# What We Talk About When We Talk About (Crypto) Regulation

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The land of cryptocurrencies has long been characterized as a "Wild West," an almost comically broad phrase that, depending on the audience, is as likely to invoke images of Will Smith riding on a steampunk spider as it is gun-toting outlaws.

Fortunately for the crypto world, this characterization is not entirely accurate; unfortunately for the crypto world, the reality is more akin to contracting dysentery in the classic Old West computer game, The Oregon Trail: unexpected, painful, and seemingly endless bouts of unpleasantness; a series of awful but necessary pit stops on the way to a brighter future.

This brighter future, currently an amorphous blob of potential on the horizon, will undoubtedly be shaped heavily by when, where, and how we choose to regulate. Unfortunately, because digital assets are so relatively new and still relatively poorly understood, it is unlikely that the perfect regulatory regime is staring us in the face, waiting to be implemented as the final piece of the utopian puzzle.

This is especially true in the context of international coordination. Given the tangible and intangible properties of the cryptocurrency space, a fragmented regulatory approach will likely do more harm than good, drawing out a process of uncertainty for much longer than necessary. To that end, when I think about where cooperation is needed in the near future, it is less focused on the question of how we can regulate (a position that contains a number of preexisting assumptions), and more focused on converging upon a set of foundational questions and answers—in other words, how ought we regulate.

These questions range from the low-hanging fruit of "Should we even be regulating this technology?" and "Is effective regulation of permissionless, decentralized networks even possible?" to the more pedantic (but important) "How do we define the technology at issue here in a way that draws appropriate lines?" Ultimately, the answers to each all inform the others, and I do not believe that fair, effective, global regulation is possible without first agreeing on what this substrate looks like. The critical component of such international efforts, then, may be to treat regulation as the exploratory experiment it is and build theoretical guardrails before running the tests.

## Open Questions Regarding Cryptocurrency Regulation

One first step might be to recognize the futility of treating cryptocurrencies and digital currencies as monolithic. I am not saying anything particularly insightful when I note that regulating Monero is likely functionally different from regulating a Central Bank Digital Currency (CBDC), or even something like Bitcoin. Each asset requires a different assessment of what constitutes a viable or technologically feasible regulatory regime, which may not look even remotely similar in practice. Insofar as there is overlap, it comes in the form of what questions need to be asked and coordinated upon at the international level, and a few stand out as being underexplored. In some cases, we need more information; in others, more clarity, or a higher degree of reflection. Below, I run through a non-comprehensive set of foundational questions highlighting some of these underexplored areas. In the interest of concision, I will skew more towards privately issued cryptocurrencies, as the answers for other, occasionally centralized, digital assets are (somewhat) clearer.

### More Information Needed: Risk Profile of Cryptocurrencies

An intelligent international regulatory regime can't be developed until we collectively agree on the risks that crypto may pose to existing infrastructure—for example, the traditional global financial markets. There is no question that there is some risk, but at the same time, the developments that are properly considered to be earth-shattering in the crypto world (e.g., the collapse of Luna/TerraUSD) have left a surprisingly small wake in the world of traditional finance (so far). This does not mean that the risk posed is nonexistent and/or static, simply that this risk is not fully understood. Perhaps, if Tether, the largest stablecoin in the world with a market capitalization of almost $70b, had collapsed (not an impossibility) instead of TerraUSD (a competing stablecoin), a non-negligible part of the worldwide economy would have been affected. This potentiality is not something to take lightly, and the likelihood of crypto's successes and/or failures affecting other spaces ought to be taken into consideration when deciding on appropriate regulation. In addition to the risk profile of crypto, much more information is needed regarding the benefits and pitfalls of cryptocurrency in order to set out a feasible, fair, and coordinated international strategy on regulation. Cooperating to gather this data is likely to be the most efficient path forward if the goal is a harmonious, effective, global approach to regulation.

### More Clarity Needed: What Exactly Will We Be Regulating?

Governments and international institutions will face myriad challenges when attempting to draw out the metes and bounds of exactly what ought to be regulated. The first issue is one of taxonomy: in the case of a blockchain-based cryptocurrency, to what extent ought the token be regulated separately from the rest of the network, and which regulators should focus on which elements of the system? In other words, should regulators attempt only to regulate, say, Ether, or should they also be looking at the Ethereum network, including smart contracts (e.g., Tornado Cash, now an even more critical conversation), validators, and ERC-20 tokens—and how ought they approach this? Fragmented regulation is not particularly helpful here, and creates a mix of distrust, uncertainty, and, in extreme cases, incentivizes a global reshuffling of funds as opportunities for regulatory arbitrage come into focus.

The second issue is definitional—how do we accurately describe what it is that we're hoping to regulate, without over- or underreaching? Trying to write a workable definition of something like cryptocurrency that is sufficient for legislation while not capturing other things such as databases, or Google Sheets, or PayPal is extremely difficult. While fear has centered on the possibility of overly broad regulation, narrow regulation has the potential to pose just as many problems by fostering an air of uncertainty. On a global scale, this would likely have a marked chilling effect on innovation—not an ideal outcome by any metric. Converging on taxonomic and definitional goals is likely to be the most efficient path forward if the goal is a harmonious, effective, global approach to regulation.

### More Reflection Needed: What Might We Have Learned from The Internet?

In many ways, the internet was a brief but phenomenal training ground for regulating decentralized technologies both at the national and international levels. The successes and failures of this inherently mutable playground ought to inform how we (carefully, and ideally with a delicate hand) regulate the cryptographic world of blockchain and digital currencies. Perhaps, then, we should begin not by asking what we hope to achieve, but by what means we hope to get there.

As an example, there seems to be no global consensus on such fundamental questions as when we regulate using the carrot and when we employ the stick. In his seminal book, Code, Lawrence Lessig noted that something like mandatory Internet ID cards would be a political impossibility (at least in the US), despite their utility in increasing the traceability of actions performed on the internet. Instead, he points out the ease of creating incentives for individuals to voluntarily register for an Internet ID by making life significantly easier [2] for those who do so (similar to how a driver's license is not required, but life is difficult without one). The legacy internet, by virtue of its current structure in which intermediaries play an integral role, contains a series of chokepoints that work well for applying the regulatory thumbscrews.

Crypto may or may not ultimately have intermediaries that serve as regulatory weak points, thus making opt-in incentivization a much more feasible and possibly attractive option for a global regulatory regime. The internet provides a nice slate of lessons on this front, ranging from how to incentivize innovation (e.g., by not enforcing non-competes) to the necessity of carving out safe harbors (e.g., as found in the Digital Millennium Copyright Act). While we have made mistakes (or not, depending on one's general feelings about surveillance capitalism), we have also learned quite a bit about how to structure a regulatory regime in an at least quasi-analogous environment.

Given the technological constraints that come along with cryptocurrencies, we are obligated to consider whether the current fragmented, heavily stick-based, somewhat neutral-harbor approach is truly the best way forward. A mix of approaches simply muddies the waters while creating opportunities for (and incentivizing) regulatory arbitrage. Finding common goals between jurisdictions will be a key to building a workable regulatory environment, and this requires international cooperation and a willingness to start back at square one by asking baseline questions. Examining alternatives and listening to lessons learned from the past, especially those that align with core tenants of the blockchain philosophy, may be the most efficient path forward if the goal is a harmonious, global approach to regulation.

## Final Thoughts

None of this is to say that regulation is absolutely the answer, or to suggest more rules and restrictions than are necessary. When pressed on my position (which does not necessarily reflect the position of any of the institutions I am affiliated with), it's something closer to resigned acceptance that regulation is a likely eventuality, undergirded with the (possibly naive) hope that a mix of creativity, optimism, and coordination can lead the way toward an ethical but relatively unfettered crypto space. What this will require is an immense amount of humility and cooperation on an international scale, and, most importantly, allowing enough time to elapse to be convinced that a given path is the right way forward. When pulled together, all of the above considerations suggest that more research, reflection, and communication are needed when considering how and when to regulate cryptocurrencies on an international scale.