

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 4: The Early National Era – Criminal Justice/Punishment

Commonwealth v. Wyatt, 6 Rand. 694 (VA 1828)

Dickerson Wyatt operated a gaming house in Chesterfield County, Virginia. He was arrested and convicted for violating state laws against gambling. Virginia law at the time permitted persons convicted of gambling to be repeatedly whipped while in prison. Wyatt challenged that statute, claiming that repeated whippings violated the cruel and unusual punishment provision of the state constitution. The General Court of Virginia sustained the criminal sentence. As you read the excerpt below, consider whether the judicial decision was based on an interpretation of the state constitution or judicial deference to legislative choices.

JUSTICE DANIEL

...
It is urged that the Act of 1823, already referred to, while it properly limits the authority of the Court to a reasonable extent of punishment to be inflicted on the party convicted, by imprisonment not less than one nor more than six months, yet authorises the Court to inflict the lightest punishment by stripes imaginable, or the most cruel, even extending necessarily to death itself, for an offence of the same character and grade. For that, as the Court may impose an imprisonment for six months, and may also direct the party imprisoned to receive any number of stripes, at different times, not exceeding thirty nine at any one time, during his confinement, at the *discretion* of the Court, it is perfectly evident that the Court, by virtue of this Law, might exercise its discretion to subserve vindictive passions, and so as to direct the party convicted to be subjected to thirty-nine stripes every day of the six months, which would inevitably terminate in death; a death produced by the most *cruel torture*. That by the Bill of Rights, properly regarded as part of the Constitution of Virginia, the General Assembly is restrained from authorising by Law, "cruel and unusual punishments (to be) inflicted," and that therefore the authority delegated to the Courts, as above described by the Act aforesaid, being prohibited to the Legislature, by the Constitution, cannot by it be delegated to the Courts, and that the Act aforesaid is therefore void, and ought so to be regarded by this Court.

It may be allowed, that the Act in question might be regarded as less objectionable, if the aggregate number of stripes, which might be inflicted for any one offence, had been limited as the term of imprisonment is; but this imperfection, if one, does not involve the consequences contended for, nor is it allowed that the discretion of the Court mentioned in the Act, can rightfully be regarded as unlimited. The responsibility of the Court might have been lighter, if the Act had been more cautiously dictated; but in all cases, where by Law, whether Statute or Common Law, a subject is referred to the discretion of the Court, that must be regarded as a *sound discretion*, to be exercised according to the circumstances of each particular case. If the Judge should not so limit the authority of his discretion, but extend it further to subserve motives of oppression, or his own vindictive passions, he might and would be impeached. The punishment of offences by stripes is certainly odious, but cannot be said to be *unusual*. This Court, regarding the discretion delegated by the Act in question, as being of the same character with the discretion always exercised by Common Law Courts to inflict fine and imprisonment, and subject to be restrained by the same considerations, does not feel itself at liberty in this case to refuse to obey the Legislative will, nor to execute that will by its Judgments.



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