

Law, Politics and Scholarship in the Seventeenth Century: The Reputation of Nathaniel Fiennes

As ‘founder’s kin’ members of the Fiennes family have enjoyed a long association with New College. In the early modern period this status, as at other colleges, conveyed privileged admission and a position within the fellowship, ostensibly without necessity to prove or pursue particular academic merit. One beneficiary was Nathaniel Fiennes (c.1608–1669), second son of William Fiennes, 1st viscount Saye and Sele. On the face of it, this man’s reputation, both in his lifetime and subsequently, appears to exemplify the disadvantages of the system. On closer examination, however, Nathaniel emerges as a student of serious academic credentials, a distinct and sometimes influential political and religious thinker and orator, and a champion of the University of Oxford at an hour of need.

To many contemporaries, ‘Bristol Fiennes’ was the parliamentarian army officer who, in notably cowardly and precipitate manner, on 26 July 1643 surrendered control of the second most important port in the kingdom to royalist forces, dealing the most bitter blow in a summer of spectacular military reversals.¹ Despite his subsequent attempts to justify himself to fellow MPs, he fell foul of a vindictive campaign by pamphleteers William Prynne and Clement Walker, and of more general ‘peace-party’ opposition at Westminster to the perceived political machinations of Saye and Sele.² Court-martialled that December, Fiennes was pronounced guilty and sentenced to death.³ A pardon issued by Parliament’s commander-in-chief, Robert Devereux, 3rd earl of Essex, gave him back his life and allowed him to escape into exile, but it did not restore his standing.⁴ On 10 September 1645 the next surrender of Bristol (by royalist commander Prince Rupert to Sir Thomas Fairfax and the New Model army) demonstrated to many (although not a furious Charles I) that the city was indefensible, and allowed Fiennes to resume his career in the House of Commons, but it did little to repair his popular reputation.⁵ Twelve years later, when he was an important member of Protector Oliver Cromwell’s council of state and Speaker of the Cromwellian Other House of Parliament, snide comments were still being made about his cowardice and ineffectualness. Diarist Thomas Burton related how, at a crowded parliamentary grand committee in January 1657, someone claimed to have spotted a pickpocket under the table. At this, ‘Colonel Fiennes drew his sword and vapoured hugely, how he would spit him, but the fellow escaped—if there were any such’.⁶

After the Restoration—facilitated in part by Fiennes and his friends—Fiennes retired into relative obscurity, although he was fondly remembered in colonial Connecticut.⁷ His will and the inventory taken after his death reveal that he had been living in comfort in provincial Lincolnshire, with flocks of sheep and a study of books worth £30.⁸ Family archives have largely not survived—perhaps through deliberate destruction of potentially politically compromising material—and Fiennes’s published speeches have often been overlooked. The historian Thomas Carlyle expressed

¹ E. Hyde, Earl of Clarendon, *The History of the Rebellion and Civil Wars*, ed. W. D. Macray (6 vols., Oxford, 1992), III, 107–12 [hereafter, Clarendon, *History*]; *A copie of the articles agreed upon at the surrender of the city of Bristol* (1643) (E63.15); British Library [hereafter BL], Add. MS 18980.

² *Journals of the House of Commons* [hereafter *CJ*] III, 194a, 254a, 269a; Clarendon, *History*, III, 254–55; *Mercurius Aulicus*, no. 31 (5 Aug. 1643), 421 (E.65.13); no. 32 (12 Aug. 1643), 427–8 (E.65.26); no. 40 (1 Oct. 1643), 557; no. 41 (8 Oct. 1643), 580; no. 49 (3–9 Dec. 1643), 703; no. 51 (17–23 Dec 1643), 725; no. 1 (31 Dec.–6 Jan. 1643/4), 762, 766; *A true relation of the taking of Bristol* (Oxford, 1643); J. Taylor, *Mercurius Aquaticus* (1643) (E.29.11); *Colonell Fiennes his reply to a pamphlet* (1643) (E.70.1); *Articles of impeachment and accusation, exhibited in Parliament* (1643) (E.78.3), esp. p. 9; W. Prynne, *The doome of cowardice and treachery* (1643).

³ *State Trials*, I, 766–815.

⁴ *Mercurius Aulicus* no. 2 (7–13 Jan. 1643/4), 780; *Calendar of State Papers Venetian*, 1643–1647, p. 62 [hereafter *CSP Ven.* etc.]; Clarendon, *History*, III, 255; Bodleian Library [hereafter Bodl.], Art 4° S11 Art. BS [W. Fiennes], *Vindiciae Veritatis* (1654), 45–52.

⁵ *CJ* IV, 273a.

⁶ *Diary of Thomas Burton Esq.*, ed. J. T. Rutt (4 vols., 1828), I, 336–7 [hereafter, Burton, *Diary*]. The only surviving portrait of him, kept at the family home at Broughton Castle, near Banbury, shows him in military uniform.

⁷ *CSP Colonial, America and West Indies*, 1661–1668, p. 53.

⁸ D. Fiennes, ‘Inventory of the goods of Nathaniel Fiennes, died 1669’, *Cake and Cockhorse* 9 (1984), 38–48; TNA, PROB11/334/450.

grudging admiration, disarmed by the rationality, tolerance and ‘gorgeous figurative style’ of Fiennes’ speech at the opening of the third protectorate Parliament. ‘It is the first time we thoroughly forgive the Honourable Nathaniel for surrendering Bristol . . . long ago; and rejoice that Prynne and Independency Walker did not get him shot’.⁹ The rehabilitation for which Carlyle hoped has still not yet come, although his forthcoming History of Parliament biography re-evaluates his political career.¹⁰ What follows highlights his intellectual formation, his contribution to parliamentary discourse and his place in Oxford life.

In more sober moments, even Fiennes’s enemies might concede that this was a man ‘who had more of the learning of the Gownmen, (whether . . . Lawyers or Divines) than he had of the sword’.¹¹ His scholarship—or at the least, his quest for higher education—was in fact impressive. In November 1624, aged 16, he was admitted to New College as a scholar from Winchester and, although like many contemporaries he did not take a degree, he appears to have stayed more than four years, specialising in the study of civil law.¹² In July 1629 he subscribed at Leiden University—the temporary destination of a good many British protestant gentlemen—to study jurisprudence.¹³ The following May he transferred to the University of Franeker in the Dutch province of Friesland, which attracted a somewhat more select band of Englishmen, drawn by its Ramist philosophy and the growing reputation of William Ames, the English Calvinist theologian who had been a professor there since 1622.¹⁴ Given Ames’s close relations with the New England colonists whom Saye and Sele patronised, it is plausible to suppose that Fiennes remained some time in his company; Ames left Franeker in 1633 and in February of the same year Fiennes enrolled at the University of Basel, this time with two of his brothers and two sons of their father’s business associate Robert Rich, second earl of Warwick.¹⁵ Although its heyday was past, this university too offered Ramism and protestant theology within a republican city state.¹⁶ Fiennes did not stay long, however, being admitted on 23 April 1633 to the University of Padua, long popular with Englishmen visiting Italy because it lay within the relatively tolerant domains of republican Venice.¹⁷ Only in August 1636, when he married at Hawnes in Bedfordshire, is there a sighting of Fiennes again in England.¹⁸

Doubtless—and perhaps especially at Padua—the experience had entailed the pursuit of pleasure and the acquisition of a veneer of cosmopolitan polish. However, in Fiennes the effects were palpably deeper. Indeed, study did not cease with his return to England: in a rare surviving letter, of February 1637, he exchanged opinions on a book with his kinsman Sir Robert Harley, grateful ‘that you were pleased to lett me lighte my candle at yours as having understood thereby some particulars which I have not mett with otherwhere’.¹⁹ His extended studies appear to have honed the rhetorical skill which characterised his later parliamentary speeches, encouraged him to develop daring arguments, and facilitated the draftsmanship deployed in preparing parliamentary bills and declarations. They were also apparent in his views on law—common, statute, civil and natural—and his knowledge of Christian theology, history and ecclesiology. His parliamentary output seems underpinned by his appreciation of alternative polities—especially the aristocratic oligarchies he had

⁹ T. Carlyle, *The Letters and Speeches of Oliver Cromwell*, ed. S. C. Lomas and C. H. Firth (3 vols., 1908), III, 158–9; N. Fiennes, *The speech of the Right Honourable the Lord Fiennes* (1658) (E.934.6).

¹⁰ *History of Parliament: The House of Commons 1640–1660*, ed. S. K. Roberts (forthcoming ?2017). Articles on Nathaniel’s elder brother James (under 1604–1629) and earlier family members may be accessed already online at www.historyofparliamentonline.org.

¹¹ Sir P. Warwick, *Memoires of the Reign of King Charles I* (2nd edn, 1702), 259.

¹² *Alumni Oxonienses*; T. F. Kirby, *Winchester Scholars* (1888), 170; A. Wood, *Athenae Oxonienses*, ed. P. Bliss (1820), III, 877.

¹³ *Index to English Students . . . at Leyden University*, ed. E. Peacock (1883), 98.

¹⁴ *Album studiosorum academiae Franekerensis* (Franeker, 1969), 88; K. L. Sprunger, *The Learned Doctor William Ames* (1972).

¹⁵ *Die Matrikel der Universität Basel*, III (1962), 350–51.

¹⁶ ‘William Ames’, *Oxford DNB*; E. Bonjour, *Die Universität Basel von den Anfängen bis zur Gegenwart 1460–1960* (Basel, 1960), 221–41

¹⁷ *Monografie Storiche sullo Studio di Padova* (Venice, 1922), 197. I owe this reference to my colleague Dr David Scott.

¹⁸ *The Parish Registers of Haynes*, ed. W. Brigg (1891), 15.

¹⁹ British Library, Add. MS 70105.

encountered in the Netherlands, Switzerland and Venice, and the Erastian protestantism the first two practised, state-directed and free from clerical dominance.

Fiennes, who in 1640 was elected to the Short and then the Long Parliament for his father's pocket borough of Banbury, approached the institution with a high view of its law-making function. When petitioners came to Parliament 'as humble suppliants . . . desiring the altering of laws, that have been found burdensome unto them . . . they come in the right manner, to their right and proper place', for it was 'Parliament, where, and wherein only, old laws may be repealed, and new laws may be made'.²⁰ (The location was not, his hearers might infer, the royal court, the privy council, or even among the crown-appointed common-law judges.) In 1640 and 1641, partly to serve the political end of an alliance with the Scottish Covenanters which gave essential military leverage against the king, partly from personal conviction, Fiennes was at the vanguard of anti-episcopal sentiment in the Commons. He was eloquent in denunciation of the bishops who had—ostensibly with unprecedented illegality—sat in convocation in the interval between the 1640 Parliaments, and produced a book of *Canons* to be imposed on the laity. These Canons contained material 'not only contrary to the laws of this land, but also destructive of the very principal and fundamental laws of this kingdom'. Against scripture, precedent and the practice of the Reformed (i.e. Calvinist and Zwinglian) church, bishops had abrogated to themselves, as well as investing in the monarchy to an unprecedented degree, authority as of divine right. The bishops:

tell us that Kings are an Ordinance of God, of Divine Right, and founded in the Prime Laws of Nature, from whence it will follow that all other forms of government, as *Aristocracies*, and *Democracies*, are wicked forms of Government contrary to the Ordinance of God, and the Prime Laws of nature, which is such new Divinity as I never read in any Book . . .²¹

In 1642 Charles I, despairing of controlling Parliament and London, left his capital for the north, taking most of his secretariat and his courtiers with him. He thereby deprived parliamentary actions of the legitimation of royal assent, and put Parliament in a position somewhat analogous to that of Convocation two years earlier. Fiennes was at the heart of the Commons committee which then dug out precedents to justify independent action.²²

Returning to the Commons in the mid-1640s following his rehabilitation, Fiennes became for a while a leader of the so-called 'Independent' party who, with the assistance of the newly-created New Model army, sought to gain an all-out victory against the king. This set him and his friends at odds with the 'Presbyterian' party, who persisted with a Scottish alliance, and sought both a 'softer' peace with Charles I and a narrower church settlement. Factional fighting spilled over into the question of regulating the universities, a pet project of the Presbyterians, and at this point, if not before, Fiennes began to re-engage with his *alma mater*. Placed in 1646 and 1647 on successive committees concerned with the parliamentary visitation of Oxford as well as with other tasks requiring scholarly expertise, Fiennes joined the jurist John Selden (one of the MPs for the university) and others in an attempt to resist or modify the Presbyterian purge of fellows they considered delinquent or inadequate.²³ While in the short term their efforts were largely in vain, they probably did not go unappreciated.

In January 1648 a majority in Parliament voted not to proceed with peace negotiations with the king, whom they now held as a prisoner on the Isle of Wight, because of his rejection of their latest propositions and his secret dealings with Scottish commissioners. It is generally agreed that it was Fiennes who in February drafted a declaration in which Parliament justified its actions to the Scots and argued, in ways rarely voiced previously, for its own political pre-eminence. If peace could not be had on any terms but the king's, said Fiennes, 'upon these terms we needed not to have had any

²⁰ N. Fiennes, *A speech of the honorable Nathanael Fiennes . . . made the 9th of Feb. 1640* (1641) (E.196.32).

²¹ N. Fiennes, *A second speech of the honourable Nathanael Fiennes . . . Touching the Subjects Liberty against the late Canons, and the New Oath* (1641), 1–3, 15, 19–20 (E196.35).

²² *CJ* II, 572b, 580a, 582a, 583a.

²³ *CJ* V, 51b, 83a, 84a, 174a, 348a; *The Register of the Visitors of the University of Oxford*, ed. M. Burrows (Camden Society, new series, XXIX), p. lxxi [hereafter *Reg. of the Visitors*]; A. Wood, *The History and Antiquities of the University of Oxford*, ed. J. Gutch (Oxford, 1792–1796), II, pt. II, 533–34, 538, 544.

War'.²⁴ Boldly, he asserted that it was in fact the king who had erred: 'It is much more likely that a King should be mistaken . . . than that the whole Kingdom Represented in Parliament, should desire what would be for their own hurt'.²⁵ The experience of the previous few years of conflict had demonstrated that it was insufficient for subjects to rely on Magna Carta, or on any other legal precedent or written agreement, to guarantee their rights and liberties: Parliament also needed control over the armed forces. 'If the militia . . . be in one man, they are absolute slaves'. With logic not far removed from Thomas Hobbes, but the more remarkable for being articulated in a document emanating from Westminster itself, Fiennes went on to argue that law was of itself powerless.

How ridiculous are those Laws which may be violated by force, and by force shall not be defended? What a mock authority is that of the Courts of Justice, and of the High Court of Parliament it self, if it be not accompanied with the power of the Sword, when by the power of the Sword it shall be opposed, affronted, resisted, their summons scorned, their Messengers kicked about the streets, and their votes and judgements derided? Surely those people have but an imaginary freedom whose freedom hath no other than Paper, or Parchment walls at best to defend it . . .²⁶

The veracity of this analysis was to be illustrated all too starkly before the year was out, but in the short term Fiennes, his father and their friends executed something of a *volte face*. Especially after the defeat of pro-royalist risings over the summer, there seemed to them a good prospect of negotiating a workable peace settlement with the king in the form of the treaty of Newport. The Fienneses appear to have hoped for a limited monarchy, circumscribed by law and guaranteed by control of the militia, with a leading role for the aristocratic élite but with freedom of conscience within decent norms of behaviour. However, on 6 December the army high command, convinced that Charles could never be trusted to keep his word and that he should be punished for the blood shed in the wars, lost patience with the protracted negotiations, purged Parliament and set in train the king's trial and execution (30 January 1649), and the inauguration of a republic.

Fiennes, as a supporter of the treaty, fell victim to the purge, detained with other MPs as he tried to take his seat in the House.²⁷ Apparently he did not go silently: 'demanding by what power he was committed, it was answered'—presumably hardly to his surprise—"By the power of the sword".²⁸ For the next five years, like his father (who took refuge on the Isle of Lundy), he retired from public life. But even at the point of political eclipse he seems to have been striving to shape his Oxford college as he could not shape the nation. A list of founders' kin and Winchester scholars were presented to the consideration of the warden and the parliamentary visitors for admission to the college, 'according to the desire of Mr Nathaniel Fines, signified upon the eight of December 1648'.²⁹

The advent of the Cromwellian protectorate late in 1653 brought for Fiennes, as for other social conservatives, hope of a return to a more familiar polity. He plunged back into politics and rose rapidly. In April 1654 'Colonel Nathaniel Fiennes' was admitted to the protectorate council, where among much else, he became engaged with reform of the court of chancery and the affairs of the universities.³⁰ Elected in the summer to Oliver's first Parliament as one of the Members for Oxfordshire, his varied committee work included business related to university regulation and petitions from civil lawyers, whose whole profession (and the university teaching behind it) had been undermined by the dismantling of church courts.³¹ Once that Parliament had been dissolved early in 1655, Fiennes remained involved with legal reform and in June 1655 became one of the

²⁴ Bodl. Art 4° S11 Art. BS, [W. Fiennes], *Vindiciae Veritatis* (1654), 8, 77/sig. Kk3.

²⁵ *Vindiciae Veritatis*, 29.

²⁶ *Vindiciae Veritatis*, 31.

²⁷ *Mercurius Elencticus*, no. 5 (5–12 Dec. 1648), 527 (E.476.4).

²⁸ *Mercurius Pragmaticus*, no. 37 (5–12 Dec. 1648), sig. Ccc3v (E.476.2); *Memoirs of the Verney Family*, ed. F. P. Verney and M. M. Verney (2nd edn, 1907), i. 443; *The articles and charge of the armie against fourscore of the Parliament men* (1648), 6; W. Prynne, *The substance of a speech made in the House of Commons* (1648), 115.

²⁹ *Reg. of the Visitors*, 239.

³⁰ *CSP Domestic*, 1654, pp. 252, 285, 346.

³¹ *CJ* VII, 428a, 429b, 433b, 435b.

commissioners of the great seal.³² Meanwhile he was among the regime's principal negotiators with foreign powers, a role for which his extensive sojourns abroad rendered him well-prepared.³³ By this time the general perception was that he had become one of Cromwell's chief advisers.³⁴

In elections for the second protectorate Parliament in 1656, he was chosen to sit for Oxford University, apparently both because of his high standing and on the assumption that he would be an effective defender of the institution in succession to John Selden (who had died in December 1654). It seems that hopes were not disappointed. The University wrote to him on 17 December 1656 thanking him for his friendship and patronage and for 'giving his hand for the continuing and upholding of the civil law, when ready to go to ruin or fall'.³⁵ In January 1657 he was to the fore in dealing with a petition from the University requesting non-interference from the law courts in internal disciplinary matters, arising from a disputed election at All Souls'.³⁶ At the same time he presented the case submitted by Corpus Christi for its right of presentation to Wiltshire and Gloucestershire rectories.³⁷

As the session continued, Fiennes was among MPs sent to persuade Cromwell to accept the offer of a crown. Fiennes's reasoning, like those of his colleagues, was essentially pragmatic. The restoration of a monarchy was a 'politic necessity', to avoid what is 'boundless and lawless'. This form of government had 'the unquestionable stamp of humane authority . . . for many hundred years together' and had proved 'most suitable to the Laws of these Nations, most agreeable to the desires and dispositions of the people, and most likely to maintain quiet and peace in the Nations, with Justice and Liberty'; experience had shown the alternatives to be 'shaking and uncertain' and to have attained their ends 'but imperfectly'.³⁸

Ultimately, Cromwell rejected such seductive arguments, but in the short term this did not affect Fiennes's rising star. When the second session of the second protectorate Parliament was called in December 1657, he was summoned to the new and controversial 'Other House', a belated and rather vaguely-conceived replacement to the House of Lords, abolished in February 1649. Although no longer the University's representative in the Commons, he still dealt with its affairs at Westminster. He was now chief arbitrator in the continuing All Souls' dispute.³⁹ Since Cromwell was ill on the first day of proceedings (20 January 1658), Fiennes as commissioner of the great seal delivered the opening speech to the Parliament, intended to set the tone for what followed. As he took the centre stage, this proved the apogee of his political career. His speech displayed the style, the latitude of thought and the respect for law that Fiennes had imbibed in his extended education. In a bravura performance deploying extended biblical metaphors and analogies, he energised his listeners with stirring images and helpful principles rather than listed government intentions. He conceded the bitter experience that 'those that shall pluck up the Flood-gates of the great Deep, and let in the surging and raging Waves of War into a Nation, cannot stop them and bound them when and where they please'.⁴⁰ Those called to public service had to navigate those choppy seas, steering between the rock of the 'Spirit of Imposing upon Mens Consciences, when God leaves them a Latitude, and would have them free' and the quick-sand of 'an abominable Licentiousness to profess and practise any sort of detestable Opinions and Principles'.⁴¹ There had to be a balanced political system, based on

³² *CSP Dom.* 1655, pp. 82, 137, 148, 166; *The Diary of Bulstrode Whitelocke, 1605–1675*, ed. R. Spalding (1990), 409; *The Clarke Papers*, ed. C. H. Firth (Camden Society), III, 42, 44; *Swedish Diplomats at Cromwell's Court, 1655–1656*, ed. M. Roberts (Camden Society, 4th series, xxxvi), 80–1; *A Collection of the State Papers of John Thurloe*, ed. T. Birch (7 vols., 1742), II, 568 [hereafter *TSP*].

³³ *Swedish Diplomats at Cromwell's Court*, 165n, 243; *The Writings and Speeches of Oliver Cromwell*, ed. W. C. Abbott (4 vols., 1988), IV, 24; *CSP Dom.* 1655–1656, p. 20; 1657–1658, pp. 27, 30, 131, 229, 230, 256; *TSP* IV, 392, 588–9, 619–20; *Diary of Bulstrode Whitelocke*, 424–9, 435–6, 439–40.

³⁴ *CSP Dom.* 1655–1656, p. 80.

³⁵ *CJ* VII, 462b; *The Life and Times of Anthony à Wood*, ed. A. Clark (1932), I, 210.

³⁶ Burton, *Diary*, I, 353–4; *CJ* VII, 482a; *CSP Dom.* 1656–1657, pp. 225, 235.

³⁷ Burton, *Diary*, I, 268; *CJ* VII, 477a, 498a.

³⁸ *Monarchy asserted, to be the best, most ancient and legall form of government* (1660), 61–4.

³⁹ *CSP Dom.* 1657–1658, pp. 181, 236–7, 278; *Reg. of the Visitors*, 428n., 437–8.

⁴⁰ *The speech of the Right Honourable the Lord Fiennes* (1658), 7 (E.934.6).

⁴¹ *The speech of the Right Honourable the Lord Fiennes*, 12.

participation and compromise; old and new plants were to be woven into the hedge, trampled by war, 'made to fence our laws and liberties'.⁴²

By the time Fiennes made his last great parliamentary speech, Oliver was dead and had been succeeded as protector—precariously—by his eldest surviving son Richard. His oration to the third protectorate Parliament at its opening on 27 January 1659 had elements of a eulogy, selecting for praise what he saw as best in Cromwell's regime. As well as offering debateable (though not groundless) assertions about Oliver's role in encouraging universities, 'schools of good learning' and 'godly and able' preachers and ministers, he characterised 'his late Highness' in ways that resonated in the memory of many: 'a Man of War, yet he dyed in Peace, and left these Nations in Peace at home, and Victorious abroad'; 'dextrous and wonderfully successful in keeping Love between dissenting Brethren'.⁴³ But Richard's regime soon fell. As Speaker of the Other House, it was Fiennes's duty to preside over the dissolution of Parliament on 4 February.

Thereafter, Fiennes steadily lost his many public appointments.⁴⁴ He was glimpsed in February and March 1660 manoeuvring with aristocratic friends to shape the terms on which Charles Stuart might return as king.⁴⁵ Ultimately, however, although the Restoration was hastened by their willingness to contemplate negotiation, it was accomplished effectively without conditions. Perhaps helped by the friends he had made at Oxford to avoid the need to sue for pardon—as his father could not—Fiennes retired to his farm and his study.⁴⁶

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⁴² *The speech of the Right Honourable the Lord Fiennes*, 16–17.

⁴³ *The speech of the right honourable Nathaniel Lord Fiennes* (1659), 6, 9–10 (E.968.2).

⁴⁴ TNA, C181/6, fols. 353, 387, 396, 402.

⁴⁵ *Calendar of Clarendon State Papers*, IV (ed. F. J. Routledge, 1932), 572; *The Diary of Samuel Pepys*, ed. R. C. Latham and W. Matthews (11 vols., 1970–1983), I, 75.

⁴⁶ Broughton Castle MS, 28 Sept. [1660]; Fiennes, 'Inventory of the goods of Nathaniel Fiennes'.