

1. Record Nr.	UNINA9910809363703321
Autore	Franck Thomas M
Titolo	Political questions/judicial answers [[electronic resource] ] : does the rule of law apply to foreign affairs? / / Thomas M. Franck
Pubbl/distr/stampa	Princeton, N.J., : Princeton University Press, c1992
ISBN	1-283-53989-6 9786613852342 1-4008-2073-1 1-4008-1164-3
Edizione	[Course Book]
Descrizione fisica	1 online resource (209 p.)
Disciplina	342.73/044 347.30244
Soggetti	Political questions and judicial power - United States Judicial review - United States Courts - United States Separation of powers - United States National security - Law and legislation - United States United States Foreign relations
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references and index.
Nota di contenuto	Front matter -- Contents -- Acknowledgments -- CHAPTER ONE. Introduction -- CHAPTER TWO. How Abdication Crept into the Judicial Repertory -- CHAPTER THREE. Two Principled Theories of Constitutionalism -- CHAPTER FOUR. Prudential Reasons for Judicial Abdication -- CHAPTER FIVE. When Judges Refuse to Abdicate -- CHAPTER SIX. Mandated Adjudication: Act of State and Sovereign Immunity -- CHAPTER SEVEN. Abolishing Judicial Abdication: The German Model -- CHAPTER EIGHT. A Rule of Evidence in Place of the Political-Question Doctrine -- CHAPTER NINE. The Special Cases: In Camera Proceedings and Declaratory Judgments -- CHAPTER TEN. Conclusions: Does the Rule of Law Stop at the Water's Edge? -- Notes -- Index
Sommario/riassunto	Almost since the beginning of the republic, America's rigorous

separation of powers among Executive, Legislative, and Judicial Branches has been umpired by the federal judiciary. It may seem surprising, then, that many otherwise ordinary cases are not decided in court even when they include allegations that the President, or Congress, has violated a law or the Constitution itself. Most of these orphan cases are shunned by the judiciary simply because they have foreign policy aspects. In refusing to address the issues involved, judges indicate that judicial review, like politics, should stop at the water's edge--and foreign policy managers find it convenient to agree! Thomas Franck, however, maintains that when courts invoke the "political question" doctrine to justify such reticence, they evade a constitutional duty. In his view, whether the government has acted constitutionally in sending men and women to die in foreign battles is just as appropriate an issue for a court to decide as whether property has been taken without due process. In this revisionist work, Franck proposes ways to subject the conduct of foreign policy to the rule of law without compromising either judicial integrity or the national interest. By examining the historical origins of the separation of powers in the American constitutional tradition, with comparative reference to the practices of judiciaries in other federal systems, he broadens and enriches discussions of an important national issue that has particular significance for critical debate about the "imperial presidency."

---