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Jeff Sessions and the Thuggery of Asset Forfeiture

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One of the unfortunate features of Washington is that people often wind up in places that bring out their worst behaviors.

The classic example is Jack Kemp, who did great work as a member of Congress to push a supply-side agenda of low marginal tax rates and less double taxation. Indeed, it's no exaggeration to say that the Reagan tax cuts were made possible by Kemp's yeoman efforts. But when President George H.W. Bush brought Kemp into his cabinet back in 1989, it wasn't to head up the Treasury Department. It was to be Secretary of Housing and Urban Development, a department that shouldn't even exist. And because Kemp was weak on spending issues, he predictably and unfortunately presided over an expansion of HUD's budget. If he was at Treasury, by contrast, he may have been able to stop Bush's disastrous read-my-lips tax deal.

Another example is that Republicans members of Congress from farm states generally favor small government. So if they wind up on committees that deal with overall fiscal issues, they usually are allies in the effort to restrain Leviathan. Unfortunately, they more often wind up on the Agriculture Committee, which means they accumulate power and expertise in the area where they are least likely to favor free markets and limited government. Their net effect is that they may still have a decent voting record, but their actual impact on public policy will be harmful. The same thing happens with Republicans who get on the transportation committees.

Today's example is Attorney General Jeff Sessions. When he was Chairman of the Senate Budget Committee, he was an ally in the fight against big government. He favored decentralization. He supported rolling back the welfare state. He favored entitlement reform. He supported tax cuts. He used his power and position to try to do the right thing. But when Trump asked Sessions to join his cabinet, it wasn't to head the Office of Management and Budget, a position that would have been a good fit. Instead, Trump picked him to be Attorney General, which is problematical because Sessions is an advocate of the failed War on Drugs. And he's also a supporter of "asset forfeiture," which occurs when governments steal money and property from citizens without convicting them of any crime. Or sometimes without even charging them with a crime.

I'm not joking. This happens with distressing regularity. It's called "policing for profit."

In poor nations, a corrupt cop will stop motorists to shake them down for pocket change. In the United States, we've legalized a bigger version of that sleazy behavior. George Will shared a reprehensible example last December.

The Sourovelises' son, who lived at home, was arrested for selling a small amount of drugs away from home. Soon there was a knock on their door by police who said, "We're here to take your house" and "You're going to be living on the street" and "We do this every day." The Sourovelises' doors were locked with screws and their utilities were cut off. They had paid off the mortgage on their \$350,000 home, making it a tempting target for policing for profit. Nationwide, proceeds from sales of seized property (homes, cars, etc.) go to the seizers. And under a federal program, state and local law enforcement can partner with federal authorities in forfeiture and reap up to 80 percent of the proceeds. This is called — more Orwellian newspeak — "equitable sharing." No crime had been committed in the Sourovelises' house, but the title of the case against them was "Commonwealth of Pennsylvania v. 12011 Ferndale Street." Somehow, a crime had been committed by the house. In civil forfeiture, it suffices that property is suspected of having been involved in a crime. Once seized, the property's owners bear the burden of proving their property's innocence.

The good news is that there's a growing desire to stop governments from stealing.

Indeed, Will points out that there was "a 2015 Senate Judiciary Committee hearing on forfeiture abuses."

Unfortunately, not everybody at the hearing agreed that it's wrong for governments to arbitrarily engage in theft.

...one senator said "taking and seizing and forfeiting, through a government judicial process, illegal gains from criminal enterprises is not wrong," and neither is law enforcement enriching itself from this. ...this senator asserted an unverifiable number: "Ninety-five percent" of forfeitures involve people who have "done nothing in their lives but sell dope." This senator said it should not be more difficult for "government to take money from a drug dealer than it is for a businessperson to defend themselves in a lawsuit." In seizing property suspected of involvement in a crime, government "should not have a burden of proof higher than in a normal civil case."

The Senator who made these statements was Jeff Sessions.

And, as George Will explains, the then-Senator missed a few points.

In civil forfeiture there usually is no proper "judicial process." There is no way of knowing how many forfeitures involve criminals because the government takes property without even charging anyone with a crime. The government's vast prosecutorial resources are one reason it properly bears the burden of proving criminal culpability "beyond a reasonable doubt." A sued businessperson does not have assets taken until he or she has lost in a trial, whereas civil

forfeiture takes property without a trial and the property owner must wage a protracted, complex, and expensive fight to get it returned.

The *Wall Street Journal* also opined about the new Attorney General's indefensible position.

The all-too-common practice allows law enforcement to take private property without due process and has become a cash cow for state and local police and prosecutors. ...Assets are often seized—and never returned—without any judicial process or court supervision. Unlike criminal forfeiture, civil forfeiture doesn't require a criminal conviction or even charges. According to the Virginia-based Institute for Justice, which tracks forfeitures, 13% of all forfeitures done by the Justice Department between 1997 and 2013 were in criminal cases while 87% were civil forfeitures. And 88% of those forfeitures were done by an administrative agency, not a court. ...The lack of procedural protection coupled with financial incentives has turned policing for profit into a slush fund for governments hungry for cash, and the payouts too often come at the expense of civil liberties. We'd like to hear what Mr. Sessions thinks of the practice today.

Sadly, it doesn't appear that President Trump is on the right side either.

In a new column on the topic, George Will addresses this unfortunate development.

There is no reason for the sheriffs to want to reform a racket that lines their pockets. For the rest of us, strengthening the rule of law and eliminating moral hazard are each sufficient reasons. Civil forfeiture is the power to seize property suspected of being produced by, or involved in, crime. If property is suspected of being involved in criminal activity, law enforcement can seize it. Once seized, the property's owners bear the burden of proving that they were not involved in such activity, which can be a costly and protracted procedure. So, civil forfeiture proceeds on the guilty-until-proven-innocent principle. Civil forfeiture forces property owners, often people of modest means, to hire lawyers and do battle against a government with unlimited resources. And here is why the sheriffs probably purred contentedly when Trump endorsed civil forfeiture law — if something so devoid of due process can be dignified as law: Predatory law enforcement agencies can pocket the proceeds from the sale of property they seize.

The folks at Reason have a new video on Trump's support for theft-by-government.

By the way, I hold out some hope that Trump may not be completely bad on the issue. It's possible that he's never considered the issue and doesn't understand that it involves over-the-top government thuggery. He may simply think it's some sort of procedural issue involving good cops against bad crooks.

So perhaps when he is briefed on what the issue really means, he'll be in favor of protecting Americans from the kind of horrible abuse that the Dehko family experienced. Or the mistreatment of Carole Hinders. Or the ransacking of Joseph Rivers. Or the brutalization of Thomas Williams.

I could continue, but I think you get the point.

Let's close, though, with some good news. I wrote two years ago about the case of Charles Clarke, who had \$11,000 that was stolen by government. Thanks to the Institute for Justice, that stolen money has been returned.

Charles Clarke, the college student who was robbed of \$11,000 in cash by cops at the Cincinnati/Northern Kentucky International Airport two years ago, will get his money back with interest under an agreement he reached with the Justice Department this week. ... To keep the money, the government theoretically had to show that it more likely than not came from selling drugs or was intended to buy them. But that burden applied only if Clarke had the means to challenge the forfeiture once the government had taken his savings. Innocent owners often find that standing up for their rights costs more than the value of the property they are trying to get back. Luckily for Clarke, he had the Institute for Justice in his corner.

And the other bit of good news is that New Mexico has curtailed the disgusting practice of asset forfeiture. Hopefully Trump won't try to destroy the careers of the lawmakers who decided the Constitution was more important than lining the pockets of the bureaucracy.

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