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Biography Is Destiny: The Case of Justice Peter V. Daniel

Earl M. Maltz[†]

Judicial biographies are an indispensable resource for those of us seeking to understand the structure of constitutional law. The evolution of this structure is determined by the interacting views of the shifting groups of nine individuals serving on the Court over time. Each individual's position reflects a unique set of influences and experiences. Judicial biographies provide detailed accounts of these influences and experiences, thereby deepening our knowledge of the forces that ultimately shape Supreme Court jurisprudence.

By contrast, more traditional modes of constitutional scholarship tend to focus only on certain parts of the Justices' biographies to the exclusion of other significant influences on the development of their views. For example, purely doctrinal descriptions of Supreme Court opinions implicitly reflect the understanding that all of the Justices have graduated from law school and, as such, have internalized and are to a greater or lesser degree influenced by the distinctive conventions of legal analysis that are at the core of the law school curriculum. Other analyses emphasize the political backgrounds and views of the Justices as the primary determinants of judicial decisionmaking—once again, emphasizing only one part of the Justices' biographies.

However, judicial decisions are often influenced by aspects of the Justices' lives that are not easily assimilated into either doctrinal or political analysis. Justice Lewis F. Powell, Jr.'s approach to privacy issues provides an example of such influences. Powell's approach to *Roe v. Wade*¹ and its progeny was no doubt affected by his experience counseling a distraught

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¹ 410 U.S. 113 (1973).

young man who came to him for advice regarding an unplanned pregnancy at a time when abortion was illegal in Virginia.² Conversely, Powell's 1986 decision to provide the crucial fifth vote rejecting a challenge to a Texas anti-sodomy statute in *Bowers v. Hardwick*³ was likely influenced by his stated belief that he had never met a gay person—an assertion that, ironically, Powell made at a time when he employed a gay law clerk.⁴

Analogous factors can play a role even in the most unlikely of circumstances. Consider the case of Justice Peter V. Daniel of Virginia. Although Daniel is the subject of a very fine biography by John P. Frank,⁵ those who are not deeply immersed in the constitutional law of slavery may never have even heard of him. In the literature on *Dred Scott v. Sandford*,⁶ he is typically dismissed as an almost cartoonish character, the very embodiment of Southern extremism. Daniel is variously described as “a brooding proslavery fanatic,”⁷ a “bigot” with a “fanatical temper,”⁸ and a “zealot who hoped that his fellow southerners would go to ‘any extremity’ to ensure that slave property received greater protection than any other form of property.”⁹ In some respects, by 1857, these characterizations were quite accurate. Closer examination, however, reveals that the forces that shaped Daniel's views in *Dred Scott* were quite complex.

Peter Vivian Daniel was born on April 24, 1784, on a family farm in Stafford County, Virginia, an agricultural region located approximately fifty miles south of Washington, D.C. and sixty miles north of Richmond.¹⁰ He received his early education from private tutors, and in 1802, spent a few months at Princeton before returning to Stafford County. In 1805, Daniel moved to Richmond to study law in the offices of Edmund Randolph. Randolph, a former aide to George

² This incident is described in JOHN C. JEFFRIES, JUSTICE LEWIS F. POWELL, JR. 347 (1994).

³ 478 U.S. 186 (1986).

⁴ See JEFFRIES, *supra* note 2, at 521.

⁵ JOHN P. FRANK, JUSTICE DANIEL DISSENTING: A BIOGRAPHY OF PETER V. DANIEL, 1784-1860 (1964).

⁶ 60 U.S. (19 How.) 393 (1856).

⁷ DON E. FEHRENBACHER, THE DRED SCOTT CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND POLITICS 234 (1978).

⁸ 1 ALLAN NEVINS, THE EMERGENCE OF LINCOLN 103 (1950).

⁹ LEONARD L. RICHARDS, THE SLAVE POWER: THE FREE NORTH AND SOUTHERN DOMINATION, 1780-1860, at 96 (2000).

¹⁰ The details of Daniel's life are taken from FRANK, *supra* note 5.

Washington, had served as both Attorney General and Governor of Virginia. In addition, he had represented Virginia in the Continental Congress and the Constitutional Convention. After being admitted to the bar in 1808, Daniel came back to Stafford County to practice. In 1809, he returned to Richmond as a representative to the state legislature, and in 1810, married Randolph's younger daughter, Lucy. Thereafter Daniel permanently relocated to Richmond.

The Randolph connection did not translate into great financial prosperity for the Daniel family. Daniel was a committed Jeffersonian in a city whose business establishment was dominated by Federalists and later Whigs, men who tended to give their business to those who shared their political views. Thus, throughout his life, Daniel's income was far less than that of the exalted company in which he found himself.

However, the son-in-law and protégé of Edmund Randolph did have immediate access to the highest circles in Virginia Democratic politics. He quickly became a prominent member of the so-called "Richmond Junto," a network of influential Democrats that dominated Virginia politics for much of the early nineteenth century. Daniel's formal base of power was his membership on the Virginia Council of State, a unique institution which shared executive power with the state governor. Daniel served on the Council almost continuously from 1812 to 1835, and for much of that period was its senior member and, as such, Lieutenant Governor of the state.

Beginning in the 1820s, Daniel also started taking an increasingly active role in national politics. In 1824, the Junto threw its support behind presidential candidate William H. Crawford of Georgia. The election was ultimately decided by the House of Representatives, with John Quincy Adams defeating both Crawford and Andrew Jackson. In 1828, Daniel vigorously supported the ticket of Jackson and John C. Calhoun of South Carolina, and was rewarded as the Jackson-Calhoun forces carried Virginia and thwarted Adams' bid for reelection.

Daniel had great admiration for Jackson; however, he had a much closer personal relationship with Jackson's trusted lieutenant Martin Van Buren, the New York politician largely responsible for reinvigorating the Democratic Party in the late 1820s. In the early 1820s, Van Buren had established a political alliance between his Albany Regency and the Richmond Junto. For more than two decades thereafter, Daniel maintained an active correspondence with the "Little

Magician,” strongly supporting his campaigns for the vice presidency in 1832 and the presidency in 1836.

This personal relationship no doubt influenced Daniel’s thinking when Virginia Democrats split between supporters of Jackson and Calhoun during Jackson’s first term. The key issue dividing the two factions was the protective tariff which had been adopted with Jackson’s support. Daniel agreed with Calhoun on the substantive issue; nonetheless, he remained the titular leader of the Jackson Democrats in Virginia. Moreover, despite his lifelong commitment to states’ rights, Daniel continued to support the administration in its firm opposition to South Carolina’s claim that it had the right to nullify the tariff on constitutional grounds. At the same time, Daniel also consistently adhered to the view that a state had the right to secede from the Union in response to more severe provocation.

Daniel’s position on the tariff itself must have left him somewhat ambivalent in his support for Jackson against Calhoun and the State of South Carolina. However, he had no compunctions about rallying behind the administration in its war with the Bank of the United States. Daniel considered the Bank an abomination. When asked to evaluate the claims of an aspirant to political office, Daniel replied, “He has professed a belief in the *constitutionality* of a *national bank*, and that is an objection which with me would overrule any and every recommendation which could be urged for him or for any other person.”¹¹ Thus, Daniel enthusiastically supported Jackson’s decision to remove federal deposits and place them in state banks. When Roger Brooke Taney left his position as Attorney General to oversee this process as Secretary of the Treasury, Jackson chose Daniel to be Taney’s replacement. Daniel refused this appointment for financial reasons. However, in March, 1836, when Philip P. Barbour left the United States District Court for the Eastern District of Virginia to become an Associate Justice of the Supreme Court, Daniel accepted an appointment to be his successor.

Five years later, on February 25, 1841, Justice Barbour died in office. Martin Van Buren, who succeeded Jackson in 1836 but was defeated for reelection by Whig William Henry Harrison in 1840, had eight days left until his term expired. Seeking to deprive the Whigs of the opportunity to choose a

¹¹ *Id.* at 113 (quoting Justice Daniel).

Justice, Van Buren quickly appointed Daniel to succeed Barbour on the Court.

A brief but intense political struggle over the nomination soon followed. The dispute over slavery that would soon become so prominent played no role in this struggle; instead, the dispute was simply an incident in the ongoing battle for political power between the Democrats and the Whigs. Democrats in the Senate had enough votes for confirmation. Whigs, however, knew that if they could delay Senate action for just eight days, the nomination would automatically die and the seat would be filled by a Harrison nominee.

Daniel's opponents pursued a two-pronged strategy in seeking to achieve this objective.¹² They first sought to take advantage of the fact that recently admitted southwestern states were not yet part of any circuit and had no representation on the Supreme Court. The Whigs introduced a bill that would have remedied this situation by abolishing the existing Fourth Circuit, merging Virginia and North Carolina into other existing circuits, and creating a new southwestern circuit in place of the Fourth. They hoped thereby to entice some southwestern Democrats to oppose Daniel in the hope of having a Justice appointed from their own region to service the new circuit.

This part of the strategy was a partial success. The circuit reorganization bill passed the Senate, and some southwestern Democrats abandoned the Daniel nomination. Nonetheless, after it became apparent that the Senate bill could not be acted upon in the House of Representatives, it also became clear that Daniel retained enough support to be confirmed if the matter came to a vote on the merits.

In their second attempt to defeat Daniel's nomination, the Whigs tried to deprive the Senate of a quorum by abandoning the chamber *en masse*. This attempt failed by the narrowest of margins after the Democratic leadership scoured the city of Washington in a desperate effort to locate absent Democratic senators. Thus, shortly after midnight on March 2, 1841, Peter V. Daniel was confirmed as an Associate Justice of the Supreme Court.

Van Buren reported to Jackson that, in nominating Daniel, he had taken the opportunity "to put a man on the

¹² *Id.* at 155-60 (describing the struggle over Daniel's confirmation).

bench of the Supreme Court . . . who will I am sure stick to the true principles of the constitution, and being a Democrat *ab ovo* [literally, from the egg] is not in so much danger of a falling off in the true spirit.”¹³ In many respects, the tall, spare, dark-complected Daniel met or even exceeded Van Buren’s expectations. A true agrarian conservative, Daniel was deeply committed to the constitutional theories embodied in the Virginia and Kentucky Resolutions and the work of John Taylor. He viewed the defense of these principles against the Whigs’ nationalist, pro-business policies as an apocalyptic struggle between good and evil. Daniel’s public comments on politics were notable for their forcefulness; he was described by one political opponent as “one of the most violent partisan writers in the state.”¹⁴ Daniel was no less emphatic in private. In an 1832 letter to Van Buren, he described the forthcoming election as a “great struggle between democracy and the constitution on the one hand, and corruption and profligacy unexampled on the other.”¹⁵ He declared, “The conflict we are now waging [is] against that worst of all influences; that which puts intelligence, probity, patriotism, falsehood, venality, vice in every form, all upon an equality, that is, values them merely as they can become means to be wielded to its purposes—the *influence of money*.”¹⁶ Similarly, after meeting Daniel Webster, Daniel reported, “My hand was actually contaminated by contact with his.”¹⁷ In short, as John P. Frank has aptly observed, “[T]he Daniel who came to the Court in 1841 . . . was a man of controversy, ferocious, unyielding, and utterly humorless in dispute.”¹⁸

These attitudes and personal characteristics shaped Daniel’s treatment of the constitutional issues that came before the Taney Court. Not surprisingly, the Chief Justice was Daniel’s closest friend and ideological ally on the Court; however, Daniel was considerably less compromising than Taney in his position on issues such as federalism and the rights of corporations. He dissented alone more than twice as often as any other Justice during his tenure, and more than

¹³ *Id.* at 160-61 (quoting Martin Van Buren).

¹⁴ *Id.* at 88.

¹⁵ *Id.* at 87 (quoting Justice Daniel).

¹⁶ FRANK, *supra* note 5, at 87 (quoting Justice Daniel).

¹⁷ *Id.* at 88 (quoting Justice Daniel).

¹⁸ *Id.* at 166.

three times as often as Taney, John Catron, and John A. Campbell combined.¹⁹

One of the most notable features of Daniel's jurisprudence was his opposition to the expansion of federal power. On a variety of issues ranging from the interpretation of the commerce power to questions of federal jurisdiction, Daniel consistently argued that the authority of the federal government should be circumscribed within narrow limits.²⁰ However, he was apparently willing to subordinate this principle to the need to protect Southern interests. For example, in *Prigg v. Pennsylvania*,²¹ Daniel concurred in the view that Congress did not exceed its authority in passing the Fugitive Slave Act of 1793.

On the issue of federal exclusivity, however, Daniel's position was far more consistent with the overall pattern of his jurisprudence. Throughout the 1840s, he joined Taney and Samuel Nelson in strenuously arguing that, in the absence of contrary federal legislation, the Commerce Clause by its terms did not divest the states of the power to regulate or tax interstate commerce. These Justices were, however, unable to attract majority support for a single opinion embodying this view. Thus, in 1851, both Taney and Nelson agreed to join a compromise majority opinion in *Cooley v. Board of Wardens*,²² which proclaimed that federal power over matters of national concern was exclusive, but that the states retained concurrent authority to regulate interstate commerce in situations where local interest predominated. Among the previous advocates of nonexclusivity, Daniel stood alone in rejecting the compromise. Displaying what might be described as either an admirable devotion to principle or simple blind stubbornness, he continued to insist that only congressional action could deprive the states of their inherent authority to regulate commerce.²³

This theme of concurrent state and federal jurisdiction also dominated Daniel's opinion in *Prigg*.²⁴ The basic theme of his opinion is that, while Congress possessed authority to implement the Fugitive Slave Clause, states also retained

¹⁹ *Id.* at 237.

²⁰ *E.g.*, *The Propeller Genessee Chief v. Fitzhugh*, 53 U.S. (12 How.) 443, 463-65 (1851) (Daniel, J., dissenting); *Searight v. Stokes*, 44 U.S. (3 How.) 151, 180-81 (1845) (Daniel, J., dissenting).

²¹ 41 U.S. (16 Pet.) 539, 650-57 (1842) (Daniel, J., concurring).

²² 53 U.S. (12 How.) 299 (1851).

²³ *Id.* at 325-26 (Daniel, J., concurring).

²⁴ 41 U.S. at 650-57 (Daniel, J., concurring).

power to pass laws that would provide further aid to the slaveowner. Most of Daniel's opinion is devoted to a systematic canvass of authorities that, he contended, supported the theory of concurrent power in general terms. Daniel also emphasized the symbolic effect of a holding of federal exclusivity in the specific context of the Fugitive Slave Clause:

[S]uppose that a fugitive from service should have fled to a state where slavery does not exist, and in which the prevalent feeling is hostile to that institution; there might, nevertheless, in such a community, be a disposition to yield something to an acknowledged constitutional right—something to national comity too, in the preservation of that right; but let it once be proclaimed from this tribunal, that any concession by the states towards the maintenance of such a right, is a positive offence, the violation of a solemn duty, and I ask what pretext more plausible could be offered to those who are disposed to protect the fugitive, or to defeat the rights of the master? The Constitution and the act of Congress would thus be converted into instruments for the destruction of that which they were designed especially to protect.²⁵

Finally, Daniel rejected the argument that states might, under the guise of legislation purportedly designed to protect the rights of slaveowners, actually impede the recovery of fugitives. He observed that analogous arguments might be made against the grant of enforcement power to the federal government, and that “should . . . abuses be attempted, the corrective may be found . . . in the controlling constitutional authority of this Court.”²⁶

Daniel argued that states not only possessed the *power* to pass supplementary legislation, but that such legislation was, in fact, desirable. Seemingly accepting Justice Story's conclusion that state officials could not be compelled to participate in the enforcement of the federal statute, Daniel observed that federal law enforcement officials were far less numerous than their state counterparts, and that state legislation might therefore be necessary to provide the slaveholder with *any* effective governmental assistance.²⁷

Obviously, Daniel's opinion in *Prigg* reflects the views of a Southerner committed to the defense of slavery. His concurrence was clearly influenced by both ordinary political considerations and distinctively legal analysis. Daniel's

²⁵ *Id.* at 657.

²⁶ *Id.*

²⁷ *Id.* at 656-57.

endorsement of Story's view that Congress had power to legislate in support of slaveowners' rights was in some tension with Daniel's position as the Taney era's foremost advocate of limited federal power. However, his advocacy of the concurrent power doctrine was no more than a simple application of the principles that Daniel espoused in other contexts. In short, while clearly adopting a position that was more proslavery than that of Justice Story, Daniel's opinion was no more intemperate in substance and tone than the analogous antislavery opinion of Justice McLean.

Yet despite his unyielding commitment to the defense of slavery, prior to 1847, Daniel would have been an unlikely candidate to produce the kind of inflammatory opinion that he produced in *Dred Scott*. Daniel's political alliance with Martin Van Buren was a model of bisectional cooperation, and his opinion in *Prigg*, while undoubtedly pro-Southern, was moderate in tone. Moreover, Daniel was one of the few Southerners who opposed the movement to annex Texas, viewing it as a Calhounite conspiracy.

At the same time, however, Daniel took offense to Northerners who opposed annexation because the addition of Texas would benefit the slave state. In 1844, he expressed this outrage to Van Buren in the strongest terms:

Can anything be more galling to the spirit of honorable men than to be told that it is enough to justify the condemnation of any measure, that its effect may be the promotion of their peculiar interests and welfare: that it may prove advantageous to the holders of slave property? Are we to be placed under permanent and unrelenting ban of the Federal Government? To be held as less than the *equals* of our miscalled *fellow citizens*? To be regarded as the plague-spot upon our nation, and then required by our oppressors and revilers to shout for our *blessed Union*? A blessed Union indeed it would be upon such terms. No—No—The most temperate amongst us, would not hesitate to decide, if things have come or are to come to this complexion, to go with our imputed blemishes, our crimes and defilements, apart to ourselves; and leave these exclusively beautiful and moral and clean and immaculate, to their own purity.²⁸

The dispute over the Wilmot Proviso crystallized Daniel's outrage. As early as 1845, Daniel privately expressed the view that federal legislation explicitly limiting the right of slaveowners to bring slaves into the territories would be grounds for secession. Nonetheless, he expressed his

²⁸ 5 CARL B. SWISHER, HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE TANEY PERIOD 1836-64, at 560-61 (quoting Justice Daniel).

willingness to accept the general idea of geographical division as a workable compromise. Two years later, the New York State Democratic Convention adopted a resolution supporting the position that slavery should be outlawed in all of the territory obtained from Mexico. Daniel wrote to Van Buren seeking clarification of his position on this issue. When Van Buren replied evasively, Daniel (whose wife had recently died from a stroke) responded that if Van Buren in fact supported the Wilmot Proviso,

I shall have lived to witness a development, that even the great overwhelming and stunning personal calamity which has come upon me cannot prevent me from contemplating with deep sorrow and alarm. I shall have been constrained to perceive on the part of those, on whom of all the public men in this nation I imposed the greatest trust, what my deliberate convictions compel me to view as the overthrow of the great national compact; as the extreme of injury and oppression; oppression in its most galling form, because it declares to me that I am not regarded as an equal.²⁹

Daniel's mortification could only have been magnified in 1848, when Van Buren became the presidential candidate of the Free Soil Party.

The impact of Daniel's sense of personal betrayal on the subsequent evolution of his political thought cannot be reliably assessed. What is clear is that beginning in the late 1840s, Daniel associated all things Northern with the antislavery movement, and hated the North with an obsessive fury that he had hitherto reserved for his Whig political enemies. He refused to venture north of the Delaware River and became indifferent to the preservation of the Union itself. When Daniel's great-nephew made a favorable comment regarding those who took antislavery positions, Daniel replied simply, "I fear those people are very wicked."³⁰

The language of Daniel's concurring opinion in *Dred Scott* reveals the depth of his bitterness over what he saw as betrayal by his one-time friend and ally. Based upon what he believed were "truths which a knowledge of the history of the world, and particularly of that of our own country, compels us to know,"³¹ Daniel contended that:

²⁹ Frank, *supra* note 5, at 245-46 (quoting Justice Daniel).

³⁰ 5 SWISHER, *supra* note 28, at 70 (quoting Justice Daniel).

³¹ *Dred Scott*, 60 U.S. at 475 (Daniel, J., concurring).

[T]he African negro race never have been acknowledged as belonging to the family of nations; that as amongst them there never has been known or recognised by the inhabitants of other countries anything partaking of the character of nationality, or civil or political polity; that this race has been by all the nations of Europe regarded as subjects of capture or purchase; as subjects of commerce or traffic; and that the introduction of that race into every section of this country was not as members of civil or political society, but as slaves, as *property* in the strictest sense of the term.³²

Later, addressing the claim that Congress could constitutionally bar slavery from the territories, Daniel argued:

Can there be imputed to the sages and patriots by whom the Constitution was framed, or can there be detected in the text of that Constitution, or in any rational construction or implication deducible therefrom, a contradiction so palpable as would exist between a pledge to the slaveholder of an equality with his fellow-citizens, and . . . a warrant given . . . to another, to rob him of that property, or to subject him to proscription and disfranchisement for possessing or for endeavoring to retain it? The injustice and extravagance necessarily implied in a supposition like this, cannot be rationally imputed to the patriotic or the honest, or to those who were merely sane.³³

Of course, even if he had never broken with Van Buren, Daniel might well have reached the same conclusions in *Dred Scott* (although he probably would have expressed his views in more temperate language). Nonetheless, the basic point remains. The views of judges are not shaped only by legal theory and political ideology, but by the totality of their life experiences. Thus, the work of biographers such as John P. Frank, Linda Greenhouse,³⁴ and Dennis Hutchinson³⁵ is indispensable to those who hope to truly understand the judicial process.

³² *Id.*

³³ *Id.* at 490.

³⁴ LINDA GREENHOUSE, *BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN'S SUPREME COURT JOURNEY* (2005).

³⁵ DENNIS HUTCHINSON, *THE MAN WHO ONCE WAS WHIZZER WHITE: A PORTRAIT OF JUSTICE BYRON R. WHITE* (1998).