1868

July 21: The readmission of the Southern states to the federal Union had been delayed due to the fact that, with black citizens now being counted as whole persons rather than being counted, as they had before the civil war, as three-fifths of a person (by the infamous original Constitutional compromise), the Southern states would of necessity come to have a larger number of Representatives in the US House of Representatives than they had had before the civil war. The impact of this, if the Southern states succeeded in denying the voting franchise to newly freed black citizens on the basis of being black or on the basis of not being property owners, would be to reward them for seceding by granting to their propertied white men **an even more disproportionate political influence than they had before they had seceded**. Also, the XIVth Amendment to the federal Constitution had been considerably delayed due to a conflict over the probably behavior of the Southern states. Its Section 2 was therefore negotiated to provide that if any state were to restrict the voting franchise (as it was anticipated that these Southern states were likely to attempt to do), its representation in the US Congress would punitively be slashed. The effect of this provision would be twofold: 1st, it would effectively prevent the congressmen representing the coalition of Southern states from again dominating the Congress, and 2d, it would effectively encourage the enfranchisement of the black freedmen. Finally on this day the Amendment was ratified granting citizenship to any person born or naturalized in the United States and granting an enumerated and restricted set of civil rights to such citizens. This amendment would travel informally under the name "the civil rights amendment."

It is commonly said that this XIVth Amendment of the Reconstruction Era *in re* the "civil rights" of US citizens is what has implemented the prohibition of enslavement found in the XIIIth Amendment of 1865. By this view we would have a constitutional right not to be "enslaved" — whatever it is we decide that being enslaved amounts to. That attitude is of course absurd on its face, for a nation does not implement one constitutional amendment by enacting yet another constitutional amendment. (In the same line, would we implement a law against, say, prostitution, by enacting a 2d law that declared once again that prostitution was illegal? –No, we would not, for our legal system does not operate by the Red Queen's dictum "What I tell you twice is true."

We tell people once and then, if they ignored us, we put them in prison to allow their organ of hearing to

gradually become more sensitive against a background of silence.) In fact **there is no civil right not to be enslaved**, as such a civil right is not on enumerated list and as it is a principle in law that an enumerated list is an exhaustive one. Had the XIVth amendment used the legally coded word "includes," of course, the matter would be entirely different, because if the amendment had allowed that we had civil rights, and that among them were the following, *x*, *y*, and *z*, then it would have allowed that there might well be some civil right *a*, which we had, which was in supplement to the declared *x*, *y*, and *z*. By default, however, since the amendment does not employ the legally coded word "includes," the legally coded word "exclude" applies. Nothing not on this short, declarative list can be added to it for anything and everything else is excluded by it. Subsequently to having fought and died in a Civil War that was said to have been about ending slavery, stuff like that, we have been forbidden any civil right not listed, such as, say, a civil right not to be enslaved.

But you're such a fool that you didn't even know about this, right? Pulled the wool right over your eyes, didn't they? –Yeah go right ahead and get enraged at the messenger.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one

years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

SLAVERY

It had been in civil war times that the fatal steps had begun to be taken, that for the first time constructively accorded to soulless corporations all the constitutional rights that previously had been reserved to the individual citizen human being, such as freedom of speech and of the press, freedom of religion, freedom from self-incrimination, whatever. It was, therefore, due to our preoccupation with civil war, that we must now all dance with elephants as we do — and be very very careful where we place our feet. The simple lesson to be drawn is that our civil war was the first occurrence of what is now an unavoidable rule of war: through war corporations can make themselves rich and powerful. This is true not only because of war profiteering but also because of huge orders for the production of capital goods (ships, locomotives, cannons) rather than of consumer goods. Since civil war times the elephants of commerce and the ants of commerce (us individual human beings) have acquired "equal rights," to tread upon one another's toes.

What happened was that during civil war times, in the background, while everyone was preoccupied with fighting and nobody was paying much attention to business, there had been truly immense land grants to railroads. Mostly, these grants had resulted from the Transcontinental Railroad Act of 1862 and from an even more lucrative Act of 1864 — both of which President Lincoln had signed without a whole lot of fanfare. Private railroad corporations had been unwilling to build a transcontinental railroad unless they owned the rights-of-ways their tracks would cross. And during the war and Reconstruction, the federal government had not been in any position to span the continent with a government owned and built railroad. Consequently, the federal government had given away 128,000,000 acres of land, to the railroad megacorporations, between 1862 and 1871. To give you an idea of how much the railroads came away with, for much of the century after 1862 the Central Pacific Railroad Company was the largest private landowner in the State of California. The

Central Pacific Railroad owned 11,600,000 acres, more than 10 percent of the total area of the state. Today, California's largest private landowner (the 2d largest private landowner in the USA) is Sierra Pacific Industries, a timber corporation. Sierra Pacific Industries owns 1,500,000 acres, or about 1 percent of California. Imagine: a single railroad once owned ten times that much! We might smell conspiracy and/or corruption here, in that before his presidency, Lincoln had been a very successful corporate lawyer whose major clients had included the Illinois Central Railroad (and its Vice President had been George B. McClellan, soon to become Lincoln's troublesome general). Fishier still, Lincoln also had signed the National Banking Act of 1863, which had created the first coherent, national monetary system, something Lincoln had deemed necessary to the war effort. But basically, the most one could charge Lincoln with in these matters was benign neglect and/or tunnel vision. Lincoln had been preoccupied with winning a war and had simply never gotten around to formulating a set of economic policies.

This sets us up for what is going to happen next, in Santa Clara County v. Southern Pacific Railroad in 1888 — the US Supreme Court is going to award corporate "personhood" to such invented mega-entities. This coming case was going to construe or misconstrue the "equal protection" clause of the new 14th Amendment that had been enacted in June 1866 and ratified by the states in July 1868 by turning it in the direction of fake individuals and thus turing it away from real individuals.

We can't blame the whole thing on President Lincoln. He would have lots of help. Only two of Lincoln's high court appointees (Samuel F. Miller and Stephen J. Field) would still be serving in 1886. The 1886 "Santa Clara" opinion's author would be Associate Justice John Marshall Harlan (not to be confused with his grandson of the same name, who would serve on the Earl Warren court from the mid-1950s to 1971). Lincoln's appointee for Chief Justice, Salmon P. Chase, would die in 1873 and Justice Harlan would get appointed in 1877 by President Rutherford B. Hayes. Food for thought, however, is that we are still coping with the results of the railroads' land-grab that began with the help of President Lincoln. Today's controversies between environmentalists and ranchers over "grazing rights," for instance, are centered on precisely this same land: millions of acres owned by railroad companies that still exist on paper, but have not operated trains for decades. Because the old track rights of way are now unneeded, the railroads have been leasing grazing rights to private ranchers. In this way, federal giveaways to wealthy individuals and corporations continue unabated.