

On the other hand, the federal government is imposing very important indirect controls over the petroleum industry through the exercise of its national defense and foreign commerce powers.

Part One of the paper will discuss all these forms of government control in the belief that each must be considered by Congress in the formulation of any future oil shale policy.

It should be remembered that none of these controls are absolute and all are subject to change. Therefore, the problems of federalism will also play a part in any policy considerations. Relationships between state and federal governments and between private industry and these governments must always be taken into account. Critics of the petroleum industry argue for increased federal control over that industry in the future. On the other hand, oil-producing states have resisted such a move and seek to preserve the regulatory powers which have been traditionally reserved to them. These problems of federalism will be of great significance to an emerging oil shale industry.

A. Federal versus State powers

1. Federal anti-trust regulations

The early history of the oil industry was marked by severe competition. Large combinations exercised a monopolistic control through their ownership of refineries and oil pipelines. Finally, the great Standard Oil Trust of John D. Rockefeller was dissolved by Sherman Act prosecution in 1911.¹⁵

Since that time, there has been only minimal anti-trust regulation over the exploration, production and refining phases of the petroleum industry.¹⁶

2. Demand estimates and production control under State "conservation statutes"

As was indicated at the outset of Part One, the production of crude oil is presently being controlled by state governments.¹⁷

It is due to what some describe as an "unfortunate legal accident" that President Coolidge was stymied in 1924 in his attempts to establish a Federal Oil Conservation Board. For during the early stages of the development of the oil industry it was an accepted constitutional principle that the production of oil¹⁸ lay outside the purview of the interstate commerce clause of the federal constitution. Meanwhile, and as early as 1914, oil-producing states had passed prorationing conservation statutes which in the decades that followed underwent a stormy history of attempted enforcements and evasions. These state statutes provide that production quotas may be placed on the oil wells of a state. The productions quotas are set on the basis of estimates of demands, and for this reason critics have labeled the proration system as being nothing short of "administrative price fixing." Nevertheless, in 1932, the Supreme Court overruled lower federal court injunctions against the enforcement of these state statutes and declared in *Champion Ref. Co. v. Corporation Comm'n*¹⁹ that state pro-

¹⁵ Standard Oil Co. v. United States, 221 U.S. 1 (1911).

¹⁶ In the 1950's, some vertically integrated major oil companies were obliged to accept consent decrees which were based on charges of violations of both sections 1 and 2 of the Sherman Act at all levels of the companies' operations. On the production levels the decrees generally enjoined "the operation of agreements among the consenting defendants to control crude production for the purpose of fixing prices, and similar agreements among themselves fixing prices to be paid for crude oil or charged for refined products." United States v. Standard Oil Co. of California, Civil No. 11584-C, S.D. Cal., May 12, 1950; United States v. Standard Oil Co. of California, TRADE REG. REP. (1959 Trade Cas.) ¶ 69399 (S.D. Cal. June 19, 1959).

¹⁷ The most recent Congressional approval of the Interstate Oil Compact is to be found in Pub. L. No. 86-143, Aug. 7, 1959, 73 Stat. 290 (1959).

¹⁸ By contrast, the natural gas industry did not begin to flourish until World War II, at which time it was held—from its inception—to be subject to the Interstate Commerce power of the federal government. That power has served to make the natural gas industry one of the most heavily regulated enterprises of the present day. A discussion of this regulation, and of the many acts and cases by which it has been imposed, is beyond the scope of this paper.

¹⁹ 286 U.S. 210 (1932).