# Felons' Effects and the Effects of Felony in Nineteenth-Century England

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On May 17, 1853, a court sentenced Francis Prout of East Stonehouse, Devon, to six months' hard labor for receiving £1 15s. in stolen money.[1] Prout's "lodger," a Mary Ann Foss, had stood charged with the theft at the local quarter sessions, but during her trial she denounced Prout as a brothel keeper who profited from crimes committed in his house. With no real warning, Prout found himself tried and convicted. An even more alarming surprise followed a few days later, when the local authorities decided to pursue Prout's property. They invoked the ancient practice by which felons forfeited their possessions, claiming not just Prout's moveable goods, as was common, but also his ninety-nine-year leases on two local pubs and the profits from his freehold on a pub and houses in Plymouth. The latter constituted an unusual decision, in part because the inquisition necessary to seize the property would cost about £150, and in this case no interested party stepped forward to pay the fees. But as the chairman of the quarter sessions argued, Prout's property was "chiefly acquired by the wages of prostitution." Underneath his talk of "fallen women" and "unfortunate creatures" lay a very modern concern

1. For what follows, see especially the documents gathered in The National Archives: Public Record Office (hereafter PRO), TS 25/771 and also TS 5/42; HO 18/360/1; and C 205/16/14.

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with the illicit proceeds of criminal activity. In such a case, the chairman opined, the property in question should be forfeit.

Treasury officials ordered Prout's tenants to pay their rents to the Crown while they set about the procedures necessary to relieve the offender of his assets. On hearing this, Prout's wife, Susan, and much of the community of East Stonehouse mounted a forceful challenge. A group of fifty-nine men, including churchwardens, merchants, and tradesmen of all descriptions, sent a memorial protesting the government's action. In an awkward circumlocution, they admitted "that the house which was kept by the said F. Prout is one of that description of which unfortunately there are many in every seaport town." Nonetheless, they insisted "that he is not a man who would countenance or be a part to a robbery or harbour or encourage thieves." Their chief argument for his innocence lay precisely in Prout having property to forfeit. A guilty man would have transferred title prior to his trial, they argued, and "his not having done so, as is usual in similar cases, is in itself a circumstance which weighs deeply with your memorialists, in proof of his innocence." They said, furthermore, that even if Prout was guilty, his sentence to six months of hard labor amply satisfied the need for punishment. Finally, they noted that Prout's wife, widowed mother-in-law, and four children— "innocent and unoffending parties"— would suffer unjustly: "Absolute ruin must come upon them all."[2]

Prout's wife took over from there—and took a rather different tack. She, too, made some noises about her husband's innocence, but she focused on her own rights to "her" property. True, she acknowledged, none of the property was legally her own. But in any way that mattered, it was morally hers, derived from her labor, her savings, and her family's gifts. She maintained that she and Francis had acquired the property with her income from service as a cook prior to marriage and as a laundress in their first years together, and money was provided by her mother when she came to live with them. In contrast, Francis had had no real savings from his work as a blacksmith's apprentice at the Royal Dockyard before their marriage. Since then he had wisely invested and increased their assets, but all based on her initial contributions and with her continued assistance over the more than twenty years they had been together. She gathered witnesses and affidavits to prove her story; in the words of the local tailor, Susan Prout was "always thought by me and others to be a woman who had property and . . . she was one of the most saving, industrious, and frugal women I ever knew, and very honest."[3] In the end, the Treasury officials chose to press the Crown's claims to Prout's property, despite the expense, because

2. PRO, T 25/771, 6–7.
3. PRO, T 25/771, 12–13.

of its implication in illegal activities. But they also decided to give the proceeds to Prout's wife. Although Susan Prout's claim had no legal merit, the Board deemed her a fit object of pity (hardly her own portrayal!) and settled the property that remained after expenses upon trustees for her benefit.

The Prouts' case nicely illustrates some of the ways in which the ancient practice of felony forfeiture adapted to nineteenth-century needs. It also illustrates some of the complexities forfeiture encountered in an age with cultures of punishment and property that differed so dramatically from those of earlier years. The nineteenth century, of course, witnessed important and interrelated changes in the detection, prosecution, and punishment of crime. Reformers sought certain and uniform disciplinary measures. A system reliant upon the deterrence supposedly afforded by publicly inflicted death and with discretion as its hallmark disappeared over the course of the nineteenth century. Even though capital punishment continued behind closed doors for almost another hundred years, the end of public executions in 1868 is widely seen as having marked the end of an era. Many scholars have addressed the questions of how and why this shift in penal culture came about, and the degree to which economic and political changes shaped it.[4] The forfeiture of felons' property has thus far received little notice, however, even though it too continued through these years and ended shortly after the demise of public hanging.

Until 1814, individuals convicted of felony risked losing their lands and goods. Thereafter, only those guilty of murder, treason, or petty treason stood to lose real estate, but forfeiture of goods and chattels remained a

4. The literature on this topic is voluminous, especially for the earlier eighteenth-century developments, but see, in particular, J. M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford: Oxford University Press, 1986); David Philips, *Crime and Authority in Victorian England: The Black Country, 1835–1860* (London: Croom Helm, 1977); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750–1950* (London: Macmillan, 1978); David Sugarman and G. R. Rubin, ed., *Law, Economy, and Society, 1750–1914: Essays in the History of English Law* (Abingdon: Professional, 1984); Martin J. Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830–1914* (Cambridge: Cambridge University Press, 1990); V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford: Oxford University Press, 1994); Clive Emsley, *Crime and Society in England, 1750–1900*, 2nd ed. (London: Longman, 1996); and David Bentley, *English Criminal Justice in the Nineteenth Century* (London: Hambledon, 1998). For the Whig classic against which many of these works situate themselves, but that remains an essential reference on matters of fact, see Leon Radzinowicz, *A History of English Criminal Law*, 4 vols. (London: Stevens, 1948–86). For two particularly influential works of theory, see Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon, 1978), and David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1990).

legal consequence of most felony convictions through to 1870. One might ask why felony forfeiture persisted so long. Embedded in the very origins of the common law, part and parcel of feudal property relations, this practice adapted to survive into a century with vastly different conceptions of property and a vastly different penal culture. How so? What functions did it serve in the nineteenth century? Or, one might flip the question to focus on the reasons for its demise: Why did this ancient practice disappear, and why then? State-sanctioned spectacles of physical suffering have understandably dominated scholars' attentions, but the many acts of dispossession imposed upon felons also merit notice, both for their own sake and for what they may tell us of the broader nineteenth-century shift in penal culture. Furthermore, forfeiture is a punishment on the rebound, being reinvigorated in various common law jurisdictions over recent decades.[5] Although the modern variant has thus far focused more on "guilty property" rather than guilty persons—drawing upon civil rather than criminal law traditions—knowing more about the demise of the one may allow better informed responses to the revival of the other. Accordingly, I shall examine felony forfeiture, the debates it engendered, and the uses it served in the years preceding its disappearance.

The first section briefly traces the early history of the practice before turning to its nineteenth-century defenders and critics; the former saw forfeiture as something more than just an ancient relic, but the latter denied its depiction as either a just or effective deterrent. The middle portion uses records of forfeiture's operation to document features of this long-overlooked aspect of penal history, more particularly to demonstrate how officials tried to adapt it to the difficulties posed by broader changes in the cultures of punishment and property. That felons now frequently survived their sentences, for example, introduced complications but also allowed officials to try using forfeiture as a discretionary tool for the moral reformation of offenders. The final section returns to the debates

5. A significant body of literature on modern forfeiture law exists; see, for example, Paul Schiff Berman, "An Anthropological Approach to Modern Forfeiture Law: The Symbolic Function of Legal Actions Against Objects," *Yale Journal of Law and the Humanities* 2 (1999): 1–45; Amy D. Ronner, "Husband and Wife are One—Him: *Bennis v. Michigan* as the Resurrection of Coverture," *Michigan Journal of Gender and Law* 4 (1996–1997): 129–69 (my thanks to Tim Stretton for this reference); and Leonard W. Levy, *A License to Steal: The Forfeiture of Property* (Chapel Hill: University of North Carolina Press, 1996). Civil forfeiture rests in part on the tradition of the deodand. For its history, see Elizabeth Cawthon, "New Life for the Deodand: Coroners' Inquests and Occupational Deaths in England, 1830–1846," *American Journal of Legal History* 33 (1989): 137–47; Teresa Sutton, "The Deodand and Responsibility for Death," *Journal of Legal History* 18 (1997): 44–55; Teresa Sutton, "The Nature of the Early Law of Deodand," *Cambrian Law Review* 9 (1999): 9–20.

about forfeiture to show how these difficulties ultimately led to the demise of this ancient sanction. Reformers successfully characterized forfeiture as posing dangerously inconsistent and indefensible threats to property without any promise of deterrence.

## Ancient Relic or Effective Deterrent?

At least as long as "felony" had existed in England, so too had forfeiture. Medieval law held that felons lost all goods and chattels to the king and their lands to their lords. Guilty of an especially serious subset of felony, traitors forfeited all real and personal property to the sovereign alone. Felons violated their bonds of fidelity to their feudal superiors, and as a consequence forfeited their possessions. The notion that an offender's blood had become corrupt, and thus not heritable, explained the loss of lands: The corruption of felons' blood meant that they died without heirs, and so their land escheated to their lords by right. Lords and corporations often profited as well from royal grants of the right to collect the chattels of felons. The financial and political proceeds of justice could be significant.[6]

Over the years, critics found many things to dislike about felony forfeiture. Medieval petitioners cited abuses by rapacious officials who skimmed profits or even indicted the innocent in hopes of personal gain. Early modern writers reiterated such concerns and added to them complaints about the hardships forfeiture imposed on the innocent, be they the creditors or kin of the condemned. Conversely, defenders of forfeiture came to use those same effects on the innocent to justify the practice as a valuable deterrent: Potential (male) felons not fearing their own deaths might forebear from crime out of concern for the well-being of their wives and children. Even as criticisms of the practice changed, so too did defences.[7]

Over the seventeenth and eighteenth centuries, critics grew more adamant that forfeiture imposed not just hardship but also an active injustice upon the dependants of an offender. Some talked of forfeiture depriving heirs of their "natural right" to inherit, or at least insisted that guilt was a purely individual quality that ought not to redound upon the family of a felon. Such opinions were successfully countered for a time by the

6. See K. J. Kesselring, "Felony Forfeiture in England, c.1170–1870," (forthcoming in the *Journal of Legal History*). For a nineteenth-century discussion of the law relating to forfeiture, see "Felony and its Incidents," *Law Magazine and Quarterly Review of Jurisprudence* 18 (1837): 357–69.

7. Kesselring, "Felony Forfeiture."

sorts of arguments Charles Yorke expressed in his 1745 essay on forfeiture, a work one memorialist later called "one of the best legal treatises of our language."[8] For Yorke and those who echoed him, property was a creature and creation of civil society; as such, society could establish rules governing its possession and transmission in ways that best suited its interests. William Eden expressed some reservations about forfeiture in 1771 but, drawing upon Yorke, ultimately decided that "it is neither unjust nor unwise to convert human partialities to the promotion of human happiness." It might even prove a more effective deterrent than capital punishment: "The mere execution of the criminal is a fleeing example; but the forfeiture of lands leaves a permanent impression."[9]

At much the same time as Eden's influential work appeared, however, Cesare Beccaria's critique of existing penal practices, including confiscation, was working its way around an English readership.[10] Jeremy Bentham, too, offered a scathing condemnation. In one sense, his logic resembled Yorke's—he also argued that property was a gift not of God but of the state. His arguments focused less on the rights or wrongs of property or the injustice to the family, however, and more so on expediency and utility in deterring crime. According to him, forfeiture was a "mis-seated" punishment, a "transitive" penalty that legislators expressly inflicted upon people connected to the offender rather than on the offender alone. In his customary fashion, Bentham noted that since "the end of punishment is to restrain a man from delinquency" one must ask "whether it be an advantageous way of endeavoring at this, to punish … his wife, his children, or other descendants; that is, with a direct intention to make them sufferers." If it did work in this way, then property "rights" were irrelevant, but he considered it highly unlikely that forfeiture did deter in this

8. For one expression of the view that forfeiture violated a natural right of inheritance, see *The Beauties of the British Senate: Taken from the Debates of the Lord and Commons Taken from the Beginning of the Administration of Sir Robert Walpole*, 2 vols. (London, 1786), 242. For Yorke, see his *Considerations on the Law of Forfeiture, for High Treason* (London, 1745) and "Life of the Honorable Charles Yorke," *Law Magazine and Quarterly Review of Jurisprudence* 30 (1843): 63. On shifting conceptions of property and property rights in these years, see G. R. Rubin and David Sugarman, who argue that the "much vaunted rise of absolute private property" discussed by C. B. Macpherson and others coexisted with qualified notions of property in ways that made the conception of property more flexible, subtle, and complex from the seventeenth century onward. G. R. Rubin and David Sugarman, "Introduction: Towards a New History of Law and Material Society in England, 1750–1914," in *Law, Economy and Society*, ed. G. R. Rubin and David Sugarman (Oxford: Professional, 1984), 31–41.

9. William Eden, *Principles of Penal Law*, 3rd ed. (Dublin, 1772), 37–38, 48, 249–50.

10. Cesare Beccaria, *On Crimes and Punishments and Other Writings*, ed. Richard Bellamy (Cambridge: Cambridge University Press, 1995), 58–59.

fashion. First, he noted, few individuals loved a child or spouse more than themselves. Beyond this, many offenders had no dependants, and many had no property to forfeit. As such, "the punishment will be inoperative in nine hundred and ninety-nine cases out of a thousand. Now a punishment that is good in one case only out of a thousand is good for nothing . . . It is, therefore, for the most part useless, and whenever it is not useless, it is mischievous." It was mischievous, in part, because it weakened respect for the law; the public demanded punishment of an offender, but pursuing him after death and through his innocent family excited feelings of pity. It was illogical, Bentham argued, and contrary to the spirit of the age.[11]

But sufficient fondness for forfeiture remained that critics moved first against corruption of blood and escheat, where they most readily found supporters. Here they had the moral authority of Sir William Blackstone on which to draw. Even that great defender of the status quo had criticized escheat of land upon corruption of blood as unjust and un-English, a Norman addition to older traditions of forfeiture and hence easily separable from it.[12] Sir Samuel Romilly introduced bills to abolish corruption of blood in 1813 and again in 1814. While Romilly made clear his opposition to forfeiture in general, he focused his efforts more narrowly. In the end, his measure passed, but with amendments: Corruption of blood and the escheat of land remained in cases of high and petty treason, and for murder. For all other felonies, however, only forfeiture of goods and chattels thenceforth applied.[13]

The amendments made to Romilly's bill highlight that forfeiture survived not by accident, but by intention. Opponents persisted, but so too

11. Jeremy Bentham, "An Introduction to the Principles of Morals and Legislation," *The Works of Jeremy Bentham*, ed. John Bowring, 11 vols. (Edinburgh, 1843), I:480–83. He deemed forfeiture for suicide to be even worse, a "vicarious" punishment, and one of the cases in which punishment is "in the most palpable degree mis-seated" (479–80). On forfeiture for suicide, see in particular Michael MacDonald, "The Secularization of Suicide in England, 1660–1800," *Past and Present* 111 (1986): 50–100, and with Terence R. Murphy in *Sleepless Souls: Suicide in Early Modern England* (Oxford: Oxford University Press, 1991).

12. Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols., 13th ed. (London, 1800), 2:251–55. See also John Cairns, "Blackstone, the Ancient Constitution and the Feudal Law," *Historical Journal* 28 (1985): 711–17.

13. *The Speeches of Sir Samuel Romilly in the House of Commons*, 2 vols. (London, 1820), 1:434; 2:3–17, and *The Debate in the House of Commons, April 25, 1814, Upon Corruption of Blood* (London, 1814). For the final act, see 54 George III, c. 145. An act passed in 1833 tidied loose ends: 3&4 William IV, c. 145. As for the forfeiture of personal property upon a felony conviction, there were exceptions. From the sixteenth century on, many new statutory felonies stipulated no escheat of land, and a few went further to note that no forfeiture of goods would apply, either. See, for example, the notorious "Black Act," 9 George I, c. 22.

did supporters. A bill introduced in 1834 to abolish forfeiture of goods and chattels failed.[14] In 1843, the Criminal Law Commission recommended the end of forfeiture, but rather than disappear, it became reinvigorated. A Treasury directive of that year encouraged more stringent collection and reporting of felons' forfeitures.[15] The Commission's next report, in 1845, provides a sense of the range of arguments then being offered both for and against the practice, although more heavily weighted towards the opponents. In the list of queries commissioners sent out to legal professionals throughout the country, they asked for opinions about corruption of blood and forfeiture for felony. Of the ninety-seven respondents listed in the commission's report, some forty-one offered their thoughts on this topic.[16] Four of them believed that forfeiture should be kept, perhaps with minor changes; a few others thought it could be retained but only if substantially altered; most thought it simply needed to be abolished outright. Those who thought it should or could be retained cited its qualities as a deterrent, its value in preventing criminals from enjoying their ill-gotten gains, and its potential utility in covering the costs of prosecution. For them, this ancient practice had adapted to serve useful ends. Lord Denman, the chief justice of King's Bench, thought it at least a reasonably adequate stopgap; it performed necessary functions until better means could be found to secure restitution for victims, to strip criminals of the proceeds of illegal activities, and to make offenders liable for the costs of their own prosecution.[17]

Those who wanted it gone gave a variety of reasons. The factor opponents most frequently cited—some seventeen times in all—was the now venerable argument about its effects on the innocent, as either an injustice or an inconvenience. Sons ought not to suffer for the sins of their fathers; furthermore, dependants of a criminal often ended up on the parish. Richard Johnson, the clerk of the peace for Hereford, noted

14. 1834 (124), *Parliamentary Papers* (hereafter PP), *Bill to amend Law of Forfeiture as regards Goods and Property of Persons Convicted of Felony* and 1834 (223), PP, *Bill to amend Law of Forfeiture . . . (as amended by Committee)*.

15. 1843 (448), PP, *Seventh Report of Her Majesty's Commissioners on Criminal Law*, 19, 96. On the Criminal Law Commission, see Lindsay Farmer, "Reconstructing the English Codification Debate: The Criminal Law Commissioners, 1833–45," *Law and History Review* 18 (2000): 397–425, http://www.historycooperative.org/journals/lhr/18.2/farmer.html; and Michael Lobban, "How Benthamic Was the Criminal Law Commission?" *Law and History Review* 18 (2000): 427–32, http://www.historycooperative.org/journals/lhr/18.2/lobban.html.

16. 1845 (656), PP, *Eighth Report of Her Majesty's Commissioners on Criminal Law*, appendix A, 211–338.

17. Ibid., 212.

simply that "I consider this a punishment inflicted on the relations and friends of the criminal, and not on the criminal himself."[18]

Ten respondents directly expressed doubts about forfeiture's effectiveness as a deterrent. Not only was such punishment of the innocent unjust but it also failed to dissuade potential criminals. One coroner asserted hotly that it "never yet deterred a man from the commission of crime."[19] Eight respondents mentioned a related concern about the uneven effects of forfeiture on the rich and poor. Forfeiture might deter "persons in affluent circumstances," but they maintained that most criminals were of a class far too poor to suffer from forfeiture and thus too poor to be deterred by its threat. Beyond weakening the case for deterrence, this unevenness became an argument for abolition in its own right. Surely, as G. J. Fielding, a clerk of the peace, explained, something was amiss if a Rothschild or Baring might "inadvertently" pluck a peach while strolling in a garden and thereby lose the entirety of his vast personal estate, when a poor man who committed the same offence lost nothing of comparable value.[20] Of course, as nine respondents pointed out, most anyone who had property to forfeit conveyed it safely away between arrest and conviction, thus easily avoiding its seizure. As one barrister argued, "whenever a felon forfeits his goods and chattels, the forfeiture is, in truth, not a punishment for the felony but for the neglect of ordinary and simple precautions. This is manifestly unjust."[21] And again, this weakened any argument for forfeiture's effectiveness as a deterrent. Anyone with enough property to be deterred by forfeiture in theory had the wit and wherewithal to evade it in practice; in contrast, these respondents maintained, most people who turned to crime had too little property to be put off by the prospect of its loss.

A few respondents argued that that forfeiture not only failed to deter but also made recidivism more likely by leaving felons with nothing upon which to begin anew. A man emerged from prison "alike destitute of property and character, without any means of getting his first meal except by returning to his crimes."[22] The clerks to the magistrates in Tunbridge Wells wrote their own letter, if not disgusted then at least scornful, citing all these factors and more. They highlighted, too, the disparities between felonies and misdemeanors, observing that some of the latter offences had greater "moral guilt" than the minor felonies, yet incurred no forfeiture.[23] Repeatedly these respondents noted inconsistencies, disparities, and

18. Ibid., 319.
19. Ibid., 252.
20. Ibid., 332.
21. Ibid., 225.
22. Ibid., 271.
23. Ibid., 307.

irrationalities. Summing up almost all these concerns was the verdict that forfeiture had become "obsolete and unsuitable to the existing state of society." Ten of the respondents made their point in these terms. In contrast to those who thought this medieval practice had successfully adapted to serve new needs, they labeled the practice a "relic" of one unflattering sort or another: a "relic of feudal avarice" or "a relic of ancient vassalage." Forfeiture was "barbarous" in itself, the remnant of "a barbarous age," or even "the last barbarous relic of a barbarous age." As one man noted wryly, forfeiture was a product of "the feudal ages . . . a period which assuredly was not the classical age of criminal jurisprudence."[24] Forfeiture was now, they said, "inapplicable," "unsuitable," or "inconsistent" with modern sensibilities and standards. As G. A. Lewin, recorder of Doncaster, opined, "The spirit of the times is against it."[25]

## Nineteenth-Century Practice and Problems

Other than by reading Bentham, how might men like Lewin have come to believe that felony forfeiture ran counter to "the spirit of the times"? What experiences lie behind such interpretations? And why did something that provoked such scorn from so many legal writers and professionals survive so long? The records of its operation provide some clues, revealing its discretionary applications in a legal system otherwise tending toward uniformity.

The very nature of forfeiture's operation ensured that those records are sparse, scattered, and selective, however. The arresting officer or gaol keeper took possessions from offenders upon arrest. Upon a felon's conviction constables or bailiffs might then make a more thorough search for additional property, contacting banks, investment societies, and others to inquire about less tangible possessions. Those officials working on behalf of the Crown were then to report the seizures to the clerk of the peace, who made quarterly returns to the Treasury, which in turn expected the sheriff to account for the proceeds. In addition to the Crown, however, a variety of corporations and lords also collected felons' goods; thus, no single agency cataloged felony forfeitures. Nor do criminal court records provide any sense of which felons lost their possessions. Until 1827, trial judges routinely asked jurors what property a felon had, but this had long since become

24. Ibid., 225.
25. Ibid., 222.

a meaningless formality.[26] Sheriffs, bailiffs, constables, and others collected offenders' possessions regardless of the jurors' response to this question. Any record of such seizures typically appeared in financial rather than judicial papers. For these reasons, it is impossible to develop a clear picture of how many felons lost their goods, and whether this varied over time or for particular offences. Nonetheless, some information about the operation of felony forfeiture can be found. The London Metropolitan Archives, for example, hold several registers and receipt books for felons' forfeited effects, mostly for the 1850s, along with correspondence about such seizures and auction catalogs for the goods in question. Of particular value are fonds at the National Archives, which contain the correspondence registers of the Treasury officials who dealt with disputed cases and answered petitions for the forfeited effects of felons.

The first and most obvious fact to be gleaned from these documents is that felony forfeiture continued in practice until the very moment the statute of 1870 passed. The Treasury responded to some 659 petitions for felons' effects from 1859 to 1869, an average of about sixty-six a year, with no significant variation from one year to the next.[27] These numbers reflect only a small proportion of the total number of forfeitures imposed on felons in any given year. The sheriffs of Middlesex and London alone recorded such forfeitures from a total of 472 offenders sentenced at the Central Criminal Court in the year between October 1, 1858 and September 30, 1859, for instance.[28] While the London registers do not survive in an unbroken run throughout the 1850s and 1860s, scattered correspondence clarifies that the Corporation continued to collect—and to defend its right to collect—felons' goods right up until the passage of the 1870 statute.[29]

While the Treasury Board's correspondence cannot give any indication of the total number of felons who lost their goods, it does demonstrate the continued collection of such forfeitures throughout the country, and by

26. The statute of 7&8 George III, c. 28, noted that jurors no longer needed to answer this question.

27. PRO, T 15/12–21. While I have drawn examples from earlier and later volumes in this series, I did a systematic survey only for these ten years. For background on the Treasury and its procedures, see Henry Roseveare, *The Treasury: The Evolution of a British Institution* (New York: Columbia University Press, 1969).

28. London Metropolitan Archives (hereafter LMA), CC/RFG/2/4. It is difficult to determine the proportion of felony convicts this represents. Sources suggest that some 887 to 905 individuals were found guilty of indictable offences in the Central Criminal Court in this year, but without specifying how may of these were convicted of felonies as opposed to misdemeanours. See *Old Bailey Proceedings Online* for the 887 total; 1860 (112), PP, *Committals* (*Central Criminal Court*) for the 905 total.

29. LMA, CLA/040/03/228, CLA/040/03/226; PRO, T 15/22, 221, 245.

agencies in addition to the Crown. The vast majority of references deal with the greater London area, certainly, but most every region produced evidence of ongoing forfeitures. The sheriffs of Middlesex and Surrey figure most prominently among the officials mentioned in the letters, with sheriffs from Kent, Hampshire, Essex, and Sussex close behind. Yorkshire, Gloucestershire, Westmoreland, the Welsh counties, and other areas also received mention, however. Furthermore, the Board told some twenty-five petitioners to correspond with other authorities, as the forfeitures had gone to someone other than the Crown. The Corporation of London and the Dean and Chapter of Westminster figure most frequently among the referrals, followed closely by the Duchy of Lancaster. Others such as the corporations of Liverpool, Folkestone, and New Windsor received mention, too. Some privileged individuals also continued to make good their claims to felons' goods: By virtue of his grant of the honor of Knaresborough, for example, the Duke of Devonshire pressed his claim to the effects of Yorkshire convict William Elsworth in 1860.[30]

The Treasury correspondence indicates that even where forfeitures were owed to the Crown, local officials sometimes collected more than they reported. In an 1847 report, a Treasury barrister maintained there was "little doubt that considerable property is retained by the constables and others and is never accounted for to the crown."[31] The responses to petitions bear him out. Very often the first news the Treasury had of a forfeiture was the offender's request for its return. In 1861, officials wrote to the superintendents of police at both Leicester and Coventry asking about items offenders wanted back, but which had not been reported. So, too, did they inquire of the chief constable of Kidderminster about the large quantities of both finished and unfinished leather that George Gough maintained he had lost upon his arrest.[32] Occasionally, a local official wrote back to insist that the goods were his by right, whether by longstanding local custom or by a misreading of some statute or another. A Cumberland gaoler, for example, argued that he need not submit returns of goods as he was owed whatever he found on the offenders in his keeping.[33] Clearly, some local agents of the law made money from felons' forfeitures beyond the 5 to 10 percent poundage to which they were legally

30. PRO, T 15/13, 403.

31. 1847–48 (502), PP, *Abstract Return of Amount of Felons' Property Forfeited to Crown in England and Wales, 1842–48*, 6.

32. PRO, T 15/14, 25, 32, 64

33. See, for instance, PRO, T 15/22, 6.

entitled.[34] In so doing, they also kept some aspects of the practice from the documentary record.

Also obscured from view is the degree of loss a felon suffered. A good many of the London receipts suggest the individual lost only what was on his or her person upon arrest. Many seizures consisted of nothing more than a watch, knife, small amounts of cash, and the clothing on the offender's back, which may or may not have been all the individual owned. Other receipts, however, indicate that constables visited the offender's lodging to collect additional items. William Wilding, for example, forfeited his shaving supplies and an assortment of clothing that included sixteen collars and "5½ pairs of socks"—presumably he did not carry these items with him.[35] Sometimes the records detail entire wardrobes, or provide lengthy lists of items that must have constituted the complete contents of a home or shop. Tools, boats, livestock, and dogs all appeared among the seized assets, along with bank books, pawn shop receipts, and other such things. Evidence of savings might prompt orders for their surrender; a London undersheriff sent such a request to Bridget Descroll's bankers after finding deposit books in her possession recording a balance of some £43, for example.[36] What determined how thorough a search and seizure an individual faced, however, remains difficult to detect.[37]

Nor can the records reliably report how much such a seizure affected an individual. Clearly, though, despite the assumptions of some critics of forfeiture's uneven effects on rich and poor, even the smallest forfeiture could matter a great deal for the poorest of offenders. Forfeiture may not have deterred them, but it did deepen their destitution. After serving twelve months' imprisonment for theft from her employer, the sixty-six-year-old Charlotte Lamb protested that "I have paid the penalty of my offence and have returned a sadder and a poorer person, so much so that even the few articles I had in my possession at the time of my arrest and which the officer took from me are of consequence."[38] Also emerging from twelve months' imprisonment for theft, William Long asked for the

34. The poundage allotted to sheriffs varied over time and depending on the amount seized. In 1861, a Treasury order allowed a poundage of 7.5 percent on the first £100 and 5 percent on anything higher. PRO, T 15/14, 271. Later entries refer to a 10 percent cut.

35. LMA, CLA/035/02/005. See also CCC/RGF/9/3.

36. LMA, CCC/RFG/16/16.

37. The type of offence committed is indicated too rarely in the records to allow any sort of evaluation of whether this affected the incidence and degree of forfeiture, as one might suspect. It should be noted, however, that the records do show the occurrence of forfeitures for the full range of felonies, from petty thefts to murder.

38. LMA, CLA/040/03/226; *Old Bailey Proceedings Online*, October 25, 1869, Trial of Charlotte Lamb and Harriett Powell (t18691025-962), http://www.oldbaileyonline.org.

few shillings taken from his person and the few items of clothing taken from his lodgings, "which would do me a great service, having come out of prison and of no more than I stand upright in."[39] After his nine months of hard labor for stealing a handkerchief, Thomas Edwards wrote that "I am an unfortunate man, a native of . . . New South Wales. I have no friends at all in England. I can't get no ship on account of being an aged man. Some days I earn six pence and some days I don't earn nothing." He maintained that upon his arrest "there was two shillings and four pence taken from me. Sir, I would [be] ever thankful if you would allow me to have it, as it will procure me a few things to sell so that I can get an honest living Sir . . . I am in a very distressed state."[40]

Thus, while felony forfeiture may have offered some lower-level officials welcome perks and profits, it did so in ways that imposed hardship on offenders without bringing any real financial benefit to the Crown. Seizures such as Edwards's 2s. 4d., even if multiplied by hundreds of offenders and even if reliably collected and reported, would have left many individuals in hard straights but without adding much to the Crown's balance sheet. Reported net annual receipts from felons' forfeitures amounted to little more than a couple of thousand pounds at most, and usually much less. A Treasury Solicitor's report tendered in 1833 reported one boom year, with net proceeds of £2598, but otherwise an average of £65 retained in each of the previous ten years. The report made in 1847 noted an average net gain of less than £200 per annum over the last few years. Later reports showed that in the eighteen years from 1849 to 1866, the Treasury Solicitor accounted for an average gross annual income from felony forfeiture of £2100, but restored 78 percent of that amount, leaving average net annual proceeds of £463.[41] The tallies suggest that the Treasury's efforts to encourage the collection and reporting of forfeitures met with some success, but they also confirm that the motive could not have been pecuniary. As with the financial proceeds of justice more generally, the days in which felony forfeiture represented a valued source of income for the Crown had long since passed.

What functions, then, did felony forfeiture serve in the nineteenth century? Or, at least, what function did Treasury officials think it served? What does their correspondence suggest about the purposes and problems

39. LMA, CCC/RFG/5/2(a).

40. LMA, CCC/RFG/13/4; *Old Bailey Proceedings Online*, February 4, 1850, Trial of Thomas Edwards (t18500204-408).

41. 1833 (765), PP, *Felons' Property. Returns of all Property and Money of Convicted Felons . . . July 1823 to 1st June 1833* and 1847–48 (502), PP, *Abstract Return of Amount of Felons' Property Forfeited to Crown in England and Wales, 1842–48*; 1864 (136), PP, *Felons' Property . . . from 1848 to 1863* and 1870 (125), PP, *Felons' Property*.

*Table 1.* Treasury Responses to Requests for Felons' Goods, 1859–1869.

| Petitioner/Petition written of behalf of | Number | Positive Response* | Declined | Other** |
|---|---|---|---|---|
| Felon | 262 | 55% | 35% | 10% |
| Wife | 108 | 44% | 49% | 7% |
| Other family | 101 | 59% | 37% | 4% |
| Victim or creditor | 65 | 85% | 8% | 7% |
| Other/unknown relationship | 123 | 52% | 25% | 23% |

* "Positive response" includes partial returns of the felon's goods.
** "Other" includes referrals to other authorities and responses indicating a need for further information, for which no subsequent entries could be found.

of forfeiture? Their responses to petitions for felons' effects indicate that they saw themselves as prudent, moral managers of offenders' assets, bestowing property on those they deemed deserving, either legally or morally, and denying it to the undeserving. Forfeiture of felons' goods allowed them the discretion to encourage or reward good behavior and to penalize the unregenerate as they saw fit. It represented an area in which discretionary decision making persisted throughout the rationalizing reforms of the era. But felony forfeiture required their careful management not just to ensure moral reformation of the offenders—it also needed such care because of the problems it posed in an age with cultures of punishment and property that differed so dramatically from those that had prevailed at its inception.

Petitions for felons' effects came not just from the offenders themselves, but also from spouses, relatives, creditors, victims, and others. As indicated in Table 1, people claiming to be victims or creditors of the offender had the best chance of success, with 85 percent of their petitions receiving positive responses. They almost always received recompense for their losses, failing only if they did not provide sufficient proof of their claim or if the board members thought they requested more than they had lost. That the Board routinely recognized the claims of victims and creditors may not seem all that striking, but nonetheless it represents a marked change from the past. Until the sixteenth century, the victim of a theft had to assume the expense and burden of an appeal against the offender in order to get any goods back; thereafter, the victim still had to be an active participant in the prosecution in order to have any legal right to the property.[42] Bills to protect creditors' claims to a felon's goods appeared in

42. 21 Henry VIII, c. 11. The Larceny Acts of 1827 and 1861 noted that the financial penalties imposed on summarily convicted thieves would be used to reimburse the victims, but otherwise continued to endorse the principle that the victim had to be active in the

several early seventeenth-century parliaments, all without success.[43] In the nineteenth century, though, the Crown's agents much more readily recognized and accepted the claims of others to property found in a felon's possession. A few landlords and landladies obtained unpaid rent.[44] The guardians of the Boston Union asked to be reimbursed for the money they had spent to support of the wife and family of one convict.[45] Defence lawyers received compensation, as did a surgeon who had assisted one felon. Even a good many of the claims by family members appealed not to the merciful discretion of the board, but to a notion of legitimate ownership. They maintained that some item or another found in a felon's possession in fact "belonged" to the father, brother, or other relative of the offender and thus ought to be returned. Again, upon reasonable proof of such a claim, the Board acceded to the request. The Board doled out felons' possessions not in the form of patronage grants, as the Crown had done in earlier centuries,[46] but according to its notions of legitimate property rights.

The Treasury officials also proved remarkably willing to recognize the validity of pretrial property transfers. Although the law had held that real estate escheated at the moment of the offence, personal property was only forfeit from the moment of conviction. As such, individuals apprehended for an offence could, and did, transfer much of their property before trial and thus direct its course. Technically, the property had to exchange for a valuable consideration and appear a bona fide sale or assignment if challenged. The Crown and others with claims to felons' forfeitures did sometimes contest property assignments made between arrest and conviction, but the Crown, at least, seems to have done so only when significant amounts or rival claims were involved.[47] Otherwise,

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indictment of the thief to obtain compensation, "to encourage the prosecution of offenders." 7&8 George IV, c. 29 § 57; 24&25 Victoria, c. 96 §100.

43. See Maija Jansson, ed., *Proceedings in Parliament, 1614* (Philadelphia: American Philosophical Society, 1988), 51, 119, 126; Wallace Notestein , ed., *Commons Debates, 1621*, 7 vols. (New Haven, Conn.: Yale University Press, 1935), 2:199; 5:110; 7:129–32; William B. Bidwell and Maija Jansson, ed., *Proceedings in Parliament 1626*, 4 vols. (New Haven, Conn.: Yale University Press,1996), 4:91.

44. PRO, T 15/14, 255.

45. PRO, T 15/14, 374.

46. K. J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge: Cambridge University Press, 2003), 128–31.

47. See, for example, *Perkins v. Bradley* (1841), 66 E.R. 1013, 1 Hare 219. The Corporation of Cambridge initially sought to obtain bank stock, worth over £600, that Henry Perkins had transferred to his solicitor just prior to his felony conviction to pay for debts and services. The Corporation withdrew its claim upon notice that its grant of felons' goods did not cover stock, which forfeited to the Crown alone; the Crown pressed its claim,

Treasury officials showed themselves ready to respect such transfers. When Alice Smith complained that the sheriff had seized her goods even though she had assigned them to someone else just prior to her conviction, the Treasury ordered the sheriff to return the goods to their rightful owner.[48] So, too, did London officials order the return of items taken from one Benjamin Curran, who had assigned his effects to Henry Hawkins one day before his trial.[49] When someone warned the Treasury that Thomas Slack, about to be tried for murder, was in the process of transferring his possessions to avoid forfeiture, officials seemed concerned not that the Crown was being defrauded but that a child for whom Slack acted as a trustee might thereby lose her assets.[50] Even in such dubious cases, the Treasury recognized the rights of the new owners.

Offenders petitioning for the return of their own possessions also stood a good chance of having at least some of those items returned, but only if they could prove their good conduct. As indicated in Table 1, 55 percent of petitions by or on behalf of felons received positive responses. The return of their goods was depicted as a discretionary gift, however, not the recognition of a right. They frequently regained their clothing and small amounts of money, and sometimes their tools in trade, in order to set them on the path of virtue. The Board gave John Shaw of Nottingham 8s. 10d. of his forfeitures "to enable you to obtain an honest livelihood."[51] They gave James Buchanan his eye glasses and magnifying lenses "to enable you to follow your trade on your release from prison."[52] James Read received £50 out of the sum forfeited by his son Thomas, to purchase tools and materials Thomas required to resume his former trade as a jeweller.[53]

On the back of one such request, however, someone scribbled that the prison governor thought the offender "a bad fellow and a very old prison bird."[54] The Treasury officials deemed good character references essential when responding to appeals on the felon's behalf. Accordingly, petitioners sometimes had help making their requests. Ministers often wrote for the

arguing that the forfeiture should relate back to the commission of the felony, but failed. See also *Chowne v. Baylis* (1862), 54 E.R. 1174, 31 Beav. 351, although the Crown claimed its intervention here was motivated in part by a concern that the property transfer in question amounted to an attempt to compound a felony, to prevent prosecution through a pretrial payment to the victim.

48. PRO, T 15/19, 217.
49. LMA, CLA/040/03/226.
50. PRO, T 15/19, 95.
51. PRO, T 15/16, 51.
52. PRO, T 15/13, 491.
53. PRO, T 15/11, 16.
54. LMA, CCC/RFG/16/11.

offender. Sometimes neighbors and fellow parishioners also submitted recommendations. A Mrs. Smith of the Elizabeth Fry Society sent a request on behalf of Elizabeth Sounds.[55] Undersheriffs and local officials occasionally provided character references. Very frequently, the Board required a positive recommendation from the prosecutor or the committing magistrate. Even if the offender was off in New South Wales or some other distant locale, the Board sent letters and referrals back and forth with colonial agents before agreeing to return some or all of the felon's goods.

The Board made some felons wait, using the felons' former property as leverage to encourage good conduct. In 1862, two Yorkshire convicts who applied for their goods immediately upon their release from prison were told to reapply in three months' time, when the Board might better evaluate the degree of their reformation.[56] Two years later, Isaac Golstine of Hull was told to wait six months before presenting testimonials about his good character since release.[57] Robert Blay lost £31 14s. 3d. to the Crown upon his conviction; when he petitioned for its return, the Board decided to give him roughly half, but only in installments. Since the only evidence of his good conduct related to his time in prison, the Board decided to give him £5 at once to enable him to find employment and a further £10 a year later, pending reports of his continued good conduct. The remaining moneys it sent to the guardians of the Headington Union to defray the costs incurred in supporting Blay's children during his imprisonment.[58]

The Board sometimes used its discretion creatively in deciding just what to return or how to do so. After her two months' imprisonment for stealing two brooches, Louisa Blatchford recovered all of her possessions except for a written character reference from a former employer. The Treasury officials decided that, given the circumstances, the reference should be destroyed rather than returned.[59] In response to other requests, the Board sometimes directed that the property be given not to the offender directly, but to a local minister or magistrate, or perhaps a parent, to manage on behalf of the individual.[60] When Rosa Levy applied for goods forfeited by her husband and his brother, the Treasury ordered the sheriff to use some of the forfeited sums to pay for her passage on the first ship to Bremen. He was to give her all of the female clothing and some of the money found on the Levys, but only once she was safely aboard and

55. PRO, T 15/18, 175.
56. PRO, T 15/15, 57–58.
57. PRO, T 15/16, 323.
58. PRO, T 15/21, 446–47.
59. PRO, T 15/17, 255–56.
60. See, for example, PRO, T 15/15, 451 and 461.

sure to be on her way. It had been Rosa's repeated fainting that provided the cover for the thefts at a jewellery shop, but she avoided conviction because of her status as a wife. The Board seemed to find this form of subsidized transportation the best solution in an odd situation.[61]

When the Treasury officials denied a felon's request, they did so generally because they deemed the offence particularly egregious or the offender unlikely to reform. They refused some felons because they had already given the effects to someone else, or because the offender had waited too long and the goods had been sold. Most refusals, however, offered some variant on the following line: Board members had "enquired into the circumstances attendant upon your conviction and they do not consider they would be justified in directing the restoration of the property found in your possession." Generally, the letters provide no further details, but a few suggest that recidivism was the biggest factor working against a felon's request. When the Reverend Mountfield and other inhabitants of Newport, Shropshire, wrote on behalf of one William Cohen, for example, the Board explained that it denied their request because of Cohen's previous conviction.[62]

Strikingly, the wives of male felons were the petitioners most likely to be refused. Upon marriage, all of a woman's goods and chattels became her husband's.[63] The forfeiture of his property, then, could leave the wife with nothing. Unless a woman could prove that the items in question were legally her own separate property, specially settled upon her prior to marriage, she had to appeal to the tender hearts of the Treasury officials. Very often—in roughly 44 percent of the requests—the Board gave the

61. PRO, T 15/13, 296; *Old Bailey Proceedings Online*, November 28, 1859, Trial of Jacob, Louis, and Rosa Levy (t18591128-1).

62. PRO, T 15/20, 68.

63. Special rules applied for chattels real and chattels incorporeal. Things such as debts and bonds reverted to a woman's ownership if her husband died or was convicted before "reducing them into possession." Chattels real, such as leases on land, did forfeit for a husband's offence, but if he died a natural death, they were treated much like real estate and passed back into her possession. For discussions of married women's property rights, see, in particular, Susan Staves, *Married Women's Separate Property in England, 1660–1833* (Cambridge, Mass.: Harvard University Press, 1990); Lee Holcombe, *Wives & Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983); and Amy Louise Erickson, "Common Law versus Common Practice: The Use of Marriage Settlements in Early Modern England," *Economic History Review* 43 (1990): 21–39. Campaigners for reform of married women's property law frequently drew comparisons between the effects of crime and the effects of marriage in that both deprived an individual of their property rights. Upon occasion, they also used stories of the wives of felons who were left with nothing to make their points, too. See Holcombe, *Wives & Property*, 66, 149. I plan to look at the conjunction of married women's property law and criminal forfeiture in more detail in a future article.

wife at least something from her husband's forfeited possessions. (See Table 1.) But even the wife generally required a character reference. When Harriet Harrison petitioned for property seized from her husband, William, on his conviction at the Birmingham sessions in 1858, for example, the Treasury requested a letter from the mayor of Birmingham "stating that you are, in his opinion, deserving of their lordships' favourable consideration."[64] Hannah Rix, the desperately poor and deserted wife of a bigamist, had to present character references to secure the return of a legacy bequeathed to her by her uncle and forfeited upon the conviction of her two-timing spouse.[65] And the approvals were very often only partial returns. Susanna Knights of West Ham, for example, was denied everything but the household items, receiving only such things as bedding, a dustpan, a bag of dirty linen, and, aptly enough, a broken wedding ring.[66]

While attentive to a wife's need and good character, the Board nonetheless based its decisions primarily upon the nature of the crime and her husband's behavior since his arrest. When the unnamed wife of transported felon John Swepson appealed for his forfeited goods, the Board obtained a report from the governor of New South Wales that Swepson "bore a very good character and that nothing appeared to his prejudice since his arrival in the colony." The Board then decided to grant half to Swepson himself and half to be divided between his wife and four children, the latter described as being "in indigent circumstances."[67] Still, the bulk of the wives making such requests—49 percent—received nothing at all.[68] The standard line in the responses to rejected petitions noted that the Board had made its decision after inquiring "into the circumstances attendant on the conviction of your husband."[69] The main subject of forfeiture remained the felonious husband; the wife's likely hardship continued to be a consequence of his misdeeds and a fate to be borne in mind by all potential offenders.

The Treasury officials thus understood their responsibilities to include the orderly disposition of felons' assets to those who had good legal claims, above all else ensuring that the proceeds of illicit activity returned to their rightful owners. They also used their discretion in ways that promoted and rewarded good behavior and tailored punishments to individual

64. PRO, T 15/11, 20.
65. PRO, TS 5/44, 70.
66. PRO, T 15/17, 360.
67. PRO, TS 5/44, 3–4.
68. See Table 1. The remaining 7 percent were referred elsewhere or deferred pending character references and further information. Since these particular deferrals never reappeared, one presumes that they too represent failed requests.
69. See, for example, PRO, T 15/21, 131, 235, 311.

offenders despite a broader movement towards uniformity and certainty in penal culture. Their responses to the wives of male felons suggest that they still believed that forfeiture had a deterrent effect that justified its operation. They faced a mounting number of difficulties in applying and adjudicating forfeitures, however. This ancient form of punishment adapted to a new age, but only with difficulty. Underlying many of the problems was the simple fact that these felons were now very much alive. It was one thing to take all the property of an executed felon, but rather another to do so from an offender living and needing to support himself or herself and any dependants. In centuries past, forfeitures had typically been collected from felons sentenced to death. With the shift towards transportation and then imprisonment, the vast majority of convicted felons lived, producing a variety of complications.

This may well have influenced the responses to the wives who petitioned for their spouses' goods: Being wives rather than widows in most cases, any property they obtained from the Board in essence went back to their husbands when the men returned from transportation or imprisonment. Presumably this is why the Board specifically refused Mrs. Brooke of Yorkshire her husband's stock-in-trade and shop fixtures, and gave her only the household furnishings.[70] Significantly, too, when the Board members did give property to a wife, they often settled it for her separate and sole use.[71] When Fanny Strong petitioned for the money seized from her savings account upon her husband's conviction, she admitted that the money had not been legally set aside as her own separate property, but she nonetheless described it as "absolutely and entirely my own," the product of her own savings and gifts from her family. She needed the money back, she said, to pay off creditors. The Treasury officials ultimately gave her some of the money, but put it in trust for her. As one acknowledged, "If the sum was now to be placed unconditionally in her hands, of course, if she has debts she *might* pay them; on the other hand, it seems to me rather more probable that, bearing in mind the husband's character and his existing relations with his wife, it would be immediately directed to the purposes of Mr. Strong."[72] The patriarchal nature of property law

70. PRO, T 15/15, 296.

71. Settling the property in trust for the wife of a felon made sense as a way to keep it out of the hands of the felonious husband, at least legally. But interestingly enough, the Board often made a point of settling any money it gave to a married woman for her own separate use; that is, even when it gave property to the married daughter of a felon, for example, it ensured that the property was settled for her own separate use. See, for example, PRO, TS 25/851 and TS 25/855.

72. PRO, T 1/15324.

compounded the problems posed by live felons when implementing a punishment that had emerged in a vastly different era.

Legacies that came due to offenders after conviction but before the expiration of their sentences also provided the Treasury a steady supply of business. In some cases, officials stepped in to bestow legacies much as they would have passed if the convict had simply died a natural death, rather than being in the unusual position of being legally dead but physically very much alive.[73] They divided the annuities bequeathed to transported felon William Benger between Benger's wife and children, for example.[74] Even here, though, officials made discretionary decisions based on their evaluations of petitioners' conduct. The case of Mary Ann and William Carter serves as an example. At the age of twenty-eight, William was sentenced to seven years' transportation for stealing three brushes and a pair of shoes worth 17s. If he had been executed for his offence, his wife Mary Ann would have been able to claim the bequest of £200 subsequently made to her by a family member, but because her husband lived the bequest became his property and thus forfeit to the Crown. Upon her petition and in consideration of her own good conduct, the Treasury decided to give her the residue after costs, £171.[75] The Treasury made a similar intervention in the case of Frederick Scott. At the age of eighteen, Scott was sentenced to death for highway robbery; when the woman he had robbed recommended mercy, he was instead transported for life. Upon his father's death several years later, the Treasury divided Frederick's forfeited legacy between his mother and two of his three siblings; the third, a brother called Charles, they thought unfit for such largesse, but the others had shown themselves to be "deserving objects of charity."[76]

73. After 9 George IV, c. 32 (1828), however, offenders were no longer considered legally dead once they had completed their punishments, but they started afresh rather than automatically regaining rights or property they had had prior to conviction. The property rights of transported felons became a complex matter, depending in part on whether they were sentenced to transportation or granted it in lieu of a death sentence, but also on variations in policy respecting pardons and tickets of leave. See *Coombs v. Her Majesty's Proctor* (1852), 163 E.R. 1409, 2 Robertson Ecclesiastical 547 and Bruce Kercher, "Perish or Prosper: The Law and Convict Transportation in the British Empire, 1700–1850," *Law and History Review* 21 (2003): 527–84, http://www.historycooperative.org/journals/lhr/21.3/forum_kercher.html.

74. PRO, TS 30/1, no. 23.

75. PRO, TS 30/1, no. 76; *Old Bailey Proceedings Online*, January 3, 1833, Trial of William Carter (t18330103-67).

76. PRO, TS 30/3, no. 60; *Old Bailey Proceedings Online*, April 7, 1824, Trial of Frederick Scott (t18240407-46).

Sometimes the Treasury officials simply granted the legacy to the felon as if no conviction had taken place. But as they explained to petitioner Stephen Bendall, "all personal property bequeathed to anyone who has been convicted of felony escheats to the Crown and is only given up on satisfactory proof being afforded of such person having rendered himself deserving of the indulgence of the sovereign." Bendall had asked to be able to enjoy property left to him in a will, some twenty years after his conviction for receiving stolen goods.[77] In a similar case, John Bird returned to England after serving his sentence of transportation and borrowed money in the expectation of collecting a sizeable bequest from a family member. Bird and his creditors alike were upset to discover that his felony conviction years before rendered him incapable of claiming the bequest, which forfeited to the Crown. The Treasury officials stepped in to satisfy the creditors and to give Bird the remainder, as he had behaved himself to their satisfaction since his return.[78] Similarly, John Radley, sentenced to seven years' transportation at age twenty-one for a theft of 20s. value, later found himself denied a legacy of over £123. The Board granted it to him—minus costs of £17—in consideration of his "honest and industrious" conduct after his return.[79]

The forfeiture of felons' goods could thus adapt to serve useful ends in an era in which felons routinely lived, but only with difficulty and a good deal of supervision. Other features of the new penal age also posed problems. The diminishing use of the death penalty obscured the line between felony and misdemeanor. With the boundary blurred, the merits of stripping the possessions of some offenders but not others came under question. More practically, it also simply proved confusing for constables and gaolers. Which items were only being stored until a petty offender's release and which were to be sold off as the forfeited goods of felons? Correspondence suggests that mistakes sometimes happened, to the ire of released misdemeanants. Treasury officials occasionally wrote to county sheriffs to clarify that an offender had been guilty merely of a misdemeanor and so ought to have his or her goods returned, or to inform victims of an offence that no compensation would be forthcoming from the offender's effects as no effects had been forfeited.[80]

The turn towards summary procedures proved a similar source of confusion. Faster and cheaper than jury trials, summary proceedings became

77. PRO, T 15/12, 174, 232.

78. PRO, TS 30/1, no. 25.

79. PRO, TS 30/1, no. 36; *Old Bailey Proceedings Online*, September 14, 1814, Trial of George Gilkes and John Radley (t18140914-49).

80. See, for example, PRO, T 15/15, p. 519, T 15/16, 380, and LMA, CCC/RFG/5/2(e) and CCC/RFG/5/2/1(d).

more and more common over the eighteenth and nineteenth centuries. Efforts to have lesser felonies tried in this manner had run into difficulties over the issue of forfeitures, however; while MPs trusted magistrates working on their own to order whipping, imprisonment, and other such punishments in a responsible manner, some thought it dangerous to allow property to forfeit in such trials.[81] Accordingly, under the terms of the Criminal Justice Act of 1855, individuals charged with theft could elect either a jury trial or summary proceedings. If found guilty by the former, they risked the forfeiture of their property; if by the latter, their possessions were safe.[82] This satisfied concerns about the security of property, but it led to some confusion. When the trustees of the Chelsea Savings Bank inquired what to do with the deposits of one James Wadham, recently convicted for larceny, for example, the Board informed them that no action was required because he had been sentenced under the Criminal Justice Act.[83] The Board similarly informed the undersheriff of Wiltshire to return the donkey and other effects he had taken from William Alexander. A judge had sentenced Alexander to three months' imprisonment for theft, but did so under the Criminal Justice Act.[84] Having the mode of trial rather than the character of the offence determine the type of punishment had much the same effect as the blurring of the line between misdemeanor and felony.

Broader shifts in nineteenth-century penal culture thus complicated felony forfeiture. Collecting forfeitures from felons who did not die for their offences, who faced punishments that otherwise might differ little from those imposed for misdemeanors, and whose punishments might even depend merely on the type of trial proved possible but prone to confusion and complaint. Other complications arose from the changing complex of attitudes about property over the nineteenth century. Concerns about the nature of property and the nature of individuals' rights to retain it emerge most clearly from the pronouncements of forfeiture's opponents, but they can be detected even in the decisions of the Treasury officials. Their expanded notion of legitimate property rights has already been noted.

81. See, for example, *The Times* (London), May 14, 1828, 1. On summary procedures, see Bruce P. Smith, "The Presumption of Guilt and the English Law of Theft, 1750–1850," *Law and History Review* 23 (2005): 133–71, http://www.historycooperative.org/journals/lhr/23.1/smith.html; Peter King, "The Summary Courts and Social Relations in Eighteenth-Century England," *Past and Present* 183 (2004): 125–72; and Bentley, *English Criminal Justice*, 19–28.

82. For the text of the act, see 18&19 Victoria, c. 62. Convictions under the Juvenile Offenders Act similarly incurred no forfeiture.

83. PRO, T 15/22, 182.

84. PRO, T 15/18, 194. See also T 15/13, 471 and 477.

Beyond the legal claim or moral character of the petitioner, the character of the property in question also shaped the Board's decisions. It showed almost no interest whatsoever in pursuing claims to land. It met inquiries about freehold with an explanation that the Crown no longer had a claim to such property, although strictly speaking it could collect the profits for the felon's lifetime.[85] To inquiries about leasehold, it almost invariably answered that the Crown would not prosecute its claim. When Caroline Howse wrote to ask that the Crown relinquish its interest in leasehold premises in Chelsea forfeited on the conviction of her husband, the Treasury solicitor readily agreed.[86] To queries about stocks, bonds, annuities, insurance policies, and other such things, the Board gave mixed responses. The Treasury defended the Crown's claims to chattels incorporeal against the claims of corporations such as the Dean and Chapter of Westminster and the City of London—it insisted that the ancient grants of felons' "goods and chattels" to these bodies did not include choses-in-action—but when faced with requests from felons, their families, or their counsel, the Treasury solicitor very often announced that the Crown would not pursue its interests in this particular case.[87] This reluctance to make good on Crown claims to land and to many chattels incorporeal may have resulted from a sense that others had better moral claims to the property in question. On the other hand, the reluctance may well have derived from a desire to avoid the expense and bother of such forfeitures. The reasons behind such decisions are unclear, but the frequency with which the Board declined to pursue the Crown's rights to such possessions is striking. The growing complexity of "property" impinged upon forfeiture's operation nearly as much as the shifts in penal culture.

## Forfeiture's Demise

The growing complexity of "property" and the sense that rights to retain it were absolute rather than conditional certainly shaped the debates about forfeiture. Over the 1860s, parliamentary critics of felony forfeiture renewed their attempts to get rid of it, introducing bills to that effect in 1864, 1865, 1866, and again in 1870. The bills sometimes ran out of time before a change of government or the ending of a session. They encountered objections about infringing upon royal prerogative or the property rights of the lords and corporations that also collected felons'

85. See, for example, PRO, T 15/15, 25, 511, 523.
86. PRO, T 15/18, 13. For other examples, see T 15/13, 279 and T 15/17, 37.
87. See PRO, T 15/12, 212 and T 15/22, 245

forfeitures. Some MPs spoke against the bills simply because they preferred to wait for a comprehensive revision of criminal law. A few did, however, defend forfeiture on its merits, at least urging respect for a time-tested device, while others still endorsed it as a deterrent. They agreed that forfeiture might in theory have deleterious effects but insisted that the Crown—via the Treasury officials—always used its discretion wisely.[88] The Treasury officials themselves argued that the present system in fact proved a "great advantage" even for the interests of kin and creditors, precisely because of the "full discretion which the crown . . . possesses of dealing with such property."[89]

In praising discretion, however, the defenders spoke a language that marked them as not just having a difference of opinion but also a different ideological bent than their opponents.[90] What defenders called discretion, opponents saw as inconsistencies, inequalities, and uncertainties. This echoed reformers' arguments against capital punishment, but here it had a particular resonance in that these inconsistencies meant that forfeiture affected the property of some differently than it did that of others. Changes in the nature and significance of property impinged upon the decisions of the Treasury officials who enforced forfeiture; so, too, did these changes affect the nature of opposition to forfeiture. Personal property had always been more prone to seizure than real property. Over the years, the difference became more pronounced as equitable self-help and statutory changes served to protect landed estates. Entails, uses, strict settlements and all the rest had done much to save land from forfeiture. From the sixteenth century, statutes creating new felonies often stipulated no corruption of blood, or no forfeiture of land beyond the lifetime of the offender—only a very few offered this protection to personal property.[91] The act of 1814 nearly got rid of the risk to real estate altogether, and ultimately did so at least for all felons save murderers. Thereafter, the different degrees of protection afforded different types of property became especially galling. Even some defenders of forfeiture noted the differential treatment of real

88. See, for example, *The Times*, February 27, 1834, 2; July 1, 1859, 6; July 21, 1859, 6; June 16, 1864, 8; and *Parliamentary Debates*, 3rd series, vol. 21, cols. 863–64; vol. 154, cols. 486–90; vol. 155, cols. 135–39; vol. 175, cols. 1800–11.

89. PRO, HO 45/7662, Report of the Treasury Solicitor against the Proposed Bill to Abolish Forfeiture, May 23, 1865.

90. On the significance of "discretion" in reform debates, see in particular Randall McGowen, "The Image of Justice and Reform of the Criminal Law in Early Nineteenth-Century England," *Buffalo Law Review* 32 (1983): 89–126.

91. See Kesselring, "Felony Forfeiture."

and personal property as a troubling inconsistency.[92] The law had long set land apart as a superior type of property; in a society with industrial, mercantile, and finance capital assuming greater importance, even for the landed interest, such privileging became less and less defensible.[93]

Critics worried that a "rich trader" might lose thousands of pounds—the entirety of his estate—for committing the same crime for which a landed proprietor or a very poor man would lose relatively little.[94] A Rothschild or Baring might not have had any real reason to fear forfeiture of his stocks, bonds, and other such things, knowing that he could convey them away before conviction or believing himself likely to have most restored by the Treasury. It came to seem a particular injustice that such a thing *could* happen, however. It is hard, then, to avoid the impression that the transformations in material and economic life that led to the greater importance of personal property to greater and more important segments of the population contributed to the end of forfeiture.

Yes, an individual could convey away his or her personal property in the days before trial in order to avoid its forfeiture, but critics all had favorite horror stories of such tactics gone awry. Like Francis Prout, a few people may have been taken unawares. Others may have found themselves unfriended. In parliamentary discussions of forfeiture's abolition, some MPs referred to cases in which individuals transferred their property to a trusted friend, only to find that the friend subsequently refused to return the goods.[95] Perhaps they had in mind cases like one reported in the *Times* in May 1869, when an acquitted defendant subsequently found himself in trouble once more for his attempts to regain his property. Herbalist Isaac Chamberlain had incurred a manslaughter charge after the death of one of his patients. Fearing forfeiture, he went to the bank with Mary Ann Chandler, a woman he then lived with, and transferred stock valued at £2194 to her name. Chandler apparently refused to return the stock, however, so Chamberlain took first his sister and then another woman to the

92. See, for example, Philip Vernon Smith's 1870 proposal to retain forfeiture upon significant amendments, including a proposition to make its operation on real and personal property identical: "On the Law of Forfeiture for Treason and Felony," (1870) *Papers Read Before the Juridical Society*, vol. 3, pt. 19, 665–88. See also Eden, *Principles*, 41; Yorke, *Considerations*, 4th ed., 1775, 95; and Theodore Barlow, *The Justice of the Peace* (London, 1745), 215.

93. See Phyllis Deane and W. A. Cole, *British Economic Growth, 1688-1959*, 2nd ed. (Cambridge: Cambridge University Press, 1967), 269–77, for estimates of the dramatic decline in the relative importance of landed capital. For a discussion of the relationships between landed, financial, and industrial interests see Martin Daunton, *State and Market in Victorian Britain* (Woodbridge: Boydell, 2008), 148–78.

94. See, for example, *The Times*, February 7, 1844, 2; March 31, 1870, 6.

95. *The Times*, June 16, 1864, 8.

bank in attempts to pass them off as Chandler. On the second attempt, the forgery got the gang of them arrested on new charges. Chamberlain's counsel focused his defence on the barbarism of forfeiture and the claim that the stock was, in any sense that mattered, really Chamberlain's anyway. The jury acquitted all three, to the sound of applause from the gallery.[96]

Even if no such problems emerged, being forced to transfer one's assets imposed an unwelcome burden. Some remembered the story of Lord Cardigan: Upon his arrest for dueling in 1840, Lord Cardigan had reportedly transferred to trustees his vast copyhold estates; upon his acquittal, he successfully regained the copyholds, but had to pay enormous sums in new entry fines.[97] Such tales of inconvenience and woe seemed to be the primary motivation for MP Charles Forster, the driving force behind both the 1864 and 1870 bills. Forster told of an ironmaster in his district with a "great trading connection" who had a manslaughter verdict returned against him for a fatal accident at his foundry. Even though a judge quashed the verdict, the mere prospect of forfeiture had worsened the man's health and prompted him to retire from business to avoid risking his property in this way in future. "Was it desirable," Forster asked, "that in a great trading community like ours, such an impediment in the way of commerce should be permitted to continue?"[98]

Forster's bills had been models of brevity. The body of his 1870 effort ran to three lines: "From and after the passing of this act no conviction of felony shall cause a forfeiture of the lands and goods of any person so convicted, any statute or usage to the contrary notwithstanding." What finally passed proved rather longer, running to some thirty-three clauses. It also proved something of a compromise. Forfeiture remained for outlaws, and the Crown might appoint administrators for felons' estates during their imprisonment. It also made provisions for civil suits against felons' estates to cover the costs of prosecution and victims' injuries—two things defenders of forfeiture had long liked about it.[99] Discretion lived on, in some small way, but any notion of forfeiture as a deterrent disappeared.

96. *The Times*, May 7, 1869, 12. The report in the Old Bailey Proceedings gives no real hint of this subtext, however; May 3, 1869, Trial of Isaac Chamberlain, Caroline Judd, and Ann Hutchinson (t18690503-487), http://www.oldbaileyonline.org.

97. *The Times*, June 16, 1864, April 8 and 23, 1868, 12.

98. *The Times*, Thursday, March 31, 1870, 6; *Parliamentary Debates*, vol. 200, cols. 931–38, quote at 933. Forster was a Gladstonian Liberal, the son of a banker, friend of the "commercial interests," and a longtime MP for Walsall. See the obituary in the *Birmingham Daily Post*, July 28, 1891, 8, which singles out his work in securing the end of forfeiture, "the last barbarous relic of a barbarous age." The particular case that prompted Forster's concern may have been the explosion of a boiler owned by S. Mills of Darlaston, which killed furnace man George Andrews. The inquest charging Mills with manslaughter was reported in the *Birmingham Daily Post*, January 15, 1864, 3.

99. 33&34 Victoria, c. 23 (1870).

By 1870, enough MPs agreed that forfeiture did in fact violate "the spirit of the age" to do away with it. The new "spirit of the age" included changes both to punishment and to property. One might see the forfeiture act as having as much to do with the impulses behind the 1868 law abolishing public executions as with the impulses behind such measures as the 1870 Married Women's Property Law. The latter act recognized that even women who married retained some right to wages, investments, savings, and legacies. If they did, so too might felons. Just as the Married Women's Property Act was propelled in part by the marked increase in the number of wage-earning wives, so too did shifts in property contribute to the 1870 Forfeiture Act.[100] But the forfeiture statute also included one ostensibly unrelated provision: In dismantling the "last barbarous relic of a barbarous age," it also stipulated—almost as an afterthought—that persons guilty of high treason no longer be drawn on a hurdle, have their heads severed from their bodies, and have those bodies divided into four quarters. The old regime of punishment was never just about the body: The gruesome public spectacles of suffering had long coexisted with the deterrent of dispossession. From 1868 to 1870, both disappeared, nearly in tandem.

100. See Holcombe, *Wives & Property*, 34ff.

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