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Texaco, Inc. v. Pennzoil Co.: Beyond a Crude Analysis of the Rooker-Feldman Doctrine's Preclusion of Federal Jurisdiction

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I. INTRODUCTION

Texaco, Inc. v. Pennzoil Co.[1] is the $12 billion case. This unprecedented damage award, Texaco claims, is over forty times larger than the largest private civil judgment ever upheld in any prior case of any kind.[2] The Court of Appeals for the Second Circuit found that the obscure and often misinterpreted *Rooker-Feldman*[3] doctrine did not preclude a federal district court from exercising jurisdiction under 42 U.S.C. § 1983 to enjoin Pennzoil's enforcement of this state court judgment and to reduce the amount of a supersedeas bond from $12 billion to $1 billion.[4] Unless the Supreme Court can somehow manipulate this doctrine to preclude federal jurisdiction, however, the district court properly entertained the suit, as Pennzoil, the federal court defendant, failed to assert the affirmative defense of res judicata.[5]

The court of appeals based its holding upon two Supreme Court cases, *Rooker v. Fidelity Trust Co.*[6] and *District of Columbia Court of*

1. 784 F.2d 1133 (2d Cir.), *prob. juris. noted*, 106 S. Ct. 3270 (1986).
2. Brief for Appellee at 3, Pennzoil Co. v. Texaco, Inc., No. 85-1798 (U.S. Nov. 4, 1986).
3. *See infra* text accompanying notes 6-8.
4. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1157.
5. *See infra* note 36 and accompanying text.
6. 263 U.S. 413 (1923).

Appeals v. Feldman,[7] as well as the statute these cases interpreted, 28 U.S.C. § 1257.[8] Section 1257 dictates the jurisdiction of the Supreme Court of the United States to review state court judgments. Under the traditional interpretation that courts have given the *Rooker-Feldman* doctrine, the mere possibility that the Court will exercise its certiorari or appellate jurisdiction to review those claims already adjudicated in a state's highest court in which a decision could be had, precludes a lower federal court from considering an appeal of such state court decisions.

The court of appeals avoided the doctrine's reach, however, finding that *Rooker-Feldman* precludes a federal court from reviewing only those claims actually raised in a prior state court proceeding.[9] This court's cursory treatment of *Rooker-Feldman's* scope made it relatively easy for the district court to postpone the debilitating financial effect of the judgment on Texaco. An analysis of the doctrine's policies, however, reinforces its applicability, and a survey of how courts have construed it demonstrates that in this case the court used it incorrectly.

The court of appeals failed to determine whether Texaco's federal claims were inextricably intertwined with those raised in state court, nor did it discern whether Texas procedure provided any means by which Texaco could have raised these claims while in state court. The *Rooker-Feldman* doctrine definitely mandates the latter inquiry, and it may also require the former. In fact, under one reading of the doctrine, it precludes a federal court from exercising jurisdiction to consider any claim that a litigant could have raised in a prior state court proceeding, whether or not that claim is inextricably intertwined with the claims and issues actually litigated.[10] This interpreta-

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7. 460 U.S. 462 (1983).

8. 28 U.S.C. § 1257 (1982) reads:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
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> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

9. *See infra* note 37 and accompanying text.

10. *See infra* text accompanying notes 124-25.

tion gives the doctrine greater scope than traditional res judicata.[11]

Courts historically have confused *Rooker-Feldman* with the traditional and widely known preclusion principles, res judicata and collateral estoppel. In fact, confusion abounds as to exactly what the doctrine is, and an analysis of cases, statutes, and commentary reveal numerous inconsistencies. This Note will explain that for the doctrine to serve the policies that the Supreme Court intended it to address, the Court must explicitly articulate an additional inference as of yet not attributed to the doctrine.[12] In addition, the Court must decide whether the doctrine precludes Texaco and other state court litigants from attaining federal jurisdiction over claims separate from and not inextricably intertwined with actually litigated state court claims,[13] where that party procedurally could have raised the claim in state court, such as Texaco's challenge to the constitutionality of the Texas supersedeas bond.

The *Rooker-Feldman* doctrine is the product of two negative inferences derived from section 1257. The Supreme Court has described this section as a limitation on its ability to review state court judgments, as the Court may only review decisions from the "highest state court."[14] Consequently, because even the Supreme Court may not review decisions from a lower state court, it naturally follows that a federal district court may not entertain appeals from lower state court judgments.[15] While this point has great intuitive appeal given that federal courts are of limited jurisdiction, no court has articulated that this inference actually flows from the *Rooker-Feldman* doctrine. The policy behind this first component of the doctrine is to facilitate a state appellate process free from federal interference.

The second inference, traditionally attributed to the doctrine, is that once the highest state court has taken some form of action, *only* the Supreme Court may hear an appeal.[16] In short, the second inference holds that the Supreme Court has *exclusive* jurisdiction to review judgments from a state's highest court.[17] While this intimation historically has been the only one attributed to *Rooker-Feldman*, courts incorrectly have explained the need for this latter inference by citing the policy justification for the former—an uninterrupted state appel-

11. *See infra* notes 170-88 and accompanying text.
12. *See infra* notes 88-92 and accompanying text.
13. *See infra* notes 153-68 and accompanying text.
14. *See infra* note 91 and accompanying text.
15. *See infra* notes 90-91 and accompanying text.
16. *See infra* notes 56-58 and accompanying text.
17. *See infra* note 57 and accompanying text.

late process.[18]

The goal of this Note is to unravel the doctrine and to explain its scope and purpose in the context of the *Texaco* case. In so doing, one may reasonably reach the conclusion that the Court in both *Rooker* and *Feldman* was simply wrong: Neither of those cases were examples of a federal district court acting as an "appellate" tribunal over state court judgments. Those cases are little more than examples of traditional res judicata, where a state court litigant failed to raise federal grounds for relief in state court, and consequently suffered the penalty of locked federal courthouse doors.[19]

II. THE *Texaco v. Pennzoil* CASE

In February 1984, Pennzoil brought suit against Texaco in Texas state court for knowingly and intentionally interfering with Pennzoil's pending agreement to acquire three-sevenths of Getty Oil's stock. Four-and-one-half months of trial and thirty-five witnesses later, the jury returned a verdict in favor of Pennzoil, awarding it $11.12 billion in damages.[20] The trial judge denied Texaco's motion for judgment notwithstanding the verdict (j.n.o.v.), based on constitutional and statutory grounds,[21] on the very same day that Texaco filed it, and entered judgment in the full amount of the jury verdict, plus interest

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18. *See infra* notes 59-63 and accompanying text.

19. *See infra* notes 139-69, 189-94 and accompanying text.

20. Pennzoil had negotiated to buy approximately three-sevenths of Getty's outstanding shares for $110 per share. Getty eventually sold the stock to Texaco for $128 per share. The jury found that Pennzoil was entitled to $7.53 billion as compensatory damages and $3 billion as punitive damages, plus prejudgment interest and costs. This interest amounted to $625 million, from which the court subtracted approximately $34 million, according to a stipulation filed by Pennzoil.

The judgment also provided that Pennzoil could recover post judgment interest at a rate of 10% per annum until the judgment was paid. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1136-37. The amount of the judgment was based on evidence Pennzoil presented as to the cost of replacing the oil reserves that Pennzoil would have acquired under the foiled agreement. Brief for Appellant at 2, Pennzoil Co. v. Texaco, Inc., No. 85-1798 (U.S. Sept. 5, 1986).

21. In Texaco's memorandum in support of its motion for j.n.o.v., it alleged claims that the *judgment* of the Texas court:

(i) Impermissibly burdens interstate commerce, and therefore violates the commerce clause, U.S. CONST. art. I § 8, cl. 3, and frustrates the purposes of the Williams Act, 15 U.S.C. §§ 78*l*-78n (1982);

(ii) Conflicts with and is preempted by the Securities Exchange Act of 1934, 15 U.S.C. §§ 78n(d), 78n(e) & 78bb (1982);

(iii) Changes the New York law of tortious inducement to breach of contract, and is therefore in violation of the full faith and credit clause, U.S. CONST. art. IV, § 1; and

(iv) Violates the due process clause of the fourteenth amendment, U.S. CONST. amend. XIV, § 1, as it was obtained in a fundamentally unfair proceeding.

Texaco, Inc. v. Pennzoil Co., 626 F. Supp. 250, 251 (S.D.N.Y.), *aff'd in part, rev'd in part*, 784 F.2d 1133 (2d Cir.), *prob. juris. noted*, 106 S. Ct. 3270 (1986).

and costs.[22]

Recognizing that Texaco was now threatened with financial ruin, and undoubtedly motivated by the astronomical amount of the judgment, the trial judge attempted to preserve the status quo for as long as his court had jurisdiction over the case.[23] For the three-and-one-half month period following the entry of the judgment, the court prohibited Pennzoil from executing on it. The court also barred Texaco from encumbering its assets except in the ordinary course of business.[24]

Upon expiration of the trial court's jurisdiction, Texaco would have been required to post a supersedeas bond in the amount of $12 billion in order to stay the execution of the judgment during the appellate process.[25] Otherwise, Pennzoil had state procedures available by which it could have acquired a lien on all of Texaco's property in the state of Texas immediately upon the expiration of this "stand-still" period.[26]

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22. Jurisdictional Statement for Appellant at A123-28, Pennzoil Co. v. Texaco, Inc., No. 85-1798 (U.S. May 1, 1986).

23. The duration of the "stand-still" period is determined through application of the Texas Rules of Civil Procedure. Judgment was entered on Dec. 10, 1985. Texaco complied with the requirement that a party must move for a new trial within 30 days after the judge has signed the judgment. TEX. R. CIV. P. ANN. r. 329b(a) (Vernon 1985). The trial judge then had 75 days in which to rule on the motion, *id.* at r. 329b(c), or until Feb. 23, 1986. If the trial judge had not ruled on the motion within that period, it would have been denied as a matter of law. The trial judge retains jurisdiction over a case for 30 days after the denial of a motion. *Id.* at r. 329b(f). Therefore, if the trial judge in *Texaco* did not rule on the motion, the trial court would have retained jurisdiction until March 25, 1986. *See* Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1137-38 n.3.

Texaco argues, however, that this "stand-still" period could potentially have been much shorter than three and one-half months. Because the trial judge theoretically could have ruled on Texaco's motion for new trial at anytime within the 75 day period, the trial court's jurisdiction could have expired as early as Feb. 8, 1986, or approximately 2 months after the entry of the judgment. Brief for Appellee at 4-5 n.9, *Texaco* (No. 85-1798).

24. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1137.

25. TEX. R. CIV. P. ANN. r. 364 (Vernon 1985) (current version at TEX. R. APP. P. ANN. r. 47 (Vernon 1986)), provides in pertinent part:

> (a) **May suspend execution**. Unless otherwise provided by law or these rules, an appellant may suspend the execution of the judgment by filing good and sufficient bond to be approved by the clerk, or making the deposit provided by Rule 14c, payable to the appellee in the amount provided below, conditioned that the appellant shall prosecute his appeal or writ of error with effect and, in case the judgment of the Supreme Court or Court of Appeals shall be against him, he shall perform its judgment, sentence or decree and pay all such damages as said court may award against him.
>
> (b) **Money Judgment**. When the judgment awards recovery of a sum of money, the amount of the bond or deposit shall be at least the amount of the judgment, interest and costs.

26. TEX. PROP. CODE ANN. § 52.001 (Vernon 1983) provides that an abstract of judgment presented by the judgment creditor, when properly recorded and indexed, "constitutes a lien

Despite the judgment's protective provisions, Texaco immediately experienced adverse consequences.[27] As a result, one week after entry of the judgment, but during the stay of its execution, Texaco sought a preliminary injunction in federal court against Pennzoil's taking any action to enforce the Texas judgment[28] because it claimed that it could not possibly meet the mandatory bond requirement.[29] Texaco maintained that "it *then* stood on the brink of bankruptcy" and that "[t]he company's viability was *then* measurable—not in months—but in days (perhaps hours)."[30]

Texaco alleged in its amended complaint in federal district court all of those claims raised in its motion for j.n.o.v. to the Texas trial court,[31] as well as two additional claims under 42 U.S.C. § 1983[32] not presented to the Texas court. These latter constitutional grounds were that the Texas lien and supersedeas bond provisions prevented Texaco from effectively prosecuting an appeal through the Texas state court system, and that consequently, the application of the bond requirement violated the due process and equal protection clauses of the federal Constitution.[33] The United States District Court for the

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on the real property of the defendant located in the county in which the abstract is recorded and indexed."

27. "It's bonds were downgraded and its credit lines shrank. Unsecured borrowing became unavailable and even secured financing uncertain. Suppliers, joint venturers, and purchasers of Texaco assets shied away from dealing with it . . . ." Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1139. In addition, Texaco stated that in the week following entry of the judgment, its ability to obtain crude oil— "the lifeblood of Texaco's operations"—was jeopardized. Brief for Appellee at 5, *Texaco* (No. 85-1798).

28. Texaco, Inc. v. Pennzoil Co., 626 F. Supp. 250 (S.D.N.Y.), *aff'd in part, rev'd in part*, 784 F.2d 1133 (2d Cir.), *prob. juris. noted*, 106 S. Ct. 3270 (1986).

29. There was little doubt that should Texaco be required to liquidate its assets it would have been able to pay Pennzoil's judgment in full. At the time of the judgment, Texaco's liquidation value was between $22 and $26 billion. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1155. Texaco claimed, however, and the court of appeals concurred, that enforcement of Rule 364, along with the simultaneous attachment of Texaco's property, would render Texaco unable to finance its operations or obtain the credit necessary for its continued existence. *Id.* at 1152.

30. Brief for Appellee at 33, *Texaco* (No. 85-1798).

31. *See supra* note 21.

32. 42 U.S.C. § 1983 (1982) reads in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

33. The Texas constitution grants a right of appeal to all civil and criminal litigants. TEX. CONST. art. I, §§ 13, 19. *See* Nelson v. Krusen, 678 S.W.2d 918, 921 (Tex. 1984); *see also* Dillingham v. Putnam, 109 Tex. 1, 4, 14 S.W. 303, 304 (1890) (a party's right to appeal is not dependant upon his ability to give a bond to secure satisfaction of the judgment). At least in criminal proceedings, federal due process requires that once a state has created the right of

Southern District of New York granted Texaco's application for a preliminary injunction against enforcement of the Texas judgment, while at the same time requiring Texaco to post security in the sum of $1 billion.[34]

Pennzoil challenged the district court's review of the Texas judgment, but the Court of Appeals for the Second Circuit implicitly held that the doctrine of res judicata[35] did not bar the federal district court from reviewing the Texas judgment, because Pennzoil failed to raise this affirmative defense in the district court.[36] More significantly for present purposes, the court of appeals explicitly held that the *Rooker-Feldman* doctrine precludes federal court review only of those claims actually raised in a state trial court.[37]

Despite the court's reference to much of the district court's decision as an "impermissible appellate review of issues that have already been adjudicated by the Texas trial court,"[38] it found that *Rooker-Feldman* does not preclude a federal district court from exercising jurisdiction over claims that were not raised in a prior state court proceeding.[39] Under this reasoning, the *Rooker-Feldman* doctrine did not bar the district court from exercising jurisdiction over Texaco's section 1983 claims not raised in state court;[40] namely, that the application of the Texas supersedeas bond and lien provisions deprived the company of its constitutional rights to due process and equal protection.[41] Consequently, the court of appeals did not have to address the issue of whether or not Texaco could have raised these claims while still in state court. Upon determining that *Rooker-Feldman* did not foreclose federal review, the court of appeals affirmed the district court's order granting a preliminary injunction[42] on the condition that

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appeal, it must "offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal." Evitts v. Lucey, 469 U.S. 387, 405 (1985).

34. The district court assumed that the benefit of the bargain that Pennzoil lost is approximately $800 million. Added to this were interest, costs, and attorney's fees, which together comprised the additional $200 million necessary to secure Pennzoil's claim. Texaco, Inc. v. Pennzoil Co., 626 F. Supp. at 261-62.

35. *See infra* notes 139-69 and accompanying text.

36. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1144.

37. *Id.* at 1143.

38. *Id.*

39. *Id.* at 1144.

40. *See supra* note 33 and accompanying text.

41. U.S. CONST. amend XIV, § 1.

42. The court of appeals, upon finding federal jurisdiction to hear Texaco's challenge to the constitutionality of the bond and lien provisions, held: Texaco's civil rights claims stated the essential elements of an action brought under 42 U.S.C. § 1983, and Texaco's complaint adequately alleged the first element of this claim; threatened deprivation of a constitutional right. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1145. The second essential element of a section 1983 action is whether conduct resulting in the deprivation of a federal right is fairly

Texaco promptly and diligently prosecute its appeal in the Texas appellate courts.[43] *Texaco, Inc. v. Pennzoil Co.*, 784 F.2d 1133 (2nd Cir.), *prob. juris. noted*, 106 S. Ct. 3270 (1986).

III. APPLICABILITY OF THE *Rooker-Feldman* DOCTRINE

A. *The* Rooker *Decision*

In *Rooker v. Fidelity Trust Co.*,[44] the Rookers executed to Fidelity Trust Company, as trustee, two warranty deeds to land.[45] They claimed that Fidelity violated the trust agreement,[46] but the Indiana trial court entered judgment for the trust company, foreclosing the mortgage and directing a sale of the property.[47] After the Indiana Supreme Court affirmed the judgment, the Rookers brought suit in federal district court seeking a declaration that the state court judgment violated the contract clause of the federal Constitution,[48] as well as the due process and equal protection clauses of the fourteenth amendment.[49] The district court dismissed the suit for lack of juris-

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attributable to the state. Lugar v. Edmonson Oil Co., 457 U.S. 922, 937 (1982). Because state officials must participate in the enforcement of the state court judgment, this constitutes state action for purposes of section 1983. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1146. *Cf.* Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978) (warehouseman's sale of goods entrusted to him does not constitute state action even though the Uniform Commercial Code created his lien).

The court of appeals also held that the district court was not required to refrain from exercising jurisdiction over claims arising under 42 U.S.C. § 1983. The *Pullman* abstention doctrine requires federal courts to abstain from deciding difficult and unsettled questions of state law, which a court necessarily must resolve before it can reach a substantial federal question. Railroad Comm'n v. Pullman Co., 312 U.S. 496, 501 (1941). The court of appeals reasoned that because Texas has refused in the past to reduce the amount of the supersedeas bonds required under Rule 364, there is no ambiguity as to what the state law is. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1148. Abstention, as Younger v. Harris, 401 U.S. 37 (1971) dictates, is dependant upon the existence of three conditions: there must be (1) vital state interests at stake, (2) state procedures available to provide an adequate opportunity for the appellant to raise his federal claims in a state court, and (3) an ongoing state proceeding. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1149. After finding that the first and third elements were satisfied, the court of appeals found state court mandamus to be an inadequate state remedy, and said that the trial judge would, in all probability, either deny the relief sought on constitutional grounds or leave the constitutional issues undecided until his jurisdiction expired. *Id.* at 1150-51.

Finally, the court of appeals held that the district court did not abuse its discretion in granting Texaco preliminary injunctive relief. Texaco met its burden of showing irreparable harm, as well as either probable success on the merits or sufficiently serious questions going to the merits to make them fair grounds for litigation, plus a balance of hardships weighing decidedly in Texaco's favor. *Id.* at 1152.

43. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1157.

44. 263 U.S. 413 (1923).

45. Rooker v. Fidelity Trust Co., 185 Ind. 172, 173, 109 N.E. 766, 767 (1915).

46. *Id.* at 181, 109 N.E. at 768.

47. *Id.* at 182, 109 N.E. at 769.

48. U.S. CONST. art. I, § 10, cl. 1.

49. U.S. CONST. amend. XIV, § 1.

diction,[50] and the plaintiff appealed to the Supreme Court of the United States, which held that the suit was not within the district court's jurisdiction "as defined by Congress."[51] The Court, therefore, sustained Fidelity's motion to affirm the district court's jurisdictional dismissal.[52]

In essence, the *Rooker-Feldman* doctrine complements the principle that federal courts are courts of limited jurisdiction, by reasoning that "lower federal courts possess no power whatever to sit in direct review of state court decisions."[53] In *Rooker*, the Court explained that if a lower state court decision was wrong, the judgment would not be void, but rather it became "open to reversal . . . in an appropriate and timely appellate proceeding."[54] As the *Texaco* court described it, "[A]n inferior federal court established by Congress pursuant to Art. III, § 1, of the Constitution may not act as an appellate tribunal for the purpose of overruling a state court judgment, even though the judgment may rest on an erroneous resolution of constitutional or federal law issues."[55]

The Court based the *Rooker* decision upon principles of statutory construction and negative inference. Congress granted *original* jurisdiction to federal district courts under a variety of statutes, principally, 28 U.S.C. §§ 1331, 1332, and 1343,[56] and by inference, under 28 U.S.C. § 1257, *exclusive* jurisdiction to the Supreme Court to review final judgments or decrees from the highest court of a state in which a decision could be had.[57] A commentator has interpreted *Rooker* to stand for the proposition that Congress, in enacting section 1257, implicitly failed to bestow upon the lower federal courts the

50. Rooker v. Fidelity Trust Co., 263 U.S. at 413.

51. *Id.* at 414.

52. *Id.*

53. Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 296 (1970). For a discussion of the *Feldman* decision and its impact on the doctrine, see *infra* notes 93-107 and accompanying text.

54. Rooker v. Fidelity Trust Co., 263 U.S. at 415. *But see infra* text accompanying notes 87-88.

55. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1142. A constitutionally required exception to the *Rooker-Feldman* doctrine is habeas corpus, where a "single federal judge may overturn the judgment of the highest court of a State." Sumner v. Mata, 449 U.S. 539, 543-44 (1981).

56. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331(a) (1982).

"The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000 . . . and is between—(1) citizens of different states . . . ." 28 U.S.C. § 1332(a) (1982).

Section 1343 of title 28, entitled "Civil rights and elective franchise," further sets out circumstances under which district courts will have original jurisdiction. 28 U.S.C. § 1343 (1982).

57. *See supra* note 8.

jurisdiction to review state court judgments.[58]

Federalism is an underlying policy behind the *Rooker* decision; the continuance of a system of two distinct legal systems, each proceeding independently of the other, with the Supreme Court as the final arbiter of federal questions raised in either the federal or state court systems.[59] In order "to prevent needless friction between state and federal courts,"[60] and to facilitate the deference necessary for this bi-judicial system to function properly, Congress constructed "lines of demarcation between the two systems"[61] through the enactment of such jurisdictional statutes.[62] Perhaps most persuasively, continuous appeals to federal courts would likely destroy the finality of state court decisions.[63]

Rooker also stems from the Court's longstanding view that state courts are competent (as well as obligated) to adjudicate federal constitutional claims.[64] The doctrine assumes that it is necessary for a state to have the opportunity to intelligently mediate federal constitutional concerns with state interests, and that if a federal court disrupts this process, it "prevent[s] the informed evolution of state policy by state tribunals."[65]

B. *The Highest State Court Requirement*

The court of appeals addressed the issue of whether the *Rooker-Feldman* doctrine precludes federal review of Texaco's state claims raised only in a state trial court. The court said that "[a]llowing

58. Chang, *Rediscovering the* Rooker *Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 HASTINGS L.J. 1337, 1349 (1980) (limitation of original jurisdiction to federal district courts is a statutory corollary of Congress's grant to the Supreme Court of exclusive power to review state court judgments through section 1257).

59. *See* Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 286 (1970).

60. *Id.* (citing Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 309 U.S. 4 (1940)).

61. *Id.*

62. *See supra* notes 8 & 56. The federal anti-injunction statute, 28 U.S.C. § 2283 (1982), which states that a federal court may not grant an injunction to stay proceedings in a state court, is another example of congressional intent to erect barriers between the state and federal court systems. The Court, however, has held the statute inapplicable to civil rights actions brought under 42 U.S.C. § 1983. Mitchum v. Foster, 407 U.S. 225 (1972).

63. Chang, *supra* note 57, at 1350; *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 13 (1982) (conclusive carry-over effect should not be accorded a tentative judgment).

64. Huffman v. Pursue, 420 U.S. 592, 611 (1975) ("Appellee is in truth urging us to base a rule on the assumption that state judges will not be faithful to their constitutional responsibilities. This we refuse to do."); *see also* Sumner v. Mata, 449 U.S. 539, 549 (1981) (Despite state court differences of opinion as to how to interpret the Constitution, there is no presumption that they are not doing their "mortal best to discharge their oath of office."); Swain v. Pressley, 430 U.S. 372, 383 (1977) (In processing habeas corpus petitions, federal judges must respect state judges' decisions.).

65. Moore v. Sims, 442 U.S. 415, 430 (1979).

lower federal courts to review the judgments of state lower courts is as intrusive and as likely to breed antagonism between state and federal systems as allowing federal court review of the judgments of the states' highest courts."[66] In interpreting the doctrine this way, the court apparently discarded 28 U.S.C. § 1257 and the "highest state court" requirement. The *Texaco* decision, as well as many earlier interpretations of *Rooker*, have failed to examine the doctrine and its policies in relation to the language of the statute.

The *Rooker-Feldman* doctrine would seem to be triggered by the requirement set forth in 28 U.S.C. § 1257, that the Supreme Court may review only those judgments or decrees rendered by the "highest state court in which a decision could be had." Although in a great majority of cases applying *Rooker-Feldman*, the party sought federal relief only after resorting to the state court of last resort,[67] federal courts also have used *Rooker-Feldman* to preclude federal review of an adverse lower state court decision.[68] The federal court in *Duke v. Texas*[69] did exactly that, witholding jurisdiction on the ground that the way was open for the plaintiffs "to assert their federal claims through final decision by Texas courts and thereafter to seek review in the Supreme Court under [28 U.S.C. § 1257]."[70] In *Duke*, the state trial judge issued a permanent injunction prohibiting the soon to be

66. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1142-43.

67. *See, e.g.*, Miofsky v. Superior Court, 703 F.2d 332 (9th Cir. 1983) (California Supreme Court denied petition for a writ of mandate); Friarton Estates Corp. v. City of New York, 681 F.2d 150 (2d Cir. 1982) (New York Court of Appeals affirmed the appellate division's staying of its entire calendar); Dasher v. Supreme Ct. of Tex., 658 F.2d 1045 (5th Cir. Unit A Oct. 1981) (Texas Supreme Court overruled motion for leave to file petition); Reynolds v. Georgia, 640 F.2d 702 (5th Cir. Unit B Nov. 1981), *cert. denied*, 454 U.S. 865 (1981) (Georgia Supreme Court affirmed trial court's granting of summary judgment); Turco v. Monroe County Bar Ass'n, 554 F.2d 515 (2d Cir.), *cert. denied*, 434 U.S. 834 (1977) (New York Court of Appeals dismissed appeal from an order disbarring petitioner); *see also* Lombard v. Board of Educ., 502 F.2d 631 (2d Cir. 1973), *cert. denied*, 420 U.S. 976 (1975) (New York Court of Appeals denied leave to appeal termination of a teacher's probationary appointment); Francisco Enters., Inc. v. Kirby, 482 F.2d 481 (9th Cir. 1973), *cert. denied*, 415 U.S. 916 (1974) (California Supreme Court denied petition for rehearing regarding the revocation of a liquor license); Brown v. Chastain, 416 F.2d 1012 (5th Cir. 1969), *cert. denied*, 397 U.S. 951 (1970) (Florida Supreme Court dismissed an appeal of the denial of a state-provided transcript in a child custody matter); Norwood v. Parenteau, 228 F.2d 148 (8th Cir. 1955), *cert. denied*, 351 U.S. 955 (1956) (South Dakota Supreme Court affirmed the revocation of an optometrist's license).

68. *See* Wood v. Orange County, 715 F.2d 1543 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984) (plaintiffs filed suit in federal district court after a lower state court imposed a lien on their property); Rhoades v. Penfold, 694 F.2d 1043 (5th Cir. 1983) (federal suit filed after state trial court overruled a motion for new trial and the state court of appeals issued a certificate of refusal to file the record on appeal); Hutcherson v. Lehtin, 485 F.2d 567 (9th Cir. 1973) (per curiam) (Rather than take an appeal from the judgment of the California municipal court, the appellant brought a section 1983 action in federal district court.).

69. 477 F.2d 244 (5th Cir. 1973), *cert. denied*, 415 U.S. 978 (1974).

70. *Id.* at 253. Along similar lines, the court intimated that a party must test the

federal plaintiffs from entering a college campus.[71] No state appellate court had considered the injunction in *Duke*.

While the great majority of cases applying the doctrine have done so only after action by the state's court of last resort,[72] non-*Rooker-Feldman* cases interpreting which courts satisfy this requirement define it flexibly.[73] State trial courts have, though infrequently, satisfied the "highest state court" requirement of 28 U.S.C. § 1257.[74] In *Largent v. Texas*,[75] the plaintiff was tried and fined $100 in a Texas county court for violating an ordinance requiring a permit to sell books. Texas law explicitly provided that no appeal lay from the judgment of a county court.[76] The Court held that because there is no state method for reviewing this conviction, the appeal was properly before it under section 1257's predecessor, section 237 of the Judicial Code.[77] Yet the Court has refused to assert jurisdiction under section 1257 where a party has failed to avail itself of remedies present within the state court system,[78] regarding the important purpose of the highest court requirement to be the prohibition of Supreme Court "interference with state proceedings when the underlying dispute may be otherwise resolved."[79]

The Court has recognized instances where the rule "ought not to be administered in such a mechanical fashion because certain situations warrant a departure from the requirement of finality for federal

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sufficiency of state remedies before seeking to invoke the assistance of the district court. *Id.* at 252.

71. *Id.* at 247.

72. *See supra* note 67 and accompanying text.

73. *See* Annotation, *Supreme Court's Views as to What is Highest Court of State Within Meaning of 28 USCS § 1257, Authorizing Supreme Court Review of Final Judgment of Highest Court of State in Which Decision Could Be Had*, 61 L. Ed. 2d 944 (1980).

74. *See, e.g.*, Stanford v. Texas, 379 U.S. 476 (1965) (granting certiorari to review an order by a local magistrate who denied a motion to annul a previously issued search warrant which was not appealable or reviewable under state law); Grovey v. Townsend, 295 U.S. 45 (1935) (Texas justice court held to be the highest court in which a decision could be had).

75. 318 U.S. 418 (1943).

76. Because Mrs. Largent was first convicted in a state corporation court, she appealed to the County Court of Lamar County, Texas, which conducted a trial de novo. Largent v. Texas, 318 U.S. at 419 n.2; TEX. CODE CRIM. PROC. ANN. art. 876 (Vernon 1936). The Texas statute also provided that the Court of Criminal Appeals may not consider any case where the fine imposed does not exceed one-hundred dollars. Largent v. Texas, 318 U.S. at 421; TEX. CODE CRIM. PROC. ANN. art. 53 (Vernon 1936).

77. For a brief history of the antecedents of this statute, see Annotation, *supra* note 73, at 948.

78. *See* Costarelli v. Massachussetts, 421 U.S. 193 (1975) (dismissing for want of jurisdiction where a party could have attacked the constitutionality of a Massacussetts two-tier trial court system by a motion to dismiss in the superior court); Hamerstein v. Superior Ct. of Cal., 341 U.S. 491 (1951) (rejecting jurisdiction where the plaintiff could have obtained state-court review of an adjudication by the California Superior Court).

79. Costarelli v. Massachussetts, 421 U.S. at 196.

appellate jurisdiction."[80] These are situations where the highest court of a state has determined finally the federal issue present in a particular case, although further proceedings on other issues are pending in lower state courts. The principal case articulating these exceptions to section 1257's "highest state court" language is *Cox Broadcasting Corp. v. Cohn*,[81] which recognizes four situations[82] where the decision on a federal issue is considered final for purposes of section 1257. In those situations, *Cox* allows the Court to take jurisdiction without awaiting the completion of additional proceedings anticipated in lower state courts.[83] The Court justified this broadening of the "highest court" requirement by pointing out that these categories do not require the decision of other federal questions that may require subsequent review by the Court,[84] and that immediate rather than delayed review avoids "the mischief of economic waste and of delayed

80. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 477 (1975) (citing Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 124 (1945)).

81. 420 U.S. 469 (1975).

82. *Cox* outlined the four categories satisfying the highest state court requirement:

a) Cases where there are further proceedings yet to occur in the state courts, but where the federal issue is conclusive or the outcome of further proceedings preordained. *Id.* at 479. *See, e.g.*, Mills v. Alabama, 384 U.S. 214 (1966) (Although the state supreme court remanded for a jury trial on the criminal complaint, the Court took jurisdiction because the appellant had no defense other than his federal claim, and could not possibly prevail at trial on the facts or any non-federal ground.). *Id.* at 217-18.

b) Cases in which the federal issue, finally decided by the highest court in the state will survive and require deciding regardless of the outcome of future state court proceedings. Cox Broadcasting Corp. v. Cohn, 420 U.S. at 480. *See, e.g.*, Brady v. Maryland, 373 U.S. 83, 85 n.1 (1963) (holding a new criminal trial on punishment only, and not guilt, reviewable because the federal issue was separable); Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 127 (1945) (federal issue adjudicated by state supreme court held reviewable despite a pending accounting, on the theory that the accounting could not give rise to a federal question).

c) Cases where the federal claim had been decided fully with further proceedings on the merits in the state courts still to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case. Cox Broadcasting Corp. v. Cohn, 420 U.S. at 481. *See, e.g.*, North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973) (Although the state supreme court remanded a case challenging the denial of an application to the pharmacy board, the Court entertained the case on the premise that the federal issue would not survive the remand, whatever the result of state administrative proceedings.).

d) Cases where the state courts have decided finally the federal issue, and pending proceedings might allow the party seeking review to prevail on the merits of a nonfederal claim. In these cases, where reversal of the state court's ruling on the federal issue would preclude further litigation, the Court has taken jurisdiction where a refusal to do so may seriously erode federal policy. Cox Broadcasting Corp. v. Cohn, 420 U.S. at 482-83.

83. Cox Broadcasting Corp. v. Cohn, 420 U.S. at 477.

84. An example of a proceeding that may involve an interlocutory decision as to one federal question, with another to be decided later, is eminent domain; where the federal questions involve not only whether or not a taking has occurred, but also the question of just compensation. *Id.* at 477-78 n.6.

justice."[85]

Cox Broadcasting and its progeny[86] provide little support for the proposition that for purposes of *Rooker-Feldman*, the Texas trial court in *Texaco* is the highest state court from which a decision could be had, because in the *Cox* line of cases, a party at least had petitioned the state's highest court to take some form of action.[87] *Texaco* is the first time the Court is being asked to apply *Rooker-Feldman* to bar federal trial court jurisdiction of claims that should have been raised in state court, where only a state trial court has heard them.

C. *The Double Negative Inference*

The primary policy that courts have attributed to the *Rooker-Feldman* doctrine is to allow the state judicial process to proceed absent federal interference.[88] Yet, given the doctrine's traditional scope, it is logically and sequentially inaccurate to cite its benefits as inuring to lower state court proceedings. Because of the doctrine's relationship with 28 U.S.C. § 1257 and the "highest state court" requirement, its preclusive effect would seem to be activated only once the state's highest court has rendered some type of decision. By the time a state's highest court has considered a case—triggering *Rooker-Feldman*—the doctrine's policy of uninterrupted state trials and appeals already has been achieved.

The inference traditionally read into section 1257 by the *Rooker-Feldman* doctrine is that Congress granted the Supreme Court exclusive jurisdiction to review, through appeal or certiorari, judgments from the highest state court.[89] In response to the incongruity that results when the inference fails to serve the policy, an additional inference must be integrated into the *Rooker-Feldman* doctrine to determine whether it may apply in *Texaco*.

In addressing the issue of whether a federal trial court's "collateral review" of a state court judgment is contrary to the purpose of

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85. Radio Station WOW, Inc. v. Johnson, 326 U.S. at 124.

86. O'Dell v. Espinoza, 456 U.S. 430 (1982); Minnick v. California Dep't. of Corrections, 452 U.S. 105 (1981); Flynt v. Ohio, 451 U.S. 619 (1981); San Diego Gas & Elec. Co. v. City of San Diego, 450 U.S. 621 (1981); American Export Lines v. Alvez, 446 U.S. 274 (1980).

87. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) (court of appeals issued a per curiam order denying petition for admission to bar); Florida State Bd. of Dentistry v. Mack, 401 U.S. 960 (1970) (denial of certiorari by Florida Supreme Court); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) (Indiana Supreme Court affirmed judgment of state circuit court). *But see* Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275 (1946) (citing *Rooker* in support of a finding of res judicata, where there was no action by any state court whatsoever.).

88. *See supra* notes 59-63 and accompanying text.

89. *See supra* note 57 and accompanying text.

Congress in providing for Supreme Court review, Professor Currie surmised:

> [T]he Supreme Court was chosen to review state court judgments because only it had sufficient dignity to make federal review of state courts reasonably palatable; that the highest-state-court requirement was designed to preclude federal interference unless and until state courts had a full opportunity to avoid that clash [arising from federal review of state court judgments] . . . .[90]

Therefore, the first negative inference to be read into *Rooker-Feldman* is that because section 1257 is a limitation on even the Supreme Court's ability to review state court judgments—Congress having granted the Court jurisdiction to review only the highest state court in which a decision could be had—lower federal courts must similarly be restricted in order to accomplish the ideal of an uninterrupted state appellate process. Although cases decided under *Rooker-Feldman* have not articulated this reading of the statute, the Court has recognized that section 1257 is a limitation on its power to review cases coming from state courts.[91]

Consequently, *Rooker-Feldman* is not triggered by the highest state court's taking action. Rather, the doctrine limits Supreme Court *and* lower federal court interference with state proceedings from an action's outset through the point in time when the highest state court has spoken. At that point, the limitation on the Supreme Court is removed and the "evil" that *Rooker-Feldman* was created to prevent has been avoided. Once the limitation is removed, the second negative inference that courts historically have applied, takes effect. Because the Supreme Court now has exclusive jurisdiction to entertain appeals of state judgments, lower federal courts have no such jurisdiction.[92] Hence, an attempt by a federal district court to hear an appeal of a state court judgment will, at all times, be precluded by the *Rooker-Feldman* doctrine.

IV. THE SCOPE OF *Rooker-Feldman* PRECLUSION

A. *The* Feldman *Decision and Its Interpretation*

District of Columbia Court of Appeals v. Feldman[93] represents the

90. Currie, *Res Judicata: The Neglected Defense,* 45 U. CHI. L. REV. 317, 323 (1978).

91. Flynt v. Ohio, 451 U.S. 619, 620 (1981).

92. Without explaining the inconsistency between the policy of state appeals and the highest state court requirement, the Court of Appeals for the Fifth Circuit declared that district courts have no more power to review the decisions of lower state courts than those of state supreme courts. *See* Gresham Park v. Howell, 652 F.2d 1227, 1234 n.14 (5th Cir. Unit B Aug. 1981).

93. 460 U.S. 462 (1983).

Court's most recent discussion of the *Rooker* doctrine. In *Feldman*, the plaintiffs filed a petition with the District of Columbia Court of Appeals[94] seeking waiver of the District's bar requirement that applicants must graduate from accredited law schools. Upon denial of the petition, plaintiffs brought an action in federal district court alleging constitutional violations not raised below, and seeking injunctive relief.[95]

In *Feldman*, the Court reaffirmed the validity of *Rooker*, holding that district courts have no jurisdiction "over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional."[96] Pursuant to section 1257, an appeal may be had only in the Supreme Court.

Feldman further defined the *Rooker* doctrine through its discussion of whether *Rooker* bars federal review of claims that were not raised in the state court, but which could have been. *Rooker* merely stated that an action will be barred "if the constitutional questions stated in the bill actually arose in the cause."[97] Similarly, the Court in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*[98] held that federal district courts do not have appellate jurisdiction over federal questions "raised in state proceedings."[99] *Feldman*, however, extended *Rooker*'s reach at least to preclude federal district court review of claims that are "inextricably intertwined" with a state court's denial of a particular plaintiff's application for admission to

94. For purposes of 28 U.S.C. § 1257, the term "highest court of a state" includes the District of Columbia Court of Appeals. 28 U.S.C. § 1257 (1982).

95. Plaintiff Feldman sought a declaration that refusal to waive the rule violated the fifth amendment to the Constitution and the Sherman Act, and also an injunction requiring the defendants either to grant him immediate admission to the bar or to permit him to sit for the bar examination as soon as possible. Plaintiff Hickey's complaint was identical to that of Feldman's, except that he simply sought an order requiring the defendants to allow him to sit for the bar examination at the earliest possible date. District of Columbia Court of Appeals v. Feldman, 460 U.S. at 469 n.3.

96. *Id.* at 486.

97. Rooker v. Fidelity Trust Co., 263 U.S. at 415.

98. Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281 (1970).

99. *Id.* at 296. Court of appeals cases pre-dating *Feldman* have applied this interpretation of the scope of *Rooker*. *See, e.g.*, Tang v. Appellate Div., 487 F.2d 138, 143 (2d Cir. 1973), *cert. denied*, 416 U.S. 906 (1974) (A direct suit against the state judiciary raising the very same issues should be dismissed if the principle of comity is to have any meaning.); *see also* Jack's Fruit Co. v. Growers Mktg. Serv., 488 F.2d 493, 494 (5th Cir. 1973) (district court is without jurisdiction to review federal constitutional questions decided by state courts); Hanley v. Four Corners Vacation Properties, Inc., 480 F.2d 536, 538 (10th Cir. 1973) (where issue of due process actually has been litigated, the determination of that issue is res judicata; *Rooker* cited as support); *cf.* Getty v. Reed, 547 F.2d 971, 976 (6th Cir. 1977) (district court had jurisdiction over original federal complaints alleging state law violations of the federal Constitution, which were not merely proceedings seeking appellate review).

the state bar.[100]

The *Feldman* Court then proposed that review of a state court decision by the Supreme Court "could be barred by a petitioner's failure to raise his constitutional claims in the state courts."[101] In addition, the Court specifically discussed a district court's ability to apply the "could have raised" standard:

> [T]he fact that we may not have jurisdiction to review a final state-court judgment because of a petitioner's failure to raise his constitutional claims in state court *does not mean that a United States district court should have jurisdiction over the claims.* By failing to raise his claims in state court a plaintiff may forfeit his right to obtain review of the state-court decision in any federal court.[102]

The *Feldman* Court added one final caveat to the evolving *Rooker* doctrine, derived from the case of *Doe v. Pringle*,[103] which also dealt with denial of admission to the bar. The court in *Doe* held that a district court does not have subject matter jurisdiction to review a state court's denial of a particular application to the state bar.[104] According to *Doe*, however, a district court may exercise jurisdiction over general constitutional challenges to state bar rules.[105] *Feldman* distinguished *Doe*, stating that general constitutional challenges to state bar rules do not require a district court to review a final state court judgment in a judicial proceeding.[106] This aspect of the *Rooker-Feldman* doctrine alone does not provide Texaco with federal jurisdiction.[107]

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100. District of Columbia Court of Appeals v. Feldman, 460 U.S. at 483 n.16.

101. *Id.*; see also Cardinale v. Louisiana, 394 U.S. 437, 438 (1969) ("[T]he Court will not decide federal constitutional issues raised here for the first time on review of state court decisions."); Raley v. Ohio, 360 U.S. 423, 435 (1959) (emphasizing that the Supreme Court's appellate jurisdiction requires that a party explicitly and timely insist in state court that a state statute, as applied, is repugnant to the Constitution).

102. District of Columbia Court of Appeals v. Feldman, 460 U.S. at 484 n.16 (emphasis added).

103. 550 F.2d 596 (10th Cir. 1976), *cert. denied*, 431 U.S. 916 (1977).

104. *Id.* at 599.

105. District of Columbia Court of Appeals v. Feldman, 460 U.S. at 485; Doe v. Pringle, 550 F.2d at 599.

106. District of Columbia Court of Appeals v. Feldman, 460 U.S. at 485 (jurisdiction granted over general challenges to the District's rule, but not over challenges to particularized decisions of the District of Columbia Court of Appeals adjudicating a party's right to practice law).

107. The court of appeals determined the constitutionality of the Texas lien and bond provisions as *applied* to Texaco, and not as a constitutional challenge on their face. The court considered only the "unique and extraordinary circumstances of this case, which are unlikely ever to recur because here obtaining a $12 billion bond is impossible." Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1150. But even if Texaco had brought a general challenge to Texaco's bond requirement, there is no question that a Texas ruling on such a facial challenge is a judicial

B. *Pennzoil's Arguments Against Federal Jurisdiction*

Pennzoil contends that the *Rooker-Feldman* doctrine bars all of Texaco's claims in federal court, because the only courts empowered to entertain claims of constitutional error in a Texas state court judgment are the Texas appellate courts and the Supreme Court of the United States. Derivatively, lower federal courts possess no power to directly review state court decisions. The court of appeals held the doctrine to bar those claims actually raised in state court, and ordered dismissal of such claims on this basis. Pennzoil asserts, however, that *Rooker-Feldman* should be read more broadly, to preclude federal review of claims that a litigant *could* have raised in a state court proceeding, as well as those that actually were.[108] Pennzoil also argued that by failing to construe *Rooker-Feldman* to bar Texaco's two additional claims not raised in state court, the court of appeals awarded federal jurisdiction through "the simple expedient of failing to raise a question in a state proceeding—thereby precluding, by definition, the characterization of subsequent collateral federal district court consideration of that question as appellate 'review.' "[109]

Pennzoil further claims that because section 1257 provides for Supreme Court review of "judgments" or "decrees" (as opposed to claims or issues), and because the enforceability of the judgment that Pennzoil obtained in Texas is the very matter that the state court purported to review in Texaco's motion for j.n.o.v., the judgment is necessarily inextricably intertwined with its enforcement.[110] Texaco, on

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proceeding. Thus, the limited "general challenge" exception to the *Rooker-Feldman* doctrine cannot possibly apply in this context.

For cases mounting general challenges to the constitutionality of a rule or provision within the scope of *Feldman*, see Lowrie v. Goldenhersh, 716 F.2d 401, 407 (7th Cir. 1983), *cert. denied*, 106 S. Ct. 862 (1986) (Although a particular challenge comprised much of the complaint, the intertwining of this challenge with a general attack on the constitutionality of the rule governing admission of foreign-licensed attorneys to the bar was not so inextricable that the district court could not consider it.); Piper v. Supreme Court of N.H., 723 F.2d 110, 118 (1st Cir. 1983), *aff'd*, 470 U.S. 274 (1985) (Federal court had jurisdiction over claims that a state bar's residency requirement was unconstitutional in all cases.); Howell v. State Bar of Tex., 710 F.2d 1075 (5th Cir. 1983), *cert. denied*, 466 U.S. 950 (1984) (petitioner only collaterally estopped from posing a general federal challenge to state disciplinary proceedings, not a facial attack).

108. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1144.

109. Brief for Appellant at 40, *Texaco* (No. 85-1798).

110. *Id.* at 41. Pennzoil further argues that courts have not exclusively limited the *Rooker-Feldman* doctrine to those cases in which a federal court is specifically asked to reverse the result of a state court adjudication. That would limit the application of the doctrine to mere issue preclusion. *Id.* at 41 n.39; *see, e.g.*, Hale v. Harney, 786 F.2d 688 (5th Cir. 1986) (applying *Feldman* and finding that complaints regarding the decree of a state court were inextricably intertwined with questions of the validity of that decree, and thus not reachable by a federal court); Thomas v. Kadish, 748 F.2d 276, 282 (5th Cir. 1984), *cert. denied*, 105 S. Ct. 3531 (1985) (A deliberate bypass of state procedures should not entitle a party to a "review of

the other hand, maintains that constitutional claims are inextricably intertwined with state court decisions only when they can be decided by direct review of the state court decision.[111]

The court of appeals rebuffed Pennzoil's arguments, finding federal jurisdiction through analysis of a litigant's ability to obtain relief under 42 U.S.C. § 1983. It held that interpreting the *Rooker-Feldman* doctrine and 28 U.S.C. § 1257 as barring Texaco's constitutional claims would limit a party's ability to seek relief under this statute because most claims brought under section 1983 could be raised in a related state proceeding.[112] The court found this neutralization of the statute's operability to run contrary to section 1983's purpose: to allow the federal courts to protect people from unconstitutional action under color of state law.[113]

C. *Analysis of* Rooker-Feldman*'s Reach*

The Second Circuit denied the existence of any support for Pennzoil's "could have raised" argument,[114] and dismissed the possibility that Texaco's federal claims are inextricably intertwined with its state claims, without the benefit of discussion.[115] The court failed to mention, however, that the *Feldman* decision specifically addressed the "could have raised" and "inextricably intertwined" issues, apparently resolving them in Pennzoil's favor.[116] Furthermore, federal courts that have addressed the issue[117] since *Feldman* and prior to *Texaco*, have upheld this nuance of the *Rooker-Feldman* doctrine, that failure of a plaintiff to secure a final state court judgment "may forfeit his right to obtain review of the state court decision in any

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his constitutional claims by a federal district court that would have been unavailable to him if he had pursued his claim to final state court judgment.").

111. Brief for Appellee at 45, *Texaco* (No. 85-1798).

112. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1144.

113. *Ex parte* Virginia, 100 U.S. 339, 346 (1880). Courts also have interpreted the statute as providing "dual or concurrent forums in the state and federal system, enabling the plaintiff to choose the forum in which to seek relief." Patsy v. Board of Regents of Fla., 457 U.S. 496, 506 (1982); *see also* Mitchum v. Foster, 407 U.S. 225, 239 (1972) ("Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and the laws of the Nation.").

114. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1144.

115. *Id.*

116. *See supra* notes 100-01 and accompanying text.

117. Reed v. Terrell, 759 F.2d 472, 473 n.3 (5th Cir.), *cert. denied*, 106 S. Ct. 343 (1985); Thomas v. Kadish, 748 F.2d 276, 277-78 (5th Cir. 1984), *cert. denied*, 105 S. Ct. 3531 (1985); Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984); Rosquist v. Jarat Const. Corp., 570 F. Supp. 1206, 1210 (D.N.J. 1983); Michaelis v. Nebraska State Bar Ass'n, 566 F. Supp. 89, 93 (D. Neb.), *aff'd*, 717 F.2d 437 (8th Cir. 1983).

federal court."[118]

In *Wood v. Orange County*,[119] the Court of Appeals for the Eleventh Circuit discussed the "could have raised" expansion of the doctrine undertaken in *Feldman*, holding this standard to apply only where the plaintiff had a reasonable opportunity to raise a federal claim in state proceedings.[120] The court in *Wood* reasoned that where a plaintiff has had no such opportunity, it cannot fairly be said that the plaintiff "failed" to raise the issue.[121]

The *Feldman* decision, however, left open to conjecture the role of the "inextricably intertwined" test in *Rooker-Feldman* preclusion. Yet, the maxim that a federal court has no jurisdiction over issues that are "inextricably intertwined with allegations underlying the judgment of a state supreme court"[122] holds true even when the challenger asserts a constitutional claim.[123]

"Inextricably intertwined" and "could have raised" are not necessarily synonymous, however, and the *Feldman* Court mentioned both.[124] *Feldman* presents two alternative resolutions to uncertainties regarding the extent of *Rooker-Feldman* preclusion. The doctrine may preclude all federal claims that a litigant could have raised in state court, even though they are not inextricably intertwined with those that actually were. Under this reasoning, even if an attack on the bond is not inextricably intertwined with Texaco's previous attack on the judgment in Texas state court, a federal district court is precluded from exercising jurisdiction if Texaco procedurally could have launched such an attack on the bond while in state court. *Or*, the

118. *See supra* text accompanying note 102.

119. 715 F.2d 1543 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984).

120. *Id.* at 1547; *see also* University of Tenn. v. Elliott, 106 S. Ct. 3220, 3226 (1986) (quoting United States v. Utah Const. & Mining Co., 384 U.S. 394 (1966)). *Wood* deviates from earlier Fifth Circuit interpretations of the *Rooker* doctrine, which held that *Rooker* was triggered when the effect of a federal decision favorable to the plaintiff would be to nullify or modify the state court judgment, regardless of whether the plaintiff had a reasonable opportunity to raise those claims. *See, e.g.*, Gresham Park Community Org. v. Howell, 652 F.2d 1227 (5th Cir. Unit B, Aug. 1981); Brown v. Chastain, 416 F.2d 1012 (5th Cir. 1969), *cert. denied*, 397 U.S. 951 (1970); Warriner v. Fink, 307 F.2d 933 (5th Cir. 1962), *cert. denied*, 372 U.S. 943 (1963); Manufacturers Record Publishing Co. v. Lauer, 268 F.2d 187 (5th Cir. 1959), *cert. denied*, 361 U.S. 913 (1959).

121. The court also said that when there is no reasonable opportunity to raise the issue, it is not, therefore, inextricably intertwined with the state court's judgment. Wood v. Orange County, 715 F.2d at 1547.

122. Curry v. Baker, 802 F.2d 1302, 1310 n.5 (11th Cir.), *stay denied*, 107 S. Ct. 5 (1986).

123. *Id.* The Court of Appeals for the Fifth Circuit has held in several cases that litigants are unable to challenge state court judgments by filing civil rights suits in lower federal courts. Brinkmann v. Johnston, 793 F.2d 111 (5th Cir. 1986); Hale v. Harney, 786 F.2d 688 (5th Cir. 1986); Sawyer v. Overton, 595 F.2d 252 (5th Cir. 1979); Kimball v. Florida Bar, 632 F.2d 1283 (5th Cir. 1980).

124. *See supra* notes 100-01 and accompanying text.

doctrine may only preclude federal jurisdiction over claims that could have been raised in state court *and* which are inextricably intertwined with those that actually were. If courts apply the two terms concurrently, then *Rooker-Feldman* is much narrower than Pennzoil would prefer,[125] because Pennzoil must demonstrate that Texaco's state court attack on the judgment is inextricably intertwined with an attack on the bond.

It may already be apparent that the syllogism presented above is somewhat flawed. If the *Rooker-Feldman* doctrine precludes a federal court from exercising jurisdiction over any claim that a litigant procedurally could have raised in a prior state court trial, then the scope of that preclusion certainly engulfs the narrower preclusion of issues inextricably intertwined with those litigated in state court. This assumes, of course, that there was an available procedural mechanism for a litigant to raise the inextricably intertwined issue in state court, which is Pennzoil's position. Consequently, if the "could have raised" standard is a separate test to determine the scope of issues precluded from federal consideration—not merely a check on the inextricably intertwined test—then the inextricably intertwined test essentially becomes superfluous. Given this conclusion, perhaps the appropriate course is to assume that the Court in *Feldman* would not have articulated a superfluous test, and that federal jurisdiction is only precluded over issues inextricably intertwined with those actually litigated in a state court that provided procedures for a litigant to contest the precluded issues.

The Court of Appeals for the Ninth Circuit in *Robinson v. Ariyoshi*[126] apparently[127] adopted this approach to *Rooker-Feldman*. Although the Supreme Court has vacated and remanded this decision, the Court apparently did so on the merits and not on jurisdictional grounds, and at the very least *Robinson* is a useful benchmark. The *Robinson* court determined whether federal constitutional claims that the state court had refused to consider on a petition for rehearing were inextricably intertwined with the state court's judgment. The court deemed the crucial components to the inextricably intertwined test to be "consideration" and "decision."[128] If both of these elements

125. *See supra* note 108 and accompanying text.

126. 753 F.2d 1468 (9th Cir. 1985), *vacated*, 106 S. Ct. 3269 (1986).

127. In *Robinson*, the court of appeals provided guidance as to how to apply the "inextricably intertwined" component of the *Rooker-Feldman* doctrine. It is doubtful, however, that the court regarded *Rooker-Feldman* as a jurisdictional doctrine independent of res judicata, as the two were said to be "two sides of the same coin." Thus, it seems that rather than clarifying the scope of the *Rooker-Feldman* doctrine, the ninth circuit further confused the issue. *Id.* at 1472.

128. *Id.*

are present, then federal review is impermissible. If the state court did not previously *consider* the federal claim, however, or if the *decision* given was ambiguous, then it is unlikely that those claims actually presented to the state court are so inextricably intertwined with subsequent federal claims that a district court cannot take jurisdiction.[129]

The Ninth Circuit recently complemented the *Robinson* decision in *Worldwide Church of [G-d] v. McNair*.[130] The *McNair* court held that when a district court is unable to evaluate a plaintiff's constitutional claims without reviewing the state court's legal determinations and the jury's verdict, then that court lacks subject matter jurisdiction due to *Rooker-Feldman* preclusion.[131] The court did not indicate whether issues not inextricably intertwined with the state court judgment are precluded from federal jurisdiction if a litigant could have raised them. The *Feldman* test has been described as determining the extent of *Rooker-Feldman* preclusion through a "realistic consideration of the nature of the underlying claim," rather than a "mechanical classification of the relief requested."[132]

Since *Feldman*, many federal courts of appeals that have applied the doctrine have used the "inextricably intertwined" standard to measure the scope of the *Doe v. Pringle*[133] caveat to the *Rooker-Feldman* doctrine.[134] This inquiry centers upon determining which claims present general facial attacks on state bar admission requirements, and which present claims attacking their specific application. Yet *Feldman* failed to provide a "bright line" rule to distinguish claims that are inextricably intertwined with a state court's judgment and those that are not.[135]

The Court of Appeals for the Tenth Circuit attempted to elucidate *Feldman*'s inextricably intertwined standard in *Razatos v. Colorado Supreme Court*.[136] In *Razatos*, the plaintiff had attacked the

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129. *Id.*

130. 805 F.2d 888 (9th Cir. 1986).

131. *Id.* at 892-93.

132. Carbonell v. Louisiana Dept. of Health & Human Resources, 772 F.2d 185, 189 (5th Cir. 1985).

133. 550 F.2d 596 (10th Cir. 1976), *cert. denied*, 431 U.S. 916 (1977).

134. *See, e.g.*, Nordgren v. Hafter, 789 F.2d 334 (5th Cir.), *cert. denied*, 107 S. Ct. 177 (1986); Reed v. Terrell, 759 F.2d 472 (5th Cir.), *cert. denied*, 106 S. Ct. 343 (1985); Thomas v. Kadish, 748 F.2d 276 (5th Cir. 1984), *cert. denied*, 105 S. Ct. 3531 (1985); Lowrie v. Goldenhersh, 716 F.2d 401 (7th Cir. 1983); Howell v. State Bar of Tex., 710 F.2d 1075 (5th Cir. 1983), *cert. denied*, 466 U.S. 950 (1984).

135. Worldwide Church of [G-d] v. McNair, 805 F.2d 888, 891 (9th Cir. 1986); Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1433 (10th Cir. 1984), *cert. denied*, 471 U.S. 1016 (1985).

136. 746 F.2d 1429 (10th Cir.), *cert. denied*, 471 U.S. 1016 (1984).

constitutionality of certain Colorado Rules of Civil Procedure, prescribing how disciplinary proceedings may be brought against attorneys. After the state court ruled against him, Razatos brought a section 1983 claim in federal court asserting that the application of a different rule (not challenged in state court), within the same subject area, violated his right to due process. The *Razatos* court concluded that a district court does not have jurisdiction to hear a claim when it would "have to go beyond mere review of the state rule *as promulgated*, to an examination of the rule *as applied* by the state court to the particular factual circumstances of [the plaintiff's] case."[137]

Under either the "inextricably intertwined" test or the "could have raised" test, in order for *Rooker-Feldman* preclusion to apply, the doctrine mandates that Texas must have had procedures available for Texaco to challenge the bond. In addition to this investigation of Texas procedures,[138] because federal courts have made "inextricably intertwined" an integral part of the *Rooker-Feldman* test, the Supreme Court, upon a determination that the doctrine applies, may choose to determine whether Texaco's attack on the constitutionality of the bond is inextricably intertwined with a similar attack on the judgment.

D. *Res Judicata*

Courts often have used the *Rooker-Feldman* doctrine interchangeably with res judicata.[139] "Under res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues or bases of remedies that *were or could have been raised* in that action" to vindicate a particular claim.[140] The effects of former adjudication are also manifested in the form of issue preclusion.

Issue preclusion is simply the principle that later courts should honor an earlier decision on a matter that actually has been liti-

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137. *Id.* at 1433; *see also* Brown v. Board of Bar Examiners, 623 F.2d 605, 610 (9th Cir. 1980) (absent a request for the broad-based remedy of general declaratory relief, federal complaint must be dismissed); Czura v. Supreme Court of S.C., 632 F. Supp. 267, 270 (D.S.C. 1986) (no federal jurisdiction where plaintiff could have brought challenges to a procedure, where disbarment was a real possibility, in a previous forum). The court in *Razatos*, however, found that the district court did not have to evaluate the decision of the Colorado Supreme Court in order to evaluate the plaintiff's claim. The court of appeals therefore reversed the district court's finding of lack of jurisdiction. Razatos v. Colorado Supreme Court, 746 F.2d at 1434.

138. *See infra* notes 195-211 and accompanying text.

139. *See infra* note 170 and accompanying text.

140. Allen v. McCurry, 449 U.S. 90, 94 (1980) (citing Cromwell v. County of Sac, 94 U.S. 351, 352 (1876)) (emphasis added).

gated.[141] It precludes the relitigation of issues actually and necessarily decided in former judicial proceedings.[142] The *Restatement (Second) of Judgments* speaks of res judicata as "claim preclusion" and collateral estoppel as "issue preclusion."[143]

Claim preclusion, also known as "traditional res judicata," extends to the adjudication of all issues relevant to the same claim between the same parties whether or not raised at trial.[144] The essence of the doctrine is that a final adjudication on the merits prevents the parties from subsequently litigating an alternative ground for relief arising out of the same claim,[145] thereby forcing parties to raise certain matters in their first suit on pain of subsequent forfeiture[146] through the principles of "merger" and "bar."[147] Res judicata extinguishes "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose."[148]

Congress, through its enactment of 28 U.S.C. § 1738 in 1948,[149]

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141. 18 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4416 (1981).

142. *See* Brown v. St. Louis Police Dept., 691 F.2d 393, 395 (8th Cir. 1982), *cert. denied*, 461 U.S. 908 (1983); Montana v. United States, 440 U.S. 147, 153 (1979); *see also* Dennis v. Rhode Island Hosp. Trust Nat'l Bank, 744 F.2d 893, 899 (1st Cir. 1984) (Collateral estoppel "bars relitigation of any factual or legal issue that was *actually* decided in previous litigation 'between the parties, whether on the same or a different claim.' ").

143. Allen v. McCurry, 449 U.S. 90, 94 n.5 (1980) (citing RESTATEMENT (SECOND) OF JUDGMENTS § 74 (Tent. Draft. No. 3, 1976)); *see also* Brown v. Felsen, 442 U.S. 127, 139 n.10 (1979) ("Whereas res judicata forecloses all that which might have been litigated previously, collateral estoppel treats as final only those questions actually and necessarily decided in a prior suit.").

144. White v. World Fin. of Meridian, Inc., 653 F.2d 147, 150 (5th Cir. Unit A, Aug. 1981); Dennis v. Rhode Island Hosp. Trust Nat'l Bank, 744 F.2d at 898; *see also* J. FRIEDENTHAL, M. KANE & A. MILLER, CIVIL PROCEDURE 615 (1985) (citing Cromwell v. County of Sac, 94 U.S. 351, 353 (1876)).

145. Montana v. United States, 440 U.S. at 153; *see also* Roach v. Teamsters, 595 F.2d 446, 449 (8th Cir. 1979) (enunciated test was whether the wrong for which redress is sought is the same for both actions).

146. 18 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4406 (1981).

147. When a judgment is rendered in favor of the plaintiff, the claim is merged into the judgment, meaning that the claim is extinguished and the judgment is substituted for the claim. RESTATEMENT (SECOND) OF JUDGMENTS § 17 comment a (1982). When a judgment is rendered in favor of the defendant, the judgment is generally a bar to subsequent action on the claim. *Id.* § 17 comment b. *See generally id.* §§ 17-18.

148. *Id.* § 24(1).

149. 28 U.S.C. § 1738 (1982) provides that "[T]he . . . judicial proceedings of any court of any such State . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such state . . . from which they are taken." *See* Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985) ("Section 1738 embodies concerns of comity and federalism that allow the States to determine, subject to the requirements of the statute and the

specifically has required that all federal courts give preclusive effect to state court judgments whenever the courts of the judgment rendering state would be obligated to do so. Interestingly, the Court had not decided directly[150] whether the preclusive aspects of res judicata and collateral estoppel apply to actions brought under 42 U.S.C. § 1983, until *Allen v. McCurry*.[151] At Willie McCurry's criminal trial in Missouri state court, he invoked the fourth and fourteenth amendments to suppress evidence seized by police.[152] After the trial court denied the motion to suppress on these constitutional grounds, he was convicted.[153] McCurry then filed a section 1983 action in federal court, complaining that the city of Saint Louis and its police department conspired to violate his fourth amendment right to be free from an unreasonable search and seizure.[154] The Court said that in addition to preventing McCurry from relitigating issues in his federal habeas corpus action,[155] his state court loss on the fourth amendment issue collaterally estopped his section 1983 claim.[156] The Court in *Allen* conclusively determined that issues actually litigated in state courts have the same preclusive effect in a subsequent section 1983 action in federal court, as in the courts of the judgment rendering state.[157]

After *Allen*, civil rights plaintiffs are prohibited from relitigating any matters that a state court decided, as long as there was an opportunity for full and fair litigation.[158] The Court, by looking to the leg-

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Due Process Clause, the preclusive effect of judgments in their own courts."); *see also* Kremer v. Chemical Const. Corp., 456 U.S. 461, 466 (1982) ("Section 1738 requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged.").

150. In Preiser v. Rodriguez, 411 U.S. 475, 497 (1973), the Court impliedly approved of several of the circuits' application of res judicata to civil rights actions brought under 42 U.S.C. § 1983. *See, e.g.*, Coogan v. Cincinnati Bar Ass'n, 431 F.2d 1209, 1211 (6th Cir. 1970); Jenson v. Olson, 353 F.2d 825 (8th Cir. 1964); Rhodes v. Meyer, 334 F.2d 709, 716 (8th Cir.), *cert. denied*, 379 U.S. 915 (1964); Goss v. Illinois, 312 F.2d 257 (7th Cir. 1963); *cf.* Huffman v. Pursue, Ltd., 420 U.S. 592, 606 n.18 (1975); Wolff v. McDowell, 418 U.S. 539, 554 n.12 (1974).

151. 449 U.S. 90 (1980).

152. State v. McCurry, 587 S.W.2d 337 (Mo. Ct. App. 1979).

153. Allen v. McCurry, 449 U.S. at 91.

154. *Id.* at 92.

155. The defendant McCurry was precluded from raising a search and seizure issue on a federal habeas corpus petition. Stone v. Powell, 428 U.S. 465, 494 (1976) ("[W]here the state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his or her trial.").

156. Allen v. McCurry, 449 U.S. at 104-05.

157. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 83 (1984).

158. Shapiro, *The Application of State Claim Preclusion Rules in a Federal Civil Rights Action*, 10 OHIO N.U.L. REV. 223, 226 (1983). The *Allen* decision is often thought of as a response to the Supreme Court's increasing concern with an overburdened federal caseload.

islative history of 42 U.S.C. § 1983, found no Congressional intent to repeal or restrict the traditional doctrines of preclusion.[159] Absent a "congressionally authorized exception to these principles of preclusion,"[160] the Court saw fit to reject the principle that "every person asserting a federal right is entitled to one unencumbered opportunity to litigate that right in a federal district court."[161] Opponents, however, regard section 1983 as the embodiment of a strong congressional policy that it is necessary for federal courts to be the "primary and final arbiters of constitutional rights,"[162] and thus would require a clear congressional mandate before reading preclusion principles into section 1983 claims.

The Court extended this holding to res judicata in *Migra v. Warren City School District Board of Education.*[163] Migra, an educational supervisor, sued the board of education in state court for breach of an employment contract as well as individual board members for wrongful interference with her contract. The Ohio court ruled for Migra on the contract claim but dismissed the tort claim.[164] She then filed a section 1983 action in federal court. The Court held that because she could have brought her constitutional claim in her original tort and contract suit in state court, res judicata barred her from subsequently maintaining such an action in federal court.[165] The state court judg-

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See also Note, Allen v. McCurry*: Collateral Estoppel as a Bar to Section 1983*, 5 CRIM. JUST. J. 149, 165 (1981).

159. Allen v. McCurry, 449 U.S. at 97-98.

160. *The Supreme Court, 1980 Term—Collateral Estoppel in Section 1983 Actions*, 95 HARV. L. REV. 280, 281 (1981).

161. Allen v. McCurry, 449 U.S. at 103; *see also* Monroe v. Pape, 365 U.S. 167, 183 (1961) (Supreme Court has considered a section 1983 remedy to be supplementary to a state remedy).

162. Allen v. McCurry, 449 U.S. at 110 (Blackmun, J., dissenting). A commentator has described the Court's decision in *Allen* as "giving lower federal courts tools for avoiding federal civil rights litigation." Note, *Preclusion in Section 1983 Actions after* Allen *and* Migra*: Choice of Forum Considerations for the New York Civil Rights Complainant*, 36 SYRACUSE L. REV. 1091, 1104 (1985); *see also* Comment, *The Collateral Estoppel Effect to be Given State Court Judgments in Federal Section 1983 Damage Suits*, 128 U. PA. L. REV. 1471, 1492-93 (1980) (wooden application of collateral estoppel would frustrate a party's right of at least one chance to litigate any constitutional issue in federal court).

163. 465 U.S. 75 (1984).

164. *Id.* at 78-79.

165. *Id.* at 85. The question of whether claim preclusion is applicable to a section 1983 action had been answered in the affirmative by most federal courts of appeals that faced the issue before the *Migra* decision. *See, e.g.*, Isaac v. Schwartz, 706 F.2d 15 (1st Cir. 1983) (dismissing a section 1983 suit because relevant transactions underlying both the state and federal complaints were the same); Nilson v. City of Moss Point, 701 F.2d 556 (5th Cir. 1983) (1983 action barred by res judicata because substantive right sought to be vindicated was presented in plaintiff's prior Title VII suit); *see also* Lee v. City of Peoria, 685 F.2d 196 (7th Cir. 1982) (court saw no reason to distinguish between civil rights actions brought under section 1983, and those brought under Title VII, the latter having been previously held subject to res judicata); Castorr v. Brundage, 674 F.2d 531 (6th Cir.), *cert. denied*, 459 U.S. 928 (1982)

ment had the same claim preclusive effect in federal court that it would have had in the state courts.[166]

Professor Wright has noted that there is still an uncertain area in the application of res judicata to section 1983 claims—defendant preclusion.[167] "This is whether a state court defendant will be precluded from bringing a federal civil rights action based on constitutional arguments that he could have used as a defense, but did not, in state court."[168] This factual setting, of course, is the very one posed by the *Texaco* litigation. Perhaps it *should* make a difference that Texaco, as well as all state court defendants, was haled into court involuntarily. While the involuntary nature of state court litigation made no difference in *Allen*, that case only upheld collateral estoppel, not the more expansive preclusion of res judicata.[169]

E. *Comparison of* Rooker-Feldman *with Traditional Preclusion*

Courts have obscured *Rooker-Feldman* by viewing it as an application of res judicata.[170] Professor Chang opines that the preclusion

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(preference for finality was not outweighed by any compelling considerations of a section 1983 claim); Robbins v. District Court of Worth County, Iowa, 592 F.2d 1015 (8th Cir.), *cert. denied*, 444 U.S. 852 (1979) (Where federal section 1983 claim was based on the same nucleus of operative fact as before the Iowa state court, plaintiffs were unable to circumvent claim preclusion.); Scoggin v. Schrunk, 522 F.2d 436 (9th Cir. 1975), *cert. denied*, 423 U.S. 1066 (1976) (court of appeals rejected the notion that unless a civil rights claim had actually been raised in state court, it was not barred by res judicata); Spence v. Latting, 512 F.2d 93, 99 (10th Cir.), *cert. denied*, 423 U.S. 896 (1975) (Allowing plaintiff to bring section 1983 claims in federal court, where judgment on the claim had been rendered by Oklahoma Supreme Court, "would work a disservice to the salutary policies underlying res judicata.").

A minority of courts had previously held claim preclusion to be ineffectual in a section 1983 proceeding. *See, e.g.*, New Jersey Educ. Ass'n v. Burke, 579 F.2d 764 (3d Cir.), *cert. denied*, 439 U.S. 894 (1978); Lombard v. Board of Educ. of New York, 502 F.2d 631 (2d Cir. 1974), *cert. denied*, 420 U.S. 976 (1975); Mack v. Florida Bd. of Dentistry, 430 F.2d 862 (5th Cir. 1970), *cert. denied*, 401 U.S. 954, *cert. denied*, 401 U.S. 960 (1971).

166. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. at 85. The Court deemed it more important to give full faith and credit to state court judgments than to ensure separate forums for federal and state claims. *Id.* at 84. The Supreme Court later expanded the *Migra* rule, holding that federal courts must apply the issue and claim preclusion law of the forum state to agency decisions rendered in quasi-judicial proceedings, in addition to traditional state court litigation. University of Tenn. v. Elliott, 106 S. Ct. 3220, 3226 (1986).

167. 18 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4414 n.7 (1981). Professor Wright's reasoning implies that defendant preclusion may apply to situations analogous to *Texaco*, where the original state court defendant brings a subsequent federal action to assert federal constitutional claims omitted from the prior state court action. For a discussion of the relationship between state judgments and federal civil rights laws, see generally *id.* § 4471.

168. C. WRIGHT, LAW OF FEDERAL COURTS § 100A, at 693 (4th ed. 1983).

169. *See supra* notes 139-48 and accompanying text.

170. Robinson v. Ariyoshi, 753 F.2d 1468, 1472 (9th Cir. 1985), *vacated*, 106 S. Ct. 3269 (1986) ("[W]e have read *Rooker* not as a jurisdictional barrier but as an application of res judicata."); Ellentuck v. Klein, 570 F.2d 414, 425 (2d Cir. 1978) (due process claims that were

of claims under *Rooker* is virtually identical in scope to the claim preclusion of res judicata.[171] Numerous courts have explained the *Rooker-Feldman* syllogism as follows: Federal courts are prohibited from acting as appellate courts of the states.[172] In fact, Congress specifically defined federal courts with limited jurisdiction, and it only granted *original* jurisdiction to the district courts.[173] Thus, *Rooker-Feldman* bars an action brought to a federal district court seeking review of a prior state decision as "appellate," because the proper avenue would have been to seek review in a court that has explicitly been granted appellate jurisdiction.

The preclusion of claims under res judicata proceeds much the same way. Because res judicata applies only when a final judgment is rendered,[174] claims barred by res judicata cannot be brought again as original actions simply based upon an alternative legal theory. Where res judicata bars an action involving review from state to federal court, *Rooker-Feldman* would likewise bar the action. Professor Chang maintains that although *Rooker* and res judicata describe the same concept, courts historically have treated the two differently.[175]

If *Rooker-Feldman* only bars federal consideration of "claims" that are inextricably intertwined with claims litigated in state court, then its scope perfectly matches that of res judicata. This conclusion is justified because res judicata similarly bars federal consideration of any unasserted "remedy" with respect to the transaction out of which the state court claim arose.[176] The key assumption is that in a factual context such as *Migra*, *Rooker-Feldman* would preclude a district court from considering the section 1983 "claim" as it was inextricably intertwined with the state court, state law claims. In *Migra*, of course, the res judicata explanation was that the section 1983 suit is simply a separate "remedy" to redress the same "claim" that the

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fully adjudicated barred by res judicata; *Rooker* cited as support); *see also* Williams v. Washington, 554 F.2d 369, 371 (9th Cir. 1977); Roy v. Jones, 484 F.2d 96, 99 n.11 (3d Cir. 1973); Francisco Enters., Inc. v. Kirby, 482 F.2d 481, 484-85 (9th Cir. 1973), *cert. denied*, 415 U.S. 916 (1974).

171. Chang, *supra* note 58, at 1354. *But see* Atwood, *State Court Judgments in Federal Litigation: Mapping the Contours of Full Faith and Credit*, 58 IND. L.J. 59, 88-89 n.143 (1982) (preferable approach to state-to-federal preclusion is full faith and credit).

172. Rooker v. Fidelity Trust Co., 263 U.S. at 416. *But see supra* note 55.

173. Rooker v. Fidelity Trust Co., 263 U.S. at 416.

174. RESTATEMENT (SECOND) OF JUDGMENTS § 13 (1982). This section goes on to say, however, that "for purposes of issue preclusion . . . 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." *Id.*

175. Chang, *supra* note 58, at 1354.

176. RESTATEMENT (SECOND) OF JUDGMENTS § 24 comment c, at 199 (1982).

plaintiff pursued in state court.[177] In short, the doctrines approximate each other because inextricably intertwined claims will only arise out of the same series of connected transactions.

But the Court may hold that the *Rooker-Feldman* doctrine does not only preclude federal jurisdiction over claims that are inextricably intertwined with claims litigated in a state court. In other words, using res judicata terminology, *Rooker-Feldman* may preclude federal review of a separate claim that does not arise out of the series of connected transactions that comprised the subject matter of the original state court proceeding. This reasoning depends upon whether the *Feldman* Court sought to preclude jurisdiction over separate claims that a litigant did not raise in state court, and which are *not* inextricably intertwined with actually litigated state court claims, where that party procedurally could have presented the separate claim to the state trial court but simply chose not to do so. If the doctrine does in fact preclude federal consideration of certain non-inextricably intertwined claims, then it definitionally extends beyond the scope of res judicata, which only extinguishes unlitigated issues with respect to a given series of connected transactions.[178]

Whatever its scope, when *Rooker-Feldman* applies, a federal court has no jurisdiction and must dismiss the action sua sponte regardless of whether the federal defendant raised the claim in a timely fashion.[179] Res judicata, on the other hand, is an affirmative defense,[180] which a defendant must plead in his answer to the complaint,[181] and ordinarily the court will not raise it on its own initiative.[182] If the defendant does not raise res judicata, he will be presumed to have waived the defense, and the issue will be both

177. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. at 84-85.

178. *See supra* note 148 and accompanying text.

179. Currie, *supra* note 90, at 324.

180. FED. R. CIV. P. 8(e).

181. 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1277 (1969).

182. J. FRIEDENTHAL, M. KANE & A. MILLER, CIVIL PROCEDURE 617 (1985). While the following cases all acknowledge the general principle that a court will not raise an affirmative defense sua sponte that a party has not pleaded, qualifying language abounds. Baylor Univ. Medical Center v. Heckler, 758 F.2d 1052, 1057 n.8 (5th Cir. 1985) (court of appeals not prevented from considering an affirmative defense not raised below where the district judge sua sponte chose to address the issue); Prinz v. Greate Bay Casino Corp., 705 F.2d 692, 694 (3d Cir. 1983) (Under FED. R. CIV. P. 15(c), issues tried by express or implied consent of the parties shall be treated as if they had been raised in the pleadings.); Boone v. Kurtz, 617 F.2d 435, 436 (5th Cir. 1980) (sua sponte dismissal on res judicata grounds by a district judge is permissible and in the interest of judicial economy where both actions were brought before the same court); Willis v. Fournier, 418 F. Supp. 265, 267 (M.D. Ga.), *aff'd*, 537 F.2d 1142 (5th Cir. 1976) (Both parties submitted briefs to the court, after the court informed them of a res judicata issue, thereby creating no prejudice to the plaintiff.); *see also* Carbonell v. Louisiana Dept. of Health & Human Resources, 772 F.2d 185, 189 (5th Cir. 1985) (A district court may

ignored,[183] and made unavailable on appeal.[184] On the other hand, *Rooker-Feldman*, as noted, precludes jurisdiction despite the failure of a federal defendant to raise the issue of lack of jurisdiction. This arguably avoids the waste of judicial resources and federal-state friction that may occur when preclusion depends upon the diligence of the defendant's attorney. Furthermore, Professor Currie explains that because the interests embodied in section 1257's exclusivity are federal, *Rooker-Feldman* provides for a limited and uniform federal law of preclusion in cases where state laws may vary.[185]

One clear difference between traditional preclusion doctrines and *Rooker-Feldman* preclusion is that the former depend upon a statute-by-statute comparison with 28 U.S.C. § 1738, while the latter sweepingly precludes jurisdiction because it is based on an interpretation of 28 U.S.C. § 1257. The upshot of *Allen* and *Migra* is that both collateral estoppel and res judicata preclude a federal court from entertaining an otherwise valid section 1983 claim (leaving aside the issue of defendant res judicata preclusion). But this conclusion does not in itself tell one whether these preclusion doctrines apply to other statutory civil rights schemes, or indeed any independent ground of federal jurisdiction.

In *Kremer v. Chemical Construction Corporation*,[186] for instance,

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only raise res judicata sua sponte where both actions are brought in courts of the same district, and where essential justice mandates it.).

183. "Generally, a failure to plead an affirmative defense results in the waiver of that defense and its exclusion from the case." 5 C. WRIGHT & A. MILLER, *supra* note 181, § 1278; *see* Mozingo v. Correct Mfg. Corp., 752 F.2d 168, 172 (5th Cir. 1985) (Although a district court is granted the discretion to allow late amendments to press a defense when no prejudice would result to the other party, equity and the purposes underlying collateral estoppel militate strongly against allowing the defense to be asserted after trial.); Exxon Corp. v. Texas Motor Exch., 628 F.2d 500, 507 n.3 (5th Cir. 1980) (Res judicata is an affirmative defense that must be pleaded in trial court and will not be considered for the first time on appeal.). *See generally* Henry v. First Nat'l Bank of Clarksdale, 595 F.2d 291, 298 n.1 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980); Zeligson v. Hartman-Blair, Inc., 135 F.2d 874, 876 (10th Cir. 1943).

Professor Chang suggests that *Rooker* may be viewed as changing the concept of res judicata, implying that because of the identical claim preclusive effect of the two doctrines, res judicata can never be waived. Regardless of whether the federal defendant raises res judicata as an affirmative defense, the federal court must look to the law of the rendering state, and if res judicata would be applied by the state courts, then the federal court must dismiss the action. Thus, there are not two doctrines but rather only one, a jurisdictional type of res judicata. Chang, *supra* note 58, at 1354-55 n.110.

184. Underwater Devices, Inc. v. Morrison-Knudsen Co., 717 F.2d 1380, 1388 (Fed. Cir. 1983); Henry v. First Nat'l Bank of Clarksdale, 595 F.2d 291, 298 n.1 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980); *see also* Coleman v. Frierson, 607 F. Supp. 1566, 1574 (N.D. Ill. 1985) (defense of res judicata may not be raised for the first time after judgment has been entered and the record established).

185. Currie, *supra* note 90, at 324.

186. 456 U.S. 461 (1982).

the Court applied *Allen*'s reasoning by analogy to a Title VII[187] claim, to note that "[t]here is no claim here that Title VII expressly repealed § 1738."[188] Yet the *Rooker-Feldman* doctrine is premised upon neither an interpretation of section 1738, nor of any particular basis of jurisdiction, such as section 1983. Instead, the doctrine's reliance upon section 1257 indicates that it works in a broad brush fashion, roughly analogous in scope to res judicata and collateral estoppel, to preclude federal trial court jurisdiction whenever a litigant had a full and fair hearing in state court.

F. *Should the Court Disregard* Rooker-Feldman?

The principle set forth by *Rooker-Feldman*, that "an inferior federal court . . . may not act as an appellate tribunal for the purpose of overruling a state court judgment."[189] serves a useful, but limited purpose. Due to Pennzoil's failure to raise res judicata as an affirmative defense in the district court,[190] *Rooker-Feldman* was the only means by which the court of appeals could have held that the attack on the constitutionality of the state court judgment, actually raised in state court, did not warrant a federal forum. This portion of Texaco's federal complaint[191] is surely an attempt to invoke a district court's appellate jurisdiction, a power that Congress has yet to convey.

Yet, to call this an "appellate doctrine," which bars a federal district court from acting as an appellate tribunal, is a misnomer. In *Rooker*, an adverse ruling in a state court contract action, based solely upon state law grounds, prompted the plaintiff to file a federal lawsuit, with relief sought on federal constitutional grounds. In *Feldman*, a bar applicant sought a discretionary waiver of a bar admission requirement, not premised on a federal right. An adverse decision by a District of Columbia court led to a federal complaint, seeking relief on federal constitutional and statutory grounds. It is apparent that neither *Feldman* nor *Rooker* is an example of an appellate attack, as one cannot appeal claims that were not litigated below.[192] Rather, these cases, and most probably that portion of Texaco's federal complaint attacking the constitutionality of the bond, are examples of res

187. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 253 (codified as amended in scattered sections of 42 U.S.C.).

188. Kremer v. Chemical Constr. Corp., 456 U.S. at 468.

189. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1142.

190. *See supra* note 36 and accompanying text.

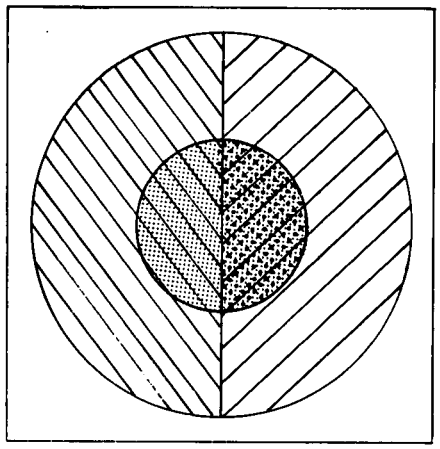
191. *See supra* note 21 and accompanying text.

192. "It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create the cause." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 175 (1803).

judicata claim splitting,[193] where a state court litigant simply failed to raise federal grounds for relief in state court despite the procedural ability to do so.

Yet the fact that the Court chose to describe *Rooker* and *Feldman* as "appellate," forces one to consider whether the Court should completely overrule that interpretation. *Feldman*'s extension of the doctrine, to preclude jurisdiction over claims not litigated below, provides clear evidence that the doctrine has branched far beyond its articulated purpose. In addition, if the doctrine shares the same scope as res judicata, then it is of marginal utility, only serving as a means of preclusion where a party has waived that affirmative defense.[194]

V. APPLICATION OF THE *Rooker-Feldman* DOCTRINE



Federal claims that a litigant could have raised in state court (*Texaco*).

Federal claims that a litigant could have raised in state court that are inextricably intertwined with those state claims (*Migra*).

Federal claims that a litigant was unable to raise in state court.

Federal claims that a litigant was unable to raise in state court that are inextricably intertwined with those state claims (*Allen*).

A. *Texas Procedure and the "Could Have Raised" Test*

After having determined that the *Rooker-Feldman* doctrine applies in *Texaco*, the Supreme Court must determine whether Texas

193. RESTATEMENT (SECOND) OF JUDGMENTS §§ 24-26 (1982).

194. *See supra* notes 180-82 and accompanying text.

procedure provided a means by which Texaco could have challenged the constitutionality of the Texas bond and lien provisions. The court of appeals dismissed the possibility of Texaco's attacking the bond while in state court, by positing that "the likelihood of obtaining a definitive constitutional ruling in the short period of time available to it appears extremely slim, at least without full cooperation on the part of Pennzoil."[195] Rather than speculate as to how Texas law may be accessed to mount this challenge, which is what the court of appeals did, it is necessary to determine whether Texaco had the substantive right to an affordable stay pending appeal, as well as whether "state procedural law barred presentation of [Texaco's] claims."[196]

The "open-courts" provision of the Texas Constitution gives Texaco the substantive right to challenge the state's bond and lien provisions, as effectively denying its state created right to appeal.[197] In *Dillingham v. Putnam*,[198] the Supreme Court of Texas held that a legislative act that requires a party to give a supersedeas bond, without reference to the ability or inability of the party to give such a bond, is violative of the Texas Constitution's "open-courts" clause.[199]

The Texas trial court restrained Pennzoil from enforcing the judgment for three-and-one-half months after its entry, or from December 10, 1985 until March 25, 1986.[200] Texaco had at least one possible procedural remedy during that period. Pennzoil filed a stipulation, offering to waive its right to full bond, and asked instead for the court to adopt suitable security as provided by the Federal Rules of Civil Procedure.[201] Neither the Texas trial judge nor Texaco

195. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1139.

196. Brief for Appellant at 25, *Texaco* (No. 85-1798) (citing Moore v. Sims, 442 U.S. 415, 430, 432 (1979)).

197. TEX. CONST. art. 1, § 13 provides that "[A]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

198. 109 Tex. 1, 14 S.W. 303 (1890).

199. *Id.* at 1, 14 S.W. at 305; *see also* Nelson v. Krusen, 678 S.W.2d 918 (Tex. 1984) (legislature has no power to make a remedy by due course of law contingent on an impossible condition); Pace v. McEwen, 604 S.W.2d 231 (Tex. Civ. App. 1980) (intermediate appellate court enjoined enforcement of a trial court order that effectively rendered the appeal meaningless).

200. *See supra* notes 23-24 and accompanying text.

201. On December 20, 1985, Pennzoil filed the following stipulation in the District Court of Harris County, Texas:

> Pennzoil stipulates and agrees that, if Texaco seeks to supersede or stay the enforcement of this judgment and it makes provisions to secure the judgment which the Texas courts determine would meet the standards of FED. R. CIV. P. 62, Pennzoil will be bound by any stay that the Texas courts enter based on a finding that Texaco has provided security which meets the standards of FED. R. CIV. P. 62.

Jurisdictional Statement for Appellant at A129, *Texaco* (No. 85-1798).

accepted this offer.[202]

The Texas Rules of Civil Procedure offer additional methods by which Texaco could have sought relief while in state court. One possibility is that Texaco could have perfected its appeal, upon the trial judge's entering the judgment, by filing a relatively nominal cost bond.[203] Once perfected, the Court of Civil Appeals "may review for excessiveness the amount of the bond or deposit fixed by the trial court and may reduce the amount if found to be excessive."[204] Because of the "stand-still" status of Pennzoil's claim,[205] Texaco probably could have expedited this procedure without fear of Pennzoil's executing on the judgment.

Furthermore, Texaco may have been able to bypass the bond rule's grasp[206] by showing the trial court that it was equitably entitled to remedial relief in the form of a stay of judgment.[207] Rather than address the possibility of Texaco's implementation of any of these procedures, the Court of Appeals for the Second Circuit addressed only the remedy of state court mandamus,[208] though not in the context of *Rooker-Feldman*, but in terms of the "adequate state remedy" component of the *Younger v. Harris*[209] abstention doctrine. The court dismissed this alternative as unable to provide Texaco with an adequate and timely state remedy.[210]

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202. Texaco, Inc. v. Pennzoil Co., 784 F.2d at 1140.

203. TEX. R. CIV. P. ANN. r. 363 (Vernon 1985) (current version at TEX. R. APP. P. ANN. r. 40 (Vernon 1986)).

204. TEX. R. CIV. P. ANN. r. 365(b) (Vernon 1985) (current version at TEX. R. APP. P. ANN. r. 49 (Vernon 1986)); *see* Man-Gas Transmission Co. v. Osborne Oil Co., 693 S.W.2d 576, 577 (Tex. Civ. App. 1985) (trial court's setting bond in a grossly inequitable amount would often defeat the appellant's right to suspend judgment pending appeal).

205. *See supra* notes 23-24 and accompanying text.

206. Rule 364 was amended in 1984 to begin: "Unless otherwise provided by law or these rules . . . ." Appellants argue that section 65.013 of the Civil Practice and Remedy Code will allow the trial court to stay the judgment because this statute falls within the recently added qualifying language of the Rule. *See* Brief for Appellant at 29 n.l, *Texaco* (No. 85-1798) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 65.013 (Vernon 1986).

207. TEX. CIV. PRAC. & REM. CODE ANN. § 65.013 (Vernon 1986).

208. *See* TEX. GOV'T CODE ANN. § 22.002(a) (Vernon 1986) (providing for issuance of all writs of quo warranto and mandamus by the supreme court or a justice of the supreme court). In addition, section 22.221 of the Government Code permits an intermediate court of appeals to issue all writs of mandamus against a judge of a district or county court. TEX. GOV'T CODE ANN. § 22.221 (Vernon 1986); *see also* Pope v. Ferguson, 445 S.W.2d 950, 954 (Tex. 1969) (writ of mandamus will be issued to direct a district judge to enter or set aside a particular judgment or order when the directed course of action is the only proper course and the petitioner has no other adequate remedy), *cert. denied*, 397 U.S. 997 (1970).

209. 401 U.S. 37 (1971). For a discussion of the court of appeals' application of *Younger*, see *supra* note 28.

210. Texaco, Inc., v. Pennzoil Co., 784 F.2d at 1151-52.

B. *The "Inextricably Intertwined" Test*

Texaco arguably had the substantive right and the procedural ability to challenge the constitutionality of the bond and lien provisions. The *Rooker-Feldman* doctrine may[211] require an evaluation of the inextricable intertwining of the substance of the federal claims with the previously raised state court claims. Professor Chang argued that the doctrine's claim preclusion parallels res judicata,[212] theorizing without the benefit of the *Feldman* decision, which supports his position if the inextricably intertwined standard equals the modern transactional definition of claim[213] in res judicata.[214]

The issue becomes whether Texaco's challenge to the constitutionality of the bond is inextricably intertwined with its prior challenge to the constitutionality of the judgment. Analysis of federal court applications of the test, namely *Robinson*[215] and *McNair*,[216] yield the common denominator that if the federal court is required to review a state court's particular findings of law and fact, then district court review would be impermissible.[217]

These definitions seem to lend credence to Texaco's argument against preclusion,[218] because the Texas bond rule was not a part of the proceeding in the Texas trial court, and a direct review of the Texas trial would not reveal any discussion of the bond. Texaco's challenge to the constitutionality of the bond as applied, however, may necessarily require review of the state court's proceedings, because in Texas, the amount of the bond equals the amount of the bond.[219] Consequently, review of the trial record is the only way to determine the propriety of the amount of the bond. Therefore, Texaco's federal claims conceivably could be inextricably intertwined with its state court claims, and beyond the scope of district court review.

To the extent that an attack on the supersedeas bond is intertwined with Texaco's previous attack on the judgment, then the *Rooker-Feldman* doctrine definitely precludes federal jurisdiction.

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211. *See supra* text accompanying notes 124-38.

212. *See supra* note 113 and accompanying text. A district court in New Jersey has argued that the *Migra* decision obviated the need to apply an "inextricably intertwined" test, as *Migra* simply requires a court to import the res judicata standards of the forum state. Randolph v. Lipscher, 641 F. Supp. 767, 781 n.8 (D.N.J. 1986).

213. *See supra* notes 170-71 and accompanying text.

214. *See supra* notes 139-48 and accompanying text.

215. Robinson v. Ariyoshi, 753 F.2d 1468 (9th Cir. 1985), *vacated*, 106 S. Ct. 3269 (1986).

216. Worldwide Church of [G-d] v. McNair, 805 F.2d 888 (9th Cir. 1986).

217. *See supra* notes 126-32 and accompanying text.

218. *See supra* note 111 and accompanying text.

219. *See supra* note 25.

Likewise, if the bond challenge arises out of the entire series of transactions associated with the judgment, then res judicata would have prevented federal court consideration, if Pennzoil had raised that defense. But if the bond is not so intertwined, then preclusion is *only* appropriate if the Court adopts the more expansive interpretation of *Feldman*, that all claims that a litigant could have raised in state court are precluded. Even if Pennzoil had asserted res judicata as a defense to Texaco's federal court bond challenge, that doctrine would not have prevented federal consideration if the bond requirement did not arise out of the series of transactions out of which the judgment arose, i.e., if it is not inextricably intertwined with the judgment.

The Supreme Court's reasoning in *Cohen v. Beneficial Industrial Loan Corp.*[220] indicates that the Court may indeed adopt this latter approach to the *Rooker-Feldman* doctrine's scope. In *Cohen*, the Court considered the appealability of a district court order refusing to follow a New Jersey statute that required certain shareholders to post a bond in order to file a derivative action.[221] The problem was that 28 U.S.C. § 1291[222] only allows appeals from "final decisions of district courts," and no final decision had been reached due to the dispute about the applicability of the bond requirement in this diversity suit. The Court held, however, that the bond was "in that small class which finally determine claims of right separate from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated."[223] The analogy to the present litigation is easily drawn: The dispute regarding the supersedeas bond is collateral to and separable from Texaco's previous attack on the judgment in Texas court. Given this conclusion, the bond is not inextricably intertwined with the judgment.

If the Court adopts the above reasoning, it should be careful to limit the scope of *Rooker-Feldman* preclusion to those cases where a litigant had a full and fair opportunity to present his federal claims to an unbiased state tribunal.[224] This caveat is critical, because res judicata and collateral estoppel are already at work, preventing many civil rights plaintiffs from reaching a federal forum. The Court should undertake cautiously any further expansion of the preclusiveness of state court judgments.

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220. 337 U.S. 541 (1940).

221. *Id.* at 544-45.

222. 28 U.S.C. § 1291 (1982).

223. Cohen v. Beneficial Indus. Loan Corp., 337 U.S. at 546.

224. *See supra* note 158 and accompanying text.

VI. CONCLUSION

The Supreme Court, in deciding *Texaco, Inc. v. Pennzoil Co.*,[225] will have the opportunity to disentangle the numerous ambiguities and inconsistencies of the *Rooker-Feldman* doctrine. It is crucial that the Court analyze the preclusive effects of the doctrine in terms of the policy it was designed to serve; federal district court deference to state court proceedings. Only through adherence to this ideal, may courts draw the proper inferences as to the doctrine's applicability, as well as implement the proper test in its application.

The *Rooker-Feldman* doctrine, as defined by numerous courts, applies in *Texaco*. At the time that the Texas trial concluded, the highest Texas court had not yet acted. Therefore, the doctrine's first inference—that the Supreme Court as well as lower federal courts are limited in their ability to entertain appeals from lower state court decisions[226]—is in effect. The *Rooker-Feldman* doctrine is thus an appropriate means of discerning whether the district court had subject matter jurisdiction over Texaco's section 1983 claims.

Given the applicability of the doctrine, the more difficult question is how are courts to apply it? Federal courts in the post-*Feldman* era have incorporated both components of the *Feldman* test—whether the federal claims could have been raised in state court, as well as whether they are substantively inextricably intertwined with those claims actually raised in state court. A district court's finding that both of these inquiries command affirmative responses should compel it to dismiss the action for lack of jurisdiction.

Both Texaco and Pennzoil have legitimate arguments addressing the "inextricably intertwined" component of the *Rooker-Feldman* test.[227] If Texaco is successful, however, in arguing that because the constitutionality of the bond was not addressed at the Texas trial, and its federal and state claims are not inextricably intertwined, then the Court will find that *Rooker-Feldman* does not preclude federal jurisdiction.

Yet a conclusion that the federal district court had jurisdiction to review the Texas judgment is completely at odds with the overarching purpose of the *Rooker-Feldman* doctrine: preventing federal courts from interrupting the on-going business of state courts. Such an incongruity may compel the Court to hold that the doctrine precludes federal jurisdiction to consider the constitutionality of the bond requirement because Texaco could have launched such an appeal

225. 784 F.2d 1133 (2d Cir.), *prob. juris. noted*, 106 S. Ct. 3270 (1986).

226. *See supra* notes 90-91 and accompanying text.

227. *See supra* notes 110-11 and accompanying text.

while in the Texas courts, even though the Court concludes this issue is not inextricably intertwined with the judgment. One final hope is that the Court will set the record straight, and declare that while there is a need for the doctrine's declaration that, amongst federal courts, only the Supreme Court can entertain "appeals" from state court judgments, neither *Rooker* nor *Feldman* constituted appeals to federal district courts.

BENJAMIN SMITH*

* The author gratefully acknowledges the contribution of Kevin Dorse in writing this Note. May he live long and prosper. Thanks to Professor Dennis Lynch for his critique, and special thanks to David N. Smith for his altruism. This Note is dedicated with love to my family, and to my best friend Elizabeth.