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

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

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. 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. Tubman’s would be the first portrait of a historic woman to appear on

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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-672ef0391d02#.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. The announcement received extensive media coverage. 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. 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. 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. 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


GEORGE S. CUAHJ & 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. 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.

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, 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


10. See Steve Inskeep, Jacksonland: President Andrew Jackson, CherokeeChief 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.").

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.

Table of Contents

1.0 The Representative Power and Privilege of Money ........... 199
2.0 The Choosing and Un-Choosing of Certain Portraits (Including Jackson) .................................................. 202
3.0 From the Legal Perspective: Historical Problems with American Currency Design ........................................... 206
   3.1 The Civil War Period and Its Legacy .......................... 206
   3.2 The Late 19th Century ........................................... 209
   3.3 The 1929 Redesign Project ....................................... 211
   3.4 The Remainder of the Twentieth Century and Rewriting History .............................................................. 214
   3.5 Events Leading up to the 2016 Announcement ................ 217
   3.6 Moving Toward the Next Time .................................... 222
4.0 Other Governmental Methods of Selecting Portraits, Images, and Names Offer Guidance for a New System ................................................................. 222
   4.1 Naval Vessels ......................................................... 222
   4.2 Stamps .................................................................... 224
   4.3 Coins ..................................................................... 226
      4.3.1 The Early Legal History of American Numismatic Iconography ......................................................... 226
      4.3.2 The Legislative History of the Susan B. Anthony $1 Coin ............................................................... 229
      4.3.3 Creating the Citizens Coinage Advisory Committee .... 233
5.0 We Need a Citizens Currency Advisory Committee .......... 236
5.1 An Independent Committee Will Improve the Flow of Information ................................................................................. 239

5.2 Mirroring the Process of the Citizens Coinage Advisory Committee Creates a More Consistent and Therefore More Legitimate System ........................................................................... 240

5.3 Delegating Symbolic Decision-Making Will Allow Treasury to Focus on the Issues Within Its Area of Expertise .................................. 241

Conclusion ........................................................................................................................................................................ 244

Appendix A: Letter to Treasury ................................................................................................................................. 245

Appendix B: Treasury Response Letter .................................................................................................................... 246

Appendix C: Internal Treasury Memoranda ........................................................................................................... 247

1.0 The Representative Power and Privilege of Money

Money is seen as a symbol of the state.\textsuperscript{12} The imagery used on currency signifies its credibility; this validation is all the more important for paper money that has no intrinsic value.\textsuperscript{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.”\textsuperscript{14} In a democracy, such authenticity implies that the figurations on currency are intended to reflect political power through liberty and self-rule.\textsuperscript{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

\textsuperscript{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. Höbling et al. eds., 2006); see also ERIC HELLEINER, THE MAKING OF NATIONAL MONEY: TERRITORIAL CURRENCIES IN HISTORICAL PERSPECTIVE 100–20 (2003).


\textsuperscript{14} Id.

\textsuperscript{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, THEGUARDIAN (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."  

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. "Liberty" was an obvious choice in the post-revolutionary period, and was a theme and archetype already made popular on colonial coins. The allegorical "Lady Liberty," in one form or another, was depicted on American coins for over a century.

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." Roosevelt was instrumental in ushering in a new era in coin design:

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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 1½ 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 irrevocable 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 Mc Ginley 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. Mc Ginley, COINING NATIONALITY: WOMAN AS SPEC TACLE ON NINETEENTH-CENTURY AMERICAN CURRENCY, 7 AM. TRANSCENDENTAL Q. 247, 266 (1993).

design in which presidential portraits replaced allegorical figures but continued their symbolic role.\textsuperscript{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.\textsuperscript{22} African-American men and women were entirely excluded.\textsuperscript{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.\textsuperscript{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."\textsuperscript{25}

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

\begin{itemize}
\item \textsuperscript{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).
\item \textsuperscript{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).
\item \textsuperscript{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).
\item \textsuperscript{24} See infra Part 2.0.
\end{itemize}
question possibly "lost to history."\textsuperscript{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.

\textbf{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.\textsuperscript{27} The project introduced a singular design for all currency notes, replacing the myriad of styles in circulation.\textsuperscript{28} The size of the bills was also reduced as a cost-saving measure.\textsuperscript{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.\textsuperscript{30} A subcommittee


\textsuperscript{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 SECY 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.

\textsuperscript{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).

\textsuperscript{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.
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.\textsuperscript{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.\textsuperscript{40} This list was intended for the person with the ultimate authority over these decisions, Secretary Mellon.\textsuperscript{41}

\textsuperscript{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.

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

\textsuperscript{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 account able 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 His 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,
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

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 1875 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 DEP'T, 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.\textsuperscript{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.\textsuperscript{63} In doing so, he substituted his portrait for that of George Washington.\textsuperscript{64}

This sparked outrage in Congress.\textsuperscript{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."\textsuperscript{66} Congress until 1877 that the Bureau of Engraving and Printing became solely responsible for printing all U.S. government currency. \textit{Id.}

\textsuperscript{62} See, e.g., GOODWIN, supra note 50, at 216–46 (recounting Clark's alleged embezzlement, fraud, and sexual indiscretions). \textit{But see U.S. TREASURY DEPT., 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").}

\textsuperscript{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. \textit{See id.} at 309. Fractional currency was authorized explicitly by Congress. \textit{See Act of Mar. 3, 1863, ch. 72, 12 Stat. 709, 711; Act of June 30, 1864, ch. 172, 13 Stat. 218, 220.}

\textsuperscript{64} All denominations of the second issue of fractional currency, beginning in 1863, featured the portrait of George Washington. \textit{See CUHAI & 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. \textit{See id.} at 405, 407.

\textsuperscript{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." \textit{Id.} at 1407, 1421. Speaking on the floor, he raised a similar argument to that heard during the debate of the Mint Act:

\begin{quote}
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 . . . . \\
\textit{Id.}
\end{quote}

\textit{His colleague, Thaddeus Stevens, moved to amend this proviso to allow an exception for living U.S. Presidents, but was denied. \textit{Id.}} The Senate Finance Committee moved to strike out the restriction on using the likenesses of living persons on currency. \textit{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." \textit{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. \textit{See CUHAI & BRANDIMORE, supra note 4, at 414.}

\textsuperscript{65} \textit{CONG. GLOBE, 39th Cong., 1st Sess. 1560, 1586 (1866).}
promptly passed a law barring the depiction of any living persons on currency. This sole limitation on the Treasury Secretary’s discretion has remained in force ever since.

3.2 The Late 19th Century

The earliest designs for federal currency were largely left to the artists tasked to produce them. Treasury Secretary Salmon Chase solicited early proposals for designs and models for new notes in the New York Times. The submissions needed only to be “national in their character,” with a preference for imagery not previously used on other currency and securities. While the Secretary exercised his discretion to choose from among the proffered designs, there is no indication that Chase—or 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.

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.
71. Id.
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.
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.”

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. 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 counterfeitors. 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.” As such, the estimation of historical greatness and widespread public recognition of the men portrayed on our currency have become inextricably intertwined.

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.” 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 picher 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. 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.

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. A Treasury official explained that the portrait assignments were a key security feature, which "would be lessened to the extent changes are now made." 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.

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. DEP'T 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.


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).
army 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 sidestepped 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. Bl atteis to the Dir. of the Mint (Oct. 16, 1942) (on file at National Archives).
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." 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). 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.

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. 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. Representative Halpern positioned the bill as an explicit symbolic corrective to structural sexism.

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.

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 CUHAI & BRANDIMORE, supra note 4, at 18–130.
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. 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. 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, 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. When this bill went nowhere, he reintroduced the legislation in each of the next four Congresses.

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. 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.'"

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

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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).
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. 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. And, because Treasury Secretary Lew's 2016 announcement included no circulation date but only a design unveiling date of 2020, 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. She did not hear back for months until receiving an invitation to come to the White House in the spring of 2015. 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."

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

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

This campaign was so public and received such significant media attention 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. The new bill would be part of a larger reimagining of all currency, working with a theme of “democracy.” 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.”

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

121. Id.
122. Id.
123. Id.
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.
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. 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. 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.

Treasury also began promoting a hashtag on Twitter, #thenew10, to satisfy those Americans who wanted a say on the new design. 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." 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. 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

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

137. Lew, Remarks at the National Archives, supra note 111.


posts. The information would potentially be made available to private contractors, Congress, or other agencies. 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. 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. The Wall Street Journal editorial board analogized Lew to Aaron Burr, the man who assassinated Hamilton in 1804. A few weeks later, the musical Hamilton, starring Lin-Manuel Miranda, opened on Broadway to overwhelming acclaim. 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. 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.").
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

151. See Lew, supra note 2.
152. Id.
153. Id.
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. 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." Naming rules and conventions have developed over time for each class of vessels. In response to a perceived breakdown in those rules, the Navy submitted a report to Congress in 2012 explaining its practices. 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. 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. 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.

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"

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).
162. See id. at 3.
164. Id. at 13–17 (discussing and then listing proposed and enacted legislation).
began trending very quickly, and soon won the poll. 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. The name was ultimately changed, but not before the exchange became a known worldwide as a “monument to ministerial folly.”

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. The earliest iteration of the CSAC was established in 1957 by order of the Postmaster General. Members are appointed by the Postmaster General, meet quarterly, and consider the needs of customers as well as stamp-collecting enthusiasts. Members are selected based on their knowledge of philately, history, science and technology, art, education, sports, and other subjects of public interest. The U.S. Postal Service website also assures visitors that it

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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,

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).
(describing 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, Margarette 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 Chisolm, 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.\footnote{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.\footnote{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


\footnote{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 \textit{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. 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. 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." 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?" As discussed in Part 1.0, an allegorical Liberty won the day and was depicted on U.S. coinage for over a century.

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." 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 men 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 Heliogabulus . . . ." 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 imprimitur 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."

The resulting legislation empowered Treasury to prepare and adopt new designs for individual coins no more than once every twenty-five years. 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. 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. 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." 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.

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.").


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.").


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 26, 1921).
Coins have not been without their own scandals surrounding female figures. In 1916, an original design competition was held for a new quarter.\textsuperscript{191} Herman A. MacNeil’s design of a standing female Liberty was selected.\textsuperscript{192} She held an olive branch and a shield and wore a flowing garment that exposed a breast.\textsuperscript{193} The coin entered circulation that year and the exposed breast created an immediate scandal.\textsuperscript{194} MacNeil redesigned the coin without fanfare, and a new “Miss Liberty” quarter appeared the following year, wearing a full suit of armor.\textsuperscript{195}

Over the following decades, presidential portraits became fixed on the obverse of almost all coins in circulation.\textsuperscript{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.\textsuperscript{197} Treasury hoped to persuade Americans to adopt the coin and achieve a significant cost savings for the government.\textsuperscript{198} Seizing the moment, progressive legislators introduced bills in both the House and Senate authorizing a $1 coin

\begin{thebibliography}{99}
\bibitem{191} See Taxay, supra note 21, at 347. The Washington quarter was not introduced until 1932. See id. at 360.
\bibitem{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.").
\bibitem{193} See David W. Lange, History of the U.S. Mint and Its Coinage 150 (2005).
\bibitem{194} See Vermeule, supra note 18, at 139.
\bibitem{195} Id.
\bibitem{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).
\bibitem{198} See Proposed Smaller One-Dollar Coin, supra note 197, at 5 (statement of Bette B. Anderson, Under Secretary of the Treasury).
\end{thebibliography}
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

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.” Representative Leach went on, suggesting the coin might include Susan B. Anthony, Harriet Tubman, or Marian Anderson. 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.”

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.” 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.

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]

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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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{215}

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

\textsuperscript{211} Id. at 99–100.

\textsuperscript{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.

\textsuperscript{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).

\textsuperscript{214} Id. at 112.

\textsuperscript{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 congressmen 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

217. Id. (emphasis added).
218. Id. at 96–99. 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).
200th anniversary of the Louisiana Purchase and the Louis and Clark expedition. He was particularly vexed that the plans were “chosen internally without input from the American people or Congress” and were to proceed almost immediately. 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.

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.” Membership on the committee is proscribed in detail, and no member may hold any other position in the federal government. Meetings are open to the public, with prior and timely notice published in the Federal Register. This was an intentional departure from the practices of a predecessor committee tasked with reviewing commemorative coins, which operated away from public view. 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.”

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.


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


226. 149 CONG. REC. 4469.


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.


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


\(^{235}\) 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. 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. 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. 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.

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. 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. Some simply directed the Treasury Secretary to place the likeness of Harriet Tubman on future issues of a particular denomination. Others called for formal public input on currency portraits. For example, the day after Secretary Lew announced #thenew10 in June of 2015, Senator Jeanne Shaheen introduced a bill requiring the Treasury Secretary to


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. 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. 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

proprietary algorithms. 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. As such, it is not an effective type of collaboration the administration was seeking.

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. 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. 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).


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.").

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 it 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

255. Id. at 93.
256. Pun deliberately intended.
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

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260. Id. § 103, 117 Stat. 617.
261. Id.
262. Id. at 616–17.
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


\(^{265}\) See supra notes 31–41 and accompanying text.
currency collectors at its www.moneyfactorystore.gov website.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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."\textsuperscript{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.\textsuperscript{271}

\begin{itemize}
\item \textsuperscript{267} Idels 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.
\item \textsuperscript{268} 52 Fed. Reg. 720 (Jan. 8, 1987).
\item \textsuperscript{269} Id.
\item \textsuperscript{270} 52 Fed. Reg. 5236 (Feb. 19, 1987). The committee, however, has no role with respect to currency design, only coins.
\item \textsuperscript{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).
\end{itemize}
Appendix

Appendix A: Letter to Treasury

[Letter content]

The letter appears to be a formal communication regarding financial matters, possibly related to the Treasury. The content is not clear due to the image quality, but it likely contains detailed information or instructions pertinent to the Treasury's role or responsibilities.
Appendix B: Treasury Response Letter
Appendix C: Internal Treasury Memoranda

TREASURY DEPARTMENT
WASHINGTON

May 20, 1937

TO MR. OBSERVER

Please prepare a list of the portraits which are to appear on the new rather purchase. It will be the policy to have a certain amount of representation of all kinds of subjects and to secure as nearly as possible to the portraits are used on the respective denominations. There will be portraits of the most famous men who have made their mark in the history of the nation.

In the case of the $10 gold certificate, one portrait will be used for the $10 gold certificate, Washington will be distinguished and in honor of Lincoln. Washington being half for one of the portraits.

I believe that the portraits must vary in value and that the portraits will be of value in commemorating this great problem.