MORE MONEY, MORE PROBLEMS: 
THE BITCOIN VIRTUAL CURRENCY 
AND THE LEGAL PROBLEMS THAT FACE IT

Daniel Smith*

"How pale is the art of sorcerers, witches, and conjurors when compared with that of the government's Treasury Department!"

- Ludwig von Mises

INTRODUCTION

What is Money? The answer to this question is vastly different today from what it was a century ago: physical currency has increasingly become a thing of the past. More and more of our transactions involve plastic cards and electronic communication between computers—a series of ones and zeros being passed from buyer to seller through a series of intermediaries. Moreover, the currency that underlies those ones and zeros—United States dollars—is a "pure simulacra, pieces of paper completely decoupled from any tangible backing." Our dollars are no longer redeemable in gold, or anything of

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1 LUDWIG VON MISES, THE THEORY OF MONEY AND CREDIT 418 (J.E. Batson, trans., 1953)
2 See, e.g., Binyamin Appelbaum, As Plastic Reigns, the Treasury Slows Its Printing Presses, N.Y. TIMES, (July 6, 2011), http://www.nytimes.com/2011/07/07/business/07currency.html?pagewanted=all (reporting that production of $5 bills is at its lowest level in 30 years and that for the first time $10 bills were not produced).
3 See, e.g., Richard A. Epstein, Durbin's Folly: The Erratic Course of Debit Card Markets, 7 COMPETITION POL'Y INT'L 58, 60 (2011) (describing that the debit card became the most common method of payment in 2009).
inherent value for that matter. In other words, the United States now utilizes a "flat" currency-paper that derives its value solely from the law. For better or worse, the days of a gold-backed United States dollar are long gone.

This shift to a fiat currency that largely resides in virtual spaces raises an important question: do we need to rely on governments for money any longer? When creating money required gold reserves that corresponded to the supply of currency and access to printing presses, only large institutions—primarily national governments—could ever hope to maintain a currency. But now that money’s value has no connection to tangible assets and cash exists largely in virtual space, the barriers to entry are considerably less burdensome.

Enter Bitcoin. A few cryptographers and computer programmers have shown that in the new world of money and technology they can, on a small scale, do exactly what the Federal Reserve and Treasury do for the dollar. Bitcoin proponents argue they can do it better. Bitcoin is a purely virtual currency governed by an open-source computer code that controls supply, prevents counterfeiting, and facilitates transfers between users. As a fiat currency, dollars have value because the global community trading in dollars believes that dollars have value. They trust the Federal Reserve and Treasury Department to act prudently. The same dynamic is at work with Bitcoin, but on a much smaller scale. Rather than trust the Fed, Bitcoin users trust the computer code underlying the Bitcoin network.

It is hard to deny that the Bitcoin concept sounds cool. But after digesting the idea, it is equally difficult for one to avoid having some real concerns. After all, this is money we are talking about. People work hard for their money. How does Bitcoin stop thieves? What if a hacker compromises the whole Bitcoin network and destroys the currency’s value? Is the whole concept a scam? More simply, is it even legal for a bunch of people to just create and circulate their own currency?

The last of these questions is the most foundational: Can these people even do this? This question bears relevance not only to Bitcoin, but also to its inevitable, perhaps more successful, successors. Open-source, virtual currencies may be niche today, but could become mainstream in the near future. This Comment provides a provisional answer to the fundamental question of Bitcoin’s legality. Part I gives a brief overview of the mechanics behind Bitcoin. Part II chronicles the currency’s lifespan so far. Finally, Part III considers the potential impact of the Stamp Payments Act of 1862 on Bitcoin—an ancient statute that is arguably the gravest present-day threat to fledgling virtual currencies.

PART I: WHAT ARE BITCOINS, WHERE DO THEY COME FROM, AND WHO ON EARTH WOULD WANT THEM?

It is difficult to picture Bitcoins because they do not exist in physical form. That is, they are not actually "coins" at all. Rather, Bitcoins are “unique strings of numbers that constitute units of the currency[.]” Possess one of these discrete strings of numbers, and

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7 Id.


12 See supra, note 9.

13 The public has grown increasingly distrustful of central monetary authorities in recent years. See, e.g., 80% Favor Auditing the Federal Reserve, RASMUSSENREPORTS.COM, (May 27, 2010), http://www.rasmussenreports.com/public_content/business/general_business/may_2010/80_favor_auditing_the_federal réserve. This suggests a distinct possibility that people would be willing to accept trustworthy independent currencies.

14 See, e.g., Eric Mack, Are Physical Bitcoins Legal?, CNN.COM, (Oct. 25, 2011, 03:51 PM), http://news.cnn.com/2011/10/05/tech/currency/traditional-bitcoin-legal/ (While some have manufactured "physical" Bitcoins, really, they are just coins with imprinted codes that can be used to redeem Bitcoins online. They are purely symbolic, and are not "actual" Bitcoins).

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It is difficult to picture Bitcoins because they do not exist in physical form. That is, they are not actually “coins” at all. Rather, Bitcoins are “unique strings of numbers that constitute units of the currency[,]” possess one of these discrete strings of numbers, and
you have a Bitcoin. Similar to breaking a dollar, Bitcoins can be divided up to eight decimal places.\textsuperscript{16}

Bitcoins only exist as units of currency in the context of a network of users that is governed by a uniform source code.\textsuperscript{17} In a sense, this code serves as a referee, ensuring everyone on the network is playing by the same rules. Its most basic function is to confirm that a particular string of digits is a legitimate Bitcoin owned by a specific user.\textsuperscript{18} This is what makes Bitcoin work; users would not be willing to trade anything of value for Bitcoins if other users could create or duplicate them at will.

Users access the Bitcoin network by using one of several different Bitcoin clients.\textsuperscript{19} While these clients have different features and graphic interfaces, they all abide by the underlying Bitcoin source code that holds the network together.\textsuperscript{20} If a particular client began allowing users to break the rules of the source code, the rest of the network would not recognize those users and their Bitcoins.\textsuperscript{21} The Bitcoin clients provide an interface for users to store their Bitcoins in a virtual wallet and trade with other users.\textsuperscript{22} Bitcoins come into existence when certain high-end users “mine” them.\textsuperscript{23} Users become “miners” by configuring their clients to bear the processing burden of confirming the legitimacy of Bitcoin transactions on the network.\textsuperscript{24} Essentially, these users offer their systems up to be the work horses through which the source code enforces its rules on the network. The reward for this sacrifice, dubbed “mining,” is both monetary compensation and the steady regulation of supply.\textsuperscript{25} As a practical matter, mining has become increasingly difficult as the Bitcoin network has expanded; generally only sophisticated users with high-powered computers mine Bitcoins currently.\textsuperscript{26} The typical user acquires Bitcoins from buying or trading for them.\textsuperscript{27}

Still, why bother mining for these coins, let alone pay dollars for them? Bitcoin proponents claim there are two major advantages to the virtual currency. The first is lower transaction costs—Bitcoin is the first genuine form of internet cash. Online transactions in dollars seem instantaneous from the user’s perspective, but the reality is that such “transactions normally require a trusted intermediary.”\textsuperscript{28} Whether with a credit card or Paypal, there is a middleman who stands between buyer and seller.\textsuperscript{29} Bitcoin effectively removes this middleman, and the costs associated with it, because after a buyer transfers Bitcoins to the seller, the transaction is complete.\textsuperscript{30}

The second purported advantage of Bitcoin is that the currency’s value will remain stable.\textsuperscript{31} This advantage is largely theoretical. Bitcoin proponents argue that the source code’s meticulous control of the money supply and the decentralized nature of the network will
you have a Bitcoin. Similar to breaking a dollar, Bitcoins can be divided up to eight decimal places.\footnote{About Bitcoin, BITCOIN P2P DIGITAL CURRENCY, http://bitcoin.org/about.html (last visited Mar. 15, 2012)}

Bitcoins only exist as units of currency in the context of a network of users that is governed by a uniform source code.\footnote{See BITCOIN.ORG (Feb. 26, 2011), http://bitcoin.org; Naomi O'Leary, Bitcoin, the financial traders’ anarchic new toy, REUTERS, (Apr. 2, 2012, 5:52 AM), http://www.reuters.com/article/2012/04/02/us-traders-bitcoin-idUSBRE83108120120402 (“Bitcoin is not run by people with hot sexual appetites for hotel maids. It is not run by corporations. It is not governed by people with budgets to meet. It is governed by a mathematical formula . . .”).} In a sense, this code serves as a referee, ensuring everyone on the network is playing by the same rules. Its most basic function is to confirm that a particular string of digits is a legitimate Bitcoin owned by a specific user.\footnote{Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System, BITCOIN.ORG 1, 2-3 http://bitcoin.org/bitcoin.pdf (discussing the double-spending problem and Bitcoin’s solutions).}

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Users access the Bitcoin network by using one of several different Bitcoin clients.\footnote{See e.g. Jon Matonis, FORBES MAGAZINE, (Mar. 24, 2012, 11:27 AM), http://www.forbes.com/sites/jonmatonis/2012/03/24/bitcoin-doesnt-need-a-dongle/ (discussing several different Bitcoin clients for mobile devices). A list of clients can be found on the Bitcoin Wiki. See BITCOIN WIKI, https://en.bitcoin.it/wiki/Category:Clients (last visited Apr. 5, 2012).} While these clients have different features and graphic interfaces, they all abide by the underlying Bitcoin source code that holds the network together.\footnote{Naomi O’Leary, Factbox—What is Bitcoin—currency or con?, REUTERS, (Apr. 2, 2012 12:16 AM), http://uk.reuters.com/article/2012/04/01/uk-factbox-bitcoin-idUKBRE83000P20120401 (“If a programmer tried to alter the Bitcoin code—for example to try to increase the number of Bitcoins in circulation—this rule would algorithmically disagree with all the other computers on the network.”).} If a particular client began allowing users to break the rules of the source code, the rest of the network would not recognize those users and their Bitcoins.\footnote{See id. (discussing several different Bitcoin clients for mobile devices).} The Bitcoin clients provide an interface for users to store their Bitcoins in a virtual wallet and trade with other users.\footnote{See, e.g., Matonis, supra note 19 (discussing the transfer and “wallet” features of several Bitcoin clients for mobile devices).} Bitcoins come into existence when certain high-end users “mine” them.\footnote{See id. (discussing several different Bitcoin clients for mobile devices).} Users become “miners” by configuring their clients to bear the processing burden of confirming the legitimacy of Bitcoin transactions on the network.\footnote{See id. (“A maximum of 21 million Bitcoins will be released to miners at a gradual rate that halves every four years.”).} Essentially, these users offer their systems up to be the work horses through which the source code enforces its rules on the network. The reward for this sacrifice, dubbed “mining,” is both monetary compensation and the steady regulation of supply.\footnote{See id. (discussing Bitcoin exchanges).} As a practical matter, mining has become increasingly difficult as the Bitcoin network has expanded; generally only sophisticated users with high-powered computers mine Bitcoins currently.\footnote{See Timothy B. Lee, AES TECHNICA, http://aseotechnica.com/technology-policy/news/2011/12/bitcoins-comeback-should-western-union-be-afraid.ars (“Bitcoin boosters point to two major advantages Bitcoins have over dollars: price stability and lower transaction costs.”).} The typical user acquires Bitcoins from buying or trading for them.\footnote{Id.}

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The second purported advantage of Bitcoin is that the currency’s value will remain stable.\footnote{See id. (“Where the first miners had used their existing machines, the new wave, looking to mine bitcoins 34 hours a day, bought racks of cheap computers with high-speed GPUs cooled by noisy fans . . . the bulk of mining is now concentrated in a handful of huge mining pools . . .”).} This advantage is largely theoretical. Bitcoin proponents argue that the source code’s meticulous control of the money supply and the decentralized nature of the network will
ensure long-term stability. This is contrasted with national currencies that are subject to government monetary policy. In reality, Bitcoin values have been anything but stable. Bitcoin’s exchange rate spiked from $1.16 to a high of $29.55 in a couple of months, and then plummeted to under $5.00 as quickly as it had risen.

PART II: THE RISE, FALL, AND RISE OF BITCOIN

The fundamental idea of Bitcoin is simple, and raises an obvious question: why has no one thought of this before? The answer is that people have, but Bitcoin is just the first virtual currency to sustain any sort of success. Bitcoin’s predecessors were plagued by the high risk of exploitation by hackers because without physical currency, “the payee can’t verify that one of the owners did not double-spend the coin.” Bitcoin’s success is rooted in its unique solution to this problem.

32 Timothy Lee, Bitcoin’s Comeback: Should Western Union Be Afraid?, WIRED.COM (December 21, 2011, 3:33 PM)
http://www.wired.com/threatlevel/2011/12/bitcoins-comeback/
33 See James Ball, Bitcoins: What are they, and how do they work?, THE GUARDIAN (June 22, 2011, 9:07 AM)
http://www.guardian.co.uk/technology/2011/jun/22/bitcoins-how-do-they-work (“Perhaps the simplest explanation for what brought thousands of users – many non-technical – to an unprotected currency is the sheer increase in value it attained in recent months. On 1 January 2011, Bitcoins were worth 30 cents each. By 9 June 2011, they were worth $29.55.”)
34 Id. Other reports suggest a higher peak: $32.00. See Nicholas Jackson, The Bitcoin Economy is Collapsing With No Sign of Recovery, THE ATLANTIC (Aug. 8, 2011, 7:10 AM)
http://www.theatlantic.com/technology/archive/2011/08/the-bitcoin-economy-is-collapsing-with-no-sign-of-recovery/243253/ (“Earlier this year, the price of the Bitcoin climbed to a high of $32. It then fell to about $18. . . . But then it continued to fall. . . . [dropping] from $13.50 to under $7.”). As one can imagine, determining precise exchange rates for a niche, virtual currency is not a perfect science.
35 See Wallace, supra note 14.
36 See E-currency Site Floos Goes Offline, CNET.COM (Aug. 9, 2011, 1:55 PM)
37 See Ball, supra note 38 ("It started, and ended, with a click. With one touch of a mouse, a hacker managed to transfer 25,000 credits of online currency – then worth almost $500,000 dollars – to his own account. The transfer is visible on a public register; the original owner has publicised his plight online, but to no avail – the money is gone.")
38 See Nakamoto, supra note 26, at 2 (“A common solution is to introduce a trusted central authority, or mint, that checks every transaction for double spending. After each transaction, the coin must be returned to the mint to issue a new coin, and only coins issued directly from the mint are trusted not to be double-spend. The problem with this solution is that the fate of the entire money system depends on the company running the mint, with every transaction having to go through them, just like a bank.")
ensure long-term stability. This is contrasted with national currencies that are subject to government monetary policy. In reality, Bitcoin values have been anything but stable. Bitcoin’s exchange rate spiked from $1.16 to a high of $29.55 in a couple of months, and then plummeted to under $5.00 as quickly as it had risen.

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All that is certain about Satoshi Nakamoto is that he is a very gifted cryptographer. He claimed to be a 36-year-old Japanese man, but no one knows if he is actually Japanese, a man, or even a single individual. No one has ever actually spoken with him; his modes of communication have been strictly limited to emails, Internet message boards, and so on. Some claim he is actually a collection of individuals, while others purport to have tracked him down.

The facts are as follows: Nakamoto posted his research paper outlining Bitcoin on “an obscure cryptography listserv” in November 2008—perhaps the height of the public’s distrust of the world’s dominant monetary authorities. He launched Bitcoin a few months later, in January 2009, and mined the first fifty Bitcoins himself. He actively participated in the community, which grew from a cadre of cryptographers to a much larger group of enthusiasts. And then he vanished.

Nakamoto wrote hundreds of posts on the Bitcoin message board in 2009 and 2010, but that activity inexplicably stopped in April 2011. His final post on the message board addressed some inconsequential changes to the Bitcoin program. He maintained e-mail contact with a small group of de facto leaders of the Bitcoin community.
for some time after, but it is no longer clear he still does.51 Curiously, Nakamoto’s disappearance roughly corresponds with Bitcoin’s liftoff from obscurity to mainstream recognition.52 By 2011, numerous stores—both online and in the real world—started accepting Bitcoins as payment.53 Forbes ran a profile on the currency in April 2011, which some credit for Bitcoin’s rise.54 Some websites and podcasts began covering Bitcoin news on a weekly or even daily basis.55 Most notably, the value of Bitcoin relative to dollars skyrocketed.56 A Bitcoin was worth less than a dollar at the start of 2011, but surged to just under $30 by June.57

But, growing pains nearly broke the fledgling currency’s back. In June 2011, hackers made out like bandits after infiltrating one of the most prominent Bitcoin exchange websites, Mt. Gox.58 And in July, the leading Bitcoin wallet service was compromised and more than $200,000 in Bitcoins were stolen.59 Bitcoin value plummeted.60 Around the same time, a website where a variety of illegal items are sold for Bitcoins popped up.51 A few prominent politicians publicly voiced their outrage, equating Bitcoin to “an online form of money laundering.”62

At least to some extent, each one of these fiascoes was attributable to one of Bitcoin’s key selling points. In a world of ever-diminishing virtual privacy, anonymity was important to the early Bitcoin adopters.63 But anonymity also attracts criminals looking for new outlets to sell illicit products. Likewise, creating the first truly independent virtual “cash” has numerous advantages, but one prime disadvantage: once it’s gone, it’s gone. There is no credit company to cancel your transactions after a theft and no easy way to find out where your stolen Bitcoins end up, let alone get them back.

For now, Bitcoin has weathered the storm.64 The exchange rate has remained around three to five dollars per Bitcoin with relative consistency over the past couple of months.65 Wired.com ran a story about “Bitcoin’s Recovery” in December 2011.66 The currency even appeared on an episode of CBS’s The Good Wife in early 2012.67 Perhaps the ups and the downs of 2011 were just the currency (and its community) working out the kinks. However, now that Bitcoin has proven its staying power, the question of its legality will undoubtedly rise again. During Bitcoin’s ascendancy, many wondered if the cur-

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51 Davis, supra note 28, at 62 (explaining that Nakamoto’s e-mail responses became increasingly erratic and then stopped altogether).
52 Nakamoto disappeared in April 2011, the same month Forbes ran an article that contributed to an explosion in Bitcoin value. See Wallace, supra note 18 ("In the spring, catalyzed in part by a much-linked Forbes story on the new ‘crypto currency,’ the price exploded."). (referring to Greenberg, supra note 36).
53 See Greenberg, supra note 36 ("A subculture of geek-friendly merchants is catching on. About $30,000 worth of Bitcoins change hands every day in electronic transactions, spent on Web-hosting, electronics, dog sweaters and alpaca socks."). See also Trade, BITCOIN WIKI, https://en.bitcoin.it/wiki/Trade (last visited Mar. 14, 2012) (providing a list of products and services that accept Bitcoin).
54 Wallace, supra note 14.
55 See, e.g., The Bitcoin Show, ONLINE TV.COM, http://odonytv.com/category/shows/the-bitcoin-show/(noting that after Gawker published a story “about the currency’s popularity among online drug users, it more than tripled in a week.
56 Wallace, supra note 14 (noting after Gawker published a story “about the currency’s popularity among online drug users, it more than tripled in a week.
57 Id. (also noting “[t]he market value of all bitcoins in circulation was approaching $130 million”).
59 Wallace, supra note 14.
60 Jackson, supra note 39 (showing that the price of Bitcoin went from a high of $32 to under $7 during the first week of August 2011).
61 Chen, supra note 10 (describing Silk Road as a “digital black market that makes buying and selling drugs as easy as buying used electronics”).
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rency was legally viable, with some opining that the answer was or would soon be "no." When Bitcoin was on the ropes, talk about the underlying legality of virtual currencies justifiably waned, yet Bitcoin endured.

Whether Bitcoin thrives or fails it is abundantly clear that independent virtual currencies will be a part of society's future. As such, assessing the legal issues with Bitcoin gives a clearer picture of the currency's future and provides important guidance to its potential successors.

PART III: THE LEGALITY OF BITCOIN

In its short life, Bitcoin has already raised a legion of legal concerns. Some have been easily dismissed, while others would require too lengthy of an analysis for this piece. The focus of this Comment is on The Stamps Payment Act of 1862 ("SPA" or "Act"), a short, obscure statute with the potential to destroy Bitcoin. The SPA states:

"Whoever makes, issues, circulates, or pays out any note, check, memorandum, token, or other obligation, or more than $1, intended to circulate as money or to be received or used in lieu of lawful money of the United States, shall be fined under this title or imprisoned not more than six months, or both."

From a modern onlooker's perspective, the SPA appears to be a rather curious creation. Perhaps the most immediate question is whether an obscure law from the 19th century could really have any relevance to Bitcoin. Indeed, reputable legal scholars and (former) Bitcoin proponents have cited the SPA in discussions about the currency's legality. Furthermore, government actors appear perfectly willing to dust off outdated laws to achieve their desired outcomes in other situations so there is concern that lawmakers will use the SPA to halt Bitcoin's progression.

A. History

Lawmakers enacted the SPA in the middle of the Civil War, an era when "the nation's banking and financial system was in disarray." The SPA was among the first of several attempts to stabilize the nation's currency. Prior to the Civil War, the domestic monetary landscape looked virtually nothing like it does now, or even fifty years ago. The federal government issued no paper dollars. Rather, the government issued paper money and Treasury-issued coins. The only paper currency took the form of unregulated private bank notes that circulated as money.

Leading up to the Civil War, "recurring bouts of inflation" plagued the country, causing the metal value of U.S. coins to often surpass their face value. In response, individuals began hoarding coins and circulating notes backed by fractions of their coins, rather than...
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dealing in the coins themselves.\textsuperscript{81} By the start of the war, government-issued coins had essentially ceased circulating.\textsuperscript{82} The federal government followed the example of several states and enacted the SPA to stop the hoarders from dealing in these “shinplasters,” as they were called.\textsuperscript{83}

Even though the SPA’s \textit{raison d’être} bears no relation to Bitcoin, the government might still use the law to stop an activity it considers undesirable. In fact, Congress amended the SPA in 1994, so the Act has not been entirely forgotten.\textsuperscript{84}

\section*{B. Breaking Down the Statute}

The language of the SPA presents three questions with respect to its applicability to Bitcoin or other virtual currencies. First, is Bitcoin a “note, check, memorandum, token, or other obligation” within the meaning of the Act?\textsuperscript{85} While often used as cash, these instruments as defined in the statute are actually enforceable contracts requiring one party to pay another. By contrast, the value of Bitcoins stems solely from their artificially controlled supply and Bitcoin users’ willingness to accept Bitcoins in exchange for goods or other services. Therefore, they have no inherent “promise to pay.”\textsuperscript{86} Bitcoins are distinguishable from tokens for a similar reason: tokens signify an inherent, underlying obligation to give the holder something for the token.\textsuperscript{87} In other words, tokens are redeemable. Bitcoins can be exchanged for dollars or goods to the extent that sellers desire the virtual currency, but they involve no enforceable obligation on the part of others to accept them.\textsuperscript{88}

Second, are Bitcoins “for a less sum than $1”?\textsuperscript{89} Since Bitcoins can be denominated up to eight decimal places, Bitcoin fractions worth less than one dollar can certainly be traded.\textsuperscript{90} But Bitcoins are not “for” anything—they represent no obligation to pay any number of dollars.\textsuperscript{91} At any given time, there is an ascertainable exchange rate between Bitcoin and dollars, along with other national currencies.\textsuperscript{92} But Bitcoins are not denominated in dollars. Moreover, Bitcoins are not primarily, let alone exclusively, traded for values of less than one dollar.\textsuperscript{93} Even setting aside the criticism in the preceding paragraph, the SPA could only reach a relatively small fraction of Bitcoin transactions. It would be absurd for courts to permit law enforcement to target a small fraction of Bitcoin micro-transactions with a statute that was clearly created to outlaw entire species of currency.\textsuperscript{94}

Lastly, are Bitcoins “intended to circulate as money[?]”\textsuperscript{95} At first glance, the answer seems simple enough. Bitcoin is, after all, a currency. But this inquiry returns us to the question posed at the outset: “what is money?”\textsuperscript{96} Here, case law provides guidance. In 1863, the Western District of Pennsylvania evaluated tickets issued by a toll-bridge owner that were “good for one trip” across the bridge.\textsuperscript{97} The court held that the tickets were permissible because “[t]hey do not contain a promise to pay money, they are not the representatives of money, and therefore cannot be said to circulate . . . as money.”\textsuperscript{98} Furthermore, the court distinguished the tickets from “tokens recently issued by the merchants of this city” which had apparently resembled the “shape, design [and] material, to the coin of the United States.”\textsuperscript{99}

The court went on to discuss money more generally, noting, “[i]t may be of the precious or the baser metals or it may be of paper, provided it has the stamp of the sovereign authority.”\textsuperscript{100} Following the court’s reasoning, Bitcoin falls outside the scope of the SPA. Like the toll-bridge tickets, Bitcoins are neither “promise[s] to pay money” nor “representatives of money”—“money” being “of the precious or baser metals” or “of paper, provided it has the stamp of the sovereign authority.”\textsuperscript{101}

\begin{thebibliography}{100}

\bibitem{81} Id. at 465-66.
\bibitem{82} Id. at 466.
\bibitem{83} Id.
\bibitem{84} Kerry Lynn Macintosh, \textit{The New Money}, 14 \textit{BERKELEY TECH. L.J.} 659, 672 n.78 (1999).
\bibitem{86} See supra notes 37-40 and accompanying text.
\bibitem{87} Token Definition, \textit{Ballentine’s Law Dictionary} (Lexis).
\bibitem{88} See supra Part I.
\bibitem{89} 18 U.S.C. § 336.
\bibitem{90} Bitcoins can be denominated up to eight decimal places. See supra note 19.
\bibitem{91} See supra Part I.
\bibitem{81} See \textit{Last Price, Mr. Gox,} https://mtgox.com/ (last visited Apr. 8, 2012).
\bibitem{92} As a practical matter, most transactions are going to involve more than one dollar.
\bibitem{93} That is, the "shinplaster." See supra notes 85-94 and accompanying text.
\bibitem{94} 18 U.S.C. § 336.
\bibitem{95} See supra notes 1-4 and accompanying text.
\bibitem{96} United States v. Monongahela Bridge Co., 26 F. Cas. 1292 (W.D. Pa. 1863) (No. 15,796).
\bibitem{97} Id. at 1292-93.
\bibitem{98} Id. at 1292.
\bibitem{99} Id. at 1293. ("Money is the medium of exchange among the people. Its peculiar characteristic is, that it is the one thing acceptable to all men, and in exchange for which they will give any commodity they possess. The power to make it is an exclusive attribute of sovereignty, no difference of what material it may be composed. . . . Any infringement of this supreme prerogative is visited with merited punishment by all nations that claim to have organized or well-regulated governments.").
\bibitem{100} Id. at 1292-93.
\end{thebibliography}
dealing in the coins themselves.\textsuperscript{81} By the start of the war, government-issued coins had essentially ceased circulating.\textsuperscript{82} The federal government followed the example of several states and enacted the SPA to stop the hoarders from dealing in these "shinplasters," as they were called.\textsuperscript{83}

Even though the SPA's raison d'être bears no relation to Bitcoin, the government might still use the law to stop an activity it considers undesirable. In fact, Congress amended the SPA in 1994, so the Act has not been entirely forgotten.\textsuperscript{84}

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\begin{notes}

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\textsuperscript{87} Id.
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\textsuperscript{89} See supra note 19.
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\end{notes}
In *United States v. Van Auker*, the Supreme Court confronted a similar set of facts: a furnace company in Maine issued obligations that would “pay the bearer, on demand, fifty cents in goods” in the store.\(^{102}\) The Court provided a general description of money:

> A dollar is the unit of our currency. It *always means money, or what is regarded as money*. In this case, the statute makes it the standard of measure with reference to the forbidden notes and obligations. If one of them be for a larger “sum than one dollar,” it is not within the prohibition, and is not affected by the law. It is a fair, if not a necessary, inference, that the standard of measurement named was intended to be applied only to things ejusdem generis; in other words, to notes for money, and to nothing else.\(^{105}\)

The Court noted that the SPA was “certainly inapplicable to any thing not measurable by the pecuniary standard.”\(^{104}\) Furthermore, the *Van Auker* Court demonstrated the SPA’s inapplicability to Bitcoin because “money” is effectively interchangeable with “dollar” with respect to the SPA. Accordingly, the Act only prohibits obligations intended to circulate specifically as dollars. But Bitcoins are intended to circulate as Bitcoins—not as dollars. Moreover, a Bitcoin is not a note, and certainly not a “note for money,” to which *Van Auker* categorically limits the SPA’s scope.

This interpretation comports with the legislative intent behind the SPA. Congress did not create the SPA to combat the creation of stand-alone, competing currencies.\(^{106}\) Rather, it sought to address the problem of hoarders fabricating their own fractional denominations of the dollar to substitute for official currency.\(^{106}\)

The other half of the SPA addresses obligations intended “to be received or used in lieu of lawful money” and may initially appear problematic. After all, people use Bitcoins instead of using other national currencies. However, this clause seems to target counterfeiters exclusively. Several courts that considered the SPA in the 19th century indicated that the statute also served as an independent prohibition on counterfeit currency.\(^{107}\) For instance, *Monongahela Bridge Co.* mentions the prosecution of merchants under the Act for creating tokens resembling U.S. coins in “shape, design, [and material].”\(^{108}\)

However, the unambiguous target of the SPA’s “intended to circulate as money” clause—shinplasters—were not counterfeit currency, but rather notes legitimately backed by precious metals.\(^{109}\) Accordingly, the SPA’s “in lieu of lawful money” language prohibits only counterfeit U.S. currency. Therefore, under a strict textual interpretation, Bitcoins appear to be safely outside the jurisdiction of the SPA.

Still, law enforcement or courts might not interpret the statute so narrowly. In fact, Congress’s inclusion of the catchall, “other obligation[s],” in addition to four other specified instruments, suggests that the SPA could reach any new monetary inventions.\(^{110}\) And for good reason: the “shinplaster” epidemic caught the government entirely unprepared.\(^{111}\) Courts conceivably could find the SPA contemplates anything circulating as money.

**CONCLUSION**

As the United States and other national governments adopt more reckless monetary policies, it is easy to see why Bitcoin is an attractive alternative to national currencies.\(^{112}\) Recent “quantitative easing” and rapidly growing deficits are becoming the norm; the idea of the Federal Reserve unintentionally obliterating the value of the dollar is not nearly as ludicrous as it was a decade ago.\(^{113}\)

Is Bitcoin some sort of monetary panacea? Hardly. Bitcoin has proven beyond the shadow of a doubt that it has its own problems. But, Bitcoin has also served as a valuable starting point for moving into the monetary future. No open-source virtual currency will overtake the dollar anytime soon. But Bitcoin has proven that virtual currencies have clear advantages. Courts and legislatures should allow these currencies to flourish and augment economies rather than quell them in their nascency.


\(^{103}\) Id. at 368 (emphasis added).

\(^{104}\) Id.

\(^{105}\) Smith & Wilson *supra* note 81, at 1110 n.27.

\(^{106}\) See Part III(b).

\(^{107}\) See, e.g., *United States v. Roussopulous*, 95 F. 977 (D. Minn. 1899).

\(^{108}\) *Monongahela Bridge Co.*, 26 F. Cas. at 1292. The court further described the tokens issued by the merchants as “worthless issues of rotten boroughs.” Id. See also *Roussopulous*, 95 F. at 978 (finding tokens outside the scope of the SPA because they weighed “27 grains troy weight, which is less than one-fifth the weight of the half-dollar coin . . . . It differs in its devices and inscriptions plainly from all coins of the United States.”).

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106 Monongahela Bridge Co., 26 F. Cas. at 1292. The court further described the tokens issued by the merchants as “worthless issues of rotten boroughs.” Id. See also Roussopoulous, 95 F. at 978 (finding tokens outside the scope of the SPA because they weighed “27 grains troy weight, which is less than one-fifth the weight of the half-dollar coin . . . . It differs in its devices and inscriptions plainly from all coins of the United States.”).
107 See supra note 105 and accompanying text.
109 See supra note 94 and accompanying text.
110 See supra note 57 and accompanying text, could use more support
At least with respect to the SPA, this Comment suggests that Bitcoin is safe at present. But the SPA is just one of a myriad of legal uncertainties surrounding Bitcoin and virtual currencies in general.\textsuperscript{114} Lawmakers should recognize the value of virtual currencies and clarify the law to accommodate them. Legal ambiguity inhibits growth, and may prevent our ever discovering the full extent of the advantages inherent in virtual currencies.