The sections from 7 to 16 (the earlier sections having been already considered) are occupied with a discussion of what are supposed to be the views of the American Argument on the subject of prerogative or executive power, as distinguished from the ordinary administration of authority through the instrumentality of courts of justice and their procedure. Although we may not pretend to have as accurate views of constitutional questions pertaining to the nation of Great Britain, or to the general principles of her common law, or of the effect of her statutory regulations and of her judicial decisions as the eminent Counsel of her Britannic Majesty, yet I think it will be found that the criticisms upon our Argument in these respects are not by any means sound. It is of course, a matter of the least possible consequence to us, in any position which we occupy, either as a nation before this Tribunal or as lawyers in our Argument, whether or not the sum of the obligations of Great Britain in this behalf under the law of nations was referred for its execution to this or that authority under its constitution, or to this or that official action under its administration. One object of our Argument has been to show that, if the sum of these obligations was not performed, it was a matter of but little importance to us or to this Tribunal, *where*, in the distribution of administrative duty, or *where*, in the constitutional disposition of authority, the defect, either of power or in the due exercise of power, was found to be the guilty cause of the result; yet, strangely enough, when, in a certain section of our Argument, *that* is laid down as one proposition, we are accused by the learned Counsel of a *petitio principii*, of begging the question, that the sum of her obligations was not performed by Great Britain.

With regard to *prerogative*, the learned Counsel seems to think that the existence of the supposed executive powers under the British Constitution, and which our Argument has assigned to the prerogative of the Crown, savours of arbitrary or despotic power. We have no occasion to go into the history of the prerogative of the British Crown, or to consider through what modifications it has reached its present condition. When a free nation like Great Britain assigns certain functions to be executed by the Crown, there does not seem to be any danger to its liberties from that distribution of authority, when we remember that Parliament has full power to arrange, modify, or curtail the prerogative at its pleasure, and when every instrument of the Crown, in the exercise of the prerogative, is subject to impeachment for its abuse.

The prerogative is trusted under the British Constitution with all the international intercourse of peace and war, with all the duties and responsibilities of changing peace to war, or war to peace, and also in regard to all the international obligations and responsibilities which grow out of a declared or actual situation of neutrality when hostilities are pending between other nations. Of that general proposition there seems to be no dispute. But it is alleged that there is a strange confusion of ideas in our minds and in our Argument, in not drawing the distinction between what is thus properly ascribable to extra-territoriality or *ad extra* administration, what deals with outward relations and what has to do with persons and property within the kingdom. This prerogative, it is insisted, gives no power over persons and property within the kingdom of Great Britain, and it is further insisted that the Foreign Enlistment Act was the whole measure of the authority of the Government, and the whole measure therefore of its duty, *within the kingdom*. It is said the Government had no power by prerogative to make that a crime in the kingdom which is not a crime by the law, or of punishing a crime in any other manner than through the Courts of Justice. This of course is sound, as well as familiar, law. But the interesting question is, whether the *nation* is supplied with adequate legislation, if that is to furnish the only means for the exercise of international duty. If it is not so supplied, that is a fault as between the two nations; if it is so supplied, and the powers are not properly exercised, that is equally a fault as between the two nations. The course of the American Argument is to show that, either on the one or the other of the horns of this dilemma, the actual conduct of the British Government must be impaled.

We are instructed in this special Argument as to what, in the opinion of the eminent Counsel, belongs to prerogative, and what to judicial action under the statute; but we find no limitation of what is in the power of Parliament, or in the power of administration, if adequate parliamentary provision be made for its exercise. But all this course of argument, ingenious, subtle, and intricate as it is, finally brings the eminent Counsel around to this point, that by the common law of England *within the realm*, there *is* power in the Crown to use all the executive authority of the nation, civil and military, to prevent a *hostile act* towards another nation within that territory. That is but another name for prerogative, there is no statute on that subject, and no writ from any Court can issue to accomplish that object.

If this is undoubtedly part of the common law of England, as the learned Counsel states, the Argument here turns upon nothing else but the old controversy between us, whether these acts were in the nature of *hostile acts*, under the condemnation of the law of