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Judicial Administration

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JUDICIAL ADMINISTRATION

Inherent Power of the Court—Constitutional Grant of Power—Contempt. In *State v. Estill*[1] the Washington Supreme Court held that it would not be bound by the terms of the contempt statutes. C. J. Brooks, the father of Ermie Estill, and Robert Reditt, her fiancee, gave false testimony as defense witnesses in her jury trial. Brooks and Reditt were cited for contempt of court "*on the basis of the clearly apparent and partly conceded perjury* of each . . ."[2] and were adjudged guilty in that "said conduct tended to *impair the authority* of the court and to *interrupt the course* of the trial. . . ."[3] The two defense witnesses consolidated their appeals and obtained a reversal from the court, sitting departmentally. On petition for rehearing the court agreed with the conclusion of the departmental opinion, but disagreed with the reasons set forth.

The departmental opinion set out the statutory definition of contempts of court[4] and held that this perjury did not fall within its terms, saying:

> As to the existence of common-law contempts in this state, we have set out the statutory definition in its entirety because its comprehensive nature indicates that the legislature intended to cover the entire field of contempts. The legislature has the power of superseding the common law. It has elected to do so in this instance. We, therefore, limit ourselves to an interpretation of the statute.[5]

The court, en banc, firmly rejected this holding, stating:

> A majority of the court does not agree that the legislature has the power to supersede the inherent power of a constitutional court to punish for contempt; nor does a majority of the court believe that the legislature has attempted to do so.[6]

This statement, as well as the excerpts quoted by the court from various authorities, is ambiguous because of its brevity. The court does not make it clear whether the legislature may affect the court's contempt powers at all, and indeed loosely implies that it may not. Generally, the courts of other jurisdictions allow regulatory legislation, but not limitary legislation.[7]

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[1] 55 Wn.2d 576, 349 P.2d 210 (1960), *affirming on other grounds* 50 Wn.2d 331, 311 P.2d 667 (1957).
[2] State v. Estill, 50 Wn.2d 331, 332, 311 P.2d 667, 688 (1957).
[3] *Id.* at 332, 311 P.2d at 668.
[4] RCW 7.20.010.
[5] State v. Estill, 50 Wn.2d 331, 334-35, 311 P.2d 667, 669-70 (1957).
[6] State v. Estill, 55 Wn.2d 576, 579, 349 P.2d 210, 212 (1960).
[7] See Annot., 121 A.L.R. 215 (1939); THOMAS, PROBLEMS OF CONTEMPT OF COURT 50 (1934).

The court cited *Corpus Juris Secundum*[8] for the proposition that the legislature may not destroy, or abridge, or limit, as by definition, the inherent power of courts to punish for contempt.[9] However, that reference further states that "although there is authority to the contrary, the legislature may, however, regulate the use of the power, and in some jurisdictions . . . the punishment that may be imposed."[10]

Similarly, *American Jurisprudence*[11] was cited by the court[12] but it must be noted that *American Jurisprudence* qualifies its remarks with the assertion that: "It [a constitutionally created court] may, however, regulate the practice in proceedings for contempt, . . . limit or extend the powers of punishment. . . ."[13]

Washington has recognized the power of the legislature to regulate procedural matters, provided that it does not deprive the court of powers essential to the proper exercise of its judicial functions.[14] Also, acting in the interest of self-preservation, the court has held that its dignity and the necessity for orderly procedure require that the legislature not be allowed to provide for the intervention of a jury in a contempt proceeding.[15] In addition, it has been indicated that the legislature is limited in its power to prescribe the punishment which may be inflicted for contemptuous conduct.[16] While early cases[17] have stated that the legislature may declare what acts or omissions shall constitute contempt, *State v. Estill* follows the majority rule[18] in pointing out that the legislature may not exhaustively do so.

The philosophy which seems to have governed the Washington court has been carefully stated in a student casenote:

> This power [to punish for contempt], therefore, is an inherent one

[8] 17 C.J.S. *Contempt* § 43(b) (1939).
[9] 55 Wn.2d 576, 579, 349 P.2d 210, 212 (1960).
[10] 17 C.J.S. *Contempt* § 43(b) at 59 (1939).
[11] 12 AM. JUR. *Contempt* § 49 (1938).
[12] 55 Wn.2d 576, 579, 349 P.2d 210, 212 (1960).
[13] 12 AM. JUR. *Contempt* § 49, at 424 (1938).
[14] In the well known case, State *ex. rel.* Foster-Wyman Lumber Co. v. Superior Court, 148 Wash. 1, 267 Pac. 770 (1928), the court asserted its power to prescribe rules of procedure, but avoided a decision as to whether the power was granted by the legislature or was inherent. However, eight years later, in Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 418, 63 P.2d 397, 407 (1936), it was held: "Undoubtedly, the legislature may prescribe reasonable regulations governing court procedure. . . . But the courts are not required to recognize a legislative restriction which has the effect of depriving them of a constitutional grant or of one of their inherent powers."
[15] Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 423-24, 63 P.2d 397, 409 (1936); State *ex. rel.* Dailey v. Dailey, 164 Wash. 140, 144-45, 2 P.2d 79, 81 (1931).
[16] See State v. Buddress, 63 Wash. 26, 29, 114 Pac. 879, 881 (1911) (dictum).
[17] State v. Buddress, *supra* note 16, at 29, 114 Pac. at 881 (dictum); *In re* Coulter, 25 Wash. 526, 529, 65 Pac. 759, 760 (1901) (dictum); State v. Tugwill, 19 Wash. 238, 252-53, 52 Pac. 1056, 1061 (1898) (dictum).
[18] See THOMAS, PROBLEMS OF CONTEMPT OF COURT 51 (1934).

> because it, like the power to compel the attendance of witnesses or the power to call a grand jury and instruct it, is essential to the functioning of the court. . . .[19] It follows therefore, that while the jurisdiction of a legislative court may be varied by legislative action, if a court is one of record, whether of constitutional or statutory origin, the legislature cannot destroy its inherent power to punish contempt.
>
> On the other hand, despite occasional loose language to the contrary, this power is not an absolute one. . . . [T]he authority of the legislature to *regulate* this inherent power itself within certain reasonable limits is recognized even among the strictest inherent power advocates. . . . [W]hether or not a statutory regulation is valid should depend upon whether it preserves to the court sufficient power to protect itself from indignities and to enable it effectively to administer its judicial functions.[20]

Of course, serious problems may arise in distinguishing between legislation so limitary as to be invalid and that which is merely regulatory. Abstract rules[21] can furnish only a rough guide, and perhaps the better approach is to survey the cases of other jurisdictions in a search for pursuasive holdings as well as in an attempt to understand the underlying factors and attitudes which have motivated the courts.

Judge Mallery, in an opinion concurring in result only, stated that the Washington contempt statute was in force before the constitution was adopted, and that while our constitutional forefathers were aware of it they put no provisions in the constitution repugnant to it.[22] He concluded, therefore, that the statute was "constitutionally validated" and should not be declared a nullity.[23]

Judge Foster, in a concurring opinion,[24] disagreed with Judge Mallery in that he felt that the statute was repugnant to the constitution, at least in so far as it diminished the jurisdiction of the court. This viewpoint is more consistent with the controlling philosophy of past cases. For instance, in *Blanchard v. Golden Age Brewing Co.*,[25] the court adopted the federal viewpoint which is that "the courts of the United States, when called into existence and vested with jurisdiction

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[19] Note, 21 IOWA L. REV. 595, 596-97 (1936).
[20] *Id.* at 598.
[21] Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 424, 63 P.2d 397, 409 (1936), (legislation limitary if court is deprived of powers essential to its efficient action and the proper administration of justice); State *ex. rel.* Dailey v. Dailey, 164 Wash. 140, 145, 2 P.2d 79, 81 (1931), (power inherent if necessary to preserve the dignity of the court and its orderly procedure); State *ex. rel.* Dysart v. Cameron, 140 Wash. 101, 109, 248 Pac. 408, 411 (1926), (legislation limitary if court is deprived of powers essential to its very existence as a court).
[22] State v. Estill, 55 Wn.2d 576, 582, 349 P.2d 210, 213 (1960).
[23] *Id.* at 645, 349 P.2d at 213-14.
[24] *Id.* at 647, 349 P.2d at 214-15.
[25] 188 Wash. 396, 63 P.2d 397 (1936).

over any subject, at once become possessed of the power [to punish for contempt]."[26] The court made it clear that this power was given because of necessity.[27]

In *State v. Estill* the majority apparently felt that the power to punish perjury as a contempt was essential to the effective operation of the court. If this is true,[28] then in creating the court our constitutional forefathers must have granted this power.[29] A statute denying it, passed before or after the constitution, would be repugnant to it.[30]

However, contrary to Judge Mallery's contention, RCW 7.20.010 is not rendered a nullity because of the *Estill* decision. It still remains in force in enumeration of particular acts which may not be within the court's inherent power to punish, or which the court might not wish to punish on its own accord.[31]

The Washington practitioner should not be misled by the rather loose language appearing in this decision which in places indicates a radical departure from established law. The court has merely denied the power of the legislature to deprive it of inherent powers necessary to its effective operation. It is suggested that the acts enumerated by statute remain as a substantial part of the Washington law of contempt.[32]

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JURISDICTION

State Jurisdiction over Indian Country. Two recent Washington cases, *State ex rel. Starlund v. Superior Court*[1] and *State ex rel. Adams*

[26] Michaelson v. United States *ex. rel.* Chicago, St. P. M. & O. Ry., 266 U.S. 42, 65-66 (1924).

[27] Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 425, 63 P.2d 397, 409 (1936).

[28] Only the court can make this decision. See State v. Frew, 24 W.Va. 416, 49 Am. Rep. 257, 274 (1884).

[29] The majority quoted from Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 63 P.2d 397 (1936). "But the courts are not required to recognize a legislative restriction which has the effect of depriving them of a constitutional grant or of one of their inherent powers. What the legislature has not given, it cannot take away. . . ." State v. Estill, 55 Wn.2d 576, 580, 349 P.2d 210, 212 (1960).

[30] Hence Judge Mallery's citation of art. XXVII, § 2, of the state constitution, which provides that "All laws now in force in the Territory of Washington, *which are not repugnant to this Constitution, shall remain in force . . .*" (Emphasis added.) does not contradict, but supports, the majority's decision.

[31] See 17 C.J.S. *Contempt* § 43(b) (1939).

[32] Apparently Keller v. Keller, 52 Wn.2d 84, 86, 323 P.2d 231, 232 (1958) is a still valid statement of the Washington position. "In general, contempt proceedings in this jurisdiction may be placed in three categories: (a) criminal contempt prosecuted under RCW 9.23.010; (b) civil contempt initiated under RCW 7.20.010 *et seq*; and (c) contempt proceedings resulting from the long exercised power of constitutional courts (1) to punish summarily contemptuous conduct occurring in the presence of the court, (2) to enforce orders or judgments in aid of the court's jurisdiction, and (3) to punish violations of orders or judgments."

[1] 157 Wash. Dec. 87, 356 P.2d 994 (1960).