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CONSTITUTIONAL LAW-CORPORATIONS-ARTIFICIAL "PERSONS" AND THE FOURTEENTH AMENDMENT

Robert P. Griffin S.Ed.
University of Michigan Law School

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COMMENTS

CONSTITUTIONAL LAW—CORPORATIONS—ARTIFICIAL “PERSONS”
AND THE FOURTEENTH AMENDMENT—That a corporation is a “person”
for certain purposes within the meaning of the Fourteenth Amend-
ment, and therefore entitled to invoke its protection, is considered by

students of constitutional law to be well settled.¹ For that reason the dissent of Justice Douglas in the recent case of *Wheeling Steel Corporation v. Glander*² demands more than passing recognition. Therein he restates and adds his support to the view of Justice Black that the word "person" as used in the Fourteenth Amendment refers exclusively to human beings and affords no protection whatsoever to corporations against arbitrary state action.³

In 1938, in his dissent to *Connecticut General Life Ins. Co. v. Johnson*,⁴ Justice Black first called on the Court to overrule its previous decisions interpreting the Fourteenth Amendment so as to bring corporations within the scope of its protection. His stinging and solitary challenge to a proposition considered so fundamental that it had gone unquestioned by courts for more than half a century was enough to excite considerable comment among legal scholars.⁵ However, the concern that flared in the wake of Justice Black's startling revolt was generally thought to have died a natural death until the recent disclosure by Justice Douglas of his willingness to forsake *stare decisis* for a re-interpretation of the amendment.⁶ However remote may seem the likelihood that the Court will eventually reverse its present stand, the arguments of the dissenters at least merit consideration.

The bases of the challenge primarily are two: first, that history does not support the interpretation now accepted; and second, that the context in which the word "person" is used does not sustain the construction.⁷

¹ *Minneapolis & St. Louis R. Co. v. Beckwith*, 129 U.S. 26, 9 S.Ct. 207 (1889); *Santa Clara County v. So. Pacific R. Co.*, 118 U.S. 394 (1886); see generally, 16 C.J.S., *Constitutional Law*, §§504, 573 (1939); 12 AM. JUR., *Constitutional Law*, §§474, 590 (1938).

² (U.S. 1949) 69 S.Ct. 1291, 1299; 48 MICH. L. REV. 228 (1949); 63 HARV. L. REV. 139 (1949).

³ In an additional and separate opinion Justice Jackson pointed out the apparent inconsistency of the position now taken by Justice Douglas. The latter has authored several opinions, and concurred in others, in which the prerogative of corporations to invoke the protection of the Fourteenth Amendment was at least implicitly recognized. See principal case at 1298. Cf. *Railway Express Agency, Inc. v. N.Y.*, 336 U.S. 106, 69 S.Ct. 463 (1949); *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 69 S.Ct. 432 (1949); *Illinois Central R. Co. v. Minnesota*, 309 U.S. 157, 60 S.Ct. 419 (1940).

⁴ 303 U.S. 77, 58 S.Ct. 436 (1938); 3 MO. L. REV. 318 (1938); 24 VA. L. REV. 686 (1938).

⁵ Snyder, "The Corporate Person and the Fourteenth Amendment," 8 BROOKLYN L. REV. 4 (1938); Martin, "Is a Corporation a 'Person'?" 44 W.VA. L. Q. 247 (1938); 24 A.B.A.J. 223 (1938).

⁶ As regards Justice Douglas' views on the role of *stare decisis* in constitutional law, see Douglas, "Stare Decisis," 49 COL. L. REV. 735 (1949).

⁷ "Neither the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection." From Justice Black's dissent

I. HISTORY

A. *Course of Judicial Interpretation*

Shortly after the adoption of the Fourteenth Amendment in 1868, the Supreme Court decided that corporations were not "citizens" within the meaning of the privileges and immunities clause.⁸ It was not long thereafter before a court was confronted with the argument that corporations, if not citizens, were "persons" and therefore entitled to equal protection of the laws as guaranteed by the amendment. In refuting this bold assertion, Judge Woods, while on the federal circuit court in Louisiana, declared in *Insurance Co. v. New Orleans*:⁹

"The plain and evident meaning of the section is, that persons to whom the equal protection of the law is secured are persons born or naturalized or endowed with life and liberty, and consequently natural and not artificial persons. This construction of the section is strengthened by the history of the submission by congress, and the adoption by the states of the 14th amendment, so fresh in all minds as to need no rehearsal."¹⁰

While the precise question was not presented to the Supreme Court in the celebrated *Slaughterhouse Cases*,¹¹ the ruling by Judge Woods seemed far from being in jeopardy when Justice Miller, speaking for the majority of the Court in regard to the reasons behind the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments, said:

"No one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm

in *Connecticut Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77, 85-86, 58 S.Ct. 436, 440 (1938). In general, see FLACK, *THE ADOPTION OF THE FOURTEENTH AMENDMENT* (1908); GUTHRIE, *LECTURES ON THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES* (1898); Farrage, "Non-natural Persons and the Guarantee of 'Liberty' under the Due Process Clause," 28 KY. L. J. 269 (1940); Sholley, "Corporate Taxpayers and the Equal Protection Clause," 31 ILL. L. REV. 463 (1936); Corwin, "The Doctrine of Due Process before the Civil War," 24 HARV. L. REV. 366 (1911).

⁸ *Paul v. Virginia*, 75 U.S. 168 (1868). The Supreme Court had already held that corporations were not "citizens" within other provisions of the Constitution. *Bank of U.S. v. Deveaux*, 9 U.S. 61 (1809); but compare *Marshall v. Baltimore & Ohio R. Co.*, 57 U.S. 313 (1853); *Bank of Augusta v. Earle*, 38 U.S. 519 (1839).

⁹ (C.C.La. 1871) 13 F. Cas. 67.

¹⁰ *Id.* at 68.

¹¹ 83 U.S. 36 (1873).

establishment of that freedom, and the protection of the newly-made freeman and citizen. . . ."¹²

Not until the case of *San Mateo County v. Southern Pacific R. Co.*¹³ did the issue under consideration squarely confront the Supreme Court.¹⁴ The *San Mateo* case originated in the California courts where railroad interests sought to free themselves from discriminatory modes of valuation in the assessment of taxes. Sitting as a circuit judge on the intermediate appeal, Justice Fields had held for the railroad corporations and had announced:

"It would be a most singular result if a constitutional provision intended for the protection of every person against partial and discriminating legislation by the states, should cease to exert such protection the moment the person becomes a member of a corporation. We cannot accept such a conclusion. On the contrary, we think it well established . . . that whenever a provision of the constitution . . . guaranties to persons the enjoyment of property, . . . or prohibits legislation . . . affecting it, . . . the courts will always look beyond the name of the artificial being to the individuals whom it represents."¹⁵

While Justice Fields reached a result contrary to that of Judge Woods, interestingly enough, it was not on the basis that a corporation per se is a "person," but rather on the ground that the corporate veil should be pierced in order to protect the individual shareholders as "persons."¹⁶

When the County of San Mateo appealed to the Supreme Court, the case for the railroad was argued by Roscoe Conkling and George Edmunds, both of whom had been members of the Senate when the Fourteenth Amendment was drafted and submitted for adoption. Their arguments unmistakably inferred that the framers of the amendment, the Joint Congressional Committee on Reconstruction, of which Conkling was a member, had intended to protect corporations by

¹² Id. at 71.

¹³ 116 U.S. 138, 6 S.Ct. 317 (1885).

¹⁴ While the issue might have been appropriately decided in several earlier cases the Court preferred to rest the decisions on other grounds. See *Chicago Burlington and Quincy R. Co. v. Iowa*, 94 U.S. 155 (1876); *Peik v. Chicago & Northwestern R. Co.*, 94 U.S. 164 (1876); *Richmond R. Co. v. Richmond*, 96 U.S. 521 (1877).

¹⁵ *County of San Mateo v. So. Pacific R. Co.*, (C.C. Cal. 1882) 13 F. 722 at 744.

¹⁶ Judge Sawyer, concurring in the result reached by Justice Field, rejected the "looking through" reasoning, and said, "A corporation itself is, in my judgment, a 'person' within the meaning of the constitutional provision. . . ." Id. at 761.

deliberately inserting the word "person" into the context of the draft.¹⁷

Although the *San Mateo* case was never actually decided on its merits,¹⁸ it has been generally assumed that the arguments, especially that of the brilliant advocate Conkling, had a profound influence on the Court.¹⁹ At any rate, a few years later when the case of *Santa Clara County v. Southern Pacific R. Co.*²⁰ came before the Court, Chief Justice Waite summarily announced:

"The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment . . . which forbids a State to deny to any person . . . the equal protection of the laws, applies to . . . corporations. We are all of the opinion that it does."²¹

No reasons were then stated, nor have reasons ever been stated, by the Court for its conclusion. The decision by judicial fiat is especially interesting in view of the fact that the same Judge Woods who had held to the contrary while on the circuit bench in Louisiana was a justice of the Supreme Court at the time of the *Santa Clara* decision and did not dissent from its holding.²²

B. The "Conspiracy Theory"²³

Whatever may have been the reason for the mysterious silence maintained by the Court in regard to its decision in the *Santa Clara* case,²⁴ there is no doubt that an ideal setting was left in place to

¹⁷ See Graham, "The 'Conspiracy Theory' of the Fourteenth Amendment," 47 *YALE L.J.* 371 and 48 *YALE L.J.* 171 (1938). Mr. Graham's article contains what is perhaps the most exhaustive analysis of the Conkling argument in the *San Mateo* case.

¹⁸ *San Mateo County v. So. Pacific R. Co.*, 116 U.S. 138, 6 S.Ct. 317 (1885).

¹⁹ See CHIDSEY, *THE GENTLEMAN FROM NEW YORK—A LIFE OF ROSCOE CONKLING* 369 (1935); CONKLING, *LIFE AND LETTERS OF ROSCOE CONKLING* 681 (1889).

²⁰ 118 U.S. 394, 6 S.Ct. 1132 (1886).

²¹ *Id.* at 396.

²² Judge William B. Woods of the Fifth United States Circuit, which then included Louisiana, was appointed in 1880 by President Hayes to the Supreme Court of the United States. He served as an associate justice until shortly after the *Santa Clara* decision. 2 *CARSON, THE HISTORY OF THE UNITED STATES SUPREME COURT* 480 (1902).

²³ The treatment here is limited to a mere statement of the theory. For a more complete analysis, see Graham, "The 'Conspiracy Theory' of the Fourteenth Amendment," 47 *YALE L.J.* 371 and 48 *YALE L.J.* 171 (1938); Boudin, "Truth and Fiction About the Fourteenth Amendment," 16 *N.Y. UNIV. L.Q.* 19 (1938); for a review of both, see 52 *HARV. L. REV.* 851 (1939).

²⁴ That the Court considered its reasoning so obvious as not to require explanation does not seem a satisfactory answer in view of Justice Woods' presence on the bench. It has been suggested that perhaps the Court was undecided whether to rest the decision on the ground that a corporation per se is a "person," or on the basis that shareholders as individuals are the protected "persons." See Sholley, "Corporate Taxpayers and The Equal Protection Clause," 31 *ILL. L. REV.* 463 (1936).

accommodate writers of a later era in formulating one of the most celebrated charges of plot and intrigue to be found in the pages of constitutional history.²⁵

The "conspiracy theory" of the adoption of the Fourteenth Amendment first received widespread recognition after its statement in 1927 by Charles and Mary Beard in their *Rise of the American Civilization*. Therein, the distinguished historians developed the thesis that certain shrewd Republican lawyers serving on the Joint Congressional Committee which drafted the amendment had seized upon their assignment as an opportunity to bring corporations and business interests within the protection of the federal judiciary.²⁶

The principal figure in the alleged "plot" was Representative John A. Bingham, who was almost wholly responsible for the phraseology of the due process clause. After inserting the carefully chosen word "person," innocent enough on its face, the Beards charge that Bingham and Roscoe Conkling urged the adoption by Congress of the amendment as it now reads without revealing a deeper and ulterior motive of emancipating corporations as well as slaves.²⁷

The texts of certain speeches made subsequently by Bingham on the floor of the House,²⁸ the contents of a journal of the Joint Committee which was produced dramatically by Conkling for the first time to support his argument in the *San Mateo* case,²⁹ and finally the sponsorship by the Beards, have culminated in a widespread acceptance of the "conspiracy theory." However, the evidence has failed to convince many, and weaknesses in the empirical structure of the theory have not been found lacking.³⁰

It has been pointed out that the phraseology used in the due process clause has its counterpart in, and appears to have been lifted from, the Fifth Amendment, adopted many years before. The word "person," it is argued, was really employed in preference to the word "citizen" in

²⁵ For example, see BATES, *THE STORY OF CONGRESS* 233 (1936); Lerner, "The Supreme Court and American Capitalism," 42 *YALE L.J.* 668, 691 (1933).

²⁶ 2 BEARD, *THE RISE OF AMERICAN CIVILIZATION* 111 (1927).

²⁷ *Id.* at 112.

²⁸ *CONG. GLOBE*, 42d Cong., 1st sess., Appx. at 84 (1871).

²⁹ TAYLOR, *THE ORIGIN AND GROWTH OF THE AMERICAN CONSTITUTION* 355 (1911).

³⁰ For a bitter criticism of the "plot" theory written in the tone of an advocate, see Boudin, "Truth and Fiction about the Fourteenth Amendment," 16 *N.Y. UNIV. L.Q.* 19 (1938). Also, 2 BOUDIN, *GOVERNMENT BY JUDICIARY* 404 (1932); Hamilton, "Property—According to Locke," 41 *YALE L.J.* 864, 875 (1932).

order to bring aliens within the scope of the amendment.³¹ Furthermore, it is by no means certain that corporations would not have been ultimately protected even if the word "citizen" had been used.³² In addition, to say that it was intended from the first to protect corporations in the modern "substantive" sense of due process presupposes an uncanny insight on the part of the "conspirators." It is doubtful that artificial persons were particularly covetous of "procedural" due process rights, and "substantive" due process concepts had not yet been developed.³³

The "conspiracy theory" was the subject of a thorough analysis by Mr. Howard J. Graham, the results of which appeared in print not many years ago.³⁴ Representing the most exhaustive treatment of the subject yet published, the Graham articles contain a well-documented collection and appraisal of the evidence and arguments. However, the diligent research of Mr. Graham did not enable him to reach any definite conclusions as to the basis in fact for such a theory.³⁵

Whatever its basis in fact, it may well be argued that this historical controversy, however interesting, is not especially decisive in discovering the true meaning of the word "person" in the amendment. It would seem that the intent of those who actually drafted the amendment should not be entitled to more weight than the intent of those who made it law by their subsequent adoption and ratification. While it is undoubtedly true that the people and the state legislators considered the proposed amendment primarily as protection for newly-emancipated human beings,³⁶ research does not reveal that there was

³¹ Boudin, "Truth and Fiction about the Fourteenth Amendment," 16 N.Y. UNIV. L.Q. 19 (1938).

³² *Id.* at 62. For all practical purposes a corporation is now a "citizen" within the meaning of Article III of the Constitution (diversity of citizenship jurisdiction of federal courts). *Marshall v. Baltimore & Ohio R. Co.*, 57 U.S. 314 (1853); McGovney, "A Supreme Court Fiction," 56 HARV. L. REV. 853 (1943).

³³ The basis for due process protection in the modern "substantive sense" was not laid until the Court decided *Allgeyer v. Louisiana*, 165 U.S. 578, 17 S.Ct. 427 (1897), thirty years after the plot was allegedly conceived, and more than a decade after the Santa Clara decision. See Howe, "The Meaning of 'Due Process of Law' Prior to the Adoption of the Fourteenth Amendment," 18 CALIF. L. REV. 583 (1930).

³⁴ Graham, "The 'Conspiracy Theory' of the Fourteenth Amendment," 47 YALE L.J. 371 and 48 YALE L.J. 171 (1938).

³⁵ 48 YALE L.J. 171 at 193 (1938).

³⁶ Justice Black's assertion that "the history of the Amendment proves that the people were told that its purpose was to protect weak and helpless human beings and were not told that it was intended to remove corporations in any fashion from the control of state governments," *Connecticut Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77 at 87, 58 S.Ct. 436 at 441 (1938), finds support in the language of Justice Miller in the *Slaughterhouse Cases*, 83 U.S. 36 (1873).

any settled or uniform opinion as to the scope of the words employed. On the contrary, the dearth of information available suggests that little or no thought was given to the possible interpretations of the language at the time of its adoption.³⁷

On such a state of the evidence the historical argument posed by the dissenters does not seem especially convincing.

II. "THE CONTEXT" ARGUMENT

Aside from the contention that history does not justify the interpretation accorded the Fourteenth Amendment, the dissenters offer an etymological argument. The word "person," according to legal lexicographers, is a generic term, devoid of precise meaning in the abstract.³⁸ A human being, while always a person in a real and ordinary sense, may or may not be a "person" in contemplation of law.³⁹ By the same token, a corporation, only a fictitious and artificial entity, may or may not be a legal "person."⁴⁰ Since the word is inherently ambiguous in legal parlance, its meaning must be gathered from the context in which it is found.

Looking to section one of the Fourteenth Amendment, the word "person" is used as follows:

"All *persons* born or naturalized in the United States . . . are *citizens*. . . . No state shall make or enforce any law which shall abridge the privileges or immunities of *citizens* . . . ; nor shall any state deprive any *person* of life, liberty, or property, without due process of law; nor deny to any *person* . . . the equal protection of the laws." (Italics supplied)

Analyzing the language, the dissenters point out that since corporations are not "born or naturalized" the word "persons" in the first sentence must necessarily refer only to human beings.⁴¹ In construing the due process clause, courts have never found that corporations were persons who could not be deprived of "life"; nor does the clause restrain a state from depriving an artificial person of "liberty."⁴² Only

³⁷ FLACK, *THE ADOPTION OF THE FOURTEENTH AMENDMENT* (1908); Martin, "Is a Corporation a 'Person'?" 44 *W.VA. L.Q.* 247, 259 (1938).

³⁸ 3 *BOUVIER'S LAW DICTIONARY* 2574 (1914); 32 *WORDS AND PHRASES* 189 (1940).

³⁹ Slaves were not considered "persons" within the meaning of many statutes. *Anderson v. Poindexter*, 6 *Ohio St.* 622 (1856); Cf. *State v. Boisselle*, 83 *N.H.* 339, 143 *A.* 704 (1928).

⁴⁰ 32 *WORDS AND PHRASES* 189 (1940); 19 *C.J.S.*, *Corporations* §1360 (1940).

⁴¹ Principal case at 1300.

⁴² *Western Turf Assn. v. Greenberg*, 204 *U.S.* 359, 27 *S.Ct.* 384 (1906).

with reference to "property" in the due process clause and with reference to the equal protection clause are corporations "persons" entitled to invoke the Fourteenth Amendment. According to Justice Douglas, "It requires distortion to read 'person' as meaning one thing, then another within the same clause and from clause to clause."⁴³

That such an interpretation would be inconsistent was first declared in 1871 by Judge Woods as a basis for his ruling in *Insurance Co. v. New Orleans*.⁴⁴ Therein he reasoned:

"If we adopt the construction claimed by complainants [corporation], we must hold that the word "person" where it occurs the third time in this section, has a wider and more comprehensive meaning than in the other clauses . . . where it occurs. This would be a construction for which we find no warrant in the rules of interpretation."⁴⁵

Here again, it is interesting to note that his own arguments apparently did not impress Justice Woods when subsequently he acquiesced in the *Santa Clara* decision.

While the "context" approach to the problem seems a proper one, it is questionable whether the conclusion of inconsistency reached by the dissenters necessarily follows. In the realm of statutory interpretation, it is undoubtedly true that artificial beings have no standing to enforce rights which are peculiarly human in their nature, such as the rights to "life" and "liberty." However, this is not necessarily so because a corporation in legal contemplation does not qualify as a "person" within the terms of a particular statute, but may be only because so much of the statute as is peculiar to human rights is inapplicable. That a particular statute or constitutional provision is inapplicable in one instance ought not automatically to preclude its availability in situations where it is found applicable.

Indeed, as one writer has pointed out, in light of the inconclusive state of the evidence on which the historical argument rests, it must be assumed that the Supreme Court in deciding the *Santa Clara* case did analyze the language of the amendment and did apply rules of construction but nevertheless reached a result contrary to that which the dissenters consider compelling.⁴⁶

⁴³ Principal case at 1300.

⁴⁴ (C.C. La. 1871) 13 F. Cas. 67.

⁴⁵ *Id.* at 68.

⁴⁶ Boudin, "Truth and Fiction about the Fourteenth Amendment," 16 N.Y. UNIV. L.Q. 19, 59 (1938).

III. CONCLUSION

While it may be true that the doctrine of stare decisis does not command the highest degree of respect in the field of constitutional law, nevertheless, it would seem that even in this field arguments which are to succeed in overturning a well-established principle with roots deep in the socio-economic structure of the country should be very convincing.

If the dissenters had openly contended that because of abuses policy considerations demand that a flexible constitution be reinterpreted to meet a pressing need of the times for unhampered control over corporations, an entirely different issue would be raised. But the dissenters contend only that a technical error of construction was committed which ought to be corrected notwithstanding any consequences. Indeed, Justice Douglas says:

"It may be most desirable to give corporations this protection from the operation of legislative process. But that question is not for us. It is for the people. If they want corporations to be treated as humans are treated, if they want to grant corporations this large degree of emancipation from state regulation, they should say so. The Constitution provides a method by which they may do so."⁴⁷

Far from enjoying a "large degree of emancipation," an examination of the authorities reveals that corporations enjoy a bare minimum of protection from state control under the present interpretation of the amendment. The very existence of a corporation depends upon the pleasure of the state. There is no indication that a refusal by a state to grant or renew a corporate charter would violate the Federal Constitution.⁴⁸ While a legislature may not discriminate arbitrarily between corporations of the same class, there is little doubt that for many

⁴⁷ Principal case at 1301-1302.

⁴⁸ "The right to exist as a corporation is a franchise which a state may grant or refuse at will so far as due process considerations are concerned." *ROTSCHAEFER*, *CONSTITUTIONAL LAW* 465 (1939). No case has held that the grant of the privilege in some cases and not in others amounts to denial of equal protection. Under the reserved power included in almost every corporate charter since Justice Story's suggestion in the *Dartmouth College* case the state may repeal a corporation's franchise. 7 *FLETCHER, Cyc. Corp.*, perm. ed., §3658 (1931). Having the right to grant or withhold corporate charters, the state may attach any conditions to incorporation which are not unconstitutional. 3 *WILLOUGHBY, THE CONSTITUTION OF THE UNITED STATES* 1683 (1929); *Western Union Tel. Co. v. Kansas*, 216 U.S. 1, 30 S.Ct. 190 (1909); see Hale, "Unconstitutional Conditions and Constitutional Rights," 35 *Col. L. Rev.* 321 (1935).

purposes corporations may be singled out and distinguished from other "persons" for discriminatory regulation and taxation without violating the equal protection clause.⁴⁹ The broad and extensive police power of the state over corporations is subject only to the vague due process limitation that regulation cannot constitute a clear and arbitrary invasion of "property rights."⁵⁰

Even if the word "person" in the amendment were re-interpreted so as to preclude corporations as such from its scope, it does not necessarily follow that corporate property would then be subject to a greater degree of state control. If it should be held that a corporation as an entity is not a "person," certainly the shareholders as individuals must qualify. Why should not a court pierce the corporate veil, if necessary, to protect corporate assets as property which in reality belongs to the shareholders?⁵¹

On weighing the evidence and arguments to support the dissenters' contention that corporations should be stripped of the constitutional protection which they now enjoy, it is submitted that the reasoning of Justice Douglas proves too much. If the people do not want corporations to come within the protection of the Fourteenth Amendment, the Constitution provides a method by which they may say so.

Robert P. Griffin, S.Ed.

⁴⁹ *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 29 S.Ct. 370 (1909); *Mallinckrodt Chemical Works v. Missouri ex rel. Jones*, 238 U.S. 41, 35 S.Ct. 671 (1914). Corporations may be classified separately for income tax purposes. *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342 (1910). Of course, public service corporations may be subjected to discriminatory regulation. *Budd v. New York*, 143 U.S. 517, 12 S.Ct. 468 (1892); *Munn v. Illinois*, 94 U.S. 113 (1876). For some purposes a state may distinguish between foreign and domestic corporations, *Zalatuka v. Metropolitan Life Ins. Co.*, (C.C.A. 7th, 1937) 90 F. (2d) 230; or between foreign corporations and natural persons. *Crescent Cotton Oil Co. v. State of Mississippi*, 257 U.S. 129, 42 S.Ct. 42 (1921).

⁵⁰ In general, see 14 FLETCHER, *CYC. CORP.*, perm. ed., §6708 (1945); ROTTSCHAEFER, *CONSTITUTIONAL LAW* 451 (1939); *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105, 49 S.Ct. 57 (1928).

⁵¹ See language of Justice Field in *the County of San Mateo v. So. Pacific R. Co.*, (C.C. Cal., 1882) 13 F. 722, 744; Boudin, "Truth and Fiction About the Fourteenth Amendment," 16 N.Y. UNIV. L.Q. 19, 64 (1938). Generally, see Horowitz, "Disregarding the Entity of Private Corporations," 14 WASH. L. REV. 285 (1939) and 15 WASH. L. REV. 1 (1940).