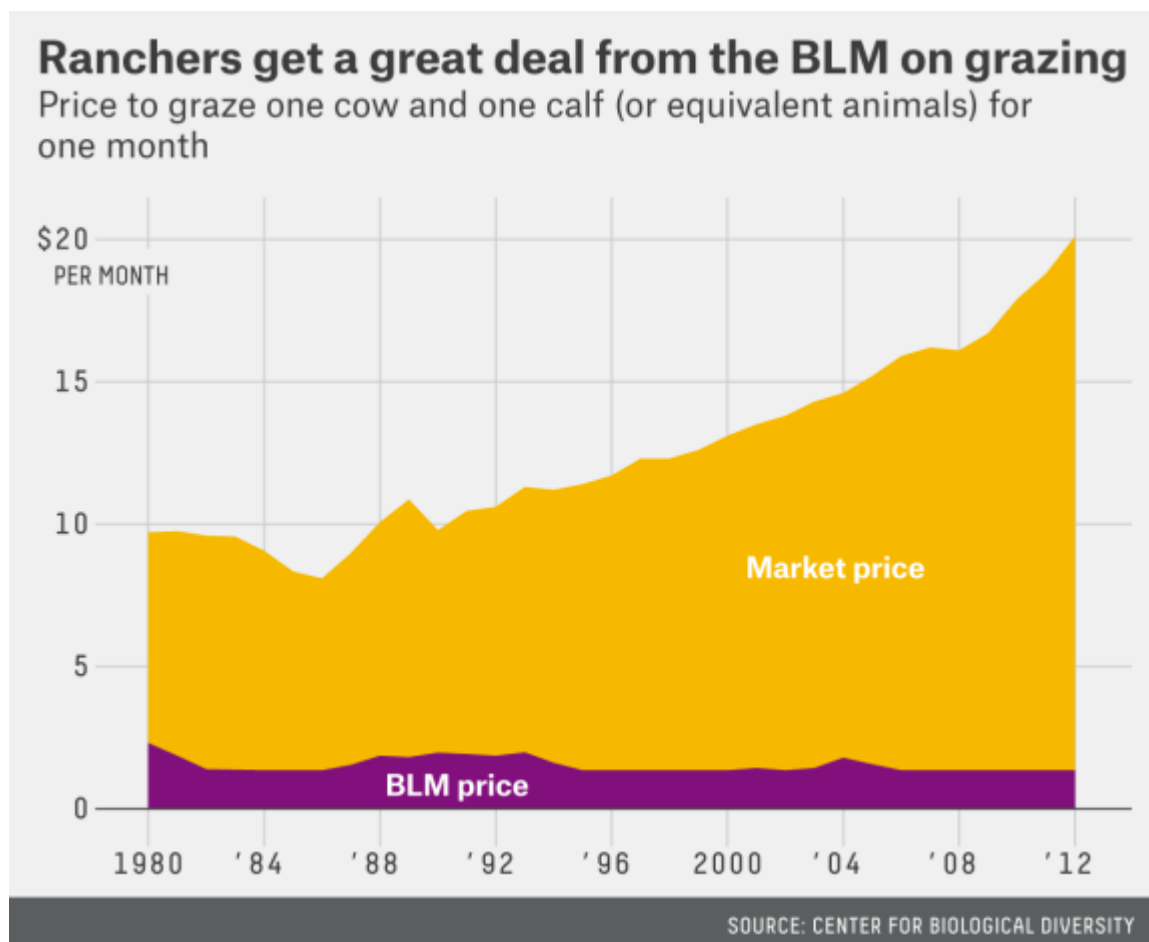




The Internets are filled with excellent (and some not-so-excellent) commentary on the right-wing militia takeover of a building in Oregon's [Malheur National Wildlife Refuge](#): I recommend [this piece from the great Charles Pierce](#) on the meta-political aspects. But the standoff is suffused with legal issues, and for Legal Planet readers, particularly environmental legal issues.

At FiveThirtyEight, [Leah Libresco points out](#) something that natural resource scholars and policy wonks have known about — and complained about — for a long time, perhaps decades, namely: these supposedly tough, flinty, independent-minded ranchers are robbing the taxpayers blind, literally feeding off of the public trough. But citing a study from the Center for Biological Diversity, Libresco article gets more specific: the Bureau of Land Management charges ranchers 93% less than the market rate for grazing.



It's a rather typical trope for one element of supposed anti-government activism: get the government off our backs — but only after giving us free land, free resources, and free water (the last after the feds pay for massive irrigation projects). It's hardly a surprise that Ammon Bundy, one of the ringleaders of the group (and son of lawbreaker Cliven Bundy) [has benefitted from a federal loan guarantee program](#).

But from a legal standpoint, this paragraph in Libresco's article stands out:

The bureau's fees are so much lower than the market price in part because its fees are set at a flat, national rate and can't be adjusted to match demand in local markets. Plus, the bureau sets that national grazing price using a formula, rather than any kind of bidding system or market appraisals, as some other federal agencies with higher prices do. As a result, in 2014, grazing fees covered only 15 percent of the bureau's costs to maintain grazing lands. The rest of the cost is made up in federal appropriations and covered by taxpayers.

The question for lawyers, of course, is why does the Bureau maintain these policies? It's possible that the [Taylor Grazing Act](#), the principal federal statute governing grazing, mandates it: this would make it akin to [the infamous 1872 Mining Act](#), which allows companies to strip public lands of valuable minerals without paying a dime in royalties to the public or even clean up the mess they make.

But, like the song says, it ain't necessarily so: I am far from an expert on federal grazing laws, but the summaries I have read appear to give the Bureau a large amount of discretion. So these anomalies could stem from the Bureau itself, for reasons familiar to students of bureaucracy. This could be a classic [iron triangle](#), with the Bureau subsidizing the ranchers, the empowered ranchers pushing their Congressional representatives to support the Bureau in its efforts, leading the Bureau to support the ranchers even more. It could be what James Q. Wilson called "[client politics](#)," where the benefits of a regulation are concentrated but its costs are dispersed: those paying the costs each only pay a little bit and those who benefit get a lot, so why should the agency take on the beneficiaries. It could be a matter of personnel: maybe the sorts of people who work at BLM are sympathetic to ranchers. Or it could just be inertia. [Holly](#) and [Sean](#) know far more about this than I do, and they might pop up on the issue: as I said, I claim no expertise.

So in addition to being traitors, because they reject the authority of the federal government, and moochers, because they are living off the public dime, and dangerous, because they are armed, the folks who have taken over the building at Malheur just might be very good lobbyists, either in the legislative or the executive branch or both. They are the very coddled insiders that they claim to be protesting. Ironies abound in literature, and in politics as well.