

Title	The Fourteenth Amendment and the Interstate Commerce Clause. a study of their operations, the intergovernmental relationship, and the Nation-Business problem
Sub Title	
Author	山口, 房司(Yamaguchi, Fusashi)
Publisher	三田史学会
Publication year	1988
Jtitle	史学 (The historical science). Vol.58, No.1 (1988. 9) ,p.1(136)- 2(135)
JaLC DOI	
Abstract	
Notes	Abstarct
Genre	
URL	<a href="https://koara.lib.keio.ac.jp/xoonips/modules/xoonips/detail.php?koara_id=AN00100104-19880900-0135">https://koara.lib.keio.ac.jp/xoonips/modules/xoonips/detail.php?koara_id=AN00100104-19880900-0135</a>

慶應義塾大学学術情報リポジトリ(KOARA)に掲載されているコンテンツの著作権は、それぞれの著作者、学会または出版社/発行者に帰属し、その権利は著作権法によって保護されています。引用にあたっては、著作権法を遵守してご利用ください。

The copyrights of content available on the KeiO Associated Repository of Academic resources (KOARA) belong to the respective authors, academic societies, or publishers/issuers, and these rights are protected by the Japanese Copyright Act. When quoting the content, please follow the Japanese copyright act.

# The Fourteenth Amendment and the Interstate Commerce Clause. A Study of their Operations, the Intergovernmental Relationship, and the Nation-Business Problem

Fusashi YAMAGUCHI

Civil War marked the close of one great epoch in the U. S. history, and the beginning of another. In the prewar years, chiefly concerning the slavery issue, the nation-state problem was completely dominant for fear that centrifugal forces would tear the nation apart. In the postwar years, capitalism took the leading part. Capitalism, developing at a rapid but relatively moderate tempo in the prewar years, had been given an enormous accelerating thrust by the war, was now proceeding at a pace that was unexampled in the American history. So the nation-state problem of the ante-bellum period was substituted for the new nation-business issue in the post-bellum days.

The primary purpose of the adoption of the War Amendments, especially the Fourteenth Amendment, was undoubtedly to protect and elevate the rights of newly freed negroes to a plane of equality with the white people. But the Amendments in their practical operations, giving no power to both Federal and States governments, were carried not to achieve the said purpose, but to guard the interests of corporations such as railroads, "the first big business."

The application of the Fourteenth Amendment marked the practical overthrow of the Congressional ideal within seven years after its adoption. The Supreme Court of the U. S., by annulling the original purpose of the section one of that article in the two famous cases, reduced the bill of rights to distant potentialities. Such being the operation of the Amendment, the so called "Conspiracy Theory" could be nourished among students of the late nineteenth and early twentieth centuries.

The corporations and trusts now used this newly adopted Amendment, with frequently accompanied by the interstate commerce clause, Art I, Sec. 8, c. 3 of the U. S. Constitution, as powerful weapons to promote their interests. When the litigations came to the Supreme Court, almost always it helped the corpora-

tions expand. This trend continued to the Court or the Constitutional Revolution of 1937.

Men said that the power of governments, both Federal and States, should be used to control this giant, to mitigate the harm to individual and collective welfare that it might do if left unchecked. Conversely, others could say that the giant would serve the community best if it were allowed to go its own way, that the *laissez faire* should be watchwords of the day. Thus the question of whether governments should control capitalism, and how much they should control it, moved to the center of the American political arena, i. e. the nation-business problem came to the fore.

The chief interest of the present writer is to show that how these problems——intergovernmental relationship and the nation-business problem——would properly be understood in terms of the constitutional history (mainly through the Highest Bench's judicial reviews), dealing with the Fourteenth Amendment, the interstate commerce clause, and their step-child, the "Twilight Zone."