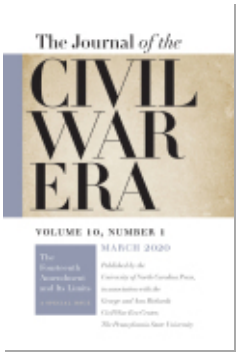
Slaves, Coolies, and Shareholders: Corporations Claim the Fourteenth Amendment



Evelyn Atkinson

The Journal of the Civil War Era, Volume 10, Number 1, March 2020, pp. 54-80 (Article)

Published by The University of North Carolina Press

Slaves, Coolies, and Shareholders

Corporations Claim the Fourteenth Amendment

This article examines the little-known case In re Tiburcio Parrott *(1880), in which the federal court extended Fourteenth Amendment rights to corporations for the first time. It reveals that an analogy between Chinese immigrants and corporate shareholders was the basis for the court's reasoning. This article explores the social and political context of the movements for Chinese exclusion and corporate regulation in 1870s California to explain this analogy, revealing that Chinese immigrants and corporations were seen as intertwined threats that challenged free white labor and threatened popular democracy. The article focuses on the dueling interpretations of "equal treatment" and "free labor" at play in this conflict. It shows how arguments by corporate lawyers, who represented both corporate clients and Chinese immigrants, and the support of sympathetic judges, lay the foundation for an expansive interpretation of the Fourteenth Amendment that eventually was endorsed by the US Supreme Court.*

On a drizzly day in February 1880, in an empty sandlot next to San Francisco's city hall, Denis Kearney called for the erection of a gallows.[1] An Irish immigrant who helped found the Workingmen's Party of California, Kearney declared that "incorporated men" who "refused to discharge their Chinese help" should be "hung 'higher than a kite.'"[2] These "thieves" needed to comply with the provision of the newly enacted California constitution that prohibited any corporation from employing Chinese labor. Kearney specifically targeted Tiburcio Parrott, the wealthy president of a mining company, who had recently allowed himself to be arrested to test the constitutionality of the provision.[3] He advised Parrott to "take warning" from the fate of a group of "Chinamen" who had tried to contest an anti-Chinese law and were "found hanging to the trees the next morning." Amid the crowd's cheers, Kearney warned, "If Parrott should happen to be found to-morrow morning hanged on a lamppost, it might save the city from a bloody revolution."[4]

As Kearney's invective reveals, corporations and Chinese immigrants were inextricably linked in the rhetoric of anti-Chinese politics of California in the late nineteenth century. By employing large numbers of Chinese laborers, proponents of Chinese exclusion argued, corporations undercut the wages of white workers and forced them into a condition of poverty and dependence akin to slavery. According to this argument, in undermining free white labor, the basis for an independent citizenry, corporations and Chinese workers endangered popular sovereignty itself. In 1879, Californians adopted a new constitution that addressed this intertwined threat by prohibiting corporations from employing Chinese laborers. The mining magnate Tiburcio Parrott challenged this prohibition under the Fourteenth Amendment's due process and equal protection clauses. In the landmark legal case *In re Tiburcio Parrott* (1880), the Ninth Circuit held the prohibition unconstitutional; the basis of its reasoning was an analogy the court drew between Chinese laborers and corporate shareholders, a paring that reiterated popular perception of corporations and Chinese immigrants as deeply interconnected.[5]

In re Tiburcio Parrott set new precedent in interpreting the Fourteenth Amendment rights of both Chinese laborers and of corporations. The case is important for two reasons. First, it highlights the linkage of cases involving corporations' claims for Fourteenth Amendment rights and the claims of Chinese immigrants. Second, it reveals the centrality of corporations to the development of the federal courts' interpretation of the Fourteenth Amendment in the Reconstruction era. That doctrine had significant implications for the future constitutional claims of minority groups.

Despite the decision's significance, historians have not scrutinized *Parrott* in depth or examined its place in the social and political history of the post–Civil War United States. While Charles McClain Jr. has described the case in his history of Chinese equal protection litigation, he does not analyze its implications for the doctrinal importance of free labor or discuss the important comparison between Chinese laborers and shareholders.[6] Legal scholars have recognized the importance of Fourteenth Amendment cases involving Chinese immigrants in laying the groundwork for corporations' constitutional claims, and some have mentioned *Parrott* in passing.[7] However, scholars have not delved into the social and political context that made the comparison between Chinese coolies and shareholders in *Parrott* possible, nor have they the examined how the framing of the corporations' claims in *Parrott* influenced the federal courts' interpretation of the Fourteenth Amendment more broadly.

Corporations have largely fallen outside accounts of the political and legal history of the "Greater Reconstruction."[8] Recent scholarship has

contended that studies of Reconstruction-era history must incorporate the West, to illuminate the multiplicity of regional debates over the meaning of freedom and equality after emancipation and the influence of complex racial ideologies on those concepts.[9] Scholars have also argued for expanding the periodization of Reconstruction studies to stretch from the postbellum era through the Gilded Age.[10] This article argues that studies of the Greater Reconstruction must include corporations as well. Corporations were central players in Reconstruction-era arguments about free labor and equal treatment, and corporate litigation played a vital role in shaping the courts' early interpretation of the Fourteenth Amendment, as a longer chronological view makes clear.[11] While arguments about the rights of racial minorities took varying complicated turns, corporations throughout the period successfully claimed the Fourteenth Amendment as a shield against state regulation.

Corporations' early Fourteenth Amendment claims were thoroughly entangled with race. Historians have recognized the importance of cases brought by Chinese immigrants to the development of Fourteenth Amendment doctrine.[12] What few scholars have examined is the intimate connection between Chinese immigrants and corporations in these cases. *In re Parrott* brings this connection to light. This article reveals that early Fourteenth Amendment cases were brought simultaneously by Chinese immigrants and corporations, and some, like *Parrott*, expressly combined the claims of both. Furthermore, the same coterie of corporate lawyers represented both Chinese and corporate litigants, recycling and expanding on the same arguments for both clients. The same federal judges also heard both sets of cases. Examining how the constitutional rights of Chinese immigrants evolved in tandem with those of corporations reveals the striking power of corporations in shaping the federal courts' interpretation of the Fourteenth Amendment.

This inquiry builds on current scholarship on the Greater Reconstruction era to reveal the development of ideas about equal protection and free labor as they applied to a new set of "persons," corporations. As politicians and citizens rebuilt the postwar legal order, they debated what it meant to be a free, rights-bearing legal person.[13] It is well established that in the aftermath of slavery the ideology of free labor was central to this new understanding of personhood; the right to freely labor was seen as the fulcrum of freedom for those formerly enslaved.[14] Additionally, although the Fourteenth Amendment promised "equal protection under law" to all "persons," what constituted "equal" and who could claim status as a "person" was debated. The West, particularly California, was a crucial site where questions of the meaning of free labor and equal treatment played out.[15]

This article reveals that the principles of free labor and equal protection were central not only to Chinese immigrants' claims but to claims of corporations' constitutional rights as well. Both opponents and proponents of Chinese immigration drew on concepts of equal treatment and free labor, but they defined these terms in contrasting ways. For advocates of the white working class like Kearney's Workingmen's Party, "equal treatment" meant equal opportunity and prohibiting special privileges for certain groups, such as corporations, while "free labor" meant the right of white men to earn enough to support their families and participate in the polity. In contrast, corporate lawyers contended that equal treatment was a principle embodied in the Fourteenth Amendment's equal protection clause, which applied to all "persons." Corporations had long been considered persons in some areas of law, such as contract and property ownership, but courts had significantly restricted their ability to claim constitutional rights.[16] While proponents of immigration restrictions emphasized the threat to free white labor that Chinese workers allegedly posed, corporate lawyers argued that Chinese immigrants themselves possessed the right of free labor and, by extension, that corporations possessed the right to freely contract for labor. The federal Ninth Circuit court endorsed this interpretation. Notably, the crux of the court's reasoning that corporations were persons under the Fourteenth Amendment was the comparison it drew between corporate shareholders and Chinese immigrants.

In examining the relationship between Chinese immigrants and corporations, this article is informed by scholarship showing the essential contribution of Chinese labor to entrenching capitalist labor relations in the United States.[17] It takes this insight one step farther to argue that lawsuits by Chinese laborers were essential to establishing *corporate* capitalism—a system of market relations in which industries were controlled by corporations employing masses of wage laborers and exercising significant economic power.[18] The link between Chinese immigrants and the flourishing of corporate capitalism in the postbellum era is the doctrine that emerged from intertwined cases brought by Chinese litigants and corporations.

■ In 1878, delegates from across California met to draft a new state constitution. The convention was the product of an alliance between the Workingmen's Party, formed in 1877, and the California Farmer's Alliance. Convention delegates were a motley assortment of Workingmen, Grangers, alleged nonpartisans, and lawyers.[19] The goal of the convention was twofold: to curb the threat of Chinese labor by securing jobs for white men and to limit the power of large corporations.[20]

The Workingmen's Party and its allies saw Chinese immigrants and corporations as conjoined evils. The dichotomy between free and slave labor was central to this view. As scholars of the Reconstruction Era have shown, the meaning of "free labor" depended on its contrast with "slave labor."[21] Yet determining when labor was free rather than coerced proved an ongoing battle, which was exacerbated by the rise of wage labor.[22] It was particularly difficult to distinguish the two in the West, where various forms of unfree labor—including the Mexican-inherited padrone system, American Indian domestic servitude, prostitution, and Chinese contract labor—abounded.[23]

Opponents of Chinese immigration pointed to Chinese "cooliesm" to show that Chinese labor was unfree and thus should be excluded.[24] They argued that this system, in which Chinese laborers contracted to pay off their passage to the United States over a period of time by deducting a set amount from their wages, was "a system of peonage" that kept them perpetually bound to their employers.[25] Chinese laborers also lived like slaves, opponents claimed, eating meager meals and sleeping in squalid shanties, and were inherently servile. Since Chinese coolies were essentially slaves, they reasoned, the corporations that employed them were slave masters.[26] The *San Francisco Chronicle* accused the "great corporations" of building up "another form of slavery in the disguise of coolieism," controlled by "another aristocracy more powerful, more selfish, more brutalizing than that which cost the nation a million lives and four billions of money to destroy."[27] One amendment offered at the convention, to prohibit "Asiatic coolieism, a form of human slavery," sought to hold "all companies or corporations" that imported such labor "subject to the penalties and punishments provided in the law of Congress against the importers of African slaves." Explained one delegate, "Slavery in the South was broken up by law, but in this State to-day it is upheld by a power above the law, by the power of the Central Pacific Railroad Company."[28]

Corporate-backed Chinese coolieism, Workingmen and their allies argued, threatened to reduce white men to slavelike status as well.[29] Corporations encouraged Chinese immigration to create a supply of cheap labor, they claimed, which would intentionally undercut the wages of white laborers, reducing them to poverty and dependency.[30] Invoking the infamous line from *Dred Scott v. Sanford* (1857), that "the class of persons who had been imported as slaves" and their descendants "had no rights which the white man was bound to respect," supporters of the new constitution accused corporations of believing that "WORKINGMEN HAVE NO RIGHTS Which they are bound to respect."[31] Delegate C. R. Kleine, a Prussian immigrant shoemaker, asserted, "We have a class of capitalists

that want cheap labor. . . . They want to bring us down to the level of the coolie himself; to a level with slave labor."[32] The *Chronicle* explained that the attempt of "the railway corporation" to convince workingmen to vote against the new Constitution was "a repetition of the practice of the Southern planters" to coerce "poor whites . . . to bolster up an institution . . . which was inevitably reducing them to a social condition on a dead level with that of the negro slaves."[33] San Francisco mayor Isaac S. Kalloch made this point succinctly: "California is a slave State, and the monopolies are the masters and the Chinese the slaves, and we are becoming the poor white trash."[34]

By reducing white men to a condition akin to slavery, Workingmen argued, corporations threatened the very foundation of republican government—white men's status as masters of their households.[35] If Chinese competition continued to undercut white wages, delegates warned, white working men would be unable to "support a decent home"; their daughters would be "dragg[ed] down . . . into degradation and disgrace" and their sons "made hoodlums"; and their status as free laborers and heads of households would be destroyed.[36] Delegates like J. N. Barton, a farmer, equated white men's status with democratic government.[37] Barton, who explained that had successfully raised a family only to be "brought down by force of circumstances and misfortune to a level with these slaves," announced to the convention, "I stand here today to defend my dignity and my manhood; to defend the principles of our government." Providing opportunities for white men to form households and establish themselves was essential to ensuring their political power; as one delegate from San Francisco explained, if white men were employed, they "would become part of the State, and own homes and enter business on their own account." Instead, Workingmen lawyer Clitus Barbour contended, the threat of Chinese labor was "sapping the foundations of their political and civil liberty, and threatening its very existence." If cheap Chinese labor "reduced the rate of wages so that the laboring man can no longer support himself, and wife, and little ones," delegates warned, corporations would gain control of the government and subvert popular democracy. California would then become "the gibbering skeleton of a lost republic!"[38]

The convention attempted to contain this threat to white labor and popular government by targeting corporations and Chinese laborers simultaneously. In addition to provisions singling out the Chinese and corporations separately for discriminatory treatment, the new constitution also contained a provision that attempted to kill both birds with one stone: "No corporation," it read, shall "employ, directly or indirectly,

in any capacity, any Chinese or Mongolians."[39] Notably, this prohibition applied only to corporate employers, not individuals.[40] It would prove the linchpin for corporate claims of equal protection under the Fourteenth Amendment, in the case of *In re Tiburcio Parrott*.

■ In addition to free labor, the meaning of "equality" was also debated after the Civil War, not only with regard to African Americans but to all nonwhite and nonmale groups as well.[41] Some scholars have pointed out that anti-Chinese activists mobilized the language of "equality" and the "brotherhood of man" as strategic rhetorical tools.[42] Yet the Chinese exclusionists in the convention were also ideologically committed to their own concept of equality.[43] This can be seen in the delegates' concern with ensuring "equal treatment under law" as opposed to "special legislation."

"Special legislation" singled out particular individuals or corporations for special privileges, such as government subsidies, exemption from taxation, or eminent domain power. These special privileges, Workingmen and their allies claimed, disrupted the right to equal opportunity that underlay the meaning of democracy. As a supporter of the new Constitution proclaimed, "Fellow-citizens, if this new Constitution guards any principle more than another, . . . it is, that before the law all men shall be equal."[44] To promote equality, the laws must "affect all alike," not "advance the interests of some particular person, or some particular corporation."[45] Constitution supporters specifically targeted "grasping corporations" as the beneficiaries of special legislation; the *San Bernardino Times* explained that "the people" simply wanted "equal rights, equal taxation and relief from the anaconda grip of crushing monopoly rule."[46]

Delegates' commitment to general laws echoed the concern with "class legislation" expressed by influential jurist Thomas Cooley in his 1868 treatise *Constitutional Limitations*. Cooley wrote that "every one has a right to demand that he be governed by general rules" and that any law that singled out a particular group was unconstitutional.[47] Nonpartisan delegate T. B. McFarland, a lawyer, opined that it was "a fundamental principle in our government that no law shall be passed which affects one person and not the balance of the community. That is the principle . . . that saves all our personal rights." The new constitution included a provision that prohibited the legislature from passing special legislation in a long list of enumerated cases, including the chartering of corporations.[48]

However, in the final version, delegates explicitly provided that the constitution's commitment to "general laws" did not mean "that all differences founded upon class or sex should be ignored" but rather "that they shall operate uniformly . . . on all persons who stand in the same category."[49]

This echoed an important qualification on the principle of general legislation that Cooley had discussed, that the legislature may "deem it desirable to establish . . . distinctions in the rights, obligations, and legal capacities of different classes of citizens."[50] In other words, equality meant "treating likes alike," and equality of treatment was only necessary within a particular legally defined class of persons.[51]

In the minds of most delegates, therefore, rule by general laws was the right of white male citizens.[52] Delegate Barbour asserted, "This is a white man's government; a government of Caucasians established by white men, and for white men."[53] Acknowledging that the term "persons" included both nonwhite and nonmale persons as well as artificial persons like corporations, delegates took pains to expressly exclude those groups from the promise of equal treatment.[54] In corporate law of the nineteenth century, the corporation "for certain purposes" was "considered as a natural person," insofar as it possessed the right to own property, sue and be sued, and contract as a single entity. Certain laws applying to "persons," such as taxation and debtor-creditor laws, often had been held to apply to corporations as well.[55] Delegates were well aware of this. In a debate over the new Constitution's "Declaration of Rights," which proclaimed, "All men are by nature free and independent and have certain inalienable rights," delegates rejected a proposal to change "men" to "persons" on the ground that "the word person includes artificial as well as natural persons . . . and therefore corporations would be included in this grant of rights."[56]

Yet some delegates did recognize a new, expansive vision of equality, one espoused by Reconstruction-era Republicans, which advocates of Chinese exclusion referred to derogatorily as the "brotherhood of man theory."[57] Congressional Republicans argued that all persons were entitled to equal protection of their rights, a principle they claimed the Fourteenth Amendment embodied.[58] Delegates expressed concern that singling out Chinese immigrants for special treatment might run afoul of the Fourteenth Amendment, as well as the Burlingame Treaty of 1868, which entitled Chinese immigrants to "the same privileges, immunities and exemptions in respect to travel or residence" as immigrants from "most favored nations," such as Britain and France. Democratic delegate Joseph Filcher, a journalist, bemoaned, "We find that we are hedged about, even in a constitutional capacity, by the principles of the Federal Constitution on all sides."[59] Their concern was well-founded; for a decade prior to the convention, California state courts had been debating whether anti-Chinese laws violated the Fourteenth Amendment, and at the time of the convention, the Ninth Circuit had already struck down one law discriminating against Chinese immigrants.[60]

Some of the more conservative delegates warned that the combined effect of the Fourteenth Amendment and the Burlingame Treaty was that, with the exception that they could not become citizens, "the Chinese are made equal in this country before the law."[61] San Francisco lawyer John Dickinson, pointing out "that if the Constitution of the State were directed against Englishmen, Irishmen or Germans it would not have been received favorably," contended that the law "must not be class legislation. It must not be in opposition to the doctrine of equality" under Fourteenth Amendment.[62] Delegate Samuel Wilson, a lawyer for the Central Pacific Railroad and a close friend of Justice Stephen Field, made the most sophisticated legal argument regarding the unconstitutionality of anti-Chinese laws.[63] The language of the Fourteenth Amendment, he argued, "is not limited merely to the negro, it is comprehensive enough to embrace all others. . . . It matters not who the individual is; it matters not how humble he is, or how base he is, the broad shield of the law extends over him, and he may demand all the right which any other person may have to the equal protection of the laws."[64] Wilson thus endorsed a broader interpretation of the meaning of "equality," as treating all the same regardless of their membership in a particular group. His capacious reading of the Fourteenth Amendment forecasted that of the court in *In re Tiburcio Parrott*.

In contrast to the debates over the equal protection rights of Chinese persons, no delegate entertained seriously the idea that the Fourteenth Amendment would apply to corporations. Although acknowledging that corporations were artificial "persons," delegates viewed the corporation as "a creature of the State, controlled by the State," that possessed only the rights the state had granted it in its charter.[65] Morris M. Estee, chairman of the Committee on Corporations, explained that "there is no such thing as the existence of a railroad anywhere, in any country, except by and through the sovereign will of the State." Because corporations were created by state law, former California Supreme Court justice David S. Terry argued, "we can control corporations, and prevent them from employing any class of laborers we choose. We can make it a condition of the existence of their charter." While some pointed out that the state could not prohibit individuals from employing whom they chose, delegates largely agreed that because of their nature as a state-created entity, corporations could not claim the same right to equal protection as natural persons.[66] Delegate Barbour denounced as "fallacious and sophistical" the idea that the corporation's charter rights were on par with the "chartered rights of man." Rather, as one delegate emphasized, "God made man, and man made corporations."[67]

Ultimately, the convention voted to pass the provision prohibiting corporations from employing Chinese labor, and risk a challenge in the courts when it came. As Barbour remarked, "The Supreme Court can set it aside if it wants to. We are not worse off."[68]

■ After the Constitution was ratified in 1879, Denis Kearney, whose incitement to hang both Chinese laborers and corporate employers opened this article, took it upon himself to enforce the prohibition on Chinese employment. He and his band of Workingmen acolytes put up "threatening placards" around San Francisco, "warning employers of Chinese to desist from that practice, and vaguely hinting at terrible consequences in the event of refusal."[69] The "Kearney committee" visited companies where Chinese immigrants were employed and, with more or less intimation of violence, attempted to persuade them to "discharge their Chinese."[70] They targeted small corporations like cigar factories and laundries first. Although these employers initially refused to let their Chinese employees go, arguing that "it was impossible to get whites to do the work now done by the Chinese," within a few days many succumbed to the pressure and discharged their Chinese workers.[71]

The Sulphur Bank Quicksilver Mining Company, however, refused to fire its Chinese miners. Its president, Tiburcio Parrott, "declined to be dictated to, saying he should obey the law when the United States Courts denied him the right to hire whom he pleased and pay what he pleased."[72] Parrott was the son of one of the wealthiest men in San Francisco, whose family fortune had been made in banking, mining, and trade with China and Hong Kong. Parrott, whose quicksilver mine employed 216 Chinese laborers, had a compelling interest in overturning the prohibition, especially so because the sulfur smell and condition of the mines were reportedly so opprobrious that no white men would consent to work there.[73]

Parrott's resistance inflamed Kearney and his supporters. Denouncing Parrott as "an infernal and inhuman villain, a vile wretch, a double-dyed ruffian, and a deep-rooted scoundrel," Kearney took up a collection to construct a gallows on the sand lot, warning that Parrott's refusal to comply was "sufficient to justify a resort to force and arms for the maintenance of the supremacy of the law."[74] Parrott was duly arrested and fined; he promptly sued, arguing that the prohibition violated the Fourteenth Amendment rights of both Chinese workers and corporations.

The Chinese consul immediately joined Parrott's suit, claiming that the Chinese "were directly interested in the question and had a right to be heard."[75] The alliance of the Chinese consulate with a major corporate

player in California industry was not unusual, but rather highlights the intimate connection between the interests of the Chinese community and large corporations. Relations between the Chinese mercantile elite and the lawyers and capitalists of the city had long been amicable.[76] The coalition of mutual aid societies for Chinese immigrants, known as the Chinese Six Companies, was active in establishing this relationship.[77] The Six Companies' chief legal counsel and representative, the American Frederick A. Bee, was a self-proclaimed "capitalist" with railroad and mining interests, who moved in elite San Francisco circles.[78] Elaborate banquets hosted by the Six Companies and "the leading citizens of California" celebrated the commercial relationship between China and the United States.[79] At these banquets, Chinese dignitaries and merchants rubbed shoulders with California politicians, judges, lawyers, and industrial magnates, who praised the "extraordinary and auspicious" meeting of "the oldest and the newest civilizations."[80] Attendees included the lawyers who would later serve as counsel in *Parrott*, as well as the judges who would hear the case.

Parrott's case highlights not only the interconnection of the Chinese community and corporations in this period but another important and little-known connection as well: the lawyers for Chinese immigrants and for corporations suing under the Fourteenth Amendment were predominantly the same. The Six Companies, founded by Chinese merchants in the late 1850s and which effectively directed the operation of the Chinese consulate after it was established in 1878, was well versed in the American legal system.[81] Early on, the organization had realized that employing American legal counsel was necessary to manage its legal affairs as well as to combat city ordinances and laws that singled out Chinese immigrants for prejudicial treatment.[82] Even before the Fourteenth Amendment was ratified, allies of the Chinese had mobilized the amendment and the Civil Rights Act to challenge a state law prohibiting Chinese immigrants from testifying in court.[83] Throughout the 1870s, the Chinese Six Companies brought suits challenging this and other laws that targeted Chinese indirectly.[84]

The Six Companies employed the most prestigious lawyers in San Francisco in support of their cause. Among the most esteemed was the partnership of McAllister & Bergin.[85] Hall McAllister, a heavyset man fond of quoting Shakespeare, the Bible, and even his own poetry in the courtroom, had been a longtime supporter of US–Chinese relations.[86] Notably, while representing the Chinese immigrant community, these lawyers also served as counsel for the major industrial players in California. McAllister regularly represented the Pacific Mail Steamship Company (which, as the primary transporter of Chinese immigrants, had a vested interest in the

Parrott case), and McAllister & Bergin served as counsel for several mining and railroad companies, including the Southern Pacific Railroad.

The interests of their two core groups of clients, Chinese immigrants and corporations, came together in *In re Tiburcio Parrott*. McAllister and his partner Thomas Bergin became the lead lawyers for Tiburcio Parrott, while Delos Lake, a lawyer for the Central Pacific Railroad who was also a supporter of Chinese trade, represented the Chinese consulate.[87] Although Lake, considered "a monster of sarcasm," ribbed McAllister for quoting his verses in court, commenting that they contained "more poetry than truth" and "that was not saying anything for the poetry," the three attorneys launched an effective joint offensive.[88] It is unclear whether they personally sympathized with the Chinese or were simply representing two important clients—a mining corporation and the Chinese Six Companies. Lake, for instance, had no love for Chinese immigrants, describing them in another context as a "repugnant," "objectionable," "inferior race."[89] McAllister, in contrast, had advocated against restrictions on Chinese immigration since the 1850s.[90] Yet regardless of their personal stances, these lawyers crafted a compelling argument that the law prohibiting corporations from employing Chinese workers violated the Fourteenth Amendment rights of both their corporate and Chinese clients.

The case, considered "of great importance; in fact, of unusual importance," caused much excitement.[91] The courtroom during oral argument was "so crowded that it became necessary in a few moments after the opening to close the doors against more spectators." Members of the "sandlot" as well as representatives from the Chinese community attended.[92] *Parrott* was not just a political standoff but a crucial decision point for the ideology of egalitarianism: it required the federal circuit court to determine whether "equality" should be defined narrowly—treating likes alike, as the Workingmen argued—or broadly, as the Reconstruction Republicans claimed. The court ultimately embraced the broad definition of equality, concluding that any law singling out a particular group of people for special treatment was unconstitutional. In so doing, they interpreted the Fourteenth Amendment as providing constitutional protection for all persons, including corporate shareholders.

The federal judges who heard the case, Ogden Hoffman and Lorenzo Sawyer, were well versed in Chinese claims to Fourteenth Amendment rights. In an 1869 case involving the right of Chinese litigants to testify, Judge Sawyer, then a justice on the California Supreme Court, had declared that it was "unmistakable" that the Fourteenth Amendment "confers the right to testify in protection of his life or his property."[93] By March 1880, when *Parrott* arose, both Sawyer and Judge Hoffman had struck down

several other ordinances as unconstitutional.[94] Sawyer was known to be sympathetic to the Chinese; he mourned, "The ingenuity of our people in devising means for annoying the Chinese seems inexhaustible."[95] Allies of Chinese immigrants praised him as "maintaining the rights of the Chinese with courage and energy in opposition to a strong current of popular clamor."[96] Sawyer also denigrated Denis Kearney and the Workingmen as "lunatics."[97] Hoffman similarly was known for treating Chinese litigants no differently than white litigants, accepting Chinese testimony as a judge in federal district court even when the state court prohibited it.[98] Both he and Sawyer also moved in the same social circles as Chinese consul Frederick Bee, railroad and industry magnates, and the lawyers arguing for Parrott and the consulate.[99]

Corporate lawyers like McAllister, Bergin, and Lake may not have been the initial drivers of litigation aimed to protect Chinese immigrants under the Fourteenth Amendment, but they soon realized that establishing a broad interpretation of the amendment via cases involving Chinese immigrants was a winning strategy for expanding the rights of their corporate clients as well.[100] In the early years after its passage, whether the Fourteenth Amendment applied beyond descendants of slaves was an open question. During debates and after the amendment's passage, several senators indicated that they expected the amendment and the Civil Rights Act to apply beyond freedpeople to other persecuted minorities, including the Chinese.[101] Some scholars have argued that some framers of the amendment were also aware that the amendment's use of "persons" could extend to corporate persons as well.[102] Yet in the *Slaughter-House Cases*, which involved a group of butchers who challenged New Orleans's grant of monopoly to a slaughterhouse as violating their "privilege" to freely labor under the Fourteenth Amendment's privileges and immunities clause, the Supreme Court had expressed doubt "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 the Amendment.[103]

Justice Stephen Field, however, had dissented in *Slaughter-House*, arguing for an expansive interpretation of the Fourteenth Amendment.[104] He explained, "The amendment was not, as held in the opinion of the majority, primarily intended to confer citizenship on the negro race. It had a much broader purpose. . . . It was intended to make it possible for *all* persons" in the nation "to live in peace and security."[105]

Litigation by Chinese immigrants gave Field the chance to apply his vision of the amendment.[106] In the first case he heard, involving a San Francisco ordinance that prohibited all "lewd and debauched women"

from entering the state by ship except under bond, Field opined that under the Fourteenth Amendment, "all persons, whether native or foreign, high or low, are, whilst within the jurisdiction of the United States, entitled to the equal protection of the laws."[107] Field surmised that while this law targeted Chinese immigrants, such discriminatory legislation, if allowed to stand, could just as easily be used to target "other parties, besides low and despised Chinese women."[108] This was the nexus of Field's understanding of equal protection: if states were permitted to deny rights to one group of people, there was nothing to stop them infringing on the rights of others. Notably, the lawyer in this case was Thomas Bergin, who would serve as counsel for *Parrott*.

Field developed his theory further a few years later in a case challenging a San Francisco ordinance mandating that all male inmates have their hair cut short—a particularly severe punishment for Chinese men, whose queues had religious significance. Although personally favoring Chinese exclusion, Field once more warned of a slippery slope. Pointing out that "we have, for instance, in our community a large number of Jews" whose religion forbade them from eating pork, he explained that allowing such discriminatory legislation against the Chinese would likewise permit "an ordinance of the supervisors requiring that all prisoners confined in the county jail should be fed on pork," which everyone could agree would be "intended hostile legislation." Allowing laws targeting persons of one "class, sect, creed or nation," he concluded, would open the door to laws discriminating against any other, and thus none of them could be permitted.[109]

Unlike the convention delegates, Field understood the principle of equal treatment to preclude not only laws that granted special privileges but also those that imposed special burdens. For Field, class legislation was a problem for two reasons: it was the product of majority tyranny over a disempowered minority, and it created the possibility of a "slippery slope," the risk that discriminatory laws against one group could under changed circumstances be applied to other minorities.

The lawyers for Parrott and the Chinese consulate seized on this broad interpretation of the Fourteenth Amendment. They also took Field's reasoning one step farther: if the Fourteenth Amendment applied not just to African Americans but to all persons facing discrimination, why should it not apply to corporate "persons" as well?

Lake, McAllister, and Bergin focused first on the rights of Chinese immigrants affected by the prohibition. "EQUALITY OF PROTECTION," McAllister proclaimed, "is the Constitutional right of all persons in the United States."[110] Although the Fourteenth Amendment's primary purpose

"was to protect the negro," Lake admitted, its "great object" was, in fact, "to put all persons within the several States on the same broad footing in respect to gaining an honest livelihood, whether native born or foreign, white or black."[111] The prohibition denied Chinese persons equal protection of the law because it took from workers "one of the most sacred rights—the right to labor in a lawful business in a lawful manner."[112]

The lawyers strove to elide any difference between corporations and Chinese laborers. The law not only denied Chinese persons their right to labor, they argued, but also treated corporations differently than individuals by denying them their right to contract with laborers of their choosing.[113] In his two-hour closing argument, Bergin spoke of the rights of Chinese workers to labor and of corporations to employ labor in one breath: "A corporation possesses the same right to employ whom it pleases as a natural person has, and the friendly alien coming here is entitled to exercise his vocation in a lawful manner complying with the laws of the State."[114]

These arguments proved compelling to Hoffman and Sawyer. The Fourteenth Amendment placed "every person within the jurisdiction of the state, be he Christian or heathen, civilized or barbarous, Caucasian or Mongolian, upon the same secure footing and under the same protection," the judges concluded. Hoffman warned that if the law could prohibit Chinese employment, "it might equally well have forbidden the employment of Irish, or Germans, or Americans, or persons of color." By relying on these examples, the judges at first appeared to indicate that the purpose of the Fourteenth Amendment was to protect minority races or nationalities. This could have been enough to find the law unconstitutional. However, they then extended their interpretation to cover corporations as well. Hoffman reasoned that a corporation was simply an aggregate of shareholders: "Behind the artificial or ideal being created by the statute and called a corporation, are the corporators— natural persons."[115] A law that impaired the corporation's ability to hire certain workers, therefore, was actually an attack on the rights of the shareholders. "Such an exercise of legislative power," Hoffman emphasized, "can only be maintained on the ground that stockholders of corporations have no rights which the legislature is bound to respect."[116]

With this turn of phrase, Hoffman echoed the holding of Justice Roger Taney in the antebellum case *Dred Scott v. Stanford* (1857), that "the class of persons who had been imported as slaves . . . had no rights which the white man was bound to respect."[117] This phrase had great purchase in a discussion of the Fourteenth Amendment, which had been passed explicitly to overturn Taney's holding in *Dred Scott*.[118] As noted above, supporters

of the new Constitution also used this phrase to compare white laborers with descendants of slaves. Adopting this analogy, Hoffman implied that corporate shareholders were equivalent to persecuted racial minorities. In so doing, he justified applying the Fourteenth Amendment to corporations, rendering the powerful akin to the powerless.

Judges Hoffman and Sawyer drew on the convention delegates' rhetoric of free versus unfree labor in their holding in *Parrott*, but flipped it on its head. The delegates had used the claim that Chinese 'coolies' were effectively slaves to denigrate them and justify their expulsion. The comparison to slavery created a dichotomy between free and unfree labor; since the free labor of white men must be protected, the unfree labor of Chinese coolies must be stopped. Yet for Hoffman and Sawyer, the questionable status of the Chinese workers merited a different conclusion: because Chinese workers were a minority whose fundamental right to freely labor was threatened, they could claim the protection of the Fourteenth Amendment. Indeed, the Supreme Court had indicated in the *Slaughter-House Cases* that the Thirteenth Amendment protected against other forms of unfree labor, noting that should "Mexican peonage or the Chinese coolie labor system" rise to the level of slavery, the amendment would "safely be trusted to make it void."[119] Notably, Sawyer and Hoffman engaged in no examination of whether the labor of Chinese workers was actually "free" under the contract labor system. In effect, the free labor rhetoric of the convention, meant to be the grounds for exclusion, became for Hoffman and Sawyer grounds to protect Chinese workers instead.

If Chinese workers were a persecuted minority like freedpeople, corporations were "like" Chinese workers insofar as both were singled out in the new Constitution for discriminatory treatment. Their interconnected relationship and the fact that both were specially targeted allowed Hoffman and Sawyer to move seamlessly in their analysis from the rights of one to those of the other. By conceptualizing corporations simply as collections of shareholders, the court could conclude that shareholders were a group subject to special burdens under the law, like Chinese laborers and African Americans.

The decision in *Parrott* provoked intense feeling. Anti-Workingmen papers applauded the result. The *San Francisco Chronicle* scoffed, "The decision takes no intelligent person possessing a reasonable knowledge of the data of the question by surprise. Every lawyer worthy of the name anticipated it."[120] The *Daily Alta California* praised the judges' "very able and elaborate opinion": "On the Circuit Bench there is no catering to the influence of the Sand-lot, nor no yielding to the howling of the mob."[121]

Meanwhile, the Workingmen's ward presidents petitioned the governor to appeal Parrott's case to the Supreme Court; yet this proved impossible because of a law prohibiting the Supreme Court from hearing appeals in such cases.[122] For the time being, the opinions of Hoffman and Sawyer stood as the final determination on the question of the right of corporations under the Fourteenth Amendment.

Corporate lawyers and federal judges quickly built on *Parrott* to apply the Fourteenth Amendment in cases solely involving corporations. Just two years later, in a case involving railroad taxation, Field and Sawyer reaffirmed that corporations were protected by the Fourteenth Amendment. The amendment, Field explained, "stands in the constitution as a perpetual shield against all unequal and partial legislation by the states . . . whether directed against the most humble or the most powerful; against the despised laborer from China, or the envied master of millions." For Field, wealth was a "condition" like race that must be shielded from unequal legislation. In his concurrence, Sawyer also blurred the line between race and other categories: "The rights of the negro are, certainly, no more sacred or worthy of protection than the rights of the Caucasian or other races" or than "the rights of corporations, and, through them, the rights of the real parties,—the corporators."[123]

Deviating from its opinion in *Slaughter-House* a decade earlier, the Supreme Court accepted Field's broad interpretation of the Fourteenth Amendment in two cases, one involving a Chinese immigrant, Yick Wo, and the other involving a railroad corporation.[124] These cases are both well known, but they are rarely discussed in tandem. Yet the decisions were announced the same day, and together they adopted Field's vision of an expansive Fourteenth Amendment as the law of the land.

In *Yick Wo v. Hopkins*, the Supreme Court held that a law allowing San Francisco commissioners to discretionarily deny laundry permits violated the equal protection clause when those permits were denied exclusively to Chinese laundry owners. Echoing the Chinese immigrant cases and *Parrott*, Justice Stanley Matthews explained that the provisions of the Fourteenth Amendment "are universal in their application, to all persons within the territorial jurisdiction . . . and the equal protection of the laws is a pledge of the protection of equal laws." Matthews concluded that when a law made "unjust and illegal discriminations between persons in similar circumstances," this was a "denial of equal justice . . . within the prohibition of the constitution."[125] In *Santa Clara County v. Southern Pacific Railroad*, Chief Justice Morrison Waite declined to hear argument on whether the Fourteenth Amendment applied to corporations, stating at the outset of the second round of oral arguments, "we are all of the opinion

that it does."[126] Notably, Hall McAllister was the lawyer for both Yick Wo and the railroad.[127] Together, *Yick Wo* and *Santa Clara* cemented Field's interpretation of the Fourteenth Amendment as covering not only persecuted racial minorities but corporate shareholders as well.[128]

■ The *Parrott* case and its progeny outraged proponents of corporate regulation. The *Chronicle* opined, "As to the claim that an amendment which was passed wholly and solely for the protection of negroes from oppression by their former masters, can be invoked by a corporation . . . , it is really too absurd for discussion."[129] Such an interpretation "gives to the amendment a scope which was not dreamed of by its framers."[130]

Although at first it appeared the Chinese community had won, the effect of *Parrott* on Chinese prospects for employment was short-lived. In response to growing anti-Chinese sentiment, the Republican Party endorsed Chinese exclusion.[131] The Burlingame Treaty was revised in 1880, while the Chinese Exclusion Act (1882) and the Geary Act (1892) further curtailed Chinese immigration.[132] Although the threat of Chinese labor diminished, white workingmen continued to face challenges in the form of corporate monopolies and federal hostility to labor uprisings.[133]

The Supreme Court's broad interpretation of the Fourteenth Amendment prompted extensive corporate litigation throughout the end of the nineteenth and early twentieth century. While increased anti-Chinese sentiment and the entrenchment of Jim Crow limited the Court's willingness to use the amendment to protect racial minorities, it was more sympathetic to corporate claims.[134] In 1912, one commentator calculated that of the 604 cases argued in the Supreme Court involving the Fourteenth Amendment since its passage, 312 involved corporations, while only about one per year involved African Americans.[135] Although corporate claims were not always successful, it was no longer questioned whether corporations were "persons" protected by the Fourteenth Amendment.[136]

NOTES

The material in this article is based upon work supported by the National Science Foundation under Grant No. SES-1655497.

1. "The Gallows," *Daily Alta California*, February 23, 1880.

2. "Sand-Lot Threats," *San Francisco Chronicle*, February 23, 1880.

3. "Kearney's Victim," *Daily Alta California*, February 25, 1880.

4. "Sand-Lot Threats."

5. In re Tiburcio Parrott, 1 F. 481, 492 (C.C.D. Cal. 1880).

6. Charles J. McClain Jr., *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America* (Berkeley: University of California Press, 1994), 83–92.

7. See Howard J. Graham, *Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the "Conspiracy Theory," and American Constitutionalism* (Madison: State Historical Society of Wisconsin, 1968), 146–47; Paul Kens, *Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age* (Lawrence: University Press of Kansas, 1997), 209–10; Adam Winkler, *We the Corporations: How American Businesses Won Their Civil Rights* (New York: Liveright, 2018), 153.

8. For one exception see Richard White, *Railroaded: The Transcontinentals and the Making of Modern America* (New York: Norton, 2011); Richard White, *The Republic for Which It Stands: The United States during Reconstruction and the Gilded Age, 1865–1896* (New York: Oxford University Press, 2017).

9. See Heather Cox Richardson, *West from Appomattox: The Reconstruction of America after the Civil War* (New Haven: Yale University Press, 2007); Joshua Paddison, *American Heathens: Religion, Race, and Reconstruction in California* (Berkeley: University of California Press, 2012); Stacey L. Smith, *Freedom's Frontier: California and the Struggle Over Unfree Labor, Emancipation, and Reconstruction* (Chapel Hill: University of North Carolina Press, 2013); D. Michael Bottoms, A*n Aristocracy of Color: Race and Reconstruction in California and the West, 1850–1890* (Norman: University of Oklahoma Press, 2013); Edlie L. Wong, *Racial Reconstruction: Black Inclusion, Chinese Exclusion, and the Fictions of Citizenship* (New York: New York University Press, 2015); Beth Lew-Williams, *The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America* (Cambridge, MA: Harvard University Press, 2018).

10. Elliott West dated "Greater Reconstruction" as spanning from 1846 to 1877, while recent scholarship has extended the period into the 1890s. Elliott West, "Reconstructing Race," *Western Historical Quarterly* 34 (Spring 2003): 20; Eric Foner, afterword to *After Slavery: Race, Labor, and Citizenship in the Reconstruction South*, ed. Bruce E. Baker and Brian Kelly (Gainesville: University Press of Florida, 2014), 224. Richard White notes that although Reconstruction and the Gilded Age are often discussed separately, in fact "the two gestated together" and significantly overlapped. White, *Republic for Which It Stands*, 2. Other scholars have traced through lines from the immediate postbellum era into the late nineteenth century and beyond. See Steven Hahn, *A Nation under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Belknap Press of Harvard University Press, 2003); Heather Cox Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the Post–Civil War North, 1865–1901* (Cambridge, MA: Harvard University Press, 2004); Kendra T. Field, *Growing Up with the Country: Family, Race, and Nation after the Civil War* (New Haven: Yale University Press, 2018). This seemingly ever-broadening scope has led Gregory P. Downs and Kate Masur to question whether the framework of Reconstruction is still useful for understanding the postwar period. Downs and Masur, "Echoes of War: Rethinking Post–Civil War Governance and Politics," in *The World the Civil War Made,* ed. Gregory P. Downs and Kate Masur (Chapel Hill: University of North Carolina Press, 2015), 4.

11. Labor historians have discussed the importance of corporations to the development of the concept of free labor with regard to white and black laborers and the wage

labor system, but not the connection between Chinese claims to free labor and corporations' Fourteenth Amendment rights. See David Montgomery, *Beyond Equality: Labor and the Radical Republicans, 1862–1872* (New York: Knopf, 1967); David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865–1925* (New York: Cambridge University Press, 1987); Stacey L. Smith, "Emancipating Peons, Excluding Coolies: Reconstructing Coercion in the American West," in Downs and Masur, *World the Civil War Made*, 46–74.

12. See McClain, *In Search of Equality*; Charles J. McClain Jr., "The Chinese Struggle for Civil Rights in 19th-Century America: The Unusual Case of Baldwin v. Franks," *Law and History Review* 3 (Autumn 1985): 349–73; Bottoms, *Aristocracy of Color*; Graham, *Everyman's Constitution*.

13. See Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998); Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010); Laura Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights (*New York: Cambridge University Press, 2015); Lew-Williams, *Chinese Must Go*.

14. Stanley, *From Bondage to Contract*; Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (1988; repr., New York: Harper & Row, 2002); Smith, *Freedom's Frontier*; Erik Mathisen, "The Second Slavery, Capitalism, and Emancipation in Civil War America," *Journal of the Civil War Era* 8 (December 2018): 677–99.

15. See Smith, *Freedom's Frontier;* Paddison, *American Heathens;* Wong, *Racial Reconstruction;* Lew-Williams, *Chinese Must Go;* Najia Aarim-Heriot, *Chinese Immigrants, African Americans, and Racial Anxiety in the United States* (Urbana: University of Illinois Press, 2003).

16. See Stewart Kyd, *A Treatise on the Law of Corporations*, 2 vols. (London: J. Butterworte, 1793), 1:13; Joseph K. Angell and Samuel Ames, *Treatise of the Law of Private Corporations Aggregate,* 2nd ed. (Boston: Little & Brown, 1843). The Supreme Court had held that corporations were protected by the Contract clause, Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819) but refused corporations constitutional protection under the privileges and immunities clause. See Paul v. Virginia, 75 U.S. 168 (1869).

17. See McClain, *In Search of Equality*; Smith, *Freedom's Frontier*; Smith, "Emancipating Peons, Excluding Coolies"; Moon-Ho Jung, *Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation* (Baltimore: Johns Hopkins University Press, 2006); Lon Kurashige, *Two Faces of Exclusion: The Untold History of Anti-Asian Racism in the United States* (Chapel Hill: University of North Carolina Press, 2016).

18. For scholarship on the rise of corporate capitalism, see Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890–1916: The Market, the Law, and Politics* (New York: Cambridge University Press, 1988); Naomi Lamoreaux, *The Great Merger Movement in American Business, 1895–1904* (Cambridge: Cambridge University Press, 1985); Charles Perrow, *Organizing America: Wealth, Power, and the Origins of Corporate Capitalism* (Princeton, NJ: Princeton University Press, 2002);

William G. Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton, NJ: Princeton University Press, 1997); Gerald Berk, *Alternative Tracks: The Constitution of American Industrial Order, 1865–1917* (Baltimore: Johns Hopkins University Press 1994).

19. Carl Brent Swisher, *Motivation and Political Technique in the California Constitutional Convention, 1878–79* (Claremont, CA: Pomona College, 1930), 9–10, 17, 25.

Debates and Proceedings of the Constitutional Convention of the State of California, Convened at the City of Sacramento, Saturday, September 28, 1878, 2 vols. (Sacramento: State Office, 1880), 2:661; Swisher, *Motivation and Political Technique*, 24, 42.

20. Kens, *Justice Stephen Field*, 198–99.

21. See Stanley, *Bondage to Contract*, 2; Foner, *Reconstruction*, 296, 299; Smith, "Emancipating Peons, Excluding Coolies," 47, Smith, *Freedom's Frontier*, 4; Lew-Williams, *Chinese Must Go*, 31; Jung, *Coolies and Cane*, 6.

22. See Stanley, *Bondage to Contract,* 84; Montgomery, *Beyond Equality,* 89.

23. See Smith, *Freedom's Frontier,* 4; Jung, *Coolies and Cane,* 6, Lew-Williams, *Chinese Must Go,* 30.

24. For histories of the term "coolie," see Jung, *Coolies and Cane*, 5; Wong, *Racial Reconstruction*, 17–18, 69–70; Smith, "Emancipating Peons, Excluding Coolies," 61; Smith, *Freedom's Frontier*, 3, 95–97; Lew-Williams, *Chinese Must Go*, 31–34.

25. *Debates and Proceedings,* 2:725; Jung, *Coolies and Cane*, 8. The popular perception was harsher than reality: Chinese laborers were not hired for fixed, long-term contracts, but under temporary debt servitude known as the credit-ticket system. *See* Smith, "Emancipating Peons, Excluding Coolies," 63; Lew-Williams, *Chinese Must Go*, 34.

26. Lew-Williams, *Chinese Must Go*, 32–33.

27. "Our Eastern Critics," *San Francisco Chronicle,* March 22, 1879.

28. *Debates and Proceedings,* 2:724, 700.

29. Smith, *Freedom's Frontier*, 81, 93; Jung, *Coolies and Cane*, 9, 224; Lew-Williams, *Chinese Must Go*, 32.

30. "The Pending Struggle," *San Francisco Chronicle*, July 28, 1879; "Perkins as a Bureau Man," *San Francisco Chronicle*, 3, 1879; *Debates and Proceedings,* 1:402.

31. "The Pending Struggle," *San Francisco Chronicle*, July 28, 1879; Dred Scott v. Sanford, 60 U.S. 393, 407 (1857).

32. *Debates and Proceedings,* 2:701.

33. "Using the Chinese," *San Francisco Chronicle*, April 23, 1879.

34. "Light Ahead," *San Francisco Chronicle*, May 5, 1879.

35. Scholars have compellingly illustrated the importance that the status as head of household held for wage laborers, both black and white, in supporting their claim for political participation. *See* Stanley, *From Bondage to Contract*; Amy Dru Stanley, "Instead of Waiting for the Thirteenth Amendment: The War Power, Slave Marriage, and Inviolate Human Rights," *American Historical Review* 115 (June 2010): 732–65; Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations,*

and the Political Culture of the Antebellum South Carolina Low Country (New York: Oxford University Press, 1995).

36. "Pending Struggle"; *Debates and Proceedings,* 2:654, 701, 653.

37. Winfield Davis, *History of Political Conventions in California, 1849–1892* (Sacramento: Trustees of the California State Library, 1892), 392.

38. *Debates and Proceedings,* 2:653, 701, 650, 687, 688, 1:636, 637.

39. California Constitution of 1879, Art. XIX, §3. For a discussion of the constitutional provisions targeting Chinese immigrants, *see* McClain, *In Search of Equality*, 82–83.

40. *Debates and Proceedings,* 2:658–72.

41. Smith, *Freedom's Frontier,* 5, 227; Edwards, *Legal History of the Civil War and Reconstruction*, 148–49.

42. Smith, Freedom's Frontier, 3; Kurashige, Two Faces of Exclusion, 4–5.

43. Stacey Smith discusses how the free labor ideology underpinning the concept of equality was used to justify excluding non-free labor such as Chinese coolies. Smith, *Freedom's Frontier,* 5. Lon Kurashige has categorized supporters and opponents of Chinese exclusion broadly as "exclusionists" and "egalitarians," while also noting the malleability of the concept of egalitarianism. Kurashige, *Two Faces of Exclusion*, 3–4.

44. "Booming," *San Francisco Chronicle*, April 18, 1879.

45. *Debates and Proceedings,* 1:434.

46. "Both Sides," *San Francisco Chronicle*, March 28, 1879, quoting the *San Bernardino Times*.

47. Thomas Cooley, *A Treatise on the Constitutional Limitations which Rest upon The Legislative Power of the States of the American Union* (Boston: Little, Brown, & Co., 1868), 391, 392–93.

48. *Debates and Proceedings*, 1:264, 363; California Constitution of 1879, Art. IV, §25.

49. California Constitution of 1879, Art I, §12.

50. Cooley, Treatise on the Constitutional Limitations, 390.

51. Cooley did note that arbitrary infliction of burdens would violate the equal protection clause: "When the law imposes a punishment . . . for the avowed purpose of affecting this class as others are not affected, it seems plain that . . . the equal protection of the laws [are] denied to the class." Thomas McIntire Cooley, "Ho Ah Kow v. Matthew Nunan," *American Law Register* 27 (January–December 1879): 686.

52. Delegates also occasionally included white women in the scope of equal treatment. Although denying women the franchise, they passed provisions prohibiting the University of California from refusing admission on account of sex, and providing "that no person shall be disqualified, on account of sex, from pursuing any lawful business, vocation or profession." California Constitution (1879), Art. XI §9; Art. XXXI §18. Women—by implication white women—here obtained a valuable right that Chinese men were explicitly denied: the right to freely labor. This provision may have been included as a response to the recent Supreme Court case *Bradwell v. Illinois*, holding

that women had no constitutional right to labor in a particular profession. 83 U.S. 130 (1873).

53. Swisher, *Motivation and Political Technique*, 30; *Debates and Proceedings,* 2:649.

54. *Debates and Proceedings,* 2:232–33.

55. Joseph K. Angell and Samuel Ames, *Treatise of the Law of Private Corporations Aggregate* (Boston: Hilliard, Gray, Little & Wilkins, 1832), 1, 3–4.

56. *Debates and Proceedings,* 1:233.

57. *Debates and Proceedings,* 2:702.

58. On the Republican vision, *see* Foner, *Reconstruction*, chap. 6.

59. *Debates and Proceedings*, 2:674, 657, 700; Davis, History of Political Conventions in California, 391.

60. "Chinese versus Caucasian," *Daily Alta California*, December 13, 1868; "Chinese Testimony in the Test Case," *Daily Alta California*, December 18, 1868; "Chinese Testimony," *Daily Alta California*, December 8, 1869; In re Ah Fong, 1 F.Cas. 213 (C.C.D. 1874); McClain, *In Search of Equality*, 33.

61. *Debates and Proceedings*, 2:657, 674, 676.

62. "The Chinese Must Go," *San Francisco Chronicle*, February 13, 1880.

63. Swisher, *Motivation and Political Technique*, 86–87. Wilson had opposed the calling of a constitutional convention and likely worked to counter the influence of the Workingmen's Party at the convention (17, 25–26).

64. Swisher, *Motivation and Political Technique,* 685.

65. Swisher, *Motivation and Political Technique*, 700. Delegates considered incorporation to be a privilege the state allowed its citizens via its general incorporation statute.

66. *Debates and Proceedings,* 1:380, 2:99, 658–72, 642–43. Delegates did not elaborate on why they thought it would be unconstitutional when applied to individuals. Limiting the prohibition to corporations may have been a pragmatic decision; although corporations were the major employers of Chinese, some convention delegates and Workingmen's Party candidates were farmers who occasionally employed Chinese laborers as farmhands. "Dr. Glenn and the Chinese," *San Francisco Chronicle,* July 31, 1879; "Ratified," *San Francisco Chronicle,* July 19, 1879.

67. *Debates and Proceedings*, 1:532 (quoting Edmund Burke, "Speech on Fox's East India Bill," 1783), 2:417.

68. *Debates and Proceedings,* 2:649.

69. "Threatening Placards," *Sacramento Daily Union*, March 9, 1880.

70. "Kearney's Victim"; "Gallows"; "Pacific Slope News," *Sacramento Daily Union*, February 27, 1880; "A Laundry Discharges Its Chinamen," *Daily Alta California*, February 21, 1880; "Threat Factory," *Daily Alta California*, February 21, 1880; "California, Unemployed, Another Parade Promised," *Sacramento Daily Union,* February 21, 1880.

71. "Threat Factory"; "Laundry Discharges Its Chinamen"; "California, Unemployed, Another Parade Promised."

72. "Kearney's Victim."

73. Andrew Scott Johnston, *Mercury and the Making of California: Mining, Landscape, and Race, 1840–1890* (Boulder: University Press of Colorado, 2013), 252, 231, 204, 252.

74. "Sand-Lot Threats"; "Gallows."

75. "Parrott's Plea," *San Francisco Chronicle*, March 7, 1880.

76. McClain, *In Search of Equality*, 25; Yucheng Qin, *The Diplomacy of Nationalism: The Six Companies and China's Policy toward Exclusion* (Honolulu: University of Hawai'i Press, 2009), 53–54.

77. Founded in the late 1850s, in 1878 the organization was renamed the Chinese Consolidated Benevolent Association. Qin, *Diplomacy of Nationalism*, 44, 103.

78. "South Fork of American River," *Sacramento Daily Union*, September 27, 1855.

79. Qin, *Diplomacy of Nationalism*, 103, 53; Oscar Tully Shuck, *The California Scrap-Book: A Repository of Useful Information and Select Reading* (San Francisco: H. H. Bancroft & Company, 1869), 221–24, 585.

80. Shuck, *California Scrap-Book*, 220–22, 225, 224.

81. McClain, *In Search of Equality*, 86, 23–24; Qin, *Diplomacy of Nationalism*, 44, 31–33.

82. Qin, *Diplomacy of Nationalism*, 47; McClain, *In Search of Equality*, 54; McClain, "Chinese Struggle for Civil Rights," 350.

83. "Chinese versus Caucasian"; "Chinese Testimony in the Test Case"; People v. Washington, 36 Cal. 658 (1869); *Welch v. Ah Hund*; People v. Brady (San Francisco Police Court, Nov. 1869); People v. Brady, 40 Cal. 198 (1870). See McClain, *In Search of Equality*, 31–35.

84. "The Pagan Ordinancies," *Daily Alta California*, June 3, 1873; "The 'Monitor' on the Chinese Ordinances," *Daily Alta California*, June 7, 1873; Qin, *Diplomacy of Nationalism*, 88; Hudson N. Janisch, "The Chinese, the Courts, and the Constitution" (JSD diss., University of Chicago, 1971), 306.

85. *See* Daniel Levy, "Classical Lawyers and the Southern Pacific Railroad," *Western Legal History* 9 (1996): 226.

86. Oscar Tully Shuck, *History of the Bench and Bar in California* (San Francisco: Occident Printing House, 1889), 420; Shuck, *California Scrap-Book*, 585; Hall McAllister, "The Statute Forbidding the Immigration of Chinese into California by Sea, Unconstitutional and Void," *Alta California*, July 28, 1858.

87. See Southern Pac. R. Co. v. Orton, 6 Sawy. 457 (1879); In re Ah Chong, 6 Sawy. 451 (D. Cal. 1880).

88. Shuck, History of the Bench and Bar, 420.

89. Report of the Royal Commission on Chinese Immigration (Ottawa: Commissioner, 1885), 346.

90. McAllister, "Statute Forbidding the Immigration of Chinese."

91. "Leading Cases," *Daily Alta California*, February 29, 1880.

92. "Parrott's Plea."

93. "The Question of Chinese Testimony," *Marysville Daily Appeal*, October 8, 1869; "Chinese Testimony in Our Courts," *Daily Alta California*, October 7, 1869; *People v. Washington*, 36 Cal. 658 (1869).

94. *See* People v. Awa, 27 Cal. 638 (1865), *Welch v. Ah Hund* (1868), discussed in McClain, *In Search of Equality*, 33; Ho Ah Kow v. Nunan, 20 Alb. L.J. 250 (D. Cal. 1879); but see In re Ah Yup, I F. Cas. 223 (C.C.D. Cal. 1878).

95. Sawyer to Deady, December 4, 1882, Matthew Deady Papers, Oregon Historical Society, Portland. See Linda C. A. Przybyszewski, "Judge Lorenzo Sawyer and the Chinese: Civil Rights Decisions in the Ninth Circuit," *Western Legal History* 1 (1988): 23.

96. Sawyer to Deady, December 22, 1884, Deady Papers.

97. Sawyer to Deady, June 9, 1880, Deady Papers.

98. McClain, *In Search of Equality*, 23.

99. See Bottoms, *Aristocracy of Color*, 175 (saying "both men were scrupulously fair" on the bench, while noting that they both expressed anti-Chinese sentiment in their personal views); Christian Fritz, *Federal Justice: The California Court of Ogden Hoffman, 1851–1891* (Lincoln: University of Nebraska Press, 1991), 211, 214–15, 217; Przybyszewski, "Judge Lorenzo Sawyer and the Chinese," 53; Delos Lake to Matthew Deady, June 3, 1870, and Silas Sanderson to Matthew Deady, July 20, 1882, both in Deady Papers.

100. Daniel Levy notes that the Central Pacific lawyers were "integral" in extending the Fourteenth Amendment to parties beyond African American but does not draw firm conclusions about the larger litigation strategy of these lawyers. Levy, "Classical Lawyers and the Southern Pacific Railroad," 216.

101. This included Senator John Conness of California, Cong. Globe, 39th Cong., 1st Sess. 2892 (1865–66), as well as Senators Benjamin Wade of Ohio and William Stewart of Nevada. McClain, *In Search of Equality*, 37–38.

102. *See* Graham, *Everyman's Constitution*, 94, 123n57; Winkler, *We the Corporations*, 132–36.

103. *Slaughter-House Cases*, 83 U.S., 71, 81. The Supreme Court denied the butchers' claim that the Amendment's privileges and immunities clause included the protection of their right to labor.

104. *Slaughter-House Cases*, 83 U.S., 97 (Field, J., dissenting).

105. Bartemeyer v. State of Iowa, 85 U.S. 129, 140 (1873) (Field, J., concurring, emphasis in original).

106. As a Supreme Court justice, Field was also responsible for serving on the Ninth Circuit. Fritz, *Federal Justice*, 30.

107. *In re Ah Fong*, 1 F.Cas. 213, 213, 218.

108. *In re Ah Fong*, 1 F.Cas. 217.

109. *Ho Ah Kow*, 20 Alb. L.J., 253, 256, 255.

110. "Corporations and Chinese," *Daily Alta California*, March 7, 1880.

111. "The Chinese Question," *Sacramento Daily Union*, March 8, 1880.

112. "Corporations and Chinese," *Daily Alta California*, March 7, 1880.

113. "Chinese Question."

114. "The Last Word," *San Francisco Chronicle*, March 10, 1880.

115. *In re Tiburcio Parrott*, 1 F. at 509 (Sawyer, J., concurring), 491. Other scholars have identified that the aggregate theory of the corporation underlay corporate claims

for Fourteenth Amendment rights, but none have focused on the *Parrott* case, which was the first to apply the theory in the context of the amendment. *See* Morton Horwitz, "*Santa Clara* Revisited: The Development of Corporate Theory," *West Virginia Law Review* 88 (1985): 173–224; Gregory A. Mark, Note, "The Personification of the Business Corporation in American Law," *University of Chicago Law Review* 54, no. 4 (1987): 1441–83.

116. *In re Tiburcio Parrott,* 1 F. at 492, 491.

117. *Dred Scott*, 60 U.S. at 407.

118. See Slaughter-House Cases, 83 U.S. 9 (1872).

119. *Slaughter-House Cases,* 83 U.S. 9, at 72.

120. "The Chinese Labor Decision," *San Francisco Chronicle*, March 23, 1880.

121. "Judge Sawyer's Decision," *Daily Alta California*, March 27, 1880.

122. "The Ward Presidents," *Daily Alta California*, March 29, 1880; "Employing Chinese," *Daily Alta California*, May 24, 1880. See Winkler, *We the Corporations*, 153. Congress later eliminated this law.

123. *Railroad Tax Cases,* 13 F. at 741, at 761 (Sawyer, J., concurring).

124. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Santa Clara County v. Southern Pac. R. Co., 118 U.S. 394 (1886).

125. *Yick Wo*, 118 U.S. at 367, 369, 373–74.

126. *Santa Clara County*, 118 US at 396; "State and Nation," *San Francisco Chronicle*, January 27, 1886.

127. McAllister represented Yick Wo in both the Ninth Circuit and Supreme Court and the Southern Pacific Railroad in the Ninth Circuit. Levy, "Classical Lawyers and the Southern Pacific Railroad," 182.

128. Justice Waite did not explain why the Fourteenth Amendment applied to corporations, yet *Santa Clara* was quickly cited as holding that corporations were persons under the Fourteenth Amendment, mostly in opinions written by Justice Field. See Missouri Pac. Ry. Co. v. Mackey, 127 U.S. 205, 209 (1888) ("It is conceded that corporations are persons within the meaning of the amendment."); Pembina Consol. Silver Mining & Milling Co. v. Com. of Pennsylvania, 125 U.S. 181 (1888); Gulf, C. & S.F. Ry. Co. v. Ellis, 165 U.S. 150 (1897).

129. "Judge Field Again," *San Francisco Chronicle*, Jan. 29, 1885

130. "Field's Conflicting Views," *San Francisco Chronicle*, Jan 27, 1885.

131. Smith, Freedom's Frontier, 226–28; Lew-Williams, *Chinese Must Go,* 45–48; see Montgomery, *Fall of the House of Labor.*

132. Qin, *Diplomacy of Nationalism,* 123.

133. Foner, *Reconstruction,* 695–96.

134. See Chae Chan Ping v. U.S., 130 U.S. 581 (1889); Quock Ting v. U.S., 140 U.S. 417 (1891); Fong Yue Ting v. U.S., 149 U.S. 698 (1893); In re Gee Hop, 71 F. 274 (1895*);* Wong Wing v. U.S., 163 U.S. 228 (1896); United States v. Cruickshank, 92 U.S. 542 (1876), the Civil Rights Cases, 109 U.S. 3 (1883); Plessy v. Ferguson, 163 U.S. 537 (1896); McClain, *In Search of Equality*, 282; Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge, MA: Harvard University Press, 2007), 8; Edwards, *Legal History of the Civil War and Reconstruction*, 161–66.

135. Charles Wallace Collins, *The Fourteenth Amendment and the States* (Boston: Little, Brown, & Company, 1912), 129.

136. In 1938, the New Deal Supreme Court limited the ability of businesses to claim extensive protection under the Fourteenth Amendment, while indicating the amendment would offer more substantial protection for "discrete and insular minorities." United States v. Carolene Products Co., 304 U.S. 144, 154n4 (1938).