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THE LEGISLATIVE VETO

Whether the Legislative Veto is constitutional or not is a relatively simple question, despite the confusion caused by the bureaucracy and compounded by the federal courts.

Since 1933, Congress has progressively delegated more and more far-reaching law-making authority to various federal agencies. The liberals have promoted and enthusiastically cheered this vast increase in the power of the bureaucracy because it has been exercised to achieve liberal economic and social goals.

In many areas, these agencies dictate with explicit detail how we run our businesses and live our lives. The violation of federal agency rules and regulations is punishable by enormous fines and, in some cases, by criminal penalties.

Some of these rule-making agencies are accountable to the President. But, for many of these agencies, their only relationship to the President or Congress is the fact that their members are initially appointed by and with the advice and consent of the Senate.

To these so-called "independent" agencies is delegated broad discretion to determine whether to investigate an industry, person, or practice; whether to initiate rule-making procedures; what to write into the rules; whether and how to rewrite the rules after comments are received on the initial drafts; and, having devised the rules, whether to finalize them as binding law.

This almost unlimited transferral of authority would have been viewed by the Founding Fathers as an unconstitutional delegation of legislative power to agencies which are virtually unaccountable either to the Congress or to the President. (It is self-evident, for example, that Congress could not constitutionally reconstitute the Pentagon as an agency unaccountable to the President and Commander-in-Chief.)

During the 1930s, the courts devised a "nondelegation doctrine" in order to limit the amount of power which Congress could constitutionally delegate to agencies. Under pressure from the liberals favoring an expanded federal governmental role, this doctrine has eroded into virtual extinction.

One commentator summarized the demise of the doctrine this way: "The original objective of preventing the delegation of legislative power and the later objective of requiring every delegation to be accompanied by meaningful statutory standards had to fail, should have failed, and did fail."

Congress, in an effort to reassert a small bit of authority over the agency rule-making process, has crafted the Legislative Veto -- a device by which an agency rule about to go into effect can be killed by a vote of one or both Houses of Congress. In this way, Congress reassigns back to itself one tiny piece of the enormous legislative power which Congress delegated to the agency.

Many of those liberals most active in expanding the concept of Congressional delegation now inconsistently argue that it is unconstitutional for Congress to delegate to itself any power at all.

With respect to a veto exercised by one House of Congress, they argue that, even though Congress can delegate a legislative or executive function to an independent agency, Congress cannot redelegate even a small portion of that function to part of the legislative branch itself. The liberals argue that, because blocking a rule is a legislative function, delegating that blocking power to one or both Houses of Congress would deprive the President of his veto over that blocking action.

If this argument were valid, it would mean that Congress is the only entity constitutionally incapable of exercising a major element of legislative power. This would be ridiculous since Congress regularly delegates to the President alone the power to control the rule-making of so-called dependent agencies.

The constitutionality of a veto which may be exercised only by two Houses acting in concert is a bit more complex. The Constitution specifically states: "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President ... and ... approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives ..."

In recent years, however, Congress has increasingly used concurrent resolutions, which do not require the President's signature, to accomplish a broad range of objectives.

The annual budget and other varieties of legislation dealing with special objectives or observances are accomplished by concurrent resolutions.

It is rather clear that a large part of the liberals' claim that the Legislative Veto may be unconstitutional is a political game being played by those whose primary objective is to insulate the bureaucracy's power from any supervision by Congress.