

Sec. 2—Judicial Power and Jurisdiction Cl. 2—Original and Appellate Jurisdiction

cases removed from them. Federal courts and Congress have developed rules to guide these and other avenues of jurisdictional friction with the States.

Comity.—“[T]he notion of ‘comity,’” Justice Black asserted, is composed of “a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as ‘Our Federalism’. . . .”¹²⁷⁶ Comity is a self-imposed rule of judicial restraint whereby independent tribunals of concurrent or coordinate jurisdiction act to moderate the stresses of coexistence and to avoid collisions of authority. It is not a rule of law but “one of practice, convenience, and expediency,”¹²⁷⁷ which persuades but does not command.

Abstention.—The abstention doctrine manifests the concept of comity. The doctrine instructs federal courts to refrain from exercising jurisdiction in certain cases when the same matter is before a state court. Abstention may apply when the applicable state law, which would be dispositive of the controversy, is unclear and a state court interpretation of the state law question might obviate the need to decide a federal constitutional issue.¹²⁷⁸ Abstention is not proper,

¹²⁷⁶ *Younger v. Harris*, 401 U.S. 37, 44 (1971). Compare *Fair Assessment in Real Estate Ass’n v. McNary*, 454 U.S. 100 (1981), with *id.* at 119–25 (Justice Brennan concurring, joined by three other Justices).

¹²⁷⁷ *Mast, Foos & Co. v. Stover Manufacturing Co.*, 177 U.S. 458, 488 (1900). Recent decisions emphasize comity as the primary reason for restraint in federal court actions tending to interfere with state courts. *E.g.*, *O’Shea v. Littleton*, 414 U.S. 488, 499–504 (1974); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 599–603 (1975); *Trainor v. Hernandez*, 431 U.S. 434, 441 (1977); *Moore v. Sims*, 442 U.S. 415, 430 (1979). The Court has also cited comity as a reason to restrict access to federal *habeas corpus*. *Francis v. Henderson*, 425 U.S. 536, 541 and n.31 (1976); *Wainwright v. Sykes*, 433 U.S. 72, 83, 88, 90 (1977); *Engle v. Isaac*, 456 U.S. 107, 128–29 (1982). See also *Rosewell v. LaSalle National Bank*, 450 U.S. 503 (1981); *Fair Assessment in Real Estate Ass’n v. McNary*, 454 U.S. 100 (1981) (comity limits federal court interference with state tax systems); *Levin v. Commerce Energy, Inc.*, 560 U.S. ___, No. 09–223, slip op. (2010) (comity has particular force in cases challenging constitutionality of state taxation of commercial activities). And see *Missouri v. Jenkins*, 495 U.S. 33 (1990).

¹²⁷⁸ C. WRIGHT, *HANDBOOK OF THE LAW OF FEDERAL COURTS* 13 (4th ed. 1983). The basic doctrine was formulated by Justice Frankfurter for the Court in *Railroad Comm’n v. Pullman Co.*, 312 U.S. 496 (1941). Other strands of the doctrine are that a federal court should refrain from exercising jurisdiction in order to avoid needless conflict with a state’s administration of its own affairs, *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *Alabama Public Service Comm’n v. Southern Ry.*, 341 U.S. 341 (1951); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Martin v. Creasy*, 360 U.S. 219 (1959); *Moses H. Cone Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983); *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S.