

MASSIVE CONSTITUTIONAL PARALLELS SHUNNED

U.S. History texts sidestep these stark similarities between the American Revolution and Radical Reconstruction. They ignore the British constitutional basis for colonial revolt in the former. They blame only white racism for opposing the latter.

This is one of many Acts of Parliament between 1763 and 1775 that violated American colonists' rights as Englishmen and caused the American Revolution.

Act of Parliament

Revenue (or Sugar or Molasses) Act (1764)

Parliament in this Act first taxed the colonies for revenue instead of merely to regulate trade. Part of the revenue would help support a 6,000 to 10,000-man British garrison in the colonies.

Parliament halved the old unenforced 6 pence per gallon duty on foreign molasses imported into the colonies, to 3 pence per gallon, but British customs officials and the British navy would enforce this new rate. (A 6-pence duty on foreign molasses would discourage trade while a 3-pence duty would encourage it, Parliament reasoned, and thus boost actual revenue.) In 1766 Parliament cut this duty to about one penny per gallon, which the colonists paid, since that was about what they had been paying British customs collectors not to enforce the higher duties.

This Act doubled taxes on European goods shipped to the colonies via England as the 17th-century Navigation Acts required. Those Acts also listed "enumerated articles" which the colonists must export only to England if they exported them beyond intercolonial trade. To this list the Revenue Act added furs, potash, iron, and lumber – all major colonial exports to Europe. British merchants in England resold these "enumerated articles" to Europe at higher prices, reaping unearned profits.

Colonial shippers leaving colonial ports, even if only for intercolonial trade, had to file detailed manifests declaring their cargoes and post high bonds to guarantee payment of import duties on foreign molasses. Compliance cost time and money because customs houses were few and far between. (Almost all intercolonial trade occurred by sea where possible, due to poor roads.)

Ships and cargoes violating the Revenue Act were liable to seizure by customs officials in port and by the British navy at sea. In seizure cases under this Act the burden of proof lay on shippers to show that they had complied rather than on the seizer to show they had not. These cases were tried before a judge appointed by the British home government in a juryless admiralty court in distant Halifax, Nova Scotia, the British naval headquarters in North America.

Ships and cargoes seized and condemned under the Revenue Act were sold at auction. The customs officer involved, the royal colonial governor, and the British home government each received one third of the auction price of ships and cargoes seized in port. The British naval officers involved and the British home government each received half of the auction price of ships and cargoes seized at sea. This Act almost totally exempted customs and naval officers from countersuit by shippers for unlawful seizure. These provisions encouraged unjust seizures.

BACKGROUND

Britain stationed almost no troops in North America to protect the colonists before the French and Indian War (1754-63), when the French in Canada could foment Indian attacks on English settlements. After the French and Indian War, Britain posted between 6,000 and 10,000 soldiers in the colonies, prompting the question: If the colonists needed no British soldiers to protect them from the Indians before the War, why did they need them after it, with the French gone? Also, during that War, special colonial ranger companies, which focused on burning Indian towns and food supplies,

dealt much more effectively than regular British soldiers with the Indian threat. Britain dissolved these ranger companies after the War. Plus, mismanagement of Indian relations by General Amherst, British army commander in North America, helped provoke Pontiac's Rebellion (1763). Britain evidently wanted the colonists to help support a standing army in peacetime which could enforce Parliamentary legislation in the colonies, or which could quickly transfer to Europe if France took up arms to redress the imbalance of power there after Britain's great victory in the Seven Years' War (1756-63).

Rights of Englishmen Violated

NO TAXATION WITHOUT CONSENT

NO STANDING ARMY IN PEACETIME WITHOUT CONSENT

DUE PROCESS BEFORE PROPERTY SEIZURE

INNOCENT UNTIL PROVEN GUILTY

TRIAL BY JURY OF PEERS

SPEEDY TRIAL

LIABILITY FOR UNLAWFUL PROPERTY SEIZURE

Radical Reconstruction (1867-77) featured numerous serious constitutional problems, many of which reprised Parliament's violation of American colonial rights before 1776.

• TAXATION WITHOUT REPRESENTATION

From 1867 to 1871, under the Reconstruction Acts, an "iron-clad oath" disfranchised Southerners who had voluntarily aided the Confederacy. Meanwhile huge tax increases and soaring state debts far exceeded real value received. The personal impact of political corruption on individual Southerners was greater than that of the Tweed and Grant scandals on Northerners. New state social spending – plus costs of post-war rebuilding – tripled and quadrupled Southern state tax rates in 1870 compared to 1860, though the property-tax base had shrunk. In one instance, 15% of Mississippi landowners could not pay these taxes and lost their land.

• UNFREE ELECTIONS/RESTRICTION ON REPUBLICAN FORM OF GOVERNMENT

Until 1872, the 14th Amendment barred ex-Confederates from state or federal office if, before supporting the Confederacy, they had sworn to uphold the U.S. Constitution, depriving the South of its natural leaders.

• STANDING ARMY IN PEACETIME WITHOUT CONSENT

Under Radical Reconstruction, after the President formally declared the rebellion over and with ex-Confederate states unrepresented in Congress, the Army occupied the South.

• JURYLESS TRIAL

Peacetime military tribunals in the South during Radical Reconstruction lacked juries.

• NO SEPARATION OF POWERS

Through their issuance of general orders, commanding generals in the five military districts under Radical Reconstruction combined executive, legislative, and judicial functions.

• BILLS OF ATTAINDER/NO DUE PROCESS BEFORE PROPERTY SEIZURE/NO PRESUMPTION OF INNOCENCE

The policy of "40 acres and a mule," where freedmen received land previously owned by Southern whites, unconstitutionally punished the previous landowner without a trial.

• EXTRA-CONSTITUTIONAL AMENDING PROCESS

Ex-Confederate states had to ratify the 14th Amendment as if they were in the Union, but were unrepresented in the Congress that proposed it, as if they were not in the Union.

• ANTI-JEFFERSONIAN/JACKSONIAN, PRO-HAMILTONIAN/WHIG ECONOMIC MOTIVES FOR AMENDMENTS

Before 1861, due to Jeffersonian/Jacksonian opposition, Hamiltonians/Whigs could never permanently enact their economic program (i.e., protective tariffs, national banking, federal aid to internal improvements). But without Confederate states in Congress during the Civil War, Republicans – political heirs to Hamiltonians/Whigs – did enact that program. The 13th Amendment, however, repealed the 3/5s Compromise, so after Appomattox, Republicans faced a resurgent South in Congress with 12 more Southern members in the House of Representatives, where each black male would now count as 5/5s instead of 3/5s. Republicans were thus open to experiment on how to protect their national economic ascendance. The 14th Amendment (1868) therefore assured Republican dominance in Congress, not black suffrage in the South. It said the South could either enfranchise freedmen, introducing black Republican members into the U.S. House of Representatives, or it could disfranchise freedmen and lose some proportional white Democratic representation there. The 15th Amendment (1870) forbade black male disfranchisement after Grant won the presidency in 1868 due to the freedman's vote in the South. Southern states disfranchised the freedman and called Congress' bluff, which neither reduced white Southern representation in the U.S. House under the 14th Amendment, nor enforced the 15th Amendment, because it found it could preserve protective tariffs, national banking, and federal aid to internal improvements without either Southern freedman representation or reduction of white Southern Democratic representation in the U.S. House, while ending the chronic violence over Radical Reconstruction.

The First Reconstruction of the 1860s did not achieve racial justice. The Second Reconstruction of the 1960s did. Unlike the former, the latter secured rights of blacks without violating those of whites.