

# Providing a Legal Framework for Blockchain Activities And a Blockchain Framework for Legal Activities

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# Talk Introduction

- How does the law provide structure and regulation on blockchain/distributed ledger activities?
  - Can enable as well as control
  - Can seek to apply/adapt/contort existing models – Carla point - uncertainty
  - Can seek to develop targeted/certain solutions for legislation & regulation
  - Law already is computation – just word based: See Flood & Goodenough
- How does blockchain/distributed ledger inform and change how the law is conceived and applied?
  - New possibilities for doctrine
  - New possibilities for process
- Personal approach: find the holes in the interface of law and ledger and help to fill them, hopefully intelligently; Vermont Bias

# Question 1: How will the law deal with a new activity?

- Common law: bend existing concepts to meet the new approach
  - Although occasionally a new framework
- Legislative and regulatory: can also create new categories and results
- Getting it right matters: Paul Romer insight:

“Economic growth is driven by the coevolution of two sets of ideas, technology and rules. Governments can increase the rate of growth – in ways that benefit all citizens – by creating systems of rules that are both encouraging of and responsive to innovation; the various goals do not always line up.”

# Legal Status of a Blockchain Network

- What is the legal status of a distributed ledger community?
  - Chain itself? Supporting organizations?
  - “Decentralized Autonomous Organization” or DAO
  - Isn’t on-chain governance enough?
    - Blockchain utopianism and libertarianism
  - Nice idea, *but the law may classify it in existing formats*
    - When the Sheriff shows up with a binding order, on-chain independence gets tricky
    - Suits do happen – Winklevoss twins vs. Shrem
- Existing Law Possibilities
  - Partnership? Possibly a disaster
    - Third Party Liability, Fiduciary Duties, Changes, Tax
  - Trust? Carla Reyes
- Vermont Legislative Solution: The Blockchain LLC
  - Explicitly aimed at solving problems of liability, governance, duties, tax

# Other Enabling Concerns

- What is the admissibility status of blockchain data in court?
  - More later, but a Vermont approach here as well
- What is the legal status of Tokens?
  - Analogies to instruments, including stock, checks, bills of lading etc.
  - Don't want the law to put them into old buckets: UCC has specific requirements
  - Wyoming a starting point, but need better, widely adopted legal structure: UCC "Article Blockchain"?
- What is the legal status of smart contracts?
  - UETA does a lot of the the work, but needs more
  - "Ricardian" idea
  - Repository initiatives: Specific target? Use more general? BBR suggestion

# Regulatory Challenges: Apply Existing Paradigms Here?

- Securities Regulation in the US
  - Crypto/ICO Concerns: Is the token/coin a security?
    - If So, US Regulatory structure
    - Howey Test
  - Issuance: ICO's and the 1933 Act
    - Trying to comply or ignoring? Significant risks of penalty
  - Trading: Is it a security or a commodity?
    - Involving a broker/dealer can assist
  - State by State Concerns as Well
- Money Transfer
  - KYC/Money Laundering

# New Approaches

- Here, too we need new structures
- Government is beginning to recognize that
  - US Treasury White Paper
  - SEC Strategic Hub for Innovation and Financial Technology (FinHub)
    - Just announced
    - Not quite a sandbox: “Provide a portal for industry and the public to engage directly with SEC staff on innovative ideas and technological developments”
  - State Initiatives
    - Arizona Sandbox – credit here
    - Wyoming, Vermont
  - International – UK Sandbox, Singapore, Malta, Bermuda, etc.

# What It May Look Like

- Possible Next Steps in Traditional Regulatory Relaxation
  - Safe harbors
    - Offerings
    - Trading/Usage
  - Small purchaser exceptions
  - Nimble disclosure requirements
  - Beyond Crypto and Coins: Security, Equity and Utility Tokens
- But Blockchain and its relatives will also drive us to new formulations



# Question Two: How will a new activity change the law? Some of the possibilities

- Solving the openness/privacy challenge
  - Encryption, distribution
  - Bringing the algorithm to the data
  - Gibberish open to everyone
- Property
  - Will ease and democratization of recordation lead to new bundling of rights and duties? Does the “numerus clausus” melt?
- Government registries more generally
  - Secretary of State network?
  - Notary substitute for authentication?

# Possibilities Continued

- Personal information
  - Ability to have personal control?
  - Vermont PIPC
- Organizations
  - What will a DAO look like when we do recognize it?
  - Turing Machine – erase and rewrite: able to learn & change
- Funding/Securities/Contracts
  - Computable Contracts – Flood & Goodenough
  - “Smart securities” – self tracking, administering
  - Legal Specification Protocol: Stanford White Paper

# Courts Themselves

- What does a proceeding look like if conducted remotely and utilizing a distributed ledger approach?
  - What needs to be in person?
  - ODR already widespread in civil disputes
  - Federal Bankruptcy Courts: High Use of PDFs and other data filing
- What blockchain can add: information security
  - Consider Italian Initiative
  - Are we concerned about hacking of processes?
    - Interested parties?
    - The supposedly neutral magistrate?
    - Interest in Russia for a reason

# Wrap Up

- Law and the new technology applications will benefit from a deliberative approach to creating rules on blockchain/distributed ledger
  - Reminder: needed to enable and to regulate
- We should be active in this: Propose law & seek adoption
  - Harvard/MIT/Stanford
  - My Stanford conference story
  - Others in this room
  - Some thoughts on how to
- More than enough to keep us busy for the foreseeable future