stood without keeping in view the history of the times when they were adopted, and the general objects they plainly sought to accomplish. At the time when they were incorporated into the Constitution, it required little knowledge of human nature to anticipate that those who had long been regarded as an inferior and subject race would, when suddenly raised to the rank of citizenship, be looked upon with jealousy and positive dislike, and that State laws might be enacted or enforced to perpetuate the distinctions that had before existed. . . . [The Fourteenth Amendment] was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general government in that enjoyment, whenever it should be denied by the States. It not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws, and authorized Congress to enforce its provisions by appropriate legislation." [1589] Thus, a state law that on its face discriminated against African-Americans was void.[1590] In addition, "[t]hough the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." [1591]

Education

Development and Application of "Separate But Equal".—Cases decided soon after ratification of the Fourteenth Amendment may be read as precluding any state-imposed distinction based on race,[1592] but the Court in *Plessy v. Ferguson* [1593] adopted a principle first propounded in litigation attacking racial segregation in

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[1589] Strauder v. West Virginia, 100 U.S. 303, 306–07 (1880).

[1590] Strauder v. West Virginia, 100 U.S. 303 (1880) (law limiting jury service to white males). Moreover it will not do to argue that a law that segregates the races or prohibits contacts between them discriminates equally against both races. Buchanan v. Warley, 245 U.S. 60 (1917) (ordinance prohibiting blacks from occupying houses in blocks where whites were predominant and whites from occupying houses in blocks where blacks were predominant). *Compare* Pace v. Alabama, 106 U.S. 583 (1883) (sustaining conviction under statute that imposed a greater penalty for adultery or fornication between a white person and a Negro than was imposed for similar conduct by members of the same race, using "equal application" theory), *with* McLaughlin v. Florida, 379 U.S. 184, 188 (1964), *and* Loving v. Virginia, 388 U.S. 1, 10 (1967) (rejecting theory).

[1591] Yick Wo v. Hopkins, 118 U.S. 356, 373–74 (1886) (discrimination against Chinese).

[1592] *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 67–72 (1873); Strauder v. West Virginia, 100 U.S. 303, 307–08 (1880); Virginia v. Rives, 100 U.S. 313, 318 (1880); *Ex parte* Virginia, 100 U.S. 339, 344–45 (1880).

[1593] 163 U.S. 537 (1896).