CHAPTER III

THE PRACTICAL SCOPE OF THE AMENDMENT

The Congressional programme for the scope of the Amendment came to a sudden end at the hands of the Supreme Court. Within the short period intervening its adoption and the first cases involving its interpretation, the weight of public opinion had already repudiated the governmental ideal of the Radicals. The destinies of the measure having now been left to the Supreme Court, that tribunal attempted to set forth in general terms its future sphere of activity. This was done not so much by way of positive definition as by protests against certain classes of litigation under the Amendment. This original programme of the Court has, by the logic of events, also failed.

We now turn to see what is the actual and practical scope of the Amendment, that is to say, in what manner and to what extent it operates on the States. The spheres of State activity may be classified under four heads, viz: (1) The power of eminent domain, or the taking of private property for public use after just compensation; (2) the power of taxation, through which the revenues are produced, and the free exercise of which is essential to the life of a State; (3) the police
power, or power to promote the peace, happiness, health, prosperity, and general welfare of its people; and (4) the power of procedure. For lack of a better, this term is used to embrace all of those activities of the State, administrative, executive, or judicial, whereby the State seeks to enforce its laws.

The enforcement of the Fourteenth Amendment may involve a restraint, temporary or permanent, on any of the above spheres of State activity. This restraint, however, can only be exercised through the judicial branch of the Federal Government. The Amendment, under its present interpretation and methods of procedure, gives to the Supreme Court of the United States the jurisdiction to inquire into and have the final decision as to the validity of every act of a State Legislature and every proceeding of any administrative, executive, or judicial officer of the State. There are no exceptions, provided of course the party aggrieved properly presents his complaint.

The present attitude of the Supreme Court of the United States as to this question may be stated in the words of the opinion in Raymond v. Chicago Traction Co., decided at the October Term, 1907, viz.: "The provisions of the Fourteenth Amendment are not confined to the action of the State through its Legislature, or through the executive or judicial authority. Those provisions relate to and cover all of the instrumentalities by which the State acts, and so it has been held

1 207 U. S. 35, 36.