

ARTICLE

The Dawn of Shareholder Value: The Normalization of the Hostile Takeover in the UK 1952–1954

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It is widely recognized that the hostile takeover is a key element of the UK's shareholder value system of corporate governance. This article draws on archival evidence to offer a detailed account of the emergence of the hostile takeover and its acceptance within the media and government between 1952 and 1954. The existing literature claims that the takeover was not normalized until 1959, and that finance was restricted until then. This article shows that takeovers were accepted within government five years earlier, and that the Bank of England and Treasury knew that insurance companies were financing them, but did nothing about it.

The article begins with the legal and accounting changes introduced in Companies Act 1948, as well as the precarious financial position of shareholders. Together, they created an opening for hostile takeovers to emerge, which were driven by the desire of bidders to gain control of, and sell off, real property that was undervalued on corporate balance sheets. First emerging in 1952, the hostile takeover took the corporate and financial community, as well as the Government (the Bank of England, Board of Trade and Treasury) by surprise. The media led the way in cheerleading for the hostile takeover, while companies such as the Savoy Hotel Group and the Daily Mirror sought to defend themselves against unwelcome approaches. The Government ultimately settled for condemning “speculative” bids in public, but behind the scenes accepted the hostile takeover as legitimate. By 1954, it was recognized that: companies were under pressure to raise dividends and sell off assets in order to deter takeover bidders; that they only had limited options to defend themselves; and that there was little that could be done by Government. Managerialism had begun to give way to shareholder value.

Keywords: hostile takeovers; company law; shareholder value; corporate governance

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Introduction

It is widely recognized that the hostile takeover is a mainstay of shareholder value corporate governance.¹ A takeover is hostile where a bidder makes an offer directly to the shareholders to buy up all the shares of a target company, without the consent of, or even in the face of opposition from, the incumbent directors of the target. Once a bidder has acquired sufficient voting shares to take control of the general meeting of shareholders, they can replace the board of directors and run the company in their own financial interests. Where the hostile takeover is able to operate, it puts pressure on company directors to prioritize the short-term financial interests of shareholders. By the 1960s, the academic literature recognized that the mere threat of hostile takeover will suffice to increase the pressure on directors.² Fligstein and Shin date the “shareholder value conception of control” to the economic crisis of the 1970s, emerging “as an ideology and as a set of strategies” in response to managers who “were sitting on undervalued assets that were earning low profits and, not surprisingly, their stock prices reflected the judgment of the market as to how well they were doing.”³

This article argues that the hostile takeover was normalized in the United Kingdom at the beginning of 1954, considerably earlier than in the United States.⁴ The hostile takeover brought with it a new social norm: shareholder value. Company law does not require directors to maximize shareholder value in the sense of prioritizing the short-term financial interests of shareholders.⁵ Instead, directors have considerable latitude, subject to the various ways in which shareholders can hold the directors accountable. As shareholders were largely passive in the first half of the twentieth century, directors and managers were generally considered to have gained significant discretionary power to identify who would benefit from company decision-making. This was reflected in a huge growth in managerialist theorizing.⁶ Writing in 1955, Gower, the UK’s leading academic company lawyer, claimed that “So far at any rate as England is concerned public opinion seems to have hardened ... so that it has become almost an accepted dogma that management owes duties to ‘the four parties to industry’ (labor, capital, management, and the community)”.⁷ Gower then became increasingly managerialist as time went on, repeating the claim that company law was “unreal” because a company’s “relationships with its workers, the consumers of its products, and the community as a whole, are of equal if not greater importance” than those with its shareholders.⁸

This article argues that, despite widespread acceptance of managerialist ideology during the early 1950s, the emergence and normalization of the hostile takeover had already planted

1. Deakin, “The Coming Transformation”; Lazonick and O’Sullivan, “Maximizing.”

2. Marris, *Managerial Capitalism*; Manne, “Mergers.”

3. Fligstein and Shin, “Shareholder Value.”

4. This is recognized in Roberts, “Regulatory Responses,” 183, but this article dates normalization to five years earlier than Roberts; see also Holmstrom and Kaplan, “Making Sense,” 123, arguing corporate governance in the US did not force managers of large public corporations to focus on shareholder concerns until the 1980s.

5. Deakin, “Reversing,” 30.

6. For an overview, see Johnston et al., “How the Law”; Folkman et al., “Working for themselves,” 554–556.

7. Gower, “Corporate Control,” 1190.

8. Cited in Ireland, “From Lonrho,” 14.

the seeds of change. As the hostile takeover became a growing threat, company directors had to give priority to the interests of shareholders if they wanted to preserve their control of companies. The story begins with shareholders in a weak position, both legally and politically. Things began to shift when the door was opened to the hostile takeover by legal changes in the Companies Acts 1947-48. A new group of bidders quickly took advantage, identifying targets with undervalued property on their balance sheets, then took control of those companies, liquidating the property and using the proceeds to finance their next round of bids. In this endeavor, they were assisted by financial institutions, the insurance companies in particular, which were keen to get their hands on high-quality property, and entered sale and leaseback transactions with the bidders. As we will see, key actors in the relevant branches of central government were not expecting the emergence of the takeover, and policy was in a state of flux during 1952 and 1953. However, by the beginning of 1954, there was no longer any significant opposition in principle to takeovers, although the Bank of England remained sensitive to the effects that shifts in public opinion might have on its position as the primary regulator of the City of London.

This article makes two main contributions to the existing literature. First, it fleshes out the fairly minimalist accounts of the early years of the hostile takeover that are already in existence.⁹ It shows how the hostile takeover, which first emerged in 1952, took the corporate and financial community, as well as the government (including the Bank of England, Board of Trade and Treasury), by surprise. The media led the way in cheerleading for the hostile takeover, arguing that takeovers were both “natural” and efficiency-enhancing. In particular, the more detailed account offered here highlights how a number of companies approached the government for help in the face of unwelcome bids. Previous research has not identified that those companies included Sears and the Daily Mirror, focusing instead on the very public controversy surrounding the Savoy bid.¹⁰ Against a backdrop of media outcry that the attempted defense by the Savoy Hotel heralded the end of capitalism, the Government was struggling to define the new phenomenon and reach consensus on which aspects of it were objectionable. The evidence from the archives suggests that media coverage, in turn, was a constant influence on government policy, pushing it in the direction of accepting takeovers as legitimate.

While the Governor of the Bank of England and the Chancellor agreed in public that “speculative” takeovers should not be financed, they left “speculative” undefined. Behind the scenes, however, a consensus gradually emerged that there was little that could or should be done about takeovers, the Board of Trade looking on hostile takeovers more favorably than their counterparts at the Treasury, and the Governor consistently opposed to any formal intervention. The Bank of England continued to tell financial institutions to exercise caution, but when the British Insurance Association admitted financing hostile takeovers through sale and leaseback transactions, the Governor acquiesced, and this practice was also well known to the Treasury. From 1954, it was recognized across Government that: companies were under

9. For example in Roberts, “Regulatory Responses”; Bruner, *Corporate Governance*, 148–149; Kershaw, *Principles*, 76–79, as well as the more detailed accounts found in Rollings, “A Few Pike”; Johnston, “From Managerialism”; and Johnston et al., “How the Law.”

10. Roberts, “Regulatory Responses,” 187–188; Rollings, “A Few Pike.”

pressure to raise dividends and sell off assets in order to deter takeover bidders; companies only had limited options to defend themselves; and that there was little that could be done by Government. The threat of hostile takeover was already exercising a powerful influence over the decisions of corporate management.

Second, in arguing that the hostile takeover had been normalized within government by the beginning of 1954, the article also offers a different interpretation of the evidence from that found in Richard Roberts' seminal 1992 article, as well as in more recent work by Neil Rollings.

It makes a number of clarifications and adds nuances to Roberts' influential account. It disagrees with Roberts' view that, in the Spring of 1953, "the Bank's sympathies plainly lay with the 'victim companies' and take-overs were regarded as against the national interest."¹¹ It also disagrees that "by mid-November 1953, the authorities were agreed that take-overs were politically undesirable and economically harmful."¹² In fact, as we will see, the picture was much more complex than that, and the balance of sympathy was in support of the bidders, or at least it was recognized that there was little that could—or should—be done to interfere with what was generally viewed as a market transaction. The Savoy Hotel affair, in particular, created an enormous media storm, and from that point onwards, there was no support for takeover defenses and no longer any serious pushback against bidders within government.

The article also questions Roberts' argument that the Bank was trying to stop takeovers in December 1953 by sending letters to banking and insurance industry associations so that bidders were "cut off from credit".¹³ While there was much discussion about "speculation", it is far from clear that the "authorities viewed the finance of take-overs as speculation and wished it to stop".¹⁴ As we will see, the Governor knew that the insurance companies were financing the bidders, but acquiesced and certainly did not instruct the insurance companies to cease financing bidders. It therefore calls into question Roberts' claim that by cutting off bidders' access to finance, the authorities ensured that takeovers "did not become "normal commercial exercises" in the mid-1950s but remained 'financial curiosities.'"¹⁵ The article shows that companies, from small breweries to the Daily Mirror, which owned property were worried about takeovers during the early 1950s, and that the media was awash with discussion about the bids. While takeovers became more frequent during the late 1950s and during the 1960s, there were 162 takeovers of listed companies between 1952 and 1955, an unknown number of which were hostile.¹⁶ There was also an unknown number of takeovers of private

11. Roberts, "Regulatory Responses," 187.

12. Roberts, "Regulatory Responses," 189.

13. Roberts, "Regulatory Responses," 189–191.

14. Roberts, "Regulatory Responses," 189.

15. Roberts, "Regulatory Responses," 191, citing Bull and Vice, *Bid for Power*, 240. Bull and Vice's journalistic account offers no data, and, as we will see later, mistakenly assumes that the Governor of the Bank of England cut off finance to bidders.

16. Tabb, *Accountancy Aspects*, 37. Tabb made clear at 25 that his focus was on hostile takeovers ("the new take-over technique, removing a board by appealing directly to the shareholders despite the directors' objections"). It is not clear from Tabb's research how many of these 162 takeovers were hostile, but he indicates (at 45) that the ten wholesale and retail distribution companies taken over were "probably" influenced by "increasing property values after 1945." Many of these were therefore presumably hostile, because if the incumbent managers had been willing to sell and leaseback the freehold, the takeover would almost certainly not have occurred. It is also worth pointing out that takeovers could begin in a hostile way, but with the target

companies.¹⁷ As such, the threat of takeover would have become an important managerial consideration—and a counterweight in practice to professed managerialist beliefs—by early 1954.

Finally, it traces acceptance of the hostile takeover within government to the beginning of 1954, some five years earlier than Roberts, who relies on a 1959 memorandum written by then Chief Cashier Leslie O'Brien to identify a shift in the Bank of England's thinking.¹⁸ In making this argument, the article also rejects Rollings' more recent claim that normalization came even later. In support of this position, Rollings refers to continued unease from the Governor of the Bank of England about hostile take-overs as late as 1959.¹⁹ Rollings claims that Roberts' account is "oversimplified" and even "misleading"²⁰ because Roberts' narrow range of sources omits the Treasury and the Board of Trade. This article trawls the same archival evidence as Rollings, albeit supplemented with the media coverage at the time, but offers a different reading. The Governor may well have expressed concern about "developments in this field of activity" in 1959, but as we will see, behind the scenes, he had given up trying to prevent insurance companies from financing takeovers by late 1953. Indeed, shortly after the 1959 memo cited by Rollings, the Governor convened a Working Party to develop a code of conduct for acquisitions and mergers, which is not the action of someone who had fundamental objections to takeovers.²¹ In fact, the Governor's concern in 1959 was not with the principle of hostile takeovers, but rather with how they were being conducted and the resultant public concern (Clare had just launched a bid for Watney), which was creating a growing danger of regulatory intervention.²² Moreover, the Governor's concerns probably only related

board later acquiescing (as in the case of Fraser's 1953 bid for Binns). More broadly, since the incumbent board would have known—certainly after the media coverage of Clare's bid for Sears—that any bidder could go hostile, this would have made them more likely to agree to an initial friendly approach. As mentioned above, in corporate governance terms, the threat of hostile takeover is more important than its execution. However, it remains a question for further research how many of the takeovers between 1952 and 1955 were hostile. It is also an open question how many attempted hostile takeovers failed during this period, either because of devices like the Whitbread Umbrella, discussed further below, or because the incumbent board headed off the threat by selling off the freehold and/or increasing the dividend.

17. One example that can be found in the case law is Hugh Fraser's attempt to take control of Lyle & Scott Ltd, a private company, in 1956, which the incumbent directors were able to block in court. See *Lyle & Scott Ltd v Scott's Trustees* [1959] AC 763, discussed in Johnston, "From Managerialism," 261. It seems unlikely that this was an isolated example.

18. Roberts, "Regulatory Responses," 193.

19. Rollings, "A Few Pike," 259.

20. Rollings, "A Few Pike," 277.

21. On 10th July 1959, the Governor encouraged the Issuing Houses Association to create a working party "to draw up a code of conduct relating to acquisitions and mergers" (C40/971, letter from IHA to Governor, 17th July 1959). At a second meeting with the City institutions, there was discussion about the contents of the Code, and Sir Oliver Franks (Deputy Chair Committee of London Clearing Bankers) said that "the real difficulties over take-over bids arose only from a few spectacular cases," catching the public eye because of the big profits being made. (C40/971, 21st July 1959) The final remit given to the City Institutions asked them to work out rules to "mitigate the less desirable features of 'take-over' bids and the like" (C40/971, 22nd July 1959).

22. Sidney Irving of Labour had called for the Board of Trade to set up "a Departmental committee to investigate the operation of take-over bids, with a view to recommending such appropriate amendments to the Companies Act as may be necessary in the public interest" and asked "whether some code of business ethics, or some other means, could be devised to protect the public interest". ("Take-over Bids," HC Deb 02 June 1959 vol 606 cc21-4 at 21).

to certain potential targets.²³ For example, the memo cited by Rollings records the “Governor’s nightmare ... that one day he might wake up to find some successful bid had been made for one of the Banks.”²⁴ Behind the scenes, the Governor was taking legal advice about how takeovers of banks could be prevented, rather than about takeovers more generally.²⁵ In sum, the Governor acquiesced to takeovers in principle from the end of 1953.

The article is structured as follows. It begins with an account of the situation before 1952. This highlights how difficult it was for control of companies to change hands, drawing on the work of Rutterford and Hannah, as well as the little known account offered by Tabb. It then highlights how the changes to the Companies Act from 1947-48, following the recommendations of the Cohen Committee, made corporate control more contestable and laid the legal foundation for the emergence of the hostile takeover from 1952. Finally, it highlights the precarious position of shareholders in 1951, a position that would change significantly the following year. The third section explores the emergence of the takeover bidders and their reception in the media, highlighting that the media recognized very early on that there had been a fundamental shift in favor of shareholders. The fourth part traces the development of government policy during 1953 and the ambiguous but public consensus that emerged at the end of that year that only “speculative” takeovers were objectionable. The final part explores the efforts of the Bank of England to restrict the supply of finance to unwelcome bidders, which ended with the Bank’s quiet acquiescence to the financing practices of the insurance companies. From this point, there was no longer any meaningful opposition to the hostile takeover. A short conclusion follows.

The Situation Before 1952

While the separation of ownership and control may have been largely completed in listed UK companies before 1914,²⁶ shareholders were not entirely passive. Numerous shareholder associations in specific industries were formed during the early twentieth century, while in 1932, a short-lived Shareholders Protection Association was formed to assist shareholders bringing claims against boards of directors.²⁷

However, even if they were well organized, it was hard for shareholders who were dissatisfied with the company’s performance to change the board. Before 1948, hostile takeovers

23. Kynaston (*City of London Vol 4*, 240) notes Cobbold’s comment following a discussion with the Chancellor that they both felt that a takeover “may not be a bad thing in some instances,” but also recognized that takeovers are “damaging to the general idea of prudent and conservative management of companies and might, in a few cases, be excessively embarrassing.” A month later the Governor was expressing concern about the “deplorable” “public relations aspect” of bids.

24. T233/2002, Record of Conversation, 29th May 1959.

25. The Governor sought advice from Peppiatt at Freshfields about “whether in the public interest some measure of control or guidance might have to be considered,” but was particularly concerned about the prospect of a bid for a bank (C40/970, 14th July 1959). Peppiatt highlighted the difficulty of interfering with the right of shareholders to sell their property, and set out various ways in which banks might make themselves takeover-proof. After this, there was considerable discussion behind the scenes as to how bank takeovers might be prevented (C40/970, 16th to 21st July 1959), while Peppiatt offered further advice on self-regulation of the “objectionable features” in order to head off legislation (C40/970, 30th July 1959).

26. Foreman-Peck and Hannah, “Extreme Divorce.”

27. Rutterford, “Shareholder Voice,” 135; Maltby, “National Crisis,” 44.

were very difficult—the board of the target company normally had to consent to any change of control. As Tabb puts it, “Before 1948, where the directors of an offeree company expressed strong opposition to a bid it was immediately withdrawn.”²⁸ Culture no doubt played a part, but the main reason for this was that company boards were entrenched through a variety of legal devices.²⁹ In sum, as long as the directors and their associates could block a 75 percent special resolution—which they usually could,³⁰ whether by holding more than 25 percent of the votes or by issuing non-voting shares—they could not be removed. Nor could the shareholders interfere with their management of the company unless they could pass a 75 percent resolution, either to give instructions under the default articles or to change the articles to allow them to give instructions.³¹

The inability of shareholders easily to override the decisions of directors does not mean that there were no changes of board control or amalgamations between companies. In a pioneering but largely overlooked 1981 article, Tabb details the four ways in which takeovers could be completed before 1950.³² The first was very rare in the UK: it was something like a proxy fight in the US, albeit that the bidder would buy shares, then attend the general meeting and try to persuade the other shareholders to appoint them as chairman. Second, the bidder could gain approval from the target board; these friendly takeovers “were really amalgamations” and “were the most common prior to 1950.” They can be seen in the anti-competitive restructuring of small businesses under a holding umbrella, with the directors and managers generally remaining in control.³³ Third, a third party, such as the target’s bank, might put pressure on the target board to accept.³⁴ Finally, the bidder could persuade the target board to withdraw its initial opposition either by offering a very generous price or paying the directors’ compensation for loss of office.³⁵

To Tabb’s four ways of changing control, Rutterford and Hannah have added a fifth way of changing control in the face of board opposition, albeit one that did not involve acquisitions of shares, and so is not a hostile takeover as defined in this article. In their research into the influence of shareholder committees of investigation appointed under the Companies Act 1862, four out of their sample of 50 produced a shift in board control in a manner somewhat akin to a proxy contest. These committees could be proposed and adopted by shareholders by majority,³⁶ their costs could be shared among shareholders or reimbursed by the company,³⁷ and they operated as a means of challenging directors and management who did not meet expectations or who benefited from conflicts of interest. Most importantly, they acted as an important means by which directors could be removed from office before the Companies Act 1948.³⁸ Where a committee recommended removal of all directors, they sometimes resigned,

28. Tabb, “Accountancy Aspects,” 329.

29. These are explored in more detail in Johnston et al., “Balanced Enterprise,” 81–82.

30. Hannah, “Divorce,” 415–417.

31. *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cunninghame* [1906] 2 Ch 34; see also Rutterford “Shareholder Voice,” 128.

32. Tabb, “Reasons,”

33. Hannah, “Rise,” 86–87.

34. Tabb, “Reasons,” 325.

35. Tabb, “Reasons,” 324–326.

36. Rutterford and Hannah, “Unsung Activists,” 753.

37. Rutterford and Hannah, “Unsung Activists,” 756.

38. Rutterford and Hannah, “Unsung Activists,” 746.

while in other cases, shareholders voted against reappointment.³⁹ Committee members were sometimes appointed to the Board after they had reported.⁴⁰ This happened in the extraordinary situation in 1919 in Schweppes, where the general meeting failed to pass a special resolution removing the existing directors, so passed resolutions increasing the number of directors and appointing committee members, following which the incumbents resigned.⁴¹ After 1945, these committees died out, as company affairs became more complex, individual shareholders more dispersed, institutional investors formed their own protection committees, and the market for corporate control emerged after the reforms of 1948.⁴²

This was the context in which the Cohen Committee was appointed in 1943 to consider amendments to company law, focusing on “the safeguards afforded for investors and for the public interest.”⁴³ In the event, the Committee’s 1945 report recommended a number of changes to company law which dramatically changed the balance of power between directors and shareholders when they became law in the Companies Act 1947 (and were then consolidated with existing provisions into the Companies Act 1948).

Much has been written about the Cohen Committee and the reforms of 1947–8, with the focus primarily on the accounting reforms. For example, both Maltby and Bircher have shown that the 1947 Act built on public arguments that financial reporting should be used to ensure accountability, both to shareholders and to the public.⁴⁴ However, the Cohen Committee focused on reporting to ensure accountability to shareholders. In Maltby’s telling, the modernizers who viewed shareholders as paramount won out over the traditionalists who thought boards ought to be in control of what was disclosed. Bircher also showed how the Committee’s recommendations of mandatory profit and loss account, balance sheet showing true and fair view, and consolidated accounting were driven by submissions of the ICAEW, but were also “premised on the newly perceived need to protect disenfranchised shareholders”.⁴⁵ Perhaps most influentially, Hannah offered a “tentative explanation” that more reliable publicly available information contributed to the emergence of the hostile takeover by facilitating direct bids to shareholders where incumbent directors were refusing to cooperate.⁴⁶

The reforms of 1947–1948 also made a number of important changes to company law, and their importance to the emergence of the hostile takeover is increasingly recognized.⁴⁷ The most significant was probably the introduction of a power for the shareholders in general

39. Rutterford and Hannah, “Unsung Activists,” 761.

40. Rutterford and Hannah, “Unsung Activists,” 762–763.

41. Rutterford and Hannah, “Unsung Activists,” 770.

42. Rutterford and Hannah, “Unsung Activists,” 772.

43. *Cohen Report*, 7.

44. Maltby, “National Crisis,” Bircher, “Company Law Reform.”

45. Bircher, “Consolidated Accounting.” For the ICAEW’s submissions to the Cohen Committee and a discussion of their influence see de Paula, *Developments*.

46. Hannah, “Takeover Bids,” 69–71 and 75; Chambers, “The City.”

47. See for example, Tabb, “Reasons”; Bruner, *Corporate Governance*, 147; Johnston et al., “How the Law”; Johnston, “From Managerialism.” Others such as Cheffins, “Law, Economics” and Donnelly, “Public Interest Politics,” prefer to focus on “extra-legal factors” and “self-regulation” to explain the shareholder value orientation of UK corporate governance.

meeting to remove a director by simple majority at any time, regardless of any provision in the articles or any contract with the company.⁴⁸ The origins of this recommendation are obscure, with no discussion in the Committee, and it may have simply come from Cohen himself.⁴⁹ In any event, it allowed a new controller quickly to undo all the mechanisms by which directors tended to entrench themselves, making control of many companies contestable overnight. Before this change, a new controller would have had to rely on the incumbent directors and any entrenched managing directors resigning voluntarily, or on retirement by rotation, which would involve waiting two years to take control of the board (and would not work if retirement by rotation had been disabled in the articles or managing directors exempted⁵⁰). In giving a new controller a legal right to remove incumbents quickly and cleanly,⁵¹ it would have reassured the new wave of bidders—and especially those who financed them—that companies could be restructured quickly following an acquisition of control, and properties could be sold off.

Beyond the removal power, the Committee recommended that company directors should be required to disclose and obtain shareholder approval for any payments made to them by way of compensation for loss of office, particularly in connection with share transfers.⁵² This addressed the fourth of Tabb's ways of launching a takeover, namely, paying the directors to give up their positions, making it more shareholder-friendly. There was a recommendation for changes to the "squeeze out" rule, originally introduced in 1929,⁵³ which allowed an acquiror of 90 percent of a company's shares compulsorily to acquire the remainder of the shares, but could not be used by an acquiror who already owned 10 percent of the shares before making the offer.⁵⁴ The Committee's recommendation to allow an acquiror in this position to use the power would subsequently benefit bidders, like Clore, who secretly bought up shares on the market before launching a bid by excluding those holdings from threshold calculations.⁵⁵ Finally, the Committee recommended the introduction of a sell-out rule, allowing those who did not accept the offer to force the bidder to acquire their shares where they acquired 90 percent of the shares.⁵⁶ As is recognized now, this rule operates to protect target shareholders from coercive bids.⁵⁷

48. Cohen Report, para 130, s29 CA 1947 which became s184 CA 1948.

49. For further analysis, see Johnston, "From Managerialism." In his autobiography (Cohen, *Cohens*, 81), Cohen's son, Tim, writes that his father "had to write most of the report himself." The archival evidence shows Cohen drafting much of the report by hand, including drafting the provision about the shareholder removal power himself, and offers no evidence that it was ever discussed in committee.

50. Cohen Report, para 130.

51. If the directors did not resign voluntarily, a removal resolution required 28 days special notice to the company under s2(6) CA 1947 and s29(2) CA 1947 (s142 and 184(2) CA 1948), although the meeting could be called earlier.

52. Cohen Report, para 92, s36 CA 1947 which became ss191–193 CA 1948.

53. s155 CA 1929.

54. Cohen Report, para 141, s11 CA 1947 which became s209 CA 1948.

55. On Clore's practice, see Gordon, *Two Tycoons*, 50–51, referring to "a quick concealed build-up of shares purchased in the market," a practice Clore himself partially denied (Minutes of Evidence Taken Before the Company Law Committee [HMSO 1961] paras 2668 and 2680).

56. Cohen Report, para 141, s11(4) CA 1947 which became s209(2) CA 1948.

57. See e.g., *Report of the High Level Group of Company Law Experts on Issues Related to Takeover Bids*, Brussels, 10th January 2002, 62.

It seems unlikely that the Labour government that was in power in 1947 intended to create space for the hostile takeover to emerge. While the Labour government insisted on dividend restraint, it had been heavily focused on nationalization between 1945 and 1948,⁵⁸ with the Cabinet in turmoil over whether to nationalize the steel industry in 1947.⁵⁹ As such, it paid little attention to matters of company law.⁶⁰ Nor was there any meaningful debate in Parliament about the shareholder power to remove directors.⁶¹ Indeed, there is no evidence that anyone in government—or in Parliament—anticipated what was going to happen next. In contrast, key members of the Cohen Committee, including Cohen himself and Professor Goodhart, viewed shareholder control over directors as fundamental.⁶² Despite a mandate that included considering the “public interest”,⁶³ Cohen steered the Committee’s focus toward “Shareholders’ control and modification of the rights of the shareholders”.⁶⁴ Did the Committee intend to facilitate hostile takeovers? There is no doubt that it wanted to “to give shareholders greater powers to remove directors with whom they are dissatisfied, than they have at present”.⁶⁵ Moreover, the changes discussed in the previous paragraph suggest an intention to facilitate changes of control through share acquisitions.

However, these legal changes would not have made any difference if shareholders had not been willing to sell. But company law reform and the emergence of the hostile takeover came along at a critical time for shareholders, who were often in a precarious financial position. In August 1953, the *Financial Times* reported that individuals had been net sellers of stocks and shares for several years, asking why the “gradual euthanasia of the rentier is still regarded widely as inevitable fate?”⁶⁶ The *Economist* summed up the dire position of many shareholders by noting that, despite the boom, the previous five years had seen no net personal investment on the stock exchange, and asked whether the “old-fashioned private investor is really dead”.⁶⁷

Shareholding was becoming less attractive because of political pressure and tax disincentives not to distribute dividends, which were intended to reduce pressure for wage rises. Dalton introduced a policy of voluntary dividend restraint from 1947, which was continued by Cripps, and a three-year government control of dividends was proposed in June 1951, although it was never introduced.⁶⁸ The most significant changes in corporate control that occurred between 1945 and 1951 were nationalizations, paid for in fixed interest government stock.⁶⁹ Alongside this, a permanent profits tax was introduced in 1947, taxing retained profits

58. Tomlinson, “Labour Party,” 687–688; Morgan, *Labour in Power*, 98, 107.

59. Morgan, *Labour in Power*, 121.

60. Clift, Gamble and Harris, “Labour Party,” 63–64. Dutton, *British Politics*, 27, comments that the Labour Party’s plans for nationalization left most of the private sector untouched, with the government aiming at most for “a loose partnership with industry – one in which the forces of capital and the market would remain supreme.”

61. For a summary, see Johnston et al., “How the Law,” 90.

62. Johnston et al., “How the Law,” 87.

63. Cohen Report, 7.

64. Johnston, “From Managerialism,” 256.

65. Cohen Report, para 130.

66. “Ownership of Shares,” *Financial Times*, 13th August 1953.

67. “Corpse in the Capital Market,” *The Economist*, 7.2.53, 375–377.

68. Littlewood, *The Stock Market*, 26, 34, 44.

69. Littlewood, *The Stock Market*, chapter 5.

at 10 percent but taxing distributions at 25 percent, rising to 30 percent in 1949-50 and 50 percent in 1951.⁷⁰ While profits tax was deductible from income tax until the end of 1951, income taxes were also very high between 1945 and 1951, “the tax rate for income above £12,000 was set at 85 per cent and the top marginal rate of 90 per cent applied to income above £15,000.”⁷¹ In addition, death duties were very high, at 50 percent for estates between £100,000 and £150,000 and 80 percent for estates over £1million.⁷² Company shares were, of course, concentrated in estates over £50,000 that were liable to death duties.⁷³ The *Financial Times* quoted the chairman of Charterhouse Investment Trust to the effect that “the very fabric of these concerns is being torn to pieces by death duties”, with proprietors forced to dispose of part of their holdings to pay the tax. A large, previously privately held ordinary shareholding in H. Samuel was offered to preference shareholders in order for their previous owners to make provision for death duties.⁷⁴ We will see in the next section that the family that controlled Sears similarly had to dispose of a family blockholding to pay death duties, and that this, combined with the 1947–1948 changes to the Companies Act, opened the door to Clore and created a dilemma for government.

The Emergence of the Hostile Takeover and Early Media Coverage

In May 1951, shortly after Charles Clore had bought shares in it, but a few months before he joined the board,⁷⁵ a company called Investment Registry made its first hostile bid for Frederick Gorringer Ltd, which owned a store in Buckingham Palace Road. The formal offer was made directly to shareholders, conditional upon 90 percent acceptances.⁷⁶ The board of Gorringer managed to persuade the company’s shareholders not to accept, not least by highlighting how much money would be raised by selling off the company’s freehold, which was hugely undervalued on the balance sheet. In the end, the bid for Gorringer failed, accepted by only 41 percent of ordinary shareholders and 28 percent of voting preference shareholders.⁷⁷ Clore’s second attempt to gain control of prime property through a hostile bid, when he attempted a takeover of the company that owned the Grosvenor House Hotel on Park Lane, also failed when the directors revalued the property.⁷⁸

70. King, *Public Policy*, 258–259.

71. Cheffins and Bank, “Corporate Ownership,” 793.

72. Cheffins and Bank, “Corporate Ownership,” 797.

73. “Corpse in the Capital Market,” *The Economist*.

74. “H. Samuel Offer,” *Financial Times*, 17th March 1951.

75. Davies, *Merger Mania*, 20; Bull and Vice, *Bid for Power*, 72. Clore held a considerable interest in New Century Finance Company, which was the largest individual shareholder in Investment Registry, and Clore acquired a “relatively minor” indirect shareholding from the estate of Arthur G Cousins in March 1950: see “Investment Registry,” *Financial Times*, 25th March 1950. By 1956 at the latest, New Century owned all the issued ordinary shares of Investment Registry, and Clore owned almost all the shares in the companies that owned the shares of New Century: see *Princes Investments Ltd v IRC*; *Clore v IRC* [1967] Ch. 953 at 968.

76. “Bid for Shares of F. Gorringer: Board Advises Rejection,” *Financial Times*, 9th May 1951.

77. Bull and Vice, *Bid for Power*, 74.

78. Bull and Vice, *Bid for Power*, 74–76.

Everything changed with the success of his third attempt, aided by a loan from Bank of America, which was just opening its first British office.⁷⁹ Clore gained control of J. Sears and Co Ltd and its Freeman, Hardy and Willis subsidiary. At the time, it was one of Britain's largest firms with over 900 shops, which were the main reason Clore was attracted to the company.⁸⁰ The board attempted to repel Clore, not least by trebling the dividend, but he obtained control of around 70 percent of the equity,⁸¹ aided in part by the Sears' family need to sell a large shareholding in 1952 in order to pay death duties.⁸² Having gained a majority of the shares on Monday 9th February, by the end of the week Clore had control of the board. Clore immediately called a meeting at which the board was "reconstituted",⁸³ with incumbent chairman Dudley Church and managing director EJ Ward departing, while Clore was appointed as chairman and both his lawyer Leonard Sainer and associate Jack Gardiner became directors of Sears and its Freeman Hardy and Willis subsidiary.⁸⁴ Clore may not have needed to use the removal power, but it would certainly have helped in the negotiations: if the incumbent directors had not been willing to resign, Clore could have removed them within 28 days. Presumably, they saw the writing on the wall. Once Clore had control of the board, the Sears family sold off their remaining shares.⁸⁵ Clore then sold off "a substantial portion of its freeholds and took back long leases in their stead."⁸⁶ The *New Statesman* reported at the time that Sears sold "for £4m 'or more' freehold properties which Freeman, Hardy & Willis then rent back from the purchasers".⁸⁷ Clore then used the gains made on the property sales to fund his next takeover.⁸⁸

As we will see in part five, the role of insurance companies in these sale and lease back transactions became known to the Bank of England and the Treasury by the end of 1953 at the latest. Historical research on the property sector has shown that, once planning controls were relaxed after 1949,⁸⁹ insurance companies provided a large amount of finance to hostile bidders in order to purchase properties that could be profitably redeveloped.⁹⁰ Here we can simply note that if an insurance company pledged the finance for a conditional offer to purchase shares, either the offer would fail and they would get their money back, or it would be successful, and they would get their hands on the property very quickly, thanks to the new rules giving a majority shareholder absolute power over the board. As Clore showed in the Sears case, the board could be reconstituted very quickly after the change of control, removing any obstacle to liquidating the undervalued property. Hence, the emergence of the takeover was also closely

79. Clutterbuck and Devine, *Clore*, 66.

80. Davies, *Merger Mania*, 21.

81. Sainer, "Biography," 698 (Sainer was Clore's solicitor).

82. Gauld, *Gentleman Jack*, 19.

83. "J. Sears Board Reconstituted," *Financial Times*, 16th February 1953.

84. Clutterbuck and Devine, *Clore*, 69.

85. Clutterbuck and Devine, *Clore*, 69–70.

86. Sainer, "Biography of Charles Clore," 698. Clutterbuck and Devine, *Clore*, 65 note that "The idea of sale and lease-back was not completely original. It had been pioneered by Isaac Wolfson some years before and Charles had immediately grasped the potential of this form of asset management."

87. "Mr Clore's Empire," *The New Statesman and Nation*, 25th September 1954, 342.

88. Marriott, *Property Boom*, 53.

89. Marriott, *Property Boom*, 46.

90. Scott, *Property Masters*, 150.

connected to the emergence after World War II of “the business of commercial property development (transforming the value of a real-estate asset by erecting valuable new buildings, rather than simply holding property and collecting rents)”⁹¹ Indeed, Kefford argues that “the British property sector was enmeshed with London’s financial sector from a remarkably early stage and the new business of commercial property development was seized upon by the City’s financial institutions as a favored means of storing and growing capital.”⁹²

The Sears takeover gave rise to debate about the merits of takeovers in the letters page of the *Financial Times*, with one writer highlighting that, with financial interests taking over, there was a danger that “shareholding becomes entirely divorced from social responsibility.”⁹³ Another countered that “those who take the risks are entitled to reap any reward that may come their way. After all, when a company falls on bad times the employee can withdraw his labour intact, but can the shareholder do this with his capital?”⁹⁴ In his influential *Financial Times* column, Harold Wincott condemned those opposing takeovers as:

“an odd collection of bedfellows ... the TUC and the Socialists, who want statutory dividend limitation, just to do shareholders down; ... those Tories who’ve lost faith in freedom; ... the company directors and the managerial revolution to whom shareholders were really a bit of a nuisance anyway before it was discovered they actually had the power to pass the hat – your hat.”

Wincott’s article was also the first attempt to justify the hostile takeover as natural, arguing that

“Natural forces always do win out in the end, and all that is happening now is that directorial pants which have been sitting on the safety valve for a decade or so are at last getting scalded.”

Finally, he advanced a claim that is now commonplace in defenses of shareholder value,⁹⁵ namely that shareholders are better qualified than directors to deploy capital:

“the true interests of the country would have been far better serviced if shareholders had had the profits and reinvested them at *their* discretion.”⁹⁶

While the Government was still formally insisting on a policy of voluntary dividend restraint,⁹⁷ it was already clear to commentators in early 1953 that the bids had put directors under pressure to increase distributions to shareholders. Onlooker in the *Financial Times* noted the “possibility that more Boards of Directors will be declaring higher dividends to stave

91. Kefford, *Global Rise*, 202.

92. Kefford, *Global Rise*, 203. See further McFall, “Life Funds,” 80–81 for discussion of the appetite of fast-growing life insurers for commercial property.

93. Letter from Tom Sargent, *Financial Times*, 12th February 1953.

94. Letter From Nigel Henderson, *Financial Times*, 17th February 1953.

95. Driver, “Fixing,” 244–245.

96. Wincott, “Why Not Trust the Shareholders?,” *Financial Times*, 17th February 1953.

97. Rollings, “A Few Pike,” 278.

off attacks of the Sears type".⁹⁸ More systematically, Wincott identified that a "silent revolution" had begun in October 1952 when the Sears share price started to rise, heralding the start of a trend for companies to increase dividends as a percentage of profits available, despite the fact that profits had fallen compared to the previous year.⁹⁹ Since dividends lagged asset prices, and there were "bids—and rumors of bids—galore", this would inevitably lead to "Boards of directors 'unlocking' asset values themselves without waiting for someone outside to buy their way in and do the job" and "raising dividends to reduce the 'area of undervaluation'". In other words, in late 1952, boards of directors had already begun to behave exactly like bidders, and the first shoots of the shareholder value revolution were visible, to financial commentators at least.

Bids and Defenses: Contesting the Hostile Takeover

We have just seen that the media quickly recognized the change in corporate financial policies following the first bids, as boards increased dividends and sold off property. But other companies sought to head off bidders in different ways, including seeking help from the Treasury, looking for protection from a larger company, and designing legal devices to deter bidders.

For example, the Daily Mirror approached the Chancellor on 10th November 1953, concerned that Charles Clore was going to launch a hostile bid to gain control of the group's paper mill assets.¹⁰⁰ The Mirror wanted to issue £400,000 of unissued capital to Albert Reed, a company in which it had a 42 percent shareholding, but needed permission from the Capital Issues Committee (CIC) to do so.¹⁰¹ On hearing of the application, Compton at the Treasury commented that it was "difficult to believe that the Daily Mirror need protection!", and anticipated that the Chancellor would not want to intervene at the CIC stage. Compton learned that the CIC "felt" against the application because they had "no instructions to take cognizance of 'take-over bids'", and judged on its "commercial merits", the case deserved "no special 'priority'".¹⁰² The Treasury's initial view was not to depart from the CIC decision because it had "taken no decision in principle against take-over bids and we have been given no reason to suppose that Mr Clore's designs on the Daily Mirror would damage any interest which the Government ought to protect."¹⁰³ Treasury formally advised not giving consent, but the Economic Secretary, Reginald Maudling, disagreed, advising the Chancellor, Rab Butler, to approve the Mirror's application on the basis that it would have no effect on the economy but

98. "The Week in the City," *Financial Times*, 28th February 1953.

99. Harold Wincott, "Boardroom Revolution," *Financial Times*, 18th August 1953, 6–7.

100. T233/2188.

101. The Capital Issues Committee (CIC) was set up under the Defence (Finance) Regulations 1939 to advise the Treasury in relation to consent to issue capital, and after 1951 prioritized capital issuance for expansion in accordance with Government policy. This included defence, raw materials, dollar saving, exports to desirable markets, technical advancements and cost reduction. See "Capital Issues Committee (Instructions)," Hansard, Vol 486, 17th April 1951. As we will see, it did not include considerations relating to takeovers.

102. T233/2188.

103. T233/2188/20.

would “help the Company to protect itself against speculative take-over bids of a type which you have recently condemned in public.”¹⁰⁴ In the end the Chancellor was not persuaded to permit the application. The Mirror was advised to make a second application, placing less emphasis on Clore, but it too was rejected. Maudling told the Chancellor that the “Committee are wrong” and that “if the applicant had been The Times and not the Daily Mirror permission would have been recommended”. Ultimately, Butler, Chancellor in a Conservative government that had won the election in October 1951, declined to intervene, perhaps unsurprisingly given the Daily Mirror’s allegiance to Labour.

Elsewhere, small breweries that were being targeted by the bidders were approaching Whitbread, a huge national brewery, asking it to purchase minority stakes so that they could come under the protection of the “Whitbread umbrella”.¹⁰⁵ This began in “the early 1950s”, so that by the mid-1950s, “Whitbread had 13 such investments”.¹⁰⁶ Whitbread gained in various ways, by making beneficial trading arrangements and often taking a board seat. The Whitbread umbrella gained little publicity at the time, but, like the Mirror’s approach to the Chancellor, serves as a marker of the ferocity of the early 1950s takeover wave.

In contrast to the way these defenses played out in private, it was the attempted takeover of the Savoy Hotel that really brought the hostile takeover to the attention of the general public. As such, it could not be ignored by the government. In October 1953, a mystery bidder had acquired 20 percent of the ordinary shares in the Savoy Hotel Limited, which in turn owned 100 percent of the shares in the Berkeley Hotel Company Limited. The rapid rise in the share price had alerted the directors, who owned less than 10 percent of the shares, to a potential bid. The Savoy board asked for a Board of Trade enquiry into share ownership, and it ultimately became clear that the bidder was Land Securities. Its controller, Harold Samuel, had secretly acquired the 20 percent shareholding, while Clore had also acquired 9 percent of the shares. In late November 1953, Samuel informed Hugh Wontner, the managing director and chairman of the Savoy Hotel Group, that he was seeking control of the Savoy Company and that, if successful, he intended to close the Berkeley as a hotel and turn it into offices.¹⁰⁷ Shortly afterwards, Samuel sought representation for his company on the Savoy Board. Wontner approached his friend, the Prime Minister, Churchill, for help.¹⁰⁸ He also lobbied the Treasury for support, and attempted to persuade the President of the Board of Trade, Peter Thorneycroft, to put out a statement opposing any change of user of the Group’s properties.¹⁰⁹

Besides seeking political help, the Savoy Board explored other ways to defend against the bid. Having rejected a scheme based on share issuance to a staff benevolent fund following legal advice,¹¹⁰ as well as considering the possibility of issuing special shares,¹¹¹ it approved

104. T233/2188/33. Butler’s comments in Parliament on 15th December in response to Gaitskell are discussed in the next section.

105. Bower, “Whitbread Umbrella.”

106. MMC, *Supply of Beer*, para 6.87. For further discussion, see Redman, *Story of Whitbread*, 41–42.

107. Board of Trade, *Savoy*, 16.

108. Roberts, “Regulatory Responses,” 187.

109. For a review of this, see Rollings, “A Few Pike,” 281–282.

110. Bull and Vice, *Bid for Power*, 34. This of course was exactly what the incumbent directors did in 1963, leading to the case of *Hogg v Cramphorn* [1967] Ch 254.

111. Rollings, “A Few Pike,” 282.

the “Worcester Buildings Scheme”. That scheme transferred the Berkeley Hotel itself (and some other properties) to the Worcester Buildings Company (London) Ltd in return for a large quantity of non-voting preference shares and a much smaller quantity of voting second preference shares. Worcester Ltd then leased the Berkeley back to Berkeley Hotel Ltd, subject to a covenant that it be used as hotel and restaurant.¹¹² The ordinary voting shares in Worcester Ltd were issued for cash to trustees of a benevolent fund established for staff; the effect was to put control of the Berkeley Hotel and the other properties in the hands of the trustees, of whom Wontner was one, the other two being the company’s accountant and a doctor of high standing. Meanwhile, most of the cash flow rights accrued to the existing Savoy shareholders as preference shareholders in Worcester Ltd.¹¹³

Once the scheme was announced, the directors of Savoy responded by purchasing “substantial amounts of stock” and Samuel offered to sell his stock, as well as threatening legal proceedings.¹¹⁴ Shortly afterwards, Samuel agreed to sell his stock (as did Clore) to the directors of the Savoy Hotel. The trustees of the benevolent trust then sold their shares to the Savoy Company at par, giving it control of the Worcester Buildings Company, and with it, the Berkeley site. The Savoy Board’s purchase of Samuel’s and Clore’s shares was supported by a bank loan from Barclays, which, of course, required CIC approval. That application was rejected by the CIC,¹¹⁵ albeit noting that some of the Savoy submissions “relate to matters outside the Committee’s terms of reference”. After much internal discussion, the Chancellor reluctantly agreed that “it would be against public policy to use the Treasury’s power of control over capital issues in order to frustrate the purchase of the Savoy shares by Mr Wontner and his associates”.¹¹⁶ The contrast with the Daily Mirror decision only a month earlier is stark, as is the highly politicized nature of the decision. Having borrowed the money, the Savoy Board then sold and leased back a building, and paid a capital dividend to the company’s shareholders.¹¹⁷ As such, the Savoy Board was behaving in a manner very similar to a takeover bidder.

The Savoy Hotel affair caused an enormous scandal, primarily because of the Worcester Buildings Scheme. The media coverage is particularly interesting, given that it came during a period which is generally understood as the high point of managerial capitalism.¹¹⁸ The

112. Board of Trade, *Savoy*, 6–7.

113. Bull and Vice, *Bid for Power*, 36–37. British-owned Assam Company in India adopted similar scheme to head off a bid for control, but it was approved by shareholders.

114. Board of Trade, *Savoy*, 20–21.

115. Special Report from the Capital Issues Committee Meeting on 23rd December 1953, T233/2187/68.

116. T233/2187/61, 23rd December 1953.

117. Bull and Vice, *Bid for Power*, 41. The Savoy Directors later consolidated their control by issuing “B” shares with ten times the voting rights of the ordinary shares as scrip to ordinary shareholders, selling off the A shares they had acquired from Samuel, and then buying up “B” shares from individual shareholders on the market. For contemporaneous discussion, see “Savoy for Ever? Control Scheme by Directors,” *The Manchester Guardian*, 3rd May 1955, noting that it should not be difficult for the holders of Samuel-Clore shares to acquire the 51 percent necessary for permanent control, and then sell off many of the A shares to repay the bank loan. Ironically, a few years later, the Directors sold off the Berkeley site in Piccadilly to Yorkshire Insurance, planning to build a new Berkeley in Knightsbridge at a cheaper site: see Marriott, *Property Boom*, 50.

118. Marris dates the “classical managerial era” from the “early 1900s” to the IT revolution of the 1980s: see Marris, *Managerial Capitalism in Retrospect*, xvi, 11–12. Gower’s managerialist views were discussed above, fn 7 and 8.

Financial Times began by acknowledging that the Savoy Board had a responsibility to consider the interests of workers, and that by acting on this principle they had “no doubt attracted a good deal of sympathy to themselves”. But this was not an absolute principle and the question was “whether or not the directors are or might be sacrificing the shareholders’ interests. Other things being equal, it is the shareholders’ interests, in the widest sense, which are paramount.” It concluded that, if the directors’ proposals were accepted as a precedent by the City, “the way will be open to the destruction of the whole company system.”¹¹⁹

Similarly, *The Times* made the obligatory nod to the company being “something different from the totality of the shareholdings”, but stressed that it was the “owners... who take the ultimate risks” because “their property is irretrievably committed in the business”, something they would never agreed to “if they contemplated that control of their property could ordinarily be alienated without consideration and without their positive approval.” Few shareholders “can have supposed that the ‘managerial revolution’ had gone quite so far as that”. The Savoy scheme represented “a precedent which is hard to reconcile with the joint stock company system under which most of the country’s business is done.”¹²⁰

Finally, *The Economist* noted the potential harmful economic and social consequences of bids, especially if the bidder plans to “gut” a carefully husbanded undertaking and “to rob patient shareholders of what was due to them”.¹²¹ But a week later, it proclaimed that the Savoy board “have done permanent damage to the basic assumptions of joint stock enterprise.”¹²² While acknowledging public disapproval of bids and the inevitable speculation involved in changing use of property, it insisted that

“In theory and in legal form the shareholder is master, exalted by the Companies Act of 1948 far beyond the status of the directors. But in practice he makes no pretence to exert effective control, and is content to leave everything to the directors until he discovers that things are going wrong.”

Now, that Clore and Samuel had “let loose the suppressed revolution in company finance”, *The Economist* said, “the lessons are clear. It is more sensible to give benefits to existing shareholders than to leave the front door open to a determined bidder; once on the defensive, directors may be led into courses that are themselves indefensible.”¹²³ It was already clear, to the media at least, that managerialism would have to yield to shareholder value.

The Political Response to the Hostile Takeover Phenomenon

Behind the scenes in the Treasury and the Bank of England in 1953, there was a great deal of activity, and this intensified as the Savoy scheme was launched. This section traces the

119. “Directors’ Duties,” *Financial Times*, 8th December 1953.

120. “Ownership and Control,” *The Times*, 10th December 1953.

121. “The Battle for the Savoy,” *The Economist*, 12th December 1953.

122. “The Shareholder Today,” *The Economist*, 19th December 1953. See also L.D. Williams, “Companies Act May Have to Be Amended,” *Daily Mail*, 11th December 1953.

123. “The Shareholder Today,” *The Economist*, 19th December 1953.

process through which Government policy toward takeovers was formulated, contrasting the ambiguity of public pronouncements with the emergence behind the scenes of a consensus that nothing could or should be done about takeovers.

Things began when the Sears board approached the Treasury for help on 9th January 1953, Sears already being aware that Clore was probably behind the imminent bid, and that he planned to sell the freeholds to an insurance company and take them back on a 99-year lease. Having already increased the dividend, Sears' board was now seeking CIC permission to issue bonus shares.¹²⁴ Compton added a note that "the Treasury is doing as much as we legitimately can to help them." There is no further reference to Sears' application to the CIC in the archive; presumably it was overtaken by events.

In February 1953, a draft statement was prepared for the Chancellor on dividend restraint, along with a supporting memorandum headed "Company Control and Dividend Limitation". That memorandum was broadly approving of takeovers, asking whether management complaints about the policy of dividend restraint might actually be "an excuse for inferior management, which is not earning profits or is letting assets be unused. If so the shareholders have a perfect right to improve the yield of their property by changing the management, without interference from the Government." It recommended that Government should "refrain from offering protection to Boards of Companies so assailed". But, it added, companies must be free to protect themselves, giving up dividend restraint and increasing the dividend just as the Sears board had done.¹²⁵ Hence, early in 1953, it appears that the Treasury was already broadly supportive of takeovers.

The Bank of England was first alerted to the issue of hostile takeovers in March 1953 when it received a "Memorandum on Real and Fictitious Share Bids".¹²⁶ Contrary to Roberts' reading, this memorandum was not an internal Bank memo; a handwritten note on document (by Peppiatt) says that Chesterfield "brought in this memo". This presumably referred to Arthur Desborough Chesterfield, chief general manager of Westminster Bank Ltd. This means that Roberts was incorrect to claim that the Bank was on the side of "victim companies" and that it regarded takeovers as "against the national interest".¹²⁷ Chesterfield's memo noted that offers had been made to shareholders by syndicates of financiers, either with the object of increasing the dividend or getting control of freehold property (or other assets) to be sold and cash released, leaving "a large capital gain for the syndicate (and probably a long lease on onerous terms for the Company)". It acknowledged the arguments of financial writers, such as Wincott in the *Financial Times*, discussed above, but advanced the more conventional managerialist view of the time, that management should retain control over decisions about corporate finance. Each case was to be judged on its merits, but "at its worst this kind of maneuver simply means dissipating capital" and "may also mean the break up of businesses which are making an important contribution to the country's needs". There is no evidence that the Bank was persuaded by Chesterfield's arguments, and Peppiatt noted that he told Chesterfield that both Bank and Treasury had considered the problem, and referred to a

124. Memo from Lees to Compton dated 9th January 1953 (T233/2000).

125. Memo dated 7th February 1953 (T233/2000/7-11).

126. C40/970/2, 18th March 1953.

127. Roberts, "Regulatory Responses," 187.

Parliamentary question and answer,¹²⁸ but “it was not just that any action could usefully be taken” (sic) and the “S.E. are on the look out for any abuse”.¹²⁹

After this, both Treasury and the Bank kept their counsel on the subject until the Savoy affair burst onto the scene. With the Prime Minister expressing concerns about the Savoy,¹³⁰ the Governor’s view in November 1953, which he had shared with the Treasury, was that “nothing can sensibly be done to interfere with take-over bids and that any remedy would cause more trouble than the disease”.¹³¹ Compton at the Treasury was charged with producing a report on takeover policy, to be drafted jointly with the Board of Trade.¹³² During meetings, there were extensive discussions about the pros and cons of takeovers, ranging from their role in promoting the shareholder interest and acting as deterrent to “complacent and inferior management” to the harmful publicity for the City and tax-free capital gains enjoyed by bidders. The group was told that the Governor’s view was that “you could not really prevent people using their money to buy things. Nor was it right to try”, something he later made clear in a public speech.¹³³

In the end, the group did agree that there was a problem of defining the mischief, and that there should not be a public inquiry.¹³⁴ However, the Board of Trade was more favorable toward takeovers than the Treasury, and there were heated discussions about whether ordinary takeovers should be considered “speculative.” The disagreements were so deep that the joint report was almost abandoned. In the end, the final report stated that

“it is wrong to interfere with the freedom of transactions in stocks and shares and... it is wrong to protect complacent directors against attempts by shareholders to change the management either with a view to running the business efficiently so as to get the best value out of the assets, or to using its resources more economically, or to improving their investment by promoting an amalgamation with another concern for a sound commercial reason.”¹³⁵

Those in the Treasury who were less receptive to takeovers were able to include a comment that a takeover “may be open to criticism if the object is to gain control in order to ‘milk’ the business by a sharp increase in dividend distribution, or to break up the business by

128. This reference is obscure and probably refers to Jay’s question to Butler on 17th March 1953 about steps to enforce the policy of dividend restraint “in view of the increased dividends being offered by firms,” in response to which Butler responded that the policy remained in place and hope it would be “apprehended in certain quarters”: see “Dividend Restraint (Policy),” HC Deb 17 March 1953 vol 512 cc2042-4 at 2043.

129. Author’s reading of barely legible handwritten note by Peppiatt, seen by O’Brien, dated 23.3.53 (C40/970). S.E. presumably refers to the Stock Exchange.

130. Rollings, “A Few Pike,” 280–286.

131. Governor’s Note, 13th November 1953 (C40/973/4).

132. Memo dated 17th November 1953 (T233/2000).

133. Memo EEB to Compton 20.11.53 reporting on meeting with Governor, T233/2000/76; in a speech at the Stock Exchange on 15th December 1953, the Governor stated that he did “not favour any attempt, by legislation or otherwise, to prevent one person using his own money to buy shares from another who wishes to sell” and that he did not “favour attempts by Board of Directors or others to reduce the right of shareholders to control their own property.” However, he was “left with the feeling” that “some of these transactions, in some aspects, are disruptive to the community and bad for the City’s prestige” (C40/970/84).

134. Letter Compton to Peppiatt, 19th November 1953, T233/2000.

135. Final Report on Takeover Bids, 5th January 1954, T233/2001.

distributing the capital assets, especially if the latter transaction is designed to take the form of a tax-free distribution.” However, a footnote, which was added at the insistence of the Board of Trade, stated “This is so far, a hypothetical criticism. The Board of Trade have as yet no knowledge of any case in which the business has in fact been broken up.” The “as yet” qualifier was added in turn at the insistence of the Treasury.¹³⁶

The upshot of this report was that both Board of Trade and Treasury largely accepted the legitimacy of the takeover bid, leaving only a hypothetical, but as yet, non-existent, set of problematic scenarios. At the same time, the Governor’s opposition to interference in markets was also clearly echoed in the quote above from the joint report. From the beginning of 1954, then, the Treasury and Board of Trade had reached a common position which was broadly supportive of takeovers, while the Governor was opposed to intervention. As is shown next, this consensus was much less apparent on the public record, which might explain why Roberts and Rollings concluded that the consensus emerged so much later.

In response to a Parliamentary question by Gaitskell on 15th December 1953, the Chancellor, drawing on a response drafted by the Governor and the Treasury, highlighted a distinction between takeovers “in the usual course of business” and those “open to criticism”. He then repeated his earlier guidance that credit “should not be given for the speculative buying or holding of securities, real property or stocks of commodities”.¹³⁷ However, by the time of the Opposition’s early day motion on takeover bids on 11th February 1954,¹³⁸ the Chancellor was equipped with the joint report and was able to dispose of the issue definitively. He outlined two “fairly normal” scenarios, one where a purchaser “in the same line of business” bought resources to allow it to expand, and the other where a purchaser bought resources in order “to develop them more profitably”. These were contrasted with the scenario in which the bidder “cares little whether he destroys some long-established business, or whether he saps the financial strength of the business by distributing profits which ought, in fact, to be ploughed back.”¹³⁹ Relying on the Board of Trade’s footnote, he claimed to have made a very wide examination of the matter, and found “no evidence of widespread plundering or destruction of businesses.” He added that he supported the Bank of England’s guidance to lenders to take “special care” when financing takeovers which appeared to include “a speculative element.” Asked to define “speculative element”, he said “I believe that the Bank of England and the banks understand this matter just as well as any right hon. or hon. Member of this House ... credit facilities—and I am defining it a little more closely—should not be given for the speculative buying or holding of securities, real property or stocks of commodities.”¹⁴⁰

In fact, the meaning of the term “speculative” was far from clear, and the next section shows that its meaning was unclear even to the banks. Yet it was bearing a lot of weight in the Chancellor’s and Governor’s public pronouncements, carrying a clear derogatory implication

136. Memo by Lees of meeting with Board of Trade, 4th January 1954 (T233/2001).

137. C40/970/72. Gaitskell’s question and the Chancellor’s answer is “Company Shares (Take-Over Bids),” HC Deb 15 December 1953 vol 522 cc178-80 (<https://api.parliament.uk/historic-hansard/commons/1953/dec/15/company-shares-take-over-bids>)

138. HC Deb 11 February 1954 vol 523 cc1383 (<https://api.parliament.uk/historic-hansard/commons/1954/feb/11/take-over-bids>)

139. HC Deb 11 February 1954 vol 523, cc1450–1451.

140. HC Deb 11 February 1954 vol 523, cc1455.

for certain types of hypothetical takeovers. It seems to have been designed to both reassure the public and maintain consensus within government. As for the public, one memorandum highlighted that Treasury and Board of Trade were “fully alive to the harm done by the effect on public opinion of the less desirable type of transactions, and ... ready to take further action if abuses are revealed.”¹⁴¹ Marriott claims that the decision to use the term “upset many of the legitimate developers, who went to great lengths to insist that they were developers, investors, not speculators.”¹⁴²

Inside government, and beyond the public gaze, the term seems to have been understood quite narrowly as referring to market manipulations when there were rumors of a bid (there were no laws against insider trading at the time), but not to bids which sought to liquidate real property that was undervalued on the target company’s balance sheet. What explains this apparently deliberate ambiguity? The period after the Second World War is often termed the period of “Butskellism”, of economic consensus between the two main parties, especially in relation to a commitment to full employment.¹⁴³ Yet behind the apparent consensus, the Conservative government was divided over the desirability of at least some of the takeovers. As Dutton puts it, “Conservatism combined a collectivist, paternalistic strain with a free-market libertarian right.”¹⁴⁴ This divide can be seen clearly in the archive. The Treasury (and presumably the Chancellor, Rab Butler) opposed quick, tax-free gains as “bad for the reputation of business” and posing a threat to the public interest policy of dividend restraint. In contrast, the President of the Board of Trade, Peter Thorneycroft, thought that “speculation should be encouraged for the sake of an active share market and to stimulate business.” He was firmly on the side of shareholders and was opposed to “any action taken by the boards of companies to prevent shareholders from getting full value out of their property by dividend sales or break-up of assets”.¹⁴⁵ It is possible that Thorneycroft was encouraged by the Chancellor not to express these views in Parliament.¹⁴⁶ In summary, it can be suggested that the word “speculative” was used to encompass and conceal these divergent views within Government.

Yet this reliance on the ambiguous term “speculative” meant that discussions within Government were confined to possible ways of dealing with the less desirable aspects of bids. As for the practice of building up holdings in secret before launching the bid, the Bank of

141. Treasury brief prepared by Compton, 6th February 1954 (T233/2001) highlighted that Treasury and Board of Trade were “fully alive to the harm done by the effect on public opinion of the less desirable type of transactions, and are ready to take further action if abuses are revealed.”

142. Marriott, *Property Boom*, 10.

143. Tomlinson, *Employment Policy*, 142; Morgan, *Britain Since 1945*, 84–93; for the origins of expression “Butskellism,” see Dutton, *British Politics*, 43–44. Dutton offers a very detailed discussion of the extent of consensus, interpreting it to mean that “the political parties operated within a given framework, a set of generally accepted parameters in which certain key assumptions were shared and in which policy options were consequently limited.”

144. Dutton, *British Politics*, 7.

145. Compton, “Take-Over Bids in Parliament,” 29th January 1954 (233/2001), 2.

146. An annotation to Compton’s memo, written by Sir Herbert Brittain, Third Secretary to the Treasury, and seen by Butler before his meeting with Thorneycroft on 31st January 1954, suggested that Thorneycroft ought not to express these views in the House, and should be content to accept that “it would be inappropriate and futile for the Government to attempt to formulate, let alone apply, any policy of general application when motives and methods can vary so much from the case to case.”

England considered requiring disclosure of nominee shareholdings, something proposed in the Cohen Report, but which did not make it into the Companies Act.¹⁴⁷ However, there would be difficulties in practice, and it was ultimately rejected on the basis that it would “only touch the outside fringe of this particular problem.”¹⁴⁸ Likewise, there was discussion about the role of the Inland Revenue in catching up with the bidders, potentially treating gains as taxable as “the business of the operators”, but this would take time and would be unlikely to succeed given that “the operators are astute”.¹⁴⁹ There was even discussion of introducing a capital gains tax (which was eventually introduced in 1965), but the Budget Committee of the Treasury took the view that it “would be complicated in operation and uncertain in yield”.¹⁵⁰

In contrast, there was no appetite whatsoever in Government for protecting incumbent management against bidders. This was in part because of the media coverage of the Savoy affair,¹⁵¹ and in part because of a general acceptance by the end of 1953 that takeovers were a means of removing inefficient management. The Government recognized that there were few options left for companies targeted by the bidders. The Board of Trade raised the possibility of companies changing their articles to require a 75 percent majority of shareholders to approve sales of property or changes of use, but this would require action before a bid came along, and would also require shareholders to be willing to rule out a bid.¹⁵² This is an interesting suggestion as it would have returned such companies to the position they were in before the Companies Act 1948, where the board could hold a blocking minority with just over 25 percent. Wontner of the Savoy had even suggested that the Government or a trustee outside the business could hold an A share controlling disposals of property.¹⁵³ This too came to nothing.

In his speech in February 1954, the Chancellor addressed counter-measures taken by boards, highlighting that management could try to persuade shareholders not to sell or take other legally permissible actions.¹⁵⁴ Nor were the Opposition in any mood to support incumbent management, Gaitskell expressing concern that the Savoy directors “have all this power and are responsible to nobody”.¹⁵⁵ Here Gaitskell was echoing the views expressed in the *New Statesman*, which lamented the “speculative operation” that drove up Savoy shares as “jungle economics”, but was opposed to giving power back to directors, since it was “undesirable that they should be accountable to nobody for their conduct of affairs.”¹⁵⁶ In line with the consensus politics of the time, the gap between Gaitskell and the Treasury was vanishingly small.

Most importantly, there was no support from anyone for the type of scheme that the Savoy Hotel Group had implemented, the Board of Trade and Law Officers provisionally considering

147. Memo from Peppiatt to Governors, 19th November 1953 (C40/970/7).

148. Letter from Peppiatt to Compton entitled “Takeover Bids,” 23rd November 1953 (C40/970/11).

149. Final Report on Take-Over Bids, 5th January 1954, 7 (T233/2001).

150. Treasury memo from Hall to Compton dated 19th November 1953 (T233/2000).

151. The critical media coverage of the Savoy affair was summarized in Annexes to the briefing provided to the Chancellor for the Opposition Motion (T233/2001).

152. Treasury note “Take-Over Bids,” 14th December 1953 (T233/2000); see also Final Report on Take-Over Bids, 5 (T233/2001).

153. Memo by Compton, 27.11.53 (T233/2000/98).

154. HC Deb 11 February 1954 vol 523, cc1383 and 1456–1457.

155. HC Deb 11 February 1954 vol 523, cc1437.

156. “Savoyards,” *New Statesman*, 12th December 1953.

it “if not illegal, grossly improper.”¹⁵⁷ In April 1954, Peter Thorneycroft appointed Mr E Milner Holland QC to investigate the affairs of the Savoy Hotel Limited and the Berkeley Hotel Company Limited.¹⁵⁸ Ultimately, Milner Holland advised that the action by the Savoy Hotel directors might not have been taken in bad faith, but was still unlawful as taken for an improper purpose because its aim was to “deprive the shareholders of such control as under the regulations of the company they may have over the Company’s assets”. Rollings’ account shows how Thorneycroft’s decision angered Churchill,¹⁵⁹ but this was less a matter of principle and more a matter of Churchill’s relationship with Wontner.

For those in Government who remained concerned about the impact of takeovers on public opinion, including the Governor, perhaps the last way of controlling them was to get a tighter grip on the sources of finance. The final section explores this because, once this option was ruled out, there was no longer any obstacle to hostile bidders. The hostile takeover would have been tacitly accepted—and therefore normalized—across Government.

The Last Option: Controlling the Financing of Hostile Takeovers

While drafting the joint report discussed in the previous section, Compton asked the Bank of England who was financing the takeovers and why the Bank could not “control the raising of money by Clore and Co.?” He also wondered whether “influence might be brought to bear on those lenders to withdraw support from the less reputable take-over operators?”¹⁶⁰ After highlighting that *The Economist* had just expressed support for takeover bids, the alternative being “industrial stagnation”,¹⁶¹ Peppiatt at the Bank replied that it was difficult to pick out certain names as “undesirable”, while tackling takeovers through influencing finance would only work to control bidders who were dependent on borrowing. Finally, he reiterated the Chancellor’s guidance not to finance “the speculative buying of securities”. However, he acknowledged that “the point at which a projected deal ceases to be speculation is not easy to define and we do not see what more can usefully be done”. We saw in the previous section that, behind the scenes, both the Board of Trade and the Bank were interpreting the term “speculative” very narrowly, excluding bids intended to liquidate (or “make better use of”) undervalued property. This interpretation is supported by Peppiatt’s observation that “It would seem natural that insurance companies would be interested so far as the eventual acquisition of property is concerned”.¹⁶² The Bank’s acquiescence to the financing activities

157. Final Report on Take-Over Bids (T233/2001), 4.

158. Board of Trade, *Savoy*.

159. Rollings, “A Few Pike,” 284–290.

160. Letter from Compton to Peppiatt, “Take-Over Bids,” 19th November 1953 (C40/970/6).

161. Letter Peppiatt to Compton, 23rd November 1953, C40/970/11. The reference is to “Ban on the Bids?,” *The Economist*, 14th November 1953. *The Economist* referred to wider discussion in the left-wing media about “sober managements ‘exposed to adventurers and speculators.’” It claimed that the real issue was the “wasteful” use of assets under “inefficient boards of directors,” and while it would be unfortunate if “fly-by-nights” adopted “a distribution policy that was more generous than the long term interests of the company demanded,” it was “much better to allow the brute forces of the market to teach some investors and some directors the error their ways than to run any risk of freezing the pattern of industrial control. That way lies industrial stagnation.”

162. Letter Peppiatt to Compton, 23rd November 1953, C40/970/11.

of insurance companies has not been made sufficiently clear to date in the literature, and is certainly incompatible with the view of Roberts and Rollings that the Bank remained opposed to takeovers until 1959.

However, the Governor's communications with financial institutions remained Delphic. In December 1953 correspondence with the British Insurance Association (BIA), for example, the Governor highlighted the "considerable speculative element" in "some at least" of the take-over bids, urging the BIA's constituents to "keep well in mind the requests by the Chancellor" and emphasizing the need for "financial institutions to use special caution in respect of any invitations coming before them which appear to be connected with these take-over operations."¹⁶³ After receiving a similar communication, the Committee of London Clearing Bankers (CLCB) sought greater clarity and suggested a presumption that share purchases by companies in the same line of business were acceptable, while "purely ... financial" transactions should be carefully investigated.¹⁶⁴ While the Governor acknowledged this "help" and passed it on to foreign banks,¹⁶⁵ it is clear that the banks did not have a clear understanding of what the Governor wanted. In particular, the Bank of America admitted financing two or three takeover bids (one of which was presumably bridge financing of Clore's bid for Sears), but insisted that there was no speculative element involved.¹⁶⁶ Finally, A.W. Tuke, the chairman of the CLCB, sent a hand-written note to the Governor, asking him "again" to use "some other expression, such as 'open to criticism'" rather than "speculative" because at least some bids were "dead certs" in which "Mr X knows exactly what he is going to do with the Company's property before he makes his offer".¹⁶⁷

During this time, the *Financial Times* attributed a fall in the share prices of companies "in the 'take-over' class" to the fact that insurance companies had been warned by the Bank "not to buy property if it appears to assist the negotiation of a transaction of a purely speculative nature". The insurers responded with a public statement that they paid "close attention" to the interests of policy holders and the nation, and that, where "there were a feeling" that any bid would be detrimental to the nation", they would not facilitate it.¹⁶⁸ An internal memo at the Bank described the insurers' response as "feeble and unconvincing",¹⁶⁹ while the *Lex* column of the *Financial Times* noted that "the great majority of [insurance] companies have not at any time taken action which would facilitate speculative bids much less actually financed them". However it added that "some may have negotiated with 'potential owners' of property rather than with actual owners, and one or two companies are widely believed to have done so." While it expected the insurers to comply with the Bank's request, it noted that the "conditions which give rise to bids are, however, far too widespread for even a Bank request to mean the end of the movement."¹⁷⁰ It concluded that "only some bids – chiefly those which are spurious from the beginning and are never meant to implemented – are wholly bad, and only some bids

163. C40/970/18, letter to Levien dated 2nd December 1953.

164. C40/970/23, Minutes of meeting of CLCB, 3.12.53.

165. C40/970/29, letter from Cobbold to Tuke of CLCB dated 4th December 1953.

166. C40/970/61, 8th December 1953.

167. Letter Tuke to Cobbold, 10th December 1953 (C40/970).

168. "Take-Over Deals: Insurance Cos.' Attitude," *Financial Times*, 8th December 1953.

169. C40/970, Memo dated 8th December 1953.

170. *Lex*, "Notes for Investors," 8th December 1953.

involve property transactions. The odium which is justified in the case of some bidders, however, now seems to be spreading to cover all, and because of the property deal element in some cases the insurance companies have recently attracted their share of the criticism.”

Meanwhile, the Governor advised the BIA against putting out a further “disclaimer” in response. An unpublished draft they showed to the Governor is informative of how they sought to justify their activities: it emphasized that sale and lease back transactions can be “thoroughly desirable if they enable the owner to free monies tied up in bricks and mortar and utilize them for the direct purpose of financing and developing his business.”¹⁷¹ The Governor’s suggested shorter response preserved the point about the merits of sale and leaseback, and shows that he was aware of it.¹⁷²

While there was considerable ambiguity in the Governor’s communications, his correspondence with the BIA makes it clear that he was aware that insurance companies were financing takeovers, yet made no effort to stop them. The Governor’s acquiescence is quite incompatible with someone who was opposed to takeovers. And following communications between the Bank and the Treasury, the final report on takeovers incorporated the BIA’s argument that “a firm understanding between a bidder and an insurance company may well be an important feature in a take-over bid involving a property deal.”¹⁷³

The BIA continued to push its line that it was not financing speculation, and that takeovers “may be expected to result in a greater efficiency, or a more effective use of the assets”. It added that “a good many insurance companies pursue an active policy of property investment” and “have without doubt purchased considerable amounts of property subject to the granting back of long-term leases to the vendors, but such transactions are not in themselves speculative, and may, and do, serve thoroughly sound and genuine business needs.” There was no need for concern because “institutional investors can surely be relied upon to exercise the utmost caution when such propositions are submitted to them, since in making their investments they would certainly wish to have a proper regard for the public interest in its widest sense.”¹⁷⁴ This memo is important because the insurance companies were admitting to the Treasury that they were financing takeovers, which was something the Bank already knew. Peppiatt commented that the memo contained “nothing new,” and the Bank wrote to Compton at the Treasury to confirm this.¹⁷⁵

Perhaps because of the ambiguity associated with the term “speculative”, the government’s policy toward the insurance companies was misunderstood at the time. For example, Bull and Vice claimed, virtually contemporaneously, that the Bank of England’s directive not to assist “purely speculative” transactions was “clearly” aimed at “the bidder’s familiar lease-back transaction”.¹⁷⁶ Likewise, Moon understood speculative bids to be aimed at forcing the

171. This was the same justification later offered by Charles Clore: see e.g., Pearson Phillips, “MR TAKE-OVER and his methods,” *Daily Mail*, 27th May 1959; Goronwy Rees, “Pioneer of the Take-Over Charles Clore,” *Sunday Times*, 24th January 1960 (“the methods he has used ... have brought back into the productive system assets and resources which were lying idle or not fully exploited”); Sainer, “Biography,” 699.

172. C40/970/75 and C40/970/78, 11th December 1953.

173. Joint Report on Takeovers, 5th January 1954, 6 (T233/2001).

174. BIA memo on takeover bids responding to the Motion, dated 21st January 1954, and written by J.F.B., was sent to Maudling Treasury on 1st Feb 1954, C40/970/110.

175. On 4/2/54; letter from Bank of England to Compton confirming BIA memo “contains nothing new,” 5.2.54 (T233/2001).

176. Bull and Vice, *Bid for Power*, 1958 at 84.

declaration of larger dividends, obtaining quick capital profits through asset disposals, and having an impact on morale inside the firm.¹⁷⁷ No one seems to have been aware of the extraordinary scale of the property purchases by the insurance companies from the bidders. While there were scattered media reports at the time,¹⁷⁸ more recent research has begun to show the scale of the phenomenon. Peter Scott shows that Legal & General purchased more than 313 properties from Sears in a single deal in 1954, and £11m of property from Charles Clore before 1960. In total, they provided or committed £21,112,969 to Clore, £23,360,000 to Fraser, and £19,690,200 to Samuel before 1960.¹⁷⁹

From early 1954 onwards, then, the interest of the insurance companies was considered “natural”, and no objection was ever raised with them directly by the Governor or the Treasury. At this point, the Board of Trade was fully supportive of takeovers, while the Treasury and the Bank were acquiescing in the insurance companies financing the bidders by purchasing properties from them. This meant that the mantra that “speculative transactions should not be financed” had become virtually meaningless. From this point on, the hostile takeover had been normalized and became a permanent fixture on the UK’s corporate scene.

Conclusion

The acquiescence of the Bank and the Treasury to the financing of takeovers by insurance companies marks the end of this account and the dawn of the new age of shareholder value. As we have seen, the media played its part in the normalization of the hostile takeover and the rejection of managerialism. Likewise, within government, there was never any great opposition to takeovers, although there was initially a lack of consensus as to what was acceptable, concern about the implications for the policy of dividend restraint, and doubts about the viability of intervention. In the end, these disagreements were concealed behind ambiguous public pronouncements condemning “speculative” takeovers, a formulation which had the additional benefit of reassuring the public that something was being done. In line with the culture of consensus at the time, the opposition Labour Party’s position did not differ meaningfully from that of the government.

This is not to claim that there were any easy answers to whether and how the forces unleashed by the Cohen Report might be contained or mitigated. But, contrary to previous accounts in the literature, from the beginning of 1954, there was no longer any serious objection to hostile takeovers within the UK government. Despite widespread public and academic acceptance of managerialism, directors would be increasingly constrained to restructure the company’s balance sheet and to prioritize the interests of shareholders. From 1952, stock market performance improved markedly, reflecting not only a growing economy and the entry of growing numbers of small shareholders, but also the emergence of the

177. Moon, *Business Mergers*, 125.

178. “J. Sears Sells Freeholds,” *Financial Times*, 1st December 1953.

179. Scott, *Property Masters*, 123, 150. Legal & General was a dominant player in the pensions market, with insurance companies covering a majority of workers in private sector pension schemes by 1956: see Hannah, *Inventing Retirement*, 37–38.

takeover and the managerial response to the threat in the form of an increase in dividends.¹⁸⁰ The era of shareholder value had begun.

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180. Littlewood, *The Stock Market*, at 86–87; Wincott n99 above discussing the “silent revolution” as directors increased dividends from 1952; Rutterford and Sotiropoulos, “The Rise,” 521 (noting that the market tripled in value between 1948 and 1957) and 525 (discussing growing numbers of small shareholders).

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