structions, interpretivism and noninterpretivism.[716] Using a structural argument, one seeks to infer structural rules from the relationships that the Constitution mandates.[717] The remaining three modes are not necessarily tied to original intent, text, or structure, though they may have some relationship. Doctrinal arguments proceed from the application of precedents. Prudential arguments seek to balance the costs and benefits of a particular rule. Ethical arguments derive rules from those moral commitments of the American ethos that are reflected in the Constitution.

Although the scholarly writing ranges widely, a much more narrow scope is seen in the actual political-judicial debate. Rare is the judge who will proclaim a devotion to ethical guidelines, such, for example, as natural-law precepts. The usual debate ranges from those adherents of strict construction and original intent to those with loose construction and adaptation of text to modern-day conditions.[718] However, it is with regard to more general rules of prudence and self-restraint that one usually finds the enunciation and application of limitations on the exercise of constitutional judicial review.

Prudential Considerations.—Implicit in the argument of *Marbury v. Madison*[719] is the thought that the Court is obligated to take and decide cases meeting jurisdictional standards. Chief Justice Marshall spelled this out in *Cohens v. Virginia*:[720] "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought

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[716] Among the vast writing, *see, e.g.*, R. Bork, The Tempting of America (1990); J. Ely, Democracy and Distrust: A Theory of Judicial Review (1980); L. Tribe & M. Dorf, On Reading the Constitution (1991); H. Wellington, Interpreting the Constitution (1990); Symposium, *Constitutional Adjudication and Democratic Theory*, 56 N. Y. U. L. Rev. 259 (1981); Symposium, *Judicial Review and the Constitution: The Text and Beyond*, 8 U. Dayton L. Rev. 43 (1983); Symposium, *Judicial Review Versus Democracy*, 42 Ohio St. L.J. 1 (1981); Symposium, *Democracy and Distrust: Ten Years Later*, 77 Va. L. Rev. 631 (1991). *See also* Farber, *The Originalism Debate: A Guide for the Perplexed*, 49 Ohio St. L.J. 1085 (1989).

[717] This mode is most strongly association with C. Black, Structure and Relationship in Constitutional Law (1969).

[718] *E.g.*, Meese, *The Attorney General's View of the Supreme Court: Toward a Jurisprudence of Original Intention*, 45 Pub. Admin. Rev. 701 (1985); Addresses: Construing the Constitution, 19 U. C. Davis L. Rev. 1 (1985), containing addresses by Justice Brennan, id. at 2, Justice Stevens, id. at 15, and Attorney General Meese. Id. at 22. *See also* Rehnquist, *The Notion of a Living Constitution*, 54 Tex. L. Rev. 693 (1976).

[719] 5 U.S. (1 Cr.) 137 (1803).

[720] 19 U.S. (6 Wheat.) 264, 404, (1821).