The Science of Jurisprudence. By HANNIS TAYLOR, LL.D. (New York: The Macmillan Company. 1908. Pp. lxv, 676.)

This work is divided into two parts, one historical and the other analytical. The historical portion is presumably intended to sustain the thesis that "there is rapidly arising a typical state-law system whose outer shell is English public law, including jury trials in criminal cases, and whose interior code is Roman private law. This far-reaching generalization, now submitted to the consideration of students of the science of jurisprudence for the first time, so far as the author knows, has been subjected in advance to the searching and approving criticism of a few of the most eminent jurists of the English-speaking world." (Preface, p. xv.) But is there anything really new in this broad generalization? Dr. Taylor's thesis involves two points: (1) That Roman private law has exercised a great influence upon modern legal systems. (2) That the English constitutional system has been to a very large extent copied by other nations. These statements are commonplaces to students of jurisprudence, but Dr. Taylor may well merit whatever credit is due for mechanically placing them in juxtaposition.

In order to establish his thesis it would seem that the author must discuss: (1) The expanding movement of Roman private law. (2) The expansion of English private law. (3) How far the two systems have influenced each other, and to what extent, if any, Roman law has displaced English law. (4) The development of English constitutional law, and its expansion to other countries; and the influence of the English constitutional system, if any, upon the private law of countries by which is has been adopted. Had the author given a clear and satisfactory account of the expansion of the English and Roman legal systems he would have done an important service, even though his thesis should be proven incorrect.

What we have, however, is a brief history of Roman law; a more extensive account of English constitutional history; an unsatisfactory discussion of the expansion of Roman private law; and a very fragmentary account of the extension of the English constitutional system. The author devotes practically no attention to the questions which seem essential for the maintenance of his thesis, namely, to what extent has English private law been adopted outside of England, and to what extent has Roman law influenced or displaced English law? A discussion of these questions the author probably intends to avoid by general statements in which he intimates that English private law has

been to such a large extent derived from Roman sources that it cannot be called a separate legal system (pp. 436–437). He makes no effort to show the actual influence of Roman law upon the English legal system, and seemingly has little knowledge of the literature upon this subject.

It seems also that the facts hardly support Dr. Taylor's contention with reference to the increasing influence of Roman private law. Mr. Bryce's statement regarding the relative positions of the English and Roman legal systems appears to be much more accurate. (*Studies in History and Jurisprudence*, 121–123.) Certainly within recent years there has not been any great movement toward the adoption of the Roman legal system. The author himself admits that in the nineteenth century English private law has to a large extent displaced Roman law in Scotland. In connection with the author's views it is of interest to quote a statement made by Sir Henry Maine in 1856 that "the Roman law is . . . . fast becoming the *lingua franca* of universal jurisprudence." Since 1856 Roman law has made little perceptible advance toward universal dominion. Dr. Taylor's work cannot be ranked as an important or original contribution to the subject of which it treats. It is an unsatisfactory type of legal history, based upon insufficient investigation, and displaying in many respects an ignorance of important legal literature.

It may be well, however, to inquire to what extent the several parts of Dr. Taylor's work are of value. His chapter on the External History of Roman law gives a fairly satisfactory account of Roman legal development, though it can hardly be said to be an improvement upon other similar accounts available in English. In fact, much of this chapter can hardly be called more than a compilation made up from other books in English. A careful reading of Taylor, pp. 102–112, together with Muirhead's *Roman Law*, 2d ed. pp. 297–307, and Sohm's *Institutes*, 2d English ed., pp. 98–105, will indicate something of Dr. Taylor's indebtedness to these authors. The notes and references to Roman legal literature not in English lend a counterfeit appearance of erudition to this portion of the work, but it may be of interest to call attention to the fact that many of Dr. Taylor's notes of this character are identical with notes in Sohm, Muirhead, and in Greenidge's *Roman Public Life*. The author shows little first-hand familiarity with the literature other than that in English. Note 3 on p. 108 and note 5 on p. 138, copied from Muirhead's note 2 on p. 308 and note 2 on p. 372, should, had the author been familiar with the sources, have been supple-

mented by a reference to the *Legis Romanae Wisigothorum fragmenta ex codice palimpsesto sanctae Legionensis ecclessiae*, published by the Spanish Royal Academy of History in 1896.

Pages 193–427 form a chapter entitled the External History of English Law, and are devoted to a history of British constitutional development, summarized from the author's larger work on *The Origin and Growth of the English Constitution*. This chapter is fairly well done, but much the greater part of it bears no relation to the subject of jurisprudence.

Chapter V on English Law in the United States is devoted to English constitutional institutions as developed in the United States, and is practically worthless. The chapter was evidently written for the purpose of exploiting the author's novel views with reference to Pelatiah Webster, whose pamphlet is reprinted in an appendix to the book here under review. A fuller knowledge of the literature of American constitutional history and a closer study of governmental conditions from 1776 to 1787 would probably have caused a revision of the somewhat absurd claims which Dr. Taylor has presented with reference to Pelatiah Webster. It would also seem that much of this chapter is out of place in a treatise on jurisprudence.

The historical portion of Dr. Taylor's book is completed with a chapter on Roman and English Law Combined. This chapter is devoted to the constitutional development in Latin-America, and to the development of private law in South America, British Guiana, Ceylon, South Africa, and Scotland. The discussion of Brazilian law is of value as containing information not otherwise available. In the account of Latin-American constitutional development, pp. 479–481 and parts of pp. 474–476 are copied from Rodriguez' *American Constitutions*, although this fact is not indicated. The account of Roman-Dutch law is borrowed, without the use of quotation marks, from Nathan's *Common Law of South Africa*, I, 1–24.

The portion of Dr. Taylor's book devoted to analytical jurisprudence covers only 128 pages. Within such a brief space it is impossible to treat this subject in a manner comparable with the excellent works of Holland, Salmond, Pollock, and Markby. The author does not know Salmond's *Jurisprudence*. Dr. Taylor follows in large part the plan of Holland's work, and his indebtedness to Holland is certainly in places great enough to be acknowledged by the use of quotation marks. See, for example, Taylor, pp. 543–547, and Holland, 10th ed., pp. 186–193; compare also Taylor, pp. 619–622, with Holland, pp. 405–408, and

with Bar's *International Law; Private and Criminal*, p. 36, et seq. On the whole Dr. Taylor cannot be said to have made any important contribution either to historical or to analytical jurisprudence.

W. F. DODD.

Das Problem der juristischen Persönlichkeit. By JULIUS BINDER. (Leipzig: 1907. Pp. 146.)

The problem of the juristic person will never cease to be agitated in Germany; it appeals too strongly to the metaphysical tendency of German jurisprudence. Professor Binder insists that the earlier inquiries have been metaphysical instead of legal, and have therefore stated the problem in an insoluble manner. This same conviction must have forced itself upon many minds. Can Gierke's fascinating theory of the organic reality of the collective entity be either proved or disproved? Has the enormous mass of material which he has brought together with an industry unexcelled even in his own country amounted to a demonstration of the existence of the corporate will?

Professor Binder sums up his own theory as follows: "As a 'person' is not a thing in the world of phenomena but a concept, so also the juristic person. We have to deal with a figure in which we comprehend the sum total of the most diverse relations, and the essential content of which we can ascertain only by analyzing his concentrated concept into its constituent relations."

If we understand him right, he sees in the juristic person a technical contrivance for conveniently dealing with complex combinations of right. By implication this seems to negative any legal effect of the psychological nexus resulting from the combination of persons. And however valuable this element may seem in dealing with certain phases of corporate capacity and responsibility, it must perhaps be admitted that it is unnecessary for the explanation of most corporate relations, and therefore not an essential element in the definition of a juristic person. This, however, does not mean that it can be safely ignored in a comprehensive view of the law of corporations.

It does not appear that Dr. Binder draws any novel practical conclusions from his theory.

The essay is by no means easy reading, but it is well and carefully written.

E. F.