

HANDOUT:

Preventing Mob Rule: Passing a Law

In a democracy, the people rule. This means that if a majority of the public demands a law or public policy, elected leaders have an obligation to seriously consider that demand.

However, sometimes the majority demands a law or public policy that could trample the rights of minorities. The phenomena of the majority wanting to trample the rights of a minority is also known as ochlocracy, or mob rule.

To keep ochlocracy at bay, liberal democracies spread power amongst several institutions. The separate powers of the Senate, the House of Commons, and even the Queen illustrate how the power to create and enact laws is spread amongst different institutions in Canada. Each institution can act as a check on the power of the others.

By having power spread across institutions, the law-creation process can be more reasoned and less mob-like. There are more opportunities to consider positions, consult experts, and ask questions. This helps temper emotions, protect minority rights, and promote reason when creating laws.

The Path to Creating a Law

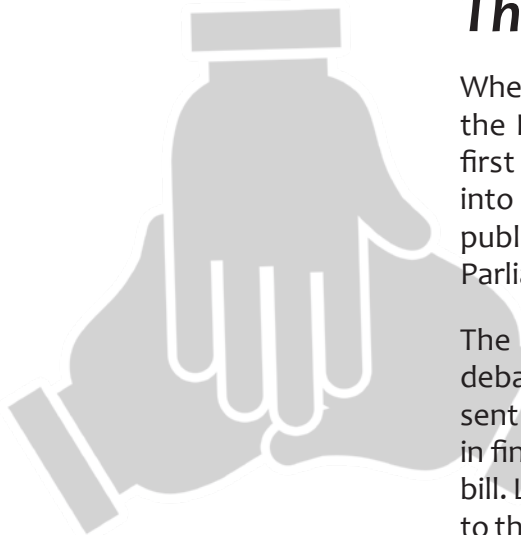
In Canada, the federal government cannot simply declare a law, without a debate and without that law being subjected to reviews and consideration. The rule of law requires that there are open and established processes to guide the creation of laws.

The process below outlines the steps to creating most federal laws in Canada. The process for creating laws at the provincial level is similar, except that there is no Senate review of provincial laws.

Three Readings

When a proposed law—also known as a bill—is first introduced in the House of Commons, it must pass a series of three votes. The first vote, known as First Reading, is the introduction of the bill into the House. At this point, the bill is simply introduced into the public record and the legislative process: if it passes, Members of Parliament and the public in general may begin examining the bill.

The next vote is called Second Reading. At this point, legislators debate the principle and the object of the bill. If the bill passes, it is sent to a legislative committee. Legislative committees examine bills in fine detail, and often call in experts to get outside opinions on the bill. Legislative committees have the power to propose amendments to the bill. The committee will report back to the House of Commons, allowing all Members of Parliament to debate the bill and suggest further amendments before putting it to a final vote.



The final vote for a bill in the House of Commons is Third Reading. At third reading, Members of Parliament vote on whether or not they want the bill to become the law. Even if the bill passes, it does not yet become law. At this point, the law is sent to the Senate for further consideration.

The Senate

All federal legislation must be passed by both the House of Commons and the Senate of Canada.

The three-reading process for passing a bill in the House of Commons is repeated by the Senate.

Because the Senate is appointed, and not elected, senators can resist short-sighted political pressure, or the desires of a runaway mob. This means that at its best, the Senate is a place where proposed laws are given a careful, second consideration. Sir John A. Macdonald once described the Senate as the chamber of “sober second thought.”

It is extremely rare that the Senate will outrightly refuse to pass a bill proposed by the House of Commons. It is more common for the Senate to take issue with aspects of a proposed law. When this is the case, the Senate will amend the bill. The House of Commons usually accepts the amendments.

Royal Assent

A final check on legislation is Royal Assent, the Queen’s formal approval. The Queen is Canada’s Head of State. Without Royal Assent, a bill cannot become law. Because the Queen resides in Britain, Royal Assent in Canada is given by the Queen’s representative. For federal legislation, it is the Governor General. For provincial legislation, it is the Lieutenant Governor. If the Queen or her representative have grave concerns over a law, they could refuse to sign it into effect.

The refusal to grant Royal Assent to a bill is virtually unprecedented. The last instance of a British Monarch refusing Royal Assent was in 1707. The Governor General of Canada has never refused Royal Assent of parliamentary legislation. And only once was Royal Assent refused at the provincial level, in Prince Edward Island in 1945.

If history serves as a guide, it is highly unlikely that Royal Assent would be refused today. Yet, because Royal Assent could be refused, it could be said that the Monarchy is the ultimate check on power in Canada. Because the refusal of Royal Assent is virtually unprecedented, it is difficult to know what the reaction would be if Royal Assent was refused for a Canadian law today.

Peace, Order, and Good Government

Canada has other safeguards in its legislative process to avoid the rule of the mob. For example, there are a few last-ditch, archaic powers contained in the constitution that could potentially be used by the federal government to halt runaway provincial legislation.

Canada’s reasoned and rational process for creating laws helps curtail mob rule, and ensure that Canada remains a country of peace, order, and good government.

THINK

1. The rule of law requires that orderly processes be in place to create and change laws. Do the processes discussed above guarantee that mob rule can never happen in Canada?
2. No single institution or person in Canada's system of government holds total power. How can the division of power promote peace, order, and good government?
3. Have you seen instances where a self-interested majority has overridden reason, harmed minorities, and set back the social advancement of society?
4. Today, only Canada's federal level of government has a senate. In the past, many provinces once had senates too. However, each province with a senate abolished it years ago.
 - a) What would be lost if Canada's Senate was abolished?
 - b) What would be gained if Canada's Senate was abolished?
 - c) Look into recent reforms into Canada's Senate. Will these reforms help ensure that a runaway mob does not trample on the rights of minorities?