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Testimony before the U.S. House of Representatives Committee on Financial Services
Subcommittee on Digital Assets, Financial Technology, and Inclusion

"Digital Dollar Dilemma: The Implications of a Central Bank Digital Currency and Private Sector Alternatives"

September 14, 2023

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Biographical Statement

Christina Parajon Skinner is an expert on financial policy and regulation, with a focus on central banks and fiscal authorities. Her research pursues questions surrounding central bank mandates, monetary and fiscal policy, capitalism and financial markets, and the constitutional separation-of-powers. Professor Skinner's work is international and comparative in scope, drawing on her experience as an academic and central bank lawyer in the United Kingdom. Her research has been published in the *Columbia Law Review*, the *Duke Law Journal*, the *Georgetown Law Journal*, the *Harvard Business Law Review*, and the *Vanderbilt Law Review*, among other leading academic journals. Professor Skinner has also contributed to financial regulatory policy working groups, including those convened by the Federal Reserve Bank of New York, the Financial Stability Board, and the U.K. Banking Standards Board, and the Bank of England. She is presently an Affiliate Fellow at the Stigler Center, at the University of Chicago's Booth School of Business and a research member of the European Corporate Governance Institute (ECGI). This testimony was largely adapted from a law journal article, *Central Bank Digital Currency as New Public Money*, forthcoming in the University of Pennsylvania Law Review and a derivative Mercatus Center monetary policy brief, *A New Coin of the Realm? Central Bank Digital Currency as New Public Money*.[1]

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[1] Christina Parajon Skinner, *Central Bank Money As New Public Money*, 172 University of Pennsylvania Law Review (forthcoming 2023), *available at* https://ssrn.com/abstract=4360665; Christina Parajon Skinner, *A New Coin of the Realm? Central Bank Digital Currency as New Public*, *Money?*, Mercatus Policy Brief, July 10, 2023, https://www.mercatus.org/research/policy-briefs/new-coin-realm-central-bank-digital-currency-new-public-money.

Chair McHenry, Ranking Member Waters, Subcommittee Chair Hill, Ranking Member Lynch, and members of the Subcommittee, thank you for the opportunity to testify today on the potential impact of a central bank digital currency. I commend the Committee for its ongoing consideration of whether a CBDC is legally, economically, and democratically appropriate for the United States as other economies globally move closer to introducing one. The United States is distinct from many of these other jurisdictions insofar as it vests Congress with the exclusive constitutional authority to decide what public money is.

Introduction

Today, nearly every central bank around the world is considering whether to create and issue a new form of public money referred to as "central bank digital currency," or CBDC.[2] Some of the world's largest economies have taken up the lead in this novel monetary pursuit. China launched its digital Yuan (also known as e-CNY) in 2020. In February 2023, the Bank of England ("BOE") and HM Treasury announced that, in their "judg[ment,] . . . it is likely a digital pound will be needed in the future," and these UK authorities are thus "convinced that future preparatory work is justified."[3] For its part, the European Central Bank ("ECB") is similarly enthusiastic about the prospect of an EU-wide CBDC. In October 2023, the ECB will complete its two-year "investigation phase," during which time it has studied how a digital euro would be "designed and distributed" and will thereupon decide whether to move forward and develop one.[4] Given the extent to which the PCB, the BOE, and the ECB have all expressed some commitment to a CBDC, other central banks inevitably have some 'fear of missing out.'

Certainly, the U.S. Federal Reserve ("the Fed") has been more measured in its approach to CBDC, relative to these other central banks. Although the Board of Governors has not dismissed the prospect of a CBDC,[5] it has neither indicated a view that CBDC is necessary or inevitable nor moved toward an official pilot. With that being said, some of the regional Reserve Banks have studied aspects of CBDC and CBDC remains a subject of both the Board's and some Reserve Banks' research. Further, the Fed faces pressure from the Biden Administration to study whether a U.S. dollar CBDC is feasible and, as indicated above, the Fed increasingly operates in an international policy environment where its peer central banks move closer toward instantiating some form of CBDC.[6] As such, whether the Fed can or should create this new form of public money is likely to remain a live and pressing issue in the years to come.

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[2] According to the World Economic Forum, central banks in 130 countries, whose economies collectively represent 98% of global GDP, are considering CBDC. *See* World Economic Forum, EU Unveils Plans for Digital Euro, Promising Complete Privacy, Aug. 1, 2023, https://www.weforum.org/agenda/2023/08/digital-euro-is-coming-privacy/.

[3] BANK OF ENGLAND, HM TREASURY, THE DIGITAL POUND: A NEW FORM OF MONEY FOR HOUSEHOLDS AND BUSINESSES?, CONSULTATION PAPER 5 (Feb. 7, 2023).

[4] Eur. Central Bank, Digital Euro, https://www.ecb.europa.eu/paym/digital_euro/html/index.en.html.

[5] BD. OF GOVERNORS OF THE FED. RESERVE SYS., MONEY AND PAYMENTS: THE U.S. DOLLAR IN THE AGE OF DIGITAL TRANSFORMATION (2022).

[6] President Biden's March 2022 executive order on digital assets indicated that the "Administration sees merit in showcasing United States leadership and participation in international fora related to CBDCs and in multi-country

Given that Congress has the exclusive constitutional authority to create or delegate the issuance of public money, it is important that Congress establish clear lane markers concerning the Fed's authority vis-à-vis CBDC. Problematically, however, some of the most pivotal questions about a CBDC's impact on U.S. society and democracy remain unanswered. In particular, although myriad economic and social rationales have been offered to support the creation of a CBDC, we have little understanding of how CBDC might crimp individual economic rights concerning money by, among other things, reducing monetary privacy and disintermediating banks. Moreover, we have yet to wrestle with the paradoxical possibility that CBDC may well increase the power and footprint of the central bank while also undermining its independence.

Because greater clarity on these possible outcomes is essential to informing Congress's decision about whether to authorize the Fed to create a CBDC—or conversely, whether to prohibit one—I will primarily focus the balance of this written testimony on developing (**I**) *groundwork*, by explaining why CBDC would be a new form of public money that requires congressional authorization; (**II**) *a rights-based analysis*, in suggesting that CBDC would be likely to weaken individual monetary rights relative to our current form of public money (i.e., cash) and (**III**) a *structural analysis*, by examining how CBDC could impact the power dynamic between the Fed and the Executive Branch thereby implying the structural separation between the branches of government.

I'll also briefly draw on my international and comparative perspective to refute the notion that the U.S. must or should develop a CBDC if other leading economies do, either to defend the dollar's reserve currency status or to ensure the continuity (or improve the efficiency) of cross-border payments.

I. CBDC is a new form of public money, which Congress must first approve.

Most of the public probably does not appreciate that they routinely transact with two legally distinct yet economically indistinguishable forms of money. Public money is created by the sovereign State; today, it consists of paper currency (i.e., cash) and coin—which is available to the general public—and central bank reserves—which are available only to banks and a handful of other financial institutions. Central bank reserves are, today, entirely digital.

Although the general public—households and non-financial companies—do not have access to digital money in the form of central bank reserves, they do have access to privately created digital money in the form of bank-issued demand deposits. A simplified explanation of private money creation is as follows: when a bank makes a loan, it creates a corresponding amount of deposits for the borrower and thereby creates money in the form of new deposits. Congress intentionally created a system by which the private sector would create a portion of the nation's money and credit supply when it designed the national banking system in the National Bank Acts

conversations and pilot projects involving CBDCs." Exec. Order No. 14,067, 87 Fed. Reg. 14,143, 14,146 (Mar. 14, 2022).

of 1863 and 1864.[7] Currency and demand deposits are equal from an economic point of view: both are completely fungible, interchangeable media of exchange and stores of the dollar's value.

A CBDC would become a third kind of money, a digital form of public money that is available to the general public—the businesses and households that we refer to as the real economy or the 'retail' sector of the economy. Hence, for the most part, discussions of CBDC unless otherwise indicated refer to *retail* CBDC—central bank issued money that ordinary people could have and broadly use.

The so-called wholesale CBDC is a bit of redundant term. As just noted, digital money for use exclusively between banks already exists and has for years in the form of central bank reserves. Banks use their reserves, held at accounts at the regional Reserve Banks, to settle transactions between themselves on the central bank's main ledger. More recent conversations about wholesale CBDC, then, refer to the relatively mundane project of upgrading the infrastructure used to make these settlement systems and processes work more efficiently. Put another way, efforts to develop wholesale CBDC focus on ways to improve the speed or stability of the interbank transfers that become final only once settled on the balance sheet of the central bank; they do not contemplate the creation of a new form of public money as retail CBDC initiatives do. If anything, wholesale CBDC could provide more opportunity for private sector payments innovation in the retail space by affording new mechanisms for the settlement of digital assets (as well as central bank reserves) between banks.

Ultimately, only Congress has the power to authorize the Federal Reserve to create a (retail) CBDC. Article I, Section 8 of the U.S. Constitution vests Congress with the authority to "coin money" and "regulate the value thereof."[8] Although Congress can delegate that power in some respects,[9] it cannot wholly abdicate it by giving the central bank discretion to decide whether and how to create a new form of public money.

It bears further emphasis that the power to coin money is exclusive to Congress. The Framers and Ratifiers of the Constitution were deliberate in their choice to vest Congress with plenary power over public money creation—and they expected that Congress would jealously guard it.[10] As I have elsewhere written, "Keeping power over public money away from the President was . . . especially important. Understandably, the Framers were intent on protecting our new democracy against slippage into a monarchy. Because monarchs cannot accomplish tyranny without money, the power to decide what would qualify as money, and which governmental organs could create it, was intentionally given to Congress—to guard against any future presidential propensity for profligacy or altering money's value in ways hallmark of a despot."[11]

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[7] See The National Bank Act, June 3, 1864, *reprinted in* 2 DOCUMENTARY HISTORY OF BANKING AND CURRENCY IN THE UNITED STATES, 1383, 1383–1411 (Herman E. Krooss & Paul A. Samuelson eds., 1969).

[8] U.S. CONST. art. 1, § 8, cl. 5.

[9] McCulloch v. Maryland, 17 U.S. 316 (1819).

[10] *See* THE FEDERALIST NO. 51 (James Madison) (Clinton Rossiter ed., 1961).

[11] *See* Christina Parajon Skinner, *The Monetary Executive*, 91 GEO. WASH. L. REV. 164, 167 (2023).

II. We can anticipate that CBDC will impact individual economic rights surrounding money.

To date, most proponents of CBDC have neglected to highlight to the public that CBDC is likely to impact a cluster of individual economic rights concerning money. In particular, a U.S.-dollar CBDC appears poised to reduce monetary privacy; to alter the nature of the property right conventionally understood to attach to public money; and dilute the version of popular monetary sovereignty that has maintained in the United States since its Founding Era.

a. Privacy: CBDC cannot offer cash-like privacy and might enable policy-enhancing surveillance.

Presently, existing forms of retail public money—cash and coin—offer complete privacy. Cash is a bearer instrument, meaning, its value is recognized immediately upon presentation regardless of its provenance. In contrast, demand deposits are subject to intense levels of government scrutiny pursuant to the Bank Secrecy Act, which requires that banks (and other financial institutions) conduct due diligence on their depositors and customers and monitor all transactions over a certain dollar threshold for suspicious activity (i.e., the financing of illicit activity or tax and sanctions evasion).[12] The Supreme Court has long-ago determined that there is no Fourth Amendment privacy right to the contents and movements into and out of one's bank account.[13]

Given that CBDC will, if it comes to pass, be held by financial intermediaries acting as the Fed's wallet,[14] CBDC will almost certainly be subject to the same surveillance requirements that demand deposits are. Central banks have essentially admitted they have no desire to create a CBDC that functions like a bearer instrument for national security reasons (in my opinion, rightly so), and they otherwise lack the technological capacity to offer cash-like privacy on an account-based CBDC.

Aside from privacy, there is the question of who captures the value in one's payments data. An individual's payments transaction history is valuable data to a range of private corporations for tailoring advertisements and for related bespoke-experience-creating objectives. By extension, an individual's payments data can also be valuable to the State in tailoring public policy. Authoritarian regimes can be expected to use the data gathered from CBDC to perfect their civic control—to monitor speech as expressed through one's purchases and movement as indicated by one's substantive and geographic payments patterns. It may be convenient to imply that

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[12] The Currency and Foreign Transactions Reporting Act (Bank Secrecy Act) of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in scattered sections of 12, 18, & 31 U.S.C.); see also 31 C.F.R. ch. X (2015) (detailing BSA implementing regulations); 31 C.F.R. ch. I, pt. 103 (2010) (same).

[13] *See* United States v. Miller, 425 U.S. 435 (1976).

[14] The Fed has at this stage made clear that it would prefer to implement an intermediated form of CBDC, meaning, one that is held in bank accounts. The Bank of England has indicated a similar preference. *See* BD. OF GOVERNORS, *supra* note 5; BANK OF ENGLAND & HM TREASURY, *supra* note 3.

constitutional democracies would not cross such lines, but history teaches that individual liberties are often infringed during real or claimed emergencies.

b. Property: CBDC is programmable and therefore departs from the existing money-as-property paradigm.

CBDC is a programmable form of money. Accordingly, CBDC is more a policy instrument than a property right, which makes it highly distinct from cash. It can be programmed to, for example, offer remuneration or not (and to adjust that rate or apply it to individuals or groups selectively). This feature alone makes CBDC a ready-made tool for new sorts of monetary policy interventions, including, perhaps most notably, the ability to defeat the so-called effective lower bound ("ELB") by imposing negative interest rates. The ability to manipulate remuneration rates on CBDC would also enable the Fed to implement new kinds of quasi-fiscal stimulus or conduct outright fiscal transfers (e.g., by ramping up the remuneration for some groups or purchases but not others). `

So understood, CBDC as programmable money is a far cry from an inalienable property right of the natural law tradition adopted by the Framers and intended in the Constitution. It leaves permanently open the question of whether and when the value stored in an individual's CBDC could be digitally adjusted to meet the State's objectives.

c. Sovereignty: CBDC clips the wings of popular monetary sovereignty.

Monetary sovereignty has often been asserted as a rationale for developing and introducing a CBDC. These exhortations refer to the importance of maintaining the State-issued currency as an "anchor," meaning the avoidance of non-sovereign currencies (namely, unbacked cryptocurrencies) supplanting the State's role in determining the unit of account and fragmenting the monetary system significantly.[15] While there is no doubt some legitimacy behind the concern, there is important nuance and pertinent history missing from blanketed assertions that sovereign States must supply a so-called anchor currency.

Since its Founding, the U.S. has rejected the notion that the State qua sovereign would enjoy absolute authority over money in the domestic arena. This is evidenced by the discussions at the Founding concerning paper money; while the Constitution's Ratifiers ultimately decided not to expressly prohibit the federal government from creating paper money (i.e., from emitting bills of credit), nor did they expressly grant it authority *to do so*. This silence, as read against the Founding-era conversations and the Tenth Amendment's capacious grant of sovereignty to the People, indicates a constitutional commitment to popular monetary sovereignty. It implies that the federal government is responsible for supplying the population with an asset-referenced currency (i.e., coin) but leaves open the possibility that other forms of money may be created by the People themselves, that is, the private sector. While popular monetary sovereignty does not, of course, preclude the State from regulating the private sector's monetary innovations consistent with other provisions of the Constitution, it does undercut the claim that the federal government

[15] *See, e.g.*, Pablo Hernández de Cos, Governor, Banco España, Progress in the Strategic Agenda for a Digital Euro (Nov. 15, 2021), https://www.bis.org/review/r211202d.pdf.

has an exclusive 'sovereign' prerogative to create and issue money. That was precisely the position that the European monarchs took and the Framers most certainly eschewed it.

Indeed, the tradition of popular monetary sovereignty established at the Founding has prevailed through the present day. It was manifest in the nineteenth century experiment with free banking legislation in several states, the design of the national banking system that delegated private money creation to the national banks, and the rise of alternatives to demand deposits like money market funds. The more recent innovation in stablecoins can thus be viewed as the next iteration of popular monetary sovereignty—the exercise of a freedom to create new forms of private money that the nation's founders assumed would continuously serve as a salutary check on the State's natural propensity to inflate the currency, through over-issuance, to enable spending beyond tax revenue.

It is important to preserve this constitutional tradition and customary understanding of the private sector's role around money. However, the introduction of a CBDC would most likely diminish popular monetary sovereignty by shifting demand for money away from the private sector banks and toward the Federal Reserve. In ordinary times, to the extent people use CBDC, they are more likely to substitute CBDC for their demand deposits than for their cash holdings given the privacy-premium cash still commands.[16] Moreover, central banks have consistently messaged that CBDC should be viewed as the safer alternative to demand deposits in particular, pointing out that CBDC would be essentially risk free as a full faith and credit liability of the central bank. In contrast, demand deposits carry the credit risk associated with liabilities of a private sector institution.[17] Accordingly, there is little question that CBDC will disintermediate the banking sector at least to some extent; the question is merely one of degree. In addition, for some proponents, squashing demand for stablecoins is an explicit goal in introducing CBDC.[18] If this gambit were to be successful, again, popular monetary sovereignty would cede to a State-dominant view of money.

III. The policy rationales offered for a US dollar CBDC are largely uncompelling.

CBDC should arguably offer compelling social benefits to justify these anticipated costs. But for the most part, it cannot.

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[16] *See* Ignazio Angeloni & Daniel Gross, *Letter: Banknotes have Characteristics a Digital Euro Can Never Acquire*, FIN. TIMES, May 9, 2023, https://www.ft.com/content/f4c2d814-7576-4069-a393-25e2e8c0c03b.

[17] *See* BD. OF GOVERNORS, *supra* note 5 ("A CBDC would be the safest digital asset available to the general public, with no associated credit or liquidity risk.").

[18] *See, e.g.*, BANK OF ENGLAND, DISCUSSION PAPER, CENTRAL BANK DIGITAL CURRENCY 17 (2020); *see also* Lael Brainard, *Preparing for a Financial System of the Future*, Remarks at the 2022 U.S. Monetary Policy Forum (Feb. 18, 2022), https://www.federalreserve.gov/newsevents/speech/brainard20220218a.htm.

a. Payments efficiency

One widely touted benefit of CBDC is greater payments efficiency.[19] Since the Federal Reserve's founding, it has played a key role in shaping the national payments system—initially to effectuate its congressional mandate to provide for an "elastic currency" and then, over time, by providing public sector infrastructure to support innovation in payments instruments. Some at the Fed may well view CBDC as part of their statutory mandate to supply a currency that modernizes the payments system.[20]

Yet rarely is it the case that the State can supply a piece of technology better than the private sector can. Payments is likely no exception. Rather than focus on the creation of a new monetary instrument, far better would it be to reduce the legal frictions that currently impede the private sector's ability to innovate faster domestic and cross border payments—namely, (i) an overgrown and inefficient anti-money laundering and counter-terrorist financing legal framework; (ii) and the lack of comprehensive stablecoin legislation that could provide the required legitimacy and direction for innovation in that space.[21] The desuetude of the OCC's 'fintech' special charter was perhaps also a lost opportunity to encourage innovation within a regulated perimeter.[22]

b. Financial Stability

Some imply CBDC as a guardian of financial stability, referring mainly to the hypothetical scenario in which stablecoins dominate the payments landscape. Those who make this argument for CBDC compare stablecoin issuers to 'wildcat banks' of the nineteenth century free banking era, where private bank note issuance resulted in an environment of monetary fragmentation, fraud, and other consumer abuses.[23] For this group, a CBDC would sharply reduce consumer demand for stablecoin and therefore avoid the prospect that stablecoins will destabilize the U.S. financial system.

This analogy largely misses the mark insofar as it cherry picks from history. Free banking is not inherently unstable, as experiments in other jurisdictions prove; though it is true the U.S. version did not work well when it was tried.[24] In any case, the financial stability argument

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[19] Payments tend to fall under the remit of the central bank, both because central banks provide the final settlement asset (reserves) and because central banks are usually the regulator and supervisor of payments systems and the financial institutions that supply payments services. *See* U.S. DEP'T OF THE TREASURY, THE FUTURE OF MONEY AND PAYMENTS: REPORT PURSUANT TO SECTION 4(B) OF EXECUTIVE ORDER 14067, at 1 (2022), https://home.treasury.gov/system/files/136/Future-of-Money-and-Payments.pdf.

[20] *See* Eric S. Rosengren, President & CEO, Fed. Reserve Bank of Bos., Remarks at the Panel Discussion, "Central Bank Perspectives on Central Bank Digital Currencies" (May 12, 2021).

[21] *See* Christina Parajon Skinner, *Coins, Cross-Border Payments, and Anti-Money Laundering Law*, 60 HARV. J. ON LEGIS. 301 (2023).

[22] *See* OCC, EXPLORING SPECIAL PURPOSE NATIONAL BANK CHARTERS FOR FINTECH COMPANIES (Dec. 2016).

[23] *See generally* Gary B. Gorton & Jeffery Y. Zhang, *Taming Wildcat Stablecoins* 90 U. CHI. L. REV. 909 (2023).

[24] *See generally* Daniel Sanches, *The Free Banking Era: A Lesson for Today?* Reserve Bank of Phila., Econ. Insights, 2016, https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/economic-insights/2016/q3/eiq316_free_banking_era.pdf.

presumes that stablecoins would scale and become common usage before an appropriate regulatory regime were put in place. More importantly perhaps is the reality that the net effect of CBDC on financial stability remains unclear. In crisis times, we can expect the usual flight-to-safety kind of behavior, by which consumers would be likely to substitute the relatively riskier asset—bank deposits—for the safer one—CBDC. To the extent banks were to experience such acute drainage of deposits in moments of financial stress, that effect would increase financial instability.

Overall, then, CBDC cannot promise greater financial stability. Far better to use separate legislation and regulatory design to address head on the stability related risks of stablecoins rather than attempt to use the power of the State to eliminate their existence with CBDC.

c. Financial inclusion

Another camp of CBDC supporters believes that a CBDC would enhance social justice by increasing financial inclusion—that is, offering access to financial services to those households that are unbanked (do not have bank accounts) or currently rely on nonbank payments services to supplement the banking services they do have (underbanked).[25] But in order for CBDC to improve the inclusiveness of the financial system, it would have to be coupled with an option for household-level accounts at the Fed, in which people could store and access their CBDC. Household Fed accounts are infeasible for a number of reasons and the Fed itself has for the most part rejected the idea.[26]

If CBDC is to be held in accounts hosted by the banking system, it is unclear how a CBDC alone—the mere monetary instrument—would advance financial inclusion. It would, in that case, only do so if programmed to benefit some groups over others by, for example, offering preferential interest rates to some groups or inflating value relative to some goods and services that were purchased by some segments of the population (but not others). Because CBDC is, at base, a programmable form of money, any of these features would in theory be technologically and cryptographically possible. However, using money in this way would raise serious questions of legitimacy for the Federal Reserve, who is not mandated to make these subjective value choices. Manipulating money as such would also almost certainly undermine investor confidence in the dollar.

d. The international dynamic

Finally, as I noted at the outset, although the international central banking community heads toward CBDC, there is no need for the U.S. to hurry. I agree with others who have previously spoken on this subject that the dollar's status as reserve currency of the world does not depend on whether it comes in CBDC form or not. For all intents and purposes associated with international monetary transactions, the U.S. dollar already has full digital functionality—the

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[25] *See* Morgan Ricks et al., *Central Banking for All: A Public Option for Bank Accounts* 1 (2018), https://rooseveltinstitute.org/wp-content/uploads/2021/08/GDI_Central-Banking-For-All_201806.pdf; *see also* FDIC, NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 175 (2021), https://www.fdic.gov/analysis/household-survey/2021report.pdf.

[26] *See* BD. OF GOVERNORS, *supra* note 5.

dollars that circulate around the world either as demand deposits (in private transactions) or as reserves (in swaps lines, for example) are *already in electronic form*. It is unclear what a CBDC could add.

More broadly speaking, our reserve currency status is enjoyed thanks to our commitment to the rule of law and democratic institutions, especially and including an independent judiciary that enforces contracts and protects property rights and an enduring commitment to free-market values. It also reflects the Fed's consistent effort to preserve the dollar as a stable store of value. While we should not become complacent about the dollar, these institutions are what undergirds the dollar's status and require constant reinforcement.

Ultimately, other jurisdictions may well decide that a CBDC is right for them. This need not sway the United States. Because sovereign currencies are not interoperable, regardless whether they are CBDC or existing demand deposits, some foreign exchange infrastructure is and will always be required to conduct a cross-border transaction. Even the Bank for International Settlements ("BIS") Project Icebreaker essentially conceives as much in a world of multiple CBDC arrangements. In its "hub-and-spoke approach," the BIS envisions a system not very dissimilar from the forex markets we have today, which include intermediaries to generate bids and asks (to buy one currency with other) and a mechanism for clearing and settling the transaction.[27] It thus seems possible for the U.S. dollar to co-exist with a digital euro and a digital pound without much change from the status quo.

IV. The Fed's independence

Since 2010, the Fed's balance sheet has grown considerably. This growth is the result of trillions of dollars of assets purchased through quantitative easing programs, and the trillions of dollars of new liabilities created through the overnight reverse repurchase agreement facility and operation of an ample reserves operating system (that now also pays interest on those reserves). This growth has expanded the Fed's footprint in financial markets considerably. CBDC would expand the Fed's presence into the real economy as well.

If created, CBDC would establish for the first time a direct relationship between people and the Fed. This immediately puts on the table policy interventions that today would seem anathema to an independent central bank. These include, for example, so-called "People's QE"—the idea that, during a crisis, the Fed could initiate helicopter drops for ordinary people (i.e., issue CBDC and distribute it to all accounts, just like a fiscal stimulus but without the corresponding debt).

Alternatively, CBDC might smooth the path for future legislative initiative to use the Fed to lend to the real economy much like the CARES Act did.[28] This, however, would position the

[27] *See* BIS, Project Icebreaker, Mar. 6, 2023, https://www.bis.org/publ/othp61.htm.

[28] CARES Act, Pub. L. No. 116-136, § 4003(c)(3)(D)(ii), 134 Stat. 470, 474 (2020) (authorizing the Fed to use section 13(3) to establish a "Main Street Lending Program").

central bank in an industrial lending role—a role Congress long ago abandoned in recognition that it was not the proper role of an independent central bank.[29] One might even imagine the central bank facing pressure to create something like a repurchase agreement facility for households, where loans were made to struggling households or businesses by accepting liens against homes, cars, appliances, or equipment Once the central bank bills itself as a people's bank, how will it proceed to draw the line between groups and individuals requesting that assistance? Again, these are subjective value judgments that should be reserved to elected officials in Congress.

The Fed's independence from the Executive Branch also stands to be impacted by the creation of a CBDC. Setting to one side the question of balance sheet composition, and assuming no change in the amount of reserves or repos issued, creating CBDC would increase the liability side of the Fed's balance sheet. To match those liabilities with new assets, the most obvious choice would be for the Fed to buy more Treasury securities. But would the knowledge that CBDC can be issued to create headroom for new Treasury purchases reduce incentives for the rest of government to exercise fiscal discipline? That balance sheet dynamic could thus open the door to pressure from the Treasury (and indirectly, the President himself).

The Fed could also, theoretically, buy corporate bonds to match new CBDC liabilities. Yet buying corporate bonds is also problematic for the Fed's independence, as it requires the central bank to choose winners and losers in the economy—while allocating credit to some sectors and not others—which is, at base, a fiscal function that should be reserved for elected leaders. The very existence of the option may thus invite pressure on the Fed to buy the bonds of politically favored companies or sectors and forgo those that are not in the political majority's good graces.

The third option for what the Fed might buy to offset new CBDC liabilities is a bit more esoteric but bears mention in light of the growth of what I have elsewhere referred to as the "Monetary Executive"; that is, the sub-constitutional tradition of the President exercising unilateral monetary or fiscal powers that belong to Congress.[30] Section 14 of the Federal Reserve Act permits the Fed to buy agency debt. A world with CBDC begs the question whether a future presidential administration might pressure the Fed to buy a wider range of agency debt in order to increase a particular agency's funding without going through the constitutionally required appropriations process.

Conclusion

One is hard-pressed to demonstrate a problem that CBDC alone could solve. At the same time, introducing CBDC is likely to have certain costs to individual economic liberty by providing the State with more tools—and hence greater temptation—to establish command-and-control style public policy. Meanwhile, the introduction of a CBDC could reduce space for private innovation. Furthermore, CBDC could have profound impact on financial market structure insofar as it would

[29] Prior to 1958, the Fed did have the power to lend to industry under section 13(b) of the Federal Reserve Act. As I have previously explained, "most historical accounts of 13(b) recognize it as a mistaken attempt to position the Reserve Banks as pseudocommercial lenders during a decades-long confusion about their role within the Federal Reserve System." Christina Parajon Skinner, *Central Bank Activism*, 71 DUKE L.J. 101, 130 (2021).

[30] *See* Skinner, *supra* note 11.

almost certainly weaken banks through disintermediation. Although the United States should prioritize leadership in payments innovation and safeguard the dollar's reserve-currency status, CBDC does not obviously advance those goals. Technology and economic geopolitics can change rapidly, to be sure; but at least right now, the costs of introducing CBDC appear to outweigh the benefits.