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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)

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