tive findings and procedures that were absent in the NIRA.[77] The Court has also relied on the constitutional doubt principle of statutory construction to narrow interpretations of statutes that, interpreted broadly, might have presented delegation issues.[78]

Concerns in the scholarly literature with respect to the scope of the delegation doctrine[79] have been reflected in the opinions of some of the Justices.[80] Nonetheless, the Court's decisions continue to approve very broad delegations,[81] and the practice will likely remain settled. The fact that the Court has gone so long without holding a statute to be an invalid delegation, however, does not mean that the nondelegation doctrine is a dead letter. The long list of re-

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Whitman v. American Trucking Ass'ns, 531 U.S. 457, 474 (2001) (the NIRA "conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring 'fair competition'").

[77] *See, e.g.*, Yakus v. United States, 321 U.S. 414, 424–25 (1944) (*Schechter* involved delegation "not to a public official . . . but to private individuals"; it suffices if Congress has sufficiently marked the field within which an administrator may act "so it may be known whether he has kept within it in compliance with the legislative will.").

[78] *See, e.g.*, Industrial Union Dep't v. American Petroleum Inst., 448 U.S. 607, 645–46 (1980) (plurality opinion) (invalidating an occupational safety and health regulation, and observing that the statute should not be interpreted to authorize enforcement of a standard that is not based on an "understandable" quantification of risk); National Cable Television Ass'n v. United States, 415 U.S. 336, 342 (1974) ("hurdles revealed in [*Schechter* and J. W. Hampton, Jr. & Co. v. United States] lead us to read the Act narrowly to avoid constitutional problems").

[79] *E.g.*, *A Symposium on Administrative Law: Part I—Delegation of Powers to Administrative Agencies*, 36 AMER. U. L. REV. 295 (1987); Schoenbrod, *The Delegation Doctrine: Could the Court Give It Substance?*, 83 MICH. L. REV. 1223 (1985); Aranson, Gellhorn & Robinson, *A Theory of Legislative Delegation*, 68 CORN. L. REV. 1 (1982).

[80] American Textile Mfrs. Inst. v. Donovan, 452 U.S. 490, 543 (1981) (Chief Justice Burger dissenting); Industrial Union Dep't v. American Petroleum Inst., 448 U.S. 607, 671 (1980) (then-Justice Rehnquist concurring). *See also* United States v. Midwest Video Corp., 406 U.S. 649, 675, 677 (1972) (Chief Justice Burger concurring, Justice Douglas dissenting); Arizona v. California, 373 U.S. 546, 625–26 (1963) (Justice Harlan dissenting in part). Occasionally, statutes are narrowly construed, purportedly to avoid constitutional problems with delegations. *E.g.*, *Industrial Union Dep't*, 448 U.S. at 645–46 (plurality opinion); National Cable Television Ass'n v. United States, 415 U.S. 336, 342 (1974).

[81] *E.g.*, Mistretta v. United States, 488 U.S. 361, 371–79 (1989). *See also* Skinner v. Mid-America Pipeline Co., 490 U.S. 212, 220–24 (1989); Touby v. United States, 500 U.S. 160, 164–68 (1991); Whitman v. American Trucking Ass'ns, 531 U.S. 547 (2001). While expressing considerable reservations about the scope of delegations, Justice Scalia, in *Mistretta*, 488 U.S. at 415–16, conceded both the inevitability of delegations and the inability of the courts to police them.

Notice Clinton v. City of New York, 524 U.S. 417 (1998), in which the Court struck down the Line Item Veto Act, intended by Congress to be a delegation to the President, finding that the authority conferred on the President was legislative power, not executive power, which failed because the presentment clause had not and could not have been complied with. The dissenting Justices argued that the law was properly treated as a delegation and was clearly constitutional. Id. at 453 (Justice Scalia concurring in part and dissenting in part), 469 (Justice Breyer dissenting).