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Beyond preconceptions: Analyzing the role of political party branding and psychological factors in voter decision-making within developing multi-party contexts

By Daniel Y. ROTHSCHILD [a] & Walter BLOCK [b†]

Abstract. Civil asset forfeiture allows the police to profit from crime instead of the criminal by seizing a person's belongings that were used in illegal activity. The police profit from crime by keeping a percentage of the proceeds they seize. This ends up creating some perverse incentives, such as having more police resources go to seize people's assets instead of fighting crime. Shifting police efforts away from combating hard crime into fighting so-called "victimless crimes" causes an increase in hard crimes as criminals substitute from soft crimes, such as selling drugs, into hard crimes where the chances of being caught are now lower.
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1. Introduction

There are two types of people when it comes to civil asset forfeiture: Those who hate it, and those who don't know what it is. Our goal in this paper is to have the reader subscribe to the first view.

Before justifying such a view, it's necessary to give a brief outline on what civil forfeiture is exactly. To be succinct, it is the view that it is justified to seize property from individuals, whether or not they have been accused of a crime, let alone convicted of one; the idea behind this is that the object, and not the person that is considered guilty of committing the crime.

The origins of civil asset forfeiture started in religion with the concept of "deodands," a legal fiction where the object itself was to blame for the crime. The origin of deodands comes from the Old Testament, where (in Exodus) it is written: "If an ox gore a man or a woman, that they die; then the ox shall be surely stoned and its flesh shall not be eaten, but the owner of the *ox shall*be quit." In Biblical times people sacrificed the animal or object "guilty" of committing the crime to God (Moores, 2009: 780-781). In more modern times, when the King replaced God's authority, the English common law updated the concept of the deodand, where the object used in the crime was forfeited to the king in order to pay for the victim's funeral (Williams, Holcomb, & Kovandzic, 2010). The British movie *The Hour of the Pig*, which takes place during the Middle Ages,is about a lawyer defending a pig accused of murder. It is an excellent example if one is interested in watching a modern film showing the superstitious fictions that inspired civil asset forfeiture.

[a] Department of Economics, George Mason University, University Drive, Fairfax, VA, USA.
[†b] Joseph A. Butt, S.J. College of Business, Loyola University New Orleans, New Orleans, LA, USA.

The justification for civil asset forfeiture's existence in the United States was that it was going to be used in a limited manner, where it was impossible (or difficult) to locate the victim and give him recompense. The state would act as the victim's proxy by collecting the "guilty" object used in the crime as restitution.

Civil asset forfeiture was rarely used, but since 1970, when Congress passed the Comprehensive Drug Abuse Prevention and Control Act, it has become acommon occurrence (Moores, 2009). The Comprehensive Drug Abuse Prevention and Control Act allowed the government to seize drugs and drug paraphernalia in order to reduce crime. In 1984, Congress passed the Comprehensive Crime Control Act, which further expanded the police powers to seize assets.

The justification for civil asset forfeiture is that it would act as a deterrent to crime by not allowing the criminal to profit from his crime. By seizing the accused (i.e. the property, not the person), civil asset forfeiture would also be self-financing, by allowing the police department to collect a percentage of the assets they seize.

Since only humans have rights and objects do not, the right to be declared innocent until proven guilty, a right to not be forced to incriminate oneself, and the right of double jeopardy do not apply. (Warchol & Johnson, 1996).

Civil asset forfeiture is similar to antitrust law in the sense that the owner of the property has to prove that his property is innocent instead of the prosecutor having to prove guilt.

2. Literature Review

The best (and most thorough) study on the effects of civil asset forfeiture is Williams, Holcomb, & Kovandzic (2010), which looked at the effect of forfeiture on crime rates and the police budget in all 50 states. These authors reviewed the requirements for seizing a person's assets (e.g. preponderance of the evidence and probable cause) to determine whether states with higher standards have more police seizing assets. Their study revealed that since the federal government's standard is weaker than that of many other states, more equitable sharing is done in states with a higher standard of proof than the federal government's.

Rulli (2001) compared civil asset forfeiture after The Civil Asset Forfeiture Reform Act of 2000and showed that while CAFRA offers more protections against property owners before police are able to seize a person's assets, not only is the protection weak but civil forfeiture has increased after this enactment since there are now more "crimes" subject to forfeiture. Rulli also indicated that, since CAFRA, civil forfeiturehas led to an increase in criminal forfeiture. This is because CAFRA providesthe accused the right to an attorney so people are able to contest the charge. Bringing the case to trial leads to more convictions. Before this law, the standards were lower and people were less willing to contest the charge (since they would have to pay for the lawyer themselves). Before CAFRA, the standard to seize a person's assets was probable cause, but since CAFRA, the standard is now (the still weak) preponderance of the evidence (Levesque, 2015: 76). When Congressman Hyde originally drafted CAFRA, he wanted the government to provide a "clear and convincing standard" before seizing a person's "guilty" assets. But because of lobbying from the police bureau, a compromise was reached to impose a

higher standard than probable cause and a lower standard than clear and convincing evidence: preponderance of the evidence. (Levesque, 2015: 73).

Kelly & Kole (2013) looked at panel data sets to see if police respond to civil asset forfeiture by using more resources devoted to seizing assets. They found statistical support that police agencies change the pattern of policing as a result of forfeiture, but in economic terms these effects are very weak. Kelly and Kole used Law Enforcement Management and Administrative Statistics (LEMAS) data, which are derived from a questionnaire that asks police officers how much forfeiture they seize. They also looked at the FBI's Uniform Crime Reports (UCR) to see which areas the police are devoting their energies to in order to see if more resources are being allocated to seizure. Kelly and Kole demonstratedthat the conclusion that police are devoting more resources for seizing assets is over-exaggerated.

Baicker & Jacobson (2007) evaluatedthe relationship between local spending and police seizures and showed that local governments offset the latter by reducing the amount of funds they give to police the following year. Baicker & Jacobson (2007: 2123) also used data from the Drug Enforcement Administration's System to Retrieve Information from Drug Evidence (STRIDE) for the years 1977-1999. STRIDE records purchases and seizures of illegal drugs made by undercover DEA agents and informants. According to Baicker & Jacobson (2007: 2132): "The effect of de facto sharing on log cocaine prices is small and imprecise. In contrast, forfeiture incentives are associated with a clear increase in the log price of heroin, the most commonly used illicit opiate: evaluated at the mean de facto sharing rate of 0.33, the coefficient of 4.14 implies an elasticity of heroin prices with respect to real sharing of 0.14."

What the above literature implies is that there is a positive relationship between police behavior and civil asset forfeiture. Rulli concludes that the correlation is very weak. Baicker and Jacobson find a negative relationship between police seizure and policing behavior; e.g., that when the police get fewer funds as a result of forfeiture they do a cost-benefit analysis to see if they can make more money through seizure or through the bureau.

3. Arrests

Benson & Rasmussen (1998) compared the crime rate in Florida before and after the war on drugs. They determined the arrest rate for Index I crimes (those with victims) and non-Index I crimes ("victimless crimes") and demonstrated that forfeiture leads to police arresting people for non-Index I crimes. Mast, Benson, & Rasmussen (2000) compare Index I crimes and police arrests and point out that forfeiture leads to an increase in Index I crime arrests since more police resources are devoted to non-Index I crimes. Since the odds of getting caught are lower for Index I crimes, criminals experience a substitution effect by engaging in illegal behavior where the chances of being caught are less likely.

As drug arrests increased, real crime Index I arrests decreased. As Benson & Rasmussen (1998: 85) show, "In 1980, 7.4% of all arrests in Florida were for drug offenses while 31.8% were for Index I crimes. The new offensive in the war against drugs seems to have started in 1984.Indeed, drug arrests as a percentage of all arrests in Florida had fallen to 7.1% by 1983, but they increased to 7.6% of the total in 1984. This trend continued so that by 1987 drug arrests accounted for 10% of total arrests while Index I arrests had fallen

to 25.9% (drug arrests peaked at 13% of total arrests in 1989). In fact, drug arrests increased 115% between 1980 and 1987 (from 32,029 to 68,747), while Index I arrests as a whole increased by only 29.2% (138,548 to 179,029)."

Benson and Rasmussen provide data showing that the arrest rate for Index I arrests fell during the war on drugs (which means that Index I crimes increased). This reveals that the theory that drug use leads to harsher crimes is wrong. The number of actual rights violations increased when police arrested more drug users. The war on drugs leads to more violent crime, not drug use itself. In other words, the war is causing violence, not the drugs.

As Benson & Rasmussen (1998: 97) mention:

> "When viewed in light of Becker's economic theory of crime and its deterrence hypothesis, it is not surprising that Index I crimes increased in Florida during the drug war period (1984–1989). In fact, Index I crime rates were falling in Florida in the early 1980s (from 8387.8 crimes reported per 100,000 population in 1980 to 6837.9 in 1983) as the relative effort against drugs fell (from 7.5% to 7.1% of total arrests), but they rose steadily after 1983 as drug enforcement efforts increased, reaching 8479.9 in 1987 and 8755.9 in 1989 when drug arrests reached 10 and 13% of total arrests, respectively. That is, from 1983 (the year before the offensive against drugs began to accelerate) to 1989, the Index I crime rate in Florida rose by 28% (25% over the period of our data, from 1983 to 1987) as drug arrests relative to total arrests rose by 83% (41% over our data period). The predicted benefits of a drug war, including reduced Index I crimes, clearly have not materialized and the opportunity costs of the drug war have been very high, as they include the consequences of increasing Index I crime. The emphasis on drug enforcement in Florida temporarily waned after 1989. For instance, drug arrests relative to total arrests fell back to 10% in 1992, and Index I crimes fell from their 1989 peak to 8289.0. Given the reality of scarce police resources, getting 'tough' on drug crime meant getting soft on Index I crime, and getting softer on drug crime after 1989 apparently allowed police to get tougher on Index I crime."

How do people in government obtain their revenue? How does one know when the benefits exceed the costs? How do the police influencethe amount of funds they receive? One of the problems with asset forfeiture laws is a problem that all victimless crime laws have. Suppose someone damages another person's property. In such a case, there is an actual victim (the property owner) and actual damages to calculate (calculating the costs of what was damaged and the repairs needed to fix it). If Jones stole a thousand dollars from Smith, calculating what the punishment should be is relatively easy—it is double the amount of damages plus legal fees.[1] The rationale behind such punishment is simple and straightforward. If Jones steals a thousand dollars from Smith, Jones is demonstrating by his actions that he thinks it is okay for him to take $1,000 from other people against their will. If this is so then Jones has no right to complain when the victim he robbed from takes $1,000 of his (Kinsella, 1996). Likewise, Jones also owes $1,000 *to the victim* to replace what he stole.[2]

[1] Some libertarian theoreticians are a bit more draconian than that. See on this: Barnett & Hagel, 1977; Block, 2009a, 2009b; Kinsella, 1996, 1997; Olson, 1979; Rothbard, 1977, 1998; Whitehead & Block, 2003.

[2] In most legal regimes, the crime is in effect against the state, not the actual victim. The emphasis is not on making the victim whole, but in punishing the criminal.

When there is an actual victim and tangible damages, calculating the loss is relatively easy; just add up the amount of damages that such actions caused. However, what happens if there is no victim? The "crime" is then a victimless one. [3] The only offense is committing an actof which another person [4] disapproves; the target of the "criminal"does not explicitly suffer and yet wants to dictate behavior. When an adult buys drugs there is no victim, there is only a voluntary market exchange. In such cases, what can unambiguously determines the damage? Our answer: nothing. If someone destroys property one can point to the damage; and the amount of reimbursement is predicated on that figure. But when there is no damage this is impossible. When the victim is theoretical and nebulous, how does one rationally calculate who should be awarded restitution and in what amount? How does one determine if the punishment is insufficient or excessive? There is no non-arbitrary way to answer such questions.[5] The costs and benefits for victimless crimes are impossible to determine since no damage was done and therefore *any* punishment is a legal travesty.

4. Crimes and non-crimes

Naylor (2000) talks about the difference between crimes and non-crimes.[6] He asserts that the former are predatory offenses that always involve the distribution of wealth. Crimes are bilateral. They are not Pareto efficient. Crimes are coercive actions that reduce overall living standards. They are a zero sum game where one gains at another's expense. Rape is a crime since it is an invasive act that benefits the perpetrator and renders the victim worse off. Theft fits this descriptionsince the criminal obtains resources by depriving the owner of his property. Murder is a transgression since the culprit in effect "steals" the life of the person he exterminates. All crimes are one-way streets. These infractions involve one person getting something without giving anything back in return, against the will of the victim. All crimes are by their very nature barbaric.

In sharp contrast, non-crimes, or market transactions are multilateral. They are voluntary. Consensual behavior increases overall living standards by making both parties involved better off, at the very least in the ex ante sense of anticipations. Market transactions involve trading value for value; they are two-way streets[7] where the only way to make yourself better is by improving the lot of the other. Capitalist transactions involve creation, not destruction.

[3] There is no such thing as a victimless crime in the literal sense. The real victim of a victimless crime is actually the person being accused and thrown in prison for harming nobody and the criminals are the people who passed such an unjust law, the police who arrest the peaceful person, the jury who convicts, and the judge who sentences.

[4] E.g., the government

[5] Becker (1974) would set penalties in such a manner as to minimize the incidence of crime. This it must be readily admitted, is not arbitrary from the perspective of that goal. But it is arbitrary from the point of view of allowing the "punishment to fit the crime." For example, it might be the case that imposing the death penalty for petty crime would minimize it. But, this would be arbitrary and capricious from any perspective that incorporated even the most superficial element of justice.

[6] Voluntary acts between consenting adults or simply being passive.

[7] Charity, too, falls under this rubric, as long as the donor and the recipient do not act under threat or compulsion.

They make people richer. Commercial interactions involve the production of desired goods and services.

The problem with criminalizing marketplace transactions is, "Police action [is being] shifted from combating predatory offenses practiced *against* an unwilling public to attacking enterprise crimes in which underground economies attempted to service the [now] forbidden consumption needs for a *complicit* public" (Naylor 2000: 8). Even more importantly:

> "Though both are lumped together as co-equals in the criminal code, enterprise crimes [aka victimless crimes, such as drugs] have an economic nature and social impact that is radically different from predatory ones. Enterprise crimes involve the production and/or distribution of new goods and services that happen to be illegal by their very nature...Since the transfers are *voluntary*, it is often difficult to define a 'victim,' unless it is some abstract (and largely meaningless) construct like 'society.' Although the total sums involved are often *claimed* to be considerable, in absolute terms and in relation to the economy as a whole, as long as the transactions remain voluntary, there are *no monetary loses* to any individual from the act itself (although there may be from indirect consequences from the act). On the contrary, because enterprise crimes involve production and distribution of new goods and services...they raise national income and...contribute to economic welfare. Their morality is accordingly debatable." (Naylor 2000: 9).

Naylor points out that, since there is no victim in such "crimes," there is no obvious person who can be awarded damages. As a result, the state sets itself up as the victim to whom rewards of damages belong.[8]

Another problem with measuring the benefits of civil forfeiture laws is determining who decides who gains from the laws. Preferences are by their very nature subjective[9]. There are no objective benefits. This applies even to life itself, since the person who is suicidal deems his continuation on the planet as having negative worth. The only way to measure the costs and benefits is based on the subjective preferences of each individual. As (Rothbard 1998: 178) asks, if government decided to produce clothing, how much and in what way should it be produced? Should the state ensure everyone gets cashmere sweaters or clothes made of cotton? What determines when government is producing too many clothes or not enough? The same is true for all other services.[10]

(Rothbard 1998: 178) states, "Another inner contradiction of the theory of laissez-faire government deals again with taxation. For if government is to be limited to 'protection' of person and property, and taxation is to be 'limited' to providing that service only, then *how* is the government to decide *how much*

[8] Hence, the justification for civil forfeiture becomes clear since when the police seize people's assets used for "criminal activity," they are merely collecting reparations from those who damage the government by violating the laws of the state. See also Rothschild and Block, forthcoming; Salerno, 2015.

[9] States Hayek (1979, 52): "And it is probably no exaggeration to say that every important advance in economic theory during the last hundred years was a further step in the consistent application of subjectivism." Also, see the following on this issue: Barnett, 1989; Block, 1988; Buchanan & Thirlby, 1981; Buchanan, 1969, 1979; Butos & Koppl, 1997; Cordato, 1989; DiLorenzo, 1990; Garrison, 1985; Gunning, 1990; Kirzner, 1986; Mises, 1998; Rizzo, 1979, 1980; Rothbard, 1979, 1997b; Stringham, 2008.

[10] For a devastating analysis of such problems, see Mises (1922)

protection to provide and how much taxes to levy?... Indeed, 'protection' could conceivably imply anything from one policeman for an entire country, to supplying an armed bodyguard and a tank for every citizen—a proposition which would bankrupt the society posthaste. But who is to decide on how much protection, since it is undeniable that every person would be *better* protected from theft and assault if provided with an armed bodyguard than if he is not? On the free market, decisions on how much and what quality of any good or service should be supplied to each person are made by means of voluntary purchases by each individual; but what criterion can be applied when the decision is made *by government*? The answer is none at all, and such governmental decisions can only be purely arbitrary."

If government decides how much of each type of service to provide, what the price should be, and what should be legal, it is not subject to the wishes of the taxpayer. Can a taxpayer decide that the state is wasteful and do business elsewhere? No. The government doesn't have to worry about satisfying the consumer, which is why the provision of "public goods[11]" is determined by lobbyists and the special interests of the state.

Police bureaus have a discretionary budget they obtainfrom their sponsor, such as the legislature overseeing the agency. The bureau's manager cannot pursue discretion without constraint "due to the monitoring and other controls imposed by the bureau's sponsor" (Benson, Kim, & Rasmussen 1994: 163). Uncertainly prevents perfect monitoring, because unlike most goods produced by the market, output is rarely measurable and cannot be objectively evaluated. In order to determine what the discretionary budget should be, the sponsor depends on the bureau (Mises, 1944) to determine what factors are necessary to determine if the goals are being met. For example, the goal of the police bureau is to fight crime. The way to determine if law enforcement is doing a good job is by looking at the number of arrests. These are up, so to the public eye, that means more scum off the street and reduced crime. Police often have arrest quotas that influence their pay. In order for them to obtain a bigger budget they need to make more captures and the preeminent way to do that is to find more arrestable offenses.

Benson, Kim, and Rasmussen point out that the number of detentions and the response time measure how effective are the police. Therefore, they have incentives to produce fast response times and make a lot of arrests. "Instead of watching to *prevent* crime, motorized police patrol [is] a process of merely *waiting* to respond to crime" (Sherman 1983: 149). Benson, Kim & Rasmussen (1994: 164-165) mention that police have an incentive to keep arrests high, and thus lobby to increase the number of detainable offenses.

According to Benson and Rasmussen, police can keep crime rates high while increasing arrests. Since there are no crime statistics on non-Index I crimes, police have an incentive to increase arrests for non-index I crimes, thereby keeping Index I arrests up. As Benson & Rasmussen 1998: 89) state, "police have incentives to allocate any resources to the control of non-Index I

[11] As well as, all too often, public bads. For a critique of the "public goods" argument, see Barnett & Block, 2007, 2009; Block, 1983, 2000, 2003; Bibliography, undated; Cowen, 1988; De Jasay, 1989; Holcombe, 1997; Hoppe, 1989; Hummel, 1990; Osterfeld, 1989; Pasour, 1981; Rothbard, 1985, 1997a; Schmidtz, 1991; Sechrest, 2003, 2004a, 2004b, 2007; Tinsley, 1999.

crimes, like vice and narcotics, for which crime statistics are not kept, thereby holding Index I crime rates up while increasing arrest statistics."

5. Misallocation of resources

Civil asset forfeiture reveals that since police keep seized assets by making more drug arrests, their resources are devoted to increasing drug arrests.

One of the justifications for allowing police to keep a portion of what they seize is to give them an incentive to pursue the drug war. According to Baicker and Jacobson, it is not so clear that having a portion of the assets go to the Department of Justice increases their budget since local governments reduce the amount of funding they send to the Justice Department based on how many assets they seize. Therefore, there is a trade-off: police have to figure out how much of their energy should be devoted to seizure and how much to arrests in order to maximize the amount of money they receive (or steal).

Local governments offset police seizures by reducing the amount they spend on police the following year and instead use these funds to spend on public welfare (but not on fire protection, heath, and hospitals). According to Baicker & Jacobson (2007: 2135) "Police, in turn, respond to the real net incentive for seizures once local offsets are taken into account, not simply the incentives set out in statute. When police are really allowed to keep the assets they seize, they increase anti-drug policing."

Heroin arrests and prices have increased more than marijuana. Why? Because heroin is a far more lucrative market (Baicker & Jacobson 2007: 2115). If the police were truly interested in combating drug use they would go after people who sell more drugs and not simply the most lucrative booty for themselves.

Because up to 80% of the seizures go uncontested, police are encouraged to seize more assets. Why so few challenges? Simple: The defendant has to demonstrate his innocence instead of the prosecutor being required to prove guilt (Moores 2010: 787). Since it is time-consuming and expensive to contest such suits, many people do not. Police take advantage of their power and people's ignorance by scaring them into acquiescing inhanding over their property. The people face an ultimatum: Agree to hand over your property or face trumped-up criminal charges. If you agree, the police will let you go. An example of such a case occurred in Florida, where Delane Johnson had roughly $10,000 in his possession. Officers arrested Johnson for violating a law that requires a person to report business transactions greater than $10,000 (Moores 2010: 796). The constabulary presented Johnson with a waiver entitled, "Contraband Forfeiture Agreement." According to this "agreement" Johnson would agree to surrender the money to the department "voluntarily" and waive his right to counsel. Johnson was never told what the waiver said and what he was signing. The police did not inform him that he had a right to contest the charge. Faced with the threat of being persecuted, he signed the waiver.

Daniel Broussard was a commanding officer of the Oakland task force who "regularly exhorted Task Force officers to keep their arrest numbers up. Broussard warned that they would need statistics to show that the federal money was spent... to secure another grant [that was going to expire in 18-24 months]" (Blumenson & Nilsen 1998: 82). Broussard told the Task Force that everybody they find goes to jail tonight for everything. In order to obtain more

arrests to get more funding, police also routinely plant drugs and falsify police reports, as Robert Sobel, who was an LA Country Sheriff's Sergeant, admitted (Blumenson & Nilsen 1998: 83).

6. Conclusion

Civil asset forfeiture is a failure. The goal was to take the profit out of crime, but instead of going after dealers, most police efforts aim at buyers. According to Eric Sterling, the Director of the Criminal Justice Policy Foundation: "Only 11 percent of drug offenders in federal prison are high-level traffickers, while more than 50 percent are low-level" (Blumenson & Nilsen 1998: 71). Since police are able to obtain 80% of seized assets thanks to so-called equitable sharing, the police have less incentive to take the profit out of crime, since for them crime is profitable.[12] People's property is being taken away from them without a trial. Police seize people's assets, trumping up criminal charges and agreeing to drop them if property is relinquished.

The men in bluelobby to weaken any changes that will reduce the amount of assets that go to their department. Instead of reducing misconduct, forfeiture leads to an increase in crimes that have victims since police resources are being aimed at drug offenses instead. Violent crimes are less risky in terms of being caught, which causes an increase in violent crimes.

The solution we propose is a radical one. All alternatives and attempts at compromise have failed. We suggest not reform but an end to forfeiture laws. Equitable sharing must end. Objects do not commit crimes, people do. The very phrase "the war on drugs" is a lie. There is no war on drugs. If a person gets caught with drugs it is not the drug that goes to jail. The war on drugs is a war on people. It is a war that incarcerates more Americans than any other "crime." The war on drugs imprisons addicts—people who are vulnerable and are trying to numb the pain of past trauma by self-medicating. And what does our society do to these people who need our compassion and understanding? It brutalizes them. They have suffered enough abuse.

Civil forfeiture has not taken the profit out of crime; rather, it places profit in crime. The only difference is that the criminals are those with legal immunity: the police. Civil forfeiture reveals the hypocrisy of the state for all to see, and it is not a pretty sight.

[12] As Milton Friedman explained, "If you look at the drug war from a purely economic point of view, the role of the government is to protect the drug cartel. That's literally true." (Friedman, 1992)

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