only in admiralty would be tried without a jury.[815] And a colorable constitutional claim has been held to support jurisdiction over a federal statutory claim arguably not within federal jurisdiction.[816]

Still another variant is the doctrine of "pendent parties," under which a federal court could take jurisdiction of a state claim against one party if it were related closely enough to a federal claim against another party, even though there was no independent jurisdictional base for the state claim.[817] Although the Supreme Court at first tentatively found some merit in the idea,[818] in *Finley v. United States*,[819] by a 5-to-4 vote the Court firmly disapproved of the pendent party concept and cast considerable doubt on the other prongs of pendent jurisdiction as well. Pendent party jurisdiction, Justice Scalia wrote for the Court, was within the constitutional grant of judicial power, but to be operable it must be affirmatively granted by congressional enactment.[820] Within the year, Congress supplied the affirmative grant, adopting not only pendent party jurisdiction but also codifying pendent jurisdiction and ancillary jurisdiction under the name of "supplemental jurisdiction." [821]

Thus, these interrelated doctrinal standards now seem well-grounded.

Protective Jurisdiction.—A conceptually difficult doctrine, which approaches the verge of a serious constitutional gap, is the concept of protective jurisdiction. Under this doctrine, it is argued that in instances in which Congress has legislative jurisdiction, it can confer federal jurisdiction, with the jurisdictional statute itself being the "law of the United States" within the meaning of Article III, even though Congress has enacted no substantive rule of decision and state law is to be applied. Put forward in controversial cases,[822] the doctrine has neither been rejected nor accepted by the Su-

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[815] Romero v. International Terminal Operating Co., 358 U.S. 354, 380–81 (1959); Fitzgerald v. United States Lines Co., 374 U.S. 16 (1963).

[816] Rosado v. Wyman, 397 U.S. 397, 400–05 (1970).

[817] Judge Friendly originated the concept in Astor-Honor, Inc. v. Grosset & Dunlap, Inc., 441 F.2d 627 (2d Cir. 1971); Leather's Best, Inc. v. S. S. Mormaclynx, 451 F.2d 800 (2d Cir. 1971).

[818] Aldinger v. Howard, 427 U.S. 1 (1976).

[819] 490 U.S. 545 (1989).

[820] 490 U.S. at 553, 556.

[821] Act of Dec. 1, 1990, Pub. L. 101–650, 104 Stat. 5089, § 310, 28 U.S.C. § 1367. In City of Chicago v. International College of Surgeons, 522 U.S. 156 (1998), the Court, despite the absence of language making § 1367 applicable, held that the statute gave district courts jurisdiction over state-law claims in cases originating in state court and then removed to federal court.

[822] National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582 (1949); Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957); *see also* the bankruptcy cases, Schumacher v. Beeler, 293 U.S. 367 (1934), and Williams v. Austrian, 331 U.S. 642 (1947).