

Jurisprudentialists of a federalist persuasion held that POGG was the sole grant of power to the federal government and the specific enumerations were merely concrete examples of the broader, more comprehensive power. The practical point of their position was that the federal government enjoyed plenary power to regulate trade and commerce.

The JCPC had interpreted the text differently, finding in the exclusive grant to the provinces in article 92 of a power to “make laws in relation to ...Property and civil Rights in the Province” an impressive limitation on the federal government’s power over trade and commerce. Much of the jurisprudence of the late nineteenth and early twentieth centuries centered on JCPC’s effort to find the right balance between these texts, with most of the decisions favoring the provinces.<sup>28</sup> This line of reasoning culminated in a series of opinions authored by Lord Haldane which restricted POGG to an “exceptional” power to be used only in an “emergency” or in the face of “sudden danger to the social order” or in “special circumstances such as a great war.”<sup>29</sup>

Canadian nationalists, like Dean Kennedy, seem to be on target when they find JCPC’s interpretation of the BNA Act crabbed and strained. Although the Quebec Resolutions, the text debated in 1865, differed somewhat from the BNA Act of 1867, it was close enough to provide evidence suggesting that a good number of the delegates favored expansive powers for the federal government.<sup>30</sup> The 29th Resolution, anticipating what would eventually emerge as the POGG clause in the BNA Act, provided: “The General Parliament shall have power to make Laws for the peace, welfare, and good government of the Federated Provinces (saving the Sovereignty of England) and especially laws respecting the following subjects.” It then went on to enumerate a long list of specific powers, most of which reappeared in the BNA Act. Among them was “[t]he Regulation of Trade and Commerce.”

During the Confederation Debates, support for a broad interpretation of federal power came first and foremost from John A. Macdonald. Warming to one of his favorite