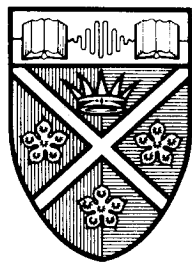


D 320.94106 FER ●
STRATHCLYDE
PAPERS ON
GOVERNMENT
AND POLITICS



*THE RESOLVING OF CONSCIENCE
BY HENRY FERNE, 1642
A REPRINT WITH INTRODUCTION*

John Sanderson

No. 38

1984



30125 00275615 2

#17508946

INTRODUCTION

Henry Ferne's The Resolving of Conscience was probably one of the most effective of the pamphlets sustaining Charles I against the armed resistance of his subjects in the fifth decade of the seventeenth century. Appearing in the autumn of 1642, it belonged to the early stages of an unprecedentedly large debate about the propriety of resistance, a debate to which Ferne himself was to make at least two further major contributions, Conscience Satisfied: that there is no warrant for the arms now taken up by subjects (April 1643) and A Reply to Severall Treatises (November 1643).[1] The Resolving is noteworthy in that it gives expression to a moderate Royalism, capable of appealing to those who (like Ferne himself) respected Parliament and had been in some degree alienated by governmental policies in the 1630s[2] but who by the autumn of 1642 had grave reservations about the constitutional claims which the Long Parliamentarians were finding themselves obliged to make. Ferne's is therefore a Royalism significantly different from that of such writers as Roger Manwaring (whose sermons brought him to impeachment in 1628), Sir Robert Filmer and Michael Hudson, all of whom tolerated Parliament with the proviso that it confined itself to a minor auxiliary role in the polity.[3]

Like so many writers on either side of the Civil War, Ferne (born 1602) was a clergyman, taking the degree of B.D. at Cambridge in 1633 and the degree of D.D. at Oxford in 1643. The previous year he had impressed the King by a sermon preached before him at Leicester (where

Ferne was archdeacon) in July, as Charles was contemplating the call to arms against the Houses which ultimately came at Nottingham on August 22nd. He assisted the King during the abortive Uxbridge negotiations (1644-5), in which connection the defence of episcopacy was his principle remit,[4] and again preached before him immediately prior to the latter's journey to London in December 1648 to stand trial for his life. On this occasion he comforted the unhappy monarch with the thought that while national deliverance would have to await a national regeneration, the just man cut off prior to this would experience an immediate deliverance: "it comes sooner than was expected, and after a better way than that of an outward deliverance. For he is taken away from an evil present...and what is denied him in this life, is made good in a better..."[5] Ferne himself had no such deliverance, enduring the Interregnum and living long enough to see the Restoration. For a brief period up to his death in 1662, he was bishop of Chester.[6]

The Long Parliament, whose actions were to provide the context for so much of Ferne's writing, had met in November 1640; and had sought by a number of measures, legislative and other, to prevent a recurrence of the eleven years of Charles's personal rule which had followed the dissolution of his third Parliament in 1629. Charles, reduced temporarily to political impotence, had acquiesced in these measures but a suspicion nevertheless remained among Peers and MPs that, under the continuing spell of a mischievous entourage, he was still a would-be absolutist who would reverse by force the

D
320.94106
FER

"constitutional revolution"[7] of 1641 should an opportunity present itself. The control of ministerial appointments and of the militia therefore came to be the issues which fatally divided the sides. As an uncommitted observer had it, while Parliamentarians acknowledged Charles's concessions of 1641, they nevertheless felt

that there is great reason to suspect that all these acts were but unwillingly assented to...His Majesty's bad Counsellors being still as prevalent with him as before...might afterwards as easily persuade him to the breach of these new acts, as they had formerly had done to the breach of others: so that all they had done was nothing worth, unless there might be some further course taken for the removal of these evil Counsellors, and the settling of the power of the kingdom in such hands as might preserve the laws, and not destroy them.[8]

In the Resolving, Ferne had his own (less uncommitted) way of describing the same situation: the Parliamentarians suspected that Charles "will not make good his promises, and therefore they will make all sure, seize his arms and forts, strip him of all, and if [he] begin to stir for his own right and dignity, then the people must be made to believe that he makes war against his Parliament, [and] intends to destroy their liberties".[9]

The Resolving insists that organised armed resistance to the supreme magistrate is wrong under all circumstances and should be renounced by anyone claiming to be a conscientious Christian. And Ferne's prohibition would have been maintained even if the typical Parliamentarian allegations against Charles (that he was an aspiring absolutist and a threat to the Protestant religion) had had some

substance: in fact Ferne held them to have none, and he was therefore doubly sure that the resistance of 1642 was unacceptable.[10]

Ferne's attitude to resistance was based primarily on certain biblical texts which he (in common with so many of his contemporaries) held to be of overarching importance in the area of political obligation. "It is the divine", he warned in the Epistle Dedicatory, "that must settle the conscience". These texts were Romans 13, 1 Peter 2 and the fifth Commandment. According to Romans 13 every soul should be "subject unto the higher powers. For there is no power but of God: and they that shall resist shall receive to themselves damnation". 1 Peter 2 urged the faithful to "submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king as supreme; or unto governors, as unto them that are sent by him for the punishment of evil doers and for the praise of them that do well". The fifth Commandment received a wide interpretation from the Royalists and was taken to refer to political as well as natural parents. Ferne's confidence that Romans 13 contained a blanket prohibition of resistance was enhanced by the consideration that the magistrates with whom Paul was familiar and to whom he had urged at least passive subjection really were (unlike Charles I) destructive tyrants, enemies to both God and man.[11]

Ferne's remedies in the event of misbehaviour by the magistrate (and for him misbehaviour involved a violation of God's laws and/or the laws of the land) were for the most part as conventional as his

insistence that Romans 13, 1 Peter 2 and the fifth Commandment constituted the starting point for any proper consideration of political obligation. Such misbehaviour must be met by what he calls "fair means": "cries and prayers to God", petitions to the prince, denials of subsidies and obedience.[12] However, when threatened with a "sudden and illegal assault" by the prince's agents, or even by the prince himself, the individual might defend himself, holding his prince's hands and warding off his blows, while being careful not to endanger his person by retaliation.[13] Ferne distinguishes such (legitimate) personal defence from an organised military operation in which others co-operated to resist the magistrate, for personal defence was not a threat to the integrity of the commonwealth, whereas co-operative armed resistance emphatically was.[14]

Significant in Ferne's rejection of resistance is the absence of either a defence of royal policy in the 1630s or an absolutist constitutional orientation. Though Ferne's opposition to any resistance beyond "personal defence" is total, it is not part of his case that Charles should be inviolate either because he was infallible or because he was an absolute ruler. As a moderate Royalist, Ferne implicitly admits certain miscarriages of policy in the period of personal rule, and positively goes out of his way to deny that Charles was or could properly aspire to be anything approaching an absolute ruler.[15] And in so doing he vigorously repudiates "that false imputation laid upon the divines of this kingdom, and upon all those that appear for the King in this cause, that they endeavour to defend

an absolute power in him, and to raise him to an arbitrary way of government. This we are as much against on his part as against resistance on the subject's part".[16] In Ferne's view the English enjoyed the benefits of a mixed or tempered government, with the Estates of monarchy, aristocracy and commons being required by the constitution to combine for many important political purposes. Thus he writes of "that excellent temper of the three Estates in Parliament, there being a power of denying in each of them, and no power of enacting in one or two of them without the third...[and] this power of denying, [is] for the security of each".[17]

Ferne's assertion (some Royalists would call it an unnecessary concession) [18] that monarchy was an Estate which often worked with the two other Estates enabled him to claim with some plausibility that disrespect for Parliament was no part of his case ("faine would I silence every thought and word that may seem to reflect upon that high Court...this so desired a Parliament") [19] and that his criticism of the Houses was the result of their unprecedented constitutional claims (e.g. to control the militia and royal appointments) and by their sponsorship of resistance, whereby they had gone beyond their proper constitutional role and were endangering the polity as a whole.[20] His most discerning critic, Philip Hunton, was nevertheless unimpressed, claiming that Ferne effectively made all monarchies (including England's) absolute by his prohibition on resistance, resistance which alone could make substantive the limitations upon the monarch's power which Ferne made so much of in his writings. Without

the possibility of resistance, Hunton tells us in A Treatise of Monarchie,

all distinction of government is vain; and all forms resolve into absolute and arbitrary. For that is so, which is unlimited, and that is unlimited not only which hath no limits set, but also which hath no sufficient limits, for to be restrained from doing what I will, by a power which can restrain me no longer or otherwise than I will, is all one, as if I were left at my own will...[Consequently] without this forcible resistance of instruments of usurped power... no sufficient limits can be to the prince's will, and all laws binding him are to no purpose.[21]

Ferne's philosophical differences with the Parliamentarians probably appear most strikingly when we inquire into the provenance of this tempered regime of Estates which he took himself (pace Hunton) to be sustaining. Indeed, the Parliamentarians were outraged by his view that the mixed government currently enjoyed by the English was not the consequence of any "pre-contrivment" (as he termed it in Conscience Satisfied) [22] by the people, but had evolved from the absolutism of the immediate pre and post-Conquest regimes by dint of a number of regal concessions whereby successive kings (up to and prominently including Charles I) had bound themselves to use their God-given sovereign power in certain ways only, for example legislating only with the concurrence of the other Estates of Parliament.[23]

The Parliamentarians' account of the English constitution and its history was quite different. For them, God had decreed magistracy in a general and abstract sense for the safety and welfare of His

creatures, while at the same time usually leaving the appointment of individual magistrates and the provision of specific systems of magistracy to "the people" within the several nations.[24] As Charles Herle, a prominent critic of the Resolving, put it: "that there be in all societies of men...a government (capable of its end, safety) is out of question God's institution... but that this government be so or so moulded, qualified and limited, is as questionless from the paction or consent of the society to be governed".[25] Magistracy on this view was a superior way in which the individual could exercise his natural right of self-defence against anti-social elements, and this view commonly led to the assertion that the people, in creating a system of magistracy, would not have been so careless of their welfare and the welfare of their successors as to allow absolute power to any individual or narrowly circumscribed group. Rather some kind of tempered, mutually self-restraining magistracy would have suggested itself, and resistance as the ultimate remedy for governmental misbehaviour would have been at least implicitly provided for.

The creators of the English polity had therefore devised a scheme of mixed government which involved elements of monarchy, aristocracy and democracy; as Herle was to put it: "The common interest of the whole body of the kingdom in Parliament, thus twisted with the King's, makes the cable of its anchor of safety stronger".[26] And legitimate resistance had been envisaged in the event of a magistrate seriously failing to discharge the trust laid upon him within these

constitutional arrangements.[27]

Now for people who felt this way about the manner in which they should be governed, Charles's period of personal rule, his attempt to arrest the five MPs, and his raising of an army to intimidate the Houses, all seemed to threaten the "ancient constitution" in which they all believed so profoundly. Indeed, captivated as he still was by evil advisers, Charles had arguably ceased to act as a magistrate who could be recognised under the terms of Romans 13, 1 Peter 2 or the fifth Commandment (he had ceased, for example, to punish evil doers and to praise those who did well) and the Parliamentarians held themselves to be justified in forcefully repelling the Cavaliers while hoping at the same time to rescue His Majesty from their clutches.[28] The Houses thus saw themselves as defending the nation's heritage of political rights and privileges while simultaneously summoning the nation to the defence of the Houses, and they asked rhetorically on November 2nd 1642 whether it was not "high time for us to stand upon our defence, which nature teaches every man to provide for; and this kingdom (unless it be very unnatural and unmindful of itself) cannot but afford [it] to them whom it hath intrusted, and by whom it is represented".[29]

To Ferne, the Parliamentary understanding of politics was fatally defective in that it encouraged and justified armed assaults upon the magistrate. In fact he suspected that no polity could sustain itself upon supposition of an in-built power of resistance to

be exercised when influential subjects believed that some magistrate was not fulfilling his trust.[30] Ferne was happy to agree that God had decreed political power in a general way for the welfare of His creatures, but for him there was a specific providence as well as a general one, and he saw established regimes and magistrates in place as consequences of this specific providence. As he puts it in Conscience Satisfied, government was "from God not only as an ordinance or precept... but also as an efflux or issue of that providence which sets up and pulls down, which translates kingdoms, and governs the whole world..."[31]

While the Parliamentarians held all legitimate regimes other than those (biblical) ones directly attributable to God Himself to be fundamentally elective, with "the people" appointing magistrates and making appropriate arrangements for regime continuity, Ferne believed that election was only one of a number of ways in which a specific providence could exhibit itself, with conquest and hereditary succession featuring at least as prominently as any kind of election. Thus he tells that whereas magistrates were in biblical times "sometimes designed immediately by Himself, as Moses, the Judges, Saul, David, &c.", now "He designs His vicegerents on earth mediately, as by election of the people, by succession or inheritance, by conquest &c..."[32] And even when an election is involved, Ferne insists that it can only nominate the individual or individuals who will rule and cannot empower them, a function which God reserves to Himself. Thus "We must here distinguish what the writers of the

other side seem to confound, to wit, the power itself (which is a sufficiency of authority for command and coercion in the governing of a people) from the designing of a person to bear that power, and the qualification of that power according to the divers ways of executing it in several forms of government".[33] And because subjects had not empowered their magistrates, it followed that they could not dispossess them by means of armed resistance.

Ferne also saw fit to warn his readers about the dangers inherent in the Parliamentary insistence that (almost) all regimes and magistrates were in an important sense people-created, for he saw no pressing reason why, on these premisses, the people should not take action against erring Parliamentmen (perceived as having betrayed their trust) just as Parliamentmen were taking action against a king who had proved (at least in their eyes) to be untrustworthy, for "according to the principles now taught them, they may lay hold upon this power of resistance, for their representative body claims it by them".[34]

For further discussion of and information about Henry Ferne, the following works should be consulted: J. W. Allen, English Political Thought, 1603-44 (New York: Archon Books, 1967); J. H. Franklin, John Locke and the Theory of Sovereignty (Cambridge University Press, 1978); J. W. Gough, Fundamental Law in English Constitutional History (Oxford: Clarendon Press, 1955); M. A. Judson, The Crisis of the Constitution (New York: Octagon Books, 1971); Ernest Sirluck's

Introduction to Volume II of The Complete Prose Works of John Milton
(New Haven: Yale University Press, 1959).

The present text is reproduced from the one in the Ogilvie Collection, Glasgow University Library, and I am grateful to P. K. Escreet (Keeper of the Special Collections in the Glasgow University Library) for his permission to reprint, and to his colleague David Weston for his assistance with the technicalities of the process.

NOTES

1. Four reprints of the Resolving (hereafter referred to as "ROC") are recorded in Donald Wing's Short-Title Catalogue of Books...1641-1700. An Answer to a seditious pamphlet entitled Plain English (February 1643) may also be Ferne's, and this attribution is supported by A Plain Fault in Plain English. And the same in Dr. Fearn's (February 1643), p. 3, where Ferne is taken to be the author of the Answer. A distinctive turn of phrase appearing in both Conscience Satisfied (hereafter referred to as "CS") and the Answer, as well as a general ideological congruity, make this attribution plausible. Curiously, Wing tentatively takes Ferne himself to be the author of A Plain Fault. In this Introduction, quotations from seventeenth century texts have been modernised with respect to spelling and punctuation.
2. See especially CS, pp. 3,30.
3. See: Roger Manwaring, Sermon at Oatlands (4 July 1627); P. Laslett (ed.), Patriarcha and other Political Works of Sir Robert Filmer (Oxford: Blackwell, 1949); Michael Hudson, The Divine Right of Government (1647).
4. His tract Episcopacy and Presbytery considered (1644) was the outcome of this activity.
5. A Sermon Preached before His Majesty (29 November, 1648), p. 20.
6. For Ferne's life and other works, see the Dictionary of National Biography.
7. See C. V. Wedgwood, The King's Peace (Glasgow: Collins Fontana, 1966), p. 348.
8. Queres and Conjectures, concerning the present state of the Kingdom (1643), reprinted in H. Erskine-Hill & G. Storey (eds.), Revolutionary Prose of the English Civil War (Cambridge University Press, 1983), p. 232.
9. ROC, p. 38. Cf. J. Daly, "Could Charles I be trusted? The Royalist Case, 1642-1646" (Journal of British Studies, VI, 1966).
10. See ROC, Epistle Dedicatory. Cf. A Reply to Severall Treatises (hereafter referred to as "RST"), p. 4.
11. See ROC, pp. 11, 28. Cf. CS, p. 53.
12. See ROC, p. 31. Cf. RST, pp. 39,42.

13. See ROC, p. 8. For Parliamentary reactions to this proposal, see: Samuel Rutherford, Lex Rex (1644), reprint Edinburgh, 1843, ch. 29, p. 145; Jeremiah Burroughs, A Brief Answer to Dr. Ferns Booke (1643), p. 116; William Bridge, The Wounded Conscience Cured (1642), Works (1854) IV, p. 215.
14. See ROC, p. 8. Cf. RST, pp. 90-95.
15. For the admission of errors, see: ROC, pp. 45-6; CS, p. 3; An Answer to... Plain English, p. 5. For denials of absolutism, see: ROC, p. 23; RST, pp. 13, 15ff, 28, 30; An Answer to... Plain English, p. 2.
16. ROC, p. 3. Cf. RST, p. 21.
17. ROC, pp. 25-6. Ferne may well have been prompted in this analysis by the King's Answer to the Nineteen Propositions of June, 1642, where, in order to save himself from a position of a mere spectator in politics, Charles claimed that the English possessed an "ancient, equal, happy, well poised, and never enough commended constitution" in which "the balance hangs even" between the three Estates of monarchy, aristocracy and commons (Robert Barker edition, pp. 17, 18). For an assessment of the contemporary significance of the Answer, see J. Sanderson "The Answer to the Nineteen Propositions Revisited" (Political Studies, XXXII, 1984).
18. See Clarendon, Life (1817), I, p. 111. Ferne himself sought to withdraw from the position which he had taken in ROC and CS when in RST he argued that the three Estates were the clergy, lords and commons, over which Estates the monarchy presided: "[W]hen His Majesty hath spoken of himself as one of the three Estates, he hath spoken to them [the Parliamentarians] in their own phrase (for they first styled him so)...But His Majesty did never use that phrase with any intent of diminution to his supremacy or headship; for properly the prelates, lords and commons, are the three Estates of the kingdom, under His Majesty as their head" (p. 32).
19. ROC, Epistle Dedicatory.
20. See ROC, pp. 38, 39.
21. Philip Hunton, A Treatise of Monarchie (1643), p. 53; see also Bridge, Wounded Conscience, p. 210, for the same complaint.
22. CS, p. 11.
23. See RST, pp. 15, 93, for strong reaffirmations of the genuineness of mixed monarchy in England.

24. For "thearchy", or God's direct appointment of certain (biblical) rulers, see: The Subject of Supremacie (1643), p. 43; Henry Parker, Rejoinder of H.P.... to Mr. David Jenkins Cordial (1648), reprinted in W. H. Terry (ed.) Judge Jenkins (Cayme Press, 1929), pp. 100-101.
25. Charles Herle, A Fuller Answer to a treatise by Dr. Ferne (1642), pp. 5-6. See also: William Prynne, The Sovereigne Power of Parliaments and Kingdomes, Part III, (1643) p. 116; Burroughs, Brief Answer, p. 127.
26. Herle, Fuller Answer, p. 6.
27. See: J. M., A Sovereigne Salve to cure the blind (1643), pp. 2-3, 6; The Late Covenant Asserted (1643), Preface; A Miracle: an Honest Broker (1642), p. 20; Prynne, Sovereigne Power, pp. 2-4, 47, 70.
28. On Charles ceasing to act as a magistrate, see: The Late Covenant Asserted, p. 5; Jeremiah Burroughs, The Glorious Name of God (1643), pp. 32,33; Bridge, Wounded Conscience p. 219; Rutherford, Lex Rex, p. 145; Prynne, Sovereigne Power p. 5. On rescuing him, see: Burroughs, Glorious Name, p. 7; Prynne, Sovereigne Power, pp. 1, 3, 16.
29. A Remonstrance of the Lords and Commons (2 November, 1642), reprinted in Edward Husbands, An Exact Collection of all Remonstrances...between the King's most excellent Majesty, and his High Court of Parliament (1643), p. 728.
30. See ROC, p. 14.
31. CS, p. 7. Cf. RST, pp. 20, 55.
32. ROC, p. 18.
33. ROC, p. 15. Cf. RST, p. 13.
34. ROC, p. 25. Cf. CS, p. 74. If Ferne is the author of An Answer to Plain English (see note 1) then he is to be found there using a rather different strategy to stifle the Great Rebellion, for the pamphlet admonishes the populace not to be taken in by the pretenses of the Parliamentary leadership, whose principle motivation is said to be an ambition for power: "For assure yourselves, the interests of discontented Nobles, or Commons, that have gained a greater power in your affections, are not the same with you of the lower rank, and therefore they do but abuse you, and make you with hazard of your estates, and lives and souls, cut out [a] way to their ends" (p. 8).