Comparative Legilinguistics
vol. 2025/64
DOI: https://doi.org/10.14746/cl.2025.64.3

Mapping rhetorical dissent: a comparative analysis of the Obergefell opinions

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Abstract: This paper offers a rhetorical analysis of the four dissenting opinions in Obergefell v. Hodges (2015), the landmark U.S. Supreme Court case that extended constitutional protection to same-sex marriage. Drawing on a ten-dimensional coding framework, the study investigates how Justices Roberts, Scalia, Thomas, and Alito construct their dissenting positions not only in legal terms but as distinctive rhetorical performances. The framework includes appeals (ethos, logos, pathos), tone/style, framing devices, intertextuality, figurative language, rhetorical questions, identity and community appeals, and lexical polarity). While united in outcome, the dissents diverge sharply in form, intent, and audience. Roberts adopts a tone of institutional mourning; Scalia mounts a caustic protest; Thomas articulates a doctrinal and philosophical minimalism; and Alito warns against the erosion of pluralism and conscience rights. The analysis shows that judicial dissent operates on multiple discursive levels, revealing divergent conceptions of law, democracy, and cultural identity. By focusing on dissent as a rhetorical genre, this paper contributes to broader debates about constitutional discourse, the function of dissenting opinions, and the interplay between law and persuasion in pluralistic societies.

Keywords: judicial rhetoric; dissenting opinions; Obergefell v. Hodges; constitutional discourse; Supreme Court; framing; legal reasoning; persuasion

1. Introduction

Linguistic research into the discourse of judicial dissents has revolved around the logical but also the persuasive value of legal reasoning, adopting a range of methodological perspectives, such as dialogism (e.g. Nikitina forth.), metadiscourse (e.g. Boginskaya 2023), rhetorical move analysis (e.g. Goźdź-Roszkowski 2020), stance-taking (e.g. McKeown 2022), pragma-dialectics (Goźdź-Roszkowski forth.) to name a few. A strong linguistic component can be also found in studies carried out by political scientists. These studies aim to account for the use of specific rhetorical practices by studying particular forms of rhetoric in judicial dissents. For example, Hume (2019) sets out to explain why US Supreme Court justices deploy 'caustic rhetoric' against each other in their opinions. The study tests two alternative theories (polarization hypothesis and coalition maintenance hypothesis) in the Supreme Court Database, supplemented with Linguistic Inquiry and Word Count (LIWC) data.

For all the differences in approach, the existing research appears to share two major features. First, dissenting opinions are treated as a homogenous type of discourse and they are analyzed in order to isolate linguistic features characteristic of this genre. Second, the object of analysis is usually confined to a single resource or a limited range of language resources. For example, Boginskaya (2023) examines boosting devices used by judges of the Russian Constitutional Court in their dissents to enhance the persuasive value of their arguments against majority opinions.

In contrast, this paper aims to complement the existing research by designing a more comprehensive framework in order to compare and contrast dissenting opinions in terms of specific rhetorical choices made by dissenting writers. It proposes a range of core dimensions that correspond to distinct and analyzable components of rhetorical discourse functioning within the social and cultural context of dissenting opinions. The dimensions have been identified based on a close reading of four separate opinions in the narrowly decided US Supreme Court landmark case of *Obergefell v. Hodges*. The dimensions are then used to compare the four dissents, create a rhetorical profile for each and, finally, reveal their rhetorical divergence.

Obergefell v. Hodges (2015) is a landmark U.S. Supreme Court case that legalized same-sex marriage nationwide. Justice Anthony Kennedy, writing for the 5-4 majority, stated that marriage is a

fundamental right that cannot be denied based on sexual orientation. The opinion asserts that the right to marry is a fundamental liberty protected by the Fourteenth Amendment, and same-sex couples are entitled to the same marital rights as opposite-sex couples and marriage laws must evolve to reflect contemporary understandings of equality.

To enrich the comparative dimension of rhetorical dissent, it is instructive to contrast its function in common law and civil law traditions. In common law systems, such as those in the United States and United Kingdom, dissenting opinions are institutionalized as individual expressions of judicial reasoning, often crafted as performative rhetorical acts aimed at multiple audiences, including future courts, legislators, academics, and the broader public (Gibson, 2012; Hume, 2019). In contrast, civil law systems have historically resisted overt judicial dissensus, favoring a unified institutional voice to uphold legal certainty and doctrinal coherence. However, this tradition is evolving. As Kelemen (2019) observes constitutional courts in countries such as Germany, Spain, and even Italy have increasingly opened rhetorical space for individual dissent, though it remains largely doctrinal in tone and carefully delimited in scope. These dissents tend to privilege legal rationality over emotional resonance. Ultimately, these cross-traditional differences reflect divergent judicial cultures: the common law judge as individual author-advocate versus the civil law judge as institutional voice. Recognizing this contrast clarifies that dissent is not simply a matter of personal or ideological divergence, but a culturally mediated rhetorical form embedded in the structural logic of different legal systems.

2. Theoretical and analytical framework

This study draws upon a synthesized theoretical foundation that bridges classical rhetorical tradition with modern linguistic theory, enabling a robust analytical framework for examining dissenting judicial opinions. At its core, the framework is designed to elucidate the rhetorical operations underpinning legal dissent, particularly as these are manifested in *Obergefell v. Hodges* (2015). By integrating insights from ancient rhetorical theory and contemporary discourse analysis, the study establishes a ten-dimensional coding schema capable of capturing the complex interplay between language, ideology, and persuasion in judicial writing.

The classical roots of this framework are anchored in the rhetorical systems articulated by Aristotle, Cicero, and Quintilian. Aristotle's tripartite division of persuasive appeals—ethos, logos, and pathos—serves as a foundational model for understanding how dissenting justices construct credibility, engage emotion, and reason through legal argument. These appeals operate not in isolation, but interdependently, shaping how dissenters craft institutional authority, moral stance, and argumentative logic. Cicero's five canons of rhetoric, particularly *inventio*, *dispositio*, and *elocutio*, inform the structural and stylistic dimensions of dissent, offering a lens through which to examine the composition, arrangement, and expressive force of judicial texts. Meanwhile, Quintilian's ethical orientation—the ideal of the good person speaking well—resonates with the self-presentational strategies often employed by dissenting justices who frame themselves as principled protectors of constitutional integrity and democratic values.

Modern rhetorical and linguistic theories extend and complicate these classical insights. For example, Systemic-Functional Linguistics (Halliday, 1973), Appraisal Theory (Martin & White, 2005), and Conceptual Metaphor Theory (Lakoff & Johnson, 1980) each contribute to a deeper understanding of how rhetorical meaning is constructed through linguistic choices (see Cockcroft and Cockcroft 2014 for an overview of how classical rhetoric and modern linguistic theory combine). These approaches emphasize that persuasion is contextually embedded and ideologically inflected, highlighting the evaluative and identity-building functions of language. Stylistic elements such as metaphor, repetition, and rhetorical questions are not merely ornamental; they function as communicative strategies that structure legal discourse, activate ideological stances, and align with or resist dominant cultural narratives.

Building on this dual heritage, the study proposes a ten-dimensional rhetorical coding framework to systematize the analysis of dissenting opinions. The dimensions—appeals (ethos, logos, pathos), tone/style, framing devices, intertextuality, rhetorical questions, figurative language, repetition/parallelism, dissent framing, identity and community appeals, and lexical polarity—each capture a distinct rhetorical function while remaining interrelated. For example, the appeal to ethos may simultaneously influence tone, and framing devices may intersect with intertextual references to precedent or constitutional text.

The framework is summarized in Table 1 and each dimension reflects a distinct, analyzable component of rhetorical discourse,

enabling a more systematic approach to what are often highly stylized and ideologically charged texts.

Code Category	**Subcategories**	**Explanation**
1. Appeals (*Aristotelian*)	Ethos, Logos, Pathos	Tracks credibility building, logic and emotional appeals
2. Tone / style	Sarcasm, Formal, Defiant, Moral Outrage, Ironic, Dignified	Captures the emotive or stylistic stance of the opinion
3. Framing Devices	Slippery Slope, Floodgates, Originalism, Living Constitution, Democratic Risk	Identifies rhetorical framings used to justify dissent.
4. Intertextuality	Case Citation, Historical Reference, Constitutional Text, Literary Reference	Marks references used to build interpretive depth.
5. Rhetorical Questions	Yes/No Format, Reflective, Confrontational	Indicates use of rhetorical questioning to challenge the majority.
6. Figurative Language	Metaphor, Simile, Analogy, Allusion	Detects persuasive comparisons or imagery.
7. Repetition/Parallelism	Lexical repetition, Structural repetition, Triadic phrases	Tracks persuasive syntactic tools.
8. Dissent Framing	Future Orientation, Moral Stand, Preservation of Principle, Judicial Protest	Codes how dissent is positioned—as forward-looking, moral, or resistance-based.
9. Identity/Community Appeals	National Identity, Minority Rights, Public Conscience, Democratic Values	Looks at appeals to collective identity and social ethos.
10. Lexical Polarity	Loaded Terms, Value-laden adjectives, Pejoratives	Detects emotionally charged or evaluative vocabulary.

Table 1. Core Dimensions and Coding Categories in Judicial Dissenting Opinions.

At the foundation of the scheme lies the classic triad of appeals—ethos, logos, and pathos—which serve as the pillars of rhetorical intention. By identifying how a justice appeals to credibility,

reason, or emotion, it is possible to begin unpacking the persuasive logic embedded within dissent. These appeals often underpin the tone, shape the argumentative strategy, and signal the intended audience, whether it be future courts, Congress, or the public. As Frost (2016) emphasizes, effective advocacy necessitates a deliberate integration of all three rhetorical appeals—ethos, pathos, and logos—each functioning synergistically to reinforce the others. The logical coherence of an argument may be significantly compromised if the advocate, in this case the justice, lacks rhetorical credibility or fails to manage the emotional dynamics inherent in the case.

The dimension of tone/style captures the affective register and discursive posture of a dissent. Justices may adopt a formal, restrained voice to project neutrality, or conversely, a sarcastic or alarmist tone to dramatize perceived overreach by the majority. Tone functions not merely as an expressive layer but as a strategic stance that reinforces the dissent's legitimacy and emotional weight.

Equally important are framing devices, which orient the reader toward a particular moral, political, or legal lens. Goffman (1974) introduced the sociological concept of *frames* as mental structures that help individuals make sense of the world. He showed how everyday actions and communications are organized through implicit "frames of understanding." They shape how an audience perceives, interprets, and emotionally reacts to a message, idea, or issue. They work by selectively highlighting certain aspects of a topic while downplaying or omitting others. These may include metaphors like “slippery slope” or “judicial activism,” as well as conceptual frames like “preserving liberty” or “defending democracy.” This means that framing can be viewed as a deliberate rhetorical act, not just unconscious bias. In fact, Kuypers (2010) argues that frames are arguments—designed to persuade audiences to see issues in a specific light. Framing devices signal the dissent’s broader worldview and establish the terms on which the argument should be judged.

The inclusion of intertextuality tracks how justices invoke constitutional text, historical events, legal precedents, or even literary and religious references to enhance the authority or resonance of their position. Intertextual strategies serve not only to ground arguments in legal tradition but also to evoke a sense of continuity, rupture, or cultural memory.

Rhetorical questions, often overlooked, emerge as powerful markers of tone and persuasion. Whether reflective or confrontational,

such questions challenge the reader or majority opinion, opening space for doubt or highlighting contradiction.

Other dimensions attend to the architecture of dissent. Figurative language—through metaphor, simile, or analogy—adds symbolic depth to legal reasoning, while repetition and parallelism reinforce core themes or escalate rhetorical momentum. These stylistic devices are not decorative but deeply functional, guiding emphasis and rhythm.

The dissent framing category refers to how a justice rhetorically constructs the *purpose, audience, and trajectory* of their dissent. It answers questions like: What is this dissent *for*? Who is it addressed *to*? How does it position itself relative to the majority opinion, the Constitution, history, or the future? Put differently, dissent framing captures how justices position their disagreement: as a principled protest, a prediction of reversal, a preservation of constitutional fidelity, or a defense of moral values. This meta-rhetorical stance shapes how the dissent is read—as either a lament, warning, or blueprint for the future.

Finally, identity and community appeals reveal how dissenters invoke collective experiences—national, religious, racial, or civic—to mobilize reader sympathy or foreground constitutional stakes. This is closely tied to the use of lexical polarity, where emotionally charged or evaluative language is used to stigmatize or valorize legal positions, judicial behavior, or social outcomes. Identity and community appeals should be also viewed as rhetorical strategies that invoke specific groups, such as the People, religious communities, racial minorities, or founding citizens. Characteristically, they frame arguments in terms of shared values, beliefs, histories, or vulnerabilities, seeking to generate solidarity, empathy, or moral urgency by positioning the dissent as aligned with or protective of these groups. These appeals amplify the stakes of a legal disagreement by embedding it within broader social, cultural, or moral identities.

This study relies on close reading as a way to approach the texts of the dissents. This tradition emphasizes interpretation that arises from detailed textual engagement rather than contextual generalizations. According to Ohrvik (2024), close reading can be viewed as a form of analytic attentiveness—a deliberate, almost meditative engagement with the text that attends to word choice, sentence structure, rhetorical devices, typography and physical layout. Ohrvik (2024) distinguishes three central steps in the close reading methodology: *textual immersion*, when the analyst fully engages with the language and physical form of

the text, *theoretical orientation* as the next step applying an interpretive lens or theory, depending on the nature of a particular area of study, and *reflective re-reading* practiced as iterative re-engagement with the text, informed by theoretical insights and a growing awareness of its multifaceted layers.

At the textual immersion level, the dissenting opinions are treated as a literary artefact and, while reading, attention is paid to identifying legal metaphors, allusions to historical precedents, or emotive turns of phrase (e.g., "a chilling effect on democracy"). Then, the next level of the theoretical orientation involves applying a rhetorical lens. This study relies on the classical Aristotle's definition of rhetoric as "the faculty of discovering the possible means of persuasion in reference to any subject whatever" (Aristotle, 1926: 15 [trans. J.H. Freese]).

3. Results and discussion

The application of a ten-dimensional rhetorical coding framework to the four dissenting opinions in *Obergefell v. Hodges* (2015) reveals substantial variation in how each justice constructed their legal and ideological opposition to the majority ruling. While all four dissenters—Chief Justice John Roberts, and Justices Antonin Scalia, Clarence Thomas, and Samuel Alito—disagreed with the Court's recognition of same-sex marriage as a constitutional right, their dissenting texts demonstrate divergent rhetorical styles, emotional registers, and framing strategies. Table 2 provides a comprehensive summary based on the ten core rhetorical dimensions and coding categories used in the paper. It outlines how each dissenting justice in *Obergefell v. Hodges* deploys rhetorical strategies across the framework's full spectrum.

Given the exigencies of space, this section distills the analysis by focusing on the most distinctive rhetorical dimensions that define the dissents of Chief Justice Roberts and Justices Scalia, Thomas, and Alito.

Core Dimension	**Roberts**	**Scalia**	**Thomas**	**Alito**

1. Appeals (Ethos, Logos, Pathos)	Ethos, Logos – institutional modesty, caution	Pathos, Ethos – emotional critique of majority	Logos – conceptual clarity, natural rights	Logos, Pathos – cautionary, protective
2. Tone / Style	Formal, restrained, mournful	Sarcastic, indignant, mocking	Minimalist, philosophical	Grave, morally concerned
3. Framing Devices	Judicial restraint, democratic process	Judicial coup, cultural elitism	Negative liberty, anti-entitlement	Erosion of pluralism, ideological conformity
4. Intertextuality	Historical cases, constitutional text	Implicit framers' intent, tradition	Declaration of Ind., Magna Carta,	Civic values, legal tradition
5. Rhetorical Questions	Reflective ('Just who do we think we are?')	Confrontational and sarcastic	Minimal or absent	Used to highlight future consequences
6. Figurative Language	Low use	High use (metaphor, analogy, alarmism)	Low figurative use	Moderate use – warnings, analogies
7. Repetition / Parallelism	Used for contrast to underscore legitimacy	Strong repeated phrases ('this Court')	Limited or none	Emphatic phrasing
8. Dissent Framing	Institutional warning, preservation of principle	Judicial protest, cultural warning	Philosophical protest	Normative caution, future concern
9. Identity / Community Appeals	Democratic identity, civic values	Populist identity, 'the People'	Individual autonomy, moral integrity	Traditional communities, religious conscience
10. Lexical Polarity	Moderate, balanced diction	Highly charged, pejorative language	Low polarity, abstract language	Moderate to strong evaluative terms

Table 2. Core Rhetorical Dimensions in Obergefell Dissents.

3.1 Chief Justice John Roberts: Institutional Caution and Judicial Modesty

Roberts's dissent is marked by a restrained, somber tone that reflects his commitment to institutional modesty and judicial restraint. His language is measured and formal, avoiding overt emotionalism while still conveying a serious warning about potential institutional overreach. In one passage, he asks, *"*Just who do we think we are?*"*(para. 3). This rhetorical question, though brief, encapsulates a tone of reflective incredulity. It reveals a tone that is not angry or sarcastic (unlike Scalia), but deeply uneasy about the institutional consequences of the ruling. It subtly criticizes the Court's willingness to step into areas that might be seen as the prerogative of democratic or legislative decision-making. The choice of *we* here not only implicates the Court collectively but also suggests a moment of self-doubt about its own authority—a hallmark of his restrained style.

His rhetorical appeal rests primarily on logos and ethos, urging the Court to respect the constitutional role of the legislature. This is most clearly evident in statements such as, "Whether same-sex marriage is a good idea should be of no concern to us*"* (Roberts, 2015, para. 1), which underscores his framing of the Court's ruling as an overreach of judicial authority rather than a moral objection. Roberts's use of neutral, legalistic diction, and his limited engagement with emotionally charged language suggest a desire to project impartiality, reinforcing his measured tone throughout. While pathos is less pronounced in Roberts's dissent compared to some of his colleagues, there is an undercurrent of lament—a subtle emotional appeal suggesting that the Court's decision might lead to unintended erosion of democratic legitimacy. However, this emotional appeal is deliberately muted, complementing rather than overwhelming the rational arguments.

Three dominant frames can be distinguished: Judicial Overreach, Threat to Democratic Legitimacy and Procedural Caution. Roberts frames his dissent by positioning the Court as an institution that must exercise caution. His framing devices underscore the notion that the judiciary must limit its intervention in politically and socially contentious issues. By doing so, he warns of the risk of undermining the Court's legitimacy and encroaching on the roles reserved for elected bodies. This is evidenced by one of his statements (*"*The majority's decision is an act of will, not legal judgment.*"* (para. 4)) where Roberts frames the ruling as a political imposition, not a constitutional interpretation—positioning his dissent as a defense of the judicial role. This rhetorical framing casts the majority as judicial activists and frames his dissent as an institutional safeguard. In describing the

majority decision, Roberts uses terms such as *usurp* and *overreach* to characterize the Court's action. Though these words might appear in brief phrases rather than extended passages, they collectively evoke a sense of institutional apprehension. His rhetoric suggests that the decision fundamentally alters the balance between the judiciary and the democratic process.

Roberts's dissent is rich in references that ground his argument in constitutional tradition. He draws on historical precedents and judicial philosophy to lend weight to his cautionary stance, effectively invoking the collective memory of past judicial restraint. Roberts invokes constitutional text (Due Process, Equal Protection), historical precedent (e.g. *Baker v. Nelson*) and Founding-era jurisprudence indirectly, by referencing the Framers' vision of government.

Roberts occasionally makes subtle appeals to a broader democratic identity. By emphasizing that judicial decisions should reflect the will of the people, he aligns his position with the community of citizens whose values and choices are meant to be expressed through democratic institutions. For example, when he refers to *the people* in his rhetorical questioning, there is an implicit appeal that the Court should not replace or override the voice of the populace. This reinforces his identity as a judge who sees himself as part of a larger institutional framework that respects democratic values.

Roberts uses judicial repetition to underscore legitimacy, as in the following example:

(1) It is not about whether, in my judgment, the institution of marriage should be changed... It is about whether, in our democratic Republic, that decision should rest with the people acting through their elected representatives, or with five lawyers..." (para. 12)

This form of structural parallelism is used to draw moral contrasts without emotional rhetoric. Roberts positions his dissent as a constitutional warning, a defense of judicial boundaries and democratic process.

3.2 Justice Antonin Scalia: Populist Originalism and Sarcastic Resistance

Justice Antonin Scalia's dissent is a paradigmatic example of rhetorical dissensus in constitutional jurisprudence. His dissent is marked by an

aggressive, polemical tone and a populist appeal that seeks not merely to contest the majority's holding, but to delegitimize its constitutional reasoning and expose its cultural elitism. Framed as a judicial protest, Scalia's opinion is rhetorically crafted for public resonance and historical impact, deploying sarcasm, alarmist framing, and emotionally charged lexis to defend a vision of democratic self-governance rooted in originalism and popular sovereignty.

One of the most defining features of Scalia's rhetoric is his tone/style, which is uniquely confrontational and unapologetically mocking. From the outset, he dismisses the majority opinion as a *judicial Putsch*, a strikingly evocative phrase that equates the Court's action with a coup d'état (Scalia, 2015, para. 1). This rhetorical move functions not only as critique but as delegitimation, framing the Court as an institution that has abandoned legal judgment in favor of cultural imposition. Scalia's sarcastic tone is sustained throughout, as in his comment that the opinion is "couched in a style that is as pretentious as its content is egotistic" (para. 2). Such phrasing exemplifies both lexical polarity and tone saturation, as Scalia pairs negatively loaded adjectives (*pretentious, egotistic*) with a structure designed to ridicule.

Scalia's dissent draws heavily on pathos and ethos, employing emotional provocation to frame the majority as disconnected from democratic accountability. He writes:

(2) This practice of constitutional revision by an unelected committee of nine, always accompanied...by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence: the freedom to govern themselves (para. 5).

Here, Scalia activates identity and community appeals by invoking "the People" as a wronged democratic subject. This rhetorical maneuver aligns the dissent with a broader populist tradition, in which institutional overreach is cast as betrayal of national character. By framing the Court's decision as an assault on popular sovereignty, Scalia positions himself not just as a dissenting justice, but as a defender of constitutional republicanism.

Framing devices are a central component of Scalia's rhetoric. He relies on crisis-oriented metaphors—e.g., "a threat to American democracy" (para. 3)—to suggest that the ruling not only violates judicial norms but jeopardizes the very fabric of constitutional governance. This type of dissent framing serves a dual function: it simultaneously warns future courts and appeals to political audiences who may use the dissent as a reference point in future ideological

debates. Indeed, Scalia's rhetoric transforms his opinion into a public-facing counter-narrative, designed to outlast the immediate ruling.

Scalia's intertextuality is largely implicit, consisting of invocations of tradition, the framers, and historical restraint, rather than citation-heavy legalism. This aligns with his broader ethos of originalist interpretation, where constitutional legitimacy is derived from historical continuity rather than evolving standards of decency. He insists that the Constitution *"*had nothing to do with it*,"* asserting that the Court's ruling "says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court" (para. 6). In this formulation, Scalia once again returns to the identity appeal of "the People," contrasting elite judicial power with democratic authorship.

Despite the overtly emotional and theatrical tone, Scalia's dissent is also methodically structured through repetition and parallelism. His repeated use of the phrase *this Court* is not incidental; it becomes a rhetorical device that personalizes and targets the institution itself as the subject of critique. Each repetition further builds the case that the Court is not merely incorrect, but institutionally illegitimate in this context.

The dissent is framed as both a protest and a warning, imbued with a forward-looking sensibility that seeks to preserve originalist values for future judicial review. Scalia's dissent, therefore, operates on three levels: (1) a critique of the majority's reasoning, (2) a warning about institutional overreach, and (3) a political-cultural appeal to constitutional tradition. It is performative, yes—but also doctrinally anchored in a view of law that resists interpretive innovation.

In sum, Scalia's dissent is a vivid example of rhetorical resistance within the judiciary. It constructs a powerful alternative narrative about law, legitimacy, and democratic agency. Through its use of sarcastic tone, loaded diction, identity appeals, and alarmist framing, the dissent both defends originalist doctrine and attempts to mobilize a cultural counter public against what he views as judicial overreach. As such, it is not merely a legal disagreement—it is a strategic discursive act, meant to reverberate far beyond the courtroom.

3.3 Justice Clarence Thomas: Philosophical Minimalism and Natural Rights Logic

Justice Clarence Thomas's dissent offers a rhetorically distinctive contribution to the judicial opposition against the constitutional recognition of same-sex marriage. Whereas other dissenters, such as Justices Scalia or Alito, adopted emotive or culture-focused tones, Thomas's rhetorical posture is deeply philosophical, minimalist, and grounded in a rigorous appeal to natural rights theory and negative liberty. His dissent is not aimed at stirring public sentiment, but at clarifying constitutional principle, revealing a style of rhetorical engagement that is measured, abstract, and consistently aligned with his broader judicial identity.

Central to Thomas's rhetorical approach is his deployment of logos—the appeal to reason, definition, and conceptual clarity. His dissent rests on a tightly defined understanding of liberty:

(3) "Liberty has long been understood as individual freedom from governmental action, not as a right to a particular governmental entitlement" (Thomas, 2015, para. 4).

Here, he asserts that liberty is a negative freedom—freedom from interference, not the right to receive recognition or benefits from the state. This foundational distinction sets the terms for his argument and functions rhetorically to recast the majority opinion as a fundamental misreading of the Constitution's liberty guarantees. This is not merely legal argumentation—it is a form of rhetorical framing that seeks to re-anchor constitutional meaning in classical liberal theory.

One of the dissent's most discussed lines reflects Thomas's broader natural law orientation (cf. Ewing 2023):

"Government cannot bestow dignity, and it cannot take it away." (para. 6).

This sentence encapsulates several rhetorical features at once. It is axiomatic, delivered with an air of moral finality, and it reflects Thomas's philosophical commitment to the idea that dignity is intrinsic to the human person, not conferred by state recognition or social status. The framing here is important: rather than denying the dignity of same-sex couples, Thomas rejects the majority's premise that dignity is something granted by government at all. This is a crucial rhetorical move that shields the dissent from accusations of exclusion, while reinforcing a highly individualistic and depersonalized view of constitutional liberty.

In contrast to Scalia or Roberts, Thomas makes little use of rhetorical questions or figurative language. His rhetorical mode is didactic, drawing on natural law theorists, Enlightenment principles, and historical definitions of liberty. Intertextually, he references the

Declaration of Independence, the Magna Carta, and Frederick Douglass to build a genealogy of liberty rooted in freedom from domination, not affirmative recognition. These sources serve as moral and philosophical authorities, reinforcing his ethos as a justice grounded in constitutional first principles.

Thomas's framing devices rely on a narrow but forceful conceptual core: the state is not a source of value or meaning, but merely a guardian of individual rights. He refrains from engaging the emotional or social dimensions of marriage equality, treating the issue as theoretical rather than cultural. This rhetorical strategy places his dissent in the tradition of abstract legalism—resistant to evolving social narratives and emotionally distant by design.

His identity and community appeals are minimal and indirect. Rather than aligning with any religious or cultural group, Thomas's dissent speaks to the ideal of the autonomous individual, untethered from state validation. The few references to historical suffering—particularly slavery—are interpreted through this lens of personal dignity existing independently of legal status:

"Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved." (para. 6).

This controversial comparison is not meant to equate same-sex couples with slaves, but to illustrate a philosophical principle: that dignity precedes government, even in conditions of extreme oppression. Rhetorically, this move is high-risk and was widely criticized, but in the logic of Thomas's dissent, it functions to underscore the unshakable sovereignty of individual personhood, even in the absence of state recognition.

Thomas's dissent framing is best described as a philosophical protest—a refusal to participate in what he sees as a fundamentally flawed conceptualization of constitutional liberty. It is not framed as a call to future courts or a cultural constituency, but as a statement of intellectual clarity and judicial independence. The dissent is meant to stand outside of evolving doctrine, as a guardrail of foundational logic.

3.4. Justice Samuel Alito: Cultural Vigilance and Protection of Pluralism

Justice Samuel Alito's dissent constructs a legal argument that is both constitutionally grounded and culturally sensitive, emphasizing the broader societal consequences of the Court's decision to legalize same-sex marriage. Alito's rhetorical style is measured but morally vigilant, combining legal logic with protective emotional appeals on behalf of communities and individuals who, in his view, may now face social and legal marginalization. His dissent is best understood as a form of cultural guardianship, where judicial restraint is rhetorically framed as a necessary defense against ideological conformity and the erosion of pluralistic values.

The tone and style of Alito's dissent is distinct from both the judicial solemnity of Chief Justice Roberts and the sarcastic fire of Justice Scalia. Alito's language is marked by a controlled urgency—his writing remains civil and precise, yet it expresses an unmistakable warning about the future consequences of the majority's ruling. His tone is grave, with moments of restrained but pointed concern. This rhetorical posture positions his dissent as a serious, forward-looking critique rather than a reactionary outburst.

A key rhetorical device in Alito's dissent is his appeal to pathos, often in conjunction with logos. He writes:

"Today's decision shows that decades of attempts to restrain this Court's abuse of its authority have failed. Five Justices have closed the debate and enacted their own vision of marriage as a matter of constitutional law." (Alito, 2015, para. 2)

Here, Alito blends institutional critique with emotive language (*abuse*, *closed the debate*) to convey a sense of loss—not just of legal process, but of civic dialogue and democratic self-rule. His appeals to logic rest on the idea that the Constitution is silent on the matter of marriage, and that social institutions should be shaped by the people, not by judges. However, he also calls upon readers to feel the danger of this ruling's long-term impact on public discourse and private conscience.

Alito's dissent is structured around the framing device of ideological coercion. He warns that the ruling will not merely legalize same-sex marriage, but will eventually marginalize and stigmatize those who continue to hold traditional beliefs:

"It will be used to vilify Americans who are unwilling to assent to the new orthodoxy." (para. 4)

This sentence functions rhetorically as a protective appeal, highlighting the possible social repercussions for dissenters. His use of the term "orthodoxy" invokes religious and cultural language, implying

that the Court is enforcing not just law, but belief—a move that resonates both legally and symbolically. This framing activates both identity-based concerns (particularly around religious liberty) and civic pluralism, constructing a narrative of the dissent as defense against enforced conformity.

Alito's identity and community appeals focus squarely on religious believers and others with traditional moral convictions. He consistently speaks on behalf of groups who may face new challenges in the wake of the ruling—not just legal but social and reputational. Alito writes that "those who cling to old beliefs will be labeled as bigots" (Alito, 2015, para. 4). This group-based appeal is framed not as a defense of orthodoxy itself, but as a defense of the right to hold alternative moral views without suffering social or legal sanction. In this way, Alito's dissent constructs a version of liberal pluralism—not as endorsement of all views, but as a defense of the right to differ.

Alito's dissent framing thus emerges as protective and cautionary. He does not frame his dissent as an act of moral superiority or judicial infallibility, but as a necessary warning about the broader consequences of legal rulings in a pluralistic democracy. His audience is as much the public conscience as it is the legal record. In this sense, his dissent resembles a form of constitutional moralism—one that seeks to balance judicial restraint with a civic duty to warn.

4. Conclusions

This study has explored the rhetorical divergence in judicial dissents through a close comparative analysis of the four separate dissenting opinions in *Obergefell v. Hodges* (2015), using a ten-dimensional coding framework grounded in both classical rhetoric and modern linguistic theory. While the dissenting justices—Roberts, Scalia, Thomas, and Alito—shared ideological opposition to the majority's ruling on same-sex marriage, their dissenting texts reveal striking rhetorical plurality, shaped by differences in tone, strategic appeals, framing devices, and conceptions of judicial role.

Chief Justice Roberts's dissent is marked by judicial restraint and institutional caution, relying primarily on logos and ethos to underscore concerns about democratic legitimacy and procedural overreach. Justice Scalia's opinion, by contrast, is a rhetorical protest, laced with sarcasm, populist indignation, and alarmist metaphors aimed

at delegitimizing the majority. Justice Thomas advances a philosophical and doctrinal critique, privileging natural rights reasoning and a minimalist conception of liberty. Finally, Justice Alito adopts a culturally vigilant stance, warning against the marginalization of religious and moral dissenters, and employing a sober but emotively protective tone to defend pluralism.

The study has shown how each dissent engages distinctively with the core dimensions of rhetoric, including appeals (ethos, logos, pathos), tone/style, intertextual reference, figurative language, and identity-based appeals. It also demonstrated how justices frame their dissent to serve different purposes: as institutional warnings (Roberts), cultural resistance (Scalia), philosophical counterpoints (Thomas), or normative cautions about social cohesion (Alito). These rhetorical stances are not merely stylistic; they perform discursive roles that project divergent visions of constitutional fidelity, civic identity, and the role of the judiciary in a pluralistic democracy.

Furthermore, the analysis confirmed that rhetorical features in dissenting opinions are often multifunctional and interdependent, with overlapping use of tone, polarity, and framing, complicating attempts at categorical separation. Yet this rhetorical richness also affirms the central premise of the study: that dissenting opinions are best understood not as homogenous judicial artifacts but as individuated rhetorical performances, each contributing uniquely to the discursive landscape of constitutional law.

In sum, dissenting opinions serve not only as sites of legal disagreement but as instruments of rhetorical agency, capable of shaping future jurisprudence, influencing public discourse, and embodying contestation within the rule of law. By applying a comprehensive rhetorical framework to the *Obergefell* dissents, this study offers new insights into how judicial dissent operates at the intersection of law, language, and persuasion—an intersection that remains vital to the democratic project of constitutional interpretation.

While the current analysis focused on four dissenting opinions in a single landmark case, the framework is designed to scale. It could be used in large, corpus-based studies of dissenting opinions across different time periods, legal domains, or judicial contexts—enabling researchers to trace the evolution of rhetorical styles, shifting ideological alignments, or changes in tone and identity appeals over time. Such a project could incorporate natural language processing or machine-assisted annotation tools to map rhetorical patterns across hundreds or even thousands of dissenting texts, offering new insights

into how dissent functions not only as jurisprudence but as a mode of legal communication, cultural narration, and institutional critique. This would expand the understanding of judicial voice beyond individual cases, illuminating how dissent participates in the longitudinal construction of constitutional discourse.

Conflict of Interest Statement

The author declares no conflicts of interest to disclose related to this manuscript. If any conflicts arise in the future, the Author will promptly inform the journal.

AI Use Statement

The author confirms that artificial intelligence (AI) tools were not used in any aspects of this research.

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