Journal of British Studies 56 (July 2017): 629–659.

Book Reviews

Pre-1800

JOHN M. COLLINS. *Martial Law and English Laws, c. 1500–1700*. Cambridge Studies in Early Modern British History. New York: Cambridge University Press, 2016. Pp. 319. $99.99 (cloth).
doi: 10.1017/jbr.2017.97

Martial law, an anathema to respectable Anglo-American legal culture, has been vilified as the substitution of autocratic whim for the fair dispensation of justice, brute force in magisterial gowns, and the abandonment of consensual law. Influential jurists, sometimes for reasons of political expediency, characterized martial law as beyond the pale of the laws of this realm of England. In *Martial Law and English Laws, c. 1500–1700*, John M. Collins demonstrates that nothing could be farther from the truth. Martial law abided within the panoply of the king's laws. Used in dynamic fashion, martial law addressed a range of circumstances, that is, civil war, administration of distant colonies, the suppression of religious and political dissent, obdurate social control, and military governance.

The multifaceted nature of martial law requires a surgical method of understanding. Collins first dissects the evolution of procedure in its application, then martial law's substantive nature, and finally the expansion of its jurisdiction. English martial law amalgamated classical and medieval procedures (such as *oyer and terminer*), opening new avenues that sovereigns sought to navigate. For example, Tudor commissioners in Ireland convicted and executed undesirables via manifest proofs by utilizing summary martial law process. But when employed in England, Parliament condemned distribution of commissions of martial law in its litany of grievances against arbitrary monarchical authority.

In the 1620s Charles granted such commissions to deputy lieutenants and mayors struggling to control unruly soldiers. The Bishops Wars (1639–40) then produced murder, mutiny, desertion, and the destruction of property. Charles I sanctioned the use of martial law in mid-July 1640, but the damage was done. Hostilities ended by September 1640 and though the authorization of martial law empowered at least two firing squads, murderous soldiers suffered prosecution under common law at regularly scheduled assizes. The disorders of

1640–42 exposed the limitations of common law. The Civil Wars of 1642–48 wrought procedural and substantive adaptations, that is, courts of the marshal superseded by the widened purview of councils of war. Articles of War, inherited from the 1500s and early 1600s, coalesced further from disparate ordinances and applications. Practice became clarified, catalogued, and codified. Procedures for managing ad hoc armies eventually spawned High Courts of Justice and a capacious interpretation of high treason.

The regicide of 1649 dominated what royalists deemed a parliamentary reign of terror. The trial of a king forced reconsideration of the nature of treason, which prompts Collins to spotlight a fourteenth-century precedent. Thomas, second earl of Lancaster, received a sentence of death on the basis of treason from King Edward II on 22 March 1322. Lancaster was prevented from speaking in his own defense. No witnesses were called, no counsel provided, no jury of his peers sat in judgement. Nor was Lancaster's treason specified, documented, or elaborated upon as he sat in the makeshift docket. The earl's sovereign declared Lancaster's treason "notorious" and that sufficed for Lancaster's immediate decapitation.

On January 30, 1649 King Charles I was likewise beheaded, in this case by the authority of a tribunal purporting to represent the subjects, and laws, of the realm. More incongruous executions might not be found: the arbitrary dispatch of a subject by a monarch, and the unprecedented trial and regicide of a lawful king by his subjects. Yet, Collins reveals, parallels exist. The hybrid court that tried Charles Stuart incorporated elements of a court-martial and exploited the "notorious" nature of crimes, as had Edward II in condemning Thomas of Lancaster.

Royalists now decried the murder of their monarch by echoing parliamentary objections to the commissions of martial law that Charles had issued in the 1620s. Parliamentary forays into the pliable application of martial law along with the expedient justice of "notorious" treason had already occurred during the trial of the Earl of Strafford, a 1641 prologue to the trial and execution of Charles Stuart. The assimilation of such procedures and jurisdiction by an organ of the state was far more momentous than Edward II's arbitrary justice of an affronted king meting out punishment to an over-mighty subject.

The latitude with which monarchs might allege "notorious" treason was assimilated by the Commonwealth in broadening the scope of high treason. The High Court of Justice that ordered royalist Sir Henry Hyde's execution (though not cited by Collins) for high treason (4 March 1650/51), on the very same block as his royal master, dramatized enhanced legal jurisdiction as a component of state building. Hyde's actions affronted parliamentary sovereignty because the attempted assumption of an ambassadorship by an agent possessing a royal commission (without parliamentary endorsement), coupled with undisguised royalist allegiance, threatened the stability of English overseas economic interests. The Commonwealth Parliament that produced the Navigation Acts (1651) and its successors commandeered martial law to govern foreign lands (as Ireland had been in the 1500s) and build an empire. The state appropriated authority once expressed in the principle that the king is the font of all justice.

Martial law's imperial utility became part of the larger development of the fiscal-military state during the civil wars, Commonwealth, Protectorate, and after. Jurisdiction widened qualitatively, chronologically and geographically. The tight radius extending from the royal standard (a twelve-mile circumference) was redefined initially to periods when Westminster's courts were shuttered, then becoming a fixture of colonialism, finally bourgeoning into codes for standing military and naval institutions. Collins chronicles how a substantial body of law consolidated the governance of garrisons and colonies, ordered naval forces, and formulated Mutiny Acts. The Glorious Revolution of 1688, after defining and circumscribing monarchical powers more precisely, enabled Parliament to conjoin the older, prerogative-based martial law with statutes and ordinances that enhanced martial law's legitimacy even further. Queen Anne's Parliament completed the task by incorporating martial law provisions and ordinances into the common law tradition. Riot Acts propped up by martial law

guaranteed the Hanoverian Succession. While criminal law imposed new capital offenses, martial law safeguarded aristocratic propertied society and a commercially prosperous bourgeoisie at home and abroad.

Collins's deeply researched and articulate volume is a landmark achievement that goes beyond the parameters of legal history.

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GARY W. COX. *Marketing Sovereign Promises: Monopoly Brokerage and the Growth of the English State*. Political Economy of Institutions and Decisions. New York: Cambridge University Press, 2016. Pp. 221. $94.99 (cloth).
doi: 10.1017/jbr.2017.98

In *Marketing Sovereign Promises*, Gary W. Cox contributes to the vibrant debate about the role of political institutions in Britain's transformation from a peripheral European power to a global hegemon. He takes issue with the institutionalists' approach, giving careful and thorough acknowledgment of Douglass North and Barry Weingast's critics. Yet Cox is firm on the point that the Glorious Revolution of 1688 was a watershed moment, arguing that "English sovereign debt became very credible almost immediately after the Revolution" (13). His explanation for this achievement lies in parliamentary control of budgets and the credible threat of the shutdown of government to prevent profligate spending or unwarranted taxation.

Cox focuses the first part of the book, chapters 2 to 9, on an exposition of that argument. In these chapters he covers, variously, an assessment of the development of Parliament's control over taxation and spending, the establishment of monopoly control over the issuance and marketing of sovereign debt, the question of property rights, and the connections that arguably led from the Glorious Revolution to industrialization. Cox takes the long view in exploring antecedents to the revolutionary settlement but, frustratingly, does not consider the development of the state or its financial systems much past 1720. This means that his argument ignores the tests of financial credibility that came with the wars at the end of the eighteenth century.

In the second part of the book, chapters 10 to 12, Cox offers an assessment of whether and how the English model was adopted by other states. He assesses the early and late adopters and concludes that many of the world's constitutions do not mandate the ability to shut down parts of government in the absence of an agreed budget and therefore cannot be said "to have taken the first and most important step to limited government" (175). The second part of the book is less developed than the first and many of the points made have been explored in much more detail by Mark Dincecco in *Political Transformations and Public Finances: Europe, 1650–1913* (2011).

Throughout part one Cox offers elegant and persuasive arguments. He argues that despite the fact that most scholars have focused on the financial revolution, as defined by P. G. M. Dickson, the "budgeting revolution crucially underpinned the debt revolution" (49). It was only once Parliament gained full control of the state's finances, which Cox denotes as the right to make annual budgets, that it was able to issue longer-term, funded, and much cheaper debt. The key to all of this was Parliament's ability to veto the budget to punish profligate behavior.

Since the type of debt held and shortfalls between expected and realized tax revenues are key to Cox's argument, the work would have benefited from a closer examination of the British financial system. Cox does not provide any detail about tax funds or their shortfalls, nor does he ever