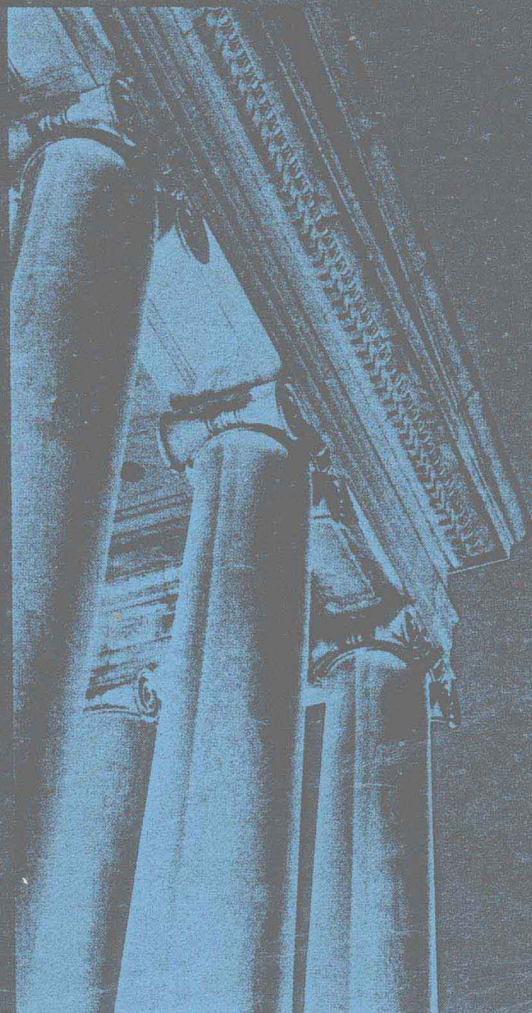


BUSINESS, GOVERNMENT, AND PUBLIC POLICY

CONCEPTS
AND PRACTICES

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*To Deborah
and Susan*

PREFACE

This book provides an analytical framework for understanding the complex legal, political, and social forces that affect business. As we enter the 1990s, business and management must clearly recognize and understand the various elements of the public-policy and regulatory processes in order to survive and flourish. How do public-policy issues that may affect business arise? What political and social influences bear on the development of such issues? What roles do government institutions play in the development and implementation of public policy, and how can business be effective in influencing that policy? What are the forces that are likely to have an impact on the future relationship between business and government? The goal of this book is to assist students, managers, and interested citizens in resolving these questions.

Throughout the book we have endeavored to illustrate consistently the interrelationships among major subject areas. The early chapters link the public-policy process with the institutions that make and implement such policies. The chapters on antitrust policy not only provide a detailed analysis of the antitrust laws but also emphasize the public-policy aspects of antitrust and the implementation roles of administrative agencies. Finally, the chapter on business-government relations describes how corporate social respon-

sibility is related to business regulation and suggests that the challenge of international economic competition may lead to a new series of public policies to improve American competitiveness.

We have tried wherever possible to place the subject areas discussed in this book in historical perspective. In this way the reader can assess the contemporary significance of subject areas such as business regulation, antitrust, and the business-government relationship as well as how and why these subject areas have evolved over time.

This book is intended for use in management courses that deal with (1) business, government, and society; (2) business and public policy; (3) business-government relations; or (4) government regulation of business. Such courses typically emphasize the external political, social, and regulatory forces that affect management decision making. The book is designed to provide instructors with the maximum flexibility by presenting a set of core materials on business, government, and public policy that can be supplemented by other materials suited to the needs of particular courses and individual instructors. It can be used quite effectively with supplements such as a casebook, readings books, or more narrowly targeted books that provide extended coverage of the issues raised. The book also serves as a foundation to which other subject areas may be added, such as corporate governance and business ethics. Owing to its focus on public-policy making, government regulation, antitrust policy, and business-government relations, the book also should be of interest to business managers and participants in executive development programs.

The book can be divided into three parts. The first part, which comprises Chapters 1, 2, and 3, analyzes the major elements of the public-policy process and presents a model to aid in understanding the interrelationships between these elements. Here we examine the government institutions involved in the making and implementation of public policy and discuss what business can do to influence and take part in the process.

The next part, consisting of Chapters 4, 5, and 6, provides an in-depth look at how the public policy of antitrust developed in the United States and how the forces of the public-policy process have substantially altered the direction of that policy in recent years. In this part the reader is introduced to particular antitrust laws that affect business as well as to the strategies business can employ to help shape the future direction of antitrust policy. This part thereby serves to clarify the concepts previously developed in the book, along with offering a somewhat sophisticated knowledge of an important policy directly affecting business in the United States. The relatively thorough focus on one major policy area also familiarizes readers with the complex considerations required in most other public-policy analyses so that supplementary materials and projects may be more profitably assigned.

The final part of the book, Chapter 7, discusses the future of the business-government relationship. In this regard we address two major forces, corporate social responsibility and the growth of international economic

competition, which are likely to bring about a more cooperative relationship between business and government. We believe that the issues examined in Chapter 7 and in the preceding chapters of this book will stimulate thought and discussion about public-policy making and the business-government relationship.

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CHAPTER ONE

Making Public Policy

INTRODUCTION

This chapter examines the principal factors that are involved in the formulation of public policy in American society. First we discuss how policy issues arise in American society. If managers are to be effective in influencing the formulation of public policies affecting business, they must understand how policy issues arise and how such issues can be identified early in the policy process so that appropriate corporate strategy can be developed. The remainder of the chapter deals with policy analysis. In order to help you understand why certain issues eventually become public policy while other issues do not, we will develop a model of the public-policy process that identifies the principal factors influencing the making of public policy. The model also analyzes the process by which these factors operate upon one another in order to influence the making of public policy.

Why Study the Public-Policy Process?

Why is it important for business managers to understand the workings of the public-policy process? The vast array of regulatory legislation affecting business that has been enacted by Congress over the past fifty years provides the answer. The impact of this legislation on the corpora-

tion has been enormous — in terms of the cost of doing business and the loss of freedom to carry out its business functions as it sees fit. The following examples of regulatory legislation (each of which is an example of a public policy) illustrate the point: the Social Security Act of 1935, the National Labor Relations Act of 1935, the Taft-Hartley Act of 1947, the Securities Act of 1933, the Securities and Exchange Act of 1934, the Civil Rights Act of 1964, and the Clean Air and Water Acts of the 1960s and 1970s. The number of regulatory public policies affecting business grew especially rapidly from 1962 to 1976. Table 1-1 illustrates the extent and impact of these public policies on American business. If business had been more sensitive and aware of the emerging issues of race and sex discrimination in employment, of air, water and noise pollution, and of health and safety problems in the workplace, to name but a few, it could have been a much more effective participant in the public-policy process of the 1960s and 1970s. The public policies that emerged during that period might well have been less costly, more efficient, and generally less burdensome, since these regulatory policies would have benefited from the practical input that the affected businesses could provide. Moreover, business would have benefited in the long run by developing a cooperative and socially responsible image.

Business managers need to understand the public-policy process in order to be able to influence the process in the best interests of the corporations they represent. Such an understanding should enable business managers to identify issues important to the corporation early in the policy process and to view them as an opportunity and a challenge rather than simply as a threat. Managers who ignore issues in the public-policy process (for example, proposals to increase controls on biotechnology firms or proposals to protect the privacy of consumer, employee, or investor records in computer data banks) often do so from lack of knowledge about what is happening and a belief that they have no control over the process. Understanding coupled with participation can help managers overcome these kinds of reactions.¹

Public Policy Defined

What exactly do we mean when we use the term *public policy*? The public-policy literature offers many definitions, most of which are too abstract to be practically useful. The following definition is a good starting point:

Public policies are those policies developed by governmental bodies and officials. (Nongovernmental actors and factors may, of course, influence policy development.) The special characteristics of public policies stem from the fact that they are formulated by what David Easton has called "authorities" in a political system, namely, "elders, paramount chiefs, executives, legislators, judges, administrators, councilors, monarchs, and the like." These are, he says, the persons who "engage in the daily affairs of a political system," are "recognized by most members of the system as having responsibility for these

TABLE 1-1 Extension of Government Regulation of Business, 1962-80.

YEAR OF ENACTMENT	NAME OF LAW	PURPOSE AND FUNCTION
1962	Food and Drug Amendments	Requires pretesting the drugs for safety and effectiveness and labeling of drugs by generic names.
1962	Air Pollution Control Act	Provides first modern ecology statute.
1963	Equal Pay Act	Eliminates wage differentials based on sex.
1964	Civil Rights Act	Creates Equal Employment Opportunity Commission (EEOC) to investigate charges of job discrimination.
1965	Water Quality Act	Extends environmental concern to water.
1965	Cigarette Labeling and Advertising Act	Requires labels on hazards of smoking.
1966	Fair Packaging and Labeling Act	Requires producers to state what a package contains, how much it contains, and who made the product.
1966	Child Protection Act	Bans sale of hazardous toys and articles.
1966	Traffic Safety Act	Provides for a coordinated national safety program, including safety standards for motor vehicles.
1966	Coal Mine Safety Amendments	Tightens controls on working conditions.
1967	Flammable Fabrics Act	Broadens federal authority to set safety standards for inflammable fabrics, including clothing and household products.
1967	Age Discrimination in Employment Act	Prohibits job discrimination against individuals aged 40 to 65.
1968	Consumer Credit Protection Act (Truth-in-Lending)	Requires full disclosure of terms and conditions of finance charges in credit transactions.
1968	Interstate Land Sales Full Disclosure Act	Provides safeguards against unscrupulous practices in interstate land sales.
1969	National Environmental Policy Act	Requires environmental-impact statements for federal agencies and projects.
1970	Amendments to Federal Deposit Insurance Act	Prohibits issuance of unsolicited credit cards. Limits customer's liability in case of loss or theft to \$50. Regulates credit bureaus and provides consumers access to files.
1970	Securities Investor Protection Act	Provides greater protection for customers of brokers and dealers and members of national securities exchanges. Establishes a Securities Investor Protection Corporation, financed by fees on brokerage houses.

TABLE 1-1 (Continued)

YEAR OF ENACTMENT	NAME OF LAW	PURPOSE AND FUNCTION
1970	Poison Prevention Packaging Act	Authorizes standards for child-resistant packaging of hazardous substances.
1970	Clean Air Act Amendments	Provides for setting air quality standards.
1970	Occupational Safety and Health Act	Establishes safety and health standards that must be met by employers.
1972	Consumer Product Safety Act	Establishes a commission to set safety standards for consumer products and bans products presenting undue risk of injury.
1972	Federal Water Pollution Control Act	Declares an end to the discharge of pollutants into navigable waters by 1985 as a national goal.
1972	Noise Pollution and Control Act	Regulates noise limits of products and transportation vehicles.
1972	Equal Employment Opportunity Act	Gives EEOC the right to sue employers.
1973	Vocational Rehabilitation Act	Requires federal contracts to take affirmative action on hiring the handicapped.
1973	Highway Speed Limit Reduction	Limits vehicles to speeds of 55 miles an hour.
1973	Safe Drinking Water Act	Requires EPA to set national drinking water regulations.
1974	Campaign Finance Amendments	Restricts amounts of political contributions.
1974	Employee Retirement Income Security Act	Sets new federal standards for employee pension programs.
1974	Hazardous Materials Transportation Act	Requires standards for the transportation of hazardous materials.
1974	Magnuson-Moss Warranty Improvement Act	Establishes federal standards for written consumer-product warranties.
1975	Energy Policy and Conservation Act	Authorizes greater controls over domestic energy supplies and demands.
1976	Hart-Scott-Rodino Anti-trust Amendments	Provides for class-action suits by state attorneys general; requires large companies to notify the Department of Justice of planned mergers and acquisitions.
1976	Toxic Substances Control Act	Requires advance testing and restrictions on use of chemical substances.
1977	Department of Energy Organization Act	Establishes a permanent department to regulate energy on a continuing basis.
1977	Surface Mining Control and Reclamation Act	Regulates strip mining and reclamation of abandoned mines.
1977	Fair Labor Standards Amendments	Increases the minimum wage in three steps.

TABLE 1-1 (Continued)

YEAR OF ENACTMENT	NAME OF LAW	PURPOSE AND FUNCTION
1977	Export Administration Act	Imposes restrictions on complying with the Arab boycott.
1977	Business Payments Abroad Act	Provides for up to \$1 million in penalties for bribes of foreign officials.
1977	Saccharin Study and Labeling Act	Requires warning labels on products containing saccharin.
1978	Fair Debt Collection Practices Act	Provides for the first nationwide control of collection agencies.
1978	Age Discrimination in Employment Act Amendments	Raises the permissible mandatory retirement age from 65 to 70 for most employees.
1980	Federal Trade Commission Improvements Act	Bars the FTC from enforcing antitrust laws against farm co-ops; prevents agency from issuing a regulation concerning funeral industry.
1980	Comprehensive Environmental Response, Compensation, and Liability Act	Creates superfund to pay for cleanup of hazardous chemical spills; taxes petroleum and chemicals.

Source: Murray L. Weidenbaum, *Business, Government, and the Public*, 3rd ed. (Englewood Cliffs, N.J.: Prentice Hall, 1986), pp. 24-26. Reprinted with permission.

matters," and take actions that are "accepted as binding most of the time by most of the members so long as they act within the limits of their roles."²

Starting with this general definition of public policy, we can move to a more specific and functional definition that will be used in this chapter and the remainder of the book. Thus public policy may be defined as including:

1. Laws (also often referred to as statutes) enacted by the U.S. Congress and the state legislatures;
2. Rules and regulations adopted by administrative agencies;
3. Executive orders issued by the president of the United States pursuant to his constitutional authority or authority granted him by the Congress; and
4. Judicial opinions handed down by the federal and state courts, especially opinions by the U.S. Supreme Court and the various state supreme courts.

In the next chapters we will provide a detailed look at how the institutions mentioned in definitions 1 through 4 are involved in the making and implementation of public policy. For instance, as you will learn in the chapters on antitrust policy, the federal courts and administrative agencies such as the Department of Justice and the Federal Trade Commission play a

major role in interpreting, refining, and in some areas expanding upon the antitrust legislation passed by Congress. In so doing, the federal courts and administrative agencies make public policy in the antitrust area.

HOW ISSUES ARISE IN THE PUBLIC-POLICY PROCESS

Before discussing the factors that influence the operation of the public-policy process, it is important to understand how the issues upon which the process operates come into being. Another way of putting this is to ask, How do issues become sufficiently recognized to be added to the *public-policy agenda*? For our purposes we can define the public-policy agenda as that set of issues which have received sufficient attention or recognition such that they are being actively considered by the policy process for adoption as the public policy of a state or the United States. Of course, for reasons discussed below, not all issues on the public-policy agenda succeed in becoming public policy. In fact, most issues (for instance, the proposal for national health care for all Americans funded by increased Social Security taxes) remain on the agenda for many years or are rejected because the factors that influence the making of public policy are never sufficiently favorable for the issue to succeed in becoming a public policy.

While the question of *how* issues arise in the public-policy process is not a simple one, most public-policy specialists agree that the factors listed in Table 1-2, which are discussed below, provide a good explanation of what occurs. While certain factors may be individually sufficient to thrust an issue onto the policy agenda, other issues may require the support of a combination of factors to achieve agenda status.

TABLE 1-2 How Issues Are Identified for the Public-Policy Agenda

Support by social, political, economic, or religious leaders/opinion makers
Media influence
Advances in science and technology
Level of education and leisure time in the population
Interest groups
Historical events: domestic and foreign
Changing economic and demographic conditions
Rational ignorance

**Support by Social, Political, Economic,
or Religious Leaders/Opinion Makers**

Issues are often given their first important recognition and visibility before the general public when they receive the support of well-known and often charismatic leaders or opinion makers. While such support may not alone be

sufficient to get the issue on the public-policy agenda, it often helps trigger additional needed backing from the media and interest groups. Examples of the importance of opinion-maker influence are numerous. The issue of automobile safety gained significant support in the mid-1960s when Ralph Nader wrote his now famous book, *Unsafe at Any Speed* (1965) about the problems of the Corvair automobile, manufactured by General Motors. Mr. Nader's crusade for automobile safety was highly publicized by the television and print media, which provided the issue with additional visibility and staying power. Once raised by Mr. Nader's book, the issue remained highly visible because of his vocal support and the influence of the media.

Rachel Carson's book, *Silent Spring*, published in 1962, is another example of a best-selling book that highlighted a vital public issue — in this case, the uncontrolled use of the insecticide DDT and the resulting pollution of the nation's streams and waterways. The book helped to raise the issue and mobilize the concern of many Americans about pesticide pollution and environmental pollution generally. It is also important to recognize that the related issues of pesticide and environmental pollution gained access to the policy agenda via a number of other factors to be discussed below; namely, media support, advances in science and technology that allowed for more accurate pollution measurement, increased levels of education and leisure time in the population that enabled many Americans to have the knowledge and time to be concerned, and a favorable economic environment that made possible the enactment of relatively costly public policies (for instance, the Clean Air and Water Acts of the 1960s and 1970s) to clean up the environment.

One last example of the importance of opinion makers in moving issues onto the policy agenda involves the charismatic leadership of Dr. Martin Luther King and the issue of civil rights. The issue of racial discrimination in employment and public accommodations (hotels, motels, restaurants, and so on) gained extraordinary visibility from his speeches, marches, and acts of civil disobedience, all of which were widely reported in the media.

Media Influence

It is difficult to overestimate the influence of the print and broadcast media as factors in determining which issues become sufficiently visible to be included on the public-policy agenda. The three major commercial television networks together with public television and the rapid growth of specialized cable television programming make national and world news instantly available to the American people. Additionally, the news divisions of the major television networks and many political leaders in Washington and around the country have long been influenced by the reporting and analysis of some of the nation's leading newspapers.³ Thus if major elements of the media are attracted to a particular issue, perhaps because of the influence of certain key opinion makers, interest groups, or historical events, the issue acquires high visibility, and if the media interest is sustainable, the issue will be added to the policy agenda. Ex-