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

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December 17, 2020
University of Hamburg
Law, Finance, and Technology Workshop
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