

In Defense of Counterfeiting Illegitimate Money

Rejoinder to Murphy and Machaj

By WALTER E. BLOCK*

ABSTRACT. Counterfeiting legitimate money is, and ought to be, a crime, not only under the libertarian law code but under the rules and regulations of all civilized orders. But what about counterfeiting money that is per se illegitimate; that is, is itself counterfeit? Is that a licit human action? The present article argues, somewhat paradoxically, that it is. It offers a counterpart to two authors—Murphy (2006) and Machaj (2007)—who take the opposite point of view.

I

Introduction

IN BLOCK (1991), I argued that while governmental counterfeiting of gold and silver with its fiat currency is unjustified, private counterfeiters who counter counterfeit against these statist depredations are compatible with the libertarian legal code. In Section II of this article, I consider, and reject, the criticisms Machaj (2007) has made of this thesis of mine. Section III is devoted to an examination, and also a rejection, of Murphy (2006), who also demurs from my perspective on this matter.

II

Machaj

MACHAJ (2007) AGREES with my first point, but not my second. In my opinion, his paper constitutes a splendid, challenging, learned, pro-

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vocative, and even brilliant attempt to refute my defense of private counterfeiting (Block 1991). Despite its keen insights, I maintain in the present article that it fails: that private counterfeiting can indeed be justified under the libertarian legal code.

My critic (2007) starts out on a correct note: "The basis of Block's argument is that one cannot counterfeit counterfeited money, just like one cannot steal from a thief." He then charges me with a mistaken libertarian analysis of the case in which B steals A's property, but then is quickly relieved of same by C.

It is certainly *moral* for C to return the stolen goods to the rightful owner, A. But is there a libertarian obligation that rests with C for him to do this? Machaj claims there is, but I cannot see my way clear to agreeing with him on this. For if this is so, it is an instance of a *positive obligation*, anathema to this political philosophy.¹ Make no mistake about it; unless B and C are in cahoots in order to provide embarrassment to libertarian theory,² for C to be required to come to the aid of A, a perfect stranger to him, implies a positive obligation.³

Machaj (2007) states: "C gave himself ownership of the stolen money. He entitled himself to the resources over which he should not have had control. This definitely is a bad thing." Well, yes, ideally. It is A's legitimate property, after all. But matters are not quite so straightforward. For, to hark to the counterfeiter case, where it is not as clear as to precisely who is stealing from whom, suppose that A for some reason or another cannot be found. Now, it is a choice between B, the outright thief, and C, who did not steal from the rightful owner. Rather, he liberated the stolen goods from the robber. Surely, the libertarian would prefer C to B. Moreover, let us generalize from this case. Suppose that *every time* a theft took place on the part of a B, there was a C standing nearby to relieve B of his ill-gotten gains. Once word of this new dispensation got out, it would stop robbery in its tracks, for such criminals could be guaranteed of one thing: they would not get to enjoy the fruit of their evil. Of course, this is a mere utilitarian argument, not worthy, perhaps, of even being mentioned in a libertarian analysis. Yet, it does suggest that C's claim to the booty is, at least, far better, infinitely better, if I may resort to cardinality for the moment, than B's.

Rothbard (1998: 183) had this to say about the proper relationship between the government and the individual:

as a criminal organization with all of its income and assets derived from the crime of taxation, *the State cannot possess any just property*. This means that it cannot be unjust or immoral to fail to pay taxes to the State, to appropriate the property of the State (which is in the hands of aggressors), to refuse to obey State orders, or to break contracts with the State (since it cannot be unjust to break contracts with criminals). Morally, from the point of view of proper political philosophy, “stealing” from the State, for example, is removing property from criminal hands, is, in a sense, “homesteading” property, except that instead of homesteading unused land, the person is removing property from the criminal sector of society—a positive good.

Let us now move from a discussion of theft to one of counterfeiting.⁴ According to my critic:

When a customer owning fifty “printed-in-the-basement-dollars” walks into a shop and buys a pair of shoes with this “money,” is it a voluntary exchange? Do we have two parties who *both* have a *rightful* claim on the goods or items they exchange? Is privately counterfeited money a rightful claim on anything? It does not seem so.

My answer to this not unreasonable charge of theft through fraud against the shoe store is based on repudiation of public debt (Chodorov 1948; Nulle 2004a, 2004b; Rothbard 1962: 881–883, 1982: 184, 1992, 2004; Wagner 1996). While a libertarian Nuremberg Court would not necessarily jail all these who lent money to, and thereby supported, the unjust government (Block 2004b), by purchasing its bonds or debt (currency), it cannot be denied that this is not exactly a pro libertarian venture. Given that that libertarian case in favor of repudiation of government debt is established, what, then, for those who hold currency? We can say at the very least that what might otherwise be clearly considered fraud or theft against them takes on an entirely different meaning in this context. In other words, he who traffics in fiat currency deserves what he gets⁵ when and if he is “victimized” by a private counterfeiter, who, even Machaj (2007) concedes, is on the side of the angels:

when the private counterfeiter is counterfeiting fiat money, two things take place. First of all—he negates the illegitimate property title which is

currently held by the state. This should be considered a good thing, certainly from a free enterprise perspective, as fiat money is itself illegitimate.

My thought is that Machaj does not fully appreciate how truly radical is his concession, that extant fiat currency is illicit. If it is so, then those who involve themselves in it, such as the supposedly “innocent” shoe seller⁶ who will accept said currency in return for his shoes, can have no valid objection to the private counter counterfeiter of these notes.

Now comes from Machaj not one but an entire series of the most magnificent attempts at *reductio ad absurdum* I have ever witnessed, even if they are at my own expense.

The first one is based on the fact that I have a paper trail as an opponent of fractional reserve banking (FRB) on the grounds that it is incompatible with libertarian law (Block 1988, 1989; Block and Garschina 1996; Hoppe, Hulsmann, and Block 1998). Here, Machaj charges that my support for the private counterfeiter of counterfeit money is logically incompatible with my rejection of FRB. Not so, not so. I only dissent from FRB when it is the state, or members of the ruling class (Domhoff 1967, 1971, 1998; Hoppe 1990; Kolko 1963; Mises 1978; Oppenheimer 1975; Raico 1977; Rockwell 2001) who are engaging in this practice. When and if it were to be conducted by private individuals, Ragnar Danneskjold (Block 2004b) types who are doing it in an effort to overturn statist monetary depredations, I would then favor it. None of my previous publications even contemplated this possibility. Thanks to Machaj, any future work of mine on this subject will incorporate this insight.

Machaj’s second *reductio* attempt is as follows:

Let us imagine I pretend to be a tax collector, visit some business firms and inform them they need to pay me right away a certain amount of tax. After they pay me I gladly walk out with money earned practically for nothing. Are those businessman allowed to take the money away from me or not? The libertarian answer seems obvious—yes. If so, then Block’s analysis of counterfeiting cannot be correct.

I agree with my critic that he would be unjustified if he stole money in this way from business firms, but I see a disanalogy between this act of theft and that of the private counter counterfeiter. Yes, the private creator of fake fiat currency lowers the value of the dollars of

all those who hold them, but as Hoppe and Block (2002) indicate, one can legitimately own only physical property, not its value, as this is determined subjectively by numerous people. Were it true that one could own the value of property, then if someone purchased bread I could sue him for (slightly) raising the price I would have to pay for this item, and thus lowering the value of my own possessions. Very different from the private counterfeiter, the man who collects fake taxes is actually stealing physical property, not merely lowering its value. Say what you will about fiat currency, it cannot be denied that at least it is physically real.⁷

I think that Machaj's third attempt at a *reductio* is the weakest of the three. Here, he claims that my argument logically implies support for murder. But, if it does not even go so far as to buttress mere theft, I do not think the argument can be extended to cover the actual killing of innocents. Where this argument goes astray is that libertarian punishment theory attempts to make the punishment fit the crime. A slap on the wrist for holders of government paper, yes. Capital punishment? Hardly.

Let me give an overall assessment of this critique. To put matters in Austrian terms, Machaj is arguing as if we are already at equilibrium; in contrast, I am being market-process oriented. To give this discussion a political slant, he is acting as if the libertarian revolution has already been won and we have already achieved the libertarian nirvana; I am maintaining, in effect, that this goal has not at all yet been attained. I am looking at a method of achieving it; he is spurning this means, while in effect welcoming its accomplishment.

Consider a very famous quote I think apropos:

If there is no struggle, there is no progress. Those who profess to favor freedom and yet depreciate agitation . . . want crops without plowing up the ground, they want rain without thunder and lightening. They want the ocean without the awful roar of its many waters. . . . Power concedes nothing without a demand. It never did and it never will. (Douglass 1857)

Machaj is deprecating a person who acts so as to oppose statist depredation. I don't much care that the last thing on the average counterfeiter's mind is regaining economic freedom and the gold standard; I am judging his act, not his intention.

III

Murphy

IN MY BOOK (1991: 109–120), I claimed that the counterfeiter of legitimate money (e.g., gold and silver and/or notes based on them) is indeed guilty of fraud, and should be punished to the full extent of the law. However, I also maintained in that publication that the counterfeiter of illegitimate money (e.g., present money now circulating) is guilty of no crime under the libertarian legal code (Rothbard 1982). I was intent on defending and justifying “the (non-government) counterfeiter” and indeed entitled the chapter of the book dealing with this matter in precisely that way.

Murphy (2006) correctly cites me on this matter, but then:

disagree(s) with the above analysis. Regardless of their sordid history, the fact remains that U.S. Treasury notes are money. They are the widely used medium of exchange, and thus satisfy the definition of *money*. It may be true that this state of affairs would not persist in a free market, but this is an incidental fact.

Murphy and I both agree that gold and silver are legitimate money, while presently circulating U.S. Treasury notes are not. He (2006) share[s] “Block’s condemnation of the coercive monetary systems and legal tender laws enforced by all modern governments.” In turn, I am fully in accord with him that “U.S. Treasury notes are money.” But there, I fear, is where our concurrence ends.⁸

Murphy (2006) charges me⁹ with “faulty economic analysis,” but I really do not see how this can be the case, since he and I are fully on the same page with regard to his one economic claim, namely, that “U.S. Treasury notes are money.”¹⁰ Instead, in my view, it is Murphy who is guilty of error, but not an economic one. Rather, his mistake lies in the area of linguistics and philosophy.

Counterfeiting counterfeit money is like stealing from a thief, cheating a cheater, or murdering a murderer. None of these things, logically, can be done. That is, it would be a logical contradiction to assert that any of them had been accomplished.¹¹ In contrast, you *can* kid a kidnapper, whine at a whiner, read to a reader, kill a killer, and so forth.

Let us take a moment and focus on the contrast between the last set of each of these series of events: murdering a murderer and killing a

killer. I claim that the former implies a logical contradiction, on the assumption, of course, that capital punishment can at least sometimes be justified. For, if a murderer is put to death, he may be killed, but he *cannot* be murdered, since this would be unjustified killing, and we have just assumed, *arguendo*, that this act is justified. To have a justified unjustified killing is a contradiction in terms.

In Block (1991), I made the same point with regard to theft. It is impossible to steal from a thief what he has robbed from someone else. At most one can “liberate” the stolen property. For stealing logically applies only to rightfully owned property.

But Murphy is having none of this. He (2006) states:

Block attempts to strengthen his case with an analogy, but it too does him no good. . . . Even if we grant the legitimacy of this argument, Block has in no way justified the private counterfeiter. Just because the State forces us to use fiat currency, it does not follow that people are carrying “stolen property” around in their wallets. (From *whom* were the reader's Treasury notes stolen?) More serious, if Block thinks his argument justifies counterfeiting, then Block must also consider the simple mugger to be heroic, since after all he is only redistributing “counterfeit” money into his own pocket.

One problem with this response is that it takes my argument too literally. Theft and murder are only analogies, after all, to counterfeiting. It is not necessary that what the Treasury Department did was to engage in actual stealing. All that is necessary to defend my point is to realize that while those notes we carry around in our wallets might be real money, they do not constitute *legitimate* money. There is all the world of difference between attacking (counterfeiting) something that is legitimate from something that is not legitimate.

But let us join my esteemed colleague in his literal-minded interpretation. He asks: “From *whom* were the reader's Treasury notes stolen?” My answer, in effect, is that the U.S. government stole them from the innocent citizenry; indeed, from all who were using gold at the time when the state banned this precious metal as a money. Murphy joins me in greatly regretting that the tie between gold and money was cut by the government. But if so, then surely *some* illicit harm was perpetrated upon the general public by the state. It need not be, exactly, theft, as in a taking (Epstein 1985). Fraud as a form of robbery will do quite nicely in describing this situation.

Consider Murphy's (2006) statement: "U.S. notes are not counterfeit, since they do not purport to be anything else." My response is very much to the contrary.¹² These notes *do* purport to be something they are not. Not money, but *legitimate* money. That is, U.S. Treasury notes are bruited about by their perpetrators not merely as *money*, which they most certainly are, but as *legitimate money*, which they most certainly are not. I can readily understand why Murphy considers them money; I agree with him on that matter. But I cannot for the life of me imagine why Murphy thinks they are *legitimate* money, given his assertion (2006): "I share Block's condemnation of the coercive monetary systems and legal tender laws enforced by all modern governments."

Murphy (2006) continues: "Indeed, if all of the gold and silver of the world suddenly disappeared, the United States would not be reduced to a state of barter; prices might fluctuate, but U.S. Treasury notes would circulate as genuine money, just as before."

Here, another adjective appears: "genuine." If our author is making a positive point, again, I concur. Those green pieces of paper now circulate, and commerce is conducted with them. But I, in contrast, am making a normative claim, not a positive one. These notes are "genuine" in the sense that they do indeed oil the wheels of commerce, but not at all in terms of compatibility with the libertarian legal code, in that they are based on coercion.

Next, my intellectual opponent on this issue throws down the challenge: "Block must also consider the simple mugger to be heroic, since after all he is only redistributing 'counterfeit' money into his own pocket." My answer is that this amounts to something akin to double theft; first by the Treasury, as mentioned just above, and second by the simple mugger. Those green pieces of paper are, I contend, evidence of theft. Yet, counterfeit though they be, they belong to the people in whose pocketbooks they presently reside. When the mugger comes along and shifts them from their rightful owner's control to his own, he is of course engaging in theft. But this is *different* from what the counterfeiter does. In my understanding, what the counterfeiter of counterfeit money is doing is attacking, in effect, the institution of counterfeit money. Yes, he is lowering the value of the counterfeit money in their hands, but

under libertarian law, we can own, only, things themselves, not their *value* (Hoppe and Block 2002).

Murphy must consider a man guilty if he breaks into Fort Knox or a Treasury building and smashes, loots, and burns. I regard this as a *reductio ad absurdum* of Murphy's position, since I interpret the state as illegitimate,¹³ as a criminal gang as it were, and see such a person as the implementer of justice (Block 2004b, forthcoming).

Murphy also distances himself from my claim that the counterfeiter provides a public service: ruining our pernicious present system of fiat currency. He (2006) charges that "Block has treated far too lightly the short-run pain that would be caused by a crackup boom (necessary to destroy the current monetary system)."

I think he moves too quickly to a crackup inflationary boom. There are several possibilities that might occur before that point is reached, and thus obviate it. Posit the following scenario. The Treasury Department knows full well there is a large counterfeiting gang loose, but, for some reason, is powerless to stop these individuals from engaging in inflation of the present currency on a massive scale. Suppose, further, that this information is widely available to the general public. Now, Murphy is entirely correct in thinking that the result of all this *might* be a horrific hyperinflation of the 1923 German variety. But there are other possibilities as well. For example, a return to the gold standard, forthwith! That is, people could renounce the soon-to-be-worthless piece of paper in their pocket, and use, instead, any number of other things. For example, foreign currency, or, dare I say it, *gold*.¹⁴

But suppose Murphy is correct in his surmise. Is a short, temporary, crackup boom and resultant depression "worth" suffering from in order to achieve a full, complete gold standard, which would pretty much banish the Austrian business cycle from ever occurring? Who can say? We cannot entertain interpersonal comparisons of utility; we have no market discount rate to impose. Such comparisons thus make little sense. They are also *irrelevant* to the debate between Murphy and myself, for they are purely empirical matters, as Murphy (2006) himself acknowledges; and our disagreements concern, only, how libertarian law must view counterfeiters of counterfeit money.

Murphy's (2006) concluding remark is: "Block's disgust with the U.S. monetary system has caused him to err by failing to treat fiat currency as true money." I plead not guilty. In my view, fiat currency is indeed "genuine" and "true" and "real," but it is not *legitimate*. I am making a normative point. Murphy objects on positive grounds. We pass as ships in the night.

Notes

1. According to Keeler (1981: 42, cited in Watner 1982): "there are no general positive obligations, obligations to do something for another as opposed to refraining from doing something to him. Positive obligations arise only from an individual's own actions, such as entering into a contract; the unfortunate straits of another cannot create them." In the view of Long (2003: 49): "what is un-libertarian is the *enforcement* of positive obligations." States Watner (1982: 309): "For the libertarian, justice can only be negative, can only prohibit aggressive and criminal acts by one person upon another. Justice does not compel positive acts regardless of how praiseworthy for even necessary such actions may be." Rothbard (1998: 100) has it that: "the very concept of 'rights' is a 'negative' one, demarcating the areas of a person's action that no man may properly interfere with. No man can therefore have a 'right' to compel someone to do a positive act, for in that case the compulsion violates the right of person or property of the individual being coerced. Thus, we may say that a man has a *right* to his property (i.e., a right not to have his property invaded), but we *cannot* say that anyone has a 'right' to a 'living wage,' for that would mean that someone would be coerced into providing him with such a wage, and that would violate the property rights of the people being coerced. As a corollary this means that, in the free society, no man may be saddled with the legal obligation to do anything for another, since that would invade the former's rights; the only legal obligation one man has to another is to respect the other man's rights." See also Block (1977: 6; 2004a).

2. Which I explicitly rule out. If this were the case, then I would agree with Machaj. Another possibility, also assumed away in this analysis, is that A has hired C as his private policeman. Then, were C to not return the property stolen from A by B back to A, C would be in dereliction of his duty. Block (2002, 2003) argues that in such a case, specific performance should be enforced upon C.

3. I do not maintain that C has no obligations to A, the rightful owner, at all. If A confronts C, demanding back the stolen property C seized from B, the thief, C must return it, but *minus* a salvage or finder's fee.

4. States de Soto (2006: 245): "Clearly if bankers succumb to this temptation, they violate universal legal principles and commit not only the crime

of counterfeiting (by issuing a false receipt unbacked by a corresponding deposit), but the crime of fraud as well, by presenting as a means of payment a document that in reality lacks all backing." (I thank David Kramer for drawing my attention to this quote.) As well, Paul (2008) refers to "the counterfeiting Federal Reserve."

5. But see note 6 below.

6. Full disclosure here. I admit that I myself carry around fiat currency in my wallet.

7. But did I not just get finished saying that he who holds fiat currency deserves what he gets, since he has chosen to invest his wealth in an illicit form. But there is a limit to how severely such "malefactors" can be treated. Certainly, no libertarian Nuremberg Court would treat such people (virtually all of us) very severely. Indeed, the claim might almost but not quite be made that we are more sinned against than sinning, except for the fact that he who holds government paper supports the state in a way that he who drives on a government highway does not.

8. It is a pleasure and an honor to have so astute an economist as Murphy so severely probe this publication of mine. This affords me the opportunity to further attempt to get that one-millionth of an inch closer to the truth on this matter.

9. This author has also taken issue with me on this topic in Murphy (2002a: 113).

10. Well, I suppose we could *both* be in error, but that would scarcely settle matters between the two of us.

11. This is similar to the claim that someone drew a square circle.

12. Rothbard (1984: 5) considers governments guilty of counterfeiting. He argues as follows (emphasis added): "Given the existence of the State, we must try to abolish, and if not abolish then to limit and reduce, its internal power—its internal exercise of taxation, *counterfeiting*, police state aggression, controls, regulations, or whatever."

13. As does Murphy himself. See Murphy (2002b).

14. Whenever in the past people have been "free to choose," to use an expression beloved of gold critic Milton Friedman, they have usually chosen, you guessed it, gold. See on this Rothbard (1962, 1990) and Block (1999).

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