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THE REGULATION OF PROCEDURE BY RULES ORIGINATING IN THE JUDICIAL COUNCIL

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The question whether rules of procedure should originate in a judicial council, does not necessarily depend upon whether the final authority for their promulgation is to be the legislature or the courts. In principle, if rules of procedure are to be prepared by such a body, it is a mere matter of detail whether their ultimate sanction is legislative or judicial.

It can well be argued, of course, that one is intrinsically superior to the other, or that the judicial council, if it formulates and presents rules, will have better success with one than with the other. Nevertheless, whatever the final authority may be, I think it can be shown that the judicial council is an agency entirely capable of preparing and presenting rules of judicial procedure adapted to the needs of the time, and that it could be employed for that purpose with great advantage to the public.

In considering whether an independent body of the sort which we have been calling a judicial council, would be an appropriate body for the development and formulation of rules of procedure, there are certain tests which may be applied.

In the first place, the rule-making body, whatever it is, should have adequate technical information in regard to the subject-matter with which it deals. But the importance of this test can very easily be over-emphasized. It has been a very common complaint against legislative regulation of procedure that the legislature can not adequately perform the task because it does not understand procedural technique. Perhaps that is true, but perhaps it is also true that when procedure becomes so intricate that laymen can not

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understand it, there is likely to be something wrong about it which calls for simplification. I am inclined to think that what we need is fewer technical rules and more judicial discretion in applying them. In a recent book by Henry W. Taft, entitled "Witnesses in Court," the author states, as a result of long experience as a trial lawyer, that he would prefer to try cases without any rules of evidence at all than to try them under the rules that we now have. Experience with arbitration where less technical rules of procedure are employed, thoroughly demonstrates that judicial functions may be performed satisfactorily without an intricate technique. If all our rules of pleading and practice were abolished, we would get along very well, if the judges exercised proper control of the proceedings. Judge McDermott recently told me of a number of experiences he had been having as a member of statutory federal three-judge courts. There were a dozen cases in which preliminary injunctions had been asked for. The pleadings were not complete, and the cases were not at issue. And yet in every case, although the court had assembled merely to hear the application for a temporary injunction, the judges then and there succeeded, without any difficulty or delay, by oral suggestions, in having the pleadings completed, the issues presented and the case argued and decided on the merits with entire satisfaction to everyone.

In overstressing the importance of technical rules of procedure, we have equally overstressed the necessity for technical information on the part of rule-making authorities. Nevertheless we are dealing with a technically trained profession which thinks in terms of a traditional technique, and if we are to continue to use the services of our profession to the best advantage, the familiar rules cannot be abandoned all at once. Therefore it is doubtless essential that the rule-making body should understand the technical background of the men who are to administer justice, and should deal with the rules in the light of actual conditions.

Conceding, then, that technical knowledge is necessary on the part of whatever body is to make the rules, a judicial council, as it has been ordinarily constituted in this country, certainly has adequate knowledge of that kind. The judicial council is ordinarily made up of members of the judiciary representing all the important courts, and also of members of the Bar, and frequently the attorney-general of the state is a member. Sometimes there are also lay members, but the proportion of professional members is certainly high enough in any case and perhaps too high.

Such a council is better equipped in this respect than the legislature, because the legislature is made up almost entirely of laymen; and it is better equipped than any court, because the court not only includes no members of the Bar but consists entirely of either appellate court judges alone or of trial court judges alone. This results in a restricted view,—the view of the bench as distinguished from that of the entire profession, and of a single court as distinguished from that of the entire judiciary.

The second test that should be applied is, that the rule-making body ought to be so constituted that it will be strongly impelled by an inherent incentive to act. Unused power is worthless. The legislature, so far as this test is concerned, is quite ideal, because it always has the strongest incentive to act. That is the very reason for its existence. There would be no meeting of the legislature if it were not assumed that the law needed to be changed. When through making changes the legislature adjourns. Change is the very essence of our conception of legislation. Therefore, as far as an inherent incentive to act is concerned, we cannot do better than the legislature.

But the difficulty here is that the incentive to act is a general incentive, covering the whole field of social needs, and the field is so broad that the relatively obscure subject of legal procedure is likely to receive scant attention. There is no political appeal in improving the rules of procedure. No class or constituency urges it as a matter of selfish interest. The people who are already in the courts as litigants, do not expect to be there long, and they all hope to be out before any changes in the procedural system could possibly bring them any relief. Prospective litigants cannot identify themselves. Nobody anticipates being a victim of litigation, so that those who are going to become involved in it cannot possibly constitute a class which will urge improvement in its methods. The result is that, the only impulse toward procedural reform arises from the general desire of the public to get a better administration of justice. But such vague impulses are of little effect in forcing legislation through a busy legislature which is much more interested in the things which have a strong popular appeal. If we could have special sessions of the legislature with nothing but procedural reform upon the program, we might do very well. But such a thing is a political impossibility.

Now apply this test to a court. It will appear, I think, that the court has no incentive at all to take up the burden of reform. In the first place the judiciary is the element which conserves; it does not create. It follows precedent. Its primary function is to administer the law as it is. The courts are the stabilizing factor in our civilization and we want them to remain so. It is their task to maintain and protect our social organization. To point out that the court lacks incentive to develop new rules of procedure, because of a judicial attitude which accepts the established order, reflects no criticism upon the court. We need exactly that kind of a judicial institution. But it does not follow that the court is the best qualified agency to carry out procedural reforms.

Furthermore, the courts are fully occupied with other duties which are always urgent. Their main function is the strictly judicial function of deciding cases and determining the law, and that function is of paramount importance. Cases press upon the court and occupy substantially all the time and attention of the judges. To impose upon them the additional duty of investigating and attempting to solve the problems of procedure is unreasonable. They will not do it, and I do not believe they ought to do it, and I doubt if they can do it. No non-competitive organization will ever voluntarily change its routine. Why should it? It gets familiar with its own methods, there is no pressure of competition, it does not have to change in order to perform its functions. Why should it not be content to continue in its accustomed way? Perhaps it should; at least it usually does.

The history of procedural reform has shown that there is nothing to be expected from the initiative of the courts themselves. The English Civil Procedure Act of 1833 was the first effort during the last century to meet the demand of the public for something better in the way of machinery for the administration of justice. Matters had gotten into a very bad condition. People hoped for relief by conferring a large degree of power on the court to regulate the rules of procedure. The result was the famous Hillory Rules of 1834, and we all know they were not a success. They did not go far enough. The judges did not understand what was wanted. Reform was outside of their normal field of activity. They lacked creative imagination. They were not in touch either with the clients or with the public, and the rules they produced were not satisfactory.

Years went by with increasing discontent, and after another half century of struggle came the judicature acts of 1873 and 1875. What did Parlia-

ment do? Did it pass a brief enabling act and say to the courts, "Draw up the rules"? It did not. Parliament itself drew up the rules. It passed the statute to which was attached a complete schedule of rules of practice. It did, however, give to the judges the power to change that schedule at any time as they saw fit. This was a delegation to the court of full control over the rules, and on paper it provided a flexible scheme for adjusting procedure from time to time as the public need required.

But the plan was a failure. Nothing was done by the judges. In 1913 a royal commission was appointed to see what was wrong. Many witnesses were examined, including judges and lawyers and business men. In its report, after making a large number of specific suggestions for changes in organization of courts, their methods of administration and their procedure, the Commission said:

"The question may be asked, why the delays in the administration of justice which have been so long complained of could not have been remedied by the adoption of these proposals by the responsible authorities through the procedure already provided without recourse to a Royal Commission. We regret to say that we do not think a satisfactory answer can be given to this question.

"Section 75 of the Judicature Act, 1873, enacts that a Council of the Judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year on such day or days as shall be fixed by the Lord Chancellor with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operations of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and inquiring and examining into any defects which may appear to exist in the system of procedure of the administration of the law in the said High Court of Justice or the said Court of Appeal or in any other court . . . and they shall report annually to one of His Majesty's principal Secretaries of State.

"It appears that successive Lord Chancellors, commencing with Lord Selbourne and continuing to the present day, have only taken the initiative imposed on them by this section of fixing a day for such a meeting on three occasions in thirty-seven years. Lord Loreburn told us that in seven years he had summoned one meeting, but considered them useless. The Lord Chancellor said 'he could conceive no more futile proceeding. We should meet and it would come to nothing.' We feel that the view held by the Lord Chancellor and so many of his predecessors as to the inutility of such meetings is probably well founded; but assuming that to be so, we cannot but regret that they have not asked Parliament to relieve them from the duty imposed upon them by statute and to substitute some other method of considering from time to time and securing any necessary reforms in the administration of justice."

In 1921, the Solicitors' Journal published an article on Reform in the Judicature, which criticised, as a still existing weakness, the same want of initiative on the part of the judges of which the Royal Commission of 1913 had complained. The writer pointed out that

"It was the defect of the Judicature Act, 1873, that, while it brought about the unity of the Judicature, it did so with insufficient guarantees for its subservience to public requirements. It was the intention of the Act as expressed in the preamble, to bring about 'the better administration of Justice in England.' . . . The reform was fundamental and it would have been thought that adequate safeguards would have been introduced to meet the gravity of the change. But this was not done. . . . The

Supreme Court, with the concurrence of a majority of the judges present at any meeting . . . is made master of its own practice and procedure, for it is empowered, with such concurrence, not only to alter and annul any rules, but to make fresh ones. . . . Subsequent legislation has only altered the regulations for the making of Rules of Court in the following way. . . . It has organized a Rule Committee of which two Barristers and two Solicitors are constituted members. The Committee, however, remains a purely professional body.

"If a tree be judged by its fruit, it is apparent that this contrivance for the ordering of the Judicature does not suffice as a safeguard of public interests. The inadequacy of the organization and procedure of the Judicature is a matter of common consent . . ."

Continuing inactivity on the part of the judges, which allowed the judicial system to fall farther and farther behind the needs of the business community, finally resulted in a protest from the London Chamber of Commerce. In the report of its committee the costs of litigation were declared to be excessive, and it was suggested that they were due to the ineffective procedure of the courts, particularly in respect to pleadings, rules for production of documents and proof of facts, the numerous interlocutory proceedings, and the tendency of the courts to go into matters of detail at great and unnecessary length. See 169 Law Times, 391, 441 (1930); 172 Law Times, 153 (1931). As a result of this protest came the so-called "New Procedure" rules of 1932, which undoubtedly represent an improvement but which fall far short of meeting the complaints of the business men of London.

The inadequacy of the "New Procedure," and the inability of the court itself to meet the situation, has brought still another effort to utilize outside initiative and ingenuity as an aid to the exercise of the rule-making power by the court. This is the recent appointment by the Lord Chancellor of the Business of the Courts Committe, only a minority of which consists of judges. It has published two interim reports, in March and December, 1933, which deal in detail with proposed changes in the rules of procedure.

American experience with rule-making by courts has been exactly the same as that of England. The United States Supreme Court was given power in 1792 to make rules of practice in equity for the federal courts. Thirty years went by before the court took up this task and enacted the first set of rules. The rules of 1822 stood substantially unchanged for twenty years. Thereafter, seventy years went by before the next revision was made in 1913, and since that time the rules have stood practically unchanged.

In 1916 the Virginia legislature, through the efforts of the State Bar Association, gave the Supreme Court of Appeals full rule-making power over the procedure in all the courts of record of the state. The act provided that "the court shall prepare a system of rules and practice and a system of pleadings, etc." The court took no action, and two years later the legislature, possibly to save its face, amended the act by substituting "may" for "shall," but the power so conferred remained unused and unexecuted. In 1928 another statute was passed, in a further effort to enlist the help of the Supreme Court of Appeals, as a result of which that court enacted one rule. That is all they have done with that rule-making power, aside from certain rules respecting the mechanics of appeals in the Court of Appeals.

In Alabama, in 1913, the legislature gave the Supreme Court power to adopt rules for all courts of the state provided they did not interfere with existing statutes. Nothing was ever done.

In Michigan, by the constitution of 1850, the Supreme Court was given power and charged with the duty "by general rules to establish, modify and

amend the practice in such court and in the Circuit Courts and simplify the same." It was eight years before the first set of rules was promulgated. I do not know who prepared them, but I think it probable that the Supreme Court itself did not. By 1896, forty years later, only a few minor changes had been made in the practice. In that year a State Bar Association Committee, impressed with the imperative need of doing something to modernize the practice, prepared a new set of rules and submitted them to the court, and the court promptly adopted them. There was no trouble about their adoption after the work of preparation was done.

For eighteen years no further changes were made, when another Bar Association Committee drew up a set of revised rules and they, also, were promptly adopted. In 1928 the legislature created a procedure commission which radically revised the rules. The court adopted them and they went into effect. The initiative in no case was in the court.

In New Jersey rule-making power was granted in 1912, authorizing the Supreme Court to make rules for its own conduct and for that of the circuit courts, common pleas courts and other inferior courts, which should supersede prior statutes in conflict therewith. So far as I know, there has been no substantial use of that power.

It appears, therefore, that in theory the court is an unsuitable agency for initiating changes in procedure, and experience has fully demonstrated that it will not in fact do it.

Will the judicial council be any more successful in meeting the test now under consideration? Would it have an inherent tendency to take action? I think it would. The judicial council, as a rule-making agency, would operate as a small legislative body. Its entire purpose would be to change, to modify, and to improve. It would have the same task as the legislature itself, but in a much more limited field. Its energies would not be scattered, but would be directed to one single task,—the improvement of the administration of justice. It would be entirely free from judicial inhibitions which result from the duty of the court to take the law as it is and administer it in a way to stabilize society.

The third test to apply to any proposed rule-making agency, is to determine whether it will have dominating motives for preparing such rules as will impartially serve and protect all the parties in interest. Those several parties are, the trial court, the reviewing court, the bar, the litigants and the taxpaying public. Each one of these components in the problem of judicial administration has special needs and naturally seeks special advantages, which are often inconsistent with the needs and advantages of the others. Long court sessions are burdensome to the judges, but are probably of advantage to lawyers, litigants and public. Technicalities of procedure may seem to serve the purposes of lawyers, but they make the courts less serviceable to litigants. Juries relieve trial courts of responsibility for the decision of facts, but they cost the public a great deal of money. The new Illinois Civil Practice Act requires instructions to be prepared in a connected, coordinated, narrative form by the trial judge and submitted to the lawyers before being given, which increases the work of the judges but relieves the lawyers and saves the public the expense of many new trials.

The trial judge in England is required to take notes of the trial, showing the entire substance of the testimony, and an appeal can be taken upon the judge's notes alone. This makes a small record of five or six pages, in cases where we would have a record of one or two hundred. It places a burden upon trial judges, but it is of great benefit both to litigants, by saving an enormous amount of expense, and to appellate judges, by reducing the size of the records they must read.

There are similar conflicts in interest in connection with the printing of records on appeal. Appellate judges would rather read print than typewriting. Parties would rather pay for a typed record because it is cheaper. In England they never print their records on appeal; they all go up in typewritten form. Printing is required only for the House of Lords. Printed records are against the interest of litigants and in the interest of appellate courts. It is said that printing bills for records and briefs in New York State run to a million and a half dollars a year.

All rules for simplifying appeals are advantageous to litigants and lawyers, but are against the interest both of trial judges, because they lead to more reversals, and of appellate judges, because they bring up more cases.

What rule-making agency can be found which will properly reconcile these conflicting interests? The legislature represents all elements in society and yet it has no part in the administration of justice. As an agency for regulating procedure it would therefore seem quite ideal in this respect. The court, on the other hand, would be in no such detached position. A trial court, as a rule-making body, while fully understanding and serving its own needs, could not do as well for the court of review, and vice versa. Neither court could fully appreciate and serve the interests of the bar, nor could it so sympathetically understand the problems of the litigant as the lawyers are able to do. If rules are to be satisfactory, they must be drawn with a view to all the interests which are affected thereby.

Here is an interesting example of the disastrous results of a failure to consider all the interests concerned in the operation of court rules. The bar of Chicago and of Illinois, undertook, three or four years ago, to revise the practice in the state of Illinois and they prepared a Civil Practice Act radically revising the practice. The proposed act was published, and circulated everywhere throughout the state. All lawyers and judges had copies of it. It was debated in every local Bar Association for a year. Nobody in the profession was in ignorance of its essential details. The act was adopted by the legislature and went into effect on the first day of January, 1934. Now, while that act was under consideration, the Municipal Court of Chicago was given rule-making power, and the judges of that court proceeded to draw up and adopt a set of rules. Although the court was one of small jurisdiction, which, of course, should operate informally and simply, the procedural provisions adopted consisted of three hundred and eleven rules, substantially following the intricate practice of the Supreme Court of England. They went into effect on January 2, 1934, the very next day after the Civil Practice Act went into effect, and not one single rule among the three hundred and eleven is like any corresponding rule in the Civil Practice Act. The judges of the Municipal Court seemed to completely overlook the fact that the lawyers who practiced before them practiced also before the circuit and superior courts, where the Civil Practice Act was in use, and that they were forcing those lawyers to learn and to operate two entirely different systems of procedure in Chicago.

Would the judicial council stand in any more favorable position than the courts in dealing with these matters? I think it would. It would directly represent the trial court, the appellate court, and the bar, and it would indirectly represent the litigants and the public. It contains its quota of lawyers, and lawyers are in touch with clients; judges are not. Being in touch with their clients lawyers are in a far better position than the judges to understand the public attitude toward the administration of justice. The judicial council, in order to better represent the public, might very well have lay members. Michigan has them, and there are two or three other

councils which also have lay members. There is every reason why they should be there. English commissions for investigating the courts and suggesting improvements often consist largely of laymen. The lay members will probably be fully as valuable as the professional members of the council. In England a ministry of justice with lay members upon it has been suggested. In the Solicitors' Journal for November 26, 1921, it is argued that such a personnel would be more efficient than an exclusively professional body. The writer says:

"The president of the Board of Trade was never necessarily a railway man, and yet, through his supervision and the supervision of his department, we have efficiency in the railways, when, in the Judicature, with the head of the Judicature in control, we have inadequacy. This is an anomaly and it consigns to confusion the Lord Chancellor's argument advanced at the Guildhall Banquet founded on the inability of the laymen to comprehend technical matters. * * *

"When considering the measures of reform required it must be remembered that the success of the railway administration in this country is due to the fact, not only that it comes under Parliamentary control and so is kept in subjection to public needs; but that it had in the Board of Trade a body performing what we might term 'Liaison' duties whereby the requirements of the companies are reconciled with public wants from a study and appreciation of the claims of both."

Although the personnel of the judicial council may be so arranged as to give some representation to the lay public, I think that is not the principal safeguard which the public would enjoy. The chief safeguard of public interest, in connection with an independent agency like the judicial council for regulating procedure, would lie in the fact that the council itself would desire and strive for political success under the constant stimulus of public discussion and criticism.

This suggests another aspect of the problem which cannot be overlooked. The courts themselves should be protected from public criticism in their strictly judicial work. Their function is to impartially declare the law, not to please the parties or support special interests. It is a delicate question how far political attacks upon the judgments of courts can be carried without undermining confidence in the courts themselves. Certainly it would be sound policy to remove the courts as far as possible from political controversy by relieving them of non-judicial duties likely to arouse criticism. It is the delay, expense, technicality and uncertainty of litigation, rather than the legal quality of judicial decisions, which dissatisfies the public with the administration of justice. If the courts are to be responsible for both the methods employed and the judgments rendered, public criticism directed against them in respect to the former function will react against them in respect to the latter. On the other hand, by relieving them of administrative duties which arouse popular complaints, they will be able to perform their strictly judicial duties in an atmosphere much less violently charged with political controversy.

This point has not been overlooked in England in the struggle to find some way of freeing the courts from the shackles of an impractical procedure. The Solicitors' Journal, in the article already quoted, presents the reasons for a separate administrative organization for regulating the business of the courts as follows:

"* * * The conditions that have brought about reform in the Navy and Army require to be brought to bear upon the Judicature in order that it may come under the same beneficial influences. These reside primarily

in the fact that * * * naval and military administration * * * *comes under public comment and stimulus.* No such system prevails with regard to the Judicature. The Lord Chancellor, * * * as head of the Judiciary * * * exercises an unquestioned * * * authority, and so is himself removed, as are all the functions which he exercises removed, from parliamentary review and comment. While his essential [judicial] functions are in this way raised, and rightly raised, above public criticism, other functions which he exercises and which do not deserve this sanctuary are automatically raised with them, and in this way the services of the Judicature, because they are centered in the Lord Chancellor, become screened from public criticism, and, in the larger sense, are still waters. The pretense is made that public interference with * * * the ordering of the Judicature is an interference with the powers and duties of the judges. But this is not the case. It is not in the exercise of judicial function that renovation is sought. The case for reconstruction rather is that misconceptions touching the independence of the Bench should no longer be allowed to retard reform in the services that attend it.

"The fact is that the offices of the Lord Chancellor as they affect * * * the Bench and the Woolsack are * * * at variance with those which touch the services of the Judicature. * * * If the services of the Judicature are to meet public expectations, it is required of him that he should hold himself liable to attack when they fall below the standard set. The immunity from attack he now enjoys is at the root of the inadequacy of the services. * * * We have, in fact, a situation in which matters of organization and procedure in the law are left, as far as the public is concerned, very much to take their course. And yet organization and procedure are at the root of efficiency in the law.

"So conscious are those who have studied the question of the causes to which the inadequacy of the services of the law are due, that the demand has been made that the new Ministry of Justice should be a civil or non-professional head. This may easily be claiming too much. * * * The main thing to achieve is Parliamentary criticisms and control."

A judicial council charged with public responsibility for devising efficient machinery for litigation and a proper organization for the various administrative agencies which are involved in the work of the courts, would substantially meet the need here suggested. It would relieve the courts from duties which would tend to produce embarrassment and impair the public confidence which they ought to enjoy, and would at the same time provide an adequate agency for the regulation of judicial business.

The fourth and last test which I propose for efficiency in the regulation of procedure, is the ability to organize and direct research. The problems involved are exceedingly difficult. They call for both statistical and observational studies of litigation in all its phases, and an extensive comparative review of the experience of other jurisdictions. Without an adequate organization for such research, with a highly expert direction and control, proposals for improvements in procedure would have no solid foundation.

Under this test, the legislature seems unsuitable. It does not have a membership likely to be qualified for such work. It holds intermittent sessions which are not conducive to continuous studies. It is subject to sudden changes in personnel and in party control. It operates in an atmosphere of constant political stress. None of the conditions for successful research are present.

The court is equally ill suited for the task. The judges are busy with other things, they have judicial work to do which is of fundamental im-

portance, cannot be postponed and must occupy almost their exclusive attention. Furthermore, they are not interested fundamentally in change. Their psychology is against it. They administer an existing system of law. They do not have, as judges, the imagination which is necessary for research studies instituted to devise new methods of administering justice.

The judicial council, on the other hand, has all the qualifications necessary to develop and use proper research facilities. In the first place, the personnel of the council would be selected on the basis of interest in such studies. In the next place, the judicial council would function continuously, and in the third place, that would be its primary business.

If it be assumed that the foregoing study of the various agencies available for the regulation of judicial procedure, has indicated the judicial council as the one best qualified for the purpose, the question still remains, should it have power both to prepare and propose rules and to give them full legal effect?

I believe its power should be limited to the preparation and submission of such rules as it considers desirable, leaving the final enactment either to the legislature or to the court.

But I think a legal presumption should be indulged in favor of its proposals. There has been an enormous amount of relatively futile work done by judicial councils. They ought to have produced much more extensive results. The Judicial Council of Massachusetts is undoubtedly the most successful of all the judicial councils in the country, but that council, consisting of a group of unusually able and interested lawyers, meeting every two weeks, year after year, to study the problems of procedure in Massachusetts, has achieved results which, while substantial, seem to me utterly inadequate. Its proposals have been ignored where they ought to have been followed, and for that reason they have doubtless often been too restricted and restrained. Such a council ought not to be in a position where its suggestions have no legal status in the scheme of government. How can the work of the council be made more effective?

I suggest that when the judicial council presents its recommendations to the legislature or to the court, according as one or the other has legal control over the processes of procedure, those proposals be first accorded the presumption of adequacy and suitability, to be followed by full legal effectiveness unless affirmatively rejected within a definite period by the controlling authority.

This would offer adequate protection against inadvisable changes. The proposals of the council should be published, in order to make them a subject for public discussion and criticism. And if they are rejected by the final authority, it should be by resolution of the legislature or by a written and published opinion and order of the court. Such a legislative veto has been employed in England as a safeguard against inadvisable rules of court, and it has been introduced into the recent act of Congress conferring upon the United States Supreme Court power, by general rules, to consolidate legal and equitable procedure in the federal courts.

A plan of this kind would seem to offer the public the maximum opportunity to utilize the invaluable services of a judicial council, while preserving an effective check upon proposals of doubtful value.