

# Retirement

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Abraham Lincoln put his arms around Richard Henry Dana Jr. and held him for a long time. Dana, a Boston Brahmin, lawyer and author of "Two Years Before the Mast", had successfully argued the *Prize Cases* before the Supreme Court. Dana's success eliminated a potentially crushing burden upon the U.S. during the Civil War.

If the devil is in the details, the *Prize Cases* held him. Prize is a term in maritime law for a vessel seized during war. One nation may seize, and take ownership of or proffer to another, a ship benefitting the belligerent nation—the one they are at war with. The United States was not at war with a *nation* when the Civil War was fought. Lincoln did not want war declared by Congress, as that would imply the southern states had sovereignty, that they were an independent nation. Rather he concluded that it would best serve that nation—the Union—if the aggression were against an *insurrection* within the United States.

War, prosecuted by a formal declaration, would carry other technical risks, including having some countries begin to recognize the southern states as a separate nation, and even take sides in the war. But the President was also damned if he didn't make the formal declaration.

Lincoln had established blockades on the southern ports as part of the effort to weaken the control of the southern insurrectionists. The government had seized vessels of all types entering these ports, and they were claimed as prizes. If the Supreme Court decided that the Civil War was not a war, that such could only occur between nations and at least must be declared, then the U.S. could become liable for the ships it seized and required to pay enormous sums as recompense. An amount estimated to be possibly crippling to the Treasury.

During the Civil War, when lawyers brought cases to court to reclaim the ships or their value, the law was in a conundrum—one that was sustained to the Supreme Court. In a divided (5-4) opinion, it decided that "The President was bound to meet [the aggression] in the shape it presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact." Whether or not it was called a War, it should be treated like one. A rose, by any other name.

Richard Dana, a last-minute addition to the President's legal team, developed the argument that the majority bought. His capacity to do so came in no small part from contracting measles in his teens. He represented one of many generations of Danas to enter Harvard College. His family had long been part of the Boston Establishment, his grandfather had been Chief Justice of the Massachusetts Supreme Court. One of his grammar school teachers was Ralph Waldo Emerson and his son would marry the daughter of Henry Wadsworth Longfellow, a next-door neighbor—it doesn't get more New England than that.

Before Dana was deep into his studies, he came down with the measles. The disease, remember this is long before vaccines and other modern medicine, afflicted his eyes and especially his ability to read. That was not a disability that could be overcome sufficiently to study.

So, he went to sea. At age nineteen in 1834, Dana boarded the *Pilgrim* as a common seaman. Its destination was the west coast of Mexico, including the ports of San Diego, Santa Barbara, Monterey and San Francisco. Mexican ranchers in California had cow hides (in the tens of thousands) to sell to manufacturers in New England and the *Pilgrim* was dispatched to haul them.

Dana crewed in the forecabin, a small and rancid compartment located in front of—before—the mast of the ship. On his way to Cape Horn he witnessed a flogging of a sailor that set a cornerstone in his career. So disproportionate and cruel was the punishment that he vowed to assist sailors in any way within his means.

Those means would come with a law degree after his return and resumption of studies at Harvard. But he also experienced something else on this voyage that would set his course. Crew members were often a diverse group. The fictional *Pequod* of *Moby Dick* had Africans, Persians, Native Americans and Polynesians. Dana encountered, worked with, and established bonds with blacks, Mexicans and Sandwich Islanders. This contrasted with his university cohort, mostly the Brahmin class of Boston, who associated only with others of their kind.

A caste system, like any class system, has established rules of behavior and interaction with "lower" classes. Dana's voy-

age eliminated the distinctions for him. When he returned to Boston, he was different from the other members of society. In 1840, when he was admitted to the bar, he published his memoirs of the voyage.

His law practice was principally maritime. Sailors sought his representation, wanting to be counseled by the author of *Two Years Before the Mast*. He won numerous cases against vessels, officers and the companies that controlled them. This put him on an odd footing with those he was associated with in society.

Later, he began to defend clients—blacks—against the Fugitive Slave Act, considered America's most draconian law. The act made it illegal to harbor escaped slaves, or otherwise assist them, or to not affirmatively assist in their recapture. One case, in defense of Anthony Burns, brought him international note, and an attack on his life. This also angered many Bostonians.

While the North fought the Civil War to end slavery, before the war New Englanders were not uniformly abolitionists. In fact, the textile industry, which overtook whaling as the principal portion of the economy, was dependent upon slave-picked cotton to manufacture their products. The end of slavery would dramatically alter the supply chain.

For the industrial class of Boston, blacks were no less mechanisms of industry than the loom. For Dana, however, captured Africans were not a commodity. They were fully human, in spite of what many southerners and northerners, or the Constitution, said. His experience at sea dissolved the barriers that separate people. This was not an intellectual observation, it was the grounding of his soul.

Dana defended blacks from acquisition and forcible return to slavery under the Fugitive Slave Act. He was ostracized for doing so, and nearly got killed. He did not do it for money, and he did not do it because it was politically expedient—it was far from both of these. He did it because in his mind and his heart he had had experiences that could afford no other course. We know this because of his extensive journal. Robert Lucid's presentation of this journal is referenced below.

From the experiences of a privileged college boy aboard a brutal vessel and landing on a Pacific shore, Dana developed principles that, it is argued, helped set the Civil War in motion and allow Lincoln to continue it. This argument is articulated in a recent biography of Dana by Jeffrey Amestoy, also referenced below.

So, you have wondered, what does any of this have to do with city planning? Well, I suppose, in the particular, not much. And why is this article titled Retirement?

On a thirty-hour bus ride from college in Eugene, I was returning home for the first time in the winter of 1972. As we rounded Pismo Beach on 101, I saw a large construction site that would become the shopping center at Oak Park Boulevard. I had grown up in Grover Beach (nee City) looking at the hills north across the freeway. No structures had been built on those hundreds of acres of ranchland. K-mart would be the first.

I remember feeling sick to my stomach. How could this get torn up? What authority did anyone have to change this landscape? The last question was not something I could articulate at the time. Only the emotion of the destruction of the natural area was at hand for me. However, it permeated and precipitated some of the decisions that led me to planning. If I am an environmentalist, then that is the source trauma, still vivid in my own memory.

But let me assure you, this is not intended to conflate my career with Dana's. It is only to draw a parallel to something I've identified as a defining moment. And to ask you to do the same. Careers are always drawn by expediencies: money, location, society and personal ability. However, there is usually something more, something deeper, that drives them and sustains them.

But let me end any further lecturing and suggest to you some readings which I have only recently done. They are great, though there will be others more closely aligned with your experience.<sup>1</sup> For me, one of the great joys of these discoveries is that they came at the close of (this portion of) my career, on the eve of my retirement. Check these readings out:

Dana, R.H., Jr. (1840). *Two Years Before the Mast: A Sailor's Life at Sea*. New York, NY: Harper Brothers.

Amestoy, J. (2015). *Slavish Shore: The Odyssey of Richard Henry Dana Jr.* Cambridge, MA: Harvard University Press.

*Jeffrey Amestoy was Chief Justice of the Vermont Supreme Court and his book brings back to us the life and importance of Dana. Most people, if they have heard of Dana, know only of his book. Justice Amestoy brings us his life.*

Lucid, R. (ed.). (1968). *The Journal of Richard Henry Dana, Jr.* (Three volumes). Cambridge, MA: Belknap Press of Harvard University Press.

Prize Cases, 67 U.S. 635 (1862). This can be accessed at <https://supreme.justia.com/cases/federal/us/67/635/>.

*As a lawyer, I am comfortable reading legal opinions. As a scholar, you should become comfortable as well. Judicial opinions can be read as essays, by great minds, on issues of import. Consider the case of The Amistad at: <https://supreme.justia.com/cases/federal/us/40/518/>.*