1. INTRODUCTION
   1. Background Story
   2. Brackidicial Systems 101
      1. Common Law Systems
      2. *Marbury v. Madison*
         1. Judicial Review-- “to say what the law is”
         2. This case actually depended on the *Federalist Papers*
      3. Written Rationale—Opinions
         1. Majority- these opinions become standard to law
         2. Concurrence – The middle case – agree with majority stance, however disagree with one or more points
         3. Dissent- disagree with the majority’s decision
   3. How do Justices come to their rationale?
      1. Loose Constructionism
         1. “Living Constitution”
      2. Strict Constructionism
         1. *Orignialism*
         2. *Dred Scott*
   4. *The Federalist Papers*
      1. Written to convince the voters of NY to ratify the Constitution
      2. Hamilton, Madison, and Jay (who was not at the Convention)
      3. Dates:
      4. Number:
      5. The Early Court-
         1. Pro-Federalist:
            1. *Cohens v. Virginia,* Chief Justice Marshall:

***“The opinion of the Federalist has always been considered as of great authority. It is a complete commentary on our constitution; and is appealed to by all parties in the questions to which that instrument has given birth.”* (19 U.S. 264)(1821)**

* + - 1. Anti-Federalist:
         1. Cherokee Nation v. Georgia, Justice Baldwin
         2. “We can thus expound the constitution without a reference to the definitions of a state or nation **by** any foreign writer, hypothetical reasoning, or the dissertations of the Federalist. This would be to substitute individual authority in place of the declared will of the sovereign power of the union, in a written fundamental law ... It would be dangerous in the extreme to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation.” (30 U.S. 1) (1831)

1. MY RESEARCH
   1. Research Question: “What purpose/ *how*
   2. Discussion of Exisiting Literature
      1. Discussion, case-study based
2. Structure of My Research
   1. Methodology
      1. XML-based technologies; Hierarchy
   2. Using the context of *Originalism*
      1. Original Intent
         1. Assumptions
            1. Hamilton and Madison knew the original intnent
            2. They wanted to write about it
            3. Federalist 34, Hamilton: “*The Convention thought the concurrent jurisdiction prefereable to that subordination; and it is evident that it has at least the merit of reconciling an indefinite constitutional power of taxation in the Federal Government, with an adequate and independent power in the States to provide for their own necessities”*
         2. *US Term Limits, Inc. v. Thornton* 
            1. State constitutional amendment designed to limit the reelection of incumbents
            2. Citing the Federalist Papers “The available affirmative evidence indicates the Framers’ intent that the States have no role in the setting of qualifications”
            3. *Federalist Paper No. 52*, Madison
            4. The available affirmative evidence indicates the Framers' intent that States have no role in the setting of qualifications. In Federalist Paper No. 52, dealing with the House of Representatives, Madison addressed the "qualifications of the electors and the elected." The Federalist No. 52, at 325. Madison first noted the difficulty in achieving uniformity in the qualifications for electors, which resulted in the Framers' decision to require only that the qualifications for federal electors be the same as those for state electors. Madison argued that such a decision "must be satisfactory to every State, because it is comfortable to the standard already established, or which may be established, by the State itself." *Id*., at 326 (*US Term Limits, Inc. vs. Thornton, 514 US 779 (1995)*
      2. Ratifiers’ Understanding
         1. Ratification debates may have influenced the Federalist Papers
         2. *Printz v. United States*
            1. In addition to early legislation, the Government also appeals to other sources we have usually regarded as indicative of the original understanding of the Constitution. It points to portions of The Federalist which reply to criticisms that Congress's power to tax will produce two sets of revenue officers--for example, "Brutus's" assertion in his letter to the New York Journal of December 13, 1787, that the Constitution "opens a door to the appointment of a swarm of revenue and excise officers to prey upon the honest and industrious part of the community, eat up their substance, and riot on the spoils of the country," reprinted in 1 Debate on the Constitution 502 (B. Bailyn ed. 1993).
         3. *Justice Chase Dissent,* 
            1. The papers of the Federalist, widely circulated in favor of the ratification of the Const tution, discuss briefly the power to coin money, as a power to fabricate metallic money, without a hint that any power to fabricate money of any other description was given to Congress;123 **and the views which it promulgated may be fairly regarded as the views of those who voted for adoption. (*The Federalist No. 41)***
      3. Original Objective Meaning of the Constitution
         1. The meaning a reasonable person at the time of the founding would have understood the Constitution to be
         2. Federalist Papers use many of the same terms as the Constitution
            1. May yield understandings, objective meaning to 18th century language
         3. Justice Thomas, concurrence *United States v. Lopez*
            1. *What the word “commerce” means ordinarily at the time*
      4. Authoirity of the Papers independent of *Original Meaning*
   3. Potential Conclusion
   4. Structure of the Federalist Papers allows one to see what issues are most heavily debated upon (Federalist 20-30 are states’ rights, etc.)