CAMPAIGN CONTRIBUTIONS AS CRIME: THE CASE OF CONTRIBUTION INFLUENCE ON US ECONOMIC AND ENVIRONMENTAL POLICY

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Abstract: Although the current campaign finance system in the US allows private donations to campaigns, an increasing body of evidence suggests that these contributions influence policy and could potentially lead to social injury. This leads to an important question: Do campaign contributions constitute crime? The present article takes up this question. After an overview of the famous debate between Tappan and Sutherland on the role of social injury in determining whether something is a crime—and a concise summary of different types of political crime (e.g. corruption, bribery, state crime, and state-corporate crime)—an analysis is conducted to assess the connection, if any, between campaign contributions and two types of social injury: economic harm/inequality and environmental harm. Findings from the analysis show that campaign contributions can, indeed, cause social injury. It is therefore concluded that campaign contributions sometimes constitute crime under Sutherland’s framework. Numerous campaign finance reform options are discussed—all with the intent of limiting the social injury created by campaign contributions.

Keywords: bribery; corruption; campaign contributions; corporate crime; state crime; state-corporate crime; white-collar crime

Introduction

In the 2020 US federal elections, campaign contributions flowed to candidates in record sums, totaling more than US $14 billion. Research shows that campaign contributions influence policy decisions (e.g. Peoples 2010; Roscoe and Jenkins 2005; Stratmann 2005). Moreover, a growing body of research suggests that campaign contributions can cause social injury—as was the case, for instance, with their role in the policies that led to the Global Financial Crisis (Peoples 2020). These realities raise an important question: Do campaign contributions constitute crime?
In this article, an analysis is conducted to assess the impact of campaign donations in contributing to two types of social injury: economic harm/inequality and environmental harm. In the former case, a review of the literature is done; in the latter case, both a review of the literature and a unique statistical test are conducted. With respect to economic harm/inequality, the review of the literature shows mounting evidence that campaign donations can, indeed, contribute to economic harm/inequality. In terms of environmental harm, the statistical analysis conducted here shows a clear link between contributions from the fossil fuel industry and voting against environmental reform policy among US House members, thereby effectively blocking environmental reform—again, evidence that contributions can contribute to social harm (environmental harm, in this case). Combined, these findings show that campaign donations can cause social injury, and, thus, sometimes constitute crime according to Sutherland's (1945) framework.

In the following sections and paragraphs, contribution patterns and consequences in the context of the US are expounded. Next, the debate between Tappan (1947) and Sutherland (1945) is introduced. After that, different types of political crime (e.g. corruption, bribery, state crime, and state-corporate crime) are summarized. Next, the analyses mentioned in the previous paragraph are conducted. Following the analyses, the implications of the findings are discussed. The article concludes by exploring various campaign finance reform options that would aim to reduce the social injury created by campaign contributions.

Contributions: Patterns, Policy Influence

Although an extensive description of US campaign finance policy is outside the purview of this article, it is worth providing a few key facts: There are two main categories of contributions in the US: (1) “hard money” contributions that are given directly to candidates and are coordinated with a campaign (e.g. donations from political action committees (PACs) and individual donors); and (2) “independent expenditures” that are indirect and not explicitly arranged with a campaign (e.g. donations from “SuperPACs”). There are limits on hard money contributions (e.g. US $2,800 per candidate/election from individual donors, US $5,000 per candidate/election for PACs), whereas independent expenditures are virtually unlimited, due in part to the lifting of restrictions on independent expenditures in the Citizens United v. Federal Election Commission, 558 US 310 Supreme Court decision. Across categories, businesses and wealthy elites are the biggest contributors. Case in point: less than one per cent of the population donates US $200 or more to campaigns in any given election cycle (Center for Responsive Politics 2022a). This has led some to describe the corporations and elites that account for the bulk of contributions as the “top one percent of the
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one percent” (Olsen-Phillips et al. 2015)—and they donate large amounts of money.

Campaign contributions are given to US political candidates in generous and increasing sums. Campaign contributions in federal elections have hit record highs every four years (corresponding with years in which there are both congressional and presidential elections) for the past two decades. Specifically, contributions hit a new high of US $3.1 billion in 2000; this was then surpassed in 2004, when contributions totalled US $4.1 billion; then, in 2008, a new record was set at US $5.3 billion; in 2012 yet another record was set at US $6.3 billion; that record was then beaten in 2016 at US $6.4 billion; finally, in the most recent election, old records were shattered as we set a new high of approximately US $14 billion in contributions (Center for Responsive Politics 2022b).

With all of this money flowing to politician’s campaign coffers, it begs the question: What does the money buy? Surprisingly, the answer to this question was uncertain for many years. Although most agreed that contributions helped politicians’ electoral odds (especially when combined with incumbency advantage), it was unclear if the money influenced anything else. Some acknowledged that it might provide access for donors, but few acknowledged that it could actually influence policy decisions. For instance, one lawmaker said of donors, “don’t ever try to create the impression with me … that your money has bought you something. It hasn’t.” (Jackson 1988: 105) Another lawmaker offered a simpler denial: “There’s not tit for tat in this business, no check for a vote.” (Schram 1995: 16) This began to change, however, in the 1990s and early 2000s.

In the 1990s and early 2000s, donors and politicians began to open up about how campaign contributions may influence policy decisions—perhaps because Supreme Court cases around the time seemed to absolve lawmakers of bribery related to campaign finance (more on those cases in a subsequent section). For instance, one lawmaker argued that “[t]here’s no way in hell that [legislation granting China ‘most favored nation’ trading status] would have passed … if all these companies hadn’t come flooding in and making campaign contributions and asking for peoples’ support. … There’s absolutely no doubt in my mind that money changed votes.” (Makinson 2003: 66) Another lawmaker contended that “… the current method of campaign funding … has a serious and profound impact on not only the issues that are considered in Congress, but also the outcome of those issues …” (Schram 1995: 31, 49) Some lawmakers even confessed to being influenced themselves, with one admitting, “I am sure that on many occasions … I made the choice that I needed this big corporate client and therefore I voted for … its provision …” (Schram 1995: 28)

Although prior scholarly work was mixed on the question of contribution influence (Baumgartner and Leech 1998), by the early 2000s research started to come to
a consensus that campaign contributions do, indeed, influence policy decisions. For instance, in 2005 two separate meta-analyses of the literature came to the same conclusion: contributions influence voting on bills. One of the meta-analyses examined approximately thirty studies in the literature and concluded: “[t]he meta-analysis performed here suggests that money does indeed influence votes.” (Stratmann 2005: 146) The other looked at a similar number of studies and found the same thing, stating that “a reasonable conclusion is that one in three roll call votes exhibits the impact of campaign contributions.” (Roscoe and Jenkins 2005: 64) They argued further—addressing causality concerns—that “it is simply not true that the apparent connection between money and voting is just [votes causing contributions]” (Roscoe and Jenkins 2005: 63)—instead, contributions cause votes.

In 2010, a study of sixteen years of votes across eight US Houses further demonstrated that contributions influence policy decisions (Peoples 2010). The study—the largest of its kind to date—examined voting on all the bills during that sixteen-year period, which added up to approximately 7,000 votes. This is significant because most studies in the literature—including those in the Baumgartner and Leech (1998) review and the studies assessed in the early 2000s meta-analyses (Roscoe and Jenkins 2005; Stratmann 2005)—examined just a single bill or a handful of bills. Looking at all the bills in a given period provides a far more comprehensive look at contribution influence and offers generalizable results. The study concluded that in seven of the eight Houses, there was evidence that contributions causally affected votes (Peoples 2010).

As the research in the previous paragraphs illustrate, there is now overwhelming evidence that contributions influence policy decisions in the US. (It should be noted that similar evidence is emerging in other contexts—for instance, in Colombia [Evertsson 2013]). A later section will explore the consequences of contribution influence. But the next sections will provide some theoretical and conceptual background on (a) the criteria for determining whether something is a crime and (b) different types of crime in the political arena (e.g. political corruption, bribery, state crime, and state-corporate crime).

**Theoretical Background: Law/Punishment Versus Social Injury When Defining “Crime”**

Determining whether something is a crime is not as straightforward as it may seem. Although some would contend that the question of whether something is a crime is a matter of existing law, the reality is more ambiguous—especially given that, as implied in the previous section, law is influenced by powerful interests (e.g. campaign donors). Consequently, another factor outside of the law is worth considering as well: social injury. The juxtaposition of law and social injury is
central to the now-famous debate that occurred in the 1940s between Tappan and Sutherland concerning what constitutes a crime.

Tappan (1947) argues that for any activity to be viewed as a crime, it must satisfy two conditions: (1) it must violate the law in some way; and, stemming from the first point, (2) it must result in some kind of punishment. Put succinctly, Tappan contends that law—and, secondarily, punishment—is the main factor determining whether something can be considered a crime. By contrast, Sutherland (1945) makes the case that an activity can be considered a crime simply if it causes social injury. Importantly, Sutherland does not argue that an action must violate the law to be considered a crime. It may violate the law, it may not. Moreover, although Sutherland discusses civil penalties and related sanctions, punishment itself is not central to his thesis. What matters, instead, is that something causes social injury.

The above is just a concise summary of the debate between law and social injury in deciding whether something is a crime. A more detailed treatment of this debate can be found in Schwendinger and Schwendinger (1970). What matters for the purpose of this article is that defining something as a “crime” boils down to an assessment of existing law/punishment and social injury. Accordingly, both law/punishment and social injury will be utilized in the analysis that follows in this article.

Types of Crime in the Political Arena

In this section, types of crime that occur in the political arena will be concisely introduced—first at the individual level (e.g. political corruption and bribery), then at an aggregate level (e.g. state crime and state-corporate crime).

Political Corruption and Bribery

Although there is no standard definition of political corruption in the literature, Passas (1998: 44–45) contends that political corruption involves “public officials acting in the best interest of private concerns, regardless of, or against, the public interest. Therefore, corruption can be defined as the covert privatization of government functions.” Zimring and Johnson (2005: 796), however, offer a simpler definition: “the illegal use of power for personal gain.” Bribery is defined in a similar way. Going straight to the law, the Federal Bribery Statute (18 US Code § 201) outlines bribery as a situation in which a public official receives/accepts “anything of value … in return for being influenced in the performance of any official act.”

So are campaign contributions a form of political corruption/bribery? Although campaign contributions are certainly of value to politicians, bribery cases have typically hinged on an explicit promise, or “quid pro quo.” The courts have upheld
this standard in their interpretation of the statute. For instance, in the 1991 McCormick v. United States 500 US 257 Supreme Court decision, Justice Anthony Kennedy contended, “to hold that legislators commit federal crime when they act for the benefit of constituents shortly before or after campaign contributions are solicited and received … is an unrealistic assessment … but [it could be a crime] if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act.” A similar logic has prevailed in other Supreme Court cases.

The above clearly shows that only explicit promises—quid pro quo exchanges—are considered bribery by the courts. Most exchanges of campaign contributions for favorable policy decisions do not fall into this category. Instead, they are what social scientists would refer to as “reciprocal exchanges” (Molm, Takahashi and Peterson 2000) in that the terms of the exchange are not negotiated in advance; no explicit promises are made. But they are nonetheless virtually identical to what is described in the Federal Bribery Statute—just without explicit promises—which is perhaps why the late Senator Russell Long quipped, “the distinction between a campaign contribution and a bribe is almost a hairline’s difference.” (Kaiser 2009: 18)

Most donors and politicians know how to work the boundary between what is legal and illegal (bribery), and stay on the legal side of the line. But there are some exceptions. For instance, donor/lobbyist Jack Abramoff and US House member Bob Ney were indicted and charged in connection with an illegal quid pro quo exchange (US Department of Justice 2006). Nevertheless, most stay on the legal side of the boundary—often through ‘creative compliance’ (McBarnet 1991; 2006). “Creative compliance refers to the use of technical legal work to manage the legal packaging, structuring and definition of practices and transactions, such that they can claim to fall on the right side of the boundary between lawfulness and illegality. It is essentially the practice of using the letter of the law to defeat its spirit, and to do so with impunity.” (McBarnet 2006: 1091) This is exactly what donors and politicians do with respect to contributions and influence. Their actions look virtually the same as bribery—and, importantly, their actions are the same as bribery in their ramifications. But since they typically involve no promises or quid pro quo, they are technically legal, even if they produce “implicit bribery” (Jordan 2015: 1435) and act as, essentially, “legal bribes” (Friedrichs 2004: 135).

**State Crime and State-Corporate Crime**

According to an oft-cited definition, state crimes are “acts defined by law as criminal and committed by state officials in the pursuit of their job as representatives of the state … [that do not] benefit only individual officeholders.” (Chambliss 1989: 184) One might argue, however, that this definition is a bit limiting in that it restricts state crime to only those acts that are defined by law as criminal. As the
theoretical discussion in this article illustrates, there is precedent in the field to identify things as criminal based on social injury (Sutherland 1945). Consequently, others expand the definition and contend that state crime can also include actions on the part of the government that are “deviant, abusive, harmful ... [or] wrongful.” (Ross 2015: 499)

According to Kramer and Michalowski (1990), state crimes fall into two general categories: (1) state-initiated and (2) state-facilitated. With some state-initiated crimes—and with virtually all state-facilitated crimes—other entities (e.g. corporations) are involved with the state as co-conspirators. As such, said crimes move beyond state crime exclusively and extend into the realm of state-corporate crime.

State-corporate crime is defined as “illegal or socially injurious actions that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of the goals of one or more institutions of political governance and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution.” (Aulette and Michalowski 1993: 175 (italics added here)) State-corporate crime is at least partly a result of the fact that corporations and the state often have a symbiotic relationship (Tombs 2012).

The role of the state varies when it comes to state crime and state-corporate crime. The “complicity continuum” developed by Kauzlarich, Mullins and Matthews (2003) describes four possible roles for the state, along with examples of crimes/outcomes: omission-implicit (e.g. inequality); omission-explicit (e.g. regulatory failure); commission-implicit (e.g. funding unethical experiments); and commission-explicit (e.g. genocide).

**Research Question, Analytical Approach**

Now that the debates between Tappan and Sutherland have been summarized and different types of crime have been introduced, it is time to address the primary research question of this article: Do campaign contributions constitute crime? Consistent with the theoretical and conceptual background in this article, both law and social injury will be examined to determine whether contributions and/or their consequences constitute crime.

Although legality is rather straightforward—and indeed, as the discussion of corruption and bribery illustrates, campaign contributions are technically legal under the current campaign finance rules in the US—social injury is not as obvious. But the literature in criminology and criminal justice provides some insights into the sorts of things that might be considered “socially injurious,” and, thus, criminal.

One example of social injury is economic harm/inequality. As noted earlier, Kauzlarich, Mullins and Matthew (2003) list social inequality as a key example of the “omission-implicit” category in their complicity continuum of state/
state-corporate crime. Likewise, Rose-Ackerman (1999) discusses the economic problems associated with political corruption, including, but not limited to, inefficiencies and inequities. Granted, some caution is warranted when using inequality as an example of social harm, as some would argue that not every instance of inequality is necessarily evidence of social injury (e.g. Cohen 1996). Consequently, when assessing inequality, the analysis in this article will focus on the link between campaign donations and policy that either (a) redistributes resources away from ordinary citizens toward corporations and/or the wealthy or (b) contributes to substantial economic harm for large portions of the population.

A second example of social injury related to economic harm/inequality is environmental harm (Ruggiero and South 2013; Stretesky, Long and Lynch 2013). There is burgeoning scholarly interest in what some have referred to as “green criminology” (Lynch 1990; South 1998). Although an extensive review of this emerging area is outside the purview of this article, it is important to note that research addresses environmental harms ranging from acute events (e.g. oil spills) to “natural” disasters (Green and Ward 2004) and global warming (Kramer 2020). Importantly, scholars suggest that both corporations and the state are involved in creating environmental harm (e.g. Green and Ward 2004; Kramer 2020; White 2013)—and the state’s role could be categorized as “omission-explicit” in Kauzlarich, Mullins and Matthew’s (2003) complicity continuum.

Given the above, the analysis in this article will focus on economic harm/inequality and environmental harm. For economic harm/inequality, the previous literature is examined. For environmental harm, the previous literature is examined and a unique analysis is conducted on how campaign contributions influenced voting on The American Clean Energy and Security Act of 2009 (ACES). Although the ACES Act was ultimately defeated and failed to become law, it would have been among the most sweeping environmental reforms ever enacted in the US and would have helped reduce environmental harm and slow climate change.

**Campaign Contributions and Economic Harm/Inequality**

Campaign donations contribute to an increase in social inequality. In other words, contributions help donors accumulate more wealth—often at the expense of everyone else. Evidence suggests that campaign contributions serve to exacerbate inequality in society (Peoples 2020). This occurs in a few different ways: campaign contributions increase inequality between firms/industries, tilt the tax code in favor of donors, and influence policies that enrich the wealthy but harm most others in society.

Some economic sectors are able to secure subsidies from the government that put their sector at an advantage compared with others—often through PAC
contributions. For instance, Lopez (2003: 257) estimates that “$1 in contributions brings about $2,000 in policy transfers [via subsidies]” for the agricultural sector. Not only does this potentially create inequality between sectors, it may also exacerbate larger patterns of social inequality in society. Put differently, heavily subsidizing certain economic sectors can harm consumers and taxpayers and shift money away from social programs, thereby increasing overall inequality. Lopez (2003: 257) points this out with respect to the agricultural subsidies examined in the study: “Eliminating campaign contributions would significantly … benefit consumers and taxpayers and increase social welfare by approximately $5.5 billion.”

In a similar vein, campaign contributions can also increase inequality via alterations to the tax code. Interviews conducted by Clawson, Neustadtl and Weller (1998) reveal that corporate executives and PAC officers cite changing the tax code as one of their biggest “accomplishments” in politics. The cumulative effects of this are telling. Corporate taxes account for an ever-decreasing share of taxes in the US relative to individual taxes—a pattern that has been in place for decades. The ratio of corporate taxes to individual taxes was around 1:1 in the 1950s. By the 1960s, the proportion paid by corporations dropped such that the ratio went to 1:2. Since then, the gap has continued to widen, and today it is around 1:5. To give a specific example, in 2017 individual taxpayers accounted for US $1.6 trillion in taxes while corporations accounted for just US $300 billion—about a 1:5 ratio. Examined a bit differently, corporate taxes were around four percent of Gross Domestic Product (GDP) in the 1950s but have fallen to less than two percent of GDP today. As noted earlier, this pattern likely contributes to social inequality. Not only are taxes shifted from corporations to ordinary individuals, but to the extent that some of that revenue is not replaced, it means that there is less money available for social programs that would help the most disadvantaged in society.

In yet another example of campaign contributions exacerbating inequality, recent research suggests that campaign donations led to two policies that contributed to the Global Financial Crisis of 2007–08 (hereafter referred to as the “Financial Crisis” or simply “crisis”) and subsequent Great Recession (Peoples 2020). Although lots of factors were at play, the two policies that led most directly to the Financial Crisis were the Gramm-Leach-Bliley Act (GLBA) in 1999 and the Commodity Futures Modernization Act (CFMA) in 2000. The GLBA repealed portions of the Glass-Steagall Act, allowing banking and investing firms to merge. The CFMA deregulated the sale and trade of collateralized debt obligations and credit default swaps. Combined, these policies increased risk and caused the housing bubble to burst, creating the Global Financial Crisis and Great Recession. The Financial Crisis and ensuing Great Recession cost the economy approximately US $14 trillion; more importantly, a total of around 8 million people were laid off or fired during the recession, and about 4 million people lost their homes each year
(Institute for Policy Research 2014). It is little wonder, then, that the poverty rate in the US climbed above fifteen percent in the aftermath of the recession. Yet not everyone did poorly. In fact, some millionaires and billionaires saw their wealth increase substantially during the recession, and the big banks and donors behind the crisis faced little/no adverse effects from their involvement due to bailouts.

It is quite clear from the above discussion that campaign contributions can increase inequality in society. Arguably, a big part of the reason why is because of the inequality inherent in contribution patterns. As noted in the last section, the majority of campaign contributions—especially PAC contributions—come from corporations and the elite. Again, these corporate and elite donors can be conceived of as the “top one percent of the one percent.” (Olsen-Phillips et al. 2015)

This means that corporations and the elite have greater influence on legislation than others. For instance, research shows that corporate PACs have a greater influence on roll call votes than labor PACs (Peoples and Gortari 2008). More generally, research illustrates that policy decisions reflect the preferences of elites rather than the general public (Gilens and Page 2014). In sum, the end result is that corporations and associated individuals in the wealthy upper class “rule” when it comes to policy decisions in the US (Domhoff 2014).

**Campaign Contributions and Environmental Harm**

In the US, the fossil fuel industry holds a prominent position within the power structure (Wishart 2019). Given the importance of energy to the economy, electric utilities and other fossil fuel companies have a privileged position within the policy-making arena (Stokes 2020) and have been able to develop long-standing relationships with policy-makers and force institutionalized relationships—particularly with the Republican party (Loewentheil 2012). By contrast, environmental groups have far less power. Environmental groups have been largely unable to convince Congress to pass even weak bills to regulate greenhouse gas emissions. This failure has largely been attributed to opposition from the fossil fuel industry (Bryner 2008).

One of the greatest political strengths of the fossil fuel industry in the US may be their successful opposition to climate legislation (e.g. efforts to reduce emissions) at both the federal and state level (Stokes 2020). This involves an “opposition coalition” of industry representatives who donate money and lobby policy-makers to vote against legislation (Cheon and Urpelainen 2013). A study of the 110th Congress (January 2007 to January 2009) finds that while energy sector lobbying had only a small impact on the likelihood of enactment of federal energy legislation, the effect of lobbying is stronger when an actor lobbies against a bill rather than in support of it (Kang 2016). But the 111th Congress (January 2009 to January 2011) is even more interesting.
The 111th Congress is an ideal period to assess contribution influence on climate legislation as Congressional attention to the issue peaked amid the largest campaign for climate legislation in the history of environmental policy in the US (Brulle 2018; Loewentheil 2012). Members of Congress started introducing more significant climate legislation bills as early as 2007, and expectations heading into the 111th Congress were that some form of national climate change action would be taken. The efforts during this period culminated in introduction of, and House voting on, the ACES Act. As noted earlier, the ACES Act, if enacted, would have arguably been the most sweeping environmental reform in US history. It included a cap-and-trade reduction plan designed to reduce economy-wide greenhouse gas emissions 17 per cent by 2020. But the ACES Act was ultimately defeated; indeed, it was never even taken up by the Senate after the House vote.

It is estimated that the ACES Act accounted for nearly fourteen per cent of all recorded lobbying expenditures in the 111th Congress (Meng and Rode 2019) and was the ninth most lobbied bill among federal legislation in 2009 (Kim, Urpelainen and Yang 2016). Tracing how lobbying may have affected the outcome of voting on the ACES Act, Meng and Rode (2019) estimate that lobbying activities decreased the likelihood the bill would be enacted by thirteen percentage points. Downie (2017) goes a step further and contends that lobbying on ACES was a key reason for its ultimate death. Coal producers were opposed to the bill because they stood to lose significant revenues. Indeed, Downie (2017a) notes that the top ten coal producers, representing about seventy-six per cent of US coal production, were almost uniformly opposed to the bill.

The work by Meng and Rode (2019) and Downie (2017) suggest that campaign donations and associated lobbying may have influenced voting on the ACES Act. To our knowledge, however, no studies have specifically examined how campaign contributions from the fossil fuel industry and environmental groups affected voting on the ACES Act in the US House. We fill this void in the literature by conducting said analysis in this article. The following sections concisely describe our data, variables, and methods—and then present the results of the analysis.

Data and Variables

The data for the variables used in this analysis come from a number of publicly accessible sources, such as OpenSecrets (the website of the non-profit Center for Responsive Politics), Office of the Clerk for the US House, and Congress.gov. Descriptive statistics, such as means, standard deviations, and minimums/maximuns for each variable can be found in Table 1; more information on data sources and measurement for each variable can be found in Table 2.

**Dependent variable.** The dependent variable for the analysis is voting against the ACES Act. We obtained data on how House members voted on the ACES
Table 1 Descriptive Statistics for Variables in Analyses

| Variable                  | N  | Mean  | St. Deviation | Min, Max |
|---------------------------|----|-------|---------------|----------|
| Vote against ACES         | 433| .489  | .500          | 0, 1     |
| Amount from Industry PACs | 433| 3.538 | 4.717         | 0, 41.01 |
| Amount from Environmental PACs | 433| 2.03  | .228          | −.10, 2.03 |
| Democrat                  | 433| .589  | .493          | 0, 1     |
| Female                    | 433| .166  | .373          | 0, 1     |
| Black                     | 433| .088  | .284          | 0, 1     |
| Asian                     | 433| .016  | .126          | 0, 1     |
| Hispanic                  | 433| .058  | .238          | 0, 1     |

Table 2 Sources for, and Measurements of, Variables in Analyses

| Variable                  | Data source                  | Measurement                                               |
|---------------------------|------------------------------|-----------------------------------------------------------|
| Vote against ACES         | Office of the Clerk, US House| Dichotomous, 1 = Voted “No” on ACES, 0 = Voted “Yes” or abstained |
| Amount from Industry PACs | OpenSecrets                  | Quantitative, in USD — Rescaled by dividing by 10,000     |
| Amount from Environmental PACs | OpenSecrets                  | Quantitative, in USD — Rescaled by dividing by 10,000     |
| Democrat                  | OpenSecrets                  | Dichotomous, 1 = Democrat, 0 = Republican                  |
| Female                    | Congress.gov                 | Dichotomous, 1 = female, 0 = male                          |
| Black                     | Congress.gov                 | Dichotomous, 1 = Black, 0 = otherwise                      |
| Asian                     | Congress.gov                 | Dichotomous, 1 = Asian, 0 = otherwise                      |
| Hispanic                  | Congress.gov                 | Dichotomous, 1 = Hispanic, 0 = otherwise                   |

Act from the Office of the Clerk for the US House. We coded it as a dichotomous variable where the value 1 represents voting “no,” whereas 0 represents voting “yes” or abstaining from voting.

Independent variables. The main independent variables in the analysis are the amounts of money House members received from (a) Political Action Committees (PACs) representing the fossil fuel industry and (b) PACs representing environmental groups in the two-year election cycle prior to the 111th Congress (this is important to ensure proper causal ordering). We obtained information on these donation amounts from OpenSecrets.org, the main website of the non-profit Center for Responsive Politics. For the amounts, we rescaled the numbers so they would be similar in scale to all the other variables. To do so, we divided by 10,000. (Note: rescaling in this way does not change the variance—it only changes the scale. Put differently, rescaling in this fashion has no impact on statistical significance in the models).

Control variables. We included numerous “control” variables in the analysis to account for other factors that might influence lawmaker voting, such as party
affiliation (democrat = 1, republican = 0), gender (female = 1, male = 0), and ethnicity (Black, Asian American, Hispanic, and white—all measured as dichotomous where having said ethnic background = 1; reference group = white).

**Methods**

For the analysis, we conducted a logistic regression to assess the relative effects of the independent and control variables on the dependent variable, voting against the ACES Act. Logistic regression was appropriate given the dichotomous measurement of the dependent variable. Although we ran multiple models in a step-wise fashion, we only include in this article the final, “full” model—which includes all independent variables and controls—for the sake of brevity. The results from the analysis are presented in Table 3, which includes unstandardized coefficients (with asterisks indicating level of statistical significance, if any) and odds ratio scores.

**Results**

The results of the logistic regression show that the amount of money received from PACs representing the fossil fuel industry was significantly related to the way in
which House members voted on the ACES Act ($p < .05$), net of other factors. Specifically, the results show that the more money a House member received from industry PACs, the more likely they were to vote against the ACES Act. (Note: although one might reasonably question the causal direction of this relationship, the meta-analyses by Roscoe and Jenkins (2005) and Stratmann (2005) cited earlier show that contributions lead to votes rather than the other way around; moreover, recall that campaign contributions in this analysis come from the two-year election cycle before the 111th Congress and the ACES vote, which reduces the risk of reverse causality). On the other hand, the amount of money received from PACs representing environmental groups had a negligible effect on how House members voted on the ACES Act. Although the coefficient is negative, as would be expected, it is not statistically significant. Other (control) variables that were significantly related to voting were lawmaker party (democrats less likely than republicans to vote against the ACES Act), gender (women less likely than men to vote against the ACES Act), and ethnicity (black people less likely than white people to vote against the ACES Act).

The results of the logistic regression are consistent with the literature on how the fossil fuel industry wields its political power. As noted earlier, scholars argue that in the political realm the fossil fuel industry harnesses its resources to oppose environmental reform legislation (Bryner 2008; Cheon and Urpelainen 2013; Stokes 2020). Moreover, some argue that lobbying from the fossil fuel industry decreased the odds that the ACES Act would be passed/enacted (Meng and Rode 2019), and effectively killed the Act (Downie 2017). Our analysis shows that PAC money from the fossil fuel industry did, indeed, significantly increase the odds of voting against the ACES Act. Given that the ACES Act was ultimately defeated and failed to become law, Downie’s (2017) argument has merit—industry lobbying (and associated campaign donations) likely killed the Act. Importantly for this article, given that the ACES Act sought to curb emissions and slow climate change, the fact that campaign contributions were significantly related to voting against the Act—leading ultimately to its defeat—campaign donations contribute to social injury (environmental harm, in this case), and are therefore potentially criminal. This will be discussed further in the following section.

Discussion: Campaign Contributions and Social Injury/Crime

Based on the literature review of how campaign donations contribute to economic harm/inequality—and the analysis showing the connection between donations and the defeat of the ACES Act (environmental harm)—the answer to whether contributions cause social injury would seem to be a resounding “yes.” With respect to economic harm/inequality, campaign contributions yield some sectors generous
government subsidies (Lopez 2003) and tilt the tax code in favor of donors (Clawson, Neustadt and Weller 1998; Peoples 2020) — which likely results in less money being put toward social programs that would help ordinary people. Moreover, research shows that campaign contributions influenced the passage of the GLBA in 1999 and the CFMA in 2000, the combination of which helped lead to the Financial Crisis and ensuing Great Recession (Peoples 2020). This clearly resulted in social injury. As already mentioned, around eight million people were laid off or fired during the recession, and about four million people lost their homes each year (Institute for Policy Research 2014). In the realm of property crimes, we would consider relatively small losses (e.g. US $1,000 or less) to be socially injurious; losing one’s job/income or home is exponentially more significant. The fact that millions of people faced such a fate in the midst of the Great Recession stands as irrefutable evidence that social injury occurred on a large scale as a result of campaign contributions—at least in the case of the GLBA, CFMA, and the consequent Financial Crisis and Great Recession.

In the case of environmental harm, the story is much the same—but the underlying mechanism is a bit different. Rather than contributing to the enactment of harmful policies, as was the case with the GLBA and the CFMA, campaign donations contribute to the defeat of what would have been helpful policy. This was the case with the ACES Act, as suggested by others (Downie 2017; Meng and Rode 2019) and illustrated in the unique analysis presented in this article. The ACES Act would have mandated emission reductions and likely slowed climate change—but it was defeated by contributions and lobbying from the fossil fuel industry. The more money lawmakers received from the fossil fuel industry, the more likely they were to vote against the ACES Act—and the Act ultimately failed to become law.

**Are Campaign Contributions Crime?**

When considering the important insights of Sutherland (1945) establishing that socially injurious actions are criminal, regardless of legality—*it can be concluded that campaign donations can, indeed, be considered criminal*, at least when they result in social injury—such as when they contribute to economic harm/inequality and environmental harm. Much like with state crime itself, though, contributions can either facilitate crime or be criminal in themselves. Each possibility will be addressed concisely below.

**Campaign contributions as facilitators of crime.** The analysis in this article suggests that *campaign contributions can help facilitate state crime and state-corporate crime*. In other words, campaign contributions represent one of the key mechanisms through which powerful entities—including corporations—can advance criminal aims. This can involve any number of possibilities, from enacting socially injurious laws to blocking laws that would contribute to the greater
good (e.g. environmental reform). As such, one result of contribution influence is that powerful entities operate under “regimes of permission” (Whyte 2014).

According to Whyte (2014: 244), “[c]orporate power … is wholly reliant upon a series of regimes of permission, including the permission to trade as a separate entity, investment regimes which permit limited liability, the application of the separate entity in criminal law, the permission for corporations to act as holders of rights and so on. Crucially, [in] those regimes of permission we also find the coordinates of impunity—a corporate veil which shields owners from civil liability and a de facto corporate veil which shields both owners and managers from criminal liability.” Many of these “regimes of permission” are made possible through campaign contributions. In other words, the laws that allow for a range of corporate activities—including malfeasance—are influenced by corporations themselves via campaign contributions. Corporations are essentially writing their own rules. It is little wonder, then, that corporations operate under such favorable conditions and “the brand of state regulation known as corporate crime has basically disappeared.” (Snider 2000: 169)

Campaign contributions themselves as crimes. One could argue that contributions themselves are criminal. This should not be interpreted as a claim that contributions are illegal—earlier sections of this article establish that contributions are legal in the US under current campaign finance laws and bribery statutes. It is instead an argument that campaign contributions harm democracy and prevent it from fulfilling its primary function—serving the “will of the people.” (Lessig 2011)

The most basic definition of democracy is that it is a form of government in which “the people” rule. Consequently, policy in a democracy should reflect the will—or majority preference—of the people. Campaign contributions steer policy away from the will of the people. As noted earlier, the bulk of contributions come from a small percentage of elites (Olsen-Phillips et al. 2015). Not surprisingly, policy therefore reflects the preferences of these elites rather than the preferences of the majority of the population (Gilens and Page 2014). Yet it is important to note that this is just what we can trace. An increasing amount of money falls into the hidden “independent expenditure” category—which itself can be an indicator of deviant behavior (Green and Ward 2004). Given these realities, when reform is discussed in the next section, complete bans on contributions will be offered as the ideal solution to campaign contribution influence.

Further Discussion: Campaign Finance Reform

As the analysis in this article illustrates, although campaign donations are legal—and, thus, do not fit the legal definitions of political corruption or bribery—they are nonetheless socially injurious in that they contribute to economic harm/inequality and environmental harm—and, thus, constitute crime in Sutherland’s (1945)
formulation. This leads to an important question: Should campaign finance reform be pursued? There are a number of reforms that could be pursued, each of which will be discussed briefly below: increased disclosure, restricting contribution amounts, restricting contribution types/sources, and banning contributions altogether.

Increased Disclosure

One reform that could be pursued is increasing disclosure of campaign contributions. This could be an important step for a number of reasons. First, as noted earlier, hidden exchanges are sometimes indicative of underlying deviance (Green and Ward 2004). Mandating disclosure would shed light on these potentially deviant activities. Additionally, the *Citizens United v. Federal Election Commission, 558 US 310* Supreme Court decision led to an increase in the very types of contributions that often go undisclosed: independent expenditures. Mandating disclosure would allow watchdog groups and the public to see who is donating to whom in this largely secretive realm. All of this said, many contributions—including the PAC contributions analyzed in this article—are already disclosed, yet they still have a significant influence on the voting patterns of lawmakers. Put differently, disclosure seems to do little to curb actual influence, which is likely why Goidel et al. (1999) refer to increased disclosure as the “do-little” reform and Lessig (2011) calls it “reform that doesn’t reform.” Other reforms may therefore be more effective.

Restricting Contribution Amounts

There are already some restrictions on contribution amounts. As noted earlier in the article, hard money contributions are restricted to US $2,800 per candidate/election from individual donors and US $5,000 per candidate/election for PACs. But more could be done. As noted above, independent expenditures, such as those given by SuperPACs, are virtually unregulated. Yet it is unclear whether restricting contribution amounts would significantly reduce the impact of campaign contributions on policy decisions. Although the present study used contribution amounts from industry PACs and environmental PACs as the main independent variables, other studies have suggested that contribution amount itself matters less than simply receiving a contribution, period (Peoples 2010). This means that mere limits on contribution amounts would likely have little impact and would therefore fall into the category of “performative regulation,” which is defined as policy that “in appearance serves political ends but in practice affects an inconsequential level of control.” (Mackenzie and Green 2008: 138)

Restricting Contribution Types/Sources

Another possible reform would be to restrict certain types or sources of contributions. This could be accomplished either by banning certain types of contributions
(e.g. SuperPAC contributions) or preventing certain types of entities from donating (e.g. corporations in the fossil fuel industry). In reality, though, neither is likely to occur. We saw an effort similar to the former scenario (banning certain types of contributions) with the Bipartisan Campaign Reform Act of 2002 (BCRA), which sought to limit certain types of independent expenditures. But the Supreme Court eventually struck this down in their *Citizens United v. Federal Election Commission*, 558 US 310 decision. With the latter scenario—preventing certain types of entities from donating—it would be quite difficult to determine which entities should be “banned” and which should be allowed to donate. Moreover, it is a near certainty that the Supreme Court would overturn any such measure under “free speech” concerns. This, then, leads us to the final option: banning contributions altogether.

**Banning Campaign Contributions**

Although seemingly the most extreme reform, banning contributions entirely would likely be the most effective way to curb contribution influence—and it may also be the most feasible. As already shown in this article, campaign donations cause social injury (e.g. via contributing to economic harm/inequality and environmental harm) and are, therefore, crimes. Moreover, with respect to this “criminal” aspect of campaign contributions, they both facilitate crime and serve as crimes themselves given the harm they inflict on democracy. Consequently, banning contributions altogether—and replacing them with public financing of political campaigns—is arguably the optimal reform path. Importantly, unlike restrictions on certain types/sources of contributions, there is precedent in the Supreme Court for considering amount restrictions—and, by extension, full restrictions (bans). For instance, the *Buckley v. Valeo*, 424 US 1 Supreme Court decision upheld some restrictions on contributions in the interest of “the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.” Globally, there are other countries that have similar bans (i.e. they do not allow private contributions to political campaigns). Although bribery and corruption are an ever-present concern—even in those countries where private contributions are not permissible—it is abundantly clear from this article that the harm created by contributions outweighs their benefit, and, thus, reform is needed—ideally an outright ban.

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