The Social Construction of Civil Asset Forfeiture as a Social Problem in the United States: A Sociological Analysis of Legislation and Cultural Commentary Surrounding Civil Asset Forfeiture Throughout United States History

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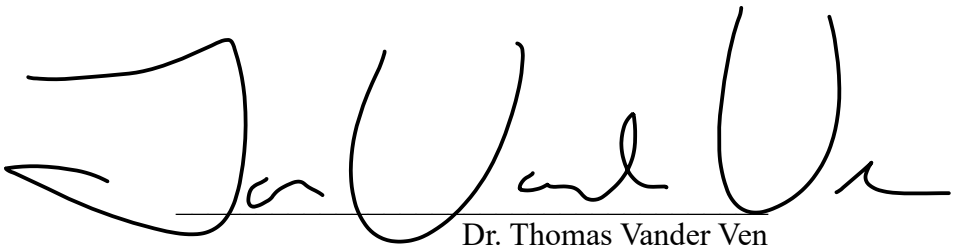

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Abstract

Civil asset forfeiture is a controversial legal process that allows law enforcement agencies to seize property suspected of having been involved in criminal activity. Although it has been utilized throughout United States history, civil asset forfeiture only began to appear as a major topic within academic literature during the 1990s, and the vast majority of this literature has not addressed its evolution as a social problem. Therefore, based on Spector's and Kitsuse' (1987) and Harris' (2013) framework for analyzing social problems from a strict social constructionist perspective, this study examines the claims-making activities within the public discourse surrounding civil asset forfeiture throughout United States history to better understand the factors that have influenced the public perception of civil asset forfeiture in the United States. The findings of this study indicate that public opposition to civil asset forfeiture has developed as a reaction to the government's increased use and defense of civil asset forfeiture following its reform within United States common and statutory law. Furthermore, this study reveals that supporters of civil asset forfeiture advocate for its practice primarily because it is used to deprive criminals of their illegally obtained assets and benefit victims of crime, while opponents of civil asset forfeiture criticize its practice primarily because it incentivizes property seizure, hurts innocent property owners, and reduces the standard of proof required for property seizure, placing the burden of proof on those defending their property from forfeiture.

Keywords: civil asset forfeiture, social construction, social problem, claims

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The Social Construction of Civil Asset Forfeiture as a Social Problem in the United States: A Sociological Analysis of Legislation and Cultural Commentary Surrounding Civil Asset Forfeiture Throughout United States History

The Federal Bureau of Investigation (FBI) defines asset forfeiture as "a powerful tool used by law enforcement agencies, including the FBI, against criminals and criminal organizations to deprive them of their ill-gotten gains through seizure of these assets" (U.S. Department of Justice, n.d.b). It further identifies civil judicial forfeiture, also known as civil forfeiture, civil asset forfeiture, or in rem forfeiture, as "a judicial process that does not require a criminal conviction," specifying that it is "an action filed against the property itself, rather than a person" (U.S. Department of Justice, n.d.b). In fact, civil asset forfeiture does not even require that the owner of the property in question be charged with a crime; to secure a civil asset forfeiture, law enforcement agencies must only demonstrate that they have probable cause, or knowledge that would lead a reasonable person to believe, that the property was involved in a crime (U.S. Department of Justice, 2019a). Thus, civil asset forfeiture allows law enforcement agencies at the local, state, and federal levels to seize property suspected of having been involved in a crime, regardless of whether the owner of that property was actually involved in a crime.

The practice of asset forfeiture dates back to ancient laws; Hebrew scriptures include a provision requiring oxen that have killed people to be forfeited or executed, regardless of the owners' guilt or negligence (Exodus 21:35-36, New Revised Standard Version; Fourie & Pienaar, 2017). The concept of punishing property for its involvement in crime has evolved since then, with evidence of its use in both Roman and early English common law (Fourie & Pienaar, 2017). This practice was first officially utilized in the

United States after the enactment of the British Navigation Act of 1660, which authorized the forfeiture of both smuggled goods and the ships that were used to smuggle those goods to and from the American Colonies (Nelson, 2016). In 1696, due to the difficulty of attempting to capture and officially convict pirates, Parliament began allowing these forfeitures to proceed as legal actions against property seized rather than against property owners, transforming the practice into what is now known as civil asset forfeiture (Nelson, 2016). Civil asset forfeiture as a penalty for smuggling expanded in the American colonies before the American Revolution and contributed to the colonists' complaints of unreasonable searches and seizures (Herpel, 1996; Nelson, 2016). Despite partially inspiring the Fourth Amendment to the United States Constitution, however, the practice of civil asset forfeiture continued in the United States after it gained independence from Great Britain. Since then, United States law enforcement agencies at all levels have used civil asset forfeiture as a sanction for a variety of legal violations, including the smuggling of alcohol during its prohibition in the 1920s (Desmond, 1925; Herpel, 1996) and the possession and trafficking of controlled substances from the late 20th century to the present day (Boudreaux & Pritchard, 1996).

The practice of civil asset forfeiture has been a source of ongoing political controversy in the United States. Some proponents have argued that it facilitates crime control by allowing law enforcement to confiscate the assets of suspected criminals in certain situations that prevent those suspected criminals from being brought to trial (McDowell, 1996), or by providing a financial benefit to law enforcement agencies (Thornburgh, 1990). For example, Attorney General Thornburgh (1990, p. 9) stated that civil asset forfeiture enables “a drug-dealer to serve time in a forfeiture-financed prison,

after being arrested by agents driving a forfeiture-provided automobile, while working in a forfeiture-funded sting operation." The FBI asserts that funds obtained from civil asset forfeiture are currently being used to finance various operations that serve American communities, such as drug treatment facilities, bomb-sniffing canines, and 911 call center equipment (U.S. Department of Justice, n.d.b). On the other hand, the use of forfeiture funds to finance law enforcement activities has sparked outrage among critics. Political activist organizations such as the American Civil Liberties Union and the Heritage Foundation claim that the practice of civil asset forfeiture motivates law enforcement to seize property with the intention of making a profit rather than fighting crime (American Civil Liberties Union, 2020b; Snead & Chavez, 2017).

Regardless of personal opinion, anyone can be affected by civil asset forfeiture. Because it does not require a criminal charge against the property owner, law enforcement officers can use civil asset forfeiture to seize the property of innocent citizens, regardless of whether doing so is their intention. For example, one family from Texas, a couple and two children, reported having been detained by a municipal police department on the grounds that the couple matched the department's profile of drug traffickers, despite not being found in possession of drugs (Stillman, 2013). The city's prosecutor told the couple that if they did not forfeit their cash to the local government, they would be charged with money laundering and child endangerment, which could result in jail time and/or loss of custody of their children (Stillman, 2013). In the end, the family forfeited their cash and no charges were filed against them (Stillman, 2013). By pursuing action against the property itself, civil asset forfeiture allows law enforcement

agencies to bypass the lengthy and tedious trial process and seize the assets of anyone they deem suspicious.

Although civil asset forfeiture was protested by colonists before the American Revolution and still has the potential to negatively affect anyone regardless of their innocence, it is nevertheless widely practiced within law enforcement agencies across the United States. In fact, the U.S. Department of Justice (2019b) reports that 42 states currently participate in the federal asset forfeiture program, yielding more than $2.2 trillion in forfeited assets in 2019 alone. This figure represents an increase from those of previous years; from 2015 to 2018, the highest value of total federal forfeitures was slightly more than $1.9 trillion (U.S. Department of Justice, 2016), while the lowest was slightly less than $1.4 trillion (U.S. Department of Justice, 2018). Yet, while police misconduct and abuses of power have been popular topics of discussion on news stations and websites, considerably less attention has been devoted specifically to the practice of civil asset forfeiture (Anderson, 2006). The purpose of this study, therefore, is to analyze the evolution of the public discourse surrounding the topic of civil asset forfeiture throughout United States history in order to better understand the factors that influence the general public's perception of its practice and expand the discussion of civil asset forfeiture law as a socially constructed social problem.

Literature Review

Despite its historic roots and impact on United States citizens, civil asset forfeiture law in the United States was not a topic of discussion within academic literature until the 1950s, when an attorney with the Federal Security Agency highlighted the U.S. Supreme Court's inconsistent jurisprudence, or legal theory, regarding the

imposition of civil asset forfeiture upon property owners who have been acquitted of criminal charges (Dickerman, 1952). His argument specifically focuses on the judicial precedent established by the U.S. Supreme Court in *Coffey v. United States* (1886) that a criminal acquittal prohibits subsequent civil asset forfeiture proceedings. The Court reached this decision by applying the principles of *res judicata*, the concept that any matter which has already been decided upon by a competent court should not be subject to further deliberation by the same court, and double jeopardy, the idea that no one should be tried more than once for the same incident (*Coffey v. United States*, 1886). Dickerman (1952), however, argues that since the U.S. Supreme Court established this precedent in 1886, the Court has progressively diverged from this standard, stripping it of all meaning without ever directly overturning it.

Some scholars continued to discuss civil asset forfeiture law within the purview of broader legal topics throughout the 1960s. For example, DeReuil (1963) presents civil asset forfeiture as one of multiple examples to discuss the applicability of the Fourth Amendment protection against unreasonable searches and seizures for civil cases in general. Smith and McCollom (1968) also use civil asset forfeiture as an example to demonstrate how simultaneously pursuing criminal and civil charges against an individual can result in the curtailment of the Fifth Amendment protection against self-incrimination. However, few scholars directly addressed civil asset forfeiture until the 1970s. For instance, Lipp (1974) argues that the government's practice of civil asset forfeiture should be abandoned because it has the potential to punish innocent property owners. Meanwhile, Diver (1979) proposes a framework for imposing civil monetary penalties, including civil asset forfeiture, that considers both the seriousness of the initial

criminal act and the ability of the defendant to satisfy the penalty. Even still, civil asset forfeiture did not gain momentum as a major topic of academic research until after the enactment of the Anti-Drug Abuse Act of 1986, which increased federal drug prohibition enforcement efforts, including the civil forfeiture of assets belonging to those suspected of involvement in drug-related crimes. Despite the growth of academic interest in the topic of civil asset forfeiture, however, the vast majority of academic literature surrounding civil asset forfeiture law does not consider its social construction throughout United States history. Rather, most researchers advocate either for or against its practice.

Publications advocating for civil asset forfeiture represent a very small fraction of the academic discussion surrounding civil asset forfeiture law. Researchers who favor the practice have defended it for its purpose of defunding large criminal organizations (Cicchini, 2010), disincentivizing criminal activity by removing its profits (Brooks, 2014), and returning stolen assets to victims (Brennan, 2015). However, many more researchers have advocated against civil asset forfeiture based on its implications for due process and the financial incentive it offers law enforcement agencies.

Due Process

Unlike criminal asset forfeiture, civil asset forfeiture does not require the criminal charge or conviction of the property owner and therefore does not afford property owners the same due process protections that are ensured in criminal proceedings. Some scholars have argued that civil asset forfeiture allows prosecutors and law enforcement agencies to circumvent due process requirements, making forfeitures easier to secure (Heching, 1993; Taifa, 1994; Lieske, 1995; Herpel, 1996; Nova, 1996; Barnet, 2001; Williams, 2002; van den Berg, 2015). For example, while criminal forfeitures require the government to show

beyond a reasonable doubt that the property owner is guilty, the government must only demonstrate probable cause, a much lower standard of proof, to secure a civil asset forfeiture (Taifa, 1994; Herpel, 1996; Jensen & Gerber, 1996; Ross, 2000; Barnet, 2001; Williams, 2002; Moores, 2010; van den Berg, 2015; O'Connell, 2017). Moreover, once the government has established probable cause, the burden of proof shifts to the property owner, who must then show by preponderance of evidence, a higher standard than probable cause, that the property was not involved in a crime (Heching, 1993; Reinhart, 1994; Herpel, 1996; Nova, 1996; Ross, 2000; Barnet, 2001; Moores, 2010; Rulli, 2011; van den Berg, 2015). Thus, whereas the government must prove the defendant's guilt in criminal proceedings, civil asset forfeiture forces property owners to sufficiently demonstrate their own innocence. Doing so tends to be much more difficult than proving one's guilt because it requires proof of a negative, that the alleged crime did not actually occur.

Scholars have also criticized this shift in the burden of proof from the government to the property owner for its effects on both the Fifth Amendment right against self-incrimination and the Sixth Amendment right to a court-appointed attorney. Because these rights are only available to criminal defendants, they generally do not apply to property owners defending their property from civil asset forfeiture. For instance, when a defendant in a criminal case wants to defend his/her property in a concurrent civil asset forfeiture case, (s)he may have to reveal self-incriminating information that may be used against him/her in the criminal case in order to demonstrate that the property in question was not involved in a crime (Rosenberg, 1988; Durkin, 1990). Rosenberg (1988) suggests that property owners in this situation should be granted immunity for information

revealed during civil asset forfeiture proceedings, while Durkin (1990) cites this issue as evidence for civil asset forfeiture's unconstitutionality. To make matters worse, property owners in civil asset forfeiture cases are not granted the right to a court-appointed attorney, leaving them more vulnerable to the risk of self-incrimination and less likely to successfully defend their property from forfeiture (Rosenberg, 1988; Taifa, 1994; Jensen & Gerber, 1996; Moores, 2010; Rulli, 2011; van den Berg, 2015; O'Connell, 2017).

Scholars have also criticized civil asset forfeiture for its inconsistent regard for the Eighth Amendment's Excessive Fines Clause. Meyer (2014) provides the following illustration:

> On his lunch hour, a young executive drives, in his BMW, to purchase 5 grams of marijuana. A policeman subsequently pulls him over, discovers the drugs, and his car, valued at over $50,000, is forfeited. The man who sold the young executive drugs drives a Mercedes, which he purchased using the proceeds from his drug-related activities. He has been the major supplier of drugs in the area for two years. When he is caught, he too, will forfeit his car. In the former case, the forfeiture is not warranted, in the latter, it is. Assume that both men were convicted. The maximum fine the young executive would pay under criminal law is $2,000, yet he lost property valued at twenty-five times that amount! In the case of the drug dealer, however, he would have lost his car anyway because it was purchased with illegally obtained "drug money," and would have been forfeited under criminal statutes.

This anecdote demonstrates how civil asset forfeiture can result in disproportionality between property owners' financial loss and the seriousness of the associated crime.

Although the U.S. Supreme Court clarified in *United States v. Ursery* (1996) that civil asset forfeiture served a remedial rather than punitive interest and thus does not warrant the same constitutional protections as criminal proceedings do, critics argue that, according to common sense, forfeiting property inherently punishes the property owner, and therefore should be bound by the same limitations as traditional fines (Reinhart, 1994; Lieske, 1995; Meyer, 2014; van den Berg, 2015; Rulli, 2017).

Financial Incentive

In addition to literature addressing civil asset forfeiture's implications for citizens' due process rights, an additional body of research on civil asset forfeiture law developed surrounding its effects on law enforcement. In particular, the establishment of equitable sharing, a program that allows federal law enforcement agencies to receive a portion of the revenue generated by state civil asset forfeitures and then return the remaining revenue back to state law enforcement agencies to fund their activities, has been a significant topic of discussion within academic literature. Critics have argued that this practice gives law enforcement agencies a clear financial interest in forfeited assets, encouraging them to seize as much property as possible (Reinhart, 1994; Boudreaux & Pritchard, 1996; Williams, 2002; Worrall, 2001; Carpenter, 2014; van den Berg, 2015; O'Connell, 2017; Holcomb et al., 2018). In fact, Boudreaux and Pritchard's (1996) economic analysis of civil asset forfeiture and policing practices reveals that the opportunity for revenue provided by civil asset forfeiture incentivizes the excessive policing and prosecution of potentially lucrative drug crimes at the expense of fighting other crimes that involve fewer forfeitable assets. Civil asset forfeiture, Boudreaux and Pritchard (1996) argue, reduces the efficiency of law enforcement activities by

encouraging law enforcement agencies to prioritize revenue generation over crime reduction. Furthermore, Worrall (2001) contends that equitable sharing has led many law enforcement agencies to depend upon civil asset forfeiture to stay in operation. As many legislatures reduce law enforcement budgets to compensate for expected forfeiture revenues, these agencies feel even more of a pressure to seize enough property to fund continued law enforcement (Worrall, 2001). Because it is a necessity for many law enforcement agencies and has shown to reduce the optimality of law enforcement activities, these critics assert that civil asset forfeiture may be unjust regardless of its implications for due process rights (Reinhart, 1994; Boudreaux & Pritchard, 1996; Williams, 2002; Worrall, 2001; Carpenter, 2014; O'Connell, 2017; Holcomb et al., 2018).

Theoretical Framework

Rather than replicating prior academic literature and arguing in favor of or against the practice of civil asset forfeiture, this study analyzes its social construction throughout United States history. Therefore, this study is grounded in the social constructionist framework outlined in Spector's and Kitsuse' (1987, p. 76) work, *Constructing Social Problems,* which contends that that social problems can be analyzed by studying the "emergence, nature, and maintenance of claims-making and responding activities."

There are two main branches of social constructionism: strict and contextual social constructionism. When analyzing social problems from the strict social constructionist perspective, the objective reality of the perceived problem is irrelevant (Spector & Kitsuse, 1987). Rather, the primary objective of strict social constructionist research is to draw conclusions about the development of society's characterization of a

particular phenomenon as problematic (Spector & Kitsuse, 1987). For example, Schweingruber and Horstmeier (2013) utilize strict social constructionism to analyze the evolution of the concept of internet addiction, highlighting reasons that people have advocated for and against its definition as a psychological disorder, but they do not compare these claims to verified psychological research regarding excessive internet use. They do not exclude such research because they aim to completely ignore reality, as some critics have suggested (Nichols, 2015). They do so, rather, to focus their analysis on the public perception of excessive internet use. They are not evaluating whether this perception is factually correct, but the nature of the perception and why and how it has developed within society (Schweingruber & Horstmeier, 2013).

The contextual social constructionist perspective, on the other hand, considers the known facts regarding a particular phenomenon and compares them to claims regarding that phenomenon as a social problem (Nichols, 2015). For example, a contextual constructionist may approach Schweingruber's and Horstemeier's (2013) study of the social construction of the concept of internet addiction by comparing public statements claiming that excessive internet use qualifies as a psychological disorder to evidence published by professional psychologists regarding the addictive nature of internet use to determine whether the its public perception of a problem reflects reality.

While both branches of social constructionism are useful in different contexts, this study adheres to strict social constructionism, in part because the governmental agency in charge of civil asset forfeiture in the United States, the U.S. Department of Justice, does not publish data about civil asset forfeiture that is detailed enough to verify or subvert claims regarding civil asset forfeiture. For example, the U.S. Department of Justice does

not publish statistics regarding the frequency with which assets are seized from individuals who are never charged criminally. Furthermore, existing statistical research on civil asset forfeiture is often perceived as claims-making activity by opposing claims-makers. For example, research has shown that the use of civil asset forfeiture reduces the overall optimization of law enforcement activities (Boudreaux & Pritchard, 1996), but this conclusion itself constitutes a claim within the discussion surrounding civil asset forfeiture because it explicitly calls for reform of United States civil asset forfeiture law. The purpose of this study, therefore, is not to determine the practices and effects of civil asset forfeiture, but to understand its evolution as a social problem within society.

Spector and Kitsuse (1987, p. 75) define social problems as "the activities of individuals or groups making assertions of grievances and claims with respect to some putative conditions." Expressed simply, "people decide what is and what is not a social problem by the way they react to things" (Best & Harris, 2013, p. 3). The nature of an occurrence or situation itself has no bearing on its classification of a social problem. Rather, the condition becomes a social problem only when people have made claims about it (Best & Harris, 2013). Thus, although civil asset forfeiture is technically a legal process, it has become a social problem because people have publicly criticized its practice.

A claim, then, is defined as "a demand that one party makes upon another" (Spector & Kitsuse, p. 83). Within the social constructionist framework, claims-makers include any party perceived by others in society as making assertions about a particular situation (Spector & Kitsuse, 1987). Hence, one need not specifically argue for or against a situation to make a claim; if others perceive a statement as a claim, then the person who

made that statement is a claims-maker (Spector & Kitsuse, 1987). For example, Stillman's (2013) article in *The New Yorker* details various accounts of police officers seizing innocent property owners' assets via civil asset forfeiture and the lasting effects of these actions on individuals and families. However, the author does not explicitly state that this occurrence is troubling or needs to change (Stillman, 2013). Nevertheless, her article is a claim within the discourse surrounding civil asset forfeiture because it publicly calls attention to the consequences of civil asset forfeiture, which has since allowed others to respond to this issue and develop their own claims.

Building upon the social constructionist framework, Harris (2013) suggests that the study of claims regarding a social problem should focus on the types of claims made and their potential interpretations, the nature of the claims-makers, and the evidence claims-makers used to support their claims. Spector's and Kitsuse' (1987) original work also highlights the importance of considering how claims are communicated to others in society and the perceived motivations of the claims-makers. However, they are careful to note that any assertion of another claims-maker's potential motive is itself a claim within the discussion of the social problem in question (Spector & Kitsuse, 1987). Harris (2013, p. 8) also lists three essential questions for social constructionists to ask:

- Where is this problem within the social constructionist process? Is it just emerging? Is it being newly discovered, or rediscovered? Is it being categorized for the first time? Is its perceived nature being shaped and reformed by new or recycled claims?

- Is [claims-making] about this problem increasing, decreasing, or remaining stable? How much attention has the problem received over time? What might explain this level of attention?
- Which [claims-makers] and which audiences are paying attention to the problem? What social factors may be influencing the actions of those who are attempting to promote, undermine, or redefine the problem?

Considering these elements, this study aims to examine and understand civil asset forfeiture's construction as a social problem throughout United States history.

Methodology

Data Collection

To examine the claims-making activities surrounding civil asset forfeiture throughout United States history, this study will adapt the methodology established by Galliher and Galliher (1997) in their social constructionist analysis of capital punishment laws in Kansas between 1973 and 1994. In their study, Galliher and Galliher (1997) compile all articles related to capital punishment from five prominent Kansas newspapers, materials related to capital punishment released by Kansas' state legislature, and statements regarding capital punishment by the Governors of Kansas between 1973 and 1994. These data sources are then examined to "trace the history of the legislative process, uncover triggering events, identify key supporters and opponents, and discover claims-making and motivations behind support and opposition to the death penalty" (Galliher & Galliher, 1997, p. 372).

Because the study of the social construction of civil asset forfeiture as a social problem in the United States is wider in scope than Galliher's and Galliher's (1997) study

of the social construction of capital punishment in Kansas, this study uses their methodology as an example, but adapts it to encompass a much broader timeframe and geographic area. First, to trace the jurisprudence surrounding civil asset forfeiture in the United States, this study examines all cases mentioning civil asset forfeiture in some regard that have petitioned U.S. Supreme Court for certiorari, or review of a lower court's decision, since the Court's establishment in 1789. These cases are obtained from LexisNexis, a database that provides electronic access to all U.S. Supreme Court opinions, using the search query: "'civil forfeiture' OR 'civil asset forfeiture' OR 'in rem forfeiture'". The search also includes a filter to only include cases reviewed by the U.S. Supreme Court from 1789 to 2020.

In addition to examining U.S. Supreme Court cases, this study also considers all federal public laws mentioning civil asset forfeiture in some regard that were enacted since the U.S. Congress' establishment in 1789 to trace the legislation surrounding civil asset forfeiture in the United States. These laws are obtained from ProQuest Congressional, a database that provides electronic access to all federal legislative histories, using the search query: "'civil forfeiture' OR 'civil asset forfeiture' OR 'in rem forfeiture'". The search also includes a filter to only include public laws, or bills that have actually been enacted. This study does not consider bills that were not passed into public laws because they do not have any legal impact on United States citizens.

However, the history of jurisprudence and legislation surrounding civil asset forfeiture in the United States does not provide a complete picture of civil asset forfeiture's social construction. Similar to Galliher's and Galliher's (1997) method of collecting governors' statements and newspaper articles to study the social construction

of capital punishment in Kansas, this study's method aims to identify key claims-makers within the public discourse surrounding civil asset forfeiture in the United States and their motivations for favoring or opposing the practice. As such, this study collects claims regarding civil asset forfeiture from three broad categories: government statements, statements from nongovernmental organizations (NGO), and newspaper articles.

A simple Google search demonstrates that the U.S. Department of Justice, including its subsidiary offices and agencies such as the FBI, the Drug Enforcement Agency, and the Office of the Attorney General, is the primary claims-maker regarding civil asset forfeiture within the United States government. Because it would take more time than is feasible to collect and analyze every statement about civil asset forfeiture made by any part of the federal government, this study limits its focus on governmental claims about civil asset forfeiture to those made by the U.S. Department of Justice. Moreover, to focus on claims as defined by Spector and Kitsuse (1987), this study limits its collection of statements by the U.S. Department of Justice to only those intended to be viewed by the general public. Therefore, these claims are obtained from the U.S. Department of Justice' *Justice News* website and archives, which include only press releases and speeches made by the U.S. Department of Justice and its subsidiary agencies and offices. These website and archives do not allow for multiple search terms, so the search query for these claims is limited to "civil forfeiture".

This study also considers statements made by NGOs, specifically those focused on political advocacy. Similar to the method used to determine that the United States government's primary claims-maker regarding civil asset forfeiture is the U.S. Department of Justice, a simple Google search demonstrates that the Heritage

Foundation, the American Civil Liberties Union, the Southern Poverty Law Center and the Institute for Justice are heavily involved in United States civil asset forfeiture activities. However, in adhering to Spector's and Kitsuse' (1987) definition of claims, this study limits its focus to statements specifically intended for the public eye. While the Institute for Justice has represented multiple indigent, or impoverished, property owners in lawsuits against civil asset forfeiture, it has not published any articles or press releases about the issue. Therefore, this study limits its consideration of NGO statements to claims published by the Heritage Foundation, the American Civil Liberties Union, and the Southern Poverty Law Center. These claims are obtained via each NGO's website's news or press release page, using the search query: "'civil forfeiture' OR 'civil asset forfeiture' OR 'in rem forfeiture'".

Finally, in adapting the method of Galliher and Galliher (1997) to encompass social construction on a national basis, this study considers articles published in the four newspapers that are circulated daily to the entire United States: the *New York Times*, *The Washington Post*, the *Wall Street Journal*, and *USA Today*. Claims published in these newspapers are obtained from ProQuest Newsstream, a database that provides electronic access to current and archived United States news content, using the search query: "'civil forfeiture' OR 'civil asset forfeiture' OR 'in rem forfeiture'". This search also includes a filter to ensure that all articles collected focus on issues in the United States rather than those in other countries.

Data Analysis

After gathering as much evidence of the legislation and public discourse surrounding civil asset forfeiture as feasible, this evidence is analyzed based on an

adapted version of systematic thematic discovery, a method of analyzing qualitative data established by Vander Ven et al. (2018) in their study of sedation-facilitated sexual violence perpetrated by medical professionals. In their study, Vander Ven et al. (2018) analyze over 1,000 media accounts of sexual violence by first identifying key search terms based on prior research to guide them in determining thematic patterns within the qualitative data. Then, researchers read through each article, aiming to identify themes based on the key search terms determined in the prior step as well as new themes that emerge from the data (Vander Ven et al., 2018). After identifying themes in the qualitative data, researchers develop a coding sheet that lists each theme and counts how often and where they are found in the data (Vander Ven et al., 2018). Finally, researchers develop a thematically organized quote log based on the coding sheet to compare results across categories (Vander Ven et al., 2018).

This study of the social construction of civil asset forfeiture in the United States uses a similar method. First, qualitative data representing the legislation and public discourse surrounding civil asset forfeiture in the United States is collected according to the methodology described in the previous section. For the analysis of claims made by the U.S. Department of Justice, political advocacy NGOs, and national newspapers, key search terms are devised based on discourse already studied in the literature review. These include terms such as “defunding criminal organizations”, “removing the profit from crime”, “benefitting victims”, “due process”, “standard of proof”, “burden of proof”, “excessive fines”, “right to counsel”, “law enforcement”, and “financial incentive.” While reading through the claims, some predetermined themes are revised and/or combined and new themes emerge, such that the final coding sheet includes the

following themes: “funds infrastructure”, “deprives criminals of illegally obtained assets”, “benefits victims”, “prevents/deters future crime”, “defunds criminal enterprises”, “supports law enforcement”, “targets unconvictable criminals”, “hurts innocent property owners”, “circumvents property owners’ right to counsel”, “imposes disproportionate punishment”, “incentivizes property seizure”, “reduces/reverses standard/burden of proof”, “offers potential for quid pro quo”, “doesn’t require judicial review”, and “allows law enforcement to abuse funds”. These themes represent the primary arguments favoring and opposing civil asset forfeiture within the claims studied. For example, “funds infrastructure” and “benefits victims” refers to the benefit of using funds obtained from civil asset forfeiture to fund infrastructure development and benefit victims of crime, respectively. On the other hand, “offers potential for quid pro quo” refers to the criticism of law enforcement officers’ ability to withdraw property owners’ criminal charges in exchange for the forfeiture of their assets, and “doesn’t require judicial review” refers to the criticism of the fact that civil asset forfeiture is most often an administrative procedure in which the prosecutor, who stands to gain revenue from civil asset forfeiture, is the only one who judges the forfeiture’s validity.

For the purpose of this study, each theme is considered a different claim, and each press release, speech, and article is coded by which claim(s) it contains. On the coding sheet, each statement has one row, and each type of claim has one column; each statement receives a “1” in every column representing a claim that appears within that statement, and a “0” in every column representing a claim that does not appear within that statement.

However, prior to coding the claims, each press release, speech, and article collected is analyzed based on whether or not it actually contains a claim regarding civil asset forfeiture. According to Spector and Kitsuse (1987), simply mentioning a social problem does not constitute a claim. Rather, a statement is only a claim if it explicitly argues in favor of or against a particular phenomenon, or if it can be perceived as doing so (Spector & Kitsuse, 1987). For example, the U.S. Department of Justice (2020) released a statement mentioning that it issued a civil forfeiture against Airbus SE, an aircraft provider, to recover funds derived from its engagement in foreign bribery. This statement does not include any discussion of civil asset forfeiture's benefits or drawbacks (U.S. Department of Justice, 2020), and thus is not considered a claim for the purpose of this study. On the other hand, Attorney General Jefferson Sessions delivered a speech in which he defended civil asset forfeiture on the grounds that it deprives criminals of illegally obtained assets, prevents and deters future crime, defunds criminal enterprises, and supports law enforcement (U.S. Department of Justice, 2017). His speech, therefore, constitutes a claim about civil asset forfeiture for the purpose of this study. The effect of distinguishing claims from the qualitative data gathered for this study is strong; only 112 of the 416 U.S. Department of Justice statements, 63 of the 74 political advocacy NGO statements, and 54 of the 127 newspaper articles collected for this study are considered claims.

Nevertheless, this method of distinguishing claims does not apply to this study's analysis of the jurisprudence and legislation surrounding civil asset forfeiture in the United States. This study does not consider U.S. Supreme Court opinions and federal public laws as claims, but rather a background to guide the analysis of claims; the history

of jurisprudence and legislation regarding civil asset forfeiture in the United States provides insight into the use of civil asset forfeiture throughout history as well as its legal support and opposition. Cases reviewed by the U.S. Supreme Court, therefore, are coded based on whether or not they discuss the constitutionality of civil asset forfeiture and, if so, which constitutional questions are discussed and whether or not they limit the scope of civil asset forfeiture based on that discussion. Federal public laws, on the other hand, are coded based on the primary subject they address, such as fishing or drug crimes.

After all data has been either excluded for its lack of claims or coded by the categories it falls under, the findings are analyzed to reveal insights about the public discourse surrounding civil asset forfeiture throughout United States history. First, trends in common and statutory law are analyzed based on data obtained from cases reviewed by the U.S. Supreme Court and federal public laws. These trends include the frequency with which the U.S. Supreme Court reviews cases related to civil asset forfeiture and the topics of those cases, including whether or not the Court's decisions in those cases limited the scope of civil asset forfeiture, as well as the frequency with which the U.S. Congress has enacted federal public laws regarding civil asset forfeiture and the topics of those laws. Then, trends in claims regarding civil asset forfeiture are divided by their sources and analyzed based on the frequency with which they are made and the topics they discuss, including the extent to which they highlight civil asset forfeiture's positive and negative aspects. Each press release, speech, and article may include multiple claims that address different topics, so this analysis considers the proportion of all claims made rather than the proportion of all publications by each source that address each topic. Finally, these results are reviewed holistically to draw conclusions about the social

construction of civil asset forfeiture throughout United States history, including the identification of primary claims-makers and their potential influences.

Findings

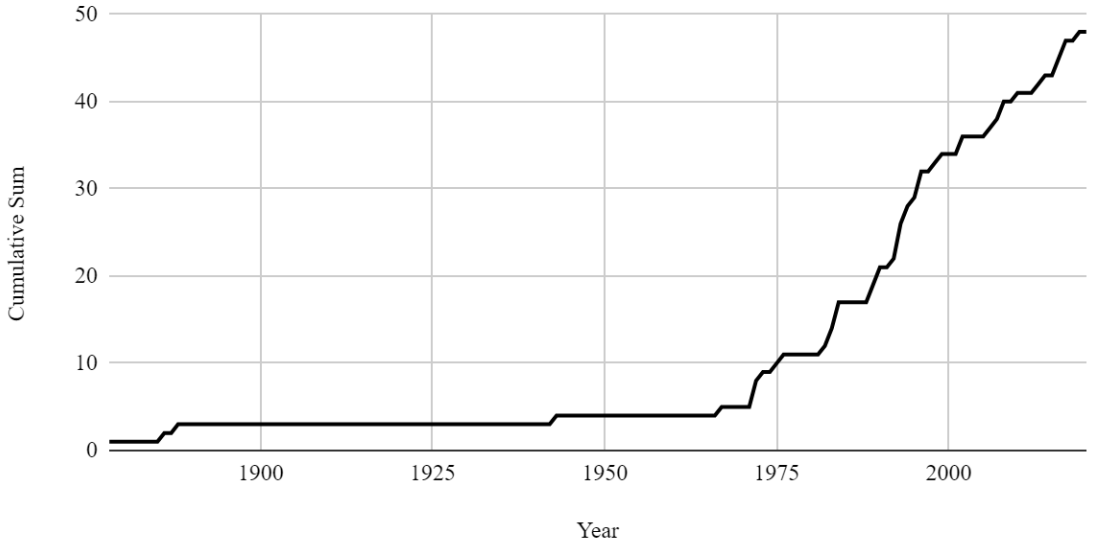
Trends in Common and Statutory Law

Civil asset forfeiture was part of United States common law before it became statutory law. In other words, civil asset forfeiture was addressed in court cases before any official laws about it were passed. The U.S. Supreme Court first directly addressed civil asset forfeiture in October of 1878 in *Dobbins's Distillery v. United States* (1878). In this case, the United States had issued a civil forfeiture against a distillery because its operator, who rented the distillery from its owner, had violated public revenue laws by neglecting to properly document financial transactions in his operation of the distillery (*Dobbins's Distillery v. United States*, 1878). The distillery owner then claimed that he had no knowledge of the operator's crimes and therefore should not have had to forfeit his property (*Dobbins's Distillery v. United States*, 1878). In its opinion, however, the U.S. Supreme Court affirmed that a civil forfeiture may still be valid even if the owner of the forfeited property had no knowledge of the crimes committed using his/her property (*Dobbins's Distillery v. United States*, 1878). Justice Clifford, who wrote the opinion on behalf of the Court, stated: "If [the owner] knowingly suffers and permits his land to be used as a site for a distillery, the law places him on the same footing as if he were the distiller" (*Dobbins's Distillery v. United States*, 1878). In essence, the U.S. Supreme Court authorized the civil forfeiture because the property owner willingly leased his property to someone who used that property to break the law, even though the owner was not aware of the operator's unlawful behavior. This opinion established a precedent that

property owners need not be aware of crimes committed using their property for it to be forfeited civilly.

The U.S. Supreme Court has continued to issue opinions regarding civil asset forfeiture since 1878. Although United States law enforcement agencies have practiced civil asset forfeiture since the United States' inception, Figure 1 demonstrates that the rate at which the U.S. Supreme Court has reviewed cases mentioning civil asset forfeiture began to drastically increase in the early 1970s.

Figure 1: Cumulative Sum of U.S. Supreme Court Cases Mentioning Civil Forfeiture Since 1878

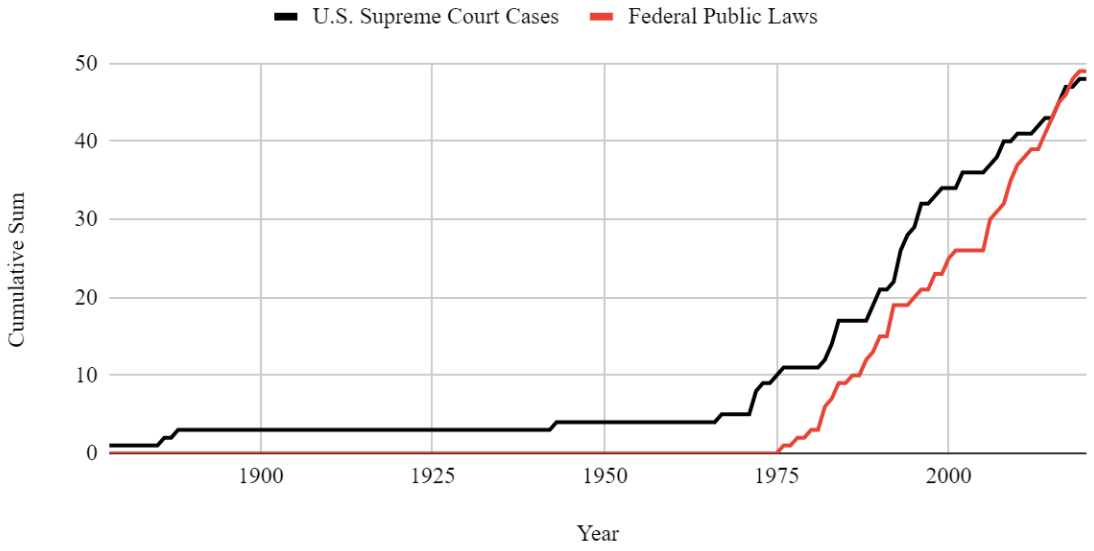


In fact, the U.S. Supreme Court reviewed more than eight times as many cases that mentioned civil asset forfeiture after 1970 as it did before; about 90% of U.S. Supreme Court cases that mention civil asset forfeiture occurred during a period that represents only 20% of United States history.

This growth in U.S. Supreme Court activity related to civil asset forfeiture appears to roughly coincide with an increase in the number of federal statutory laws that

incorporate civil asset forfeiture. The first federal public law related to civil asset forfeiture was enacted in April of 1976 and explicitly authorized federal law enforcement agencies to issue civil forfeitures against property involved in illegal fishing activities, namely fishing vessels, equipment, and cargo (Fishery Conservation and Management Act of 1976). Like cases reviewed by the U.S. Supreme Court, the prevalence of federal public laws involving civil asset forfeiture began to drastically increase in the 1970s, despite law enforcement agencies having utilized the practice throughout United States history. Figure 2 compares the growth in the enactment of federal public laws related to civil asset forfeiture to that of U.S. Supreme Court cases that mention civil asset forfeiture.

Figure 2: Cumulative Sum of U.S. Supreme Court Cases and Federal Public Laws Related to Civil Forfeiture Since 1878



This correlation is not surprising; as statutory law increasingly authorizes law enforcement agencies to utilize civil asset forfeiture in a wider variety of situations, the

chance of civil asset forfeiture appearing in cases that reach the U.S. Supreme Court inevitably grows.

These findings invite the question: what happened in the 1970s? Nineteen seventy-six marked the inception of federal public law explicitly authorizing civil asset forfeiture as punishment for criminal activity. By 2000, federal public laws had established civil asset forfeiture as a method of combating crimes related to illegal fishing (Fishery Conservation and Management Act of 1976; North Pacific Fisheries Act of 1954 Amendments; Northern Pacific Halibut Act of 1982; Fisheries Amendments of 1982; Atlantic Salmon Convention Act of 1982 Amendment; National Oceanic and Atmospheric Administration Authorization Act of 1992; Oceans Act of 1992; Fisheries Act of 1995; Sustainable Fisheries Act), mining (Deep Seabed Hard Mineral Resources Act), pornography (Child Protection Act of 1984; Omnibus Trade and Competitiveness Act of 1988), drugs (Anti-Drug Abuse Act of 1986; Anti-Drug Abuse Act of 1988; Crime Control Act of 1990), and sex (Protection of Children from Sexual Predators Act of 1998), violations of financial (Financial Institutions Reform, Recovery, and Enforcement Act of 1989; Crime Control Act of 1990; Housing and Community Development Act of 1992; Money Laundering and Financial Crimes Strategy Act of 1998) and transportation regulations (Washington Metropolitan Transit Regulation Compact Amendments), and car theft (Anti Car Theft Act of 1990).

Meanwhile, the U.S. Supreme Court reviewed 23 cases related to civil asset forfeiture over the same 24-year period. Of these cases, only 14 involved a direct deliberation over the constitutionality of one or more aspects of civil asset forfeiture. These cases discussed the implications of civil asset forfeiture for innocent owners

(*United States v. One Assortment of 89 Firearms*, 1984; *United States v. 92 Buena Vista Ave.*, 1993; *Bennis v. Michigan*, 1996), questions of courts' jurisdiction over civil asset forfeiture activities that cross local and state boundaries (*Republic National Bank v. United States*, 1992), the protection against double jeopardy (*United States v. One Assortment of 89 Firearms*, 1984; *United States v. Ursery*, 1996), the right to a speedy trial (*United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in United States Currency*, 1983), the right to counsel (*Caplin & Drysdale v. United States*, 1989), the right to due process (*Caplin & Drysdale v. United States*, 1989; *United States v. James Daniel Good Real Property*, 1993; *Libretti v. United States*, 1995; *Degen v. United States*, 1996), prior restraint, or the potential governmental suppression of activities exercising the First Amendment right to freedom of speech (*Caplin & Drysdale v. United States*, 1989; *Alexander v. United States*, 1993), the protection against excessive fines (*Caplin & Drysdale v. United States*, 1989; *Alexander v. United States*, 1993; *Austin v. United States*, 1993; *United States v. Bajakajian*, 1998), the protection against unreasonable searches and seizures (*Caplin & Drysdale v. United States*, 1989; *Alexander v. United States*, 1993; *Austin v. United States*, 1993; *James Daniel Good Real Property*, 1993; *Florida v. White*, 1999), and the forfeiture of untainted assets (*Caplin & Drysdale v. United States*, 1989; *Alexander v. United States*, 1993; *Austin v. United States*, 1993; *James Daniel Good Real Property*, 1993; *Florida v. White*, 1999).

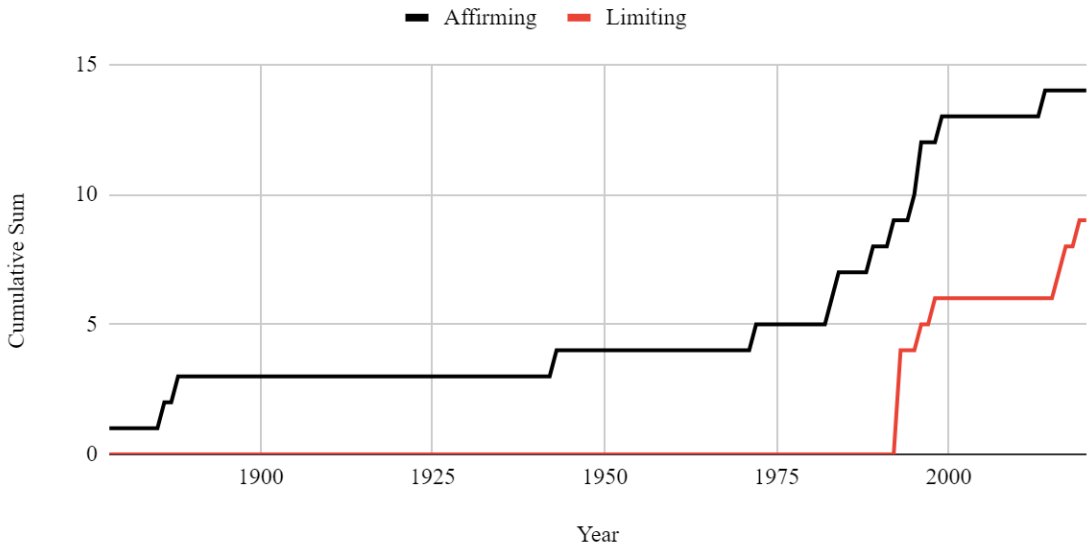
However, the U.S. Supreme Court only began to limit the scope of civil asset forfeiture in 1993. In *United States v. 92 Buena Vista Ave.* (1993), the government sought civil forfeiture against a woman's house, claiming that the funds she obtained from her romantic partner to purchase the house were traceable to a drug crime. The woman

claimed that because she was not aware that the funds she used to purchase the house had been involved in criminal activity, she should not have had to forfeit it (*United States v. 92 Buena Vista Ave.*, 1993). While the district court rejected her claim on the grounds that only bona fide purchasers, or property owners who purchased their property in good faith at its stated value, who obtained property prior to the occurrence of the criminal activity in question could defend their property from civil asset forfeiture based on innocence, the U.S. Supreme Court decided "that the term 'owner' should be broadly construed" beyond just bona fide purchasers and that limiting the innocent owner defense to only those who purchased property prior to any related criminal activity would nullify every attempt to defend one's property from civil asset forfeiture based on innocence (*United States v. 92 Buena Vista Ave.*, 1993).

Before the 1990s, the U.S. Supreme Court deliberated over the constitutionality of various aspects of civil asset forfeiture only eight times, and none of its decisions limited the practice of civil asset forfeiture. From 1990 through 1999 alone, however, the U.S. Supreme Court made 11 decisions regarding the constitutionality of civil asset forfeiture, and more than half of those decisions limited civil asset forfeiture in some way. In particular, in addition to establishing that property owners may defend their property from civil forfeiture on the basis of their own innocence in *United States v. 92 Buena Vista Ave.* (1993), the U.S. Supreme Court also limited civil asset forfeiture based on its ability to impose excessive punishment (*Alexander v. United* States, 1993; *Austin v. United States*, 1993; *United States v. Bajakajian*, 1998), constitute an unreasonable seizure, and confiscate property that was never actually involved in a crime (*Alexander v. United States*, 1993; *Austin v. United States*, 1993; *James Daniel Good Real Property*,

1993). Figure 3 compares the rate at which the U.S. Supreme Court has limited civil asset forfeiture to the rate at which it has directly affirmed civil asset forfeiture practices in its decisions throughout United States history.

Figure 3: Cumulative Sums of U.S. Supreme Court Cases Affirming and Limiting Civil Forfeiture Practices Since 1878



This growing trend of limiting civil asset forfeiture in common law beginning in the 1990s precursed the only existing federal statutory limitation of civil asset forfeiture: the Civil Asset Forfeiture Reform Act of 2000. The Civil Asset Forfeiture Reform Act of 2000 explicated federal civil asset forfeiture standards. For example, it mandates an opportunity for interested parties to file claims for forfeited property, an authorization, but not a requirement, of the court to provide legal counsel to indigent owners of forfeited property, an allowance for property owners to defend their property from forfeiture by demonstrating their innocence by preponderance of evidence, and an opportunity for property owners to claim that a forfeiture is constitutionally excessive (Civil Asset Forfeiture Reform Act of 2000).

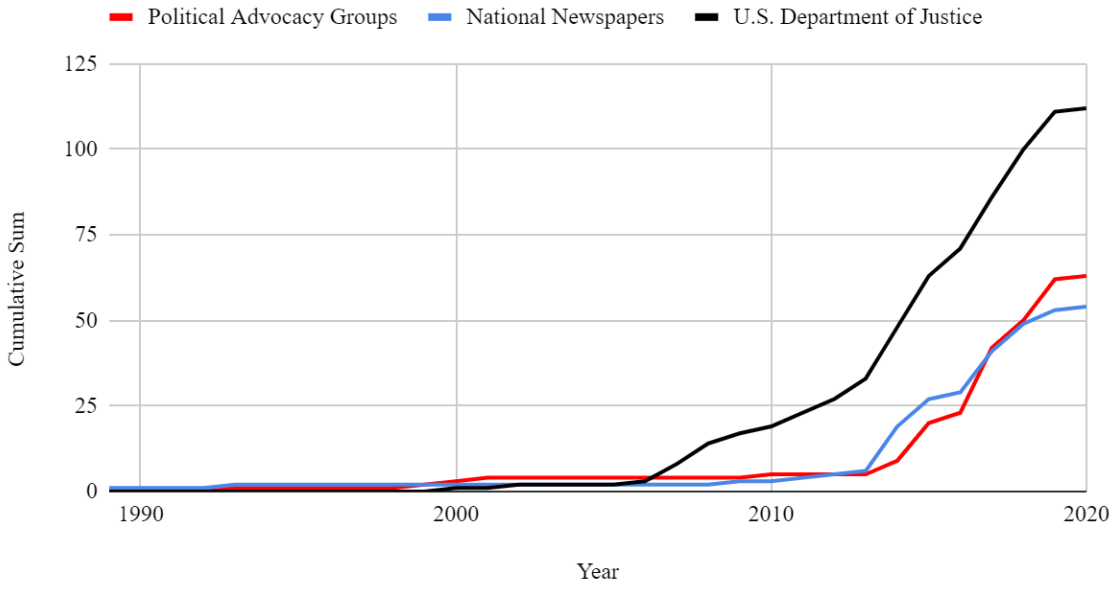
After the Civil Asset Forfeiture Reform Act of 2000 clarified the scope of federal civil asset forfeiture, the U.S. Supreme Court did not deliberate over civil asset forfeiture's constitutional implications again until 2014, when it decided that criminal defendants may not challenge a grand jury's determination of probable cause to obtain civilly forfeited assets, even if those assets are necessary to hire legal counsel (*Kaley v. United States*, 2014). Since this decision, the U.S. Supreme Court has only deliberated over civil asset forfeiture's constitutionality three times, limiting the scope of civil asset forfeiture based on its implications for the right to counsel (*Luis v. United States*, 2016), innocent property owners (*Honeycutt v. United States*, 2017), and the constitutional protection against excessive fines (*Timbs v. Indiana*, 2019).

Since the Civil Asset Forfeiture Reform Act of 2000, the federal government has also continued to authorize civil asset forfeiture within public laws to combat various types of crimes, including, but not limited to, human trafficking (Victims of Trafficking and Violence Protection Act of 2000; Trafficking Victims Protection Reauthorization Act of 2005), terrorism (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001; USA PATRIOT Reauthorization and Improvement Act of 2005), and foreign policy violations (Preserving Foreign Criminal Asset for Forfeiture Act of 2010; North Korea Sanctions and Policy Enhancement Act of 2016; Protect and Preserve International Cultural Property Act; John S. McCain National Defense Authorization Act for Fiscal Year 2019). Although the U.S. Supreme Court has defined further common law limits to civil asset forfeiture since the enactment of the Civil Asset Forfeiture Reform Act of 2000, there have been no other successful statutory reforms to the practice at the federal level.

Trends in Claims-making Activities

In analyzing the social construction of civil asset forfeiture throughout United States history, this study considers claims made by the U.S. Department of Justice, political advocacy groups including the Heritage Foundation, the American Civil Liberties Union, and the Southern Poverty Law Center, and national newspapers including *The Washington Post*, the *New York Times*, the *Wall Street Journal*, and *USA Today*. While 618 press releases, speeches, and articles from these sources mention civil asset forfeiture, only 229 include claims about civil asset forfeiture for the purpose of this study. Figure 4 shows the rates at which each type of claims-maker, the U.S. Department of Justice, political advocacy groups, and national newspapers, have published statements containing one or more claims about civil asset forfeiture throughout United States history.

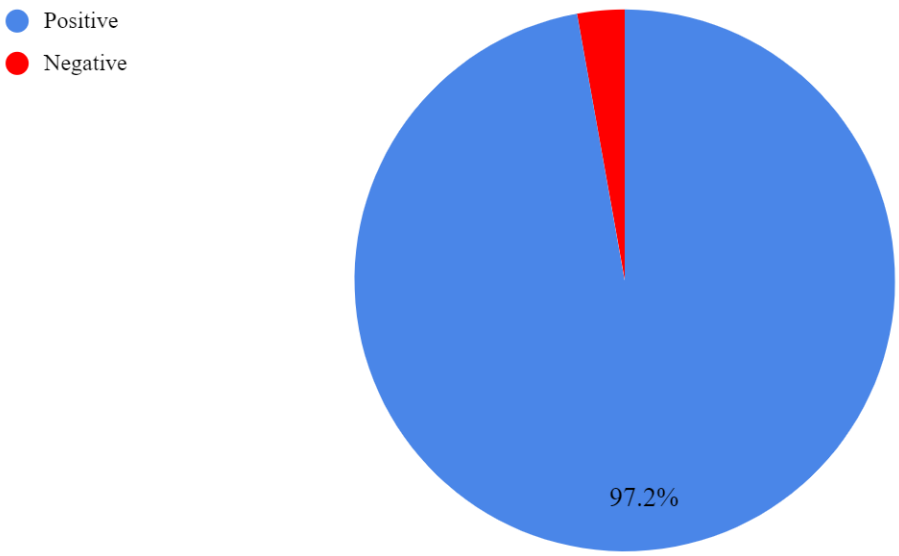
Figure 4: Cumulative Sums of Claims by Claimsmaker Type



Although United States law enforcement agencies have practiced civil asset forfeiture since the United States' inception and the U.S. Supreme Court has been grappling with civil asset forfeiture's constitutionality since 1878, the first claim made about civil asset forfeiture by any claims-maker considered for this study was made in May of 1989 by *The Washington Post.* The article, "Crime pays - for police work" (1989), defends civil asset forfeiture for its use in financially supporting law enforcement activities. By the time the Civil Asset Forfeiture Reform Act of 2000 was enacted, only three more publications containing claims about civil asset forfeiture had been made by these claims-makers: one by the Heritage Foundation (Kopel, 1993), one by the American Civil Liberties Union (1999), and one by the *Wall Street Journal* (Hayes, 1993). Ironically, the first claim made about civil asset forfeiture by the U.S. Department of Justice, the governmental agency that oversees federal civil asset forfeiture activities, was made in 2000, almost two and a half decades after federal statutory law first explicitly authorized civil asset forfeiture.

Although the U.S. Department of Justice only began making claims about civil asset forfeiture in 2000, it quickly became and remained the primary claims-maker in the public discourse surrounding civil asset forfeiture in the United States, as shown in Figure 4 above. Considering that there may be multiple different claims made within each press release and speech, Figure 5 shows the ratio of positive to negative claims made about civil asset forfeiture by the U.S. Department of Justice.

Figure 5: Ratio of Positive to Negative Claims Made by the U.S. Department of Justice



More than 97% of the claims made about civil asset forfeiture by the U.S. Department of Justice highlight the positive aspects of civil asset forfeiture, while less than three percent highlight its negative aspects. Figure 6 shows the benefits of civil asset forfeiture that the U.S. Department of Justice has defended in its claims, while Figure 7 shows the negative consequences of civil asset forfeiture that the U.S. Department of Justice has acknowledged in its claims.

Figure 6: Benefits Mentioned by the U.S. Department of Justice

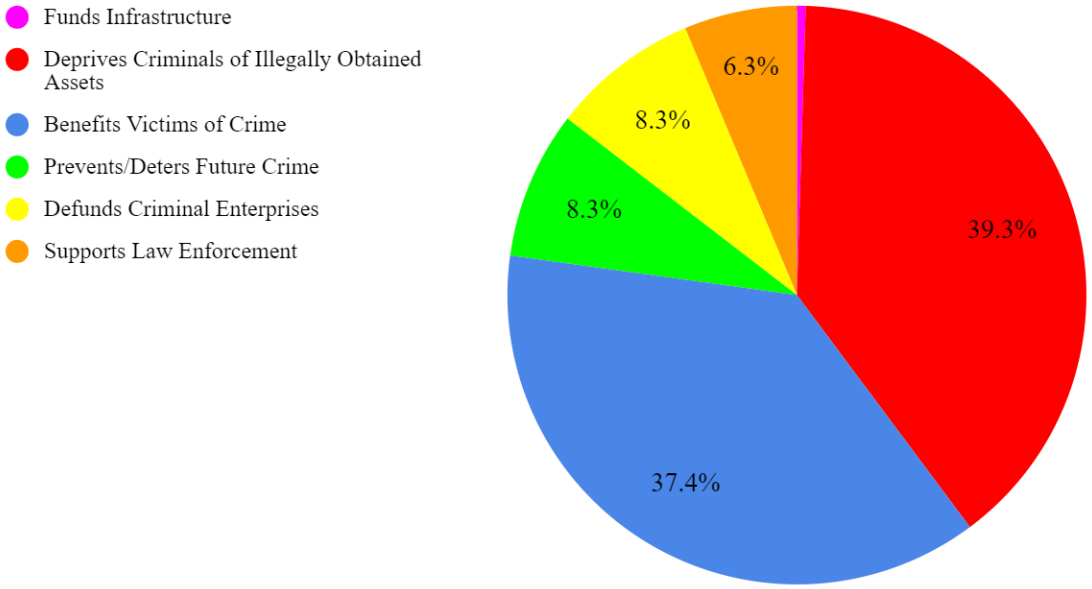
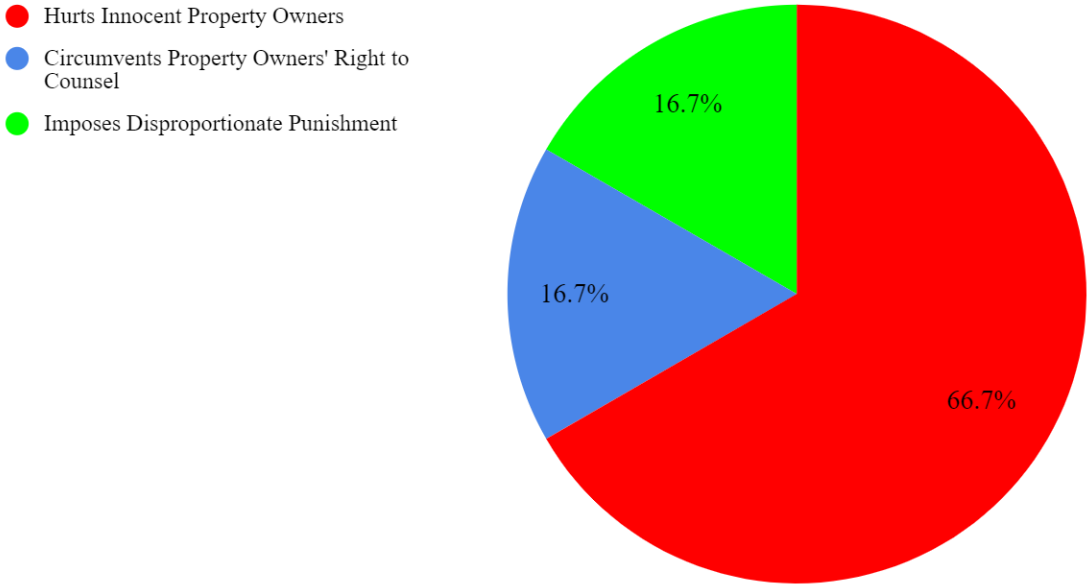


Figure 7: Drawbacks Mentioned by the U.S. Department of Justice



The U.S. Department of Justice has defended civil asset forfeiture primarily on the grounds that it deprives criminals of illegally obtained assets and uses those funds to benefit victims of crime, while still occasionally acknowledging that the practice has the

potential to harm innocent property owners. However, the U.S. Department of Justice only began to acknowledge civil asset forfeiture's drawbacks in 2011, and even those statements that acknowledge its drawbacks focus primarily on its benefits.

If the U.S. Department of Justice is the primary claims-maker supporting civil asset forfeiture, then political advocacy groups may be considered the primary claims-makers opposing civil asset forfeiture. There are several NGOs that advocate against civil asset forfeiture, but this study only examines the Heritage Foundation, the American Civil Liberties Union, and the Southern Poverty Law Center for reasons described in the previous section. Of these NGOs, the first to make a claim about civil asset forfeiture was the Heritage Foundation. In 1993, Heritage Foundation national security policy analyst David Kopel (1993) criticized the Violent Crime Control and Law Enforcement Act of 1994 in part because it did not reform federal civil asset forfeiture practices. Kopel (1993) argued that civil asset forfeiture should be reformed because it hurts innocent property owners, circumvents property owners' right to counsel, imposes disproportionate punishment upon those who are convicted, reduces the standard of proof required to seize property, and shifts the burden of proof onto property owners, who must prove they are innocent to regain their property.

Although NGOs continued to sporadically publish claims about civil asset forfeiture through the 1990s and 2000s, the rate at which they did so began to drastically increase beginning in 2014, as shown in Figure 4 above. In fact, 92% of the claims made about civil asset forfeiture by these NGOs throughout United States history were made within the last six years. Furthermore, unlike the U.S. Department of Justice, these NGOs have primarily advocated against civil asset forfeiture and called for its reform. Figure 8

shows the proportion of claims made by these NGOs that highlight positive aspects of civil asset forfeiture compared to negative aspects.

Figure 8: Ratio of Positive to Negative Claims Made by NGOs

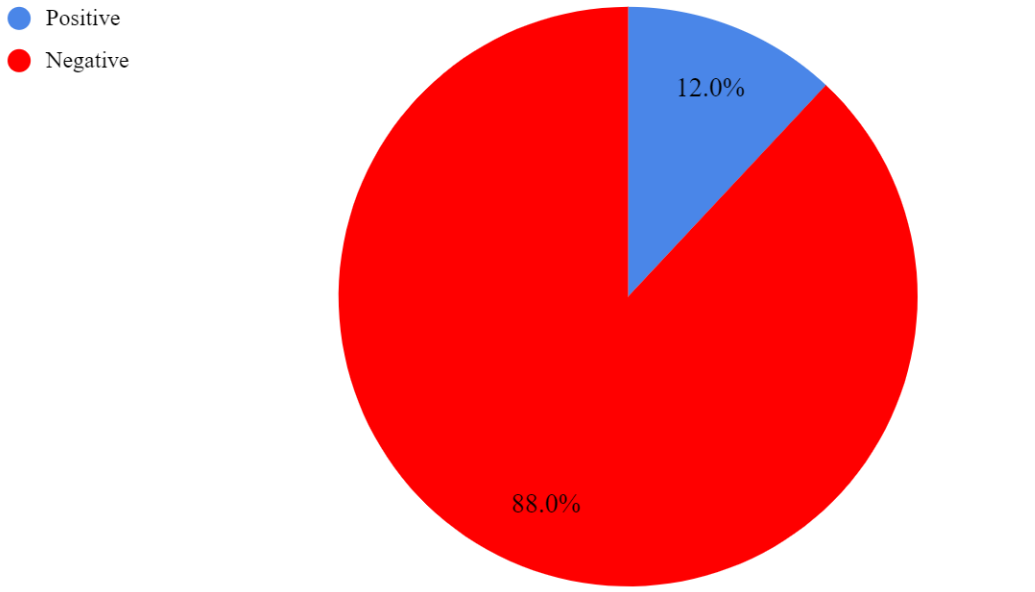


Figure 9 and Figure 10 show which benefits and drawbacks of civil asset forfeiture, respectively, these NGOs have mentioned in their claims.

Figure 9: Benefits Mentioned by NGOs

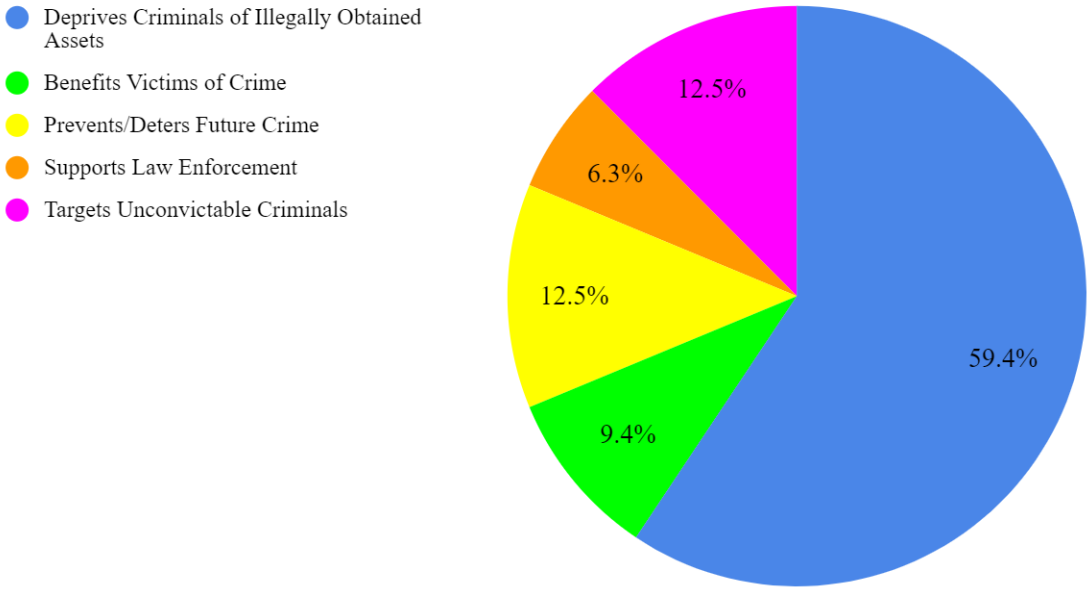
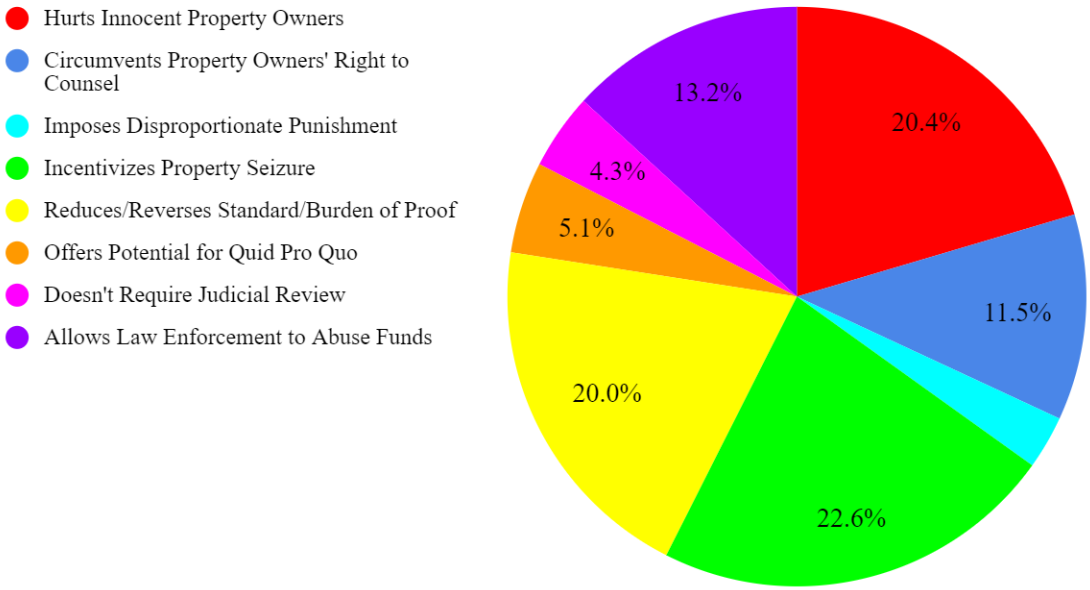


Figure 10: Drawbacks Mentioned by NGOs

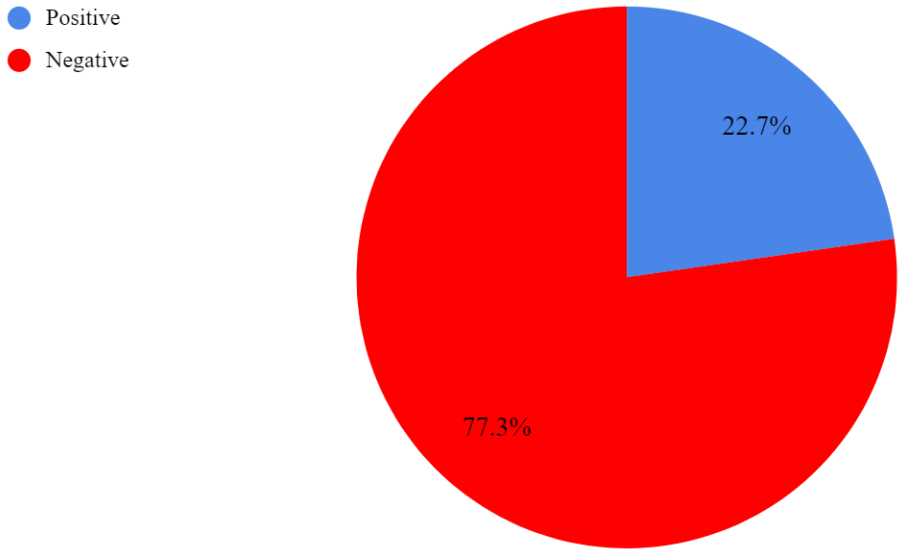


While there are few claims by NGOs highlighting the positive aspects of civil asset forfeiture, those that do have tended to highlight the benefit that civil asset forfeiture deprives criminals of illegally obtained assets. Unlike the U.S. Department of Justice,

however, very few NGOs have praised civil asset forfeiture for benefitting victims of crime. Furthermore, while the U.S. Department of Justice has only highlighted three main drawbacks of civil asset forfeiture, namely its potential negative impact on innocent property owners, property owners' right to counsel, and the proportionality of punishment, these NGOs have acknowledged a much wider variety of civil asset forfeiture's drawbacks. Although no single drawback has been the subject of the majority of these NGOs' claims, civil asset forfeiture's potential to incentivize property seizures for law enforcement agencies' financial gain, punish innocent property owners for crimes they did not commit, and reduce the standard of proof, shifting the burden of proof off of the government, have, collectively, comprised the majority of these NGOs' claims.

Similar to the Heritage Foundation, the American Civil Liberties Union, and the Southern Poverty Law Center, national newspapers, including *The Washington Post*, the *New York Times*, the *Wall Street Journal*, and *USA Today*, sporadically published claims about civil asset forfeiture beginning in 1989 and throughout the 1990s and 2000s, and only began publishing such claims at a much higher rate beginning in 2014, as shown in Figure 4 above. Correspondingly, approximately 89% of the claims about civil asset forfeiture published by national newspapers were published within the last six years, despite the actual practice of civil asset forfeiture in the United States dating back to the nation's inception. Unlike NGOs, however, almost a quarter of the claims about civil asset forfeiture published by national newspapers highlight its positive aspects. Figure 11 shows the ratio of positive to negative aspects of civil asset forfeiture mentioned in claims published by national newspapers.

Figure 11: Ratio of Positive to Negative Claims Made by National Newspapers



Thus, while the U.S. Department of Justice has largely advocated for civil asset forfeiture and NGOs focused on political advocacy have largely advocated against it, national newspapers have presented both sides to a greater extent, while still highlighting civil asset forfeiture's negative aspects much more often than its positive ones. Figure 12 shows the distribution of civil asset forfeiture's benefits highlighted by national newspapers, and Figure 13 shows the distribution of drawbacks.

Figure 12: Benefits Mentioned by National Newspapers

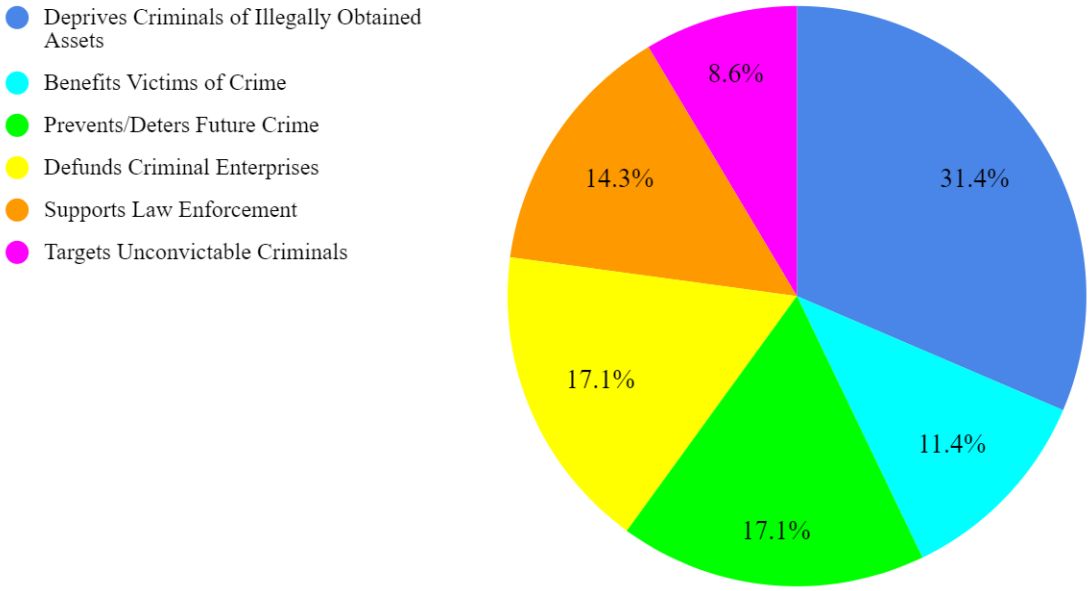
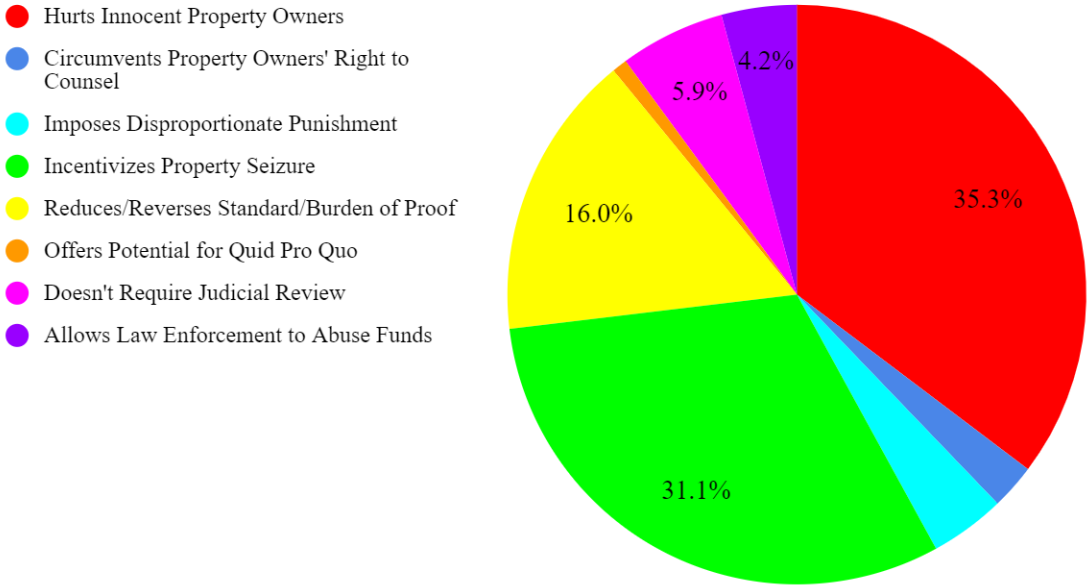


Figure 13: Drawbacks Mentioned by National Newspapers

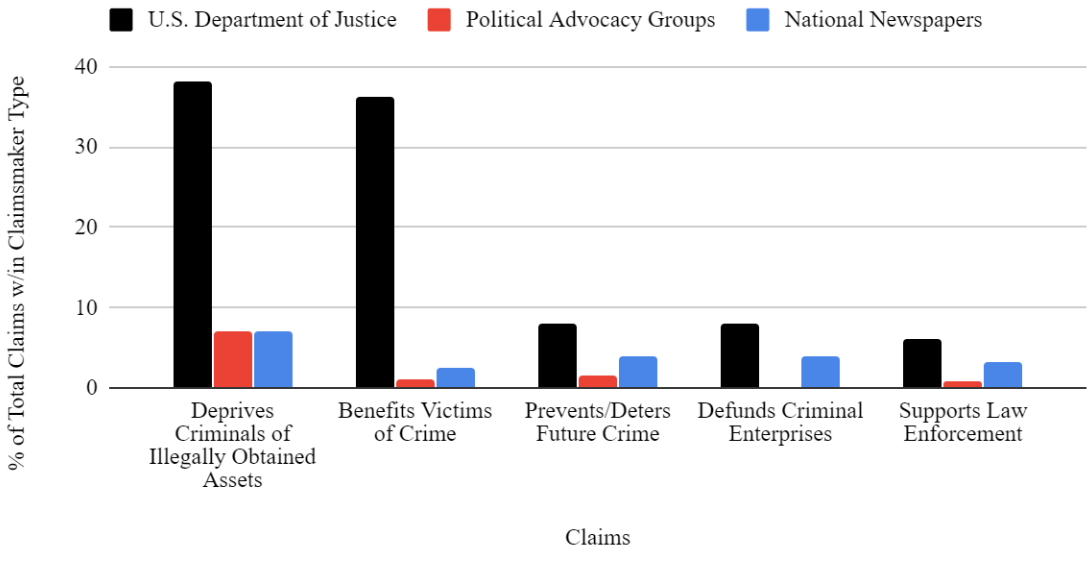


Similar to claims made by the U.S. Department of Justice and NGOs, the primary benefit of civil asset forfeiture highlighted by national newspapers is that it deprives criminals of illegally obtained assets. Also like the U.S. Department of Justice and NGOs, national

newspapers have focused on civil asset forfeiture's potential to hurt innocent property owners in their criticisms of the practice. National newspapers have also focused on civil asset forfeiture's potential to incentivize law enforcement agencies to forfeit as much property as possible to increase their budgets as well as civil asset forfeiture's impact on the standard and burden of proof for seizing assets, criticisms that have appeared often in claims made by NGOs, but not in those made by the U.S. Department of Justice.

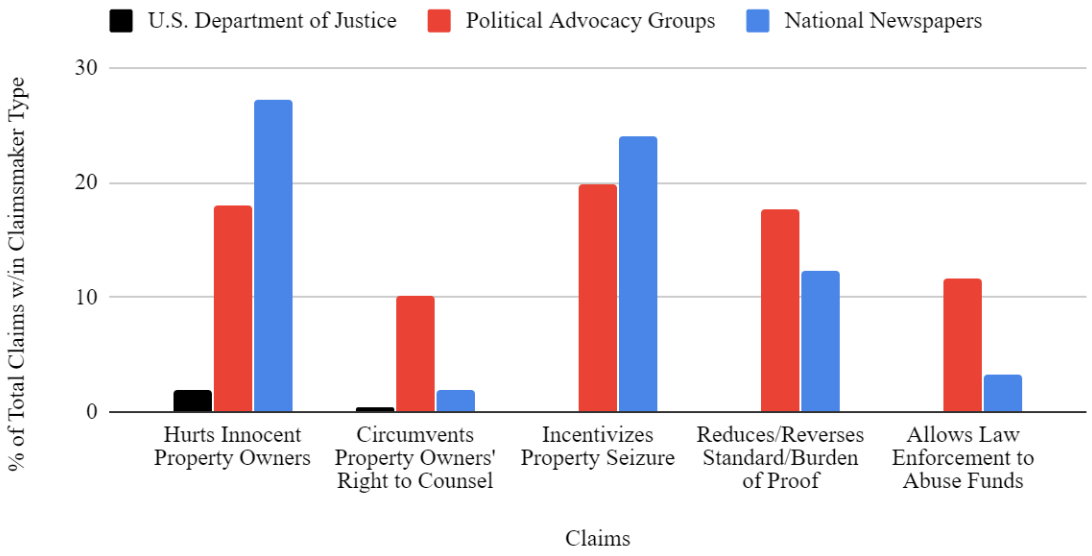
In summary, the U.S. Department of Justice' claims about civil asset forfeiture have been overwhelmingly positive, while claims published by political advocacy NGOs and national newspapers have been primarily negative. Figure 14 shows the percent of all claims made by each claims-maker type that address the five most prevalent negative claims, demonstrating the extent to which the U.S. Department of Justice has advocated for civil asset forfeiture compared to other claims-makers.

Figure 14: Positive Claims by Percent of Total Claims Made by Claimsmaker Type



In a similar fashion, Figure 14 demonstrates the extent to which political advocacy NGOs and national newspapers have made specific claims to criticize civil asset forfeiture.

Figure 15: Negative Claims by Percent of Total Claims Made by Claimsmaker Type



Discussion

Although United States law enforcement agencies have practiced civil asset forfeiture since the United States' inception, civil asset forfeiture was not grounded in federal common law until 1878, nor did it appear in federal statutory law until almost 100 years later in 1976. Furthermore, this study's findings reveal that civil asset forfeiture was not a social problem as defined by Spector and Kitsuse (1987), meaning that not many people publicly criticized civil asset forfeiture, until around the 1990s. Even so, it did not gain momentum as a social problem until the early 2010s. While there are likely many complex and intertwined causes of civil asset forfeiture's growth as a social problem in the United States that are beyond the scope of this study, these findings also reveal a correlation between increased legislation and jurisprudence related to civil asset

forfeiture and civil asset forfeiture's prominence within the general public discourse; the appearance of civil asset forfeiture in cases reviewed by the U.S. Supreme Court and the enactment of federal public laws authorizing civil asset forfeiture both began to increase rapidly in the late 1970s and early 1980s and have continued to occur since then, and claims criticizing civil asset forfeiture began to rapidly increase during the early 2010s, after the U.S. Supreme Court and U.S. Congress had already begun to reform civil asset forfeiture within common and statutory law.

In essence, there appears to be a time lag of roughly 30 years between when civil asset forfeiture gained legal momentum and when it began to develop as a social problem in the United States. Moreover, public criticism of civil asset forfeiture did not begin to grow until roughly 20 years after the practice had already been reformed within common and statutory law and, although claims supporting the practice of civil asset forfeiture began to increase after the establishment of judicial and legislative reforms of civil asset forfeiture, they did so approximately 10 years before claims opposing civil asset forfeiture began to grow. As such, the social construction of civil asset forfeiture as a social problem in the United States appears to follow a public argument that the U.S. Supreme Court started in the 1990s; the U.S. Supreme Court first limited the scope of civil asset forfeiture in 1993 and the U.S. Congress explicitly reformed civil asset forfeiture in 2000, which immediately prompted the U.S. Department of Justice to begin advocating for civil asset forfeiture by touting its benefits, to which the public has generally responded by criticizing the harms caused by civil asset forfeiture.

Although Spector and Kitsuse (1987) warn that any speculation as to claims-makers' motivations may itself become a claim within the public discourse, it is apparent

within its claims regarding civil asset forfeiture that the U.S. Department of Justice' claims in favor of civil asset forfeiture correlate to its official mission. The U.S. Department of Justice states that part of its mission is "to enforce the law and defend the interests of the United States according to the law … [and] to seek just punishment for those guilty of unlawful behavior" (U.S. Department of Justice, n.d.a). According to this study's findings, the U.S. Department of Justice's primary claims in support of civil asset forfeiture are that it deprives criminals of illegally obtained assets and benefits victims of crime. Therefore, it seems logical that the U.S. Department of Justice defends the practice of civil asset forfeiture because it is a tool that both supports law enforcement and criminal punishment by depriving criminals of their assets and defends the interests of the United States by benefitting victims of crime.

However, one of the primary claims in opposition to civil asset forfeiture asserts that it incentivizes the excessive seizure of property by law enforcement agencies, including the U.S. Department of Justice, by allowing these agencies to keep up to 100% of the profits of civil asset forfeiture. Thus, according to many of the claims-makers who oppose civil asset forfeiture, the U.S. Department of Justice's primary motivation for defending the practice is that it represents a large source of revenue. Indeed, economic analyses have demonstrated that law enforcement agencies not only prioritize lucrative civil asset forfeitures to pad their budgets (Boudreaux & Pritchard, 1996), but actually rely on civil asset forfeiture as a budgetary necessity (Worrall, 2001). Nevertheless, the evident financial influence of civil asset forfeiture on law enforcement agencies is not proof that the U.S. Department of Justice, or any United States law enforcement agency, is corrupt in its motivation for defending civil asset forfeiture. This study's findings only

reveal its explicitly stated reasons for supporting civil asset forfeiture, which include, in order of prevalence within the claims studied, that it deprives criminals of illegally obtained assets, benefits victims of crime, defunds criminal enterprises and deters future crime, supports law enforcement agencies, and funds infrastructure.

Meanwhile, political advocacy NGOs examined in this study have countered the U.S. Department of Justice' claims by first acknowledging some of civil asset forfeiture's benefits, especially that it deprives criminals of their illegally obtained assets, but then arguing that these benefits are outweighed by civil asset forfeiture's negative consequences, particularly that it incentivizes property seizure by law enforcement agencies, hurts innocent property owners, and reduces the standard of proof required to seize property, making it harder for property owners to defend forfeitures. While it would be virtually impossible to determine underlying motivations behind these NGOs' claims against civil asset forfeiture, it seems important to highlight that the NGOs included in this study, the Heritage Foundation, the American Civil Liberties Union, and the Southern Poverty Law Center, fall on different locations on the modern American political spectrum. The Heritage Foundation's (2020) official mission "is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense." On the other hand, while the ACLU (2020) and the Southern Poverty Law Center (n.d.) both claim to be bipartisan, they are both generally perceived as much more liberal than conservative. Thus, based on the findings of this study, there does not appear to be a correlation between NGOs' political views and their support of or opposition to civil asset forfeiture. Nevertheless, some supporters of civil asset forfeiture

have alleged that opposition to civil asset forfeiture is a liberal argument. For example, a prosecutor in Arizona said that "only 'narrow minds' and 'pretend conservative organizations' could support civil forfeiture reform", implying that the Heritage Foundation is not actually conservative due to its opposition to civil asset forfeiture (Snead, 2017). Claims regarding NGOs' political affiliations may be debatable, however, based on political self-determination, there does not appear to be a correlation between claims-makers' political ideologies and their attitudes toward civil asset forfeiture.

Finally, claims published in national newspapers are more balanced in their representation of claims both in support of and opposition to civil asset forfeiture, in part because these newspapers do not have a vested interest in civil asset forfeiture like the U.S. Department of Justice does, nor do they adhere to specific political values such as limited government, like the NGOs considered in this study do. Rather, claims published in these newspapers come from a variety of sources, including government officials affiliated with the U.S. Department of Justice and other United States law enforcement agencies as well as members of political advocacy NGOs such as the Heritage Foundation. Thus, claims published in national newspapers logically represent a wider variety of views than claims published by the U.S. Department of Justice and political advocacy NGOs do. Moreover, this study's findings demonstrate that claims made about civil asset forfeiture in national newspapers have tended to focus on similar benefits of civil asset forfeiture as claims made by the U.S. Department of Justice, including a primary focus on civil asset forfeiture as a tool for depriving criminals of their illegally obtained assets. Likewise, claims about civil asset forfeiture published in national newspapers have tended to focus on similar drawbacks of civil asset forfeiture as claims

made by political advocacy NGOs; the three main drawbacks of civil asset forfeiture highlighted by NGOs and national newspapers are that it hurts innocent property owners, incentivizes law enforcement agencies to seize as much property as possible, and reduces the standard of proof required for forfeiture, making it more difficult for property owners to defend their property.

In closing, this study does not attempt to establish an opinion regarding civil asset forfeiture; rather, its aim is to study the evolution of other opinions regarding civil asset forfeiture and draw conclusions about the social construction of civil asset forfeiture as a social problem in the United States. Harris (2013) advises that the study of the social construction of any social problem should consider the timeline of the problem's social construction, whether claims regarding the problem are increasing, decreasing, or remaining steady, and the factors that influence the construction of the problem. This study's findings demonstrate that civil asset forfeiture is indeed a social problem in the United States because people have publicly criticized it and called for its reform. However, although the practice of civil asset forfeiture began before the United States' inception and there is evidence of civil asset forfeiture in United States common law dating back to 1878, its social construction as a social problem did not begin to fully develop until the early 2010s. Since then, claims criticizing civil asset forfeiture have only increased in number. However, claims supporting civil asset forfeiture began to increase approximately five to 10 years before claims supporting it did. Based on this study's findings, it appears as if the social construction of civil asset forfeiture as a social problem has been strongly influenced by both the growth in legislation authorizing civil asset forfeiture since the late 1970s and the trend of limiting the scope of civil asset

forfeiture within common law based on its constitutional implications, which began in the 1990s. After the establishment of common and statutory law reforms of civil asset forfeiture, the U.S. Department of Justice began to defend its practice of civil asset forfeiture heavily. It seems plausible, then, that the social construction of civil asset forfeiture as a social problem based on the growth in claims opposing civil asset forfeiture developed at least in part as a reaction to the government's increased practice and defense of civil asset forfeiture after a wave of judicial and legislative reforms.

Limitations and Suggestions for Further Research

This study has provided insight into civil asset forfeiture as a social problem in the United States, a topic that had previously gone unaddressed within the academic literature surrounding civil asset forfeiture. Nevertheless, it is limited in scope due to a finite timeframe and restricted resources. First and foremost, it is impossible to collect every claim made about civil asset forfeiture throughout the history of the United States. Some claims, especially those made before the existence of the Internet, may have been made orally, gone undocumented, or been lost over the course of history. Those claims that are still identifiable could be found in any one of such a wide variety of locations that it would take years to search all of them; for example, it would be unreasonable to try to gather every claim made about civil asset forfeiture by every organization or agency, or in any newspaper or book, or on any website, including every social media site. Therefore, this study limits itself to the examination of a select few key claims-makers, specifically those determined to be leading the national discourse surrounding civil asset forfeiture. Federal governmental agencies, political advocacy NGOs, and national newspapers are at the forefront of the public discourse surrounding most political issues,

and civil asset forfeiture is no different. Of these categories, this study focuses on only those federal agencies and NGOs that have engaged in significant claims-making activity within the public discourse surrounding civil asset forfeiture. Thus, this study could be expanded by further research into claims-making activities by other governmental agencies, NGOs, and newspapers not limited to those circulated nationally on a daily basis. Furthermore, additional research into claims-making activities at the state and local levels may provide deeper insight into the social construction of civil asset forfeiture as a social problem not just in, but across the United States.

In addition to the collection of more claims from a wider variety of sources, this study provides a foundation for further research into the influences of the social construction of civil asset forfeiture as a social problem. For example, additional research may be conducted to shed light upon claims-makers' motivations for supporting and opposing civil asset forfeiture. A more detailed study may reveal explicit connections between different claims, for example, if a claim made by an NGO directly refers and responds to a prior claim made by the U.S. Department of Justice. A deeper investigation such as this may provide important context regarding the immediate influences of civil asset forfeiture's social construction. Finally, this body of research may be expanded by investigating the social construction of civil asset forfeiture from a contextual constructionist perspective, taking into account the available data on the actual practice of civil asset forfeiture and comparing it to allegations made in claims regarding civil asset forfeiture. For example, statistical research may either verify or refute the claim that the U.S. Department of Justice's primary motivation for supporting civil asset forfeiture is the revenue it provides. While this study offers a perspective of civil asset forfeiture that

had previously not been considered within academic literature, additional research is needed to further develop the understanding of civil asset forfeiture in the United States as a socially constructed social problem.

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