# Rights, Commerce, and Reform (1874-1921)

*The end of Reconstruction and the start of Industrialization led to a 50-year era where the Supreme Court addressed constitutional questions about rights, commerce, and reform.*

**Background**

The end of the Civil War in 1865 marked a significant turning point for the United States. Though the fighting ended, major racial, regional, and political conflicts persisted. The federal government addressed these problems over the next 12 years. During this time, known as **Reconstruction**, the states ratified three new constitutional amendments—the Thirteenth, Fourteenth, and Fifteenth—that created constitutional protections for African Americans. Reconstruction ended after the Election of 1876, when the majority-Republican Congress agreed to **demilitarize** the South. The former Confederate states, which were dominated by the Democratic party, had been under **martial law** since 1867. In return, both sides agreed to recognize Republican Rutherford B. Hayes as the winner of the closely decided and disputed 1876 election.

At the same time, the **Gilded Age** began as rapid industrialization generated unprecedented economic growth. Before 1880, over half of the country's population worked on farms. Between 1860 and 1920, however, the **urban** population ballooned from 6.2 million to 54.2 million people. Rural migrants and over 12 million immigrants flocked to cities hoping to secure a job in one of the many new factories. Additionally, railroad lines multiplied by nearly six times, growing from 35,000 miles pre-Civil War to over 200,000 miles by 1899. Expanding railroad routes, especially the **transcontinental railroad**, connected the nation and facilitated the exchange of people, goods, and ideas. Opening these territories to American settlers, however, violated treaties with Native American tribes and threatened their **sovereignty**.

Between 1874 and 1921, post-Civil War and industrial problems intersected—Reconstruction ended, the **Jim Crow** era began, the country acquired new territories, and some of the nation's largest-ever companies rose and fell. The racial conflicts, industrial working conditions, and commercial disputes that occurred during this time presented distinct problems. They centered, however, on the powers of the federal and state governments to protect the interests of individuals and, later, businesses. As these issues manifested themselves as legal challenges, the Supreme Court of the United States interpreted and applied the new Reconstruction Amendments, especially the **Fourteenth Amendment**, as it considered constitutional questions about rights, commerce, and reform.

**Rights**

The Supreme Court issued one of the first interpretations of the Fourteenth Amendment in *Cruikshank v. United States* (1875). The case challenged the convictions of several **Ku Klux Klan** mob members who killed as many as 160 Black voters following a local election in Louisiana. The Supreme Court unanimously overturned their convictions. According to *Cruikshank*, the Fourteenth

Amendment's rights of **due process** and **equal protection** only applied to state actions, not the actions of individuals. The Court applied similar reasoning when it struck down the Civil Rights Act of 1875. The act, which outlawed discrimination in public accommodations (like restaurants and theatres) had no constitutional basis since only the states—not private businesses or individuals—needed to uphold the Fourteenth Amendment. The Supreme Court cited the *Civil Rights Cases* (1883) as precedent in the 1896 *Plessy v. Ferguson* decision, which legalized racial segregation.

The Court also considered how the Fourteenth Amendment applied to other marginalized groups. Lawyer Myra Bradwell, for example, sued the state of Illinois for denying her admission to its **bar** because she was a woman. The Court upheld the state's right to deny Bradwell a law license in *Bradwell v. Illinois* (1873). The decision did not stop women from participating in law, however, and around the same time, Belva Lockwood successfully lobbied Congress to pass a bill banning discrimination against female attorneys. She became the first woman to argue before the Supreme Court in 1880. Additionally, an influx of immigration during the **Industrial Revolution** generated questions about citizenship. The 1898 decision in *U.S. v. Wong Kim Ark* affirmed that birthright citizenship is protected by the Fourteenth Amendment to the Constitution.

Meanwhile, settlers increasingly moved into western territories, raising questions about the self-governing powers of Native American tribes. By 1903, the *Lone Wolf v. Hitchcock* decision held that Congress had full legal authority to control tribes through acts of Congress and could disregard any established treaties. In the *Insular Cases*, heard from 1901 to 1904, the Supreme Court confirmed Congressional authority over all **annexed** territories gained through U.S. **imperialism**.

During World War I and the **First Red Scare**, the Court heard several **First Amendment** challenges to the Espionage and Sedition Acts of 1917, which criminalized any speech or activity that interfered with the war effort. These decisions generally asserted that national security concerns provided grounds to limit **civil liberties**. The *Schenck v. United States* (1919) decision, for example, held that free speech may come under scrutiny if the words suggest "*a clear and present danger*" to the country.

**Commerce**

During the late 1800s, dramatic advancements in technology and transportation led to rapid urban development. New factories, mass production, steam power, and railroads revolutionized the United States' economy, transforming it from an **agrarian** to an industrial one in a matter of decades. To maximize profits, companies across industries—such as steel, oil, railroad, and sugar—eliminated competitors and consolidated their resources into **trusts** or **holding companies.** This business tactic often gave one firm a **monopoly** and led to a concentration of wealth. With total control over the market, monopolies could, and did, exploit consumers by charging prices above competitive levels.

In 1890, Congress passed the **Sherman Antitrust Act** to regulate corporate activity and prevent monopolies. The act outlawed any contract or consolidation that resulted in the "restraint of trade or commerce among the several States, or with foreign nations." There was, however, disagreement over the scope of the act. For example, the Justice Department sued the American Sugar Refining Company for forming a monopoly over sugar refining. The Supreme Court, however, held in *United States v. E.C. Knight Company* (1895) that the act only applied to interstate commerce, which Congress has a Constitutional power to regulate. The act did not apply to manufacturing monopolies, like sugar refining. The decision weakened the Sherman Antitrust Act and limited the federal government's power to break up large trusts. For the next decade, there were few anti-monopolization cases.

**Reform**

The Supreme Court's interpretation of commercial law evolved as the **Progressive movement** gained momentum at the turn of the century. Under the direction of President Theodore Roosevelt, the Department of Justice resumed prosecuting large corporations under the Sherman Antitrust Act. In the 1904 *Northern Securities* case, the Court held that the merger of two of the nation's largest railroad companies was illegal, ushering in an era of government "**trust-busting**." The following year, the Court's decision in *Swift and Company v. United States* found that the meatpacking industry's "beef trust" violated the Sherman Antitrust Act. Then, in 1911, the Supreme Court dissolved John D. Rockefeller's Standard Oil Company, one of the largest corporations in the country. These decisions did not officially overturn *E.C. Knight Company*, but rather reflected different interpretations of the **Commerce Clause** as the Supreme Court's membership changed over time. Trust-busting continued under fellow "progressive" presidents William Howard Taft and Woodrow Wilson. Additionally, in 1914, the Clayton Antitrust Act and the Federal Trade Commission (FTC) strengthened the Sherman Antitrust Act. The FTC enforced it, while the Clayton Act outlawed anticompetitive practices.

The Court also addressed the role of federal and state governments in workplace safety regulations. In *Lochner v. New York* (1905), the Supreme Court invalidated a New York law that set maximum working hours for bakers. Justice Rufus W. Peckham wrote for the majority that the law's interference with the right to contract between employer and employee was unconstitutional. While the Constitution does not explicitly mention liberty of contract, Justice Peckham stated that it is implied by the **Due Process Clause** of the Fourteenth Amendment. According to the majority, the freedom to enter into a contract falls under the federal government's protection against any statute that infringes on an individual's "life, liberty, or property without due process of law." The decision frustrated Progressive reformers who believed government intervention was the best solution to society's social and economic problems. In the eyes of reformers, the *Lochner* decision supported **laissez-faire** ideology by protecting business rights over the workers. In *Muller v. Oregon* (1908), however, the Supreme Court upheld an Oregon state law that prohibited women from working more than 10 hours per day. The *Muller* decision created a clear legal division between men and women in the workplace.

**Conclusion**

Over nearly five decades, three Chief Justices—Morrison R. Waite, Melville W. Fuller, and Edward D. White—administered the Supreme Court during dramatic transformations stemming from the Civil War and Industrialization. Associate Justices such as Samuel F. Miller, Joseph Bradley, John Marshall Harlan, and Oliver Wendell Holmes authored opinions interpreting the Reconstruction Amendments for the first time, applying them to both racial equality and to emerging questions about commercial and workplace regulations.

As the era came to a close, the states ratified four new amendments to the Constitution seeking additional reforms. In 1913, the **Sixteenth Amendment** established a federal income tax. The same year, the **Seventeenth Amendment** mandated the direct election of U.S. senators, giving citizens a stronger voice in the makeup of Congress. **Prohibition** began following the **Eighteenth Amendment** (1919), which outlawed liquor sales for the next decade. Finally, the women's suffrage movement successfully campaigned for the **Nineteenth Amendment**, which the states ratified in 1920. Still, racial problems and debates over the role of government persisted into the 1920s. Though the Court's opinions shaped race, commerce, and reform between 1874 and 1921, its interpretations of these constitutional questions would continue to evolve as the nation moved into the Roaring Twenties and beyond.

**Discussion Questions**

1. To what extent did Supreme Court decisions between 1874 and 1896 impact the rights and freedoms of Black Americans?
2. How did Supreme Court decisions about monopolies change over time between 1898 and 1911? What factors do you think account for this change?
3. The Fourteenth Amendment was originally created in 1868 to extend rights to formerly enslaved African Americans. How else did the Supreme Court apply this amendment during this era?
4. How did the Supreme Court participate in the system of checks and balances amongst the three branches of government between 1874 and 1921?
5. How did Supreme Court decisions between 1874 and 1921 influence the balance of power between the federal and state governments?

**Vocabulary**

- **Reconstruction –** the period after the Civil War ended when the United States worked to integrate newly-freed African Americans as full citizens.
- **Demilitarize** – to remove all military forces from a zone.
- **Martial law –** temporary substitution of military authority for civilian rule and is usually invoked in time of war, rebellion, or natural disaster.
- **Gilded Age –** a period of rapid industrialization, economic growth, and significant social and political change.
- **Urban –** relating to cities

- **Transcontinental Railroad –** a continuous network of railway tracks that crosses a continent, connecting different coasts or borders of a landmass completed in 1869, which linked the Pacific and Atlantic coasts, significantly shortening travel times and facilitating western expansion and trade.
- **Sovereignty –** the authority of the state to govern itself.
- **Jim Crow** – refers to the legalized segregation of the Black population of the United States in schools, restaurants, public transportation, and other institutions or facilities, and the denial of the right to vote, after the Civil War up until the 1960s.
- **Fourteenth Amendment –** ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all persons "equal protection of the laws."
- **Ku Klux Klan –** a violent post-Civil War secret society founded in Tennessee in 1866 to upend the Black political and social power that was being established during Reconstruction.
- **Due process –** fair treatment through the normal judicial system.
- **Equal protection –** the idea that a government must treat an individual in the same manner as others in similar conditions and circumstances.
- **New South –** a political and intellectual movement after Reconstruction that promoted
- **Bar –** refers to an exam needed to practice law
- **Concurring opinion –** an opinion that agrees with the result reached by the majority (the judgment), but that expresses a different analysis or gives the law or facts a different emphasis in reaching that result.
- **Industrial Revolution** – a period of rapid change in the economy brought about by the introduction of power-driven machinery (in the U.S., the late 1800s).
- **Annexed –** added, as in territory
- **Imperialism –** the policy or practice of extending a nation's power and influence through diplomacy or military force.
- **First Red Scare** – period of time (1917-1920) following the 1917 Russian Revolution in which there was widespread fear of communism, socialism, and anarchy.
- **First Amendment –** "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
- **Civil Liberties –** fundamental rights and freedoms protected by the U.S. Constitution.
- **Agrarian –** based on farming and agriculture
- **Trusts –** a large grouping of businesses in the same industry that transfer their assets to a board of trustees, reducing competition and effectively creating monopolies or near-monopolies.
- **Holding companies** – a corporation that owns enough voting stock in another company to control its policies and oversee its management.
- **Monopoly –** a market structure where a single seller or producer controls the entire supply of a particular good or service, eliminating competition and giving the monopolist significant control over price and availability.

- **Sherman Antitrust Act –** (1890) a federal law that prohibits activities that restrict interstate commerce and competition in the marketplace. It was put in place to address monopolies.
- **Progressive movement –** an early twentieth-century political movement that countered problems created by industrialization with social, political, economic, and environmental reforms.
- **Trust-busting –** government policy, especially during the Progressive Era, to break up large corporations and monopolies.
- **Commerce Clause –** gives Congress the power to regulate commerce (buying and selling) between the states.
- **Due Process Clause –** a provision in both the Fifth (applies to the federal government) and Fourteenth Amendments (applies to states) that guarantees individuals protection of the right to notice and being heard when they may be deprived of life, liberty, or property; protections against equal protection violation, and the protection of fundamental rights.
- **Laissez-faire –** an economic theory where there is minimal government interference in the economy.
- **Sixteenth Amendment** – ratified in 1913; gave Congress the power to levy an income tax.
- **Seventeenth Amendment –** ratified in 1913; provided for the direct election of senators by the people of each state.
- **Eighteenth Amendment –** prohibited the manufacture, sale, and transportation of alcohol; repealed in 1933.
- **Prohibition –** a period of time between 1920 and 1933 when the Eighteenth Amendment to the Constitution banned the manufacture, sale, and transportation of alcohol.
- **Nineteenth Amendment –** declared that the right to vote cannot be denied based on sex.