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Beyond #TheNew10 - The Case for a Citizens Currency Advisory Committee

Genevieve B. Tung

University of Pennsylvania Carey Law School, gtung@law.upenn.edu

Ruth Anne Robbins

Rutgers Law School, Ruth.Anne.Robbins@rutgers.edu

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BEYOND #THENEW10—THE CASE FOR A CITIZENS CURRENCY ADVISORY COMMITTEE

Genevieve B. Tung & Ruth Anne Robbins***

These are “far from being matters of indifference.”
—Alexander Hamilton¹

Introduction

On April 20, 2016, ten months after promising to place a woman’s portrait on the \$10 bill, Treasury Secretary Jacob J. Lew announced sweeping design changes in American currency.² Instead of displacing Alexander Hamilton’s portrait on the \$10 bill, as had been previously announced, the portrait of President Andrew Jackson depicted on the \$20 bill would be replaced with that of Harriet Tubman: an abolitionist, Union scout, suffragist, and conductor of the Underground Railroad.³ Tubman’s would be the first portrait of a historic woman to appear on

* Genevieve Tung, Reference and Circulation Librarian and Assistant Professor of Law.

** Ruth Anne Robbins, Distinguished Clinical Professor of Law.

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1. The quote comes from Alexander Hamilton, the first Secretary of the Treasury. Alexander Hamilton, *Second Draft of the Report on the Establishment of a Mint [28 January 1791]*, FOUNDERS ONLINE: NAT’L ARCHIVES, <http://founders.archives.gov/documents/Hamilton/01-07-02-0334-0003> (from an autographed draft of the Hamilton papers in the Library of Congress).

2. See Jacob J. Lew, *An Open Letter from Secretary Lew*, MEDIUM (Apr. 20, 2016), <https://medium.com/@USTreasury/an-open-letter-from-secretary-lew-672cfd591d02#.ruewyn92o>. We use the word “currency” as synonymous with paper bills, as distinguished from coins. Together, the two are our money.

3. *Id.*

U.S. paper currency in over a century.⁴ The announcement received extensive media coverage.⁵ On the back of the \$10 bill, images of suffragists Lucretia Mott, Sojourner Truth, Susan B. Anthony, Elizabeth Cady Stanton, and Alice Paul would join the current image or a new image of the Treasury Building.⁶ The back of the \$5 bill would recognize significant historical events that took place at the Lincoln Memorial, including depictions of Martin Luther King, Jr., Marian Anderson, and Eleanor Roosevelt.⁷ Secretary Lew's long-awaited decision received excited media attention around the world, and punctuated months of speculation. The press recognized it as a tremendous victory for the grassroots organization "Women On 20s," which had tirelessly campaigned for over a year to replace Andrew Jackson with a woman on the \$20 bill, and which had loudly decried Lew's initial announcement to place a woman's portrait on the \$10 bill.⁸ Everyone had an opinion on the new designs.

Even with Treasury's dramatic announcement, though, came the unwelcome news that the new \$20 would not reach circulation until the

4. Martha Washington appeared on silver certificates from 1886 through 1896. GEORGE S. CUHAJ & WILLIAM BRANDIMORE, *STANDARD CATALOG OF UNITED STATES PAPER MONEY* 22–24 (George S. Cuhaj ed., 34th ed. 2015).

5. For just a few examples from April 20, 2016, the date of the announcement, see Margaret Chadbourn & Mary Bruce, *Harriet Tubman to Replace Andrew Jackson on the Face of the \$20 Bill*, ABC NEWS (Apr. 20, 2016), <http://abcnews.go.com/US/harriet-tubman-replace-andrew-jackson-face-20/story?id=38544017>; Reena Flores, *Harriet Tubman to Go on \$20 Bill; Hamilton to Stay on \$10*, CBS NEWS (Apr. 20, 2016), <http://www.cbsnews.com/news/harriet-tubman-to-go-on-20-bill-hamilton-to-stay-on-10/>; Ahiza Garcia, *Harriet Tubman's Move to the \$20 Has Fans Rejoicing*, CNN MONEY (Apr. 20, 2016), <http://money.cnn.com/2016/04/20/news/economy/harriet-tubman-20-bill-reaction/>. We could have provided cites to many other news sources as well. The media coverage continued for weeks, including references made by President Barack Obama at the White House Correspondents' Dinner. Press Release, Office of the Press Secretary, White House, Remarks by the President at the White House Correspondent's Dinner (Apr. 30, 2016), <https://www.whitehouse.gov/the-press-office/2016/05/01/remarks-president-white-house-correspondents-dinner> ("If this material goes well, I'll use it at Goldman Sachs next year. . . . Earn me some serious Tubmans.").

6. Lew, *supra* note 2. As an aside, we note a special allegiance to Alice Paul, native daughter of South Jersey, where we teach.

7. *Id.*

8. See WOMEN ON 20S, <http://www.womenon20s.org> (last visited Nov. 20, 2016). For articles referring to Women On 20s as the leaders in the push to place Harriet Tubman on the \$20 bill, see, for example, Maya Rhodan, *Hamilton's \$10 Bill Victory Prompts Elation—And Outrage*, TIME (Apr. 20, 2016), <http://time.com/4301417/alexander-hamilton-harriet-tubman-20-bill-10-bill-controversy> (giving credit to Sofia, the junior ambassador of Women On 20s); Vauhini Vara, *The Women on 20s Campaign Celebrates the Harriet Tubman \$20*, NEW YORKER (Apr. 21, 2016), <http://www.newyorker.com/business/currency/the-women-on-20s-campaign-celebrates-the-harriet-tubman-20> (profiling the work of Susan Ades Stone, Executive Director of Women on 20s).

2020's, and probably later in the decade.⁹ Moreover, Andrew Jackson, known for his role in the "Trail of Tears" and for owning and trading slaves, will be moved to the reverse side of the bill, opposite the woman who risked her life to free scores of slaves.¹⁰

The popular reception—and criticism—of the new currency design came as no surprise. In a representative government, representation is both political and personal. Americans have a longstanding history of exercising an entitled curiosity about the workings of their government when matters of iconography, history, and national honor are at stake. Indeed, Americans have been asking questions and offering opinions about the images appearing on our paper money for at least ninety-five years,¹¹ although the advent of social media made the 2015–16 level of protest much more possible.

This Article explores the representational shortcomings of American currency—meaning paper bills only, not coins—and the legal and administrative framework that has enabled those shortcomings to persist. From the beginning, the manner for designing federal paper money has been characterized by arbitrary and arguably autocratic decision-making and resistance to open processes that consider the creativity and insights of the public. Until now, the portraiture and imagery featured on American currency has consistently asserted and reified the singular importance of one type of American: white, male politicians and statesmen, largely from the executive branch. We review the history of Treasury's role in the design of currency—and coinage—and compare it with that of other agencies tasked with choosing the people and events worthy of commemoration. Ultimately, we suggest an alternative process for currency design to help the Treasury Department live up to its own ideals.

Up front, we want to assure readers that we are excited about the announced design changes to the \$5, \$10, and \$20 bills, and we believe that, excepting the continued inclusion of Andrew Jackson, Treasury

9. Jackie Calmes, *Harriet Tubman Ousts Andrew Jackson in Change for a \$20*, N.Y. TIMES (Apr. 20, 2016), <http://www.nytimes.com/2016/04/21/us/women-currency-treasury-harriet-tubman.html>.

10. See STEVE INSKEEP, JACKSONLAND: PRESIDENT ANDREW JACKSON, CHEROKEE CHIEF JOHN ROSS, AND A GREAT AMERICAN LAND GRAB 71 (2016) ("Although [Jackson's] ownership of slaves was unremarkable in Tennessee, he sometimes engaged in slave dealing, a business that even slave owners considered disreputable.").

11. See Ruth Anne Robbins & Genevieve Tung, *95 Years of Waiting for a Woman on Paper Currency*, WOMEN YOU SHOULD KNOW (Jan. 28, 2016), <http://www.womenyoushouldknow.net/95-years-of-waiting-for-a-woman-on-paper-currency>; see also *infra* app. A, Letter from William McEvans, Dime Sav. Bank Co., to Warren G. Harding, President, U.S. (Apr. 19, 1921) (on file with authors).

has come to a laudable result. Nothing in this Article should be interpreted to suggest that we recommend delaying those changes. Rather, we believe that changes should happen with alacrity. Nevertheless, the way that Treasury approached its announcement was fraught with challenges for those citizens trying to have their voices heard in what they believed should be an authentic democratic process. We believe that the system of choosing the signification on our currency is broken and should be modified. It took a small, private, non-profit organization to highlight this fact for the country—an organization that deserves more recognition than it has been accorded by Treasury. Without intervention, all future currency design changes are likely to be laden with similar controversy and potential disappointment.

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1.0 The Representative Power and Privilege of Money

Money is seen as a symbol of the state.¹² The imagery used on currency signifies its credibility; this validation is all the more important for paper money that has no intrinsic value.¹³ As communications scholar Josh Lauer noted, “Nationalist iconography provides an important channel through which the authenticity and legitimacy of national currency is communicated, and through which social trust is reaffirmed in its taken for grantedness.”¹⁴ In a democracy, such authenticity implies that the figurations on currency are intended to reflect political power through liberty and self-rule.¹⁵

The Founders saw public identification with the currency as desirable. The first Treasury Secretary, Alexander Hamilton, recognized this when he spoke of the prudence of limiting his role in determining what that symbology would be on coinage: “The devices of

12. See Heinz Tschachler, ‘In God We Trust’ or, *How Dollar Bills Represent and Constitute the American Nation—An Attempt in Cultural Iconography*, in 4 *AMERICAN STUDIES IN AUSTRIA, US ICONS AND ICONICITY* 41, 41 (Walter W. Hölbling et al. eds., 2006); see also ERIC HELLEINER, *THE MAKING OF NATIONAL MONEY: TERRITORIAL CURRENCIES IN HISTORICAL PERSPECTIVE* 100–20 (2003).

13. See Josh Lauer, *Money as Mass Communication: U.S. Paper Currency and the Iconography of Nationalism*, 11 *COMM. REV.* 109, 127 (2008).

14. *Id.*

15. The historical figures depicted on our bills are involved in a continuous symbolic exchange with the State: their accomplishments are held up for recognition but also as a screen for governmental action that may fall short of the ideals being recognized. Some have objected to the depiction of Harriet Tubman on the \$20 for this reason—an honorific that conceals exploitation. See, e.g., Steven W. Thrasher, Opinion, *To Put Harriet Tubman on the \$20 Bill Would Be an Insult to Her Legacy*, *THE GUARDIAN* (May 15, 2015), <http://www.theguardian.com/commentisfree/2015/may/15/a-slave-abolitionist-has-no-business-being-on-the-20-bill>.

the coins are far from being matters of indifference; as they may be made the vehicles of useful impressions. They ought therefore to be emblematical, but without losing sight of simplicity."¹⁶

The U.S. Mint was established the following year, and the first Mint Act specified that the new currency should depict a figure "emblematic of liberty" on the obverse of all coins.¹⁷ "Liberty" was an obvious choice in the post-revolutionary period, and was a theme and archetype already made popular on colonial coins.¹⁸ The allegorical "Lady Liberty," in one form or another, was depicted on American coins for over a century.¹⁹

In the early years of the twentieth century, President Theodore Roosevelt worked actively to improve the artistry of American coinage, working closely with the sculptor Augustus Saint-Gaudens to produce something adapted to "the needs of modern commerce, and yet . . . worthy of a civilized people—which is not true of our present coins."²⁰ Roosevelt was instrumental in ushering in a new era in coin

16. Hamilton, *supra* note 1; see also 2 ANNALS OF CONG. 2085 (1792) (the final copy of the report above, submitted to congress). Hamilton did not consider himself the artist, and offered only a few other remarks: "The fewer sharp points and angles there are, the less will be the loss by wearing. The Secretary thinks it best, on this head, to confine himself to these concise and general remarks." 2 ANNALS OF CONG. 2085. By contrast, Hamilton made suggestions regarding the size and dimensions of each coin, "made on the supposition that the Legislature may think fit to regulate this matter." *Id.* at 2084.

17. See Act of Apr. 2, 1792, ch. 16, §§ 1, 10, 1 Stat. 246, 246, 249.

18. See CORNELIUS VERMEULE, NUMISMATIC ART IN AMERICA: AESTHETICS OF THE UNITED STATES COINAGE 9 (1971) ("Thus, it would appear Liberty had been an integral part of American numismatic art from the earliest struggles of the thirteen independent colonies and the first union of sovereign states.").

19. Although imaginary, the female personification of Liberty on American coinage was routinely subject to crude and explicitly gendered critique. A half-dollar struck in 1809 appeared, to one critic, as if "the artist had put a picture of his fat mistress on the coins." *Id.* at 32. Another Liberty, depicted on a 1¢ piece from 1814, was mocked as a "blowsy barmaid." *Id.* at 34. According to another critic, W.T.R. Marvin, the profile of Liberty shown on the coins of 1892

can hardly be called a beauty . . . [T]here is a fullness in the upper lip, which detracts from the expression, and a slight swelling on the back of the neck, that led one irreverent critic to remark "she is going to have a boil," and another to say "the throat is that of a gladiator"!

Id. at 89. As Christina McGinley has explained, "the physical specificity of this type of commentary serves to undermine the legitimacy and potential power of the female as icon at the same time that it reinforces 'types' for (un)acceptable femininity." Christina L. McGinley, *Coining Nationality: Woman As Spectacle on Nineteenth-Century American Currency*, 7 AM. TRANSCENDENTAL Q. 247, 266 (1993).

20. Letter from Theodore Roosevelt, President, U.S., to Augustus Saint-Gaudens (Nov. 24, 1905) in *Roosevelt and Our Coin Design: Letters Between Theodore Roosevelt and Augustus Saint-Gaudens*, 99 CENTURY MAG. 721, 727 (1920).

design in which presidential portraits replaced allegorical figures but continued their symbolic role.²¹

But in the nineteenth and early twentieth centuries, official ideas about who could represent the ideals of American democracy were quite limited. This is well illustrated by the paper money issued by Treasury in the late 1800s. Presidents, statesmen, and military heroes were favored; artistic and cultural figures were largely overlooked. With the exception of Martha Washington—and a vignette of Pocahontas—women were relegated to allegorical and decorative roles.²² African-American men and women were entirely excluded.²³

The last comprehensive redesign of American currency was completed in 1929. It was at that time that the portraits that we currently see on our money were fixed.²⁴ The process behind that project illuminates why the iconography could go unchanged for so many decades. It also demonstrates the profound impact of the law's delegation of authority to the Treasury Secretary over aesthetic and representational aspects of currency.

Then, as now, people were abuzz about the new currency designs. How had the men featured on the bills been chosen? The answer has never been clear. The Treasury Department's website addresses this mystery in its FAQ: "A committee appointed to study such matters made those choices. The only exception is the reverse design of the one-dollar bill. Unfortunately, however, our records do not suggest why certain Presidents and statesmen were chosen for specific denominations."²⁵

More detailed answers about Jackson's selection for the \$20 have eluded historians, such that the Washington Post recently declared the

21. Roosevelt was the driving force behind the Lincoln Cent, released in honor of the centennial of Lincoln's birth, which marked a paradigm shift: now the portrait of a great American was understood to be "emblematic of Liberty." See DON TAXAY, *THE U.S. MINT AND COINAGE: AN ILLUSTRATED HISTORY FROM 1776 TO THE PRESENT* 331 (1966) (quoting correspondence between the Treasury Secretary and the Director of the Mint indicating that because Lincoln's portrait would be considered emblematic of Liberty, it would be inappropriate to use an allegory of "Liberty" on the reverse).

22. See, e.g., CUHAJ & BRANDIMORE, *supra* note 4, at 22–23 (depicting Martha Washington on the \$1 silver certificate of 1886); *id.* at 42 (depicting Pocahontas' presentation "to the Old World" on the \$5 National Gold Bank Note of 1870).

23. See *id. passim* (containing images of all the paper money used from the nineteenth century forward; there are no images depicting African-American men or women).

24. See *infra* Part 2.0.

25. Resource Center: Portraits & Designs, U.S. DEPT OF TREASURY, https://www.treasury.gov/resource-center/faqs/Currency/Pages/edu_faq_currency_portraits.aspx (last visited Nov. 20, 2016).

question possibly “lost to history.”²⁶ This was the newspaper quote that gave us pause and ultimately led us to dig further. While many of the decisions that factored into the 1929 currency redesign have gone unrecorded, Treasury records do show more information about the process than its website suggests. Our research, conducted largely at the National Archives, sheds new light on how Treasury exercised its almost unlimited statutory grant of authority over currency design. The story of how Andrew Jackson came to be the face of the \$20 bill exemplifies why the law should change.

2.0 The Choosing and Un-Choosing of Certain Portraits (Including Jackson)

The 1929 currency series was the culmination of an effort that had progressed in fits and starts over several administrations.²⁷ The project introduced a singular design for all currency notes, replacing the myriad of styles in circulation.²⁸ The size of the bills was also reduced as a cost-saving measure.²⁹

Part of the project involved selecting the portraits to appear on each denomination. In 1925, Secretary of the Treasury Andrew Mellon appointed a committee to study the many facets of the proposed redesign, from size to paper to portraiture. The committee included no private citizens but was instead comprised of staff from Treasury, the Federal Reserve Board, and other federal agencies.³⁰ A subcommittee

26. Abby Ohlheiser, *Why is Jackson on the \$20 Bill? The Answer May Be Lost to History*, WASH. POST: THE FIX (Apr. 20, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2015/03/06/why-is-andrew-jackson-on-the-20-bill-the-answer-may-be-lost-to-history>; see also Lauer, *supra* note 13, at 126 (“[T]he selection of American statesmen on contemporary U.S. currency cannot be explained.”).

27. See U.S. TREASURY DEP’T, HISTORY OF THE BUREAU OF ENGRAVING AND PRINTING, 1862–1962, at 110–11 (1962).

28. At the time, there were several different types of sanctioned paper currency in circulation, including U.S. notes, silver certificates, gold certificates, national bank notes, and Federal Reserve notes. See SEC’Y OF THE TREASURY, ANNUAL REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF THE FINANCES FOR THE FISCAL YEAR ENDED JUNE 30, 1928, at 58 (1929). Among these, only Federal Reserve notes are produced today. CUHAJ & BRANDIMORE, *supra* note 4, at 16.

29. See U.S. BUREAU OF EFFICIENCY, REPORT OF THE U.S. BUREAU OF EFFICIENCY FOR THE PERIOD FROM NOVEMBER 1, 1924, TO OCTOBER 31, 1925, H.R. Doc. No. 95, at 2–3 (1925) (reporting comments of Treasury Secretary Franklin MacVeagh).

30. The committee was chaired by Assistant Treasury Secretary Charles S. Dewey. See Minutes of Meeting, Special Comm. to Consider Designs, Size, Destruction, Etc., of Paper Currency Issues of the U.S. 1 (Nov. 12, 1925) [hereinafter November 1925 Meeting Minutes] (on file with authors). The other members were: F.G. Awalt, Deputy Comptroller of the Currency; William S. Broughton, Commissioner of the Public Debt; Herbert D. Brown, Chief of the Bureau of Efficiency; Charles W. Collins, Deputy Comptroller of the

convened to study currency design and to develop a schema for recommending which portraits should be used on the new notes.³¹

The subcommittee concluded that as a primary element, using exclusively presidential portraits would offer the greatest security against counterfeiting because of their familiarity among the American people.³² The committee reports delineate a system of choosing the presidential portraits based on four major factors, which significantly overlap each other. First, the most “outstanding” Presidents should be selected whenever possible.³³ Second, the preference should be for Presidents who had been martyred for their service to the nation. Third, the men chosen for each denomination should have striking and easily recognizable faces to help citizens differentiate the denominations. Finally, the most “distinguished” Presidents should be placed on the most frequently used bills.³⁴

After several months of meetings in 1926, the committee finalized its recommendations.³⁵ Its report was classified.³⁶ Its work was apparently concluded.

The redesign project was announced publicly in May 1927.³⁷ Days before the announcement, the Commissioner of the Public Debt, who had served on the design committee, was abruptly tasked by the committee chairman to create a short list of recommended portraits.³⁸ Rather than reproduce the committee’s list from the previous year, the

Currency; H.P. Dawson, an engraver with the Bureau of Engraving and Printing; John J. Deviny, Assistant Director of the Bureau of Engraving and Printing; Walter L. Eddy, Secretary of the Federal Reserve Board; Dr. V.H. Gottschalk, a research associate with the U.S. Bureau of Standards; A.W. Hall, from the Bureau of Engraving and Printing; Robert G. Hand, Commissioner of Accounts and Deposits; W.H. Moran, Chief of the Secret Service Division; R.W. Scribner, of the National Bureau of Standards; H. Theodore Tate, Deputy Assistant Treasurer; Walter Wyatt, general counsel to the Federal Reserve Board; and George L. Harrison, Deputy Governor of the Federal Reserve Bank of New York. *See id.*

31. *See Id.*

32. *Id.* at 3.

33. *Id.* at 4.

34. *Id.* at 4–5; *see also* November 1925 Meeting Minutes, *supra* note 30, at 6–7.

35. *See* Summary of the Work to Date of Subcomm. No. 1, Combined with Subcomm. No. 4, of the Treasury Gen. Comm. for the Study of Problems of Paper Currency Issues 2 (Aug. 20, 1926) (on file with authors).

36. According to a handwritten annotation on a copy of the report furnished by the Bureau of Engraving and Printing in response to our Freedom of Information Act (FOIA) request, this document’s classification was removed on June 27, 1961.

37. *See* SEC’Y OF THE TREASURY, *supra* note 28 at 84.

38. Memorandum from C.S. Dewey, Assistant Sec’y of the Treasury, to William Broughton, Comm’r of the Pub. Debt (May 20, 1927) (on file with National Archives, Record Group 53); *see infra* app. C.

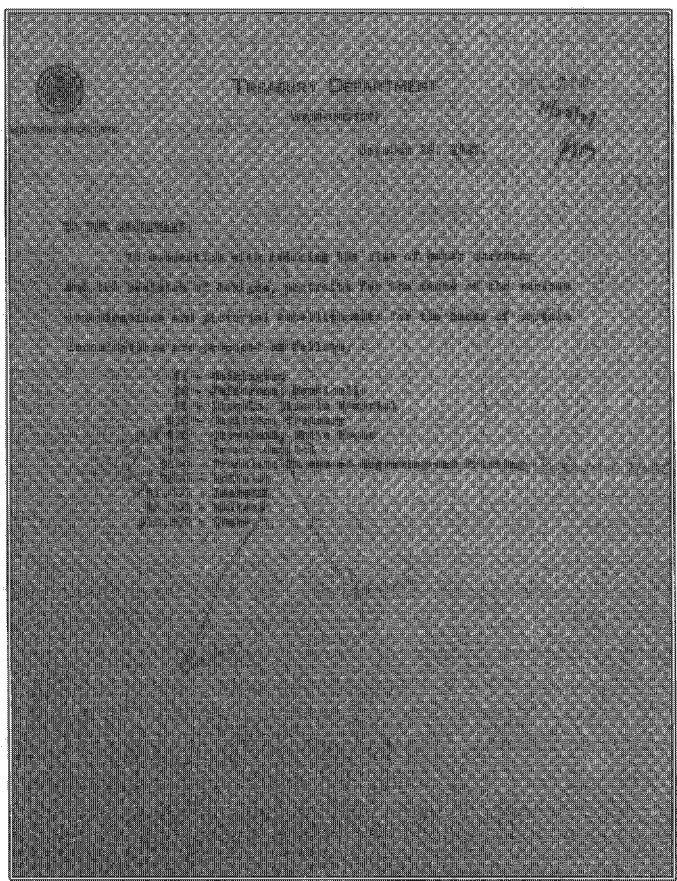
Commissioner made multiple changes to the committee's proposals. Those changes notably overrode the presidents-only threshold criterion and removed four of the committee's recommended Presidents from the list.³⁹ He replaced them with two former Treasury Secretaries, Alexander Hamilton and Salmon Chase, statesman Benjamin Franklin, and a President of his own choosing, James Madison.⁴⁰ This list was intended for the person with the ultimate authority over these decisions, Secretary Mellon.⁴¹

39. Memorandum from William Broughton, Comm'r of the Pub. Debt, to C.S. Dewey, Assistant Sec'y of the Treasury (May 20, 1927) [hereinafter Memorandum from William Broughton] (on file with National Archives, Record Group 53). The removed Presidents were: Monroe (a Democratic-Republican), Garfield (a Republican), Wilson (a Democrat), and Roosevelt (a Republican). See *infra* app. C. For historical context, Calvin Coolidge (a Republican) was President in 1927.

40. Memorandum from William Broughton, *supra* note 39; see *infra* app. C. James Madison was also a Democratic-Republican.

41. Technically, Broughton prepared the list for the Assistant Secretary of the Treasury, C.S. Dewey, who eventually gave it to the Secretary, Andrew W. Mellon. See Memorandum from William Broughton, *supra* note 39 (describing the presentation of a memo to Secretary Mellon).

After some additional back-and-forth between these Treasury staffers, a final list of portraits and pictorial backs was presented for Mellon's approval. What happened next can be seen in a document preserved in the National Archives.⁴²



With a few pencil strokes, the list was rearranged again. Andrew Jackson and Grover Cleveland were swapped between the \$1000 bill and the \$20 bill. Independence Hall was scribbled in for the back of the \$100, replacing what otherwise would have been an image of the

42. Memorandum to Andrew Mellon, Sec'y of the Treasury, (Oct. 28, 1927) [hereinafter Image] (on file with National Archives, Record Group 53) (with handwritten edits).

building of the Bureau of Engraving and Printing. No reason for these changes is recorded, but no reason needed to exist. The Secretary of the Treasury has always had the authority simply to impose almost any choice he likes, and is accountable only to the President who appoints him. Congress has delegated such authority to holders of that office since the Civil War.

The following part and sections describe the history that has ensued.

3.0 From the Legal Perspective: Historical Problems with American Currency Design

3.1 The Civil War Period and Its Legacy

The Secretary of the Treasury is responsible for all decisions about the design of paper currency.⁴³ His⁴⁴ authority is limited today only by the mandate that “In God we Trust” appear somewhere on the bill, in a place he designates, and that only portraits of deceased persons may appear, with the person’s name underneath.⁴⁵ While there are a handful of regulations governing the selection of distinctive papers for producing U.S. currency, none govern the symbolic choices that make American bills distinctive.⁴⁶

Substantively, the law has barely changed since the Civil War. Paper money as legal tender was authorized under duress in 1862 by a Congress desperately short of funds. It was embraced with great reluctance,⁴⁷ which may have contributed to Congress’ decision to delegate to Treasury virtually all decisions about its design. This was far greater authority than Treasury enjoyed at the time with respect to coinage.⁴⁸ The first bills produced under this law, called U.S. notes, were printed in 1862; the first \$1 note depicted then-serving Treasury Secretary Salmon P. Chase.⁴⁹ In the words of author Jason Goodwin,

43. 31 U.S.C. § 5114(a)(1) (2012) (“The Secretary of the Treasury shall engrave and print United States currency and bonds of the United States Government and currency and bonds of United States territories and possessions from intaglio plates on plate printing presses the Secretary selects.”).

44. Every Treasury Secretary to date has been male.

45. *Id.* § 5114(b).

46. 31 C.F.R. § 601.1–601.5 (2016).

47. See A. BARTON HEPBURN, A HISTORY OF CURRENCY IN THE UNITED STATES 184 (1967).

48. See *infra* Section 4.3.

49. CUHAJ & BRANDIMORE, *supra* note 4, at 18.

these bills were “a clear case of inflation; he also had an inflated sense of his own worth.”⁵⁰

To the dismay of many, paper money persisted and the Treasury Department continued to design and circulate currency after the war's end.⁵¹ The designs were dramatic by modern standards, and changed regularly.⁵² The bills from this period also demonstrate a notable measure of the Treasury Department's self-reverence.⁵³ Among the over forty individuals portrayed on the various types and denominations of non-fractional federally printed currency before 1929,⁵⁴ six were Treasury officials, including Secretaries of the Treasury Alexander Hamilton,⁵⁵ Albert Gallatin,⁵⁶ Salmon P. Chase,⁵⁷ William Windom,⁵⁸ Treasurer Michael Hillegas,⁵⁹ and the first and only U.S. Superintendent of Finance, Robert Morris.⁶⁰

When Congress authorized the first printing of U.S. notes, the work of producing the new currency fell to a man named Spencer Morton Clark.⁶¹ Although he was responsible for laying a foundation for the

50. JASON GOODWIN, *GREENBACK: THE ALMIGHTY DOLLAR AND THE INVENTION OF AMERICA* 220 (2003).

51. Cf. Franklin Noll, *Lincoln's Greenback Mill: Civil War Financing and the Start of the Bureau of Engraving and Printing, 1861–1863*, 1 FED. HISTORY J. 25, 25 (2009), <http://shfg.org/shfg/wp-content/uploads/2011/01/3-Noll-final-design-pp25-31.pdf> (“Almost unintentionally, the government established a monopoly on the production of government currency and securities, turning a wartime expedient into an institution.”).

52. E.g., CUHAJ & BRANDIMORE, *supra* note 4, at 9–130 (showing each denomination's changes until 1929).

53. Which is not to say that today's currency is less self-important. The Treasury Building is depicted on the back of each contemporary \$10 bill. A separate image of the Bureau of Engraving and Printing building was originally slated to appear on the back of the \$100 Federal Reserve note before someone, probably Treasury Secretary Andrew Mellon, decided to substitute the picture of Independence Hall that we are familiar with today. See Image, *supra* Part 2.0.

54. See Lauer, *supra* note 13, at 122.

55. Depicted on the 1862 \$2 and \$5 U.S. notes; the 1863, 1869, and 1880 \$20 U.S. notes; the 1882 and 1907 \$1000 gold certificate; and the 1918 \$1000 Federal Reserve note. CUHAJ & BRANDIMORE, *supra* note 4, at 28, 37, 75–76, 125–26, 128.

56. Depicted on the 1862 \$500 U.S. note. *Id.* at 117.

57. Depicted on the 1918 \$10,000 Federal Reserve note. *Id.* at 130.

58. Depicted on the 1891 \$2 silver certificate. *Id.* at 32.

59. Depicted on the 1907 and 1922 \$10 gold certificate. *Id.* at 68.

60. Depicted on the 1862 \$1000 U.S. note and the 1878 and 1880 \$10 silver certificates. *Id.* at 64–65, 122.

61. Clark's early work came under the nominal direction of the new Comptroller of the Currency. U.S. TREASURY DEPT, *supra* note 27, at 22. The supervisory relationship between the Secretary of the Treasury and the Bureau of Engraving and Printing was not formalized until 1896. *Id.* at 24. During the early years of federally sanctioned paper monies, much of the printing work was done by private firms. *Id.* at 22 n.1. It was not

Bureau of Engraving and Printing and implementing many innovations in currency printing, he is largely remembered for his corruption and impropriety.⁶² He is also famed for his sense of self-importance. In 1864, Clark placed his own portrait on the third issue of the 5¢ denomination of fractional currency.⁶³ In doing so, he substituted his portrait for that of George Washington.⁶⁴

This sparked outrage in Congress.⁶⁵ In the words of one congressman, "No man should be immortalized upon the public money of the country until the verdict of posterity has been pronounced upon his name, and it can go down upon that record sanctioned by the voices of men of all parties, of all politics, and of all religions."⁶⁶ Congress

until 1877 that the Bureau of Engraving and Printing became solely responsible for printing all U.S. government currency. *Id.*

62. See, e.g., GOODWIN, *supra* note 50, at 216-46 (recounting Clark's alleged embezzlement, fraud, and sexual indiscretions). But see U.S. TREASURY DEP'T, *supra* note 27, at 1 (attributing the creation of the Bureau to "the self-confidence, courage, ingenuity, and patriotism of one man, Spencer Morton Clark").

63. See GENE HESSLER, THE COMPREHENSIVE CATALOG OF U.S. PAPER MONEY 313 (1974). "Fractional currency" refers to miniature notes for denominations of less than \$1 circulated by the U.S. government in place of coins during and, for a short while, after the Civil War. See *id.* at 309. Fractional currency was authorized explicitly by Congress. See Act of Mar. 3, 1863, ch. 72, 12 Stat. 709, 711; Act of June 30, 1864, ch. 172, 13 Stat. 218, 220.

64. All denominations of the second issue of fractional currency, beginning in 1863, featured the portrait of George Washington. See CUHAJ & BRANDIMORE, *supra* note 4. The third issue featured William Fessenden (then a U.S. Senator from Maine and Secretary of the Treasury in 1864 and 1865) on the 25¢ note and Francis E. Spinner (Treasurer of the United States and also known as the "Father of Fractional Currency") on the 50¢ note. See *id.* at 405, 407.

65. Pennsylvania Republican Representative Martin Russell Thayer first proposed to condition upcoming appropriations for the engraving and printing of paper currency to the proviso that "no portrait or likeness of any living person shall be engraved or placed upon any of the bonds, securities, notes, or postal currency of the United States." *Id.* at 1407, 1421. Speaking on the floor, he raised a similar argument to that heard during the debate of the Mint Act:

Sir, when we shall have a living Caesar to make both the laws and the money of this country, it will be time enough to place his effigy upon the coins and notes of the United States. There is no reason why this practice should be persisted in. It is derogatory to the dignity and the self-respect of the nation . . .

Id. His colleague, Thaddeus Stevens, moved to amend this proviso to allow an exception for living U.S. Presidents, but was denied. *Id.* The Senate Finance Committee moved to strike out the restriction on using the likenesses of living persons on currency. CONG. GLOBE, 39th Cong., 1st Sess. 1407, 1421 (1866). When asked to explain, Senator William Fessenden offered that the use of likenesses of living persons "is regarded at the Treasury as a security against counterfeiting." *Id.* It is worth noting here that Senator Fessenden, who served as Secretary of the Treasury in 1864 and 1865, was himself depicted on many 25¢ notes in circulation at the time. See CUHAJ & BRANDIMORE, *supra* note 4, at 414.

66. CONG. GLOBE, 39th Cong., 1st Sess. 1560, 1586 (1866).

promptly passed a law barring the depiction of any living persons on currency.⁶⁷ This sole limitation on the Treasury Secretary's discretion has remained in force ever since.⁶⁸

3.2 *The Late 19th Century*

The earliest designs for federal currency were largely left to the artists tasked to produce them.⁶⁹ Treasury Secretary Salmon Chase solicited early proposals for designs and models for new notes in the *New York Times*.⁷⁰ The submissions needed only to be "national in their character," with a preference for imagery not previously used on other currency and securities.⁷¹ While the Secretary exercised his discretion to choose from among the proffered designs, there is no indication that Chase—nor his successors—provided thematic guidance or instructions. Bureau artists produced innumerable engraved portraits for currency, securities, and stamps, including a great many whose faces and deeds are largely obscured by time.⁷²

Per their experience with coinage, Treasury officials were certainly aware of their power to create national iconography, and at times used that power didactically and paternalistically. As Spencer Clark suggested to Salmon Chase, the new currency could inspire historical

67. Act of Apr. 7, 1866, ch. 28, sec. 12, 14 Stat. 14, 25 (making additional appropriations and supplying the deficiencies in the appropriations for sundry civil expenses of the government for the fiscal year ending the June 13, 1866, and for other purposes).

68. See R.S. § 3576 (1875) ("Portraits of living persons not to be placed on bonds or notes."); 31 U.S.C. § 413 (1934) ("No portrait shall be placed upon any of the bonds, securities, notes, fractional or postal currency of the United States while the original of such portrait is living."); *Id.* § 5114(b) (2012) ("Only the portrait of a deceased individual may appear on United States currency and securities.").

69. See also William A. Du Puy, *Whose Pictures Should Go on Our Paper Money?*, 20 AM. BANKERS ASS'N J. 790, 790 (1927) ("[T]he pictures that are on the bills have got there quite by accident. Whenever it has become necessary to design a new note it has usually been left to the artist to whom the assignment happened to fall to determine what should be on it."). Mr. Du Puy was a staffer at the short-lived U.S. Bureau of Efficiency and also participated in the work of the currency re-design committee discussed in Part 2.0. See October 1925 Meeting Minutes, *supra* note 31, at 1.

70. *Proposals for Designs, Models, and Printing of Treasury Notes*, N.Y. TIMES, Mar. 27, 1863, at 6.

71. *Id.*

72. See, e.g., ENGRAVING & PRINTING BUREAU OF THE TREASURY, LETTER FROM THE SECRETARY OF THE TREASURY, TRANSMITTING, IN ANSWER TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE 12TH INSTANT, REPORT RELATIVE TO THE CONDITION OF THE ENGRAVING AND PRINTING BUREAU OF THE TREASURY, H.R. EXEC. DOC. NO. 45 (1869) (inventorying hundreds of dies for all aspects of currency printing).

curiosity and eventual historical knowledge and national pride among the less-educated working class:

[The bills] would tend to teach the masses the prominent periods in our country's history. The laboring man who should receive every Saturday night, a copy of the "Surrender of Burgoyne" for his weekly wages, would soon inquire who General Burgoyne was, and to whom he surrendered. This curiosity would be aroused and he would learn the facts from a fellow laborer or from his employer. The same would be true of other National pictures, and in time many would be taught leading incidents in our country's history, so that they would soon be familiar to those who would never read them in books, teaching them history and imbuing them with a National feeling.⁷³

The 1896 issue of silver certificates, for example, was explicitly intended to acculturate their users about history and allegory.⁷⁴ "[E]ach note is designed to serve an educational and sentimental purpose. All are decorated, on the faces, entirely with allegoric groups referring to conspicuous events in history. . . . They also contain the names of men of all classes who have served in this country as epoch-makers."⁷⁵

During this period, there is no indication that Treasury took any routine concern of popular opinion when designing the currency. Treasury was, however, responsive to criticism from the financial sector and other prominent voices. In 1897, Treasury Secretary Lyman Gage instructed the Bureau of Engraving and Printing to prepare entirely new designs for the faces of all silver certificates after reviewing "communications from leading financial institutions."⁷⁶ The bills that had been so vaunted for their educative value the year before had been criticized by some for appearing "more like patent medicine advertisements" than government issue.⁷⁷ The design of the \$5 note was also targeted by Anthony Comstock, Secretary of the Society for the

73. Eric Helleiner, *National Currencies and National Identities*, 41 AM. BEHAV. SCIENTIST 1409, 1412 (1998) (quoting Letter from Spencer Clark to Salmon P. Chase, Secretary of the Treasury (Mar. 28, 1863)). Amusingly, the surrender of General Burgoyne appears on the back of a \$500 note—not something the "laboring man" would be likely to see in his weekly wages.

74. *See Something New in Cash*, CHI. TRIB., July 26, 1896, at 39.

75. *Id.*

76. *New Faces for Bills*, CHI. TRIB., June 13, 1897, at 4.

77. *Id.*

Suppression of Vice, because it depicted a bare-breasted allegorical figure of "Electricity Presenting Light to the World."⁷⁸

3.3 The 1929 Redesign Project

The 1929 redesign marked an enormous shift in American currency production. Almost four billion dollars' worth of large-sized notes were replaced *en masse* with the new, smaller-sized currency in use today.⁷⁹ In a radio address to announce the launch, Undersecretary of the Treasury Ogden Mills extolled the virtues of the new currency, emphasizing how the select roster of portraits would become easy to remember and recognize, confounding counterfeiters.⁸⁰ Thanks to the new system of denominational designs, currency portraits became, for the first time, a limited good.

As forecasted, the portraits became fixed in the people's minds. We can no longer tell whether we know the men on the money because they are on the money, or whether they are on the money because we know them. Each side of a dollar has become a place "where history and myth collide."⁸¹ As such, the estimation of historical greatness and widespread public recognition of the men portrayed on our currency have become inextricably intertwined.⁸²

The portraits were questioned from the beginning. The *New York Times* reported on the roll-out with a full-page spread, which suggested that the choice of portraits and their assignments to bills had led to a controversy "both serious and facetious."⁸³ Part of the controversy was political: the Democrats complained that the majority of the portraits

78. GENE HESSLER, U.S. ESSAY, PROOF AND SPECIMEN NOTES 114 (2d ed. 2004).

79. See \$3,921,000,000 New Currency out Today; 'Curiosity Demand' for Smaller Bills Expected, N.Y. TIMES, July 10, 1929, at 1.

80. Hon. Ogden L. Mills, Under Sec'y of the Treasury, Speech Delivered over the Radio: The New Small-Size Currency (July 6, 1929) (transcript available in a Treasury Department press release, on file with authors) ("Thus, in the case of our \$5.00 bill, on the face side, the portrait of Lincoln will always appear in the center. As a Lincoln portrait will always indicate at \$5.00 bill, so the portrait of Washington will always be found on the 1's; of Jefferson on the 2's; of Hamilton on the 10's; of Jackson on the 20's . . .").

81. GOODWIN, *supra* note 50, at 287.

82. See Emily Gilbert, *Common Cents: Situating Money in Time and Place*, 34 ECON. & SOC'Y 357, 375 (2005) ("The production, and reproduction, of national identities, and particular narratives of national subjectivity, is hence [from] one outcome of the formation of national currencies.").

83. Mildred Adams, *Gigantic Task of Changing Our Money: Revolution Soon to Be Effected*, N.Y. TIMES, June 30, 1929, at 21; see also *What's the Use?*, WASH. POST, Mar. 6, 1928, at 6 (reprinting a joke that portraying Cleveland and Wilson on high-denomination bills would be useless because, "What are the use of puttin' the picter of a Dimocrat on a bill that a Dimocrat nivver sees?").

on small bills were Republicans, whereas Democrats appeared on the larger and less-frequently used denominations.⁸⁴ Some people were disappointed to find their old favorites had not made the cut. Months before the new money was released, one congressman wrote to Secretary Mellon complaining of the decision to exclude Albert Gallatin from the roster and asking for him to be reintroduced.⁸⁵

The archives contain dozens of letters in which Treasury officials informed people with currency questions or suggestions that changes were disfavored or impossible. Only months after the new bills were launched, a Kansas businessman wrote to Andrew Mellon to ask when he might change or add to the portraits used on the new \$5 and \$10 bills.⁸⁶ A Treasury official explained that the portrait assignments were a key security feature, which "would be lessened to the extent changes are now made."⁸⁷ Members of Congress were similarly rebuffed. In 1941, an Assistant Secretary of the Treasury wrote to a senator who had forwarded some questions from a constituent:

As regards the paper currency, with the introduction of the small size, the principle of denominational designs was adopted, and changes are made as infrequently as possible and only on the occasion of a new issue, or for the purpose of providing greater protection against counterfeiting. Moreover, changes involve new engraved work, adding to the cost of production.⁸⁸

In 1942, a woman wrote to Treasury Secretary Henry Morgenthau suggesting that the words to the Star Spangled Banner be printed on the reverse side of the \$1 bill to "add to the morale of both civilian and

84. Adams, *supra* note 83. The \$500, \$1000, \$5000, and \$10,000 notes were removed from circulation in 1969. *Resource Center, Denominations*, U.S. DEPT OF TREASURY, <http://www.treasury.gov/resource-center/faqs/Currency/Pages/denominations.aspx> (last updated July 8, 2014). These notes had not been produced since the Second World War, and were primarily used to effectuate large transfers between banks. *Id.*

85. *See Would Honor Gallatin.; Celler Urges His Portrait for New Issue of Currency*, N.Y. TIMES, Sept. 6, 1928, at 12 (describing plea of Representative Emmanuel Celler of Brooklyn, N.Y.).

86. Letter from George W. Finnup to Andrew W. Mellon, Sec'y of the Treasury (Dec. 31, 1929) (on file at National Archives). Mr. Finnup did not offer any suggestions of his own: "Of course we would not want to change Lincoln but could you put out another bill of a wonderful man if you thought he was a wonderful man on another five dollar bill . . . if the man has been dead, say, a half a century? You will appreciate the man when the time comes." *Id.*

87. Letter from Walter E. Hope, Assistant Sec'y of the Treasury, to George W. Finnup (Jan. 4, 1930) (on file at National Archives).

88. Letter from John L. Sullivan, Assistant Sec'y of the Treasury, to Senator Claude Pepper (Aug. 29, 1941) (on file at National Archives).

armed forces," because "[m]ost everybody ha[d] a \$1 bill, even Army boys."⁸⁹ A Treasury official responded, "[A]lthough impracticable, your patriotic suggestion is appreciated."⁹⁰

By focusing on the fixed nature of the portraits, Treasury side-stepped questions about the logic behind its selection. This may explain the loss of knowledge in the department. That did not stop people from asking. There are several examples of letters inquiring, in particular, about the lack of female representation on the money. In 1947, a high school business class wrote to the Treasury Secretary after viewing the "famous collections of monies of the world" at a New York City bank.⁹¹ They asked,

Most countries have included men and women on their currency together and separately. We noticed that the only women on any United States currency was Martha Washington. Is there any reason why other women who have done much in forming the history of our nation have not been so honored?⁹²

In reply, Treasury recounted the rationale of denominational portraits, explaining:

In *finally fixing* the portraits to be used it was determined to make as few changes as possible. Only portraits theretofore used were retained and these were selected with the purpose of having them fairly representative of men who had performed distinguished service in various periods of the country's history.⁹³

Similarly, in response to a Chicago woman's suggestion that Jane Addams be honored by having her portrait appear on currency, a Treasury undersecretary informed her that "[i]n order not to interrupt the production of the vast number of bills required each year, and in order that the public may be in a position to judge the validity of the currency, changes are made in the designs of paper currency only when

89. Postcard from Anna C. Parrett to Henry Morgenthau, Sec'y of the Treasury (Apr. 16, 1942) (on file at National Archives).

90. Letter from D.W. Bell, Under Sec'y of the Treasury, to Mrs. Anna C. Parrett (Apr. 30, 1942) (on file at National Archives).

91. Letter from Junior Bus. Training Class, Chatham High School, to John Snyder, Sec'y of the Treasury (Dec. 12, 1947) (on file at National Archives).

92. *Id.*

93. Letter from E.L. Kilby, Comm'r of the Bureau of Pub. Debt, to Junior Bus. Training Class, Chatham High School (Dec. 23, 1947) (on file at National Archives) (emphasis added). This letter was also addressed to "Gentlemen." *Id.*

absolutely necessary."⁹⁴ Other responses by Treasury to citizen letters echo the same themes.

Treasury was never keen to discuss the portrait selection process; within thirteen years, Treasury lost the thread of its own narrative about how the decisions were made. In the National Archives, this can be seen in a 1942 letter written by a Brooklyn man who wrote to Treasury to ask, "[W]hat the reasons are, if any, for the appearance of the various characters on the different United States bills."⁹⁵ An internal Bureau of Engraving and Printing memo referring to this letter reported that "there is no record in this division as to why any particular portraits were used."⁹⁶ In response to the letter, an Assistant Secretary of the Treasury eventually wrote:

Since the first issues of paper currency during the Civil War, portraits of distinguished Americans have been used as a part of the face design of various kinds of paper currency issued by the United States. . . . The fact that these particular individuals were selected should not be taken as an indication that the service of other distinguished men were considered less important.⁹⁷

3.4 *The Remainder of the Twentieth Century and Rewriting History*

The loss of Treasury's institutional knowledge was not limited to the Bureau of Engraving and Printing. In 1985, Treasurer Katherine D. Ortega testified before a House committee on consumer affairs concerning proposed new anti-counterfeiting legislation that would require congressional approval for any change to the design of paper currency.⁹⁸ While advocating for continued autonomy, Ortega misrepresented the process used to designate currency portraits. In a prepared statement, she reported that, since the Treasury Department

94. Letter from D.W. Bell, Under Sec'y of the Treasury, to Elizabeth C. Anderson (Jan. 17, 1941) (on file at National Archives).

95. Letter from S.R. Blatteis to the Dir. of the Mint (Oct. 16, 1942) (on file at National Archives).

96. Memorandum from Acting Superintendent, Engraving Div., Bureau of Engraving and Printing, to A.P. Ruth, Chief Accountant, Bureau of Engraving and Printing (Oct. 22, 1942) (on file at National Archives).

97. Letter from W.T. Heffelfinger, Assistant to the Under Sec'y of the Treasury, to S.R. Blatteis (Oct. 31, 1942) (on file at National Archives).

98. See *Currency Design Act: Hearing on H.R. 48 Before the Subcomm. on Consumer Affairs & Coinage of the H. Comm. on Banking, Fin. & Urban Affairs*, 99th Cong. 10-16 (1984) (statement of Katherine D. Ortega, Treasurer of the U.S. Department of the Treasury).

began printing currency, "design changes have been rare, and what changes there have been were handled carefully. The current series of portraits on U.S. currency, for example, was determined in the late 1920's by a citizen's panel rather than a single Government official or the Congress."⁹⁹ This statement was incorrect for two reasons. First, the final roster of portraits in fact was chosen by a single government official (the Treasury Secretary).¹⁰⁰ Moreover, as detailed in Part 2.0 of this Article, the committee that laid the groundwork for the secretary's choice was comprised entirely of government officials, many of whom were Treasury staff.¹⁰¹

Beyond raising concerns about counterfeiting, Congress has done little about currency design. There have been, however, several isolated efforts to promote change. In 1971—several years prior to the introduction of the Susan B. Anthony \$1 coin—Congressman Seymour Halpern, New York, introduced a bill to place a portrait of Susan B. Anthony on the \$2 note.¹⁰² The bill was co-sponsored by thirty-two other members of the House and endorsed by the governors of seventeen states and twenty-five women's organizations.¹⁰³ Representative Halpern positioned the bill as an explicit symbolic corrective to structural sexism.¹⁰⁴

The fact that only one other woman—Mrs. Martha Washington—has ever been honored formally by having her portrait on the Nation's currency serves as a further reminder to us of our insensitivity in the past. Passage of H.R. 11515 will not raise women's pay to parity with men's—it cannot eliminate sexist jokes, or encourage more women to strive to admission to law school. But it can honor one woman who made a significant contribution to the building of this Nation, and give to Susan B. Anthony recognition that has been due her for many, many years.¹⁰⁵

99. *Id.* at 13.

100. *See supra* Part 2.0; *infra* app. C.

101. *See supra* note 31. Moreover, dramatic design changes between currency series were the norm from 1863 to 1929. *See* CUHAJ & BRANDIMORE, *supra* note 4, at 18–130.

102. H.R. 11,515, 92d Cong. (1971); *see also* H.R. 11,516, 92d Cong. (1971); H.R. 11,758, 92d Cong. (1971); H.R. 11,759, 92d Cong. (1971); H.R. 13,418, 92d Cong. (1971).

103. *See* 117 CONG. REC. 38,547–38,549 (1971) (statement of Representative Halpern). Co-sponsors included Representatives Shirley Chisholm, Bella Abzug, and Louise Day Hicks. *See* Nan Robertson, *To Honor U.S. Women—Susan B. Anthony \$2 Bill?*, N.Y. TIMES, Nov. 2, 1971, at 42.

104. 117 CONG. REC. 38,548 (1971).

105. 118 CONG. REC. 3469 (1972) (statement of Representative Halpern).

A companion bill was introduced in the Senate.¹⁰⁶ Representative Halpern proposed Anthony for the honor after consulting with women's groups and Dorothy Andrews Elston, the U.S. Treasurer who had died only a few months before the legislation was introduced.¹⁰⁷ Despite its sponsors' demonstrations of support, and the potential savings to be enjoyed by the Bureau of Engraving and Printing should the denomination become successful,¹⁰⁸ the bills died in committee.

Similarly, in 1979, Indiana Representative Andrew Jacobs proposed a law to mandate Treasury to place the portrait of Georgia Neese Clark Gray, the first woman to serve as Treasurer of the United States, on the fifty-dollar bill.¹⁰⁹ When this bill went nowhere, he reintroduced the legislation in each of the next four Congresses.¹¹⁰

It is not clear that Treasury took notice of any of these efforts. In 2015, Treasurer Rosie Rios suggested that, before her then-pending initiative to put a woman on the ten-dollar bill, no one had thought to honor a woman on American currency.¹¹¹ In an appearance at Barnard College, Rios recounted her efforts as a progressive paradigm shift: "I remember one person actually came up to me and said, 'What are you trying to do, are you trying to rewrite history?' . . . I said, 'Yes, yes I am. I guess I am. I want to write women into our history.'" ¹¹²

Treasury forgetting its own history is more than an inevitable fading of institutional memory. It has allowed the fixity of the portraits

106. S. 2970, 92d Cong., 117 CONG. REC. 45,348 (1971); S. 3022, 92d Cong. 117, CONG. REC. 46,899 (1971).

107. See 117 CONG. REC. 38,547–38,548 (1971); Robertson, *supra* note 103, at 42.

108. Robertson, *supra* note 103, at 42 (referring to statements made by James A. Conlon, Director of the Bureau of Engraving and Printing).

109. H.R. 5814, 96th Cong., 125 CONG. REC. 31,422 (1979).

110. See H.R. 875, 97th Cong., 127 CONG. REC. 378 (1981); H.R. 1453, 98th Cong., 129 CONG. REC. 2, 194 (1983); H.R. 114, 99th Cong., 131 CONG. REC. 447 (1985); H.R. 496, 100th Cong., 133 CONG. REC. 867 (1987). In 1985, Kansas Senator Nancy Kassebaum sponsored an identical bill in the Senate, which also went nowhere. See S. 970, 131st Cong., 131 CONG. REC. 8570 (1985). This was apparently standard practice for Representative Jacobs, known for his sometimes "quixotic" legislative efforts. See Peter Grier, *Bills That Bring a Little Levity—And a Pointed Message—To Capitol Hill*, CHRISTIAN SCI. MONITOR, Mar. 21, 1983, at 5.

111. See Veronica Suchodolski, *At Barnard, U.S. Treasurer Rosie Rios Says Woman on \$10 May Be Announced in the Near Future*, COLUM. DAILY SPECTATOR (Dec. 1, 2015), <http://columbiaspectator.com/news/2015/12/01/barnard-us-treasurer-rosie-rios-says-woman-10-may-be-announced-near-future>.

112. *Id.*; see also Ruth Anne Robbins & Genevieve Tung, *95 Years of Waiting for a Woman on Paper Currency*, WOMEN YOU SHOULD KNOW BLOG (Jan. 28, 2016) <http://www.womenyoushouldknow.net/95-years-of-waiting-for-a-woman-on-paper-currency> (discussing the history and showing letters in the National Archives asking for women to be placed on the money).

to undermine Treasury's own authority. As Lauer has pointed out, this is significant.¹¹³ "The astonishing absence of historical documentation surrounding the selection of nationalist imagery on U.S. currency makes it difficult to claim that it is the result of systematic, purposeful decision-making on the part of the state."¹¹⁴ And, because Treasury Secretary Lew's 2016 announcement included no circulation date but only a design unveiling date of 2020,¹¹⁵ there is plenty of time for its plans to change. It is incumbent on outsiders to observe vigilantly, lest Treasury forget again.

3.5 *Events Leading up to the 2016 Announcement*

In the summer of 2014, a nine-year-old girl wrote to President Obama asking him to consider placing a woman on money.¹¹⁶ She did not hear back for months until receiving an invitation to come to the White House in the spring of 2015.¹¹⁷ By then, the organization Women On 20s had already launched its online campaign with the specific goal to "compel historic change by convincing President Obama that now is the time to dedicate the \$20 exclusively to women."¹¹⁸

The Women On 20s campaign took a thoughtful approach towards selecting just which woman should appear on the \$20 bill. The founders began by considering a group of sixty accomplished American women.¹¹⁹ Each "candidate" was appraised for both the impact that she had on society and the level of difficulty that she had faced in pursuing her goals.¹²⁰ After this internal winnowing, they sent a list of their top thirty candidates to a group of approximately one hundred advisors—including many women's history experts—who judged the candidates

113. Lauer, *supra* note 13, at 126.

114. *Id.*

115. Lew, *supra* note 2.

116. Sofia was in third grade in Massachusetts at the time she wrote the letter. Charlotte Alter, *Exclusive: Read a 9-Year Old's Letter to Obama About Putting a Woman on U.S. Currency—And His Response*, TIME (Mar. 31, 2015), <http://time.com/3765227/woman-us-currency-obama-letter>. President Obama mentioned her letter in a speech soon thereafter, remarking that he thought it "was a pretty good idea." Remarks in Kansas City, MO, DAILY COMP. PRES. DOC. 2 (July 30, 2014). She later became a junior ambassador of the Women On 20s organization. *Our Team*, WOMEN ON 20S, http://www.womenon20s.org/our_team (last visited Nov. 20, 2016).

117. Alter, *supra* note 116.

118. Women On 20s was incorporated in January of 2014, before Sofia wrote to President Obama. Telephone discussion with Barbara Ortiz Howard and Susan Ades Stone, Founder and Exec. Dir. of Women On 20s, (Apr. 26, 2016).

119. *The Process*, WOMEN ON 20S, http://www.womenon20s.org/the_process (last visited Nov. 20, 2016).

120. *Id.*

based on the same criteria.¹²¹ A final list of fifteen candidates was then presented to the public for a vote.¹²²

The campaign ran for ten weeks, from March 1 to May 10, 2015, using a two-tiered, online voting system.¹²³ Back stories for each candidate appeared on the website, providing viewers an opportunity to learn more about American history.¹²⁴ The first “round” of voting asked the public to choose three women from the pool of fifteen candidates.¹²⁵ In the second round, a single winner was chosen from among four finalists.¹²⁶ Over 600,000 people voted in total.¹²⁷ The results were announced on Mother’s Day: Harriet Tubman was the winner.¹²⁸ The organizers presented a petition to President Obama and the Treasury Department on May 12, 2015.¹²⁹

This campaign was so public and received such significant media attention¹³⁰ that Treasury could not help but take notice. Secretary Lew made an announcement a month after the Women On 20s campaign ended, promising to put a woman’s portrait not on the \$20 bill but on the \$10 bill.¹³¹ The new bill would be part of a larger reimagining of all currency, working with a theme of “democracy.”¹³² Lew referred to the Women On 20s campaign in passing, thanking those involved for “your passion and your citizenship. Your campaign is exactly what democracy is about—making your voice heard.”¹³³

During the summer and fall of 2015, Secretary Lew and Treasurer Rios both held town-hall-style meetings—largely with groups of college

121. *Id.*

122. *Id.*

123. *Id.*

124. *Primary Candidates*, WOMEN ON 20S, http://www.womenon20s.org/candidates_primary (last visited Nov. 20, 2016).

125. *Id.*

126. *Results*, WOMEN ON 20S, <http://www.womenon20s.org/results> (last visited Nov. 20, 2016) (the fourth finalist was added by Women On 20s in response to public sentiment that a Native American should appear in the final round of voting).

127. *Id.*

128. *Id.*

129. *The Campaign*, WOMEN ON 20S, <http://www.womenon20s.org/campaign> (last visited Nov. 20, 2016).

130. See, e.g., Charlotte Alter, *Harriet Tubman Wins Poll for Woman on \$20 Bill*, TIME (May 12, 2015), <http://time.com/3856138/harriet-tubman-20-bill/>.

131. Jacob J. Lew, Remarks at the National Archives (June 18, 2015) [hereinafter Lew, Remarks at the National Archives], (transcript available at <https://www.treasury.gov/press-center/press-releases/Pages/jl0082.aspx>).

132. *Id.* (“The next series of Federal Reserve notes will revolve around the theme of democracy. Images that capture this theme will be featured on the new 10 dollar note and future Federal Reserve notes.”).

133. *Id.*

students—on multiple occasions. Most of these gatherings were open to the press.¹³⁴ Over the same period, Lew and Rios also held meetings with distinguished history scholars, all of which were closed to the press and the public.¹³⁵ Treasury has been reluctant to share information about these conversations; our Freedom of Information Act request for the notes or minutes of one such meeting has been pending for over a year.¹³⁶

Treasury also began promoting a hashtag on Twitter, #thenew10, to satisfy those Americans who wanted a say on the new design.¹³⁷ As the Treasurer told the *Indianapolis Star*: “I look at [Twitter] obsessively Anyone who gets an email from me at 2 o’clock in the morning knows I’m on that site all the time.”¹³⁸ Treasury announced its plans to collect and selectively republish social media posts using Treasury-generated hashtags or other “social media message identifiers,” as well as submissions to its own website.¹³⁹ The announcement did not mention the technical specifics behind the collection, although it did note that the collection would include the personal identifying information of individuals making the affected

134. See, e.g., *Daily Treasury Guidance for Friday, July 10, 2015*, U.S. DEP’T. OF TREASURY (July 10, 2015), <https://www.treasury.gov/press-center/daily-guidance/Pages/07102015.aspx> (Lew meeting with NYU students); *Making Women Visible: Smith Hosts Visit from U.S. Treasurer for a New Look for \$10 Bill*, GREYCOURT GATE (Aug. 21, 2015), <https://www.smith.edu/news/smith-hosts-visit-from-u-s-treasurer/> (Rios meeting at Smith College); *Daily Treasury Guidance for Wednesday, October 14, 2015*, U.S. DEP’T. OF TREASURY (Oct. 14, 2015), <https://www.treasury.gov/press-center/daily-guidance/Pages/10142015.aspx> (Lew meeting at University of Maryland); Sarah de Crescenzo, *Who Do You Want to See on the New \$10 Bill?*, ORANGE CO. REG., <http://www.ocregister.com/articles/bill-689850-rios-treasury.html> (last updated Nov. 4, 2015) (Rios at U.C. Irvine); *Daily Treasury Guidance for Monday, November 23, 2015*, U.S. DEP’T. OF TREASURY (Nov. 23, 2015), <https://www.treasury.gov/press-center/daily-guidance/Pages/11232015.aspx> (Lew meeting at Northern Virginia Community College); Suchodolski, *supra* note 111 (Rios meeting at Barnard College).

135. See, e.g., *Daily Treasury Guidance for Thursday, July 30, 2015*, U.S. DEP’T. OF TREASURY (July 30, 2015), <https://www.treasury.gov/press-center/daily-guidance/Pages/07302015.aspx> (Lew meeting with Presidential Historian Doris Kearns Goodwin); *Daily Treasury Guidance for Wednesday, August 5, 2015*, U.S. DEP’T. OF TREASURY (Aug. 5, 2015), <https://www.treasury.gov/press-center/daily-guidance/Pages/08052015.aspx> (Lew meeting with academics and historians at the National Museum of American History); *Daily Treasury Guidance for Friday, Oct. 23, 2015*, U.S. DEP’T. OF TREASURY (Oct. 23, 2015), <https://www.treasury.gov/press-center/daily-guidance/Pages/10232015.aspx> (Rios meeting with academics from the Radcliffe Institute for Advanced Study).

136. This request was placed on November 30, 2015.

137. Lew, Remarks at the National Archives, *supra* note 131.

138. Gregory Korte, *Woman on \$10 Will Launch Currency Overhaul*, INDYSTAR (Aug. 20, 2015), <http://www.indystar.com/story/money/2015/08/20/treasury-secretary-asks-woman-10-launch-currency-overhaul/32078911/>.

139. 80 Fed. Reg. 36,407, 36,408 (June 24, 2015).

posts.¹⁴⁰ The information would potentially be made available to private contractors, Congress, or other agencies.¹⁴¹ The total number of tweets, posts, and emails that Treasury ultimately collected has not been made public, nor has there been any additional information as to what method, if any, was used to categorize or preserve the messages received.

Many women were disappointed to have asked for a place on the \$20 and be offered the \$10, a bill of lesser value and smaller circulation.¹⁴² They were not alone: admirers of Alexander Hamilton, including the former Federal Reserve Board of Governors Chairman, Ben Bernanke, stepped forward to protest the displacement of his portrait from the \$10 note.¹⁴³ The *Wall Street Journal* editorial board analogized Lew to Aaron Burr, the man who assassinated Hamilton in 1804.¹⁴⁴ A few weeks later, the musical *Hamilton*, starring Lin-Manuel Miranda, opened on Broadway to overwhelming acclaim.¹⁴⁵ The idea of displacing Hamilton from the \$10 note became even less popular.

In December 2015, Lew indicated that he would delay his decision due to the unexpectedly large amount of public interest in the issue.¹⁴⁶ There were no further college visits or town-hall meetings. Lew did, however, meet privately with Lin-Manuel Miranda, ostensibly to talk “about the enduring mark Alexander Hamilton left on our nation’s

140. *Id.*

141. *Id.*

142. See, e.g., Jack Linshi, *Hillary Clinton: A Woman Shouldn't Have to Share the \$10 Bill*, TIME (July 7, 2015), <http://time.com/3948872/hillary-clinton-woman-bill> (“That sounds pretty second class to me.”).

143. See Ben S. Bernanke, *Say It Ain't So, Jack*, BROOKINGS: BEN BERNANKE'S BLOG (June 22, 2015, 11:15 AM), <http://www.brookings.edu/blogs/ben-bernanke/posts/2015/06/22-jack-lew-ten-dollar-bill> (“I must admit I was appalled to hear of Treasury Secretary Jack Lew's decision last week to demote Alexander Hamilton from his featured position on the ten dollar bill.”).

144. See Richard Brookhiser, Opinion, *First Aaron Burr, Now Jack Lew*, WALL ST. J., June 20, 2015, at A11.

145. See Suzy Evans, *'Hamilton' Opens on Broadway with the Roots, Fireworks & Famous Faces*, BILLBOARD (Aug. 7, 2015), <http://www.billboard.com/articles/news/6656692/hamilton-broadway-opening-night-the-roots>. *Hamilton* went on to win the 2016 Pulitzer Prize for Drama. *The 2016 Pulitzer Prize Winner in Drama*, THE PULITZER PRIZES (Sept. 8, 2016), <http://www.pulitzer.org/winners/lin-manuel-miranda>. Jack Lew loved the show. See Annie Lowrey, *Treasury Secretary Jack Lew Loved Hamilton*, NEW YORK: DAILY INTELLIGENCER (Aug. 27, 2015, 4:28 PM), <http://nymag.com/daily/intelligencer/2015/08/treasury-secretary-jack-lew-loved-hamilton.html>.

146. Nick Timiraos, *Treasury Will Delay Announcement on \$10 Bill Redesign to 2016*, WALL ST. J.: REAL TIME ECONOMICS (Dec. 11, 2015, 5:56 PM), <http://blogs.wsj.com/economics/2015/12/11/treasury-will-delay-announcement-on-10-bill-redesign-to-2016>.

history.”¹⁴⁷ As Miranda put it in a subsequent message to his Twitter followers, “I talked to @USTreasury about this on Monday. Sec. Lew told me ‘you’re going to be very happy.’ #wegetthejobdone.”¹⁴⁸ Miranda’s comments renewed public interest in the issue.¹⁴⁹ The leaders of Women On 20s, who had never had a meeting with Lew, continued applying pressure on Treasury through social media and published an editorial in the *New York Times*.¹⁵⁰

In April 2016, Treasury abruptly took down the website it had created to promote #thenew10. Its web address automatically redirected to a new website called “Modern Money,” which introduced Treasury’s new plans for the \$20, \$10, and \$5 bills. Lew also released his online open letter explaining his decision.¹⁵¹ He thanked Americans for sending “more than a million responses” to his original announcement that a woman would be honored on the currency.¹⁵² He attributed the decision to honor Harriet Tubman on the \$20 to “thousands of responses we received from Americans young and old.”¹⁵³ He did not mention the Women On 20s campaign, though it seems improbable that Treasury was unaware of their targeted efforts—and on April 20, 2016, several major national news organizations interviewed Women On 20s as part of the news story announcing the changes to the currency.¹⁵⁴ Susan Ades Stone, Women On 20s’ Executive Director and strategist, echoed the happiness others were feeling: this was a welcome change to the previous announcements that only the \$10 would feature a woman.¹⁵⁵

147. Michael Paulson, *Hamilton May Stay on the \$10 Bill, Thanks to Help from Broadway*, N.Y. TIMES, (Mar. 16, 2016), http://www.nytimes.com/2016/03/17/theater/hamilton-may-stay-on-the-10-bill-thanks-to-help-from-broadway.html?_r=0.

148. *Id.* (citing Lin-Manuel Miranda (@Lin_Manuel), TWITTER (Mar. 16, 2016, 9:07 AM), https://twitter.com/Lin_Manuel/status/710105107078189057?ref_src=twsrc^tfw).

149. *E.g.*, Christina Cauterucci, *Thanks, Hamilton Fans: You Might Have Just Cost Us a Woman on the \$10 Bill*, SLATE: XX FACTOR: WHAT WOMEN REALLY THINK (Aug. 13, 2016, 5:39 PM), http://www.slate.com/blogs/xx_factor/2016/04/13/thanks_hamilton_fans_you_might_have_just_cost_us_a_woman_on_the_10_bill.html.

150. *See* Women On 20s, FACEBOOK (Aug. 16, 2016), <https://www.facebook.com/WomenOn20s/posts/1699613076977452> (“[It’s still possible to snatch victory from the jaws of defeat!!]”); Susan Ades Stone & Barbara Ortiz Howard, *A Woman’s Shot at the \$20*, N.Y. TIMES (March 17, 2016), http://www.nytimes.com/2016/03/18/opinion/a-womans-shot-at-the-20.html?_r=0.

151. *See* Lew, *supra* note 2.

152. *Id.*

153. *Id.*

154. *See, e.g.*, Ahiza Garcia, *Harriet Tubman’s Move to the \$20 Has Fans Rejoicing*, CNN MONEY (Apr. 20, 2016), <http://money.cnn.com/2016/04/20/news/economy/harriet-tubman-20-bill-reaction> (interviewing the Executive Director of Women On 20s, Susan Ades Stone, beginning at minute 01:30 of the broadcast).

155. *Id.* at minute 04:52.

3.6 *Moving Toward the Next Time*

Although we applaud the final result, Treasury's process created confusion, excluded stakeholders from the true discussions, and resulted in surprise endings. All of this could have been avoided, and should be avoided in the future. Dollar bills are not the only federally produced goods combining functional and semiotic attributes. Naval vessels, stamps, and coins are freighted with representational significance. But the story of how the Treasury Secretary has exercised such sweeping authority over currency design has unfolded in a way unmatched by any other administrative domain.¹⁵⁶

Today, the decision to honor a place, person, or historical event most often reflects the vision and judgment of many individuals and groups, including input by laypeople. And, not coincidentally, these honors have been bestowed on a more diverse array of figures than our paper bills. Each system offers lessons for a better series of currency.

The next section explains other federally-named, transitory objects that combine functionality with symbolism. These are naval vessels, stamps, and coins. Because of the obvious crossovers with currency, the history of the process used for coins receives the most attention in its section.

4.0 **Other Governmental Methods of Selecting Portraits, Images, and Names Offer Guidance for a New System**

4.1 *Naval Vessels*

The Secretary of the Navy has traditionally chosen and announced the names of Navy ships, originally in accordance with the explicit

156. The fraught relationship between specie and paper currency within American history has been well documented and is beyond the scope of this Article. Let it suffice to say that from the earliest days of the republic, "constitutional money" (meaning coinage) had competition from private and state-chartered institutions, as well as more dubious sources. As the nation grew, promissory notes from privately-owned state-chartered banks, commonly called banknotes, gradually became an important medium of exchange. See Ali Khan, *The Evolution of Money: A Story of Constitutional Nullification*, 67 U. CIN. L. REV. 393, 408 (1999). They offered convenience and flexibility, and sidestepped the difficulties created by the fluctuating values of gold and silver as bullion and at the time of coinage. *Id.* at 408–10. State banknotes began to circulate more commonly and could be issued in higher denominations. *Id.* at 412. In 1837, the Supreme Court upheld the constitutionality of banknotes issued by a Kentucky state bank, largely on the grounds that their circulation was too widespread and crucial to the functioning of the American economy to be declared unconstitutional. *Briscoe v. Kentucky*, 36 U.S. 257, 326–27 (1837). The Court's opinion was read by Justice McLean, a political ally of President Andrew Jackson. *Id.* at 311.

direction of Congress and today arguably with implicit authority that would permit the Secretary of the Navy as much or more discretion as the Secretary of the Treasury.¹⁵⁷ Yet, with nudging from Congress, even an organization as closed-off as the Navy has accepted the need for some openness concerning its symbolic decision-making.

“Congress has long maintained an interest in how Navy ships are named, and has influenced the naming of certain Navy ships.”¹⁵⁸ Naming rules and conventions have developed over time for each class of vessels.¹⁵⁹ In response to a perceived breakdown in those rules,¹⁶⁰ the Navy submitted a report to Congress in 2012 explaining its practices.¹⁶¹ The names are personally decided by the Secretary of the Navy, who relies on resources including research gathered by the Naval History and Heritage Command as well as suggestions submitted by service members, veterans, and the public.¹⁶² For example, a letter-writing campaign by elementary school students in New Hampshire was instrumental in the decision to name a ship after the state.¹⁶³ In several instances Congress has also introduced legislation or enacted legislation to name a ship, or otherwise provided the Secretary of the Navy with a “sense of Congress” concerning a ship naming.¹⁶⁴

The system in place allows a controlled process for naming naval ships and a process for interested parties to share input—while also avoiding the potential for awkward public relations stories that may arise from unrestrained popular control. Consider a cautionary counter-example: in early 2016, the UK Natural Environment Research Council called for public input via Twitter to help choose a name for its new state-of-the-art polar research vessel. The name “Boaty McBoatface”

157. RONALD O’ROURKE, CONG. RESEARCH SERV., RS22478, NAVY SHIP NAMES: BACKGROUND FOR CONGRESS 1 (NOV. 9, 2015) [hereinafter O’ROURKE, Nov. 9, 2015 Report]. Current Federal Law (10 U.S.C. § 7292 (2012)) arguably gives implicit authority of the Secretary of the Navy to name ships, “given its location in subtitle C of Title 10, which covers the Navy and Marine Corps.” *Id.*

158. *Id.* at i.

159. *Id.* at 3.

160. See RONALD O’ROURKE, CONG. RESEARCH SERV., RS 22478, NAVY SHIP NAMES: BACKGROUND FOR CONGRESS i (June 15, 2016).

161. See DEPT. OF THE NAVY, A REPORT ON POLICIES AND PRACTICES OF THE U.S. NAVY FOR NAMING THE VESSELS OF THE NAVY iii (2012), <http://www.dtic.mil/dtic/tr/fulltext/u2/a569699.pdf> [hereinafter, NAVY REPORT]. This report was transmitted to Congress on July 13, 2012.

162. See *id.* at 3.

163. O’ROURKE, Nov. 9, 2015 Report, *supra* note 157, at 13.

164. *Id.* at 13–17 (discussing and then listing proposed and enacted legislation).

began trending very quickly,¹⁶⁵ and soon won the poll.¹⁶⁶ This left the chief executive of the council, who had the final say, in the unpopular position of having to choose between public goodwill and the scientific gravitas desired by the United Kingdom's science ministry.¹⁶⁷ The name was ultimately changed, but not before the exchange became a known worldwide as a "monument to ministerial folly."¹⁶⁸

4.2 Stamps

Stamp designs are developed by the Citizens' Stamp Advisory Committee (CSAC), a task which includes coordinating, receiving, processing, and responding to an average of 50,000 suggestions from the public each year.¹⁶⁹ The earliest iteration of the CSAC was established in 1957 by order of the Postmaster General.¹⁷⁰ Members are appointed by the Postmaster General, meet quarterly, and consider the needs of customers as well as stamp-collecting enthusiasts.¹⁷¹ Members are selected based on their knowledge of philately, history, science and technology, art, education, sports, and other subjects of public interest.¹⁷² The U.S. Postal Service website also assures visitors that it

165. See Laura Wagner, *Meet the U.K.'s Cutting-Edge Research Vessel... Boaty McBoatface?*, NPR (Mar. 21, 2016), <http://www.npr.org/sections/thetwo-way/2016/03/21/471299842/meet-the-u-k-s-cutting-edge-research-vessel-boaty-mcboatface>; Rebecca Flood, *Boaty McBoatface Leads Online Vote to Name £200m Research Vessel*, INDEP. (Mar. 23, 2016), <http://www.independent.co.uk/news/boaty-mcboatface-could-be-the-name-of-200m-research-vessel-after-public-vote-a6942551.html>.

166. *Boaty McBoatface Wins Poll for Public Naming Vessel*, BBC NEWS (Apr. 20, 2016), <http://www.bbc.com/news/uk-politics-36092807>.

167. Jessica Elgot, *Boaty McBoatface May Not Be Name of New Polar Research Vessel*, THE GUARDIAN (Apr. 18, 2016), <http://www.theguardian.com/environment/2016/apr/18/boaty-mcboatface-may-not-be-name-of-new-polar-research-vessel>.

168. *Boaty McBoatface Wins Poll for Public Naming Vessel*, BBC NEWS (Apr. 20, 2016), <http://www.bbc.com/news/uk-politics-36092807>; see Stuart Heritage, *Boaty McBoatface: Tyrants Have Crushed the People's Will*, THE GUARDIAN (Apr. 19, 2016), <http://www.theguardian.com/commentisfree/2016/apr/19/boaty-mcboatface-tyrants-have-crushed-the-peoples-will>. The boat was eventually named the Royal Research Ship Sir David Attenborough. Bill Chappell, *Boaty by Another Name: 'Sir David Attenborough' Is Chosen for British Research Ship*, NPR (May 6, 2016), <http://www.npr.org/sections/thetwo-way/2016/05/06/477010650/boaty-by-another-name-sir-david-attenborough-is-chosen-for-british-research-ship>.

169. See U.S. POSTAL SERV., ADMINISTRATIVE SUPPORT MANUAL, ISSUE 13, at 270 (1999).

170. Post Office Department Stamp Advisory Committee, 22 Fed. Reg. 1996 (Mar. 21, 1957).

171. See *Citizens' Stamp Advisory Committee*, U.S. POSTAL SERV., <https://about.usps.com/who-we-are/csac/welcome.htm> (last updated 2015).

172. *Citizens' Stamp Advisory Comm., Background*, U.S. POSTAL SERV., <https://about.usps.com/who-we-are/csac/background.htm> (last updated 2015).

welcomes written suggestions for stamp subjects “that help portray the diversity of the American experience for a worldwide audience.”¹⁷³ The website provides careful instructions on how to send suggestions to the Committee, including the criteria it applies to evaluate suggestions.¹⁷⁴ While the CSAC bears the responsibility for appraising and recommending stamp subject matter and designs, the Postmaster General retains final authority.¹⁷⁵ Since 1957, there have been over one hundred stamps depicting historical women and people of color.¹⁷⁶

The decision-making within the CSAC is not transparent, however. The Postal Service is unique among federal agencies in that it strives to perform as a business and its operations are afforded a certain amount of privacy. The CSAC has always held its meetings out of public view,

173. Citizens’ Stamp Advisory Comm., *The Stamp Selection Process*, U.S. POSTAL SERV., <https://about.usps.com/who-we-are/csac/process.htm> (last updated 2015).

174. *Id.*

175. *E.g.*, KEVIN R. KOSAR, CONG. RESEARCH SERV., RS20221, *COMMEMORATIVE POSTAGE STAMPS: HISTORY, SELECTION CRITERIA, AND REVENUE POTENTIAL* (Jan. 29, 2007) (describing a singular instance in which the Postmaster General rejected a CSAC proposal).

176. *E.g.*, H. E. HARRIS & CO., 2016 US/BNA POSTAGE STAMP CATALOG 41–178 (2016) (depicting Lucy Stone, W.C. Handy, Emily Dickinson, Willa Cather, Paul Laurence Dunbar, Susan B. Anthony, Martin Luther King, Jr., Benjamin Banneker, Francis Perkins, Dolly Madison, Emily Bissell, Hellen Keller, Edith Wharton, Dorothea Dix, Pearl Buck, Crazy Horse, Rachel Carson, Sequoyah, Lillian M. Gilbreth, Whitney Moore Young, Edna St. Vincent Millay, Jackie Robinson, Dr. Mary Walker, Scott Joplin, Carter G. Woodson, Mary McLeod Bethune, Abigail Adams, Margaret Mitchell, Julia Ward Howe, Virginia Apgar, Mary Cassatt, Sitting Bull, Mary Lyon, Sojourner Truth, Jean Baptiste Pointe du Sable, James Weldon Johnson, A. Philip Randolph, Ida B. Wells, Marianne Moore, Jan E. Matzeliger, Fanny Brice, W.E.B. Du Bois, Dorothy Parker, Clyde McPhatter, Otis Redding, Dinah Washington, Percy Lavon Julian, Grace Kelly, Patsy Cline, Joe Louis, Clara Bow, Theda Bara, Dr. Allison Davis, Ethel Waters, Nat ‘King’ Cole, Ethel Merman, Bessie Smith, Muddy Waters, Billie Holiday, Robert Johnson, ‘Ma’ Rainey, Ruth Benedict, Dr. Alice Hamilton, Bessie Coleman, Marilyn Monroe, Alice Paul, John Coltrane, Thelonious Monk, Louis Armstrong, Ernest E. Just, Jacqueline Cochran, Dorothy Fields, Count Basie, Benjamin O. Davis, Madam C.J. Walker, Mahalia Jackson, Josh White, Malcolm X, Ayn Rand, Patricia Roberts Harris, Margaret Chase Smith, Edna Ferber, Wilma Rudolph, Harriet Beecher Stowe, Roy Wilkins, Lucille Ball, Langston Hughes, Nellie Bly, Ethel L. Payne, Ida M. Tarbell, Marguerite Higgins, Thurgood Marshall, Zora Neal Hurston, Audrey Hepburn, Cesar E. Chavez, Paul Robeson, Martha Graham, Agnes de Mille, Alvin Ailey, Barbara McClintock, Arthur Ashe, Greta Garbo, Sugar Ray Robinson, Katherine Anne Porter, Judy Garland, Ella Fitzgerald, Gerty Cori, Martha Gellhorn, Bette Davis, Richard Wright, Anna Julia Cooper, Doris Miller, Kate Smith, Oscar Micheaux, Rube Foster, Katherine Hepburn, Helen Hayes, Maria Goeppert Mayer, Barbara Jordan, Romare Bearden, John J. Johnson, Sylvia Plath, Elizabeth Bishop, Gwendolyn Brooks, Miles Davis, Lady Bird Johnson, Rosa Parks, Lydia Mendoza, Ray Charles, Shirley Chisholm, Jimi Hendrix, C. Alfred ‘Chief’ Anderson, Edna Lewis, Julia Child, Joyce Chen, Janis Joplin, Robert Robinson Taylor, Wilt Chamberlain, Maya Angelou, Harriet Tubman, Eleanor Roosevelt, and Marian Anderson on stamps).

arguing that the members of its advisory boards would be reluctant to fully express their views if they knew their remarks would become public records and cause potential future embarrassment.¹⁷⁷

Because it has not been held subject to the Federal Advisory Committee Act, it is not required to hold open meetings or release transcripts.¹⁷⁸ Yet by seeking the informed views of CSAC members and distributing the heavy burden of considering and filtering public input, the Postmaster General has, in practical terms, limited the discretion of its office for the benefit of all.

4.3 Coins

Most Americans see and use our coins and bills interchangeably. If asked to name differences, we would point to their material, weight, and shape. Very few of us realize that coins and bills are produced by two different entities within Treasury: the U.S. Mint and the Bureau of Engraving and Printing, managed by two separate directors and subject to two separate legal frameworks.

The current system for choosing iconography on coins provides the closest workable model for how Treasury should manage the aesthetic and iconography facets of currency. It combines congressional oversight and a meaningful role for citizens' input, while still vesting decision-making authority within the agency. The road leading to this process has been neither an easy nor a straightforward one; rather, it demonstrates some of the same issues frustrating Treasury today in currency design.

4.3.1 The Early Legal History of American Numismatic Iconography

Congress has always played an active role in coin design and has done so since the 1790s. The Constitution ascribes Congress the power

177. See, e.g., WILLIAM L. DAWSON, AMENDING THE ADMINISTRATIVE EXPENSES ACT OF 1946, AND FOR OTHER PURPOSES, H.R. REP. NO. 85-576, at 17-18 (1957) (reprinting letter of Maurice H. Stans, Deputy Postmaster General to the House Committee on Government Operations).

178. When the U.S. Postal Service was reconfigured by the Postal Reorganization Act in 1970, it was expressly made subject to the Freedom of Information Act and the Government in the Sunshine Act, but exempted from any federal law "dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds." Pub. L. No. 91-375, 84 Stat. 719, 725 (1970) (codified as amended at 39 U.S.C. § 410(a) (2012)). Accordingly, the Postal Service has considered itself exempt from the later-enacted Federal Advisory Committee Act (5 U.S.C.A. 2), a view tacitly accepted by Congress. See *Am. Postal Workers Union v. U.S. Postal Serv.*, 541 F. Supp. 2d 95, 98 (D.D.C. 2008).

to coin money, to regulate its value, and to punish counterfeiting.¹⁷⁹ During the debates on the first Mint Act in 1792, legislators spiritedly debated the best way to represent the new country through its coinage. An early version of the Mint bill provided for coins to bear “an impression or representation of the head of the President of the United States for the time being” on the obverse.¹⁸⁰ Opponents argued that the depiction of a current national leader was akin to the practice of Imperial Rome and the monarchies of Europe, and would “be viewed by the world as a stamp of Royalty on our coins [that] would wound the feelings of many friends, and gratify our enemies.”¹⁸¹ Moreover, the President’s head was an imperfect representation of the new republic: “There is to be but one head; but does not our Government consist of three parts?”¹⁸² As discussed in Part 1.0, an allegorical Liberty won the day and was depicted on U.S. coinage for over a century.¹⁸³

During the late 1880s, Treasury officials urged Congress to give the Mint more latitude in approving changes to the “devices” (designs) on coins. Their motivations were largely aesthetic; in the words of the Director of the Mint, when “[v]iewed as works, not of mechanical but of fine art[,] . . . the most that can be said of some of our coins is that they might be worse.”¹⁸⁴ The change was sold to Congress as a pragmatic

179. U.S. CONST. art. I, §8. Ali Khan has argued that the Constitution’s monetary clauses have been largely nullified. See generally KHAN, *supra* note 156.

180. 3 ANNALS OF CONG. 71, § 10 (1792) (reprinting Mint bill). The reverse of each gold or silver coin was to feature an eagle and the inscription, *The United States of America*; copper coins would bear an inscription showing the denomination (cent, half-cent, etc.). *Id.* While the bill was under initial consideration in the Senate, that chamber considered and rejected an amendment that would require copper coins to feature on their reverse “a representation of America, in the usual female figure of Justice holding balanced scales, with this inscription, ‘To all their due.’” 3 ANNALS OF CONG. 57, § 2 (1792).

181. 3 ANNALS OF CONG. 484 (1792). While the gesture might be intended as an honor for “the great man now their President, they may have no great reason to be pleased with some of his successors.” *Id.* Moreover, it would be no honor to Washington to grant him the same honor previously done to “persons of no better character than a Nero, a Caligula, or a Heliogabalus . . .” *Id.* at 488.

182. *Id.*

183. See *infra* Part 1.0. “Liberty” had been depicted on several types of coins struck during the colonial period, and was likely a familiar archetype to many members of the second Congress. See VERMEULE, *supra* note 18, at 9 (“Thus, it would appear Liberty had been an integral part of American numismatic art from the earliest struggles of the thirteen independent colonies and the first union of sovereign states.”). For a more recent discussion of the Liberty motif, see *infra* Section 4.3.2.

184. H.R. REP. NO. 51-406, at 2 (1890) (reporting recommendations of E.O. Leech, Director of the Mint). This was unacceptable as a matter of national self-representation.

It is dictated by the sound maxim of political wisdom that whatever issues from the nation, like whatever is used for the purposes of the nation, should inspire the people with respect for the nation, and serve, as far as is consistent with the

way to make coinage upgrades more flexible. Congress understood that the proposal did not suggest an imprimatur of congressional approval for radical change: "[I]f a coin has an eagle upon it, that eagle must remain; but under this bill there might be a rearrangement of the feathers of the bird."¹⁸⁵ The resulting legislation empowered Treasury to prepare and adopt new designs for individual coins no more than once every twenty-five years.¹⁸⁶

While this act gave significantly more latitude to Treasury to modify and modernize coin designs, it has not stopped Congress from interceding to mandate the creation of new coins or the use of new portraits.¹⁸⁷ However, it did lay the foundation for the adoption of wholly new coin designs in the twentieth century, when the new paradigm of Presidential portraits on American coinage was established.

This era of greater dynamism was ushered in by President Theodore Roosevelt. Roosevelt commissioned the redesign of several coins, including the Lincoln cent first circulated in 1909.¹⁸⁸ Roosevelt also took it upon himself to write to Leslie Mortimer Shaw, the Secretary of the Treasury at the time, telling him that he thought the state of the coinage was "artistically of atrocious hideousness."¹⁸⁹ In 1921, President Warren G. Harding issued an executive order mandating that "essential matters relating to the design of medals, insignia and coins, produced by the executive departments," should be submitted to the Commission on Fine Arts for advice on their aesthetic merit before being approved by the relevant executive officer.¹⁹⁰

utilitarian object primarily intended, as an agent of political and artistic [e]ducation.

Id.

185. 21 CONG. REC. 1690, 1691 (daily ed. Feb. 2, 1890) (statement of Representative Tracey); *see also* 21 CONG. REC. 10,212, 10,212 (daily ed. Sept. 19, 1890) (statement of Senator Sherman) ("I think there will be no danger of the temple of liberty toppling down or of our financial system being reversed by the passage of this very harmless bill.").

186. Act of Sept. 26, 1890, ch. 944, 26 Stat. 484.

187. *See, e.g.*, Act of Mar. 4, 1931, ch. 505, 46 Stat. 1523 ("An Act To authorize a change in the design of the quarter dollar to commemorate the two hundredth anniversary of the birth of George Washington.").

188. *See* TAXAY, *supra* note 21, at 330-39. *See generally* Homer Saint-Gaudens, *Roosevelt and Our Coin Designs*, 99 CENTURY 721, 721-22 (1920).

189. Mark Van Winkle, *The Sculptor, the President, and the Making of a Classic American Coinage*, in *THE COINAGE OF AUGUSTUS SAINT-GAUDENS* 7, 7 (2006). Hamilton had not been a fan either, remarking when the eagle first appeared on a coin, "The eagle is not a very expressive or apt appellation for the largest gold piece, but nothing better occurs." 2 ANNALS OF CONG. 2083-84 (1792).

190. Executive Order on Advisory Authority of Fine Arts Commission, 21 SUPP. TO THE MESSAGES AND PAPERS OF THE PRESIDENTS 8987 (July 28, 1921).

Coins have not been without their own scandals surrounding female figures. In 1916, an original design competition was held for a new quarter.¹⁹¹ Herman A. MacNeil's design of a standing female Liberty was selected.¹⁹² She held an olive branch and a shield and wore a flowing garment that exposed a breast.¹⁹³ The coin entered circulation that year and the exposed breast created an immediate scandal.¹⁹⁴ MacNeil redesigned the coin without fanfare, and a new "Miss Liberty" quarter appeared the following year, wearing a full suit of armor.¹⁹⁵

Over the following decades, presidential portraits became fixed on the obverse of almost all coins in circulation.¹⁹⁶ Yet many numismatists, including some in the Treasury Department, held a torch for the Liberty motif, such that they preferred to reintroduce the allegorical female figure rather than see a historical woman depicted on a circulating coin. The debate over what ultimately became the Susan B. Anthony dollar pitted Treasury officials against members of Congress, with the former going on the record to offer presumptuous and sexist rationalizations for keeping women off the money.

4.3.2 The Legislative History of the Susan B. Anthony \$1 Coin

In the spring of 1978, the Treasury Department promoted a bill to authorize production of a new \$1 coin.¹⁹⁷ Treasury hoped to persuade Americans to adopt the coin and achieve a significant cost savings for the government.¹⁹⁸ Seizing the moment, progressive legislators introduced bills in both the House and Senate authorizing a \$1 coin

191. See TAXAY, *supra* note 21, at 347. The Washington quarter was not introduced until 1932. See *id.* at 360.

192. See VERMEULE, *supra* note 18, at 139 ("MacNeil's Liberty is presented as the Athena of the Parthenon pediments, a powerful woman striding forward with head and arms conveying a strong sidewise motion.").

193. See DAVID W. LANGE, HISTORY OF THE U.S. MINT AND ITS COINAGE 150 (2005).

194. See VERMEULE, *supra* note 18, at 139.

195. *Id.*

196. *E.g.*, The Washington quarter (1932), the Jefferson nickel (1938), the Roosevelt dime (1945), the Kennedy half dollar (1964), and the Eisenhower dollar coin (1971).

197. H.R. 12,444, 95th Cong., 124 CONG. REC. 12,009 (1978). Congressman Walter E. Fauntroy introduced the bill as the Chairman of the Subcommittee on Historic Preservation and Coinage to the Committee on Banking, Finance and Urban Affairs. *Proposed Smaller One-Dollar Coin: Hearings on H.R. 12444 Before the Subcomm. on Historic Preservation and Coinage of the H. Comm. on Banking, Fin. & Urban Affairs*, 95th Cong. 5 (1978) [hereinafter *Proposed Smaller One-Dollar Coin*].

198. See *Proposed Smaller One-Dollar Coin*, *supra* note 197, at 5 (statement of Bette B. Anderson, Under Secretary of the Treasury).

identical to Treasury's proposal, but featuring the portrait of famed suffragist Susan B. Anthony.¹⁹⁹

In a House committee hearing, an Undersecretary of the Treasury and the Director of the Mint—ironically, both women—jointly presented the Treasury Department's vision of a coin that would depict an allegorical female image, rather than a representation of a woman from American history.²⁰⁰ Treasury favored a "modernized version of the classic Liberty . . . bear[ing] the portrait of an identifiable woman with a face of classic beauty. . . . The female Liberty Head is symbolic of and does honor to all women rather than any particular individual."²⁰¹

In a nod to the competing Susan B. Anthony bills, Mint Director Stella Hackel acknowledged that while "[m]any distinguished American men and women have made substantial contributions to this country" worthy of commemoration, the new coin in question was

intended to circulate widely. Therefore a design consistent with the historical precedents established by the Secretaries of the Treasury and the Congress would be most appropriate.

In our view, expanding the field of design selection beyond historical abstracts or U.S. Presidents *would set an unwise course in coin design*, and invite a controversial debate upon who should be so honored, which would tend to damage the overall success of the proposal.²⁰²

Director Hackel was asked what delays the Mint would incur were it told to redesign the coin, given that it had already prepared a mock-up of a "flowing haired Liberty."²⁰³ She conjectured a six-month delay or more, depending on the nature of any ensuing controversy about the selection of a historical woman to portray.²⁰⁴ Given that each design mockup costs \$10,000, only a Miss Liberty version was presented to the subcommittee.²⁰⁵

199. See Susan B. Anthony Dollar Coin Act, S. 3036, 95th Cong., 124 CONG. REC. 12,406-12,407 (1978) (enacted) (sponsored by Senator William Proxmire); Susan B. Anthony Dollar Coin Act of 1978, H.R. 12,728, 95th Cong., 124 CONG. REC. 13,614 (1978) (sponsored by Representative Mary Rose Oakar).

200. *Proposed Smaller One-Dollar Coin*, *supra* note 197, at 6. The Mint Director at that time was Stella Hackel, and the Under Secretary of the Treasury was Bette B. Anderson. *Id.* at 5.

201. *Proposed Smaller One-Dollar Coin*, *supra* note 197, at 6, 8.

202. *Id.* at 8-9 (emphasis added).

203. *Id.* at 11.

204. *Id.* at 11-12.

205. *Id.* at 15-16.

The director's implicit suggestion that Congress should defer to Treasury did not go over well. Committee member Jim Leach stated he was "deeply disappointed with the administration's testimony," arguing that "[r]ather than hav[ing] a symbolic Liberty head, [he] would much prefer to have represented someone that was a fighter for liberty."²⁰⁶ Representative Leach went on, suggesting the coin might include Susan B. Anthony, Harriet Tubman, or Marian Anderson.²⁰⁷ He professed: "I would like to see a living symbol rather than an abstract. . . . [A]nd I would hope that the subcommittee would also not be deterred by administration efforts in effect to preempt consideration beyond their position."²⁰⁸

A second day of testimony was scheduled to focus on the coin's design, as "that is the issue, oddly enough, upon which seemingly the most concern has been focused, both within the Congress as well as from the citizenry as a whole."²⁰⁹ In the interim, and at the direction of the subcommittee, the Mint compiled a list of suggested designs received from citizens. Topping the list of fifty-five suggestions and 3840 private letters was Susan B. Anthony: 30.2% of the letters from the citizens suggested her name, compared to the relatively small 4.7% of the letters suggesting Miss Liberty.²¹⁰

In light of those numbers, and unappreciative of the Mint Director's testimony during the first day of testimony, Representative Leach called out Treasury's approach to spending \$10,000 on a design of Miss Liberty as both sexist and presumptuous:

Administration witnesses have testified that it is imperative that precedent be followed. Unfortunately, precedent and Presidents have been all male. Unfortunately also, Treasury has attempted to preempt congressional prerogative by going to the expense of designing a new Liberty head and asserting that any other design will result in months of delay before a [new]

206. *Id.* at 15 (statement of Representative Jim Leach, Member, House Committee on Banking, Finance and Urban Affairs).

207. *Id.*

208. *Id.* The committee was also unmoved by the American Numismatic Association and the magazine *Coin World*, both of which supported the Miss Liberty design, and suggested that Susan B. Anthony instead be honored through a commemorative coin series. *Id.* at 33, 44–45, 91.

209. *Id.* at 93.

210. *Id.* at 96–97.

coin can be struck. I am neither convinced by Treasury logic nor sympathetic to Treasury pressure.²¹¹

The congressman had, by this time, introduced yet another dollar coin bill—a “sisters” coin—to depict both Susan B. Anthony and Harriet Tubman.²¹²

Treasury did not fare well during the rest of the day when it came to comments about the coin's design. Another committee member, Representative Mary Rose Oakar, informed the committee that the Congresswoman's Caucus had written to Treasury Secretary G. William Blumenthal two months earlier requesting that Susan B. Anthony appear on the face of the coin, and that the Secretary had never responded.²¹³ When asked to speculate on the Secretary's silence, Representative Oakar replied, “I really do not know. I think that hopefully it is not typical of the way they respond not only to Members of Congress, but female Members of Congress.”²¹⁴

Another congresswoman also argued that fear of controversy or an abundance of worthy figures had never stopped the government from deciding to honor someone in the past: “I can't recall an instance where a male mythical figure was chosen instead of a real American man to be featured on a circulating coin solely to avoid opening up ‘a can of worms,’—Kennedy, Roosevelt, and Eisenhower made it over Uncle Sam, Father Time, and Neptune.”²¹⁵

In a subsequent Senate hearing, Director Hackel walked back Treasury's position, testifying that the design should be the prerogative

211. *Id.* at 99–100.

212. *See* 124 CONG. REC. 15,622 (May 25, 1978) (“I have selected these two individuals—one white, one black—because they were contemporaries who served the cause of women and the Nation in a complementary effort.”); *see also Proposed Smaller One-Dollar Coin*, *supra* note 197, at 101. Leach's proposal opened the door to conversations about representation and the intersection of race and gender. National Organization for Women leader Eleanor Cutri Smeal pointed out, “[W]henever we are to single out females [for recognition], we must have them represent all females. Then, of course, there is no one woman who can quite cut the mustard; then we must have a series or several or two . . . I don't think we should try to do all things with one coin.” *Id.* at 129–30. Representative Oakar similarly suggested that the intent behind the Susan B. Anthony bill was not to foment rivalries, but rather that Anthony and Tubman were both “[i]ndividually, in our history, they are very important women, and that is why they deserve to be honored individually.” *Id.* at 135.

213. *Proposed Smaller One-Dollar Coin*, *supra* note 197, at 110 (statement of Representative Mary Rose Oakar, Member, House Committee on Banking, Finance and Urban Affairs).

214. *Id.* at 112.

215. *Id.* at 115 (remarks of Representative Patricia Schroeder; congresswoman Schroeder also co-sponsored the Susan B. Anthony coin bill).

of Congress.²¹⁶ “As a matter of fact,” she testified, “the Department takes the view that *any decision to commemorate a distinguished American or historical event should originate in Congress rather than the Treasury Department.*”²¹⁷ Hackel also presented an updated tally of correspondence received by the Mint from the public and members of Congress concerning the design of the dollar coin, indicating that Susan B. Anthony had continued to garner the largest share of support.²¹⁸ The Senate Banking Committee also received a petition bearing over one-thousand signatures from the Juneteenth Committee of Houston, Texas, requesting that Harriet Tubman’s portrait be placed on the coin.²¹⁹ Treasury’s plan to use Miss Liberty on the coin went nowhere after that.

In its final report, the Senate Banking Committee formally rejected Treasury’s suggestion “that its recommended return to the traditional female-liberty concept after all these years represented a suitable symbol for more than one-half of the American electorate.”²²⁰ The Susan B. Anthony coin was authorized by Congress shortly thereafter.²²¹ While the coin itself is now largely viewed as a failure, this is attributable to logistical missteps by the Mint and Americans’ entrenched preference for paper dollars over coins.²²²

4.3.3 Creating the Citizens Coinage Advisory Committee

Twenty-five years later, after another conflict between a congressman and the Mint, the time was ripe to settle on a more permanent solution. In 2002, Representative Eric Cantor was dismayed to learn that the Mint had planned temporarily to remove the image of Monticello from the reverse of the nickel in order to commemorate the

216. See *Susan B. Anthony Dollar Coin Act of 1978: Hearing on S. 3036 before the S. Comm. on Banking, Hous., & Urban Affairs*, 95th Cong. 101 (1978) [hereinafter *Susan B. Anthony Dollar Coin Act of 1978 Hearing*] (testimony of Stella Hackel, Director of the U.S. Mint).

217. *Id.* (emphasis added).

218. *Id.* at 98–99. The Mint sent over 4500 acknowledgements of receipt, and received over 120 suggested names. *Id.* at 99–100.

219. *Id.* at 157–91. Within two months of this hearing, Representative Leach withdrew the bill to feature Tubman and Anthony on a single coin “in the final analysis and in the interest of harmony.” 124 CONG. REC. 31,640 (1978).

220. S. REP. NO. 95-1120, at 3 (1978).

221. Susan B. Anthony Dollar Coin Act of 1978, Pub. L. No. 95-447, 92 Stat. 1072 (codified as amended at 31 U.S.C. § 391(c)(1) (2012)).

222. See, e.g., Keeley McCarty, Comment, *Flip the Coin to the Fed: A Comment on the Dysfunctional Relationship Among the Federal Reserve System, Congress, and the United States Mint*, 64 ADMIN. L. REV. 315, 323–26 (2012).

200th anniversary of the Louisiana Purchase and the Louis and Clark expedition.²²³ He was particularly vexed that the plans were “chosen internally without input from the American people or Congress” and were to proceed almost immediately.²²⁴ After months of agitation by Representative Cantor, Congress passed a law that, among other things, created an independent organization, the Citizens Coinage Advisory Committee, to review and recommend coin designs to the Treasury Secretary.²²⁵

The passage of this legislation demonstrated a level of Congressional mistrust of Treasury. Indeed, Representative Cantor told his colleagues that he “believe[d] that the Treasury Secretary needs a second independent opinion on proposals to redesign circulating coinage and on other Mint products, and this committee will provide that opinion.”²²⁶ Membership on the committee is proscribed in detail,²²⁷ and no member may hold any other position in the federal government.²²⁸ Meetings are open to the public, with prior and timely notice published in the Federal Register.²²⁹ This was an intentional departure from the practices of a predecessor committee tasked with reviewing commemorative coins, which operated away from public view.²³⁰ In advocating for the bill, the congressman emphasized that the committee would not be a rubber stamp: “[T]his panel is not intended to merely ratify proposals, but is intended to be able to speak with its own voice.”²³¹

Today the committee is responsible for advising the Treasury Secretary on the themes and designs used on all U.S. circulating, commemorative, and bullion coinage, as well as national medals.

223. 148 CONG. REC. 13,773 (2002) (floor debate in the House); see *Keep Monticello on the Nickel Act*, H.R. 4903, 107th Cong. (2002) (introduced on June 11, 2002). This bill passed in the House but failed to pass during the 107th Congress. See 148 CONG. REC. 13,775 (2002) (passage in the House). Cantor reintroduced the bill that ultimately became law the following year. See 149 CONG. REC. 243 (2003); *American 5-Cent Coin Design Continuity Act of 2003*, H.R. 258, 108th Cong. (2003). From 2001 to 2014, Cantor represented Virginia's 7th Congressional District, which includes Monticello. See *Eric Cantor*, CONGRESS.GOV, <https://www.congress.gov/member/eric-cantor/C001046> (enter “Eric Cantor” in the main search bar).

224. 149 CONG. REC. 4469 (2003).

225. *American 5-Cent Coin Design Continuity Act of 2003*, Pub. L. No. 108-15, 117 Stat. 615 (codified as amended at 31 U.S.C. § 5135).

226. 149 CONG. REC. 4469.

227. 31 U.S.C. § 5135 (b)(1).

228. *Id.* § 5135 (b)(3).

229. *Id.* § 5135 (b)(8).

230. See 149 CONG. REC. 4469.

231. *Id.*

Although the committee's enabling legislation specifically exempted it from the Federal Advisory Committee Act, it nevertheless embraces transparency in a number of ways: its meeting minutes and transcripts are posted online, along with its formal recommendations to the secretary and links to other resources.²³² It has even published a presentation on "[h]ow to make friends and influence the Committee" on its website.²³³

As the preceding examples suggest, currency is far from the only governmental product freighted with honorific or representational significance. But unlike naval vessels, stamps, and coins, currency portraits and designs have been strictly limited in number. Treasury has resisted changing the portraits on its paper money for almost a century. This inertia has made any reimagining of the currency seem, until recently, to fall beyond serious consideration.

This is partially logistical, given the design prerogatives interposed by anti-counterfeiting technology. But technical explanations are not the whole story. In 2001, the then-Director of the Bureau of Engraving and Printing testified in a House committee hearing that the "cost of redesigning currency, exclusive of the security features, is very minimal."²³⁴ The re-engraving costs, amortized over an entire issue of currency, "is in the hundreds-of-a-cent per note."²³⁵ The aesthetic elements found on each bill are essentially neutral from a technical point of view.²³⁶ If it is true, as the Bureau of Engraving and Printing has asserted, that currency benefits from regular technical re-evaluation every seven to ten years,²³⁷ there is no reason that its iconographic elements should not also be revisited.

232. See, e.g., United States Mint Citizens Coinage Advisory Committee Meeting, 80 Fed. Reg. 58,814 (Sept. 30, 2015). See generally, CITIZENS COINAGE ADVISORY COMM., <http://ccac.gov>. (last visited Nov. 20, 2016) (announcing upcoming CCAC meeting with agenda items).

233. See CCAC Special Reports, CITIZENS COINAGE ADVISORY COMM., <http://ccac.gov/aboutUs/SpecialReports.cfm> (last visited Nov. 20, 2016).

234. *Design & Security of Currency: Hearing Before the Subcomm. on Domestic Monetary Policy, Tech., & Econ. Growth of the H. Comm. on Fin. Servs.*, 107th Cong. 17 (2001) (statement of Hon. Thomas A. Ferguson, Director, U.S. Bureau of Engraving and Printing).

235. *Id.*

236. See *id.* at 20 (describing a proposed change to the reverse of certain bills as not "either better or worse as far as the counterfeit deterrent than other types of printing").

237. See *id.* at 14.

5.0 We Need a Citizens Currency Advisory Committee

Now that Treasury has announced such sweeping and progressive changes on three popular denominations, it may seem that the moment to talk about currency design has passed. We believe, however, that this moment is worthy of further contemplation. There are four other denominations of American currency that may be subject to non-technical redesign in the coming decades.²³⁸ Indeed, Secretary Lew has already suggested that Treasury is looking towards “kicking off a whole new generation of currency” with new series of notes exploring the theme of democracy.²³⁹ Moreover, a time may come in the future where elements of the designs proposed in 2016 are themselves ripe for visual updating or other reconsiderations, such as the decision to depict Andrew Jackson on the reverse of the \$20.

As we hope readers have likewise concluded from the reading thus far, Treasury has historically demonstrated an inability to grapple with representational issues in a thoughtful and orderly way. This has led to the erasure of women and people of color on our coins and particularly on our paper money. The progressive changes to the \$5, \$10, and \$20 bills announced in 2016 are laudable, but the path taken to get there nevertheless was deeply flawed. Had there not been grassroots efforts in 2015 and 2016 calling for a change, it is unlikely that Treasury would have reached the same outcome.

Months before his announcement about #thenew10, Secretary Lew had reportedly already settled on using a portrait of Susan B. Anthony—a woman who had already been tested on the \$1 coin—on the \$10 bill.²⁴⁰ As to the internal, political reasons for why this plan did not proceed, we can only speculate. But the “feel good” public campaign Treasury decided to announce instead quickly lost focus. The process was closed to the public during important meetings, and the social-media-based system set up to collect feedback from the public was too diffuse and unwieldy to be plausible. The emphasis on social media put the focus on giving everyone a chance to speak, rather than whether anyone would actually be listening. In demonstrating its lack of

238. A provision of the 2015 budget omnibus barred Treasury from redesigning the \$1 bill. See Consolidated Appropriations Act, 2016, P.L. 114-113, § 117, 129 Stat. 2242, 2431 (2015) (“None of the funds appropriated in this Act or otherwise available to the Department of the Treasury or the Bureau of Engraving and Printing may be used to redesign the \$1 Federal Reserve note.”).

239. Lew, Remarks at the National Archives, *supra* note 131.

240. Nick Timiraos, *Treasury Secretary Lew Planned to Put Susan B. Anthony on the \$10 Bill*, WALL ST. J. (April 19, 2016), <http://www.wsj.com/articles/lew-planned-to-put-susan-b-anthony-on-10-bill-1461083466>.

accountability, Treasury's modern story mirrored that of the 1929 redesign.

There is no reason to think that this confusing and poorly managed process will not repeat itself if—or when—Treasury is prompted to make further iconographic changes. Without structural reform, the department is free to repeat its historical mistakes without any way to learn from them. One of the important takeaways from Women On 20s' campaign is that a well-curated caucus system—one that is reasoned, representative, and knowledgeable about our history—can be an effective way to select an honoree. The ideal process must respect and reflect public sentiment without devolving into chaos or simply masking a foregone conclusion.

The widespread exuberance that greeted Lew's announcement on April 20, 2016 arguably may be interpreted as reflecting many citizens' unexpected delight at being heard by a government agency: overcoming Treasury's resistance to the idea that people wanted changes to the \$20 bill, not the \$10.²⁴¹ Some in Congress were already in the process of trying to respond to such demands. On the day that Treasury announced its dramatic plans, there were at least eight bills and resolutions pending in Congress mandating some kind of representational change to U.S. currency design.²⁴² Some simply directed the Treasury Secretary to place the likeness of Harriet Tubman on future issues of a particular denomination.²⁴³ Others called for formal public input on currency portraits.²⁴⁴ For example, the day after Secretary Lew announced #thenew10 in June of 2015, Senator Jeanne Shaheen introduced a bill requiring the Treasury Secretary to

241. See Gerald R. Miller, *On Being Persuaded: Some Basic Distinctions*, in *THE PERSUASION HANDBOOK: DEVELOPMENTS IN THEORY AND PRACTICE* 3, 6–12 (James Price Dillard & Michael Pfau eds., 2005); see also RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* 30, 35 (2013) (discussing response-changing in legal context and Judge Posner's formula for overcoming resistance (citing RICHARD POSNER, *OVERCOMING LAW* 500–01 (1995))).

242. See Supporting Efforts to Place a Woman on the Currency of the United States, S. Res. 348, 114th Cong. (2016); Put a Woman on the Twenty Act of 2015, H.R. 1910, 114th Cong. (2015); Woman on the Twenty Act, H.R. 2147, 114th Cong. (2015); Harriet Tubman Tribute Act of 2015, H.R. 2610, 114th Cong. (2015); Women on the Twenty Act, S. 925, 114th Cong. (2015); Harriet Tubman Tribute Act of 2015, S. 1508, 114th Cong. (2015); A Bill to Require the Secretary of the Treasury to Convene a Panel of Citizens to Make a Recommendation to the Secretary Regarding the Likeness of a Woman on the Ten Dollar Bill, and for Other Purposes, S. 1613, 114th Cong. (2015); Celebrating the First Woman in Congress Currency Act, S. 1633, 114th Cong. (2015); Harriet Tubman Currency Tribute Act of 2015, S. 1720, 114th Cong. (2015).

243. S. 1720; S. 1508; H.R. 2610.

244. See H.R. 1910.

convene a citizens' panel to "advise and make recommendations to the secretary regarding the likeness of a woman to appear" on the \$10 notes.²⁴⁵ Such a panel would "consider and weigh input provided by the American people."²⁴⁶

None of these proposals, including Senator Shaheen's, would necessarily offer an adequate check on the secretary's discretion. An *ad hoc* group is unlikely to be able to address systemic problems. A committee convened among "citizens" without consideration of what they might bring to the table is no more likely to reach informed consensus than an online comment thread. A group of political appointees may not necessarily represent the interests of Americans from all walks of life. A group controlled by Treasury may simply act as a rubber stamp. Thus, we propose creating an independent review body for currency design that is modeled after the Citizens Coinage Advisory Committee, although with certain modifications attendant to the special nature of paper money. Setting up such a committee makes sense for three main reasons:

- (a) Adopting a "Citizens Currency Advisory Committee" will allow currency design decisions to step out from behind closed doors; in doing so, it will improve the flow of information from Treasury to the public;
- (b) Mirroring the practices of the Citizens Coinage Advisory Committee will harmonize the decision-making process for all of our monetary iconography; and
- (c) Delegating iconographic and aesthetic decisions to independent experts will allow Treasury to focus on the issues within its area of expertise.

To be clear, we are writing in 2016, just after the announcement of the planned changes to the \$5, \$10, and \$20 bills, and have zero intention to delay the design release or circulation date of the new money. The idea of the proposed Citizens Currency Advisory Committee is prospective and intended to streamline, not hinder, the process of redesign.

245. S. 1613. Senator Shaheen had previously introduced an almost identical bill calling for a panel to consider the \$20. *See* S. 925.

246. S. 1613; S. 925.

5.1 *An Independent Committee Will Improve the Flow of Information*

An independent committee, tasked to review and recommend proposed non-technical currency design changes, will rehabilitate the process that has been in place for too long and lay the groundwork for better acceptance of Treasury's decisions and actions. A more transparent and independent process would be consistent with the principles of good government that were supposed to be the hallmark of the current administration.²⁴⁷ An autonomous body can serve as a check to the Treasury Secretary's discretion and as a sounding board for the public. Recommendations from the Citizens Coinage Advisory Committee note internal votes on designs. These recommendations cannot bind the Treasury Secretary, but because they are freely available online, it is harder for the Secretary to disregard them without repercussions. For example, a recommendation letter sent from the committee chairperson to Jack Lew in February 2016 clearly stated the committee members' views on two obverse and reverse designs for the upcoming 2017 Ellis Island (Statue of Liberty National Monument) and Effigy Mounds National Monument coins in the America the Beautiful Quarters Program.²⁴⁸ Ignoring or changing this proposal would require real commitment and justification to the public by the secretary.

Like the Citizens Coinage Advisory Committee, a Citizens Currency Advisory Committee should be able to operate in plain sight—holding open meetings, releasing agendas and meeting minutes, and naming members—and thereby better-satisfying public curiosity and anticipating concerns. At the same time, by establishing clear criteria for suggested portraits and designs, enforcing requirements for proposals, and seeking the input of outside experts, such a committee could avoid the mistakes Treasury made trying to manage the firehose of opinion released by social media in 2015–16.

Twitter is a powerful medium, but relying on Twitter to justify agency decision-making is unwise at best or disingenuous at worst. The challenges inherent in archiving content from such a dynamic and voluminous source of information are dizzying: Twitter processes over 500 million tweets a day, and access to tweets is mediated by Twitter's

247. Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4685 (Jan. 21, 2009).

248. Letter from Mary N. Lannin, CCAC Chairperson, to Jack Lew, Sec'y of the Treasury (Feb. 26, 2016), http://ccac.gov/media/calendar/lettersToSecretary/2016_0216.pdf.

proprietary algorithms.²⁴⁹ A social media campaign may purport to be publicly-driven, allowing for immediate, uncensored, and authentic input. But without any infrastructure to translate that raw information into knowledge, it is only a distraction—either for those who contribute, or those who suggest they might be guided accordingly. This may explain why the Treasury Department's website lists 274 names that were sent in after Secretary Lew's June 2015 announcement, but does not list the source of the names nor the number of times each name was mentioned on Twitter or in correspondence.²⁵⁰ As such, it is not an effective type of collaboration the administration was seeking.²⁵¹

5.2 *Mirroring the Process of the Citizens Coinage Advisory Committee Creates a More Consistent and Therefore More Legitimate System*

Creating parallel structures to consider currency and coins is an argument unto itself.²⁵² Coins and bills are transposable in commerce and in the minds of the people who use them. Consider that during the Congressional debates over the Susan B. Anthony dollar, some feared the dollar coin would unseat George Washington from his place of honor on the \$1 bill.²⁵³ Because the public considers the semiotics of money holistically, the governmental structures should likewise be organized to do the same. Citizens Advisory Committees for both types of money would create a consistency in the application of principles and

249. See Michael Zimmer, *The Twitter Archive at the Library of Congress: Challenges for Information Practice and Information Policy*, FIRST MONDAY (July 6, 2015), <http://firstmonday.org/ojs/index.php/fm/article/view/5619/4653>. The Library of Congress' planned digital archive of all public tweets was announced in 2010, but as of April 2016 remained unavailable. *Id.* The challenges include finding ways to organize, to easily retrieve, to store, and to set policy about access controls. *Id.* The dynamism of Twitter adds to the complexity of archiving tweets.

250. *Your Recommendations*, MODERN MONEY, <https://modernmoney.treasury.gov/new-notes/your-recommendations> (last visited Nov. 20, 2016); cf. *supra* Section 4.3.2 (discussing the report the U.S. Mint prepared, showing the number of letters received from the public and Congress about preferred designs for a new \$1 coin).

251. Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4685 (Jan. 21, 2009).

252. John R. Allison, *Combinations of Decision-Making Functions, Ex Parte Communications, and Related Biasing Influences: A Process-Value Analysis*, 1993 UTAH L. REV. 1135, 1135 (1993) ("Not only does the use of more formal procedures respond to the expectations, and perhaps demands of affected parties, but such an exercise can have much merit in its own right. The goals and positive contributions of sound procedure are often referred to as *process values*.").

253. See *Susan B. Anthony Dollar Coin Act of 1978 Hearing*, *supra* note 216, at 119 (statement of Senator Garn, House Committee on Banking, Housing and Urban Affairs).

standards. The resulting decisions in currency will be more thoughtful because the decisions about coins are already subject to a process that makes them more thoughtful.

The decision to create a parallel Citizens Currency Advisory Committee also would follow the principle of consistency that is central to accounting practices. The consistency principle states that once an accounting method or principle is adopted, the entity should continue to follow it to allow interested parties to measure and compare performance over time.²⁵⁴ In accounting, changes in method or process should be clearly disclosed.²⁵⁵ Consistency of process is a virtue for any government activity and particularly for the Treasury Department. It maintains the stability of reputation, as well as the message.

Put another way, it is illogical for Treasury to promote public participation and accountability in one area (coins) while simultaneously denying it in another area (paper bills) where the two products are intellectually and functionally interchangeable. Moreover, while citizens joining together and advocating for a cause may be a worthwhile exercise in democracy, the method is neither predictable nor reasonable for a “next time.” To allow the status quo to persist would suggest that for the next currency project, the same large burden would rest on the shoulders of small organizations, like Women On 20s, which inevitably are under-resourced and are subject to the vagaries of social media. Groups able to tackle something as behemoth as the Treasury Department will never be a dime a dozen.²⁵⁶

5.3 *Delegating Symbolic Decision-Making Will Allow Treasury to Focus on the Issues Within Its Area of Expertise*

Consistency is also a valuable adaptive behavior from the psychological vantage because it makes thinking easier by turning to things that are already known.²⁵⁷ The Citizens Coinage Advisory Committee exists to offer the Secretary of Treasury the expertise of people who study numismatic iconography and who represent the American people. A consistent—but parallel—process for currency would do the same, making the Treasury Secretary’s role that much easier. That principle has been important enough in recent times that on his first working day, President Obama issued a memorandum to the

254. JAMIE PRATT, FINANCIAL ACCOUNTING IN AN ECONOMIC CONTEXT 92–93 (8th ed. 2011).

255. *Id.* at 93.

256. Pun deliberately intended.

257. ROBERT B. CIALDINI, INFLUENCE: THE PSYCHOLOGY OF PERSUASION 60–61 (1993).

heads of executive departments and agencies, calling for them to be participatory as a way to enhance efficacy and quality. The departments and agencies were directed to seek out and respect the expertise of citizens.

Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.²⁵⁸

The Citizens Coinage Advisory Committee exists not to legislate, but to advise the Secretary of Treasury on any theme or design proposals relating to circulating coins, commemorative coins, or national medals.²⁵⁹ The eleven-person committee is decided by the Treasury Secretary, but four of those seats are filled by individuals recommended by Congress.²⁶⁰ None of the seats may be held by any government employee,²⁶¹ but are chosen based on special expertise in American history or numismatics, or otherwise represent citizens' interests in coinage.²⁶² Since that committee began its work, our coins have seen a multitude of changes that do reflect "who we are," and that also bring history to Americans that they might not otherwise have known. The 50 State Quarters Program and the America the Beautiful Quarters Program are projects undertaken with guidance from the Citizens Coinage Advisory Committee.²⁶³

258. Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4685 (Jan. 21, 2009).

259. American 5-Cent Coin Design Continuity Act of 2003, Pub. L. No. 108-15, § 103, 117 Stat. 615, 618 (2003) (codified as amended 31 U.S.C. § 5135(c)(1) (2012)).

260. *Id.* § 103, 117 Stat. 617.

261. *Id.*

262. *Id.* at 616–17.

263. *Historical Image Library*, U.S. MINT, https://www.usmint.gov/about_the_mint/coinLibrary/index.html (last updated 2015). The meeting information page of the CCAC includes recommendations to the Treasury Secretary about upcoming quarter designs. *CCAC Meetings, Recommendations and Minutes*, CITIZENS COINAGE ADVISORY COMM., <http://ccac.gov/calendar/notices.cfm> (last visited Nov. 20, 2016).

Likewise, the history described in this Article demonstrates that those are the kinds of people who should be advising Treasury. Alone, Treasury is ill-qualified to make these decisions. The job qualifications of many Treasury officials—knowledge of finance, economics, monetary policy, and taxation—do not necessarily overlap with an appreciation for the representational significance of our physical currency. The main job of the Treasury Department is to promote economic growth, collect and disburse public funds, and manufacture money. Citizens should be permitted to weigh in on the iconography, perhaps using a systematized method more analogous to that used by the Citizens Stamp Advisory Committee, which asks interested persons to send letters and include information related to the stated criteria used by the committee.²⁶⁴ The iconography on all money should be evaluated by artists and historians, the latter including scholars with an expertise in women's history, critical race theory, sociology, and other areas that would allow a broad consideration of Americana that has not been part of the currency to date. In short, people with the time, inclination, and expertise to make decisions that can stand up to the scrutiny of future generations. The membership of this committee is one that Congress should help determine, particularly given the history of the committee in the 1920s comprised of government employees. That committee's efforts were unceremoniously tossed aside several months later by two committee members who substituted a wholly different criteria for portrait selection.²⁶⁵

The experts needed for these kinds of advisory opinions fall into a somewhat different category than numismatics, and we also see a currency committee meeting with somewhat less frequency than the Citizens Coinage Advisory Committee. For that reason, we have not recommended a unified committee. We also believe that the two committees, while possibly sharing some common members among the general citizens, would do different work in the end. A Citizens Currency Advisory Committee appointed with the types of expertise listed above need not be limited to act in only those situations when circulating currency was being redesigned, but could also advise the Treasury Secretary on its sideline of commemorative prints. The Bureau of Engraving and Printing sells a variety of products to

264. Citizens' Stamp Advisory Comm., *The Stamp Selection Process*, U.S. POSTAL SERV., <https://about.usps.com/who-we-are/csac/process.htm> (last visited Nov. 20, 2016); see also Citizens' Stamp Advisory Comm., *Stamp Subject Selection Criteria*, U.S. POSTAL SERV., <https://about.usps.com/who-we-are/csac/criteria.htm> (last visited Nov. 20, 2016) (showing a twelve criteria list).

265. See *supra* notes 31–41 and accompanying text.

currency collectors at its www.moneyfactorystore.gov website.²⁶⁶ Shortly after Secretary Lew's June 2015 announcement that new currency series would honor a woman and celebrate democracy, the Bureau of Engraving and Printing began promoting the sale of intaglio prints depicting a young and beautiful woman as an idealization of democracy, presumably culled from "historical" documents in its archives. This ill-timed exercise of questionable taste might have been avoided had a Citizens Currency Advisory Committee been available to consider the matter.²⁶⁷

Conclusion

This proposal is far from radical. In fact, the Treasury Department itself announced plans to establish a single Advisory Committee on Coinage, Medal, and Currency Design in 1987.²⁶⁸ The proposed committee, which would have been subject to the Federal Advisory Committee Act's transparency rules, would have been tasked with reviewing design proposals "with regard to aesthetics, appropriateness, quality and practical application" and advising the secretary accordingly.²⁶⁹ But only a few weeks later, Treasury withdrew the proposal, announcing that it would instead "rely to a greater extent on the advice and counsel of the Commission of Fine Arts to guarantee the quality of future designs."²⁷⁰

It is unclear why Treasury changed its mind. It is clear that Treasury recognizes the need to bring more minds together to wrangle with these kinds of decisions. This burden should not again fall on dedicated private citizens using their own resources. It is time for Treasury to defer to a true citizens committee, as it believed itself to have done so many decades ago.²⁷¹

266. U.S. DEP'T OF TREASURY BUREAU OF ENGRAVING & PRINTING, <http://www.moneyfactorystore.gov> (last visited Nov. 20, 2016).

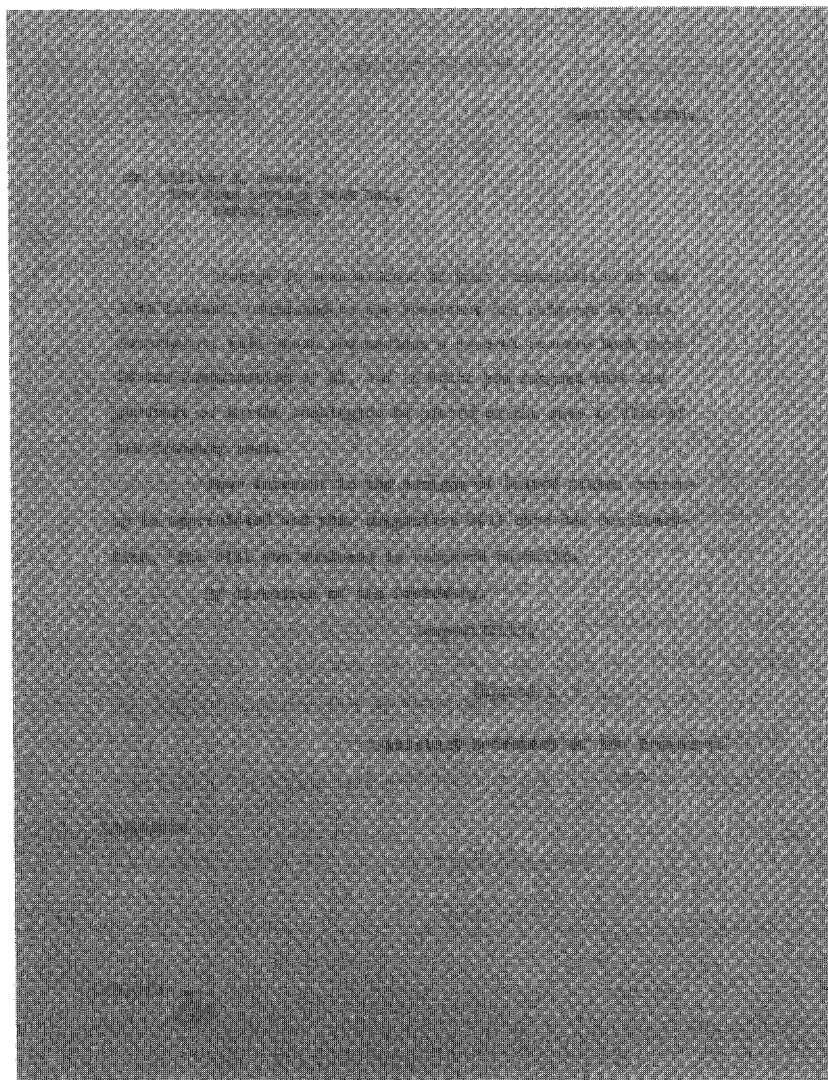
267. *Ideals in Allegory, DEMOCRACY Intaglio Print*, U.S. DEP'T OF TREASURY BUREAU OF ENGRAVING & PRINTING, <http://www.moneyfactorystore.gov/idealsinallegorydemocracyintaglioprint.aspx> (last visited Nov. 20, 2016). We each have a copy of this Intaglio print in their offices, used as a motivator to complete this Article.

268. 52 Fed. Reg. 720 (Jan. 8, 1987).

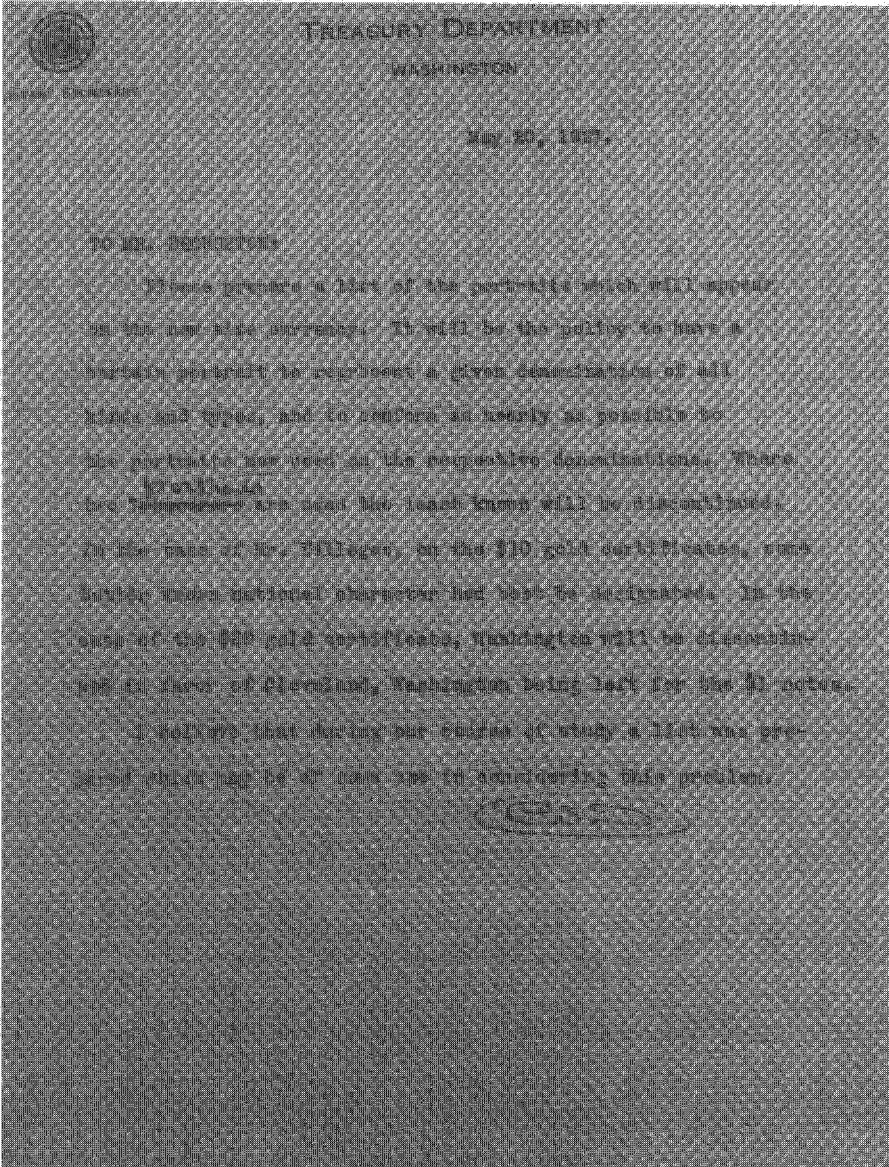
269. *Id.*

270. 52 Fed. Reg. 5236 (Feb. 19, 1987). The committee, however, has no role with respect to currency design, only coins.

271. See *supra* notes 98–101 (discussing treasurer Ortega's incorrect testimony about the makeup of the committee deciding the portraits for the 1929 currency changes).

Appendix B: Treasury Response Letter

Appendix C: Internal Treasury Memoranda



1970-1971	1972-1973	1974-1975	1976-1977	1978-1979	1980-1981	1982-1983	1984-1985	1986-1987	1988-1989	1990-1991	1992-1993	1994-1995	1996-1997	1998-1999	2000-2001	2002-2003	2004-2005	2006-2007	2008-2009	2010-2011	2012-2013	2014-2015	2016-2017	2018-2019	2020-2021	2022-2023	2024-2025	2026-2027	2028-2029	2030-2031	2032-2033	2034-2035	2036-2037	2038-2039	2040-2041	2042-2043	2044-2045	2046-2047	2048-2049	2050-2051	2052-2053	2054-2055	2056-2057	2058-2059	2060-2061	2062-2063	2064-2065	2066-2067	2068-2069	2070-2071	2072-2073	2074-2075	2076-2077	2078-2079	2080-2081	2082-2083	2084-2085	2086-2087	2088-2089	2090-2091	2092-2093	2094-2095	2096-2097	2098-2099	2100-2101	2102-2103	2104-2105	2106-2107	2108-2109	2110-2111	2112-2113	2114-2115	2116-2117	2118-2119	2120-2121	2122-2123	2124-2125	2126-2127	2128-2129	2130-2131	2132-2133	2134-2135	2136-2137	2138-2139	2140-2141	2142-2143	2144-2145	2146-2147	2148-2149	2150-2151	2152-2153	2154-2155	2156-2157	2158-2159	2160-2161	2162-2163	2164-2165	2166-2167	2168-2169	2170-2171	2172-2173	2174-2175	2176-2177	2178-2179	2180-2181	2182-2183	2184-2185	2186-2187	2188-2189	2190-2191	2192-2193	2194-2195	2196-2197	2198-2199	2200-2201	2202-2203	2204-2205	2206-2207	2208-2209	2210-2211	2212-2213	2214-2215	2216-2217	2218-2219	2220-2221	2222-2223	2224-2225	2226-2227	2228-2229	2230-2231	2232-2233	2234-2235	2236-2237	2238-2239	2240-2241	2242-2243	2244-2245	2246-2247	2248-2249	2250-2251	2252-2253	2254-2255	2256-2257	2258-2259	2260-2261	2262-2263	2264-2265	2266-2267	2268-2269	2270-2271	2272-2273	2274-2275	2276-2277	2278-2279	2280-2281	2282-2283	2284-2285	2286-2287	2288-2289	2290-2291	2292-2293	2294-2295	2296-2297	2298-2299	2300-2301	2302-2303	2304-2305	2306-2307	2308-2309	2310-2311	2312-2313	2314-2315	2316-2317	2318-2319	2320-2321	2322-2323	2324-2325	2326-2327	2328-2329	2330-2331	2332-2333	2334-2335	2336-2337	2338-2339	2340-2341	2342-2343	2344-2345	2346-2347	2348-2349	2350-2351	2352-2353	2354-2355	2356-2357	2358-2359	2360-2361	2362-2363	2364-2365	2366-2367	2368-2369	2370-2371	2372-2373	2374-2375	2376-2377	2378-2379	2380-2381	2382-2383	2384-2385	2386-2387	2388-2389	2390-2391	2392-2393	2394-2395	2396-2397	2398-2399	2400-2401	2402-2403	2404-2405	2406-2407	2408-2409	2410-2411	2412-2413	2414-2415	2416-2417	2418-2419	2420-2421	2422-2423	2424-2425	2426-2427	2428-2429	2430-2431	2432-2433	2434-2435	2436-2437	2438-2439	2440-2441	2442-2443	2444-2445	2446-2447	2448-2449	2450-2451	2452-2453	2454-2455	2456-2457	2458-2459	2460-2461	2462-2463	2464-2465	2466-2467	2468-2469	2470-2471	2472-2473	2474-2475	2476-2477	2478-2479	2480-2481	2482-2483	2484-2485	2486-2487	2488-2489	2490-2491	2492-2493	2494-2495	2496-2497	2498-2499	2500-2501	2502-2503	2504-2505	2506-2507	2508-2509	2510-2511	2512-2513	25
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[illegible]

