1 Introduction

On January 23, 2008, following years of challenges from activist groups, H. Lee Scott, Jr., the chief executive officer of Wal-Mart, delivered the following remarks at the company's 2008 year beginning meeting:

> We live in a time when people are losing confidence in the ability of government to solve problems. But at Wal-Mart, we don't see the sidelines that politicians see. And we do not wait for someone else to solve problems that might hurt our business or affect our customers in a negative way. We have a culture of teamwork, a culture of innovation, and above all, a culture of action.
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> In the years ahead, we might not be able do everything that everyone wants us to do. But we will do things that need to be done and that you and your company can do. Wal-Mart can take a leadership role, get out in front of the future, and make a difference that is good for our business and the world.

Although the economic climate worsened notably in the years following Scott's speech, Wal-Mart, along with many of its competitors and suppliers, stayed the course and continued to see beyond "the sidelines" between business and society demarcated by the state. For example, Wal-Mart has engaged in a delicate strategic dance with protesters regarding its store-siting policies. During the period from 1998 to 2007, when faced with significant protest activity over a proposed store, in 65 percent of cases Wal-Mart retreated and either did not open the store or located it elsewhere (Ingram, Yue, and Rao 2010).

Similarly, in response to the demands of groups such as Wake Up Wal-Mart and Wal-Mart Watch, as well as the filing of union-backed lawsuits by employees, the retailer changed several of its labor, health care, and environmental practices. These responses came due to the real and perceived costs to the firm that previous negative publicity generated: a 2004 survey by McKinsey & Company for Wal-Mart found that "2 percent to 8 percent of Wal-Mart consumers surveyed had ceased shopping at the chain because of negative press they have heard" (Rosenbloom and Barbaro 2009).

Wal-Mart's experiences and those of similar retailers are not unique. American firms as diverse as DuPont, Nike, Home Depot, Citibank, Microsoft, McDonald's, and Freeport Mining have faced criticisms over a wide range of their seemingly private practices, including those related to procurement, environmentalism, human rights, labor, affirmative action, and executive compensation. In the face of many of these challenges, firms have responded by reforming their practices; in other instances, however, firms have not backed down regardless of how intense the internal or external pressure to do so.

The question this book tackles, as illustrated by the experiences of Wal-Mart and other corporations, is: Under what conditions will individual firms modify their behavior internally rather than submit to formal or informal punishment? That is, how do businesses strategize in a complex and uncertain environment in which they face challenges not just from the state but from other private and public actors, including interest groups, social movements, employees, and investors? When do they absorb the cost of a private policy, and when do they dare the government to create and enforce a formal regulation, or the public to patronize another firm?

This book views the adoption of private policies by individual firms as a key strategic response to the political challenges American firms face and one that has grown more common in recent decades. To gain leverage on a firm's choice of whether or not to reform its practices, I conceptualize this private policymaking as a conditional process that is sometimes the result of external demand, sometimes the creation of a strategic decision to supply, and sometimes the product of a combination of these supply-and-demand dynamics. Underlying public forces, as generated both by the mass public and public policymakers, drive these forces of supply and demand (and their associated costs and benefits), and firms, in turn, respond to them via private policymaking.

In order to theorize as to the specific roles of public forces in firm decision-making, it is important first to understand the political environment American businesses faced in recent decades. In particular, documenting how businesses simultaneously gained strength vis-à-vis the state and lost it vis-à-vis society during this time period and how these trends in power correlate with trends in public and private policymaking is essential.

Business power and the declining efficacy of contentious politics

The notion that firms exist in a market system free of politics has long been debunked. As Karl Polanyi (1957) argued, there is no such thing as a pre-political market. Instead, firms are better understood as social actors embedded in a politically and socially shaped marketplace (Granovetter 1985). Starting with this understanding, we can consider the ways in which the relationships between business and the state and business and society changed in the United States from the 1970s to present; what we will find is that corporations accumulated more power and leverage versus the state during this time period but simultaneously became more vulnerable to direct challenges from society.

Writing in 1977, Charles Lindblom argued that the power of business in America was as impressive as it was extensive. At the time, Lindblom's views were considered radical enough for the Mobil Corporation to take out a full-page advertisement in the *New York Times* attacking him. Today, however, many scholars argue that the late 1970s, rather than representing the peak of business power, marked the starting point of a new era of increasing power and favorable policies (see, e.g., Hacker and Pierson [2010]). To trace this trend and to highlight how contentious politics – that is, those "collective interactions between parties attempting to advance their interests, but in which one of the parties is the state or some element thereof" (Soule 2009, 30) – at the national level in the United States became less of a threat to business interests in the present, I use the same three-part framework of business power as Lindblom.

First, business power can be seen as structurally embedded in the nation's political economy. Through the threat of capital flight or reduced investment, business can exercise sufficient leverage over incumbent politicians to maintain its position or achieve its desired policy outcomes without taking overt action. Structural power provides business with the ability to set the policy agenda, through the suppression of threatening issues and proposals, and to do so regardless of which party governs (Dryzek 1996).

Advocates for the structural argument point to two recent trends that further strengthened it: globalization and capital aggregation. Most dramatically, critics of the latest wave of globalization claim that it has fundamentally weakened states' abilities to regulate business practices (Strange 1996). From this perspective, the technological ability of firms to shift capital, investment, etc. instantaneously gives businesses additional leverage over governments. Firms are additionally advantaged, critics argue, because corporations' home governments often are unable to regulate corporate practices beyond national borders (Newell 2000). For example, although the developed nations that are home to the vast majority of the world's largest corporations have fairly strict regulations on corporate environmental practices and effectively enforce these regulations, one or both of these conditions may not be in place in the developing nations in which large transnational firms operate (Knill and Lehmkuhl 2002). However, the evidence for this governance deficit and the empirical effects of globalization broadly is mixed, with some scholars arguing that it actually led some states to strengthen their regulatory regimes (Vogel 1995).

The continuing aggregation and concentration of capital and employment among the largest American firms over the course of the twentieth century also increased business' structural power and largely went unchecked (Nace 2003). As the largest firms grew even bigger, they became more systemically important to the economy (or, infamously, too big to fail) and more able to extract rents from the state in the form of tax breaks, regulatory relief, and bailouts. Further, their prominence in society grew as well. Quite simply, these firms now have political leverage that other organizations can only dream of having.

Second, business power can arise via instrumental means. Examples of business' political instruments include campaign donations, professional lobbying, grassroots lobbying, and charitable contributions.[1] Regardless of the tool employed, this power can serve to supplement business' structural power or to protect its interests when its structural power is insufficient or absent. In contrast to structural power, business exercises its instrumental power in a largely overt manner (Hacker and Pierson 2002). The goal is to receive favorable treatment in the legislative and regulatory processes, and its logic is simple: the use of

[1] For a fuller list, see Schlozman and Tierney (1986, 150).

instruments leads to access, and that access, in turn, provides business with sufficient influence in the policymaking process to achieve its ends or, at least, limit the gains of its opponents.

There is no question that from the 1970s onward, businesses of all sizes exercised their instrumental power more frequently and collectively and became more sophisticated in their attempts to influence Congress, the courts, and the bureaucracy (Goldstein 1999; Hula 1999; Walker 1991; Yackee and Yackee 2006). It is an open question, however, as to how much success business enjoyed as a result of these activities. Business' campaign finance donations appear to provide it with the access it seeks, but empirically, determining whether or not this access translates into favorable policy outcomes is difficult.[2] Nonetheless, the particularly sharp rise in lobbying expenditures since 1980 leads one to believe that firms would not employ that specific tool if it were more akin to consumption than investment. As Baumgartner *et al.* (2009) note, although business "does not always win, corporate, professional, and trade interests have a distinct advantage in setting the lobbying agenda" (257).

An additional factor that is indicative of the instrumental power of business is the increasing appearance of the "revolving door" between the halls of power in corporate America and Washington, DC (Werner and Wilson 2010). Recent examples of individuals who moved back-and-forth between government and business include former Vice President Dick Cheney, White House Chief of Staff William Daley, four of the six Secretaries of the Treasury from 1993 through 2011, and recent heads of the Office of Information and Regulatory Affairs and the Office of Management and Budget. Even though these appointments were all legitimate and subject to the consent of the US Senate, they demonstrate how common and bipartisan the revolving door is.

[2] For a summary of the lack of findings in support of a robust link between business power and the activities of corporate political action committees, see Ansolabehere, de Figueiredo, and Snyder (2003); for a similar discussion regarding corporate soft money donations, see Ansolabehere, Snyder, and Ueda (2004); for an examination of this link with regard to the motivations behind donations by individual corporate executives, see Gordon, Hafer, and Landa (2007); and finally, for a study of the anticipated effect on business power of the Supreme Court's ruling in *Citizens United* v. *Federal Election Commission*, see Werner (2011).

Third, business' political power also stems from its ability to shape public opinion. Just as business' structural power works to keep certain issues off the public agenda, so too does this more manipulative form of power. As Lindblom (1977) writes, businesses design their public persuasion efforts to suppress public discussion of the "grand issues of politico–economic organization" (250). Businesses attempt to convince the public through relatively surreptitious means, such as education programs and think tanks, that business should not only maintain its privileged position but that it should also be released from the excessive burdens of the state (Smith 2007). Such efforts were on display during the health care debates in both 1993 and 2010 when organizations such as the National Federation of Independent Business (NFIB), the Health Insurance Association of America, and the Chamber of Commerce spent millions on public relations campaigns in attempts to defeat or limit reform, and they also have an institutionalized component in corporate-backed think tanks such as the American Enterprise Institute.

Even recognizing that the above gains in business power are not absolute, firms still find themselves operating at a greater advantage due to the decline of various countervailing forces arrayed against business. This decline is due to three trends: the drop in union membership, changes in the composition and goals of public interest groups, and the adoption of a more market-friendly ideology by the Democratic Party.

For the majority of the twentieth century, the group consistently battling business was organized labor. Since the 1970s, however, union membership declined overall and dramatically in the private sector. Only a rise in membership rolls in public sector unions prevented a near complete collapse of the movement. According to the Bureau of Labor Statistics, in 2010, 36.2 percent of public sector workers were unionized, but only 6.9 percent of private sector workers were, yielding an overall percentage of 11.9 percent. The consequences of this decrease are manyfold, but perhaps most importantly, the decline of organized labor hurts its ability to donate to – and mobilize for – friendly candidates and to lobby public officials for sympathetic (and likely anti-business) legislation and regulations (Francia 2006).

Other like-minded interest groups did not fill the gap created by the decline of unions. Traditional interest groups that focused on recruiting and building substantial memberships versus managing the issue of survival also declined in size and number, and as a result, few groups now exist with the local infrastructure that makes mobilization easier (Skocpol 2003). (It is revealing to contrast this decline with the simultaneous construction of such grassroots networks by the Chamber of Commerce and the NFIB.) Instead, most interest groups created since the 1960s focus on narrow, post-materialist concerns, and although often successful in the policymaking process, they typically do not coordinate across issues and certainly do not have the strength to counterbalance business on their own (Berry 1999).

Anti-business sentiment was increasingly on the wane in the Democratic Party during this time period as well, as the Democrats struggled to compete with the Republican Party for political action committee and soft money donations from businesses. Starting in the early 1980s, congressional Democrats, led by Rep. Tony Coelho, pushed the party to adopt a friendlier attitude toward business in order to attract corporate contributions (Vogel 1989). Following the party's massive defeat in the 1984 presidential election, the Democratic Leadership Council (DLC) formed to accelerate this pro-business repositioning, and the organization remained ascendant through the Clinton Administration (Baer 2000). Although these efforts helped the Democrats narrow the fundraising disparity between the parties, to the DLC's critics on the left, the party's embrace of its economic ideology reflected business' supremacy.

Taking into account the power of corporations in politics and the contemporaneous decline of countervailing pressures, what we would expect is a decrease in the efficacy of contentious politics targeted toward firms and a decline in public policymaking unfavorable to big business. Such a pattern of active policymaking and passive policy drift occurred between the late 1970s and 2010, in spite of changes in the party in charge of the presidency or Congress. Examples of recent pro-business policies abound and include deregulation of a slew of industries, multiple new free-trade agreements, several rounds of reductions in corporate taxes (as well as increases in various tax allowances), non-regulation of derivatives and other financial contracts, and tort reform. Even on those occasions when public policymakers targeted business for additional regulation – e.g., the corporate governance and accounting reforms of the Sarbanes–Oxley Act or the financial services reforms of the Dodd–Frank Act – critics charged that the new laws and regulations did not go far enough, were watered down during the rulemaking process or easily circumvented, and could not keep pace with rapidly changing economic and technological environments (Hacker and Pierson 2010).

Although policies emanating from Washington today are certainly tougher on businesses than those during the Gilded Age and American businesses still face the threat of regulation at all levels of government (national, state, and local), few would argue that, in the current environment, there is a high likelihood of the state enacting new restrictions that are as stringent toward firms as those enacted during the period from the New Deal through the Nixon–Ford Administration. However, and perhaps as a result, during this time period we saw a corresponding rise in the adoption of private policies by firms designed to self-regulate their own behavior. One could argue that since the state did not act, activists took the fight directly to corporations, or that firms, ever conscious of the state's ability to act and more engaged in and knowledgeable of politics than ever, strategically chose to turn themselves into policymaking venues. The next section further details the rise of private policymaking and its strategic underpinning.

The rise of private politics and the increasing scope of private policymaking

Private policymaking is the output of private politics – which, as Baron (2010) states, is "politics [which] pertains to individual and collective action to influence the conduct of private agents, including oneself, as in the case of NGOs that apply social pressure to change the conduct of firms" (1299). In contrast to contentious politics, in private politics the role of the state is minimal and indirect, if it is involved at all. Although private politics that targets business is a centuries-old phenomenon, it rose to prominence in the last 20 years, as the concept of corporate social responsibility (CSR) became commonplace in the business world, academia, and the broader public, and as individual corporations increasingly adopted policies that internally regulate their actions.

This section will briefly detail the rise of private policymaking by firms and will document its increasing scope in terms of both its various manifestations and the policy areas it encompasses, demonstrating that although business strengthened its position in contentious politics between the late 1970s and 2010, firms increasingly found themselves adopting the role of policymaker in private politics through either threat or choice.

The rise of private politics

In the United States, private politics and policymaking originated in Revolutionary times. As Soule (2009) discusses, the Boston Tea Party was in part a corporate protest designed to punish the East India Company for its support of the British government's policies toward the colonies. In the nineteenth century, as large corporations became more common in the wake of the Industrial Revolution, they began experimenting with the early forms of CSR through philanthropy and the provision of public goods (Heald 1988). Welfare capitalism, that is the provision of welfare state-like benefits by private employers, spread throughout the US in the 1920s, during a period of rising conservatism in politics and declining labor membership. Further, in leading large firms, welfare capitalism lasted well beyond the creation of a more extensive American welfare state through the New Deal (Jacoby 1997).

Although the adoption of such policies for leading firms was indicative of a desire of firms to avoid unionization and employee turnover, for most firms, CSR in the mid-twentieth century represented an effort "to do good to do good" rather than to profit by doing so (Vogel 2005). Throughout the twentieth century, corporations continued to contribute to or supply public goods, such as museums, parks, and public broadcasting, and to participate in local causes. In the 1950s and 1960s, however, firms found themselves facing competing demands in private politics. On one side, activists began to challenge firms to change their policies with regard to labor, civil rights, and human rights, etc. and specifically targeted firms with connections to the Vietnam War or the apartheid regime in South Africa. On the other side were economists and other financial market participants who argued that any good behavior that came at the expense of shareholder value ran contrary to the fiduciary duties of a corporation's management (see, e.g., Friedman [1962]).

Such criticism ran counter to powerful trends though, as from the late 1970s onward, corporations, activists, and the public placed a new emphasis on private policymaking, and specifically CSR, that separates the present from earlier eras (Vogel 2005). This new era of private policymaking is indicative of a shift away from it being an ad hoc response to a strategy for managing stakeholder relationships – including those with customers, investors, suppliers, and employees – a goal that corporations, their management, and business schools started giving greater weight to in the 1980s (see, e.g., Freeman [1984]).

It also suggests that corporations view private politics as an area in which they do not have the same kind of power, especially structural power, against their stakeholders and society as they have against the state in contentious politics and may believe that they have to engage their stakeholders, at least on some issues and to some degree. Further, it reflects the greater leverage activists have against corporations in private politics, given the smaller scale of organization it can involve, the cheaper costs of organizing against firms in the Internet era, the low risk of repression, and the wider variety of protest tactics that can be employed against firms versus the state (for a list of such tactics and a discussion of their increasing sophistication, see Soule [2009, 18]).

In scholarly terms, this modern concept of private policymaking encompasses what Vogel (2010) and Zadek (2001) term civil regulation and Bartley (2007) terms private regulation. These approaches connect self-regulatory behavior to the stakeholder theory of the firm, are primarily international in focus, and are greatly concerned with the efficacy of self-regulation. In particular, civil and private regulation emphasize the role of protesters, social movements, and shareholder and investor activists in setting corporate agendas through direct action, as well as their role in devising solutions to the problems they identify. In this form of private policymaking, it is not uncommon for shareholders or local community members to participate in assuring that firms comply with their commitments.

Importantly, though, protesters and scholars are not the only ones paying greater attention to private policymaking and CSR. The press provides increasingly larger amounts of coverage to corporate policies, and human resources professionals often recruit job candidates with specific training in corporate responsibility (Alsop 2005). Further, between 2000 and 2005, the percentage of investors and executives who described CSR as either "central" or "important" to investment decisions in surveys conducted by *The Economist* nearly doubled from 44 to 85 percent (The Economist 2005). The mass public's awareness of CSR continues to expand and shift as well, as 27 percent of respondents defined CSR as "a demonstrated commitment to the well-being of employees" versus only 3 percent that defined it as