

# O EAST OREGONIAN PINION

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## OUR VIEW

## Two ways to look at Hammonds pardon

Donald Trump pardoned the Hammonds Tuesday morning. Because the president doesn't work well with others, and because a majority of Americans disagree with him on most issues, he has found the legislative route to change too difficult. So he has grown partial to pardons. Sure, the effect is so narrow to be microscopic, but it generates headlines just the same.

Celebrities, lobbyists, congressmen or business elites approach Trump with a pet issue or person they feel was mistreated by our system of justice. They generally find the president all ears. Pardons play into his personality complex that rests somewhere between messianic and dictatorial.

Enter the Hammonds. They check many of the boxes that sells to Trump's base: a narrative of vengeful, overwrought government justice brought to bear on a white, resourceful family. Understanding that, it's no surprise he took notice.

And there are reasons he should have.

Back in 2012, we recommended President Obama grant the Hammonds clemency and allow the father and son to return to their Harney County ranch. We thought there was a small window when such a decision could be made, writing: "At the end of their terms presidents typically grant pardons or clemency to a host of federal inmates whose cases are too politically controversial for all but a lame duck to handle."

It's striking now to see how Trump has made so much that was once too controversial so incredibly normal. He has shifted us all from our foundation — it's reasonable now to doubt NATO and the FBI, and consider the benefits of separating children from their parents and partnering with vicious dictators of foreign governments. All had been — and we would argue still are — anti-American sentiments that Trump has



In this 2016, file photo, rancher Dwight Hammond Jr. greets protesters outside his home in Burns. President Donald Trump has pardoned Dwight and Steven Hammond, two ranchers whose case sparked the armed occupation of a national wildlife refuge in Oregon. The Hammonds were convicted in 2012 of intentionally and maliciously setting fires on public lands.

brought into the mainstream.

To some extent, so is the decision to pardon the Hammonds.

The father and son received a fair trial and were found guilty. In addition to lengthy probation, Dwight Hammond was originally sentenced to six months in prison, his son one year. The original prison sentences were served. But those sentences ignored the minimum mandatory five-year sentence prescribed by federal arson statute. The government appealed, the sentences were overturned and the trial court ordered the Hammonds back to prison to serve out the remainder of the five-year sentences.

That's what they had been serving until Tuesday, when Trump's clemency was granted. The decision was hailed by the Oregon Farm Bureau, by U.S. Rep. Greg Walden, the Oregon Cattleman's Association and the Bundy family who led the occupation of the

Malheur Wildlife Refuge.

"Today shows we were right, we went there for a good reason and our efforts have finally come to fruition," Ryan Bundy told Oregon Public Broadcasting. "All of those who went with us and supported the Hammonds, they should be pardoned also."

The decision was slammed by Oregon Attorney General Ellen Rosenblum and others in urban areas, and even some in Eastern Oregon who confronted and chased out the Bundys.

"The federal court ... followed the Rule of Law in overturning the Hammonds' reduced sentences for committing arson on Oregon fed lands," Rosenblum tweeted. "POTUS, who has not set foot here since being elected, has pardoned them. We can only wonder why."

The Hammonds committed a crime and were found guilty in Pendleton by a jury of their peers. That is fact. Still,

we argue the sentence levied upon them should not be so set in stone.

Even most liberals would agree that mandatory minimum sentences are problematic and often unduly harsh. And if we're going to reform the justice system away from locking too many Americans behind bars, the change must come from everywhere.

And that's where we come down on this: The Hammonds are neither saints nor devils. We are happy they are headed home, and we hope they return with more respect for the government agencies they live and work alongside. The Hammonds have shown very little of that in the past.

At the same time, we must make sure the extremist factions and the militia movements that supported the Hammonds are not emboldened by this decision. The Bundys led a group of people that Eastern Oregon resoundingly rejected — despite small pockets of local support. Trump's decision should do nothing to change our understanding that what the Bundys did was wrong, even though they were found not guilty in a court of law. Perhaps that lack of conviction is due to the same overly ambitious prosecution that also caused problems in the case of the Hammonds.

It seems to us then that commutation of their sentence would have been a better choice than outright clemency. It would have made clear that the government respects the rule of law and the wisdom of a jury, but that the president now believes the federally mandated sentence for that crime was just too harsh. We have said the same all along.

We hope this is a narrow victory for two men and one family. If it is twisted into a triumph for an extremist element who believes they have been called by God and the Constitution to threaten, fight and war against the government, then the decision to pardon will have a long-term and damaging effect.

## OTHER VIEWS

## The village that raised Brett Kavanaugh

In the weeks ahead, we're going to spend a lot of time going over Brett Kavanaugh's biography — where he's from and what he's written. But that's not the most important way to understand the guy.

Kavanaugh is the product of a community. He is the product of a conservative legal infrastructure that develops ideas, recruits talent, links rising stars, nurtures genius, molds and launches judicial nominees. It almost doesn't matter which Republican is president. The conservative legal infrastructure is the entity driving the whole project. It almost doesn't even matter if this person is confirmed or shot down; there are dozens more who can fill the vacancy, just as smart and just as conservative.

This community didn't just happen; it was self-consciously built. If you want to understand how to permanently change the political landscape, it's a good idea to study and be inspired how it was done.

Back in the 1970s, the legal establishment was liberal. Yale Law School was the dynamic center of liberal legal thinking. Lawyers who had begun their careers during the New Deal were at the height of their power and prestige. The Ford Foundation funded a series of legal aid



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organizations to advance liberal causes and to dominate the law schools.

Even Republican Supreme Court picks like Harry Blackmun and Sandra Day O'Connor tended to drift left because the prevailing winds in the whole profession were strongly heading that way.

As Steven Teles notes in "The Rise of the Conservative Legal Movement," the first conservative efforts to stand up to the left failed. Business groups funded a series of conservative public interest law firms. But the business groups had no intellectual heft, they were opportunistic and they had zero moral appeal.

Then things began to turn around. First came the critique. In 1980, Michael Horowitz wrote a seminal report for the Sarah Scaife Foundation explaining why conservatives were impotent in the legal sphere. Horowitz suggested, for example, that conservative legal organizations pick cases in which they represented underdogs against big institutions associated with the left.

Then came the intellectual entrepreneurs. Aaron Director of the University of Chicago Law School inspired many of the thinkers — like Ronald Coase and Richard Posner — who would create the law and economics movement. This was a body of

ideas that moved from the fringes of American legal thought to the very center. This movement was funded by groups like the John M. Olin Foundation, which was willing to invest for the long term and not worry about "metrics" or "measurable outcomes."

Then came the network entrepreneurs. In 1982, a group of law students including Lee Liberman Otis, David McIntosh and Steven Calabresi founded the Federalist Society, which was fundamentally a debating society. They could have just hosted events with like-minded speakers, but debates were more interesting and attracted better crowds.

The Federalist Society spread to other law schools and beyond pretty quickly. It turned into a friendship community and a professional network, identifying conservative law students who could be promoted to fill clerkships.

As Teles points out, the key features of the Federalist Society were the limits it would put on itself. It did not take stands on specific policy issues. It did not sponsor litigation on behalf of favorite causes. It did not rate judicial nominees the way the American Bar Association did.

It wielded its immense influence indirectly, by cohering a serious, disciplined community and letting it do the work.

Otis, McIntosh and Calabresi all went to work in the Reagan

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administration. They are now part of a vast army of conservative legal cadres, several generations deep, working throughout the system or at legal organizations.

The conservative legal establishment is fully mature. Trump bucked the conservative foreign policy establishment and the conservative economic establishment, but he's given the conservative legal establishment more power than ever before, which is why there are so few never-Trumpers in legal circles.

As establishments mature they begin to fracture. As Teles mentioned to me in an email, all the judges on any GOP list are going to be skeptical of *Roe v. Wade*, but Federalist Society types are now divided on many of the

issues coming to the fore: criminal justice reform, executive power and the constitutionality of the administrative state.

I'd be surprised, though, if any of these splits fundamentally disrupted this establishment. The people who built the conservative legal establishment built a community over several decades — with deep roots and strong fraternal and professional bonds.

It's a lesson for everybody. If you emphasize professional excellence first, if you gain a foothold in society's mainstream institutions, if you build a cohesive band of brothers and sisters, you can transform the landscape of your field.

David Brooks, *New York Times*