

# COUNTERING WALTER BLOCK'S "HEROIC" PRIVATE COUNTERFEITER

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## 1. Introduction

IN HIS PROVOCATIVE BOOK, *Defending the Undefendable*, Walter Block (1976) presents a cast of seemingly nefarious characters, such as the slumlord, the prostitute, and the moneylender, whose actions, he shows, are harmless and even beneficial when looked at from a free-market and natural law perspective. There is, however, one case where his defense is more than a little controversial: that of the private counterfeiter. According to Block, an individual counterfeiter who creates his own notes commits no real crime because money issued by the government is itself counterfeit, and counterfeiting counterfeit money is analogous to seizing stolen goods from thieves. Block points out that under the natural law, if B steals property from A, and C takes the stolen property away from B, C is *not* guilty of theft if the property in question cannot be returned to A; for example, if A no longer exists or cannot be found. Block contends that a similar proposition can be applied to counterfeiting, where B are the government and banking institutions, who throughout history have fraudulently misrepresented their notes as being equivalent to genuine money such as gold and silver, A are the past depositors of these precious metals who were the original victims of B's counterfeiting fraud prior to the establishment of a universal fiat currency,

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CITATION INFORMATION FOR THIS ARTICLE:

Laura F. Davidson. 2013. "Countering Walter Block's "Heroic" Private Counterfeiter." *Libertarian Papers*. 5 (1): 67-88. ONLINE AT: [libertarianpapers.org](http://libertarianpapers.org). THIS ARTICLE IS subject to a Creative Commons Attribution 3.0 License ([creativecommons.org/licenses](http://creativecommons.org/licenses)).

and C is the “heroic” private counterfeiter who “seizes” B’s ill-gotten gains. In a fiat system all money is counterfeit, and since A are no longer present to reclaim their stolen deposits, C is fully justified in “counterfeiting” B’s counterfeit notes. According to Block, such actions are not only legitimate, they are positively beneficial, since the private counterfeiter is engaging in the equivalent of “liberating” stolen goods, and helping to defeat the evil fiat monetary system to boot.

In a rejoinder to Block, Murphy (2006) argues that fiat notes are *not* counterfeit, because the government no longer claims they are redeemable for precious metals. Indeed, the very fact that the link between fiat money and gold has been broken indicates this is so. Even though fiat money only exists due to coercive legal tender laws, it is nevertheless a real medium of exchange, and the private counterfeiter, therefore, counterfeits *genuine* money. Block’s analogy with the thief, says Murphy, cannot be used to justify the actions of the private counterfeiter, because “it does not follow that people are carrying ‘stolen property’ around in their wallets.” According to Murphy, if Block’s argument is true, then we would have to consider the simple mugger to be heroic, since he is also simply redistributing the state’s counterfeit money.

Block (2009) responds that this is taking the analogy too literally. Of course the notes are not stolen, but the principle is that just as it is logically impossible to steal stolen goods, because stealing only applies to rightfully owned property, so also one cannot logically counterfeit counterfeited notes, because counterfeiting only applies to articles that are genuine. According to Block, even though Murphy claims fiat notes are not counterfeit, in the sense that the state makes no pretense regarding their redemption for precious metals, they are nevertheless illegitimate, as Murphy himself acknowledges. They are certainly money, but they are not a *genuine* form of money, and thus the private “counterfeiter” cannot be guilty of the crime of counterfeiting them.

Machaj (2007) argues that while the negation of the government’s money by a private counterfeiter is a “good thing,” it is hard to argue why such a person should gain a legitimate title to the money he creates, or the goods for which it is exchanged. Machaj’s concern is this: if it is true that it is morally defensible for a private person to gain a licit ownership interest in a counterfeit article that is employed to negate an illegitimate government title, then this proposition could be used to justify all sorts of rather dubious behavior by private individuals. For every government action that deprives the public of its rightfully owned property and gives rise to a false ownership or interest—e.g. tax collection, regulation of business, etc.—a private person would be justified in profiting from precisely the same activity. Machaj points

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to an alleged double standard in Block's argument since the latter is a severe critic of fractional-reserve banking. If the private counterfeiter's title to his own "printed-in-the-basement" money is licit, how can Block criticize commercial banks for profiting from precisely the same kind of activity when they issue fiduciary media?

Block (2009) counters that anyone who uses fiat money or buys government bonds is in effect supporting the state, which is why under the libertarian legal code there is an obligation to repudiate the public debt.<sup>1</sup> By "trafficking" in fiat money, ordinary people are guilty of violating this code, and have no right to complain if they become the "victims" of the private counterfeiter's deception. Indeed, the latter does indeed gain a licit title to that which he takes. With regard to commercial banks, Block contends that he only objects to fractional-reserve banking when it is conducted by members of the ruling class, to which the commercial banks belong. But since the private counterfeiter is "on the side of angels," and is helping to overturn "statist monetary depredations," his actions are fully justified.

In Davidson (2010) I agree with Block that the general natural law proposition regarding theft is correct, and that one cannot logically steal stolen goods, nor counterfeit something that is itself counterfeit. However, I claim the analogy is misapplied, particularly with respect to fiat money. While the *issuance* of fiat currency by the government is unquestionably immoral, the notes themselves are *not* counterfeit. Moreover, their use, once they pass into the hands of the general public, is *not* illicit. Since these entirely innocent people are forcibly prevented from using any medium of exchange other than fiat money, it becomes *their* currency, and the goods they obtain with it are legitimately theirs. By exchanging his notes with them, Block's "hero" is not a "liberator," but rather a criminal counterfeiter of *genuine* money, who steals from rightful owners.

Block (2010) in a rejoinder takes issue with my article on several grounds. He objects to the notion that the government uses no deception when it points out that fiat money is no longer redeemable for precious metals. He cannot see his way clear to agreeing that all people know this to be the case. Moreover, fiat money, stresses Block, can *never* be legitimate, because it arises through an illegitimate process, and therefore the private counterfeiter cannot logically be a counterfeiter; he is a liberator. Additionally, if a sufficient number of ordinary people produced the state's illicit money, a hyperinflationary meltdown would ensue, and the world would be rid of the evil fiat system. How could a Libertarian object to that?

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<sup>1</sup> See Rothbard (2004) on repudiating the public debt.

The present paper is a response to this latest rejoinder and an elaboration of some of the arguments raised in the debate. The issues involved might seem somewhat esoteric, but they nevertheless raise important ethical questions regarding the nature of counterfeiting and the issuance and use of fiat money. In sections 2 and 3 below, I outline two fundamental problems with Block's analogy when applied to the counterfeiting of counterfeit money. Sections 4 and 5 address the issue of why counterfeiting is a crime and how it affects property titles, both in a commodity-based system and in a purely fiat system. Section 6 explains why fiat notes are not counterfeit, and section 7 takes issue with Block's description of fiat money as illegitimate. Sections 8 and 9 reveal the nature of the crimes committed by the government and the private note producer in a fiat system. Block's utilitarian arguments in favor of the private counterfeiter are disputed in section 10. Section 11 concludes.

## 2. The First Problem with Block's Analogy

Theft is an act of wrongful taking (via stealth, coercion, deception, etc.) There is no disagreement that a "liberator" of a stolen good is not a thief himself, even though he too might use stealth, coercion or deception. However, there are certain dissimilarities between simple theft and counterfeiting, which present difficulties for Block's analogy.

When we describe an article as "stolen," we imply it is associated with only one specific action: theft. Moreover, no other object, besides the stolen article, is implied by that action. Counterfeiting, however, is a crime that involves two actions: (1) the creation of an inferior imitation or likeness or semblance of a good, or false claim to a good, *and* (2) the (actual or intended) theft of another good by representing the imitation article as genuine. (The imitation good or claim may be employed with deception, in exchange or otherwise, in order to steal a completely different good, or, in the case of a false claim, to steal the good to which the claim purportedly represents a true title.) Under the natural law, both actions must exist for a person to be guilty of this particular crime, because merely creating an imitation article without the intent to steal is not illicit.<sup>2</sup> Moreover, the crime implies two objects connected with these actions: the imitation article itself, and the good which

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<sup>2</sup> Writes Kinsella (2001) "We do not have a "right to copy" as part of a bundle of rights to have a right to impose a known pattern or form on an object we own. Rather, we have a right to do anything at all with and on our own property, provided only that we do not invade others' property borders."

is the target of the fraud. Thus, when we describe an article as “counterfeit,” we imply, in addition to it being an inferior or forged copy of something genuine, that it is, or has been, or will be, used with deception to procure something else.<sup>3</sup> While the logical impossibility of stealing a stolen good is clear, the use of this proposition as an analogy to absolve the private counterfeiter is not quite as straightforward as it might at first appear.

Suppose Nero has recently set himself up as a counterfeiter. And unbeknownst to most of the people of Rome, he has been debasing silver denarii coins with cheaper metal, which he is now using to steal goods from average citizens by claiming the coins are 100% silver. And let Block’s “hero” be a libertarian-minded Roman citizen who has got wind of Nero’s scheme, and is considering entering the coin-producing business to counter this illicit operation. In order for the latter *not* to be guilty of the crime of counterfeiting himself, he must either not make debased imitations, or, if he does, he must not use them deceptively to acquire legitimately owned property. (He is, however, morally justified in using them deceptively to take *stolen* goods.) Does he make his own imitation money? Let us say yes, he creates debased imitations of genuine money, or, he creates imitations of Nero’s debased money, it does not matter which. (The latter is not a logical contradiction, for it is certainly possible to take counterfeit money and copy it. One can *copy* counterfeit money, but one cannot logically *counterfeit* this money, except in a certain sense discussed in the next section.) Does he exchange them for stolen goods? If he uses his “money” to buy goods illicitly procured by Nero, or any other thief, the answer is yes, in which case he is a liberator, not a criminal. But suppose an innocent person offers to sell his homesteaded property or his labor. These goods are certainly not stolen, in any sense of the word, but if Block’s “hero” exchanges his “money” for *these* goods, he is indeed guilty of the crime of counterfeiting, because he has created an imitation of a good and then used it, with deception, to take another good that was not originally part of any theft. He is not a counterfeiter of

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<sup>3</sup> In the case of counterfeit money, the target of the fraud is probably something other than money, although there is no reason why counterfeit money could not be fraudulently exchanged for genuine money. An interesting question is whether the definition of counterfeiting can include non-criminal actions where the goods involved are intangible. An example might be where a false trophy or award is put on the mantelpiece to impress others, and the good received is simply praise or adulation given by those who are led to believe the trophy is genuine. Even if there is no material benefit to the deceiver, or material loss to those deceived, the trophy could still be considered counterfeit.

counterfeit money. Rather, he is just a plain vanilla counterfeiter of *genuine* money.

### 3. The Second Problem with Block's Analogy

Block's analogy asserts that counterfeiting a counterfeit object is not a crime; indeed it is not logically possible. But what if the original good is deemed "counterfeit" only because of its *past* associations with counterfeiting? Suppose Smith is a modern-day collector of denarii issued by Nero. If Jones manufactures his own versions of these Roman artifacts in his basement and sells them to Smith while claiming they are from the 1st century AD, there can be no question he is guilty of a counterfeiting fraud. However, this crime does not occur because Jones tells Smith the coins contain a certain specified weight of precious metals when they do not. To the contrary, as a knowledgeable buyer, Smith knows that Nero's denarii are not 100% silver. As far as he is concerned, the real value to him is that he thinks the coins are collectible objects from antiquity, and the counterfeiting fraud occurs because Jones misrepresents them as such, knowing full well they are not.

The problem here is that it is erroneous to say, "Jones is not guilty of wrongdoing because Nero's coins are counterfeit and it is impossible to counterfeit a counterfeit object." The correct way to analyze this state of affairs is to say that Nero's coins are now valued in their own right, for characteristics other than those that were claimed in the original fraud, and it is these new and different attributes that Jones misrepresents. He therefore counterfeits a *genuine* object. As shall be discussed later, this problem in Block's analogy is of particular importance for present-day fiat money. Calling present-day fiat notes "counterfeit" or "illegitimate" in circumstances where they are not, and then denying the possibility of counterfeiting this money, is inadmissible.

### 4. Why Counterfeiting, in General, is a Crime

It is essential to make clear exactly what a counterfeiter is taking, and why it is theft, when he exchanges his counterfeit money. He is not seizing the value of the money he copies, for value cannot literally be seized. And if all he did was devalue the currency, by randomly giving away his coins or notes without receiving anything in return, this would not be theft. Such an action might cause havoc with the monetary system, but it would not amount to stealing. Rather, the illegitimate act in any counterfeiting scheme is that by misrepresenting his own coins or notes as being genuine money, the

counterfeiter takes real goods and services from his victims, who are given something worthless in exchange. In the case of the state and the banks as the original counterfeiters, the people who were defrauded in this way were those who were given what they thought were genuine money or money claims when they were in fact false. These took the form of debased coins, that were misrepresented as being made of a specified weight of precious metals, or token coins or paper certificates that were purported to represent a demand claim to a specified weight of the commodity money, but for which only a fractional reserve existed. In the latter case, the issuers would have been unable to deliver the equivalent amount in gold or silver if all claimants attempted to redeem the certificates simultaneously. With these nefarious methods, the state and the banking institutions were able to steal goods and services that were procured from the false claims they created (Hülsmann, 2008; Rothbard, 1990). The crime involved the theft, through deception, of the goods that were taken from those who were initially given the false money. Given these circumstances, it could certainly be argued that any private producer would be morally justified in exchanging his own false coins or notes for property in the possession of the government, provided the original owners could not be found.<sup>4</sup> But what if he exchanged them with the population at large?

## 5. Counterfeit Money and Property Titles

Consider, first, the conditions existing in an early commodity-based system, prior to the adoption of a universal fiat currency, where false coins circulate alongside genuine silver. Let us assume, *arguendo*, that many people not involved in Nero's money creation scheme believe (mistakenly) that all coins are genuine. If an ordinary person, call him Gaius, who unwittingly holds one of the false coins, uses it to procure property from another person, call him Titus, does Gaius legitimately become the owner of that which he acquires? Unfortunately for both, no. Gaius has improperly acquired property from Titus because he has inadvertently handed the latter a counterfeit coin. If the faulty transfer is discovered at a later date, Titus (or his agent) may demand the property back, or, if Gaius refuses, use force to repossess it, since the former is still the legitimate owner. But suppose Titus or his heirs can no longer be found. In this case, because Gaius's property acquisition is entirely innocent, *and not theft*, there is no natural law justification for another person to seize the property in question. With Titus no longer available to

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<sup>4</sup> Rothbard (1998, p.183) states: "As a criminal organization with all of its income and assets derived from the crime of taxation, the State cannot possess any just property."

take back that which would otherwise be his, Gaius may keep the property, and any would-be “liberator” of it would be a thief.<sup>5</sup>

Suppose both Gaius and Titus know the coin is false, but decide to trade with it anyway. If no deception takes place between the two of them, and the transaction is voluntary, not only is there no theft, but the titles are transferred legitimately. Since Titus is willing to exchange his property for a coin knowing full well that it is not 100% silver, this is not an improper transaction. And it is certainly not the case that Gaius has stolen anything. Even though the coin was issued fraudulently, and was used to procure goods illicitly in the past, it is not the case that fraud or any other illicit action is perpetrated by those who choose to transact with it in the present, if both parties are fully aware of its true nature. It is not a crime to buy or sell the instrument of a previous crime if there is no intent to use it in any future crime. Titus now legitimately owns the “counterfeit” object, and Gaius has proper title to the good that is exchanged for it. Only if Gaius knows his coin is false and represents to an unwitting Titus that it is genuine can it be said that a crime occurs and that the property transferred to Gaius is a justifiable target of liberation.

When the private counterfeiter enters the scene, the only justification he can have for passing his own coins or notes is to reclaim goods he knows with certainty to be stolen. Under the above commodity-based system, if he confines his exchanges to the original counterfeiters (or those closely associated with them), all of whom have acquired property through fraud, his actions are justified. But if, on the other hand, he exchanges his false money with the general population without knowing the circumstances in which any potential seller originally procured the property being traded, this inevitably puts him in a position where he *might* steal from a legitimate owner. Moreover, if he trades his coins or notes for labor services, or any goods for

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<sup>5</sup> Writes Rothbard (1998, p. 58): “But suppose that Jones is not the criminal, not the man who stole the watch, but that he had inherited or had innocently purchased it from the thief. And suppose, of course, that neither the victim nor his heirs can be found. In that case, the disappearance of the victim means that the stolen property comes properly into a state of no-ownership. But we have seen that any good in a state of no-ownership, with no legitimate owner of its title, reverts as legitimate property to the first person to come along and use it, to appropriate this now unowned resource for human use. But this “first” person is clearly Jones, who has been using it all along. Therefore, we conclude that even though the property was originally stolen, that if the victim or his heirs cannot be found, and if the current possessor was not the actual criminal who stole the property, then title to that property belongs properly, justly, and ethically to its current possessor.”

which title is certain and clear, such as homesteaded property, or goods directly derived from homesteaded property, he is without doubt a thief. The problem is that without the requisite certainty, his action cannot be justified.

Consider now the present day, where through the adoption of legal tender laws and other statutes the use of commodity money is effectively outlawed, and the government together with its central bank has moved to a purely paper currency where it makes no pretense regarding the redemption of its notes—i.e. a universal fiat system. While the origin of fiat money, from a historical point of view, was the counterfeiting of claims to precious metals, this is not the case under present day legal tender laws. Their issuance by the central bank and their use by the government is *still objectively immoral*, and constitutes theft—actually robbery—but this process involves neither counterfeiting nor fraud. Moreover, contrary to Block’s position, I contend that once fiat notes pass into the hands of the general public, their use as a medium of exchange becomes legitimate by them, and involves neither fraud nor robbery. Unlike the circumstances prior to the adoption of modern-day legal tender laws, where counterfeit gold coins circulated alongside genuine ones, giving rise to the possibility that their use could entail fraud, no such problems arise with fiat notes, *per se*. The only state-sanctioned counterfeiters in this schema are the commercial banks, in that their issuance of fiduciary media entails fraudulent claims to (genuine) fiat money. But because fiat notes issued by the government are genuine, the opportunities for the private counterfeiter to seize stolen goods among the general population are *reduced*. Under no circumstances can the use of fiat money, by itself, by those unconnected with the government/central bank, or the commercial banks, involve theft. Indeed, not only is there no fraud by these people, but all property titles resulting from their use of the fiat notes are valid. Unless Block’s counterfeiter specifically targets the property of the financial institutions, or their backers and enablers, his activities are sure to be unjustified.

## 6. Why Fiat Notes are Not Counterfeit

For a thing to be counterfeit it must be made in imitation of something else and then passed off fraudulently as the genuine article. Fiduciary media fit the description because they represent the portion of all claims to fiat notes the commercial banks promise to redeem on demand, but which they know cannot be redeemed should all claimants make their demands simultaneously. Fiduciary media are created by commercial banks and masquerade as genuine fiat money because, via a contractual contrivance,

banks provide the illusion of on-demand availability when they know this cannot actually be possible for all customer at the same time.

Fiat notes, however, are not counterfeit, and their use does not result in fraud, because no one has any illusions regarding their possible redemption. Clearly, if the general population is made aware that the currency is no longer redeemable for gold or silver, that currency does not masquerade as anything at all, and assuming this knowledge is universal, there can be no deception by anyone who simply uses the currency. Instead of being valued by the public as a medium of exchange *and* a commodity, it is valued by them *only* as a medium of exchange (which at any given time has a certain objective purchasing power). No one within the population at large—neither buyers nor sellers—can unwittingly pass this kind of money believing it to be anything other than what it appears to be.

Block (2010) contends he cannot see his way clear to agreeing that *everyone* is aware that the government's fiat notes are not redeemable for precious metals. Let us assume he is correct. Suppose only *some* people are aware these bills are no longer redeemable. Call members of this aware group A, and everyone else who is unaware, U. Under what circumstances would fraud be committed when members of either group trade with the currency? Certainly not when members of A trade with each other, or when members of U purchase goods from group A. In these cases, no deception is involved and all property acquired is legitimately owned. Only when a member of A purchases a good from someone in group U is it fraud, and only in cases where the former *knows* he is dealing with the latter and represents the currency as redeemable. Only in this case is the good in question illicitly acquired. And while it could be argued that members of U, when they trade with each other, do not acquire valid titles either (even though no fraud is involved), there exists a considerable number of goods that *are* legitimately acquired and *do* have valid titles, in which case we return to the original question of how any private counterfeiter can know whether he is seizing property from a rightful owner or not.

## 7. What Does Block Mean by “Illegitimate Money”?

According to Block, even if we accept that present-day fiat money is not counterfeit in the sense that no deception is used, it is nevertheless illegitimate, because it no longer represents a claim to “genuine” money; e.g. gold or silver. But what does it mean to say something is illegitimate?

It is my contention that fiat money cannot logically *be* illegitimate *per se*. Indeed, there is *no such thing* as an inherently illegitimate object, whose mere

existence violates the natural law, for illegitimacy does not attach directly to *things*, but rather to *actions*, of human beings, and more specifically to actions involving an initiation of aggression.<sup>6</sup> (Actions that do not involve aggression do not violate the natural law and cannot be illegitimate.) Thus, if we loosely describe a particular object as “illegitimate,” it can only mean that some action involving it is, or was, or is intended to be, in violation of the natural law, and not the thing itself. Once it has been created, the only actions concerning an object that can be illegitimate are its use or dispensation or later acquisition, and only in cases where some kind of aggression, such as force or fraud, is employed by the relevant actor.<sup>7</sup>

With regard to fiat money, there can be no question the government *uses* newly produced fiat money illegitimately, because it employs aggression, through the enforcement of legal tender laws, to ensure it remains a viable medium of exchange.<sup>8</sup> It also *acquires* circulating fiat money illegitimately, via the theft of taxation. But what of ordinary members of the public; i.e. those who are neither employed by the state nor recipients of state largesse? Block would have us believe that because they traffic in the government’s notes, and because these bills are “illegitimate,” these ordinary citizens are somehow complicit in the state’s crime, and therefore if they suffer at the hands of his private fiat-note-producing “hero,” they are only receiving their just deserts. But what *actions* of the public involving the fiat money are illegitimate? Does their acquisition of it involve theft? Does their dispensation or use of it involve force or fraud? If not, then they have committed no violation, and they are utterly blameless, in which case they are certainly not a justifiable casualty of the private counterfeiter’s actions.

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<sup>6</sup> When we describe an object as “counterfeit,” what we really mean is that it is, or was, or will be, used deceptively to defraud. It is the action that makes it counterfeit; otherwise it is a mere imitation.

<sup>7</sup> What of an atom bomb? Can it be said that this is an example of an illegitimate object, because its only purpose is to murder innocent civilians? Should atom bombs be banned forever under the libertarian legal code? I argue, no. Who is to say that a particular product of man’s labor is specific to one end only, and that this end is always criminal? There could conceivably be a legitimate use for an atom bomb, such as rock blasting. It is not the thing itself that is illegitimate; rather it is its use, or its intended use, involving aggression, that violates the natural law. (In the case of an atom bomb, unless it was very clear its use was licit, its mere possession would indicate an intended use that was malevolent, and illegitimate, since atom bombs are probably incapable of being used within the geographical confines of the Earth as a purely defensive weapon. See Block and Block, 2000.)

<sup>8</sup> See section 8 below for a full explanation.

Can it be argued that the public, by their use of fiat money, are nevertheless accessories, because their demand encourages the state to produce more, thereby ensuring that its illicit use continues? Certainly not. It is true that if ordinary citizens stop demanding fiat money, and resort to alternative media of exchange in violation of the state's laws, or to barter, then its production and use inevitably grinds to a halt. But there is no positive obligation under the natural law for the public to stop the *government's* crime, and, as a consequence, to endure either the wrath of the state, or the unpalatable prospect of barter. If the *public's* use of it is not criminal, *per se*, because they have not initiated any kind of aggression themselves, they can in no way be considered accessories to the state's crime.

A sharp distinction should be drawn between this case and that of a person who knowingly receives *stolen* property. The so-called fence—the receiver of stolen goods—is an accessory, because he accepts the stolen item knowing full-well it has improper title. His acquisition is illegitimate. The ordinary user of newly-issued government money, on the other hand, does not conspire to receive *stolen* money, and without this kind of illicit acquisition no *crime* is committed by the new possessor, even if the money in question was used illicitly by the previous possessor. (It should be pointed that by “ordinary user” I mean all those not directly connected with the state and its operations. Government employees and contractors, welfare recipients, and other direct beneficiaries, do indeed conspire with the state to receive taxpayer or newly-issued money. They *are* accessories, and their acquisition *is* illicit.)

Block (2009) argues that the moral obligation to repudiate the public debt can be used as an argument to condemn the public's “trafficking” in fiat money. But there seems to be a world of difference between entering into a contractual relationship with the state, by voluntarily lending money to it, when there are many other avenues open for investment, and using fiat money for interpersonal transactions, not involving the state, when that is the only medium of exchange the government will allow.

## 8. The Nature of the Government's Crime in a Fiat System

Block and I both agree that fractional-reserve banking is illicit, and that money created through this process is always counterfeit (Block 1988, 1989; Block and Garschina 1996; Block and Davidson 2011; Hoppe, Hülsmann, and Block 1998, de Soto 2006). We also agree that central bank money printing is wholly unethical, but we disagree as to why it violates the natural law. As noted above, I have argued that the use of fiat notes by the public is legitimate. Why then are new additions to the monetary base by the

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government and the central bank immoral, and why do these actions constitute theft?<sup>9</sup>

The money producer transfers real goods to himself while reducing money's objective exchange value—its purchasing power—in a non-neutral way.<sup>10</sup> Those who spend the new money first, while its purchasing power is still high, gain wealth at the expense of those who receive it last, the money producer gaining the lion's share. However, in a fiat system, the essential factor that makes this process of wealth transfer theft is that it is conducted in a coercive environment, in which the government, in concert with its central bank, prevents the public from using other media of exchange. It is, in essence, “triangular intervention” on a massive scale. According to Rothbard (2004, p. 878), triangular intervention occurs “where a hegemonic relation is created between the invader and a pair of actual or potential exchangers.” In this case, the government dictates that the participants to every non-bartered market transaction must use the state's medium of exchange—fiat paper money—and no other. Rothbard outlines two types of triangular intervention: price controls and product controls. Although Rothbard mentions legal tender statutes as examples of *price* controls, where the good being controlled is the price of money, he does so in the context of these laws mandating a certain exchange ratio between competing media of exchange; for example, the ratio of gold to silver in a bimetallic system. However, when legal tender laws are used to outlaw competing media of exchange altogether, as is the case with a purely fiat currency, this is an example of *product* control, the product being money.<sup>11</sup>

It is robbery because the government is able to enrich itself by reducing the purchasing power of money, while forcibly preventing the use of alternative currencies. Indeed, if alternative media of exchange were permitted, there would be nothing objectively illicit in anyone attempting to produce, and use, purely paper money and devaluing it to zero.<sup>12</sup> Provided

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<sup>9</sup> Also involved in the theft are the central bank's co-conspirators, by which I mean financial institutions involved in central bank open-market operations.

<sup>10</sup> The objective exchange value of money is not a single number, but rather an array of numbers consisting of the inverse of all goods' prices. This is an objective, and not subjective, value, because it is derived from actual money prices existing in the market.

<sup>11</sup> The state also grants itself a monopolistic privilege, by outlawing competing producers of the fiat currency. See below.

<sup>12</sup> On freely competing paper monies, see Hayek (1978). Such monetary schemes would not violate the natural law, but as Rothbard has rightly pointed out, they might nevertheless prove impossible to initiate since, according to Mises' regression theorem, all media of exchange must have their origin in a commodity that is valued in a state of barter. See also Murphy (2005).

this was conducted without any kind of deception (and not as a byproduct of fractional reserve lending which always violates the natural law) this practice would be legitimate. Of course, in an unhampered market, the population could freely choose on an informed basis whether this type of money really suited its needs. In all likelihood, it would rapidly be displaced as a medium of exchange by commodity monies, which cannot be so easily produced, and the government's scheme to amass wealth would be eradicated in short order. But under its legal tender laws the government need not worry about producers of alternative currencies, for it excludes them by force, and thus the continued survival of its scheme is assured. Moreover, because it is done openly, with naked aggression or the threat of naked aggression, the scheme is robbery—i.e. theft using violent coercion—and *not* fraud, which is theft by deception.

### 9. The Nature of the Private Money Printer's Crime in a Fiat System

Within this milieu, a private money printer cannot have any moral justification for his activities. If the notes are *not* identical to the government's notes, he commits a counterfeiting fraud against the ordinary user because he creates and exchanges imitations, which are not equivalent to the genuine article. In this case, his victim is the person holding them when they are discovered. But suppose he is a true expert at his craft, in that his bills have precisely the same set of attributes, and all the serviceability of genuine fiat notes. Indeed, suppose no expert on earth could tell the difference, because they are literally identical. In this case, he becomes an unlicensed independent fiat money producer—he is not a counterfeiter<sup>13</sup>—and because his notes are not discoverable, the loss is spread amongst certain segments of the population in precisely the same manner as newly issued government money.

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<sup>13</sup> From a natural law perspective, he is not a counterfeiter in this case because if his notes are literally identical to those issued by the government, both materially and in their serviceability, the notes are not inferior and no deception is required when he exchanges them. Deception is of course required to avoid detection by the state, because he is violating the state's monopoly on production laws, and liable to prosecution. But this means he is engaged not in counterfeiting, but rather in the unlicensed—i.e. unauthorized by the state—independent production of fiat money. This fact does not excuse his behavior, however, because even though being an unlicensed producer would not ordinarily violate the *natural* law, it *does* violate the natural law (for a different reason) when the thing being produced is fiat money. (He commits the same crime as the state; namely robbery: see below.)

He enriches himself at the expense of innocents by creating fiat money (that costs relatively little to produce), the continued existence of which relies on the government's use of coercion. In this sense, he is guilty of robbery as well. Admittedly, he does not use force himself, but he certainly takes advantage of it by stealing goods while force is being used by others.<sup>14</sup> It is as though a shop owner is being held at gunpoint by a gang of robbers, and, while his store is being systematically emptied, Block's small-time independent operator surreptitiously nabs a few of the store owner's wares for himself. Is not this underhanded villain a part of the robbery too, even though he did not orchestrate it? At the very least, he is an opportunistic thief.

The government's illicit wealth transfer scheme relies on eliminating competition, not only by outlawing other currencies, but also by monopolizing the production of the imposed fiat currency. It might be argued, therefore, that any person who produces his own version of the fiat notes, and exchanges them with the general population, is ethically justified in his actions on the basis of helping to eradicate the latter kind of monopoly. But this argument is invalid, at least on moral grounds. The government's actions become robbery as a result of the former kind of restriction, while its monopoly on the production of the fiat notes merely serves to prevent competition from other thieves. This would not be the case under the original commodity-based system, where it was the government's monopoly

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<sup>14</sup> Are not the commercial banks guilty of robbery instead of fraud if they do not hide the nature of fractional-reserve banking from the public? In other words, if they openly produce fiduciary media, the production of which increases the money supply and reduces money's purchasing power, and they do so within a coercive environment, is this not theft using coercion rather than theft by deception? No. Fractionally-backed demand account contracts are invalid because they involve inherent logical contradictions (Davidson 2008). They are the equivalent of a square circle. Therefore, even though a bank might assert that its customers' accounts are fully redeemable and equivalent to genuine money, and even though its customers might believe it, such assertions must logically be false. The crime is thus fraud. One possible argument against this is if the government/central bank, as the lender of last resort, promises that in the event of a bank run it shall make good all claims against any fractional reserve bank. In this case, it might be argued that fiduciary media have all the attributes and safety of genuine money since their redemption into government fiat notes is guaranteed, and that the crime by the commercial banks is the ensuing devaluation of money and thus theft by coercion, rather than the counterfeiting fraud. But this would be erroneous. Since the government/central bank covers a commercial bank's claims by printing more fiat money, it is the former that is doing the robbing, and it is doing so to cover the latter's fraud.

of the mints, and not the outlawing of competing media of exchange, which constituted the violent aspect of the robbery. When the public was made to accept the debased coins alongside existing genuine ones, despite knowing they were forgeries, it was this process of legalized falsification that was the coercive mechanism by which wealth was amassed illicitly.<sup>15, 16</sup>

In a pure fiat system, however, the instruments of coercion used against the population at large are laws designed to outlaw the use of gold (or other commodities) as media of exchange altogether. And while the fiat note monopoly exists and is indeed coercive, it coercively proscribes an activity—extracting wealth by creating paper money—that only exists *itself* through coercion. Thus, unlike when gold was the medium of exchange, there can be no honest producer-users of the prevailing money under a fiat system. Fiat money production is always theft no matter who engages in it, and any monopoly power in that regard serves only to operate upon thieves. Only an advocate of equal opportunity thievery could argue that it would be a worthwhile cause to allow more competition. Contrary to Block's assertions, the private fiat money producer does not engage in a noble quest to destroy the government's money and prevent further larceny, and he does not seize stolen goods; rather, he takes advantage of the coercive environment created through the government's prohibition of competing currencies, and competes with the government to produce notes that are used to steal goods from innocent people.

## 10. Further Considerations

It is important to stress that the devaluation of money, *per se*, is not the reason the actions of either the fiat money printer or the fractional reserve

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<sup>15</sup> See Hülsmann (2008), in particular Chapter 8 “Legalized Falsifications.” Of course, this does not prevent the public from hoarding genuine coins and using only the falsified money certificates—debased coins etc.—for their exchanges, in accordance with Gresham's law, but the principle is that if tendered, it is mandatory for everyone to accept the false certificates.

<sup>16</sup> In this case, there would have been nothing illicit in producing genuine gold coins, even though it would have violated the government's statute laws. In contrast, in a fiat system, it is always illicit to be a producer-user of fiat notes, even if they are as good as the genuine article. This is so because the reproducer is taking *advantage* of (a different set of) statute laws that have outlawed competing media of exchange altogether.

banker are unethical.<sup>17</sup> In the case of the government as note issuer, the critical principle that renders its activities illegitimate is that it must use naked aggression for the medium of exchange to exist in the first place. This is why it is *never* a violation of the natural law to produce—but not counterfeit—commodity money, or even manufacture a non-commodity money in a non-fiat system, even if it induces price inflation.<sup>18</sup> In the case of the fractional reserve banker, his activities are illicit regardless of the monetary regime, but here again the fall in money's purchasing power caused by his actions is not the natural law basis upon which he is to be castigated. Fiduciary media, unlike genuine money—including genuine fiat money—are issued in a process that provides only the illusion of their equivalence to the medium of exchange no matter the “contractual” provisions agreed to in their creation. Therefore fiduciary media are counterfeit, and their issuance is a particular form of fraud.

Block (2010) proffers an interesting argument to bolster his assertion that fiat money can never become licit. First, he asserts fractional-reserve banking is illicit even if there is a “contractual” arrangement between the bank and its demand account customers; that is, even if the bank uses no deception in this narrow regard. I have no disagreement with this proposition. As Block observes, contracts such as these are equivalent to creating a square circle, and the process, even if it is conducted openly, is illegitimate. But then second, using this initial statement as evidence that a lack of deception (on the bank's part) can still result in an illegitimate arrangement, he claims to show that the use of all fiat money by the general population—i.e. those not associated in any way with the government or the banks—must therefore be illicit, even if no members of *that* group use deception. However, the logic of this argument is flawed. Even if we accept that commercial banks do *not* engage in deceptive practices, the second proposition does not logically follow from the first. When a practice is immoral *even if* there is a lack of deception, it does not follow that a different practice is also immoral (or gives rise to an illicit product) simply because no

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<sup>17</sup> Writes Hülsmann (2008, p. 49) “...let us emphasize that the distribution effects springing from production are not per se undesirable. They are an essential element of the free market process, which puts a premium on continual production in the service of consumers and does not reward inactivity.”

<sup>18</sup> Provided the coins or notes have all the attributes and serviceability of the money they purport to be, it matters not at all how they are produced or who produces them. Thus, if it were possible for an alchemist to manufacture gold in a laboratory that was in every respect identical to mined gold, and equally serviceable to mined gold, it would *not* be counterfeit. The same is true of paper money.

deception is involved in it either. Moreover, while commercial banks can be transparent regarding the fractional backing of their customers' demand accounts, it is a logical impossibility for them to be able to promise to all account holders that their money is in fact redeemable on demand in all situations. Whatever the contractual provisions agreed to, chicanery is involved, and the fiduciary media created as a consequence are fraudulently issued. With fiat notes, on the other hand, a *lack* of deception by the government/central bank makes their use *not* fraud, even though it *is* illicit. And when the non-bank public exchanges fiat notes (or that portion of other money backed by reserves) between themselves, it is the lack of deception on the public's part that results in legitimate property titles. The confusion in Block's argument arises by failing to discriminate between the legitimacy of using the thing by those who have created it and those who have not.

I now address one last theme of Block's counter-argument: that it is justifiable to counterfeit fiat money on the grounds that if a sufficient number of people did it, the entire illicit monetary system and the regime that created it would be torn asunder in a hyperinflationary meltdown. While I wholeheartedly agree it is desirable to rid the world of fiat money, can we honestly say the right way to go about it is through inflation, deliberately induced by a band of counterfeiters who would "make the Germany of 1923 and the Zimbabwe of the 21<sup>st</sup> Century look like pikers" (Block, 2010)? Would it be moral for private counterfeiters to engage in a strategy, which, if successful, could result in severe hardship for millions of people? I argue that it would not.

Suppose a crew of slaves is toiling on Scipio's galley. And one day, a particularly impetuous slave throws down his oar and exclaims "Hot diggity, I have an idea! Let us set fire to this ship and burn it to a cinder so we can gain our freedom." If he executes his plan and the ship sinks but many slaves drown, can we call his action objectively moral if the others have not agreed to it, or not even been consulted? Certainly not. Setting fire to the ship in order to be rid of the oppressor is not a justifiable action when there are other innocent people aboard, who have no means of escape. Within the confines of the ship, the use of fire is an indiscriminate weapon, and not a legitimate means of self defense.<sup>19</sup> In a similar manner the mass counterfeiters' counteroffensive against the government is indiscriminate, taking no account of innocents, who, unaware of the plan and deprived of any alternative medium of exchange, are severely hurt by the economic chaos.

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<sup>19</sup> On the illegitimacy of using non-discriminating weapons as a form of self-defense, see Rothbard (1998, p. 191) and Block and Block (2000).

Members of the rebellious group have no right to risk the lives or property of those who are not their oppressors, particularly when there might be other legitimate avenues open to them by which the fiat system could be eradicated. Engineering an economic calamity where everyone is a potential target is unjust.

However, the injustice in the mass counterfeiting proposition involves more than simply employing a weapon of indiscriminate destruction and causing some inevitable but unfortunate collateral damage. For not only do the counterfeiters secure a financial lifeboat for themselves to weather the storm they create, their plan relies on benefiting at the expense of those not aware of the scheme, while willfully causing great suffering. Since the counterfeiters are the first to trade their notes, they gain while the vast majority lose. Moreover, by exploiting the government's use of coercion that prohibits competing media of exchange, they foist their fiat money on an unwitting populace and steal from under their noses, mulcting them of their property in exactly the same manner as the state, right up to the point at which all money has been destroyed. Surely this makes their motives less than pure and their plan doubly dubious.

## 11. Summary and Conclusion

Counterfeiting is, and should, be a crime. A person who is guilty of counterfeiting engages in two separate actions. First, he makes an imitation of an article, and second, he exchanges it for another good by falsely representing the imitation object as genuine. Counterfeiting always involves the actual or intended *theft* of another good through deception. Without it, there is no crime, because making copies in itself violates no natural law.

There are, however, two situations where an inferior imitation can be exchanged legitimately. The first case exists where a person uses it with deception, but does so in order to seize a good that is known to be stolen. In this instance, he can be considered a liberator of the good in question. Because he is not a thief, he is *not* a counterfeiter, whether or not he produces the imitation article himself. The second case occurs where no deception is used. If both parties to a transaction are aware the imitation article was used in the past in a counterfeiting crime, but exchange it anyway, because it is now valued in its own right as something other than the thing it originally imitated, it has ceased to be counterfeit for the purposes of that exchange. If no possibility exists for using the imitation deceptively, because *all* economic agents are aware of its true nature, then it has ceased to be counterfeit altogether. In this latter case, it can be described as “counterfeit” only in the sense that it was used deceptively in the *past*. Therefore, it is *not* a valid

argument to say that a person who makes an imitation of this now genuine article, and exchanges it in the present, is a liberator on the grounds that it is impossible to be a counterfeiter of a counterfeit thing. It is true he is not a counterfeiter of a counterfeit thing, but that does not make him a liberator; rather he is a counterfeiter of a *genuine* thing, and thus a thief.

Present-day fiat notes issued and used by the government/central bank are no longer counterfeit because no pretense is made regarding their redemption for precious metals. Their use by the state, its associates, and collaborators is nevertheless a violation of the natural law because the state outlaws competing media of exchange. This violation amounts to robbery, but not fraud. The use of fiat notes amongst people at large, however, is completely legitimate because they are neither the initiators nor enforcers of the legal tender laws; indeed they are the victims of them. Because no invalid titles are created when the public exchanges fiat notes, an independent producer is *not* a liberator of stolen goods if he exchanges his own bills with these innocents. Fiduciary media issued by commercial banks *are* counterfeit because they represent false claims to genuine fiat money in the hands of the public. But when a private producer exchanges his own notes with people not involved with the government's coercive money printing robbery, or the commercial banks' fractional reserve lending fraud, then he himself commits a crime.

Producing (but not counterfeiting) *any type* of money does not violate the natural law in the *absence* of statute (legal tender) laws outlawing competing media of exchange. Producing or counterfeiting a *protected* money, in the *presence* of such laws, is always illegitimate, when it is exchanged with people who are subjugated by those laws. Thus, utilitarian arguments in favor of engendering catastrophic devaluation and currency collapse, by producing or counterfeiting fiat money, always fail on moral grounds.

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