Rebel Farmers And Government Cartels: How The New Deal Cartelized U.S. Agriculture

Trevor Burrus

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Marvin Horne doesn't look like a man in open rebellion against the United States government, but the 70-year-old raisin farmer and his wife Laura have had enough. If they get their way, they're not going to let the U.S. Raisin Administrative Committee take their raisins anymore.

Yes, there's a Raisin Administrative Committee.

This week, the Supreme Court heard arguments in Horne's case challenging the Raisin Administrative Committee. It's the New-Deal case that took 80 years to bring.

Like an agency pulled from the pages of an Ayn Rand novel, the Raisin Administrative Committee (RAC) oversees many parts of U.S. raisin production. The 47-member committee consists of different representatives from the raisin industry, including "handlers," those who pack the raisins and prepare them for sale, and "growers," those who grow and dry grapes. They meet in an office in Fresno and issue "marketing orders," which decide, among other things, how many raisins should be diverted into the National Raisin Reserve each year. By taking raisins off the open market, the RAC maintains an artificially high price for raisins and keeps many, but obviously not all, raisin farmers happy. Think of it as a raisin cartel, a raisin OPEC.

Under federal law—the Agricultural Marketing Agreement Act of 1937 (AMAA), amended in 1949 to include raisins—raisin handlers are obligated to divert whatever percentage of raisins the RAC demands, and then take whatever compensation the committee offers, which is often nothing.

Marvin Horne is one of the unhappy raisin farmers who feels that the RAC has outlived its usefulness, if it ever had any to begin with. More than ten years ago, Horne refused to hand over his raisins to the RAC. In response, the RAC fought back, including hiring private investigators to stake out the Hornes' farm. Now Marvin Horne stands on the precipice of dealing the RAC a near-fatal blow—a Supreme Court opinion ruling that, under the Fifth Amendment's Takings Clause, the RAC has to pay just compensation whenever it takes a farmer's raisins.

The Hornes, who currently owe the government about 1.2 million pounds of raisins and approximately $700,000 in fines, have few options left except for a Supreme Court victory. Their fight against the RAC, however, is part of a proud tradition of individuals fighting against government-created cartels, especially in agriculture. Those cartels collude against consumers in ways that would be blatantly illegal in industries that don't enjoy government sanction. Occasionally, someone will fight back against the cartel, and the industry will circle the wagons to protect its unique, anti-competitive privilege.

For those who have just heard of the Raisin Administrative Committee, it may strike you as odd that the federal government would run such a bizarre organization. But the RAC is not unique. The USDA maintains a marketing order system in dozens of crops, including cherries, avocados, and pistachios. To understand why organizations like the RAC exist, and to understand how the Hornes are part of a tradition of brave Americans fighting against government created monopolies, we need to go back to when these cartels began, the New Deal.

The New Deal

Over 200 years ago, famed economics sage Adam Smith understood the dangers of allowing competitors to collude. In *The Wealth of Nations*, Smith wrote, "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices." Most importantly, wrote Smith, the law should not encourage such collusive, anti-competitive behavior: "But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary."

During the New Deal, Smith's wise words were wholly forgotten. From the moment President Franklin D. Roosevelt arrived in office, he had cartels on his mind. Competition, he thought, was too fierce, and it was causing prices and wages to fall too low. While competition could be good, "destructive competition" was bad. The answer, thought FDR and his famed brain trust, was to use the law to promote cooperation between members of the same industry in order to ensure that competition was "fair."

The result was the National Industrial Recovery Act (NIRA), signed by FDR on June 16, 1933. In essence, the NIRA tried to cartelize the entire economy. Businesses were encouraged to meet together in "a conspiracy against the public," in Adam Smith's words. But their agreements, rather than being mere handshake deals carried out in smoke-filled backrooms, were to have the force of law. An industry's agreed-upon "code of fair competition" would be signed by the president himself, and violators could be fined or even jailed for violating the code. Just a few decades previously the federal government had passed anti-monopoly "trust busting" laws like

the Sherman Anti-Trust Act in order to combat anti-competitive collusion. During the New Deal, however, the government entirely changed course. What was once an unmitigated evil was seen as a necessary step on the road to recovery.

Without the force of government backing up the rules, cartels are notoriously difficult to maintain. Voluntary collusion always presents opportunities for someone to shirk the agreement in order to make extra cash while his competitors hold their prices steady. In the worst situations, shirkers are countered with mob-like tactics, from slashing tires, to breaking kneecaps, to burning down stores. When the government gets involved in enforcing cartels they essentially take-over the job of busting kneecaps. Cronies with lead pipes are replaced by bureaucrats and police officers.

But often their tactics are similar. After the "code of fair competition" for Ohio's tire companies was passed under the NIRA, smaller tire companies found that the government's enforcers were hardly better than the mob's. F.H. Mills, president of Master Tire and Service, Inc. out of Youngstown, wrote to Senator William Borah, an opponent of the NIRA, of his plight. He complained in particular about a Mr. Frank Blodgett, an administrator from the National Recovery Administration. Mills "explained my conditions" to Mr. Blodgett, "and showed where it would be impossible to stay in business and comply with his request." In response, Mr. Blodgett "demanded that he be given the right to go over my books and run my business according to his ideas." When Mills refused, the "furious Mr. Blodgett then stated that he would put his heel upon the neck of our little company and twist it with all the force at his command."

The little companies had it the worst. Businesses are hardly uniform, and each company faces different pressures depending on its brand name, geographic location, and other variables. The "codes of fair competition" under the NIRA did not countenance such variation. The Ohio tire code, for example, was largely written by Goodyear, Firestone, and Goodrich, and it thus primarily benefited those large companies. Before the NIRA, small manufacturers like Master Tire and Service could only survive by undercutting the nationally recognized brands in price. After the NIRA, they were compelled to raise their prices to the large manufacturers' level. Large companies had advantages in economies of scale and service, and the NIRA stripped small companies of their only competitive advantage. And of course Goodyear, Firestone, and Goodrich wanted it that way.

Bringing Down the NIRA

All of this is important backdrop to the case that brought down the NIRA, which, like the Hornes, featured businessmen who were fed-up with government-enforced cartels.

The four Schechter brothers ran two fairly large butcher shops in Brooklyn. As Jewish immigrants, they ran a kosher shop, mostly selling poultry to retailers. They slaughtered their chickens ritualistically, in compliance with Jewish dietary law.

Their specialized company and unique clientele were the type of aberrant business that the NYC chicken cartel was ill equipped to deal with. Under the "Code of Fair Competition for the Live Poultry Industry" for NYC, the Schechter brothers' business model was basically illegal. In order

to prevent “destructive price cutting” the code prohibited “killing on the basis of grade.” In other words, customers did not have the right to “make any selection of particular birds.” As silly as it sounds, the code required the butcher to reach into the chicken coop and grab the first chicken that touched his hand, any specific selection was prohibited. If a customer wanted to buy a half coop, the butcher could only break the coop in half. Because kosher rules require that unhealthy birds be discarded, the code essentially made kosher butchery illegal.

Although the brothers tried to follow the rules, it proved nearly impossible to run their business. And neither the code enforcers nor the U.S. attorneys had much sympathy for the brothers' situation. The government charged them with selling “unfit chickens” to two men, and they went to trial. The trial was a confusing ordeal of strange questions posed to the Schechter brothers, who spoke halting English—at one point, brother Martin was ominously asked “There is a lot of competition between you and your competition, is there not?”—and attacks on the brothers' education levels. In the end, the judge fined them $7,425—over $100,000 today—and sentenced all four brothers to between one and three months in jail.

The chicken cartel's mob-like enforcers seemed to have done their job.

But the Schechters refused to back down, and they took their case to the Supreme Court. They argued that Congress's power regulate interstate commerce did not reach the local NYC poultry industry. They also argued that the NIRA delegated too much legislative power to the executive branch.
During oral arguments at the Supreme Court, the justices struggled to understand that bizarre provisions of the code of fair competition. Just explaining the code elicited laughter from the courtroom audience and jokes from the justices. While the Schechters' attorney, Joseph Heller, explained the prohibition on customer selection of chickens, Justice Harlan Fiske Stone asked “Do you mean that there can be a selection if he buys one-half the coop?” “No. You just break the box into two halves,” Mr. Heller responded. The laughter in the courtroom was amplified by Justice George Sutherland's jape “Well, suppose, however, that all the chickens have gone over to one end of the coop?”

The Schechters won, and with their victory came the end of the National Industrial Recovery Act. It was not the end, however, of Roosevelt's scheme to cartelize the U.S. economy.

Agricultural Cartelization

The Supreme Court may have temporarily halted Roosevelt's plan for large-scale cartelization in business and industry, but he next set his sights on agriculture. In many ways, and certainly in the case of the Hornes, New Deal agricultural reforms are still with us today. The perseverance of bizarre things like the RAC are a testament to the permanence of even the silliest government programs.

The Hornes work under the Agricultural Marketing Agreement Act of 1937. Raisins weren't included in the act, however, until 1949, when there was a pronounced post-war drop in demand for raisins. The government had been buying tons of raisins to send to the troops, and, after the war, raisin farmers felt somehow cheated by the return to normal levels of raisin demand. This is

a recurring story in U.S. agricultural policy—farmers feeling that high, stable prices achieved during some time past were actually the "just" prices and that government should work to guarantee that price. In the New Deal, for example, the "fair" price for many agricultural commodities was determined to be the one achieved during 1910-14, a time of prosperity for farmers.

The dairy industry, in particular, was transformed by New Deal agricultural policies. As a result, the industry exists within a convoluted system of managed competition, a tangled web of subsidies and regulations where playing politics can be more important than being a good businessman who serves his customers well.

In the early 2000's, another "agricultural outlaw" like Marvin Horne found himself fighting the dairy industry for the right to run his business as he saw fit. Hein Hettinga was a prosperous Western dairy farmer who decided to restructure his business around New Deal-era constraints. Like raisins, dairy farmers can be either "producers," those who gather raw milk, and "handlers," those who bottle and package milk products. Under the AMAA, farmers who only bottle milk from their own cows, so-called "producer-handlers," can avoid paying into some of the government-imposed programs. Hettinga did just this, and he soon was undercutting the competition by up to 20 cents per gallon.

Drawing on the kind of spunky, can-do American spirit that made this country great, the dairy industry went whining to Congress. Hettinga should not be allowed to exploit that "loophole" in the law, they complained. "Loophole" is of course just cartel-speak for what would be normal business practices in a less-regulated industry.

The dairy industry has powerful lobbyists and the ears of many members of Congress. One was Harry Reid, the then minority whip, who had once snuck an amendment into a spending bill that exempted Las Vegas-area dairy farmers from some federal pricing rules. Despite the amendment, Reid's precious Las Vegas dairy industry was still facing competition from a large milk plant that was under construction outside of town.

The horse trading went into full gear, and the patchwork of federal rules for Arizona (where Hettinga's main plant was located), California, and Nevada presented many trading opportunities. Reid wanted exemptions for all Nevada producers, Arizona producers wanted to be protected from the threat of lower-cost Nevada milk, and California producers wanted Hettinga's business throttled.

Lobbying money and campaign cash flowed. In the end, Hettinga was outmatched. Without even a committee hearing, the new milk bill was brought up by Reid to a nearly empty Senate chamber and passed by "unanimous consent," which is Senate-speak for rubber-stamping backroom deals. The bill closed the Hettinga "loophole" but, ironically, or perhaps expectedly, opened up the exact same loophole for Reid's Nevada producers.

Hein Hettinga tried to bring a legal case, but he was quickly shot down by the D.C. Circuit Court of Appeals. The courts of appeals are bound by Supreme Court precedent, which wasn't on Hettinga's side. Judges Janice Rogers Brown and David Sentelle, however, added a stem-winder opinion explaining how silly they thought the law was. "Given the long-standing precedents in this area no other result is possible," they wrote, but there was a larger lesson to be learned:

The Hettingas' collision with the MREA [Milk Regulatory Equity Act]—the latest iteration of the venerable AMAA—reveals an ugly truth: America's cowboy capitalism was long ago disarmed by a democratic process increasingly dominated by powerful groups with economic interests antithetical to competitors and consumers. And the courts, from which the victims of burdensome regulation sought protection, have been negotiating the terms of surrender since the 1930s.

And that's how America produces milk, grows its raisins, and, once, slaughtered its chickens. Actually, it is how nearly all American agriculture is done. Silly policies that originated in failed New Deal ideas—policies that the justices themselves couldn't help making fun of—became the law of the land. Now, the RAC exists because it exists, and, like all artificial government agencies, its first instinct is survival.

Of the two amicus briefs filed in support of the government, one was tellingly written by Sun-Maid, the largest raisin marketer in the world. The brief is a shameless defense of the RAC, of which Sun-Maid producers or handlers hold 13 of the 47 seats. The RAC, the brief explains, allows "industry participants to collectively decide whether to regulate their respective industries." It "benefits the entire raisin industry, including petitioners, by avoiding price volatility." In other words, let us regulate ourselves because we benefit from it. Hettinga's big dairy competitors or the Schechters' big poultry opponents couldn't have said it better.

Occasionally people like the Hornes, the Schechters, or the Hettingas help expose agricultural cartels and crony capitalists for what they are—government agencies that help big businesses and hurt consumers. This happens rarely, however, because it is usually easier to work with the government than to work against it, and cartelization is usually agreeable to those in the cartel.

Mongrel-agencies like the RAC are cave dwellers, they hate to be brought into the light. They prefer to hide behind a prolix U.S. agricultural code that is essentially printed chloroform, to borrow a phrase from Mark Twain. Like bacteria specially adapted to live in harsh environments, the code is their sustenance. Only a few industry specialists really understand how the code works, and they want to keep it that way.

Trevor Burrus is a Research Fellow in the Cato Institute's Center for Constitutional Studies.