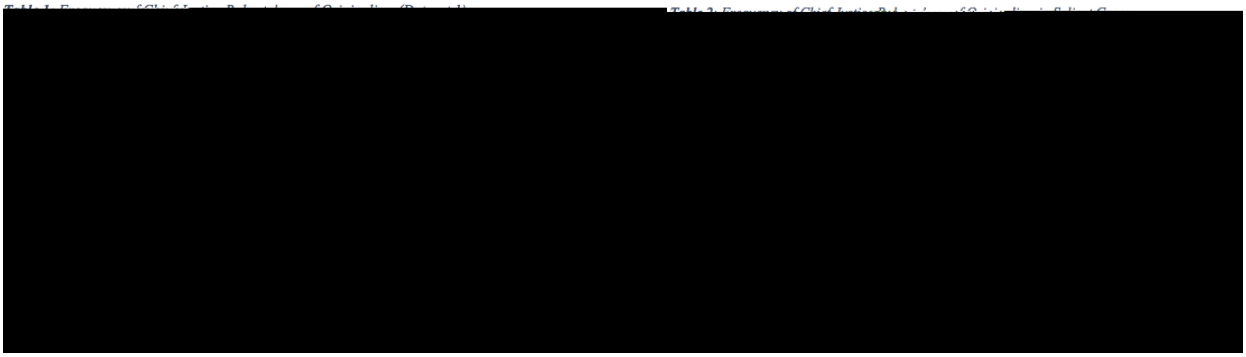
An Umpire Among Equals:
The Espoused and Practiced Judicial Philosophy of Chief Justice John Roberts

In the last half-century, debates around judicial philosophy—that is, the framework one uses to interpret the Constitution—have taken center-stage in American constitutional law. The ideological poles of originalism and living constitutionalism have dividing conservatives and liberals, offering fundamentally different lenses through which to view foundational issues such as gun rights, abortion rights, and money in politics, as well as more recently, partisan gerrymandering, LGBTQ rights, and religious liberty. At the center of this issue, as well as the Court, stands Chief Justice John Roberts, an adamant institutionalist and conservative revered and reviled by those on both sides of the isle for controversial rulings such as those that saved Obamacare and destroyed the Voting Rights Act.

The purpose of this project is to describe and evaluate the extent to which Chief Justice John Roberts adhered to the judicial philosophy he espoused at the time of his confirmation to the Surpeme Court in 2005; in short, did we get the umpire Roberts promised when he famously stated "Judges are like umpires. They don't make the rules, they apply them…I will remember that it's my job to call balls and strikes and not to pitch or bat" (Confirmation Hearing, 2005, p. 56). Through an evaluation of his confirmation hearing, his writings prior to confirmation, and the circumstances under which he was nominated by President Bush to fill Chief Justice Rehnquist's place at the head of the Federal Judiciary, I formulate a conception of John Roberts as a "moderate originalist" when he began his tenure.

Through a literature review focusing on originalism and its formative thinkers, as well as judicial politics scholarship seeking to define and quantify the same, in addition to a close reading of Justice Scalia's majority opinion in *District of Colombia. v. Heller* (2008), I create a dictionary of originalist terms comprised of citations, words and phrases that help identify the use of originalism in Supreme Court written opinions. Using the text analysis software Voyant I then assess the extent to which the Chief Justice has employed originalism in his writings on civil liberties since on the Court.

What my research demonstrates is that Chief Justice Roberts has not acted as an originalist (Table 1) except conditionally when writing in highly salient cases (Table 2). I argue this is a strategic and political inclination to buttress controversial opinions with the authoritative words of the framing; when the nation is watching, John Roberts would prefer to stand with the founders at his back, rather than alone with his decisions. I argue his hesitancy to use originalism in other instances reflects what appears to be a personal inclination away from the judicial philosophy.



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Confirmation Hearing on the Nomination of John G. Roberts, Jr.to be Chief Justice of the United States: Hearing Before the Committee on the Judiciary, United States Senate, 109th Cong. (2005).