1 Business and American Democracy

The remedy for ignorance is investigation.

William H. Riker, The Strategy of Rhetoric

The largest and most wide-ranging corporate scandals in American history marked the end of the twentieth century. Following the post-economic boom of the 1990s, once profitable and highly respected companies such as Enron Corporation, Worldcom Incorporated, ImClone Systems Incorporated, Adelphia Communications Corporation, Commercial Financial Services, and Tyco International were found to have engaged in illegal accounting practices and fraudulent stock trading. Arthur Anderson, one of the nation's most revered accounting firms, looked the other way as Enron financial executives "cooked their books." The $7 trillion U.S. mutual fund industry was also under siege, with dozens of fund companies (including some of the biggest firms, such as Putnam Investment Management and Janus Capital Group) accused of illegal late trading of mutual fund shares and other wrongdoing. At the same time brokerage giant Morgan Stanley agreed to pay $50 million to settle charges by the Securities and Exchange Commission (SEC) that it had received substantial hidden fees from fourteen of the country's largest mutual fund companies in return for promoting their funds to investors over those offered by dozens of competitors. For the first time Americans watched televised images of impeccably groomed corporate executives led away in handcuffs by law enforcement officials. Chairman of the New York Stock Exchange Richard Grasso was forced to resign for accepting an enormous compensation package worth almost $188 million. Andrew Fastow, the former finance chief who built Enron's complicated web of off-the-books partnerships to hide debt and boost profit, pleaded guilty to fraud-related charges in 2004. Apparently, no one was spared. Even Martha Stewart, America's lifestyles icon who always projected an air of grace, humility, and sophistication, was convicted of securities fraud, obstruction of justice, and making false statements for illegally selling $228,000 of ImClone stock. Undoubtedly, the incident tarnished her wholesome image and, for many, underscored the lengths some business leaders are willing to go to protect their wealth. Enron, Global Crossing, Worldcom, and other companies filed for bankruptcy, stranding employees and investors with worthless stock while company executives like Kenneth Lay and Bernard Ebbers reaped huge financial rewards. A survey by *CFO* magazine found that about one in six chief financial officers felt pressured by chief executives to misrepresent corporate financial results, and 5 percent (the actual figure is probably higher) admitted they had violated accounting rules in the last five years (*Los Angeles Times* 2002b).[1]

The high incidence of illegal activities by leaders of some of America's largest corporations comes at a time when businesses are trying hard to earn the public's trust and confidence on a variety of fronts, including in the areas of environmental protection and natural resource policy. Companies have long complained that environmental regulations are too burdensome and costly and that they should be given much more flexibility in attaining pollution control standards. Firms are asking the government to end direct command-and-control regulation and trust them to select the most cost-effective methods and equipment to abate pollution and manage natural resources (Anderson and Leal 2001). Business leaders believe this can be accomplished by instituting market-based mechanisms and voluntary action programs, among other things (Anderson and Leal 2001; Marcus, Geffen, and Sexton 2002; OECD 2003). Many now support efforts to improve environmental quality and are willing to change certain practices in order to achieve that end. Environmentalists, of course, have frequently complained that corporations are not sincere, only care about profits, and will not cease polluting or wasting natural resources unless forced to do so by government. No doubt, public confidence in American business has significantly eroded as a result of the unparalleled charges leveled against once prominent companies and their executives and of the flood of media coverage that has accompanied legal action. The corporate scandals at the turn of the twentieth century may have important implications for the debate over the true commitment of industry to improve environmental quality and natural resource conservation, though this is not a focus of this research. At the very least, given the serious nature of these scandals, this is certainly an appropriate time to examine the extent of corporate influence over environmental policymaking.

This book adds to the environmental politics and policy literature by conducting a comprehensive investigation of business influence in agenda building and environmental policymaking in the United States over time. In addition to determining how much business interests influence environmental and natural resource policy, the book tests possible explanations for their level of success in shaping the government's agenda and policy. This introductory chapter lays the groundwork for the investigation by providing a general discussion of democratic theory in relationship to business and interest groups. It also explores the disagreements that exist between corporate leaders and environmentalists over the contribution of industry to improved environmental quality and natural resource protection. The study draws on the theoretical literature on issue definition and framing and agenda-building processes, and offers a general conceptual framework for analyzing the influence of corporate America over environmental policymaking. Theories that specifically address the internal operation and characteristics of companies are also discussed, though they are not a major focus of this book. The research then explores how much firms have influenced Congress, the EPA and certain natural resource agencies, and the courts on environmental and natural issues since 1970, when the environmental movement began. No other study has examined the ability of business to influence environmental policy in all three branches of government and in such detail. The results of this research provide a compelling rationale for exploring agenda building in specific cases involving environmental and natural resource issues. Accordingly, the book presents an analysis of six cases in which private firms were involved in disputes concerning pollution control and natural resource management.

More specifically, the study addresses the following three research questions: How much do certain sectors of industry (for example, agriculture, chemical, mining, logging, energy production, and so on) and business as a whole affect environmental policy? Related to this, what determines business success or failure in the environmental policy arena? Lastly, is the amount of influence business has proportionate to other interests in society appropriate in view of the competitive needs and well-being of a large, complex, and democratic society? The findings of the analysis involving the first two questions are used as a basis for tackling the third question at the end of the book.

Therefore, the central question of the book is, how often does business get its way on environmental issues? Do corporations, given the immense wealth and resources they command, exert an unequal and unfair influence over American government whereby they are able to compel elected representatives and agency officials to reject or compromise substantially appropriate and necessary environmental rules and regulations?[2] A related concern, often ignored in the interest group literature, is the frequency with which firms are able to prevent environmental and natural resource policy proposals from even reaching the government agenda. Although recent research suggests that firms do not possess the amount of influence necessary to shape or block public policymaking on a consistent basis more generally (see, for example, Berry 1999; M. Smith 2000), few studies have critically analyzed their ability to affect agenda setting specifically within the environmental policy sphere. This investigation addresses this issue by empirically assessing the ability of companies to affect legislative, administrative, and judicial decision making and mold the government's environmental and natural resource policy agenda since the beginning of the environmental movement.

The Role of Interest Groups in a Democracy

As students of American politics are aware, James Madison attempted to address the thorny issue of the "mischiefs of faction" within the context of the new U.S. Constitution in *Federalist Paper Number Ten.* A major concern among leaders and citizens at the time was whether the proposed government under the new Constitution would prevent a faction, large or small, from taking control of the country. Madison wrote that factions would naturally arise because of the freedoms granted citizens under the Constitution to associate and form groups. He knew that rational individuals would recognize the advantage of acting in numbers rather than alone. In Madison's view, factions would be a natural product and price of liberty. Government must control them, but it cannot suppress them. According to him, factions would be limited in their power under the new Constitution because the national government would be divided into three separate branches with important checks and balances on one another. "Ambition must be made to counteract ambition," he said. He also explained that elected representatives would have the intelligence and the wisdom to serve the larger interests of the nation and would help control efforts at tyranny from any source. In addition, citizens would have guaranteed civil rights and civil liberties to protect them from the "mischiefs of faction."

The potential danger of excluding certain segments of the population from the political process was a major concern of the founding fathers as well. Although Madison believed the causes of factions were rooted in human diversity, he thought inequality in the possession of economic resources was at the heart of the problem:

> But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors and those who are debtors fall under like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. (*Federalist Paper Number 10*)

Madison argued that all individuals and groups, from the poor to the affluent, would be equally protected by the Constitution.

Even though Madison wrote his essay more than two hundred years ago, many of the issues he addressed remain relevant to American politics. At least since the early 1960s, presidents and members of Congress from both parties have complained vociferously about the undue influence of interest groups in Washington DC, primarily because of the rapid growth in the number, size, and resources of these groups. The general public, too, has grown increasingly skeptical of the role of interest groups in the political system. Today, interest groups are blamed for legislative gridlock on vital issues such as health care reform, education reform, energy policy, and environmental policy as well as for the increased politicization of the judicial-nominating and -approval process.

In particular, the size and wealth of business lobbying organizations have grown dramatically since World War Two, prompting some observers to argue that they are now too powerful and are undermining democracy and threatening the well-being of society (for example, Korten 1995). The weakening of the political parties, the rising costs of media advertising and election campaigns, and the increasing contributions by Political Action Committees (PACs) to candidates and parties have led to calls for reform in the way American elections are financed. Business interests, among others, are key targets of critics who demand the enactment of meaningful campaign finance reform at the federal level. The campaign finance reform legislation enacted in 2002 bans "soft money," among other things, and is a significant attempt to level the playing field. Loopholes in the act exist, however, and it will be necessary to adopt additional regulations in the future in order to correct inequities in the financing of campaigns. Thus, despite Madison's assurances, the question of how we allow business and other interest groups to form and participate but control their influence remains a dilemma in modern times.

Democratic Concepts and Theory

Much has been written about the required conditions for a successful democracy, and there is widespread agreement that the presence of a multiparty system, competitive elites, the secret ballot, free and open elections held at regular intervals, majority rule, and guaranteed civil rights and civil liberties are important. Public participation in political and governmental affairs is also a critical ingredient in the functioning of a democratic society.[3] Opportunities for citizen involvement normally include attending public hearings and meetings, writing elected officials, joining interest groups, and voting in elections. At the same time, elected representatives are expected to make decisions that reflect the public will and are held accountable for their actions (Jones and Baumgartner 2004). They must allow citizens open access to the decision-making process and demonstrate that they are responsive to the needs and demands of the broad public.

Although classical democratic theorists anticipated that citizens would have considerable knowledge about political issues and government policy, possess a strong motivation for involvement in political life, and exhibit a high level of participation in public affairs, most of the expectations concerning the requirements for effective democracy have been tempered by the results of empirical research conducted during the last fifty years (see, for example, Campbell et al. 1960; Verba and Nie 1972; Milbrath and Goel 1977; Wolfinger and Rosenstone 1980; Burnham 1987; Carmines and Stimson 1989; Teixeira 1992; Wattenberg 1998; Putnam 2000; Abramson, Aldrich, and Rohde 2003). In general, Americans tend to have relatively low interest and knowledge about the issues and candidates of the day, often hold inconsistent views on the issues, and vote with great irregularity. Since the 1960s, for instance, voter turnout has generally hovered at or below the 50 percent mark in presidential elections. In spite of these deficiencies, American democracy has been fairly stable and has flourished, primarily because the various channels of communication between the people and government have remained open, thereby allowing citizens to voice their approval or disapproval and take effective action at certain points in time (for example, the civil rights movement, the protest against the Vietnam War, the women's and environmental movements, and the patriotic fervor following the attack on the World Trade Center). Thus, there are a variety of ways (for example, by joining interest groups and through the media and now the Internet) for Americans to communicate their views and beliefs about salient issues without becoming actively involved in politics on a continuous basis. At the very least, citizens continue to hold cherished democratic values and do not wish to change radically the present political system.

There is disagreement over how much public participation is required to sustain a democratic society (Hahn and Kamieniecki 1987). Those who contend that democracy is best served by a high rate of involvement correctly point out that a democratic society, unlike a traditional oligarchy, depends on the consent of its citizens (for example, Pateman 1970; Verba and Nie 1972; Milbrath and Goel 1977; Hahn and Kamieniecki 1987; Putnam 2000). Consent cannot be taken for granted where a large segment of the public is apathetic, uninterested, and unaware. Consensus, in fact, actually may be weak in such a state (Lipset 1981; Hahn and Kamieniecki 1987). Moreover, low rates of turnout almost always indicate that the socially and economically disadvantaged are underrepresented in government (Key 1958; Verba and Nie 1972; Milbrath and Goel 1977). Elected leaders are usually less receptive to unorganized, lower-status citizens than to the more privileged, involved, and organized strata, which includes business interests (Verba and Nie 1972).[4] Low levels of public participation and the underrepresentation of the disadvantaged segments of the public may also indicate a lack of effective citizenship and of support for the political system, which eventually can threaten the stability of democracy (Hahn and Kamieniecki 1987). At the same time, some question whether high involvement is really beneficial and suggest that low levels of participation mean that most citizens are basically satisfied with current conditions (Lipset 1981). Such a position, however, perpetuates the belief that low levels of citizen participation are acceptable, if not desirable. Citizen participation is regarded as essential to the functioning of a democracy; indeed, it is at the heart of democratic theory.

Although the sharp rise in the number and diversity of interest groups is seen by some as a healthy trend and a way to offset declining levels of public participation and the continued weakening of the political parties, the question remains exactly whose interests are being served and with what effect (Jones and Baumgartner 2004). Despite the substantial increase in the size and number of environmental organizations since the 1960s, the emergence of the environmental justice movement in the 1990s suggests there is a deep concern among many over the disproportionate exposure to pollution by poor and minority groups in urban centers throughout the nation (see, for instance, Mohai and Bryant 1992; Kamieniecki and Steckenrider 1997; Ringquist 1997, 2003; Foreman 1998; Schlosberg 1999). Yet, only recently have large mainstream environmental groups begun to pay attention to environmental justice issues. And even if one believes that the influence of business interests has waned in recent years due to the rise of competing citizen groups, as many have argued (for example, Berry 1999), business still appears to exert a great deal of power in the halls of government, *especially* in the environmental policy arena. The crucial question is, to what degree does the campaign and lobbying activities of business result in denying segments of the public and future generations of Americans the opportunity to enjoy the benefits of high environmental quality and the country's natural resources?

Even though business is not always a model citizen, it nevertheless must be allowed to collaborate and participate fully in democratic society. A number of liberals and environmentalists have called for severe restrictions on business activity, a significant restructuring of capitalism, and a redistribution of wealth in America. A series of U.S. Supreme Court decisions in the 1870s and 1880s (generally involving granaries and railway corporations), however, established a doctrine of corporate personhood, thereby providing business with important rights and liberties to participate freely in politics and policymaking. In the *In re Sinking Funds* cases, 99 U.S. 718 (1878), the Court found that the Fifth Amendment due process clause prohibited the United States and the states from depriving *persons or corporations* of property without due process of law. Another important case, *Santa Clara County v. Southern Pacific Railway Corporation* 118 U.S. 394 (1886) further established that corporations are persons under the Fourteenth Amendment by ruling that the Fourteenth Amendment's equal protection clause applies to corporations. More recently, the Court has ruled that denying corporations the ability to contribute money to political campaigns infringes on their freedom of speech and is unconstitutional. At the same time, of course, it is illegal for corporations to wiretap, harass, and physically threaten members of opposition groups as a way to quiet their protests.

Corporate America and Environmental Policy: Opposing Views

The influence of business over environmental policy is often used as an example of the substantial and unfair leverage certain interest groups have over government actions, especially when compared to the level of influence of average citizens (Korten 1995; Ehrlich and Ehrlich 1996; Dryzek 1997; Gonzalez 1997; Suzuki and McConnell 1997; De-Shalit 2000; Press and Mazmanian 2003; Brown 2001; Glazer and Rothenberg 2001; Kettl 2002). Many believe that the power business wields in American politics threatens democracy and, among other things, undermines the nation's efforts to control pollution and conserve natural resources (Milbrath 1989; Cahn 1995; Korten 1995; Ehrlich and Ehrlich 1996; Dryzek 1997; Suzuki and McConnell 1997; Brown 2001; Gonzalez 2001; Devra Davis 2002; Press and Mazmanian 2003). Environmentalists assert that "big business" has continuously been an impediment to the formulation and implementation of clean air and water quality standards. Ranchers and land developers, they argue, have successfully fought endangered species protection; oil, coal, and natural gas companies have opposed strict energy-conservation measures and have lobbied against the adoption of renewable sources of energy; mining companies have thwarted the revision of mining laws and regulations; and chemical companies have fought legislation intended to control pesticides, promote the safe disposal of hazardous waste, and abate old, abandoned toxic waste sites.

Corporate leaders and conservative analysts strongly disagree with this assessment (for example, Simon 1981, 1999; Easterbrook 1995; Wildavsky 1995; Lomborg 2001; P. Moore 2002). They feel that environmentalists are exaggerating problems and are predicting dire consequences in order to alarm Americans unnecessarily, raise money for their cause, and shape public policy. In addition, they maintain that many present laws, regulations, and government programs are too expensive to comply with, will result in only modest—if any—improvements in environmental quality, and, therefore, are unnecessary. In their view, corporations have a great deal at stake financially (as do their shareholders), and they have every right to express their positions and lobby government to protect their interests. After all, this is what democracy is all about.

Environmentalists counter these arguments in several ways. They point out that the true costs of pollution (for example, to public health and property) are excluded in cost / benefit and economic-based assessments as well as in the actual cost of manufacturing processes and goods. When these factors are included in such calculations, efforts to protect the natural environment and promote natural resource conservation are more than worth the effort and expense (Hawken, Lovins, and Lovins 1999; Lovins, Lovins, and Hawken 1999). Moreover, at the global level, the United States is not playing a major role in forging an effective international agreement to control climate change because of the political power of certain domestic industries, primarily the energy companies. Environmentalists accuse business of derailing efforts to pass legislation to protect the environment in Congress by the kinds of lobbying tactics they use and by the vast sums of money they contribute to certain House and Senate campaigns. Following the passage of environmental-protection laws, business frequently seeks to influence rulemaking in government agencies, principally in the EPA, and, if unsuccessful, challenges the laws in court.

In addition, environmentalists charge that business spends large sums of money to frame issues purposely in biased ways in order to affect public opinion. Firms do this, according to environmentalists, by manipulating media coverage and writing editorials that slant the truth (Devra Davis 2002). A number of large companies, including Koch Industries, ExxonMobil, Philip Morris, General Motors, General Electric, Archer Daniels Midland, and DaimlerChrysler, have developed and heavily funded several conservative think tanks such as the Cato Institute, Citizens for a Sound Economy, and the Federalist Society (C. Moore 2002). The Koch family, for example, contributed more than $21 million to the Cato Institute alone between 1977 and 1994 (C. Moore 2002). The money is primarily used to fund policy and scientific research, produce publications and mailings, and hire "neutral" experts to write articles and editorials that support business interests. Several think tanks have sponsored scientific studies that diminish the severity of environmental threats posed by air and water pollution, acid rain, and climate change. Findings from these studies are being used to undermine the precautionary principle, undercut adaptive management, and insist on "complete" scientific knowledge as a basis for environmental regulation. Policy and economic analyses conducted by industry-funded think tanks almost always contend that current and proposed environmental and natural resource rules and regulations are extremely costly and provide little or no benefit. In 1999 the Citizens for a Sound Economy Foundation, the funding arm of the Citizens for a Sound Economy, paid top attorneys to write "friend of the court" briefs arguing that the Clean Air Act was unconstitutional. The Claude Lambe Foundation, DaimlerChrysler, and General Electric helped fund this effort. The Lambe Foundation has also funded the Foundation for Research on Economics and the Environment (FREE) based in Bozeman, Montana (C. Moore 2002). FREE, a libertarian organization, conducts seminars for federal judges, including those that serve on the Circuit Court of Appeals in Washington DC, which reviews numerous environmental cases.

Business leaders reject these accusations and point to the progress the country has made since the early 1970s in improving air and water quality, conserving energy, keeping the price of energy relatively low, and encouraging the safe transportation and disposal of chemical waste. Companies have spent hundreds of millions of dollars to retool their plants and manufacturing processes in order to control emissions, save energy, and safely dispose of toxic waste. The reduction of sulfur dioxide (SO_2) emissions by power plants in the mid-Atlantic states has significantly reduced acid rain, thereby protecting forests, lakes, and streams in the United States and Canada. The timber industry has hired numerous ecologists and conservation biologists and is now managing forests wisely by protecting critical habitats (Winter 2002). Large agricultural firms are effectively managing soil erosion and are containing feedlot waste and chemical runoff from cropland. Unlike in the past, firms are cooperating more closely with government regulators and maintain that a "greening of industry" is currently taking place (United Nations Conference on Trade and Development Programme on Transnational Corporations 1993; Hoffman 2000; Prakash 2000; Robbins 2001; Marcus, Geffen, and Sexton 2002; Press and Mazmanian 2003). National business associations cite programs such as Energy Star, Responsible Care, Project XL, and 33/50 as evidence that corporations have adopted a new attitude toward protecting the environment and conserving the nation's natural resources (Marcus, Geffen, and Sexton 2002; Press and Mazmanian 2003). Clearly, both environmentalists and business leaders present a number of compelling arguments to support their positions.

No matter which side one takes, it is surprising that little empirical research has been done on the influence of business over U.S. environmental policy given the frequency with which large companies are the primary targets of federal environmental laws, the large amounts of money companies spend to comply with government regulations, and the millions of dollars business spends on election campaigns and lobbyists each year. Moreover, since 1970 the media have covered issues related to business and the environment on a regular basis. Hardly a week goes by that a conflict over environmental protection or natural resource conservation involving business is not part of the news. The few studies that have been conducted tend to be narrow, descriptive, impressionistic, and anecdotal. Previous research focuses on only a few unique businesses as case studies, treats business as a single entity, and ignores that companies belong to distinct industrial sectors. These studies also overlook the extent to which companies disagree with one another and take opposing positions on environmental policies.

Although most researchers believe corporations wield considerable power in American politics today, there is disagreement over just how dominant they really are and to what extent they can mold the government agenda. Some researchers contend that the recent rise in citizen groups, including environmental organizations, has successfully mitigated the influence of the once powerful firms in politics and government (for example, Baumgartner and Leech 1998; Berry 1999). Other scholars, however, believe that business groups are still dominant players in American politics in general, and in environmental politics in particular (for example, Korten 1995; Clawson, Neustadt, and Waller 1998; Libby 1998; Glazer and Rothenberg 2001). A main goal of this inquiry is to shed light on this debate and to draw conclusions about whether business exerts too much influence in the environmental policy arena and, by so doing, undermines democracy and the well-being of the public.

De-Shalit (2000) argues that government *must* play a pivotal role in environmental protection in democratic, pluralist societies. Although classical liberals embrace pluralism and tolerate actions reflecting self-interest in democratic nations, he believes the environment is a unique case. According to him, "Environmental issues call for a politics of the common and the good, and consequently for interventionism" by government (2000, 92). Therefore, "A sense of community is needed since social and environmental responsibilities in the environmental era ought to take precedence over self-interested profit-making motivation" (2000, 92). In De-Shalit's view, the unique nature of environmentalism, with its focus on protecting and furthering the common good, calls for a limited policymaking role for industry and significant intervention by national government. A strong case can also be made, however, for limiting the government's role to rulemaking so as to internalize the costs and decisions of individual actors as opposed to government regulating aggressively (direct command-and-control regulation) (Freeman 2006).

Summary and the Study Plan

This book contains seven additional chapters. Chapter 2 analyzes business, interest groups, and environmental policymaking. Chapter 3 develops a general theoretical framework to explain the role of corporations in American environmental policymaking. The framework outlined in this chapter forms the basis for the analyses reported in the chapters that follow. The framework identifies possible political and economic variables that might account for the ability of business to affect decisions concerning environmental issues in Congress and elsewhere. It also includes important theories of issue definition, framing processes, and agenda setting. Theories concerning the internal operation and characteristics of firms are briefly introduced as well. An overview of the study's research design is presented at the end of that chapter. Chapter 4 contains a quantitative analysis of agenda setting in Congress, and Chapter 5 investigates the influence of business in the EPA, certain natural resource agencies, and the federal courts. The findings reported in Chapters 4 and 5 justify the need to explore the influence of business over environmental and natural resource policy in specific situations. Therefore, Chapter 6 examines the role of industry in three cases concerning environmental regulation (General Electric's pollution discharge of polychlorinated biphenyls [PCBs] into New York State's Hudson River and the efforts to control acid rain and climate change in the United States). Chapter 7 discusses the role of industry in three natural resource policy issues (attempts to amend the General Mining Law of 1872, the restoration of the Florida Everglades, and the protection of the northern spotted owl and old-growth forests in the Pacific Northwest). The justification for selecting these cases is provided in the research design section of Chapter 3. The final chapter offers a summary of the study's major findings, discusses the implications of those findings with respect to the theoretical framework, and attempts to determine whether business has an unfair advantage in environmental policymaking and, as a consequence, undermines democracy and the public welfare. The last chapter concludes with suggestions for future research.