Getting *Younger* — A Guide To Abstention, *Rooker-Feldman*, And Other Defenses To Federal Civil Rights Actions That We All Learned In Law School, But May Have Forgotten

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ABSTENTION

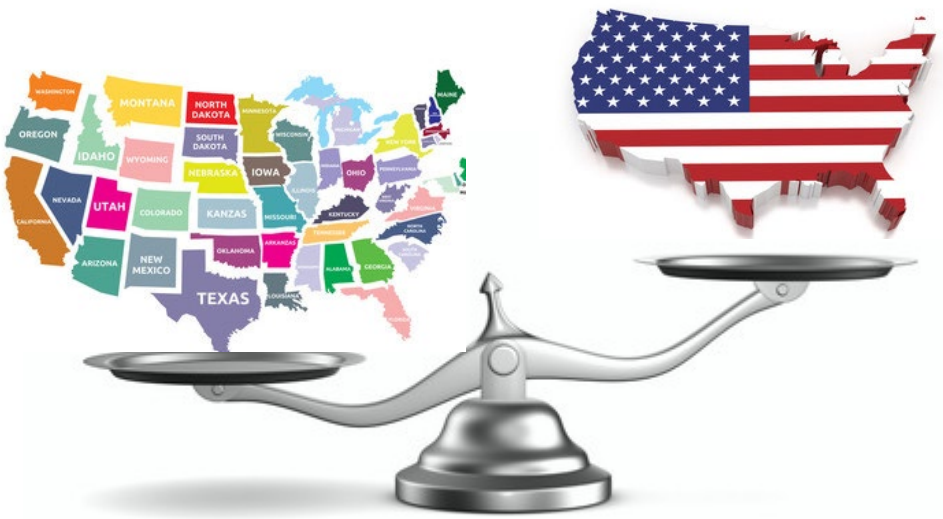
OVERVIEW

- Abstention is the decision of a federal court not to hear a case that it would otherwise have jurisdiction to decide.
- Federal courts have an obligation to hear matters that are properly before them, but comity between state and federal courts, as well as judicial efficiency, may justify a federal court staying or dismissing a case, in light of pending state proceedings.
- Doctrine has been expanded in possible reaction to increased use of federal courts to examine state actions under section 1983.

Younger Abstention Overview

- The general rule: A federal court will not enjoin, or otherwise interfere with a pending state prosecution, or a state court's performance of judicial duties.

- *Younger* abstention is what prevents federal courts from interfering with pending state criminal proceedings, though it has ultimately been expanded to foreclose federal intervention in a broad range of state enforcement proceedings.



Younger: Background

- *Younger v. Harris*, 401 U.S. 37 (1971): Plaintiff being prosecuted in state court and brings section 1983 action against the district attorney, arguing that the criminal statute impaired his First Amendment rights.
- District court finds statute unconstitutional and enjoins further prosecution.
- Supreme Court reverses.

Younger: Reasoning

- Injunctive relief against pending state criminal prosecutions generally inappropriate.
- Under basic principles of equity, injunction only proper where the plaintiff is suffering irreparable harm and has no adequate remedy at law. A criminal defendant may typically raise any constitutional defense in the context of the state proceedings.
- Notions of comity, i.e., "our federalism," dictate that federal courts respect the co-equal status of state courts, with federal intervention in the criminal process limited to direct review of any conviction by the Supreme Court, or via habeas corpus.
- Federal courts might still enjoin enforcement of an unconstitutional statute *prior* to commencement of a prosecution.

Younger Steadily Expanded

- Applies to claims for declaratory relief. *Samuels v. Mackell*, 401 U.S. 66 (1971).
- Applies to civil actions akin to prosecution, e.g., nuisance abatement proceedings, or claims for recovery of fraudulently received benefits. *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *Trainor v. Hernandez*, 431 U.S. 434 (1977).
- Applies to state administrative actions that are judicial in nature and serve important state interests, e.g., employment discrimination proceedings brought by state commission. *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986).

Younger Expansion: State Judicial Interests Implicated

- Even if state is not a party to a proceeding, abstention is appropriate to avoid impacting important state judicial interests.
- *Younger* applies to federal challenge to state court civil contempt proceeding. Federal court should not interfere with state court's power to compel compliance with its orders. *Juidice v. Vail*, 430 U.S. 327 (1977).
- *Younger* applies to federal challenge to state court order setting an appeal bond. Like contempt, posting of bond is allow state courts to effectuate compliance with their orders and judgments. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987).
- *Younger* applies to federal challenge to state court bail and sentencing practices, even if there is no individual pending state proceeding. *O'Shea v. Littleton*, 414 U.S 488 (1974): Injunction would potentially insert the federal court into every state court proceeding and interfere with the administration of state courts.
- *Younger* applies to administrative attorney discipline proceedings: Regulation of attorneys closely related to administration of the state judicial system. *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423 (1982).

Younger Expansion: Prosecution Not Filed At Time Of Federal Action

- *Younge*r abstention may be required where prosecution was not actually commenced at the time the federal suit was filed, but only shortly thereafter. *Hicks v. Miranda*, 422 U.S. 332 (1975).
- Key is whether federal court has conducted any "proceedings of substance on the merits."
- Denial of TRO: Not proceeding on the merits; *Younger* applies. *Hicks v. Miranda*, 422 U.S. 332 (1975)
- Order granting a preliminary injunction: Proceeding on the merits; *Younger* inapplicable. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

Younger Expansion: Criminal Proceedings Short Of Formal Charges

- Several Circuits have held that grand jury proceedings are sufficient to constitute pending proceedings, even if no criminal complaint or indictment has been filed. See *Texas Ass'n of Business v. Earle*, 388 F.3d 515 (5th Cir. 2004); *Kaylor v. Fields*, 661 F.2d 1177 (8th Cir. 1981); *Craig v. Barney*, 678 F.2d 1200 (4th Cir. 1982).

When Is An Action "Pending" In State Court ?

- State court lawsuit remains pending for purposes of *Younger* through exhaustion of appellate remedies.
- Open question: Is there still a pending state proceeding when an administrative body renders a final decision, but the losing party may still seek review in state court? See *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 369 n.4 (1989).
- Circuits are divided on the issue.
- Availability of state court review means proceeding still pending: *Maymo-Melendez v. Alvarez-Ramirez*, 364 F.3d 27, 35-36 (1st Cir. 2004); *Majors v. Engelbrecht*, 149 F.3d 709, 713 (7th Cir. 1998); *O'Neill v. City of Philadelphia*, 32 F.3d 785, 790-91 (3d Cir. 1994); *Alleghany Corp. v. Pomeroy*, 898 F.2d 1314, 1316-17 (8th Cir. 1990).
- State administrative enforcement proceeding no longer pending when agency proceeding completed, despite availability of state court review: *Norfolk & W. Ry. Co. v. Pub. Utils. Comm'n of Ohio*, 926 F.2d 567, 572-73 (6th Cir. 1991); *Cecos Int'l, Inc. v. Jorling*, 895 F.2d 66, 72 (2d Cir. 1990); *Thomas v. Tex. State Bd. of Med. Exam'rs*, 807 F.2d 453, 456 (5th Cir. 1987).

Does *Younger* Apply To Suits For Damages Alone?

- Open issue whether *Younger* applies to suits for damages alone. Supreme Court has suggested that, assuming *Younger* applies in such cases, a federal court should stay as opposed to dismiss the federal action. See *Deakins v. Monaghan*, 484 U.S. 193 (1988).
- Circuits divided on the issue.
- *Younger* does not apply: *Alexander v. Ieyoub*, 62 F.3d 709, 713 (5th Cir. 1995); *Giulini v. Blessing*, 654 F.2d 189, 192-94 (2d Cir. 1981).
- *Younger* applies: *Amerson v. Iowa*, 94 F.3d 510, 512-13 (8th Cir. 1996); *Kyricopoulos v. Town of Orleans*, 967 F.2d 14, 15 n.1 (1st Cir. 1992); *Traverso v. Penn*, 874 F.2d 209, 213 (4th Cir. 1989); *Williams v. Hepting*, 844 F.2d 138, 144-45 (3d Cir. 1988); *Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986); *Doby v. Strength*, 758 F.2d 1405, 1406 (11th Cir. 1985); *Parkhurst v. Wyoming*, 641 F.2d 775, 777 (10th Cir. 1981).

Exceptions To *Younger*

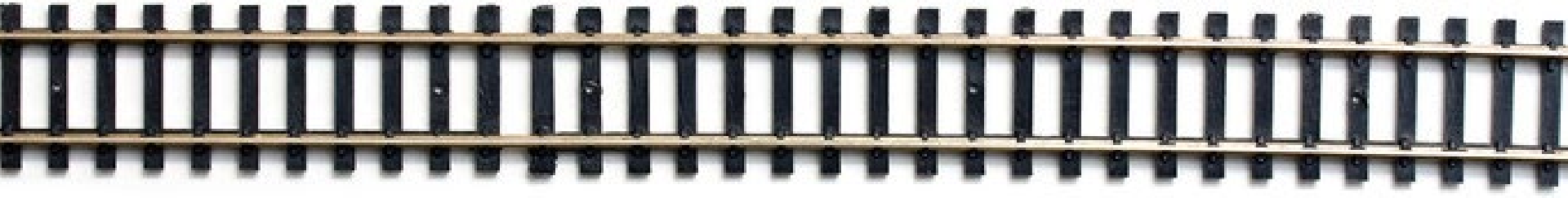
- Where the constitutional claim cannot be adjudicated in the state forum. *Gerstein v. Pugh*, 420 U.S. 103 (1975): Probable cause determinations for warrantless arrestees unreviewable in state proceeding because charges might not be filed.
- State proceedings brought in bad faith, i.e., with no reasonable expectation of conviction, or are biased. *Kugler v. Helfant*, 421 U.S. 117 (1975); *Gibson v. Berryhill*, 411 U.S. 564 (1973).
- Where a statute is "flagrantly and patently violative of express constitutional prohibitions" in every conceivable manner. *Younger*, 401 U.S. at 53-54.

Common Scenarios For *Younger* In Civil Rights Suits

- Where federal suit seeking equitable relief arises out of, or may impact, a pending administrative or judicial proceeding prosecuted by the defendant public entity.
- Land use proceedings, such as nuisance abatement, zoning challenges, and permitting disputes.
- Employee disciplinary matters.
- Licensing proceedings.

Pullman Abstention Overview

- The general rule: A federal court will abstain from a case presenting a federal constitutional question, where resolution of an unsettled issue of state law might eliminate the need to decide the question, or materially alter the federal court's resolution of the question.
- *Pullman* abstention is a function of judicial policy: federal courts should avoid addressing constitutional issues unless absolutely necessary, and ensure correct adjudication of a constitutional issue that is based on a state statute.



Pullman Abstention Background

- *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941): federal challenge to state regulation concerning railroad staffing, arguing both that it was contrary to state law, and violated the federal constitution.
- District court panel issues an injunction, concluding that the regulation was invalid under state law.
- Supreme Court reverses: District court should have abstained from hearing the matter, pending resolution of the state law issue by a state court.

Pullman Holding

- Where resolution of federal constitutional issue could be avoided, or materially altered, by interpretation of unsettled state law, federal courts should abstain in favor of having a state court resolve the critical state law issue.
- Two elements for *Pullman* abstention.
- Federal case must present an unsettled question of state law.
- Must be the possibility that resolution of the state law issue might eliminate the need to decide, or materially alter the nature of the constitutional issue.

When Is State Law unsettled?

- There must be uncertainty or ambiguity as to the state law that is the subject of the constitutional challenge.
- If state statute is clear, mere fact that no state court has addressed it does not mean the law is unsettled. See *Hawaii Housing Author*ity v. *Midkiff*, 467 U.S. 229 (1984) and *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).
- If state statute is ambiguous, but state courts have interpreted the provision in a particular manner, the law is not unsettled.
- This includes interpretation by both state appellate courts, and *even trial courts*. *City of Houston v. Hill*, 482 U.S. 451 (1987): *Pullman* abstention unwarranted in First Amendment challenge to statute because numerous state trial courts declined to give provision narrowing construction that would avoid an overbreadth problem.

What Does It Mean To Be Susceptible To Construction That Might Impact Federal Claim?

- Not clear: Supreme Court has not articulated a specific standard.
- State statute must be "obviously susceptible" to a limiting construction. *Zwickler v. Koota*, 389 U.S. 241, 251 n.14 (1967).
- State statute need be only "fairly" susceptible to a limiting construction. *Harman v. Forssenius*, 380 U.S. 528, 535 (1965).
- State law only has to be "conceivably" subject to a narrow construction. *Fornaris v. Ridge Tool Co.*, 400 U.S. 41, 43 (1970).
- Only clear point: A "bare, though unlikely, possibility" that state courts might eliminate need to decide federal claim, is insufficient for *Pullman* abstention. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 237 (1984).

Is *Pullman* Abstention Mandatory or Discretionary?

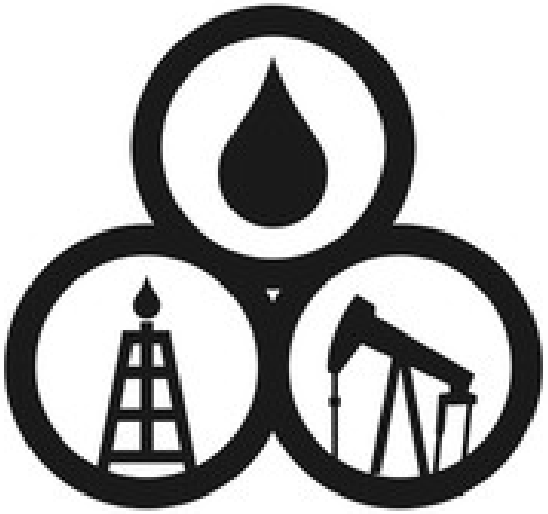
- Open issue.
- Supreme Court has stated that when the factors are met, abstention is "required." *Babbitt v. UFW Nat'l Union*, 442 U.S. 289 (1979).
- However, Court has found exceptions in particular cases where delay might jeopardize meaningful relief.
- Delay in adjudicating issue could be financially devastating to the plaintiff. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).
- Need to exercise First Amendment rights. *Baggett v. Bullit*, 377 U.S. 360 (1964).
- Voting rights. *Harman v. Forssenius*, 380 U.S. 528 (1965).
- Case dependent: No general exemption for these categories.

Common Scenarios For *Pullman* Abstention In Civil Rights Cases

- Typically arises in federal suits that challenge a newly enacted statute, ordinance or policy.

Burford Abstention Overview

- The general rule: Federal court should abstain where case presents difficult question of state law concerning a matter of substantial public importance that transcends the interest of the party, or where immediate federal review of individual administrative decisions would disrupt state efforts to create a coherent policy concerning matters of substantial public concern.
- *Burford* abstention is based on premise that federal courts should not interfere with state administrative schemes that require unique expertise or uniform application with respect to subjects that are of critical state concern, where the administrative decisions are subject to later judicial review.



Burford Abstention Background

- *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943): federal challenge to decision of a Texas regulatory agency granting oil drilling permits, arguing that issuance of the permits violated state and federal law.
- District court grants injunction.
- Supreme Court reverses: Federal court should abstain.

Burford Decision Reasoning

- Texas had a comprehensive regulatory scheme for the oil and gas industry, including a specialized decision-making and review process, that might be disrupted if individual permit determinations could be immediately challenged in federal court.
- State's interest in setting uniform policy with respect to a vital industry, outweighed any interest in immediate federal court review.
- State administrative decisions were subject to judicial review in state court, where any federal issue could be raised, and if necessary, subsequently resolved by the Supreme Court on direct review.

Touchstone for *Burford*: Vital state interest served by administrative scheme

- *Alabama Pub. Serv. Comm'n v. S. Ry Co.*, 341 U.S. 341 (1951): *Burford* applies to federal challenge to state railway commission route rulings – statewide interest in route regulation.
- *Zablocki v. Redhail*, 434 U.S. 374 (1978): *Burford* inapplicable to challenge to state law requiring court permission before specified individuals could be married – routine constitutional challenge, no potential for disrupting any uniform regulatory scheme.
- *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350 (1989): *Burford* inapplicable to challenge to local body electric rate setting decision – challenged based on federal preemption and did not implicate complex issue of state law or raise an issue of statewide concern that transcended interest of the parties.

Does *Burford* Apply Only To State, And Not Local Agency Decisions?

- Open issue whether *Burford* is applicable solely to the decisions of state administrative agencies, or whether it applies to decisions of a local agency made pursuant to a state authorized procedure.
- Circuits split.
- *Burford* is inapplicable to local land use decisions that involve only local, and not statewide, policies: *Heritage Farms, Inc. v. Solebury Township*, 671 F.2d 743 (3d Cir. 1982); *Saginaw Housing Comm'n v. Bannum*, Inc., 576 F.3d 620 (6th Cir. 2009); *Stratta* v. *Roe*, 961 F.3d 340 (5th Cir. 2020).
- *Burford* applies to local agency decisions effecting state policy: *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269 (4th Cir. 2008).

Common Scenarios For *Burford* In Civil Rights Cases

- *Burford* often raised in the context of challenges to state regulatory schemes involving public resources, licensing or rate-setting.

Colorado River Abstention Overview

- General rule: In extraordinary circumstances, federal court may abstain from adjudicating a federal case where there is a parallel state action involving the same parties and similar issues.
- Stems from concerns of judicial efficiency and risk of conflicting adjudications when there are parallel state and federal lawsuits involving the same parties and same issues.



Colorado River Abstention Background

- *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976): Federal government files suit in federal court on behalf of various Indian tribes, seeking a determination of water rights on federal lands.
- Party to state court water rights adjudication suit amends the complaint in that action to add the United States as a party, as permitted by a federal statute that expressly allowed the United States to be a party to such state proceedings.
- District court stays the federal proceedings pending determination of the state court suit.
- Tenth Circuit reverses, reasoning no previously recognized abstention doctrine applies.
- Supreme Court reverses: District court could properly abstain.

Colorado River Reasoning

- Federal courts have an "unflagging" duty to hear cases that are properly before them.
- However, in "exceptional" circumstances, a federal court has discretion to stay a federal action pending resolution of a state suit involving the same parties and claims.
- Key inquiry is whether considerations of judicial efficiency are served by staying federal suit.
- Court identifies four factors to consider.

Colorado River Four Factors

1. Which court first assumed jurisdiction over the particular property that is the subject of the dispute.
2. The relative inconvenience of the federal forum.
3. The interest in avoiding piecemeal litigation.
4. The order in which the suits were filed.

Four Factors As Considered In *Colorado River*

1. Abstention justified here: Most factors balance in favor of stay of federal case.
2. The federal case had not progressed very far.
3. The state court was nearby.
4. The state court had already conducted extensive litigation of water rights, and the United States had been a party to other state water adjudication proceedings pursuant to the federal statute.

Initial Broad View Of *Colorado River* Abstention

- *Will v. Calvert Fire Ins. Co*., 437 U.S. 655 (1978): Plurality cites *Colorado River* in upholding district court's decision to abstain from hearing a federal securities action, pending a decision in a state court suit between the parties involving a state reinsurance pool where one of the defenses was that the pool violated federal securities law.
- Plurality opinion suggests district courts have very broad discretionary powers to stay a federal case pending disposition of a comparable state, and does not mention any "exceptional" circumstances, or the four factors of *Colorado River*.

Colorado River Narrowed: *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983)

- Hospital sues contractor in state court to obtain a determination that the underlying contract dispute was not subject to arbitration.
- Contractor then files federal court action to compel arbitration under the Federal Arbitration Act (FAA).
- District court stays the federal action pending disposition of the state proceedings.
- Supreme Court holds that abstention is improper.

Moses H. Cone
Holding

- Supreme Court reaffirms that *Colorado River* abstention is only appropriate in *exceptional* circumstances to be determined by consideration of the four factors, along with two additional factors.
- New additional factors: (1) the presence of federal law issues and (2) whether the state forum will adequately protect the parties' interests.

Moses H. Cone Reasoning

- Abstention improper -- none of the *Colorado River* factors justify staying federal suit.
- Neither court had acquired jurisdiction over any property.
- The federal forum was just as convenient as the state forum.
- No danger of piecemeal litigation of the merits of any claim -- federal proceeding only involve the manner of resolving the underlying merits.
- Although state suit filed first, it had not proceeded very far.
- Federal suit involved federal law, and presence of federal claim generally weighs against abstention.
- Not clear that the state court would compel arbitration as required by the FAA -- improper to defer to forum that would not protect a party's interests.

Requirement of Parallel State Proceedings

- Federal and state cases must involve same parties and issues.
- Not enough that the cases involve the same facts.
- Legal claims do not have to be identical, but closely related enough that the state court adjudication will ultimately dispose of the claims in the federal action as well.

No Need To Satisfy *Colorado River* Test In Declaratory Relief Suits

- *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995): Under Declaratory Judgment Act, district courts have independent discretion to stay a federal declaratory relief action pending disposition of parallel state proceedings.

Scenarios For *Colorado River* Abstention In Civil Rights Cases

- Typically arises where plaintiff files identical actions in state and federal court, or a federal civil rights suit, and state court action for battery or wrongful arrest.
- Given the tightened standards applied in *Moses H. Cone*, it is often difficult to convince a federal court to abstain under *Colorado River*.
- Particular reluctance in section 1983 cases because of the significance of federal constitutional claims, and the aptitude federal courts have in addressing such claims.

The *Rooker-Feldman* Doctrine



Overview

- General Rule: A federal district court lacks subject matter jurisdiction to entertain cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.
- The *Rooker-Feldman* doctrine bars lower federal courts from entertaining suits that seek to overturn a state court judgment.
- Premised on the exclusive jurisdiction of the Supreme Court to review state court civil judgments via direct review.
- Recognition that while Congress has allowed federal district courts to review state court judgments for criminal convictions via habeas corpus, it has not extended that power to review of civil judgments.

Rooker-Feldman Background

- *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923): parties defeated in state court filed suit in federal district court seeking determination that state judgment void.
- District court dismissed action.
- Supreme Court affirms.
- State court acted within its jurisdiction, and if the decision was wrong, that did not make the judgment void, but merely open to reversal or modification on state court appeal.
- Federal district courts have no appellate authority; Congress had empowered only the Supreme Court to exercise appellate authority to reverse or modify a state court judgment.

Rooker-Feldman Background Continued

- *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).
- Two plaintiffs, neither of whom had graduated from an accredited law school, unsuccessfully petition the District of Columbia Court of Appeals to waive court rule requiring D.C. bar applicants to have graduated from ABA approved law school.
- Plaintiffs file suit in federal court challenging rule.
- Supreme Court, citing *Rooker*, holds that federal district court lacked subject matter to review decision of D.C. court.

Court Has Narrowed The Doctrine

- *Rooker-Feldman* does not apply to a federal suit brought by a non-party to the state suit. *Johnson v. De Grandy*, 512 U.S. 997 (1994)
- Doctrine only applies to state judicial decisions, and not to administrative decisions of state agencies. *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 644 n.3 (2002).
- Doctrine only applies where the state court judgment is rendered *before* commencement of the federal action. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005): Mere fact that concurrently pending state suit goes to judgment before pending federal suit cannot deprive the federal district court of subject matter jurisdiction.

Open Issue: Interlocutory State Court Orders

- Does doctrine apply to the interlocutory decisions of state courts, for example, an order granting a preliminary injunction?
- *Exxon Mobile*: Doctrine applies "after the state proceedings ended."
- Several circuits interpret that as barring application of the doctrine to interlocutory state court rulings. See *Burciaga v. Deutsche Bank National Trust Co.*, 871 F.3d 380, 385 (5th Cir. 2017); *Kowalski v. Boliker*, 893 F.3d 987, 995 (7th Cir. 2018); *Malhan v. Secretary of U.S. Dep't of State*, 938 F.3d 453, 458-59 (3d Cir. 2019).
- First Circuit suggests doctrine can apply so long as the parties to the state court proceeding are not pursuing further action with respect to the interlocutory order. See *Federacion de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 24-28 (1st Cir. 2005).

Open Issue: When Is A State Court Judgment "Final?"

- Open question whether a judgment is final when issued by the trial court, or only when appellate review has been exhausted, or the time to seek it has passed.
- Several circuits have held that *Rooker-Feldman* does not apply if the state court case is on appeal, or the time to appeal has not expired. *Green v. Jefferson Cnty. Comm'n*, 563 F.3d 1243, 1249-50 (11th Cir. 2009); *Dornheim v. Sholes*, 430 F.3d 919, 923 (8th Cir. 2005); *Guttman v. Khalsa*, 446 F.3d 1027, 1031-32 (10th Cir. 2006); *Parker v. Lyons*, 757 F.3d 701, 705 (7th Cir. 2014).
- Numerous district court decisions (many out of the Second Circuit), have applied the doctrine even though the state case was on appeal, reasoning that the entire purpose of the doctrine is to prevent district court review of state court judgments and supplant state appellate review.

Open Issue: Application To Suits For Extrinsic Fraud

- Circuits split on whether the doctrine applies to federal suits arguing that the state court judgment was procured by extrinsic fraud.
- Claims for extrinsic fraud may proceed: In re *Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986); *Resolute Ins. Co. v. State of N.C.*, 397 F.2d 586, 589 (4th Cir. 1968); *Kougasian v. TMSL*, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004).
- No exception for extrinsic fraud: *Kelley v. Med-1 Solutions, LLC*, 548 F.3d 600, 604-05 (7th Cir. 2008); *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031, 1035-36 (8th Cir. 1999); *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427 (2d Cir. 2014).
- Middle ground: Extrinsic fraud claim permitted if plaintiff can show that injury is derived from the fraudulent conduct itself, and not solely as a result of the judgment, with the notion being that the plaintiff is not seeking to void the judgment. See, e.g., *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159 (3d Cir. 2010).

Scenarios For Application Of *Rooker-Feldman* In Civil Rights Suits

- Often arises in proceedings with pro per litigants seeking to invalidate state judgment.
- Frequently arises in disputes over licensing over disciplinary proceedings.
- Note: Doctrine does no bar federal suit to challenge licensing or disciplinary scheme, so long as relief sought would not disturb the underlying adjudication as to the plaintiff.

The *Heck v. Humphrey* Bar



The *Heck v. Humphrey* Bar Overview

- The *Heck v. Humphrey* bar prevents plaintiffs who have been convicted of a crime from challenging the validity of the conviction in a federal civil rights suit for damages unless and until the conviction has been reversed. It reflects the policy that state court criminal convictions are subject to review by federal courts only via direct review by the Supreme Court, or through habeas corpus proceedings.
- General Rule: If a successful 42 U.S.C. § 1983 action for damages would necessarily imply the invalidity of a criminal conviction, a plaintiff cannot pursue the claim until the underlying conviction is reversed, invalidated, expunged, or otherwise nullified.

Heck v. Humphrey Background

- *Heck v. Humphrey*, 512 U.S. 477 (1994) convicted prisoner files federal suit for damages under section 1983 asserting conviction based on concealment of evidence by officers.
- District court dismisses action and Seventh Circuit affirms.
- Supreme Court affirms.

Heck v. Humphrey Reasoning

- Where success on the civil rights claim for damages would **necessarily imply** the invalidity of an underlying criminal conviction, no suit can be brought unless and until the conviction has been reversed or expunged by way of direct appeal or habeas corpus relief.
- Analogizes to favorable termination requirement for the common law tort of malicious prosecution.
- Limitation necessary to avoid undermining federal habeas corpus and exhaustion of state post-conviction remedies as the specific federal remedy to challenge the validity of a conviction.
- Consistent with *Preiser v. Rodriguez*, 411 U.S. 475 (1973), which barred section 1983 claims for injunctive relief concerning the fact or duration of imprisonment, as habeas corpus is the sole avenue of relief for such claims.

What Does "Necessarily Imply" Mean?

- Confusing phrase: C.J. Roberts has described it as an oxymoron.
- Often difficult to apply standard.
- Easy cases: Federal claims based on malicious prosecution, fabrication of evidence or perjury at trial –barred by *Heck.* Cases challenging method of execution not barred by *Heck* –successful suit would not invalidate sentence, but merely alter manner of carrying it out. *Nelson v. Campbell*, 541 U.S. 637 (2004); *Hill v. McDonough*, 547 U.S. 573 (2006).

Heck And Excessive Force Claims

- Generally, claims of excessive force survive a *Heck* challenge because in most cases, the act of excessive force itself is not related to the merits of the underlying conviction.
- Exception: Excessive force claims arising from conviction for resisting arrest or assaulting an officer.
- Key inquiry: Will success on the excessive force claim **necessarily** imply that the underlying conviction was invalid?

Heck And Excessive Force Claims Examples

- If the excessive force allegedly occurred after the suspect had already been arrested for resisting, *Heck* does not apply. The force has nothing to do with the underlying crime. *Sanford v. Motts*, 258 F.3d 1117 (9th Cir. 2001).

- The problem of multiple acts of resistance.

- If plaintiff pled guilty, factual basis of the plea may not be clear from the record, and the presence of several potential grounds for the plea means that success on a subsequent excessive force claim would not necessarily imply the conviction was invalid. *Smith v. City of Hemet*, 394 F.3d 689 (9th Cir. 2005).

- Review of criminal trial transcript may indicate that jury convicted plaintiff for act of resistance that had not prompted the use of the alleged excessive force. *Martinez v. City of Albuquerque*, 184 F.3d 1123 (10th Cir. 1999).

- Underlying criminal conviction might not have required the jury to assess the level of force employed by the officers. *Nelson v. Jashurek*, 109 F.3d 142 (3d Cir. 1997); *Willingham v. Loughnan*, 261 F.3d 1178, 1183 (11th Cir. 2001).

Other Claims Falling Outside Of *Heck*

- Claims for warrantless arrest or unlawful seizure of evidence often fall outside of *Heck*, because success on such claims does not necessarily imply that the underlying criminal conviction was invalid. *Wallace v. Kato*, 549 U.S. 384 (2007).
- *Mills v. City of Covina*, 921 F.3d 1161, 1167 (9th Cir. 2019): *Heck* does not bar pre-conviction claims for unlawful stop and detention, false arrest and false imprisonment.
- *Weilburg v. Shapiro*, 488 F.3d 1202, 1206 (9th Cir. 2007): *Heck* does not bar action based on unlawful extradition because successful claim would not invalidate conviction.

Open Issue Whether *Heck* Applies If Plaintiff No Longer In Custody

- The Supreme Court has expressly noted that it is an open issue whether *Heck* bars a section 1983 claim by a plaintiff for whom habeas corpus was unavailable as a remedy. *Muhammad v. Close*, 540 U.S. 749, 752 n.2 (2004).
- Circuits are split.
- 1983 claims may proceed where plaintiffs, through no fault of their own, are unable to seek habeas corpus relief. *Wilson v. Johnson*, 535 F.3d 262, 266-68 (4th Cir. 2008); *Powers v. Hamilton Cnty. Public Defender Comm'n*, 501 F.3d 592, 603 (6th Cir. 2007); *Harden v. Pataki*, 320 F.3d 1289, 1298-99 (11th Cir. 2003); *Nonnette v. Small*, 316 F.3d 872, 876-77 (9th Cir. 2002); *Carr v. O'Leary*, 167 F.3d 1124, 1127 (7th Cir. 1999); *Cohen v. Longshore*, 621 F.3d 1311, 1316-17 (10th Cir. 2010).
- *Heck* favorable termination requirement prevents section 1983 claim for damages even if by plaintiff's release from custody has made habeas relief unavailable. See, e.g., *Figueroa v. Rivera*, 147 F.3d 77, 81 n.3 (1st Cir. 1998); *Williams v. Consovoy*, 453 F.3d 173, 177-78 (3d Cir. 2006); *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000); *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007).

Thanks!



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