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As lawyers we often hear the statement made that a number of disciplines influence the law. This causes us to overlook the extent to which the law influences these same disciplines and, as a constraint, serves to channel energy and activity. It seems that in the exploitation of energy we have this type of interface between law, economics and political policy.

Economics has been regarded as basic to the exploitation of natural resources for energy. Consequently, we hear a great deal about the influence of the market upon the sources, the production, and the distribution of energy. In addition, those of us who are interested in the environment, particularly in an historical context, are continuously struck by the interaction between conservation law and the operations of the energy industry.

I contend that conservation law will have the greatest impact when it coincides with the production interests of this industry. Conversely, it will be quite ineffective insofar as conservation and production do not mesh. We must not see as an inevitable fact a continuing hostility between conservation or environmental laws and the operation of the market. Indeed, there are instances where conservation law and the interest of the energy industry can work together. Permit me to illustrate what I mean from American oil and gas law.

In the study of oil and gas law in the United States, one will see that the first efforts towards conservation in oil and gas resources were aimed at two objects. First, preserving the continuing existence of oil and gas reserves; and secondly, regulating the price structure of the industry so that the oil and gas produced would not be lost.

When gas was first commercially produced in northern Ohio and Indiana in the 1880's, it was brought into production by an extraordinarily wasteful technique. This was due in part to a basic geologic error, namely the belief that oil and gas were not stock resources but were flow resources capable of regenerating themselves.

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Subsequently, it was discovered that such was not the case except in a geologic time sense, and that to exploit them was to extract them forever. This geologic discovery resulted in passage of legislation first by Pennsylvania and then by other states which regulated the production of gas so that it could not be merely vented and burned at the well head in a series of spectacular flambeaux.

The next innovation in the conservation laws came in Texas in 1919 when an attempt was made to limit the production of oil by spacing wells and prorating the flow of these wells, thus constricting the amount of oil entering the market. This constraint was not particularlarly effective, so the states entered into negotiations with the industry for the purpose of establishing a stable national price. This was followed by the short-lived National Recovery Act which created a national market in oil, and subsequently in gas, supported by a single national pricing structure. The decision in 1935 that the National Recovery Act was unconstitutional did not have a serious effect on the oil and gas industry, and the structured price system was effectively replaced by the CONNOLLY HOT OIL ACT,[1] which made it illegal to send oil produced in contravention of state regulations through interstate commerce.

The result has been that we have had a national market in oil; and, therefore, domestic oil prices have not substantially fluctuated. This has remained the case, despite the fact that we do have a deficiency of oil and gas, compelling us to import both. New England has been the only exception to this fairly stable price relationship. The unfortunate problem in the Northeastern United States, which has led to rather dramatic price rises in that region in recent years, is the region's remoteness from domestic sources, national gas pricing regulations, and restrictions on quantity and price of imported hydrocarbons.

You can see, therefore, a very intimate relationship between the energy industry and conservation. This point can also be illustrated by examining the regulation of brackish water disposal. Such waters are disposed of by a reinjection system which, according to the National Oil and Gas Association, the industry has enthusiastically adopted. This method of disposal serves two purposes: first, the reinjection of brackish waters prevents surface environmental damage and, second, the return of the water creates the potential of secondary recover of additional deposits of oil and gas.

The interface of conservation and production tends to influence

[1] CONNOLLY HOT OIL ACT, 15 U.S.C.A. 715 (1963).

the development not only of oil and gas but of all energy sources as well. Today, we tend to overlook the intimate relationship in the past between the environmental movement and hydroelectric power. Hydroelectric power was initially seen as "the solution to pollution." The Black Cities of the 19th century would no longer be supplied power from the burning of coal, but rather, would be supplied with what was known as White Power from the flow of clean water. Unfortunately, very few people addressed themselves to the inability of hydroelectric power to supply the quantity of electric power needed, nor to the value of valleys which had to be flooded, or to whatever values might be lost as the result of damming streams. Enthusiasm kept the optimist from seeing that the percentage of power supplied by hydroelectricity was going to be minuscule.

Between the United States and Canada, whether individuals like it or not, a continental economy exists, operated through transnational corporations. This is so because a fairly pluralistic economic system functions in both countries. Despite the ability of giant multinational corporations to plan their own futures, to control national price structures, and to determine their customers these corporations are nevertheless not part of a single integrated national plan in either country.

If you do not comprehend the concept of a planned national economy, I suggest that you study the People's Republic of China, which engages in trade abroad as part of a single national integrated plan. Essentially, all their trading conforms with their integrated national plan. This is not true in the United States or Canada, and consequently there are many interstices between the operations of the multinational corporations and the trade policies of the respective states. This lack of national planning allows entrepreneurs, various pressure groups, and government planners to manipulate certain economic factors to their own advantage.

I think that if the United States had a national plan, that is, if the NRA had not been declared unconstitutional, we would have an economic system in this country closely approximating that of modern Italy. Beginning in the 1920's, the Italians developed a system of mixing private capital and state enterprise which has been successful. There is no reason to believe that NRA would not have developed along similar lines.

Whether Canada would benefit if the United States had such a plan is difficult for me to say. I suspect that Canada would be better off dealing with a country not acting under a single integrated

national plan. For such an economic plan would emphasize concerns of a domestic origin, which would be unrelated to the maximum growth and development of the Canadian economy and its natural resources. I think that Canadians, however disenchanted they may be from dealing with individual corporate entities, are in a better situation than if they had to deal with a single regulatory agency entrusted with the task of overseeing American interests under an integrated plan.

The United States and Canada have had very stable, predictable, and constant economic relations for the past 60 years. I think it would not be meaningful to go back much before 1910 because the United States was still largely a debtor country and Canada's population was not equal to her developmental aspirations. Beginning about 1910, the United States developed a relationship with Canada in which the Canadians have not entirely been the victims. A strong case could be made for the proposition that it is American workers who have been victimized by that relationship. I would assert that certain capital interests in the United States have used Canada as a colonial territory to which they have exported American jobs. Far from my scenario being a scheme to suppress Canadian interests, I would suggest that this is a plot to undermine the American working class in which government and industry in both countries play a major role in the promotion of their own interests. Without detailing this notion, I offer it merely as an alternative explanation that can be sustained by some marshalling of the evidence.

If we look at the position of the United States in the world, it seems that we see a country in a very unstable and rather brittle situation. We have developed a technological civilization considerably more complex than any other country and as a result are vulnerable to economic change. Due to our vulnerability we might be tempted to manipulate Canada to whatever point of view we happen to hold at that moment. However, I do not think we would be free to do so for Canada may not only seek alternative markets, but Canada may also seek alternative friends.

If we are brittle, vulnerable and unstable, so is Canada; and for the same reasons. I think there are compelling reasons for the United States and Canada to be cooperative, to respect one another, rather than for the Canadians to take their marbles and try to peddle them elsewhere, or for the United States to engage in a Balkan fantasy of "teaching these people a lesson."

Once we have imposed constraints on industry in the form of

environmental protective measures, we need not be surprised when we see industry employ these controls to its own advantage. It has been suggested that it is not at the moment economically advantageous to use either coal to make gas or to import Algerian gas in liquified form. Yet with the constraints under the Clean Air Amendments of 1970[2] on the amount of sulphur which may be contained in fuel, the conversion of coal to gas could very well prove to be economically feasible, making this kind of foreign or domestically produced fuel competitive with some of the very expensive Canadian product.

This simply illustrates that the operation of environmental statutes and technological change come together to create the kind of political, social and economic milieu in which both Americans and Canadians have to operate. On that note, I will conclude by saying that although we have to function in the real world, we change the character of that real world by how we implement our ideals.

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[2] CLEAN AIR AMENDMENTS OF 1970, 42 F.C.A. Sec. 1857b.

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