

# **From *tradition pecuniae* to bitcoin: new payment instruments capable of extinguishing a pecuniary obligation?**

## **Abstract**

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This paper is set to conduct a transversal analysis of the bitcoin system through an argumentation that will highlight its potentialities and its limits, building on a general dissertation on the origin and evolution of the phenomenon, in order to then get to the considerations related to the advantages and disadvantages deriving from its use; as well as its possible future avenues of development.

The objective that is being pursued by this research is not only that of defining, (following the proper introduction, functioning and legal aspects ), an opinion on cryptocurrency as a tout court opportunity or risk, but also that of providing, in a perspective that cannot just be negative, the basic knowledge needed in order to be able to formulate an independent judgment on this new phenomenon that is evolving and that is partly still under development. Its most relevant and definitely positive aspect is its absolute independence from any institution or central entity: the Bitcoin system seems to make possible a free market, independent from the control of the State on the monetary reserve, though it is important, however, to consider the fact that the volume of the bitcoin transactions exchange is modest, and therefore it does not represent a threat to either Central Banks or to the permanence on the market of brokers that manage the traditional payment systems.

There are many factors that could determine whether the fate of bitcoin will be

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favorable or adverse. Despite the recent regulation attempts, cryptocurrencies seem to be more of an asset fit for speculation than a valid exchange currency: there are many risks associated to owning and exchanging them, and the purpose for which they were created is invalidated by the technical faults that are peculiar to this type of technology, as well as by frauds and growing commission costs which make this system similar to the traditional one.

In particular, the effects that bitcoin, as well as the other payment instruments alternative to legal tender, produces in terms of the fulfilment of pecuniary obligations will be taken into account, offering a contribution to the reflection in this area.

The theoretical and jurisprudential tradition of pecuniary obligations identifies an inseparable link between solutorial moment and translative moment, identifying the exact fulfillment of the obligation exclusively in the form of *traditiopecuniae*. In the traditional doctrinaire and jurisprudential representation, the inaccuracy of the pecuniary service performed with alternative means of payment to cash has generally been preached, since it implies a real objective modification of the obligation, and it has been deduced the qualification of *datio in solutum* ex art. 1197 Civil Code or *datio pro solvendo*.. The significant changes in commercial and financial transactions, however, entail a widening of the methods of execution of the pecuniary service by the debtor with respect to the uniqueness and universality of the traditional scheme of *traditiopecuniae*. Furthermore, the innovative action is fuelled by both European and national standards, which recognize or require that payment be made in ways other than cash.

The present work aims to support the doctrinal thesis that recognizes, next to the classic scheme of cash payment, the paradigm of "intermediated" fulfillment, regulated by an apparatus of norms, presided over by peculiar logics and categories.

