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service is made after the suit is brought, not only to avoid process, but to frustrate any orders which may be issued, contempt will lie.[26]

In the instant case, the court reasoned that respondent's flight, and the fact that his attorney had notified him of the court's proposed future issuance of the order, *together* with the fact that contemner knew that he was awaiting sentencing, justified the conclusion that he had actual knowledge of the issuance of the order. Rather than relying upon the inherent power of the court to punish for contempt, it cited respondent for violating a *particular* order which the court had issued. In reality the court has established a new interpretation of constructive contempt by holding that one may be guilty of contempt for violating a court order before the order has been issued. The holding presents a unique[27] conception of when contempt will lie under the statutory provision.[28] The court seems to be taking a strong backward step from the trend of expanding the rights of a contemner as expressed in recent statutes and court decisions.

COURTS—STATUTORY CONSTRUCTION—EXTRINSIC AIDS

Defendant failed to pay an income tax on money he had extorted. *Held*, by construction of § 22(a) of the Internal Revenue Code, money obtained by extortion is taxable income. *Rutkin v. United States*, 343 U.S. 130 (1952).

Statutes must be frequently applied to situations not contemplated at the time of their enactment. Any interpretation by the Supreme Court becomes an integral part of the satute and is positive law.[1] Because the separation of powers doctrine demands that the legislature make all major policy legislation,[2] the Court's duty is merely to determine probable legislative intent.[3] To prevent unnecessary judicial "legislation," especially when construing legislation involving either federal or state supremacy or a question of balance of powers within the government itself,[4] the Court, in its *first construction* of a statute, employs extrinsic aids such as previous legislative history,[5] standing committee reports,[6] sponsor's explanations[7]

26. *In re* Rice, 181 Fed. 217 (M.D. Ala. 1910). *Cf.* Aarons v. State, 105 Miss. 402, 62 So. 419 (1913).

27. See United States v. Hall, 198 F.2d 726, 729 (2nd Cir. 1952), Clark, J., dissenting: ". . . exhaustive independent research has disclosed no similar case. It is probably the first time that a proceeding like this has been before the courts."

28. See note 1 *supra*.

1. Guaranty Trust Co. v. Blodgett, 287 U.S. 509 (1933); White County v. Gwin, 136 Ind. 562, 36 N.E. 237 (1894).

2. FTC v. Bunte Bros., 312 U.S. 349 (1940).

3. Bardes v. Hawarden Bank, 178 U.S. 524 (1900).

4. Palmer v. Massachusetts, 308 U.S. 79 (1939).

5. Western Union Telegraph Co. v. Lenroot, 323 U.S. 490 (1945); Boone v. Lightner, 319 U.S. 561 (1943); Federal Communications v. Columbia Broadcasting System, 311 U.S. 132 (1940).

and special committee reports.[8] If, in an atmosphere of public debate,[9] Congress does not act this initial interpretation is considered to have established the legislative intent.[10] Until recently, the Court in re-examining the construction employed congressional silence as an extrinsic aid.[11]

With the exception of those questions involving constitutional problems,[12] failure of the legislature to act affirmatively over several sessions since a judicial construction of its enactments indicates legislative acceptance of the Court's original construction.[13] Congressional silence, while closely associated with stare decisis,[14] was employed so that Congress would not be forced to enact constant declaratory legislation.[15] However, since 1940,[16] the Court without apparent reason has intermittently failed to recognize[17] the use of congressional silence as an extrinsic aid in determining legislative intent.

The first judicial construction of the word "gain"[18] in Section 22(a) of the Internal Revenue Code[19] held that embezzled money (and intimated monies derived from other related crimes[20]) was not taxable as a gain because a duty to return such money existed. Although Congress did not act affirmatively to change this construction, the majority of the Court in the instant case, distinguishing on the facts,[21] in effect reversed the previous construction by holding that the extorter must pay in income tax.[22] Employing extrinsic aids similar to those used in the first construction,[23]

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6. Chamberlain, *The Courts and Committee Reports*, 1 U. OF CHI. L. REV. 81 (1934).

7. Addison v. Holly Hill Fruit Products, 322 U.S. 607 (1944).

8. United States v. Pfitsch, 256 U.S. 547 (1921).

9. Missouri v. Ross, 299 U.S. 72 (1936).

10. United States v. Elgin J. and L. Ry., 298 U.S. 492 (1936). See dissent of Frankfurter, J., in Comm'r of Internal Revenue v. Church, 335 U.S. 632, 687, 688 (1949).

11. Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940).

12. Neither stare decisis nor congressional silence over many years will prevent overruling long standing interpretation if the court considers the interpretation unconstitutional. See Cleveland v. United States, 329 U.S. 830 (1946); Erie v. Tompkins, 304 U.S. 64 (1938), overruling Swift v. Tyson, 41 U.S. 1 (1842); Baltimore & Ohio R.R. v. Baugh, 149 U.S. 368 (1893).

13. United States v. N. H. Pulaski Co., 243 U.S. 97 (1917).

14. Hunter v. State, 85 Fla. 91, 95 So. 115 (1923).

15. Note, 49 HARV. L. REV. 137 (1935).

16. Helverging v. Hollock, 309 U.S. 106, 119 (1940). "Silence and inaction by Congress are insufficient alone to debar the court from re-examining its own doctrines."

17. Bruce's Juices v. American Can Co., 330 U.S. 743, 750 (1947); Screws v. United States, 325 U.S. 91 (1945); Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940) (applied). Rutkin v. United States, 343 U.S. 130 (1952); Girouard v. United States, 328 U.S. 61 (1946); Helvering v. Griffiths, 318 U.S. 371 (1943) (not applied).

18. Commissioners of Internal Revenue v. Wilcox, 327 U.S. 404 (1946).

19. 52 STAT. 457 (1938), 26 U.S.C. § 22(a) (1946).

20. Commissioners of Internal Revenue v. Wilcox, 327 U.S. 404, 408 (1946).

21. Stevenson-Chislett, Inc. v. United States, 98 F. Supp. 252 (W.D. Pa. 1951).

22. *Query*: Does not the extorter owe a duty to return the extorted money to the victim? See dissent by Black, J. in Rutkin v. United States, 343 U.S. 130, 136 (1952). And see Corbett, *Taxation, Embezzled Funds*, 26 B.U.L. REV. 404 (1946).

23. Rutkin v. United States, 343 U.S 130, 136 (1952).

the Court reasoned that the legislature had intended this crime to be included as an unlawful gain.[24]

The exercise of certain legislative functions by the court is an inescapable product of the judicial process of determining congressional intent. But this must be clearly distinguished from the instances where the court changes its previous interpretation. There, the result is not merely a necessary consequence of the judicial process, but if proper weight is not given to congressional silence, becomes judicial legislation.[25] Because the court's original construction of this section of the Internal Revenue Code allowed the embezzler in some instances to set up his crime to defeat the tax,[26] national debate following[27] the decision stimulated discussion of the possibility of law enforcement through the tax power.[28] But in the six year period following this decision Congress did not act to establish such a policy.[29]

It is submitted that the construction in the instant case is judicial legislation and has the effect of placing the federal government, through the use of the tax power, on the state level of criminal law enforcement.[30] Whether federal law enforcement through the use of the tax power would be a benefit to the federal system would be a policy decision of such major importance that it clearly rests with Congress.[31] The present Court,[32] by exercising a legislative function, continues to place upon Congress the affirmative duty to act explicitly on every judicial construction of its statutes.

INFANTS — AGE DETERMINING JURISDICTION OVER ACTS OF JUVENILE OFFENDERS — FEDERAL JUVENILE DELINQUENCY ACT

Defendant was charged with the unlawful possession of counterfeit currency.[1] He moved to dismiss the indictment on the ground that the court

24. Note that neither the Wilcox nor the Rutkin Case affect the taxation of funds from illegal ventures because in most states, the other party, being in *pari delicto*, has no legal right to recover the money. Johnson v. United States, 318 U.S. 189 (1943) (numbers syndicate); United States v. Sullivan, 274 U.S. 259 (1927) (illegal liquor traffic).

25. Anderson v. Wilson, 289 U.S. 20 (1933).

26. McCue v. Comm'r, March 4, 1946 Memo. Op., Dkts. 233, 315, 464, CCH Fed. Tax Rep. 7343 (m).

27. See Note, 25 TEX. L. REV. 693 (1947); Note, 46 COL. L. REV. 677 (1946).

28. Note, 48 COL. L. REV. 100 (1948).

29. Stevenson-Chislett, Inc. v. United States, 98 F. Supp. 252 (W.D. Pa. 1951) (Congress allowed deduction of loss by victim).

30. McCray v. United States, 195 U.S. 27 (1903).

31. See dissent of Stone, C. J. in Girouard v. United States, 328 U.S. 61, 70 (1946).

32. See Palmer, *Dissents and Overrulings*, 34 A.B.A.J. 554 (1948) (failure of consistent application of the extrinsic aid of congressional silence is one of the major factors splitting our presently divided court).

1. 62 STAT. 705 (1948), 18 U.S.C. § 472 (1951) (uttering counterfeit obligations or securities); 62 STAT. 701 (1948), 18 U.S.C. § 371 1951) (conspiracy to commit offense