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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]

CHARLES F. ABBOTT JR.

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).

v. Superior Court,[2] point up the hiatus which continues to exist in the State of Washington's jurisdiction over Indians living within its borders. In the *Starlund* case Clyde Colwash, an unemancipated, enrolled member of the Yakima Indian Tribe, who resided upon the Yakima Indian Reservation, had been abandoned by his parents. The Yakima County Juvenile Court declared him to be a dependent child and placed him in the custody of the juvenile probation officer. In the *Adams* case Indian parents were deprived of custody of their four children in a juvenile proceeding in Okanogan County. The children were enrolled members of the Colville Indian Tribe and had lived on the Colville Indian Reservation. In both cases the dependency orders were reviewed by the Washington Supreme Court on writs of certiorari and the respective juvenile courts were held to be without jurisdiction over the children.

Public Law 280[3] enabled the State of Washington to assume criminal and civil jurisdiction over Indians and Indian Lands within the state, either by amending the state constitution or by enacting affirmative legislation.[4] In response to Public Law 280, the Washington Legislature in 1957 enacted H.B. 404,[5] now codified as RCW 37.12, which obligates the state to assume civil and criminal jurisdiction over Indian Tribes whose tribal councils have made requests to the governor that such jurisdiction be exercised. To date only nine of Washington's twenty-one Indian Tribes have requested that the state assume jurisdiction over them.[6]

In the *Adams* case the court pointed out that:

> The confederated tribes of the Colville Indian Reservation have not elected to place themselves under the operation of RCW 37.12; until they do so, or the legislature unconditionally assumes jurisdiction, as

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[2] 157 Wash. Dec. 73, 356 P.2d 985 (1960).

[3] 67 Stat. 588, 590 (1953), 28 U.S.C. § 1360 (note) (1958). While this section of the statute does not refer to the states to which it applies by name, the states to which § 6 of the statute applies are: Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah and Washington. H.R. Rep. No. 848, 83rd Cong., 1st Sess. 6 (1953).

[4] "The consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act..." 67 Stat. 590 (1953), 28 U.S.C. § 1360 (note) (1958). The Washington Supreme Court has held that an act of the legislature was sufficient for the assumption of jurisdiction by the Washington courts. State v. Paul, 53 Wn.2d 789, 337 P.2d 33 (1959).

[5] Wash. Sess. Laws 1957, c. 240; now codified in RCW 37.12.

[6] Letter from Warren A. Bishop, Assistant to the Governor, to the author, April 17, 1961.

> authorized by Public Law 280, the courts of this state will have no jurisdiction beyond that expressly granted by Congress.[7]

In the *Starlund* case, RCW 37.12 is not mentioned specifically but the court proceeded on the assumption that it did not confer jurisdiction over members of the Yakima Tribe upon the juvenile court. The court again stated that the juvenile court could have only such jurisdiction as has been expressly surrendered by Congress.

A primary consideration which motivated Congress in the enactment of Public Law 280 was the hiatus in criminal law enforcement authority which existed with respect to Indians in the states involved.[8] The states lacked criminal jurisdiction over Indians within their borders. Federal jurisdiction over crimes by one Indian against another was limited except for ten major crimes.[9] Consequently, as a practical matter enforcement of any type of criminal law was left to the tribes themselves. In most states the tribal organization was not adequate to perform this function. The assumption of criminal law jurisdiction by the states was looked to as a means of restoring law and order to the Indian Tribes.

In the area of civil litigation too, the tribal council was found to be ill-fitted to cope with the exigencies of twentieth century life. Increased contact with the outside world had accultured residents of Indian Country to American ways to a point where an extension of civil jurisdiction by the states was deemed desirable.

In passing Public Law 280 Congress proceeded with two considerations in mind: (1) the wishes of the states involved; and (2) the wishes of the Indian Tribes to be affected. According to the report of the Secretary of the Interior, state and local officials in California, Minnesota, Nebraska, Oregon and Wisconsin were favorably disposed to the assumption of jurisdiction. Civil and criminal jurisdiction over Indian Tribes was conferred upon these states directly,[10] both because of the states' willingness to assume it and because there were no state constitutional or statutory impediments to the assumption of jurisdiction by the states. Of the Indian Tribes to be affected by the proposed transfer of jurisdiction, only the Red Lake Band of Chippewas in Minnesota, the Warm Springs Tribe in Oregon and the Menominee

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[7] 157 Wash. Dec. 73, 77, 456 P.2d 985, 988 (1960).
[8] H.R. Rep. No. 848, 83rd Cong., 1st Sess. 5 (1953).
[9] 18 U.S.C. § 1153 (1958). The "Ten Major Crimes" are murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery and larceny.
[10] 67 Stat. 588 (1953), 18 U.S.C. § 1162 (1958), 28 U.S.C. § 1360 (1958).

Tribe in Wisconsin voiced objections. All three of the tribes were exempted from the transfer.

Public Law 280 enabled the State of Nevada to assume criminal and civil jurisdiction over the Indians within its borders at such time as it should desire to do so by affirmative legislation.[11] No state constitutional or statutory provision stood to impair a direct conferral of jurisdiction upon the state but Nevada authorities had expressed a general unwillingness to assume jurisdiction. A number of Nevada county officials were willing to undertake criminal law enforcement only if granted a subsidy for doing so. Other officials were unwilling to undertake criminal law enforcement under any circumstances.

Of the states enabled to assume jurisdiction by constitutional amendment or affirmative legislation, only two voiced objection to the assumption of jurisdiction. State officials in Montana and North Dakota appeared unwilling to undertake criminal law enforcement without a federal subsidy for doing so. Officials of the State of Washington voiced no objection to the assumption of jurisdiction. The Indian Tribes located in Montana and North Dakota objected to the assumption of jurisdiction by the respective states. Within the State of Washington the Colville and Yakima Tribes objected to the assumption of jurisdiction over them by the state because of a feeling that their members would be treated inequitably in the state's courts. The Secretary of the Interior in his report stated that the Colville and Yakima Tribes had "reasonably satisfactory" tribal organizations.[12] It is interesting to note, however, that the *Adams* and the *Starlund* cases arose out of the Colville and the Yakima Tribes respectively.

The State of Washington does not stand alone in its failure to fully utilize the benefits accorded by Public Law 280. Few of the states affected by Public Law 280 have actively responded to it at all. A Nevada statute enacted in 1955[13] provides for the assumption of jurisdiction by the state over Indian Tribes within the state; however, it allows the county commissioners of each county to except their counties from its operation by petitioning the governor. The North Dakota Constitution has been amended[14] only to allow for the assumption of jurisdiction in the future by an affirmative act of the legislature. A South Dakota statute[15] permits the exercise of jurisdiction in

[11] 67 Stat. 590 (1953), 28 U.S.C. § 1360 (note) (1958).
[12] H.R. Rep. No. 848, 83rd Cong., 1st Sess. 7 (1953).
[13] NEV. REV. STAT. 41.430, 194.040.
[14] N.D. CONST. § 203.
[15] S.D. Sess. Laws 1957, c. 319.

counties where two conditions have been met. The Indian Tribes to be affected must have assented by a vote of a majority of the tribe and the county commissioners must have successfully negotiated a contract with the Federal Bureau of Indian Affairs for the reimbursement of expenses occasioned by the exercise of jurisdiction. Since the Bureau of Indian Affairs has not been authorized to contract with the states, the statute has been without effect.

In most states the main objections to the assumption of jurisdiction over Indians are the increased costs necessitated by its exercise and the antipathy of certain of the Indian Tribes affected. A fuller exercise of jurisdiction by the State of Washington does not seem to be objectionable from the standpoint of costs. This is apparent from the fact that RCW 37.12 in its present form does not make the exercise of jurisdiction dependent upon the receipt of a subsidy or the wishes of the localities involved. The exercise of jurisdiction depends entirely upon the wishes of the Indian Tribes to be affected.

Public Law 280, which was based on information supplied by the Secretary of the Interior,[16] is representative of the efforts of Congress to legislate in the best interests of the Indians and the states affected. An evaluation of RCW 37.12 in terms of the considerations which gave rise to the enactment of Public Law 280 indicates that neither the State of Washington nor the Indians living within its borders are fully realizing the benefits offered by Congress. The *Starlund* and *Adams* cases demonstrate that the Washington statute, an act which the legislature deemed "necessary for the immediate preservation of the public peace, health, and safety, and for the support of the state government and its existing public institutions . . .,"[17] has been largely ineffective. The failure of a majority of the Indian Tribes to petition for the assumption of jurisdiction by the state has hampered enforcement of the state's criminal laws.[18] It has also precluded a number of individual Indians from availing themselves of the protection of the state's civil laws.

The Secretary of the Interior stated in his report to the House Committee,[19] that with the exception of the Yakima and Colville Tribes, the Indians in Washington generally concurred in the proposal to confer jurisdiction upon the states. The failure of a number of the tribes to petition the governor for the exercise of state jurisdiction

[16] H.R. Rep. No. 848, 83rd Cong., 1st Sess. 7-8 (1953).
[17] Wash. Sess. Laws 1957, c. 240, § 8.
[18] See Comment *Jurisdiction Over Indians*, 33 WASH. L. REV. 289 (1958).
[19] H.R. Rep. No. 848, 83rd Cong., 1st Sess. 7-8 (1953).

over them seems to stem more from tribal inertia than from hostility to state jurisdiction. Until the legislature acts affirmatively to assert jurisdiction over the Indian Tribes, situations such as those presented in the *Adams* and *Starlund* cases will continue to arise in Washington. A large number of Indians will continue to be without the protection of the state's courts.

LEON MISTEREK

MUNICIPAL CORPORATIONS

Suspension or Revocation of a Driver's License by Police Courts. The Washington Supreme Court recently announced that no police or municipal court may suspend a Washington State driver's license for violation of a municipal ordinance.

In *City of Bellingham v. Schampera,*[1] defendant Schampera was charged and convicted in the Bellingham police court of driving while under the influence of intoxicants in violation of a city ordinance[2] substantially similar[3] to RCW 46.56.010. He appealed to the Whatcom County Superior Court where a trial de novo[4] was had. He was convicted, fined $100 and sentenced to ninety days in the county jail. His driver's license was suspended for 6 months.

On appeal, Schampera argued that the state, by enacting RCW 46.56.010, had pre-empted the field of legislation with respect to drunken driving; that a municipality was without power to suspend or revoke a state driver's license for violation of a municipal ordinance; and that the Bellingham ordinance was invalid because the punishment provided thereunder was in excess of that allowed by law to be assessed by a municipal or police court. The court held against Schampera's first and third contentions but for him on the second.

With respect to the third contention, the Bellingham city ordinance provided:

> Upon the first conviction for the violation of the provisions of this section [one of which prohibits driving on the public highways while under the influence of intoxicating liquor] the court shall impose a fine of not less than fifty dollars or more than five hundred dollars and not less than five days or more than one year in jail, and shall in addition

[1] 157 Wash. Dec. 1, 356 P.2d 292 (1960).

[2] BELLINGHAM, WASH., CODE § 18.56.100 (1955).

[3] The ordinance forbade drunken driving and was, in its penalty provisions, a verbatim copy of RCW 46.56.010.

[4] "Though the appeal results in a trial de novo, the charge is still the violation of a municipal ordinance, and the superior court's authority is specifically limited on such an appeal by RCW 35.22.560... [$300 fine and/or ninety days imprisonment]." City of Bellingham v. Schampera, 157 Wash. Dec. 1, 11, 356 P.2d 292, 299 (1960).