Save America: Throw the Raisins Away!

*By Timothy Sandefur**

Many Americans would be shocked to learn that the federal government confiscates a quarter—or even half—of the entire California raisin crop every year. But they would be even more shocked to learn the reason for this policy: federal bureaucrats seize these raisins in order to make food more expensive.

The idea dates back to the New Deal, when certain economists were first given almost free reign over the *Code of Federal Regulations*, and the goal, at its heart, was to limit the production and sale of fruits and vegetables in order to "stabilize" their prices—i.e., to insulate them from the law of supply and demand. Believing that free market competition led to "chaos" and impoverished farmers, the architects of the Agricultural Adjustment Act of 1933 thought that the solution was obvious: by restricting the supply of foodstuffs on the market, government would create artificial scarcity that would raise the prices of remaining goods. The Act, and its successor, the Agricultural Marketing Agreement Act, therefore limited the amount of fruit or vegetables that farmers could produce, and compelled them to give up a certain fraction of their product each year for the government to sell overseas, rather than to hungry Americans. By making the remaining products more expensive, the farmers' income would go up.

Henry Hazlitt pointed out in his classic *Economics in One Lesson* that this argument is a mirage. The destruction of food means the destruction of wealth, so, although farmers may get a higher price for each bushel of raisins or each bag of peanuts, society in general will be less well-off, because it will have fewer raisins or peanuts for consumers to enjoy. The farmers' increased income is really just a tax imposed on consumers and transferred to the farmer. Worse, such policies disrupt the market mechanisms that allow farmers to know how much of their crop is demanded by the public, and distract farmers from producing the goods that are really desired. A farmer who lets a field lie fallow because of a government edict is not able to grow the plums or peaches that buyers are actually willing to purchase. In a country where thousands still go hungry every day, it is rarely wise to make food more expensive.

Yet, seventy years after their "emergency" origin, agricultural adjustment schemes remain on the books, as California raisin grower Marvin Horne learned in 2004, when he violated federal law by selling his entire raisin crop. A federal agency called the "Raisin Administrative Committee," which enforces federal raisin quotas, chooses an annual percentage of raisins (called "reserve" raisins) which must be handed over to the government when farmers deliver their produce to packers. This number is generally around 25 % of a farmer's crop, and has reached as high as 53 %. The U.S. Department of Agriculture then sells these "reserve" raisins to public schools and other buyers, and uses the proceeds from these sales to subsidize American raisin exporters. Whatever money is left over is then returned to the growers who first had their raisins confiscated.

Horne complained that this policy was wasteful, and that he had the right not to participate in it. "This is America," he told reporters. "I don't owe anybody any portion of my crop. The government cannot confiscate any of my produced raisins for the benefit of their program." But the USDA fined Horne more than $1,000 per day for each violation of its orders, and when Horne and his wife were found guilty of violating the order, they were fined $275,000 for selling their raisin crop as they wished. That same year, a group of raisin growers in Fresno, California, filed a lawsuit demanding that the government compensate them for the raisins that it takes each year. The Fifth Amendment, after all, holds that when the government takes private property for public use, it must pay the owner just compensation. But in December, the Federal Court of Claims ruled against the farmers. They knew about this program when they went into the business, explained Judge Charles Lettow, and in being forced to give up a portion of their crop, they "are paying an admissions fee or a toll—admittedly a steep one—for marketing raisins." The government "does not force plaintiffs to grow raisins or to market the raisins," it is merely requiring that "if they grow and market raisins, then passing title to their 'reserve tonnage' raisins to the [government] is their admission ticket."[1]

Such a conclusion violates a basic principle of Anglo-American law: the right to sell a product is not a government privilege for which the producer can be required to pay a "toll"—it is a natural right, inherent in the very fact of ownership, and when the government takes that right, it must justly compensate the person. The right to sell the product of one's labor is one of the most—if not *the* most—important aspect of the ownership right, and has been recognized as such throughout American history. Indeed, the very term "fruits of one's labor" indicates that among individual rights, the farmer's right to sell his produce was one of the first to be recognized. As Sir William Blackstone noted in the 1760s, "Where the vendor hath in himself the property of the goods sold, he hath the liberty of disposing of them to whomever he pleases, at any time, and in any manner."

Regarding the court's statement that the farmers "chose" to enter the interstate market, in light of the Supreme Court's expansive readings of the Commerce Clause, it is virtually impossible for any person selling a commodity to *avoid* entering the interstate market. Under federal law, raisin producers cannot even sell raisins from roadside stands to passersby without being considered members of the "interstate market" and subject to the raisin-confiscation scheme.

Economists are virtually unanimous in their view that agricultural adjustment is ultimately self-defeating and wasteful. But agricultural adjustment laws include a specious element of "democratic" decision-making that gives the illusion

* *Timothy Sandefur is a senior staff attorney at the Pacific Legal Foundation, where he filed amicus briefs in the raisin case. He is the author of* Cornerstone of Liberty: Property Rights in 21st Century America *(reviewed in Engage 7.2).*

of voluntarism to what is actually a coercive government program. The law authorizes any raisin producer to petition the government to adopt a "marketing order" that, if approved by a majority vote of the farmers, will be enforced on all of them, including those who vote no. Moreover, agricultural cooperatives are allowed to bloc-vote on behalf of all of their members, meaning, as one expert pointed out, that "there will not infrequently be a single cooperative corporation that dominates the production of the commodity." Cooperatives can therefore override their own members' actual preferences, and muster whatever votes are necessary to adopt or reject a proposal regardless of the desires of their constituents. Nor are courts particularly concerned with preserving even this minuscule element of free choice: in a 1993 case, when citrus growers who disagreed with a proposed cartel agreement were outvoted by the Sunkist Cooperative's bloc-vote, and sued on the grounds that this violated their constitutional rights, the Federal Court of Appeals adopted "rational basis" scrutiny, and refused to accord their voting rights the same degree of respect accorded to the right to vote in other governmental elections.[2] Individual growers, even those belonging to agricultural cooperatives, have no real voice in the process; yet, while this is generally considered good reason to adopt heightened scrutiny, judges wary of protecting economic freedom have refused to preserve the participatory rights of this particular "discrete and insular minority."

Who, then, benefits from the federal raisin cartel? Big agricultural firms, whose "territory" is secured against newcomers and innovators by these restrictions on the opportunity. As Jim Powell points out in his devastating book, *FDR's Folly: How Roosevelt And His New Deal Prolonged The Great Depression,* agricultural adjustment schemes always did benefit powerful, entrenched agricultural companies against small farmers, who could only compete through the lower prices that the law now prohibited. Subsidies to farmers who do not grow products, restrictions on the acreage a farmer may plant, and minimum price rules that bar newcomers, protect slow, inefficient—but politically well-connected—corporations against upstarts who wish only to offer the public food they need at lower prices. Such laws, Powell concludes, are "the most blatant type of interference with U.S. agricultural markets, a throwback to medieval times when guilds determined who could work in various trades, how much they could charge, and how much they could produce." Farmers are essentially prohibited from going outside of the federally-created raisin cartel, because they are subjected to regulations any time they sell raisins in "interstate commerce"—meaning any commerce at all. Yet when they seek just compensation for the property that the government takes from them, they are told that the system is essentially voluntary, that they chose to participate in it, and that they can be required to pay a "toll" for the privilege of selling the raisins they have produced through their own labor and ingenuity.

The case is now pending before the Federal Circuit Court of Appeals.[3] Meanwhile, Americans will continue to pay inflated prices, mostly unaware of the injustices committed daily against hardworking farmers—or of the federal bureaucracy's vigilance in ensuring that grocery bills remain high.

Endnotes

1 Evans v. United States, 74 Fed.Cl. 554, 563-64 (Fed.Cl. 2006)

2 Cecelia Packing Corp. v. USDA, 10 F.3d 616, 624-25 (9th Cir. 1993).

3 Evans v. United States, No. 07-5045.