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FELONY FORFEITURE AND THE PROFITS OF CRIME IN EARLY MODERN ENGLAND[*]

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ABSTRACT: For much of English history, the law punished felons not just with death, but also with the loss of their possessions. This article examines the practice of felony forfeiture in the sixteenth and early seventeenth centuries, focusing on who profited and with what effects. It argues that recognizing the role such profit-takers played challenges common depictions of the nature and meaning of participation in law and governance. The heightened use of judicial revenues as tokens of patronage under Elizabeth and the early Stuarts impinged upon participatory aspects of the law's operation.

In 1547, Thomas Michell murdered Eleanor and John Sydnam and then killed himself. Knowing Michell to be a 'man of great possessions' reputedly worth more than a thousand pounds, undersheriff Nicholas Sarger moved quickly to seize the goods of this felon for the king. When he arrived, however, he found several of Michell's neighbours already in the house, busily removing everything they could carry. Nor were the undersheriff and the neighbours the only people interested in Michell's property: Nicholas Heath, the king's chief almoner, launched suits in Star Chamber against Sarger

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and the others, claiming that because Michell was not just a murderer but also a suicide, the goods belonged to him by royal grant.[1]

What prompted these people to descend like vultures on a fresh victim was a long-lived but little studied aspect of the law's operation: the forfeiture of felons' property. For much of English history, the law punished felons not just with death, but also with the loss of all their possessions. Felony forfeiture was embedded in the very origins of the common law and survived until 1870.[2] According to legal writers, forfeiture—not capital punishment or anything intrinsic to the offence itself—defined felony and distinguished it from other offences.[3] Yet, despite the longevity of the practice and its centrality to definitions of felony, historians have given it little notice. Forfeiture for treason has received some scholarly attention, but the much more common forfeitures by regular felons have received almost none.[4] Accordingly, this article asks what we might learn from such ostensibly unedifying tales as that of Thomas Michell about the nature and operation of early modern law. Who profited from felons' forfeitures, and to what effect? Did this change over time? And how does acknowledging this overlooked aspect of the law alter our understanding of the law's function and meaning in early modern society? The article focuses on the sixteenth and early seventeenth centuries,

[1] The National Archives: Public Record Office (TNA), STAC 2/26/199 and 2/26/430.
[2] For the continuation of felony forfeiture through to 1870, see K.J. Kesselring, 'Felons' effects and the effects of felony in nineteenth-century England', *Law and History Review*, 28 (2010), pp. 111-39.
[3] See, for example, Sir William Blackstone, *Commentaries on the laws of England*, 13th ed (4 vols., London, 1800), IV, pp. 97-8.
[4] But see Michael MacDonald, who pays the subject some attention in his writings on suicide: 'The secularization of suicide in England, 1660-1800', *Past and Present* 111 (1986), pp. 50-100, and with Terence R. Murphy in *Sleepless souls: suicide in early modern England* (Oxford, 1991). See also the excellent piece by David C. Brown, 'The forfeitures at Salem, 1692', *William and Mary Quarterly*, 3rd ser., 50 (1993), pp. 85-111. Leonard W. Levy offered a useful overview of the history in his engagement with modern manifestations of forfeiture: *A license to steal: the forfeiture of property* (Chapel Hill, 1996). R.A. Houston's forthcoming work on suicide in Scotland and northern England from 1500-1850 also devotes much attention to suicide forfeitures and their collection; my thanks to Professor Houston for generously sharing drafts of several chapters prior to their publication.

years that witnessed key changes to felony forfeiture in law, in practice, and in people's perceptions. Ultimately, it suggests, the restoration of profit-takers to their place in legal culture complicates common depictions of the nature and significance of popular participation in the Tudor and early Stuart polity.

That government in early modern England relied on the participation of many individuals of all but the 'lowest' sort is now an accepted fact, even if its significance is variously interpreted. Some scholars saw this participation as manifesting a fundamental consensus about social order, or at least as having established a type of 'negotiation' that effectively constrained the relatively powerful.[5] Recently, however, some historians have offered qualifications and caveats to such interpretations. Andy Wood, for example, insists that the substantial limits on the poor in such negotiations be recognized: popular political action took place within the context of a 'profoundly unequal, and often cruel, class structure'.[6] John Walter writes of a 'normative order' of negotiation and the responsibilities of power that served, imperfectly, 'to conceal relationships that in reality were marked by conflict'.[7] In a different vein, Ethan Shagan notes that popular participation could subvert the aims and structures of central authority.[8] This survey of

[5] Key works advocating the 'negotiation' model include Paul Griffiths, Adam Fox, and Steve Hindle, eds., *The experience of authority in early modern England* (Basingstoke, 1996); Michael J. Braddick and John Walter, eds., *Negotiating power in early modern society: order, hierarchy, and subordination in Britain and Ireland* (Cambridge, 2001); Steve Hindle, *The state and social change in early modern England, c. 1550-1640* (New York, 2000); and Michael J. Braddick, *State formation in early modern England, c. 1550-1700* (Cambridge, 2000).

[6] Andy Wood, 'Subordination, solidarity, and the limits of popular agency in a Yorkshire valley', *Past and Present* 193 (2006), pp. 41-72, quote at 72. See also Steve Hindle, 'Imagining insurrection in seventeenth-century England: representations of the Midland rising of 1607', *History Workshop Journal* 66 (2008), pp. 21-61.

[7] John Walter, *Crowds and popular politics in early modern England* (Manchester, 2006), p. 10.

[8] Ethan Shagan, 'The two republics: conflicting views of participatory local government in early Tudor England', in John McDiarmid, ed., *The monarchical republic of early modern England* (Aldershot, 2007), pp. 19-36. See also J.C. Davis, 'Afterword: Reassessing radicalism in a traditional society: two questions', in Glenn Burgess and Matthew Festenstein, ed., *English radicalism, 1550-1850* (Cambridge, 2007), esp. pp. 366-7.

felony forfeiture similarly affirms that participation cannot be read as consent or as clear evidence of effective 'negotiation'. So, too, does it challenge a related but more resilient interpretation, one that depicts widespread participation as a sign of the success or strength of the late Tudor and early Stuart state in its domestic context, in contrast to the state's evident fiscal and military failures.[9] As this article demonstrates, weaknesses in one area bled into the other, as the crown adopted various fiscal expedients that impinged upon law and justice and challenged public participation therein.

I

The practice of stripping offenders of all they possessed had Anglo-Saxon precedents and developed its standard common law features by the late twelfth century.[10] The formula for forfeiture held that traitors lost all lands and all goods to the king. In contrast, felons forfeited their goods to the king, and their lands escheated to their lord after the king had taken the profit and waste of those lands for a year and a day. Such a fate applied when the offender had been deemed guilty by a jury, or had absconded and become outlawed. Even if felons successfully pleaded benefit of clergy after conviction and before sentencing, they still lost their goods; they saved their life and lands, but not their chattels. Nor did a post-conviction pardon save the offender from forfeiture unless it specifically included a gift of the felon's goods.[11] Forfeiture provisions did not apply in the same manner throughout the country: variations existed in Gloucester, Redesdale, and

[9] See Braddick, *State formation*, pp. 3, 178.
[10] Patrick Wormald, *The making of English law: King Alfred to the twelfth century: legislation and its limits* (Oxford, 2000), pp. 19, 144-9, and John Hudson, *The formation of the English common law: law and society in England from the Norman Conquest to Magna Carta* (New York, 1996), pp. 161-2.
[11] See Ferdinando Pulton, *De pace regis et regni* (London, 1609), fos. 216-40; Sir Edward Coke, *The first part of the institutes of the laws of England, or a commentary upon Littleton*, ed. Francis Hargrave and Charles Butler (2 vols., London, 1832, 19th edn .), II, pp. 351a, 392b; *The works of Francis Bacon*, ed. James Spedding *et al* (7 vols., London, 1858-61), VII, pp. 485-8; and Sir Matthew Hale, *Historia placitorum coronae*, ed. W.A. Stokes and E. Ingersoll (2 vols., Philadelphia, 1847), I, pp. 239-57, 353-69, 413, 492-3, 703.

most notably in Kent. There, a felon lost his goods, but upon execution his lands passed immediately to his heir, a practice summed up in the saying, 'the father to the bough, the son to the plough'.[12] But generally, the standard formula applied: from traitors, all lands and personal possessions to the king in perpetuity; from felons, all personal possessions to the king and all lands to the lord of the fee, after the king's year and a day.[13]

Court records have fostered a misconception that such forfeitures had all but ceased by the early modern period. Surviving assize records note the nearly formulaic response of trial jurors to the standard query about a felon's goods that, to their knowledge, the felon had none; one might then think that the jury had saved the felon's effects from forfeiture. As Sir Thomas Smith's sixteenth-century description of court business intimates, however, this was not so. After the jurors gave their verdict, Smith noted, 'The clark asketh what lands, tenements, or goods, the prisoner had at the time of the felony committed, or at any time after. Commonly it is answered that they know not, nor it shall not greatly need, for the sheriff is diligent enough to enquire of that, for the Prince and his own advantage, and so is the escheator also'.[14] Indeed, coroners, escheators, sheriffs, and others left records in their capacities as revenue collectors which clarify that they found and seized goods even when trial jurors denied knowledge of a felon's possessions. The escheat of land required an inquisition, but sheriffs could and did collect felons' effects by virtue of their office alone, and they did so regardless of the jurors' statements about felons' property. The jurors at the 1579 trial of Henry Mellershe of Croydon, for example, found him guilty of murder but said that to their knowledge he

[12] *Statutes of the realm*, vol. 1, pp. 223-6, *Prerogativa Regis*; TNA, SP 14/185, no. 44.
[13] For a more detailed discussion of the precedents and procedures described in this paragraph, see K.J. Kesselring, 'Felony forfeiture, *c*. 1170-1870', *Journal of Legal History*, 30 (2009), pp. 201-26.
[14] Sir Thomas Smith, *De republica anglorum, a discourse on the commonwealth of England*, ed. L. Alston (Cambridge, 1906), p. 102.

had no goods or chattels; yet, the local sheriff duly submitted a return noting the horse, profits of two leases, and cash that he had seized from Mellershe's family. William Payne, an Essex labourer convicted of manslaughter in 1594, faced a similar fate: according to the relevant assize records, jurors disavowed knowledge of any goods and chattels, but elsewhere the sheriff recorded the seizure of goods valued at roughly £5 from Payne.[15] Unfortunately, the nature of record keeping and survival—and, as will be seen, the very way in which forfeiture operated—mean some basic questions about the practice cannot be answered. We cannot learn the proportion of felons who had their goods seized, whether this varied over time, or whether the likelihood of seizure depended on the type of crime, for example. But if we turn away from criminal court records to look elsewhere, we do at least find plenty of evidence that felony forfeiture continued throughout the sixteenth and early seventeenth centuries.

It continued, but subject to a number of changes. Sixteenth-century lawmakers introduced several key innovations. Most notably, in 1547 they ensured that the widows of felons might retain their dower in their husbands' freehold land, and for most felonies created after that year they protected the heir's rights to the felon's real estate.[16] In the 1530s and 40s, some writers had criticized felony forfeiture for unfairly punishing the innocent more so than the guilty; wives, heirs, and creditors all suffered for the sins of another.[17] In response, legal writers came to defend forfeiture as a valuable deterrent precisely because of these effects on the innocent, arguing that a potential offender might

[15] For Mellershe: TNA, E 199/43/31 and ASSI 35/21/3, m. 31; for Payne: E 199/12/28 and ASSI 35/37/1, m. 26.
[16] See, for example, Hale, *Historia placitorum coronae*, I, pp. 253, 353, 258, and for a more detailed discussion of the changes, Kesselring , 'Felony Forfeiture'.
[17] See Thomas Starkey, *Dialogue between Pole and Lupset*, ed. K.M. Burton (London, 1948), pp. 115, 177 and Henry Brinkelow, *The complaynt of Roderyck Mors* (London, 1548), sigs. C3r-C4r.

forebear out of concern for kin or creditors. Its justification relied on it being a punishment that imposed a hardship.[18] Members of parliament took action that left both critics and defenders of felony forfeiture unsatisfied: while they offered some protections for land, they left all goods subject to forfeiture, prompting continued complaint. So, too, did the failure to offer any protection to creditors like that offered to widows and heirs: despite at least five legislative attempts over the early seventeenth century to ensure that creditors be able to claim from the estates of felons, no such measure passed. As the draft of one of these bills noted, 'it is agreeable to justice that the fuller punishment of the nocent or guilty do not any ways involve or draw on the overthrow or prejudice of those that be innocent and guiltless'.[19] Would-be law reformers of the civil war and interregnum period accordingly launched volleys of criticisms against felony forfeiture.[20]

Developments took place in the enforcement of the law, too, that changed the number and nature of those who profited from crime and serve as the focus for the remainder of this article. In theory, the ability to profit from felony forfeitures was limited to kings and lords. In practice, however, it was always quite broadly dispersed, and became even more so in the late Elizabethan and early Stuart years. In contrast to other aspects of criminal justice that became more tightly controlled and centralized in the early modern period, forfeiture became less so. Felony forfeiture became increasingly privatized and increasingly politicized.

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[18] See, for example: William Staunford, *Les plees del coron* (London, 1560), p. 194d; Pulton, *De pace regis et regni*, fos. 237d-238; T.E., *The lawes resolutions of womens rights* (London, 1632), p. 152.
[19] The issue of felons' creditors was discussed in the parliaments of 1610, 1614, 1621, 1624 and 1626. *Journal of the House of Lords (LJ)*, II, 661; Maija Jansson, ed., *Proceedings in parliament, 1614* (Philadelphia, 1988), pp. 51, 119, 126; Wallace Notestein et al, eds., *Commons debates, 1621* (7 vols., New Haven, 1935), II, pp. 199, V, 110, VII, 129-32; William B. Bidwell and Maija Jansson, eds., *Proceedings in parliament, 1626* (4 vols., New Haven, 1996), IV, p. 91. For drafts of two of the bills, see Parliamentary Archives, HL/PO/JO/10/1/19 and HL/PO/JO/10/1/22; the quotation is taken from the former.
[20] Donald Veall, *The popular movement for law reform, 1640-1660* (Oxford, 1970), esp. pp. 114, 131, 235.

II

Who stood to profit from criminal convictions? Lords had long done so. They held rights to the land escheated by felons by the nature of the bond between lord and tenant, but they also frequently obtained the rights to felons' personal possessions by royal grant. The medieval and early modern crown regularly bestowed upon lords, bishops, and boroughs the privilege of collecting the goods and chattels of felons. The grant might cover the assets of any of their own tenants who became felons or of any felon convicted of a crime committed on their lands. In any given region, then, quite a number of people had claims to felons' forfeited chattels. In the Sussex coroners' records calendared by R.F. Hunnisett, for example, goods of felons were seized to the use of the crown, the archbishop of Canterbury, the bishop of Chichester, the duke of Norfolk, the earl of Arundel, Lord Abergavenny, and the mayor and burgesses of Chichester.[21]

Beyond the lords and corporations with special blanket grants of felons' goods, other individuals profited from felony forfeiture by petitioning for and receiving the grant of a particular offender's possessions. John Gildon and Thomas Fulbroke, for example, obtained from Henry VII the goods and chattels of Thomas Huchins, a Wiltshire convict.[22] One of the first signs of royal favour for Catherine Howard was the rather unromantic gift of the goods and chattels of two Sussex murderers.[23] In 1633, Charles I gave Halton Barwick, one of his falconers, the goods Thomas Whitaker forfeited upon

[21] R.F. Hunnisett, ed., *Sussex coroners' inquests, 1485-1558* (Sussex Record Society, vol. 74, Lewes, 1985), passim; *Sussex coroners' inquests, 1558-1603* (Kew, 1996), passim; *Sussex coroners' inquests, 1603-1688* (Kew, 1998), passim.
[22] TNA, STAC 1/1/3.
[23] J.S. Brewer, J. Gairdner, and R.H. Brodie, eds., *Letters and papers...of the reign of Henry VIII* (21 vols., London, 1862-1910, 1929-32), XV, p. 295.

his conviction for manslaughter.[24] Examples of such individual grants could be multiplied many times over. Petitioners for the effects of a particular felon moved quickly, often acting upon news of an offence committed, and well before conviction. And they sought such grants not just from the crown, but also from other lords or corporations that received felons' goods. For example, upon John Browne's conviction for felony in the late 1540s, his possessions went to the bishop of Peterborough, who decided to give one-third of the value of the goods to Browne's wife Alice, but granted the other two-thirds to his own servant, John Mountsteving.[25] In 1590, Anthony Ashley, a clerk of the privy council, paid the London sheriffs £20 in hopes of obtaining the forfeitures of a man charged with manslaughter. As it turned out, the individual was acquitted, and it seems that even had he been convicted, the goods would have gone to the dean of St. Paul's rather than the corporation of London. Ashley had to turn to his bosses on the privy council to have his £20 payment returned. Nonetheless, his attempt shows that persons besides the crown received requests for forfeitures, and the speed with which petitioners moved to profit from others' wrongdoing.[26]

These two means of sharing the wealth—grants in perpetuity to a lord or corporation of the rights to felons' goods for a particular area, and grants to an individual petitioner of an individual felon's lands or possessions—had long precedent. Queen Elizabeth and her Stuart successors developed a new element, however, in farming out forfeitures, giving favoured individuals rights over felons' forfeitures in return for a

[24] *Calendar of privy seals, signed bills, & c, Appendix 1 to the forty third annual report of the deputy keeper of the public records* (London, 1882), p. 474. For other such grants given by Charles I, see also pp. 5, 67, 98, 128, 135, 498, and BL, Harleian 1012, a docket book of patents, pp. 9, 10, 34, 28, 42d, 53, 58d, 65d.
[25] TNA, SP 10/8, no. 49.
[26] J.R. Dasent, ed., *Acts of the privy council of England, new series: 1542-1631* (45 vols., London, 1890-1964), XX, pp. 3, 26.

portion of the proceeds. In 1579, for example, Queen Elizabeth granted one of her equerries the concealed chattels of up to thirty convicted felons that he would discover, with one-fifth of the value to be rendered at the Exchequer. [27] King James preferred to give the right to collect all forfeitures in a given area for a given amount of time in return for a rent or a proportion of the proceeds, or even both. In 1605, for example, he leased to James Anderton the right to gather the goods of felons and outlaws in Lancashire.[28] In 1619, he granted to Roger Thorpe, one of his gentlemen ushers, the power to search for any concealed profits due the crown from felony convictions within the duchy of Lancaster from 1578 to 1617. Half of the proceeds would go to the king, and half to Thorpe.[29] Such grants of the farms of forfeitures continued under King Charles. In 1637, Michael Oldisworth presented a proposal for the mutual benefit of Charles and himself, maintaining that within the stannaries of Devon and Cornwall, negligible returns of felons' goods had been made over the past few years. He asked for and received a grant of the same for thirty-one years, promising to pay the king £10 annually from the proceeds.[30] King Charles gave a consortium of London merchants similar rights to the forfeitures of felons in Liverpool.[31] In 1627, William Belou received a grant to repay a debt of £5000, to be raised out of the lands or goods of felons not then discovered, initially with one-third to go to repayment of the debt, and the remainder to the king.[32]

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[27] *Calendar of the patent rolls preserved in the Public Record Office, Elizabeth I* (9 vols., London, 1939-1986),VIII, no. 169. (*CPR*) See also: *CPR*, VII, no. 2869 (1578), a grant for concealed forfeitures of traitors, among other things, with one-third of the value to go to the crown.
[28] *Calendar of state papers, domestic series...1547-1625* (12 vols., London, 1856-72), VIII (1603-10), p. 227. (*CSPD*).
[29] TNA, E 128/38/1.
[30] *Calendar of state papers, domestic series...Charles I* (23 vols., London, 1858-97), XXII (1637), p. 300 (*CSPD Charles*); British Library (BL), Harley 1012, p. 33.
[31] TNA, E 165/93.
[32] *CSPD Charles*, XIII (1627-8), p. 437. Belou subsequently complained, however, that he made little profit as low level officials embezzled the proceeds from poor felons and the king granted to individual

Other such examples exist, as do a number of petitions and proposals for similar farms of forfeitures.[33]

In an era in which the crown reworked felony forfeiture provisions to allow the lucrative milking of recusants, and in which the crown notoriously granted monopolies and farms on penal statutes, such an innovation is almost to be expected.[34] 'Projects' began in the 1550s to encourage entrepreneurial endeavours, but by the end of the century they came to be used for the privatization of crown finance. Royal councillors endorsed revenue farming as a way ideally to increase revenues but at the least to stabilise and make them predictable; such farms also helped satisfy demands for patronage.[35] Felons' forfeitures, like so much else, became wrapped up in this projecting mentality. The ability to profit from forfeitures, already broadly dispersed, thus became even more broadly shared with the late Elizabethan and early Stuart fondness for government by license.

How *much* profit did these people make? For the crown and some traditional grant holders, the answer is 'not much'. The town of Great Yarmouth has a good run of surviving chamberlains' accounts which show nearly negligible proceeds from forfeitures. Great Yarmouth brought in only £73 from felons' goods between 1581 and 1612, averaging less than two and a half pounds a year, out of total annual revenues of

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petitioners the proceeds from wealthy felons. *CSPD Charles*, XV (1629-31), p. 475 and XVI (1631-33), p. 65.

[33] For other proposals for farms of forfeitures, see *CSPD,* VI (1601-3), p. 140; TNA, SP 14/180, no. 95; BL, Add 10038, fo. 254.

[34] For procedures and debates involving revenue from recusants, see M.C. Questier, 'Sir Henry Spiller, recusancy, and the efficiency of the Jacobean exchequer', *Historical Research* 66 (1993), pp. 251-66.

[35] For projects and revenue farming, see in particular Joan Thirsk, *Economic policy and projects: the development of a consumer society in early modern England* (Oxford, 1978); John Cramsie, *Kingship and crown finance under James VI and I, 1603-1625* (Woodbridge, 2002); Linda Levy Peck, *Court patronage and corruption in early Stuart England* (Boston, 1990); Robert Ashton, 'Revenue farming under the early Stuarts', *Economic History Review*, n.s., 8 (1956), pp. 310-22; and Robert Ashton, 'Deficit finance in the reign of James I', *Economic History Review*, n.s., 10 (1957), pp. 15-29.

over £1600. When the unusually high amount of £24 seized from one felon in 1599 is deducted, the average annual proceeds become even more meagre.[36] Similarly, between 1574 and 1642, Ipswich had annual receipts of forfeitures ranging from a high of £17 to lows of 4d, with an over all average of not much more than £1 a year, when total receipts ran around some £600 a year.[37] Indeed, the value of the goods forfeited by a felon might not even cover the cost of that felon's execution. The town made a little profit, but not much, from the conviction of the aptly named cutpurse John Wallet: the chamberlain valued his goods at £3 2s 4d, but paid 14s for Wallet's board while he awaited trial and another 5s for the hanging itself. The dry financial accounts sometimes make evident just how inconsequential the seizures were: two boys, who cost 3s 4d to execute, forfeited only 'one sheet with other trash', valued at 2s. From another felon, the chamberlain recorded the receipt of bits of iron 'and some other trifles' worth 2s 2d.[38] True, the town's officials did not always seek to maximize possible returns, instead showing some discretionary lenience. Like others convicted of manslaughter, Peter Jeames managed to avoid execution for his offence, and was allowed to redeem his goods at a favourable rate.[39] And true, there could be occasional windfalls. In 1597, for example, gentleman Edmond Dockett had to pay the town of Plymouth £132 to redeem the goods he forfeited on his conviction for manslaughter.[40] Perhaps because of such occasions, corporations fought doggedly to protect their claims to felony forfeitures from rival jurisdictions. A corporation's right to collect felons' effects represented an entitlement to be defended for

[36] Norfolk Record Office, Y/C 27/1. Felony forfeitures continued to be recorded in the Great Yarmouth audit books in years after 1612, but were subsumed under a more general subheading of 'all goods escheated, forfeited, and coming to this town by any felony, pirate goods, deodands, waifs, strays, and other escheats'.
[37] Suffolk Record Office, Ipswich (SRO), C/3/2/1/2, fos. 72 and 206d, and C/3/2/1/1-2, passim.
[38] SRO, C/3/2/1/2, fos. 9, 10, 11, 72, 231.
[39] SRO, C/3/2/1/2, fos. 149 and 242.
[40] R.N. Worth, ed., *Calendar of the Plymouth municipal records* (Plymouth, 1893), p. 139.

the sake of prestige or the occasional rich felon more so than regular income. In general, the financial value of the proceeds was minor.

Certainly, felony forfeitures were incidental to crown revenue. The 1552 revenue commission noted the receipt of only £41 6s from felons' goods in the previous year.[41] A memorandum prepared in 1610 recorded tallies from the previous seven years that ranged from a low of £17 0s 19d to a high of £186 14s 3d, with a seven year total of only £459 5s 7d.[42] Some years proved better than others: in 1589 the crown received over £605 from felons' goods, but even this was a tiny proportion of total revenues.[43]

Why so little? The 1552 commissioners believed that sheriffs had seized much more from felons but had 'evil answered' or 'very slenderly answered' for the same.[44] From scattered evidence it seems the commissioners were right, that sheriffs, undersheriffs, bailiffs and others routinely pocketed the proceeds of seizures, failing to report them altogether or undervaluing the goods received.[45] Furthermore, the crown had already granted away felons' goods in large and populous areas of the country. The three grants to the corporation of London and the deans and chapters of Westminster and St. Paul's alone must have denied the crown a good many forfeitures. Finally, the individuals typically charged with offences tended not to be terribly wealthy, while

[41] BL, Add 30198, fol. 7d. See also J.D. Alsop, 'The revenue commission of 1552', *Historical Journal* 22 (1979), pp. 511-33. For crown revenues more generally over this period, see Patrick O'Brien and Philip Hunt, 'The rise of a fiscal state in England, 1485-1815', *Historical Research* 6 (1993), pp. 129-76.
[42] BL, Lansdowne 166, fos. 159-161d.
[43] BL, Lansdowne 165, fo. 150.
[44] BL, Add 30198, fo. 40.
[45] For similar complaints, see BL, Harleian 4807, fo. 20 and TNA, STAC 2/24/436. The clerks of the parcels, who received fees for entering sheriffs' and escheators' accounts of forfeitures, in the 1620s launched a campaign to ensure better accounting, but with little success. They claimed both that some escheators, etc., simply failed to levy seizures, but also that a good many also concealed the profits. See: TNA, E 215/1706; LR 9/103; E 126/2, fo. 239; E 126/3, fo. 78d.

individual petitioners anxious for profit avidly sought any felons who were well endowed.

Indeed, for the crown, felons' forfeitures had more political than financial value. Royal officials made occasional attempts to bring more of the forfeitures into the Chamber or Exchequer, most notably with the farms and leases of forfeitures. Otherwise, as tokens of patronage, forfeitures served primarily as a means for the crown to reward and favour. Grants of forfeitures sometimes allowed the crown to show discretionary magnanimity to the family of the condemned, or to a victim of an offence. More frequently, as Joel Hurstfield demonstrated for the revenues of fiscal feudalism more generally, grants of forfeitures served as commodities for a crown at pains to reward its servants.[46] This proved particularly true under King James. When the earl of Salisbury tried to rein in James's grants with the 'Book of Bounty', a list of items fit to be given to importunate suitors, the forfeitures of felons appeared high on the list of permissible gifts. The book banned suits for fines in Star Chamber and upon penal statutes as dangerous to the king's interests, but otherwise expressed a willingness that 'those monies which do arise by the faults of offenders may sometime serve for matter of bounty'.[47] In the struggle to balance revenue and recompense in the midst of mounting financial difficulties, the proceeds of justice became ever more important as a source of reward.

Arguably, then, the main financial beneficiaries of forfeiture were the individuals who petitioned for particular grants or for farms of forfeitures. The courtiers who kept their ear to the ground and their eye on the assize dockets, seeking the stray gentleman or

[46] Joel Hurstfield, 'The profits of fiscal feudalism, 1541-1602', *Economic History Review*, 2d ser., 8 (1955), pp. 53-61.
[47] *A declaration of his majesties royall pleasure, in what sort he thinketh fit to enlarge, or reserve himselfe in matter of bountie* (London, 1610), quotation at p. 24; reprinted in 1619 and in *Commons debates, 1621*, VII, pp. 491-6.

wealthy merchant charged with a felony, seemed to find the practice worth their time. The man who begged a courtier to help him get a grant of one felon's possessions, promising him half the proceeds, or £600, certainly had a nice profit in sight, as did the courtier.[48] James Levingston, a servant of James's bedchamber, variously collected the forfeitures of traitors, recusants, and felons alike, including the goods of one Peter Smithweek, charged with a 'foul murder'.[49] Presumably Levingston found his repeated suits for forfeitures worth the effort, as did the men who farmed such things of the king. So, too, one suspects, did the bailiffs and undersheriffs who made the seizures and compositions find themselves with the occasional bonus to supplement their more meagre incomes. For such individuals, the sort of forfeiture that appears negligible on the accounts of the crown or a borough offered a more meaningful boon. Philip Smith, for example, leased the profits of the hundred of Chippenham from Sir Anthony Mildmay. The rights attached to this hundred included the goods, chattels, and credits of felons. Smith maintained that his usual practice for profiting from this lease was to make composition with family members. For the benefit of the wife and children of one felon Smith sold the goods to the offender's brother for the sum of £7. After the suicide of Robert Hobbes, his widow Susan purchased the household goods from Smith for a little more than £22.[50] When we remember that an agricultural labourer in the early seventeenth century earned about 8d per day, and that the family of an arable farmer with some thirty acres might survive on roughly £11 to £14 a year,[51] it becomes clear that

[48] TNA, SP 14/31, no. 68.
[49] TNA, SP 14/154, no. 22; E 214/1343; BL, Salisbury MS 128, no. 157. From King Charles, Levingston also received a grant of three-quarters of the money received from sums sheriffs held back from the king; *Calendar of privy seals*, p. 78.
[50] TNA, STAC 8/2/37.
[51] Peter Bowden, 'Agricultural prices, farm profits and rents', in Joan Thirsk, ed., *The agrarian history of England and Wales* (8 vols., Cambridge, 1967-), IV, p. 657.

while forfeiture was an unpredictable source of income, it occasionally offered substantial payouts to individuals.

III

Thus, the ability to profit from forfeitures was broadly dispersed, and became more broadly dispersed as Elizabeth and the early Stuarts increasingly sought political rather than purely financial gain from the practice. What effect did such profit-taking have on the operation of the law?

Felony forfeiture sometimes led to a reluctance to enforce the law as written, serving as an incentive for jury nullification. People occasionally objected to stripping a felon's family of all its possessions and to denying creditors a chance for repayment. This sort of opposition appears most clearly in suicide cases.[52] In addition to family, friends or simply self-interested neighbours absconding with goods before officials could inventory or seize them, coroners and their juries sometimes labelled a self-slaying accidental rather than felonious suicide in order to avoid forfeiture. To give just one example: when William Ponder of Dodford killed himself, neighbour Thomas Baylie went to the bailiff's home to help him select men of the adjoining townships who he deemed suitable for the coroner's jury. Baylie then returned to Ponder's widow, and reportedly assured her that 'I have been abroad and laboured of them of the inquest that dwell abroad out of Dodford…be merry, for thou hast no cause to the contrary, so that thine own neighbours will be thy friends'. He felt confident that the inquest jurors drawn from Dodford would find a suitable verdict, and had helped pick men from the neighbouring townships who he

[52] Whether this opposition is more easily seen in such cases because of distinctive attitudes to self-slaying or simply because the records are more easily found is difficult to determine. As the king's almoner typically had the right to the forfeitures of suicides, a search of Star Chamber records for almoners as plaintiffs readily results in a trove of disputed forfeiture cases.

hoped would be similarly inclined. He admitted to addressing the jury once it convened, saying, 'Remember yourselves, Mr Worley [the grant holder] hath no need of the poor woman's goods and therefore give them not from her'. The jury found a verdict of accidental death; the widow got to keep her goods. The coroner in the case seemed content to acquiesce as long as Baylie paid the fee he obtained only in cases of felonious death.[53] As Michael MacDonald and Terence Murphy note in their study of early modern suicide, 'there are hundreds of suits in the surviving records of Star Chamber in which families, neighbours, and coroners and their juries were charged with concealing the goods of suicides', a good number of which involved false verdicts from juries.[54]

Of course, trial jurors for other felonies had little ability to frustrate the law's forfeiture provisions, other than by finding an individual not guilty. If they found an individual guilty of an offence for which he might claim benefit of clergy, they could save the offender's lands as well as his life, but still not the goods.[55] They could and generally did declare that an offender they deemed guilty had no goods or chattels to forfeit, but as noted earlier, that seems not to have mattered much. Creditors, friends and family of the condemned found other ways to evade the law's forfeiture provisions, hiding goods, witnessing jail-yard property conveyances of dubious legality, and so forth. Evidence of such evasions suggests that forfeitures did impinge upon some individuals' responses to crime and to the procedures of the criminal law. As MacDonald and Murphy note in respect to suicide forfeitures, 'charity, class interest, local solidarity, and

[53] TNA, STAC 5/A10/20.
[54] MacDonald and Murphy, *Sleepless souls*, p. 78. See also Carol Loar, 'Conflict and the courts: common law, Star Chamber, coroners' inquests, and the king's almoner in early modern England', *Proceedings of the South Carolina Historical Association* (2005), pp. 47-58.
[55] Henry Alexander, at least, accused a jury of doing just this. Having received from King James a grant of the lands and goods one Richard Bankes would forfeit if convicted of murder, Alexander later accused the coroner and trial jurors of confederating to have Bankes found guilty merely of manslaughter, and thus saving Bankes's freehold from escheat: TNA, STAC 8/46/18.

traditional values concerning inheritance set up eddies of defiance'.[56] Forfeiture sometimes sparked opposition to the law as written.

Yet, one suspects that a more pervasive effect of forfeitures, and especially of the growing range of people with the ability to profit from them, was to ensure a ready supply of individuals with a vested interest in seeing the law enforced, or at least in securing their own benefit. Much study of the early modern courts has emphasized the diffusion of discretionary decision making throughout all stages of the process, from accusation to indictment and through to conviction. The historiographical focus is usually on how this broad participatory base served to mediate between central and local notions of order, to moderate an unyielding law to make it fit individual and local circumstances.[57] When we look at forfeitures, however, and the individuals who hoped to profit from them, we see people with a concrete economic interest in limiting the discretion of local jurors or other local agents of the law. Here we find evidence that the broad participatory nature of law enforcement did not necessarily reflect or promote some sort of communal moral consensus. Indeed, much of the evidence for the operation of the law's forfeiture provisions comes from court cases launched by aggrieved grant holders who thought a local coroner, sheriff, or jury had somehow deprived them of their rightful goods. Not just friends and family, but also traditional office holders found themselves supervised and sanctioned.

With the ability to profit from criminal convictions so broadly dispersed, in fact, sometimes not just one but several grantees stepped in with competing claims, leaving felons or their families literally at a loss. Philip Stockwell, for example, faced dual

[56] MacDonald and Murphy, *Sleepless souls*, p. 86.
[57] Works espousing this view draw especially on Cynthia Herrup's foundational study, *The common peace: participation and the criminal law in seventeenth-century England* (Cambridge, 1987).

demands for his property, even after he obtained a pardon for manslaughter. Upon Stockwell's arrest, the mayor and bailiffs of Windsor seized his goods, whereupon his wife paid forty marks composition in order to keep the household items. Soon after, however, the dean of the queen's chapel of Windsor claimed the right to Stockwell's goods and tried seizing them once more. A court found the dean's claim better than the mayor's, but the latter refused to return the composition money he had taken from Stockwell's wife.[58] Similarly, John Goodchild compounded with the agents of Lord Thomas Howard, lord of the manor, for the sheep, bullocks, and such like that his father forfeited upon his felony conviction at the Bury St Edmunds assizes, only to find that Sir Nicholas Bacon, as lord of the liberty, had the better claim to most of the items. Goodchild lost both the livestock and the composition money.[59] Even were these rival claimants more interested in staking claims to entitlements and power rather than immediate pecuniary gain, their efforts had similar effects. Trial jurors may have said these men had nothing to forfeit, but grant holders and their agents proved ready to find and fight for whatever scraps became available.

Thus, potential profit takers had an interest in limiting local discretion and in seeing the law enforced in ways that secured their benefit. This did not always mean heightened rigor. Some people received pardons they might not otherwise have obtained, precisely because someone had an interest in obtaining their forfeitures. Petitioners sometimes had to request a pardon for the convict in order to assure a profit from the lands: if the offender's lands were entailed to pass to an heir immediately upon his death, the petitioner might seek a pardon for the offender's life as well as the grant of his

[58] TNA, REQ 2/30/22 (6 Eliz).
[59] TNA, REQ 2/87/43 (37 Eliz).

forfeitures. James granted at least a few such forfeitures accompanied by pardons, in order to allow entailed lands to be enjoyed properly.[60] In his petition to Queen Elizabeth, Laurence Smith made the link explicit: he asked that she recognize his past service with a gift of all the lands and tenements she received upon Rowland Cole's conviction for burglary, lands which promised a yearly revenue of £60. Smith also asked the Queen 'to grant unto him your gracious pardon for the life of the said Rowland Cole, in respect that the lands of Cole [are] entailed, whereby your Majesty nor any other by your Highness' grant cannot receive any longer benefit of the said lands than during the life of the said Rowland Cole'.[61]

Occasionally contemporaries worried that the financial interests of private men in the law's operation led to lax prosecution. Such complaints about slack enforcement appeared most often with respect to the seizures from recusants and upon penal statutes—there farmers frequently had an interest in compounding to avoid the costs and risks of prosecution.[62] Conversely, some feared that felony forfeitures provided incentive for unduly rigorous prosecutions or even wholly fabricated charges. Back in the 1540s, Henry Brinkelow, for example, worried that interest in forfeitures 'helped many an honest man to his death'.[63] Were such concerns justified? The supporting documentation for a few pardons suggests that the individuals in question had been falsely charged out of a desire for their goods. The 1524 signed bill for the pardon of Joan Burleton, for example, noted that she was now deemed innocent of poisoning her husband after having been indicted 'by the procurement, instance, and special labour of certain malicious

[60] BL, Salisbury MS, vol. 127, no. 121; TNA, SP 14/109, no. 81; SP 14/68, no. 38.
[61] BL, Salisbury MS, P. 820. For similar requests in respect to traitors' forfeitures, see Kesselring, 'Mercy and liberality: the aftermath of the 1569 Northern Rebellion', *History* 90 (2005), pp. 221-22.
[62] See, for example, *Commons journals*, II, p. 38.
[63] Henry Brinkelow, *The complaynt of Roderyck Mors,* sigs. C3r-C4r.

gentlemen...desiring her goods and tenements'.[64] Other individuals, perhaps not innocent, certainly found themselves more rigorously prosecuted than they might otherwise have done. Christopher Carlell received from Queen Elizabeth a promise of the forfeitures of one William Vaux should Vaux be convicted of murder. According to his own wife, Carlell took charge of Vaux's prosecution, only to see the jury acquit him. Carlell had Vaux indicted once more for the same offence, the second time successfully. Whether Vaux was innocent or not, we cannot now know, but clearly the interest in his property contributed to his conviction and ultimately his execution.[65] Even if no injustice was done in fact, forfeiture allowed people to believe, or at least to argue, that greed rather than guilt led to an individual's death. Thomas, Lord Dacre was executed for murder; his son-in-law later maintained his innocence, opining that 'he was cast away through two privy counselors that gaped after his living'.[66] The third earl of Castlehaven made similar accusations of conspiracy when attempting to regain properties forfeited upon his father's conviction.[67]

Concerns about false convictions or at least, in Sir Edward Coke's words, 'violent prosecutions' grew with the movement towards farms and the heavier reliance on forfeitures as gifts for suitors.[68] Grants made before an individual's conviction became especially contentious, prompting fears that the petitioner might in some way pervert the course of justice. Even Salisbury, Caesar, and the others involved in the drafting of King James's 'Book of Bounty' shared or reacted to this concern. Their tortured editing and

[64] TNA, C 82/541/264 [*L&P*, IV, i, no. 137.19.]
[65] TNA, SP 14/43, no. 21.
[66] Essex Record Office, D/DL/L11 (dorse).
[67] See Cynthia Herrup, *A house in gross disorder: sex, law, and the 2nd earl of Castlehaven* (Oxford, 1999), p. 104.
[68] Robert C. Johnson, *et al*., ed., *Commons Debates 1628* (6 vols., New Haven, 1977), II, p. 44 and III, p. 411.

reediting of the section relevant to felony forfeitures first made no mention whatsoever of pre-conviction suits, then imposed a blanket ban, and finally moved on to various rewordings of a line which said, essentially, that pre-conviction suits might still be made, but the petitioner must not speak with the trial judges or meddle with the case in any way.[69] Their fine-tuning of the language in the book, issued in 1610, was for naught. MPs in the parliament of that year complained about a variety of the crown's fiscal expedients in the debate on the 'Great Contract'; they included in their list of grievances not just the losses suffered by felons' creditors but also the 'begging of men's lands…before their conviction'. Facing a barrage of complaints about prerogative finance, James sought to forestall further criticism on this particular matter. He pledged that 'he never would grant any man's suit in that behalf, …he did detest any such suit, and promised absolutely that he would never grant any hereafter'. He said, furthermore, that 'he would [hold] him unadvised and undutiful that should attempt him in any such suit'.[70]

The Commons entered the pledge in their journal, but before long James resumed making pre-conviction grants of felons' forfeitures. He promised Gabriel Hippisley, one of his equerries, the estates of William Robinson and five others who stood charged with a felony in Yorkshire, for example. Adam Hill, a page of the bedchamber who had a fondness for forfeitures, obtained a grant of the estate of one Nicholas Luck, should he have the misfortune of being convicted.[71] Having in previous parliamentary sessions

[69] Peter Davison, 'King James's Book of Bounty: from manuscript to print', *The Library*, 5th ser., 28 (1973), pp. 26-53. See, for example, TNA, SP 14/37, nos. 17, 70, and 76 and SP 14/97, no. 20 for four of the drafts with changes to this section in each.
[70] Elizabeth Foster Read, ed., *Proceedings in parliament, 1610* (2 vols., New Haven, 1966), II, pp. 359, 368, 382, 383; *Journals of the House of Commons (CJ)*, I, pp. 447-8. For the broader debate on the Great Contract, see Alan G.R. Smith, 'Crown, parliament and finance: the great contract of 1610', in Peter Clark et al, ed., *The English commonwealth, 1547-1640* (Leicester, 1979), pp. 111-27, 237-39.
[71] TNA, SP 14/145, no. 26; SP 14/142, no. 47. For Hill, see also SP 14/109, nos. 4 and 5, for grants of the goods of a Northamptonshire coinclipper and an Irish murderer.

attacked monopolies and grants to compound with those who broke penal laws, Sir Edward Coke introduced a bill in 1628 to abolish the practice of begging felons' forfeitures before conviction. Coke depicted such grants as part of a more pervasive problem with the triumph of private over public interest in the turn to government by license. The bill reappeared in 1629 but both times disappeared after the second reading and committal.[72] It was only many years later that concerns about this practice manifested themselves more successfully, in the Bill of Rights. Its drafters insisted 'that all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void'.[73]

Interest in the forfeitures of felons, then, opened opportunities for conflict. The potential for problems grew when Elizabeth and the early Stuarts turned to farming out forfeiture collection, altering the number of people who might profit from crime and the manner in which they did so. Patent holders were not answerable to local communities or local expectations of appropriate behaviour in the same way as village constables and other such officials were; nor, perhaps, were they as constrained as the agents of traditional grants holders, such as lords of liberties who had rights over their own lands alone.[74] Patent holders and farmers—and not just farmers of forfeitures—fit poorly into

[72] *CJ*, I, pp. 874, 897, 920, 921-22. I have been unable to find drafts of these acts, unfortunately. Significantly, in his *Third part of the institutes* (London, 1644), p. 229, Coke claimed such begging of forfeitures before conviction was already illegal, citing 21 James, c. 3, the 'Act concerning monopolies and dispensations with penal laws,' as having endorsed the principle that '*placitum coronae* ought not to become in effect *placitum privatum*'.

[73] See Lois Schwoerer, *The declaration of rights, 1689* (Baltimore, 1981), p. 96. The practice of felony forfeiture after the Revolution of 1688/89 requires more study, especially given the increasing reliance upon rewards and thief takers thereafter. For a preliminary discussion, suggesting that while manorial lords continued to collect such forfeitures, the crown largely abandoned the use of felons' effects as patronage grants after 1689, see Kesselring, 'Felony Forfeiture,' pp. 218-9, 222-4.

[74] See Braddick, *State formation*, pp. 40-3. Braddick discusses the role of and increasing crown reliance upon these 'caterpillars', men inhabiting the 'twilight world of government and self-service', and acknowledges briefly that they posed difficulties as they were not constrained by social expectations in the

existing models that focus on the primacy of negotiation in relations of power and authority in the early modern state. We are told that 'ruling was a repeated exercise in compromise, cooperation, and cooptation because, in the absence of a large salaried bureaucracy, the need for participation set strict limits on the capabilities of administration'.[75] But historians such as Joan Thirsk, John Cramsie, and others remind us that the late Elizabethan and early Stuart crown found ways of dealing with 'the absence of a large salaried bureaucracy' other than relying on local community leaders.[76] The farmers of felons' forfeitures were but a handful of the much denounced 'caterpillars of the commonwealth' that overran Elizabethan and early Stuart England. When William Lambarde wrote of 'flies that feed upon the sores of diseased cattle,' he had in mind informers, another group of men who notoriously sought profit from wrongdoing.[77] Yet these flies and caterpillars often disappear from our accounts when we turn to discussions of how the broad participatory base of the early modern state helped legitimate its power as authority.

Of course, one must be careful to avoid exaggerating just how new and different these licensees were. One could argue that they represented a difference in degree more

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same way as gentry commissioners and village officers. John Cramsie makes a similar observation: *Crown finance*, p. 64.

[75] Herrup, *Common peace*, p. 206. It is this aspect of her work that has thus far proven most influential, but see also her speculation that 'an additional peculiarity of the late sixteenth and early seventeenth century legal structure may be that middling men found themselves both newly active in the legal process and newly threatened in their activism'. Calling for a history of participation attentive to change, she pursues this observation in her essay 'The counties and the country: some thoughts on seventeenth-century historiography', in Geoff Eley and William Hunt, ed., *Reviving the English revolution: reflections and elaborations on the work of Christopher Hill* (London, 1988), pp. 289-304.

[76] See the works cited in n. 35**,** and also A. Hassell Smith, *County and court: government and politics in Norfolk, 1558-1603* (Oxford, 1974), which discusses the contested role of patentees in local administration. Smith further suggests that the crown granted such patents not just for revenue and reward, but perhaps also precisely as 'a means of overcoming the tardiness and obstructiveness which many justices displayed towards statutes and council orders'. (229)

[77] Conyers Read, ed., *William Lambarde and local government: his 'Ephemeris' and twenty-nine charges to juries and commissions* (Ithaca, 1962), p.107. See Cramsie, *Crown finance*, p. 33 for a list of other projects and uses of the proceeds of justice.

so than in kind. In respect to forfeitures, for example, Henry VII gave Sir Edward Belknap the new and short lived office of Surveyor of the King's Prerogative, responsible for collecting felons' forfeitures, among other things. He promised Belknap no fixed salary, but rather a ninth part of all profits. In 1538 Henry VIII appointed Tristram Teshe the general receiver of all lands and possessions in the north acquired by attainder. Teshe received a salary, but also an additional £1 on every £100 collected.[78] More generally, as one early seventeenth-century observer asked, what *was* the difference between traditional grants of liberties and the new patents? Defending patents for the fines on penal statutes, he pointed to the hundreds of liberties and franchises given over the years to boroughs, lords of manors, and others, all of whom routinely dealt with offenders as they saw fit, as well as diverting profits from the king's coffers.[79] The Scottish courtiers, assorted sycophants, and mercenary middlemen blamed for profiting from felony forfeitures may not have been any more rapacious than a manorial lord with rights to felons' goods. Certainly, sheriffs, bailiffs of liberties and others proved sufficiently avid in their own hunt for felons' forfeitures that we cannot draw the distinction between traditional officers and grant holders and the newer patentees too neatly.[80]

Nor can we dismiss the distinction, though, if for no other reason than that a good many contemporaries thought it existed and thought it mattered a great deal. Yes, felony forfeiture had long had the potential for abuse and conflict, and that potential did increase over the late Elizabethan and early Stuart years. But the context had changed as well. John Guy, Michael Braddick and others have noted that the use of the word 'state', in the

[78] W.C. Richardson, *Tudor chamber administration, 1485-1547* (Baton Rouge, 1952), pp. 195ff, 388.
[79] TNA, SP 14/20, no. 23.
[80] For some of the criticisms levelled against such traditional office holders in these years, see J.S. Cockburn, *A history of English assizes, 1558-1774* (Cambridge, 1972), pp. 104-5; TNA, E 215/1131.

sense of a public realm separable from and above private interests, first appeared then became quite common from the 1590s.[81] Richard Cust has recently described the emergence over the late sixteenth and early seventeenth centuries of the 'public man', in whose political vocabulary the contrast between 'public' and 'private' became 'highly charged terms with a moral force and potency which allowed them to stand for fundamentally opposed approaches to government and magistracy'. This new and polarizing style of politics and political actors drew upon zealous Calvinism, classical republicanism, and—one might add—a native rhetoric of the common weal.[82] These same years, of course, coincided with both the rise of government by license *and* the rise in complaints against it. We need not even look to the implacable opponents of informers, patentees, and monopolists to find discussions of the dangerous disjunction of public and private: Caesar, Salisbury, and others of King James's own councillors frequently noted the problems of promoting the profit of 'particular and private men' over public necessities.[83] The published 'Book of Bounty' itself highlighted the difficulty, contrasting the service of 'public ministers' in the pursuit of justice with the craven actions of 'private men, who for the most part care not how they molest or strain the subject'.[84] Jurors listened to charges informing them of a duty 'to serve not your own private

[81] Braddick, *State Formation*, pp. 19-20; John Guy, *Tudor England* (Oxford, 1988), 352.
[82] Richard Cust, 'The 'public man' in late Tudor and early Stuart England', in Steven Pincus and Peter Lake, ed., *The politics of the public sphere* (Manchester, 2007), pp. 116-43, quote at 121. For the addition of native common weal traditions, see also David Rollison, 'The spectre of the commonalty: class struggle and the commonweal in England before the Atlantic world', *William and Mary Quarterly* 63 (2006), pp. 221-52; Andy Wood, *The 1549 rebellions and the making of early modern England* (Cambridge, 2007); and Shagan, 'Two republics'.
[83] See Pauline Croft, ed., 'A collection of several speeches and treatises of the late lord treasurer Cecil and of several observations of the lords of the council given to king James concerning his estate and revenue in the years 1608, 1609, and 1610', *Camden Miscellany* 29 (London, 1987), pp. 245-317, quote at 274. Of course, these men also profited from such patents themselves. For Salisbury's prodigious income, see L. Stone, 'The fruits of office: the case of Robert Cecil, first earl of Salisbury, 1596-1612', in F.J. Fisher, ed., *Essays in the economic and social history of Tudor and Stuart England* (Cambridge, 1961), pp. 89-116.
[84] *A declaration of his majesties royall pleasure… in matter of bountie*, p. 24.

affections, but the necessities of the public state'.[85] Defenders of projects used the same language, merely arguing that public good and private gain could be compatible. The new terminology is significant. The frequent contrasts and comparisons of public and private interests that might diverge, the discussions of who or what the public consisted of, and the repeated invocations of a 'state' suggest an altered intellectual context, not just new and problematic financial practices.[86]

But here we begin to move rather too far away from felons and their forfeitures. What, concretely, can we conclude from this survey of the practice of felony forfeiture in the sixteenth and early seventeenth centuries? Some basic questions will have to remain unanswered; we simply do not know how frequently or how thoroughly felons' belongings were seized, and that limits what we can say. Felony forfeiture did not bring the crown nearly the material resources as did forfeiture for treason—undoubtedly critical in the foundation of the Tudor dynasty, and later in the north and in Ireland. Rather, the crown milked it unsystematically for immediate political gain, using it as a token of patronage. Consequently, it was profoundly a source and site of conflict. We are counselled more and more to see state formation not as something done *to* people, but *with* people. And it was. But too often this participation is read as consensus. It was instructional, yes, but integrative only in a narrow sense of the word. Nor was it static, unchallenged, or unchanging. If 'the legal system exemplifies the participatory nature of English government in the seventeenth century', that participation came under attack

[85] BL, Add 48109, fo. 36, one of Sir Christopher Yelverton's jury charges.
[86] For this point, in addition to Cust see also Paul Slack, *From reformation to improvement: public welfare in early modern England* (Oxford, 1999), pp. 75-6, on the shift from 'common weal' to 'public good', and Christopher Brooks, *Law, politics and society in early modern England* (Cambridge, 2008), p. 139. Brooks observes as a notable feature of the impositions debate of 1610 that both sides were 'deeply conscious of a distinction, which had hitherto not been so highly developed, between the interests of the crown as distinct from those of its subjects, and between the public interests of the nation as a whole versus those of private individuals'.

when the crown turned to licensees and the proceeds of justice to help solve its financial problems.[87] And royal councillors thought felons' forfeitures were one of the relatively 'safe' types of grants to be made from judicial revenues. Once we restore profit-takers to accounts of the operation of early modern law, we will need to rethink common suppositions about the nature of participation and discretion. When we look at forfeitures, we find people interested in personal profit more than the common peace.

[87] Herrup, *Common peace*, p. 205. See above, n. 75.