

# Making Up Crime

By Peter Ferrara

Townhall.com

September 10, 2009

The American people enjoy the legal right to buy, sell, and own gold and silver, including gold and silver coins, as specifically recognized by Federal statute. This includes newly minted coins or medallions produced by private companies, as the right to own gold and silver is not limited to trading coins that were already produced before a certain date.

You are also free to trade anything you own for anything else that someone is willing to exchange with you. If someone is willing to trade you their used car for 6 truckloads of freshly cut logs, there is no law that prohibits that exchange. Similarly, there is no law that prohibits you from trading 6 gold coins with one ounce of gold each (one ounce of gold currently trades for roughly \$1,000) for a used car, or for anything else that anyone is willing to trade with you. Ditto that for silver coins.

Bernard von NotHaus decided to expand this concept through his gold and silver company, Liberty Dollar, Inc. His company has minted Liberty Dollar medallions in denominations of \$1, \$5, \$10, \$20, and \$50. (He opposes calling them coins to avoid any confusion that they are official government currency). The company sold these medallions nationwide through a network of associates and regional marketers.

The company has also sold and distributed paper notes redeemable in gold and silver, identical to warehouse receipts for gold and silver stores that can be used to go pick up the applicable share of the precious metal at any time. Liberty Dollars can also be owned in digital form that can be traded over the Internet.

Von NotHaus and his company have also encouraged merchants, or small businesses, to accept Liberty Dollars for purchases, and even to make change for customers in Liberty Dollar currency. Liberty Dollars have consequently now been in widespread use in Asheville, North Carolina, Austin, Texas, and Berryville, Arkansas, with at least \$20 million Liberty Dollars in circulation, and thousands of merchants accepting the currency and offering it as change.

Those trading in this currency are simply exercising fundamental American freedoms of property ownership, freedom of contract, and freedom of exchange. Nevertheless, in June the FBI arrested von NotHaus and three senior employees of his company, charging them under federal indictment with the crime of counterfeiting. A court order forced von NotHaus to close his Liberty Dollar company even before trial.

The indictment states, without citation to authority, “It is a violation of law for private coin systems to compete with the official coinage of the United States.” No it is not. If the Congress wants to prohibit private circulation and trade in gold and silver coins, it can. But it hasn’t. To the contrary, it has expressly provided by law that the American people enjoy the freedom to own and trade in gold and silver.

That is why the specific crimes alleged in the indictment reference no such law prohibiting currency competition. Instead, they allege violations of the specific federal statutes prohibiting counterfeiting, and of mail fraud in carrying out the counterfeiting “conspiracy.”

But counterfeiting means creating phony currency made to look like and trade as federal currency itself. It involves fraud and stealing, as those who exchange goods and services for it are misled into thinking they are receiving standard U.S. currency in return, and what they receive instead are worthless fakes.

This is quite different from exercising the freedom to openly exchange gold and silver for other goods and services, which is the same as bartering. Congress has not prohibited this. Instead, it has effectively authorized it through statutory recognition of the right to own gold and silver.

The criminal prosecution of von NotHaus and his associates is consequently an abuse of power. If Congress wants to prohibit trade in gold and silver coins and alternative currencies, it should have to pass a law doing so. In the process, we can have a debate over the desirability of currency competition.

Nobel Prize winning economists such as Friedrich Hayek have argued that such currency competition is highly desirable, as it would push the government to maintain the value of its currency and avoid inflation. But federal prosecutors know nothing about such economic arguments, and should not be making monetary policy. Most importantly, they should not be making up crimes, and falsely prosecuting American citizens. That abuse of power threatens the ultimate liberty of us all.

When Fed Ex got started, the Feds charged it with violating the legal monopoly of the post office. When Fed Ex won that battle, it was a landmark victory for all Americans. The case against Liberty Dollar offers another potential landmark victory for American liberty.

Peter Ferrara is General Counsel of the American Civil Rights Union and a Director at the Institute for Policy Innovation.