Preface

This book is a response to two related issues: the determination of policymakers to apply familiar regulatory silos to cryptoassets, and the reticence of some members of the tech community to acknowledge the role public oversight regulation can play in societal (and industry) development. In this vein, the book seeks to provide a counterweight of sorts. As regards the former group, the application of financial regulation has had its successes, in particular, stemming sham or naïve arrangements hidden under the seductive veil of a new technology. However, the focus of this book is to query more generally the wisdom of applying, sometimes not without a degree of contortion, financial regulation developed in the 20th century to a technology that creates new commercial, institutional and societal possibilities for the 21st century. I have dubbed this general regulatory approach the standard narrative since there is widespread acceptance of it, despite murmurs of disquietude. Too little thought has gone into interrogating its appropriateness and exploring alternative themes. As regards the latter group, the technologists, there is a cogent body of thought that decentralized intelligent cooperation can provide a meaningful alternative to top-down regulation. While it is important that such cooperation is developed and integrated into socio-technological processes, I believe the tech community currently has unique opportunities to influence the shape of public oversight regulation that is, in my view, inevitable in one form or another.

To the extent that the schism between these two groups can be characterized as reflecting a misalignment of industry propositions and policy responses, I believe that identifying and discussing the points of conceptual convergence and divergence is a precursor to constructive collaboration. Of course, to the extent that the approach taken in this book seeks to serve two masters it is open to the danger that each is dissatisfied with the exegesis of their respective provinces. Nevertheless, I also believe there is a need for a different voice on how public regulation might be applied to cryptoassets because the conversation has in important ways been dominated by a financial-purpose-only theme that suits the interests of some stakeholders. Often under-represented in this discussion, or lambasted by the standard narrative orthodoxy, are the technologists and others who created this new technology and recognize possibilities that go well beyond the financial theme, yet are frustrated and concerned that capture by the standard narrative may stifle the development of the technology down
any pathway other than a financial one. A symptom of the present situation is the lack of fora that bring together the two groups with a view to exploring how presently diverging dialogues could be wrangled into convergence.

The two unorthodox terms used in the subtitle of this book arose out of a personal journey beginning in 2016 following conversations with developers and technologists in Hong Kong, the San Francisco Bay Area, Japan, Singapore and elsewhere (Puerto Rico!), when it became apparent to me that terms such as blockchain and distributed ledger technology did not assist in developing more insightful thinking about the technology and its attendant regulatory concerns. This is because the terms respectively described products and functionalities, not the enabling concepts on which the technology itself is based. Hence I have settled on the term cryptographic consensus technology, or CCTech for the reasons explained in the Chapter 0 introduction and in Chapter 1.

I have also coined the term New Prospect to encapsulate the new possibilities offered by CCTech in an emerging cryptoeconomy that may be based around wholly different institutional and commercial arrangements from those found today. While such prospects may be new, the concept is not – it has been positioned for convenience under a label broadly representative of a diverse body of thinking and activity that can be traced back to the 1980s, to which I have endeavoured to provide pointers for further reading.

The book strives to complete its journey by avoiding the pitfall of engaging in critique without reconstruction. Accordingly I have, perhaps somewhat ambitiously, suggested an alternative solution that provides policymakers with a different tool to think about CCTech. I have designated this a Determined-By-Architecture, or DBA, approach, which is one of five proposals for development presented in the penultimate chapter of the book. Such an approach would not be possible to formulate in the absence of looking behind popularized terms to the enabling concepts. By bringing focus to the enduring architecture of CCTech, the prospect for a more sustainable regulatory framework emerges, one that is resilient to the enabling concepts being configured to form new iterations and different use cases.

This book also comes about as a result of a journey that many readers will have taken in one form or another. What makes the topic of cryptoassets so fascinating is the depth and breadth of different subject areas that can – and need to – be explored. A lawyer will start from the product itself to understand the rights and obligations it gives rise to and how it might interact with areas of public law regulation. This is a starting point far removed from the origin of the mathematics, cryptography and computer science on which it is based. The neoclassical economist will look at how a cryptoasset, generated and maintained over a network of participants, behaves in terms of economic relationships and, like the lawyer, will likely consider how it maps onto, or
does not map onto, existing concepts already well entrenched in their preferred theoretical approach. A political economist will go further still and consider how the technology interacts with the more fundamental relationship between the individual and the state, or the processes that govern the distribution of power and wealth. A technologist will tend to ignore most of the foregoing considerations and consider what different uses might be found for the technology, possibly conceiving of implementations that are wholly different from what might be labelled as the bricks-and-mortar approach of traditional thinkers. A futurist will speculate into the distant, or perhaps not so distant, future as to how the technology might fundamentally change the way we do things or change society more broadly. Few, if any, can claim expertise in all of the above regards; for most, it’s a steep, polymathic learning curve. In recent years, this sort of learning experience has been abbreviated as a result of the ready classifications that are increasingly becoming imposed on the technology: store of value, payment mechanism, asset-backed security, etc. While such classification tools are not per se always wrong, they frequently pigeon-hole the underlying technology and forestall a more fundamental assessment and understanding of its possibilities as a tool for decentralized cooperation.

Artists have also become increasingly interested in the possibilities of blockchain, particularly non-fungible tokens (NFTs). The cover of this book shows the reification of two NFTs – ANARCHY0682 and TRUST0533 – from the Value of Values art project by Maurice Benayoun, Nicolas Mendoza and Tobias Klein, in which shape and transactional value are given to neuro-designed human values.

There are some caveats to make with respect to the book’s coverage. It does not seek to address applications of the technology in, for example, central bank digital currencies or stablecoins. Its specific focus largely sidesteps another important area of investigation, namely, the area of private law. Areas of law pertaining to contract, property, privacy, intellectual property, trust and so on, though not touched upon herein are nevertheless areas in need of enquiry and development. There is also a question of the appropriate geographic reach of this book. By its nature, CCTech is borderless. There may be little correlation between where it is developed, promoted and subsequently used. A foundation may be set up in Switzerland, developed by coders working in Puerto Rico and Mainland China, funded by selling tokens in South Korea, and traded on an exchange based in Hong Kong. Yet the regulatory framework in each of the different jurisdictions involved may range from dissimilarity to outright conflict. Almost every jurisdiction in the world has had to make some form of response. As an important imperative of this book is querying the application of financial regulation, I have largely focused on the three major international capital markets, namely, New York, Hong Kong and London, particularly the
first which is rich in case law. Where relevant to illustrate a matter of interest, regulatory developments in other jurisdictions are discussed.

Notwithstanding the foregoing caveats, it is hoped that this book raises in the reader a curiosity to question what is presented as generally accepted and to explore further.

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The views expressed herein represent my personal views, not any institution or body that I may be affiliated with. Any errors in the text are solely mine.

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