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The Troops Don't Support the Constitution

by Jacob G. Hornberger

Every U.S. soldier takes an express and solemn oath to “support and defend the Constitution.” That oath, however, is a sham because the troops do not support or defend the Constitution. Instead, when it comes to war the troops follow another oath they take — to obey the orders of the president, and they do this without regard to whether such orders violate the Constitution.

A textbook example involves President Bush's war on Iraq.

The Constitution prohibits the president from waging war without first securing a declaration of war from Congress. By waging war on Iraq without the constitutionally required congressional declaration of war, the president violated the Constitution.

Some people pooh-pooh the violation, perceiving the Constitution as simply a technical document that can be violated whenever the president feels that “national security” — or even the welfare of foreigners — necessitates it.

Some also make the claim that when Congress delegated its power to declare war on Iraq to the president (on the eve of the 2002 congressional elections), that delegation served as an adequate substitute for an actual declaration of war on Iraq.

They are wrong.

The Constitution is the supreme law of the land that we the people of the United States have imposed on our federal officials. Like it or not, U.S. officials are supposed to comply with its restrictions on power. If U.S. officials don't like a particular constitutional provision or if they feel that it is outdated, the proper remedy is to seek a constitutional amendment, not ignore the provision.

Moreover, the Supreme Court, which is the final arbiter of constitutional interpretation under our system of government, has long held that no branch of the federal government can lawfully delegate its constitutional powers to another branch of government. Only the Congress, not the president, is authorized to declare war, and without that declaration the president cannot lawfully wage war on another nation.

We should bear in mind that had the president complied with the declaration-of-war requirement, the Congress might well have discovered in the process that the president's WMD claims were defective. The Congress might also have concluded that invading a sovereign and independent country for the purpose of "spreading democracy" — a war in which tens of thousands of innocent people would be killed and maimed — could not be justified under moral principles.

"But we can't refuse orders of the president. He's our commander in chief," say the troops. "It's not our job to determine what is constitutional or not. We deployed to Iraq, like it or not, because the president ordered us to do so."

Setting aside the moral implications of that position, doesn't that mindset reflect that the oath that the troops take to support and defend the Constitution is in fact a sham? The troops know — or should know — that the Constitution prohibits the president from waging war without a congressional declaration of war. They also know that the Congress never declared war on Iraq. Nevertheless, they obeyed the president's orders to attack Iraq.

The president's war on Iraq reflects why our nation's Founding Fathers [opposed standing armies](#). Members of a professional army, who have vowed to obey the orders of the president, are unlikely to say no when the president orders them to attack another country.

On the other hand, a nation that relies instead on well-trained citizens (i.e., [citizen-soldiers](#)) to defend itself from a foreign attack would stand in a different position. Citizen-soldiers, while willing and prepared to rally to the defense of their own country in the event of an invasion, would be much less likely to answer the president's call to leave their families and give up their jobs to attack a country thousands of miles away from American shores.

Isn't it ironic that, even as the troops waging war in Iraq exhort the American people to support them, the troops, by invading Iraq without the constitutionally required congressional declaration of war, have failed to support the Constitution?

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