

## HOW DOES THE LAW AFFECT TRUST IN BITCOIN?: AN ANALYSIS OF LEGAL CONSCIOUSNESS\*

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### ABSTRACT

This Article aims to understand how Bitcoin users' and enthusiasts' legal consciousness symbolically penetrates the social field of cryptocurrencies in Brazil by structuring and shaping individual decisions to buy, use, and invest in crypto assets. Thirty-nine Bitcoin users and enthusiasts were interviewed. The thirty-nine transcripts were coded and analyzed using grounded theory. In the end, three distinct interpretations were obtained through which the interviewees' legal consciousness is expressed, and affects, as a result, their individual decisions. The interpretations were named: (1) law as a utility tool; (2) law as a security provider; and (3) law as a political tool. From the findings, this Article concludes that, even in social fields where the law is actively contested and rejected, it still represents a structuring component of social relations with relevant behavioral shaping power.

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## INTRODUCTION

The power of law over civil society has long been debated. Classic authors of political science, sociology and legal sciences point to a constant growth in the power of law over everyday life. Contrarily, contemporary authors have been calling attention to everyday forms of civil resistance that would, in their view, suggest a process of dismantling the power of law over citizens. For instance, the use of technology, as a form of self-regulation, is one way of evading legal obligations imposed by states and private agents. A modern example of this, which recently caught the attention of the entire world, is The Bitcoin Project (“Bitcoin”).

Through peer-to-peer technology, Bitcoin operates with no central authority or banks. The author of Bitcoin did not associate it with any political activity. However, early adopters and enthusiasts believed Bitcoin would represent not only a more agile and less bureaucratic way of transacting values over the internet, but also as an act of resistance against the power of the state exercised through law and regulation.<sup>1</sup>

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1. Bill Maurer et al., “*When Perhaps the Real Problem is Money Itself!*”: *The Practical Materiality of Bitcoin*, 23 SOC. SEMIOTICS 261, 266 (2013); John O. McGinnis & Kyle Roche, *Bitcoin: Order Without Law in the Digital Age*, 94 IND. L.J. 3, 31 (2017).

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Bitcoin emerged in 2009 as a means of defiance against a financial system in crisis and “captured” by state regulation and private agents.<sup>2</sup> At the time, the adoption and use of Bitcoin strongly suggested the emergence of an alternative kind of currency that escaped from the regulatory “traps” of state and private financial institutions.<sup>3</sup> That idea was only possible in view of disintermediated technological constitution of Bitcoin that makes it difficult, if not impossible, to be controlled by the state and other organizations. Due to this political connotation, Bitcoin was embraced by left-wing anarchic groups and right-wing libertarian groups who view state law as an evil to be fought.<sup>4</sup>

These types of explanations have invaded popular literature of cryptocurrencies. However, the long-life history of money demonstrates the impossibility of conceiving a currency in any form without the organizational support of formal and informal institutions—including the state law and regulation. The short trajectory of Bitcoin demonstrates how its growth as a means of payment, for instance, strongly depends on the state law to persist.<sup>5</sup> Even though the state only regulates the behavior of Bitcoin users and does not address, as in the case of the standard currency, the way in which the technology works, state law, including legal regulation, represents a practical and symbolic material condition of the general acceptance of Bitcoin in the market.<sup>6</sup> State law stabilizes expectations of future acceptance of technology as a means of payment; a unit of account and a store of value.<sup>7</sup> State law and legal-state regulation represent unequivocal conditions for attributing trust to Bitcoin, even if technology is commonly identified as a form of resistance to state law.<sup>8</sup>

Taking into account this apparent contradiction, this Article investigates the influence of state law on Bitcoin users’ and

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2. Maurer, *supra* note 1, at 265.

3. *Id.* at 262.

4. Nigel Dodd, *The Social Life of Bitcoin*, 35 THEORY, CULTURE & SOC’Y 1, 6 (2017).

5. Henrik Karlstrøm, *Do Libertarians Dream of Electric Coins? The Material Embeddedness of Bitcoin*, 15 J. OF SOC. THEORY 1, 3 (2014).

6. *Id.* at 11.

7. *Id.* at 13.

8. Dodd, *supra* note 4, at 6.

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enthusiasts' (collectively "users") decisions to buy, exchange, sell or invest in the cryptocurrency. Thirty-nine interviews with Bitcoin users were conducted in Brazil, one of the largest Bitcoin markets in the world.<sup>9</sup> The use of Bitcoin suggests implicit and explicit signs of contestation and denial of state law and legal-state regulation in general. This study demonstrates that, despite this, Bitcoin users find, in the law and in imperfect legal notions, the basis of trust in the cryptocurrency as an alternative kind of money. They do so by interpreting the law as an indispensable strategic resource for the consolidation of the Bitcoin market, and also as a technical and financial security provider for the use and investment in the cryptocurrency. The very idea of contestation and rejection of the law behind Bitcoin, indirectly attributes confidence in the cryptocurrency, as Bitcoin is seen as an alternative currency that it is not subject to state or private legal regulation. Taking that into account, this paper raises the hypothesis that, although state law is the object of active contestation by Bitcoin users, state law nevertheless maintains centrality and influence over the behavior of agents in the social field of the cryptocurrency.

This Article is divided into five sections. Section one describes the contemporary discussion on legal consciousness, and how this social phenomenon triggers passive acceptance of the law, while simultaneously raising contestation and rejection against it. Section two describes the origin of Bitcoin and the anti-law and anti-institutional narrative with which cryptocurrency is commonly associated. It also explains why, despite an anti-law and anti-institutional narrative, trust in Bitcoin and money, cannot be sustained without state law support and legally organized social institutions. Section three discusses the methods used for data collection and analysis. Section four outlines the results of the data. It illustrates the

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9. This was possibly due in large part to the political and economic situation in recent years in the country. Brazil experienced severe inflationary crises in the 1990s and recently revived its memory after 2013, albeit on a much smaller scale. The recent image of inflation, widespread in the media and associated maliciously or not with various corruption scandals, may have deepened the process of distrust of the law and formal institutions of law by the population. This scenario has possibly become attractive for the use and investment in Bitcoin, which is supposedly an alternative type of money that does not "depend" on the monetary policy conducted by central authorities.

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three interpretations of law through which Bitcoin users' legal consciousness is expressed and, as a result, affects the trust in the cryptocurrency. Lastly, section five discusses the results in view of the contemporary discussions on legal consciousness.

#### I. LEGAL CONSCIOUSNESS: THE UNAPPARENT POWER OF LAW

The role of law in society has long been debated. Most recently, social scientists and legal scholars have been pointing to a gradual increase in the influence of law on everyday life. On the one hand, it is claimed that the power of law has grown intensely. Bertrand de Jouvenel shows how the power of state law has grown, from the French monarchical period to the present day, both in its capacity to mobilize resources and coercion.<sup>10</sup> On the other hand, it is also claimed that the power of law has grown to an extent. José Eduardo Faria points to a loss of the prevalence of state law from the crisis of welfare states onwards. Yet, Faria demonstrates how legislative proliferation, sectoral regulation of the economy, and private and flexible forms of self-regulation have intensified the penetration of law into society since the first crises of capitalism.<sup>11</sup> The power of law in everyday life has not only arisen through formal and coercive mechanisms. The power of law has also grown in a non-apparent, symbolic, and at the same time structuring, ubiquitous and pervasive way.<sup>12</sup>

This non-apparent dimension of the law has been called legal culture.<sup>13</sup> The term "legal culture" was first proposed by Lawrence Friedman to refer to a set of ideas, values, opinions, and attitudes that people, not just official legal staff, generally take when considering the law. According to Friedman, the different manifestations of the

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10. *See generally* BERTRAND DE JOUVENEL, *O PODER: HISTÓRIA NATURAL DE SEU CRESCIMENTO* (João Baptista Peixoto Neto ed., Paulo Neves trans.) (1998).

11. JOSÉ EDUARDO FARIA, *O DIREITO NA ECONOMIA GLOBALIZADA* (1st ed. 2004).

12. GUNTHER TEUBNER, *CONSTITUTIONAL FRAGMENTS: SOCIETAL CONSTITUTIONALISM AND GLOBALIZATION* (Oxford Univ. Press 2012).

13. Lawrence M. Friedman, *Is There a Modern Legal Culture?*, 7 *RATIO JURIS* 117, 118 (1994); David Nelken, *Using Legal Culture: Purposes and Problems*, 5 *J. COMP. L.* 1, 4 (2010); Sally Engle Merry, *What is Legal Culture? An Anthropological Perspective*, 5 *J. COMP. L.* 40, 40 (2010).

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legal culture at certain places represent a necessary condition for the functioning and effectiveness of official law. At the same time, legal culture provides the social bases for the practical application of official law, insofar as it produces familiarity with the universe of legal rules and principles. Legal culture also functions as a source of law in spaces where the official law is absent.<sup>14</sup> Where the state apparatus and official law do not reach, whether due to a factual impossibility or structural deficiencies, lay social agents are still able to invoke and apply legal principles, aiming at settling social disputes and organizing societal life.<sup>15</sup>

Patricia Ewick and Susan Silbey refer to this invisible dimension of the law as “legal consciousness.”<sup>16</sup> According to the authors, legal consciousness is a structuring and structured part of society. While ideas, notions and legal terminologies become part of material and discursive systems, which condition social meaning making, they are also being repeatedly modified in view of the context. Legal consciousness is not, therefore, imposed on individuals through formal coercive mechanisms of legal institutions. It is constantly worked upon by individuals in the most diverse social spaces in an ongoing social process of production and construction of legality in everyday life.<sup>17</sup> Ewick and Silbey identify three narratives—also called interpretative schemas—through which the legal consciousness of the citizens of the state of New Jersey materializes in their discourses and attitudes, thus conditioning the way they interpret the world and construct and reconstruct legality.

The first narrative is called “before the law.” According to this narrative, individuals abstractly interpret the law, as if it were the result of an untouchable divine work detached from the experiences of everyday life. Ewick and Silbey observed that this narrative encourages passive, inert and deferential behavior to legal commands and precepts.

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14. Friedman, *supra* note 13, at 118.

15. Patricia Ewick & Susan S. Silbey, 28 *The Common Place of Law: Stories From Everyday Life*, 28 CONTEMP. SOC. 556, 556-57 (1998).

16. Erik D. Fritsvold, *Under the Law: Legal Consciousness and Radical Environmental Activism*, 34 L. & SOC. INQUIRY 799, 803 (2009).

17. *Id.* at 804.

The second narrative is called “with the law.” According to this narrative, individuals see the law with a cynical view. The law here is interpreted as an essentially mundane and profane terrain, on which the actors act strategically. This second narrative encourages behaviors similar to that of a player: individuals see themselves as participants in a game in dispute for victory, pursuing damages for a violated right or defending themselves against any accusation that they believe to be unfounded.

Finally, the third narrative is called “against the law.” According to this narrative, the law is interpreted as a result of relations of power and domination. This particularity of the law disables it from resolving everyday disputes, recognizing the truth of the facts, and responding to the demands of justice. For this reason, this third and final narrative encourages rejection and contestation of the law.

The three types of legal consciousness reveal not only the way the law in general (or its image) penetrates in an unseen way the everyday life—constructing and reconstructing meanings that help to interpret and modify reality—but it also explains the reasons, despite the constant failures of the law, its power remains hegemonic and indestructible. According to Ewick and Silbey, the preponderance of discursive mobilization of the schemas “before the law” and “with the law” among the citizens of New Jersey creates the social basis of the power and fascination of law in that place.<sup>18</sup> The interpretations of the law as a divine product on the one hand, and as accessible and manipulable on the other, represent the essential condition for it to sustain its power and authority without the mobilization of official and formal mechanisms of enforcement, despite its structural flaws and failures.

Although Ewick and Silbey have described New Jersey citizens’ forms of legal consciousness, recent studies point to the generalization of the results. Almost all studies on legal consciousness conducted after Ewick’s and Silbey’s work have also described at least three forms of consciousness similar to the narratives described by the authors.<sup>19</sup> However, despite the correspondence of Ewick’s and

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18. Simon Halliday & Bronwen Morgan, *I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination*, 66 CURRENT LEGAL PROBS. 1, 8-9 (2013).

19. See Kathryn Young & Katie R. Billings, *Legal Consciousness and Cultural Capital*, 54 L. & SOC. REV. 33, 37 (2020).

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Silbey's works with the reality of different contexts and populations, recent studies have also questioned the idea that the power of law, even in its non-apparent dimension, can effectively sustain itself and grow in everyday life. Rather than observing a prevalence of the narratives "before the law" and "with the law" in particular contexts, these studies have focused on the analysis of how civil disobedience cases reveal the prevalence of law-challenging narratives that theoretically would weaken its power and influence over society.

Departing from the analysis of specific cases carried out in the Netherlands, Mark Herthog describes the way Dutch society, generally, instead of passively accepting the legal commands emanating from traditional public institutions, routinely sparks a process of rejection and contestation of those same commands.<sup>20</sup> In the cases analyzed, instead of the law revealing a positive influence over people's behavior, it generally arouses hatred, fury and indignation. In many of these cases, feelings of rejection of the law arise from the perception of its contamination with injustices and immoralities. Similarly, Erik Fritsvold identified an inclination to challenge the law and its authority among groups of environmental activists.<sup>21</sup> Halliday and Morgan further accentuated this perspective by exploring a fourth form of legal consciousness that they claim reveals active contestation and denial of the law.<sup>22</sup> When describing the fourth form of legal consciousness, Halliday and Morgan talk about the insufficiency of Ewick's and Silbey's analysis to explain legal consciousness in particular social groups.<sup>23</sup>

Taking that into account, this Article examines the law's impact on Bitcoin users' decisions to buy, exchange, sell or invest in the cryptocurrency. The investigation of Bitcoin users' legal consciousness is justified since the use of the cryptocurrency reveals a paradox: while money cannot sustain confidence without the support of state law and legally organized institutions (as it will be seen below), the growth of Bitcoin reveals that a different type of money, which is closely related to contestation and denial of the law, is

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20. MARC HERTHOG, *NOBODY'S LAW: LEGAL CONSCIOUSNESS AND LEGAL ALIENATION IN EVERYDAY LIFE* (2018).

21. Fritsvold, *supra* note 16, at 800.

22. Halliday & Morgan, *supra* note 18, at 4.

23. *See id.* at 10.



emerging. As it was widely publicized by internet social media, Bitcoin emerged in 2009 as a protest against a financial system in crisis and “captured” by state regulation and private agents.<sup>24</sup> The support for Bitcoin at that time strongly suggested the emergence of an alternative kind of currency that escaped from the regulatory traps of the state and private financial institutions.<sup>25</sup> This idea was only possible given disintermediated technological constitution of Bitcoin that makes it difficult, if not impossible, to be controlled by the state and other organizations. Due to this political connotation, Bitcoin was embraced by left-wing anarchic groups and right-wing libertarian groups who see the state and the status quo as evils to be fought.<sup>26</sup> Taking that into account, this Article explores how Bitcoin supporters interpret the law and how this interpretation affects the way they see Bitcoin as a type of alternative money, which indirectly impacts their decisions of using, purchasing, and investing in the cryptocurrency. By understanding how Bitcoin supporters interpret the law and how this interpretation affects their decisions, we also want to understand how legal consciousness has penetrated this social field, and sustained or challenged the power of law in everyday “virtual” life.

## II. BITCOIN AND THE ANTI-LEGAL AND ANTI-INSTITUTIONAL NARRATIVE

Although Bitcoin has been used in recent years as a speculative assets more than anything else,<sup>27</sup> the idea that it functions as a type of currency, or that it will function as such in the future, persists among ordinary users.<sup>28</sup> The notion that Bitcoin equates to money is not unjustifiable, as aspects of Bitcoin routinely perform like money.<sup>29</sup>

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24. Maurer, *supra* note 1, at 261-62; McGinnis & Roche, *supra* note 1, at 3.

25. *See* Maurer, *supra* note 1, at 261-62.

26. *Id.* at 262.

27. Dirk Baur & Adrian D. Lee, *Bitcoin: Medium of Exchange or Speculative Assets?*, J. OF INT’L. FINANCIAL MARKETS INSTITUTIONS AND MONEY 1, 14 (2017); FLORIAN GLASER, ET AL., EUROPEAN CONFERENCE ON INFO. SYSTEMS, BITCOIN – ASSET OR CURRENCY? REVEALING USERS’ HIDDEN INTENTIONS 13 (2014).

28. Maxime Lambrecht & Louis Larue, *After the (Virtual) Gold Rush: Is Bitcoin More than a Speculative Bubble?*, 7 INTERNET POL’Y REV. 1, 2 (2018).

29. *See* Ole Bjerg, *How is Bitcoin Money?*, 33 THEORY, CULTURE, AND SOC’Y 1, 1 (2015).

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Unlike standard digital money (e.g. e-money, digital dollar, digital euro), Bitcoin is designed to work entirely peer-to-peer.<sup>30</sup> It is transferred directly from user to user without ever going through the internal verification, standardization, commensuration, and review processes of any particular institution.<sup>31</sup> Instead of a third-party intermediary that normally stands behind currencies, Bitcoin is transmitted digitally, over the internet, through a cryptographic protocol that follows preprogrammed mathematical rules.<sup>32</sup>

The disintermediated operation of Bitcoin has led enthusiasts to believe that, by virtue of the elimination of the trusted third party (e.g. state banks, or other corporations) from the value transfer chain, and the insertion instead of a semiautomated electronically controlled procedure, a type of currency emerged that excludes all types of institutional and political interference from its governance.<sup>33</sup> The transfer to a mathematically and electronically controlled process is understood by its advocates and users to insulate money from the domain of institutions, especially the law and its associated politics.<sup>34</sup> This intermediary-free currency was promoted in reaction to the waves of fluctuating—loss and gain—credibility through which the institutions of law and politics often pass.<sup>35</sup> In response to what appears to be declining confidence in legal and international institutions, Bitcoin has been actively publicized as a new type of currency that should inspire confidence that money managed by central authorities does not seem to sustain.<sup>36</sup>

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30. See generally SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM (2008); See Danton Bryans, *Bitcoin and Money Laundering: Mining for an Effective Solution*, 89 IND. L.J. 441, 443, 451 (2014); Primavera De Filippi, *Bitcoin: A Regulatory Nightmare to a Libertarian Dream*, 3 INTERNET POL'Y REV. at 1, 1 (2014); Matthew P. Ponsford, *A Comparative Analysis of Bitcoin and Other Decentralised Virtual Currencies: Legal Regulation in the People's Republic of China, Canada, and the United States*, 9 HONG KONG J. OF LEGAL STUD. 29, 30 (2015).

31. NAKAMOTO, *supra* note 30, at 1.

32. *Id.*

33. Dodd, *supra* note 4, at 6.

34. *Id.* at 8.

35. Marcelo de Castro Cunha Filho & Susan Silbey, *What Lies Behind the Apparent Trust in Cryptocurrencies?*, JUST MONEY (Apr. 15, 2020).

36. Maurer, *supra* note 1, at 273; McGinnis & Roche, *supra* note 4, at 4.

In particular, internet enabled social media communities promote the idea that central banks, private financial institutions, and governments manage national currencies—such as the dollar, the euro, and the real—to serve the persons managing these institutions rather than the public at large.<sup>37</sup> These institutions often inflate the currency, deflate, confiscate, or withdraw it from circulation. The public is dependent upon these national currencies but is unable to affect the consequences for the transactions of everyday life. The same, however, would not apply to Bitcoin, since it is managed by machines incapable of changing the rules or protocols, according to what is issued and transacted.<sup>38</sup>

According to Cunha Filho and Silbey, the popular cryptocurrency narrative provides a seductive explanation for how trust can emerge from the negation of law and politics as well as the substitution of mathematical quantification for historically evolved social institutions.<sup>39</sup> For a long time, numbers have been considered trust providers because they claim objectivity.<sup>40</sup> According to Porter, objectivity is defined as the absence of personal interests, strict obedience to norms, equal treatment of similar issues, impartiality etc. According to Cunha Filho and Silbey, “numbers are an attractive substitute for the messy ambivalence of language and qualitative judgments because they create and overcome distance, both physical and social.”<sup>41</sup> They appear to offer a common language that erases cultural, historical, and geographical variations while simultaneously erecting “a new form of distance because” the discipline of numbers “erases the local, the personal, and the particular” which are always embedded in law and political institutions.<sup>42</sup>

However, the idea that trust may develop from the exclusion of law, institutions, and politics is dubious because trust is not just about the processes that makes up these institutions.<sup>43</sup> Trust is intrinsically

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37. Maurer, *supra* note 1, at 262.

38. Marcella Atzori, *Blockchain Technology and Decentralized Governance: Is the State Still Necessary?*, 6 J. GOV'T REG. 45, 46 (2017).

39. Cunha Filho & Silbey, *supra* note 35.

40. THEODORE M. PORTER, *TRUST IN NUMBERS: THE PURSUIT OF OBJECTIVITY IN SCIENCE AND PUBLIC LIFE* (1995).

41. Cunha Filho & Silbey, *supra* note 35.

42. *Id.*

43. *Id.*

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linked to the idea of overcoming the uncertainty of future outcomes.<sup>44</sup> Generally speaking, trust is manifested in an expectation that a person or mechanism at some future time will behave in a known way in order to produce a specific event. Reliance on Bitcoin as an approximate form of money comes not only from the expectation that the algorithms will work independently of human decisions, but also relies on a prediction—an expectation—that that the currency will enter the social world in its materiality and concreteness to be used as a means of payment, as an unit of account, and as a store of value. For Bitcoin to become a reliable means of payment, with such characteristics, a number of other aspects must provide conditions for overcoming the uncertainty regarding the future use of cryptocurrencies.<sup>45</sup>

One of the aspects that may provide such conditions is the law. Traditional and contemporary monetary theories emphasize the role of law and legally organized institutions as precursors of trust in money. There are three main strands of monetary theory that explain the way in which the law assumes this role. The first is the traditional neoclassical theory, according to which, money essentially consists of a commodity universally accepted as a medium of exchange.<sup>46</sup> The second is the state theory, where money is essentially a creation of the law and the state.<sup>47</sup> The final concept is the institutional theory, according to which money is nothing more than a credit issued by public or private entities that works as a general means of payment.

In traditional neoclassical theory, law and legal institutions do not configure an essential condition for the existence of money.<sup>48</sup> However, the law assumes that the essential function of providing the economic incentives that allows a given commodity to be accepted in society as the more salable medium of exchange and, therefore, as

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44. *Id.*; Blaine G. Robbins, *What is Trust? A Multidisciplinary Review, Critique, and Synthesis*, 10 SOC. COMPASS 972, 982 (2016); Dmitry Khodyakov, *Trust as a Process: A Three-Dimensional Approach*, 4 SOC. 115, 116 (2007).

45. Cunha Filho & Silbey, *supra* note 35.

46. *Dodd supra* note 4, at 9.

47. *See id.* at 3, 5.

48. Karl Menger, 2 *On the Origins of Money*, 2 ECON. J. 239, 240-41(2009).

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money.<sup>49</sup> According to this theory, the law can, for example, function as an incentive to the consolidation of trust in money, insofar as it sets the security standards that the issuers of paper money must observe in order to avoid counterfeiting.<sup>50</sup> The law can also determine, among many other things, the limits on the flow of money into or out of the country in order to contain liquidity crises and manage national monetary policy.<sup>51</sup>

On the other hand, in the state theory of money, the law offers more than just the economic incentives for the consolidation of trust in money.<sup>52</sup> According to the theory, the law is not only a facilitator for the “life” of money, but the law is also constitutive of its existence.<sup>53</sup> According to Georg Knapp, money is the product of a law.<sup>54</sup> There is no money without a law creating it.<sup>55</sup> More specifically, the law creates money by proclaiming it as a unit of account and the means of payment that must be effectively accepted in the economy.<sup>56</sup> In addition, the law would be responsible for constitutively acting to facilitate the universal acceptance of money as the proclaimed means of payment. The law would do so by determining, for example, the obligation of the state to accept the means of payment as a way of paying taxes.<sup>57</sup> The law assumes a double function in this scenario in order to sustain trust in money. On one hand, it acts constitutively as a precursor of the existence of money.<sup>58</sup> On the other hand, it provides

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49. *See id.* at 242, 249, 254 (explaining that the historical difficulty in valuing articles of commerce led to money becoming a universalized medium of exchange due to its special saleableness).

50. *Id.* at 255.

51. *See id.* (discussing law has the ability to “fix[] a definite ratio of value amongst” different commodities, thereby allowing the law to control the flow of money).

52. *See* Georg Friedrich Knapp, *The State Theory of Money*, 34 J. POL. ECON. 404, 405-06 (1926) (Knapp’s article stands for the general proposition that without the law money could not function).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 52.

57. *Id.*

58. *Id.* at 27.

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the guarantees by which money can be effectively accepted into society.<sup>59</sup>

Departing from the assumptions of the state theory, the institutional theory of money also finds in law, and above all, in legally organized institutions, the *locus* of trust in money.<sup>60</sup> Unlike the state theory, the institutional theory offer that money cannot be reduced to a means of payment produced by the sovereign power exclusively. For the institutional theory, money essentially consists of a credit issued by public or private agents that starts to “circulate” as a universal means of payment in the economy.<sup>61</sup> As redeemable credit against the issuer, trust in money would derive from the economic capacity of the agents that issue it—be they public or private (such as commercial banks)—and also from the institutional structure within which they operate.<sup>62</sup> Both factors would represent the essential condition for trust in money because they act as clues that money issuers will honor their promises to redeem the credits generated in the future in that particular form of currency.<sup>63</sup>

Taking into account the multiple roles that law and legally organized institutions play in the constitution and consolidation of trust in money, this paper presents the following questions: How do Bitcoin users interpret the role of law and how does this interpretation conditions trust in the cryptocurrency as a representation of money? Would the law be totally irrelevant as the non-specialized literature points out, or would it represent a trust provider to the use and investment in Bitcoin as an alternative form of money? As mentioned above, in answering these questions, this paper aims to examine not only the role that legal consciousness plays in building trust in the cryptocurrency, but also how it effectively shapes behavior in an environment where the formal mechanisms of law and coercion work to a limited extent.

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59. *Id.* at 95.

60. *See* GEOFFREY INGHAM, *THE NATURE OF MONEY* (Polity Press 2004).

61. *Id.*

62. *Id.*

63. *Id.*

### III. RESEARCH METHODS

In total, thirty-nine Brazilians were interviewed between August 2018 and March 2019. Out of the thirty-nine interviews, twenty-one were conducted face-to-face in Brazil and eighteen online. Participants include twenty-seven men and twelve women of diverse ages, social classes and educational qualifications. All interviews were recorded and transcribed. The transcripts were analyzed in an abductive way using a software called Atlas. By using the techniques of line-by-line and chunk-by-chunk coding in the initial stages, pneumatic codes were extracted from a sample of eight interviews. The codes indicated common themes that appeared in the transcripts.<sup>64</sup> Approximately fifty codes were created. All fifty codes were subsequently used to code all interviews, including the initial eight. After coding all of the thirty-nine interviews, a second round of analysis looked at the most frequent codes. It also showed the connection with the analysis of the “legal” and institutional bases of trust, specifically “trust,” “distrust,” “doubts,” “state,” “law,” and “regulation.” After recoding the fragments found under each code, several categories were created. Once systematized, the categories were grouped into three distinct über-categories, which indicated different interpretations of the law.

### IV. THE STRUCTURING POWER OF LAW IN BUILDING TRUST IN BITCOIN

Despite the anti-legal and anti-institutional narrative that has become popular on the internet and social media, we observed that the legal ideas, legal terms, and common sense of justice are often criticized by the interviewees as resources or obstacles to the formation of trust in Bitcoin. The legal ideas, legal terms, and common sense of justice found in the transcripts revealed three distinct interpretations about the law. Each interpretation indicates how the law penetrates into the “Bitcoin environment” and how it contributes to the structuration of trust, or symmetrically mistrust, in Bitcoin as a popular representation of money. The interpretations were named: (1) law as a utilitarian tool, (2) law as a safety provider/non-

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64. See KATHY CHARMAZ, *CONSTRUCTING GROUNDED THEORY: A PRACTICAL GUIDE THROUGH QUALITATIVE ANALYSIS* (Sage Publications 2014).

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provider, and (3) law as a political tool. The three interpretations will be discussed below.

*A. Law as a Utilitarian Tool*

The first narrative about the law is marked by a utilitarian calculation. In this context, interviewees interpreted the law as an incentive provider to use and invest in Bitcoin. According to the interviewees, the law functioning in this way generates positive effects on the Bitcoin market. Most interviewees associated the law with legal certainty. In the following quotation, Interviewee four explained how the regulation would improve the practical usability of cryptocurrency and how she would feel more confident using Bitcoin daily due to the law's implementation. The law working for Interviewee four can support and generate economic incentives for the daily cryptocurrency holder.

Interviewee four: . . . so, is it that bad to regulate [Bitcoin]? For me, I can come to a place and say . . . I prefer paying the tax and having no headache [which is a popular Brazilian expression that means to have problems], I prefer a thousand times. . . . Bitcoin is to be used. After all, my conception is that Bitcoin is a currency. And if it is a currency, it is a currency that is to be used. It has to be easy to use.

Interviewer: Regulation will come forward . . .

Interviewee four: The tendency is to improve it. I think the tendency is that regulation will come forward to improve it [Bitcoin], because [regulation] will make it usable for me and for everybody. Bitcoin doesn't really have usability. . . . today usability is very restricted. But, with regulation, usability will scale up to anything you want to buy. . . . The government will want to raise money [by collecting taxes]. The simple fact that the government makes it mandatory to be declared on income tax will encourage me and everybody to declare it. What will I do with money I can't spend? I'd rather declare it and put it to circulate.

Interviewee four interpreted public regulation as an instrument for achieving a desirable end. She did not reflect on the need to regulate Bitcoin based on the imperatives of justice or any moral code that serves minority groups as the consumers. Based on this observation, the regulation and the law fit perfectly into a utilitarian calculation. Positively, this calculation acts as an incentive for the respondent to



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accept Bitcoin as a kind of alternative currency. Based on respondent's reaction to the regulation, it can be inferred that respondent implicitly depicted the use of cryptocurrency as a universally accepted medium of exchange. This interpretation about the law is similar to how neoclassical theory of money conceives of the role of law in providing incentives or disincentives to trust in money.

### *B. Law as a Safety Provider*

The second interpretation about law identifies it as a security-providing tool. Unlike the first interpretation, the provision of security here is not evaluated from a utilitarian calculation. Instead, under this interpretation, the law is deemed as an instrument for generating background knowledge to allow the production of social expectations regarding the level of technical and financial security of Bitcoin and its environment, without the need to impose positive incentives. The law achieves this not only by imposing calculative incentives on Bitcoin users, but also by exercising its symbolic authority. Interviewees who articulate this view of the law interpret the law as a paradigm of power and authority. The symbolic authority of law is used as a discursive resource capable of creating a widespread belief of trust in the cryptocurrency. Below, we will see how Interviewee nine justifies her confidence in technology not through the practical effects of law, but through reliance on its symbolic authority. When asked why Interviewee nine feels afraid to use Bitcoin more often in her daily life, she replied:

Interviewee nine: I think this control [Bitcoin governance model] that seems to be a kind of "out of control" [regulation] is weird, you know? Who controls [Bitcoin]? How is this fluctuation made? How does it rise and fall? Okay, I know it can only be released bit by bit. Now, I even understand how miners work. I think it's going to give me a bit more security when someone says: "Now, that's regulated." I think society is like that . . . there must be somebody saying, "you can trust that."

In the fragment above, it is clear how Interviewee nine interprets the law not through the lens of the practical effects that it could eventually generate in the Bitcoin market, but by the law's symbolic

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character. At any moment during the interview did Interviewee nine claim that regulation could indirectly benefit her or harm her as a consumer? Interviewee nine only indicated that regulation, by the mere fact of “being out there,” gives her the feeling that the cryptocurrency could be trusted enough to be widely used, including by herself. This interpretation about the law resembles, albeit with reservations, the state theory of money. For this strand of the literature, discussed briefly in the previous section, the law and the state act beyond the monetary phenomenon. Actually, both the law and the state act materially and symbolically in the constitution of money, insofar as they build background knowledge to disseminate expectations about the existence and legitimacy of the currency, without having to impose positive (or symmetrically negative) incentives on economic agents.

### *C. Law as a Political Tool*

The third interpretation about the law explains it as a purely political instrument. Under this interpretation, the interviewees see the law as a “contaminated” institution that is illegitimate and subject to private interests. The interviewees see Bitcoin as a form of transgression to the law due to the decentralized nature of the technology. This interpretation is similar to the narrative often seen in popular literature on blogs, virtual forums, and ordinary websites. The following passage demonstrates how this interpretation of the law represents a discursive resource for building trust in Bitcoin as an alternative type of currency.

Interviewee twenty-seven: . . . who made the laws was a bunch of guys we don't know. We don't know who they are. We don't know what kind of interest is behind the laws, or whether the same rule applies equally to everyone. In Bitcoin, no! If I try to break the rules, my transaction will simply be blocked and the same goes for everyone. That's why I consider Bitcoin much stronger. . . a much more robust currency.

The above fragment clearly identifies the contrast between traditional viewpoints about the law with the “new institution” of Bitcoin. Associating the law with a corrupt institution subject to private interests is used as a trigger for perceiving Bitcoin as a remedy

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to this “pathological” situation. In the fragment above, Interviewee twenty-seven’s trust in Bitcoin does not derive from its practical usefulness in everyday life, nor from its reliability in terms of security or any other symbolic value. Conversely, the confidence in Bitcoin, under this third interpretation, emerges from a political connotation attributed to Bitcoin due to a situation caused by traditional institutions such as the law.

## V. DISCUSSION

At the beginning of this Article, it was said that recent studies have explained society’s loss of prevalence of law in everyday life. However, the findings presented above lead us to a different conclusion. Even though the third previously identified interpretation of law suggests a process of contestation and rejection of the law from the perspective of Bitcoin users, the first two interpretations also suggest a reinforcement and consolidation of the law as a normative center with positive influences on the behavior of those same actors. The findings demonstrate that alongside those who deny the law, there is simultaneously acceptance and a positive evaluation of its power and authority.

The apparent contradiction is even more evident because the different narratives about law are not discursively articulated by different groups of the sample. There is no particular group, such as one’s gender or age, that articulates one of the interpretations exclusively. On the contrary, the three interpretations of the law coexist in the answers of all interviewees. This implies that the same interviewee who demonstrates dissatisfaction with the law also demonstrates satisfaction and deference to the law. For instance, the law is interpreted as a positive incentive for regulating the Bitcoin environment, and as increasing the levels of technical and financial security in the same social field in a non-utilitarian way. Therefore, the sample shows combinations of interpretations of the law are multiple, and even contradictory in some cases.

Contrary to contemporary views, the law influences and is important to Bitcoin users. Even in an environment that hypothetically does not accept control and regulation by state law, participants of this social field still use the law as a mechanism for structuring their individual decisions of buying, using, and investing in the

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cryptocurrency. Even though the law is the target of contestation and rejection, it exerts a positive influence on this social field through its symbolic and non-apparent dimension. Furthermore, the fact that the law is actively an object of contestation and rejection does not indicate alone a lack of predominance of the law in everyday matters. In fact, even when the law is interpreted in a negative way, it still does not lack influence on users' behavior. On the contrary, the active contestation and rejection of the law by users and enthusiasts lead them to trust Bitcoin as an alternative type of money that can bypass state law and state regulation. This reveals that Bitcoin users' deeply take into account the law in order to guide their behavior. Were the law unimportant to this group of people, it would simply be ignored and not put under direct scrutiny and evaluation before any decision-making process.

The interpenetration and coexistence of all these interpretations about law only accentuates its role in society. Invariably, the plurality of views and interpretations about law reveals its structuring character – even when this happens in a symbolic and non-apparent way. The symbolic and non-apparent dimension of the law is part of what had been previously called legal consciousness. Although the formal coercive mechanisms of law are almost absent from this social field, the legal consciousness in play partially occupies this universe. Therefore, social reproduction of the cryptocurrency universe is not allowed without interference of the law. Out of the fact that legal culture and legal consciousness penetrate the social field of Bitcoin, one can only logically derive the structuring effect of the law even in an environment where official law is actively contested and rejected.

#### CONCLUSION

This Article investigated Bitcoin users' legal consciousness in Brazil. The objective of this investigation was to know how the law, and interpretations of the law, penetrate the Bitcoin social field in a symbolic and non-apparent way. This investigation also looked at how the law indirectly exercises its structuring power by shaping social relations of buying, selling, using and investing in the cryptocurrency without the mobilization of coercion. The idea of proceeding with this investigation originated from the hypothesis that the law could be losing space and normative power over social life in the face of the

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constant structural and moral flaws to which it is daily exposed. The social field of Bitcoin in Brazil proved to be particularly attractive for this type of analysis for two reasons. First, because the law is hypothetically unable to directly regulate the way Bitcoin works. Second, because the origin of Bitcoin is historically related to the contemporary process of loss of confidence in the law and in legally organized institutions.

In total, thirty-nine Bitcoin users were interviewed in the Latin American country. After analyzing the interviews, it was found that the law, despite being the object of active rejection and contestation by this group of people, still structures trust relationships in the cryptocurrency universe. The law does that in three distinct ways. Each way can be identified with a different interpretation about the law itself. The interpretations were: (1) law as a utilitarian tool, (2) law as a safety provider, and (3) law as a political tool. In the first case, the law is interpreted as a tool that generates mostly economic incentives to the use and investment in Bitcoin. In the second case, the law is interpreted as an institution capable of creating background expectations regarding the security of the technical and financial environment of the cryptocurrency. Finally, in the third case, the law is interpreted by its ability to reproduce injustices or fair treatment on the business environment of the Bitcoin.

There was no articulation of only one specific interpretation in particular groups of the sample. Virtually, all respondents articulate two or more interpretations of law. Sometimes, the interpretations are articulated in a complementary way, sometimes in a contradictory way. From this observation, it is clear that although the law is actively an object of contestation and rejection by Bitcoin users and enthusiasts, it is also interpreted positively as an instrument that generates economic incentives and security for the business environment of the cryptocurrency. Besides that, the law does not lose influence on social behavior even when it is interpreted with a negative connotation. On the contrary, the negative evaluation of the law also serves as a reference for user's decision making.

Ultimately, the analysis of Bitcoin users' legal consciousness reveals that the normative power of law represents a fundamental structural aspect of this social field. Whether structuring trust relationships directly or indirectly in cryptocurrency, the law is present and powerful, even in environments where it should be

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supposedly silent. Its ubiquity and pervasiveness represent symptoms of its normative power, not of its weakness. Contrary to what recent literature on legal conscience points out, the power of law does not diminish. It only grows.