

A QUESTION OF TRUST: FACEBOOK LIBRA AS MONEY IN THE ECONOMIC AND LEGAL SENSE

*Muharem Kianieff**

This article examines the use of Facebook’s Libra (now renamed “Diem”) as a substitute for fiat money. It considers Libra’s prospects for success in light of the fact that it purports to substitute trust in a technology for the traditional legal supports that bolster public trust in traditional fiat currencies. The legal doctrines that support fiat currencies do so for the purposes of recognizing the economic functions that money performs and are also meant to support public policies that promote monetary stability, protect consumers and help to enforce anti money laundering statutes. It is argued that Libra will result in unintended challenges for monetary authorities that will subject the world’s financial system to greater consumer transaction risks, increase systemic risks, and make it more difficult to combat money laundering efforts. The ultimate question is whether the public can place its trust in Facebook and its partners to manage a global currency, or is that trust better placed in the hands of central banks?

* Associate Professor, University of Windsor, Faculty of Law.

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INTRODUCTION

The troublesome question, What is money? has so constantly engaged the mind of economists that a lawyer might hesitate to join in the attempt to solve it. Yet the true answer must, if possible be determined. For ‘money answereth all things.’ It is a fundamental notion not only of the economic life of [hu]mankind but also of all departments of law. In fact, a great deal of a lawyer’s daily work centers around the term ‘money’ itself and the many transactions or institutions based on that term, such as debt, damages, value, payment, price, capital, interest, tax, pecuniary legacy. Money is a term so frequently used and of such importance that one is apt to overlook its inherent difficulties, and to forget that the multitude of its functions has led to a multitude of meanings.¹

F.A. Mann – The Legal Aspect of Money (1992)

These words, written by the eminent English Jurist Francis Mann at the beginning of his well-known treatise, nicely encapsulates the tension between economic conceptions of money, and their application to numerous legal doctrines that depend on a working legal definition of the same. Despite the fact that these words were written in 1992, current technological developments in consumer payment mechanisms (which Benjamin Geva defines as “any machinery facilitating the payment of money in the payment of a debt, which enables the debtor to avoid the transportation of money . . . to the creditor in the discharge of a debt”),² have made these distinctions more relevant than ever. As such, it may be helpful to consider how legal definitions of money in the common law and elsewhere, may play a role in increasing (or undermining as the case may be) the public acceptability of new payment mechanism technologies that attempt to rely on technological proofs of trust rather than relying on the force of law to build public confidence in these new business concepts.

The past number of years have brought a number of aspirants to the payments world in the form of cryptocurrencies. The development of Distributed

¹ FREDERICK ALEXANDER MANN, *THE LEGAL ASPECT OF MONEY* 3 (5th ed. 1992).

² Benjamin Geva, *The Concept of Payment Mechanism*, 24 OSGOODE HALL L. J. 1, 4 (1986).

Ledger Technology has helped to overcome many of the initial issues that had plagued previous efforts to establish digital currencies, which can pose a serious challenge to state-issued fiat money.³ As these technologies have attempted to gain market share from established payment system providers, they have had to convince consumers that the benefits that flow from cryptocurrencies have outweighed any potential risks or justify any transactions costs to be incurred from substituting to cryptocurrencies from fiat currencies.⁴ In doing so, they must persuade consumers that the technological advances that are present in cryptocurrencies can help to mitigate against risks incurred when dealing with private currencies generally.

As it happens, the development of Facebook's recently announced Libra (now known as "Diem") currency, is a unique opportunity to consider whether the development of a cryptocurrency using Distributed Ledgers, can also benefit from having the support of a large well capitalized multinational corporation with a built in userbase that numbers a staggering 2.7 billion individuals.⁵ Hence, unlike traditional cryptocurrency offerings, Facebook is hoping that familiarity with its products and goodwill towards its platform will help to convince consumers throughout the world to begin transacting using Libra.⁶ The launch of this particular business model allows us to consider a number of questions including whether consumer goodwill towards an established promoter in combination with the leveraging of new payment technologies can help Libra to surmount some of the challenges that have thus far, hindered the acceptability of cryptocurrencies. Moreover, does the lack of any legal recognition really matter in the case of Libra (which hopes to fulfil some of the economic functions of money), if economic and technological realities dictate that the law ought to accept Libra as a form of cash? Finally, is there still a role to play for law vis-à-vis currency regulation or will technology replace the need for the rule of law to compel public acceptance of a currency? While it may be early at this stage to consider the prospects for Libra's ultimate success or failure, there are a number of indicators present in the case of Libra which allow us to make an educated guess as to its long run prospects for

³ See generally, Marco Iansiti, et. al., *The Truth About Block Chain*, HARV. BUS. REV. (January 2017), <https://hbr.org/2017/01/the-truth-about-blockchain>.

⁴ See generally, MUHAREM KIANIEFF, *BLOCKCHAIN TECHNOLOGY AND THE LAW: OPPORTUNITIES AND RISKS* (1st ed. 2019).

⁵ Michael del Castillo, *Facebook's Libra Cryptocurrency: Under the Hood*, FORBES (2019), https://www.forbes.com/sites/michaeldelcastillo/2019/06/18/facebook-cryptocurrency-under-the-hood/?utm_source=TWITTER&utm_medium=social&utm_term=Valerie%2F#5a34586570e0.

⁶ Paul Vigna, *Facebook Says Libra Can Change the World. It Needs to Convince Users.*, THE WALL STREET JOURNAL (2019), <https://www.wsj.com/articles/facebook-says-libra-can-change-the-world-it-needs-to-convince-users-11561541402>.

success. In addition, one must also consider whether the development of a cryptocurrency such as Libra is a welcome development for consumers around the world, or does it subject them to unnecessary risks and dangers?

Part One of this essay will introduce Libra and discuss some of the features of the product that distinguish it from existing crypto currencies. Part Two will consider the economic functions that conventional money seeks to fulfill and briefly assess how Libra could conceivably fulfil these functions. Part Three will consider the long serving legal definition of money as reflected in the common law and statutes and situate Libra's position within this rubric and consider how the economic functions of money may help to determine the legal status of Libra. Part Four will assess Libra from a consumer protection perspective with a view to considering how the proceeding three parts will demonstrate that the product is still a very risky proposition for consumers around the world.

PART ONE: FACEBOOK LIBRA AS A NEW CRYPTO CURRENCY

FOUNDING IN 2019 AND NOVEL FEATURES

When it was initially announced with much fanfare on June 18, 2019, Facebook's Libra was promoted as a new digital currency that would help to change access to payment mechanisms for millions around the globe.⁷ The White paper that accompanied the release stated that Libra would help:

- To provide services for the unbanked, and enhance financial inclusion;
- eliminate costly fees associated with remittances, access to ATM, and overdraft charges;
- reduce a dependency on payday lending;
- provide for a global, open, and less costly system of moving money which is said to help stimulate global economic growth;
- allow individuals to place their trust in a decentralized form of governance; and
- support 'ethical' actors in the global payments system.⁸

⁷ Colin Harper, *Facebook's Libra Is Here. But It May Not Be What You Think.*, BITCOIN MAGAZINE (June 18, 2019), <https://bitcoinmagazine.com/articles/facebooks-libra-is-here-but-it-might-not-be-what-you-think>.

⁸ THE DIEM ASSOCIATION, WHITE PAPER § 2 (2020), <https://www.diem.com/en-us/white-paper/?noredirect=en-US> [hereinafter "WHITE PAPER"].

This is made possible, according to Facebook, by relying on decentralized networks to enhance acceptability and promote trust in the value that is represented by Libra.⁹ Echoing similar sentiments made by Satoshi Nakamoto when Bitcoin was launched, the trust represented by the auditable ledger that is publicly available and searchable is what allows crypto currencies based on Blockchains to avoid what is termed the double spend problem.¹⁰ Briefly, the double spend problem refers to the situation where an individual who comes into possession of a unit of crypto currency, cannot be sure that the value contained in this unit has not already been spent by a previous holder thereby rendering the unit worthless in the hands of the present holder (imagine being given a cheque made to bearer that has already been cashed for instance).¹¹ Blockchains solve this problem by providing for a central repository that can be audited by anyone, who can then confirm that the value contained in the currency has not already been spent elsewhere.¹²

One of the features that sets Libra apart from other currencies that utilize a Blockchain approach is that Libra intends to use a hybrid private (permissioned) – public Blockchain.¹³ What this means is that on the public side, the software that is used to develop the currency is open sourced and theoretically open to anyone who wishes to develop it.¹⁴ Facebook states that this will help to facilitate the development global interoperable financial networks that will help to assist individuals and businesses to transfer Libra around the world.¹⁵

The manner that Libra accomplishes this is by using a unique programming language, *Move*, that will implement custom transaction logic and smart contracts in order to make it easier for users to write code that “fulfils the author’s intent, thereby lessening the risk of unintended bugs or security incidents.”¹⁶ Facebook argues that this particular approach offers a couple of advantages. First, it provides an additional means of preventing double spending by constraining a digital asset to one owner, ensuring that it can only be spent once, and the creation of new

⁹ *Id.*

¹⁰ Russell Brandom, *Facebook’s cryptocurrency Has a Trust Problem*, THE VERGE (Jun. 18, 2019), <https://www.theverge.com/2019/6/18/18683867/facebook-cryptocurrency-libra-calibra-trust-banking>; see also Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, <https://bitcoin.org/bitcoin.pdf>.

¹¹ See Kianieff, *supra* note 4, at 5-6.

¹² Nakamoto, *supra* note 10, at 2.

¹³ Del Castillo, *supra* note 5.

¹⁴ WHITE PAPER, *supra* note 8, at § 2.

¹⁵ *Id.*

¹⁶ *Id.* at § 3.

resources is restricted.¹⁷ Second, the development of the *Move* language, also means that Libra can also verify that transactions only change the account balance of the sender and receiver, which is said to make transactions more secure.¹⁸ In the initial stages, transactions on *Move*-based smart contracts will be based upon pre-defined templates, but Facebook has indicated that future versions will be user-defined.¹⁹ This is important for the long-term viability of the product, not only as an payment mechanism, but as a financial platform that can support products and services developed by third party developers and businesses who wish to scale their products using the Libra platform.²⁰

The hybrid nature of the Libra Blockchain also brings with it a number of variations from the model that Bitcoin first pioneered. For instance, the Blockchain that supports Libra does not rely on a conventional data structure found in other cryptocurrencies.²¹ Rather, the Libra Blockchain relies on a virtual/logical construct that can be used by validators to confirm the system state rather than the conventional time-stamped batch transactions that are relied upon by permissionless Blockchains.²² Facebook states that this allows transactions to be looked up in a more efficient manner, and the ledger itself is more easily updatable since anyone looking up a particular transaction no longer has to fetch and process all immediate preceding transactions.²³ According to Facebook, the optimized nature of the ledger allows for more efficient operations since validators can store multiple versions of the ledger state and recompute the ledger state authenticator more efficiently following the processing of a transaction.²⁴

Indeed, finding efficiencies in the handling of transaction data is key for Libra to outpace its rivals in providing transaction processing throughput that more closely approximates that of traditional payment mechanisms. For example, traditional payment mechanisms such as the credit card Visa, can process approximately 60,000 transactions per second, while conventional Blockchain-

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See id.* at § 1.

²⁰ Michael del Castillo, *Facebook's Libra Cryptocurrency: A Technical Breakdown for Business Leaders*, FORBES (June 18, 2019), <https://www.forbes.com/sites/michaeldelcastillo/2019/06/18/facebook-cryptocurrency-under-the-hood/?sh=656f292570e0> [hereinafter "Technical Breakdown"].

²¹ Jameson Lopp, *Thoughts on Libra "Blockchain,"* MEDIUM (June 18, 2019), <https://medium.com/@lopp/thoughts-on-libra-blockchain-49b8f6c26372>.

²² *Id.*

²³ Zachary Amsden, et al., *The Libra Blockchain, Libra*, DEVELOPERS (July 23, 2019), <https://developers.libra.org/docs/assets/papers/the-libra-blockchain.pdf>.

²⁴ *Id.* at 15.

based cryptocurrencies are limited to approximately 7 per second.²⁵ As a result, Facebook must add a comparable level of functionality, or at least something that more closely approximates the throughput of existing payment mechanisms if it is to offer consumers a compelling reason to switch.

BYZANTINE FAULT TOLERANCE RUBRIC

To this end, Libra has also made some changes to the governance structure and verification processes at the transaction level. Unlike Bitcoin which uses a proof of work consensus protocol, Libra will use a Byzantine Fault Tolerance consensus protocol.²⁶ Briefly, the differences between the two are as follows:

- Under a proof of work rubric, transactions that are proposed to be added to the Blockchain are verified by nodes on the network. These nodes compete with each other for the right to mint a Bitcoin as compensation for their services of verifying transactions against tampering in the data transmission process.²⁷ The software that powers the Blockchain in question will decide which node on the network will have the right to seal off a block of transactions and begin the next one by randomly assigning a number of zeros to be added to the underlying hash of the transactions in question.²⁸ The first node that correctly guesses the answer seals the block and is given a reward in the form of Bitcoins mined by the system.²⁹ This node then also receives the right to broadcast its batch of transactions to be updated on every other node's copy of the Blockchain.³⁰
- Under a Byzantine Fault Tolerance Rubric, a node maintains an internal state that consists of ongoing specific information or status.³¹ When this node receives a message from the network, it will run a computation or operation in conjunction with its internal state in order to determine what course of action it should take.³² The Libra version of this protocol works by selecting a validator to serve as a leader in each round in which

²⁵ Kai Stinchcombe, *Ten years in, nobody has come up with a use for blockchain*, HACKERNOON (Dec. 22, 2017), <https://hackernoon.com/ten-years-in-nobody-has-come-up-with-a-use-case-for-blockchain-ee98c180100>.

²⁶ Technical Breakdown, *supra* note 20.

²⁷ See Geva, *supra* note 2, at 12-17.

²⁸ *Id.* at 12-13.

²⁹ *Id.* at 13.

³⁰ See *id.* at 12-17.

³¹ See *id.* at 13.

³² *Id.*

transactions are processed.³³ The leader will propose a block of transactions to extend a certified sequence of blocks that contain the full previous transaction sequence.³⁴ When a validator receives a proposed block, it can then decide whether to vote in favor of its incorporation into the Libra Blockchain in accordance with its internal voting rules.³⁵ Consensus for incorporation into the Blockchain is achieved once a contiguous three chain rule is satisfied (that is to say, at least three blocks of transactions incorporating the original transaction—the original one plus two subsequent rounds of transactions—have been voted on in favor by ‘honest’ nodes that meet a requirement for quorum) before the state that results from executing these transactions is updated on the Libra Blockchain.³⁶

One of the reasons why Libra is relying on a Byzantine Fault Tolerance rubric is that it has found the protocol to exhibit high throughput and low transaction latency.³⁷ It did not consider using the conventional proof of work rubric as a result of their relative inefficiency, high energy costs, and associated environmental costs.³⁸ It is estimated that the throughput of Libra at launch will support approximately 1000 transactions to be processed per second.³⁹

FOUNDING MEMBERS

It is important to note that the original composition of nodes and validators on the Libra network will be much more restricted in the initial stages than that found in permission-less cryptocurrency frameworks. The initial launch of Libra will be conducted using a group of geographically distributed ‘Founding Members’ who will assume initial responsibility for developing the ecosystem and investing resources to further its development.⁴⁰ Facebook asserts that this will help to maintain security in the system by having a safe and live validator set.⁴¹ These founding members will be selected from well-known organizations (who are presumed to act benevolently in order to preserve their reputations) in accordance with predefined eligibility criteria.⁴² Once the system is developed, it will transition

³³ Amsden et al., *supra* note 23, at 17.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 17-18.

³⁷ *Id.* at 18.

³⁸ *Id.*

³⁹ *See id.* at 22; *see also* Jameson Lopp, *Thoughts on “Libra Blockchain,”* CYPHERPUNK COGITATIONS (June 18, 2019), <https://blog.lopp.net/thoughts-on-libra--blockchain-/>

⁴⁰ Amsden et al., *supra* note 23, at 2; *see also* WHITE PAPER, *supra* note 8, at § 5 (2020).

⁴¹ Amsden et al., *supra* note 23 at 2; *see also* WHITE PAPER, *supra* note 8, at § 6.

⁴² WHITE PAPER, *supra* note 8, § 6.

to a more broadly distributed public style model using a proof of stake consensus protocol.⁴³

Until then, Facebook had initially managed to secure the participation of a number of well-known payment mechanism providers. Among them were:

- Credit Card companies such as Mastercard and Visa;
- Payment Service Providers such as PayPal, Mercado Pago, Xapo and Coinbase;
- Telecommunications companies such as Vodafone and Iliad;
- Venture Capital Firms such as Andreessen Horowitz, USV, and Thrive Capital;
- Non-Profit and Non-Governmental Organizations such as Women’s World Banking, Kiva and Mercy Corps.⁴⁴

With respect to the valuation of the currency, Facebook has announced a number of measures that are designed to mitigate against wild currency fluctuations of the type that has plagued previous cryptocurrencies. For one, Facebook promises that it will hold a number of “reserve assets” comprising of “low volatility assets such as bank deposits and short-term government securities from stable and reputable central banks.”⁴⁵ Facebook notes that Libra is not a pegged currency and is still meant to fluctuate in value relative to the local currency it is exchanged against.⁴⁶ Nonetheless, Facebook claims that the asset pool, which is to be held by a “geographically distributed network of custodians with investment-grade rating” will assist in boosting consumer confidence and facilitate the decentralization of the assets held.⁴⁷ What is not being promoted, of course, is a 100% reserve; but the function of the reserve is to act as a mitigating influence on any potential disruptions that may result from speculation in the currency.

⁴³ Amsden et al., *supra* note 23, at 2; *see also* WHITE PAPER, *supra* note 8, at § 3.

⁴⁴ *See* Diem Association, *Members*, https://www.diem.com/en-us/association/#goals_organization.

⁴⁵ WHITE PAPER, *supra* note 8, at § 4; *see also* Michael Katz, *Senate Holds Hearing on Digital Currencies, Blockchain*, CHIEF INVESTMENT OFFICER (August 6, 2019), <https://www.aicio.com/news/senate-holds-hearing-digital-currencies-blockchain/>.

⁴⁶ WHITE PAPER, *supra* note 8, at § 4.

⁴⁷ *Id.*

THE LIBRA ASSOCIATION⁴⁸

In a similar vein, the governance structure that will oversee the management of these reserves is meant to reinforce consumer confidence by vesting control in a separate organization known as the Libra Association. Facebook states that the initial composition of the association will consist of representatives of the founding members.⁴⁹ The implication here is that not only will the Association comprise of representatives of private enterprises but will also provide a voice for representatives from non-profit, multilateral and academic institutions from all over the world, to be headquartered in Geneva, Switzerland.⁵⁰ Facebook claims that this arrangement is meant to be analogous to the governance structure that is commonly found in foundations.⁵¹ The Association will be responsible for any policy changes and technical decisions that must be made, using a two-thirds voting majority.⁵²

Interestingly, the Association is also charged with the task of maintaining the money supply function of Libra. That is to say, the Association is to decide when Libra coins are to be minted or destroyed as conditions warrant.⁵³ Libra states that coins are to be minted when authorized resellers have purchased coins from the Association using fiat assets that are used to back the coins.⁵⁴ Conversely, coins are removed from circulation when the authorized resellers sell the coins back to the Association in exchange for the underlying asset.⁵⁵ Moreover, the Association stands committed to repurchasing Libra coins at a price that is equal to the value of the basket of assets held by the Association.⁵⁶ Facebook claims that this will result in the Association also serving as a “buyer of last resort” in accordance with a reserve management policy that can only be changed in accordance with a two-thirds majority vote as described above.⁵⁷

In sum, Facebook has promoted Libra as having a new level of interoperability that is not matched by existing cryptocurrency products. This is the result of the fact that Libra will have access to the Facebook platform, which it is

⁴⁸ As of December 1, 2020, the Libra Association became the Diem Association. At the time of writing, it was the Libra Association. For consistency, references in the body of the article are to the Libra Association.

⁴⁹ *Id.* at § 2.

⁵⁰ *Id.* at §§ 2, 7.

⁵¹ *Id.* at § 7.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

hoped, will significantly assist in customer acquisition. Facebook has also enlisted a number of organizations around the world to help demonstrate to customers that it is adopting the best practices in the industry in a manner in which it hopes will further efforts to be transparent to its customers.

Moreover, it is anticipated that by providing for the establishment of the Libra Association, the currency can be supported by a de facto private central bank that will help to shore up the value of Libra vis-à-vis established fiat currencies. As was noted above, the value of Libra will still fluctuate, however these tendencies will be mitigated by the Libra Association who will help to ensure convertibility and ensure that customers have access to money in the event that Libra falters. The value proposition here for consumers around the world is that Libra hopes to offer a more stable and less costly alternative to existing currencies, under the auspices of lowering transactions costs for all consumers, particularly those in developing economies where access to financial services remains a problem for many.⁵⁸

At the core of this value proposition, is that consumers will ultimately have faith in, and trust, Facebook to establish and help manage a currency ecosystem that has a level of scalability that is presently unrivaled in the marketplace. Of course, much of this depends on the goodwill that consumers have in Facebook itself—a goodwill that has come under considerable strain in recent years (which will be discussed in greater detail below). Indeed, this may provide some insight into Facebook’s motivations for entering this space. Kevin Werbach argues that part of the rationale is that Facebook is hoping that the architecture of the Blockchain framework that underpins Libra will help it to re-establish trust between Facebook and its users.⁵⁹ Certainly, time will tell if this is the case. Suffice it to say though that the reception that has greeted Libra is somewhat less than enthusiastic at the moment.

But, the broader question remains: can the market position that Facebook occupies with billions of users around the world, plus the architecture of Blockchain, overcome previous efforts to establish private currencies that do not have the force of law or the power of the state behind them? It is submitted that the answer to this question can be found by considering how the economic definition of money intersects with the common law legal definition and how the law/state plays a supporting role in maintaining public confidence in the medium of exchange.

⁵⁸ *Id.* § 1.

⁵⁹ Kevin Werbach, *The Real Reason for Facebook’s New Cryptocurrency*, N.Y. TIMES (June 20, 2019), https://www.nytimes.com/2019/06/20/opinion/facebook-libra-cryptocurrency.html?utm_source=&utm_medium=&utm_campaign=.

**PART TWO: THE ECONOMIC FUNCTIONS OF MONEY AND THEIR
MANIFESTATION IN ENGLISH AND AMERICAN COMMON LAW**

THE TRADITIONAL ECONOMIC VIEW

Essential to the function of any economy, is a universally accepted currency. And indeed, in any economy, currency performs a number of functions.⁶⁰ The most famous of these was first articulated by the economist, William Stanley Jevons where he outlined the functions that currency serves in the economy. In short, they are that currency is a:

1. Medium of Exchange: Here money helps to alleviate the problem of a double coincidence of wants. That is to say, it is something that is valued by both parties to a transaction, which can be used in exchange for goods and services in the economy.⁶¹ The article that is selected then becomes money *par excellence* by custom or the force of circumstances;⁶²
2. Common Measure of Value: Being used to exchanging things frequently for sums of money, people begin to value other things in terms of money, so that all exchanges are calculated and adjusted by comparison to the money values of the things exchanged;⁶³
3. Standard of Value: Contracts for debts that require payment at some future date, will not require that the same commodity that was lent out be originally returned.⁶⁴ For instance, if corn is to be exchanged on credit, one will not require repayment in corn plus interest. Rather, the creditor will prefer to have ‘money’ in the future rather than the thing that was originally lent out or purchased with the creditors loan. By stipulating that contracts be repaid in a particular denomination, current money serves the function of a standard of value by which the value of future payments is to be regulated.⁶⁵

⁶⁰ See WILLIAM STANLEY JEVONS, MONEY AND THE MECHANISM OF EXCHANGE 13-14 (1896).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 14.

⁶⁴ *Id.*

⁶⁵ *Id.* at 14-15.

4. The use of money as a reference point in which prices are denominated is referred to as a “unit of account” and the future denomination of loans is sometimes referred to as a “standard of deferred payment;”⁶⁶ and
5. Store of Value: Individuals may wish to hold on to money *in specie* as an asset that maintains its value over time.⁶⁷

The functions that money performs is also linked to the motives that individuals have for using it. The famous British Economist John Maynard Keynes classified these as follows:

1. The Transactions Motive: Money is demanded for its use in making regular payments;⁶⁸
2. The Precautionary Motive: Money is demanded in order to be used for unforeseen contingencies;⁶⁹
3. The Speculative Motive: This arises from the uncertainties about the money value of other assets that an individual may hold.⁷⁰

These two concepts work hand in hand in establishing the conditions under which, a commodity can gain sufficient public acceptability in order to be considered money for economic purposes. To quote from Geva and Geva:

Like all systems of exchange, money can only be exchanged for other units of money, or exchanged for other goods and services, if there is social acceptance regarding its legitimacy. This legitimacy has multiple dimensions. It needs to be accepted as a store of value, and of equal importance, the exchange is made possible only if those engaging in the exchange agree that the goods and services are operating within the boundaries of what is socially permitted.⁷¹

⁶⁶ RUDIGER DORNBUSCH, et al., *MACROECONOMICS* 380-82 (McGraw-Hill Irwin 2011).

⁶⁷ Muharem Kianieff, *Show Me The Money! A Critical Evaluation of Laissez-Faire Internet Currencies*, 17 *BANKING AND FINANCE L. REV.* 216, 221 (2001).

⁶⁸ DORNBUSCH ET AL., *supra* note 66, at 383.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Benjamin Geva & Dorit Geva, *Non-State Community Virtual Currencies*, in *DIGITAL CURRENCIES IN PRIVATE AND PUBLIC LAW* 281, 289 (Sarah Green & David Fox eds., 2019).

In a similar vein, Dornbusch et al., argue:

Money is whatever is generally accepted in exchange. In the past an astounding variety of monies have been used: simple commodities such as seashells, then metals, pieces of paper representing claims on gold or silver, pieces of paper that are claims only on other pieces of paper, and then paper and electronic entries in banks' accounts. However magnificently a piece of paper may be engraved, it is not money if it is not accepted in payment. And however unusual the material of which it is made, anything that is generally accepted in payment is money. There is thus an inherent circularity in the acceptance of money. Money is accepted in payment only because of the belief that it will later also be accepted in payment by others.⁷²

As can be seen from the above statements, for a medium of exchange to be commonly accepted as money, there must be a social acceptance of the currency as a valid tender in payment of debts, that can then be used by the holder, to pay others. That is to say, the acceptability of a medium of exchange depends in large part on the willingness of other members of society to accept it as satisfaction of a debt owing, or in exchange for goods and services.

What this means for Libra then, is that in order to evolve from being a payment system that helps individuals purchase goods and services from the Facebook platform, the Libra currency must find acceptability in a given geographic region (or ideally, globally) to serve as money outside of the established Facebook platform. Analogously, it has to go beyond being a mere token that helps to facilitate exchanges inside Facebook, to becoming a substitute for conventional current forms of money. Otherwise, Libra risks becoming a token that is limited in its acceptability inside the Facebook ecosystem only.

⁷² DORNBUSCH ET AL., *supra* note 66, at 382.

THE COMMON LAW VIEW OF CURRENCY AS MONEY

But, there is also a common law dimension that Libra must overcome. As Professor Geva points out: “[c]urrency can be described as the transfer of money from hand to hand, in payment of debts, free from claims to it on the part of all persons, including prior owners or possessors.”⁷³ And indeed, this concept of a transferable money that constitutes a unique exception to the normal rules of property law, in that even the true owner’s title can be extinguished in favor of a bona fide holder for value, is a concept that emerges from the initial cases in England that debated the nature of bank notes as a currency in and of themselves. For instance, in the 1825 case of *Miller v. Race*, Lord Mansfield stated as follows:

These notes were designed to answer a deficiency of cash; and are of that use that not a tenth part of the trade of this kingdom could be carried on without them: They [have] become a medium of commerce.

Questions, therefore, arising on these cash notes, are to be determined by the principle which governs in cases of trade; that is, by considering the usage of trade as part of the law.⁷⁴

Later on, his Lordship continues in a famous passage:

It is neither goods, nor security for money, nor any document of a debt, but as much money as a guinea is, which appears by receipts given by bankers, on your paying bank notes into their hands: their receipt is not for the specific bank-notes, but for so much money: which is so well understood, that they are commonly called paper money. Money, properly speaking, is whatever common consent has fixed upon as a sign denoting a certain value; and though, commonly, of gold and silver, yet, sometimes, of mixed metals: and leather stamped has been used; so may paper; seeing, whatever the material is, common consent may make it money, to all intents and

⁷³ Benjamin Geva, *From Commodity to Currency in Ancient History: On Commerce, Tyranny, and the Modern Law of Money*, 25 OSGOODE HALL L.J. 115, 117 (1987).

⁷⁴ *Miller v. Race* (1825) 96 Eng. Rep. 1151, 1152.

purposes; and that bank-notes are so received, and not considered as documents of a debt, or securities for money, appears from many determinations.⁷⁵

As Mann notes, by 1820, it came to be said that “the representation of money which is made transferable by delivery only, must be subject to the same rules as the money which it represents.”⁷⁶ A similar holding was found in the United States case *Newco Rand Co. v. Martin*⁷⁷ where the Supreme Court of Missouri stated:

Money is currency, is not earmarked and passes from hand to hand. There is no obligation on the part of the transferee to investigate a transferor’s title or source of acquisition of money when accepted honestly and in good faith. One must give a bona fide transferee for value a better title than he himself has.⁷⁸

Therefore, precedent demonstrates that the concept of a bona fide holder for value from the law of negotiable instruments has been a central feature of helping to promote the circulatable aspect of money as applied to monetary instruments.⁷⁹

In the context of Blockchain cryptocurrencies generally with their traceability/auditability that is built in to the technology infrastructure that support them, one cannot help but consider that the technology itself is helping to facilitate the transferability of a cryptocurrency as money, since the traceability aspect can be relied upon by a “holder” of the product, as proof that they are being conferred good title. What this means then, is that Blockchain technology itself is a means for not only allowing a currency to pass from hand to hand, but rather can also provide a sort of verifiable guarantee against the double spend problem which helps the product achieve the level of popular acceptability that it is crucial to have, if the product is to be accepted as money in the economic and legal sense of the term.

⁷⁵ *Id.* at 1154.

⁷⁶ CHARLES PROCTOR, MANN ON THE LEGAL ASPECT OF MONEY 43, n. 185 (7th ed. 2012).

⁷⁷ *Newco Land Co. v. Martin*, 358 Mo. 99, 213 S.W.2d 504 (1948).

⁷⁸ *Id.* at 509.

⁷⁹ PROCTOR, *supra* note 76, at 43.

LIBRA AS MONEY

Despite the fact that Facebook has altered its view of Libra as a payment mechanism rather than a new form of money, one cannot help but notice that many of the economic indicia outlined above are very much present in their proposal.⁸⁰ For instance, Libra is clearly a medium of exchange, even if it is only meant to serve as a means of transferring money.⁸¹ The fact that “money” is being exchanged for Libra, which then forms the basis upon which transfers are to take place, means that Libra is taking the form of a currency in and of itself. In addition, the fact that exchanges are to take place through a Libra denomination makes it very clear that things can also be valued in terms of Libra. That of course, makes Libra a common measure of value and indeed, a standard of value as well.

Is Libra a store of value? The answer depends on some of the motives under which individuals may wish to hold a currency. As of this writing, there are conflicting statements from Facebook regarding potential motives that an individual may have for holding Libra. For example, in testimony before Congress, both the head of Libra, David Marcus and the head of Facebook, Mark Zuckerberg both stressed that Libra is to be used strictly as a payment mechanism.⁸² But, as Marcus notes in his testimony, “Libra was established to be a digitally native currency that can be used around the world. Libra brings together attributes of the world’s best currencies: Stability, low inflation, wide usability, and fungibility.”⁸³ The low inflation and stability aspects are important here for our purposes. Low inflation has been one of the major selling features of the development of cryptocurrencies since the appearance of Nakamoto’s white paper that gave rise to the concept in 2008.⁸⁴ This is particularly the case in high inflation economies where the local currency may not necessarily be the best store of value. Any alternative that does not depreciate as rapidly and that has a relatively high acceptance rate immediately becomes attractive to consumers who are looking for

⁸⁰ See *An Examination of Facebook and Its Impact on the Financial Services and Housing Sector: Hearing Before the H. Comm. on Fin. Services*, 116th Cong. 98-104 (2019) (statement of Mark Zuckerberg, Chief Executive Officer, Facebook).
<https://docs.house.gov/meetings/BA/BA00/20191023/110136/HHRG-116-BA00-Wstate-ZuckerbergM-20191023-U1.pdf>.

⁸¹ *Id.*

⁸² *Id.*; *Examining Facebook’s Proposed Cryptocurrency and Its Impact on Consumers, Investors, and the American Financial System, Hearing Before the H. Comm. on Fin. Services*, 116th Cong. 164- 170 (2019) (statement of David Marcus, Head of Libra).

⁸³ Marcus House Statement, *supra* note 82.

⁸⁴ Nakamoto, *supra* note 10 at 4; see also KIANIEFF, *supra* note 4, at 74-75.

a stable medium where their savings can be denominated, and whose value remains steadfast in relation to the rapidly fluctuating local currency.

Hence, Marcus' comments are particularly telling since the "stability" facet of Libra is meant to directly address not only the existing consumer concerns regarding potential fluctuations of cryptocurrency value, but also to individuals who live in high-inflation environments in search of a stable store of value. Moreover, this point is reinforced by the fact that Libra is structured as a "stable coin" that is backed by a basket of global currencies that presumably could be looked to in order to satisfy claims arising from financial difficulties that Calibra may find itself embroiled in that may make it difficult to exchange Libra for fiat currencies.⁸⁵

As such, the fact that a stable store of what may be considered to be relatively "safe" investments that constitutes the basket of currencies used by Libra, may also serve to help reinforce public confidence that Libra has, as a fail-safe, a traditional asset base that underlies the currency. Moreover, it is also implied that a large company such as Facebook, in tandem with its partners, will provide a well-capitalized base with which to commence operations. That is to say, it is represented to consumers that Libra is making prudent investment choices (rather than riskier ones with a higher payoff), and as such, the Libra Reserve (being an organization comprised of well-respected financial experts) that are designed to maintain the value of Libra. Notice as well, that the Libra Reserve is being represented as the relevant decision maker with respect to these investments, rather than Facebook itself, which is designed to add a certain amount of legitimacy that experienced entities are ensuring that Libra remains a consistent store of value.⁸⁶

Indeed, Marcus himself touts this facet of Libra in outlining how it is proposed that Libra will differentiate itself from conventional stablecoins. To quote his House testimony:

Unlike existing stablecoins – digital currencies designed to minimize volatility by being "pegged" to a single asset – Libra will not have a fixed value in any single real-world currency. Instead, Libra will be fully backed on a one-to-one basis through the Libra reserve, which will hold a basket of currencies in safe assets such as cash bank deposits and highly liquid, short-term government securities. These currencies

⁸⁵ See Marcus Statement, *supra* note 82.

⁸⁶ See *id.*

will include the U.S. dollar, the British pound, the euro, and the Japanese yen. This approach will minimize exposure to fluctuations from a single region, providing further stability for people around the world who could rely on Libra for their daily financial needs.

The assets in the Libra Reserve will be held by a geographically distributed network of regulated custodians with investment-grade credit ratings to provide high auditability, as well as transparency, security and a decentralization of assets. These custodians are well-versed in safekeeping billions, even trillions of dollars' worth of assets. Because Libra will be backed by the Reserve, anyone using Libra should have a high degree of confidence that they will be able to sell it for local fiat currency, based on an exchange rate, just like exchanging one currency for another when travelling.⁸⁷

As can be seen above, this is in keeping with the fundamental premise that was laid out above, namely that people are being encouraged to rely on the expertise and reputation of Facebook, its partners, and their leveraging of new technologies to provide for new ways of granting access to individuals to payment mechanisms that no longer rely on traditional financial institutions. Conspicuously absent is any discussion of any role that government/law might play beyond that of a licensing authority who is asked to recognize Facebook and company as ordinary money transmitters / payment system providers rather than a conventional financial institution.⁸⁸

THE ROLE OF LAW IN BUILDING TRUST IN PAYMENT MECHANISMS

Here again, are some crucial features that are lacking, which may prove to be a very difficult hurdle for Libra to overcome. For instance, one of the defining

⁸⁷ *Id.*

⁸⁸ See, e.g., *Examining Facebook's Proposed Digital Currency and Data Privacy Considerations: Hearing Before the S. Comm. on Banking, Housing, and Urb. Affairs*, 116th Cong. 46-50 (2019) (statement of David Marcus, Head of Libra, Facebook). Marcus here is primarily concerned with complying with anti-money laundering and anti-terrorist financing regulations. He does concede that there will have to be prudential supervision of Libra, however this is to take place in Switzerland, where the company will be incorporated.

features of state-backed fiat currencies is the fact that many of them are declared by statute to be legal tender.⁸⁹ This has historically been the case since the Bank of England first began to issue its own bank notes that were designed to function as currency in 1844.⁹⁰ In the United States, legal tender has been used to stabilize the financial system during times of panic and also to help facilitate the acceptance of federal reserve notes that were crucial to allowing the federal reserve to conduct monetary policy that was designed to contain the crisis. To quote from Michael Barr:

During panics, banks faced with a shortage of cash had no way to expand the money supply. Issuing more national banknotes to serve as an emergency currency was not an option because banknotes had to be backed by a corresponding value of Treasury bonds. Additional national banknotes could therefore only be issued through an increase in Treasury bonds deposited with the Comptroller of Currency. In times of panic, that was not an option because banks did not have enough money to purchase more Treasury bonds, let alone pay their depositors. In essence, national banknotes were not an elastic currency because their volume could not expand with rising need during a crisis.

The Federal Reserve Act solved this problem by creating Federal Reserve notes, legal tender whose supply the Federal Reserve System could increase or decrease as needed. The Federal Reserve Banks were authorized to discount short-term commercial and agricultural paper for their member banks against the proceeds of which Federal Reserve notes could be issued and put in circulation. Then, as the discounted paper was paid off, the Federal Reserve notes would be withdrawn from circulation. In this way, the Federal Reserve could control the amount of Federal

⁸⁹ See 31 U.S.C. § 5103 (making United States currency legal tender); *see also* Currency and Bank Notes Act of 1954, c. 12 UK, <https://www.legislation.gov.uk/ukpga/Eliz2/2-3/12> (allowing the Bank of England to issue bank notes).

⁹⁰ Bank Charter Act 1844, c. 32 UK, <https://www.legislation.gov.uk/ukpga/Vict/7-8/32/enacted>.

Reserve notes in circulation and, thus, the elasticity of the money supply.⁹¹

Similarly, government intervention in the form of deposit insurance for instance, helps to encourage public confidence in our financial institutions. As Professor Barr et al., points out:

Without deposit insurance, a banking crisis presents the same dilemma. Each depositor is presented with two choices. She can run to the bank to withdraw her money, knowing that it will undermine the bank's soundness and have potentially disastrous consequences for the bank's remaining depositors. Or, she can choose to leave her money in the bank and hope that other depositors will do the same, forestalling the need for the bank to liquidate its assets at depressed values, thereby preserving its soundness. Depositors understand that deposits are redeemed on a first-come, first-serve basis, known as a sequential service constraint. Depositors who choose to get to the bank first are more likely to be paid in full than those who make withdrawals later. In a world where depositors are not certain they will receive their money back on demand, making a run on the bank is an individually rational choice that leads to a collectively irrational outcome.

A fundamental purpose of deposit insurance is to correct this misalignment between individual incentives and systemic effects. Under federal deposit insurance, which is administered by the FDIC, the government guarantees that depositors will be reimbursed for deposit losses caused by a bank's failure up to a fixed amount. By placing the full faith and credit of the United States behind insured depositor balances, deposit insurance eliminates insured depositors' incentives to run on the bank. Insurance eliminates the damaging collective action problem for insured depositors. The

⁹¹ MICHAEL S. BARR, ET AL., FINANCIAL REGULATION: LAW AND POLICY 47 (2018).

problem of runs, however, still exists for large uninsured depositors and other uninsured short-term creditors.⁹²

In this sense, the legal regime that underpins a financial system, has helped to contribute to increasing public confidence in the state issued currency that is crucial for this currency to take the form of money, both in the economic, and the legal sense of the word. These features are presently lacking in Libra and it remains to be seen whether this absence will ultimately prove to be fatal.

One should not underestimate the power of law in fostering trust. As Professor Werbach correctly points out:

How, then, does law promote trust? In truth, trust and law have an ambiguous relationship. A promise lacking the required attributes of contract law may still be sufficient to engender trust, even though it is not enforceable. Conversely, untrusting enemies may enter into legally binding transactions if they see a mutual advantage. Yet the two domains are clearly connected. The question, which numerous scholars have engaged, is whether law is more likely to promote or undermine trust.

On the one hand, law may enhance confidence and channel relationships in trust-enhancing ways. The legal system provides redress for violations of agreements, which may give the parties additional confidence when entering these relationships. This was essentially Thomas Hobbes's argument in *Leviathan*. Legal enforcement is not perfect, but trust necessarily involves some risk. The legal enforcement mechanism may reduce the possibility and magnitude of loss from untrustworthiness enough to induce trust-based relationships. Moreover, law formalizes relationships. Knowing the scope of expectations on both sides, as well as placing the entire arrangement within a structure, can limit misunderstandings. Thus, even though legal

⁹² *Id.* at 246.

enforcement rests on the Leviathan of state power, law may create necessary space for the informal arrangement of P2P trust. In the formulation . . . of trust as confident vulnerability, the prospect of legal redress makes the actor feel less vulnerable, thus expanding her or his confidence to interact . . . On the other hand, . . . Researchers have shown that if the trusting party is relying on the competence of the other, as opposed to its goodwill, reducing that competence to detailed contractual language can arouse suspicion. It suggests distrust, which may beget distrust in response.⁹³

As described above, Libra is facing a difficult challenge in balancing concerns that it can both operate a stable payments mechanism and ensure that this payment system and associated currency can withstand market pressures in order to function as money. The primary device that will help to facilitate this will ultimately be the trust that consumers place in Libra, and the technology that it will employ, to operate a safe and stable payment mechanism. But, the system that is proposed has yet to clarify how merely having a stable coin portfolio will help mitigate some of the risks outlined above, and how Facebook and their partners' reputations are meant to compensate for the lack of having the force of law/regulation behind it in times of crisis.

PART THREE: MONETARY POLICY RISKS AND CONSUMER PROTECTION ISSUES ASSOCIATED WITH LIBRA

LIBRA AND MONETARY POLICY

As mentioned above, one of the major advantages held by Libra, vis-à-vis its cryptocurrency predecessors, is the built-in userbase that will allow it to capitalize on synergies with the Facebook userbase.⁹⁴ This will also have tremendous repercussions on whether the Libra currency will attain a critical mass of circulation that will allow it to assume the economic and legal attributes of money. Writing twenty years ago in the context of electronic money, this author cautioned:

⁹³ KEVIN WERBACH, *THE BLOCKCHAIN AND THE NEW ARCHITECTURE OF TRUST* 163-64 (Sandra Braman ed., 2018).

⁹⁴ Joseph Insirello, *Politics and Geopolitics in Libra: an analysis*, MEDIUM (Sep. 2, 2019), <https://medium.com/@josephinsirello/politics-and-geopolitics-in-libra-an-analysis-part-1-d90af328633c>.

Now suppose that in the long run, confidence in e-money grows to a point where people begin to ask to be paid in e-money (usually the dominant form of e-money in the marketplace) as opposed to traditional currencies to avoid the transactions costs associated with having to exchange the currencies. Individuals then make all of their purchases using the new e-money, which for all intents and purposes is a perfect substitute for its paper equivalent. At this point, the e-money is disconnected from the standard that it is based upon, and as a result, paper money no longer figures into these individual calculations. It is at this point that the government has lost control over the money supply and the issuer now exercises the control and discretion that the central bank once did.⁹⁵

Although Libra has not yet reached the level of scale required to displace conventional government-issued fiat currencies, the large userbase that it will be able to utilize through Facebook will give it a tremendous advantage in reaching a level of scale that its competitors will find very difficult to replicate.⁹⁶ The built-in market recognition that Libra will gain by virtue of being an integral component of the Facebook platform, will allow Libra to pose a more direct threat to conventional fiat currencies than any other cryptocurrencies that have been launched to date.

This is not a threat that has been lost with various academic commentators in regard to the Libra proposal. Katherine Pistor correctly notes that the selection of a stable coin on its own does not guarantee that the Libra system will be immune from general market turbulence.⁹⁷ In her testimony before the House Committee, Professor Pistor states that during a typical crisis scenario, investors will pay for the ability to keep their assets safe.⁹⁸ What this means for Libra is that during such

⁹⁵ *Show me the Money!*, *supra* note 67, at 230.

⁹⁶ Taylor Telford, *Why governments around the world are afraid of Libra, Facebook's cryptocurrency*, WASH. POST (Jul. 12, 2019), <https://www.washingtonpost.com/business/2019/07/12/why-governments-around-world-are-afraid-libra-facebooks-cryptocurrency/>.

⁹⁷ *Examining Facebook's Proposed Cryptocurrency and Its Impact on Consumers, Investors, and the American Financial System: Hearing Before the H. Comm. On Financial Services*, 116th Cong. 4 (2019) (statement of Katharina Pistor), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-pistork-20190717.pdf>.

⁹⁸ *Id.*

a crisis scenario, the global demand and supply for safe investments would influence Libra's efforts to maintain its portfolio of stable currencies. Whether it would have enough market clout to help stabilize the value of Libra under such conditions remains to be seen.⁹⁹

By virtue of the fact that it serves as a currency of currencies, the effect that this may have on foreign exchange markets may not be insignificant.¹⁰⁰ Needless to say, this may help to frustrate some of the open market operations engaged in by central bankers by virtue of the sheer magnitude of the size of the potential Libra userbase. As Chris Brummer correctly notes, this will also be a challenge for customers of Libra who will also take on foreign exchange and currency risk due to the fact that Libra is a stable coin.¹⁰¹ To quote from Professor Brummer:

In the case of a run, the key concern would be whether or not there are sufficient Libra currencies and government securities backing the Libra to support redemption requests. If there are not, and if the size of the Libra network was large enough – a run could conceivably have serious cross-border, and possibly systemic consequences. Holder of Libra could find themselves with “money” that has—despite its assurances saturating the document—significantly diluted purchasing power.¹⁰²

Robert Weissman, the President of Public Citizen takes the point further in his comments by noting:

As the world has seen repeatedly, including but not only with the Southeast Asian financial crash in the late 1990s, currency runs can be contagious and spread across borders, provoking global crises.

Currency runs are already a hazard in the global economy. Libra threatens to make the problem far

⁹⁹ *Id.* at 5.

¹⁰⁰ *Id.*

¹⁰¹ *Examining Facebook's Proposed Cryptocurrency and Its Impact on Consumers, Investors, and the American Financial System: Hearing Before the H. Comm. On Financial Services*, 116th Cong. 4-5 (2019) (statement of Chris Brummer), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-brummerc-20190717.pdf>.

¹⁰² *Id.* at 5-6.

worse—more likely to occur, more frequent and at a bigger scale – to the extent it achieves its object of “frictionless” conversion into Libra and out into currencies different than the original currency of purchase. National governments may be able to forestall currency runs through imposition of capital controls, a policy device that the International Monetary Fund now recognizes can help defend currencies from catastrophic devaluation. But governmental capacity to impose capital controls will, at minimum, be severely hindered by Libra, given Facebook’s objective that conversion would be as simple as posting a social media message. Imposing capital controls would require completely shutting down Libra within a country, a very difficult undertaking once the system is established and becomes pervasive.¹⁰³

Hence, rather than being merely a payment mechanism that allows individuals to have access to the financial system, the more “money-like” the Libra currency becomes, the greater the chance that Libra will pose a threat to the global financial system.

The issue of Libra’s threat to global financial stability merits further discussion. For instance, the discussion assumes that Libra in its present form will not include offering services that one traditionally associates with modern day banking. That is to say, the discussion only looks at Libra as a payment system provider and fails to consider whether Libra, will at some point in the future, engage in the activities that financial institutions have previously found to be very lucrative. As Brunnermeier et al., have noted in a recent paper, the emergence of technology firms offering cryptocurrencies in the space that was previously the province of financial institutions, may result in the radical restructuring of the method of delivery for financial services. One passage is particularly salient for our purposes here:

In many modern economies, payment services are offered as an extension of banks’ intermediation

¹⁰³ *Examining Facebook’s Proposed Cryptocurrency and Its Impact on Consumers, Investors, and the American Financial System: Hearing Before the H. Comm. On Financial Services*, 116th Cong. 11 (2019) (statement of Robert Weissman), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-brummerc-20190717.pdf>.

activities. The motive for the creation of payment instruments is banks' demand for funds. Banks are the point of contact for all users of the payment system. In many countries, banks' dominance of financial activities extends even to the provision of insurance and asset management services. The financial system, and the way in which consumers store and exchange value, is organized around banks and credit . . .

In a platform-based economy, this hierarchy could be overturned. Payments are at the center of any economic platform, and all other activities would organize themselves around the central payment functionality. Consumers' point of contact would be with the entity that owned the platform rather than a bank. Financial services such as payment and insurance would be subordinated to payment services. In this new type of financial hierarchy, traditional financial institutions such as banks could be replaced by fintech subsidiaries of payment systems.¹⁰⁴

If Libra were to gain the level of public acceptance that would make it money in the traditional economic and legal sense, this acceptance would go beyond accepting Libra as a global currency/money and would also help provide Libra with a built in userbase with whom it could offer additional services. Consumers would already be pre-positioned to accept these additional financial services from Libra/Facebook, since they would already be accustomed to relying on them to facilitate payments within the Facebook ecosystem and beyond. Libra could allow Facebook to achieve a level that would allow it to very quickly begin performing some of the functions that existing financial institutions have found to be very lucrative over the years.

LIBRA AS A FINANCIAL SERVICES PROVIDER

This would have very serious consequences for holders of Libra, which merits further discussion. Suppose that the Libra Association initially finds that its efforts to increase access to the global payments system have proven to be quite

¹⁰⁴ Markus K. Brunnermeier, et al., *The Digitalization of Money*, OPENSCHOLAR AT PRINCETON 15 (Aug. 2019), https://scholar.princeton.edu/sites/default/files/markus/files/02c_digitalmoney.pdf.

successful. But, not content with this goal, the Libra Association seeks to grant additional access to world financial networks in a bid to increase individual financial independence by providing access to credit. Even though Libra has said that it will maintain a one for one reserve, Libra could argue that this massive capital reserve should be used to benefit underprivileged individuals who have difficulty obtaining credit, particularly in the developing world where it can help to considerably overcome many of the systemic burdens that prevent individuals from rising out of poverty. Many global philanthropic and empowerment efforts do so by providing individuals (particularly by focusing on women which studies show can help benefit an entire society by increasing their participation in the financial system) who lack a credit history with access to microfinance initiatives, whose objective it is to help individuals establish a credit history and fund small scale enterprises that help alleviate poverty.¹⁰⁵ This would, of course, be in keeping the goals that Facebook has set out for Libra in its White paper.¹⁰⁶ To this end, Libra could attempt to find new “productive” and “socially beneficial” uses for this “idle capital” that it would no longer need as 100% reserves after it reaches the requisite level of global acceptance as money in order to meet consumer redemption requests, much in the same way banks did when they were issuing private banknotes.¹⁰⁷

This result would go beyond the traditional functions exercised by one entity and may give rise to an entire financial industry that is associated with Libra. As Omarova and Steele correctly point out:

Once launched, Libra will spawn an entire ecosystem of financial services and service providers — authorized Libra dealers, brokers, asset managers, custodians, exchanges, digital identity providers, verifiers and so on — whose identities and qualifications we cannot yet anticipate. These entities may be controlled by Facebook or by other

¹⁰⁵ See *Designing Products and Developing Institutions to Serve Low-Income Women*, WOMEN’S WORLD BANKING 26-32 (2018), https://www.womensworldbanking.org/wp-content/uploads/2019/06/FSDA_CS_design_FINAL.pdf; see also Financial Services for the Poor Strategy Overview, THE BILL AND MELINDA GATES FOUNDATION (2018), <https://www.gatesfoundation.org/our-work/programs/global-growth-and-opportunity/financial-services-for-the-poor>.

¹⁰⁶ See WHITE PAPER, *supra* note 8.

¹⁰⁷ See generally Muharem Kianieff, *Private Banknotes in Canada: 1867 (and Before) to 1950*, 30 QUEEN’S L. J. 400 (2004); Geva, *supra* note 71, at 145; Anton N. Didenko & Ross P. Buckley, *The Evolution of Currency: Cash to Cryptos to Sovereign Digital Currencies*, 42 FORDHAM INT’L L. J. 1043, 1045 (2019).

corporate members of Libra Association, operate across multiple financial and commercial markets and not be subject to appropriate supervision and oversight by financial regulators.

For example, what additional financial products and “synergistic” financial services will authorized Libra dealers, or “resellers” offer? Libra-denominated loans? Leveraged investments in Libra coins or Libra-denominated assets? Derivative products referencing Libra? These lucrative activities would immediately expand the reach of Libra far beyond simple peer-to-peer payments or remittances into every corner of the financial market.¹⁰⁸

This would prove to be a challenge not only from a domestic perspective of which agency/agencies are best equipped to regulate the ecosystem, but also from an international perspective, as well as the digital nature of the product which makes direct supervision difficult.

The first result of this change would be that it would be very difficult for Libra to argue that it should be regulated as a money transmission business since it would now be providing financial services. This would mean that Libra would be subjected to prudential supervision in order to determine what type of risk exposure any extensions of credit it makes would be subject to, and whether that would affect the ability of the Libra Association to redeem or exchange Libra for fiat currencies.¹⁰⁹ This would bring into greater focus the quality not only of the loans made by Libra, but the risk profile of the investments in securities and global fiat currencies that are backing Libra. In this sense, the conduct of the Libra Association would have great significance to the world economy, not only as a global financial institution, but as a currency provider as well. Indeed, one commentator has argued that this would make the Libra Association into a de facto central bank that would require not only domestic supervision in the United States and elsewhere but would also need to work with International Monetary authorities such as the IMF and

¹⁰⁸ Saule Omarova & Graham Steele, *There's a Lot We Still Don't Know About Libra*, N.Y. TIMES (Nov. 4, 2019), <https://www.nytimes.com/2019/11/04/opinion/facebook-libra-cryptocurrency.html>.

¹⁰⁹ *Id.*

World Bank.¹¹⁰ As Professor Pistor correctly notes, Libra could very quickly transition from “too small to care” to “too big to fail” in short order.¹¹¹

This raises two sub issues: how would a global effort to stop a potential run on Libra overcome political resistance over the use of public resources to support an entity with questionable trustworthiness? And second, will political considerations vis-à-vis Facebook, as the perceived “de facto entity” behind Libra (despite its claims of maintaining an arm’s length relationship with Libra), affect the value or solvency position of Libra? These issues are discussed below.

SYSTEMIC RISKS ASSOCIATED WITH LIBRA

Beginning with the “too big to fail” issue, the argument presupposes that there is an ongoing systemic risk associated with Libra. In other words, Libra, as a non-bank actor, can contribute to counterparty risks that other financial service providers experience. To quote from Kress et al.:

Systemic risk spreads through the counterparty channel when a firm defaults on its financial obligations to counterparties and saddles them with losses. Firms default on their obligations in many different circumstances, few of which threaten financial stability. However, a nonbank financial firm *can* generate systemic risk if it experiences a run in the midst of broader financial market instability.

To be vulnerable to a run, a firm normally must fund itself with some form of short-term liabilities payable in cash. Examples include repo transactions, securities lending, and commercial paper. In many ways, these short-term debts resemble bank demand deposits, the classic liability implicated in runs. Other types of short-term liabilities, such as a firm’s escalating need to post cash collateral, can also trigger a run.

In the normal scenario, a firm is subject to a run if it pairs such short-term liabilities with long-term

¹¹⁰ Brandom, *supra* note 10.

¹¹¹ Pistor Statement, *supra* note 97, at 5.

illiquid assets. Firms in this position may be required to dump their illiquid assets at fire-sale prices in order to raise enough cash to meet immediate demands by creditors. Knowing this, creditors will rush to claim repayment before the firm's cash reserves run out, in a classic case of the prisoner's dilemma. Creditors' uncertainty about the firm's true financial health will exacerbate this stampede. Unless the firm's asset sales generate enough cash to cover its obligations (which is unlikely) and absent a bailout, the firm will default.¹¹²

Applied to the Libra example, the default that could take place here depends upon Libra's ability to meet its customers' redemption requirements. This is more likely in the scenario in which Libra seeks to loan out its capital reserves in the manner described above. It is also a factor (albeit a diminished one) in the 100% reserve scenario as well. In the reserve scenario, a sudden and unforeseen demand for redemption in another currency could create an insurmountable challenge for Libra. Robert Weissman illustrates such an example as follows:

The main worry is a classic "run on the bank" scenario, i.e., what happens if the Libra Association is unable to deliver on the promise to exchange Libra for a real currency of the user's choice. For example, if Europeans worried about the value of the euro decided en masse to purchase Libra and then demanded payment in dollars, it is entirely possible the Association would not be able to pay out. If the Libra Association decided in the future to change its one-to-one reserve policy, or decided to invest some portion of the reserves speculatively and suffered losses, it could find itself unable to pay out. Or, because of failures among Libra Association members, breaches or questions about the Libra technology, new regulatory impositions, a failure by a bank holding a significant portion of the reserve, unforeseen rumors or developments, there could be a

¹¹² Jeremy C. Kress, et al., *Regulating Entities and Activities: Complementary Approaches to Nonbank Systemic Risk*, 92 S. CALIF. L. REV. 1455, 1470-71 (2019).

run on the Libra and demand for payment in real currency beyond the capacity of the reserve.¹¹³

Here again, the cruciality of the trust factor should not be underestimated. Trust will enable Libra's ability to gain acceptability in the marketplace and it will also come into play in a potential bailout scenario. For instance, following the 2008 financial crisis, there was a lingering resentment among individuals who felt that using taxpayer funds to assist an industry that was perceived as no longer serving the middle class would, in essence, both reward firms engaging in reckless behavior with taxpayer money and allow wrongdoers to go unpunished.¹¹⁴ Indeed, Kress, McKay, and Schwarcz argue that one of the unintended consequences of the 2008 bailout is that it incentivized non-banks to "affirmatively become systemically significant."¹¹⁵

It is submitted that any proposed bailout of Libra, if necessary, be dependent on the goodwill that a country's citizenry has towards Facebook, in addition to overcoming any lingering geographical or regional considerations of using domestic taxpayer dollars to bail out a nominally Swiss entity. In other words, if an association with Facebook tarnished the goodwill towards Libra, it would hinder the necessary international political goodwill required to assemble a bailout package, or to coordinate activities through the International Monetary Fund or World Bank without subjecting Facebook and Libra to a massive list of preconditions that may prove difficult to enforce. If these efforts stymied over a considerable amount of time, it may be too late to stop a run on Libra in time, or, at the very least, it would compound the problem.¹¹⁶ Analogously, if trust in Facebook were badly damaged, it would make it very difficult for any bailout to proceed, particularly if there is a lack of consensus over whether Facebook intends to change its behavior.¹¹⁷

¹¹³ Weissman, *supra* note 103, at 7.

¹¹⁴ See Nelson D. Schwartz, *The Recovery Threw the Middle-Class Dream Under a Benz*, N.Y. TIMES (Sept. 12, 2018), <https://www.nytimes.com/2018/09/12/business/middle-class-financial-crisis.html>.

¹¹⁵ Kress et al. *supra* note 112, at 1467

¹¹⁶ See Katharina Pistor, *Facebook's Libra Must Be Stopped*, PROJECT SYNDICATE (June 20, 2019), <https://www.project-syndicate.org/commentary/facebook-libra-must-be-stopped-by-katharina-pistor-2019-06>.

¹¹⁷ See Kwon-Yong Jin, *How To Eat an Elephant: Corporate Group Structure of Systemically Important Financial Institutions, Orderly Liquidation Authority, and Single Point of Entry Resolution*, 124 YALE L.J. 1746, 1751 (2015) (discussing the risk that large, complex financial institutions are more incentivized to take risks with the knowledge that policymakers cannot let them fail and thus create a vicious cycle of this behavior).

Some may argue that such a scenario is unlikely to occur. But the recent history of Facebook makes it very difficult to overcome the entrenched suspicion regarding its promises to the public. For example, the infamous example of the Cambridge Analytica scandal where Facebook was seen as a conduit for foreign misinformation campaigns during the 2016 Presidential Election.¹¹⁸ Despite its claims that it will not engage in malevolent behavior following this scandal, Facebook has again been recently implicated in a scheme involving a breach of its users' trust by leveraging users' personal information against potential competitors by giving firms Facebook had ongoing relationships with access to their users' data and analytics, while withholding the same from partners who Facebook saw as a potential threat.¹¹⁹ The disclosed emails from Facebook's top executives reveal a rather insincere attempt to use a concern over protecting consumer privacy as a pretext for attempting to harm potential rivals.¹²⁰

Facebook's potential malfeasance also plays a role in the second issue outlined above. Even if Libra were a prudently managed cryptocurrency that invests very conservatively, its association (real or perceived) with Facebook could trigger a run on Libra. For instance, should another scandal on the scale of Cambridge Analytica take place in the future, the negative goodwill that would be attributed to Facebook could affect the value of Libra and potentially trigger a run, despite the fact that Libra may have a relatively healthy balance sheet. One should not forget that this is also a feature that affects fiat currencies where domestic or international political developments and policy decisions can adversely affect a country's currency.¹²¹ Consequently, even if one were to take Libra at its word that it will maintain an arm's length relationship with Facebook over time, this may still be ineffective at thwarting a potential run. If there were an event that would massively shake public confidence in Facebook, this lack of trust could then become an issue for Libra by virtue of its perceived association with Facebook, particularly if individuals choose to divest their holdings of Libra en masse to protest Facebook's actions.

Libra supporters could argue that this is precisely why the Libra Reserve will work to peg the Libra to fiat currencies in order to guard against any wild

¹¹⁸ See Nicholas Confessore, *Cambridge Analytic and Facebook: The Scandal and the Fallout So Far*, N.Y. TIMES (Apr. 4, 2018), <https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html>.

¹¹⁹ Olivia Solon & Cyrus Farivar, *Leaked documents show Facebook leveraged user data to fight rivals and help friends*, NBC NEWS (Nov. 6, 2019), <https://www.nbcnews.com/news/all/leaked-documents-show-facebook-leveraged-user-data-fight-rivals-help-n1076986>.

¹²⁰ *Id.*

¹²¹ See JOSHUA BARON ET AL., NATIONAL SECURITY IMPLICATIONS OF VIRTUAL CURRENCY: EXAMINING THE POTENTIAL FOR NON-STATE ACTOR DEPLOYMENT 7 (2015).

fluctuations that may affect the value of the currency. This is typically why “stable coins” attempt to hold reserves of fiat currencies in much the same way that gold was used to back traditional currencies. In this sense, the premise behind stable coins is that they can ground currencies in actual assets that are valuable in and of themselves. This has two direct advantages. First, there is a reserve that can build public trust that any fiat currencies that they exchange for cryptocurrencies will be redeemed at par.¹²² Second, they are designed to ensure that the money supply that is regulated by the basket of assets is grounded in the assets themselves, thereby ensuring that there is no “artificial” growth in the size of the money supply.¹²³ Hence, Libra Association proposed to use a “currency board” approach to providing stability to the value of Libra rather than actively setting monetary policy.¹²⁴

However, as Barry Eichengreen argues, the analogy comparing stablecoins with the gold standard omits the very active role that governments played in maintaining stable exchange rates.¹²⁵ Professor Eichengreen raises some very interesting points here that merit further consideration. Stablecoins are not a passive system that simply relies on automatic adjustments of currency holdings in order to maintain the value of an official currency, but rather, they on a full range of tools to achieve its objectives, in addition to its open market operations.¹²⁶ One of these is the fact that a central bank has legal support from the state in the form of legal tender laws which have served as a powerful tool in maintaining fiat currencies’ viability and acceptability during times of economic crises.¹²⁷ It is submitted that this legal tender, which helps to mandate the acceptability of

¹²² See Brian Fung, *One of the hottest things in cryptocurrency right now: Stablecoins*, WASH. POST (Nov. 1, 2019), <https://www.washingtonpost.com/technology/2018/11/01/one-hottest-things-cryptocurrency-right-now-stablecoins/>.

¹²³ See Mike Orcutt, *“Stablecoins” are trending, but they may ignore basic economics*, MIT TECH. R. (June 7, 2018), <https://www.technologyreview.com/2018/06/07/240613/stablecoins-are-trending-but-they-may-ignore-basic-economics/>.

¹²⁴ Libra Association Members, *Cover Letter*, LIBRA 1, 2 (Apr. 2020), https://wp.diem.com/en-US/wp-content/uploads/sites/23/2020/04/Libra_WhitePaperV2_April2020.pdf (as mentioned above, the Libra Association has changed its name to the Diem Association and issued an updated Cover Letter in December 2020); see also Barry Eichengreen, *Will Libra Be Stillborn?*, PROJECT SYNDICATE (Oct. 14, 2019), <https://www.project-syndicate.org/commentary/libra-looks-like-a-currency-without-a-purpose-by-barry-eichengreen-2019-10?barrier=accesspaylog>; Julia Anderson & Francesco Papadia, *Libra as a currency board: are the risks too great?*, BRUEGEL (Jan. 27, 2020), <https://www.bruegel.org/2020/01/libra-as-a-currency-board-are-the-risks-too-great/>.

¹²⁵ Barry Eichengreen, *Facebook’s venture into cryptocurrency is a terrible idea*, WASH. POST (June 24, 2019), <https://www.washingtonpost.com/opinions/2019/06/24/facebooks-venture-into-cryptocurrency-is-terrible-idea/>.

¹²⁶ *Id.*

¹²⁷ Kianieff, *supra* note 107, at 440.

governmental debt obligations, is crucial to building public confidence in fiat currencies and this is something that Libra, at the moment, finds itself sorely lacking in its bid to gain public trust.¹²⁸ This trust is essential in making a currency money in and of itself, and without the legal support necessary to weather a crisis, Libra could find itself facing considerable difficulty in maintaining public trust without any assistance from governments who can use the power of law to compel their use.

An issue can also be raised with respect to how a successful Libra will result in considerable market concentration for the Libra Association/Facebook. In recent years, Facebook has faced considerable criticism for using its market power to steer customers into its ecosystem, and the announcement of Libra has renewed concerns that Libra could give Facebook even more concentrated market power.¹²⁹

Indeed, this potential for more concentrated market power will have significant consequences for monetary authorities. For one, there is a danger that any potential changes in the basket of currencies that will constitute the Libra Reserve, could be used to coerce or use undue influence over national governments to pursue policies that Facebook may find more favorable to its interests.¹³⁰ This will serve as yet another factor in adversely affecting the exchange rate of a sovereign currency of an economy that is under pressure, potentially exacerbating an already challenging position. Moreover, the fluctuations present in the value of Libra may also have an unintended spillover effect as the exchange rates for any sovereign currencies that constitute a portion of the Libra Reserve would be perceived as fluctuations in the value of the sovereign currencies.¹³¹

Omarova and Steele note that the introduction of a private currency on such a wide scale as is predicted for Libra, will inevitably result in the Libra Association playing the role of a Central Bank.

The potential injection of significant amounts of privately issued money into the financial system, without regard to the real economy or its productive capacity, would also have significant consequences for United States monetary policy and sovereignty.

¹²⁸ Brunnermeier et al., *supra* note 104, at 24.

¹²⁹ Daniel Palmer, *Facebook Libra Already Facing an EU Antitrust Probe: Report*, COINDESK (Aug. 21, 2019), <https://www.coindesk.com/facebook-libra-already-facing-an-eu-antitrust-probe-report>.

¹³⁰ Weissman, *supra* note 103, at 5.

¹³¹ Omarova & Steele, *supra* note 108, at 2.

Despite its claims to the contrary, the Libra Association would be effectively conducting monetary policy, both when it determines the composition of the basket of sovereign currencies to which the value of Libra is pegged, and when it acts as the “buyer of last resort” for [the] purposes of maintaining the stable value and supply of Libra coins. Unlike the Federal Reserve, however, the Libra Association would exercise these core central bank powers without the legally mandated public responsibilities and oversight framework of the Federal Reserve Act of 1913.¹³²

In a similar fashion, Robert Weissman argues:

[I]f large amounts of money remain within the Libra ecosystem without being paid back out in national currency, the members of the Libra Association will have a self-interest in creating new fiat currency—and distributing it to themselves. Their collective interest would incentivize them to keep Libra functioning, yes, but if they could allocate billions of Libra to themselves, why wouldn’t we expect them to do so? As Kaushik Basu, former World Bank chief economist, notes, Facebook and the Libra Association will “be tempted to issue extra Libra to earn seigniorage in the same way central banks do on the national currencies they issue.” At scale, this could potentially be inflationary on a global scale. Perhaps more troubling is how it would wrest control of monetary policy from central banks and nation states, who would have to set national monetary policy against the backdrop of Libra’s global monetary policy. It’s hard even to conceptualize the complications this would create, let alone figure out how they might be managed.¹³³

For his part, David Marcus has publicly stated that the Libra Association has no desire at the present to compete with sovereign currencies or engaging in

¹³² *Id.* at 2-3.

¹³³ Weissman *supra* note 103, at 12.

activities that are associated with monetary policy.¹³⁴ Moreover, Marcus assures regulators that Libra will work with the Federal Reserve and other central banks to ensure that Libra does not compete with sovereign currencies or interfere in the execution of monetary policy.¹³⁵ But one cannot discount the possibility that even though Libra may not set out to influence monetary policy directly, it may end up doing so despite its best intentions. As was noted above, the sheer magnitude of the market presence of Libra will make its presence felt in global currency markets. Rather than mitigating these affects over time, an increasing market share for Libra will only amplify them.

Further, one could also argue that since the Libra Association will be incorporated as a not-for-profit entity, some of the temptations to manipulate the currency as described by Weissman above may not necessarily come to pass. As Professor Pistor points out, the Libra Reserve will be established as a Special Purpose Vehicle (as either a trust or a corporation) under Swiss Law, while the Libra Association will be comprised of members of an association known in Swiss Law as a “Verein.”¹³⁶ What this means is that the Libra Reserve will be shielded from any legal liabilities that may be incurred by the Libra Association, while at the same time, the Libra Association will not be able to look to any of the assets held in the Libra Reserve in order to meet its own liabilities.¹³⁷ The question then remains, how is the Libra Association to be funded and/or profits distributed to Association members? Professor Pistor is quite right when she states that the Libra Association will still maintain the power to allocate returns on the assets that are held in the Libra Reserve, and the White Paper states that these returns will be used to cover the costs of the system, including the operational costs, executive compensation, and crucially, dividends for Libra token holders.¹³⁸ As noted by Professor Brummer, the White Paper fails to make clear whether members of the Libra Association are required to act as fiduciaries of the system, or whether they are able to put their own financial interests first.¹³⁹

The issue of returns on investment makes Weissman’s comments in regard to seigniorage above, particularly prescient as this may also have a significant impact on monetary policy and consumer welfare.¹⁴⁰ At its most basic level, seigniorage is defined in the economic sense as the revenue that is associated with

¹³⁴ Marcus House Statement, *supra* note 82, at 3.

¹³⁵ *Id.*

¹³⁶ Pistor Statement, *supra* note 97, at 6.

¹³⁷ *Id.*

¹³⁸ *Id.*; WHITE PAPER, *supra* note 8, at § 4.

¹³⁹ Brummer Statement, *supra* note 101, at 7.

¹⁴⁰ Weissman, *supra* note 103, at 12.

the production of money and its maintenance.¹⁴¹ Analogously, it has also been defined as the difference between the value of money in exchange and its cost of production.¹⁴² The amounts earned by the government by producing fiat currencies is the result of having what is in effect, an interest free loan from the holders of its currency, which is the economic equivalent of the government earning interest on the cash that it issues.¹⁴³ When viewed alongside some of the interest earned by the Federal Reserve on some of its other assets, the sums involved can be quite significant. In 2017, the operations of the United States Federal Reserve resulted in a transfer of \$80.2 Billion to the United States Treasury.¹⁴⁴ This is no insignificant sum and would certainly result in a serious economic impact should these earnings be transferred to a private entity such as Libra and away from national governments. This is a loss that would ultimately be borne by citizens of these countries in the form of government service reductions or higher taxes in order to replace the lost income that would now accrue to the benefit of Libra.

ANTI-MONEY LAUNDERING AND KNOW YOUR CUSTOMER REQUIREMENTS

One of the areas where Libra has not provided many details relates to the know your customer (KYC) and anti-money laundering requirements that are in place in most major economies. These are requirements that all financial institutions must adhere to in order assist in the fight against money laundering and terrorist financing.¹⁴⁵ Briefly, this requires a financial institution to verify the identity of a potential account holder before opening an account, and to monitor this account and report any suspicious activity.¹⁴⁶ The time that is required to complete this due diligence, results in a delay before a customer gains access to

¹⁴¹ Manfred J. M. Neumann, *Seigniorage in the United States: How Much Does the U.S. Government Make from Money Production*, FED. RES. BANK OF ST. LOUIS REV., 1, 29, 30 (1992).

¹⁴² DANIEL L. THORNTON, ARE VIRTUAL “CURRENCIES” LIKELY TO SUCCEED 1 (2014)

¹⁴³ THOMAS P. VARTANIAN, et al., 21ST CENTURY MONEY, BANKING AND COMMERCE 492 (Fried, Frank, Harris, Shriver, & Jacobson eds. 1998).

¹⁴⁴ Press Release, Board of Governors of the United States Federal Reserve, Federal Reserve Board announces Reserve Bank Income and Expense Data and Transfers to the Treasury for 2017 (Jan. 10, 2018) (on file with the Federal Reserve Board).

¹⁴⁵ See THALES, *Know Your Customer in Banking*, <https://www.thalesgroup.com/en/markets/digital-identity-and-security/banking-payment/issuance/id-verification/know-your-customer#:~:text=KYC%20means%20Know%20Your%20Customer,who%20they%20claim%20to%20be> (last visited Apr. 17, 2021).

¹⁴⁶ LEXISNEXIS, *KYC: What is Know Your Customer? A definition*, <https://internationalsales.lexisnexis.com/glossary/compliance/kyc-know-your-customer#:~:text=Definition%3A%20What%20is%20Know%20Your,the%20identity%20verification%20of%20customers.&text=To%20help%20tackle%20financial%20crime,diligence%20checks%20have%20been%20introduced> (last visited Apr. 17, 2021).

their accounts and services.¹⁴⁷ The costs of complying with existing KYC/AML requirements are significant for existing financial institutions in developed countries.¹⁴⁸ In 2017, a survey by Thomson Reuters found that financial institutions in the United States spent \$48 million on average in labor costs and outsourcing associated with KYC due diligence.¹⁴⁹ With larger financial institutions, this cost was estimated to be as high as \$500 million annually.¹⁵⁰ In a 2018 survey, Thomson Reuters found that financial institutions continued to add personnel to work on meeting regulatory KYC requirements, with existing personnel expecting to see significant increases to their workloads.¹⁵¹ Note that these amounts do not take into account the costs associated with failing to comply, which themselves can be quite significant.¹⁵² The increasing nature of KYC is therefore leading many to consider distributed ledger-based solutions, with their interoperability and immutability aspects, to help streamline the process.¹⁵³

The problem becomes particularly compounded in the developing world where official documentation may be lacking, and where the compliance costs could outweigh the economic value of the account relationship for the financial

¹⁴⁷ *Id.*

¹⁴⁸ John Callahan, *Know Your Customer (KYC) Will Be A Great Thing When It Works*, FORBES (Jul. 10, 2018, 7:15 AM), <https://www.forbes.com/sites/forbestechcouncil/2018/07/10/know-your-customer-kyc-will-be-a-great-thing-when-it-works/?sh=6d13112f8dbb>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ THOMSON REUTERS LEGAL, *2018 Anti-Money Laundering Insights Report* (Oct. 19, 2018), https://legal.thomsonreuters.com/en/insights/reports/2018-anti-money-laundering-insights-report?gatedContent=%25252Fcontent%25252Ffewp-marketing-websites%25252Flegal%25252Fgl%25252Fen%25252Finsights%25252Freports%25252F2018-anti-money-laundering-insights-report&chl=soc&cid=9007265&sfdccampaignid=7011B000002O48xQAC&utm_campaign=none+%2528GaggleAMP%2529&utm_content=organizations-are-spending-resources-and-time-to-address-new-req-1620579&utm_medium=LinkedIn+%2528GaggleAMP%2529&utm_source=GaggleAMP-Corporate+Investigative.

¹⁵² Jose Parra-Moyano & Omri Ross, *KYC Optimization Using Distributed Ledger Technology*, SSRN ELECTRONIC J., 2 (2017), https://www.researchgate.net/profile/Jose_Parra-Moyano/publication/315046134_KYC_Optimization_Using_Distributed_Ledger_Technology/links/5aa000dba6fdcc22e2cc473d/KYC-Optimization-Using-Distributed-Ledger-Technology.pdf.

¹⁵³ *See id.* at 2-3 (noting immutability); *see also* Maxime Heckel & Bastien Collette, *How Should We Tackle the New KYC Challenges?*, DELOITTE INSIDE MAGAZINE, Oct. 2016, at 67, 69, https://www2.deloitte.com/content/dam/Deloitte/fr/Documents/risk/deloitte_how-should-we-tackle-the-new-kyc-challenges.pdf (noting interoperability); Kianieff, *supra* note 4, at 92-93 (describing financial institutions' use of Blockchain to streamline KYC compliance).

institution.¹⁵⁴ As a result, efforts to reach the unbanked by providing microfinance loans that help individuals establish a credit rating are frustrated.¹⁵⁵ Hence, any technological advancements that Libra can provide may prove to be quite helpful in fulfilling its mission to provide financial services to the unbanked around the world. This is why many organizations around the world have embraced Libra as a partner in fulfilling their own missions to do the same.¹⁵⁶ The question still remains as to how Libra intends to achieve this, and whether it intends to establish partnerships with existing financial institutions to perform KYC due diligence.¹⁵⁷

For many of Libra's non-profit members, the development of the technology behind Libra can help overcome some of the regulatory hurdles that make reaching the unbanked more difficult. A Libra official recently stated that the technology can allow for a tiered KYC which can require different levels of due diligence and authentication of personal data at different levels of financial thresholds.¹⁵⁸ Libra claims this is possible as a result of distributed ledgers providing a tamper-resistant means of real-time risk reporting, rather than utilizing the present self-reporting model dependent on competitive banks.¹⁵⁹

A number of questions still remain unanswered in the White Paper. As Professor Brummer points out, there are a number of system-wide limitations from a design perspective with respect to monitoring Libra participants, that may result in Libra being used for illicit activity. To quote Professor Brummer:

First, the on and off ramps into the Libra system – especially exchanges and wallets – could operate or establish themselves in jurisdictions with lax AML and KYC rules, surveillance and enforcement of local market participants.

¹⁵⁴ See Ian Allison, *How Anti-Money-Laundering Rules Hinder Libra's Mission to Reach the Unbanked*, COINDESK (Oct. 9, 2019), <https://www.coindesk.com/how-anti-money-laundering-rules-hinder-libras-mission-to-reach-the-unbanked>.

¹⁵⁵ See generally *id.* (describing the difficulty of applying traditional KYC requirements to someone with ten dollars of credit at a rural store in a country with limited infrastructure).

¹⁵⁶ See Brady Dale, *For Non-Profits Working with Facebook, Libra Isn't Such a Crazy Idea*, COINDESK (Oct. 9, 2019), <https://www.coindesk.com/for-non-profits-working-with-facebook-libra-isnt-such-a-crazy-idea>.

¹⁵⁷ See Eichengreen, *supra* note 124 (“Visa and Mastercard address [the problem of bad actors] by partnering with banks, which issue their cards with a bank imprint. Those banks are regulated by national governments. They are subject to rules about what transactions to authorize, what information they report to the authorities, in what countries they can operate and how and where they hold their reserves. In contrast, Facebook is not a bank. It is not regulated like one.”).

¹⁵⁸ See Allison, *supra* note 154.

¹⁵⁹ *Id.*

According to the blueprint sketched out in the White Paper, it appears customers could conceivably trade Libra for privacy coins and vice versa abroad, hold Libra in wallets located in an unregulated jurisdiction, and then send Libra coins to Calibra wallet users.

These challenges are complicated further by the fact that **the Libra blockchain will allow clients to “hold one or more addresses that are not linked to their real world identity.”** Besides helping to enable illegal transactions, this may not square with the surveillance and reporting responsibilities of Calibra as a money services business under the Bank Secrecy Act. **By its terms, the Bank Secrecy Act’s “travel rule” requires covered financial institutions (and Calibra would be one) to pass on certain customer information [to] financial institutions receiving funds from their accounts, including the name and address of the transmitter.**¹⁶⁰

Professor Brummer continues:

For anti-money laundering, as well as consumer protection and cybersecurity, the strength of the Libra ecosystem will lie in its weakest link. In order to make claims that Libra is safe, relies on a “secure, scalable, and reliable blockchain” and will be regulatorily compliant, a well-considered, unified compliance program will be necessary. Otherwise, users of Libra coins could well find themselves answering questions by law enforcement officials in the wake of what they thought were ordinary Libra purchases. The White Paper fails to disclose this fact, much less how the product it is introducing would address it. And it is, in my view, particularly important at this early stage of the blockchain’s development since once

¹⁶⁰ Brummer Statement, *supra* note 101, at 10 (internal citations omitted) (emphasis added).

bad actors are in the system, purging their abuse may be especially difficult, if not impossible.¹⁶¹

These observations raise important issues regarding consumer trust in Libra. If Libra cannot provide a frictionless experience for consumers that is not seen as a conduit for illicit activity, then it will find itself difficult to scale. Moreover, additional concerns remain about Libra's ability to fulfill its mission to empower the unbanked, if it cannot answer the basic questions required by KYC, including identity, which may not be possible to verify physically.¹⁶²

Indeed, as Professor Brummer states, the actions of Libra in this case depend on the actions of its partners in the Libra ecosystem.¹⁶³ Here again, trust plays a prominent role in ensuring that the system can function smoothly—both trust that Facebook/Libra can place in their partners to ensure that they meet their commitments, and trust that consumers must place in Libra that it has screened and vetted its partners to ensure that it meets consumer expectations. But this represents a best-case scenario of sorts for consumers, since it assumes that Facebook and Libra will act in good faith and in a hands-off manner in operating the Libra system as a benevolent currency/payment mechanism. Consumers must take a leap of faith in assuming that Facebook/Libra will not leverage the seigniorage, transaction fees, and most importantly, the data generated by Libra in order to consolidate Facebook's position as a social media and service provider giant.

RECENT EVENTS THAT HAVE UNDERMINED TRUST IN FACEBOOK

With recent history as a guide, there is little reason to assume that Facebook, and by extension, Libra, will now change its behavior in a bid to re-establish trust with consumers in the manner described by Professor Werbach above. Consider for instance the misrepresentations that Facebook has recently made to consumers in recent years for which it has been required to engage in a consent agreement with the Federal Trade Commission.¹⁶⁴ Amongst the activities that the FTC included as a basis for its complaint are the facts that Facebook:

¹⁶¹ *Id.* at 10 -11 (internal citations omitted) (emphasis added).

¹⁶² Allison, *supra* note 152. 154

¹⁶³ Brummer Statement, *supra* note 101, at 10-11.

¹⁶⁴ Lesley Fair, *FTC's \$5 Billion Facebook Settlement: Record-Breaking and History-Making*, FEDERAL TRADE COMMISSION (July 24, 2019), <https://www.ftc.gov/news-events/blogs/business-blog/2019/07/ftcs-5-billion-facebook-settlement-record-breaking-history>.

- Changed its website in December 2009 to display publicly the information that users may have designated as private, and did not warn consumers that it was making the change, nor did it obtain their consent in advance;¹⁶⁵
- represented that third-party apps that were installed on users' Facebook profiles would have access only to the information necessary to operate, when these apps actually had access to nearly all of users' personal data;¹⁶⁶
- told users that they could restrict the availability of their data to a select group of friends when in fact this information was not shielded from the applications that their friends had installed;¹⁶⁷
- represented that it had a "Verified Apps" program whereby it certified the security of participating apps when, in fact, Facebook never did so;¹⁶⁸
- promised it would not give users' personal information to advertisers—and subsequently broke this promise;¹⁶⁹
- claimed that a users' photos and videos would not be accessible when they deleted their account. This was shown not to be the case;¹⁷⁰ and
- maintained that its data transfers between the United States and European Union complied with the U.S.-E.U. Safe Harbor Framework. Facebook was found to be in violation of this agreement.¹⁷¹

As a part of the consent order, Facebook was required to comply with certain conditions.¹⁷² As Robert Weissman points out, these commitments were famously violated when Facebook allowed Cambridge Analytica to exploit the private data of 50 million users in an attempt to influence voting in the 2016 Presidential Election.¹⁷³ Since then, Facebook's reputation has continued to be tarnished amid accusations that it:

¹⁶⁵ Weissman, *supra* note 103, at 4.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Fair, *supra* note 164.

¹⁷³ Weissman, *supra* note 103, at 4.

A Question of Trust: Facebook Crypto as Money — Economically and Legally

- Has failed to secure user passwords;¹⁷⁴
- has paid teenagers to download spyware;¹⁷⁵
- was accused by the Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs of helping to facilitate the ongoing Rohingya genocide in Myanmar;¹⁷⁶ and
- was accused of failing to halt the exchange of child sexual abuse images through Facebook Messenger in a *New York Times* investigation.¹⁷⁷

In light of these aforementioned instances, it would be reasonable to state that Facebook has a long way to go in its attempt to rehabilitate its image. And indeed, this will take some time, assuming that Facebook ceases engaging in this type of deplorable behavior—which it has yet to do. What this means for Libra is that the connection with Facebook as the initial promoter of the product has hindered its acceptability as a payment mechanism, much less as a currency. The trouble for Libra is that it cannot really separate itself from Facebook, since it needs access to the Facebook platform in order to provide it with the scale and functionality that it needs to differentiate itself from current cryptocurrency offerings. Until these issues are resolved, it is highly unlikely that Libra will attain the level of trust that is necessary to become accepted as a currency in the legal and economic sense.

CONCLUSION

In the months that have followed the initial announcement of its launch, regulators in the United States have reacted with skepticism. In today's highly

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Examining Facebook's Proposed Digital Currency and Data Privacy Considerations: Hearing Before the S. Comm. On Banking, Housing, and Urban Affairs* (July 16, 2019) (statement of Senator Sharrod Brown, ranking member), <https://www.banking.senate.gov/newsroom/minority/brown-opening-statement-at-facebook-hearing>.

¹⁷⁷ Michael H. Keller & Gabriel J.X. Dance, *The Internet is Overrun with Images of Child Sexual Abuse. What Went Wrong?*, NEW YORK TIMES (Sept. 28, 2019), <https://www.nytimes.com/interactive/2019/09/28/us/child-sex-abuse.html?module=inline>; Jennifer Valentino-DeVries & Gabriel J.X. Dance, *Facebook Encryption Eyed in Fight Against Online Child Sexual Abuse*, NEW YORK TIMES (Oct. 2, 2019), <https://www.nytimes.com/2019/10/02/technology/encryption-online-child-sex-abuse.html?searchResultPosition=9>.

charged political atmosphere, an opposition to Facebook's planned launch is a rare instance of bipartisanship as both the Chairman of the Senate Committee on Banking, Housing and Urban Affairs, Senator Crapo and the Ranking Member, Senator Brown, both issued opening statements that condemned Facebook's previous conduct, and questioned whether things had changed vis-à-vis Libra.¹⁷⁸ Similar statements were made by the Treasury Secretary who questioned whether Libra was even launch ready in light of the fact that it had serious regulatory concerns that needed to be addressed.¹⁷⁹ The Treasury Secretary has since relented slightly stating that he does not oppose a launch of Libra, but it would have to be fully compliant with all AML regulations before it would be allowed to launch.¹⁸⁰ A similar level of skepticism was also expressed by central banks around the world who vowed to block an unregulated Libra launch.¹⁸¹ For its part, Libra has publicly committed not to launch until U.S. regulators approve.¹⁸² The less than enthusiastic response of Congressional authorities, has prompted some of the initial Libra founders such as PayPal, Visa, Mastercard, eBay, Vodafone and others, to re-evaluate their participation in the project.¹⁸³ This exit was accelerated after Senators

¹⁷⁸ See Sharrod Brown, *supra* note 176; *Examining Facebook's Proposed Digital Currency and Data Privacy Considerations: Hearing Before the S. Comm. On Banking, Housing, and Urban Affairs* (July 16, 2019) (statement of Senator Mike Crapo, Chairman), <https://www.banking.senate.gov/newsroom/majority/crapo-statement-at-facebook-hearing>.

¹⁷⁹ David Pan, *US Treasury Secretary: Regulatory Fears Forced Libra Exodus*, COINDESK (Oct. 14, 2019), <https://www.coindesk.com/us-treasury-secretary-regulatory-fears-forced-libra-exodus>.

¹⁸⁰ Daniel Palmer, *Mnuchin 'Fine' With Libra Launch, But Crypto Project Must 'Fully' Comply With AML Rules*, COINDESK (Dec. 6, 2019), <https://www.coindesk.com/mnuchin-fine-with-libra-launch-but-crypto-project-must-fully-comply-with-aml-rules>.

¹⁸¹ Balazs Koranyi, *Europe Should Ignore 'Treacherous Promises' of Facebook's Libra Currency: ECB's Mersch*, REUTERS (Sept. 2, 2019), <https://www.reuters.com/article/us-ecb-policy-libra/facebooks-libra-could-undercut-ecbs-powers-mersch-idUSKCN1VN0H0>; Anna Baydakova, *Germany Passes National Policy to Explore Blockchain But Limit Stablecoins*, COINDESK (Sept. 18, 2019), <https://www.coindesk.com/germany-passes-national-policy-to-explore-blockchain-but-limit-stablecoins>; Daniel Palmer, *France Says It Will Block Facebook Libra in Europe*, COINDESK (Sept. 12, 2019), <https://www.coindesk.com/france-says-it-will-block-facebook-libra-in-europe-report>; Marie Huillet, *German Government Approves New Plan to Block Private 'Parallel Currencies': Libra*, COINTELEGRAPH (Sept. 18, 2019), <https://cointelegraph.com/news/german-govt-approves-new-plan-to-block-private-parallel-currencies>; William Foxley, *German Finance Minister Supports Digital Euro But 'Very Critical' of Libra*, COINDESK (Oct. 7, 2019), <https://www.coindesk.com/german-finance-minister-supports-digital-euro-but-very-critical-of-libra>; William Foxley, *Bank of England Sets Out Rules for Libra Launch in the UK*, COINDESK (Oct. 9, 2019), <https://www.coindesk.com/bank-of-england-sets-out-rules-for-libra-launch-in-the-uk>.

¹⁸² Zuckerberg Statement, *supra* note 80.

¹⁸³ Nikhilesh De, *Paypal Withdraws from Facebook-led Libra Crypto Project*, COINDESK (Oct. 4, 2019), <https://www.coindesk.com/paypal-withdraws-from-facebook-led-libra-crypto-project>; Mike Isaac, et al., *PayPal Pulls Out of Libra, Facebook's Crypto Currency Project*, NEW YORK

Schatz and Brown sent public letters to some of these participants warning that any system failures on the part of Libra, could spill over and affect the participant's own systems and financial well-being.¹⁸⁴ Arguably, this is a considerable blow against the project if some of the partners with significant consumer goodwill have withdrawn from the project.

The calls for Libra to be subject to regulation, have only begun to stimulate discussions of some of the risks inherent with Libra, while ignoring some of the more prevalent ones that help to support a currency. For instance, much of the present talk has centered on AML regulations that are designed to thwart the use of Libra in order to commit illicit acts. There are still significant risks associated with Libra from a consumer protection perspective that heretofore, have not been addressed in calls for regulation. That is to say, there is no discussion of providing for prudential supervision of the Libra Reserve, nor is there any discussion of ensuring that all of Libra's obligations will be redeemed in the event of a run. Without an independent third party, such as a governmental authority who can use the power of the state to stabilize a crisis situation, consumers will be forced to trust that Facebook and their partners will take the necessary steps to ensure that consumer expectations are met. As has been outlined above, these shortcomings can have catastrophic consequences for consumers in the event of a run, and this will significantly undermine confidence in the entire financial system.

Having seen the potential that Libra poses to supplant fiat currencies, regulators around the world have begun re-examining whether to issue a central bank digital currency before Libra reaches a sufficient scale so as to disrupt the ability of a central bank to conduct monetary policy.¹⁸⁵ While these developments were previously taking place slowly, they have found a new sense of urgency the

TIMES (Oct. 4, 2019), <https://www.nytimes.com/2019/10/04/technology/paypal-facebook-cryptocurrency-libra.html?searchResultPosition=4>; Danny Nelson, *Institutional Libra Backers Are Getting Cold Feet*, COINDESK (Oct. 2, 2019), <https://www.coindesk.com/institutional-libra-backers-are-getting-cold-feet>; Nikhilesh De, *Facebook-led Libra Forms Governing Council After Big-Name Departures*, COINDESK (Oct. 14, 2019), available at <https://www.coindesk.com/facebook-led-libra-forms-governing-council-after-big-name-departures>; Nikhilesh De, *Vodafone Is the Latest Big Company to Quit Facebook-Founded Libra Association*, COINDESK (Jan. 21, 2020), <https://www.coindesk.com/vodafone-is-the-latest-big-company-to-quit-facebook-founded-libra-association>.

¹⁸⁴ United States Senators Brian Schatz & Sharrod Brown, *Signed Letters re Libra to Patrick Collison, Ajaypal Banga, and Alfred Kelly*, (Oct. 9, 2019), <https://www.schatz.senate.gov/imo/media/doc/Signed%20Letters%20re%20Libra%20to%20Patrick%20Collison,%20Ajaypal%20Banga,%20and%20Alfred%20Kelly.pdf>.

¹⁸⁵ Dave Michaels & Paul Vigna, *The Coming Currency War: Digital Currency vs. the Dollar*, WALL STREET JOURNAL (Sept. 22, 2019), https://www.wsj.com/articles/the-coming-currency-war-digital-money-vs-the-dollar-11569204540?mod=hp_featst_pos3.

accelerate research and development in this area. For its part, the Federal Reserve remains skeptical, citing the potential threats to its ability to set interest rates if it has to pay out interest on consumer balances that will be held at the Federal Reserve as part of this program, and the risks posed by hackers who could more easily steal currency from the Federal Reserve surreptitiously.¹⁸⁶

In its submissions, Libra has warned that over-regulation or an outright hostility by U.S. regulators may end up hurting U.S. interests in advancing technology.¹⁸⁷ David Marcus warns that if innovation is stifled in this area in the United States, then this technology will be developed abroad.¹⁸⁸ With the greatest respect to Mr. Marcus, this, in and of itself, does not justify subjecting consumers to unnecessary risks that will jeopardize the long run viability of the entire financial system. Moreover, it is not necessarily true that there is a direct tradeoff between innovation and regulation. As the history of credit cards has shown, a strong legal regime that protects consumers can help to foster consumer trust that leads to greater acceptability of new innovations and allows these products to reach scale.¹⁸⁹ While nobody wants to stifle innovation, everyone wants these products to succeed, and in order to do so, steps have to be taken to provide for a legal regime or method of redress in the case of these types of too big to fail type products, so that they do not impose unnecessary costs and risk to consumers, and eventually governments who will have to fashion solutions in the event that these products find themselves in some difficulty.

The emergence of Libra has provoked a strong reaction throughout the world. Its development is an important one for helping to demonstrate how cryptocurrencies must find a means to back up their value in the event of a run, and how consumers will be reluctant to trust them until they find a way to do so. While initial developments in this area were focused on building trust in the technology's ability to solve the double spend problem, which has largely been solved, the more pressing and challenging issue is how trust can be fostered among consumers in a manner that affects the product's ability to carry out the economic and legal functions of money. This is not a problem that can be solved with technology alone. While it is admirable that Facebook/Libra has committed to working with regulators before the product launches, the discussion has thus far centered around AML regulations. These discussions need to encompass additional issues if Libra is serious about fostering trust. The questions facing consumers and regulators alike are whether they can separate Libra from Facebook and its previous conduct, and

¹⁸⁶ *Id.*

¹⁸⁷ See WHITE PAPERS, *supra* note 8.

¹⁸⁸ Marcus House Testimony, *supra* note 82, at 4-5; Marcus Senate Testimony, *supra* note 88, at 2.

¹⁸⁹ See KIANIEFF, *supra* note 4, at 82-86.

whether, the requisite level of responsibility and accountability in the product is deficient in such a way that the public would be better served by a Central Bank Digital Currency.

Regulators would be wise to consider these issues expeditiously. As Professor Dornbusch once warned, “in economics, things take longer to happen than you think they will, and then they happen faster than you thought they could.”¹⁹⁰ Any potential Libra launch must be tempered through prudent regulation in order to maintain public confidence in the financial system. Of course, trust once lost, take a long time to regain. But, with the proper legal and regulatory regime, we can allow for innovation that maintains a legal of predictability and accountability that is so vital to maintaining public confidence.

¹⁹⁰ As cited in Mark Carney, The Growing Challenges for Monetary Policy in the current International Monetary and Financial System, Speech at the Bank of England (Aug. 23, 2019), *full transcript available at* <https://www.bankofengland.co.uk/-/media/boe/files/speech/2019/the-growing-challenges-for-monetary-policy-speech-by-mark-carney.pdf?la=en&hash=01A18270247C456901D4043F59D4B79F09B6BFBC>.