[8] *United States v. Microsoft Corp.* (1999).

[9] A determination by a judge of a fact supported by the evidence presented at the trial or hearing, Black's Law Dictionary, Abridged 7th Ed., West Group, 2000, p. 511.

[10] An inference on question of law, made as a result of factual showing, (Black's Law Dictionary, Abridged 7th Ed., West Group, 2000, p. 233).

[11] Conclusions of Law.

[12] "... as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." (*United States v. Grinnell Corp., 1966*).

[13] 85 to 100% - monopoly, 51 to 84% - area of court discretion, 50 – 0% no monopoly, .....

[14] Conclusions of Law.

[15] OEMs - companies that assemble and sell computers, for example Dell.

[16] IAPs - companies that provide access to the Internet.

[17] ICPs - companies that develop websites.

[18] ISVs - companies that specialise in the development and sale of software, CCI High Tech Dictionary at http://www.computeruser.com.

[19] Full exploration of facts is usually necessary in order properly to draw decree so as to prevent future violations and eradicate existing evils. *United States v. Ward Baking Co.* (1964).

[20] Code of Conduct of United States, Canon 3A (6).

[21] Code of Conduct of United States, Canon 2.

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# A Brief Note on the Sherman Anti-Trust Act


*Jan Šefranka*


This brief article will attempt to explain the fundamental historical background of the **Sherman Anti-Trust Act** of 1890, and will use examples to illustrate its application in the first decade of its existence.

## Historical Background

The year 1890, when the **Sherman Anti-Trust Act** was passed was memorable for some of the most significant legislation drafted in the last two decades of the 19th century. In addition to the **Sherman Anti-Trust Act,** President Grover Cleveland approved the **Dependent Pension Act,** the **Sherman Silver Purchase Act,** the **McKinley Tariff,** and the admission of the last of the "omnibus states," Idaho and Wyoming, which followed the admission of the Dakotas, Montana, and Washington in 1889. In fact, this period can be perceived as a shift in the attitudes of American public. The years between 1870 and mid-1890s are often referred to as the "Gilded Age,"[1] after a novel by Mark Twain and Charles Dudley Warner. The most unforgettable character in the book was an engaging mountenback, Colonel Beriah Sellers, who always embroiled in some slippery scheme to trade on political favors and who had his counterparts in real political life. Corruption and abuses of industrial "robber barons" were widespread.

However, the early 1890s brought in a new strain in political thinking and general attitudes. It was, above all, the spread of trusts and their growing power that gave rise to public concern and outcry aimed against such figures as John D. Rockefeller, who was determined to "pay nobody a profit." His strategy was simple. In order to consolidate scattered business interests, Rockefeller and other entrepreneurs resorted to the legal device of the trust. Long established in law to enable one or more people to manage property belonging to others, such as children or the mentally incompetent, the trust was used for new purpose - the centralized control of business. The model was set by Standard Oil of Ohio, which was not permitted to hold property out of state. In 1872, it began to place properties or companies acquired elsewhere in trust, usually with Henry M. Flagger, the company secretary. This became impractical, however, as the death of the trustee would endanger the trust. To get around this problem, all of thirty-seven stockholders in various Standard Oil enterpri-

ses conveyed their stock to nine trustees in 1882, receiving "trust certificates" in return. The nine trustees were thus empowered to give central direction to all the Standard Oil companies. This device made it very difficult for smaller competitors to hold out, and in fact they were often steamrolled by huge marketing organizations.

In 1890, the Democrats and Republicans had pledged themselves to doing something about the growing power of trusts and monopolies. The **Sherman Anti-Trust Act,** named for Senator John Sherman, chairman of the Senate Judiciary Committee that drafted it, sought to incorporate into federal law a long-standing principle of the common law against "restraint of trade." It forbade contracts, combinations, or conspiracies in restraint of trade or in the effort to establish monopolies in interstate or foreign commerce. A broad consensus put the law through, but its passage turned out to be largely symbolic. The common law prevailed only in state courts, and the largest corporations had grown well beyond the boundaries of a single state, and beyond the ability of state courts to control them. During the next decade, successive administrations expended little effort on the Act's enforcement. From 1890 to 1901, only eighteen suits were instituted, and four of those were against labor unions.

The following examples are to illustrate two different applications of the **Sherman Anti-Trust Act.**

### President Theodore Roosevelt's Trust Busting

The turn of the century saw the advent of the "Progressive movement,"[2] which attacked, among other things, the growth of corporate giants responsible to "no one but themselves," and it outlined many reforms that would be accomplished in the years to come. The goals of the Progressives were greater democracy, good government, regulation of business, social justice, and public service. Publicist Henry Demarest Lloyd, in his book "Wealth against Commonwealth" (1894), critically examined the Standard Oil Company, as well as other monopolies, the economical power of which was able to corrupt, if not control, governments.

President Theodore Roosevelt adhered to some of these progressive causes. He believed that effective regulation was better than wholesale trust busting and restoration of small business, which might be achieved only at the cost to the efficiencies of scale gained in larger operations. Roosevelt nevertheless acquired a reputation as a "trustbuster." In 1901, he felt impelled to take up the trust problem in the belief that it might be too risky to ignore. He maintained a "sincere conviction that combination and concentration should be, not prohibited, but supervised and within reasonable limits controlled..."

As Congress balked at regulatory legislation, President Roosevelt sought to force the issue by a more vigorous prosecution of the **Sherman Anti-Trust Act.** He had to choose his target carefully. In the case against the Sugar Trust (*United States v. E.C. Knight and Company,* 1895) the Supreme Court had declared manufacturing to be a strictly intrastate activity. Railroads, however, were unquestionably engaged in intrastate activity and thus subject to federal authority. In February 1902 Roosevelt ordered Attorney-General Philander C. Knox to move against the Northern Securities Company, a firm vulnerable both to law and public opinion. That company, formed the previous year, had taken shape during a gigantic battle in the New York Stock Exchange between E. H. Harriman of the Union Pacific and James J. Hill and J. P. Morgan of the Great Northern and Northern Pacific. The stock battle raised the threat of a panic, and led to a settlement in which the chief contenders made peace. They formed Northern Securities as a holding company to control the Great Northern and Northern Pacific.

Around the time Roosevelt ordered suit against Northern Securities in 1902. He balanced his action with a speech at the South Carolina and West Indian Exposition in Charleston, denouncing the demagogues who raved "against the wealth which is simply the form of embodied thrift, foresight, and intelligence." But when J. P. Morgan invited Roosevelt to settle their differences, the president refused. Hill complained: "It seems hard that we should be compelled to fight for our lives against the political adventurers who have never done anything but pose and drew salary..." Knox pressed the case and in 1904, the Supreme Court dissolved the combination. "What has been the result?" Hill asked. "To the owners... merely the inconvenience of holding two certificates of stock of different


*B is the Beef Trust. This heartless old sinner makes the people pay double or go without dinner.*

colors instead of one. To the public, no difference at all except that it has missed the advantages which the simpler and more businesslike plan would have secured."

As mentioned above, the **Sherman Anti-Trust Act** of 1890 had also a strong bearing on organized labor. The following is example of how it affected labor movement.

### The Pullman Strike of 1894

The Pullman strike of 1894 involved a dispute at the model town of Pullman, Illinois, which housed workers of the Pullman Palace Car Company. The idyllic appearance of the town was deceptive. Employees were required to live there, paying rent and utility costs higher than in nearby towns, and buying goods from company stores. During the Depression of 1893, George Pullman laid off 3,000 of 5,800 employees, and cut 25-40 percent of the wages, but not his rent and other charges. When Pullman fired three members of a grievance committee,[3] a strike began on May 11, 1894. Pullman workers had been joining the American Railway Union, founded the previous year by Eugene V. Debs. Once Debs, the secretary-treasurer of the Brotherhood of Locomotive Firemen, had decided that such brotherhoods were too exclusive. He set out to organize an industrial union to include all railway workers. Late in June, the union workers ceased to handle Pullman cars, and by the end of July had tied up most of the roads in the Midwest.

The roads brought strikebreakers from Canada and elsewhere, instructing them to connect mail cars to Pullman cars so that interference with Pullman cars meant also interference with the mails. Attorney-General Richard Olney swore in 3,400 special deputies to keep the trains running, and when clashes occurred between these and some of the strikers, lawless elements exploited the situation. Finally, on July 3, President Cleveland answered an appeal from the railroads, and sent federal troops into the Chicago area, where the strike was based. Illinois Governor John Peter Altgeld insisted that the state could keep order, but Cleveland claimed authority, and a duty to ensure the delivery of the mails.

Meanwhile Olney had got an injunction from the federal district court forbidding any interference with mail or any attempt to restrain interstate commerce; the principle was that a strike or boycott violated the **Sherman Anti-Trust Act.** On July 13, the union called off the strike and on the same day Debs was cited for violating the injunction and sentenced to six months in jail. The Supreme Court upheld the decree in the case of *In re Debs* (1895) on broad grounds of national sovereignty: "The strong arm of national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of mails."

1 Gilded Age – a period of American history between the 1870s and 1890s marked by corruption and profiteering.

2 Progressive Movement – a democratic reform movement against abuses of the Gilded Age industrialists and entrepreneurs.

3 A grievance is any condition that exists which causes any employee to feel that his/her rights have been violated.

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# A Historical Account of Louisiana's Civil Law

## A Civil Law Island in the United States

*McKenna Richards*

Every student of the common law learns early on that Louisiana is unique in the United States in being a *civil law* jurisdiction. Most students and lawyers outside Louisiana leave their knowledge at that, and thus miss an opportunity to learn exactly what that difference means, along with the often fascinating story of how an island of Roman law arose in the midst of a common law ocean.

### Louisiana's Legal History

Louisiana owes the uniqueness of its legal regime to its colonial history, which saw periods of both French and Spanish rule. When the first European colonists began arriving in the New World in the sixteenth century, North America was soon divided among the English, French, and Spanish empires, each of which imported its language, customs, and laws to its territories. While the English brought their common law, whose development has been continuous from the Norman Conquest in 1066 to this day, law on the continent during this pre-code period consisted of an often confusing mixture of Roman concepts (the *jus commune*), royal decrees, and local ordinances.

In 1682, René-Robert Cavelier, Sieur de la Salle, claimed for France the territory extending from the Mississippi River to the Rocky Mountains between the Gulf of Mexico and the