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Fall Brackenridge Research Fellowship: Research Proposal

“Constitutional Adjudication: The Use of the *Federalist Papers* in the Opinions of the Supreme Court of the United States”

From Article III of the United States Constitution, the Supreme Court is granted the “judicial Power… to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.” In 1803, Chief Justice John Marshall interpreted this clause of the Constitution stating that “[It] is the province and duty of the judicial department to say what the law is.[[1]](#footnote-1)” In today’s terms, this decision created the process of judicial review—the Supreme Court has the authority to overturn laws deemed unconstitutional based upon their interpretation of the Constitution. However, this seemingly straightforward authority of the Court raises questions when justices rely on sources outside of the Constitution, such as law review articles or foreign law, to interpret the Constitution. My proposed research project will focus on one of these commonly cited outside sources: the *Federalist* *Papers* written by Alexander Hamilton, James Madison, and John Jay.

The impetus for this proposed research project stems from my interest in common law systems—systems of law based on procedural customs and precedents—such as the one found in the United States. More specific to this project, I am intrigued by how a collection of newspaper editorials, an apt description of the *Federalist Papers* at the time they were written, has risen to an esteemed status in American legal systems. I hope to gain an increased understanding of just how important these papers are in interpreting the basis of law in America, the Constitution.

With over a thousand written Supreme Court opinions, the aims of this research project can be meaningfully achieved with computer technology. The technologies that I previously learned in the Computational Methods in the Humanities course will allow for relatively quick and effective data collection with programs that I will write myself. The data collection will occur by a “mark-up” of the opinion text, which will be used for subsequent parsing. The nature of the data will extend beyond a simple count of references to the *Federalist Papers*, focusing on qualitative aspects in an effort to gauge how important the referenced *Federalist Paper* was in the decision. Other analyzed factors will include the section of the Constitution that is under interpretation in the selected cases. The qualitative nature of the data will be better suited for analysis that will aim to answer questions like, “What is the perceived status of the *Federalist Papers* in the minds of the Supreme Court justices?” and “What sections of the Constitution have the most unclear interpretations, as evidenced by frequent reference to the *Federalist Papers*?”

This proposed research project aims to build a portion of the answer to “what is the law?”, inherent in any common law system. Determining the foundations of law is fundamentally important to every United States citizen. Knowing what sources judges and justices rely on in important Court decisions is necessary to gauge the soundness and justness of the judicial system as a whole. Furthermore, what does it say about the United States judicial system that a set of newspaper editorials, independently written, have risen to an exalted status? Questions of this sort are increasing in importance today, as justices continue to refer debatable outside sources in an effort to determine the intent of the Constitution and United States law. Even though this project may not have the philosophical background to answer if the *Federalist Papers* should be referenced, the project will still set out to determine the extent of their use.

1. Marbury v. Madison, 5 U.S. 137 (1803) [↑](#footnote-ref-1)