



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

Congressional Complicity in WMD Duplicity **by Jacob G. Hornberger**

Why has Congress been relatively quiet on the executive branch's deception about Saddam Hussein's weapons of mass destruction? The answer is easy: By abrogating its constitutional responsibility regarding its constitutional power to declare war, Congress made itself a silent partner in the president's wrongdoing.

Keep in mind that our system of government is different from others around the world. Under our way of life, the powers of the president are not omnipotent but are instead limited to those enumerated in the Constitution. Keep in mind also that the Constitution is the supreme law of the land — the law that governs the actions of all federal officials.

That's not to say that presidents have not historically exercised powers not granted to them by the Constitution. It's simply to say that when they did so, they were acting illegally under our form of government.

While the Constitution grants the power to wage war to the president, the power to declare war is given to the Congress. That means that the president is precluded from waging war in the absence of a declaration of war from Congress. In fact, that's why both presidents Wilson and Roosevelt sought declarations of war from Congress before committing the United States to war in the first and second world wars.

Furthermore, under our system of government, one branch of government is precluded from delegating its powers to another branch. Thus, Congress cannot delegate its power to declare war to the president.

Yet that's exactly what the Congress did last fall when it voted to give the president power to decide whether to go to war against Iraq. By authorizing the president to make that determination, the members of Congress abrogated their constitutional duty to make it. In so doing, they ensured that there would be no independent screening process by which the president's justifications for war could be tested.

If the Congress had insisted on its power to declare war, the president would have been required to show Congress why he felt it was necessary to go to war against Iraq. Congress would

then have been able to carefully examine his pre-war claims that were used to frighten the American people into believing that Saddam Hussein was about to strike America with nuclear, biological, and chemical weapons. The process would have provided our elected representatives in Congress the opportunity to pierce through all the pre-war hype and deception.

That's exactly what the Framers intended when they divided the powers to declare and wage war between the legislative and executive branches of the federal government. They knew that rulers throughout history had led their nations into disastrous wars and quagmires on the basis of shaky and fake justifications. They knew also that war constituted the greatest threat to the liberty and well-being of the citizenry — from their own government.

It's true that prior to the war, President Bush made it clear that he didn't care whether he had a declaration of war from Congress or not, citing the numerous wars that had been waged since World War II without a congressional declaration of war.

But the fact that previous presidents have waged wars in violation of the supreme law of the land does not operate as a grant of power to future presidents to do the same. If an act is illegal when committed by one president, it continues to be illegal when committed by subsequent presidents.

Given that the U.S. Supreme Court has long refused to involve itself in the enforcement of this particular section of the Constitution, there remains only one method by which the people can enforce it. That method lies with a clear pronouncement by Congress that if the president goes to war without the constitutionally required congressional declaration of war, he will be impeached.

By failing to do that during the run-up to President Bush's Iraq war and by unconstitutionally delegating their power to declare war to the president, the members of Congress not only betrayed the oath they took to defend the Constitution, they also betrayed the American people.

That's why they're as culpable as the president with respect to the deception that was used to justify the war.

Mr. Hornberger is founder and president of The Future of Freedom Foundation.

This article was originally published in August of 2003.