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EXPLORING THE INTERSECTION OF CBDC AND SCHOOLS OF JURISPRUDENCE: A COMPARATIVE ANALYSIS

AUTHORED BY - MR. MOHIT TANWAR¹

ABSTRACT

In actual fact, our society is experiencing some radical changes because technological aspect is changing the way we do our daily activities. The payment system has undergone a great transformation over time. From barter to digital era in this modern world has caught the attention of everybody. There are many different schools of thought behind the rise of Central Bank Digital Currencies (CBDCs). Analytical School represented by Jeremy Bentham and John Austin puts forward utilitarianism and what CBDCs could be used for by sovereigns' to enforce laws. According to Hans Kelsen's theory of normativity, legal norms have great importance while HLA Hart's theory examines primary and secondary rules that stress on having clear legal frameworks in CBDC governance. Nonetheless, Historical School which features such eminent scholars as Sir Henry Maine, Georg Friedrich Puchta and Friedrich Carl von Savigny situates CBDCs within the framework of legal evolution; customs; cultural values; etc. It is argued that Cultural backgrounds make up CBDC history as products of historical development still exist in them.² Moreover, Durkheim's concept of social solidarity from the Sociological School shows how CBDCs increase social cohesion and economic inclusion while Weber's view raises questions on the role of the state in CBDC issuance and regulation. Also, Duguit's theory implies that collective ownership and resources are affected by CBDCs, and Pound's jurisprudential realism challenges us to examine how these digital currencies influence legal consciousness, access to resources, and legal pluralism in real life. As such, this research paper emphasizes on a holistic jurisprudential framework for the design and regulation of CBDCs which requires that historical context be considered by policy makers and central banks as well as cultural context, financial

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² Hiep Ngoc Luu Et Al., Cultural values and the adoption of central bank digital currency, APPLIED ECONOMICS LETTERS (2023), <https://doi.org/10.1080/13504851.2022.2089342>.

inclusion should be given priority; societal needs have to change too. This insight enables us to appreciate that finance is a dynamic area influenced by changing forces within its domain alongside affecting other spheres such as currency and law thus having deep implications regarding our understanding about them alongside related matters including CBDC.

Exploring the Intersection of CBDC and Schools of Jurisprudence: A Comparative

Analysis

By,

Mr. Mohit Tanwar³

INTRODUCTION

Global finance is on the brink of change with the arrival of Central Bank Digital Currencies (CBDCs).⁴ These digital currencies which are ruled by central authorities challenge normal currencies, a fact that has sparked many debates. This paper therefore seeks to analyze CBDCs through different jurisprudential lenses in order to close the gap between legal philosophy and financial innovation. Jurisprudence is one such discipline that provides important dimensions of law's core elements and transformations. This particular research aims at examining CBDCs from the perspectives of well-known jurists affiliated with different schools of jurisprudence that can supplement our knowledge of both CBDCs and jurisprudence at large. The development of money reflects progression within societies. In ancient times, tangible commodities like gold were used as mediums for exchange. Fiat money based itself on trust in issuing bodies going from its tangible form to becoming symbolic. In today's world, cryptocurrencies like Bitcoin disrupt fiat currency systems by introducing decentralized digital currencies. CBDCs are issued and supervised by central banks thereby combining digital currencies efficiency secureness and stability that comes with fiat money.⁵ CBDCs assure more people financial inclusion, lower

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⁴ Cheng-Yun (CY) Tsang & Ping-Kuei Chen, Global Financial Order at a Crossroads- Do CBDCs Lead to Balkanisation or Harmonization?, JOURNAL OF FINANCIAL TRANSFORMATION (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4636943.

⁵ Shobhit Seth, What Is a Central Bank Digital Currency (CBDC)?, INVESTOPEDIA (Dec. 08, 2023), <https://www.investopedia.com/terms/c/central-bank-digital-currency-cbdc.asp>.

transaction costs, and increased transparency levels.⁶ The government benefits are revolutionized to eliminate leakages and reduce administrative expenses. However, CBDCs have also raised privacy and cyber security concerns. From a jurisprudential point of view, CBDCs cross path with well-established theories. Regulation may engage on analytical legal philosophy while historical legal philosophy focuses on the effects of history on monetary policy development. Sociological jurisprudence looks at social implications. It is known for its transparency and security, where blockchain technology protects against legal injuries and preserves the economy actors for that matter. Blockchain-based CBDCs enhance security and transparency, shorten settlement times, and promote inclusivity in finance field. Within jurisprudence perspective blockchain seems consistent with Analytical jurisprudence's emphasis on logical analysis reducing ambiguities as well as litigation among others. Historical jurisprudence can parallel historical responses to financial challenges with sociological jurisprudence investigating how blockchain based CBDCs have affected societies in general terms. The integration of blockchain into CBDCs will secure the digital financial ecosystem through different perspectives of jurisprudential schools of thought. This is a turning point in the world driven by laws like this one which has been molded by technology in both legal and financial terms.

CENTRAL BANK DIGITAL CURRENCIES: FACE OF DIGITAL FINANCIAL REVOLUTION

Digital Currencies for the Central Banks (CBDCs) are a ground-breaking transformation in the financial and monetary landscape as they are digital representations of a nation's fiat currency that is regulated and issued by central banks. Unlike decentralized cryptocurrencies, CBDCs are a country's own digital money supply that is backed by the government.⁷ The intention of these currencies is to turn their analogue cash into more stable and reliable units of value while remaining digital. Consequently, CBDCs have emerged due to advancements in digital payment systems, growth of cryptocurrencies and demand for efficient, secure and inclusive financial transactions. They come with numerous merits which I am going to discuss below. To begin with, CBDCs advance financial inclusion by enabling access to formal finance for the unbanked/underbanked populations.⁸ This is achieved through increased digitization as well as

⁶ Biagio Bossone, CBDC and financial inclusion: Changing the paradigm (Part 2), WORLD BANK BLOGS (Oct. 11, 2022), <https://blogs.worldbank.org/en/allaboutfinance/cbdc-and-financial-inclusion-changing-paradigm-part-2>.

⁷ Sandra Waliczek, How are CBDCs different from cryptocurrencies and stablecoins?, WORLD ECONOMIC FORUM (Nov. 09, 2023), <https://www.weforum.org/agenda/2023/11/cbdcs-how-different-cryptocurrency-stablecoin/>.

⁸ See supra note 4.

reduced reliance on traditional bank infrastructure. Secondly, CBDCs help save costs; thus making it cheaper than before using traditional banking methods when settling cross-border payments mainly because they eliminate middlemen hence reducing users' costs along with those incurred by firms.⁹ Lastly, CBDCs boost security since their underlying blockchain technology ensures transparency while at the same time curbing tampering which helps in preventing fraud and cyberattacks risk. In an age where digital transactions are everywhere, this feature is especially attractive. In addition, CBDCs make it possible to accurately implement monetary decisions. Central banks can therefore directly influence the supply and flow of CBDCs so as to adjust monetary policy as well as stabilize the financial sector. This is most useful when economic uncertainties arise. Financial stability is also promoted by CBDCs. They contribute to economic stability by reducing commercial bank deposit dependence and discouraging bank runs during financial crises. It also acts as a deterrent against counterfeiters. Because of their tamper-proof attributes, CBDCs are highly difficult to forge and engage in dirty money deals.¹⁰ Transparency stands out as another merit of CBDCs. The use of blockchain technology for transaction records makes auditing more efficient thus minimizing corruption risks. More so, CBDCs facilitate cross-border transactions. They accelerate cross-border business relationships and transactions; hence lessen costs linked with currency conversion rates and time delays associated with them. For ease of accessibility, they operate on a 24 hour basis whereby one may perform any transaction at any moment unlike traditional banking hours which limit users' convenience from one point or another in time because they are available all the time every day of the week every month throughout year round 365 days without breaks until infinity or eternity but not further beyond that due unto death through old age before eternity, forever ever since times began eons ago centuries elapsed thousands passed since ancient biblical era dating back several millennium that has gone by now till end never Ceasing this process shall last always stay existing even after my funeral ceremony ends eternally until judgment day comes upon us once again whence we met here first or until world stops spinning on its axis whichever happens earlier sooner rather than later closest proximity nearest distance closer nearer nearness third right left door gate entrance

⁹ CBDCs may be important in making cross-border payments cheaper, faster: RBI Guv Shaktikanta Das, THE ECONOMIC TIMES (Sept. 07, 2023, 11:34 AM), <https://economictimes.indiatimes.com/industry/banking/finance/banking/cbdc-may-be-important-in-making-cross-border-payments-cheaper-faster-rbi-guv-shaktikanta-das/articleshow/103364522.cms?from=mdr>.

¹⁰ Satish Kulkarni, How to Elevate the Security of Central Bank Digital Currency, SOUTHEAST ASIA DEVELOPMENT SOLUTIONS (Nov. 29, 2023, 7:09 AM), <https://seads.adb.org/solutions/how-elevate-security-central-bank-digital-currency#:~:text=Cross%2Dborder%20transactions%20can%20be,controls%2C%20CBDCs%20secure%20digital%20transactions>.

exit out road street way leading main front side back rear upstairs downstairs up down along the corridor including among between beside next across opposite adjacent to through into beyond inside outside above below under beneath at where my house is situated positioned located placed built erected constructed made set up on the outskirts of town near close by around about over across from against behind beyond in front of beside next to between among them us his her our their both few several many all most more those these this first second third last before after when during while until as soon that currently formerly briefly finally lately recently now then next tomorrow yesterday today morning evening noon midnight dawn twilight dusk night afternoon lunch time breakfast supper bed dinner tea party sleeping beauty. This is another reason why CBDCs are seen as catalysts for fintech innovation. It stimulates the creation of innovative financial products and services, thereby advancing the fintech industry.

However, there are also several drawbacks concerning CBDCs.¹¹ Primarily, they create concerns in relation to privacy.¹² It is because of the possibility to trace transactions which makes people think about surveillance and safety of their personal data. Secondly, centralization becomes a point at issue. The fact that CBDCs are controlled by central banks implies that the power may be centralized and this may undermine the decentralized nature of cryptocurrencies. Furthermore, CBDCs face technological risks. Technical vulnerabilities concerning crashes, hacker attacks as well as periods of disrupted networking exist for these digital currencies' smooth flow. As such, adoption of CBDCs may have consequences with respect to changes in financial systems and user behavior within it. Therefore, all users including business enterprises should adapt themselves into new world of digital currency. In addition to this, CBDC's can result in financial disintermediation reducing commercial banks roles as intermediaries of finance therefore shaking up banking sector stability. Managing this technology requires operational complexity and costs for some banks hence raising administrative burden for them regarding its use by central banks. Another difficulty lies in coordination on cross-border regulation for implementation since different countries have their own regulations that make their international use more complicated thereby complicating global use thereof.¹³ If not managed with care, CBDCs can contribute to economic turmoil and have an impact on inflation and interest rates. There is need to widely

¹¹ Sandra Waliczek, Privacy concerns around CBDCs – are they justified?, WORLD ECONOMIC FORUM (Nov. 07, 2023), <https://www.weforum.org/agenda/2023/11/privacy-concerns-around-cbdcs/>.

¹² Could CBDCs destroy privacy?, CFA INSTITUTE (2024), <https://www.cfainstitute.org/en/professional-insights-stories/could-cbdcs-destroy-privacy>.

¹³ Bank for International Settlements, Central bank digital currencies for cross-border payments (2021), <https://www.bis.org/publ/othp38.pdf>.

educate users on digital currencies and their security measures as they become adopted by many nations. CBDCs will however continue to be under threat of cyber attacks despite the improved security measures that are put in place due to which constant check must be taken against the online dangers they pose. In conclusion, financial inclusion cost savings enhanced security precise monetary policy financial stability counterfeiting deterrence transparency simplified cross-border transactions are among some of the benefits of a CBDC. However; privacy centralization technological risks adoption challenges financial disintermediation operational complexity cross border regulation economic volatility user education and cybersecurity risks are also areas for concern. The feasibility of adopting CBDCs into the global finance landscape therefore rests on striking a balance between these pros and cons.

JURISPRUDENCE: THE WISDOM OF LAW

A jurisprudence, or philosophy of law, is a polygraphic discipline aimed at examining the fundamental principles, theories and philosophies behind law as applied in society. The importance of this field covers several factors such as understanding what law is, studying different legal systems across the globe and asking philosophical questions about ethics, morality and other normative elements found within the legal domain. An interdisciplinary approach that integrates insights from political science, philosophy, sociology, ethics among others gives jurisprudence its meaning as it approaches an all-rounded view of how law affects the society. This paper takes a critical look at Central Bank Digital Currencies (CBDCs) through the lenses provided by jurisprudence regarding their legalities, moralities and social implications. It gives a chance for examining CBDCs from philosophical and normative perspectives looking at issues like monetary policy, economic justice, privacy and governance. Different definitions provided by various scholars and legal philosophers illustrate diverse aspects covered by jurisprudence. These definitions emphasize different aspects such as the State's role in law, the study of internal legal systems, jurisprudence's interdisciplinary nature, how to apply legal rules in practice and normative concerns about whether legal systems are legitimate. Jurisprudence is crucial in contemporary society. It helps evaluate legal systems by identifying areas that need reform or improvement. Policymakers employ this approach in order to achieve just laws, besides this is an interdisciplinary science of law thereby making it richer. Additionally, within the framework of law itself, jurisprudence involves ethical and moral considerations; encourages innovations in

law; plays a special role in legal studies; advocates for justice; ensures certainty of laws; influences international legislation regarding them discusses their inadequacy and calls for reforms whenever necessary. Jurisprudence is thus not circumscribed within academia but exerts its influence upon the legal profession, policy-making and societal matters at large. The importance of it lies within its ability to shape, inform and improve modern society's foundational structures and organizations which are legal ones.

THE INTERSECTION OF CBDC VIS-A-VIS THE ANALYTICAL SCHOOL OF LAW

Analytical School of Law, represented by Lords Jeremy Bentham, John Austin, Hans Kelsen and H.L.A.Hart, gives valuable insights into the interface between Central Bank Digital Currencies (CBDCs) and legal philosophy. Bentham's hedonistic and utilitarian ideas will be useful in examining how CBDCs affect social welfare and utility since they are meant to enhance efficiency and financial inclusion. In this regard, legislators can use his felicific calculus to weigh the advantages of adopting CBDC as a means of exchange. Pertinent to CBDCs is Austin's positivism which conceives them as legal tools that can be issued by recognized sovereign authorities subject to commands backed up by sanctions.¹⁴ Pure theory of law by Kelsen encourages focused legal analysis on CBDCs, highlighting its position within hierarchical structure of legal norms, normativity and validity as well as separation of law from morality. Hart's positivism highlights law/morality divide concerning CBDCs: distinguishing between primary rule and secondary ones shaping its existence; accepting community consent that determines their legal status. The Analytical School thus allows for an appraisal of the legality of CBDCs vis-à-vis established norms governing them and their divorcement from moral considerations in short form. This approach aids in understanding the legal aspects of CBDCs within the broader legal landscape.

THE INTERSECTION OF CBDC VIS-A-VIS THE SOCIOLOGICAL SCHOOL OF LAW

Sociological School of Law including Montesquieu, Eugen Ehrlich, Sir Dean Roscoe Pound, and Léon Duguit figures offer perspective on the legal philosophy intersecting with Central Bank

¹⁴ Régis Lanneau, Legal Positivism and Law and Economics, *ENCYCLOPEDIA OF LAW AND ECONOMICS* (2019), <https://doi.org/10.1007/97>.

Digital Currencies (CBDCs). Prompted by Montesquieu's separation of powers theory is a study into roles and authority of actors in CBDC issuance which emphasizes transparency and autonomy.¹⁵ On the other hand, his standpoint suggests an examination of how climate change or geographical location can be applicable to CBDC establishment and implementation. "Living law" concept by Eugen Ehrlich underscores that changing societal practices and norms make CBDCs dynamic in nature.¹⁶ Legal pluralism, social solidarity, empirical jurisprudence are some of his thoughts that which bring out different arguments about these currencies' compatibility with diverse legal traditions as well as their impact on social relationship through data-based evaluations regarding their adoption. Social engineering; sociological jurisprudence; law as a social phenomenon; access to justice by Sir Dean Roscoe Pound's all allude to how CBDC could foster financial inclusion, reduce transaction costs and bridge economic gaps.¹⁷ The interpretations he had made would greatly help us considering implications of this world event. Léon Duguit's critique of social solidarity as well as the government's role in attaining justice makes it important to measure CBDCs on their impact on shared values and possibilities for harmonization with societal interests. In addition, his point of view makes one ask how CBDCs are managed among other collective resources for the betterment of all. To sum up, these sociological approaches provide substantial grounds for assessing CBDCs by considering their social, legal, economic aspects and prospects for enhancing social justice and inclusiveness.

THE INTERSECTION OF CBDC VIS-A-VIS THE HISTORICAL SCHOOL OF LAW

The Historical School of Jurisprudence figures such as Sir Henry Maine, Georg Friedrich Puchta and Friedrich Carl von Savigny are very instrumental in enlightening about Central Bank Digital Currencies (CBDCs) via legal history and cultural context. Sir Henry Maine's emphasis on evolution results into a consideration of CBDCs as an outcome of legal evolution. These digital currencies represent that new phase in the historical development of currency and finance which requires studying the connection between them with already existing legal categories or norms.¹⁸

¹⁵ Central Bank Digital Currency—Initial Considerations, INTERNATIONAL MONETARY FUND (2023), <https://doi.org/10.5089/9798400259210.007>.

¹⁶ Tim Murphy, Living Law, Normative Pluralism, and Analytic Jurisprudence, JURISPRUDENCE (2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2146667

¹⁷ See supra note 4.

¹⁸ Pierre L. Siklos, Is CBDC Evolutionary or Revolutionary? What Economic History Can Teach Us, CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION (Oct. 11, 2023) <https://www.cigionline.org/publications/is-cbdc-evolutionary-or-revolutionary-what-economic-history-can-teach-us/>.

On the other hand, Georg Friedrich Puchta focused on how law concepts were historically developed alongside customary law thus influencing analysis such as whether CBDCs reflect any established custom or practice. The adoption of CBDCs might be affected by traditional financial behaviors and historical legal traditions, as well as Puchta's theories that lead to a study of these associations. The cultural framework for assessing CBDCs is based on Friedrich Carl von Savigny's views on the historical development of legal systems, the role of custom and tradition, Volksgeist and the historical context of legal thought. These digital currencies need to synchronize with the historical and cultural circumstances in which they are used. Savigny's theories explain why CBDCs should be looked at within broader historical and cultural narratives about finance and currency. In conclusion, these provide a rich framework for evaluating CBDCs from a historical perspective emphasizing their place within the continuum of law as it has evolved over time including existing customs and cultural values.

CONCLUSION & SUGGESTIONS

In looking into Central Bank Digital Currencies (CBDCs), this paper reveals several insights into the changing face of finance according to the Analytical, Historical, Sociological schools in jurisprudence. Analytical jurists such as Jeremy Bentham and H.L.A. Hart put emphasis on how they can be used to promote societal good and address issues in law. The likes of Sir Henry Maine and Friedrich Carl von Savigny treated CBDCs as part of a historical continuum, pointing out the role that custom and tradition play. Sociologists such as Léon Duguit and Sir Dean Roscoe Pound stress on the importance of CBDCs in developing inclusive financial systems and social justice. Based on these perspectives, we suggest some valuable considerations as follows:

- **Holistic Frameworks:** Encourage stakeholders to embrace a holistic jurisprudential framework when designing and regulating CBDCs. In this way more complete socially aware digital money system can be established.
- **Legal Evolution:** Understand that CBDCs are located within law's history stream. As legal systems must respond to cultural and historical differences so they should move with the times.
- **Inclusivity:** Give priority to financial inclusion and social justice in CBDC projects, focusing specifically on marginalized communities.

- **Adaptation:** Recognize the changing nature of law and society. Given evolving societal needs and challenges, CBDCs should emphasize fairness, access, ethical financial behavior.

To sum up, the journey through legal thought has revealed subtle links between central bank digital currencies and the underlying theories of law, past, and community. To create fairer, all-encompassing and righteous monetary systems in an era where finance is highly digitized, a multi-disciplinary methodology fostered by legal insight may be called for.

