

**Banking and the Antimonopoly Tradition:
The Long Road to the Bank Holding
Company Act**
Jamie Grischkan

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Banking and the Antimonopoly Tradition:

The Long Road to the Bank Holding Company Act

Jamie Grischkan

In the wake of a new challenge to the reigning antitrust paradigm of efficiency and consumer welfare, the relationship between monopoly power and democratic governance is once again a focus of political and scholarly discourse. The extent to which private institutions with market power may distort the political process and the role antitrust law should play in combating those distortions is at the center of these new debates.¹ This chapter focuses on one such institution, the bank holding company, and the movement to prevent its monopolistic expansion in the decades surrounding World War II. Staked on constitutional grounds that emphasized the inextricable ties between economic and political power, monopoly and fascism, the movement to regulate bank holding companies that culminated in the Bank Holding Company Act of 1956 (the “BHCA”) represents a pivotal, yet virtually unacknowledged, chapter in the history of the American antimonopoly tradition.² As scholars look to relight the torch of Louis Brandeis and others who advocated for an antitrust jurisprudence that accounts for the political, as well as economic, ramifications of market power, the story of the rise and regulation of bank holding companies deserves reexamination. Rooted in Progressive antimonopoly ideals, the enactment of the BHCA in 1956 challenges longstanding and entrenched accounts of American political economy that depict World War II as the “end of reform” and the antitrust movement as a faded passion.³ Retracing the long road to the BHCA ultimately reveals the

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enduring potency of the antimonopoly tradition long after its supposed demise, and contributes to a deeper historical understanding of the foundational goals and evolving role of the American antitrust regime.

Banking has occupied a central place within American antimonopoly thought and policy from the very outset of the nation. Disputes over the role of financial power in a democracy divided the nation's first political parties, catalyzed Jacksonian politics and animated some of the most important populist, Progressive, and New Deal reforms of the late nineteenth and twentieth centuries. While the nature of the threat monopoly posed to liberal democracy shifted over time, the animus toward financiers remained constant. For Thomas Jefferson and other antimonopolists of the early republican period, special government privilege and centralized state power represented the gravest dangers to the fledgling nation. Economic concentration mattered because it reflected government favor and such economic power could in turn further corrupt the political system. The Jeffersonian vision of democracy thus relied on a decentralized agrarian society and local political rule as a safeguard against government tyranny. Bankers not only represented the antithesis of the productive yeoman farmer, whose independence and self-sufficiency rendered him the proper guardian of republican virtue, but embodied the kind of political favoritism that imperiled democratic governance. Granted particularly valuable privileges through special legislative charters, bankers served as liminal figures whose function as keepers of credit and currency gave them vast control over the economy, and thereby, the polity.⁴

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Jefferson and the Anti-Federalists thus bitterly opposed the Congressional chartering of the first Bank of the United States in 1791 and Alexander Hamilton's plans to intertwine the financial interests of a mercantile elite with the power of the federal government. Similarly, Andrew Jackson attacked the Second Bank of the United States on the grounds that it embodied the kind of monopoly born of government privilege that enriched a "monied aristocracy" at the expense of the common man.⁵ By the 1840s, free banking, and general incorporation more broadly, emerged as a solution to the corruption of state power by an economic elite. By granting a corporate or bank charter to anyone who met certain basic requirements through an administrative process, Jacksonian Democrats intended to remove the exclusivity of state privilege from economic enterprise and eradicate existing monopolies.⁶

By the Gilded Age however, the rise of behemoth corporations and financial oligarchs had created new sources of concern for antimonopolists who now turned toward the state, rather than away from it, in an effort to curb the ever expanding reach of private economic power. Typified in populist and Progressive initiatives ranging from railroad and public utility regulation to antitrust law and the establishment of the Federal Reserve, sweeping expansions in state and federal power reflected a commitment to an incredibly capacious notion of the "social control" of business.⁷ Yet even as the antimonopoly movement evolved to address the challenges of a new industrial age, finance remained its beating heart. Throughout the tumultuous transformations of the late nineteenth century, debates over money and banking dominated American politics. As Greenbackers and Silverites waged battle against the gold standard and agrarian populists lambasted the concentration of capital and credit in New York, financial reform functioned as a

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sieve through which competing visions of American democracy poured. For antimonopolists, the financial system remained the central arbiter of economic opportunity. To democratize control over credit and currency, albeit through new mechanisms of state and federal power, was to ensure a nation of independent producers and preserve political liberty.⁸

By 1907, a devastating financial panic that necessitated the intervention of J.P. Morgan to stabilize the banking system further channeled public outrage toward a Wall Street “money trust” accused of determining the fate of the entire economy.⁹ The absence of a central bank that could step in to manage the crisis, leaving Morgan to fill such a role, spurred a public reckoning with the role of private financial power in the economic and political life of the nation.¹⁰ The panic of 1907 thus prompted wide-ranging government inquiries and reform efforts, including the creation of the National Monetary Commission in 1908 and the Pujo investigation, a series of Congressional hearings from 1912 to 1913 that publicized the enormous influence wielded by a handful of investment banking houses in New York City. Despite the detailed reports of the National Monetary Commission indicting structural defects in the banking system as the primary catalyst for the frequency and severity of American financial panics, it was the Pujo hearings that captivated the nation.¹¹ Exposing the extensive role a small group of investment bankers, and their networks of commercial banks and trust companies, played in organizing, financing, and managing many of the largest corporations in the nation, the Pujo Committee underscored the unique dangers of concentrated financial power.¹² Control over money and credit, the “life blood of business,” not only endangered the stability of the financial system but the welfare of the broader economy as well.¹³ The Committee’s final report explained that bankers’ ability to direct

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“other people’s money” toward favored ventures could extinguish competition in industry, thereby magnifying the impacts of monopoly in banking far beyond the financial sphere.¹⁴ By underwriting and distributing the securities of the most important corporations and establishing interlocking boards of directors, the Committee argued that a small and insular network of bankers had gained outsized control over both finance and commerce, threatening equality of opportunity, independent enterprise, and ultimately democracy.¹⁵

Though scholars have cast doubt on the extent of control J.P. Morgan and other prominent banking houses actually exerted in practice, the Pujo Committee’s work influenced some of the most consequential expansions of federal power in the Progressive era, including the creation of the Federal Reserve and the enactment of the Clayton Antitrust Act, which prohibited interlocking directorates and anticompetitive stock mergers.¹⁶ Nevertheless, the old Jeffersonian and Jacksonian fears of centralized state power coursed through Progressive era debates over financial regulation and competition policy. As Louis Brandeis epitomized in his excoriation of the “money monopoly,” big banks and big government presented twin perils to the individual liberty necessary for democracy.¹⁷

Thus, while Progressives like Theodore Roosevelt championed robust government power to match the efficiency and productivity of large-scale corporations and financial titans, Woodrow Wilson and Brandeis advocated a diffusion of economic power through competition and the primacy of state and local governance to preserve American democracy. These divisions, laid bare in the 1912 presidential debates over the proper role of antitrust law in countering financial-industrial monopolies, were never definitively resolved.¹⁸ Rather, antitrust remained an

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unsettled enterprise, the remnant of a deeper and broader antimonopoly tradition that historians argue ultimately withered in the face of World War II.¹⁹ Yet far from diminishing in the wake of the war, the antitrust movement lived on, structuring national policymaking well into the postwar decades. Moreover, finance remained a centripetal force in its enduring influence. As the battle to enact the BHCA epitomizes, postwar political economy continued to reflect the complexity and contradictions, inherent tensions and lasting power of the antimonopoly tradition. Though the BHCA has often been attributed to the outsized influence of small bankers opposed to the growth of larger, more efficient rivals, the bank holding company movement ultimately reflected a broader Progressive vision, one that understood concentrated financial power as a dire threat not only to economic prosperity, but to constitutional democracy itself.²⁰

The bank holding company emerged at the turn of the twentieth century as a means of circumventing restrictions on bank expansion. The American banking system had favored unit banking, single office banks with no branches, over branch banking, one chartered bank with multiple branch offices, since the Civil War, which established a dual banking regime of federal and state regulators.²¹ Prohibitions on branch banking resulted in the creation of thousands of small, local banks rather than a handful of large, interstate branch banks. Despite the advantages of branch banking, including greater stability and credit diversification, a late nineteenth century alliance of agrarian populists and unit bankers effectively maintained limitations on branching at the federal level and in many states.²² In the early twentieth century, bankers looking to expand thus turned to the newly available holding company device. Because the bank holding company was chartered under general incorporation laws, it was not subject to federal or state banking

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authorities. Bank holding companies could therefore acquire unit banks within and even across state lines despite branching restrictions.²³

Many states initially failed to address the issue of bank holding companies as they remained generally small, centered around rural banks, and a minor force within the banking landscape.²⁴ However, the number of bank holding companies, as well as the size and sophistication of banking groups, grew dramatically in the late 1920s amidst the speculative boom of the decade and competition for regional control. While some states did respond with efforts to regulate bank holding companies to varying degrees, the 1929 stock market crash and the onset of the Great Depression largely halted bank holding company expansion as well as reform efforts.²⁵ Moreover, just as states had faced territorial limitations on their regulatory reach amidst the rise of the holding company in the industrial realm, the bank holding company highlighted the inability of states to control activity beyond their borders. When bank holding company groups crossed state lines, or consisted of both state and national banks, comprehensive regulation at the state level was virtually impossible.²⁶

Federal regulators also tried to extend jurisdiction to holding companies that owned national banks on several occasions, but to no avail. Though the Pujo Committee had recommended a prohibition on corporate ownership of national bank stock, the reforms that followed ultimately focused on interlocking directorates for large, urban national banks and trust companies, the primary form of control exercised by the most powerful Wall Street banks.²⁷ Even the establishment of the Federal Reserve did not fundamentally alter the structural

deficiencies of the unit banking system that spurred the development of bank holding companies, as the political compromises required to ensure its creation limited the scope of reform.²⁸

The bank holding company thus endured as an effective, though less preferable substitute, for branch banking and unit bankers similarly opposed this competitive threat to their existence.²⁹ Even as the weaknesses of unit banking were laid bare in the unprecedented bank failures of the Great Depression, the powerful unit banking lobby succeeded in preventing branching liberalization. Rather, the Banking Act of 1933 established deposit insurance as the solution to the banking crisis, which propped up weaker unit banks rather than restructuring the banking system to allow for larger, more stable branch banks.³⁰ In doing so, Congress set the stage for a much longer battle for control over the primary device used to evade the unusual constraints of the American banking system.³¹

In the late 1930s, a cadre of veteran Progressives, populists and New Dealers took up this battle and redrew its terms in the shadow of fascism, shifting the movement from one dominated by unit banking interests to one reflecting broader structural concerns about American democracy. Undoubtedly, the unit banking lobby played a sizeable role in the origins and eventual success of bank holding company legislation. From the Independent Bankers Association (the “IBA”), formed in Minnesota in 1930 to combat the expansion of two formidable bank holding company systems in the Northwest, to the American Bankers Association, unit bankers across the nation mobilized against holding company groups.³² They argued that independent banks could not survive against massive, centrally managed systems that had greater resources and could shift funds across regions. Emphasizing the importance of local

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banks that kept deposits and loans circulating within and for the benefit of the community, unit bankers warned that average citizens would lose access to credit should distant holding companies secure banking monopolies.³³ Like the anti-branch banking movement, a broader coalition of agrarian populists and small merchants supported their grassroots campaign.³⁴ The IBA, for example, joined the Minnesota Farmer-Labor Party in 1930, which opposed the acquisition of independent banks by bank holding companies. Indeed, the 1936 platform of the Farmer-Labor Party explicitly connected unit banking with the plight of struggling farmers and retailers in pressing for “government ownership of monopolistic industries and banking, except independent banks whose stock is locally owned and who are financing independent merchants and farmers.”³⁵ And in 1938, Wright Patman, the Texas populist who championed the interests of farmers, small business and unit bankers alike, introduced a bill calling for the outright liquidation of all bank holding companies within two years.³⁶

While scholars have generally attributed the opposition of unit bankers and their allies to unabashed self-interest, their efforts also speak to deeply rooted conceptions of the threat concentrated financial power posed to democratic governance.³⁷ By advocating for a decentralized banking structure to preserve local economic and political autonomy, unit bankers channeled an antimonopoly tradition tracing back to Thomas Jefferson and Andrew Jackson. Yet, in turning towards state power to prohibit bank holding company expansion and embracing federal privileges, including deposit insurance, unit bankers tapped into a distinctly Progressive antimonopoly spirit. While unit banking certainly contained brashly anticompetitive features, as unit banks themselves often constituted local monopolies due to branching restrictions, its

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supporters articulated their cause in more Brandeisian terms. They sought regulatory protections for community enterprises and portrayed them not as anticompetitive, but as a means of ensuring the individual autonomy necessary for democracy. Like the anti-chain store crusade and other movements of small proprietors in the early twentieth century, unit banking signified more than a reactionary yearning for a bygone era.³⁸ Rather, it represented a different vision of political economy, one whose potency and lasting influence has been underestimated in traditional narratives of the development of American capitalism.³⁹

While a unit banking coalition thus helped catalyze federal legislative efforts, old Progressives as well as New Dealers concerned about public control of private power also turned their attention toward bank holding companies in the late 1930s. For the battle to curb bank holding company expansion revolved not only around the survival of independent banking, but around the holding company itself as an instrument of regulatory evasion. Like their Progressive era forebears, leading figures in the campaign to bring bank holding companies under federal supervision emphasized the holding company as a dangerous device utilized to escape government oversight of economic power. Chartered under state general incorporation laws that no longer sought to control corporate exploits, bank holding companies represented a perilous loophole in the otherwise strict regulatory regime of the commercial banking sector. Moreover, just as Progressives had turned to federal antitrust legislation in the face of states' inability to regulate beyond their borders, these advocates of bank holding company reform demanded Congressional action to address the interstate nature of group banking.⁴⁰

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Thus, William Gibbs McAdoo and Carter Glass, two former Secretaries of the Treasury under Woodrow Wilson, introduced bank holding company bills in 1937 and 1938.⁴¹ Importantly, both McAdoo and Glass were staunch proponents of branch banking who abhorred the anticompetitive motivations of the unit banking lobby. Their support for a freeze on bank holding company expansion rested on apprehension over the lawless nature of the device, which allowed potentially vast interstate bank groups to escape comprehensive and effective regulation. Thus, the movement for bank holding company reform was rooted not merely in special interest protectionism or localist ideology, but in a deeper, Progressive concern with the holding company as a mechanism for amassing concentrated power beyond the reach of government supervision.⁴²

Moreover, Franklin D. Roosevelt himself began to champion bank holding company reform in the winter of 1938. In a January press conference, FDR linked the public utility holding company, widely synonymous in the American public with monopoly, greed, and corruption, to the bank holding company. Noting that some public utility holding companies exercised outsized control compared to the “very little equity” they held, FDR boldly asserted that he favored “eliminating holding companies entirely.” When pressed whether he in fact meant “all holding companies” even in “other lines of industry,” FDR reiterated his indictment by using the bank holding company as “another very good illustration” of the problem. “You find a situation in a good many parts of the country” he explained, “where in a very large geographical area practically all of the banks are controlled by some holding company.” Like Glass and McAdoo, however, FDR separated the bank holding company issue from branch

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banking, helping to transform the campaign from one rooted in the long history of anti-branching sentiment to one focused on holding company power and abuse more broadly.⁴³

FDR's support for the elimination of all holding companies quickly made national headlines, and placed the bank holding company squarely in public view as an object of scorn in the same family as the condemned public utility holding company.⁴⁴ By the spring of 1938, FDR had tasked an interdepartmental committee with furthering legislative reform and included the bank holding company in his formal message to Congress on the strengthening of antitrust law. Invoking old Progressive tropes, FDR warned of the dangers concentrated private power posed to the "liberty of a democratic people."⁴⁵ Connecting monopolistic economies to the rise of fascism abroad, FDR identified bank holding companies as a particular threat to the body politic. "It is hardly necessary," he declared, "to point out the great economic power that might be wielded by a group which may succeed in acquiring domination over banking resources in any considerable area of the country." FDR implored Congress to enact legislation that would "prevent holding companies from acquiring control of any more banks" and eventually provide for their abolition.⁴⁶ In the wake of FDR's Congressional address, the bank holding company thus became one battlefield in a larger war that pitted monopoly power against the very soul of American democracy.

That bank holding company reform would have a moment in the spotlight in the waning years of the 1930s is not entirely surprising, as many scholars have recognized the ascendancy of the antimonopolists within New Deal policymaking following the failed experiments with government planning and the 1937-1938 recession.⁴⁷ What is remarkable is that the seeds planted

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by those old Progressives would be tended to even in the midst of a world war, and bloom in the years to follow. For historians generally mark the late 1930s as the twilight of Progressive economic reform, contending that Keynesian fiscal policy and the promotion of mass purchasing power became the primary tools for managing the postwar economy.⁴⁸ Moreover, scholars argue that despite vigorous antitrust enforcement, the postwar antitrust regime transformed the American antimonopoly tradition from a political movement into a technocratic enterprise shrouded in legal and economic expertise.⁴⁹ However, the long road to the BHCA reveals an antimonopoly movement built upon Progressive ideals that reached its zenith in the postwar years on a Congressional stage. Far from conservatizing forces that muted Progressive era and New Deal reforms, World War II and the Cold War revitalized an old Brandeisian understanding of the threat monopoly power posed to political liberty and nurtured a renewed faith in antitrust as a powerful bulwark against the decay of democracy.

Like their predecessors, the leading figures of this postwar movement spanned partisan divides and reflected the contingency and malleability of American antitrust law. From populist Democrats from the traditional southern and western strongholds to eastern Republicans and New Deal officials, the campaign against bank holding companies wrought unlikely alliances in the service of antimonopoly ideals. Thus, it was Marriner Eccles, the former head of a multistate bank holding company turned Federal Reserve chairman, who would play a vital role in carrying the torch of bank holding company reform from the New Deal era to the postwar years. Indeed, Eccles, and his own transformation from bank holding company advocate to antitrust crusader,

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personifies the multifaceted and inchoate nature of the bank holding company movement as it bridged the antimonopoly tradition across the seismic chasm of World War II.

Best known for his long tenure at the helm of the Federal Reserve from 1934 to 1948, Marriner Eccles was born in Utah to a devout Mormon father who preached a philosophy of laissez-faire and self-reliance as he rose from utter poverty to astounding wealth.⁵⁰ A man who could read and write no more than his own name until the age of twenty-one, David Eccles instilled in his son Marriner the fierce work ethic and rugged individualism that he believed characterized not only his own success but that of the American West itself. Marriner ultimately carried forward his father's legacy, forming one of the most prominent early bank holding companies in the western United States by 1928 as his devotion to his father's faith flourished alongside his business ventures.⁵¹

Yet, only six years later, Eccles would find himself Governor of the Federal Reserve Board and advocating federal intervention through countercyclical spending long before Keynesianism garnered a consensus. Moreover, Eccles would go on to personally spearhead the campaign for greater federal control over bank holding companies throughout the 1940s. How did the former head of a major bank holding company and evangelist of laissez-faire principles come to lead the charge for bank holding company regulation in the postwar years? As Eccles himself described it, he experienced a profound conversion amidst the unprecedented devastation of the Great Depression. "On the morning of the awakening," he recalled in his autobiography, "I saw for the first time that though I'd been active in the world of finance and production for seventeen years and knew its techniques, I knew less than nothing about its economic and social

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effects.” Stripped of his prior belief in self-help and nonintervention, Eccles came to see that the “job of warding off trouble...is...everybody’s collective responsibility, acting through the organs of our government.”⁵² Upon FDR’s election in 1932, Eccles became a pious New Dealer and early spokesman for Keynesian spending in the face of a deflationary Depression.

Advocating quietly behind the scenes for sweeping deficit financing and changes in the Federal Reserve System, Eccles’ name soon emerged as a possible replacement for Governor of the Federal Reserve Board in 1934. Meeting with FDR in November, Eccles made clear his intention to overhaul the Federal Reserve. Emphasizing the beliefs that would characterize his later views of the bank holding company problem, Eccles criticized the disparity between private and public power, noting that while the “System had originally been designed to represent a blend of private and public interests and of decentralized and centralized authorities...this arrangement had become unbalanced” as “[p]rivate interests, acting through the Reserve banks, had made the System an effective instrument by which private interests alone could be served.”⁵³ He suggested restructuring and strengthening the Federal Reserve Board in Washington, among other solutions that would eventually comprise the Banking Act of 1935. Though FDR warned Eccles of “formidable opposition” to his appointment, six days later he announced Eccles as Governor of the Federal Reserve Board.⁵⁴

After his appointment in 1934, Eccles moved swiftly to put into motion his plans to reduce reserve bankers’ control over the system, particularly that of the New York Federal Reserve Bank, and centralize authority in the Washington based Board of Governors. Despite bitter opposition to the Banking Act of 1935, the bill passed in August that year and bore the

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mark of Eccles' faith in serving the public interest through strong federal oversight and action.⁵⁵ Thus, despite his former role as a wildly successful banker running a sizable bank holding company, Eccles' own reflections on the transformation of his views during the Depression and his record of service in FDR's administration evince a genuine commitment to bringing public control to bear on private economic power.⁵⁶ And it would be Eccles, proselytizing from the newly fortified pulpit of the Federal Reserve following the Banking Act of 1935, who would play a central role in carrying forward those ideals as he challenged the most powerful bank holding company in the nation during and after World War II. For it was Eccles who went searching for an old Progressive weapon, the Clayton Antitrust Act, and used it for the very first time in the history of the Federal Reserve against the Transamerica Corporation in 1948, long after the dusts of war had settled. Eccles' role in bank holding company regulation has often been reduced to a power grab for the Federal Reserve or a singular obsession with bringing down Transamerica.⁵⁷ However, his deeply rooted faith in the New Deal, in collective action via federal regulation as a salve for economic instability, reveals a far more nuanced story of the movement for bank holding company reform and of American liberalism.

By 1938, having reorganized the Federal Reserve Board, Eccles continued his quest to strengthen the supervisory capacity of the Federal Reserve and unify the banking system.⁵⁸ For Eccles, the bank holding company now represented an obstacle, rather than a means, toward that end. For bank holding companies had long evaded meaningful oversight by the Federal Reserve, and every other banking agency, thereby challenging Eccles' goal of striking a new balance between federal regulatory control and private financial power. Armed only with the authority to

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grant voting permits for bank holding companies to vote their shares in subsidiary member banks, the Federal Reserve had no way of halting the actual expansion of bank holding company syndicates.⁵⁹ Yet Eccles was no Wilsonian in the mold of Glass or McAdoo, no populist romanticizing small, unit banks. Rather, Eccles was a pragmatic reformer, a New Dealer helping to adapt an older republican antimonopoly tradition into a modern one that would rely on federal regulation rather than an antiquated faith in trustbusting.⁶⁰ Thus, even as Henry Morgenthau and an Interdepartmental Banking Committee mounted a campaign for the dissolution of all bank holding companies in the early months of 1938, and Carter Glass led the charge in the Senate, Eccles defended their utility and advised Glass not to proceed with his bill.⁶¹ Recognizing holding companies as the only alternative means of branch banking, which he supported as a method of strengthening and stabilizing the banking system, Eccles did not view these corporations as anticompetitive devices. Instead, he focused on the lack of coherent federal authority over bank holding companies and their affiliates as the primary issue.⁶² In the wake of another attempt by Glass and Morgenthau to enact a bank holding company bill in 1941 that would eliminate the device, Eccles responded to FDR's personal request that "all four agencies work together" on the legislation with a pointed defense of bank holding companies.⁶³

By 1948, however, Eccles would attempt to force the breakup of the largest bank holding company in the nation and transform the Federal Reserve into an antitrust prosecutor in the postwar period. What accounts for the dramatic shift in Eccles' role, and that of the Federal Reserve, in bank holding company reform and the postwar antitrust regime? Ultimately the breakdown of Eccles' relationship with and view of the Transamerica Corporation, and its fiery

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steward A.P. Giannini, contributed significantly to his pioneering efforts to throw the Federal Reserve's hat into the antitrust ring. The owner of the largest bank in the world by 1945, Giannini had utilized the bank holding company device to blatantly defy federal authority, crafting a massive interstate empire of national and state banks as well as commercial businesses in the face of repeated directives to halt all expansion. The struggle to rein in the unbridled power of Giannini's bank holding company thus transformed Marriner Eccles from regulator to trustbuster and rekindled a broader Progressive commitment to breaking up monopoly power.

A.P. Giannini had a long history of antagonizing banking regulators as he pushed the outer limits of branch and interstate banking throughout the first half of the twentieth century.⁶⁴ Transamerica, the holding company which owned the majority interest in Bank of America, as well as other banks and business ventures ranging from insurance and real estate to manufacturing, concerned regulators who viewed it as a monopolistic giant in the banking realm and beyond. From conflicts with the Treasury, the Comptroller of the Currency, and the SEC, key members of FDR's administration wrangled with old questions about the "curse of bigness" as Transamerica's sheer size and tenacity challenged federal control.⁶⁵ As Leo Crowley, chairman of the FDIC, warned of Transamerica in a memorandum to Henry Morgenthau on January 31st, 1938, "[a]t the present time the Bank of America has 490 branches. This represents a large concentration of credit in one group, or in fact, in the hands of one man."⁶⁶ Morgenthau's private notes on Bank of America similarly reveal a concern over its size, and it was Morgenthau who corralled the troops against Giannini. While known for his obsession with a balanced budget, Morgenthau approached the issue of bank holding companies, and Transamerica

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specifically, with a similar doggedness.⁶⁷ Eccles, however, remained on good terms with Giannini throughout the early 1940s.

Both western bankers who resented Wall Street control of the financial system, Eccles and Giannini saw eye to eye on several matters as the Depression gave way to the New Deal. Giannini had built his success off of providing smaller loans to laborers, immigrants, and others often excluded by traditional banking standards. Moreover, Giannini had helped rescue the Nevada banking system by purchasing and stabilizing numerous failing banks at the invitation of the Nevada State Banking Examiner in 1933.⁶⁸ Epitomizing the old Progressive disputes over distinguishing good from bad trusts, Transamerica reaffirmed, at least for reformers like Eccles, that the problem of bigness was rarely simplistic or one-dimensional. Indeed, in contrast to popular depictions of Giannini lassoing defenseless little community banks, Giannini considered himself a monopoly buster fracturing New York's control of the financial system by accruing his own power in the west. Moreover, he was an outspoken supporter of FDR and the New Deal at a time when "nearly all other big bankers were against it," working closely with the Administration and supporting Eccles in his reorganization of the Federal Reserve System in the Banking Act of 1935.⁶⁹ Thus, even as the SEC under William O. Douglas waged a very public war against Transamerica over misrepresentations regarding its distribution of stock in 1937, and the Comptroller of the Currency deemed Bank of America's banking practices unsound, Eccles helped Giannini negotiate an agreement with the Comptroller in the spring of 1940 and praised his leadership in a congratulatory letter.⁷⁰ Thus, as late as 1941, Eccles defended Giannini's

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interests to FDR himself by stating frankly that Morgenthau and Glass's bank holding company bill was intolerably discriminatory toward Transamerica.⁷¹

By 1942 however, Giannini's defiance of the truce Eccles helped broker with the Comptroller changed Eccles' views of the danger Transamerica posed. Between 1940 and 1942, Transamerica continued its bank expansion by purchasing the stock of various banks without meeting the requirements of its deal with the Comptroller, who denied permission for new branches within branching states. Eccles cautioned Giannini regarding his actions but to no avail.⁷² Rather, Giannini reaffirmed his determination to thwart what he deemed brazen discrimination against Transamerica by attempting to play state and federal banking regulators against each other. Having been denied permission for new branches in California by the Comptroller, Giannini attempted to condition his purchase of the First Trust and Savings Bank of Pasadena upon its securing approval for new branches from the Federal Reserve. When the Pasadena bank made informal inquiries regarding additional branches, it prompted a private conference among the banking agencies in which the Federal Reserve, the Comptroller, and the FDIC agreed to present a united front in denying any requests for expansion by Transamerica.⁷³ The Board then followed up with a sharp rebuke in a February 14th, 1942 letter to Transamerica, denying the Pasadena bank's proposed branches and stating plainly that there was unanimous agreement "that the Federal bank supervisory agencies should...decline permission for the acquisition directly or indirectly of any additional banking offices...by Transamerica Corporation..."⁷⁴

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Transamerica responded with equal parts outrage and defiance. In a letter sent one month later, its Vice President insisted that the “acquisition of interests in banks” was a matter “within the responsibility and discretion of the directors and management of the corporation.” Moreover, Transamerica refused to accede to the federal bank supervisory agencies’ policy, stating that it could not, “...accept such a ruling on behalf of itself or any bank in which it owns any interest.”⁷⁵ As Giannini brazenly forged ahead with his plan to control more banks in the five state area of California, Nevada, Oregon, Washington, and Arizona, Eccles began to see Transamerica in a different light. For Eccles had devoted the last decade of his life to stabilizing the banking system and strengthening the Federal Reserve’s role and supremacy in that process. A.P. Giannini’s refusal to bow to that authority presented a substantial threat to the very legitimacy of the Federal Reserve’s power at a time when the arteries of administrative governance were still clogged with resistance.⁷⁶ The notion that one corporation, ever growing in size, controlled largely by one man, could operate beyond the reach of the federal banking agencies challenged the very principles that had driven Eccles into public service. Thus, even as America’s entrance into World War II necessitated the Federal Reserve’s attention to war financing, Eccles, alongside the Comptroller and the FDIC, continued his quest to bring Transamerica to heel.

Eccles turned first to the privilege of membership in the Federal Reserve System as a mechanism of control. In early 1942, Giannini had attempted to acquire control of a bank in Lakewood Village, California, where he had previously been denied a branch, by indirectly financing the individuals who purchased the majority of stock in the bank. The Board had

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already been warned of Giannini's backing when the Peoples Bank of Lakewood Village applied for membership in the Federal Reserve System. In a letter from Leo Crowley at the FDIC to the Board in January, Crowley alerted the Board to the Transamerica connections and warned that "for some time" the FDIC had been "greatly concerned over rumors that Transamerica intends to establish an additional State bank group in California." Reiterating to the Board that the FDIC was "unalterably opposed to further expansion by this group," Crowley went so far as to admit that the agency was not "concerned whether Lakewood Village" was "in need of additional banking facilities." "In our judgement," he declared, "this is not the question. The primary question is one of principle." Though paying lip service to the concentration of risk in California as the FDIC insured "the Transamerica System to the extent of \$1,190,000,000," Crowley made clear that the problem Transamerica posed was not merely to the solvency of the deposit insurance program, but to the "principle" of democratic authority itself.⁷⁷

Indeed, the scope of the Board's power became a subject of judicial analysis when the Federal Reserve conditioned the Lakewood Village bank's membership on a promise not to be acquired by or affiliate with Transamerica in May of 1942. When Transamerica subsequently purchased ten percent of the Peoples Bank stock without its knowledge, and the Board refused to revoke the condition, the Peoples Bank filed suit in federal court. The District Court for the District of Columbia found that the bank's acceptance of membership barred it from bringing the claim and that regardless the condition was valid, but the judgment was reversed on appeal. The Court of Appeals focused on whether the "Board's assumption of the power to check the expansion of bank holding companies" amounted to "an invasion of the legislative field" and

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determined that the Board’s condition as a “mere device to check the growth of a holding company” had no foundation in the Federal Reserve’s authorizing statute.⁷⁸ *Eccles v. Peoples Bank of Lakewood Village* would eventually reach the Supreme Court, where Justice Felix Frankfurter held that the declaratory judgment sought by the bank was an inappropriate remedy for administrative action that had yet to come to fruition, thus avoiding ruling on the merits.⁷⁹ Meanwhile, as the *Peoples Bank* case wound its way through the courts presenting novel questions about the boundaries of administrative authority, Eccles focused on how best to confront a banking empire that managed to continuously evade regulatory control.

The answers Eccles came up with involved a two front assault, with the pursuit of a legislative solution to prevent the unrestrained development of bank holding company systems in the future and a turn to antitrust law to deal with the problem of Transamerica in the present. Thus, in the Federal Reserve’s 1943 Annual Report, Eccles offered an impassioned plea for Congressional action on a bank holding company bill that would provide the Board with the authority to control the expansion of holding company groups. Invoking Progressive tropes in describing the dangers of the holding company, a “device” that “lends itself readily to the amassing of vast resources obtained largely from the public which can be controlled and used by a few people...in carrying out an unlimited program of expansion,” Eccles nevertheless made clear that it was only “the exceptional case” that concerned the Board as he detailed the ways that the corporate device had been used to “escape the supervisory powers of the various bank supervisory agencies.”⁸⁰ The man who had once stood up to the likes of Henry Morgenthau,

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Carter Glass and others for designing discriminatory legislation aimed specifically at Transamerica had certainly come a long way in a short time.

Importantly, both private and public Board communications also began to emphasize Transamerica’s growing acquisitions of nonbanking businesses in its case for holding company legislation.⁸¹ Unlike many other countries in which banks had large ownership stakes in industrial enterprises, American banking practice had long regarded the separation of banking and commerce as “axiomatic,” though the policy had never been perfectly enforced.⁸² Initially intended to prevent government chartered banks that acted as quasi-public institutions from monopolizing other lines of business, activity restrictions later reflected liquidity and solvency concerns as well. Thus, even as the general incorporation revolution unleashed corporate activity for any lawful purpose, the notion that bank ventures into risky commercial endeavors jeopardized depositor funds and public confidence in the financial system preserved limitations on bank conduct.⁸³ Additional economic issues reinforced the division over time. The panic of 1907 and the Pujo investigation had publicized the outsized control investment bankers and their networks of commercial banks and trust companies had exerted over the industrial economy and prompted legislative reform focused on interlocking directorates. By the early 1930s, the perception of conflicts of interest and corruption among banks and their securities affiliates in the wake of the Great Depression led to the Glass-Steagall Act, which separated commercial from investment banking.⁸⁴ Yet even under the Glass-Steagall Act, holding companies could still acquire both banks and purely commercial businesses. Similar concerns over conflicts of interest thus emerged as the possibility of a bank holding company favoring its own nonbanking

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businesses through preferential loans and suppressing opportunities for other enterprises threatened competition.⁸⁵ Moreover, the old antimonopoly fears of government privilege corrupting economic enterprise endured, as the benefits of federal deposit insurance could be passed on to nonbanking businesses under the holding company structure.⁸⁶

By the late 1930s, political concerns became paramount as well. Against the backdrop of the development of extensive combinations of banking and industry in the German and Japanese contexts, the American emphasis on separating the banking sector from the commercial business realm became increasingly pertinent to democratic policy goals. Not only would it prevent a bank from discriminating against rival businesses in allocating credit, it would further the commitment to a decentralized economic landscape. Disallowing combinations of financial and industrial entities would prevent the accrual of vast power in a handful of enormous conglomerates, and thereby ensure not only the competitive provision of credit but the integrity of the political system. As faith in the policy of divorcing banking and commerce grew sacrosanct with the rise of fascism abroad, the bank holding company device became a graver threat to American liberty.⁸⁷ For though bank holding companies initially developed to evade branching limitations rather than restrictions on mixing banking and commerce, Transamerica had begun increasingly acquiring industrial and manufacturing businesses under the umbrella of the holding company device. Thus, a confidential memorandum on the Board's policy regarding Transamerica in March 1943 listed Transamerica's acquisition of "substantial investments in unrelated businesses and industries" as one of the primary causes for concern. An attached exhibit catalogued all of the nonbank investments, from a fire insurance company in 1928 to

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engine and aircraft businesses acquired in 1942.⁸⁸ And in the 1943 Annual Report, Eccles detailed the perils of bank holding company investments in the industrial sphere.⁸⁹

Maintaining his position that dissolution of all existing bank holding companies would be technically complex and negatively impact controlled banks and depositors, Eccles advocated in the Annual Report for preventative legislation that still left the problem of Transamerica's present state unresolved.⁹⁰ Thus, Eccles also began to gather information regarding the Federal Reserve's power to combat banking monopolies via the antitrust laws. After being advised that a preliminary inquiry into Transamerica by the Antitrust Division of the Department of Justice had led to "no specific conclusion," Eccles initiated a probe into whether the Board could bring suit under the Clayton Antitrust Act.⁹¹ Though the Federal Reserve had been granted authority under Section 11 of the Act to enforce the provisions related to banking, it had never utilized its statutory power to bring a Section 7 case involving acquisitions of bank stock.⁹² Eccles nevertheless instructed the Board's legal counsel to investigate the potential of turning this weapon on Transamerica's seemingly impenetrable defenses.⁹³

Records of the Board of Governors indicate that discussion of the possibility of an antitrust case against Transamerica began in earnest by the summer of 1944, with J.P. Dreibelbis, an assistant general counsel for the Federal Reserve, authoring a memorandum on the issue and continued discussion in Board meetings regarding Section 7 penalties in the months to follow.⁹⁴ By 1945, Eccles had arranged to meet with Attorney General Tom Clark to discuss the evidence he had gathered during the Antitrust Division's investigation of Transamerica. Writing to Eccles in advance of the conference, Clark outlined the challenges of bringing a case against

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Transamerica under the Sherman Antitrust Act for conspiracy to monopolize commercial banking and credit facilities in a five state area. Despite Transamerica controlling “approximately 40% of banking offices and...36% of the commercial banking deposits” of a five-state area, the DOJ had not been able to “develop substantial evidence either that Transamerica achieved its present dominating position in the commercial banking field through illegal trade practice...or that it abused its dominant position once it was achieved.” Clark advised that while he had discovered instances of Transamerica using coercive tactics, it had been “impossible...to pin down a sufficient number of them to make a prima facie case on the theory suggested.”⁹⁵ In light of the DOJ standing down, and Transamerica’s flagrant persistence in its plans for expansion, Eccles decided to proceed with the first antitrust case in the history of the Federal Reserve and break up the Transamerica empire.⁹⁶

Thus, by the end of World War II, Transamerica had become the octopus driving a resurgent postwar antimonopoly crusade against bank holding companies. Eccles, the man who once advocated for a regulatory, rather than trustbusting, solution to the bank holding company problem, had pioneered a new kind of Section 7 case designed to break up the most formidable bank holding company in the nation. Unable to be controlled, too big to fail, a moneyed monopoly invading the industrial landscape, Transamerica embodied the democracy eroding colossus of the Progressive imagination. Opposition to the behemoth holding company thus unfolded in the postwar years on Brandeisian terms, with its size a proxy for its threat to competition, opportunity, and above all, democracy. Yet, unlike the broader “antimonopoly moment” of the late New Deal, sacrificed to the war along with Progressive liberalism itself as

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canonical histories would have it, the antimonopoly case against bank holding companies not only survived but finally succeeded a decade after World War II.⁹⁷ For out of the ashes of a war against fascism, an antitrust movement centered around the political dangers of concentrated financial power rose like a phoenix.

Indeed, Eccles did not make his groundbreaking decision to bring suit under the Clayton Act in a vacuum, as the belief that economic concentration endangered democracy pervaded legal discourse and national policymaking in the aftermath of World War II.⁹⁸ The growing faith in antitrust as an antidote to fascism was so potent that American antitrust law was exported to Germany and Japan by delegations sent to oversee the rehabilitation of democracy in the war torn nations.⁹⁹ Internal Federal Reserve memos show that the Board actively tracked these policy developments and changes in antitrust jurisprudence as it developed its own theory for its case against Transamerica. In a 1946 memo suggestively titled “Giannini Empire,” the Board detailed Transamerica’s ever rising control of banking resources in western states, as well as its forays into nonbanking business ventures. Emphasizing its refusal to respect federal orders, the Board echoed the fears of concentrated economic power leading to fascism then dominating policy debate:

The control of such vast resources, in itself, creates the gravest sort of economic problems...Likewise, the mere possession of such power, even if it were not used (and there is plenty of evidence that it has been) has far-reaching political implications, particularly when the power is in the hands of a management which is openly hostile to the policies of this Administration and is defiant of all Federal authority as is this one...This management recognizes no truce. Indeed, it takes advantage of the times to get its hands on more and more economic resources with the result that, if nothing is done, we may find that a Fascist economic empire has been built within our own borders.¹⁰⁰

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Furthermore, in 1947, Eccles wrote again to Attorney General Clark in light of the Supreme Court's decision in the *American Tobacco* case, which seemed to "eliminate the need in certain cases for the kind or extent of proof which had previously been thought necessary in antitrust proceedings," inquiring as to "whether the decision...might not lessen to a considerable extent the doubt which heretofore it has entertained as to the ultimate success of an antitrust proceeding against Transamerica."¹⁰¹ Eccles received no response to his letter, however, as a changing of the guard in the Treasury signaled the end of a consensus among the federal agencies on resisting Transamerica's expansionary designs. With the appointment of John Snyder as Secretary of the Treasury in 1946, who clashed with the Federal Reserve on key policy matters, the Treasury began to utilize its influence to promote, rather than oppose, the Giannini interests.¹⁰²

Supported by the legal opinion of the Board's general counsel regarding the Federal Reserve's authority under the Clayton Antitrust Act, Eccles formally notified the Attorney General, the Chairman of the FDIC, and the Comptroller of the Board's antitrust investigation into Transamerica in November of 1947.¹⁰³ Barely two months later, President Truman informed Eccles that he would not reappoint him as Chairman of the Board of Governors, though he requested he remain on as Vice-Chairman, leading Eccles to believe the Gianninis had orchestrated his removal. While no records reveal such a motivation definitively, the Chairman of the Senate Banking and Currency Committee gave such assertions credence during Congressional hearings on the confirmation of Thomas McCabe as Chairman of the Board of Governors in March 1948.¹⁰⁴ While some blamed Eccles' battle with the White House over

inflation for his removal, Eccles remained convinced that the Gianninis bore responsibility for his demotion.¹⁰⁵

Even with Eccles replaced as Chairman by Thomas McCabe, and A.P. Giannini's death in 1949, the battle against Transamerica raged on, buoyed by the apparent substantiation of the Progressive fear of outsized economic concentration leading to the corruption of democratic governance. For here was a private corporation so powerful it had seemingly been able to remove a government official who had dared to challenge its defiance of federal regulatory authority. Indeed, as hearings officially got underway in 1948 on Transamerica's alleged violations of the Clayton Antitrust Act, lawyers for the bank holding company attempted to smear Eccles as vindictive and self-interested as part of their defense.¹⁰⁶ Ultimately, Transamerica's efforts to portray the Board's charges as nothing more than a personal vendetta failed. The Board presented statistical evidence of Transamerica's dominant position in a five-state area over the course of two years, arguing that Transamerica's control of 41% of all commercial banking offices, 39% of all commercial bank deposits, and 50% of all commercial bank loans constituted a tendency toward monopoly. Relying only on those figures, without an examination of actual competitive effects in the areas served by the acquired banks, as proof of Transamerica's violation of Section 7 ultimately led the Board's order that Transamerica divest its capital stock in forty seven banks to be overturned on appeal by the Third Circuit.¹⁰⁷ The court noted however, that the quantitative analysis the Board presented disclosed "a tremendous concentration of banking capital, and thereby of economic power, in the hands of the Transamerica group" and urged that "it may well be in the public interest to curb the growth of

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this banking colossus by appropriate legislative or administrative action.”¹⁰⁸ Members of Congress who had long sought bank holding company legislation heeded the Third Circuit’s advice. Though several hearings in both the Senate and the House had been held on multiple different bank holding company bills in 1947, 1950, and 1952, the Board’s failed attempt to corral Transamerica’s defiant expansion via Clayton Act proceedings propelled more urgent Congressional attention and ultimately legislative action. Thus, by 1953, hearings once again got underway.¹⁰⁹ Moreover, anticipation of restrictive federal legislation led to further expansion of bank holding company groups beginning in 1954, prompting additional hearings and debates throughout 1955 and early 1956 to work through numerous differing bill versions and finally reach a compromise.¹¹⁰

Taken together, Congressional records reveal several key aspects of the movement for bank holding company reform as it entered the final leg of the race that had begun nearly two decades ago. First, the exhaustive hearings show a broader coalition of policymakers and bankers who had mobilized on a national scale in support of bank holding company legislation. Though initial opposition to bank holding companies had originated in the early twentieth century with unit bankers at the state level, it was Progressive and New Deal policymakers opposed to such protectionism who ignited the movement for federal control over the device in the late 1930s. By the late 1940s, however, after a decade of failed attempts at legislation, Eccles reached out to Democratic proponents of unit banking and Republican politicians alike, including Representative Brent Spence of Kentucky, who introduced a Board drafted bill in 1945, and Republican Senator Charles Tobey of New Hampshire, who introduced and held hearings on a

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Board drafted bill in 1947.¹¹¹ While the numerous bank holding company bills that came before the House and Senate Banking and Currency Committees between 1945 and 1956 drew bipartisan support for the larger objective of enacting some measure of control over bank holding companies, conflict emerged over the extent of that control and the proper means of attaining it.¹¹²

On a grassroots level, a widening coalition of unit bankers across the country worked together toward a clearer goal of protecting unit banking. As one member of the House noted in 1955, “Twenty five years ago the [Independent Bankers Association] was founded in Minnesota with 28 member banks. Today over 5,200 banks have joined the fight to preserve the democratic ideal of banking.”¹¹³ Correspondence of bankers’ associations expose the arteries of a nationwide movement dedicated to opposing bank holding companies, and the issue garnered national news coverage throughout the 1940s and 1950s.¹¹⁴ So effective were the independent bankers in mobilizing a cohesive and coherent national movement that they succeeded in having their own version of a bank holding company bill introduced in 1950 and 1953 by Senators A. Willis Robertson and Homer Capehart respectively.¹¹⁵

Moreover, a broader small business constituency voiced its support for bank holding company reform, linking small community banks to the survival of independent merchants and local economies. The National Association of Retail Druggists lobbied in favor of restrictive bank holding company legislation, for example, arguing that bank holding companies could not “possibly know local conditions similar to the hometown independent banker” and warning that “[i]f these companies are permitted to continually circumvent the law...another monopolistic

practice becomes rooted in our economy.”¹¹⁶ The Secretary-Treasurer of the Wisconsin Retail Hardware Association made similar assertions, writing to Senator J.W. Fulbright that “[e]xperience has clearly indicated that local bankers are familiar with local conditions and the needs of local merchants.”¹¹⁷ In his own letter to Senator Fulbright, the Vice President of the National Federation of Independent Business reiterated that “more is at stake than the welfare of the independent banker.” Rather, he cautioned, “the future of our whole free enterprise system may be at stake in view of the fact that we are headed straight for a concentration of finance and credit.” “May you be guided,” he concluded, “not by the pleas of the merger holding company mob, but by the philosophy of Jefferson, who would never have permitted such a power to grow up as that which we see in the bank-holding company.”¹¹⁸ Thus, far from one of the “faded passions of American reform,” the antitrust movement remained alive and well long after its supposed death in 1938.¹¹⁹ Indeed, the failure of antitrust law to adequately combat one of the most powerful bank holding companies in the country ultimately led to new antimonopoly legislation in the form of the BHCA. Moreover, that victory occurred not in the shrouded realm of administrative technocracy or judicial enforcement of complex antitrust concepts, but on a Congressional stage in clear declarations of policy linking a competitive banking system with American democracy itself.

Nevertheless, fundamental issues revolving around federalism and the rights of states in a new regime of federal bank holding company regulation, the extent of administrative power, and the very meanings of monopoly and competition in the banking sector remained contested throughout the Congressional debates. By the early 1950s, however, the movement for reform

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had coalesced around two central concerns: the danger of undue concentration of economic power and the combination of banking and nonbanking business under a holding company structure.¹²⁰ Both concerns echoed the old Progressive focus on financial monopolies as particularly perilous to the body politic, as bankers' control over credit carried the potential to corrupt not only economic but political democracy as well.¹²¹ While the two issues remained rooted in Progressive antimonopoly ideals, it was ultimately the potent antitotalitarian sentiment of the postwar period that furthered, rather than stymied, those principles and finally led to the enactment of the BHCA in the spring of 1956.

The fear that undue concentration of economic power would result from continued bank holding company expansion ran throughout the Congressional hearings and debates. Advocates of reform argued that because credit served as the “very lifeblood of all commerce,” banking concentration threatened the entire economy in a way that few other industries did.¹²² As Senator Paul Douglas stated plainly, “[b]ig banks” preferred “big business” over “little business” and thus “monopoly and quasi-monopoly in industry” followed from banking concentration.¹²³ Indeed, the contention that independent, local banks were the bedrock of competitive, free enterprise and critical to the survival of small business appeared frequently in the bank holding company hearings. Congressmen, especially those from populist southern and western regions, echoed unit bankers and small merchants in arguing that the centralization of credit in distant holding companies threatened local prosperity and autonomy. As Speaker of the House Sam Rayburn, the storied Texas representative who helped enact some of the most important Progressive and New Deal legislation, typified in 1955:

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The local independent bank is an ideal small business enterprise. Local people get together, invest their own capital...and solicit the deposits of the community... They then take those deposits and put them out to work for the benefit of the people living in that community. I am certain I do not exaggerate when I state that the importance of the economic and social role of the independent banker in a democratic society ranks second to none.¹²⁴

Those Brandeisian tenets, and the faith in decentralization as key to democratic governance, took on newfound significance in the postwar years as the nation reeled from a world war against fascism and faced an ongoing battle against socialism. For the preservation of local economic autonomy appeared more important than ever as the monopolistic economies of Nazi Germany and Japan became linked with the rise of totalitarian control. As Senator Douglas admonished the Senate in a 1956 debate on a bill that had been reported out of committee,

Prior to Hitler there were only three banks in Germany...These played ball and helped the cartels and monopolies...which financed Hitler's final drive to power. Thus, concentration of financial power helped on the concentration of economic power, and then the two joined hands to aid in creating a dictatorship of political power...¹²⁵

Not only looking backward at the case study of Germany, but forward as the specter of socialism seemed to inch ever closer to American shores, reformers argued that banking concentration facilitated the socialization of finance. Reasoning that it was easier to nationalize a few massive banks than thousands of small, independent banks, Congressmen and unit bankers pointed to nations like England in the aftermath of the Labour Party's victory as warnings to be heeded. As Emmanuel Celler, who had helped amend the Clayton Antitrust Act in 1950, advised in a June 1955 debate in the House, "[i]n England, where you had large concentrations particularly of financial power, it was a very simple matter for the Government to step in and nationalize the banks. I warn the bankers of this country that unless this trend is stopped, we are

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going the way that England went...”¹²⁶ Likewise, a House report submitted by Representative Brent Spence in May 1955 cautioned that “...monopolistic control of credit could entirely remold our fundamental political and social institutions... We dare wait no longer, for already we are rapidly following the example of England whose many banks became the Big Five.”¹²⁷ Senator Douglas shared a similar message in 1956, though he accurately depicted the mere concentration of the British banking system, which had not in fact been nationalized.¹²⁸

The issue of bank holding companies combining both banking and nonbanking businesses in defiance of the separation of banking and commerce unfolded along much the same lines. In a powerful statement in the 1950 Senate hearings, Thomas McCabe, Eccles’ successor as Chairman of the Board, dispelled any notion that the effort to include such a provision in bank holding company legislation derived merely from Eccles’ personal battle against A.P. Giannini. Rather, he articulated the deeper foundations of the policy, emphasizing the public character of banking and the risk of anticompetitive credit provision to the broader economy:

...of this fundamental truth I have become convinced: That the business of banking is a sacred public trust... The moment you mix private business with banking... you thereby create the possibilities of favoritism of one business over another. Just so soon, in my judgment, will the strength of the private enterprise system as we know it become impaired... [T]he mixing of vast nonbanking organizations with equally vast banking operations is ethically and basically wrong and should be prevented...

Invoking Progressive era precedents, McCabe likened the separation of banking and commerce to other moral reforms of the era, reminding the Committee that “[t]oday, none of us would question the wisdom of... labor laws, workmen’s compensation statutes and other similar legislation. The record of opposition to such regulation on the business leaders of an earlier day, however, is a lesson in history we should not quickly or easily forget.”¹²⁹ Similarly,

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Representative Brent Spence encapsulated the Progressive fear of banking and commercial conglomerates accruing power so vast as to dominate democratic governance, warning in the 1952 hearings that “... if there is a monopoly of money and credit in the country, and they also control the means of production and distribution, then you have a perfect monopoly, one which cannot be overthrown.”¹³⁰ “Just imagine,” he later argued in a 1955 House debate, “what chance you would have if you were a small businessman in a community where a bank holding company controlled the bank and also a competing business?” Underscoring the political implications of financial-industrial monopolies, Spence concluded that “the holding companies are a dangerous thing to our economy, that the centralized concentration of economic power is just as dangerous as the concentration of political power. It is more lasting. It is harder to break.”¹³¹ Repurposing those Progressive era precepts in the postwar political context of antifascism and anticommunism, advocates of reform similarly raised the specter of tyranny abroad to support the separation scheme.¹³² So potent was the fear of authoritarianism in the years following World War II that preventing the mere possibility of such monopolistic power was enough to justify the codification of the policy, despite a lack of evidence of actual transgressions.¹³³

While the objectives of bank holding company legislation garnered widespread agreement due in large part to the political climate of the postwar period, vigorous debate erupted over the proper medicine to treat the disease of monopoly. Some Congressmen declared themselves the heirs of Thomas Jefferson and Andrew Jackson in favoring the decentralization of federal authority over bank holding companies. Senators Burnet Maybank and A. Willis Robertson thus articulated a suspicion of administrative power and fought to reserve for the

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states a measure of authority to regulate bank holding companies within their borders.

Proclaiming himself “a Jeffersonian Democrat” in the 1950 Senate hearings, Robertson vowed to “keep a close eye on the Federal Reserve Board.”¹³⁴ As Senator Maybank echoed in the same hearings, “[i]f this thing interferes with any States’ rights whatsoever...I will never vote for it, because we have too much concentration of power in Washington now.”¹³⁵ The House Committee on Banking and Currency also sought to diffuse federal power among multiple agencies rather than unify it in the Federal Reserve.¹³⁶ Senator Paul Douglas, who claimed the legacy of Andrew Jackson in opposing centralized federal control over interstate bank holding company groups, ultimately ensured that the legislation would not displace states’ regulatory authority by introducing a floor amendment to prohibit any additional interstate expansion of bank holding companies without permission from the states involved.¹³⁷

Congressmen and unit bankers channeling the Jeffersonian and Jacksonian suspicion of federal control of a concentrated financial system thus exerted a profound influence over bank holding company legislation, and the hearings and debates certainly feature conspiratorial moments and exaggerated warnings of impending tyranny. Opponents of the legislation, including bank holding company executives, were not wholly above the “paranoid style” either and offered their own warnings of government despotism.¹³⁸ However, the movement for bank holding company reform also consisted of policymakers who considered themselves the heirs of Theodore Roosevelt and adherents to the Progressive and New Deal faith in elite expertise. Thus, by 1947, death sentence and freeze legislation for bank holding companies had been abandoned in favor of regulating future expansion under the auspices of federal administrative

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supervision.¹³⁹ Moreover, the July 1955 Senate report made clear that the Committee did not consider bank holding companies “evil of themselves.”¹⁴⁰ Between the late 1930s and the mid-1950s, three different Federal Reserve chairmen supported bills providing for greater federal administrative authority over bank holding companies, even if not centered in the Board, and staff members reiterated the distinction between “mere size and...dangerous size.”¹⁴¹ And individuals like Carter Glass and Marriner Eccles, who played central roles in the movement for bank holding company reform, decried the protectionist regulations that shielded the less efficient unit banking system from larger rivals and provided small bankers with their own credit monopolies in states prohibiting branch banking.

Ultimately, the Federal Reserve gained sweeping new power to regulate bank holding company expansion under the final bank holding company bill, enacted into law on May 9, 1956.¹⁴² The BHCA in many ways then laid the foundation for the Federal Reserve to become the “most powerful among US banking regulators,” as the importance of bank holding companies continued to grow in the second half of the twentieth century.¹⁴³ The BHCA nevertheless evinced the compromises brokered over the course of two decades, and the uneasy amalgam of populist and Progressive ideals that characterized the formation of the first federal antitrust regime in the early twentieth century. The legislation prohibited the mixing of banking and commerce under a holding company structure and bank holding companies thus had to divest all ownership interests greater than five percent in any nonbanking organization within five years, a nod to structural separation and the trustbusting impulse. The Douglas Amendment reinforced the dual banking system by reserving for the states some control over bank holding

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company regulation within their borders and restricted the growth of interstate branching for years to come. And perhaps most importantly, the BHCA exempted bank holding companies that owned only one bank from regulation.¹⁴⁴ By defining a bank holding company as a corporation that controlled at least twenty-five percent of two or more banks, the BHCA paved the way for a continuing battle over the boundaries of its antimonopoly foundations. Indeed, Congress would amend the BHCA in 1966 and again in 1970 to close the loopholes banks took advantage of throughout the 1950s and 1960s.¹⁴⁵

The battle for bank holding company legislation ultimately illustrates the enduring tensions within the American antimonopoly tradition, and the unsettled foundations of the antitrust regime. As Congressional debate stretched from the 1940s into the 1950s, as the first antitrust proceeding against a bank holding company commenced, as small bankers demanded protection and financial regulators negotiated the meaning of monopoly, the search for answers to the unresolved questions of 1912 continued on unabated.¹⁴⁶ The role of antitrust in calibrating the proper balance between private and public power remained contested throughout the postwar period as the memory of fascism and the specter of the Cold War revived the Brandeisian concern with ensuring a democratic economy so as to safeguard political freedom. The enactment in 1956 of the BHCA, rooted in Progressive ideals and granting wide-ranging federal control over the structure of American banking, epitomizes the significance of the antitrust movement well beyond the late New Deal. The long road to the BHCA thus offers an important corrective to static historical narratives that paint the postwar era as the “end of reform,” an age of compensatory liberalism focused on Keynesian fiscal management and civil liberties rather

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than monopoly power and the relationship of economic structure to American democracy.¹⁴⁷ The BHCA placed political objectives at the heart of its antimonopoly measures, rather than merely statistical analyses and mathematical algorithms of market dominance. What was gained, and what was lost, in doing so is worth excavating not only to shine a light on a forgotten chapter of the American antimonopoly tradition, but to illuminate the way forward.

¹ See Lina M. Khan, “Amazon’s Antitrust Paradox,” *Yale Law Journal* 126 (January 2017): 710-805; Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (New York: Columbia Global Reports, 2018); Daniel A. Crane, “Antitrust’s Unconventional Politics,” *Virginia Law Review Online* 104 (September 2018): 118.

² Bank Holding Company Act of 1956, Pub. L. No. 84-511, 70 Stat. 133 (1956).

³ Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Vintage Books, 1995); Richard Hofstadter, “What Happened to the Antitrust Movement?,” in *The Paranoid Style in American Politics and Other Essays* (New York: Alfred Knopf, 1965).

⁴ See Bray Hammond, *Banks and Politics in America: From the Revolution to the Civil War* (Princeton: Princeton University Press, 1957) 35-39, 114-122; William Letwin, *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act* (Chicago: University of Chicago Press, 1954), 59-63; Gretchen Ritter, *Goldbugs and Greenbacks: The Antimonopoly Tradition and the Politics of Finance in America, 1865-1896* (Cambridge: Cambridge University Press, 1997), 2-4; Susan Hoffmann, *Politics and Banking: Ideas, Public Policy, and the Creation of Financial Institutions* (Baltimore: The Johns Hopkins University Press, 2001), 21-43; Richard T. McCulley, *Banks and Politics During the Progressive Era: The Origins of the Federal Reserve System 1897-1913* (New York: Routledge, 1992), 3-6; Charles Calomiris and Stephen Haber, *Fragile By Design: The Political Origins of Banking Crises and Scarce Credit* (Princeton: Princeton University Press, 2015), 153-195; Daniel A. Crane, “Antitrust Antifederalism,” *California Law Review* 96 (February 2008): 1-12.

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⁵ See Hammond, *Banks and Politics in America*, 114-122; Letwin, *Law and Economic Policy in America*, 60-62; McCulley, *Banks and Politics During the Progressive Era*, 3-9; Fulton, William Savin, and Andrew Jackson, *Andrew Jackson to William Savin Fulton, July 4*. July 4, 1824. Manuscript/Mixed Materials. <http://www.loc.gov/item/maj010566>.

⁶ See Letwin, *Law and Economic Policy in America*, 62-66; Eric Hilt, “Early American Corporations and the State,” in *Corporations and American Democracy*, eds. William J. Novak and Naomi R. Lamoreaux (Cambridge: Harvard University Press, 2017).

⁷ See William J. Novak, “Law and the Social Control of American Capitalism,” *Emory Law Journal* 60 (2010), 377-405; Letwin, *Law and Economic Policy in America*, 67-70.

⁸ See Ritter, *Goldbugs and Greenbacks*, 1-9, 190-194.

⁹ Mary A. O’Sullivan, *Dividends of Development: Securities Markets in the History of US Capitalism, 1866-1922* (Oxford: Oxford University Press, 2016), 203-230, 257.

¹⁰ Vincent Carosso, *Investment Banking in America: A History* (Cambridge: Harvard University Press, 1970), 127-132.

¹¹ The National Monetary Commission concluded that unit banking had led to a weak and unstable banking structure that funneled interbank deposits to New York banks, whose speculative activities and reliance on the call loan market then exposed the entire financial system to runs and collapse. See Carosso, *Investment Banking*, 242-246.

¹² The final report of the Pujo Committee revealed that J.P. Morgan, National City, First National, Guaranty Trust Co. and the Bankers’ Trust Co. held 341 directorships in 112 corporations with a total market capitalization of 22.45 billion. U.S. Congress, House, *Report of the Committee Appointed Pursuant to House Resolutions 429 and 504 to Investigate the Concentration of Control of Money and Credit*, 62nd Congress, 3rd Sess. (Washington DC, 1913) (hereinafter, *Pujo Report*), 89.

¹³ Louis D. Brandeis, *Other People’s Money and How the Bankers Use It* (New York: Frederic A. Stokes Company, 1914), 5.

¹⁴ *Pujo Report*, 130.

¹⁵ *Pujo Report*, 129- 135; Brandeis, *Other People’s Money*, 62.

¹⁶ See O’Sullivan, *Dividends of Development*, 273-310.

¹⁷ Brandeis, *Other People’s Money*, 1; see Jeffrey Rosen, *Louis D. Brandeis: American Prophet* (New Haven: Yale University Press, 2016).

¹⁸ See Ellis W. Hawley, *The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence* (Princeton: Princeton University Press, 1966); Daniel A. Crane, “All I Really Need to Know about Antitrust I Learned in 1912,” *Iowa Law Review* 100 (May 2015): 2025-2038.

¹⁹ See Brinkley, *End of Reform* 135-136; Hofstadter, “What Happened to the Antitrust Movement?,” 224; Hawley, *The New Deal and the Problem of Monopoly*, 456-471.

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²⁰ See Benjamin Klebaner, “The Bank Holding Company Act of 1956,” *Southern Economic Journal* 24 (January 1958): 313-326; George S. Eccles, “Registered Bank Holding Companies,” in *The One Bank Holding Company*, ed. Herbert V. Prochnow (Chicago: Rand McNally & Company, 1969); Daniel R. Fischel, Andrew M. Rosenfield & Robert S. Stillman, “The Regulation of Banks and Bank Holding Companies,” *Virginia Law Review* 73 (March 1987), 331-338; Charles Calomiris, *U.S. Bank Deregulation in Historical Perspective* (New York: Cambridge University Press, 2000), 52-69 (generally ascribing restrictions on bank consolidation and bank branching to special interest lobbying).

²¹ While northern states had generally adopted unit banking prior to the Civil War, early interpretations of the National Bank Act of 1863 mandated unit banking for all national banks and branching in southern states dissipated in the wake of the war. Calomiris and Haber, *Fragile By Design*, 162-167; Ray B. Westerfield, *Historical Survey of Branch Banking in the United States* (New York: American Economists Council for the Study of Branch Banking, 1939), 10-11.

²² See Calomiris and Haber, *Fragile By Design*, 181-182; Eugene White, *The Regulation and Reform of the American Banking System, 1900-1929* (Princeton: Princeton University Press, 1983), 10-15.

²³ See Gaines Thomson Cartinhour, *Branch, Group, and Chain Banking* (New York: The Macmillan Company, 1931), 199.

²⁴ Notable exceptions included two prominent bank holding systems in the Northwest and the early development of Transamerica in California. See Gerald C. Fischer, *Bank Holding Companies* (New York: Columbia University Press, 1961), 6-8, 10: “In most states...except for the rule that one state bank could not buy the stock of another bank, there were no legal provisions whatsoever regarding the ownership of bank shares.”

²⁵ See Fischer, *Bank Holding Companies*, 10 (pointing to Wisconsin and Missouri as states that regulated bank holding companies, and West Virginia and New Jersey as states that prohibited group banking); Ward Ralph Lamb, *Group Banking: A Form of Banking Concentration and Control in the United States* (New Brunswick: Rutgers University Press, 1961), 80-102.

²⁶ Lamb, *Group Banking*, 171-172.

²⁷ *Pujo Report*, 163. Section 8 of the Clayton Antitrust Act outlawed interlocking bank directorates for national banks or trust companies with deposits or capital greater than five million dollars, or located in a city of more than two hundred thousand inhabitants. Additionally, though Section 7 of the Clayton Act prohibited corporate stock acquisitions that would substantially lessen competition or tend to create a monopoly, and in Section 11 authorized the Federal Reserve Board to enforce relevant provisions, doubt remained as to the general applicability of antitrust law within the uniquely regulated sphere of banking. See Fischer, *Bank*

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Holding Companies, 15; Adolf A. Berle, Jr., “Banking Under the Antitrust Laws,” *Columbia Law Review* 49 (May 1949): 589-606.

²⁸ See Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877-1917* (Chicago: The University of Chicago Press, 1999), 235-259.

²⁹ Calomiris and Haber, *Fragile By Design*, 182: “...laws specified that a freestanding unit bank owned by a holding company...could not share back-office operations...and thus had to forgo the advantages of scale economies in administration.” While the bank holding company emerged primarily as a consequence of restrictions on branch banking, it was not the only factor contributing to its development and evolution over time. The agricultural depression, the speculative frenzy of the 1920s merger movement which increased the marketability of bank holding company stock, efforts to forge regional independence through bank holding company groups, and the desire to compete with newly established bank holding companies were also motivating factors. See Lamb, *Group Banking*, 86.

³⁰ While prohibitions on interstate bank branching endured, a number of states did move to allow some form of intrastate branching following the bank failures of the Great Depression. See Lamb, *Group Banking*, 34; Charles W. Calomiris & Eugene N. White, “The Origins of Federal Deposit Insurance,” in *The Regulated Economy: A Historical Approach to Political Economy*, eds. Claudia Goldin and Gary D. Libecap (Chicago: University of Chicago Press, 1994).

³¹ While the Banking Act of 1933 did include provisions related to bank holding companies, they were ultimately feeble, requiring approval of voting permits for registered bank holding companies which could be easily avoided. See Fischer, *Bank Holding Companies*, 61-63.

³² See Lamb, *Group Banking*, 40; Charles Sterling Popple, *Development of Two Bank Groups in the Central Northwest: A Study in Bank Policy and Organization* (Cambridge: Harvard University Press, 1945).

³³ *Providing For Control and Regulation of Bank Holding Companies: Hearings on S.829 Before the Senate Committee on Banking and Currency*, 80th Cong., 1st Sess. (1947) (Statement of Ben Dubois, Secretary of the IBA) (hereinafter *1947 Hearings*), 44-45: “Big banks and big business naturally work hand in glove with one another. The concentration of economic power becomes, of course, political power. Our democracy receives a jolt. We cannot maintain a true democracy without a true democratic economy. If this country is to prosper, we must have numerous types of independent businesses. People must own and manage their own enterprises.” See also 72 Cong. Rec. 9372 (1930) (Statement of Rep. Browne): “Instead of your bank, where the community and surrounding farming country deposits its money, being owned and directed by your friends and neighbors, the officers of the chain banks will never be seen on your streets, and you will have no acquaintance with them...If the branch is of a New York bank, it will be a New York point of view...loans will be made primarily on the basis of collateral, and the collateral in small local enterprise or farm mortgages is automatically excluded on account of the cost and

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time involved in an investigation sufficient to satisfy the New York bank officials who pass upon it. Therefore you will not have the opportunity to borrow that your banker neighbor formally gave you.”

³⁴ Calomiris and Haber, *Fragile By Design*, 171: “The populist support for unit banking reflected, in part, the advantages that some classes of local borrowers received from limiting bank entry through unit banking. Because unit banking tied local banks to the local economy, it made bankers more willing to continue to provide credit to their existing borrowers during lean times, unlike a branch bank that might move funds to other locations in pursuit of greener pastures.”

³⁵ 80 Cong. Rec. 9695 (1936); Richard M. Valelly, *Radicalism in the States: The Minnesota Farmer-Labor Party and the American Political Economy* (Chicago: University of Chicago Press, 1989), 82.

³⁶ See H.R. 8890, 75th Congress (1938); “Glass Drafts Bill to Liquidate All Bank Holding Companies; Senator’s Plan Would Allow Five Year Process – Program Differs from Patman Measure Chiefly in Time Element,” *New York Times*, January 25th, 1938.

³⁷ A vast literature on the political economy of banking regulation portrays the movements and legislation opposing bank branching and other forms of bank consolidation as the product of pressure group influence and the protectionist motivations of unit bankers. See Klebaner, “The Bank Holding Company Act,” 314-315; Calomiris and Haber, *Fragile by Design*, 153-195; Eugene White, “The Political Economy of Banking Regulation: 1864-1933,” *The Journal of Economic History*, Vol. 42, No. 1 (Mar. 1982): 33-40; Burton A. Abrams and Russell F. Settle, “Pressure Group Influence and Institutional Change: Branch Banking Legislation During the Great Depression,” *Public Choice*, Vol. 77, No. 4 (1993): 687-705; Calomiris, *U.S. Bank Deregulation in Historical Perspective*, 43-69. Where antimonopoly ideals are referenced in the context of bank holding company reform, they are generally cited only briefly or portrayed as the vestige of a rearward populism rather than the subject of sustained investigation. See Saule T. Omarova & Margaret E. Tahyar, “That Which We Call A Bank: Revisiting the History of Bank Holding Company Regulations in the United States,” *Review of Banking and Financial Law* 31 (2011), 120; Carl Felsenfeld, “The Bank Holding Company Act: Has It Lived Its Life?,” *Villanova Law Review* 1 (1993), 6-13; Mark J. Roe, “A Political Theory of American Corporate Finance,” *Columbia Law Review* 91 (1991).

³⁸ See Richard Schragger, “The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution,” *Iowa Law Review* 90 (2005). Policymakers in the 1920s and 1930s often connected the anti-chain store movement to the unit banking movement. See 72 Cong. Rec. 9373 (1930) (Statement of Rep. Browne): “I firmly believe that the chain bank and chain store system is a very great menace to our free institutions.”

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³⁹ See Daniel Scroop, “The Anti-Chain Store Movement and the Politics of Consumption,” *American Quarterly* 60 (Dec. 2008): 932; Schragger, *The Anti-Chain Store Movement*, 108; Laura Phillips Sawyer, *American Fair Trade: Proprietary Capitalism, Corporatism, and the “New Competition,” 1890-1940* (Cambridge: Cambridge University Press, 2018), 22-23; Gerald Berk, *Louis D. Brandeis and the Making of Regulated Competition, 1900-1930* (New York: Cambridge University Press, 2009).

⁴⁰ See Fischer, *Bank Holding Companies*, 10; “The Bank Holding Company Act of 1956,” *Duke Law Journal* 7 (1957): 4-5.

⁴¹ See S. 2348, S. 3060, 75th Cong. (1937); S. 3575, 75th Cong. (1938).

⁴² As Glass declared in 1932, “...the little banker is the ‘monopolist.’ He wants to exclude credit facilities from any other source than from his bank,” 75 Cong. Rec. 9892 (1932); see William G. McAdoo, *Crowded Years: The Reminiscences of William G. McAdoo* (Cambridge: The Riverside Press, 1931), 111-112. Though McAdoo had a reputation for patronage by the end of his Senate career, and a relationship with A.P. Giannini, the head of a powerful bank holding company, he had a long record of advocating greater federal control over the banking system and supported bank holding company legislation even when it no longer appeared a path to branch banking, which Giannini favored. See Douglas B. Craig, *Progressives at War: William G. McAdoo and Newton D. Baker, 1863-1941* (Baltimore: Johns Hopkins University Press, 2013).

⁴³ Press Conferences of Franklin D. Roosevelt, 1933-1945, Franklin D. Roosevelt Presidential Library & Museum, January 14th, 1938, Series 1, 425-12,13.

⁴⁴ See “All Holding Companies?” *New York Times*, January 15th, 1938; “All Holding Companies Must Go – Roosevelt,” *Washington Post*, January 15th, 1938.

⁴⁵ Message from President Franklin D. Roosevelt to Congress Transmitting Recommendations Relative to the Strengthening and Enforcement of Antitrust Laws, April 29, 1938, S. Doc. No. 173, 75th Cong., 3d. Sess. (1938), 1: “The first truth is that the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself. That, in essence, is fascism--ownership of government by an individual, by a group, or by any other controlling private power.”

⁴⁶ Message from President Franklin D. Roosevelt, 8-9.

⁴⁷ See for example, Brinkley, *The End of Reform*, 106-136; Hawley, *The New Deal and the Problem of Monopoly*, 383-419.

⁴⁸ See Brinkley, *The End of Reform*, 135-139: “To most liberals wrestling with economic policy at the close of the 1930s...confronting economic concentration was rapidly becoming secondary to stimulating consumption...Within a few years, concern about monopoly and commitment to expanding the regulatory and administrative functions of the state had largely disappeared from liberal rhetoric...On matters of political economy, at least, something resembling a consensus had begun to emerge behind a new kind of liberalism: a liberalism less inclined to challenge
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corporate behavior than some of the reform ideas of the 1930s had done...more reconciled to the existing structure of the economy, and...strongly committed to the use of more ‘compensatory’ tools – a combination of Keynesian fiscal measures and enhanced welfare-state mechanisms – in the struggle to ensure prosperity;” Michael Sandel, *Democracy’s Discontent: America In Search of a Public Philosophy* (The Belknap Press: 1983), 261-262: “By the end of World War II the central issues of economic policy had little to do with the debates that had preoccupied Americans from the Progressive era to the New Deal...The old questions about what economic arrangements are hospitable to self-government ceased to be the subject of national debate.”

⁴⁹ See Hoftsadter, “What Happened to the Antitrust Movement?,” 188-190; Sandel, *Democracy’s Discontent*, 240-242.

⁵⁰ Marriner Eccles, *Beckoning Frontiers: Public and Personal Recollections*, ed. Sidney Hyman (New York: Alfred Knopf, 1966), 51.

⁵¹ Eccles, 53.

⁵² Eccles, 38, 54.

⁵³ Eccles, 128-135, 166.

⁵⁴ Eccles, 175.

⁵⁵ See Allan Meltzer, *A History of the Federal Reserve, Volume I: 1913-1951* (Chicago: University of Chicago Press, 2010), 415-487.

⁵⁶ That record also included the architecture of the Federal Housing Authority in 1934. Rooted in the shortcomings of private mortgage financing and housing construction, the FHA reflected Eccles’ belief that the federal government should mediate citizens’ access to credit in order to ensure basic standards of living. Eccles, *Beckoning Frontiers*, 155-176; see Mark Wayne Nelson, *Jumping the Abyss: Marriner S. Eccles and the New Deal, 1933-1940* (Salt Lake City: University of Utah Press, 2017).

⁵⁷ See Omarova and Tahyar, *That Which We Call A Bank*, 133: “A big part of what motivated the Federal Reserve’s interest in bank holding company legislation was its desire to protect its administrative turf and further consolidate its own power.”; Pauline Heller and Melanie Fein, *Federal Bank Holding Company Law: 3rd Edition* (Law Journal Press: 2011), 4.07.

⁵⁸ Eccles, *Beckoning Frontiers*, 266-276.

⁵⁹ Banking Act of 1933, Pub. L. No. 73-66, § 5144, 48 Stat. 162 (1933); Board of Governors of the Federal Reserve System, *Annual Report of the Board of Governors of the Federal Reserve System* (1943), 34-35.

⁶⁰ Brinkley, *The End of Reform*, 58-62.

⁶¹ See Diaries of Henry Morgenthau Jr., Franklin D. Roosevelt Presidential Library & Museum, Series 1, Vol. 105, January 5, 1938, 77-78 (recounting a discussion with Carter Glass in which he advocated eliminating all bank holding companies); “Glass Plans Bill Dooming Bank Holding Company Firms,” *Washington Post*, Jan. 25, 1938; Marriner Eccles to Franklin D. Roosevelt, *This work will appear in: Antimonopoly and American Democracy, edited by Daniel A. Crane and William J. Novak, forthcoming from Oxford University Press.*

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Jan. 23rd, 1941, Marriner S. Eccles Papers, University of Utah J. Willard Marriott Library Special Collections, Box 17, Folder 5, Item 1: “[T]he Board advised Senator Glass” that the 1938 bill “did not, in its opinion, offer a satisfactory solution of the matter.”

⁶² Eccles to FDR, Jan. 23rd, 1941, Eccles Papers, Box 17, Folder 5, Item 1; Board of Governors of the Federal Reserve System, *Annual Report of the Board of Governors of the Federal Reserve System* (1938), 13 (highlighting that a confusing array of agencies charged with overseeing different individual affiliates within holding company structures had created “conflicts, and gaps in authority,” necessitating further legislation).

⁶³ Eccles to FDR, Jan. 23rd, 1941, Eccles Papers, Box 17, Folder 5, Item 1: “[t]he new bill...is not a practicable solution of the problem...and would be unfair to every holding company...now rendering a service to the public.”

⁶⁴ See Marquis James and Bessie Rowland James, *Biography of a Bank: The Story of Bank of America* (New York: Harper and Brothers, 1954), 72-80, 268-304, 435-457.

⁶⁵ Louis Brandeis, *A Curse of Bigness*, Harper’s Wkly., Jan. 10, 1914, 18.

⁶⁶ Leo Crowley to Henry Morgenthau, Jr., Jan. 31, 1938, Diaries of Henry Morgenthau Jr., Franklin D. Roosevelt Presidential Library & Museum, Series 1, Vol. 354, Index Tab No. 7, 2.

⁶⁷ See for example, Diaries of Henry Morgenthau Jr., Franklin D. Roosevelt Presidential Library & Museum, Series 1, Vol. 354, “Bank of America,” October 22, 1937 – May 11, 1939; see also Brinkley, *End of Reform*, 33-34; James and James, *Biography of a Bank*, 435-457; Felice A. Bonadio, *A.P. Giannini: Banker of America* (Berkeley: University of California Press, 1994), 242-257.

⁶⁸ See James and James, *Biography of a Bank*, 1-4; Bonadio, *A.P. Giannini*, 29-38; Charles H. Russell, Governor of Nevada, to Hon. J. Allen Frear, July 5, 1955, *Control of Bank Holding Companies: Hearings on S.880, S. 2350, and H.R. 2667 Before a Subcommittee of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess. (1955)*, 380 [hereinafter *1955 Senate Hearings*]

⁶⁹ See James and James, *Biography of a Bank*, 277; see also “Bank Law an Issue in Giannini Dispute,” *New York Times*, Dec. 4, 1938; Bonadio, *A.P. Giannini*, 224-230.

⁷⁰ Eccles to AP Giannini, November 2, 1940, Eccles Papers, Box 19, Folder 1, Item 15 (writing that he wished “banking leaders in the various parts of the country had an equally vigorous and progressive attitude toward the mission of banking in contributing to the solution of our economic problems.”); see Bonadio, *A.P. Giannini*, 261-273.

⁷¹ Eccles to FDR, Jan. 23rd, 1941, Eccles Papers, Box 17, Folder 5, Item 1: “We feel that the proposed bill is punitive in that it is directed against one particular banking group...”

⁷² Board of Governors of the Federal Reserve System, Chronological Summary of Events Pertaining to Transamerica and Bank of America, Box 19, Folder 6, Item 38, 3-4.

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⁷³ Extract from Minutes of the Board, Meeting of Feb. 6, 1942, Eccles Papers, Box 19, Folder 2, Item 2.

⁷⁴ Chester Morrill to Transamerica Corporation, Feb. 14, 1942, Eccles Papers, Box 19, Folder 4 Item 7.

⁷⁵ W.L. Andrews to Board of Governors of the Federal Reserve System, March 17, 1942, Eccles Papers, Box 19, Folder 4, Item 7.

⁷⁶ See Anne Kornhauser, *Debating the American State: Liberal Anxieties and the New Leviathan, 1930-1970* (Philadelphia: University of Pennsylvania Press, 2015).

⁷⁷ Leo Crowley to Board of Governors of the Federal Reserve System, January 18, 1942, Eccles Papers, Box 19, Folder 2, Item 1 (having made clear the FDIC's belief that there was "grave danger" that Transamerica would "seek to establish uninsured State units should the Federal authorities refuse to cooperate with their program," Crowley's focus on "principle" rather than the economic need for additional banking facilities reflected deeper concerns regarding regulatory authority and the balance of public and private power in democratic governance).

⁷⁸ *Peoples Bank v. Eccles*, 161 F.2d 636, 636-643 (D.C. Cir. 1947), *rev. 'd on other grounds*, 333 U.S. 426 (1948).

⁷⁹ 333 U.S. 426 (1948).

⁸⁰ Board of Governors of the Federal Reserve System, *Annual Report* (1943), 36-37. On the Progressive tropes reflected in the report, see Brandeis, *Other People's Money*, 20: "...it is the investment bankers' access to other people's money in controlled banks and trust companies which alone enables any individual banking concern to take so large part of the annual output of bonds and stocks."

⁸¹ Board of Governors, *Annual Report* (1943), 36: "Accepted rules of law confine the business of banks to banking and prohibit them from engaging in extraneous businesses such as owning or operating industrial and manufacturing concerns. It is axiomatic that the lender and borrower or potential borrower should not be dominated or controlled by the same management. In the exceptional case, the corporate device has been used to gather under one management many different and varied enterprises wholly unallied and wholly unrelated to the conduct of the banking business." See also Arguments in Support of Board of Governors Policy in Matter of Bank of America and Transamerica Corporation, March 1943, Eccles Papers, Box 20, Folder 7, Item 34, Exhibit 3 (detailing the "principal acquisitions by Transamerica Corporation of nonbanking units within recent years...")

⁸² Board of Governors, *Annual Report* (1943), 36; see Saule Omarova, "The Merchants of Wall Street: Banking, Commerce, and Commodities," *Minnesota Law Review* 98 (2013): 277-278; Bernard Shull, "The Separation of Banking and Commerce: Origin, Development, and Implications for Antitrust," *Antitrust Bulletin* 28 (1983); but see Carl Felsenfeld, "The Bank Holding Company Act: Has It Lived Its Life?" *Villanova Law Review* 38 (1993): 5, 34- 52
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(emphasizing combinations of banking and commercial enterprise in American history, and arguing that the tradition of separation has been overstated); Mehrsa Baradaran, “Reconsidering the Separation of Banking and Commerce,” *George Washington Law Review* 80 (2012) (highlighting the difference between the separation of banking and commerce in banking, rooted in tradition, and the separation of banking and commerce in commerce).

⁸³ Early American bank charters were modeled explicitly on the Bank of England’s 1694 charter, which prohibited the bank from dealing in goods or merchandise in order to prevent unfair competition. Later policy justifications included the belief that some activities, including equity and real estate investment, were too risky for commercial banks. See Shull, “The Separation of Banking and Commerce,” 259; see also Bernard Shull, “The Separation of Banking and Commerce in the United States: An Examination of Principle Issues,” *Financial Markets, Institutions, & Instruments* 8 (2002): 20-21.

⁸⁴ See *Pujo Report*, 129-130, 142; Shull, “The Separation of Banking and Commerce in the United States,” 10.

⁸⁵ Omarova and Tahyar, “That Which We Call A Bank,” 130; Shull, “The Separation of Banking and Commerce in the United States,” 34-35.

⁸⁶ See Christine E. Blair, “The Mixing of Banking and Commerce: Current Policy Issue,” *FDIC Banking Review* 16 (2004): 102-107; Shull, “The Separation of Banking and Commerce in the United States,” 35 (noting additional concerns related to the relationship between large banking organizations and government: “[w]ill their size and importance compel government to protect them when, and if, they confront difficulties?”).

⁸⁷ See Message from President Franklin D. Roosevelt to Congress Transmitting Recommendations Relative to the Strengthening and Enforcement of Antitrust Laws, April 29, 1938, S. Doc. No. 173, 75th Cong., 3d. Sess. (1938); Shull, “The Separation of Banking and Commerce in the United States,” 40-41.

⁸⁸ Board of Governors of the Federal Reserve System and Lawrence Clayton, Arguments in Support of Board of Governors Policy in Matter of Bank of America and Transamerica Corporation, March 1943, Eccles Papers, Box 20, Folder 7, Item 34.

⁸⁹ Board of Governors, *Annual Report* (1943), 36.

⁹⁰ Board of Governors, *Annual Report* (1943), 37: “Such legislation should be so designed as to prevent any such company from using the corporate device to circumvent and evade sound banking principles, regulatory statutes, and declared legislative policy.”

⁹¹ Eccles, *Beckoning Frontiers*, 444-445.

⁹² J. Leonard Townsend, Memorandum to Board of Governors, Oct. 31, 1947, Box 19, Folder 4, Item 15.

⁹³ Eccles’ investigation thus signified a pathbreaking effort as the applicability of antitrust law to banking, a regulated industry subject to its own unique forms of government oversight, was still *This work will appear in: Antimonopoly and American Democracy, edited by Daniel A. Crane and William J. Novak, forthcoming from Oxford University Press.*

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uncertain in the early 1940s. See Berle, “Banking Under the Antitrust Laws,” 589-590:

“Application of the antitrust laws to banking is a relatively new field of study...Until relatively recent times, many lawyers would have considered antitrust attack on practices and agreements with respect to banking operations as *prima facie* impossible.”

⁹⁴ George B. Vest, Memorandum to Chairman Eccles, August 19, 1944, Eccles Papers, Box 19, Folder 3, Item 1 (referencing discussion of Clayton Act proceedings against Transamerica in a Board meeting); see also J.P. Dreibelbis, Four Courses Open to Board, January 31, 1945, Eccles Papers, Box 19, Folder 3, Item 6.

⁹⁵ Tom C. Clark, Letter to Marriner Eccles, Oct. 31, 1945, Eccles Papers, Box 19, Folder 3, Item 8.

⁹⁶ Expansion of Transamerica Corporation’s Banking Interests 1942-1946, March 20, 1947, Eccles Papers, Box 19, Folder 4, Item 5 (showing Transamerica’s control over banks in a four state area increasing from 6.9% to 13.5% between 1942 and 1946); Eccles, *Beckoning Frontiers*, 450.

⁹⁷ Brinkley, *End of Reform*, 106, 265-268.

⁹⁸ Brinkley, 160-164. Debates over amending the antitrust laws began shortly after WWII, for example, and revolved around forthrightly political goals of preserving democracy through a decentralized economic structure. They culminated in the enactment of the Celler-Kefauver Act of 1950, which strengthened Section 7 and closed the asset acquisition loophole. See Daniel A. Crane, “Fascism and Monopoly,” *Michigan Law Review* 118 (2020): 1323-1325.

⁹⁹ See Wyatt Wells, *Antitrust and the Formation of the Postwar World* (New York: Columbia University Press, 2002), 137, 152-153 (noting the preoccupation with finance in particular: “The Americans led the way in striking against concentration in German finance...As General Clay described it, ‘six of the largest banks in Germany were dissolved and their branches authorized to operate only as separate institutions.’”)

¹⁰⁰ Board of Governors of the Federal Reserve System, Giannini Empire, January 28, 1946, Eccles Papers, Box 17, Folder 8, Item 5 (detailing Transamerica’s control of 426 banks and 1,045 branches in a five state area, amounting to 50.4% of all banking offices and 41.4% of all deposits in California, and 60.9% of all offices and nearly 79.7% of deposits in Nevada, among other statistics, though Transamerica had acquired many failing banks in Nevada at the behest of state banking authorities in the early 1930s).

¹⁰¹ Eccles to Tom C. Clark, Feb. 26th, 1947, Eccles Papers, Box 19, Folder 4, Item 2; *American Tobacco Co. v. United States*, 328 U.S. 781 (1946).

¹⁰² Eccles, *Beckoning Frontiers*, 450-453; Meltzer, *A History of the Federal Reserve*, 656.

Snyder was also accused of favoring Transamerica due to his friendship with the Gianninis and Sam Husbands, with whom he had worked at the Reconstruction Finance Corporation and who had gone on to a high-ranking position in Transamerica. See *Confirmation of Thomas B.*

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McCabe: Hearings Before the Committee on Banking and Currency, 80th Cong., 2nd Sess. (1948), 180-181 [hereinafter *McCabe Confirmation Hearings*]; Bonadio, *A.P. Giannini*, 289-291.

¹⁰³ Eccles, *Beckoning Frontiers*, 450.

¹⁰⁴ *McCabe Confirmation Hearings*, 188.

¹⁰⁵ Eccles, *Beckoning Frontiers*, 441; Meltzer, *A History of the Federal Reserve*, 656.

¹⁰⁶ Eccles, *Beckoning Frontiers*, 454.

¹⁰⁷ *Transamerica Corp. v. Board of Governors of the Federal Reserve System*, 206 F.2d 163 (3d Cir. 1953), 169: “The Board’s conclusion of a tendency to monopoly in the five-state area, therefore fails for want of a supporting finding that the five states constitute a single area of effective competition among commercial banks and flies in the face of its own finding that the local community is the true competitive banking area.”

¹⁰⁸ *Id.*

¹⁰⁹ *Bank Holding Legislation: Hearings on S. 76 and S. 1118 Before the Committee on Banking and Currency*, 83rd Cong., 1st Sess., Part 2 (1953), 238-244 (inserting into the Congressional record the entire opinion in *Transamerica Corp. v. Board of Governors of the Federal Reserve System*)

¹¹⁰ Gerald C. Fischer, *The Modern Bank Holding Company: Development Regulation, and Performance* (Philadelphia: Temple University Press, 1986), 22.

¹¹¹ Eccles to Rep. Brent Spence, April 23, 1946, Eccles Papers, Box 17, Folder 9, Item 6; Eccles to Sen. Charles Tobey, March 10, 1947, Eccles Papers, Box 17, Folder 11, Item 11; Eccles to Sen. Charles Tobey, June 13, 1947, Eccles Papers, Box 19, Folder 4, Item 11.

¹¹² See S. Rep. No. 84-1095 (1955), 3-4 for legislative history of bills introduced.

¹¹³ 101 Cong. Rec. 8034 (1955) (Statement of Rep. Marshall)

¹¹⁴ See Carroll F. Byrd to Marriner Eccles, April 15, 1946, Eccles Papers, Box 17, Folder 9, Item 4: “I wish to... call your attention...to the urgency, as far as the Independent Bankers Association of the Twelfth District is concerned, of your introduction of the proposed anti-bank holding company legislation prior to the meetings of the Executive Counsel...representatives from all seven Western states will be in attendance...and they are planning to lay the groundwork for submitting the proposed bill to be so introduced to the consideration of the various Conventions of State Bankers Associations throughout the United States.” For newspaper coverage, see for example, “Bill Would Break Banking Monopoly,” *New York Times*, Jan. 15, 1941; “Giannini Empire Declared Illegal,” *New York Times*, June 14, 1951.

¹¹⁵ *Control of Bank Holding Companies, Transcript of Proceedings Before the Subcommittee of the Senate Committee on Banking and Currency, Executive Session*, 84th Cong., July 19th (1955), 2; S. Rep. No. 84-1095 (1955), 3-4.

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¹¹⁶ George F. Frates, Washington Representative, National Association of Retail Druggists to Sen. J.W. Fulbright, June 29, 1955, National Archives, R.G. 46, 84th Cong., Committee on Banking and Currency, Sen. 84A-F4, Box 729, Folder 3.

¹¹⁷ H.A. Lewis, Secretary-Treasurer, Wisconsin Retail Hardware Association to Sen. J.W. Fulbright, May 25, 1955, National Archives, R.G. 46, 84th Cong., Committee on Banking and Currency, Sen. 84A-F4, Box 728.

¹¹⁸ Ed. Wimmer, Vice President, National Federation of Independent Business to Sen. J.W. Fulbright, July 8, 1955, National Archives, R.G. 46, 84th Cong., Committee on Banking and Currency, Sen. 84A-F4, Box 729, Folder 3.

¹¹⁹ Hofstadter, “What Happened to the Antitrust Movement?,” 188, 224: “Presumably the historians drop the subject of antitrust at or around 1938 not because they imagine that it has lost its role in our society but because after that point it is no longer the subject of much public agitation—in short, because there is no longer an antitrust movement.”

¹²⁰ See *Control and Regulation of Bank Holding Companies: Hearings on H.R. 6504 Before the House Committee on Banking and Currency, 82nd Cong., 2nd Sess. (1952)*, 1 [hereinafter *1952 Hearings*]

¹²¹ See Brandeis, *Other People’s Money*, 6: “The development of our financial oligarchy followed, in this respect, lines with which the history of political despotism has familiarized us: usurpation – proceeding by gradual encroachment rather than by violent acts; subtle and often long concealed concentration of distinct functions, which are beneficent when separately administered, and dangerous only when combined in the same persons... The makers of our own Constitution had in mind like dangers to our political liberty when they provided so carefully for the separation of governmental powers.”

¹²² *Bank Holding Bill: Hearings On S. 2318 Before a Subcommittee of the Senate Committee on Banking and Currency, 81st Cong., 2nd Sess. (1950)*, 99 (Statement of Sen. Cain) [hereinafter *1950 Hearings*]; see also S. Rep. No. 84-1095 (1955), 1: “The dangers accompanying monopoly in this field are particularly undesirable in view of the significant part played by banking in our present national economy.”

¹²³ 102 Cong. Rec. 6857 (1956) (Statement of Sen. Douglas).

¹²⁴ 101 Cong. Rec. 3821-3822 (1955) (Statement of Rep. Rayburn reprinted in Congressional record).

¹²⁵ 102 Cong. Rec. 6857 (1956) (Statement of Sen. Douglas)

¹²⁶ 101 Cong. Rec. 7960 (1955) (Statement of Rep. Celler)

¹²⁷ H. Rep. 84-609 (1955), 2.

¹²⁸ 102 Cong. Rec. 6857 (1956) (Statement of Sen. Douglas): (“...for many years now there have been virtually only five banks that mattered in England and Wales...”). While England’s banks were cartelized and dominated by the Big Five, which facilitated its nationalization of certain

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industries, only the Bank of England was formally nationalized. See Calomiris and Haber, *Fragile by Design*, 137-139.

¹²⁹ *1950 Hearings*, 216.

¹³⁰ *1952 Hearings*, 32.

¹³¹ 101 Cong. Rec. 8021 (1955).

¹³² In the 1955 Senate hearings, for example, Hitler's rise to power was again linked to German financial-industrial monopolies, with the representative of the Independent Bankers Association of America stating, "Germany...had got down to 3 banks...Not only had the banking resources been concentrated into those few hands but they had gone out...and purchased control of various types of industries in Germany...So it was a very easy matter for Mr. Hitler to gain control, as a former German banker told me several years ago. All he had to do was arrest 3 bank presidents and put his men in and he had control over practically all the banking and the finance and the industry of Germany. The same is true in Italy, Japan, France." *1955 Senate Hearings*, 109 (Statement of W.J. Bryan, Independent Bankers Association of America).

¹³³ "Even though you may point to some bank holding companies that have done a moderately good business, it is the opportunity, it is the power that is given, that is dangerous." 101 Cong. Rec. 8021 (1955) (Statement of Rep. Spence). When questioned in the 1955 Senate hearings on whether banks controlled by bank holding companies had favored commercial affiliates, J.L. Robertson of the Federal Reserve asserted that he could not "vouch for" a particular instance, but urged Congress to "take into consideration the potentialities involved." *1955 Senate Hearings*, 64-65 (Statement of J.L. Robertson).

¹³⁴ *1950 Hearings*, 61-62, 67.

¹³⁵ *1950 Hearings*, 63.

¹³⁶ H. Rep. 84-609 (1955), 14-15.

¹³⁷ As Douglas declared in the 1956 Senate debates, "We who are struggling to prevent the concentration of financial power from becoming greater are carrying on the fighting tradition of Andrew Jackson who wanted a competitive and a free America, and not one dominated by a relatively small group of financiers and industrialists," 102 Cong. Rec. 6857 (1956) (Statement of Sen. Douglas). See Bank Holding Company Act of 1956, Pub. L. No. 84-511, § 3(d), 70 Stat. 134, 135 (1956).

¹³⁸ Hofstadter, *The Paranoid Style*, 3; see *1947 Hearings*, 65 (Statement of Ellery C. Huntington, Jr.) (likening the bank holding company legislation to the totalitarian actions of Tito, which he witnessed in his service during WWII in Yugoslavia: "The bill I think is authoritarian in character, more so as I have stated than any measure I ever saw prepared by Tito and his lieutenants."); see also A.P. Giannini to Marriner Eccles, 1942, Eccles Papers, Box 20, Folder 7, Item 7 (denouncing the efforts of the Federal Reserve to curb bank holding company expansion through administrative discretion: "It seems inappropriate that governmental agencies should at

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this time be reaching out to usurp the legislative prerogatives...If you do not like the existing laws, let us try to change them by constitutional means. We should not in these times resort to Nazi-Fascist methods of dictatorship.”).

¹³⁹ See *1947 Hearings*, 21 (Statement of Marriner Eccles): “...we are not proposing here...and see no use for proposing the death sentence or what may be known as the freeze. So we are treating this on a regulatory basis just like banks.”

¹⁴⁰ S. Rep. No. 84-1095 (1955), 1.

¹⁴¹ *1950 Hearings*, 224 (Statement of J. Leonard Townsend)

¹⁴² The BHCA required all bank holding companies to register with the Federal Reserve and to seek approval for any future bank acquisitions. In approving bank acquisitions, the Board was to take into consideration five factors, including the competitive effects of the acquisition, with little direction beyond the vague guidelines of the statute. The Board also gained the power to examine bank holding companies and each of their subsidiaries, and to oversee the separation of banking and commerce by determining what activities of holding companies were closely related to banking. See Bank Holding Company Act of 1956, Pub. L. No. 84-511, 70 Stat. 133 (1956).

¹⁴³ Heller and Fein, *Federal Bank Holding Company Law*, 4.07.

¹⁴⁴ The exception for one-bank holding companies was controversial and influenced by several factors, including Congressional preoccupation with large bank holding company systems, the difficulty of enacting legislation that would encompass a vast number of bank holding companies, and the influence of the unit banker, small business constituency that wanted to preserve the ability to combine banking and commerce in their localities. See Omarova and Tahyar, “That Which We Call A Bank,” 137-138.

¹⁴⁵ An Act to Amend the Bank Holding Company Act of 1966, Pub. L. No. 89-485, 80 Stat. 236 (1966); Bank Holding Company Amendments of 1970, Pub. L. No. 91-607, 84 Stat. 1760 (1970).

¹⁴⁶ See Crane, “All I Really Need To Know About Antitrust,” 2038; Hawley, *The New Deal and the Problem of Monopoly*, 494.

¹⁴⁷ Brinkley, *End of Reform*, 10-11.