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“How The 14th Amendment Was Hijacked In Favor Of Corporate America ”

By: David Balovich

Have you ever been asked the question “Why are corporations treated as persons with the same rights as individuals”?

American corporations enjoy many of the same rights as American citizens. Both, for instance, are entitled to the freedoms of speech, due process of law, and equal protection under the laws of the jurisdiction where they reside.

How exactly did corporations come to be understood as “people” bestowed with the most fundamental constitutional rights? The answer can be found in a bizarre lawsuit brought before the Supreme Court over 130 years ago involving a respected lawyer who lied before the Supreme Court, an ethically challenged Supreme Court Justice, a questionable action on behalf of the Supreme Court Recorder, and one of the most powerful corporations of the day.

The corporation was the Southern Pacific Railroad Company, owned by one of the four infamous “robber barons”, Leland Stanford. In 1881, after California lawmakers imposed a special tax on railroad property, the Southern Pacific Railroad fought back, making the bold argument that the law was an act of unconstitutional discrimination under the Fourteenth Amendment. As many of you know from your American history classes, the Fourteenth Amendment was adopted after the Civil War to protect the rights of freed slaves. Among other things the Amendment guarantees to every person the “equal protection of the laws.”

The Southern Pacific Railroad argued that it was included under the 14th Amendment” too, reasoning that just as the Constitution prohibited discrimination on the basis of racial identity, it also barred discrimination against Southern Pacific Railroad on the basis of its corporate identity.

The lead lawyer representing Southern Pacific was a politician from New York named Roscoe Conkling. A former Congressman, Senator, and leader of the Republican Party for more than a decade, Conkling had also been nominated to the Supreme Court twice and declined both times, the second time after the Senate had already confirmed him.

As he spoke before the Court on Southern Pacific’s behalf, Conkling informed the Court that he had been a member of the drafting committees that was responsible for writing the Fourteenth and Fifteenth Amendments, two of the three “Reconstruction Amendments” dealing with citizen’s rights under our Constitution.

As the last living member of the committee, Conkling told the justices that the drafters had changed the wording in the Fourteenth Amendment, replacing “citizens” with “persons” so the Amendment would also include corporations.

He went on to say that laws referring to “persons,” have “by long and constant acceptance ... been held to embrace artificial persons as well as natural persons.” Conkling supported his account with a personal journal he produced that he claimed to be a previously unpublished record of the deliberations of the drafting committee.

Historians would later determine that although Conkling’s journal was real, his statement to the Court was a lie. The journal was a record of the congressional committee’s deliberations but, upon close examination, it offered no evidence that the drafters ever intended to protect corporations. It showed, in fact, that the language in the equal-protection section of the Amendment was never changed from “citizen” to “person.” So far as anyone can tell, the rights of corporations were never discussed during the public debates over the ratification of the Fourteenth Amendment or during any of the ratifying conventions by the individual states. It became apparent that prior to Conkling’s appearance on behalf of Southern Pacific, no member of the drafting committee had ever suggested that corporations were to be included in the Fourteenth Amendment.

There’s reason to believe that Conkling’s deception before the Supreme Court was known to others on his legal team. The justices held onto the case for over three years without ever issuing a decision and then Southern Pacific unexpectedly settled the case with the State of California. Shortly thereafter, another case, *Santa Clara County v. Southern Pacific Railroad Company* was heard before the Supreme Court, raising the exact same legal question as in the first case. Southern Pacific still had the same team of lawyers, with the exception of Conkling. Surprisingly, Southern Pacific’s lawyers omitted any mention of Conkling’s previous statements about the committee drafting history or his journal. Historians and legal experts believe the Southern Pacific lawyers were suspicious of Conkling’s previous claims and chose not to include his story or journal in the second case.

When the Court issued its decision on the second case, the justices expressly declined to decide if corporations were “persons” or not. The dispute they concurred could be, and it was, resolved on other grounds, prompting one justice, Stephen J. Field, to chastise his colleagues for failing to address “the important constitutional questions involved.” “At the present day”, he wrote, “nearly all great enterprises are conducted by corporations, and they deserved to know if they had equal rights too”.

Stephen Field was an Associate Justice of the Supreme Court for 34 years, the second longest tenure of any Supreme Court Justice. Prior to that he was the fifth Chief Justice of California, a good friend and confidant of Leland Stanford, and one of the original trustees of Leland Stanford Junior University. He is considered to be guilty of serious ethical violations in the Southern Pacific cases, at least by today’s standards. As a confidant of Leland Stanford, Field had advised Southern Pacific on which lawyers to hire for the two cases and by so doing should have recused himself from hearing them. He refused to—and while the first case was pending, he shared internal memos between the Justices concerning the case with Southern Pacific’s legal team.

So, Field is on the Court and another bizarre event occurs in the Southern Pacific case. Supreme Court’s opinions are officially published in volumes and edited by an administrator called the Reporter of Decisions. By tradition, the reporter writes up a summary of the Court’s opinion and it is the first page at the beginning of each opinion.

The reporter during this time was J.C. Bancroft Davis. Bancroft Davis, had been a judge, Assistant Secretary of State, the Ambassador to Germany, and president of a railroad before becoming the Reporter of Decisions for the Supreme Court. His inaccurate summary of the *Santa Clara County v Southern Pacific Railroad* Judges opinion stated that the Court had held that “corporations are persons within ... the Fourteenth Amendment.” Whether his summary was an honest error or something more egregious—Davis had once been the President of the Newburgh and New York Railway Company—will likely never be known.

Stephen Field nonetheless saw Davis’s erroneous summary as an opportunity. A few years later, in an opinion in an unrelated case, Field wrote that “corporations are persons within the meaning of the Fourteenth Amendment”. And he cited *Santa Clara County v. Southern Pacific Railroad Company* even though Field knew, as one of the judges, the Court had never expressed such an opinion.

Fields’ maneuver worked. In the following years, *Santa Clara County v Southern Pacific Railroad Company* would be cited over and over in courts across the nation, including the Supreme Court, in decisions deciding that corporations had rights under the Fourteenth Amendment.

The false precedent from the Southern Pacific case would go on to be used by a Supreme Court in the early 20th century that became famous for striking down numerous economic regulations, including federal child-labor laws; zoning laws; and wage-and-hour laws.

Meanwhile, in cases like the infamous *Plessy v. Ferguson* (1896), a landmark case where the Supreme Court upheld the constitutionality of segregation laws for public facilities, refusing to read the Constitution as protecting the rights of African Americans, the real intended beneficiaries of the Fourteenth Amendment.

Between 1868, when the Fourteenth Amendment was ratified, and 1912, the Supreme Court would only accept and hear 28 cases involving the rights of African Americans but they would accept and hear over 366 cases involving the rights of corporations.

That day back in 1882 when the Supreme Court first heard Roscoe Conkling’s argument in *State of California v Southern Pacific Railroad Company*, the *New-York Daily Tribune* featured a story on the case with a headline that would turn out to be prophetic: It read “Civil Rights of Corporations.”

Indeed, in a feat of deceitful legal experimentation, the shrewd legal team of the Southern Pacific Railroad Company had with the imagination and false statements of its lead counsel, along with an unethical Supreme Court justice, and the questionable actions of the Supreme Courts Recorder of Decisions misrepresented the Fourteenth Amendment to be more of a defense for the rights of American corporations than the rights of its’ minorities for which the Amendment was truly intended.

And that is how American corporations became “persons” and attained the same rights of individuals.

I wish you well.

***** **APRIL 2018** *****

Day	Date	Group	Location	Time
Tues	3	Austin Construction	Tres Amigos, 7535 East Hwy 290, Austin, TX	11:30
Tues	10	Corpus/Victoria/Laredo	Holt Cat, Corpus Christi TX/Teleconference Call	11:30
Tues	10	Rio Grande Valley	Teleconference Call	11:30
Thurs	12	SW Food Credit Group	Will not have a meeting this month. Next meeting May 10th	11:00
Tues	17	Austin Construction	Tres Amigos, 7535 East Hwy 290, Austin TX	11:30
Thurs	19	HVAC Credit Group	Texas Air Products, San Antonio TX	11:30
Thurs	19	Austin Ad Media	Phone Conference Meeting 1-800-791-2345	2:00
Thurs	19	Fuel & Lube/Heavy Eq.	Phone Conference Meeting 1-800-791-2345	2:30
Fri	20	SW Electrical Group	The Onion Creek Country Club, Austin TX	11:30
Tues	24	SA Construction	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:30

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