who had not gone to trial. At first, the Court drew the line at cases in which judgments of conviction were not yet final, so that all persons in those situations obtained retrospective use of decisions,[588] but the Court later promulgated standards for a balancing process that resulted in different degrees of retroactivity in different cases.[589] Generally, in cases in which the Court declared a rule that was "a clear break with the past," it denied retroactivity to all defendants, with the sometime exception of the appellant himself.[590] With respect to certain cases in which a new rule was intended to overcome an impairment of the truth-finding function of a criminal trial[591] or to cases in which the Court found that a constitutional doctrine barred the conviction or punishment of someone,[592] full retroactivity, even to *habeas* claimants, was the rule. Justice Harlan strongly argued that the Court should sweep away its confusing balancing rules and hold that all defendants whose cases are still pending on direct appeal at the time of a law-changing decision should be entitled to invoke the new rule, but that no *habeas* claimant should be entitled to benefit.[593]

The Court later drew a sharp distinction between criminal cases pending on direct review and cases pending on collateral review. For cases on direct review, "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past."[594] Justice Harlan's *habeas* approach was first adopted by a plurality in *Teague v. Lane*[595] and then by the Court in *Penry v.*

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[588] Linkletter v. Walker, 381 U.S. 618 (1965); Tehan v. United States ex rel. Shott, 382 U.S. 406 (1966).

[589] Johnson v. New Jersey, 384 U.S. 719 (1966); Stovall v. Denno, 388 U.S. 293 (1967); Adams v. Illinois, 405 U.S. 278 (1972).

[590] Desist v. United States, 394 U.S. 244, 248 (1969); United States v. Peltier, 422 U.S. 531 (1975); Brown v. Louisiana, 447 U.S. 323, 335–36 (1980) (plurality opinion); Michigan v. Payne, 412 U.S. 47, 55 (1973); United States v. Johnson, 457 U.S. 537, 549–50, 551–52 (1982).

[591] Williams v. United States, 401 U.S. 646, 653 (1971) (plurality opinion); Brown v. Louisiana, 447 U.S. 323, 328–30 (1980) (plurality opinion); Hankerson v. North Carolina, 432 U.S. 233, 243 (1977).

[592] United States v. United States Coin & Currency, 401 U.S. 715, 724 (1971); Moore v. Illinois, 408 U.S. 786, 800 (1972); Robinson v. Neil, 409 U.S. 505, 509 (1973).

[593] Mackey v. United States, 401 U.S. 667, 675 (1971) (separate opinion); Desist v. United States, 394 U.S. 244, 256 (1969) (dissenting). Justice Powell has also strongly supported the proposed rule. Hankerson v. North Carolina, 432 U.S. 233, 246–248 (1977) (concurring in judgment); Brown v. Louisiana, 447 U.S. 323, 337 (1980) (concurring in judgment).

[594] Griffith v. Kentucky, 479 U.S. 314, 328 (1987) (cited with approval in Whorton v. Bockting, 549 U.S. 406, 416 (2007)).

[595] 489 U.S. 288 (1989).