



## When Shutdown Orders Overtake the Constitution

by Richard W. Rahn

### GOVERNMENT EMPLOYEES HAVE A DUTY TO DISOBEY UNLAWFUL EDICTS

If you were a U.S. National Park Service ranger, would you have kept disabled World War II veterans from going to their privately funded, open-air memorial in Washington? A congressman confronted a park ranger and told her she should be "ashamed." The congressman has apologized, but should he have done so?

The ranger was obeying a questionably lawful order from a higher-up. Whoever was at the top of the chain giving the order ought to be ashamed because government is not supposed to create unnecessary misery and hardship, which is obviously what the Obama administration attempted to do with the recent government "shutdown."

In a number of cases, officials of the Obama administration appear to have given unlawful orders during the shutdown, such as to put up barricades to prevent people from going to nonfederal attractions

such as Mount Vernon, and keeping open nonessential activities like federally owned golf courses that serve the "well-connected." The Uniform Code of Military Justice Section 892, Article 92 makes it clear that military personnel have an obligation and a duty to obey only lawful orders and, indeed, have an obligation to disobey unlawful orders, including orders by the president that do not comply with the code. The moral and legal obligation of the military is to the U.S. Constitution and not to those who would issue unlawful orders, especially if those orders are in direct violation of the Constitution and the code. Civilian employees also have an equal obligation to disobey unlawful orders.

The illegitimate orders that government workers followed during the shutdown might seem like minor infractions, but those who committed them should think about where they would draw the line. Authoritarian regimes often start by demanding that their staffs make minor infringements of civil liberties, but these tend to grow quickly until the people are cowed. Soon, government workers who are doing what they know to be wrong become too frightened of the monster they helped create to stop.

Article I, Section 7 of the Constitution makes it clear that only Congress can authorize and appropriate funds, yet it is estimated that during the shutdown, only 17 percent of government spending was temporarily halted. A substantial portion of the other 83 percent was being spent without a specific authorized and appropriated amount. Entitlements, such as Social Security and Medicare, continue on without annual appropriated specific funds, which shows how the words in the Constitution have been made all but unrecognizable.

Initially, an estimated 800,000 government employees were deemed nonessential, but during the two-week shutdown, about half of them were brought back. The shutdown revealed that many of these employees are not needed, their jobs could be better done at the state or local level, or the jobs should be contracted out — the National Park Service being an obvious example. Some state governments took over the operation of some of the parks in order to get them open again. The obvious question is: Why not let the states

operate or contract out the operation of all of the parks within their borders? Competition between the states would probably ensure that almost all parks would be better managed.

Many of the regulatory agencies furloughed most of their workers, which was probably a net gain to the economy, since the private sector was not being hassled for two weeks with many unneeded and even counterproductive regulations. What would happen if there were no new regulations churning out of the Environmental Protection Agency, Securities and Exchange Commission, Commodity Futures Trading Commission, Consumer Product Safety Commission, and Food and Drug Administration? The economy would grow faster and no fewer crooks would likely be caught since there are enough statutes on the books to cover almost every conceivable crime, and then some.

What would happen if there were no Department of Labor or Department of Commerce to collect all of the statistics? Answer: The ones that are needed would be produced at a fraction of the cost by private companies, associations and foundations. If you gave it considerable thought, you would be hard-pressed to think of anything the federal government does — outside of defense, the federal courts, the National Institutes of Health and the Centers for Disease Control, which fall under the General Welfare Clause of the Constitution — that state and local governments or the private sector could not do equally well or better, at lower cost.

The reason for the dysfunction in Washington is that the government is trying to do too many things that are not authorized by the Constitution, or that governments are incapable of doing competently at all. The new poster child is Obamacare.

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<http://www.washingtontimes.com/news/2013/oct/21/rahn-when-shutdown-orders-override-the-constitution/>