fect the nation, as to require that words which import this power should be restricted by a forced construction."[714]

Limitations on the Exercise of Judicial Review

Constitutional Interpretation.—Under a written constitution, which is law and is binding on government, the practice of judicial review raises questions of the relationship between constitutional interpretation and the Constitution—the law that is construed. The legitimacy of construction by an unelected entity in a republican or democratic system becomes an issue whenever the construction is controversial, as it frequently is. Full consideration would carry us far afield, in view of the immense corpus of writing with respect to the proper mode of interpretation during this period.

Scholarly writing has identified six forms of constitutional argument or construction that may be used by courts or others in deciding a constitutional issue.[715] These are (1) historical, (2) textual, (3) structural, (4) doctrinal, (5) ethical, and (6) prudential. The historical argument is largely, though not exclusively, associated with the theory of original intent or original understanding, under which constitutional and legal interpretation is limited to attempting to discern the original meaning of the words being construed as that meaning is revealed in the intentions of those who created the law or the constitutional provision in question. The textual argument, closely associated in many ways to the doctrine of original intent, concerns whether the judiciary or another is bound by the text of the Constitution and the intentions revealed by that language, or whether it may go beyond the four corners of the constitutional document to ascertain the meaning, a dispute encumbered by the awkward con-

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[714] 19 U.S. at 422–23. Justice Story traversed much of the same ground in Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816). In Ableman v. Booth, 62 U.S. (21 How.) 506 (1859), the Wisconsin Supreme Court had declared an act of Congress invalid and disregarded a writ of error from the Supreme Court, raising again the Virginia arguments. Chief Justice Taney emphatically rebuked the assertions on grounds both of dual sovereignty and national supremacy. His emphasis on the indispensability of the federal judicial power to maintain national supremacy, to protect the states from national encroachments, and to make the Constitution and laws of the United States uniform all combine to enhance the federal judicial power to a degree perhaps beyond that envisaged even by Story and Marshall. As late as Williams v. Bruffy, 102 U.S. 248 (1880), the concepts were again thrashed out with the refusal of a Virginia court to enforce a mandate of the Supreme Court. *See also* Cooper v. Aaron, 358 U.S. 1 (1958).

[715] The six forms, or "modalities" as he refers to them, are drawn from P. Bobbitt, Constitutional Fate: Theory of the Constitution (1982); P. Bobbitt, Constitutional Interpretation (1991). Of course, other scholars may have different categories, but these largely overlap these six forms. *E.g.*, Fallon, *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 Harv. L. Rev. 1189 (1987); Post, *Theories of Constitutional Interpretation*, in Law and the Order of Culture 13–41 (R. Post ed., 1991).