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The Right to Dignity and the Supreme Court

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Introduction

Dignity is a common term in Supreme Court decisions. Dignity has been used in at least 974 Supreme Court decisions.[1] Still, frequency of use does not equate with clarity. In fact, in the case of "dignity" just the opposite is true. Dignity has been present in Constitutional decisions and dissents since some of the earliest cases that came before the Supreme Court. Confusion over the meaning of dignity leads to legal experts questioning what the use of dignity means for Constitutional precedent. Dignity is applied without a full understanding of the concept, it is used as a general justification for any argument. Lacking the clarity of meaning provides justices with a kind of Constitutional blank check to be applied in any case. The ambiguity surrounding dignity undermines the clarity of thought by making the Supreme Court's decision nearly impossible follow the logic of an opinion relying on dignity without knowing its basic definition. The problem of overusing "dignity" is that forcing its appearance into arenas where it has no place will weaken the meaning of the term. The result could be that dignity might be ignored, the Court turning its back on a term that has only undermined the Court and never been properly defined. The Court has, though, used "dignity" to decide important cases and there would seem there is no going back, it is already a highlight of many Supreme Court opinions and due to recent decisions it has been emphasized. To truly understand dignity's role in the American jurisprudence one must first examine and explain its different meanings and different interpretations. Based on the past uses of dignity by the influences on the American Judiciary

[1]Search "Dignity", Source: "Supreme Court Cases, Lawyers Edition," *Lexis Nexis Academic Server*, (Accessed November 29, 2016).

and the opinions of the Supreme Court an acceptable interpretation of the term will be adopted and the repercussions on modern issues investigated.

It is possible to define Dignity as it used by the courts. It may be as difficult as nailing Jell-O to a wall but the meaning of dignity is one of the most significant abstracts in philosophy. Dignity is a task for only the brightest philosophical minds, one that has been repeatedly examined throughout the ages. This paper will not attempt to examine, define, or debate dignity from a philosophical or theological perspective on its own merits. Instead, the paper will accept the most widely held definitions. These are held by the two major schools of thought that appear to influence the American political thought; most specifically, the position of the Catholic Church and Immanuel Kant's view as the main contributor to dignity in Enlightenment thought. All of the analysis and projecting will be saved for how the court interprets and implements dignity.

Dignity's significance is that the term illustrates the full struggle being fought in the courts by the Western Christian thought process and the Enlightenment school of thought. To fully understand how it must be traced back to the beginning. Dignity can be traced back to a fundamental difference in how each philosopher viewed the concept. Saint Thomas Aquinas defined dignity as "something's goodness on account of itself" essentially summing up what is known today as intrinsic value.[2] According to Christian thought, this intrinsic value gives everything that is God's creation dignity. Within Aquinas's belief in Natural law there is a natural pecking order in the Universe, with God at the top of the pyramid and then beneath

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[2]Michael Rosen, *Dignity: its history and meaning,* (Harvard University Press, 2012), 25.

him, man, created in God's own image. Humanity's dignity is not the same as the dignity of a plant or animal.

Kant views dignity as the characterization of one who has the ability to use morality. To Kant morality has "unconditional and incomparable value" and is what separates man from every other living being.[3] Dignity, therefore, is distinctly human. It is something that all of the humanity shares, for everyone feels the call of morality within themselves, and since every human faces choice from morality, every human is, therefore, free. Kant's view of dignity calls upon a respect that we are all free people, and that is the amazing part of humanity's creation. It is not, like Aquinas says, that the amazing part of being human comes from just being a part of creation. Our dignity does not come from our rank as those directly beneath God, it comes from our innate freedom that we are independent of God. Rosen explains how Kant's interpretation reveals humanity's world is not "subject to the divine will," for as long as an individual has dignity and can find morality's questions within themselves, then human being will always remain free.[4] This is the base of all secular thought from the Enlightenment period, and therefore the secular thought found in America.

This background provides an understanding of why there is so much tension focused on dignity but does not focus on the specifics with the meanings that make the application of these different understandings of dignity so polarizing. Dignity, as it relates to the church, is a dignity that depends on positioning within the divine law, therefore different dignities are different for different statuses in life. For example, the King's dignity is not the same as the

[3] Ibid., 23.
[4] Ibid., 25.

peasant's dignity. [5] The Catholic dignity is a status or rank; ranks must be defended to maintain the position or worthiness in God's eyes. The Dignity of being created in God's image carries a holiness that an individual must act holy, as not to lessen the natural status of being created in God's image with sin.[6] This brings an interesting parallel that shows that in the Christian interpretation of "dignity" depends on morality just like Kant's. The disconnect is that the Christian morality is all about protecting God's image from sin while Kant's definition of morality is about the independence of choice. Kant's "dignity" revolves around the individual's right to be as free as possible within the bounds of morality and society's obligation to respect others opinion since each individual feels the call of morality. This shapes Kant's "dignity" interpretation as a liberty. It is not that humans all have the right to be equals, they are all inherently equal regardless of the surrounding opinions. A right to dignity is the recognition of this equality, charging the government with a categorical imperative to see each individual is treated morally in accordance with their ability to use their own morality. Aquinas's dignity would be an obligation, to protect the morality of man, to protect the civilization those values have created, and to guide humanity as to not lose its way from its search for holiness.

This leads to the question, to which definition of dignity is the American legal system referring? Which answer is it trending towards? Is there cause for dignity to be used as a precedent going forward, and what will be the impact of the chosen dignity on issues facing the Supreme Court today?

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[5] Ibid., 17.
[6] Ibid.

Early America Dignity

American political thought has always been very closely tied ideas from the Enlightenment. Thomas Jefferson citing “Life, Liberty, and the Pursuit of Happiness” as unalienable rights given by humanity’s creator in the Declaration of Independence is a parallel with Locke’s own assertion of that every individual has the power to his own life, liberty, and property, but he has the obligation to see this right defended. Jefferson used the idea of all men having an entitlement to these rights as justification for the United States' secession from the British Empire, for the British government was denying their subjects of rights they were born with and continue to own by existing as man. The violation of the most basic rights of man, those that are given simply from creation, have no room to be tampered with. As stated by Locke, these rights are vital enough where man not only has the ability to act on them, but the right to defend the violation of these rights. Therefore Jefferson states that those living in the 13 British American colonies believe that to defend those very rights a new government must be created – one that represents the citizens and their interests. Locke’s impression on Jefferson is vital, as the very first document the United States produces is completely derived once again from Enlightenment’s thought process on dignity. Locke’s reasoning for the existence of the unalienable rights is similar to the existence of dignity.

“God makes him (man) in his own image, after his own likeness; makes him an intellectual creature and so capable of dominion: for whereinsoever else the image of God

consisted, the intellectual nature was certainly a part of it, and belonged to the whole species, and enabled them to have dominion over the inferior creatures…"[7]

Here the Bible is once again referenced, particularly important is Genesis and the creation of man. Locke's definition fits into both viewpoints of what position Dignity holds in the world as he elaborates on the origins of what gives man inalienable rights. Locke draws on the Biblical lines that have held together all of the fundamental institutions throughout Western Civilization up until that time period. Man is made in God's own image. A Christian belief that fathered this view of fundamental rights, it seems to link the presence of these right to the existence of dignity. Aquinas believed that man's dignity was the highest of all things because of the Bible that stating only humanity was made in God's image. This closeness to God gives man a status that is superior to all other beings in the Universe, as we are the only ones who can do some of what God does. So it seems Locke sides with the idea dignity is a value that present because of how man is created, which could lead to the need for protecting said value. Locke goes on to say in his quote that the intellectual nature of man is what truly sets us apart from everything else and that no matter what else God gave us within his own image, our intelligence is primary among those properties. This echoes much more of the thought from the Enlightenment that intelligence goes hand in hand with interpreting morality. Kant's belief in the intelligence of man being the defining characteristic of us as humanity is something that is clearly reflected in Locke's writing. Locke's reasoning shows that our ability to reason is what separates us from the rest of the creation. It is only through dignity and knowledge that

[7] John Locke, *Two treatises of government*. (Cambridge University Press 1988). 33.

humanity is able to dominate other species, implying that this intelligence is what makes humans unique. Intellect itself cannot be taken away, it is a property that it is inherent to each human being's development, no matter the choices they make. By choosing intellect as the property that defines humanity, Locke carries on Kant's ideas. Kant's dignity and Locke's belief in intellect run parallel to each other, each is a gift from God that is unique to humans that reflects God's own image. Intellect goes hand in hand with decision making, so Locke preaches that it is man's power to make decisions that set them apart from animals, but Kant's own ideas about morality are within intellect. Intellect is about more than just making decisions, but about analyzing and examining them against other values.

Jefferson's choice to reflect Locke is not limited in his opening line of the Declaration. Locke was Jefferson's main influence on his view of religion. Locke argued that the state and the church had entirely different goals, and therefore could not be connected.[8] The state is located in the physical realm, of men and objects, and its duty was to protect the "civil goods" (life, liberty, bodily health, freedom from pain, and possessions of earthly things) of man, while the Church was there to praise God and win a spiritual victory, but all aspects of the church must be voluntary because of the pursuit of salvation requires true belief.[9] Therefore the church cannot be involved in a depriving man of the civil goods.[10] Jefferson's view of religion is directly linked to this. Jefferson comments that the Declaration of Independence was innately necessary because of the link between the church and State in Britain.[11] This relationship

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[8] Alan Levine. Early Modern Skepticism and the Origins of Toleration. Lanham: Lexington, 1999. Print. 185.

[9] Ibid.

[10] Sanford Kessler. "Locke's Influence on Jefferson's" Bill for Establishing Religious Freedom"." Journal of Church and State (1983): 237.

[11] Ibid.

fostered the innate right of the King's to rule the common people, something that only existed because of an insistence on honoring the Old Testament because it benefited those in power. This is a direct attack on the Aquinas view of dignity, as Jefferson believes that independence is necessary to get away from the thought that humans have different levels of dignity that give some the ability to rule others. Not only that, but Jefferson refers to the common man "breaking the chains" as he escaped the bounds of the old government because now there is access to all of the rights everyman is entitled to.[12] This was taken further when Jefferson worked with the Virginia State legislature to pass the *Bill for Establishing Religious Freedom,* where "Stated simply, no one in Virginia after the passage of the bill could be forced to attend religious services, to support a church financially, or to suffer any civil loss because of his religious beliefs."[13] This bill was the predecessor and model to a fundamental right later ratified onto to the Constitution, the separation of church and state within the first amendment.

Tracing the influence Enlightenment thought to the United State's Founding Fathers is vital to discussing dignity's modern value in the country because by establishing where the thought process came from that gives us the established ideas within the Constitution allows us to interpret the writings of the Founding Fathers and analyze what is implied in the vagueness of the Constitution. How Jefferson's view is traced to Locke has an impact on dignity. It not only shows that Kant's dignity is directly paired with the freedom of religion but also that Aquinas view on dignity and its link to religion and status is distinctly unAmerican from the earliest documents. In fact, it expands that America's primary issue with Britain was a dispute about

[12] Ibid., 236.
[13] Ibid., 238.

dignity, and the freedom of religion is the first protection of Kant's dignity. The first amendment presence may also be implying a right to dignity because of what freedom of religion is actually protecting, and the very existence of the United States is based on the role dignity played in the independence movement, making it essential to weigh in every decision that U.S. Constitution makes.

To expand on this idea that dignity is inherent to the Constitution we turn to the link we have with our Framers in the modern day, the *Federalist Papers*. The *Federalist Papers* were a series of essays written by Publius, the identity chosen by James Madison, Alexander Hamilton, and John Jay chose to represent them as they defended the Constitution in New York Newspapers. These are the most prominent Federalists of their time, and they defend every part of the Constitution part by part. How dignity is referred to within the text is a direct insight into the intent of the Framers as they wrote the document. The multiple definitions of dignity complicate this issue, as the Dignity from Enlightenment thought is defined as Kant said in Man's ability to use know and use morality. But due to the Christian influence that these men grew up with, dignity is still used in the context of a status or ranking of worthiness. It is here that the other two meanings of Dignity are distinguished.

Many of the uses of dignity in all American writing is based on this ranking or holiness definition. This use cannot be ignored, it characterizes what Publius will be communicating. The Federalists are the political party attacking the Articles of Confederation due to the unrest throughout the young nation. The Federalists call for a stronger National government, to have a real presence to stabilize internally and be a stronger global presence. The common use of dignity that is used throughout the *Federalist* Papers is referring to the dignity of the young

United States, its status, and respectability. This is referring to Aquinas's definition of dignity, where different creations in God's world possess different to dignity and therefore different power. The Federalists use Aquinas's definition of dignity to back the need for a strong national government, inferring that the status that comes from the national government's creation of God's world is the reason that the national government should be awarded power. If the National government is not viewed in its natural position as an institution then its lack of credibility will make it defunct and the chaos that is occurring under the Articles of Confederation will continue. This continuing use of an institution's dignity by the Framers means that institution and other non-human objects possessing dignity will become an American tradition to modern day.

The *Federalist Papers* use the word dignity 14 times.[14] Only in *Federalist* 1 is the dignity of the individual highlighted. There Publius is introducing the essays that will be arguing for the strong new central government. Publius is appealing to the citizen by stating that the government he envisions is the government that will be the one to protect the individual rights and dignity more than any other. While Publius is referring to the dignity of the individual his use and cadence still hints to the Aquinas definition, where every creation has dignity, it just also includes the individual. *Federalist* 6 assigns American's a national dignity, a dignity that is being infringed because of the uncivilized actions occurring due to government failure. This is another opportunity the Federalists use the current events to say the declining status of our government is affecting the status of individuals within America. Similar uses of infringements

[14] Publius. "The Federalist papers," *Congress.gov*. https://www.congress.gov/resources/display/content/The+Federalist+Papers (Accessed 11/29/16).

on the national government's dignity continues to be used in Essays 15, 17, and 19.[15] Most of these first essays are arguments concerning just how strong the new government is, these uses compare the new government to institutions in the past but the uses of dignity are not very specific.

In *Federalist* 30, Publius (written by Hamilton) personifies the state even further while using dignity. *Federalist* 30 is an essay discussing taxation and the National government's role in taxing the people.[16] Hamilton points out that taxing is a basic necessity for every government to survive, and without taxation, it is unreasonable to expect any success to come from the government. Hamilton asks on how the government could survive without taxation, "How can it ever possess either energy or stability, dignity or credit, confidence at home or respectability abroad?"[17] It is significant within the question that Hamilton draws a parallel between dignity and credit. It leaves no room for interpretation of what Publius meant in this instance of using dignity. Dignity is clearly the currency of why the people should trust the government. It is the token of good faith within the Social Contract.The quote even goes on to define exactly what terms should be present for the government to maintain the people's trust, energy, and stability. This definition can be vital to future questions where dignity may play a factor.

Essays 46 and 58 once again discuss the dignity of the country.[18] Essay 69 is a paper on the Presidency, and makes an interesting discrepancy between the President's authority and his dignity for one of his powers, but in the end, it is a bit of an emasculating use of dignity.[19] The

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[15] Ibid., 15,17,19.
[16] Ibid., 30.
[17] Ibid.
[18] Ibid., 46, 58.
[19] Ibid., 69.

ability to receive ambassadors and other officials is more of a use of dignity than authority because this power is more for the ceremony than the substance. There is a flurry of using dignity as the Presidency is discussed with none of having any consequence. And there is no significant use of dignity when discussing the judiciary. But there is a passage vital to dignity on Judiciary, in *Federalist* 83 Publius argues that the absence of outlining in text the rights that individuals hold does not mean that individuals do not possess these rights.[20]

James Madison continued these premise as he flipped on Hamilton to join Thomas Jefferson in the creation of the Bill of Rights. But Madison only flips and agrees to outline certain rights because he believes he figures out the solution to what the detractors that Hamilton discussed before. He includes the Ninth Amendment which states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Easy to understand, but essentially this was Madison protection to assure that the argument, 'well it was not in the Constitution in the first place' has no merit. This is an acknowledgment of the existence of the unlisted rights citizens possess.

One other essay that carries the ideas about dignity is from *Federalist* 10, where Publius outlines the challenge of protecting the minority from the majority in democratic governments.[21] It is important to hold that Publius found as much value in the minority as he did the majority, and being part of one of the other did not change the equality of any individual within each group. *Federalist* 10 is an acknowledgment of the challenges government

[20] Ibid., 83.
[21] Ibid., 10.

faces to protect individuals and minorities and works on a solution to create safety for those groups.[22]

Discovering Dignity

In 2015 the Supreme Court decided *Obergefell vs Hodges*, the case that ruled that States must grant marriage licenses to same-sex couples as it is a violation of "due process" within the 14th amendment. In the case Justice Kennedy wrote the majority opinion as many people consider him the swing vote for *Obergefell*. His opinion gives a unique insight into his thought process of what prompted him his decision, specifically how he concludes his decision.

> "It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of the civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right".[23]

The fourteenth amendment protects the liberties of individuals from being obstructed without "due process." Many may interpret from the case as well as the opinion that the liberty being infringed upon is the right to marriage. *Skinner vs Oklahoma* established that marriage is a "basic civil right of man … fundamental to the very existence and survival of the race".[24] This really prioritizes marriage as vital and *Obergefell* may remind many scholars of *Loving vs Virginia*, the case where interracial marriage was reconfirmed unconstitutional because it

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[22] Ibid.

[23] *JAMES OBERGEFELL, et al., Petitioners (No. 14-556) v. RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, et al.VALERIA TANCO, et al., Petitioners (No. 14-562) v. BILL HASLAM, GOVERNOR OF TENNESSEE, et al.APRIL DeBOER, et al., Petitioners (No. 14-571) v. RICK SNYDER, GOVERNOR OF MICHIGAN, et al.GREGORY BOURKE, et al., Petitioners (No. 14-574) v. STEVE BESHEAR, GOVERNOR OF KENTUCKY, 576 U.S. ___ (2015) LexisNexis.* http://www.lexisnexis.com/hottopics/lnacademic/ (Accessed November 29 2016).

[24] *Skinner v. Oklahoma ex rel. Williamson 316 U.S. 535 (1942*) Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/316/535 (Accessed November 29 2016).

targeted a highly protected designation (race) and did not serve a compelling government interest.[25] In *Loving*, Brennan expands on *Skinner* by saying:

> "To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is sure to deprive all the State's citizens of liberty without due process of law."[26]

Sexual orientation to this point has not been named as a designation worthy of strict scrutiny on government policy, but the similarities between *Loving* and *Obergefell* can make it appear as thought *Obergefell* is paving a path for that possibility.

But when Kennedy's opinion is further analyzed, it features something unusual to recent constitutional law, the presence and role dignity played in the decision. According to Kennedy, the homosexual men and women ask the Constitution for equal dignity in the name of the law, for it is the dignity that allows them to use the ancient and vital foundation of marriage. Dignity's is used here as a tool for an institution, therefore the dignity is what Kennedy is saying the homosexual men and women are entitled too. They ask to be seen with dignity "in the eyes of the law,"and the eyes of the law is meant to be the only viewpoint that can be decided free of the personal feelings an individual carries. Therefore, Kennedy is essentially asking for a right to dignity, that these citizens just as any other should have the respect of the state to pursue other vital rights.

This is extremely difficult for a few reasons. First of all, it has to be established that there is even a right to dignity in the first place. The first place to do that is to turn to the Bill of

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[25] *Loving v. Virginia 388 U.S. 1 (1967)* Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/388/1%26gt%3B. (Accessed November 29 2016).

[26] Ibid.

Rights, but there is no mention of dignity there. However, due to the presence of the ninth amendment, it is possible that a right to dignity would be an unenumerated right. There are plenty of unenumerated rights, voting, travel, marriage, privacy just to name a few. Many of those rights went through a long painful process before being recognized by the courts. It takes many things to become a right, and there is often voices in the minority calling for the right years before the majority of the court comes to terms with it. Privacy is the premier example of an unenumerated right, as it was molded for years and years, hotly debated before implantation, and remains controversial since its introduction as part of Constitutional law. Privacy can be traced a long time, for many the first major privacy case, was *Buck v Bell*. However, *Buck v Bell* is a major failure for what would become a recognized right, as privacy is never mentioned in the opinions and the entire case hinges on an entirely different issue. The case relied not on if the practice of eugenics and making it so people are unable to reproduce without their permission violated any rights, it was a case on if that decision is reached fairly. To quote the majority opinion,

> "The attack is not upon the procedure, but upon the substantive law. It seems to be contended that in no circumstances could such an order be justified. It certainly is contended that the order cannot be justified upon the existing grounds. The judgment finds the facts that have been recited, and that Carrie Buck is the probable potential parent of socially inadequate offspring, likewise afflicted, that she may be sexually sterilized without detriment to her general health, and that her welfare and that of society will be promoted by her sterilization, and thereupon makes the order. In view of the general declarations of the legislature and the specific findings of the Court, obviously we cannot say as a matter of law that the grounds do not exist, and, if they exist, they justify the result." [27]

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[27] *Buck v Bell 274 U.S. 200 (1927)* Legal Information Institute, (Accessed November 29 2016). https://www.law.cornell.edu/supremecourt/text/274/200 (Accessed November 29 2016).

There is a clear attempt here by Justice Holmes to say that the court knows this to be wrong when he says that there are no circumstances could such an order be justified. The court just had not adapted and evolved to the point where it would strike down a violation of this kind of right because the right had not been developed. There had been no precedent, and instead, the court, unable for now to shape its own precedent, had to fall back to see how this decision is made. Today, it would not matter that there is a seemingly fair hearing arraigned before the procedure because the action is what violated the right. But privacy was years away from the court feeling out a definition of privacy and time for it to be used.

While *Buck vs Bell* is a major disappointment, there was a lot of foresight on privacy from elsewhere in the world of law. A couple of young lawyers named Samuel D. Warren and Louis D. Brandeis wrote an article called *The Right to Privacy.* This article has accolades that range from “nothing less than adding a chapter to our law"[28] to “perhaps the most famous and certainly the most influential law review article ever written."[29] This article is the vision and foreshadowing of a future Supreme Court Justice shaping and defining hidden rights that were present within the laws that already exist. The article is a refinement of the existing law, carefully using research and logic to find the core principal of what the original framers and current legislatures who passed the law were attempting to protect.

This is exactly what dignity needs, a thorough examination of what the modern uses of dignity are actually trying to protect and what effect that has on other rights and the law around it. By examining the laws that already go towards protecting the dignity, it can hopefully

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[28]Mason, Alpheus Thomas. *Brandeis: A Free Man's Life*, New York: The Viking Press, 1946) 1.
[29] Nimmer, Melville B. *The right of publicity*. (Law and Contemporary Problems 19.2. 1954) 203.

become possible to outline the right as specifically as Brandeis and Warren did in their article. *The Right to Privacy* can be used as a direct model for defining a right to dignity, and without thoroughly examining the right to Privacy it is difficult to fully understand the right to dignity because of the similarities between the two principals. Both are terms that at the core have to do with an interaction or lack of interaction. While both Aquinas and Kant's definition of dignity do not have dignity depend on others to respect dignity. Aquinas's dignity can be seen as an interaction with religion or creation, while Kant's dignity inherent to the individual means unlike Aquinas' definition, there is no traditional institution to protect that right from being infringed upon. Privacy is a right that both has no traditional institution that exists to protect it and also revolves around the interactions of others over actions taken. The similarities between dignity and privacy mean that analyzing the earliest arguments on privacy can provide the explanation for the right to dignity to finally break away from being undefinable and satisfy the need that legal scholar are aware exists.

Using a Model

In *The Right to Privacy* Warren and Brandeis begin the article with the protection of property as the initial common law that the individual demanded. Initially, the protection of the ability to own property expanded out from the very basics of physical interference protecting the individual from actually being tied up, but the authors illustrated the change in the law.

"Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life, the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession – intangible, as well as tangible."[30]

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[30] Warren, Samuel D., and Louis D. Brandeis. *The right to privacy* (Harvard law review, 1890): 193.

These changes in the law have been necessary and accepted as society has changed, each change had an explanation for the additional protection and the authors summarize the how the changes that were made to the right to life and property occurred and why they are justified.[31]

Brandeis and Warren use this premise for changing the law as society changes to make the point about creating a law to deal with the rise of new media having access to more people than ever before. Immediately in addressing this new problem a name for a new right is drawn upon by the authors, calling it the right "to be let alone."[32] The authors go on to describe the problems that the new media is having on the rights of the individual,

> "Instantaneous photographs and news-paper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-top.'"[33]

Because of the newest media, there is no personal subject that cannot be publicized and the ability that humans have always had the choice of disclosure is now under threat for selling this new media. The description of this threat is what prompts the question what ability or value has humanity always held that is now being deprived of them? In this case, it is the right "to be let alone." Warren and Brandeis expand on the new threat, "The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the

[31] Ibid., 193-195.
[32] Ibid., 195.
[33] Ibid..

columns of the daily paper."[34] The authors present this is a clear and dangerous threat to individuals, with the even further elaboration of the damage this kind of media can do to the society.

Brandeis and Warren move onto what the existing law has established to combat the perversion of the new media and how it harms the individual. First examined is if libel and slander can protect from an individual from the sharing of personal information through media. The authors find this measure has shortcomings.

> "In short, the wrongs and correlative rights recognized by the law of slander and libel are in their nature material rather than spiritual. That branch of the law simply extends the protection surrounding physical property to certain of the conditions necessary or helpful to worldly prosperity. On the other hand, our law recognizes no principle upon which compensation can be granted for mere injury to the feelings."[35]

When copyright law is examined, Brandeis and Warren come to a lot closer to what they are searching for. Essentially the problem that is found with the copyright law is that it does not go far enough, to sum up the necessary protection, as an individual maintains the right not just to his own words once said, but also maintains how much is said in the first place. No one can make a man share his thoughts or opinions. To illustrate the issue with copyright law is a scenario, a man's private letter falls into the wrong hands. Copyright does not refer to all the private facts that are then published from the from the letter and it really damages the man knowing that information is out there and the damage that the information has cost the man. The reputation damage from the information is the incalculable damage that is difficult to value, but anytime this information stops someone from using this man's service or burdens the

[34] Ibid., 196.
[35] Ibid., 197.

man with additional costs means the man is suffering. The suffering does not come from one individual knowing the information, it comes from that anybody can know. From this research and logic, Brandeis and Warren came out with this conclusion:

> "We must, therefore, conclude that the rights, so protected, whatever their exact nature, are not rights arising from contract or from special trust, but are rights as against the world; and, as above stated, the principle which has been applied to protect these rights is in reality not the principle of private property, unless that word be used in an extended and unusual sense. The principle which protects personal writings and any other productions of the intellect or of the emotions is the right to privacy,and the law has no new principle to formulate when it extends this protection to the personal appearance, sayings, acts, and to personal relation, domestic or otherwise."[36]

This article's importance cannot be overstated, as it characterized a whole new line of legal thought to be investigated. This legal precedent is finally fully implemented in *Griswold vs Connecticut*. In *Griswold*, Justice Douglas found the right to privacy within the penumbra of other guarantees from the Bill of Rights. For Douglas, privacy is a right older than the Constitution but it is in the penumbra of association in the First Amendment, the recognition of personal property from the Third and Fourth Amendments, the "zone of personal privacy" that comes from Fifth Amendments self-incrimination clause, and the warning that James Madison left everyone that exactly this could occur in the Ninth Amendment.[37] The case struck down a law that the government could outlaw contraceptives between married couples, and *Eisenstadt vs Baird* outlawed contraceptives for singles 7 years later. Scholars such as Prichitt point out that the dissent of Justice Black is accurate, that "the court had created a value out of the whole cloth of the Constitution and used it to superimpose its own views of wise social policy

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[36] Ibid, 213.

[37] Pritchett, Charles Herman *Constitutional Civil Liberties,* (Prentice Hall, 1984) 318.

on those of the legislature."[38] But Prichitt continues that this does not invalidate the ruling, comparing it to *Lochner* does not work because *Lochner* is wrong to not see the link between working long hours and health concerns, while *Griswold* struck down a "ridiculous (uncommonly silly) law that could have been enforced only by putting policemen in bedrooms."[39] All Supreme Court decisions ultimately come from values and our Constitution can be interpreted by using those values as long as they do not fly directly in the face of what the Constitution stands for. The author Arkes has an entire book with the premise that every Supreme Court justice is more concerned with doing what they deem right than what the Constitution's interpretation actually requires of them.[40] After privacy was established it had a series of applications by the court, eventually being expanded to being part of what is today maybe the most controversial Supreme Court case yet, *Roe v Wade*. By ruling that privacy was a fundamental right, therefore the state needs a compelling interest to become involved, privacy includes the right for a women to have control over her body and the fetus growing within it.[41]

Dignity could be about to face a similar explosion in use as privacy did in the 1960s and 1970s. Since *The Right to Privacy* is a key part of the reason that privacy is recognized today, it would be interesting to see if dignity could use the general structure of the article to draw parallels between the stage Dignity has been in and the stage of privacy before the article was created. The article essentially introduced the topic, then highlighted this new threat to the way Americans have lived their lives, examine existing laws to find the protection that is or is not

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[38] Ibid.
[39] Ibid., 319.
[40] Arkes, Hadley. *Beyond the Constitution*. Princeton University Press, 1992.
[41] Ibid.

available for the problem. Applying these ideas to dignity to may give the definition needed to understand if dignity is a right that can be implemented.

Applying The Model

Law began with the protection of an individual's basic principles such as life, liberty, and property. In the very earliest times only the most basic and most literal definitions of wrongdoing were protected from the law, physical restraints were covered by freedom, assault and battery by life, and theft of a property. As discussed by Brandeis and Warren, the law continues to open up and expand as society changes and creates new challenges. The arrival of privacy as a right, the need for racial law, and all of the new ways technology challenges the rights we have always held. But as Brandeis and Warren recognize, not all rights are from a changing society that needs new rules and protections in an ever changing world. Sometimes the law changes and the only thing that changes are the views of the people creating the law. Brandeis and Warren recognize this when they acknowledge, "Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened, and now the right to life has come to mean the right to enjoy life."[42] Much of law is strictly based on our own society civilizing itself. As humanity reaches new levels of commerce and education has a stronger presence in the lives of every citizen, the views that are the norm change across the board. A long dedication to education, prolonged prosperity, lasting stability also allow for the further thorough examination of the philosophy and human rights.

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[42] Warren and Brandeis, 193.

This is characterized by Chief Justice Warren in the majority opinion deciding the case of *Trop vs Dulles*. Brennan is the first on this court to try and define what the wording of the 8th Amendment meant when it bans "cruel and unusual punishment".[43] Brennan goes on to say that the Constitution clearly recognizes the State's right to punish but, "the Amendment stands to assure that this power is exercised within the limits of civilized standards".[44] Using the previous logic, it seems that society is becoming more civilized all the time, just a look back to the past of our everyday lives, customs, and decorum vouches for that. Brennan agrees with the logic, he cites how earlier Constitutional precedent struck down punishment much too harsh for the crime. It was so harsh it reached the point of cruelty. The severity of punishment, as much as the method of punishment, is therefore under the jurisdiction of the 8th Amendment and the Court. The only remaining question is what standard the Court would use to judge if a punishment was unconstitutional. Brennan answers with "evolving standards of decency that mark the progress of a maturing society".[45] Brennan creates American legal precedent that all must acknowledge that the law can change because society itself is improving to be more civilized.

Now the problem that plagues the civil liberties of Americans today is not a problem that arose from a change in technology or behavior. It is a problem that has been brought the nation's attention because society's priorities have changed while many rules have not. The conflict comes from the years of morality law that is closely tied with the predominant religion

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[43] *Trop v Dulles, 356 U.S. 86 (1958,)* Legal Information Institute, https://www.law.cornell.edu/supremecourt/text/316/535 (Accessed November 29 2016).

[44] Ibid.

[45] Ibid.

as many attitudes seem to shift to views on what role moral law should maintain in the country when such a large portion no longer even agrees with the morals. Homosexuality, polygamy, drug use, prostitution are all morality laws that when the actual action occurs, the only one `suffering harm'(if they really believe it is harm) is the individual performing the action. These inherently individual choices are banned by democracy, the majority telling the State what an individual can and cannot do personally. Yet, these actions are not covered under privacy.

That is because of the externalities that are associated with these actions, that the legalization of these choices harms the society as whole even though it is only a select few individuals who decide to make these choices. An example is the Little People of America organization lobbying to illegalize dwarf throwing as a hobby or business.[46] The idea is that a dwarf agrees to be thrown by a customer for the pleasure of being able to toss another human around for a fee. Banning the practice meant that a member of the Little People's own community is being deprived of the opportunity to use their height in this unique business idea because it would harm how the majority view the Little People community.[47] The question that bothers the United States today is what role the externalities play in legalizing personal actions.

While society and democracy have every right in the American system to attempt to ban anything that could affect society negatively, there is a duty to protect the individual that the government also owes. One word constantly brought up when it comes to the protection of rights is dignity. Dignity can be defined as a value, but where we get that value is distinctly different. Kant reveals dignity to be a property that is only human while Aquinas gives dignity to

[46] Rosen, 69.
[47] Ibid.

all God's creation. As with all decisions, there must be a cost-benefit considerations, but dignity from Kant demands that all men be treated equally because they are human and they alone have the ability to judge morality. This definition of dignity sees no cost of changing a law because it may cause spiritual damage to others. If the only externality of changing marriage to include gay men and women is the deviation from traditional values in faith, well Kant's dignity holds that stopping an individual from being recognized as an equal holds real value while tradition does not. Kant's definition of dignity does not allow for the counter argument that the institution of marriage as a whole can be weakened and departures from traditon makes marriage worth less to those that are married. The "dignity" of the institution does not carry any weight and marriage cannot be less valuable to married men and women because they are still being considered equals who can use morality for themselves.

Simply put, dignity is at the center of the battle between faith and secularism within the United States. Individuals are still being held down by laws that are in place because of an institution's values. These laws have no consequences other than the act of disobeying the law, and these laws ignore that under Enlightenment thought humans are unique because of their unique ability to consider morality. A right to dignity is an individual's endowment to not have to follow a law that has meaning other than morality, since that individual has every ability to ponder his own morality. A right to dignity rejects any law that is a restriction of people solely out of tradition, for tradition carries no value while the person's ability to be seen as equal as possible does. A right to dignity is an individuals ability to be seen as equal in law despite the values of the majority attempting to bar those different from state institutions. What shapes this right is a long evolution of ideas that one liberty the individual should not have to give up in

a country where there is separation of church and state is the ability to be seen as equal by the state and participate in state institutions solely because of the values that come from outside of the state. This right is within the penumbra of the First Amendment's freedom of religion clause because what is the virtue of being able to practice one's own religion or philosophy while having to live by the values of another?

What Dignity Could Mean

Establishing this as the right to Dignity would keep the consequences on the current controversial Constitutional issues pretty limited, as this definition of the right to dignity is relatively narrow. This "right to dignity" would only exist to further explain Justice Kennedy's thought process and uphold the ruling for future challenges. If the right to dignity was applied in this way, however, the new right could be recognized in the reversals of some older cases. *George Reynolds vs the United States* is a case decided in 1879 that held the Constitutionality of the Morril Anti-Bigamy laws, which banned Polygamy at the threat of a fine and imprisonment. The key point argued in *Reynolds* is whether this law to target polygamy violated the First Amendment right since polygamy for the Mormon church was a religious practice that was considered a duty to perform by any worthy Mormon man. The Court essentially ruled that the freedom of religion is not the same as the freedom t`o any action in the name of religion. What could really change with the right to Dignity is the question at hand, instead of asking if polygamy should be protected as a religious right, the question could change what is the virtue of having this law followed in the first place? If its only consequence of being suffered is a value dectated from tradition by the democratic majority that individuals should not be able to get married to more than one person, then there is no place for the law as it would conflict with

the right to Dignity. The reasoning used in Justice Waite's majority opinion further illustrates that the ruling conflicts with this right to dignity.

> "…we see no just cause for complaint in this case. Congress, in 1862 (12 Stat. 501), saw fit to make bigamy a crime in the Territories. This was done because of the evil consequences that were supposed to flow from plural marriages. All the court did be to call the attention of the jury to the peculiar character of the crime for which the accused was on trial and to remind them of the duty they had to perform. There was no appeal to the passions, no instigation of prejudice."[48]

Not only does the opinion show that this decision had nothing to do with the Court's evaluation of the purpose of the law, but the court quotes an argument made before the Court of why this law passed in the first place and it shows that the only consequence of polygamy is to protect those who make the decision to enter the union.

> "'I think it not improper, in the discharge of your duties in this case, that you should consider what are to be the consequences to the innocent victims of this delusion. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children, innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land.'"[49]

While this is the definition for dignity that can be currently diagnosed, there is always the expansion of a right once the right is recognized. When *The Right to Privacy* was written, privacy was defined as a right that protects the individual from the damage that the new media could do, since it was applied by the Supreme Court it has become the right that prevents government regulations over a person's own body and used as the main tool to discuss abortion. But *The Right to Privacy* provided that initial vision look far into the future. There has

[48] *Reynolds v the United States, 98 U.S. (8 Otto.) 145 (1878*), Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/316/535 (Accessed November 29 2016).

[49] Ibid.

been a similar work that vouches for the role dignity plays in the American Constitution, for it was Justice William Brennan's 1985 Perhaps the narrow definition of dignity can be expanded upon, Justice Brennan's speech is a great way to examine what else dignity can become.

Justice Brennan first thesis of the speech is to explain how he reads the text of the Constitution. Brennan compares how he views the Constitution with those that view the Constitution through the eyes of Original Intent. One flaw in the given right to dignity is the disagreement over why Kant's definition has been chosen over Aquinas' definition, the point is raised by those who agree with Aquinas that dignity is present in all things ant this should be because the *Federalist Papers* show that the Framers viewed dignity in this way. This argument ignores the need of individuals to be protected from the majority by relying on a definition from Original Intent. Brennan attacks Original Intent thoroughly, attacking the motivations behind the thought process as "arrogance cloaked as humility" to pretend that any modern man can make a decision from any perspective other than his own, especially when there was no consensus among the men of that time either.[50] Brennan attacks the attempt to dismiss an argument because it was not considered by those writing the Constitution as political as the attempt push a certain right into the course of the discussion, ignoring issues simply because they have not been addressed before inherently favors the majority over the minority.[51] This is parallel to the arguments that rise against a right to Dignity, for both see not the attack on the minority because they find virtue in what the majority wants. Brennan continues that the next

[50] *Justice William J. Brennan, Jr. Speech was given at the Text and Teaching Symposium, Georgetown University, October 12, 1985, Washington, D.C.,* PBS, http://www.pbs.org/wnet/supremecourt/democracy/sources_document7.html (Accessed November 29th, 2016).

[51] Ibid

attack on his view of the Constitution is the removal of the democratic process, but he simply rejects the premise because while the Constitution is democratic it does not have "blind faith" in democracy, several key individual liberties are shielded from any government intervention.[52] Brennan has destroyed any need for dignity to be used as a right to more power for any institution in government by showing the need for protection in a democratic government is always more needed by the minority and therefore the individual when facing institutions.

Brennan's views come from his interpretation of the Constitution as he lived, and every generation must do the same, which is why the Constitution should be interpreted uniquely to fit the values they have learned and to face the modern challenges, "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized”[53]. This leads to Brennan’s most important point, what his view of the entire Constitution is: “For the Constitution is a sublime oration on the dignity of man, a bold commitment by a people to the ideal of libertarian dignity protected through law.”[54] Brennan's premise that the Constitution is as much a document describing the relationship between the individual and the state as it is a government design. He uses dignity broadly, as an idea but two other principles are always used with dignity, that it is evolving and that it must be protected.

Brennan's insistence on "an evolving standard of decency" is nothing new, as this idea is paired with dignity not because it is vital specifically to dignity, but because this evolving

[52] Ibid.
[53] Ibid.
[54] Ibid.

standard is vital to how any principles is reviewed. Brennan does not define dignity as he uses it, whether that is because he assumes that the audience already knows what dignity is or because he is intentionally leaving it up to interpretation. By using this passage from Brennan, "this text is a sparkling vision of the supremacy of the human dignity of every individual"[55] and Kant's definition that every human has the ability to reason through morality, the assumption is he is describing a natural equality that all men share with each other because they are human. As far as how this relates to the right of dignity there is no right to being equal, because of dignity everyone is already inherently equal. That is why treating others as unequal is so wrong because their equals does not depend on the majority's views so why should the majority be able to prevent the individual to do anything that is unrelated to the public. Brennan captures this with the history of land ownership, and how for years that was how equality was determined, the ability to own property. Guaranteeing all people have the right to own property regardless of how they may be different was enough to provide dignity to the entire American population for a long time. But society is changing, and property ownership is no longer what defines equality because not enough people choose to use this right. Now interactions drive the economy so livelihoods are based on interactions with businesses, other individuals, and the government. Brennan drives home the point that the government is becoming more involved in impeding on dignity because dignity has moved to interactions in the new age, a place where the government used to be able to have control. Brennan demands

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[55] Ibid.

that the government must award more to individual rights than ever before because of the importance of these interactions.

To transform this belief of Brennan's to an applicable right that can be used in the courts to perform his intention, it is important to focus on the role of protection. Like previously stated, when it is said that there is a right to dignity, this is not a right to being equal, all people are equal inherently. If Brennan states that the source that is most likely to ignore the dignity is the democratic government, then the right to dignity is really a right to protection because of dignity. This is a right that demands that judges to ignore intent and weigh the consequences of a law against the burden it can place on the individual when deeming the law constitutional. The right to dignity is the protection the individual is guaranteed from laws or government action with no purpose or externality small enough to not be worth infraction of rights.

This is such a broad interpretation of dignity that it is honestly impossible to understand all of the implications this could have on every Supreme Court case or enacted law. The acceptance of this law would be unique because currently, only the fundamental rights are the ones that are guaranteed the strictest scrutiny the Court can give. The right to dignity would be based on individual rights so much that it would require a compelling government need for every individual liberty that is being suppressed not just the fundamental ones. Implementing this right is a total shift on the court, from one that has to justify why the individual has this particular right, to one where the first thing questioned is why this government action is being taken. One main attack on this right to dignity is how undemocratic it is, giving the Court Power to essentially strike down any legislation like a veto or even just another lawmaker. And indeed, the right is completely undemocratic, but that is sometimes seen as one in the same as

oppressive, which it is not. The right cannot create law, only strike it down, therefore leaving the population unaffected by implemented laws that the majority does not agree to.

One topic that sticks out, however, is an issue Brennan fought maybe his most passionately for, the death penalty. Brennan finds that the death penalty violates the 8th amendments cruel and unusual punishment clause because of his sliding standard, as the country civilized it is no longer moral or acceptable to have state-sponsored executions. In his own words:

> "A punishment must not be so severe as to be utterly and irreversibly degrading to the very essence of human dignity. Death for whatever crime and under all circumstances is a truly awesome punishment. The calculated killing of a human being by the State involves, by its very nature, an absolute denial of the executed person's humanity. The vilest murder does not, in my view, release the State from constitutional restraints on the destruction of human dignity. Yet an executed person has lost the very right to have rights, now or ever. For me, then, the fatal constitutional infirmity of capital punishment is that it treats members of the human race as nonhumans, as objects to be toyed with and discarded. It is, indeed, "cruel and unusual." It is thus inconsistent with the fundamental premise of the Clause that even the most base criminal remains a human being possessed of some potential, at least, for common human dignity."[56]

All of this remains true, but it may be an established right to Dignity that could finally get the death penalty ruled Unconstitutional for a reason that Brennan did not consider here. The right to dignity would require the justices to not ask if the state ending a life in a violation of an individual right, but instead it would require the Justices to ask what the death penalty as a more severe punishment to life in prison offers society. There is no change in the chance that the convict ever puts society at risk again because either way he will never be rejoining society, barring escape. Does the death penalty offer a deterrence to the crime that means society

[56] Ibid.

benefits from less crime? Or is there a dramatic saving of funds in execution that saves a significant and noticeable burden from being placed on society? Does the punishment of death warrant some kind of virtue due to justice? These are similar questions to what are currently being asked about the death penalty, but now the benefit to society must be proved, and without answering yes to these questions no Justice could continue to rule the death penalty constitutional.

Conclusion

Due to a long history of the concept and reason relevancy, the Supreme Court may be about to start exploring the capabilities of a right to dignity. Today, using nothing more than the precedent in Kennedy's opinion in *Obergefell* and the origins of dignity that are traced back to Kant, the right to dignity could be implemented as the individuals protection from morality law that only exists to stop the violation of that specific moral and not have any negative externalities that come along with the banned practice. Even this much is only possible due to the evolution of the entire legal system, rights such as Privacy rising to the test to act as a model for how to understand society's need and tailor the right to what seems to be the natural protection. Dignity's long history has left it broad with many meanings, and it took a lot of legal thought to narrow down the broadness that was created when the term was interpreted so differently at some of its earliest points. Yet, as society changes the law changes with it and what society currently values is the interactions between individuals and institutions. This creates a need for protection of individuals rights, as they so often conflict with the rights of the institution. One day, dignity could stand for everything thinkers like Justice Brennan imagined. By switching the perspective every justice must approach the legal

system with, justifying a law that costs liberties every time it is passed. By using the death penalty as an example case of how a right to dignity would affect the issue, this change could lead to significant changes in all Constitutional issues. What are the benefits of banning drug use, the benefits of restricting campaign donations, or the benefits of outlawing prostitution? Dignity has always been at the heart of the United States, finally realizing the right just allows it to become a defining characteristic of the country once again.

Work Cited

Alan Levine, *Early Modern Skepticism and the Origins of Toleration*, Lanham: Lexington, 1999, Print.

Arkes, Hadley. *Beyond the Constitution*. Princeton University Press, 1992.

"Buck v Bell 274 U.S. 200 (1927)," (Accessed November 29 2016) Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/274/200 (Accessed November 29 2016).

JAMES OBERGEFELL, et al., Petitioners (No. 14-556) v. RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, et al.VALERIA TANCO, et al., Petitioners (No. 14-562) v. BILL HASLAM, GOVERNOR OF TENNESSEE, et al.APRIL DeBOER, et al., Petitioners (No. 14-571) v. RICK SNYDER, GOVERNOR OF MICHIGAN, et al.GREGORY BOURKE, et al., Petitioners (No. 14-574) v. STEVE BESHEAR, GOVERNOR OF KENTUCKY, 576 U.S. ___ (2015) " LexisNexis. http://www.lexisnexis.com/hottopics/lnacademic/ (Accessed November 29 2016).

John Locke, *Two treatises of government*. (Cambridge University Press 1988). 33.

Justice William J. Brennan, Jr. Speech was given at the Text and Teaching Symposium, Georgetown University, October 12, 1985, Washington, D.C., PBS, http://www.pbs.org/wnet/supremecourt/democracy/sources_document7.html (Accessed November 29th, 2016).

"Loving v. Virginia 388 U.S. 1 (1967)" Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/388/1%26gt%3B. (Accessed November 29 2016).

Mason, Alpheus Thomas. *Brandeis: A Free Man's Life*, (New York: The Viking Press, 1946) 1.

Michael Rosen, *Dignity: its history and meaning*, (Harvard University Press, 2012), 25.

Nimmer, Melville B. *The right of publicity*. (Law and Contemporary Problems 19.2. 1954) 203.

Reynolds v the United States, 98 U.S. (8 Otto.) 145 (1878), Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/316/535 (Accessed November 29 2016).

Pritchett, Charles Herman *Constitutional Civil Liberties*, (Prentice Hall, 1984) 318.

Sanford Kessler. *Locke's Influence on Jefferson's Bill for Establishing Religious Freedom*, Journal of Church and State (1983): 237.

Search "Dignity", Source: "Supreme Court Cases, Lawyers Edition," Lexis Nexis Academic Server, (Accessed November 29, 2016).

Skinner v. Oklahoma ex rel. Williamson 316 U.S. 535 (1942) Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/316/535 (Accessed November 29 2016).

Trop v Dulles, 356 U.S. 86 (1958,) Legal Information Institute, https://www.law.cornell.edu/supremecourt/text/316/535 (Accessed November 29 2016).

Warren, Samuel D., and Louis D. Brandeis, *The right to privacy*, Harvard law review (1890): 193.