

H-Net Reviews

in the Humanities & Social Sciences



Christoph Kampmann. *Reichsrebellion und Kaiserliche Acht: Politische Strafjustiz im DreiÖßigÖährigen Krieg und Das Verfahren gegen Wallenstein.* MÖ¼nster: Aschendorff, 1992. xiv + 281 pp. EUR 11,45 (paper), ISBN 978-3-402-05672-1.

Reviewed by Robert Bireley (SJ, Loyola University)

Published on HABSBURG (October, 1995)

There exists an immense literature about the enigmatic and controversial imperial general of the Thirty Years War, Albrecht von Wallenstein, and especially about the circumstances of his demise. Who would have thought that more could be said on the subject? Yet Christoph Kampmann in this important and convincing study has newly illumined the role of Emperor Ferdinand II and the imperial court in the Wallenstein case. He shows that Ferdinand proceeded against the general in 1633/34 according to a legitimate and widely accepted interpretation of imperial law, without appealing either to a higher moral law or to a reason of state to be invoked in cases of necessity or extreme danger to the existence of the state. Such a finding substantially revises the view of Heinrich Ritter von Srbik (*Wallensteins Ende*, 2d ed., Salzburg, 1952), whose account of the final days of Wallenstein has long been widely accepted. Furthermore, and this is a point not made by Kampmann, his book confirms for the Wallenstein affair what has been affirmed for Ferdinand's efforts at the restoration of Catholicism, namely, his concern always to act legally in accordance with his conception of the imperial constitution (cf. Robert Bireley, *Religion and Politics in the Age of the Counte Lamormaini, S.J., and the Formation of Imperial Policy* [Chapel Hill, 1981]), and so it contributes to an increasingly positive historical verdict on this Habsburg ruler.

Kampmann sets out to investigate the clash between Ferdinand and Wallenstein from the perspective of contemporary imperial legal theory and practice. Exhibiting a command of the vast literature on Wallenstein, he draws on the substantial recent literature on imperial law, such as Michael Stolleis's *Geschichte des oeffentlichen Rechts in Deutschland*, vol. 1: 1600-1800 (Mu-

nich, 1988), and above all on his own extensive reading of contemporary juridical treatises. In addition, he mines archival sources which have not yet been exploited for the Wallenstein affair, for example, the archives of the Reichshofrat and of the Lower Austrian estates in Vienna. Thus the book is solidly based on primary and secondary sources.

Ferdinand proceeded against Wallenstein legally by placing him under the imperial ban as a notorious rebel. Kampmann traces briefly the evolution of the ban in the late middle ages and the sixteenth century and of its application to those who broke the Landfrieden and later the Religionsfrieden. The consequences of the ban were to exile the offender from the imperial community, to deprive him of all legal protection for his property and his person, that is, to render him liable to the confiscation of his property and ultimately to the death penalty, and to threaten accomplices with the same measures. According to a declaration of the Reichstag of Augsburg of 1559, a prince who took up arms against the emperor incurred the ban as it were automatically, though political considerations might well condition the response of the imperial authorities. Two major jurists, then, among others, Joachim Mysinger a Frundreck and Andreas Gaill, whose relevant and frequently republished treatises first appeared at Frankfurt and Wittenberg in 1563 and at Cologne in 1578 respectively, both argued that in the case of a notorious breach of the peace there was no need for a summons, a hearing, or even a formal sentence for the ban to take effect. The emperor could take direct action against notorious offenders without any previous legal measures. Kampmann devotes then a large chunk of the first half of his book to showing how Emperor Matthias proceeded accordingly in the

case of the condottiere Ernst von Mansfeld and Ferdinand against Frederick of the Palatinate and his associates and then the Dukes of Mecklenburg. Imperial commissioners dispatched from Vienna to implement the ban in the years 1628 to 1631 were to distinguish between notorious rebels, against whom they were to proceed on the spot, and others whose case was to be remitted for hearing and decision to Vienna. Kampmann might have noted that the same distinction was made and the same procedure was followed in the contemporaneous cases of alleged violators of the Religious Peace who were subject to the Edict of Restitution. To be sure there were opposing legal opinions, and Kampmann discusses these too, but the point is that Ferdinand acted according to a valid and widely accepted jurisprudence.

In the second half of the book Kampmann provides an engrossing account of the last months of Ferdinand's conflict with Wallenstein and its immediate aftermath as well as a careful analysis of the legal issues. After learning of the oath of allegiance to himself that Wallenstein

required from his officers at Pilsen on January 12, 1634, which only confirmed well founded suspicions about the general, Ferdinand moved against him. Following consultation of three of his leading councillors – their meeting was not a secret trial or formal legal process as Srbik claimed – Ferdinand issued a decree on January 24 removing him from office and treating him as a rebel. This initial decree was not public, since there was need first to prepare for its execution and to forestall resistance by the general and his allies. A second, public decree followed on February 18, which also served to warn prospective accomplices of the general and, in fact, the imperial court was surprised by the minimal support Wallenstein found among the troops. After the general's death on February 25, there were some who advocated a posthumous trial or at least a formal declaratory sentence against him. But consistent with the position that Wallenstein had been a notorious rebel, all that the imperial court ever issued was a formal treatise or white book explaining its position, which appeared in October 1634.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/habsburg>

Citation: Robert Bireley. Review of Kampmann, Christoph, *Reichsrebellion und Kaiserliche Acht: Politische Strafjustiz im DreiÖßigjÖhrigen Krieg und Das Verfahren gegen Wallenstein*. HABSBURG, H-Net Reviews. October, 1995.

URL: <http://www.h-net.org/reviews/showrev.php?id=199>

Copyright © 1995 by H-Net, all rights reserved. H-Net permits the redistribution and reprinting of this work for nonprofit, educational purposes, with full and accurate attribution to the author, web location, date of publication, originating list, and H-Net: Humanities & Social Sciences Online. For any other proposed use, contact the Reviews editorial staff at hbooks@mail.h-net.msu.edu.