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might be tempted to restore serfdom under apprentice and penal laws and other legal guises. Still there is plenty of evidence to show that those who framed the Fourteenth Amendment and pushed it through Congress had in mind a far wider purpose-that of providing a general restraining clause for state legislatures."

Collins,Stimson,West and others deny that the framers of the Amendment or the people who ratified it meant its provisions to apply to any "persons",including under the term "persons" corporations,thereby ~~ex~~ protecting them against obnoxious state restrictions or taxations,or meant that they favored the system of judicial review of legislation which developed from the later interpretations of the amendment. In the earlier decisions arising from cases under the amendment,of course,the Federal Courts specifically stated that it was doubtful whether the amendment would ever be used to fight discrimination against any one but negroes. (Slaughter House Cases.) It was only after the famous San Mateo County and Santa Clara County Cases in the Supreme Court that the later and wider interpretation was given the Amendment. And thereby hangs a tale,for it was in the San Mateo County Case that Conkling delivered his famous argument before the Supreme Court in which he maintained that it had been the purpose of the framers of the amendment to have its provisions apply to all persons,natural and artificial,and that was why the wording was made so vague and obscure. One of the members of this Court was Justice Miller,the same who some years ~~xxxx~~ earlier had ~~rendered~~ delivered the ~~decision~~ opinion in the Slaughter House Cases. Yet this time he concurred with the majority in overruling his own earlier interpretation. Conkling's argument was considered superb. He produced a manuscript copy of the Journal of the Joint Committee on Reconstruction ~~of Fifteen~~ which had drawn up the amendment,and of which he had been a member. He showed how each article of the amendment had been proposed and voted on separately and that they were simply put into one amendment for convenience,and not because they were in any way related. He impressed the Court. And most important, there was no one there to refute him. The manuscript copy was the only existing copy of the Journal at the time,since,in violation of a law of Congress,the Journal had not been printed in 1866-67. But Conkling,Blaine etc were not made of the stuff that worries about a little thing like a law.

No study of this question-the truth or falsity of Conkling's statements-has as yet been made. I have so far ~~it impossible~~ been unable to get a copy of the brief which Conkling held at the time and although a great many writers quote from it-Kendrick,Guthrie, Beard,Lingley,Taylor etc.- none of them indicate where they got the speech,probably one from the other going back to Guthrie who published his lectures in 1898. I have discovered however, by looking through the files of the New York World,that his speech was printed in pamphlet form by Judd and Detweiler of Washington, D.C. ~~xxxxxx~~

Fourteenth Amendment:

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The following table is taken from Ch. Wallace Collins' "The Fourteenth Amendment and the States", Collins being opposed to the later and wider interpretation of the amendment by the courts. (Page 138)

"Table showing parties seeking relief from State activity under the Fourteenth Amendment."

October Term U.S.Sup.Court	Total Opinions	Corporations	Negro Race	Individuals
1878	0	0	0	0
1879	5	0	3	2
1880	1	0	1	0
1881	2	0	0	2
1882	4	1	2	1
1883	5	1	1	3
1884	5	2	0	3
1885	7	3	0	4
1886	4	1	0	3
1887	12	5	0	7
1888	8	2	0	6
1889	10	4	1	5
1890	13	0	0	13
1891	12	8	0	4
1892	10	3	0	7
1893	15	9	0	6
1894	9	5	1	3
1895	14	5	4	5
1896	26	17	0	9
1897	20	9	1	10
1898	31	26	0	5
1899	31	18	2	11
Total:	244	119	16	109

The percentage for corporations increased after 1899.

A few significant opinions:

Arthur T.Hadley in the Independent, April,1908,Vol.64:836 in an article on "The Constitutional Position of Property" said: "The Fourteenth Amendment was framed to protect the negroes from oppression by the whites,not to protect corporations from oppression by the legislatures. It is doubtful whether a single one of the members of Congress who voted for it had any idea that it would touch the question of corporate relation at all."

F.J.Stimson in his "The American Constitution as it Protects Private Rights" said: (Page 202) "The intention of its (the Fourteenth Amendment's) proposers---was doubtless only to protect the negroes."

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Max West in an article in the Yale Review, February 1900, Vol. 8:401 said: "The language of the amendment is so comprehensive that, notwithstanding its history, its application could hardly have been expected to be restricted always to discriminations against negroes; yet it was no more than right that the court should exercise the greatest caution in extending it to cases which were not in the minds of Congress when the Amendment was proposed, or of the people, when it was adopted."

Another significant point is the fact that Conkling, while reading from the Journal, ommitted names, and he did so with good reason for himself had repeatedly voted against the Civil Rights article of the amendment before it was finally adopted. It seems to me that Roscoe Conkling, corporation counsel, was not the man to vote against so vague but attractive a clause if he really thought that it was to be applied to corporations as well as to negroes.

The Journal, which Conkling is said to have used so effectively, is now in the vaults at Columbia University having been purchased for the University by B.B. Kendrick who found it while engaged in writing his thesis on "The Journal of the Joint Committee on Reconstruction of Fifteen." In addition to this manuscript copy there is a printed copy in the Government Printing Office and that is all. It was not until 1884 that Congress ordered 6000 copies of the Journal and then they were never distributed. Kendrick says that he had considerable difficulty in finding this out, but one glance at the Check List of Government Documents gives all this information. An exact copy of the Journal makes up the second chapter of Kendrick's book which is a volume of the Columbia University Studies in History etc., Vol. LXII, and hence is easy of access. But read the Journal as often as one might, it is impossible, at least so it seems to me, to see how Conkling could prove his point by quoting from it. So far I have been unable to get a copy of Conkling's speech for they have no copies either in the N.Y. Public Library, the Columbia Law Library or the Library of the Bar Association of N.Y. City at 42 West 44 Street.

Until I get a copy of it I shall have to give the story of the San Mateo trial quoting as much of his speech as I have been able to find in various secondary works. Apparently what they have gotten from other secondary works in this connection has been sufficient to convince many of the writers on recent American history that there is not much reason to doubt Conkling's words or the effect of his oratory on the members of the Court. The N.Y. World of January 32, 1883 called his speech "an able and logical protest against the novel aggressions of 'sandhill radicalism' upon corporations and capital as embedded in the Constitution of California."

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THE SAN MATEO COUNTY CASE.

The best story of the case of San Mateo County v The Southern Pacific Railroad Company is that given by Kendrick and accordingly I reproduce here his entire account even though it is rather long, being pages 28-36 of his Introduction.

"In the case of San Mateo County v The Southern Pacific Railroad Company (116 U.S.138) the defendant maintained that the state of California in assessing the value of its property had violated that section of the Fourteenth Amendment which forbids a state to deny to any person within its jurisdiction the equal protection of the laws. The San Mateo case was argued on December 19,1882, by which date railroad companies, especially in the West, were coming to be the objects of what they considered to be invidious state legislation, and subjected to an unequal and exhorbitant rate of taxation. Under these circumstances the companies determined to appeal to the Supreme Court for protection. Collis P.Huntington, a well-known railroad magnate of the old school, was at that time president of the Southern Pacific. His principal attorney as well as personal friend was Roscoe Conkling, a recently resigned Senator from New York, who was then devoting his entire time to his legal profession. Huntington selected Conkling as his chief counsel, and upon the latter devolved the onerous task of convincing a majority of the members of the Supreme Court that the opinion of Justice Miller in the Slaughter House Cases was based upon a misconception of the intent of the framers of section 1 of the fourteenth amendment. Conkling undertook to show that the reconstruction commitee, of which he had been a member, had designed that section as much for the protection of white people as negroes against discriminating state legislation. Having accomplished this, his next purpose was to prove that though the word person was placed in juxtaposition with citizen, the two were not synonymous; that the former in this section had its ordinary juristic meaning, and hence included artificial persons (i,e, corporations) as well as natural persons. There is no doubt that Conkling's argument at this time marks the beginning of that important revolution in our law which has been briefly sketched above.

"In the earlier decisions which involved the fourteenth amendment, the Court seems to have been unusually prone to take into consideration the intention of the framers of that amendment. Since Conkling had been a member of the committee which drafted the fourteenth amendment, he may have been presumed to have been in an excellent position to interpret the intentions of himself and his colleagues. But that was not all. He occupied a still stronger position in that he was armed with the very journal of the committee and with it proceeded to show that the committee did not expect that the operation of the amendment would be confined to the protection of the freedmen. Because of the importance of Conkling's speech in the history of our jurisprudence, I will venture to give rather copious extracts from it.

" 'I come now to say that the Southern Pacific Railroad Comapny is among the "persons" protected by the fourteenth amendment--I

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" "The idea prevails-it is found in the opinion of the Court in the Slaughter-House cases; it has found broad lodgment in the public understanding; that the fourteenth amendment-nay I might say all three of the latter amendments were conceived in a single common purpose-that they came out of one and the same crucible,and were struck by the same die; that they gave expression to only one single inspiration. The impression seems to be that the fourteenth amendment especially was brought forth in the form in which it was at last ratified by the States,as one entire whole, beginning and ending as to the first section at least,with the protection to the freedmen of the South.'

"Conkling then criticized Justice Miller's opinion in the Slaughter-House cases as to the 'pervading spirit' of all the war amendments.

" 'It may shed some modifying light on this supposition,to trace the different proposals,independent of each other,originating in different minds,and at different times,not in the order in which they now stand,which finally,by what may be called the attrition of parliamentary processes in the committee and in Congress,came to be collected in one formulated proposal of amendment.

" 'These originally separate,independent propositions,came from a joint committee of the two Houses. The committee sat with closed doors. A journal of its proceddings was kept by an experienced recorder from day to day.

" 'It seems odd that such a journal has never been printed by order of the two Houses. It has never been printed,however,or publicily referred to before,I believe.

" 'Having consulted some of those whose opinions it preserves,and having the record in my possession,I venture to produce some extracts from it,ommitting names in connection with votes.

" 'From these skeleton entries-a journal is only a skeleton-your Honors will perceive that different parts of what now stands as a whole-even parts of the clauses supposed to relate exclusively or especially to freedmen and their rights-were separately and independently conceived,separately acted on,perfected,and reported, not in the order in which they are now collated,and not with a single inspiration or design. You will perceive also that before what now constitutes the first section was perfected,or even considered,the committee had reported,and lost all jurisdiction and power over,the portion of the amendment which did in truth chiefly relate to the freedment of the South. The subject of suffrage,the ballot,and representation in Congress,was disposed of before the committee reached the language on which to-day's argument proceeds.'

"Conkling then quoted at length from the journal in order to show that the civil rights section of the fourteenth amendment as originally considered in committee constituted by itself a whole,separate amendment to the Constitution. Moreover,he asked why,if the end to which the mind of the author,Bingham, was reaching out was simply to bespeak protection for the black man of the South,he should choose such general and sweeping words,

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when he could so easily and briefly have expressed exactly the idea on which his thoughts were bent. These words were taken almost bodily from the Constitution as follows:

" 'The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each state all privileges and immunities of citizens in the several states; (Art.4 Sec.2) and to all persons in the several states equal protection ~~of~~ ~~the~~ in the rights of life,liberty,and property (5th amendment).

"Conkling then continued:

" 'Now,may it please your Honors,obviously the object of the draughtsman of this last referred to amendment in making reference on the face of his resolution to article 4,section 2, and to the fifth amendment,was to remind the committee of the established meaning and universally accepted import and force of the words which there stood.

" 'At the time the fourteenth amendment was ratified,individuals and joint stock companies were appealing for congressional and administrative protection against the discriminating and invidious state and local taxes. One instance was that of an express company,whose stock was largely by citizens of the state of New York,who came with petitions and bills seeking acts of Congress to aid them in resisting what they deemed oppressive taxation in two states,and oppressive and ruinour rules of damages applied under state laws. That complaints of oppression in respect of property and other rights,made by citizens of northern states who took up residence in the South,were rife,in and out of Congress,none of us can forget; that complaints of oppression,in various forms, of white men in the South,-of "Union men",were heard on every side,I need not remind the Court.'

"Conkling,after arguing further that the fourteenth amendment was intended as much for the protection of white men as negroes against discriminating state legislation,then undertook to prove to the Court that the amendment was designed to operate upon associations of individuals (i.e.corporations) as well as upon individuals singly.

" 'The defendant here,in respect of its property is in law and in fact but the business style of individual owners united and co-operating in a common undertaking,and who,as mere method and convenience,conduct business through corporate agency. Be it a church, a hospital,a library,a hotel, a mill, a factory, a mine,or a railroad, the property and assets of a corporation belong to no one save the creditors and the shareholders.

" 'Suppose in South Caroline,a society of colored men should incorporate themselves and acquire a church or a college,and this property should,by statute be confiscated,either by discriminating taxation or otherwise,can it be supposed that the fact of their having formed a corporation,rather than a joint-stock company or a partnership,would exclude them from the protection of the fourteenth amendment? Could such a cramped construction be given to the amendment,even if the rule of its construction

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restricted its operation to only the cases known or foreseen by those who chose the language?

" 'I have put the case of colored men. Let me transpose the illustration. In several states, colored men outnumber white men. Suppose in one of these states laws should be contrived by the colored majority, or a constitution set up, under which the property of white men should be confiscated, surely the Court would not say the Constitution is dumb, but would speak, if only the parties to the record were reversed.

" 'I have sought to convince your Honors that the men who framed, the Congress which proposed, and the people who through their legislatures ratified the fourteenth amendment, must have known the meaning and force of the term "persons."-------

" 'Those who devised the fourteenth amendment wrought in grave sincerity. They may have builded better than they knew. They vitalized and energized a principle as old and as everlasting as human rights. To some of them, the sunset of life may have given a mystical lore.

" 'They builded not for a day, but for all time: not for a few, or for a race, but for man. They planted in the Constitution a monumental truth, to stand foursquare whatever wind might blow. That truth is but the golden rule, so entrenched as to curb the many who would do to the few as they would not have the few do to them.'

"Though the points argued by Conkling were not decided by the Court in the San Mateo Case, yet his speech in that case marks distinctly the point at which the Supreme Court ceased to interpret section 1 of the fourteenth amendment as having reference almost wholly to negroes, and began to regard it as having a much broader application. In order to show that Conkling's argument had a most profound effect upon the minds of the judges, the three following incidents are related.

"Justice Miller, who had delivered the opinion of the Court in the Slaughter-House Cases, was still on the bench when the San Mateo case was argued. He listened to Conkling's refutation of his own opinion, and when another of the defendant's counsel began to argue the same points which Conkling had made, Miller interrupted him and said: 'I have never heard it said in this Court or by any judge of it that these articles (i.e. the fourteenth amendment) were supposed to be limited to the negro race. The purport of the general discussion in the Slaughter-House cases on this subject was nothing more than the common declaration that when you come to construe any act of Congress, you must consider the evil which was to be remedied in order to understand fairly what the purpose of the remedial act was.' To this statement, Conkling's associate replied: 'I understand, then, that so far as your Honor is concerned, the color line has disappeared from American jurisprudence.' To this, Miller did not dissent, from which we may fairly conclude that he was ready to abandon what had been generally regarded as a very narrow interpretation of the civil rights clause of the fourteenth amendment.

"In the spring of 1883, Justice Field was sitting in the circuit court in California, when he was called upon to decide the

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Santa Clara case,which involved the same general principles as the San Mateo case. His de ision is remarkable in that he adopted the same attitude toward the purport of the civil rights section of the fourteenth amendment which Conkling had enunciated in his San Mateo speech. In fact, the justice quoted several passages from that speech,a notable one being the concluding paragraph of it in which Conkling laid down what he considered the true method of interpretation.

"But an appeal from Justice Field's decision of the Santa Clara case in the California circuit,was taken to the Supreme Court. As has been seen,the case was argued before that tribunal in 1886. Again the Court refused to decide the question raised under the fourteentha amendment,but in his dictum---the Chief Justice committed himself and the Court to the doctrine that the 'equal protection of the laws' clause should be interpreted as extending to persons other than members of the colored race,and that 'persons' in this sense included corporations. The dictum as to both these matters followed Conkling's view,and the door was opened for organized capital to contest,oftentimes successfully, before the highest court in the land,whatever laws of the state it considered disadvantageous to its own interests. And what gave greatest force to Conkling's argument was his ingenious use of the journal of the joint committee on reconstruction."

Justice Miller's words in the Slaughter-House cases (16 Wallace 36) were as follows: "We doubt very much whether any action of a state not directed by way of discrimination against the negroes as a class,or on account of their race,will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency,that a strong case would be necessary for its application to any other."

In the Railroad Tax Cases in September 1883 (Santa Clara County v Southern Pacific Railway Co.) tried before Justice Field in the California Circuit Court (18 Federal Reporter 385) the Justice declared: "All history shows that a particular grievance suffered by an individual or a class,from a defective or oppressive law,or the absence of any law,touching the matter,is often the occasion and cause for enactments,constitutional or legislative, general in their character,designed to cover cases not merely of the same,but all cases of a similar,nature. The wrongs which were supposed to be inflicted upon or threatened to citizens of the enfranchized race,by special legislation directed against them, moved the framers of the amendment to place in the fundamental law of the nation provisions not merely for the security of those citizens,but to insure to all men,at all times,and at all places, due process of law,and the equal protection of the laws. Oppression of the person and spoliation of property by any State were thus forbidden,and equality before the law was secured to all----. With the adoption of the amendment the power of the States to oppress any one under any pretense or in any form whatever was ended; and henceforth all persons within their jurisdiction could claim equal protection under the laws. And by equal protection is meant equal security to everyone in his private rights-in his rights to life,

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to liberty,to property,and to the pursuit of happiness. It implies not only that the means which the laws afford for such security shall be equally accessible, but that no one shall be subject to any greater burdens or charges than such as are imposed upon all others under like circumstances. This protection attends everyone everywhere,whatever be his position in society or his association with others,either for profit,improvement,or pleasure. It does not leave him because of any social or official position which he may hold,nor because he may belong to a political body,or to a religious society,or be a member of a commercial,manufacturing or transportation company. It is the shield which the arm of our blessed government holds at all times over every man,woman,and child,in all its broad domain,wherever they nay go,and in whatever relations they may be placed. "No state"-such is the sovereign command of the whole people of the United States-"no State shall touch the life,liberty,or the property of any person,however humble his lot or exalted his station,without due process of law; and no state, even within due process of law,shall deny to anyone within its jurisdiction the equal protection of the laws."

And when the County carried the case to the Supreme Court on appeal in 1886,when the Court was ready to receive the arguments,Chief JusticeWaite said: "The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution,which forbids a State to deny to any person within its jurisdiction the equal protection of the laws,applies to these corporations. We are all of the opinion that it does." (118 U.S.394) (The Justice spoke of "these" corporations because several similar cases were tried at the same time as the Santa Clara Case and one decision settled all of them.) This is the first definite statement on thepart of the Supreme Court that a corporation is a "person" within the meaning of the civil rights act of the fourteenth amendment. It was hoped that in this case the Supreme Court would definitely state whether or not a State might tax a corporation under a different system from that imposed upon individuals,but again the case was disposed of ~~under~~ on another point. Justice Field in a concurring opinion regretted the fact that the Court had not passed on this point, that is whether "an unjust discrimination had been made between the corporation's property and the property of individuals,to its disadvantage,thus subjecting it to an unequal share of the public burden,and to that extent depriving it of the equal protection of the laws." (Quoted in Warren,III:318-319) ~~Eventually this point was decided against the corporations~~.

In 1888,in the case of the Pembina Mining Company v Pennsylvania,the court in its decision held that "The inhibition of the fourteenth amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. Under the designation of 'person' there is no doubt that a private corporation is included. Such corporations are merely associations of individuals united for a special purpose,and permitted to do business under a particular name,and have a succession of members without dissolution." (125 U.S.181)

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Minnesota Rate Case or the Chicago,
Milwaukee, and St.Paul Railway Company v Minnesota
(134 U.S. 418)

"This case involved the validity of a Minnesota law which conferred upon a state railway commission the power to fix 'reasonable' rates. The commission, acting under this authority, had fixed a rate on the transportation of milk between two points.

"The railroad having refused to put this rate into effect, the commission applied to the supreme court of the state for a writ of mandamus. In its answer the railroad claimed, among other contentions, that the rate was unreasonably low. The supreme court of the state refused to listen to this contention, saying that the statute by its terms made the order of the commission conclusively reasonable; accordingly it issued the mandamus. By writ of error, the case was brought to the Supreme Court of the United States, which, by a vote of six to three, ordered the decree of the state court vacated, on the ground that the statute as construed by the supreme court of the state was unconstitutional, as a deprivation of property without due process of law." (Beard, 74)

This time the opinion of the Supreme Court was written by Justice Blatchford who said: "The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public is eminently a question for judicial investigation requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such depreivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus in substance and effect, of the property itself without due process of law and in violation of the Constitution of the United States."

Thus, by the changed interpretation of the Fourteenth Amendment after the San Mateo Case argued in 1882, capital, organized capital received further protection and encouragement. In the words of Collins, the Fourteenth Amendment "although it was a humanitarian measure in origin and purpose, and was designed as a charter of liberty for human rights, it has become the Magna Charta of accumulated wealth and organized capital." (Collins, 138)

Regardless of what purpose the framers and ratifiers of the amendment had in mind in the sixties, there is no denying that the later interpretation of it fitted in admirably with the laissez-faire theory of the American business men and capitalists, the "benevolent bourgeoisie" of the eighties and nineties.

(It is interesting, and perhaps significant, to note that the 700-page biography of Conkling, by A.R.Conkling disposes of his part in the San Mateo case as follows: "This case, the county of San Mateo v THE Southern Pacific Railway Company, argued December 19, 1882, was probably the most important case he ever argued in the U.S.Supreme Court. It involved grave constitutional questions." P.680. And that is all it says.