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Richard W. Edwards Jr.

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Many Splendored Possibilities or Hobson's Choice? — Who Made the Policies and What Are the Assumptions

*Richard W. Edwards, Jr.**

Perhaps many of you know the story of "Hobson's choice." There was a stablemaster named Hobson some 400 years ago. Whenever anyone came to rent a horse, Hobson gave the person only one choice — the horse nearest the stable door. The customer had no choice. Hobson had a firm unwaivering policy, but he could of course have had a different one.

Who holds the options on the development of Canadian energy resources? The vast bulk of energy resources both in Canada and the United States are on public lands. In the United States over half of remaining oil and gas reserves are on Federal lands; 40% of coal and uranium reserves and 80% of oil shale are on Federal lands.¹ In Canada the percentages of energy resources on dominion or province lands are even greater.² It would seem that ownership of resources should give governments both an incentive for wise energy policies and the leverage to carry them out.

I wish to bring to your attention two barriers to the development and implementation of a comprehensive energy policy for Canada, and the United States. The first barrier exists in the fragmentation of responsibilities among a bewildering array of governmental agencies in both the United States and Canada. The second barrier to a comprehensive policy is an intellectual one. Certain assumptions about energy resource needs and supplies tend to be widely shared and to guide policy. Policies based on these assumptions carry risks that should be identified. More about that later.

* Associate Professor of Law, University of Toledo College of Law.

The address is repeated substantially as it was delivered at the Conference. Events relevant to the subject of the paper that occurred subsequent to March 4, 1972, are noted in the footnotes.

¹ *Clean Energy: Message from the President of the United States transmitting a Program to Insure an Adequate Supply of Clean Energy in the Future*, House Doc. 92-118, 92d Cong., 1st Sess. (June 4, 1971), p. 6, reprinted in *The President's Energy Message: Hearing before the Committee on Interior and Insular Affairs*, U.S. Senate, 92d Cong., 1st Sess. (June 15, 1971), p. 265 (hereafter cited as "Hearing on The President's Energy Message").

² For example, 90 per cent of the oil lands in the Province of Alberta are owned by the province.

Many knowledgeable people may not be familiar with the legal regimes that regulate energy resource development in Canada and in the United States. In this paper I shall sketch, with a very broad brush, the nature of these legal regimes. Knowledge of these regimes is critical to the appraisal of energy policies and proposals for changes. We shall see that in both Canada and in the United States the responsibility for the formulation of energy policy and, particularly the implementation of policy, is fragmented among an array of agencies. As long as the present dispersal of regulatory functions continues, it will be very difficult, if not impossible in practice, to implement a coherent energy policy.

Let us take a look at the agencies. In both Canada and the United States atomic energy policy is separated out to be dealt with by special agencies, the Atomic Energy Commission in the United States and the Atomic Energy Control Board in Canada. Both of these bodies have very broad mandates for the development of atomic energy and its regulation. The agencies have traditionally been given sizeable budgets under which to operate.³

In the United States there is no agency that parallels the Atomic Energy Commission with a similar broad mandate for the development and regulation of fossil fuels and other energy resources. We shall discuss later the National Energy Board in Canada which has certain limited but quite significant powers and responsibilities.

In the United States many of the key decisions affecting the development of oil, gas, and coal are made by the governments of the several states. For example, state governments enact property taxes. These taxes can have serious effects on the development of resources. In many states property taxes by their magnitude may force the owner of coal-bearing lands, for example, to exploit the coal to the full or forfeit his land to the state for failure to pay taxes.

In addition to property taxes, state regulation can take other forms. In Texas and Louisiana, for example, state regulatory agencies control the rate of oil production. State public utility commissions review prices and service in the delivery of natural gas. States also have health and safety regulations that affect the economics of resource exploitation.⁴

³ Canada: ATOMIC ENERGY CONTROL ACT, R.S.C. 1952, ch. 11; amended 1953-54, ch. 40, sec. 15, and ch. 47; 1966-67, ch. 25, sec. 41. United States: ATOMIC ENERGY ACT OF 1952, 42 U.S.C. §§ 2011 et seq. (1970 ed.). ATOMIC ENERGY COMMISSION APPROPRIATIONS ACT, P.L. 92-314, 86 STAT. 220 (1972); PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ATOMIC ENERGY COMMISSION APPROPRIATIONS ACT, P.L. 92-405, 86 STAT. 621 (1972).

⁴ For general discussions of state policies, see Public Land Law Review Commission,

In Canada, the provincial governments have an even greater impact on energy resource policy than do the states in the United States. Provinces not only tax and regulate activities on private land, but also own large acreages. Under the British North America Act, with which all Canadians here are familiar, ownership of Crown lands was retained by the provinces when they entered the confederation. Thus, the provinces own vast amounts of land which they dispose of by permit and lease — and, of course, the provinces set the terms of the leases.⁵

In addition to provincial lands, there are substantial acreages in Canada, principally in the Northwest Territories and in the off-shore areas, over which the central Dominion Government maintains title and controls exploitation.⁶

Having noted the divisions of responsibility between the federal government and states in the United States and between the dominion and provinces in Canada, let us turn to the bodies at the central government levels bearing responsibility for energy policy.

Thirty federal agencies or offices within the United States have responsibility for energy policy determinations.⁷ Of these the De-

State Land Resources and Policies (1970); and Flittie, *The Law of Oil and Gas*, Chapter 31 (1966). The CONNALLY HOT OIL ACT prohibits the interstate transportation of oil produced in excess of allowables fixed by state regulation, 15 U.S.C. § 715 (1970 ed.).

Congress by joint resolution of June 30, 1972, consented to the extension until September 1, 1974, of the INTERSTATE COMPACT TO CONSERVE OIL AND GAS, P.L. 92-322, 86 STAT. 383 (1972).

⁵ As noted earlier, approximately 90 per cent of the oil lands in the Province of Alberta are owned by the province. Hodgson, *Digest of Mineral Laws of Canada* (19) summarizes the legal regimes affecting minerals in the provinces.

⁶ PUBLIC LANDS GRANTS ACT, R.S.C. 1952, ch. 224; amended 1959, ch. 52; 1967-68, ch. 32. TERRITORIAL LANDS ACT, R.S.C. 1952, ch. 263; amended 1955, ch. 17; 1957, ch. 36; 1966-67, ch. 25; 1967-68, ch. 32. ACT RESPECTING THE PRODUCTION AND CONSERVATION OF OIL AND GAS, 17-18 ELIZABETH II, ch. 48 (1969); 18-19 ELIZABETH II, ch. 43 (1970). Canada Oil and Gas Land Regulations.

⁷ In response to a survey conducted by the Senate Committee on Interior and Insular Affairs, the following agencies and offices indicated that their function resulted in the determination of energy policies:

- Alaska Power Administration
- Atomic Energy Commission
- Bonneville Power Administration
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Bureau of Outdoor Recreation
- Bureau of Reclamation
- Council on Environmental Quality
- Defense Electric Power Administration
- Department of Commerce
- Department of Defense
- Department of State
- Environmental Protection Agency

partment of Defense, the Department of the Interior, the Federal Power Commission, and the inter-agency Oil Policy Committee play particularly important roles in energy resource determination.

The Department of Defense is mentioned first, because the articulation of public policy on energy resources by that department may be persuasive with other bodies such as the Department of the Interior, the Federal Power Commission, and even state agencies.

The Department of the Interior is responsible for the exploitation of energy resources on federal land — particularly the large acreages in the western mountain states and the off-shore areas. The department has not sought or viewed itself as possessing responsibility for developing or implementing a policy on exploitation of energy resources on state-owned or privately-owned land.⁸ The Of-

Federal Power Commission
 Federal Trade Commission
 Forest Service
 Geological Survey
 National Aeronautics and Space Administration
 National Science Foundation
 Office of Coal Research
 Office of Emergency Preparedness
 Office of Minerals and Solid Fuels
 Office of Oil and Gas
 Office of Science and Technology
 Oil Import Administration
 Rural Electrification Administration
 Southeastern Power Administration
 Southwestern Power Administration
 Tennessee Valley Authority⁷

For purposes of the questionnaire, energy policy was defined as:

"all basic legal authority which authorizes programs and/or policies designed to assist, promote, regulate or to impose constraints on the range of alternatives which local, State, Federal and private decision-makers may consider in their effort to meet existing and future growing energy demands."

Senate Committee on Interior and Insular Affairs, *Goals and Objectives of Federal Agencies in Fuels and Energy*, Committee Print, 92d Cong., 1st Sess. (1971), pp. 3-4.

In addition, the federal tax provisions regarding depletion allowance affect the economic incentives for mineral exploration. See 26 U.S.C. Sec. 611 *et seq.* (1970 ed.).

⁸ The Department of Interior has sponsored research, beneficial to all in the industry, on improved recovery methods and energy conversion techniques. It has not sought to regulate the volume of oil production or coal mining on private lands. See statement of Rogers C. B. Morton, Secretary of the Interior, in "Hearing on the President's Energy Message," *supra* note 1, at 85-104.

Acts of Congress related to energy policy administered by the Department of the Interior are compiled in Titles 30 and 43 of the U.S. Code. These Titles contain many separate acts often administered by separate agencies within the Department of the Interior. While generally the Department of the Interior is responsible for the development of resources on public lands, the Secretary of the Navy has exclusive jurisdiction and administrative power over leases on Naval Petroleum Reserves. 10 U.S.C. §§ 7428 *et seq.* (1970 ed.).

For a general discussion of the responsibilities of the Department of the Interior, see Senate Committee on Interior and Insular Affairs, *A Review of Energy Resources of the Public Lands Based on Studies Sponsored by the Public Land Law Review Commis-*

office of Oil and Gas within the Department of the Interior administers quotas on oil imports into the United States.⁹ The Director of the Office of Emergency Preparedness plays a critical role in setting the level of import quotas.¹⁰

The Federal Power Commission in the United States is essentially a passive body that responds to proposals put to it. It issues certificates of convenience and necessity for pipe lines and electric power grids, and has a rate-making function. By saying that the Federal Power Commission is a passive body, I do not mean to say that it is not a tough body for a gas or electric company to deal with. I mean simply that the Commission rarely takes the initiative to develop a national long-term coherent energy policy and to seek means to bring it about. Rather it waits for requests from a utility company to run a pipe line here or a pipe line there or import so much natural gas. Of course, in the context of dealing with many applications, a policy that effects those applications may be discerned.¹¹

The legal regimes at the national level in Canada appear to this observer almost as complex as those in the United States. The De-

sion, Committee Print, 92d Cong., 1st Sess. (1971); Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and to the Congress* (1970); Public Land Law Review Commission, *Energy Fuel Resources of the Public Lands*, Vols. I-VI (1970); and Public Land Law Review Commission, *Study of the Outer Continental Shelf Lands of the United States*, Vols. I-VI (1969).

⁹ A presidential proclamation of 1959 limited imports of gas and oil into the United States. Imports are handled under licenses issued by the Office of Oil and Gas. The Oil Import Appeals Board reviews grants, revocations, and suspensions of licenses. PROCLAMATION 3279, 19 U.S.C. § 1862 (1970 ed.). Department of the Interior Regulations, as revised November 5, 1971, implementing the proclamation appears in Chapters X and XI of Title 32A of the Code of Federal Regulations (1972).

¹⁰ 19 U.S.C. § 1682 (1970 ed.). On February 20, 1970, the President charged the Director of the Office of Emergency Preparedness with "the policy direction, coordination and surveillance" of the oil import program. Responsibility for the administration of the program remained in the Department of the Interior. The President further established an inter-agency Oil Policy Committee, chaired by the Director, to provide advice on oil policy matters.

¹¹ The basic statutory provisions respecting the Federal Power Commission appear at 15 U.S.C. §§ 717 et seq. and 16 U.S.C. §§ 791 et seq. (1970 ed.). Much of current controversy centers on natural gas pricing decisions of the Federal Power Commission. Artificially low prices for the consumer have had the effect of discouraging investment to develop additional supplies. One seldom sees in the debates any distinction between identifying reserves to be exploited only many years hence to meet long-term future needs and identifying reserves for immediate exploitation-consumption. Spokesmen for private companies, with near and medium term balance sheets on their minds, tend to set the terms of debate through their public statements. All options are not considered. See report of the conference on energy policy sponsored by the Conference Board, Inc., in New York in April 1972, 4 *National Journal* 747 (April 29, 1972). The President appears to be prepared to adopt the industry "solution" of stimulating extraction of oil and gas. See Corrigan, "Energy Report/Administration Readies 1973 Program to Encourage More Oil, Gas Production," 4 *National Journal* 1621 (October 21, 1972).

partment of Energy, Mines and Resources is a counterpart to the U.S. Department of the Interior. It has responsibility for lease arrangements on dominion lands such as off-shore areas and also in the Northwest Territories.¹²

The National Energy Board, a seven-member board, shares some of the same characteristics as the U.S. Federal Power Commission. In terms of its powers and the Canadian setting, the National Energy Board is the more powerful agency. Like the Federal Power Commission, the Board approves the construction of interprovincial and international pipelines and international electric power transmission lines, and it issues certificates of convenience and necessity for their operation.

The act establishing the National Energy Board provides in Part VI:

Part VI

Exports and Imports

§ 81. [N]o person shall export any hydrocarbons or power or import any hydrocarbons except under the authority of and in accordance with a license issued under this part.

§82. (1) . . . [T]he Board may issue licenses . . .

- (a) for the exportation of power or hydrocarbons, and
- (b) for the importation of hydrocarbons,
- (2) A license issued under this Part may be restricted or limited as to area, quantity or time or as to class or kind of products. . . .

§ 83. Upon an application for a license the Board shall have regard to all considerations that appear to it to be relevant and, without limiting the generality of the foregoing, the Board shall satisfy itself that

- (a) the quantity of hydrocarbons or power to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard, in the case of an application to export hydrocarbons, to the trends in the discovery of hydrocarbons in Canada; and
- (b) the price to be charged by an applicant for hydrocarbons or power exported by him is just and reasonable in relation to the public interest.¹³

From a long-term policy point of view the Canadian National Energy Board is probably a key institution. But we have to bear in mind the powers of the provinces as noted earlier.

¹² The responsibilities of the Department of Energy, Mines and Resources are set forth in the Government Organization Act, 14-15 Elizabeth II, ch. 25 (1966-67); amended 1967-68, ch. 16, sec. 13; 1968-69, ch. 28, sec. 105. Acts administered by the department are listed in Part V of Schedule A of the Act. See also footnote 6.

¹³ 7-8 ELIZABETH II, ch. 46 (1959); amended 1970, ch. 65.

I understand that there is a major study of energy policy underway in Canada and that it will address issues of governmental organization. To my knowledge the study has not yet been published.¹⁴ President Nixon in his Energy Message to Congress of June 1971 recommended that federal responsibilities be centered in an Energy Administration in a new Department of Natural Resources. However, in his message the President did not address the question of federal-state relationships.¹⁵

¹⁴ Gordon M. McNabb, Assistant Deputy Minister (Energy Development) of Energy, Mines and Resources; made the following statement in a letter to the author dated March 14, 1972:

"You asked for information concerning a Canadian Government study of energy policy. There is a study underway but it is being done within the Government and no public information is available at this particular time."

¹⁵ The full text of the portion of President Nixon's Energy Message dealing with organizational problems follows:

"But new programs alone will not be enough. We must also consider how we can make these programs do what we intend them to do. One important way of fostering effective performance is to place responsibility for energy questions in a single agency which can execute and modify policies in a comprehensive and unified manner.

"The Nation has been without an integrated energy policy in the past. One reason for this situation is that energy responsibilities are fragmented among several agencies. Often authority is divided according to types and uses of energy. Coal, for example, is handled in one place, nuclear energy in another — but responsibility for considering the impact of one on the other is not assigned to any single authority. Nor is there any single agency responsible for developing new energy sources such as solar energy or new conversion systems such as the fuel cells. New concerns — such as conserving our fossil fuels for non-fuel uses — cannot receive the thorough and thoughtful attention they deserve under present arrangements.

"The reason for all these deficiencies is that each existing program was set up to meet a specific problem of the past. As a result, our present structure is not equipped to handle the relationships between these problems and the emergence of new concerns.

"The need to remedy these problems becomes more pressing every day. For example, the energy industries presently account for some 20 percent of our investment in new plant and equipment. This means that inefficiencies resulting from uncoordinated government programs can be very costly to our economy. It is also true that energy sources are becoming increasingly interchangeable. Coal can be converted to gas, for example, and even to synthetic crude oil. If the Government is to perform adequately in the energy field, then it must act through an agency which has sufficient strength and breadth of responsibility.

"Accordingly, I have proposed that all of our important Federal energy resource development programs be consolidated within the new Department of Natural Resources.

"The single energy authority which would thus be created would be better able to clarify, express, and execute Federal energy policy than any unit in our present structure. The establishment of this new entity would provide a focal point where energy policy in the executive branch could be harmonized and rationalized.

"One of the major advantages of consolidating energy responsibilities would be the broader scope and greater balance this would give to research and development work in the energy field. The Atomic Energy Commission,

Assumptions Underlying U.S. Energy Policy

We shall now examine some of the assumptions that appear to underlie United States policy respecting energy resources. Everyone appears to agree that the United States will require vast amounts of energy over as long a time period as one can project. U.S. energy consumption per capita has almost doubled since 1940. A typical estimate projects energy requirements to increase at a rate of 3½ percent per year over the next 30 years.¹⁶ How is the energy demand to be met?

One assumption of United States policy — whether articulated expressly or by governmental actions — is that in about 30 years — by 2000 — nuclear power plants will generate half of the nation's total electric power.¹⁷ It is predicted that fifty years from now — about 2020 — controlled nuclear fusion (the same method of power generation as the sun and the hydrogen bomb) will become the dominant source of power. It is also hoped that by that time solar power will be a significant source of energy and that power generation from fossil fuels will be much more efficient.¹⁸ In contrast,

for instance, has been successful in its mission of advancing civilian nuclear power, but this field is now intimately interrelated with coal, oil and gas, and Federal electric power programs with which the Atomic Energy Commission now has very little to do. We believe that the planning and funding of civilian nuclear energy activities should now be consolidated with other energy efforts in an agency charged with the mission of insuring that the total energy resources of the nation are effectively utilized. The Atomic Energy Commission would still remain intact, in order to execute the nuclear programs and any related energy research which may be appropriate as part of the overall energy program of the Department of Natural Resources.

"Until such time as this new Department comes into being, I will continue to look to the Energy Subcommittee of the Domestic Council for leadership in analyzing and coordinating overall energy policy questions for the executive branch." *Hearing on The President's Energy Message*, 270-271.

See also President's Advisory Council on Executive Organization, *Memorandum for the President: The Establishment of a Department of Natural Resources* (May 12, 1970). The Advisory Council recommended a limited consolidation of federal agencies that sell energy or are engaged in research: the Rural Electric Power Administration, the Bureau of Mines, the Geological Survey, the Office of Coal Research, the civilian energy programs *but not regulatory functions* of the Atomic Energy Commission. The independent status of the Atomic Energy Commission would otherwise not be affected. The Federal Power Commission would not be included in the consolidation, nor would programs of the Department of Defense.

¹⁶ See Faltermayer, "The Energy 'Joyride' Is Over," *Fortune* (Sept. 1972), pp. 99-101; and Statement of Rogers C. B. Morton, Secretary of the Interior, *Hearing on The President's Energy Message*, *supra* note 1, at 85-87.

¹⁷ Statement of Glenn T. Seaborg, Chairman, Atomic Energy Commission, *Hearing on the President's Energy Message*, *supra* note 6 at 106, 108. The A.E.C. predicts that the liquid Metal Fast Breeder Reactor will be commercially demonstrated before 1980 and that by 2000 it will be the "workhorse" of the electric power industry.

¹⁸ Controlled nuclear fusion is still in the laboratory stage. It would not present

a minority of experts predict that the United States will still be dependent on non-nuclear fuels — oil, gas, and coal — for as much as 75 percent of its energy needs in the year 2000.¹⁹ One's perspective on future energy supplies tends to be determined by his faith in technology.

The optimistic policy perspective has several consequences. One, we must take all steps necessary to assure that very large-scale atomic energy does in fact develop within the projected time-frame. Secondly, steps must be taken to assure an adequate supply of fossil fuel resources for the next 40-50 years. One further consequence, not required by the stated premises but evident in government action, is that government officials and officers of private companies (most of whom are optimists) do not seem overly concerned if energy resources in the sense of oil and gas reserves are seriously depleted at the end of 40-50 years because presumably other sources of energy will be coming on stream. I simply wish to expose this assumption in governmental and oil company policy so that its consequences can be appraised.²⁰

In the search for fossil fuels to "tide us over" the next 40-50 years, United States policy is to develop multiple sources of supply. We shall see efforts to develop oil from shale and programs aimed at economic gassification of coal. On the international level, we will see efforts to prevent the United States from becoming too dependent on any one country or area of the world for oil, gas, and other fossil fuels.

In the absence of special efforts to diversify supply, it is likely that by the year 1985, one-half or more of the oil consumed in the heavily-populated east and west coast cities of the United States will originate in the Middle East. Such dependence upon Middle Eastern countries could exert terrific pressure on United States foreign policy. Thus, while the United States has an interest in seeing Middle East oil resources developed to meet the needs of the U.S. as well as Europe, Japan, and other industrial countries, U.S. policy favors,

the waste disposal problems of other nuclear reactors. Officials are reluctant to set a date for commercial application of this technique of power generation. See statement of Glenn T. Seaborg, *Id.* See also Hottel, *New Energy Technology* (1972).

¹⁹ See statement of John F. O'Leary, former Director of the Bureau of Mines, 18 *National Journal* 748 (April 29, 1972).

²⁰ That long-term conservation and shepherding of oil and gas is not a primary concern to governmental or private decision-makers is apparent in the article by Corrigan, *supra* note 12, reporting on Administration plans for oil and gas development.

at the same time, the development of alternative sources of supply.²¹ The United States wants to see Canadian resources developed, but again does not want to become "too" heavily dependent upon them. I put the word "too" in quotation marks because it is difficult to draw a line between dependence that is necessary, desirable, acceptable, and dependence that is subordinate and begging. The United States would like to be able to purchase oil from many alternative sources with no foreign country capable of using its supplier position as a serious lever on U.S. foreign policy.

The United States probably has almost as great an interest in Canada being self-sufficient in oil as does Canada itself. United States officials profess fear that in an emergency Canada might divert petroleum now flowing from Alberta into the United States to instead supply needs in eastern Canada, if Venezuelan oil now going to eastern Canada was cut off or was priced higher. President Nixon stated the U.S. position this way in his message on "Clean Energy":

"The United States is . . . prepared to move promptly to permit Canadian crude oil to enter this country, free of any quantitative restraints, upon agreement as to measures needed to prevent citizens of both our countries from being subjected to oil shortages, or threats of shortages."²²

One wonders whether this professed concern motivates U.S. statements or whether the underlying objective of U.S. statements and actions is to bring about a world-wide surplus supply situation in the medium term recognizing that the United States is going to be a large importer of oil and gas. The encouragement of the development of sources abroad in as many countries as possible, coupled with a system of controls over oil imports into the United States, has permitted the United States to take the posture "we don't need your oil" in dealing with any one country or group of countries. This attitude, which is reflected in the present quota on oil imports from Canada, has not fostered mutual respect between U.S. officials and their counterparts on the other side of the border.

If the estimates about nuclear technology prove too rosy, the short-term policies of the United States on the international level designed to maximize the development of petroleum sources could result in wasteful consumption over the next forty years with severe shortages in the years thereafter. Instead of pursuing a policy de-

²¹ Statement of Secretary Morton, *Hearing on the President's Energy Message, supra*. Note 1, at 85, 94.

²² *Ibid.*, at 267-268 .

signed to provide the maximum bargaining freedom in the short run, policy-makers might well consider a policy of cooperation with producer countries to develop relationships to assure supplies over the long-term and to provide incentives for conservation in the short run.

While the federal government and private companies vigorously pursue research in nuclear breeder reactors and nuclear fusion, solar energy, oil from shale, and coal conversion, we should not lose sight of the fact that in the long-term the people of the U.S. are going to require a supply of Canadian oil and gas. This has two aspects: It is in the U.S. and Canadian interest that Canada have an adequate supply over time — this means active exploration progress coupled with conservation programs to limit actual exploitation. It also means the U.S. must in its relations with Canada bear in mind the U.S. interest that Canada be willing in the future — the distant future as well as close future — to sell energy or energy resources in the U.S.

The U.S. concern should be assurance of a supply of energy (the converted resource — electricity — as well as fuel itself) over time at a price that is bearable. We do not want a policy that provides cheap energy now at the expense of prohibitively priced energy or inadequate supplies later.

Canada's concern should be the rational development of its energy resources. It is very easy for short-term benefits in terms of construction labor, the impact of oil industry capital investment on the health of other Canadian industries, and the tax and royalty funds generated by oil investment to influence decision-making. The challenge to policy is to devise schemes to encourage the marking out and measurement of reserves but not their immediate exploitation. One technique would be fixed fee exploration contracts with oil and drilling companies in which immediate costs are borne by government to preserve long-term options. Should the United States be willing to participate in financing such undertakings?

Conclusion

Those from the oil industry here have heard the expression "Permanent Sovereignty Over Natural Resources." It has been bandied about in the United Nations, often by some of the less responsible states. But the idea has a lesson for Canada. It should exercise sovereignty over its resources to develop and implement a long-term policy for exploration, conservation, and controlled use.

In the course of this discussion, we shall probably hear mention of the Herb Gray report proposing a screening agency to control and guide foreign investments entering Canada.²³ In my judgment such a screening committee is no substitute for — and a poor vehicle for considering — a long-term energy resource policy by Canada. It may affect the perception by Canadians of the benefits derived by them when oil, gas, or coal is taken from the ground and shipped to the United States. Whether a Canadian managed company or a U.S. company digs up the resource and sells it — or energy created from it — is not nearly as important as the policy that determines what and how much will be dug now and how much will be saved to meet energy needs of future generations. And when we think of oil and gas we should not limit our thoughts to their use as fuels — they are feed stocks for plastics and other petrochemicals. Nature took millions of years to create them; we can consume them quickly.

At this point, I want to repeat a few words about the assumptions that underlie energy policy from the U.S. side.

In the last decade, three-fourths of total energy requirements of the United States have been met by oil and gas. The remaining one-quarter was from coal, atomic energy, and water-power. There seems to be a conception that by, say, 2020 the vast bulk of our energy requirements will be met by nuclear-generated electricity and perhaps solar energy. In this context government policy-makers see their task as assuring a supply of energy over the next 40-50 years. They are not particularly concerned about the substantial depletion of oil and gas resources over that period since they believe other energy systems will come on stream by the end of the period. There is also the idea that coal and oil shale provide a safety margin should calculations err. Some of this same philosophy enters into the decisions of the Canadian National Energy Board. It is charged by the statute quoted earlier with assuring that supplies of gas and electricity meet future domestic needs before permitting export. Its rule of thumb is to project supply and demands for a 20-30 year period. In the fall of 1971, it denied an application to export gas from Canada to the U.S., a decision much criticized in the U.S.²⁴ I would fault the Board for not taking a longer perspective as it deals with export applications.

I think that a policy that permits very substantial depletion of

²³ See "The Herb Gray Report: Domestic Control of the National Environment," *Canadian Forum* (December 1971), p. 1; Daly, "After the Gray Report: An Industrial Strategy for Canada," *Canadian Forum* (January 1972), p. 2.

²⁴ *Wall Street Journal*, November 22, 1971, at 12.

oil and gas resources in the short-run period is a very risky policy for long-term. Much more emphasis must be given to government regulatory and pricing schemes that will free the use of alternative resources — such as coal and atomic energy — now — immediately, not 40 years from now.

Foresight for future generations, and for our children today who should live to 2050, suggests that much more serious consideration should be given to formulating explicit policies, and bearing the costs of them now, to assure that in the period after 2020 the world's recoverable petroleum reserves, and the reserves on this continent, are in good shape. Policies should be developed now to discourage exploitation and use of U.S. and Canadian oil and gas resources. This may require far more cooperation between the two countries than simply removing quotas on imports from Canada of oil and uranium. Such a policy would impose terrific restraints on Canadian "development." For Canada it would mean postponing until the future economic benefits available to it now from digging out and selling its natural resources. It is not a cost Canada would likely be willing to bear alone. Can it be shared?

The challenge is to set guidelines for a long-term energy resource policy — with a 100-year or longer perspective — with a strong conservation element. If policy is clarified and bureaucracies restructured for effective decision-making, then this possibility is opened.

To return to the Hobson analogy, we can look over the horses in the stable. If we are wise we will not pick the fastest horse — the horse that gives an exciting ride but becomes sweaty and tired before the end of the day. Rather we will pick out a strong horse, a horse with intelligence to adapt to the terrain we will cross, and who can carry us to the end of our journey.