interfere in provincial jurisdictions by actions of disallowance, unless it is a case so extreme that it would be obvious to the great majority of people that there should be such interference. Otherwise, I very much fear that the resentment and the adverse reaction would do infinite harm to the fabric of Confederation, which is already under severe strains today, not only in Central Canada but in Western Canada as well.

Hon. Eugene A. Forsey: Honourable senators, I rise first of all to say how glad I am that this matter has been raised, because I think that in a good deal of recent discussion, such as there has been—and it has been rather skimpy on the whole—in a good deal of recent discussion of the power of the Government of Canada to interfere with provincial legislation under the provisions of the British North America Act, the matter has not been dealt with with anything like the thoroughness and the logic, let alone the reference to history, that it might have been and, in my judgment, should have been.

There has been, in my view, too easy an assumption that the provincial governments and legislatures are always right, unless they can be proven to have been flagrantly wrong, beyond contestation by their most ardent supporters and defenders. I think this is perhaps a somewhat oversimplified view.

I am one of those who feel that the dominion power of disallowance of provincial acts, and even the dominion power to instruct Lieutenant-Governors to reserve provincial bills, may yet have considerable value, and more particularly in cases where fundamental human rights are involved. If we could get a bill of rights embedded in the Canadian Constitution, entrenched in the Constitution, so that certain rights would be beyond the power either of the Parliament of Canada or of the legislatures of the provinces to interfere with them, then I dare say you could make out a fairly strong case for the abolition of the power of disallowance of provincial acts and the reservation of provincial bills.

But we have no such entrenched bill of rights in our Constitution and I am very reluctant to see the rather thin protection that is afforded to civil rights and liberties by the reservation and disallowance sections of the British North America Act abolished before we have some adequate substitute for them.

I say it is rather thin, because the number of times in which the dominion has intervened to protect basic civil liberties is lamentably small. It has intervened much more often, though even then not very often, to protect the rights of property. I am not prepared, myself, to regard the rights of property as resting on the same solid foundation as the rights of the human person. I do not suppose any honourable senators will recall what I said on this subject in discussing the report of the Joint parliamentary Committee on the Constitution, but I did there, when I discussed that in this house, associate myself with the caveat of the NDP members of the committee that the rights of property were probably not seriously in need of protection in an entrenched bill of rights in the Constitution; that on the whole they could be left to the courts to deal with; that we had no reason to suppose that our courts would be insufficiently tender of the rights of property.

[Hon. Mr. Manning.]

However, very few general propositions in such matters can be laid down absolutely and without qualification, and I should be inclined to say that you could even make an argument—I should not be prepared to go to the stake for it—you could make an argument for saying that even with a bill of rights entrenched in the Constitution and protecting the rights of the person, if you did not include something covering the rights of property, you would perhaps find it worthwhile to retain the power of disallowance in cases where there could be shown to be flagrant abuse of the rights of property.

I am not particularly tender of the rights of property. I think that there is a good deal of a tendency to overestimate them. But after all they do exist under our law and under our general constitutional understandings.

Having said that, I want to turn more particularly to the subject matter of this inquiry. Senator van Roggen was kind enough to place me in a rather high rank of people knowledgeable in this subject, and I think he rather overdid it. He was kind enough to suggest that perhaps I took second place only to Senator Goldenberg. I am sorry, by the way, to see that Senator Goldenberg has left, as I should have liked him to hear the deferential remarks I am now about to make about him. I should think it highly probable that Senator Goldenberg knows a great deal more about this subject than I do. I should think it is absolutely certain that the present Associate Deputy Minister of Justice, Dr. La Forest, knows more than either of us about the subject. I think he is probably the premier authority on this subject in the whole country. Nevertheless I have a certain degree of knowledge—perhaps, somewhat above the average, shall I say—of this subject, because in the course of my somewhat tempestuous past career, I have had occasion to take part in the movement for disallowance of provincial acts in four cases.

● (1540)

Senator van Roggen attributed to me alone the petition for the disallowance of the Quebec padlock act. Well, honourable senators, I drew up that petition, but I did it on behalf of a group of people in Montreal, organized as a civil liberties union. I did not have the temerity, myself, personally, individually to draw up such a petition. But I did it in association with a number of other people who felt as I did on the subject of that particular legislation.

Then, later on, I drew up, when I was at the Canadian Congress of Labour, a petition on behalf of that Congress, the Trades and Labour Congress of Canada, and the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods, for the disallowance of the Prince Edward Island Trade Union Act of 1948, which would have placed all unions in that province, except those confined to the province alone, in a most perilous position, to put it mildly.

Then I helped to draw up for the Canadian Labour Congress the two petitions presented for the disallowance of the Newfoundland labour legislation in 1959. I might add that on that occasion the congress tried first of all to get the Government of Canada to instruct the Lieutenant-Governor to reserve those bills for the signification of the Governor General's pleasure. Our view was that by the time the process of disallowance had ground out its result—and it usually is a very slow process, although not