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ARTICLE

TOWARD A REVISION OF THE MINTING AND COINAGE LAWS OF THE UNITED STATES

DAVID L. GANZ*†

THE COINAGE AND MINTING LAWS of the United States¹ are badly in need of revision and modernization.² In the 200 years since the American Revolution, there have been only two comprehensive coining and minting laws passed by Congress: the original Mint Act of April 2,

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† The author wishes to acknowledge the following individuals who were of immeasurable assistance during the long period of research and preparation of this Article; without their help in supplying candid comments, information, and supporting data the result would not have been possible. Acknowledgment is due to the following people: Hon. Stella B. Hackel, Director of the Mint; Hon. Mary Brooks and Hon. Eva B. Adams, former Directors of the United States Mint; Frank H. MacDonald, Deputy Director of the United States Mint; Dr. Alan J. Goldman, Assistant Director of the Mint for Technology; Miklos Lonkay, Esq., Counsel to the Mint; Roy C. Cahoon, former Assistant Director of the Mint for Public Services; James Parker, Public Information Officer and Assistant Director of the Mint for Public Services; Nicholas Theodore, Superintendent of the United States Mint at Philadelphia; Frank Gasparro, Chief Engraver of the United States; Bland T. Brockenborough, Officer-in-Charge at the San Francisco Assay Office; the late Howard Johnson, former Chief of the Mint's Washington laboratories; Mrs. Margaret Linzel Walker, Chief of the Statistical Division of the Mint; Jackson O'Neal Lamb, Staff Director of the Subcommittee on Historic Preservation and Coinage of the House Committee on Banking, Finance and Urban Affairs; Charles B. Holstein, former professional staff member of the Subcommittee on Consumer Affairs of the House Committee on Banking and Currency; Edward Sokol, former professional staff member of the Subcommittee (ad hoc) on Minting and Coinage of the Senate Committee on Banking, Housing, and Urban Affairs; and lastly, Barbara Bóndanza, a Ph.D. candidate in American Civilization at New York University whose organizational approach to the subject matter made possible a more cogent presentation. Special acknowledgment is due the Institute for Business Planning, New York, whose facilities were utilized, and whose support was provided, during significant portions of the work on this Article.

¹ Refers generally to those provisions comprising 31 U.S.C. §§ 251-463 (1970 & Supp. V 1975). Included are more than two dozen key coinage acts, discussed at note 6 *infra*, enacted since passage of the Act of Feb. 12, 1873, ch. 131, 17 Stat. 424 (current version in scattered sections of 31 U.S.C.). Also involved are certain laws pertaining to the Mint and its general direction. The history of coinage legislation has involved countless enactments, amendments, revisions, and codifications. Throughout this Article, an attempt has been made to provide a comprehensive reference to the original Acts of Congress. Citations to the session laws are provided for historical purposes only; in such instances the subsequent history has been omitted. The current versions of various acts have been provided when relevant to the discussion or to current practice.

² See U.S. DEPT. OF THE TREASURY, EXEC. COMMUNICATION NO. 355, THE STATE OF THE UNITED STATES COINAGE (1977), noted in 123 CONG. REC. H185 (daily ed. Jan. 6, 1977) (hereinafter cited as EXEC. COMMUNICATION NO. 355). The full text may also be found in

1792,³ and the Coinage Act of 1873,⁴ a codification and revision of the minting and coinage laws enacted prior to that date. In the 103 years since the Coinage Act of 1873, the only other attempted codification of coinage law took place in the Revised Statutes of 1875.⁵ Thereafter, dozens of major pieces of coining and minting legislation were passed by Congress, largely on an ad hoc basis.⁶ Many have altered or fundamentally changed the structure of the coinage laws; others have rendered obsolete certain sections relating to the functions of the Bureau of the Mint. The statutes and compilations of the law contain legisla-

Treasury Press Release, Doc. No. WS-1246 (Jan. 5, 1977). The report suggested that the cent and half dollar be eliminated, and the dollar reduced in size. On April 7, 1977, Treasury Secretary Blumenthal confirmed in a letter to the chairman of the Subcommittee on Historic Preservation and Coinage of the House Committee on Banking and Currency that there was no change of position on this in the new administration. Telephone Interview with Jackson O'Neal Lamb, Staff Director of Subcommittee (Apr. 13, 1977). By late 1977, the views of the administration had shifted, at least as to the cent, though the proposed elimination of the half dollar and creation of a smaller-sized "mini dollar" retained support. See *Top Treasury Staff Expected to Rally to Penny's Defense*, Wall Street Journal, November 4, 1977, at 10. Director of the Mint Stella B. Hackel confirmed to this writer that published reports of the Treasury's reversal of its position on elimination of the cent were correct, and that action on half dollar elimination and dollar reduction is to proceed in the second session of the Ninety-fifth Congress. Interview at Washington, D.C. (Nov. 29, 1977); Ganz, *New Direction at the Mint*, 14 COINAGE 56 (1978).

³ Act of April 2, 1792, ch. 16, 1 Stat. 246.

⁴ Act of Feb. 12, 1873, ch. 131, 17 Stat. 424 (current version found in scattered sections of 31 U.S.C.).

⁵ The following sections of the *Revised Statutes of 1875* relate to coinage: REV. STAT. §§ 3495-3568 (generally re-enacting the provisions of the Coinage Act of 1873); REV. STAT. §§ 5457-5462 (counterfeiting provisions); REV. STAT. §§ 3473-3474 (payments by and to the United States); REV. STAT. §§ 3484-3487 (legal tender status); REV. STAT. § 3700 (purchase of coin).

⁶ Some of the major legislation included: Act of Jan. 29, 1874, ch. 19, 18 Stat. 6 (current version at 31 U.S.C. § 367 (1970)) (permitting U.S. Mint to strike coins for foreign countries); the Bland-Allison Act of February 28, 1878, ch. 20, 20 Stat. 25 (current version at 31 U.S.C. § 405 (1970)) (restored legal tender status to silver dollars and made certain other requirements pertaining to silver metal); Act of July 14, 1890, ch. 708, 26 Stat. 289, as amended by Act of Nov. 1, 1893, ch. 8, 28 Stat. 4 (current version at 31 U.S.C. § 111 (1970)) (bimetallism established and silver bullion purchases discontinued); Gold Standard Act of 1900, ch. 41, 31 Stat. 45 (codified in scattered sections of 12, 31 U.S.C.); Gold Reserve Act of 1934, ch. 6, 48 Stat. 337 (codified in scattered sections of 12, 31 U.S.C.) (effectively ended use of gold coinage); coinage provisions of the War Powers Act of 1942, Pub. L. No. 815, 56 Stat. 1064 (current version at 31 U.S.C. § 317a (1970)) (compositional change in minor coinage authorized); Act of Sept. 5, 1962, Pub. L. No. 87-643, 76 Stat. 440 (current version at 31 U.S.C. § 317 (Supp. V 1975)) (authorized compositional change in the cent); Mint Appropriation Act of Aug. 20, 1963, Pub. L. No. 88-102, 77 Stat. 129 (current version at 31 U.S.C. § 294 (1970)) (permitted funding of Philadelphia and Denver Mints); the Coinage Act of 1965, Pub. L. No. 89-81, 79 Stat. 254 (current version at 31 U.S.C. §§ 283, 294, 301-304, 317c, 324, 335, 340, 391-398 (1970), amended in part, 31 U.S.C. §§ 224, 391 (Supp. V 1975)) (ended use of silver in all coins except half dollar, created clad-coinage, and established the Joint Commission on the Coinage); One Bank Holding Company Act of 1970, Pub. L. No. 91-607, tit. II, 84 Stat. 1769, (codified at 31 U.S.C. § 324b (1970)) (Eisenhower dollar created, silver removed from 50 cent piece); Act of Oct. 18, 1973, Pub. L. No. 93-127, 87 Stat. 456 (codified at 31 U.S.C. §§ 324d-324h (Supp. III 1973 & Supp. V 1975)) (authorized bicentennial coinage); Act of Oct. 11, 1974, Pub. L. No. 93-441, 88 Stat. 1261 (codified at 31 U.S.C. § 317(b)-317(c) (Supp. V 1975)) (authorized compositional change of one cent piece); Act of Dec. 26, 1974, Pub. L. No. 93-541, 88 Stat. 1739 (codified at 31 U.S.C. §§ 324g, 324i (Supp. V 1975)) (permitted continuance of 1974 date on 1975 quarters, half dollars, and dollars and allowed certain distribution requirement changes). See *also* Note 106 *infra* For major changes between 1874 and 1900.

tion which no longer corresponds to technological realities, production requirements, commercial necessities, and the needs of a modern mint.

Inadequacies within the system are self-evident. The time has come for change — for the recodification, revision, and modernization of American minting and coinage laws. The purposes of this Article are multi-fold; to examine current coinage laws, to discuss a revision proposed in 1973,⁷ to present views expressed and heard by Congress in recent times,⁸ and to mesh these points in such a manner that a more viable series of minting and coinage laws will emerge. Involved in this intertwining will be several competing interests: those of the Department of the Treasury and its subsidiary Bureau of the Mint; to the extent that their functions overlap, the Bureau of the Mint and the Bureau of Engraving and Printing; the private commercial minting entities and the United States Mint; coin collectors; the Department of the Treasury and the Federal Reserve System, manufacturer and distributor of coinage; and commercial and individual consumers, primary users of the nation's coin supply.

I. METHODOLOGY

This study will examine a revision of the minting and coinage laws proposed in 1973,⁹ and will contrast and compare the revision with existing law. Both will then be tested against actual problems that have arisen, and desired results measured for compatibility with each system. Alternative results will also be contrasted by use of extensive bibliographic compilations of pertinent congressional hearings, Mint studies, examinations by private industry, and reflections of the media commentators closest to the problem area.

A. *Omnibus Legislation and Coinage Problems Since 1973*

In examining the revision of the nation's coinage laws, it must be noted from the outset that the Bureau of the Mint has given the topic extensive consideration. Commencing in 1971, a comprehensive and thorough revision and modification was attempted within the Office of Legal Counsel, and by 1973 the entire Department of the Treasury had become involved.¹⁰ Culmination of this work was achieved in April, 1973 when draft legislation, with the approval of the Office of Management and Budget, was forwarded to the Office of Legal Counsel of the Senate. Shortly thereafter, the chairman and ranking minority member of the Senate Committee on Banking, Housing, and Urban Affairs introduced a bill "to revise and modernize the statutes relating to coinage and the

⁷ See S. 1619, 93d Cong., 1st Sess. (1973) (United States Mint Act of 1973).

⁸ This includes a series of hearings. See notes 19-22 *infra* and accompanying text.

⁹ See note 7 *supra*.

¹⁰ History of the revision prior to legislative introduction was given by Mint Director Mary Brooks in *Bicentennial Coinage, Commemorative Medals, and Commemorative Coins: Hearings on H.R. 5244 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 93d Cong., 1st Sess. 38 (1973) [hereinafter cited as *1973 House Bicentennial Hearings*].

Bureau of the Mint."¹¹ The short title of the bill was the United States Mint Act of 1973,¹² but most Mint officials still refer to it as the omnibus mint act.

Mint officials apparently anticipated prompt consideration and passage¹³ of the proposal. Congress was in no rush to make the change, however, perhaps because of the criticism leveled at certain aspects of the omnibus legislation.¹⁴ Nonetheless, Congress has had to consider substantial piecemeal change in coinage laws since April, 1973. These changes include the initial bicentennial coin legislation in mid-1973,¹⁵ a 1974 law authorizing a compositional change in the metal of the cent,¹⁶ and a late-1974 enactment permitting the Secretary of the Treasury to maintain the older reverse designs on the quarter, half dollar, and dollar during the latter half of calendar year 1975.¹⁷ There are tentative plans in 1978 for consideration of the status of the cent, elimination of the half dollar, reduction of the size of the dollar, and administrative reorganization within the Mint.¹⁸

While the 1973 proposed revision was a step in the right direction, it would not have proved adequate in the face of problems encountered by the Mint and the nation since the omnibus legislation was introduced. The shortage of one cent pieces in mid-1974, and the resulting difficulty in amending the coinage laws,¹⁹ indicate that substantive change in not only coinage composition, but also the means of effecting change on short notice, is essential. Difficulties associated with passage of the bicentennial coinage legislation,²⁰ and the controversies

¹¹ S. 1619, 93d Cong., 1st Sess. (1973).

¹² *Id.* (enacting clause).

¹³ See, e.g., statement of Mint Director Brooks in 1973 *House Bicentennial Hearings*, *supra* note 10, at 38, in which she expressed the belief that the proposed change "is looked upon favorably in Congress."

¹⁴ See, e.g., Ganz, *Bill to Recodify Mint Laws Contains Hidden Surprises*, *Numismatic News Weekly*, June 5, 1973, at 14.

¹⁵ Act of Oct. 18, 1973, Pub. L. No. 93-127, 87 Stat. 455 (codified at 31 U.S.C. §§ 324d-324h (Supp. III 1973 & Supp. V 1975)).

¹⁶ Act of July 12, 1974, Pub. L. No. 93-341, 88 Stat. 295 (codified at 31 U.S.C. §§ 317(b), 317(c) (Supp. V 1975)).

¹⁷ Act of Dec. 26, 1974, Pub. L. No. 93-541, 88 Stat. 1739 (codified in scattered sections of 12, 31 U.S.C.).

¹⁸ Address by Hon. Walter E. Fauntroy, Chairman of the Subcomm. on Historic Preservation and Coinage of the House Comm. on Banking, Finance, and Urban Affairs, National Automatic Merchandizing Assoc., Annual Convention in Chicago (Oct. 14, 1977).

¹⁹ *Proposal to Authorize a Change in the Composition of the One-Cent Coin: Hearings on H.R. 11841 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 93d Cong., 2d Sess. (1974) [hereinafter cited as *1974 Aluminum Cent Hearings*]. These hearings explored in great depth the problems associated with a proposed change in the weight and alloy of the cent.

²⁰ For an in-depth examination, see Ganz, *Tribute to 200 Years of Freedom: The Story of How the United States Got Its Bicentennial Coinage*, 88 *THE NUMISMATIST* 499 (1975). An expanded and documented version is found in D. GANZ, *14 BITS: THE STORY OF AMERICA'S BICENTENNIAL COINAGE* (1976). (a legal and legislative history of 31 U.S.C. §§ 324d-324i (Supp. V 1975)) [hereinafter cited as D. GANZ, *AMERICA'S BICENTENNIAL COINAGE*]. For the problematic aspects faced by Congress, see *1973 House Bicentennial Hearings*, *supra* note 10; *Bicentennial Commemorative Coinage and Construction of New Mint Buildings: Hearings on S. 422, S. 1141, S. 1927, S. 1928 and S. 1901 Before the Sub-*

resulting from various bills to create national mint medals²¹ and new denominations of coinage,²² demonstrate that current coinage and minting laws are wedded to an era of few private medallists, even fewer contract coiners, and no Federal Reserve System. While the Coinage Act of 1873 was an attempt to cope with the problems of an earlier era, — as shown by its extensive legislative history²³—the legislation is inadequate to cope with the commercial needs of a modern economic society, and Mint officials have been forced to stretch interpretations to the outer limits in order to avoid a major problem in the coinage field.

B. *Studies by the Mint and Private Industry*

Substantively, the most important input to any examination of American coinage laws is that of the Bureau of the Mint. Over the past decade, Mint officials have tried constantly to improve existing technology and production requirements, utilizing both in-house studies and outside consulting contracts as a means to that end.

Since 1973, the Bureau of the Mint has participated in three substantial coinage examinations: *Alternative Materials for One Cent Coinage*,²⁴ a Treasury Department study which recommended the replace-

comm. on Minting and Coinage of the Senate Comm. on Banking, Housing and Urban Affairs, 93d Cong., 1st Sess. [hereinafter cited as *1973 Senate Bicentennial Hearings*].

²¹ See *National Bicentennial Medal, Hearings on H.R.J. Res. 386 Before the Senate Committee on Banking, Housing, and Urban Affairs, 95th Cong., 1st Sess. (1977)* [hereinafter cited as *1977 Senate Medal Hearings*]. See also *Joint Resolution to Provide for the Striking of a National Medal to be Issued Annually in Commemoration of the Bicentennial: Hearings on H.R.J. Res. 386 Before the Subcomm. on Historic Preservation and Coinage of the House Comm. on Banking, Finance and Urban Affairs, 95th Cong., 1st Sess. (1977)* [hereinafter cited as *1977 Capitol Historical Society Medals Hearings*]; *Oversight Hearing on National Medals: Hearings Before the Subcomm. on Historic Preservation and Coinage of the House Comm. on Banking, Finance and Urban Affairs, 95th Cong., 1st Sess. (1977)* [hereinafter cited as *1977 Oversight Hearings on National Medals*]; *Proposal to Authorize Medals Commemorating the Bicentennial of the American Revolution: Hearings on H.R. 7987 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency, 92d Cong., 1st Sess. (1971)* [hereinafter cited as *1971 House Bicentennial Medal Hearings*]. See also, *1973 House Bicentennial Hearings, supra* note 10, at 11-21. Earlier commentary is found in *Commemorative Medals and Coin Legislation: Hearings on H.R. 2380, H.R. 3488, H.R. 3575, H.R. 4003 and H.R. 6014 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency, 88th Cong., 1st Sess. (1963)* [hereinafter cited as *1963 House Comm. Coins and Medals Hearings*]. See also *Commemorative Medals and Bicentennial Coinage: Hearings Before the Subcomm. on Historic Preservation and Coinage of the House Comm. on Banking, Currency and Housing, 94th Cong., 1st Sess. (1975)* [hereinafter cited as *1975 Coins and Medals Hearings*].

²² See *1975 Coins and Medals Hearings, supra* note 21, at 48-49, 68-76. On commemorative coin designs, see *1963 House Comm. Coins and Medals Hearings, supra* note 21, at 46-109. Older, but of great import (and frequently cited as authority) is H.R. REP. No. 101, 76th Cong., 1st Sess. (1939), regarded as definitive on abuses in manufacturing and sales aspects of commemorative coinage.

²³ See H.R. EXEC. DOC. No. 307, 41st Cong., 2d Sess. (1870); S. Misc. Doc. No. 132, 41st Cong., 2d Sess. (1870), for analysis of the initial draft legislation, comments from numerous individuals, the second draft, and the final bill.

²⁴ U.S. DEPT. OF THE TREASURY, *ALTERNATIVE MATERIALS FOR ONE CENT COINAGE (1973)* [hereinafter cited as *ALTERNATIVES*], reprinted in *1974 Aluminum Cent Hearings*,

ment of the copper cent with an aluminum coin; *One Cent Coinage*,²⁵ a summary of 1973-1974 Treasury-Federal Reserve Committee studies which called for the elimination of mint marks on coins, introduction of a two cent coin as legal tender, size-reduction in the dollar, probable elimination of the half dollar, and termination of the use of the one cent piece; and finally, a comprehensive study by Research Triangle Institute²⁶ in which data from the Bureau of the Mint and other sources was correlated by a private contractor into an ideal coinage system. Somewhat older, but nonetheless important in ascertaining technological data and official positions, are two 1965 studies²⁷ compiled in preparation for the introduction of clad coinage. This includes the official *Treasury Staff of Silver and Coinage*, and the companion *Final Report on A Study of Alloys Suitable for Use As United States Coinage*, prepared by the Battelle Memorial Institute.

In considering these studies, it should be noted that they are to a certain extent self-serving. In the case of the Treasury Department's studies on ending the use of silver in coinage,²⁸ and on introduction of an aluminum cent,²⁹ it is apparent that conclusions were drawn before the reports were written, and that the studies thereafter attempted to justify the conclusions. This is particularly evident in the 1973 aluminum cent study, a point not lost on the Congressional subcommittee considering the matter. Despite this shortcoming, the technical data and conclusions of the studies are invaluable because they afford the researcher access to otherwise unavailable documents, plus insight into the official thinking that ultimately frames legislation designed to change, or fundamentally alter, an existing aspect of American coinage.

²⁵ U.S. DEPT. OF THE TREASURY, ONE CENT COINAGE (1974) [hereinafter cited as ONE CENT COINAGE], summarized in Ganz, *Treasury-Fed 1974 study weighed future of cent, possibility of two cent*, *Coin World*, Nov. 5, 1975, at 1.

²⁶ A comprehensive study of domestic coinage was done under contract from the Bureau of the Mint by Research Triangle Institute, a North Carolina consulting firm. Published data from the study included the following pertinent documents: RESEARCH TRIANGLE INSTITUTE, A COMPREHENSIVE REVIEW OF U.S. COINAGE SYSTEM REQUIREMENTS TO 1990: PROJECT SUMMARY (1976) [hereinafter cited as PROJECT SUMMARY]; RESEARCH TRIANGLE INSTITUTE, A COMPREHENSIVE REVIEW OF U.S. COINAGE SYSTEM REQUIREMENTS TO 1990: SUMMARY (1976) [hereinafter cited as RTI SUMMARY]; RESEARCH TRIANGLE INSTITUTE, A COMPREHENSIVE REVIEW OF U.S. COINAGE SYSTEM REQUIREMENTS TO 1990: CURRENT DENOMINATIONS AND ALLOYS (1976) [hereinafter cited as 1 RTI STUDY]; RESEARCH TRIANGLE INSTITUTE, A COMPREHENSIVE REVIEW OF U.S. COINAGE SYSTEM REQUIREMENTS TO 1990: COINAGE SYSTEM ALTERNATIVES (1976) [hereinafter cited as 2 RTI STUDY]. The RTI SUMMARY is reprinted in [1976] *DIR. OF THE MINT ANN. REP.* 48-51.

²⁷ U.S. DEPT. OF THE TREASURY, TREASURY STAFF STUDY ON SILVER AND COINAGE (1965) [hereinafter cited as 1965 TREASURY STAFF STUDY]; BATTELLE MEMORIAL INSTITUTE, FINAL REPORT ON A STUDY OF ALLOYS SUITABLE FOR USE AS UNITED STATES COINAGE (1965) [hereinafter cited as 1965 BATTELLE STUDY]. The reports are reprinted in *Coinage Act of 1965: Hearings on H.R. 8746 Before the House Comm. on Banking and Currency*, 89th Cong., 1st Sess. 163-380 (1965).

²⁸ 1965 TREASURY STAFF STUDY, *supra* note 27.

²⁹ See *1974 Aluminum Cent Hearings*, *supra* note 19, at 135, where this author wonders aloud "whether or not the Treasury Department made a decision to change to aluminum and then wrote a report to justify the change." See *id.* at 103, for the Mint's response to the charge.

C. Congressional Input

The placement of coinage and minting laws in proper perspective is greatly aided by the hearings held over the years by the respective banking committees of the House and Senate, and by the other committees of Congress that have dealt with mint-related legislation. When full-scale hearings are conducted, divergent views from a variety of interested parties are heard, and not infrequently a reconciliation by the congressional subcommittee is thereafter attempted. In other instances, congressional hearings emphasize the negative aspects of American coinage law, and often result in either the enactment of remedial legislation or the effectuation of change through administrative procedures within the Department of the Treasury.

At the oversight hearings on national mint medals held in April, 1977, Undersecretary of the Treasury Bette B. Anderson reiterated the position that has been expressed by the Treasury Department since the 1930's, opposing the use of coinage for commemorative events, and favoring the use of national medals provided the events intended for tribute have sufficient national character to merit commemoration.³⁰ Also outlined at this meeting was an elaborate proposal for a comprehensive revamping of existing national medals legislation³¹ which would substantially alter the statutorily mandated requirements found in section 52 of the Coinage Act of 1873, but would not be inconsistent with some past precedents in the field. At the request of the subcommittee chairman, the proposal is presently under Treasury consideration.

In late June, 1977, the Subcommittee on Historic Preservation and Coinage of the House Committee on Banking, Finance, and Urban Affairs held a brief hearing on House of Representatives Joint Resolution 386, which would authorize a series of thirteen annual medals to be issued on behalf of the United States Capitol Historical Society. Testimony was solicited from various members of Congress and private individuals,³²

³⁰ 1977 Oversight Hearings on National Medals, *supra* note 21, at 5. The general criteria utilized in determining whether an event is of sufficient national character to merit medallion commemoration with a national mint medal is set forth in a memorandum made available to members of the Subcommittee on Historic Preservation and Coinage at the 1977 Oversight Hearings on National Medals, *supra* note 21. This memo, found in subcommittee files, states, *inter alia*, that "[t]he medal should have significance for all the people. It should honor only those events that have contributed to and advanced the history of the country, or [t]hose persons whose superior deeds or achievements have embellished our history or who are representative of the finest of accomplishments in service to the Nation." Examples were then cited, including: "Statehood celebrations; military heroes or battle actions; national figures who have made outstanding contributions to the security, advancement or prestige of the United States; persons who have performed specialized services in a particular medium for the benefit of humanity; national historic monuments or landmarks." Other events of import "not having the scope or magnitude of a national medal should not be struck by the U.S. Mint," the memo continued. "This would include individual contributions or events occurring within a certain locality, region or state and having meaning only to the residents and history within those borders. . . ." See *Treasury still Fighting "commems,"* Coin World, Jan. 18, 1978, at 3.

³¹ *Id.* at 10-29. The proposals were those of the author. See Title V of the Model Act appended.

³² Statements were solicited from Hon. Fred Schwengel, President of the U.S. Capitol Historical Society, Andrew F. Wahlquist, President of Commemorative Marketing (with

and while much of the prepared testimony centered on the propriety of utilizing the United States Mint as manufacturer for the series, a controversy of real import arose concerning section two of the resolution which provides for use of the Mint mailing list to announce the availability of the medals to the 2.8 million individuals whose names and addresses are contained therein. Involved are issues of privacy, security for the collector, and competitive advantage, as well as allegations of past unfair competition. A balancing process may ultimately be needed to solve the problems raised at that hearing, and a proposed solution may be found in section 504 of the Model Act appended to this Article.

In 1975, the same subcommittee held hearings on the topic of national medals, and simultaneously considered the reintroduction of a two cent piece as legal tender.³³ Members of Congress, Mint officials, and one private individual³⁴ were invited to express their views on more than a dozen current bills,³⁵ and the overall examination of congressional hearings over the past decade reveals similar comprehensive treatment. For example, in late March, 1974, extensive hearings were conducted by the Subcommittee on Consumer Affairs of the House Banking and Currency Committee on the subject of changing the composition of the cent from copper to aluminum.³⁶ Mint officials testified³⁷ and submitted their previously unreleased study favoring aluminum,³⁸ representatives of the vending machine industry provided input,³⁹ and interested private individuals offered comments.⁴⁰

additional statements from the author), Hon. J. J. Pickle and Hon. John J. Rhodes, members of Congress. House of Representatives Joint Resolution 386 passed the House unanimously after some debate. 123 CONG. REC. H10, 143 (daily ed. Sept. 2, 1977). It was subsequently referred to the Senate Banking Committee, where it was significantly modified in two ways: the provision concerning the use of the Mint mailing list was deleted, and a surcharge of 25 percent of the cost reimbursable to the Mint was added. See section 501(3) of the appended Model Act, which would provide for a 50 percent surcharge. On November 28, 1977, the 1977 Senate Medal Hearings, *supra* note 21, were conducted, and testimony delivered by Schwengel, Wahlquist, and Stella Hackel, Director-designate of the Mint. The reasons for modification in the Senate, as well as the Treasury's reversal of its position on the mailing list, are explained in S. REP. NO. 95-611, 95th Cong., 1st Sess. (1977).

³³ 1975 *Coins and Medals Hearings*, *supra* note 21. H.R. 8155, 94th Cong., 1st Sess. (1975) called for the manufacture of a two cent coin, which had previously been issued from 1864 to 1873 under authority of the Act of April 22, 1864, ch. 66, 13 Stat. 54, which was terminated by passage of the Coinage Act of 1873, *supra* note 4.

³⁴ The following members of Congress and Mint officials were present: Congressmen Ashbrook, Gude, K. Mechler, Jones, Rousselot, and Schulze; Mint Director Mary Brooks, accompanied by Deputy Director Frank H. MacDonald, Public Information Officer James Parker, Legal Counsel Miklos Lonkay, and Assistant Director for Technology Alan J. Goldman. For their testimony, see 1975 *Coins and Medals Hearings*, *supra* note 21, at 50-76. The author also testified. *Id.* at 85-97.

³⁵ The text of all bills is reprinted in 1975 *Coins and Medals Hearings*, *supra* note 21, at 2-44.

³⁶ 1974 *Aluminum Cent Hearings*, *supra* note 19.

³⁷ *Id.* at 6-11, 82-104.

³⁸ *Id.* at 12-81. See note 24 *supra*.

³⁹ *Id.* at 104-127.

⁴⁰ *Id.* at 127 and following. My own comments are found at 134-135.

In 1973, both the House⁴¹ and Senate⁴² banking committees gave extensive examination to bicentennial coinage. Gold commemorative coins⁴³ were given favorable consideration by the Senate, but were rejected in the House. A proposal to change the reverse design of the quarter dollar for the bicentennial, presented by a private individual before the Subcommittee on Consumer Affairs of the House Banking and Currency Committee,⁴⁴ resulted in a reconsideration of the Mint's policy position against such an issue.⁴⁵ Substantively, the proposal directly influenced the decision to amend the legislation in favor of reverse design changes on the quarter in addition to those on the half dollar and dollar.⁴⁶ The use of silver in coinage was also discussed at great depth at both hearings.⁴⁷

When the first bicentennial medal hearing⁴⁸ was held in 1971, there was some opposition to the concept of the government operating in competition with private industry⁴⁹ in this field. Resulting legislation provided for the issuance of thirteen medals through 1983.⁵⁰ This was later amended to permit limited issuance through mid-1977.⁵¹ Despite this limitation, a subsequent bill⁵² to permit the striking of up to twenty-one different medals to commemorate Americans of various ethnic backgrounds was given favorable consideration by the Senate,⁵³ the House Subcommittee on Historic Preservation and Coinage, and the full House Banking and Currency Committee.⁵⁴ A linguistical snarl⁵⁵ and the rush to end the Ninety-fourth Congress prevented passage. Other

⁴¹ 1973 House Bicentennial Hearings, *supra* note 10.

⁴² 1973 Senate Bicentennial Hearings, *supra* note 20.

⁴³ *Id.* at 1-6, 9-48. See D. GANZ, AMERICA'S BICENTENNIAL COINAGE, *supra* note 20, at 43-51.

⁴⁴ H.R. REP. NO. 93-391, 93d Cong., 1st Sess. 6 (1973); 1973 House Bicentennial Hearings, *supra* note 10, at 68-70.

⁴⁵ 1973 Senate Bicentennial Hearings, *supra* note 20, at 21-22.

⁴⁶ The resulting legislation is 31 U.S.C. §§ 324d-324h (Supp. III 1973 & Supp. V 1975).

⁴⁷ See D. GANZ, AMERICA'S BICENTENNIAL COINAGE, *supra* note 20, at 43. See also notes 151-57 *infra* and accompanying text.

⁴⁸ 1971 House Bicentennial Medal Hearings, *supra* note 21.

⁴⁹ *Id.* at 103. The feelings may not have changed substantially since then. See, e.g., 1977 Capitol Historical Society Medal Hearings, *supra* note 21, at 37 (remarks of Rep. Evans).

⁵⁰ Act of Feb. 12, 1972, Pub. L. No. 92-228, 86 Stat. 37.

⁵¹ Act of Dec. 11, 1973, Pub. L. No. 93-177, § 15(b)(2), 87 Stat. 704 (repealing the Act of Feb. 12, 1972, cited in note 50 *supra*). Despite the repeal, there is some thought that H.R.J. Res. 386, 95th Cong., 1st Sess. (1977) is an "extension" of this program. 1977 Capitol Historical Society Medal Hearings, *supra* note 21, at 1 (remarks of Chairman Fautroy).

⁵² S. 371, 94th Cong., 1st Sess. (1975).

⁵³ S. 371 passed the Senate on voice vote. 121 CONG. REC. S9883 (daily ed. June 6, 1975).

⁵⁴ Action on H.R. 7808, 94th Cong., 1st Sess. (1975) was scheduled for the suspension calendar on Monday, October 20, 1975, following approval of the full House Banking Committee. Whip Advisory Notice, Oct. 14, 1975 (unpublished).

⁵⁵ The problem was that 25,000 medals were authorized for the entire issue of 21 medals, or an average of less than 1,200 medals each. Remedial legislation was proposed in Ganz, *House panel opens testimony on coin, medal legislation*, *Coin World*, Oct. 8, 1975, at 17.

medal-related hearings were held in 1963,⁵⁶ in the early 1970's as part of the bicentennial package,⁵⁷ and in April and June, 1977.⁵⁸

One hearing peripheral to official minting functions is nonetheless of import to this study because of subsequently issued regulations⁵⁹ of the Federal Trade Commission. Hearings were conducted in February, 1973 on the Hobby Protection Act,⁶⁰ which became law later that same year.⁶¹ The key provisions are those pertaining to the products of the United States Mint which may be re-struck without use of the word "copy" on the dies.⁶²

Hearings on the Coinage Act of 1969,⁶³ subsequently enacted into law as Title II of the One Bank Holding Company Act of 1970,⁶⁴ are important because of their consideration of the half dollar and its role in commerce, the commentary that is made concerning the dollar coin, introduced after a thirty-six year hiatus in 1971, and the consideration given to the problems of the vending industry.

A substantial number of hearings and studies were conducted by Congress between 1964 and 1969, as the nation made a fundamental shift in its coinage policies that ultimately removed silver, except for certain coins,⁶⁵ and replaced it with a copper-nickel cladding. This process began in 1964 with hearings on the content of silver coins⁶⁶ and was continued the following year in the examination of the Coinage Act of 1965 by the Senate⁶⁷ and House of Representatives.⁶⁸ Prohibition of the use of mint marks on coinage for a period of five years was the solution of one section⁶⁹ of the Coinage Act of 1965, and when

⁵⁶ 1963 *House Comm. Coins and Medals Hearings*, *supra* note 21.

⁵⁷ 1973 *House Bicentennial Hearings*, *supra* note 10; 1973 *Senate Bicentennial Hearings*, *supra* note 20.

⁵⁸ 1977 *Capitol Historical Society Medals Hearings*, *supra* note 21; 1977 *Oversight Hearings on National Medals*, *supra* note 21; 1975 *Coins and Medals Hearings*, *supra* note 21.

⁵⁹ 16 C.F.R. §§ 304.1-6 (1977).

⁶⁰ *Hobby Protection Act: Hearings on H.R. 5777 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 93d Cong., 1st Sess., ser. 93-3 (1973).

⁶¹ 15 U.S.C. §§ 2101-2106 (Supp. V 1975).

⁶² 16 C.F.R. § 304.1(d) (1976). *But see* 1977 *Oversight Hearings on National Medals*, *supra* note 21, at 19, 21-22, 24.

⁶³ *Coinage Act of 1969: Hearings on H.R. 13252 Before the House Comm. on Banking and Currency*, 91st Cong., 1st Sess. (1969) [hereinafter cited as 1969 *Coinage Hearings*].

⁶⁴ One Bank Holding Company Act of 1970, Pub. L. No. 91-607, tit. II, 84 Stat. 1768 (codified at 31 U.S.C. §§ 317, 324, 391, 405 (1970 & Supp. V 1975)) [hereinafter cited as 1970 *Coinage Legislation*].

⁶⁵ This includes the Eisenhower silver-clad dollar, authorized by 31 U.S.C. § 391(d) (1970), and the silver bicentennial coins struck pursuant to 31 U.S.C. § 324(g) (Supp. III 1973 & Supp. V 1975).

⁶⁶ *Proposal to Reduce the Content of Silver Coins: Hearings on S. 2671 Before the Senate Comm. on Banking and Currency*, 88th Cong., 2d Sess. (1964).

⁶⁷ *Coinage Act of 1965: Hearings on S. 2080 Before the Senate Comm. on Banking and Currency*, 89th Cong., 1st Sess. (1965).

⁶⁸ *Coinage Act of 1965: Hearings on H.R. 8746 Before the House Comm. on Banking and Currency*, 89th Cong., 1st Sess. (1965).

⁶⁹ *Coinage Act of 1965*, Pub. L. No. 89-81, § 204(a), 79 Stat. 254 (codified at 31 U.S.C. § 324 (1970)) (amending) *REV. STAT. § 3517* (1875)).

the Mint decided in 1967 that the mint hallmark was desirable, congressional approval was necessary.⁷⁰

Offering an overview of the entire coin crisis of the mid-1960's is the House Government Operations Committee, which first studied efforts of the Treasury Department prior to its "crash coin production program,"⁷¹ then examined the program itself,⁷² and finally reviewed the entire coin situation.⁷³ It is a classic view of the ad hoc problem-solving approach utilized with respect to the nation's coinage laws in recent times.

Also valuable in the study of the Mint's coinage views, and the congressional reaction, are the annual appearances of the Director of the Mint before the appropriations committees of the House and the Senate. While long-term solutions are seldom discussed, problems of immediate concern are usually examined with a degree of candor lacking in some of the more formalized hearings.

In examining this type of input, the testimonies and publications have been consulted and commented upon in this Article as required. So, too, have other related and peripheral hearings been consulted, though generally a cut-off date — the 1963 hearings on commemorative coins and medals⁷⁴ — has been employed.

II. THE CORPUS OF AMERICAN MINTING AND COINAGE LAWS: ORIGINS AND CURRENT STATUS

A United States Mint was established⁷⁵ in Philadelphia⁷⁶ under the original Mint Act of April 2, 1792.⁷⁷ Until passage of the Act of March 3, 1835,⁷⁸ this was the only authorized government mint. To some extent the requirements of the Mint and its regulations bear closely on the development of coinage law in the 185 years since the Mint's founding. This is particularly true in light of the re-enactment of some of the early provisions in current law.

Heading up the Mint then, as now, was a director.⁷⁹ Also assigned

⁷⁰ *Mint Marks: Hearings on S. 1008 Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967)* [hereinafter cited as *1967 Mint Mark Hearings*].

⁷¹ H.R. REP. NO. 194, 89th Cong., 1st Sess. (1965).

⁷² H.R. REP. NO. 195, 89th Cong., 1st Sess. (1965).

⁷³ H.R. REP. NO. 1468, 89th Cong., 2d Sess. (1966).

⁷⁴ *1963 House Comm. Coins and Medals Hearings, supra* note 21.

⁷⁵ Joint Res. No. 3, 1st Cong., 3d Sess., 1 Stat. 225 (Mar. 3, 1791) authorized the first Mint.

⁷⁶ Philadelphia, as seat of government, was designated site of the Mint. Act of April 2, 1792, ch. 16, § 1, 1 Stat. 246. It was reapproved for a two-year term by the Act of May 14, 1800, ch. 70, 2 Stat. 86, and again in the Act of Mar. 3, 1801, ch. 21, 2 Stat. 111. Continued reapproval was needed until the Act of May 19, 1828, ch. 67, 4 Stat. 277, which stated that the Mint would remain in Philadelphia until otherwise provided by law. See F. STEWART, *HISTORY OF THE FIRST UNITED STATES MINT* (1924).

⁷⁷ Act of Apr. 2, 1792, ch. 16, 1 Stat. 246.

⁷⁸ Act of Mar. 3, 1835, ch. 39, 4 Stat. 774.

⁷⁹ Act of Apr. 2, 1792, ch. 16, § 1, 1 Stat. 246 (current version at 31 U.S.C. § 251

to the Philadelphia facility were an assayer,⁸⁰ a chief coiner,⁸¹ an engraver,⁸² a treasurer,⁸³ workmen and clerks,⁸⁴ and by 1795 a melter and refiner.⁸⁵ Subject to minor revisions, these positions exist to this day.

The duties of the key officials of the Mint were carefully prescribed by law.⁸⁶ Metallic composition of the coinage was closely regulated,⁸⁷ and deviation from the norm by Mint officials in knowingly allowing the debasement of coinage could be met with the death penalty.⁸⁸ To assure compliance, an annual Assay Commission, appointed by the President of the United States,⁸⁹ was empowered to meet at the Mint each year to survey the produce of the previous year's strikings which had been set aside in a sealed pyx box.⁹⁰ Funded presently by an annual appropriation of \$2,500,⁹¹ the Assay Commission is believed to have met each year in Philadelphia since its authorization, examined the money product, and made the required report.⁹² The overall impact of the Assay Commission is minimal, yet until 1977 there was little opposition in Congress⁹³ to the continuation of the unit.

The annual trial of the pyx is essentially an anachronism because of the practice of the Mint to conduct assays and examinations of the standards of coins manufactured throughout the year. Under current practice, for each 200,000 pieces or fraction thereof struck in the denomina-

⁸⁰ *Id.* Act of Apr. 2, 1792, ch. 16, 1 Stat. 246 (current version at 31 U.S.C. § 263 (1970)).

⁸¹ *Id.* The reorganization of the Act of Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384, (codified at 31 U.S.C. § 267 (1970)), consolidated the duties formerly imposed on the coiner, melter, and refiner under the authority of the superintendent.

⁸² Act of Apr. 12, 1792, ch. 16, § 1, 1 Stat. 246 (current version at 31 U.S.C. § 263 (1970)).

⁸³ *Id.*

⁸⁴ *Id.* § 2 (current version at 31 U.S.C. § 266 (1970)).

⁸⁵ *Id.* § 1. See note 81 *supra*.

⁸⁶ *Id.* § 3 (Duties are now found in scattered sections of 31 U.S.C.).

⁸⁷ *Id.* Substantially the same provisions were retained by the Act of June 28, 1834, ch. 95, § 4, 4 Stat. 699, and in the subsequent 1837 coinage law revision, Act of Jan. 18, 1837, ch. 3, § 32, 5 Stat. 136.

⁸⁸ Act of Apr. 2, 1792, ch. 16, § 19, 1 Stat. 250.

⁸⁹ *Id.* § 18 (current version at 31 U.S.C. § 363 (1970)). The original statutory members of the Assay Commission were the Chief Justice of the United States, the Secretary of State, the Secretary and Comptroller of the Treasury, and the Attorney General of the United States. The Commission's Report is submitted to the President. The 1973 Mint revision legislation would have required certification to the Secretary of the Treasury. See S. 1619, 93d Cong., 1st Sess. § 206 (1973). This author served on the 1974 Assay Commission.

⁹⁰ The "trial of the pyx," as the assay is historically known, is an English tradition dating originally to the reign of King John when a general assay was begun. Edward III ordered commencement of a regular pyx trial. Ganz, *Modern Technology Threatens Future of Assay Commission*, Numismatic News Weekly, May 1, 1973, at 17. See also 8 HALSBURY'S LAWS OF ENGLAND ¶¶ 1028-1034 (4th ed. 1974).

⁹¹ 1977 APPENDIX TO THE BUDGET OF THE UNITED STATES 614-16 (1976) (covering Fiscal Year 1977).

⁹² U.S. DEPT. OF THE TREASURY, THE ANNUAL ASSAY COMMISSION 16 (1974) (internal Mint regulations).

⁹³ Ganz, *Coinage panel to consider two numismatic proposals*, Coin World, Feb. 9, 1977, at 10. In 1977 only statutory assayers, as opposed to public, members served at the pyx trial.

tions of dollar, half dollar, and quarter, two specimens are forwarded to the Washington laboratories for analysis. For the dime, the quantity is two coins per 400,000 pieces.⁹⁴ When the Annual Assay Commission meets on the second Wednesday in February, it in essence duplicates the testing conducted by the Mint in the course of the previous calendar year for coins already released into circulation. Because the various tests are complicated and require scientific analysis, skilled Mint technicians essentially carry out the process under the watchful, if eager eyes of the neophyte commissioners.

In fairness, it should be noted that service on the annual Assay Commission is considered an honor by those selected for membership, and that in order to gain appointment, application must be made with the approval of the individual's representatives in Congress prior to presidential designation. Despite the fact that the post is non-compensatory and the applicants pay essentially all of the costs associated with their service, competition for the limited number of openings has been keen in recent years.

Except for the addition of the Office of Superintendent, the administrative, manufacturing, and supervisory operations established by the original Mint Act remain today. Administrative aspects took up only a small portion of the original Mint Act, however, and it seems that the Congress and Executive Branch of that time were more concerned with the specifications for coinage. Hamilton, in his REPORT ON THE ESTABLISHMENT OF A MINT,⁹⁵ devoted just twenty-one sentences to the organizational structure of the Mint, basing most of his comments on European models.⁹⁶ Structural brevity notwithstanding, the intricacies of coinage composition, design, weight, and denomination were extensively explored. It is now little more than history that the dollar was chosen as the unit of value, and of little importance that a fifteen to one ratio of silver to gold was established for purposes of currency valuation.⁹⁷ It is perhaps noteworthy that the first estimation of coinage demand requirements was inadequate,⁹⁸ that the metal composition finally put into production created gold coinage of greater bullion worth than face value,⁹⁹ and that because of these and similar problems a total of twenty-

⁹⁴ See note 92 *supra*.

⁹⁵ A. HAMILTON, REPORT ON THE ESTABLISHMENT OF A MINT (1791), reprinted in 7 PAPERS OF ALEXANDER HAMILTON 473 (Syrett ed. 1963) [hereinafter cited as HAMILTON PAPERS]. The report is also found in 2 ANNALS OF CONGRESS 2112 (1791) [hereinafter cited as ANNALS].

⁹⁶ See HAMILTON PAPERS, *supra* note 95, at 606, reprinted in ANNALS, *supra* note 95, at 2140-41.

⁹⁷ See HAMILTON PAPERS, *supra* note 95, at 573, reprinted in ANNALS, *supra* note 95, at 2114. See also D. TAXAY, THE U.S. MINT AND COINAGE 48-51 (1966).

⁹⁸ See HAMILTON PAPERS, *supra* note 95, at 601, reprinted in ANNALS, *supra* note 95, at 2136, where it is estimated that perhaps 50,000 one dollar gold pieces will be required. This poor demand forecasting is a contemporary problem as well. See ONE CENT COINAGE, *supra* note 25, at 5-12.

⁹⁹ The ratio of gold to silver established by Congress on Hamilton's recommendation did not correspond to the bullion price during the period from 1792 to 1834. Consequently, gold coinage was often melted for its bullion worth. A chart listing the

six major coinage bills had to be enacted between 1792 and 1842¹⁰⁰ to rectify errors of judgment and to meet unexpected contingencies. This initial alteration of the 1792 legislation included one complete overhaul in 1837,¹⁰¹ and several minor ones.¹⁰² Also lacking in elasticity, the 1837 revision¹⁰³ was replaced by the Coinage Act of 1873, the last attempted codification.¹⁰⁴ Despite this extensive examination¹⁰⁵ of the problems of the day and an attempt to create a flexible Bureau of the Mint, by the turn of the twentieth century there had been at least fifteen major alterations of the 1873 legislation, and in the seventy-seven years since then, dramatic changes have resulted in a virtual rewriting of the entire codification.¹⁰⁶

III. SELECTED PROBLEMS TODAY

While the Coinage Act of 1873 and its subsequent amendments may have served the Mint well through the early part of the twentieth century, the turbulent period of the last two decades has tried the legislation to its outer limits. From a subjective standpoint, it seems apparent that each successive problem faced by the Mint has been dealt with on an ad hoc basis, either by new legislation or by a warped interpretation of an older law. The elasticity of the existing coinage legislation is no longer capable of accomodating the realities of commerce, the Mint's

commercial ratio is found in U.S. SENATE, COMMITTEE ON FINANCE, COINAGE LAWS OF THE UNITED STATES 1792-1894, at 108 (4th rev. ed. 1894) [hereinafter cited as COINAGE LAWS].

¹⁰⁰ The most important bills are compiled in COINAGE LAWS, *supra* note 99, at 1-25. See also M. BEAMAN & A. McNAMARA, INDEX ANALYSIS OF THE FEDERAL STATUTES 1789-1873 (1911).

¹⁰¹ The major revision was the Act of Jan. 18, 1837, ch. 3, 5 Stat. 136.

¹⁰² This includes the following Acts: Act of May 8, 1792, ch. 39, 1 Stat. 283 (relating to copper coinage); Act of Jan. 14, 1793, ch. 2, 1 Stat. 299 (relating to copper coinage); Act of Feb. 9, 1793, ch. 5, 1 Stat. 300; Act of Feb. 1, 1798, ch. 11, 1 Stat. 539 (legal tender status of foreign coins); Act of Apr. 10, 1806, ch. 22, 2 Stat. 374 (legal tender status of foreign coins); Act of Mar. 3, 1819, ch. 97, 3 Stat. 525 (legal tender status of foreign coins); the numerous bills pertaining to the situs of the national mint cited in note 76 *supra*; Act of Mar. 3, 1795, ch. 47, 1 Stat. 439 (additional officers, seigniorage rights, and Presidential power to reduce weight of copper coins); Act of June 28, 1834, ch. 96, 4 Stat. 700 (reduced weight of foreign gold coins to revalue dollar); Act of Mar. 3, 1835, ch. 39, 4 Stat. 774 (established branch mints).

¹⁰³ Act of Jan. 18, 1837, ch. 3, 5 Stat. 136.

¹⁰⁴ Act of Feb. 12, 1873, ch. 131, 17 Stat. 424.

¹⁰⁵ See authorities cited in note 23 *supra*.

¹⁰⁶ These changes include, *inter alia*, those cited in note 6 *supra*, and the following selected laws: Act of June 20, 1874, ch. 320, 18 Stat. 97 (reestablished branch mint at New Orleans); Act of Jan. 14, 1875, ch. 15, 18 Stat. 296 (resumption of specie payment); Act of Mar. 3, 1875, ch. 143, 18 Stat. 478 (created 20 cent coin); Act of Apr. 17, 1876, ch. 63, § 2, 19 Stat. 33 (use of silver coin to redeem fractional currency); Act of Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25 (restored legal tender status to the dollar); Act of May 2, 1878, ch. 79, 20 Stat. 47 (prohibited further coining of twenty cent piece); Act of June 9, 1879, ch. 12, § 3, 21 Stat. 8 (current version at 31 U.S.C. § 459 (1970)) (limiting legal tender of silver coins to ten dollars); Act of Mar. 3, 1887, ch. 396, 24 Stat. 634 (ended use of trade dollar); Act of Sept. 26, 1890, ch. 944, 26 Stat. 484, (current version at 31 U.S.C. § 276 (1970)) (prohibiting coin design changes more frequently than once in 25 years, and similar prohibition against alteration of coin diameters without Congressional approval); Act of Sept. 26, 1890, ch. 945, 26 Stat. 485 (discontinued striking of one and

role as a sales agency to numismatists, the advent of private commercial minting facilities which compete with the United States Mint for coin and medal contracts, or the problems of inflation and their impact on production costs.¹⁰⁷ Legislative cures for the impediments in the coinage system have occasionally been implemented, but not without the sacrifice of time and efficiency. Congress has tended to discount the importance of coinage matters, the result of which is inevitably legislative delay when it can be least afforded. A brief examination of some selected areas and recent legislative enactments will shed light on the problems, and the ad hoc solutions with which Congress has responded.

A. Denominations and Metallic Composition

In an integrated approach, problems that have occurred with American coinage denomination — cent through dollar, commemorative issues, and higher denominations struck in gold — are explored below along with the related problem of the metallic composition of the coinage.

1. The One Cent Piece

Four times in the past thirty-five years, the Department of the Treasury has requested that Congress authorize a major change in the status of the one cent piece.¹⁰⁸ Three changes were actually effected, resulting in four types of metallic composition among the circulation strikes.¹⁰⁹ The fourth requested change, total elimination of the cent, remains under advisement.¹¹⁰ Two alternatives exist for the present cent,¹¹¹ but the viability of these alternatives remains conjectural. One alternative expired by its own terms on December 31, 1977.¹¹² Like predecessor legislation, the death knell for the cent requires approval by Congress and the President, a lengthy process at best.

three dollar gold pieces and three cent nickel coins); Act of June 4, 1897, ch. 2, 30 Stat. 27 (appropriation authorizing recoinage of noncurrent gold and silver coin); Act of Mar. 14, 1900, ch. 41, § 9, 31 Stat. 48 (permitting recoinage of subsidiary silver coin).

¹⁰⁷ See Ganz, *Congress Still Balks Despite Need for New Denver Mint*, Numismatic News Weekly, Feb. 28, 1976, at 16; Ganz, *Mint Study Proposes Elimination of Cent, Half; Change in Dollar*, Numismatic News Weekly, Dec. 20, 1975, at 15; Ganz, *Mint Production Changes Could Mean Added Activity*, Numismatic News Weekly, Jan. 24, 1976, at 10; Ganz, *Mint Study Suggests Abandoning Mint Marks*, Numismatic News Weekly, Dec. 6, 1975, at 20. It would also be useful to consult the trilogy of articles by this author in Numismatic News Weekly, in which some solutions to the problems posed in the main text were suggested. See Ganz, *Modernization of Nation's Coinage Law is Overdue*, Numismatic News Weekly, Apr. 3, 1976, at 10; Ganz, *Permanent Changes Needed to Streamline Coinage Laws*, Numismatic News Weekly, Apr. 10, 1976, at 18; Ganz, *Coinage Law Revision Produces Some Solutions, New Problems*, Numismatic News Weekly, Apr. 24, 1976, at 14.

¹⁰⁸ See War Powers Act of 1942, ch. 767, §§ 1, 2, 56 Stat. 1064; Act of Sept. 5, 1962, Pub. L. No. 87-643, 76 Stat. 440 (current version at 31 U.S.C. § 317 (1970 & Supp. V 1975)); Act of Oct. 11, 1974, Pub. L. No. 93-441 (current version at 31 U.S.C. §§ 317(b), 317(c) (Supp. V 1975) (originally codified at 31 U.S.C. § 317 (1970)); EXEC. COMMUNICATION No. 355, *supra* note 2.

¹⁰⁹ The four types resulted from the 1942-1943 shift from copper-tin-zinc to zinc-coated steel; the 1943-1944 switch from steel to copper-zinc; the 1946 resumption of copper-zinc-tin, and the 1962 change adopting a copper-zinc composition.

¹¹⁰ EXEC. COMMUNICATION No. 355, *supra* note 2.

¹¹¹ Governed by 31 U.S.C. § 317(c) (Supp. V 1975).

Among the earlier changes, the zinc-plated steel cent introduced under the War Powers Act of 1942 took considerable time to achieve passage.¹¹³ The language was broad and permitted many changes, including concurrent striking of coins containing different proportions of metal. In 1944, copper shell casing mixed with zinc was substituted for the steel cents, and in 1946 the familiar copper-zinc-tin mixture was restored. Just fifteen years later, with tin in short supply and rising in price, the Mint went to Congress¹¹⁴ to request elimination of that metal. Hearings were held,¹¹⁵ and the request was granted.¹¹⁶

Subsequently, when the rising price of copper threatened the seigniorage of the one cent piece¹¹⁷ and a 1974 shortage of one cent pieces forced the Mint to raise production levels far beyond previously anticipated or projected rates, major problems arose.¹¹⁸ While the Mint was able to utilize the facilities of the San Francisco Assay Office¹¹⁹ and the bullion depository at West Point,¹²⁰ a far more fundamental problem remained: what to do if the price of copper rose to a level where the cent could no longer be made profitably. After extensive study,¹²¹ a Treasury Department study group opted for an aluminum cent. Legislation was sent to Capitol Hill and promptly passed by the Senate. Hearings were called for in the House,¹²² but action was delayed until October, 1974, more than a year after the problem was first identified by Mint officials. The solution arrived at by compromise legislation¹²³ was to permit a reduction in the copper content of the cent, which appeared a better choice than the introduction of aluminum in at least one view.¹²⁴ The Secretary of the Treasury was granted the option of making a compositional change until the end of 1977, provided Congress did not disapprove within a specified period. After that date, a cent composition problem not able to be remedied by reducing the copper content would require new congressional action. This novel legislative idea of congressional veto power over executive action remains untested.

In a comprehensive examination of the American coinage structure

¹¹³ Ganz, *Cents and Nickels Changed for War*, 11 COINAGE 32, 33-36 (Sept. 1975).

¹¹⁴ See [1962] DIR. OF THE MINT ANN. REP. 128.

¹¹⁵ *Elimination of Tin in the Alloy of the One Cent Piece: Hearings on H.R. 11310 Before Subcomm. No. 1 of the House Comm. on Banking and Currency*, 87th Cong., 2d Sess. (1962).

¹¹⁶ Act of Sept. 5, 1962, Pub. L. No. 87-643, 76 Stat. 440 (current version at 31 U.S.C. § 317 (1970 & Supp. V 1975)).

¹¹⁷ See generally ALTERNATIVES, *supra* note 24; *1974 Aluminum Cent Hearings*, *supra* note 19.

¹¹⁸ ONE CENT COINAGE, *supra* note 25, at 11, listed the estimated demand for one cent coinage for Fiscal Year 1975 as 7.52 billion pieces, and total coin demand at 11.18 billion. The Office of Production of the Bureau of the Mint disclosed that 10.004 billion cents and 13.377 billion pieces were actually produced.

¹¹⁹ Use is permissible pursuant to 31 U.S.C. § 283 (1970).

¹²⁰ Utilized by authority of 31 U.S.C. § 324f (Supp. V 1975).

¹²¹ See notes 24 & 25 *supra*.

¹²² *1974 Aluminum Cent Hearings*, *supra* note 19.

¹²³ Act of Oct. 11, 1974, Pub. L. No. 93-441, § 1, 88 Stat. 1261 (codified at 31 U.S.C. §§ 317(b), 317(c) (Supp. V 1975)) (amending 31 U.S.C. § 317 (1970)).

¹²⁴ See *1974 Aluminum Cent Hearings*, *supra* note 19, at 135 (chart).

undertaken on behalf of the Department of the Treasury, Research Triangle Institute (RTI) made a number of interesting observations concerning the one cent piece. RTI found that while the cent "possesses negligible purchasing power and has a commercial value primarily as a unit of account," it would nonetheless "dominate total coin requirements by 1990."¹²⁵ RTI's finding was based on a projected rise in the price of copper to such a level that "by 1990 . . . cents may provide an economical source of copper for limited industrial consumption, leading to an accelerated rate of cent coin withdrawals from circulation."¹²⁶

After thorough examination of the problems associated with the cent, RTI concluded that there were four primary options available for consideration. These options were: to continue production of one cent pieces as currently produced "until the level of [manufacture] or the losses from negative seigniorage became prohibitive,"¹²⁷ which could be undertaken without legislation; to "replace the ninety-five percent copper-five percent zinc cent with an alternative material,"¹²⁸ which could be done administratively if the compositional change retained copper and zinc as materials,¹²⁹ or by legislation if other materials were used;¹³⁰ to add a two cent coin to the existing denominations "to reduce the projected number of cents required for commercial transactions,"¹³¹ which would require congressional approval; and to eliminate the cent denomination from circulation, which could be done by either administrative or legislative directive.¹³² After considerable examination of alternative alloys,¹³³ RTI proposed that "production of the cent coin be terminated by 1980."¹³⁴ The proposal was based on the existing production capacity of the Mint, which would have to be doubled by 1990 in RTI's estimation to handle cent requirements alone,¹³⁵ as well as the lack of real commercial need for the denomination and continued inflation which steadily erodes the purchasing power of the accounting unit.

In a December 31, 1976 letter to the President of the Senate and the Speaker of the House, outgoing Treasury Secretary William E. Simon recommended that Congress consider seriously the RTI recommendation of "eliminating the one cent piece from our coinage system."¹³⁶ In a subsequent report,¹³⁷ the Treasury Department noted that "[t]he United

¹²⁵ 2 RTI STUDY, *supra* note 26, at 1-1.

¹²⁶ *Id.* at 1-3. *But see* the melting prohibition found in 31 C.F.R. § 94.1 (1976).

¹²⁷ 2 RTI STUDY, *supra* note 26, at 2-4.

¹²⁸ *Id.*

¹²⁹ This could be done under the authority of 31 U.S.C. § 317(b) (Supp. V 1975).

¹³⁰ Action could be taken in the absence of disapproval by Congress through Dec. 31, 1977. 31 U.S.C. § 317(c) (Supp. V 1975).

¹³¹ 2 RTI STUDY, *supra* note 26, at 2-5.

¹³² *Id.* at 2-5.

¹³³ *Id.* at 4-1, 4-2.

¹³⁴ *Id.* at 8-1.

¹³⁵ Calculations are based on data presented in 1 RTI STUDY, *supra* note 26, at 3-8.

¹³⁶ Letter from Hon. William E. Simon, Secretary of the Treasury, to the President of the Senate and Speaker of the House (Dec. 31, 1976) (accompanying EXEC. COMMUNICATION No. 355, *supra* note 2).

States Government is rapidly approaching a decision point concerning the continuance of the one cent coin," citing as factors the "diminishing utility of the one-cent coin in commerce," "ever-increasing production," and inflation which has diminished purchasing power¹³⁸ of the unit of value. The actual recommendation of the Treasury Department was that the cent be eliminated by 1980, and preferably sooner, but not before extensive public hearings "and a thorough understanding of the impact of the consumer and various institutions involved" are realized.¹³⁹

Congressional opposition will likely forestall any move toward elimination of the cent,¹⁴⁰ a coin which the majority of Americans apparently wish retained¹⁴¹ if only because eighty percent of all current transactions would require price adjustment if the coin were eliminated.¹⁴² For this reason, the Model Act appended to this work would retain the cent as a denomination, but would adopt the two other RTI alternatives — addition of a two cent piece to ease temporarily some of the pressure on the cent supply, and permission to make metallic changes to a new composition provided Congress does not specifically object to the proposed change. It is nonetheless anticipated that the elimination of the cent will one day be practical and necessary, based on seigniorage considerations alone. Data assembled by RTI indicates that in 1976 the total cost of manufacturing cents for commerce already exceeded the face value of the coin¹⁴³ when the distribution and storage costs were added to production expenditures. The increase in cost is expected to continue until by 1982, the Mint itself produces the denomination at a loss¹⁴⁴ — a negative seigniorage. This is taken into account in section 307 of the Model Act, which would give legislative sanction to the practice of discontinuing a coinage denomination from circulation by administrative order.

2. The Five Cent Piece

Just as Congress had to act to change the composition of the one cent coin during the Second World War, it also faced the task of eliminating the use of nickel in the five cent piece. As part of the War Powers Act of 1942, a variable formula was devised to permit the Secretary of the Treasury to change the alloy of the five cent piece, and if necessary, to strike a three cent coin to ease production demand.¹⁴⁵ This authority was used to alter the composition of the coin to a silver-copper-manganese alloy, and nickel was diverted for use in the war effort. The compositional change expired automatically on December 31, 1946, though the production of silver nickels had actually ceased in 1945.

¹³⁸ *Id.* at 1, 2.

¹³⁹ *Id.* at 23.

¹⁴⁰ 2 RTI STUDY, *supra* note 26, at 8-2.

¹⁴¹ *Id.* at 3-24, 3-26.

¹⁴² *Id.* at 3-5.

¹⁴³ *Id.* at 1-8.

¹⁴⁴ RTI SUMMARY, *supra* note 26, at 5; 1 RTI STUDY, *supra* note 26, at 3-9.

¹⁴⁵ Act of Dec. 18, 1942, ch. 767, § 1, 56 Stat. 1064; Ganz, *Cents and Nickels Changed for War*, 11 *Conn. L. Rev.* 32, 38 (Sept. 1979).

In the early 1960's a shortage in five cent pieces occurred in several Federal Reserve districts,¹⁴⁶ and not until the Mint began its "crash" coinage program to combat the shortage in nearly all denominations¹⁴⁷ was the nickel in truly secure supply. Projections of the RTI study place the role of the nickel in an enhanced position in the decades ahead. On the assumption that the cent will be eliminated,¹⁴⁸ the five cent piece is expected to be subject to increased production requirements.¹⁴⁹ As a means of cost-efficiency, RTI has suggested that consideration be given to changing the composition of the five cent piece from the current seventy-five percent copper-twenty-five percent nickel to ninety-five percent copper-seven percent nickel, a ratio which corresponds to the proportional percentage rate of metallic composition in current clad coinage. "No direct usage exists for the scrap metal from the manufacture of clad coinage" according to the RTI study. The proposed change would provide a major use. The result would be a coin "with a reddish cast that would be aesthetically acceptable, and . . . compatible with existing coin processing equipment."¹⁵⁰

Under section 301 (3) of the Model Act, the Secretary of the Treasury would be permitted to alter administratively the composition of such coins as the nickel upon compliance with certain procedures, and provided Congress does not express specific disapproval. While this urges neither adoption nor dismissal of the proposal to change the composition of the nickel, it does make it a viable option if Mint technologists so recommend.

3. The Dime and Quarter

The growing problem relating to the dime and quarter has not been one of shortage due to overuse, though both coins have strong commercial utilization throughout the United States. Rather, the problem may be traced to the silver content¹⁵¹ of the coins. As the price of silver began to climb toward \$1.2929 per ounce in the early 1960's,¹⁵² there was real fear that the point would be reached at which it would become technically profitable to melt down a standard silver dollar for its bullion content. At that time the dollar still circulated as a legal tender and was generally available in banks throughout the United States, though generally unused.

A more serious rubicon would be reached if the price of silver rose above \$1.38 per ounce, the level at which the subsidiary coins — the half

¹⁴⁶ *Proposal to Reduce the Content of Silver Coins: Hearings on S. 2671 Before the Senate Comm. on Banking and Currency, 88th Cong. 2d Sess. 28-29 (1964)* [hereinafter cited as *1964 Content of Silver Coins Hearings*].

¹⁴⁷ H.R. REP. No. 194, 89th Cong., 1st Sess. 10 (1965).

¹⁴⁸ See notes 136 & 137 *supra* and accompanying text.

¹⁴⁹ 2 RTI STUDY, *supra* note 26, at 6-11, 7-28 tab. 7-14.

¹⁵⁰ *Id.* at 1-9, 1-10.

¹⁵¹ H.R. REP. No. 195, 89th Cong., 1st Sess. 6-13 (1965).

¹⁵² See generally *1964 Content of Silver Coins Hearings, supra* note 146; *Coinage Act of 1965: Hearings on S. 2080 Before the Senate Comm. on Banking and Currency, 89th Cong. 1st Sess. (1965)*.

dollar, quarter, and dime — would each be worth more than their face value when measured by bullion worth. Despite the crash program of the Treasury Department, which included greatly expanded production and conservation, it became clear upon examination that even if the silver situation was minimized the dime and quarter in particular would remain hostage to future rises.¹⁵³ The first solution proposed was a reduction in the silver content of the subsidiary coinage and the dollar,¹⁵⁴ later modified in part and adopted as the Coinage Act of 1965.¹⁵⁵ A wiser overall approach, total elimination of silver from the dime and quarter, was subsequently adopted.

Following this decision, substitution of the cupro-nickel clad coinage was begun. The Mint began a calculated policy of withdrawal of all silver dimes and quarters¹⁵⁶ from circulation, in effect anticipating Gresham's Law.¹⁵⁷ Today, a dozen years after the inflationary trend began to be of concern, the ten and twenty five cent denominations are circulating freely, and silver has been removed almost entirely from circulating coinage. The quarter dollars created for the bicentennial¹⁵⁸ were originally expected to cause production problems, but efficient manufacturing and distribution¹⁵⁹ minimized potential shortages of the denomination during issuance in 1975 and 1976.

In its exhaustive study of current problems in the American coinage system, RTI concluded that the quarter was probably *not* the most efficient denomination, and that a twenty cent piece should, in an optimally efficient system, be used as a replacement.¹⁶⁰ RTI recognized that there was little likelihood of this occurring because "the quarter has become a standard unit of account and value . . . [and] equipment modification and commercial transaction costs associated with its elimination and subsequent replacement with a twenty cent coin would far exceed those which could be offset by the marginal increase in theoretic efficiency."¹⁶¹

Under section 301 (1) (g) of the Model Act, the Secretary of the

¹⁵³ See 1965 TREASURY STAFF STUDY, *supra* note 27; 1964 *Content of Silver Coins Hearings*, *supra* note 146.

¹⁵⁴ S. 2671, 88th Cong., 2d Sess. (1964).

¹⁵⁵ Act of July 23, 1965, Pub. L. No. 89-81, tit. I, § 101(a)(1)(B), 79 Stat. 254 (codified at 31 U.S.C. § 391 (1970)). Cladding is a bonding process by which a copper-nickel alloy is bonded to a pure copper core. The resulting product is referred to technically as cupro-nickel cladding. A more detailed explanation is found in the 1965 BATTELLE STUDY, *supra* note 27, at 40-41.

¹⁵⁶ See [1970] DIR. OF THE MINT ANN. REP. 24 tab. 9 (silver recovered from melting U.S. silver coins, 1968-70). A comparable program was undertaken by the Mint for gold coinage between 1934 and 1967. See Ganz, *The Age of Gold*, 86 THE NUMISMATIST 957, 1179 tab. 10 (1973).

¹⁵⁷ Generally stated, Gresham's Law theorizes that "bad" or debased money drives "good" money from circulation. R. WESTERFIELD, *MONEY, CREDIT AND BANKING* 48-49 (1938).

¹⁵⁸ Authorized by 31 U.S.C. § 324d (Supp. III 1973 & Supp. V 1975).

¹⁵⁹ Statistics supplied by the Office of Production, Bureau of the Mint, indicate that 816.5 million quarters were produced in calendar year 1975.

¹⁶⁰ 2 RTI STUDY, *supra* note 26, at 3-1 para. 1.1, 3-3 para. 2.1.

Treasury could authorize the reissuance of the twenty cent piece, provided that certain preconditions were satisfied. Yet, it is unlikely that this would be done at the expense of the quarter dollar. RTI concluded that, like the dime, the twenty five cent piece circulates freely with "annual production . . . directed toward satisfying new requirements rather than replacing withdrawals from circulation."¹⁶² The annual attrition rate for both the dime and quarter was listed as zero by RTI,¹⁶³ compared to 22.7 percent for the half dollar and thirteen percent for the one cent piece.¹⁶⁴ The latter were considered inefficient denominations by RTI because they did not circulate adequately, and because an extensive amount of Mint production is devoted not only to manufacturing current needs, but also to replacing the pieces withdrawn from the circulating pool. It is interesting to note that both the dime and the quarter benefit from a "different attitude from the public"¹⁶⁵ which in effect "reflects the desirability of those denominations for the primary function of coinage — facilitating commercial transactions."¹⁶⁶

4. The Half Dollar

Minting records show that the half dollar, of all subsidiary coins is among the least-demanded denominations.¹⁶⁷ Despite this, the Bureau of the Mint has not been able to manufacture, nor the Federal Reserve to distribute, the fifty cent piece in a manner which would permit adequate circulation. The John F. Kennedy half dollar authorized by Congress in 1963¹⁶⁸ is responsible in no small measure for the shortage of this denomination since 1964. Apparently acquired by many as a memorial to the late President,¹⁶⁹ the 1964-dated coins seem to have disappeared, even before the rise in the price of silver, despite a 400 million piece production run. Following passage of the Coinage Act of 1965,¹⁷⁰ a forty percent silver content was retained in the half dollar while the metal was eliminated in all other coins. Hoarding inevitably resulted, and again the denomination failed to circulate effectively.¹⁷¹

¹⁶² 1 RTI STUDY, *supra* note 26, at 2-56.

¹⁶³ *Id.* at 2-54.

¹⁶⁴ *Id.* The Treasury Department apparently agrees with this view, and has recommended that the cent and fifty cent piece be eliminated. EXEC. COMMUNICATION No. 355, *supra* note 2. See discussion of Blumenthal letter at note 2 *supra*.

¹⁶⁵ *Id.* at 2-56.

¹⁶⁶ *Id.*

¹⁶⁷ Between 1793 and 1966, the United States Mint produced 1.799 billion half dollars, compared to 4.449 billion quarters, 10.055 billion dimes, 11.355 billion nickels (measured since 1866), and 68.5 billion cents. [1971] DIR. OF THE MINT ANN. REP. 180-81, 185.

¹⁶⁸ Act of Dec. 30, 1963, Pub. L. No. 88-256, 77 Stat. 843.

¹⁶⁹ 1964 *Content of Silver Coins Hearings*, *supra* note 146, at 19; H.R. REP. NO. 194, 89th Cong., 1st Sess. 21-22 (1965).

¹⁷⁰ Act of July 23, 1965, Pub. L. No. 89-81, 79 Stat. 254 (1965) (current version at 31 U.S.C. §§ 283, 294, 301-304, 317c, 324, 335, 340, 391-398 (1970)).

¹⁷¹ The administration proposal called for a forty percent silver-clad half dollar. See Presidential Message, *reprinted* in H.R. Doc. No. 199, 89th Cong., 1st Sess. 2 (1965). This was rejected by the House Banking and Currency Committee, which called for identical clad composition of all subsidiary coinage. H.R. REP. NO. 509, 89th Cong., 1st

Concerned about the increased use of silver in the half dollar, the Mint proposed in 1969 that the precious metal be eliminated entirely from the fifty cent coin. Hearings were held,¹⁷² and confident of passage the Mint began the following year's production by manufacturing 1970-dated forty percent silver coins for the special proof and mint sets sold to collectors. Apparently intended as a bonus to collectors, for Treasury officials predicted a composition change early in the year, this action later became an acute embarrassment when the Coinage Act of 1969 became enmeshed in a controversy between the Chairman of the House Committee on Banking and Currency and the Director of the Mint. Not until some legislative maneuvering¹⁷³ permitted the addition of a second title to the One Bank Holding Company Act of 1970¹⁷⁴ was it possible to eliminate the use of silver in the fifty cent piece. During the period of more than a year in which this move was under consideration, no half dollars were manufactured for circulation by the Mint, and the economy apparently suffered no ill effects.

Research Triangle Institute's examination of current problems in American coinage concluded the obvious in regard to the fifty cent piece; the denomination is not only not currently used, but its elimination would be welcome. The rate of attrition for the fifty cent piece was listed at 22.7 percent,¹⁷⁵ the highest of any denomination of American subsidiary coinage, indicating that the coin was "most susceptible to withdrawal from circulation."¹⁷⁶ According to the RTI study, the circulating pool of half dollars was almost 700 million pieces in 1973, and the Mint's production in the following two years was barely enough to replace those removed from circulation by attrition.¹⁷⁷ Continued disfavor of the denomination is likely. The coin is cumbersome, and two quarters serve as an efficient substitute for use in vending machines, few of which accept fifty cent pieces.¹⁷⁸

In RTI's optimal coinage system, a theoretical model, the fifty cent piece figured high on the list. Projected theoretical transactions with the fifty cent piece in an idealized coinage system indicate that more than twenty-two percent of all transactions would use the denomination.¹⁷⁹ Removed from the abstract, with the cent excluded only 5.8 percent of all transactions involve the half dollar,¹⁸⁰ and with the cent

Sess. 10-11 (1965). This was rejected by the full House, though not before at least one member called for the elimination of the denomination, stating that "The quarters and dimes are sufficient." 111 CONG. REC. 16235 (1965) (remarks of Rep. Fogarty).

¹⁷² 1969 *Coinage Hearings*, *supra* note 63.

¹⁷³ See STAFF OF THE HOUSE COMM. ON BANKING AND CURRENCY, 91ST CONG., 1ST SESS., SUMMARY OF ACTIVITIES 57-58 (Comm. Print 1970); S. REP. NO. 91-1084, 91st Cong., 2d Sess. 18-21 (1970).

¹⁷⁴ Pub. L. No. 91-607, tit. II, 84 Stat. 1760 (codified at 31 U.S.C. § 324 (1970)).

¹⁷⁵ 1 RTI STUDY, *supra* note 26, at 2-54.

¹⁷⁶ *Id.* at 2-55.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* Only 20 percent of the vending companies surveyed indicated that they had machines which could accept the 50 cent piece. 2 RTI STUDY, *supra* note 26, at 3-9.

¹⁷⁹ 2 RTI STUDY, *supra* note 26, at 3-9.

included the percentage is infinitesimal. The lack of use of the denomination is given further confirmation by the substantial show of disapproval within the commercial and manufacturing sector in an RTI survey requesting opinions on fifty cent piece use.¹⁸¹ On January 5, 1977, the Department of the Treasury formally recommended to Congress that the half dollar be eliminated from production and circulation based on the minimal utility¹⁸² of the denomination for consumers.

5. The Dollar and Higher Denominations

The largest circulating coin in terms of size and value is the dollar. In the past, however, the coinage system included golden one, two and a half, three, five, ten, and twenty dollar denominations.¹⁸³ Use of these higher denominations was ended in 1934,¹⁸⁴ and the gold dollar, quarter eagle, and three dollar gold piece were eliminated earlier. Although the silver dollar was authorized in the original Mint Act,¹⁸⁵ as was the eagle and half eagle, the first dollar coin did not achieve circulation.¹⁸⁶ Following passage of the Coinage Act of 1873 the coin was demonetized, which as some commentators have suggested simply gave effect to actual commercial reality.¹⁸⁷ During the resumption of its coinage, from 1878 to 1904 and again from 1921 to 1935, it seems apparent that the silver interests rather than prospective users were catered to for the coin was too bulky for efficient use.¹⁸⁸ There was a striking of silver dollars in 1965 bearing a 1964 date,¹⁸⁹ but the Coinage Act of 1965 subsequently banned their manufacture for a five-year period.¹⁹⁰ Return of the dollar was then recommended by the Joint Commission on the Coinage at its May 12,

¹⁸¹ *Id.* at 3-34 to 3-37.

¹⁸² EXEC. COMMUNICATION No. 355, *supra* note 2, at 22.

¹⁸³ Coinage Act of 1873, ch. 131, § 14, 17 Stat. 424.

¹⁸⁴ Gold Reserve Act of 1934, ch. 6, § 5, 48 Stat. 340 (current version at 31 U.S.C. § 315b (1970)).

¹⁸⁵ Act of Apr. 2, 1792, ch. 16, § 15, 1 Stat. 246.

¹⁸⁶ A. HEPBURN, HISTORY OF COINAGE AND CURRENCY IN THE UNITED STATES AND THE PERENNIAL CONTEST FOR SOUND MONEY 27 (1903) [hereinafter cited as HISTORY OF COINAGE AND CURRENCY].

¹⁸⁷ *Id.* at 278-81. See A. WEINSTEIN, PRELUDE TO POPULISM: ORIGINS OF THE SILVER ISSUE 1867-1878, at 16 (1970).

¹⁸⁸ HISTORY OF COINAGE AND CURRENCY, *supra* note 186, at 286-317.

¹⁸⁹ S. REP. No. 88-1095, 88th Cong., 2d Sess. 6 (1964) approved of the funding for the manufacture of 45 million silver dollars. *Special Hearing on Silver Dollars: Hearings Before a Subcomm. of the House Comm. on Appropriations*, 89th Cong., 1st Sess. 34 (1965) indicated that none had yet been produced, though in fact they had been made as trial strikes. See Ganz, *1964 Silver Dollar Mystery Plot Thickens*, Numismatic News Weekly, Mar. 22, 1975, at 18; Ganz, *1964 Silver Dollar Mystery Finds Friends in High Places*, Numismatic News Weekly, Mar. 29, 1975, at 28; Ganz, *If Resolved, Legalities of '64 Peace Dollar Possession Will Have Great Hobby Impact*, Numismatic News Weekly, Apr. 5, 1975, at 24. The coin bore a 1964 date rather than 1965, the actual date of coinage, because of the effect of the Act of Sept. 3, 1964, Pub. L. No. 88-580, 78 Stat. 908 (repealed by Act of July 23, 1965, Pub. L. No. 89-81, tit. II, § 204(b), 79 Stat. 256), which directed continued use of the 1964 date until it was determined that an adequate supply of coin existed in the nation.

¹⁹⁰ Act of July 23, 1965, Pub. L. No. 89-81, § 101(c), 79 Stat. 255 (current version at 31 U.S.C. § 315b (1970)).

1969 meeting, and legislation to effect this goal was introduced a short time afterward.¹⁹¹ What ultimately happened to the dollar coin was that silver interests once again interceded and forced a compromise, which resulted in the authorization of the striking of up to 150 million silver-clad dollars to be sold at a premium to collectors.¹⁹² This limitation has since been held to apply to the aggregate of silver-clad bicentennial coins manufactured.¹⁹³

Dollar coins do not at present circulate adequately, but the blame for this apparently lies jointly with the Federal Reserve System, which is responsible for ordering the coins from the Mint, and with the public at large who appear to perceive the coins as bulky and unwieldy. The new bicentennial dollar¹⁹⁴ might have reached active circulation if minted in sufficient quantities, but public resistance to the size and weight of the current dollar coin¹⁹⁵ will likely continue to prevent the denomination from serving its purpose as the legal tender equivalent¹⁹⁶ of the one dollar bill. Among the major recommendations of RTI was a proposal that a smaller dollar coin be adopted for circulation.¹⁹⁶ The Mint adaptation of the RTI proposal called for an eight-gram coin having a diameter of 26.5 millimeters and a thickness of 2.03 millimeters, to be produced from a clad material and having a distinctive "security ridge" on its inner border.¹⁹⁷

The smaller coin would serve to boost commercial utilization of the one dollar denomination, which is the chief limitation of the present, more cumbersome coin.¹⁹⁸ In a survey of banks and retail firms concerning the continuance or discontinuance of certain denominations, the dollar was a nearly unanimous choice for elimination.¹⁹⁹ Currently, fewer than nine percent of the nation's vending machines can accept dollar coins,²⁰⁰ yet there is apparent enthusiasm on the part of automatic merchandisers for a smaller dollar coin which could be utilized effectively to explore vending possibilities now foreclosed.²⁰¹

There is, additionally, an economic argument favoring introduction of the smaller dollar coin. The current cost to produce a paper bill of any denomination is about fifteen dollars per thousand notes, each of which has an estimated lifetime of fifteen to eighteen months.²⁰² By

¹⁹¹ H.R. 13252, 91st Cong., 1st Sess. (1969).

¹⁹² 31 U.S.C. § 391(d) (1970).

¹⁹³ 31 U.S.C. § 324g (Supp. V 1975).

¹⁹⁴ 31 U.S.C. §§ 324d-324e (Supp. III 1973 & Supp. V 1975).

¹⁹⁵ Current statistics for the dollar show a 1-1/2 inch diameter (38.1 millimeters), and a weight of 22.68 grams, the equivalent weight of four quarters or ten dimes. See EXEC. COMMUNICATION No. 355, *supra* note 2, at 22.

¹⁹⁶ 2 RTI STUDY, *supra* note 26, at 8-3 *et seq.*

¹⁹⁷ U.S. DEPT. OF THE TREASURY, A NEW SMALLER DOLLAR COIN: TECHNICAL CONSIDERATIONS 3 (1976) [hereinafter cited as SMALLER DOLLAR STUDY].

¹⁹⁸ 2 RTI STUDY, *supra* note 26, at 1-8 to 1-9, 3-34 para. 3.5.

¹⁹⁹ *Id.* at 3-20. See commentary, *id.* at 3-35.

²⁰⁰ *Id.* at 3-36.

²⁰¹ Ganz, *U.S. coin needs panel topic at NAMA meeting*, *Coin World*, Oct. 20, 1976, at 1, 3.

comparison, it would cost an estimated 2.5 cents to manufacture a copper-nickel clad dollar of 26.5 millimeters in diameter with an anticipated life expectancy in circulation of fifteen years.²⁰³ Mere economic efficiency should not serve as the sole basis for such a decision, however, for absent consumer use, the smaller dollar coins could result in no actual saving. For this reason, optimal efficiency would be achieved through the use of the smaller dollar coin in conjunction with dollar bills. While the dollar coin does have vending machine uses that escape those now open to the paper substitute, each type of currency has a convenience of its own, and beneficial properties best suited to simultaneous use. The rationale of RTI was essentially adopted January 5, 1977 when the Department of the Treasury called for a reduction in the size of the dollar coin.²⁰⁴

6. Other Denominations

While the subsidiary and minor coinage denominations minted for circulation have not been changed in the twentieth century, there have nonetheless been periodic calls for the introduction, or at least consideration, of alternate denominations. During World War Two, for example, the War Powers Act of 1942²⁰⁵ authorized the striking of a three cent piece to save critical war material.²⁰⁶ Somewhat later, then Undersecretary of the Treasury for Monetary Affairs Paul A. Volcker proposed the reissuance of a three cent piece as a minor coin to solve a "chronic shortage" of cents.²⁰⁷ RTI, in examining the national coinage preferences of the nine largest coin-using countries,²⁰⁸ discovered that only India utilized a denomination based upon three times a unit of value.²⁰⁹ RTI noted that a two cent coin was an efficient choice utilized in fifty of the 151 nations surveyed,²¹⁰ and that a "3 cent coin would be only slightly less efficient than a 2 cent coin."²¹¹ RTI nonetheless concluded that because "contemporary coinage systems utilizing a three cent coin are rare (in current use in only two of the 151 countries reviewed), and no organization surveyed recommended its use . . . the 3 cent coin was . . . excluded from further consideration."²¹²

A consumer-oriented approach stemming from the desire to minimize

1976: *Hearings Before a Subcomm. of the House Comm. on Appropriations*, 94th Cong., 1st Sess. 111 (1975).

²⁰³ See *SMALLER DOLLAR STUDY*, *supra* note 197, at 23.

²⁰⁴ EXEC. COMMUNICATION NO. 355, *supra* note 2, at 18-22.

²⁰⁵ Act of Dec. 18, 1942, ch. 767, 56 Stat. 1064.

²⁰⁶ *Id.* § 1. See Ganz, *Cents and Nickels Changed for War*, 11 *COINAGE* 32 (Sept. 1975).

²⁰⁷ See Ganz, *A Repetition of History*, *Numismatic News Weekly*, March 24, 1970, at 8 (quoting remarks of Max Frankel as reported in the *New York Times*).

²⁰⁸ These include the United States, Japan, India, West Germany, Canada, United Kingdom, Mexico, Brazil, and Taiwan. 2 *RTI STUDY*, *supra* note 26, at 3-2 para. 1.2.

²⁰⁹ *Id.* at 3-3.

²¹⁰ *Id.* at 3-2.

²¹¹ *Id.* at 3-5.

²¹² *Id.*

the effect of inflationary price increases resulted in a 1972 proposal by Director of the Mint Mary Brooks to revive the half cent. Price increases in vending machines could then be made in two and one-half unit increments, instead of the full nickel, leaving the consumer with a net savings of as much as one hundred dollars a year.²¹³ No implementing action was taken on either the Brooks or Volcker proposal, however.

Of more significant interest was the proposed reissuance of the two cent piece, which was struck originally from 1864 until elimination by the Coinage Act of 1873.²¹⁴ The use of this denomination has received renewed consideration by the Bureau of the Mint since inflation in the world price of copper first presented difficulties with the cent. Following inaction on the aluminum cent proposal,²¹⁵ Mint officials recommended that the two cent coin be adopted if an additional denomination was introduced.²¹⁶ The reasons supporting such a denomination were multifold. A major factor was that both cent production and the use of copper would be eased; a nearly proportional reduction in the number of one cent coins struck for each two cent piece produced could result.²¹⁷ A secondary consideration was the consumer benefit factor, in that a coin between the one and five cent denominations could absorb vending machine price increases²¹⁸ not unlike the proposed half cent.²¹⁹

One bill designed to implement the two cent piece has been introduced, using as a major attraction the bicentennial design theme.²²⁰ Interestingly, the 1974 joint study by the Federal Reserve and Treasury Departments suggested that "[i]ntroduction of a 2 cent piece with a bicentennial theme . . . might be a way of generating acceptance and desire for the coin."²²¹ Representative Richard Schulze of Pennsylvania, then ranking minority member of the Subcommittee on Historic Preservation and Coinage of the House Committee on Banking, Currency, and Housing, pushed for adoption of the two cent piece during the Ninety-fourth Congress. At hearings held in September, 1975,²²² he coupled his initial proposal with that of a commentator²²³ to propose the commemoration of American colonial women as a bicentennial

²¹³ Interview with Hon. Mary Brooks, Director of the Mint, *quoted in Ganz, Revival of U.S. Half Cent Seen As Consumer Boon*, Numismatic News Weekly, June 13, 1972, at 8.

²¹⁴ The legislation omitted the denomination, thereby ending its production.

²¹⁵ H.R. 11841, 93d Cong., 1st Sess. (1973); *1974 Aluminum Cent Hearings*, *supra* note 19.

²¹⁶ ONE CENT COINAGE, *supra* note 25, at 26.

²¹⁷ See 121 CONG. REC. E3425-26 (daily ed., June 23, 1975) (remarks of David Ganz on reduced cent production through use of a two cent piece). See also *Treasury, Postal Service, and General Government Appropriations For Fiscal Year 1976: Hearings Before a Subcomm. of the House Comm. on Appropriations*, 94th Cong., 1st Sess. 70 (1975) (remarks of Secretary Simon) [hearings hereinafter cited as *1976 Appropriation Hearings*].

²¹⁸ *1976 Appropriation Hearings*, *supra* note 217, at 240.

²¹⁹ See note 213 *supra* and accompanying text.

²²⁰ H.R. 8155, 94th Cong., 1st Sess. (1975).

²²¹ ONE CENT COINAGE, *supra* note 25, at 27.

²²² *1975 Coins and Medals Hearings*, *supra* note 21.

²²³ See *1975 Coins and Medals Hearings*, *supra* note 21, at 75-76 (report of B. Rogdanz).

tribute. On the other side of Capitol Hill, Senator Charles McC. Mathias, Jr. of Maryland utilized the same article²²⁴ to advance the cause of a gold commemorative coin with an American revolutionary woman theme.

No action was taken on the two cent coin issue during the Ninety-fourth Congress because Mint officials made it clear that they were awaiting the completion of the Research Triangle Institute study on critical choices for American coinage before making any recommendations.²²⁵ RTI did examine the two cent question extensively, frequently in the context of replacing the one cent coin or as a denomination designed to co-exist with the smaller unit of account. Upon examination of the widespread use of the two cent piece in roughly a third of the world's nations and four of the nine largest coin-using countries,²²⁶ RTI concluded that "the use of a two cent coin substantially reduces the total number of coins required by reducing cent requirements."²²⁷ RTI found that "the use of a two cent coin results in an implied increase in the commercial efficiency of the coinage system,"²²⁸ despite the fact that in practice the one and two cent coins will not serve as perfect substitutes.²²⁹ The study projected that between fifty and seventy-five percent of the theoretical increase would be realized if a two cent coin were introduced into circulation.²³⁰

It was apparent that a majority of the nation's businessmen do not currently favor introduction of the tuppence, State revenue officials excepted.²³¹ RTI statistical data indicated that seventy percent of retail businesses, commercial banks, and automatic merchandising service firms surveyed opposed introduction of this denomination.²³² Despite this, RTI recommended introduction of a two cent piece to co-exist with the cent until the lower denomination could be phased out,²³³ noting that this "alternative is premised upon a forced substitution through restricted production of one cent coin"²³⁴ as a means of assuring circulation. RTI considered four distinct options in making this determination.²³⁵ The first was retention of the cent without a two cent coin. The second was a two cent coin of a size and thickness identical to the present cent,²³⁶ which would necessitate that the material or

²²⁴ See 121 CONG. REC. S16740-741 (daily ed. Sept. 25, 1975) (remarks of Sen. Mathias).

²²⁵ 1975 *Coins and Medals Hearings*, *supra* note 21, at 48 (remarks of Director Brooks). Formal action was recommended by EXEC. COMMUNICATION No. 355, *supra* note 2, just one day after the first session of Ninety-fifth Congress convened.

²²⁶ 2 RTI STUDY, *supra* note 26, at 3-2.

²²⁷ *Id.* at 3-5, 3-6 tab. 3-2. "

²²⁸ *Id.* at 3-13.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.* at 3-30.

²³² *Id.* at 3-38.

²³³ *Id.* at 8-2.

²³⁴ *Id.* at 7-14.

²³⁵ *Id.* at 5-3.

²³⁶ *Id.* at 5-4 tab. 5-2.

configurational characteristics of the two denominations be distinct.²³⁷ The advantage of this approach, RTI claimed, was that in time the one cent coin could be legislatively valued at two cents. This was apparently rejected because of potential difficulties with manual processing operations, which affect eight out of ten American coins.²³⁸ Option three would maintain the present cent and introduce a two cent coin of 20.13 millimeters diameter, half way between the cent and nickel, of a thickness identical to the present cent. The fourth option differed from the third only in that the thickness of the two cent coin would be 1.77 millimeters, as contrasted with 1.57 millimeters in the present cent.²³⁹ The RTI study ultimately recommended that the fourth option be employed if the two cent coin were to be introduced.²⁴⁰

B. *Denominations and Metallic Composition in a Proposed Revision of Coinage Laws*

A great deal of time and effort has gone into past changes or attempted changes of metallic composition. Delay or inaction can be a critical factor with substantive effect on the overall production of the Mint and ultimately upon the coin-consuming functions of the economy. Similarly, lack of flexibility in the introduction of alternate denominations may plausibly be viewed as a handicap to an efficient system of coinage production. In terms of specifications of size, weight, and composition, it is clear that the ramifications of any changes affecting coin-operated vending devices would have to be carefully evaluated. It is equally apparent, however, that rigidity in size, at least in the case of the dollar, is a current handicap. The procedures for additions and changes in coinage should not be so inflexible as to prevent cooperation between the vending machine industry and the Treasury Department in determining the most practical requirements.

Authorization for the standard circulating coins with the exception of the half dollar, as well as the two cent piece, are found in section 301 of the Model Act appended. In addition, the Secretary of the Treasury would be permitted to authorize issuance of any denomination previously issued²⁴¹ but no longer coined, provided that certain steps are taken. This approach would retain the option of using a half cent or three cent piece when necessary, and would allow for certain higher denomination coins if deemed desirable. Leaving the size of the dollar open would permit reduction to the desired size following comprehensive testing by the Technology Division of the Bureau of the Mint.²⁵² As noted in

²³⁷ *Id.* at 5-3.

²³⁸ *Id.*

²³⁹ *Id.* at 5-3, 5-4 tab. 5-2.

²⁴⁰ *Id.* at 5-7.

²⁴¹ See appended Model Act at section 301 and commentary accompanying section 301(g).

²⁴² Despite the recommendation of the Treasury that a particular specification of the dollar be utilized, SMALLER DOLLAR STUDY, *supra* note 197, it is wiser to permit further study rather than to legislate the appropriate dimensions and specifications at this time.

the comments to the Model Act, the intent is to define coinage requirements broadly to permit change when deemed necessary by the Secretary of the Treasury. In the event that a denomination manufactured by the Mint became superfluous for economic or other reasons, the Secretary of the Treasury would have authority under section 307 of the Model Act, or under the general powers provision of section 207(j), to eliminate the denomination from the production schedule. A more specific explanation of the workings of these provisions may be found in the commentary accompanying the Model Act.

The reasons supporting the decision to eliminate the half dollar as circulating legal tender are obvious. More problematical is whether the one cent piece is a useful denomination in modern coinage. The cent is unquestionably the most heavily manufactured coin in American history. In the Lincoln Memorial reverse series alone, the Bureau of the Mint has produced more than ninety-six billion coins since 1959. Annual production continues to climb, and yet as the *One Cent Coinage* study accurately noted the ineffective circulation of this denomination is apparent. While statistics are not available to support the conclusion, it is equally apparent that one cent coins are utilized by consumers for small-change transactions, particularly those involving sales or use taxes, and are shortly thereafter retired from circulation. As consumer purchases continue to increase, and as the rates of sales taxes rise, the demand for one cent coins will continue to drain the facilities of the Mint. This demand is so vast that by 1980, according to one estimate, the Mint will not be able to keep up with consumer demand unless additional facilities for production are authorized.²⁴³

Some of the demand for one-cent coins could be dispelled through implementation of a value-added taxing system with numerics rounded to the nearest five, and the introduction of a two cent piece would serve to lighten the production load substantially. The ultimate decision, however, will require a delicate balance between political pragmatism and the economic necessities of the nation. Perhaps the elimination of the cent on a fade-out basis of ten years should be considered, coupled with the introduction and retention of a two cent piece. Alternatively, both denominations might enjoy permanent, concurrent use.

Section 301 of the appended Model Act would allow for any of these alternatives, authorizing the cent as a denomination, and setting out the general specifications for coinage. Nonetheless, section 307 would permit the Secretary of the Treasury to discontinue production of any denomination when in his judgment it no longer effectively serves the national economic interest. In the event of such discontinuance, the denomination could be reinstated under section 301(1)(g) provided certain

²⁴³ See *Proposal Relating to Construction of Additional Mint Buildings: Hearings on S. 1339 and H.R. 6620 Before the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. 51-58 (1976)* (hearings on additional Mint facilities at Denver). RTI's examination concluded that cents will account for 85 percent of all coinage needs by 1985. 1 RTI STUDY, *supra* note 26, at 3-19. Further, RTI noted that a "penny mint" will be required to prevent massive shortage in selected areas of the nation because of the excessive demand, which should reach 37 billion by 1990 if unchecked. 1 RTI STUDY, *supra* note 26, at 3-18 to 3-12 (maps 3-17, 3-18).

prerequisites are met. The basic point, however, is that decisions regarding coinage denominations would rest in the discretion of the Secretary of the Treasury. The Model Act would remove from direct congressional concern the politically sensitive issue of ending the use of a denomination, and would institute efficient check and balance procedures to govern the participation of Congress and the Treasury Department in such decisions.

C. *Design Requirements and Design Changes*

Composition of coinage design, ranging from portraiture, symbols, and devices to emblems of the United States, was debated by Congress even as final preparations had yet to be made for the establishment of the Mint. In March, 1792, for example, debate in the House of Representatives centered around section 10 of the proposed Mint Act, which provided in part that:

Upon one side of each of the said coins there shall be an impression or representation of the head of the President of the United States for the time being, with an inscription which shall express the initial or first letter of his Christian or first name, and his surname at length, and the year of the coinage; and upon the reverse . . . the figure or representation of an eagle with this inscription — "*United States of America. . .*"²⁴⁴

The language ultimately adopted as section 10 of the original Mint Act was an "impression emblematic of liberty with an inscription of the word Liberty and the year of the coinage." The reverse of the precious metal coinage was required to bear the figure of an eagle, in addition to a statement of national origin. Section 18 of the Coinage Act of 1873 modified the initial specifications in requiring the Latin motto "E Pluribus Unum" to be inscribed, and permitting "In God we Trust" to be placed on coinage by the Director of the Mint acting with the approval of the Secretary of the Treasury. Still further amendment was added²⁴⁵ by the Act of September 26, 1890²⁴⁶ to prohibit change in the coinage design of any denomination more often than once in twenty-five years.

The quarter century provision notwithstanding, there is strong evidence of stability in American coinage designs at least insofar as the leaders commemorated on the obverse of the most heavily used coins: the cent, nickel, dime, and quarter. Lincoln's portrait has been on the cent since 1909, Jefferson's on the nickel since 1938, Roosevelt's on the dime since 1946, and the Washington quarter, originally intended as a commemorative of the bicentennial of his birth, has been issued regularly since 1932.

More problematical are the designs on the fifty cent piece and dollar

²⁴⁴ See 3 ANNALS OF CONGRESS 71, 484 (1792).

²⁴⁵ D. TAXAY, *THE U.S. MINT AND COINAGE* 286 (1966).

²⁴⁶ Act of Sept. 26, 1890, ch. 944, 26 Stat. 484 (current version at 31 U.S.C. § 276 (1970)).

— busts of John F. Kennedy and Dwight D. Eisenhower, two popular Presidents of different political persuasions. It has been charged, and can probably be neither proved nor refuted, that the Eisenhower dollar was an "equal time" provision in response to the Kennedy half dollar. With the proposed addition of the smaller-sized dollar, and the projected elimination of the fifty cent piece, both Eisenhower and Kennedy would disappear from the coinage scene.²⁴⁷

Since the 1890 minting law amendments, a number of private sculptors have participated in coinage design. St. Gaudens became involved in the double eagle, and Pratt in the Indian-head gold pieces. Fraser created the Indian head or buffalo nickel, and Brenner the Lincoln cent. Weinman, MacNeil, and DeFrancisci also created new coinage in the pre- and post-World War One period, and in 1938 a national competition selected Felix Schlag to design the new Jefferson nickel. The works of these men have become recognizable standards in coinage design.

America's bicentennial coinage, bearing reverse designs emblematic of the Revolutionary era, added a new wrinkle to the law.²⁴⁸ The reverse designs by Jack L. Ahr, Seth Huntington, and Dennis R. Williams on the quarter, half dollar, and dollar, respectively, could be retained for as long or short a period as the Secretary of the Treasury prescribed.²⁴⁹ The twenty-five year limitation was therefore inapplicable, but it was initially unclear whether reversion to previous designs would take place upon discontinuance of the bicentennial pieces. This issue was of little practical import for the half dollar, which was on the verge of elimination, but the dollar coin tentatively scheduled to have new obverse and reverse designs could have been affected had Treasury Secretary Simon not mandated that the 1974 designs be returned in 1977.²⁵⁰ A further wrinkle, now largely historical, was the proviso in the One Bank Holding Company Act of 1970 which created the Eisenhower Dollar.²⁵¹ This provision not only specified an obverse design, but mandated that the reverse design depict the Apollo lunar landing. Had a different design been chosen for 1977, a real issue would have arisen whether an act of Congress would be required to return to other than the specifically-authorized design. This problem would be eliminated under the Model Act which, while retaining the overall twenty-five year limitation, would permit the Secretary of the Treasury certain options in making design changes.

In order to encourage the continued involvement of outside artists in coinage design, provision has also been made in the Model Act to permit their employment on a free-lance or other basis. It is preferable that

²⁴⁷ Ganz, *Our new small-size dollar coin*, 12 COINAGE 54 (Oct. 1976).

²⁴⁸ See generally D. GANZ, AMERICA'S BICENTENNIAL COINAGE, *supra* note 20.

²⁴⁹ 31 U.S.C. § 324d (Supp. V 1975).

²⁵⁰ See *Simon orders return to eagle reverses for dollar, half, quarter*, Coin World, Sept. 22, 1976, at 1, 3. But see H.R. REP. No. 93-391, 93d Cong., 1st Sess. (1973), wherein the Mint suggested that commemorative coinage of limited duration attracts coin collectors and defeats circulation attempts. See also Ganz, *House panel questions dropping of '76 designs*, Coin World, Feb. 2, 1977, at 1.

²⁵¹ See 31 U.S.C. § 324b (1970).

this be done within the strictures of a national design contest such as that employed for the bicentennial coinage,²⁵² which utilized an independent judging panel, the recommendations of the Fine Arts Commission, and ultimate congressional approval. As to the design requirements of the coinage law itself, the provisions of the Model Act represent basically the law as it is today. The Model Act would require the use of mottoes, emblems, and the like generally, but would grant the Treasury Secretary broader discretion in fashioning design requirements for specific coins.²⁵³

D. Mint Marks and Dating of Coinage

The dating of United States coinage with the year of manufacture and the placing of mint marks as distinguishing hallmarks are practices based upon common objectives. Both are designed, in principal, to assure the integrity of coinage struck at each minting facility and to assist in the maintenance of quality control over production.

The origins of the dating requirement are found in section 10 of the first Mint Act passed by Congress,²⁵⁴ which specifically stated that each piece shall bear the date of its coinage. Despite this exacting requirement, it is clear that there were numerous times, at least during the early years of Mint operations, in which all usable production dies were employed regardless of the year of manufacture.²⁵⁵ Except for certain pattern and experimental pieces, proper dating was employed throughout the latter part of the nineteenth century, and through the first sixty-four years of the twentieth century.

The use of mint marks has not been utilized as long as dating in this country, though the marks do have an ancient heritage.²⁵⁶ The first branch mint designed to supplement the operations of the parent Philadelphia facility was not authorized until 1835.²⁵⁷ While no specific act prior to 1965 can be found mentioning mint marks by name,²⁵⁸ it is clear from the interpretation given to section 4 of the Act of March 3, 1835, authorizing the creation of branch mints, that the use of mint marks was appropriate to insure uniformity of production and the ability to distinguish between products of the various minting facilities.

In the early 1960's the nation slipped into a coin shortage of massive

²⁵² D. GANZ, *AMERICA'S BICENTENNIAL COINAGE*, *supra* note 20, at 56-58 nn. 482-502.

²⁵³ *Id.* at 56 n. 487. The rules of the competition did require the statutory lettering. See GANZ, *Bicentennial Coin Contest Meant a Legal Circumvention*, *Numismatic News Weekly*, May 7, 1974, at 26.

²⁵⁴ Act of April 2, 1792, ch. 16, § 10, 1 Stat. 246.

²⁵⁵ Breen, *Silver Coinage of the Philadelphia Mint 1794-1916*, 159 *COIN COLLECTOR'S J.* 7 (1958).

²⁵⁶ See *1967 Mint Mark Hearings*, *supra* note 70, at 19-22.

²⁵⁷ Act of Mar. 3, 1835, ch. 39, 4 Stat. 774.

²⁵⁸ See H. R. EXEC. DOC. No. 307, 41st Cong., 2d Sess. 37 para. 4 (1870), wherein former Mint Director James Ross Snowden recommended that the departmental practice of using mint marks be required by law. See also *1967 Mint Mark Hearings*, *supra* note 70, at 26.

proportions,²⁵⁹ and a search for dramatic solutions was begun by Congress, the Department of the Treasury, the Bureau of the Mint, the Federal Reserve, and representatives of commerce, industry, and banking. One of the solutions initially proposed was the retention of the coinage date beyond the calendar year,²⁶⁰ which represented in effect a return to earlier practices of the Mint.²⁶¹ The aim of the legislation was obvious from both the hearings²⁶² and contemporaneous comments: to put speculators in coinage of current vintage out of business,²⁶³ and thereby alleviate the coin shortage. When this legislation²⁶⁴ failed to bring the shortage under control, a new solution was suggested as part of the Coinage Act of 1965:²⁶⁵ "In order to prevent the withdrawal of the new coins from circulation on a large scale for collecting purposes, the . . . legislation eliminates the mint mark from the new coins and also provides for dating the coins in such manner that collector requirements will be held to a minimum."²⁶⁶ Despite the suggestion of the 1965 Act, coin collectors were not the cause of the great coin shortage of the early 1960's, and to judge from the subsequent testimony of Mint officials they may not even have been a significant factor.²⁶⁷ The elimination of mint marks provided for in the Coinage Act of 1965²⁶⁸ proved no cure-all, and in mid-1967 the Treasury went back to Congress to request the return of its discretionary authority to employ the marks.

The alternative use of date-freezing techniques to control supply shortages has also been the subject of recent discussion.²⁶⁹ Authority for continuance of the 1964 date²⁷⁰ was repealed by the Coinage Act of 1965, which considerably broadened the scope of the date-freeze procedure by permitting the Secretary of the Treasury to employ the technique at any time in order to prevent a coin shortage.²⁷¹ Nearly a

²⁵⁹ See H.R. REP. NO. 194, 89th Cong., 1st Sess. (1965) (preceding Treasury program); H.R. REP. NO. 195, 89th Cong., 1st Sess. (1965) (Treasury crash program); H.R. REP. NO. 1468, 89th Cong., 2d Sess. (1966) ("The Coin Situation").

²⁶⁰ H.R. 11893, 88th Cong., 2d Sess. (1964); S. 2950, 88th Cong., 2d Sess. (1964).

²⁶¹ See note 255 *supra* and accompanying text.

²⁶² *Retention of "1964" on all Coins: Hearings on S. 2950 Before the Senate Comm. on Banking and Currency*, 88th Cong., 2d Sess. (1964); *Coin Shortage: Hearings on H.R. 11893 Before a Subcomm. of the House Comm. on Government Operations*, 88th Cong., 2d Sess. (1964).

²⁶³ See note 262 *supra*.

²⁶⁴ Act of Sept. 3, 1964, Pub. L. No. 88-580, 78 Stat. 908 (originally codified at 31 U.S.C. § 324 (1964)).

²⁶⁵ Act of July 23, 1965, Pub. L. No. 89-81, 79 Stat. 254 (codified in scattered sections of 31 U.S.C.).

²⁶⁶ H.R. REP. NO. 509, 89th Cong., 1st Sess. 10 (1965).

²⁶⁷ *1967 Mint Mark Hearings*, *supra* note 70, at 9.

²⁶⁸ Act of July 23, 1965, Pub. L. No. 89-81, tit. II, § 204(a), 79 Stat. 254, (repealed by Act of June 24, 1967, Pub. L. No. 90-29, § 5, 81 Stat. 77 (codified at 31 U.S.C. § 324 (1970))).

²⁶⁹ *1967 Mint Mark Hearings*, *supra* note 70, at 9 (statement of mint director).

²⁷⁰ Act of Sept. 3, 1964, Pub. L. No. 88-580, 78 Stat. 908 (repealed by Act of July 23, 1965, Pub. L. No. 89-81, 79 Stat. 254).

²⁷¹ Act of July 23, 1965, Pub. L. No. 89-81, tit. II, § 204(a), 79 Stat. 254 (amending REV. STAT. § 3517 (1875)).

decade later, a similarly worded section was required to be enacted to permit the concurrent manufacture of bicentennial coinage and coins with the previously-used design. This legislation²⁷² was enacted in direct response to criticism²⁷³ of the dual-striking proposal on the ground that it violated a congressional directive to manufacture specifically-dated coinage.²⁷⁴

Recognizing the problems that have become apparent through past experience, section 302 of the Model Act would grant specific discretionary authority to the Secretary of the Treasury to use mint marks or to decline to use them. The Model Act would continue the present authority for the utilization of date-freeze procedures when necessary, provided notice is given in the Federal Register. A forty-five day exemption period would also be allowed at the close of each calendar year to permit the continuance of proof and uncirculated coin production with the previous year's dies.

E. *National Medals, and Commemorative and Pattern Coinages*

The products of the United States Mints intended for sale to collectors or for public distribution other than as legal tender are varied, but national mint medals, commemorative coinage, and pattern pieces or experimental and trial strikes have common characteristics in terms of functional purpose, past history, artistic creativity, and monetary reimbursement to the government. These items are discussed below, with focus on past and present history and proposals to standardize future roles.

1. National Medals

The origins of national mint medals can be traced to section 52 of the Coinage Act of 1873.²⁷⁵ Prior to passage of this Act, national medals had been struck by the United States Mint at Philadelphia "under departmental authority only."²⁷⁶ It is of some historical and contemporary interest to note the circumstances under which the codification and revision of coinage laws of a century ago dealt with national medals, particularly since the problems of that era have become magnified in the passing century.

Draft legislation for the Coinage Act of 1873, prepared by John Jay Knox, Deputy Comptroller of the Currency, provided that "national and other medals may be prepared at the Mint, under such regulations as the Superintendent, with the approval of the Director, may prescribe:

²⁷² Act of Dec. 26, 1974, Pub. L. No. 93-541, § 4, 88 Stat. 1739 (codified at 31 U.S.C. § 324i (Supp. V 1975)).

²⁷³ The issue was first raised in Ganz, *Bicentennial Ambiguities*, Numismatic News Weekly, Nov. 6, 1973, at 3. See also D. GANZ, *AMERICA'S BICENTENNIAL COINAGE*, *supra* note 20, at 55 n. 480.

²⁷⁴ 31 U.S.C. § 324e (Supp. V 1975).

²⁷⁵ Act of Feb. 12, 1873, ch. 131, § 52, 17 Stat. 432.

²⁷⁶ H.R. EXEC. DOC. NO. 2, 43d Cong., 1st Sess. 471 (1873). For a history and catalogus *see* B. W. JULIAN, *MEDALS OF THE UNITED STATES MINT: THE FIRST CENTURY* (1977).

Provided, That such work does not interfere with the regular coinage operations of said Mint."²⁷⁷ The draft was then circulated by Knox for comments; those comments pertaining to national and other medals prove an interesting analysis of the problems of the day. The highly respected Robert Patterson of Philadelphia, after extensive analysis of all facets of the bill, noted in pertinent part that "[i]t is alleged by outside parties, perhaps with injustice, that the superior facilities of the Mint in striking medals . . . are used so as to break up all private business and competition."²⁷⁸ This criticism notwithstanding, section 53 of the revised draft²⁷⁹ utilized language identical to that in the original. This was not the version which ultimately became law as part of the Coinage Act of 1873, however. Section 51 of the final version stated that "dies of a national character may be executed . . . and national and other medals struck . . . [and] no private medal dies shall be prepared at said mint," all of which points to congressional intent "not to interfere with the legitimate business of private artists."²⁸⁰

The present requirements for national medal status are multifold: the dies for the medals must be of a national character, which term is not further defined; they must be produced at the Philadelphia Mint; and they may be executed by the chief engraver provided that the work does not interfere with regular coinage operations. Finally, no private medal dies may be prepared at the Mint, or any machinery used for that purpose.

Despite these seemingly stringent requirements, a number of laws recently passed by Congress have stretched the national medal legislation to its outer limits. In 1973 the San Francisco Assay Office was given permission to strike a national mint medal commemorating the centennial of the cable car containing the label "Struck at the San Francisco Mint," notwithstanding the opposition of the Treasury Department²⁸¹ based upon the apparent failure of the design to represent a national character sufficient to merit official medallic commemoration. To commemorate the centennial of Colorado statehood, additional legislation was enacted to permit the striking of national medals at the Denver Mint.²⁸² While the subject of this commemoration was deemed of sufficient national character, the striking should have been conducted in Philadelphia as required by present law.

Further abrogation of the principles set forth in the national medal statute was evidenced in 1973 when clauses were inserted into the national medal legislation authorizing the production of the Jim Thorpe medal and a medal commemorating the International Environmental

²⁷⁷ [1896] DIR. OF THE MINT ANN. REP. 461, 473.

²⁷⁸ *Id.* at 506; H.R. EXEC. DOC. No. 307, 41st Cong., 2d Sess. 20 para. P (1870).

²⁷⁹ *Id.* at 483.

²⁸⁰ CONG. GLOBE, 42d Cong., 2d Sess. 2307 col. 2 (1872).

²⁸¹ Act of Oct. 1, 1973, Pub. L. No. 93-114, 87 Stat. 417. This Act was passed despite opposition from the Treasury. See 1973 House Bicentennial Hearings, *supra* note 10, at 109.

²⁸² Act of Dec. 29, 1973, Pub. L. No. 93-228, 87 Stat. 944. See commentary on this Act in 1973 House Bicentennial Hearings, *supra* note 10, at 95, 152.

Exposition at Spokane,²⁸³ to be manufactured by private industry from dies approved by the Secretary of the Treasury. This was an effort by Congress to permit private medallic manufacturers to compete effectively with the Bureau of the Mint for the production of an ever-growing number of national mint medals — a return to the original intent of the legislation based in large part on the testimony of the President of Medallic Art Company before the Subcommittee on Consumer Affairs of the House Banking and Currency Committee in 1973 hearings.²⁸⁴ Despite this preliminary effort, it is clear from the subsequent reaction of the Mint that legislation authorizing outside control²⁸⁵ over either design or production is not popular within the Treasury Department.

It seems likely that private industry can compete successfully in the production of national mint medals, using hubs and dies created within certain statutory constraints, and competitive bidding appears a more than plausible means of awarding such contracts to private mints.²⁸⁶ Control over the dies would remain in government hands, but the actual manufacturing process representing the greatest profit-making operation would be controlled by private firms. As a further means of encouraging private industry to manufacture the medals, new statutory changes could be employed to require the Bureau of the Mint to surcharge the cost of its operations to more accurately reflect overhead and related intangibles, and to realize a profit on certain items produced. Such a proposal has already been made by at least one member of Congress,²⁸⁷ though opposition is still apparent.

The subject matter of national mint medals has also generated considerable controversy.²⁸⁸ An attempt was made in 1969 to set up informally the standards defining events deemed of sufficient national

²⁸³ Act of Oct. 19, 1973, Pub. L. No. 93-132, §§ 5-6, 87 Stat. 461 (Jim Thorpe); Act of Dec. 29, 1973, Pub. L. No. 93-221, §§ 4-5, 87 Stat. 913 (Spokane Exposition).

²⁸⁴ 1973 House Bicentennial Hearings, *supra* note 10, at 144, 153-156.

²⁸⁵ See, e.g., H.R. 7667, 94th Cong., 1st Sess. (1975), commented on by the Director of the Mint in 1975 *Coins and Medals Hearings*, *supra* note 21, at 46-48.

²⁸⁶ 1973 House Bicentennial Hearings, *supra* note 10, at 153-55.

²⁸⁷ See Ganz, *Effort to add minting surcharge threatens bill for ethnic medals*, *Coin World*, June 2, 1976, at 40. See also S. 425, 95th Cong., 1st Sess. (1977) (surcharge of 25 percent of the cost of manufacture added to proposed national medal). This is not without disagreement, however. Andrew Wahlquist, President of Commemorative Marketing and Communications Consultants, Washington, D.C., made contrary arguments against such a surcharge in a letter to Walter E. Fauntroy in his capacity as Chairman of the Subcommittee on Historic Preservation and Coinage of the House Committee on Banking, Finance, and Urban Affairs. Letter of May 3, 1977 (may be found in files of subcommittee). Wahlquist's firm is scheduled tentatively to market the U.S. Capitol Historical Society's medallic series, proposed in H.R.J. Res. 386, 95th Cong., 1st Sess. (1977). See 1977 Senate Medal Hearings, *supra* note 21, and the Senate Banking Committee amendment of H.R.J. Res. 386 adding a 25 percent surcharge. See also Ganz, *Capital Medal Bill Receives Panel's Okay*, *Coin World*, Nov. 9, 1977, at 1.

²⁸⁸ See, e.g., 1977 Oversight Hearings on National Medals, *supra* note 21, at 17-18. See also AMERICAN REVOLUTION BICENTENNIAL COMMITTEE, ADVISORY PANEL ON COINS AND MEDALS, TRANSCRIPT OF PROCEEDINGS, PLENARY SESSION 21-31 (1970) [hereinafter cited as ARBC PROCEEDINGS]. See generally notes 281-83 *supra* & 292-94 *infra* and accompanying text.

character to be commemorated by United States Mint medals.²⁸⁹ The Bureau of the Mint agreed at that time that "a broad yardstick might be considered and serious judgment made as to whether the individual or event influenced or is likely to influence the broad mainsteam of American history and has enriched the lives of the Nation as a whole."²⁹⁰ The succeeding director of the Mint amplified this thought in a September 16, 1970 letter to the chairman of the pertinent subcommittee of the House Banking and Currency Committee, which handled coinage legislation and the subsidiary medal issue:

[T]he Mint takes the position that a national medal should have significance for all the people. It should honor only those events that have contributed to or advanced the history of the country, or those persons whose superior deeds or achievements have embellished our history or who are representative of the finest accomplishment in service to the nation.²⁹¹

Mint and Treasury Department officials, as well as members of Congress, appear not to have placed much stock in these guidelines. National medal commemoration of the International Environmental Exposition at Spokane was held by the Treasury's General Counsel "not [to] meet the guidelines for a 'national medal' agreed upon by the Subcommittee . . . and the Bureau of the Mint."²⁹² Medallic commemoration of Jim Thorpe was similarly questioned in committee,²⁹³ though not by the General Counsel,²⁹⁴ and a similar problem resulted during consideration of the San Francisco cable car centennial medal.²⁹⁵

Added problems in the production of national medals have concerned coinage design and the ability of the Bureau of the Mint to produce restrikes of original designs previously manufactured. Under the regulations promulgated in the Hobby Protection Act,²⁹⁶ restrikes or reissued medals need not bear the word "Copy" when the issuing authority is the United States or any foreign government. The effects of this provision are problematical because unwary or inexperienced collectors or purchasers could easily be deceived as to the true origins of a medallic creation. The exception for government-manufactured

²⁸⁹ *Exec. Sess. of the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 91st Cong., 1st Sess. (Apr. 25, 1969), extracted in *1971 House Bicentennial Medal Hearings*, *supra* note 21, at 21-24, and *1973 House Bicentennial Hearings*, *supra* note 10, at 15-17.

²⁹⁰ See note 289 *supra*.

²⁹¹ Letter from Hon. Mary Brooks, Director of the Mint, to Representative Leonor K. Sullivan, Chairman of the Subcomm. on Consumer Affairs of the House Committee on Coinage and Currency, reprinted in *1971 House Bicentennial Medal Hearings*, *supra* note 21, at 24, and *1973 House Bicentennial Hearings*, *supra* note 10, at 17-18.

²⁹² *1973 House Bicentennial Hearings*, *supra* note 10, 139.

²⁹³ *1973 House Bicentennial Hearings*, *supra* note 10, at 120-132.

²⁹⁴ *Id.* at 115-16.

²⁹⁵ *Id.* at 96-114; Act of Oct. 1, 1973, Pub. L. No. 93-114, 87 Stat. 417.

²⁹⁶ Act of Nov. 29, 1973, Pub. L. No. 93-167, 87 Stat. 686 (codified at 15 U.S.C.

restrikes was added at the request of the Treasury Department²⁹⁷ to accommodate the re-issuance of a series of medals commemorating the Revolutionary War era, but the exception applies generally to all mint-produced medals including an early national medal honoring Charles Carroll of Carrollton.²⁹⁸ Limitation of further use of this loophole is essential, and the pertinent regulation should be repealed.

2. Commemorative Coins

Commemoration of persons and events on coinage has long been a distinguished tradition in our culture, dating to ancient Rome²⁹⁹ and, commencing in 1892,³⁰⁰ in the United States. Dozens of American institutions and individuals have been honored³⁰¹ with this distinct form of commemoration, which requires an act of Congress³⁰² for authorization because the coin created has a legal tender status, albeit one not primarily intended for circulation at face value.

Private sponsors of commemorative coin issues were the prime beneficiaries of early issues, and the coins produced by the Mint were inevitably turned over to local or state commissions which subsequently sold the pieces at a profit to souvenir hunters, coin collectors, dealers, and speculators. The government received its normal seigniorage from the production of the coin, while the sponsoring agency received the difference between the face value or base cost and the actual selling price. The Grant memorial coinage of 1922³⁰³ is illustrative. The Ulysses S. Grant Centenary Memorial Association was incorporated in Ohio for the purpose of erecting buildings in honor of the late president. Funding for the purpose was to come from the sale of commemorative coins. Congress authorized the striking of 10,000 gold one dollar commemorative coins and 250,000 silver fifty cent pieces, which the association was authorized to sell. All of the gold issues were sold, and of 100,000 half dollars actually produced, 71,600 pieces were consumed and the balance melted by the Mint.³⁰⁴

Individual proposals for such medals as the Grant commemoratives were themselves inconsequential and served valid purposes, but as President Hoover pointed out in his veto message of April 21, 1930:

²⁹⁷ See 16 C.F.R. § 301.1(d) (1976). See also Dingfelder, *The Hobby Protection Act*, 35 FED. BAR. J. 55 (1976).

²⁹⁸ H.R. 3427, 94th Cong., 1st Sess. (1975); Act of April 1, 1976, Pub. L. No. 94-257, 90 Stat. 302.

²⁹⁹ See, e.g., E. SYDENHAM, *THE COINAGE OF THE ROMAN REPUBLIC* xxxvii (Durst ed. 1976); P. HILL, *THE UNDATED COINS OF ROME* 5-6 (1970).

³⁰⁰ Act of Aug. 5, 1892, ch. 381, 27 Stat. 389.

³⁰¹ For a comprehensive listing, see D. BULLOWA, *THE COMMEMORATIVE COINAGE OF THE UNITED STATES 1892-1938*, Numismatic Notes and Monographs No. 83 (1938); A. SLABAUGH, *UNITED STATES COMMEMORATIVE COINAGE* (2d ed. 1975).

³⁰² Compiled in D. BULLOWA, *supra* note 301.

³⁰³ Authorized by the Act of Feb. 2, 1922, ch. 45, 42 Stat. 362.

³⁰⁴ Treasury Press Release, Doc. No. BM-7A (June, 1963), reprinted in 1963 *House Comm. Coins and Medals Hearings*, *supra* note 21, at 62-3 [hereinafter cited as 1963 Press Release].

During the past 10 years, 15 such special coins have been issued, an average of one each eight months, an aggregate of over 13,000,000 such coins have been authorized. There are now pending before Congress five other bills for such coinage. . . . The monetary system of the country is created and exists for certain well-defined and essential purposes . . . [which] can best be served and the integrity of our coins . . . protected from counterfeiting by limiting the number of designs with which in the course of time the public can become thoroughly familiar. . . . The growing practice of issuing commemorative coins, incidentally to be sold at a profit and provide funds for projects of celebrations, appears to me to run counter to this principle and by their multiplicity to have become a misuse of our coinage system.³⁰⁵

Proliferation of the issues of commemorative coins increased beginning in 1933, and so did the abuses. In a June 17, 1935 letter³⁰⁶ to the Chairman of the Senate Committee on Banking and Currency, President Roosevelt complained that since the year of his inauguration "nine issues of such coins have been authorized, an average of one issue every three and a fraction months, notwithstanding the fact that in each case the Treasury Department reported adversely on the bill." Noting further that medallic commemoration could suitably replace commemorative coins, Roosevelt quoted from section 3510 of the Revised Statutes to the effect that no change in design should be made more often than once in twenty-five years. He recommended that draft legislation³⁰⁷ be adopted to the end of declaring it "the policy of the United States to authorize the striking of commemorative medals in lieu of commemorative coins and to discontinue striking of such coins."³⁰⁸

Curative legislation was not forthcoming from this proposal, for despite Senate approval on July 30, 1935 the House Committee on Banking and Currency took no action. President Roosevelt renewed his request the day following his second-term inauguration.³⁰⁹ Again citing the pertinent provision of the Revised Statutes and noting the problems associated with a multiplicity of coin designs, Roosevelt concluded with a strong statement attacking "[t]he alarming increase in the demand, during the past year, for legislation authorizing the issuance of special coins to commemorate a wide variety of historical events,

³⁰⁵ See veto of H.R. 2029 in H.R. Doc. No. 354, 71st Cong., 2d Sess. (1930).

³⁰⁶ Letter from F.D. Roosevelt, President of the United States, to Duncan U. Fletcher, Chairman of the Senate Committee on Banking and Currency (June 17, 1935), reprinted in 1963 Press Release, *supra* note 304, at 13, and 1963 *House Comm. Coins and Medals Hearings*, *supra* note 21, at 59-60 [hereinafter cited as Letter to Fletcher].

³⁰⁷ S. 3086, 74th Cong., 1st Sess. (1935).

³⁰⁸ Letter to Fletcher, *supra* note 306.

³⁰⁹ Letter from F. D. Roosevelt, President of the United States, to the Chairman of the Senate Committee on Banking and Currency (Jan. 21, 1937), reprinted in 1963 Press Release, *supra* note 304, at 12, and 1963 *House Comm. Coins and Medals Hearings*, *supra* note 21, at 58.

many of which are of no more than local significance."³¹⁰ Action on this proposal was nonetheless forestalled.

Roosevelt made yet another move when the Seventy-sixth Congress convened in 1939. Draft legislation was swiftly introduced,³¹¹ and an in-depth examination begun. Emerging from this was the definitive Cochran Report,³¹² long-regarded as authoritative on the abuses evidenced in existing commemorative coinage issues.³¹³ With particularity, the Cochran Report detailed the pertinent section 3510 of the Revised Statutes, and noted that "[w]ith the flood of commemorative coin authorizations, this statute, while still on the books, has in recent years been more honored in the breach than in the observance."³¹⁴ The Report was particularly critical of the practice of permitting the United States Mint to produce coins previously authorized until the entire amount permitted under the enabling act had been manufactured. "Continuing orders are received at the mints for coins authorized as far back as 10 years ago. . . . [T]he Mint is required to fill orders from the interested organization or, as a matter of fact, from any coin dealer in any amount, large or small, as they may be called for at any time, until [the] vast quantity [authorized] is absorbed or until the act is repealed or suspended."³¹⁵ The Cochran Report justifiably criticized this situation as a burden on the operations of the Mint, whose primary function is to produce coinage for circulation. The report also attacked the appalling extent to which the coins have been exploited for private gain,³¹⁶ explaining that "[i]n all cases the coins are delivered by the mint to the agent named in the act," who thereafter delivered "a large amount of such coins to dealers for disposal to the public. There is no control over the charge which dealers may make."³¹⁷ Cochran concluded that "[n]o country in the world permits such abuse of its coinage as has been permitted in this country,"³¹⁸ and urged prompt acceptance of remedial legislation.

The abuses cited by Chairman Cochran were well-known to the coin collectors of the day, and contemporary commentary³¹⁹ indicated general approval of his proposal. Yet even as this was debated, action on a more extensive scale was at work in the Senate. Senator Maloney introduced a bill³²⁰ which made an even greater attempt at regulating the abuses evident in commemorative coin issues. Under its terms, a

³¹⁰ *Id.*

³¹¹ S. 100, 76th Cong., 1st Sess. (1939); H.R. 2750, 76th Cong., 1st Sess. (1939).

³¹² H.R. REP. No. 101, 76th Cong., 1st Sess. (1939).

³¹³ See 1963 *House Comm. Coins and Medals Hearings*, *supra* note 21, at 40-68, 69-74.

³¹⁴ H.R. REP. No. 101, 76th Cong., 1st Sess. 1 (1939).

³¹⁵ *Id.* at 2.

³¹⁶ *Id.* at 3.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Taking Abuses Out of Commemoratives*, 52 THE NUMISMATIST 637 (1939).

Commemorative Coin Commission would have been established to act as a clearinghouse for all proposed monetary commemoratives. Disapproval by the Commission on the basis of insufficient national importance to merit such a coin would have proved fatal to issuance or approval by Congress.³²¹

The key provisions of the Maloney bill, aside from the proposed establishment of the Commemorative Coin Commission, were contained in the fourth section. In pertinent part, this section provided that only one mint could be used to produce each coin authorized, that the denomination utilized was to be a fifty cent piece bearing a design approved by the Secretary of the Treasury, that the coins were to be of a single date and issued within a year of authorization, that the coins were to be legal tender in their face amount, that 25,000 pieces were required for each issuance or order, that the Treasury Secretary could issue the coins at par value to such agencies as might be designated by the Department, and that the coins were subject to the pertinent counterfeiting statutes and the like. It is also of interest to note that a clause limiting the number of coinage bills submitted to the Commission to ten was stricken in committee.³²²

The more modest of the two bills passed Congress in August, 1939,³²³ but not without some confusion on the part of the Bureau of the Mint³²⁴ and the numismatic press³²⁵ as to which version had in fact passed. While the Mint was unable through the 1939 legislation to stem completely the tide of commemorative coin issues, as evidenced by the subsequent commemorative efforts for the centennial of Iowa statehood and the Booker T. Washington and George Washington Carver half dollars, the use of the presidential veto increased³²⁶ and by 1955 commemorative coinage had all but disappeared.

A generation later, consideration of proposals for bicentennial coinage brought the Treasury Department's arguments against commemorative coinage out of the closet, but the rationale was essentially the same.³²⁷ Even for a celebration such as the two-hundredth anniversary of the founding of the nation, Treasury logicians were opposed to special commemoratives.³²⁸ Distinct commemorative coinage eventually did emerge for the bicentennial,³²⁹ but the Treasury Department initially remained unenthusiastic, implementing only the two coin denomina-

³²¹ *Id.* §§ 1, 3.

³²² *Bill to Regulate Commemoratives Passes Congress*, 52 THE NUMISMATIST 724, 725 (1939).

³²³ Act of Aug. 5, 1939, ch. 442, 53 Stat. 1209 (codified at 31 U.S.C. § 376a (1970)).

³²⁴ See [1939] DIR. OF THE MINT ANN. REP. 5, corrected in [1940] DIR. OF THE MINT ANN. REP. 5.

³²⁵ See note 322 *supra*; *The Coinage Bill Recently Passed by Congress*, 52 THE NUMISMATIST 800 (1939).

³²⁶ See 1963 House Comm. Coins and Medals Hearings, *supra* note 21, at 51-7.

³²⁷ See ARBC PROCEEDINGS, *supra* note 288, at 21-31.

³²⁸ *Id.* at 30.

tions circulated least, the dollar and half dollar, until Congress warmed to the proposal and added the quarter dollar.³³⁰

Treasury opposition to the bicentennial coinage also extended to the silver-clad collector coins required to be manufactured as part of a legislative compromise between the Senate and House.³³¹ In at least one sense the position of the Department was justified: the forced production of forty-five million silver-clad bicentennial coins was a wasted effort which proved uneconomical when the Treasury was unable to sell them all. The Mint was unable to comply with the requirement that the coins be produced by July 4, 1975³³² and remedial legislation was necessitated the following year.³³³ These minor problems aside, however, it seems clear that the bicentennial commemorative issues have been a success from both a critically aesthetic³³⁴ and financial standpoint.³³⁵ Because of the utilization of the Mint's extensive marketing and sales facilities at San Francisco and Washington, and an aggressive marketing approach which included the offering of discounts for quantity purchases,³³⁶ the bitter taste left from prior commemorative issues is no longer present. Plausibly, the other arguments raised against the issue of commemoratives are not validly applied to the bicentennial issues because of their unique character and their status as a circulating legal tender. It is nonetheless apparent that the success of the bicentennial commemoratives should be considered in future legislative efforts. The lesson to be learned is that when the Mint is in charge of the distribution and the profits accrue to the general fund of the Treasury, most of the abuses of the 1930's disappear, though clearly on subsequent resale a profit may or may not be made by the seller.³³⁷

Section 303 the Model Act is the section pertaining to commemorative coinage, though other sections of Title III are pertinent to the issuance and design compositional elements. The Joint Commission on the Coinage, re-established in Title IV of the Model Act, would be assigned specific functions under Title III: to consult with the Commission on Fine Arts and recommend to the Secretary of the Treasury the issuance of up to three different commemorative coin designs each year. To avoid public confusion, only those denominations *not* ordinarily struck by the

³³⁰ *Id.* at 82. See H.R. REP. No. 93-391, 93d Cong., 1st Sess. 6 (1973).

³³¹ *Id.* at 43 nn. 449-460, 52-53.

³³² Act of Oct. 18, 1973, Pub. L. No. 93-127, § 4, 87 Stat. 456 (codified at 31 U.S.C. § 324g (Supp. III 1973 & Supp. V 1975)).

³³³ Act of Dec. 26, 1974, Pub. L. No. 93-541, § 5, 88 Stat. 1739 (codified at 31 U.S.C. § 324g (Supp. V 1975)).

³³⁴ Vermeule, *Our Bicentennial designs: How aesthetic are they?*, *Coin World*, June 30, 1976, at 22 (comment by author of *NUMISMATIC ART IN AMERICA* (1971)).

³³⁵ During Fiscal Year 1976, the San Francisco Assay Office delivered 4.6 million proof sets, 2.8 million silver-clad bicentennial proof sets, and 3.8 million silver-clad uncirculated bicentennial sets.

³³⁶ See U.S. Dept. of the Treasury, Bureau of the Mint Press Release (Aug. 19, 1975) (announcing bulk rate of \$7 per set for orders of 50 sets or more).

³³⁷ This point was brought home in the dialogue between Don Taxay and Hon. Mary Brooks, Director of the Mint, in ARBC PROCEEDINGS, *supra* note 288, at 34-37, and between Taxay and Deputy Assistant Secretary William Dickey, *id.* at 59-62.

Mint for circulation would be employed in such a program. This is similar to the proposed Commemorative Coin Commission of 1939,³³⁸ and the suggested limitation of utilizing a single denomination.³³⁹ Other elements of the Model Act would grant the Secretary of the Treasury certain options in the manufacture and sale of commemorative coins should their issuance be authorized.

3. Pattern Coinages and Experimental and Trial Strikes

Pattern coinages, experimental issues, and trial strikes represent American monetary history — a twilight heritage reflected in the coinage and minting laws since the Mint was organized in 1792. As Patterson DuBois noted in an early article, pattern issues are “half-forgotten witnesses . . . [to] the impractical schemes of visionaries and hobbyists — a tale of national deliverance from minted evil . . . the tale of what ‘might have been.’ ”³⁴⁰

Throughout the long history of patterns, trial strikes, and experimental issues,³⁴¹ there is strong evidence that coin collector interest in this fascinating field was tolerated, if not encouraged by Mint officials.³⁴² In 1866³⁴³ the first rules were adopted by the Mint to deal comprehensively with pattern issues.³⁴⁴ With particularity, the rules provided that no coins nor patterns were to be struck after the year of their date,³⁴⁵ that all were to be issued in their “proper metal,”³⁴⁶ and that patterns or experimental pieces were to be obtainable “within the year of [their] date but not after,”³⁴⁷ with standing orders for the same acceptable³⁴⁸ at a price of three dollars in currency for all but precious metal patterns. These were valued at the cost of the bullion contained in the coins plus a three dollar charge.³⁴⁹ Interestingly, early Treasury Rules expressly permitted the Director of the Mint to send patterns to numismatic societies incorporated in the United States, requiring payment only for the cost of precious metal.³⁵⁰ Most important in this early set of rules was that “profits . . . are not to be the perquisite of

³³⁸ See note 322 *supra* and accompanying text.

³³⁹ S. 100, § 5(2), 76th Cong., 1st Sess. (1939).

³⁴⁰ DuBois, *The Pattern Piece*, 17 AM. J. NUMISMATICS 56 (1883).

³⁴¹ See J. JUDD, UNITED STATES PATTERN, EXPERIMENTAL AND TRIAL PIECES (6th ed. 1977).

³⁴² See Ganz, *Wild Ideas to Change U.S. Coins*, 11 COINAGE 33 (Oct. 1975); Logan, *Twilight Coinage*, 11 COINAGE 64 (Nov. 1975).

³⁴³ Rules for the United States Mint at Philadelphia (effective July 1, 1866) [hereinafter cited as 1866 Rules].

³⁴⁴ The author wishes to acknowledge the gracious assistance of Miklos Lonkay, Esq., Counsel to the Mint, for kind assistance in locating these early, obscure rules, copies of which are found in Treasury archives in a file pertaining to pattern seizures. See notes 355-90 *infra* and accompanying text.

³⁴⁵ 1866 Rules, *supra* note 343, at Rule 1.

³⁴⁶ *Id.* at Rule 2.

³⁴⁷ *Id.* at Rule 3.

³⁴⁸ *Id.*

³⁴⁹ *Id.* at Rule 4.

any person holding a place in the mint,"³⁵¹ a statement probably necessary in the light of past practices at Philadelphia.

The Coinage Act of 1873,³⁵² engineered by John Knox and Dr. Henry R. Linderman,³⁵³ was designed to codify existing law, as well as to pave new paths in the field. Dr. Linderman served as first Director of the Bureau of the Mint. During his five year tenure, the coinage act he helped create was first tested and tried. In May, 1874³⁵⁴ Linderman promulgated regulations governing the striking and sale of certain specimen pieces. In pertinent part they provided that the Superintendent of the Philadelphia Mint "shall have general supervision of the manufacture of medals and the striking of proof and pattern pieces."³⁵⁵ In amplification of the rules of 1866, also promulgated by Linderman,³⁵⁶ the 1874 regulations required that the hubs of pattern dies be destroyed at the end of each year.³⁵⁷ The 1874 regulations expressly permitted the sale of proof and pattern coins at prices established by the Superintendent of the Mint with the approval of the Director.³⁵⁸ With particularity, the regulations provided further that "[n]o coins or patterns shall be struck after the year of their date, or in any other metal or alloy than that in which the coin is issued or intended to be issued,"³⁵⁹ and that "[w]hen a pattern piece is adopted and used in the regular coinage in the same year, it will then be issued as a proof at a price near its current value."³⁶⁰ These provisions were further amplified by an 1881 regulation³⁶¹ which provided that pattern pieces could be struck and sold subject to the earlier regulations when authorized by the Director of the Mint,³⁶² at a price fixed by the Superintendent and approved by the Director³⁶³ as long as the coins or pattern pieces were struck within the year of their date in the appropriate metal or alloy,³⁶⁴ and as long as the dies for production were defaced at the end of the calendar year. By the regulations of January 17, 1887,³⁶⁵ the Director made a substantive change by requiring that no pattern pieces could be coined nor dies executed in denominations other than those used for general circulation during the

³⁵¹ *Id.* at Rule 6.

³⁵² Act of Feb. 12, 1873, ch. 131, 17 Stat. 424.

³⁵³ C. EVANS, HISTORY OF THE UNITED STATES MINT AND COINAGE 105 (rev. ed. 1889); A. WEINSTEIN, PRELUDE TO POPULISM: ORIGINS OF THE SILVER ISSUE 1867-1878, at 15 & n. 21, 16 & n. 22 (1970).

³⁵⁴ Regulations for the Striking and Sale of Medals and the Furnishing of Proof Coins and Specimen Pieces at the Mint Under the Coinage Act of 1873 (issued May 14, 1874) [hereinafter cited as 1874 Regulations].

³⁵⁵ *Id.* at Regulation 2 (emphasis added).

³⁵⁶ See note 343 *supra*.

³⁵⁷ 1874 Regulations, *supra* note 354, at Regulation 2, § 3.

³⁵⁸ *Id.* § 8.

³⁵⁹ *Id.* § 9.

³⁶⁰ *Id.* § 10.

³⁶¹ Regulations of the Director of the Mint, June 25, 1881 (effective July 1, 1881).

³⁶² *Id.* § 7.

³⁶³ *Id.* § 8.

³⁶⁴ *Id.* § 9; see 1874 Regulations, *supra* note 354, at Regulation 2, § 9.

³⁶⁵ General Instructions and Regulations (effective March 1, 1887).

year.³⁶⁶ The practice of permitting the Superintendent of the Philadelphia Mint to furnish patterns to incorporated numismatic societies was continued,³⁶⁷ with the usual provision requiring payment in bullion cost only for precious metal.³⁶⁸

Dr. Linderman died in 1879. To raise funds for his widow and son, a significant portion of his collection of coin patterns were put up for public auction eight years later. Bangs and Company set the auction for June 28, 1887, but the government intervened and prevented the sale.³⁶⁹

On July 1, 1887, Director of the Mint James P. Kimball issued a formal circular³⁷⁰ with the approval of Treasury Secretary C. S. Fairchild which misstated the previous regulations,³⁷¹ and while quoting accurately from the Coinage Act of 1873 and the Revised Statutes, misinterpreted the legislative history behind those sections which regulated the denominations, standards, and weights of coinage. In pertinent part, the circular stated that "the emmission [sic] of impressions of experimental dies whether in soft metal or in metal of the same weight and fineness proper to coins of the same denomination, is unlawful except in the case of pattern pieces . . . [which] are coined for general circulation during the calendar year of their date."³⁷² The circular further stated that the impression taken from any experimental dies was required to be destroyed. These requirements were mistakenly ascribed by the circular as coming from the May 14, 1874 regulations,³⁷³ which it is evident they did not.

In addition, the circular suggested that "the striking of a piece in semblance of a United States coin in a metal or alloy, or of a weight and fineness other than prescribed by law is in violation of Section 5460 of the Revised Statutes,"³⁷⁴ a statute designed to prevent debasement of coinage and no more.³⁷⁵ The Director invoked section 3517 of the Revised Statutes³⁷⁶ in tandem with section 5461, which he alleged prohibited the "emission or offer for sale or exchange of any impression from any die of a coin of the United States, or of a proposed coin of the United States, bearing a legend as of a coin of the United States, but with a device or devices not authorized by law."³⁷⁷ In the same con-

³⁶⁶ *Id.* at art. 15, § 3.

³⁶⁷ *Id.* at art. 15, § 7.

³⁶⁸ See note 349 *supra* and accompanying text.

³⁶⁹ For details, see articles cited in note 342 *supra*.

³⁷⁰ U.S. Dept. of the Treasury Circular No. 76, Bureau of the Mint Circular No. 11 (July 1, 1887) (Unlawful Traffic in United States Mint Pattern Pieces).

³⁷¹ See 1874 Regulations, *supra* note 354, at Regulation 2.

³⁷² See S. MISC. DOC. No. 132, 41st Cong., 2d Sess. (1870).

³⁷³ See note 354 *supra*.

³⁷⁴ REV. STAT. § 5460 (1875) (repealed by Act of March 4, 1909, ch. 321, § 341, 35 Stat. 1153).

³⁷⁵ See Coinage Act of 1873, ch. 131, § 64, 17 Stat. 424. Compare *id.* § 43 (original draft), and *id.* § 67 (revised draft), with the British Coinage Act of 1870, 33 Vict., ch. 10, § 3. The British act was similar in purpose and was apparently considered by Knox in the drafting. See [1896] DIR. OF THE MINT ANN. REP. 491, 498.

³⁷⁶ REV. STAT. § 3517, 17 Stat. 427 (1875) (current version at 31 U.S.C. § 324 (1970)).

³⁷⁷ See note 374 *supra*.

nection, Kimball noted that "[n]o impression from any coinage die of the United States struck in other metal than that authorized by law, or of a weight and fineness other than that prescribed by law (Revised Statutes [§§] 3513,³⁷⁸ 3514,³⁷⁹ 3515³⁸⁰), nor pattern piece bearing a legend of a coin of the United States, and bearing a device or devices not authorized by law (Revised Statutes [§§] 3516,³⁸¹ 3517,³⁸² Mint Regulations³⁸³), should be in existence longer than required for the lawful purpose for which it was authorized to be struck."³⁸⁴

Kimball's argument was structured upon the premise that coin-debasement and counterfeiting statutes, coupled with provisions specifying which coins might be struck, their required inscriptions, and the appropriate alloy, militated against the issuance of patterns. To bolster his argument, he cited a further provision which stated that no coins of any metal or type could be issued unless in conformity with the requirements of the Coinage Act of 1873.³⁸⁵

The legislative history of the sections of the Revised Statutes cited by Director Kimball indicate a contrary result to that advanced by the Director. The Coinage Act of 1873, codified in the Revised Statutes and later in Title 31 of the United States Code, specified in section 15 that the silver coins of the United States were to be certain enumerated denominations, while section 16 imposed the same requirement for minor coins. The effect of these provisions on the handling of pattern pieces, however, must be evaluated through reference to section 17 of the 1873 Act, which prohibited the issuance of coins other than in the denominations, standards, and weights set forth in the Act. The legislative history of section 17 makes it clear that while these sections were designed to eliminate the silver dollar and other issues from Mint production and to prohibit any future deposits of silver for domestic circulation following the Mint's conversion of the bullion to coin, they were never intended to regulate the production and disposition of pattern pieces.

Concededly, it was within the power of the director of the Mint to issue regulations banning pattern ownership *in futuro*, but the retroactive application was not only arbitrary but unjustified. Regulations were subsequently issued in 1888³⁸⁶ which effectively ended pattern strike acquisitions by collectors. Section 15 of these regulations required that "[a]ll experimental and trial pieces shall be struck by the engraver from planchets furnished by the coiner upon requisition by the Superintendent for a specific number of pieces," while section 16 declared it to

³⁷⁸ 31 U.S.C. § 316 (1970).

³⁷⁹ 31 U.S.C. § 321 (1970).

³⁸⁰ 31 U.S.C. § 317 (1970 & Supp. V 1975).

³⁸¹ 31 U.S.C. § 322 (1970).

³⁸² 31 U.S.C. § 324 (1970).

³⁸³ See notes 343, 355, 361 & 365 *supra*.

³⁸⁴ U.S. Dept. of the Treasury Circular No. 76, Bureau of the Mint Circular No. 11 (July 1, 1887).

³⁸⁵ Act of Feb. 12, 1873, ch. 131, § 17, 17 Stat. 427 (current version at 31 U.S.C. § 322 (1970)).

³⁸⁶ Regulations of Jan. 21, 1888 (effective April 1, 1888).

be a misdemeanor for an officer or employee of the Mint to strike either by hand or by machinery a coin of the United States or a dated pattern or experimental piece after the year of its date. The second subsection prohibited utilization of any coin in other than the prescribed metal and fineness. Finally, the fourth subsection provided that experimental pieces of proposed denominations were to be struck in proper metals and alloys which, if not adopted for regular coinage during the year of striking, were to be defaced and melted.

Notwithstanding the explicit regulations, numerous patterns are known to have been struck thereafter, as well as experimental and trial strikes. These pieces include the 1933 double eagle, the 1942 plastic cents, the 1964-dated silver peace dollar, the 1965 pattern clad-coinage, the 1974 aluminum cents, and the 1975-1976 small-size dollar patterns in a multitude of sizes and shapes. The Mint claims never to have released these patterns. Most earlier issues, such as the 1913 Liberty nickel, may be traced to public or surreptitious sales by officials or employees of the Mint.

There is little in the way of precedent to guide the framing of legislation for this area. The controversies concerning the estates of Dr. Linderman in 1887,³⁸⁷ and that of a well-known coin dealer in 1910,³⁸⁸ were both settled without trial. One double eagle dated 1933 was seized by the government in an action upheld by the courts,³⁸⁹ but the result might be different today in an era of legalized private gold ownership.³⁹⁰ Two distinct approaches in dealing with pattern coinages seem possible, and these need not be mutually exclusive. One solution would be to retroactively validate pattern pieces produced before enactment, subject to the exclusion of certain coins such as the 1964 peace dollar and 1974 aluminum cents,³⁹¹ while simultaneously prohibiting or regulating the holding of future trial strikes, patterns, and experimental pieces. A second approach might be to recognize that such coins are of legitimate collector interest, and should consequently be sold by the Bureau of the Mint at a premium. This would not of course preclude retroactive validation or exclusion of certain issues, which could be accomplished through regulation.

The approach taken by the Model Act is an amalgam of these proposals, modified in light of the past history of pattern issues. Those pieces sold by the Mint subject to prior regulation would be legal to hold, which equity demands. An artificial cut-off point for ownership would be set at December 31, 1932. All pieces manufactured prior thereto could be the subject of legal ownership without restriction.

³⁸⁷ See articles cited in note 342 *supra*.

³⁸⁸ *United States v. Haseltine* (preliminary proceedings in Federal District Court for the Eastern District of Pennsylvania, 1910) (pleadings and documents on file at the U.S. Dept. of the Treas., Washington, D.C. (1910 file 1)).

³⁸⁹ *United States v. Barnard*, 72 F. Supp. 531 (W.D. Tenn. 1947).

³⁹⁰ Holzer, *How Americans Lost Their Right to Own Gold — And Became Criminals in the Process*, 39 BROOKLYN L. REV. 517 (1973). See Ganz, *The U.S. Gold Coin That Is Still Illegal*, Numismatic News Weekly, Jan. 18, 1975, at 44.

³⁹¹ See articles cited in note 189 *supra*.

Those of subsequent date which have been purchased at public auction could also be permissibly owned. Those pieces not falling into these classifications could be seized, but not destroyed, and the product placed in either the Smithsonian national collection or that of a numismatic society. Patterns manufactured subsequent to the introduction, rather than enactment, of the Model Act could be sold or not sold by the Secretary at his discretion, again subject to such regulations as deemed necessary. In any event two specimens of each pattern, experimental piece, or trial strike would be required under the Model Act to be transmitted to the Smithsonian Institution to insure the maintenance of a permanent record of these distinctive links with American coinage history. Specimens could also be lent to various non-profit museums and numismatic societies for exhibition purposes, public offerings or non-sale notwithstanding.

F. *Other Issues for a Proposed Revision*

Other areas considered in the Model Act are ministerial or technical in nature, and are explored fully in the accompanying commentary. They include the re-creation of the Joint Commission on the Coinage, which had its origins in the Coinage Act of 1965³⁹² and its demise following passage of the Federal Advisory Committee Act.³⁹³ The Commission would be assigned specific functions under the Model Act, and would be designed so as to avoid the inadequacies of its predecessor.

The Model Act also discusses the Annual Assay Commission, providing alternatively for its retention or abolition. Two versions are provided to reflect conflicting estimations of the Commission's worth. While the Assay Commission is an anachronism, and the designees do little more than rubber-stamp the findings presented to them by Mint officials, the position is deemed a political one and an honor which some members of Congress wish to reserve for their constituents. Should abolition of the Assay Commission be effectuated, the alternate provision in the Model Act would provide statutory requirements for quality control, a process now conducted through regulations without force of law.

The funding of the Bureau of the Mint is the subject of Title VII of the Model Act, which reflects information drawn from an extensive number of hearings concerning Mint budgets, as well as other pertinent documents. The conclusion presented, and the basic premise upon which the Title is based, is that while the appropriation process should continue as a means of keeping the Bureau of the Mint accountable to Congress, the cost of coinage metal and distribution should come from a revolving fund authorized by law and initially begun by congressional appropriation. The commentary following each section is sufficiently informative to explain the inner workings and goals of the revision effort in this area.

Finally, Title VIII deals with laws rendered obsolete or contradictory

³⁹² See, e.g., 31 U.S.C. §§ 301-304 (1970).

³⁹³ Act of Oct. 6, 1972, Pub. L. No. 92-463, §§ 1-15, 86 Stat. 770 (codified at 5 U.S.C. app. 1 (Supp. 1-1975)).

by other provisions of the Model Act. These would be repealed, except as explained in the sections. Regulations issued under these laws would remain in force until changed by Secretary of the Treasury, however, to permit the continuation of past practices for a period, and to facilitate a gradual transition to new procedures.

IV. CONCLUSION

The Model Act which follows is an extensive attempt not only to consolidate, but to innovate, in the development of a contemporary coinage system. It is concededly a flawed view, biased by the studies of the author and legislative histories compiled through exhaustive research. It is through this legislation, however, that the Mint of today can become the Mint of the year 2000 and beyond.

