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# Implications of the Informational Nature of Payments

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INTRODUCTION

The mushrooming growth of electronic funds transfer (EFT) systems[1] in the past few years has evoked numerous legislative and administrative responses to the perceived and potential problems which these systems might hold for individual customers of depository institutions.[2] The immediate, potential problems for individual consumer-users, which these enactments attempt to address, fall roughly into four broad categories—individual control/choice, liability/security, documentation/ privacy, and dispute resolution.[3]

Because of the recent enactment of various laws addressing essentially individual, consumer concerns about EFT systems, policymakers, consumer representatives and academicians are devoting increased attention to the less traditional, potential "consumer" effects of EFT systems. The purpose of this article is to suggest that EFT systems may bring into focus basic considerations about the exchange of value[4] among persons, and the importance of this func-

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1. For a description of early EFT systems, *see generally* PEAT, MARWICK, MITCHELL & CO., EFT: A STRATEGY PERSPECTIVE (1977).

2. On the federal level, 15 U.S.C. §§ 1693 *et seq.* (1978); on the state level, representative enactments include WIS. ADMIN. CODE *Banking* § 14, *S&L* § 26, *CU* § 63; and 1978 Mich. Pub. Acts 322.

3. Obviously, not all identified consumer concerns will fit neatly into one of these categories. For example, individual privacy concerns have implications in both the control/choice category and in the documentation category. Nonetheless, these essentially individualized concerns exist and have fostered a legislative and administrative response which will affect the growth and development of current and future EFT systems.

4. What is meant by "value" in the context of exchange thereof, is a symbol or

tion to our society, and to suggest additional considerations which may compel reexamination of the manner in which we transfer value and the appropriate regulation of that transfer.

The first section of this article examines the informational nature of money and poses questions suggested by this view. The next section reviews historical trends, which may be relevant to this informational view of money; and the final section addresses the structure of the financial industry and the governmental response to that structure.[5]

## I. Information Management

Much of the attention focused on the impact of EFT technology has tacitly assumed a common understanding of the nature of "money." It may be instructive to consider what "money" has become in our society, what the use of electronic technologies to transfer value portends vis-a-vis the informational characteristics of that transfer, and what our proper response should be to these considerations.

### *A. Money as Information—Symbolism*

Since the time that mankind evolved beyond barter as a means for effectuating inter-personal obligation settlements, the mechanisms which have been developed to settle obligations have uniformly utilized some tangible "thing" as the basis of understanding between the parties. This "thing," in whatever form, has provided the psychological underpinnings for these transactions. Without the reassurance provided by the relatively wide acceptability of the tangible "thing," it is unlikely that much obligation settlement would historically have occurred beyond that narrow set of circumstances in which the parties could successfully agree on terms to barter.

There have been general, physical forms developed to permit transactions. Coins were among the first of such forms, though history tells us that animal skins, salt, various grains, and other diverse things have been used as indicia of value.[6] Coin represented a major, practical change in the notion of value representation, since it provided a relatively discreet, standardized measure. Qualitative

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indicator of value, as is discussed later. Value itself is the relative worth which either a particular "thing" or an indicator thereof subjectively possesses in the relatively common, widespread perception.

5. Recognition of money's essentially informational character will hopefully permit a more thorough analysis by these users.

6. *See generally* W. Baxter, P. Cootner & K. Scott, Retail Banking in the Electronic Age, The Law and Economics of Electronic Funds Transfer 4 (1977).

variations in previously existing exchange media, *e.g.,* animal skins, limited their acceptability. That is to say, a particular animal skin, used as a representation of value, varied widely in its acceptability, both because of its individual qualitative characteristics and because of its localized desirability, which varied from community to community.

The standardization possible with coin permitted a much broader scale of acceptability. Coins could be fairly easily standardized within an issuing jurisdiction. A relatively widespread and uniform perception of their value could also be more easily attained, especially given the desirability of the metals from which coins were struck. Conceptually, of course, coin did not represent a major change insofar as it involved symbolism; it was merely the substitution of one "thing" for another. The degree of symbolism involved in coin was expanded, however, since animal skins had a physical use as clothing material, salt could preserve food, and grains could be eaten, while coins of metal were intrinsically useful only as raw material. The ultimate importance of coin was that it *symbolized* something, as opposed to being revered as something valuable for its physical utility. The widespread introduction of coin firmly established the essentially symbolic nature of value indicia.

The purpose served by this symbolism is readily apparent—it facilitates the exchange process. Without such a mechanism for exchange, growth in trade and industry—a social goal of generally accepted desirability—would be severely stunted. Without trade on a significant scale, little real wealth could be created, and, without the creation of real wealth, no society could physically improve itself or the lot of its members significantly. The symbolic nature of money underpins much of what a society aspires to accomplish.

Though coin solved many of the difficulties inherent in the barter system, it was limited by its physical characteristics. It was bulky and easily subject to theft and counterfeiting. As a result, a new symbolism was developed—paper currency. At that point, the symbolic nature of value indicators was virtually complete. Whereas coin still possessed *some,* albeit limited, intrinsic value because of the common perception of the worth of the metal in the coin itself, paper possessed literally no intrinsic value, except perhaps as a combustible. Paper's value is totally symbolic. As in the case of coin, the use of paper symbols facilitated many types of obligation settlements. The benefits of paper are readily apparent. The costs of storage, transportation and production are all factors strongly favoring its use. Public acceptance, however, was initially slow. This was due in large part, no doubt, to the fact that paper currency was *totally* symbolic in its value, and lacked even the ma-

terial value of the precious metal in coins.[7]

Though the wide acceptability of coin and currency solved certain problems inherent in obligation settlement, neither of these mechanisms was particularly satisfactory for obligation settlement on anything but a face-to-face basis. Because of their wide acceptability, they could not be safely released from one's possession. As a result, another symbol was developed—the check. A check amounts to nothing more than a conditional promise to pay upon presentment at a certain place. Its major advantage lies in the fact that it can be made to symbolize value only to a particular party, the payee. Consequently, it can more safely be released from one's physical presence. With this innovation, obligation settlement could be effectuated with relative safety across substantial distances. The value of a check, like that of paper currency, is totally symbolic. It is a symbol which can be converted relatively easily into another symbol, such as coin or currency, or into "things" of intrinsic value. It can also be exchanged directly for goods or services. Its primary advantage is that it permits, where desired, a focusing of acceptability onto a particular individual or institution.

The next major development in the evolution of payment mechanisms was the credit card. The significant, conceptually distinguishing element of the credit card as a payment means was that it not only served as a mechanism for exchanging value between parties, but was also a means for creating an obligation, which would require settlement at a future time. It retained the purely symbolic value of paper, while at the same time reaching the other half of the transaction, *i.e.,* the establishment of an obligation.

It is important to note, however, that even though the scope of involvement of the payment mechanism in the entire transaction is broadened by the use of a credit card, such a device is acceptable as a payment means only because of its symbolic nature. The credit card itself has little or no value; rather, it is useful because of the perception engendered in the accepting merchant, that this device may be transformed into yet another, equally symbolic "thing," which ultimately can be translated into some non-symbolic, "real" value.

The relatively prolonged period required for coin, currency, checks, and credit cards to gain general acceptance demonstrates the basically fiscal conservatism common to individuals everywhere.

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7. Like coins, paper currency symbolized the perceived authority (or capacity perhaps) of the issuing entity to redeem it for more tangible "things" of value. The subjective psychology of this perception goes far beyond the modest goals of this paper.

The initial reluctance to embrace each of these value symbols gives credence to the notion that people are instinctively suspicious about accepting *symbols* for value, especially new symbols. Or, put another way, an individual, whether payor or payee, needs or wants the psychological reassurance of actually holding or possessing some "thing" of value. Thus, a basic, inherent conflict exists. Psychologically, people desire tangibility in value, yet, this physical characteristic limits the use of such value indicators in transfers between parties and in terms of ensuring the authenticity of the indicator (avoiding counterfeiting), among other restrictions.

The truly unique aspect of EFT systems lies in the elimination of even the tangible symbol of value. Use of such systems becomes the ultimate act of payment faith; not only is the value which is transferred reduced to a symbolic form, but the symbolic form itself is removed entirely from the immediate possession of the parties to the transfer. In short, no "thing" is passed, only information. Payments are thus recognizable as essentially information transfers. They are directives to rearrange information stored in debit and credit ledgers (*e.g.,* checks and credit cards) or symbols of potential future uses (*e.g.,* currency and cash). They are important, and accepted, only for the information they symbolize.

The evolution of payment mechanisms to purely symbolic form is entirely logical. It also focuses attention on the importance of considering the symbolism of all payment mechanisms. If the settlement of obligations can be viewed as essentially an exchange of information, policy-making for the widespread implementation of EFT systems should consider the history of information exchange mechanisms, and the ends sought to be achieved in the formation and structure of the particular information transmission means.

### *B. Regulation of Information Transmission*

There are diverse methods of transmitting information in our society,[8] which involve equally diverse technologies. Virtually all of these methods have been highly structured through some regulatory framework. This fact demonstrates a serious question inherent in the characteristics of the mass transmission of information, and the importance to our society of its efficacious transfer. Is the information itself of such a peculiar quantity or substance and is its efficient transmission so vital to our society, that the creation of a structured environment in which its effective transmission can occur is a social,

8. It is important at this juncture to stress what heretofore has only been implicit: the concerns identified in this article relate only to the *means* of information transmission, not to the *contents* of that transmission.

political and economic imperative? In response to this query, it is important to consider several of the prevalent mechanisms by which mass information (of whatever content) is transmitted.

The postal services of all industrialized countries are, and have been for some time, a function of the government. The importance of such systems is readily apparent, especially in the largely pre-electronic communications era. The America experience was such that the United States Constitution specifically permitted federal legislative creation of "post offices and post roads."[9] While economic incentives might support private postal systems within narrow geographical boundaries, quite obviously most areas do not, and cannot, generate sufficient volumes to support a system throughout the country at an acceptable cost. The key element of this discussion is the notion of "acceptable cost." Obviously, some private system could theoretically exist if its pricing practices were such as to adequately reflect and charge for the services provided on a user-fee basis. The problem, of course, is that the "cost" of such services would, in many instances, be exorbitant, and have the inevitable effect of inhibiting the transmission of information via this particular means. The importance, on other than economic grounds, of providing this information exchange function has long been recognized, rendering postal services a necessary and legitimate function of government, even at a net economic "loss."

The emergence of electronically-based wire technology for information transmission has presented new structural problems. The economic problems of providing telephone and telegraph service in relatively remote areas are seemingly not so severe as providing postal services. Yet, other factors have promoted creation of a government-supervised environment in which such services developed. While an array of telephone companies, for example, might have kept user prices down through competition, there was no competitive means of ensuring that equipment from one company would be compatible with that of another company across the city, state or country. Without inter-system compatibility, the publicly desirable goal of facilitating widespread information exchange via this particular technology could not have been realized.

Further, it soon became apparent that massive economies of scale applied to the provision of telephonic and telegraphic services. One firm could produce enough of the product at a profitable price to satisfy the entire market. That is to say, a classic "natural monopoly" situation existed. In fact, the telephone system is probable the archetype "natural monopoly." Given the importance of the use

9. U.S. CONST. art. I § 8, cl. 7.

of this particular technology to the socially desirable goal of transmitting information expeditiously, the public concern for governmental overseeing of this monopoly is not difficult to understand.

Another technology involved in information transmission is the mass broadcasting industry—radio, television and cable. This industry is distinguishable from the previously discussed communication technologies primarily in that it is essentially uni-directional, *i.e.,* party A may transmit to party B using the technology, but party B cannot generally transmit to party A within the bounds of the same system. This peculiar characteristic of broadcasting highlights one of the crucial aspects common to the post office, telegraph, and telephone, namely, the fundamental importance of the ability of members of our society to communicate *with* one another. This facet also explains the relatively higher degree of competition permitted in the broadcasting industry. The transmission of information *to* other persons is undeniably important, but the ability to send *and receive* information from other persons is even more critical. This is apparent in the commercial context—while advertising is important, negotiations are crucial. Two-way information transmission is equally important in managing one's personal, daily affairs and in functioning effectively in modern society.

Money can quite accurately be perceived as a symbol for a particular kind of information. EFT may be viewed as merely a means of transferring this information. This view is strengthened by some of the features of EFT technology, which is based upon computers. What computers do, and are intended to do, uniquely well is to permit the efficacious management of large amounts of information. Without computer technology, widespread EFT would be impossible to achieve. EFT technology also relies heavily on long distance telephone lines, which are, of course, nothing more than means for transmitting information.

Information management today, effectuated largely by means of computers, is extremely expensive. As the true nature of payments-as-information becomes clearer, the concern over corporate concentration in the payments industry will increase as the largest and financially strongest institutions acquire the necessary and expensive technology, which is beyond the financial means of most other institutions. As concerns for concentration concerns become more pronounced, regulatory mechanisms to address these concerns will become more necessary, desirable, or both.

### *C. Privacy*

Recognition of the informational nature of money also explains,

in large degree, the concern which individual consumers have about their financial privacy.[10] Privacy problems are essentially information management problems. EFT systems create privacy concerns since (1) they create permanent records of transactions, which heretofore may not have generated such records, and (2) they pose information management problems through the increased centralization of data, and the improved capture and retrieval capabilities inherent in their technologies.[11] The objective concerns about privacy invariably involve the potential for misuse or abuse of the information obtained. The subjective concerns involve an almost inherent antipathy toward the disclosure of *any* personal information, regardless of whether the misuse of such information, in fact, occurs. People resent the disclosure of personal, financial information. What is ultimately dangerous, of course, is the use or misuse of such information by others. Disclosure or improper access is merely the occurrence which makes such abuse potentially possible.

The recommendations of the Presidential Privacy Study Commission[12] reflect this common perception of the intrinsic evils of disclosing, or not properly concealing, personal financial information. The Commission's recommendations were intended to inhibit the disclosure of, or access to, such information, rather than to deter particular types or categories of misuse.

This philosophical approach (restricting disclosure rather than controlling informational use) is undoubtedly attuned to the attitudes of most individuals concerning their privacy and is, therefore, appropriate. Further, this approval is also easier to legislate; one is unlikely to be in an accident with an automobile that is kept in the garage. Nonetheless, such an approach of necessity creates tension with the generally recognized, legitimate needs of businesses to obtain pertinent, complete information to effectuate their transactions.[13]

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10. The Dimensions of Privacy, A National Opinion Research Survey of Attitudes Toward Privacy (conducted for Sentry Insurance Co. by Louis Harris & Associates, Inc. and Professor Alan F. Westin, May 1979) [hereinafter cited as Sentry Insurance Study]. For example, sixty-three percent of the American public believe that the use of computers should be "sharply restricted" in the future if personal privacy is to be preserved. Since privacy is commonly viewed as a *per se* public benefit, this view obviously poses significant problems for our service-oriented, technologically-based society which is in large part fueled by the collection, storage and use of its citizens' personal information. In few areas is this more true than with EFT systems.

11. It is important to note that privacy problems are not peculiar to EFT systems; rather, they are generic types of problems exacerbated by EFT technology.

12. *See generally* Presidential Privacy Initiative (established by the President's Domestic Council in the fall of 1977).

13. These tensions become sharper in situations where circumstances—legal or

The public perception of the potential for privacy abuses remains an important stumbling block to wide public trust in and acceptance of EFT systems. When individuals are pressed to identify *specific* ways in which they would be abused by such unwanted disclosures, they are often unable to provide any. The fear, of course, is of misuse and not of disclosure. Even so, a *perceived* drawback of a new product or technology can be just as devastating to its acceptance as a demonstrable problem. This is not to suggest that privacy-based concerns about EFT are not legitimate.[14] Rather, it suggests a concern for EFT technology derived from its predominantly informational characteristics, since concerns about the privacy of financial records are, in fact, concerns about the capture, retention, use and potential misuse of information about individuals and their financial transactions.

### *D. Other Concerns*

A final aspect of the information management problems engendered by widespread EFT usage relates to the monetary policy control capability. Historically, the government has employed a variety of mechanisms to implement the monetary policies, which have prompted the shaping and effectuation of national goals. By varying its monetary policy, the government has attempted to assist temporarily depressed industries, to restrict credit availability, and so forth.

In an electronic environment, however, value will move much faster. This increased velocity will have a significant impact on float,[15] both inter-institutional and between an institution and its customer. Monetary supplies may grow more rapidly as a result of higher velocities. Serious doubts exist about the capability of federal agencies to effectively manage monetary supplies when "money" becomes less tangible and potentially less subject to regulatory control.[16] What is affected may not be the policy itself, but in-

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otherwise—require business decisions to be made in accordance with objective criteria, *e.g.*, the Equal Credit Opportunity Act, 15 U.S.C. §§ 1681 *et seq.* (1976). Such requirements presume both the existence of and access to reliable, accurate, complete personal information upon which to base prudent business decisions.

14. Presumably, such concerns are legitimate, as evidenced by various legislative enactments. *See generally* Kudlinski, Raiken & Hodgdon, *Confidentiality of EFT Information*, 13 U.S.F.L. REV. 449 (1979).

15. Float on the consumer level generally involves the issuance of a payment instruction against funds which are not yet on deposit. So long as sufficient funds are deposited prior to presentment of the instruction, it will, in the normal course of business, be paid. Similarly, on the financial institution level, the transfer of funds will be manipulated so as to maximize the potential earning power of funds on deposit.

16. *See, e.g.*, Smaistrla, *The Payment Mechanism-Electronic Funds Transfer and*

stead, the capacity to implement a given policy. This reduced capacity of implementation may, in turn, affect subsequent remedial procedures. As value becomes less tangible (the corollary of becoming more recognizably informational), the capacity of governmental authorities to control monetary policies may diminish if not properly established and structured.

History has shown that most large-scale information transmission mechanisms have evolved into highly structured forms. The transmission of information in an optimal way generally requires an oversight mechanism, which recognizes the non-economic aspects of making such transmission capabilities generally available. Additional pressures favoring the development of such an oversight mechanism derive from societal concerns about protecting the privacy of such information while assuring its reasonable availability, and from a policymaker's desire to be able to effectuate monetary policies by regulating the economic implications of the largely informational, increasingly electronic, flow of money.

## II. Industry and Government Changes and Consumer Concerns

Once there is an understanding of the fundamentally informational nature of money and the history of the regulation of information transmission, one can more cogently examine industry considerations, the implications for government, and the resultant consumer concerns of electronic funds transfer.

### *A. Depository Institutions*

Concern over the very structure of the depository institution industry has been intensified by the introduction of EFT systems. Traditionally, of course, consumers have largely managed their routine financial affairs by means of a bank, savings bank, savings and loan association, or credit union. They have effectuated many of their purchase transactions in coordination with credit-granting, mercantile institutions. The historic bases for these varied institutions are quite diverse, as are the peculiar financial needs which these institutions attempt to meet. Certain types of services have been nearly the exclusive province of certain of these institutions, *e.g.,* demand deposit accounts were historically available from commercial banks, while home mortgages were obtained from savings

*Monetary Policy*, Monthly Bus. Rev., Fed. Reserve Bank of Dallas, Aug. 1977, at 6. "[T]he widespread introduction of EFT would likely accelerate the increase in the income velocity of money, requiring downward adjustment in the targeted rate of growth of M*1 if inflationary effects are to be avoided." *Id.* at 9.

and loan associations. Furthermore, the functional divisions between particular services within the same institution were generally clear-cut, *e.g.,* demand deposits and savings deposits within a bank.

These distinctions, both inter-institutional and intra-institutional, are rapidly breaking down.[17] Blurring has been both cosmetic and substantive. For example, savings accounts have increasingly been characterized by a statement reporting system more akin to a checking account, and NOW account legislation[18] permits, albeit on a somewhat limited basis, the issuance of instruments functionally equivalent to a check drawn upon a savings balance. Similarly, thrift institutions, which traditionally have served home mortgage markets almost exclusively, have been attempting recently to participate actively in non-mortgage consumer lending by such varied means as the use of service corporations and by attempting to obtain specific, non-mortgage lending authority from state legislatures.[19]

The introduction of EFT technology is undoubtedly hastening the demise of the traditional distinctions between financial institutions. EFT technology, insofar as it directly impacts the retail consumer of financial services, essentially facilitates access of the individual to his funds on deposit or to his credit line at a retail financial institution.[20] Increased accessibility to funds on deposit may have an impact on the balances retained in such accounts, which in turn, may increase pressure to increase transactional charges. For example, allowing a consumer to withdraw cash from an interest-bearing account via an ATM[21] at a remote location, will

17. *See, e.g.,* NATIONAL SCIENCE FOUNDATION, THE CONSEQUENCES OF ELECTRONIC FUNDS TRANSFER (1975) [hereinafter cited as NSF REPORT]. The trend has not been precipitated solely by EFT. The primary impetus stems from a competitive business system, wherein varying institutions are more aggressively seeking depository dollars. Banks, for example, seek consumer dollars more actively to replace funds no longer in corporate deposits as comptrollers become increasingly adept at cash management. Thrift institutions, not surprisingly, have responded by attempting to retain existing consumer deposits through a variety of means, such as six-month T-bill related certificates. The technology of the 1960s and 1970s has not only improved corporate comptroller capacity, but also enabled more zealous courting of individual customers through such means as EFT services.

18. 12 U.S.C. § 1832(a), *as amended by* Title XIII, Pub. L. 95-630.

19. *See, e.g.,* Wis. S.B. 246 (1977).

20. By allowing a consumer to access his account through an EFT transaction, financial institutions reduce or eliminate the need to access the account via a personal visit to the institution, whch may be inconvenient for the consumer, or via the mails, which represents a significant cost to either the institution or the customer or both.

21. ATM refers to an "automated teller machine." Such a device is a customer operated mechanism whereby the customer may perform certain routine financial

reduce his incentive to maintain a substantial balance in a traditional, non-interest-bearing, demand deposit account. A savings account at *any* depository institution can thereby be made nearly the functional equivalent of a checking account. Consequently, the *functional* roles of thrifts and banks will become more alike in the eyes of the typical retail customer.[22]

As the functions that financial institutions perform, and wish to perform, and the perceptions which they engender in the average consumer become more similar, their ability to efficiently communicate with and relate to one another will become increasingly important. This fact is not inconsistent with the notion of the essentially informational nature of money advanced above, since all of these institutions deal essentially in information disguised as money. If EFT is to ultimately provide significant benefits to both consumers and financial institutions, the fledgling systems will necessarily have to be integrated with one another, both regionally and nationally. That is to say, financial institutions will need to be better able to communicate with one another in order to exchange information.

### *B. Governmental Involvement*

Significant governmental involvement, whether in the form of specific legal requirements, technical interface standards, or direct activity in the information exchange system, will almost certainly be required to assure such communications. This involvement need not necessarily be more extensive than the government's current role in the money system, *e.g.,* Fedwire, clearing through the Federal Reserve System.[23] It must, however, exist. The government will either be extensively involved in the operation of the payments system (for example, as in various European GIRO-type systems) or will, in all likelihood, be involved in overseeing the activities of those few financial institutions which it may allow to operate regionally or nationally.[24]

Significant governmental involvement in the developing payment system also seems likely because of the need to ensure the extension of such a system into areas where economics alone might not justify its existence. Though it can be argued that absent an economic justification for providing EFT payment services in a given

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transactions, *e.g.,* withdrawals, deposits, inter-account transfers. It may be remote or in the institution. It acts to permit communication between customer and institution.

22. NSF REPORT, *supra* note 17, at 38-39.

23. For a discussion of federal involvement in EFT generally, *see* Einhorn, *The Federal Government's Operational Role in EFT*, 13 U.S.F.L. REV. 431 (1979).

24. This latter type of involvement seems politically inevitable, should such wide-scale operations be permitted.

area, the government has no business in insuring the availability of those services, such an argument ignores in the essentially informational nature of money. Viewed from this perspective, the needed communications mechanisms (*e.g.,* telephone, telegraph, cable) are already largely in place and regulated by the government. Further, it is largely governmental involvement which keeps purveyors of alternative means of financial communication out of any given area, as by branching restrictions.[25] It is difficult to contend that the government has no proper role in assuring the availability of EFT services in remote areas, while simultaneously claiming that the government has a proper role in precluding prospective purveyors of such services in those same areas.

Finally, governmental involvement will likely be significant, given the substantial degree of "sharing" or "joint access" by the multiple institutions which will probably be involved in both developing and developed systems.[26] For the government to allow "sharing," while not retaining strict surveillance, would be to abrogate its duty to promote competition through aggressive enforcement of antitrust laws. The opposite side of the sharing "coin" is, of course, to allow sharing and disavow any need for competition among institutions. This view would essentially equate the EFT system with a public utility, such as the telephone company.

A major problem with governmental involvement in the payments system, however, stems from the informational nature of money. People basically desire privacy, especially in their financial affairs, and particularly from the government.[27] Consequently, EFT

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25. *See, e.g.,* 12 U.S.C. § 36 (1976), which allows a national bank to establish and operate a branch *within* the State in which it is situated when approved by the Comptroller of the Currency.

26. Many states have already enacted so-called "sharing" legislation. States with operating shared systems include Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin. *See* PEAT, MARWICK, MITCHELL & CO., *supra* note 1, at 140-76. Obviously motivated in large part by political considerations intended to protect smaller institutions in their competitive positions, these enactments quite obviously pose competitive problems of their own by virtue of both the cooperative nature of the sharing of the technology and the chilling effect on establishing competing systems against a system backed by the resources of multiple sharing institutions. A potential competitor to an existing shared system must overcome substantial capitalization and market share hurdles. Further, in a "shared" world, consumers are understandably nervous when ostensibly competing institutions combine to offer such services, thus giving rise to potentially substantial pricesetting capabilities *within* such institutional groups.

27. For example, the Sentry Insurance Study, note 10 *supra*, indicates that forty-three percent of the public is worried about how the federal government will use the

is but another arena in which the desire for privacy from governmental intrusion will conflict with legitimate governmental involvement in fostering such systems.

## III. CONCLUSION

Electronic funds transfer systems represent nothing more than a technologically sophisticated mechanism for transferring information to and from parties. The information in this instance happens to be symbolic of value, but is nonetheless essentially information. The efficacious transmission of such information *qua* money is essential to the orderly functioning of our economic society. The transmission of this type of information is so essential to the order and growth of our economy and to the participation of millions of consumers, that widespread implementation of EFT technology requires exacting scrutiny of its utility-like nature, which has traditionally and historically been done to other, essential, information exchange mechanisms in our society. To what extent utility-like structures are appropriate in EFT systems remains to be established, and to what extent governmental involvement in EFT poses threats to privacy must also be considered. "Things" are clearly not, nor are they ever likely to be again, as they have been.

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personal information it gathers on individuals, and by a 51-38% majority, the public believes that in ten years "we will have lost much of our ability to keep important aspects of our lives private from government." *Id.* at 5.