

Stealing Your Life Away: The Threat of Civil Asset Forfeiture

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Children are among the best property rights advocates on the entire planet. If another child, or even an adult, tries to seize their toys, the usual rebuttal is to loudly declare, “Mine!” What we can learn from our youngest citizens is that [legitimate property acquisition and titling](#) is intrinsic to the preservation of human liberty, for without it, the rational allocation of scarce resources cannot occur, thereby cultivating a breeding ground for unmitigated thievery.

Civil asset forfeiture, simply put, is legalized [exaction](#). Based upon the medieval English legal concept of the deodand, the assumption here is that inanimate objects are capable of moral agency, and as such are held to be culpable if used in the commission of what [the State](#) considers to be a crime. [As I've written about before](#), the deodand was forfeited to the sovereign via an *in rem* proceeding by the Exchequer on behalf of the Crown. Unlike a proceeding conducted *in personam* where fundamental protections on behalf of the defendant are in play, the deodand has no rights, and therefore it is presumed to be “tainted” and worthy of punishment by the judge. Ironically, its owner is the one who is being truly punished, and with little recourse, if any, to any legal remedy or restitution; in essence, the owner is treated almost as if he were an outlaw.



The real danger posed by civil forfeiture, though, is that *unlike* criminal forfeiture, the government is *not* required to arrest and charge you for committing an offense, much less convict you for a violation of their law in order to seize your property outright. Usual constitutional safeguards such as search warrants, cross-examination, assistance of counsel, and most importantly, [a speedy and public trial by an impartial jury](#), are applicable only to human defendants, not inanimate defendants; therefore, civil forfeiture provides a way for the government to do an end run around the several American constitutions. At this point, civil forfeitures are little different from [the so-called “writs of assistance” that aggrieved colonial America enough to fight for her independence from the British Empire.](#)

Much like [fractional reserve lending](#), the term “civil asset forfeiture” is little other than a semantic relabeling of one method used by government to engage in legalized property theft. [Tina Bennis](#) lost her van because her husband consorted with a prostitute in it, yet, according to the United States Supreme Court, the forfeiture, despite her “equitable interest” in the van, did not violate the Fifth Amendment’s Takings Clause. [George Reby](#) initially lost \$22,000 in cash because Monterey police officer Larry Bates suspected that it *could* have been used to facilitate illicit narcotics trafficking; fortunately for Reby, he eventually received a check for the same amount of cash he lost. [Dale Agostini](#) lost both his unspecified amount of cash and his infant son to Tenaha police officer Barry Washington; during his overnight incarceration, Agostini asked district attorney Lynda Russell if he could kiss his son goodbye, to which she answered that he should kiss her instead. [Russ Caswell](#) almost lost his budget motel to the federal government on false allegations that he was negligently complicit in the illicit narcotics activities that were taking place in the rooms he rented out. [Zaher El-Ali](#) lost his Chevrolet Silverado because the man to whom he lent his pickup truck was arrested for driving intoxicated; interestingly, in a rare admission from the government, [the](#)

[dissenting minority of the Texas Supreme Court](#) pointed out that civil forfeiture directly victimizes innocent property owners.

Several think tank reports have been publicly issued describing the perverse financial incentives motivating [the American gendarmerie](#) to steal from the citizenry as much as they can by way of civil forfeiture. The Institute for Justice (IJ) published in March of 2010 that it is common for police departments nationwide to [pad their budgets extra-legislatively from the sales of civilly forfeited property](#). Later that year in November, IJ published a report focusing on how [Texan police agencies retain up to 90% of the proceeds from forfeited property](#), which between 2001 – 2007, amounted to at least \$280,000,000 that was garnered from 35,000 pieces of real property, excluding cash. IJ subsequently published in October of 2011 their findings that through the “equitable sharing” agreements with the federal government, [several state law enforcement agencies were receiving noticeably high kickbacks from the civil forfeitures they participated in alongside federal law enforcement agencies](#). This, more than anything, is why civil asset forfeiture has been referred to more colloquially as “policing for profit.”

Touted much by congresscritters John Conyers and the late Henry Hyde, the [Civil Asset Forfeiture Reform Act of 2000](#) (CAFRA) did little to significantly alter the practice of civil forfeiture itself by the federal government. Although CAFRA did increase the federal government’s burden of proof from probable cause to a preponderance of the evidence, provided assistance of counsel for indigent owners who lost their homes, and eliminated the cost bond requirement, neither does CAFRA clearly explain what is needed to perform a satisfactory innocent owner defense (which was not available to Bennis in 1996, but what was crucial to Caswell keeping his business earlier this year), nor does CAFRA halt the externalization of a public good’s cost. I suspect that, exceptions notwithstanding, the reason why most mainline libertarians refuse to publicly discuss civil forfeiture is because [the failure of CAFRA to stop the political corruption](#) would also imply a systematic failure of all techniques that rely on working within the system in order to change it for the better, whether that be [electoral voting](#) or [filming cops](#).

Statutory codes provide the legal foundation for the police’s use of civil forfeiture. [18 USC §§ 981, 984, & 985](#) say in part, respectively, that:

“The following property is subject to forfeiture to the United States...All assets, foreign or domestic – of any individual, entity, or organization engaged in planning or perpetrating any Federal crime of terrorism against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person of influence over any such entity or organization.”

“In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution, or precious metals – it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture.”

“Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.”

Other provisions within this chapter also mentioned the suspicion of illicit narcotics trafficking and money laundering as grounds for civil forfeiture, yet, in light of the fact that [97% of all cash within the M1 money](#)

supply is tainted by cocaine, these forfeiture statutes could be construed as being so broad as to potentially satisfy probable cause, or even a preponderance of the evidence, that nearly all cash in circulation is liable to be civilly forfeited! Similarly, [Art. 59.02\(a\)](#), [59.02\(c\)](#), & [59.07](#) of the [Texas Code of Criminal Procedure](#) say, respectively, that:

“Property that is contraband is subject to seizure and forfeiture under this chapter.”

“An owner or interest holder’s interest in property may not be forfeited under this chapter if the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder acquired and perfect the interest...”

“This chapter does not impose any additional liability on any authorized state, county, or municipal officer engaged in the lawful performance of the officer’s duties.”

In other words, the definition of “contraband” under [Art. 59.01\(2\)](#) is so broad as to constitute both real and fungible property allegedly used in the commission of a wide variety of crimes that you could literally lose everything you own in the blink of an eye. Not only that, but because civil forfeiture is perfectly legal, accusations of officers acting under [color of law](#) when they pocket a huge percentage of the proceeds from the sale of your forfeited property is legally incorrect.

Despite the statutory legality of civil forfeiture, it is incompatible with constitutionally guaranteed safeguards. The ability of the police to keep *any* of the proceeds from the sale of forfeited property allows them to sidestep the legislative power of the purse to decide on appropriations of money to the rest of the government, thereby rendering them a self-funding, and therefore, unaccountable entity of government. [Art. I § 9 cl. 6](#) of the United States Constitution says:

“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”

Interestingly, [Art. III § 49a\(b\)](#) of the 1876 Texas Constitution says, in part:

“Except in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each House, no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid.”

As you can see, when you factor in both constitutional clauses, what you have is a situation whereby “equitable sharing” is used to do an end run around both Congress and the [Tenth Amendment](#). In fact, the [MJTF](#) drug interdiction unit, South Florida Impact, has bragged that [they laundered money in order to attract money launderers](#) (much like how reverse stings work) on a ratio of one-to-one, and then using those profits to self-finance themselves completely. At this juncture, the only difference whether or not state, county, or municipal police use “equitable sharing” with the federal government is to determine which organized criminal gang receives a greater share of the loot.

To top it all off with the federal government, the [Seventh Amendment](#) guarantee to a jury trial in a civil case is unavailable in an *in rem* proceeding because juries are limited to *in personam* trials, and the [Eighth Amendment](#) guarantee against excessive fines is not a surefire defense in federal court. I say this because in light of their refusal to establish a yardstick in order to gauge what is constitutionally excessive (despite their 1993 ruling in [Austin v. United States](#) where civil forfeiture was ruled to be subject to the limits of the [Excessive Fines Clause](#)), the federal judiciary dodges adjudicating on the matter since they prefer to adhere to their [constitutional avoidance doctrine](#). This is why I surmise that they would prefer to judge the merits of a case on something like the statutory innocent owner defense, rather than on fundamentally constitutional grounds.

One unusually pernicious aspect of civil forfeiture is how it socially engineers people to tacitly accept the [cashless society](#). As police thug [Larry Bates told the media](#) about why he seized George Reby’s \$22,000 in cash:

“The safest place to put your money if it’s legitimate is in a bank account. He stated he had two. I would put it in a bank account. It draws interest and it’s safer.”

Obviously, a cashless society makes it very easy to pull off the implementation of a mass surveillance police state apparatus. As the chairman of Signature Bank described [the relationship between civil forfeiture and the cashless society](#):

“To provide another example, the U.S. government is becoming very fond of seizing money from citizens first and asking questions later via ‘civil forfeiture.’ Amazingly, the government is permitted by law to do this even if it is only government staff members who have a suspicion, not proof, of wrongdoing. By seizing a citizen’s or a firm’s money, the victim/defendant has almost no choice but to settle. A case about civil forfeiture was recently argued in front of the Supreme Court in which the government seized all the money of a tiny family-owned grocery store on the suspicion that it was laundering cash because its cash deposits were below the \$10,000 level, an occurrence that triggers a report to the government. By depriving companies and individuals of the cash to defend themselves, even innocent firms are under immense pressure to settle or to plead guilty. To make matters worse, the dramatic consolidation of the banking system has made it easier for the government to acquire information as there are fewer access points. For example,

JPMorgan, one of America's largest and most powerful banks, is the size of more than 3,000 smaller banks combined, and the top four U.S. banks control about 60 percent of the U.S. banking deposits."

What Scott Shay was referring to here is that federal prosecutors alleged that the sheer amount of cash was *prima facie* evidence of money laundering, which they suggested indicated the use of so-called "structuring," which is supposedly used to avoid generating a [currency transaction report](#), as required by the [Bank Secrecy Act](#). Although the carrying of cash itself is perfectly legal, carrying *too much* cash would be grounds for a police officer to civilly forfeit it, if he decides that there is sufficient probable cause or a preponderance of the evidence that it was used for either drug trafficking, money laundering, or "terrorism."

Lysander Spooner once provided quite an apt way to think of civil forfeiture, since it had been used before in admiralty cases where the ship's owner was not a Citizen of any of the States, and since such an owner was not an American, the federal judiciary explained in 1796 that due to the legal fiction, civilly forfeited ships were not entitled to jury trials. In his [Analogy of the Highwayman](#), Spooner said:

*"The government does not, indeed, waylay a man in a lonely place, spring upon him from the road side, and, holding a pistol to his head, proceed to rifle his pockets...[t]he highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a 'protector,' and that he takes men's money against their will, merely to enable him to 'protect' those infatuated travellers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection. He is too sensible a man to make such professions as these. Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful 'sovereign,' on account of the 'protection' he affords you. He does not keep 'protecting' you, by commanding you to bow down and serve him; by requiring you to do this, and forbidding you to do that; **by robbing you of more money as often as he finds it for his interest or pleasure to do so**; and by branding you a rebel, a traitor, and an enemy to your country, and shooting you down without mercy, if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impostures, and insults, and villanies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave."*
[emphasis added]

I can't fathom a better explanation of what is truly happening with this unmitigated power of government. [Much like its power of taxation](#), the government must first confiscate your property, under a coercive threat of initiatory violence, before it can afford you any sort of legal protection for your property, and this arrangement is assumed to be tacitly consented to by the [social contract](#) implied in the [reciprocal obligations](#) mentioned in *Minor v. Happersett*, 88 U.S. 162 (1874). Needless to say, [the thievery inherent in all taxation](#) is more clearly demonstrated by the systematic abuse civil forfeiture inflicts upon its hapless

victims who, more often than not, suffer the roadside exaction with no legal remedy available to them once the police cunningly coerce them into “forfeiture agreements” whereby a refusal to sign would incur criminal charges lest they give their property up in exchange for their freedom.

There have been two major “solutions” proposed that would supposedly solve the problem of civil asset forfeiture by tweaking it to death, and which I believe are nothing more than false hopes. The first of these is that if legislation could be passed to reform the statutes detailing the practice of civil forfeiture, then our property rights can be secured again. This is impossible to do because no legislature has any incentive to repeal or even amend the civil forfeiture laws in any real way, unless you count [the dog-and-pony show of transparency](#) they put on about the proceeds from the forfeited properties. Similarly, the fairly moderate “solution” of transferring the civilly forfeited property to any American government’s general revenue fund only removes the *direct* incentive for the police to steal property, but not the government’s *indirect* incentive to benefit from the stolen proceeds as it sees fit; the only difference, at most, is *which* group of thieves gets to decide how to parcel out the loot. [Moral hazard](#), much?

Another major proposed “solution” is for citizens to use their historical power of jury nullification to stop civil forfeiture. [For nuanced reasons I have written about recently](#), it is very unwise to rely solely on a jury to nullify these unjust civil forfeiture laws; of course, it is still an open question as to whether a [state citizen](#) stands a better chance of having a jury nullify these civil forfeiture laws rather than a United States citizen, yet, such would require a clean test case that is not likely to occur anytime soon. In light of the incentives motivating jurors to convict right from the outset, such an indication does not bode well for the said “nullification” of these tyrannical laws.

What can be done, though, to at least mitigate the harm caused by the government’s use of civil forfeiture? As the old adage goes, “[an ounce of prevention is worth a pound of cure](#),” and to that end, there are two methods I’ve gleaned from all of the case studies I’ve read that implicitly suggest how citizens can discourage law enforcement from stealing their property. The first of these is to [roleplay police interrogations](#) so you can learn how to handle yourself when an officer is (presumably) conducting an investigation of some kind, even if it’s just a traffic stop. Not telling the cops that you have a large stash of cash in your car is, I hate to say it, a rather common sense measure that seems to have fled the minds of those who were victimized by way of civil forfeiture.

Related to this, is to never consent to a search by politely, yet firmly, informing the officer of your objection. Although it is not a guarantee that the officer won’t conduct a warrantless search anyway, your verbal protest could (arguably) be used as the grounds for a motion to suppress evidence in court because the officer’s search was actually illegal; obviously, if the judge chose to suppress such evidence, then presumably the only logical result would be for the forfeiture action to be dismissed and your property returned to you immediately. Ideally, though, such an illegal search should not turn up anything anyway, if you were competent in hiding your valuables in the first place, which none of the forfeiture victims obviously were. Books by [Michael Connor](#), [Jack Luger](#), or even [Dennis Fiery](#) can teach you the principles (and a few techniques) about how to hide your valuables effectively so the police can’t steal what they can’t find, so you can hopefully avoid going to court altogether.

In terms of legal representation, your options are pretty limited, to tell the truth. One option would be to place a lawyer on retainer, but if you do, don’t shell out anymore than \$2,000 just for the retainer (which you might want to consider effectively the same as a cost bond). A lower cost option would be to hire a paralegal who is willing to do some part-time freelance work for you; this is doable provided that you don’t solicit the paralegal for “[legal advice](#).” If you are indigent, as most civil forfeiture victims are reduced to, then seek out *pro bono* legal representation from IJ or even from the [recommended lawyers list](#) as provided by Forfeiture Endangers American’s Rights (FEAR). As a last resort, if you must go *pro se*, then you should buy FEAR’s [Asset Forfeiture Defense Manual](#) for ~ \$120.

Regarding legal defenses, there are two methods that remain virtually undiscussed in the published literature from both IJ and FEAR. [Gary Hunt once put forward an oral demand for habeas corpus in court by saying:](#)

"I object to these proceedings. I am the moving party today, and I am the plaintiff and I set forth a demand for Habeas Corpus for the record. I cannot find an injured party to summon for trial and I want an order for the Sheriff to bring the injured party before the court. I need an order from the court to tell the Sheriff to bring forth the injured party. If this charge is criminal then the injured party must present himself with a sworn statement of the injury. If the nature is civil, then the original contract to which I am alleged to be a party to and have violated must be brought forward."

As could be expected, the judge threatened him with contempt of court multiple times, but when Hunt asked the judge if he was unilaterally suspending *habeas corpus*, the judge encouraged the prosecutor to *nonle prosee* the case. Whether this would work in a civil forfeiture proceeding would, again, require a clean test case. The other method that hypothetically could work would be [Karl Lentz's two-sentence defense](#) he uses in court:

"I require the immediate restoration of my property. I require you to restore property immediately."

Lentz justifies the use of this defense as being integral to what [he considers the primary purpose of government to be:](#)

"Since civilization began, governments were created to secure and protect the property of man. That's all they do; that's mission statement one...we're going to assign certain duties to people, and people are going to agree to certain roles, and all we're basically getting together for is to protect and secure each other's property from a hostile invader. That's all we do; that's all governments do."

Obviously, Lentz's justification for the existence of [the State](#) necessarily butts heads with Spooner's arguments in favor of its irrevocable abolition, yet what I am presenting here are potential avenues for legal defense should you or someone you care about fall victim to a civil forfeiture action.

One area of the whole civil asset forfeiture mess that is seldom addressed are the government auctions

themselves. Similar to how [Julian Heicklen](#) got harassed on numerous occasions just for simply handing out FIJA leaflets, [Judy Osburn](#) and her fellow sign wavers were targeted by the auction staff who then subsequently called in an officer, and who in turn eventually capitulated to her that her street actions were legally sound. Going beyond this though, why hasn't anyone (presumably) thought of [a mutual aid approach](#) towards civil forfeiture? Specifically, why not form a [friendly society](#) whose sole purpose it is to buy back the forfeited property with the explicit goal of *promptly* returning it to its rightful owners? There is no reason why these grassroots auction "[buybacks](#)" could not also be accompanied by leafleting FEAR literature simultaneously.

Civil forfeiture is maybe the number one best reason to take your personal privacy *very* seriously, for it is impossible for the police to seize what they can't find. The skill set one would need to prevent being targeted for civil forfeiture would be akin to what some have called the [vonu strategy](#). Tactics include prepositioning your assets, [emotionally detaching from your possessions](#), caching supplies, [dumpster diving](#), archiving records, and [paper-tripping](#). Stockpiling 5 years worth of food storage doesn't make much sense if the cops can just swoop in and shamelessly steal all of it in the blink of an eye; however, if you are already litigating a forfeiture in court, then [the skill set of a state citizen](#) is what you would need to rely on instead. Needless to say, each of these avenues require further research in order to better comprehend and use them.

If there were anything to be learned from the government's highly abusive and corrupt use of civil forfeiture, it would be to **diversify, diversify, diversify**. Most people own *one* home, *one* car, and *one* bank account, yet, imagine if those same people had two or three of those things? Sure, this would presumably necessitate a lower standard of living (say, two or three crappy sedans instead of just the one Mercedes), but unless the police are willing to go after absolutely everything you legally own, this would serve as an automatic disincentive for them; of course, if you were able to successfully go on a paper-trip, then owning those additional properties *in other names* would give you even greater protection, assuming that the police were not able to draw any connections between them.

Interestingly enough, civil forfeiture is a unique political issue because it presents a rare opportunity for an [indirect strategic](#) application of [guerrilla warfare principles](#). For instance, thanks to the [judicially approved reliance on anonymous tips](#), it's only a matter of time until such a method is used against a random politician; and the best part is, he doesn't even need to be arrested in order for his cash, automobile, or even home to be forfeited to the government. Obviously, certain precautions would necessarily need to be taken, but arguably, your average [Burn Notice](#) viewer could pull something like that off without too much of a hassle, assuming they don't give the police a reason to crack down on them.

Concluding as I have about the effects and implications of civil asset forfeiture, there is no reason to believe that [due process](#) actually matters. Despite all [the flowery rhetoric you may hear](#), there is no such thing as fair or equitable treatment when it is *your* property that is being civilly forfeited. Law enforcement, especially county sheriffs, might as well be the [Sheriff of Nottingham](#), because they work for the King (that is, the United States, or any of its *de facto* provinces). Civil forfeiture is just as legal as a ticket citation for "speeding," and perhaps the worst part about it is that it empirically demonstrates that your property rights are not respected by the government **at all**; ergo, such "civil liberties" are just an illusion that the State must perpetuate about itself that it is *somehow* serving some useful function to us. Anarchists who prefer to "[starve the State](#)" rather than smashing it into oblivion are also failing to take civil forfeiture into account as "a necessary budgetary supplement" for the several American governments.

Likely worse are the psychological effects such knowledge of civil forfeiture can have on your psyche. *Knowing* that the government absolutely does not respect your natural property rights can take quite an emotional toll, but at some point, you just have to move past it and take action (such as those options I've already outlined), if for no other reason that for your peace of mind. This is why I believe it is essential to

also explore, even if only tentatively, some other options for dealing with civil forfeiture that go beyond what IJ and FEAR were willing to publish in their respective bodies of literature.

Property rights are integral to a truly free society. [As Ed Bear told his parallel universe counterpart Win Bear at Mr. Meep's Spanish Hideaway:](#)

"Win, we simply don't tolerate a parasite that takes half your income and then builds more taxes into everything you buy! You people have been trying to get by on a quarter of your productive capacity – an eighth, when you count of the costs of regulation – while the State eats up the rest! It's a wonder you've survived at all!"

It is certainly a wonder why any humans have been able to survive the onslaught of the State as long as it has been around. Government is a negative externality, and this can be evidenced as recently as by [the latest IJ report published earlier this month](#) on how an economics experiment **proved** that the American *gendarmerie* are directly incentivized by the civil forfeiture statutes to legally steal as much property from the citizenry as humanly possible. Until people are willing to recognize that nothing less than the total and irrevocable abolition of civil asset forfeiture will begin the very slow process of securing our property rights again, then the rampant thievery will continue unabated, but only as long as we allow it to, with the operative question being, of course, for how long?