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DAVID BOWEN

Constitution is worthy of U.S. protection, too



Columnist

There is an interesting national debate under way concerning the powers of an American president when our country is involved in military hostilities.

I say "hostilities" instead of "war" since most of our wars are not declared wars under the Constitution — the last was World War II — but "police actions" or "anti-insurgency campaigns" or "temporary incursions" or "pre-emptive interventions."

Constitutional question

When the Cold War ended, happily in our favor, we found ourselves the sole superpower. Most other nations were perfectly willing to let us spend our money and lives instead of theirs to serve as a global policeman, replacing oppressive rulers and "ending tyranny in our world," as President George W. Bush has put it.

The current constitutional question has been brought to our attention by Bush, who has announced that whenever our nation is involved in hostilities he has the right to do whatever he feels is needed under his constitutional powers as "commander in chief of the army and navy."

Both Democratic and Republican presidents have had the urge to assume both executive and legislative powers (just as our courts like to assume legislative powers). President Harry Truman thought his commander-in-chief role gave him the right to seize America's steel mills, threatened with a strike during the Korean War.

But the U. S. Supreme Court set him straight in *Youngstown Sheet and Tube v. Sawyer* in 1952. The Court said that "the president's order amounts to law-making, a legislative function which the Constitution has expressly confided to the Congress and not to the president," further, that "where Congress had laid down specific procedures to deal with the type of crisis confronting the president, he must follow those procedures."

The Supreme Court would probably do the same for President Bush today if given the opportunity.

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ent, he must follow those procedures."

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Since we spend so much time at war, if American presidents are given unlimited general powers simply because they command the military, we will have something approaching an elected monarch.

Our constitutional system of checks and balances will be at an end.

Statute law violated?

The case in point, domestic electronic intercepts between the United States and points overseas is not, as I see it, a major issue, but the Constitution is.

Can a president violate statute law, in this case the Foreign Intelligence Surveillance Act of 1978 (for which I voted), either because, as he has said, it is an old law and times have changed or because, as he has also said, his powers in wartime are unlimited or even because Congress has authorized him to "use force," and thus whatever he wishes to do can be construed as an extension of force?

Bush has presented no evidence that existing law has inhibited his ability to intercept domestic messages. And Congress will give him any necessary powers he might request if new ones are needed, which they have already done eight times since 9-11.

There are very few Americans who would deny the president the powers he needs to track down and prosecute al-Qaida members or allies or obtain information needed to prevent further attacks on Americans. The issue is much broader, however, and goes to the foundation of our Constitution and the principle of rule of law.

Let us hope the president and Congress can find a way to protect the American people and at the same time preserve, protect and defend the Constitution of the United States.



David Bowen of Jackson is a former member of Congress, who represented the 2nd Congressional District. He is a regular contributing columnist.