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II. BOOK REVIEWS.

DUE PROCESS OF LAW UNDER THE FEDERAL CONSTITUTION. By Lucius Polk McGehee. Northport, N. Y.: Edward Thompson Co. 1906. pp. 451. 8vo.

"I have long thought," wrote Prof. John C. Gray twenty years ago in the preface to his classic Rule against Perpetuities, "that in the present state of legal learning a chief need is for books on special topics, chosen with a view,

not to their utility as the subjects of convenient manuals, but to their place and importance in the general system of the law." This belief has apparently given impulse to the series of "Studies in Constitutional Law" of which the present is the second volume. For the conception of the "Studies" the publishers deserve to be commended. But the particular "Study" has added practically nothing to our previous knowledge of the author's subject. Neither through the treatment, conception, analysis, nor comment on the cases has he made any substantial contribution to what is to be found in the digests. He has allowed himself sparingly the luxury of criticism, prophecy, or independent analysis. Yet he gives evidence here and there, as in his prefatory comments on Haddock *v.* Haddock and his remarks on the police power (pp. 361, 362), that he is possessed of no mean critical and analytical powers, so that we regret all the more that his evident learning and study should not have borne better fruit.

Perhaps it would not be just to dismiss the book without more detailed consideration justifying our convictions. For example, after pointing out the use of the phrase "due process" in the Vth and XIVth amendments, Mr. McGehee discusses the relation of the first ten amendments to the XIVth. He contents himself with setting forth the Supreme Court decisions to the effect that "due process" in the two amendments is not identical; that at least some of the rights guaranteed by the earlier amendments are not protected as against state action by the later one. Of course the subject is in an unsatisfactory and unsettled state, but Mr. McGehee makes no effort to elucidate it. What of a state statute, for instance, in line with Bentham's notion abolishing the privilege against self-crimination? Would it shipwreck on the XIVth amendment? Again, in his discussion of the rights protected by due process, — life, liberty, and property, — Mr. McGehee does not analyze his subject. Before determining whether a person has been deprived of one of these "inalienable rights," is it not essential to define the extent and nature of the right? That every word of the Constitution be given effect is the merest commonplace of construction, and yet Mr. McGehee makes a conglomerate of "life, liberty, and property." Several courts have found the "due process" requisite satisfied, when in fact in the given case no right was involved which "due process" protected. The Supreme Court, however, attaches a distinct connotation to each one of the three rights when a case calls for discrimination. See Northwestern Ins. Co. *v.* Riggs, 203 U. S. 243, 255.

In a number of instances Mr. McGehee's treatment of the cases is inadequate and unsatisfactory. In Union Refrigerator Co. *v.* Kentucky (199 U. S. 194) the Supreme Court decided that the state of the owner's domicile cannot tax personalty outside of the state. The author takes the decision as a matter of course, despite the fact, as implied by Mr. Justice Holmes' dissent, that the practice, however unjust, had time-honored sanction. In the Ju Toy decision (198 U. S. 253) the Supreme Court held that the determination of an executive officer on the issue of the citizenship of a person seeking entrance is final. Mr. McGehee characterizes it as "anomalous." This decision is a wide step in the plainly increasing tendency of enlarging the scope of so-called administrative law. Surely that is a mooted and fertile subject, inviting comprehensive discussion from the point of view of constitutional law. We might go on and speak of the treatment of the Lochner case (198 U. S. 45), Boyd *v.* U. S. (116 U. S. 616) and its relation to Hale *v.* Henkel (201 U. S. 43), South Carolina *v.* U. S. (199 U. S. 437), and many more. A few important decisions, we believe, are overlooked: Jack *v.* Kansas (199 U. S. 372), which holds the immunity provision of the Kansas Anti-Trust Act not violative of the XIVth amendment; Harris *v.* Balk (198 U. S. 215), which holds that a debt may be garnished wherever the debtor may be found. Building on the Sturm case (174 U. S. 710), the author adopts the artificial notion that a debt has a situs and tells us that for purposes of attachment the situs of the debt is at the residence of the debtor. In the Harris case, however, the Supreme Court finally rids itself of that artificial doctrine, at least in cases of attachments.

F. F.