tection Clauses of the Fourteenth Amendment,[125] and perhaps by the Due Process Clause of the Fifth Amendment. In addition, the Court's has directed its supervisory power over the federal system to the issue.[126] Even before the Court extended the right to a jury trial to state courts, it was firmly established that, if a state chose to provide juries, the juries had to be impartial.[127]

Impartiality is a two-fold requirement. First, "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial."[128] This requirement applies only to jury panels or venires from which petit juries are chosen, and not to the composition of the petit juries themselves.[129] "In order to establish a *prima facie* violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group

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[125] Thus, it violates the Equal Protection Clause to exclude African-Americans from grand and petit juries, Strauder v. West Virginia, 100 U.S. 303 (1880); Alexander v. Louisiana, 405 U.S. 625 (1972), whether defendant is or is not an African-American, Peters v. Kiff, 407 U.S. 493 (1972), and exclusion of potential jurors because of their national ancestry is unconstitutional, at least where defendant is of that ancestry as well, Hernandez v. Texas, 347 U.S. 475 (1954); Castaneda v. Partida, 430 U.S. 482 (1977).

[126] In the exercise of its supervisory power over the federal courts, the Court has permitted any defendant to challenge the arbitrary exclusion from jury service of his own or any other class. Glasser v. United States, 315 U.S. 60, 83–87 (1942); Thiel v. Southern Pacific Co., 328 U.S. 217, 220 (1946); Ballard v. United States, 329 U.S. 187 (1946). In Taylor v. Louisiana, 419 U.S. 522 (1975), and Duren v. Missouri, 439 U.S. 357 (1979), male defendants were permitted to challenge the exclusion of women as a Sixth Amendment violation.

[127] Turner v. Louisiana, 379 U.S. 466 (1965).

[128] Taylor v. Louisiana, 419 U.S. 522, 528 (1975). *See also* Williams v. Florida, 399 U.S. 78, 100 (1970); Brown v. Allen, 344 U.S. 443, 474 (1953). In Fay v. New York, 332 U.S. 261 (1947), and Moore v. New York, 333 U.S. 565 (1948), the Court in 5-to-4 decisions upheld state use of "blue ribbon" juries from which particular groups, such as laborers and women, had been excluded. With the extension of the jury trial provision and its fair cross section requirement to the States, the opinions in these cases must be considered tenuous, but the Court has reiterated that defendants are not entitled to a jury of any particular composition. *Taylor*, 419 U.S. at 538. Congress has implemented the constitutional requirement by statute in federal courts by the Federal Jury Selection and Service Act of 1968, Pub. L. 90–274, 82 Stat. 53, 28 U.S.C. §§ 1861 *et seq*.

[129] Lockhart v. McCree, 476 U.S. 162 (1986). "We have never invoked the fair cross-section principle to invalidate the use of either for-cause or peremptory challenges to prospective jurors, or to require petit juries, as opposed to jury panels or venires, to reflect the composition of the community at large." 476 U.S. at 173. The explanation is that the fair cross-section requirement "is a means of assuring, not a *representative* jury (which the Constitution does not demand), but an *impartial* one (which it does)." Holland v. Illinois, 493 U.S. 474, 480 (1990) (emphasis original).