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REAGAN'S VETO OPPORTUNITY

Will the House of Representatives, where the Democrats have a majority, be able to spend as usual while defeating Ronald Reagan's tax-cut-spending-cut package? Professor Charles Rice of Notre Dame Law School has just circulated a paper which shows the new Republican President how to prevent that from happening.

Rice has thoroughly researched the Presidential veto power and concluded that Reagan and one-third-plus-one of the House or Senate have the absolute power to terminate any federal agency or program by vetoing its appropriation bill. While the Administration must enforce any legislation after it is passed, the Administration may not spend any funds which have not yet been appropriated.

Under the Constitution, any program or agency must terminate if no money is authorized and appropriated for it, and no appropriation exists unless and until it is passed by both Houses of Congress and signed by the President (or repassed over his veto by two-thirds of a quorum of both Houses of Congress). No federal agency or program can stay in operation without funds.

The propriety of a President's using his veto to terminate existing agencies and programs was conclusively settled by President Andrew Jackson's veto of the bill to recharter the second United States Bank. Jackson's veto message, one of the longest in history, established that the veto power could be used by the President for reasons of policy and wisdom (as well as for constitutional reasons). Jimmy Carter's 1977 veto of funds for the Clinch River Breeder Reactor Demonstration Plant is a recent precedent for a Presidential killing of an existing program.

Franklin D. Roosevelt's veto on Feb. 22, 1944 and Harry Truman's veto on June 16, 1947 made it clear that appropriation bills are just as subject to a Presidential veto as any other type of bill. The federal courts have even upheld the Presidential veto over the war-making power that the Constitution grants so broadly to Congress in Article I.

Professor Rice's scholarly paper takes the position that Reagan not only has the option but the duty to use his constitutional veto power in order to fulfill his 1980

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election mandate. In his acceptance speech in Detroit, Reagan said: "Any program that represents a waste of money must have that waste eliminated or the program must go, by Executive Order where possible, by Congressional action where necessary."

Special-interest group pressures will be closing in on Congress like vultures in order to prevent the abolition of agencies such as Education or Energy or Legal Services. The constructive use of the Presidential veto is the constitutional check designed by the Founding Fathers to deal with that sort of obstructionism in Congress.

The veto is not only a negative device; it was designed as a positive power to provide an opportunity for constructive Presidential leadership and more thorough Congressional consideration of bills. The veto gives the President the power to focus attention on certain undesirable aspects of a bill in order to compel reconsideration.

Like every other power in the Constitution, the President's veto is limited. It can be overridden by two-thirds of a quorum in each House. (The President has an absolute veto power only where Congress, by its adjournment, prevents return of the bill -- the so-called pocket veto.)

The Federalist Papers show that the Founding Fathers debated the veto at length and intended it for use in cases where the President seriously disagrees with the wisdom (or lack of it) in a proposed bill. They made the veto a limited power (i.e., subject to Congressional override) specifically in order to encourage a President to exercise his veto power more readily and often than if the veto were an absolute power.

It is clear from the Federalist Papers that the Founding Fathers planned the veto as a constructive legislative procedure, whether the President and one-third-plus-one of one House can make it stick, or whether two-thirds of both Houses can override. The veto appears in Article I of the Constitution, the legislative section, rather than in Article II, the executive section.

A good role-model for Ronald Reagan would be a man he frequently quotes, Franklin D. Roosevelt, who used his veto 635 times on a great variety of issues. He considered the veto an essential tool of his leadership.

The present economic emergency demands a massive cutting of federal appropriations. President Reagan should use his veto proudly and positively as one of the most important powers of the office to which he was so decisively elected. (end)