We all have seen and read the news reports on the occupation of the Malheur National Wildlife Refuge by approximately twenty-five militants of various sorts. They were protesting the federal government's prosecution of two ranchers for arson on government land, and, more broadly, the government's legal standing to have and manage that land to begin with.

How we got to this point is worth noting.

After the American War of Independence, the existing states gave their unused and unsettled land to the federal government. This affected basically all the land west of the Appalachian mountains, and the government made substantial revenue selling off this land to settlers and homesteaders to farm or develop. This was formalized by the Land Ordinance of 1785, which provided for the surveying and sale of lands that the federal government owned.

As more westward expansion occurred, Congress passed the Homestead Acts in 1862, which allowed homesteaders to acquire forty acre plots. Congress also gave railroads large land grants for building the transcontinental railroad, including mineral and timber rights. The thinking was that the railroads could sell off the lands to finance their construction costs. This has carried on in southern Oregon to this day in the BLM's management of the 'O&C' lands. 'O&C' stands for one of the railroads, the long-defunct Oregon and Central. The present checkerboarded O&C lands of the BLM are the result of the railroads trading tracts with the government for more saleable land parcels that could be sold for a higher price by the railroad.

Much of the land, especially in the mountain West, remained unclaimed, and by the early 20th century, the Department of the Interior held vast tracts of land in the western United States. The federal government tried to give the unclaimed land to the various states in 1932, but the states refused to take the land because of the burden to administer it in the depths of the Great Depression. When this happened, the Bureau of Land Management was created to manage these lands.

In 1976, the Homestead Act was repealed and the federal government retained all of the existing land over which they had control. The BLM was tasked with administering this land for the benefit of all users, specifically naming ranching, grazing, and mining as viable uses, in addition to public recreation. The formal regulations regarding this
land use have been the subject of much dispute, and conflicts such as the 'Sagebrush Rebellion' and the 'Nye County Revolt' in Nevada erupted.

Those disputes weren't limited to just Nevada, however. There have been arguments throughout the West over timber sales and management; grazing permits and oversight; mining claims and environmental consequences. Yes, there have been some bad actors over the years. Unfortunately, the government reacts to these abuses with regulations to counter the very worst cases, and doesn't bother to tailor them for individual situations that may not be abusive in the least.

We've seen this happen locally with the reduction of timber sales and the consequent erosion of the timber products industry because of environmentalist concerns. We've seen it in the reduction of grazing permits in eastern Oregon because of the Sage Grouse habitat.

Now the government is aggravating those disputes with the expansion of totally protected areas through the use of the 'Monuments Act' whereby the President can expand the boundaries of existing National Monuments and Parks by executive order. This is being done now in southern Oregon and restricts public and timber access to large areas of BLM land on the southern border with California.

This issue of the federal government's retention of the public lands was at the core of the Bundy's occupation of the Malheur Wildlife Refuge, in addition to their stated support for the two ranchers accused of arson on public lands.

Don't get me wrong; the message they were trying to send is a valid one, even if the tactics and the messengers weren't.

They say that the BLM and Forest Service are illegal and the land belongs to the states anyway. Their contention is that the legislative attempts to revert the land to the various states in 1932 were enacted, even if the states didn't agree to take the land, and those laws were never revoked. Given that, they want the BLM and Forest Service to get out of the land management business and that the states would be better equipped to manage the land (i.e. that they would be more receptive to the demands of the local users than the federal government). Add to the mix that the fact that the state and local governments are strapped for cash, and you get the picture.

The Bundy's ranch in Nevada, along with other old-time operations, had grazed their cattle on unclaimed government land for decades prior to the creation of the BLM in 1932. Think 'open range.' Where the fight started was that there was no consideration given to the existing situation at the time, and the ranchers and loggers were kicked
off the public land or forced to pay for permits to access land that they had previously used free for years.

This is at the heart of the occupation at Malheur, and in truth, these are grievances that the government has never addressed. The Bundys have a point in that their ranch was premised on the ability to graze their cattle on the government land for free, and that to be restricted to only the land that they owned meant that their herds were economically unsustainable under those circumstances. No one is disputing the fact that they were, for the most part, good stewards of the land that they used. Their livelihood depended on it.

Last year it came to a head when the Bundy brother's father (Clivon Bundy) refused to pay the grazing fees that the government claimed he owed, and the government attempted to confiscate his cattle that were grazing on BLM land. This led to the confrontation between the Bundys, their supporters and the BLM. Wisely, the BLM retreated in the face of a possible armed rebellion which would have cost lives, but it emboldened the 'Sagebrush Rebellion' to take further action, of which the Malheur occupation is the latest result, and probably not the last.

This history isn't finished, and here in southern Oregon, it is being kindled again with the Monument expansion and logging/grazing restrictions. Buckle your seat belts, folks, there's more to come.

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Update January 2018

As of today, January 8, 2018, the case against Clivon Bundy and his sons has been dismissed, with prejudice, which means that it cannot be retried. The judge threw out the case based on the fact that the prosecutors failed to turn over all the evidence to the defense team. The prosecutors claimed that the possibility existed of witness intimidation by the defendant’s supporters.

OK, so the Bundy’s are scot free on this one. They got acquitted in Oregon in spite of the fact that they occupied government land and prevented government employees from doing their jobs, in addition to causing damage to the facilities. One of their number even got killed by authorities ... the circumstances of which are still being litigated.

To protest and fight things out in court is one thing ... to physically move against the government is another. Either we’re a nation of laws that get fought out in the courts, or we aren’t. If not, we’re going to an unknown place where if you don’t agree with a law, you might feel free
to just ignore it and pay the consequences. The Bundy decisions seem to indicate that the price you’d pay would be minimal, depending on how much chaos you caused and harm generated just to flaunt the law.

Extending this principle to its utmost incarnation, you could refuse to pay your property taxes because you don’t agree on how much you should pay. Or you could refuse to pay part of your taxes that are for the libraries in the county because you never go to the library. Or, even more to the point, you could refuse to pay that part of your taxes that fund the schools, on the grounds that you have no children in school, therefore you are exempt. Maybe you disagree on the welfare system, so you withhold that portion of your taxes that fund it. The system would move to confiscate your property and you’d be off to the legal races.

You begin to see the slippery slope that we’re going down with this kind of thinking. If everyone chose to not obey the laws as written and just ignored the ones that they disagreed with, the entire system would collapse and only anarchy would be left. If twenty percent of all citizens refused to pay their income taxes (that’s 36 million people), the government couldn’t enforce the law, and they’d try to make examples of some to scare the rest. But the whole enforcement thingie would become a joke. That’s why the Bundy cases are so troubling.

Yes, the government controls a majority of the land in Nevada and Oregon. Yes, the law didn’t take into account the concerns and existing conditions of the land users at the time it came into effect. Yes, Bundy was in violation of the law for refusing to pay the grazing fees. Yes, the BLM was wrong for refusing to negotiate a compromise of some kind. Yes, Bundy had water rights on the BLM land that seemed to give him access rights.

But the right place to fight out these conflicts is in the court system, not by resisting the feds with armed militia or occupying an innocuous wildlife refuge. Therein hangs the problem.

When we actively threaten federal or state agents with lethal force, we lose the right to claim ownership. When we occupy land owned by the public, we lose our authenticity to claim that the government is wrong.

We cannot condone the militant actions of the Bundys and their supporters. The proper venue for the dispute resolution would be in the courts, not at the point of a gun. The validation of their actions (as they see it) merely emboldens others that see this as a green light for further physical anti-government actions. The end result is much more of the same, and the loss of credibility for any law whatsoever.