THE *ROOKER-FELDMAN* DOCTRINE: TOWARD A WORKABLE ROLE

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INTRODUCTION

The *Rooker-Feldman* doctrine is the product of two cases decided by the Supreme Court six decades apart: appropriately, *Rooker v. Fidelity Trust Co.*¹ and *District of Columbia Court of Appeals v. Feldman*.² Stated in its simplest and most uncontroversial form, the *Rooker-Feldman* doctrine provides that federal courts other than the Supreme Court lack jurisdiction to hear appeals from state court decisions.³ This conclusion is based on inferences drawn from 28 U.S.C. §§ 1257 and 1331.⁴ In practice, lower federal courts are using *Rooker-Feldman* in a wide variety of circumstances to conclude that they are unable to hear cases

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¹ 263 U.S. 413 (1923). *Rooker* is discussed in detail *infra* in Part II.A.

² 460 U.S. 462 (1983). *Feldman* is discussed in detail *infra* in Part II.B.

³ Some variation on this definition is common in case law and scholarly literature. See, e.g., *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994) (noting that under *Rooker-Feldman* "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court"); *ASARCO Inc. v. Kadish*, 490 U.S. 605, 622 (1989) ("The *Rooker-Feldman* doctrine interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in this Court."); Thomas D. Rowe, Jr., *Rooker-Feldman: Worth Only the Powder To Blow It Up?*, 74 NOTRE DAME L. REV. 1081, 1081-82 (1999) ("[F]ederal district courts lack jurisdiction to entertain claims that are 'inextricably intertwined' with the merits of a judgment already rendered by a state court system . . ."); Jean R. Sternlight, *Forum Shopping for Arbitration Decisions: Federal Courts' Use of Antisuit Injunctions Against State Courts*, 147 U. PA. L. REV. 91, 138 (1998) ("[F]ederal courts lack jurisdiction to review or sit as an appellate court over state court decisions."). *Rooker-Feldman* is discussed in greater detail *infra* in Parts II and IV.B.

⁴ Section 1257 grants the Supreme Court jurisdiction to review state court decisions and § 1331 grants original jurisdiction to federal district courts. The inferences supporting the *Rooker-Feldman* conclusion are that the grant of appellate jurisdiction in these matters to the Supreme Court is exclusive and that the grant of original jurisdiction to district courts precludes appellate jurisdiction.

in which prior state court judgments are implicated.⁵

Despite receiving very little treatment by the Supreme Court,⁶ *Rooker-Feldman* has experienced "explosive growth" in lower federal courts, where the number of cases relying on the doctrine is astonishing.⁷ This growth has led to some questionable and controversial outcomes.⁸ A few critics have responded,⁹ almost uniformly concluding

⁵ See, e.g., *Feldman*, 460 U.S. 462 (1983) (challenge to bar rules); *In re Audre, Inc.*, 216 B.R. 19 (B.A.P. 9th Cir. 1997) (bankruptcy); *Davis v. Allen County Office of Family & Children*, No. 96-1953, 1997 WL 267863 (7th Cir. May 6, 1997) (paternity); *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506 (7th Cir. 1996) (legal malpractice); *Beckford v. Citibank N.A.*, No. 00 Civ. 205 DLC, 2000 WL 1585684 (S.D.N.Y. Oct. 24, 2000) (mortgage foreclosure); *Young v. Ill. State Bd. of Elections*, 116 F. Supp. 2d 977 (N.D. Ill. 2000) (election procedure).

⁶ Since *Feldman*, the Supreme Court has mentioned the *Rooker-Feldman* doctrine in three cases, see *De Grandy*, 512 U.S. at 1005; *ASARCO*, 490 U.S. at 622-23; *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 7-8 (1987); *id.* at 18 (Scalia, J., concurring); *id.* at 21 (Brennan, J., concurring in judgment); *id.* at 24-26 (Marshall, J., concurring in judgment); *id.* at 28 (Blackmun, J., concurring in judgment); *id.* at 31 n.3 (Stevens, J., concurring in judgment), and has cited *Rooker* and *Feldman* together to support a similar proposition two other times, see *Howlett v. Rose*, 496 U.S. 356, 370 n.16 (1990) (citing *Rooker* and *Feldman* to support the "rule that a federal district court cannot entertain an original action alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute"); *Martin v. Wilks*, 490 U.S. 755, 784 n.21 (1989) (Stevens, J., dissenting) (citing *Rooker* and *Feldman* to support the proposition that "permitting collateral attacks also leads to the anomaly that courts will, on occasion, be required to sit in review of judgments entered by other courts of equal—or even greater—authority"). Supreme Court treatment of *Rooker-Feldman* is discussed in greater detail *infra* in Part II.C.

⁷ Suzanna Sherry, *Judicial Federalism in the Trenches: The Rooker-Feldman Doctrine in Action*, 74 NOTRE DAME L. REV. 1085, 1088 (1999). Sherry asserts that "[s]ince 1990 alone, lower federal courts have used *Rooker-Feldman* to find jurisdiction lacking in more than 500 cases." *Id.* The number of lower federal court cases mentioning the doctrine is significantly higher: recent Westlaw searches revealed 929 lower federal court cases mentioning *Rooker-Feldman*. According to Westlaw's KeyCite service and Lexis's Shepard's service, *Rooker* and *Feldman* have been cited approximately 1200 and 1500 times, respectively.

⁸ See, for example, *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506 (7th Cir. 1996), discussed *infra* in Part II.D, in which the *Rooker-Feldman* doctrine was used, arguably incorrectly, to dismiss an apparently meritorious case.

⁹ A review of the academic literature suggests that the *Rooker-Feldman* doctrine is largely overlooked. Remarkably little has been written about *Rooker-Feldman*. See generally Susan Bandes, *The Rooker-Feldman Doctrine: Evaluating Its Jurisdictional Status*, 74 NOTRE DAME L. REV. 1175, 1176 n.4 (1999) (discussing scholarly treatment of the doctrine). A few articles on related topics such as preclusion or antisuit injunctions have mentioned it, see, e.g., Lonny Sheinkopf Hoffman, *Removal Jurisdiction and the All Writs Act*, 148 U. PA. L. REV. 401, 454 (2000); Sternlight, *supra* note 3, at 138-40, and it has been the source of occasional student notes, see, e.g., Benjamin Smith, Note, *Texaco Inc. v. Pennzoil Co.: Beyond a Crude Analysis of the Rooker-Feldman Doctrine*, 41 U. MIAMI L. REV. 627 (1987); Gary Thompson, Note, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of the Federal Courts*, 42 RUTGERS L. REV. 859 (1990), but the

that *Rooker-Feldman* should be abolished. Nevertheless, it appears unlikely that the doctrine will disappear in the near future.¹⁰ Thus, refining—and, if necessary, redefining—the doctrine is an important goal.

This Comment examines the present usage of *Rooker-Feldman* and the criticisms it has engendered and attempts to establish a clear theoretical role for the doctrine. Part I introduces several other doctrines that are relevant to a discussion of *Rooker-Feldman*. Part II examines the history and present usage of *Rooker-Feldman*. Part III discusses the two major criticisms of *Rooker-Feldman* as it is presently applied: that it is duplicative and that it leads to bad results. Part IV presents a conceptual framework for *Rooker-Feldman* and reconsiders the objections discussed in Part III in light of that framework, concluding that the scholarly criticisms are misguided and that *Rooker-Feldman*, properly applied, avoids the problems currently associated with the doctrine. Finally, Part V offers a hypothetical situation indicating when and how this framework would apply in practice.

I. OTHER RELEVANT DOCTRINES

Rooker-Feldman necessarily arises in interjurisdictional contexts in which other doctrines, such as preclusion and abstention, also apply. Before addressing *Rooker-Feldman* in any detail, it is important to consider these other doctrines to provide context for the discussion. As discussed below, one of the major criticisms of *Rooker-Feldman* is that it “does no work”¹¹ because all of the good outcomes it creates would be created anyway by some combination of the doctrines discussed here.¹² A basic understanding of these other doctrines is necessary before this criticism can be evaluated.

bulk of the work on the subject has come in the form of a symposium published in 1999. Symposium, *The Rooker-Feldman Doctrine*, 74 NOTRE DAME L. REV. 1081 (1999). Professor Wright's treatise now addresses the *Rooker-Feldman* doctrine, 18 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4469.1 (Supp. 2000), but the casebook with “the most extensive treatment of *Rooker-Feldman* in any book now on the market,” Rowe, *supra* note 3, at 1083, contains only nine pages of coverage, see MARTIN H. REDISH & SUZANNA SHERRY, FEDERAL COURTS: CASES, COMMENTS, AND QUESTIONS 575-84 (4th ed. 1998).

¹⁰ See Bandes, *supra* note 9, at 1179 n.19 (asserting that although she would like federal courts to “jettison the doctrine entirely,” she is “not hopeful”); Jack M. Beer-mann, *Comments on Rooker-Feldman or Let State Law Be Our Guide*, 74 NOTRE DAME L. REV. 1209, 1233 (1999) (“[I]t seems to me that it is very unlikely that either Congress or the Court will overrule the *Rooker-Feldman* doctrine.”).

¹¹ Barry Friedman & James E. Gaylor, *Rooker-Feldman, From the Ground Up*, 74 NOTRE DAME L. REV. 1129, 1147 (1999).

¹² See *infra* Part III.A (discussing this objection).

The first relevant set of doctrines is the preclusion doctrines: *res judicata* (or claim preclusion) and collateral estoppel (or issue preclusion). The details of these doctrines vary across jurisdictions, but *res judicata* generally bars parties or their privies from asserting claims that were raised or could have been raised in prior litigation arising from the same nucleus of operative facts, while collateral estoppel precludes relitigation of issues that were actually litigated and necessarily decided in prior litigation. These doctrines address the issue of how courts should treat prior judgments and protect the rights of parties established by litigation. They save resources, create finality and certainty, and protect winning parties from harassment. In practice, the relationship between the preclusion doctrines and *Rooker-Feldman* has been difficult to define.¹³

There are several sources of law relating to the preclusion doctrines, especially in interjurisdictional contexts. In suits within a single jurisdiction, the preclusion law of that jurisdiction generally governs subsequent cases. When a judgment is rendered in one state and a subsequent suit is filed in another, the second state is obliged, under the Full Faith and Credit Clause and the Full Faith and Credit statute, to give the judgment of the first state at least as much preclusive effect as it would receive in the first state.¹⁴ If the subsequent suit is filed in federal court rather than in another state, the preclusion law of the rendering state still applies, under the Full Faith and Credit statute.¹⁵

¹³ See *infra* notes 100-08 and accompanying text (discussing the relationship between the doctrines).

¹⁴ U.S. CONST. art. IV, § 1 ("Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."); 28 U.S.C. § 1738 (1994) ("Such Acts, records and judicial proceedings or copies thereof . . . 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, Territory or Possession from which they are taken."); Howard M. Erichson, *Interjurisdictional Preclusion*, 96 MICH. L. REV. 945, 984 (1998) ("In the state-state interjurisdictional configuration . . . a judgment's binding effect is founded both on the Full Faith and Credit Clause and on the corresponding statute."). There are exceptions to this rule: for example, the court of the second state need not give the judgment of the first state full effect if that judgment was not validly rendered. See, e.g., *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) ("A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere.").

¹⁵ 28 U.S.C. § 1738; see *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (noting that § 1738 "commands a federal court to accept the rules chosen by the State from which the judgment is taken" (quoting *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 482 (1982))). This is relevant to *Rooker-Feldman* because this is the situation—a state court judgment followed by a federal suit—in which *Rooker-Feldman* arises.

Finally, the source of law governing the preclusive effects of federal judgments appears to be federal common law.¹⁶

The second relevant set of doctrines is the abstention doctrines.¹⁷ These doctrines allow federal courts, in certain circumstances, to abstain from exercising their jurisdiction in the interests of federalism and comity. Federal courts can abstain and require litigants to initiate state court suits¹⁸ or they can abstain and defer to ongoing state suits.¹⁹ Abstention doctrines address interactions between federal and state courts and instruct federal courts about when it is or is not proper to hear certain cases. This Comment will argue that the *Rooker-Feldman* doctrine serves a similar function after state suits have ended.²⁰

Finally, it is important to note two other powers of federal courts: injunction of state suits under the exceptions to the Anti-Injunction Act (most notably the relitigation exception)²¹ and removal of cases based on the authority conferred by the All Writs Act.²² These proce-

¹⁶ See generally *Semtek Int'l, Inc. v. Lockheed Martin Corp.*, 121 S. Ct. 1021, 1028 (2001) ("In short, federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity."); Stephen B. Burbank, *Interjurisdictional Preclusion, Full Faith and Credit and Federal Common Law: A General Approach*, 71 CORNELL L. REV. 733 (1986). This issue is not particularly relevant to a discussion of the *Rooker-Feldman* doctrine. For discussions of interjurisdictional preclusion, see generally Burbank, *supra*, and Erichson, *supra* note 14.

¹⁷ These include *Pullman* and *Burford* abstentions, discussed *infra* in note 18, and *Younger* and *Colorado River* abstentions, discussed *infra* in note 19.

¹⁸ *Pullman* abstention stays a federal case when state law is unclear and a favorable decision on state law will eliminate the need for the federal court to decide a constitutional question. *R.R. Comm'n v. Pullman*, 312 U.S. 496, 498 (1941). *Burford* abstention allows federal courts to abstain from determining important state regulatory issues if state courts are, under state law, part of the regulatory process. *Burford v. Sun Oil Co.*, 319 U.S. 315, 333-34 (1943).

¹⁹ *Younger* abstention prohibits federal courts from enjoining ongoing state suits based on a claim that the underlying prosecution is unconstitutional. *Younger v. Harris*, 401 U.S. 37, 43-44 (1971). *Colorado River* abstention allows a federal court to decline to hear a case in the interest of "wise judicial administration." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976).

²⁰ This argument is developed *infra* in notes 210-16 and accompanying text.

²¹ 28 U.S.C. § 2283 (1994) ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."). For a detailed history of the Anti-Injunction Act, see generally *Mitchum v. Foster*, 407 U.S. 225, 236 (1972). The final exception, "to protect or effectuate its judgments," is commonly referred to as the relitigation exception. This exception is the most relevant to a discussion of *Rooker-Feldman* and is discussed in greater detail *infra* in Part IV.A.

²² 28 U.S.C. § 1651(a) (1994) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). Federal courts occa-

dures, like the abstention doctrines, are animated by the policies of federalism and comity. They, too, address interactions between state and federal courts, specifically relating to state court suits that threaten prior federal judgments. This Comment will argue that the *Rooker-Feldman* doctrine roughly mirrors these powers because a federal court deciding whether it lacks jurisdiction to hear a case based on *Rooker-Feldman* is making a judgment similar to the one it would make when considering whether to enjoin a state suit under the relitigation exception to the Anti-Injunction Act or whether to permit removal of a suit based on the All Writs Act.²³

II. THE *ROOKER-FELDMAN* DOCTRINE

This Part will begin with a discussion of the two cases that are central to the doctrine, *Rooker* and *Feldman*. It will then discuss the subsequent treatment of the doctrine by the Supreme Court and by lower federal courts, noting some of the major questions that remain unanswered and introducing some of the ways *Rooker-Feldman* is being used.

A. *Rooker v. Fidelity Trust Co.*

Dora and William Rooker entered into a trust agreement with Fidelity Trust Company on October 11, 1909.²⁴ A dispute over the contract arose and, on October 30, 1912, the Rookers brought an action in an Indiana circuit court.²⁵ The trial court interpreted the trust agreement as a mortgage and ordered a foreclosure sale.²⁶ On appeal, the Indiana Supreme Court determined that the instrument at issue was "an absolute deed of trust" rather than "a deed of trust in the nature of a mortgage" and accordingly reversed the decision of the trial court and granted the Rookers' motion for a new trial.²⁷

In the subsequent proceeding, Fidelity Trust Co. prevailed again, this time under the law of trusts. The trial court held that Fidelity

sionally use this power to permit removal of cases. See, e.g., *Chance v. Sullivan*, 993 F. Supp. 565, 567 (S.D. Tex. 1998) ("Alternatively, the Court has jurisdiction of the claims against Sullivan by virtue of the All Writs Act . . ."). This practice is arguably based on a misreading of the relevant statutes, resulting in an overextension of federal jurisdiction. See generally Hoffman, *supra* note 9, at 455 (criticizing this practice).

²³ This argument is developed in greater detail *infra* in Part IV.A.

²⁴ *Rooker v. Fidelity Trust Co.*, 109 N.E. 766, 766 (Ind. 1915).

²⁵ *Id.* at 768.

²⁶ *Id.* at 768-69.

²⁷ *Id.* at 770.

"ha[d] not mismanaged, repudiated, or abandoned its trust, but ha[d] faithfully performed its duties as trustee under the deeds and trust agreement set out in the pleadings and special findings . . . and [held] the legal title to said lands as trustee for the sole purpose of completing its duties and obligations as such trustee by making sale of the same and by making distribution of the proceeds according to the terms of said deeds and trust agreement, and not otherwise, and in no other capacity."²⁸

The Rookers appealed to the Indiana Supreme Court, which concluded that "[n]o reversible error [was] shown in the record" and affirmed the judgment.²⁹ The Rookers petitioned for a rehearing, alleging that the state statute in question violated the federal Constitution, but the petition was denied.³⁰ The United States Supreme Court then denied certiorari.³¹ "[A]t the solicitation of the plaintiffs," however, the Chief Justice of the Indiana Supreme Court allowed a writ of error to the United States Supreme Court.³²

The Rookers asserted two arguments for the writ of error. They first contended that the validity of the state statute had been challenged in state court, thus allowing Supreme Court review of the constitutionality of the state statute. Second, they argued that the decision in the second appeal to the Indiana Supreme Court "took and applied a view of the trust agreement different from that taken and announced on the first appeal,"³³ thereby violating the Contract Clause³⁴ as well as the Due Process and Equal Protection Clauses of the Fourteenth Amendment.³⁵ In response, Fidelity challenged the jurisdiction of the Supreme Court, arguing that "the case is not one

²⁸ *Rooker v. Fidelity Trust Co.*, 131 N.E. 769, 773 (Ind. 1921) (quoting the trial court opinion, which is reprinted in its entirety in the appellate decision), *cert. denied*, 259 U.S. 580 (1922), *writ of error dismissed by* 261 U.S. 114 (1923).

²⁹ *Id.* at 776.

³⁰ *Rooker v. Fidelity Trust Co.* (*Rooker I*), 261 U.S. 114, 117 (1923) ("[A]fter the judgment of affirmance the plaintiffs sought to raise the question [of the constitutionality of the state statute] by a petition for rehearing, which was denied without opinion.").

³¹ *See Rooker v. Fidelity Trust Co.*, 259 U.S. 580 (1922) (denying certiorari); 259 U.S. 577 (1922) (same).

³² *Rooker I*, 261 U.S. at 116.

³³ *Id.* at 117.

³⁴ U.S. CONST. art. I, § 10, cl. 1 ("No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . .").

³⁵ *Id.* amend. XIV, § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); *see Rooker I*, 261 U.S. at 116-18 (evaluating both the Contract Clause and the Due Process Clause arguments).

the judgment in which may be reviewed . . . on writ of error."³⁶ The Court agreed and dismissed the Rookers' claims.

On the first issue, the Court examined the record and concluded that the challenge to the constitutionality of the state statute had not been timely raised.³⁷ On the second issue, the Court stated that the Rookers' argument "amounted to nothing more than saying that in the plaintiffs' opinion the court should follow the first decision," and as such it "did not draw in question the validity of an authority exercised under a State."³⁸ "Plainly," the Court concluded, "this claim does not bring the case within the writ of error provision."³⁹ Accordingly, the writ of error was dismissed.

The Rookers then filed suit in federal district court, presenting "a bill in equity to have a judgment of a circuit court in Indiana, which was affirmed by the Supreme Court of the State, declared null and void."⁴⁰ The bill was based on the same constitutional claims dismissed by the Supreme Court for lack of jurisdiction:

The grounds advanced for resorting to the District Court are that the judgment was rendered and affirmed in contravention of the contract clause of the Constitution of the United States and the due process of law and equal protection clauses of the Fourteenth Amendment, in that it gave effect to a state statute alleged to be in conflict with those clauses and did not give effect to a prior decision in the same cause by the Supreme Court of the State⁴¹

The district court dismissed the bill for lack of jurisdiction and the Rookers appealed directly to the Supreme Court.⁴²

The Court held that "the suit is so plainly not within the District Court's jurisdiction as defined by Congress that [Fidelity's] motion to affirm must be sustained."⁴³ The Court reasoned that

[i]f the constitutional questions stated in the bill [that is, the federal bill in equity] actually arose in the cause [that is, the state case], it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open

³⁶ *Rooker I*, 261 U.S. at 117.

³⁷ *Id.* ("It is at least doubtful that the question is one of any substance, but its tardy presentation renders further notice of it unnecessary.").

³⁸ *Id.* at 118.

³⁹ *Id.*

⁴⁰ *Rooker v. Fidelity Trust Co. (Rooker or Rooker II)*, 263 U.S. 413, 414 (1923).

⁴¹ *Id.* at 414-15.

⁴² *Id.* at 415.

⁴³ *Id.*

to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original.⁴⁴

Oddly, the Court's analysis assumed that the state court had addressed the constitutional questions, when in fact, it had not.⁴⁵ Ten months earlier, the Court itself had dismissed the claim that the state statute was unconstitutional specifically because it had not been timely raised in the state proceedings.⁴⁶ So, it would have been impossible for the Indiana Supreme Court to consider claims that its judgment violated the Constitution (except perhaps in a rehearing, which was denied in this case). Thus, despite its language, *Rooker* appears to be more like a collateral attack on a state court judgment than an appeal of a state court judgment.

In any event, whether or not the assumptions were counterfactual, the Court in *Rooker* held that federal district courts cannot review decisions of the highest state courts because only the Supreme Court has jurisdiction to engage in such review. This holding was based on inferences drawn from the precursors to 28 U.S.C. §§ 1257 and 1331, which grant jurisdiction to review certain state court judgments to the Supreme Court and original jurisdiction to federal district courts, respectively.⁴⁷ *Rooker* was not particularly influential, and it was cited infrequently over subsequent decades.⁴⁸

⁴⁴ *Id.* at 415-16 (citations omitted).

⁴⁵ See *Rooker v. Fidelity Trust Co.*, 131 N.E. 769 (Ind. 1921) (failing to address any constitutional issues).

⁴⁶ *Rooker I*, 261 U.S. at 117.

⁴⁷ The inference drawn from § 1257 is that no other court has the power to engage in such review. The inference drawn from § 1331 is that the grant of original jurisdiction precludes any appellate jurisdiction. One commentator has presented a third, nonstatutory basis for the decision in *Rooker*: that trial courts should not have the power to destroy each others' judgments. Williamson B.C. Chang, *Rediscovering the Rooker Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 HASTINGS L.J. 1337, 1350 (1980). Indeed, this policy rationale probably contributed to both the creation of the statutes and the decision in *Rooker* in the first place.

⁴⁸ Prior to the Court's 1983 decision in *Feldman*, *Rooker* was cited by the Court only two times. Fla. State Bd. of Dentistry v. Mack, 401 U.S. 960, 961 (1971) (White, J., dissenting from the denial of certiorari); Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275, 283 (1946). Incidentally, *Rooker II* was by no means the end of the litigation surrounding the plot of land and the trust. See, e.g., *Rooker v. Fidelity Trust Co.*, 141 N.E. 4, 4 (Ind. 1923) (denying an appeal from "an order approving a lease of certain tillable land, part of the trust estate, to one Thomas West for the crop year of

B. District of Columbia Court of Appeals v. Feldman

Six decades later, the Supreme Court decided *District of Columbia Court of Appeals v. Feldman*.⁴⁹ The case arose when Marc Feldman, who had not attended law school but had been admitted to the bar in both Virginia and Maryland, sought admission to the bar by waiver in Washington, D.C.⁵⁰ The Committee on Admissions of the District of Columbia Bar denied his application because it was in violation of a District of Columbia bar admission rule requiring applicants to have graduated from an accredited law school.⁵¹ The Committee acknowledged that waiver was possible, but stated that only the District of Columbia Court of Appeals, the highest court in the jurisdiction, could waive the graduation requirement.⁵² Accordingly, Feldman submitted a petition to the District of Columbia Court of Appeals on June 13, 1977, seeking admission without examination or, alternatively, to be allowed to sit for the bar examination.⁵³ After several months of inactivity, Feldman's counsel wrote a letter to the Chief Judge of the Court of Appeals urging action on the petition and suggesting that "barring Mr. Feldman from the practice of law merely because he has not graduated from an accredited law school would raise important ques-

1922"); *Rooker v. Fidelity Trust Co.*, 145 N.E. 493, 494 (Ind. 1924) (affirming "the issuance of a writ of assistance to enforce compliance with a former judgment of [the state trial court], which judgment was affirmed by this court"); *Rooker v. Fidelity Trust Co.*, 151 N.E. 610, 611 (Ind. 1926) (denying an appeal "from an order and decree which confirmed a sale theretofore ordered by the court in its final decree, which settled the rights of the parties"); *Rooker v. Fidelity Trust Co.*, 177 N.E. 454, 458 (Ind. 1931) (vacating a judgment rendered by the Tipton Circuit Court while the matter was still pending before the Hamilton Circuit Court, though ordering the Hamilton Circuit Court "to adopt the finding of the Tipton circuit court and enter judgment removing [Fidelity] as trustee"); *Rooker v. Fidelity Trust Co.*, 5 N.E.2d 140 (Ind. Ct. App. 1936) (en banc) (denying an appeal from a judgment striking the complaint from the files).

⁴⁹ 460 U.S. 462 (1983).

⁵⁰ *Id.* at 465. For an interesting discussion of Feldman's colorful subsequent career path, see Beermann, *supra* note 10, at 1210 n.3. Feldman's case was reviewed simultaneously (though not technically consolidated) with that of Edward J. Hickey, Jr., whose allegations and prayer for relief "were virtually identical to the allegations and prayer for relief in Feldman's complaint." *Feldman*, 460 U.S. at 472-73.

⁵¹ See *Feldman*, 460 U.S. at 464-65 ("Under no circumstances shall an applicant be admitted to the bar without having first submitted to the Secretary to the Committee [on Admissions] a certificate verifying that he has graduated from an approved law school." (quoting D.C. CT. APP. R. 461(b)(3) (alteration in original))).

⁵² *Id.* at 466. The District of Columbia Court of Appeals, though technically not a state court, is treated as a "highest court of a state" for the purposes of 28 U.S.C. § 1257. *Feldman*, 460 U.S. at 464.

⁵³ *Id.* at 466.

tions under the United States Constitution and the federal antitrust laws."⁵⁴ On March 30, 1978, Feldman's petition was denied by a per curiam order of the Court.⁵⁵

Feldman then filed a complaint in federal district court, alleging constitutional and federal antitrust violations. The district court held that it lacked subject matter jurisdiction to review an order of another jurisdiction's highest court, "reasoning that the Court of Appeals' rulings on the applications for waivers were judicial in nature, and as such were reviewable only in the Supreme Court of the United States."⁵⁶ Feldman sought review in the Court of Appeals for the District of Columbia Circuit, which affirmed the dismissal of the antitrust claims⁵⁷ but reversed the dismissal of the constitutional claims because, in its view, the waiver proceedings were not judicial in nature.⁵⁸

The Supreme Court granted certiorari on the constitutional claims⁵⁹ and vacated the judgment of the circuit court.⁶⁰ While noting that "[t]he District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review final determinations of the District of Columbia Court of Appeals in judicial proceedings,"⁶¹ the Court ultimately disagreed with the circuit court, concluding that the petitions for waiver "were judicial in nature."⁶² Therefore, the Court held, the district court lacked jurisdiction over Feldman's complaint to the extent that it "sought review in District Court of the District of Columbia Court of Appeals' denial" of his petition.⁶³

The Court also held, however, that the district court had subject matter jurisdiction over Feldman's complaint "[t]o the extent that [it] mounted a general challenge to the constitutionality of [the bar admission rule]."⁶⁴ The Court distinguished "a constitutional challenge to the state's general rules and regulations governing admission" from "a claim, based on constitutional or other grounds, that the

⁵⁴ *Id.* at 466-67 (quoting Feldman's counsel's letter).

⁵⁵ *Id.* at 468.

⁵⁶ *Feldman v. Gardner*, 661 F.2d 1295, 1298 (D.C. Cir. 1981), *vacated sub nom.* D.C. Court of Appeals v. *Feldman*, 460 U.S. 462 (1983).

⁵⁷ *Id.* at 1298, 1308.

⁵⁸ *Id.* at 1298, 1310, 1317, 1319.

⁵⁹ Certiorari was denied as to the antitrust claims. *Feldman*, 460 U.S. at 474 n.11.

⁶⁰ *Id.* at 488.

⁶¹ *Id.* at 476.

⁶² *Id.* at 479.

⁶³ *Id.* at 482.

⁶⁴ *Id.* at 482-83.

state has unlawfully denied a particular applicant admission."⁶⁵ In making this distinction, the Court held that district courts have jurisdiction over the former but not the latter because general challenges ask district courts "to assess the validity of a rule promulgated in a nonjudicial proceeding."⁶⁶ Consequently, the allegations that the District of Columbia Court of Appeals acted arbitrarily, denying Feldman due process of law—that is, that the court's judicial action caused Feldman's injury—were "inextricably intertwined" with the court's decision in a judicial proceeding and as such were not within the jurisdiction of the district court. The allegations generally attacking the constitutionality of the bar admission rule, however, were permissible because they did not "require review of a judicial decision in a particular case."⁶⁷ Various aspects of this distinction have given rise to much of the confusion currently surrounding the *Rooker-Feldman* doctrine.

C. Supreme Court Treatment of *Rooker-Feldman* Since *Feldman*

The Supreme Court has found few occasions to address *Rooker-Feldman* since deciding *Feldman*.⁶⁸ Although *Rooker* is cited occasionally for its statement of the principle behind § 1257,⁶⁹ members of the Court have mentioned the *Rooker-Feldman* doctrine in only three cases.⁷⁰ Two other cases, while not referring to *Rooker-Feldman* per se,

⁶⁵ *Id.* at 485 (quoting *Doe v. Pringle*, 550 F.2d 596, 597 (10th Cir. 1976)).

⁶⁶ *Id.* at 486.

⁶⁷ *Id.* at 487.

⁶⁸ See *supra* note 6 (discussing Supreme Court treatment of the doctrine).

⁶⁹ See, e.g., *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 177 (1997) (Ginsburg, J., dissenting) (noting that, in *Rooker*, the Supreme Court interpreted the statutory predecessors of § 1257 when it held that cross-system appellate authority is outside of the domain of lower federal courts).

⁷⁰ *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994) (considering the "*Rooker-Feldman* abstention doctrine" and finding it "inapt"); *ASARCO Inc. v. Kadish*, 490 U.S. 605, 622-23 (1989) (noting that when plaintiffs who would not have had standing to raise a constitutional challenge in a federal proceeding challenged a state statute on constitutional grounds in a state proceeding, dismissal of the case with instructions for petitioners to sue in federal trial court would "represent a partial inroad on *Rooker-Feldman*'s construction of 28 U.S.C. § 1257"); *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 7-8 (1987) (noting that the lower federal courts considered the *Rooker-Feldman* doctrine); *id.* at 18 (Scalia, J., concurring) (noting that the "so-called *Rooker-Feldman* doctrine" did not deprive the Court of jurisdiction); *id.* at 21 (Brennan, J., concurring in judgment) (concluding that *Rooker-Feldman* did not apply because *Texaco*'s § 1983 action did not "challenge the merits of the Texas suit"); *id.* at 24-26 (Marshall, J., concurring in judgment) (arguing that the district court lacked jurisdiction because the claims were "inextricably intertwined" with a Texas state judgment); *id.* at 28 (Blackmun, J., concurring in judgment) (noting that *Rooker-Feldman* did not bar the

have cited both *Rooker* and *Feldman* to support a similar proposition.⁷¹

The first of these cases was *Pennzoil Co. v. Texaco Inc.*, decided in 1987.⁷² All six opinions in *Pennzoil* mentioned the doctrine,⁷³ but only Justice Marshall argued that it barred the district court from hearing Texaco's constitutional challenge to Texas state procedures for enforcement of Pennzoil's state-court judgment.⁷⁴ Ironically, Justice Marshall's discussion, in which no other Justices joined and with which all of the other Justices disagreed,⁷⁵ is the most extensive formulation of the doctrine by a member of the Court since *Feldman*. He offered the following analysis:

While the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.⁷⁶

Justice Marshall's analysis, though not his conclusion, is similar to *Feldman*. *Feldman* prohibited review of state judicial actions by federal courts other than the Supreme Court; Justice Marshall in *Pennzoil*

collateral review sought by Texaco); *id.* at 31 n.3 (Stevens, J., concurring in judgment) (noting that *Rooker-Feldman* did not bar the federal claims).

⁷¹ Howlett v. Rose, 496 U.S. 356, 370 n.16 (1990) (citing both *Rooker* and *Feldman* to support the "rule that a federal district court cannot entertain an original action alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute"); *Martin v. Wilks*, 490 U.S. 755, 784 n.21 (1989) (Stevens, J., dissenting) (citing *Rooker* and *Feldman* to support the proposition that "permitting collateral attacks also leads to the anomaly that courts will, on occasion, be required to sit in review of judgments entered by other courts of equal—or even greater—authority").

⁷² 481 U.S. 1 (1987).

⁷³ *See supra* note 70.

⁷⁴ *Pennzoil*, 481 U.S. at 24-26 (Marshall, J., concurring).

⁷⁵ Marshall was the only Justice to find that *Rooker-Feldman* barred Texaco's constitutional challenge. The majority relied on *Younger* abstention, *id.* at 10, thereby implicitly finding that the district court had jurisdiction. Justice Scalia wrote separately "only to indicate that I do not believe that the so-called *Rooker-Feldman* doctrine deprives the Court of jurisdiction to decide Texaco's challenge to the constitutionality of the Texas stay and lien provisions." *Id.* at 18 (Scalia, J., concurring). Justices Brennan, Blackmun, and Stevens, in their opinions concurring in judgment, all stated that *Rooker-Feldman* did not bar Texaco's claims. *Id.* at 21 (Brennan, J., concurring in judgment); *id.* at 28 (Blackmun, J., concurring in judgment); *id.* at 31 n.3 (Stevens, J., concurring in judgment).

⁷⁶ *Id.* at 25 (Marshall, J., concurring in judgment).

sought to prohibit review when the federal claim would succeed "only to the extent that the state court wrongly decided the issues before it."⁷⁷ *Feldman*, however, allowed claims that constituted a "general challenge" to the underlying rule (or presumably, by extension, the underlying statute).⁷⁸ Texaco's challenge to the constitutionality of state stay and lien provisions for enforcement of the state court judgment was the only claim before the Supreme Court in *Pennzoil*.⁷⁹ Justice Marshall argued that Texaco's challenge should be barred because the injunctive relief sought by Texaco required the federal district court to consider the merits of Texaco's state appeal.⁸⁰

This approach seems too broad: the district court was not required to make a determination as to the merits of the state court judgment in order to decide to issue an injunction on constitutional grounds. Texaco's argument was that the state bond and lien statutes violated the Due Process and Equal Protection Clauses because they would allow Pennzoil to decimate Texaco before Texaco could appeal. The Second Circuit correctly recognized that any subsequent reversal of the judgment would come too late to prevent substantial harm to Texaco. It then explicitly accepted the findings of the Texas state court.⁸¹ In recognizing that it would be "justified in holding that any threatened harm to [Texaco] from effective denial of its right of appeal could be labeled inconsequential" only if Texaco's appeal were "patently frivolous,"⁸² the Second Circuit was required neither to review the state court judgment nor to conclude that the state court "wrongly decided the issues before it."⁸³

In 1989, two years after *Pennzoil*, the Supreme Court twice more

⁷⁷ *Id.* (Marshall, J., concurring in judgment).

⁷⁸ *Feldman*, 460 U.S. at 483.

⁷⁹ Texaco also had claimed that the state judgment "conflicted with the Full Faith and Credit Clause, the Commerce Clause, the Williams Act, and the Securities Exchange Act of 1934." *Pennzoil*, 481 U.S. at 6 n.6. The Second Circuit held that *Rooker-Feldman* barred these claims. *Texaco Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1137 (2d Cir. 1986) (citing *Rooker* and *Feldman* to support the proposition that "all other claims asserted in Texaco's complaint must be dismissed for lack of subject matter jurisdiction since they seek appellate review on the merits of the Texas judgment in violation of 28 U.S.C. § 1257 as interpreted by the United States Supreme Court"), *rev'd on other grounds*, 481 U.S. 1 (1987).

⁸⁰ *Pennzoil*, 481 U.S. at 26 (Marshall, J., concurring in judgment) ("[T]he courts below, by asking whether Texaco was frivolous in asserting that the trial court erred . . . , undertook a review of the merits of judgments rendered by a state court.").

⁸¹ *Texaco*, 784 F.2d at 1153.

⁸² *Id.*

⁸³ *Pennzoil*, 481 U.S. at 25 (Marshall, J., concurring in judgment).

addressed the *Rooker-Feldman* doctrine. First, in *ASARCO Inc. v. Kadish*, the Court addressed a constitutional challenge to a state statute that had been brought originally in state court by plaintiffs who would have lacked standing if the suit had been brought in federal court.⁸⁴ The Arizona Supreme Court ruled that the statute was “unconstitutional . . . as it pertain[ed] to nonhydrocarbon mineral leases.”⁸⁵ Current lessees, whose leases were threatened by the judgment, appealed to the U.S. Supreme Court.⁸⁶ The United States, in its brief, argued that the case should be dismissed and the state judgment left undisturbed, asserting that the proper course for the petitioners would be to sue in federal trial court.⁸⁷ The Court rejected this argument, noting that the action in federal court that such an approach would require “would be an attempt to obtain direct review of the Arizona Supreme Court’s decision in the lower federal courts, and would represent a partial inroad on *Rooker-Feldman*’s construction of 28 U.S.C. § 1257.”⁸⁸ This, the Court argued, “would denigrate the authority of the state courts by creating a peculiar anomaly in the normal channels of appellate review.”⁸⁹

Less than two weeks later, the Court decided *Martin v. Wilks*, in which Justice Stevens, in a footnote to his dissent, cited *Rooker, Feldman*, and *ASARCO* to support the proposition that “permitting collateral attacks . . . leads to the anomaly that courts will, on occasion, be required to sit in review of judgments entered by other courts of equal—or even greater—authority.”⁹⁰ Justice Stevens argued that collateral review should be confined to “certain narrowly defined defects” because “a broad allowance of collateral review would destroy the integrity of litigated judgments, would lead to an abundance of vexatious litigation, and would subvert the interest in comity between courts.”⁹¹ This position is reminiscent of the one Justice Stevens took in his dissent in *Feldman*, in which he argued that Feldman was not seeking appellate review but rather was mounting a permissible collateral attack on the unconstitutional application of the District of Co-

⁸⁴ 490 U.S. 605 (1989).

⁸⁵ *Kadish v. Ariz. State Land Dep’t*, 747 P.2d 1183, 1197 (Ariz. 1987).

⁸⁶ *ASARCO*, 490 U.S. at 610.

⁸⁷ *Id.* at 622 (citing Brief for the United States at 20 n.14).

⁸⁸ *Id.* at 622-23.

⁸⁹ *Id.* at 622.

⁹⁰ 490 U.S. 755, 784 n.21 (1989) (Stevens, J., dissenting).

⁹¹ *Id.* at 783.

lumbia bar admission rule, as allowed by 28 U.S.C. § 1331.⁹²

The Court next discussed the doctrine the following year in *Howlett v. Rose*.⁹³ The Court cited *Rooker* and *Feldman* in a general discussion of the applicability of federal law in state courts. Specifically, the Court noted that *Rooker* and *Feldman* supported a "rule that a federal district court cannot entertain an original action alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute."⁹⁴ This rule, the Court explained, "presuppose[s] that state courts presumptively have the obligation to apply federal law to a dispute before them and may not deny a federal right in the absence of a valid excuse."⁹⁵ This was the extent of the discussion of *Rooker-Feldman*.

Finally, in the 1994 case of *Johnson v. De Grandy*, the Court addressed the applicability of "this Court's *Rooker/Feldman* abstention doctrine" to a claim brought by the federal government under section 2 of the Voting Rights Act.⁹⁶ Previously, the Florida Supreme Court had issued a declaratory judgment approving the Florida legislature's apportionment plan, as required by the Florida state constitution, although the Florida court "acknowledged that constitutional time constraints [had] precluded full review" and therefore recognized "the right of any interested party to bring a § 2 challenge to the plan."⁹⁷ In the subsequent federal proceedings, Florida argued that the claims of the United States should be barred by *Rooker-Feldman*. The Court noted that *Rooker-Feldman* barred "a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights,"⁹⁸ and concluded that *Rooker-Feldman* was "inapt" because "the United States was not a party in the state court [and therefore] was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding."⁹⁹

The Supreme Court's treatment of *Rooker-Feldman* has addressed some issues while leaving others unresolved. The most difficult out-

⁹² *Feldman*, 460 U.S. at 489-90 (Stevens, J., dissenting).

⁹³ 496 U.S. 356 (1990).

⁹⁴ *Id.* at 370 n.16.

⁹⁵ *Id.*

⁹⁶ 512 U.S. 997, 1005-06 (1994).

⁹⁷ *Id.* at 1001.

⁹⁸ *Id.* at 1005-06.

⁹⁹ *Id.* at 1006.

standing question is how *Rooker-Feldman* relates to other doctrines. *Feldman*, which “expressly [did] not reach the question of whether the doctrine of res judicata forecloses litigation on [the allowed] elements of the complaints,” strongly suggests that *Rooker-Feldman* is distinct from res judicata.¹⁰⁰ Similarly, Justice Marshall’s opinion in *Pennzoil*, discussing what it means for claims to be “inextricably intertwined” with state court judgments,¹⁰¹ suggests that *Rooker-Feldman* is distinct from collateral estoppel, as does the factual background—though not the language—of *Rooker*.¹⁰² Nevertheless, lower courts have struggled mightily with this issue.

The Seventh Circuit, for example, has noted that “although the *Rooker-Feldman* doctrine and principles of preclusion may be easily confused with each other because they both define the respect one court owes to an earlier judgment, the two are not coextensive.”¹⁰³ Furthermore, the Seventh Circuit has reasoned, “a claim is not ‘inextricably intertwined’ merely because it could have been raised, but was not, in the earlier state proceeding.”¹⁰⁴

The Sixth Circuit has described *Rooker-Feldman* as “a combination of the abstention and res judicata doctrines,”¹⁰⁵ and the Eighth Circuit has claimed that *Rooker-Feldman* and preclusion are “extremely similar.”¹⁰⁶ Meanwhile, one court in the Southern District of New York apparently has followed the approach of the Seventh Circuit by distinguishing *Rooker-Feldman* from preclusion and asking, like Justice Mar-

¹⁰⁰ D.C. Court of Appeals v. Feldman, 460 U.S. 462, 487-88 (1983).

¹⁰¹ Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring in judgment). Justice Marshall focused not on whether the federal claims actually had been raised or litigated in the state court proceeding but instead on whether “the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.” *Id.*

¹⁰² See *supra* notes 45-46 and accompanying text (noting that the Court in *Rooker* treated the Rookers’ constitutional claims as though they had been raised in state court even though they had not).

¹⁰³ Centres, Inc. v. Town of Brookfield, Wis., 148 F.3d 699, 703 (7th Cir. 1998).

¹⁰⁴ Ritter v. Ross, 992 F.2d 750, 754 (7th Cir. 1993). The Seventh Circuit correctly reasoned that:

[i]f the opposite were true, the Court would not have allowed the litigants in *Feldman* to bring their general constitutional challenges to the bar admission rule in federal district court. This conclusion is further buttressed by *Pennzoil*, where separate concurrences by a majority of the Court indicated *Rooker-Feldman* would not automatically bar a federal claim that was not raised in the state court.

Id.

¹⁰⁵ United States v. Owens, 54 F.3d 271, 274 (6th Cir. 1995).

¹⁰⁶ Charchenko v. City of Stillwater, 47 F.3d 981, 983 n.1 (8th Cir. 1995).

shall in *Pennzoil*, "whether the federal district court would necessarily have to determine that the state court erred in order to find that the federal claims have merit."¹⁰⁷ Another court in the Southern District, however, has conflated the two doctrines, asserting that "at a minimum, the *Rooker-Feldman* doctrine deprives lower federal courts of subject matter jurisdiction over litigation that is barred by the doctrines of res judicata and collateral estoppel."¹⁰⁸

Issues aside from *Rooker-Feldman*'s relation to other doctrines remain unresolved as well. For example, it is not entirely clear, despite the Court's holding in *Johnson*,¹⁰⁹ whether *Rooker-Feldman* bars federal actions by parties not participating in the earlier state suit.¹¹⁰ It is also unclear whether the doctrine is meant to apply only after decisions of "highest" state courts, although it seems that *Rooker-Feldman* should apply to any state judicial determination.¹¹¹ Similarly, it is unclear

¹⁰⁷ Khal Charidim Kiryas Joel v. Vill. of Kiryas Joel, 935 F. Supp. 450, 455 (S.D.N.Y. 1996).

¹⁰⁸ Beckford v. Citibank N.A., No. 00 Civ. 205 DLC, 2000 WL 1585684, at *3 (S.D.N.Y. Oct. 24, 2000). This approach is incorrect for the reasons noted by the Seventh Circuit in *Ritter*, 992 F.2d 750: *Feldman* and *Pennzoil* both concluded that lower federal courts had jurisdiction over claims that were not raised in state court.

¹⁰⁹ *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994) (allowing the United States to litigate a Voting Rights Act claim because it was not a party to the earlier state suit and was not attempting to challenge the state court judgment).

¹¹⁰ Lower federal courts have reached divergent results on this question. See, e.g., *Garry v. Geils*, 82 F.3d 1362, 1367 n.8 (7th Cir. 1996) (noting that, unlike preclusion rules, *Rooker-Feldman* may bar a suit even absent any full and fair opportunity to litigate in state court). But see, e.g., *Bennett v. Yoshina*, 140 F.3d 1218, 1224 (9th Cir. 1998) (allowing a suit to proceed because the federal plaintiffs were not parties to the state suit); *Owens*, 54 F.3d at 274 ("The *Rooker-Feldman* doctrine does not apply to bar a suit in federal court brought by a party that was not a party in the preceding action in state court."). One reason for this confusion may be that lower federal courts have not interpreted "the Supreme Court's brief, equivocal, and conclusory statement as binding precedent," Sherry, *supra* note 7, at 1112 n.108, because the Court in *Johnson* noted both that the United States was not a party to the state suit and that the United States did not seek to challenge the state court determination. *Johnson*, 512 U.S. at 1005-06.

¹¹¹ At least one commentator has argued that "extending *Rooker-Feldman* to deprive the federal courts of jurisdiction following activity in the states' lower courts deprives the *Rooker-Feldman* doctrine of its rationale." Friedman & Gaylord, *supra* note 11, at 1137. This argument is apparently based on § 1257, which only addresses decisions of the highest state courts, and on the Court's recognition in *Feldman* that it was being asked to review the decision of the "highest court" in a jurisdiction. D.C. Court of Appeals v. Feldman, 460 U.S. 462, 486-87 (1983). If a district court lacks appellate jurisdiction under § 1331 (the other statutory inference central to *Rooker-Feldman*, see *supra* note 4), however, then clearly it cannot hear "appeals" from lower state courts. Furthermore, the analysis in *Feldman* seems to depend more on the fact that the District of Columbia's determination was judicial than on the fact that the determination was made by the jurisdiction's highest court. See *Feldman*, 460 U.S. at 476-82 (addressing

whether *Rooker-Feldman* applies to state court orders that lack sufficient finality to be protected by the Full Faith and Credit statute.¹¹² Finally, it is not exactly clear which actions are appeals, which are inextricably intertwined with state court judgments, which are permissible general challenges, and which are impermissible collateral attacks.¹¹³

D. Rooker-Feldman in Lower Federal Courts

The scarcity of Supreme Court opinions discussing the *Rooker-Feldman* doctrine contrasts sharply with the doctrine's treatment in lower federal courts, where it has experienced "explosive growth."¹¹⁴ Despite this growth—or perhaps because of it—the scope of the doctrine remains unclear, as lower courts have created a "complex, confusing, and sometimes contradictory body of precedent."¹¹⁵ Many courts are confused and consequently are misapplying the doctrine.

Perhaps the most egregious example of this confusion and misapplication is *Kamilewicz v. Bank of Boston Corp.*,¹¹⁶ which has become "a cause célèbre among law professors."¹¹⁷ *Kamilewicz* emerged out of a

the issue of whether the determination of the District of Columbia Court of Appeals was judicial in nature). Finally, the fact that many Justices in *Pennzoil* discussed the applicability of *Rooker-Feldman* to a decision of a Texas state trial court without mentioning the possibility that the doctrine did not apply because the highest state court had not rendered the state decision at least suggests that *Rooker-Feldman* applies to lower state court decisions as well. See *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 18 (1987) (Scalia, J., concurring); *id.* at 21 (Brennan, J., concurring in judgment); *id.* at 24-26 (Marshall, J., concurring in judgment); *id.* at 28 (Blackmun, J., concurring in judgment); *id.* at 31 n.3 (Stevens, J., concurring in judgment). Lower federal courts have generally applied *Rooker-Feldman* to bar suits collaterally attacking judgments of lower state courts. See, e.g., *Rolleston v. Eldridge*, 848 F.2d 163, 165 (11th Cir. 1988) (allowing *Rooker-Feldman* to bar such a case); *Texaco Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1142 (2d Cir. 1986) (noting that "courts, including the Supreme Court, have not hesitated to apply the *Rooker-Feldman* doctrine" to such cases); see also Sherry, *supra* note 7, at 1092 n.36 (collecting cases).

¹¹² This question is addressed in greater detail *infra* in note 222.

¹¹⁴ This question is addressed in greater detail *infra* in Part IV.B.

¹¹⁵ Sherry, *supra* note 7, at 1088; see also *supra* note 7 (discussing the treatment of *Rooker-Feldman* by lower federal courts). This combination of lower court growth and Supreme Court and academic silence has prompted one commentator to assert that "[the *Rooker-Feldman* doctrine's] rapid rise and expansion occurred almost entirely below the radar." Bandes, *supra* note 9, at 1175; cf. Hoffman, *supra* note 9, at 403 n.9 ("[E]ven 'a little cloud may bring a flood's downpour.'" (quoting *La Buy v. Howes Leather Co.*, 352 U.S. 249, 258 (1957) (discussing removal of cases based on the All Writs Act))).

¹¹⁶ Bandes, *supra* note 9, at 1176.

¹¹⁷ 92 F.3d 506 (7th Cir.), *reh'g denied*, 100 F.3d 1348 (7th Cir. 1996).

¹¹⁸ Beermann, *supra* note 10, at 1232.

class action suit filed in Alabama state court against the Bank of Boston and BancBoston Mortgage Corporation, among others. BancBoston serviced the mortgages of each of the approximately 715,000 class members, who filed suit alleging defects in the manner in which BancBoston calculated the amount of surplus the class members were required to maintain in their escrow accounts.¹¹⁸

After the plaintiff class won partial summary judgment, the state court approved a notice of a proposed settlement drafted by the attorneys for the class, and the notice was sent to the members of the plaintiff class.¹¹⁹ The notice stated that "the settlement was 'fair, reasonable, adequate, and in the best interests of the class' and that the attorney fees sought were 'reasonable' and would 'not exceed one-third of the economic benefit' to the class."¹²⁰ One of the defendants, Bank of Boston, objected to the notice because it failed to disclose that the method of paying attorney fees would have the result that "some class members would suffer an out-of-pocket loss as a result of the lawsuit."¹²¹

The Alabama state court subsequently held a fairness hearing and approved the settlement.¹²² The fees—5.32% of the balance in each account, for a total of more than \$8 million¹²³—were debited to the accounts. Class members received a one-time interest payment ranging from \$0.00 to \$8.76.¹²⁴ The result for many class members, as Bank of Boston had predicted, was that the fees deducted from escrow exceeded the award.¹²⁵ Dexter Kamilewicz, for example, was awarded \$2.19 in interest and charged \$91.33 in fees, for a net loss of \$89.14.¹²⁶

Outraged class members formed another class and sued the attorneys for malpractice, breach of fiduciary duty, negligent misrepresentation, and fraud, among other claims.¹²⁷ In the same suit, they also sued the Bank of Boston and its lawyers, although everything the bank had done (specifically, debiting the accounts in the amount of appli-

¹¹⁸ *Kamilewicz*, 92 F.3d at 508.

¹¹⁹ *Id.*

¹²⁰ *Id.* (quoting the notice of proposed settlement).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Kamilewicz*, 100 F.3d at 1349 (Easterbrook, J., dissenting from denial of rehearing en banc).

¹²⁴ *Kamilewicz*, 92 F.3d at 508.

¹²⁵ *Id.* at 509.

¹²⁶ *Kamilewicz*, 100 F.3d at 1349 (Easterbrook, J., dissenting from denial of rehearing en banc).

¹²⁷ *Kamilewicz*, 92 F.3d at 509.

cable fees) had been authorized—indeed required—by the settlement.¹²⁸ After noting that the “boundaries [of *Rooker-Feldman*], and the line separating it from res judicata, are less than precise,”¹²⁹ the district court held that the plaintiffs were seeking to mount an impermissible collateral attack on the Alabama state court judgment, “asking us to undo what the Alabama court did,” and dismissed the suit under *Rooker-Feldman* for lack of subject matter jurisdiction.¹³⁰

The plaintiffs appealed to the Seventh Circuit, which affirmed the dismissal.¹³¹ The court reasoned:

[T]he plaintiffs’ injuries are a result of the state court judgment. Their claim in federal court is a multi-pronged attack on the approval of the settlement regarding the attorney fees issue. Regardless of which of the specific federal claims the district court were to consider, it would run directly into the state court finding, entered after a two-day fairness hearing—that the fees were reasonable. The federal claims are “inextricably intertwined” with the state court judgment, whether that judgment is right or wrong.¹³²

The Seventh Circuit thus held that it could not determine that fraud and malpractice had been committed without first determining that the settlement and fee arrangement were unfair, which would require, in effect, a reversal of the state court judgment to the contrary.

The representatives of the plaintiff class then filed a petition for rehearing and suggestion for rehearing en banc. Both requests were denied, but five judges dissented from the denial of rehearing en banc.¹³³ The dissent, written by Judge Easterbrook, argued that rather than collaterally attacking the judgment, the malpractice claim “takes the judgment as a given—indeed, it is only so long as the judgment

¹²⁸ This was in an effort to mount a collateral attack on the validity of the state court judgment, which allegedly suffered from jurisdictional defects. *Kamilewicz*, 100 F.3d at 1349 (Easterbrook, J., dissenting from denial of rehearing en banc) (“Kamilewicz argued that the judgment is void with respect to account holders who live outside Alabama—for what right does Alabama have to instruct financial institutions in Florida to debit the accounts of citizens of Maine and other states?”). This presents an interesting question, which is raised again *infra* in Part IV.B: are collateral attacks on judgments that are not entitled to full faith and credit because the rendering court lacked jurisdiction barred by *Rooker-Feldman*?

¹²⁹ *Kamilewicz v. Bank of Boston Corp.*, No. 95 C 6341, 1995 WL 758422, at *4 (N.D. Ill. Dec. 15, 1995), *aff’d*, 92 F.3d 506 (7th Cir. 1996).

¹³⁰ *Id.* at *6.

¹³¹ *Kamilewicz*, 92 F.3d at 512.

¹³² *Id.* at 511.

¹³³ *Kamilewicz*, 100 F.3d at 1349 (Easterbrook, J., dissenting from denial of rehearing en banc).

stands that the litigant has a compensable loss.”¹³⁴ The *Rooker-Feldman* doctrine, Judge Easterbrook claimed, was irrelevant: “[T]he plaintiff does not seek review of the decision. The original parties’ entitlements vis-à-vis each other are fixed by the judgment. The contest is now between the litigant and his lawyer.”¹³⁵ Finally, Judge Easterbrook argued that all malpractice suits are independent actions rather than collateral attacks.¹³⁶ “That the lawyer’s misconduct occurred in a judicial proceeding,” Judge Easterbrook concluded, “doesn’t insulate the lawyer from liability, even when the *Rooker-Feldman* doctrine insulates the judgment.”¹³⁷

Judge Easterbrook’s point is well-taken. As one commentator has noted, “it is perfectly possible that the Alabama court was correct to approve the class settlement but that, given adequate legal advice, the *Kamilewicz* class members would have opted out. Nothing in a federal court ruling for the plaintiffs would necessarily undermine or conflict with the Alabama court’s decree.”¹³⁸ That is, the settlement and fee arrangement could be in the best interest of the class as a whole but against the interest of some of the class members, in which case those class members should have been fully informed of that fact and of their right to opt out of the settlement. The *Kamilewicz* class members’ claim was no more a collateral attack on a state judicial proceeding than were Texaco’s due process and equal protection claims in *Pennzoil*.¹³⁹ In both cases, the injury alleged in federal court would not have occurred but for the state court judgment, but in neither case did the plaintiff seek to undermine that judgment in any way. The injury in both cases was proximately caused by someone or something other than the state court—the class counsel in *Kamilewicz* and the allegedly unconstitutional state statute in *Pennzoil*.

¹³⁴ *Id.* at 1351.

¹³⁵ *Id.* Judge Easterbrook’s analysis actually went farther, asserting that “a malpractice action is not affected by the *Rooker-Feldman* doctrine.” *Id.* at 1352. “If the *Rooker-Feldman* doctrine applies to suits by the absent class members because a malpractice action is a collateral attack on the order approving the settlement and awarding attorneys’ fees,” Judge Easterbrook reasoned, “then the law of preclusion (*res judicata*) should bar malpractice actions in any court, state or federal, and without regard to which judicial system handled the first case. Yet no one thinks that.” *Id.* at 1353.

¹³⁶ *Id.* at 1353.

¹³⁷ *Id.* at 1351.

¹³⁸ Sherry, *supra* note 7, at 1124.

¹³⁹ See *supra* notes 72-83 and accompanying text (discussing *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1 (1987)).

III. MAJOR CRITICISMS OF *ROOKER-FELDMAN*

Cases such as *Kamilewicz*, in which the *Rooker-Feldman* doctrine was used to "close the door of the federal courthouse"¹⁴⁰ to apparently deserving plaintiffs, have led to almost unanimous criticism of the doctrine in the legal scholarship on the subject.¹⁴¹ Critics are asking whether *Rooker-Feldman* is "worth only the powder to blow it up."¹⁴² Their arguments are the subject of this Part.

Virtually all objections to the *Rooker-Feldman* doctrine take one of two forms: that it is redundant because it overlaps with other doctrines or that it creates harmful and unjust results. Critics often argue both—that *Rooker-Feldman* adds nothing of value and that it independently harms judicial administration. Nearly everyone who has written extensively about *Rooker-Feldman* has taken this basic position.¹⁴³

A. *The First Objection: Rooker-Feldman Is Unnecessary*

The first objection, that the *Rooker-Feldman* doctrine is superfluous, is based on the idea that all of the outcomes created by *Rooker-Feldman*, or at least the desirable ones, would be created anyway by other doc-

¹⁴⁰ *Kamilewicz*, 100 F.3d at 1353 (Easterbrook, J., dissenting from denial of rehearing en banc).

¹⁴¹ See *supra* note 9 (discussing scholarly treatment of the doctrine).

¹⁴² Rowe, *supra* note 3, at 1081.

¹⁴³ See, e.g., Friedman & Gaylord, *supra* note 11, at 1133 (arguing that *Rooker-Feldman* "might" fill a "small hole," but that the doctrine "should be abolished"); Rowe, *supra* note 3, at 1084 (noting that *Rooker-Feldman* does not "make[] a major contribution or difference," but leads to "some highly questionable decisions"). Professors Wright, Miller, and Cooper summarily capture both objections to the *Rooker-Feldman* doctrine in their treatise:

This doctrine is nearly redundant because most of the actions dismissed for want of jurisdiction also could be resolved by invoking the claim- or issue-preclusion consequences of the state judgments. . . . As yet there is no satisfactory answer to the question whether the variations introduced by jurisdiction theory are useful. The ever-present risk is that the jurisdiction label will stop up thought, invoking inappropriate reflexes rather than independent consideration of distinctive problems. All of the desirable results achieved by the jurisdiction theory could be achieved by supplementing preclusion theory with familiar theories of abstention, comity, and equitable restraint.

WRIGHT ET AL., *supra* note 9, § 4469.1. Not all commentators hold this view. See Sherry, *supra* note 7, at 1128 (arguing that *Rooker-Feldman* is an "extremely valuable tool in the management of cross-jurisdictional cases"). Significantly, some of the scholars who criticize the doctrine find some grounds for its usefulness, suggesting that perhaps they are critical of the application of the doctrine rather than of the doctrine per se. See, e.g., Beermann, *supra* note 10, at 1209, 1213 (criticizing the doctrine but then tracing an acceptable role for it).

trines such as preclusion or abstention.¹⁴⁴ Stated another way, the criticism is that *Rooker-Feldman* "does no work."¹⁴⁵ Indeed, these critics note, some courts have even merged *Rooker-Feldman* and the preclusion doctrines, either explicitly or functionally.¹⁴⁶ Obvious appeals, under this view, will be handled by res judicata. Disguised appeals will be addressed by *Younger* abstention if the state court suit is ongoing or by preclusion doctrines if the state court suit is complete.¹⁴⁷

The first important task, then, is to distinguish the *Rooker-Feldman* doctrine from its counterparts. Does it have a unique role? Parts IV and V of this Comment address this question, concluding that *Rooker-Feldman* is necessary and uniquely applicable in certain situations. Briefly, certain federal suits seek to undercut state judicial proceedings—for example, when disappointed state court litigants file suit in federal court alleging either that the state court judgment enforced an unconstitutional statute or that the state court judgment itself constituted a constitutional violation.¹⁴⁸ The state court judge (or the state court itself) may be a party to the federal suit. Since the state suit is complete, none of the abstention doctrines apply. Depending on the intricacies of state law, preclusion doctrines may or may not be implicated in the federal suit.¹⁴⁹ However, if the federal suit alleges

¹⁴⁴ This, indeed, was the focus of the *Notre Dame Law Review's* recent symposium on *Rooker-Feldman*, see Symposium, *supra* note 9, which addressed the "major question whether and to what extent the doctrine serves valid independent purposes of its own," Rowe, *supra* note 3, at 1083.

¹⁴⁵ Friedman & Gaylord, *supra* note 11, at 1147.

¹⁴⁶ See *supra* notes 100-08 and accompanying text (discussing the relationship between the doctrines).

¹⁴⁷ There is a third possibility: a state court judgment has been rendered, thus bringing the federal suit outside *Younger* abstention (since there is no longer a parallel state court proceeding), but in a form insufficient for preclusion doctrines to apply to the federal court action. Since the federal court must give the state court judgment the same preclusive effect it would receive within the state, see *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (noting that § 1738 "commands a federal court to accept the rules chosen by the State from which the judgment is taken" (quoting *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 482 (1982))), technical variations in state preclusion law, such as mutuality requirements, may prevent the application of preclusion doctrines. Furthermore, the subsequent federal suit may allege harms stemming from the state court judgment itself, again escaping preclusion doctrines because the harm alleged will have resulted from a separate set of operative facts and may not have been litigated in the state proceeding. See *infra* Part IV.C.1 (articulating a nonduplicative role for the *Rooker-Feldman* doctrine).

¹⁴⁸ This narrow but important distinction is explored in greater detail in the context of the hypothetical presented *infra* in Part V.

¹⁴⁹ See discussion *supra* note 147 (raising the possibility that preclusion doctrines will not apply to certain challenges to state court judgments in subsequent federal court actions).

that the state court judgment caused a constitutional harm because, for example, the state court overstepped its bounds, preclusion doctrines probably will not be dispositive since the federal suit alleges a separate claim arising from a new transaction;¹⁵⁰ “[i]ndeed, the federal claim—which seeks to rectify the harm done by the state suit itself—could not have been brought in the original suit.”¹⁵¹ *Rooker-Feldman* is valuable in this context to maintain the values of federalism and comity and to avoid an “end run” by disappointed litigants around preclusion doctrines.¹⁵²

B. *The Second Objection: Rooker-Feldman is Harmful*

The second objection is more substantive than the first. It is based on cases (such as *Kamilewicz*) in which *Rooker-Feldman* has been used to create arguably bad results. This objection has been stated in various forms.¹⁵³ The most cogent articulation of this objection has been by Susan Bandes, who asserts that “it has become clear that [*Rooker-Feldman*] is neither harmless nor interchangeable.”¹⁵⁴ The crux of her argument is that *Rooker-Feldman* leads to bad results because its jurisdictional status is inflexible and nonwaivable, and thus it is used by courts to trump nonjurisdictional policies, often without analysis.¹⁵⁵ In her words:

[*Rooker-Feldman*] gives courts implicit permission to fail to discuss the policies inherent in the decision to deny jurisdiction, on the apparent

¹⁵⁰ This analysis, of course, relates to res judicata. Collateral estoppel may bar the federal suit if the constitutional issues were litigated and necessarily decided in the state suit. For a more thorough discussion of this point, see the hypothetical presented *infra* in Part V.

¹⁵¹ Sherry, *supra* note 7, at 1093.

¹⁵² *Id.* at 1094.

¹⁵³ See, e.g., Friedman & Gaylord, *supra* note 11, at 1168-69 (asserting that *Feldman* was wrongly decided and that the doctrine’s only use is barring otherwise valid federal actions for no good reason in violation of due process).

¹⁵⁴ Bandes, *supra* note 10, at 1178.

¹⁵⁵ Indeed, she points out, many decisions lack substantial analysis: “of 39 Seventh Circuit Court of Appeals decisions on *Rooker-Feldman* grounds between January 1996 and September 1998, 26 were one- or two-page unpublished dispositions.” *Id.* at 1176 n.5. This, presumably, is what Professors Wright, Miller, and Cooper were warning against when they said that “[t]he ever-present risk is that the jurisdiction label will stop up thought, invoking inappropriate reflexes rather than independent consideration of distinctive problems.” WRIGHT ET AL., *supra* note 9, § 4469.1. Of course, one reason why the Seventh Circuit may have so many short, unreported opinions on *Rooker-Feldman* is that it has the most developed case law on the subject. A recent West-law search revealed over 200 cases in the Seventh Circuit mentioning *Rooker-Feldman*, more than any other circuit.

theory that since the doctrine is mandatory, such policies are irrelevant. To put it another way, it gives the illusion of a lack of judicial choice and responsibility. Moreover, it seems to obviate the need to balance the doctrine against countervailing doctrines.¹⁵⁶

According to Bandes, this problem began with *Feldman*, which failed to identify the "policies at risk."¹⁵⁷ She asserts that courts use *Rooker-Feldman* to engage in court-initiated forum shifting, thereby creating injustice.

As an example of this, Bandes points to *Davis v. Allen County Office of Family & Children*.¹⁵⁸ In *Davis*, the Seventh Circuit affirmed the dismissal of a § 1983 gender discrimination suit with the following analysis:

Although the equal protection claim is distinct from the state court judgment, it is "inextricably intertwined" with the state court judgment and the district court also lacked jurisdiction over that claim. Because the federal courts do not have jurisdiction over this case, it should have been dismissed for lack of subject matter jurisdiction.¹⁵⁹

This was the extent of the court's analysis of the issue, illustrating the (at least apparent) lack of consideration of the issues.¹⁶⁰ As Bandes puts it, "[p]erhaps the court was correct, but who's to know?"¹⁶¹

It is often unclear whether the second objection argues that *Rooker-Feldman* is a bad doctrine per se or rather that *Rooker-Feldman* is widely misused. The latter is certainly true, but it seems unfair to say that *Rooker-Feldman* is a bad doctrine when courts and commentators obviously do not agree on exactly what it is. Once a new framework for the doctrine is defined, this objection should be reconsidered. In any event, despite these arguments, it seems highly unlikely that the *Rooker-Feldman* doctrine will disappear in the near future.¹⁶² Accordingly, as noted at the outset of this Comment, carefully defining the doctrine is an important goal.

¹⁵⁶ Bandes, *supra* note 10, at 1178.

¹⁵⁷ *Id.* at 1194; *see also* Sternlight, *supra* note 3, at 139 ("[T]he Supreme Court did not explicitly outline the policy arguments it believed supported its conclusions in *Feldman*.").

¹⁵⁸ No. 96-1953, 1997 WL 267863 (7th Cir. May 6, 1997); Bandes, *supra* note 10, at 1204.

¹⁵⁹ *Davis*, 1997 WL 267863, at *1 (citations omitted).

¹⁶⁰ Again, it is relevant to note that the Seventh Circuit has considered the issues more extensively than any other circuit. *See supra* note 155 (discussing the extent of the Seventh Circuit's treatment of *Rooker-Feldman*).

¹⁶¹ Bandes, *supra* note 10, at 1204.

¹⁶² *See supra* note 10 and accompanying text.

IV. A CONCEPTUAL FRAMEWORK FOR *ROOKER-FELDMAN*

This Part attempts to identify a theoretical justification for the *Rooker-Feldman* doctrine. It argues that the *Rooker-Feldman* doctrine is roughly analogous to the relitigation exception and should operate as an abstention doctrine to bar collateral attacks after the first (state) case ends. This approach clarifies what it means for issues to be “inextricably intertwined” with state judicial proceedings while still prohibiting cases that seek to undermine those proceedings. This model is appropriate because it is consistent with the underlying concerns of federalism and comity.

A. *The Policies Animating Rooker-Feldman*

The first step in constructing an independent role for the *Rooker-Feldman* doctrine is to distinguish it from preclusion doctrines. One important difference is that federalism, rather than finality, is the central policy behind *Rooker-Feldman*. Suzanna Sherry has articulated this distinction:

While preclusion doctrines serve many purposes—including finality and forcing parties to make the first trial “the main event”—the *Rooker-Feldman* doctrine is first and foremost an integral part of judicial federalism. *Res judicata* is about parties; *Rooker-Feldman* is about courts. That difference explains why *Rooker-Feldman*, unlike *res judicata*, is a jurisdictional doctrine rather than an affirmative defense. It also explains why state law, complete with individual variations, governs preclusion questions, but *Rooker-Feldman* is an unvarying federal doctrine.¹⁶³

Thus, practically speaking, “*Rooker-Feldman* and the habeas exception to it tell federal courts *when* they may review state court decisions; preclusion rules tell them *how* to treat those decisions.”¹⁶⁴

The “habeas exception” to *Rooker-Feldman* mentioned by Sherry (and others¹⁶⁵) illustrates a broader point about federalism. Congress

¹⁶³ Sherry, *supra* note 7, at 1101 (emphasis added).

¹⁶⁴ *Id.*

¹⁶⁵ *See, e.g.,* Rowe, *supra* note 3, at 1082 n.3 (“Federal habeas corpus for state prisoners, in which the applicant brings a collateral attack on a state court conviction in what is technically a new federal court civil action, is commonly regarded as a statutory exception to the *Rooker-Feldman* jurisdictional limit.”). *But see* Gruntz v. County of Los Angeles (*In re* Gruntz), 202 F.3d 1074, 1079 (9th Cir. 2000) (en banc) (“[F]ederal habeas-corpus law turns *Rooker-Feldman* on its head. Rather than leaving state court judgments undisturbed, it provides expressly for federal collateral review of final state court judgments and requires exhaustion of state remedies as a precondition for federal relief. . . . [T]hrough the statutory writ of habeas corpus Congress has created a

can expressly authorize exceptions to the general rule that lower federal courts cannot review decisions of state courts;¹⁶⁶ however, the fact that Congress wrote the habeas statutes at all indicates that they are, in fact, exceptional.¹⁶⁷ Collateral attacks are generally prohibited.¹⁶⁸ One reason for this is federalism: it would undercut state courts and state law to allow collateral attacks in federal court of state-court judgments. *Rooker-Feldman* is consistent with this general prohibition.¹⁶⁹

This analysis provides a starting point in the search for a justification for *Rooker-Feldman*. In order to continue developing an effective conception of *Rooker-Feldman*, it is important to explore other doctrines relating to judicial federalism. Specifically, a detour into the law applicable in procedurally opposite cases (that is, cases originally filed in federal court with subsequent state court suits), such as the Anti-Injunction Act, will be necessary.¹⁷⁰ As discussed in Part I, the two main approaches to this problem are injunction by the federal courts of the state court suits under the relitigation exception to the Anti-Injunction Act and removal of the state court action to federal court using the authority conferred by the All Writs Act. Since the second

comprehensive system of federal collateral review of state court criminal judgments. Thus, habeas corpus is not an 'exception' to *Rooker-Feldman*, but a procedure with roots in statutory jurisdiction parallel to—and in no way precluded by—the doctrine." (citations omitted)).

¹⁶⁶ This is conceptually similar to the "expressly authorized by Act of Congress" exception contained in the Anti-Injunction Act, 28 U.S.C. § 2283 (1994), although *Rooker-Feldman* appears to have the opposite baseline: the Anti-Injunction Act prohibits federal courts from enjoining state cases (thereby allowing the state suits to proceed) unless certain exceptions are met and *Rooker-Feldman* prohibits federal courts from hearing cases with certain exceptions. In both instances, however, the baseline rule is the most respectful of the states' rights and the most consistent with a strong view of judicial federalism. Furthermore, because in both instances the federal courts have all of the power to decide whether or not to apply the doctrines, it seems correct that the default rule should protect states. A broader conception, encompassing both *Rooker-Feldman* and the Anti-Injunction Act, would require federal courts to respect state court proceedings and judgments unless certain narrow exceptions apply.

¹⁶⁷ Otherwise the statutes would be redundant—Congress would not have to grant jurisdiction for collateral attacks if that jurisdiction already existed. See, e.g., 28 U.S.C. § 2254 (1994) (delegating to the federal courts the power to entertain applications for writs of habeas corpus on behalf of people in custody pursuant to state-court judgments).

¹⁶⁸ See *supra* note 15 and accompanying text (describing the Full Faith and Credit statute).

¹⁶⁹ See *Martin v. Wilks*, 490 U.S. 755, 784 n.21 (1989) (Stevens, J., dissenting) (citing both *Rooker* and *Feldman* to support the proposition that collateral attacks are generally disallowed).

¹⁷⁰ One commentator has noted the significance of this comparison. Sherry, *supra* note 7, at 1102-03.

of these options, removal based on the All Writs Act, seems to be based on an overextension of federal jurisdiction,¹⁷¹ this discussion will focus on the first option—injunction of the state suit under the relitigation exception.

The relitigation exception allows federal courts, in certain exceptional circumstances, to protect their judgments by enjoining state suits.¹⁷² There is no real analog to this power in procedurally opposite (that is, *Rooker-Feldman*) cases—the state court is unable to protect itself (and its judgment) in this way.¹⁷³ The Anti-Injunction Act and its exceptions reflect a compromise of sorts between the two potentially inconsistent policy goals of “respecting the autonomy of the state courts as adjudicators of equal dignity to the federal courts” and “protecting superior federal interests.”¹⁷⁴ A similar compromise may occasionally be warranted in procedurally opposite cases—that is, sometimes there may be a strong enough state interest at stake to justify the result that a federal court does not hear a suit challenging a prior state court judgment.

A consideration of when federal courts enjoin state suits based on the relitigation exception is revealing. The authority to do so exists “when there is something special about the federal proceeding, or perhaps something flawed about the state proceeding—and . . . those conditions are ill-defined.”¹⁷⁵ The Supreme Court has indicated that the power is only available when federal injunctive relief is “necessary to prevent a state court from so interfering with a federal court’s consideration or disposition of a case as to seriously impair the federal

¹⁷¹ Hoffman, *supra* note 22, at 453-54.

¹⁷² 28 U.S.C. § 2283 (1994) (“A court of the United States may not grant an injunction to stay proceedings in a State court *except* as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” (emphasis added)); see *supra* notes 21-23 and accompanying text (discussing the injunctive power of federal courts under the relitigation exception). As noted in Part I, *supra*, this power ultimately derives from the All Writs Act, 28 U.S.C. § 1651(a) (1994), which permits federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

¹⁷³ State courts may not enjoin federal proceedings. See, e.g., *Donovan v. City of Dallas*, 377 U.S. 408, 412-13 (1964) (“While Congress has seen fit to authorize courts of the United States to restrain state-court proceedings in some special circumstances, it has in no way relaxed the old and well-established judicially declared rule that state courts are completely without power to restrain federal-court proceedings.” (footnotes omitted)).

¹⁷⁴ Diane P. Wood, *Fine-Tuning Judicial Federalism: A Proposal for Reform of the Anti-Injunction Act*, 1990 BYU L. REV. 289, 290.

¹⁷⁵ *Id.* at 304-05.

court's flexibility and authority" to decide a case.¹⁷⁶ Not surprisingly, courts "have described the reach of the relitigation exception in terms that are strikingly similar to the standard characterizations of *Rooker-Feldman*. . . . [T]he exception authorizes injunctions against state court suits that threaten to 'nullify,' 'frustrate,' 'eviscerate,' 'destroy the effect of,' or 'render impotent' the federal judgment."¹⁷⁷ In other words, federal courts are permitted to enjoin state suits that seek to mount collateral attacks on prior federal judgments.¹⁷⁸

One commentator, noting these similarities, has argued that *Rooker-Feldman* should be a functional equivalent of the relitigation exception, "essentially direct[ing] federal courts to 'enjoin' themselves."¹⁷⁹ This is justified because "[b]oth raise similar problems of judicial federalism, and each cries out for a way to protect the integrity of judgments from disappointed litigants seeking a potentially more hospitable forum. In each case, res judicata principles protect the winning party, but cannot always protect the court."¹⁸⁰

This conclusion, while conceptually sound, is based on an extremely broad reading of the relitigation exception.¹⁸¹ The relitigation exception is generally viewed more narrowly as essentially coextensive with preclusion doctrines,¹⁸² primarily because of the Supreme Court's decision in *Chick Kam Choo v. Exxon Corp.*¹⁸³ In *Chick Kam Choo*, the

¹⁷⁶ *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970). Incidentally, although the Supreme Court did not explain the policy behind its decision in *Feldman*, it did cite *Atlantic Coast Line* and its policy discussion several times. See, e.g., *Feldman*, 460 U.S. at 476, 482 n.16 (citing *Atlantic Coast Line*).

¹⁷⁷ Sherry, *supra* note 7, at 1103 (footnotes omitted).

¹⁷⁸ *Black's Law Dictionary* defines "collateral attack" using similar terms: "With respect to a judicial proceeding, an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it." BLACK'S LAW DICTIONARY 261 (6th ed. 1990).

¹⁷⁹ Sherry, *supra* note 7, at 1105.

¹⁸⁰ *Id.*

¹⁸¹ Sherry acknowledges this; she recognizes that extending the relitigation exception beyond preclusion is controversial, but asserts that "lower courts do it all the time." *Id.* at 1103 n.71.

¹⁸² See, e.g., Michael Finch, *Fairness and Finality in Institutional Litigation: The Lessons of School Desegregation*, 4 GEO. MASON U. CIV. RTS. L.J. 109, 184-94 (1994) (discussing the relitigation and "in aid of jurisdiction" exceptions to the Anti-Injunction Act and their narrow interpretation); Wood, *supra* note 174, at 304-07 (discussing the relitigation exception and its relationship to preclusion doctrines).

¹⁸³ 486 U.S. 140 (1988). Many recent cases involving the relitigation exception cite *Chick Kam Choo* to support this conclusion. See, e.g., *Regions Bank of La. v. Rivet*, 224 F.3d 483, 488 (5th Cir. 2000) (citing *Chick Kam Choo* for the proposition that "[t]he relitigation exception requires that the claims or issues that the federal injunction is to insulate from litigation in state proceedings 'actually have been decided by

Court noted that "[t]he relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously *was presented to and decided by* the federal court. It is founded in the well-recognized concepts of *res judicata* and collateral estoppel."¹⁸⁴ Moreover, the Court stated that "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings *actually have*

the federal court"); *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 448 (5th Cir. 2000) (citing *Chick Kam Choo* for the proposition that the relitigation exception "was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court"); *MLE Realty Assocs. v. Handler*, 192 F.3d 259, 261-62 (2d Cir. 1999) (quoting more extensively from *Chick Kam Choo* and stating that "the relitigation exception is narrower than the doctrine of *res judicata*"); *Movado Group, Inc. v. Matagorda Ventures, Inc.*, No. 98CIV.6223(LMM), 2000 WL 1154317, at *1 (S.D.N.Y. Aug. 14, 2000) (citing *Chick Kam Choo* for the proposition that "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court"); *Blue Cross v. SmithKline Beecham Clinical Labs., Inc.*, 108 F. Supp. 2d 130, 135-36 (D. Conn. 2000) (citing *Chick Kam Choo* for the proposition that injunctions are permitted "so long as the purpose behind the injunctive relief is to 'protect or effectuate [a federal court's] judgments'" (alteration in original)); *Thomas v. Albright*, 77 F. Supp. 2d 114, 119 (D.D.C. 1999) (citing *Chick Kam Choo* for the proposition that "a federal Court may enjoin an action in a state court when issue preclusion (collateral estoppel) or claim preclusion (*res judicata*) is the source of the movant's application for relief"). Other cases reach the same result without relying on *Chick Kam Choo*. See, e.g., *Ramsden v. AgriBank, FCB*, 214 F.3d 865, 868 (7th Cir. 2000) (stating that the relitigation exception allows litigants to protect favorable federal judgments "by enjoining repetitive state court proceedings instead of relying on a claim or issue preclusion defense"); *Budget Elec. Contractors, Inc. v. Consol. Elec. Distribs., Inc.*, No. 97-55973, 1999 WL 685951, at *1 (9th Cir. 1999) (asserting that the relitigation exception applies "only if the state action involve[s] the same parties or their privies and the same cause of action as the final judgment on the merits in the prior federal action" (internal quotation marks omitted)).

Nevertheless, the broader reading suggested by Sherry has support as well. See, for example, Sherry, *supra* note 7, at 1103-04 & nn.71-83, and the cases cited therein. One reason may be that federal courts sometimes apply preclusion doctrines broadly in the context of the relitigation exception, asking "whether two claims involve the same cause of action, under which the critical question is not the relief requested or the theory asserted but whether the plaintiff bases the two actions on the same nucleus of operative facts," *N.Y. Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000) (internal quotation marks omitted) (applying *res judicata* very broadly, concluding in that case that "only one key fact . . . is relevant"), or acknowledging that "the actual claims and the subject matter of the suit may differ" and "complete identity of the parties" may not be required, *Next Level Communications LP v. DSC Communications Corp.*, 179 F.3d 244 (5th Cir. 1999) (applying collateral estoppel). That is, federal courts may interpret preclusion doctrines broadly or even occasionally go beyond them in order to enjoin state suits that threaten to undermine prior federal court judgments.

¹⁸⁴ 486 U.S. at 147 (emphasis added).

been decided by the federal court.”¹⁸⁵ This prerequisite is “strict and narrow,” based on “the precise state of the record and what the earlier federal order *actually said*.”¹⁸⁶ The Court’s language suggests that the relitigation exception will never apply unless preclusion doctrines, narrowly interpreted, also apply.

Even this narrower view of the relitigation exception is roughly analogous to *Rooker-Feldman*. Similar policies of federalism and comity are still at stake: the central question is still how interactions between federal and state courts should be handled. A baseline rule of respect for judgments by the other court system should still apply. The extension of *Rooker-Feldman* to issues “inextricably intertwined” with state court judgments, however, indicates that the broader interpretation of the relitigation exception (whether correct or not) is a better analog, since that extension moves *Rooker-Feldman* beyond preclusion by focusing the analysis on a different question: whether the federal relief can be granted without a determination that a state judicial proceeding was wrongly decided.¹⁸⁷

There is still a useful lesson to be learned from the narrow version of the relitigation exception, even if it is not a perfect analog for *Rooker-Feldman*: federalism doctrines that overlap with preclusion doctrines are not necessarily problematic. Few commentators argue that the relitigation exception should be abandoned, even though it almost never applies in situations in which preclusion doctrines do not also apply.¹⁸⁸ Indeed, when the Supreme Court abandoned the relitigation exception in *Toucey v. New York Life Insurance Co.*,¹⁸⁹ Congress reinstated it with a statutory amendment several years later.¹⁹⁰ More recently, the Court reaffirmed this in *Rivet v. Regions Bank* when it suggested an injunction based on the relitigation exception as an alternative to improper removal based on a defensive plea of preclusion

¹⁸⁵ *Id.* at 148 (emphasis added).

¹⁸⁶ *Id.*

¹⁸⁷ See *supra* note 101 and accompanying text (discussing what it means for issues to be “inextricably intertwined” with state court judgments).

¹⁸⁸ But see Wood, *supra* note 174, at 304 (noting that the relitigation exception is “difficult to justify”).

¹⁸⁹ 314 U.S. 118 (1941). *Toucey* “expressly disavowed the ‘relitigation’ exception.” *Mitchum v. Foster*, 407 U.S. 225, 236 (1972).

¹⁹⁰ “The congressional response to *Toucey* was the enactment in 1948 of the anti-injunction statute in its present form in 28 U.S.C. § 2283, which, as the Reviser’s Note makes evident, served not only to overrule the specific holding of *Toucey*, but to restore ‘the basic law as generally understood and interpreted prior to the *Toucey* decision.’” *Mitchum*, 407 U.S. at 236 (footnotes omitted).

by a federal judgment.¹⁹¹

Approaching *Rooker-Feldman* with the relitigation exception in mind is therefore useful for several reasons. It provides a functional explanation for the doctrine, taking cases out of federal jurisdiction when they threaten state judgments. Furthermore, it shows that any overlap of *Rooker-Feldman* with preclusion doctrines is not problematic. Finally, comparison to the broader interpretation of the relitigation exception advanced by Sherry, which is more relevant because of *Rooker-Feldman*'s "inextricably intertwined" language, helps direct attention to the relevant policies of comity and judicial federalism that are at issue.

B. A Conceptual Framework for Rooker-Feldman

A careful reading of the Supreme Court precedents reveals that the *Rooker-Feldman* doctrine is designed primarily to thwart collateral attacks on state court judgments in lower federal courts. Accordingly, the doctrine is relevant only when a federal court plaintiff alleges that the state court or its judgment caused the plaintiff's injury. When this occurs, the federal suit is generally a collateral attack seeking to "undo what the [state] court did."¹⁹²

This formulation helps illustrate the distinction between permissible general challenges, allowed under *Feldman*,¹⁹³ and impermissible appeals from, or collateral attacks on, issues inextricably intertwined with state court judgments. As noted in *Kamilewicz*, the pivotal inquiry is "whether the federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim."¹⁹⁴ Generally, as recently explained by the Seventh Circuit in *Remer v. Burlington Area School District*, *Rooker-Feldman* "bars federal jurisdiction when the federal plaintiff alleges that her injury was caused by a state court judgment."¹⁹⁵ Further, *Rooker-Feldman* bars claims that are inextricably intertwined with state court judgments, which arise when "the district court is in essence . . . called upon to review the state-court de-

¹⁹¹ 522 U.S. 470, 478 n.3 (1998).

¹⁹² *Kamilewicz v. Bank of Boston Corp.*, No. 95 C 6341, 1995 WL 758422, at *6 (N.D. Ill. Dec. 15, 1995), *aff'd*, 92 F.3d 506 (7th Cir. 1996).

¹⁹³ See *supra* text accompanying notes 64-66 (discussing the Court's allowance of Feldman's general challenge to the constitutionality of the District of Columbia bar admission rule).

¹⁹⁴ *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506, 510 (7th Cir. 1996).

¹⁹⁵ 205 F.3d 990, 996 (7th Cir. 2000).

cision."¹⁹⁶ Federal claims seeking relief that would undercut state court judgments are impermissible collateral attacks. General challenges to statutes themselves, however, do not necessarily require federal courts to review state court decisions, which is why they are permitted.

The various Supreme Court precedents support this interpretation of the *Rooker-Feldman* doctrine. The general proposition that *Rooker-Feldman* bars federal jurisdiction when the federal plaintiff seeks relief from an injury caused by a state court judgment is supported by the Court's declarations in *Rooker*, *ASARCO*, *Howlett*, and *Johnson*.¹⁹⁷ Justice Stevens's statement in his dissent in *Martin* indicates that *Rooker-Feldman* generally relates to collateral attacks.¹⁹⁸ The extension of *Rooker-Feldman* to issues inextricably intertwined with state court judgments, supported by *Feldman*,¹⁹⁹ is explained in terms similar to those used by Justice Marshall in *Pennzoil*.²⁰⁰ Finally, for the same reason *Rooker-Feldman* extends to issues inextricably intertwined with state judgments, it allows general challenges. This was the holding of *Feldman*,²⁰¹ and it is supported by narrow readings of, for example, the

¹⁹⁶ *Id.* (quoting D.C. Court of Appeals v. Feldman, 460 U.S. 462, 483 n.16 (1983)). The Seventh Circuit correctly interpreted this requirement in *Remer*, concluding that *Rooker-Feldman* did not bar federal jurisdiction when, "[a]lthough Ms. Remer's § 1983 action [was] based on the same situation that gave rise to the state court injunction, it [did] not call into question the validity of or impair the enforceability of the state court injunction." *Id.* at 998.

¹⁹⁷ The Court in *Rooker* held that the district court lacked jurisdiction over the Rookers' claim that the judgment of the Indiana Supreme Court violated the Constitution. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414-15 (1923). Similarly, in *ASARCO*, the Court noted that a federal suit attempting to "obtain direct review of the Arizona Supreme Court's decision . . . would represent a partial inroad" on *Rooker-Feldman*. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 622-23 (1989). In *Howlett*, the Court explained that "a federal district court cannot entertain an original action alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute." *Howlett v. Rose*, 496 U.S. 356, 370 n.16 (1990). Finally, in *Johnson*, the Court reasoned that it is impermissible to seek "what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994).

¹⁹⁸ *Martin v. Wilks*, 490 U.S. 755, 784 n.21 (Stevens, J., dissenting) (citing *Rooker* and *Feldman* to support the general prohibition on collateral attacks).

¹⁹⁹ 460 U.S. at 483-84 n.16, 486-87.

²⁰⁰ Justice Marshall explained that a federal claim was inextricably intertwined when it would succeed "only to the extent that the state court wrongly decided the issues before it" or "[w]here federal relief can only be predicated upon a conviction that the state court was wrong." *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring in judgment).

²⁰¹ See 460 U.S. at 482-83 (allowing *Feldman*'s claims "[t]o the extent that [they]

Court's opinion in *Howlett* and Justice Marshall's dissent in *Pennzoil*.²⁰² A federal court plaintiff may not claim that a state court "violated the Constitution by giving effect to an unconstitutional state statute,"²⁰³ but that does not preclude the federal plaintiff from alleging that the statute itself is unconstitutional (although in many cases preclusion doctrines would bar such a claim).

In practice, the application of this approach turns on a distinction between assertions that the state court harmed the federal plaintiff and that the harm came from some other source. Arguments that a state court properly applied an unconstitutional statute are permitted,²⁰⁴ as are claims that a state court's decision put the federal plaintiff in a position that made a state statute unconstitutional as applied.²⁰⁵ However, arguments that the state court violated the Constitution by applying an unconstitutional statute²⁰⁶ or that the state court's judgment itself was unconstitutional²⁰⁷ are not permitted. The central question when applying *Rooker-Feldman* is whether the argu-

mounted a general challenge to [the bar admission rule]").

²⁰² In *Howlett*, the Court stated that *Rooker-Feldman* prohibited original federal actions "alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute." 496 U.S. at 370 n.16 (emphasis added). Read narrowly, this suggests that general challenges to state statutes are permissible. This construction is consistent with Justice Marshall's formulation in *Pennzoil* because, as in *Feldman* itself, such a challenge does not require a determination that the state court "wrongly decided the issues before it." *Pennzoil*, 481 U.S. at 25 (Marshall, J., concurring in judgment).

²⁰³ *Howlett*, 496 U.S. at 370 n.16.

²⁰⁴ This is one possible interpretation of the holding of *Feldman*, which explained that general challenges are permitted because they do not "require review of a judicial decision in a particular case." 460 U.S. at 487. However, as noted in *Feldman*, *res judicata* or collateral estoppel may "foreclose[] litigation on these elements of the complaints." *Id.* at 487-88.

²⁰⁵ This was the situation in *Pennzoil*. As discussed above, see *supra* notes 78-81 and accompanying text, Texaco's constitutional argument did not seek to undermine the state court decision, despite the fact that Texaco would not have had standing to challenge the state bond and lien statutes in the absence of the decision. This is why *Rooker-Feldman* should not be analyzed by asking if the federal plaintiff would have no complaint "but for" the state court judgment. Cf., e.g., *Remer v. Burlington Area Sch. Dist.*, 205 F.3d 990, 998 (7th Cir. 2000) (citing cases holding that *Rooker-Feldman* precluded federal jurisdiction when "but for the state court determinations, the federal plaintiffs would have had no complaints"). The harms of such an approach are illustrated by the Seventh Circuit's decision in *Kamilewicz*, 92 F.3d 506 (7th Cir. 1996), discussed *supra* in Part II.D.

²⁰⁶ The Court rejected this argument in both *Rooker* and *Feldman*. *Feldman*, 460 U.S. at 476; *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923); see also *supra* Parts II.A, II.B (discussing *Rooker* and *Feldman*, respectively).

²⁰⁷ The Court rejected this argument in *Rooker* as well. 263 U.S. at 415. The distinction between these two arguments is explored in greater detail *infra* in Part V.

ment of the federal court plaintiff can coexist with the state court decision or whether the argument seeks to undermine that decision.²⁰⁸

This framework does not significantly diverge from *Rooker-Feldman*'s statutory basis.²⁰⁹ Claims that the state court harmed a federal court plaintiff are equivalent to claims that the state court wrongly decided the issues before it. Plaintiffs asserting these claims are asking federal courts to review judicial determinations by state courts, which is impermissible because of our policies of federalism and comity. Significantly, federalism and comity work both ways: the judgment a federal court would make when using *Rooker-Feldman* to dismiss a suit is similar to the one it would make when enjoining a collateral attack on its judgment in state court under the relitigation exception. In both cases, disappointed litigants are trying to ask another court system to undercut a judgment validly rendered. Viewed this way, *Rooker-Feldman* simply bars creative collateral attacks on state court judgments.

This approach, however, arguably fails to escape the problems associated with *Rooker-Feldman*'s jurisdictional status.²¹⁰ A possible solution to these problems may lie in the Supreme Court's reference to the "*Rooker/Feldman* abstention doctrine."²¹¹ One scholar has argued that the proper role for *Rooker-Feldman* is "as an abstention doctrine under which disappointed state court litigants may not go to federal district court to complain about harm they suffered at the hands of state courts."²¹² The problem with this approach is that *Rooker-Feldman* cannot logically be an abstention doctrine and remain consistent with its basic premise:²¹³ How can a court abstain from exercising jurisdiction if it has no jurisdiction in the first place?

The answer to this question is that the true jurisdictional case, in which a plaintiff appeals from a state court judgment to a federal dis-

²⁰⁸ This, of course, roughly tracks Justice Marshall's formulation of the doctrine in *Pennzoil*.

²⁰⁹ See *supra* note 4 and accompanying text (discussing the statutory basis for the *Rooker-Feldman* doctrine).

²¹⁰ See *supra* Part III.B (discussing the lack of analysis by courts applying *Rooker-Feldman*, arguably because of its jurisdictional status). That is, despite a sound theoretical basis, the undesirable practical results may still remain because "the jurisdiction label will stop up thought." WRIGHT ET AL., *supra* note 9, § 4469.1. It would be reasonable, however, to assume that by identifying the policies at issue this approach might facilitate better analysis.

²¹¹ *Johnson v. De Grandy*, 512 U.S. 997, 1005 (1994).

²¹² Beermann, *supra* note 10, at 1213.

²¹³ That is, that lower federal courts lack jurisdiction to hear appeals from state courts.

strict court in violation of §§ 1257 and 1331, is rare. *Rooker-Feldman* may only be jurisdictional "in the very narrow situations in which litigants ask the federal courts to rehear issues identical to those on which they have already obtained state court decisions," or when suits "are facially styled as appeals."²¹¹ That is, the jurisdictional bar based on statutory construction should be construed narrowly, rather than expansively. Outside those narrow situations—for example, when federal suits raise issues that are not identical to the issues in a prior state suit, but are inextricably intertwined with the state court judgment—*Rooker-Feldman* can, perhaps, exist as an abstention-like doctrine. Formulated in this manner, *Rooker-Feldman* would instruct federal courts to abstain from hearing impermissible collateral attacks on state court judgments.

Applying *Rooker-Feldman* as a doctrine of abstention rather than one of subject matter jurisdiction is again consistent with the underlying policies of federalism and comity.²¹⁵ The various abstention doctrines, along with other doctrines and practices such as the Anti-Injunction Act and certification, allow federal courts to respect state court proceedings. All of the abstention doctrines, however, apply either before a state suit begins or when there are parallel proceedings in both state and federal court.²¹⁶ Treating *Rooker-Feldman* as an abstention that applies after the state suit has concluded would extend the protection granted to state courts by the other abstention doc-

²¹¹ Bandes, *supra* note 9, at 1179 & n.19.

²¹⁵ The abstention doctrines are grounded in federalism and comity; indeed, *Younger* itself described these policies as encompassing:

a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Younger v. Harris, 401 U.S. 37, 44 (1971).

²¹⁶ *See supra* notes 18-19 and accompanying text (discussing the various abstention doctrines).

trines in a logical and consistent way. It would also recognize the additional harm to federalism and comity presented by interjurisdictional collateral attacks.

This approach resolves some of the confusion surrounding *Rooker-Feldman*, but it also raises new questions. Specifically, besides permitted collateral attacks such as habeas corpus,²¹⁷ *coram nobis*,²¹⁸ and the like, are there other exceptions to *Rooker-Feldman*?²¹⁹ For example, does *Rooker-Feldman* bar collateral attacks on judgments suffering from jurisdictional defects?²²⁰ Does it bar collateral attacks that would be permitted by courts in the rendering forum?²²¹ Finally, does *Rooker-Feldman* bar collateral attacks on state court determinations that lack finality?²²² Courts seeking to adopt this framework would have to ad-

²¹⁷ See *supra* text accompanying notes 165-69 (discussing the relationship between habeas corpus and *Rooker-Feldman*).

²¹⁸ Writs of *coram nobis*, *coram vobis*, and *audita querela* have generally been replaced by motions for relief from judgment. See, e.g., FED. R. CIV. P. 60(b) ("Writs of *coram nobis*, *coram vobis*, *audita querela*, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.").

²¹⁹ See, e.g., *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1079 (9th Cir. 2000) (en banc) ("In apparent contradiction to the *Rooker-Feldman* theory, bankruptcy courts are empowered to avoid state judgments, to modify them, and to discharge them. By statute, a post-petition state judgment is not binding on the bankruptcy court to establish the amount of a debt for bankruptcy purposes. Thus, final judgments in state courts are not necessarily preclusive in United States bankruptcy courts." (citations omitted)); *id.* at 1080 ("Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to [the principle that validly rendered judgments are not subject to collateral attack] and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally."); *Hachamovitch v. De-Buono*, 159 F.3d 687, 696 (2d Cir. 1998) ("*Rooker-Feldman* may be a dubious ground for a refusal to exercise federal jurisdiction over a case . . . that falls within [a] statutory grant of subject matter jurisdiction . . .").

²²⁰ These judgments are not generally entitled to receive full faith and credit. See *supra* note 14 (discussing exceptions to the general rule that judgments are to be afforded full faith and credit). Judge Easterbrook raised this question in *Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348, 1350 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing en banc) ("[A] judgment that is not entitled to full faith and credit does not acquire extra force via the *Rooker-Feldman* doctrine.").

²²¹ This is a related, but slightly different, question. The Fifth Circuit has held that *Rooker-Feldman* does not bar collateral attacks "when that same action would be allowed in the state court of the rendering state." *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995); see also *Beermann*, *supra* note 10, at 1213 (advocating a *Rooker-Feldman* abstention doctrine in which federal actions are barred "when the state courts would not entertain the action").

²²² An affirmative answer to this question would be consistent with the general framework presented here, but it would broaden *Rooker-Feldman* by allowing the doctrine to apply in situations in which state court proceedings had not yet concluded.

dress these questions.

C. *Is This Responsive? A Reconsideration of the
Objections to Rooker-Feldman*

1. The First Objection

The approach set out in this Part traces a role for *Rooker-Feldman* that is not redundant. The thrust of the first objection was that existing doctrines—preclusion and abstention—adequately handle the typical *Rooker-Feldman* situation.²²³ *Rooker-Feldman* prevents federal courts from hearing suits that mount collateral attacks on prior state court judgments. Preclusion doctrines, which may overlap with *Rooker-Feldman* in many cases, will not always serve this function. There are at least two reasons for this: technical variations in state preclusion law, such as mutuality requirements, may prevent the application of preclusion doctrines;²²⁴ and collateral attacks may allege that the state judgment itself harmed the federal court plaintiff, thereby escaping preclusion doctrines because the harm alleged will have resulted from a separate set of operative facts and may not have been litigated in the state proceedings.²²⁵

Some critics implicitly acknowledge that preclusion doctrines will not always prevent interjurisdictional collateral attacks. Professors Wright, Miller, and Cooper, for example, have stated that “[a]ll of the desirable results” achieved by *Rooker-Feldman* “could be achieved by

Such a broad reading would be consistent with the command of *Feldman* that lower federal courts may not review judicial determinations of state courts, D.C. Court of Appeals v. Feldman, 460 U.S. 462, 476-82 (1983), but it may be unnecessary because of *Younger* abstention’s applicability to ongoing state proceedings, *Younger v. Harris*, 401 U.S. 37 (1971); *see, e.g.*, *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 17 (1987) (applying *Younger* abstention in order to defer to “pending state proceedings”). In any event, “[t]he applicability of the *Rooker-Feldman* doctrine to interlocutory decisions of state courts is an open question.” *Centres, Inc. v. Town of Brookfield, Wis.*, 148 F.3d 699, 702 n.4 (7th Cir. 1998).

²²³ *See supra* Part III.A (discussing this objection to *Rooker-Feldman*).

²²⁴ Federal courts are obliged to give state court judgments only the same preclusive effect, and no more, that they would receive in courts of the rendering state. *Maresse v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985). If the state in which the initial judgment was rendered had a mutuality requirement, a disappointed litigant seeking to attack the initial judgment could escape preclusion doctrines by adding another party to the dispute—either the state court judge or the state court (raising issues of sovereign and judicial immunity) or someone else.

²²⁵ This was apparently the case in *Rooker*. *See supra* notes 45-46 and accompanying text (discussing *Rooker*). The hypothetical discussed *infra* in Part V provides another example of this phenomenon.

supplementing preclusion theory with familiar theories of abstention, comity, and equitable restraint.²²⁶ If preclusion doctrines alone were adequate, they would not need to be supplemented. Furthermore, "supplementing" preclusion theory to avoid collateral attacks may violate *Marrese's* command, grounded in "concerns of comity and federalism," that states, not federal courts, determine the preclusive effects of state-court judgments.²²⁷ Finally, supplementing preclusion in such a way may not be effective since current abstention doctrines operate only before or during, and not after, state suits.²²⁸

The policies of comity and federalism indicate that interjurisdictional collateral attacks generally should not be allowed. Treating *Rooker-Feldman* as an abstention doctrine applicable after state suits have ended addresses this concern in a way that is consistent with the "familiar theories" advanced by Professors Wright, Miller, and Cooper. It also avoids the conflict with *Marrese* by giving another tool besides preclusion to federal courts seeking, in the interest of comity, to avoid hearing collateral attacks on state judgments. *Rooker-Feldman* uniquely fills this role by providing that only the Supreme Court (on appeal) or a state court (in a new action or on a motion for relief from judgment) can hear these suits.

2. The Second Objection

The second objection to *Rooker-Feldman* was that it leads to bad results.²²⁹ This Part will argue that *Rooker-Feldman*, properly defined and applied, avoids this problem. Cases with questionable outcomes, such as *Kamilewicz*,²³⁰ and cases with little or no analysis, such as *Davis*,²³¹ result from misapplication and confusion. Furthermore, courts relying on a "but for" test—that is, applying *Rooker-Feldman* when the federal court plaintiff would have no claim but for the state court judgment—are overapplying the doctrine.²³² Identifying these problems and pre-

²²⁶ WRIGHT ET AL., *supra* note 9, § 4469.1.

²²⁷ *Marrese*, 470 U.S. at 380.

²²⁸ See *supra* notes 18-19 and accompanying text (discussing the various abstention doctrines).

²²⁹ See *supra* Part III.B (discussing this objection to the *Rooker-Feldman* doctrine).

²³⁰ *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506 (7th Cir. 1996).

²³¹ *Davis v. Allen County Office of Family & Children*, No. 96-1953, 1997 WL 267863 (7th Cir. May 6, 1997).

²³² The Seventh Circuit uses such a test. See, e.g., *Remer v. Burlington Area Sch. Dist.*, 205 F.3d 990, 998 (7th Cir. 2000) (citing *Kamilewicz* to support the proposition that *Rooker-Feldman* precludes federal jurisdiction when "but for the state court determinations, the federal plaintiffs would have had no complaint"). This approach is er-

senting a clear framework for *Rooker-Feldman* may help address these issues.

The result in *Kamilewicz*—that the doors of the federal courthouse were closed, apparently in error, to a deserving plaintiff—would be avoided by the framework presented in this Comment. The malpractice claim at issue in *Kamilewicz* was not a collateral attack on the Alabama state court judgment; it is possible that both the state court judgment that the settlement was fair to the class and *Kamilewicz*'s claim that his attorneys should have advised him to opt out of the settlement could be correct.²³³ This was noted in Judge Easterbrook's dissent from the denial of a rehearing en banc²³⁴ and it has been noted by several commentators as well.²³⁵ The problem in *Kamilewicz* was not with *Rooker-Feldman* but with the faulty logic of the majority.

Similarly, the result in *Davis*—that *Rooker-Feldman* was applied with virtually no analysis—might also be avoided by the framework presented in this Comment. Commentators objecting to the application of the doctrine without appropriate analysis have argued that this occurs because of *Rooker-Feldman*'s jurisdictional status.²³⁶ While this argument may be overstated,²³⁷ it too is addressed by the framework presented here: courts typically provide extensive policy analysis when

aneous because it confuses *Rooker-Feldman* with standing. See *supra* note 205 and accompanying text.

²³³ See *supra* notes 134-38 and accompanying text (explaining this argument). The result might have been different if, for example, the state court had addressed and necessarily decided the opt-out issue in its opinion. Cf. *Thomas v. Albright*, 77 F. Supp. 2d 114, 119-23 (D.D.C. 1999) (relying on the relitigation exception to the Anti-Injunction Act to enjoin a state malpractice suit seeking to mount a collateral attack on a judgment of the district court upholding a settlement agreement after explicitly addressing and deciding the claims of the state court plaintiffs). This shows one way in which *Rooker-Feldman* can sometimes overlap with preclusion doctrines.

²³⁴ *Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348, 1351 (7th Cir. 1996) (Easterbrook, J., dissenting from the denial of rehearing en banc) ("[P]laintiffs' claim against the *Hoffman* class counsel . . . is not a collateral attack on a judgment.").

²³⁵ E.g., Sherry, *supra* note 7, at 1124.

²³⁶ See, e.g., WRIGHT ET AL., *supra* note 9, § 4469.1 (describing an "ever-present risk" that *Rooker-Feldman*'s jurisdictional label will "stop up thought"); Bandes, *supra* note 10, at 1178 (asserting that *Rooker-Feldman* "gives courts implicit permission to fail to discuss the policies inherent in the decision to deny jurisdiction, on the apparent theory that since the doctrine is mandatory, such policies are irrelevant").

²³⁷ Many cases applying *Rooker-Feldman*, after all, engage in substantial analysis, and there is just as much flexibility in jurisdictional doctrines as in other doctrines. Furthermore, *Davis* may have had such little analysis because the case was unreported and accordingly the rationale was not fully explained. Finally, as noted *supra* in note 155, the Seventh Circuit may have short, unreported opinions on *Rooker-Feldman* (such as *Davis*) because it has the most developed case law on the subject.

applying the various abstention doctrines or the relitigation exception. The problem of failing to identify the "policies at risk"²³⁸ disappears when all of the relevant competing policies are fully explained. Any court considering the application of *Rooker-Feldman* should address the issues of jurisdiction, abstention, federalism, collateral attacks, and preclusion. In any event, recognizing the policies animating *Rooker-Feldman* and treating it as an abstention doctrine may alter its "status as jurisdictionally inflexible, its amorphous relationship to federalism, and its insufficient articulation" which currently make "unprincipled application too easy," thereby avoiding results such as the one in *Davis*.²³⁹

V. WHEN AND HOW SHOULD THIS FRAMEWORK APPLY?

It is easier to consider the approach to *Rooker-Feldman* presented in Part IV through an illustration. The following hypothetical, as should be immediately clear, is based loosely on *Bush v. Palm Beach County Canvassing Board*.²⁴⁰ Imagine an extremely close election generating several lawsuits. Imagine further that claims regarding a recount could potentially be raised under both state and federal law, as was the case in Florida. For the sake of simplicity, assume that the relevant claims are that the state election law was violated and that the state election law violates the Equal Protection Clause and the First Amendment.

Imagine, for the purposes of this hypothetical, that a single suit was filed in state court. Several outcomes are possible:²⁴¹ the state court could rule on both the state law and the constitutional issues, and a subsequent suit could be filed in federal court raising the constitutional issues again ("Scenario 1"); the state court could rule on the state law issues only, and a subsequent suit could be filed in federal court raising the constitutional issues ("Scenario 2"); or the state court could rule on the state law issues only, and a subsequent suit could be filed in federal court alleging that the state court decision itself violated both federal law and the separation of powers provisions of the Constitution ("Scenario 3").

Should the federal suit be permitted in Scenario 1? Based on preclusion doctrines, the answer is clearly no—both *res judicata* and col-

²³⁸ Bandes, *supra* note 9, at 1194.

²³⁹ *Id.* at 1204.

²⁴⁰ 121 S. Ct. 471 (2000).

²⁴¹ The list presented here is, of course, noninclusive.

lateral estoppel should apply to the federal court claims.²⁴² But what about *Rooker-Feldman*? Because the state court explicitly determined that the statutes were constitutional, general claims that the statutes are unconstitutional would be barred.²⁴³ Similarly, claims that the state court gave effect to statutes that were unconstitutional and therefore violated the Constitution itself would also be barred.²⁴⁴ In Scenario 1, then, both *Rooker-Feldman* and preclusion would bar the federal claims. In this situation, the doctrines overlap.²⁴⁵

In Scenario 2, the state court ruled only on state law and the subsequent federal suit raised the constitutional issues. Again, the preclusion analysis is relatively straightforward: collateral estoppel would not apply since the constitutional issues were not litigated and necessarily decided in the state suit, but *res judicata* probably would apply because the constitutional claims should have been raised in the state suit.²⁴⁶ The *Rooker-Feldman* analysis is similar to that in Scenario 1, but slightly different. Once again, if the federal court claims asserted that the state court violated the Constitution by giving effect to unconstitu-

²⁴² This result might not hold in a jurisdiction that had a mutuality requirement for its preclusion doctrines if the federal court plaintiff added additional parties, such as the state court judge or the state court, to the second suit.

²⁴³ The general challenges allowed by *Feldman* are only permissible when they "do not require review of a judicial decision in a particular case." D.C. Court of Appeals v. Feldman, 460 U.S. 462, 487 (1983). That is, because the state court determined the constitutional issues in Scenario 1, which it was entitled to do, see *Howlett v. Rose*, 496 U.S. 356, 370 n.16 (1990) ("[S]tate courts presumptively have the obligation to apply federal law to a dispute before them."), the general challenge in the federal suit would amount to a collateral attack on that judicial determination of the state court, and as such would be disallowed by *Rooker-Feldman*.

²⁴⁴ According to the Court's statement in *Howlett*, this claim would be barred. See *Howlett*, 496 U.S. at 370 n.16 ("[A] federal district court cannot entertain an original action alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute.").

²⁴⁵ The overlap in Scenario 1 is admittedly confusing. It is this situation that gives rise to the two common objections to *Rooker-Feldman* discussed *supra* in Part III: that it is unnecessary and that it leads to bad results. In this case, it is unnecessary to the outcome—although that may not be a reason to discard the doctrine, see *supra* text accompanying notes 185-88 (arguing that the relitigation exception is similarly redundant but that this is not necessarily problematic)—and it has the potential to create unusual results because it is confusing. It is no more confusing, however, than the collateral estoppel inquiry into whether issues were litigated and necessarily decided; indeed, part of the *Rooker-Feldman* analysis in Scenario 1—arguably the most confusing part—is nearly identical to the collateral estoppel analysis.

²⁴⁶ Indeed, it is generally required that "federal question[s] arising from . . . state case[s] must first be presented to the state courts for decision." *Howlett*, 496 U.S. at 370 n.16.

tional statutes, the claims would be barred.²⁴⁷ To the extent that the federal court claims mounted a general attack on the constitutionality of the state statutes, however, they would not be collateral attacks on the state judgment, read narrowly, and they would therefore be permitted by *Rooker-Feldman*.²⁴⁸ Scenario 2 thus represents a situation in which preclusion would apply and *Rooker-Feldman* would not.

Finally, in Scenario 3, the state court again ruled only on state law and the subsequent federal suit alleged that the state judgment itself violated federal laws and the Constitution. The federal claim is different from the one in Scenario 2 because it alleges that the state court decision itself created an independent constitutional violation rather than that it enforced an unconstitutional statute.²⁴⁹ This Scenario presents questions of sovereign and judicial immunity that are beyond the scope of this Comment. The preclusion analysis in Scenario 3 is more interesting: collateral estoppel again would not apply because the federal issues were not litigated and necessarily decided in the state suit, and res judicata arguably also would not apply because the harm alleged arose from a separate set of operative facts. *Rooker-Feldman*, however, would apply to bar the federal suit because the suit seeks to undermine the state court judgment.

It is important to distinguish Scenario 3 from both *Pennzoil* and *Kamilewicz*. In *Pennzoil*, Texaco claimed that, after the state court decision, it was placed in a position that made the application of the Texas bond and lien statutes unconstitutional.²⁵⁰ *Rooker-Feldman* did not bar these claims because Texaco did not mount a collateral attack on the state court judgment. Similarly, the claim in *Kamilewicz* was, at least in part,²⁵¹ that even if the Alabama court had correctly determined that

²⁴⁷ *Id.*

²⁴⁸ This is exactly the type of general challenge allowed by *Feldman*, because it does not require review of a state judicial decision. 460 U.S. at 487; cf. *supra* note 243.

²⁴⁹ Both of these arguments were presented to the Court in *Rooker*. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414-15 (1923). See generally *supra* Part II.A (discussing *Rooker*).

²⁵⁰ Texaco also claimed that the state judgment violated federal law and the Constitution, but the Second Circuit held that *Rooker-Feldman* barred these claims. *Texaco Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1137 (2d Cir. 1986) (citing *Rooker* and *Feldman* to support the proposition that "all other claims asserted in Texaco's complaint must be dismissed for lack of subject matter jurisdiction since they seek appellate review on the merits of the Texas judgment in violation of 28 U.S.C. § 1257 as interpreted by the United States Supreme Court"), *rev'd on other grounds*, 481 U.S. 1 (1987).

²⁵¹ See *supra* note 128 and accompanying text (noting that the *Kamilewicz* plaintiffs also tried to sue the Bank of Boston in order to mount a collateral attack on the Alabama state judgment).

the settlement was fair to the class as a whole, the class counsel should have advised the *Kamilewicz* plaintiffs to opt out of the settlement. Again, the federal claim was not that the state court had erred. In Scenario 3, however, the premise of the federal suit is essentially that the state court “wrongly decided the issues before it.”²⁵²

Scenario 3 thus represents a situation in which *Rooker-Feldman* alone, and not preclusion or abstention, would apply. In other instances, such as Scenario 1, the doctrines overlap, but in Scenario 3 they do not. The result in Scenario 3, that *Rooker-Feldman* bars the federal claims, seems to be correct: the federal claims will not be precluded, but they are counter to the principles of federalism and comity articulated, among other places, in *Younger v. Harris*.²⁵³ It is improper for lower federal courts to engage in such review—whether considered appellate review or a collateral attack—of a state court.²⁵⁴ In the language of *Rooker-Feldman*, the federal claims in Scenario 3 are “inextricably intertwined” with the state court judgment because they can only succeed to the extent that the state court was wrong.

CONCLUSION

The *Rooker-Feldman* doctrine currently “encourages jurisdictional helplessness, because it offers federal courts the option of lightening their docket without taking the responsibility for ousting any particular federal claimant.”²⁵⁵ A much better approach would be to consider the context of each case and analyze the particular state and federal interests at stake, determining when, in the interests of federalism and comity, a federal court should abstain from hearing a suit that amounts to a collateral attack on a prior state court judgment. This type of “judicial articulating and weighing of competing interests”²⁵⁶ occurs frequently in the context of the relitigation exception to the Anti-Injunction Act and the various abstention doctrines, which are animated by the same policies as *Rooker-Feldman*. An approach to *Rooker-Feldman* offering a clear recognition of those policies would

²⁵² *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring in judgment).

²⁵³ 401 U.S. 37, 44 (1971); see *supra* note 215 (quoting *Younger*); see also *Texaco*, 784 F.2d at 1142-43 (discussing this policy rationale for *Rooker-Feldman*).

²⁵⁴ See, e.g., *Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 296 (1970) (“[L]ower federal courts possess no power whatever to sit in direct review of state decisions.”).

²⁵⁵ Bandes, *supra* note 9, at 1207.

²⁵⁶ *Id.* at 1206.

overcome the two strongest criticisms of the doctrine by simultaneously giving *Rooker-Feldman* an independent purpose and avoiding misapplication due to a lack of analysis.