Court review, the nonfederal ground must be broad enough, without reference to the federal question, to sustain the state court judgment;[839] it must be independent of the federal question;[840] and it must be tenable.[841] Rejection of a litigant's federal claim by the state court on state procedural grounds, such as failure to tender the issue at the appropriate time, will ordinarily preclude Supreme Court review as an adequate independent state ground,[842] so long as the local procedure does not discriminate against the raising of federal claims and has not been used to stifle a federal claim or to evade vindication of federal rights.[843]

Suits Affecting Ambassadors, Other Public Ministers, and Consuls

The earliest interpretation of the grant of original jurisdiction to the Supreme Court came in the Judiciary Act of 1789, which conferred on the federal district courts jurisdiction of suits to which a consul might be a party. This legislative interpretation was sustained in 1793 in a circuit court case in which the judges held the Congress might vest concurrent jurisdiction involving consuls in the inferior courts and sustained an indictment against a consul.[844] Many years later, the Supreme Court held that consuls could be sued in federal court,[845] and in another case in the same year declared sweepingly that Congress could grant concurrent jurisdiction to the inferior courts in cases where Supreme Court has been invested with original jurisdiction.[846] Nor does the grant of original jurisdiction to the Supreme Court in cases affecting ambassadors and consuls

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[839] Murdock v. City of Memphis, 87 U.S. (20 Wall.) 590, 636 (1874). A new state rule cannot be invented for the occasion in order to defeat the federal claim. *E.g.*, Ford v. Georgia, 498 U.S. 411, 420–425 (1991).

[840] Enterprise Irrigation Dist. v. Farmers' Mutual Canal Co., 243 U.S. 157, 164 (1917); Ivanhoe Irrigation Dist. v. McCracken, 357 U.S. 275, 290 (1958).

[841] Enterprise Irrigation Dist. v. Farmers' Mutual Canal Co., 243 U.S. 157, 164 (1917); Ward v. Love County, 253 U.S. 17, 22 (1920); Staub v. City of Baxley, 355 U.S. 313 (1958).

[842] Beard v. Kindler, 558 U.S. ___, No. 08–992, slip op. (2009) (firmly established procedural rule adequate state ground even though rule is discretionary). *Accord*, Walker v. Martin, 562 ___, No. 09–996, slip op. (2010). *See also* Nickel v. Cole, 256 U.S. 222, 225 (1921); Wolfe v. North Carolina, 364 U.S. 177, 195 (1960). *But see* Davis v. Wechsler, 263 U.S. 22 (1923); Brown v. Western Ry. of Alabama, 338 U.S. 294 (1949).

[843] Davis v. Wechsler, 263 U.S. 22, 24–25 (1923); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 455–458 (1958); Barr v. City of Columbia, 378 U.S. 146, 149 (1964). This rationale probably explains Henry v. Mississippi, 379 U.S. 443 (1965). *See also* in the criminal area, Edelman v. California, 344 U.S. 357, 362 (1953) (dissenting opinion); Brown v. Allen, 344 U.S. 443, 554 (1953) (dissenting opinion); Williams v. Georgia, 349 U.S. 375, 383 (1955); Monger v. Florida, 405 U.S. 958 (1972) (dissenting opinion).

[844] United States v. Ravara, 2 U.S. (2 Dall.) 297 (C.C. Pa. 1793).

[845] Bors v. Preston, 111 U.S. 252 (1884).

[846] Ames v. Kansas ex rel. Johnston, 111 U.S. 449, 469 (1884).