Can the President unilaterally end fossil fuel leasing on federal lands? Or does this policy decision require Congressional intervention? Can the President unilaterally terminate existing National Monuments that protect federal public lands from development? Or does this policy decision also require Congressional intervention? Does federal law preempt state law on federal lands? Or does the Constitution require the transfer of all federal lands to a state when it is admitted to the Union?

Some of these questions are contemporary: The Trump Administration tried to unilaterally shrink two National Monuments in Utah, actions that were reversed by the Biden Administration. And the disputes over fossil fuel leasing on federal lands have been fodder for ongoing litigation in the courts throughout the Biden Administration's term.

Some of these questions are of long pedigree: Fights over whether federal law preempts state law go back over a century, and the debates over whether federal land ownership within a state is constitutional are just as old. But these debates are current as well. Utah has passed legislation seeking transfer of much of the federal land within the state's borders, for instance.

Scholars and courts have wrestled with those questions. But as I point out in a new article, previous analyses haven't drawn on a key point: The location of congressional power to manage the federal lands within the Constitution.

The Property Clause, found in Section 3 of Article IV, provides the basic authority for Congress to manage federal public lands: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." It is the location of the Clause in Article IV that is the key point I draw out in my analysis, and that location provides important answers for questions like the ones at the beginning of this blog post.

Article IV is unlike the first three articles of the Constitution. Article I creates and empowers Congress; Article II does the same for the Executive Branch and the President; and Article III establishes the federal judiciary. All three of these branches are units of the federal government, and can be understood as part of what is called "vertical federalism": The creation of a central government for our federal system of government. The federal government has exclusive powers in areas such as foreign relations, and as such speaks for all of the states, providing a unifying force through its very existence.

But Article IV is very different. Its provisions relate to the relationships between the states. Article IV has provisions like the Full Faith and Credit Clause, which provides for the recognition by one state of another states' judicial proceedings and other public acts; the Privileges and Immunities Clause, which provides that citizens of one state should receive the same privileges and immunities of citizens of another state; and the Extradition Clause, which provides for extradition of fugitives from the justice system from one state to another. All of these are about state-to-state relationships – what is called "horizontal federalism."

Horizontal federalism was seen by the framers of the Constitution as extremely important for creating a stronger, tighter union. It would facilitate trade and commerce among the states, and in so doing, would increase the bonds among citizens of different states. Moreover, the provisions of Article IV often do not rely heavily on the federal government (unlike the first three articles). Section 2 (which includes the Privileges and Immunities Clause and the Extradition Clause) does not even mention Congress.

The Property Clause is also in Article IV, appropriately so because the Property Clause is also fundamentally about horizontal federalism. After the Revolution, the newly independent thirteen states had a key problem with respect to sovereignty and borders. About half of the states had significant claims to lands west of the Appalachians, and those claims often overlapped. Without the sovereignty of Great Britain to mediate the disputes, the states were left to do it themselves. There was real concern of warfare among the states over the claims – indeed, conflict broke out in Pennsylvania between settlers from Connecticut and Pennsylvanians over Connecticut's land claims in the Wyoming Valley. Moreover, the half of the states without western land claims asserted that the western claims should be surrendered to the new federal government, on the grounds that all states had fought for independence and should receive the benefits in terms of western expansion. Maryland felt strongly enough about this issue that it refused to ratify the Articles of Confederation for a significant period of time.

The Property Clause essentially ratified a compromise, whereby states with western claims (like Virginia) ceded those claims to the United States, in return for future admission of those lands as new, separate states. The Clause filled a vacuum present in the Articles, which never authorized federal ownership or management of lands. By resolving the problem of interstate disputes over the western lands, the Clause is also an example of horizontal federalism, albeit one in which the federal government plays a much greater role, since it became the owner and manager of

the western lands, a neutral arbiter and owner between the states resolving the overlapping claims.

What are the implications of acknowledging the horizontal federalism in Article IV and the Property Clause? Most importantly it implies congressional primacy in power implementing the Property Clause. If Article IV is about state-to-state relationships, rather than the unitary power of the federal government, then Congress is a better representative of the states (including the equal representation of the Senate) than a nationally elected President is.

There are limits to congressional primacy here – given the importance of day-to-day management for the public lands, and the impossibility of legislation ex ante identifying and resolving all management issues, there has to be residual executive power to manage the federal lands, at least where Congress has been silent.

In the next blog post, I'll take these principles and use them to help answer the questions I led off this post with.