rationing statutes were constitutional.[20] Since that time the courts have universally upheld the statutes as legitimate "conservation" measures.[21]

A federal measure instituted under N.R.A. and serving to enhance the enforcement of state production control was the provision for "forecasts of demand." Initially a Petroleum Administration Board, partially composed of representatives of the industry, advised the Secretary of Interior of demand forecasts. Later the Bureau of Mines, itself within the Department of Interior, began to make these forecasts. This picture is continued to this day.[22] Neither the monthly nor annual forecasts of the Bureau of Mines possess authority[23] binding on state production-control agencies, but they are helpful and are given considerable weight by state authorities in setting their production quotas.

3. The critics

Economists, legal scholars and political commentators have been outspoken critics of the present system of production control under state "conservation statutes." Eugene Rostow, former Dean of the Yale Law School, claims that the Bureau of Mines forecasts of demand [and the state quotas which follow from it] depend on a concealed premise of price stability. Their effect is to state how much or how little crude oil need be produced to permit prices to remain fixed.[24] Rostow asserts that such demand estimates work like the statistical service condemned in the *Sugar Institute*,[25] *Maple Flooring*[26] and *American Column & Lumber*[27] anti-trust cases. Rostow proposes a total "reorganization" of the oil

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[20] The Court upheld the Oklahoma market demand statute, attacked as repugnant to the due process and equal protection clause, as a reasonable exercise of the state police power to prevent unnecessary loss, destruction, or waste.

One of the most outspoken critics of the oil industry as a whole, and of national policies concerning it, has been Eugene Rostow in his book A NATIONAL POLICY FOR THE OIL INDUSTRY (1948). At page 29 of his book Dean Rostow calls the conservation premise upon which the *Champlin* case rests as "entirely untenable."

Nevertheless, as late as 1950, the Supreme Court has been unmoved by such a point of view as advocated by Rostow. In Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179 (1950), the Court dismissed the due process and equal protection issues in a case involving natural gas, stating as follows:

"It is now undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas. This court has upheld numerous kinds of state legislation designed to curb waste of natural resources and to protect the correlative rights of owners through ratable taking, . . . or to protect the economy of the state. . . . These ends have been held to justify control over production even though the uses to which property may profitably be put are restricted. . . .

"Like any other regulation, a price-fixing order is lawful if substantially related to a legitimate end sought to be attained. . . . In the proceedings before the Commission in this case, there was ample evidence to sustain its finding that existing low field prices were resulting in economic waste and conducive to physical waste. That is a sufficient basis for the orders issued. It is no concern of ours that other regulatory devices might be more appropriate, or that less extensive measures might suffice. Such matters are the province of the legislature and the Commission."

Id. at 185–86.

[21] For instance, Wyoming's Oil Conservation Law enacted in 1951 reads as follows:

"It is not the intent or purpose of this law to require the pro-ration or distribution of the production of oil and gas among the fields of Wyoming on the basis of market demand. This act shall never be construed to require, permit or authorize the commission, the supervisor, or any court to make, enter, or enforce any order, rule, regulation or judgment requiring restriction of production of any pool or of any well to an amount less than the well or pool can produce in accordance with sound engineering practice."

WYO. STAT. § 30–229 (1957).

[22] In addition, the Bureau of Mines was directed by the Presidential Proclamation of March 12, 1959, to provide the Oil Import Administration with periodic forecasts of domestic demand and production to assist the Administration in establishing import quotas. 24 Fed. Reg. 1781.

[23] Indeed, such critical writers as Rostow (see note 20 *supra*) claim that "the Bureau of Mines estimates, the keystone of the entire plan, are without support in substantive legislation. No statute prescribes standards or policies for guiding the agency in its determinations of permissible supply." ROSTOW, *op. cit. supra* note 20, at 29.

[24] ROSTOW, *op. cit. supra* note 20, at 27. Compare this charge to the language of the Interstate Oil Compact, Article V:

"It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate a monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitation."

[25] Sugar Institute, Inc. v. United States, 297 U.S. 553 (1936).

[26] Maple Flooring Mfgs. Ass'n. v. United States, 268 U.S. 563 (1925).

[27] American Column & Lumber Co. v. United States, 257 U.S. 377 (1921).