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# *Van Oster v. Kansas* and the Unconstitutionality of Civil Forfeiture

THOMAS SENST

## Introduction

In the 19<sup>th</sup> Century, Congress enacted the first civil forfeiture statutes in the Navigation Acts of 1817. Congress' intention was to create legislation that could be used to help fight piracy. Civil forfeiture allows law enforcement to seize property allegedly involved in a crime without having to charge the owner. Homes, cars, businesses, and more are all subject to civil forfeiture. Additionally, many of the forfeited proceeds are often granted to the agency that successfully seized the property; therefore, law enforcement profits from crime. In a recent study of 1,400 municipal and local law enforcement agencies, 40% have become dependent on asset forfeiture funds to pay for expenses (Worral, 2001).

The purpose of this paper is to illustrate the contradictory nature of civil forfeiture through a case analysis of *Van Oster v. Kansas* and compare the precedent established in this case to current civil forfeiture laws. This case has not received the proper attention that it deserves in civil forfeiture scholarly literature. *Van Oster* represents a case in which the Supreme Court upheld civil forfeiture, yet the internal logic of their justification suggests that civil forfeiture is unconstitutional.

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Additionally, this paper will conceptualize judicial dictions and opinions delivered by Justice Brandeis and Justice Holmes, who both served on the Supreme Court in the beginning of the twentieth century, to show that they imply civil forfeiture is unconstitutional.

Furthermore, there will be a section discussing the new development of the innocent owner defense as established under the Civil Asset Forfeiture Reform Act (CAFRA) of 2000. Congress enacted CAFRA to alleviate many of the problems existent in civil forfeiture, such as some of the problems that will arise in *Van Oster*. To highlight the contemporary relevance of *Van Oster*, this paper will compare it to CAFRA's mandated innocent owner defense. As will become clear in the paper, property can be seized despite an owner's guilt or innocence of a crime.

## Asset Forfeiture

Asset forfeiture is a legal power that allows law enforcement to seize property involved in the facilitation of a crime or to seize property that has been used to commit a crime (Cassella, 2013). Once the property is seized, law enforcement takes ownership of the property and can either reserve it or sell it, retaining any proceeds. Some of the funds are funneled directly back to the forfeiting agency, some funds are channeled into victim compensations funds, and others are placed in general funds on local, state, or federal levels. There are three forms of asset forfeiture: administrative forfeiture, criminal forfeiture, and civil forfeiture. Each variation has its own procedures and place within the justice system.

When an agency with proper authority establishes

probable cause that a piece of property is involved in a crime, that agency can place an administrative warrant on the property. The agency must then notify any potential claimants of the impending forfeiture. Claimants have a certain time to place a claim on the property. If no claimant challenges the forfeiture, the property is seized. However, should a person make a claim, the overseeing agency must either return the property or pursue a trial forfeiture<sup>1</sup> (Cassella, 2013). The agency can also choose to pursue a criminal and civil forfeiture concurrently.

In a criminal forfeiture, property is seized post-conviction of an offender (Leach & Malcolm, 1994). When an offender is indicted, any property the government is interested in seizing must be listed within the indictment. Upon conviction, the government forfeits the property listed in the indictment (Cassella, 2013). If any property is not specifically labeled in the indictment, it cannot be seized. Law enforcement used criminal forfeiture extensively during the 1970s as a tactic to fight organized crime. Specifically, law enforcement used it to seize drug proceeds. However, this tactic was highly ineffective. Often, the drug money would be dispersed into various bank accounts or altogether disappear by the time an offender could be convicted (Williams, 2006). Where procedural aspects fail in criminal forfeiture, civil forfeiture makes up for it, if at a constitutional price. Prior to 2000, there was no unifying civil forfeiture legislation. Instead, civil forfeiture powers derived from subsections of various pieces of legislation. A typical civil forfeiture case followed an establishment of probable cause that a piece of property was involved in a crime. Once probable cause was established, a law

enforcement agency had to file for a civil forfeiture warrant on the property, at which point, the agency took possession of the property (Cassella, 2013).

It is important to note that the agency which established probable cause does not have to be the same agency which placed the civil forfeiture warrant. If a state has strict civil forfeiture laws, state or local agencies can bypass those laws through adoptive forfeiture. State agencies render the case to the federal government which then proceeds with the forfeiture (Worrall, 2001). Known as equitable sharing, the federal government receives 20% of the funds from the forfeiture, and the state or local agency retains the remaining 80% of the forfeited proceeds (Moores, 2009).

Once a law enforcement agency has placed a civil forfeiture warrant on a piece of property, the property is physically seized until a trial takes place (Cassella, 2013). However, law enforcement agencies do not have to place a warrant on a piece of property to seize it through civil forfeiture. The relation-back doctrine is a power attached to civil forfeiture that grants property rights to the government once property has been involved in a crime (Worrall, 2001). Because of the relation-back doctrine, property can be seized after the establishment of probable cause.

Following the Civil Asset Forfeiture Reform Act of 2000, Congress weakened the relation-back doctrine (Leach & Malcolm, 1994). However, the basic premise of the relation-back doctrine is still largely in effect under the category of summary forfeitures. A summary forfeiture is a seizure of property by law enforcement that takes place on scene without a trial being

held (Worrall & Kovandzic, 2008). Typically, summary forfeitures are reserved for property that is illegal of itself, such as illegal weapons and illicit drugs. Defendants are not allowed to claim ownership to property that is illegal to own, which grants power to summary forfeitures (Worrall & Kovandzic, 2008). Some forms of property that are subject to civil forfeiture are also subject to summary forfeiture.

Civil forfeiture is an *in rem* proceeding opposed to *in persona* (Bourdreaux & Pritchard, 1996). In a civil forfeiture trial, a jury determines a piece of property guilty or innocent of a crime instead of a person. Property is not granted the same rights that defendants are. Additionally, civil forfeiture trials take place in civil court despite the property's seizure being in relation to a crime. Many constitutional rights and protections do not apply in civil forfeiture trials because of their classification as *in rem* and because civil forfeiture trials take place in civil courts.

### **A Brief History of Civil Asset Forfeiture Before *Van Oster v. Kansas* (1926)**

Civil forfeiture derives from an old English common law practice known as deodands (Finklestein, 1973). The English Crown heavily abused deodands (Bourdreaux & Pritchard, 1996), and after the United States gained its independence, the founders created asset forfeiture laws that were primarily used to fight piracy. Tracking down pirates was difficult during the 1700s and 1800s due to technological constraints; therefore, the government used asset forfeiture to seize stolen goods when the pirate could not be found (Bourdreaux & Pritchard, 1996).

There are three specific civil forfeiture cases that took place in the 1800s that are of note. First, in *The Palmyra v. United States* (1827), the Supreme Court of the United States declared that the innocence of an owner was not a mitigating factor in a civil forfeiture trial. The *Palmyra* was a ship whose captain engaged in piratical aggressions against the United States (*The Palmyra v. United States*, 1827). However, the owner of the ship was not on board of the vessel during the piratical act, nor was the owner aware of the captain's intentions to commit piracy. Despite the owner's innocence, the ship itself was involved in a crime and was seized regardless (*The Palmyra v. United States*, 1827).

The *Palmyra* had been seized based on archaic superstitions that were used to justify deodands in old English common law. Following English deodand law, if an object had the ability to move, it had the ability to commit a crime (Finklestein, 1973). For instance, if a vase were to fall on someone's head and kill that person, the vase would have been guilty of murder and could be forfeited to the Crown under the presumption that it was possessed by Satan (Finklestein, 1973). While these superstitions were not considered by the Supreme Court at the time of *The Palmyra*, it was still believed that if an object could move, it could commit a crime (*The Palmyra v. United States*, 1827).

Later, in *Dobbin's Distillery v. United States* (1877), the powers of civil forfeiture expanded from only personal property<sup>2</sup> to real<sup>3</sup> and personal property. Although real property was never explicitly labeled as a form of property that could be seized through civil forfeiture until the Comprehensive Drug Abuse Prevention and

Control Act of 1970 (Moore, 2009), the precedent established in this case granted law enforcement the power to seize real property much earlier. Real property can include a person's house and business and no limitations were placed on this power until *Austin v. United States* (1993), which prevented the government from seizing both a person's home and place of work in relation to a single, small drug violation.

Finally, in *Boyd v. United States* (1886), the Supreme Court declared civil forfeiture to be "quasi-criminal." This precedent created a legal limbo where civil forfeiture is neither civil or criminal, casting doubt as to where civil forfeiture belongs in the justice system. Civil forfeiture has two qualities, remedial and punitive (Cassella, 2013). The remedial aspect consists of funneling proceeds into law enforcement and victim compensation funds. The punitive fragment derives from punishing offenders who abuse their property and deterring others from using their property illegally (Jenson & Gerber, 1996).

Following these cases, there was an expansion of civil forfeiture powers during the 1920s after the passage of the National Prohibition Act of 1919. The act allowed the government to seize property used in the transportation, manufacturing, or selling of illicit liquor and alcohol. Congress repealed the National Prohibition Act with the Twenty-First Amendment. The National Prohibition Act was federal law at the time of *Van Oster v. Kansas* and the precedent established in this case has had disturbing consequences for contemporary civil forfeiture law.

### **Legal Analysis of *Van Oster v. Kansas* (1926)**

*Van Oster v. Kansas* is a widely overlooked civil forfeiture case. This can be attributed to the time at which it was decided. As stated, *Van Oster* took place during Prohibition, a fourteen-year span which outlawed the transportation, selling and distribution of alcohol and liquor under the National Prohibition Act of 1919 (Okrent, 2011).

Notably, the property forfeited in *Van Oster* was not seized under the National Prohibition Act, rather under a Kansas statute which mimicked federal Prohibition laws. This statute granted civil forfeiture powers to state and local law enforcement agencies. Although specific precedent regarding the Kansas statute became meaningless after the Twenty-First Amendment, precedent established in this case exemplifies a disturbing example of the abuse of civil forfeiture power.

The plaintiff in this case, Van Oster, purchased a car from a local car dealership. As stipulated in the deal, the car was left on retention by the dealership to be used for business purposes (*Van Oster v. Kansas*, 1926). Prohibition agents arrested an employee of the dealership, Clyde Brown, for allegedly being involved in a bootlegging operation for which Brown used the car to transport illegal liquors (*Van Oster v. Kansas*, 1926). A criminal court later acquitted Brown of the crime.

Following the acquittal of Brown, Van Oster appealed the forfeiture of her car. Of the numerous arguments presented by Van Oster, two are of importance. First, Van Oster claimed that the Kansas statute denied due process guaranteed under the Fourteenth Amendment. Second, and most importantly, Van Oster challenged

the seizure of her car based on the acquittal of Brown. Brown's acquittal proved no crime occurred, and, therefore, the forfeiture of the car was illegal (*Van Oster v. Kansas*, 1926).

The Supreme Court of the United States opposed Van Oster on both her arguments. The Court declared that procedures similar to ones in the Kansas statute regarding civil forfeiture had never been deemed to violate the due process clause of the Fifth Amendment and therefore could not violate the due process clause of the Fourteenth Amendment (*Van Oster v. Kansas*, 1926).

Prior to *Van Oster v. Kansas*, there had been many Fifth Amendment claims raised against civil forfeiture proceedings. In the three cases mentioned earlier in this paper, *The Palmyra v. United States* (1827), *Dobbin's Distillery v. United States* (1877), and *Boyd v. United States* (1886), plaintiffs raised Fifth Amendment arguments to appeal civil forfeiture. In a typical civil forfeiture case, law enforcement seizes property before a trial takes place. Therefore, owners are deprived of their property without proper legal process. In previous cases, the Fifth Amendment's due process clause failed as an appellate method because civil forfeiture cases are *in rem* proceedings. The rights of the owner are not taken into consideration in a civil forfeiture case.

By attempting to employ the Fourteenth Amendment to civil forfeiture, Van Oster was attempting a two-step assault on the constitutionality of civil forfeiture. First, the seizure of her car was under a Kansas state statute opposed to a federal statute. Before the ratification of the Fourteenth Amendment, constitutional amendments applied to federal law, not state law. However,

the Fourteenth Amendment's inclusion clause applied most constitutional amendments to state law. To apply the due process clause in the constitution, Van Oster first had to establish that the Kansas statute was subject to constitutional constraints.

Van Oster's second step of employing the Fourteenth Amendment's due process clause provided a chance for the Supreme Court to revisit the meaning of due process in relation to civil forfeiture. Again, due process precedent established under the Fifth Amendment stated that due process does not apply to property, or property owners, in a civil forfeiture trial. However, there had been no precedent regarding the Fourteenth Amendment's right of due process in relation to a civil forfeiture trial at this point. The Fourteenth Amendment could have acted as a catalyst to overturn nearly a century of precedent. Instead, the Supreme Court retained past precedent and stated that due process, even under the Fourteenth Amendment, does not act as a mitigating factor in a civil forfeiture trial.

Van Oster's second argument, the acquittal of Brown, proved no crime occurred. If no crime occurred, then there was no purpose for the forfeiture because, in a civil forfeiture trial, property is seized based on its relation to a crime. However, Van Oster's appeal was one of certiorari. Therefore, Van Oster had to base her argument on constitutional rights and restrictions. The Supreme Court stated that Van Oster failed to raise a constitutional argument as to why the acquittal of Brown showed cause for the reversal of the forfeiture and so the car was seized nonetheless. In other words, Van Oster failed to raise proper legal terminology, so her car was seized despite Brown's acquittal.

Brown's acquittal and the car's seizure represents a disconnect from the justice system and civil forfeiture. The standard of proof is vastly different in a criminal case opposed to a civil forfeiture trial. In a criminal trial, an offender can only be found guilty beyond a reasonable doubt. In a civil forfeiture case, property can be seized based on a preponderance of evidence, a lower burden of proof (Johnson, 2002).

The difference in these two levels of proof are paramount. The purpose for the different standards of proof derives from the perceptions of criminal court versus civil court. Criminal courts are designed to punish offenders whereas civil courts are designed to settle disputes between private parties. Moreover, civil forfeiture is not solely a punishment but it is also regarded as remedial (Cassella, 2013) (Stillman, 2013) (Bourdreaux & Pritchard, 1996). This is exemplified best by the "quasi-criminal" ruling of civil forfeiture delivered in *Boyd v. United States* (1886).

In *Van Oster's* case, law enforcement was essentially pursuing a criminal action and civil action against *Van Oster's* car at the same time. By pursuing both a criminal action and a civil action concurrently, the government attempted to punish or deprive property based off one potentially illegal action while using varying standards of proof. Beyond a reasonable doubt is a more difficult level of proof to obtain than a preponderance of evidence. Therefore, by using civil forfeiture, the government can almost ensure a favorable outcome at the end of the case.

Not only are the levels of proof between criminal trials and civil trials vastly different, civil forfeiture is unique

in that it is exempt from the exclusionary rule of the Fourth Amendment (Jenson & Gerber, 1996). Per the exclusionary rule, law enforcement is barred from using illegally obtained evidence in a trial. Additionally, law enforcement agencies are prohibited from using evidence gained after the establishment of probable cause (Jenson & Gerber, 1996). Civil forfeiture, which already has a lower standard of proof than a criminal court, can use illegally obtained evidence and post seizure evidence to establish probable cause.

Not to mention, in a civil forfeiture trial, the government does not have to prove that a crime happened, evidenced by *Van Oster's* precedent. To prove something beyond a reasonable doubt is the closest form of proof that a jury can confirm as to whether a crime occurred and whether a defendant is guilty. The acquittal of Brown casts doubt as to whether the crime occurred, and if the crime did occur, it casts doubt if Brown or the car was involved. If no crime occurred, or if the car was not involved in the crime, the forfeiture of the car is illegal. Consequently, by employing a lower standard of evidence in a civil forfeiture trial, the government is then able to seize property even if no crime was legally defined to have transpired. Precedent established in *Van Oster* grants the government power to seize property illegally when no crime has been defined to have occurred.

## Discussion

Using the precedent established in *Van Oster*, this section of the paper seeks to illustrate the unconstitutionality of civil forfeiture. Specifically, it will draw upon the earlier information established in this paper including an understanding of asset forfeiture, the three early cas-

es of civil forfeiture during the 1800s, and the precedent of *Van Oster*. Furthermore, this section will conceptualize and analyze statements from Justice Oliver Holmes and Justice Louis Brandeis, both of whom served on the Supreme Court of the United States during the early twentieth century. Although the Supreme Court upheld *Van Oster*, the logic presented by the court and by these justices suggests that *Van Oster* should have been overturned.

Civil forfeiture has a dual nature; it is concurrently remedial and punitive. Its remedial aspect derives from the allocation of proceeds to law enforcement and victim compensation funds to help prevent, fight, and cope with future crime. Civil forfeiture is punitive because it is designed to punish owners who use their property illegally, deter potential criminals from using their property illegally, and prevent criminals from profiting from crime (Cassella, 2013) (Jenson & Gerber, 1996).

In a decision delivered by the Supreme Court in *One Ford Coupe v. United States* (1926), the Supreme Court of the United States acknowledged that should something be deemed solely a punishment, it must be viewed as such under the law (*One Ford Coupe v. United States*, 1926). As an owner of property in a civil forfeiture case, there is no other possibility than punishment. In a civil forfeiture trial, if the property is found guilty, the owner is punished through the deprivation of their property. There is no chance for remedy for an owner. If the owner can only be punished, then in all asset forfeiture cases, the legal actor—which is the government—is always punishing the owner.

Punishment through civil forfeiture is unconstitutional.

Supreme Court Justice Oliver Wendell Holmes stated “statutes...are unconstitutional...[if] they punish the plaintiff with heavy fines and penalties...without defining the crime...of which he is guilty and without providing any criminal procedure or right guaranteed him by the Constitution of the United States...” (Holmes Paper Section 4 Sequence 17). Per Holmes’ criteria, civil forfeiture punishes owners unconstitutionally.

First, civil forfeiture punishes owners without defining a crime for which they are guilty, as evidenced by the precedent established in *Van Oster*. *Van Oster* was punished through the deprivation of her property despite Brown’s acquittal. Second, civil forfeiture punishes owners without providing proper criminal procedure. Civil forfeiture trials take place in civil court as opposed to criminal court. Correspondingly, the guilt and innocence of the owner does not act as a mitigating or aggravating factor in a civil forfeiture trial because the property is on trial, not the owner. Third, civil forfeiture punishes owners without providing proper constitutional protections, illustrated by the lack of due process rights guaranteed by the Fifth and Fourteenth Amendments. Therefore, per Justice Holmes’ requirements, civil forfeiture punishes owners unconstitutionally.

This aligns with what Justice Brandeis stated in another case: “courts of justice will not redress a wrong done by the defendant when he who seeks redress comes into court with unclean hands” (Brandeis Papers Reel 36 Frame 00590). Brandeis conveyed that if a person wished to receive compensation for a wrong in court, that person will not be compensated if that person has committed a wrong as well. Brandeis later stated the application of this rule is more persuasive if the ille-

gal actor is the government (Brandeis Papers Reel 36 Frame 00590).

In a civil forfeiture case, the government is compensated for a wrong, or a crime. Compensation is in the form of forfeitable assets. Again, per Holmes' constitutional requirement, this compensation is obtained through unconstitutional means. In effect, the government is compensated for a wrong while also committing a wrong. Following Brandeis, this should not be allowed by the courts. Again, to Brandeis, this becomes more persuasive when the illegal actor is the government. In all civil forfeiture cases, the legal actor is always the government, so if civil forfeiture is unconstitutional, the government is then always acting illegally when employing civil forfeiture.

Civil forfeiture is unconstitutional. It violates multiple Amendments, punishes owners without proper due process, and compensates the government for crime, causing the government to form a symbiotic relationship with crime. Contrarily, civil forfeiture cannot simply be removed from a practical standpoint. As stated before, many civil forfeiture proceeds are dispersed into law enforcement funds. During a study of 1,400 municipal and local police departments, 40% were found to be reliant on civil forfeiture funds (Worrall, 2001). To remove civil forfeiture would be to act irresponsibly and deprive these departments of the funds they need.

Equally important, civil forfeiture prevents criminals from profiting from crime. Although other forms of asset forfeiture also serve this purpose, none do so as effectively as civil forfeiture. In an administrative forfeiture case, once a claimant has challenged the forfei-

ture, the forfeiture must proceed to a trial forfeiture—either a criminal forfeiture or a civil forfeiture. During the 1970s, law enforcement attempted to employ criminal forfeiture to cripple organized crime by targeting drug proceeds. By the time a criminal trial was over, the money would be dispersed and was largely unobtainable.

*Boyd v. United States*' ruling of civil forfeiture as being “quasi-criminal” is the best definition of civil forfeiture. It is designed to punish, but it does so without following criminal procedure. Civil forfeiture has become so ingrained in the criminal justice system as a remedial tool, that to completely remove it would be irresponsible without a plan to subsidize it. The next section of the paper will discuss possible asset forfeiture solutions to civil forfeiture and if these solutions would have changed the outcome of *Van Oster*.

### **CAFRA's Innocent Owner Defense: A Proper Solution to *Van Oster*?**

This section of the paper will analyze contemporary civil forfeiture law in the context of *Van Oster*. Specifically, it will determine if the precedent established in *Van Oster* could exist under CAFRA's innocent owner defense. Despite the large time gap between *Van Oster* and CAFRA, it is imperative to analyze both together as Congress designed CAFRA to alleviate the internal inconsistencies of civil forfeiture and prevent precedent similar to *Van Oster* from recurring.

As stated earlier in this paper, the guilt or innocence of an owner does not act as a mitigating or aggravating factor in a civil forfeiture trial. Fortunately, after 2000, CAFRA enacted an innocent owner defense. However,

there are limits to this defense. The innocent owner defense is not constitutionally protected (Johnson, 2002). Lacking a constitutional backbone, the innocent owner defense has been interpreted differently in various state and federal circuits.

One definition of the innocent owner defense is as follows: should the conveyance of property be unlawful and should the property be used unknowingly to commit an illegal action, then the owner can be considered innocent (Johnson, 2002). The variables of conveyance and knowledge of the illegal act have been critical in formulating a working definition of the innocent owner defense. Some courts require that both the property be conveyed illegally and for the owner to be ignorant of the illegal use of his or her property for the innocent owner defense to work. Other courts require only one factor to be satisfied, and others still have more complicated definitions of when to employ the innocent owner defense.

To satisfy part of the innocent owner defense, the owner must be ignorant of the illegal usage of their property. It is important to note that not all courts treat this defense similarly. Some courts place more emphasis on the ignorance of the illegal usage than the illegal conveyance of property. However, many courts state that owners must be ignorant of their property being used illegally to ensure that the illegal usage of property was against the consent of the owner (Johnson, 2002). Asset forfeiture exists in part to punish owners who use their property illegally, so where the illegal usage of property is aligned with the consent of the owner, asset forfeiture is designed to punish that owner.

There is a third factor of the innocent owner defense which is whether the owner did all that was within reason to prevent the illegal usage of their property (Johnson, 2002). In some courts, this requirement is satisfied by an establishment of illegal conveyance of property or ignorance of an illegal action. If an owner has their property stolen, the owner can no longer enforce their will over the property. Additionally, if the owner is ignorant of potential wrongdoing, the owner may not reasonably be able to prevent the illegal usage.

Although this third factor is sometimes satisfied by an establishment of the first two factors, it can also be independent (Johnson, 2002). For example, if a person's car is stolen and is used to rob a bank, but the owner did not call the police to report a stolen vehicle, the reasonable action requirement may not be satisfied. In this case, the owner would have had to report the car stolen to law enforcement to fulfill the third requirement of the innocent owner defense. Similarly, if an owner of a car knows their car will be used to rob a bank and does not attempt to prevent the robbery, or alert authorities, this third requirement will not be satisfied.

The innocent owner defense is enforced differently by a state and circuit basis. Because there is no universal consensus on the innocent owner defense, it is important to analyze it under various conditions. First is a lenient viewpoint of the innocent owner defense, where if any one of the factors is satisfied, it will be enough to invoke the innocent owner defense. Second will be a moderate viewpoint where two of the factors must be satisfied. Lastly, will be a strict viewpoint where all three factors must be satisfied. For the sake of argument, it will be assumed that Brown did commit a crime.

First, Van Oster was ignorant of the intentions of Brown. Although the car was left on retention by the dealership, Van Oster was unaware exactly how Brown would use the car, and was unaware that the car would be used illegally. Therefore, Van Oster was ignorant of the illegal usage of her car and under the lenient definition, the innocent owner defense would have prevented Van Oster from losing her car.

Whether Van Oster did all that she could to prevent the illegal usage of her car depends on the definition of reasonable. Again, as a second factor, the owner must prove that she did everything reasonable to prevent the illegal usage of her car. If Van Oster was truly ignorant, there is not much she could have done to prevent the illegal usage of her car. However, it could be argued that Van Oster had a duty to constantly question the actions of Brown to ensure the car was not being used illegally as it was known that Brown would be using the car regularly. Therefore, depending on the definition of reasonable, Van Oster could have, or could not have employed the innocent owner defense under the moderate viewpoint.

Following the final factor, the conveyance of Van Oster's car was completely legal. Van Oster knew that Brown would be using her car. Under the strict definition of the innocent owner defense, Van Oster could not have employed the innocent owner defense.

## Conclusion

Precedent established in *Van Oster* represents a fundamental disconnect between the legal spirit of the Constitutional and its application. It is clear to see why an

innocent owner should not be deprived of property, especially when no crime has occurred. Unfortunately, the precedent still exists, even with the adoption of an innocent owner defense. Although civil forfeiture does not match up with the spiritual intent of the Constitution, it cannot be easily repealed or replaced because of law enforcement's dependency on it as a source of revenue and justice.

To replace civil forfeiture with either administrative forfeiture or criminal forfeiture would be irresponsible. Both procedures would be unable to satisfy the void left behind by the removal of civil forfeiture. However, to leave civil forfeiture intact without reform would be to rob innocent owners of their property.

The most comprehensive attempt at civil asset forfeiture reform under CAFRA was not enough to prevent abuses by law enforcement. Issues intrinsic in civil forfeiture do not stem purely from procedural or constitutional inconsistencies, but also from larger social and political contexts. There was a large spike of civil forfeiture usage following the War on Drugs which not only created many new drug related crimes, but also restricted police funding. It is not the fault of police departments that abuse civil forfeiture, but the larger social issue of over criminalization and underfunding. To solve the civil forfeiture debate, civil forfeiture must be conceptualized as a symptom of a much larger illness.

## Notes

1. Trial Forfeiture – is either a civil forfeiture or a criminal forfeiture. An administrative forfeiture is not a trial forfeiture because no trial takes place when or after the property is seized.

2. Personal Property – A form of property that can be easily moved. Typically, it refers to smaller items but can include cars or ships, as in the case of The Palmyra.

3. Real Property – Property that cannot be easily moved: it is usually something tethered to the land or the land itself.

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## About the Author

Thomas Senst is a graduating senior majoring in Criminal Justice. He began this research project in a directed study with Dr. Jamie Huff (Criminal Justice) in the spring of 2016. He continued his research after being awarded the Adrian Tinsley Summer Research Grant, and presented it at the 2016 Midwestern Criminal Justice Association annual meeting in Chicago. Thomas continued this project as an Honors Thesis.