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is no residuum of executive power, not thus accounted for, on which to hang a general "national security prerogative."

The language of Article II, likewise, carried clear implications on the extent of Presidential power. The term "president" itself, for example. Three state constitutions, in the 1780s, referred to their executive as a president. In every one of those states, the chief executive was the first among equals, or presiding officer, in a plural executive (hence the Latin participle "president"), sometimes taking the form of a privy council whose "advice and consent" was required for the exercise of a wide range of executive powers. The "advice and consent" requirement was not a mere rubber stamp. It required the nominal chief executive, in effect, to function as a component part of a plural executive: "the governor-in-privy council." Something of this is preserved in the federal executive's direct involvement, in the person of his Vice President, in presiding over the Senate. The clear effect of the Constitution's original language, given the contemporary understanding of its terms of art, was to create the President as presiding officer of a plural executive ("President-in-Senate") in the exercise of all powers for which "advice and consent" were required.

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> task force as the best way for the administration to use confidential deliberations to set national policy. And she said her role as White House counsel was generally to "protect against any attempted infringement on the appropriate role of the executive branch."
>
> "In order to effectively serve the American people, the president's powers must be protected," Miers said in June, in a speech given to the conservative Heritage Foundation. "We must recognize that we are a nation at war, and that requires a strong presidency to act as commander-in-chief."…

These so-called "strict constructionists" should be aware that the Article II delegation of power to the Executive has an "original understanding" paper trail almost as extensive as that of the legislative delegation in Article I, Section 8. I've done a fair amount of reading on the subject, although I'm too damned lazy to go back through Thorpe's *Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies*, Madison's *Notes*, and Elliot's *Debates* to dig out the exact citations (it's a project in the hopper, though).

Hamilton, that prototype of neocon sliminess, argued as Pacificus that Article II (unlike Article I) was a plenary grant of all executive powers involved in the royal prerogative, minus only those expressly forbidden. But as one defender of Article II's language pointed out in the Federal Convention, there is no general residue of executive power that is not expressly accounted for in some part of the Constitution. All the separate components of the royal prerogative were listed by Blackstone in volume 1 of his *Commentaries*. And every single one of those components in the Constitution is expressly granted to the President, expressly denied to him, or expressly granted or denied to some other branch of government. There

consists mainly of fake privatization, and fake deregulation. If you're a glutton for punishment, just check out one of these old posts: "The Neoliberal Myth of 'Small Government'"; "More Small-Government Conservatism: Deregulation, Texas-Style"; "Public Services, 'Privatized' and Mutualized"; "Faux Private Interests, Part III: Sean Gabb on ASI-Style 'Privatization'"; "Claire Wolfe on Economic Fascism"; "MaxSpeak on the Myth of Small-Government Conservatism."

Here's how I summed up their fake conservatism in an earlier post:

> They're a statist borg collective, concealing themselves like pod people behind a facade of traditional Main Street conservatism.

Part 2

More on that noted "strict constructionist" and enemy of "legislating from the bench," Harriet Miers (from Progressive Review):

> RICK KLEIN, BOSTON GLOBE — Earlier this year, Supreme Court nominee Harriet E. Miers used several speeches to push for expanding President Bush's powers to protect the United States against terrorism, arguing that "a nation at war" needs a stronger executive branch, according to transcripts the White House has provided to the Senate Judiciary Committee.
>
> In her speeches to conservative groups, Miers called for extension of the Patriot Act, which expands law enforcement agencies' power to investigate suspected terrorists. She defended Vice President Dick Cheney's closed-door energy

Part 1

It seems Harriet Miers' so-called "strict constitutionalism" doesn't bear much looking into. Apparently, it's not the federal government that's one of strictly defined and limited powers–just the legislative branch of it (via Mojo Blog):

> As White House chief-of-staff, [Andy Card] found the most intriguing article, he said, to be Article II, which established the presidency and the executive branch. Miers, he continued, understood Article II as well, and would defend it "when challenged by those given the power to challenge it by Article I [i.e., the Congress] and Article III [i.e., the courts]."
>
> Thus ended Card's constitutional disquisition — not a moment too soon, as he had managed to conflate Miers' duties as White House counsel with what he seemed to be saying was her judicial philosophy on executive power. He could not have meant to imply that Miers would see her first duty on the bench as defending Bush against all enemies, legislative and judicial, but that's what he managed to convey. At minimum, he suggested that Miers would be the staunchest proponent of executive power over that of the other two branches that the Court had seen in a very long time. Whom, exactly, this was meant to reassure is unclear. Card's comment could not have been better calculated to raise suspicions of Miers on both sides of the aisle.

I've pointed out before how phony and disingenuous the Federalist Society's version of "strict constitutionalism" is ("Fake Constitutionalism"). Or as Miers explained it herself in the Fafblog Interview:

> FB: Well, first off let me say I'm pretty relieved that you've confirmed reports that you will not legislate from the bench. Movin on, you're a good friend of the president, and on the court you'd have cases where you'd have to rule for him or against him. Do you there could be a conflict of interest there?
>
> MIERS: Well that's just crazy, Fafnir. As a personal friend of the president, I know more about presidents than most people. I have to rule on the president's powers, I can call 'im up and say, "Hey, Mr. President, do you have the constitutional authority to indefinitely detain prisoners without due process?" And he'll say "You bet."

Of course, I doubt Miers is really that much of a strict constructionist even when it comes to legislative powers; if she comes up with a reading of the Commerce Clause that undermines Crisco John's position on federal preemption of state medpot and assisted suicide laws, I'll be very much surprised. And somehow, I doubt she's all that bothered by an activist federal government when it comes to things like "tort reform." The Shorter Federalist Society "Strict Constructionism": we're for limited government, except when it comes to giving the Executive the kinds of "national security" powers claimed by Charles I, and preempting state laws in the interest of big business, and making sure you're keeping your dick where it belongs.

This fake constitutionalism is just one example of why modern conservatism, in both its Buckleyite New Right version of the '50s and its updated neocon form, is a fake ideology. Besides fake constitutionalism and fake federalism, it also manages to peddle adulterated versions of several other popular buzzwords: fake populism, fake communitarianism, and fake free market liberalism.

Thomas Frank has a pretty good ear for their fake populism. Some people (particularly those in Red States) may have trouble distinguishing their populist denunciation of elites from the altogether different sin of "class warfare." To clarify things, here's how to tell them apart:

> **Elites**. Latte-sipping, brie-eating, Volvo-driving, little magazine-reading, effete snobs who live on the coasts, whom it is entirely permissible to attack for their privileged lifestyle. Such attacks are entirely different from the heinous crime of **Class Warfare** (q.v.), which no decent person will engage in.
>
> **Class Warfare**. Demagogic attacks based on the entirely specious ground of unearned wealth, a sin up with which the neocons will not put. Entirely different from demagogic attacks based on cultural characteristics like the kind of food and entertainment one likes (see **Elites**).

The fake communitarians like to wring their hands over "bowling alone," wax enthusiastic over "civil society," and selectively quote de Tocqueville on barn raisings and suchlike. But notice their talk of "empowerment" and "civil society" never strays from the realms of consumption and of reproducing human labor-power. When it comes to the realm of econmic production and of government, the neocons are good Crolyites, New Class managerialists who believe in the "rule of law": in other words, decisions should be made by competent professionals, while we sit down, shut up, and ratify their decisions every four years (and keep ourselves busy with things that are more our speed, like bowling leagues and church socials).

On the fake free market liberalism, I've had plenty to say here–most of it probably about the Adam Smith Institute. It