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I. INTRODUCTION

When a court announces a new rule of constitutional criminal procedure, one question immediately follows: does the new rule...

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apply to litigants negatively affected by the “old rule.” For the past two hundred years, the answer to this question was simple and straightforward—yes. In 1965, however, the U.S. Supreme Court abandoned the traditional analysis and adopted a case-by-case approach for determining the retroactivity of new rules of constitutional criminal procedure. In the 1989 case of Teague v. Lane, the Court revisited the doctrine of retroactivity and announced that new rules of constitutional criminal procedure would, as a general rule, not apply retroactively.

Although the Teague rule was specifically designed for, and limited to, cases on federal habeas review, a few states, including Minnesota, incorrectly interpreted Teague as binding on state courts in state post-conviction proceedings. In 2006, Stephen


3. “A decision is retro[active] if it applies to causes of action accruing before the decision.” 21 C.J.S. Courts § 204 (2009).

A ruling that does not apply even to the parties before the court in the case in which the ruling is issued is purely prospective. A decision has limited prospective effect if the rule announced applies retroactively to the parties before the court and also to those litigants whose claims were pending at the time of the decision announcing the new rule, but prospectively to all others. Id. (footnotes omitted). For a detailed discussion of relevant definitions, specifically in the context of criminal procedure, see State v. Baird, 654 N.W.2d 105, 111 n.5 (Minn. 2002).


6. Danforth v. Minnesota, 128 S. Ct. 1029, 1042 n.17 (2008). As Justice Stevens emphasized in Danforth, Teague was decided under the federal habeas statute and, therefore, is not binding on state courts. Id.

It is . . . abundantly clear that the Teague rule of nonretroactivity was fashioned to achieve the goals of federal habeas while minimizing federal intrusion into state criminal proceedings. It was intended to limit the authority of federal courts to overturn state convictions—not to limit a state court’s authority to grant relief for violations of new rules of constitutional law when reviewing its own State’s convictions.
Danforth, seeking post-conviction relief, urged the Minnesota Supreme Court to abandon the *Teague* test and adopt an alternative approach. The Minnesota Supreme Court rejected Danforth’s argument, holding that it was required to follow *Teague*’s retroactivity standard. The U.S. Supreme Court sided with Danforth and reversed and remanded, holding that states were free to develop their own retroactivity approaches for state post-conviction proceedings. On remand, the Minnesota Supreme Court again rejected Danforth’s arguments and decided to retain the *Teague* retroactivity approach for state post-conviction proceedings. Thus, the Minnesota Supreme Court decided to formally adopt a retroactivity standard that was not designed for state post-conviction application.

This note first traces the history of the federal retroactivity doctrine, from the English common law to the U.S. Supreme Court’s latest decision in *Danforth*. Next, this note discusses the history and development of the retroactivity doctrine in the State of Minnesota. Then, this note discusses the facts and holding and provides an analysis of the Minnesota Supreme Court’s final decision in *Danforth v. State*. This note goes on to suggest that the Minnesota Supreme Court should accept the Supreme Court’s invitation to develop a retroactivity standard that is responsive to the goals and purpose of Minnesota’s post-conviction proceedings and provides a number of alternatives that can be adopted in *Teague*’s place. Finally, this note concludes that the Minnesota Supreme Court should adopt a modified, broader version of the *Teague* retroactivity standard because it will best serve the goals and purpose of state post-conviction review.

*Id.* at 1041. The Court also noted that following *Teague*, the majority of state courts interpreted *Teague* as binding only on federal habeas courts. *Id.* at 1042. Minnesota is one of only three states that interpreted *Teague* as binding on state courts. *Id.* n.17.

8. *Id.* at 494.
10. *Danforth*, 761 N.W.2d at 494.
12. *See infra* Part II.A.
13. *See infra* Part II.B.
14. *See infra* Part III.
15. *See infra* Part IV.
16. *See infra* Part IV.A.
17. *See infra* Part IV.B.
18. *See infra* Parts IV.C and V.
II. HISTORY

A. Development and History of the Federal Retroactivity Doctrine

1. Retroactivity at Common Law

The origins of retroactivity and its basic principles can be traced back to the English common law. Under common law, newly announced rules were applied retroactively to all subsequent cases, without distinguishing between cases on direct and collateral review. As Professor LaFave points out in his treatise, “At common law there was no authority supporting the proposition that judicial decisions made law only for the future.”

The common law approach to retroactivity was based on Blackstone’s declaratory theory of law, stating that “the duty of the court was not to ‘pronounce a new law, but to maintain and expound the old one.’” Under this approach, the judge does not create new law, but rather “discover[s] what the true law is and . . . expose[s] the misinterpretation that formerly governed.”

Because courts did not create the law but merely discovered it, a court’s overruling of a prior decision was simply viewed as a correction of a prior misunderstanding of the law. Accordingly, the overruled decision was never the law, and the newly announced rule, having been the law all along, must be applied retroactively.

The U.S. Supreme Court adopted this approach, and, until

19. See Linkletter v. Walker, 381 U.S. 618, 622 (1965). The Linkletter Court began its analysis by reviewing the history of retroactivity, noting that “[w]hile to some it may seem ‘academic’ it might be helpful to others . . . .” Id.

20. Doherty, supra note 2, at 450 (discussing retroactivity at common law); see also Linkletter, 381 U.S. at 622 (“At common law there was no authority for the proposition that judicial decisions made law only for the future.”); Kuhn v. Fairmont Coal Co., 215 U.S. 349, 372 (1910) (Holmes, J., dissenting) (“Judicial decisions have had retrospective operation for near a thousand years.”).


22. Linkletter, 381 U.S. at 623 n.7 (“While Blackstone is always cited as the foremost exponent of the declaratory theory, a very similar view was stated by Sir Matthew Hale in his History of the Common Law which was published 13 years before the birth of Blackstone.”).

23. Id. at 622–23 (quoting 1 BLACKSTONE, COMMENTARIES 69 (15th ed. 1809)).

24. Hutton, supra note 1, at 425 (discussing Blackstone’s theory of law).

25. See id. (discussing Blackstone’s theory of law).

26. See id. (“In accordance with this theory, any ‘new rule’ has to be applied retroactively because it represents what the law has been all along.”).

1965, new rules of constitutional criminal procedure were consistently applied to all cases coming before the Court on habeas review. As one commentator noted, “[t]here was no question of which laws should be retroactive, or whom they would be retroactive to, because the law was always applied retroactively.”

In his article attacking the *Linkletter* decision, Professor James Haddad correctly pointed out that prior to 1965, “the Court’s practice always had been to apply new constitutional decisions retroactively and never did a majority opinion even consider that something less would be permissible.” Even the *Linkletter* court admitted that “[i]t is true that heretofore, without discussion, we have applied new constitutional rules to cases finalized before the promulgation of the [new] rule.” As such, the common law approach to retroactivity was relatively straightforward and provided courts with a bright-line, easily applicable rule of automatic retroactivity.

By 1965, however, the legal realism movement, based on John Austin’s theory of law, had emerged and was gaining popularity

the Court continued to construe every constitutional error, including newly announced ones, as entitling state prisoners to relief on federal habeas."

**28. Danforth**, 128 S. Ct. at 1036 (Until 1965, “[n]ew’ constitutional rules of criminal procedure were, without discussion or analysis, routinely applied to cases on habeas review.”); *see also* LAFAVE, supra note 21, § 11.5 (“This common law position took hold in this country, so that it was generally assumed that all judicial decisions were fully retroactive.”); Ann N. Bosse, *Retroactivity and the Supreme Court*, 41 MD. B.J. 30, 30 (2008) (“Until . . . 1965, new rules of criminal procedure were routinely applied to all cases - past, present, and to come.”).

**29. Doherty, supra note 2, at 451 (discussing retroactivity at common law).**


**31. Linkletter**, 381 U.S. at 628. Prior to 1965, “the thought that a decision of the United States Supreme Court declarative of constitutional rights might be nonretroactive was never seriously entertained.” LAFAVE, supra note 21, § 11.5.

**32. See Doherty, supra note 2, at 451 (discussing retroactivity at common law).** At common law, “questions of retroactivity were easy, indeed, invisible.” Roosevelt, supra note 1, at 1077–78 (discussing retroactivity at common law). As some commentators argue, the Court’s rejection of the common law automatic retroactivity doctrine during the last half of the twentieth century has created confusion and inconsistency. *See* Christopher S. Strauss, Comment, *Collateral Damage: How the Supreme Court’s Retroactivity Doctrine Affects Federal Drug Prisoners’ Apprendi Claims on Collateral Review*, 81 N.C. L. REV. 1220, 1222 (2003) (discussing the Court’s current retroactivity doctrine and stating that over the past thirty-six years, the Court has been struggling with a retroactivity doctrine that is “theoretically incoherent” and “difficult to apply”).

**33. Linkletter**, 381 U.S. at 624 (discussing Austin’s theory of law); *see also*
among scholars and practitioners. Austin argued that “judges do in fact do something more than discover law; they make it interstitially by filling in with judicial interpretation the vague, indefinite, or generic statutory or common-law terms that alone are but the empty crevices of the law.” Under this theory, overruled decisions are considered valid law until overruled, and newly announced rules of law do not apply retroactively to decisions made final prior to the announcement of the new rule.

Relying on the theory of legal realism, some scholars challenged the common law approach to retroactivity. Critics argued that the common law approach was “out of tune with actuality” because judicial repeal of what was thought to be the law could often “work hardship to those who had trusted to its existence.” As for the members of the Court, Justice Frankfurter was the first to suggest, in 1956, that new rules of constitutional criminal procedure should not be applied retroactively. Concurring in *Griffin v. Illinois*, Justice Frankfurter argued that the “law generally speaks prospectively. . . . We should not indulge in the fiction that the law now announced has always been the law. . . . It is much more conducive to law’s self-respect to recognize candidly the considerations that give prospective content to a new pronouncement of law.” Similarly, in 1958, Justices Harlan and Whittaker renewed Justice Frankfurter’s proposal and urged the Court to adopt a prospective-only application of the rule announced in *Griffin*. In *Eskridge v. Washington State Board of Prison Terms and Paroles*, Justices Harlan and Whittaker argued that *Griffin*, decided in 1956, should not be applied retroactively to a defendant convicted in 1935.


34. *See* Doherty, *supra* note 2, at 451 (discussing retroactivity at common law).


36. *Id.* at 624.

37. LAFAVE, *supra* note 21, § 11.5.

38. *Linkletter*, 381 U.S. at 624 (quotations omitted).


41. *Id.* at 26 (Frankfurter, J., concurring).

42. Haddad, *supra* note 30, at 420.


44. *Id.* at 216 (Harlan, J. & Whittaker, J., dissenting).
Five years later, in *Pickelsimer v. Wainwright*, Justice Harlan once again voiced his discontent with automatic retroactivity. In a brief, two-sentence per curiam opinion, the *Pickelsimer* Court remanded ten Florida cases for reconsideration in light of *Gideon v. Wainwright*. Dissatisfied with the Court’s “summary disposition” of ten Florida cases, Justice Harlan urged the Court to “deal definitively with th[e] important and far-reaching subject” of retroactivity. As these examples demonstrate, by 1965, Blackstone’s legal principles, the driving force behind American retroactivity jurisprudence, were under attack by supporters of Austin’s legal realism.

### 2. Automatic Retroactivity Abandoned: Linkletter v. Walker

In the 1965 decision of *Linkletter v. Walker*, the U.S. Supreme Court “expressly [addressed] the issue of retroactivity for the first time.” As Justice Clark explained in the first paragraph of the Court’s opinion, the Court granted certiorari to resolve “what has become a most troublesome question in the administration of justice.” The issue in *Linkletter* was whether the exclusionary rule announced in the landmark decision of *Mapp v. Ohio* applied retroactively to cases finally decided prior to *Mapp*. As the Court noted, “A split of authority ha[d] developed in the various courts of appeals concerning the retrospectivity of Mapp.” Citing a long
list of conflicting cases, the Court stated that, “About the only point upon which there was agreement in the cases cited was that our opinion in Mapp did not foreclose the question” of retroactivity of Mapp.56

The “prospect of upsetting ‘thousands’ of final state court convictions in order to apply the exclusionary rule was too much,” forcing the Linkletter court to abandon “centuries of adherence to a strict rule of retroactivity.”57 Ensuring that Mapp would not apply retroactively,58 Linkletter held that the retroactivity of new rules of constitutional criminal procedure should be determined on a case-by-case basis under a three-part test.59 As the Court explained, the retroactivity of new rules would be determined by weighing “the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.”60 Thus, Linkletter abandoned the historic rule of automatic retroactivity61 and adopted the modern doctrine of “prospectivity.”62 In other words, new rules of constitutional criminal procedure would no longer enjoy automatic retroactive effect.

The Linkletter decision was immediately criticized for its practical and theoretic shortcomings.63 The first attack came from

56. Id.
58. Id. at 12. If applied retroactively, Mapp would overburden state criminal justice systems: “Hearings would have to be held in large numbers. Guilty men would go free either because the States did not have the resources to carry the defense against claims of unlawful seizures to a successful conclusion or because essential evidence had been unlawfully seized and offered at trial.” Haddad, supra note 30, at 422 (discussing the Mapp decision).
59. Linkletter, 381 U.S. at 629.
60. Id.
61. Lasch, supra note 57, at 11.
63. Linkletter, 381 U.S. at 629.
64. See Lasch, supra note 57, at 12–24 (discussing various critiques of the Linkletter decision). “[C]ommentators have ‘had a veritable field day’ with the Linkletter standard, with much of the discussion being ‘more than mildly negative.’” Teague v. Lane, 489 U.S. 288, 303 (1989) (citing Beytagh, supra note 49, at 1558) (quotations omitted).
Justice Black, the author of the dissenting opinion in *Linkletter*.

Justice Black argued that the *Mapp* rule should be applied retroactively to Linkletter and others similarly situated while they are “languishing in jail” as a result of evidence used unconstitutionally to convict them. Justice Black began his critique of the Court’s decision by pointing out that, even though Linkletter’s offense was committed after that of Mapp, Linkletter’s conviction was affirmed while Mapp was set free. Dissatisfied with such a result, dictated only by the difference in timing between the two cases, Justice Black proclaimed that the Court’s decision in *Linkletter* was “arbitrary and discriminatory.”

In addition to his dissatisfaction with the Court’s disparate treatment of similarly situated defendants, Justice Black was also concerned that the *Linkletter* court was pushing its constitutional limits by venturing into the sphere of legislative lawmaking. As Justice Black explained, by announcing prospective-only rules of constitutional criminal procedure, the Court was making law rather than interpreting it. The criticism of the Court’s decision in *Linkletter* decision did not end with Justice Black’s dissent.

Professor Mishkin, an often-cited commentator in the field, criticized *Linkletter* for abandoning Blackstonian theoretic principles. Mishkin believed that Blackstone’s declaratory theory...
played a “symbolic role” in American jurisprudence and was necessary to uphold the “prestige and power” of American courts. \(^{74}\) Mishkin also argued that the *Linkletter* decision would not only discourage attorneys from advocating on behalf of their clients by presenting novel legal theories, but would also interfere with the courts’ abilities to replace “unsound or outmoded legal doctrines.”\(^{75}\)

Professor Haddad, another legal scholar, also attacked the Court’s decision in *Linkletter*, arguing that the *Linkletter* retroactivity approach should be abandoned.\(^ {76}\) Haddad criticized the Court for applying the new retroactivity approach to the rule announced in *Mapp* but not to those announced in *Gideon* and *Griffin*.\(^ {77}\) Haddad especially criticized the *Linkletter* majority for its lack of and misuse of precedent.\(^ {78}\) As Haddad explained, there were multiple cases decided prior to *Linkletter* where the Court applied new constitutional rights retroactively.\(^ {79}\) Additionally, there were multiple instances where the Court invoked the common law automatic retroactivity doctrine to cases finally decided prior to the

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\(^{74}\) *Id.* at 62–63 (discussing the symbolic significance of Blackstone’s theory of law). “The ‘declaratory theory’ expresses a symbolic concept of the judicial process on which much of courts’ prestige and power depend.” *Id.* at 62. “This is the strongly held and deeply felt belief that judges are bound by a body of fixed, overriding law, that they apply that law impersonally as well as impartially, that they exercise no individual choice and have no program of their own to advance.” *Id.* “If the view be in part myth, it is a myth by which we live and which can be sacrificed only at substantial cost.” *Id.* at 62–63. While professor Mishkin criticized the Court’s rejection of Blackstone’s declaratory theory of law, he nonetheless agreed with the ultimate result reached by the Court in *Linkletter*. *Id.* at 102 (“The Linkletter result . . . seems quite sound—indeed, in part for reasons which its rationale tends to obscure.”).

\(^{75}\) *Id.* at 60–61 (discussing the effects of prospective judicial lawmaking). “When a new rule of law is given purely prospective effect, it . . . does not determine the judgment awarded in the case in which it is announced. It follows that if parties anticipate such a prospective limitation, they will have no stimulus to argue for change in the law.” *Id.* “[T]he recognition of even a substantial possibility of such limitation will tend to deter counsel from advancing contentions involving novelty or ingenuity and will lead them to focus on other aspects of their cases.” *Id.* at 61.

\(^{76}\) Haddad, *supra* note 30, at 440–41 (concluding that prospective-only application of new rules of constitutional criminal procedure should be “banished”).

\(^{77}\) Haddad, *supra* note 30, at 423.

\(^{78}\) Haddad, *supra* note 30, at 425.

\(^{79}\) *Id.*
announced of the new rule.\textsuperscript{80} Lastly, like Justice Black, Haddad was also dissatisfied with the Court’s disparate treatment of similarly situated defendants.\textsuperscript{81} For these and other reasons, Haddad concluded that the \textit{Linkletter} retroactivity approach “should be banished.”\textsuperscript{82}

Unpersuaded by the sharp criticism, the U.S. Supreme Court continued to expand the \textit{Linkletter} rule in \textit{Johnson v. New Jersey}\textsuperscript{83} and \textit{Stovall v. Denno}.\textsuperscript{84} In \textit{Johnson}, the Court held that the rules announced in \textit{Escobedo v. Illinois}\textsuperscript{85} and \textit{Miranda v. Arizona}\textsuperscript{86} would not be applied retroactively.\textsuperscript{87} In \textit{Stovall}, the Court held that the \textit{Linkletter} rule would apply not only to cases on collateral review but also to cases pending on direct review.\textsuperscript{88} Thus, the Court continued to apply and expand the \textit{Linkletter} rule in other important criminal procedure decisions throughout the 1960s.\textsuperscript{89}

As the Court noted in \textit{Danforth}, “application of the \textit{Linkletter} standard produced strikingly divergent results.”\textsuperscript{90} A few years after the Court’s decision in \textit{Stovall}, Justice Harlan responded to these inconsistencies and attacked the \textit{Linkletter} approach through his dissenting opinion in \textit{Desist v. United States}\textsuperscript{91} and concurring opinion in \textit{Mackey v. United States}.\textsuperscript{92} Justice Harlan argued that in a short period of time, the \textit{Linkletter} approach generated a large

\begin{itemize}
\item \textsuperscript{80} Id.
\item Many of these decisions represented conscious rejections of suggestions that a prospective-only doctrine be recognized in the area of constitutional criminal procedure. The fact that such suggestions were not deemed worthy of comment by any majority opinion weighs heavily against a suggestion that the Court believed that prospective-only treatment could be accorded some constitutionally required procedural safeguards but not the one involved in the particular case before the Court.
\item Id. at 438 (“There is something offensive about the notion that the Supreme Court of the United States, like the sometimes-just, sometimes-generous vineyard owner, can bestow its favors upon whomever it pleases.”).
\item Id. at 441.
\item 384 U.S. 719 (1966).
\item 388 U.S. 293 (1967).
\item 378 U.S. 478 (1964).
\item 384 U.S. 436 (1966).
\item \textit{Johnson}, 384 U.S. at 721.
\item \textit{Stovall}, 388 U.S. at 300–01.
\item \textit{See Danforth v. Minnesota}, 128 S. Ct. 1029, 1037 n.8 (2008).
\item Id. at 1037.
\item 394 U.S. 244, 256 (1969) (Harlan, J., dissenting).
\item 401 U.S. 667, 675 (1971) (Harlan, J., concurring).
\end{itemize}
number of “incompatible rules and inconsistent principles.” Justice Harlan further proclaimed that the Linkletter approach had created “doctrinal confusion” and “must be rethought.” Despite the criticism, the Court continued to apply the Linkletter retroactivity approach for another twenty years.

3. Retroactivity “Rethought”: Griffith v. Kentucky and Teague v. Lane

In the 1987 decision of Griffith v. Kentucky, the Court finally started to “rethink” the Linkletter approach, as was urged by Justice Harlan in Desist and Mackey. Griffith rejected the Linkletter retroactivity rule for cases on direct review and held that new rules of constitutional criminal procedure would apply retroactively to all cases pending on direct review or not yet final.

Two years later, in Teague v. Lane, the Court reaffirmed Griffith and completely rejected the Linkletter approach to retroactivity. Under Teague, new rules of constitutional criminal procedure would not apply retroactively to cases on collateral review unless the case falls under one of two exceptions: (1) when the new rule places certain kinds of conduct “beyond the power of the criminal law-making authority to proscribe . . . .” and (2) when the new rule is a “watershed” rule of criminal procedure without which the likelihood of an accurate conviction would seriously be diminished. As such, Teague established a new standard for determining whether new rules of constitutional criminal procedure apply retroactively.

93. Desist, 394 U.S. at 258 (Harlan, J., dissenting).
94. Id.
97. 401 U.S. at 676–77 (Harlan, J., concurring); 394 U.S. at 258 (Harlan, J., dissenting).
98. Griffith, 479 U.S. at 328.
100. Id. at 311–13. Although Teague was a plurality opinion, it was quickly adopted by the majority of the Court in Penry v. Lynaugh, 492 U.S. 302, 305 (1989).
101. A “new rule” is one that “breaks new ground or imposes a new obligation on the States or the Federal Government.” Teague, 489 U.S. at 301. In other words, “a case announces a new rule if the result was not dictated by precedent existing at the time the defendant’s conviction became final.” Id.
102. Id. at 311–12.
4. The Court’s Final Word: Danforth v. Minnesota

The latest development in the retroactivity jurisprudence was Danforth v. Minnesota, where the Court was asked to determine whether Teague is binding on state courts in post-conviction proceedings. As the Court noted, neither Linkletter nor Teague constricted the states from developing and adopting a broader retroactivity approach for state post-conviction proceedings. Furthermore, Teague was not developed to further state goals, but rather to address the goals of federal habeas review and minimize federal interference in state criminal convictions. As Danforth concluded, Teague “does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed ‘nonretroactive’ under Teague.” Thus, states are now free to develop their own approach for determining the retroactivity of new rules of constitutional criminal procedure.

B. Development and History of Minnesota’s Retroactivity Doctrine

In Danforth v. State, the Minnesota Supreme Court provided a brief overview of the history and development of Minnesota’s retroactivity doctrine. There, the supreme court traced Minnesota’s retroactivity jurisprudence to its 1977 decision of State v. Olsen. However, an even earlier Minnesota case discussing the retroactivity of new rules of constitutional criminal procedure in

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103. Danforth v. Minnesota, 128 S. Ct. 1029 (2008). Although a majority of states did not interpret Teague as binding on state courts, three states, Minnesota, Oregon, and Montana, were under the impression that Teague was binding on state courts. Id. at 1042 n.17.

104. Id. at 1038. “A close reading of the Teague opinion makes clear that the rule it established was tailored to the unique context of federal habeas and therefore had no bearing on whether States could provide broader relief in their own postconviction proceedings than required by that opinion.” Id. at 1039. The Court also noted that because Teague was a statutory decision interpreting a federal statute, it cannot be read as binding on state courts. Id. at 1040.

105. Id. at 1041.

106. Id. at 1042.

107. Lasch, supra note 57, at 43. As the Court noted in Danforth, the majority of states have recognized that Teague was not binding on state postconviction proceedings. 128 S. Ct. at 1042. However, most states continue to apply the Teague approach “out of convenience.” Lasch, supra note 57, at 42.

108. 761 N.W.2d 493, 495–97 (Minn. 2009).

109. Id. at 496 (referring to State v. Olsen, 258 N.W.2d 898, 907 n.15 (Minn. 1977)).
some detail is the court’s 1965 decision of State v. Richter.\textsuperscript{110}

The issue before the court in Richter was whether Mapp, decided in 1961, applied retroactively to a 1951 conviction obtained through a guilty plea.\textsuperscript{111} Anticipating the U.S. Supreme Court’s decision on the retroactivity of Mapp,\textsuperscript{112} the Richter court appeared hesitant to issue an opinion on the matter.\textsuperscript{113} Nonetheless, the court provided a thorough analysis, expressly rejecting Blackstone’s declaratory theory of law and stating that the retroactivity of Mapp would be decided based on public policy considerations.\textsuperscript{114} As the court explained, “we do not subscribe to the philosophy that Mapp was the law in 1951.”\textsuperscript{115} The Richter court also distinguished Mapp from the U.S. Supreme Court’s decisions in Griffin and Gideon, explaining that the new rules announced in those cases are applied retroactively because they have a direct impact on the reliability of a defendant’s trial and on the determination of his innocence or guilt.\textsuperscript{116}

The exclusionary rule announced in Mapp, on the other hand, does not affect the reliability of the defendant’s trial and was designed primarily for the purpose of deterring police misconduct.\textsuperscript{117} Writing that retroactive application of Mapp would disturb a reliably obtained conviction and have no deterrent effect on police misconduct, the Richter court concluded that Mapp would not be applied retroactively in that case.\textsuperscript{118}

\textsuperscript{110.} 270 Minn. 307, 133 N.W.2d 537 (1965).
\textsuperscript{111.} Id. at 307–08, 133 N.W.2d at 537–38.
\textsuperscript{112.} Id. at 310, 133 N.W.2d at 539. Decided in February of 1965, the Richter court noted that the U.S. Supreme Court had granted certiorari in Linkletter v. Walker. Id. at 310, 133 N.W.2d at 539. The Court decided Linkletter v. Walker less than four months later, in June of 1965. 381 U.S. 618 (1965).
\textsuperscript{113.} Richter, 270 Minn. at 310, 133 N.W.2d at 539 (“So much has been written on the retroactivity of Mapp we hesitate to further burden the bench and bar with protracted speculation on how that question will ultimately be resolved.”). The court nonetheless went on to provide a detailed, in-depth analysis of the retroactivity of Mapp. See id. at 311–17, 133 N.W.2d at 540–43.
\textsuperscript{114.} Id. at 312–13, 133 N.W.2d at 540–41. “[W]e do not feel compelled to adopt the views expressed by Blackstone in his Commentaries concerning the effect of overruling previous decisions. . . . [T]he application of the Mapp rule must be determined by a consideration of broad public policy.” Id. at 312–13, 133 N.W.2d at 540–41.
\textsuperscript{115.} Id. at 313, 133 N.W.2d at 541.
\textsuperscript{116.} Id. at 315, 133 N.W.2d at 542.
\textsuperscript{117.} Id. at 316, 133 N.W.2d at 542.
\textsuperscript{118.} Id. at 316–17, 133 N.W.2d at 542–43. “[W]e do not feel moved to adopt a rule which can not now have any deterrent effect, but would result only in granting a belated trial to a prisoner who has confessed in open court the details
During the period immediately following the Court’s decision in *Linkletter*, the Minnesota Supreme Court addressed the issue of retroactivity of new rules of constitutional criminal procedure a few times, although only summarily in a number of cases.\footnote{119. See Bultman v. State, 290 Minn. 511, 513, 187 N.W.2d 117, 118 (1971) (disposing of the retroactivity issue in one short paragraph); State ex rel. Boswell v. Tahash, 278 Minn. 408, 417, 154 N.W.2d 813, 819 (1967) (disposing of the retroactivity issue in one short paragraph).} In *State ex rel. Rasmussen v. Tahash*, the court addressed the retroactivity of *Escobedo v. Illinois* in some detail.\footnote{120. 272 Minn. 539, 141 N.W.2d 3 (1966).} Relying, among other cases, on *Linkletter* and *Richter*, the Minnesota Supreme Court held that *Escobedo* would not apply retroactively unless directed otherwise by the U.S. Supreme Court.\footnote{121. Id. at 546–47, 141 N.W.2d at 9.} As in *Richter*, the court based its decision on the determination that *Escobedo*, unlike *Gideon* and *Griffin*, does not play a role on the reliability of the defendant’s conviction and, as such, should not be applied retroactively.\footnote{122. Id. at 545–46, 141 N.W.2d at 8–9.} In *Bultman v. State*\footnote{123. 290 Minn. 511, 513, 187 N.W.2d 117, 118 (1971).} and *State ex rel. Boswell v. Tahash*,\footnote{124. 278 Minn. 408, 417, 154 N.W.2d 813, 819 (1967).} the Minnesota Supreme Court decided that, based on *Linkletter*, *Mapp* would not be given retroactive effect.

While *Linkletter* was cited by the Minnesota Supreme Court in numerous decisions,\footnote{125. Id. at 316, 133 N.W.2d at 543.} the court did not formally adopt the *Linkletter* retroactivity standard until its *State v. Hamm* decision in 1988.\footnote{126. 423 N.W.2d 379, 386 (Minn. 1988).} In *Hamm*, the Minnesota Supreme Court held that the Minnesota Constitution guarantees criminal defendants a twelve-person jury in misdemeanor prosecutions and struck down a fifteen-year-old statute, providing for a six-person jury, as unconstitutional.\footnote{127. Id. at 386.} Next, citing *State v. Olsen*,\footnote{128. 258 N.W.2d 898, 907 n.15 (Minn. 1977).} the court formally adopted the *Linkletter-Stovall* retroactivity standard and held that the new twelve-person jury rule would not apply retroactively.\footnote{129. *Hamm*, 423 N.W.2d at 386. The court stated: “In . . . *Olsen* . . . we cited with approval various United States Supreme Court cases which set forth a test for determining whether a decision should be applied prospectively. We adopt the criteria set forth in those cases and hold that the criteria have been met in this case.” Id.}
Under the *Linkletter-Stovall* approach, courts would decide the retroactivity of new rules of constitutional criminal procedure by considering three factors: “(1) the purpose of the decision, (2) reliance on the prior rule of law, and (3) the effect upon the administration of justice of granting retroactive effect.”130

As the court noted in *Danforth*, Minnesota courts continued to follow the *Linkletter-Stovall* retroactivity approach until 2004.131 That year, the Minnesota Supreme Court issued its decision in *O’Meara v. State*,132 where the court abandoned the *Linkletter-Stovall* retroactivity approach and adopted the *Teague* retroactivity approach in its place.133 The *O’Meara* court explained that it was “compelled to follow the lead of the Supreme Court in determining” the retroactivity of new rules of federal constitutional criminal procedure.134 Finally, in its most recent decision of *Danforth v. State*, the Minnesota Supreme Court rejected the U.S. Supreme Court’s invitation to abandon *Teague* and instead formally adopted the *Teague* retroactivity standard for state post-conviction proceedings.135 The Minnesota Supreme Court’s final decision in *Danforth* is described in detail below.

### III. THE DANFORTH DECISION

In the summer of 1995, Stephen Danforth was charged with first-degree criminal sexual conduct for allegedly molesting J.S., a six-year-old boy.136 During a videotaped interview, J.S. stated that he was sexually abused by Danforth.137 The videotape of the interview was admitted into evidence, and the jury was allowed to watch the videotape at trial.138 Danforth was subsequently found guilty,139 and his conviction was affirmed on appeal.140
In 2004, eight years after Danforth’s conviction, the U.S. Supreme Court issued its decisions in *Crawford v. Washington* and *Blakely v. Washington*. Following these holdings, Danforth filed a post-conviction petition, seeking relief under the new rules established therein. Danforth’s petition was denied because, as the court found, *Crawford* and *Blakely* did not apply retroactively to Danforth’s case. The court of appeals affirmed, and the Minnesota Supreme Court granted review solely on the *Crawford* issue.

On review, Danforth argued that the supreme court is free to apply a retroactivity standard broader than *Teague*, and that *Crawford* applies to his case under state retroactivity principles. Danforth also argued that *Crawford* applies to his case even under the *Teague* retroactivity standard. The Minnesota Supreme Court rejected Danforth’s arguments, holding that (1) it was required to follow the *Teague* retroactivity standard, and (2) *Crawford* did not apply to Danforth’s case retroactively under *Teague*. Danforth appealed to the U.S. Supreme Court, which granted certiorari and reversed and remanded. The Court held that state courts are not required to follow *Teague* and may develop their own standards for determining the retroactivity of new rules of federal constitutional criminal procedure. Danforth’s case then returned to the Minnesota Supreme Court.

On remand, Danforth argued that the *Teague* standard should be abandoned, and that the Minnesota Supreme Court should return to the *Linkletter-Stovall* approach or adopt Nevada’s

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144. Id.
145. Id.
146. Id.
147. Id.
148. Id.
150. Danforth *v.* State, 761 N.W.2d 493 (Minn. 2009).
151. See supra notes 131–133 and accompanying text.
Colwell\textsuperscript{152} approach for deciding whether new rules of federal constitutional criminal procedure apply retroactively.\textsuperscript{153} The Minnesota Supreme Court framed the issue on remand as “what standard [it] should use to decide whether new rules of federal constitutional criminal procedure will be applied retroactively.”\textsuperscript{154}

The Minnesota Supreme Court ultimately rejected Danforth’s arguments and affirmed its prior decision, holding that Minnesota will continue to use the Teague standard for deciding whether new rules of constitutional criminal procedure apply retroactively to state criminal convictions.\textsuperscript{155}

After reviewing the changes in Minnesota’s retroactivity doctrine over the last half of the twentieth century,\textsuperscript{156} the supreme court considered the policy concerns underlying Teague.\textsuperscript{157} The Danforth court first admitted that not all policy considerations leading to the U.S. Supreme Court’s decision in Teague necessarily transfer to state courts addressing state post-conviction challenges.\textsuperscript{158} As such, the Danforth court conceded that Teague’s concerns of interfering with state convictions do not play a role in state post-conviction proceedings.\textsuperscript{159} However, the Danforth court stated that Teague’s second policy consideration, finality of state convictions, is equally applicable to state post-conviction proceedings.\textsuperscript{160} Quoting Teague, the court highlighted the importance of finality of state convictions: “Without finality, the criminal law is deprived of much of its deterrent effect.”\textsuperscript{161}

\textsuperscript{152} Colwell v. State, 59 P.3d 463, 471 (Nev. 2002). Colwell is a modified version of the Teague retroactivity standard, which broadened Teague’s first exception and eliminated the “watershed” rule requirement from Teague’s second exception. \textit{Id.} at 472.
\textsuperscript{153} Danforth, 761 N.W.2d at 498.
\textsuperscript{154} Id. at 495.
\textsuperscript{155} Id. at 500.
\textsuperscript{156} Id. at 495–96. The supreme court explained that until recently, Minnesota followed the Linkletter-Stovall standard set out by the U.S. Supreme Court. \textit{Id.} at 495. In 2004, however, Minnesota abandoned Linkletter and adopted the standard set out by the U.S. Supreme Court in Teague. \textit{Id.} at 496. Since that time, Minnesota has consistently followed the Teague retroactivity standard. \textit{Id.} at 496–97.
\textsuperscript{157} Id. at 497–98.
\textsuperscript{158} See \textit{id.} at 498 (“[W]e acknowledge that one of the policy concerns underlying Teague-that federal habeas courts not excessively interfere with state court’s is absent when a state court is reviewing state convictions”).
\textsuperscript{159} Id.
\textsuperscript{160} Id. The Danforth court also noted that other states have recognized an interest in finality of state convictions. \textit{Id.}
\textsuperscript{161} Id. (quoting Teague v. Lane, 489 U.S. 288, 309 (1989)). The court also
court further explained that the Teague standard not only supports Minnesota’s interest in finality of criminal convictions, but is also a “bright line rule.”

Finally, the supreme court explained its reasoning for rejecting Danforth’s invitation to adopt an alternative retroactivity approach. The court first considered and rejected a return to the Linkletter-Stovall test. The court explained that a return to Linkletter-Stovall would overburden Minnesota’s criminal justice system with re-litigation of old cases under new rules. The court also rejected Nevada’s Colwell standard advocated by Danforth because Colwell, according to the court, would lead to the same finality problems as those created by Linkletter-Stovall. The court concluded by stating that cases announcing new rules under Teague are rare not because Teague is “unyielding or unworkable,” but because “such cases are rare.” Thus, in Danforth, Minnesota formally adopted the Teague retroactivity standard for state post-conviction proceedings.

IV. ANALYSIS OF THE DANFORTH DECISION

A. Minnesota Should “Rethink” its Retroactivity Approach

As the U.S. Supreme Court emphasized in Danforth, Teague was not intended to limit states’ authority to grant relief in state post-conviction proceedings. Rather, the purpose of Teague was to

relied on the Florida Supreme Court’s reasoning that “an absence of finality casts a cloud of tentativeness over the criminal justice system, benefiting neither the person convicted nor society as a whole.” Id. at 498–99 (quoting Witt v. State, 387 So.2d 922, 925 (Fla. 1980)).

162. Id. at 499. But see Lasch, supra note 57, at 50–51 (suggesting that Teague may work against finality by giving defendants an incentive to prolong their direct appeal as long as possible in hopes that a beneficial new rule will be announced before their conviction becomes final); see also Strauss, supra note 32, at 1222 (stating that the U.S. Supreme Court’s current retroactivity doctrine is “incoherent” and “difficult to apply”).

163. Danforth, 761 N.W.2d at 499.

164. Id.

165. Id.

166. Id. The court also noted that no other state has followed Nevada’s Colwell approach. Id.

167. Id. at 500. The court appeared to agree that Teague is a strict rule, but nonetheless believed that “eventually there may be a new rule” that will apply retroactively under Teague. Id.

168. Id.

address the goals of federal habeas review and minimize federal interference with state criminal convictions. \(170\) Thus, \textit{Teague} has “no bearing on whether States could provide broader relief in their own post-conviction proceedings than required by that opinion.”\(171\)

The Minnesota Supreme Court agreed that federal habeas concerns are irrelevant for the purposes of state post-conviction proceedings. \(172\) However, the court refused to abandon \textit{Teague} due to its concern for finality and fear of a major disruption in the state criminal justice system. \(173\) While the court’s reasoning adequately addresses the State’s interest in finality, it completely neglects another important state interest—to correct “miscarriages of justice.”\(174\)

One purpose of state post-conviction proceedings, which is nonexistent in federal habeas review, is to provide an “\textit{initial forum}” for raising and litigating various constitutional violations. \(175\) It is during state post-conviction proceedings—not federal habeas review—that issues of innocence and fairness of proceedings are initially litigated. \(176\) By focusing solely on finality, the Minnesota Supreme Court ignored the “liberty-ensuring” function of state post-conviction review. \(177\) In other words, the Minnesota Supreme Court failed to “weigh the importance” of finality against other state interests, such as fairness and accuracy of convictions, as was suggested by the U.S. Supreme Court in \textit{Danforth}. \(178\) To ensure that Minnesota’s retroactivity doctrine serves the needs of Minnesota’s post-conviction review, the Minnesota Supreme Court should adopt a less stringent test than \textit{Teague}, one that will allow the goals of state

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\(170\). \textit{Id.}
\(171\). \textit{Id.} at 1039.
\(172\). \textit{Danforth}, 761 N.W.2d at 498. “[W]e acknowledge that one of the policy concerns underlying \textit{Teague}—that federal habeas courts not excessively interfere with state courts—is absent when a state court is reviewing state convictions . . . .” \textit{Id.}
\(173\). \textit{Id.} at 498–500. Although the court expressed great concern for the possibility of never-ending litigation under \textit{Linkletter}, it failed to provide a single example of any such major disruptions during the twenty-seven years that \textit{Linkletter} was in force in Minnesota. \textit{See id.} at 495–96.
\(174\). Hutton, \textit{supra} note 1, at 444 (discussing state postconviction remedies).
\(175\). Lasch, \textit{supra} note 57, at 44 (discussing state postconviction remedies).
\(176\). \textit{See} Hutton, \textit{supra} note 1, at 441 (discussing state postconviction remedies).
\(177\). \textit{See id.} “For the states to parrot the federal courts’ focus on finality and waste of resources as reasons not to afford careful scrutiny in the postconviction setting is incongruous.” \textit{Id.} at 443 (footnotes omitted).
post-conviction review to be accomplished.179

B. Review of Alternatives to Teague

Having determined that Teague is too restrictive for state post-conviction proceedings, the next question is what retroactivity test the Minnesota Supreme Court should adopt in its place.180 One of the easiest options is to simply return to the pre-Linkletter, common law approach of automatic retroactivity.181

In 1969, only four years after the Court’s decision in Linkletter, Professor Haddad urged the Court to abandon Linkletter and return to the common law approach of automatic retroactivity.182 Haddad argued that Linkletter was incorrectly decided, departed from precedent, and discriminated between similarly situated defendants.183 Because Haddad was responding to the Court’s decision in Linkletter, his argument was only targeted at the U.S. Supreme Court, not state courts addressing state post-conviction challenges.184 However, judging by his concluding remarks, it appears that Professor Haddad believed that prospective-only application of new rules of constitutional criminal procedure should never have been an option anywhere in the country.185 Professor Haddad’s suggestion to return to the common law approach of automatic retroactivity has recently been renewed, but aims specifically at state courts in state post-conviction proceedings.

In his detailed analysis of the U.S. Supreme Court’s decision in Danforth, Professor Lasch urges state courts to adopt the standard of automatic retroactivity of new rules of constitutional criminal procedure.186 In his article, Lasch argues that unlike the Teague approach, full retroactivity of new rules offers several benefits for

179. See Hutton, supra note 1, at 457 (discussing states’ reaction to Teague).
180. See id. at 451.
181. See id. at 440–41.
182. Id. Although Haddad published his article twenty years prior to the Court’s decision in Teague, his proposal to return to the common law approach of automatic retroactivity is still an available option today.
183. Id.
184. See id.
185. See id. at 441 (“Non-retroactivity’ should be banished from the constitutional criminal procedure scene.”).
186. See infra notes 190-99 and accompanying text.
187. Lasch, supra note 57, at 43 (“Among the various options [of retroactivity standards] from which state courts may choose, full retroactivity is far and away the best choice . . . .”).
the states. For example, Lasch points out that certain claims, such as “ineffective assistance of counsel” and government’s failure to share exculpatory evidence, are almost always litigated on post-conviction review rather than on direct review. By adopting the *Teague* retroactivity standard, state courts forego an opportunity to participate in the doctrinal development of certain constitutional claims, and, as a result, leave the U.S. Supreme Court as the sole authority for the development of this area of the law. By returning to full retroactivity, on the other hand, state courts would not only play a direct role in the development of post-conviction remedies, but also advocate for and protect state interests by influencing the development of federal constitutional law.

Additionally, Professor Lasch argues that a return to full retroactivity would eliminate the problem of inequality, which *Teague* addressed but did not fully resolve. As Lasch explains, the *Teague* retroactivity doctrine still discriminates between defendants whose cases are on direct review and those whose cases are on collateral review. For example, two codefendants convicted on the same day may be treated differently under *Teague* simply because one codefendant happened to finalize his direct review process faster than the other. Lasch concludes that states can easily avoid such “accidents of time” by abandoning *Teague* and returning to full retroactivity of new rules of constitutional criminal procedure. Thus, as demonstrated above, one option available for the Minnesota Supreme Court to consider is a return to the common law approach of automatic retroactivity.

Writing four years after the Court’s decision in *Teague*,

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188. See infra notes 193–99 and accompanying text.
190. Id. at 52.
191. Id. at 52–53.
192. Id. at 48.
193. Id. at 48–49.
194. Id. at 49. Lasch provides an even more striking hypothetical by comparing two codefendants, one of whom appeals his conviction based on a frivolous claim, while the other does not file an appeal at all. Id. at 50–51. If a new rule is announced after the conviction of the latter becomes final, but while the conviction of the former is still on direct appeal, only the defendant who abused the appellate process will benefit from the new rule. Id. Such a result conflicts with the states’ interest in finality of convictions by giving litigants an incentive to prolong their litigation in hopes that a new, favorable rule will be announced while their case is still on direct review. See id.
195. Id.
196. See *supra* notes 183–198 and accompanying text.
Professor Hutton suggested two other alternatives, or retroactivity standards, that states may consider as replacements for *Teague*.

One of these alternatives is the return to the *Linkletter-Stovall* approach. Hutton admits that the *Linkletter-Stovall* approach leads to disparate treatment of similarly situated defendants. Nonetheless, she argues that the *Linkletter-Stovall* retroactivity standard, unlike *Teague*, allows state courts to focus on protection and enforcement of constitutional rights, which is the purpose of state post-conviction proceedings.

The second alternative proposed by Professor Hutton is a “pure prospectivity/retroactivity” approach. Under this approach, new rules of constitutional criminal procedure would be applied either to all defendants challenging their convictions or to none at all. As Hutton explains, this approach has its risks and benefits. If new rules are applied retroactively to every defendant challenging his conviction, all defendants would be treated similarly, and the timing of a particular defendant’s appeal process would not dictate whether he should benefit from the new rule. While pure retroactivity will eliminate the arbitrary discrimination between defendants, it carries the risk of disturbing the states’ criminal justice systems each time a new rule of constitutional criminal procedure is announced.

Pure prospectivity, on the other hand, will dissuade defendants from challenging their convictions on constitutional grounds because, even if successful, they will not benefit from the new rule. Additionally, prospective application of new rules is inconsistent with the purpose of state post-conviction review because it allows for continued incarceration of defendants whose convictions were based on constitutional violations. Nonetheless,

197. Hutton, supra note 1, at 451–57.
198. Id. at 452–55.
199. Id. at 454.
200. Id. at 454.
201. Id. at 455–57.
202. Id. at 455–57.
203. Id. at 455–57.
204. Id. at 456. This is also one of the arguments made by Justice Black in his dissenting opinion in *Linkletter v. Walker*. 381 U.S. 618, 642 (1965) (Black, J., dissenting); see also supra notes 67-73 and accompanying text.
205. See infra note 207 and accompanying text.
206. Hutton, supra note 1, at 457.
207. Id. at 456.
208. Id.
the Linkletter-Stovall approach and the “pure prospectivity/retroactivity” approach are two more alternatives that the Minnesota Supreme Court may adopt to replace Teague.

Another alternative to the Teague retroactivity standard was adopted by the Nevada Supreme Court in Colwell v. State. In Colwell, the Nevada Supreme Court considered whether it should adopt Teague or an alternative approach for determining the retroactivity of new rules of constitutional criminal procedure. Unlike the Minnesota Supreme Court in Danforth, the Nevada Supreme Court concluded that Teague is not binding on Nevada courts in state post-conviction proceedings and ultimately rejected the strict application of Teague.

In its analysis, the Colwell court reviewed the retroactivity approach set forth by the U.S. Supreme Court in Teague, observing that the Teague retroactivity rule is “sound in principle.” However, the Colwell court also emphasized that the policy considerations responsible for the Court’s decision in Teague, including finality of convictions, are only partially relevant to state courts’ task of addressing state post-conviction challenges. Additionally, the Colwell court observed that the U.S. Supreme Court has applied Teague so narrowly that new rules of constitutional procedure are rarely applied on collateral review. Having made these determinations, the Colwell court decided to retain Teague, but with significant modifications.

These modifications involved broadening the scope of Teague’s two exceptions. As such, under Colwell, new rules of constitutional criminal procedure will apply retroactively if the case falls under one of the following two exceptions: “(1) if the rule

209. 59 P.3d 463 (Nev. 2002).
210. Id. at 469–72.
211. Danforth v. State, 718 N.W.2d 451, 454 (Minn. 2006).
212. The Colwell court explained that besides the minimum protections offered by the two exceptions in Teague, Teague is not binding on Nevada state courts. Colwell, 59 P.3d at 470, “[W]e are free to choose the degree of retroactivity or prospectivity which we believe appropriate to the particular rule under consideration, so long as we give federal constitutional rights at least as broad a scope as the United States Supreme Court requires.” Id. at 471 (quoting State v. Fair, 502 P.2d 1150, 1152 (Or. 1972)) (quotations omitted).
213. Id. at 472.
214. Id. at 471.
215. Id.
216. Id.
217. Id. at 472.
218. Id. at 471–72.
establishes that it is unconstitutional to proscribe certain conduct as criminal or to impose a type of punishment on certain defendants because of their status or offense; or (2) if it establishes a procedure without which the likelihood of an accurate conviction is seriously diminished. 219 Colwell’s first exception is broader than Teague’s first exception in that it is not limited to cases involving “primary, private individual” conduct. 220 Colwell’s second exception is also broader than Teague’s second exception in that it does not require the new rule to be of “watershed” significance. 221 As such, Colwell’s second exception will allow retroactive application of a new rule if the new rule has a significant impact on the accuracy of a defendant’s trial and conviction. 222 Having set out this modified version of Teague as Nevada’s new retroactivity doctrine, the Colwell court stated the new approach will be both “fair and straightforward.” 223

As explained above, the Minnesota Supreme Court has a variety of alternatives that can be adopted in Teague’s place. 224 One option is to return to the common law approach of automatic retroactivity. 225 Two other available approaches are the Linkletter-Stovall standard or Hutton’s “pure prospectivity/retroactivity” approach. 226 Finally, another available alternative is Colwell’s modified Teague standard. 227 As outlined below, the Minnesota Supreme Court should adopt Colwell’s modified Teague standard because it is responsive to both finality and accuracy of convictions, and, therefore, is a fair and balanced approach. 228

C. Colwell’s Modified Version of Teague is the Best Alternative for Minnesota

From the options available, Colwell’s modified Teague standard is the best approach for Minnesota because it would allow for an equal balance between Minnesota’s interest in finality of convictions on the one hand and fairness and accuracy of criminal

219. Id. at 472.
220. Id.
221. Id.
222. Id.
223. Id.
224. See supra notes 183–226 and accompanying text.
225. See supra notes 183–200 and accompanying text.
226. See supra notes 201–212 and accompanying text.
227. See supra notes 213–227 and accompanying text.
228. See infra notes 233–240 and accompanying text.
proceedings on the other. First, Colwell’s approach would address Minnesota’s interest in finality of state convictions and, if applied, would uphold the integrity of Minnesota’s criminal justice system. As the Colwell court explained, the modified Teague approach incorporates Teague’s main rule that new rules of constitutional criminal procedure would generally not be applied retroactively in state post-conviction proceedings. As such, Colwell’s modified Teague rule would not cause any major disruptions in Minnesota’s criminal justice system, as was feared by the Minnesota Supreme Court majority in Danforth. Contrary to the Danforth court’s fears, new rules of constitutional criminal procedure would not necessarily be frequently announced, and, even when announced, would not necessarily be applied retroactively.

Additionally, the modified Teague rule would not lead to inconsistent results, as was the case with Linkletter-Stovall, because the Minnesota Supreme Court could apply the modified Teague rule in a consistent manner and provide lower courts with guidance in a relatively short period of time. Colwell’s modified version of Teague would be beneficial to Minnesota’s interest in finality of criminal convictions and would uphold the integrity of the state criminal justice system.

In addition to addressing finality of convictions, Colwell’s modified Teague approach would also address and improve the fairness and accuracy of criminal proceedings in Minnesota. Colwell’s major modification of the original Teague rule is that it broadens the scope of Teague’s two exceptions. Most importantly, Colwell does away with the “watershed” rule requirement necessary for retroactive application under Teague. The Colwell approach allows courts to simply determine whether a new rule has a significant impact on the accuracy and reliability of a trial rather than concerning themselves with whether the rule

229. Danforth v. State, 761 N.W.2d 493, 498 (Minn. 2009) (stating that finality of convictions is an important state interest).
231. See Danforth, 761 N.W.2d at 501 (Anderson, J., dissenting) (stating that Colwell’s modified version of Teague would not have an adverse effect on the state criminal justice system).
232. See Colwell, 59 P.3d at 473 (finding that the rule in question in Colwell’s case was new, but would not be given retroactive effect).
233. Id. at 472.
234. Id.
qualifies as “watershed.” By focusing on accuracy, Minnesota courts would be addressing the fairness of trials and innocence of criminal defendants, and, as a result, be furthering the goals and purpose of Minnesota’s post-conviction review. Since Teague was not designed to further such state objectives, Minnesota’s current retroactivity doctrine does not adequately address these important state interests. Because Colwell’s modified version of Teague allows for a healthy balance between the competing interests of finality and fairness, it is the best retroactivity approach for the State of Minnesota.

V. CONCLUSION

The federal retroactivity doctrine has undergone some major changes during the last half of the twentieth century. While the current federal retroactivity doctrine was designed specifically to address federal interests and applications, the Minnesota Supreme Court has adopted the federal approach and, most recently, rejected the U.S. Supreme Court’s invitation to adopt an approach that best suits state goals and objectives. In formally adopting the Teague retroactivity standard for state post-conviction proceedings, the Minnesota Supreme Court neglected to address the important state interests of fairness and accuracy of state criminal convictions. The Minnesota Supreme Court’s focus on finality and its decision to formally adopt Teague will most likely preclude retroactive application of new rules to most, if not all, cases on state post-conviction review. To create a healthy balance between the competing interests of fairness and finality of convictions, and to allow the goals of state post-conviction review to be accomplished, the Minnesota Supreme Court should rethink its retroactivity approach and replace Teague with a more balanced test that adequately addresses all of these important state interests.

235. See id. (“[I]f accuracy is seriously diminished without the rule, the rule is significant enough to warrant retroactive application.”).

236. See Hutton, supra note 1, at 441 (discussing state postconviction remedies).

237. See Danforth v. State, 761 N.W.2d 493, 500–02 (Minn. 2009) (Anderson, J., dissenting). Justice Anderson acknowledged the criticism that “the Teague rule has been applied so strictly by the U.S. Supreme Court ‘that decisions defining a constitutional safeguard rarely merit application on collateral review.’” Id. (quoting Colwell, 59 P.3d at 471).