cial prejudice infecting a trial, as when the facts are merely that the defendant is black and the victim white, the Constitution is satisfied by a more generalized but thorough inquiry into the impartiality of the veniremen.[161]

Although government is not constitutionally obligated to allow peremptory challenges,[162] typically a system of peremptory challenges has existed in criminal trials, in which both prosecution and defense may, without stating any reason, excuse a certain number of prospective jurors.[163] Although, in *Swain v. Alabama*,[164] the Court held that a prosecutor's purposeful exclusion of members of a specific racial group from the jury would violate the Equal Protection Clause, it posited so difficult a standard of proof that defendants could seldom succeed. The *Swain* standard of proof was relaxed in *Batson v. Kentucky*,[165] with the result that a defendant may establish an equal protection violation resulting from a prosecutor's use of peremptory challenges to systematically exclude blacks from the jury.[166] A violation can occur whether or not the defendant and the excluded jurors are of the same race.[167] Racially discriminatory use of peremptory challenges does not, however, constitute a violation of the Sixth Amendment, the Court ruled in *Holland v. Illinois*.[168] The Sixth Amendment "no more forbids the prosecutor to strike jurors on the basis of race than it forbids him to strike them on the

---

[161] Ristaino v. Ross, 424 U.S. 589 (1976). The Court noted that under its supervisory power it would require a federal court faced with the same circumstances to propound appropriate questions to identify racial prejudice if requested by the defendant. Id. at 597 n.9. *See* Aldridge v. United States, 283 U.S. 308 (1931). *But see* Rosales-Lopez v. United States, 451 U.S. 182 (1981), in which the trial judge refused a defense request to inquire about possible bias against Mexicans. A plurality apparently adopted a rule that, all else being equal, the judge should necessarily inquire about racial or ethnic prejudice only in cases of violent crimes in which the defendant and victim are members of different racial or ethnic groups, id. at 192, a rule rejected by two concurring Justices. Id. at 194. Three dissenting Justices thought the judge must always ask when defendant so requested. Id. at 195.

[162] "This Court has long recognized that peremptory challenges are not of federal constitutional dimension." Rivera v. Illinois, 129 S. Ct. 1446, 1450 (2009) (internal quotation marks omitted) (state trial court's erroneous denial of a defendant's peremptory challenge does not warrant reversal of conviction if all seated jurors were qualified and unbiased).

[163] *Cf.* Stilson v. United States, 250 U.S. 583, 586 (1919), holding that it is no violation of the guarantee to limit the number of peremptory challenges to each defendant in a multi-party trial.

[164] 380 U.S. 202 (1965).

[165] 476 U.S. 79 (1986).

[166] *See* Fourteenth Amendment discussion of "Equal Protection and Race," *infra*.

[167] Powers v. Ohio, 499 U.S. 400 (1991) (defendant has standing to raise equal protection rights of excluded juror of different race).

[168] 493 U.S. 474 (1990). *But see* Trevino v. Texas, 503 U.S. 562 (1992) (claim of Sixth Amendment violation resulting from racially discriminatory use of peremptory challenges treated as sufficient to raise equal protection claim under *Swain* and *Batson*).