

The Law of Lawmaking

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This Article explores the "law of lawmaking" – the body of rules that govern the legislative process in parliament. It argues that this body of law, which has received very little attention in legal scholarship, has great practical and normative importance. The Article develops the theoretical and normative thinking about the law of lawmaking by focusing on what the aims of this body of law are (and should be). It argues that the law of lawmaking should serve six main purposes: (1) organizing legislative activity and decision-making; (2) increasing the efficiency of the legislative process; (3) providing clear criteria for recognizing valid law; (4) restraining the legislature and protecting the opposition and citizenry; (5) improving the quality of legislation; and (6) guaranteeing a legitimate democratic process. It also offers ways for realizing an optimal balance among these goals.

The Article then analyzes the existing rules governing lawmaking in the Knesset in light of these goals, arguing that the two main purposes that are insufficiently manifested in the current law of lawmaking are restraining the legislature and ensuring the quality of legislation. It also highlights some room for improvement in applying the principles of transparency and public participation. It then turns to discussing the implications of the discussion on the proper purposes of the law of lawmaking for amending the rules governing lawmaking or designing new rules, including a Basic Law on Legislation. Finally, it also discusses the implications for the various types of judicial review: judicial review of the legislative process, judicial review on the content of the legislative rules, and substantive constitutional review.