

A Brief Discussion on the Principle of International Comity in Recognition and Enforcement Foreign Judgemnt in U.S. Courts

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Abstract: The principle of international comity is the fundamental basis for U.S. courts to recognize and enforce foreign judgments. However, some scholars persist regarding the efficacy of comity, given its inherently vague and flexible nature. This paper clarifies the role of the comity in U.S. recognition practice courts in recognizing and enforcing foreign judgment and defends its ongoing necessity. The analysis shows that modern U.S. practice has considerably expanded the community beyond traditional private international law notions for resolving the choice of law issues. Comity doctrine in American law provides the ground for recognizing foreign judgments. Critically, comity is discretionary, neither as a legal obligation nor mere courtesy. This empowers U.S. courts to recognize foreign judgments absent binding international law, while retaining prudence to deny decrees that would harm US interest. Since *Hiton v. Guyot*, the courts has adopted the principle of international comity as the basis for recognizing and enforcing foreign judgments.

Keywords: Principle of International Comity; Recognition and Enforcement of Foreign Judgments; Conflict of Laws; Public Strategy

1. Introduction

The recognition and enforcement of foreign judgments are important parts of transnational litigation. In current practice, the legal basis for recognizing and enforcing foreign court judgments in China primarily relies on international treaties and reciprocity [1]. In other words, in the absence of treaty relations, China will generally recognize and enforce foreign court judgments based on the principle of reciprocity. Unlike China, U.S. courts maintain that the recognition and enforcement of foreign court judgments is based on the principle of

international comity [2]. However, Chinese scholars have not paid too much attention to the principle of international comity in the U.S. judgment recognition and enforcement system. The reasons are roughly as follows: (1) International comity is a synonym for reciprocity, courtesy and friendliness [3]; (2) Other principles have replaced the principle of international comity. In the later period, the American judgment recognition and enforcement system began to pursue more binding doctrines like: vested rights, legal obligation, *res judicata*, etc.; (3) Comity represents a policy rather than a rule of law [4]. For reasons as such, the principle of international comity only expresses the court's pursuit of common goals such as peace, cooperation and development in international relations, and its value as a legal principle is limited [5].

However, suppose the principle of international comity is only regarded as a kind of goodwill and courtesy. Why would American courts frequently apply the principle of international comity and why do they emphasize it as the basis for recognising and enforcing judgments? The fundamental reason is that the principle of international comity mentioned by the US courts is more than a legal doctrine to solve the conflict of law issues mentioned in Huber's theory. The meaning of the term comity varies in the current theoretical practice in the United States, including courtesy, the need for reciprocity, or a synonym for the rules of public international law. [6] Some scholars conclude that the principle of international comity is a "respect for foreign government actors", which is required by the domestic law of the United States, not by international law. For example, the courts subdivide comity into legislative comity (prescribe comity) and judicial comity (judicial comity/adjudicative comity) [7]. When comity serves as a rule of interpretation (canons of construction), it can limit and narrow the

jurisdiction of laws and regulations, that is, legislative comity [8].

One form of the judicial comity is that courts recognizes and enforces foreign judgments if certain conditions are met [8]. In addition to recognizing judgments for a foreign nation, the United States has also applied the principle of comity to resolve the recognition and enforcement of judgments between sister states, also known as interstate comity. Therefore, applying the principle of international comity in the United States is much more complicated than what it is in the traditional doctrine [9]. Compared with Huber's three maxims, the international comity mentioned by the U.S. courts has more diverse interpretations and a wider scope of application.

This article will combine theory and practice to clarify the principle of international comity in the recognition and enforcement of foreign judgments in the U.S. court and study and discuss its connotation, characteristics and application in practice. This article takes the history of the principle of international comity as the starting point, distinguishes the principle of international comity from other comity terms, and further clarifies the connotation and application of the principle of international comity in the U.S. courts.

2. Distinguishing the U.S. Principle of International Comity from Traditional Doctrines

The initial step toward accurately comprehending the meaning of international comity requires a differentiate the use of international comity in U.S. courts with Huber's notion of international comity. The connotation of comity influences and directs judicial viewpoints regarding its applicability; therefore, a precise conceptual comprehension is essential for a thorough assessment of how American courts employ the doctrine to acknowledge and uphold foreign judgements [10]. Upon review, the principle of international comity as judicially interpreted and applied within the U.S. common law legal system reflects considerable development beyond traditional comity theories. American jurists and legal scholars have substantially expanded, enriched, and refined the conventional comity framework to establish a considerably more flexible, multifaceted contemporary doctrine [11]. This modern evolution of comity departs from traditional

principles in three primary respects:

2.1 Comity is Neither an Absolute Legal Obligation Nor Mere Goodwill

Within conventional comity frameworks, the foundational understanding of international comity traces back to the highly influential Dutch scholar Ulrich Huber, who formulated the doctrine in the treatise 'On the Conflict of Different Laws in Different Empires' during the 17th century. Huber's three core principles posit that every sovereign nation retains the discretion to refuse to recognize or apply foreign law within its territory. Still, they may defer to foreign legal statutes or rulings out of considerations of "comity" so long as they are not inconsistent with its own interests or sovereignty prerogatives [12]. However, despite comity's extensive integration into private international law theory, uncertainty has persisted regarding whether comity ostensibly constitutes some form of international legal obligation or merely represents a voluntary moral courtesy [13].

In response, American jurists and legal theorists have devoted substantial effort toward elucidating comity's nature within the U.S. domestic legal context. Most influentially, in the 1834 treatise *Commentaries on the Conflict of Laws*, U.S. Supreme Court Justice Joseph Story expressly rejected the premise that international comity could constitute customary legal obligations on sovereign states. Instead, Story concluded that comity remains a voluntary choice provided for within U.S. domestic law [14]. In Story's conceptualization, domestic courts should presume foreign law implicitly accepted to facilitate trade and commerce if it does not conflict with local public policies or interest [15]. Critically, this implies that in scenarios where domestic law does not specifically prohibit application of a foreign legal provision, American courts may then opt to defer to the foreign statute or ruling strictly on the basis of comity considerations [16]. Consequently, at least within U.S. jurisprudence, this doctrine has constituted the theoretical foundation for the entire field of American private international law [17]. Justice Story and subsequent jurists have characterized comity as essentially amounting to "voluntary concessions" by the domestic country [18]. Because comity does not technically infringe on notions of legal sovereignty, U.S. courts have

continuously endorsed the concept as part of an inherently voluntary national public policy [19]. The seminal formulation of comity in U.S. law emerged from Justice Gray's majority opinion in the 1895 Supreme Court case *Hilton v. Guyot*, which remains the most authoritative expression of the doctrine's connotation. Critically, Gray defined comity as "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other [20]. This interpretation reinforces that comity does not constitute obligations under international law. Courts retain full discretion over extending comity, such that it manifests judicial courtesy rather than mandatory deference [21]. Simultaneously, comity differs from abstract goodwill because its extensive integration into legal practice has effectively given the concept binding legal force [22]. In contemporary U.S. jurisprudence, therefore, international comity remains characterized as a doctrine of reciprocity, discretion, and respect founded upon longstanding legal traditions rather than merely political caprice [23].

2.2 Comity's Scope Includes Recognizing Foreign Judicial Decisions

Traditionally within private international law theory, Huber's comity framework centered on determining the acceptable instances in which domestic courts should recognize the applicability of foreign law. Some Anglo-American jurists interpreted this "foreign law" in the third Huberian maxim to denote legal powers and rights acquired under the framework of another country's laws. British scholar Albert Dicey, in particular, repurposed Huber's principles to advocate a vested rights theory, although Dicey acknowledged comity's uncertain standing in common law [24].

Nonetheless, modern U.S. jurisprudence has considerably expanded the purview of foreign law envisioned under comity. In particular, American courts have reinforced that respecting foreign government actions under comity encompasses acknowledging the legal validity of another sovereign country's administrative, legislative, and judicial acts within its defined territorial jurisdiction [25].

The 1895 *Hilton* majority opinion itself articulated an expansive vision of comity as follows:

The laws of one nation "to operate within the dominion of another nation, depend upon what

our greatest jurists have been content to call the comity of nations" A nation will suffer the laws of another to operate within its dominion, waiving the exclusiveness of its legislative power, so long as the exercise of that legislative power is not contrary to its interests and policy [26].

This explication of comity permits domestic courts to defer to foreign judgments out of respect for other countries' sovereignty entitlements. Whereas Dicey and other common law theorists characterized recognizing foreign rights as an issue of vested rights, U.S. practice has relied on a flexible, discretionary comity model without the constraints of rights theories [27]. In contemporary application, therefore, the doctrine of international comity furnishes U.S. courts with an expansive legal basis for electing to acknowledge the legal validity of foreign judicial decisions through prudential deference [28].

2.3 Comity Can Resolve Interstate Judgment Recognition

Somewhat exceptionally, U.S. courts have even extended the application of international comity principles to resolve certain conflicts stemming from the American federal system. While the Full Faith and Credit Clause of the U.S. Constitution already imposes obligations on states to respect the civil judgments issued by sister state courts, exceptions exist, excluding categories like anti-suit injunctions and criminal sentences [29]. Similarly, individual states can voluntarily opt to acknowledge sister state judgments deemed "criminal" in nature based on notions of interstate comity [30]. This doctrine thus allows prudential recognition of sister state decisions that states are not necessarily constitutionally compelled to enforce [31].

Admittedly, considerable variation and uncertainty exists in how U.S. courts have distinguished between the overlapping concepts of international comity, general comity, and interstate comity [32]. Some opinions rigidly rejected applying the term international comity to interstate affairs [33]. However, in function, international comity, comity, and interstate comity all effectively refer to the same underlying doctrine - prudential deference to foreign government acts absent violation of local public policy, whether those acts stem from sovereign national or state governments [34].

Therefore, in comparison to conventional comity

theories, the contemporary U.S. doctrine has substantially wider scope and applicability. International comity furnishes American courts with a flexible vehicle to voluntarily acknowledge foreign judgments in scenarios where neither international law nor domestic constitutional provisions demand recognition. This expansive conception continues to inform current judicial practice directly.

3. Situating Comity Among Common Law Recognition Theories

Given the international community doctrine's pivotal role in the U.S. recognition of foreign judgments, elucidating its relationship to other common law theories underlying recognition sheds further light on American jurisprudential perspectives. The comparative analysis reveals that on certain key questions of recognition practice, adopting international comity as the governing paradigm essentially precludes concurrent adoption of rival theories.

3.1 Comity Repudiates the Legal Obligation Theory

The "legal obligation" or "obligation" theory constituted an influential conceptual framework regarding foreign judgment recognition within British and early American jurisprudence. This doctrine effectively treated any foreign court verdict as *prima facie* legal evidence of an underlying contractual debt arrangement or obligation between the parties [35].

Consequently, American courts would regard a foreign civil judgment commanding a defendant to render payment or fulfil some other creditor obligation as manifesting an independently enforceable legal right conferred by the court upon the plaintiff. Pursuant to a vested rights rationale, the resulting verdict constituted an enforceable judicial property interest that other countries should duly respect [36]. Both U.S. and British courts extensively applied variations of this theory during the 19th century, with the UK ultimately entrenching the obligation framework as the governing doctrine. The British decision in *Meyer v. Ralli* explicitly reaffirmed obligation as the sole appropriate basis for recognizing foreign judgments, rejecting international comity [37].

In contrast, the seminal American judgment in *Hilton v. Guyot* confirmed comity as the foundation for U.S. foreign judgment recognition practice while permitting defendants

to challenge the validity of judgments on limited grounds including fraud or lack of jurisdiction, without reassessing all merits [38]. If U.S. courts elect to recognize a foreign verdict premised on comity, this confers full preclusive effect. The comity model is irreconcilable with the premised obligation theory of merely *prima facie* evidence of debt. Consequently, current international comity doctrine among U.S. courts fundamentally denies legal obligation as the appropriate theoretical framework [39].

3.2 Reciprocity is an Optional Consideration Under Comity

The *Hilton* majority did introduce reciprocity as an additional prudential condition for recognition of foreign judgments under comity, refusing to acknowledge a French verdict due to France's lack of reciprocal recognition of equivalent American decisions [40]. The court noted that extending comity depends on judges determining whether the domestic nation's interests would be prejudiced by recognising the foreign judgment at issue [41].

Justice Story's earlier exposition on comity seemingly endorsed conditioning application of the doctrine on expectations of reciprocity as well. The story suggested domestic courts reserve discretion to refuse comity absent probable reciprocity from the foreign jurisdiction. However, presuming eventual reciprocity would organically develop through voluntary cooperation on recognition could encourage mutual trust and respect among sovereigns [42].

Yet subsequent U.S. jurisprudence has not uniformly embraced *Hilton's* emphasis on reciprocity. The initial Supreme Court opinion provoked extensive debate over its precedential value, with various authorities seeking to minimize the associated reciprocity requirements [43]. Neither Justice Gray nor lower courts have regularly cited reciprocity when articulating controlling standards for recognition [44].

3.3 Comity Enables Application of Res Judicata Principles

Many U.S. courts have utilized the domestic law doctrine of *res judicata* to recognize and give preclusive effect to foreign judgments. *Res judicata* estops parties from relitigating claims already subject to a final judgment, reflecting a policy preference for litigation finality [45].

Reliance on *res judicata* potentially obviates the comity's necessity, as judges could determine appropriate recognition of foreign verdicts by simply extending domestic preclusion rules [46]. However, numerous authorities contest directly applying *forum res judicata* law in the foreign judgment context as logically inconsistent. Neither local nor foreign *res judicata* principles can automatically dictate the appropriate preclusive scope for a foreign ruling's domestic recognition [47]. Moreover, domestic preclusion policies developed to manage local litigation arguably do not appropriately inform recognition of foreign decisions [48].

To avoid these dilemmas, international comity furnishes the requisite theoretical justification for U.S. judges to utilize domestic *res judicata* doctrine regarding recognized foreign judgments. By initially acknowledging another country's judicial decision under international comity standards, this voluntary deference enables the court to invoke its own *res judicata* rules then to give preclusive effect to the recognized judgment against the parties [49].

Absent comity, a foreign court decree constitutes an extraterritorial act by a foreign sovereign lacking independent force domestically. However, once recognized via comity, applying *res judicata* becomes defensible to grant the judgment binding authority [50]. U.S. courts need not automatically give preclusion effect to foreign judgments under comity. But the doctrine does provide courts discretion to elect *res judicata* consequences for recognized decisions [51]. International comity thus forms an essential prerequisite enabling application of *res judicata* policies to foreign rulings. In summary, adopting the international comity framework holds several indispensable implications for treating foreign judgments under U.S. common law. Invoking comity intrinsically denies legal obligation as the paradigm for recognition. Comity renders reciprocity discretionary rather than obligatory.

4. The Practical Application of International Comity in U.S. Recognition Practice

Despite ongoing academic skepticism toward international comity, the doctrine retains an integral role in recognising foreign judgments across the U.S. legal system. Surveying specific state practices highlights the influence and flexibility of international communities as the underlying legal basis for recognition.

4.1 Most U.S. States Have Inherited or Adopted the Comity Principles from Hilton

The lack of federal legislation or international agreements mandating foreign judgment recognition yields significant interstate variations in governing laws and rules. Nonetheless, most U.S. states share remarkably similar standards for evaluating foreign court decisions. First, no current federal statute requires U.S. courts to recognize foreign judgments in either federal or state proceedings. Foreign rulings receive differentiated treatment compared to sister state judgments entitled to full faith and credit [52]. Second, the U.S. has not ratified any international treaties or conventions establishing recognition obligations. Thus, courts continue relying on the voluntary comity paradigm [53].

The Erie doctrine ruling that state governments determine appropriate recognition of foreign civil judgments muddles the authority of the federal precedent in Hilton [54]. However, despite formally losing binding force on states, Hilton's comity-derived standards continue to furnish the template for contemporary state recognition laws [55]. Most states have either directly incorporated Hilton through common law jurisprudence, or deliberately modeled statutory recognition provisions on its foundations [56].

Consequently, although state rules on foreign judgment recognition markedly vary in precise form and contours, their underlying premises remain broadly continuous. International comity persists as the prevailing modern rationale, with flexibility to serve state policy preferences. This illustrates the enduring usefulness of Hilton's comity doctrine for elucidating foreign recognition practice.

4.2 Applying Comity Falls Within Courts' Discretionary Authority

The established conceptualization of international comity as neither absolute obligation nor mere courtesy means that decisions to recognize foreign judgments ultimately fall within the discretionary authority of domestic courts [57]. Comity empowers prudential recognition absent directives under international law or the Constitution [58].

Judges must determine in each case whether granting comity aligns with the circumstances, or if countervailing public policies necessitate

refusing recognition [59]. Parties disputing comity's applicability bear the burden of proving inappropriateness to the court [60]. Crucially, even where the general presumption favors comity, courts retain the right to refuse deference to foreign acts deemed contrary to national interests [61].

Because elected as a matter of national common law, precedential principles and appellate review ensure that lower courts' comity determinations do not grow fully arbitrary [62]. But judges still command considerable latitude over electing recognition premised on the comity's flexible nature.

4.3 Comity's Appropriateness is a Condition for Granting Recognition

Given the importance of the international community within American recognition practice, U.S. courts consistently treat the doctrine's reasonable applicability under the circumstances as an essential precondition to acknowledging a foreign judgment's domestic legal validity [63].

State courts have adopted two primary models for evaluating comity's propriety. First, some courts apply a simplified assessment concentrating directly on safeguarding public policy and citizens' rights [64]. Second, other courts incorporate the multifactor recognition standard from *Hilton* itself to structure comity determinations. Typical considerations include jurisdiction, fairness, proper procedures, lack of bias or fraud, and compatibility with domestic policy [65].

Irrespective of the exact approach, satisfying a threshold finding of a comity's general suitability constitutes the necessary gateway permitting further assessment of whether to recognize any given foreign judgment. Failing this preliminary comity appraisal results in summary dismissal absent additional examination. As such, international comity operates akin to an affirmative defence against recognition in appropriate cases [66].

In practice, therefore, the voluntary flexibility of international comity significantly empowers U.S. courts to deny recognition to foreign judgments deemed deleterious to substantive policy interests or notions of procedural fairness. Comity enables American judges to act as equitable gatekeepers regarding which foreign rulings should command domestic effect. Simultaneously, comity furnishes the requisite

legal justification and foundation for electing to recognize foreign decisions where discretionarily appropriate.

5. Controversies Concerning the Role of International Comity

The extensive integration of international comity throughout U.S. recognition practice has not occurred without criticism. Skeptics continue to question both the wisdom and legal propriety of placing such discretionary weight upon a doctrine lacking precise boundaries and susceptible to judicial abuse. The primary lines of objection center on comity's inherent ambiguity, its seeming indeterminacy in application, and the arguable incongruity of applying an ostensibly political concept in judicial proceedings.

5.1 Comity's Inherent Ambiguity Undermines Legal Development

A principal strand of criticism argues that the endemic ambiguity besetting the concept of international comity severely constrains the stable maturation of private international law. Dependence on such an uncertain doctrine purportedly renders recognition practice unpredictable and open to judicial caprice [67].

Some posit that the voluntary flexibility inherent in comity analysis essentially makes recognition of foreign law "a judicially voluntary and capricious matter" rather than an issue of consistent legal doctrine [68]. In this perspective, the growing inability of courts to render comity decisions grounded in concrete evidence instead of rhetorical assertions threatens to herald the twilight of the doctrine's usefulness [69].

Moreover, skeptics maintain that even absent comity, workable alternative theories like vested rights, legal obligations, and *res judicata* could furnish courts a framework for recognizing foreign judgments [70]. The American conflicts revolution in private international law already substantially displaced rigid traditional doctrines like comity by advocating realist perspectives recognizing the exigencies of globalization [71]. New theories also seemingly guided the modification of British and French approaches [72]. This implies potential substitutes for comity exist that may enable more predictable recognition practice.

5.2 Comity Risks Judicial Abuse in Application

A further critique concentrates on the dangers of international comity's endemic indeterminacy of meaning. Absent strict guidance, the doctrine's flexibility risks being exploited as a pretext for result-oriented decisions [73]. Judges often appear to apply idiosyncratic individualized comity standards rather than controlling analytical frameworks [74].

The inability of courts and commentators to forge consensus on comity's substance seemingly threatens to degrade the doctrine into sophistic wordplay [75]. Skeptics argue that judicial comity analyses frequently entail empty rhetorical references lacking meaningful constraints [70]. Judges purportedly invoke comity as a veil to conduct subjective balancing of interests while claiming principled application [68]. This discretion lacks discipline and predictable parameters.

Overall, international comity's vagueness and mutability arguably render the doctrine susceptible to arbitrary judicial application and conflation with personal policy preferences. More determinate recognition frameworks could potentially limit opportunities for judicial overreach.

5.3 Comity May be Better Suited to Executive Rather Than Judicial Functions

A third body of criticism suggests that the conceptual nature of international comity renders the doctrine fundamentally unsuited to judicial application, instead falling within the proper competency of the executive branch. In this perspective, comity remains inherently a foreign relations and diplomacy tool rather than an appropriate legal principle for court rulings [76].

Skeptics argue that principles of conflicts between laws reflect choices properly reserved for sovereign governments rather than private judges [77]. The indeterminacy of comity purportedly obfuscates more than clarifies analysis [78]. Additionally, by questioning foreign countries' legislative and judicial acts, unelected judges risk usurping executive authority over diplomacy. This stance contends that applying open-ended comity considerations falls outside judges' institutional competency. Courts should limit analysis to objective domestic law criteria, leaving subjective reciprocity interests to the diplomatic discretion of the executive branch [78].

6. Conclusion

Notwithstanding persistent criticisms, international comity remains firmly entrenched as the touchstone principle guiding U.S. foreign judgment recognition practice. The doctrine's longevity despite shortcomings underscores that no obviously superior replacement has yet emerged. Even skeptics acknowledge that, despite imperfections, comity can prove useful for directing judicial discretion in many recognition cases. Pragmatically, international comity's voluntary flexibility seems necessary to facilitate the continued incremental development of American recognition law and practice. Binding multilateral treaties appear unlikely, and federal legislation could run afoul of state sovereignty. Principles of comity furnish a stable common baseline that allows states autonomy in crafting details.

Moreover, efforts to abandon nebulous principles like comity in favor of legal realist perspectives have also generated difficulties. While realism deserves credit for encouraging international judicial cooperation, some implementations have arguably exceeded reasonable limits. Comity constitutes a compromise preserving constructively, the international comity doctrine attempts to balance several indispensable, albeit contradictory, imperatives. Rights of sovereign autonomy must be reconciled with necessities of international coordination. Similarly, granting courts discretion over recognition maintains judicial integrity yet simultaneously demands good faith self-restraint by judges. Finding optimal equilibrium between these competing demands remains challenging. But the merits of seeking balance likely explain the enduring relevance of international comity in U.S. recognition practice. Despite imperfections, the comity appears destined to remain foundational without a superior paradigm.

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