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The Libertarian

A Plea For Procedural Due Process

Richard A. Epstein, 10.20.09, 10:15 AM EDT

Stop government abuse in property forfeiture and license suspension cases.



Today we live in world of entitlements. We are constantly reminded that the government owes us a job, a house and a health insurance policy. This constant celebration of positive rights has a real downside, however, for it easily deflects our

attention from the traditional libertarian concern that no person should be deprived of their liberty or property without due process of law. Yet all too often today, state procedures compromise the ability of individuals to keep their property and their jobs from arbitrary loss by state power.

All too frequently, the same governments that are so intent to generate a dizzying array of new positive rights are also highly insensitive to the dangers that their criminal procedures pose to protecting people from the arbitrary seizure of their property and the arbitrary loss of licenses needed to do their jobs. Two current cases illustrate the concerns.

This past week, the United States Supreme Court heard oral argument in *Alvarez v. Smith*, which took dead aim at the Illinois Drug Asset Forfeiture Procedure Act. This law essentially allows any local government to seize and impound, say, the automobile that has been involved in a drug crime for over six months without any hearing on the merits of the government's case. That delay is barely acceptable when the perpetrator of the crime owns, say, the car in which drugs were used or sold. But the delay is far more oppressive when the car belongs to an innocent person who had no role in the criminal act.

Of course, the government should be able to impound for investigative purposes. But it hardly follows that it should be able to drag out the forfeiture indefinitely, without giving its owner any mechanism to challenge the legality of the seizure or to post bond to obtain the return of the car. The federal system supplies these elementary protections. Unfortunately, the state of Illinois does not, and for the worst of all reasons—it wants to profit from the ultimate sale of the seized vehicle after the owner gives up his or her legal claim out of a sense of frustration

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