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Ed Legner

PEOPLE EX REL. STAMOS v. JONES: A RESTRAINT ON LEGISLATIVE REVISION OF THE ILLINOIS SUPREME COURT RULES

The proposition that the Illinois courts possess the power to adopt court rules for the regulation of practice and procedure is firmly established in the judicial history of Illinois.[1] This proposition is not unique to Illinois, for common law courts had traditionally adopted court rules in order to regulate proceedings and facilitate the administration of justice.[2]

Although the rule-making function is firmly established, its history in a government operating under a system of separation of powers is characterized by considerable uncertainty regarding the source of the rule-making power of the judiciary and legislature.[3] Furthermore, a degree of unpredictability still exists where court rules and statutory provisions on the same procedural matters conflict.[4] Amidst this perplexity regarding the locus of responsibility for procedural regulation, one proposition remains certain: courts have no power to adopt rules which violate constitutional provisions or substantive law.[5] Thus, the rule-making power of the judiciary is necessarily limited to matters strictly procedural in nature.[6]

HISTORICAL FOUNDATION OF JUDICIAL-LEGISLATIVE INTERACTION IN PROCEDURAL REGULATION

As has been stated, there is firm support for the proposition

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[1] *E.g.*, People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1960); People *ex rel.* Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950); Biggs v. Spader, 411 Ill. 42, 103 N.E.2d 104 (1952); Gyure v. Sloan Valve Co., 367 Ill. 489, 11 N.E.2d 963 (1938); Wilson v. Gill, 279 Ill. App. 487 (1935); Robbins v. Campbell, 65 Ill. App. 2d 478, 213 N.E.2d 641 (1965).

[2] Gertner, *The Inherent Power of Courts To Make Rules*, 10 U. CIN. L. REV. 32 (1936). See Hoffman v. Paradis, 259 Ill. 111, 102 N.E. 253 (1913), wherein the court defined practice and procedure as:

> . . . that which regulates the formal steps in an action or other judicial proceeding; 'those legal rules which direct the course of proceedings to bring parties into the court and the course of the court after they are brought in.'

Id. at 112-13, 102 N.E. at 254.

[3] Pound, *The Rule-Making Power of the Courts*, 12 A.B.A.J. 599 (1926); Joinder, *Rules of Practice and Procedure: A Study of Judicial Rule Making*, 55 MICH. L. REV. 623, 624 (1957).

[4] Note, *The Rule-Making Powers of the Illinois Supreme Court*, 1965 U. ILL. L.F. 903. *See also* Terrell, *The Rule-Making Power of the Florida Supreme Court: The Twilight Zone Between Substance and Procedure*, 24 U. FLA. L. REV. 87 (1971).

[5] Joiner, note 3 *supra* at 629.

[6] *See also* Doherty, *Total Pretrial Disclosure to the State: A Requiem to the Accusatorial System*, 60 ILL. B. J. 534, 540 (1972).

that the judiciary possesses the power to regulate practice and procedure through the medium of court rules. Practice and procedure in the common law courts of England was generally regulated by rules of court[7] and by the time the common law was introduced into this country, it had become customary for the judiciary to regulate practice and procedure by rule.[8]

More immediate to the development of the rule-making power in Illinois is the Ordinance of 1787 which provided that the common law would be in force throughout the Northwest Territory.[9] It follows that the courts established pursuant to the Ordinance of 1787 must be deemed to have possessed the customary powers of the common law courts, one of which was the power to regulate practice and procedure. Notwithstanding the existence of this rule-making power, the territorial period from 1787 to 1818 was characterized by considerable legislation on procedural matters.[10]

The Judicial Article of the Constitution of 1818 provided that "[T]he judicial power of this state shall be vested in one supreme court, and such inferior courts as the general assembly shall, from time to time, ordain and establish."[11] The term "court" was not defined, nor was reference made to the rule-making power of the judiciary. Since the judicial power was vested in the "courts" and the term "court" was not defined by the Constitution of 1818, incorporation by reference[12] demands that the term be deemed to carry with it all the powers which "courts" possessed the instant before the instrument incorporating that term became effective, except where otherwise provided by that constitution. The instant prior to the effective

[7] Pound, note 3 *supra* at 601. *See also* 1 TIDD, THE PRACTICE OF THE COURTS OF KINGS BENCH AND COMMON PLEAS at xxxviii (7th ed. 1821). In his list of procedural rules of court, Tidd lists the earliest rule of the Court of Common Pleas as having been adopted in 1457.

[8] Pound, note 3 *supra* at 601.

[9] See note *a* to An Act of August 7, 1789, ch. VIII, 1 STAT. 50. One of the articles of compact between the original states and the Territory and eventually the states arising within the Territory was that of "judicial proceedings according to the course of the common law." *Id.* at 52. *See also* Zacharias, *The Illinois Courts Prior to Statehood*, 56 Ill. B. J. 556 (1968).

[10] Act of May 18, 1792, ch. 36, 1 STAT. 275. The legislature also directed the courts to adopt rules of practice in "An Act Regulating and Defining the Duties of the United States Judges for the Territory of Illinois," § 19, 1816-17 Laws, Ill. Terr. 37.

[11] ILL. CONST. art. IV, § 1 (1818).

[12] Incorporation by reference is a rule of construction which has found application in two situations. First, with respect to documents, incorporation by reference is the method of making one document of any kind become a part of another separate document by referring to the former in the latter, and declaring that the former shall be taken and considered as a part of the latter the same as if it were fully set out therein. Secondly, with respect to terms and phrases, incorporation by reference operates to grant an undefined word or phrase the meaning and effect which obtained to the term or phrase antecedent to its use in the instant document. The reference may be ex-

date of the Constitution of 1818, the courts possessed the customary powers of the common law courts under the authority of the Ordinance of 1787, including the power to regulate practice and procedure through the adoption of general rules of practice. Thus it is clear that through incorporation by reference the courts created pursuant to the mandate of article IV, section 1 of the Constitution of 1818 must be deemed to have possessed rule-making power with the constitution as the source.

The legislative role in the regulation of practice and procedure had become established prior to statehood. Pursuant to the constitution, the courts clearly possessed rule-making power through incorporation by reference. Thus, the basis was formed for considerable controversy between court rules and statutes regulating procedure in a government operating under a system of separation of powers.

DEVELOPMENT OF A JUDICIAL ATTITUDE CONCERNING JUDICIAL-LEGISLATIVE INTERACTION

The Subordinate Status of Court Rules

The existence of an inherent rule-making power in the judiciary was recognized by the Illinois Supreme Court at an early date,[13] but court rules were never accorded the level of independent status which inescapably follows from the exercise of power vested in an independent branch of government. An early illustration of this judicial attitude was manifest in *Owens v. Ranstead*,[14] wherein the court indicated that judicially created rules of practice and procedure must be consistent with statutory enactments. *Owens* and other early cases[15] espousing this caveat are not surprising historically, especially in light of the active legislative role during the territorial period. Moreover, when significant procedural reforms were initiated during the 19th century, the legislature took the active role. As a consequence of this early legislative initiative and the then prevalent doctrine of "legislative supremacy," the rule-making power of the judiciary was often treated as subordinate to the legislature's by the courts themselves.[16]

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press or implied and may be to a statute, constitution, any other document, or the common law.

[13] Wallbaum v. Haskins, 49 Ill. 313 (1868); Mix v. Chandler, 44 Ill. 174 (1867); Prindeville v. People, 42 Ill. 217 (1866); Holloway v. Freeman, 22 Ill. 197 (1859).

[14] 22 Ill. 161 (1859).

[15] Note 13 *supra*.

[16] Comment, *The Inherent Power of Courts To Formulate Rules of Practice*, 29 ILL. L. REV. 911, 913 (1935); Pound, note 3 *supra*; Trumbull, *Judicial Responsibility for Regulating Practice and Procedure in Illinois*, 47 NW. U.L. REV. 443, 447 (1952); Southerland, *The Exercise of the Rule*

The status of court rules and their relationship to conflicting procedural statutes was further complicated by a history of legislative enactments which purported to *confer, grant,* or *delegate* rule-making power upon the Illinois Supreme Court. An example of such legislation was the Civil Practice Act of 1933, which provided that "[T]he Supreme Court of this State *shall have power* to make rules of pleading, practice, and procedure . . . but not inconsistent with the provisions of this Act . . . ."[17] This legislation, insofar as it purported to vest the court with rule-making power, was unnecessary. The supreme court possessed the power through incorporation by reference with the constitution as the source.[18] This theory was clearly enunciated in *Hanna v. Mitchell,*[19] in 1922.

In *Hanna,* the New York Court of Appeals held that notwithstanding the existence of enabling legislation, "[T]he power to make rules governing the practice and procedure in the courts is a judicial, and not a legislative, power."[20] This conclusion was supported through analysis of the historical development of the rule-making power. Specifically, the court pointed out that the rule-making power in the English Courts of Kings Bench, Common Pleas, and Exchequer was considered inherent; that the common law of England was adopted in New York, and that the supreme court created pursuant thereto possessed and exercised the rule-making power. In short, the court applied the doctrine of incorporation by reference. Having found support in the long-standing exercise of the power by the judiciary before the state legislature was created, the court concluded that legislation purporting to vest the court with rule-making power constituted a mere "legislative recognition" of a power already possessed by the judiciary.[21]

Notwithstanding the doctrine of incorporation by reference and cases decided on grounds similar to those in *Hanna v. Mitchell,* courts have held such enabling legislation to be a constitutionally permissible delegation of power; the theory being that the rule-making power is judicial as well as legislative.[22] This theory, however, necessarily defends the subordinate status to which court rules have often been relegated, as it obscures

Making Power, 12 A.B.A.J. 548 (1926); Tyler, *The Origin of the Rule Making Power and Its Exercise by Legislatures,* 22 A.B.A.J. 772-73 (1936).

[17] No. 359, [1933] Ill. Laws, 58th Sess. 784, art. 1, § 2, *as amended* ILL. REV. STAT. ch. 110, art. 1, § 2 (1971) (emphasis added).

[18] Note 12 *supra.*

[19] 202 App. Div. 504, 196 N.Y.S. 43 (1922), *aff'd* 235 N.Y. 534, 139 N.E. 724 (1923).

[20] *Id.* at 513, 196 N.Y.S. at 51.

[21] *Id.*

[22] *Accord, In re* Constitutionality of Section 251.18, Wisconsin Statutes, 204 Wis. 501, 236 N.W. 717 (1931); *See* Annot., 110 A.L.R. 28 (1937); 158 A.L.R. 707 (1945).

the source of the rule-making power. It is apparent that if a court rule be deemed the product of an exercise of power received through legislative grant, it could not be accorded a status superior to a conflicting procedural statute, except where the legislature so provides. Moreover, the continued possession of the power by the courts would be subject to the will of the legislature which could revoke the power at any time, or nullify an undesirable court rule by subsequent statute.[23]

Source of Legislative Power To Adopt Procedural Statutes

The postulate that the legislature possesses a valid power to directly regulate matters strictly procedural in nature is fundamental to any policy or theory whereby court rules are relegated to a status subordinate to conflicting procedural statutes. The validity of this presupposition may depend upon constitutional interpretation, because the power to regulate practice and procedure may be arguably one which is not "peculiarly and intrinsically" vested in either the legislature or judiciary.

In re Constitutionality of Section 251.18, Wisconsin Statutes,[24] involved the Wisconsin Supreme Court's consideration of the constitutionality of a Wisconsin statute purporting to vest rule-making power in the supreme court. The principal contention, unlike that in *Hanna,* was that the statute constituted an impermissible delegation of legislative power to the court. The supreme court rejected this contention, holding that the power to regulate procedure was essentially judicial, and that delegation to the courts was constitutionally permissible.

Important in the *Wisconsin* case, as distinct from *Hanna,* is the unchallenged assumption that the legislature possessed a valid power to regulate procedure. In order to sustain the enabling statute, it was necessary to determine that the power to regulate practice and procedure was not so "peculiarly and intrinsically legislative" that the separation of powers doctrine would preclude delegation of rule-making power to the courts. To accomplish this objective, it was cardinal to the *Wisconsin* decision to find that the power to regulate procedure is "essentially judicial," for such a determination would obviate any contention that the legislature was attempting to abdicate its law-making function. However, the assumption of a valid legislative power to regulate procedure, coupled with the determination that the power is "essentially judicial," results in the existence of *concurrent* power to regulate procedure. This result is not offensive to the doctrine of separation of powers, so long as the

[23] Hall, *Judicial Rule-Making Is Alive but Ailing,* 55 A.B.A.J. 637, 639 (1969).

[24] 204 Wis. 501, 236 N.W. 717 (1931).

doctrine is not scientifically applied, and it is concluded that the power is not "peculiarly and intrinsically" vested in either branch of government.

The process whereby the Wisconsin Supreme Court determined that the power to regulate procedure is essentially judicial is of particular interest when considering the nature of that power in Illinois. The Wisconsin court emphasized that "[T]he question as to what powers are essentially judicial and what legislative is to be solved by ascertaining the definition and scope of such power at the time the Constitution was adopted."[25] An analysis of the leading "court rule" cases in Illinois will illustrate that the Illinois Supreme Court also formulated its concepts concerning the nature of the rule-making power through historical analysis of the nature of the power and varied constructions of the separation of powers provision of the constitution.

The Rule-making Controversy in Illinois

In *People v. Kelly*[26] it was contended that since the judicial powers were vested in the courts by the constitution, the legislature could not control the exercise of these powers and that such control would violate the separation of powers.[27] The court rejected this all inclusive contention on the theory that the doctrine of separation of powers "is the declaration of a fundamental principle and, though of vital importance, is to be understood as the broad theoretical line of demarcation between the great departments of government."[28] In essence, the court refused a literal application of the separation provision.

Having determined that regulation of procedure by statute did not violate the separation of powers, the *Kelly* court indicated that the source of this legislative power was constitutional, supporting this proposition by citing section 22 of article IV of the Constitution of 1870, which provided that:

> The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For . . . regulating the practice in courts of justice; . . . In all other cases where a general law can be made applicable, no special laws shall be enacted.

The court found further support in section 29 of article VI which provided:

> All laws relating to courts shall be general, and of uniform operation; and the organization, jurisdiction, powers, proceedings and practice of all courts, of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts, severally, shall be uniform.

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[25] *Id.* at 505, 236 N.W. at 718.
[26] 347 Ill. 221, 179 N.E. 898 (1932).
[27] ILL. CONST. art. III (1870).
[28] 347 Ill. at 235, 179 N.E. at 903.

The *Kelly* court theorized that the presence of these provisions pertaining to the uniformity of laws governing practice and procedure necessitated the implication that the legislature possesses a constitutional power to regulate procedure by statute.

The theory upon which *Kelly* sustained the legislature's role was justifiable in light of the court's refusal to undertake a literal or scientific application of the separation of powers provision. That section provided that before one department could exercise powers properly belonging to another, such an exercise must be "expressly directed or permitted" by the constitution.[29] Thus, using a broad theoretical line of demarcation coupled with the constitutional language quoted above, the *Kelly* court had no difficulty deriving constitutional authority for regulation of procedure by statute.

Two years later, in *People v. Callopy*,[30] the Illinois Supreme Court implemented the same analysis employed in the *Wisconsin* case, and intimated that the power to regulate procedure more closely approaches one which is "peculiarly and intrinsically" judicial rather than one which is "essentially" judicial. The precise question in *Callopy* was whether or not the power to make rules was to be considered a power vested in the courts by the constitution by virtue of the broad grant of "judicial power."[31] The *Callopy* court concluded that since the power to regulate practice and procedure was considered to be a "judicial power" at common law, the same rule-making power must be considered to have been vested in the supreme court by the constitution.

Later, in *Agran v. Checker Taxi Co.*,[32] the power of the legislature was again the subject of controversy, but the theory of the *Agran* court also reflected a substantial change in judicial attitude from that expressed in *Kelly*. The *Agran* court capitalized upon the historical analysis of *Callopy*, pointing out that although "judicial power" is not defined by the constitution, nevertheless, the constitution vests "judicial power" in its entirety in the courts; that "[I]f the power is judicial in nature, it necessarily follows that the legislature is expressly prohibited from exercising it."[33] The court emphasized that "[T]he General Assembly has the power to enact laws governing judicial practice only where they do not unduly infringe upon the inherent powers of the judiciary,"[34] without attempting to justify its position by postulating theories as to the source of this legislative

[29] Note 27 *supra*.
[30] 358 Ill. 11, 192 N.E. 634 (1934).
[31] ILL. CONST. art. VI, § 1 (1870).
[32] 412 Ill. 145, 105 N.E.2d 713 (1952).
[33] *Id.* at 149, 105 N.E.2d at 715.
[34] *Id.*

power. Rather, it intimated that while it has become *customary* to recognize a limited legislative power to regulate procedure, the source of this legislative power is uncertain, and its exercise constitutes a "usurpation" of judicial power.[35]

Callopy and *Agran* represented a culmination of all the elements of a changed judicial attitude concerning the matter of court rules. With the decision in *Agran* it was apparent that the court considered the responsibility for regulating matters strictly procedural to be vested in the court and that unauthorized statutory regulation of such matters constituted a usurpation of judicial power. Significantly, the Civil Practice Act was amended in light of *Callopy* and subsequent cases, giving full recognition to the supreme court's expressions that the rule-making power is inherent in the judiciary and does not exist by virtue of legislative grant.[36]

Against this background of history and decisional law, the controversy in *People ex rel. Stamos v. Jones*[37] was presented to the Illinois Supreme Court in an original petition for a writ of mandamus.

THE STAMOS DECISION

The controversy in *Stamos* had its genesis in an amendment to the Code of Criminal Procedure which conflicted with a court rule on the same procedural matter. The statute, in relevant part, provided as follows:

> If an appeal is taken from a judgment or order on an offense other than a 'forcible felony,' and the defendant is admitted to bail, the sentence of imprisonment shall be stayed by the trial court. If an appeal is taken from a judgment or order on an offense defined as a 'forcible felony' the defendant shall *not* be entitled to a continuation of his bail and the sentence of imprisonment shall not be stayed by the trial court.[38]

The Illinois Supreme Court, prior to the enactment of the above statute, adopted a court rule which provided that upon appeal from a judgment sentencing a defendant to imprisonment, "[T]he defendant *may* be admitted to bail and the sentence . . . stayed by a judge of the trial or reviewing court."[39]

On September 12, 1967, the Honorable Sidney A. Jones, the defendant in *Stamos,* found one Major McNeal guilty of two charges of aggravated battery and sentenced him to imprison-

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[35] *Id.*

[36] ILL. REV. STAT. ch. 110, § 2(1) (1967) provides in part that "[T]he Supreme Court of this State *has* power to make rules of pleading, practice and procedure . . . . " (emphasis added).

[37] 40 Ill. 2d 62, 237 N.E.2d 495 (1968).

[38] Law of Sept. 5, 1967, ch. 38, § 121-6 [1967] Ill. Laws 75 (repealed 1969) (emphasis added).

[39] ILL. REV. STAT. ch. 110A, § 609(b) (1967) (emphasis added).

ment in the penitentiary for a term of years. When a bond in the amount of $5,000 was filed, Judge Jones admitted McNeal to bail.

Since McNeal was found guilty of aggravated battery, a forcible felony, section 121—6 (b) of the Code of Criminal Procedure would have precluded the admission of McNeal to bail; while under rule 609 (b) the admission to bail would have been subject to the sound discretion of the judge. The court resolved the conflict between section 121—6 (b) of the Code of Criminal Procedure and rule 609 (b) by appealing to the provisions of the Judicial Article of 1962.[40]

The Judicial Article of 1962 made special reference to the rule-making authority of the supreme court in particular instances.[41] The *Stamos* court observed that of the five references to the rule-making function contained in sections 2, 5, and 7, there was but one instance wherein the constitution expressly stated that the exercise of the rule-making power was "subject to law hereafter enacted."[42] That particular reference concerned the matter of direct appeal from the circuit court to the supreme court. The court concluded that inasmuch as the constitution expressly subjected court rules to legislative enactments only in matters of direct appeal, it was only with respect to those matters that the General Assembly was authorized by article VI to revise rules adopted by the supreme court. The court held that since the constitution provided that "[T]he Supreme Court shall provide by rule for expeditious and inexpensive appeals . . ."[43] without any qualification subjecting such rules to "law hereafter enacted," it must be concluded that the constitution vested responsibility for rules governing appeals in the supreme court and not in the legislature.[44] Thus, since the legislature exceeded its authority, section 121—6 (b) of the Code of Criminal Procedure, as amended, was declared unconstitutional.

Although the decision in *Stamos* was limited strictly to the matter of regulating appeals, its significance lies in the court's assertion of an exclusive rule-making power in the supreme court over a particular facet of procedure. The court's analysis of its rule-making power pursuant to the new article VI (Judicial Article adopted in 1962) of the Illinois Constitution of 1870, is especially significant in accounting for this assertion of exclusive responsibility for rules governing appeals.

The Judicial Article of 1962, unlike prior judicial articles,

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[40] ILL. CONST. art. VI (1870).
[41] *Id.* §§ 2, 5, 7.
[42] *Id.* § 5.
[43] *Id.* § 7.
[44] Note 37 *supra* at 66, 237 N.E.2d at 498.

expressly recognized a rule-making power in particular instances.[45] Although the *Stamos* court focused particularly upon these "express references," its decision did not proceed from any significant constitutional changes effected by their inclusion in the Judicial Article. The court noted that "[T]hese provisions do not suggest an intention to effect a general revision of the rule-making power of this court as it existed prior to the adoption of article VI."[46] Thus, since the Judicial Article of 1962 did not effect a general revision of the rule-making power, it must be concluded that the shift in judicial policy manifest in *Stamos* proceeded from the development of a judicial attitude concerning the relationship between the judicial and the legislative powers to regulate matters strictly procedural in nature. In implementing the concepts expressed in *Callopy* and *Agran,* the court cited *Agran* in reference to its statement that the express references to the rule-making power contained in the Judicial Article of 1962 were not intended to change the general rule-making power from that which had existed prior thereto.[47] The court was simply emphasizing that the characterization of the rule-making power developed in *Agran* remained viable and controlling under the Judicial Article of 1962.

The above analysis clearly illustrates that the significance of *Stamos* can be more fully appreciated from the historical perspective of legislative-judicial interaction in procedural regulation. Historical analysis of the development of the rule-making power demonstrates not only that the *Stamos* court could have declared an exclusive judicial power to regulate appeals in the absence of the express reference to the power contained in section 7 of the Judicial Article of 1962, but also that the same analysis could be utilized with respect to court rules generally.

The *Stamos* decision, significant in its assertion of the supremacy of judicially created rules of practice and procedure in the event of conflict with a procedural statute, must nevertheless be viewed within the limited context of "conflict situations." The court did not declare that all statutes regulating judicial procedure are constitutionally void in the absence of express

[45] Note 41 *supra.*

[46] 40 Ill. 2d at 65, 237 N.E.2d at 497.

[47] See ILL. CONST. art. VI, § 2, *Historical and Practice Notes* (S.H.A. 1967), which comments on the disputes which arose concerning the rule-making power at the time the Judicial Article of 1962 was adopted. Many of the ambiguities which have surrounded the relationship between court rules and statutes and the power of the legislature to regulate procedure by statute could have been clarified when the Judicial Article was adopted in 1962. However, as the *Historical and Practice Notes* indicate, conflict on these matters could not be resolved and the much needed clarification did not result. The adoption of the Judicial Article of 1962 did not effect a change in the general rule-making power of the courts.

constitutional authorization, nor did it overrule those prior decisions recognizing a limited power in the General Assembly to regulate procedure by statute. The traditionally recognized legislative power to regulate procedure within a limited context remains unaffected by *Stamos*, in the absence of conflict with a court rule, so long as the particular procedural statute is not repugnant to an express constitutional provision.

STATUS OF THE RULE-MAKING POWER PURSUANT TO THE CONSTITUTION OF 1970

The Judicial Article of the 1970 Constitution did not effect a general revision of the rule-making power. However, in making its proposals, the Judiciary Committee emphasized the necessity of affirmative judicial action in order to effectuate the intended centralized administration and supervision of the judicial system.[48] Article VI, sections 4, 6, and 16 are especially significant in regard to centralized administration and supervision.

Article VI, section 4 (b) provides:

> Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right. *The Supreme Court shall provide by rule* for direct appeal in other cases.[49]

The last sentence of subpart (b) vests an exclusive rule-making power in the supreme court within the limitations contained therein. In conjunction with this proposed subpart, the Judiciary Committee emphasized that the supreme court should have complete discretion and control over direct appeals, exclusive of death sentence cases, and that the court could more effectively execute its responsibilities as a supreme court if it were vested with such control over direct appellate jurisdiction.[50]

Article VI, section 4 (c), regulating appeals from the appellate court to the supreme court, provides:

> Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, or if a division of the Appellate Court certifies that a case decided by it involves a question of such importance that the case should be decided by the Supreme Court. *The Supreme Court may provide by rule* for appeals from the Appellate Court in other cases.[51]

As witnessed in subpart (b), the last sentence of section 4 (c) vests exclusive rule-making power in the supreme court to pro-

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[48] REC. OF PROC., SIXTH ILL. CONST. CONV., *Committee Proposals*, vol. VI at 812-27 (1969-70).

[49] ILL. CONST. art. VI, § 4(b) (1970) (emphasis added).

[50] Note 48 *supra* at 816-17.

[51] ILL. CONST. art. VI, § 4(c) (1970) (emphasis added).

vide for appeals to the supreme court from the appellate court in situations other than those specified therein, where appeal to the supreme court lies as a matter of right.

Article VI, section 6 also provides an exclusive rule-making power in the supreme court within the limitations contained therein. Section 6 provides that *"The Supreme Court may provide by rule* for appeals to the Appellate Court from other than final judgments of Circuit Courts."[52]

The Judiciary Committee emphasized that vesting exclusive rule-making authority in the supreme court within the limitations contained in sections 4 and 6 was not intended to affect "the existing constitutional status of the Legislative and Judicial Departments in respect to the general subject of rule making power in matters of practice and procedure."[53] The committee, commenting upon the "existing constitutional status" of the rule-making power, referred specifically to the concurrent power relationship between the legislature and judiciary. Significantly, the committee noted, citing *Agran* and *Stamos,* that

> [W]here there has been on occasion a conflict between the legislative enactment and a Supreme Court Rule in areas where the legislative power is not constitutionally established or where the Court believes it has an inherent judicial power, the Supreme Court has held that the rule takes precedence over the statute.[54]

Article VI, section 16 provides in part that:

> General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. *The Supreme Court shall provide by rule* for expeditious and inexpensive appeals.[55]

The framers added the words "and supervisory," emphasizing that this addition more fully expressed their intention "that the general authority over all courts vested in the Supreme Court covers both administrative and supervisory powers."[56] Although the last sentence of section 16, as construed in *Stamos,* vests exclusive responsibility in the supreme court for promulgating rules governing appeals, the section was not intended to modify the concurrent power relationship between the legislature and judiciary on the matter of court rules generally.[57]

Although the Constitution of 1970 did not effect a substantial revision of the concurrent power relationship, it should be emphasized that the constitution contains no express provision which would preclude the supreme court from determining that

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[52] *Id.* § 6 (emphasis added).
[53] Note 48 *supra* at 825.
[54] *Id.*
[55] ILL. CONST. art. VI, § 16 (1970) (emphasis added).
[56] Note 48 *supra* at 814.
[57] See ILL. CONST. art. VI, § 16, *Constitutional Commentary* (S.H.A. 1971).

the judiciary possesses an exclusive rule-making power over facets of procedure not expressly vested therein. As this analysis has indicated, the propriety of legislative control over matters strictly procedural emanates more directly from custom or tradition than from constitutional authority.

CONCLUSION

Historical analysis clearly illustrates the traditional role of the judiciary in the regulation of practice and procedure by rule. Although such an analysis, coupled with a literal application of the separation of powers doctrine, could lead to the conclusion that the judicial power in this regard is exclusive, the Illinois Supreme Court has not been disposed to so conclude. Rather, the court has recognized a limited legislative power to regulate procedure, although its source is not clearly established. The decision in *Stamos* is significant in that it focuses upon the dilemma which arises out of conflict between court rules and statutes, a natural outgrowth of the concurrent power relationship in the absence of clearly defined boundaries. Although *Stamos* was limited to the matter of regulating appeals, the principles operative therein could be utilized with respect to court rules generally in similar future conflict situations.

The status of the rule-making power pursuant to the Constitution of 1970 remains substantially unchanged, with the exception of certain enumerated instances in which the power is exclusively judicial. The framers particularly emphasized that a general revision of the long-standing concurrent power relationship between the legislature and judiciary regarding procedural regulation was not intended. Thus, in light of the Constitution of 1970, and within the exceptions enumerated therein, it may be concluded that the power to regulate practice and procedure is possessed concurrently by the legislature and judiciary. However, *Stamos* may still be viewed as authority for the proposition that in situations of conflict between a legislative enactment and a supreme court rule and where the power of the legislature in the particular instance cannot be constitutionally established, the rule takes precedence.

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