The Voluntaryist

Whole Number 72 *"If one takes care of the means, the end will take care of itself."* **February 1995**

"Sweat Them At Law With Their Own Money": Forfeitures and Taxes in American History

By Carl Watner

Not only voluntaryists, but people from across the political spectrum are objecting to the current wave of seizures, forfeitures, and attacks on private property. Stemming from the passage of the RICO legislation of the early 1970s and the inception of "America's longest war" - the war on drugs - these confiscations are only the latest manifestation of a power the government has had since the adoption of the federal Constitution. There is absolutely no difference in principle between passing a law that authorizes the forfeiture of a prohibited drug, a law that authorizes forfeiture of merchandise on which the excise duty has not been paid, or a law which empowers the Internal Revenue Service to seize one's property and auction it off to satisfy unpaid back taxes. All such laws are based on the premise that the government may take property without the owner's consent.

One of the first acts of Congress in 1789 was to enact revenue laws for the collection of customs and excise duties. Modeled after the Navigation Laws of England, these new American laws contained the same types of enforcement features that were found in the century-old acts of Parliament, against which the American revolutionists rebelled. As J. B. Thayer put it, "The Revolution came, and then what happened? Simply this, we cut the cord that tied us to Great Britain, and there was no longer an external sovereign. Our conception was that 'the people' took his place. [S]o far as existing institutions were left untouched, they were construed by translating the name and style of the English sovereign into that of our new rulers - ourselves, the People." Although the King's armies were defeated in 1781, the essence of government in America remained the same. For example, the Virginia Constitution of 1776 contained a provision that "All escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the legislature may abolish or otherwise provide for."

Changing the locus of sovereignty from the English monarch to the people of each American state in no way altered the exploitative nature of the institution that had been ruling them. The English Crown, both in Great Britain and its colonies, had a long history of turning every contingency into a source of revenue. "Forfeitures appealed to the English Crown because forfeited estates of attainted traitors and felons added substantially to the Crown domain and because statutory forfeitures were the principal means of tax enforcement." Seizures provided a steady source of income, and were never questioned as being a violation of constitutional rights. By the time of the American Revolution, forfeiture, seizure, and condemnation procedures were enshrined by ancient custom and statute in England and its North American colonies.

English legislation regulating both coastal and foreign trade, as well as the establishment of a government board to collect customs duties, can be found as far back as 1381, when the first Navigation Act was passed during the reign of Richard II. A trade act enacted in the early 1540s, under the reign of Henry VIII, provided for the forfeiture of goods carried in English owned vessels that carried foreign shipmasters. Under an act of Parliament passed in 1564, the activities of informers were encouraged by allowing them a share of penalties. During the Commonwealth period in 1649 and 1651, a new series of Navigation Acts was approved by Parliament. The Act of 1651 "proclaimed the doctrine that merchandise should be brought directly from the country of production or from the port where usually first shipped, and announced that goods must be carried either in ships of the country of origin or of usual first shipment or in English ships." Other than empowering the Admiralty to seize violators, the Act relied upon informers, who were promised one-third of the value of the offending ship and cargo. At least forty or more vessels were seized and forfeited under the terms of this Act. Subsequent legislation in 1660, provided that "the carrying of trade between ports in the British Empire" be limited to "English ships." All merchants and factors doing business in the British colonies were required to be bona-fide British subjects. "The penalty was forfeiture of all their goods." This act further provided that no sugar, tobacco, cottonwood, indigo, or ginger be carried from the colonies to England other than under pain of forfeiture. An office of "Survey, Collector and Receiver of the Moneys and Forfeitures Payable by the Act" was also created at the same time. If the master of the ship failed to make a complete and accurate accounting of his cargo, both the ship and its lading

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George Washington and the Whiskey Tax

By Forrest Carter
From Chapter 3,
THE EDUCATION OF LITTLE TREE, 1976.

But where we run into real trouble was over George Washington. To understand what it meant to Granpa, you have to know something of the background.

Granpa had all the natural enemies of a mountain man. Add on to that he was poor without saying and more Indian than not. I suppose today, the enemies would be called "the establishment," but to Granpa, whether sheriff, state or federal revenue agent, or politician of any stripe, he called them "the law," meaning powerful monsters who had no regard for how folks had to live and get by.

Granpa said he was a "man, full-growed and standing before he knowed it was agin' the law to make whiskey." He said he had a cousin who never did know, and went to his grave-mound not knowing. He said his cousin always suspicioned that the law had it in for him because he didn't vote "right"; but he never could figure exactly which was the right way to vote. ... Granpa laid his death at the door of the politicians, who, he said,were responsible for just about all the killings in history if you could check up on it.

In reading the old history book in later years, I discovered that Granma had skipped the chapters about George Washington fighting the Indians, and I know that she had read only the good about George Washington to give Granpa someone to look to and admire. He had no regard whatsoever for Andrew Jackson and, as I say, nobody else in politics that I can call to mind.

After listening to Granma's readings, Granpa began to refer to George Washington in many of his comments...holding him out as the big hope that there *could* be a good man in politics.

Until Granma tripped up and read about the whiskey tax.

She read where George Washington was going to put a tax on whiskey-makers and decide who could make whiskey and who couldn't. She read where Mr. Thomas Jefferson told George Washington that it was the wrong thing to do; that poor mountain farmers didn't have nothing but little hillside patches, and couldn't raise much corn like the big landowners in the flatlands did. She read where Mr. Jefferson warned that the only way the mountain folk had of realizing a profit from their corn was to make it into whiskey, and that it had caused trouble in Ireland and Scotland (as a matter of fact that's where Scotch whiskey got its burnt taste from fellers having to run from the King's men and leaving their pots to scorch). But George Washington wouldn't listen, and he put on the whiskey tax. ...

Granpa spoke again, but his tone didn't hold much hope, "Do ye know if General Washington ever got a lick on the head—I mean in all them battles maybe a rifle ball hit him on the side of the head?"...

Granpa said he figured George Washington took a lick on the head some way or other in all his fighting, which accounted for an action like the whiskey tax. He said he had an uncle once that was kicked in the head by a mule and never was quite right after that.... ▽

Sweat Them At Law

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were subject to seizure. The English courts construed these statutes so that the act of an individual seaman, undertaken without the knowledge of the master or owner, could cause the forfeiture of an entire ship. The Acts were written so that the burden of proof was upon the owner or claimant to show that the seizure was illegal, rather than requiring the Admiralty or Collector of Customs to defend their actions.

"Stealing the King's customs," otherwise known as smuggling, soon became common. Evasion often took place by entering port secretly at night or falsifying information relative to ownership of the cargo, "so that when His Majesty's officers came to collect the duty," there would be no valuables on which to levy it. Even churches were used upon occasion to conceal smuggled goods, and the clergy did not seem to have been unduly concerned about such crimes. "Proceedings for the violation of the Navigation Acts or customs laws could be brought either against the smuggler or against the offending ship and its illegal cargo," by actions "in personam" against the person involved or "in rem" against the thing concerned. Since ancient times, the court of the Exchequer had used the "in rem" action to give the King title to treasure-trove and wrecks, since many times there was no obvious owner against whom suit could be brought. "The same technique proved valuable in seizures because the authorities could more often lay their hands upon smuggled merchandise than upon the smugglers themselves. Once the smuggled goods

were seized, they were then appraised as to value, and two proclamations issued. The first "called upon those interested in the goods to show cause why they should not remain forfeit, and the other invited bidders to make an offer of more than the appraised value." One half of the successful bid was to be paid to the Exchequer, while the other half went to the officer making the seizure.

Similar procedures were used to regulate prices, manufacturing, trade, shipping, and real estate in colonial America. The very first set of price control measures issued in any English-speaking colony (Virginia in 1623) included a forfeiture and confiscation feature: "Upon paine of forfeiture and confiscation of all such money and Tobacco received or due for commodities so sold (contrary to the aforesaid orders) the one half to the informer, the other half to the State." The buyer of price-controlled goods was required to report his purchases to the Governor or Counsel of State within ten days. For failure to do so "the said buyer shall forfeit the value of said goods, the one half to the informer, and the other half to the State." When a public market was established in Boston in 1696 (requiring that certain goods be traded only in the City's market area), the lawmakers provided that those violating the laws of public market be subject to forfeiture of their goods, and that informers be paid rewards. A typical law provided that any "fish, beef, or pork packed and sold without a Gager's [official inspector] mark shall be forfeited by the seller, the one half to the informer and the other half to the country." J. R. T. Hughes in his analysis of SOCIAL CONTROL IN THE COLONIAL ECONOMY pointed out that ever since the beginning of British colonization of North America, real estate - whether feudal holdings under British rule, or absolute fee simple title under state governments - has always been subject to "the authority of our various political units to seize it and sell it for taxes."

Beginning in the year 1764, the English government decided that the century-old navigation system should be used for the sake of revenue and political exploitation. During the French and Indian Wars (1755-1763), Parliament had enacted a number of "trading with the enemy" acts, which were enforced by the British Navy. As Oliver Dickerson noted in THE NAVIGATION ACTS AND THE AMERICAN REVOLUTION, with the coming of peace, the British navy became more of a menace than any foreign enemy, such as France or Spain. It "continued in its wartime job of policing British commerce. As the crews received one half the net proceeds of all seizures, it was profitable for them to seize colonial ships on purely technical grounds. Trials were in admiralty courts, the burden of proof of innocence was upon the owner of the seized vessel. Costs were assessed against the owner even in cases of acquittal; the owner had to give a heavy bond before he could file a claim to his own vessel; and there was no practical way a naval officer in the colonies could be sued for wrongful seizures. ... Legislation after 1763 increased the technical grounds for seizure and opened up new opportunities for naval action against colonial shipping. Thus the warfare that was begun against France in 1756 was continued with varying degrees of vigor against British colonial commerce until the outbreaks of open hostilities" against the British in 1775.

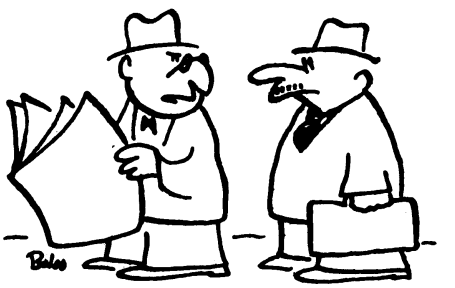
The Sugar Act of 1764 and the Stamp Act of 1765 marked the end of the period of salutary neglect in British North America. Although the Stamp Act was only in operation a little more than 4 months, and ultimately repealed in March 1766, its enforcement provisions duplicated those in the Sugar Act. Under the former, penalties for failure to purchase and display government tax stamps on legal and commercial documents, pamphlets, newspapers, almanacs, and playing cards, were to be assigned equally, in three parts, to the colonial governor, the informer, and to the Crown. Under the Sugar Act, if a seizure was made at sea, one-half the value went to the crew of the vessel making the seizure. Offenses under both acts were triable in newly established courts of admiralty. These and similar other provisions found in the Sugar Act and the Revenue Act of 1767 formed the basis for "the legal plundering of American commerce." These laws generally recited that a customs bond must be issued before any goods were loaded on board either a coastal or ocean-going vessel, that the penalty for failure to have such bonds and clearance papers was "confiscation of ship, tackle, stores, and cargo." Additionally there was a requirement that "all vessels had to carry cockets [manifests] listing in detail every cargo item on board. Penalty was forfeiture of the goods not included on the cockets." If a shipmaster entered port and broke bulk before receiving a permit to unload, then his ship was laid open to seizure. Any customs officer who reported the breach of these conditions was entitled to one third the value of all confiscations. "In the admiralty courts, goods or ships once seized were the property of the crown unless legally claimed by the owner. To maintain a claim the owner had to prove the innocence of goods or ship." Even if the admiralty court restored the cargo or ship to its original owner, generally the judges certified that custom officials had "probable cause" in making the seizure. This meant that the original owner had to pay all court costs, including the fee of the judges, and was barred from bringing any future damage suit against the custom officials in the civil courts.

> "The State and its minions have nothing of their own, want everything, and will do anything to get it."
>
> —Carl Watner

Two examples will serve to demonstrate the odious nature of these British practices. In Massachusetts in late 1767, the customs commissioners were "denounced [by the merchants] as robbers, miscreants, and 'bloodsuckers upon our trade'." John Hancock, future signer of the Declaration, and one of the leading businessmen in the colony, announced that "he would not let any custom officials board any of his ships." He followed through on his threat when, in April 1768, he refused to allow the commissioners to board his ship LYDIA. On June 10th, his sloop LIBERTY was seized and confiscated in Boston harbor after loading 20 barrels of tar and 200 barrels of oil without a license. In late October 1768, Hancock and his five partners were sued by the Attorney General of the colony for £9,000 each for allegedly aiding in the unloading of 100 pipes of wine on the night of May 9th, 1768, when the LIBERTY first entered Boston. The suit was brought under a provision of the Sugar Act that "any person in any way connected with or abetting the unloading, transporting, receiving, storing, or concealing uncustomed goods could be sued for triple the value of the goods allegedly landed." Finally in late March 1769, the suit was withdrawn for lack of evidence and political support in London. After the condemnation decree, the LIBERTY had been converted to a naval sloop, and was commanded by a zealous British navy captain, William Reid, who sailed the ship into the harbor at Newport, Rhode Island and began seizing merchant ships there. In mid-1769, members of the local populace "grounded, scuttled, and then burned the LIBERTY [now a customs sloop], to the ground."

Similar events took place in the Southern colonies. In March 1767, Daniel Moore was appointed Collector of Customs in Charleston, South Carolina. After seizing three inner-coastal ships belonging to Henry Laurens, one of the richest men in the southern colonies, Moore quickly acquired a reputation for rapaciousness, and promised the southern merchants that he would "sweat them at law with their own money." On May 24, 1768, Lauren's ship ANN arrived from Bristol, was properly entered at the customhouse, and began loading for the return journey. Moore claimed that Captain Fortner, Laurens' master of the ship, had failed to give bond prior to loading certain non-enumerated goods in violation of clause twenty-three of the Sugar Act. The ANN was seized by George Roupell, Moore's deputy. With her tackle, furnishings, and cargo, the ANN was probably worth in excess of £1,000 sterling. Laurens challenged the seizure, and the admiralty court judge decided that the ANN should be released back to her owners, but even then, Laurens was assessed two-thirds of court costs, as well as payment of the judge's fee. The seizure of the ANN received wide-spread notice in all the colonies. A writer in the PENNSYLVANIA JOURNAL summarized the American outlook. "Our property is not only taken from us without our consent, but when thus taken, is applied still further to oppress and ruin us. The swarms of watchers, tide waiters, spies, and other underlings [are] now known in every port in America, [and] infamous informers, like dogs of prey thirsting after the fortunes of worthy and wealthy men, are let loose and encouraged to seize" the property of these unlucky merchants.

Despite these pre-Revolutionary experiences with forfeitures and seizures, no objection to these procedures was registered in the Declaration of Independence. The closest remonstrance was against the King's imposition "of Taxes on us without our Consent." The rebellious colonists did not oppose the use of seizures and forfeitures, they only objected to their use against themselves. In fact, "three weeks after the Declaration of Independence, the Continental Congress proposed a law making all property of those siding with the King subject to seizure. During the early years of the Revolutionary War, virtually every state enacted laws confiscating the holdings of people loyal to the Crown." Traitors, enemy aliens, and other people guilty of the offense of "adhering to the enemy" were banished "and all their real and personal property confiscated." "Debts owed to British merchants were another target of the state legislatures." In Virginia, Maryland, and North Carolina money owed to enemy aliens or British merchants was sequestered and paid into the state treasuries. British creditors were not allowed to sue their American debtors in the local American courts. So far as is known, no American patriot took exception to these forfeitures, seizures, and sequestration schemes. Some 40 years after the Revolution, Chancellor James Kent noted that these procedures "had been the constant theme of complaints and obloquy in our political discussions for the fifteen years preceding the war," yet were unhesitatingly embraced by the legislative and judicial branches of the new country.



"The trouble with politicians is that they always put my money where their mouth is."

From a strictly constitutional point of view, what was the legal basis for forfeitures and seizures? Probably it was considered an inherent right of sovereignty, falling within the power of Congress to "lay and collect Taxes, Duties, Imposts and Excises." Whatever its source, it was not long before the first

Congress of the United States relied upon their use. The first meeting of Congress took place on March 4, 1789. On July 31, 1789, Congress passed legislation to "regulate the Collection of the Duties imposed by law on the tonnage of ship or vessels, and on goods, wares and merchandises imported into the United States" (Session 1, Chapter 5). Many portions of the law dealt with forfeitures and seizures. Section 12 provided that goods were to be forfeited if landed in the United States without a customs permit; Section 22 provided that goods entered, but not truly invoiced, should be forfeited; Section 24 empowered the Customs agents to search for and seize concealed goods; Section 25 authorized the conviction of any person concealing goods, who upon conviction shall forfeit such goods and pay a sum double the value of the goods so concealed; Section 37 provided that vessels and goods condemned by this act should be sold to the highest bidder at public auction; Section 38 determined that all forfeiture proceedings should be split between the United States Treasury, the informer(s), and customs collectors; and finally, Section 40 provided that all goods brought into the United States by land, contrary to this act, should be forfeited together with the carriages, horses, and oxen that shall be employed in conveying the same. This legislation formed the basis for subsequent laws, such as that of First Congress, Session III, Chapter 15, March 3, 1791 which sparked the Whiskey Rebellion (see THE VOLUNTARYIST, No. 68, June 1994, p. 6).

It is not known when the first official seizures and forfeiture of smuggled goods into the United States took place, but in the early 1800s court cases record legal challenges to government expropriation. However, since the money generated by customs revenues was probably the primary source of income to the federal government, it is not surprising that the federal courts upheld these laws under the justification of "guarding the revenue laws from abuse." One of the earliest court cases contesting a forfeiture proceeding was registered as "The United States v 1960 Bags of Coffee" (12 US 398). Agents of the Federal government had seized a large quantity of coffee imported in violation of the Non-intercourse Act of March 1, 1809. Justice Johnson of the Supreme Court noted that "the question rests on the wording of the act of Congress, by which it is expressly declared that the forfeiture shall take place upon the commission of the offense." Therefore, the government was entitled to the forfeited goods even though the importer had sold them to an innocent purchaser for valuable consideration.

Another early landmark case, involving the power of the government to seize a ship under the piracy acts of March 3, 1819, was heard before the Supreme Court in January 1827. In the case of "The Palmyra" (25 US 1) the use of the "in rem" action to impose a forfeiture was challenged. The owner of the ship contended that a forfeiture could not be imposed "in rem" until he had first been convicted in a criminal prosecution. The court held that no criminal conviction was necessary to sustain an "in rem" forfeiture. The proceeding against the thing forfeited stands wholly unaffected by any criminal proceeding "in personam" against its owner, and "no personal conviction of the offender [or owner] is necessary to enforce a forfeiture 'in rem' in cases of this nature." In upholding the difference between a civil forfeiture and a criminal one, the court laid out the ground work for all future civil or "in rem" government attacks on private property. All civil forfeitures begin with the arrest or seizure of the offending property. On the other hand, a criminal forfeiture cannot commence until the defendant has been convicted in a criminal proceeding.

"Power corrupts, and absolute power corrupts absolutely. Present company excepted, of course."

During the first half of the 19th Century there was little departure from the government's standard practice of enforcing the customs laws via "in rem" proceedings. However with the outbreak of the Civil War, Congress found a new way to apply forfeiture and seizure laws. The first Union confiscation law was passed on July 15, 1861 (Statutes At Large, XII, 319) and provided for the confiscation of property, including slaves actually employed in the aid of the insurrection. The second confiscation law, passed in mid-1862, was titled "An Act to Suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes" (Statutes at Large, XII, 589). It provided for seizure and forfeiture of two different categories of property. First, property belonging to "officers, whether civil, military, or naval of the Confederate government or any of the rebel states, and of citizens of loyal states giving aid or comfort to the rebellion" was declared seizable at once without qualification. Second, other people in any part of the United States who aided the rebellion were to be warned by

public proclamation, and given sixty days in which to return their allegiance to the federal government. If they failed to do so, their property was to be confiscated.

Something like this happened in the case of the Robert E. Lee estate, known as "Arlington," in northern Virginia. Soon after the first confiscation act in August 1861, Congress levied a direct tax upon real estate in the South. The tax was upheld by the Supreme Court as constitutional, even though no similar levy was made against property in the loyal states. The tax was only assessed and collected in those areas of the South controlled by the northern armies. Owners were only given one chance to pay the tax; should payment be missed, there was no grace period during which the property might be redeemed and saved from seizure and auction. Tax commissioners often required payment of the tax in person by the owner, an onerous burden for those owners behind the southern lines. Additionally, if valuable land was sold, any proceeds in excess of the tax due were forwarded to the U. S. Treasury, rather than being returned to the original owner. Many opponents of the direct tax described it simply as another form of forfeiture and confiscation.

In the case of the Lee property, a tax amounting to $92.07 was levied, and in September 1865, the whole estate was sold for its non-payment. The tax commissioners bid $ 26,800 on part of the estate for the federal government. (This parcel is now known as Arlington National Cemetery.) After the death of Mrs. Robert E. Lee, her son, G. W. P. C. Lee petitioned Congress, claiming he possessed valid title to the estate. He contested the validity of the tax sale which amounted to confiscation in his view. His mother had attempted to tender the tax through an agent, but the commissioners had refused to accept it. The Lee petition was buried in Congressional committee, and not heard of further. Mr. Lee then brought suit in federal court in Alexandria, Virginia, where his title was upheld. On appeal, the Supreme Court sustained the lower court decision, but not on the basis that such war-time tax sales were unconstitutional. Rather, the Court denounced the conduct of these particular tax commissioners, who had refused payment from Mrs. Lee's agent and required that the owner pay the tax in person. "In view of the decision, an appropriation became necessary to establish the title of the United States to Arlington Cemetery. The matter was finally settled by the payment of $150,000 as compensation to the Lee heirs, in return for which a release of all claims against the property was secured."

The Civil War is notable for greatly expanding taxation and the related enforcement powers of the federal government. "The first income tax measure ever put into operation by the federal government" was signed by President Lincoln on July 1, 1862. The tax was a lien upon any property owned by the taxpayer, "and, if not paid, the property could be taken and sold by the United States" (12 U S Statutes at Large, 474-75). George S. Boutwell, first commissioner of Internal Revenue, not only employed detectives to search out those wealthy individuals who refused to file or attempted to defraud the government, but also established the rule that informers might be rewarded. The first federal legislation authorizing the compulsory production of personal papers and records for tax enforcement purposes was passed on March 3, 1863 ("An Act to prevent and punish Frauds upon the Revenue," 12 Stat. 737), soon after the first federal income tax law. The law "authorized the search and seizure of a man's private papers, or the compulsory production of them, for the purpose of using them in evidence against him in a criminal case, or in a proceeding to enforce the forfeiture of his property." In other words, if the government alleged that an excise, duty, or income tax was due, or that property be forfeit, then the government's claim was to be upheld unless the defendant produced his books and records to prove otherwise.

International Forfeiture Alert!

The newest and most modern twist on asset forfeiture involves inter-governmental cooperation, often based upon Mutual Legal Assistance Treaties, which typically include a provision for "a splitting of forfeited assets between the signatories." THE FINANCIAL PRIVACY REPORT (Box 1277, Burnsville, MN 55337) of January 1994 reports that "The Swiss government recently seized and sent to the U.S. government - $22 million from the account of a convicted drug dealer. As part of the agreement, the Swiss received half of that money - $11 million — back."

The case of Boyd vs United States (116 US 616, 1886) is particularly interesting, not because it found such legislation unconstitutional, but because it shows that the original Constitution and Bill of Rights sanctioned the violation of private property and personal privacy. In the Boyd case, Justice Bradley pointed out that the 4th Amendment did not prohibit all searches and seizures, but only outlawed "unreasonable searches and seizures." In deciding the case against the government, Bradley noted that "the search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, was a totally different thing than a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him." What Bradley didn't say, was that it was the government itself, which was the judge of what was reasonable and unreasonable. Furthermore, as constitutional history has shown, his distinction is a distinction without a difference, because

courts today generally hold defendants in contempt if they do not produce their books and records for the Internal Revenue Service.

In making these admissions, Bradley demonstrated that the government has always had the power to seize goods forfeited for breach of the revenue laws. "[S]eizures have been authorized by our own revenue acts from the commencement of government. The first statute passed by Congress to regulate the collection of duties, the act of July 31, 1789, 1 Stat. 29, 43 contains provisions to this effect. As this act was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment." Bradley noted other exceptions to the 4th Amendment prohibition against "unreasonable search and seizures:"

> So, also the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures. So, also, the laws which provide for the search and seizure of articles and things which it is unlawful for a person to have in his possession for the purpose of issue or disposition, such as counterfeit coins, lottery tickets, implements of gambling, etc, are not within this category. Many other things of this character might be enumerated.

In closing his opinion, Bradley also objected to the government's attempt to make "in rem" forfeitures civil, rather than criminal. In his view this was reprehensible and impermissible because the claimants were deprived of their legal immunities and protections under the criminal laws of due process.

It is clear that, today, we are living with the legacy of not only the English Navigation Acts, but the Civil War Confiscation Acts, and the income tax law of 1862. Nearly every court case since the founding of the United States has upheld the right of the political sovereign to exercise its power - via forfeitures and seizures - over the lives and property of its citizens. The foundational precedents were set in the common law, and confirmed in the early federal courts. Cases from the last half of the 19th Century and early 20th Century merely set the tone for today's drug prohibition laws, and their accompanying forfeiture provisions. Cases such as the "United States vs Two Horses" (1878), the "United States vs Two Bay Mules, Etc." (1888), or the "United States vs One Black Horse, et. al." (1904), all reflect the federal government's power to seize animals and conveyances that were used to transport liquor on which no federal excise had been paid. Once this power was established, there was no difficulty in using it to confiscate motor cars, trucks, boats and airplanes used in the illegal transportation of untaxed or prohibited liquor or drugs.

> "Sweet is the name of Liberty; but the thing itself a value beyond all treasure. So much the more it behooves us to take care lest we, contenting ourselves with the name, lose and forego the thing."
>
> —Peter Wentworth, 1576.

It is hard to see any end in sight as the government attempts to expand the use of its forfeiture laws. "Once a property qualifies for forfeiture, almost any other property owned or possessed by the same person can fall into the forfeiture pot." As the government succeeds in casting its forfeiture nets, it would not be too implausible to imagine that all of Harvard University might be seized because some drug sale or drug manufacturing took place on campus. As Steven Duke and Albert Gross, authors of AMERICA'S LONGEST WAR, have written:

> Where will it end? Why not extend it [forfeitures] to income tax evasion and take the homes of the millions - some say as many as 30 million - who cheat on their taxes? The statutory basis for forfeiting homes and businesses of tax evaders is already in place. The Internal Revenue Code reads, "It shall be unlawful to have or possess any property intended for use in violating the provisions of the Internal Revenue Service Laws or which has been so used, and no property rights shall exist in any such property."[26 USC 7302] The provisions of this law could even be extended to the accountants and lawyers of income tax cheats.

If ever proof was needed of the voluntaryist assertion that governments don't create, protect, or enforce property rights, here it is. Coercive governments destroy and negate property rights. Or as Daniel Moore, the 18th Century customs man put it, "We'll sweat them at law with their own money!"

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Government Is An Unnecessary Evil

By Fred Woodworth

Human beings, when accustomed to taking responsibility for their own behavior, can cooperate on a basis of mutual trust and helpfulness.

No True Reform is Possible that Leaves Government Intact

Appeals to a government for redress of grievances, even when acted upon, only increase the supposed legitimacy of the government's acts, and add therefore to its amassed power.

Government Will Be Abolished When Its Subjects Cease to Grant It Legitimacy

Government cannot exist without the tacit consent of the populace. This consent is maintained by keeping the people in ignorance of their real power. Voting is not an expression of power, but an admission of powerlessness, since it cannot do otherwise than reaffirm the government's supposed legitimacy.

Every Person Must Have the Right to Make All Decisions about His or Her Own Life

All moralistic meddling in the private affairs of freely-acting persons is unjustified. Behavior which does not affect uninvolved persons is nobody's business but the participants'.

We Are Not Bound by Constitutions or Agreements Made by Our Ancestors

Any constitution, contract, or agreement that purports to bind unborn generations—or in fact anyone other than the actual parties to it—is a despicable falsehood and a presumptuous fraud. We are free agents liable only for such as we ourselves undertake.

All governments survive on theft and extortion, called taxation. All governments force their decrees on the people, and command obedience under threat of punishment.

The principal outrages of history have been committed by governments, while every advancement of thought, every betterment of the human condition, has come about through the practices of voluntary cooperation and individual initiative. The principle of government, which is force, is opposed to the free exercise of our ability to think, act and cooperate.

Government causes more harm than it stops; does not protect people from crime, but institutionalizes such forms as censorship and war. All governments constantly enlarge upon and extend their powers, at the cost of FREEDOM.

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