Extract from John R. Vile's *The Constitutional Convention of 1787* citing Tillman's *A Textualist Defense*

Seth Barrett Tillman

Available at: https://works.bepress.com/seth_barrett_tillman/62/
of 3/4" and judged that "the former was the greater" (II. 587). Nonetheless, the Convention voted 6-4-1 to restore the two-thirds provision.

Summary

The Convention thus kept the core idea in the Virginia Plan of a veto but chose to vest this power singly in the president rather than attempting to ally him with the judicial department. Par- tisan and opposition of the Council of Revision indicated that they were all concerned about the doctrine of separation of powers. Although they clearly interpreted it differently, with those who were especially fearful of legislative powers being willing to ally the other two branches in opposition to them. Most, but by no means all, dele- gates who spoke on the subject appeared comfort- able that in their judicial capacity, judges would examine the constitutionality of the laws that came before them, but those who supported this power thought there was a distinction between examining laws for their constitutionality and exam- ining them for their wisdom. Delegates rejected an absolute executive veto, but they waffled on the majority that would be necessary to override a presidential veto. Agreeing for a time to a three- fourths majority, they ultimately settled on a two- thirds majority as being adequate to protect the presidency and the people against legislative encroachments without giving too much power to a single individual. Perhaps allied with a few mem- bers of the legislative branch.

Robert Spitzer, who has studied the veto, has observed that the delegates to the Constitutional Convention chose not to use the term "veto," which he describes as a "semantic ploy" that "reflected a keen awareness of the monarchical roots of this power and the resentment that its use by the king and his colonial governors had engen- dered in America" (Spitzer 1988, 18). He observes that the placement of this power within Article I recognized that it was a legislative power and that the Constitution imposed no limits on its use. He further believes that the Framers intended for the veto to be used as much to influence the adoption of legislation as in blocking laws (18–19).


The Constitutional Convention of 1787

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