

FRED AND PAUL FORGET THE CONSTITUTION-TIME TO REMIND THEM

I'm supposed to be doing something else entirely. But I'm going to raise a point that I've raised already—because it sure seems like Democrats are sleeping through the Constitution.

Paul Clement, in his explanation of why BushCo could invoke executive privilege in the USA scandal, claimed that the President has "nondelegable Presidential power" "to nominate orto remove U.S. Attorneys." It's a claim repeated (though in more humble form) by Fred Fielding in his invocation of executive privilege.

In the present setting, where the President's authority to appoint and remove U.S. Attorneys is at stake, the institutional interest of the Executive Branch is very strong.

[snip]

Your letter does not dispute these principles.

[snip]

The letter does not challenge the exclusive character of the President's appointment and removal power, nor does the letter attempt to establish a constitutional basis for the Committees' inquiry into this matter.

Now, IANAL. But, particularly given Fielding's retreat on this issue, I believe BushCo is on shaky ground on this issue and the Democrats really need to start pointing that out. After all, the Constitution itself disputes Clement's and Fielding's claims that Bush's appointment

power is non-delegable and exclusive.

but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

But don't take my word for it. This whole scandal started when BushCo had Brett Tolman sneak a provision into the PATRIOT Act to take appointment power away from judges and give it to the AG. In other words, the history of this scandal itself proves Clement and Fielding's claim to be false, because it proves Congress does have the authority to dictate how appointments are made (and BushCo didn't make a squeak of complaint when Congress rearranged the appointment powers last year).

Now, if I'm right about this Constitution thing and if I'm right about the PATRIOT provision, then the Democrats are as much at fault as Fred and Paul. After all, Clement made that ambitious claim—but no one from Congress has pointed it out and refuted it. Congress is, at this point, just handing over its powers to the Executive, with no complaint. How are we planning to rein in the Executive's overreach when, at the same time, we're handing it more and more authority?