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INTRODUCTION

Until April 2020, when the United States Supreme Court published its decision in *Ramos v. Louisiana*, it was constitutionally permissible for a person to be found guilty in the states of Louisiana and Oregon with only 10 out of 12 jurors voting to convict.[1] A jury vote that would result in a mistrial in any other state could be enough for a conviction in Louisiana and Oregon, depriving an individual of freedom for any number of years.[2] Simply crossing a state line could mean the difference between a conviction and a chance at a new trial.[3]

The history of Louisiana and Oregon's draconian jury laws dates back to the post-Reconstruction Jim Crow era.[4] Both states had explicitly racist and white-supremacist reasons for enacting non-unanimous jury laws.[5] Louisiana enacted its non-unanimous jury law for felonies in 1898 as part of a constitutional convention—the avowed purpose of which was to "establish the supremacy of the white race."[6] The facially race-neutral jury rule was purposely constructed to escape scrutiny under the relatively new Fourteenth Amendment.[7] The original law required a mere nine-person majority to convict.[8] However, in 1973, the law was amended to require 10 jurors to obtain a conviction, putting the state in line with Oregon's non-unanimous jury law.[9] Under this regime, Black jurors were effectively silenced, casting twice the number of "empty" votes for acquittal as their white counterparts.[10] The rule also disproportionately affected Black defendants.[11] Whereas white defendants had a 33% chance of a non-

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* J.D./D.C.L. candidate 2022, Paul M. Hebert Law Center, Louisiana State University. Special thanks to Kennedy Beal, Elyce Ieyoub, and Brittany Williams Flanders for all their careful editing. The author dedicates this Comment to Dr. Robert C. Looney in memoriam and to all those convicted without the unanimous jury of their peers to which they were entitled.

1. Ramos v. Louisiana, 140 S. Ct. 1390, 1394 (2020).
2. *Id.*
3. *Id.*
4. *See generally id.*; Thomas Ward Frampton, *The Jim Crow Jury*, 71 VAND. L. REV. 1593 (2018).
5. *Ramos*, 140 S. Ct. at 1394.
6. *Id.*
7. *Id.*
8. LA. CONST. art. 116 (1898).
9. LA. CONST. art. 1, § 17 (1974).
10. An empty vote is one that does not affect the outcome of the verdict. *Ramos*, 140 S. Ct. at 1394; Frampton, *supra* note 4, at 1638.
11. Frampton, *supra* note 4, at 1638.

unanimous conviction, Black defendants had a 43% chance of the same.[12] This regime was in place for more than 120 years, and non-unanimous juries convicted thousands of defendants without the full agreement of the jury in their case.[13] Effective in January 2019, Louisiana changed the law to now require jury unanimity to reach a conviction.[14] This new constitutional provision, however, only applies prospectively.[15] Therefore, for all individuals in Louisiana convicted prior to this legislative change, the courts were the only remaining hope for recourse.[16]

Oregon's non-unanimous-jury rule also had explicitly racist origins.[17] In 1934, Oregon enacted its non-unanimous jury law to allow a conviction with the approval of only 10 out of 12 jurors for any crime except first-degree murder.[18] This period in Oregon's history marked a powerful resurgence of the Ku Klux Klan.[19] The law itself was enacted in response to a wave of anti-Semitism following the conviction of a Jewish man for murdering a Protestant.[20] Unlike Louisiana, Oregon never abrogated its non-unanimous jury law, and it remained in effect until it was overruled by the *Ramos* decision in April 2020.[21]

In *Ramos*, the United States Supreme Court ended the practice of non-unanimous jury convictions when it held that the Sixth Amendment requires jury unanimity at both the state and federal level.[22] Because of this ruling, Oregon defendants were no longer subject to the threat of a non-unanimous conviction, and individuals in both Louisiana and Oregon whose convictions were not finalized could have a chance at a new trial.[23]

However, the impact of *Ramos* was still unclear for those who had already exhausted their direct appeals.[24] The Court explicitly declined to rule on whether the new rule in *Ramos* should be applied retroactively to

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12. *Id.*
13. *Id.*
14. LA. CONST. art. 1, § 17 (2018).
15. *Id.*
16. *See generally id.*
17. Ramos v. Louisiana, 140 S. Ct. 1390, 1394 (2020).
18. OR. CONST. art. 1, § 11 (1857).
19. Aliza B. Kaplan & Amy Saack, *Overturning* Apodaca v. Oregon *Should Be Easy: Nonunanimous Jury Verdicts in Criminal Cases Undermine the Credibility of Our Justice System*, 95 OR. L. REV. 1, 4 (2016).
20. *Id.* at 4–5.
21. *Ramos*, 140 S. Ct. at 1407.
22. Prior to *Ramos*, jury unanimity was only required at the federal level. *Id.* at 1394.
23. *Id.* at 1406; *see infra* Part I for a description of direct and collateral review and an explanation of when a case is considered finalized.
24. *Ramos*, 140 S. Ct. at 1407.

individuals whose only choice to challenge their convictions is through collateral review.[25] Thus, potentially thousands of individuals convicted by non-unanimous juries were left without any certainty on whether they would get another chance at freedom.[26]

Such was the case for Thedrick Edwards.[27] In 2007, Mr. Edwards was convicted of armed robbery, aggravated rape, and aggravated kidnapping.[28] The jury deliberated for only three hours before putting the then 19-year-old away for the rest of his life without the possibility of parole.[29] However, the jury in his trial did not reach a unanimous decision.[30] In fact, Louisiana's non-unanimous jury laws operated exactly as designed in this case—by silencing the influence of the single Black juror who managed to escape the prosecution's strikes during jury selection.[31] This juror rendered the sole vote for acquittal.[32]

When a conviction requires a unanimous jury, a holdout juror ensures that deliberations will continue until that juror either convinces the other jurors of the defendant's innocence or is convinced of the defendant's guilt by the rest of the members of the jury.[33] If the holdout juror cannot

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25. *Id.* "Collateral review" is defined as:

> an attempt to undermine a judgment through a judicial proceeding in which the ground of the proceeding (or a defense in the proceeding) is that the judgment is ineffective. Typically, a collateral attack is made against a point of procedure or another matter not necessarily apparent in the record, as opposed to a direct attack on the merits exclusively. A petition for a writ of habeas corpus is one type of collateral attack.

Collateral Attack, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also* discussion on direct and collateral review *infra* Part I.

26. *Ramos*, 140 S. Ct. at 1407.

27. State v. Edwards, No. 2008-KA-20011, 2009 WL 1655544, at *1 (La. Ct. App. June 12, 2009).

28. *Id.*

29. Brief for Petitioner at 5, Edwards v. Vannoy, 140 S. Ct. 2737 (2020) (No. 19-5807).

30. *Id.*

31. *Id.* Parties have several ways to eliminate potential jurors from a case during voir dire, such as challenges for cause and peremptory challenges. These strikes, especially peremptory challenges, have their own history of racism and discrimination. See Jean Montoya, *The Future of the Post-Batson Peremptory Challenge: Voir Dire by Questionnaire and the "Blind" Peremptory*, 29 U. MICH. J.L. REFORM 981 (1996) for a discussion of peremptory challenges and jury strikes.

32. Brief for Petitioner, *supra* note 29, at 5.

33. *See generally* H.H. Hansen & D.E. Buckner, Annotation, *Time Jury May Be Kept Together on Disagreement in Criminal Case*, 93 A.L.R.2d 627 (1964).

convince or be convinced, the result is a mistrial.[34] At the time of Mr. Edwards's conviction, however, Louisiana's non-unanimous jury law meant that "jurors in the majority never had reason to consider the perspective or opinion of a minority of dissenting jurors, because—by design—once the jury reached a consensus of ten, dissenting voices became irrelevant."[35] Instead of the mistrial that likely would have resulted in the 48 other states, Mr. Edwards was permanently stripped of his freedom without the unanimous agreement of a jury of his peers.[36] Since his conviction in 2007, Mr. Edwards exhausted all of his direct appeals, and his conviction became finalized.[37] Thus, Mr. Edwards was stuck in limbo along with the many other individuals who had exhausted their direct appeals.[38]

The United States Supreme Court chose Mr. Edwards's case as the vehicle to decide whether *Ramos* should be applied retroactively.[39] The retroactivity standard that the Court uses in cases announcing new rules of criminal procedure, like *Ramos*, comes from the 1989 Supreme Court decision in *Teague v. Lane*.[40] However, even in his opinion in *Ramos*, Justice Gorsuch hinted that the Court might be reluctant to find that the jury-unanimity rule meets the extremely high bar of the *Teague* standard.[41]

The retroactivity standard in *Teague* has been a nearly insurmountable standard for petitioners seeking to use a new rule of criminal procedure.[42] Under the *Teague* regime, new rules of criminal procedure do *not* apply retroactively to cases that had already been finalized before the rule was announced.[43] The only exceptions to this narrow standard were when the new rule rose to the level of a substantive change in the law or constituted a "watershed" rule of criminal procedure.[44] The cases meeting the

34. *See generally id.*

35. State v. Gipson, 296 So. 3d 1051, 1054 (La. 2020).

36. Brief for Petitioner, *supra* note 29, at 5.

37. *Id.* at 6.

38. In Louisiana, an estimated 1,600 individuals would be affected by a retroactive application of *Ramos*. *Id.* at 16.

39. Edwards v. Vannoy, 141 S. Ct. 1547 (2021).

40. Ramos v. Louisiana, 140 S. Ct. 1390, 1407 (2020) (citing Teague v. Lane, 489 U.S. 288, 311 (1989)).

41. *Id.* Justice Gorsuch stated that the *Teague* test is "demanding by design" and that the Court "will rightly take into account the States' interest in the finality of their criminal convictions" when applying the *Teague* standard to the new rule of jury unanimity. *Id.*

42. *Id.*

43. *Teague*, 489 U.S. at 310.

44. *Id.* at 311.

substantive exception are few and far between.[45] The *Teague* Court defined a watershed rule as one that implicates the fairness and accuracy of a criminal proceeding[46] and is "implicit in the concept of ordered liberty."[47] The cases adopting the watershed exception are non-existent; there has never been a case where a new rule of criminal procedure was considered to be a watershed rule deserving of retroactivity.[48] And now, there never will be.[49]

Even before the Court forever altered the *Teague* standard in *Edwards v. Vannoy*, the criminal retroactivity standard was prohibitively high, and in practice it meant that very few individuals would ever be able to obtain relief for a conviction obtained using procedures that had since been deemed unconstitutional.[50] This was an outcome so unjust that it bordered on the nonsensical, as the *Teague* standard ensured that individuals with the oldest convictions under an unconstitutional rule are the *most* likely to remain imprisoned because they have exhausted their direct appeals.[51] Without minimizing the current racial inequality and biases in the court system, there is no denying that historically, juries were even more apt to convict for racist reasons than they are today.[52] The non-unanimous-jury rules and their historical origins are proof of that fact.[53] But under *Teague*, individuals convicted under the shadow of that historical regime had the *lowest* possibility of relief because of the date of their conviction.[54] In a country burdened by disproportionate and shameful mass incarceration, not applying new constitutional rules of criminal procedure retroactively is a missed opportunity to dismantle and reform the carceral state.[55]

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45. Ruthanne M. Deutsch, *Federalizing Retroactivity Rules: The Unrealized Promise of* Danforth v. Minnesota *and the Unmet Obligation of State Courts to Vindicate Federal Constitutional Rights*, 44 FLA. ST. U. L. REV. 53, 62 (2016).

46. *Teague*, 489 U.S. at 307.

47. *Id.* at 311.

48. Ramos v. Louisiana, 140 S. Ct. 1390, 1407 (2020).

49. Edwards v. Vannoy, 141 S. Ct. 1547, 1560 (2021) (eliminating the watershed exception).

50. Deutsch, *supra* note 45, at 64.

51. Christopher N. Lasch, *The Future of* Teague *Retroactivity, or "Redressability," after* Danforth v. Minnesota*: Why Lower Courts Should Give Retroactive Effect to New Constitutional Rules of Criminal Procedure in Post-Conviction Proceedings*, 46 AM. CRIM. L. REV. 1, 49 (2009).

52. *See generally* Frampton, *supra* note 4, at 1638.

53. *Ramos*, 140 S. Ct. at 1394.

54. *See infra* Part I for a discussion on collateral review and the length of convictions.

55. Deutsch, *supra* note 45, at 56.

However, instead of taking the opportunity presented by *Edwards v. Vannoy* to extend the new unanimous-jury rule to those in Edwards's position, the Supreme Court chose to make the *Teague* standard even more restrictive.[56] Thankfully, states are not required to follow the overly restrictive standard that was established in *Teague* and narrowed in *Edwards*.[57] The Court in *Danforth v. Minnesota* held that although *Teague* is binding on federal courts, state courts are free to develop their own rules of retroactivity.[58] *Teague* is merely the floor for state standards, not the ceiling.[59] Therefore, even though the United States Supreme Court declined to hold that *Ramos* was retroactive when it decided *Edwards v. Vannoy*, Louisiana and Oregon are still free to grant retroactive relief to those convicted by non-unanimous juries.[60] As *Danforth* clarifies, "the remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law."[61] Louisiana should take advantage of the opportunity *Danforth* provided to craft a new retroactivity standard that offers individuals convicted under state law who have exhausted their direct appeals a new ground for review whenever a rule of criminal procedure is declared unconstitutional.[62]

Part I of this Comment will outline the historical development of the retroactivity standard and describe its current application in *Teague* and *Edwards*. Part II will highlight the unsatisfactory and unjust results of the *Teague* standard by discussing examples of its application. Additionally, this Part will discuss *Danforth v. Minnesota* and describe why *Teague* constitutes a baseline standard for retroactivity without restricting states' ability to construct their own standards above the *Teague* floor. Part III of this Comment will show that Louisiana should do away with the *Teague* standard by addressing how the standard fails to meet Louisiana's criminal justice goals. Part IV addresses the circuit split that has arisen in Louisiana in the wake of *Edwards v. Vannoy*. Part V will provide a solution to *Teague's* failings: Louisiana should introduce its own, more equitable retroactivity standard that takes into account the historically racist intent and application of the rules of criminal procedure.

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56. Edwards v. Vannoy, 141 S. Ct. 1547 (2021).
57. Danforth v. Minnesota, 552 U.S. 264, 288 (2008).
58. *Id.* at 291.
59. *Id.* at 288.
60. *See generally id.*
61. *Id*.
62. *See* State v. Gipson, 296 So. 3d 1051 (La. 2020); *Danforth*, 552 U.S. 264.

I. THE HISTORICAL DEVELOPMENT OF THE RETROACTIVITY STANDARD

The history of the retroactivity doctrine has been and remains "confused and confusing."[63] Therefore, a review of the development of this doctrine is necessary to provide context for the current state of affairs. Before examining the history of this rule, however, a brief discussion of the criminal-appeals process is crucial. Until *Edwards v. Vannoy*, the most important distinction that affected whether a new rule of criminal procedure would be automatically retroactive or not[64] was the procedural posture of a petitioner's case and, therefore, it is important to clarify the meaning of each stage.

The key dividing line for the pre-*Edwards* retroactivity analysis was between direct and collateral review.[65] Direct review is the process of ordinary appeal.[66] This stage typically includes the trial itself, any appeal to the intermediate court of the state, and then a discretionary appeal to the state's supreme court.[67] After direct appeals are exhausted, the defendant's conviction is final.[68] Collateral review is the process of post-conviction appeal, including any federal or state habeas corpus petitions.[69] The distinction between direct and collateral review is largely a product of timing: the more time that has passed since a person's conviction, the further that person moves along these tracks toward a finalized conviction.[70] As this Part will discuss, the timing of a defendant's conviction and stage of appeal over time became the primary deciding factor in whether an individual's conviction would stand despite the advent of a new rule of criminal procedure.[71]

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63. *Danforth*, 552 U.S. at 271; *see also* Kendall Turner, *A New Approach to the Teague Doctrine*, 66 STAN. L. REV. 1159, 1163 (2014); Lasch, *supra* note 51, at 3.

64. *See* discussion *infra* Section I.C.

65. Teague v. Lane, 489 U.S. 266, 292 (1989).

66. Andrew I. Haddad, *Cruel Timing: Retroactive Application of State Criminal Procedural Rules to Direct Appeals*, 116 COLUM. L. REV. 1259, 1263 (2016).

67. Lasch, *supra* note 51, at 4.

68. Haddad, *supra* note 66, at 1263.

69. Lasch, *supra* note 51, at 5.

70. *See generally id.* at 4–5.

71. *See* discussion *infra* Sections I.A–D.

A. From Common Law to Linkletter v. Walker

Originally, state courts were almost never bound by United States Supreme Court decisions on criminal procedure.[72] Notably, even the exclusionary rule for Fourth Amendment violations was only binding on federal courts until the landmark case *Mapp v. Ohio*, which was the first to apply the exclusionary rule for illegally seized evidence to the states in 1961.[73] Furthermore, prior to the decision in *Mapp*, jurisprudential retroactivity was never given much attention, and, in fact, it was generally considered a foregone conclusion.[74] When the Court announced a new rule, it would typically produce a uniformly retroactive result.[75] This Blackstonian view of the law assumed that the courts merely discovered the law rather than created it.[76] Thus, at common law, all judicial decisions were assumed to apply retroactively.[77] However, after announcing the new rule in *Mapp*, the Court began to consider for the first time the practical effects and costs that a new principle of criminal procedural law might have on federal and state courts.[78]

The Court addressed the concept of retroactivity for the *Mapp* rule for the first time in *Linkletter v. Walker*.[79] In *Linkletter*, the Supreme Court ventured into a sustained discussion of retroactivity to decide whether individuals convicted prior to the *Mapp* decision who had exhausted all their direct appeals should be allowed to raise the issue on federal habeas corpus review.[80] In order to avoid the costs of upsetting the thousands of cases that were decided prior to *Mapp*, the Court in *Linkletter* struck a Faustian bargain and abandoned the longstanding adherence to the common law retroactivity regime.[81] The Court held that the retroactivity of a new rule of criminal procedure must be determined on a case-by-case basis "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."[82] In short, the Court felt that the thousands of cases decided

72. Kermit Roosevelt III, *A Little Theory Is a Dangerous Thing: The Myth of Adjudicative Retroactivity*, 31 CONN. L. REV. 1075, 1082 (1999).
73. Mapp v. Ohio, 367 U.S. 643 (1961).
74. Roosevelt, *supra* note 72, at 1082.
75. *Id.*
76. Linkletter v. Walker, 381 U.S. 618, 622–23 (1965).
77. *Id.* at 622.
78. Lasch, *supra* note 51, at 11.
79. *Linkletter*, 381 U.S. 618.
80. Roosevelt, *supra* note 72, at 1089.
81. Lasch, *supra* note 51, at 11.
82. *Linkletter*, 381 U.S. at 629; *see also* Deutsch, *supra* note 45, at 59.

prior to *Mapp* could not be "obliterated."[83] Thus, finality won out over justice.

B. Stovall v. Denno: *The* Linkletter *Rule Clarified:*

In 1967, the Court clarified the retroactivity standard that came out of *Linkletter*.[84] The Court in *Stovall v. Denno* articulated the test for retroactive application of a new criminal procedure rule, which considered: "(a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards."[85] In *Stovall*, the Court embraced "selective prospectivity" and further restricted the retroactive application of new judicially created rules.[86] The *Stovall* test ensured that the practical costs of applying a new rule could always be used to justify the denial of retroactive application, putting financial costs before the uniform application of a constitutional principle.[87] *Stovall* cemented the three-prong test for retroactivity and ensured that later cases decided under the *Stovall* regime would be subject to this perverse cost-benefit analysis.[88]

One such case was *Desist v. United States*, in which the Court refused to apply the new Fourth Amendment standard articulated in *Katz v. United States*[89] retroactively.[90] Using the *Stovall* test, the Court found that applying the *Katz* standard retroactively would "increase the burden on the administration of justice" by instigating a substantial number of costly appeals in which it would be difficult to determine after the fact "whether a particular instance of eavesdropping led to the introduction of tainted evidence at trial."[91] The Court further found that applying the *Katz* standard retroactively would overturn pre-*Katz* decisions that fairly relied

83. *Linkletter*, 381 U.S. at 636.

84. Stovall v. Denno, 388 U.S. 293 (1967).

85. *Id.* at 297.

86. Lasch, *supra* note 51, at 17 (citing *Stovall*, 388 U.S. at 300–01). "Selective prospectivity" describes the situation in which a new rule is applied to the litigants before the court but not to any similarly situated litigants. *See* Roosevelt, *supra* note 72, at 1092.

87. *See generally id*.

88. *Id.* at 16.

89. The Court in *Katz* held that physical intrusion was not necessary to constitute a search under the Fourth Amendment and that merely recording a conversation was sufficient. Katz v. United States, 389 U.S. 347, 351 (1967).

90. Desist v. United States, 394 U.S. 244 (1969).

91. *Id.* at 251, 253.

upon the old rules without serving to deter any similar searches or seizures in the future.[92] Thus, the *Desist* Court continued to employ the selective prospectivity regime from *Stovall*[93] and allowed the particular litigants in *Desist* to take advantage of the new *Katz* standard, while denying this right to every other individual convicted prior to its 1967 decision.[94] Accordingly, *Katz* did not apply retroactively to anyone, except the five litigants in *Desist*, either on direct or collateral review.[95]

In his dissent in *Desist*, Justice Harlan proposed a solution that would later be adopted in *Griffith v. Kentucky* and *Teague v. Lane*.[96] Justice Harlan proposed that the *Stovall* rule should not apply to cases pending on direct review.[97] He reasoned that for individuals with remaining appeals, it would be unfair to "pick and choose" who among them would receive the benefit of retroactivity.[98] Those with remaining appeals, in Justice Harlan's opinion, should get the benefit of retroactivity.[99] However, Justice Harlan's largesse did not extend to those who had exhausted their direct appeals.[100] Justice Harlan agreed that courts collaterally reviewing habeas petitions need only look to the laws in place at the time of the original proceeding.[101]

C. Griffith v. Kentucky*: Harlan's Distinction Enshrined*

In *Griffith v. Kentucky*, the Court abandoned the *Stovall* test for cases pending on direct review.[102] The *Griffith* Court considered whether the decision in *Batson v. Kentucky*[103] dealing with racially discriminatory jury selection would apply retroactively to individuals still undergoing the direct appeals process.[104] The Court adopted Justice Harlan's *Desist*

92. This deterrence justification might be argued in the context of other rules of criminal procedure. However, the mere fact that applying a rule retroactively will not deter further misbehavior is not a reason to withhold retroactive application. *See infra* Part IV; *Desist*, 394 U.S. at 253.

93. Lasch, *supra* note 51, at 18 (citing *Stovall*, 388 U.S. at 300–01).

94. *Id.*

95. *See* discussion *infra* Part I for an explanation of direct and collateral review.

96. *Desist*, 394 U.S. at 258 (Harlan, J., dissenting).

97. *Id.*

98. *Id.* at 259.

99. *Id.*

100. *Id.* at 263.

101. *Id.*

102. Griffith v. Kentucky, 479 U.S. 314 (1987).

103. Batson v. Kentucky, 476 U.S. 79 (1986).

104. *Griffith*, 479 U.S. at 320.

argument that the *Stovall* regime should be done away with for individuals on direct appeal and that the distinction between direct and collateral appeals should be reinstituted.[105] The Court based its decision on the principle that similarly situated defendants should receive the same treatment.[106] To the Court, it made no sense for the lucky defendant who was granted certiorari to have the new rule apply retroactively in their case but in no others.[107] As Justice Harlan put it, this merely constituted "fishing one case from the stream of appellate review, using it as a vehicle for pronouncing new constitutional standards, and then permitting a stream of similar cases subsequently to flow by unaffected by that new rule."[108] Still, this new rule in *Griffith*, while proclaiming equal treatment under the law, protected only those with recent enough convictions to still have direct appeals.[109] An individual whose appeals were finalized one day before the *Griffith* decision was announced had no recourse, while a defendant with one day remaining on appeal had a whole new opportunity to utilize the *Batson* standard.[110] This arbitrary distinction became solidified in *Teague v. Lane*, and it remained the retroactivity standard in use until *Edwards v. Vannoy*.[111]

D. Teague v. Lane*: The Current Landscape of Retroactivity*

Two years after *Griffith*, the United States Supreme Court did away with the *Stovall* retroactivity standard for individuals on collateral appeal when it decided *Teague v. Lane*.[112] The new retroactivity standard under *Teague* imposed an extremely high bar for retroactivity, arguably even more stringent than those in *Linkletter*[113] and *Stovall*.[114] Under *Teague*, new rules of criminal procedure would generally *not* be applied retroactively to individuals whose convictions were finalized before the new rule was announced.[115] This general bar to retroactivity illustrates just how far the Court has departed from the presumption of retroactivity at

105. Haddad, *supra* note 66, at 1270.
106. *Griffith*, 479 U.S. at 323.
107. *Id.*
108. Mackey v. United States, 401 U.S. 667, 679 (1971) (Harlan, J., concurring in part and dissenting in part).
109. *Griffith*, 479 U.S. at 323.
110. *See id.*
111. *See* Teague v. Lane, 489 U.S. 288 (1989).
112. *Id.*
113. Linkletter v. Walker, 381 U.S. 618 (1965).
114. Stovall v. Denno, 388 U.S. 293 (1967).
115. *Teague*, 489 U.S. at 310.

common law.[116] In 25 short years, the Court nearly entirely dismantled the opportunity for individuals to utilize new constitutional rules of criminal procedure to challenge their convictions, moving from the Blackstonian presumption of retroactivity to a presumptive bar against it.[117]

The Court also announced two narrow exceptions to the general bar against retroactivity in *Teague.*[118] The first exception applied when a new rule was substantive rather than procedural, meaning that the rule put "certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe."[119] In a later case, the Court framed the substantive exception as applying when a new rule "alter[ed] the range of conduct or the class of persons that the law punishes."[120] Alternatively, if a new rule was deemed to be procedural rather than substantive, retroactivity might still have been available under the second exception in *Teague*, which applied when the court announced a new "watershed" rule of criminal procedure that was "central to an accurate determination of innocence or guilt" and "implicit in the concept of ordered liberty."[121]

However, in the 32 years that the watershed exception was in effect, the Court *never* found a new rule of criminal procedure to qualify as a watershed rule.[122] Furthermore, the Court suggested that there may never be a case to meet this burden.[123] In fact, the Court has stated that *Gideon v. Wainright*[124] may have been the only case that would constitute a watershed rule were it decided under *Teague.*[125] In *Gideon*, the Court held that the Sixth Amendment right to counsel applied to the states and required state courts to appoint attorneys to represent indigent defendants.[126] The Court felt that *Gideon* likely would have constituted a watershed procedural rule because "when a defendant who wishes to be represented by counsel is denied representation . . . the risk of an unreliable

116. *See* Roosevelt, *supra* note 72, at 1082.

117. *See Linkletter*, 381 U.S. 618; *Stovall*, 388 U.S. 293; Desist v. United States, 394 U.S. 244 (1969); Griffith v. Kentucky, 479 U.S. 314 (1987); *Teague*, 489 U.S. 288.

118. *Teague*, 489 U.S. at 311.

119. *Id.*

120. Schriro v. Summerlin, 542 U.S. 348, 353 (2004).

121. *Teague*, 489 U.S. at 311.

122. Ramos v. Louisiana, 140 S. Ct. 1390, 1407 (2020).

123. Deutsch, *supra* note 45, at 63.

124. Gideon v. Wainwright, 372 U.S. 335 (1963).

125. Edwards v. Vannoy, 141 S. Ct. 1547 (2021); *see also* Deutsch, *supra* note 45, at 63 (quoting Whorton v. Bockting, 549 U.S. 406 (2007)).

126. *Gideon*, 372 U.S. at 342.

verdict is intolerably high."[127] This wrongly implies that there is such a thing as a *tolerably* high risk of an unreliable verdict.

Gideon is inarguably a landmark case, and the new rule it announced is widely considered a "right without peer" because without access to a lawyer, it is nearly impossible to properly take advantage of any other constitutional right or principle.[128] But the prominence of this right should not dilute the application of others.[129] If *Gideon* is the posterchild for a watershed procedural rule, then "the rule is easily paraphrased: nothing is as important as *Gideon*, so nothing is retroactive."[130] An exception that can never be fulfilled is not really an exception at all. Consequently, Justice Kavanaugh agreed with this sentiment in doing away with the watershed exception altogether in *Edwards v. Vannoy*.[131]

Therefore, under the retroactivity standard in *Teague*, a petitioner had high hurdles to clear in order to obtain retroactive application of a new rule of criminal procedure.[132] First, the court had to determine whether the rule on review was new or merely an application of an existing rule to new facts.[133] If the petitioner could successfully argue that her case merely rested on an existing rule, then the petitioner could "avail herself of the decision on collateral review."[134] However, if a petitioner's case was deemed to rest on a new rule, then it was subject to *Teague*'s extremely high threshold for retroactivity.[135] The *Teague* Court defined a new rule as one that either "breaks new ground or imposes a new obligation on the States or the Federal Government" or one in which "the result was not dictated by precedent existing at the time the defendant's conviction became final."[136] A rule that "breaks new ground" would indeed be a rare thing to see, but a rule that merely was "not dictated by precedent" could arguably refer to an application of an existing framework to a novel set of facts.[137] This "newness" standard covered a wide range of possibilities, and some have said that this first hurdle was little more than "a screen for covert rulings on the merits."[138]

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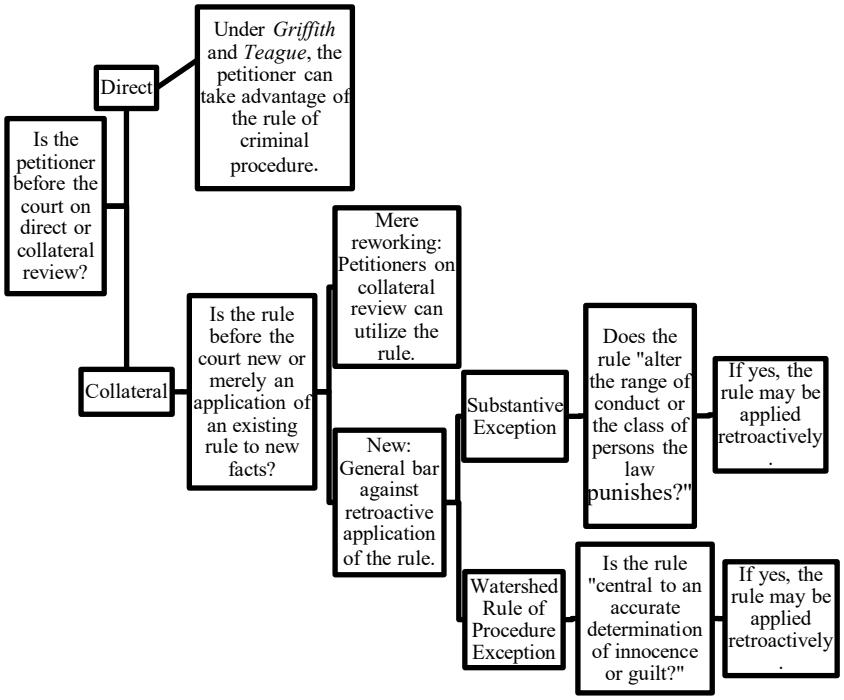
127. *Whorton*, 549 U.S. at 419.
128. Justin F. Marceau, *Gideon's Shadow*, 122 YALE L.J. 2482, 2484 (2013).
129. *Id.*
130. *Id.*
131. Edwards v. Vannoy, 141 S. Ct. 1547, 1560 (2021).
132. *See generally* Deutsch, *supra* note 45.
133. *Id.* at 62.
134. Chaidez v. United States, 568 U.S. 342, 347 (2013).
135. Deutsch, *supra* note 45, at 62.
136. Teague v. Lane, 489 U.S. 288, 301 (1989) (emphasis removed).
137. Lasch, *supra* note 51, at 27.
138. *Id.* at 28.

After this newness hurdle, the rule would need to either be substantive or rise to the level of a watershed rule—somewhere above and beyond *Gideon v. Wainwright* in terms of implicating "concept[s] of ordered liberty."[139] The following chart illustrates the steps of the *Teague* analysis.[140]



When the Supreme Court decided *Edwards v. Vannoy*, not only did it find that the unanimous-jury rule from *Ramos* did not meet this high

139. *Teague*, 489 U.S. at 311.

140. *See id.* at 301, 310–311; Haddad, *supra* note 66, at 1270; Griffith v. Kentucky, 479 U.S. 314, 323 (1987); Schriro v. Summerlin, 542 U.S. 348, 353 (2004).

standard of a watershed rule, but it also did away with the watershed exception altogether.[141] This next Part will explore how the *Teague* standard has functioned over time prior to this elimination of the watershed exception.

II. *TEAGUE* APPLIED: HOW THE RETROACTIVITY STANDARD WORKED IN PRACTICE

Although the Court eliminated the watershed exception in *Edwards v. Vannoy*,[142] it is still important to see how the Court applied the *Teague* doctrine as it stood before this unexpected alteration. Furthermore, the *Edwards* Court left the rest of the *Teague* doctrine in place, including the substantive exception.[143] Therefore, this Part will discuss the application of the *Teague* doctrine in pre-*Edwards* jurisprudence.

A. The Substantive Rule Exception

In practice, cases have only occasionally met the substantive exception under *Teague*. One recent example of a case that met this exception is *Welch v. United States*.[144] In *Welch*, the Court held that a new rule announced in *Johnson v. United States*[145] was substantive and therefore retroactive for individuals on collateral review.[146] In *Johnson*, the Court struck down a portion of the Armed Career Criminal Act of 1984[147] that was void for vagueness.[148] This portion of the law imposed a steeper penalty for felons in possession of firearms if the offender had three or more prior serious drug offenses or violent felonies.[149] However, the law defined a violent felony as one that "involves conduct that presents a serious potential risk of physical injury to another."[150] The Court in *Johnson* found this phrase to be too vague to provide fair notice to defendants, and thus struck it down as void for vagueness.[151]

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141. Edwards v. Vannoy, 141 S. Ct. 1547, 1560 (2021).
142. *Id.*
143. *Id.*
144. Welch v. United States, 578 U.S. 120 (2016).
145. Johnson v. United States, 576 U.S. 591 (2015).
146. *Welch*, 578 U.S. at 129.
147. 18 U.S.C. § 924(e)(2)(B)(ii).
148. *Johnson*, 576 U.S. at 606.
149. 18 U.S.C. § 924(e)(1).
150. *Id.* § 924(e)(2)(B)(ii).
151. *Johnson*, 576 U.S. at 597.

Whether this new rule should be applied retroactively was a question that the *Johnson* Court left open for another day.[152] In *Welch*, the Court took up this question and held that the rule announced in *Johnson* was substantive because it altered the range of conduct that the law punished.[153] Therefore, individuals convicted under the prior version of the Armed Career Criminal Act could use the decision in *Johnson* to petition the court under collateral review.[154]

The Court in *Welch* also pointed out an important distinction about the meaning of substantive and procedural rules.[155] The Court stressed that the nature of a new rule depended on the *function* of that rule rather than the right that underlies it.[156] In other words, a new rule that affects the operation of a substantive right, such as the right to jury unanimity under the Sixth Amendment, can still be considered a procedural rule if it merely affects the operation of that right.[157] This reveals a critical flaw in the *Teague* structure: the artificial line drawn between the substance of a right and the procedural application of that right. In reality, these two concepts are not so easily separable as illustrated in cases that fail to meet the high standard for the watershed exception.

B. The Watershed Procedural Rule Exception

Schriro v. Summerlin[158] exemplifies the fictional nature of the division between substantive and procedural rules. In this case, the Court determined whether a new rule announced in *Ring v. Arizona*[159] would apply retroactively.[160] The *Ring* decision invalidated Arizona's capital sentencing scheme, which gave judges too much authority in determining capital sentencing.[161] Under the old scheme, after a jury convicted an individual of first-degree murder, it fell to the trial judge alone to make a

152. *See* Welch v. United States, 578 U.S. 120 (2016).
153. *Id.* at 129.
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.*
158. Schriro v. Summerlin, 542 U.S. 348 (2004).
159. Ring v. Arizona, 536 U.S. 584 (2002).
160. *Schriro*, 542 U.S. at 358.
161. *Ring*, 536 U.S. at 588.

finding of fact in order to determine whether aggravating factors were present to support the death penalty.[162]

In *Schriro v. Summerlin*, the Court held that *Ring* would not apply retroactively to individuals who had exhausted their direct appeals.[163] The Court reasoned that even though juries may be more accurate fact-finders than judges, this fact did not significantly diminish the accuracy of all death sentences prior to *Ring* in Arizona.[164] This justification presents a contradiction: that the capital sentencing scheme was too inaccurate to continue, but not so inaccurate that the death sentences issued under it should be reevaluated.[165]

Even in a life-or-death situation, the Court refused to hold that the rule in *Ring* was substantive or, at the very least, articulated a watershed rule of procedure.[166] Schriro's particular situation is especially shocking to consider, as his defense attorney was having an affair with the prosecutor, and the judge who sentenced him may have confused the facts of his case with the facts of another defendant sentenced that same day.[167] Even for defendants with less shocking factual situations, the holding in *Schriro* deprived them of an opportunity for resentencing.[168] *Schriro* virtually guaranteed these individuals' deaths, not because of a decision of a jury of their peers, but from the decision of a single judge assigned to their case.[169] The Court, in holding that this law did not satisfy a *Teague* exception, allowed an unconstitutional scheme to guarantee the deaths of individuals who had not been convicted in accordance with their Sixth and Fourteenth Amendment rights.

C. Danforth v. Minnesota*: Freeing States from* Teague*'s Constraints*

Under this highly restrictive regime, in 2008 the United States Supreme Court provided a chance for states to diverge from the *Teague* standard.[170] In *Danforth v. Minnesota*,[171] the Court addressed retroactivity

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162. *Id*; C. Ryan Russell, *Death Anyways: Federal Habeas Corpus Retroactivity Law and the Decision in* Schriro v. Summerlin, 83 OR. L. REV. 1389, 1394 (2004).
163. *Schriro*, 542 U.S. at 358.
164. *Id.* at 355–56.
165. *Id.*
166. *Id.* at 358.
167. Russell, *supra* note 162, at 1389.
168. Ring v. Arizona, 536 U.S. 584, 588 (2002).
169. *Id.*
170. Danforth v. Minnesota, 552 U.S. 264 (2008).
171. *Id.*

stemming from the new rule announced in *Crawford v. Washington*.[172] The *Crawford* case dealt with the Confrontation Clause of the Sixth Amendment and its relation to out-of-court statements made by witnesses, holding that the hearsay rules in the Federal Rules of Evidence cannot usurp a defendant's right to cross-examine witnesses at trial.[173]

In *Danforth*, the petitioner sought, and was ultimately denied, relief under the new *Crawford* rule in state habeas proceedings.[174] There, the Minnesota Supreme Court applied the *Teague* standard and found that the *Crawford* rule did not constitute a watershed procedural rule, reasoning that a new rule "must do more than simply improve the accuracy of a proceeding" to qualify as a watershed exception.[175] The Minnesota Supreme Court reasoned that the new rule espoused in *Crawford* might even make convictions less accurate by excluding some reliable instances of hearsay, and therefore it could not qualify as a watershed procedural rule.[176] Danforth then appealed the Minnesota Supreme Court decision and asked the United States Supreme Court to consider whether *Teague* constrained the authority of state courts "to give broader effect to new rules of criminal procedure."[177] The Court concluded that *Teague* was binding on all federal courts but only constituted a baseline requirement for states.[178]

Thus, states are free to construct their own broader retroactivity rules and grant retroactive relief beyond what is required in *Teague*.[179] However, few have taken advantage of this new opportunity.[180] This is especially concerning when considering the underlying justification behind the distinction between direct and federal collateral appeals espoused in *Teague*.[181] The Court in *Teague* specifically stated that one of its justifications for the general bar against retroactivity on collateral review was deference to state courts.[182] It makes little sense for states to defer to the rationale in *Teague* when the very purpose behind *Teague* was to preserve deference to state courts' direct-review process.[183]

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172. Crawford v. Washington, 541 U.S. 36 (2004).
173. *Id.* at 68.
174. Danforth v. State, 718 N.W.2d 451, 460 (Minn. 2006).
175. Deutsch, *supra* note 45, at 68; *Danforth*, 718 N.W.2d at 460.
176. *Danforth*, 718 N.W.2d at 460.
177. Danforth v. Minnesota, 552 U.S. 264, 266 (2008).
178. *Id.* at 282.
179. Deutsch, *supra* note 45, at 68.
180. *Id.* at 70.
181. *See* Teague v. Lane, 489 U.S. 266, 306 (1989).
182. *Id.*
183. Deutsch, *supra* note 45, at 75.

A historical review of the development of retroactivity reveals two things. First, retroactivity used to be the norm and has only changed relatively recently because of jurisprudence relying on a misplaced attempt to save states' money.[184] Second, a denial of retroactivity produces overly harsh results that deny individuals the right to constitutionally sound proceedings based solely on the date of their conviction.[185] Theoretically, a difference of one day in the date that final appeals are fully exhausted could mean that one defendant gets a chance at a new trial or sentence but another does not, merely because his trial happened to be docketed for a slightly earlier date.[186] Under the current retroactivity regime, any number of trivial events can mean the difference between retroactivity or not. The decision of a judge to take a vacation and delay the cases on his docket or the sickness of an attorney forcing a delay in the trial might be the reason one defendant can utilize a new rule while his neighbor in the same cell block might not. Needless to say, this is highly arbitrary and unjust. Thankfully, the *Danforth* rule gives states an opportunity to override this harsh scheme within their borders.[187]

III. *EDWARDS V. VANNOY*: THE DEATH OF THE WATERSHED EXCEPTION

The *Teague* regime was already a steep barrier for any new rule of criminal procedure. Then, *Edwards v. Vannoy* presented a double blow to advocates of prison reform: by denying retroactivity to the new rule of jury unanimity announced in *Ramos v. Louisiana* and by making the retroactivity barrier even steeper by eliminating the watershed exception.[188] First, the Court held that *Ramos* did not constitute a new watershed rule of criminal procedure.[189] Justice Kavanaugh reasoned in part that the *Ramos* rule could not be a watershed rule if the rule in *Duncan v. Louisiana*[190] was not.[191] In *Duncan*, the Court ruled that defendants had the right to a jury trial in state criminal cases.[192] In *DeStefano v. Woods*, the Court held that the right to a jury trial announced in *Duncan* would not

184. *See supra* Section I.A.
185. *See supra* Section II.A–B.
186. *See generally Teague*, 489 U.S. at 310; *see* Griffith v. Kentucky, 479 U.S. 314, 323 (1987).
187. Danforth v. Minnesota, 552 U.S. 264, 282 (2008).
188. Edwards v. Vannoy, 141 S. Ct. 1547, 1560 (2021).
189. *Id.* at 1559.
190. Duncan v. Louisiana, 391 U.S. 145 (1968).
191. *Edwards*, 141 S. Ct. at 1559.
192. *Duncan*, 391 U.S. at 149–150.

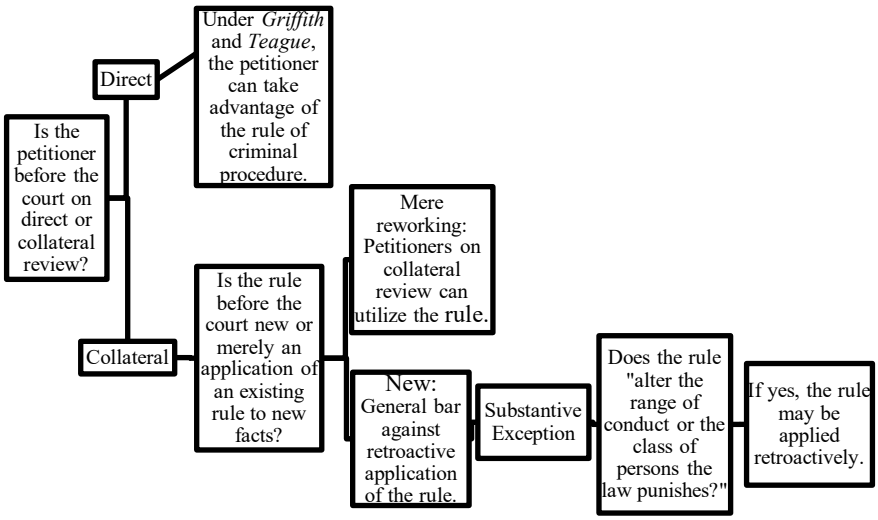
be retroactive.[193] Justice Kavanaugh reasoned that jury unanimity was a "subsidiary" right to the rule announced in *Duncan*, and therefore the right to a unanimous jury shouldn't be retroactive if the right to a jury itself was not.[194]

Furthermore, in deciding that *Ramos* would not be retroactive, Justice Kavanaugh stated that "conducting scores of retrials years after the crimes occurred would require significant state resources"[195] and "costs imposed upon the States by retroactive application of new rules of constitutional law on habeas corpus thus generally far outweigh the benefits of this application."[196] Although Justice Kavanaugh rightfully pointed out that retrying certain old cases would be traumatizing to past victims, he neglected to place the blame for this renewed trauma where it belongs: in the hands of the state for failing to meet its burden of proof at the first trial and convince all jurors beyond a reasonable doubt of the defendant's guilt.[197] Therefore, as in *Linkletter v. Walker* in 1965, cost and finality won out over justice.[198]

In addition to holding that the new rule in *Ramos* was not a watershed rule of procedure, the Court went a step further and eliminated the watershed exception entirely.[199] Ironically, the Court pointed to the very issue that critics of the *Teague* doctrine have focused on for years as the reason for this elimination: the fact that the watershed exception has never been successfully invoked.[200] Justice Kavanaugh stated, "Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of defense counsel, prosecutors, and courts. Moreover, no one can reasonably rely on an exception that is non-existent in practice . . . ."[201] However, instead of addressing this problem by expanding the watershed exception into a working doctrine, the Court

193. DeStefano v. Woods, 392 U.S. 631, 633 (1968) (*per curiam*).
194. *Edwards*, 593 U.S. at 1558.
195. *Id.* at 1554.
196. *Id.* (*quoting* Sawyer v. Smith, 497 U.S. 227, 242 (1990)).
197. *Id.*
198. Linkletter v. Walker, 381 U.S. 618, 636 (1965).
199. *Edwards*, 141 S. Ct. at 1560.
200. *Id.*
201. *Id.*

chose to eliminate it entirely.[202] Thus, in the aftermath of *Edwards v. Vannoy*, the *Teague* analysis at the federal level is as follows:[203]



IV. WHY *TEAGUE* NEEDS TO GO: THE PROBLEMS WITH A COST-BENEFIT-ANALYSIS APPROACH

Louisiana should expand upon the *Teague* regime and use it as a floor rather than a ceiling when deciding the retroactivity of a new rule of criminal procedure. Currently, individuals who have exhausted their direct appeals are left with no opportunity to take advantage of any new rule that would have invalidated their conviction had it only occurred more recently. This time-based constraint is illogical. Further, the current *Teague* approach incorporates a cost-benefit analysis that is both immoral and logically unsound. For these reasons, a new, Louisiana-based

202. *Id.*

203. *See* Teague v. Lane, 489 U.S. 266, 301, 310, 311 (1989); Haddad, *supra* note 66, at 1270; Griffith v. Kentucky, 479 U.S. 314, 323 (1987); Schriro v. Summerlin, 542 U.S. 348, 353 (2004); *Edwards*, 141 S. Ct. at 1558–60.

approach to retroactivity should expand the timing constraints of retroactivity to include individuals whose convictions have been finalized and should afford more weight to the effects of denying retroactivity on defendants over the potential costs of retroactive application of a new rule on the system.

It must be briefly noted that Louisiana is powerless to overrule the United State Supreme Court's determination that a rule is new rather than an application of a preexisting rule to new facts.[204] The "newness" of a rule is a threshold consideration, and an analysis of retroactivity, either under *Teague* or under a *Danforth*-enabled state standard, does not become relevant unless the procedural rule is considered new.[205] Therefore, if the Supreme Court has determined a rule to be new, Louisiana is bound to at least use *Teague* as a retroactivity floor.[206] Louisiana is also powerless to sink lower than the substantive or watershed exceptions.[207] These exceptions are the binding floor to any retroactivity analysis.[208] Thus, if the Louisiana Supreme Court wishes to take advantage of the *Danforth* opportunity, they must expand the retroactivity standard rather than contract it.

One of the primary considerations the Court undertook in deciding *Teague* was the desire to avoid the costs of reconsidering previously finalized cases.[209] The Court found retroactivity undesirable because it "continually forces the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards."[210] However, the costs of administering additional proceedings for individuals after a new rule is announced do not exist in a vacuum. Instead, these costs should be considered in light of the extremely expensive regime of mass incarceration with which America generally and Louisiana specifically struggle.

Currently, there are over 2.2 million people in American prisons and jails.[211] This constitutes a 500% increase over the last 40 years—far too

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204. Deutsch, *supra* note 45, at 62.

205. *Id.*

206. Danforth v. Minnesota, 552 U.S. 264, 288 (2008).

207. *Id.* at 282. Because Louisiana adopted the *Teague* standard as the standard for state collateral rule, Louisiana still retains the watershed exception. However, like at the federal level, this exception has never been used in Louisiana. *See infra* Section V.A.

208. *Id.*

209. Teague v. Lane, 489 U.S. 266, 310 (1989).

210. *Id.*

211. In 1980, there were approximately 315,000 incarcerated individuals in America, while in 2018, there were over 1.4 million. *Id.*

much to be attributed to population growth.[212] Furthermore, this growth cannot merely be accounted for by people with short-term sentences.[213] One in nine prisoners is incarcerated for life, and one in three of those individuals has no possibility of parole.[214]

As bleak as these numbers are on the national level, Louisiana's are even worse.[215] In fact, Louisiana's rate of imprisonment is double the national average.[216] Louisianans are also more likely to receive life sentences, and the number of individuals currently incarcerated for life is nearly triple what the total prison population was in 1970.[217] Despite decreasing crime rates, Louisiana has also seen a large increase in the prison population over time, with the prison population increasing sevenfold over the last 40 years.[218]

These numbers are not without cost. Nationally, prison costs now account for one out of every fifteen state discretionary spending dollars.[219] Furthermore, these numbers are growing, not shrinking.[220] In fact, criminal-justice costs are the second fastest growing category in state budgets behind only Medicaid.[221] Louisiana is not exempt from these costs.[222] In 2018, Louisiana spent $868 million, nearly 10% of Louisiana's

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212. *Id.*

213. *Id.*

214. *Id.*

215. *See generally id.*

216. Louisiana incarcerates people at a rate of 1,619 per 100,000 residents. *Mass Incarceration*, A.C.L.U. LA., https://www.laaclu.org/en/issues/mass-incarceration [https://perma.cc/G4F2-Y3LV] (last visited Oct. 1, 2020).

217. Lea Skene, *Report: Number of People Serving Life in Louisiana Dwarfs Entire State Prison Population in 1970*, ADVOCATE (Feb. 21, 2020), https://www.theadvocate.com/baton_rouge/news/crime_police/article_31f0dc98-54cd-11ea-807c-b3a2c890a656.html [https://perma.cc/9BMA-PC7C]. According to the most recently available data, Louisiana currently has 4,895 individuals serving life sentences. *See State-by-State Data: Louisiana*, SENTENCING PROJECT, https://www.sentencingproject.org/the-facts/#map [https://perma.cc/3BV8-Q8BQ] (last visited Oct. 21, 2020).

218. In 1980, there were 8,889 total incarcerated individuals in Louisiana. Today, however, there are over 63,000. *State-by-State Data: Louisiana*, *supra* note 217. *See also Mass Incarceration*, *supra* note 216.

219. *Fiscal Cost of Mass Incarceration*, A.C.L.U., https://www.aclu.org/issues/smart-justice/mass-incarceration/fiscal-cost-mass-incarceration [https://perma.cc/L66Y-FCW7] (last visited Oct. 1, 2020).

220. *Id.*

221. *Id.*

222. *State-by-State Data: Louisiana*, *supra* note 217.

total spending, on corrections out of a total budget of approximately $9.5 billion.[223]

In a state that has experienced recent budget shortfalls and painful spending cuts,[224] prison costs seem like the most reasonable area to save money. Other budget categories, such as education and healthcare spending, have a relatively fixed number of affected individuals, meaning that cuts in these categories are limited by the unchanging number of individuals who utilize these services.[225] For example, although cuts to the education budget can reduce the amount spent per child, there is no direct way to reduce the total population of children enrolled in Louisiana public schools through spending cuts alone. However, the same is not true for the prison system.[226] States can and do release individuals from the corrections system all the time when their sentences run out or when they are granted parole, thus eliminating the need to spend corrections money on those individuals.[227]

There are many steps that other states can and have taken to reduce their prison populations. Some examples are reducing or eliminating mandatory minimum sentences, eliminating habitual-offender laws, or creating and expanding diversionary court programs such as those focused

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223. *Id.*; *Overview: Fiscal Year 2018 Budget*, LA. BUDGET PROJECT (Mar. 13, 2017), https://www.labudget.org/2017/03/overview-fiscal-year-2018-budget/#:~:text=Gov.,to%20fund%20general%20government%20operations [https://perma.cc/T84T-67Z3]. Corrections spending "reflects the costs to build and operate prison systems and may include spending on juvenile justice programs and alternatives to incarceration such as probation and parole." NAT'L ASSOC. OF STATE BUDGET OFFICERS, 2019 STATE EXPENDITURE REPORT 60 (2019), https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/SER%20Archive/2019_State_Expenditure_Report-S.pdf [https://perma.cc/6BPA-X86N].

224. For a primer on Louisiana's budget woes, see Jan Moller, *Louisiana Budget Crisis: Stop Settling for Scraps*, LA. BUDGET PROJECT, http://www.louisianapartnership.org/resources/Documents/LBP%20Budget%20and%20Tax%20La%20Partnership.pdf [https://perma.cc/75XR-2M8Y] (last visited Nov. 15, 2020).

225. *See generally Overview: Fiscal Year 2018 Budget*, *supra* note 223.

226. *See generally* Dennis Schrantz et al., *Decarceration Strategies: How 5 States Achieved Substantial Prison Population Reductions*, SENTENCING PROJECT (Sept. 5, 2018) https://www.sentencingproject.org/publications/decarceration-strategies-5-states-achieved-substantial-prison-population-reductions/ [https://perma.cc/6UDF-LYHH].

227. *Id.*

on drugs and addiction.[228] However, in Louisiana, a retroactive application of the prohibition on non-unanimous juries as well as other new constitutional rules that may arise represent untapped strategies to further reduce the prison population.[229]

In the context of the *Ramos* rule and the subsequent *Edwards* decision, it is clear that a large percentage of individuals currently in prison in Louisiana today are there because of a now-unconstitutional rule.[230] Non-unanimous jury laws have allowed Black Louisianans to serve on juries while effectively eliminating any effect their votes might have had on the outcome of a case.[231] The results of this discriminatory policy, according to one study that reviewed 3,000 felony trials over a six-year period in Louisiana, show that 40% of all trial convictions were the result of a non-unanimous jury vote.[232] Out of documented non-unanimous jury convictions, Black defendants were convicted at a 30% higher rate than their white counterparts.[233] The juries responsible for these convictions tended to be whiter than their surrounding communities, with the average jury in East Baton Rouge Parish having two fewer Black jurors than would be representative of the overall community.[234] Thus, it is clear that the impact of retroactive application of the *Ramos* case could be substantial on individual defendants and on the prison system as a whole.

Critics (as well as Justice Kavanaugh) might argue that the large number of impacted individuals is a reason *not* to apply *Ramos* retroactively. After all, holding new proceedings for a large chunk of the

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228. *Id.* For an in-depth discussion on Louisiana's habitual-offender laws, see Harper G. Street, *Breaking the Chains of a Habitually Offensive Penal System: An Examination of Louisiana's Habitual-Offender Statute with Recommendations for Continued Reform*, 82 LA. L. REV. 963 (2022).

229. See *supra* Introduction for a discussion on the impact of non-unanimous jury laws. *See also* Frampton, *supra* note 4, at 1638.

230. Ramos v. Louisiana, 140 S. Ct. 1390 (2020); Edwards v. Vannoy, 141 S. Ct. 1547 (2021).

231. *Ramos*, 140 S. Ct. at 1394.

232. Jeff Adelson et al., *How an Abnormal Louisiana Law Deprives, Discriminates and Drives Incarceration: Tilting the Scales*, ADVOCATE (Apr. 1, 2018), https://www.nola.com/news/courts/article_8e284de1-9c5c-5d77-bcc5-6e22a3053aa0.html [https://perma.cc/4Y5V-HYG2].

233. *Id.* This article "reviewed about 3,000 felony trials over six years, turning up 993 convictions rendered by 12-member Louisiana juries in which the newspaper was able to document the jury votes." White defendants had a 33% chance of a non-unanimous conviction while Black defendants had a 43% chance of the same, which amounts to a 30% difference. Frampton, *supra* note 4, at 1638.

234. Adelson et al., *supra* note 232.

prison population would undoubtedly be costly.[235] For example, the cost to taxpayers for the average homicide trial is between $22,000 and $44,000, and the cost of the average robbery trial is between $600 and $1,300.[236] However, housing prisoners is also a highly costly endeavor.[237] Louisiana pays over $16,000 per prisoner per year on average.[238] It stands to reason that older prisoners would be more expensive to house as their medical needs increase with age. Therefore, a lifetime of housing an individual is an expensive task. In only a few years, the cost of corrections far outweighs the cost of even a homicide trial, and corrections costs outpace the cost of a lesser trial in a matter of months. These costs seem even steeper when considering that many individuals are imprisoned due to the operation of now unconstitutional laws and procedures.

Therefore, over time, it would actually save the state money to revisit the cases of people who have exhausted their direct appeals. Although not every person allowed to take advantage of a constitutional rule will be released, this still provides an opportunity for the state to revisit older convictions that may no longer be in Louisiana's best interest.

Furthermore, the financial cost of implementing a new rule pales in comparison to the injustice of denying people the application of a new constitutional rule merely because they have been convicted for a longer period of time. The Court in *Griffith* espoused the principle that similarly situated defendants should be subject to the same treatment in deciding that retroactivity should be granted to individuals with remaining direct appeals.[239] This same principle should be extended to those whose convictions are finalized. Yes, those individuals are at a different procedural stage, but this does not change the fact that their convictions rest in whole or in part on an unconstitutional principle that could have completely changed the outcome of their case had it been heard today. Therefore, Louisiana should take advantage of the opportunity presented in *Danforth v. Minnesota*[240] to create a broader rule of retroactivity that is more reflective of the state's values.

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235. Ramos v. Louisiana, 140 S. Ct. 1390, 1406 (2020).

236. Pricilla Hunt et al., *The Price of Justice: New National and State-Level Estimates of the Judicial and Legal Costs of Crime to Taxpayers*, 42 AM. J. CRIM. JUST. 231, 231 (2016).

237. *Prison Spending in 2015*, VERA INST. OF JUST., https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending [https://perma.cc/JSA2-SC92] (last visited Oct. 1, 2020).

238. *Id.*

239. Griffith v. Kentucky, 479 U.S. 314, 323 (1987).

240. Danforth v. Minnesota, 552 U.S. 264 (2008).

IV. A LOUISIANA OPPORTUNITY: THE CIRCUIT SPLIT OVER RETROACTIVITY

Since *Edwards v. Vannoy* was decided, several Louisiana circuit courts have considered whether to take advantage of the opportunity provided by *Danforth* to apply *Ramos* retroactively in state proceedings.[241] In November 2021, the Louisiana Third Circuit Court of Appeal decided against a retroactive application of *Ramos* in the case of David A. Nelson.[242] Nelson was convicted of manslaughter in 2012 by a non-unanimous jury.[243] The Third Circuit acknowledged that Louisiana was free to apply *Ramos* retroactively in light of *Danforth*.[244] However, the court declined to do so.[245]

The Third Circuit reasoned that because Louisiana has not applied rules like those from *Batson* and *Crawford* retroactively, there is no justification for treating the *Ramos* rule any differently.[246] The court, although acknowledging that *Edwards* did not eliminate the watershed exception for Louisiana courts, found that the *Ramos* rule did not meet that impermissibly high bar, stating that "we cannot fathom any different conclusion than that of the United States Supreme Court that *Ramos* does not satisfy the 'watershed' exception set out in *Teague*."[247]

However, on the same day, the Louisiana Fourth Circuit Court of Appeal took the opposite approach in *State v. Melendez*, applying *Ramos* retroactively in granting the individual a new trial.[248] The court began by examining and acknowledging the racist history behind non-unanimous juries and stated that this policy has "had a profound effect on non-white defendants."[249] The court found that based on this racist history, the *Ramos*

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241. John Simerman, *New Rulings Set Up Louisiana Supreme Court Showdown over 1,500 Non-unanimous Jury Verdicts*, NOLA.COM (Nov. 11, 2021), https://www.nola.com/news/courts/article_6c4e7c96-4310-11ec-9410-336bb57972ca.html [https://perma.cc/8YLH-P6TU].

242. State v. Nelson, No. 21-461, 2021 WL 5232244 (La. App. 3d Cir. Nov. 10, 2021).

243. *Id.* at *2.

244. *Id.* at *9.

245. *Id.* at *17.

246. *Id.* at *15.

247. *Id.* at *16. Because the Louisiana Supreme Court adopted the *Teague* standard as a whole in *State ex. rel. Taylor v. Whitley*, the watershed exception is technically still available to Louisiana courts on state collateral review. *See infra* Section V.A.

248. State v. Melendez. No. 2021-K-0597 (La. App. 4th Cir. Nov. 10, 2021).

249. *Id.* at *3.

rule should be applied retroactively "in the interest of justice and fundamental fairness."[250]

At the time of these Louisiana circuit court decisions, there were at least 200 requests for the Louisiana Supreme Court to consider the retroactivity of *Ramos* on the state level.[251] In light of the new circuit split and the many pending requests to the Louisiana Supreme Court, it is highly likely that the court will soon decide the final hope for a new trial of those convicted in Louisiana by non-unanimous juries. When the court takes up this question, it will not only have the opportunity to retain the watershed exception that *Edwards* eliminated at the federal level, but also to expand upon the deeply flawed *Teague* retroactivity analysis and to create a more just standard for Louisianans.

V. WHAT LOUISIANA SHOULD DO INSTEAD: A PURPOSEFUL APPROACH TO RETROACTIVITY

Louisiana has the freedom to build on the *Teague* standard and expand retroactivity beyond its current bounds.[252] The current approach is limited by the uncertain status of the watershed exception due to its elimination at the federal level and the out-of-place cost considerations.[253] In order to combat these limitations, the Louisiana Supreme Court should adopt two additional exceptions to the general bar to retroactivity: a purpose-based exception and an outcome-based exception.

A. Consider the Intent and Purpose of the Old Rule

The Louisiana Supreme Court should create a new exception to the *Teague* standard that incorporates a consideration for the intent and purpose of any old, unconstitutional rule. This exception would be beneficial for two reasons: first, because it would expand the scope of retroactivity beyond its current limits and, second, because it would allow the state to address and rectify a long history of discriminatory criminal laws.[254]

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250. *Id.*

251. *Fourth Circuit Court of Appeal Holds* Ramos *Retroactive in PJI Case*, THE PROMISE OF JUST. INITIATIVE (Nov. 10, 2021), https://promiseofjustice.org/news/fourth-circuit-court-of-appeal-holds-ramos-retroactive-in-pji-case [https://perma.cc/7QNS-YMT3].

252. *See supra* Section II.C.

253. *See supra* Part III.

254. *See supra* Introduction for a brief discussion of Louisiana's racist laws.

Louisiana only officially adopted the *Teague* standard in 1992 in the case *State ex. rel. Taylor v. Whitley.*[255] In this case, the Louisiana Supreme Court addressed the potential retroactive application of *Cage v. Louisiana.*[256] In *Cage*, the United States Supreme Court found that a jury instruction "equating reasonable doubt with a 'grave uncertainty' and an 'actual substantial doubt' and stating that what was required was a 'moral certainty' that the defendant was guilty, was constitutionally defective."[257] Although on remand the Louisiana Supreme Court found the jury instruction in Cage's case to be harmless error, *Cage v. Louisiana* still was a new rule in need of a retroactivity analysis.[258]

In *Taylor*, the Louisiana Supreme Court applied the *Teague* standard for the first time to determine whether *Cage* should be applied retroactively.[259] The Court determined that the *Cage* rule met neither the substantive exception nor the watershed exception, and thus, it was not retroactively applied.[260] Even in this initial case, the Louisiana Supreme Court chafed against the *Teague* standard, wrongly asserting that they were not bound to adopt it and that doing so was merely the Court's choice.[261] This assertion was later partially justified by *Danforth v. Minnesota*, which clarified that states are only bound to use *Teague* as a floor.[262]

At the time of the *Taylor* decision, there was already pushback against the adoption of *Teague*.[263] Justice Calogero in his *Taylor* dissent suggested that Louisiana should not use *Teague*.[264] Justice Calogero relied on Louisiana Constitution article I, section 21, which states that the writ of habeas corpus shall not be suspended in Louisiana.[265] This article must be read in concert with Louisiana Code of Criminal Procedure article 930.3, which states that a petitioner in custody shall be granted relief if "the conviction was obtained in violation of the constitution of the United States or the state of Louisiana."[266] Justice Calogero stressed the importance of state proceedings as the venue in which to vindicate federal

255. State *ex rel*. Taylor v. Whitley, 606 So. 2d 1292 (La. 1992).
256. *Id.*; Cage v. Louisiana, 498 U.S. 39 (1991).
257. *State ex rel. Taylor*, 606 So. 2d at 1293 (citing *Cage*, 498 U.S. 39).
258. State v. Cage, 583 So. 2d 1125 (La. 1991).
259. *State ex rel. Taylor*, 606 So. 2d at 1296.
260. *Id.* at 1299–300.
261. *Id.* at 1296.
262. Danforth v. Minnesota, 552 U.S. 264, 288 (2008).
263. *State ex rel. Taylor*, 606 So. 2d at 1301 (Calogero, J., dissenting).
264. *Id.*
265. *Id.* (citing LA. CONST. art. 1, § 21 (2018)).
266. La. Code Crim. Pro. art. 930.3.

constitutional rights.[267] He reasoned that with *Teague* restricting opportunities for federal relief, state collateral proceedings were an increasingly important opportunity to address now-unconstitutional convictions.[268] Furthermore, Justice Calogero addressed the fear that "the gates of the penitentiary may be flung open" if new rules were deemed retroactive more frequently.[269] He dismissed this fear, reasoning that cases with harmless error would remain settled.[270] Finally, he emphasized that Mr. Taylor should not be disadvantaged merely because of the timing of his conviction.[271] The Louisiana Supreme Court should adopt Justice Calogero's reasoning that state collateral proceedings are a legitimate venue in which to vindicate constitutional rights.[272]

In her dissent to a denial of certiorari in *State v. Gipson*, former Louisiana Supreme Court Chief Justice Bernette Johnson suggested a new test for retroactivity, and in doing so, referred to and expanded on Justice Calogero's earlier dissent.[273] Louisiana should build upon Justice Calogero's call for a state-based solution and adopt Chief Justice Johnson's test in order to create a new exception to the general *Teague* bar to retroactivity. In *Gipson*, the Louisiana Supreme Court denied certiorari in a case calling for a retroactive application of *Ramos v. Louisiana.*[274] Chief Justice Johnson would have granted certiorari in this case and wrote, assigning her reasons.[275] Although she felt that *Ramos* should clear *Teague*'s high bar, Chief Justice Johnson still asserted that *Teague* was an outdated and overly restrictive standard that should be abandoned.[276] She argued that the cost-benefit approach enshrined in *Teague* has no place in determining fundamental rights.[277] Chief Justice Johnson then proposed a new approach: one that builds beyond the misplaced scheme that has dominated the past 40 years of criminal procedure and institutes a new purposeful view of retroactivity.[278]

Chief Justice Johnson suggested that a new Louisiana retroactivity standard should include a "consideration of whether a stricken law had a

267. *State ex rel. Taylor*, 606 So. 2d at 1301.
268. *Id.*
269. *Id.*
270. *Id.*
271. *Id.* at 1302.
272. *Id.* at 1301.
273. State v. Gipson, 296 So. 3d 1051, 1054 (La. 2020).
274. *Id.* at 1052.
275. *Id.*
276. *Id.*
277. *Id.* at 1056.
278. *Id.*

racist origin, has had a disproportionate impact on cognizable groups or has otherwise contributed to our state's history of systemic discrimination against African Americans."[279] The Louisiana Supreme Court should adopt Chief Justice Johnson's test as the first additional exception to the *Teague* bar on retroactivity.

This new purposive exception would expand the scope of retroactivity by providing certainty to new rules like the one in *Ramos* that were created with such explicitly discriminatory reasons.[280] When an old rule was so clearly intended to accomplish discriminatory goals, there is no need to descend into an analysis of whether the rule was successful in accomplishing its hateful purpose; the mere history of an intentionally discriminatory rule should be sufficient to create a presumption that it was successful. Under this new exception, even if the United States Supreme Court determines that *Ramos* does not meet either the substantive or watershed exception, the Louisiana Supreme Court would be able to analyze the discriminatory and racist purpose of the law and apply *Ramos* retroactively anyway.

B. An Outcome-Determinative Factor

In addition to Chief Justice Johnson's purposive consideration, Louisiana should also build upon the federally defunct watershed procedural exception and create a new avenue for retroactivity that considers whether a new rule of criminal procedure could have changed the outcome of a case. The watershed exception was meant to grant retroactivity when a rule is "central to an accurate determination of innocence or guilt."[281] In practice, this standard proved to be too exclusive to be workable, and its elimination destroys this possibility entirely.[282] Instead, the Louisiana Supreme Court should build this test into a new standard that would provide retroactivity to a new rule of criminal procedure that could have affected the outcome of a conviction.

This expansion above and beyond the watershed exception would shift the focus from whether a new rule affected the "accurate determination of innocence or guilt" to a focus on the outcome of a conviction.[283] First, although accuracy may be the ultimate goal of our criminal procedures, innocence and guilt are often not the determining factors in the outcome

279. *Id.*

280. *See* discussion *supra* Introduction for a brief recounting of the racist history of non-unanimous jury laws.

281. Teague v. Lane, 489 U.S. 288, 313 (1989).

282. Edwards v. Vannoy, 141 S. Ct. 1547, 1560 (2021); *see* supra Part II.

283. *Teague*, 489 U.S. at 313.

of a criminal prosecution.[284] Procedures matter. To paraphrase a famous quote from *Crawford v. Washington*, dispensing with a constitutional rule of criminal procedure would be akin to dispensing with a jury trial because a defendant is obviously guilty.[285] Likewise, courts should not withhold the protection of procedures merely because we are fairly certain that the end result was "correct." This does not erase the fact that such an outcome would be based on unconstitutional procedures. Furthermore, in many instances, the initial use of now-unconstitutional procedures obscures any chance of gauging whether innocence or guilt was accurately determined in the first place.[286]

The Louisiana Supreme Court should clarify and expand upon the watershed procedural exception in *Teague* and create an outcome-determinative exception to the general bar to retroactivity. If the application of a new constitutional rule *could* have resulted in a different outcome for a defendant, then that defendant should have the opportunity to take advantage of that rule even if they have exhausted their direct appeals.

This standard would ensure that meaningful procedural changes in the law would not be reserved only to the benefit of those with newer convictions. Further, retroactivity would be the assumption rather than the rare exception. If these new exceptions were adopted by the Louisiana Supreme Court, the *Teague* analysis would be modified as illustrated in this chart.[287]

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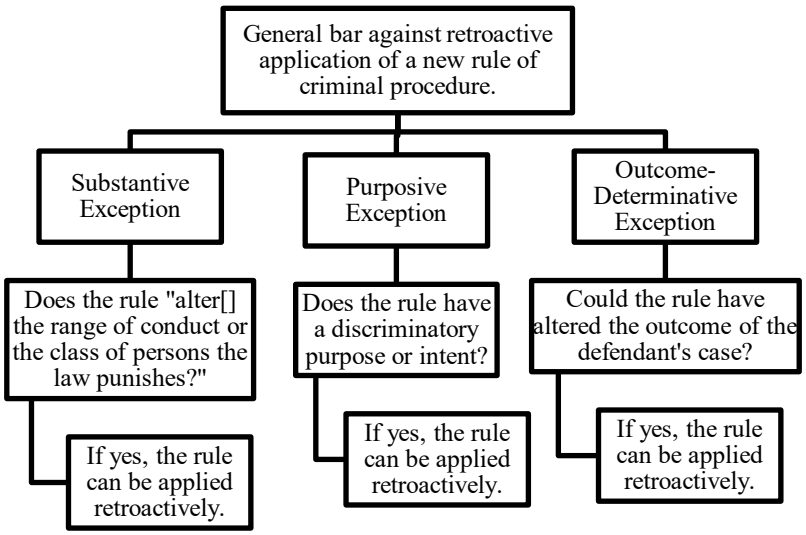
284. *See, e.g.*, Mapp v. Ohio, 367 U.S. 643 (1961). The exclusionary rule in *Mapp* applies regardless of the probative value of evidence. A piece of evidence might definitively prove a defendant's guilt, but our court system will still exclude it if it was obtained in violation of the Fourth Amendment. This is merely one example of the valuation of procedural safeguards outweighing the accuracy of innocence or guilt.

285. The quote in full is: "Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty." Crawford v. Washington, 51 U.S. 36, 62 (2008).

286. *See, e.g.*, Ramos v. Louisiana, 140 S. Ct. 1390 (2020); *see also supra* Introduction for a discussion on the effects of non-unanimous jury laws that allowed for shortened jury deliberations.

287. I have included only the relevant part of the chart for purposes of this discussion and eliminated the first steps of the Teague analysis that were discussed previously. For a full presentation of the earlier steps of this analysis, *see* chart *supra* Section I.D. *See Teague*, 489 U.S. at 301, 310, 311; Haddad, *supra* note 66, at 1270; Griffith v. Kentucky, 479 U.S. 314, 323 (1987); Schriro v. Summerlin, 542 U.S. 348, 353 (2004); State *ex rel.* Taylor v. Whitley, 606 So. 2d 1292, 1301–02 (La. 1992) (Calogero, J., dissenting); State v. Gipson, 296 So. 3d 1051, 1054 (La. 2020); *Crawford*, 51 U.S. at 62.



For example, if this outcome-determinative exception were adopted, a case like *Edwards v. Vannoy* would be subject to a retroactive application of *Ramos* in a Louisiana state court even if it would not be in federal courts.[288] In *Edwards*, the jury did not reach a consensus before handing down a conviction.[289] Therefore, a retroactive application of the new rule in *Ramos* could have changed the outcome of his case. Yes, it is possible that after continued deliberations, the lone holdout juror may have been convinced beyond a reasonable doubt; however, it is just as possible that the case might have resulted in a hung jury and a mistrial.[290] This case is an example of one that would meet a new outcome-based exception.

Another example of a case that would have met the outcome-based exception is *Crawford v. Washington*.[291] When the Minnesota Supreme Court was evaluating whether the new *Crawford* rule should be made retroactive, they reasoned that this new rule did not meet the watershed procedural exception because it could lessen the accuracy of convictions by excluding reliable instances of hearsay.[292] Under the proposed

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288. Edwards v. Vannoy, 141 S. Ct. 1547 (2021). Under the proposed solution in this Comment, *Edwards* would meet both the purposive and outcome-based exceptions.

289. State v. Edwards, No. 2008-KA-20011, 2009 WL 1655544, at *1 (La. Ct. App. 2009).

290. *See generally* Hansen & Buckner, *supra* note 33.

291. *Crawford*, 541 U.S. 36; see *supra* Section I.C. for a full presentation of *Crawford.*

292. Danforth v. State, 718 N.W.2d 451, 460 (Minn. 2006).

outcome-based exception, however, the fact that *Crawford* did not implicate the accuracy of guilt or innocence would be irrelevant. Instead, the analysis would depend on whether the exclusion of some hearsay because of the Confrontation Clause in the Sixth Amendment *could* affect the outcome of a case. If a Louisiana petitioner's case decided before *Crawford* might have reached a different outcome because of the exclusion of some testimonial hearsay, then *Crawford* would be given retroactive effect under the outcome-based exception.

Louisiana is a state that has been burdened by a history of racism and racist laws.[293] These laws have had measurable effects on outcomes in the criminal-justice system.[294] To counteract the negative effects that this history has engrained within the justice system, Louisiana should impose a new retroactivity test that considers the real-world purpose and impact of old rules in determining whether to apply new rules retroactively. Further, rather than adhere to the current *Teague*/*Edwards* regime, Louisiana should create two new exceptions—a purposive exception and an outcome-based exception—that would do away with arbitrary timing divisions and ensure that all individuals receive equal protection under new constitutional rules.

CONCLUSION

The *Teague* standard is an outdated, unjust, and illogical system. It virtually guarantees that cases announcing new constitutional rules will have no teeth.[295] This problematic foundation has been made all the worse by the elimination of the watershed exception.[296] Although it is true that future defendants and those convicted recently enough to still have direct appeals will have a chance to take advantage of new constitutional rules, those who have been incarcerated the longest will have no opportunity to right the unconstitutional wrongs that occurred in their cases.

Regardless of how the Supreme Court decided *Edwards v. Vannoy*, it is time to replace the current, dysfunctional regime. Because of the opportunity *Danforth* presents, Louisiana is as well situated as any state to introduce a new retroactivity regime. In fact, our state is in a particularly unique situation in which it is even more necessary to do so. We have the highest rates of mass incarceration, and therefore a more aggressive retroactivity standard would benefit us more than most.

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293. *See generally* Ramos v. Louisiana, 140 S. Ct. 1390, 1394 (2020); Frampton, *supra* note 4, at 1638.

294. *See generally* Frampton, *supra* note 4.

295. *See generally* Teague v. Lane, 489 U.S. 266 (1989).

296. Edwards v. Vannoy, 141 S. Ct. 1547, 1560 (2021).

Expanding on and rebuilding the *Teague* standard will provide for a more just, even application of constitutional principles. Incorporating new purpose- and outcome-focused exceptions to the current framework will realign Louisiana's retroactivity regime with our values. The date of someone's conviction should have no bearing on their chance for justice.