known to the law. The origin, scope, and purpose of the concept have eluded all attempts at precise statements." [610]

It has been suggested that it may be more useful to itemize the categories of questions that have been labeled political rather than to attempt to isolate the factors that a court will consider to identify such cases.[611] The Court has to some extent agreed, noting that the criteria applied by the Court in political questions cases can vary depending on the issue involved.[612] Regardless of which approach is taken, however, the Court's narrowing of the rationale for political questions in *Baker v. Carr*,[613] discussed below, appears to have changed the nature of the inquiry radically.

Origins and Development.—In the first decade after ratification of the Constitution, the Court in *Ware v. Hylton* [614] refused to pass on the question whether a treaty had been broken, and in *Martin v. Mott*,[615] the Court held that the President acting under congressional authorization had exclusive and unreviewable power to determine when the militia should be called out. But the roots of the doctrine are most clearly seen in *Marbury v. Madison*,[616] where Chief Justice Marshall stated: "The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive can never be made in this court." [617]

In *Luther v. Borden*,[618] however, the Court made clear that the doctrine went beyond considerations of interference with executive functions. This case, arising from the Dorr Rebellion (a period of

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[610] Frank, *Political Questions*, in Supreme Court and Supreme Law (E. Cahn, ed., 1954), at 36.

[611] The concept of political question is "more amenable to description by infinite itemization than by generalization" Id.

[612] Baker v. Carr, 369 U.S. 186, 217 (1962).

[613] 369 U.S. at 208–232.

[614] 3 U.S. (3 Dall.) 199 (1796).

[615] 25 U.S. (12 Wheat.) 19 (1827).

[616] 5 U.S. (1 Cr.) 137 (1803).

[617] 5 U.S. (1 Cr.) at 170. In Decatur v. Paulding, 39 U.S. (14 Pet.) 497, 516 (1840), the Court, refusing an effort by mandamus to compel the Secretary of the Navy to pay a pension, said: "The interference of the courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief; and we are quite satisfied, that such a power was never intended to be given to them." It therefore follows that mandamus will lie against an executive official only to compel the performance of a ministerial duty, which admits of no discretion, and may not be invoked to control executive or political duties which admit of discretion. *See* Georgia v. Stanton, 73 U.S. (6 Wall.) 50 (1867); Mississippi v. Johnson, 71 U.S. (4 Wall.) 475 (1867); Kendall v. United States ex rel. Stokes, 37 U.S. (12 Pet.) 524 (1838).

[618] 48 U.S. (7 How.) 1 (1849).