CHAPTER IX

THE CORPORATIONS AND THE TWILIGHT ZONE

The great problems facing the nation when the Fourteenth Amendment was being adopted were social and political rather than economic in the narrower sense of the word. The debates in Congress, the discussions in the various State legislatures, and the political campaigns before the people in 1866 and 1868 clearly reveal the motives underlying the making of that provision. It was a part of the great problem of reconstruction and had for its immediate purpose social and political readjustment in the South according to the theories of the party in power. It was a war amendment in that it attempted to conserve the results of the victory.

In so far as the strictly economic element was present, it was a matter of individual property rights—the protection of the weak and the oppressed. The object of protection was primarily the negro race. It was also intended to give protection to such of those from the North who had moved into the South immediately after the War. There was never any fear in the minds of the people of the North that their own States could not or would not protect their citizens in the common

C. W. Collins, The Fourteenth Amendment and the States
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enjoyment of those rights and privileges which were the sacred heritages of all people of English stock. It never entered the public discussion, for instance, that the State of Massachusetts, or that the State of New York, would deprive persons within their bounds of life, liberty, or property without due process of law, or deny to them the equal protection of the laws.

There were no great corporation problems before the nation forty-five years ago. There were, of course, corporations and great activity in railroad building, but these economic movements were then in their infancy as compared with their modern status. The motive of the people for adopting the Fourteenth Amendment as a part of the Constitution of the United States was unrelated to the corporations.¹

The actual operation of the Amendment reveals many interesting and some startling facts. The accompanying chart shows the distribution of litigation under the Amendment since its adoption to the beginning of the October Term, 1911.² In 1886 the Supreme Court declared a corporation to be a person within the meaning of the equal protection clause of the Amendment. This was in the case of

¹ "The Fourteenth Amendment was framed to protect the negroes from oppression by the whites, not to protect corporations from oppression by the legislature. It is doubtful whether a single one of the members of Congress who voted for it had any conception that it would touch the question of corporate regulation at all." — Arthur T. Hadley in the Independent, Vol. LXIV, pp. 836–837.