

ing the territory, or other property belonging to the United States; and nothing in this article shall be so construed, as to prejudice any claims of the United States, or of any particular State.”

The language of this authority first arrests our attention: “Congress shall have power to *dispose* of “the public territory. The disruption of the confederated states, would of course, destroy whatever power of agency the cessions and acceptance conferred upon them. The cessions, in their terms, look to some common agent, to *dispose* of the territory ceded “to the use and benefit of the states.” While the confederation existed, this common agent was found in the Congress of the states. But a constitution was contemplated, which if adopted, necessarily destroyed the active efficiency of any power of the confederation. Had no such provision been made as above quoted—the cessions, though made, would have been inoperative to any beneficial extent, for want of a proper power to carry out these objects. This power of *disposition*, adopting the phraseology of the deeds of cession, as we contend, was conferred by the cited clause, to supply the deficiency that would otherwise have existed, but that it was also subject, in that “disposal” to an equally obligatory observance of the mode in which the cessions required it to be made “for the use and benefit of the states.

To contend that the adoption of the constitution, containing the recited cessions by the states, was a fee simple grant of the territory to the general government, would be to force a construction negatived by the terms of the power granted, and history of its insertion in that instrument.

By reference to the 2d volume of the Madison Papers, it will be seen, that in the original draft of the constitution, reported by the committee of eleven, no power over the public territory was given to Congress, except as to the admission of new states, formed by its settlement. The clause “of disposition” of it, was first suggested by Mr. Madison, on the 18th August, 1787, in the following words: “To dispose of the unappropriated lands of the United States.” On the 30th of August, Mr. Martin moved to take up the following: “The legislature of the United States shall have power to erect new states, within, as well as without, the territory claimed by the several states, or either of them; and admit the same into the Union: provided, that nothing in this constitution shall be con-