SYMPOSIUM
THE ROOKER-FELDMAN DOCTRINE
FOREWORD

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

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The Rooker-Feldman doctrine is an oddity among limits on federal
courts' subject matter jurisdiction. Named after generative cases
decided six decades apart, it rests innocuously enough on the proposi-
tion that Congress has conferred appellate jurisdiction over state
court judgments upon only one federal court, the Supreme Court of
the United States. 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

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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.
1203, 1210 n.3 (1999).

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 juris-
diction 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.\textsuperscript{3}

The oddity arises because \textit{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 \textit{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 \textit{Rooker-Feldman} makes the doctrine's bar unwaivable and subject to being raised by the court on its own motion.\textsuperscript{4} Depending on whether \textit{Rooker-Feldman} applies only to final judgments of highest available state courts,\textsuperscript{5} other grounds such as "Our Federalism"\textsuperscript{6} or a different abstention

\begin{footnotes}
\footnotetext{3}{See Feldman, 460 U.S. at 486–87. The Court noted: [R]espondent's... 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.}

\footnotetext{4}{Id.}

For general reference on the \textit{Rooker-Feldman} doctrine, see 18 James Wm. Moore \textit{et al.}, Moore's Federal Practice § 133.30[3] (3d ed. 1999); 18 Charles Alan Wright \textit{et al.}, Federal Practice and Procedure § 4469, at 665–68 (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 \textit{Rooker-Feldman} jurisdictional limit. See 18 Moore's, supra, § 133-30[3][a], at 133-22.}

\footnotetext{5}{See 18 Moore's, supra note 3, § 133.30[3][b], at 133-22 to -23.}

\footnotetext{6}{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 \textit{Rooker-Feldman} as depriving lower federal courts of "jurisdiction to review state court judgments" without reference to finality in highest state court).}

\footnotetext{6}{See, e.g., Erwin Chemerinsky, Federal Jurisdiction § 13.1–4 (3d ed. 1999); Larry Yackle, Federal Courts 388–415 (1999).} \end{footnotes}
doctrine 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. 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.

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. Susan Bandes is author of the chapter covering Rooker-Feldman in the new third edition of Moore’s Federal Practice. 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.

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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] jurisdiction cases, it would be better to go straight to the res judicata rules that justify preclusion.") (footnote omitted).
11 See 18 Moore’s, supra note 3, § 223.30[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 commentary on the three principal papers 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 decisions 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.

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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.
