

De minimis curat lex

The Supreme Court grapples with tiny fruit

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WHETHER the obscure statute that governs America's raisin trade is constitutional, Elena Kagan is not sure. She and her fellow Supreme Court justices are pondering that question at the moment, and will rule shortly. But she sounds reasonably confident that the Agricultural Marketing Agreement Act of 1937 is "the world's most outdated law".

Since the 1940s raisin farmers have been obliged to make over a portion of their crop to a government agency called the Raisin Administrative Committee. The committee, run by 47 raisin farmers and packers, along with a sole member of the raisin-eating public, decides each year how many raisins the domestic market can bear, and thus how many it should siphon off to preserve an "orderly" market. It does not pay for the raisins it appropriates, and gives many of them away, while selling others for export. Once it has covered its own costs, it returns whatever profits remain to farmers. In some years there are none. Worse, farmers sometimes forfeit a substantial share of their crop: 47% in 2003 and 30% in 2004, for example.

Participation in this Brezhnevite scheme is mandatory. Although a large majority of raisin farmers approved of it by referendum when it started 65 years ago, they have not been formally consulted since. And raisins are just one of 30 products subject to such "marketing orders" overseen by the Department of Agriculture. The department portrays these arrangements as anodyne efforts to set quality standards and improve marketing. But Ilya Shapiro of the Cato Institute, a think-tank, argues that the federal government is nurturing a crop of agricultural cartels.

"If private entities were doing this, it would be a felony," notes Michael McConnell, who argued against the system at the Supreme Court on behalf of some aggrieved raisin farmers. It is not just the farmers who suffer: domestic raisin prices are higher than international ones, so consumers are victims too. He finds the notion that the government's raisin-administrators ward off chaotic gyrations in prices far-fetched: walnut and citrus farmers, after all, have abandoned similar systems in recent years without any ill effects.

But the Supreme Court is not, sadly, debating whether it is legitimate for the government to manipulate markets in this way (the constitution does not have much to say about competition, alas). Instead, it is considering whether the government should at least pay for the raisins it expropriates. The lawyers for the Department of Agriculture are taking shelter in procedural questions. But the barminess of the raisin bureaucracy has not

escaped the justices. The government's offer to farmers, Justice Antonin Scalia suggested, was akin to "Your raisins or your life."