CHAPTER X

THE FAILURE OF THE FOURTEENTH AMENDMENT AS A CONSTITUTIONAL IDEAL

There is a feeling abroad in America that when a given measure becomes a part of the Constitution of the United States, its virtue must never henceforth be questioned. There is here a tendency towards a paper worship which involves a fundamental misconception of the true nature of constitutional law. The organic law of a people can never become fixed or static until the civic life of that people has ceased to develop, and become stagnant. This latter condition never exists, because every community is a living community and life always means motion and progress.

Notwithstanding the prevalence of this abnormal reverence for the letter of the Constitution, the American people are second to none in progressive activity and have gone beyond all in their practical view of life. This is a live country. The development of its political life has kept pace with its marvellous industrial achievements. Bold experiments in the realm of government have been launched without the guide of precedents. With an independence worthy of a free people, new conditions of life have been met with new
political measures. The organic laws of the new frontier States in the West have been made to express the living ideals of the people. In general the State constitutions are frequently changed to meet the growing needs of each succeeding generation.

The same general principles which govern the State constitutions apply also to the fundamental law of the nation. It behooves each generation to examine for itself the political and constitutional ideals which form the basis of the Federal Government. There may not always be the necessity for a change in the organic law. There is the necessity for reexamination and reevaluation. Our fathers met their problems of constitutional law and solved them in the light of their own day. No less a burden has fallen upon their children. The Constitution is the servant of the people, not their master. *Salus populi est suprema lex.*

It is in this spirit that we approach this discussion of the Fourteenth Amendment to the Constitution of the United States. It has now been in operation forty-one years. We of the younger generation can look back on the history of its adoption without the bias of partisan zeal. The time has now come when we can see more clearly the whole movement of which this amendment formed a part. We can now ask what function it has performed as a constitutional measure. We can, by looking over its judicial history, see wherein it fails to meet the needs of this generation.

It would be but the vain discussion of an academic