



special
collections



DOUGLAS
LIBRARY

QUEEN'S UNIVERSITY
AT KINGSTON

KINGSTON ONTARIO CANADA

A

110
17

DISCOURSE

Touching the Inconveniencies of a
Long continued Parliament.

AND THE IYDGE^MENT

OF THE
LAW OF THE LAND

In that Behalfe.

By DAVID JENKINS now Prisoner in
the Tower of LONDON.



Printed in the Yeare, 1647.

AC911.1647. J4:6

DISCOURSE

Touching the Improvement of

And the

AND THE

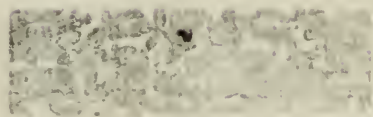
JUDGEMENT

OF THE

LAW OF THE LAND

In the

By David Hume, Esq.
The



Printed in the Year 1752



A DISCOURSE

Touching the Inconveniencies of a
Long continued Parliament.

1.

A Perpetuall Parliament is repugnant to the Act made this Parliament for a Trienniall Parliament; for how can every three years a Parliament begin, if this be perpetuall, which may be so if the two Houses please :

2.

An adjournment of the Parliament makes no Session, *4 Pars, Institut. fol. 27.* Howbeit, before the Adjournment, the King gives His Royall assent to some Bills. *Cooke, ibid.*

3.

There is no Session till a prorogation or dissolution of the Parliament.

4.

This Parliament, as appears by the Act for not dissolving thereof, set downe in the Printed Statutes of this Parliament, *fol. 138.* cannot be prorogued but by Act of Parliament. There hath beene as yet no Act of Parliament present, and therefore all the Acts of this Parliament, are Acts of one Session.

5.

Plowd.com.79
33 H.8 Bro.
relation 35.
Bro. Parl. 86.
Dier. 1 Mariz
45.

All the Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament are Acts of one day; so the Act for the Trienniall, and the Act for this Perpetuall, are two Acts of one day by the Law.

6.

4 Ed. 3. cap. and 36 Ed. 3. cap. 10. A Parliament is to bee holden once every yeere, and more often if need shall bee; those Acts are confirmed by the Act for the Trienniall Parliament. How doth a perpetuall Parliament agree with a Parliament once every yeere, or with the intention of those Lawes? How doth a Parliament every three yeeres agree with a Parliament for ever, which may be, if the two Houses please?

7.

The result is this; at one day in Law this Parliament two Acts have passed. (for howbeit the one was in 16 Carol. and the other in 17. Carol. yet both in Law are Acts of one day) the one saith there shall be a Trienniall Parliament after the end of the sitting of this Parliament: The other, this Parliament shall sit for ever, if they please. The one will have a Parliament with an end, the other, a Parliament without an end.

8 Pars, Doct.
Bonhams case
fol. 118.

8 Ed. 3. 30.

33 E. 3. cessa-
vit, 32.

27. H. 6. An-
nuity 41.

14 Eliz. Dier;
33.

When an Act of Parliament is against common right or Reason, or repugnant, or impossible to bee performed, the Common Law shall controle it, and adjudge this Act to bee void; they are the words of the Law.

An Act of Parliament, that a man shall bee Judge in his owne cause, is a void Act.

Begin with Common Right. It is against Common Right, that indebted men should not pay their debts: That if any Member of the House of Commons doe any Subject wrong by disseising him of his land, or dispossessing him of his goods, or blasing of his fame, or doing violence to his

his person, that such persons during their lives should not be questioned by a priviledge of Parliament, and that extended also to many others besides themselves. Common Right doth abhorre these enormities, which a perpetuall Parliament doth beget, besides the utter destruction of all mens actions, reall, personall, or mixt, who have to doe with Parliament men, by the Statute of Li-^{21 Jac.} mitation, which confines suits to certain yeares.

For Common Reason. Parliaments were ordained for remedies to redresse publike grievances; It is against Reason they should make publike and insufferable grievances. The Law of the Land allowes no protection for any man employed in the service of the Kingdome but for a yeare, to be free from suits, and in many suits none at all, howbeit hee be in such service; but a Parli-^{39 H. 6. 39.}ament perpetuall may prove a protection, not for a yeare, but for ever, which is against all manner of Reason.

For Impossibility. The death of His Majesty (whose life God prolong) dissolves it necessarily; For the Writ of summons is, *Carolus Rex in hoc individuo*, and *Carolus Rex* is in this particular, *Habiturus colloquium & tractatum cum Prelatis & proceribus, &c.* King Charles being ^{2 H. 5. Cooke} to have Conference and Treaty with his Prelates and ^{Title Parliam} Peeres; *Carolus Rex* cannot have *Colloquium & tractatum*, Conference and Treaty, when he is deceas'd; and ^{3. pars.} therefore it is impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive.

For Repugnancie. That which is but for a time, cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act of 17. *Caroli Regis*, which is to continue at pleasure, is in the said Act expressed to be to raise credit for money for these three purposes. First, for reliefe of his Majesties Army and people in the North. Secondiy,

Secondly, for preventing the imminent danger of the Kingdome. Thirdly, for supply of other His Majesties present and urgent occasions. These ends are ended, the reliefe of that Army, the imminent danger supposed was six yeares agoe, the supply of His Majestie hath bene a supply against him, take away the end, the meanes thereto are to no purpose, take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and Reason, the Act should end, the Law rejects things unprofitable and uselesse.

Sir Anthony
Mayns case. 5.
pars, 1 H. 4. 6.
Littl. cap.
Villen.

A perpetuall Parliament (besides that it incites men to selfe-ends, destructive of the publique of which the whole Kingdome hath had sufficient experience) wilbe a constant charge to the Kingdome; for that every County and Borough, who send Members to the Parliament, are by the Law to pay wages to their Parliament men, which to many Counties will amount above some Subsidies Yearely: There are many poore Borough-Townes in each County of this Kingdome, who being to maintaine two Burgesses in Parliament, will be quickly begger'd, if the Parliament have no end; for all which reasons it is cleare, that such long continuance of Parliaments, will instead of a remedy (which is and ought to be the proper and true end of Parliaments) become an insufferable grievance and oppression to all the People of the Land.

The Writ of Summons this Parliament is the basis and foundation of the Parliament. If the Foundation be destroyed the Parliament falls. The Assembly of Parliament is for three purposes. *Rex est habiturus colloquium et tractatum cum prelatibus, magnatibus et proceribus super arduis negotijs concernentibus*, 1. Nos. 2. *Defensionem regni nostri* 3. *Defensionem Ecclesie Anglicane*. This Parliament hath overthrowne this Foundation in all 3 parts, 1. Nos. the King, they have chased him away, and imprisoned

prisoned him; they have voted no prelates, and a number of other Lords, about 40. in the City must not come to the House, and about 40. more are out of Towne, the *colloquium et tractatus* are made void thereby: For the King cannot consult and treat there with men removed from thence. 2. *Defensionem regni nostri*, that is gone; they have made it their Kingdome, not His, & they have usurped all His Sovereignty. 3. *Defensionem Ecclesie Anglicanae*, that is gone, that *Ecclesia Anglicana* must be understood necessarily that Church, that at the test of the Writ was *Ecclesia Anglicana*, they have destroyed that too. So now these men would be called a Parliament, having abated, quashed, and made nothing of the Writ whereby they were Summoned and Assembled. If the Writ be made void, all the process is void also: that House must needs fall, where the Foundation is overthrowne, *Sublato fundamento opus cadit*, the Foundation being taken away, the worke falls, is both a maxime in Law and Reason.

For some yeares past, there is no crime from Treason to Trespasse, but they are guilty of: all Treason, Felonies, Robberies, trespasses are *contra pacem, coronam, et dignitatem Regis*, against the Peace, Crowne and Dignitie of the King; as appeares by all Indictments in all Ages. *Pax Regis* the Kings Peace, *Corona Regis*, the Kings Crowne, *Dignitas Regis*, the Kings Dignitie, are all trod under foot, and made nothing; *Pax Regis*, the Peace of the King is become a Warre against the King, His Dignitie put into prison, and the Crowne put upon their owne heads.

All the Judges of *England* have resolved, that Noble-men committing Treason have forfeited their Office and Dignitie, their Offices to counsell the King in time of Peace, to defend him in time of Warre, and therefore those men against the duty and end of their Dignitie taking not onely Counsell, but Armes also to destroy Him

Nevills case
7. part, 34.
2. Jacobi.

Him, and being thereof attaint by due course of Law by a tacite condition annexed to the estate of their Dignitie, have forfeited the same; they are the words of the Law, and therefore they have made themselves incapable to be Members of the upper House.

The Oppressions of the People.

Briberies, Extortions, Monopolies, ought to be inquired after by the House of Commons, and complained of to the King and Lords, what have they done?

The House of Commons cannot by the Law commit any man to prison, who is not of the said House, for Treason, Murder, or Felony, or any thing but for the disturbance of the publique Peace; by the priviledge of the whole body.

They have no power by the Writ, which the King issueth to elect and returne Members of that House, so to doe. For the Writ for them is onely *ad faciendum et consentiendum* to those things, whereof His Majestie shall consult and treat with his Prelates and Nobles, & *de communi consilio Regni* shall be there ordained, as appears by the Writ. Here is no separate power given over the Kings people to them, but onely *ad faciendum et consentiendum*, and in all times this hath bene expounded and restrained to that which concerned their owne Members in Relation to the publique Service, as he is a Member of the corporate body of the Parliament, whereof the King is the Head.

But that the House of Commons have committed any man for Treason, Murder or Felony, or for any offence that had no relation to a Member of the House of Commons, as it is against Law and Reason, so no instance can be given till this Parliament.

All Questions and trials where witnesse are examined, the examination is upon oath by the Law, by all our Bookes;

4 Pars. institut, 23. 24. 25.

19 H. 6. 43.
22. E. 4. 22.
5 H. 4. cap. 8.
3 H. 6. 46.

Bookes, Statutes, every dayes practice. Examination without an Oath, is but a loose discourse; therefore the House of Commons not claiming power to give an Oath, have no power to examine any man.

No man shall bee imprisoned by the King or His Councell, unlesse it be by Inditement, presentment of his good and lawfull Neighbours where such deeds bee done, in due manner, or by processe made by Writ originall at the Common Law: This Statute rehearseth *Magna Charta*, pag. 29. and expounds *Lex terre*, the Law of the Land there mentioned: This Law binds all men, and the House of Commons (for they say they are of the Kings Councell) in all points, but onely against the disturbers of the service of the Parliament; and therefore the imprisonment of severall persons who are not their Members, and for no disturbance to their Members, is utterly against the Law of the Land, and the franchise of the Free-men of this Realme.

25 E. 3. c. 12
Petition of
Right. 3 Car.

Cui non licet quod minus, non licet quod majus; he who may not doe what is lesse, may not doe what is greater; they cannot commit a man for murder or Felony, much lesse for Treason.

No Court can fine and imprison, but a Court of Record, the House of Commons is no Court of Record, the House of the Lords where the King is in his Person, his Nobles and his Judges, and Councell at Law, the Masters of the Chancery sitting, is a Court of Record, and that is the Court of Parliament, where the *colloquium & tractatus* is. The House of Commons may present grievances, grant or not grant aydes, consent or not consent to new lawes, but for fining and imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They have no Journall Booke, but sithence *Edw. 6. time. 6 Hen. 8. cap. 15.* doth not prove the House of Commons to be a Court of Record, it mentions onely to be entered on Record in the Booke of the Clerke of the Parliament, if any Member depart into the Country.

8 Pars, Cook
120.
27 H. 6. 8.

There is no Journall there but sithence *Ed 6.* time, or it is a remembrance or memoriall, as *12 H. 4. 23.*

14 H. 8. 3.
36 H. 8. Dier
60.
4 Pars Instit.
cap. 1.

The whole Parliament is one corporate body, consisting of the Head and three Estates: The Court is onely there where the *Consilium & tractatus* is, where the consult and treaty is with the King, which is in the House of Lords onely.

The House of Commons claime not to examine upon oath any man; no Court can bee without a power to give an oath, Courts Baron, Court of Pipowders, County-Court, may and doe give oath: No Court can bee without a power to-try, no tryall can be without Oath; and therefore the House of Commons not claiming power to give an Oath, can bring no matter to tryall, and consequently can be no Court.

The behaviour of the Commons at a Conference with the Lords, the Commons are alwayes uncovered, and standing when the Lords sit with their hats on, which shewes they are not Colleagues in judgement, for fellow Judges owe no such Reverence to their Companions,

11 H. 4. ca. 1.

When was ever Fine imposed by the House of Commons estreated in the Exchequer? The ejection of a Member, who hath sitten, is against the Law; for they cannot remove a man out of the House unduly returned, much lesse a man returned duely.

14 H. 4. cap. 1.

1 H. 5. cap. 1.

8 H. 6. cap. 7.

25 H. 6. cap. 15

By these Lawes it appeares, that if any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is 200. pound, one to the King, another to the party that is duly elected, imprisonment for a yeare without Baile or Mainprise; and that person who is unduly returned, shall serve at his owne charge, and have no benefit at the end of the Parliament by the *Writ De solutione fœndorum Militum, Civium & Burgensium Parliament.* and the tryall of the falsity of the returne, is to be before the Justices of Assises in the proper County,

County, or by action of debt in any Court of Record. This condemnes the Committee for undue elections, which hath been practised but of late times; for besides these Lawes, it is against a maxime of the Common law; ^{3 Ed. 4. 20.} ^{5 Ed. 4. 41.} an averment is not receivable against the returne of the Sheriffe, for his returne is upon Oath, which Oath is to be credited in that suit wherein the returne is made.

The said Statutes condemne and make those members no members, which were not resident in the County or Boroughs, for which they were elected, at the time of the test of the Writ of the Summons of the Parliament, and any abusive practice of late times to the contrary is against the Law, and ought not to be allowed.

Affault upon Parliament Men.

If a Parliament man or his Meniall Servant be assaulted, beaten, or wounded, in the Parliament time, proclamation shall bee made where the deed is done, that the offender shall render himselfe to the Kings Bench, within a quarter of a yeare after proclamation made, and the offence there to be tryed, for default of appearance the offender is declared, attainted of the misdeed, and it is accorded that thereafter it bee done likewise in the like Case. ^{5 H. 4. cap 6.} ^{11 H. 6. cap 11.}

Serving of processe upon a Lord of the Parliament punished in the Lords House. ^{Bogo de Clare} ^{18 E. 3. 4 pars,}

Serving of processe upon *Thornby* inquired of in the *Chancery*, and there the offenders were convicted. ^{Instit. fol 24.} ^{John Thornbyes case,}

The premisses prove, that breaches of priviledge of Parliament may bee punished elsewhere then in Parliament. ^{Clerk of the} ^{Parliam, ibid.} ^{10. E. 3.}

Upon all this Discourse, it is easie to discern what fruits may be expected from this Parliament, continuing as long as the two Houses please; and that there is no safety for this Common-wealth, but by the Observations of their ancient Franchises, Customes and Lawes.



CONCLUSION.

I Say againe, that without an Act of Oblivion, a gracious generall Pardon from His Majesty, the Arreares of the Souldiers paid, a favorable regard had to tender Consciences, there will bee neither Truth nor Peace in this Land, nor any man secure of any thing he hath.

The End.

