Compilation of primary documents to assist in interpreting Disallowance Power in Section 90 of the *Constitution Act, 1867*

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90. The following Provisions of this Act respecting the Parliament of Canada, namely, —the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the

Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

Summary of Section 90

[NOT COMPLETE YET]

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PART 1:

Disallowance Power Prior to 1867

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[NOT COMPLETE YET]

PART 2:

Section 90 in Successive Drafts, from the Quebec Resolutions, 1864 to the *Constitution Act, 1867*

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The Quebec Resolutions (1864)[1]

October 12, 1864: Notes on the Division of Powers with Revisions

> Power of disallowance *[checkmark]*

[…]

> Veto to General Government *[checkmark]*

(Source: George Brown Papers, Drafts of the Quebec Resolutions, Notes on the Division of Powers with Revisions, October 12th, 1864 (MG 24, B 40, Vol. 21, p. 3768-3769). Click HERE.)

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October 25-26, 1864: Resolutions on Indians, Etc.

> 8. Any Bill passed by the General Legislature shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the ~~General~~ ~~Government~~ *[Governor General]* within one year after the passing thereof.

(Source: George Brown Papers, Drafts of the Quebec Resolutions, Notes on the Division of Powers with Revisions, October 12th, 1864 (MG 24, B 40, Vol. 21, p. 3750). Click HERE.)

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October 26, 1864: Working Draft No. 1

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[1] All transcriptions from the Quebec Resolutions are from *Charles Dumais, The Quebec Resolutions: Including Several Never-Published Preliminary Drafts by George Brown and John A. Macdonald, and a Collection of all Previously-Published Primary Documents Relating to the Conference, October 10, 1864-October 29th, 1864* (CCF, 2021).

> 8. Any Bill passed by the General Legislature shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 1, October 26th, 1864, MG 26 A, Vol. 46, pp. 18164-18168. Click HERE.)

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October 26-27, 1864: Working Draft No. 2

> ~~8. Any Bill passed by the General Legislature shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.~~

[...]

> *[renumbered to 46]* ~~8.~~ Any Bill passed by the General Legislature shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 2, October 26th-27th, 1864, MG 26 A, Vol. 46, pp. 18142-18155. This text is found on pp. 18148 & 18151. Click HERE.)

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October 27, 1864: Working Draft No. 3

> Any Bill passed by the General Legislature shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof. [*illegible*]

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 3, October 27th, 1864, MG 26 A, Vol. 46, pp. 18156-18158. This text is found on p. 18157. Click HERE.)

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October 27, 1864: Working Draft No. 4

> *[51.]* ~~That~~ any Bill passed by the General ~~Legislature~~ *[Parliament]* shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces

> hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 4, October 27th, 1864, MG 26 A, Vol. 46, pp. 18136-18138. This text is found on p. 18137. Click HERE.)

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March 14, 1865: Quebec Resolutions as adopted in the Legislature of the Province of Canada

> 51. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto; and, in like manner, any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald, The Quebec Resolutions, 1864 as Adopted in the Legislature of the Province of Canada, Vol. 46, pp. 18210-18216. This text is found on pp. 18213-18214. Click HERE.)

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The London Resolutions (1866)

December 4, 1866: Version No. 1, Copy 1

> 51. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 1, Copy 1, December 4th, 1866 (MG 26 A, Vol. 46, pp. 18184-18190). This text is found on p. 18184. Click HERE.)

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December 4-6, 1866: Version No. 1, Copy 2

> 51. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 1, Copy 2, December 4-6th, 1866 (MG 26 A, Vol. 46, pp. 18169-18174). This text is found on p. 18169. Click HERE.)

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December 13-14, 1866: Version No. 2, Copy 1

> 51. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislature if the said Provinces hitherto; and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 2, Copy 1, December 13-14th (MG 26 A, Vol. 46, pp.18176-18183). This text is found on p. 18176. Click HERE.)

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December 13-14, 1866: Version No. 2, Copy 2

> 51. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislature if the said Provinces hitherto; and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 2, Copy 2, December 13-14th, 1866 (MG 26 A, Vol. 46, pp. 18191-18196). This text is found on p. 18191. Click HERE.)

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December 14, 1866: Version No. 3, Copy 1

> 51. Any bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of bills passed by the Legislatures of the said Provinces hitherto; and in like manner any bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 3, Copy 1, December 14th, 1866 (MG 26 A, Vol. 46, pp. 18197-18209). This text is found on p. 18198. Click HERE.)

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December 28, 1866: Final Version

> 50. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

(Source: London Resolutions as found in Joseph Pope (ed), *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act* (Toronto: Carswell Co. Ltd., 1895) at 98-110. This text is found on p. 99. Click HERE.)

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Constitution Act, 1867

n.d. (probably early January, 1867): Rough Draft

> 34. The Governor General may disallow any Bill passed by the Local Legislature within one year after the passing thereof, and upon the proclamation thereof by the Governor it shall become null and void; and no Bill which shall be reserved by the Governor for the consideration of the Governor-General shall have any force or authority until the Governor-General shall signify his assent thereto and proclamation thereof made within the Province by the Governor of the province for which such Bill has been passed.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Rough Draft, n.d. (MG 26, A, Vol. 48, pp. 18768-18793). This text is found on p. 18768. Click HERE.)

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n.d. (1867): 4th Draft, Later Version, Revised Copy

> ~~122~~[119].—Where the Lieutenant-Governor assents to a Bill he shall by the first convenient opportunity send an authentic copy of the Act to the Governor-General, and if the Governor-General in Council within one year after the passing thereof, thinks fit to disallow the Act, such disallowance being signified by the Governor-General to the Lieutenant-Governor, or by proclamation, shall annul the Act from and after the day of such signification or proclamation.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Later Version, Revised Copy, n.d. (MG 26, A, Vol. 49/1, pp. 19399-19450). This text is found on p. 19404. Click HERE.)

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n.d. (1867): 4th Draft, Final Version

> 119.—Where the Lieutenant-Governor assents to a Bill he shall by the first convenient opportunity send an authentic copy of the Act to the Governor-General, and if the Governor-General in Council within one year after the passing thereof, thinks fit to disallow the Act, such disallowance being signified by the Governor-General to the Lieutenant-Governor, or by proclamation, shall annul the Act from and after the day of such signification or proclamation.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Final Version, n.d. (MG 26, A, Vol. 49/2, pp. 19614-19664). This text is found on p. 19619. Click HERE.)

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Local Constitutions Drafts Package (1866-1867)

n.d.: Early Package [n.d.]

> 41. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor-General within one year after the passing thereof.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Early Package, n.d. (MG 26, A, Vol. 49/2, pp. 19451-19461). This text is found on p. 19460. Click HERE.)

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n.d.: Revised Package

> 124.—Where the Lieutenant-Governor ~~General~~ assents to a Bill ~~in the Queen's name~~, he shall by the first convenient opportunity send an authentic copy of the Act to the Governor-General, and if the Governor-General in Council within one year after the passing thereof, thinks fit to disallow the Act, such disallowance being signified by the Governor-General to the Lieutenant-Governor, or by proclamation, shall annul the Act from and after the day of such signification or proclamation.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Revised Package, n.d. (MG 26, A, Vol. 49/2, pp. 19500-19518). This text is found on pp. 19515-19516. Click HERE.)

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PART 3:

Debates on Section 90 from the *Confederation Debates in the Province of Canada* (1865-1866)

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Province of Canada (1865) [2]

February 9, 1865: John Sanborn, Étienne Pascal Taché, James Currie, and John Ross speaking in the Legislative Council of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 123)

> **John Sanborn [Wellington, elected 1863]**—[...] The only safeguard they were to have was in regard of education, but in regard of the rights of property they were to be left to the Legislature. And this brought him to the consideration of that part of the proposed Constitution which had reference to civil rights and rights of property. It was said that the civil laws of Lower Canada were now consolidated into a code, and this would enhance our credit; and if based upon sound principles and rendered permanent, it would undoubtedly do so, for what is so conducive to the prosperity of a country as well-protected rights of property and vested interests? This feature was deeply engrained in the British mind, and in that of the United States also, insomuch that the American Constitution provides that no law could be passed which would affect the rights of property. This was exemplified in the celebrated Dartmouth College case, in which Webster so distinguished himself, when the endowment was maintained and perpetuated. But to what power were the rights of property committed in these resolutions?
>
> When the Minister of Finance [Alexander T. Galt] appealed to moneyed men abroad for a loan, could he say the Constitution had provided guarantees against injurious changes, when it was known that the laws relating to property were left to the caprice of the local governments? Where was the security of the great religious societies of Montreal, if a sentiment hostile to monopolies were carried to extremes in the Local Parliament?
>
> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]**—The General Legislature had power to disallow such acts.
>
> **James Currie [Niagara, elected 1862]**—This would be an interference with local rights.

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[2] Please note that there is a difference between the formatting of the original and that of the text in these reports. That is because the text portion comes from our publication, *The Confederation Debates in the Province of Canada* (CCF, 2022), which modernized the formatting of the text to current *Hansard* style. The content remains the same. However, if the user wishes to see the original, the hyperlink will bring them to the 1865 edition.

John Ross [Canada West, appointed 1848]—It would preserve local rights.

John Sanborn [Wellington, elected 1863]—It was a wise power and commended itself to all; it was, however, not an ordinary power to be commonly resorted to, but an extreme power, and one almost revolutionary. It was a power somewhat similar to that which existed in the second branch of the Legislature to stop the supplies, but in its very nature not one often to be exercised; and it could not be frequently exercised without destroying the very foundations of society, and occasioning evils of the greatest magnitude. On the whole he conceived that entrusting such power to the local governments was illogical and dangerous, and informing the world that the rights of property were not made sure. It was urged by some that, to make the measure now before the House answer the ends proposed, it must be immediately adopted, but he did not participate in this opinion.

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February 14, 1865: Narcisse Belleau, speaking in the Legislative Council of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 183)

Narcisse F. Belleau [Canada East, appointed 1852]—[...] But even granting that the Protestants were wronged by the Local Legislature of Lower Canada, could they not avail themselves of the protection of the Federal Legislature? And would not the Federal Government exercise strict surveillance over the action of the local legislatures in these matters? Why should it be sought to give existence to imaginary fears in Lower Canada? I say imaginary, because the liberality of the inhabitants of Lower Canada—a liberality of which they gave proof long, long ago, by enacting the emancipation of the Jews before any other nation in the world had dreamed of such a measure—is well known. No; far from wishing to oppress other nationalities, all that the French Canadians ask is to live at peace with all the world; they are quite willing that they should enjoy their rights, provided that all live peaceably together.

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February 15, 1865: Jacques-Olivier Bureau, speaking in the Legislative Council of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 192)

Jacques-Olivier Bureau [De Lormier, elected 1862[...] The local legislatures will have the power of making laws on the subjects of immigration and agriculture; but the Federal Legislature will have the same power, and it is evident that it will have the upper hand on these matters; that the laws of Lower Canada, for instance, may be overridden by means of the veto of the Federal Government.

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February 16, 1865: Philip Moore, Étienne Pascal Taché, speaking in the Legislative Council of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 228)

> **Philip Moore [Canada East, appointed 1841]**—Now, that being the case, I think our Local Government will be placed in a lower position than in the Government we have now. Every measure resolved upon in the Local Government will be subject to the veto of the Federal Government—that is, any measure or bill passing the Local Legislature may be disallowed within one year by the Federal Government.
>
> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]**—That is the case at present as between Canada and the Imperial Government.
>
> **Philip Moore [Canada East, appointed 1841]**—I beg to differ slightly with the honorable gentleman. Any measure passed by this province may be disallowed within two years thereafter by the Imperial Government. But the local governments, under Confederation, are to be subjected to having their measures vetoed within one year by the Federal Government, and then the Imperial Government has the privilege of vetoing anything the Federal Government may do, within two years. The veto power thus placed in the hands of the Federal Government, if exercised frequently, would be almost certain to cause difficulty between the local and general governments. I observe that my honorable friend, Sir Etienne P. Taché, does not approbate that remark.
>
> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]**—You understand me correctly.
>
> *(p. 229 in the primary document)*
>
> **Philip Moore [Canada East, appointed 1841]**—It will be conceded that the question of the veto power was very ably discussed, at one time, in the United States Congress, and that discussion led to a qualification of the veto power in the Constitution of the United States, so that now any bill passed by both Houses may be vetoed by the President within ten days thereafter, by assigning reasons for doing so. Both Houses may then, however, again take up the measure, and if they pass it by a two-third vote, it becomes the law of the land, independent of the President's will. Now, I would have the veto power applied in a similar way in our new Constitution. Exercising it in an arbitrary manner, as the Federal power is privileged to do, it must, from the very nature of things, create dissatisfaction and difficulty between the two governments.

Étienne Pascal Taché, p. 236

> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]**—[...] And when I am conscious of having done these things, I feel it comes hard on me to hear honorable gentlemen say that there is no security for them in the future, but that the French—the Papists—may do anything they choose in the lower branch of the Legislature. But, honorable gentlemen, if the lower branch of the Legislature were insensate enough and wicked enough to commit some flagrant act of injustice against the English Protestant portion of the community, they would be checked by the General Government. But the honorable gentleman argues that that would raise an issue between the local and the general governments. We must not,

however, forget that the General Government is composed of representatives from all portions of the country—that they would not be likely to

(p. 237 in the primary document)

commit an unjust act—and that if they did so they would be met by such a storm of opposition as would sweep them out of their places in a very short time But, honorable gentlemen, to come back to the electoral divisions.—I wish to look at them a little more closely, to show the results already produced. I will be obliged to make a comparison, but believe me, I do not wish to make invidious comparisons.

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February 16, 1865: Antoine-Aimé Dorion, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 258)

Antoine-Aimé Dorion [Hochelaga]—Now, sir, when I look into the provisions of this scheme, I find another most objectionable one. It is that which gives the General Government control over all the acts of the local legislatures. What difficulties may not arise under this system? Now, knowing that the General Government will be party in its character, may it not for party purposes reject laws passed by the local legislatures and demanded by a majority of the people of that locality. This power conferred upon the General Government has been compared to the veto power that exists in England in respect to our legislation; but we know that the statesmen of England are not actuated by the local feelings and prejudices, and do not partake of the local jealousies, that prevail in the colonies.

The local governments have therefore confidence in them, and respect for their decisions; and generally, when a law adopted by a colonial legislature is sent to them, if it does not clash with the policy of the Empire at large, it is not disallowed, and more especially of late has it been the policy of the Imperial Government to do whatever the colonies desire in this respect, when their wishes are constitutionally expressed. The axiom on which they seem to act is that the less they hear of the colonies the better.

Some Hon. Members—Hear, hear.

Antoine-Aimé Dorion [Hochelaga]—But how different will be the result in this case, when the General Government exercises the veto power over the acts of local legislatures. Do you not see that it is quite possible for a majority in a local government to be opposed to the General Government; and in such a case the minority would call upon the General Government to disallow the laws enacted by the majority? The men who shall compose the General Government will be dependent for their support upon their political friends in the local legislatures, and it may so happen that, in order to secure this support, or in order to serve their own purposes or that of their supporters, they will veto laws which the majority of a local legislature find necessary and good.

Some Hon. Members—Hear, hear.

Antoine-Aimé Dorion [Hochelaga]—We know how high party feeling runs sometimes upon local matters even of trivial importance, and we may find parties so hotly opposed to each other in the

> local legislatures, that the whole power of the minority may be brought to bear upon their friends who have a majority in the General Legislature, for the purpose of preventing the passage of some law objectionable to them but desired by the majority of their own section. What will be the result of such a state of things but bitterness of feeling, strong political acrimony and dangerous agitation?
>
> **Some Hon. Members**—Hear, hear.

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February 20, 1865: Henri Joly, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 261)

> **Henri Joly [Lotbinière]**—[...] It must not be forgotten, however, that the Lieutenant-Governor, who will enjoy the right of reserving the bills of the Local Parliament for the sanction of the Governor General, will be appointed by the Governor General in Council, that is to say, by the Federal Government, and, as a matter of course, it must be expected that he will act in conformity with the views of the Federal Government. Any bill reserved by him will require to be sanctioned by the Federal Government, which may refuse such sanction if they think proper, as they undoubtedly will as regards any bill the object of which might be to give responsible government to Lower Canada, whilst all the other provinces would only have governments which were not responsible.

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February 21, 1865: Hector-Louis Langevin, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 376)

> **Hector-Louis Langevin [Dorchester, Solicitor General East]**—They did not hesitate, when the country claimed their services, to risk their health and to give up the comforts and delights of home, and I am well assured that the people will not grudge them the miserable half crown which they receive in exchange, and will approve of what the Government has done under the circumstances. The honorable member for Hochelaga reproaches the Government with another misdeed. The truth is that he finds something wrong, some short-coming, in every action of the present Administration. Accordingly, alluding to the right of veto permitted to the General Government, the honorable member expresses himself in this manner:
>
> "Thus, if a measure were passed by a majority of a local legislature, and if, nevertheless, the majority of the section of the General Government representing that particular province were opposed to it, would not that section use all their influence in the General Government to throw out that measure?" Before answering the honorable member, Mr. Speaker, I think it will be well to refer to the two clauses which relate to that matter. In these clauses we find:—
>
> 1. Any bill of the General Parliament may be reserved in the usual manner for Her Majesty's assent, and any bill of the local legislatures may, in like manner, be reserved for the consideration of the Governor General.

2. Any bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of bills passed by the legislatures of the said provinces hitherto; and, in like manner, any bill passed by a local legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

Well, I ask the House, what is wrong in those two clauses? At present, what is our position when a bill has passed the two Houses of our Legislature? It is this: the bill is submitted for the sanction of the Governor General, and in nearly all cases is sanctioned without being referred to the Imperial Government. But if, for instance, the bill relates to a divorce, or to any question which concerns the Imperial Government, or if again it is a measure affecting our relations with our neighbors or any other nation, it is then reserved for Her Majesty's sanction. When a measure is thus reserved, does the honorable member for Hochelaga [Antoine-Aimé Dorion] suppose that the members of the English Government meet to take it into consideration?

Not at all; there is in the Colonial Office a second or a third class clerk whose particular business it is, and who makes his report to the minister. This report decides either the sanction or the disallowance of the measure in question. If the measure is highly interesting to the country and is disallowed, we cannot blame any one and must submit, as the English ministry are not responsible to us. Under the Confederation this danger and inconvenience will no longer exist.

In a case wherein the Local Government of Lower Canada should pass a law which the Lieutenant-Governor might think fit to reserve for the sanction of the Central Government, if the latter refused their sanction, although it was demanded by the people of the section, and there were no reason for this refusal, we should have our sixty-five members in the Central Parliament to protest against it, and who would unite and make combinations to turn out the ministry who should act in that manner.

And you are not to say that those sixty-five members would be powerless against the rest of the House. United in a compact phalanx, they would, without doubt, find support among the members of the other provinces, who would have every reason not to allow our rights and privileges to be infringed, lest they should one day experience the same treatment themselves in

. *(p. 377 in the primary document)*

regard to their own.

On the other hand, Mr. Speaker, the disallowance of a measure sanctioned by the local governments is limited as to time, and must be declared within twelve months, whereas, under the present system, it can be done within two years. This is a restriction which has been granted in favor of Lower Canada and of all the other provinces of the Confederation; it is a restriction favorable to the people, but the honorable member will refuse, no doubt, to acknowledge that this concession to the people is our work. Moreover, why should we be afraid of this veto? In our Local Legislature we assuredly have no intention to be unjust towards a portion of the population, but propose to act towards them, as in times past, as towards equals; we intend, in short, to be as just to that part of the population as we were when they were a feeble clement in it. This has not prevented the honorable member for Hochelaga [Antoine-Aimé Dorion] from telling the English members from Lower Canada that they must be on their guard and take care of themselves.

Well, Mr. Speaker, I shall not offer such an insult to the race to which I belong. The French-Canadians have always acted honorably towards the other races who live among them, and they will certainly not take advantage now, any more than they have done in times past, of the majority

they may have in the Local Legislature to molest or persecute the minority. This is the reason why we have no fear nor misgiving relative to the right of veto. Moreover, we are not to suppose that the intention of the two clauses which I have already quoted, is that every bill passed in the local legislatures will be reserved for the sanction of the Central Government. That reservation will take place only in respect of such measures as are now reserved for Her Majesty's sanction.

So that the honorable member for Hochelaga [Antoine-Aimé Dorion] is widely mistaken when he reproaches the present Government for having agreed to those two clauses.

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February 22, 1865: John Rose, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 404)

John Rose [Montreal Centre]—I stated that I would not criticise many of the features of this scheme; but there are two main features which to my judgment commend themselves to the attention of every one who has any doubts as to the stability of the system, and which give us a sufficient guarantee, that guarantee which federal unions have heretofore wanted, namely: that it establishes a central authority which it will not be within the power of any of the local governments to interfere with or rise up against. It appears to me that they have avoided the errors into which the framers of the American Constitution not unnaturally fell. They have evidently learnt something from the teachings of the past, and profited by the experience afforded in the case of our American neighbors. They have established this Central Government, giving it such powers, and so defining the powers of the local governments, that it will be impossible for any Local Parliament to interfere with the central power in such a manner as to be detrimental to the interests of the whole.

The great advantage which I see in the scheme is this, that the powers granted to the local governments are strictly defined and circumscribed, and that the residuum of power lies in the Central Government. You have, in addition to that, the local governors named by the central authority—an admirable provision which establishes the connection of authority between the central power and the different localities; you have vested in it also the great questions of the customs, the currency, banking, trade and navigation, commerce, the appointment of the judges and the administration of the laws, and all those great and large questions which interest the entire community, and with which the General Government ought to be entrusted.

There can, therefore, be no difficulty under the scheme between the various sections—no clashing of authority between the local and central governments in this case, as there has been in the case of the Americans. The powers of the local governments are distinctly and strictly defined, and you can have no assertion of sovereignty on the part of the local governments, as in the United States, and of powers inconsistent with the rights and security of the whole community.

Some Hon. Members—Hear, hear.

John Rose [Montreal Centre]—Then, the other point which commends itself so strongly to my mind is this, that there is a veto power on the part of the General Government over all the

legislation of the Local Parliament. That was a fundamental element which the wisest statesmen engaged in the framing of the American Constitution saw, that if it was not engrafted in it, must necessarily lead to the destruction of the Constitution. These men engaged in the framing of that Constitution at Philadelphia saw clearly, that unless the power of veto over the acts of the state legislatures was given to the Central Government, sooner or later a clashing of authority between the central authority and the various stated must take place. What said Mr. Madison in reference to this point? I quote from *The Secret Debates upon the Federal Constitution*, which took place in 1787, and during which this important question was considered.

On the motion of Mr. Pinkney "that the National Legislature shall have the power of negating all laws to be passed by the state legislature, which they may judge improper," he stated that he considered "this as the corner stone of the system, and hence the necessity of retrenching the state authorities in order to preserve the good government of the National Council." And Mr. Madison said, "The power of negating is absolutely necessary—this is the only attractive principle which will retain its centrifugal force, and without this the planets will fly from their orbits."

Now, sir, I believe this power of negative, this power of veto, this controlling power on the part of the Central Government is the best protection and safeguard of the system; and if it had not been provided, I would have felt it very difficult to reconcile it to my sense of duty to vote for the resolutions. But this power having been given to the Central Government, it is to my mind, in conjunction with the power of naming the local governors, the appointment and payment of the judiciary, one of the best features

· *(p. 405 in the primary document)*

of the scheme, without which it would certainly, in my opinion, have been open to very serious objection.

Some Hon. Members—Hear, hear.

John Rose, Luther Holton, George-Étienne Cartier, p. 407

John Rose [Montreal Centre]—You cannot, I say, force a new Constitution upon an unwilling people, but in this instance I believe a very great majority approve of, and are earnestly desirous of the change. I know you must

· *(p. 407 in the primary document)*

satisfy them that their interests for all time to come are safe—that the interests of the minority are hedged round with such safeguards, that those who come after us will feel that they are protected in all they hold dear; and I think a few observations will enable me to show the House that that has been well and substantially done in this case.

Some Hon. Members—Hear, hear.

John Rose [Montreal Centre]—Looking at the scheme, then, from the standpoint of an English Protestant in Lower Canada, let me see whether the interests of those of my own race and religion in that section are safely and properly guarded. There are certain points upon which they feel the greatest interest, and with regard to which it is but proper that they should be assured that there are sufficient safeguards provided for their preservation. Upon these points, I desire to put some questions to the Government.

The first of these points is as to whether such provision has been made and will be carried out that they will not suffer at any future time from a system of exclusion from the federal or local legislatures, but that they will have a fair share in the representation in both; and the second is, whether such safeguards will be provided for the educational system of the minority in Lower Canada as will be satisfactory to them?

Upon these points some apprehensions appear to exist in the minds of the English minority in Lower Canada, and although I am free to confess that I have not shared in any fear of injustice at the hands of the majority, as I consider that the action of the past forms a good guarantee for the future, yet I desire, for the full assurance of that minority, to put some questions to my hon. friends in the Government.

I wish to know what share of representation the English-speaking population of Lower Canada will have in the Federal Legislature, and whether it will be in the same proportion as their representation in this Parliament? This is one point in which I think the English inhabitants of Lower Canada are strongly interested. Another is with regard to their representation in the Local Legislature of Lower Canada—whether the same proportion will be given to them as is now given to them in this House, that is to say, about one-fourth of the Lower Canadian representation, which is the proportion of the English speaking to the French speaking population of Lower Canada, the numbers being 260,000 and 1,100,000 respectively.

Now, the spirit of the resolutions as I understand them—and I will thank my hon. friend the Attorney General [George-Étienne Cartier] to correct me if I am in error in regard to them—provides that the electoral districts in Lower Canada for representatives in the first Federal Legislature shall remain intact as they now are; and, although the resolution is somewhat ambiguously expressed, I take that to be its spirit.

Luther Holton [Chateauguay]—Have the kindness to read it and see.

John Rose [Montreal Centre]—The 23rd resolution reads: "The Legislature of each province shall divide such province into the proper number of constituencies, and define the boundaries of each of them."

Then the 24th resolution provides that "the Local Legislature may from time to time alter the electoral districts for the purpose of representation in such Local Legislature, and distribute the representatives to which the province is entitled in such Local Legislature, in any manner such legislature may see fit." In these resolutions I presume that power is given to the Legislature of each province to divide the province into the proper number of constituencies for representation in the Federal Parliament, and to alter the electoral districts for representation in the Local Legislature.

Now, to speak quite plainly, the apprehension which I desire to say again I do not personally share in, but which has been expressed to me by gentlemen in my own constituency, is this, that with respect to the Local Legislature, it will be competent for the French majority in Lower Canada to blot out the English-speaking minority from any share in the representation, and so to apportion the electoral districts that no English speaking member can be returned to the Legislature. That is an apprehension upon which I would be very glad to have an expression of opinion by my hon.

friend the Attorney General East [George-Étienne Cartier]. As I read the resolutions, if the Local Legislature exercised its powers in any such unjust manner, it would be competent for the General Government to veto its action, and thus prevent the intention of the Local Legislature being carried into effect—even although the power be one which is declared to be absolutely vested in the Local Government, and delegated to it as one of the articles of its constitution.

George-Étienne Cartier [Montreal East, Attorney-General East]—There is not the least doubt that the Local Legislature of Lower Canada should apportion the electoral districts in such a way as to do injustice to the English-speaking population, the General Government will have the right to veto

· *(p. 408 in the primary document)*

any law it might pass to this effect and set it at nought.

Luther Holton [Chateauguay]—Would you advise it?

George-Étienne Cartier [Montreal East, Attorney-General East]—Yes, I would recommend it myself in case of injustice.

Some Hon. Members—Hear, hear.

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February 23, 1865: Alexander Mackenzie, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 433)

Alexander Mackenzie [Lambton]—Lower Canada, I believe, was the first portion of British territory to give political freedom to the Jew. I believe that a person of this persuasion sat in the Lower Canada Legislature thirty years before the same privileges were accorded in Great Britain. People who charged the French Canadians with intolerance should remember this with some degree of favor. With regard to the people of British origin, over the whole Confederacy, I do not think it is at all necessary to defend them from any charges of this kind. I do not think they will be inclined to persecute the people of Lower Canada if they had it in their power; but I admit

· *(p. 433 in the primary document)*

that it is reasonable and just to insert a provision in the scheme that will put it out of the power of any party to act unjustly. If the power that the central authority is to have—of vetoing the doings of the Local Legislature—is used, it will be ample, I think, to prevent anything of that kind. But the veto itself is objected to. It is objected that the elected Legislature will be rendered powerless by the influence of the appointed Upper House exercised over them. Well, sir, under the British Constitution, in all British colonies, and in Great Britain itself, there is a certain elasticity to be presumed. Everything is not provided for, because a great deal is trusted to the common sense of the people.

I think it is quite fair and safe to assert that there is not the slightest danger that the Federal Parliament will perpetrate any injustice upon the local legislatures, because it would cause such a reaction as to compass the destruction of the power thus unjustly exercised. The veto power is necessary in order that the General Government may have a control over the proceedings of the local legislatures to a

certain extent. The want of this power was the great source of weakness in the United States, and it is a want that will be remedied by an amendment in their Constitution very soon. So long as each state considered itself sovereign, whose acts and laws could not be called in question, it was quite clear that the central authority was destitute of power to compel obedience to general laws.

If each province were able to enact such laws as it pleased, everybody would be at the mercy of the local legislatures, and the General Legislature would become of little importance. It is contended that the power of the General Legislature should be held in check by a veto power with reference to its own territory, resident in the local legislatures, respecting the application of general laws to their jurisdiction. All power, they say, comes from the people and ascends through them to their representatives, and through the representatives to the Crown. But it would never do to set the Local above the General, Government. The Central Parliament and Government must, of necessity, exercise the supreme power, and the local governments will have the exercise of power corresponding to the duties they have to perform.

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February 24, 1865: Leonidas Burwell, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 447)

Leonidas Burwell [Elgin East]—It is hardly necessary for me to make allusion to the local governments; there are so many propositions connected with them, and so little is known of what their constitution will be, that it is hardly possible indeed for me to refer to them. I would like to be informed as to their character and authority before speaking of them. My opinion is, that they should have certain powers defined in written constitutions, so that beyond these powers they would have no right to legislate, and if they did, that their legislation should be set aside and rendered null and void by the superior courts. I believe that the British Constitution is of that elastic character that the institutions, which exist under it, can be made most popular and still work well. I think history has proved this to be the case. Under it we have kept sacred the great principle of responsible government, which we now enjoy, and under which ministers of the Crown hold seats in and are responsible to the Legislature. Well, we want no change in that principle; for I think it is the greatest safeguard to liberty, not only in England, but the world.

Some Hon. Members—Hear, hear.

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February 27, 1865: Christopher Dunkin, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 490)

Christopher Dunkin [Brome]—[...] The appointment of lieutenant-governors is again a bait, and perhaps not a small one for more than a few of our public men. The power of disallowance of local bills, and also that of reserving them for the sanction of the General Government, are on the one hand represented as realities—powers that will really be exercised by the General Government to restrain

improper local legislation—to make everything safe for those who want a Legislative rather than a Federal union; but on the other hand, to those who do not want a legislative union, it is represented that they mean nothing at all, and will never be exercised.

Some Hon. Members—Hear, hear.

Christopher Dunkin [Brome]—Uniformity of laws again is to be given to all the provinces, if they desire it, except Lower Canada; but by a peculiar provision of the Constitution, although nothing can be done by the General Parliament to render the laws uniform, without the consent of the provinces concerned, it is stipulated that it shall be impossible for Lower Canada, even though she should desire it, to have her laws uniform with those of the other provinces. So, too, with regard to education in Upper and Lower Canada; the provision is to be made, no one knows how, for everybody, and all are guaranteed some sort of satisfaction.

Christopher Dunkin, p. 500

Christopher Dunkin [Brome]—[...] Well, here in this proposed Constitution—looking to the relations which are to subsist between the Federation and the provinces—in lieu of a real Federation, such as subsists between the United States and the different states, we find an attempt to adopt to a considerable extent the British system of a stated supremacy, not meant to be in fact the half of what it passes for in theory. But, however such a system may work as between Great

. *(p. 501 in the primary document)*

Britain and her colonies, it by no means follows that it admits of extension to this case. If the vaguely stated powers of our so-called Federation are to be merely nominal, they will be insufficient; if not nominal, they will be excessive. Either way, the United States idea of an attempted precise statement of the powers meant to be given and used, is the true one. What, then, is the system adopted in the United States, as regards these relations between the Federal power and the several states? There are two leading principles, and very sound principles, that pervade it.

Christopher Dunkin & George-Étienne Cartier, p. 502

Christopher Dunkin [Brome]—It seems to be meant that these constitutions shall be as varied as the people of the different provinces may see fit to make them;

. *(p. 502 in the primary document)*

nay, there are even left to the people of the different provinces the same large powers for amending them afterwards. To be sure there is the grand power of disallowance by the Federal Government, which we are told, in one and the same breath, is to be possessed by it, but never exercised.

George-Étienne Cartier [Montreal East, Attorney-General East]—The presumption is, it will be exercised in case of unjust or unwise legislation.

Christopher Dunkin [Brome]—The hon. gentleman's presumption reminds me of one, perhaps as conclusive, but which Dickens tells us failed to satisfy his Mr. Bumble. That henpecked beadle is said to have said, on hearing of the legal presumption that a man's wife acts under his control:—"If the law presumes anything of the sort, the law's a fool—a natural fool!"

Some Hon. Members—*Laughter*.

Christopher Dunkin [Brome]—If this permission of disallowance rests on a presumption that the legislation of our provinces is going to be unjust or unwise, it may be neared; but under that idea, one might have done better either not to allow, or else to restrict within narrower limits, such legislation. If the promised non-exercise of the power to disallow rests on a presumption that all will be done justly and wisely in the provincial legislatures, the legislative power is well given; but the there is no need, on the other hand, for the permission to disallow.

Some Hon. Members—Hear, hear.

Christopher Dunkin [Brome]—I repeat, this system, or no-system, aims at nothing like uniformity between the general and local constitutions, or between the local constitutions themselves; and in this respect, it is essentially at variance witch the much wiser system adopted in the United States. It further allows of no real autonomy; in fact, the only trace of uniformity it can be said to have about it, consists in its disallowance of all autonomy to the provinces.

Some Hon. Members—Hear, hear.

Christopher Dunkin, p. 505

Christopher Dunkin [Brome]—Are we going to try to work, in all these provinces, a worse system than that which, when, worked from the Colonial Office at home, resulted in what Lord Durham well called "constituted anarchy?" If we are, how long may we count on putting off the conflict of authority that shall end in a complete crash of the entire fabric?

Some Hon. Members—Hear, hear.

Christopher Dunkin [Brome]—But, Mr. Speaker, I have not come to the crowning difficulties of this case, even yet. Not at all. Between the states of the United States, as I have already stated, while there is an essential identity of constitution, there is at the same time a carefully distinct aspiration of powers and functions. I do not say that the dividing line is drawn exactly where it should be, but that there is a distinct dividing line, no one can gainsay.

But how do we stand here, Mr. Speaker, as to the attributes of our own provincial legislatures and government, on the one hand, and those of the Federal power on the other? Do we follow American example, and give so much to the union and the rest to the provinces; or so much to them, and the rest to it? Either rule would be plain; but this plan follows neither. It simply gives us a sort of special list for each; making much common to both, and as to much more, not showing what belongs to either. I cannot go now—it is impossible for me at this hour of the night to go—into detail on this head. I can give no more than some few specimens; and I take first the three subjects of the fisheries, agriculture, and immigration.

These three subjects are equally assigned to the General Legislature on the one hand, and the Provincial Legislature on the other. It is provided by the 45th resolution, that in all such cases, wherever any statutes of the general and local parliaments clash, those of the General Parliament shall override those of the local. So that in these matters of the fisheries, agriculture and immigration, either the local legislatures must not legislate at all, or if they do

> · *(p. 506 in the primary document)*
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> the General Legislature may at any time undo anything they may have done. One can easily foresee any amount of clashing of authority in such cases. Fishery regulations of all sorts—bounties perhaps; the thousand questions affecting agriculture.
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> Or to take just one that suggests itself as to immigration; one province wishes, perhaps, to encourage immigration of a certain kind, say, for instance, from the continent of Europe. It is a legitimate wish; but the Federal Legislature may, perhaps, in the varying shifts of public opinion, adopt a different policy, and reverse all that the province may have done. To what end give powers to the local parliaments which may thus be taken away at any moment by the Federal Legislature?
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> **Some Hon. Members**—Hear, hear.

Christopher Dunkin, p. 508

> **Christopher Dunkin [Brome]**—[...] I pity the poor man who is at once a criminal judge and a civil judge. Between the clashing of his masters and the clashing
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> · *(p. 509 in the primary document)*
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> of his book authorities, he had better mind what he is about, with the painful doubt rising at every turn whether provincial legislation may not be overridden by federal legislation.
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> His province may well have legislated on what it holds a local matter, while the Federal Parliament may have legislated on it, thinking it a federal matter. Anywhere there may well be some bit of federal legislation contradicting something in a local statute. And do our resolutions say that the federal statute shall always override the local statute? No, only in cases where there is concurrent jurisdiction. And yet our judge who is to decide these nice questions is paid by one power and removable by that power, and may have his functions taken away and be persecuted to the death by the other. He will have a bad time of it.

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February 28, 1865: Christopher Dunkin, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 513)

> **Christopher Dunkin [Brome]**—[...] Turning to the assignment of powers to the Federal Government on the one hand, and the local or provincial governments on the other, we meet again with the unhappy contrast between
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> · *(p. 514 in the primary document)*
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> the wisdom displayed on that point in the Constitution of the United States, and the lack of wisdom in the arrangement proposed for adoption here. There is, in the United States' system, a clear and distinct line drawn between the functions of the general and state governments. Some may not like the idea of state sovereignty, and many may wish that more power had been given to the General Government. But this much is plain, that it is not proposed to allow anything approaching to state sovereignty here. We have not even an intelligible statement as to what powers are to be exercised by the general, and what by the local legislatures and governments.

Several subjects are specifically given to both; many others are confusedly left in doubt between them; and there is the strange and anomalous provision that not only can the General Government disallow the acts of the provincial legislatures, and control and hamper and fetter provincial action in more ways than one, but that wherever any federal legislation contravenes or in any way clashes with provincial legislation, as to any matter at all common between them, such federal legislation shall override it, and take its place. It is not too much to say that a continuance of such a system for any length of time without serious clashing is absolutely impossible. This is in effect so declared in the despatch of Her Majesty's Colonial Secretary [Edward Cardwell], and it is clearly pointed out in the London *Times* and in the *Edinburgh Review*. It seems as if our statesmen had sought to multiply points of collision at every turn.

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March 2, 1865: Joseph Cauchon, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 575)

Joseph Cauchon [Montmorency]—To convince the House of this, I need but read the following:—

31. The General Parliament may also, from time to time, establish additional courts, and the General Government may appoint judges and officers thereof, when the same shall appear

· *(p. 575 in the primary document)*

necessary or for the public advantage, in order to the due execution of the laws of Parliament.

32. All courts, judges and officers of the several provinces shall aid, assist and obey the General Government in the exercise of its rights and powers, and for such purposes shall be held to be courts, judges and officers of the General Government.

33. The General Government shall appoint and pay the judges of the Superior Courts in each province, and of the County Courts in Upper Canada, and Parliament shall fix their salaries.

35. The judges of the courts of Lower Canada shall be selected from the Bar of Lower Canada.

37. The judges of the Superior Courts shall hold their offices during good behaviour, and shall be removable only on the address of both Houses of Parliament.

45. In regard to all subjects over which jurisdiction belongs to both the General and Local Legislatures, the laws of the General Parliament shall control and supersede those made by the local legislature, and the latter shall be void so far as they are repugnant to, or inconsistent with the former.

38. For each of the provinces there shall be an executive officer, styled the lieutenant-governor, who shall be appointed by the Governor General in Council, under the great seal of the Federated Provinces, during pleasure: such pleasure not to be exercised before the expiration of the first five years, except for cause: such cause to be communicated in writing to the Lieutenant-Governor immediately after the exercise of the pleasure as aforesaid, and also by message to both Houses of Parliament, within the first week of the first session afterwards.

39. The lieutenant-governor of each province shall be paid by the General Government.

50. Any bill of the General Parliament may be reserved in the usual manner for Her Majesty's assent, and any bill of the local legislatures may, in like manner, be reserved for the consideration of the Governor General.

51. Any bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of bills passed by the legislatures of the said provinces hitherto, and, in like manner, any bill passed by a local legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

The evident object of this organization is to reassure the Protestant minority of Lower Canada against any apprehension for the future; it is also perhaps in the interest of national unity, to prevent local parliaments and governments from infringing the attributes of the Central Parliament. The nomination of judges, the veto, the reservation and even certain directions to be found in the project itself, tend to the same end, and must necessarily attain it. I see nothing wrong in that, provided that this formidable engine in going out of its course does not crush the rights which we are bound to respect and maintain forever in their integrity.

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March 6, 1865: Antoine-Aimé Dorion & George-Étienne Cartier, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 689)

Antoine-Aimé Dorion [Hochelaga]—I will tell you in a

(p. 690 in the primary document)

moment. I say that the Federal Parliament will exercise sovereign power, inasmuch as it can always trespass upon the rights of the local governments without there being any authority to prevent it. What authority have you constituted which can come forward and say to the Federal Parliament:—"You shall not do such and such a thing, you shall not legislate upon such and such a subject, because these matters are reserved to the local governments."

There will be no such authority, and consequently it will have sovereign power, and can do all that it pleases, and may encroach upon all the rights and attributes of the local governments whenever it may think proper. We shall be—(I speak as a Lower Canadian)—we shall be at its mercy, because it may exercise its right of veto on all the legislation of the local parliaments, and there again we shall have no remedy. In ease of difference between the Federal power and the local governments, what authority will intervene for its settlement?

George-Étienne Cartier [Montreal East, Attorney-General East]—It will be the Imperial Government.

Antoine-Aimé Dorion [Hochelaga]—In effect there will be no other authority than that of the Imperial Government, and we know too well the value assigned to the complaints of Lower Canadians by the Imperial Government.

George-Étienne Cartier [Montreal East, Attorney-General East]—The delegates understood the matter better than that. Neither the Imperial Government nor the General Government will interfere, but the courts of justice will decide all questions in relation to which there may be differences between the two powers.

A Voice—The Commissioners' courts.

Some Hon. Members—Hear, hear.

Antoine-Aimé Dorion [Hochelaga]—Undoubtedly. One magistrate will decide that a law passed by the Federal Legislature is not law, whilst another will decide that it is law, and thus the difference, instead of being between the legislatures, will be between the several courts of justice.

George-Étienne Cartier [Montreal East, Attorney-General East]—Should the General Legislature pass a law beyond the limits of its functions, it will be null and void *pleno jure*.

Antoine-Aimé Dorion [Hochelaga]—Yes, I understand that, and it is doubtless to decide questions of this kind that it is proposed to establish Federal courts.

George-Étienne Cartier [Montreal East, Attorney-General East]—No, no! They will be established solely to apply and adjudicate upon the Federal laws.

Antoine-Aimé Dorion [Hochelaga]—In Great Britain, Parliament is all-powerful, everyone admits it—and I would like to know whether it is proposed to give to the Federal Parliament the omnipotence enjoyed by the Imperial Parliament. Without that, the system proposed to be established is no longer a political monarchical system, but rather a vast municipality. If all the courts of justice are to have the right of deciding as to the legality of the laws, the Federal Parliament will not be able to make them without a justice of the peace or commissioner of small causes setting them aside, under the pretext that they are not within the jurisdiction of the central power, as is now done in the case of a process overhaul of road work. That is not the monarchical system; it is the republican system. In England, as it is here at the present moment, the Legislature is all-powerful, and I believe that that was the principle which it was sought to adopt. If the differences between the Federal and the Local Parliaments are not to be submitted to the decision of a Supreme Federal Court, I do not see who can possibly decide them.

Some Hon. Members—Hear, hear.

Antoine-Aimé Dorion [Hochelaga]—We are told that the Federal Court of Appeals will not be charged with the decision of matters in dispute between the legislatures, but they will only have to give final judgments in cases decided by the local inferior courts. Well, for my part I cannot approve of the creation of this court. The great inconveniences of it to us Lower Canadians may easily be seen.

Thus, when a cause shall have been argued and decided in all our courts, we shall still have to go before a Federal Court of Appeal composed of judges of all the provinces, and in which we shall probably have only one judge, who may be selected out of the English population. And this is the protection afforded to us.

I repeat that I see no protection whatever for our interests, as Lower Canadians, in the constitution of the political and judicial powers, for the Federal Parliament can encroach upon our rights without any authority having the power to interfere, and then we shall have a Federal Court of Appeal in which we shall only be represented by one judge against six or seven of other origins.

Some Hon. Members—Hear, hear.

Antoine-Aimé Dorion, p. 694

> **Antoine-Aimé Dorion [Hochelaga]**—I am opposed to this Confederation in which the militia, the appointment of the judges, the administration of justice and our most important civil rights, will be under the control of a General Government the majority of which will be hostile to Lower Canada, of a General Government invested with the most ample powers, whilst the powers of the local governments will be restricted, first, by the limitation of the powers delegated to it, by the veto reserved to the central authority, and further, by the concurrent jurisdiction of the general authority or government. Petitions, with more than 20,000 signatures attached to them, have already been presented to this House against the scheme of Confederation.

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March 9, 1865: Jean-Baptiste-Éric Dorion, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 860)

> **Jean-Baptiste-Éric Dorion [Drummond & Arthabaska]**—[...] I am opposed to the scheme of Confederation, because by means of the right of veto vested in the Governor by the 51st resolution, local legislation will be nothing but a farce.
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> They may try to make us believe that this power would be but rarely exercised, and that it differs in nowise from that exercised by the present Governor when he reserves bills for the Royal assent; but all the country knows that it would not be so. From the moment that you bring the exercise of the right of veto more nearly within the reach of interested parties, you increase the number of opportunities for the exercise of the right—you open the door to intrigues.
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> As, for instance, a party will oppose the passing of a law, and not succeeding in his opposition in Parliament, he will approach the Ministers and the Governor General, intriguing to obtain as a favor that the law may be disallowed. Take an example. I suppose your Confederation to be established; that a bill is passed for the protection of settlers, such as we have seen pass the House six times in ten years without becoming law, on account of the opposition to it in the Legislative Council by the councillors from Upper Canada; what would happen?
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> The few interested parties who were opposed to the measure would rush to the Governor General to induce him to disallow the law. By an appeal to the right of property, to the respect due to acquired rights, and to other sophistries, they would override the will of the people on a measure which is just in itself, and which is sought for and approved of by all legal men of Lower Canada in the present House. The people of Lower Canada will be prevented from obtaining a law similar to those now existing in thirteen different states of the American union, and which would in no way affect the principles of the existing law in Lower Canada.
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> **Some Hon. Members**—Hear, hear.
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> **Jean-Baptiste-Éric Dorion [Drummond & Arthabaska]**—This is one instance out of a thousand, and will serve to illustrate the effect of this right of veto.

Paul Denis, p. 876

> **Paul Denis [Beauharnois]**—[...] They tell the Protestants that under Confederation they will lose all their rights in Lower Canada in respect of the education of their children; and, on the other hand, they tell the Catholics that their religion is in danger, because the Federal Government will have the right of veto in respect of all the measures of the Local Government. But this right of veto must of necessity exist somewhere, in order that the minority may be protected from any injustice which the majority might attempt to do them.
>
> We cannot hope to have the majority in the Federal Parliament, when we French Lower Canadians and Catholics have never had it under the existing union. And yet we cannot but congratulate ourselves upon the relations which have always existed between us and our fellow-countrymen of other origins and religions. The Benning Divorce Bill affords a proof that we are in a minority in the present Legislature, for the Protestants all voted in favor of that measure, and the Catholics against it, and the bill was passed.
>
> The Catholics, then, are wrong when they exclaim that we ought to unite and carry out our own religious views and secure the triumph of French-Canadian nationality; doing so will only have the effect of exciting the Protestants and the British-Canadians to do the same thing, and then we should fall into a state of anarchy. One night last week, about midnight, an honorable member of this House, an ex-Minister, the honorable member for Cornwall (Honorable J.S. Macdonald) forgot his position so far as to seek to excite religious jealousies and hatreds; but I am happy to see that he has not succeeded in his attempt, and that Catholics and Protestants have treated his fanatical appeals with contempt, and have made no response. After having heard this, can any one believe in the reality of all these anticipations of danger paraded in the newspapers, in the House, and throughout the country? No, it is impossible to believe in it, and not to perceive that it is all hypocrisy, with the view of exciting the prejudices of the people.

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March 10, 1865: John Scoble, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 911)

> **John Scoble [Elgin West]**—A careful analysis of the scheme convinces me that the powers conferred on the General or Central Government secures it all the attributes of sovereignty, and the veto power which its executive will possess, and to which all local legislation will be subject, will prevent a conflict of laws and jurisdictions in all matters of importance, so that I believe in its working it will be found, if not in form yet in fact and practically, a legislative union.

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Province of Canada (1866)

August 2, 1866: Richard Cartwright, speaking in the Legislative Assembly of Canada (click HERE to view a PDF of the 1866 edition of the Confederation Debates, then scroll to p. 73[3])

> **Richard Cartwright [Lennox & Addington]** thought there ought to be means for revising the judgments of the single Chamber. He suggested that the Confederate Parliament be empowered to disallow any act of the Local Parliament of Upper Canada. If the House insisted on having only one Chamber, he believed his suggestion would have a good effect in acting as a check on hasty Legislation, but he would himself record his vote in favor of two Chambers for Upper Canada.

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[3] This document comprises pp. 71-74 of the debates. Page 73 can be found on the third page.

PART 4:

Debates on Section 90 in the Confederation Debates in Other Provincial Legislatures (1865-1866)

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New Brunswick (1865)

June 1, 1865: Albert Smith speaking in the New Brunswick House of Assembly (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 118)

> **Hon. Mr. Smith:** […] Mr. George Brown, through the consummation of this Scheme, will accomplish the object which he has advocated all his life—that is, representation by population, which will give Canada, by the rapid increase of her population, the controlling power of this whole Confederacy By adopting this Scheme we surrender our independence, and become dependent upon Canada, for this Federal Government will have the veto power upon our legislation.
>
> The 51st section of the Scheme says: " Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto ; in like manner any Bill passed by a local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof." Here is a written Constitution with certain rights given and accorded to the local Legislatures, and
> • (p. 119)
> certain rights are given to the General Government. Suppose there is a confliction between the two Governments where is the appeal? In, the United States they have an appeal to the Judges of the land ; but here the General Government has an arbitrary veto and we have to submit. I think this is a very serious defect in the Constitution.

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June 2, 1865: Abner McClellan speaking in the New Brunswick House of Assembly (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 128)

> **Mr. McClellan**.—He referred to Mr. Galt's speech at Sherbrooke, and in reply to that I have an extract from a speech of Mr. Dorion, who is on the same side as the hon. President of the Council, which I shall read to shew his opinion of the scheme, as giving to New Brunswick a great advantage

> over Canada, in a financial and commercial point of view. Mr. Dorion opposes the scheme because the people of New Brunswick get the best of the bargain. The hon. President quotes Galt's speech at Sherbrooke, to shew the origin of the movement, which proves nothing, unless it be that to remove a social or political evil existing amongst our Canadian fellow-colonists without at the same time injuring ourselves, forms an objectionable feature. Surely the hon. member ought to attach great weight to the arguments of Mr. Dorion, who, like himself, has the *patriotism* to oppose British interests, and Colonial progress. A fellow-feeling ought to make them co-incident in opinion, if not wondrous kind to each other. Another objection taken was, the Bills framed by the local Legislatures would be liable to be disallowed by the General Government. I do not see the point of this objection, as our local bills may now be disallowed by a power farther off, and whereas in the General Government we should have representatives to explain and support them, in England we have none at all.

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June 3, 1865: George Otty speaking in the New Brunswick House of Assembly (click HERE to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 130)

> **Mr. Otty**—[…] To go over all the arguments against this Scheme would take more time than we have at our disposal ; but there is one item particularly objectionable, that is the 51st Section. According to that, any law which we may pass, if it happen to conflict with the interest of Canada, can be disallowed at any time within one year after it has passed our Legislature.

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New Brunswick (1866)

March 26, 1866: William Caie speaking in the New Brunswick House of Assembly (click HERE to view a PDF of the 1866 edition of the Confederation Debates, then scroll to p. 58)

> **Mr. Caie**— […] Another objection is representation by population. If we are joined by Nova Scotia, Prince Edward's Island and Newfoundland, our representatives will only be forty out of one hundred and ninety-four, but it is doubtful whether we will be joined by them. Another objection to the scheme is eighty cents per head, which I consider entirely too small and too much power is given to the Parliament at Ottawa. They have the power of vetoing almost everything that is done by the local Governments. That is a power I do not wish to see taken from us.

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June 27, 1866: Albert Smith speaking in the New Brunswick House of Assembly (click HERE to view a PDF[4] of the 1866 edition of the Confederation Debates, then scroll to p. 26)

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[4] PDF date incorrectly lists the debate as June 29. This is a mistake.

> **Mr. Smith**—[…] The 17th section of the 29th resolution gives it to the General Government, whilst the 8th section of the 43rd resolution gives it to the local government. Now how are differences and controversies on this subject to be settled? Have they a Superior Court to which the matter can be carried as in the United States, where differences between States and the General Government can be carried and settled? No, there is nothing of the kind provided. Is it not important that there should be some tribunal where disputes of this nature may be settled; and I ask the Attorney General to look into the matter and provide for some means of appeal. But even then there is the other power they possess of vetoing any action of the Local Legislatures. Should we submit that Canada should have the power to abrogate and nullify all or any of our legislation, with no power to which to appeal? They have also let us the power of managing our own private or local affairs, but the question may be raised what is private and local, and then who is to determine?

[…]

> **Mr. Smith** […] It is provided by this Scheme that Bills passed by this House may be reserved for the consideration of the General Government, but I do not think that it is necessary to do this as the General Government will have a veto power over any Bill we may pass without the power of appeal. It has been the pride and glory of our country that politics has been kept clean of the sacred precincts of our Courts of Law. We have been able to boast that our Judges have kept themselves free from the turmoil of political strife. But shall we be able to say the same under this Union? I fear not.

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June 29, 1866: Charles Skinner speaking in the New Brunswick House of Assembly (click HERE to view a PDF of the 1866 edition of the Confederation Debates, then scroll to p. 49)

> **Mr. Skinner** […] He had no objection to the appointments being in the hands of the Central Government. Then the General Government had a veto power over all the acts of the Provinces. If New Brunswick or Nova Scotia were to pass a law which they found to be required and it was afterwards declared unconstitutional by the General Government, it would cause a great deal of discontent. The whole might be obviated by placing the matter in the Judiciary, for the reverence of our people for the Bench is deep and constant. See how it is; a man is in political life, deep in the turmoil and strife of an election. He is a fit mark for the wit or sarcasm of any one, but he is raised to the Bench by the party in power, and the people cease to scoff and already reverence. Yes, if the veto power were in the hands of the Judges, the people would bow to their decisions, but they would not if left with politicians.

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PART 5:

Post-Confederation Debates on Section 90

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March 13, 1878, Debate in the House of Commons, pp. 1084-1092 (click HERE)

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April 14, 1882, Debate in the House of Commons, pp. 876-927 (click HERE)

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May 18, 1886, Debate in the House of Commons, pp. 876-927 (click HERE)

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February 27, 1888, Debate in the Senate, pp. 28-55 (click HERE)

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April 6, 1888, Debate in the House of Commons, pp. 598-646 (click HERE)

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PART 6:

Post-Confederation Debates on Section 90

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[Not complete yet]

PART 7:

Analysis

By: Michael J. Scott

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Protection of Minorities

Throughout the debates, the power of disallowance was argued to be a tool in the government's toolbox for the protection of minorities. More specifically, this was a tool to be used to protect Protestants in what would become Quebec, if the majority ever threatened to abuse their rights. While this tool was seen as an exceptional power to be used sparingly, the Fathers of Confederation were adamant that they would not hesitate to use the power if Anglophone, Protestant rights were threatened. This theme formed the main framework of this discussion, especially amongst the drafters themselves.

Here follows a few interjections from government members charged with laying out the case of Confederation. First, here is Étienne Pascal Taché in the Legislative Council,

> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]**—[...] And when I am conscious of having done these things, I feel it comes hard on me to hear honorable gentlemen say that there is no security for them in the future, but that the French—the Papists—may do anything they choose in the lower branch of the Legislature**. But, honorable gentlemen, if the lower branch of the Legislature were insensate enough and wicked enough to commit some flagrant act of injustice against the English Protestant portion of the community, they would be checked by the General Government.** But the honorable gentleman argues that that would raise an issue between the local and the general governments. We must not, however, forget that the General Government is composed of representatives from all portions of the country—that they would not be likely to
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> · *(p. 237 in the primary document)*
>
> commit an unjust act—and that if they did so they would be met by such a storm of opposition as would sweep them out of their places in a very short time But, honorable gentlemen, to come back to the electoral divisions.—I wish to look at them a little more closely, to show the results already produced. I will be obliged to make a comparison, but believe me, I do not wish to make invidious comparisons.[5] [Emphasis is ours]

Hector-Louis Langevin too, reiterates the same case in the Legislative Assembly. He tries to assuage fears of abuse of power by saying the veto would not be used since experience has proven Lower Canada a respecter of Protestant rights. He says,

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[5] Province of Canada, Legislative Council, February 16, 1865. *The Confederation Debates in the Province of Canada* (CCF, 2022), p. 265

> […] **Moreover, why should we be afraid of this veto? In our Local Legislature we assuredly have no intention to be unjust towards a portion of the population, but propose to act towards them, as in times past, as towards equals; we intend, in short, to be as just to that part of the population as we were when they were a feeble clement in it.** This has not prevented the honorable member for Hochelaga [Antoine-Aimé Dorion] from telling the English members from Lower Canada that they must be on their guard and take care of themselves.
>
> Well, Mr. Speaker, I shall not offer such an insult to the race to which I belong. **The French-Canadians have always acted honorably towards the other races who live among them, and they will certainly not take advantage now, any more than they have done in times past, of the majority they may have in the Local Legislature to molest or persecute the minority. This is the reason why we have no fear nor misgiving relative to the right of veto.** Moreover, we are not to suppose that the intention of the two clauses which I have already quoted, is that every bill passed in the local legislatures will be reserved for the sanction of the Central Government. That reservation will take place only in respect of such measures as are now reserved for Her Majesty's sanction.[6] [Emphasis is ours]

As we can see, the veto seemed almost exclusively tied up with minority rights. And arguing that Lower Canada had not resorted to such actions in the past, the veto would be unnecessary. This implies the power would be not used beyond stopping the abuse of linguistic/religious minorities.

Another leading proponent, Cartier assuaging the fears of Anglo-protestant John Rose, once again with the veto as a guarantor of rights.

> **John Rose [Montreal Centre]—Looking at the scheme, then, from the standpoint of an English Protestant in Lower Canada, let me see whether the interests of those of my own race and religion in that section are safely and properly guarded.** There are certain points upon which they feel the greatest interest, and with regard to which it is but proper that they should be assured that there are sufficient safeguards provided for their preservation. Upon these points, I desire to put some questions to the Government.
>
> The first of these points is as to whether such provision has been made and will be carried out that they will not suffer at any future time from a system of exclusion from the federal or local legislatures, but that they will have a fair share in the representation in both; and the second is, whether such safeguards will be provided for the educational system of the minority in Lower Canada as will be satisfactory to them?
>
> Upon these points some apprehensions appear to exist in the minds of the English minority in Lower Canada, and although I am free to confess that I have not shared in any fear of injustice at the hands of the majority, as I consider that the action of the past forms a good guarantee for the future, yet I desire, for the full assurance of that minority, to put some questions to my hon. friends in the Government.

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[6] Province of Canada, Legislative Assembly, February 21, 1865. *Confederation Debates*, p. 645.

> […]
>
> Now, to speak quite plainly, the apprehension which I desire to say again I do not personally share in, but which has been expressed to me by gentlemen in my own constituency, is this, that **with respect to the Local Legislature, it will be competent for the French majority in Lower Canada to blot out the English-speaking minority from any share in the representation**, and so to apportion the electoral districts that no English speaking member can be returned to the Legislature. That is an apprehension upon which I would be very glad to have an expression of opinion by my hon. friend the Attorney General East [George-Étienne Cartier]. **As I read the resolutions, if the Local Legislature exercised its powers in any such unjust manner, it would be competent for the General Government to veto its action,** and thus prevent the intention of the Local Legislature being carried into effect—even although the power be one which is declared to be absolutely vested in the Local Government, and delegated to it as one of the articles of its constitution.
>
> **George-Étienne Cartier [Montreal East, Attorney-General East]—There is not the least doubt that the Local Legislature of Lower Canada should apportion the electoral districts in such a way as to do injustice to the English-speaking population, the General Government will have the right to veto**
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> · *(p. 408 in the primary document)*
>
> **any law it might pass to this effect and set it at nought.**
>
> **Luther Holton [Chateauguay]**—Would you advise it?
>
> **George-Étienne Cartier [Montreal East, Attorney-General East]—Yes, I would recommend it myself in case of injustice.**[7] [Emphasis is ours]

The theme was not exclusive to government members justifying their reasoning for including such a power. Other members iterated the same reason for its inclusion. Here's Narcisse Belleau,

> **Narcisse F. Belleau [Canada East, appointed 1852]**—[...] **But even granting that the Protestants were wronged by the Local Legislature of Lower Canada, could they not avail themselves of the protection of the Federal Legislature? And would not the Federal Government exercise strict surveillance over the action of the local legislatures in these matters?** Why should it be sought to give existence to imaginary fears in Lower Canada? I say imaginary, because the liberality of the inhabitants of Lower Canada—a liberality of which they gave proof long, long ago, by enacting the emancipation of the Jews before any other nation in the world had dreamed of such a measure—is well known. No; far from wishing to oppress other nationalities, all that the French Canadians ask is to live at peace with all the world; they are quite willing that they should enjoy their rights, provided that all live peaceably together.[8] [Emphasis is ours]

And Joseph Cauchon,

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7 Province of Canada, Legislative Assembly, February 22, 1865, *Confederation Debates*, pp. 686-687.

8 Province of Canada, Legislative Council, February 14, 1865, *ibid.*pp. 187-188.

> **The evident object of this organization is to reassure the Protestant minority of Lower Canada against any apprehension for the future; it is also perhaps in the interest of national unity, to prevent local parliaments and governments from infringing the attributes of the Central Parliament.** The nomination of judges, **the veto**, the reservation and even certain directions to be found in the project itself, **tend to the same end, and must necessarily attain it.** I see nothing wrong in that, provided that this formidable engine in going out of its course does not crush the rights which we are bound to respect and maintain forever in their integrity.[9] [Emphasis is ours]

And here's Paul Denis,

> **Paul Denis [Beauharnois]**—[...] They tell the Protestants that under Confederation they will lose all their rights in Lower Canada in respect of the education of their children; and, on the other hand, they tell the Catholics that their religion is in danger, because the Federal Government will have the right of veto in respect of all the measures of the Local Government. **But this right of veto must of necessity exist somewhere, in order that the minority may be protected from any injustice which the majority might attempt to do them.**[10] [Emphasis is ours]

Hierarchy of Legislatures and the Desire to Avoid the Civil War

While minority rights were the reason for the veto, there were other structural considerations of the Constitution that the veto was a component part of. Another catalyzing reason for the addition of this clause was the desire to avoid the nightmare scenario—a federalism that would cause fracture and conflict—meaning, specifically, the situation that had just arisen in the United States, a civil war.

The Fathers of Confederation were adamant that the federal government had to have paramountcy and that there could be no questions as to the hierarchy regarding the division of powers. In addition to the disallowance clause, the *Constitution Act, 1867* also laid out that the federal government would have paramountcy in regards to conflicting laws on immigration of agriculture (concurrent powers). Furthermore, and perhaps most importantly in Section 91, the Federal Government would have power in

> …any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

This was a reversal of the Tenth Amendment to the U.S. Constitution, which many viewed as the cause of the American Civil War.

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[9] Province of Canada, Legislative Assembly, March 2, 1865. *Confederation Debates*, p. 929.

[10] March 9, 1865. *ibid.,* p. 1360.

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Constitution Act, 1867 was a rejection of this premise—meaning anything unassigned to the provincial sphere become a federal power.

The veto was part of these clauses designed to have a clear power structure with the Imperial Government as sovereign, followed by the federal parliament of Canada, and lastly by the local legislatures. Here's John Rose,

> **John Rose [Montreal Centre]**—Then**, the other point which commends itself so strongly to my mind is this, that there is a veto power on the part of the General Government over all the legislation of the Local Parliament. That was a fundamental element which the wisest statesmen engaged in the framing of the American Constitution saw, that if it was not engrafted in it, must necessarily lead to the destruction of the Constitution.** These men engaged in the framing of that Constitution at Philadelphia saw clearly, that unless the power of veto over the acts of the state legislatures was given to the Central Government, sooner or later a clashing of authority between the central authority and the various stated must take place. What said Mr. Madison in reference to this point? I quote from *The Secret Debates upon the Federal Constitution*, which took place in 1787, and during which this important question was considered.
>
> On the motion of Mr. Pinkney "that the National Legislature shall have the power of negating all laws to be passed by the state legislature, which they may judge improper," he stated that he considered "this as the corner stone of the system, and hence the necessity of retrenching the state authorities in order to preserve the good government of the National Council." And Mr. Madison said, "The power of negating is absolutely necessary—this is the only attractive principle which will retain its centrifugal force, and without this the planets will fly from their orbits."
>
> **Now, sir, I believe this power of negative, this power of veto, this controlling power on the part of the Central Government is the best protection and safeguard of the system; and if it had not been provided, I would have felt it very difficult to reconcile it to my sense of duty to vote for the resolutions.** But this power having been given to the Central Government, it is to my mind, in conjunction with the power of naming the local governors, the appointment and payment of the judiciary, one of the best features
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> · *(p. 405 in the primary document)*
>
> of the scheme, without which it would certainly, in my opinion, have been open to very serious objection.[11] [Emphasis is ours]

Alexander Mackenzie goes over the same ground in his discussions on the veto,

> I do not think they will be inclined to persecute the people of Lower Canada if they had it in their power; but I admit
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> · *(p. 433 in the primary document)*

[11] Province of Canada, Legislative Assembly, February 22, 1865. *Confederation Debates*, p. 683.

> that it is reasonable and just to insert a provision in the scheme that will put it out of the power of any party to act unjustly. If the power that the central authority is to have—of vetoing the doings of the Local Legislature—is used, it will be ample, I think, to prevent anything of that kind. But the veto itself is objected to. It is objected that the elected Legislature will be rendered powerless by the influence of the appointed Upper House exercised over them. Well, sir, under the British Constitution, in all British colonies, and in Great Britain itself, there is a certain elasticity to be presumed. Everything is not provided for, because a great deal is trusted to the common sense of the people.
>
> I think it is quite fair and safe to assert that there is not the slightest danger that the Federal Parliament will perpetrate any injustice upon the local legislatures, because it would cause such a reaction as to compass the destruction of the power thus unjustly exercised. **The veto power is necessary in order that the General Government may have a control over the proceedings of the local legislatures to a certain extent. The want of this power was the great source of weakness in the United States, and it is a want that will be remedied by an amendment in their Constitution very soon. So long as each state considered itself sovereign, whose acts and laws could not be called in question, it was quite clear that the central authority was destitute of power to compel obedience to general laws.**
>
> **If each province were able to enact such laws as it pleased, everybody would be at the mercy of the local legislatures, and the General Legislature would become of little importance. It is contended that the power of the General Legislature should be held in check by a veto power with reference to its own territory, resident in the local legislatures, respecting the application of general laws to their jurisdiction.** All power, they say, comes from the people and ascends through them to their representatives, and through the representatives to the Crown. **But it would never do to set the Local above the General, Government. The Central Parliament and Government must, of necessity, exercise the supreme power, and the local governments will have the exercise of power corresponding to the duties they have to perform.**[12] [Emphasis is ours]

John Scoble too, mentions the importance of sovereignty and the prevention of conflict between the provinces and the federal government,

> **John Scoble [Elgin West]**—A careful analysis of the scheme convinces me that **the powers conferred on the General or Central Government secures it all the attributes of sovereignty, and the veto power which its executive will possess, and to which all local legislation will be subject, will prevent a conflict of laws and jurisdictions in all matters of importance,** so that I believe in its working it will be found, if not in form yet in fact and practically, a legislative union.[13] [Emphasis is ours]

This also aligns with a hierarchical structure that the drafters wanted to mirror with Britain, continuing further the preamble's "A Constitution similar in principle to that of the United Kingdom…." The structure that the Federal Government was attempting to imitate in relation to the Local (Provincial) Governments was the same as the supremacy

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[12] Province of Canada, Legislative Assembly, February 23, 1865. *Confederation Debates*, pp. 723-724.
[13] March 10, 1865. *ibid.*, p. 1409.

of the Britain over Canadian Legislation. This is why, throughout the drafting process, the two clauses were linked together. This was the case right up to the London Resolutions in 1866, the final version, which read,

> 50. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto, and in like manner any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.[14]

This was also explicitly compared during the Confederation Debates. As Taché explains on p. 228

> **Philip Moore [Canada East, appointed 1841]**—Now, that being the case, I think our Local Government will be placed in a lower position than in the Government we have now. Every measure resolved upon in the Local Government will be subject to the veto of the Federal Government—that is, any measure or bill passing the Local Legislature may be disallowed within one year by the Federal Government.
>
> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]—That is the case at present as between Canada and the Imperial Government.**[15] [Emphasis is ours]

Here's Dorion, an opponent of the veto, summarizing how the clause is viewed,

> **This power conferred upon the General Government has been compared to the veto power that exists in England in respect to our legislation**; but we know that the statesmen of England are not actuated by the local feelings and prejudices, and do not partake of the local jealousies, that prevail in the colonies.[16] [Emphasis is ours]

Detractors: Clashing, Nullification of Local Rights, and Prone to Abuse

While the advocates tended to concentrate on the narrow uses of the power of veto, the detractors were worried an overly broad power was being brought in to the Constitution, which would lead to clashes between the legislatures and possibly destroy local legislatures (and nullify local majorities). The detractors feared the clause as prone to abuse as there was no means to appeal such a decision.[17]

Here is John Sanborn warning of the destabilizing risks associated with such a power,

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[14] London Resolutions as found in Joseph Pope (ed), *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act* (Toronto: Carswell Co. Ltd., 1895) at 98-110.

[15] Province of Canada, Legislative Council, February 16, 1865. *Confederation Debates*, p. 253.

[16] Province of Canada, Legislative Assembly, February 16, 1865. *ibid.*, p. 584.

[17] Beyond the Imperial Authorities. The Supreme Court did not exist—only the power to create such a court was part of the *Constitution Act, 1867*.

> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]**—The General Legislature had power to disallow such acts.
>
> **James Currie [Niagara, elected 1862]**—This would be an interference with local rights.
>
> **John Ross [Canada West, appointed 1848]**—It would preserve local rights.
>
> **John Sanborn [Wellington, elected 1863]—It was a wise power and commended itself to all; it was, however, not an ordinary power to be commonly resorted to, but an extreme power, and one almost revolutionary. It was a power somewhat similar to that which existed in the second branch of the Legislature to stop the supplies, but in its very nature not one often to be exercised; and it could not be frequently exercised without destroying the very foundations of society, and occasioning evils of the greatest magnitude.** On the whole he conceived that entrusting such power to the local governments was illogical and dangerous, and informing the world that the rights of property were not made sure. It was urged by some that, to make the measure now before the House answer the ends proposed, it must be immediately adopted, but he did not participate in this opinion.[18] [Emphasis is ours]

Here's Philip Moore debating with Taché in the Legislative Council that the arbitrary manner of the veto would cause conflict between the branches of government,

> **Philip Moore [Canada East, appointed 1841]**—I beg to differ slightly with the honorable gentleman. Any measure passed by this province may be disallowed within two years thereafter by the Imperial Government. But the local governments, under Confederation, are to be subjected to having their measures vetoed within one year by the Federal Government, and then the Imperial Government has the privilege of vetoing anything the Federal Government may do, within two years. **The veto power thus placed in the hands of the Federal Government, if exercised frequently, would be almost certain to cause difficulty between the local and general governments.** I observe that my honorable friend, Sir Etienne P. Taché, does not approbate that remark.
>
> **Étienne Pascal Taché [Canada East, appointed 1848, Premier, Minister of Militia, and Receiver General]**—You understand me correctly.
>
> · *(p. 229 in the primary document)*
>
> **Philip Moore [Canada East, appointed 1841]**—It will be conceded that the question of the veto power was very ably discussed, at one time, in the United States Congress, and that discussion led to a qualification of the veto power in the Constitution of the United States, so that now any bill passed by both Houses may be vetoed by the President within ten days thereafter, by assigning reasons for doing so. Both Houses may then, however, again take up the measure, and if they pass it by a two-third vote, it becomes the law of the land, independent of the President's will. Now, I would have the veto power applied in a similar way in our new Constitution. **Exercising it in an arbitrary manner, as the Federal power is privileged to do, it must, from the very nature of things, create dissatisfaction and difficulty between the two governments.**[19] [Emphasis is ours]

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[18] Province of Canada, Legislative Council, February 9, 1865. *Confederation Debates*, p. 132.

[19] February 16, 1865. *ibid.*, po. 253-254.

Leading anti-Confederation advocate Antoine-Aimé Dorion lays out his fears of local majorities being overridden by the pressure of the minority in the federal parliament,

> **Antoine-Aimé Dorion [Hochelaga]**—Now, sir, when I look into the provisions of this scheme**, I find another most objectionable one. It is that which gives the General Government control over all the acts of the local legislatures. What difficulties may not arise under this system? Now, knowing that the General Government will be party in its character, may it not for party purposes reject laws passed by the local legislatures and demanded by a majority of the people of that locality.** This power conferred upon the General Government has been compared to the veto power that exists in England in respect to our legislation; but we know that the statesmen of England are not actuated by the local feelings and prejudices, and do not partake of the local jealousies, that prevail in the colonies.
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> The local governments have therefore confidence in them, and respect for their decisions; and generally, when a law adopted by a colonial legislature is sent to them, if it does not clash with the policy of the Empire at large, it is not disallowed, and more especially of late has it been the policy of the Imperial Government to do whatever the colonies desire in this respect, when their wishes are constitutionally expressed. The axiom on which they seem to act is that the less they hear of the colonies the better.
>
> **Some Hon. Members**—Hear, hear.
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> **Antoine-Aimé Dorion [Hochelaga]**—But how different will be the result in this case, when the General Government exercises the veto power over the acts of local legislatures. **Do you not see that it is quite possible for a majority in a local government to be opposed to the General Government; and in such a case the minority would call upon the General Government to disallow the laws enacted by the majority?** The men who shall compose the General Government will be dependent for their support upon their political friends in the local legislatures, and it may so happen that, in order to secure this support, or in order to serve their own purposes or that of their supporters, they will veto laws which the majority of a local legislature find necessary and good.
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> **Some Hon. Members**—Hear, hear.
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> **Antoine-Aimé Dorion [Hochelaga]**—We know how high party feeling runs sometimes upon local matters even of trivial importance, and we may find parties so hotly opposed to each other in the local legislatures, **that the whole power of the minority may be brought to bear upon their friends who have a majority in the General Legislature, for the purpose of preventing the passage of some law objectionable to them but desired by the majority of their own section. What will be the result of such a state of things but bitterness of feeling, strong political acrimony and dangerous agitation?**
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> **Some Hon. Members**—Hear, hear.[20] [Emphasis is ours]

[20] Province of Canada, Legislative Assembly, February 16, 1865. *Confederation Debates*, pp. 584-585.

Dunkin describes the situation as muddled, a trick to win support from both those in favour of a legislative union and those who want a federal union.

> **Christopher Dunkin [Brome]**—[...] The appointment of lieutenant-governors is again a bait, and perhaps not a small one for more than a few of our public men. **The power of disallowance of local bills, and also that of reserving them for the sanction of the General Government, are on the one hand represented as realities—powers that will really be exercised by the General Government to restrain improper local legislation—to make everything safe for those who want a Legislative rather than a Federal union; but on the other hand, to those who do not want a legislative union, it is represented that they mean nothing at all, and will never be exercised.**[21] [Emphasis is ours]

Further on, he describes Canada's proposed power structure as muddled and unclear,

> **Christopher Dunkin [Brome]**—[...] Well, here in this proposed Constitution—looking to the relations which are to subsist between the Federation and the provinces—in lieu of a real Federation, such as subsists between the United States and the different states, **we find an attempt to adopt to a considerable extent the British system of a stated supremacy, not meant to be in fact the half of what it passes for in theory.** But, however such a system may work as between Great
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> · *(p. 501 in the primary document)*
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> Britain and her colonies, it by no means follows that it admits of extension to this case. **If the vaguely stated powers of our so-called Federation are to be merely nominal, they will be insufficient; if not nominal, they will be excessive.** Either way, the United States idea of an attempted precise statement of the powers meant to be given and used, is the true one. What, then, is the system adopted in the United States, as regards these relations between the Federal power and the several states? There are two leading principles, and very sound principles, that pervade it.[22] [Emphasis is ours]

Dunkin argues for a more precise definition of powers, arguing that it would be better to narrow local powers than to allow federal interference,

> **Christopher Dunkin [Brome]—If this permission of disallowance rests on a presumption that the legislation of our provinces is going to be unjust or unwise, it may be neared; but under that idea, one might have done better either not to allow, or else to restrict within narrower limits, such legislation. If the promised non-exercise of the power to disallow rests on a presumption that all will be done justly and wisely in the provincial legislatures, the legislative power is well given; but the there is no need, on the other hand, for the permission to disallow.**[23] [Emphasis is ours]

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21 Province of Canada, Legislative Assembly, February 27, 1865. *Confederation Debates*, p. 806.

22 *ibid.*, p. 821.

23 *ibid.*, pp. 822-823.

Dunkin argues that conflict is inevitable with an unclear division of powers in combination with federal ability to disallow provincial legislation (in more ways than one).

> **Christopher Dunkin [Brome]**—[...] Turning to the assignment of powers to the Federal Government on the one hand, and the local or provincial governments on the other, we meet again with the unhappy contrast between
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> · *(p. 514 in the primary document)*
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> the wisdom displayed on that point in the Constitution of the United States, and the lack of wisdom in the arrangement proposed for adoption here. There is, in the United States' system, a clear and distinct line drawn between the functions of the general and state governments. **Some may not like the idea of state sovereignty, and many may wish that more power had been given to the General Government. But this much is plain, that it is not proposed to allow anything approaching to state sovereignty here. We have not even an intelligible statement as to what powers are to be exercised by the general, and what by the local legislatures and governments.**
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> Several subjects are specifically given to both; many others are confusedly left in doubt between them; **and there is the strange and anomalous provision that not only can the General Government disallow the acts of the provincial legislatures, and control and hamper and fetter provincial action in more ways than one,** but that wherever any federal legislation contravenes or in any way clashes with provincial legislation, as to any matter at all common between them, such federal legislation shall override it, and take its place. **It is not too much to say that a continuance of such a system for any length of time without serious clashing is absolutely impossible.** This is in effect so declared in the despatch of Her Majesty's Colonial Secretary [Edward Cardwell], and it is clearly pointed out in the London *Times* and in the *Edinburgh Review*. It seems as if our statesmen had sought to multiply points of collision at every turn.[24] [Emphasis is ours]

Dorion said the power was rife for abuse and could dismantle the entire federal union, dissolving provincial powers at will,

> **Antoine-Aimé Dorion [Hochelaga]**—[…] **I say that the Federal Parliament will exercise sovereign power, inasmuch as it can always trespass upon the rights of the local governments without there being any authority to prevent it. What authority have you constituted which can come forward and say to the Federal Parliament:—"You shall not do such and such a thing, you shall not legislate upon such and such a subject, because these matters are reserved to the local governments."**
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> **There will be no such authority, and consequently it will have sovereign power, and can do all that it pleases, and may encroach upon all the rights and attributes of the local governments whenever it may think proper. We shall be—(I speak as a Lower Canadian)—we shall be at its mercy, because it may exercise its right of veto on all the legislation of the local parliaments, and there again we shall have no remedy.[25]** [Emphasis is ours]

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[24] Province of Canada, Legislative Assembly, February 28, 1865. *Confederation Debates*, pp. 838-839.

[25] March 6, 1865. *ibid.*, p. 1090.

Jean-Baptiste-Éric Dorion also saw the ability of the veto power to grow without a check on its power,

> **Jean-Baptiste-Éric Dorion [Drummond & Arthabaska]**—[...] I am opposed to the scheme of Confederation, because by means of the right of veto vested in the Governor by the 51st resolution, local legislation will be nothing but a farce.
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> They may try to make us believe that this power would be but rarely exercised, and that it differs in nowise from that exercised by the present Governor when he reserves bills for the Royal assent; but all the country knows that it would not be so. **From the moment that you bring the exercise of the right of veto more nearly within the reach of interested parties, you increase the number of opportunities for the exercise of the right—you open the door to intrigues.**
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> As, for instance, a party will oppose the passing of a law, and not succeeding in his opposition in Parliament, he will approach the Ministers and the Governor General, intriguing to obtain as a favor that the law may be disallowed. Take an example. I suppose your Confederation to be established; that a bill is passed for the protection of settlers, such as we have seen pass the House six times in ten years without becoming law, on account of the opposition to it in the Legislative Council by the councillors from Upper Canada; what would happen?
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> The few interested parties who were opposed to the measure would rush to the Governor General to induce him to disallow the law. By an appeal to the right of property, to the respect due to acquired rights, and to other sophistries, they would override the will of the people on a measure which is just in itself, and which is sought for and approved of by all legal men of Lower Canada in the present House. The people of Lower Canada will be prevented from obtaining a law similar to those now existing in thirteen different states of the American union, and which would in no way affect the principles of the existing law in Lower Canada.
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> **Some Hon. Members**—Hear, hear.
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> **Jean-Baptiste-Éric Dorion [Drummond & Arthabaska]**—This is one instance out of a thousand, and will serve to illustrate the effect of this right of veto.[26] [Emphasis is ours]

In New Brunswick, the anti-Confederation Government of Albert Smith was in power in 1865. Smith himself was concerned about the power of disallowance, especially with no right to appeal (at that time).

> **Hon. Mr. Smith:** […] Mr. George Brown, through the consummation of this Scheme, will accomplish the object which he has advocated all his life—that is, representation by population, which will give Canada, by the rapid increase of her population, the controlling power of this whole Confederacy By adopting this Scheme we surrender our independence, and become dependent upon Canada, for this Federal Government will have the veto power upon our legislation.

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[26] Province of Canada, Legislative Assembly, March 9, 1865. *Confederation Debates*, pp. 1338-1339.

> The 51st section of the Scheme says: " Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto ; in like manner any Bill passed by a local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof." Here is a written Constitution with certain rights given and accorded to the local Legislatures, and
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> · *(p. 119 in the primary document)*
>
> certain rights are given to the General Government. **Suppose there is a confliction between the two Governments where is the appeal? In, the United States they have an appeal to the Judges of the land ; but here the General Government has an arbitrary veto and we have to submit. I think this is a very serious defect in the Constitution.**[27] [Emphasis is ours]

Smith would reiterate this later, in opposition in 1866,

> It is provided by this Scheme that Bills passed by this House may be reserved for the consideration of the General Government, but I do not think that it is necessary to do this as the General Government will have a veto power over any Bill we may pass without the power of appeal. It has been the pride and glory of our country that politics has been kept clean of the sacred precincts of our Courts of Law. We have been able to boast that our Judges have kept themselves free from the turmoil of political strife. But shall we be able to say the same under this Union? I fear not.[28]

Conclusion

In conclusion, the power of appeal was advocated as necessary by the government for the protection of minorities, specifically Anglophone Protestants in Lower Canada (Quebec). While many who advocated for the clause said that it was unlikely to be needed, it was a means to calm fears from the Anglophone minority in Lower Canada. The clause was argued to be the continuation of a chain of command with the Imperial Government at the head, followed by the federal government of Canada, followed by the provincial governments. By having sovereignty clearly laid out, conflicts over jurisdiction like those that arose in the United States would be solved. Detractors said the clause was a power without limit and rife for abuse. The power could destroy local majorities and local democracy—dismantling the whole point of a federal union.

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[27] New Brunswick, House of Assembly, June 1, 1865, pp. 118-119.
[28] New Brunswick, House of Assembly, June 27, 1865, p. 26.