Fast Track Is Unconstitutional

December 5, 2001

Where are all those strict-constructionist Republicans who've been complaining about activist judges who don't respect the fact that the U.S. Constitution gives "all legislative powers" to the Congress? Don't those Republicans realize that it is just as unconstitutional to transfer legislative powers to the executive branch?
When it comes to legislative powers over trade matters, the U.S. Constitution is precise. Article I, Section 8, expressly grants Congress the sole power "to regulate commerce with foreign nations" and "to lay and collect taxes, duties, imposts, and excises."

The Bush Administration and some Republicans are trying to pass Fast Track, a bill to unconstitutionally transfer those commerce powers to the executive branch. Fast track would give the President and his appointees a blank check to make trade deals with foreign countries.

This isn't the first time that misguided Republicans tried to do an end-run around the Constitution by unconstitutionally transferring power to the President. During the 1980s and 1990s, we had to endure the persistent efforts of some Republicans to impose the Line Item Veto, which was patently unconstitutional, and the U.S. Supreme Court finally so ruled on June 25, 1998.

Newt Gingrich made the Line Item Veto a hallmark of the Contract With America and, for years, the Gingrich Republicans tried to make it a litmus test for fiscal conservatism. There was just one little problem: it was unconstitutional because it transferred to the President the power to change laws that Congress had passed.

In the hope of concealing the shady procedure of Fast Track, the Bush Administration has given Fast Track a sweeter-smelling name: Trade Promotion Authority. But Fast Track is exactly what this bill should be called because it will rush executive-branch agreements through Congress with mandatory deadlines, severely limited debate, no amendments allowed, only the chance to vote aye or nay, and rigging the process to evade the two-thirds treaty requirement in the Senate.

It's one thing for the President to push his agenda. But it's unfortunate that he has resorted to name-calling of those who disagree, as he did when he labeled them "isolationists" at his June 20 meeting with the Business Roundtable.

No doubt the managers of Fast Track in Congress will sanctimoniously use such arguments as "Don't you trust our President?" The response should be, Yes, we trust him to do what he said he would do, and he said his high priority under Fast Track will be to implement the Free Trade Area of the Americas Agreement, which would extend NAFTA to cover 34 Latin American countries.

When Bush signed the Declaration of Quebec City on April 22, he gave a "commitment to hemispheric integration and national and collective responsibility for improving the economic well-being and security of our people." It is clear that "our people" means all the people of the Western Hemisphere.

Bush pledged that the United States will "build a hemispheric family on the basis of a more just and democratic international order." He agreed to "the promotion of a Connectivity Agenda for the Americas (to) facilitate the beneficial integration of the hemisphere."

The Quebec Declaration is filled with United Nations doubletalk such as "sustainable development," "interdependent," "realization of human potential," "civil society," "international organizations," "reducing poverty," and "greater economic integration."

The media have never reported any public opinion polls on whether the American people want to be "integrated" with third-world, low-wage Latin American countries. The media don't ask questions when they don't want to report the answers.

Do we want to "integrate" our economies and currencies with Latin American countries, or assume the "national responsibility" to improve their "economic well-being"? Do we think that joining "a hemispheric family" with countries that do not respect the Rule of Law will give us "a more just and democratic international order"?

Even though Fast Track has not been voted on yet, the Bush Administration is behaving as though it has. Bush's U.S. trade representative Robert Zoellick just met in Qatar with 142 World Trade Organization countries, where he agreed to submit the United States to international rules to invalidate our anti-dumping laws that protect our industries against foreign governments dumping their goods on us at unfairly low prices.

An earlier version of Fast Track was in effect when Bill Clinton rammed NAFTA and GATT through Congress in 1993 and 1994. Hidden in the 22,000-page GATT was the 14-page charter putting us in the World Trade Organization, where we have one vote, the European Union 15 votes, and the Third World 80 votes.

Fast Track advocates are mute about the failure of NAFTA and GATT to live up to their rosy predictions. To most Americans, the most visible result is the current plan to flood our highways with Mexican trucks that haven't passed U.S. inspection for safety and insurance.

It would be a constitutional travesty for Congress to surrender what one federal court called "the unmistakably legislative power" to impose, modify, or continue tariffs and import restrictions. Fast track violates our separation of powers, diminishes American sovereignty, and infringes on the rights of Americans to engage in the trade of our choice.