ter thereof individually shall be adjudged guilty of a conspiracy concerning or relating against the U. States, and shall be punished by fine not exceeding [illegible] dollars, and by imprisonment not exceeding [illegible] years, not less than [illegible] years."

The Senate will hence be confronted the question which I have already laid down, that in cases where the offence common to all governments, or rather which are not peculiar to one or more, but are particular policy measures of the federal government, were punishable by the states respectively before the present constitution was adopted, and that Congress has no cognizance of any of the offences specified, such are specially made to be the constitution. Conspiracy, treason, &c. are common to most all governments, and consequently are not punishable by this government, unless committed by persons upon whom its jurisdiction has attached in the course of its legislative operations. Conspiracy is an offence not where mentioned in the constitution. It may be said that many offences are contained in the constitution not specified in the constitution; To this I reply that most of those offences are what may be termed *mixed prohibited*, and have been created as necessary auxiliaries to the exercise of powers delegated. This constitution being a special grant of power, those enjoyed in its authority implied within the exercise of any power not delegated or vested in them, except such incidental powers as may be judged necessary for the specified powers in to effect or result from the exercise of them. Not to provide against the evil, any cause must be included with the class of incidental or resulting powers.

This opinion will be fairly objected to as unconstitutional on another ground, that it will be found if it waves very much of that species of treason known in despotic governments, which is committed by simply giving the death of the royal person or conspiring against his life. This section is intended, if I understand it, to punish an intent to commit treason. If it is improper to violate the constitution in this, it is equally so to do it indirectly. I infer that the people of the U.S. by declaring that treason should consist only in levying war, &c. intended to proscribe every other species of it; it may be questioned whether we can with propriety introduce another species of treason into our penal code, under the name of conspiracy. Besides it will violate that provision which requires two witnesses to convict, or if it is, this clause is retained and the bill passed, I presume a single witness proving an intent to commit treason will be sufficient for conviction. A few cursive expressions which may escape in a magnanimt Senator in dissipation, if relished on oath in a court of justice by a pimping informer, may be competent to convict them. In governments founded on force, the despots, conscious that he has incurred the affections of his subjects, and consequently jealous of their fidelity, has his secret spies and informers, to watch their movements, and to wield their power against tumultuous. Every wise, alarm, and in fact, every government many, who have been concurrent of human nature, have been satisfied to employ instrumentality of informers, at the shrine of individual malice, or to suit the convenience of misery. The witness who swears to another's private intentions uncontested with any open deed can perpetrate incurable injustice, as the court has no means of controverting the fact, the grounds of conclusion innocent cause sive him from which to fix his government, which is founded on the affections and interest of the great majority of the people, is jealousy so common in those governments, ought not to be indulged. This article extending into the conduct of individuals is unnecessary here, and tends very much to diminish the stock of private confidence and social felicity. This crime called conspiracy, however, is in its nature so vague and indefinite and liable to be proved by testimony of so suspicious a character, that I feel it to be so dangerous to give it a place in our criminal code. Conspiracy, when indeed is well ascertained, will generally be punished with sufficient severity by that great common public opinion. It does not appear that the strictly congenial with either the genius or practice of the American government to punish a man for the wicked intentions until they have constituted in the perpetration of some unlawful act.

I will now pass to the last section of the bill, which seems to me its most objectionable. It reads thus, "And be it further enacted, that if any person or persons shall attempt by written or printed publications, or by publicly speaking to or addressing an assemblage of persons exceeding [illegible] persons to promote and bring about a dismemberment of the United States or any of the territories thereof, or to erect or establish any government within the jurisdiction of the United States, the territories or any of them, such person so offending, &c." This section is liable, independent of others to the constitutional objections which I have mentioned in my speech, and I am satisfied that the committee themselves upon a reconsideration, will be convinced that it is highly impolitic.

When I first read it, I was reminded of a story I have some where read, that a man, whose inclination had never prompted him to behead any person of his house, hesitated and when the Emperor issued an edict directing him to be beheaded with the same facility which he had never attempted to pass. The moment we say to the people they shall not speak, we inevitably begin to know off the authority of this government. No man conscious more highly than myself the necessity of the preservation of this kind, but I believe the measure which awaits the consideration of the Senate, in my opinion, is an adequate check. If there are any who entertain such sentiments let them reflect on consequences of the safety with which error of opinion may be tolerated, while reason is left free to combat it. If it has ever be found political and necessary to suppress publications of this kind, it would have more effect upon the conduct of its own citizens than one passed in the Congressional chamber. It will be denounced as another sedition law, as violating the freedom of speech and the press, and which seems to do any good purpose, may in its consequences do much mischief. I confess I have no fear of the people in the exercise of penal laws on the durability of the union. By the passage of this bill, the people will conclude, the evils, shall only put a weapon into the hands of its enemies. We had better reflect on the affections and attachment of the people to the government, than attempt to operate upon them by penal statutes. This union must be preserved by the tie of common interest and affection. I fear the effect of this bill that it is calculated to increase the jurisdiction of the federal court, I would prefer to have its jurisdiction. This federal judiciary is to the people represent the most odious feature in the government. It has been found very inconvenient and oppressive to them, and would have been much better for the peace of the distribution of the supreme court of the United States. These decisions have very much lessened the confidence in unanimous which have transpired in this bill has its