POLITICAL CORRUPTION AS A FORM OF STATE CRIME

A case study on electoral donations

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Abstract
In this chapter, I analyze how state crimes emerge when incumbents utilize their offices to reciprocate electoral donors with undue benefits, favorable regulations, contracts, and job appointments. The problem, as it is seen here, is that (a) while electoral donations are cloaked with legality, they facilitate corruption, and (b) the delivery of undue benefits creates social harm, because it diverts the allocation of public resources and destroys confidence in the political system. Thus, I argue and demonstrate how the money delivered as electoral donations constitutes a corrupt incentive that should be classified as illegal.

Introduction
In democracies money is needed to run elections and there is a parallel belief that money should not buy the decisions of incumbents, though this does occur in practice (Green and Ward 2004; Friedrichs 2004; Nelken and Levi 1996; Shichor and Geis 2007). Studies report that electoral donors have obtained favorable legislation, unjustified contracts and subsidies, and unmerited job appointments. Electoral donations certainly seem to exert undue influence on policy outcomes.¹

To deal with this problem, regulatory frameworks have been introduced worldwide to mitigate the influence of campaign contributions on incumbent decision making. Electoral regulations focus on demanding the disclosure of electoral donations and donors’ identities, and limiting the ceilings of donations and campaign expenditures. However, serious concerns regarding the scope of these regulations make them appear futile, because it is believed that some countries have left certain issues unattended to facilitate the delivery of undue benefits to donors. The Council of Europe (Doublet 2012), for example, revealed that in Germany the thresholds of individual donations are too high, encouraging donations below legal levels to avoid publication.² In Sweden the protection of privacy argument is used to justify the non-disclosure of donors’ identities. In Albania, Denmark, and Malta it is possible to give anonymous donations. In Spain state contractors cannot give electoral donations, but firms that are participating in bidding processes with state agencies can do
so. The Council also claimed that in-kind contributions are broadly defined in all European territories. For instance, in England this type of donation includes office space and equipment, in Slovenia it comprises the salaries of the people working for the political party, and in Lithuania it encompasses shares in private companies. In Belgium sponsorships to political parties are allowed, but they are not classified as in-kind contributions, and, as such, they are not subject to regulation.

Thus, the electoral laws fail to deter corporations from seeking and/or obtaining undue benefits. It has been argued that electoral law creates opportunities for crime by opening the possibility to give interested money to public officials and/or political candidates to influence policy outcomes, while claiming that money is used to strengthen and support democracy (Green and Ward 2004; Friedrichs 2004; Shichor & Geis 2007). Lessing (2001: 100) quoted US Senator Chuck Hagel, who put it thus: “There’s no shame anymore. We’ve blown the past ethical standards; we now play on the legal standards.” Since democracy is the “rule of the people,” and not the rule of wealthy people or powerful corporations, it is problematic that policy outcomes respond to donors’ influence rather than citizens’ needs, because this creates political inequality and fosters social harm.

The purpose of this chapter is to explore whether or not electoral law is used by private corporations to obtain favorable policy outcomes. While discussing the undue use of electoral law, I attempt to bring some criminological insights to bear on the ongoing debate on the suspicious character of electoral donations. Here it is suggested that corporations commit crime by using the law in a manipulative way when seeking to maximize profits/income.

**Previous research**

Campaign financing has attracted considerable research attention. A number of studies have approached the benefits accruing to donors, while others have centered on corporations’ strategic delivery of electoral donations.

I first turn to the literature treating the benefits accruing to corporate donors. Scholars have reported that firms aim to advance specific interests when making their electoral contributions. Contracts with state agencies, less governmental oversight, and favorable legislation are the most frequent kinds of compensation sought. For example, Hart (2001) reported that firms in the technology sector that made electoral contributions in various US electoral cycles between 1977 and 1996 received more contracts from governmental institutions than did firms that invested resources solely in research and development. Fellowes and Wolf (2004) revealed that members of the 105th House of Representatives who relied heavily on business contributions gave more support to pro-business tax and regulatory policies than did other members. Gordon and Hafer (2005) found that inspections of nuclear plants in the United States varied considerably, according to the size of the contributions made by the firms running them, that is, every USD 1000 increase in electoral contributions meant a seven-hour decrease in inspections.

Scholars have also reported that donors use various strategies to deliver their financial support, to increase the chances of influencing policy outcomes. Issues such as the visibility of the voting process, the sensitivity of the topic in the media, the ideological character of the issue, and proximity to the final moment of decision are crucial in timing electoral donations. Taylor (2003) studied the effect of electoral contributions when dealing with sensitive regulatory issues, specifically examining tobacco and alcohol bills, and found
that between 1975 and 2000 US Representatives belonging to the majority party and its leadership received more donations from the tobacco industry. Because the media were exposing the collateral effects of tobacco consumption, electoral donors could only exert influence when the issue was discussed in plenary sessions in which decisions were made by majority. In the case of alcohol, the issue was less visible, so Congress relied on committees to make relevant decisions. Accordingly, the alcohol industry made more contributions to committee members and chairs: their decisions were considered final, because they were adopted with little or no modification in plenary discussions. Witko (2006) analyzed the influence that political action committee (PAC) contributions can bring to bear on ideological versus non-ideological issues. He examined 20 issues, 10 ideological and 10 non-ideological, during the 103rd and 104th House sessions. The results revealed that PAC contributions had more influence on non-ideological bills in 8 out of 10 of these votes and in 9 out of 14 instances of congressional voting; the reverse held for ideological issues. Witko claimed that “PACs cannot force or convince members to take action against their core interests but can subtly alter the member’s decision making when there is uncertainty or weakly held preferences” (2006: 292).

Donors need to know how much to donate, when, and to whom. Stratmann (1998) explored the use of timing as an inexpensive mechanism to influence congressional votes. He claimed that, according to conventional wisdom, one would expect donations to be made during campaigning, when money is needed to reach the electorate. However, his results indicated that donors make their contributions in periods of low electoral activity but close to legislative voting periods in Congress, to prevent the potential reneging of undecided legislators. This suggests that the rationale of electoral donors is strategic, because giving electoral support is not just an act of giving and receiving, but of guaranteeing that donor expectations are fulfilled. Hersch and McDougall (2000) observed the “price of influence” or the amounts given as electoral donations to legislators. Based on their study of donations of the “Big Three” US automakers—General Motors, Chrysler, and Ford—they found that a lower price indicates that the legislator is already aligned with the interest group, meaning that those in opposition receive more electoral support. They also noticed that the presence of a corporate rival in a given legislator’s district also induced competitors to make donations to that legislator. Snyder (1992), who studied the long-term impact of electoral donations, revealed that younger representatives from small states received more long-term contributions than did their older counterparts, indicating that, for donors, the long-term impact of their investment is more important than seniority. Similar results were reported by Stratmann (1992), who tested the relationship between constituency interests and legislator tendency to vote for special interests attached to their districts. Results indicated that PACs from the farm sector donate more funds to legislators who are less likely to support these contributors’ interests. Consistent with this result, it was observed that donors contributed less to members of the House Agriculture Committee than to non-Committee members. In terms of impact, legislators representing districts with the largest populations of farmers were more likely to receive the largest contributions than those from smaller constituencies. These results indicate that donors buy undecided legislators and those who can represent large numbers of citizens.

In other studies, scholars have reported that donor characteristics can affect the delivery of electoral support to political parties and candidates. Apollonio and La Raja (2004), who compared the behavior of firms, labor unions, and advocacy groups, found that old firms and wealthy organizations were less likely to contribute to political parties, but that when they did so their contributions were larger than those made by other organizations.
With younger organizations, the reverse was the case: young organizations contribute less to political parties, but do so more often. Apollonio and La Raja claimed that, while younger firms use this mechanism to quickly obtain access to and legitimacy among politicians, older and wealthier firms prefer to contribute directly to candidates with whom they have established relationships. In the case of labor unions and advocacy groups, the results were different: these donors made more contributions to political parties than did firms, but the contributions were not necessarily larger. In addition, labor unions and advocacy groups gave more often to one single party, while firms tended to support parties with various ideologies.

The results reported by American researchers display similarities to the findings of case studies conducted elsewhere. For example, Claessens, Feijen, and Leaven (2008) found that Brazilian firms that donated to the presidential campaigns of 1998 and 2002 increased their bank leverage, producing higher returns. Hofnung (1996) reported that the introduction of internal party elections or primaries in Israel increased the need for private funds to run electoral campaigns. This created enormous opportunities for corruption, because local elites used their power to make decisions favoring their electoral donors. Pujas and Rhodes (2009) described a similar situation in the case of local elections in France, where illegal financing scandals were being reported on the front pages of local newspapers. They claimed that “France provides the clearest case of political hypocrisy” (2009: 749), because, while it combats corruption publicly, electoral funding is often obtained by illegal means. A similar situation was disclosed in Germany. Moroff (2009) revealed how former Chancellor Helmut Kohl, who formulated the new electoral legislation for Germany, failed to report having received donations from the Flick Group between 1969 and 1980. These contributions were reciprocated with tax exemptions for this firm, granted mainly during Kohl’s term as chancellor. In the case of Uruguay, Casas-Zamora (2005) observed that electoral donors believe that reciprocation for donation is part of the politicians’ job: contributors do not have to spell out their requests, but merely inform the recipient of the difficulties they face. “Unsaid does not mean unfathomed,” claimed Casas-Zamora (2005: 222).

Other studies treat electoral financing as a mechanism used not only to obtain benefits but also to attain power or extort rent from its use. In African countries, Salih and Nordlund (2007: 118) found that in 9 out of 10 cases party leaders were political entrepreneurs who owned their parties, waiting to attain power to recover the rents invested. This is similar to the situation observed in Italy, where the figure of the “business politician” has emerged as a consequence of illicit party finance provided by legal organizations that want to obtain state contracts (Pujas and Rhodes 2009). In South Korea, during the military regime, big corporations were forced to pay membership fees to the political parties in proportion to their revenues; those that failed or refused to pay were audited by the financial authorities (Blechinger 2002).

The problem, as it is viewed by most scholars, is that private electoral funding alters the actions of political leaders in favor of the interests of donors. However, it is noteworthy that the available studies merely mark or describe electoral donations as strategic instruments used by private corporations to achieve their interests, and fail to question whether this use is an illicit practice. While most scholars have been cautious about denoting the delivery of electoral donations as a criminal offence, Friedrichs (2004) and Harstad and Svensson (2011) have challenged this conception. These distinguished scholars claim that electoral donations constitute legal bribes, because they intend to divert policy outcomes; however, this is argument needs empirical support. Here I explored this issue by examining the following question: Are electoral donations considered legal bribes by private corporations?
In the next section the concept of legal bribes is presented and discussed in the framework of the theory of white-collar crime, as it provides the basis for understanding how corporations attempt to use the law to attain their purposes.

Theoretical underpinnings and definitional issues

The underpinnings of this article are found in Sutherland’s theory of white-collar crime, regarded as one of the most important contributions to the sociology of crime because of its substantial impact on public policy and public opinion (Braithwaite 1985; Alalehto and Persson 2012). Sutherland (1983: 7) defined white-collar crime as “a crime committed by a person of respectability and high social status in the course of his occupation.” The core argument of Sutherland’s theory is that crime is perpetrated not only by people living in poverty or slums, suffering from psychopathic deviations, or part of “deteriorated” families, but by people belonging to the upper socio-economic class.

Sutherland laid out his theory of white-collar crime based on the study of decisions of courts and administrative commissions made against the 70 largest manufacturing, mining, and mercantile corporations in the United States between 1934 and 1937. Sutherland (1983: 45) examined a total of 980 decisions, an average of 14 decisions per corporation, of which 583 were made by courts. However, only 16 percent of the decisions were made by criminal courts, which meant that only 158 decisions treated what was regarded as criminal behavior; the remaining 822 decisions treated what was considered unlawful but not criminal behavior, because they were made in administrative agencies. Sutherland emphasized that:

[s]ome writers have argued that an act is criminal only if a criminal court has officially determined that the person accused of the act has committed a crime. This limitation in the definition of crime may be made properly if a writer is interested primarily in administrative questions.

(Sutherland 1983: 45–6)

According to Sutherland, the criminal justice system is designed to protect business leaders and professionals who violate the law, because their cases are examined by authorities that operate in civil jurisdictions, in which fines and warnings correspond to the maximum sanctions imposed. He further argued that the relatively small number of convictions of white-collar offenders should not be interpreted as indicating a lack of criminal activity, but as evidence that “white-collar criminals are relatively immune because of the class bias of the courts and administration of the law” (Sutherland 1940: 7).

Sutherland received admiration for his courage in exposing and studying white-collar crimes, but at the same time he was strongly criticized by scholars who claimed that he was exposing a way of life that society completely accepted. Tappan (1947), in a furious critique of Sutherland, claimed that defining white-collar crime as an evasion of justice within the law by exercising intelligence, financial power, or political connections simply depicts problems of enforcement, but does not describe anything corresponding to a form of crime. Tappan started his essay by asking, “What is crime? As a lawyer-sociologist, the writer finds perturbing the current confusion on this important issue” (Tappan 1947: 96). According to Tappan, the term crime should apply only to violations of the law. He further argued that the term white-collar crime invites individuals to strive against the “existing
system,” because the concept is simply the result of indoctrination and of identifying successful business leaders as class criminals. He argued:

We consider that the “white collar criminal”, the violator of conduct norms, and the anti-social personality are not criminal in any sense meaningful to the social scientist unless he has violated a criminal statute. We cannot know him as such unless he has been properly convicted. He may be a boor, a sinner, a moral leper, or the devil incarnate, but he does not become a criminal through sociological name-calling unless politically constituted authority says he is.

(Tappan 1947: 101)

Although the Sutherland–Tappan debate remains unresolved, Nelken (2002) argued that conditioning the analysis of white-collar crime cases to legal definitions of crime prescribed by political authorities is an attempt to subordinate criminology to other disciplines. However, in the particular case of bribery, Sutherland and law scholars share a similar opinion. Bribery is a criminal offence. In short, Sutherland criticized “how political corruption and graft grow rapidly from the efforts of businessmen to secure special privileges” (Sutherland 1983: 93). He emphasized that:

because of the pressure of these businessmen for special privileges, the system of democracy has been changed into control by political bosses and political machineries, which is neither representative government nor efficient government, so far as the problems of the general society are concerned.

(Sutherland 1983: 93)

Sutherland did not make any particular reference to the case of electoral donations as a kind of bribe. Nonetheless, this issue has recently been addressed by white-collar crime scholars (Friedrichs 2004; Green 2010; Ross 2012; Shichor and Geis 2007). The most thorough analysis is offered by Friedrichs (2004), who devoted particular attention to the case of electoral donations, as a form of political white-collar crime. Friedrichs claimed that the private funding of elections is a legal bribe, because electoral donations are delivered to attain undue benefits. I share a similar approach.

**Legal bribe**

The term legal bribe was introduced by Friedrichs (2004) to indicate how electoral donations constitute an inconsequential regulation that facilitates crime while protecting the perpetrators. Friedrichs stated that:

the line between a “bribe” (an illegal payoff for an explicit vote) and a “contribution” (a legal donation with an implicit understanding) is exceptionally thin, and to date no member of Congress has ever been indicted simply for accepting PAC money.

(Friedrichs 2004: 136)

Legal bribe emerges when the donor (bribe-giver or briber) and the incumbent (bribe-taker or bribee) collude to attain undue benefits. In examining the legislative process in
the United States of America, Friedrichs argued that the money given as electoral donations is not to support specific candidates, but to promote issues, expecting “to enjoy special access and influence as a consequence” (Friedrichs 2004: 135). In fact, Friedrichs claimed that the set of laws on campaign contributions is intended to give the impression that there is no deal between donors and incumbents other than ideological support, when in reality electoral law is used to divert criminal responsibilities of donors and incumbents. This reinforces the idea that bribes and contributions can be one and the same. On this issue, Noonan said, “These can be masked as one another; but the masks are removable... Campaign contributions can be bribes, as successful prosecutions have established” (Noonan 1984: 698).

The term legal bribe is a reminder that corporations can use the law in a manipulative way to fulfill their interests. McBarnet (2004, 2006, 2007) has called this creative compliance with regulations, while Mackenzie and Green (2008) have denoted it as law neutralization. The point made by these scholars is that, while corporations emphasize that their behaviors are according to the law, they find alternative ways to apply the law based on interpretations that are marked as illegal. This simultaneous acceptance both of norms and of innovative ways to violate them has been denoted by Murphy and Robinson (2008) as the maximizer, which is an adaptation mode that aims at developing Merton’s theory of strain and anomie. Murphy and Robinson (2008) have argued that law-abiding and law-breaking behaviors can be undertaken to pursue wealth. Therefore, it is not surprising that legal and illegal actions are used by corporations to attain special benefits and favorable regulations.

In fact this is not a new issue. Becker (1968) anticipated that crime could emerge from legal and illegal actions, because citizens do not always obey the law as it is prescribed. Scholars who have followed Becker’s tradition have developed this double approach in the particular case of the corruption studies. While Rose-Ackerman (1975, 1999) claimed that corruption is associated with illegal practices such as the bribery of public officials, Harstad and Svensson (2011) have argued that practices such as electoral donations and lobbying are also used to bend the rules and regulations; therefore, they should be considered a kind of bribe. The duality noted indicates that corruption refers not only to illegal actions but also to unlawful actions cloaked with legality. It is notable that today scholars are well aware of the existence of these two approaches. For example, Kaufmann and Vicente (2011) used the term legal corruption to denote how the elites get involved in practices of trading on influence with members of the executive and judicial branches, because this bring them special benefits without any risk of criminalization.

In the next section I present the data used to conduct this analysis. It must be noted that the information collected aimed at validating the existence of the concept of legal bribe discussed in this section.

**Data used in the analysis**

The data used in this analysis are taken from an extended study conducted to examine the concept of legal bribes (see Evertsson 2013a). Here, I report the results of a cross-national comparison among 78 countries and of a cross-sectional survey applied to 302 private companies in Colombia.

In the cross-national study I was interested in identifying whether or not corruption emerges when electoral donations are delivered by private corporations. To perform the analysis, I gathered data from 78 countries and aggregated them into a database. Data on
corruption were provided by Political Risk Services, which produces annual information on political corruption, based on the opinions of business leaders. Data on electoral financing were taken from the ACE database, which collects information directly from national laws and regulations. Control variables were also included. In Appendix 1, I describe the variables used in the analysis, with their respective scales and sources. Methodological details regarding how the data were aggregated and the analysis performed are described in Evertsson (2013b).

The cross-sectional survey was conducted to verify the possible conclusion that emerged from the cross-national analysis. In particular, I tested whether electoral donations are seen by corporate leaders as legal bribes, and whether Lambsdorff’s characterization of bribery applies in this particular case. The theory of bribery developed by Lambsdorff (2008) suggests that bribery emerges when there are pre-existing relationships between bribers and incumbents, when bribers have a clear expectation of reciprocity, and when bribers have a weak perception of regulations. The analysis is based on a unique dataset on electoral financing and political corruption collected through 302 personal interviews with CEOs in Colombia, of whom half were donors and half non-donors. It was necessary to interview high-level executives because they are legally responsible for deciding whether or not their companies deliver electoral funding to political candidates. For the data collection, I used a structured questionnaire, because it let me include control questions to identify reci- cent respondents, which enhanced the reliability of the results (Azfar and Murrell 2009). Methodological considerations of sample size, sample characteristics, informant profiles, the scales used to collect the information, and the reliability of the information collected were particularly addressed to guarantee the validity of the results (see Evertsson 2012). The variables included in this analysis are described in Appendix 2.

Before presenting the results of the analysis I briefly describe the profile of Colombia, the country used to conduct the case study. I give special attention to the problem of bribery and to the characterization of the financing of elections in this country.

**Brief profile of the country of study**

Colombia is located in the northwestern corner of South America. It has a population of 46.9 million, making it the third largest country in Latin America after Brazil and Mexico. This country faces several challenges, poverty, irregular war, and drug trafficking being three of the greatest (see World Bank 2012a; CODHES 2011; and US Department of State 2012, respectively). According to the World Bank, firms located in this country have to deal with greater difficulties than do their counterparts elsewhere. Table 1 lists the obstacles to doing business in Colombia from a comparative perspective. Corruption, which is the second largest concern for 53.2 percent of business leaders in Colombia, significantly exceeds the Latin American and Caribbean average (39.9 percent) and the world average (36.1 percent).

Bribery is the most common form of corruption in Colombia. Table 2 reports the bribery practices found in this country from a comparative perspective. Data indicate that bribes are often paid to obtain government contracts (32.8 percent), a situation that contrasts with the results for the Latin American and Caribbean region and the world average (9.9 and 23.7 percent, respectively). According to Transparencia por Colombia (2013: 57), the bribery rate for business corporations is around 15 percent of the total cost of the contract. In the case of individual procedures required to initiate and conduct business in Colombia, the data shown in Table 2 indicate that bribery is less extensive when used to deal with
Table 1  Obstacles to doing business in Colombia from a comparative perspective

<table>
<thead>
<tr>
<th>Biggest obstacles facing private corporations—percentage of firms&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Colombia</th>
<th>Latin America &amp; Caribbean</th>
<th>World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Practices of competitors in the informal sector</td>
<td>55.2</td>
<td>30.2</td>
<td>31.7</td>
</tr>
<tr>
<td>Corruption</td>
<td>53.2</td>
<td>39.9</td>
<td>36.1</td>
</tr>
<tr>
<td>Inadequately educated workforce</td>
<td>44.5</td>
<td>35.8</td>
<td>27.1</td>
</tr>
<tr>
<td>Access to finance</td>
<td>41.4</td>
<td>30.8</td>
<td>31.8</td>
</tr>
<tr>
<td>Tax rates</td>
<td>39.2</td>
<td>35.1</td>
<td>34.9</td>
</tr>
<tr>
<td>Crime, theft, and disorder</td>
<td>32.5</td>
<td>34.3</td>
<td>26.6</td>
</tr>
<tr>
<td>Tax administration</td>
<td>28.6</td>
<td>22.7</td>
<td>23.0</td>
</tr>
<tr>
<td>Transportation</td>
<td>25.9</td>
<td>23.5</td>
<td>21.9</td>
</tr>
<tr>
<td>Court system</td>
<td>24.3</td>
<td>25.0</td>
<td>19.1</td>
</tr>
<tr>
<td>Labor regulations</td>
<td>18.8</td>
<td>17.3</td>
<td>11.8</td>
</tr>
<tr>
<td>Licensing and permits</td>
<td>10.5</td>
<td>15.9</td>
<td>15.7</td>
</tr>
<tr>
<td>Customs and trade regulations</td>
<td>6.7</td>
<td>19.7</td>
<td>17.8</td>
</tr>
</tbody>
</table>

<sup>a</sup>Answers to the question: “By looking at card [x], can you tell me which of the elements of the business environment included in the list, if any, currently represents the biggest obstacle faced by this establishment?”


Table 2  Bribery practices when doing business in Colombia from a comparative perspective

<table>
<thead>
<tr>
<th>Percentage of firms expected to pay bribes to&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Colombia</th>
<th>Latin America &amp; Caribbean</th>
<th>World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secure government contracts</td>
<td>32.8</td>
<td>9.9</td>
<td>23.7</td>
</tr>
<tr>
<td>Obtain a construction permit</td>
<td>4.1</td>
<td>12.9</td>
<td>23.2</td>
</tr>
<tr>
<td>Obtain a water connection</td>
<td>3.6</td>
<td>9.7</td>
<td>15.4</td>
</tr>
<tr>
<td>Obtain an operating license</td>
<td>2.9</td>
<td>8.4</td>
<td>15.0</td>
</tr>
<tr>
<td>Get things done</td>
<td>2.8</td>
<td>10.9</td>
<td>25.5</td>
</tr>
<tr>
<td>Obtain an electrical connection</td>
<td>1.9</td>
<td>4.0</td>
<td>16.0</td>
</tr>
<tr>
<td>Meet with tax officials</td>
<td>1.5</td>
<td>6.1</td>
<td>15.7</td>
</tr>
<tr>
<td>Obtain an import license</td>
<td>0.3</td>
<td>5.7</td>
<td>14.3</td>
</tr>
</tbody>
</table>

<sup>a</sup>Answers to the question: “In reference to [x], was an informal gift or payment expected or requested?”


public officials. For example, to obtain a water/electric connection, or an operating license/construction permit, bribes are demanded, but the firms that make use of this illegal mechanism do so to obtain preferential treatment to speed up procedures, approval, and implementation. It is worth noting that, for example, bribes are very rarely paid in the case of procedures to obtain import licenses.

Summing up, the overall problem of corruption at the corporate level in Colombia is characterized by the ubiquity of bribes targeting corporations dealing with government agencies where large rents can be extracted.
The funding of elections in Colombia

In Colombia elections are funded with public and private resources, which are delivered only during the election period (Article 109 of the Colombian National Constitution). Public funding is extended through direct subsidies and indirect mechanisms such as reduced postal rates and free timeslots on public radio and television. Private electoral funding is provided in the form of bank/personal loans, investment dividends, donations collected at public activities/events, donations made directly to the candidate/candidate’s campaign by individuals/private organizations, and in-kind contributions (Restrepo 2011). Donations from (a) state agencies, (b) the candidate or family members of the candidate, and (c) foreign companies are forbidden (Article 122 of the Colombian National Constitution). Finally, it has been prescribed that all donations should be registered and reported to the National Electoral Council, which has the responsibility to verify them and make them public (Article 265 of the Colombian National Constitution). This authority also has the mandate to establish the ceilings for individual contributions and total campaign expenditures allowed for the candidates to the different elected positions (Article 13 of Law 134 of 1994; and Article 14 of Law 996 of 2005).

In the next section I present the results of the cross-national and cross-sectional inquiries conducted to explore whether or not electoral donations are seen by private corporations as legal bribes.

Results

In the cross-national analysis I was interested in evaluating the relationship between corruption and electoral financing. To this purpose I tested three hypotheses, as follows:

H1: The impact of campaign contributions increases political corruption.
H2: The private electoral funding system increases political corruption.
H3: Electoral regulations reduce political corruption.

The results of the statistical analysis are shown in Table 3 (the entire analysis is available in Evertsson 2013b). It should be noted that not all the individual hypotheses were confirmed. In particular, the regression analysis showed that only H1 was accepted, and that the relation evaluated in H2 was opposed to the hypothesis. Additionally, the data did not show evidence that H3 was relevant in this analysis. This poses a challenge that needs to be carefully analyzed, because it may suggest that there are other possible forms to understand how corporations see the role of electoral donations on bringing about corruption.

Electoral regulations are designed to prevent corruption, as expected in H3, but the results reported in Table 3 indicate that they seem not to be relevant to curb corruption. Two issues seem to be crucial to understanding why electoral regulations were not significant in the model. On the one hand, an investigation of 219 countries revealed that the disclosure of donors’ identities is mandatory in 70 countries, the disclosure of campaign expenses is required in 99 countries, and ceilings on donations and election expenditures are applied in 64 and 74 countries, respectively (ACE 2012). This suggests that the limited availability of these regulatory instruments could be the core problem here. On the other hand, the problems of enforcement of the electoral regulations, such as the one reported by Doublet (2012) in the European territories, illustrate the limited deterrent effect that electoral regulations have on crime. Therefore, it is not surprising that the data used in the analysis did not show evidence that electoral regulations are important to prevent corruption. H3 being
not relevant in the analysis does not call into question the validity of the data collected, but it strengthens the argument that electoral regulations do not deter corruption, as has been demonstrated in the literature.

The results for H1 and H2 should be analyzed jointly. Leaders of private corporations considered that the contributions given by their corporations increase corruption (as posited in H2), but at the same time they claimed that the delivery of these legal resources do not increase the overall problem of corruption (opposite of the proposition in H1). These results are clearly contradictory, but they should be understood as such. Private corporations recognize, first, that electoral donations return them undue benefits, but second, they maintain that corruption does not increase, because they do not need to use illegal mechanisms to achieve their interests. This confirms the presence of legal bribes, but it does not do it in the form I expected. The hypotheses were formulated in the eyes of a layman, not in the eyes of a corporate leader. Here, business leaders recognized having received benefits, while saying that there is less corruption, because they do not deliver illegal payments to attain their interests. So business leaders claimed that they did not need to use illegal mechanisms to obtain undue benefits, because the use of legal mechanisms had the same effectiveness. This illustrates nothing other than the tension existing between the illegal benefits obtained from electoral donations and the legal status quo of this practice. In short, this interpretation reflects the business leaders’ characterization of electoral donations as legal bribes. However, this interpretation should be verified with relevant evidence.

To this purpose I conducted a survey with CEOs of private corporations in Colombia. In the survey I was interested in testing whether donor corporations see their contributions to political candidates as legal bribes. The results are shown in Table 4 (the entire analysis is available in Evertsson 2012).

The results reported in Table 4 indicate that leaders of private corporations in Colombia consider that the money delivered as electoral donations to political candidates is a legal bribe. CEOs do not agree that this kind of resource is an additional cost for their companies or that it constitutes a substitute for bribery (for details, see Evertsson 2012). The results obtained suggest that electoral donations are legal bribery. Although this result was

### Table 3 Ordinary least square regression results based on cross-national data

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Final model</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP</td>
<td>*-0.183 (0.106)</td>
</tr>
<tr>
<td>Democracy</td>
<td>**-0.820 (0.296)</td>
</tr>
<tr>
<td>Impact of contributions</td>
<td>***0.729 (0.135)</td>
</tr>
<tr>
<td>Private financing</td>
<td>**-0.995 (0.329)</td>
</tr>
<tr>
<td>Public financing</td>
<td>0.288 (0.347)</td>
</tr>
<tr>
<td>Disclosure of contributors</td>
<td>0.043 (0.365)</td>
</tr>
<tr>
<td>Disclosure of expenditures</td>
<td>-0.023 (0.325)</td>
</tr>
<tr>
<td>Ceilings on contributions</td>
<td>-0.241 (0.286)</td>
</tr>
<tr>
<td>Ceilings on expenditures</td>
<td>0.033 (0.325)</td>
</tr>
<tr>
<td>Constant</td>
<td>**2.353 (0.908)</td>
</tr>
<tr>
<td>R² adjusted</td>
<td>0.652</td>
</tr>
<tr>
<td>F</td>
<td>***17.049</td>
</tr>
<tr>
<td>N</td>
<td>78</td>
</tr>
</tbody>
</table>

*Note:* The complete statistical analysis is available in Evertsson (2013b)

*p < 0.10; **p < 0.05; ***p < 0.01

Dependent variable: Corruption by PRS
Table 4 Logistic regression results based on survey data

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Final model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age of the company</td>
<td>**0.030 (0.010)</td>
</tr>
<tr>
<td>Medium-sized company</td>
<td>**1.122 (0.362)</td>
</tr>
<tr>
<td>Legal bribe</td>
<td>**1.160 (0.349)</td>
</tr>
<tr>
<td>Expected reciprocity</td>
<td>*0.804 (0.463)</td>
</tr>
<tr>
<td>Previous relationships</td>
<td>*0.626 (0.370)</td>
</tr>
<tr>
<td>Regulatory quality</td>
<td>*–0.580 (0.328)</td>
</tr>
<tr>
<td>Constant</td>
<td>*–60.651 (20.548)</td>
</tr>
<tr>
<td>Model likelihood</td>
<td>229.102</td>
</tr>
<tr>
<td>Nagelkerke R^2</td>
<td>0.279</td>
</tr>
<tr>
<td>Overall % correct</td>
<td>69.8%</td>
</tr>
<tr>
<td>N</td>
<td>199</td>
</tr>
</tbody>
</table>

Note: The complete statistical analysis is available in Evertsson (2012)

*p <0.10; **p < 0.05; ***p < 0.01
Dependent variable: Status as donor/non-donor

sufficient to validate the interpretation given in the cross-national analysis, I considered it necessary to demonstrate that if electoral donations are legal bribes, then the bribery characterization should apply in this case. This is another way to confirm the main outcome of this research, by triangulating different theoretical approaches.\(^{16}\) In Table 4 it can be observed that Colombian corporate leaders reported that they give electoral donations when they have pre-existing relationships with incumbents, when they have clear expectations of reciprocity, and because they consider that electoral regulations have a limited deterrent effect on corruption. This suggests that private corporate leaders consider their electoral donations to be legal bribes, and they use this legal instrument as such. Thus, it can be concluded that electoral donations are not only seen but also used as legal bribes.

Final discussion

The criminal character of money given as electoral donations was revealed in this study. Based on the cross-national and intra-national analyses, I was able to confirm that electoral donations are seen and are used by private corporations as legal bribes. I also noted that electoral donors are not considered perpetrators, because they are not involved in criminal actions when they give electoral donations, since these are legal instruments. However, donors should not be so easily disqualified as lawbreakers, as receiving undue benefits after giving electoral donations is considered illegal according to the electoral regulations. This implies that incumbents democratically elected use their offices to deliver illegal benefits to their electoral donors, which constitutes a crime. However, the problem is not only that public officials divert their decisions in favor of their financial supporters. This form of crime redirects the allocation of public resources and harms society. In other words, it is not only that undue benefits are delivered, but also that citizens’ well-being declines, due to the diversion of public money. We all are indirect/invisible victims of this form of state crime perpetrated by elected public officials,\(^{17}\) because public funds are reallocated to serve the interests of powerful people.

Electoral donations also disrupt confidence in democratic institutions. The devastating impact of this situation can be seen in the lack of credibility of the political system and less
active participation in elections. Private electoral financing undermines democracy, which is a contradiction in itself. Many people believe in democracy—I do. However, we, the citizens, are in the hands of powerful politicians who only want our votes to get a seat in a public office from where they can extort rents. Corruption should not be the price to pay for achieving democracy though elections that are funded with private resources. It should not be forgotten that democracy is the “rule of the people,” not the rule of powerful electoral donors. We need an electoral system that strengthens democracy and does not undermine its essentials.

The research conducted here has additionally shown that the study of state crime requires the use of theories and concepts developed not only by criminologists. To understand state crime as a concept and the various forms that this practice can adopt, scholars should explore different theoretical approaches in various fields beyond criminology. We must be aware that this form of crime is not the exclusive domain of analysis of criminologists. Other disciplines have previously researched the field. While doing this research, it was of great interest to conduct the literature review, to become aware of the state of the art on the topic. This helped me not only to better understand the problem under analysis, but also to provide a new contribution to understanding the problem. State crime is an interdisciplinary topic that we should address with an interdisciplinary approach.

Acknowledgments

I wish to thank Janne Flyghed, Felipe Estrada, Henrik Tham, and David O. Friedrichs for their suggestions and comments on earlier drafts of this chapter.

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Notes

1 See Smith (1995) and Stratmann (2005) for reviews of the literature on the issue.
2 The threshold for individual donations in Germany is EUR 10,000.
3 Simpson (2002) has pointed out that criminal and civil law—of which the electoral law is part—do not deter corporations from becoming involved in crime.
4 The term democracy was introduced by the Greeks as the “rule of the people.” There are a number of approaches that can be used to define this concept. Scholars who follow the tradition of Roberth Dahl (1998, 2006) equate democracy to free election of citizens in a multiparty political representation system where government officials are elected by the majority rule.
5 According to Green (2010), social harm offers a progressive approach to crime, since it goes beyond the legalistic understanding of the violations of the law and the profile of the conventional lawbreaker. In this case, social harm emerges when political equality is undermined. This has been recognized by Hillyard and Tombs (2007) as one of the forms that social harm can take.
6 Such bills affecting the tobacco industry favored increasing taxes and strengthening mandatory warning labels, while in the case of the alcohol industry they attempted to raise the minimum drinking age, lower blood-alcohol limits, introduce warning labels, and increase taxes.
PACs are private groups created to represent special interests. PACs can receive and raise money from their relevant constituents and then make donations to political campaigns.

In what is known as “the Flick affair,” the Flick Group gave contributions totaling approximately EUR 13 million to the Christian Democratic Union, the Bavarian Christian Democrats, the Free Democrats, and the Social Democrats. The Flick Group is one of the largest conglomerates in Germany.

In the introduction to *White Collar Crime: The Uncut Version*, published after Sutherland's death, Geis and Goff (1983) described how Sutherland faced recrimination from colleagues for speaking out against the establishment. Sutherland was even forced by members of the central administration at Indiana University and by the editor of his book at Dryden Press to remove the identities of the companies he claimed were involved in white-collar crime. The university feared alienating some of its wealthy business contributors, while Dryden claimed it would be liable for damages if it denoted certain corporations as criminal.

See Nelken (2002) for a literature review in this regard.

Political white-collar crime is part of an extended category denominated governmental crimes. Another form of governmental crime is state crime, which is manifested through criminal state, state repression, state corruption, and state negligence (Friedrichs 2004).

This idea was vaguely suggested by Cloward and Ohlin (1960) when describing the involvement of juvenile American offenders in crime, but was not clearly described as a pattern of behavior.

Harstad and Svensson (2011) suggested that corporations prefer to use these legal instruments because they are less expensive and uncertain in relation to bribery.

Before 1990 electoral campaigns were only funded with private sources in Colombia. Public funding of elections was introduced after adoption of a new constitutional letter as a result of the peace agreement signed with the guerrilla group M-19. The purpose of this modification was to guarantee equal competition among old and new contenders.

I explore these two additional alternatives to denote this instrument as a completely legal instrument and as a completely illegal one.

In this case I used Friedrichs’s approach to electoral donations, Harstad and Svensson’s approach to bribes, and Lambsdorff’s characterization of bribery.

According to Green (2010), this is one of the salient characteristics of state crime.

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Appendix 1: List of variables used in the cross-national analysis

<table>
<thead>
<tr>
<th>Variable name, definition, scale, and source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corruption: Scale 0–6, higher values indicate less political corruption. Source: PRS (2006)</td>
</tr>
<tr>
<td>Private financing: Political parties receive private funding. Scale: 1 = Yes; 0 = No. Source: ACE (2006)</td>
</tr>
<tr>
<td>Public financing: Political parties receive public funding. Scale: 1 = Yes; 0 = No. Source: ACE (2006)</td>
</tr>
</tbody>
</table>
Ceilings on contributions: Are there ceilings on how much money a party/candidate can raise? Scale: 1 = Yes; 0 = No. Source: ACE (2006)

Ceilings on expenditures: Are there ceilings on party/candidate election expenses? Scale: 1 = Yes; 0 = No. Source: ACE (2006)


Democracy: Democracy for more than 46 years. Scale: 1 = Yes; 0 = No. Source: Treisman (2000)

*In the model the scale was inverted, multiplying by −1 to facilitate readability.

### Appendix 2: List of variables used in the survey

<table>
<thead>
<tr>
<th>Variable name, definition, and scale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Status:</strong> Has the company made donations to political campaigns in the last election period (2006–2007)? Scale: 1 = Donor, 0 = Non-donor</td>
</tr>
<tr>
<td><strong>Age of the company:</strong> In what year did this company begin to operate?</td>
</tr>
<tr>
<td><strong>Small-sized company:</strong> 1 = 1–49 employees; 0 = Otherwise</td>
</tr>
<tr>
<td><strong>Medium-sized company:</strong> 1 = 50–249 employees; 0 = Otherwise</td>
</tr>
<tr>
<td><strong>Large-sized company:</strong> 1 ≥ 250 employees; 0 = Otherwise</td>
</tr>
<tr>
<td><strong>Legal bribe:</strong> Agreement with the following statement: “Donations to political campaigns are a form of bribery.” Scale: 0 = Strongly disagree, disagree, or undecided; 1 = Agree or strongly agree</td>
</tr>
<tr>
<td><strong>Expected reciprocity:</strong> Agreement with the following statement: “Donations to political campaigns are used by private companies to obtain particular benefits.” Scale: 0 = Strongly disagree, disagree, or undecided; 1 = Agree or strongly agree</td>
</tr>
<tr>
<td><strong>Previous relationships:</strong> Has the head of the company previously worked in the public sector or been part of an ad hoc government group, or has the company head contributed financially to the election campaign of relatives or candidates with the same political ideology? Scale: 1 = Yes, 0 = Otherwise</td>
</tr>
<tr>
<td><strong>Regulatory quality:</strong> Perception of the quality of “financing of electoral campaigns.” Scale: 0 = Very low, low, or acceptable quality; 1 = High or very high quality</td>
</tr>
</tbody>
</table>

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### References


