AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 4: The Early National Era—Equality/Race/Free Blacks/State Citizenship

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Aldridge v. Commonwealth, 4 Va. 447 (VA 1824)

John Aldridge, a free person of color, was convicted of grand larceny. Under Virginia law, a free person of color who was convicted of grand larceny could be whipped and sold as a slave. Aldridge challenged his sentence. He claimed that his sanction violated the Virginia Bill of Rights.

The General Court of Virginia rejected the appeal. Aldridge v. Commonwealth *is one of the first cases in which constitutional authorities ruled that persons of color had no rights that white persons were bound to respect. How did Judge Dade justify that decision? Suppose Aldridge was white. Could he be sold into slavery under the Constitution of Virginia?*

JUDGE DADE delivered the opinion of the Court:

Upon the second alleged error, the Court are clearly of opinion, that there is nothing in the Constitution or Bill of Rights, repugnant to the power which the Legislature has exercised in the punishment of this crime. Notwithstanding the general terms used in the Bill of Rights, it is undeniable that it never was contemplated, or considered, to extend to the whole population of the State. Can it be doubted, that it not only was not intended to apply to our slave population, but that the free blacks and mulattoes were also not comprehended in it? The leading and most prominent feature in that paper, is the equality of civil rights and liberty. And yet, nobody has ever questioned the power of the Legislature, to deny to free blacks and mulattoes, one of the first privileges of a citizen; that of voting at elections, although they might in every particular, except color, be in precisely the same condition as those qualified to vote. The numerous restrictions imposed on this class of people in our Statute Book, many of which are inconsistent with the letter and spirit of the Constitution, both of this State and of the United States, as respects the free whites, demonstrate, that, here, those instruments have not been considered to extend equally to both classes of our population. We will only instance the restriction upon the migration of free blacks into this State, and upon their right to bear arms.

As to the ninth section of the Bill of Rights, denouncing cruel and unusual punishments, we have no notion that it has any bearing on this case. That provision was never designed to control the Legislative right to determine *ad libitum* upon the *adequacy* of punishment, but is merely applicable to the modes of punishment. We had existed for a considerable time as a community, regulated by Laws guarded by Penal sanctions, when this Bill of Rights was declared. We consider these sanctions as sufficiently rigorous, and we knew that the best heads and hearts of the land of our ancestors, had long and loudly declaimed against the wanton cruelty of many of the punishments practised in other countries; and this section in the Bill of Rights, was framed effectually to exclude these, so that no future Legislature, in a moment perhaps of great and general excitement, should be tempted to disgrace our Code by the introduction of any of those odious modes of punishment.