the creation of new law, through overrulings or otherwise, may result in retroactivity in all instances, in pure prospectivity, or in partial prospectivity in which the prevailing party obtains the results of the new rule but no one else does. In two cases raising the question when states are required to refund taxes collected under a statute that is subsequently ruled unconstitutional, the Court revealed itself to be deeply divided.[601] The question in *Beam* was whether the company could claim a tax refund under an earlier ruling holding unconstitutional the imposition of certain taxes upon its products. The holding of a fractionated Court was that it could seek a refund, because in the earlier ruling the Court had applied the holding to the contesting company, and, once a new rule has been applied retroactively to the litigants in a civil case, considerations of equality and *stare decisis* compel application to all.[602] Although partial or selective prospectivity is thus ruled out, neither pure retroactivity nor pure prospectivity is either required or forbidden.

Four Justices adhered to the principle that new rules, as defined above, may be applied purely prospectively, without violating any tenet of Article III or any other constitutional value.[603] Three Justices argued that all prospectivity, whether partial or total, violates Article III by expanding the jurisdiction of the federal courts beyond true cases and controversies.[604] Apparently, the Court now has resolved this dispute, although the principal decision was by a five-to-four vote. In *Harper v. Virginia Dep't of Taxation*,[605] the Court adopted the principle of the *Griffith* decision in criminal cases and disregarded the *Chevron Oil* approach in civil cases. Henceforth, in

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pression whose resolution was not clearly foreshadowed. The courts must look to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. Then, the courts must look to see whether a decision to apply retroactively a decision will produce substantial inequitable results. Id. at 106–07. American Trucking Assn's v. Smith, 496 U.S. 167, 179–86 (1990) (plurality opinion).

[601] James B. Beam Distilling Co. v. Georgia, 501 U.S. 529 (1991); American Trucking Assn's, Inc. v. Smith, 496 U.S. 167 (1990).

[602] The holding described in the text is expressly that of only a two-Justice plurality. 501 U.S. at 534–44 (Justices Souter and Stevens). Justice White, Justice Blackmun, and Justice Scalia (with Justice Marshall joining the latter Justices) concurred, id. at 544, 547, 548 (respectively), but on other, and in the instance of the three latter Justices, and broader justifications. Justices O'Connor and Kennedy and Chief Justice Rehnquist dissented. Id. at 549.

[603] 501 U.S. at 549 (dissenting opinion of Justices O'Connor and Kennedy and Chief Justice Rehnquist), and id. at 544 (Justice White concurring). *See also Smith*, 496 U.S. at 171 (plurality opinion of Justices O'Connor, White, Kennedy, and Chief Justice Rehnquist).

[604] 501 U.S. at 547, 548 (Justices Blackmun, Scalia, and Marshall concurring). In *Smith*, 496 U.S. at 205, these three Justices had joined the dissenting opinion of Justice Stevens arguing that constitutional decisions must be given retroactive effect.

[605] 509 U.S. 86 (1993).