

Iyare Otabor-Olubor*

Property Rights, Money and the Future of Cryptocurrency

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Abstract: The central argument in this article is that the legal recognition of cryptocurrency as a distinct form of property directly influences, and is in turn influenced by, its capacity to function as a medium of exchange. Legal scholarship often treats these topics in isolation. The analysis examines the conceptual and juridical foundations of cryptocurrency through the dual prisms of property and money, arguing that the legitimacy of cryptocurrency in economic and legal systems depends on its status as an object of ownership. It contends that the use of cryptocurrency as money cannot be separated from its proprietary character, as the ability to hold, transfer, and exclude others forms the basis upon which trust, exchange, and value are established. The discussion advances the view that cryptocurrency represents a novel category of intangible asset whose ownership must be understood within established principles of personal property while accommodating its decentralised, non-sovereign nature. The article further contends that cryptocurrency as a form of property enables it to fulfil specific monetary roles as a store of value and medium of exchange, thereby bringing personal property and money into a single analytical frame.

Keywords: cryptocurrency; crypto assets; digital assets; personal property; money

1 Introduction

The emergence of cryptocurrency (“crypto”) and other blockchain-based cryptoassets has precipitated one of the most significant jurisprudential challenges of the twenty-first century (Johnstone 2019; Van Erp 2016; Hennelly 2022). When Satoshi Nakamoto published the Bitcoin white paper in 2008, he presented a vision of peer-to-peer electronic cash that eschewed reliance on trusted intermediaries (Nakamoto 2008; Kirillova et al. 2018). What began as a small experiment among cryptographers has since evolved into a global market worth trillions of dollars, with a proliferation of cryptoassets serving diverse functions. These range from native cryptoassets like

*Corresponding author: **Iyare Otabor-Olubor**, Aston Law School, Aston University, Birmingham, B4 7ET, UK, E-mail: i.otabor-olubor@aston.ac.uk. <https://orcid.org/0000-0003-0600-4582>

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Bitcoin and Ether to non-fungible tokens (NFTs) representing digital art. Nonetheless, the law has struggled to categorise these novel assets (Lehmann 2024; Low and Teo 2017; Chow-White et al. 2020; Ho 2023; Vranken 2017). Commentators from private law, tax law, regulatory policy, and economic theory have employed different conceptual vocabularies, including personal property, currency, securities, and commodities (Tsindeliani and Egorova 2020; Kochergin 2022; Goforth 2021). This proliferation of classifications reflects both the novelty of the underlying technology and the multiplicity of interests at stake.

The debate about classification entails two closely linked questions that this article addresses. The first concerns whether holders of cryptocurrency enjoy proprietary rights enforceable against third parties. Property rights define who controls a resource, who may exclude others, and who benefits from its use and transfer (Carruthers and Ariovich 2004). Without property rights, participants cannot safely transact; they may only have contractual claims against a counterparty or custodian (Honoré 1987). The second question is whether cryptocurrency can fulfil the functions of money, serving as a widely accepted medium of exchange, a reliable store of value and a unit of account. Money underpins modern economies because it allows people to compare prices, settle obligations and plan for the future (Jonker 2019). Both questions are consequential for everyday users, investors, regulators and courts. Modern legal scholarship has considered property rights and monetary classification of cryptocurrency separately. Personal property law debates often focus on whether cryptocurrency fits within existing categories, such as choses in possession (things that can be physically held) or choses in action (rights enforceable through legal claims).¹ Economic theorists, by contrast, evaluate whether cryptocurrencies are sufficiently stable and widely accepted to qualify as a form of money, often concluding that their extreme volatility and limited adoption undermine such status (Marijan and Lal 2022; Freund 2018). This article contends that such separation overlooks an important truth, which is that the legal characterisation of cryptocurrency and its monetary potential are mutually constitutive. Without clear property rights, cryptocurrency cannot operate credibly as a form of money because users cannot be sure of their ownership, cannot exclude others, and cannot enforce their claims if it is stolen or misappropriated (Baron 2013). Conversely, if cryptocurrency fails to meet the economic functions of money, its value remains speculative, undermining the stability necessary for property rights to be meaningful.

The purpose of this paper is therefore to reappraise cryptocurrency by unifying two strands of scholarship around a central question: how does the legal characterisation of cryptocurrency as property inform, and how is it informed by, their

¹ *D'Aloia v Persons Unknown* [2024] EWHC 2342 (Ch); *Tulip Trading Ltd v Bitcoin Association for BSV* [2023] EWCA Civ 83.

purported monetary classification? To answer this question, the article constructs a theoretical framework rooted in personal property theory and financial economics. It draws on the concept of property as a bundle of rights and on Hayek's proposal for the denationalisation of money, exploring the implications of these theories for cryptocurrency. The article examines how courts and statutes have approached the classification of cryptocurrency as property, and evaluates the monetary status of cryptocurrency, assessing whether cryptocurrency meets the criteria for money. The article critically analyses recent judicial decisions and transnational commercial law reform developments, demonstrating that personal property laws on crypto and money should be interdependent.

2 The Historical and Socio-Economic Context of Cryptocurrency

It is no coincidence that Bitcoin emerged in early 2009, in the shadow of the 2007–2008 global financial crisis (Baur and Hoang 2021). That crisis had undermined public confidence in state-backed financial institutions and government monetary policies, prompting a search for alternatives (Kostakis and Giotitsas 2014). Bitcoin's pseudonymous creator, Satoshi Nakamoto, referenced the instability of the banking system in the very first block of the Bitcoin blockchain (Nakamoto 2008), indicating an intention to create a new form of money insulated from the failings of the existing system. The Bitcoin blockchain introduced a public, tamper-resistant ledger maintained not by a central authority but by a decentralised network of computers (nodes) around the world. This technological breakthrough, which combines cryptographic security (Quintais et al. 2019) with a consensus mechanism (proof of work) to validate transactions, enables parties to transact value directly with each other without needing to trust a bank or government intermediary. In the decade that followed, the number of cryptocurrencies multiplied dramatically. Developers created thousands of “altcoins” (alternative cryptocurrencies) and tokens (Lee et al. 2018). Some of these built upon Bitcoin's model while others introduced innovations such as self-executing smart contracts, enhanced privacy features, or more energy-efficient consensus algorithms (Berger and Reiser 2018). This period witnessed an era of unprecedented financial experimentation, with the concept of money itself being re-examined and reinvented in real-time.

Unsurprisingly, the rapid rise of cryptocurrency has led to vigorous debates in legal and regulatory circles. Early on, questions arose whether cryptocurrencies are

property or money, and thus subject to property and financial laws.² Are crypto securities or commodities implicating financial regulations?³ Are they simply digital goods or records which fall into a regulatory grey area?⁴ Different jurisdictions have taken different positions, but a recent trend has been to treat cryptocurrency primarily as a form of property for legal purposes, even if regulators do not recognise it as “currency” in the financial market sense (Carr 2019; Quintais et al. 2019). The United States, for example, taxes crypto holdings under capital property rules, while the UK has issued guidance treating cryptoassets as personal property but not legal tender (Goforth 2019; Low 2024; Ho 2023). Underlying these classifications is the recognition that people invest real value in cryptocurrency and expect to own it; therefore, the law must provide a framework for that ownership. Scholars have emphasised that establishing clear property rights in crypto is a prerequisite for protecting consumers and investors, as well as for integrating crypto markets into the broader financial system (Johnstone 2019; Hennelly 2022; Zou 2020). At the same time, if cryptocurrency is to function more like money, lawmakers have had to consider adaptations in secured finance, and even in contract law, such as recognising cryptocurrency as a valid payment or unit of account in contracts.⁵ Each of these legal evolutions reflects the influence of cryptocurrencies’ monetary characteristics on law. The more cryptocurrency behaves like money, the more the law must treat them as something akin to money, which should begin with acknowledging them as property.

Ultimately, the mystery surrounding cryptocurrency lies in the convergence of technological innovation, economic theory, and legal adaptation. The capacity of Bitcoin and its progeny to serve as a form of money in a socio-economic sense has prompted a reconsideration of long-standing legal definitions of property (Low and Tan 2020; Lehmann 2019; Held 2025). Conversely, the willingness of legal systems to classify and recognise crypto as property has been a key enabler of its continued use and acceptance as a monetary instrument (Arslanian 2022; Ho 2023). This interplay can be clearly seen in recent developments, as crypto gained prominence and adopters, the courts have started extending property law doctrines to them.⁶ For

² *LMN v Bitflyer Holdings Inc* [2022] EWHC 2954 (Comm); *Vorotyntseva v Money-4 Ltd (T/A Nebus.com)* [2018] EWHC 2596 (Ch); *Piroozzadeh v Persons Unknown* [2023] EWHC 1024 (Ch); *Amir Suleymani v Nifty Gateway LLC* [2022] EWHC 773 (Comm).

³ *United States v Harmon*, 474 F Supp 3d 76 (D.D.C. 2020) where the court held that Bitcoin constitutes “money” for purposes of financial crime statutes, such as the D.C. Money Transmitters Act. Also see *SEC v Kik Interactive Inc.*, 492 F Supp 3d 169 (S.D.N.Y. 2020).

⁴ *DPP v Briedis* [2021] EWHC 3155 (Admin).

⁵ *Mannarino v Persons Unknown* [2023] EWHC 3176 (Ch).

⁶ *Commissioner of the Australian Federal Police v Bigatton* [2020] NSWSC 245; *Huobi Asia Limited v Chen Boliang* [2020] HKCFI 2750.

example, courts have issued proprietary injunctions in cases involving stolen cryptocurrency, which has given more individuals and institutions the confidence to hold and transact in cryptocurrency.⁷ Going forward, the relationship is likely to remain reciprocal. The more cryptocurrencies are used as money in society, facilitating exchange, and as a store of value, the more pressure there will be on legal systems to formalise their status as property. The more precise the legal classification of cryptocurrency becomes in society, the more readily it can fulfil monetary uses. In summary, the legal position of cryptocurrency as personal property and its capacity to function as a medium of exchange are two sides of the same coin, each enabling and reinforcing the other. Building on this interdependence, the following discussion examines both dimensions in greater depth, assessing how property rights and crypto as a form of money purportedly impacts the legitimacy, stability, and broader economic integration of cryptocurrencies within our legal systems.

3 Conceptual Framework: Property as a Bundle of Rights and the Mirage of Intangibility

The classical concept of property in the common law distinguishes between tangible things that can be physically possessed and intangible rights that can only be enforced through legal action.⁸ The former category comprises “choses in possession”, such as furniture, vehicles or gold coins, while the latter encompasses “choses in action”, such as debts, company stocks and intellectual property.⁹ Transfer of a chose in possession historically required manual delivery; transfer of a chose in action required assignment and notice.¹⁰ This dichotomy reflects a legal system built around physical goods and paper instruments where possession serves as a proxy for ownership and the capacity to exclude others (Marinotti 2022; Merrill 1998). When cryptocurrency emerged, it defied these categories.¹¹ A blockchain-based native cryptocurrency exists only as records in distributed ledgers, controlled by private keys rather than physical possession or legal documents (Schwiderowski et al. 2024). They are intangible and usually decentralised, and they do not embody a right against any person but rather represent an entry on a ledger that anyone can verify

7 *Fetch.AI v Persons Unknown* [2021] EWHC 2254 (Comm).

8 *Torkington v Magee* [1902] 2 KB 427, 430; *Attorney General of Hong Kong v Chan Nai-Keung* [1987] 1 WLR 1339; *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch).

9 *Re Thynne* [1911] 1 Ch. 282; *Colonial Bank v Whinney* (1886) 11 App. Cas. 426.

10 *Colonial Bank v Whinney* (1886) 11 App. Cas. 426.

11 *Danisz v. Persons Unknown and Huobi Global Ltd* [2022] EWHC 280 (QB); *LMN v. Bitflyer Holdings Inc* [2022] EWHC 2954 (Comm).

(Tan and Xiong 2020). They cannot be physically possessed, so they are not choses in possession; however, they are not choses in action because their existence does not depend on the legal system, and they do not embody an obligation owed by a person (Low and Tan 2020). The result is a classification quandary because if cryptocurrency is neither a chose in possession nor a chose in action, how can it be personal property? Are they simply contractual entitlements, or do they require the creation of a new category of personal property?

Property theorists conceptualise ownership as a bundle of rights, including the right to possess, use, enjoy, exclude others, dispose of and inherit the asset (Gretton 2007; Snare 1972). Honoré's celebrated list of incidents of ownership also includes rights to manage and receive income, duties to prevent harm and liabilities to execution (Honoré 1987; Galloway 2018). Cryptocurrency raises questions about which incidents of ownership are present and how they are exercised. Holders can control cryptocurrency by virtue of possessing the private key, and they can transfer it by signing an electronic transaction (Jaroucheh and Ghaleb 2023). They can exclude others by keeping their private key secret (Haentjens et al. 2020). They can enjoy the cryptocurrency's value, for example, by selling it or granting a security right over it. Since cryptocurrency is intangible, possession is digital rather than physical (Zilioli 2020). Moreover, a holder's ability to assert their rights may depend on the cooperation of the blockchain network and on the recognition of courts and regulators. Legal recognition of property rights attaches normative significance to these technical details, enabling holders to sue for conversion, seek injunctions, or assert priorities in the event of insolvency.¹²

Cryptos are a novel form of digital asset defined by their decentralised nature and lack of any anchoring in external assets or legal rights. Unlike traditional financial instruments, a cryptocurrency can exist as the native crypto asset of its own independent blockchain network, deriving its value from the utility of that network and the consensual trust of its participants (Demertzis and Wolff 2018). Therefore, cryptocurrency can serve a dual role: on one hand, they may act as the fuel of the blockchain ecosystem, for example, rewarding the participants who validate transactions and secure the network, and on the other hand, they are transferrable units of value that can function as a medium of exchange and store of wealth in their own right (Kapsis 2020). This dual utility, as both an internal network currency and an external medium of exchange, places cryptocurrencies at the crossroads of two fundamental legal and economic categories: personal property and money (Arslanian 2022). It raises the central question of this article, which is what the legal nature of a cryptocurrency is, and how this legal classification relates to its purported function as a medium of exchange. Additionally, this article clarifies how recognising cryptocurrency as property influences its prospects of becoming a form of money

¹² *Osbourne v Persons Unknown Category A* [2023] EWHC 39 (KB).

and, conversely, how the aspiration to function as money pressures courts to articulate clear proprietary rights. Such an analysis is essential, as it provides the groundwork for understanding broader legal and regulatory challenges (England and Wales Law Commission Summary of Consultation Paper 2022).

At first glance, one might assume that cryptocurrencies should simply be treated as a new specie of personal property, since people can hold and trade them much like other valuable assets. Indeed, courts and legislators in several jurisdictions have increasingly acknowledged that cryptocurrency can be objects of property rights.¹³ However, fitting cryptocurrency neatly into common-law property categories has proven challenging.¹⁴ The common law has long divided personal property into “things in possession” (tangible items that can be physically held) and “things in action” (intangible rights enforceable by legal action, such as debts or shares) (Bridge et al. 2021). Cryptocurrencies do not comfortably sit in either category. They are intangible and exist only as records on a distributed ledger, yet they are not mere contractual rights against an issuer or intermediary; their existence and value do not depend on any single authority’s promise (Low and Hara 2024). In essence, a cryptocurrency is self-authenticating because it is a string of digital code secured by cryptography and consensus rather than a paper certificate or an entry in a company’s register. This *sui generis* nature means courts have had to grapple with whether such digital units can be “owned” in the legal sense and what it means to possess or transfer them.¹⁵

The significance of property rights came to the fore in the aftermath of the Mt. Gox collapse. Mt. Gox, once the world’s largest Bitcoin exchange, went bankrupt in 2014 after hundreds of thousands of bitcoins were lost. In the ensuing Japanese insolvency proceedings, a fundamental question arose as to whether the Bitcoins held by the exchange for its users could be considered property owned by those users. At that time, Japanese civil law did not recognise intangibles as “things” that could be owned, and in 2015, the Tokyo District Court concluded that Bitcoin could not be an object of ownership under the Civil Code. The court reasoned that only tangible objects could be owned in the legal sense.¹⁶ Despite the user’s argument that an electronic record of his 458 BTC in Mt. Gox’s database should be considered a tangible thing, the claim was rejected. As a result, the customer’s bitcoins were treated merely

¹³ *Yan Yu Ying v. Leung Wing Hei* [2021] HKCFI 3160 (HK); *Attorney General of Hong Kong v Chan Nai-Keung* [1987] 1 WLR 1339; *Commissioner of the Australian Federal Police v Bigatton* [2020] NSWSC 245 (Austl.). Also see Liechtenstein Token and Trusted Technology Service Provider Act (TVTG) 2019, also known as the “Blockchain Act.” Liechtenstein.

¹⁴ *Jones v Persons Unknown* (Commercial Court) [2022] EWHC 2543 (Comm); *D’Aloia v Persons Unknown* [2024] EWHC 2342 (Ch).

¹⁵ *Tulip Trading v Van Der Laan* [2023] 4 WLR 16, 24.

¹⁶ *Mt. Gox* [2015] Judgment of the Tokyo District Court (Civil Division) 28.

as part of the exchange's estate, not segregable assets belonging to him. This outcome vividly demonstrated how a lack of legal framework for cryptocurrency can leave users unprotected. Although Bitcoin was intended to operate as digital money, users had no legal remedy to recover their coins because they were not recognised as their property. The ruling in the Mt. Gox case suggests that if cryptocurrencies are to be widely used and trusted, legal systems will have to adjust. In the wake of such issues, countries like Japan have responded by reforming laws. For instance, Japan's Payment Services Act was amended in 2017 to define and regulate virtual currency, thereby granting Bitcoin and other cryptocurrencies a legal status similar to that of digital assets used for payments. This development marked a step toward acknowledging cryptocurrency within the legal domain, aiming to prevent future scenarios where users are left without legal recourse.

Legal systems built on the common law have begun to adapt following the Mt. Gox case. In England and Wales, for example, the Law Commission's 2022 consultation on digital assets recognised that specific cryptocurrencies have unique characteristics warranting a third category of personal property beyond the classic binary of things in possession or in action (England and Wales Law Commission Summary of Consultation Paper 2022). The rationale is that recognising cryptocurrency as property, even if it requires a new classificatory bucket, is vital because property rights are the mechanism by which the law recognises and protects an individual's claim to an asset (Fox 2019; Carr 2019). Without precise property classification, activities like buying, selling, inheriting, or securing a cryptocurrency remain legally uncertain. For instance, if a Bitcoin is stolen or misappropriated, can the original owner assert a property right to reclaim it? If one wishes to use cryptocurrency as collateral for a loan, will the law recognise it as an asset capable of being attached in a floating charge? These issues have been the subject of intense debate under the common law.¹⁷ The emerging consensus is that legal position of cryptocurrency is essential for its integration into the existing framework of property rights (Lehmann 2019; Giancaspro and Babie 2022; Low and Teo 2017). People will not widely use and trust cryptocurrency in the same way they use money unless they have confidence that the law will uphold their ownership and resolve disputes predictably (Dodd 2018; Extance 2015). The emerging case law and statutory proposals thus far indicate that the law is moving towards firmly classifying cryptocurrency as objects of property, carving out space for them in the legal imagination as something one can own, transfer, and secure interests in, even if they are unlike other intangibles.

¹⁷ *Litecoin Foundation Ltd v Inshallah Ltd* [2021] EWHC 1998 (Ch); *LMN v Bitfyer Holdings Inc* [2022] EWHC 2954 (Comm); *Ruscoe v Cryptopia Ltd (in Liquidation)* [2020] NZHC 728; *Nicholls v Little* [2022] EWHC 2344 (QB).

4 The Monetary Function of Cryptocurrency

Clarifying the property status of crypto is not an end in itself, but rather a means to unlock their capacity to function as money, a function for which they were originally designed (Hazlett and Luther 2020; Weber 2016). In economic terms, “money” is typically defined not by its physical form, but by the role it performs in society (Chung 2019, Reuten 2005, Mann 1949). Classical financial theory stipulates that money serves as: (1) a medium of exchange, used to intermediate the buying and selling of goods and services; (2) a measure of value (or unit of account), providing a standard metric to price goods and record debts; and (3) a store of value, allowing wealth to be saved and retrieved later without excessive loss (Tymoigne and Wray 2015; Green 2017; Tobin 1965; Wray 2019).

Primary function	Secondary function	Contingent function	Economic motives
Medium of exchange: An intermediary instrument facilitating the buying and selling of goods and services	Standard of deferred payment: Money is recognised for settling debts at a future date	Access to credit: Money underpins the lending and borrowing activities that facilitate the expansion of credit	Transactional: Money is held to meet the demands of everyday transactions
Measure of value: Money provides a standard measure for pricing and valuing goods and services	Store of value: Money can preserve purchasing power over time	Capital mobility and productivity: Money allows capital to be moved to where it can be most productively used	Precautionary: Money is held in reserve to cover unexpected expenses or financial emergencies
	Transfer of value: Money facilitates the movement of purchasing power from one entity to another	Distribution of the economy’s output: Money aids in distributing the output of an economy among various actors and sectors	Speculative: Money is held for investing when the expectation is that prices will fluctuate, leading to potential gains
		Equilibrium condition for utility and productivity: Money helps achieve an optimal state where marginal utilities and marginal productivities are equalised	

To these primary functions, there are additional related roles, such as serving as a standard for deferred payments (enabling loans and credit over time) and facilitating the transfer of value across distances or between parties (Chung 2019; Tymoigne and Wray 2015). Historically, various commodities and instruments, from

gold and silver coins to paper notes and bank balances, have fulfilled these functions under different legal regimes (Hayashi and Matsui 1996; Ritter 1995). Crucially, whatever object or record serves as money in a given context must be undergirded by social trust and legal certainty (Mann 1949; Finn 1992; Vora 2015). Legal recognition is a key part of that; for example, banknotes and bank deposits are legally recognised as money, or at least as redeemable claims to money, which gives users confidence that they can accept them in exchange and later demand goods or services or payment of debts with them.

Cryptocurrencies, since the advent of Bitcoin in 2008, have been designed to take on these three functions, albeit outside the traditional state-backed framework. Bitcoin's white paper famously describes it as "an electronic cash system" intended to enable peer-to-peer payments without the need for financial intermediaries (Nakamoto 2008). Indeed, early cryptocurrencies aimed primarily to serve as a medium of exchange, a role they have partly achieved in certain niches, such as online marketplaces and remittances, and a store of value, as seen in the "digital gold" narrative with Bitcoin and its capped supply (Baur and Hoang 2021). However, their adoption as a unit of account remains limited; prices in the broader economy are still rarely quoted in Bitcoin or Ether, in part due to volatility (Trautman 2018). This demonstrates how nascent the financial utility of cryptocurrency still is. Even so, the trajectory since 2008 has shown a growing acceptance of crypto in monetary-like roles (International Monetary Fund 2023; Risius and Spohrer 2017). For example, by the mid-2010s and beyond, major businesses and payment processors began to facilitate cryptocurrency transactions, and some jurisdictions have even considered making cryptocurrency a legal tender or officially accepted for tax payments (Ferrari 2020; Xia et al. 2023). The gradual evolution of cryptocurrencies from experimental payment tools to assets with growing monetary-like roles reflects both innovation and persistent limitations. While they increasingly serve as mediums of exchange and stores of value, their volatility constrains wider adoption as units of account (Baur and Dimpfl 2021). This incomplete transition highlights the importance of examining its legal dimension. For cryptocurrencies to be adopted securely for economic use, questions of ownership, transferability, and property rights should first be resolved.

5 Why Property Rights Matter for Cryptocurrency

Money and property have always been related because for something to circulate as money, individuals must be confident that they own whatever it is they are exchanging (Decker 2015; Ingham 1998). In the case of fiat money, holding a banknote or having an account balance confers a clear legal claim, either ownership of the note

or a claim against the bank, which is protected by law (Rahmatian 2018). Similarly, for cryptocurrency to function as a form of money, users require assurance that the crypto they hold in their digital wallets is legally theirs and that when they transfer it to someone else in payment, the transfer conveys a valid title.¹⁸ If the law were to treat cryptocurrencies not as property, but merely as unprotectable bits of data or as a legally unrecognised construct, it would undermine the confidence of users and businesses in accepting them as payment (Bratspies 2018). Conversely, once cryptocurrency is recognised as property, an entire legal infrastructure comes into play to support its use. Laws against theft and fraud apply to them; courts can issue orders, such as freezing injunctions or orders for restitution, in cases of misappropriation. These orders can be used in commercial transactions, for instance, as secured collateral or as payment in contracts with greater certainty.¹⁹ In essence, legal classification as property provides the bridge that connects the technological capability of cryptocurrencies to be used as money with the social and economic systems that rely on legal rights and obligations. Scholars recognise this relationship, given that widespread use of crypto requires clear property rights, and the process of legally defining those rights is informed by how these assets are used in commerce (Moringiello and Odinet 2022; Allen 2019; Held 2025). It is a two-way relationship because the more crypto is used as a form of money, the greater the pressure on legal systems to establish its property status; and the clearer its legal status, the easier it becomes for crypto to be used as a means of payment in everyday transactions.

The potential of cryptocurrency as private, decentralised money also resonates with long-standing debates in economic theory about who should issue money and how its value should be governed (Holzer 1972; Rahman and Ayub 2019; Mundell 2012). A particularly relevant perspective is that of Friedrich A. Hayek, the Austrian economist who, in the 1970s and 1980s, strongly argued against the state's monopoly over the issuance of money (Hayek 1976). Hayek proposed a radical idea, i.e., competition between privately issued currencies. In his vision, banks or other private issuers would create their own currencies, effectively brand-name monies, which would circulate concurrently, and market forces would determine which ones gain acceptance (Hayek 1976; Hayek et al. 1984). Currencies that maintained their purchasing power and proved reliable would drive unstable ones out of circulation, leading to a healthier financial system than one centrally managed by governments

¹⁸ *Re Gatecoin Ltd* [2023] HKCFI 914 (Hong Kong High Court); *Fetch.AI Ltd v Persons Unknown* [2021] EWHC 2254 (Comm).

¹⁹ *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 (Singapore Court of Appeal). Also see *SEC v Ripple Labs Inc.*, No. 20 Civ. 10832 (S.D.N.Y. 2023) where the U.S. district court considered whether XRP were securities but eventually ruled them as transferrable assets with property-like qualities.

(Hayek 1976, 1990). This theory postulates that profit-driven issuers would have a strong incentive to maintain a stable currency to attract and retain users. Hayek even anticipated technological advances playing a role, wherein he imagined that issuers could use computers, a forward-thinking idea at the time, to constantly monitor economic indicators and adjust the money supply in real time to maintain stability (Hayek 1990). Hayek championed a decentralised, market-regulated approach to currency, as opposed to central bank control.

Cryptocurrencies are a real-world experiment that seems to fulfil much of Hayek's vision. They are non-state currencies created by private individuals or communities, often through open-source projects, and may be secured by decentralised networks of users rather than by government trust (Howell et al. 2023). Multiple cryptocurrencies compete in the global marketplace; Bitcoin, Ether, XRP, and thousands of others vie for users, investment, and transactional acceptance. This competition is often driven by the differing governance policies and "tokenomics" encoded in these cryptocurrencies. For example, Bitcoin's supply is algorithmically limited to 21 million BTC, making it strictly scarce by design, a feature that aligns with the deflationary philosophy of Hayek (Fantacci 2019). Competing crypto projects offer alternative value propositions; some aim for faster transactions, others for greater privacy, while others seek stability through asset backing or algorithmic adjustments. They effectively compete for relevance and trust, much like Hayek's competing private currencies would have (Berger and Reiser 2018).

Notably, in the cryptocurrency space, those assets that manage to maintain more stable value and security tend to attract more users and mainstream integration, for instance, so-called "stablecoins" and Central Bank Digital Currencies (CBDCs) have gained traction for their low volatility, which echoes the idea that stability is key to broad adoption (Laboure et al. 2021; Walker 2022; Issing et al. 2000). The market-driven dynamics that Hayek theorised are observable in how cryptocurrency rises or falls in prominence. Importantly, Hayek's insights highlight why the legal aspect cannot be ignored, noting that for such currency competition to take hold truly, the legal system must permit it. This means allowing privately issued currencies, such as cryptocurrencies, to exist and circulate, which implicates regulation and property law, and enabling holders of these currencies to have defined ownership rights. The current legal trend of treating cryptocurrency as property can thus be seen as an enabling factor for Hayek's concept of currency competition, as it legally empowers private actors to hold and exchange these new forms of money, subject to the rules of commerce and property rather than banning them as illegitimate forms of money. Consequently, as cryptocurrencies reflect Hayek's conception of money directed by market dynamics, their effectiveness or inadequacy in operating as money will, in turn, influence their legal nature. Consistent use as a medium of exchange and store

of value will eventually prompt lawmakers to accord decentralised cryptocurrencies with formal monetary status beyond CBDCs, for example, legal tender status.

6 English Law and the Classification of Cryptocurrency

Under English law, cryptocurrency has been progressively considered a thing associated with property rights, although it does not fit neatly into traditional categories of personal property (England and Wales Law Commission Final Report 2023). As discussed earlier, English common law historically distinguished personal property as “things in possession” (tangible chattels capable of physical possession) and “things in action” (intangible rights enforceable by legal action).²⁰ Cryptocurrencies are neither a chose in possession nor a chose in action. However, English courts have confirmed they “are property” broadly and should not be denied the attributes of personal property rights (Property (Digital Assets etc) Bill 2025). In the case *AA v Persons Unknown (Re Bitcoin)*,²¹ the High Court ruled that cryptocurrency is “neither a chose in possession nor a chose in action” but concluded it constitutes a form of property. The material facts are that an insurance company was attacked by hackers who installed ransomware and demanded a BTC ransom. The company’s insurer paid the ransom and then used Chainalysis to track the extorted Bitcoins to an exchange, Bitfinex. The insurer sought a proprietary injunction, asserting that the ransom remained its property and could be traced to Bitfinex’s accounts. Mr Justice Bryan agreed in his judgment, relying on a legal statement that BTC was property, as it met the definition, despite not being a chose in action or in possession.²² Consequently, a proprietary injunction was granted, with the extorted Bitcoins being recoverable in equity. Similar conclusions have been reached in many cases, reinforcing a common law consensus that digital assets, such as BTC, can be subject to personal property rights.²³ This judicial trend has culminated in the statutory recognition of personal property rights in digital assets distinct from the two personal property categories (Property (Digital Assets etc) Bill 2025). The emergence of this new category illustrates the flexibility of English law in adapting property concepts to novel intangibles.

²⁰ *Torkington v Magee* [1902] 2 KB 427.

²¹ [2019] EWHC 3556 (Comm).

²² *Vorotyntseva v Money-4 Ltd (T/A Nebus.com)* [2018] EWHC 2596 (Ch).

²³ *Osbourne v Persons Unknown* [2022] EWHC 1021 (Comm); *Danisz v Persons Unknown and Huobi Global Ltd* [2022] EWHC 280 (QB); *LMN v Bitflyer Holdings Inc* [2022] EWHC 2954 (Comm).

The statute aligns with the England and Wales Law Commission's reforms, which hold that certain digital assets (including cryptocurrency) can be the object of personal property rights, even though they do not easily align with things in possession or things in action (England and Wales Law Commission Final Report 2023). The Law Commission considered that the common law was ready to recognise a distinct category of property for digital assets and recommended legislation to confirm the existence of this third category through the Property (Digital Assets etc) Bill 2025. Crucially, the Law Commission did not seek to define all aspects of this new category, preferring instead to confirm its existence and let courts delineate the precise boundaries and incidents of such digital property over time. The Bill's operative clause in Section 1 provides that:

A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither – (a) a thing in possession, nor (b) a thing in action.

This provision stipulates that the two categories are non-exhaustive, thereby resolving any uncertainty about the proprietary status of cryptocurrency and other novel digital assets. Following this clarification that cryptocurrencies and similar digital assets are capable of ownership, the statute bolsters legal certainty and acknowledges the reality of these digital assets.

The Law Commission's draft Bill, as outlined in its Supplemental Report, highlights this approach. The intention was to "confirm the existing law, facilitate the law's future development and lay to rest any lingering uncertainty" regarding personal property rights over digital assets (England and Wales Law Commission Supplemental Report and Draft Bill 2024). Notably, the Bill refrains from defining "digital asset", leaving it to courts to develop criteria for what fits within this category:

Our recommendation and this draft Bill aim to recognise, and establish a statutory footing for, the existence of a further category of personal property, into which things that do not fit easily within existing categories – including crypto-tokens – could fall. However, ... we do not consider it necessary or desirable, and perhaps even possible, to define the boundaries of such a category, or to specify criteria that would determine which assets should fall within or out with it. These issues are subject to nuance and properly left to the common law.

In its Report, the Law Commission suggested using familiar *indicia* of property, such as exclusivity, control, rivalrousness, and assignability, to identify which crypto qualify as objects of property rights. The approach, therefore, strikes a balance between certainty and flexibility. Core recognition of property status is to be provided by statute. In contrast, the core development of personal property law, for example, how concepts like possession or transfer apply to cryptocurrency, is entrusted to piecemeal case law. Although the Bill employs broad language, the Law

Commission often refers to qualifying digital assets as “data objects” or “crypto assets” to distinguish them from pure information (England and Wales Law Commission Final Report 2023). The intent is not to confer property status on all data or information which could raise policy concerns, but to ensure that things capable of attracting property rights are not denied recognition simply for failing to fit existing labels. In other words, the law will continue to require that a digital asset meet certain criteria, such as being identifiable, distinct, and subject to exclusive control, to be considered property. This means a cryptocurrency, which is comprised of unique records on a blockchain and can be exclusively controlled by whoever holds the private keys, is seen as a thing of value separate from any person’s personal rights, and thus apt to be an “object” of personal property rights. By contrast, a purely informational asset, lacking exclusivity, such as confidential information, would not automatically become property.

This reform ensures that English law’s concepts remain “forward-looking” and only those digital assets that manifest qualities warranting property treatment will enjoy it, and will be guided by case law as the third category matures. Therefore, through a mix of judicial decisions and statutory reform, English law now classifies cryptocurrency as a new form of personal property. The reform carries far-reaching implications, particularly for commercial transactions. For instance, when Bitcoin is exchanged for goods or services, the transfer resembles a sale within the meaning of Section 2(1) of the Sale of Goods Act 1979, where property in the goods passes from the seller to the buyer for consideration. Treating cryptocurrency as property ensures that such transfers generate valid titles, consideration, remedies, and obligations akin to those of monetary transactions. Without this classification, the exchange of cryptocurrency for goods would remain in legal limbo, lacking juridical certainty regarding ownership and the transfer of value.

The next phase of this article turns to the Unidroit Principles on Digital Assets and Private Law 2023 (“Unidroit Principles”), which provides a transnational soft law framework for recognising ownership, control, and transfer of digital assets. Examining these principles reveals how legal evolution in England resonates with, and is reinforced by, broader global legal consensus.

7 The Unidroit Principles on Digital Assets and Private Law

Personal property right reforms under English law reflects and contributes to a broader international effort to harmonise the private law treatment of cryptocurrency and other digital assets. One of the most significant of these developments is

the Unidroit Principles. Adopted as a set of non-binding guidelines, the Unidroit Principles are designed to inform national legislature and courts on the private law of digital assets, broadly conceived, thereby offering a common point of reference for jurisdictions grappling with similar conceptual and practical challenges (Gullifer and Tirado 2025). While the Unidroit Principles refrain from dictating whether digital assets should be classified as property under domestic law, they nonetheless affirm their proprietary nature. As set out in paragraph 0.13, digital assets can be the subject of in rem rights enforceable against the world, and Principle 3(1) makes this explicit by declaring that they “can be the subject of proprietary rights” (Unidroit Principles, para 3.1). This provision resonates closely with the trajectory of English law. Just as the Law Commission and the courts in cases such as *AA v Persons Unknown* recognised that cryptocurrency does not fit easily into the categories of choses in possession or choses in action, yet still constitutes property, the Unidroit Principles establish a baseline that digital assets should not be excluded from property regimes merely because of their intangible or *sui generis* qualities (Unidroit Principles, para 0.6).

Importantly, the Unidroit Principles avoid prescribing the juridical label that national systems should adopt. They acknowledge that one jurisdiction may describe cryptocurrency as “movable things,” another as “immaterial property,” and another as *sui generis* “data objects” (Unidroit Principles, para 3.2). What matters is the functional acceptance of enforceable proprietary rights with third-party effect. In this way, the Unidroit Principles reflect an understanding that rigid adherence to inherited categories can hinder legal adaptation and that new frameworks may be required to accommodate cryptocurrency within property law. A particularly notable contribution of the Unidroit Principles is their concept of “control” as a functional equivalent to possession. Because digital assets cannot be physically possessed, private law must clarify alternative *indicia* of ownership. Under Principle 6, control is defined as a person’s exclusive ability to prevent others from enjoying the benefits of the asset and to transfer it to others. This provision is technologically aligned with decentralised blockchain systems, where access to private keys confers the practical ability to deal with the asset. Therefore, by aligning the law with blockchain technology, the Unidroit Principles advance a nuanced legal framework that allows courts and legislature to conceptualise possession and custody of digital assets in ways consistent with their actual operation. This is critical to ensuring that property law keeps pace with the distinctiveness of cryptocurrencies.

The Unidroit Principles also advance rules on transfer and good faith acquisition, which are essential for market certainty. Principle 8 provides that a transferee who acquires control of a digital asset for value, without notice of adverse claims, takes it free of prior proprietary interests (Unidroit Principles, para 8.7). This is analogous to the doctrine of the *bona fide* purchaser for consideration without notice

in the common law property regimes (Fox 1996). The legal rationale is clear. Commercial systems cannot thrive if the title held by innocent acquirers of assets for value can be defeated due to a hidden encumbrance in the title.²⁴ Therefore, this means that someone who acquires crypto on an exchange without knowledge of their defective title, such as prior theft or misappropriation, should be shielded from *ex post* claims. English law has developed sector-specific doctrines of good faith acquisition (Stapleton 1999). Still, its adaptation to digital assets has recently been tested in *Osbourne v Persons Unknown and Others*, where the High Court recognised NFTs as property capable of ownership and protection, with the ruling concluding that the bona fide purchaser doctrine can protect good-faith acquirers of digital assets.²⁵

The Unidroit Principles provide a model that the common law and civil law jurisdictions alike can adapt, thereby promoting legal certainty in crypto markets. In substance, therefore, the Unidroit Principles converge with recent English law reforms, especially the Law Commission's recognition of a third category of property for digital assets and the proposed Property (Digital Assets etc) Bill. Both initiatives embrace the idea that law should not deny property status merely because an asset fails to conform to traditional categories, and both stress the need for a uniform criterion such as exclusivity, control, and transferability. Without a broadly compatible recognition of property rights, ownership and transfer could become mired in jurisdictional inconsistencies, undermining their credibility as a medium of exchange. In this sense, the Unidroit Principles do more than harmonise personal property rules for digital assets; they also indirectly clarify the conditions for cryptocurrencies to be used as a means of exchange. If proprietary rights are consistently recognised across borders, and if good faith purchasers are protected, individuals and businesses will have greater confidence in using cryptocurrency for exchange, investment, and collateral. Conversely, if proprietary recognition is inconsistent or uncertain, cryptocurrency remains confined to speculative or localised uses, with little chance of achieving monetary status. Thus, the Unidroit Principles reinforce this article's central claim that property and money are mutually constitutive in the case of cryptocurrency. Legal certainty about ownership and transfer is not just a matter of doctrinal neatness; it is indeed a necessary precondition for cryptocurrency to operate credibly as an economic instrument.

In conclusion, the Unidroit Principles embody the emerging global consensus that digital assets such as cryptocurrency must be recognised in a proprietary right paradigm. The standards for ownership, transfer, and good faith acquisition complement the trajectory of English law, assuring that domestic reforms are aligned

²⁴ *Jones v Smith* (1841) 1 Hare 43; *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 (HL).

²⁵ [2022] EWHC 1021 (Comm).

with broader international developments.²⁶ The Unidroit Principles also show the reciprocal relationship at the centre of this article. As legal systems clarify the proprietary status of cryptocurrency, they simultaneously strengthen the foundations for their monetary role, while the aspiration for cryptocurrency to function as money continues to exert pressure on legal systems to adapt to modern property law.

While it is settled that personal property rights can be legally asserted over cryptocurrency under the common law, thereby marking a significant advancement in the law of things, the global discourse around the status of cryptocurrency as a monetary legal tender remains controversial. Therefore, exploring the core attributes of cryptocurrency that align with or diverge from fiat currency is imperative. The forthcoming analysis will address the theoretical and regulatory factors influencing the recognition of cryptocurrency, examining its use in transactions, acceptance by merchants, and its potential to act as a medium of exchange, challenging or conforming to the legal definitions of money and currency beyond the property paradigm.

8 Hayekian Perspectives on Non-State Money and The Global Money of Cryptocurrency

The question of whether cryptocurrency can attain the status of “money” or “fiat currency” cannot be answered in isolation from its legal property character. Indeed, as the previous analysis suggests, the legal status of cryptocurrency as a form of property is mutually constitutive with its potential to serve as a medium of exchange. Without clear property rights, a cryptocurrency cannot credibly operate as money; users would have no certain ownership or remedy if their coins were stolen. Conversely, if it never stabilises or gains acceptance as a medium of exchange, its value remains speculative, undermining the basis for meaningful legal rights (Green 2017). Cryptocurrency sits at the confluence of these issues. They challenge state-backed currency systems, e.g., CBDCs, yet require legal validation to fulfil its function as money. The forthcoming section argues that the evolution of cryptocurrencies’ monetary role is inseparable from the evolution of their legal status, drawing on both economic theory and recent legal developments.

The idea of non-state money (or private money) competing with state-issued currency has deep theoretical roots. The Austrian School of economics, from Carl Menger’s 19th-century insights into the spontaneous emergence of money to

²⁶ *Commissioner of the Australian Federal Police v Bigatton* [2020] NSWSC 245; *Chen v Blockchain Global Ltd* [2022] VSC 92 (AustL).

Friedrich A. Hayek's 1970s proposal, provides a framework for understanding cryptocurrency (Hodgson 1992; Stenkula 2003; Hayek 1990). Hayek argued that breaking the state's monopoly on money issuance would allow privately issued currencies to compete, with market forces determining which currencies thrive based on their stability and acceptance (Hayek et al. 1984; Hayek 1990). In this vision, profit-driven issuers of currency, or by extension, currency systems, would strive to maintain purchasing power to attract users, leading to a healthier financial system than one centrally managed by governments (Hayek 1976). Cryptocurrencies are a real-world experiment in Hayek's theory: Bitcoin, Ether and thousands of "altcoins" are non-state, decentralised currencies created by private actors, often open-source communities, and secured by distributed networks rather than government trust. They compete in a global marketplace for users, value and credibility, much as Hayek's hypothetical private currencies would have. Notably, many projects even encode differing governing policies; Bitcoin's fixed supply cap, for example, aligns with the anti-inflationary philosophy espoused by Hayek (Ametrano 2016). The proliferation of non-state digital monies confirms that, technologically, it is possible to access money without state backing. However, Hayek also acknowledged a crucial caveat, based on the premise that such currency competition can only truly take hold if the legal system permits it (Mayer and Bofinger 2024; Ametrano 2016). The law must allow non-state monies to exist and circulate, which entails recognising that individuals can hold and exchange these new forms of value under the protection of property and contract law, rather than banning or ignoring them as illegitimate assets (Trautman 2018).

Therefore, legal institutions need to grant cryptocurrency holders the basic incidents of ownership, the ability to possess, use, exclude others, and transfer their coins, just as they would with money or any valuable asset. The current trend towards treating cryptocurrency as property can thus be seen as an enabling step because it provides the legal certainty and protection necessary for people to trust a decentralised digital asset.²⁷ In short, the theoretical promise of decentralised money that Austrian economists like Hayek envisioned requires a foundation of legal recognition; otherwise, cryptocurrency would remain an abstract curiosity rather than legal tender.

²⁷ See Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT Act) 2020 (Switzerland); Act on the Protection of Virtual Asset Users (VAUPA) 2024 (South Korea); EU Markets in Crypto-Assets Regulation (MiCA) 2023; United Nations Commission on International Trade Law (UNCITRAL) Taxonomy of Legal Issues Related to the Digital Economy, Vienna (2023). Also see *Tulip Trading v Van Der Laan* [2023] 4 WLR 16; *Nico Constantijn Antonius Samara v Stive Jean-Paul Dan* [2021] HKCFI 1078.

Across jurisdictions, regulators and courts initially struggled to determine whether cryptocurrencies should be classified as money, securities, commodities, or something else entirely.²⁸ Most were reluctant to label decentralised crypto as “currency” in the formal sense, given its volatility and the fact that it lacks issuance by a sovereign authority (Awrey 2012; Huang 2021; Goforth 2021). Instead, a common approach has emerged by classifying cryptocurrency under existing legal frameworks, chiefly as an extension of personal property or as financial instruments, while refraining from designating them as legal tender. For example, as early as 2014, the United States Internal Revenue Service declared that, for tax purposes, cryptocurrency would be treated as property, not as foreign currency, meaning that gains and losses are taxed under capital asset rules (Chason 2022; Davenport and Usrey 2023). Likewise, U.S. regulators, such as the Commodity Futures Trading Commission, have labelled crypto as commodities, and the Securities and Exchange Commission has sought to apply securities laws to certain cryptocurrencies, rather than recognising them as money (Jones 2021; Travis 2020).

In the United Kingdom, regulators and courts have taken a similar stance, regarding cryptocurrencies as tradable property but not as a form of money (Fox 2019; Low 2024). HM Treasury and the Bank of England do not recognise cryptocurrencies as legal tender, and official guidance emphasises that, while one may buy, sell, and own crypto, it is not “currency” in the legal sense (Held et al. 2025). This position was evident in early tax and regulatory guidance and has since been affirmed by case law.²⁹ The rationale is grounded in economic reality, as cryptocurrencies have seen limited use as a unit of account and medium of everyday exchange to date, and their prices fluctuate unpredictably (Green 2017). These characteristics weaken a cryptocurrency’s capacity to be used as money, as few individuals or businesses denominate prices in Bitcoin; therefore, lawmakers have been unwilling to accord it the legal status of money (Baur and Dimpfl 2021). Instead, treating them as property or as regulated assets ensures that transactions are subject to law, for example, anti-money laundering rules, taxation, and consumer protection, without endorsing crypto as part of the fiat currency system. At the same time, this property-based approach acknowledges that people do invest real value in cryptocurrencies and expect legal protections for their holdings. Therefore, by conferring property rights, i.e., the ability to own, transfer, and exclude others from one’s crypto, the law provides a framework within which cryptocurrency can be used in commerce even if they are not officially money. In other words, national legal

²⁸ *Copytrack Pte Ltd v Wall* [2018] BCSC 1709; *HDR Global Trading Ltd v Shulev* [2022] EWHC 1685 (Comm).

²⁹ *Wang v Darby* [2021] EWHC 3054 (Comm); *Chen v Blockchain Global Ltd* [2022] VSC 92; *Shaw v DPP* [2021] EWHC 2653 (Admin).

systems should carve out a space for crypto as valuable assets, which is a pragmatic approach that aligns with their *de facto* use as a store of value and medium of exchange.

As cryptocurrency integration becomes widely adopted, lawmakers in Europe have begun to craft more bespoke legal frameworks that straddle the line between treating crypto as property and treating it as money. In the European Union, the Markets in Crypto-Assets (MiCA) regulation adopted in 2023 established a comprehensive regime for cryptoassets. MiCA does not confer legal tender status on cryptocurrency, but it does formally define categories of cryptoassets and impose requirements on issuers and service providers. Notably, it creates reflexive regulations for asset-referenced tokens and e-money tokens, the latter of which effectively cover stablecoins pegged to fiat currency, and mandates that issuers of such tokens maintain adequate reserves, governance, and stability mechanisms (Van Der Linden and Shirazi 2023). Through the strict regulation of stablecoins, such as requiring that redeemable reserves fully back a Euro-pegged stablecoin, MiCA recognises that most cryptocurrencies operate as non-state financial alternatives and therefore warrant oversight similar to that of banking or payment systems (Maume 2023). In doing so, MiCA effectively narrows the divide between cryptocurrency and fiat currency. More broadly, MiCA's recognition of crypto, defining them as a new kind of digital asset, lends them legitimacy and a legal presence that they previously lacked (Wronka 2024). It brings exchanges and wallet providers into the regulatory fold, which should enhance consumer protection and trust (Wronka 2024). This legal position is crucial for the monetary role of cryptocurrencies, as regulatory status can be viewed as parallel to the legal recognition of property rights, thereby contributing to public confidence. MiCA exemplifies how the EU is adapting to crypto to accommodate the reality of digital value. Such legislative clarity not only helps courts and investors but also lays the groundwork for more advanced uses of crypto in the economy, from using cryptocurrency as collateral for loans to recognising crypto-denominated obligations in contracts, thereby ensuring that these assets are recognised in law.

Developments on both the economic and legal fronts thus reinforce one another. On one hand, as cryptocurrencies gradually fulfil more monetary functions in society, for example, being used as payment in niche markets, or held as a store of value akin to digital gold, they exert pressure on legal institutions to adjust. This development is evident in the growing number of cases addressing cryptocurrency transactions, thefts, and insolvencies, as well as in regulatory efforts to determine how crypto should be integrated within existing financial and legal frameworks.³⁰

³⁰ *Payward Inc. (Kraken) v Chechetkin* [2023] EWHC 1780 (Comm); *R v Teresko* [2018] EWCA Crim 1985; *Ruscoe v Cryptopia Ltd (in Liquidation)* [2020] NZHC 728.

The more crypto behaves like money in practice, the more untenable it becomes for the law to treat it as a legal nullity or mere curiosity. If, hypothetically, a cryptocurrency became widely used for everyday purchases or international remittances, there would be a strong impetus for lawmakers to formally recognise it, perhaps even granting it legal tender status in more jurisdictions so that commerce is not impeded.

On the other hand, as legal recognition improves, through property rights, regulatory oversight, and enforceable norms, it directly enables broader use of cryptocurrency. Legal certainty reduces the risks associated with holding and transacting in cryptocurrency. When an owner knows that courts will uphold their rights and that regulators will police fraud or malfeasance in crypto markets, they are more likely to trust and utilise crypto as a medium of exchange or store of value. For instance, the extension of theft and fraud laws to cryptocurrency, allowing victims to obtain injunctions or trace misappropriated coins, makes businesses more comfortable accepting crypto, as they are not left legally vulnerable if something goes wrong. Likewise, clarifying how cryptocurrency can be used as collateral or how crypto custody through smart contracts in decentralised exchanges are treated by courts will facilitate financial use cases, thereby integrating cryptocurrency more deeply into the fabric of commerce (Odinet and Tosato 2023).

Therefore, the legal status of cryptocurrency and its use as a medium of exchange are complementary. It has been discussed that the recognition of cryptocurrency as a new form of personal property has been both a response to its emerging financial status and a catalyst for further adoption of this form of currency. This interdependence suggests that the evolution of cryptocurrency toward being used as a medium of exchange will likely be a gradual, co-development with the law. As each incremental step in usage is taken, the law adapts, which in turn opens the door for the next step. The trajectory thus far, from early scepticism and legal void, through piecemeal recognition as property, to the current efforts at comprehensive regulation, illustrates a converging path. Cryptocurrencies are inching closer to the functions of money, and legal systems are correspondingly reshaping concepts of property and money. Ultimately, the gap between cryptocurrency as a property and money is narrowing, underpinned by the principle that stable monetary functionality cannot exist without legal certainty, and legal certainty, in turn, is fortified by real economic utility.

9 A New Legal Tender

The challenge of situating cryptocurrency within legal systems cannot be disentangled from the difficulty of defining money itself. Economists and jurists alike have

long recognised the absence of a global scientific definition of money, which has led to conceptual ambiguities in both economic theory and law (Greco 2001; Laidler 1969). At its most fundamental level, money is understood as serving as a medium of exchange, a store of value, and a unit of account within an economy (Hayashi and Matsui 1996). It is the instrument that facilitates trade by providing a common denominator through which goods and services are priced and exchanged efficiently (Bordo and Haubrich 2010). Its value derives not from intrinsic properties but from its social acceptance and legal status. Other key requirements, such as durability, portability, divisibility, and scarcity, are therefore less about physical form than about sustaining general confidence in their usability (Hull and Sattath 2024).

A distinction must, however, be drawn between “money” and “currency,” with the latter denoting money formally issued within a jurisdiction by a central authority such as a central bank (Cohen 2013; Mundell 2012). Currency is thus the juridical manifestation of money, given state imprimatur and legal tender status. It encompasses physical notes and coins as well as their electronic analogues (Allon 2018). However, the boundaries differ. Merchants may accept forms of value that are not state-sanctioned, provided they are not prohibited, demonstrating that while all currency is money, not all money is necessarily currency. This explains why barter, or indeed cryptocurrency, may function as money in practice, even if it is not legal tender. The measure of money’s value lies in its purchasing power. Analogous to mass in kilograms measuring weight, money represents value because it quantifies it (Aruoba et al. 2007; Endres 2009). This value is socially constructed through human perception, which Graziani (1996) terms induced value. Circulation and acceptance amplify this purchasing power, which explains why collective belief is fundamental to both fiat currency and cryptocurrency. Proof-of-work algorithms that validate and reward Bitcoin miners infuse cryptocurrency with perceived value in much the same way that sovereign minting imparts legitimacy to fiat money (Kubát 2015). In both systems, trust in algorithms or in governments creates value.

Cryptocurrency holds a contentious position surrounding its status as money because it possesses some features of money in that it serves as a medium of exchange in a limited sense (Jonker 2019), and a store of value, albeit with notable volatility (Trautman 2018). However, they still lack widespread adoption as a means of payment, and they are typically not issued by a central authority unless recognised as legal tender, as seen in the case of El Salvador and the Central African Republic, which have adopted cryptocurrency as legal tender (International Monetary Fund 2023; Risius and Spohrer 2017). Studies highlight that the limited adoption of cryptocurrency payments in e-commerce primarily stems from retailers’ perception that such payments offer negligible additional value compared to regulated payment methods (Choi 2021; Jonker 2019). This viewpoint suggests that merchants do not see significant benefits or enhancements in accepting cryptocurrencies over traditional

forms of payment. The monetary status of cryptocurrencies varies by jurisdiction, with some nations recognising them as a legitimate form of payment while others do not (Ferrari 2020). For example, Alipay's electronic payment system in China, integral to Alibaba's e-commerce platforms, operates using the Chinese renminbi or yuan. However, the People's Bank of China (PBOC), the nation's central bank, intervened to prevent Alipay from introducing its digital currency (Xia et al. 2023). Therefore, while cryptocurrencies exhibit some characteristics associated with money, their classification as a currency depends on the context and recognition within regulatory frameworks and economic practices. Cryptocurrency continues to occupy a novel category, reflecting both the properties of money and the attributes of a financial asset.

From this perspective, money may be understood as a dual construct, both a collective convention and an individual possession (Tang 1992). Its institutionalisation as currency occurs through what may be described as “legal induction”, the process by which a medium of exchange acquires formal legal status as legal tender, thereby conferring enforceable ownership rights on its holder (Kellogg 2014). This duality reinforces the central argument of this article, which is that legal recognition as property enables money's role in commerce. At the same time, the aspiration of cryptocurrency for monetary use exerts pressure on the law to formalise such recognition. Economic thought has often obscured this dynamic by treating money primarily as a means of payment. Wennerlind (2001) and Deutschmann (1996) argue that a persistent misinterpretation of money as a derivative of gold reserves or state credit has hindered recognition of its induced value. Carruthers (2010) reframes money as a legal construct whose value is distinct from its physical tokens. On this view, money can be treated as property with inherent worth, not simply as a credit claim (Fox 2008; Bell and Parchomovsky 2004). This parallels cryptocurrency, which represents ownership units within a blockchain ecosystem rather than obligations enforceable against a non-state issuer (Ishmaev 2017).

The fallacy of intrinsic value is well illustrated by gold. Gold's perceived worth arises not from metallurgical properties but from societal consensus (Harris and Shen 2017). Likewise, the value of fiat currency rests on collective confidence in state promises. In contrast, cryptocurrency embodies value through a decentralised consensus not reliant on sovereign authority. This positions cryptocurrency closer to historical commodity monies in providing direct ownership, rather than to fiat currency, which inherently embodies debt relationships (Mehrling 2020; Wang and Hausken 2024). Under fiat systems, circulating money represents claims issued by financial institutions and is thus encumbered by obligations such as inflation. Cryptocurrency, by contrast, offers a mode of ownership analogous to the gold standard, where the bearer is owner rather than creditor (Lehmann 2019; McCloskey and Zecher 1997). Recognition of money as currency is, however, juridical. Legal

tender laws confer compulsory acceptance in satisfaction of debts, but private actors remain free to accept or reject denominations in daily transactions (Proctor 2020). This explains why a seller may lawfully refuse a £50 note while choosing to accept Bitcoin instead, for instance. Although cryptocurrency is not legal tender in England, it may still be used as a form of money in practice where merchants choose to accept it (Jonker 2019). Its potential to serve as a store of value strengthens this role. While fiat money is exposed to inflation risk dependent on central bank policies, cryptocurrency allows holders to preserve and mobilise value on demand (Van Alstyne 2014). This autonomy exists within a regulatory framework. Where platforms accept fiat currency to facilitate cryptocurrency transfers, they fall within the remit of payment service regulation, requiring licensing and registration under the UK's Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 (Huang 2021; Santamaría 2015). This evidence shows the gradual legal embedding of cryptocurrency into the financial system. While not legal tender, cryptocurrency can nonetheless be regulated as a vehicle of value transfer.

These discussions reinforce the article's central argument which is that cryptocurrency can act as money only if it is recognised as property, enabling ownership, transfer, and exclusion. Without proprietary grounding, its circulation would lack the necessary legal foundations to support enforceable rights and remedies. For instance, the ability of courts to grant proprietary injunctions over misappropriated cryptocurrency, as seen in *AA v Persons Unknown*, demonstrates that recognising cryptoassets as property is not merely a conceptual doctrine, but a prerequisite for their integration into commercial practice. In the absence of property rights, cryptocurrencies would remain precarious abstractions, incapable of supporting the trust, security, and transferability that are essential for money. Conversely, the aspiration for cryptocurrency to operate as a form of money exerts reciprocal pressure on legal systems to refine and clarify their proprietary treatment. As individuals and institutions have gradually started to use cryptocurrency as stores of value, mediums of exchange, or even units of account, legislators and courts are compelled to ask whether existing categories of property are sufficient to encompass such assets. The Law Commission's recommendations and the Property (Digital Assets etc) Bill exemplifies this position in that they emerge precisely because the monetary significance of cryptocurrency cannot be ignored. Recognition as property thus becomes not only a legal question but a practical necessity for sustaining economic activity in a digital environment. The evolution of cryptocurrency, therefore, illuminates the symbiotic relationship between property and money. Each legitimises the other to the extent that property rights provide the legal certainty required for cryptocurrency to function as a medium of exchange. In contrast, the monetary use of crypto as money demands that property law expands to accommodate crypto assets. This reciprocal development shows a broader truth in legal theory because

money is always both a juridical and an economic phenomenon, and the laws of property and money remain inseparable in establishing the future of cryptocurrency.

10 Closing Remarks

The analysis advanced in this article demonstrates that cryptocurrency not only challenges orthodox classifications of ownership and value but also reveals the interdependence between proprietary certainty and monetary use. In doing so, cryptocurrency emerges as both a catalyst for doctrinal evolution and a testing ground for the legal architecture of modern money. The starting point of the inquiry was the observation that legal scholarship has often treated the proprietary nature of cryptocurrency and its potential as a form of money as separate debates. As the jurisprudence, statutory developments, and theoretical perspectives critically analysed in this article reveal, these domains are deeply intertwined. The capacity of cryptocurrency to operate as money presupposes a clear legal framework recognising it as property, while the aspiration to function as money places continuous pressure on legal systems to refine and clarify their proprietary treatment.

The trajectory of English law provides a paradigmatic case study of this reciprocity. English courts have progressively recognised cryptocurrency as property, even though it does not fall neatly within the binary of choses in possession or choses in action (Chan 2023). This has culminated in the Law Commission's recommendation, embodied in the draft Property (Digital Assets etc) Bill, for recognising a third category of personal property capable of encompassing digital assets. Such reforms are necessary to provide the legal infrastructure that allows cryptocurrency to be held, transferred, secured, and enforced against competing claimants. Without this proprietary grounding, users would be unable to assert remedies in cases of theft or misappropriation, and institutions would not confidently integrate cryptocurrency into their commercial practices. At the same time, the socio-economic reality that cryptocurrency is increasingly used as a medium of exchange and store of value has required legal adaptation. Economic theories, from Hayek's vision of currency competition to more contemporary literature of induced value, highlight that money is sustained by trust and collective acceptance. Cryptocurrencies, such as Bitcoin, embody these qualities in their blockchain consensus mechanisms and algorithmic scarcity. Still, these attributes are insufficient without the legitimising role of law. Legal recognition transforms technological potential into enforceable rights, and it is this transformation that makes cryptocurrency viable not only as speculative assets but as credible instruments of commerce. The international dimension further reinforces this mutuality. The Unidroit Principles represent an impressive attempt to

harmonise the treatment of digital assets across jurisdictions. The standards for ownership, control, transfer, and good faith acquisition within the Unidroit Principles provide a conceptual umbrella that validates the trajectory of domestic reforms such as those in English law. Importantly, they avoid pigeonhole taxonomies and instead emphasise the need for flexible yet enforceable proprietary rights. In doing so, they address the cross-border nature of cryptocurrency transactions and mitigate the risk that jurisdictional inconsistencies will undermine confidence in digital asset markets. The Unidroit Principles thus embody precisely the reciprocity central to this article's thesis by recognising that the proprietary treatment of digital assets underpins their monetary role. In contrast, the aspirations of cryptocurrency to function as money require legal systems to develop robust property frameworks.

This analysis also reveals a deeper theoretical context. The dichotomy between property and money is itself overstated. Money has always been a legal construct as much as an economic one, defined not only by its use as a medium of exchange but by the rights and obligations it entails. To hold money is to have a form of property, whether a gold coin, a banknote, or a cryptocurrency, protected and regulated by law. Conversely, the recognition of something as property is not value-neutral; indeed, it is impacted by the thing's capacity to circulate, store value, and act as a unit of account. In this sense, the development of cryptocurrency illustrates the relationship between the law of property and the concept of money. Each develops in response to the other, and together they determine the legal and economic status of new forms of value.

Looking forward, the implications of the findings in this article are profound. Legal systems must continue to refine the proprietary treatment of cryptocurrency, clarifying issues such as custody, control, transferability, insolvency priorities, and the application of good faith purchaser rules. Statutory reforms like the Property (Digital Assets etc) Bill provides a necessary foundation in the UK and beyond, but case law development will be critical in resolving legal disputes. At the same time, regulators must grapple with whether, and under what conditions, certain cryptocurrencies should be granted legal tender status or otherwise integrated into monetary frameworks. The re-emerging relationship between personal property and money will influence not only the future of cryptocurrency but also the evolution of money itself in the digital economy.

Ultimately, this article has argued that cryptocurrency cannot credibly be used as money without being recognised as property, and that the aspiration to act as money compels law to adapt its proprietary categories. This symbiosis illustrates a broader truth that law and economics cannot treat property and money as distinct silos. Instead, they must be understood as mutually constitutive categories whose interaction determines the legitimacy and utility of new digital assets. Cryptocurrency is one of the most prominent contemporary examples of this dynamic, but

the lessons extend more broadly to digital finance, tokenisation, and beyond. In conclusion, the future of cryptocurrency will depend on whether legal systems can provide the certainty and flexibility required to sustain trust, enforce rights, and accommodate innovation. If they can, cryptocurrency may indeed fulfil its promise not only as a new form of property but as a credible form of money. If they fail, the position of cryptocurrency will remain confined to the speculative margins of the financial system.

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Bionote

Iyare Otabor-Olubor

Aston Law School, Aston University, Birmingham, B4 7ET, UK

i.otabor-olubor@aston.ac.uk

<https://orcid.org/0000-0003-0600-4582>

Dr. Iyare Otabor-Olubor is a Senior Lecturer in Commercial Law at Aston University, Birmingham, UK. He is an expert in transnational commercial law and has contributed to global secured transactions law and policy reforms, including access to finance and financial technologies. He is a Senior Fellow of UK Advance HE.