Means Matter

One of the problems with the 'ends justify the means' mentality is determining whose ends you are pursuing. The idea of a living constitution sounds fine to the left as long as they are pursuing the goals the left values, but when the government shifts you want the restrictions of the Constitution and its devolution of power to protect your interests. The means do matter, even when they do not deliver the ends you desire. Principles and ideology matters even when they frustrate pragmatic solutions.

Glenn Harlan Reynolds, law professor and blogger at Instapundit, makes this point in The USA Today in A 'living Constitution' on the right?

> *What if right-leaning jurists listened to their critics on the left, and adopted a "living Constitution" approach instead of relying on what the Framers understood the text to mean? As Barnett asks: "Why would you possibly want a nonoriginalist 'living constitutionalist' conservative judge or justice who can bend the meaning of the text to make it evolve to conform to conservative political principles and ends? However much you disagree with it, wouldn't you rather a conservative justice consider himself constrained by the text of the Constitution like, say, the Emoluments Clause?"*
>
> *Where else might we see changes? Well, I'm neither a conservative (I'm a libertarian) or a living constitutionalist, but I can imagine a few places. One is in the scope of government power. During the New Deal era, the Supreme Court – after being threatened with "court packing" by FDR – endorsed a massive expansion of governmental power on the ground that it would lead to greater efficiency in the economy. Instead, we got a bloated bureaucracy with serious accountability problems, and a disastrous expansion in spending, regulation and federal debt. Based on this*

experience, I can imagine a conservative justice who sees the Constitution as a "living breathing organism" that must be kept in tune with the needs of the day deciding that the New Deal Court's decisions were mistakes that violate the Constitution, and must now be rolled back.

Likewise for the Warren Court's "one man, one vote" rule for state legislative apportionment, in which states – unlike the federal government under the U.S. Constitution – were no longer allowed to have a house of their legislature apportioned by geography rather than population. The result has been that states like California or Illinois, which is red almost everywhere but in the Chicago metropolitan area, are totally dominated by the large populations of urban centers. Those states are also governed badly and suffer from considerable degrees of corruption and enormous debt. Perhaps experience turns out to show that the "one man one vote" approach was wrong, and that there was wisdom after all in the Framers' approach of not apportioning everything according to population. A "living Constitution" changes with the times!

But my advice to those on the left attacking originalist approaches is this: Be careful what you ask for, because you won't like it if you get it.