LOCATING CRYPTOCURRENCIES IN THE WESTERN LEGAL TRADITION

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1. Private law as a traditional body of knowledge.

Legal categories grow incrementally rather than by step changes where there is a sudden or abrupt break with the past.

2. Defining "things" in the Western legal tradition.

Things (res) in the civil law tradition of continental Europe.

Gaius, *Institutes*, II.12-13: 12. "*Moreover, some things are corporeal, some are incorporeal*. 13. *Corporeal things can be touched* – land, a slave, clothes, *gold*, silver and of course countless others. 14. *Incorporeal things cannot be touched. They consist of legal rights* – inheritance, usufruct, obligations however contracted. It is irrelevant that an inheritance may include corporeal things, that what the usufructuary takes from the land will also be corporeal, and that what is owed to us by virtue of an obligation is usually corporeal, such as … money." (emphasis added)

What makes a gold cup a suitable subject of property?

Things in the common law tradition of England.

William Blackstone, *Commentaries on the Laws of England*, (1766) vol 2, pp 389-96: "Property, in chattels personal, may be either in *possession*; which is where a man hath not only the right to enjoy, but hath the actual enjoyment of, the thing: or else it is in *action*; where a man hath only a bare right, without any occupation or enjoyment … [W]e will proceed next to take a short view of the nature of property in *action* … the possession whereof may be however recovered by a suit or action at law: from whence the thing so recoverable is called a thing or *chose, in action.*"

3. How should we explain cryptocurrencies as "things" in the law?

We may need to recognise the concept of an "intangible corporeal" thing.

We need to think of an exclusively-protected transactional functionality as a thing which can be the subject of property.

Rather than think about a power of transacting over other things, we may need to think of the power of transacting as the thing itself.

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