Even had the will for an interventionist Southern policy survived in the White House, a series of Supreme Court decisions during Grant's second term undercut the legal rationale for such action. Previously, the Court had proved reluctant to become involved in Reconstruction controversies. But during the 1870s, responding to the shifting currents of Northern public opinion, it retreated from an expansive definition of federal power, and moved a long way toward emasculating the postwar amendments—a crucial development in view of the fact that Congress had placed so much of the burden for enforcing blacks' civil and political rights on the federal judiciary.

The first pivotal decision, in the *Slaughterhouse Cases,* was announced in 1873. Four years earlier, Louisiana had chartered a corporation to monopolize butchering in New Orleans, ostensibly to protect public health but actually to encourage the construction of modern meat-packing facilities that would enable the city to compete for control of the Texas cattle trade. Butchers suddenly deprived of employment sued in federal court, contending that the monopoly violated their right to pursue a livelihood, guaranteed, they insisted, by the Fourteenth Amendment. In effect, they asked the Court to decide whether the Amendment had expanded the definition of national citizenship for all Americans, or simply accorded blacks certain rights already enjoyed by whites. Speaking for the five-man majority, Justice Samuel F. Miller rejected the butchers' plea, insisting Congress had intended primarily to enlarge the rights of the former slaves. Blacks might have been forgiven for thinking this construction would bolster federal action on their behalf, but Miller went on to distinguish sharply between national and state citizenship, and to insist that the Amendment only protected those rights that owed their existence to the federal government. What were these federal rights? Miller mentioned access to ports and navigable waterways, and the ability to run for federal office, travel to the seat of government, and be protected on the high seas and abroad. Clearly, few of these rights were of any great concern to the majority of freedmen. The Fourteenth Amendment, Miller declared, had not fundamentally altered traditional federalism; most of the rights of citizens remained under state control, and with these the Amendment had "nothing to do." As Justice Stephen J. Field pointed out in a stinging dissent, if this were the Amendment's meaning, "it was a vain and idle enactment, which accomplished nothing and most unnecessarily excited Congress and the people on its passage."[33]

Courts, Department of Justice, and Civil Rights, 1866–1876 (New York, 1985), 105–13; George H. Thompson, *Arkansas and Reconstruction* (Port Washington, N.Y., 1976), 88–166; Earl F. Woodward, "The Brooks and Baxter War in Arkansas, 1872–1874," *ArkHQ,* 30 (Winter, 1971), 315–36.

33. Charles Fairman, *Reconstruction and Reunion 1864–1888: Part One* (New York, 1971), 1321–59; Kaczorowski, *Politics of Judicial Interpretation,* 143–59; Harold M. Hyman and William M. Wiecek, *Equal Justice Under Law: Constitutional Development 1835–1875* (New York, 1982), 475–81.

Ironies abounded in what *The Nation* called this "curious case," and not only because the parties seeking relief in federal court were Southern whites, not aggrieved freedmen. The butchers' attorney, John A. Campbell, a Democrat, prewar Supreme Court Justice, and the Confederacy's Assistant Secretary of War, invoked free labor principles to urge the Court to protect a citizen's right to choose a livelihood. Justice Field, in his dissent, agreed that the "right of free labor" was "a distinguishing feature of our republican institutions." (He did not, apparently, believe women entitled to this right, for in a simultaneous case, he joined the majority in rejecting the suit of Myra Bradwell, who sought to overturn an Illinois court ruling barring females from practicing law.) Field's broad interpretation of the Fourteenth Amendment, however, had little to do with Reconstruction, which, as a Democrat, he opposed, or with blacks' rights, in which he had almost no interest. Rather, he had become convinced by the Grange, Paris Commune, and other "class" movements, that the federal government must exercise some restraint on unwise actions by the states. His argument in *Slaughterhouse* blazed a trail toward the judicial conservatism of the 1880s and 1890s, when the federal courts became a refuge for those seeking to protect property rights against local restrictions on economic enterprise. Justice Miller, for his part, opposed the butchers because he did not wish to see the Court become "a permanent censor upon all the legislation of the states." A founder of the Iowa Republican party, he remained committed to the freedmen's enjoyment of equal rights before the law. But his judgment that primary authority over citizens' rights rested with the states led lower federal courts to limit national jurisdiction over the administration of justice, further weakening civil rights enforcement.[34]

Slaughterhouse at least affirmed the indisputable fact that the postwar amendments had been designed to protect black rights (although the Court's denial of their applicability to whites, and its studied distinction between the privileges deriving from state and national citizenship, should have been seriously doubted by anyone who read the Congressional debates of the 1860s). Even more devastating was the 1876 decision in *U.S.* v. *Cruikshank*. This case arose from the Colfax massacre, the bloodiest single act of carnage in all of Reconstruction. Indictments were brought under the Enforcement Act of 1870, alleging a conspiracy to deprive the victims of their civil rights. On the grounds that the wording

34. *Nation*, December 1, 1870; Michael L. Benedict, "Preserving Federalism: Reconstruction and the Waite Court," *Supreme Court Review*, 1978, 55–57; Fairman, *Reconstruction and Reunion*, 1364–66; Carl B. Swisher, *Stephen J. Field, Craftsman of the Law* (Washington, D.C., 1930), 376–83, 418–20, 429; William E. Forbath, "The Ambiguities of Free Labor: Labor and the Law in the Gilded Age," *Wisconsin Law Review*, 1985, 772–99; Robert G. McCloskey, *American Conservatism in the Age of Enterprise 1865–1910* (Cambridge, Mass., 1951), 73–84; Charles Fairman, *Mr. Justice Miller and the Supreme Court, 1862–1890* (Cambridge, Mass., 1939), 138, 193–94; Kaczorowski, *Politics of Judicial Interpretation*, 173–93.

failed to specify race as the rioters' motivation, the Supreme Court overturned the only three convictions the government had managed to obtain. More, however, was at stake than faulty language, for the Court went on to argue that the postwar amendments only empowered the federal government to prohibit violations of black rights by *states;* the responsibility for punishing crimes by individuals rested where it always had—with local and state authorities. The decision did uphold Washington's authority to protect the "attributes of national citizenship," but these had been defined so narrowly in *Slaughterhouse* as to render them all but meaningless to blacks. In the name of federalism, the decision rendered national prosecution of crimes committed against blacks virtually impossible, and gave a green light to acts of terror where local officials either could not or would not enforce the law.[35]

Additional evidence of the nation's waning commitment to the freedmen abounded during the 1870s. Partly because his own son was among the offenders, the President did nothing to force the United States Military Academy to take action against classmates who ostracized and harassed its first black cadets. James W. Smith, the product of a South Carolina Freedmen's Bureau school whom Connecticut philanthropist David Clark took into his home and educated, in 1870 broke West Point's color line. After enduring three years of persecution, Smith was dismissed after failing a test administered privately (in defiance of custom) by his philosophy professor. His successors endured similar ordeals. Not until 1877 did the stoical Henry O. Flipper, the son of a Georgia slave artisan, graduate and become the first black to receive a commission in the regular army.[36]

Of far more import to most blacks was the fate of the Freedman's Savings and Trust Company, one of the many financial institutions to succumb to the depression. Chartered in 1865, the bank had actively sought deposits from the freedmen, while at the same time instructing them in the importance of thrift. To inspire confidence in its activities, it employed local black leaders as cashiers and members of branch advisory boards. Blacks by the thousands came to the bank with tiny deposits—the majority of accounts were under fifty dollars and some amounted only to a few pennies—and used it to handle their financial affairs and remit funds to distant relatives. And organizations from churches to benevolent societies entrusted their modest treasuries to its vaults. The freedmen's money, declared Henry Wilson in 1867, was "just as safe there as if it were in the Treasury of the United States." Unfortunately, the bank's directors soon lost sight of both their reforming zeal and prudent busi-

35. Kaczorowski, *Politics of Judicial Interpretation,* 205–16; Benedict, "Preserving Federalism," 69–73; Fairman, *Reconstruction and Reunion,* 1371–78.

36. McFeely, *Grant,* 375–77; David Clark to Charles Sumner, December 24, 1870, Charles Sumner Papers, HU; Henry O. Flipper, *The Colored Cadet at West Point* (New York, 1878).