Alex Burger

“Constitutional adjudication: A digital examination of the use of *The Federalist* in the Opinions of the Supreme Court”

Potential for Text Reuse of *The Federalist* in SCOTUS opinions

The Supreme Court of the United States is tasked with the duty “to say what the law is”[[1]](#footnote-1). The Court fulfills this duty by hearing cases, deciding cases, and subsequently providing their rationale in written opinions. In common law systems, based upon precedent and the principle of *stare decisis* or “let the decision stand,” the interpretative rationale of previous Courts officially defines what the law is. Thus, the sources and reasoning the Justices utilize in their opinions are thoroughly examined and are of interest to scholars and the public alike. *The Federalist Papers*, a historical series of newspaper editorials collectively known as *The Federalist*, are a prime example of a commonly referenced source Justices use to justify their decisions. Their character as newspaper editorials begs the question of what is proper justification of law in America, and therefore worthy of investigation.

From the beginning of the Court’s history to 2013, there have been 425 opinions (including both majority and dissent decisions) that contain explicit citation to a specific issue of *The Federalist.* Yet, there are known occurrences of general citations with no particular issue cited, and furthermore there exists cases that *read* like certain *Federalist Papers*, but no citation exists[[2]](#footnote-2). For example, writing for the Court in one of its most famous cases, *Marbury v. Madison*, Chief Justice John Marshall mirrors the argumentation found in *The Federalist No. 78*, but no attribution is made. However, these similarities between unattributed issues of *The Federalist* and Supreme Court opinions are only backed by an ‘eye test.’ Consequently, more computationally rigorous methods are needed to make conclusive claims of true “textual reuse.”

For my purposes, I intend to define “textual reuse” beyond the literal repetition of text and include syntactic and semantic similarities. Because both corpus of texts are modern, identified, and reputable copies exist, an analysis of textual reuse of *The Federalist* in Supreme Court opinions should avoid normalization and lemmatization issues, which can occur when analyzing Ancient texts such as Greek[[3]](#footnote-3). With my belief, or sense that textual reuse of *The Federalist* exists mainly in paraphrased sections or longer portions where the Justice mixes in his own words, larger “windows of context,” such as paragraphs, would be optimal for my project. The data that has been acquired by the eTRACES and Tesserae project groups, exemplifies the computational power textual reuse identification technology and the forthcoming conclusions[[4]](#footnote-4).

While quantificational questions such as a simple count, frequency over time, and distribution of references to *The Federalist* according to a Justice’s ideological stance, can be answered with standard XML technologies, the use of textual reuse technologies in my project have the potential to offer greater insight to the influence of *The Federalist* in the Court’s opinions. Due to the vast quantity of Supreme Court opinions, over 30,000, studies of this type have only been possible for the short time the computational methods have been available. To my knowledge, textual reuse studies have not been undertaken between these two corpuses of text and the potential for exciting new conclusions is high.

1. *Marbury v. Madison,* 5 U.S. 137 (1803)  [↑](#footnote-ref-1)
2. See *Calder v. Bull,* 3 U.S. 386 (1798), and *McCulloch v. Maryland.* 17 U.S. 316 (1819), which contains near similar arguments to *The Federalist Nos. 33 and 44* [↑](#footnote-ref-2)
3. "Unsupervised Detection and Visualisation of Textual Reuse on Ancient Greek Texts. "*Journal of the Chicago Colloquium on Digital Humanities and Computer Science* 1, no. 2 (2010). Accessed October 3, 2014. http://jdhcs.uchicago.edu/. [↑](#footnote-ref-3)
4. "Text Reuse." The Digital Classicist Wiki. Accessed October 4, 2014. [↑](#footnote-ref-4)