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The Holding Company

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legislation rather than to the legislator or the technician. It undertakes neither a completeness of scope nor an exhaustiveness of treatment, but within the limits of its purpose it accomplishes an admirable result. The student, however, must still search for an adequate treatment of the legislative process as such and the study of the technique of legislation, not alone as the problem of regulation, but also as the necessity for a presentation of statutory material to the legislature itself which will facilitate the legislative consideration of the issues of public policy involved and will eliminate the practical obstacles of verbal obscurity and faulty technique. This still remains to be done.

—GEORGE A. SHIPMAN.

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THE HOLDING COMPANY. By James C. Bonbright and Gardner C. Means. New York: McGraw-Hill Company. 1932. Pp. xiii, 398.

Before New Jersey led the day in 1880 by amending her general corporation law to authorize corporations to hold shares in other corporations the only holding companies of any significance were created by special legislation, principally in Pennsylvania.¹ In the "trust-conscious" days around the turn of the century the device passed the experimental stage as a form of business combination. Since the war it has come to dominate not only the utility field but a majority of the large industrial combinations of the country. Its latest conquest has been in the field of commercial banking.

This development is a matter of fundamental economic and legal significance. ". . . the holding company has become the greatest of the modern devices by which business enterprises may escape the various forms of social control that have been developed, wisely or unwisely, as a means of limiting the vast power of the great captains of industry."² The ordinary citizen doubtless senses this point in a vague fashion and looks upon the holding company as a heartless, ununderstandable business monster capable of no good. Nothing could be more timely than a dispassionate description of the device in theory and operation and an analysis of the controversial phases of the subject in terms of

¹ See chapter 3.

² P. 7.

the public interest. Messrs. Bonbright and Means have contributed substantially to the satisfaction of this need. Their book is chiefly informative but the reflective chapters of the volume are quite meritorious.

In a preliminary chapter on the significance of the holding company the authors wisely define "holding company" to include minority stock ownership where it is sufficient "materially to influence" the management of the corporation. They observe a distinction, of great importance in the utility field, between a pure holding company and a parent operating company which is in fact also a holding company. In a brief, preliminary way the business objects of the device are described as centralized control of operating companies, unified financing for the combined companies, capital inflation and pyramided stock control.

The authors find that direct fusion through consolidation, merger or purchase of assets is the only serious rival of the holding company as a form of business combination. As between the holding company and fusion the general business advantages probably weigh with the former though ultimately in every case it is a question of which device is relatively better adapted to the character and operation of the given enterprise. In the public utility field especially, however, ulterior considerations such as freedom from public regulation and promotion profits have too frequently controlled the choice.

The bulk of the volume is devoted to a separate consideration of the industrial, the public utility, the railroad and the banking holding company. Without ignoring the importance of the subject the authors have dealt with the bank holding company only by way of completing the picture.³ In a span of twenty-four pages the reader is told of the career of the device in the industrial field. Since the war it has risen to a position of dominance. The device has served not only as a highly useful preliminary step in effecting complete fusion but also as the permanent form of organization in the larger industrial combinations. The authors stress also the use of the industrial holding company to facilitate administration, the operating companies serving the function of decentralization and the holding company that of coordination. But extended treatment of the subject was not attempted because the device presents no peculiar social problems unknown to other

³ On the bank holding company see CARTINHOOR, BRANCH, GROUP AND CHAIN BANKING (1931) *passim*.

forms of combination,⁴ and because the authors are chiefly concerned with the utility holding company.

The meat of the volume is found in the chapters upon the public utility and railroad holding companies. The reader is first grounded in the subject by an account of the history and structure of the major gas and electric and railroad holding companies. Prominent in this descriptive material appears the fact that while the early holding companies developed out of the expansion of operating enterprises much as have done the major industrial holding companies the mushroom growth of utility holding companies, largely dominated by investment bankers, which sprouted in the boom years of the last decade has involved an inverse type of expansion in which, building from the top down, highly artificial and inflated capital structures have been used to acquire, often at excessive prices, shares in established operating companies without any prospect of rational integration of properties.

The problem of regulation is approached through a chapter elaborating, at greater length than necessary to convince the average reader, the answers to the contention that a holding company is not engaged in a public utility enterprise and thus is not and should not be subjected to regulation. The collapse of the Insull system is a convincing example of the dangers not only to the investor but to the satisfactory performance of utility services of the unregulated mushroom type of holding company system that has arisen in recent years. And yet the problem of social control is so great that no state as yet has attempted or public service commission recommended complete direct regulation of the holding company. New York and Massachusetts are making motions in that direction. A control which did not extend to security issues and inter-corporate dealings within the system such as service contracts would be entirely inadequate. Since several of the larger systems control operating companies in half or more of the states of the union this reviewer is inclined to accept the conclusion of the authors that federal regulation alone would be effective. Whether the commerce power of Congress can be stretched to fit the situation insofar as intrastate operation are involved is very doubtful. This difficulty would not, of course, block the way as to railroads and the authors recommend that the

⁴ Thus pyramided stock control is exceptional in industrial holding company systems. See p. 79 *et seq.*

railroad holding company be placed under the jurisdiction of the Interstate Commerce Commission.

The pure holding company was of little significance in the railroad field before the Transportation Act of 1920. It is still far from a dominant influence. Before 1920 parent operating companies were effective as holding companies for purposes of combination. That Act, however, gives the Interstate Commerce Commission jurisdiction over consolidation of railroad companies by stock ownership. The object of a holding company like the Van Sweringen's Alleghany Corporation is to avoid such regulation. Thus only more extensive federal control of holding companies will enable the government to work out its own plan of consolidation of railroad systems.

The suggestion by the authors of the danger to the investor and the service of "liberal" incorporation laws of states like Delaware is most cogent. Public service commissions cannot assume the task of prescribing the provisions of corporate charters needed to protect investors from exploitation possible where a holding company incorporates in Delaware. To meet this situation federal incorporation is suggested for railroad holding companies. As for ordinary utilities protection of investors and ultimately of the consumer would require a control over holding companies extending to the choice of a state of incorporation.

The holding company, then, is shown to be a highly useful device, capable, like other human tools, of abuse. Evil consequences of its unregulated use have already appeared. Can the device be so harnessed by instruments of social control as to preserve its usefulness and minimize the abuses which injure the investor and the consumer?⁵ Messrs. Bonbright and Means have not only clearly presented the problem but have made stimulating suggestions as to the way out.

The volume is enriched by appendices containing a case study of suits by minority stockholders and creditors of subsidiaries alleging mismanagement by holding or parent companies by Mr. Maurice Mound of the New York Bar and an excellent bibliography.

—JEFF B. FORDHAM.

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⁵ On the problem of regulation see also CLAY, REGULATION OF PUBLIC UTILITIES (1932), p. 227 *et seq.* esp.