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ARTICLES

Legislative Amendment Directed towards a Particular Individual, Company and Dispute: The Separation of Powers and Other Constitutional Issues – *Anthony Gray*

Western Australian legislation seeks to effectively preclude businessman Clive Palmer from exercising rights that he may have previously accrued, or may accrue in relation to particular matters in dispute. The legislation purports to direct a court not to provide Mr Palmer with a remedy in relation to particular matters in dispute, if it were otherwise minded to do so. A High Court challenge to the legislation has been heard. This article concludes there are strong grounds for arguing that the Western Australian legislation breaches the separation of powers principle enshrined in the Australian Constitution and applicable to State Courts.

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The Duality of Jurisdictional Error: Central (to Justifying Entrenched Judicial Review of Executive Action) and Pivotal (to Review Doctrine) – *Emily Hammond*

Jurisdictional error has a prominent role in entrenched review of executive action in Australia, despite near universal acknowledgment that it does not illuminate the operative norms of administrative law. A statutory approach to jurisdictional error dominates in Australia, despite widespread agreement that the concept is merely conclusory. It is widely assumed that the path to explain – or to challenge – these matters is through better understanding a legislative supremacy rationale for jurisdictional error. However, a more compelling account of jurisdictional error can be drawn from a fundamental constitutional characteristic of executive power: The lack of inherent executive power over legal rights or obligations. By drawing out this distinct constitutional foundation for review of purported executive decisions, this article shows that the prominence of jurisdictional error in entrenched review of executive powers is explicable for substantive constitutional reasons, which reasons also cast light on why the concept does not require a statutory approach to the grounds of entrenched review.

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**The Systemic Nature of Convention and Its Implications for Judicial Enforcement –
*Edward Willis***

The orthodox view that constitutional conventions are not judicially enforceable is normatively dissatisfying. This article interrogates a recent model advocating judicial enforcement – an “executor court” model where courts give effect to a special category of “power-shifting” conventions. Such conventions exist where de facto and legal power are allocated to different institutional actors. The article contends that the executor model is flawed as the existence of a power-sharing convention is neither necessary nor sufficient for judicial enforcement given the systemic (rather than relational) nature of convention. In place of executor courts, the article proposes a more contextual assessment that recognises the systemic nature of convention and a role for the courts to actively support constitutional propriety. Judicial enforcement of conventions will follow, on this approach, if the constitution requires it. 149

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