also laments the practice of some newspaper publishers who cut advertising rates in order to take business away from a competitor.

"There can be no question but that public notices from official sources constitute one of the chief financial props of the so-called country newspapers in America and this is also true to some extent of the smaller dailies," says the author, "and if the publisher fails to use every legitimate means to develop the public notice as a source of revenue for his publication he stamps himself as an indifferent business man."

On the ground that "there is a vital need for the fullest possible publicity in governmental affairs" the author urges publishers to insist, "even to the point of bringing legal action," upon the publication in full of all mandatory public notices which are now summarized or may have fallen into disuse, and also to make united efforts to increase the number of public notices which must be published.

The reader should recognize that the author speaks strictly from the journalist's standpoint, and should also keep in mind the fact that the interest of the public in these notices may have a tendency to compel a modification of the writer's statements. That is, approaching the problem from the position of a member of the public, with a view to the particular types of public notices with which he is acquainted, *quaere*, what is the necessity for such a notice; how great is its effectiveness; how may it be clarified, if necessary; in short, what is its general value to the public? With these queries recurring to the mind as the article is perused, the discussion will be, it is believed, better appreciated and reconciled with individual opinions regarding the matter.

ROBERT H. JONES

ROGER B. TANEY, JACKSONIAN JURIST — *Charles W. Smith, Jr. University of North Carolina Press, Chapel Hill. 1936*

Roger B. Taney is probably most widely known as the Chief Justice of the United States Supreme Court, who gave the decision in the famous Dred Scott Case. It is unfortunate that he is known primarily for this. Bad as its reputation has been, even it was a masterpiece of judicial reasoning. Other decisions of his have been of more lasting importance. It is to bring out the real of Taney and to wipe the bad impression of the Dred Scott decision that Charles W. Smith has written this book.

This is not a biography such as is generally written. It does not proceed chronologically from birth to death of the central figure. Rather, Taney's philosophy, character, and mental make-up are analyzed solely

from his various decisions. Where clarification is needed opinions of his contemporaries are cited. The vital statistics of Taney's life are given in the space of a very few pages, in the first section of the book. These are told in a rather dry and uninteresting fashion. By his own statement, the author is trying to give a thorough discussion of Taney's political theory and his contribution to constitutional law. In this, he succeeds admirably in an interesting and entertaining manner.

Taney came into the national picture just as the pure natural rights philosophy of the Revolution was becoming a little damped. Taney's philosophy fitted the times. Not once in his many decisions does he mention natural rights. He followed generally the philosophy of Rousseau rather than that of Locke. Even there he differed in important respects. He believed that individual rights were "ancient and established"; that they were the result of compacts with the government and did not spring full-blown from nature. In all things the people were sovereign. Government was their sovereign will expressed in compact and law. Unless so expressed, there was no natural right, either to freedom, or to equality, or to hold property.

Smith calls Taney a follower of Jacksonian Democracy. The logical conclusion of Taney's philosophy, however, is that the government has the power to take away all the rights to which we have become accustomed. The keynote of Jacksonian Democracy was that certain rights were inalienable. Even though under Taney's idea it would take the concerted action of the people to alienate those rights, yet it seems there is more of a difference between that and Jacksonian Democracy than Smith implies.

Taney, says the author, considered the constitution as a compact in which the people agreed that the Federal government should express so much of their sovereignty as is there set out. Only by their concerted action can they change that compact. All the rest of the people's sovereignty is vested in the states and they are "absolutely and unconditionally sovereign" except as limited by the constitution. He realized that in a monarchy the king, being the epitome of the sovereign will, could easily enunciate it. In the democracy of the United States, however, the sovereign will, being shared by all the people, could not so easily be expressed. He therefore considered the constitution to be that expression and the Supreme Court to be its interpreter.

Taney believed that every person in the United States was subject to two governments—the state and the federal. Both exercised powers of sovereignty. The states, being originally sovereign, retained all sovereignty except that expressly given to the federal government by the

constitution. Each of these spheres of sovereignty was independent of the other. When disputes arose as to where one stopped and the other began, it was the duty of the Supreme Court with the constitution as its book of rules to decide the controversy.

Having disposed of the philosophy of Justice Taney, the author proceeds to point out the practical effect of some of his decisions. This he does in a manner that holds the interest of the reader. He shows how, in the Charles River Bridge Case, Taney laid the first real foundation for the police power of the states. Marshall, in the Dartmouth College Case had said that a charter of the state was a contract that could no more be broken than could the contract of an individual. The implications of this would greatly have hampered the state's police power. In the bridge case a charter had been given to a private company to build a bridge and charge toll. Later the state wanted to build a free bridge but by the implication in the charter they could not do it without impairing the right of contract by taking away the benefit given by the charter. Taney held that the charter was a contract but being one of the state it must be construed strictly. Since it said nothing about not building another bridge it could be assumed that in providing for the well-being of the people, the state had reserved that right. This was the first of several of the Chief Justice's decisions that built up the police power of the state.

Smith then discusses Taney and his relation to slavery. While he doesn't justify the Dred Scott decision in so many words yet he leaves a definite impression that it was the only thing for Taney to do in the situation. He shows the criticism of the North, the New York *Times* going so far as to compare it with "any decision rendered in any Washington bar-room." On the other hand he shows the praise it received in the South.

The author then proceeds to analyze the Chief Justice's concept of individual rights. During the Mexican War, he relates, a Frenchman who had been working in Mexico took his small savings and boarded a vessel for home. The vessel was caught running the blockade and the government was trying to confiscate as contraband the laborer's total savings of some $2800. In *United States* v. *Guillem*, Taney held that the wrong of the ship could not be imputed to the individual, that since his earnings were not cargo they were not subject to confiscation, illustrating Taney's feeling for individual rights.

Taney was instrumental in preventing unjust use of governmental power during war hysteria. In *Ex parte Merryman* he preserved the right to the writ of *habeas corpus*, when John Merryman was awakened

in the middle of the night and dragged off to prison without explanation. The idea to which Taney clung was that individual rights under law and not natural rights were supreme and to be protected from encroachments whether from government or people.

It is doubtful, says Smith in conclusion, whether actual democracy in the huge modern state can ever be reached. If no technique can be developed to make the sovereignty of the people factual then the "democratic faith of Taney may have to go the way of the flatboats and stagecoaches which he himself ushered out."

VICTOR A. KETCHAM, JR.

ROMAN LAW AND COMMON LAW — *Buckland and McNair. Cambridge University Press*

"Our interest lies * * * in examining the independent approach of the two peoples and their lawyers to the same facts of human life, sometimes with widely different, sometimes substantially identical results. For our belief is that one of the main juridical features of this century must be a big advance in the comparative study of law."

Thus succinctly stated, the authors set forth both the plan and the purpose of Roman Law and Common Law. They have done an admirable work in their examination of the two basic legal systems and have gone far toward accomplishing their avowed purpose.

Comparative substantive law is worthy of more attention than it has been accorded by contemporary legal scholars. Recognizing this need, Messrs. Buckland and McNair have attempted to compare and contrast the Roman legal system as it existed in various stages of Roman history, with the English common law. Their work was facilitated by the fact that searching treatises have been written concerning each system but their endeavor to compare and contrast the two bodies of law stands as a unique work fulfilling an evident need.

The book covers most of the important rubrics of law. The treatment given the comparative law relative to limitation of actions exemplifies the authors' technique. It is pointed out that to the Roman lawyer limitation of actions was one thing and the acquisition of ownership by lapse of time quite another. The common law is not so logical. The common law jurists seemed to have stumbled into the latter as a by-product of the former, and for no apparent reason have confined this mode of acquiring ownership to land, easements and the like. The Roman system of limitation of actions is marked by what appears to the modern student to be excessively long periods, being thirty years for