

It is perfectly apparent from the opinions cited, that it was not the intention of the framers of the constitution, to adjudicate by this provision, the claims of the several States to the public lands, or to give them any other position than they occupied under the confederation. The only operative part of the constitution, bearing upon these claims, is that which vests in the Supreme Court, the right of determination upon "controversies to which the United States should be a party, and to controversies between two or more States." Under the confederation, the States recognised no mutual controlling arbiter of the territorial claims, except as to boundary, limits and disputed jurisdiction. By the express proviso of the second section of the ninth article of the confederation, "no state could be deprived of territory for the benefit of the United States." This article was adopted, as before observed, prior to the cession by the States. The rights growing out of these cessions were, in the nature of things, incapable of arbitrament by the confederated Congress. It was unquestionably to supply this defect—to have an arbiter whose decisions, uninfluenced by sectional feeling, should be binding upon all the claimants, and to avoid the danger of an attempted adjustment of the rights between States equally confident of their claims, and equally determined to persist in their maintenance, that the power of ultimate judgment was conferred upon the Supreme Court. It has never been contended that any power of Congress could be engrafted upon, or enlarged by the authority of the judiciary. And the extracts quoted already establishing the position, that no surrender of State claims to the public territory was made to the general government, by the adoption of the constitution, we are authorised to conclude that the terms of the section, giving to Congress the power of disposing of that territory, were merely to designate it, as we have before remarked, as the mutual agent of the several States, vested with power to dispose of it for the objects to which, at the time of the confederation, its proceeds were admittedly liable—payment of the war debt; and after its extinction, for the "common use and benefit of the States, as such," in such proportions, as with reference to their relative conditions, would be most equitable.

Your committee then respectfully state, that from the most careful investigation of the subject submitted to them, they are bound to conclude that the position Maryland assumed in 1780, in relation to her claims to participation in the public territory, was rightfully and just. That her claims