The Oregon Occupation: Rights And Wrongs On Both Sides

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There are no good guys to cheer for in the militia takeover of an Oregon federal office building on January 2. The ostensible issue is the re-sentencing of two Oregon ranchers–Dwight Hammond and son Steven Hammond–for arson, while the underlying issue is federal land ownership of much of the West.

The arson fires lit by the Hammonds in 2001 and 2006 may have actually represented sensible land management, but the Hammonds lost the high ground by their failure to coordinate with the government agency managing the land they burned.

Prescribed fire is a tool used to improve wildlife habitat, increase land productivity and control wildfire. The 2001 fire aimed at improving productivity, but the government says the ranchers didn't bother informing the Bureau of Land Management (BLM) they planned to burn until two hours after they lit the fire.

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While they lit the fire on their own land, it escaped and burned 139 acres of federal land, but that burning probably did not do serious damage to the grassland, and they put the fire out themselves.

The 2006 fire was more questionable. A wildfire was burning on BLM land near the Hammonds' ranch, so to defend their land they lit a backfire on their own land. That would be standard procedure except, again, they didn't tell anyone, and when their fire crossed over onto federal land, it endangered firefighters who the Hammonds apparently knew were located between the wildfire and their backfire. Due to severe fire hazards, the county had a no-burn rule which the Hammonds apparently violated, but this was hardly a terrorist act.

For these actions, they were sentenced to a year in jail, which possibly was appropriate, considering they endangered people's lives. But the federal government, citing an anti-terrorism law that sets a mandatory minimum sentence of five years for arson on federal land, demanded

that they be re-sentenced. Having already served the first year, they were scheduled to be re-incarcerated for four more years after the new year.

It is always disturbing when the federal government uses laws aimed at terrorists to oppress citizens who have political differences of opinion with government policy. The Hammonds, who have paid $400,000 in fines related to the fires they lit, probably should not have been re-sentenced to four more years in prison, but that's a problem with mandatory sentencing laws and overly aggressive prosecutors, not federal land management.

Enter Ammon Bundy, son of Cliven Bundy, the Nevada rancher whose use of BLM land in that state became a hot issue in 2014. The Bundys and their allies believe that federal land should belong to the states or the ranchers themselves since the ranchers have grazed their cattle on it for so many generations.

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Thus, they ignored limits the BLM placed on the number of cattle they could graze on federal land near their ranch and refused to pay legally mandated fees for grazing those cattle.

Section 8 of the Constitution authorizes the federal government to control land in the nation's capital but nowhere else. If you believe that any power not granted to the federal government belongs to the states, then the Bundys are correct.

However, the federal government has owned land outside the capital since 1790, when Alexander Hamilton convinced the states to yield land west of the Appalachians in exchange for federal assumptions of state debt. A few years later, Thomas Jefferson himself questioned the constitutionalityof the Louisiana Purchase, even as he persuaded the Senate to approve it.

The Supreme Court has heard hundreds of cases involving federal land and has never ruled that the Constitution does not allow the federal government to own land in the West. So any battle against federal ownership would have to be fought politically, not in the courts.

That may be what Bundy and his friends think they are doing. Just as tree sitters raised public awareness of issues related to old-growth forests in the 1980s, the "militia's" occupation of a Fish and Wildlife Service building that was closed for the holidays might be a way to raise public awareness of alleged federal mistreatment of ranchers.

The problem with this tactic is that 90 percent of western residents are urbanites who are much more likely to sympathize with spotted owls and sandhill cranes than with cattle and sheep.

Decades ago, ranchers grazing their livestock on public lands paid enough fees to earn the Forest Service a profit. But in 1978, ranchers persuaded Congress to adopt a grazing fee formula on national forests and BLM lands that is designed to guarantee ranchers a profit, even as grazing costs taxpayers more than $100 million per year.

Thus, many people, including some agency officials, view the ranchers as freeloaders and their livestock as invasive species damaging the habitat for native fish and wildlife.

The Hammonds shouldn't have lit the 2006 fire without coordinating with the BLM. The federal government shouldn't have prosecuted them for prescribed burning using an anti-terrorist law. The Bundys shouldn't have occupied the Fish and Wildlife Service office.

Property rights advocates who want to change public views need to find ranchers more appealing than the Bundys, who want to overgraze other people's land without paying for the right to do so, or the Hammonds, whose unauthorized fire on federal lands threatened firefighters' lives.

Without better representatives—preferably ones willing to pay their own way and not rely on taxpayer subsidies—they won't be able to capture the hearts and minds of the American people, which means the future of ranchers who depend on federal lands is dim.

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