

Time Will Tell Whether US Digital Dollars Are a Threat to Civil Liberties

By Bradford Newman & Zachary Reeves¹

Cryptocurrency.² Bitcoin, Ether, Solana. Digital coins designed to be used as a medium of exchange through a computer network monitored and organized by a peer-to-peer network called a blockchain. For many people, Bitcoin and the many cryptocurrencies obtainable as digital assets are synonymous with freedom, decentralization, independence, and the future. Some consider it akin to anarchy, an online revolution that began with the minting of the first block of Bitcoin that flipped the proverbial bird at central banks and government policy makers. Fast forward nearly 15 years later, and many now use the coins as currency, even trading Bitcoin for pizza.³ A tech titan empowers consumers to buy electric vehicles and merchandise with crypto, then sends a single Tweet that skyrockets the value of the memecoin,⁴ Investors can now trade Bitcoin futures on Wallstreet.⁵ The uses for cryptocurrencies seem limitless. And because Web 3.0 and DeFi are in their infancy phase, many of its benefits and possible uses have yet to be discovered or fully explored.

For governments, however, the vista is different. Generally speaking, those who govern others routinely perceive the crypto ecosphere as a lawless place, used to fund terrorism and other illicit activities, launder money, and evade taxes. President Biden's March 9, 2022 Executive Order regarding the government's position on crypto -- a clear lead-up to regulation and the likely issuance of a US government-issued digital coin -- uses phrases such as: "crime," "national security," "climate change," "risk to financial stability," "money laundering," "cybercrime and ransomware," "narcotics and human trafficking," "proliferation financing," and "a tool to circumvent United

¹ Bradford Newman is the Chair of the AI and Blockchain Subcommittee of the American Bar Association and a partner with Baker McKenzie. Zachary Reeves is an associate at Baker McKenzie. The views expressed herein are the personal opinions of the authors and do not constitute legal advice.

² For purposes of this article, the terms "cryptocurrency," "crypto," "digital assets," "digital currency," "coins," and "tokens" are used synonymously..

³ The first known Bitcoin transaction between a customer and a business was in 2011, where a Florida man traded 10,000 Bitcoin for two pizzas. Today that amount would be equivalent of \$460 million. See [The First Bitcoin Transaction Was For Buying Pizzas. More Interesting Tidbits Inside \(ndtv.com\)](#).

⁴ See <https://abcnews.go.com/Business/dogecoin-rallies-elon-musk-tweet/story?id=82265024>.

⁵ The ProShares Bitcoin Strategy ETF (BITO) seeks to provide capital appreciation primarily through managed exposure to bitcoin futures contracts. [BITO \(proshares.com\)](#).

States and foreign financial sanctions regimes and other tools and authorities.” Gary Gensler, the chairman of the Securities and Exchange Commission, has called crypto “the Wild West” and said he wants to impose more regulation on digital currencies. As cryptocurrencies proliferate, global governments in the East and the West seem increasingly wary of private tokens, and legislatures eager to classify and regulate these digital assets before even giving the technology and varied use cases a chance to organically develop.⁶ Leaders and central banks fear that the lack of control they have over the value of the coins will be harmful not only to them, but for capital markets and all of society.

As the noise level rises from world governments, it is almost becoming a passing footnote that cryptocurrencies were created with the intent they be used as an alternative to governments' and central banks' monopolistic control over fiat. Bitcoin, using blockchain and cryptographic-based computer science, solved the age old problems (verification, prevention of double-spending, etc.) which historically necessitated the exclusive need to rely on banks and governments to regulate currency and modes of exchange. Yet in 2022, it is almost a sure bet that the United States government will (1) regulate private cryptocurrency while (2) issuing its own government controlled digital token. And in the context of the world's leading liberal democracy founded on a rule of law based on limitation of government powers, this development warrants serious scrutiny.

Going all the way back to the formation of America, the Founding Fathers were skeptical about giving banks and governments too much control over currencies. During the drafting of the Constitution, John Adams drew on the Colonist's distrust of government-issued money and declared that every dollar of printed fiat money was “a cheat upon somebody.”⁷ The drafters left the federal government with only the power to “coin money,”⁸ and forbade the States from making anything but gold and silver coin legal “tender.” Years later, in 1816, Thomas

⁶ Steve Forbes, Editor-in-Chief of Forbes, believes crypto should be able to grow with little government involvement. He notes that the automobile and the internet were able to grow without government interference, and asks what the long term effects on those technologies would have been had the government heavily regulated them while still in development, a similar phase as crypto today. See [Crypto's Coming Shock \(forbes.com\)](#).

⁷ See [What the Founding Fathers' Money Problems Can Teach Us About Bitcoin | Innovation | Smithsonian Magazine](#).

⁸ The federal government didn't issue paper money until 1861. See [On the Money: A US Dollar Bill's Design History and Meaning | Time](#). Before then, only fiat in the form of coins was in circulation. *Id.* Some scholars even argue that the because the Constitution does not explicitly and unambiguously grant Congress the power to print paper money or make it legal tender, the federal government doesn't have the power to do so. See [The Few Words On Money In The Constitution Say More Than We Know \(forbes.com\)](#).

Jefferson wrote that “banking establishments are more dangerous than standing armies. . . . [and] the principle of spending money to be paid by posterity, under the name of funding, is but swindling futurity on a large scale.”⁹

The advent of modern cryptocurrency in the form of Bitcoin appeared to be the anecdote to the centuries' old problem identified by Jefferson. Bitcoin was specifically designed to obviate the need for a central bank or single administrator. In fact, cryptocurrencies do not need government support or to be backed by gold and silver.¹⁰ Cryptocurrencies were architected to comprise a store of value which would be determined by the global populous via simply supply and demand arithmetic and used accordingly as private fiat.

As of November 2021, non-state issued digital assets reached a combined market capitalization of \$3 trillion.¹¹

Around the world, governments have taken notice of this threat to their total control over currency.

China's Crypto Ban and Other Global Regulations

“The oldest and strongest emotion of mankind is fear, and the oldest and strongest kind of fear is fear of the unknown,” H.P. Lovecraft, *Supernatural Horror in Literature*, 1927. China -- and Egypt, Iraq, Qatar, Oman, Morocco, Algeria, Tunisia, and Bangladesh -- have all banned cryptocurrency.¹² Eswar S. Prasad, a professor at Cornell University and the author of *The Future of Money*, believes “Beijing’s actions illustrate how national governments and central banks are becoming increasingly fearful of cryptocurrencies destabilizing their financial systems and other negative consequences.”¹³ Forty-two other countries, including Algeria, Bahrain, Bangladesh, and Bolivia, have implicitly banned digital currencies by putting restrictions on the ability for banks to deal with crypto, or prohibiting cryptocurrency exchanges, according to a 2021 summary report by the Law Library of Congress.¹⁴

⁹ Jefferson to John Taylor, May 28, 1816, in PTJ:RS, 10:89. Transcription available at [Founders Online](#). Note that the final period is missing in the original letter.

¹⁰ A global, independent currency “was something that was previously not thought possible,” says Cameron Winklevoss, claimed co-creator of Facebook. “They thought that we need central banks, we need Visa, to validate transactions.” [What the Founding Fathers' Money Problems Can Teach Us About Bitcoin | Innovation | Smithsonian Magazine](#).

¹¹ See [Executive Order on Ensuring Responsible Development of Digital Assets | The White House](#): Section 1.

¹² As of January 4, 2022, Crypto is fully banned in 9 countries. See [Crypto is fully banned in China and 8 other countries | Fortune](#).

¹³ See [China's Bitcoin Ban Is a Lesson in Crypto Regulation for Central Banks Everywhere | Barron's \(barrons.com\)](#).

¹⁴ See [Regulation of Cryptocurrency Around the World: November 2021 Update \(loc.gov\)](#).

The European Parliament has introduced important amendments to the Transfer of Funds Regulation for crypto assets. The EU's Transfer of Funds Regulation ensures that payment service providers share information regarding payer and payee, and suspend or reject a transaction when this information is either incorrect, missing or incomplete. While on its face the aim of this kind of regulation is to provide financial institutions with sufficient information in order to detect, prevent and report money laundering and terrorist financing, in practice it empowers EU governments to track all digital spending and shut down transactions it believes is illegal. Meanwhile, a recent bill in Singapore gave greater power to the Monetary Authority of Singapore to prohibit individuals who they deem unfit from performing key roles, activities and functions in the financial industry.¹⁵ And India is flirting with the idea to “prohibit all private cryptocurrencies” and launch a digital rupee.¹⁶ Government crackdown and control is here. And should the United States imminently join in, the dangers to personal liberty are greatly magnified.

The United States

The United States was founded on principles of individualism, personal privacy and freedom. There are immense societal risks that are attendant to the world's leading western liberal democracy issuing a government backed digital fiat.

In response to the trillions of dollars of investor and commercial interest, President Biden issued an Executive Order calling on the government to examine the risks and benefits of cryptocurrencies.¹⁷ The Executive Order's explicit aim is to explore a U.S. Central Bank Digital Currency (CBDC), which would be a digital fiat, created and controlled by the United States government. But if the original purpose behind the creation of cryptocurrency was to eliminate government control and oversight over fiat and monetary policy, how far will the US government's control over its citizens' digital currency extend?

President Biden's Executive Order makes clear that the future crypto policy will be to regulate in the lead-up to issuance of a US digital coin. The Executive Order says that the “principal policy objectives of the United States with respect to digital assets are as follows: We must protect consumers, investors, and businesses in the

¹⁵ See [New Singapore Crypto Law Requires Overseas-Only Operators to Be Licensed: Report \(msn.com\)](#).

¹⁶ India's central bank expects to introduce the currency “using blockchain and other technologies” soon, according to Indian Finance Minister Nirmala Sitharaman. See [India budget 2022: Digital rupee and crypto tax announced - CNN](#).

¹⁷ See *id.*

United States.” The policy goes on to articulate that digital assets have “profound implications” on “crime; national security; the ability to exercise human rights; financial inclusion and equity; and energy demand and climate change.” The Executive Order isolates the asset class as “non-state issued digital assets.” Future regulatory, governance and technological measures will purportedly be designed to “counter illicit activities” and “enhance the efficacy of our national security tools.” While there’s no denying the dark side of crypto and its possible criminal uses,¹⁸ not only does the U.S. government want to regulate crypto, they seek to control it. The Executive Order notes that “[s]overeign money is at the core of a well-functioning financial system, macroeconomic stabilization policies and economic growth.” And it is not only the federal government getting involved, but state governments too. In 2021 alone, 17 states passed laws and resolutions concerning cryptocurrency regulation, while 33 total states and Puerto Rico had pending legislation in the same 2021 legislative session.¹⁹

“Big Brother” is Watching You Spend -- And May Prevent You From Purchasing....

So why should any of this matter? In times of deep fear, the US government has historically suppressed the rights of Americans, and Americans are more than willing to give up those freedoms.²⁰ This time will be no different. It is only a matter of time before the United States issues a digital currency, and likely suppresses the value and utility of private cryptocurrencies, along with the rights of its citizens. “You could kiss any vestige of financial privacy goodbye with [the issuance of a Central Bank Digital Currency],” Steve Forbes believes, “as government could easily track everything you spend.”²¹ With a US issued digital coin, the government will have the technical capability, among other things, to limit and apply pressure on what Americans can purchase, to track and monitor track citizen's expenditures and place limits on the quantity or amount of products you purchase.²²

¹⁸ [Why is Crypto Used for Illegal & Criminal Activity | Cognyte](#)

¹⁹ See [Cryptocurrency 2021 Legislation \(ncsl.org\)](#).

²⁰ Benjamin Franklin warned, “those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.” In response to 9/11, the Patriot Act was enacted which, among other things, expanded surveillance abilities of law enforcement. In response to the COVID-19 pandemic, citizens accepted their fate of being locked down in their homes for weeks. Fear of cryptocurrency unknowns and data hacks may unleash a whole new wave of government suppression and regulation. And of course the Internment of Japanese Americans during World War 2 is another cautionary example.

²¹ See [Crypto’s Coming Shock \(forbes.com\)](#).

²² Some 66% of the public say that the potential risks they face because of data collection by the government outweigh the benefits. See [Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information | Pew Research Center](#).

Raghuram Rajan, a professor of finance at The University of Chicago Booth School of Business and a former governor of the Reserve Bank of India, believes that with the introduction of a government issued coin there “will be legitimate questions about how much the government knows about each individual, and also, how much it can act to restrain activities by individuals.”²³ In extreme cases, the government could rescind or remove all digital assets from circulation or a person’s control. That is already a reality in criminal cases,²⁴ but here the concern is the ability and willingness of government to use digital dollars to monitor and control even without the existence of criminal charges or conviction. Examples are easy to conceptualize. If Congress believes that cutting down on gas would lower emissions enough to reverse climate change, they could put spending limits on the amount of gas one could purchase. Instead of raising taxes on cigarettes, the government could nullify all cigarette purchases made with digital dollars. While the "in party" will be temporarily satisfied at the expense of the "out party," fortunes can change fast. Constitutional questions (which often take years to resolve) notwithstanding, where a Republican administration might ban the use of digital dollars to pay for Planned Parenthood services, a Democratic administration could just as easily ban the use of digital dollars to purchase guns or ammunition. The reality is that both political parties may well be tempted to utilize digital dollars to influence societal behavior and punish transgressors by restraining the ability to use the currency for travel, education and other essential life activities. And so the story would go.

So are we headed inexorably and at warp speed towards a future where, as George Orwell warned, “nothing was your own except the few cubic centimeters in your skull”? Will the United States government utilize digital coins to create a social credit scoring system on par with China's? That depends. Not only on the government's actions, but on the vigilance of lawyers in private practice and civil libertarians more generally. Careful attention must be paid to any efforts by the government to utilize digital dollars for surveillance, control or unlawful restriction of individual privacy and liberty. Because, after all, if "money is the root of all evil," then unconstrained U.S. government-issued digital dollars may turn into the "mother of all evils."

²³ [The U.S. is debating whether to adopt a digital dollar : NPR.](#)

²⁴ [See Department of Justice Seizes \\$2.3 Million in Cryptocurrency Paid to the Ransomware Extortionists Darkside | OPA | Department of Justice.](#)