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Harebrained Pot and Wheat Decisions

by James Bovard

Earlier this year, the Supreme Court, acting again like a gang that smoked too much bad weed, ruled that the federal government has the right to prohibit people from growing marijuana for medicinal purposes. The Court relied on an interpretation of the Constitution's Commerce Clause that basically gave the feds unlimited control over any activity that Congress or federal agencies sought to influence.

Justice Clarence Thomas had an eloquent dissent in which he laid out the absurdity of the majority's position:

Diane Monson and Angel Raich use marijuana that has never been bought or sold, that has never crossed state lines, and that has had no demonstrable effect on the national market for marijuana. If Congress can regulate this under the Commerce Clause, then it can regulate virtually anything — and the Federal Government is no longer one of limited and enumerated powers.... By holding that Congress may regulate activity that is neither interstate nor commerce under the Interstate Commerce Clause, the Court abandons any attempt to enforce the Constitution's limits on federal power.

The Court's majority based its decision on the 1942 case of *Wickard v. Filburn*. This is one of the most misunderstood landmark cases of the last century. Confusion about farm policy resulted in undermining everyone's freedom.

The Franklin Roosevelt administration had created a separate legal class of citizens — wheat farmers — and had minimized their freedom in order to boost wheat prices. In *Wickard*, the Supreme Court, for one of the first times, went hip-deep into the new administrative-law regimes spun out of the 1930s. The justices basically made fools of themselves through their complete lack of understanding of the federal policies that led to the de facto takeover of every wheat farm.

Farm policy and the Court

From 1933 on, Roosevelt used every means possible to drive up crop prices. But by promising to pay farmers far more than the market value of their crops, Roosevelt's New Deal encouraged farmers to produce far more than could be sold at government-controlled prices. Politicians encouraged farmers to overproduce and then cited crop surpluses as proof of the need for political control of agriculture.

Beginning in 1938, the Agriculture Department dictated how many acres of wheat each of America's 1.5 million wheat farmers could produce. Government administrators were so concerned about maintaining a stranglehold on the wheat supply that they would seize the title to a farmer's entire wheat harvest if he planted a single acre of wheat more than federal farm bureaucrats permitted.

When the farm policy was challenged by an Indiana farmer, the Roosevelt administration launched a full-court attack, declaring in its brief to the Supreme Court that it must have a free hand to "suppress ... a public evil." Yet the wheat surpluses that the Roosevelt administration labeled an evil were largely generated by politicians' promises to pay farmers far more than their crops could bring on an open market.

In its decision, the Court observed,

The wheat industry has been a problem industry for some years. Largely as a result of increased foreign production and import restrictions, annual exports of wheat and flour from the United States during the ten-year period ending in 1940 averaged less than 10 per cent of total production, while during the 1920's they averaged more than 25 per cent. The decline in the export trade has left a large surplus in production which in connection with an abnormally large supply of wheat and other grains in recent years caused congestion in a number of markets....

However, the Court failed to mention that the Roosevelt administration had intentionally sabotaged and minimized wheat exports in order to isolate American farmers from world market prices and to give politicians unlimited control over domestic prices.

Federal agricultural policy drove domestic wheat prices to almost triple the level of world market prices in 1941; it is not surprising if few foreigners wanted to buy American wheat at exorbitant prices.

Nobel laureate economist Theodore W. Schultz denounced New Deal farm programs for "putting a 'Chinese Wall' around our export farmers." In 1935 Roosevelt even bragged about his administration's destruction of farm exports:

Now, with export surpluses no longer pressing down on the farmers' welfare, with fairer prices, farmers really have a chance for the first time in this generation to benefit from improved methods.

The Roosevelt administration first murdered the wheat exports and then threw itself on the Court's mercy on the grounds that wheat farmers were orphans.

The Court further noted in *Wickard*,

It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others....

... It is hardly lack of due process for the government to regulate that which it subsidizes.

The Court concluded that the government was justified even in restricting “the amount of wheat ... to which one may forestall resort to the market by producing for his own needs.” According to the Court, the government's intent to benefit some wheat farmers gave government officials the authority to absolutely control all wheat farmers — even those who were not selling their wheat.

The notion that the government was entitled to regulate that which it subsidizes basically permits Congress, the president, and federal bureaucrats to seize control of whatever they throw money at.

The effects of *Wickard*

The Supreme Court's 1942 decision in *Wickard* sanctified federal controls. In 1953, Dwight Eisenhower took office and appointed Ezra Taft Benson as agriculture secretary. Benson wanted to return farming to the free market but Congress refused, instead setting price supports at roughly double world prices and imposing mandatory production controls on wheat and corn farmers.

In 1955 and 1956, the USDA arrested or sued more than 1,500 farmers for growing more wheat than was permitted. Stanley Yankus, a farmer in Michigan who grew wheat illegally to feed his chickens, told the House Agriculture Committee in 1959,

I am not fighting for the right to grow wheat. I am fighting for the right to own property. If I am forbidden the use of my land, then I do not own it. How can you congressmen justify the laws which have destroyed my means of making a living?

But since Congress was still in the business of taking care of farmers, farmers had to be prohibited from using their own property as they wished.

In 1963, wheat farmers voted in a national referendum on whether to continue mandatory federal controls over wheat production. At the time, farm programs were being fiercely criticized. Secretary of Agriculture Orville Freeman promulgated a “loyalty oath,” requiring all farmers

elected to USDA local committees to swear “to support all government farm programs.” A USDA committee in South Dakota used tax dollars to set up a miniature railroad exhibit at the state fair, showing a sidetrack with a railroad wreck and two signs that read, “Do not let Farm Program opponents sidetrack you onto a dead end,” and “Free Enterprise Wrecked This Train.”

USDA employees told farmers that the election issue was simple: “Two-dollar wheat [a bushel] versus one-dollar wheat.” The USDA blanketed farmers with more than 5 million copies of seven different pamphlets urging them to vote in favor of it. Federal workers even “high-pressured banks into buying newspaper ads plugging for a yes vote.” Despite the government’s high-handed pressure, wheat farmers rejected continued mandatory government controls.

However, an array of subsidy programs continued. Farmers believed that they could enjoy the benefits without the controls. A decade later, the federal government imposed an embargo on wheat exports, disrupting what farmers believed was their birthright to world markets. In 1980, President Carter embargoed wheat sales to the Soviets.

The history of farm programs illustrates how every subsidy creates a power vacuum — a vacuum that will eventually be filled by bureaucratic or political ambition. To assume that subsidies do not subvert liberty is to believe that politicians do not like power. It is only a question of time until some politician or some bureaucrat finds it in his interest to exercise the power latent in the subsidy. The politicians and bureaucrats come to feel that the money they dole out is their own — and try to exercise the management rights inherent in public property that they have long since denied to the owners of private property. As soon as a tax dollar enters the Treasury, it becomes political-bureaucratic property, to be used as politicians and bureaucrats please. Subsidies entail politicians’ taking the citizen’s paycheck and then using it to buy his submission.

Moreover, with the recent Supreme Court medical marijuana decision, this doctrine is stretched to even further extremes. As a result of a horrible legal decision issued more than 60 years ago, the federal Leviathan is able to continue expanding its controls over the lives of the American people.

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This article was originally published in the October 2005 edition of *Freedom Daily*.