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SYMPOSIUM
THE *ROOKER-FELDMAN* DOCTRINE
FOREWORD

ROOKER-FELDMAN: WORTH ONLY THE POWDER
TO BLOW IT UP?

*Thomas D. Rowe, Jr.**

The *Rooker-Feldman* doctrine is an oddity among limits on federal courts' subject matter jurisdiction. Named after generative cases decided six decades apart,¹ it rests innocuously enough on the proposition that Congress has conferred appellate jurisdiction over state court judgments upon only one federal court, the Supreme Court of the United States.² It proceeds from there to the main point for which it has come to stand, that federal district courts lack jurisdiction to entertain claims that are "inextricably intertwined" with the merits

* Elvin R. Latty Professor of Law, Duke University. B.A. Yale 1964; M. Phil. Oxford 1967; J.D. Harvard 1970. For the subtitle I am indebted to an e-mail message from Prof. David Shapiro of Harvard Law School, marveling at the spilling of the amounts of ink that follow on a doctrine that "justifies only the purchase of the powder needed to blow it up." E-mail from David Shapiro, Jan. 2, 1999 (on file with author).

1 District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). The Feldman of the more recent case was Marc Feldman, a sometime law professor at Rutgers-Camden and Maryland, who died just last year. Prof. Jack Beermann's contribution to this Issue gives some further details of Prof. Feldman's interesting career. See Jack M. Beermann, *Comments on Rooker-Feldman or Why We Should Let State Law Be Our Guide*, 74 NOTRE DAME L. REV. 1209, 1210 n.3 (1999).

2 See 28 U.S.C. § 1257 (1994) (conferring Supreme Court certiorari jurisdiction over "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had"); cf., e.g., 28 U.S.C. § 1331 (1994) (authorizing original jurisdiction over federal-question actions); 28 U.S.C. § 1332(a) (1994) (authorizing original jurisdiction over diversity and alienage actions).

of a judgment already rendered by a state court system, at least in an action involving the same parties.³

The oddity arises because *Rooker-Feldman* is quite unlike the usual sort of limit on the original subject matter jurisdiction of federal courts. The doctrine can have effect only when a case brought in federal district court is generally within original federal jurisdiction—or would be, except for prior state court adjudication that is not supposed to be subject to review in any federal court other than the Supreme Court. The very fact that other state-court adjudication has taken place will often raise a barrier to the federal court's reaching the merits, on nonjurisdictional grounds independent of the *Rooker-Feldman* doctrine. Most commonly the barrier will be interjurisdictional preclusion (or, for those who prefer older terminology, state-federal res judicata), although the jurisdictional nature of *Rooker-Feldman* makes the doctrine's bar unwaivable and subject to being raised by the court on its own motion.⁴ Depending on whether *Rooker-Feldman* applies only to final judgments of highest available state courts,⁵ other grounds such as "Our Federalism"⁶ or a different abstention

3 See *Feldman*, 460 U.S. at 486–87. The Court noted:

[R]espondents' . . . allegations . . . required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case. These allegations are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions. The District Court, therefore, does not have jurisdiction over these elements of the respondents' complaints.

Id.

For general reference on the *Rooker-Feldman* doctrine, see 18 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* § 133.30[3] (3d ed. 1999); 18 CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* § 4469, at 663–68 (1981); *id.* at 529–31, 535–51 (Supp. 1998). 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. See 18 MOORE'S, *supra*, § 133-30[3][a], at 133-22.

4 See 18 MOORE'S, *supra* note 3, § 133.30[3][b], at 133-22 to -23.

5 So limiting the doctrine's applicability could make sense in light of its roots in 28 U.S.C. § 1257, which grants the Supreme Court certiorari jurisdiction only over "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." See *supra* note 2 and accompanying text; see also *supra* note 3 (quoting from Supreme Court's *Feldman* opinion referring to impermissibility of federal district court's reviewing "a final judicial decision of the highest court of a jurisdiction in a particular case"). But see 18 MOORE'S, *supra* note 3, § 133.30[3][a], at 133-21 (describing *Rooker-Feldman* as depriving lower federal courts of "jurisdiction to review state court judgments" without reference to finality in highest state court).

6 See, e.g., ERWIN CHEMEKINSKY, *FEDERAL JURISDICTION* § 13.1-.4 (3d ed. 1999); LARRY YACKLE, *FEDERAL COURTS* 388–415 (1999).

doctrine⁷ might also force at least a stay, if not a jurisdictional dismissal, of federal adjudication in light of a previously or even subsequently filed parallel state court proceeding.

Despite what might be considerable superfluity in light of this much overlap with other doctrines, and the lack of focused Supreme Court attention since the *Feldman* decision in 1983, the lower federal courts have come to invoke *Rooker-Feldman*—often to find no jurisdiction—with notable frequency. Such judicial use of the doctrine may be understandable, given proper subordination by the district and appellate courts to what they regard as binding Supreme Court precedent; but it leaves the major question whether and to what extent the doctrine serves valid independent purposes of its own.⁸ This and other issues concerning the *Rooker-Feldman* have received strikingly little treatment in academic commentary for a doctrine upon which the courts have come increasingly to rely.⁹

The four articles that follow admirably fill this gap in the commentary, and the authors are especially qualified to speak on this subject: Suzanna Sherry is co-author of the casebook that includes the most extensive treatment of *Rooker-Feldman* in any book now on the market.¹⁰ Susan Bandes is author of the chapter covering *Rooker-Feldman* in the new third edition of *Moore's Federal Practice*.¹¹ Barry Friedman (joined here by student co-author James Gaylord) and Jack Beermann are among the few scholars to have treated the doctrine in previous law review commentary.¹²

7 See, e.g., CHEMERINSKY, *supra* note 6, §§ 12.1–.3, 14.1–.4; YACKLE, *supra* note 6, at 373–88.

8 See, e.g., 18 WRIGHT ET AL., *supra* note 3, § 4469, at 529 (Supp. 1998) (“Although no substantial harm seems to have been done by the [*Rooker-Feldman*] jurisdictional cases, it would be better to go straight to the *res judicata* rules that justify preclusion.”) (footnote omitted).

9 Since the *Feldman* decision in 1983, the two sustained law review treatments of the area have both been student notes: Benjamin Smith, Note, *Texaco, Inc. v. Pennzoil Co.: Beyond a Crude Analysis of the Rooker-Feldman Doctrine's Preclusion of Federal Jurisdiction*, 41 U. MIAMI L. REV. 627 (1987); Gary Thompson, Note, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42 RUTGERS L. REV. 859 (1990). Two articles by law professors contributing to this issue also included discussion of *Rooker-Feldman*: Jack M. Beermann, *Government Official Torts and the Takings Clause: Federalism and State Sovereign Immunity*, 68 B.U. L. REV. 277, 340–42 (1988); Barry Friedman, *Pas de Deux: The Supreme Court and the Habeas Courts*, 66 S. CAL. L. REV. 2467, 2472–73, 2476, 2480 (1993).

10 See MARTIN H. REDISH & SUZANNA SHERRY, *FEDERAL COURTS: CASES, COMMENTS AND QUESTIONS* 575–84 (4th ed. 1998).

11 See 18 MOORE'S, *supra* note 3, § 133.30[3].

12 See Beermann, *supra* note 9; Friedman, *supra* note 9. Papers on which the *Rooker-Feldman* articles in this issue are based were presented in New Orleans in Janu-

I will not summarize the contributions here because Jack Beermann's commentary¹³ on the three principal papers¹⁴ does that admirably and would make a similar effort on my part duplicative. Instead, I will highlight two principal points of apparent agreement: First, despite the different positions taken—with Suzanna Sherry finding some virtue in *Rooker-Feldman* and Barry Friedman and Susan Bandes coming largely to bury the doctrine, not to praise it—I discern no claim even by Sherry that the doctrine makes a major contribution or difference beyond the effects of other limits on federal courts' exercise of their powers. That I take to square with the views of Friedman, Bandes, and Beermann.

Second, the proliferation of lower court case law with many different emphases and some highly questionable decisions¹⁵ suggests that the time may be nigh for the Supreme Court to take an opportunity to clarify the doctrine. Not knowing what the Supreme Court might do if it took a *Rooker-Feldman* case, I drop that hint with some trepidation; but the papers in this issue should give the Court much help if it chooses to do so. The academy has done its job, and it is now the Court's turn.

ary, 1999 at the annual session of the Association of American Law School's section on Federal Courts, for which I served as program chair. All the authors were a pleasure to work with, at long range and in person—prompt, cooperative, delightfully humorous, and scrupulous and respectful in disagreement. I want to take this opportunity to thank them publicly, and to wish other program chairs such superb panelists. Thanks also to Susan Bandes for originally suggesting the idea of the program, and to the *Notre Dame Law Review* for its interest in publishing the papers.

13 Beermann, *supra* note 1.

14 Susan Bandes, *The Rooker-Feldman Doctrine: Evaluating Its Jurisdictional Status*, 74 NOTRE DAME L. REV. 1175 (1999); Barry Friedman & James Gaylord, *Rooker-Feldman, From the Ground Up*, 74 NOTRE DAME L. REV. 1129 (1999); Suzanna Sherry, *Judicial Federalism in the Trenches: The Rooker-Feldman Doctrine in Action*, 74 NOTRE DAME L. REV. 1085 (1999).

15 See, e.g., *Kamilewicz v. Bank of Boston Corp.*, No. 95 C 6341, 1995 WL 758422 (N.D. Ill. Dec. 15, 1995), *aff'd*, 92 F.3d 506 (7th Cir.), *rehearing and rehearing en banc denied*, 100 F.3d 1348 (7th Cir. 1996), *cert. denied*, 117 S. Ct. 1569 (1997). For criticism of *Kamilewicz* see, for example, 18 WRIGHT ET AL., *supra* note 3, § 4469, at 529 (Supp. 1998); Susan P. Koniak & George M. Cohen, *Under Cloak of Settlement*, 82 VA. L. REV. 1051, 1270–80 (1996).