

1. Record Nr.	UNINA9910778486803321
Autore	Gerangelos Peter A.
Titolo	The separation of powers and legislative interference in judicial process : constitutional principles and limitations / Peter A. Gerangelos
Pubbl/distr/stampa	Oxford ; Portland, Oregon, : Hart Publishing, 2009
ISBN	1-4725-6042-6 1-282-30489-5 9786612304897 1-84731-500-3
Edizione	[1st ed.]
Descrizione fisica	1 online resource (360 p.)
Disciplina	320.404
Soggetti	Separation of powers Judicial independence Judicial process
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	<p>Introduction -- Legislative interference in the pending case scenario : the foundation of principle and the Australian position -- Legislative interference with judicial functions : the jurisprudence of the United States, evaluation of principle, and towards resolution -- The separation of powers and final judgments : defining the principle limiting legislative revision of final judgments -- Qualifications to the inviolability of final judgments and final summation -- Protections afforded decisional independence in jurisdictions without an entrenched separation of powers</p> <p>1 Introduction -- I. The Relevant Scenarios -- II. Definitional Difficulties -- III. The Original Legal Entrenchment of the Doctrine and -- the Underlying Rationale -- IV. The Possibility of General Principles and -- Interpretational Methodology -- V. The Purposive Nature of The Separation of Powers -- Doctrine -- VI. The Problem of Definition and the Formalist Approach -- VII. Core Branch Functions? -- 2 Legislative Interference in the Pending Case Scenario: The -- Foundation of Principle and the Australian Position -- I. Introduction -- II. The Australian Constitutional Position and the Early -- Australian</p>

Constitutional Scholars -- III. Early Development of Principle by the High Court -- IV. The Foundation of a Discrete Set of Principles -- Governing the Pending Case Scenario: Liyanage v R -- V. Consolidation of Principle Post-Liyanage -- VI. The Direction Rule at the Crossroads: Nicholas v The Queen -- VII. The Uncertain Status of the Direction Principle in Australia -- 3 Legislative Interference with Judicial Functions: The Jurisprudence of the United States, Evaluation of Principle, and Towards Resolution -- I. Introduction -- II. The Emergence of the Changed Law Rule and the Direction Principle in the United States -- III. Klein and Its Uncertain Meaning -- IV. Hart's Thesis and the United States Foundation of the Direction Principle -- V. The Decline of the Direction Rule: The Robertson Case -- VI. Robertson's Uncertain Legacy: *Plaut v Spendthrift Farm Inc* -- VII. Klein Qualified, Overruled or Misinterpreted? *Miller v French* -- VIII. The Schiavo Litigation -- IX. Further Confirmation of the Direction Principle -- X. General Conclusions on the Separation of Powers and the Pending Case Scenario -- XI. Towards a Resolution -- XII. A Reformulated Direction Principle -- XIII. Speculative Propositions -- XIV. Conclusion -- 4 The Separation of Powers and Final Judgments: Defining the Principle Limiting Legislative Revision of Final Judgments -- I. Introduction and Definition of Final Judgment -- II. Reflections on Finality Where the Separation Doctrine is Not Entrenched -- III. A Middle Case: India -- IV. Early Australian Commentary on the Constitutional Protection of Final Judgments -- V. The Current Australian Position -- VI. Qualifications -- VII. A Reinforcement of Australian Jurisprudence: The Irish Position on Final Judgments -- VIII. The United States Supreme Court and Final Judgments -- IX. The Wheeling Bridge Qualification -- X. The Development and Consolidation of Principle by the United States Supreme Court -- XI. The Inviolability Principle Tested: *Miller v French* -- XII. Conclusion -- 5 Qualifications to the Inviolability of Final Judgments and Final Summation -- I. Introduction -- II. The Wheeling Bridge Qualification, the Regulation of Public Rights and 'Conditional' Final Judgments -- III. The Waiver Qualification -- IV. Conclusions on the Final Case Scenario -- 6 Protections Afforded Decisional Independence in Jurisdictions without an Entrenched Separation of Powers -- I. Introduction -- II. The United Kingdom and the Separation of Powers -- III. The European Convention on Human Rights -- IV. The United Kingdom, the ECHR and the Human Rights Act 1998. -- V. Canons of Statutory Interpretation -- 7 Conclusion

---

### Sommario/riassunto

This book examines the constitutional principles governing the relationship between legislatures and courts at that critical crossroads of their power where legislatures may seek to intervene in the judicial process, or to interfere with judicial functions, to secure outcomes consistent with their policy objectives or interests. Cases of high political moment are usually involved, where the temptation, indeed political imperative, for legislatures to intervene can be overwhelming. Although the methods of intervention are various, ranging from the direct and egregious to the subtle and imperceptible, unbridled legislative power in this regard has been a continuing concern in all common law jurisdictions. Prominent examples include direct legislative interference in pending cases, usurpation of judicial power by legislatures, limitations on the jurisdiction of courts, strategic amendments to law applicable to cases pending appeal, and attempts directly to overturn court decisions in particular cases. Because the doctrine of the separation of powers, as an entrenched constitutional rule, is a major source of principle, the book will examine in detail the jurisprudence of the United States and Australia in particular. These

jurisdictions have identical constitutional provisions entrenching that doctrine as well as the most developed jurisprudence on this point. The legal position in the United Kingdom, which does not have an entrenched separation of powers doctrine, will be examined as a counterpoint. Other relevant jurisdictions (such as Canada, Ireland and India) are also examined in the context of particular principles, particularly when their respective jurisprudence is rather more developed on discrete points. The book examines how the relevant constitutional principles strive to maintain the primacy of the law-making role of the legislature in a representative democracy and yet afford the decisional independence of the judiciary that degree of protection essential to protect it from the legislature's 'impetuous vortex', to borrow the words of James Madison from *The Federalist* (No 48)

2. Record Nr.

**Titolo**

UNISALENT0991003446299707536

Itinerari interrotti : il pensiero di Franco Ledda e di Antonio Romano Tassone per una ricostruzione del diritto amministrativo / a cura di Loredana Giani e Aristide Police

**Pubbl/distr/stampa**

Napoli : Editoriale Scientifica, 2017

**ISBN**

9788893911832

**Descrizione fisica**

361 p. ; 24 cm

**Collana**

Contributi di diritto amministrativo. Classici ; 1

**Altri autori (Persone)**

Police, Aristide  
Giani, Loredana

**Disciplina**

342.45

**Soggetti**

Diritto Amministrativo - Italia - Franco Ledda - Antonio Romano  
Tassone

**Lingua di pubblicazione**

Non definito

**Formato**

Materiale a stampa

**Livello bibliografico**

Monografia

**Note generali**

Atti del convegno tenuto a Roma nel 2015