by the legislature must not be arbitrary and unreasonable; they must have a reasonable relation to the circumstances of life.[17] It is doubtful, therefore, if the mere non-payment of wages could be declared presumptive evidence of fraud. One court, however, held that a wilful refusal to pay, when the employer had the ability to pay, was fraudulent in itself and therefore within the the fraud exception to the prohibition on imprisonment for debt.[18]

Semi-monthly payday laws are constitutional unless they violate a constitutional restriction against imprisonment for debt. Such constitutional restrictions are violated only by statutes imposing criminal sanctions, either fines or imprisonment, on non-corporate offenders for the non-fraudulent non-payment of wages.[19] Presumably, even this type of statute does not violate the constitutional restriction in those states which require that the debtor transfer all his property to his creditors, except in the case of an employer who is in fact insolvent. The amount of legislation on this subject indicates that many legislatures feel that regular, short-term, cash payments to employees are necessary to the well-being of the society. The liberty of the citizen, however, is much prized in our society, and the bar on criminal sanctions to enforce semi-monthly payday laws in the individual employer situation seems highly desirable.

CONSTITUTIONAL LAW — SCOPE OF THE EQUAL PROTECTION CLAUSE

Defendant, a Mexican, claimed that he was denied equal protection of the law in his trial and conviction for murder because members of his nationality had been systematically and wilfully excluded from the grand and petit juries before which his cause was heard. Evidence that there were some Mexicans qualified for jury service but that none had been called for twenty-five years was heard, but there was no direct testimony showing discrimination by the state officers. Defendant's motion to have the

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17. Tot v. United States 319 U.S. 463 (1943); Taylor v. Georgia, 315 U.S. 25 (1941); Morrison v. California, 291 U.S. 82 (1934).

18. *Ex parte* Trombley, 31 Cal. 2d 801, 193 P.2d 734 (1948) (even though the element of deception, usually essential to fraud, is absent).

19. *In re* Crane, 26 Cal. App. 22, 145 Pac. 733 (1914); State v. Prudential Coal Co., 130 Tenn. 275, 170 S.W. 56 (1914); *accord,* McGinnis v. Keen, 189 Ore. 445, 221 P.2d 907 (1950).

indictment and petit jury panel quashed on this evidence was overruled by the trial court. On appeal, held: affirmed. The equal protection clause of the Fourteenth Amendment[1] is directed at discrimination only as between two classes: the white and Negro races. Since defendant is a white man of Spanish descent and since there were white jurors in his case, it cannot be said, in the absence of direct evidence of discrimination by the state officers, that defendant was denied the equal protection of the laws.[2]

In a series of cases beginning in 1879, the Supreme Court of the United States has clearly established the principle that any action by a state in a criminal proceeding that tends to exclude systematically Negroes from serving on grand or petit juries solely because of their race constitutes a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment.[3] This principle has been applied to invalidate not only state laws expressly excluding Negroes from jury service[4] but also any discriminatory action by a state official in the selection of jurors.[5] On the other hand, the constitutional prohibition has never been construed to say that any defendant is entitled to have a member of his own race on the jury—either absolutely, or in any proportion to population.[6] Furthermore, it has been held that neither are the constitutional rights of a white defendant infringed by the systematic exclusion of Negroes from grand and petit juries[7] nor are those of a Negro defendant invaded by the peremptory discharge of Negro jurors by the state.[8]

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1. U.S. CONST. AMEND. XIV § 1: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Hernandes v. State, 251 S.W.2d 531 (Tex. Crim. 1952).

3. *E.g.*, Cassell v. Texas, 339 U.S. 282 (1950); Patton v. Mississippi, 332 U.S. 463 (1947); Smith v. Texas, 311 U.S. 128 (1940); Pierre v. Louisiana, 306 U.S. 354 (1939); Neal v. Delaware, 103 U.S. 370 (1881); Strauder v. West Virginia, 100 U.S. 303 (1879).

4. Neal v. Delaware, *supra* note 3; Strauder v. West Virginia, *supra* note 3.

5. Cassel v. Texas, 339 U.S. 282 (1950); Patton v. Mississippi, 332 U.S. 463 (1947); Pierre v. Louisiana, 306 U.S. 354 (1938); Norris v. Alabama, 294 U.S. 587 (1935).

6. Cassell v. Texas, 339 U.S. 282 (1950); Adkins v. Texas, 325 U.S. 398, *rehearing denied*, 326 U.S. 806 (1945); Virginia v. Rives, 100 U.S. 313 (1879); Washington v. State, 95 Fla. 289, 116 So. 470, *cert. denied*, 278 U.S. 599 (1928); King v. State, 143 Tex. Crim. 27, 152 S.W.2d 342 (1941).

7. State v. Dierlamm, 189 La. 544, 180 So. 135 (1938).

8. People v. Roxborough, 307 Mich. 575, 12 N.W.2d 466 (1943), *cert. denied*, 323 U.S. 749 (1944); State v. Logan, 344 Mo. 351, 126 S.W.2d 256 (1939).

Concerning the procedural application of the above principle, it is settled that the accused must be given an opportunity to introduce evidence to show discriminatory exclusion,[9] but this opportunity has been limited to the extent that any objection based on alleged discrimination may be considered waived if made at an inappropriate time.[10] The burden is on the defendant to aver and prove deliberate exclusion of Negroes in the selection of the jury,[11] and the defendant's cause in this request was materially aided by the United States Supreme Court's announcement in *Norris v. Alabama*[12] of the so-called rule of exclusion. This rule says that evidence of continuous absence of Negroes from grand and petit juries, when there are qualified Negroes available, establishes a presumption of discriminatory exclusion rebuttable only by an affirmative showing by the state that exclusion was a result of lack of qualifications prescribed for jurors by statute.[13]

The Fourteenth Amendment was originally adopted for the protection of Negroes but its provisions are broad enough to include any race or group.[14] In addition, certain courts, including the court in the principal case, have intimated that direct proof of discriminatory actions by state officers against other than Negro defendants would amount to a denial of equal protection

9. Carter v. Texas, 177 U.S. 442 (1900).

10. Motion in arrest of judgment based upon the equal protection clause comes too late if made after conviction. Cornelious v. State, 193 Ga. 25, 17 S.E.2d 156 (1941); State v. White, 193 La. 775, 192 So. 345 (1939); Mitchell v. State, 59 Okla. Crim. 345, 60 P.2d 631 (1936); Watts v. State, 75 Tex. Crim. 330, 171 S.W. 202 (1914).

11. Franklin v. South Carolina, 218 U.S. 161 (1910); Brownfield v. South Carolina, 189 U.S. 426 (1903); Bush v. Kentucky, 107 U.S. 110 (1882); State v. Gill, 186 La. 339, 172 So. 412, *cert. denied*, Gill v. Louisiana, 301 U.S. 685 (1937); Whitney v. State, 43 Tex. Crim. 197, 63 S.W. 879 (1901).

12. 294 U.S. 587 (1935).

13. In the following cases it was held, in line with the *Norris* case, that defendant had satisfied the burden: Cassell v. Texas, 339 U.S. 282 (1950) (jury commissioners testified that they chose only those whom they knew for jury service and that they knew no eligible Negroes, where Negro population was about one-seventh of the county population); Patton v. Mississippi, 332 U.S. 463 (1947) (evidence by the state that only twenty-five of the 12,511 Negroes in a county with a population of 34,821 were qualified was insufficient to rebut presumption of discrimination where no Negro had served on a criminal jury for thirty years); Pierre v. Louisiana, 306 U.S. 354 (1939) (prima facie case created when only one Negro was selected for jury service within the memory of witnesses and there was a large Negro population); Gilchrist v. Commonwealth, 211 Ky. 230, 223 S.W.2d 880 (1949) (no Negro called for state jury service for twenty-seven years and some had served on federal court juries).

14. See note 1 *supra*.

of the law.[15] The United States Supreme Court, moreover, has left the door open for the consideration of charges of discrimination that fall without the race and color category.[16] These considerations would appear to be grounds for an argument that, with the rule of exclusion now the law, it should be extended to cover other social groups subject to possible discrimination. Pointing in the same direction are the indications given by the federal courts in their construction of the federal naturalization statutes that a Mexican is in a different racial classification from that of the white man.[17] If such is the case, then the position of the defendant in the principal case and that of the Negro in *Norris v. Alabama* are closely analogous.

These factors are grounds for questioning the court's refusal in the principal case to extend the rule of the *Norris* case beyond its precise facts. There seems to be little reason why that rule should not be available to members of races, nationalities, or other social groups whose standing in a particular case is very similar to that of the Negro.

COURTS — OPERATION OF OVERRULING DECISIONS

Plaintiff purchased a truck at a stated cash price of $1,750, giving in payment a note for $1,439.14, cash in the amount of $100, and his car in trade valued at $500. The increase of $289.14 above the stated cash price was to be for insurance, interest and service charges. The seller assigned the conditional sales contract, made upon the forms of the defendant, to the defendant for $1,150. The insurance was $148.24, leaving $140.90 as interest and service charges. The plaintiff filed suit alleging usury

15. Mamaux v. United States, 264 Fed. 816 (6th Cir. 1920) (wage-earners); State v. Walters, 61 Idaho 341, 102 P.2d 284 (1940) (one-quarter blood Indian); State v. Guirlando, 152 La. 570, 93 So. 796 (1922) (Italian); Sanchez v. State, 147 Tex. Crim. 436, 181 S.W.2d 87 (1944) (Mexican); Carrasco v. State, 130 Tex. Crim. 659, 95 S.W.2d 433 (1936) (Mexican); Ramirez v. State, 119 Tex. Crim. 362, 40 S.W.2d 138, *cert. denied*, 284 U.S. 659 (1931) (Mexican). The same indication was given in the principal case.

16. In Fay v. New York, 332 U.S. 261, 283, *rehearing denied*, 332 U.S. 784 (1947), the Court said:

> We do not mean that no case of discrimination in jury drawing except those involving race or color can carry such unjust consequences as to amount to a denial of equal protection or due process of law.

17. *Ex parte* Shahid, 205 Fed. 812 (E.D.S.C. 1913); *In re* Rodriguez, 81 Fed. 337 (N.D. Tex. 1897).