

## ART AS CURRENCY: A Question of Judgment

In April, a jury convicted a group of Sydney commercial printers with forging German deutschmarks. One report suggested that the notes had a face value of \$66 million. It was the first conviction obtained under the Crimes (Currency Act) 1981. It was a rotten day for the printers but a big day for the Federal Police. Only a month later, in the tradition of 'the Lord giveth the Lord taketh away', the Federal Police had a rotten day.

On March 16th 1989 Stephen James Boggs was arrested under s.6 of the Crimes (Currency Act) 1981 for producing counterfeit money. The arresting officer had been alerted to Boggs by an article in a newspaper describing his purchase of art materials from Oxford Art Supplies. He had paid with a \$100 Boggs bill and demanded and received the correct change in Queen Elizabeth currency.

The Boggs bill was quite obviously a work of art. Drawn on artist's paper, in pencil, on one side of the page and with the images varying noticeably and humorously from the currency to which it referred. It was an appropriation, but was it a crime?

The Federal Police arrested him, seized a number of works - together with his coloured pencils, and took him to Australian Federal Police headquarters where he was interviewed further and strip searched. Bail was refused by the police but later granted by the court subject to strict reporting conditions.

The seized art works were sent to Federal Police Headquarters in Melbourne and then to the Reserve Bank where they were subjected to detailed examination by a Currency Investigations Officer. The first page of his report detailed his qualifications; the second page included the following:

"I have examined the above copies of an Australian \$100 note and state that they are counterfeit and are of common origin.

I further state that each note is counterfeit for the following additional reasons -

- 1 Pursuant to Part 1 Section 3(1) of the Crimes (Currency) Act 1981 (Commonwealth), "counterfeit money" means -
  - (a) any article, not being a genuine coin or genuine paper money, that resembles, or is apparently intended to resemble, or pass for, a genuine coin or genuine paper money; or
  - (b) any article, being a genuine coin or genuine paper money, that has been altered in a material respect and in such a manner as to conceal, or to be apparently intended to conceal, the alteration,

and includes any such article whether it is or is not in a fit state to be uttered and whether the process of manufacture or alteration is or is not complete.

2. Pursuant to Section 34(2) of the Reserve Bank Act 1959, the subject counterfeit \$100 notes have not been printed by, or under the authority of the Reserve Bank of Australia.

3. The distinctive printing method used for the production of genuine Australian currency has not been used for the counterfeits.
4. The paper on which each is produced is not the paper on which genuine Australian \$100 notes are printed.
5. The paper does not contain a watermark of the portrait of Captain Cook, which is present in genuine Australian \$100 notes paper.
6. The paper does not contain a metallic thread, which is present in genuine Australian notes paper.
7. The design of the above counterfeit notes does not conform in detail with the design of a genuine Australian \$100 note."

The fact that the confiscated objects could be characterised as counterfeit bank notes was crucial. The fact that the objects were obviously works of art was irrelevant. The charge carried a maximum sentence of 14 years. Duchamp rolled over.

Boggs' holiday may have been ruined but it had become decidedly more poignant. In between the time of the arrest and the time of the hearing Boggs was expected to appear at an exhibition of his work in London. The Local Court refused to alter the terms of his bail to allow him to travel to the show so application was made to the Supreme Court. Boggs was allowed out of the country on a surety of \$25,000.

Shortly before the accused's return to Australia, the office of the Director of Public Prosecutions indicated that it would drop the charges but this was done at such a late stage that Boggs had to leave for Australia before the DPP could approach the court and have the bail requirements dropped. To not come back may have cost \$25,000.

He returned. Next day he appeared before the court again. The charges were dropped and the case dismissed. All this had cost a lot: air fares, accommodation, legal costs...

Boggs applied to the DPP for some payment towards his expenses. The request was refused. Further requests; further refusals. Back to court. The magistrate awarded Boggs \$18,000. A rotten day for the DPP.

At time of writing, only one matter remained outstanding: The police handed back the artist's pencils and his drawings of English and American banknotes. However they retained those which depicted Australian notes. The DPP have stated that they intend applying to the Court to have the works condemned. This would mean that the works would be handed to Treasury to dispose of as it saw fit. This is an absurd situation; one in which the artist has apparently committed no offence but his work is subject to condemnation. The office of the DPP is presently considering whether it will continue with this application.

Should they proceed and succeed it would establish an interesting logic. Persons charged with making obscene phone calls and who are acquitted, would have their phones smashed; authors who are found not guilty of criminal

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libel, would see their manuscript burned; the singers of political songs might be innocent of sedition but would still have their songs banned and their records destroyed. It is an idea that should catch on .....

Just think what could happen if the accused were found guilty!

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