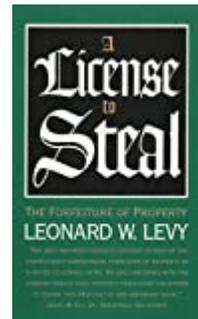


# H-Net Reviews

in the Humanities & Social Sciences



**Leonard W. Levy.** *A License to Steal: The Forfeiture of Property.* Chapel Hill, N.C.: University of North Carolina Press, 1996. xiii + 272 pp. \$29.95 (cloth), ISBN 978-0-8078-2242-5.



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Leonard W. Levy is mad as hell (yet again). Levy, who currently serves as the Andrew W. Mellon All-Claremont Professor Emeritus of Humanities at the Claremont Graduate School and as Distinguished Scholar at Southern Oregon State College, is no stranger to anyone even casually interested in American legal and constitutional history. Among his numerous notable books is his *Legacy of Suppression: Freedom of Speech and Press in Early American History* (1960), revised and up-dated in *Emergence of a Free Press* (1985), *Against the Law* (1974), *Original Intent and the Framers' Constitution* (1988), and (among still others), his Pulitzer Prize-winning 1968 book, *Origins of the Fifth Amendment*. As these titles suggest, Levy is critic and champion of civil liberties in the United States, and he always marshals his arguments in passionate ways. *A License to Steal* is his latest outpouring of rage against a governmental injustice. Fans of Levy will find his latest work of advocacy to their liking while others will find this effort merely one-sided lobbying in opposition to criminal and civil forfeitures. Levy's suspicions of and open scorn for the law of forfeiture and his concerns for the danger to private property and third party injustice, which forfeiture threatens, is commendable, but one wonders if he really wants to handicap law enforcement's authorities to combat crime and to be organized to the extent he suggests here. While local and state police and federal law enforcement authorities will make mistakes

and, at times, have been and will become over-zealous in their tactics, shall we dump criminal and even civil forfeitures out of fear of perhaps infringing upon innocent parties' property rights? Even if the usefulness of forfeiture has been over-sold as a panacea for criminal activities, as Levy suggests, is that sufficient reason to abandon this law-enforcement tool? And is it not strange that in all the writings of this noted academic civil libertarian that property rights—and concerns about the protection of private property rights from governmental regulation (a long-standing Republican party value)—have not appeared until this work? Have academic liberals rediscovered property as they have recently rediscovered religion? *A License to Steal* suggests so, as long as the academic casts himself as the defender of the little person and the innocent third parties injured in a decided minority of forfeiture actions. Like criminal and civil forfeitures, this latest work by Leonard Levy should be approached cautiously.

Never humble, Levy early on states the topic and reason for his latest offering: "This book examines both civil and criminal forfeitures. No other book does" (p. ix). His thesis comes from the first sentence of Chapter One: "Law enforcement agencies—federal, state, and local—perpetrate astonishing outrages on owners of private property through forfeitures" (p. 1). Levy then ex-

amines the hazy origins of forfeiture law starting with deodands (from “deo dandum,” given to God, “a thing forfeited”[7]) and the Old Testament. Levy spends much of Chapter One surveying the development of forfeitures and the origins of legal proceedings against things, *in rem* proceedings, through medieval law, through the arguments of Henry de Bracton, through Sir William Blackstone’s support of deodands, through Lord Chief Justice Matthew Hale’s thinking, and through the colonial American law of deodands. All in eleven pages! This chapter is less a history of the law of forfeiture and *in rem* proceedings than a sketch of the historical background. This sections forms a prologue to Levy’s point: “The law of deodands, like the law of civil forfeiture, was a tissue of legal fictions and contradictions. It was also unjust to its core” (p. 19). By the end of the first chapter, it is clear that this work is not a historical monograph but an extended law review article raging against a perceived social and legal injustice. Levy’s interest in this work is not history but inspiring resistance against another aspect of civil government.

Aimed at a general, non-lawyer audience, Chapter Two, “Felony Origins of Criminal Forfeiture,” explains the differences between *in personam* and *in rem* proceedings, and medieval English law of forfeitures, escheats. Gliding through time and space in a manner which will irritate historians, Levy follows on King Henry II of England and his legal reforms to spread the King’s law in England and to make his law common through his realm with a paragraph on the 1994 C.I.A. Aldrich Ames spy case, to demonstrate that the medieval precedent has modern usage. Levy then returns to the medieval English law and carries a look at treason through the legal commentators mentioned above and the procedures which developed to accomplish forfeiture. He then moves the story to the British North American colonies and notes that forfeiture never really caught on in the colonies. That tradition continued into the early national period when the states proscribed forfeiture for only an extremely narrow range of offenses. “In practice,” argues Levy, “criminal forfeitures nearly disappeared from the United States until 1970” (p. 38), a summary which foreshadows where Levy really wants to go.

Chapter Three, “Forfeiture in the United States before 1970,” covers three relevant topics: admiralty proceedings, many of which were *in rem*; the 1862 Confiscation Act during the Civil War and its later interpretation by the Supreme Court; and distillery forfeiture cases in the late nineteenth century. In particular, in Levy’s phrase, “the Court was overwhelmed by a fit of sanity,” when it

decided *Boyd v. United States* 116 U.S. 616 (1886). Typical of Levy’s snide tone in this work, this use of evidence is also typical of the selective use of evidence employed by Levy throughout *A License to Steal*. He mentions *Boyd* because in this revenue case, Justice Joseph Bradley declared a congressional statute unconstitutional because the the statute would have forced production of private papers thereby making the accused liable for penalties and forfeitures of their property. Since, as later chapters make clear, Levy wants the current Supreme Court to take a stand against forfeitures, this precedent is seized upon as an example of what “sane” justices ought to do according to Justice Levy.

Chapters Four and Five examine the legislative history of the “new” criminal forfeiture statute, the Racketeer Influenced and Corrupt Organizations Act (RICO) passed by Congress in 1970 and the failure of enforcement of that new statute. While ignoring any contextual analysis of the late 1960s and early 1970s, nothing about RICO’s history pleases Levy. He describes the debates in Congress as “pathetic” (p. 72) and castigates Congress for not foreseeing and anticipating injuries to innocent third parties because of the over-breath of the statute. Levy’s assessment of RICO is that nothing in the act’s legislative history suggests that Congress adopted it for good reasons. While acknowledging the perception at the time that the act was intended to strike at the profits of organized crime and to limit organized crime’s hold on legitimate businesses, he dismisses the whole act as essentially wrong-headed. That error can be seen in the act’s enforcement in the 1970s when expectations did not meet reality in the act’s usefulness to counter organized crime’s activities in the country.

Chapter Six analyzes the reforms of RICO between 1980 and 1984 which broadened its scope and led to excesses of enforcement which Levy highlights in Chapter Seven and rages against throughout the work. Chapter Eight explains how law enforcement agencies divided up the forfeited proceeds. These forfeited proceeds led to concerns about police being motivated by the proceeds of forfeitures instead of combating crime. Chapter Nine discusses what Levy sees as the “worst feature of forfeiture,” that is “its failure to provide adequately for the rights of innocent people” (p. 161), while Chapter Ten reviews the constitutional problems and issues confronting forfeiture. His final chapter evaluates proposals for reform of RICO and the law of forfeitures. At press time, Levy looked forward to “modest reform” (p. 226) of RICO and forfeiture law and, deliciously ironically, Levy found himself supporting the reform proposal of arch-

conservative Congressman Henry Hyde of Illinois.

It becomes clear in this last chapter that reform of forfeiture law is Levy's true purpose. Concerned less with the historian's task of explaining causation and change and continuity over time, Levy is far more concerned here about stirring up support to overturn a social/governmental wrong; in this case, uncompensated takings. Levy has identified an important aspect of the American legal past in need of historical research and interpretation. He has suggested some intriguing connections and precedents which later historians will find useful as starting points in their work. But Levy's social

advocacy and his typically passionate and, at times, overheated arguments limits this book's usefulness as history. Just as this work leaves the reader hanging because it ends but does not conclude, the story of the history of the law of criminal and civil forfeitures is left hanging until some other scholar tackles and provides some historical closure to this important topic.

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