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### Systemic Corruption in an Advanced Welfare State: Lessons from the Quebec Charbonneau Inquiry

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## Systemic Corruption in an Advanced Welfare State: Lessons from the Quebec Charbonneau Inquiry

### Abstract

The Quiet Revolution in the 1960s propelled the province of Quebec onto the path of greater social justice and better government. But as the evidence exposed at the Charbonneau inquiry makes clear, this did not make systemic corruption disappear from the construction sector. Rather, corrupt actors and networks adjusted to new institutions and the incentive structure they provided. The patterns of corruption emerging from the Charbonneau inquiry bear the imprint of the so-called Quebec model inherited from the Quiet Revolution in at least three ways: (1) the economic nationalism that made public policies partial towards French-speaking and Quebec-based businesses, notably in the engineering sector, with major firms like SNC-Lavalin using their dominant position as “national champions” to engage in cartel-like practices to raise the price of construction projects; (2) the Jacobinism that strongly centralized power at the provincial level and left municipalities underdeveloped in terms of bureaucratic capacity, thus making them easy prey for corrupted interests; and (3) the sovereigntist/federalist cleavage that, since the 1970s, has made Quebec businesses dependent on the Liberal Party for political stability and has allowed party operators to extract a rent from businesses in return.

### Keywords

Corruption--Political aspects; Québec (Province)

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## Systemic Corruption in an Advanced Welfare State: Lessons from the Quebec Charbonneau Inquiry

DENIS SAINT-MARTIN\*

The Quiet Revolution in the 1960s propelled the province of Quebec onto the path of greater social justice and better government. But as the evidence exposed at the Charbonneau inquiry makes clear, this did not make systemic corruption disappear from the construction sector. Rather, corrupt actors and networks adjusted to new institutions and the incentive structure they provided. The patterns of corruption emerging from the Charbonneau inquiry bear the imprint of the so-called Quebec model inherited from the Quiet Revolution in at least three ways: (1) the economic nationalism that made public policies *partial* towards French-speaking and Quebec-based businesses, notably in the engineering sector, with major firms like SNC-Lavalin using their dominant position as “national champions” to engage in cartel-like practices to raise the price of construction projects; (2) the Jacobinism that strongly centralized power at the provincial level and left municipalities underdeveloped in terms of bureaucratic capacity, thus making them easy prey for corrupted interests; and (3) the sovereigntist/federalist cleavage that, since the 1970s, has made Quebec businesses dependent on the Liberal Party for political stability and has allowed party operators to extract a rent from businesses in return.

La révolution tranquille des années 1960 a propulsé la province de Québec sur la voie d'une plus grande justice sociale et d'un meilleur gouvernement. Mais comme en font foi les témoignages à la Commission Charbonneau, elle n'a pas fait disparaître la corruption systémique du secteur de la construction. Au contraire, les personnes corrompues et leurs réseaux n'ont fait que s'adapter aux nouvelles institutions et aux structures incitatives qu'elles leur apportaient. Les formes de corruption révélées par la Commission Charbonneau portent d'au moins trois manières la marque du « modèle québécois » hérité de la révolution.

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Premièrement, le nationalisme économique a donné lieu à des politiques publiques conférant un avantage particulier aux entreprises fondées par des francophones ou établies au Québec, notamment dans l'ingénierie. De grandes entreprises comme SNC-Lavalin ont ainsi profité de leur statut de « champions nationaux » pour flirter avec la cartellisation afin de gonfler le prix des projets de construction. Deuxièmement, l'esprit jacobin, en centralisant fortement le pouvoir au gouvernement provincial, a entravé le développement administratif des municipalités, rendant ces dernières particulièrement vulnérables à la corruption. Troisièmement, depuis les années 1970, le clivage souverainiste-fédéraliste contraint les entreprises québécoises à compter sur le Parti libéral pour assurer la stabilité politique de la province, ce qui permet aux organisateurs du Parti de leur soutirer une rente sous la forme d'un financement préférentiel.

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**THE MACLEAN'S CONTROVERSY IN 2010** over its front-page illustration of "Bonhomme Carnaval" holding a suitcase overflowing with cash portraying Quebec as "the most corrupt" province in Canada is a reminder of the role of culture in perceptions of corruption.<sup>1</sup> The affair ignited passionate debates at the time, leading to a unanimous House of Commons motion denouncing the magazine for its prejudice and denigration of the Quebec nation. The pressure was significant enough that the magazine's parent company felt compelled to express its "sincere regret for any offence that the cover may have caused."<sup>2</sup> The fact that the words "most corrupt" were first applied to Quebec by Samuel P. Huntington in his 1968 book *Political Order in Changing Societies* went largely

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1. For the article behind the controversy, see Martin Patriquin, "Quebec: The Most Corrupt Province," *Maclean's* (4 October 2010) 16.
  2. Canada Newswire, "Rogers Publishing comments on the recent issue of Maclean's Magazine" (30 September 2010), online: <[www.newswire.ca/news-releases/rogers-publishing-comments-on-the-recent-issue-of-macleans-magazine-545583352.html](http://www.newswire.ca/news-releases/rogers-publishing-comments-on-the-recent-issue-of-macleans-magazine-545583352.html)>.

unnoticed, however.<sup>3</sup> A quick look at his work would have revealed that debates about culture and corruption have their origins in broader theoretical arguments in the social sciences regarding the causes of political and economic development.

From his early contributions to his later writings on the “clash of civilizations,” Huntington was known for his culturalist position, treating culture as an explanatory variable to show how cultural attitudes and beliefs hindered or enabled progress.<sup>4</sup> Conceived as a set of values and customs that purportedly distinguish one group from another, this concept of culture was prominent in modernization theory.<sup>5</sup> In the 1960s, Gabriel A. Almond and Sidney Verba produced one of the most influential understandings of culture in terms of “orientations toward the political system,” whereby some populations had “civic cultures” while others did not.<sup>6</sup> The West had a “participant” political culture, while a “parochial” culture was more widespread in the developing world.<sup>7</sup>

In Canada, similar arguments informed the depiction of Quebec’s political culture as either “tribal”<sup>8</sup> or “a case bordering on amoral familism,”<sup>9</sup> a concept developed by Edward C. Banfield to account for the backwardness of a southern Italian village.<sup>10</sup> In a polemical analysis of poverty in a small Italian village, Banfield (a University of Chicago political scientist who served as an advisor to several Republican presidents) proposed that strong kinship and family ties may induce an “amoral familism,” defined as a social equilibrium in which people care exclusively about their immediate family, exploit those outside the family, and expect everybody else to behave in the same fashion. Banfield’s thesis provoked

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3. (New Haven, Conn: Yale University Press, 1968) [Huntington, *Political Order*].
  4. See Jean Terrier, “Culture et types de l’action sociale” (2002) 40:122 *Revue des sciences sociales* 141 at 152-53; Lisa Wedeen, “Conceptualizing Culture: Possibilities for Political Science” (2002) 96:4 *Am Pol Sci Rev* 713.
  5. See Lucian W Pye & Sidney Verba, eds, *Political Culture and Political Development* (Princeton, NJ: Princeton University Press, 1965); Ralph Heintzman, “The Political Culture of Quebec, 1840-1960” (1983) 16:1 *Can J Pol Sci* 3 at 56-59.
  6. *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton, NJ: Princeton University Press, 1963).
  7. Larry Diamond, ed, *Political Culture and Democracy in the Developing Countries* (Boulder, Colo: Lynne Rienner, 1994).
  8. Robert R Alford, *Party and Society: The Anglo-American Democracies* (Chicago: Rand McNally, 1963) at 298.
  9. Kenneth M Gibbons, “The Political Culture of Corruption in Canada” in Kenneth M Gibbons & Donald C Rowat, eds, *Political Corruption in Canada: Cases, Causes and Cures* (Toronto: McClelland and Stewart, 1976) 231 at 241.
  10. Edward C Banfield, *The Moral Basis of a Backward Society* (New York: The Free Press, 1958).

considerable debate about the nature of familism and the role of culture generally in preventing or facilitating economic development.<sup>11</sup>

Among the other causes of corruption emphasized in culture-based approaches, generalized trust, religion, and acceptance of hierarchy play a crucial role.<sup>12</sup> Societies that cultivate secular-rational attitudes towards authority are perceived to be less corrupt than those whose particularistic values dominate.<sup>13</sup> Rafael La Porta and his colleagues have argued that the Protestant religion, being relatively less hierarchical compared to other churches and religions, is less likely to tolerate corruption and abuses of power.<sup>14</sup> More hierarchical religions are said to encourage corruption because they discourage civic engagement.<sup>15</sup> Higher levels of corruption are reported in countries that have a collectivist orientation<sup>16</sup> and higher levels of “power distance,”<sup>17</sup> defined as the extent to which members of society are willing to accept inequality.

Political culture accounts have (rightly) come under growing criticism for their stereotyping of entire peoples and their tendencies toward cultural essentialism.<sup>18</sup> In these accounts, culture is associated with communities typically defined by geography, nationhood, religion, or race and ethnicity. Culture

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11. See Gilberto A Marselli, “American Sociologists and Italian Peasant Society: With Reference to the Book of Banfield” (1963) 3:1 *Sociologia Ruralis* 319; William Muraskin, “The Moral Basis of a Backward Sociologist” (1974) 79:6 *Am J Soc* 1484; AJ Wichers, “Amoral Familism’ Reconsidered” (1964) 4:1 *Sociologia Ruralis* 167.
  12. See Abigail Barr & Danila Serra, “Corruption and Culture: An Experimental Analysis” (2010) 94:11&12 *J Pub Econ* 862; Seymour Martin Lipset & Gabriel Salman Lenz, “Corruption, Culture, and Markets” in Lawrence E Harrison & Samuel P Huntington, eds, *Culture Matters: How Values Shape Human Progress* (New York: Basic Books, 2000) 112; Ahmed Seleim & Nick Bontis, “The Relationship Between Culture and Corruption: A Cross-National Study” (2009) 10:1 *J Intell Cap* 165.
  13. See Alina Mungiu-Pippidi, “Controlling Corruption Through Collective Action” (2013) 24:1 *J Democracy* 101; Bo Rothstein & David Torsello, “Bribery in Preindustrial Cultures: Understanding the Universalism-Particularism Puzzle” (2014) 70 *J Anthro Research* 263.
  14. See “Trust in Large Organizations” (1997) 87:2 *Am Econ Rev* 333.
  15. See Leila Shadabi, “The Impact of Religion on Corruption” (2013) 12 *J Bus Inquiry* 102.
  16. See Nina Mazar & Pankaj Aggarwal, “Greasing the Palm: Can Collectivism Promote Bribery?” (2011) 22:7 *Psychol Sci* 843.
  17. See Geert Hofstede, *Culture’s Consequences: International Differences in Work-Related Values* (Beverly Hills, Cal: SAGE Publications, 1984).
  18. Viewing cultural traits as primordial qualities by likening them to biological or genetic factors is known as essentialism. Essentialists see culture as important and determinative and at least semi-primordial—that is, so deeply rooted in history, religion, and social organization as to be highly resistant to both change and variation (*e.g.*, studies of national characters and cultures). See Stephen Fuchs, *Against Essentialism: A Theory of Culture and Society* (Cambridge, Mass: Harvard University Press, 2001).

is portrayed as so deeply rooted, so fixed, and such a quintessential trait of a specific group that it almost seems like a natural trait.<sup>19</sup> In recent years, scholars have paid greater attention to alternative conceptions of culture as practices of “meaning-making.”<sup>20</sup> They have emphasized how people are not born *with* a culture but *into* a culture that has to be created by humans and passed on to future generations through processes of socialization.<sup>21</sup>

Old culturalist habits die hard, however. As discussed next, they are still prevalent in anti-corruption theory and research, notably around the concept of systemic corruption, which emphasizes the informal and deeply embedded cultural beliefs and practices that sustain corrupt exchanges and their reproduction over time.<sup>22</sup> In this article, I argue that systemic corruption provides a faulty conceptual foundation for building a credible and generalizable theory of political and institutional change in anti-corruption research.

## SYSTEMIC CORRUPTION AND THE CHALLENGE OF EXPLAINING CHANGE

The case of Quebec poses an interesting challenge for anti-corruption studies. While the *Maclean's* story clearly depicted an image of ubiquitous corruption, Canada's other large national print media outlet, *The Globe & Mail*, in an analysis of Quebec's welfare state and its family-friendly policies, described the province as a “little Sweden of North America.”<sup>23</sup> Quebec ranks highly on human

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19. See Jonathan Allen, “The New Culturalism of James Scott: A Third Option for Political Culture Theory” (1999) 46:93 *Theoria J Soc Pol Theory* 53; Harry Eckstein, “A Culturalist Theory of Political Change” (1988) 82:3 *Am Pol Sci Rev* 789; Jens-Martin Eriksen, “Culturalism: When the Culture becomes Political Ideology” (2013) 163:3 *Telos* 131.
  20. See Michèle Lamont, “Meaning-Making in Cultural Sociology: Broadening Our Agenda” (2000) 29:4 *Contemp Soc* 602.
  21. See Tony Bennett & John Frow, eds, *The SAGE Handbook of Cultural Analysis* (London: SAGE Publications, 2008).
  22. See Roberto Laver, “Systemic Corruption: Considering Its Culture Drivers in Second-Generation Reforms” (2014) Harvard University Edmond J Safra Center for Ethics Working Paper No 45.
  23. Erin Anderssen & Kim Mackrael, “Better daycare for \$7/day: One province's solution for Canada,” *The Globe and Mail* (18 October 2013), online: <[www.theglobeandmail.com/life/parenting/the-one-province-that-gets-daycare-right-in-canada-think-7-a-day/article14933862/?page=all](http://www.theglobeandmail.com/life/parenting/the-one-province-that-gets-daycare-right-in-canada-think-7-a-day/article14933862/?page=all)>.

development indexes<sup>24</sup> and, since the 1960s, has developed an independent bureaucracy organized on Weberian principles that exercises considerable policy-making power.<sup>25</sup> And yet testimonies at the Charbonneau inquiry into corruption in the Quebec construction industry<sup>26</sup> point toward strong evidence of systemic corruption at the municipal level, in the engineering sector, in political financing, and in the quasi-monopoly operated jointly by the Fédération des travailleurs du Québec (“FTQ”)—the province’s most powerful union—and a construction magnate who acknowledged past ties with the Montreal mafia.

How can this be? Systemic corruption is not typically associated with developed countries and advanced welfare states, but with extreme cases, as in most of the post-Soviet states for instance.<sup>27</sup> How can the “little Sweden of North America” also be the “most corrupt” province in Canada? This is the puzzle I address in this article. I use Quebec as a case study and interpret the evidence exposed at the Charbonneau inquiry to build a more robust model of institutional change in anti-corruption studies. My key theoretical point is that the shift of societies from a systemically corrupt social order to a non- or less corrupt one is not irreversible and never achieved definitively as discontinuous

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24. See Luc Godbout & Marcelin Joanis, “Vivre mieux...au Québec? Mesurer et comparer le bien-être à l'échelle internationale” in Luc Godbout, Marcelin Joanis & Nathalie de Marcellis-Warin, eds, *Le Québec économique: Un bilan de santé du Québec* (Quebec: Presses de l'Université Laval, 2011) 19.

25. See James Iain Gow, *Histoire de l'administration publique québécoise 1867-1970* (Montreal: Presses de l'Université de Montréal, 1986).

26. The Charbonneau Commission, officially called the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, was a public inquiry into corruption in the management of public construction contracts in Quebec. The Commission was created on 19 October 2011 by the provincial Liberal government of Jean Charest and was chaired by Justice France Charbonneau. The mandate of the Commission was to: (1) examine the existence of schemes and, where appropriate, to paint a portrait of activities involving collusion and corruption in the provision and management of public contracts in the construction industry (including private organizations, government enterprises, and municipalities) and to include any links with the financing of political parties; (2) paint a picture of possible organized crime infiltration in the construction industry; and (3) examine possible solutions and make recommendations establishing measures to identify, reduce, and prevent collusion and corruption in awarding and managing public contracts in the construction industry. The 1,741-page report was released on 24 November 2015. See Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) [*Charbonneau Commission Report*].

27. See Alena Ledeneva “Corruption in Postcommunist Societies in Europe: A Re-examination” (2009) 10:1 *Persp Eur Pol & Soc'y* 69.



models of institutional change lead us to believe. Too often in corruption research, scholars explain change by pointing to exogenous shocks such as wars and revolutions that bring about radical institutional reconfiguration. Enduring historical pathways are thus punctuated by sudden and revolutionary moments of agency and choice.<sup>28</sup> But thinking of change as involving the breakdown of one set of institutions and its replacement with another makes the analysis blind to the cyclical nature of corruption in societies.<sup>29</sup> This is especially the case in the construction sector, which is widely recognized as one of the world's most systemically corrupt industries, both in developed and developing worlds.<sup>30</sup> Quebec is not alone in facing endemic corruption in the construction sector. Construction is a three trillion dollar industry worldwide, and estimates of financial losses from corruption vary from fifteen to thirty per cent per year.<sup>31</sup> Construction projects are prone to corruption because of their size, uniqueness and complexity, and the fact that projects are structured through various phases and contractual links that disperse accountability among numerous separate agents. Extensive approval processes and multiple layers of contractors afford the greatest opportunities for corruption.<sup>32</sup>

Construction is always perceived as the most bribery-prone sector in political economies. According to Ernst & Young's 2012 Global Fraud Survey, respondents from the construction sector were more likely than average to see bribery as common practice in their sector.<sup>33</sup> Corruption is endemic in construction because it is an anticipated practice when contacts with public officials take place. The expectation of bribes orients behaviour. At the Charbonneau inquiry, an ex-construction boss said that for years, three per cent of the value of all contracts he received from the city of Montreal went to the mayor's party, and another one

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28. See Donatella della Porta & Alberto Vannucci, *Corrupt Exchanges: Actors, Resources, and Mechanisms of Political Corruption* (New York: De Gruyter, 1999); Michael Johnston, *Corruption, Contention, and Reform: The Power of Deep Democratization* (New York: Cambridge University Press, 2014).

29. See Cristina Bicchieri & John Duffy, "Corruption Cycles" (1997) 45:3 *Pol Stud* 477.

30. See Jill Wells, "Corruption and Collusion in Construction: A View From the Industry" in Tina Søreide & Aled Williams, eds, *Corruption, Grabbing and Development: Real World Challenges* (Cheltenham, UK: Edward Elgar, 2013) 23.

31. See John Hawkins, *How to Note: Reducing Corruption in Infrastructure Sectors* (London: Evidence on Demand, 2013).

32. See Charles Kenny, "Construction, Corruption, and Developing Countries" (2007) World Bank Policy Research Working Paper No 4271.

33. See "Growing Beyond: A Place For Integrity – 12th Global Fraud Survey" (2012), online: <[www.ey.com/Publication/vwLUAssets/Global-Fraud-Survey-a-place-for-integrity-12th-Global-Fraud-Survey/\\$FILE/EY-12th-GLOBAL-FRAUD-SURVEY.pdf](http://www.ey.com/Publication/vwLUAssets/Global-Fraud-Survey-a-place-for-integrity-12th-Global-Fraud-Survey/$FILE/EY-12th-GLOBAL-FRAUD-SURVEY.pdf)>.

per cent, known as “*la taxe à Surprenant*,” went to a city official. Such stability (even familiarity) in the ties between corrupters and corruptees is indicative of what Donatella della Porta and Alberto Vanucci describe as the “hidden order” of corruption—a set of self-enforced and invisible codes, norms, and reciprocity rules that help parties to corrupt exchanges reduce uncertainties and the risk of defections or denunciations and increase the resources at their disposal.<sup>34</sup> In the Netherlands—a country perceived to be among the least corrupt in the world—a public inquiry in 2002 found substantial evidence of collusion subsystems and networks in the construction industry.<sup>35</sup> In the United Kingdom, a 2013 survey found that half of the seven hundred construction professionals interviewed believed that corruption in construction was “extremely common,” and forty per cent responded that they had been offered a bribe on at least one occasion.<sup>36</sup> Even in “squeaky clean” Sweden, a report by the National Council for Crime Prevention found an “established culture of corruption in the construction industry.”<sup>37</sup> How can such a culture cohabit in a society with otherwise fairly high levels of social trust and quality of government?

To explain this puzzle, the article proceeds as follows. Part I critically reviews the concept of systemic corruption for its elasticity and limited applicability to advanced welfare states where corruption usually takes the form of regulatory or institutional capture and is found mostly at the subsystem level rather than the whole system level.<sup>38</sup> In these contexts, the typical assumption in research that systemic corruption is deeply embedded in culture and society and highly change-resistant needs to be relaxed. Embeddedness expresses the notion that social actors can be understood and interpreted only within relational, institutional, and

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34. See *The Hidden Order of Corruption: An Institutional Approach* (Farnham, UK: Ashgate, 2011).

35. See Grat van den Heuvel, “The Parliamentary Enquiry on Fraud in the Dutch Construction Industry Collusion as Concept between Corruption and State-Corporate Crime” (2005) 44:2 *Crime L & Soc Change* 133.

36. The Chartered Institute of Building, *A Report Exploring Corruption in the UK Construction Industry* (September 2013) at 3, online: <[www.giacentre.org/documents/CIOB\\_CORRUPTIONSURVEY.2013.pdf](http://www.giacentre.org/documents/CIOB_CORRUPTIONSURVEY.2013.pdf)>.

37. Linda Hols Salén & Lars Korsell, *Reported Corruption in Sweden: Structure, Risk Factors and Countermeasures* (2013) at 73, online: Swedish National Council for Crime Prevention (Brå) <[www.bra.se/download/18.12caa4f91440b31239f1fed/1395400931424/2013\\_22\\_Reported\\_Corruption\\_in\\_Sweden.pdf](http://www.bra.se/download/18.12caa4f91440b31239f1fed/1395400931424/2013_22_Reported_Corruption_in_Sweden.pdf)>.

38. See Jonathan Hopkin & Andrés Rodríguez-Pose, “‘Grabbing Hand’ or ‘Helping Hand’?: Corruption and the Economic Role of the State” (2007) 20:2 *Governance* 187; Mark E Warren, “What Does Corruption Mean in a Democracy?” (2004) 48:2 *Am J Pol Sci* 328 at 343.

cultural contexts and cannot be seen as atomized decision makers maximizing their own utilities.<sup>39</sup> In this article, I try to develop a more appropriate middle ground between the functionalist, oversocialized view of systemic corruption, where social conditions exist prior to behaviours, and norms and values are deeply internalized; and the utilitarian, undersocialized, neoclassical position of the principal-agent relationship in anti-corruption research and policy, according to which behaviour transcends social contexts.<sup>40</sup>

To illustrate this argument, in Part II, I take a short step back to the 1960s to describe how the Quiet Revolution propelled the province of Quebec onto the path of greater social justice and better government. Quebec has built what may be the strongest model of social protection in North America.<sup>41</sup> It has developed a distinctive European-like welfare state that includes universal child care, active labour market policies, and a government-wide strategy against poverty and social exclusion. But as the evidence exposed at the Charbonneau inquiry makes clear, the political “big bang” created by the Quiet Revolution did not make systemic corruption disappear from the construction sector. Rather, systemic corruption adapted to its new institutional environment and was significantly shaped by the incentive structure it provided. As we shall see in Part III, the patterns of corruption emerging from the Charbonneau inquiry bear the imprint of the so-called Quebec model inherited from the Quiet Revolution in at least three ways: (1) the economic nationalism that made public policies partial towards French-speaking and Quebec-based businesses, notably in the engineering sector, with major firms like SNC-Lavalin using their dominant position as “national champions” to engage in cartel-like practices to raise the price of construction projects; (2) the Jacobinism that strongly centralized power at the provincial level and left municipalities underdeveloped in terms of bureaucratic capacity, thus making them easy prey for corrupted interests; and (3) the sovereigntist/federalist cleavage that, since the 1970s, has made Quebec businesses dependent on the Liberal Party for political stability and has allowed party operators to extract a rent from businesses in return. I conclude the article by summarizing

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39. See Mark Granovetter, “Economic Action and Social Structure: The Problem of *Embeddedness*” (1985) 91:3 *Am J Soc* 481. See also Mark Granovetter, “The Social Construction of Corruption” in Victor Nee & Richard Swedberg, eds, *On Capitalism* (Stanford, Cal: Stanford University Press, 2007) 152.

40. For a similar middle ground position, see JP Olivier de Sardan, “A Moral Economy of Corruption in Africa?” (1999) 37:1 *J Mod Afr Stud* 25.

41. See Keith Banting & John Myles, eds, *Inequality and the Fading of Redistributive Politics* (Vancouver: UBC Press, 2013).

my arguments and spelling out alternative theoretical and policy implications for the future fight against corruption.

## I. THE PROBLEM OF SOCIAL EMBEDDEDNESS IN CORRUPTION THEORY AND RESEARCH

When Huntington wrote in 1968 that Quebec was “perhaps” (a term omitted in the *Maclean’s* article) the “most corrupt,” he was comparing the “Belle Province” to Australia, Britain, Canada, and the United States. His argument was that Quebec voting behaviour remained traditional and not as class-based as in the other four jurisdictions. Rather than making choices based on programmatic and universalist appeals, Quebec voters choose a particularistic form of politics based on religion, ethnicity, and language.<sup>42</sup>

This understanding of culture as universalist or particularist was prominent in modernization theories: The notion that the development of societies worldwide would, in the long run, follow the path of Western modernization in establishing liberal democracies and market capitalism.<sup>43</sup> Corruption, in this perspective, comes from the clash of indigenous values and the norms of modern bureaucracy. Values stressing traditional obligations to one’s family, tribe, or village—believed to be prevalent in developing countries—are seen as undermining formal legal and political institutions.<sup>44</sup> Corruption, in this view, “is in large part an expression of particularism—the felt obligation to help, to give resources to persons to whom one has a personal obligation, to the family above all but also to friends and membership groups.”<sup>45</sup>

In functionalist theory, corruption is considered to be a sign of friction between various subsystems and, in particular, the survival of old values and traditional institutions during periods of rapid social and economic transformation. Corruption is said to play a number of positive functions. Sociologists like Huntington and James C. Scott argued in the 1960s that high levels of corruption, though at first glance the exact opposite of a modern social

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42. Huntington, *Political Order*, *supra* note 3 at 65.

43. See Samuel P Huntington, “Modernization and Corruption” in Arnold J Heidenheimer, ed, *Political Corruption: Readings in Comparative Analysis* (New York: Holt, Rinehart and Winston, 1970) 492.

44. See Gabriel Ben-Dor “Corruption, Institutionalization, and Political Development: The Revisionist Theses Revisited” (1974) 7:1 *Comp Pol Stud* 63; JS Nye, “Corruption and Political Development: A Cost-Benefit Analysis” (1967) 61:2 *Am Pol Sci Rev* 417.

45. Martin S Lipset & Gabriel S Lenz “Corruption, Culture and Markets” in Harrison & Huntington, *supra* note 12, 112 at 119.

structure, can play an important function in the modernization of societies in the developing parts of the world.<sup>46</sup> Their argument was that political corruption can, among other things, serve as an incentive for people to join political parties that transcend traditional ties like family, ethnicity, or religion. Furthermore, political corruption was seen as an antidote to bureaucratic red tape and a means to “grease the wheels” of economic growth.<sup>47</sup> Arguments emphasizing the functionality or problem-solving quality of corruption were first developed by Robert K. Merton, who contended that corruption, in the form of the “political machine,” fulfilled certain social needs not addressed by the formal political system at the turn of the twentieth century in the United States.<sup>48</sup> At a time when the administrative capacity of the state was low and the legal order was not rigorously enforced, the political machine played a vital role in maintaining order amidst the rapid social changes brought about by industrialization and urbanization. By allowing the urban poor, ethnic minorities, and newly arrived immigrant groups access to resources and by granting business elites privileges and guarantees, the political machine effectively managed the disparate and conflicting interests of civil society during the great economic and social transformation of America.

Following Merton, others emphasized the role of patronage in facilitating political integration in culturally and linguistically diverse societies.<sup>49</sup> The interpretation of corruption as the price to pay to keep recalcitrant provinces like Quebec and Newfoundland quiet and the country together has long been at the centre of the brokerage theory of party development and elite accommodation in Canada.<sup>50</sup> To quote from Jeffrey Simpson’s *Spoils of Power*:

Patronage, by offering the benefits to people of all regions, has helped to steer Canada away from parties based on race, religion or region, which would have led to unstable coalition governments. Patronage, whatever its costs, has done its bit for national integration and political stability.<sup>51</sup>

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46. See James C Scott “An Essay on the Political Functions of Corruption” (1967) 5:3 *Asian Stud* 501.

47. See Nathaniel H Leff, “Economic Development Through Bureaucratic Corruption” (1964) 8:3 *Am Behav Scientist* 8.

48. *Social Theory and Social Structure* (New York: Free Press, 1957).

49. See James C Scott “Corruption, Machine Politics, and Political Change” (1969) 63:4 *Am Pol Sci Rev* 114.

50. See RK Carty, “Three Canadian Party Systems: An Interpretation of the Development of National Politics” in Hugh G Thorburn & Alan Whitehorn, eds, *Party Politics in Canada*, 8th ed (Toronto: Pearson Education Canada, 2001) 16; Robert Presthus, *Elite Accommodation in Canadian Politics* (New York: Cambridge University Press, 1973).

51. *Spoils of Power: The Politics of Patronage* (Toronto: Collins, 1988) at 16.

In contemporary debates, this line of argumentation defending corruption for its positive effects on modernization is almost forgotten. Today, the study of corruption is, by and large, dominated by new institutional economics and political science, both contributing to the consensus that corruption is basically a social disease.<sup>52</sup> This shift in research is usually interpreted as a rational learning process moving from mere functionalist speculation to economic models and survey data demonstrating that corruption has no positive developmental aspects whatsoever.<sup>53</sup> The functionalist prediction that developing nations would follow the more efficient path of the developed world, where corruption has become marginal or residual over time, has largely been proven wrong. Whereas the persistence of corruption in developing countries used to be seen as the exception and its relative absence or weakness in the West as the historical norm, today most researchers start from the premise that all human societies are corrupt. The crucial difference is that some have been more successful than others in developing institutions to deter corruption and reduce the costs corruption imposes on societies.<sup>54</sup> In the new institutional economics, government institutions and policies are no longer the causes of corruption and poor performance.<sup>55</sup> Classical economists and theories of rent-seeking have traditionally viewed big governments as the source of big corruption.<sup>56</sup> Research in the 1990s, however, began to stress that quality—not quantity—was the key issue when it came to government and corruption.<sup>57</sup> Renewed attention was paid to Weberian bureaucratic structures and their role in nurturing growth.<sup>58</sup>

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52. See Johann Graf Lambsdorff, *The Institutional Economics of Corruption and Reform: Theory, Evidence, and Policy* (New York: Cambridge University Press, 2007); Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (New York: Cambridge University Press, 1999).

53. See Pranab Bardhan, “The Economist’s Approach to the Problem of Corruption” (2006) 34:2 *World Dev* 341.

54. See Douglass C North, John Joseph Wallis & Barry R Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (New York: Cambridge University Press, 2012).

55. Jean-Cartier Bresson, *Économie politique de la corruption et de la gouvernance* (Paris: L’Harmattan, 2008).

56. See Rajeev K Goel & Michael A Nelson, “Corruption and Government Size: A Disaggregated Analysis” (1998) 97:1&2 *Pub Choice* 107; Johann Graf Lambsdorff, “Corruption and Rent-Seeking” (2002) 113:1&2 *Pub Choice* 97.

57. See Rafael La Porta et al, “The *Quality of Government*” (1999) 15:1 *JL Econ & Org* 222.

58. See Peter Evans, *Embedded Autonomy: States and Industrial Transformation* (Princeton, NJ: Princeton University Press, 1995); Peter Evans & James E Rauch, “Bureaucracy and Growth: A Cross-National Analysis of the Effects of ‘Weberian’ State Structures on Economic Growth” (1999) 64:5 *Am Soc Rev* 748.

As political economists became more interested in institutions, they highlighted institutions' propensities towards path dependency and lock-in processes.<sup>59</sup> Contrary to the efficiency view of institutions in classical economic analysis, the new institutional economists found that competitive pressures did not lead to the elimination of inefficient institutions and their convergence toward a common "best way." Since this finding, the big question in the words of Douglass C. North is, "[W]hy aren't all countries in the world advanced industrialized nations?"<sup>60</sup> Why are we not all Scandinavians? Why are dysfunctional institutions so difficult to change?

#### A. SYSTEMIC CORRUPTION AS AN INFORMAL INSTITUTION

North's response is that analysts have placed too much emphasis on the effects of formal institutions while neglecting the equally important role of informal ones. In recent years, new conceptions have emerged of systemic corruption as a dysfunctional informal institution comprised of a series of collective action dilemmas (social traps).<sup>61</sup> These approaches emphasize the role of social norms and cultural beliefs as coordinating devices or mechanisms that sustain particular equilibria. They tend to break down the conceptual divide between institutions and culture. They take a more sociological view of institutions.<sup>62</sup> Informal institutions are defined broadly to include the "socially shared rules," symbolic systems, cognitive scripts, and frames that guide human action.<sup>63</sup> Systemic corruption, in this perspective, is a "system where the need to offer and demand bribes in order to maintain what are deemed the necessary services or economic standard

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59. See Douglass C North, *Institutions, Institutional Change and Economic Performance* (New York: Cambridge University Press, 1990); Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics" (2000) 94:2 *Am Pol Sci Rev* 251.
60. "What is Missing from Political Economy" in Barry R Weingast & Donald A Wittman, eds, *The Oxford Handbook of Political Economy* (Oxford: Oxford University Press, 2006) 1003 at 1003.
61. See Bo Rothstein, *Social Traps and the Problem of Trust* (Cambridge, Mass: Cambridge University Press, 2005); Keith Darden, "The Integrity of Corrupt States: Graft as an Informal State Institution" (2008) 36:1 *Pol & Soc'y* 35 at 39; Anna Persson, Bo Rothstein & Jan Teorell, "Why Anti-Corruption Reforms Fail—Systemic Corruption as a Collective Action Problem" (2009) 26:3 *Governance* 449.
62. See Peter A Hall & Rosemary CR Taylor, "Political Science and the Three New Institutionalisms" (1996) 44:5 *Pol Stud* 936.
63. Gretchen Helmke & Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda" (2004) 2:4 *Persp Pol* 725 at 727. See also Alena V Ledeneva, *Can Russia Modernise? Sistema, Power Networks and Informal Governance* (New York: Cambridge University Press, 2013).

is ingrained in most agents' 'mental maps'—so much so that this has become an informal institution."<sup>64</sup> The institution of systemic corruption is informal insofar as it is neither explicitly codified nor externally enforced. Nevertheless, it powerfully shapes the interests and strategies of public officials and citizens. Corruption becomes so pervasive and routine that agents are no longer aware of it. To quote from a United Nations report on Bosnia and Herzegovina, they come to "interpret life in terms of corruption."<sup>65</sup>

Definitions of systemic corruption as an informal institution are a welcome addition to the analyst's toolkit. They remind us that the self-reproducing properties of institutions are very often cognitive in nature. But they describe an all-encompassing form of corruption that leaves little room for human agency. Further, they refer to extreme cases that are supposed to represent the exception rather than the rule. According to various estimates, approximately forty to fifty countries (out of a total of almost two hundred) around the world suffer from systemic corruption, ranging from all of the post-Soviet countries to places like Afghanistan, Pakistan, and much of sub-Saharan Africa. Systemic corruption is not typically associated with developed countries and advanced welfare states. In anti-corruption studies, the theory is that these countries were once systematically corrupt but broke free from corruption in a revolutionary moment of abrupt and wholesale transformation. Bo Rothstein calls this the "big bang approach" to change, which suggests that societies cannot escape the "social trap" of systemic corruption gradually but only through "dramatic," radical reconfigurations.<sup>66</sup>

The big question then becomes: How do systemically corrupt social orders make the transition to a non- or less corrupt one? One important obstacle stands in the way of understanding this transition. The shift, or "big bang," must begin in the systematically corrupt order and should therefore be consistent with its logic. If that is true, how does the transition get started? If systemic corruption is an informal institution that involves cognitive templates or "mental maps" that individuals unconsciously enact, then actors in such a system presumably do not think about leaving or changing it. It is, in fact, this very taken-for-grantedness that makes systemic corruption self-enforcing and so difficult to combat. As a concept, systemic corruption ends up, like culturalist theories, incapable of

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64. Bo Rothstein, *The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective* (Chicago: University of Chicago Press) at 103.

65. United Nation Development Program, *Human Development Report – Bosnia and Herzegovina* (2002), online: <[hdr.undp.org/sites/default/files/bosnia\\_and\\_herzegovina\\_2002\\_en.pdf](http://hdr.undp.org/sites/default/files/bosnia_and_herzegovina_2002_en.pdf)> at 27.

66. "Corruption and Risks: Anti-Corruption: The Indirect 'Big Bang' Approach" (2011) 18:2 *Rev Int'l Pol Econ* 228.



dealing adequately with political change.<sup>67</sup> By emphasizing the homogeneity and consistency of groups' beliefs and values, notions of systemic corruption overestimate the problem of collective action and the immovability of corrupt arrangements. The equilibrium sustaining systemic corruption is seen as so deeply rooted in culture and society that it is almost impossible to alter through institutions and policies.<sup>68</sup> It can only be disembedded by radical change. As Larry Diamond has argued:

Endemic corruption is not some flaw that can be corrected with a technical fix or a political push. It is the way the system works, and it is deeply embedded in the norms of and expectations of political and social life. Reducing it to a less destructive level—and keeping it there—requires revolutionary change in institutions.<sup>69</sup>

The problem with revolutionary models of change, however, is that they exaggerate the rupture between past and present. They pay insufficient attention to the adaptive nature of systemic corruption and are ill equipped to explain its persistence in advanced welfare states.<sup>70</sup> As the evidence presented at the Charbonneau inquiry reveals, systemic corruption in the construction industry did not go away with the dramatic advances in quality of government and social equality that followed the Quiet Revolution. Rather, corrupt actors and networks adjusted to new institutions and the incentive structure they provided. Formal institutions may not have the power to eliminate corruption, but they provide the structure of incentives that helps define the costs and benefits of participation in corrupt exchanges. In the case of Quebec, much of that structure was laid down in the 1960s in a set of institutions and policies that together, because of their complementarity, came to be known as the “Quebec model” of development.<sup>71</sup>

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67. See Eckstein, *supra* note 19.

68. According to Paul Pierson, a “deep equilibrium occurs when the various factors contributing to the resilience of a particular institution or set of institutions are so considerable that once arrangements settle on that point they are highly likely to endure for an extended period of time.” See Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton, NJ: Princeton University Press, 2004) at 157. Or, as Uslaner and Rothstein put it, “Once the system gets there, it stays there.” See Bo Rothstein & Eric M Uslaner, “All for All: Equality, Corruption, and Social Trust” (2005) 58:1 *World Pol* 41 at 72.

69. “A Quarter-Century of Promoting Democracy” (2007) 18:4 *J Democracy* 112 at 119.

70. See David Nelken and Michael Levi, “The Corruption of Politics and the Politics of Corruption: An Overview” (1996) 23:1 *JL & Soc’y* 1.

71. Peter Graefe, “Whither the Quebec Model? Boom, Bust and Quebec Labour” in John Peters, ed, *Boom, Bust and Crisis: Labour, Corporate Power and Politics in Canada* (Halifax: Fernwood, 2012) 125 at 141. See also Pierre-Paul Proulx, “Le modèle québécois: origines, définition, fondements et adaptation au nouveau contexte économique et social,” online: (2002) 29 *Rev Interventions écon* 3 <interventionseconomiques.revues.org/1022>.

Part II describes the basic parameters of this model. Part III discusses how it shaped the patterns of corruption exposed at the Charbonneau inquiry.

## II. THE QUEBEC MODEL AND THE PATH TO SOCIAL JUSTICE AND BETTER GOVERNMENT

The term “Quiet Revolution” refers to a short period of intense changes in Quebec in the first half of the 1960s corresponding to the tenure of office of the Liberal Party of Jean Lesage. It was characterized by the secularization of society, the creation of a modern welfare state and mixed economy, and major reforms to curb corruption in political financing and the public services. Until the 1960s, Quebec was dominated by the conservative Union Nationale under the leadership of Maurice Duplessis, who ruled the province from 1936 to 1939 and 1944 to 1959. Duplessis presided over a period of Quebec’s political development marked by widespread corruption and dubious electoral practices described as the “Great Darkness.”<sup>72</sup> Duplessis was known as “the Boss” (*le chef*), and, as is typical of “bossism,” he maintained a system of political authority and loyalty centered on him personally and bound together by patronage, coercion, and self-interest.<sup>73</sup> Duplessis’s death in 1959 caused the Union Nationale to lose its hold on power in the 1960 election. The new Liberal government embarked upon a massive program of reforms. It attacked political patronage and changed the electoral map to provide for better representation. It limited expenditures during elections. The period was marked by the dramatic development of government institutions. From 1960 to 1970, the province’s expenditures grew fivefold, from \$860 million to \$5 billion. As Table 1 indicates, this period also saw significant growth in the size of the public sector.

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72. See Gérard Boismenu, *Le Duplessisme: Politique économique et rapports de force, 1944-1960* (Montreal: Presses de l’Université de Montréal, 1981).

73. Bossism is similar to patronage and clientelism, though a boss uses more coercion and enjoys more unrivalled power than a patron. Bossism insists on the persistence of coercive pressures and local power monopolies in electoral politics and social relations. See Herbert F Quinn, “Quebec: Corruption Under Duplessis” in Gibbons & Rowat, *supra* note 9, 66; James Duane Bolin, *Bossism and Reform in a Southern City: Lexington, Kentucky 1880-1940* (Lexington, Ky: University Press of Kentucky, 2000); Orville D Menard, *Political Bossism in Mid-America: Tom Dennison’s Omaha, 1900-1933* (Lanhan, Md: University Press of America, 1989).

TABLE 1: GROWTH IN THE SIZE OF QUEBEC'S PUBLIC SECTOR

Year	Administration	Public Enterprises	Total	Employees per 1,000 Citizens
1955	22,262	6,044	28,302	6.2
1960	29,298	7,460	36,766	7.14
1965	41,847	14,411	56,258	9.94
1970	53,700	16,366	70,066	11.65
1975	85,465	27,047	112,512	18.2
1980	102,750	32,326	135,076	21.4
1985	108,503	41,830	150,333	22.8

Source: Alain G Gagnon & Mary Beth Montcalm, *Quebec: Beyond the Quiet Revolution* (Scarborough, Ont: Nelson Canada, 1990) at 46.

The Lesage government acted on three major fronts: economic, social, and political. On the economic front, the government's first priority was to increase French-speaking Quebecers' control over the province's economy. Although francophones made up eighty per cent of Quebec's population, they owned only forty-seven per cent of its businesses. The goal here was to redress the under-representation of French Canadians in the upper echelons of Quebec's economic structures. This was to be achieved through state-owned enterprises—most notably, the nationalization of electricity production and distribution. In 1963, Natural Resources Minister René Levesque nationalized all of the electrical utilities to form Hydro-Quebec, which remains a leading successful public-sector corporation to this day. The creation of Hydro-Quebec opened new opportunities for French-speaking professionals in managerial and technical positions.

Hydro-Quebec established French as the sole working language in the new enterprise and gave preferential purchasing treatment to Quebec-based businesses. The megaprojects embarked upon under Hydro-Quebec's mandate, which were mostly massive new dam projects in the province's remote north, were instrumental in propelling Quebec-based engineering into the major leagues and led to the emergence of world-class engineering firms such as SNC-Lavalin. Another major achievement was the creation in 1965 of a government-controlled fund that administers the assets of the Quebec Pension Plan. The fund rapidly grew to several billion dollars and provided a strong tool to support the economy by allowing the state to invest in key sectors. The Société Générale de Financement was also established to hold retirement savings and to pool money for investment in corporations owned by Quebecers. A third institution, the Caisse de dépôt et

placement du Québec (“CDPQ”), manages pension fund revenues and pools them for additional investments in the province and in francophone businesses.

On the social front, the provincial government took over the fields of education, health, and welfare, which had been in the hands of the Roman Catholic Church since the beginning of New France. It centralized power in newly created ministries of health and education, and church-related institutions came increasingly under the control of provincial bureaucracies. The public service was modernized and allowed to unionize and expand. This greatly expanded civil service gradually took on the character of an independent bureaucracy organized according to bureaucratic principles, requiring professional qualifications for appointment and promotion and exercising considerable policy-making power. In fact, by the mid-1960s, there was a widespread popular sentiment that Quebec had become a technocracy in which senior bureaucrats—not politicians—were the dominant force.<sup>74</sup>

On the political front, the pursuit of a more activist role by the Quebec government soon led to federal-provincial conflicts. Quebec’s demands for wider jurisdictional powers challenged the established procedures of Canadian federalism. Growing federal-provincial quarrels raised the question of the place of Quebec and French Canadians in Confederation. In 1965, the Royal Commission on Bilingualism and Biculturalism noted that “Canada, without being fully conscious of the fact, is passing through the greatest crisis in its history. The source of the crisis lies in the Province of Quebec.”<sup>75</sup> French Canadian nationalism was becoming more and more Québécois in nature. Quebec’s increasing power and search for autonomy met resistance from Ottawa. This was most visibly the case in the diplomatic area. Some Quiet Revolution leaders, including Lévesque, concluded that the federal system would not permit the Quebec state to assume the role it had come to expect and that only independence would make this possible. The Parti Québécois (“PQ”) was created in 1968 with the goal of transforming the province into a sovereign state. This led to a major realignment of politics into federalist and sovereigntist camps—one that still prevails today.

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74. See Jean-Jacques Simard, *La longue marche des technocrates* (Montreal: Éditions coopératives Albert Saint-Martin, 1979).

75. Canada, *A Preliminary Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Queen’s Printer, 1965) at 13.

### A. THE QUIET REVOLUTION'S EFFECTS

The “consuming goal” of the Quiet Revolution, according to Kenneth McRoberts, was “*ratrapage*, catching up to social and economic development elsewhere.”<sup>76</sup> The primary aim of reformists was to eliminate the long-standing and crippling inequality trap created by the enduring economic disparities between the French and English in Canada. Until the 1960s, francophones in Quebec earned less than anglophones. Has the economic position of francophones improved in the last fifty years? The answer is an unequivocal yes. There are two dimensions to consider: business ownership and relative earnings. On the first point, Table 2 shows that francophone-owned businesses in Quebec increased their share of provincial employment from fifty-one per cent in 1961 to sixty-seven per cent in 2003.

TABLE 2: OWNERSHIP OF THE QUEBEC ECONOMY

	Per cent Foreign-Owned Employers	Per cent Anglophone- Owned Employers	Per cent Francophone- Owned Employers
<b>Public Sector</b>			
1961	0.5	47.7	51.8
1978	0	32.8	67.2
1991	0	34.8	65.2
2003	0	38.3	61.7
<b>All Sectors</b>			
1961	13.6	39.3	47.1
1978	13.9	31.2	54.8
1991	8.7	26.2	65.1
2003	10	22.9	67.1

Source: François Vaillancourt, Dominique Lemay & Luc Vaillancourt, *Laggards No More: The Changed Socioeconomic Status of Francophones in Quebec* (Toronto: CD Howe Institute, August 2007) at 10, Table 5.

On the second point, research by Pierre Fortin indicates that Quebec francophones' earnings in 2000 were equal to or greater than earnings of anglophones of the same gender, language skills, level of education, number of years of experience, and number of weeks worked. This is a far cry from the fifty-two per cent wage gap between French-origin and British-origin men in

76. *Quebec: Social Change and Political Crisis* (Toronto: McClelland & Stewart, 1988) at 129.

Quebec in 1960. When Lesage came to power, two-thirds of young adults in Quebec did not have high school diplomas. Table 3 indicates that Quebec's average level of schooling was more than a year less than the national average fifty years ago; by 2001, that gap had closed.

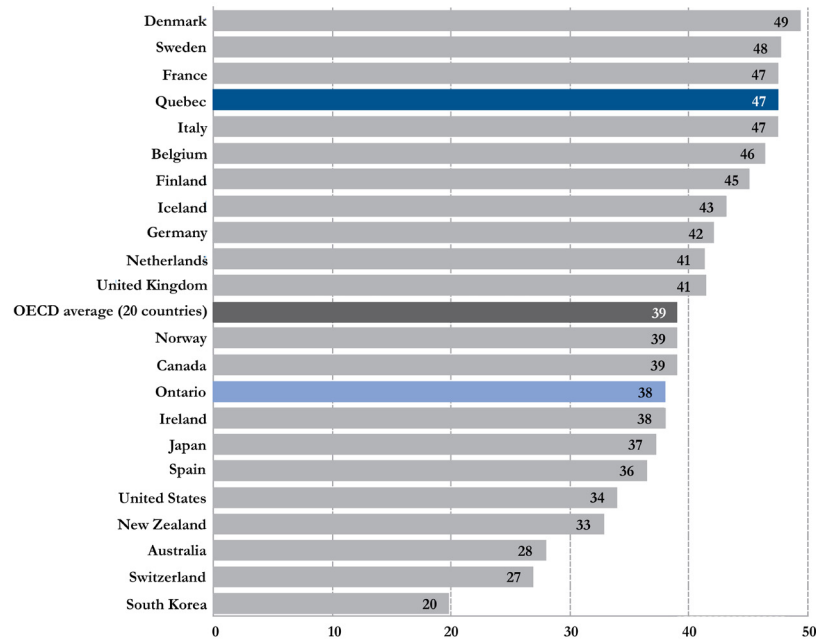
**TABLE 3: AVERAGE YEARS OF SCHOOLING FOR POPULATION AGED 25–34**

<b>Region</b>	<b>1961</b>	<b>2001</b>	<b>Change (Per cent)</b>
Quebec	9.5	14.4	4.9
Ontario	11	14.7	3.7
All Other Provinces	10.7	14.3	3.6

Source: Pierre Fortin, "Quebec's Quiet Revolution, 50 Years Later" (2011) 29 *Inroads* 90 at 93.

Increasing the welfare and health of the population was another stated objective of the Lesage government. To achieve this goal, Quebec built an imposing welfare state. Figure 1 compares public spending in Quebec with spending in twenty selected Organisation for Economic Co-operation and Development ("OECD") countries in 2009. Public spending in Quebec accounts for forty-seven per cent of gross domestic product ("GDP"). It ranks fourth, not far behind Denmark (forty-nine per cent) and Sweden (forty-eight per cent) and tied with France and Italy. Public spending accounts for a larger share of GDP in Quebec than in Finland, the Netherlands, and Norway.

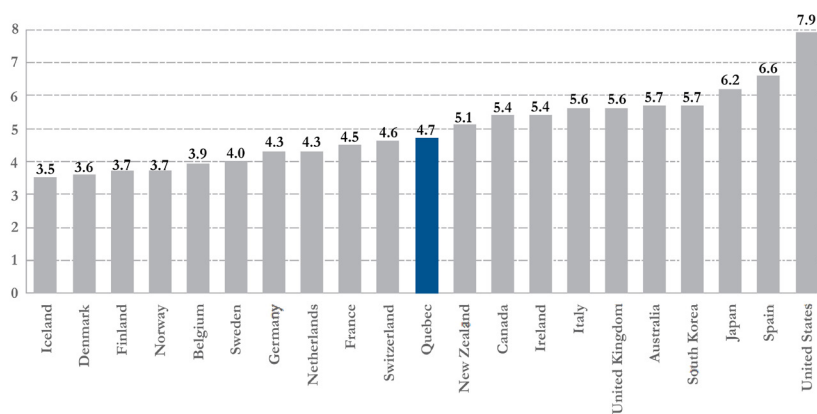
FIGURE 1: PUBLIC SPENDING AS PERCENTAGE OF GDP



Source: Robert Gagné, ed, "Productivity and Prosperity in Quebec: 2013 Overview" (2014) at 38, Figure 15, online: HEC Montréal Centre for Productivity and Prosperity <cpp.hec.ca/cms/assets/documents/recherches\_publiees/PP\_2013\_01\_OVERVIEW.pdf> [reproduced with permission].

How well is Quebec's welfare state performing? The province has probably become the most egalitarian society in North America. Whether in absolute or relative terms, there is generally less poverty in Quebec than elsewhere in Canada and the United States. 2 shows this comparison between Quebec and the twenty selected OECD countries for 2010.

**FIGURE 2: INEQUALITY IN SELECTED OECD COUNTRIES AND QUEBEC AFTER INCOME TAX AND TRANSFER (2010)**



Source: Robert Gagné, ed, “Productivity and Prosperity in Quebec: 2013 Overview” (2014) at 75, Figure 36, online: HEC Montréal Centre for Productivity and Prosperity <cpp.hec.ca/cms/assets/documents/recherches\_publiees/PP\_2013\_01\_OVERVIEW.pdf> [reproduced with permission].

In 2010, the richest households in Quebec had an average income 4.7 times higher than the poorest households, placing Quebec in the middle of the pack in terms of income inequality. The income gap between the wealthiest and the poorest households is wider in Quebec than in the Netherlands (4.3), Sweden (4.0), Norway (3.7), Finland (3.7), and Denmark (3.6). At the other end of the ranking, a number of OECD countries, almost all known for their government’s generally more limited intervention, have greater inequality than Quebec, including Canada as a whole. This is also the case for Ireland (5.4), the United Kingdom (5.6), Australia (5.7), and Japan (6.2). The United States has by far the greatest inequality. Quebec’s rate of income inequality is less than those of its immediate geographic neighbours and closer to those of more egalitarian countries in Europe.



## B. SOCIAL PARTNERSHIP IN A SMALL SOCIETY

The Quiet Revolution's goals have been broadly achieved. But this relative success was not the result of state action alone. Nor was it immediate. It was gradual. The model that emerged from the Quiet Revolution was *étatiste*—centralized and top-down. In the 1970s, the social forces and coalitions that had wrought the interventionist state began to crack and break apart. Social movements, unions, and advocates of decentralization started to criticize the technocratic management of public services.<sup>77</sup> Economic restructuring and the recession of the 1980s highlighted the limits of state-led development strategies. In the 1980s and 1990s, the province began to experiment with more collaborative forms of governance. It organized economic summits at which all players in the economy and civil society were brought together and asked to work with the government to build unity around key objectives. Quebec's welfare state entered a second phase at this time, with the introduction of a new wave of social programs such as universal drug insurance, low-fee child care, extended parental leaves, new family allowances, and pay equity.<sup>78</sup> It evolved into “a new model of solidarity-based democratic development’ anchored in new relationships between the state, the market, and a vigorous and autonomous third sector.”<sup>79</sup>

Quebec's response to changing economic circumstances was a variant of the “democratic corporatism” of small societies described by Peter J. Katzenstein.<sup>80</sup> In Europe, Katzenstein argued that perceived vulnerability (economic or otherwise) generated an ideology of social partnership that acted as the glue for the “democratic corporatist” politics and institutions found in small states. Small nations are said to have more social cohesion and greater ability to make sacrifices for the common good. They can coordinate policy in ways that help them successfully respond to external vulnerabilities by building institutional capacities for cooperation,

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77. See Carla Lipsig-Mummé, “Quebec Unions and the State: Conflict and Dependence” (1980) 3 *Stud Pol Econ* 119; Louis Maheu, “Les mouvements de base et la lutte contre l'appropriation étatique du tissu social” (1983) 15:1 *Soc sociétés* 77 at 92.

78. Jane Jenson, “Against the Current: Child Care and Family Policy in Quebec” in Sonya Michel & Rianne Mahon, eds, *Child Care Policy at the Crossroads: Gender and Welfare State Restructuring* (New York: Routledge, 2002) 309 at 332.

79. Alain Noël, “Quebec's New Politics of Redistribution” in Banting & Myles, *supra* note 41, 256 at 259.

80. *Small States in World Markets: Industrial Policy in Europe* (Ithaca, NY: Cornell University Press, 1985).

flexible manoeuvring, and concerted action in the “national interest.”<sup>81</sup> Political centralization also tends to be greater and political arrangements tend to be more closely knit. In the “varieties of capitalism” literature, small neo-corporatist societies belong to the “coordinated market economy” type.<sup>82</sup> According to Peter A. Hall, coordination and cooperation are facilitated in small political economies by “a thick set of shared understandings of the sort built up by experience over long periods of time, tantamount to a particular ‘culture’ rooted in national history.”<sup>83</sup> In the Quebec case, the modernizing and resolutely secular nationalism of the Quiet Revolution provided the critical foundation for the ideology of social partnership that Katzenstein suggested was crucial for small societies. A shared sense of national identity allowed partners to limit internal conflicts, overcome collective action problems, and coordinate on a specific equilibrium.

With more than forty per cent of the province’s workers being unionized (see Figure 3, below)—the highest rate in North America—social partnership in Quebec is characterized by the presence of powerful trade unions. Union might is matched by a well-organized business community represented by a peak association, the Conseil du patronat. Other partners include a solid women’s movement and a dense network of social and community organizations active in the social economy. Thanks to patient capital provided by workers’ investment funds such as the Solidarity Fund set up by the FTQ, social economy enterprises have flourished over the past twenty years.<sup>84</sup> The Solidarity Fund supports job creation in Quebec’s small- and medium-sized businesses. It is funded by retirement savings subscriptions from union members and the general public and enjoys tax credits from the provincial and federal governments.<sup>85</sup> The Solidarity Fund and its counterpart FondAction, established in 1996 by the Confédération des syndicats nationaux (“CSN”), the second largest union organization in

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81. See Natalka Patsiurko, John L Campbell & John A Hall, “Nation-State Size, Ethnic Diversity and Economic Performance in the Advanced Capitalist Countries” (2013) 18:6 *New Pol Econ* 827.

82. Peter A Hall & David Soskice, eds, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (New York: Oxford University Press, 2001).

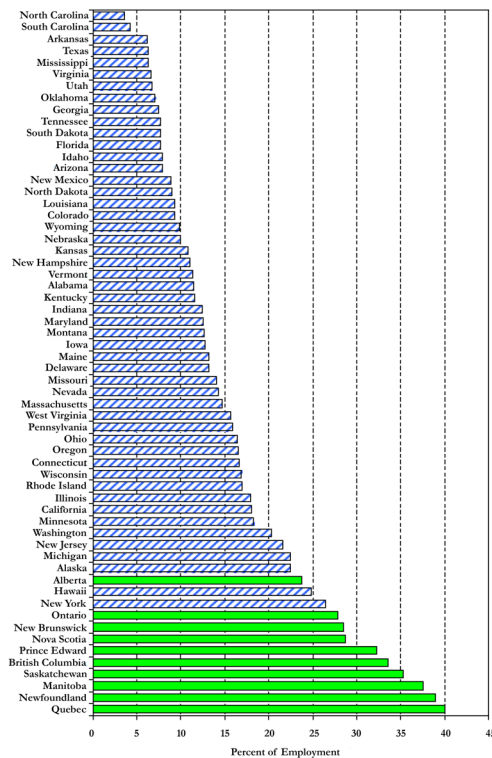
83. “Danish Capitalism in Comparative Perspective” in John L Campbell, John A Hall & Ove K Pedersen, eds, *National Identities and the Varieties of Capitalism: The Danish Experience* (Montreal: McGill-Queen’s University Press, 2006) 441 at 446.

84. See Marie J Bouchard, ed, *Innovation and the Social Economy: The Québec Experience* (Toronto: University of Toronto Press, 2013).

85. In the 2013 budget, the Harper government announced that it intended to eliminate the fifteen per cent tax credit offered to investors who buy shares of labour-sponsored venture capital funds by 2017. See Canada, Minister of Finance, *Jobs Growth and Long-Term Prosperity: Economic Action Plan 2013* (Ottawa: Department of Finance, 2013) at 207.

the province, have invested over \$12 billion in Quebec companies and helped create or maintain two hundred thousand jobs in the province. The two funds are partners, either directly or through their network members, in over three thousand Quebec businesses and social economy enterprises.<sup>86</sup>

FIGURE 3: TOTAL UNIONIZATION RATE AS A PERCENTAGE OF EMPLOYMENT (2004)



Source: Jason Clemens, Niels Veldhuis & Amela Karabegović, “Explaining Canada’s High Unionization Rates” (August 2005) at 7, Figure 1, online: <[www.fraserinstitute.org/sites/default/files/explaining-canadas-high-unionization-rates.pdf](http://www.fraserinstitute.org/sites/default/files/explaining-canadas-high-unionization-rates.pdf)> [reproduced with permission].

86. See Marguerite Mendell & Nancy Neamtan, “The Social Economy in Quebec: Towards a New Political Economy” in Laurie Mook, Jack Quarter & Sherida Ryan, eds, *Researching the Social Economy* (Toronto: University of Toronto Press, 2010) 63.

Workers' investment funds engage unions directly in socio-economic initiatives with governments and businesses.<sup>87</sup> This illustrates how social partnership blurs the boundaries between state and market and between the public and private sectors. It transforms private economic actors into public policy makers with whom the government shares part of its authority. Private organized interests are granted a representational monopoly and privileged access to the policy-making process. They are equipped with public power and have a voice at the decision table in return for their adherence to commonly agreed-upon goals.

Definitions of corruption as the "abuse of public power for private ends" rely "on the superficial clarity of a public-private distinction."<sup>88</sup> They imply a sharp distinction between market and state not found in neo-corporatist political economies where private interests assume quasi-public functions. As we shall see in Part III, below, when former FTQ President Michel Arsenault contacted Premier Charest to complain about the Chinese taking a piece of the Quebec construction market, Arsenault said he was not defending the private interests of the Accurso group, the largest employer in the industry, but rather the interests of the Quebec economy as a whole.

### III. PATTERNS OF SYSTEMIC CORRUPTION AND THE LEGACIES OF PAST INSTITUTIONAL ARRANGEMENTS

The Charbonneau Commission's total cost (around \$45 million) and legal standing have produced background investigative research and a comprehensive set of hearings at which participants were legally compelled to testify under oath. The Commission heard a total of almost three hundred witnesses over a period of two and a half years. Its work was broadcasted daily and its proceedings were widely followed on television and debated in the press. Witnesses included public officials, former and sitting politicians, party fundraisers, union bosses, engineers, and construction company representatives. Written transcripts of their testimony are available on the Commission's website and consist of approximately nine thousand pages of documents.<sup>89</sup>

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87. See Luc Bernier, Marie J Bouchard & Benoît Lévesque, "Attending to the General Interest: New Mechanisms for Mediating Between Individual, Collective and General Interest in Québec" (2003) 74:3 *Annals Pub & Cooperative Econ* 321.

88. William C Heffernan & John Kleinig, eds, *Public and Private Corruption* (Lanham, MD: Rowman & Littlefield, 2004) at 3.

89. See *Charbonneau Commission Report*, *supra* note 26.

In this Part, I explore these transcripts to reconstruct the narratives of participants in corrupt exchanges to paint a picture of systemic corruption in public contracts for construction projects at the municipal level of government.<sup>90</sup> This is admittedly a highly interpretive and inductive enterprise but inherent to the theory-building objective of this article. The goal is to develop a theoretical explanation from the testimonies given at the Charbonneau inquiry to infer that a more general causal mechanism is at work in the study of this particular case. This mechanism emphasizes the structuring effects of the Quebec social model on the patterns of corruption exposed at the Charbonneau inquiry. To recapitulate, my key theoretical claim is that discontinuous models of institutional change are ill-equipped to explain the persistence of systemic corruption in advanced welfare states. In Quebec, the “big bang” created by the Quiet Revolution did not eliminate systemic corruption in the construction industry—it remains a problem that exists in all market economies. Rather, corrupt practices adapted to new institutional arrangements and were shaped by the incentive structures they provided. I use a process-tracing method to identify traces of the Quebec model in the accounts of direct participants in networks of corrupt exchanges.<sup>91</sup> I expect patterns of systemic corruption to parallel (that is, to be embedded in) the overarching institutional structures of the political economy. As discussed next, the patterns of corruption emerging from the Charbonneau inquiry bear the imprints of the governing arrangements inherited from the Quiet Revolution in at least three ways: (1) the economic nationalism that made public policies partial towards French-speaking and Quebec-based businesses, notably in the engineering sector, with major firms like SNC-Lavalin using their dominant position as national champions to engage in cartel-like practices to raise the price of construction projects; (2) the Jacobinism that strongly centralized power at the provincial level and left municipalities underdeveloped in terms of bureaucratic capacity, thus making them easy prey for corrupt interests; and (3) the sovereignist/federalist cleavage that, since the 1970s, has made Quebec businesses dependent on the Liberal Party for stability and has allowed party fundraisers to extract a rent from businesses in exchange.

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90. I use the concept of “narrative” found in constructivist approaches to make clear that witness testimonies are not treated as an objective or empirically valid depiction of reality, but rather as discourses or stories making connections across events and which usually have a beginning and an end. See Dirk Tänzler, Konstantinos Maras & Angelos Giannakopoulos, eds, *The Social Construction of Corruption in Europe* (Farnham, UK: Ashgate, 2012).

91. Peter A Hall, “Aligning Ontology and Methodology in Comparative Politics” in James Mahoney and Dieter Rueschemeyer, eds, *Comparative Historical Analysis in the Social Sciences* (New York: Cambridge University Press, 2003) 373 at 404.

## A. THE ENGINEERING SECTOR AS A NATIONAL CHAMPION

The Lesage government's nationalization of electricity and Hydro-Quebec's subsequent development of hydropower megaprojects in the province's north in the 1970s played a key role in creating French-language engineering firms. Hydro-electric development projects, beginning with Manic V and the James Bay Project, were instrumental in propelling Quebec engineering into the major leagues. SNC-Lavalin's participation in the projects allowed it to grow to a position of global dominance, eventually becoming one of the five largest engineering firms in the world with twenty-eight thousand employees worldwide. From the outset, Hydro-Quebec adopted a policy of preferential purchasing from French-speaking enterprises, paying up to ten per cent more for locally produced items. Over time, this policy resulted in tens of billions of dollars in public contracting, leading to the development of several francophone corporations capable of competing in world markets, including SNC-Lavalin, Dessau-Soprin, Roche, and Génivar, all of which "initially developed as a result of Hydro-Quebec contracts."<sup>92</sup> These firms became national champions and symbols of "Quebec Inc."—the francophone business elite brought by state-owned enterprises such as Hydro-Quebec, CDPQ, and the Société générale de financement ("SGF").

Quebec-based engineering firms recorded revenues of \$5 billion and employed more than twenty-three thousand people in 2013.<sup>93</sup> Mergers and acquisitions have made the industry more concentrated over time, from more than one hundred firms twenty years ago to about forty today. According to the Quebec Department of Economic and Regional Development, the industry has become an "oligopoly."<sup>94</sup> This concentration is reflected in the Department of Transport's expenditures for external expertise and technical services. As Figure 4 shows, from 1997 to 2012, twelve engineering firms accounted for eighty-seven per cent (\$2.5 billion) of the funds spent by the department on professional services contracts.

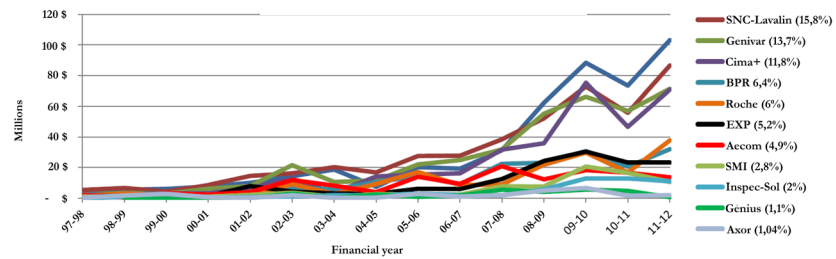
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92. Marc V Levine, *The Reconquest of Montreal: Language Policy and Social Change in a Bilingual City* (Philadelphia: Temple University Press, 1990) at 161.

93. See Ministère des Finances et de l'Économie, "Le génie-conseil québécois : l'énergie au cœur du développement du Québec" (Quebec: MFEQ, 2015).

94. Ministère du développement économique et régional, *Portrait industriel: filière du génie-conseil* (Quebec: MDER, 2003) at 30.

FIGURE 4: PROFESSIONAL SERVICES FIRMS THAT HAVE OBTAINED MORE THAN 1 PER CENT OF MTQ CONTRACTS, 1997–2012



Source: Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, Travaux routiers du MTQ : Portrait du marché (Montreal: CEIC, 2014) [reproduced with permission].

Collusion most often takes place within the market structure of oligopoly.<sup>95</sup> The firms identified in Figure 4 have all admitted to participating in a collusion scheme to raise the price of construction projects. A former Genivar executive told the Charbonneau inquiry that he was part of a cartel of engineering firms that “shared the pie” on Montreal public works contracts in the mid-2000s, rigging bids in concert with Montreal’s then-ruling Union Montreal party in exchange for political donations.<sup>96</sup> An engineer from Génius testified that he was asked to act as the industry spokesperson in the decision-making process in which firms were to become eligible for lucrative city contracts.<sup>97</sup> He worked with Union Montreal’s treasurer (who had a list of forthcoming projects) to choose contractors from a pool of firms that were in on the bid-rigging scheme, and he put forward the firms’ offers to the municipal selection committee. The winning firm would usually come in at four or five per cent under scale, he said. He testified that had the firms genuinely competed, they could have been forced to bid as much as twenty-five per cent under scale.

95. See Chaim Fershtman & Ariel Pakes, “A Dynamic Oligopoly with Collusion and Price Wars” (2000) 31:2 *Rand J Econ* 207.

96. Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) (Testimony, François Perreault, 12 March 2013) [translated by author] [on file with author].

97. Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) (Testimony, Michel Lalonde, 22 January 2013) [translated by author] [on file with author].

The bid-rigging system that plagued the construction industry in the Montreal area extended to other cities, big and small, across the province. An engineer at AECOM (formerly Tecsalt) said that in 2003, he was told by company officials in Laval—where a similar system long existed—that his firm and three others had agreed to split up contracts worth between \$25,000 and \$500,000 in the city of Gatineau.<sup>98</sup> According to the deal, forty per cent of the contracts would go to Cima+, twenty-seven per cent to Genivar, twenty-two per cent to Tecsalt, and eleven per cent to Dessau. The four firms designed a system to split public-works contracts in Gatineau between 2003 and 2009. The inquiry was told that, at first, members of the cartel communicated in person, but they later started to divide contracts during phone meetings using an elaborate code to communicate their prices before submitting their bids.<sup>99</sup> A winner was selected and the others sent in higher bids, replicating a system that first appeared in the greater Montreal area and which the Commission exposed during the hearings.

Construction magnate Tony Accurso's name came up numerous times when the inquiry focused on the system of collusion among companies bidding for Montreal contracts. At their peak, Accurso's firms employed some 3,500 people and conducted business worth \$1.2 billion annually. His vast network of companies was built through his friendships with high-ranking union officials and the backing of the province's largest labour-controlled investment fund. At the inquiry, Accurso said that he chose to do business with the Solidarity Fund because he wanted to keep investment in Quebec and not send it "to Toronto."<sup>100</sup> The construction magnate described himself as a patriotic man eager to help Quebec's economy.<sup>101</sup> Accurso admitted that four FTQ presidents had gone for trips on his luxury yacht, "The Touch" (including Louis Laberge, Henri Masse, Clement Godbout, and Michel Arsenault).<sup>102</sup> A wiretap conversation played at the Charbonneau inquiry highlighted the tight links uniting the FTQ and the Accurso group. When Accurso called Arsenault to complain about outsiders from China

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98. Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) (Testimony, Michel Lalonde, 22 January 2013) [translated by author] [on file with author].

99. *Ibid.*

100. Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) (Testimony, Tony Accurso, 2 September 2014) [translated by author] [on file with author] [Accurso Testimony].

101. *Ibid.*

102. *Ibid.*



winning lucrative engineering contracts for major Quebec infrastructure projects, the FTQ president sprang into action. He immediately contacted politicians in power, including Premier Jean Charest.<sup>103</sup> A January 2009 conversation between Arsenault and Charest was caught on tape in a police wiretap. The former union boss (who retired in November 2013) was questioned relentlessly by the inquiry's attorney about the organization's influence and how much sway Accurso had over the union.<sup>104</sup> Arsenault admitted to intervening with the government on Accurso's behalf regarding certain Hydro-Quebec related projects, but he insisted that his intervention following Accurso's complaint about outsiders winning an engineering contract was purely in the interest of defending the best interests of the Quebec economy and its workers.<sup>105</sup> After Accurso's call, Arsenault was heard speaking to Charest in a short phone exchange during which he told the premier that partners of the union's investment fund were unhappy about rumblings of a foreigner obtaining the contract.<sup>106</sup> A few days after the conversation with Charest, Arsenault reported back to Accurso, saying Charest had "turned white like a snowbank when I told him about the Chinese getting the contract."<sup>107</sup> Arsenault also said he had spoken to then-opposition leader Pauline Marois and a host of ministers including former Treasury Board President Monique-Jérôme Forget.<sup>108</sup> Arsenault admitted on the stand that there was an interest in pushing for Accurso's company to succeed.<sup>109</sup> The union's billion-dollar Solidarity Fund had invested heavily in Accurso's companies and wanted to see him get future lucrative contracts. Arsenault repeatedly stated that he did not see any conflict of interest issues.<sup>110</sup> As one witness said, "Inside the construction industry, it was well known that Tony [Accurso] was synonymous with the Fund."<sup>111</sup>

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103. Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) (Testimony, Michel Arsenault, 29 January 2014) [translated by author] [on file with author].

104. *Ibid.*

105. *Ibid.*

106. *Ibid.*

107. *Ibid.*

108. *Ibid.*

109. *Ibid.*

110. *Ibid.*

111. Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) (Testimony, Lino Zambito, 4 October 2012) [translated by author] [on file with author].

## B. THE UNDERDEVELOPED NATURE OF LOCAL PUBLIC ADMINISTRATIONS

Testimony at the Commission depicted an image of endemic corruption in local public administrations. The mayors of Quebec's two largest cities, Montreal and Laval, resigned over corruption scandals in the wake of damning testimony at the Commission. The mayor of Laval, Gilles Vaillancourt, was arrested in May 2013 at his home and charged with "gangsterism."<sup>112</sup> The inquiry also heard about so-called turn-key elections conducted in the suburbs and in smaller municipalities.<sup>113</sup> Turn-key elections involve companies, such as engineering firms, providing everything required, with candidates simply stepping into privately financed campaign operations.<sup>114</sup> The company or other business interest takes over a mayoral candidate's campaign—it rents the headquarters, hires workers, and maps strategies.<sup>115</sup> If its candidate wins, the mayor is then expected to reward his or her hidden corporate sponsor with public contracts after the election.<sup>116</sup> One witness estimated that he had organized up to sixty election campaigns while working at Roche engineering.<sup>117</sup> Over time, the rigging of election campaigns became a normal business practice. Organizers were placed on corporate payrolls. In exchange for their election-fixing services, their private sector paymasters got the inside track on lucrative municipal contracts.<sup>118</sup>

Turn-key elections constitute an obvious form of "institutional capture."<sup>119</sup> Low voter turnout and the relative absence of electoral competition in Quebec municipal politics might explain why they appear to have been common at the local level. Voter turnout averages forty to forty-five per cent in municipal elections compared to seventy to seventy-five per cent in provincial and federal

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112. Les Perreux & Ingrid Peritz, "Laval's ex-mayor faces gangsterism charges," *The Globe and Mail* (9 May 2013), online: <[www.theglobeandmail.com/news/national/lavals-ex-mayor-faces-gangsterism-charges/article11811064](http://www.theglobeandmail.com/news/national/lavals-ex-mayor-faces-gangsterism-charges/article11811064)>.

113. Quebec, Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, *Rapport final de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Montreal: CEIC, 2015) (Testimony, Gilles Cloutier, 29 April 2013) [translated by author] [on file with author] [Cloutier Testimony].

114. *Ibid.*

115. *Ibid.*

116. *Ibid.*

117. *Ibid.*

118. *Ibid.*

119. See Joel S Hellman, Geraint Jones & Daniel Kaufmann, "Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition" (2000) World Bank Policy Research Working Paper No 2444.

elections. The trend is similar for the rest of Canada.<sup>120</sup> In Montreal in 2013, only forty-three per cent of eligible voters participated despite widespread corruption scandals. Few people vote, and, as a result, a majority of mayors and local politicians in Quebec (an estimated fifty-five per cent) are elected without opposition. A study by Champagne of the 2005 municipal election found that political competition for the mayor's job declines with municipalities' size.<sup>121</sup> In municipalities with 1000–1999 inhabitants, seventy-five per cent of mayors are elected without opposition. Low turnover rates among elected municipal officials favour continuity and stability in political leadership and in relationships with private contractors. This increases the risk of corruption because incumbents face no competitors to expose their potential misuse of office.<sup>122</sup>

Most people do not vote in municipal elections because they do not perceive the significance of local government in their lives. Municipalities in Canada live in the shadow of federalism, which gives pre-eminence to provincial-federal relations.<sup>123</sup> Local governments are weak. Canadian municipalities' constitutional and jurisdictional power is limited<sup>124</sup> compared to that of municipalities in other advanced industrial countries. Local authorities are within the jurisdiction of the provincial governments—hence the well-worn phrase that they are “creatures of the provinces.”<sup>125</sup> Provincial governments create them, regulate them, prescribe many of the policies they implement, and, not infrequently, eliminate them through amalgamation. Not surprisingly, municipalities' financial position is also relatively weak. Spending by local governments makes up only 4.1 per cent of Canadian GDP, while the 2009 average for the twenty-nine OECD countries for which data is available was 12.2 per cent.<sup>126</sup>

In Quebec, the central role played by the provincial government in the promotion of the francophone majority since the Quiet Revolution has reinforced

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120. See M Reza Nakhaie, “Electoral Participation in Municipal, Provincial and Federal Elections in Canada” (2006) 39:2 *Can J Pol Sci* 363.

121. See Ministère des Affaires municipales et des Régions, “Les élections municipales 2005 : Au-delà des apparences” by Patrick Champagne (Quebec: MAMR, 2007).

122. See Todd Donovan & Regina Branton, “Electoral Competition and Political Corruption” (Paper delivered at the Western Political Science Association Annual Meeting, 23 August 2012) [unpublished].

123. See Donald JH Higgins, *Local and Urban Politics in Canada* (Toronto: Gage Educational, 1986).

124. See James Lightbody, *City Politics, Canada* (Peterborough, Ont: Broadview Press, 2006).

125. Warren Magnusson, “Are Municipalities Creatures of the Provinces?” (2005) 39:2 *J Can Stud* 5.

126. Robert Young, “La gouvernance multiniveau et les politiques publiques au sein des municipalités du Canada : reddition de comptes et efficacité” (2013) 19:1 *Télescope* 25 at 26.

the political subordination of municipalities. Distributional conflicts and ongoing rivalries with the federal government make the provincial bureaucracy more jealous of its power and less intent on sharing it. Municipalities are micromanaged from the provincial capital by the powerful ministry of municipal affairs. A study by Serge Belley et al concluded that “Quebec municipalities have not experienced a real increase in their powers over the past years ... . [T]hey have neither the institutional depth nor the fiscal and political power that characterize many of their counterparts in the advanced industrial countries.”<sup>127</sup>

In the 1960s, reformers focused their energies on developing a Weberian bureaucracy at the provincial level. Province-building accompanied the process of nation-building. The Quebec state was to be the leader, innovator, and symbol of Quebecois identity. Not much attention was paid to local government. The merit system in municipal public services remains weakly institutionalized.<sup>128</sup> Even though Montreal has the oldest administrations in the province, its own public service commission regularly decries it for making appointments outside the formal merit system. Local public services have low organizational capacities. Resources are scarce and the local public services have few in-house skills or capabilities, relying extensively on outside expertise. The Charbonneau inquiry revealed the extent of this dependence in the case of municipal engineers. Witnesses described engineering firms acting as subcontractors to local governments as a parallel or shadow public service. These private companies are insulated from government hiring rules and immune from access-to-information laws. A growing movement of personnel from government to engineering firms and vice versa in recent years points towards the development of a “revolving door” between the public and private sectors.<sup>129</sup> For years, the Quebec Lobbying Commissioner has been suspicious of, and often chastised, engineering firms for failing to disclose their contacts with government officials.<sup>130</sup>

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127. “Quebec” in Andrew Sancton & Robert Young, eds, *Foundations of Governance: Municipal Government in Canada's Provinces* (Toronto: University of Toronto Press, 2009) ch 2 at 70ff.

128. See Alain Baccigalupo, *Les administrations municipales québécoises : des origines à nos jours* (Montréal, Agence d'Arc, 1984); Michèle Dagenais, *Des pouvoirs et des hommes : L'administration municipale de Montréal, 1900–1950* (Montreal: McGill-Queen's University Press, 2000).

129. Bernard Descôteaux, “Ville de Montréal - Les portes tournantes,” *Le Devoir* (1 April 2009) online: <[www.ledevoir.com/politique/villes-et-regions/243020/ville-de-montreal-les-portes-tournantes](http://www.ledevoir.com/politique/villes-et-regions/243020/ville-de-montreal-les-portes-tournantes)>.

130. See Antoine Robitaille, “Les ingénieurs, la bête noire du commissaire,” *Le Devoir* (3 October 2009) online: <[web1.ledevoir.com/politique/quebec/269969/les-ingenieurs-la-bete-noire-du-commissaire](http://web1.ledevoir.com/politique/quebec/269969/les-ingenieurs-la-bete-noire-du-commissaire)>.

This lack of transparency has provided a fertile ground for the growth of corrupt practices. Engineers have refused to view their work as lobbying. They see themselves as professionals who provide technical advice on infrastructure projects. Testimony to the Commission suggested that the image of the neutral and disinterested expert might have served to hide improper contracting practices and the tactic of charging extra for fake cost overruns. Problems arise when municipal administrations are dependent on private sector suppliers and do not have the internal know-how to verify contractors' work. This results in private suppliers raising their prices and in public agencies becoming hostages to subcontractors' demands.

### C. BUSINESS DEPENDENCE ON THE LIBERAL PARTY FOR POLITICAL STABILITY

The election of the PQ in 1976 brought strong negative reactions from the Canadian and Quebec corporate sectors. Pierre Desmarais II, then president of the Conseil du Patronat ("CPQ"), said that he would act as "leader of the opposition" to the Lévesque government.<sup>131</sup> Fearing the instability that a rupture with Canada would engender, the Quebec business community has always been "massively federalist."<sup>132</sup> French-speaking businesses have been consistent and staunch supporters of federalism. From the beginning, they have viewed independence as a threat to their access to the wider continental market and as a "possible catalyst to economic deterioration within the province."<sup>133</sup> The CPQ in particular has been "an outspoken opponent of political independence."<sup>134</sup>

In a highly symbolic gesture, the Sun Life Insurance Co., headquartered in Montreal since the nineteenth century, moved its head office to Toronto after the PQ government came to power and passed a new law that made French the official language of the workplace in Quebec. Big business was not on the PQ's side, and the PQ retaliated by making business donations to parties illegal. One of the PQ's first acts upon taking office in 1997 was to introduce a law banning corporate donations and imposing a ceiling on individual contributions to the province's parties (Bill 2, which came right after Bill 1, also known as Bill

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131. Ghislain Dufour, *Ghislain Dufour témoigne des 30 ans du CPQ* (Montreal: Éditions Transcontinental, 2000).

132. Jean-Herman Guay, "Le patronat québécois, 1988–1998" in Robert Boily, ed, *L'Année politique au Québec 1997–1998* (Montreal: Presses de l'Université de Montréal, 1999) 153.

133. William D Coleman, *The Independence Movement in Quebec 1945-1980* (Toronto: University of Toronto Press, 1984) at 13.

134. William D Coleman, *Business and Politics: A Study of Collective Action* (Kingston: McGill-Queen's University Press, 1988) at 94.

101—the language law). At the time of its unanimous adoption by the National Assembly, Bill 2 was the first legislation of its kind in Canada. Lévesque wanted to reduce the influence of corporate money on Quebec politics. Businesses and interest groups could no longer use their money to manipulate power. Only citizens would be allowed to contribute to parties. In return, the government would compensate for the reduced financing entailed by these measures by making allocations to political parties.

According to Graham Fraser, “The reform that Lévesque cherished the most was the election-financing legislation, Bill 2. Indeed, he expressed more emotion about political fund-raising than about anything else.”<sup>135</sup> What Fraser termed the “old slush-fund tradition” was part of Quebec’s political folklore—donations were secret and were quietly repaid with government contracts. This was one of the reasons for the Liberal government’s unsavoury reputation. Bill 2 reflected the PQ belief that corporate donations were a major cause of corruption in Quebec. It was intended to sever the link between corporate wealth and political parties.

With Bill 2, Lévesque also wanted to create a level playing field for his sovereigntist party. In Quebec, big business is strongly federalist. As Chantal Hébert wrote, “Without a ban on corporate donations the ‘Yes’ camp would have been reduced to countering the federalist referendum artillery with sticks and stones.”<sup>136</sup> The draft election-financing law was initially strongly opposed by the Liberals and the Chamber of Commerce as a restriction on freedom of opinion and expression. The 1977 law has since been emulated in numerous jurisdictions, including at the federal level, where donations may no longer come from companies and must be less than \$100,000 per person. At the inquiry, however, a retired executive at the Roche engineering firm reported that the landmark Quebec election-financing law that inspired similar reforms across Canada has been systematically flouted since its inception.<sup>137</sup> He said that within three years of the PQ-initiated political reforms of the late 1970s, unscrupulous fundraisers were already circumventing them.<sup>138</sup> He estimated that less than ten per cent of funds collected at the municipal level, and twenty per cent at the provincial level, actually came from legal eligible donors.<sup>139</sup> As for the rest, corporate money quickly breached the barricade set up by the 1977 law.<sup>140</sup> He said it was easy to

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135. PQ: *René Lévesque and the Parti Québécois in Power* (Toronto: MacMillan, 1984) at 114.

136. Chantal Hébert, “Quebec corruption inquiry: Public Policy Can’t Be Treated Like a Sacred Cow” *The Toronto Star* (May 1, 2013) online: *The Toronto Star* <<http://www.thestar.com>>

137. Cloutier Testimony, *supra* note 113.

138. *Ibid.*

139. *Ibid.*

140. *Ibid.*

find people to pose as donors because they would get reimbursed and receive the added bonus of a tax credit.<sup>141</sup> “A few years later—I’d say two or three years later—the law was being outsmarted,” he told the inquiry.<sup>142</sup> “The director general of elections didn’t check and it was easy to find strawmen because of the tax credit. Everyone called me because it was essentially a \$300 gift.”<sup>143</sup>

Between 1998 and 2009, Accurso and his employees illegally donated more than \$500,000 to the Liberal party. “Never ask a politician to help you, just not to hurt you,” he recounted in his testimony to the Commission. “I never ran after anyone to give them money. When the demands came in, we did what we had to do.”<sup>144</sup> Commission lawyer Sonia LeBel presented a picture of Accurso embracing former Premier Jean Charest at a fundraiser held at his Laval restaurant in 2001. The entrepreneur explained that he offered up his restaurant and supplied the food and drinks.<sup>145</sup> The picture is signed by Mr. Charest, who wrote “Thanks for your support.”<sup>146</sup> Accurso detailed his donations to politicians over the years, saying he felt it was the best way to ensure that government officials would not block or delay his projects.<sup>147</sup> “No one makes a \$3,000 cheque out of conviction,” he told the inquiry.<sup>148</sup> He also said, “I was afraid of the possibility of reprisals from politicians.”<sup>149</sup> Figures compiled by the Commission show that between 2002 and 2008, Accurso and his employees made donations ranging from \$50,000 to \$90,000 a year to the Quebec Liberal Party. From 1998 to 2009, the donations totalled \$556,000.<sup>150</sup>

A senior SNC-Lavalin vice-president told the Commission that his firm arranged for its employees to donate hundreds of thousands of dollars in

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141. *Ibid.*

142. *Ibid.*

143. *Ibid.*

144. Accurso Testimony, *supra* note 100.

145. *Ibid.*

146. A spokesman for Mr. Charest, Grégory Larocque, said the pair were “not close” and interacted only three times during Mr. Charest’s career. The picture was one of many taken during a fundraiser for Thomas Mulcair, who was a Liberal Minister of the National Assembly of Quebec in Laval at the time.

147. Accurso Testimony, *supra* note 100.

148. *Ibid.*

149. *Ibid.*

150. Quebec, Commission d’enquête sur l’octroi et la gestion des contrats publics dans l’industrie de la construction, *Travaux routiers du MTQ : Portrait du marché* (Montreal: CEIC, 2014) at 27.

illegal donations to the Liberal Party each year during the 2000s.<sup>151</sup> Portions of a sealed police affidavit released by a Quebec court judge revealed that two former SNC-Lavalin vice-presidents each told police that their job included the unofficial responsibility of monitoring and arranging for political financing.<sup>152</sup> The men said that former SNC-Lavalin CEO Jacques Lamarre informed them of this responsibility and that they had been in contact with a senior Liberal fundraiser to arrange for donations to the party.<sup>153</sup> SNC-Lavalin employees acted as straw donors and the company reimbursed them.

Numbers released by the Commission show that even in their lawful political contributions, engineering firms have a strong bias toward the Liberal Party, Parti Libéral du Québec (“PLQ”). As Figure 5 indicates, the twelve firms that obtained most of the Department of Transport’s contracts for engineering services (eighty-seven per cent or \$2.5 billion) donated \$14.8 million to Quebec political parties between 1998 and 2011. Firms gave much more to the Liberals (fifty-six per cent) than to the PQ (thirty-six per cent). A similar preferential treatment is found in the political donations of the largest construction companies. Sixty-five per cent of the \$2.3 million they gave to parties between 1998 and 2011 went to the Liberals. It may be that the Liberals received more because they were in power for a longer period of time. Yet even when the PQ was in power (1998–2003), it did not receive anywhere near the amount that the Liberal Party got when it formed the government.

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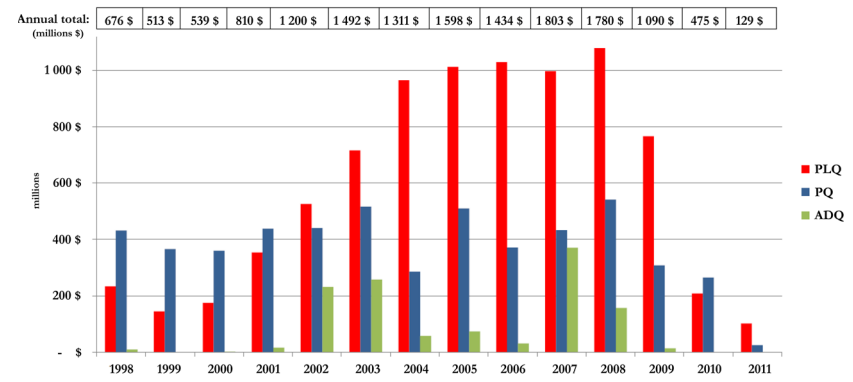
151. Quebec, Commission d’enquête sur l’octroi et la gestion des contrats publics dans l’industrie de la construction, *Rapport final de la Commission d’enquête sur l’octroi et la gestion des contrats publics dans l’industrie de la construction* (Montreal: CEIC, 2015) (Testimony, Yves Cadotte, 14 March 2013) [translated by author] [on file with author] [Cadotte Testimony].

152. Monique Muise, “New Portions of Affidavit Point to Illegal Political Financing by SNC-Lavalin” *Montreal Gazette* (November 11, 2014) online: <<http://www.montrealgazette.com>>

153. Cadotte Testimony, *supra* note 151.



**FIGURE 5: POLITICAL CONTRIBUTIONS BY ENGINEERING FIRMS OBTAINING MOST OF THE DEPARTMENT OF TRANSPORT'S CONTRACTS**



Source: Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, Travaux routiers du MTQ : Portrait du marché (Montreal: CEIC, 2014) [reproduced with permission].

Such a pattern contradicts an important body of work on business pragmatism suggesting that corporations tend to split their contributions 50-50 between the two major parties in two-party systems.<sup>154</sup> In Canada, for instance, the major banks and large corporate donors give equal amounts to the Liberals and Conservatives.<sup>155</sup> In Quebec, however, businesses are not as uniformly generous toward the two governing parties. Firms are more politically connected to the Liberal Party.

One specific advantage brought to firms by this connection is stability against the risks of secession brought by the PQ. As economists have emphasized, politicians will often be tempted to extract at least some of the rents generated by connections.<sup>156</sup> One hypothesis derived from this work would be that the PQ's rise to power in the 1970s made Quebec businesses more dependent on the Liberals for political and economic stability. This, in turn, would have allowed party operators to extract a rent from businesses in the form of preferential funding.

154. See Iain McMenamin, "If Money Talks, What Does It Say? Varieties of Capitalism and Business Financing of Parties" (2012) 64:1 World Pol 1.

155. Stephen Brooks & Andrew J Stritch, *Business and Government in Canada* (Scarborough, Ont: Prentice-Hall, 1991) at 287.

156. See Mara Faccio, "Politically Connected Firms" (2006) 96:1 Am Econ Rev 369.

#### IV. CONCLUSION

This article has stressed the embeddedness of corruption in the overarching institutional structures of the political economy. I used the case of Quebec to develop an alternative to discontinuous models of institutional change and to suggest a more appropriate middle ground between the oversocialized, functionalist view of systemic corruption and the undersocialized, neoclassical, principal-agent model in anti-corruption research and policy, according to which behaviour transcends contexts.

The shift of societies from a systemically corrupt social order to a less corrupt one is never achieved once and for all as “big bang” models of change lead us to believe. Revolutionary models of change pay insufficient attention to the adaptive nature of systemic corruption and are ill-equipped to explain its persistence in advanced welfare states. New institutions to improve the quality of government created in political “big bang” episodes may help deter corruption only in the short term. There is ample evidence to conclude that the long-run impacts could be quite different. For example, it could take corrupt officials time to learn how to manipulate a new system, so the long-run effects of an anti-corruption policy could be smaller than the short-run effects.<sup>157</sup>

As the evidence presented at the Charbonneau inquiry reveals, systemic corruption in the Quebec construction industry was not fully disembedded from society and the economy by the dramatic institutional changes toward establishing better government that took place at the time of the Quiet Revolution. But neither was it so deeply embedded that it remained impervious to its changing formal institutional environment. Anti-corruption research too often assumes that formal institutions and rules are overtaken or superseded by the informal institution of systemic corruption.<sup>158</sup> Such a position is reminiscent of society-centric and rational-design analyses that downplay the autonomous role of state institutions and public policies and that focus only on their intended effects.

Formal institutions may not have the power to root out systemic corruption from society, but this does not mean that they have no effect on it at all. Rather, they provide the structure of incentives that helps define the costs and benefits

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157. See Benjamin A Olken & Rohini Pande, “Corruption in Developing Countries” (2012) 4:1 *Ann Rev Econ* 479.

158. “Where corruption is systemic, the formal rules remain in place but they are superseded by informal rules. Where systemic corruption persists, the formal rules clash with informal and deeply ingrained patterns of social behavior and such formal rules are not sufficiently capable of altering such behavioral patterns.” See Laver, *supra* note 22 at 11.

of participation in corrupt exchanges. They leave their own imprint on patterns of corruption.

Different varieties of capitalism produce different patterns of corruption. Quebec is characterized by a coordinated market economy, and testimonies at the Charbonneau inquiry highlighted the extensive involvement of key socio-economic partners in corrupt exchanges. The Quebec model of development entrusted private economic actors with quasi-public functions. Citizens' outrage over the violation of this public trust may encourage politicians to combat corruption by reducing the size of government. Yet as demonstrated in the Quebec case, this would be like throwing the baby out with the bathwater. The real problem is the quality of government, not its quantity.