

from party of Power, or even a fortiori *Book 3 Just. cap. 1*
 it being thought dangerous to trust inferior Judges with
 the Commission of Constructive treasons, or the power of
 attainting men with treasons in a War. When there is
 ground to Attaint a Man by the ordinary proceedings and
 Method of Justice, the Parliament useth not to take
 an extraordinary course to come at him by way of the
 legislative. For it is against the honour and Dignity of
 the Parliament to do the work that an inferior Court
 can do. *Non Recurrendum ad Remedium Extraordinarium
 nisi ubi Deficit ordinarium*. But as in the ordinary course
 of humane Affairs, one will not tie himself up to the
 Observance of those Rules he prescribes to his servants
 to Act of whose Abilities he had not so good an Opinion
 as of his own: so the Law gives Reserves to themselves
 that power which they withhold from the Courts below.

A Bill of Attainder is therefore a thing never to
 be used but upon extraordinary Occasions, viz. when the
 Parliament Judges it necessary. I find Instances of
 Attainder in three cases. 1st When there is not Evidence
 of a Crime, that Westminster hall Requires, and yet all
 men are generally convinced of it, then the legislative
 power Interposeth to supply the Defect of Justice: as in
 the case of Sir John Donnicke, who, having been Judge
 of high treason, and got his trial Delayed upon his prom-
 ising to Make a full Discovery of the Crime and his
 Associates therein, did in the mean time put out of the
 way one of the two Witnesses that would have given Evidence
 against him & *W. 3 cap. 4*. For the Parliament having
 no Superior power, and being restrained by No Rules
 but those of Natural Justice, they walk by the Rule
 of a Justice and well Informed Conscience; and being
 Judges and Jury, private facts factious to each Member
 Conscience sufficeth, without outward Evidence. 2^d When
 have been brought in to Attaint some topping per-
 son great Ministers of State for flagrant Crimes

in Defiance of all Courts of Justice, whom therefore the
 inferior Judges could not Deal with: as the Duke of Min-
 -mouth. 3^d of Treasons that do not fall Under the Denomina-
 tion of the statute law, call for a trial in Parliament
25 Ed. 3 ft. 5 cap. 2. There being Judges in them a power
 to Judge those Crimes that are sheltered Behind the Law,
 and to Declare that to be treason, which was not such
 before it was Committed. such was the Earl of Straffords
 Crime, viz. the Attempting to Change the fundamental
 form of Government in the Making and Enacting laws, or
 the Essential forms of law according to which Right
 and Justice ought to be Distributed and Administered,
 and Reducing the Nation to an Inferiority in power or
 Trade to Neighbouring Potentates. For which a Bill of
 Attainder passed against him in Parliament got the
 Royal assent 10 May 1641. And in the third Rich. 2 one who
 by Misfortune & Defiance killed in a quarrel that
 happened in the street an Agent that came from Genoa,
 tho' he could not be brought within the statute of *25 Ed.*
3 ft. 5 cap. 2. Yet the person killed being a publick
 Minister the Nation took more Notice of it; and the Parli-
 ament Attainted the person who Committed the fact: but did
 not think fit to Make a General law. For the statute
 of *25 Ed. 3* was not intended to take away any treasons at
 Common Law that were so before, but only to Regulate
 the Jurisdiction and Manner of trials leaving single and
 certain Acts, as Conspiring the Kings death, Treas-
 on, counterfeiting Money, to the ordinary courts of Justice;
 and appropriating others not depending upon single Acts,
 but upon Constructions and Necessary Inferences, as Mat-
 -ters. *Altius Judicium*, to the Cognizance of the
 Parliaments the same Law gives power to the parliament
 to Make New laws, that enabled inferior courts to
 Judge according to the old Rules that guide the infe-
 -rior courts is from without, the prescripts of the Parli-
 ament.