

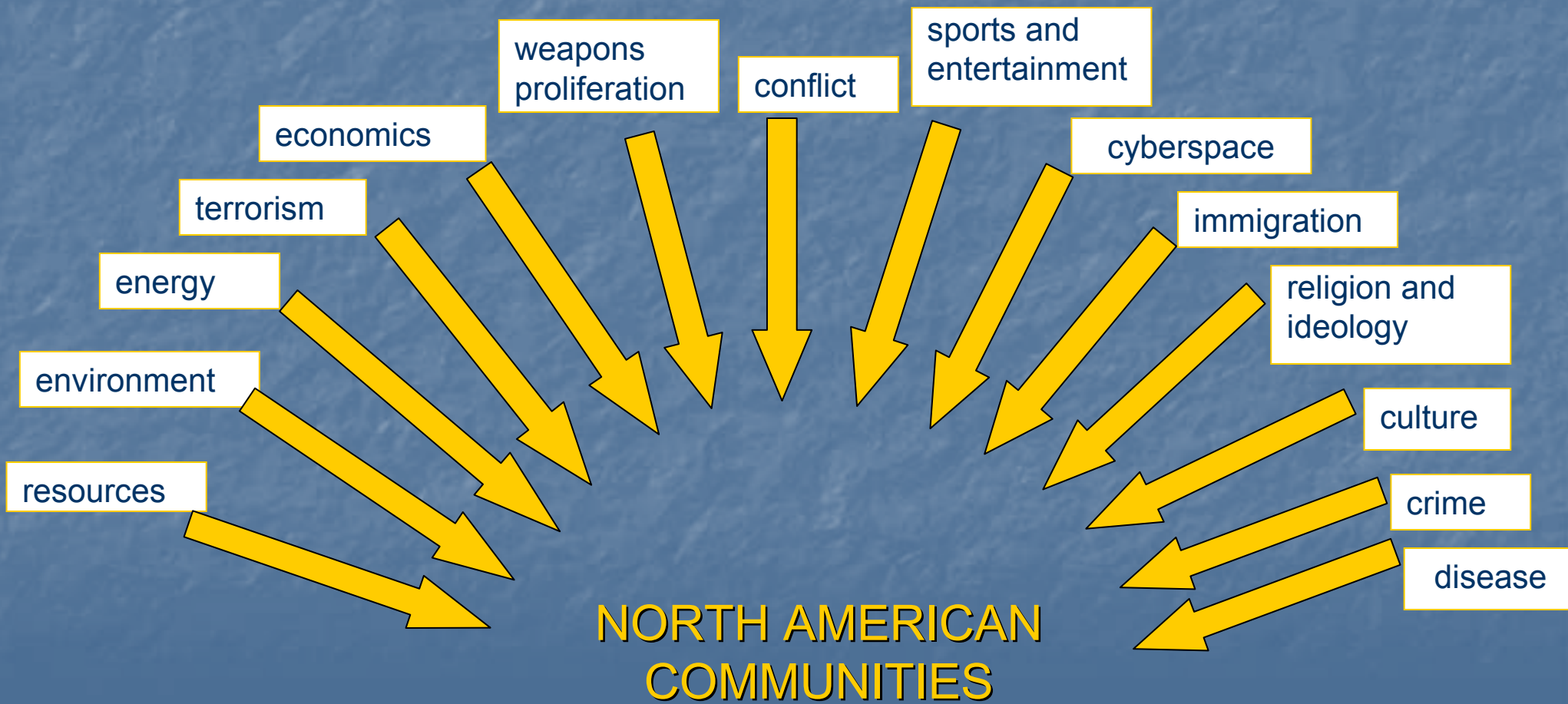
THE IMPACT OF FEDERALISM
ON THE EVOLUTION OF THE
NORTH AMERICAN ENERGY SECTOR

by

Earl H. Fry
Professor of Political Science
Brigham Young University

INTERNATIONAL EVENTS ARE TRANSFORMING LIFE IN NORTH AMERICA

INTERNATIONAL SECTOR



FEDERALISM AND NORTH AMERICAN ENERGY SECURITY

- Security in terms of safety and reliability of energy supplier—overseas vs. North America
- Security in terms of safeguarding extraction and hydroelectric sites and transmission of resources and electricity
- Security forces to combat terrorism or other types of illicit activities
- Overall security functions in North America—national, state, provincial, and local government responsibilities

NORTH AMERICAN ENERGY COOPERATION I

- 26% of U.S. oil imports in 2000 from Canada and Mexico
- In 2000, 27% of total U.S. energy imports came from Canada and 9% from Mexico
- Canada is the number one foreign supplier of energy to the United States and 2-way energy trade \$50 billion per year
- President Bush's May 2001 national energy plan—"make it easier for buyers and sellers of energy to do business across national borders"

NORTH AMERICAN ENERGY COOPERATION II

- Creation of North American Energy Working Group in 2001 and meetings held regularly
- Critical role of North American energy infrastructure in the future
- U.S. a major energy importer while Canada and Mexico are net energy exporters
- Greater convergence and transparency are occurring in the North American energy sector

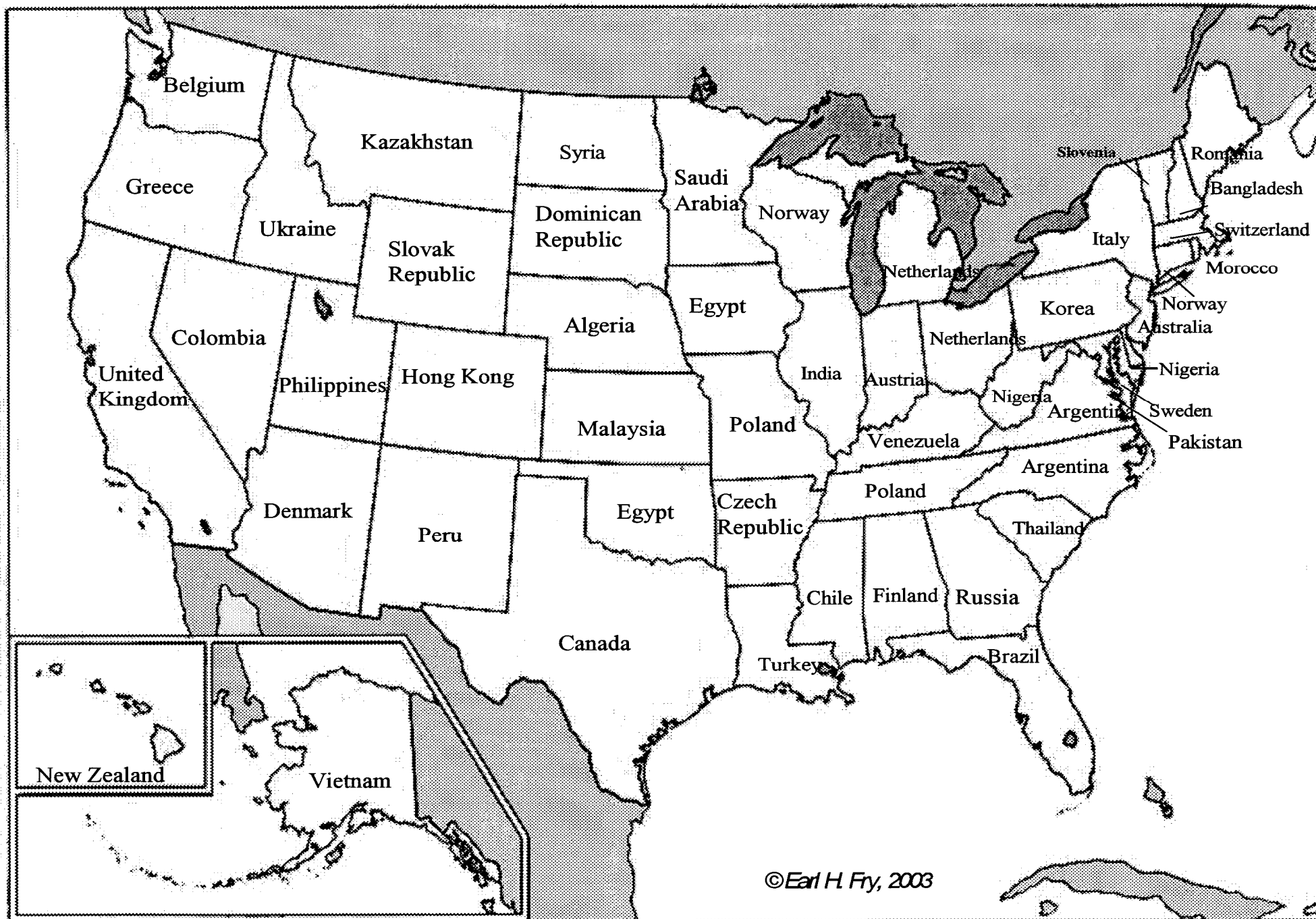
NORTH AMERICAN FEDERALISM

- Only 25 of 192 nation-states have federal systems
- All 3 North American nations are federal and they represent the largest, 8th largest, and 9th largest national economies in the world (World Bank, 2002)
- Canada most decentralized, U.S. more centralized, and Mexico by far most centralized
- Some dimensions of functioning federalism recently emerging in Mexico

NAFTA is an agreement among
three federal systems with 92
major sub-national governments
and over 100,000 other
governments

SUBSTANTIAL POWER BASE OF THE STATES AND PROVINCES

- 3 of U.S. states would rank among top 10 “national” economies in the world
- 22 U.S. states among top 25 nation-states, 38 among top 50, and all 50 among top 72
- 4 Canadian provinces would rank among top 40 nation-states and 8 among the top 80
- 1 Mexican state would rank among top 32 nation-states and 2 among top 50
- California has a larger population than Canada and a larger GDP than Canada and Mexico combined
- Budgets of several state and provincial governments larger than most nation-states’



INTERNATIONAL ACTIVITIES OF STATE AND LOCAL GOVERNMENTS

- As of December 2002, 37 states and Puerto Rico had 243 foreign offices or representatives, up from 4 in 1980
- 21 states have offices in Mexico and 12 in Canada
- Roughly 1,000 state employees work in international sector
- Almost all governors or lt.-governors lead international trade missions every year
- Almost all states have international trade and investment divisions
- About \$190 million being spent annually on international programs, exclusive of investment incentives
- Canada is #1 export partner for 37 states and Mexico #1 for 3 states

INTERNATIONAL ACTIVITIES OF CANADIAN PROVINCES I

- Quebec has almost as many employees working on international issues as the 50 U.S. states combined
- Fy 2000-01, Ministry of International Relations had a budget of C\$104 million and 587 full and part-time employees
- Quebec maintains 24 offices in 14 different countries, with 250 employees

CANADIAN PROVINCES II

- Ontario spending C\$79 million per year and has 230 employees—beginning to reopen foreign offices
- Alberta has 9 foreign offices and 50 people engaged in international programs
- B.C. down to one foreign office, but has about 100 employees and C\$20 million budget

THE CANADIAN PROVINCIAL DIMENSION

- Provincial governments have entered into hundreds of agreements with U.S. states
- 3 Canadian provinces maintain permanent offices in U.S.
- Several U.S. states maintain offices in Canada
- Annual or periodic meetings among Atlantic, Great Lakes, and Pacific provinces and states
- Special Quebec, Ontario, Alberta, and BC ties to the Council of State Governments and various Governors' groups
- Ralph Klein met with Dick Cheney in June 2001 and John Hamm had a teleconference with Cheney in December 2001, both to discuss energy issues

BORDER COMMISSIONS AND GROUPS I

Border Governors' Conference

(Arizona, California, New Mexico, Texas; Baja California, Chihuahua, Coahuila, Nuevo León, Sonora, Tamaulipas)

Border Legislative Conference

(Arizona, California, New Mexico, Texas; Baja California, Chihuahua, Coahuila, Nuevo León, Sonora, Tamaulipas)

Chihuahua - New Mexico Border Commission

Commission of the Californias

(California, Baja California Norte, Baja California Sur)

Council of Great Lakes Governors

(Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin; Ontario and Quebec [associate members])

BORDER COMMISSIONS AND GROUPS II

Idaho-Alberta Task Force

Montana-Alberta Bilateral Advisory Council

New England Governors and Eastern Canadian Premiers
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec)

Pacific Northwest Economic Region (PNWER)
(Alaska, Idaho, Montana, Oregon, Washington; Alberta, British Columbia, Yukon Territory)

Sonora-Arizona Commission

**Western Canadian Premiers and
Western Governors' Association**
(4 provinces and 21 states)

HISTORY OF FEDERALISM AND ENERGY POLICY

- LA Department of Water and Power established 1902 and engaged in electricity distribution in 1916
- 1935 U.S. federal electricity law left in place extensive state regulation of the energy sector
- Lázaro Cárdenas and the 1938 nationalization of oil and gas in Mexico
- Canada's National Energy Policy (1973-1984)—tensions between provincial control of resources and interprovincial and international trade
- Offshore drilling controversy
- Canada-U.S. FTA and NAFTA
- Kyoto Protocol
- Long-term aboriginal rights' issues

“FORMAL” FEDERALISM AND ENERGY

- Canadian division of authority—federal powers over interprovincial and international trade; provinces control natural resources and most regulation of resources
- U.S. division of authority—states generally more powerful than federal government in determining terms of access to energy for their citizens, but Washington maintains big stick with commerce, supremacy, and preemption powers; states have big role in environmental standards, land use, and business regulation
- Mexican division of authority—extremely centralized--Articles 27 and 28 and “the Nation”; modest and disputed *de facto* regional authority linked to aboriginals and *ejidos*

SUBNATIONAL DIFFERENCES REGARDING ENERGY I

- The United States, Canada, and Mexico do not have a unified view on overall energy issues even though cross-border cooperation is at record levels
- The views of Massachusetts and Texas on selected energy issues differ significantly, as do those between Alberta and Ontario and Tabasco and Nuevo León
- Texas has dispatched its own observer to OPEC meetings and favors high oil prices—in this respect it has more in common with Alberta than with California
- Electricity prices in Massachusetts almost twice as high as in Arizona—major pricing differences occur from region to region in North America

SUBNATIONAL DIFFERENCES REGARDING ENERGY II

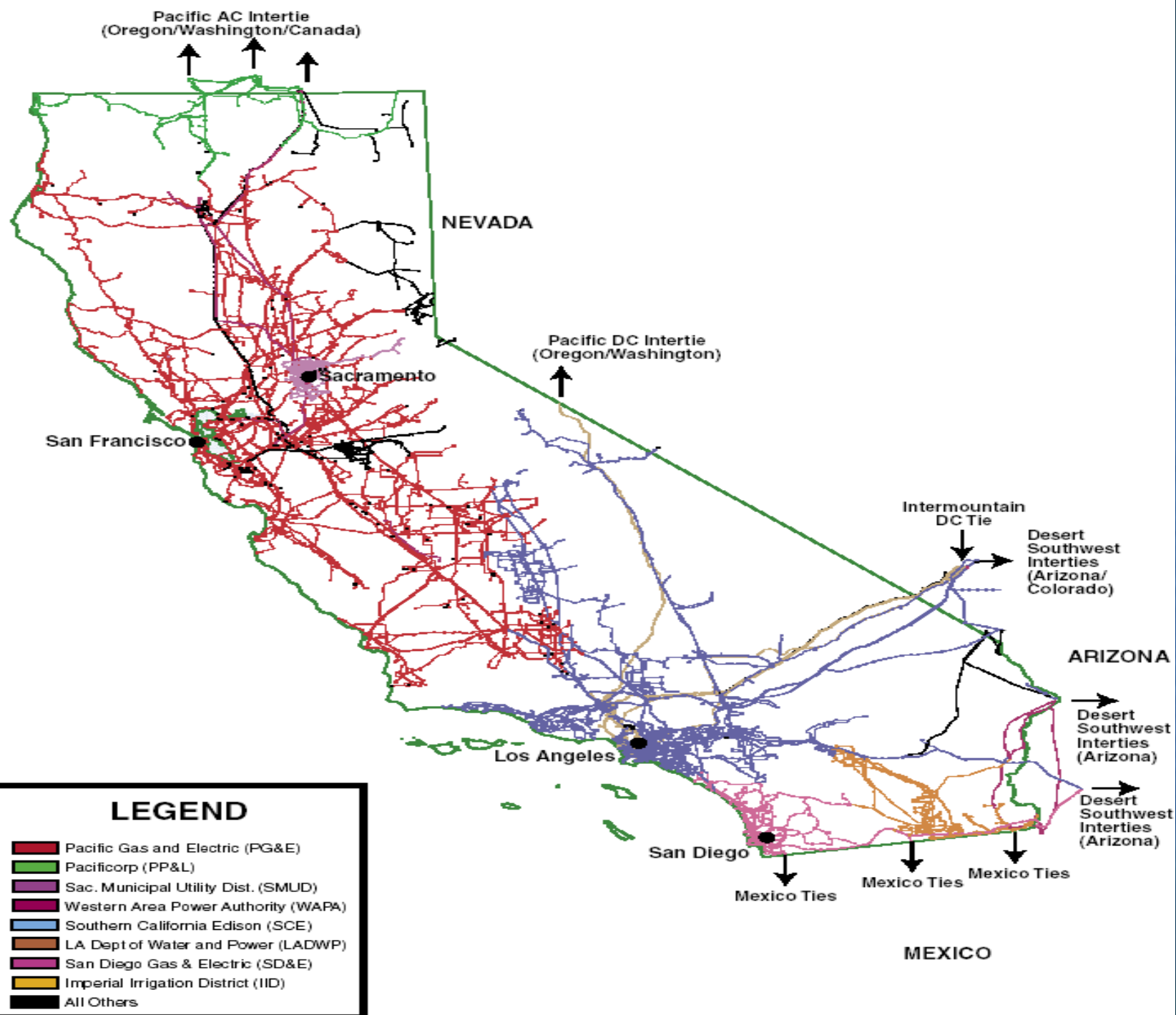
- Forging an overall consensus on selective energy issues among major subnational governments in North America will be difficult (pipelines, transmission lines, LNG facilities, renewable energy, pollution standards, waste disposal, overall security issues, etc.)

RECENT NORTH AMERICAN ENERGY CHALLENGES I

- Series of North American electricity blackouts, culminating in “Ohio” problem leading to August 2003 crisis affecting 50 million people and causing \$6 billion in economic losses
- California’s severe energy and Ontario’s current electricity crises
- Enron
- Alaskan natural gas pipeline uncertainties
- Safety and security of LNG facilities
- Rising energy prices for consumers

RECENT NORTH AMERICAN ENERGY CHALLENGES II

- Concerns about North American natural gas supplies
- Modernization and investment in Mexico's overall energy sector
- Growing continental energy interdependence (California's electrical grid chart and dependence on Canada and Mexico)
- Growing burden on many subnational governments to provide security for energy development and distribution



CONSTITUTIONAL VS. POLITICAL FEDERALISM

- Federal governments at times have constitutional authority to negate policies of state and provincial governments, but not willing to pay the political price to do so:
- California unitary taxation episode
- State and local government sanctions (except for Massachusetts and Myanmar)
- State and local government investment incentive programs

POTENTIAL STATE AND PROVINCIAL GOVERNMENT ENERGY CONFLICTS

- Hydro-Quebec's concerns about U.S. state "renewable energy" mandates, especially among some New England states
- NAFTA Chapter 11 controversies—Metalclad and Methanex cases
- Border state disputes over energy development and protection of the environment—California pushing for stricter emission standards on power stations in northern Mexico than enforced even in U.S.
- Regulation and deregulation controversies
- Should state, provincial, and local governments have right to ship their pollution to other jurisdictions (Los Angeles-Utah; California-northern Mexico; Yucca Mountain and other waste depositories)?

ABORIGINAL RIGHTS AND ENERGY

- Quebec, the Cree, James Bay, Rupert River, Great Whale River, and New York State
- Aboriginal rights in the Canadian territories
- Aboriginal rights in selected provinces
- Mexico's recent tightening of natural resource claims by indigenous groups, but Zapatistas and others continue to push for aboriginal control
- Indigenous groups in U.S. retain title and authority over many natural resources
- Ongoing controversy involving U.S. Dept. of Interior and native rights to oil and gas deposits—class-action suit in behalf of half million Indians
- Navajo nation controversy
- Utah and Skull Valley Goshute tribe (124 people) controversy over nuclear waste disposal

THE OVERLAP OF ENVIRONMENTAL AND ENERGY POLICY

- Kyoto Protocol controversy in Canada and U.S.
- New energy efficiency standards in Maryland on appliances and New Hampshire (new gas formula for autos) vs. new 3-country minimum efficiency rules
- California's mandate on cars using alternate fuels-also requires private utilities to provide 20% of electricity from "renewable sources" by 2017; it passed mandatory energy efficiency standards on appliances in 1974
- New Mexico's new mandate on renewable sources
- Suit by environmental groups and state governments derailing Bush administration's efforts to lower efficiency requirements on air conditioners
- State regulation of power-plant pollution
- State and provincial regulations at times become "national" standards for private producers

INTERGOVERNMENTAL COOPERATION AND DIALOGUE

- New Council of the Federation in Canada
- FTA and NAFTA experiences
- Kyoto Protocol experiences
- U.S. intergovernmental cooperation in continental energy sector is minimal
- Role of the National Governors' Association
- Mexican intergovernmental cooperation is miniscule

POLICY OPTIONS

- Future significance of North American Energy Working Group established in 2001
- Periodic summits of U.S., Canada, and Mexico energy regulators (last held in Alberta in 2003)
- Desperate need for regular intergovernmental consultations within each nation
- Creation of 3-nation energy group by Canadian premiers, NGA, and Mexican governors
- Expansion of inter-parliamentary dialogue at subnational governmental level
- New studies of the pros and cons of “harmonization” of subnational, national, and continental energy priorities
- Post-2008 NAFTA—a view from the provinces and states

FUTURE CHALLENGES AND OPPORTUNITIES

- Federalism as an impediment to development of continental energy policies
- Role of state and provincial-level law suits
- Intensified aboriginal controversies
- Vow to limit exploitation of national resources by provincial or state governments led by NDP, PRD, or Green party
- NIMBY syndrome linked to siting, zoning, environmental concerns, and other factors
- Will federalism take root in Mexico?
- East-West vs. North-South tensions

FUTURE CHALLENGES AND OPPORTUNITIES II

- Can federalism safeguard national and regional priorities at the expense of continental priorities (David Orchard, Ralph Nader, PRD)?
- Dissenting state, provincial, and local governments, in cooperation with environmental groups, can potentially scuttle or at least delay major energy proposals for years through lawsuits filed in national and subnational courts
- Can energy policy be “harmonized” (not homogenized) continentally without significant damage to the jurisdictional authority of state and provincial governments?
- Electrical standards should be “harmonized” through NERC

FUTURE CHALLENGES AND OPPORTUNITIES III

- Significance of thinking continentally and acting regionally with input by governors and premiers—meaningful intergovernmental consultations better than national government “mandating”
- Balancing national, subnational, aboriginal, continental, consumer, producer, energy, environmental, and intergenerational interests—a very difficult and laborious process

FEDERALISM AND SECURITY: CONCLUDING THOUGHTS

- ***Security*** from the vantage point of North American suppliers vs. overseas suppliers
- ***Physical security***—at the source and during transmission
- ***Security*** in terms of economic viability to develop and transmit energy resources
- Defining the “security” role of state and provincial governments within parameters of national systems and North America as a region
- Establishing and improving mechanisms for continental, intergovernmental, and public-private sector cooperation to enhance energy security within North America’s three federal systems