

basis of innumerable other generalized characteristics.”¹⁶⁹ To rule otherwise, the Court reasoned, “would cripple the device of peremptory challenge” and thereby undermine the Amendment’s goal of “impartiality with respect to both contestants.”¹⁷⁰

The restraint on racially discriminatory use of peremptory challenges is now a two-way street. The Court ruled in 1992 that a criminal defendant’s use of peremptory challenges to exclude jurors on the basis of race constitutes “state action” in violation of the Equal Protection Clause.¹⁷¹ Disputing the contention that this limitation would undermine “the contribution of the peremptory challenge to the administration of justice,” the Court nonetheless asserted that such a result would in any event be “too high” a price to pay. “It is an affront to justice to argue that a fair trial includes the right to discriminate against a group of citizens based upon their race.”¹⁷² It followed, therefore, that the limitation on peremptory challenges does not violate a defendant’s right to an impartial jury. Although a defendant has “the right to an impartial jury that can view him without racial animus,” this means that “there should be a mechanism for removing those [jurors] who would be incapable of confronting and suppressing their racism,” not that the defendant may remove jurors on the basis of race or racial stereotypes.¹⁷³

PLACE OF TRIAL: JURY OF THE VICINAGE

Article III, § 2 requires that federal criminal cases be tried by jury in the state and district in which the offense was committed,¹⁷⁴ but much criticism arose over the absence of any guarantee that the jury be drawn from the “vicinage” or neighborhood of the

¹⁶⁹ 493 U.S. at 487.

¹⁷⁰ 493 U.S. at 484. As a consequence, a defendant who uses a peremptory challenge to correct the court’s error in denying a for-cause challenge may have no Sixth Amendment cause of action. Peremptory challenges “are a means to achieve the end of an impartial jury. So long as the jury that sits is impartial, the fact that the defendant had to use a peremptory challenge to achieve that result does not mean the Sixth Amendment was violated.” *Ross v. Oklahoma*, 487 U.S. 81, 88 (1987). Similarly, there is no due process violation, at least where state statutory law requires use of peremptory challenges to cure erroneous refusals by the court to excuse jurors for cause. “It is for the State to determine the number of peremptory challenges allowed and to define their purpose and the manner of their exercise.” *Id.*

¹⁷¹ *Georgia v. McCollum*, 505 U.S. 42 (1992).

¹⁷² 505 U.S. at 57.

¹⁷³ 505 U.S. at 58.

¹⁷⁴ “The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crime shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by law have directed.”