

SUPREME COURT OF THE UNITED STATES

Danforth v. Minnesota

552 U.S. 264 (2008) · Decided February 20, 2008

OPINION

STEVENS, J.

Justice Stevens delivered the opinion of the Court. New constitutional rules announced by this Court that place certain kinds of primary individual conduct beyond the power of the States to proscribe, as well as “watershed” rules of criminal procedure, must be applied in all future trials, all cases pending on direct review, and all federal habeas corpus proceedings.

All other new rules of criminal procedure must be applied in future trials and in cases pending on direct review, but may not provide the basis for a federal collateral attack on a state-court conviction. This is the substance of the “Teague rule” described by Justice O’Connor in her plurality opinion in *Teague v. Lane*, 489 U. S. 288 (1989).¹ The question in this case is whether *Teague* constrains the authority of state courts to give broader effect to new rules of criminal procedure than is required by that opinion.

We have never suggested that it does, and now hold that it does not. *267I In 1996, a Minnesota jury found petitioner Stephen Danforth guilty of first-degree criminal sexual conduct with a minor. See Minn. Stat. § 609.342, subd. 1(a) (1994).

The 6-year-old victim did not testify at trial, but the jury saw and heard a videotaped interview of the child. On appeal from his conviction, Danforth argued that the tape’s admission violated the Sixth Amendment’s guarantee that “[i]n all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him.” Applying the rule of admissibility set forth in *Ohio v. Roberts*, 448 U. S. 56 (1980), the Minnesota Court of Appeals concluded that the tape “was sufficiently reliable to be admitted into evidence,” and affirmed the conviction.

State v. Danforth, 573 N. W. 2d 369, 375 (1997). The conviction became final in 1998 when the Minnesota Supreme Court denied review and petitioner’s time for filing a writ of certiorari elapsed. See *Caspari v. Bohlen*, 510 U. S. 383, 390 (1994).

After petitioner’s conviction had become final, we announced a “new rule” for evaluating the reliability of testimonial statements in criminal cases. In *Crawford v. Washington*, 541 U. S. 36, 68-69 (2004), we held that where testimonial statements are at issue, “the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.” Shortly thereafter, petitioner filed a state postconviction petition, in

which he argued that he was entitled to a new trial because the admission of the taped interview violated the rule announced in *Crawford*.

Applying the standards set forth in *Teague*, the Minnesota trial court and the Minnesota Court of Appeals concluded that *Crawford* did not apply to petitioner's case. The State Supreme Court granted review to consider two arguments: (1) that the lower courts erred in holding that *Crawford* did not apply retroactively under *Teague*; and (2) that the state court was "free to apply *268a broader retroactivity standard than that of *Teague*," and should apply the *Crawford* rule to petitioner's case even if federal law did not require it to do so.

718 N. W. 2d 451, 455 (2006). The court rejected both arguments. *Ibid.* With respect to the second, the Minnesota court held that our decisions in *Michigan v. Payne*, 412 U. S. 47 (1973), *American Trucking Assns., Inc. v. Smith*, 496 U. S. 167 (1990), and *Teague* itself establish that state courts are not free to give a Supreme Court decision announcing a new constitutional rule of criminal procedure broader retroactive application than that given by this Court.² The Minnesota court acknowledged that other state courts had held that *Teague* does not apply to state postconviction proceedings,³ but concluded that "we are not free to fashion our own standard of retroactivity for *Crawford*." 718 N. W. 2d, at 455-457.

Our recent decision in *Whorton v. Bockting*, 549 U. S. 406 (2007), makes clear that the Minnesota court correctly concluded that federal law does not require state courts to apply the holding in *Crawford* to cases that were final when that case was decided. Nevertheless, we granted certiorari, 550 *269U. S. 956 (2007), to consider whether *Teague* or any other federal rule of law prohibits them from doing so.⁴ II We begin with a comment on the source of the "new rule" announced in *Crawford*.

For much of our Nation's history, federal constitutional rights — such as the Sixth Amendment confrontation right at issue in *Crawford* — were not binding on the States. Federal law, in fact, imposed no constraints on the procedures that state courts could or should follow in imposing criminal sanctions on their citizens. Neither the Federal Constitution as originally ratified nor any of the Amendments added by the Bill of Rights in 1791 gave this Court or any other federal court power to review the fairness of state criminal procedures.

Moreover, before 1867 the statutory authority of federal district courts to issue writs of habeas corpus did not extend to convicted criminals in state custody. See Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385. The ratification of the Fourteenth Amendment radically changed the federal courts' relationship with state courts. That Amendment, one of the post-Civil War Reconstruction Amendments ratified in 1868, is the source of this Court's power to decide whether a defendant in a state proceeding received a fair trial — i. e., whether his deprivation of liberty was "without due process of law." U. S. Const., Amdt.

14, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law”). In construing that Amendment, we have held that it imposes minimum standards of fairness on the States, and requires state criminal trials to provide defendants with protections “implicit in the concept of ordered liberty.” *Palko v. Connecticut*, 302 U. S. 319, 325 (1937).

Slowly at first, and then at an accelerating pace in the 1950’s and 1960’s, the Court held that safeguards afforded by the Bill of Rights — including a defendant’s Sixth Amendment right “to be confronted with the witnesses against him” — are incorporated in the Due Process Clause of the Fourteenth Amendment and are therefore binding upon the States. See *Gideon v. Wainwright*, 372 U. S. 335 (1963) (applying the Sixth Amendment right to counsel to the States); *Pointer v. Texas*, 380 U. S. 400, 403 (1965) (holding that “the Sixth Amendment’s right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment”).

Our interpretation of that basic Sixth Amendment right of confrontation has evolved over the years. In *Crawford* we accepted the petitioner’s argument that the interpretation of the Sixth Amendment right to confrontation that we had previously endorsed in *Roberts*, 448 U. S. 56, needed reconsideration because it “stray[ed] from the original meaning of the Confrontation Clause.” 541 U. S., at 42.

We “turn[ed] to the historical background of the Clause to understand its meaning,” *id.*, at 43, and relied primarily on legal developments that had occurred prior to the adoption of the Sixth Amendment to derive the correct interpretation, *id.*, at 43-50.

We held that the “Constitution prescribes a procedure for determining the reliability of testimony in criminal trials, and we, no less than the state courts, lack authority to replace it with one of our own devising.” *Id.*, at 67.

Thus, our opinion in *Crawford* announced a “new rule”— as that term is defined in *Teague* — because the result in that case “was not dictated by precedent existing at the time the defendant’s conviction became final,” *Teague*, 489 U. S., at 301 (plurality opinion). It was not, however, a rule “of our own devising” or the product of our own views about sound policy.

III Our decision today must also be understood against the backdrop of our somewhat confused and confusing “retroactivity” cases decided in the years between 1965 and 1987. Indeed, we note at the outset that the very word “retroactivity” is misleading because it speaks in temporal terms. “Retroactivity” suggests that when we declare that a new constitutional rule of criminal procedure is “nonretroactive,” we are implying that the right at issue was not in existence prior to the date the “new rule” was announced.

But this is incorrect. As we have already explained, the source of a “new rule” is the Constitution itself, not any judicial power to create new rules of law. Accordingly, the underlying right

necessarily pre-exists our articulation of the new rule. What we are actually determining when we assess the “retroactivity” of a new rule is not the temporal scope of a newly announced right, but whether a violation of the right that occurred prior to the announcement of the new rule will entitle a criminal defendant to the relief sought.⁵ Originally, criminal defendants whose convictions were final were entitled to federal habeas relief only if the court that rendered the judgment under which they were in custody lacked jurisdiction to do so.

Ex parte Watkins, 3 Pet. 193 (1830); *Ex parte Lange*, 18 Wall. 163, 176 (1874); *Ex parte Siebold*, 100 U. S. 371, 376-377 (1880).⁶ In 1915, the realm of violations for which federal habeas relief would be available to state prisoners was expanded to include state proceedings that “deprive[d] the accused of his life or liberty without due process of law.” *Frank v. Mangum*, 237 U. S. 309, 335.

In the early 1900’s, however, such relief was only granted when the constitutional violation was so serious that it effectively rendered the conviction void for lack of jurisdiction. See, e. g., *Moore v. Dempsey*, 261 U. S. 86 (1923) (mob domination of a trial); *Mooney v. Holohan*, 294 U. S. 103 (1935) (per curiam) (knowing use of perjured testimony by the prosecution); *Waley v. Johnston*, 316 U. S. 101 (1942) (per curiam) (coerced guilty plea).⁷ The serial incorporation of the Amendments in the Bill of Rights during the 1950’s and 1960’s imposed more constitutional obligations on the States and created more opportunity for claims that individuals were being convicted without due process and held in violation of the Constitution.

Nevertheless, until 1965 the Court continued to construe every constitutional error, including newly announced ones, as entitling state prisoners to relief on federal habeas. “New” constitutional rules of criminal procedure were, without discussion or analysis, routinely applied to cases on habeas review. ²⁷³See, e. g., *Jackson v. Denno*, 378 U. S. 368 (1964); *Gideon*, 372 U. S. 335; *Eskridge v. Washington Bd. of Prison Terms and Paroles*, 357 U. S. 214 (1958) (per curiam).

In *Linkletter v. Walker*, 381 U. S. 618 (1965), the Court expressly considered the issue of “retroactivity” for the first time. Adopting a practical approach, we held that the retroactive effect of each new rule should be determined on a case-by-case basis by examining the purpose of the rule, the reliance of the States on the prior law, and the effect on the administration of justice of retroactive application of the rule.

Id., at 629. Applying those considerations to the exclusionary rule announced in *Mapp v. Ohio*, 377 U. S. 643 (1961), we held that the *Mapp* rule would not be given retroactive effect; it would not, in other words, be applied to convictions that were final before the date of the *Mapp* decision.⁸ *Linkletter*, 381 U. S., at 636-640. During the next four years, application of the *Linkletter* standard produced strikingly divergent results.

As Justice Harlan pointed out in his classic dissent in *Desist v. United States*, 394 U. S. 244, 257 (1969), one new rule was applied to all cases subject to direct review, *Tehan v. United States ex rel. Shott*, 382 U. S. 406 (1966); another to all cases in which trials had not yet commenced, *Johnson v. New Jersey*, 384 U. S. 719 (1966); another to all cases in which tainted evidence had not yet been introduced at trial, *Fuller v. Alaska*, 393 U. S. 80 (1968) (per curiam); and still others only to the party involved in the case in which the new rule was announced and to all future cases in which the proscribed official conduct had not yet occurred, *Stovall v. Denno*, 388 U. S. 293 (1967); *DeStefano v. Woods*, 392 U. S. 631 (1968) (per curiam).

He reasonably questioned whether such decisions “may properly be considered the legitimate products of a court of law, rather than the commands of a super-legislature.” 394 U. S., at 259. Justice Harlan’s dissent in *Desist*, buttressed by his even more searching separate opinion in *Mackey v. United States*, 401 U. S. 667, 675 (1971) (opinion concurring in judgments in part and dissenting in part), and scholarly criticism,⁹ laid the groundwork for the eventual demise of the Linkletter standard.

In *Griffith v. Kentucky*, 479 U. S. 314 (1987), the Court rejected as “unprincipled and inequitable” the application of the Linkletter standard to cases pending on direct review. In *Teague*, Justice O’Connor reaffirmed Griffith’s rejection of the Linkletter standard for determining the “retroactive” applicability of new rules to state convictions that were not yet final and rejected the Linkletter standard for cases pending on federal habeas review.

She adopted (with a significant modification) the approach advocated by Justice Harlan for federal collateral review of final state judgments. Justice O’Connor endorsed a general rule of nonretroactivity for cases on collateral review, stating that “[u]nless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced.” 489 U. S., at 310 (plurality opinion).

The opinion defined two exceptions: rules that render types of primary conduct “‘beyond the power of the criminal lawmaking authority to proscribe,’ ” *id.*, at 311, and “watershed” rules that “implicate the fundamental fairness of the trial,” *id.*, at 311, 312, 313.¹⁰ It is clear that Linkletter and then *Teague* considered what constitutional violations may be remedied on federal habeas.¹¹ They did not define the scope of the “new” constitutional rights themselves.

Nor, as we shall explain, did Link-letter or *Teague* (or any of the other cases relied upon by respondent and the Minnesota Supreme Court) speak to the entirely separate question whether States can provide remedies for violations of these rights in their own postconviction proceedings. IV Neither Linkletter nor *Teague* explicitly or implicitly constrained the authority of the States to provide remedies for a broader range of constitutional violations than are redress-able on federal habeas.

Linkletter spoke in broad terms about the retroactive applicability of new rules to state convictions that had become final prior to our announcement of the rules. Although Linkletter arose on federal habeas, the opinion did not rely on that procedural posture as a factor in its holding or analysis. Arguably, therefore, the approach it established might have been applied with equal force to both federal and state courts reviewing final state convictions.

But we did not state — and the state courts did not conclude — that Linkletter imposed such a limitation on the States.¹² *276The Term after deciding Linkletter, we granted certiorari in *Johnson* to address the retroactivity of the rules announced in *Escobedo v. Illinois*, 378 U. S. 478 (1964), and *Miranda v. Arizona*, 384 U. S. 436 (1966). Applying the standard announced in Linkletter, we held that those rules should be applied only to trials that began after the respective dates of those decisions; they were given no retroactive effect beyond the parties in *Miranda* and *Escobedo* themselves.¹³ Notably, the Oregon Supreme Court decided to give retroactive effect to *Escobedo* despite our holding in *Johnson*.

In *State v. Fair*, 263 Ore. 383, 502 P. 2d 1150 (1972), the Oregon court noted that it was continuing to apply *Escobedo* retroactively and correctly stated that “we 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.” 263 Ore., at 387-388, 502 P. 2d, at 1152.

In so holding, the Ore*277gon court cited our language in *Johnson* that “‘States are still entirely free to effectuate under their own law stricter standards than those we have laid down and to apply those standards in a broader range of cases than is required by this decision.’” 263 Ore., at 386, 502 P. 2d, at 1151 (quoting *Johnson*, 384 U. S., at 733).¹⁴ Like Linkletter, *Teague* arose on federal habeas.

Unlike in Linkletter, however, this procedural posture was not merely a background fact in *Teague*. 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.

Because the case before us now does not involve either of the “*Teague* exceptions,” it is Justice O’Connor’s discussion of the general rule of nonretroactivity that merits the following three comments. First, not a word in Justice O’Connor’s discussion — or in either of the opinions of Justice Harlan that provided the blueprint for her entire analysis — asserts or even intimates that her definition of the class eligible for relief under a new rule should inhibit the authority of any state agency or state *278court to extend the benefit of a new rule to a broader class than she defined.

Second, Justice O'Connor's opinion clearly indicates that *Teague*'s general rule of nonretroactivity was an exercise of this Court's power to interpret the federal habeas statute. Chapter 153 of Title 28 of the U. S. Code gives federal courts the authority to grant "writs of habeas corpus," but leaves unresolved many important questions about the scope of available relief.

This Court has interpreted that congressional silence — along with the statute's command to dispose of habeas petitions "as law and justice require," 28 U. S. C. § 2243 — as an authorization to adjust the scope of the writ in accordance with equitable and prudential considerations. See, e. g., *Brecht v. Abrahamson*, 507 U. S. 619 (1993) (harmless-error standard); *McCleskey v. Zant*, 499 U. S. 467 (1991) (abuse-of-the-writ bar to relief); *Wainwright v. Sykes*, 433 U. S. 72 (1977) (procedural default); *Stone v. Powell*, 428 U. S. 465 (1976) (cognizability of Fourth Amendment claims).

Teague is plainly grounded in this authority, as the opinion expressly situated the rule it announced in this line of cases adjusting the scope of federal habeas relief in accordance with equitable and prudential considerations. 489 U. S., at 308 (plurality opinion) (citing, *inter alia*, *Wainwright* and *Stone*).¹⁵ Since *Teague* is based on statutory authority that extends only to federal courts applying a federal statute, it cannot be read as imposing a binding obligation on state courts.

Third, the text and reasoning of Justice O'Connor's opinion also illustrate that the rule was meant to apply only to federal courts considering habeas corpus petitions challenging state-court criminal convictions. Justice O'Connor made numerous references to the "Great Writ" and the "writ," and expressly stated that "[t]he relevant frame of reference" for determining the appropriate retroactivity rule is defined by "the purposes for which the writ of habeas corpus is made available." 489 U. S., at 306 (plurality opinion).

Moreover, she justified the general rule of nonretroactivity in part by reference to comity and respect for the finality of state convictions. Federalism and comity considerations are unique to federal habeas review of state convictions. See, e. g., *State v. Preciose*, 129 N. J. 451, 475, 609 A. 2d 1280, 1292 (1992) (explaining that comity and federalism concerns "simply do not apply when this Court reviews procedural rulings by our lower courts").

If anything, considerations of comity militate in favor of allowing state courts to grant habeas relief to a broader class of individuals than is required by *Teague*. And while finality is, of course, implicated in the context of state as well as federal habeas, finality of state convictions is a state interest, not a federal one. It is a matter that States should be free to evaluate, and weigh the importance of, when prisoners held in state custody are seeking a remedy for a violation of federal rights by their lower courts.

The dissent correctly points out that *Teague* was also grounded in concerns over uniformity and the inequity inherent in the Linkletter approach. There is, of course, a federal interest in “reducing the inequity of haphazard retroactivity standards and disuniformity in the application of federal law.” *Post*, at 301. This interest in uniformity, however, does not outweigh the general principle that States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees.

The fundamental interest in federalism that allows individual States to define crimes, punishments, rules of evidence, and rules of criminal and civil procedure in a variety of different ways — so long as they do not violate the Federal Constitution — is not otherwise limited by any general, undefined federal interest in uniformity. Nonuniformity is, in fact, an unavoidable reality in a federalist system of government.

Any State could surely have adopted the rule of evidence defined in *Crawford* under state law even if that case had never been decided. It should be equally free to give its citizens the benefit of our rule in any fashion that does not offend federal law. It is thus 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 *281rules of constitutional law when reviewing its own State’s convictions.¹⁶ Our subsequent cases, which characterize the *Teague* rule as a standard limiting only the scope of federal habeas relief, confirm that *Teague* speaks only to the context of federal habeas.

See, e. g., *Beard v. Banks*, 542 U. S. 406, 412 (2004) (“*Teague*’s nonretroactivity principle acts as a limitation on the power of federal courts to grant habeas corpus relief to state prisoners” (internal quotation marks, ellipsis, and brackets omitted)); *Caspari*, 510 U. S., at 389 (“The [*Teague*] nonretroactivity principle prevents a federal court from granting habeas corpus relief to a state prisoner based on a rule announced after his conviction and sentence became final”).

It is also noteworthy that for many years following *Teague*, state courts almost universally understood the *Teague* rule as binding only federal habeas courts, not state courts. See, e. g., *Cowell v. Lepley*, 458 N. W. 2d 514 (S. D. 1990); *Preciose*, 129 N. J. 451, 609 A. 2d 1280; *State ex rel. Schmelzer v. Murphy*, 201 Wis. 2d 246, 256-257, 548 N. W. 2d 45, 49 (1996) (choosing of its own volition to adopt the *Teague* rule); but see *State v. Egelhoff*, 272 Mont.

114, 900 P. 2d 260 (1995).¹⁷ Commentators were similarly confident that *Teague*’s “restrictions applied] only to federal habeas *282cases,” leaving States free to “determine whether to follow the federal courts’ rulings on retroactivity or to fashion rules which respond to the unique concerns

of that state.” Hutton, *Retroactivity in the States: The Impact of Teague v. Lane on State Postconviction Remedies*, 44 Ala.

L. Rev. 421, 423-424, 422-423 (1993). In sum, the *Teague* decision limits the kinds of constitutional violations that will entitle an individual to relief on federal habeas, but 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*.

V The State contends that two of our prior decisions — *Michigan v. Payne* and *American Trucking Assns., Inc. v. Smith* — cast doubt on state courts’ authority to provide broader remedies for federal constitutional violations than mandated by *Teague*.

We disagree. A In *Michigan v. Payne*, 412 U. S. 47, we considered the retroactivity of the rule prohibiting “vindictive” resentencing that had been announced in our opinion in *North Carolina v. Pearce*, 395 U. S. 711, 723-726 (1969).¹⁸ Relying on the ²⁸³approach set forth in *Linkletter and Stovall*, we held that the *Pearce* rule did not apply because *Payne*’s resentencing had occurred prior to *Pearce*’s date of decision.¹⁹ We therefore reversed the judgment of the Michigan Supreme Court, which had applied *Pearce* retroactively, and remanded for further proceedings.

At first blush the fact that we reversed the judgment, of the Michigan court appears to lend support to the view that state courts may not give greater retroactive effect to new rules announced by this Court than we expressly authorize. But, as our opinion in *Payne* noted, the Michigan Supreme Court had applied the *Pearce* rule retroactively “‘pending clarification’ ” by this Court.

412 U. S., at 49. As the Michigan court explained, it had applied the new rule in the case before it in order to give guidance to Michigan trial courts concerning what it regarded as an ambiguity in *Pearce*’s new rule.²⁰ The Michigan court did not purport to make a defin²⁸⁴itive ruling on the retroactivity of *Pearce*; nor did it purport to apply a broader state rule of retroactivity than required by federal law.

Our opinion in *Payne* did not require the Michigan Supreme Court to modify its disposition of the case; it simply remanded for further proceedings after providing the clarification that the Michigan court sought. Most significantly, other than the fact that the case was remanded for further proceedings, not a word in our *Payne* opinion suggests that the Court intended to prohibit state courts from applying new constitutional standards in a broader range of cases than we require.²¹ Notably, at least some state courts continued, after *Payne*, to adopt and apply broader standards of retroactivity than required by our decisions.

In *Commonwealth v. McCormick*, 359 Pa. Super. 461, 470, 519 A. 2d 442, 447 (1986), for example, the Superior Court of Pennsylvania chose not to follow this Court’s nonretroactivity holding in *Allen v. Hardy*, 478 U. S. 255 (1986) (per curiam).

The Pennsylvania court correctly explained that our decision was “not binding authority [in part] because neither the federal, nor the state constitution dictate which decisions must be given retroactive effect.” 359 Pa. Super., at 470, 519 A. 2d, at 447. B In *American Trucking Assns., Inc. v. Smith*, 496 U. S. 167, petitioners challenged the constitutionality of an Arkansas statute enacted in 1983 that imposed a discriminatory burden on interstate truckers.

While their suit was pending, *285this Court declared a virtually identical Pennsylvania tax unconstitutional. See *American Trucking Assns., Inc. v. Scheiner*, 483 U. S. 266 (1987). Shortly thereafter, the Arkansas Supreme Court struck down the Arkansas tax at issue.

The primary issue in *Smith* was whether petitioners were entitled to a refund of taxes that were assessed before the date of our decision in *Scheiner*. The Arkansas court held that petitioners were not entitled to a refund because our decision in *Scheiner* did not apply retroactively. Four Members of this Court agreed.

The plurality opinion concluded that federal law did not provide petitioners with a right to a refund of pre-*Scheiner* tax payments because *Scheiner* did not apply retroactively to invalidate the Arkansas tax prior to its date of decision. Four Members of this Court dissented.

The dissenting opinion argued that the case actually raised both the substantive question whether the tax violated the Commerce Clause of the Federal Constitution and the remedial question whether, if so, petitioners were entitled to a refund.

The dissent concluded as a matter of federal law that the tax was invalid during the years before *Scheiner*, and that petitioners were entitled to a decision to that effect. Whether petitioners should get a refund, however, the dissent deemed a mixed question of state and federal law that should be decided by the state court in the first instance.

Although *Teague* was a plurality opinion that drew support from only four Members of the Court, the *Teague* rule was affirmed and applied by a majority of the Court shortly thereafter. See *Penry v. Lynaugh*, 492 U. S. 302, 313 (1989) (“Because *Penry* is before us on collateral review, we must determine, as a threshold matter, whether granting him the relief he seeks would create a new rule.

Under *Teague*, new rules will not be applied or announced in cases on collateral review unless they fall into one of two exceptions” (citation and internal quotation marks omitted)). The relevant passage in the Minnesota Supreme Court opinion states: “*Danforth* argues that *Teague* dictates the limits of retroactive application of new rules only in federal habeas corpus proceedings and does not limit the retroactive application of new rules in state postconviction proceedings.

Danforth is incorrect when he asserts that state courts are free to give a Supreme Court decision of federal constitutional criminal procedure broader retroactive application than that given by the Supreme Court....

In light of *Payne* and *American Trucking Associations*, we cannot apply state retroactivity principles when determining the retroactivity of a new rule of federal constitutional criminal procedure if the Supreme Court has already provided relevant federal principles.” 718 N. W. 2d 451, 456 (2006). See, e. g., *Daniels v. State*, 561 N. E. 2d 487, 489 (Ind. 1990); *State ex rel.*

Taylor v. Whitley, 606 So. 2d 1292, 1296-1297 (La. 1992); *State v. Whitfield*, 107 S. W. 3d 253, 266-268 (Mo. 2003); *Colwell v. State*, 118 Nev. 807, 816-819, 59 P. 3d 463, 470-471 (2002) (*per curiam*); *Cowell v. Leapley*, 458 N. W. 2d 514, 517-518 (S. D. 1990).

We note at the outset that this ease does not present the questions whether States are required to apply “watershed” rules in state post-conviction proceedings, whether the *Teague* rule applies to cases brought under 28 U. S. C. § 2255 (2000 ed. and Supp. Y), or whether Congress can alter the rules of retroactivity by statute.

Accordingly, we express no opinion on these issues. It may, therefore, make more sense to speak in terms of the “redress-ability” of violations of new rules, rather than the “retroactivity” of such rules. Cf. *American Trucking Assns., Inc. v. Smith*, 496 U. S. 167, 201 (1990) (Scalia, J., concurring in judgment) (“The very framing of the issue that we purport to decide today - whether our decision in [*American Trucking Assns., Inc. v. Schemer*, 483 U. S. 266 (1987),] shall ‘apply’ retroactively - presupposes [an incorrect] view of our decisions as creating the law, as opposed to declaring what the law already is”).

Unfortunately, it would likely create, rather than alleviate, confusion to change our terminology at this point. Accordingly, we will continue to utilize the existing vocabulary, despite its shortcomings. Although our post-1867 cases reflected a “softening” of the concept of jurisdiction to embrace claims that the statute under which the petitioner had been convicted was unconstitutional or that the detention was based on an illegally imposed sentence, the Court adhered to the basic rule that habeas was unavailable to review claims of constitutional error that did not go to the trial court’s jurisdiction.

See Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 471, 488-484 (1963); Hart, *The Supreme Court 1958 Term, Foreword: The Time Chart of the Justices*, 73 Harv. L. Rev. 84, 103-104 (1959). “[I]n *Waley v. Johnston*, 316 U. S. 101 (1942), the Court openly discarded the concept of jurisdiction — by then more [of] a fiction than anything else — as a touchstone of the availability of federal habeas review, and acknowledged that such review is available for claims of disregard of the constitutional rights of the accused....” *Wainwright v. Sykes*, 433 U. S. 72, 79 (1977) (internal quotation marks omitted).

Linkletter arose in the context of a denial of federal habeas relief, so its holding was “necessarily limited to convictions which had become final by the time *Mapp*... [was] rendered.” *Johnson v. New Jersey*, 384 U. S. 719, 732 (1966).

We noted in *Linkletter* that *Mapp* was being applied to cases that were still pending on direct review at the time it was decided, so the issue before us was expressly limited to “whether the exclusionary principle enunciated in *Mapp* applies to state court convictions which had become final before rendition of our opinion.” 381 U. S., at 622 (footnote omitted).

Shortly thereafter, however, we held that the three-pronged *Linkletter* analysis should be applied both to convictions that were final before rendition of our opinions and to cases that were still pending on direct review. See *Johnson*, 384 U. S., at 732; *Stovall v. Denno*, 388 U. S. 293 (1967). See, e. g., Haddad, “Retroactivity Should be Rethought”: A Call for the End of the *Linkletter* Doctrine, 60 J. Crim. L., C. & P. S. 417 (1969).

Rules of the former type “are more accurately characterized as substantive rules not subject to [Teague’s] bar.” *Schiro v. Summerlin*, 542 U. S. 348, 352, n. 4 (2004). Similarly, *Johnson* and *Griffith v. Kentucky*, 479 U. S. 314 (1987), defined the scope of constitutional violations that would be remedied on direct appeal.

The dissent is correct that at least one “thoughtful legal scholar” believed that *Linkletter* did preclude States from applying new constitutional rules more broadly than our cases required. Post, at 294 (citing Mishkin, Foreword: The High Court, The Great Writ, and the Due Process of Time and Law, 79 Harv. L. Rev. 56, 91, n. 132 (1965)). Notably, this comment was made in the context of an attack on *Linkletter*’s prospective approach as inconsistent with the idea that judges are “bound by a body of fixed, overriding law.” Mishkin, 79 Harv.

L. Rev., at 62. Moreover, the footnote cited by the dissent concludes with a statement that “the reservation to the states of the power to apply [new rules] to all convictions... is... the preferable pattern.” *Id.*, at 91, n. 132.

In all events, even if *Linkletter* and its progeny rested on the assumption that “new rules” of constitutional law did not exist until announced by this Court, that view of the law was rejected when we endorsed Justice Harlan’s analysis of retroactivity. That same year, we similarly denied retroactive effect to the rule announced in *Griffin v. California*, 380 U. S. 609 (1965), prohibiting prosecutorial comment on the defendant’s failure to testify.

See *Tehan v. United States ex rel. Shott*, 382 U. S. 406 (1966). Shortly thereafter, in a case involving a *Griffin* error, we held for the first time that there are some constitutional errors that do not require the automatic reversal of a conviction. *Chapman v. California*, 386 U. S. 18, 22 (1967). Both *Shott* and *Chapman* protected the State of California from a potentially massive exodus of state prisoners because their prosecutors and judges had routinely commented on a defendant’s failure to testify.

Although the plain meaning of this language in *Johnson* is that a State creating its own substantive standards can be as generous with their retroactive effect as it wishes, courts and commentators

both before and after *Teague v. Lane*, 489 U. S. 288 (1989), cited this language in support of the proposition that state courts “may apply new constitutional standards ‘in a broader range of cases than is required’ by th[is] Court’s decision not to apply the standards retroactively.” *Colwell*, 118 Nev., at 818, 59 P. 3d, at 470-471; see also *Stith*, *A Contrast of State and Federal Court Authority to Grant Habeas Relief*, 38 Val.

U. L. Rev. 421, 443 (2004). Thirty years after deciding *State v. Fair*, the Oregon Supreme Court “disavowed” this analysis based on our decisions in *Oregon v. Hass*, 420 U. S. 714 (1975), and *American Trucking Assns., Inc. v. Smith*, 496 U. S. 167. *Page v. Palmateer*, 336 Ore. 379, 84 P. 3d 133 (2004).

As we explain *infra*, at 288-289, its reliance on those cases was misplaced, and its decision to change course was therefore misguided. Subsequent decisions have characterized *Teague* in a similar fashion. See, e. g., *Brecht*, 507 U. S., at 633, 634 (stating that “in defining the scope of the writ, we look first to the considerations underlying our habeas jurisprudence,” and identifying *Teague* as an example).

And individual Justices have been even more explicit. See *Day v. McDonough*, 547 U. S. 198, 214 (2006) (Scalia, J., dissenting) (describing, *inter alia*, the *Teague* rule as having been “created by the habeas courts themselves, in the exercise of their traditional equitable discretion... because [it was] seen as necessary to protect the interests of comity and finality that federal collateral review of state criminal proceedings necessarily implicates”); *With-row v. Williams*, 507 U. S. 680, 699 (1993) (O’Connor, J., concurring in part *279 and dissenting in part) (listing *Teague* as one illustration of the principle that “federal courts exercising their habeas powers may refuse to grant relief on certain claims because of ‘prudential concerns’ such as equity and federalism”); 507 U. S., at 718 (Scalia, J., concurring in part and dissenting in part) (stating that *Teague* and other “gateways through which a habeas petitioner must pass before proceeding to the merits of a constitutional claim” are “grounded in the equitable discretion of habeas courts” (internal quotation marks and brackets omitted)); *Teague*, 489 U. S., at 317 (White, J., concurring in part and concurring in judgment) (characterizing *Teague* as a decision “construing the reach of the habeas corpus statutes” and contrasting it with *Griffith*, which “appear[s] to have constitutional underpinnings”); 489 U. S., at 332-333 (Brennan, J., dissenting) (characterizing *Teague* as an unwarranted change in “[this Court’s] interpretation of the federal habeas statute”); see also *Mackey v. United States*, 401 U. S. 667, 684 (1971) (Harlan, J., concurring in judgments in part and dissenting in part) (describing the problem of retroactivity as “a problem as to the scope of the habeas writ”).

The lower federal courts have also applied the *Teague* rule to motions to vacate, set aside, or correct a federal sentence pursuant to 28 U. S. C. § 2255 (2000 ed. and Supp. V). Much of the reasoning applicable to applications for writs of habeas corpus filed pursuant to § 2254 seems

equally applicable in the context of § 2255 motions. See *United States v. Hayman*, 342 U. S. 205 (1952) (explaining that § 2255 was enacted as a functional equivalent for habeas corpus to allow federal prisoners to bring a collateral attack in the court that imposed the sentence rather than a court that happened to be near the prison).

Today, the majority of state courts still read *Teague* this way. As far as we can tell, only three States - Minnesota, Oregon, and Montana - have adopted a contrary view. See *Page*, 336 Ore. 379, 84 P. 3d 133; *Egelhoff*, 272 Mont. 114, 900 P. 2d 260.

In *Pearce*, we held: “[W]henever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear. Those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. And the factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal.” 395 U. S., at 726.

As the concurrence pointed out, some States already provided equivalent or broader protection against vindictive sentencing. See *id.*, at 733-734, n. 4 (opinion of Douglas, J.). Given the fact that *Payne*’s appeal was still pending on that date, however, the result would have been different and the views of the dissenting Justices would have prevailed if the case had been decided after our decision in *Teague*.

The relevant footnote in the Michigan Supreme Court’s opinion explained: “The United States Supreme Court has not yet decided whether *Pearce* is to be applied retroactively. Although the Court twice granted certiorari to consider the question, in each case the writ was subsequently dismissed as improvidently granted. *Moon v. Maryland*, cert granted (1969), 395 US 975..., writ dismissed (1970), 398 US 319...; *Odom v. United States*, cert granted (1970), 399 US 904..., writ dismissed (1970), 400 US 23....

We decline to predict the high Court’s answer to the question of *Pearce*’s retroactive or prospective application, but we will apply *Pearce* in the present case in order to instruct our trial courts as to the Michigan interpretation of an ambiguous portion of *Pearce*, discussed *Infra*, pending clarification by the United States Supreme Court.” *People v. Payne*, 386 Mich. 84, 90-91, n. 3, 191 N. W. 2d 375, 378, n. 2 (1971).

See also Reply Brief for Petitioner in *Michigan v. Payne*, O. T. 1972, No. 71-1005, p. 4 (“*People v. Payne*, 386 Mich 84, 191 NW 2d 375 (1971) expressly withheld *284ruling on the retroactivity of *Pearce* but applied it to *Payne* to instruct the lower courts in Michigan”). See *American Trucking Assns., Inc. v. Smith*, 496 U. S., at 210, n. 4 (Stevens, J., dissenting) (“*Payne* does not stand for the expansive proposition that federal law limits the relief a State may provide, but only for the

more narrow proposition that a state court's decision that a particular remedy is constitutionally required is itself a federal question").

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