



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

fff@fff.org www.fff.org

Saddam's Capture Violates U.S. Constitution **by Sheldon Richman**

Saddam Hussein went a great distance toward establishing the kind of totalitarianism that emerged in the early 20th century in Russia, then Italy and Germany. It was a regime based on a pervasive party and ideology, self-adulation by the dictator (with concomitant privileges), and rule by terror. The regime combined brutal repression, including unspeakable forms of torture and murder, with succor, such as food rations and medical care. The inclusion of welfare-state features was an admission that brute force and fear are not enough to hold people as political slaves. Unless they are led to believe they need the regime — that its terror is somehow necessary — the people remain capable of rebellion.

Now this man who wanted to be regarded as every Iraqi's father has been brought low, dragged out of a hole in the ground looking like a common bum.

What lover of liberty cannot take joy in seeing Saddam reach the end of his road? Reading in the *Washington Post* about the four Iraqis permitted to confront the captured Saddam, one can imagine their satisfaction in seeing the tyrant treated as he deserves: as a criminal.

The joy at his fate, unfortunately, should not be unalloyed. The capture of Saddam and his impending trial and punishment cannot be separated from the manner in which he was deposed and apprehended. It was the result of an improper and unconstitutional exercise of U.S. government power by a president convinced that the rule of law, including international law, is made of elastic.

Contrary to what some may think, this is not the time to forget the illegal conduct of the Bush administration. Those who experience unmixed satisfaction at Saddam's capture need to check their premises. They are willfully evading a host of considerations that are too important to be ignored.

It may not matter in today's postconstitutional America, but there was a time when the thought of American troops chasing another country's dictator would have inspired revulsion in this country. The failure to find weapons that could have threatened the American people and the lack of evidence that Saddam participated in the 9/11 attacks have left the Bush administration

with one last rationalization for its illegal and undeclared war: the liberation and reform of Iraq. The president, his spokesmen, and his media boosters talk of mass graves and the prospects for democracy. Those are rationales enough, they say. Are they?

No one should be surprised by the mass graves. It was known that Saddam was a mass murderer when he was still a U.S. government ally in the late 1980s and the neoconservatives were proclaiming him the voice of moderation in the Middle East. (This was after he was helped into power by the ubiquitous CIA.) As for planting democracy, it seems that nothing has been learned since 1917, when the war to make the world safe for democracy ushered in the worst era of European despotism imaginable. The project to bring freedom to Iraq must seem strange to those around the world who realize that the Bush administration is allied with some pretty nasty rulers in the Middle East and Central Asia. If most Americans see nothing peculiar in that, it may only be because their government has done this sort of thing for so long.

But even if democracy were a vine that would easily take root in the Iraqi soil, that would not justify what President Bush did. The end does not justify the means. Or does that apply only to others?

I realize that bringing up the constitutional limits on government at a time like this is as welcome as telling the designated driver he shouldn't have ordered that beer. But here goes. The Constitution delegated a short list of powers to the Congress. Any power not expressly delegated is therefore off-limits. Nowhere on that short list does one find language implying that the U.S. government may free captive peoples in other lands.

That makes the war unconstitutional — even if Congress had declared it, which it didn't. How can we bring freedom to Iraq when we we're losing it here?

Sheldon Richman is senior fellow at The Future of Freedom Foundation, and editor of [Ideas on Liberty](#) magazine and author of [“‘Ancient History’: U.S. Conduct in the Middle East since World War II and the Folly of Intervention.”](#)

This article was originally published in December of 2003.