ties of the parties to the cases.[581] The Court asserted that this principle is true, while applying it only to give retroactive effect to the parties to the immediate case.[582] Yet, occasionally, the Court did not apply its holding to the parties before it,[583] and in a series of cases beginning in the mid-1960s it became embroiled in attempts to limit the retroactive effect of its—primarily but not exclusively[584]—constitutional-criminal law decisions. The results have been confusing and unpredictable.[585]

Prior to 1965, "both the common law and our own decisions recognized a general rule of retrospective effect for the constitutional decisions of this Court . . . subject to [certain] limited exceptions."[586] Statutory and judge-made law have consequences, at least to the extent that people must rely on them in making decisions and shaping their conduct. Therefore, the Court was moved to recognize that there should be a reconciling of constitutional interests reflected in a new rule of law with reliance interests founded upon the old.[587] In both criminal and civil cases, however, the Court's discretion to do so has been constrained by later decisions.

In the 1960s, when the Court began its expansion of the Bill of Rights and applied its rulings to the states, it became necessary to determine the application of the rulings to criminal defendants who had exhausted all direct appeals but who could still resort to *habeas corpus*, to those who had been convicted but still were on direct appeal, and to those who had allegedly engaged in conduct but

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[581] For a masterful discussion of the issue in both criminal and civil contexts, *see* Fallon & Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 HARV. L. REV. 1731 (1991).

[582] Stovall v. Denno, 388 U.S. 293, 301 (1967).

[583] England v. Louisiana Bd. of Medical Examiners, 375 U.S. 411, 422 (1964); James v. United States, 366 U.S. 213 (1961). *See also* Morrissey v. Brewer, 408 U.S. 471, 490 (1972).

[584] Noncriminal constitutional cases included Lemon v. Kurtzman, 411 U.S. 192 (1973); City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969). Indeed, in Buckley v. Valeo, 424 U.S. 1 (1976), and Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), the Court postponed the effectiveness of its decision for a period during which Congress could repair the flaws in the statute. Noncriminal, nonconstitutional cases include Chevron Oil Co. v. Huson, 404 U.S. 97 (1971); Allen v. State Board of Elections, 393 U.S. 544 (1969); Hanover Shoe v. United Shoe Machinery Corp., 392 U.S. 481 (1968); Simpson v. Union Oil Co., 377 U.S. 13 (1964).

[585] Because of shifting coalitions of Justices, Justice Harlan complained, the course of retroactivity decisions "became almost as difficult to follow as the tracks made by a beast of prey in search of its intended victim." Mackey v. United States, 401 U.S. 667, 676 (1971) (separate opinion).

[586] Robinson v. Neil, 409 U.S. 505, 507 (1973). The older rule of retroactivity derived from the Blackstonian notion "that the duty of the court was not to 'pronounce a new law, but to maintain and expound the old one.'" Linkletter v. Walker, 381 U.S. 618, 622–23 (1965) (quoting 1 W. Blackstone, Commentaries *69).

[587] Lemon v. Kurtzman, 411 U.S. 192, 198–99 (1973).