

# *LeMetropole Café ALD Mint Discussion*

Daily Commentary

LeMetropole Café

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Hi Bill,

I was disturbed to see that the Treasury Department moved against the Liberty Dollar last Thursday. The way in which they did this is chilling and, I think, constitutes a noteworthy step in the process of cracking down on American's ownership of non-dollar financial assets. I have unique knowledge of the law that Treasury cited as its justification, and wanted to write to you with some analysis for MIDAS. The Liberty Dollar is a privately-minted silver currency, essentially the free-market reincarnation of the old silver dollar and silver certificate. It circulates in both coin and in warehouse receipts. The money has a Statue of Liberty on it, but looks unlike any current U.S. Money. It is not "legal tender" (i.e. people cannot be required to take it and banks do not accept it), but has been considered to be legal for voluntary private transactions between individuals. During its 8-year existence, many officials from the Treasury, the Federal Reserve, and the Secret Service have all noted that, while not legal tender, it was not itself illegal.

On Thursday 9/14, the United States Mint declared the Liberty Dollar illegal in a press release on their website, citing as their justification a counterfeiting law (18 USC 486). The story was covered in a USA Today article, both attached.

The most immediately disturbing aspect of this affair is that the Treasury Department is an arm of the Executive Branch; it is charged with enforcing law, not making law or interpreting law. It is not the role of the Treasury to "declare something illegal"; that is, on its face, a sign that the separation of powers is decaying. Treasury claims to have discussed the issue with prosecutors at the Justice Department - also an arm of the Executive Branch. Executive and Executive have gotten together and decided to ban private money, disregarding long-established positions of the courts and the legislature.

Another disturbing aspect is the "legislation by press release". Imagine for a minute that you read in the newspaper that your business has been outlawed by the town police - reversing prior on-the-record quotes that your business was perfectly legal. The proclamation targets your company specifically; your competitors are still free to do business. Further, the proclamation itself does not identify the police official who has declared you an outlaw. No one called you, no one talked to you, and you were never given any chance to address whatever the issue is. Your business, while legal yesterday, is apparently illegal today without any judicial ruling or legislation. This is simply not a situation compatible with the Rule of Law.

The Mint press release is carefully worded to connect separate concepts as if they were related. It implies that making private money is illegal because the United States Federal Government has an "exclusive" power to coin money, citing Article I, section 8, clause 5

of the Constitution. But the word "exclusive" does not appear in the Constitution as quoted. The Constitution is, by its very nature, a set of enumerated powers and restrictions on governments, not on people. The \*states\* are restricted from coining money. The \*people\* are not, and in fact numismatists are aware that the United States has a rich and well-documented history of private mints producing private circulating currency which, while not "legal tender", was "lawful money". Americans create new forms of private money all the time, from casino tokens to debit cards to PayPal to GoldMoney. The Treasury Department appears to have suddenly targeted certain private money, and I suspect it expand its scope soon enough. Potentially most disturbing of all, 18 USC 486 was actually passed to keep people from passing counterfeit replica coinage that was not backed by actual bullion. It is now being used to do the exact opposite - to ban using money that has real value.

At one point I performed an extensive analysis of 18 USC 486's legislative and legal history. The historical record showed it was firmly intended for use as a counterfeiting law, not to ban private currency. The courts have ruled on this specific issue and found that 18 USC 486 does not reach private currencies. The reasons are straightforward: to counterfeit something is to make a passable copy of it for purposes of deception. The standard for counterfeiting has always been that an ordinary person in ordinary commerce would likely confuse the item with a specific other item. If you color photocopy a \$20 bill, you are counterfeiting. If you substitute Mickey Mouse for the President, color it orange, and call it a Disney Dollar, you are not counterfeiting. Disney has not committed a crime by making their own money, even though its overall look may be similar to that of the FRN and it may use similar symbols. No ordinary person would confuse a Disney Dollar with a Federal Reserve Note. For the same reason, you cannot counterfeit a \$3 bill. It is well known that there is no such bill. You could make one, and you might even convince someone that it was a FRN, and that would be fraud, but the bill itself could not be counterfeit.

18 USC 486 was a Reconstruction-era law intended to police counterfeiting. At the end of the Civil War, the United States re-backed its currency with bullion. During the war, private businesses had issued "store tokens" to deal with the dearth of specie. Some were legitimate, but others looked very like cents and were easily confused. But a collection of cents was redeemable in bullion; a collection of tokens was not. Congress acted to insure individuals could not issue private coinage that would deceive an ordinary observer into thinking it was U.S. coin, but was not actually redeemable in bullion. That law was later re-codified as 18 USC 486. One hundred and twenty years later, the Treasury Department has acted to stand 18 USC 486 on its head, using it to ban the use of coinage that \*is\* bullion and does not closely resemble circulating coin, in place of coinage that has no real value. Black has become white; white has become black - or so Treasury would have us believe.

It is interesting that this attack on circulating silver comes precisely at the time the gold and silver markets are being harshly suppressed, shortly after Goldman Sachs' Paulson took Treasury's helm. Coincidence? I think not. A new tone has been set for the next few years, and I don't much like its sound.