

count. For prerogative consisting (as Mr Locke^f has well defined it) in the discretionary power of acting for the public good, where the positive laws are silent, if that discretionary power be abused to the public detriment, such prerogative is exerted in an unconstitutional manner. Thus the king may make a treaty with a foreign state, which shall irrevocably bind the nation; and yet, when such treaties have been judged pernicious, impeachments have pursued those ministers, by whose agency or advice they were concluded.

THE prerogatives of the crown (in the sense under which we are now considering them) respect either this nation's intercourse with foreign nations, or it's own domestic government and civil polity.

WITH regard to foreign concerns, the king is the delegate or representative of his people. It is impossible that the individuals of a state, in their collective capacity, can transact the affairs of that state with another community equally numerous as themselves. Unanimity must be wanting to their measures, and strength to the execution of their counsels. In the king therefore, as in a center, all the rays of his people are united, and form by that union a consistency, splendor, and power, that make him feared and respected by foreign potentates; who would scruple to enter into any engagement, that must afterwards be revised and ratified by a popular assembly. What is done by the royal authority, with regard to foreign powers, is the act of the whole nation: what is done without the king's concurrence is the act only of private men. And so far is this point carried by our law, that it hath been held^g, that should all the subjects of England make war with a king in league with the king of England, without the royal assent, such war is no breach of the league. And, by the statute 2 Hen. V. c. 6. any subject committing acts of hostility upon any nation in league with the king, was declared to be guilty of high treason: and, though that act was repealed by the

^f on Gov. 2. §. 166.

^g 4 Inst. 152.