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INHERENT POWER OF THE JUDICIARY OVER ADMITTANCE TO THE BAR

Admission to the bar is a matter of increasing concern to the state. As its economic life, its social life, become more intricate, the legal rules governing social conduct and their administration through courts of justice become more complicated, so that adequately trained lawyers are increasingly necessary to the competent exercise of their function as officers of the courts administering justice. Too, overcrowding of the bar[1] increases the concern. As the relative number of lawyers increases, the temptation to lawyers to violate the public trust reposed in them increases, and their violations of legal ethics work generally to the detriment of society and specifically to the interference with administration of justice and to the disgrace of their profession.

Higher standards for admission to the bar would result in a more competently trained bar, and would relieve considerably the overcrowded condition by admitting as lawyers, officers of the court, only those well prepared to assist the courts in their work. There is strong sentiment that favors (and justly so) democracy of the bar. But surely the thinking adherents of that democracy would favor a raising of standards directed to the benefit of the general public and the profession. "The American Bar Association believes in that democracy, but firmly maintains that it should not be used as a cloak to excuse inadequate legal training."[2]

Courts are well acquainted with the considerations that should be determinative of standards for admission to the bar. As a practical matter they are best qualified to determine standards of admission. *And,* as a *legal* matter, the courts have inherent power over admission to the bar. But, because many regulations of the practice of law have been by legislation in the order of police regulations of individuals for the welfare of the general public, there has arisen a popular misconception that admission is a matter subject to legislative control.

This article is directed to pointing out, both generally and in Washington, the inherent power of the judiciary over admission to the bar.[3] It is proper to look to the courts for a necessary rais-

"During the last decade the numbers in our (legal) profession have increased by a third, which is twice the percentage of increase of the population during the same period, and five times that of the doctors." *Notes on Legal Education,* published by the Section of Legal Education and Admissions to the Bar of the American Bar Association, June 25, 1932.

[2] *Notes on Legal Education,* ibid.

[3] Although the subject of this article is limited to the power of the courts over *admission* to the bar, since the courts generally consider power over admission to the bar and power over discipline of its members as correlative parts of the same inherent power, reference is made to some disbarment cases in which there is consideration of the general problem.

ing of standards of admission. It is constitutional for the courts to raise those standards.

In England Prior to 1776

Prior to the Revolution of 1776 admission to the bar in England was governed by the courts through their deputies, the Inns of Court. This power of the courts over admission, in its inception, seems to have come by grant of authority from the sovereign, with statutory confirmation.[4] Bolland writing on the problem, "how and when did the Courts begin to recognize the qualifications of a Barrister of the Inn to practice before them?" concludes

> "The conclusion, then, at which I arrive is this. that authority to call to the Bar was granted by Edward I, with statutory confirmation, to the Judges exclusively, and that the Judges have constituted the Benchers of the Inns of Court their deputies for this purpose. The Benchers call to the Bars of their respective Inns, and the Judges receive at the Bar of the Court without further form or ceremony those whom the Benchers, as their authorized deputies, have called."[5]

Notwithstanding the origin of the courts' powers over those practicing before them, it is well recognized that "although the profession had its origin and mature development in a country where constitutional divisions of government were unknown, its supervision and control at every stage were handed over to the judges, until by long continued use they came to constitute recognized prerogatives belonging to the judiciary"[6] And though Parliament from time to time passed statutes regulating admission to the bar,[7] they were of negative character denying admission to those unworthy

Many cases in the United States, in interpreting the English situation, reach conclusions the same as those above. Among the more prominent of these decisions are *In re Day*,[8] *In re Cate*,[9]

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[4] 20 Edw. I (1292), 1 Rot. Parl. 84, *Holdsworth's History of English Law*, Vol. 2, pp. 311-318, 484-512; 1 Pollack and Maitland, *History of English Law*, p. 190, *et seq.*, Bolland: "Two Problems in Legal History," 24 Law Q. Rev. 392; Bruce, "The Judicial Prerogative and Admission to the Bar," 19 Ill. Law Rev. 1.

[5] 24 Law Q. R. 392, 397.

[6] Leon Green: "The Courts' Power over Admission and Disbarment," 4 Tex. Law Rev. 1, 2 *Halsbury's Laws of Eng.*, p. 360.

[7] *Maugham on Attorneys*, 15-20, App. xiv-xx.

[8] 181 Ill. 73, 54 N. E. 646, 50 L. R. A. 519 (1899).

[9] 270 Pac. 968 (Cal. 1928).

In re O'Brien's Petition,[10] *State v. Cannon,*[11] *and In re Opinion of the Justices to the Senate.*[12]

IN THE UNITED STATES

In the United States it has, with but few exceptions, been held that courts have inherent power over admission to the bar.

The federal courts have always recognized that the judiciary has such control (over admission to the bar) In *ex parte Secombe*[13] Chief Justice Taney stated. "It has been well settled, by the rules and practice of common law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counselor, and for what cause he ought to be removed."[14] In *Ex parte Garland*[15] the Supreme Court of the United States held the test oath prescribed by the Act of Congress of January 24, 1865, unconstitutional because the statute was a bill of attainder and *ex post facto.* But the court's statement regarding the nature of the function of admitting to the bar has so frequently been quoted and relied upon as sound authority that it is set out here in part.

> "They (attorneys and counselors) are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character. * * * The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court and are responsible to it for professional misconduct. * * * Their admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power, and has been so held in numerous cases."[16]

This inherent power of the courts has been generally recognized in the various state jurisdictions.[17]

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[10] 79 Conn. 46, 63 Atl. 777 (1906)

[11] 240 N. W 441 (Wis. 1932) Here the court made an "original and fundamental investigation of the question" (legislative and judicial power over admission to the bar) and after its exhaustive review of history and case law came to the same conclusions set forth above.

[12] 180 N. E. 725 (Mass. 1932).

[13] 19 How. 9, 15 L. ed. 565 (1857).

[14] Ibid.

[15] 4 Wall. 333, 18 L. ed. 366 (1867).

[16] Ibid, 378.

[17] *Ex parte Secombe,* 19 How. 9, 15 L. ed. 565 (1857) *Wernimont v. State,* 101 Ark. 210, 142 S. W 194 (1911) *In re Chapelle,* 71 Cal. App. 129, 234 Pac. 906 (1925) *In re Day,* 181 Ill. 73, 54 N. E. 646, 50 L. R. A. 519 (1899) *Hanson v. Grattan,* 84 Kan. 843, 115 Pac. 646, 36 L. R. A. (n. s.) 240 (1911) *Re Branch,* 70 N .J. L. 537, 57 Atl. 431 (1904) *Splane's Petition,* 123 Pa. 527, 16 Atl. 481 (1889) *Hoopes v. Bradshaw,* 231 Pa. 485,

There have been no *recent* decisions in any of the jurisdictions denying the existence of this inherent power. And most of the few cases holding contra to the majority followed the case of *In re Cooper*,[18] a New York decision of uncertain authority In the case of *In re Applicants for License to Practice Law*[19] the North Carolina Supreme Court stated.

> "It is urged, however, that the statute impairs or destroys the inherent right of the court to direct and control the conduct of attorneys who are its officers. There are decisions which so express themselves on this question, and, if by 'inherent' they intend to say—and this is all that most of them do say—that, in the absence of legislation on the subject, the courts have the power to regulate and deal with the matters mentioned, this may be accepted. But, if by 'inherent' is meant that the power, to the extent claimed here, is one inherent because essential to the existence of the court and the proper exercise of its functions, we do not think the position can be maintained."[20]

For authority to bolster up its position the court relied upon *In re Cooper* [21] And in *State v. Kirke*[22] the Florida court held, "At the common law the courts had no power to admit attorneys or counselors and it has been held that for this reason this is a power not inherent in a court, and in the absence of constitutional provisions a matter for regulation by the Legislative Department of the Government,"[23] the court, here too, relying for authority on the *Cooper Case* and its interpretation of the history of the English bar. But this *Cooper Case,* relied upon for authority by these North Carolina and Florida decisions, has been criticized and definitely discredited. In the New York case the legislature of that state had enacted a statute admitting to practice on diploma of the Columbia College, and the Court of Appeals held that the statute was valid. The appeal from the Supreme Court was entertained on the ground that admission to the bar was a judicial proceeding and the exercise of an appropriate judicial function. But, as the New York case was explained by the Illinois court in *In re Day*,[24]

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80 Atl. 1098 (1911) *In re Lambuth*, 18 Wash. 478, 480, 51 Pac. 1071 (1898) *In re Bruen*, 102 Wash. 472, 172 Pac. 1152 (1918) *In re Application for License to Practice Law*, 67 W. Va. 213, 67 S. E. 597 (1910) *Vernon County Bar Assoc. v. McKibben*, 153 Wis. 350, 353, 141 N. W 283 (1913), *State v. Cannon*, 240 N. W 441 (Wis. 1932) *State Board of Law Examiners v. Phelan*, 5 Pac. (2d) 263 (Wyo. 1931) *In re*: *Opinion of the Justices to the Senate*, (2d), 180 N. E. 725 (Mass. 1932).

[18] 22 N. Y. 67 (1860).

[19] 143 N. C. 1, 55 S. E. 635 (1906).

[20] 55 S. E. 635, 637.

[21] Note 18, *supra.*

[22] 12 Fla. 278 (1868)

[23] Ibid, 281.

[24] 181 Ill. 73, 54 N. E. 646 (1899).

> "The court based its decision upon the ground that although the appointment of attorneys had usually been intrusted in that State to the courts, and was judicial in its nature, yet it was not a necessary or inherent part of their judicial power, but was subject to legislative action, and had been derived from statute. In that State, the power to admit to practice was exercised before the Revolution by the Governor. By the Constitution of 1777 the appointment of attorneys was given to the courts, but the provision was dropped from the Constitution of 1846, which provided, 'Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this State.' In view of the history of admission and this particular condition of affairs, the act was sustained. The consequences have been greatly deplored by eminent men abundantly able to judge of the injustice to the public resulting from the rule then established, under which other special laws were passed."[25]

In a discussion of the power of the courts over admission, the *Cooper* Case has been criticized as follows:[26]

> "The elaborate brief of Professor Dwight in this case contains much of the ancient learning on the subject, but the brief is naturally not conceived in a judicial spirit, and it is quite as interesting for what it omits as for what it contains. The power of the judges to give a remedy to a person properly qualified for the bar, who had been rejected by the Inns of Court is never mentioned, nor was the attention of the court called to the fact that the earliest acts of Parliament upon the subject do not confer, but restrict, the judge's power to admit. It was very unfortunate that the case was argued only on one side, and when the court below found out what had happened in the Court of Appeals, they protested against the way in which a reversal of their judgment was obtained, without notice to anyone. * * *
>
> "In justice to the New York court, it ought to be said that very likely they construed the act as making the diploma not conclusive, but only competent, evidence. * * * If this is true—(the history of the constitutional provisions alluded to in the *In re Day* opinion quoted above)—it seems fair to say that the common law discretion of the judges in admitting to the bar, which exists under the normal American constitution, did not exist in New York."[27]

Other criticisms of the *Cooper* Case to the same effect have been

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[25] 54 N. E. 646, 651.
[26] 13 Harv. L. R. 231.
[27] Ibid, 253.

made.[28] And the New York case of *People v. Culkin*[29] decided in 1928, with an opinion by Chief Justice Cardoza, has clouded the authority of the *Cooper* Case in New York.

In view of these generally accepted criticisms of the *Cooper* Case, which go directly to the reliance on it made by the North Carolina and Florida courts, it would seem that these North Carolina and Florida decisions are erroneous. They seemingly stand alone,[30] and certainly are entitled to but little weight against the strong majority holding as to the courts' inherent power over admission to the bar.

Legislative Regulation of and Judicial Power Over Admission to the Bar

The courts having inherent power over admission to the bar, it would seem logically tenable that any legislative regulation of the same matter would be an encroachment upon the inherent power of the judiciary, and therefore unconstitutional as violating the division of powers, which is characteristic of the constitutional law of most states. And such, in effect, is the holding of a small minority of the states. These few jurisdictions hold that the legislature may not regulate admission to the bar in any manner, on the ground that the courts have sole power over the matter, free from interference by either of the other branches of the government.[31]

In a great majority of the jurisdictions, however, there is permitted such legislative regulations as are proper exercises of the police power and do not encroach upon the inherent power of the court. As the Pennsylvania court recently stated:

> "The true rule is as follows: Statutes dealing with admissions to the bar will be judicially recognized as valid so far as but no further than the legislation involved does not encroach on the right of the courts to say who shall be privileged to practice before them and under what

[28] "The Courts' Power over Admission and Disbarment," Leon Green, 4 Tex. Law Rev. 1, 9, 10; *In re Cate*, 270 Pac. 968, 982 (Cal. 1928); *State v. Cannon*, 240 N. W. 441, 450 (Wis. 1932).

[29] 248 N. Y. 465, 162 N. E. 487, 492, 60 A. L. R. 851 (1928).

[30] *In re Saddler*, 35 Okla. 510, 130 Pac. 906 (1913) is seemingly *contra*, however. There the court held, "that insofar as the statute here involved prohibits a disbarment for acts involving moral turpitude, but disconnected with the professional or official duties of an attorney, until after conviction therefor, is not violative of the provisions of the Constitution, vesting in various courts of the state judicial power and prohibiting the exercise by one of the three departments of government of the power properly belonging to the other departmnts." *In re Eaton*, 4 N. D. 514, 62 N. W. 597 (1895), is to the same effect.

[31] The Illinois case of *In re Day*, 181 Ill. 73, 54 N. E. 646, 50 L. R. A. 519 (1899), is the leading case of this group. *Splane's Petition*, 123 Pa. 527, 16 Atl. 481 (1889), and *Re Branch*, 70 N. J. L. 537, 57 Atl. 431 (1904), are to the same effect. But Pennsylvania has since the *Splane* case joined the majority holding—*In re Olmsted*, 292 Pa. 96, 140 Atl. 634 (1928).

circumstances persons shall be admitted to that privilege.''[32]

This limitation of the legislative power to enacting regulations that do not encroach upon the courts' inherent power over admission to practice, as stated by the courts in the various cases upholding such regulations, is not dictum, for those decisions generally proceed upon this line of reasoning: The courts have inherent power over admission to the bar, but as a matter of comity between the governmental departments and of administrative convenience such legislative regulation as does not encroach upon the inherent power will be upheld; the statute in question is a proper exercise of police power and does not encroach upon the courts' inherent power; therefore the statute is constitutional, of full force and effect.

The California court in *Re Chapelle*[33] denied the application of Chapelle for admission to the bar without examination, as required by statute. The court stated:

> ''The courts undoubtedly enjoy the inherent power to determine what persons shall be admitted to the bar (6 C. J. 571) * * * Notwithstanding the inherent power of the courts to admit applicants for licenses to practice law, 'it has been generally conceded that the Legislature may, in the exercise of the police power, prescribe reasonable rules and regulations for admission to the bar which will be followed by the courts.' 6 C. J. 572. *Vernon Co. Bar Ass'n. v. McKibben,* 153 Wis. 350, 141 N. W. 283; *In re Bruen,* 102 Wash. 472, 172 P. 1152; *Keeley v. Evans* (D. C.) 271 F. 520; *In re Ellis,* 118 Wash. 484, 203 P. 957.
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> ''*The only restraints upon the exercise of this power by the Legislature are that the regulations prescribed by that branch of the government shall be reasonable and shall not deprive the judicial branch of its power to prescribe additional conditions under which applications shall be admitted, nor take from the courts the right and duty of actually making orders admitting them.* 6 C. J. 572; *In re Platz,* 42 Utah 439, 132 P. 390.''[34] (Italics inserted.)

In *Brydonjack v. State Bar*[35] the California Supreme Court, sitting *en banc,* considered the petitioner's application for admission to the California bar, and in the course of its opinion stated: ''The sum total of this matter (legislative regulation) is that the Legislature may put reasonable restrictions upon constitutional

[32] *In re Olmsted,* 292 Pa. 96, 140 Atl. 634, 636 (1928). See also: *State v. Cannon,* 240 N. W. 441 (Wis. 1932); *In re: Opinion of the Justices to the Senate,* 180 N. E. 725 (Mass. 1932) and cases collected therein at p. 728.

[33] 71 Cal. A. 129, 234 Pac. 906 (1925).

[34] 234 Pac. 906, 907.

[35] 208 Cal. 439, 281 Pac. 1018 (1929).

functions of the courts provided they do not defeat or materially impair the exercise of those functions.''[36]

In the recent *Opinion of the Justices to the Senate*[37] the Supreme Judicial Court of Massachusetts declared.

> ''No statute can control the judicial department in the performance of its duty to decide who shall enjoy the privilege of practicing law * * * Statutes respecting admissions to the bar, which afford appropriate instrumentalities for the ascertainment of qualifications of applicants, are no encroachment on the judicial department. * * * Statutes of that nature are valid provided they do not infringe on the right of the judicial department to determine who shall exercise the privilege of practicing in the courts and under what circumstances and with what qualifications persons shall be admitted to that end. *When and so far as statutes specify qualifications and accomplishments, they will be regarded as fixing the minimum and not as setting bounds beyond which the judicial department cannot go.* Such specifications will be regarded as limitations, not upon the judical department, but upon individuals seeking admission to the bar. There is no power in the General Court to compel the judicial department to admit as attorneys those deemed by it to be unfit to exercise the prerogatives and to perform the duties of an attorney at law. * * *
>
> ''These conclusions are in accord with the principles declared in substance by the great majority of courts in this country, many decisions of which are collected in a footnote.''[38] (Italics inserted.)

Upon recognition of this rule it follows as a matter of course that legislative regulations encroaching on the courts' inherent power over admission (and disbarment) are unconstitutional, and that, notwithstanding or independent of statutory provisions, the courts, in the exercise of their inherent power, may disregard the legislative regulations and apply their own which may be in delimitation or addition to the legislature's.

In 1931 the New Mexico court while upholding the State Bar Act as an exercise of police power, in a proceeding under the act to suspend an attorney for non-payment of dues required by law of practicing attorneys, rejected one part of it. ''The power to suspend or disbar an attorney, being a strictly judicial function, may not be performed by the Board of Commissioners of the State Bar,

[36] 281 Pac. 1018, 1020.

[37] 180 N. E. 725 (Mass. 1932).

[38] Ibid, 727. In accord: *Hanson v. Grattan*, 84 Kan. 843, 115 Pac. 646, 34 L. R. A. (n. s.) 240 (1911) *Re Crum*, 103 Ore. 296, 204 Pac. 948 (1922) *Re Bruen*, 102 Wash. 472, 172 Pac. 1152 (1918) *Re Adkins*, 83 W Va. 673, 98 S. E. 888 (1919) *State v. Cannon*, 196 Wis. 534, 221 N. W 603 (1928) *State Board of Law Examiners v. Phelan*, 5 Pac. (2d) 263 (Wyo. 1931).

and the provisions of the State Bar Act purporting to confer such authority on the board are void as violating section 1 of article 3 of the Constitution making a departmental division of powers into legislative, judicial and executive."[39]

In the 1932 case of *State v. Cannon*[40] the Wisconsin court held invalid a legislative act reinstating Mr. Cannon as an attorney at law One of the reasons given by the court for invalidating the statute was that it encroached upon the inherent power of the court, the freedom of this power from legislative limitation was declared in the court's opinion

> "While the Legislature may legislate with respect to the qualifications of attorneys, its power in that respect does not rest upon any power possessed by it to deal exclusively with the subject of the qualifications of attorneys, but is incidental merely to its general and unquestioned power to protect the public interest. * * * *Such legislative qualifications do not constitute the ultimate qualifications beyond which the court cannot go in fixing additional qualifications deemed necessary by the courts for the proper administration of judicial functions.* There is no legislative power to compel courts to admit to their bars persons deemed by them unfit to exercise the prerogatives of an attorney at law The power of the court in this respect is limited only to the class which the Legislature has determined is necessary to conserve the public welfare."[41] (Italics inserted.)

In the *Brydonjack* Case[42] the California court refused to follow the findings of the Commission of Bar Examiners of the State Bar. Petitioner had been refused a recommendation for admission by the board, and he took a writ of review to the California Supreme Court. The court treated his petition as a written motion for an order of admission, and granted the motion

> "Our conclusion, then, is that the Legislature in its wisdom has placed at the disposal of this court a competent and effective body to aid it in the important function of admissions to the bar. The applicants are to first submit themselves to this bureau for investigation, and *after this is done the power in this court is plenary to admit those who have in our opinion met the prescribed test, whether the investigators do or do not agree with this conclusion.*"[43] (Italics inserted.)

In several recent cases the courts have exercised their power,

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[39] *In re Gibson,* 4 Pac. (2d) 643 (N. M. 1931). In accord: *In re Edwards,* 45 Ida. 676, 266 Pac. 665 (1928).
[40] 240 N. W 441.
[41] Ibid, 450.
[42] 208 Cal. 439, 281 Pac. 1018 (1929).
[43] 281 Pac. 1018, 1021.

in matters involving admission or disbarment, to decide in accordance with their own rules, notwithstanding legislative regulation.

In 1928 the Pennsylvania court took such action in *In re Olmsted.*[44] Olmsted had sought admission to the Delaware County bar without complying with a court rule providing that an applicant for admission to the bar of Delaware County should make a "formal declaration in writing that he intends permanently to practice in that county, and within three months to open his principal office there, which certificate shall be filed by the board (of bar examiners) with its report." The board had refused the certificate on the sole ground that this rule had not been complied with. Stating the rule that, "Statutes dealing with admissions to the bar will be judicially recognized as valid so far as but no further than the legislation involved does not encroach on the right of the court to say who shall be privileged to practice before them and under what circumstances persons shall be admitted to that privilege,"[45] the court discharged the rule to show cause why petitioner should not be enrolled as a member of the Delaware County bar. And by statutes generally governing the situation, petitioner would have been entitled to be enrolled, only non-compliance with the additional court rule stood in the way

In 1926 the Arizona Supreme Court acted upon an original proceeding before it on petition of the attorney general for the disbarment of one Bailey for reasons other than those prescribed by the legislature. Demurrer was overruled, with leave to answer, the court stating:

> "The Legislature may, and very properly does, provide from time to time that certain minimum qualifications shall be possessed by every citizen who desires to apply to the courts for permission to practice therein, and the courts will require all applicants to comply with the statute. *This, however, is a limitation, not on the courts, but upon the individual citizen, and it in no manner can be construed as compelling the courts to accept as their officers all applicants who have passed such minimum standards, unless the courts are themselves satisfied that such qualifications are sufficient. If they are not, it is their inherent right to prescribe such other and additional conditions as may be necessary to satisfy them the applicants are indeed entitled to become such officers.* * * *
>
> "Such being the law in regard to admission to the bar, it equally and necessarily follows that, whenever a practitioner by his conduct shows that he no longer possesses the qualifications required for his admission, he may be

[44] 292 Pa. 96, 140 Atl. 634.
[45] 140 Atl. 634, 636.

> deprived of the privilege theretofore granted him, and such deprivation may be either under the authority of a statute prescribing the cause therefor, and the manner of procedure, *or the court of its own inherent power may act.*"[46] (Italics inserted.)

The Appellate Division in New York has declared that the court's judgment as to fitness of applicants for admission cannot be precluded by the boards created by the legislature. "Admission to the bar is a privilege, and not a right, and the action of the bar examiners, in admitting applicant to examination and in certifying to applicant's knowledge of our laws, cannot preclude this court from the exercise of its judgment as to applicant's general character and fitness."[47] And the court, acting in the exercise of its own inherent power, refused admission to petitioner on the ground that in the opinion of the court his general character unfitted him for the position he sought.

In *Freeling v. Tucker*[48] plaintiff, an Oklahoma attorney, had rendered services in Idaho for defendant. And when plaintiff sued for the amount due for services defendant urged in defense that since plaintiff was not admitted to practice in Idaho he could not recover for services as an attorney rendered in that state. Judgment for the plaintiff was affirmed, the court holding "The power of the Legislature to provide the manner, terms, and conditions of the admission of attorneys to practice, does not deprive the courts of their inherent power, as a matter of comity, to permit an attorney from a sister state to appear and present argument in a particular case."[49]

From examination of these cases it is clear that by great weight of authority the judiciary has inherent power over admission to the bar and discipline of its members, that while the legislature has police power to establish reasonable qualifications for admission and to make reasonable regulations of attorneys which do not encroach upon the inherent power of the judiciary, those qualifications or regulations which are encroachments upon the judiciary's power are unconstitutional, and that the judiciary in the exercise of its inherent power may act independent of or notwithstanding legislative regulations. And examination of the Washington cases shows the decisions of this state's Supreme Court to be in accord with the great weight of authority

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[46] *In re Bailey*, 30 Ariz. 407, 248 Pac. 29, 30 (1926)

[47] *In re Peters*, 221 App. Div. 607, 225 N. Y. S. 144 (1927) To same effect; *In re Platz*, 42 Utah 439, 132 Pac. 390 (1913).

[48] 49 Ida. 475, 289 Pac. 85 (1930).

[49] 289 Pac. 85, 86.

IN THE STATE OF WASHINGTON

The Washington court at an early date recognized attorneys as officers of the court. In *Presby v. Klickitat County*[50] the court held. "An attorney is an officer of the court, and he takes his office with all its burdens as well as all its rights and privileges. And among the burdens thus assumed is that of being obliged, when requested by the court, to conduct, without compensation, the defense of those who are destitute of means, and are accused of crime."[51]

The inherent power of the Washington court to control discipline of members of the bar was established in *In re Lambuth*[52] where in disbarment proceedings the court stated.

> "Attorneys and counselors at law are officers of the court. * * *
>
> "*But power to strike from the rolls is inherent in the court itself No statute or rule is necessary to authorize the punishment in proper cases. Statutes and rules may regulate the power, but they do not create it.* It is necessary for the protection of the court, the proper administration of justice, the dignity and purity of the profession, and for the public good and the protection of clients."[53] (Italics inserted.)

Although the inherent power of the court was seemingly clouded by the opinion in the disbarment case, *In re Waugh,*[54] the later cases of *In re Robinson*[55] and *In re Bruen*[56] cleared the power of any such cloudiness by discrediting the *Waugh* Case and declaring it overruled. "We are of opinion that the *Lambuth* and the *Robinson* cases proceeded upon the right principles and are in conflict with the *Waugh* case, and that the *Waugh* case is in conflict with the very great weight of authority As to the matter of original jurisdiction (from which the above mentioned cloudiness came) in such proceedings, we now believe it should be, and it is overruled."[57]

In State ex rel. Mackintosh v. Rossman[58] defendant was disbarred as a practicing attorney under a statute[59] which defined barratry, made certain acts criminal, and provided that an attorney violating the act should be disbarred. The court pointed out that "From

[50] 5 Wash. 329, 31 Pac. 876 (1892).
[51] Ibid, 332.
[52] 18 Wash. 478, 51 Pac. 1071 (1898).
[53] Ibid, 480.
[54] 32 Wash. 50, 72 Pac. 710 (1903).
[55] 48 Wash. 153, 92 Pac. 929 (1907).
[56] 102 Wash. 472, 172 Pac. 1152 (1918).
[57] *In re Bruen*, 102 Wash. 472, 480, 172 Pac. 1152.
[58] 53 Wash. 1, 101 Pac. 357 (1909).
[59] Laws 1903, p. 68.

the earliest times, one of the penalities for this offense when committed by an attorney has been disbarment. Weeks, Attorneys (2d ed.) sec. 86, 3 Am. & Eng. Ency Law (2d ed.), p. 681.''[60] And as to the legislative action in regard to the matter the court stated

> ''While it is true that the practice of law is a lawful occupation in itself, it is not a natural right or a right granted by the constitution. It is a privilege granted by the state and may be surrounded with whatever restrictions the legislature may in reason prescribe. * * *
>
> ''We think the act is a legitimate exercise of legislative power.''[61]

Here the Washington court recognized the validity of reasonable legislative regulation that was an exercise of the police power of the legislature.

In re Bruen[62] is not only a leading case in this state, but is recognized in many other jurisdictions as an authority on the inherent power of the courts over the bar. In this disbarment proceeding the validity of a statute[63] giving to the board of bar examiners certain powers was attacked on constitutional grounds, and, because of the strongly reasoned opinion, the case clearly stands as authority for the general inherent power of the court over the bar —both as to admission and discipline.

Acting in pursuance of the statute, the board of bar examiners had tried Bruen on charges involving moral turpitude, found the charges true, concluded that his right to practice law had been forfeited, that he should be disbarred, and his name stricken from the roll of attorneys of the Supreme Court and of the State of Washington, and it made an order to that effect. Bruen filed a petition to review the findings, contending that the statute involved was unconstitutional as an encroachment upon the judicial powers conferred by the constitution on the courts. The court again set forth in certain language the inherent power of the court

> ''The inherent power of the court is the power to protect itself, the power to administer justice whether any previous form of remedy had been granted or not, the power to promulgate rules for its practice, and the power to provide process where none exists. *It is true that the judicial power of this court was created by the constitution, but upon coming into being under the constitution, this court came into being with inherent powers. Among the inherent powers is the power to admit to practice, and*

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[60] 53 Wash. 1, 4, 101 Pac. 357.
[61] Ibid, 3.
[62] Note 56, *supra*.
[63] Laws of 1917, ch. 115, p. 421.

necessarily therefrom the power to disbar from practice, attorneys at law."[64] (Italics inserted.)

The court stated the qualified nature of the legislative power·

"*The cases are fairly uniform upon the proposition that admitting to practice, suspending, and disbarring are judicial functions. The legislative power, in the interest of uniformity of standard and to remedy and prevent mischiefs in the profession, may regulate and restrict this power, but cannot take it away.* It may provide machinery for the administration of the regulation provided by the legislature, as in carrying into effect such regulations some agency is necessary In this instance it has provided the machinery and agency of the state board of law examiners."[65] (Italics inserted).

And the statute involved having granted to the board powers that partook of the nature of legislative, administrative or executive and judicial, the court held unconstitutional that part of the statute which it deemed to be an encroachment on the inherent power of the court to admit and disbar—"the board is not a court and cannot exercise the functions of a court except the limited function of passing upon evidence received by them and reporting it. They can make no order striking the name of an attorney from the rolls or disbarring him from practice."[66] The rest of the statute was sustained.

In 1922 *In re Ellis*[67] was decided by the court. Ellis sought admission to the bar, as a matter of right, without examination by the board of bar examiners, on the ground that he was a graduate of the University of Washington law school with a diploma evidencing such fact, and so, under the statute,[68] entitled to admission without examination. The court recognized the board of bar examiners as an "arm of the court," but, too, that ultimate determination of questions of admission rested with the court.

"While the question of the admission of an attorney to practice law in this state is one to be determined ultimately by this court, the proceedings looking to the determination of an applicant's qualifications for admission are, in the first instance, had before the state board of law examiners, which board, under our statutes, is an arm of the court created to aid the court in determining questions incident to the admission and disciplining of attorneys. It is upon the record of proceedings had before, and the recommendation of, that board, and any challenge that may be made to such recommendation, that the question

[64] 102 Wash. 472, 476, 172 Pac. 1152.
[65] Ibid, 477.
[66] Ibid, 479.
[67] 118 Wash. 484, 203 Pac. 957 (1922).
[68] Laws of 1921, ch. 126, p. 407.

of whether or not the applicant shall be admitted is determined by the court."[69]

The disbarment proceeding case of *In re Olson*[70] held that the Washington court could, and would in a proper case, act independent of or notwithstanding legislative provisions. After hearings on the complaints the state board of bar examiners recommended that the charges against Olson be dismissed. Upon objections and exceptions by the Seattle Bar Association, the matter was heard before the Supreme Court *en banc.* Counsel for Olson argued that "no objections or exceptions could be presented to this court from the findings and recommendations of the board of bar examiners by the state or on its behalf, on the ground that the statute * * * makes no provision for such procedure." In reply to this argument the court stated

> "*But under the inherent power of this court to admit, suspend or disbar attorneys at law,* notwithstanding the statute gives the right as a matter of course only to the person whose license has been annulled or revoked to object to and have a review of the same, *we have felt obliged, in a matter of such importance to the bar and the public, to consider that we may, at our own option, examine into the charges against an attorney proceeded against before the state board of bar examiners, even though his license has not been recommended to be revoked or annulled by the board.* * * * but after examining the record we are unable to arrive at any conclusion differing from that of the state board of law examiners."[71] (Italics inserted.)

If the judiciary should decide that higher qualifications than those established by the legislature should be requisite to admission to the bar, it could rule possession of those higher qualifications to be prerequisite to admission. Reasonable police regulations of admission and discipline it should and does recognize. But the existence of legislative qualifications should not and does not preclude the judiciary from establishing and requiring compliance with higher qualifications.

Examination of the cases on the inherent power of the judiciary over admission to the bar reveals authoritative basis, both generally and in Washington, for the statements made at the outset of this article It is proper to look to the courts for a necessary raising of standards of admission. It is constitutional for the courts to raise those standards.

J KENNARD CHEADLE.*

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[69] 118 Wash. 484, 485, 203 Pac. 957.
[70] 116 Wash. 186, 198 Pac. 742 (1921).
[71] Ibid, 189.
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