

WHAT WOULD BE THE CONSEQUENCES IN PRIVATE LAW OF TREATING CYBER-CURRENCIES AS MONEY?

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I. INTRODUCTION

The following paper explores the implications for private law if cyber-currencies are treated as money. The introductory section of this essay shall act as a primer and provide a short account of the origins and working of cyber-currencies. This will be followed by an attempt to define money under common law systems, founded on various authoritative sources. It will then build upon these foundations to analyse the private law implications. Lastly, the essay will examine methods by which relevant institutions should seek to respond to this global phenomenon. Whilst cyber-currencies are not generally recognised as money (by regulators or financial institutions), the arguments which will be put forward are built upon a theoretical set-up in which cyber-currencies are treated as money.

This essay does not advance any predictions whether or not cyber-currencies will be treated as money. It will seek to hypothesise the conceivable, practical

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consequences in private law if cyber-currencies were to be treated as money under the law. Given the complexities and the sheer number of cyber-currencies in existence, this essay will only derive its arguments from the case of Bitcoin, which is the most widely circulated cyber-currency in the world at present¹.

It is therefore to be highlighted that the terms ‘Bitcoin’ and ‘cyber-currency’ shall be used interchangeably. The essay, in exploring the legality of money shall derive its references primarily from Scots and English jurisprudence. However, in the sections dealing with the evaluation of the legality of cyber-currencies, in addition to references to Scots and English jurisprudence, references will also be sourced from other jurisdictions.

II. MONEY – WHAT DOES IT CONSTITUTE?

Whilst there exists no clear-cut, universal definition of money, I will seek to find a workable starting point by comparing different legal authorities to derive an understanding of the concept from a legal standpoint. Money, for instance, can be defined by the economic function it serves. Therefore, it could be anything that has a store of value, acts as a medium of exchange and has a unit of account.² Money can be broadly categorised as corporeal and incorporeal. Banknotes and coins are corporeal money, owing to their tangible status. Conversely, Bank money is a form of incorporeal money, owing to its intangible status.³ An understanding of money in legal terms would better serve our purpose of delving deeper into the private law consequences of identifying a particular thing as money. Mann’s definition of money narrows this economic definition by confining money to “all chattels which, issued by

¹ Arjun Kharpal, ‘Bitcoin’s’ Market Share Is At The Level It Was Just After It Hit Its Near-\$20,000 Record High’ (CNBC, 2019) <<https://www.cnbc.com/2018/08/07/bitcoin-market-share-near-level-when-price-hit-record-high.html>>

² David Fox, *Property Rights in Money* (Oxford University Press 2008) 1.19–1.28.

³ *ibid.*

the authority of the law and denominated with reference to a unit of account, are meant to serve as universal means of exchange in the State of issue”.⁴

However, Fox, in his paper “Cyber-currencies in private law” criticises this description of money as restrictive because it would mean that only bank notes issued by the Bank of England, and coins struck by the Royal mint, could fall under the “core sense of money”.⁵ As Fox points out, Mann’s view is problematic, given that 94.5% of the money in circulation is in the form of bank deposits rather than currency.⁶ Therefore, restricting the definition of money solely to legal tender would be restrictive and counter-intuitive. Naturally, the understanding of money ought to be beyond this core sense of money i.e. legal tender. Private law extends this concept by treating bank money as a ‘choses in action’. Choses in action are not property as defined in a ‘right *in rem*’ but rather, they are to be classified as a right against a person in enforcing an obligation *id est* a right *in personam*.⁷ Therefore, bank money whilst not strictly legal tender is treated rather as a debt obligation that is owed by the Bank towards its customers.

For the purposes of clarity, it is crucial to develop a working understanding of how this ‘so-called currency’ operates in the real world. This can only be done effectively by making two assumptions; firstly, the scope and definition of money cannot be narrowed to Mann’s definition of money as “(chattels) issued by the authority of the law and (which can be) denominated with reference to a unit of account”. Secondly, as already mentioned in the introduction, cyber-currencies are to be assumed to be recognised as money within the system given the ‘largely’

⁴ Charles Proctor and others, *Mann On The Legal Aspect Of Money* (7th edn, Oxford University Press 2012).

⁵ David Fox, ‘Cyber-currencies in private law’. University of Edinburgh, (forthcoming paper)

⁶ ‘Money And Credit - March 2018’ (Bank of England, 2018)

<<https://www.bankofengland.co.uk/statistics/money-and-credit/2018/march-2018>>

⁷ Kelvin FK Low and Ernie GS Teo, ‘Bitcoins and Other Cryptocurrencies as Property?’ (2017) 9 (2) Law, Innovation and Technology.

analogous function they serve *id est* a store of value, medium of exchange, and unit of account. Thus, having established what constitutes money, it is now possible to evaluate how cyber-currencies would fit within this context.

III. CYBER-CURRENCIERS – THE CASE OF BITCOIN

Pseudonymous Bitcoin creator, Satoshi Nakamoto, first conceived of the concept of cyber-currencies against the backdrop of the 2008 Financial Crisis. This pioneering concept, which he termed Bitcoin, was put forward in his whitepaper titled *'Bitcoin: A Peer-to-Peer Electronic Cash System'*.⁸ Cyber-currencies, as the name suggests, have no physical existence and are decentralised digital currencies whose architecture is based on cryptography. To elucidate, Bitcoin works on a peer-to-peer system wherein all the transactions are visible to all the users so that it is decentralised and functions on a distributed ledger system.⁹ This decentralised system of ledgers is called a blockchain. These block chains are contained in hundreds and thousands of computers that use this software via the internet. This is unlike a bank, where all the ledgers are stored centrally. In any given State, for example, the central bank or reserve will have records of all the bank transactions between all the customers. It could be argued that centralised ledgers give too much autonomy to these institutions, which regardless of good faith can prove to be detrimental. A cyber-attack on a centralised ledger could potentially even bring down the entire system (to the extent that it cuts off access to customers). In contrast, decentralised ledgers eliminate this concern, as the functions and storage are distributed and therefore an attack on a single point can be sustained and is not a perceived threat to the accuracy and consistency of the information.

⁸ Nakamoto, 'Bitcoin: A Peer-To-Peer Electronic Cash System' <<https://bitcoin.org/bitcoin.pdf>>.

⁹ Low and Teo (n 7).

In his paper, Nakamoto explains the benefits of his model of cryptographic proof against the universally used ‘trust-based transactions’ employed by financial institutions.¹⁰ According to him, his model eliminates the requirement for a trusted third party as transactions are now directly between the two parties and the identity of the parties are pseudonymous (if not anonymous).¹¹ To illustrate: if A wishes to send bitcoins to B, then A will issue payment instructions, which are then disseminated across all other users in the network. These users, or miners, will then verify the transaction(s) (transactions are verified in blocks by users or miners). Miners, upon successful verification of a block of transactions, are rewarded with a newly created currency (Bitcoin in this case) and any overlying transaction fees paid by the parties to the transaction.

IV. CYBER-CURRENCIES AS MONEY OR PROPERTY

Menger, in his article *On the Origins of Money*, commences one of the chapters titled ‘Influence of the Sovereign Power’ with the following phrase: “Money has not been generated by law. In its origins, it is a social and not a state-institution”.¹² The phrase seems relevant now more than ever given the exponential rise of several private currencies like Bitcoin and Litecoin across the world. This section will seek to consider and evaluate alternative models for understanding how cyber-currencies would fit within the boundaries of private law, and the implications thereof.

Cyber-currencies, being private currencies, do not have a unit of account attributable to a sovereign and therefore cannot be reduced to legal tender in the same way as bank money. However, cyber-currencies can be exchanged with the conventional currency at the existing market rate akin to how foreign currencies are

¹⁰ Nakamoto (n 8).

¹¹ *ibid.*

¹² Carl Menger, *On the Origins of Money* (Ludwig von Mises Institute 2009).

converted, the implications of which are explored below. Moreover, given that conventional money can be classified into different categories of personal property in law *id est* banknotes and coins as choses in possession and bank money as choses in action, it is therefore crucial to assess if cyber-currencies as sets of information could be classified as property in law.

A. THE FOREIGN CURRENCY ARGUMENT

As mentioned above, a case for cyber-currency can be made by extending the analogy adopted for foreign currencies. As private currencies, cyber-currencies are neither backed nor regulated by the state, nor do they have any underlying asset or value, in contrast to conventional currencies, which are regulated and recognized within the territorial jurisdiction where they are used. Nonetheless, owing to globalisation and international trade, it has become common practice for individuals and businesses to accept and deal in foreign currencies. However, foreign currencies are not legal tender and are not enforceable within domestic territories.

Prima facie, it would appear foreign currencies have no recognition in the domestic legal system. However, this is not the reality as evidenced by *Miliangos v George Frank (Textiles) Ltd*, in which the House of Lords overturned the precedent requiring all debts in judgements to be enforced in Pound Sterling.¹³ In appropriate cases, the use of foreign currencies could provide a more accurate representation of the debt, overcoming problems posed by fluctuations of value. In his *dicta*, Lord Wilberforce held that “currencies being fixed and fairly stable in value, (are) subject to the risk of periodic re- or devaluations,... so the search for a formula to deal with it becomes urgent in the interest of justice”.¹⁴ It was held that creditors could obtain

¹³ *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443.

¹⁴ *ibid* 463 (Lord Wilberforce).

a judgement in a foreign currency and the date of payment (actual date) would be the date of conversion for the foreign currency. Equally, In *Camdex International Ltd v Bank of Zambia*, Lord Justice Philips observed that foreign currencies, if specified in contracts as means of payment could be effected as a medium of exchange.¹⁵ Therefore, the money of account and the money of payment only at the date on which payment is to be made would be germane to the contract.

Treating existing cyber-currencies in the same way as any other foreign currency would be treated under domestic law seems reasonable, considering it is not issued by the sovereign and there is no intermediary institution involved in the transactions (of the state). Nor would this affect the existing taxation regime as the existing taxation on cyber-currencies is analogous to that of foreign currency as HMRC typically imposes a capital gains tax on them.¹⁶ However, this approach runs the risk of making the scope of cyber-currencies restrictive and exhaustive as cyber-currencies in the future could potentially be issued and controlled by the sovereign; an attempt to adopt the 'foreign currency' approach would only inhibit this.¹⁷ Therefore, treating cyber-currencies as foreign currency will only limit the scope of the evolving concept that is cyber-currencies.

B. CYBER-CURRENCIES: INFORMATION AS PROPERTY?

There have already been cases involving cyber-currencies (especially Bitcoin), with different jurisdictions adopting different approaches and perspectives on its

¹⁵ Joanna Perkins and Jennifer Enwezor, 'The Legal Aspect of Virtual Currencies' [2016] Butterworths Journal of International Banking and Financial Law.

¹⁶ 'Cryptoassets For Individuals' (Gov.uk, 2018) <<https://www.gov.uk/government/publications/tax-on-cryptoassets/cryptoassets-for-individuals>>

¹⁷ 'Govt May Launch India its Own Cryptocurrency 'Lakshmi': Reports' (*Deccan Chronicle*, 2019) <<https://www.deccanchronicle.com/business/economy/160917/govt-may-launch-indias-own-cryptocurrency-lakshmi-reports.html>>

legality. For instance, in the widely publicised case of *SEC v Shavers*, the Texan District Court, while holding the accused guilty of running a Ponzi scheme, held that Bitcoin was indeed a kind of money.¹⁸ The ratio of the judgement was based on the evaluation of the functional aspects of Bitcoin: Bitcoin, regardless of its limited circulation, was used to purchase goods and services at several pay points. From our discussions on the technical aspects of Bitcoin in the preceding section, it can be inferred that cyber-currencies are sets of information with no underlying asset or value. Cyber-currencies are valued or priced based on the interaction of market forces *id est* supply and demand. This is in stark contrast to most conventional currencies, which are regulated and controlled by the central bank or government that issues it. Thus, the question that arises is how do we treat information as property, especially that which has no intrinsic value of its own?

A good analogy can be drawn from the case of *Armstrong DLW GmbH v Winnington Networks Ltd*, which involved the theft of Carbon Credits through an email phishing fraud. Justice Stephen Morris in his judgement held that intangible carbon credits can be treated as property as it met the required criteria.¹⁹ Cyber-currencies similarly could be classified as such, as they meet the criteria set forth in the *Armstrong* case. As per Justice Morris, for something to be classified as property the requirements are: “[that] it is definable... It is identifiable by third parties... It is capable of assumption by third parties... [and] it has permanence and stability”. Notably, all of said requirements would seem to describe the properties of cyber-currencies.²⁰

The question that arises is how a personal property interest in cyber-currency would be classified in law: would it be a chose in action or a chose in possession?

¹⁸ *SEC v Shavers* No. 4:13-CV-416, (E.D. Tex. Sept. 18, 2014).

¹⁹ *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch), [2013] Ch 156 [50] (Justice Morris).

²⁰ *ibid.*

Justice Morris in *Armstrong* contends that personal property need not be confined to traditional classifications, thus indicating a possibility of a third category.²¹ Green and Randall have argued for the recognition of digital assets (such as cyber-currencies) because of the similar characteristics it shares with property as choses in possession *id est* excludability and movability.²² Given that bitcoins are capable of being controlled, transferred and made inaccessible through a private key, it could be said that they are functionally analogous to property as a chose in possession. This recognition of a third category *id est* property in virtual possession could be made possible through the enactment of legislation or the development of case law wherein the definition and scope of this category is set down. Naturally, the creation of such a category of rights in property would facilitate recognition of cyber-currencies as an enforceable property right. However, the enactment or development of this doctrine would also have to take into consideration the myriad of issues that it could give rise to.

This can be illustrated through the case of *Your Response Ltd v Datateam Business Media Ltd* which runs contrary to the decision in the *Armstrong* case. In *Your Response*, following the ratio established in *OBG Ltd v Allan*, the court held that it was not possible to claim a possessory lien over intangible goods or property as common law recognises possession only for tangible goods.²³ Lord Justice Davis and Lord Justice Floyd were apprehensive of recognising such a right, because of the ‘unintended consequences’ that it could give rise to.²⁴ Lord Davis demonstrates this by highlighting the unfair position other creditors would be in if a claim for possessory lien is made during insolvency proceeding as this would effectively confer certain

²¹ *ibid.*

²² Sarah Green and John Randall, *The Tort of Conversion* (1st edn, Hart Pub 2009).

²³ *Your Response Ltd v Datastream Media Ltd* [2014] EWCA Civ 281, [2015] QB 41.

²⁴ *ibid.* at 40

rights to the claimant that are not afforded to other creditors.²⁵ Given the authoritativeness of the House of Lords case of *OBG Ltd v Allan*, it would be unreasonable for the court to extend possessory lien over intangible things like databases without distinguishing them on the facts or giving compelling justifications.

Cyber-currencies being intangible property therefore cannot be subject to a claim for conversion. However, cyber-currencies can be distinguished from the facts of the *Your Response* case from a functional standpoint. In essence, information contained in a database (as in the case of *Your Response*) serves a functionally different purpose than that of a cyber-currency. Despite only containing information, in practice cyber-currencies can, and are, used as a medium for payment analogous to conventional currencies in contrast to information contained in a database.²⁶ One could argue that the case could be distinguished on the facts, given that information in a database does not circulate in the same manner as with cyber-currencies. Moreover, information in databases does not have the fungibility that cyber-currencies have. However, this point can be rebutted by the fact that although cyber-currencies are fungible and circulate more readily compared to databases, they do not sufficiently resemble the conventional understanding of money, especially considering that bitcoins are primarily held as a means of investment dependent on their volatility and not because they can facilitate purchases.

Therefore, like conventional property, an individual would not be able to confer or transfer a title in *Biprowess*, if he does not rightfully have one: *nemo dat quod non habet*. Thus, whilst it would be possible to follow each transactional link from its digitised record, it may not affirm or warrant the passing of legal title from each individual. For instance, in a transfer of bitcoins from A to B, it could be possible that A acquired the bitcoins (in the first place) through fraudulent means or through

²⁵ *ibid.*

²⁶ Fox (n 5).

coercion. Thereby making his title voidable or void (depending on the facts). For example, the title held by the hackers over the bitcoins stolen in the Mt. Gox incident would be void and would never have existed in the first place.

However, by extending the legal definition of conventional money and applying this analogous principle to cyber-currencies, a good faith purchaser of these cyber-currencies will have a defence under the common law. A special status is also conferred to promissory notes and negotiable instruments as shown in the landmark case of *Miller v Race*.²⁷ In *Miller v Race*, it was held that property and title in a bank note is passed by the act of delivery, and an individual who acquires it in good faith, for value, is the owner. Thus, he has the legal right over it in contrast to the former owner from which it was stolen.²⁸ Therefore, a good-faith purchaser for value would have an indefeasible title over cyber-currencies.

V. CLAIMS IN PRIVATE LAW

Understanding cyber-currencies as a kind of money or property would open up several new possibilities in law. Firstly, the categorisation will reduce ambiguities around taxation for appropriate revenue enforcement agencies. Secondly, it will establish a formalised and institutionalised framework, within which cyber-currencies can circulate with some legal certainty. This, in turn, will strengthen confidence amongst individuals (and prospective claimants) to engage in the use of cyber-currencies, and to seek remedies which can be attained through court actions.

A major concern in peer-to-peer transactions involving cyber-currencies would be how claims could be enforced when there are no intermediaries involved. This can be contrasted to bank transfers where the Bank acts as an intermediary and could

²⁷ Fox (n 5).

²⁸ *Miller v Race* (1758) 1 Burr 452.

therefore be held liable for any potential unjustified enrichment of the transferee. Hence, in cases involving misapplied cyber-currencies, the treatment of cyber-currencies as money would help give claimants a claim under the law of unjustified enrichment.²⁹ In this context, it would be conceivable to consider cyber-currency as a store of value instead of a commodity, where a successful claim would require the claimant to follow or trace the value to the defendant. The claimant would also have to prove that the defendant was unjustly enriched at the claimant's expense.³⁰ The defendant, in the absence of any valid claims or defence, would have to ensure that the claimant is restored back to his original position *id est* restitution.³¹ For instance, if A mistakenly transfers 10 bitcoins to C's address instead of the actually intended 'B', A would then have a claim against B for unjustified enrichment provided that A can prove that C's enrichment was A's expense was unjust and C does not have any valid defence against this claim.

Unlike conventional currencies, cyber-currencies will prove to be more effective in claims that require money to be traced. As per Lord Millett, "Following is the process of following the same asset as it moves from hand to hand. Tracing is a process of identifying a new asset as the substitute for the old."³² Bitcoin has a decentralised system and therefore "does not consist in debts owed by a centralised intermediary".³³ Thus, for tracing purposes, a parallel can be drawn between bitcoins and money: the following of a tangible currency (banknotes and coins) from one person to another would be akin to following the transactional history of the blockchain. This is because in each case the same thing can be identified as passing from successive transactions, in contrast to the tracing of intangible convention currencies which occur through a bank payment clearing system, in which intangible money does not actually pass from

²⁹ *Kelly v Solari* (1841) 152 ER 24.

³⁰ *Bank of Cyprus UK Limited v Menelaou* [2015] UKSC 66.

³¹ *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221.

³² *Foskett v McKeown* [2001] 1 AC 102, 127 (Lord Millett).

³³ Fox (n 5).

one hand to another. Thus, this essay contends that treating cyber-currencies as money in law may assist in overcoming hurdles to the effective enforceability of claims in private law which would normally arise in the presence of an intermediary.

POTENTIAL ISSUES OF ENFORCEABILITY

Emanating, naturally, from the preceding sections concerning the private law implications of treating cyber-currency as money is the enforceability of these title claims. As already observed in *Miller v Race*, a good faith purchaser for value is immune from liability and has indefeasible title. However, the test for a good faith purchaser in the case of cyber-currencies remains to be articulated, given that cyber-currencies operate on a principle of anonymity and the disestablishment of financial institutions' role in transactions between two parties. A high threshold for meeting the "good-faith" test seems unlikely or improbable, especially when it is not practically feasible to ascertain identities of the parties and the authenticity of the source. For instance, in English trusts law, the doctrine of "knowing receipt" holds individuals liable who accept trust property through unlawful or illegitimate means in spite of having knowledge of a breach of trust.³⁴ In actions involving cyber-currencies, it would be problematic for both the claimants and the defendants to prove or defend, because knowing all the relevant information about the other party's title to the property is antithetical to cyber-currency payment systems. The question that remains to be answered is: what would be deemed as reasonable diligence (on the defendant's part) in a cyber-currency transaction?

The disquisition so far has put forward the view that Bitcoin is a special kind of money and property *id est* neither a chose in action nor a chose in possession. A chose in action would require a third party or debtor *id est* a bank, to settle a claim. To that

³⁴ *El Ajou v Dollar Land Holdings* [1994] 2 All ER 685.

extent, specific implement would seem to be an equitable remedy as a response to the changing nature of property and money with no intermediary institution.³⁵ However, specific implement or specific performance *prima facie* do not appear to be entirely proportionate in these circumstances for two reasons.³⁶ Firstly, in Scots Law, specific implement is usually granted as a remedy for the enforcement of an obligation, instead of the payment of money. Thus, a remedy for specific implement for transfer of bitcoins may seem counter-intuitive, as the case in point here is that cyber-currencies are indeed money. This, however, can be rebutted by arguing that cyber-currencies are a special kind of money and property (as established above), and in this situation, they may be distinguished from the historic common law tests for specific implement. Secondly, claims for specific implement are not ordinarily accepted by the Scots courts. It is contended that this is because the ensuing sanction against the defendant in a claim for specific implement, imprisonment, is disproportionately harsh for a mere breach of contract.

Cyber-currencies can in theory override concerns of 'mixture' (which arises in bank money), as recognised in the authoritative case of *Devaynes v Noble*, which established the first-in, first out rule. It was held that as a principle, payments are as a rule of thumb, appropriated to debts based on the order in which the debts were incurred.³⁷ We have already seen above how each coin can be traced via its unique transactional history to determine the exact origin of each payment. Unlike conventional money, each cyber coin has a unique reference and could in theory be distinguished and followed through any mixture. Therefore, cyber-currencies, with a proper application of new technologies would largely be able to discern between

³⁵ Shawn Bayern, 'Dynamic Common Law And Technological Change: The Classification Of Bitcoin' 71 *Washington and Lee Law Review Online* 22 (2014).

³⁶ HL MacQueen and LJ Macgregor, 'Specific Implement, Interdict And Contractual Performance' (1999) 3 *Edinburgh Law Review* 239.

³⁷ *Devaynes v Noble* (1816) 35 ER 781.

“good coins” and stolen coins.³⁸ There have already been developments on this front. For instance, a recent “taint analysis” tool developed by a Cambridge team claims to have effectively applied (coded) the first-in, first out rule to accurately trace tainted coins (see below).³⁹ . On the whole, problems of enforceability cannot be mitigated entirely at present and the utility of cyber-currencies is thus reliant on the development of tools which can address issues pertaining to the accuracy in the traceability and identification of these coins. Furthermore, the tools of enforcement in such claims also need to be balanced with one of the original purposes of cyber-currencies, anonymity.

VI. CONCLUSION

From our discussions so far, the limitations concerning the regulation and enforcement of cyber-currencies as money within the legal system have become apparent. As Fox notes “even putting the arguments at the strongest, the doubts about how cyber-currencies would be accommodated in private law should give a reasonably prudent trustee real cause for concern”.⁴⁰ Cyber-currencies therefore, would need to bear at least some semblance with contemporary payment systems to have some practical possibility of incorporation into the legal framework. This ideally would require them to be brought under the anti-money laundering provisions of enforcement agencies and requiring some level of identification, say for instance through the know-your-customer (KYC) requirements.⁴¹

³⁸ M Möser, ‘Anonymity of Bitcoin Transactions’ (Münster Bitcoin Conference, July 2013).

³⁹ Ross Anderson, Mansoor Ahmed and Ilia Shumailov, ‘Making Bitcoin Legal’ (Cambridge University press 2018).

⁴⁰ Fox (n 5).

⁴¹ Anderson (n 39)

Another possibility could be the provision for registration of titles, as is the case of property or patents, wherein particular bitcoins are registered against the owners and with subsequent transfers, the titles pass correspondingly.⁴² This, however, could possibly defeat the purpose and central principle of cyber-currencies, that is, the anonymity of the customer. However, a possible alternative to “registration” would be to use forensics, such as taint analysis, as a means to trace disputed and stolen coins. The use of taint analysis can be effective in resolving issues like title disputes, and complexities involving “mixture” of bitcoins and so on. A final solution could be to regulate cyber-currency exchanges with the objective of protecting parties from losses in the event of a theft (such as the one involving Mt. Gox).⁴³

However, if the study of common law teaches us anything, it is that the development of law is an evolutionary process if not a revolutionary one i.e. through case law and statutes. The principles of monetary law in its early form were riddled with numerous embryonic failures, especially in its weak recognition of bank notes and other monetary instruments, which are now well established in the modern era.⁴⁴ Nonetheless, this rudimentary concept would later influence much of our present understanding about money in private law. Private law as a whole, is, therefore, a culmination of centuries of evolutionary processes. Thus, like all evolutionary processes, the recognition of the cyber-currencies in private law at present is by no means perfect. Considering how the court dealt with intangible property and showed restraint in expanding its interpretation in the *Your Response* case, it remains to be seen how the legislature responds to cyber-currencies.

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ David Fox, ‘The Case Of Mixt Monies’, *Money in the Western Legal Tradition: Middle Ages to Bretton Woods* (Oxford University Press 2016).