

Some Underappreciated Legal Considerations for the Design of Central Bank Digital Currencies

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In this talk

- CBDCs
- Some familiar legal issues
- Some unfamiliar ones
 - Fraud and mistake
 - Liens
- What to do?

CBDCs

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- Currency
- *Digital* currency
- *Central bank* digital currency?

Familiar Legal Issues

Blah de blah de blah-de-blah

- Jurisdiction
- A(nti) M(money) L(aundering)
- Tax
- Privacy
- Fin(ancial) Reg(ulation)

Fraud and Mistake

Bad transaction!

Bad transaction!

- Disloyal agents
- Impersonation
- Mistake
- Fraud in the factum
- Fraud in the inducement
- ... *none of these are detectable on-ledger!*

This is not legal advice

- Frauds are voidable
- Forgeries and thefts are void
- Wrongdoers must return what they steal (always)
- Innocent beneficiaries must make restitution (often)

The law wants what it wants

- Legal rules on finality, negotiability, etc.
- Management infrastructure
 - Dispute resolution system?
- Reporting/auditing systems
 - Transaction data + user data + ?
- Cf. Fedwire, credit, debit, Venmo, etc.

Liens

Secured transactions: a 3 credit course in 1 slide

- Borrowers can give *liens* on their property
- Collection procedures in case of default
- Priority in case of bankruptcy
- Major source of working capital
- Especially for small businesses
- Liens can trace into *proceeds* of transactions

Lenders' questions about digital currency

- Does my lien cover payments made using this currency?
- How can I collect in case of default?
- How can I lock an account so the borrower can't drain it before I can get at it?
- How can I give others notice of my lien?

What to do?

The irrelevant crypto dream

- A digital currency *could* try to thumb its nose at the legal system, and many have
- Can a territorial legal system enforce its laws against an uncooperative digital currency system?
- Good question, but it doesn't matter ...

Emptors don't like to caveat

- Checks and credit cards have extensive protections for the careless and the luckless
 - That's why they're in wide consumer use
- Wire transfers have very few protections
 - They're used almost entirely by businesses—which are exceedingly careful with them
- How big a payment will Joe's Corner Groceries make with a user-beware payment system?

Creditors play Scrooge

- Creditors would be ... unhappy ... to be told that their liens don't reach payments
 - Or that they do, but are practically unenforceable
- Unhappy to the point of forbidding their borrowers from taking payments using the digital currency

Private law is a thing

- Commercial law isn't about enforcing arbitrary rules to enhance state power
- It's about creating a framework that facilitates voluntary transactions
- It solves real problems real people have
- These problems don't just go away
- Solve them, *or no one will use your currency*

Discussion