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LEARNING IN THE LAW AND ADMISSION TO PRACTICE—A REJOINDER

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I believe that Professor Gavit's reply calls for a response, because it is clear to me that his position rests upon fallacy supported by artifice and if not challenged and exposed may result in mischief.

When subjected to scrutiny his contention that one who applies for admission to practice law in Indiana without sufficient legal learning is therefore not of good moral character turns out to be a delusion.

I want the following quotations from our court decisions before us as we start:

"Constitutions are to be construed not in accordance with the technical rules applied in construing statutes and contracts but in accordance with the intent of the people who adopt them."[1]

"As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the framers of our constitution and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they said."[2]

"We are not at liberty to presume that the framers of the constitution or the people who adopted it did not understand the force of language."[3]

"A constitution is an instrument of government, made and adopted by the people for practical purposes, connected with the common business and wants of human life. Every word in it should be expounded in its plain, obvious and common sense."[4]

"Words must be taken in their ordinary and common acceptation, because they are presumed to have been so understood by the framers of the constitution and the people who adopted it. They judged it by the meaning plain on its face according to the general use of the words employed."[5]

"A constitution derives its force from the people who ratified it and the intent to be arrived at is that of the people and this is to be found only in the words of the text."[6]

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[1] *Carton v. Secretary, etc.*, 151 Mich. 337, 351.

[2] Chief Justice Marshall in *Gibbons v. Ogden*, 9 Wheat. 1, 188.

[3] *People v. Rathbone*, 101 N. Y. S. 108.

[4] *People v. New York, etc. R. Co.*, 24 N. Y. 485.

[5] *Manly v. State*, 7 Md. 135, 147.

[6] *Beardstown v. Virginia*, 76 Ill. 34, 35.

"It is not allowed to interpret what has no need of interpretation."[7]

"If courts venture to substitute for the clear language of the instrument their own notion of what it should have been, or was intended to be, THERE WILL BE AN END OF WRITTEN CONSTITUTIONS. Written constitutions will soon become of little value, if their injunctions be lightly overlooked; and the experiment of setting a boundary to power will prove a failure."[8]

"The history of a constitutional provision, the causes which led to its adoption and the mischief which it was intended to remedy, will not be considered in the construction of it if the language is plain and unambiguous."[9]

"Nothing may be read into a constitution merely because it will be helpful in dealing with conditions now existing which did not exist when it was adopted."[10]

"Questions as to the wisdom, expediency or justice of a constitutional provision afford no basis for construction; nor can construction be used to read into it some unexpressed general policy or spirit."[11]

"The courts can not deny the plain meaning of an unambiguous provision because of a belief that it could not have been so intended."[12]

"The power of construction is so great that if it were not restrained by well settled rules, the effect of plain words would be practically uncertain. It was Chief Justice Pemberton, in the time of Charles II, who boasted he had entirely outdone Parliament in making laws."[13]

"An enumeration of certain specified things in a constitutional provision excludes all others not therein mentioned."[14]

It is now clear that there can be no interpretation imposed upon our fundamental law unless there is an ambiguity in it. The contention of my opponent from its very nature, refutes itself, for the phrase "good moral character" must be used with precisely the same meaning and sense in any instance. If the particular act of the applicant in the supposed case actually proved him of bad moral character, the term would be used with identical import as it would had he done anything else that showed what kind of character he possessed.

So the question for decision is not whether the meaning of the phrase should be changed but if the applicant is or is not of

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[7] Vattel, Bk. 2, C. 17, § 263.

[8] *Greencastle Twp. v. Black*, 5 Ind. 557.

[9] *State v. McGough*, 118 Ala. 159, 24 So. 395.

[10] *Hunter v. Colfax Const. Co.*, 157 N. W. 145 (Iowa).

[11] *Woessner v. Bullock*, 176 Ind. 166, 93 N. E. 1057.

[12] *State v. Lynch*, 87 Oh. St. 444.

[13] *Spencer v. State*, 5 Ind. 41.

[14] *People v. Deutsch*, 249 Ill. 132, 94 N. E. 162.

good moral character, as that term was used in the constitution by the common people who ratified it.

The suffocating smoke screen of words used to argue that a corrupt mind is proved by the bare act of applying for admission without legal learning becomes wholly irrelevant and foreign to the discussion for the plain reason that no additional requirements can be imposed upon applicants and he can not be examined so long as the constitution remains as it is and the rules of construction obtain as previously set out herein.

No cause appearing for interpretation and the construction not having been amended, the section must stand as a maximum requirement for admission. Our Supreme Court has in effect twice so held. In the case entitled *In re Denny,* 156 Ind. 104, 59 N. E. 359, in 1901 it was squarely decided that being of good moral character and a voter entitled Mr. Denny to admission to practice law and that the rules of the Marion Circuit Court prescribing an examination on learning in law were of no force. The rules were based upon an attempted amendment of this same section of the constitution which was supposed to have been ratified but which the court there held was not supported by enough votes to carry it.

In 1913, after another proposed amendment of the same section was supposed to have been adopted, the Marion Circuit Court tried to compel Mr. Boswell to submit to an examination in law. The trial court in each case found the applicant to be of good moral character and a voter, but the Supreme Court in *In re Boswell,* 179 Ind. 292, 100 N. E. 833, decided that the proposed amendment did not succeed and ordered Mr. Boswell to be admitted to practice, regardless of learning.

The ambiguity talked about by my adversary is found partly concealed by verbiage in the facts of a supposed case and not in the words of the constitution. He was forced to contend that the uncertainty was in the language of that instrument, since without changing its import it stands literally as ratified, an insurmountable barrier to the accomplishment of a private purpose.