deliberately bypassed state procedure; the discretion could be exercised only if the court found that the prisoner had intentionally waived his right to pursue his state remedy.[1368]

Liberalization of the writ thus made it possible for convicted persons who had fully litigated their claims at state trials and on appeal, who had because of some procedural default been denied the opportunity to have their claims reviewed, or who had been at least once heard on federal *habeas*, to have the chance to present their grounds for relief to a federal *habeas* judge. In addition to opportunities to relitigate the facts and the law relating to their convictions, prisoners could also take advantage of new constitutional decisions that were retroactive. The filings in federal courts increased year by year, but the numbers of prisoners who in fact obtained either release or retrial remained quite small. A major effect, however, was to exacerbate the feelings of state judges and state law enforcement officials and to stimulate many efforts in Congress to enact restrictive *habeas* amendments.[1369] Although the efforts were unsuccessful, complaints were received more sympathetically in a newly constituted Supreme Court and more restrictive rulings ensued.

The discretion afforded the Court was sounded by Justice Rehnquist, who, after reviewing the case law on the 1867 statute, remarked that the history "illustrates this Court's historic willingness to overturn or modify its earlier views of the scope of the writ, even where the statutory language authorizing judicial action has remained unchanged." [1370] The emphasis from early on has been upon the equitable nature of the *habeas* remedy and the judiciary's responsibility to guide the exercise of that remedy in accordance with

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[1368] 372 U.S. at 438–40.

[1369] In 1961, state prisoner *habeas* filings totaled 1,020, in 1965, 4,845, in 1970, a high (to date) of 9,063, in 1975, 7,843 in 1980, 8,534 in 1985, 9,045 in 1986. On relief afforded, no reliable figures are available, but estimates indicate that at most 4 percent of the filings result in either release or retrial. C. WRIGHT, A. MILLER, & E. COOPER, FEDERAL PRACTICE AND PROCEDURE (1988 & supps.), § 4261, at 284–91.

[1370] Wainwright v. Sykes, 433 U.S. 72, 81 (1977). The present Court's emphasis in *habeas* cases is, of course, quite different from that of the Court in the 1963 trilogy. Now, the Court favors decisions that promote finality, comity, judicial economy, and channeling the resolution of claims into the most appropriate forum. Keeney v. Tamayo-Reyes, 504 U.S. 1, 8–10 (1992). Overall, federalism concerns are critical. *See* Coleman v. Thompson, 501 U.S. 722, 726 (1991) ("This is a case about federalism." First sentence of opinion). The seminal opinion on which subsequent cases have drawn is Justice Powell's concurrence in Schneckloth v. Bustamonte, 412 U.S. 218, 250 (1973). He suggested that *habeas* courts should entertain only those claims that go to the integrity of the fact-finding process, thus raising questions of the value of a guilty verdict, or, more radically, that only those prisoners able to make a credible showing of "factual innocence" could be heard on *habeas*. Id. at 256–58, 274–75. As will be evident *infra*, some form of innocence standard now is pervasive in much of the Court's *habeas* jurisprudence.