BY THE FIAT OF EXPERTS: BITCOIN, MONETARY SOVEREIGNTY, AND TALMUDIC LEGITIMACY

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ABSTRACT

This Note asks whether "independent" Central Banks should control monetary supply. First, it explores the nature of currency governance, from precious metal through fiat currency and finally Bitcoin, noting that Bitcoin's novelty evades traditional legal categories. Then, it utilizes the Talmud and commentaries to propose a framework that underscores Bitcoin's legitimacy. Majority rule suggests that currency users might be a better choice for price discovery and governance than the specialized minority of central bankers. However, because Bitcoin is still is in its nascent phases, it fails when assessed according to a Talmudic definition of currency. Because of the advantages in distributed governance and widespread recognition, I propose that governments recognize Bitcoin's legitimacy as well.

INTRODUCTION

Today the independence of the Federal Reserve is being called into question by the presidential administration. Central bankers, under the existing system of limited appointment and termination for the President, are presumed to be insulated from political motives and thus independent. This independence also means that their power is unchecked: they are neither accountable, nor elected. This tension raises the central question of this Note—should the power to control monetary supply be vested in Central Banks and independent experts? And can new technology—decentralized currency—make distributed monetary supply control possible? I explore these questions of monetary supply control through a Talmudical analysis of currency governance.

Bitcoin is a contemporary development of money; its unique features make it difficult to fit into frameworks of the past. For example, Bitcoin has some of the characteristics of money: it is fungible and serves as a store of value. On the other hand, it isn't often used for retail payments. Transactions are rarely denominated in Bitcoin *per se*, but rather a sovereign currency is used to price

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the transaction—the unit of account—and the value is transferred in an equivalent quantity of Bitcoin. Most importantly, Bitcoin is not a sovereign currency. It does not have an issuing jurisdiction and is entirely decentralized. Thus, multiple regulators have reached different conclusions when applying their own regulatory frameworks to this novelty. Identifying the relevant laws to incorporate Bitcoin into traditional financial frameworks has been a long and arduous road, without a convincing resolution.

I argue that a currency is most "legitimate" when its control is in the hands of users operating in "real" free markets, just as it was in pre-modern history, when currency was priced by precious metal markets (plus a small tokenization reflecting trust in the sovereign). While the sovereign had some freedom to determine the value of the currency directly, tying money to precious metals resulted in currency supply being controlled, at least in part, by the commodity markets—effectively, the people. It's only in modern times, with the advent of fiat currency, that control of the monetary supply has shifted to Central Banks and expert discretion. To be clear, I use "legitimacy" as an argument about governance, not economic theory.

Through the frame of the Talmud and its commentators, this Note examines how widespread currency use confers legitimacy on a sovereign. By participating in a sovereign's currency, the population consents and submits to the sovereign's rule, providing it with legitimacy. And this is most true when the currency value reflects a true market rate—as in precious metal markets. Markets reflect the biblical principle that "majority rules." On the other hand, fiat currency is governed (and to an extent priced) by a specialized minority that the Talmud finds inferior to a majority. Widespread currency use is less indicative of the people accepting their sovereign when currency control (and thus price) is an outcome of central bankers' policy decisions. Because of the similarities of Bitcoin to precious metal currencies of yore, there are aspects to Bitcoin's governance (at least in idealized form) that seem *more* legitimate than fiat currency.

Part I begins by exploring the development of money and the emergence of Bitcoin. Accordingly, the question of "who controls?" a given currency remains a vexing issue. I look to the contemporary French Franc, still used in Africa, as an example of Central Bank power. I argue that Bitcoin solves control problems, with its decentralized control leading to truly free markets: markets that reflect supply and demand, and not distorted by the latest predictions on Central Bank monetary policy.

Part II explores the difficulties of applying the old regulatory frameworks to Bitcoin.

Part III looks to the Talmud and its commentaries to address some of the fundamental questions of control explored in Part I, and it suggests that the Talmud could, in theory, support Bitcoin as a legitimate currency that shares much in common with metallic money of the past.

Part IV analyzes Bitcoin from the Talmudic definition of currency, finding it lacking, but noting under what conditions it would make sense to recognize Bitcoin as a currency.

Finally, I conclude that the merits of Bitcoin, both in terms of its value and the unique governance structure, are reasons that countries should take it seriously and adopt the necessary regulatory steps to allow easy cryptocurrency adoption.

I. FACTUAL & LEGAL BACKGROUND

This section explores the incidents of money, its history, the transition to fiat currency in the mid twentieth century, and an example of currency control powers.

A. What is Money?

Economists commonly refer to the three incidents of money: 1) It is a store of value, 2) that serves as a medium of exchange, and 3) can be a unit of account.[1]

The first incident provides for long-term storage of wealth. If wealth consisted of perishable apples, it would last no longer than the apples themselves.[2] If wealth only existed in large and bulky packages, it could not be easily stored or moved.[3] Imagine moving $25,000 of corn: at current prices it fills several tractor trailers and weighs over 250,000 pounds. By contrast, $25,000 in cash weighs only about 250 grams, and the equivalent amount of gold weighs only about 175 grams.[4] Or consider why real property isn't used as money. It is not fungible, cannot be moved, and is hard to break into smaller value units.

The second incident is about easy exchange. Money can be seen as the most liquid of all assets, i.e., more assets can be traded for it than any other class of assets.[5] While almost everyone would make a trade in U.S. Dollars, silver bullion has a lot fewer markets.[6] Still, silver would support more transactions than commodities like honey, which itself is more exchangeable than a used snowmobile with overdue maintenance. Money is also fungible. All twenty-dollar bills are treated as identical.[7] All of these features make money commodities *useful* for facilitating any and every kind of market exchange.

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1. *See* CFI Team, *Functions of Money,* CORPORATE FINANCE INSTITUTE (June 24, 2020), https://corporatefinanceinstitute.com/resources/economics/functions-of-money/ [https://perma.cc/UAZ9-UFED].

2. *See id.* ("As services can't be stored and a lot of goods are perishable, society requires more effective ways of storing wealth.").

3. *See id.* Though CFI Team considers this part of the second incident of money, because of transportability concerns, it is relevant to being a store of value as well.

4. The rates for the above examples are approximate, as of mid-September, 2026 from Barchart.com. *See Commodity Prices*, BarChart, https://www.barchart.com/futures/major-commodities (last visited Sept. 13, 2026) [https://perma.cc/B7LM-EPTY].

5. *See* CFI Team, *supra* note 1 ("must be readily acceptable").

6. *See id.* (noting four factors for money to be a medium of exchange).

7. *See* Investopedia Team, *Understanding Fungibility in Finance and Its Importance*, INVESTOPEDIA (Aug. 22, 2025), https://www.investopedia.com/terms/f/fungibility.asp

Third, having a unit of account allows direct value comparisons between asset classes.[8] It's quite a challenge to compare the value of livestock paid for with orange juice, or rhodium.[9] But by using money, society can speak of any asset's value in monetary terms: the livestock is worth two thousand dollars, an ounce of rhodium nine thousand, and thirty thousand dollars for 15,000 pounds of frozen orange juice concentrates.[10]

B. What is a currency?

Money usually takes the form of a currency, coined or issued by a sovereign.[11] In earlier times most currencies were metallic, made from precious metal commodities, so markets determined the "value" of those currencies from the precious metal quantity, as well as the sovereign's reputation that made the sovereigns minted coins somewhat more valuable.[12] Precious metal currency carrying the imprint of a reputable sovereign, carried a "token" premium above the precious metal value alone. Gold was used for higher value coins, and the larger the coin the more value it held.[13] Conversely, cheap metals of small size were features of low value denominations.[14]

The seventeenth and eighteenth centuries saw the introduction of paper money banknotes in Europe.[15] These were issued by sovereigns as notes and they certified that the note could be redeemed at the treasury for precious metal

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[https://perma.cc/B828-Q7ET] ("Fungibility refers to the ability of an asset to be exchanged effortlessly with another item of the same kind and value. Money is a prime example of a fungible asset, which can be exchanged easily for different denominations without losing value.").

8. *See* CFI Team, *supra* note 1 ("In a money-based economy, prices can be indicated using only one measure of value, simplifying transactions and people's understanding of how much a good or service is worth. Conversely, in a barter economy, the prices for a good or service should be established based on all the other goods or services produced and exchanged.").

9. *See id.* ("in a barter economy, the prices for a good or service should be established based on all the other goods or services produced and exchanged").

10. Commodity examples taken from Barchart. *See Commodity Prices*, *supra* note 4.

11. Caleb Hinton, *Currency vs money: what is the difference?*, CurrencyTransfer (Feb. 10, 2023), https://www.currencytransfer.com/blog/expert-analysis/currency-vs-money [https://perma.cc/VE6X-ZJP6] ("currency is a type of money . . . . [it] takes the form of paper and coins").

12. Adam Brzezinski, Nuno Palma & François R. Velde, *Understanding Money Using Historical Evidence* 3–5 (Fed. Res. Bank of Chi., Working Paper No. 2024-10, 2024), https://doi.org/10.21033/wp-2024-10 [https://perma.cc/DXJ8-URJJ] (noting the development of precious metal money also included tokens whose value traded above their metallic worth).

13. *See id.* at 4–5.

14. *Id.* This was true of the multi-metallic currency issued by foreign rulers that the Talmud recognized. *See* Benjamin Geva, *The Monetary Legal Theory Under the Talmud,* 55 REVUE INTERNATIONALE DES DROITS DE L'ANTIQUITÉ 13, 16 (2008), http://ssrn.com/abstract=2439945 [https://perma.cc/BVG8-4ZLY] ("a sophisticated multimetal coin system"). *See generally* Joseph J. Ajdler, *Talmudic Metrology IV: The Halakhic Currency*, 22 B.D.D. (Bar Ilan) 7 (2009), www.ajdler.com/jjajdler/shiracoins7.pdf [https://perma.cc/J53Z-KYZP] (noting the specifics of the various foreign currencies recognized in the Talmud).

15. Brzezinski, et al., *supra* note 12, at 5–6.

coins.[16] For example, on the 1928 Ten Dollar Gold Certificate paper note was engraved "This certifies that there have been deposited in the Treasury of the United States of America ten dollars in Gold Coin payable to the bearer on demand."[17] A ten dollar gold certificate could be exchanged for a ten dollar gold coin, or two five dollar gold coins,[18] and a ten dollar silver certificate could be redeemed for ten one dollar silver coins.[19] Procedures were published to redeem the certificates for precious metals to anyone who sought redemption.[20]

In the United States, the currency system varied between bi-metallic and a gold-only standard (although during the Civil War the country briefly issued fiat currency).[21] In the 1930s, both Britain and United States left the gold standard, but it was still available for official international transactions.[22]

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16. *See, e.g.*, 34 Stat. 1289 (1906) ("Secretary of the Treasury is hereby authorized and directed to receive deposits of gold coin with the Treasurer, . . . and to issue gold certificates therefor . . . and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand . . . Such certificates shall be receivable for customs, taxes, and all public dues . . . .").

17. *See Gold Certificates 1863-1933*, U.S. PAPER MONEY CURRENCY, https://uspapermoney.org/gold_certificate.php [https://perma.cc/KW7K-RU75] (last visited Apr. 14, 2026) (image of the certificate).

18. *See generally* Historical Research Center, *BEP History Fact Sheet—Gold Certificates*, BUREAU OF ENGRAVING AND PRINTING (Apr. 2013), www.bep.gov/media/1086/download?inline [https://perma.cc/R2A3-48SP] ("Gold Certificates were originally certificates of deposit, meaning one could deposit gold at the Treasury and receive Gold Certificates in exchange.").

19. *See generally* Historical Research Center, *BEP History Fact Sheet—Silver Certificates*, BUREAU OF ENGRAVING AND PRINTING (Apr. 2013), www.bep.gov/media/1051/download?inline [https://perma.cc/LD9M-2PVM] ("Silver Certificates could be redeemed for silver until 1968.").

20. *See, e.g.*, Press Release, U.S. Mint, *Treasury Publishes Procedures for Exchanging Silver Certificates for Silver Bullion* (May 13, 1968), ("To obtain silver bullion in exchange for silver certificates, a holder of certificates must present them in person at the Federal Reserve Bank of New York or San Francisco or at the United States Assay Office in New York or San Francisco.").

21. CONG. RSCH. SERV., R41887, *Brief History of the Gold Standard in the United States* (June 23, 2011), https://www.congress.gov/crs-product/R41887 [https://perma.cc/B3PQ-8BR7]. The report notes that "[o]fficially, the United States began not with a gold standard, but with a bimetallic standard in which both gold and silver were used to define the monetary unit." Then the country switched to a gold only standard after "a relatively minor recodification of law in 1873 turned out to have enormous implications for the monetary system. In defining the dollar and the coins of the United States, the legislation omitted the 412.5 grain silver dollar. Consequently, it eliminated silver as anything but fractional currency." It is also noteworthy that "[d]uring the Civil War, the government issued legal tender paper money that was not redeemable in gold or silver, effectively placing the country on a fiat paper system." *Id.*

22. *See id.* at 9–11 (detailing the United States' exit from the gold standard and noting that the country entered a quasi-gold standard); Press Release, HM Treasury, *Going Off Gold* (Sep. 20, 1931), https://www.nationalarchives.gov.uk/education/resources/thirties-britain/going-gold/ [https://perma.cc/KC9F-Z86Z]. *See also* S. Palmer Harman, *Britain's Great Struggle: Epic of the Pound*, N.Y. TIMES (Sep. 27, 1931) ("Great Britain is off the gold standard.").

An international treaty signed in Bretton Woods, New Hampshire in 1944 refined the gold standard but also provided some flexibility.[23] The new system required each currency to be pegged to the dollar, which in turn was pegged to gold at a specific rate.[24] But the peg could be adjusted by one percent.[25] Most importantly, the United States accepted to convert foreign currency into dollars and redeem its own currency for gold.[26]

In the 1960s the United States precious metal currency system started to unwind. The "silver window" at the treasury was closed by statute on June 24, 1968; from that day onward silver certificates were not redeemable for actual silver.[27] By the late 1960s the United States could no longer meet its gold obligations and used diplomatic means to prevent international gold redemptions.[28] Finally, in August of 1971 President Nixon announced that the United States would no longer convert dollars to gold at the official rate.[29] Today's currency is fiat:[30] the value of the currency is dictated by the people's (and the markets) faith in the sovereign alone, and without reliance on precious metals.[31] There is no intrinsic value to fiat currency.[32]

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23. *See* CONG. RSCH. SERV., *supra* note 21, at 11 (noting the availability of credit as a cushion to keep the exchange rates in line). *See also* Bretton Woods Agreement Act, 59 Stat. 512 (1945) (adding the United States to the agreement).

24. Sandra Kollen Ghizoni, *Creation of the Bretton Woods System*, FED. RSRV. HIST. (Nov. 22, 2013), https://www.federalreservehistory.org/essays/bretton-woods-created [https://perma.cc/93L9-SYUU] ("Countries settled international balances in dollars, and US dollars were convertible to gold at a fixed exchange rate").

25. *Id.* ("countries agreed to keep their currencies fixed but adjustable (within a 1 percent band) to the dollar").

26. *Id.*

27. Pub. L. No. 90-29, 81 Stat. 77 (1967) (closing the gold redemption window one year after the acts passing). Though redemption is no longer possible, silver certificates remain legal tender.

28. *Id. See also* CONG. RSCH. SERV., *supra* note 21, at 12–13 (noting that by the late 1960s "the international monetary arrangement [was] a gold standard in name only . . . . Through diplomatic channels it was made clear that other countries could not expect to redeem large quantities of dollars for gold.").

29. *See* CONG. RSCH. SERV., *supra* note 21, at 12. *See also* Sandra Kollen Ghizoni, *Nixon Ends Convertibility of U.S. Dollars to Gold and Announces Wage/Price Controls*, FED. RSRV. HIST. (Nov. 22, 2013), https://www.federalreservehistory.org/essays/gold-convertibility-ends [https://perma.cc/43YU-AWMU].

30. Defined as "a command or act of will that creates something without or as if without further effort." *See Fiat,* MERRIAM WEBSTER https://www.merriam-webster.com/dictionary/fiat [https://perma.cc/AG5A-4E7S].

31. Brzezinski, et al., *supra* note 12, at 4 ("In the present-day fiduciary system, all monetary objects (coins, notes, transferable balances) are intrinsically worthless, and monetary theory pays no attention to the material support, but derives the value of money from the functions it fulfills such as a state-imposed requirement, liquidity services, and store of value.").

32. *Id.*

Because governments are no longer tied to precious metals, they have more control over the value of their currency, via their Central Banks.[33] In the days of precious metal certificates, the limiting feature to a government's monetary supply was the quantity of precious metals in its coffers.[34] But such physical limitations are no longer relevant. In their place Central Banks use multiple tools to control currency supply, issuing currency and extinguishing it through different monetary supply facilities.[35] The Federal Reserve Bank, the United States' Central Bank, has traditionally controlled monetary supply through managing reserve requirements for bank deposits and adjusting the interest rate.[36] Today, quantitative easing (QE) allows the federal reserve to directly intervene in the bond markets, purchasing debt by "printing money"—expanding the monetary supply.[37] Other Central Banks have greater powers to control their monetary supply.[38] Central Banks, now more than ever before, can add or subtract the amount of money available in the markets directly. And because price is a derivative of supply and demand, by controlling supply they influence the value of their currency.

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33. *See id.* (noting that commodity backing is "the major difference between historical and modern money").

34. *See id. See generally* CONG. RSCH. SERV., *supra* note 21 (noting the challenges facing the United States during the gold standard because of the lack of reserves).

35. Sean Ross, *How the Federal Reserve Influences Money Supply and Interest Rates*, INVESTOPEDIA (March 1, 2026), https://www.investopedia.com/articles/investing/081415/understanding-how-federal-reserve-creates-money.asp [https://perma.cc/6F68-NASE] (explaining how the Fed creates money as well as some of its facilities). For a complete list of the standing Federal Reserve facilities, see Patrick Dwyer et al., *The Federal Reserve's Standing Liquidity Facilities*, THE TELLER WINDOW (Aug. 7, 2024), https://tellerwindow.newyorkfed.org/2024/08/07/the-federal-reserves-standing-liquidity-facilities/ [https://perma.cc/B46W-C2TA]. In times of emergency even more "facilities" are available to the Federal Reserve Bank. *See What Are Federal Reserve Lending Facilities? How Will They Support the Economy during the Pandemic?*, PETER G. PETERSON FOUND. (Sep. 8, 2020), https://www.pgpf.org/article/federal-reserve-lending-facilities-what-are-they-how-are-they-funded-and-how-will-they-support-the-economy-during-the-coronavirus/ [https://perma.cc/P4AY-DMBE] (listing some of the additional facilities used during the Coronavirus pandemic).

36. *See* The Investopedia Team, *Monetary Policy: Meaning, Types, and Tools*, INVESTOPEDIA (Dec. 21, 2025), https://www.investopedia.com/terms/m/monetarypolicy.asp [https://perma.cc/2HUE-62JU] (listing the common tools).

37. *See Quantitative easing*, BANK OF ENG., https://www.bankofengland.co.uk/monetary-policy/quantitative-easing [https://perma.cc/57CM-H6JC]; The Investopedia Team, *How Quantitative Easing Spurs Economic Recovery: A Detailed Guide*, INVESTOPEDIA (May 4, 2026), https://www.investopedia.com/terms/q/quantitative-easing.asp [https://perma.cc/475U-ER7L] ("Quantitative easing is a form of monetary policy in which a central bank, like the U.S. Federal Reserve, purchases securities through open market operations to increase the supply of money and encourage bank lending. . . . Critics have argued that quantitative easing is effectively a form of money printing.").

38. For example, the Bank of Japan has long used "unconventional" financial tools. *See* Yan Carrière-Swallow, Gene Kindberg-Hanlon, & Danila Smirnov, *Macroeconomic Effects and Spillovers from Bank of Japan Unconventional Monetary Policy*, (Int'l Monetary Fund, Working Paper No. 25-227) (documenting the history and types of unconventional interventions).

Central banks, Federal Reserve included, are designed to be independent, providing economic governance with ostensibly no political valence.[39] Federal Reserve independence allows for significantly large and flexible powers over monetary supply to prevent economic disasters.[40] Yet the power of currency control, along with the advantage of independence, comes with a price: minimal accountability.[41] Federal Reserve board members are not elected.[42] Instead, the President can, on occasion, choose them with the advice and consent of the Senate.[43] And, once chosen, they are "independent" and cannot be removed by the President before the end of their term (except for cause).[44]

The nature of Central Bank governance is the conundrum addressed in this Note: To prevent financial collapse, it is necessary to grant an independent body of experts flexible control over the monetary supply. The theory behind the Central Banks is that they *should* be unaccountable, so they *are removed* from the political process and govern only by economic analysis. And this is the very concern with Central Banks: an independent body (read: unaccountable to the people) with vast flexible (read: unchecked) powers. That despite the power to control the money supply, in effect the wealth of all currency users, the leaders of the Central Banks are largely removed from the democratic, and even free market, process.[45]

To be sure, prior to democracies, currencies would be unilaterally imposed by the will of a monarch. Even still, the Federal Reserve has yet more power than the monarchs of yore. In the past governments were limited in their ability

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39. *See generally,* Neil H. Buchanan & Michael C. Dorf, *Don't End or Audit the Fed: Central Bank Independence in an Age of Austerity*, 102 CORNELL L. REV. 1, 21–25 (2016) (explaining the need for agency independence).

As this article approaches printing the Supreme Court has affirmed the independence of the Federal Reserve, even as it removed "independence" from other independent agencies. *See Trump v. Cook,* No. 25A312, 2026 WL 1855613 (U.S. June 29, 2026) (holding Federal Reserve members are independent); *Trump v. Slaughter*, No. 25-332, 2026 WL 1855612 (U.S. June 29, 2026) (overturning *Humphrey's Executor* and confirming the unitary executive theory).

40. *See* Buchanan & Dorf*, supra* note 39.

41. *See id.* at 24 (acknowledging the problem and proposing that accountability could come, at least theoretically, through Congress ending the Federal Reserve Bank by statute).

42. *See* Aditya Bamzai & Aaron L. Nielson, *Article II and the Federal Reserve*, 109 Cornell L. Rev. 843, 853 (2024) (noting that it was considered desirable to have economists unaccountable to political processes).

43. *See* 12 U.S.C. § 242.

44. *See id.* ("unless sooner removed for cause by the President"); *Cook,* No. 25A312 at *14 ("monetary policy should not be subject to political interference"). *See also* Bamzai & Nielson, *supra* note 42, at 845–54 (explaining the reasons for their independence and the Supreme Court's decision in *Myers*, *Humphrey's Executor*, *Collins* and *Seila Law*); *Slaughter*, No. 25-332 at 21 (overruling *Humphrey's Executor,* because the President "alone is vested with "[t]he executive Power" of the United States").

45. *See* Bamzai & Nielson, *supra* note 42, at 845–54. *See also* Yair Listokin & Daniel Murphy, *Macroeconomics and the Law*, 15 ANN. REV. L. & SOC. SCI. 377, 386 (2019) ("[C]entral banks generally enjoy extraordinary independence . . . have almost unlimited discretion . . . . Central banks thus enjoy an extraordinary amount of 'power and independence'").

to control currency supply by the market forces of precious metals, and their inherent scarcity.[46] While a sovereign's imprint on a coin did add value, the sovereign's reputation only went so far; ultimately physical metal was the key impediment to a sovereign's ability to freely expand their currency supply. By contrast, Central Banks today can issue currency without physical limitation.[47]

C. Colonization Via Currency—The Power and Danger of Central Banks

Central Bank independence from the political process is a matter of significant concern because a citizen's wealth is stored in his country's currency. Much like we think citizens should get to vote for their political governance, they should be entitled to participate in the store of their wealth. This isn't some hypothetical slippery slope, but a reality felt today in several African countries.

Most are unaware that a direct descendant of the French Franc *currently* exists. After all, France switched to the Euro in 2002, ending use of the French Franc.[48] But French imperialism's relic is the Central African Franc and the West African Franc, both of which are controlled by the French Treasury.[49] Typically, both are known as the "CFA Franc," because their value is identical.[50] Some countries have even voluntarily joined the CFA currency, seeking trust and fidelity in response to their own failed Central Bank management[51] (much like other countries use the US Dollar for the same reason).[52] But not all countries have voluntarily accepted the CFA. While the government of France claims that countries are free to leave the CFA at any

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46. Brzezinski, et al., *supra* note 12, at 4 (noting the differences between commodity currencies and fiat currency).

47. *But see* Listokin & Murphy, *supra* note 45, at 388 ("Because financial institutions affect the money supply, the central bank lacks *complete* control over the money supply") (emphasis added).

48. *See* Barry James & John Schmid, *An Extraordinary Moment for Europe as Euro Becomes Everyday*, N.Y. TIMES (Jan. 1, 2002), https://www.nytimes.com/2002/01/01/news/an-extraordinary-moment-for-europe-as-euro-becomes-everyday.html [https://perma.cc/GPZ2-7WMP]. Although it was predicted the Euro would spread to the CFA zone, this did not come to pass.

49. *See The CFA Franc Zone*, BANQUE DE FRANCE (Nov. 2015), publications.banque-france.fr/sites/default/files/medias/documents/816153_fiche_zone-franc.pdf [https://perma.cc/TVQ2-9XZZ].

50. *Id.* The CFA is used in Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo, Guinea Bissau, Cameroon, Congo, Gabon, Equatorial Guinea, Central African Republic, Chad and Comoros. *Id.*

51. *See Franc Zone*, FRANCE DIPLOMACY (last updated Dec. 2021), https://www.diplomatie.gouv.fr/en/country-files/africa/franc-zone/#sommaire_2 [https://perma.cc/7MSD-WPKA] (noting that Mali temporarily exited the CFA zone before rejoining).

52. Christy Lowry, *All About Dollarization: Which Countries Use USD (and Why)*, WESTERN UNION (Nov. 7, 2023), https://www.westernunion.com/blog/en/us/all-about-dollarization-which-countries-use-usd-and-why/ [https://perma.cc/NEZ4-VEDK] (noting that Micronesia, Palau, and Panama, among others, use the U.S. dollar).

time, changing currencies is not as easy as choosing a vendor for an oil change.[53] New currencies must be exchanged for the old, they must be widely adopted and accepted to be useful for private exchanges, and users must trust that the issuing sovereign is trustworthy as a guarantor. These are not small hurdles to overcome.

France imposes strict monetary requirements on its former vassal CFA states.[54] Because the CFA is controlled by France's own central bank, France determines important aspects of monetary and economic policy in those nations.[55] Thus, Central Bank currency is utilized as a form of monetary imperialism within CFA countries.[56] The CFA Franc is backed by the faith and trust of a *foreign* sovereign government—a sovereign that doesn't even use its own currency, but whose currency control power extends *solely* to its former vassal states.

The CFA illustrates the power of currency control for continued colonization, and limiting the sovereignty of the local population. While it is true that generally Central Banks do a good job of managing their currencies, the many exceptions reveal how much power is entrusted to them.[57] As noted, the powers of Central Banks are both necessary and risky. Money is a critical part of the political process and the ability of the citizenry to self-govern. Our Constitution protects citizens from the forced quartering of soldiers or deprivation of wealth without due process, so it seems that Central Banks run

53. *See Franc Zone, supra* note 51 ("Each country is free to leave the Franc Zone, either temporarily (like Mali) or permanently (like Guinea, Mauritania and Madagascar)."); Cheikh Ahmed Bamba Diagne, *Why Abandoning the CFA Franc Would Be a Risky Operation*, THE CONVERSATION (last updated Nov. 8, 2019), https://theconversation.com/why-abandoning-the-cfa-franc-would-be-a-risky-operation-120551 [https://perma.cc/6NCR-26NN] (noting the many challenges facing countries that are considering leaving the CFA).

54. *See* Ndongo Samba Sylla, *The CFA Franc as a Vivid Symbol of Colonial Continuities in Francophone Africa*, TAX JUST. NETWORK (Mar. 22, 2021), https://taxjustice.net/2021/03/22/the-cfa-franc-as-a-vivid-symbol-of-colonial-continuities-in-francophone-africa/ [https://perma.cc/U3DH-6S76] (noting how the French government exercises control by sitting on the governing boards, having an implicit veto power, and requiring its vassals to deposit 50% of their reserves with the French Treasury).

55. *Id.* (giving examples of the tension between French interests and the CFA nations).

56. *Id.* ("The persistence of neo-colonial monetary and financial relationships has favoured neither structural transformation nor regional integration, and has done even less for the economic development of the CFA countries."). The article also notes how the CFA regime "favours a particular type of political leadership. Those who can aspire to lead CFA countries are those who will not question its limitations." *Id.*

57. As an example, take Israel. Its current currency, the New Shekel, has been used for forty years. Yet when it was first issued in 1985, it was the nation's *fourth* currency in its first thirty-seven years (the Pound, Lira, Shekel, and New Shekel). *See* Vavi Toran, *Money Talks: The Story of Israel as Told by Banknotes*, THE ICENTER FOR ISRAEL EDUCATION, https://theicenter.org/wp-content/uploads/2021/02/MoneyTalks_final.pdf [https://perma.cc/U5FU-KNKL] (last visited Apr. 14, 2026).

afoul of constitutional principles by alienating the powers of currency control to an independent body of experts.[58]

D. Bitcoin, Ethereum and Decentralized currency

The new kid on the block is decentralized currency, particularly Bitcoin and Ethereum. In 2009, Satoshi Nakamoto[59] first proposed a trust-less, decentralized financial system.[60] By its code, the maximum number of Bitcoin issued is limited to 21,000,000.[61] This means that, unlike fiat currencies, a Central Bank could not "print" more currency. Devaluation of cryptocurrency by a centralized actor (like the Fed's QE facility) is also impossible.

Digital wallets provide for anonymity and the decentralized structure requires no counterparty (e.g., bank) trust.[62] Satoshi's proposal called for using shared computer power to solve complex privacy equations thereby creating an immutable ledger that stores wallet balances.[63] The ledger's history cannot be changed, its future records can only be added on top of an accurate copy of earlier records and the integrity of any ledger copy is easily verified.[64] This immutable ledger, or "blockchain," records all wallets' credit and debit balances.[65] Every Bitcoin ever created (or "mined") was initially awarded for contributing computing power to validate the transactions, a process called "mining."[66] Mining and ownership are entirely distinct: Every bitcoin has at one point been given to "miners" for maintaining and adding transactions to the blockchain; "owners" are those with a verified positive ledger balance on a blockchain wallet they control and whose transaction history traces its bitcoins to the moment when they were given to a miner.[67]

Ethereum expanded on Bitcoin's potential. Unlike Bitcoin, which is limited to basic transactions, Ethereum expanded the concept to support

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58. *See* Trump v. Cook, No. 25A312, 2026 WL 1855613 at *19–21 (U.S. June 29, 2026) (Thomas, J., dissenting) (noting that President Wilson wanted the executive power of Central Bankers to be removed from the political process because expert governance was better than the people's).

59. A pseudonymous privacy and digital currency expert. *See Satoshi Nakamoto,* ENCYCLOPEDIA BRITANNICA (July 30, 2026), https://www.britannica.com/biography/Satoshi-Nakamoto [https://perma.cc/LPJ4-JXR9].

60. Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, available at https://Bitcoin.org/Bitcoin.pdf [https://perma.cc/GMU2-6CM7]. Satoshi is a pseudonym; his true identity remains unknown.

61. *Id.*

62. *Id.* In traditional finance, a bank transfer requires the use of trusted parties—such as the bank itself.

63. *Id.*

64. *Id.*

65. *See* Nathan Peterson, *What is Cryptocurrency and how does it work?*, Charles Schwab, available at https://www.schwab.com/learn/story/cryptocurrencies-what-are-they [https://perma.cc/Z3HA-5TQV].

66. Nakamoto, *supra* note 60.

67. *Id. See also* Peterson, *supra* note 65.

virtually any type of transaction.[68] Most specifically, the Ethereum blockchain provides for "smart contracts," trust-less contracts that execute when specified conditions are met.[69]

The cryptographical proofs used to maintain the integrity of the blockchain are the reason that Bitcoin and Ethereum are called cryptocurrencies.

Decentralized currency solves the governance problem in the Central Bank model by moving the authority to a collective decision-making body that does not require the trust of expert central bankers. Bitcoin has a limited fixed supply.[70] And Ethereum, while not as rigid, still has a limited growth rate.[71] By contrast, in a few short weeks in 2020, the Federal Reserve increased its balance sheet by almost three trillion Dollars.[72] In plain terms, the Federal Reserve "printed money" to purchase securities on the open market.[73] While it might seem reasonable that such drastic measures were necessary to combat the economic harm wrought by the COVID-19 pandemic, when quantitative easing was introduced in 2008, it took years to expand the balance sheet by the same amount.[74] True, both events required a strong Central Bank response, but it still highlights the question: *who* gets to decide? As noted, the advantage of a Central Bank response is the very same cause for concern.[75] And it's also true that there have been extreme economic and commodity supply events that impacted

68. Vitalik Buterin, *Ethereum: A Next-Generation Smart Contract and Decentralized Application Platform*, ETHEREUM (2014), https://ethereum.org/content/whitepaper/whitepaper-pdf/Ethereum_Whitepaper_-_Buterin_2014.pdf [https://perma.cc/T7PR-PDH2].

69. For example, a contract could specify that credits to a wallet are divided proportionally and sent to a group of users. Thus, royalties can be divided up without the need to trust the custodian to make the distributions. *See, e.g.*, Alexandre C. Moreaux & Mihai P. Mitrea, *Royalty-Friendly Digital Asset Exchanges on Blockchains*, 11 IEEE ACCESS 56235 (2023), (Oct. 5, 2023) https://hal.science/hal-04230141v1 [https://perma.cc/MS6M-X5SG].

70. *See* Daniel Gray, *Understanding Bitcoin and Ethereum Supply*, FIDELITY DIGIT. ASSETS (Nov. 28, 2023), https://www.fidelitydigitalassets.com/research-and-insights/understanding-Bitcoin-and-ethereum-supply [https://perma.cc/7PH2-ZKGE].

71. *Id.*

72. On Mar. 4, 2020 the Federal Reserve's balance sheet was 4.144 trillion dollars; by June 11, 2020 the balance sheet had exploded to $7.113 trillion Dollars. *Compare* balance sheet on March 5, 2020, *with* June 4, 2020. Federal Reserve Balance Sheet: Factors Affecting Reserve Balances–H.4.1, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/releases/h41/ [https://perma.cc/9R8Z-5AN2] (last visited Apr. 14, 2026).

73. *History of Quantitative Easing in the U.S.*, AM. DEPOSIT MGMT. (Nov. 5, 2025), https://americandeposits.com/insights/history-quantitative-easing-united-states/ [https://perma.cc/C3DL-KLR9] ("This process is commonly referred to as 'printing money,' although it is accomplished digitally.").

74. To be sure, low interest rates alleviated the need to utilize quantitative easing following the great recession. *Id.* On September 18, 2008 the Federal Reserve's balance sheet was only 931 billion dollars, and by the end of 2013 the balance sheet had grown by roughly the same three trillion dollars. *See* Federal Reserve Balance Sheet: Factors Affecting Reserve Balances–H.4.1 (*compare* H.4.1 on Sept. 18, 2008, *with* H.4.1 at the end of Dec. 26, 2013).

75. *See supra*, Part I.B.

precious metal currency as well. Much like the Federal Reserve flooded the markets with Dollars, the Spanish Conquistadors flooded Europe with New World gold and silver in the seventeenth century.[76] As one might have expected, it resulted in devalued currency and inflation.[77] However, given the physical reality of precious metal, radical changes to the global commodity supply are uncommon,[78] whereas the poor choices of central bankers fill books with at least fifty-six episodes of failed fiat currencies.[79] Because it is primarily market driven and user/participant governed, in many ways cryptocurrency can be the currency of the people, free from the hands of government intervention.

Decentralized currency removes the choice from unelected centralized actors. Users choose to participate in the currency, set exchange rates by market forces, and sometimes vote on proposals for change.[80]

To reiterate, this Note is not about economic theory; I take no position on which provides better economic impact. It may very well be that precious metal currency has caused all sorts of hardships.[81] There are problems with both precious metal currencies and Bitcoin.[82] This Note's focus is on the merits of the governance model.

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76. Mark Cartwright, *The Silver of the Conquistadors*, WORLD HIST. ENCYCLOPEDIA (Aug. 15, 2022), https://www.worldhistory.org/article/2049/the-silver-of-the-conquistadors/ [https://perma.cc/K9K4-ZNUC].

77. *Id.* ("The massive influx of American silver and gold to European markets caused hyperinflation, not then a concept understood by many economists. Prices of commodities increased by 400% over the 16th century, and Spanish exports suffered as a consequence").

78. This is not to say that precious metal currency failures have not occurred, or that they are inflation proof. Neither is historically true. I only note that compared with the ease of currency supply expansion in fiat currency, precious metal commodities are more difficult.

79. *See* Steve H. Hanke & Nicholas Krus, *World Hyperinflations*, Cato Working Paper (Aug. 15, 2012) www.cato.org/sites/cato.org/files/pubs/pdf/workingpaper-8_1.pdf [https://perma.cc/4QX5-V52D]. *See also* Chris Thomas, *The World's 20 Greatest Currency Failures*, GOLD IRA GUIDE (Jan. 5, 2025), https://goldiraguide.org/the-worlds-greatest-currency-failures/ [https://perma.cc/P4DY-K47Z].

80. Cryptopedia Staff, *Bitcoin Forks: Upgrades and Radical Blockchain Changes*, CRYPTOPEDIA (Jan. 2, 2026), https://www.gemini.com/cryptopedia/Bitcoin-fork-protocol-upgrades-blockchain-changes [https://perma.cc/UWY8-RVRD] (explaining the shared decision making involved in changes to the protocol).

81. For example, many scholars believe that the gold standard resulted in the *in*effectiveness of the Federal Reserve during the great depression, and that a centralized authority could prevent a similar response to economic calamity. *See* Gary Richardson, *The Great Depression*, FED. RSRV. HIST. (Nov. 2, 2013) https://www.federalreservehistory.org/essays/great-depression [https://perma.cc/RVP8-X6L4] (noting that scholars believe the inflexibility of the international gold standard prevented the federal reserve from acting).

82. This Note's theoretical focus does not address the practical challenge of speculators, which presents for bitcoin as well as precious metals. *See e.g.*, *Silver Thursday*, Encyclopedia Britannica ("By 1979, [the Hunts] had engineered a genuine shortage of the metal. The Hunts owned $4.5 billion worth of silver, representing about 70 percent of the world supply.").

II. LEGAL BACKGROUND

Bitcoin, among other decentralized currencies, is hard to define by reference to existing legal frameworks.[83] Varying theories and agency guidance differ on Bitcoin's most suitable legal characterization.[84] Different regulators have implemented what they think is most prudent, but inconsistencies remain.

A. Property & State Law

1. State Law

The Constitution protects "property" interests.[85] The Supreme Court held that the "hallmark of property" is "an individual entitlement grounded in state law,"[86] and a "legitimate claim of entitlement."[87] Property is not created by the Constitution, but rather is "defined by existing rules or understandings that stem from an independent source such as state law."[88] Thus the Court found a variety of interests protected as property, such as utility services, a horse trainer's license, welfare benefits, a driver's license and high school education.[89]

Most states have at least some regulations that touch on Bitcoin. Many include Bitcoin in money transmission regulations.[90] Several have no regulations at all.[91]

New York was an early mover on cryptocurrency regulation; it adopted a Bit License regulatory framework in 2015.[92] The framework suggested Bitcoin was a property asset, because it applied abandoned property law to virtual currency.[93]

Also in 2015 came a revision to the Uniform Fiduciary Access to Digital Assets Act ("UFADAA"), making clear that fiduciary duties extended to virtual

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83. *See e.g.*, Eric D. Chason, *Crypto Assets and the Problem of Tax Classifications*, 100 WASH. U. L.REV. 765, 780-81 (2023) (noting that any tax definition comes with multiple tradeoffs).

84. *See* J. Dax Hansen & Joshua L. Boehm, *Treatment of Bitcoin under U.S. Property law*, PERKINS COIE (Mar. 2017), https://www.wyoleg.gov/InterimCommittee/2018/S3-20180524Property-BitcoinasProperty.pdf [https://perma.cc/DD5G-6GCY].

85. *See* U.S. CONST. amends. V & XIV.

86. Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982) (an employee's right to an employment commission hearing is a property interest).

87. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972).

88. *Id.*

89. *Logan*, 455 U.S. at 430. *See also Bd. of Regents*, 408 U.S. at 576 ("property interests—may take many forms.").

90. *See* Joseph Jasperse, *50-State Review of Cryptocurrency and Blockchain Regulation*, (last updated Feb. 2023), https://stevenscenter.wharton.upenn.edu/publications-50-state-review/ [https://perma.cc/9QW7-MTHQ].

91. *Id.*

92. N.Y. COMP. CODES R. & REGS. tit. 23 § 200 (2015) (Virtual currency regulations).

93. N.Y. COMP. CODES R. & REGS. tit. 23 § 200.12(c) (2015). *See also* N.Y. COMP. CODES R. & REGS. tit. 23 § 200.9(c) (speaking of virtual currency as an "asset").

currencies.[94] The UFADAA considers virtual currency to be a "digital asset," also suggesting a property interest.[95] Some states appear to recognize a property interest in Bitcoin, some have even adopted regulatory frameworks, though there is no uniform recognition for the most suitable framework.

2. IRS

The IRS also treats Bitcoin as a property interest when taxing realized capital gains.

When an asset is exchanged at a capital gain, the taxpayer must pay a capital gains tax.[96] Conversely, when an asset is sold at a loss it reduces tax liability.[97] The specific rules vary across asset classes and the IRS provides specific guidance on class treatment for tax purposes.[98] For example, a taxpayer might choose to sell stock at a loss to get a tax deduction, but immediately purchase the same asset back as a long term investment. Congress implemented "wash sale" rules that apply to securities to prevent taxpayers from taking advantage of short-term losses.[99] Similarly, to encourage improvement of real estate assets, Congress provides tax deferment for exchanging similar real estate properties, even though the exchange realizes significant capital gains.[100]

With cryptocurrency, major questions abound. Is the purchase of an item using cryptocurrency as a medium of payment a taxable event? Perhaps it should be treated as foreign currency so that transactions under $200 would be exempt under the *de minimis* exception.[101]

To answer these questions the IRS published its first treatment of Bitcoin for federal taxes in 2014.[102] The notice considered "virtual currency" to be property for tax purposes, and considered any Bitcoin transaction, even a purchase made with Bitcoin, as a taxable event.[103] It also provided that "mining," the process of earning Bitcoin by participating in the blockchain's verification, is taxable upon receipt as gross income.[104]

This differentiates it significantly from foreign currency as well as securities.[105] First, there is no $200 de minimis exemption that applies to foreign

94. Revised Uniform Fiduciary Access to Digital Assets Act (2015).

95. *Id.* at 2.

96. I.R.C. § 1222 (regulating long term capital gains).

97. I.R.C. § 1211.

98. *See generally* I.R.C. §§ 1231-1260.

99. I.R.C. § 1091 (regulating wash sale taxes).

100. I.R.C. § 1031.

101. I.R.C. § 988. Foreign currency is subject to a $200 *de minimis* exception, for personal transactions when the currency is used as a medium of exchange. *Id.* (e)(2).

102. *Notice*, 2014-16 I.R.B. 938 (IRS NOT. 2014).

103. *Id.*

104. *Id.* (A-9).

105. I.R.C. § 988.

currency.[106] Second, Bitcoin is taxed at lower rates for long term capital gains, unlike foreign currency where there is no discount for long term capital gains.[107] Third, it distinguished Bitcoin from securities because Bitcoin tax losses resulting from "wash sales," are deductible.[108] Finally, the IRS also advised that the 1031 exchange, which traditionally allowed tax deferments to exchanges of "like" property, does not apply to Bitcoin.[109]

In sum, IRS treatment of Bitcoin reflects a difficult tension of how to categorize a new development within traditional frameworks. While IRS treatment of crypto is a matter of pragmatic tax policy, it underscores that the principles of defining the various classes of financial instruments don't easily fit Bitcoin. The decision to characterize cryptocurrency as property brings some favorable treatment, like long term capital gains. But at the same time, because it isn't a currency it lacks the benefit of the *de minimis* exception that foreign currency transactions enjoy.

B. Currency

The Financial Crimes Enforcement Network (FinCEN), part of the United States Treasury, considers virtual currency as just that: a currency.[110] Hence, a cryptocurrency exchange is required to register as a Money Services

106. *See* Alex Ankier, *Debugging IRS Notice 2014-21: Creating A Viable Cryptocurrency Taxation Plan*, 85 BROOK. L. REV. 883, 902–905 (2020) (noting that treating cryptocurrency as a currency "will lead to the IRS foregoing a significant source of tax revenue").

107. *See* Chason, *supra* note 83, at 778. Foreign currency gains are treated as ordinary income, I.R.C. § 988(a)(1)(A), which do not have the benefits of long-term capital gains taxes that are taxed at lower rates. *See* I.R.C. § 1(h) (long term capital gains tax).

108. *See* Chason, *supra* note 83, at 785–89 (noting the statutory basis for this rigidity, even though the logic behind disallowing wash sale rules should apply to cryptocurrency as well). An investor could sell bitcoin at a loss during a market downturn, generating a tax deduction because of the loss. But the investor could immediately reinvest in the same bitcoin to keep his long-term investment. Under "wash sale" rules for securities, this isn't allowed.

109. *See* I.R.S. CCA 202124008 (June 18, 2021) (rejecting applying the § 1031 exchange framework to cryptocurrency transactions). This only applied to transactions prior to 2018, after which I.R.C. § 1031 was limited to only real property. *See* Chason, *supra* note 83, at 811; Act of Dec. 22, 2017, Pub. L. No. 115-97, § 13303, 131 Stat. 2054, 2123 (2017) ("Section 1031(a)(1) is amended by striking "property" each place it appears and inserting "real property.").

110. Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001, Department of the Treasury, Financial Crimes Enforcement Network (Mar. 18, 2013) (noting that "FinCEN's regulations define currency . . . as 'the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance.'" So even though virtual currency "does not have all the attributes of real currency [or] . . . legal tender status in any jurisdiction[,]" still FinCEN "does not differentiate between real currencies and convertible virtual currencies. Accepting and transmitting anything of value that substitutes for currency makes a person a money transmitter under the regulations implementing the BSA.").

Business.[111] This understanding reflects that cryptocurrency has several of the incidents of money, most notably, a unit of exchange.[112]

C. Security?

The Securities and Exchange Commission (SEC) was created after the Great Depression in response to bad behavior in the financial markets.[113] The Securities Act of 1933 empowered the SEC to control the issuance of securities as well as brokers and exchanges.[114] Defining a "security" was the question the Supreme Court faced in a case involving a Florida orange grove.[115] W.J. Howey Co., purported to be selling real estate space in an orange grove, while Howey-in-hills Inc. managed the "real estate" investment (orange trees) and returned the profits.[116] The Court eschewed security formalities and instead introduced a functional test.[117] It held a security was defined as: (1) an investment, (2) with a common enterprise, (3) an expectation of profits and (4) those profits are derived from the work of others.[118] Thus, the Court held that the contracts were in fact securities and not real estate property interests.[119]

In another landmark case, the Court broadened the definition, holding that *any* note is a security unless it bears a "family resemblance" to other assets that are not securities.[120] It also applied a multi-factor test for determining what a security is.[121] First, the motivations of the seller and buyer: If the note was sold as a capital raising scheme and the buyer purchased it for his expectation of profits, it is likely to be a security.[122] Second, the distribution of the instrument: Is it available on markets for common trading or speculation?[123] Third, the "reasonable expectation of the investing public:" If the public considers a note

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111. *Id.* ("An administrator or exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason is a money transmitter under FinCEN's regulations . . . .").

112. *Id.*

113. Securities Act of 1933, 73 Cong. Ch. 38, May 27, 1933, 48 Stat. 74, codified at 15 U.S.C. § 77. *See* also S. REP. NO. 73-1455, at 5, 47, 55 (1934) (documenting the manipulative and deceptive practices that resulted in the Great Depression).

114. *See* 15 U.S.C. § 77(e); § 77 (f); § 77 (o).

115. SEC v. W.J. Howey Co., 328 U.S. 293 (1946).

116. *Id.* 295–97.

117. *Id.* at 297–98. *See also* Reves v. Ernst & Young, 494 U.S. 56, 61 (1990) (in defining securities "we are not bound by legal formalisms, but instead take account of the economics of the transaction under investigation.").

118. *Howey,* 328 U.S. at 298–99.

119. *Id.* 299–301.

120. *Reves*, 494 U.S. at 65.

121. *Id.* at 66.

122. *Id.* But if it was intended to "facilitate the purchase and sale of a minor asset or consumer good, to correct for the seller's cash-flow difficulties, or to advance some other commercial or consumer purpose, on the other hand, the note is less sensibly described as a 'security.'"

123. *Id.*

a security, then courts are more likely to treat it as a security, even if it functions more like a loan.[124] And fourth, whether another regulatory scheme reduces the risk associated with the instrument; there is no need for the securities act in an already regulated environment.[125]

Fitting cryptocurrency into the *Howey* test is not an easy task.[126] For Bitcoin, it seems fair that it fails the *Howey* test at the first step: It isn't an investment or a sale of securities.[127] The first Bitcoin was mined, not sold. Further, as a decentralized non-entity, it may fail the "common enterprise" test of step two.[128] Although it could conceivably be argued that contributing computing power is the "investment" and a decentralized network is a "common enterprise," this seems to be quite a stretch.[129] In a speech in 2018, the SEC Director of Corporate Finance, William Hinman, argued that Bitcoin was not a security.[130] To Hinman, the lack of centralized authority was dispositive.[131] Moreover, even if Ether was a security at the time it was first sold to investors, because it later became decentralized, it lost its status as a security.[132]

But it isn't that simple. More recently, the SEC has seemingly become ambivalent about Ether's status as a security.[133] After the "merge" Ether can be staked for rewards, so then-SEC Chair Gensler suggested it met the *Howey* test.[134] The theory is that staking creates the common enterprise, since each validator must deposit tokens into the network resulting in a pooling of assets.[135] This varies from the 2018 position that Ethereum (and other crypto) are not securities. Additionally, Ethereum's development has been largely centralized

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124. *Id.*

125. *Id.* at 67.

126. *See generally* Justin Henning, *The Howey Test: Are Crypto-Assets Investment Contracts?*, 27 U. MIAMI BUS. L. REV. 51 (2018).

127. *See id.* at 65 ("there are many reasons one would buy Bitcoin or Ethereum not as an investment").

128. *Id.* at 66–68 ("Unlike a share of common stock where a company issues shares, people pay for them, and the proceeds go to the company, there is no Bitcoin company.").

129. *See id.* (suggesting and rejecting other theoretical basis to satisfy the common enterprise test).

130. William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June. 14, 2018), https://www.sec.gov/newsroom/speeches-statements/speech-hinman-061418 [https://perma.cc/S2NY-WQWC].

131. *Id.*

132. *Id.*

133. *See* Quinn Emanuel, *Ethereum's Switch to Proof of Stake Changes Securities Risks*, QUINN EMANUEL ON THE BLOCK (Spring 2023), https://www.quinnemanuel.com/the-firm/publications/ethereum-s-switch-to-proof-of-stake-changes-securities-risks/#_ftnref30 [https://perma.cc/F3UQ-HMT4].

134. *Id.*

135. *See* Maxwell Holleman, *Crypto Classification Confusion: A Recommendation To Not Regulate Ethereum Under Securities Laws*, 51 FLA. STATE U. L.REV. 1,12 (2024).

by Buterin and the Ethereum foundation, so the third element of *Howey* could be met—reliance on others.[136]

To be sure, it seems that the "wild west" of cryptocurrency (the lack of an issuing sovereign and concerns of manipulation) is the type of concern that led to the creation of the SEC in the first place.[137] And given the SEC's prominence in securities markets regulation, the SEC would be most suitable to provide a regulatory regime for cryptocurrency.[138] Nevertheless, most recently Paul Atkins, the current SEC chair, stated that "Ether is not a security."[139] And while for now both Bitcoin and Ether are not securities, former Chairman Gensler was very vocal that most other digital assets are securities.[140] Since the Supreme Court has applied a functional test to the Securities Act, further litigation will have to apply *Howey* on a case-by-case basis to determine which cryptocurrencies are securities in the eyes of the law.[141]

D. Commodity

In September 2015, the Commodity and Futures Trading Commission (CFTC), announced that Bitcoin, along with other virtual currencies are commodities within the meaning of the Commodity Exchange Act (CEA).[142] In

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136. *Id. See also,* Quinn Emanuel*, supra* note 133, ("Chair Gensler's view ought to be considered in light of his belief, expressed in 2018, that Ether was relatively centralized in comparison to Bitcoin, which both he and his predecessor have suggested is not a security due to its high decentralization and lack of intermediaries.").

137. *See* Gary Gensler, *Remarks Before the Aspen Security Forum*, (Aug. 3, 2021), https://www.sec.gov/newsroom/speeches-statements/gensler-aspen-security-forum-2021-08-03 [https://perma.cc/LFC6-873T] ("Right now, we just don't have enough investor protection in crypto. Frankly, at this time, it's more like the Wild West."); Todd Phillips, *The SEC's Regulatory Role in the Digital Asset Markets, Center for American Progress*, Oct. 4, 2021, https://www.americanprogress.org/article/secs-regulatory-role-digital-asset-markets/ [https://perma.cc/SG92-QDFY].

138. Todd Phillips*, supra* note 137.

139. Paul Atkins, *CNBC Excerpts: SEC Chair Paul Atkins Speaks with CNBC's "Squawk Box" Today*, CNBC (July 21, 2025), https://www.cnbc.com/2025/07/21/cnbc-excerpts-sec-chair-paul-atkins-speaks-with-cnbcs-squawk-box-today.html [https://perma.cc/4235-GGSV]. *See also* Moon5labs, *SEC Confirms: Ethereum Is Not a Security, Says Chairman Paul Atkins*, BINANCE SQUARE (July 22, 2025), https://www.binance.com/en/square/post/27278589735818 [https://perma.cc/2PY8-YSCC] (noting how under Chairman Gensler Ether's status was uncertain).

140. Gensler, *supra* note 137. "Make no mistake: It doesn't matter whether it's a stock token, a stable value token backed by securities, or any other virtual product that provides synthetic exposure to underlying securities. These products are subject to the securities laws and must work within our securities regime." *Id.* He also noted his agreement with previous chairman Clayton, that every ICO (initial coin offering) is a security. *Id.*

141. Ethan Johnson, *Deficiencies in the Judicial Classification of Cryptocurrencies Indicating the Need for Legislative Alternatives*, 51 J. LEGIS. 135, 158 (2025) (noting "the likelihood that courts will apply the *Howey* test inconsistently" in future cases, and therefore pushing for a legislative alternative).

142. Press Release: PR7231-15, *CFTC Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for*

2021 a CFTC commissioner tweeted his opinion, that the SEC did not have authority over pure commodities like crypto assets.[143] And the Eastern District of New York affirmed CFTC's authority.[144] It found that virtual currency could be defined as "goods" for the purpose of the CEA's definition of commodities, even as it acknowledged that authority for Bitcoin's regulation might be given to two regulatory agencies.[145] While Black's Law Dictionary defines "commodity" as an "article of trade or commerce" that includes "only [] tangible goods,"[146] the court ignored the "tangible" qualifier.[147] Because the word "tangible" was judicially expanded to include gas, therefore the court was open to other "intangible commodities," even if the statute was primarily intended to regulate agricultural commodities.[148]

But there is a notable limitation to CFTC's authority over cryptocurrency. CFTC does not regulate commodities themselves.[149] Rather CFTC only regulates derivatives (futures, swaps and options) as well as commodity

Trading or Processing of Swaps without Registering (Sept. 17, 2015), https://www.cftc.gov/PressRoom/PressReleases/7231-15 [https://perma.cc/6WUM-ZRMA].

143. @CFTCquintenz, Twitter (Aug. 4, 2021, 9:30 AM), https://twitter.com/cftcquintenz/status/1422912721637580803?lang=en [https://perma.cc/43HB-NE9T]. *See also* Keri E. Riemer, *CFTC and SEC Perspectives on Cryptocurrency and Digital Assets—Volume I: A Jurisdictional Overview* (May 6, 2022), https://www.klgates.com/CFTC-and-SEC-Perspectives-on-Cryptocurrency-and-Digital-Assets-Volume-I-A-Jurisdictional-Overview-5-6-2022 [https://perma.cc/HB9Z-NXPU].

144. Commodity Futures Trading Comm'n v. McDonnell, 287 F. Supp. 3d 213, 228 (E.D.N.Y. 2018), *adhered to on denial of reconsideration,* 321 F. Supp. 3d 366 (E.D.N.Y. 2018).

145. *Id.* ("The jurisdictional authority of CFTC to regulate virtual currencies as commodities does not preclude other agencies from exercising their regulatory power . . . .").

146. *Commodity*, BLACK'S LAW DICTIONARY (10th ed. 2014).

147. *See McDonnell*, 287 F. Supp. 3d at 225.

148. *Id. See also* 17 C.F.R. § 1.3 (2021) (defining commodity very broadly, including "services, right and interest," except onions and motion picture box office receipts!); *Introduction to Derivatives and the Commodity Futures Trading Commission*, CONG. RSCH. SERV. (Mar. 13, 2025) (hereinafter "CRS on Derivatives") https://www.congress.gov/crs-product/R48451 [https://perma.cc/AA9G-XW39] (noting that enforcement authority was initially vested in agricultural agencies because of the "market's historical origins in agricultural commerce").

149. CRS on Derivatives, *supra* note 148 ("However, the CFTC lacks broader statutory authority to regulate trading on spot (in contrast to derivative)" thus for cryptocurrency regulation "the CFTC lacks authority under the CEA to regulate direct sales of crypto, to require trading platforms for spot crypto sales to register with the CFTC, . . . to regulate such platforms' capital or risk management practices or investor disclosures, or to examine its records."). *See generally,* Michael L. Spafford, Patricia Liverpool & Paige Rinderer, *What You Should Know About the CFTC, Part 1: The Regulatory Basics*, Paul Hastings (Sep. 24, 2025), https://www.paulhastings.com/insights/derivatives-download/what-you-should-know-about-the-cftc-part-1-the-regulatory-basics [https://perma.cc/C47X-SYE5] (noting that CFTC only regulates "commodity derivatives; it does not regulate commodities," or "spot commodity transactions—i.e., contracts for physical delivery of commodities typically within two days").

markets.[150] By contrast the SEC regulates both the issuing of securities and security markets.[151] Therefore the regulatory regime under SEC is considerably tighter than CFTC regulations.[152]

The challenge of applying securities law to cryptocurrency can be felt once again as this article nears publication. SEC and CFTC jointly released a five category taxonomy dividing cryptocurrency into different buckets, and limiting the securities bucket to only those cryptocurrencies that represent or are traditional securities.[153] The remainder of crypto assets will be under the jurisdiction of the CFTC.[154] At the same time, the Digital Markets Clarity Act (CLARITY Act) is on the Senate calendar.[155] This would codify the taxonomy of the SEC/CFTC into law, together with a number of sweeping changes in defining and regulating crypto assets.

The bottom line is that there are no straightforward applications of any of the existing regulatory frameworks to Bitcoin. The lack of a centralized authority is unique, a significant problem for securities regulation. At the same time, treating it as a commodity is also problematic because the government would be forgoing much oversight—CFTC has only limited powers. IRS would rather keep its share of the taxes that would be forgone by treating cryptocurrency as a foreign currency. But its currency aspects can't be ignored, so FinCEN treats it as such.

With no clear single framework for analysis, I propose a comparison to traditional Talmudic principles of currency governance.

III. TALMUDIC PRINCIPLES OF LEGITIMATE CURRENCY.

First, a short primer on the Talmud and its commentators. According to Jewish tradition the Torah (the five books of Moses) was Godly-given together with an oral tradition that informed the interpretation of scripture.[156] The

150. *See* Investopedia Team, *Commodity Futures Trading Commission (CFTC) Overview*, INVESTOPEDIA (May 4, 2025), https://www.investopedia.com/terms/c/cftc.asp [https://perma.cc/7K9F-2RX3] ("The commission's job is to regulate the derivatives markets in the United States").

151. *Capital Markets and Securities Regulation: Overview and Policy Issues*, CONG. RSCH. SERV. (May 2026), https://www.congress.gov/crs-product/R48521 [https://perma.cc/2PRE-P7SX] (noting the scope of SEC enforcement over security offerings and security markets).

152. CRS on Derivatives, *supra* note 148 (recognizing the limitations on CFTC authority over Cryptocurrency).

153 *See A*pplication of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13714 (March 23, 2026).

154 *Id.*

155 *See* Digital Asset Market Clarity Act of 2025, H.R. 3633. *See also* United States Committee on Banking Housing and Urban Affairs*, Chairman Scott, Senate Banking Committee Advance Clarity Act in Historic Bipartisan Vote*, May 14, 2026 https://www.banking.senate.gov/newsroom/majority/chairman-scott-senate-banking-committee-advance-clarity-act-in-historic-bipartisan-vote [https://perma.cc/4XYX-U4A7].

156. *See* BABYLONIAN TALMUD, *Temurah* 14b (William Davidson Tr.) (noting the verse speaks of the teachings as both written and oral); BABYLONIAN TALMUD*, Gittin* 60b (same). All

tradition remained unwritten until it was in danger of being forgotten.[157] At that point it was written as the *Mishnah*, by Rabbi Judah the Prince.[158] Thereafter the two Talmuds were written to elaborate on the Mishnah, further documenting the oral tradition as a commentary and guide to the implementation of scriptures as well as documenting some of the detail to scriptural stories that was maintained in the oral tradition.[159] The Talmud focuses on the process of legal reasoning, and hence discussions that negate poor reasoning, as well as debates, are common.[160] To resolve questions of Jewish law left unanswered in the Talmud, early (mostly medieval) Talmudic scholars wrote commentaries to the Talmud as well as codes of Jewish law.[161] Generally the early commentators, such as Maimonides, are respected sources of interpretation.[162] Though resolving disputes between such conflicting opinions is a matter of varying Jewish tradition, Jews of European descent (Ashkenazi) generally follow the rulings of the final generations of early scholarship, with heavy weight given to

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Talmudic sources as well as most other Jewish sources and their translations used can be found at Sefaria.org.

157. It was prohibited to write down the oral tradition barring an exigency. *See* BABYLONIAN TALMUD, *Temurah* 14b (noting that "the command 'write you these words' serves to emphasize that these words, i.e., those recorded in the Written Law, you may write, but you may not write . . . the [Mishnah or the] Oral Law." However, the law may be written down to ensure "that the Torah is not forgotten from the Jewish people entirely").

158. *See* MAIMONIDES, INTRODUCTION TO THE MISHNA § 8 (Francis Nataf, trans.) ("he gathered all of the thoughts and statements, he began to compose the Mishnah, which includes the explanation of all of the commandments that are written in the Torah. Some of them are traditions received from the mouth of [Moses] . . . . And some of them are teachings that they extrapolated by way of reason, about which no disagreement happened; and [still] some are teachings wherein disagreements occurred between two reasonings. And he wrote those with their disagreements.").

159. *See* NAHUM RAKOVER, A GUIDE TO THE SOURCES OF JEWISH LAW 43 (1994), www.daat.ac.il/daat/vl/guide/guide01.pdf [https://perma.cc/J9KN-ZFWC]. (The two Talmuds are the Babylonian Talmud, and the Jerusalem Talmud written in Israel).

160. *See id*. ("Although the Talmud is printed as a running commentary on the Mishnah, it is actually much more than a commentary. It is a wide ranging, in-depth discussion of every law of the Mishnah. The Talmud investigates the rationale and biblical sources for the laws of the Mishnah, discovers and reconciles contradictions, and settles residual legal problems by applying the principles of the Mishnah to cases not included.").

161. *See* Michael J. Broyde & Ida Bedzow, *The Codification of Jewish Law and an Introduction to the Jurisprudence of the* Mishna Berura, 35 HAMLINE L. REV. 623, 626–28 (2012) (giving the commentary of Rabbi Shlomo Itzhkaki and the Tosafist as examples of the former, and Maimonides and the "Tur" (by Rabbi Yaakov ben Asher) as examples of the latter).

162. *See* J. David Bleich, *The Principles and Nature of Jewish Law,* 40 CARDOZO L. REV. 3075, 3092 (2019) ("An informal rule arose—admitting of some exceptions—to the effect that scholars of later generations do not deviate from rulings recorded by scholars of earlier generations").

Maimonides was among Judaism's greatest philosophers, a foremost Talmudical scholar and codifier of Jewish law. *See* Kenneth Seeskin, *Maimonides*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Nov. 18, 2024), https://plato.stanford.edu/archives/win2024/entries/maimonides/ [https://perma.cc/C3DQ-ATVW] ("*Mishneh Torah* . . . established him as the leading rabbinic authority of his time and quite possibly of all time.").

tradition and practice.[163] Jews of Middle Eastern and North African traditions (Sephardic), in contrast generally follow Maimonides, with some exceptions.[164]

To understand how the Talmud, an ancient document, could possibly have anything to say about currency governance, this Note looks to the Talmudical normative reasoning by which metallic currency instantiates a sovereign's legitimacy, as interpreted by some of its commentaries.

Begin with how Jewish law treats the laws of the local (non-Jewish) sovereign. Talmudic law recognizes the results of the sovereign's taxing powers to be binding under *Jewish* law.[165] For example, if property is transferred after a tax seizure of local law,[166] the new ownership is recognized as valid under Jewish law. But this is limited to a "legitimate king," defined by Maimonides' code, as a sovereign whose currency is widely accepted.[167]

Though the currency test is used to determine the *sovereigns* legitimacy, I utilize Talmudical reasoning to argue that the method can establish a *currency's* legitimacy as well, because the jurisprudential reasons for this metric appear to stem from two components: 1) Real market forces—a democratizing feature—govern the currency's value and supply and is akin to majority rulemaking,[168] and 2) widespread use of the sovereign's currency serves as an implied vote of confidence in the sovereign's legitimacy. Both metrics can be applied to Bitcoin. It is not only like commodified currencies of yore in its real market pricing, but its widespread use provides an implication of legitimacy. Thus, in contrast with the Central Bank fiat system, Bitcoin's governance system might, in some respects, be *more* legitimate.[169]

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163. *See* Broyde*, supra* note 161, at 631 (noting that Rabbi Isserles incorporated many changes to reflect Ashkenazic practice (*Ashkenaz* encompasses most of Europe except for parts of Italy, Greece, Amsterdam and the Iberian peninsula)). The period of the medieval scholars is widely considered to be from about 1100 until around 1500 C.E. *Id.*

164. *See id.* at 629 (noting that Rabbi Karo's book, the code of Jewish Conduct, also known as *Shulkhan Arukh*, "derives most of its rules from [Maimonides] rulings").

165. *See* BABYLONIAN TALMUD, *Nedarim* 28a, *Gittin* 10b, *Bava Kama* 113b, & *Bava Batra* 54b (quoting the Talmudic expositor, Shmuel, stating that "the law of the kingdom is the law.").

166. Presuming a legitimate use of the tax power. *See* BABYLONIAN TALMUD*, Nedarim 28a*, & *Bavva Kama 113b* (noting there is no obligation for "a tax collector who has no fixed amount for collection established by the kingdom, but rather collects the tax arbitrarily.").

167. MAIMONIDES, MISHNEH TORAH, LAWS OF ROBBERY AND LOST PROPERTY 5:18. (Eliyahu Touger trans.).

168. This was true of precious metal currencies more generally.

169. I am not naïve to the boldness of this statement. It was but a few years ago where Bitcoin was called rat-poison squared, anybody trading Bitcoin was "stupid," and it was popularly thought of as an index for the demand of global money laundering. *See* Tae Kim, *Warren Buffett says bitcoin is 'probably rat poison squared'*, CNBC (May 5, 2018), https://www.cnbc.com/2018/05/05/warren-buffett-says-bitcoin-is-probably-rat-poison-squared.html [https://perma.cc/72CU-VQSE] (quoting Warren Buffet as saying that "Bitcoin is 'probably rat poison squared,'" and Charlie Munger that trading cryptocurrencies is "just dementia."); Hugh Son, Hannah Levitt & Brian Louis, *Jamie Dimon Slams Bitcoin as a 'Fraud'*, BLOOMBERG (Sep. 12, 2017), https://www.bloomberg.com/news/articles/2017-09-12/jpmorgan-s-ceo-says-he-d-fire-traders-who-bet-on-fraud-bitcoin [https://perma.cc/NBA6-UWE5] ("Jamie

Nevertheless, as will be explored in the next section, although Bitcoin might be a theoretically legitimate currency, the Talmud is unlikely to recognize Bitcoin as such a currency.

A. Dina De'Malhuta—The Talmudic Obligation To Respect Tax Law

The Talmud obligates respect of the local laws, *Dina De'Malhutah Dina*, "the law of the king"—that is, of whomever is sovereign—"is the law."[170] This is most pronounced regarding tax collections.[171] The Talmud respects the authority of the local sovereign to collect taxes and requires Jews to adhere, under *Jewish religious* law, to follow *local civil* (particularly tax) law.[172] A sovereign's civil tax law is recognized and enforceable under religious law. Obviously, credal laws are not recognized.

There is some debate about the Talmudic authority on this.[173] One approach views the sovereign as an owner over the kingdom, acquired through conquest (or the conquest of his forebearers).[174] Thus, the sovereign maintains property rights over the entire kingdom, including the ability to expel trespassers, by a first capture theory.[175] Because the king owns the land, his rules govern, especially taxes demanded of those living on the land, like rent.[176] A

Dimon said he would fire any employee trading bitcoin for being 'stupid.'"); Fred Imbert, *BlackRock CEO Larry Fink calls bitcoin an 'index of money laundering,'* CNBC (Oct. 13, 2017), https://www.cnbc.com/2017/10/13/blackrock-ceo-larry-fink-calls-bitcoin-an-index-of-money-laundering.html [https://perma.cc/4J3R-66MW].

Yet, all this Note points to is the contrast between the governance of fiat currency and Bitcoin. Fiat currency hands immense power to a group of elite central bankers, expressly to keep their decisions out of the regular political process. Although Bitcoin lacks an issuing sovereign, its value and governance is with the majority of users—the people.

170. *See* BABYLONIAN TALMUD, *Nedarim* 28a, *Gittin* 10b, *Bava Kama* 113b, & *Bava Batra* 54b. "King" is not limited to a monarch, the law applies to any sovereign.

171. *See generally* 9 EMANUEL QUINT, A RESTATEMENT OF RABBINIC CIVIL LAW, 327–36 (Gefen Publishing House, 2003) (specifying taxes as a key locus of the law amongst others). *But see* Babylonian Talmud, *Gittin* 10b (Where Samuel's statement is applied to the method of acquiring a gift i.e., a secular legal authority's document transferring possession is binding under Jewish law); MOSHE FEINSTEIN, IGROT MOSHE, 1 *Hoshen Mishpat* 78 (Hebrew) (noting that the exact parameters of the law are not very clear).

172. *See generally* QUINT, *supra* note 171 (giving additional examples of the principle's scope).

173. The practical application of this law is codified in the code of Jewish conduct. *See* SHULKHAN ARUKH, HOSHEN MISHPAT § 369. *See generally* QUINT, *supra* note 171 at 306–10 (cataloguing several theories for the law).

174. NISSIM OF GERONA, COMMENTARY ON NEDARIM 28a (Vilna ed.) (c. 1325–1375). For the source that property is acquired by a king through conquest, see SHLOMO YITZHAKI, COMMENTARY ON CHULLIN 60b:13 (Vilna ed.) (c. 1065–1115) (explaining that even though the Jews promised not to conquer Moab's territory, since Moab was conquered by Sihon first, therefore the later Jewish conquest over Moab's former territory but then under control of Sihon was not a violation of the oath).

175. NISSIM OF GERONA, *supra* note 174.

176. *Id.*

second approach argues that all the citizens submit, of their own free will, to the sovereign, and thus are bound by "all taxes, tariffs, and customs" of the sovereign's lawmakers.[177] Of course, this isn't a democratic theory; generally the sovereign was an unelected monarch. Rather, submission to the monarch was an implied contract, where the citizen pledges allegiance to the law of the land for the privilege of citizenship. This implied contract is, under Jewish law, binding.

Regardless of the theory, not all sovereigns are entitled to respect. The Talmud makes clear that an endless non-specific tax does not need to be respected.[178] After all, an unjust law is no law at all.

B. Maimonides' 'Legitimate' King—A Sovereign Whose Currency Is Accepted.

Maimonides, a "leading rabbinic authority . . . possibly of all time,"[179] is more specific. He limits the Talmud's holding to a "legitimate" king.[180] An illegitimate king is no different than an armed robber, whose actions do not have legal recognition according to Jewish law.[181] Accordingly, the "law of the land" is valid only

> [w]hen the coins issued by a king are the tender of the land. This indicates that the inhabitants of that land have accepted him and consider him to be their leader and themselves to be his subjects. If, however, the coins he issues are not the tender of the land, he is considered to be a robber who takes by the force of arms. He and his servants are like a band of armed thieves, whose laws are not binding.[182]

Thus, a legitimate sovereign is one who issues coins that are utilized by his subjects. The citizens' confidence in their sovereign's currency instantiates the sovereign's legitimacy.

A Talmudic source for this metric is not readily apparent.[183] One commentator suggests a Talmudical passage elaborating on the comments of Abigail, the soon-to-be-wife of soon-to-be King David, who tells David that he

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177. SHLOMO BEN MEIR, COMMENTARY ON BAVA BATRA 54b (Sefaria Community trans., Vilna ed.) (c.1120–1160).

178. *See* BABYLONIAN TALMUD*, Nedarim* 28a, *Bavva Kama* 113b.

179. *See* Seeskin, *supra* note 162.

180. MAIMONIDES, *supra* note 167, at 5:18.

181. *Id.*

182. *Id.* This framework is codified in Jewish law. *See* Shulchan Arukh [The Code of Jewish Conduct], *Hoshen Mishpat*, 369:2 (Sefaria Comm. Trans.), https://www.sefaria.org/Shulchan_Arukh%2C_Choshen_Mishpat.369?lang=bi [https://perma.cc/R26N-6639] ("because the people of those lands have in effect agreed that he is their master and they are servants").

183. *See* Daniel Z. Feldman, *Idol Currency*, 19 SAPIR J. 1, 3 (2025), https://sapirjournal.org/money/2025/idol-currency/ [https://perma.cc/P6B6-TLVJ] ("It is unclear whether the 'image of the king' formulation was Maimonides's innovation.").

isn't yet king.[184] At the time, King Saul was still alive and the two were locked in battle over the kingship of Israel.[185] The Talmud explains that Abigail argues to David that he is not the king because his "*tivakh*" is not being well regarded.[186] Most commentators translate the word as recognizance—David was not yet *recognized* as king.[187] Maimonides seems to have translated the word as currency, i.e., because David did not issue a currency he was not yet a legitimate king.[188] Thus Maimonides deduces from this passage that a "legitimate king" (for the purpose of following his civil laws) is defined as one whose currency is accepted.[189] If, on the other hand, the sovereign's currency is not accepted, the sovereign is not a legitimate ruler and Jewish law will not respect its civil law.

However, an explanation is in order. Why is currency acceptance the metric of a legitimate sovereign, and does that reasoning shed light on the legitimacy of a currency itself? More specifically, why is currency a proxy for legitimacy? What does the citizen's refusal to trade the sovereign's currency reveal about the nature of sovereignty?

I suggest applying Talmudic recognition of majority-rules to currency. Under this theory, a majority of currency users organized in commodity markets get to control currency supply and "legitimacy" stems from the implications of a participating majority. Thus, it is a functional analogue to the legitimacy conferred by democratic elections.

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184. *See id.*; *see also* Rabbi Eliyahu Kramer of Vilna, Glosses to *Hoshen Mishpat* 368:2, SEFARIA, www.sefaria.org/Shulchan_Arukh%2C_Choshen_Mishpat.368.1?lang=bi&with=Beur%20HaGra&lang2=en [https://perma.cc/L9R5-LZKD] (last visited April 1, 2026) (referencing the Talmudical passage in BABYLONIAN TALMUD *Megillah* 14b as the source-text for this law).

185. The background context is as follows: At the time, David was anointed as king by Samuel the prophet, but Saul, the current king, did not want the monarchy to pass from his lineage, leading to battles between the two. At the time Saul was pursuing David to kill him, so David fled. Tired and hungry, David requested from Nabal food for his men and Nabal spurned him. So David went with his men to kill Nabal. Nabal's wife, Abigail, pled to protect her husband, arguing that he had not rebelled against David because David was not yet king (she also brought food to feed David's army). Abigail's argument was, according to this commentator, that David has not issued a widely accepted currency at that time. David conceded to Abigail's request and spared Nabal. When Nabal was struck dead by God ten days later, David sent for Abigail and she married him. *See Samuel I* 25:2-42.

186. BABYLONIAN TALMUD, *Megillah* 14b.

187. SHLOMO YITZHAKI, COMMENTARY ON AVODAH ZARAH 2b (Vilna ed.) (c. 1065–1115) (Hebrew).

188. *See* Feldman, *supra* note 183.

189. *See id.* at 2–3 (noting that the Jerusalem Talmud corroborates this theory).

C. "Majority Rule," Sovereignty and the Advantage of a Competent Majority Over a Specialized Minority

The concept of majority rule of judges on a panel is already discussed in the Bible.[190] "You shall neither side with the majority to do wrong—you shall not give perverse testimony in a dispute so as to pervert the majority opinion."[191] The *Mishnah* teaches that this verse is not just a prohibition on following the majority for ill, but it also teaches that proper justice is rendered by a majority of the court:[192]

> [T]he judges then discuss the matter. If the opinions of the judges are divided, as two judges say that the defendant is exempt from payment and one says he is liable to pay, he is exempt. If two say he is liable and one says he is exempt, he is liable.[193]

Jewish law recognizes the rule of majority in both civil cases and capital cases.[194] And because by Jewish law conviction in a capital case must come from a court of twenty-three,[195] therefore the ruling of the court, by majority, is the verdict of the entire body including the dissent.[196]

However, the concept of majority rules presupposes that *every* member of the panel is deemed competent to vote on a legal matter, as equally as *the most* competent member. But what if one member of the panel is significantly more familiar with the law than his fellow panelists, an expert minority opinion, and the majority of the panel, although sufficiently competent, still do not approach the level of expertise of the minority? Should the ruling reflect the competent majority, or can a specialized minority expert overrule their non-expert co-panelists?[197] As a hypothetical, imagine Judge Posner, sitting on the Seventh

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190. Contemporary scholarship has multiple treatments explaining why the law follows majority of judges. *See generally* Jeremy Waldron, *Five to Four: Why Do Bare Majorities Rule on Courts?*, 123 YALE L.J. 1692 (2014); Guha Krishnamurthi et al., *An Elementary Defense of Judicial Majoritarianism*, 88 TEX. L. REV. 33 (2009).

191. Exodus 23:2 (emphasis added). For the broad implications of majority and its partly democratic norms, see Haim Shapira, *Majority Rule in the Jewish Legal Tradition*, 82 HEBREW UNION COLL. ANN. 161 (2012).

192. *Mishnah* is a collection of early teachings of the sages. *See supra* part III.

193. *Mishnah Sanhedrin* 3:6.

194. *See id.* at 5:5 ("they stand to count the vote. If twelve judges vote to acquit him and eleven judges deem him liable, he is acquitted.").

195. *Mishnah Sanhedrin* 1:4. *See also id.* at 1:1 (civil damage cases require a court of three).

196. *See* Gil Student, *Bitul B'Rov*, TORAH MUSINGS, (Mar. 28, 2006), https://www.torahmusings.com/2006/03/bitul-be-rov_28/ (noting that according to one opinion this is true both in matters of deciding what the law is and applying the law to a specific case. However, another opinion distinguished deciding the law and applying the law. For the former need not be done by the entire court body; following a majority is sufficient. For the latter decisions must come from the entire court body, and hence not only does majority decide, but the minority is also still considered to be a part of the resulting verdict.).

197. Under a statutory regime, where the courts are empowered by the government itself, legislation could solve this issue. However, under Jewish law, courts pronounce the law of God, and so no legislature could limit or abrogate their power. *See Exodus* 18:16 ("When they have a

Circuit on a complex tort case, together with two newly appointed judges with little appellate experience. Should Posner's view not count for more than one vote?

An interpretation of a Talmudic tale may offer a resolution.[198] The sages were debating the legal question of whether an earthenware vessel sliced widthwise and held together by sand was considered a complete vessel.[199] Rabbi Eliezer, widely recognized as the greatest scholar of Jewish law of his time,[200] held it was not a complete vessel, while all the other Jewish sages disagreed with him.[201] Although Rabbi Eliezer attempted to persuasively argue his opinion, it was rejected.[202] After exhausting persuasion, he attempted to prove his point by performing miracles.[203] Finally, in a last resort effort, he called upon Heaven to prove he was right, *vox dei*, and a voice emerged and spoke "Why are you differing with Rabbi Eliezer, as the [law] is in accordance with his opinion in every place that he expresses one?"[204] Yet the Rabbis were unimpressed with Rabbi Eliezer's attempt to subvert the biblical maxim of majoritarian rule, and he was ostracized.[205] Rabbi Eliezer, too, was surely aware of the maxim; the greatest sage must have known the biblical order. Rather, it appears he felt that his specialized stature made him an expert minority whose opinion was more powerful than a majority of the sages. And given his belief, there was no way of adjudicating the question of specialized expert minority versus competent majority in the first place. For Rabbi Eliezer would vote in favor of the expert minority and the Rabbis for the majority, a non-resolution. Nevertheless, the Talmudic outcome is clear. A competent majority outweighs

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dispute, it comes before me [Moses], and I decide between one party and another, and I make known the laws and teachings of God.").

198. For more details on the story as well as additional meaning, see generally, Daniel J.H. Greenwood, *Akhnai*, 1997 UTAH L. REV. 309 (1997); Caleb Stegall, *The Ethics of Decision-Making: Result Oriented Judging and the Oven of Akhnai*, 70 U. KAN. L. REV. 593 (2022).

199. BABYLONIAN TALMUD, *Bavva Metziah* 59a-b. The gravamen of the question was whether it was susceptible to ritual impurity; a complete vessel can become ritually impure; a broken vessel cannot.

200. *See Mishnah Avos* 2:8 ("He [Rabbi Yohanan] used to say: if all the sages of Israel were on one scale of the balance and Rabbi Eliezer ben Hyrcanus on the other scale, he would outweigh them all."). Although the name Rabbi Eliezer can refer to several people with the same name, here, it refers to Rabbi Eliezer the son of Hyrcanus. *See* BABYLONIAN TALMUD, *Bavva Metziah* 59b (naming Rabbi Eliezer as the son of Hyrcanus in a later part of the story).

201. BABYLONIAN TALMUD, *Bavva Metziah* 59b. It is fair to assume that although the scholars who voted on the issue were competent, as this was an act of a *Sanhedrin*, a properly constituted court. *See* Mishnah *Sanhedrin* 4:3 (procedure for how to obtain a seat at the court). The qualifications to sit on a court include knowledge, a love of truth and disdaining unjust gain. *See Exodus* 18:21; *Deuteronomy* 1:13.

202. BABYLONIAN TALMUD, *Bavva Metziah* 59b.

203. *Id.*

204. *Id.*

205. *Id.*

even a minority expert. And it might be said that the systemic concerns of defining an expert minority counsel in favor a general majority rule.[206]

D. Widespread Currency Acceptance Is An Implicit Majority Vote

The concept of specialized minority can also apply to currency valuation. Metallic currency has true market price because the underlying commodity is traded on open markets and subject to normal supply and demand. Price discovery is a communal market process—a form of majority. To be sure, even in antiquity there was some tokenization of currency: the value of a sovereign's currency did reflect a small premium above the currencies weight in precious metal.[207] Thus market valuation included not only a precious metal valuation, but also a tokenization value depending on the communal faith in the sovereign. But where physical commodities are needed to mint coins, tokenization only gets you so far. Ultimately, the sovereign's flexibility to expand their currency supply is far more limited than the flexibility of a fiat currency's Central Bank.[208]

In contrast with Bitcoin, fiat currency markets don't accurately reflect the supply and demand because the supply can be adjusted by the specialized minority—Central Bank—discretion. True, currencies are often traded on free markets (except in countries with capital controls), but the supply of the currency varies with the whims of the Central Banks. Supply is key to market price discovery. As noted above, during the COVID-19 pandemic, the Federal Reserve initiated a quantitative easing program, which added more than three trillion dollars of money into financial markets.[209] In fact, the key tools of the Federal Reserve are specifically designed to control monetary supply.[210] Thus the market for fiat currency is not just about demand for currency, but also indicative of central bankers' supply policy (unlike metallic currency, whose

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206. So even though Rabbi Eliezer was contemporaneously recognized as the greatest scholar, the majority still rejected his ruling because of potential future confusion.

207. *See* Brzezinski, et al., *supra* note 12, at 5 ("Bronze coins in Antiquity were partly token because they didn't weigh enough to be intrinsically worth their denomination.").

208. Of course, Central Banks must maintain reasonable policies to ensure their currencies don't lose value, but that limitation is incomparably broader than the sovereign issuing commodified currency.

209. *See* Federal Reserve, *supra* note 72. *See also* Kate Duguid, *Federal Reserve's $3 trillion virus rescue inflates market bubbles*, REUTERS (July 13, 2020) https://www.reuters.com/article/economy/federal-reserves-3-trillion-virus-rescue-inflates-market-bubbles-idUSKCN24E13E/ [https://perma.cc/Y5ZJ-3A34] ("The U.S. central bank has pledged unlimited financial asset purchases to sustain market liquidity, increasing its balance sheet from $4.2 trillion in February to $7 trillion today."); Eric Milstein & David Wessel, *What did the Fed do in response to the COVID-19 crisis?*, BROOKINGS (Jan. 2, 2024) https://www.brookings.edu/articles/fed-response-to-covid19/ [https://perma.cc/BMX2-Z2TY] (listing the various facilities used by the Federal Reserve Bank to increase its balance sheet).

210. *See* Milstein & Wessel, *supra* note 209 (noting the tools of the Federal Reserve to increase monetary supply).

supply is not easily manipulated).[211] Thus, a specialized minority—central bankers—determine, to a large extent, currency value by controlling supply.

Obviously, there are some constraints on Central Banks: They can't print too much money without real economic repercussions. But it remains the case that Central Banks' discretion for expanding the monetary supply is far greater than the sovereign's discretion for expanding the supply of their precious metal currency. That hyperinflation is a phenomenon nearly exclusive to fiat currencies proves the point.[212]

I argue the true value of currency should be determined by the people, the majority who stake their wealth in the currency. As such, currency supply should be predicated on real currency markets and, to an extent, on decentralized governance. The sovereign's decision to increase currency supply should be tested in real-time by markets that are not based on the opinions of central bankers, but on the totality of normal market forces.[213]

While there is some overlap between metallic sovereign currency and Central Bank fiat currency, it is still the case that the limitation of physical metal dramatically reduces the flexibility of the sovereign's capacity for currency control in a manner that is not comparable to fiat currency. Ultimately, the question is who should have the power to control the monetary supply; should we have specialized experts (deliberately removed from the political process) or leave it to the democratization of market forces?

Combining the doctrines of *Dina d'Malhutah* and majority rules can help explain Maimonides's test for a legitimate king and apply that test to Bitcoin. Maimonides deals with an implied majority. Because the sovereign's currency is widely used therefore it "indicates that the inhabitants of that land have

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211. *But see supra* Part I-D (noting that dramatic changes in precious metal supply can have the same effect as poor Central Bank policy and giving an example of the Conquistadors bringing enormous amounts of New World gold to Europe, which resulted in inflation).

212. *See* Steve H. Hanke & Alex K. F. Kwok, *On the Measurement of Zimbabwe's Hyperinflation*, 29 CATO J. 353, 353 (2009) ("Hyperinflations have never occurred when a commodity served as money or when paper money was convertible into a commodity. The curse of hyperinflation has only reared its ugly head when the supply of money had no natural constraints and was governed by a discretionary paper money standard."); Paul Toscano, *The Worst Hyperinflation Situations of All Time*, CNBC (Jan. 29, 2014) www.cnbc.com/2011/02/14/The-Worst-Hyperinflation-Situations-of-All-Time.html [https://perma.cc/P7QQ-83LE] ("The world's first recorded hyperinflation came during the French Revolution, where monthly inflation peaked at 143 percent, but it took until the 20th century for this type of out-of-control inflation to happen again."). *See generally* Thomas J. Sargent & Neil Wallace, *Rational Expectations and the Dynamics of Hyperinflation*, 14 INT'L ECON. REV. 328 (1973) ("One essential condition is the presence of feedback from inflation to subsequent rates of money creation . . . . [T]he monetary authorities seemed to make money creation respond directly and systematically to inflation, which was probably an important reason that the hyperinflations developed.").

213. For example, the Efficient Market Hypotheses (EMH) posits that market prices reflect some degree distributed judgement about all of the pricing factors. *See generally* Sunita Surana, *Informational Efficiency in the Context of Securities Litigation: What Have We Learned?*, 2021 U. ILL. L. REV. ONLINE 334 (2021). While the EMH holds true about currency prices too, the underlying information is primarily about the central bank's policy not the general market demand.

accepted him and consider him to be their leader and themselves to be his subjects."[214] And an implied majority is recognized in the Talmud.[215]

In modern elections, the consequence of the vote has only a minor impact on most voters, and risks nothing. But a vote by currency participation is a ballot cast with voter's own wealth—currency—on the line, much like shareholders in a corporation.[216] Requiring a real stake in an election is undeniably valuable: modern prediction markets can be more accurate than political pundits.[217] This is because market participants have skin in the game.[218] They utilize all available knowledge, as a market, coming up with a distributed conclusion.[219] By contrast, political pundits' predictions can be a form of activism, whereby their opinions are designed to influence the result by shaping the perspective of the electorate.[220] Moreover, markets tend to aggregate their bets around the lowest-risk bet with the highest possibility of success. Pundits have no direct

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214. *See* MAIMONIDES, *supra* note 167.

215. *See* Shapira, *supra* note 191, at 166–67 (noting that the use of leap years was conditioned on the public acceptance as well as other implied majorities). *See also* BABYLONIAN TALMUD, *Bavva Batra* 60b (requiring a majority of the public to follow the practice of a new decree before it becomes binding).

216. In fact, where shareholders do not have a financial stake in the outcome of their vote the law treats their vote substantially differently. *See e.g.,* Delman v. GigAcquisitions3, LLC, 288 A.3d 692, 721–22 (Del. Ch. 2023). There the court noted the difference between shareholders of a regular corporation and shareholders of a SPAC (Special Purpose Acquisition Vehicle). The latter type can vote for a transaction and at the same time vote to redeem their shares, i.e., to remove the consequences of their previous vote. And because of this the court did not give the shareholder vote as much deference as it would normally get. "Unlike the vote on a typical merger or acquisition, however, the Gig3 stockholder vote on the de-SPAC merger could not reflect its investors' collective economic preferences. Stockholders' voting interests were decoupled from their economic interests. Gig3's public stockholders could simultaneously divest themselves of an interest in New Lightning by redeeming and vote in favor of the deal. Many did."

217. *See e.g.*, Allison Morrow, *How prediction markets saw something the polls and pundits didn't*, CNN (Nov. 8, 2024) https://www.cnn.com/2024/11/08/business/polymarket-election-trump-nightcap [https://perma.cc/UL5F-BYU4] ("In the days leading up to the US election, pollsters had the race deadlocked . . . . But over on the betting platform Polymarket, the odds were much more solidly in former President Donald Trump's favor.").

218. *See id.* ("Financial markets are generally pretty efficient . . . . There's no virtue-signaling in an anonymous market when you're betting . . . . Historically, betting markets have been pretty good at predicting the outcome of US elections."). *See also Polymarket vs. Polling*, POLYMARKET, https://docs.polymarket.com/polymarket-learn/FAQ/polling [https://perma.cc/JMJ4-EVVJ] ("Studies show that prediction markets like Polymarket tend to outperform traditional pollsters because participants are financially incentivized to be correct. This creates more thoughtful, data-driven predictions.").

219. *See* Morrow, *supra* note 217. To be fair, manipulation and thinly traded markets can undermine prediction markets. *See* Jeffrey A. Sonnenfeld, Steven Tian & Anthony Scaramucci, *Don't Trust the Political Prediction Markets,* YALE INSIGHTS (Oct. 24, 2024). However, while this article makes good arguments, it remains the case that prediction markets often have better predictive accuracy than political pundits.

220. *See* Morrow, *supra* note 217 (implying that pundits are prone to virtue and their reputations, whereas anonymous betters have neither concern).

financial interest at stake, so their predications don't tend to aggregate around a balanced risk-reward approach.

Real commodity currency markets were the norm in the Talmud's tri-metallic monetary system.[221] Though there was a prescribed exchange rate, it did still fluctuate based on demand.[222] Participation in the currency included both market participation—setting the currency's value—and an implied ballot of the sovereign's legitimacy.

Thus, Maimonides principle provides normative reasoning for utilizing a commodity-based currency system; it isn't a mere historical accident. Widespread currency use, by users whose wealth is invested in the outcome of their choices, aligns their shared interests with that of the sovereign and thus has the same force as a majority vote for legitimizing the sovereign.

In summary, the use of currency as a metric to determine the sovereign's legitimacy reflects a pricey ballot of confidence. Widespread practice can be the basis for an implicit majority, sufficient to determine the legitimacy of the sovereign's laws. This is truer of commodity currencies because it reflects the importance of a competent majority in a free market system, whereas Central Bank currency is but the fiat (pun intended) of a specialized minority.

E. Comparative Legitimacy Of Bitcoin And Fiat Currency

If the analysis outlined is correct, it has broad implications for currency control and governance. Widespread currency acceptance is a metric for determining who is a legitimate ruler (or government) because it serves as a stakeholder vote of confidence in the sovereign. Just as a sovereign's legitimacy is determined through participation in the currency, the same might be said of the currency itself—it too gets legitimacy by the same process. A competent majority of currency users participating in open markets is the ideal model for monetary supply and governance.

Hence, as applied to our current system of financial governance, Bitcoin[223] might be *more* legitimate than fiat currency.[224] Fiat currency obtains its value

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221. *See* Ajdler, *supra* note 14 (detailing the weights and conversion of gold, silver and copper).

222. *See* MISHNAH, *Maaser Sheni* 2:7–10; OBADIAH BARTENURA, COMMENTARY ON MAASER SHENI 2:7–10 (Robert Alpert Trans. available at Sefaria.org) ("he cannot change other than half of them, for the coins are spent in Jerusalem and when he comes there, for he will need coins immediately to buy the needs of the meal, and if everyone runs to the money-changer to change [monies], the coins will go up in value and will be found that the Second Tithe [monies] are lost."); MISHNAH, *Eduyot* 1:9–10; OBADIAH BARTENURA, COMMENTARY ON EDUYOT 1:9–10 (Robert Alpert Trans.) ("if everyone would run to the money-changer to exchange, the small coins/pennies would increase in value").

223. Of course, there are some practical concerns about Bitcoin such as manipulation and centralization. This Note leaves those practical problems aside.

224. *But see* Feldman, *supra* note 183, at 3–4, 6. He argues that "the social impact of currency, like God, is downstream from society's faith in it." Thus, "currency has been endorsed by God Himself." Therefore "[t]he more intangible currency becomes, the more untethered from a

only because of the say-so of its specialized experts filling the halls of Central Banks. But Bitcoin might offer greater moral legitimacy through its market-based value and decentralized governance. Bitcoin's value is determined by currency participants, as in any other commodity market, without interference from centralized authority. Its supply is fixed, and thus its markets are inherently real, reflecting the value of what the currency is worth, and not a prediction of monetary supply policy. So, despite the fact that Bitcoin is not issued by a sovereign, its governance has found compelling acclaim around the world as evidenced by the value of the enterprise. The value of all Bitcoin is well over a trillion Dollars.[225] Bitcoin's global markets and large trading volume reveal that Bitcoin is respected as a legitimate currency-type asset.[226] It is valued, respected and it is simple to use.[227] Although to be sure, while it is easy to use, as shown in the next section, Bitcoin's *practical* use seems minimal.[228] And finally, unlike fiat currency, Bitcoin's supply is capped,[229] and its value is not manipulatable by the latest Central Bank alphabet soup "facilities."[230]

It is true that fiat currencies are widely used, accepted, and their sovereign backers enjoy much more respect and legitimacy than cryptocurrencies.[231] Thus, because fiat currency is inherently worthless, the widespread acceptance of fiat perhaps reflects *more* confidence in the sovereign than use of precious metal currency. But while this is a powerful argument in support of fiat currency, it still lacks the "real" markets that precious metal currencies and Bitcoin have. Further, its governance structure is one of specialized experts largely exempt from regular political process. While that might come with benefits, it remains an open question whether such an "independent" power should exist outside of government and the people.

One could object that Bitcoin is distinguishable because of its lack of an issuing sovereign.[232] Perhaps the Talmudical test is only sufficient to validate a sovereign-issued currency, but not one that is decentralized. Yet, the difference

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representation of authority, the more it resembles the creations that were long ago falsely worshipped as conduits to the Creator."

225. Currently (September 2026), Bitcoin's market cap is 1.5 trillion Dollars. *See Bitcoin*, COINMARKETCAP, https://coinmarketcap.com/currencies/Bitcoin [https://perma.cc/JMA7-TTKV].

226. Currently (September 2026), Bitcoin trades on over 3,800 trading combinations with a daily volume above twelve billion dollars. *See id.*

227. *Coin Report: Bitcoin (BTC)*, FIDELITY DIGITAL ASSETS (Aug. 21, 2025), https://www.fidelitydigitalassets.com/research-and-insights/coin-report-bitcoin-btc [https://perma.cc/6F48-ABCJ].

228. The next section focuses on use as a definition of currency, which is a relative judgement, *infra* Part IV, whereas here respect and use are not defined as strictly.

229. *See* Satoshi Nakamoto, *supra* note 60.

230. *See* Milstein and Wessel, *supra* note 209 (noting the multitude of facilities utilized by the Federal Reserve Bank to inflate its balance sheet).

231. Except in cases where central bankers caused hyperinflation and the population no longer relies on the local fiat currency.

232. *See* Feldman, *supra* note 183, at 3–4, 6 (critiquing Bitcoin on precisely these grounds, calling it an "idol currency").

notwithstanding, I argue the *principles* and *reasoning* are still relevant to both supporting bitcoin's legitimacy as well as critiquing the governance structure of fiat currency.

Even if this argument does hold, Bitcoin likely fails a Talmudic definition of currency. Talmud defines currency by its capacity to serve as a medium of exchange and sets a high bar to clear—the *most* accepted medium of exchange. Since Bitcoin is not very widely utilized, even in countries where it has been declared legal tender, it flunks the test.

IV. BITCOIN AS CURRENCY FROM A TALMUDIC DEFINITIONAL PERSPECTIVE

While generally it is understood that money has three primary incidents,[233] the Talmud considers the medium of exchange the most critical function of money.[234] More specifically, a currency must be *harif*—universally accepted by merchants for it to be considered a medium of exchange.[235] Besides recognizing metallic money in common use, Jewish law also recognizes legal tender—that which a sovereign declares to be money enforceable for private debts.

Bitcoin is not *harif*—easily used for exchange—even in countries that recognize Bitcoin as legal tender. Jewish law's recognition of legal tender currency is sufficient to include developments like banknotes even though they don't fit within the metallic currency system. But it likely does not include Bitcoin because it still fails the universal acceptance prong. It would require widespread use, not just acceptance, for Bitcoin to meet the Talmudical currency definition.

A. Currency in Talmud

Generally, for most financial matters, the Talmud respects "*Minhag Sokhrim*," merchant and local customs.[236] But for some specific Talmudic laws, defining what is a "currency" is crucial.[237] As an example, under Talmudic law

233. *See* CFI Team, *supra* note 1.

234. *See* BABYLONIAN TALMUD*, Bavva Metzia* 44a.

235. *Id.* at 44a–b. Some translate *Harif* as circulate. *See id*. (William Davison Trans.)

236. Three examples: 1) Merchant custom on the moment an acquisition takes effect is dispositive with regard to a financial loss that occurred to the goods around the time the deal was executed. A contemporary example would be the use of the FOB incoterm. 2) Contract expectations are resolved through customary practice—such as determining ex post whether an animal was purchased for slaughter or work. This is similar to the Uniform Commercial Code § 1-303. 3) Expectations of municipal governance, such as what constitutes a nuisance. *See* MISHNAH, *Bavva Batra* 2:1 (nuisance); *Bavva Metziah* 7:1 (expectations of feeding employees); BABYLONIAN TALMUD*, Bavva Metzia* 74a (transactions), *Bavva Batra* 92a (clarifying the purpose of an animal sold). *See also* Miguel Angel Bustamante, *Incoterms® 2020: FAS or FOB?*, ICC ACADEMY (May 13, 2025), https://academy.iccwbo.org/incoterms/article/incoterms-2020-fas-or-fob/ [https://perma.cc/YK9J-W5EX] (explaining when liability is transferred and associated merchant terms).

237. In most instances of Jewish law, assets worth an equivalent value can take the place of money. But in several places, the law requires currency. *See* Rav Asher Meir, *Money and Means of*

an acquisition occurs when a "*kinyan*"—a physical act intended to effect an acquisition—takes place.[238] While any accepted merchant custom for effectuating a purchase can be chosen,[239] a buyer can also elect to use methods recognized by Jewish law. Under Jewish law, a cash transaction is not settled until the buyer receives the goods.[240] Usually, "it is the act of lifting the loaf that is the act of acquisition."[241] Barter[242] (*Hallippin*) is an alternative method; a lifting of an ordinary handkerchief (a *Suddar*) can serve as the acquisitive vehicle by which a larger (or more valuable) object's ownership is transferred.[243] Thus, barter is often used to acquire items that are not physically present or too difficult to lift (e.g. an elephant).[244] However, money cannot be acquired via barter, nor can it take the place of the acquisitive vehicle—the handkerchief.[245] Thus, a question arises when coins of different metals are exchanged for each other: What is the currency and what is the merchandise?[246] Because the acquisition method of barter is not valid, the only acquisitive method is the act of lifting or pulling, i.e. liability remains with the seller until the purchaser physically lifts his goods.

The Mishna elaborates: "When one exchanges gold coins for silver coins, the gold coins assume the status of merchandise and the silver coins assume the status of money."[247] So the transaction is not effectuated until the gold coins are taken. And where copper is exchanged for silver, copper is the merchandise, and silver is the currency.[248] The Talmud relates that when Rabbi Yehuda the

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Payment in Halakha (1), TORAT HAR ETZION (Dec. 25, 2016), https://etzion.org.il/en/halakha/choshen-mishpat/monetary-law/money-and-means-payment-halakha-1 [https://perma.cc/6JY9-PD9X] ("there are several areas where there is a legal distinction between money per se and goods").

238. *See* MISHNAH *Kiddushin* 1:4–6. *See also* Lewis N. Dembitz, *Alienation and Acquisition*, THE JEWISH ENCYCLOPEDIA, https://www.jewishencyclopedia.com/articles/9334-kinyan [https://perma.cc/7S43-XEYY] (last visited Apr. 1, 2026). The concept of delivery is not very different from the law of *inter vivos* gifts in which delivery is required to effectuate the gift. Depending on the nature of the item, the delivery might be physical, constructive, or symbolic. *See* 2 Thompson on Real Property § 13.04 (Thomas eds., 2025).

239. *See* BABYLONIAN TALMUD*, Bavva Metzia* 74a (William Davidson tr.) ("in a place where the custom is that it actually effects the acquisition of the item, it actually effects acquisition of it, as the halakha recognizes the legitimacy of the local custom.").

240. *See* 6 QUINT, *supra* note 171, at 152 ("The general rule is now that payment of money does not transfer ownership of the item to the buyer . . . . It is usually stated in the codes that the payment of money by itself does not transfer ownership.").

241. *Id.*

242. Sometimes called symbolic exchange. *See* BABYLONIAN TALMUD*, Kiddushin* 25b.

243. 6 QUINT, *supra* note 171, at 173.

244. *See e.g.*, BABYLONIAN TALMUD, *Kiddushin* 25a (suggesting that an elephant can be acquired using barter (*halippin*) because lifting it is impractical).

245. 6 QUINT, *supra* note 171, at 173–74.

246. *See id.* at 174–75. MISHNAH, *Bavva Metziah* 4:1.

247. MISHNAH, *Bavva Metzia* 4:1 (William Davidson trans.).

248. *Id.*

Prince[249] taught his son this passage, he originally was of the opinion that gold is money and silver is merchandise.[250] Initially, he held that the more valuable commodity, gold, had the status of currency.[251] Later he changed his position that currency is defined by that which is more spendable (*harif*).[252] This tracks the question of whether currency is best described as a store of value or a medium of exchange. Gold is a better store of value given its increased value-to-density ratio than silver. But silver is a better medium of exchange given its divisibility and wider acceptance.[253] The Talmud's conclusion is that merely common use (gold or copper) is not enough to meet the definition of currency; near universal acceptance (*Harif*) is necessary to make the cut (silver).

Acquisitive acts are one example of where Jewish law recognizes a difference between commodities and currency. Another example: Jews are forbidden to loan each other with interest.[254] And the Rabbis decreed that commodities cannot be loaned—even without interest—since at the time of repayment the commodity price may be different than at the time of the loan.[255] Currency is considered stable, and thus interest free money loans are permitted, whereas all other financial instruments are considered to fluctuate in relation to currency.[256] Hence, if Bitcoin is a currency, interest-free Bitcoin loans are permitted, but if it is considered a commodity, it cannot be loaned even without interest.[257]

In summary, the Talmudic test for defining a currency which we will apply to bitcoin is near-universal acceptance by merchants as payment (*harif*).

B. Bitcoin does not meet the Talmudical definition for a medium of exchange

Next we must determine whether Bitcoin has widespread use. Today the factors that promote widespread Bitcoin adoption are macro-economic:

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249. Rabbi Yehuda the Prince, often known as "Rabbi" was the author of the Mishnah. *See* MAIMONIDES, *supra* note 167, at 8:4.

250. BABYLONIAN TALMUD*, Bavva Metzia* 44a.

251. *See id.* At a congressional hearing, in response to a question implying that basis of banking was credit, J. P. Morgan famously responded, "money is gold, nothing else." *See Money Monopoly an Impossibility, Morgan Asserts*, N.Y. TIMES, at A1 (Dec. 20, 1912).

252. BABYLONIAN TALMUD, *Bavva Metzia* 44a.

253. As the famous expression goes: "Gold is the money of kings, silver is the money of gentlemen, barter is the money of peasants – but debt is the money of slaves." Ross Cameron, *How to Invest in Gold for the Next Recession*, WARRIOR TRADING, https://www.warriortrading.com/how-to-invest-in-gold/ [https://perma.cc/D63R-3TCL] (last visited Apr. 14, 2026).

254. *Exodus* 22:24.

255. BABYLONIAN TALMUD, *Bavva Metzia* 75a.

256. *See* Yehonason Dovid Hool, *Repayment of Loans: Jewish Law*, ORTHODOX UNION (Dec. 31, 2009), https://www.ou.org/life/torah/repayment_of_loans/ [https://perma.cc/4T9S-7CZ5]. This is true of currency even though in a multi-metallic system there can be price adjustments between the metals. *See* Mishnah, *Maaser Sheni* 2:7-10.

257. Although there are several methods by which this would be permissible. *See* SHULHKAN ARUKH, *Yoreh Deah*, §§ 172, 175.

"inflation, currency devaluation, or capital restrictions."[258] In countries that face these systemic problems, "crypto[currency adoption] is not speculative, it's functional."[259] So it is common to see Bitcoin adoption in countries experiencing these macroeconomic factors.[260] Notably, El Salvador declared Bitcoin legal tender, although it quickly lost that special status.[261] But even in countries whose currencies face capital restrictions and inflation, it appears Bitcoin is used as a store of value and to facilitate cross-border payments, but not for retail payments.[262]

Even with the aforementioned circumstances increasing the likelihood of Bitcoin adoption, indicators suggest its retail use is not widespread and certainly not near-universal. For example, El Salvador gave every citizen a digital wallet with thirty dollars' worth of Bitcoin. Still "evidence shows that its use and penetration in the economy is minimal."[263] And the IMF concluded Bitcoin is unsuitable for retail use: "Bitcoin is not an effective means of payment or short-

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258. David Kemmerer, *Top 10 Countries That Use Bitcoin—May 2025 Data*, COIN LEDGER (May 30, 2025), https://coinledger.io/research/top-10-countries-that-use-Bitcoin [https://web.archive.org/web/20260412060915/https://coinledger.io/research/top-10-countries-that-use-Bitcoin].

259. *Id.*

260. For example, most of the top ten countries for Bitcoin use in a 2023 report have capital controls (India, Vietnam, Brazil & Thailand), significant inflation (Nigeria, Pakistan), or their long-term financial strength is an open question (Ukraine). *See What Countries Have Legalized the Usage of Bitcoin*, CRYPTOCLOUD (Feb. 19, 2024), https://cryptocloud.plus/en/blog/in-which-countries-bitcoin-is-legalized [https://perma.cc/8WSW-5CXE] (citing a Chainanalysis report). *See also How Bitcoin Adoption is Growing in Emerging Markets*, BLOCKCHAIN COUNCIL (Aug. 1, 2025), https://www.blockchain-council.org/cryptocurrency/how-bitcoin-adoption-is-growing-in-emerging-markets/ [https://perma.cc/7ULJ-MGAM] (noting how Bitcoin adoption often correlates with significant financial distress or limits on banking). *See generally Understanding Kimchi Premium: Bitcoin Price Differences in South Korea*, INVESTOPEDIA (Dec. 23, 2025), https://www.investopedia.com/terms/k/kimchi-premium.asp [https://perma.cc/7SMK-WJ7V] (showing how capital controls result in a premium price for Bitcoin in South Korea).

261. *See* José Ignacio Hernández, *In El Salvador, Bitcoin's Retreat Left Valuable Lessons*, AM.S Q. (Mar. 17, 2025), https://www.americasquarterly.org/article/in-el-salvador-Bitcoins-retreat-left-valuable-lessons/ [https://perma.cc/8EHQ-JK2R] ("In September 2021, El Salvador became the first country to adopt Bitcoin as legal tender . . . . [T]he Legislative Assembly opted to abolish Bitcoin's status as legal tender in January, limiting its 'voluntary' use to the private sector.").

262. *See* 21Shares Team, *Real-world Use Cases of Bitcoin*, 21SHARES, https://www.21shares.com/en-us/research/real-world-use-cases-of-Bitcoin [https://web.archive.org/web/20260317004907/https://www.21shares.com/en-us/research/real-world-use-cases-of-bitcoin] (accessed on Jan. 20, 2026). The article also notes the medium of exchange use case, but only after listing the store of value and cross border payment uses. *Id.*

263. IMF, *Bitcoin and Financial Inclusion: A Preliminary Balance*, IMF ELIBRARY (Mar. 19, 2025), https://www.elibrary.imf.org/view/journals/002/2025/068/article-A001-en.xml [https://perma.cc/HP53-KUG4] (noting that "97¾ percent of business have not made even one sale in Bitcoin," and "[t]he adoption of Bitcoin as legal tender has not led to progress in financial inclusion so far . . . . Bitcoin is not a plausible alternative to cash for the unbanked population. With a daily volatility averaging 4 percent and an annualized price volatility at 81 percent in 2021, Bitcoin cannot address the unbanked population needs.").

term store of value."[264] "Its use cases and value-added for *daily transactions*, such as peer-to-peer or utility payments, is nil."[265] However, there might be some conflicting data: in Argentina it appears that some cryptocurrencies are more commonly used, owing to over 200% inflation in the local currency.[266] Though it appears that "stablecoins," assets that can be transmitted on blockchain and can be redeemed for fiat currency, drive most of the transactions.[267]

In the United States, ranked 4th by cryptocurrency adoption in May 2025,[268] and despite the presence of over 30,000 cryptocurrency ATMs,[269] Bitcoin still does not appear to be widely accepted as a means of exchange. As a Gallup survey results suggest: "Cryptocurrency remains a niche investment in the U.S., . . . *and limited interest beyond that*."[270]

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264. *Id.*

265. *Id.* (emphasis added). The IMF is considered by some to be categorically biased against Bitcoin. *See* Javier Bastardo, *These 3 Countries Explain Why The IMF Stance on Bitcoin Changed*, FORBES (Jul. 10, 2023), https://www.forbes.com/sites/digital-assets/2023/07/10/these-3-countries-explain-why-the-imf-stance-on-bitcoin-changed/ [https://perma.cc/8TD4-HWBT] ("The International Monetary Fund is one of the prominent global organizations against Bitcoin and cryptocurrencies. It has warned countries worldwide about using or adopting Bitcoin at any level.").

266. *See e.g.*, Javier Bastardo, *Crypto Usage Rises Across Argentina, Despite The Anti-Crypto IMF Deal*, FORBES (Apr. 26, 2023), https://www.forbes.com/sites/digital-assets/2023/04/26/crypto-usage-rises-across-argentina-despite-the-anti-crypto-imf-deal/ [https://perma.cc/A82M-4VUW] ("Argentina's Crypto Scene Is Still Booming . . . [as] crypto stablecoins like USDT and DAI continue to gain popularity through informal forex and crypto exchanges called Cuevas, offices spread across the country."); *As Argentina's annual inflation surpasses 211%, digital assets provide hope for population battling hyperinflation*, ARG. REPS. (Jan. 13 2024), https://argentinareports.com/as-argentinas-annual-inflation-surpasses-211-digital-assets-provide-hope-for-population-battling-hyperinflation/3575/ [https://perma.cc/D64D-2NZU] (suggesting likewise).

267. *See* Bastardo*, supra* note 266. For more on stable coins, see Fidelity Viewpoints, *What is a Stablecoin?,* FIDELITY (Feb. 4, 2026), https://www.fidelity.com/learning-center/trading-investing/what-is-a-stablecoin [https://perma.cc/ZL2L-2MTT].

268. *See* Kemmerer, *supra* note 258.

269. *See* Lucien Bruggeman, *Scammers notched $333 million from Bitcoin ATM scams in 2025, FBI says*, ABC NEWS (Dec. 30, 2025), https://abcnews.go.com/US/scammers-notched-333-million-Bitcoin-atm-scams-2025/story?id=128526877 [https://perma.cc/KAA5-542B] ("There are more than 45,000 bitcoin ATMs nationwide"). Other estimates put the number closer to 30,000. *See Bitcoin ATM Installations Growth (United States)*, COIN ATM RADAR, https://coinatmradar.com/charts/growth/united-states/ [https://perma.cc/QDY9-3NBV] (last visited Sept. 2026) (estimating 30,000 ATM's as of January 2026). For contrast, there are an estimated 500,000 cash ATM's operating in the United States. *See* David Tente, *ATM Population in the U.S. Shows Strong Growth Over the Past Year*, ATM INDUSTRY ASSOCIATION (Sep. 26, 2023), https://www.atmia.com/news/atm-population-in-the-us-shows-strong-growth-over-the-past-year/20388/ [https://perma.cc/LQ5G-6DC8].

270. Jeffrey M. Jones & Lydia Saad, *Cryptocurrency Still Has Limited Main Street Appeal*, GALLUP (July 22, 2025) (emphasis added) ("Roughly one in seven U.S. adults, 14%, report owning cryptocurrency today . . . . Most Americans say they won't ever buy it, as their perception of it being a very risky investment appears to be a key barrier . . . . As a result, for now, it appears that younger

More comprehensive data is hard to find, but it appears that even in countries facing banking and financial challenges, Bitcoin still isn't widely accepted. Though Bitcoin may be widely recognized as a financial asset, it is unlikely that Bitcoin meets the medium of exchange test under the Talmudical definition of currency. So even though juristically, it seems like a legitimate currency under Maimonides framework, as a matter of strict Talmudic law, it isn't a currency.

C. A Second Talmudical Currency Paradigm—Legal Tender and Dina D'malhuta

Although the strict Talmudical understanding of currency is entirely dependent on its use as a medium of exchange, there is another means of Talmudical recognition—legal tender.

Prior to paper money, as noted, Jewish law recognized a system of metallic currency (usually multi-metallic).[271] Thus, coinage had value for two distinct reasons: its commodity value and its "token" value: the value denominated by the sovereign usually above their precious metal worth.[272] When sovereigns began issuing bank notes, commentators wondered if it had the status of currency under Jewish law.[273]

As noted, early banknotes were certificates guaranteeing and providing redemption in metallic currency at the sovereign's treasury.[274] Accordingly, some Jewish authorities argued it was debenture issued by the king.[275] Since the

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men, upper-income Americans and conservatives stand to gain or lose the most from buying it."). To be sure, another survey paints a rosier picture for crypto advocates. *See* Brett Cruz & Gene Petrino, *2025 Cryptocurrency Adoption and Consumer Sentiment Report*, SECURITY.ORG (Nov. 21, 2025), https://www.security.org/digital-security/cryptocurrency-annual-consumer-report/ [https://perma.cc/2FUE-RRCG] ("In 2025, approximately 28% of American adults, or about 65 million people, own cryptocurrencies."). Nevertheless, the disagreement is on the margins, nobody debates that Bitcoin is not widely used in the United States.

271. *See* Ajdler, *supra* note 14. *See generally* Brzezinski, et al., *supra* note 12 (noting the early development of paper money).

272. Brzezinski, et al., *supra* note 12 (noting the combination of precious metal value plus a premium "tokenization" above the metal value was a common currency form).

273. *See* Asher Meir, *Korach: Money*, ORTHODOX UNION (Jun. 10, 2010), https://www.ou.org/life/money/mm_money/ [https://perma.cc/FT2N-C7J5] ("With the arrival of banknotes backed by metal, and particularly with the rise of modern money which is not backed by or convertible to anything, the question arose if paper money is considered true money or merely a note.").

274. *See supra* Part I.B.

275. *See* SHLOMO KLUGER, HAELEF L'CKHA SHELMO, CHOSHEN MISHPAT 6 (1933) (Hebrew). *See also* Rav Asher Meir, *Money and Means of Payment in Halakha (4)*, TORAT HAR ETZION (Dec. 25, 2016), https://etzion.org.il/en/halakha/choshen-mishpat/monetary-law/money-and-means-payment-halakha-4 [https://perma.cc/DEP2-AJKU] (quoting the original source that "it is obvious that they have the status of notes of indebtedness for all purposes.").

banknotes promised redemption in metal coins, therefore they should be defined as a debt note of precious metal and not as a currency.[276]

The mainstream view of Jewish legal authorities considered banknotes as currency because it is within the power of the king to decree what shall be money under the laws of *Dina D'malkhutah*.[277] Under this theory, all currency is essentially short-weighted or tokenized to some extent, and hence reliance on the imprint is essentially reliance on the law of the land.[278] This theory is quasi-circular, because as noted previously, Maimonides qualifies the law of *Dina D'malhutah* as only binding where there is widespread currency acceptance.[279] Hence, the king's power to declare banknotes legal tender is valid under *Dina D'malhutah*, but only if the citizenry accepts the use of bank note.[280] As previously explored, when paper money first became common, it *was* widely accepted by the population, so Maimonides metric was met.[281]

A third approach treats banknotes like money because of its widespread use, independent of its legal tender status.[282] Accordingly, under the third approach, Bitcoin does not make the cut. This is because *even in nations that declared it legal tender*, it is not widely used.[283]

As shown previously, the medium of exchange quality is the most important in a Talmudical analysis defining money.[284] Further, it seems that even the mainstream approach that considered banknotes to meet the definition of money under Jewish law because of their legal tender status, still requires

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276. There are many distinctions between debt securities and currency for a variety of Jewish law. For example, a note cannot serve as the basis for a marriage betrothal. *See* BABYLONIAN TALMUD, *Kiddushin* 6b.

277. MOSHE SOFER, RESPONSA TO YOREH DEAH, *Letter 134* (Hebrew). *See also,* Feldman, *supra* note 183, at 4; Meir, *supra* note 275 (quoting the original source).

278. *See* Meir, *supra* note 275 ("[B]anknotes [have] the halakhic status of money. As proof, they cite the issue of short weightedness. What difference does it make if a coin is short-weight by 25% or by 99%? In either case, the value of the coin in commerce is determined by its nominal and symbolic value, rather than its inherent value."). There are clear Talmudic references to the tokenization of currency. *See id.* (parentheses omitted) ("Numerous discussions in the Talmud show that by the time of the [Talmud], the force of these coins derived mainly from their official status, practically speaking; they did not circulate when forbidden by the sovereign and their weight was occasionally altered"). "[E]ven short-weight coins would continue to circulate." *Id.*

279. *See supra* Part III.B.

280. *See id.*

281. *See supra* Part I.B. *See also* Feldman, *supra* note 183, at 4 (noting that the law of paper money "was the same as that made from precious metal because both, he stressed, were sustained only through faith in the monarch").

282. Asher Yeshaya Karelitz, *Chazon Ish: Yoreh Deah* 72:2 (1994) (Hebrew). This approach also appears to be used by YEKHIEL MIKHAL EPSTIEN, *Arukh HaShulkan, Choshen Mishpat 278:13* (1923) (Hebrew) (emphasizing that currency notes in his time, the nineteenth century, were accepted without question as tender for transactions).

283. *See supra* Part III.B.

284. *See supra* Part IV.A.

widespread currency use..[285] This difference is not academic. In countries experiencing hyperinflation, it may well be the case that the local legal tender is not near-universally recognized.

It is true that today, more than ever before, it is relatively easy to spend Bitcoin at the retail level. Many payment processors and bank-adjacent financial institutions such as PayPal, CashApp, and even Walmart's One pay, all support crypto transactions,[286] as well as a network of Bitcoin ATM's.[287] But ultimately, it is uncommon for Bitcoin to be used in retail transactions.[288] Thus, Bitcoin probably fails a Talmudic definition of a currency—even in countries that recognize Bitcoin as legal tender.

CONCLUSION

Juristically, it makes sense that the Talmud might consider Bitcoin as a currency. It shares many commonalities of the metallic systems of yore, including market pricing and a non-adjustable fixed supply. Further it has won the respect of its millions of users who vote their legitimacy in the system by putting their own wealth on the line as part of their financial planning. Just like Maimonides definition of a legitimate king, Bitcoin's growth and adoption, seems to support its own legitimacy as a currency enterprise. But the Talmud's definition of currency does not include Bitcoin. Today, it's easier than ever to spend it at a greater variety of retailers than ever before. But nobody does. Practically, Bitcoin is not a medium of exchange, its respect and acceptance has been limited to other niche areas of finance. And it does not fulfill the medium of exchange incident of money as defined by the Talmud.

There is no doubt that fiat currency is widely accepted and legitimate. Yet its governance model raises the question: Who should control? Should the economy be led by a cadre of independent specialized experts, unelected and minimally accountable by design? It's reasonable to wonder if a market-based currency-user governance system might be more preferred to an expert class. Though society broadly accepts most fiat currencies, the users do not determine its value or its supply under normal market dynamics. So fiat currency user adoption does not support the same inference of legitimacy that it might in a fixed-supply market currency, such as precious metal or Bitcoin. Bitcoin

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285. The emphasis on a widely circulated currency referenced in the third opinion, does not seem to contradict the second opinion, they are often cited together. *See e.g.*, Meir, *supra* note 275 (combining Epstein's third approach to the question with Sofer's).

286. *See Crypto like a Pro with PayPal* PAYPAL, https://www.paypal.com/us/digital-wallet/manage-money/crypto [https://perma.cc/Q9P2-N9DR] (last visited Sept. 2026); *Buy Bitcoin Automatically with Zero Fees, Zero Spread*, CASHAPP, https://cash.app/Bitcoin [https://perma.cc/M3UQ-XZZE] (last visited Sept., 2026); *OnePay Crypto*, ONEPAY, https://www.onepay.com/crypto [https://perma.cc/B8ZU-H3TL] (last visited Sept. 2026).

287. *See* COINATMRADAR, *supra* note 269.

288. *See* Jones & Saad, *supra* note 270 (recognizing Bitcoin as a "niche investment" in a Gallup poll).

answers the "who decides" question: the people. The majority of those that use the currency and participate in markets over the specialized experts.

At some level, for those living in first world countries, this seems abstract and hardly believable. But for those who experienced a local Central Bank failure, any of the fifty-six hyperinflation events in the past 150 years or live under the fiscal control over a foreign sovereign, these concerns are real. The powers vested to central bankers are truly mighty and easily misused. Decentralized currency removes this power.

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Bitcoin (among other decentralized currency) has the benefit of decentralized governance, real markets and legitimacy. Millions of people own Bitcoin, and it holds over a trillion dollars of wealth. Given these advantages it behooves governments to adopt regulations and laws that provide for the integration of bitcoin into their financial systems. Indeed, the current congress may adopt a framework if the CLARITY Act passes. There is no doubt that Bitcoin is still in a nascent stage, but with recognition of the value this new currency brings, its maturity could come sooner than we think.