BOOK REVIEWS

Science of Jurisprudence. Hannis Taylor. The McMillan Co. 1908. pp. 635.

This book is an attempt, within a single volume, to apply both the historical and analytical methods to the field of jurisprudence. So far as these methods are concerned, it is confessedly based upon the works of Sir Henry Maine and Professor Holland. The author has also made abundant use of the work of the leading writers upon the history and theory of law, for which full credit is given by quotation and reference. The result is a graphic presentation of the best modern views upon the theory of law and upon the history of law, more especially of public law.

The historical portion covers about five hundred pages, the analytical only about one hundred. Upon the historical side attention is confined to Roman and English law, and in these systems, substantially to what is called their "External History," by which seems to be meant not so much the development of legal rules, as in Holmes' Common Law, as the development of the notion and the various forms of sovereignty, and the successive steps, methods and machinery employed for the ascertainment and enforcement of law. As the author says in the chapter on the "External History of English Law," the limitation is practically to public law. The analytical part does not, in the main, differ in method or results from *Holland's Jurisprudence.*

Attention is specially called to two theses propounded as new. One, of historical fact, is the ascription of the origin of the "novel and basic principles" of the United States Constitution to Pelatiah Webster. The author has printed in the appendix the complete "Dissertation on the Political Union and Constitution of The Thirteen United States," written by Webster, and first published in Philadelphia in 1783.

Dr. Taylor says that it was his good fortune "to unearth this epoch-making document," and that this was the basis of the four principal "plans" submitted to the Convention in 1787. It is interesting to note that Webster, prominent in the time of the Revolution as an economist and financier, was a native of Lebanon, Conn., and a graduate of Yale in 1746.

The other important thesis is that of the growth of a typical state-law system. After making as full an examination as his limits will permit of the political and legal systems of those portions of the world which can trace their legal and political history to Rome or England, the author finds that on the side of public law the English Constitution System is the model, and on the side of private law what he calls the "human, heathen Digest" of the *Corpus Juris Civilis* is, either wholly or a considerable extent, the source and model. He therefore generalizes, "that out of this blended of Roman and English law, 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."

Another interesting suggestion is made under the heading "Necessity for a Modern *jus gentium.*" After referring to the methods by which the Roman Praetor evolved the *jus gentium* and calling attention to the great number of codes and legal systems now in existence combining the essentials of English public law and Roman private law, and easily subject to examination by the student of comparative law, and the longing for a uniform conception of legal right, the author says:

"If, through a re-application of that science to data collected by Comparative Law from all existing codes, a new *jus gentium* should be established for the modern world embodying a uniform conception of legal right, there could be no difference of view as to the inestimable value of the result. The only question is as to the possibility of its attainment. The basis for such a hope is in the fact that while there are five original law systems from which existing codes are derived, there are but two in which the more important nations are really concerned. Roman and English law are now extended over, perhaps, nine-tenths of the globe. These two systems, the one originating in the code of a single Italian city, the other in the customs of a group of Teutonic tribes, practically divide the world between them."

The book is a skillful and comprehensive statement of modern historical and philosophical theories and conclusions as to the method of growth and the real nature of law. The theories advanced, and frequently even the phraseology used, are familiar to students of Maine, Bryce, Pollock, and Holland. We do not think this book should or will displace Maine's *Ancient Law,* or Holland's *Jurisprudence,* as fundamental statements of modern

views, but Dr. Taylor has made an important contribution to legal literature and has rendered a distinct service to the student in combining the essentials of his subject within a single volume, and at the same time by reference, making the volume a key to the works of the modern jurists. The parts relating to the origin of our Constitution, the typical state-law system, and the modern *jus gentium,* are highly suggestive and merit a more extended notice than our limits will admit. The book is cordially commended to students of jurisprudence. *E. B. G.*

Mining Law and Land Office Procedure. By Theodore Martin. San Francisco. Bender-Moss Co. 1908. pp. lxiv, 980.

This is a book that has no very satisfactory excuse for its publication. The only excuse given by the author is that no other text-book on the subject has been published during the last five years, except two somewhat different in character from the one now published. He says that this is a rapid age, and that during the said five years, "the new Secretary of the Interior, Hon. James A. Garfield (*sic*), has approved quite a number of modifications in the rulings and regulations of the general land office;" also that "the appellate courts have decided and passed upon some questions."

Perhaps a good book needs no excuse, even though the field is already filled with other good books. This book does need one. It certainly contains almost nothing that cannot be found in more satisfactory form in other books. The English is often inexcusably bad. It is awkward, full of unnecessary repetition, and in places is absolutely opaque. See Sect. 41. The efforts made at definition are often painful, as for example the definition of the terms "vein" and "lode," in Sects. 55-61. The definitions there given fill several pages with vain and ill-constructed repetition, quite useless to aid a court or a lawyer.

It may be, indeed, that a practising lawyer would find this work of sufficient use to justify its purchase, at least if he is not already supplied with a better book. The simpler principles of the mineral land law seem, in general, to be correctly stated. There is not, however, as much of original matter in the book as might be expected. Of the 980 pages the author's text fills only 320. The collection of statutes and land office rules fills 386 pages; 116 pages are given to forms; and the index requires 158 pages.

Somewhat fewer than 800 cases are cited. The collection of statutes and rules is doubtless as useful as other similar collections. The forms too, may be of some use, though other forms are already easily obtainable; but one is inclined to doubt the usefulness of a forfeiture notice that begins: "You are hereby notified and will take notice." See page 768. *A. L. C.*