

THE LEGISLATIVE BRANCH
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The general theme articulated in the late John Hart Ely's Democracy and Distrust applies in force with respect to state legislatures.

The principle of plenary legislative power embedded in early state constitutions has been substantively and procedurally modified in every direction.

Substantive review of statutes by the state judiciary is enhanced by the presence of 2d and 3d generation right norms in state constitutions.

The possibility of judicial review of legislative procedures is created by norms governing law-making procedures that are not found in the U.S. Constitution. At the drafting phase, each bill must contain a title which "clearly expresses" the subject matter of the body of the proposed law. In addition to the notice function of the title, each bill, except appropriations, is restricted to "one subject" in order to forestall logrolling and to focus the legislature's attention on discrete policy issues. Values of notice and clarity are furthered by the rule that bills that amended or cross-reference existing laws must include the amended or referenced legislation in their text. Particular rules apply to drafting the contents of appropriations measures to insure notice and bar logrolling. An additional safeguard of clarity stems from the anti-vagueness norm derived from the due process clause of state and federal constitution.

Constitutional procedural norms create and structure a public institution designed to fix accountability and to enhance participation and deliberation. The state house is directly accountable for originating revenue bills. The committee system is recognized and strengthened by the requirement that all bills be referred to a committee and printed.

To prevent surprise and foster public notice, no bill should be altered or amended on its passage through either chamber so as to change its original purpose and every bill must be read at length and printed before the final vote. Principles of accountability and majority rule are embedded in the requirement that a majority of each chamber cast a recorded vote on every bill, concurrence and conference committee report on final passage. Taken together, these provisions constitute an interrelated set implementing a broad version of deliberative democracy applicable to each phase of the lawmaking process from drafting legislation to final passage.

The dominance of the 18th and 19th century legislature over fiscal policy has been considerably modified. On the one hand, the extent of the state governor's powers over appropriations and budgets through the item veto and the unified budget has been significantly increased. On the other hand, the taxing, borrowing and spending powers of the legislature may be subject to super-majority requirements for passage or spending and borrowing limits entrenched in the state constitution.

The autonomy of the state legislature is also greatly affected by constitutional norms concerning legislative composition and organization. Nearly half of the states impose term limits. In many states, the legislature is not free to determine its compensation. And most state constitutions impose limits on the length and frequency of legislative sessions while empowering the governor to call the legislature to special sessions and to restrict the legislature's competence in the special session to matters set forth in the governor's call. As a result a full-time, professional legislature that meets continuously during its term of office exists in about 15 states.