Reservation and Disallowance

Reservation' and 'Disallowance' are often confused, since both derive from the practices of the British colonial empire, but they are actually distinct terms. Historically, 'reservation' was the practice whereby a colonial governor, rather than giving or refusing assent to a bill, could refer it to the imperial government for the final decision. 'Disallowance', on the other hand, was the practice whereby a colonial bill could still be declared null and void by the imperial government, even though the colonial governor had given royal assent.

Sections 55, 56 and 57 of the *Constitution Act, 1867* provided that acts of the Parliament of Canada were subject to these instruments of imperial control. A few such acts were reserved or disallowed in the first few decades after Confederation, but the powers passed into disuse as Canada evolved towards independence, even though they were never formally eliminated.

Section 90 of the *Constitution Act, 1867*, which adapted the same practices to the purpose of maintaining federal control over the provinces, proved to be of much greater significance. Early Lieutenant-Governors frequently reserved bills for a final decision by the federal government. Although the practice was controversial, and soon became unnecessary as communications improved between Ottawa and the provincial capitals, a Saskatchewan bill was unexpectedly reserved as late as 1961.

Disallowance, from the federal viewpoint, was a much more reliable instrument of control over the provinces. It was used extensively by the Macdonald, Mackenzie and Laurier governments, particularly against Manitoba and British Columbia, and thus became a source of western discontent with the federal system. After 1911 its use was rare, but the election of the Social Credit government in Alberta in 1935 led to a brief revival. The last Act ever disallowed was a 1943 Alberta statute which prohibited the sale of land to "enemy aliens" or Hutterites.

The Victoria Charter of 1971 would have eliminated 'reservation and disallowance' from Canada's Constitution, but the extensive changes made to the Constitution in 1982 left both powers intact. Either might still be used to prevent the illegal or unilateral secession of a province, but otherwise their future use is extremely unlikely.

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