paolo Carozza reminds us: “The ontological claim of human dignity helps sustain the very possibility of human rights as global principles that can and should help us condition sovereignty and hold accountable those who abuse power, especially the power of the state.”²⁴

There seems therefore to be an important role for dignity in global and comparative constitutional law, especially in a historical period where “rights discourse” is under attack in many countries in the world. Work on properly defining and applying human dignity also helps us challenge the mainstream narrative of the “rights project” as only and necessarily a progressive project. In his work, Moyn has challenged this narrative: for him it is impossible to understand the development and genesis of human rights without a proper analysis of the development of conservative and religious thinking. As Moyn has argued:

[T]he general thesis of my new book, *Christian Human Rights*, is that through this lost and misremembered transwar era, it is equally if not more viable to regard human rights as a project of the Christian right, not the secular left. Their creation brought about a break with the revolutionary tradition and its *droits de l'homme*, or – better put – a successful capture of that language by forces reformulating their conservatism.²⁵

The litigation before courts, and the work on the notion of human dignity by several actors, could therefore contribute to a new paradigm of rights protection centered on individual and collective human dignity. Developing an approach based on dignity could also help bring in the conservative legal movement, which does not

24. Carozza, *supra* note 13, at 620.

25. Moyn, *supra* note 10, at 5.

necessarily have an initial focus on individual human rights and is influenced by religious traditions.

III. LITIGATION AND ITS "RADIATING EFFECTS"

Litigation on religious issues has become an important phenomenon of our time. As argued by McCrudden, "[o]ne of the most obvious features of the landscape of religious litigation has been the increasing number of courts that are now open to receiving and adjudicating disputes between human rights and religious beliefs."²⁶ In this context, an important role is played by religious NGOs and religiously oriented public-interest law firms. According to McCrudden, "[t]here is growing evidence that the legislative and political role of NGOs, both secular and religious, is now being supplemented by an additional role: the initiation and conduct of, or participation in, *litigation* at the domestic level and beyond."²⁷ Among these organizations, NGOs, and public-interest law firms litigating before the U.S. Supreme Court and the European Court of Human Rights, conservative Christian organizations have played an important role. In the United States, several studies have highlighted the distinct character of the culture of conservative Christian litigation. As Hans J. Hacker has put it, "during the 1990s conservative Christian attorneys began to present courts with the argument that government sometimes penalizes legitimate religious expression in attempting to avoid entanglement, and that religious speech should be given the same protection from governmental intrusion as any other form of protected speech."²⁸

As a reaction to the cultural conflicts of the sixties and the increasing relevance of progressive ideas in society, religious conservatives began to organize in order to guarantee the influence of Christian morals and values in the public square and public policies:

They have attempted to fulfill the goal of "reclaiming America" by placing primary importance on working within those bastions of majoritarianism in American politics – the U.S. Congress, state legislatures, and the electoral process. In particular, legislative lobbying has held the position of primary importance within the

26. MCCRUDDEN, *supra* note 8, at 42.

27. *Id.* at 46.

28. HANS J. HACKER, *THE CULTURE OF CONSERVATIVE CHRISTIAN LITIGATION* xi (2005).

New Christian Right's overall strategy—the organizations that represent conservative Christian interests in Congress have always been the best funded, best organized, most highly visible, and most aggressive of all the many and varied institutions that compose the far-flung movement.²⁹

In addition to legislative lobbying, litigation before courts have been a major part of this effort, where litigation was understood as a useful tool to “change the world.”³⁰ As argued by Jay A. Sekulow, General Counsel for the American Center for Law and Justice, these organizations were not meaning

to carry the day on the culture with politics alone. Our job is to keep [the] avenues open, make sure the church can be the church. . . . We are there to make sure the church's voice is heard. Somebody said once we're Jesus lawyers. Jesus doesn't need a lawyer. But the church does. I believe the church needs organizations that will defend the integrity of Christians in the public square.³¹

After the decision of the U.S. Supreme Court in the case of *Lawrence v. Texas*,³² where a decision of the European Court of Human Rights was quoted in the majority opinion, some conservative Christian organizations began to wonder if the Strasbourg Court could be perceived as a threat because of the possibility that its precedent could have a persuasive influence on the decisions of the U.S. Supreme Court. Therefore, Christian conservative religious groups started to litigate in Strasbourg as well. Transnational litigation on religious issues is therefore, as we have mentioned, characterized by a strong influence from American organizations and public-interest law firms.³³ As McCrudden argues:

29. *Id.* at 6 (citation omitted).

30. JAMES DAVISON HUNTER, *TO CHANGE THE WORLD: THE IRONY, TRAGEDY, AND POSSIBILITY OF CHRISTIANITY IN THE LATE MODERN WORLD* (2010).

31. HACKER, *supra* note 28, at 5 (quoting Jay A. Sekulow, General Counsel, Am. Ctr. for L. & Just. (1998)).

32. *Lawrence v. Texas*, 539 U.S. 558 (2003).

33. American organizations are now also particularly active in Europe. See Effie Fokas, *Directions in Religious Pluralism in Europe: Mobilizations in the Shadow of European Court of Human Rights Religious Freedom Jurisprudence*, 4 OXFORD J.L. & RELIGION 54 (2015); see also Effie Fokas, *Comparative Susceptibility and Differential Effects on the Two European Courts: A Study of Grassroots Mobilizations Around Religion*, 5 OXFORD J.L. & RELIGION 541 (2016) [hereinafter *Comparative Susceptibility*]. According to Fokas, “[t]he predominance of the

It is a noticeable feature of *religious* transnational litigation that it is, in the main, US *conservative* NGOs which are at the forefront of this development, a phenomenon that warrants a brief explanation. After *Lawrence*, the ECtHR has been a particular target for interventions. The largest group of NGOs active before the Court is based in the United Kingdom, but the second largest group of NGOs comes from the United States, including several that are law school clinics, and a significant proportion of that group of US NGOs is made up of religious conservative groups.³⁴

The key role of American organizations has been highlighted also by Laura Van den Eynde, who has noticed an increase in third-party interventions from the United States before the European Court of Human Rights over the years.³⁵ As Eugenia Relaño Pastor has also argued, the “United States and Canada provide the best developed examples of NGO involvement in religious litigation and in litigation specifically by religious groups.”³⁶

An analysis of their interventions before the Courts can help us in highlighting if, and to what extent, legal arguments based on dignity play a role in their strategic litigation before the judiciary.

IV. AMICUS BRIEFS AND CHRISTIAN ARGUMENTS BEFORE COURTS

Christopher McCrudden has already underlined the extent to which judicial interpretations of human rights are influenced or shape the concept of human dignity.³⁷ McCrudden has also stressed how the concept of dignity is often context-specific and depends on both the jurisdiction and the timeframe.³⁸ For McCrudden the concept of dignity might also generate some problems, given its vague and changing notion which might open the way to an increase in judicial discretion.³⁹ But have the U.S. Supreme Court

United States in this field of study is not surprising: American society is historically actively litigious . . . the US provides one of the best developed examples of NGO and civil society engagement in religious litigation and of litigation specifically by religious groups.” *Comparative Susceptibility*, *supra*, at 547 (citations omitted).

34. MCCRUDDEN, *supra* note 8, at 53.

35. Laura Van den Eynde, *An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs Before the European Court of Human Rights*, 31 NETH. Q. HUM. RTS. 271 (2013).

36. Eugenia Relaño Pastor, *Christian Faith-Based Organizations as Third-Party Interveners at the European Court of Human Rights*, 46 BYU L. REV. 1329, 1340–41 (2021).

37. Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. INT’L L. 655 (2008).

38. *Id.*

39. *Id.*

and the European Court of Human Rights taken dignity into account so far? Jean Paul Costa, former President of the European Court of Human Rights, has investigated the role and use of human dignity in the jurisprudence of the European Court of Human Rights. First, he noticed the absence of the concept of dignity in the text of the Convention,⁴⁰ but over the years both the European Commission of Human Rights and the European Court of Human Rights began to elaborate an approach to human dignity.⁴¹ As Costa underlined, many of the cases in which human dignity has played a role have been decided under Article 3 of the Convention.⁴² Dignity has also played a role in adjudication before the U.S. Supreme Court, as multiple scholars have highlighted.⁴³ It is therefore worth asking whether human dignity has played any role, if not directly in the decision-making of the Courts, then at least in submissions by conservative Christian groups in their amicus briefs. This analysis can help to illuminate the supply side

40. According to Costa,

[t]he absence of dignity is surprising, the more so if one considers that the text of the European Convention is in many respects very close to that of the Universal Declaration. . . . It is likely that the drafters nevertheless had the concept of dignity in their minds, especially because the very establishment of the Council of Europe in 1949 and the elaboration of the Convention, the first treaty prepared within its framework, were the work of persons firmly opposed to the atrocities and barbarity of the Second World War.

Jean-Paul Costa, *Human Dignity in the Jurisprudence of the European Court of Human Rights*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 11, at 393, 394.

41. According to Costa, in a report dated December 1973, the Commission addressed the issue of human dignity by stating that racial discrimination constitutes a breach of human dignity. Costa highlights how “[t]his very first example of the use of the term dignity shows that the Commission, and the Court subsequently, have never restricted their recourse to dignity solely to Article 3, even if it is the field where it is most frequently applied.” *Id.* at 395. For the 1973 report of the Commission mentioned by Costa, see *East African Asians v. United Kingdom*, App. No. 4403/70, 3 Eur. H.R. Rep. 76 (1973).

42. According to Costa,

[m]any of these cases deal with disproportionate use of physical force against people in vulnerable situations, such as people arrested by police or detained in a cell. The general principle is that when a person is deprived of liberty, any recourse to physical force which is not strictly necessary diminishes human dignity, and is in principle an infringement of Article 3.

Costa, *supra* note 40, at 396.

43. Maxine D. Goodman, *Human Dignity in Supreme Court Constitutional Jurisprudence*, 84 NEB. L. REV. 740 (2006); AHARON BARAK, *Human Dignity in American Constitutional Law*, in HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT 185, 185-208 (2015).

of the creation of legal arguments that has also contributed to the wider legal culture and development of ideas that shape constitutional adjudication.

A. *Same-Sex Marriage*

1. *Obergefell v. Hodges*

Holding: The Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize their marriage when it was lawfully licensed and performed out of state. Relevant references to dignity in the amicus briefs submitted to the Court are available in the table below.⁴⁴

Organizations	Number of References to Dignity
Ryan T. Anderson (Heritage Foundation) ⁴⁵	One reference. Not central to the argument.
Family Research Council ⁴⁶	One reference. Not central to the argument.

44. *Obergefell v. Hodges*, 576 U.S. 644, 675–76 (2015).

45. Brief for Ryan T. Anderson, Ph.D., as Amicus Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

46. Brief for Fam. Rsch. Council as Amicus Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

Major Religious Organizations ⁴⁷	Five references. Dignity central to the protection of religious belief. “This suppression of beliefs would diminish the freedom of millions of Americans to live their faith openly and with dignity”; ⁴⁸ “These beliefs about marriage are not going away. Cherished by billions of believers worldwide and tens of millions in the U.S., these doctrines will not change based on federal court decisions, much less the shifting tides of public opinion. They are tied to theology, religious and family practices, and entire ways of life. They are no less essential to the dignity and identity of millions of Americans than petitioners’ sexual orientation is to them.” ⁴⁹
Religious Organizations, Public Speakers and Scholars Concerned About Free Speech ⁵⁰	Five references. “Freedom to speak according to religious conscience is essential to the dignity of each person and to the stability of a self-governing Republic.” ⁵¹
Mike Huckabee Policy Solutions and Family Research Institute ⁵²	One reference. Not central to the argument.
Foundation for Moral Law ⁵³	One <i>obiter</i> from <i>Lawrence v. Texas</i> .
International Conference	One reference. Not central to

47. Brief for Major Religious Orgs. as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

48. *Id.* at 29.

49. *Id.* at 34.

50. Brief for Religious Orgs. et al. Concerned About Free Speech as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

51. *Id.* at 31.

52. Brief for Mike Huckabee Pol’y Sols. et al. as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

53. Brief for Found. for Moral L. as Amicus Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

of Evangelical Endorsers ⁵⁴	the argument.
United States Conference of Catholic Bishops ⁵⁵	Four references. “It is not a judgment about the dignity or worth of any person, married or not” (p. 11); “[T]he Church’s pastoral care of persons who are sexually attracted solely or predominantly to persons of the same sex is informed not only by its teaching about the proper use of the sexual faculty, but by its conviction that each and every human person, regardless of sexual inclination, has a dignity and worth that derives from his or her Creator”; ⁵⁶ “[E]very January, the Nation celebrates the birthday of a minister, who drew upon decidedly religious and moral notions of human dignity in urging the reform of American law.” ⁵⁷
Protectmarriage.com-Yes on 8 et. al. ⁵⁸	One reference. Not central to the argument.
International Conference of Evangelical Endorsers ⁵⁹	One reference. “Absent appropriate judicial restraint, nothing prevents polygamy, bestiality, or any other practice or crime which many people currently would call a perversion, from becoming a constitutional right merely because it provides some disaffected group meaning, and alleged dignity, and

54. Brief for Int’l Conf. of Evangelical Endorsers as Amicus Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

55. Brief of U.S. Conf. of Cath. Bishops as Amicus Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

56. *Id.* at 11

57. *Id.* at 18.

58. Brief of Protectmarriage.com—Yes on 8 et al. as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

59. Brief of the Int’l Conf. of Evangelical Endorsers, *supra* note 54.

	personal fulfillment.” ⁶⁰
Catholic Answers ⁶¹	Three references. “The People’s desire to preserve the traditional definition of marriage is neither inspired by animus nor bigotry. It is a choice made by informed and engaged individuals who seek to strike a balance between preserving the rights of religious believers while also promoting the dignity of sexual minorities.” ⁶²
54 International and Comparative Law Experts from 27 Countries and the Marriage and Family Law Research Project ⁶³	Three references. “Leading experts have noted the importance of protecting religious freedom and finding nuanced compromises that will afford maximal respect to the dignity and freedom of all concerned.” ⁶⁴

Table 2: Relevant References to Dignity in the Amicus Briefs Submitted

Dignity in the judgment: Dignity is at the core of the majority opinion written by Justice Kennedy. It is therefore possible to find several references to the term. The conclusion of the opinion summarizes the understanding of dignity in this case adopted by Justice Kennedy. According to him, same-sex couples “ask for equal dignity in the eyes of the law. The Constitution grants them that right.”⁶⁵ This conception of dignity is criticized in the minority opinions, especially in Justice Thomas’s dissent. He argues that “[t]he government cannot bestow dignity, and it cannot take it away.”⁶⁶ As I have previously underlined, the use of dignity in this judgment has been widely commented upon.

60. *Id.* at 26.

61. Brief of Cath. Answers as Amicus Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

62. *Id.* at i.

63. Brief for 54 Int’l L. Experts from 27 Countries et al. as Amici Curiae Supporting Respondent, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

64. *Id.* at 31.

65. *Obergefell*, 576 U.S. at 681.

66. *Id.* at 735 (Thomas, J., dissenting).

Other religiously inspired organizations submitted amicus briefs relevant for the purpose of this study but with no direct reference to dignity.⁶⁷

2. Oliari v. Italy

Holding: Italy failed to comply with the positive obligation to respect the applicants' private and family life as the State did not provide a legal framework for the recognition and protection of their relationship under domestic law.⁶⁸

Dignity in the judgment: The only relevant reference to dignity in the text of the judgment is made at paragraph 107 where the position of the applicants is summarized: "The applicants considered that the recognition in law of one's family life and status was crucial for the existence and well-being of an individual and for his or her dignity."⁶⁹

Several organizations submitted amicus briefs relevant for the purpose of this study but with no direct reference to dignity.⁷⁰

67. See, e.g., Brief for Gen. Conf. of the Seventh Day Adventists et al. as Amici Curiae Supporting Neither Party, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574); Brief for CatholicVote.org Educ. Fund as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574); Brief for Nat'l Coal. of Black Pastors & Christian Leaders as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (Nos. 14-556, 14-562, 14-571, 14-574); Brief for Inst. for Marriage & Pub. Pol'y et al. as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (No. 14-556, 14-562, 14-571, 14-574); Brief for Texas Values as Amici Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (Nos. 14-556, 14-562, 14-571, 14-574).

68. *Oliari v. Italy*, App. Nos. 18766/11, 36030/11 (Oct. 21, 2015), <http://hudoc.echr.coe.int/eng?i=001-156265>.

69. *Id.* at 107.

70. See, e.g., Brief for Eur. Ctr. for L. & Just. as Amici Curiae, *Oliari v. Italy*, App. Nos. 18766/11, 36060/11 (2015); Brief for Pavel Parfentev on Behalf of Seven Russian NGOs (Fam. & Demography Found. et al.) and Three Ukrainian NGOs (Parental Comm. of Ukraine et al.) as Amici Curiae, *Oliari v. Italy*, App. Nos. 18766/11, 36060/11 (2015). These organizations were given leave to intervene by the Vice President of the Chamber, but no submissions were received by the court.

*B. Migration*⁷¹

1. Trump v. Hawaii

Holding: The President has lawfully exercised the discretion granted to him under 8 U.S.C. § 1182(f) to suspend the entry of aliens into the United States.⁷² Respondents did not demonstrate a likelihood of success on the merits of their claim that Presidential Proclamation No. 9645 violates the Establishment Clause.

Dignity in the judgment: There is no reference to arguments based on dignity in the judgment.

Several organizations submitted amicus briefs relevant for the purpose of this study but with no direct reference to dignity.⁷³

2. F.G. v. Sweden

Holding: The applicant's return to Iran would not constitute a violation of Articles 2 and 3 of the Convention, on account of the applicant's political past in Iran.⁷⁴ However, for the court there would be a violation of Articles 2 and 3 of the Convention if the applicant were to be returned to Iran without an *ex nunc* assessment by the Swedish authorities of the consequences of his religious conversion.

Dignity in the judgment: There is no reference to arguments based on dignity in the judgment.

Several organizations submitted amicus briefs relevant for the purpose of this study but with no direct reference to dignity.⁷⁵

71. For an overview of the relationships between human dignity and migration, see Christine M. Venter, *Human Dignity Has No Borders: Respecting the Rights of "People on the Move" and the Rights and Religious Freedom of Those Who Aid Them*, 46 *BYU L. REV.* 1369 (2021).

72. *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

73. See, e.g., Brief for Christian Legal Soc'y et al. as Amici Curiae Supporting Neither Party, *Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (No. 17-965); Brief for Found. for Moral L. as Amicus Curiae Supporting Petitioners, *Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (No. 17-965); Brief for Am. Ctr. for L. & Just. as Amicus Curiae Supporting Petitioners, *Trump*, 138 S. Ct. 2392 (2018) (No. 17-965); Brief for All. Defending Freedom as Amicus Curiae Supporting Neither Party, *Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (No. 17-965); Brief for Becket Fund for Religious Liberty as Amicus Curiae Supporting Neither Party, *Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (No. 17-965).

74. *F.G. v. Sweden*, App. No. 43611/11 (Mar. 23, 2016), <http://hudoc.echr.coe.int/eng?i=001-161829>.

75. See, e.g., Brief for Eur. Center for L. & Just. as Amicus Curiae, *F.G. v. Sweden*, App. No. 43611/11 (2016); Brief for All. Defending Freedom et al. as Amici Curiae, *F.G. v. Sweden*, App. No. 43611/11 (2016).

C. Individual Religious Freedom

1. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission

Holding: The Colorado Civil Rights Commission’s actions in assessing a cakeshop owner’s reasons for declining to make a cake for a same-sex couple’s wedding celebration violated the free exercise clause.⁷⁶ Relevant references to dignity in the amicus briefs submitted to the Court are available in the table below.

Organizations	Reference to Dignity
Billy Graham Evangelistic Association and others ⁷⁷	One reference quoting from <i>Hobby Lobby</i> . Not central to the argument.
United States Conference of Catholic Bishops and others ⁷⁸	Six references. Two <i>obiter</i> and the other references are not direct.
Becket Fund for Religious Liberty ⁷⁹	Six references. Dignity is understood as a foundational principle: “The reality is that with respect to participation in wedding ceremonies, dignity is and ought to be a two-way street.” ⁸⁰

76. Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n, 138 S. Ct. 1719 (2018).

77. Brief for Billy Graham Evangelistic Ass’n et al. as Amici Curiae Supporting Petitioners, Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n, 138 S. Ct. 1719 (2018) (No. 16-111).

78. Brief for U.S. Conf. of Cath. Bishops et al. as Amici Curiae Supporting Reversal, Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n, 138 S. Ct. 1719 (2018) (No. 16-111).

79. Brief for Becket Fund for Religious Liberty as Amicus Curiae Supporting Petitioners, Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n, 138 S. Ct. 1719 (2018) (No. 16-111).

80. *Id.* at 3.

Christian business owners supporting religious freedom ⁸¹	Twenty-one references. Dignity is understood as a key and foundational principle: “For devout religious citizens, such a rule fatally erodes religious freedom, freedom of speech, protections of property rights, and the substantive due process of dignity, autonomy, and identity” ⁸² ; “The Court, however, did not limit the meaning of personal identity to only marital and sexual choices, but explained that the right extends to all personal choices, central to one’s dignity and autonomy” ⁸³ ; “Although it vigorously protected Respondents’ ‘dignity’ rights, the lower court unfairly neglected the same rights by Petitioners” ⁸⁴ ; “It appears unwise, at best, to read <i>Obergefell</i> ’s dignity right as bestowing on one group the power to coerce compliance by another, especially in violation of the latter’s free speech and religious convictions” ⁸⁵ ; “Whatever the basis of this dignity or identity right might be, one of its boundaries must be that it can compel tolerance at most, but it cannot coerce another’s endorsement or participation, for that would constitute a complementary infringement of the latter’s dignity or identity right” ⁸⁶ ; “For followers of Jesus Christ, adhering to His commands is
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	the most personal and central choice to define their individual dignity and autonomy." ⁸⁷
Christian Legal Society ⁸⁸	Three references. "The insult or dignitary harm to same-sex couples cannot be considered in isolation. The Court must also consider the dignitary harm to religious objectors, for whom 'free exercise is essential in preserving their own dignity.'" ⁸⁹

Table 3: Relevant References to Dignity
in the Amicus Briefs Submitted

Dignity in the judgment: Dignity is mentioned six times in the judgment. It is mentioned to set the framework for the need for equal treatment of individuals: "Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth." However, no real consequence is derived from this general framework.

Several organizations submitted amicus briefs relevant for the purpose of this study but with no direct reference to dignity.⁹⁰

81. Brief for Christian Bus. Owners Supporting Religious Freedom as Amicus Curiae Supporting Petitioners, *Masterpiece Cakeshop Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No.16-111).

82. *Id.* at 10.

83. *Id.* at 23.

84. *Id.* at 25.

85. *Id.*

86. *Id.*

87. *Id.* at 32.

88. Brief for Christian Legal Soc'y et al. as Amici Curiae Supporting Petitioners, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111).

89. *Id.* at 5

90. *See, e.g.*, Brief for Found. for Moral L. as Amicus Curiae Supporting Petitioners, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111); Brief of Amici Council for Christian Colls. & Univs. et al. Supporting Neither Party, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111); Brief for Ethics and Religious Liberty Comm. of the Southern Baptist Convention et al. as Amici Curiae Supporting Petitioners, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111); Brief for Christian L. Ass'n as Amicus Curiae Supporting Petitioners, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111).

2. *Lautsi v. Italy*⁹¹

Holding: The decision to display crucifixes in the classrooms of public schools attended by the applicant's children was within the margin of appreciation left to the respondent State in the context of its obligation to respect, in the exercise of the functions it assumes in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.⁹²

Dignity in the judgment: In the context of the judgment, arguments based on dignity did not play a role and did not influence the final outcome.

Several organizations submitted amicus briefs, relevant for the purpose of this study but with no direct reference to dignity.⁹³

*D. Collective Religious Freedom*1. *Burwell v. Hobby Lobby Stores, Inc.*

Holding: As applied to closely held corporations, the regulations promulgated by the Department of Health and Human Services requiring employers to provide their female employees with no-cost access to contraception violate the Religious Freedom Restoration Act.⁹⁴

Dignity in the judgment: In the context of the majority opinion, arguments based on dignity did not play a role and did not influence the final outcome. In his concurring opinion, Justice Kennedy underlined how

[i]n our constitutional tradition, freedom means that all persons have the right to believe or strive to believe in a divine creator and a divine law. For those who choose this course, free exercise is essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts. Free exercise in this sense implicates more than just freedom of belief.⁹⁵

91. *Lautsi v. Italy*, 30814/06 Eur. Ct. H.R. (2011), <http://hudoc.echr.coe.int/eng?i=001-104040>.

92. *Id.*

93. *See, e.g.*, Brief for All. Def. Fund as Amici Curiae Supporting Applicants, *Lautsi v. Italy*, 30814/06 Eur. Ct. H.R. (2011) (not admitted by the court).

94. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

95. *Id.* (Kennedy, J., concurring)

This understanding of free exercise and its direct link with dignity seems to reflect the position of some of the organizations that submitted amicus briefs before the Court.

Organizations	Reference to Dignity
Family Research Council ⁹⁶	One reference. Not central for the development of the argument
American Center for Law and Justice ⁹⁷	Four references. “Amici urge this Court, in its adjudication of the issues involved in these cases, to be mindful of the dignity of individual conscience and the right of religious exercise our forefathers held sacred in the founding of this country” ⁹⁸ ; “Whether this country will continue to preserve the dignity of conscience and robustly protect religious freedom in the future largely depends on how this Court rules in the cases at bar” ⁹⁹ ; “While the government may not question the sincerity of the religious beliefs of business owners like <i>Amici</i> , it directly questions – in fact, seeks to eradicate – their ability to run their businesses according to these beliefs, specifically, on an issue of what they believe to be of

96. Brief for Fam. Rsch. Council as Amicus Curiae Supporting Hobby Lobby and Conestoga, et al., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (Nos. 13-354, 13-356).

97. Brief for Am. Ctr. for L. & Just. et al. as Amici Curiae Supporting Hobby Lobby et al., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (Nos. 13-354, 13-356).

98. *Id.* at 61.

99. *Id.* at 12.

	supreme importance: the dignity and sanctity of human life, in its creation and transmission.” ¹⁰⁰
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*Table 4: Relevant References to Dignity
in the Amicus Briefs Submitted*

Several organizations submitted amicus briefs relevant for the purpose of this study but with no reference to dignity.¹⁰¹

2. Fernández Martínez v. Spain

Holding: A Catholic bishop could decide not to renew the contract of a teacher of Catholic religion who had joined a public campaign to oppose the Catholic Church’s practice of celibacy for priests.¹⁰²

Dignity in the judgment: No reference to dignity can be found in the text of the Grand Chamber judgment.

Several organizations submitted amicus briefs relevant for the purpose of this study but with no reference to dignity.¹⁰³

E. Abortion

1. Russo v. June Medical Services LLC

Holding: Louisiana’s Unsafe Abortion Protection Act, requiring doctors who perform abortion to have admitting privileges at a nearby hospital, is unconstitutional.¹⁰⁴

Dignity in the judgment: No reference to dignity can be found in the text of the final majority opinion of the Court.

100. *Id.* at 20.

101. *See, e.g.*, Brief for Nat’l Ass’n of Evangelicals as Amicus Curiae Supporting Hobby Lobby et al., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (Nos. 13-354, 13-356); Brief for the Knights of Columbus as Amicus Curiae Supporting the Private Parties, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (Nos. 13-354, 13-356).

102. Case of Fernández Martínez v. Spain, 56030/07 Eur. Ct. H.R. (2014), <http://hudoc.echr.coe.int/eng?i=001-145068>.

103. *See, e.g.*, Written Comments of Chair in L. & Religions of the Université catholique de Louvain et al. as Third-Party Intervenors, Fernández Martínez, 56030/07; Observations écrites en tierce intervention du Eur. Ctr. for L. & Just., Fernández Martínez, 56030/07.

104. *Russo v. June Med. Servs.*, 140 S. Ct. 2103 (2020).

Different organizations submitted amicus briefs relevant for the purpose of this study but with no reference to religion.¹⁰⁵

2. A, B & C v. Ireland

Holding: Ireland failed to implement the right to a legal abortion.¹⁰⁶

Dignity in the judgment: The court did not make use of arguments based on dignity to reach its final judgment. The only reference to dignity can be found at paragraph 162 of the judgment where the requests of the applicants are summarized: “[T]he criminalization of abortion was discriminatory (crude stereotyping and prejudice against women), caused an affront to women’s dignity and stigmatized women, increasing feelings of anxiety. The applicants argued that the two options open to women—overcoming taboos to seek an abortion abroad and aftercare at home or maintaining the pregnancy in their situations—were degrading and a deliberate affront to their dignity.”¹⁰⁷

Several organizations submitted amicus briefs relevant for the purpose of this study but with no reference to dignity.¹⁰⁸

CONCLUSION

Christian conservative NGOs and public-interest law groups have faced important defeats before the U.S. Supreme Court and the European Court of Human Rights. They have also seen important victories, as is clear from the outcome of the *Lautsi* case decided by the Grand Chamber of the European Court of Human Rights. The *Obergefell* decision from the U.S. Supreme Court, on the other side, has probably signaled the lowest point of influence for religious-based litigation, even though, as we have seen, the decision is today criticized also by progressive scholars and activists. From the analysis undertaken in this article, and from the

105. See, e.g., Brief for Am. Ctr. for L. & Just. et al. as Amici Curiae Supporting Respondent & Cross-Petitioner, *Russo v. June Med. Servs.*, 140 S. Ct. 2103 (2020) (Nos. 18-1323, 18-1460); Brief for Ams. United for Life as Amicus Curiae Supporting Respondent & Cross-Petitioner, *Russo v. June Med. Servs.*, 140 S. Ct. 2103 (2020) (Nos. 18-1323, 18-1460).

106. *A, B & C v. Ireland*, 25579/05 Eur. Ct. H.R. (2010), <http://hudoc.echr.coe.int/eng?i=001-102332>.

107. *Id.* at 45.

108. See, e.g., Written Observations of Eur. Ctr. for L. & Just. as Third-Party Intervener, *A, B & C v. Ireland*, 25579/05 Eur. Ct. H.R. (2010); Written Observations of All. Def. Fund et al. as Third-Party Interveners, *A, B & C v. Ireland*, 25579/05 Eur. Ct. H.R. (2010).

decisions which have been analyzed, dignity-based arguments have not played a key role in the context of the litigation strategies or interventions before the European Court of Human Rights and the U.S. Supreme Court. It has yet to be seen if this trend will be confirmed in the future and if human dignity will assume a more important role in strategies to advance legal arguments via adjudication.

With the development of populist approaches to constitutionalism, conservative Christian actors have also signaled an approach that is critical of international organizations and international law. For instance, the European Centre for Law and Justice has recently been at the center of a debate on the workings of the European Court of Human Rights through the publication of a report aimed at showing the supposed bias of the court.¹⁰⁹ If a populist approach will hegemonize the approach of conservative Christians and drive them outside the boundaries of institutional trust, it will be difficult for them to provide a significant contribution to the development of the role of human dignity in adjudication. What will happen to the Christian legal movement, and especially to its American core, will be of fundamental importance also for future developments in Europe and in the world. It seems, as argued by Daniel Bennett, that

[r]egardless of the *Obergefell* decision, the Christian legal movement is too well funded and organized to simply disappear. Armed with million-dollar budgets and attorneys committed to a broader cause, Christian conservative legal organizations are not built to fade away. Some of its groups may dissolve over time, but the broader Christian legal movement is poised for a sustained presence on the stage of legal and cultural conflict.¹¹⁰

But to the development of which notion of dignity will these actors contribute? Will they focus their efforts on a truly global effort for the promotion of an inclusive notion of human dignity as the basis for the protection of human rights? Or will they prefer the less inclusive notion aimed at being exploited in the short-term scenario of the political cycle? Important guidance to these actors may come from the recent encyclical letter that Pope Francis released in October 2020. In *Fratelli tutti*, Pope Francis mentions

109. EUR. CTR. FOR L. & JUST., NGOS AND THE JUDGES OF THE ECHR, 2009–2019 (2020), <https://eclj.org/ngos-and-the-judges-of-the-echr>.

110. Bennett, *supra* note 7.

dignity sixty-six times, but two paragraphs of the document are particularly relevant for our analysis.¹¹¹ In paragraph 8 of the encyclical, Pope Francis makes an explicit link between the recognition of dignity and the universal aspiration to fraternity:

It is my desire that, in this our time, by acknowledging the dignity of each human person, we can contribute to the rebirth of a universal aspiration to fraternity. Fraternity between all men and women. . . . Let us dream, then, as a single human family, as fellow travelers sharing the same flesh, as children of the same earth which is our common home, each of us bringing the richness of his or her beliefs and convictions, each of us with his or her own voice, brothers and sisters all.¹¹²

In paragraph 22 of the encyclical, a direct connection between the protection of human rights and dignity is made:

It frequently becomes clear that, in practice, human rights are not equal for all. Respect for those rights “is the preliminary condition for a country’s social and economic development. When the dignity of the human person is respected, and his or her rights recognized and guaranteed, creativity and interdependence thrive, and the creativity of the human personality is released through actions that further the common good[.]” Yet, “by closely observing our contemporary societies, we see numerous contradictions that lead us to wonder whether the equal dignity of all human beings, solemnly proclaimed seventy years ago, is truly recognized, respected, protected and promoted in every situation.”¹¹³

There seems to be the opportunity in litigation to advance an inclusive conception of dignity which is not necessarily weaponized to continue to pursue culture wars by legal means.¹¹⁴ The cases analyzed have shown that the degree of attention to the topic so far has not been particularly relevant. Therefore, there is probably space to continue the conversation and the contribution to the development of a jurisprudence built on dignity. Linking

111. POPE FRANCIS, ENCYCLICAL LETTER: *FRATELLI TUTTI* (2020), http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html.

112. *Id.*

113. *Id.*

114. See CLIFFORD BOB, *RIGHTS AS WEAPONS: INSTRUMENTS OF CONFLICT, TOOLS OF POWER* (2019).

dignity to human rights and fraternity, as Pope Francis suggests in *Fratelli tutti*, seems to offer a road full of potential.¹¹⁵

115. For full development of this position, see generally Andrea Pin & Luca P. Vanoni, *Catholicism, Liberalism, and Populism*, 46 BYU L. REV. 1299 (2021).