The Government Says Money Isn't Property—So It Can Take Yours

In a jaw-dropping argument, the Department of Justice claims seizing $50,000 from a small business doesn't violate property rights because money isn't property.

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As a lawyer who sues the government, you get used to the different kinds of arguments that government lawyers use to justify abuses of individual rights—sweeping claims of government power, bad-faith procedural obstacles, and more.

This was a new one: The U.S. Department of Justice (DOJ) argued that confiscating $50,000 from a small business did not infringe the business' right to private property because money is not property.

"Money is not necessarily 'property' for constitutional purposes," the government's brief declared—putting the very idea of property in square quotes. Reading at my desk, I practically fell out of my chair.

The DOJ gave three rationales for the argument, all packed into a doorstopper of a footnote: (1) the government creates money, so you can't own it; (2) the government can tax your money, so you don't own it; and (3) the Constitution allows the government to spend money for the "general welfare."

If a libertarian was asked to write a satire of a government lawyer's brief, this is what they might come up with. But here it was, in black and white.

Whose money, specifically, was the government saying wasn't property? That of Chuck Saine, the owner of C.S. Lawn & Landscaping, a small landscaping business outside Annapolis, Maryland, which he has operated for over 40 years.

Saine became a client of the Institute for Justice (I.J.), a public interest law firm, when the federal government sought to impose over $50,000 in liability on his business through a "trial" held deep inside the bowls of a federal administrative agency. At said trial, both the prosecutor and the judge were employed by the same federal agency.

I.J. sued, arguing that before the government can impose that kind of liability, it has to provide a real trial before a real judge and jury. The specifics of what the government claims Saine did wrong (in short: arcane labor law) are beside the point. If the government wants to confiscate over $50,000 from your business, you must have the chance to argue your defense to an impartial judge and jury—not an agency bureaucrat.

Now, the DOJ argued that Saine has no right to a real judge and jury because the government was only trying to take his money, not his property. They claimed that fiat currency is a legal fiction that the government can as easily destroy as create. Lest anyone miss the implicit connection to the history of the gold standard, DOJ's footnote prominently cited the *Legal Tender Cases*—where the Supreme Court upheld laws forcing people to accept paper currency, rather than gold and silver, as payment for debts.

This was an argument for taking Saine's $50,000 without a trial before a real judge and jury, but the same argument could be used to justify all manner of mischief. If your money is not your property, what is to stop the government from just seizing all of it tomorrow—for any reason it gives?

Before you run out and trade your USD for meme coins, let me reassure you: DOJ's argument is wrong. The Due Process Clause applies to "life, liberty, or property," and the Supreme Court has repeatedly applied that Clause to money. It follows that, since money is neither life nor liberty, it must be property.

To be sure, DOJ's arguments have force as a philosophical critique of government, taxation, and the monetary system. They may also highlight legitimate reasons to hold part of your wealth in gold or (for some) cryptocurrency. But "for constitutional purposes," to borrow a phrase from the DOJ, the arguments are a flop.

A federal court will soon decide whether to uphold Saine's right to a trial before an impartial judge and jury. Hopefully, the court will agree: Money is property, and an agency bureaucrat is not an impartial judge.

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