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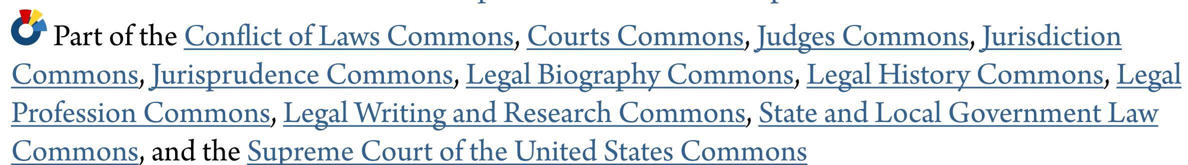
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Justice Blackmun and Preclusion in the State-Federal Context*

Karen Nelson Moore**

I. Introduction

Justice Blackmun's contributions to the development of the law in numerous areas demonstrate a commitment to individual rights, an appreciation for the real effects of a decision on the lives of the litigants, and a sense of history. These characteristics are reflected in a series of opinions written by Justice Blackmun a decade ago in the field of preclusion or res judicata, addressing whether state court adjudication should have preclusive effects on subsequent federal court litigation. Although several of these opinions were written by Justice Blackmun as dissents or concurrences, together these opinions also show his devotion to the development of law in a principled way in a significant area of state-federal relationships.

Under accepted doctrines of preclusion, when issues or claims have been litigated in one case, the parties are precluded from relitigating them in a subsequent case.[1] Merger and bar, also known as claim preclusion or res judicata, prevent a party from bringing a subsequent suit based upon a claim which has been decided by a final judgment in an earlier case involving the same parties.[2] Issue preclusion or collateral estoppel prevents a party from relitigating an issue which has already been decided by a court in a case involv-

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I wish to thank my research assistant Karen Evans for her able assistance.

1. *See generally* Cromwell v. County of Sac, 94 U.S. (4 Otto) 351, 352-53 (1876) (describing claim and issue preclusion). Issue preclusion requires that the precise issue has been litigated and determined in the prior case, whereas claim preclusion applies to prevent subsequent litigation "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Id.* at 352.

2. *Id.*

ing the party to be bound by the judgment.[3] These doctrines of preclusion have evolved over the years largely in the context of multiple cases within the same jurisdiction.[4]

Much more complicated preclusion problems arise when subsequent litigation occurs in a jurisdiction different from the initial forum. When the initial forum is a state court, and preclusion is sought in a subsequent federal court, issues of federalism, the appropriate roles of the federal and state courts, and specific aspects of particular federal statutes must be confronted. In this area, Justice Blackmun has demonstrated his commitment to individual rights, his appreciation for the real effects of a decision on the lives of the litigants, and his sense of history.[5]

II. *ALLEN V. MCCURRY*

An overview of Justice Blackmun's jurisprudence on preclusion in the state-federal context should begin with his dissenting opinion in *Allen v. McCurry*.[6] In this case McCurry was convicted in state court of possession of heroin and assault with intent to kill. At a pretrial suppression hearing the trial judge refused to suppress evidence seized in plain view during a warrantless search of a house, but excluded evidence seized from inside dresser drawers and automobile tires. Because the Fourth Amendment claim had been addressed by the trial court, McCurry could not file a petition for a writ of habeas corpus in federal court.[7] Instead, McCurry filed

3. *Id.*

4. *See generally* RESTATEMENT (SECOND) OF JUDGMENTS 2 (1982) [hereinafter RESTATEMENT SECOND].

5. Since this article focuses on Justice Blackmun's opinions in the area of preclusion in the state-federal context, it does not deal with all the issues raised by intersystem judicial preclusion. *See generally* Robert C. Casad, *Symposium: Preclusion in a Federal System*, 70 CORNELL L. REV. 599 (1985) (raising and discussing a number of other preclusion issues in the state-federal context, *e.g.*, preclusion in diversity cases). Some commentators have denominated the broad problem area as "intersystem preclusion." *See, e.g.*, MAURICE ROSENBERG, HANS SMIT & ROCHELLE COOPER DREYFUSS, ELEMENTS OF CIVIL PROCEDURE CASES AND MATERIALS 1021 (5th ed. 1990); JOHN J. COUND ET AL., CIVIL PROCEDURE CASES AND MATERIALS 1215, 1219 (5th ed. 1989); Robert C. Casad, *Intersystem Issue Preclusion and the* Restatement (Second) of Judgments, 66 CORNELL L. REV. 510 (1981). Others have utilized the term "interjurisdictional preclusion." *See, e.g.*, Stephen B. Burbank, *Interjurisdictional Preclusion and Federal Common Law: Toward a General Approach*, 70 Cornell L. Rev. 625 (1985); RESTATEMENT SECOND, *supra* note 4, at 3.

6. 449 U.S. 90, 105-16 (1980).

7. Stone v. Powell, 428 U.S. 465 (1976) (holding that where the State provides an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained through an unconstitutional search was introduced at trial).

a complaint in federal court seeking damages under 42 U.S.C. section 1983 from the officers who had seized the evidence from his home. He further alleged a conspiracy to violate his Fourth Amendment rights, an unconstitutional search and seizure, and an assault on him after his arrest and handcuffing.

In an opinion written by Justice Stewart, the Court concluded that the normal rules of preclusion should apply in section 1983 suits, notwithstanding the unavailability of federal habeas corpus relief. According to the majority, since McCurry had had one chance to litigate fully the issue of unconstitutional conduct in the pretrial suppression hearing in the state criminal trial, he should be precluded from relitigating the issue in the federal section 1983 action.[8] Noting that the federal appellate courts had generally upheld the applicability of normal preclusion rules to section 1983 cases, the majority concluded that neither the language of section 1983 nor its legislative history suggested that Congress intended to restrict the usual doctrines of preclusion or the normal scope of the Full Faith and Credit Act, section 1738.[9] The majority read section 1738 as "specifically requiring all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so."[10]

The majority recognized that Congress intended in section 1983 to change the balance of power between state and federal courts, but believed that Congress simply intended for the federal courts to operate where the "state courts were unable or unwilling to protect federal rights."[11] Where there was a full and fair opportunity to litigate in the state courts, the normal rules of preclusion should apply in subsequent federal court litigation. The absence of opportunity for federal habeas review after *Stone v. Powell*[12] "has no bearing on section 1983 suits or on the question of the preclusive effect of state-court judgments."[13]

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8. Technically, the Court decided only that the doctrine of issue preclusion was applicable to McCurry's federal § 1983 suit, but it did "not decide *how* the body of collateral-estoppel doctrine or 28 U.S.C. § 1738 should apply in this case." 449 U.S. at 105 n. 25.

9. *Id.* at 97-98. 28 U.S.C. § 1738 (1988) provides that "[J]udicial proceedings [of a state court] 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. . . ."

10. 449 U.S. at 96.

11. *Id.* at 101; *see generally id.* at 99-101.

12. 428 U.S. 465 (1976).

13. Allen v. McCurry, 449 U.S. 90, 103 (1980). Basically the majority believed that *Stone v. Powell* involved only issues of federal habeas jurisdiction, and that there was no reason to provide opportunity for federal relitigation after state crim-

Justice Blackmun's dissent focused on the legislative history of section 1983, the federal policies fostered by the statute, and the realities of a criminal defendant's posture in the earlier state criminal litigation. These factors led Justice Blackmun, joined by Justices Brennan and Marshall, to conclude that the application of issue preclusion here "works injustice on this § 1983 plaintiff, and it makes more difficult the consistent protection of constitutional rights, a consideration that was at the core of the enacters' intent."[14] Justice Blackmun's dissenting opinion in *Allen* demonstrates the key characteristics of his jurisprudence: a devotion to individual rights, an appreciation of the effects of a decision on the real people involved, and a sense of history.

Justice Blackmun provided a thorough and thoughtful analysis of the legislative history of section 1983. Because section 1983 is silent regarding the preclusive effects of prior state court judgments, the Court had previously given substantial weight to the congressional intent.[15] In rejecting the view of the majority that the enacting Congress was concerned simply with assuring procedural regularity, Justice Blackmun evaluated the legislative history and concluded that "Congress consciously acted in the broadest possible manner,"[16] so as to ensure the substantive justice which might not be obtained in the state courts when constitutional rights were at stake.[17] In enacting section 1983, Congress intended to provide remedies for constitutional violations not effectively available in state court. Therefore, it was "senseless to suppose that they would have intended the federal courts to give full preclusive effect to prior state adjudications."[18]

Justice Blackmun also emphasized in his opinion how the preclusion issue in *Allen* fit within the existing section 1983 jurisprudence. In view of two critically important section 1983 opinions of the Court, *Monroe v. Pape*[19] and *Mitchum v. Foster*,[20] Justice Blackmun emphasized that the purpose of the statute was to restructure federal and state relations, and to provide a remedy regardless of

inal cases simply because of the restrictions on criminal defendants' choices. *Id.* at 103-04.

14. *Id.* at 106.

15. *Id.*

16. *Id.* at 109.

17. Allen v. McCurry, 449 U.S. 90, 106-110 (1980).

18. *Id.* at 110.

19. 365 U.S. 167 (1961), *overruled in part*, Monell v. Department of Social Servs., 436 U.S. 658 (1978).

20. 407 U.S. 225 (1972).

the circumstances of state law.[21] The only prior precedent of the Court addressing preclusion in section 1983 cases, *England v. Medical Examiners*,[22] had permitted preclusion only where "'a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there, and has them decided there . . . .'"[23] Justice Blackmun believed that the majority's approach in *Allen* wrongly abandoned these precedents.[24]

After reviewing the principles of preclusion, Justice Blackmun criticized the majority's emphasis on only one factor—the availability of a full and fair opportunity to litigate an issue in an earlier case—as necessary to preclude subsequent federal litigation of a section 1983 issue. Instead, Justice Blackmun believed that the doctrines of preclusion did not require such a narrow scope of limitations. In light of the policies behind section 1983, he believed that all relevant factors should be considered in each case before applying preclusion.[25] In *Allen*, a number of factors compelled refusing preclusion. First, since nonmutual collateral estoppel was unknown at the time of the enactment of section 1983, the enacting Congress clearly would not have envisioned precluding a criminal defendant from bringing a subsequent constitutional claim against the police.[26] Second, the nature of the decisional process in a state criminal trial differs substantially from that in a section 1983 action.[27] Finally, a state criminal defendant does not voluntarily choose to litigate the issue of a Fourth Amendment violation in the state court. Since realistically the state criminal defendant must raise all issues in the criminal proceeding, he cannot be viewed as freely submitting his

21. 449 U.S. at 111.
22. 375 U.S. 411 (1964).
23. 449 U.S. at 112 (quoting England v. Medical Examiners, 375 U.S. 411, 419 (1964)).
24. 449 U.S. at 112.
25. *Id.* at 113.
26. *Id*. at 114-15.
27. *Id.* at 115. Justice Blackmun noted a number of differences:

> The remedy sought in [a § 1983 proceeding] is utterly different. In bringing the civil suit the criminal defendant does not seek to challenge his conviction collaterally. At most, he wins damages. In contrast, the exclusion of evidence may prevent a criminal conviction. A trial court, faced with the decision whether to exclude relevant evidence, confronts institutional pressures that may cause it to give a different shape to the Fourth Amendment right from what would result in civil litigation of a damages claim. Also, the issue whether to exclude evidence is subsidiary to the purpose of a criminal trial, which is to determine the guilt or innocence of the defendant, and a trial court, at least subconsciously, must weigh the potential damage to the truth-seeking process caused by excluding relevant evidence.

Id.

federal claims to the state court for decision.[28] Hence, Justice Blackmun concluded that it is "fundamentally unfair" to require the state criminal defendant to make an unalterable choice between having his claim heard in federal court or raising his defense in the state criminal proceeding against him.[29]

Justice Blackmun's dissenting opinion in *Allen* reflects three fundamental themes of his jurisprudence. He clearly demonstrates a commitment to individual rights by emphasizing the broad remedial purposes of section 1983 and the importance of an individual's ability to raise claims of constitutional violation in federal courts. Moreover, his emphasis on individual rights also reflects a real appreciation for the individual rights of this specific litigant, and the effects of this decision on the litigant. He appreciates that a criminal defendant in fact has no choice whether to raise a claim of a Fourth Amendment violation in a state criminal proceeding; the claim must be raised or the defendant will face a greater risk of conviction. Those circumstances in reality mean that the criminal defendant has not *chosen* to litigate the issue in state court, and should not be considered to have made a voluntary choice to forego a federal forum.[30] Finally, Justice Blackmun is sensitive to the pur-

28. Allen v. McCurry, 449 U.S. 90, 115 (1980).

29. *Id.* at 116. His emphasis on fairness for the individual involved is perhaps all the more significant given his general position in fourth amendment cases. *See* Stephen L. Wasby, *Justice Harry A. Blackmun in the Burger Court*, 11 HAMLINE L. REV. 183, 212, 235-39 (1988) (describing Justice Blackmun's position in fourth amendment cases). Moreover, Justice Blackmun had joined the majority in Stone v. Powell, 428 U.S. 465 (1976), holding that a state court criminal defendant could not raise fourth amendment claims in a subsequent federal habeas case, unless he had been denied any opportunity to litigate in state court.

30. Subsequently, the Court in a unanimous opinion by Justice Marshall in Haring v. Prosise, 462 U.S. 306 (1983), concluded that where a criminal defendant has pleaded guilty, and thus had not litigated the validity of a search and seizure, he may file a later action in federal court under § 1983 raising fourth amendment violations. Justice Marshall stated that "additional exceptions to collateral estoppel may be warranted in § 1983 actions in light of the 'understanding of § 1983' that 'the federal courts could step in where the state courts were unable or unwilling to protect federal rights.' " *Id.* at 313-14 (quoting Allen v. McCurry, 449 U.S. 90, 101 (1980)). In a footnote Justice Marshall also noted that the Court had "recognized various other conditions that must also be satisfied before giving preclusive effect to a state-court judgment." 462 U.S. at 313 n. 7.

In *Haring* the Court first considered the relevant state law and concluded that the state courts would not preclude the state criminal defendant who pleaded guilty from subsequently litigating the validity of the search, and thus that § 1738 would not prevent the § 1983 action. 462 U.S. at 314-17. The Court also determined that it should not create a special federal rule of preclusion here because the guilty plea did not constitute an admission or waiver of the fourth amendment claim, and that a rule of preclusion here "would threaten important interests in preserving federal courts as an available forum for the vindication of constitutional rights," *id.* at 322, and "would be wholly contrary to one of the central concerns

poses of section 1983 as revealed by the legislative history and the history of the era in which it was enacted.

III. *FEDERATED DEPARTMENT STORES, INC. V. MOITIE*

Justice Blackmun wrote another opinion addressing preclusion in the state-federal context in *Federated Department Stores, Inc. v. Moitie*.[31] In this case the Court held that a party who has failed to appeal an initial adverse judgment by a federal court may not relitigate its claim in a subsequent action after other parties had successfully appealed the first judgment.[32]

In *Moitie*, Justice Blackmun wrote a concurring opinion in which he expressed two significant reflections on preclusion doctrine. First, while agreeing with the result in the case, he criticized the majority for failing to recognize that there may be some situations where preclusion doctrine should be tempered by "'overriding

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which motivated the enactment of § 1983, namely, the 'grave congressional concern that the state courts had been deficient in protecting federal rights.' " *Id.* at 323 (quoting *Allen*, 449 U.S. at 98-99). Since there had not been any adjudication at all of the issues regarding the search which might provide a basis for the § 1983 claim, the basic theory supporting preclusion, of conserving scarce judicial resources, was inapplicable. 462 U.S. at 322 n. 11.

31. 452 U.S. 394 (1981).

32. In *Moitie* the plaintiffs brought six separate suits in the U.S. district court seeking treble damages for federal antitrust violations. Moitie's complaint referred only to state law and was filed in the state court, but the case was removed to federal court and joined with the others. The U.S. district court dismissed the actions for failure to allege an injury to the plaintiffs' business property. Five plaintiffs appealed, but the plaintiffs in question (Brown and Moitie) instead filed two new actions in state court purporting to raise only state law claims. Since the new complaints made allegations similar to the initial complaints, the defendants removed the new cases to the U.S. district court and sought dismissal on the ground of res judicata. Viewing the complaints as raising "essentially federal law" claims, the district court dismissed, relying on the doctrine of res judicata. 452 U.S. at 396. Meanwhile the court of appeals had reversed and remanded the appealed cases. When faced with an appeal in the second *Brown* and *Moitie* cases, the Ninth Circuit concluded that the doctrine of res judicata should be tempered by public policy and simple justice concerns, and permitted the nonappealing plaintiffs to benefit from the successful appeal of the substantially identical parties. Moitie v. Federated Dep't Stores, Inc., 611 F.2d 1267, 1269-70 (9th Cir.1980), *rev'd*, 452 U.S. 394 (1981). The Supreme Court, in a majority opinion by Justice Rehnquist, concluded that there were no grounds for exception to the normal rules of preclusion, and that there was "no general equitable doctrine" which would provide an exception to preclusion where another party with similar claims prevailed on appeal. 452 U.S. at 400. The plaintiffs had made "a calculated choice to forgo their appeals." *Id.* at 400-401. The Court refused to consider whether the first suit should be viewed as preclusive of any possible purely state law claims involved in the second suit, and simply held that the first suit was res judicata regarding the plaintiffs' federal-law claims, and reversed and remanded for further proceedings. *Id.* at 402.

concerns of public policy and simple justice.'"[33] He provided examples, such as where there are unusual procedural complexities, or where the rights of the various parties are inextricably intertwined, as justification for a nonappealing party avoiding application of preclusion doctrine.[34] Since those factors were not present in this case, he concurred with the majority opinion barring relitigation of the federal claims.

Second, in *Moitie*, Justice Blackmun addressed the relationship between the federal and state claims. He believed that the state law claims should be barred from relitigation, just as well as the federal law claims.[35] Under normal doctrines of claim preclusion, the first decision precludes future litigation of all matters which might have been raised in the first suit, whether or not those matters were actually raised, as long as they are related to the same claim which was decided.[36] In view of the pendent jurisdiction of the federal court, the plaintiffs should have raised their state law claims in the first action, and thus should be barred from litigating the second suit, whether based on federal or state claims arising out of the transaction.[37]

In *Moitie*, Justice Blackmun expressed his view that preclusion doctrine should not be rigidly applied, and that on occasion fundamental justice concerns should overcome traditional principles of preclusion. Moreover, he considered federalism implications of preclusion in the context of a federal court and its capacity to adjudicate state claims. Unlike the majority, he was willing to conclude here that prior federal court resolution can have claim preclusion effect regarding state law claims which could have been filed in federal court.[38]

33. 452 U.S. at 403 (quoting Moitie v. Federated Dep't Stores, Inc., 611 F.2d 1267, 1269 (9th Cir. 1980)).

34. 452 U.S. at 403.

35. *Id.* at 404. Justice Marshall joined the opinion.

36. *Id.* Justice Blackmun relied on Commissioner v. Sunnen, 333 U.S. 591, 597 (1948), and RESTATEMENT (SECOND) OF JUDGMENTS § 61.1 (Tent. Draft No. 5, Mar. 10, 1978). *See also* RESTATEMENT SECOND, *supra* note 2, at §§ 24-25; 18 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4406 (1981).

37. Justice Brennan also agreed that the final judgment of the first case precluded relitigation of the same claim on a state law theory. 452 U.S. at 410-11. However, he wrote a dissenting opinion concluding that the second suit was entirely based on state law, and should not have been removed to the federal court because of lack of subject matter jurisdiction; therefore, dismissal on jurisdictional grounds would be appropriate. *Id.* at 404-05.

38. *See infra* notes 72-77 and accompanying text (discussing implications of Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75 (1984), for filings in federal court of state law claims under federal court's pendent jurisdiction).

IV. *KREMER V. CHEMICAL CONSTRUCTION CORP.*

In *Kremer v. Chemical Construction Corp.*[39] the Court again required a federal court to give preclusive effect to a prior state court decision. Justice Blackmun once again wrote a strong dissenting opinion. *Kremer* involved a discrimination claim that a discharge and failure to rehire were based on the national origin and religion of the former employee. Initially Kremer filed a discrimination charge with the EEOC, which, pursuant to statute, referred the claim to the relevant state agency.[40] The state agency determined that there was no probable cause to believe that the defendant had engaged in discriminatory practices—a determination which was upheld by the state agency's appeal board as "not arbitrary, capricious or an abuse of discretion."[41] The appeal board's decision was affirmed by the Appellate Division of the New York Supreme Court. Kremer requested further action by the EEOC, but a district director of the EEOC found that there was no reasonable cause to believe the charge of discrimination and issued a right-to-sue notice.[42] Kremer then filed a Title VII action in the U.S. District Court. The Supreme Court, in an opinion by Justice White, affirmed the lower courts' conclusions that the federal complaint should be dismissed on grounds of preclusion.[43]

The majority in *Kremer* believed that there was no justification for departing from the usual preclusion rules, or from the requirements of the Full Faith and Credit Act.[44] Since the decision of the Appellate Division of the New York Supreme Court would preclude any other action in the New York courts, the majority held that section 1738 precluded any further action in federal court on the same claim.[45] Reading *Allen v. McCurry* to require an express or implied partial repeal of section 1738 in subsequent legislation, the majority concluded that neither the statutory language nor the legislative history demonstrated a "clear and manifest"[46] intent on

39. 456 U.S. 461 (1982).

40. *Id.* at 463-64 (describing statutory framework, 42 U.S.C. § 2000e-5(c)).

41. *Id.* at 464.

42. This is pursuant to the statutory framework, 42 U.S.C. § 2000e-5f(1) and (3). *See* 456 U.S. at 465 n. 3.

43. 456 U.S. 461 at 485. The Court did not expressly decide whether it was applying issue or claim preclusion, but stated that both doctrines would effectively bar the subsequent federal suit. *Id.* at 481-82 n. 22.

44. *See supra* note 9.

45. 456 U.S. at 466-67.

46. *Id.* at 485.

the part of Congress in Title VII to depart from the preclusion requirements of section 1738.[47]

In his forceful dissent, Justice Blackmun focused on the structure of Title VII, the legislative history of the statute, the prior Supreme Court jurisprudence analyzing the statute and congressional intent, the policies involved, and the effects of the Court's decision on real people who will be trapped by the decision.[48] Again, Justice Blackmun demonstrated an appreciation of history, both the history behind the statute and the precise legislative history, an earnest effort to protect individual rights, and an understanding of the real effects of the decision upon the claimant.

Examining the structure of the statute, Justice Blackmun concluded that Congress clearly intended that a plaintiff could sue in federal court despite a finding by a state agency of no discrimination.[49] In 1972, Congress had amended Title VII to provide that the EEOC should "accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced

47. *Id.* at 468-76. This approach of the majority has been criticized as an incorrect interpretation of § 1738. *See* Stephen B. Burbank, *Interjurisdictional Preclusion and Federal Common Law: Toward A General Approach*, 70 CORNELL L. REV. 625, 639 (1985). Professor Burbank argues that Congress did not choose automatic application of the relevant state's domestic preclusion laws when it enacted § 1738, and that "[s]tate preclusion rules that are hostile to or inconsistent with federal substantive policies must yield to federal common law domestically, and the statute makes the domestic solution binding nationally." *Id.* at 639-40. Thus, Professor Burbank would analyze these cases as raising problems of federal common law. *See also* Stephen B. Burbank, *Afterwords: A Response to Professor Hazard and a Comment on* Marrese, 70 CORNELL L. REV. 659, 665 (1985). Professor Burbank develops his theory more fully in a subsequent article. Stephen B. Burbank, *Interjurisdictional Preclusion, Full Faith and Credit and Federal Common Law: A General Approach*, 71 CORNELL L. REV. 733 (1986). *But see* Gene R. Shreve, *Preclusion and Federal Choice of Law*, 64 TEXAS L. REV. 1209, 1228 (1986) (stating that "[i]t is clear that, subject to constitutional restraints and the possibility of a statutory exception, section 1738 requires federal courts to give state judgments as much preclusive effect as they would have under state law." (Citations omitted)); David Currie, *Res Judicata: The Neglected Defense*, 45 U. CHI. L. REV. 317, 326 (1978) (stating that § 1738 requires that law of state rendering judgment be applied in subsequent federal action).

48. 456 U.S. at 486. Justice Blackmun's dissenting opinion was joined by Justices Brennan and Marshall. Justice Stevens wrote a separate dissenting opinion, which largely agreed with Justice Blackmun. *Id.* at 508.

49. *Id.* at 487. Subsequently, in University of Tennessee v. Elliott, 478 U.S. 788, 796 (1986), the Court concluded that "Congress did not intend unreviewed state administrative proceedings to have preclusive effect on Title VII claims." Justice Blackmun joined Justice Stevens' opinion dissenting from another aspect of the Court's opinion which required federal courts to give a state administrative agency's factfinding the same preclusive effect in a subsequent federal § 1983 action that the state courts would afford. *Id.* at 799.

under State or local law."[50] This amendment demonstrated that Congress intended to permit subsequent suits in federal court, and did not intend to give preclusive effect to the earlier state proceedings.[51] Since the statute did not differentiate between state agency and state judicial review proceedings, all state findings were simply entitled to substantial weight rather than preclusive effect.[52] Moreover, the provision of a federal forum in section 706(c) of Title VII, available despite termination of state proceedings, would be inconsistent with a rule of preclusion after state court affirmance of agency action.[53]

Justice Blackmun evaluated the nature of the state court involvement in the review process as essentially the last step of administrative action, rather than a de novo review.[54] In Justice Blackmun's view, preclusive effect was being given to the state agency's decision that there was not probable cause to believe that discrimination had occurred. Since the standard of review for the state court was whether the state agency's decision was arbitrary, capricious, or an abuse of discretion, the state court's decision was not a decision on the merits of the plaintiff's claim but rather a decision on the propriety of agency action. Thus, under fundamental principles of preclusion, since the issues in the state and federal proceedings were different, preclusion could not apply.[55] In sum, Justice Blackmun criticized the Court for doing one of two things:

> either it is granting preclusive effect to the state agency's decision, a course that it concedes would violate Title VII, or it is misapplying § 1738 by giving preclusive effect to a state court decision that did not address the issue before the federal court. Instead of making one of these two mistakes, the Court should accept the fact that the New York state court judicial review is simply the end of the state administrative process, the state "proceedings."[56]

Justice Blackmun also painstakingly examined the legislative history of Title VII and concluded that this legislative history clearly established that Congress intended to afford a federal remedy and did not intend to make state administrative remedies exclu-

50. 456 U.S. at 488 (quoting Title VII, § 706(b), codified at 42 U.S.C. § 2000e-5(b)).
51. 456 U.S. at 488.
52. *Id.* at 489.
53. *Id.* at 490.
54. *Id.* at 490-91.
55. *Id.* at 493.
56. 456 U.S. at 494.

sive.[57] The legislative history revealed concern about the nature of state agency proceedings and demonstrated the desire to provide vigorous enforcement of civil rights.[58]

Justice Blackmun based his conclusion in part on prior Supreme Court decisions which indicated that Congress did not intend that prior proceedings would automatically preclude a subsequent Title VII suit.[59] While not precluding a subsequent federal suit after an unsuccessful state agency action, the Court's majority would have precluded a subsequent federal suit after a state court upheld such agency action as not arbitrary or capricious. This restriction by the majority disregarded what the Court had previously found to be a framework of "overlapping, independent, supplementary discrimination remedies."[60]

Finally Justice Blackmun described the real effects of the Court's decision. In view of the majority opinion, Justice Blackmun argued, a prudent complainant should avoid state court review of state agency action. If the complainant seeks state court review and loses, he will be precluded from a successful suit in federal court. But if the complainant foregoes state court review, he can go to the EEOC and then to federal court, where he will receive a de novo trial with the benefits of federal procedure. This elimination of the

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57. *Id.* at 496-97. Justice Blackmun noted that Congress did provide that the EEOC could enter into worksharing agreements with state agencies, which could provide that complainants could be remitted exclusively to remedies before the state agencies. *Id.*

58. *Id.* at 498-501.

59. Four key cases which Justice Blackmun discussed are McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (plaintiff can sue in federal court based on Title VII claim, despite prior EEOC determination of no reasonable cause); Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) (plaintiff can sue in federal court despite prior adverse arbitration under collective bargaining agreement); Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975) (Title VII and 42 U.S.C. § 1981 provide separate and distinct remedies for discrimination); and Chandler v. Roudebush, 425 U.S. 840 (1976) (plaintiff can bring Title VII suit despite prior Civil Service Commission affirmance of federal agency's rejection of discrimination claim).

60. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 502 (1982). Justice Blackmun cited the language of Alexander v. Gardner-Denver Co., 415 U.S. 36, 47-48 (1974) (emphasis added by Justice Blackmun):

> [L]egislative enactments in this area have long evinced a general intent to accord parallel or overlapping remedies against discrimination. . . . Title VII provides for consideration of employment-discrimination claims in several forums. . . . *And, in general, submission of a claim to one forum does not preclude a later submission to another. Moreover, the legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes*.

456 U.S. at 502-03.

review by state courts will have the ironic effect of weakening the quality of state agency decisionmaking, as well as diminishing the importance of state courts.[61] Moreover, for complainants who are unaware of the majority's rule, the decision to seek state court review will bar the federal forum. Justice Blackmun eloquently described their plight:

> [T]he Court, for a small class of discrimination complainants, has undermined the remedial purpose of Title VII. Invariably, there will be some complainants who will not be aware of today's decision. The Court has thus constructed a rule that will serve as a trap for the unwary *pro se* or poorly represented complainant. For these complainants, their sole remedy lies in the state administrative processes . . . the nature of the agency's deliberations combined with deferential judicial review can lead only to discrimination charges receiving less careful consideration than Congress intended when it passed Title VII. The Court's decision thus cannot be squared with the congressional intent that the fight against discrimination be a policy "of the highest priority."[62]

Given the nature of administrative decisionmaking in the area of discrimination, previously recognized by the Court in *McDonnell Douglas Corp.*,[63] and the deferential nature of state court review, Justice Blackmun concluded that the Court's decision would restrict the availability of Title VII relief. Such a restriction is unwarranted; the text, legislative history, and policies embodied in the statute "demonstrate that Congress contemplated relitigation of a discrimination claim in federal court, even though a state court had refused to disturb a state agency decision adverse to the complainant."[64]

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61. *Id.* at 504-05. Justice Blackmun described this as "a perverse sort of comity that eliminates the reviewing function of state courts in the name of giving their decisions due respect." *Id.* at 505. Moreover, he states that "[i]n this case, the Court has chosen preclusion over common sense, with the result that the state courts will decline, not grow, in importance." *Id.* at 506.

62. *Id.* at 506-07. *Cf.* Note, *The Changing Social Vision of Justice Blackmun*, 96 HARV. L. REV. 717, 731-32 (1983). The note cites *Kremer* in support of the proposition that "Justice Blackmun has repeatedly depicted in recent years a vision of aggrieved individuals threatened with losing their way in a legal maze. Such a perception has helped to generate doctrinal positions that seek to preserve the availability of legal resources and the judicial machinery." *Id.* at 731.

63. 411 U.S. 792 (1973). This case was described by Justice Blackmun in Kremer, 456 U.S. at 502.

64. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 508 (1982). Justice Blackmun carefully distinguished the situation involved in Kremer from a case where a state court had held a trial on the merits; in the latter case preclusion would apply. *Id.* Moreover, he noted that even a state court's affirmance of a state agency's decision could be admitted into evidence and accorded substantial (but not preclusive) weight. *Id.*

Justice Blackmun's approach in *Kremer* thus combined the three focal points of his analysis: a thorough grounding in the legislative history and policy of the statute (Title VII); an evaluation of the implications for effectuation of individual rights; and a recognition and description of the real effects of the decision on individuals. He concluded that preclusion is wrong here: not only did Congress intend to afford a federal remedy, but that remedy is important in effectuating full consideration of Title VII claims and in avoiding procedural traps for unwary or poorly advised litigants.

V. *MIGRA V. WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION*

In 1984 Justice Blackmun wrote the opinion for the unanimous Court in *Migra v. Warren City School District Board of Education*.[65] In *Migra*, the Court held that a plaintiff who lost a state court action raising state law claims may be barred under claim preclusion doctrines from bringing a subsequent suit in federal court which raises claims pertaining to the same transaction. This decision may seem to conflict with Justice Blackmun's previous dissents discussed above, but is in fact consistent with his prior views and continues to reflect the themes emphasized in this article.

Migra, whose employment was not renewed by the school board, brought suit in state court, claiming breach of contract by the school board and wrongful interference with her contract by the individual members of the board. The state court did not decide issues of conspiracy or individual member liability, but ruled that there was a binding contract which entitled Migra to reinstatement and compensatory damages. Migra successfully sought the state trial court to dismiss without prejudice the conspiracy and individual member liability issues.[66] Migra then filed suit in the U.S. district court against the school board, its individual members, and the superintendent of schools. She argued that her contract was not renewed because she had exercised her First Amendment rights, that she had been deprived of property without due process, and that she had been denied equal protection. Invoking 42 U.S.C. sections 1983 and 1985, Migra sought injunctive relief, and compensatory

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Subsequently, Justice Blackmun reiterated his view that *Kremer* impermissibly restricts effectuation of the congressional purpose of Title VII, and will result in avoidance of state courts by well-advised plaintiffs. Consolidated Foods Corp. v. Unger, 456 U.S. 1002, 1003-04 (1982) (Blackmun, J., concurring in remand for reconsideration in light of *Kremer*, but restating his objections to *Kremer*).

65. 465 U.S. 75 (1984).

66. The trial judge's decision was affirmed by the Ohio Court of Appeals, and review was denied by the Ohio Supreme Court. *Id.* at 79.

and punitive damages. The district court granted summary judgment on the basis of preclusion, and the Sixth Circuit affirmed.[67]

The issue for the Court in *Migra* was whether claim preclusion should apply to bar a subsequent federal section 1983 suit after state court litigation of related state law claims—an issue expressly left unresolved in *Allen v. McCurry*.[68] Despite the potential awkwardness involved in his prior role as chief dissenter in *Allen*, Justice Blackmun accurately reflected both the majority and dissenting views in *Allen*, placed *Migra* in context, and applied precedent in conjunction with his own analytical framework.

Justice Blackmun began with the principles established by the majorities in *Allen* and *Kremer* that the Full Faith and Credit Act, section 1738, requires that a subsequent federal court give the same preclusive effect to a prior state court judgment that the state court would give to its own prior judgment.[69] In *Allen* this general rule was applied to require issue preclusion in a subsequent federal section 1983 suit. The majority in *Allen* did not believe that either the language or the legislative history of section 1983 demonstrated an intent to depart from the normal rules of preclusion. In light of *Allen*, Justice Blackmun wrote in *Migra*: "[i]t is difficult to see how the policy concerns underlying section 1983 would justify a distinction between the issue preclusive and claim preclusive effects of state-court judgments."[70] Since issue preclusion and claim preclusion implicate similar concerns in section 1983 litigation, Justice Blackmun concluded that the decision in *Allen* logically permitted the application of claim preclusion in subsequent section 1983 cases in federal court.[71]

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67. *Id.* at 80.

68. 449 U.S. at 97 n. 10.

69. 465 U.S. at 81. As discussed above, these are decisions with which Justice Blackmun fundamentally disagreed. However, Justice Blackmun in *Migra* wrote the opinion for the Court, in light of the existing precedents of *Allen* and *Kremer*. Professor Robert Smith raises the question whether *Migra* "could be read to go even further [than *Allen* and *Kremer*] in its apparent reliance on a literal interpretation of section 1738." Robert H. Smith, *Full Faith and Credit and Section 1983: A Reappraisal*, 63 N. C. L. REV. 59, 79 (1984). He then explains that there was no occasion for the Court in *Migr*a to develop exceptions to the application of state law in determining claim preclusion, *id.* at 79-81, and he argues that *Migra* and the other precedents permit flexibility in developing exceptions that will allow the courts to accommodate § 1983 policies in individual cases. *Id.* at 106-123.

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

71. *Id.* at 84. In light of the resolution by the Court of the earlier cases, the real question remaining in *Migra* was simply whether there is a basis for treating claim preclusion differently from issue preclusion in § 1983 cases, or whether there were any other factors which would justify a different approach in *Migra*. Criticism of *Migra* for failing to appreciate the legislative history of § 1983 misses the mark—that issue was resolved adversely by the majority in *Allen. Cf.* Leanne B.

Justice Blackmun also considered Migra's argument that to deny claim preclusive effect would be advantageous in permitting litigants to bring state claims in state court and federal claims in federal court. He determined that the Full Faith and Credit Act emphasized respect for state court judgments, and was not designed simply to provide alternative fora for state and federal claims. He stated, "[t]his reflects a variety of concerns, including notions of comity, the need to prevent vexatious litigation, and a desire to conserve judicial resources."[72]

Finally, he pointed out that Migra had the initial free choice of whether to sue in state or federal court, and that a state court could have adjudicated her federal claims. Alternatively, unlike McCurry who had been a criminal defendant in the state court in *Allen*,[73] Migra could have proceeded first in federal court. Under these circumstances, Justice Blackmun concluded that it is appropriate to allow claim preclusion to apply in the subsequent federal court section 1983 action. The Court held that the "state-court judgment in this litigation has the same claim preclusive effect in federal court that the judgment would have in the Ohio state courts."[74]

De Vos, Comment, *Claim Preclusion and Section 1983 Civil Rights Actions:* Migra v. Warren City School District Board of Education, 70 IOWA L. REV. 287, 295-300 (1984). Notwithstanding Justice Blackmun's conviction expressed in his earlier dissenting opinions that the majority was wrong in *Allen*, his approach in *Migra* reflects respect for the principle of stare decisis and for precedent. *But cf. supra* note 64.

72. 465 U.S. at 84. Again this emphasis on the application of § 1738 reflects the weight of the Court's prior majority opinions in *Allen* and *Kremer*.

73. It is primarily at this point that Justice Blackmun noted his prior opinion dissenting in *Allen*. He described his opinion there as heavily influenced by the posture of the § 1983 plaintiff in the prior state litigation as a criminal defendant, and distinguished Migra as one who was in control in determining where she wished to file suit initially. He also pointed out that if suit is initially filed in federal court, and the federal court abstains from ruling on federal claims pending state court resolution of state claims, a plaintiff can preserve her right to federal court resolution of the federal claims, *citing* England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964). 465 U.S. at 85 n. 7. In *England* the Court distinguished the situation where a party voluntarily submits her entire case, including federal claims, to the state court. 375 U.S. at 418-19.

74. The case was remanded for a determination whether the Ohio courts would apply claim preclusion in this context, since the federal courts should apply "Ohio state preclusion law." 465 U.S. at 87. Justice White wrote a concurring opinion indicating that if he were deciding the matter anew, he would permit a federal court to give greater preclusive effect to a state court judgment than the state court would. *Id.* at 88. Justice White later joined a majority opinion holding that state preclusion principles should be considered in determining the preclusive effect of a prior state court judgment on a subsequent federal antitrust suit, and rejecting the notion that the federal courts should give greater preclusive effect than a state court would to its own prior judgment. Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373 (1985) (Opinion of the Court by Justice

Thus in *Migra*, Justice Blackmun demonstrated his ability to resolve new cases in light of existing precedent, even that with which he strongly disagreed. Justice Blackmun believed that the majority's decision in *Allen* was wrong because it fundamentally misconstrued the nature of section 1983, congressional intent, and the effects on real people and on individual rights. However, in light of the majority in *Allen*, he acknowledged the logical implications of that decision in the related area of claim preclusion. He analyzed the posture of the plaintiff, and the real choices that she had, which were totally different from those of the criminal defendant in *Allen*. The civil plaintiff in *Migra*, unlike the criminal defendant in *Allen* or even the Title VII claimant in *Kremer*, had an unfettered initial choice whether to sue in state court or in federal court, and both fora could resolve all of her related claims. Thus, Justice Blackmun concluded that, in light of precedent and the posture of the parties, application of claim preclusion was warranted.

This decision in *Migra* may result in more section 1983 litigation filed in federal court. After *Migra*, parties must go to federal court first if they seek a federal forum, rather than going to state court first on their state claims and waiting until later to obtain, if necessary, resolution of federal claims in federal court. In order to prevent claim preclusion of state law claims, those state law claims must be raised in federal court under pendent jurisdiction.[75] However, these are simply the results of the federal structure, and of the Court's decision in *Allen* that the legislative history of section 1983 does not provide an exception to the mandate of preclusion found

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O'Connor; Justice Blackmun did not participate in the consideration or decision of the case).

In *Marrese* the Court held that normally under § 1738 state preclusion law should first be considered to determine whether the state courts would apply preclusion principles, even where the subsequent federal antitrust claim could only be heard in federal court. *Id.* at 379–86. Only if the state courts would apply preclusion would the federal court need to determine whether an exception to § 1738 should exist to prevent claim preclusion in subsequent cases within the exclusive federal court jurisdiction for antitrust cases. *Id.* at 386. The Court also stated: "[w]e therefore reject a judicially created exception to § 1738 that effectively holds as a matter of federal law that a plaintiff can bring state law claims initially in state court only at the cost of forgoing subsequent federal antitrust claims." *Id*. Since usually courts do not apply preclusion to matters that for jurisdictional reasons could not have been raised in an initial suit, it is likely that in most states there would not be claim preclusion in these circumstances. *See id.* at 382; RESTATEMENT SECOND, *supra not*e 4, at § 26(1)(c).

75. *See generally* 13B CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3567.1 (1984). Certain pendent claims may not be able to be raised in federal court. *See, e.g.*, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984) (Eleventh Amendment prevents federal court injunction of state officers to enforce state claims).

in section 1738.[76] Moreover, the result of *Migra* of encouraging plaintiffs with section 1983 actions to file first in federal court is consistent with Justice Blackmun's overall views of the importance of section 1983 in providing a federal forum.[77]

It is interesting to compare Justice Blackmun's decision applying claim preclusion in *Migra* with an earlier decision which he wrote for the Court refusing to apply claim preclusion in a state-federal context. In *Brown v. Felsen*,[78] Justice Blackmun concluded in a unanimous opinion for the Court that a federal bankruptcy court could consider extrinsic evidence in adjudicating whether a debt, which was previously reduced to judgment in a state court proceeding, was dischargeable under section 17 of the Bankruptcy Act.[79] The Court believed in this case "that neither the interests served by res judicata, the process of orderly adjudication in state courts, nor the policies of the Bankruptcy Act would be well served by foreclosing petitioner from submitting additional evidence to prove his case."[80]

Several factors were critical to the Court's decision in *Brown* to permit a guarantor, who had obtained a prior state court judgment against a debtor, to raise in the subsequent federal bankruptcy court proceeding issues of fraud and deceit of the debtor in obtaining the guarantee. First, the guarantor was not attempting to challenge the validity of the prior state court judgment, but rather to respond to the initiative taken by the debtor to obtain a discharge in bankruptcy.[81] Second, the issues in the bankruptcy litigation were different from issues involved in the state litigation, and it was unlikely that litigants would raise issues which might arise only if a bankruptcy were filed.[82] Third, Congress intended to provide a federal forum of the federal bankruptcy court to resolve these section 17 issues. Although Congress had not spoken expressly on the

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76. *Cf.* De Vos, *supra* note 71, at 310 (criticizing *Migra*, for, *inter alia*, producing more federal court litigation).

77. In addition to the cases in which Justice Blackmun has expressed an expansive view of § 1983, many of which are discussed *supra*, an article written by Justice Blackmun also demonstrates his view of the importance of § 1983 in assuring the "commitment of our society to be governed by law and to protect the rights of those without power against oppression at the hands of the powerful." Harry A. Blackmun, *Section 1983 and Federal Protection of Individual Rights—Will the Statute Remain Alive or Fade Away?*, 60 N.Y.U. L. REV. 1, 28 (1985).

78. 442 U.S. 127 (1979).

79. 11 U.S.C. § 35, Act of Oct. 19, 1970, Pub. L. No. 91–467, 84 Stat. 990 (repealed 1978).

80. 442 U.S. at 132.

81. *Id.* at 133.

82. *Id.* at 135.

issue, "it would be inconsistent with the philosophy of the 1970 amendments to adopt a policy of res judicata which takes these section 17 questions away from the [federal] bankruptcy courts and forces them back into state courts."[83] Finally, although the failure to litigate fraud and deceit in state court might preclude claims in state court for extraordinary remedies such as exemplary damages, the failure to litigate such issues should not prevent recovery on the debt when a subsequent bankruptcy proceeding is filed by the debtor in federal court.[84] Thus the Court determined that the prior state court judgment adjudicating the existence of a debt did not preclude the guarantor from raising issues of the debtor's fraud in a subsequent federal bankruptcy proceeding brought by the debtor.

Justice Blackmun's opinion in *Brown* did not refer to section 1738.[85] It focused instead on the purposes of the federal bankruptcy statute. The decision is premised on the concept, developed later in Justice Blackmun's and other Justices' opinions, that a subsequent statutory enactment, such as the bankruptcy statute here, may explicitly or implicitly provide exceptions to section 1738. Alternatively, the decision may be premised on a theory that federal law guides preclusion decisions in federal court and that such federal law may be an amalgam of federal statutory and federal common law. *Brown*, of course, preceded *Allen* by a year, and it was *Allen* which established the majority view that section 1738 generally requires application of state preclusion law—a view which was then applied to the question of claim preclusion in *Migra*.

Justice Blackmun's opinion for the Court in *Brown* demonstrated many of the same traits observed above in his preclusion opinions involving section 1983 actions. Recognizing the purposes of preclusion doctrine,[86] he evaluated the application of the doctrine in the particularly significant federalism context where the initial litigation occurs in state court and is followed by litigation in federal court on federal issues. He addressed relevant federal legislation and its legislative history to determine whether there are ex-

83. 442 U.S. at 136. *See also id.* at 138 (summarizing legislative history demonstrating congressional intent to have bankruptcy court resolve these issues).

84. *Id.* at 137-38. The Court explicitly limited the decision to claim preclusion. If the state litigation had actually determined fraud, a different question, that of issue preclusion, would be implicated. The Court did not decide the question of issue preclusion. *Id.* at 139 n. 10.

85. The parties made no mention of § 1738 in their briefs to the Court. *See* Brief for the Petitioner, Brief for the Respondent, and Reply Brief for the Petitioner, Brown v. Felsen, 442 U.S. 127 (1979) (No. 78-58).

86. "Res judicata thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the courts to resolve other disputes." 442 U.S. at 131.

press or implied federal interests which warrant exception from the normal doctrines of preclusion. Moreover, he considered the plight of the actual litigants, and the real effects that alternative preclusion holdings would have on their conduct.

VI. CONCLUSION

The application of preclusion doctrine in the state-federal context might be considered to be a dry and difficult area, fraught with extraordinarily technical issues. In recent years, however, this has proved to be an area of intersection and conflict between important policies expressed in federal statutes, such as section 1983 and Title VII, and principles motivating preclusion, whether expressed in common law doctrines of preclusion or in the interpretation of section 1738. In the three key cases, *Allen*, *Kremer*, and *Migra*, Justice Blackmun developed his analysis of whether preclusion was proper, demonstrating his commitment to the three central themes of his jurisprudence. Justice Blackmun explained his analysis of the legislative history of the relevant statutes, his sense of the history of the era in which each statute was enacted, and his understanding of the importance of the resolution of the preclusion problem in a fashion consistent with the policies motivating the statute. His appreciation of history is apparent. These cases also reflect the importance of individual rights in Justice Blackmun's jurisprudence; he is concerned that litigants have a fair and adequate opportunity to litigate their constitutional rights. Finally, these cases demonstrate Justice Blackmun's attention to actual outcomes. He is concerned with what will happen to real individuals as a result of the decision.

Justice Blackmun's positions in *Migra*, *Allen*, and *Kremer* also reflect the importance of party choice. In *Allen*, the state criminal defendant had no real choice whether to litigate in state court, and application of preclusion doctrine constituted a particularly great infringement of his rights afforded by section 1983 to litigate in a federal court. In contrast, in *Migr*a, the plaintiff in federal court had been the plaintiff in state court, had exercised the initial choice of forum, and could have raised both state and federal law claims initially in a single federal court action. In such a situation it is appropriate to accommodate the tension between policies of affording a federal forum for section 1983 cases and principles of preclusion expressed through section 1738. The initial party choice of a state court forum may result in subsequent exclusion from the federal courts on a claim involved in the same transaction. The results reached by Justice Blackmun in these three key cases illustrate his approach to jurisprudence. They are also eminently sensible and re-

flect both a sensitivity to individual rights and an awareness of the impact on litigants.

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