see decisions of the judges treated as unwritten law. Again, we think a study of Professor Dicey's lectures would have prevented this confusion of terms.

If Mr. Tiedeman had been content with the alternative title to his work given on his title page, viz., "A Philosophical Inquiry into the Fundamentals of American Constitutional Law," it would, we think, have designated more accurately the actual contents of the book than the title which he places more prominently forward. It certainly more correctly designates the contents of the interesting chapter on the origin and development of constitutional law, in which the development of the American constitutions, Federal and State, is traced out, and that on the doctrine of natural rights in American constitutional law.

The chapter on the constitution in the war of secession explains how the President successfully resisted writs of *habeas corpus* issued by the proper tribunals during the time of the war, taking upon himself to substitute martial law for civil law, and says our writer: "Even though there be an inexplicable contradiction between the practices of military rule and the express limitation of the written constitution, the rule which is actually enforced in time of war is the true constitutional rule, and not that which in time of peace the Supreme Court of the United States declares to be the proper rule." This seems to us a very anarchical doctrine, and to rest upon a confusion of thought, but it well illustrates a main idea of the writer of this work. Mr. Tiedeman is full of the idea, no doubt perfectly true in a certain sense, that constitutional law, as in fact all other law, is "the resultant of all the social and other forces which go to make up the civilization of the people." But Mr. Tiedeman is apparently not willing to wait until this resultant has taken the form of a properly constituted enactment or law in the ordinarily accepted meaning of the word. In the first chapter he quarrels with Austin's definition of a law, as "a rule of conduct prescribed by the supreme power of the State." We confess we are on the side of Mr. Austin. This, says Mr. Tiedeman, has led to the general adoption, "as an axiomatic truth, of a most serious error concerning the origin and development of municipal law." But Austin is not speaking of the origin and development of municipal law; he is speaking of what municipal law is after it has been originated and developed. Mr. Tiedeman prefers to say that a legal rule is "the product of social forces reflecting the prevalent sense of right" (p. 9). Would the Austin school of jurists, he asks triumphantly, "claim that there was no law on the borders of American civilization, where the only government is the vigilance committee, and where the only court of justice is presided over by Judge Lynch?" We fear that Mr. Tiedeman does not distinguish clearly between morality and law. There is a morality in such a community, and by vigilance committees, White Caps, *et hoc genus omne*, that morality may be very forcibly imposed upon recalcitrants; but the rules of this morality are not rules of law, because they are not enactments of any permanently constituted body in whom authority has been vested by or on behalf of the community to make such rules and impose them on the people. Where there is no constituted authority, there can be no law, properly so-called.