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Blockchain Regulating Social Behavior: Adjusting Traditional Law Practices

The topic of this talk is not only subject of my theorizing exercises and research interests but also a synthesis of my hands-on experience as an adviser or consultant to several crypto related projects. Some of them, including three NFT platforms I'm currently working with I will mention further.

My research efforts deal with rare, sometimes maximalistic and sometimes hypothetical implications of blockchain technology; for example, quasi-anonymous, unregulated blockchain DAOs (decentralized autonomous organization) or some particular NFT projects. Implications I pick are the type of absolute degree of blockchain concept, extreme implication of the technology to social institutions.

From the other side, my research focus is not on practical solutions...once again, I have no idea on how to convince Coinbase to keep your operations secret from the IR...but, rather, on aspects of law theory. I'm trying to evaluate whether or not - due to mentioned extreme implications - it requires to be rethought and reformed.

I will pick only 3 of such implications for today's talk, though there are much more.

Number one. Blockchain regulation.

I suppose in this professional audience, everyone knows blockchain technical basics...distributed ledger....safe data storage, no way to forge,

etc...it is also an amazing tool to gather and interpret the will of groups of humans: small, large, very large and extremely large.

In the mentioned “maximalist” example, we are interested in multilateral smart contract, a DAO as a tool of **gathering, interpreting and enforcing** the will of its members.

To the extent I know, the real unregulated DAOs have not yet proven its sustainability but I believe there might be ones I don't know about and I see no obstacles for such to appear in future. So, such tool implemented in a hypothetical DAO which is not related to any government and its institutions, as well as to any other intermediaries, and THAT makes it unique. Unique in the sense of implementing direct democracy, but even more unique in the sense of being a self-sufficient, autonomous regulator of social behavior, including all necessary attributes of a social regulator, such as systematized rules, enforcement mechanisms and specific subjects and objects.

There are many other alternative systems of regulating behavior in various social groups; e.g., religion, morale or rules of a local violin lovers club. But there are differences: most of the social regulatory systems have their hierarchy management, which is an intermediary (religion, or inter organizational rules); others have a very slow formation process (morale) and they cannot compete with conventional law but, rather, interact with it, serving as a type of its extension.

In my research I'm analyzing blockchain-based regulation and its hypothetical implications as DAO of a size of a house, a town, a country and comparing it to other legal systems with no “superpower,” which are international public law and historical Lex Mercatoria. Both have no centralized intermediary or regulator that takes the job to enforce the law.

I'm making a comprehensive comparative analysis on whether or not the introduction of blockchain technology can result in the appearance of a regulative system that can become a law and compete or coexist with

conventional law and how it will affect the basic concepts of modern law theory.

Objects of blockchain law.

Any blockchain-based network, a DAO, introduces to the world its objects. It is relatively easy to characterize such objects existing or appearing in a regulated, non-anonymous or even quasi-anonymous blockchain network. They mostly fall into the scope of digital assets or various services, similar to the objects in non-blockchain networks. However, talking about unregulated quasi-anonymous DAOs, we can encounter some objects looking brand new.

Let me provide an **example**. There is an **online forum based on blockchain** technology, which has about 700 participating accounts. The forum discusses what's happening in a digital art oriented NFT platform and is indirectly influencing the value of NFTs sold. No-one is administering the forum, the rules are set in the protocol. *It is unknown whether or not the accounts of forum participants belong to real people, their groups or are computer programs.* However, a client comes making a statement that his reputation was affected by some account holders falsely accusing him of being incompetent while taking part in online debates.

And here is the challenge: Is reputation in such an environment an object of law? Can we talk about the reputation of an anonymous account, in an anonymous network, from the legal standpoint?

There are many other objects that can exist in the unregulated blockchain virtual realm: the very account as an asset, some limited access rights and/or information.

In all virtual worlds, except unregulated blockchain DAOs, the developer retains some or all ownership rights of user-generated content. But in an unregulated blockchain network things are different. Though there might be a developer who initiated the network he is replaced by protocol, apparently a program, as soon as DAO is launched.

The nature of such objects, **existing solely inside the unregulated blockchain network**, and some “**bridges**” that link them to the real world, are subjects of my close attention. There are a lot of **legally bewildering situations** when objects in the blockchain realm are **bought** or **leased** for real **money**, or affect real life behavior.

Once again, I apply **comparative law**, taking as juxtapositions the legal qualifications of objects in different types of virtual worlds, like network computer games or social networks.

Looking wider, I researched **other regulative environments** and their correlation to civil law; e.g., previously mentioned religious rules. The **Catholic Church absolving sins in exchange for money** - historically known as **selling indulgence** - is, to some extent, very close to selling limited access rights in an unregulated blockchain DAO for real money.

In both cases, we have to address the same set of questions:

- Is it a sales contract, though there is no legally existing object to sell?
- a service, though it doesn't look alike?
- or a gift, because one gives money and gets legally nothing?

3. **NFT**

Most NFT platforms are designed as tools to facilitate sale, leases or other ways of funding art or software development. Based on blockchain technology, and popped up in the flow of crypto-hype, they are, however, real-life for profit or nonprofit projects. Respecting the fact that nowadays crypto money is easily exchanged to fiat money, to put it simply, the NFTs are sold for real money.

However, the very NFT nature in their current position totally belongs to the virtual world. The purchaser literally gets nothing, at least from the legal standpoint, in exchange for his real or crypto money.

!!! There are no IP rights transferred as a result of a sale.

In the best-case scenario, the buyer gets some “control” over the property, though these control rights are administered by the platform and there is no enforceable obligation to provide such access rights unchangeably and eternally.

Some NFT projects are crowdfunding or charity-type foundations. **Cryptobarristas** sell NFTs in order to support real-life coffee initiatives. **LovePowerCoin** NFT promotes the ideas of freedom, breaking the chain and fighting financial slavery. It is not always obvious what particular steps the NFT developers are going to take to advance in achieving their pathetic goals, but at least purchasers look at an **NFT as a tool to support the idea they like - very similar to getting a pink ribbon lapel pin in exchange for a donation to the American Cancer society**. The ribbon, or NFT in mentioned cases, **has symbolic meaning and is not seen as an investment or resale asset**.

Meanwhile, other NFT platform developers promote their NFTs as unique investment opportunities and explicitly state that the NFT purchaser **will become the owner of, for example, an art piece**.

*One bright example from my consulting practice: **The Third Place NFT** platform is selling tokens representing parts of a real painting.*

Their website explicitly states, **“You can become one of the owners of the works of the great masters,”** followed with the offer to buy NFT representing parts of renowned artists. First you can see on the website is **Pierre Auguste Renoir’s 1986 painting, *Double Portrait de Jeanne Baudot***.

Very similar ownership promises are part of advertising made by other NFT platforms.

Some lawyers consider this type of business as having attributes of **fraud** according to the legislation of some countries. I generally agree with them.

Such platforms make buyers think that they are **buying something in the legal sense...** but **they are not**: people paying money receive no ownership over any tangible or intangible object. They are actually donating money, being falsely assured that they received some digital or physical asset in exchange.

However, criminal law is not the subject of my research. What is more important for me is that ***the popularity of NFTs shows that there is a huge demand for some type of fractional ownership of art pieces, IP rights and digital assets.***

What can the law do, relative to subsistence? Nothing, directly. But if substance is physically nothing, the law can actually create it.

Think about intellectual property. A new technology is a grate thing, but unless it gets a patent, it cannot be commercialized. It can still be used to produce but not to license, or limit others to use it, hence giving much smaller competitive advantage to the owner. **That's the law that exclusively** gives a patent, a book or a song its **commercial functionality** and actually creates it in the sense of law. Currently, NFT in the US is subject to regulation only if it has security-like features. In most examined cases, it does not. Unlike the regulation of ICO (initial coin offering), which was implemented in the US and resulted in its extinction, the regulation of NFTs can actually result in the appearance of new classes of assets and new forms of joint ownership. NFT can simultaneously serve as a type of property "title" in relation to IP objects, the form of co-ownership by numerous owners of an object and a form of virtual objects ownership rights certification.

Back to the topic of this talk - that's where the existing law theory potentially needs an adjustment introducing new objects of private law.

Most of my thoughts presented today were recently published in the **Arkansas Journal of Social Changed and Public Justice.**