I hold entirely the opposite view. In my view, the federal government does not need to rely upon this power of disallowance where a province legislates in matters beyond its jurisdiction, because the Supreme Court of Canada is quite competent to rule on such legislation, and has full power to strike it down if it is *ultra vires* the province.

It is my view rather that the federal government should use this power of disallowance where a province acting within its jurisdiction passes legislation that is not *ultra vires*, but which nevertheless denies to the individual citizen natural justice and due process.

I hope to persuade honourable senators this afternoon that if the federal government refuses to discharge this clear duty imposed upon it by the BNA Act, as this and previous governments have so refused in recent years, we now live in Canada not under the rule of law but under the rule of men. For it is my judgment, honourable senators, that the Fathers of Confederation looked upon this provision for disallowance as providing that safeguard for the rights of the individual which is to be found in the due process clause of the American Constitution and which is inherent in Magna Carta, the Bill of Rights, Habeas Corpus, and the Act of Settlement under which the citizen of England finds his protection.

If Canadian federal governments will not exercise their duty in this respect, then an intolerable void will have been created in the Canadian Constitution, and immediate action should be taken to enshrine a "due process" provision in the Canadian Constitution. And I stress again that until such action is taken it is incumbent upon the federal government to perform its duty in this area.

Our present Prime Minister, I believe, takes the same position, for he suggests considering the abolution of the power of reservation and disallowance only after having introduced a Bill of Rights into the Canadian Constitution. In *Federalism and the French Canadians* at page 48, sub-paragraph (b), he states:

> The protection of basic rights having thus been insured [by the introduction of a Bill of Rights] there would be no danger in reducing the Central Government's predominance in certain areas (for example by abolishing the right of reservation and disallowance)—

But he pointed out that this should only be done after there has been enshrined in our Constitution a due process clause.

Hon. Mr. Goldenberg: Would the honourable senator allow a question?

Hon. Mr. van Roggen: Yes.

Hon. Mr. Goldenberg: The senator made reference to a "due process clause" in the Bill of Rights, corresponding to that in the Constitution of the United States. If he will allow me to correct him—I had something to do with drafting that document—there was nothing like the due process clause in the United States Constitution in the proposed Bill of Rights.

Hon. Mr. van Roggen: Honourable senators, I will withdraw the reference to a "due process clause" and rely on the Bill of Rights. The expression "Bill of Rights" refers to the present Canadian Bill of Rights which applies to federal matters only. I shall be dealing with that in a few minutes when I read section 1, which is the type of protection I seek for all Canadians, not only those falling under federal jurisdiction. In fact, I notice in turning my notes that the Canadian Bill of Rights is the next item on my agenda.

Part I, section 1 of the Canadian Bill of Rights, with which all senators will be familiar, is:

> It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,
>
> (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
>
> (b) the right of the individual to equality before the law and the protection of the law;
>
> (c) freedom of religion;
>
> (d) freedom of speech;
>
> (e) freedom of assembly and association; and
>
> (f) freedom of the press.

● (1500)

This Bill of Rights is not binding on the provinces, and I say that until such a bill of rights is embedded in our Constitution so that it governs the actions of the provinces, we must not only retain the powers of disallowance, but those powers must be exercised by the federal government or it is failing in its duty and thereby deliberately withdrawing from Canadian citizens the right of due process to which they are entitled.

Honourable senators, I shall now read some excerpts from a paper on this subject prepared in 1968, which I obtained from the Research Branch of the Library of Parliament. I have endeavoured not to take any of these out of context, but rather have selected some items from this very lengthy paper which many honourable senators may find to be of interest when considering this subject.

> It should be remembered that the powers of disallowance and reservation have been considered as an essential part of the scheme of Confederation. As reported by G. V. Laforest, who is quoted in the first page of this study, these powers were a compromise between the Fathers who supported a legislative union of the provinces and others who had favoured a federal constitution. Thus the powers of disallowance and of reservation are at the root of our system of government ... To put it another way, if someone is prepared to recommend the abolition of these powers, he must be prepared to accept some fundamental changes in our constitution. When the question of the abolition of these powers is examined, we must bear in mind that it implies a different conception of Canadian federalism.
>
> Are the "abolitionists" prepared for such radical reform?

The paper goes on to an area entitled: "The Defence of Minorities." I would commend to the consideration of honourable senators that a proper definition of democracy