BOOK REVIEWS

legislation rather than to the legislator or the technician. It under-
takes 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 regula-
tion, but also as the necessity for a presentation of statutory mate-
rial 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.

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THE HOLDING COMPANY. By James C. Bonbright and Gardi-
xiii, 398.

Before New Jersey led the day in 1880 by amending her gen-
eral 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 com-
bination. 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 commer-
cial 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 devel-
oped, wisely or unwisely, as a means of limiting the vast power
of the great captains of industry."² The ordinary citizen doubt-
less senses this point in a vague fashion and looks upon the hold-
ing company as a heartless, understandable business monster
capable of no good. Nothing could be more timely than a dis-
passionate 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. 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

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8 On the bank holding company see Cartinhour, Branch, Group and Chain Banking (1931) passim.
forms of combination, 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

*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 regula-
tion. Thus only more extensive federal control of holding com-
panies will enable the government to work out its own plan of con-
solidation 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 as-
sume 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 situa-
tion federal incorporation is suggested for railroad holding com-
panies. As for ordinary utilities protection of investors and ul-
timately 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 conse-
quences of its unregulated use have already appeared. Can the
device be so harnessed by instruments of social control as to pre-
serve its usefulness and minimize the abuses which injure the in-
vester and the consumer? 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 sub-
sidiaries 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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*On the problem of regulation see also CLAY, REGULATION OF PUBLIC
UTILITIES (1932), p. 227 et seq. esp.