

LA COMMISSION D'ENQUÊTE SUR L'OCTROI
ET LA GESTION DES CONTRATS PUBLICS
DANS L'INDUSTRIE DE LA CONSTRUCTION

SOUS LA PRÉSIDENCE DE
L'HONORABLE FRANCE CHARBONNEAU, J.C.S., présidente
M. RENAUD LACHANCE, commissaire

AUDIENCE TENUE AU
500, BOUL. RENÉ-LÉVESQUE OUEST
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COMPARUTIONS

POUR LA COMMISSION :

Me GENEVIÈVE CARTIER

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1 L'AN DEUX MILLE QUATORZE (2014), ce trentième (30e)
2 jour du mois d'octobre,

3

4 PRÉLIMINAIRES

5

6 LA PRÉSIDENTE :

7 Ackerman.

8 Miss SUSAN ROSE-ACKERMAN :

9 Yes.

10 LA PRÉSIDENTE :

11 Good Day, Miss Rose-Ackerman.

12 Miss SUSAN ROSE-ACKERMAN :

13 Yes, right. Ye.

14 LA PRÉSIDENTE :

15 Thank. Good day.

16 Miss SUSAN ROSE-ACKERMAN :

17 Good Day.

18 LA PRÉSIDENTE :

19 Maître Cartier.

20 Me GENEVIÈVE CARTIER :

21 Oui. Bonjour, Madame la Présidente. Donc, Geneviève
22 Cartier pour la Commission.

23 LA GREFFIÈRE :

24 Open your microphone.

25

1 Me GENEVIÈVE CARTIER :

2 Non, je pense que mon micro est ouvert.

3 LA GREFFIÈRE :

4 O.K. Oui, là, il est ouvert.

5 PRÉSENTATION

6 Me GENEVIÈVE CARTIER :

7 Donc, Madame la Présidente, Monsieur le

8 Commissaire, nous discutons ce matin avec la

9 professeur Susan Rose-Ackerman que nous joignons à

10 Berlin par vidéo-conférence. La professeur Rose-

11 Ackerman est la Henry Luce Professor of

12 Jurisprudence une chaire de recherche en droit et

13 en sciences politiques de l'Université Yale. Elle

14 détient une maîtrise en philosophie et un doctorat

15 en économie.

16 Elle a beaucoup publié en droit

17 administratif ainsi que sur des questions de

18 corruption, de fédéralisme et en matière d'analyse

19 économique du droit.

20 Sa contribution sur la question de la

21 corruption est particulièrement importante. Elle a

22 publié des oeuvres, des ouvrages majeurs sur cette

23 question et elle est régulièrement invitée à

24 contribuer aux travaux d'organisations

25 internationales sur des aspects de politique

1 publique anticorruption.

2 Nous lui avons demandé de nous présenter
3 ses réflexions sur les différentes façons de
4 concevoir la corruption et sur la conception qui, à
5 son avis, devrait guider nos recommandations. Elle
6 pourra aussi exposer un certain nombre de causes
7 possibles de la naissance de la corruption et nous
8 faire part de ce qu'elle voit comme un consensus
9 sur les grands principes à suivre pour développer
10 une stratégie anticorruption efficace et justifiée.

11 So good morning, Professor Ackerman. I
12 suspect that it is the afternoon in Berlin so good
13 afternoon.

14 Ms. SUSAN ROSE-ACKERMAN:

15 Yes.

16 Me GENEVIÈVE CARTIER:

17 So you will now be sworn in.

18

1 IN THE YEAR TWO THOUSAND FOURTEEN (2014), this
2 twenty-ninth (29th) day of October,

3

4 APPEARED:

5

6 SUSAN ROSE-ACKERMAN, Professor

7

8 WHOM, having made a solemn declaration, doth depose
9 and say as follows:

10

11 Me GENEVIÈVE CARTIER:

12 Q. **[1]** So thank you very much for joining us. So you
13 will be making a presentation on the themes that
14 I've just exposed and then, after your
15 presentation, we will have a short period of
16 questions. So over to you.

17 LA COMMUNICATION EST COUPÉE AVEC BERLIN

18 LA GREFFIÈRE :

19 Ah! C'est eux qui nous appellent. Voulez-vous
20 répondre.

21 Me GENEVIÈVE CARTIER :

22 On va prendre l'appel.

23 A. Okay.

24 (09:45:10)

25

1 Me GENEVIÈVE CARTIER:

2 Q. **[2]** Hello again.

3 A. Hello again.

4 Q. **[3]** So can you hear me properly?

5 A. Yes, I can.

6 Q. **[4]** So I guess this is the kind of things that
7 might happen along the way so we will make sure
8 that the end product is somehow coherent and...

9 A. Okay.

10 Q. **[5]** So, as I said...

11 A. Okay. So I can start.

12 Q. **[6]** So, as I said, you can now make your
13 presentation and then after that presentation we
14 will have a question period for you so over to you.

15 PRESENTATION

16 A. Okay. Good. Thank you very much for inviting me
17 here to make a presentation. I hasten to, I wish to
18 begin by saying of course I'm not an expert on
19 Quebec and on your particular problems but, as I
20 understand them, they are not unique, they are
21 problems that are, arise in other places where
22 corruption has been alleged.

23 So let me just, let me start with some
24 general comments about the issue of corruption. And
25 I think I want to start with first asking why do

1 people pay bribes? What is it that provides a
2 reason for them to want to pay bribes? And there
3 are several basic reasons. One is there's something
4 scarce that they want to get from the State - that
5 might be a major contract but also might be
6 something relatively narrowly focussed like a place
7 in a public housing project or a benefit of some
8 kind that's limited.

9 They might also pay because even if
10 something is not scarce, it may be supposed to be
11 only provided to people who are qualified, so
12 something like a driver's licence or some other
13 kind of a licence. They might pay to avoid a cost
14 like a high level of taxes being levied on them or
15 even a low level of taxes, customs charges. They
16 might pay to get speed, to make things happen more
17 quickly than they would have (inaudible)

18 And how can they get away with it? That
19 might happen because the system is operating very
20 opaquely, there isn't much transparency at the
21 intersection, interactions between firms or
22 individuals and the State officials who are
23 receiving the bribes. There may be very little,
24 they may think there's very little risk of being
25 revealed or being caught in the deal. They may

1 think they have impunity, they may think they're
2 powerful so that even if they are, it is revealed,
3 they are powerful enough to get around it.

4 On the other side of the deal, you might
5 ask why do public officials accept bribes? Well,
6 the obvious one is they financially gain from doing
7 this, they get personal financial benefits or,
8 maybe, benefits they can use for their own
9 political penultimate benefit.

10 And similarly, the lack of risk, the fact
11 that they may feel that they have some impunity,
12 that they're... the law is not going to get after
13 them because they're too powerful, or the
14 enforcement process is... operate very poorly, and
15 there's just very little transparency, there's a
16 lot of opaqueness in the way the system... in the
17 way which the system works.

18 Well, what are the... how might one respond
19 to these, the existence of opportunities for paying
20 and receiving bribes in the public sector. Some
21 people, most notably Gary Becker a well-known... a
22 recently deceased economist of Chicago said, "Well,
23 the real problem is the state is just too big. We
24 ought to just shrink the state and that will get
25 rid of corruption." Well, at some level that's

1 true, if you get rid of a programme, nobody can pay
2 to get special benefits under that programme. On
3 the other hand, if you just make some public
4 service more scarce than it was, fewer places in
5 public housing, fewer public contracts, it may mean
6 that the individual deals are even more corrupt as
7 people struggle to get some kind of benefit from
8 the state.

9 But the more fundamental critique of that
10 view, of the approach to fighting corruption is it
11 doesn't take the state seriously. It doesn't take
12 seriously the beneficial important things that the
13 state does, and so that rather than think about
14 simply eliminating a public programme, we need to
15 take about how they can be reformed and changed.

16 Of course, sometimes it is true that
17 something can be described as simply purely red
18 tape, that has very little public value, and simply
19 creates corrupt incentives. And in that case, it
20 may make sense to get rid of a programme. But very
21 often, of course, that's not true. And then, the
22 reform agenda moves in different directions.

23 First of all, some kinds of public services
24 that are allocated at the discretion of bureaucrats
25 might actually be sold in a legal way by the state,

1 if that doesn't undermine some other values of the
2 programme. So, a country that limits the imports of
3 capital goods might, you know, sell off the import
4 licences to the high bidder, whereas in contrast,
5 if the state is giving out places... limited places
6 in public housing, of course they wouldn't want to
7 sell them to the highest bidder, because those
8 places are supposed to go to low income people who
9 qualify not on the basis of those (inaudible) to
10 pay.

11 So, there's a set of reforms that have to
12 do with keeping the programme in place and
13 simplifying, clarifying, making more transparent
14 the criteria for allocation, reducing the
15 discretion of public officials, so that corruption
16 is less possible and easier to... to see.

17 Now, there's another response to
18 allegations of corruption in some systems, and
19 that's the response that says, "Well, you know, in
20 some systems they have a culture in which it's seen
21 as okay to give a gift to a public official who
22 treats you well, and we have to understand those
23 cultural differences and not be so tough on payoffs
24 that are observed." This is to me maybe partly
25 coming out of my background in economics. It's

1 rather a problematic response.

2 Of course, there are cultural differences
3 that need to be thought about, but when we start
4 talking particularly about corruption in the
5 allocation of some kind of very scarce public
6 service, in the allocation of major infrastructure
7 contracts to build major projects, the idea that
8 it's somehow culturally acceptable to make payoffs
9 that have major impacts on the cost of the public
10 service to the rest of the citizenry seems a kind
11 of a misunderstanding of what it means to refer to
12 culture.

13 There's been interesting work done that
14 I've reviewed a bit on this phenomena, particularly
15 in the African context where there's been some
16 research suggesting that ordinary people, even in a
17 society in which low level corruption is common,
18 don't like it, resist it, protest about it, but may
19 be caught, feel caught in this web.

20 Secondly, there have been interesting
21 situations in which a multinational firm or a large
22 firm that paid a bribe, a large bribe, say in
23 Kenya, to get an infrastructure contract or to get
24 some other kind of contract, claims to the
25 prosecutors that they were being culturally

1 sensitive, that they were trying to understand, you
2 know, the way in which things are being done in the
3 state where they're operating, and so they pay
4 bribes. In contrast, the local people in this... in
5 the countries where this happen are saying, "No,
6 this isn't culturally sensitive at all. This is
7 misunderstanding the meaning of gift giving and of
8 generosity to be able to take on yourself this
9 claim that you're somehow being culturally
10 sensitive. You are not at all, you're just paying a
11 lot of money to get a, you know, a contract that
12 would benefit you." So, I think this tact, in terms
13 of trying to either justify or understand
14 corruption, really doesn't work, doesn't serve as a
15 justification in most cases.

16 What I would say in terms of thinking about
17 how to, just as a general matter, characterize the
18 problem of corruption, is that it's very... it is
19 very related to the democratic legitimacy of a
20 State. That... we can argue that a democratic State
21 should be allocating its goods and services, making
22 it contracting decisions, in a way that is fair and
23 equitable to the citizens of the country. And
24 there's also... has a relationship to the private
25 market which also treats the alternative

1 competitors in a even handed way. It doesn't tilt
2 the scales, put a hand on the scale in a way that
3 favors those who provide a private benefit to the
4 people who are supposed to be representing the
5 population or the public values of democracy.

6 So, what does that mean in terms of policy?
7 I'll speak generally and then I want to say a few
8 words about what I take to be the main focus of
9 your investigations.

10 First, simple transparency is important for
11 the public accountability of the State. That means
12 people need to reveal the criteria that they're
13 using for making judgements. There needs to be
14 openness both to the press and to civil society
15 groups, to monitor and see what's going on, so it's
16 transparency combined with external oversight, pure
17 transparency doesn't do much by itself. It has to
18 be combined with the ability of outsiders to
19 monitor and to check on what is happening or
20 happen. So, yes, also, the procurement processes
21 themselves need to be transparent and competitive.

22 Now, of course, all States interested in
23 controlling corruption are going to have anti-
24 bribery laws, they are going to have criminal laws
25 that would permit bringing cases against people who

1 violate the law. And I don't mean to downplay that,
2 I think it's obviously an important part of any
3 anti-corruption activity, but it's not going to
4 ultimately have a long term effect on the problem,
5 unless one thinks about both these broader
6 importance of the State itself running in a more
7 transparent and open direction and also thinking
8 about reform in a structural way in which... a way
9 in which services are being provided.

10 So, let me just speak of few... a little
11 bit about the specific application to contracting,
12 so, here, I think it's... the... and its
13 relationship to the political system. First of all,
14 there's obviously a question of whether there are
15 people with important authority over contracting
16 decision, who themselves are not very well
17 controlled, they are not very well monitored;
18 there's not very much transparency about their own
19 behavior. They may not be very much, kind of,
20 turnover or in political office or show a
21 monitoring of the behavior of a public official.

22 Now, combine with that, think about what it
23 is that is being purchased. The particular risks of
24 corruption that arise in public contracting occur
25 particularly when we are talking about one of a

1 kind special purpose contracting; right? So, the...
2 and particularly if it's not just a special purpose
3 but it's unique in some sense. That... because...
4 and so why is that? It's one of a kind, so it's
5 big, I mean not just one of a kind, but big. So, it
6 really matters. The contractors really care if they
7 get this, as opposed to not get it. There's a lot
8 at stake in doing it. And the fact that it's one of
9 a kind and special purpose may mean that it's quite
10 difficult for the State to estimate, and for
11 outsiders to evaluate, whether the price, the
12 contract price, is a fair price or not. So, it may
13 be relatively easy to sign a contract, you know,
14 for a large amount of money, that allows space for
15 corrupt payoffs to be hidden, in the value of the
16 contract.

17 Another part of that, of course, is that
18 after the contract is signed, it may be relatively,
19 it maybe plausible and relatively easy for the
20 contractors to come back and say : « Sorry, this is
21 now going to cost more. We thought it was going to
22 cost ten million dollars (\$10 M); it's really going
23 to cost, you know, twenty-five million dollars
24 (\$25 M), so I need you to pay this amount of
25 money. ». It's plausible because it can happen in a

1 completely honest contract, that there are
2 mistakes. So there's risks in how much these things
3 are going to cost.

4 So the importance of being able to
5 transparently understand what is happening within
6 the contract and to monitor, and have outside
7 people being able to monitor it is very important.

8 But it also raises a second question, which
9 is: are there things that the government is doing,
10 in the form of special purpose one-of-a-kind
11 contracts, which actually could have been done in a
12 much more, in a much sort of simpler run-of-the-
13 mill way? So there obviously already are certain
14 kinds of contracts, let's say, basic road repair
15 contracts, simple things that every government
16 throughout Canada, throughout the United States,
17 has to do, and that are not technically
18 complicated, and are routine and happen over and
19 over again. Those are going to be less opened to
20 corruption or should be less opened to corruption,
21 simply because the State can compare the cost of
22 repairing roads in different places.

23 Now, of course, some roads are on hills,
24 some roads are, you know, flood; there are
25 differences in roads, but the cost of such a run-

1 of-the-mill contract can be constrained by
2 comparing it, by benchmarking it with the cost of
3 similar contracts in other places. So assuming they
4 are not all uniformly corrupt, I mean, that would
5 obviously be a problem, but assuming that they're
6 not all uniformly corrupt, this can be used as a
7 way of checking on what is going on.

8 And that, of course, raises the question of
9 whether a particular government, in making its
10 contracting decisions, is making the right choice
11 about whether something is a routine, run-of-the-
12 mill thing, or a special purpose thing. If the
13 leadership of a State or of an Agency is corrupt,
14 they have an incentive to propose projects that are
15 too fancy, too one-of-a-kind, too unusual, because
16 that becomes a way in which they can skim off, you
17 know, things for themselves, in collaboration with
18 the contractors that they're working for. So, it's
19 a kind of a structural issue to be thought about,
20 in addition to worrying about corruption in the
21 actual contracts that are signed. It's kind of
22 starting back several steps, before you even get to
23 signing the contracts to what it is that's being
24 chosen.

25 That's not to say that, you know, the

1 government shouldn't rule out all such contracts,
2 just that there would be a greater burden of proof
3 on the State to justify what it is doing. To some
4 extent, both the American and the U.S. and the
5 Canadian are federal system of government, probably
6 provide some possibilities of inter-governmental
7 oversight in this context, I leave the, that, the
8 actual way to work out to you.

9 But assuming... It's obviously true that
10 you can't convert everything into a simple run-of-
11 the-mill contract that can be, who's cost can be
12 benchmarked, by looking elsewhere, the State has
13 got to think about how to organize the contracting
14 process for major contracts. And, here I just want
15 to highlight what I suppose is maybe fairly well-
16 known in your context, that the point is not simply
17 to look at how the bidding operates at the time
18 that the bidding happen. That's one stage where you
19 want to worry about bidding rings, and check
20 whether there's a sort of sharing overtime of the
21 business, between a few companies. But you also
22 need to step back, to be, the decision about what
23 to build, and whether that seems to be related to
24 the special characteristics of particular, of a
25 particular contractor.

1 There's been some very interesting work
2 which I'm happy to ask the authors to share with
3 you, looking at a whole range of procurement
4 contracts in Hungary, Check Republic, and Slovakia,
5 trying to identify sort of, like, danger signs of
6 contracts, in terms of the numbers of bidders, the
7 amount of time between when the bid is opened and
8 when it's closed to try to get at a set of risk
9 factors to be looked at and evaluated in the
10 contracting process.

11 In any case, that's a set of cases where
12 there certainly is, we have examples of corruption
13 in that kind of high level contracting around the
14 world and it's sort of making my kind of more
15 general point which I just close, which is that I
16 think that in any kind of thought about reform, one
17 needs to get beyond improving the effectiveness of
18 prosecutors in the criminal law to thinking about
19 what is it behind, what is it, what was it that
20 produced the level of sort of extra rents and
21 profits that lead to the corrupt arrangements in
22 the first place and ask whether there are ways to
23 rearrange and reorganize that process so that,
24 going forward, the incentives are less to have this
25 happen, happen in the first place.

1 So thank you very much and I'll be happy to
2 take any questions that you might have.

3 (10:07:10)

4 Q. **[7]** Alright. Thank you very much Professor Rose-
5 Ackerman. Those are very interesting thoughts and I
6 will begin by going back to the first theme that
7 you developed in your presentation, that is the
8 idea that there might be a number of reasons why or
9 a number of perspectives that could be used to
10 understand or to view corruption and you contrasted
11 the economical view and the control view and then
12 you say we shouldn't forget and, perhaps more
13 specifically, we should favour a democratic view of
14 corruption.

15 So, in terms of policy choices, to view
16 corruption as a threat to democratic legitimacy
17 involves a number of steps that you mentioned and
18 one of those steps is, the first that you mentioned
19 is transparency.

20 A. Uh, huh.

21 Q. **[8]** So, perhaps on this theme that a number of
22 experts also mentioned to us...

23 A. Uh, huh.

24 Q. **[9]** ... to what extent should we reform our
25 institutions to, or I will say it differently. What

1 does it mean on a concrete basis to be more
2 transparent and is there a limit to transparency
3 and how much does it cost and how to evaluate it?

4 A. Well, transparency is a multifaceted concept,
5 there's not one form of it. But some things are not
6 expensive, right, so just in terms of out-of-pocket
7 expense. So for example, making the information
8 about government contracts publically available on
9 a Web site, maybe you already do that, a number of
10 governments do that. Others will argue, well, when
11 there's a private contract made between two firms
12 in the private sector, they don't have to put, make
13 their contracts public and the private firm may say
14 "I'm a private contractor. Yes, it's with the State
15 but I'm a private contractor so I should have the
16 right to keep my contract" .

17 But it seems to me that's a, not a good
18 argument because the contract is with the State,
19 there may be a person who is writing the contract
20 but the beneficiaries of the State are the citizens
21 of the, or the people who are harmed by the
22 contract are the citizens of the country and they
23 should be able to know what's there. So that... So
24 that's a form of transparency that I think is
25 related to the sort of democratic legitimacy point

1 that I was making and it's where that argument
2 should be, should trump the ordinary commercial
3 arguments that a firm might make for secrecy. And
4 if they don't want to go along with that deal, they
5 shouldn't bid for the public contract if they're
6 not willing to make the information... that
7 information public.

8 So, that's not... that's only costly in the
9 sense that there might be some firms now who say,
10 "I'm not going to bid on the public contract." My
11 guess is, this is not going to be a big problem.
12 But that's... because if they don't want to make it
13 public, then there's a question of, "Why is that?
14 What is it about this contract that you don't want,
15 you know, to be made... you know, to be made... to
16 make public?" So, I think that's the basic part of
17 transparency.

18 Now, of course, on the other side, remember
19 that the kind of the basic principles of
20 competitive bidding are that the bid is not
21 transparent when it's being made. You know, it's a
22 sealed bid that's going into a pot to be evaluated.
23 And because it would be providing too much
24 information to the other, you know, to the other
25 bidders and it might facilitate certain kinds of

1 bidding... of bidding rings if that were true.

2 So, there's going to be some kind of trade
3 out here, it's more in the... in the evaluation of
4 the bids for the kind of complicated one of a kind
5 projects that are, you know, part of what we're
6 talking about, it may not be possible to specify
7 the boundaries of the contract so precisely that
8 you can just give it to the low bidder. I mean,
9 there's going to have to be some judgement made.
10 But that should go along with a kind of reasoning
11 giving requirement, I mean, a kind of a ordinary
12 administrative law requirement for explaining what
13 you did, you know, expose, right? So, I guess
14 that's kind of where I was heading, for the kind of
15 run-of-the-mill contracts, an obligation for
16 transparency might be there, but it's less
17 important because the information, you're comparing
18 it with information that's out there in other
19 places.

20 Q. **[10]** Okay. So, you insisted in your presentation on
21 the difference between what you call one of a kind
22 project and big one of a kind project, and ordinary
23 projects like building roads and...

24 A. Yes. Huh-huh.

25 Q. **[11]** So, if I follow your argument, this means that

1 we shouldn't be so much worried about the
2 difference between, let's say, the provincial
3 government and the local government, so this is not
4 so much the relevant distinction. The relevant
5 distinction should be between the kinds of projects
6 that is being built. Do I understand correctly
7 your...

8 A. I think so. I mean, yes. Yes, I mean, I don't
9 necessarily... I mean, I don't know much in detail
10 about the relationships in Canada between local and
11 provincial governments, but that is the basic
12 point, right, that the... the key thing is what's
13 being bought. And the federal structure may put
14 into that... the procurement question, another
15 layer of oversight, right, so procurement at the
16 local level might be overseen by the provincial
17 level or by the federal level.

18 And there may be things that the provincial
19 level can do in checking on what's happening at the
20 local level that may help limit corruption at the
21 local level, maybe remove some of the impunity of
22 local politicians through some accountability, you
23 know, up the... up that chain of command, up the
24 government structure, of government structure.

25 Q. [12] So, I suppose that if we have to treat

1 differently one of a kind big projects be they
2 planned at the, let's say, provincial or local
3 level, one needs to think of... more of a
4 centralized agency that could sort of supervise
5 that kind of contract, given that we probably find
6 different levels of expertise within different
7 public institutions.

8 So, in your experience, do you... did you
9 encounter jurisdictions where there were this kind
10 of centralized agency that would overview those
11 kinds of projects, instead of having different
12 agencies or different levels of powers or
13 institutions overseeing specific or localized
14 projects?

15 A. Yes, I don't know, I mean, you know, you would
16 think the places to look would be less federal
17 states, you know, France or the UK or something.
18 But, I don't mean the... I think the way this shows
19 up in the United States is a decision to centralize
20 the construction or to centralize the, you know...
21 and it's... I just don't have a good... really, a
22 good answer, but I think about something like our
23 Interstate Highway Programme in the United States,
24 which is a federal programme with federal standards
25 about the construction of highways, but the

1 spending is at the State level. So the spending is
2 through matching money at a State level. I am not
3 an expert on the Highway Programme but I would
4 imagine that it's one where there are... and I
5 know, in fact, from driving on roads, right, that
6 there are some federal standards for highways.

7 Now, the interesting question would be,
8 if... given that, I would suppose that contracting
9 is occurring at the State level, probably not at
10 the local level, but at the State level. Has there
11 ever been any attempt to compare, you know, the
12 cost per mile, you know, in Pennsylvania and in
13 Iowa, in... you know, in similar places. It would
14 be... it might be an interesting... and does the
15 central government, you know, review that? That
16 would be... if they do that, that would be what I
17 am talking about but I'm not at all clear of that,
18 I'm not sure...

19 Q. **[13]** That's fine.

20 A. ... that they do that, given the power of the
21 states in the US. But in other words, something
22 where there's some local involvement, but the basic
23 standards are... are set in uniformity in these
24 other things.

25 Q. **[14]** I... going back to the question of one of a

1 kind big projects, you pointed out the importance
2 of justifying in the first place why such a big
3 project should actually be...

4 A. Yes, right.

5 Q. [15] ... be realized. And you mentioned in one of
6 your writings that sometimes, even within the
7 government, there are rivalries as to which
8 department should have...

9 A. Right.

10 Q. [16] ... its project being chosen along a number...

11 A. Yes, yes, yes.

12 Q. [17] ... of projects. In... so this is one thing,
13 but the other thing is that we've heard experts
14 telling us that we should avoid... or it's not easy
15 to include in any bidding process what they call
16 "secondary policy objectives" like to say, "We will
17 bid for this contract. And we will not only build
18 something but we will try to create jobs and we'll
19 try to encourage..."

20 A. Hmm, hmm. Yes.

21 Q. [18] So, when we have those big... when we have
22 those big projects...

23 A. Right.

24 Q. [19] ... are they all the more dangerous or
25 vulnerable to corruption because they include that

1 kind... they are more likely to include those
2 secondary policy objectives? Is it one of the
3 reasons why they're really vulnerable to
4 corruption?

5 A. Well, only in the sense that the more complicated
6 anything gets, the easier it can be to hide bribes
7 in the mortars, in the insides, right? But I don't
8 think in... I don't think making it more complex by
9 saying that you're adding jobs is any more... makes
10 it any more vulnerable than making it more complex
11 by adding an extra, you know, layer on the bridge,
12 right?

13 Q. **[20]** Hmm, hmm.

14 A. Right? Or crossing a bigger river rather than a
15 smaller river. In other words, it's kind of the
16 complexity itself that could be the problem.

17 Q. **[21]** Right.

18 A. But there's a secondary problem which might show
19 off or might be included in this classical example
20 of extra stuff. Right? And... and that shows off
21 not just in big infrastructure projects but in
22 other kinds of procurement contracts. And that is
23 that part of the contract... the part of the
24 contract that is not the core thing, you know, not
25 the... necessarily the building the bridge, or in,

1 say, the other examples would be, say, military
2 procurement, you know, purchasing the airplanes,
3 right. There are these other things, which in the
4 military context are called "offsets", which the
5 contractor agrees to do something else, not just
6 provide jobs by having a lot of people building the
7 bridge, but agrees to buy some of the parts from
8 local manufacturers... I suppose that might happen
9 in this situation, that instead of buying, you
10 know, from some manufacturer in Ontario, I'm going
11 to buy from Québec companies, that kind of deal,
12 right. Well, those can be vulnerable to corruption
13 if... or they need to be looked at for... to see if
14 they are corrupt, right? Because they could be ways
15 of corruptly favoring people who have, or are
16 connected with people with political power.

17 So there are examples in South Africa, for
18 example, of a military sale, which then, in the
19 contract, required that the company buys some
20 things from another company, things not necessarily
21 connected with the military sector, but they just
22 had to buy things from this other company. This
23 other company was owned by a relative of the
24 president and so, it was easy, and then the price
25 at which the thing is bought was expensive, you

1 know, relative to the market price of the thing. So
2 it was just a way; it was like a money laundering
3 thing, it was a way of syphoning funds into this
4 company, which could then be taken out by the
5 relatives of the politically powerful people.

6 So that's a risk, I mean. And so, that's
7 saying: look, you know, they may claim they may be
8 rhetoric about how this is, you know, serving other
9 values, and it may do that a little bit, right, it
10 might be providing a few jobs, but it's doing it in
11 a very expensive way. And so, that's where
12 corruption can come in, right, it's at the... But
13 that, you want to be able to see, right? You want
14 to be able, you want to be able to investigative,
15 to know. Once again, there is a benchmarking
16 question, right? Are these things being bought and
17 incorporated at a price that's much higher than
18 they could be bought in some other way, in a kind
19 of a free market. So they're kind of risk, it's
20 like a risk factor to check on.

21 Q. **[22]** Okay.

22 A. Yes.

23 Q. **[23]** You... And also on this distinction on one-of-
24 a-kind projects and the others, when we have rather
25 simple projects like building roads again, or

1 sidewalks, what difference does it make or should
2 it make on the way the contracts are awarded?
3 Should we... Because again, in one of your
4 articles, you say that we should not, and I think
5 you used the word « fetishize »; we shouldn't view
6 that as a dogma too, to have a competitive bid in
7 every kind of contract. If we say that we give up
8 on competitive bidding for very simple contracts,
9 what should we do then, to award that contract?
10 What would be a good way?

11 A. I mean I think, in someways, contracts are the, I
12 mean, sorry, sidewalks are an easy case for
13 competitive bidding. I'm not arguing it, because...
14 because it's a fairly straightforward technical
15 job, to build a sidewalk, and you could ask people:
16 « How cheaply will you do it? ». And you're not so
17 worried that if you choose the low bidder, they're
18 actually going to be unable to build a sidewalk.
19 You can see that they've built some other
20 sidewalks.

21 It's interesting. I'm just now living in
22 Berlin, and as you may know, there's a huge
23 controversy over a big airport. They're trying to
24 build a big airport in Shöenefeld, in Berlin. Of
25 course, that's a great, big, one of a kind project,

1 and it has been delayed for many years, and it's
2 some mixture of incompetence and corruption, who
3 know what it is, right? So that's not like a
4 sidewalk. It's a kind, it's a problem of the other
5 kind.

6 But so, well, where I was trying to come,
7 in the example you were talking about, I was
8 thinking more about ordinary government procurement
9 of, you know, desks and chairs and microphones and
10 whatever you've all got around you, curtains,
11 right, things that are sold in the private market,
12 to private commercial entities, and that the
13 alternative there to competitive bidding is what I
14 would call shopping, really shopping. You know, go
15 to the store and buy it. And you can look at the
16 prices and hope to even get a better price than
17 ordinary people, because of the quantity that
18 you're buying. And that's a reason for buying
19 things off the shelf.

20 Now, I think one part of this question has
21 to do with what does the government do itself with
22 its own workers, and what does it buy off the
23 shelf? So if you think there's a really serious
24 problem with corruption in contracting off all
25 kinds...

1 Me GENEVIÈVE CARTIER :

2 Oh non!

3 (LA COMMUNICATION EST COUPÉE AVEC BERLIN)

4 Q. **[24]** Well, it was very interesting, we didn't... We
5 had to go back to it. You were saying, I think we
6 were, I think I will just rephrase the...

7 A. Oh! I was just saying that I think the, I was
8 trying to see (inaudible) shopping.

9 Q. **[25]** Yes.

10 A. Being able to buy things off the shelf and say that
11 it would be a question for a government, and this
12 is assuming, you know, we've got two problems here:
13 one, you may have a government which is corrupt all
14 the way up to the top, right? And then what's the
15 relationship between that government and a higher
16 level government in terms of controlling that level
17 of corruption? Should that higher level of
18 government simply take away the power to make
19 contracts from those people? Should they prosecute
20 people and try to bring in new people? That's one
21 set of questions.

22 Q. **[26]** Uh, huh.

23 A. But suppose we're talking about a government which
24 is not corrupt all the way up, it's got some
25 corrupt people doing the deals and there are some

1 people rather than are, who are not corrupt, then
2 they have a choice of how much should they contract
3 out to the private sector and how much should they
4 do in-house? And that might be affected by how
5 vulnerable you think the different stages of the
6 process are to corruption.

7 So, if you thought that contracting with
8 the firm to do the whole project was likely to be
9 very risky in a sense of corruption, that might be
10 a reason for the State to take, you know, to do it
11 itself and then to buy the inputs that it needs,
12 contractors, labour, buy the concrete, you know,
13 buy some engineering services and do the modelling
14 itself. And even if it's a little less efficient
15 than the very best, you know, firm that could build
16 the very best thing, it still might be better than
17 a corrupted, than a process in which you end up
18 dealing with a firm that is just charging two or
19 three times what they should be charging, even if
20 they may be providing relatively low quality stuff.

21 I mean, there's another question, is it's
22 not just the cost but the quality of the thing
23 that's produced. Now, maybe your problem is
24 basically things are too expensive and they still
25 get deals and they're fine, but certainly in other

1 countries the problem is quality also. I mean, I
2 had some examples, whenever there's a... It's
3 terrible, whenever there's an earthquake...

4 Q. **[27]** Yes.

5 A. ... and buildings fall down in the earthquake, you
6 look around, I, at least, look around and say "Huh,
7 what is it that collapsed? Was it the schools, was
8 it the city hall?" Well, if they collapsed and
9 private businesses and houses didn't, that's a...
10 that's the evidence that there was likely
11 corruption in the, you know, in the contract, not
12 just padding the price but in mixing the concrete,
13 you know, there was too much sand and not enough
14 cement.

15 Q. **[28]** One last word on the question of awarding of
16 contracts because we... a number of experts, and I
17 think you certainly figure among those, are very
18 sceptical of the effectiveness of a lowest bidder
19 kind of a formula, when we have to award contracts,
20 especially when the things are not that
21 complicated, because they are vulnerable to bid-
22 rigging. On the other side of this, we have, you
23 know, the situation where we could award contracts
24 on a purely discretionary basis, well, let's say a
25 discretionary basis, but there are also risks on

1 this side.

2 A. Sure.

3 Q. **[29]** So, what do you think, should we simply give
4 up on the lowest bidder for a technique? If not,
5 what would be the cases where this should be
6 retained as a method? And also, is discretion
7 completely impossible to apply, and if so... and if
8 it is possible, in what circumstances?

9 A. Well, I wouldn't give up on the lowest bidder
10 technique for contracts where you can pretty well
11 specify what you want, right. And what I would say
12 is that you want to have the lowest bidder
13 technique checked by this benchmarking. Right? So,
14 because... and the second thing is there is an
15 important literature in economics on the
16 characteristics of different kinds of auction
17 systems, which I really can't speak to in detail,
18 but it would be probably valuable for you to, you
19 know, to talk to some of those people, because
20 there's quite a lot of experience with auctions of
21 different kinds and their strengths and weaknesses.

22 But what I was suggesting, just as to say,
23 okay, as you're pointing out, certain kinds of bid-
24 rigging are going to be easier for simpler
25 contracts, for just the ones where you think

1 auctions would work the best, because, you know,
2 the officials can judge what they want.

3 And so, my antidote to that, for a...
4 revealing bids at the urban level is to say, "Okay,
5 cabing those bids, cabing the range of those bids
6 by the prices that you see being charged for
7 comparable things in comparable jurisdictions." And
8 then, it puts the burden of proof on the bidders to
9 say, "Well, you know, Québec is just so special,
10 you know, we have the expensive roads in Québec."
11 But they have to like... it's up to them to
12 justify.

13 And then, (inaudible) even if there is a
14 bid-rig, there is some kind of attempt to rig it,
15 it can't go too far. So, you can still ask people
16 to submit bids, and maybe somebody will come in,
17 you know, really nice and low, but because it also
18 means, you know, for a simple thing, you can make
19 it very hard for them to come back to you to
20 renegotiate something more. Because it really has
21 to do with who bears the risk here, right?

22 And I think it's a very important part of
23 contracting, is how do you write the contract in
24 terms of who bears the risk of something going
25 wrong. And there's no reason why the state

1 shouldn't shift some of that risk to the
2 contractor. The state will have to pay for it,
3 right, because it's not free to ship the risk. But
4 to be very tough in the bidding about where the,
5 you know, the... to think about how you want to
6 shift those risks, and of course, the risk are
7 lower for more... for simpler contracts.

8 So, I wouldn't give up on competitive
9 bidding, I just, you know, think about recognizing
10 the risks. The problems, for me, the problems are
11 not so much in the civil contracts but on the...
12 are not but on the one of a kind complicated ones,
13 right, where... Well, that was what I was just
14 saying before, one option may be to pull that
15 complicated one apart into, you know, simpler
16 things, to... into pieces, so that... and have the
17 state perform the coordination and function, and to
18 be careful on the... making it more difficult for
19 the contractor to come in and demand extra funds
20 afterwards. I mean, there's a major holdup problem,
21 which has nothing to do with corruption, just has
22 to do with greed, right? You know, you sign the
23 contract, the hole is in the ground, and the guy
24 say, "Sorry, you know, it's not very thoughtful
25 than I thought." And, once again, it's about how do

1 you share the risks of cost... of claims for cost
2 (inaudible) suggest the need for some expertise
3 inside the State, you know, or either inside the
4 State or in independent engineers to be able to
5 evaluate some of these claims. So, you're not just
6 vulnerable to these arguments on the outside.

7 Q. **[30]** And perhaps just a word on the question of
8 discretion. Do you think there are situations where
9 this would be justified, that a public authority
10 discretionarily decides who will be the bidder? Or
11 who will be the person who will have the contract?
12 So, are there...

13 A. Well, I mean...

14 Q. **[31]** Yes.

15 A. Well, I mean, I think, in some ways, discretion is
16 going to be inevitable in a complicated project.
17 Right? So, on the one hand, you might try to make
18 things as cut-and-dried as possible so that you can
19 compare bids easily. But even... as soon as
20 something becomes multidimensional, even if it's
21 clear, even if the dimensions are clear, somebody's
22 got to decide how much weight to put on something
23 and something else. So, I think discretion, you
24 can't get rid of it. It's going to be there. And
25 it's who exercises it, and how... And then they

1 need... people need to be transparent about how
2 they've made those tradeoffs. So, that's why the
3 contract should be public, why the criteria for
4 making those judgements should be public, so that
5 it's more difficult to simply... how can the
6 criteria be... you know, "He paid me a bribe" or
7 "He's my brother," you know, or something like
8 that. Right? But you... you know, if there are
9 public demands for infrastructure projects or any
10 kind of projects that are... that have some
11 complexity to them, you can't get rid of it. You
12 can just think about with all your ways that you
13 could but I would suppose there, you know, it's
14 going to be there and it's... you know...

15 There was one think I know that we talked
16 about before which has to do with the relationship
17 between professionals, architects, engineers, other
18 kinds of professionals, and the public contracting
19 process, and the importance of enlisting those
20 people as allies in your enterprise and reducing
21 the corruption, rather than have them be part of
22 the problem, in being, you know, kind of coopted by
23 those who are trying to undermine the legitimacy of
24 the system.

25 Q. [32] On a slightly different theme, let's go back

1 to the bigger picture of the problem of corruption,
2 more generally, of course also related to the
3 bigger problem of public contracts, but... In
4 the... you say that there are some areas of
5 agreement on what should the elements of any anti-
6 corruption be. So, there are a number of points of
7 (inaudible).

8 A. Uh, huh.

9 Q. **[33]** One is transparency. We discussed that. One of
10 those elements is that you say it is important also
11 to improve working conditions of the civil service,
12 improving the way in which the public service is
13 perceived and...

14 A. Uh, huh.

15 Q. **[34]** So, this is one, again, in one of the... one
16 of your writings, we... and we also say that we
17 need to have conflict of interests rules within the
18 civil service. This has been an area of discussion
19 here, because it's not easy to know how those
20 conflict of interests rules should be framed, and
21 more specifically, to what extent it is or it is
22 not possible for public servants to have
23 relationships or contacts with the private sector.
24 So, given that we have... I think we have a strong
25 democracy, we still have strong institutions in

1 Québec...

2 A. Right.

3 Q. [35] ... how do we manage those relationships
4 through conflict of interests rules?

5 A. Huh, uh. Well, I don't... I mean, there's not a
6 perfect answer here. But, I mean, there's two sides
7 to it; on is the kind of status working conditions
8 of the civil servants themselves, so that those
9 positions are things that people want to have and
10 want to keep, you know, and particularly the higher
11 level officials take it as a professional, a
12 profession that they're part of.

13 The conflict of interest problems come up
14 in two ways. I mean, I assume you already have
15 various kinds of rules for people; just people
16 can't have two jobs, where, I mean, they can't both
17 be a civil servant and, you know, working for a
18 building contractor at the same time. That kind of
19 conflict of interest is just accepted as not
20 acceptable.

21 And that the more important issue, at
22 least, I mean, in the US, the more important issue
23 is the high level of political appointees that we
24 have, probably much bigger than you have in Québec.
25 How far down into the bureaucracy go people who are

1 political appointees? And those people know they're
2 only going to be in government for a few years.
3 They've come in from outside and they go out to
4 outside. That has the advantage that you're
5 bringing in expertise, you're bringing in people
6 who know something about stuff, but the risk, of
7 course, is the conflict of interest risk, I mean,
8 that they, looking ahead, you know, what their job
9 is going to be when they go out. And I don't think
10 we've handled this in a particularly, you know,
11 exemplary way.

12 There are rules about how many years. You
13 know, if you've worked on a case; you say you're a
14 lawyer and you've worked on a case inside the
15 government, then you go out and work for a law firm
16 that rules on how many years to have to take until
17 you can, you know, say go work for the Agency where
18 you worked or represent somebody having to do with
19 a case that you had worked on. And that provides
20 some kind of, you know, some kind of a check. But I
21 think it's a... Once again, I think it's something
22 that you should have those things in place, but I
23 assume that Québec does probably have something
24 like this.

25 In looking at some much more lower income

1 countries, or less well consolidated democracies,
2 kind of new democracies, this whole idea of
3 conflict of interest is a new idea. There's often
4 very very strong links between those civil servants
5 and politicians, elected politicians, and industry
6 groups or formal employers, or family members is
7 another part of it. So I don't know how much, so,
8 but for Canada and the US, you know, once you've
9 got in place these kind of basic require... First,
10 that the civil service itself is a respected
11 profession. And second, that you've got some
12 buffers on both sides. I'd be a little reluctant to
13 go too far, because, in terms of outlawing people
14 ever going to work for the industry that they're,
15 you know, dealing with, or never hiring anybody,
16 you know, who had some background in the industry,
17 because it just limits you too much, to who you can
18 bring in to government. And you've got to depend,
19 to some extent, on people serve professional norms.
20 And I guess that's kind of, you know, a part of
21 what they bring. Yes they are engineer who bring
22 into government; they bring in their professional
23 norms as an engineer in, as well as out.

24 You know, I think we have a terrible
25 problem in the US, and that we're going to have

1 major retirements of live civil servants in the
2 next decade or so. And than, not really being
3 reproduced. And that's partly because we've
4 contracted out so much of the basic work of the
5 bureaucracy, to private consulting firms. And it's
6 another piece of the story of if you hollow out the
7 State too much, you know, you're in trouble.

8 Then, that I take a little conflict of
9 interest, in order to be able to bring in, you
10 know, the people for a while, who have some
11 talents, and think something about real ethical
12 standards and of behaviour rather than, you know,
13 true and some buffering on both sides but rather
14 than being too nervous.

15 Q. [36] Too strict.

16 A. Too strict, yes.

17 Q. [37] So this is one type of relationship that might
18 be, let's say problematic or not easy to...

19 A. Yes.

20 Q. [38] ... so you described the case where someone
21 from within the public service might be tempted
22 eventually to go back to the private sector or the
23 reverse.

24 A. Right.

25 Q. [39] So this is a kind of...

1 A. Reverse, right.

2 Q. [40] So, but another figure is the following:
3 within the civil service, there are two other, I
4 think, kinds of situations.

5 A. Sure.

6 Q. [41] The first is within the civil service, you
7 have people who are charged with organizing the
8 bids and preparing the projects.

9 A. Yes. Yes.

10 Q. [42] And they somehow need to have contacts with
11 the industry or they pretend...

12 A. Yes.

13 Q. [43] ... that they have to so perhaps to know
14 better the products or to... So, there is a kind of
15 potential contact here.

16 A. Uh, huh.

17 Q. [44] The other situation is elected officials...

18 A. Uh, huh.

19 Q. [45] ... who might have contacts with entrepreneurs
20 or civil or engineering firms...

21 A. Yeah.

22 Q. [46] So those are a little different as...

23 A. Right.

24 Q. [47] ... situations because there, because we've
25 had situations here where there are two sides of

1 the argument - one side they say, "Well, it should
2 be zero tolerance, no contact at all between the
3 two."

4 A. Uh, huh.

5 Q. **[48]** But, on the other side, it might also seem
6 that it is almost impossible not to have some kind
7 of a contact.

8 A. Right.

9 Q. **[49]** So where do we draw the line between what is
10 legitimate and what is illegitimate in those
11 situations?

12 A. Yes. Well, it's... There was a, again, it's a hard
13 issue but I want, I would think that the... well,
14 the part it has to do with transparency so for
15 elected officials I think it's very hard to have
16 very strong restrictions on who they can talk to
17 and in its... to them, I think that the question
18 would more be how to separate the politicians from
19 the bidding process, right?

20 So, yes, the politicians can talk to
21 anybody they want, as long as they are transparent
22 about who they are talking to and what they're
23 doing, right? But they shouldn't be involved in
24 making the ultimate decision about who wins the
25 bid. So there's a kind of a separation between the

1 political stuff and, of course, it's, you know,
2 they may be lobbying themselves because they're
3 dependent on these guys for campaign money or for
4 something or lobbying the bidder, the bidding
5 process, it's... you know, it's going to be hard to
6 keep that separate but the goal should be to try to
7 have those things in separate boxes.

8 Q. [50] Uh, huh.

9 A. And the obligation on the people carrying out the
10 bidding process to be able to justify their final
11 decision in a way that isn't, well, the elected
12 politician's friends wanted it, you know, or
13 something like that. But there's a legitimate
14 argument for picking this person which could be the
15 person who's the, who has these other contacts but
16 the idea is to try to limit the...

17 Q. [51] Separate those...

18 A. ... the ability of that being the reason why the
19 contract is given rather than just ruling out, you
20 know, you could easily do it by forbidding any kind
21 of those contracts or preventing such a firm from
22 bidding...

23 Q. [52] Yes.

24 A. ... on the contract. I think either of those are
25 too draconian given that you want to have several

1 firms being able to, you know, bid on the project.
2 But, you know, it's, and it can all could be...
3 Part of the point is to organize both the bidding
4 process and the writing of the contract so there
5 are consequences, negative consequences for a firm
6 that tries to get favoured through a, to a conflict
7 through corruption or through inside contacts, so
8 writing the contract so that they can't come back
9 and get it... have it in ways that benefit them of
10 having some sort of monitoring about what's
11 happening. I mean there's a... it's a... a range of
12 kind of behaviour, but the point is focussing maybe
13 a little more on the actual nature of the contract
14 that's written, and precision about what it is
15 that's expected of the contractor, and making sure
16 that the State is not bearing all the risk; that
17 the risk is shared between the contractor and the
18 States, so the contractor can feel that they've got
19 such great political connections that they can just
20 keep coming back and, you know, getting more and
21 more money, you know, out of the State. You know, I
22 don't pretend here to have a perfect answer here,
23 but it's a set of factors or things to think about.

24 Q. [53] So that... what is interesting is that you say
25 that it's not just a rule before the contact is

1 made, it's that, once the contract is made, well
2 the contract should be structured so that it
3 becomes almost useless...

4 A. Yes.

5 Q. **[54]** ... to have those kinds of relationships
6 before...

7 A. Yes.

8 Q. **[55]** ... or we make sure that in the contract, it
9 will...

10 A. Yes.

11 Q. **[56]** ... he will not have an advantage because you
12 know X and Y.

13 A. Yes.

14 Q. **[57]** We've... our mandate requires us to also look
15 into the links between the awarding of contract and
16 the illegal political financing.

17 A. Uh, huh.

18 Q. **[58]** In your work, you also refer to the importance
19 of looking at what you call political corruption in
20 any sound anti-corruption policy. So political
21 corruption is an aspect of that policy, and you
22 mention the question of lobbying or lobbyism.

23 A. Uh, huh.

24 Q. **[59]** How do you... do you think... we have a
25 statute here that says that people who want to have

1 meeting with public officials must register so that
2 we know who is talking to whom. Do you think those
3 are policies that should be pursued, strengthen or
4 do they... on the international level, what is the
5 experience about those registration of lobbyists?
6 Do you think it's a part of the... any anti-
7 corruption policy?

8 A. Yes, I do. I think they're hard... I don't think
9 anybody's got it completely perfect here. Right?
10 So, we have a lot of, you know, lobbying
11 registration in the US, but there's a question of
12 what counts as a lobbyist, who has to register and
13 who doesn't, what's the difference between
14 providing information and providing lobbying. I
15 think we have some rather not very good laws about
16 a relationship between civil society groups and,
17 you know... we are drawing lines, in a way, so that
18 I think, don't make a lot of sense. But the basic
19 idea of some kind of registration or some kind of
20 transparency about people engaging in lobbying is,
21 I think, a good idea. And we're... that accepts the
22 existence of lobbying. I mean, I was... I've been
23 doing some work with a French lawyer, and I know in
24 France, there's a huge debate about lobbying and
25 the idea that it is inevitably a negative word; and

1 a lot of restrictions on who can get access to the
2 National Assembly, and a big scandal over somebody
3 who got access to the National Assembly, you know,
4 sort of by pretending he was a staff member, you
5 know, for somebody. Right.

6 Well, you know, our system is probably too
7 open the other way, but it's, I think, more in a
8 direction of realism. It's just that members of the
9 legislation need to know... need to hear from
10 groups of all kinds, right? So, if you look at the
11 list of lobbyists in the US, it includes the big
12 corporations, the Chamber of Commerce, but it also
13 includes the Environmental Defence Fund and Nature
14 Conservancy, and the NAACP, and, you know, all
15 kinds of other sort or cause-based groups. And
16 that's sort of important to recognize.

17 So, I think it's that basically,
18 transparency is probably the most important part of
19 that, ideally linked to this, there can be a link
20 between lobbying people and political campaign
21 finance money, and we're moving in a very
22 retrograde direction in the US, I think, in terms
23 of that, you know, the kind of limits on campaign
24 finance, and the transparency, the relative lack of
25 transparency of the origins of funds. There's

1 various ways you can set up committees to kind of
2 hide where the money comes from.

3 This seems to be like a terrible idea, I
4 mean, it's a terrible practice, that we've got,
5 that citizens won't be able to know where the funds
6 are coming from, that are supporting different
7 political parties. And it's not going to be... And
8 there's an argument about well, my free speech
9 right to be violated by having to tell the rest of
10 you, you know, who I'm supporting, is, seems to me,
11 not a good argument, just in the same way as I was
12 talking about the publicity with respect to
13 contracts, that you should have publicity with
14 respect to a financing and... Especially if you
15 don't have limits. You know, you can have some way
16 of limiting the public spending.

17 So, what is, I mean, I guess the, well, the
18 extent that the illegal political financing can be
19 analogized to corruption, as opposed to simply
20 something that's just not transparent, but then,
21 there's actually a quid pro quo. And maybe in a
22 (inaudible) why would you bother to make it, to do
23 it illegally, if it worked? It worked, some kind
24 of, you know, of control call. Then, it gets
25 combined, it becomes part of the debate over

1 corruption generally, and over how to kind of make
2 it less valuable to have those kind of political
3 connections, particularly in this context, in the
4 contracting way.

5 Q. [60] Perhaps, do the Commissioners have questions?
6 Perhaps, one last question, I think, to wrap up
7 those... your thoughts. I want to get back to your
8 first idea, because I think it's a very inspiring
9 idea, the idea that corruption must be eliminated,
10 because having corruption threatens the democratic
11 legitimacy of our institutions. So the value of
12 what we do, here at the Commission, is, we could
13 say, contribute to the maintenance of this
14 democratic legitimacy.

15 But you also point out that, depending on
16 the kinds of interventions that we make, we could
17 demobilize or we could lose the support of the
18 citizenry, if the measures that are taken are too
19 burdensome, or are too counterproductive. So, in
20 preparation for the following months, where we have
21 to think about those recommendations and make sure
22 that we can contribute to the maintenance of
23 democratic governance, what should be your advise,
24 on the right balance to be struck, between strong
25 interventions to make things clear that what

1 happened, or some what happened is really
2 unacceptable, but on the other hand, being able to
3 have businesses going and...

4 A. Yes.

5 Q. [61] ...maintaining the engagement of citizens in
6 those stakes, so.

7 A. Well, just two kinds of things. First of all, as
8 I'm sure you, since you're, to some extent,
9 reacting to some scandals that occurred in Québec,
10 that it's important to respond to scandals with
11 policies that seem to be limiting the possibilities
12 they're going to happen in future, or you will get
13 demoralized. That's why you need to respond,
14 because it's something that is making people worry,
15 right? And then concern, as you pointed out, is
16 that the response that becomes more, simply creates
17 trouble for people, as opposed to seeming to be
18 clearing things away. Well, part of, you know, part
19 of the answer, in order to limit corruption, you
20 are going to have to do things that are trouble,
21 right?

22 But on the other side, some of the reforms
23 that I've been particularly interested in stressing
24 are ones that don't make things more troublesome,
25 they make things less troublesome. They make things

1 simpler and clearer, and reduce some of the red
2 tape and trouble, not rather than making more. I'd
3 say that the risk, there's a nice book about anti-
4 corruption campaigns in New York City, called The
5 Pursuit of Absolute Integrity, that you may know,
6 that is pointing to the problem. The problem can
7 be, you say, "Okay, we got a problem here, let's
8 put more red tape, more, you know, (inaudible) on
9 top of things." And then, that just gets corrupted
10 again, and get seeming bothersome.

11 So, the idea is to ask yourself, are there
12 ways to limit corruption by making things simpler,
13 easier, clearer, you know, more transparent, more
14 shopping list contracting, you know, more simpler
15 things than more fancy stuff. And that can't be the
16 answer to everything, but it can be, you know, part
17 of what you could be recommending in your specific
18 context, (inaudible) context, but that's seems to
19 me a range of recommendations to make when you
20 think about putting your report together. So, thank
21 you.

22 Q. [62] Thank you so very much, Professor Rose-
23 Ackerman, your experience will be extremely useful
24 for us. I know how busy you are, and I'm happy that
25 you've accepted to see us from a distance. I know

1 you couldn't make it here, but it was extremely
2 important for us to be able to speak to you.

3 A. Okay.

4 Q. **[63]** So, I would like to thank you on behalf of the
5 commissioners, and hopefully we'll be able to share
6 the results of the report when it's done, so thank
7 you so very much.

8 A. Okay. Thank you for having me, bye bye.

9 Q. **[64]** Thanks.

10 UPON RECESS

11 UPON RESUMING

12 _____

13 (14:03:30)

14 LA PRÉSIDENTE :

15 Maître Cartier?

16 Me GENEVIÈVE CARTIER :

17 Madame la Présidente et Monsieur le Commissaire.

18 Donc, nous recevons cet après-midi le professeur
19 Jonathan Hopkin. Le professeur Hopkin s'intéresse à
20 la question du financement des partis politiques et
21 à la corruption politique. Et évidemment, comme ce
22 sont des thèmes qui sont au coeur de notre mandat,
23 il vient partager avec nous ses réflexions sur
24 cette question-là, et aussi sur l'expérience qu'il
25 a pu acquérir en observant un certain nombre de

1 juridictions, européennes notamment, qui sont
2 confrontées aux mêmes types de problèmes que les
3 nôtres. Alors, Madame la Greffière, si vous voulez
4 bien assermenter notre témoin.

5 _____

6

7

1 L'AN DEUX MILLE QUATORZE (2014), ce trentième (30e)
2 jour du mois d'octobre, A COMPARU :

3
4 JONATHAN HOPKIN, professeur;

5
6 LEQUEL, après avoir fait une affirmatin solonnelle,
7 dépose et dit comme suit :

8
9 Me GENEVIÈVE CARTIER:

10 Q. **[65]** So, welcome to the Commission, Professor
11 Hopkin.

12 A. Thank you.

13 Q. **[66]** So, before hearing you on the substance of
14 your presentation, we'd like to know more about
15 your professional experience and expertise. So...

16 A. Thank you. Well, I teach political sciences at the
17 London School of Economics. I've been a political
18 scientist for twenty-five (25) years. I've worked
19 in a variety of subjects. Initially, I worked on
20 political parties in the Spanish transition, and
21 around the early nineteen nineties, completed my
22 Ph.D. There were a lot of corruption scandals in
23 Spain and in Italy, where I was doing my Ph.D., and
24 I became very interested in political party finance
25 and some of the dynamics that led to corrupt

1 exchanges, and how they affected the way much
2 parties organized and raised funding. And so, I
3 worked for a number of years on these topics. I've
4 also branched out into broader considerations of
5 political and economic institutions, with a view to
6 understanding both variations in levels of
7 corruption, and also variations in how the politics
8 of inequality in redistribution play out in
9 advanced democracies. So these are my main areas of
10 research.

11 Q. [67] So thank you very much. You've prepared a
12 presentation for us, so we will hear your
13 presentation, and then, we will have a period of
14 questions following it. So...

15 PRESENTATION

16 A. O.K. Thank you very much. So, as I was saying, this
17 is been an area that I've paid some interest in and
18 over the last twenty (20) to twenty-five (25)
19 years, I've looked at, I worked mainly on the
20 politics of southern Europe, but also advanced
21 democracies more broadly, and it is in the process
22 of developing my ideas on political parties and how
23 they organize, that I was observing from a good
24 vantage point in Florence in Italy, the explosion
25 of corruption scandals in the early nineteen

1 nineties, in Italy. And that has informed a lot of
2 my thinking on these matters.

3 So, regarding the mandate of the Commission
4 of Inquiry, which I found very intriguing and
5 interesting, in particular this question of how
6 political party funding relates to the awarding of
7 public contracts, and the ways in which corrupt
8 exchanges can develop in the public administration,
9 and how the dynamics of party politics, and
10 democratic politics, more broadly, can influence
11 how contracts are awarded. It is an area that I've
12 been trying to get some understanding of, over this
13 last couple of decades, and trying to understand
14 how we can deal with these problems.

15 So what I have here is a presentation which
16 raises a few, sort of broad theoretical issues
17 about how I understand this problem, and a few
18 examples, mainly from Europe, of the dynamics that
19 I find most interesting.

20 I'm just going to start off with a broader
21 point, that politics is, in the parlance of the
22 social scientists, a collective action problem. So,
23 political life is always, in democratic polities,
24 at any rate, about how people organize to influence
25 public policy. And that means organizing

1 collectively, getting large numbers of people
2 together to make political decisions which will
3 affect the whole population.

4 And when we look at political parties, they
5 are the embodiment really, of this collective
6 action dilemma, in that they are charged with
7 making decisions which have major financial
8 consequences for individuals and companies. Yet,
9 they only have very weak incentives to do this in
10 the way which satisfied the public interest more
11 broadly.

12 And the main reason for that is that
13 political parties are voluntary political
14 organizations. They may be institutionalized in
15 various ways and supported by the State, but
16 they're not, in principle, driven by material or
17 financial gain; they are driven largely by the
18 ambition to influence political life, although in
19 practice, politicians, of course, are often paid
20 salaries and so on, but they're certainly not
21 profit making activities, or should not be.

22 But at the same time, politics is an
23 expensive business, and there is money in politics,
24 inevitably. Getting elected, maintaining political
25 organizations cost money. And voters, the citizens

1 the parties are supposed to be serving, and the
2 ultimate beneficiaries of the policies of the
3 parties within the political institutions produce,
4 are subject to what we call the free-rider dilemma,
5 which is a term from Mancur Olson's work, *The Logic*
6 *of Collective Action*, in that each individual voter
7 has only very limited incentive to gather
8 information about politics, about political
9 candidates, and to monitor the behaviour of
10 politicians, when they're in an office. And they
11 have even less of an incentive to actually
12 voluntarily contribute money to political
13 campaigns.

14 On the other hand, the individuals and
15 often the companies that are affected by decision-
16 making in the public sphere, particularly in
17 regards to awarding public contracts of various
18 kinds, have a very strong incentive and a very
19 strong pay-off to seeking information about
20 political candidates, supporting their campaigns
21 and monitoring what they do when they're in office.
22 And, of course, the potential gains from winning
23 favourable contracting decisions make a, create the
24 opportunity for them to profit from supporting
25 particular candidates, so this is a fundamental

1 weakness of democracy and it is a weakness which,
2 in some sets of institutional, political and
3 cultural circumstances can produce corruption which
4 can become systematic and even endemic.

5 So example of this that I've taken an
6 interest in, I've cited two cases in my notes here
7 that I thought were interesting. The first is a
8 corruption scandal in Italy in the early nineteen
9 nineties (1990s) which have a number of dynamics
10 which I think are of interest.

11 In nineteen ninety-two (1992), Italy was
12 facing a financial crisis similar to the one it's
13 been facing recently but which created a lot of
14 tension politically and also seized up some of the
15 budgetary opportunities for delivering public
16 policies which had implications for corruption. And
17 at the same time, a major judicial investigation
18 was launched first of all in Milan but then also in
19 Sicily into public contracts which had been awarded
20 and exchanged for bribes and financing of political
21 campaigns.

22 So the classic mechanism was that companies
23 gaining a contract would pay a commission, a
24 percentage of the value of the contract, usually,
25 to the political party or parties, which had

1 collaborated in making the decision. Very often,
2 this money was paid in cash, obviously secretly,
3 without declaring it to the tax authorities and the
4 money was used by political parties and their
5 leaders to finance their political activities but
6 also for personal enrichment.

7 Sometimes public policies were not only
8 contracts which had to be given out in any case but
9 were created with the express purpose of enhancing
10 the opportunities for corrupt exchange so the
11 nineteen ninety (1990) World Cup being a good
12 example with a lot of new stadia being built and,
13 of course, the contracts for those generated
14 corrupt returns.

15 In the Italian case, we also saw the
16 importance of criminal organisations as well. The
17 Mafia in many regions of Italy, not only in the
18 south but also in the north of Italy too, the Mafia
19 has a significant presence and they played a major
20 role in the corrupt system, in part because of the
21 financial and, if you like, militaristic power,
22 that threat of retaliation but also because Mafia
23 organisations had a strong social presence in some
24 regions of Italy and could deliver votes to
25 politicians as well as money.

1 Finally, we need to note that, in the
2 Italian case, the role of the judicial system has
3 been very important. Judges... Although judges were
4 at the heart of the revealing of these corrupt
5 practices and the, what became known as the "mani
6 pulite", clean hands investigation, many judges in
7 the Italian system, many prosecutors had turned a
8 blind eye to corrupt activities either because they
9 didn't feel that worth their attention or were
10 perhaps afraid of the consequences or because they
11 were actually directly targeted by politicians or
12 bribed or persuaded in various ways to not
13 investigate certain corrupt dealings.

14 All of this took place in a context in
15 which Italians had a very high level of political
16 participation and interest in politics so this was
17 not the result of apathy. Italy actually at that
18 time had one of the highest turnout rates of any
19 western democracy, very high rates of party
20 membership and, at the same time, political parties
21 were also extensively publically financed in Italy
22 at that time, suggesting that it was not only the
23 need to raise money which was generating this form
24 of corruption.

25 In nineteen ninety-four (1994), most of the

1 existing political elite in Italy was swept aside
2 by the electorate. There was a turnover of seventy
3 (70) to eighty percent (80%) of the parliament and
4 so there was an electoral punishment for the
5 politicians involved in these corrupt activities,
6 most of whose political careers ended.

7 However, a corrupt system, of perhaps on a
8 smaller scale but which resembled it in many
9 respects, quickly revived and accelerated in the
10 early two thousands (2000s) and the, in the period
11 in which Silvio Berlusconi was in office but not
12 only in that period, and corruption scandals was
13 often relating to areas such as the health service
14 have been emerging over the years, affecting all
15 the political parties, not just those of the right.

16 The second case, I think, is worth
17 mentioning, is corruption in Spain in the post EMU,
18 the post-euro period because it took a slightly
19 different form. Spain has had, also had a long
20 experience of the kinds of corruption that we've
21 been talking about relating to public contracts and
22 party finance and the usual commission driven award
23 of public contracts can be observed in many cases
24 in both the Spanish main parties, the Socialist and
25 the Popular party have been involved in scandals

1 relating to this. Mafia dynamics were less present
2 in Spain because of the relatively weak
3 organisation of organised crime in Spain.

4 But many similar dynamics could be observed
5 but the more recent scandals were interesting
6 because they were not driven so much by the
7 expansion of public spending in Spain at that time
8 unlike the eighties (80s) and the early nineties
9 (90s) in Italy where a lot of public expenditure
10 was generated for the purpose of enhancing corrupt
11 opportunities for corruption.

12 In the period in the early two thousands
13 (2000s) in Spain, what we saw was a novel use of
14 the financial system for corrupt gain which related
15 to planning commissions for building projects and
16 for speculation in land use being the subject of
17 corrupt exchanges in which local party, political
18 parties or local officials would receive bribes in
19 exchange for requalifying land for residential use
20 which, obviously, created the opportunity for big
21 profits for those who owned the land and also
22 planing permissions to allow big building projects
23 which would then be financed very often with money
24 lent by local savings banks which had a strong
25 political, degree of political control with local

1 elected officials often being on the boards of
2 these savings and loans institutions called "Cajas"
3 "Cajas de Ahorro" in the Spanish case.

4 And, again, parties and elected politicians
5 received bribes but, this time the money did not
6 come mostly from the public budget, but in part
7 from the financial system, which, as we know, did
8 need to be bailed out with public money. But you
9 could also see the way in which political parties
10 and official can use different aspects of the
11 economic system, this time relating to regulation
12 to generate corrupt returns.

13 So, what we see is these kinds of dynamics
14 manifest themselves in slightly different ways, but
15 there is a common theme, that is of the exchange of
16 political decisions or money by those directly
17 interested and affected by those decisions. Okay.

18 Now, there is a trend over time that we can
19 observe, relating to this, which is the fundamental
20 problem of party politics, which is that the main
21 beneficiaries of policy decisions have an incentive
22 to influence those decisions through financial
23 contributions, but broader public has very little
24 incentive to get involved. This dilemma has got
25 worse over the years, because the last two to three

1 decades have seen a decline in political
2 participation of the traditional sort of
3 conventional type through party membership, party
4 activism, and even to some extent through voting.
5 So, this is a problem common to all advanced
6 democracies, and to a greater or lesser extent all
7 democracies have seen a decline in voting and a
8 decline in party membership.

9 Now, this creates a problem in that
10 political parties, in the early phase of democratic
11 politics in Western countries relied largely on
12 private resources for their activities, so
13 conservative and liberal parties represented
14 usually wealthy classes, and therefore could
15 generate private funding from those... from people
16 with, you know, large amounts of capital to spend
17 and a lot in interests in getting the right people
18 in charge, but also could use traditional social
19 structures as a way of leveraging support.

20 In contrast, some of emerging parties of
21 oppositions, socialist and labour parties, mainly
22 in Western Europe at least, were able to function
23 on the back of large amounts of voluntary activism
24 from highly motivated sections of the community
25 they were seeking to represent.

1 And so, both of these types of parties
2 didn't really need to raise a lot of hard cash to
3 function. They could function out of using
4 traditional structures of authority in the case of
5 conservative parties or through mobilizing the
6 power of numbers in the case of socialist parties.
7 And in Western Europe, many countries had strong
8 pristine democrat parties, which levered the role
9 of the church, the organizational structural power
10 of the church and their, obviously, their strong
11 cultural power too, raise political support.

12 Now, the decline of all of these kinds of
13 political organization have meant that the
14 political parties increasingly actually do need
15 money, real concrete finance to be able to
16 function, because elections are increasingly fought
17 on the media battleground, at the national or at
18 the very least regional level, and less at the
19 grassroots level. And this means that parties have
20 a declining resources base in terms of the
21 traditional resources they used to function, and an
22 increasing need to raise money. And very often,
23 because of the free-rider dilemma I outline
24 earlier, it's not clear who will contribute this
25 money.

1 Now, aside from the possibility of corrupt
2 use of political power to raise money, of course
3 another option is state party finance, which
4 developed in, largely in the seventies ('70s) and
5 eighties ('80s) in a number of countries, and in
6 many European countries public funding of political
7 parties is quite substantial. In the Nordic
8 countries, in Germany for example, but also in
9 Spain, which we mentioned earlier, have generous
10 systems of subsidies for political parties.

11 And of course, in principle, if they have a
12 flow of resources which is sufficient to function,
13 parties have less need, less incentive to use their
14 political influence to... over things like the
15 award of public contracts to generate money.

16 And in the Scandinavian case, at least, in
17 a number of non-European countries, this seems to
18 work well, there are very strong state party
19 finance without setting particularly endemic
20 corruption problems. But we also see countries like
21 Spain and Italy, which have had high levels of
22 corruption with high levels of state party finance
23 too, and cases such as the U.K., with rather
24 limited state funding of politics and lower levels
25 of corruption. So, that suggests that there is

1 certainly not a strong and tidy direct correlation
2 between state funding and the absence of
3 corruption.

4 We could also note other institutional
5 features that may contribute to a less corrupt
6 political system. Some researchers have argued that
7 having a majoritarian offer, past-the-post type of
8 electoral system, is more likely to create
9 competitive pressures within which political
10 parties will feel they cannot afford to risk the
11 impopularity which comes from being caught in
12 corruption scandals.

13 However, the limitations of this as a
14 possible safeguard against corruption is that
15 parties can often collude, and we've seen a number
16 of examples in a number of different democracies of
17 how political parties have a kind of tacit
18 agreement not to raise certain issues, because they
19 know if one party raises an issue relating to its
20 rival, the rival party very often will have
21 something that it could also raise to discredit its
22 rival, and there is therefore a kind of tacit
23 collusion to not disturb the waters.

24 Finally, one other technique that has been
25 used by many parties to get around the problem of

1 how to raise necessary resources for their
2 functioning, is to actually use the public
3 administration as a source of personnel, either by
4 encouraging people in the public administration to
5 take part in party activities, or more directly by
6 hiring party members as functionary civil servants
7 in the public administration, which is an
8 arrangement which was common in some European
9 countries until recent budgetary constraints made
10 it difficult to continue expanding the size of the
11 public administration.

12 Again, this has different implications in
13 different countries. So, we've seen in countries
14 like Greece, Spain, Italy, the expansion of the
15 public sector was associated with an increase in
16 clientelistic forms of allocation of public jobs,
17 but other countries such as Austria have very deep
18 penetration of political parties in the public
19 administration with far lower levels of corruption,
20 or at least, measurably, apparently lower levels of
21 corruption.

22 So, it doesn't seem that clear,
23 necessarily, that the use of the public
24 administration for parties and purposes is always
25 associated with higher corruption. In any case,

1 what we could say is that the dilemmas facing
2 political parties as conventional political
3 participation enters into decline, are problems
4 that we see across the advanced democracies but
5 corruption is not at the same level across advanced
6 democracies, at least as far as we can see from the
7 available data.

8 So, in my own research, having come to this
9 conclusion, I started to look more at broader
10 economic institutions and how these institutions...
11 economic institutions, but also administrative and
12 legal institutions relating to the economy could
13 affect the opportunities for political parties to
14 engage and private companies to engage in
15 corruption.

16 And certain types of institutions of the
17 political economy appear empirically, at least in
18 cross-national quantitative studies, to be
19 associated with greater levels of corruption. So,
20 one example would be a high level of public
21 involvement in the corporate sector, large state-
22 run industries, which were a key feature of a
23 number of economies in the advanced world in the
24 post-war period, have been used, milked, one might
25 say, by political parties for the purposes of

1 either, again, generating personal or simply
2 channeling money to political parties. And, again,
3 Italy was a good example of this.

4 This has been less of an issue in recent
5 decades because of the wide-spread trend towards
6 privatization in the advanced countries, which have
7 taken a lot of industries out of state hands.
8 Although it has to be pointed out, the
9 privatization processes themselves are very often a
10 major opportunity for corrupt exchange. And the new
11 markets created when state-run industries, often
12 monopolies, are privatized, also lead to... they
13 need to regulate these markets. And, again, the
14 same corrupt incentives can emerge.

15 There appears out of the institutional
16 economics literature that corruption seems to be
17 related to two different sets of economic
18 institutions. One is a tradition of what we could
19 call "over regulation" of the economy, coupled with
20 weak judicial oversight can create lots of, if you
21 like, obstacles, lots of bottlenecks in the
22 administration, which require private economic
23 actors to interact with politicians and
24 administrators to overcome these bottlenecks,
25 creating the opportunities for corrupt exchange.

1 So, for example, extensive detailed
2 regulations of economic activity, which varies
3 across western and advanced democracies, some have
4 higher levels, and some have lower levels of
5 regulation of markets, provides the opportunity for
6 political parties to raise finance by interpreting
7 regulations in a way which can be more favourable
8 to some companies than others. And, again, whenever
9 you have political decisions with financial
10 consequences for individuals and companies, then
11 there are potentially opportunities for corruption.

12 The data we have, which I'm not always sure
13 how much to believe, but institutions such as the
14 World Bank, the OECD, and also here, in Canada, the
15 Fraser Institute, which is a politically well
16 defined organization, with quite neo-liberal
17 attitudes toward the economy, but has provided a
18 lot of data which seem to correlate with the other
19 data we have, all suggesting that less regulated
20 economies have lower degrees of corruption.
21 However, this does not necessarily imply a direct
22 correlation which would allow us to conclude that
23 deregulation would reduce the levels of corruption.
24 It may be that countries with lower regulations,
25 for other reasons, are less prone to corruption.

1 And I am going to mention one of those possible
2 reasons just now.

3 But one point we do need to raise here is
4 that, for regulation to produce opportunities for
5 corruption, there also has to be something missing,
6 and that is judicial oversight, because it is the
7 role of judges, prosecutors, in particular, public
8 prosecutors, to monitor and insure that corruption
9 related to regulatory decisions in the economy is
10 pursued and properly investigated.

11 The other main plank of political economy
12 research here, which is useful to us, is related to
13 this, and that is... this is the notion of what a
14 team of Harvard economists led by Andrei Schleifer
15 call "Legal Origins". And that is that certain
16 types of legal systems appear to be more prone to
17 corruption opportunities than others.

18 And the hypothesis here is quite a simple
19 one, that countries which have Common Law legal
20 systems, in other words, largely the English
21 speaking world, so we're talking about Britain,
22 Ireland, Canada, the US, New Zealand, Australia
23 would all fall into this category, although some
24 former British colonies also have, at least as an
25 origin, Common Law legal systems. Schleifer and his

1 colleagues argued that Common Law systems were more
2 conducive to having legal arrangements which adapt
3 and change with changing economic conditions. And
4 this is an interpretation of why the Anglo-Saxon
5 economies have tended to be less regulated than
6 perhaps most of those in Western Europe, for
7 example, in that countries with more codified legal
8 systems, legal systems deriving from the Roman Law
9 tradition, which Schleifer describes as French,
10 Germanic or Scandinavian legal origin, have much
11 more codified regulation of the economy, much more
12 detailed legal stipulations on what it is possible
13 to do in the economy. And because of difficulties
14 of legislating in rapidly changing economic
15 circumstances, you can end up with a set of legal
16 provisions which are quite detailed and quite
17 restrictive, and do not necessarily match the
18 economic reality.

19 So, they argue that French legal origin in
20 particular over-codifies economic life, and the
21 proliferation of legal detail makes it, the legal
22 system, less adaptable and less consistent with
23 economic reality, therefore creating strong
24 incentives for private market actors to use a
25 corrupt exchange to overcome legal obstructions to

1 market exchanges, which would otherwise take place
2 without any legal intervention.

3 Now, empirically, there is a bit of a
4 problem in that the French legal origin countries,
5 although on average, tend to have higher levels of
6 corruption, to such that we can measure it, than
7 the Common Law countries, but that is largely, too,
8 because the French legal origin group contains many
9 rather poorer countries, which have very high
10 levels of corruption.

11 France itself, according to Transparency
12 International's corruption perceptions index, has
13 more or less exactly the same ranking of perceived
14 corruption as the United States, which is of course
15 the key Common Law case that the Schleifer research
16 cites.

17 The other problem is that the difference
18 between Common Law and Roman Law, if you like,
19 political economies is less and less tenable, in
20 that recent trends, especially in financial
21 regulation, move towards much more codified
22 approach to the law, even in Common Law countries.

23 And finally, it has to be said that the
24 implications of this legal origin argument, as is
25 also the case for the implications of the argument

1 about over-regulation, point towards a free market
2 approach being more appropriate for reducing
3 corruption, however the experience of, for example,
4 the Anglo-American financial sectors suggest that
5 this is a conclusion we should be very careful
6 before drawing.

7 So, to conclude, what can we surmise from
8 this collection of research findings?
9 Unfortunately, the existing state of our knowledge
10 of corruption is not that helpful in designing
11 institutional responses to the problem, because
12 much of our social science understanding of how
13 corruption varies across context, rests on the
14 notion of what we call past dependency, in other
15 words the tendency of institutional patterns to
16 reproduce themselves over time, so that very often,
17 the ultimate causes of differences in levels of
18 corruption appear to date back to institutional
19 choices and developments that were, came about a
20 century or more ago. Legal origin would be a
21 perfect example of this. And no one can change
22 their legal origin now, although of course legal
23 systems can and do change all the time.

24 So what are the variables that we can act
25 upon, in trying to restrict the scope of corruption

1 in modern political economies? Well, first of all,
2 I think we need to talk about the culture and
3 expectations and attitudes of political elites. We
4 know relatively little about this because, for
5 obvious reasons, it is quite hard to measure. But
6 it seems logical to suggest that, in countries with
7 high levels of corruption or context with high
8 levels or corruption, there are probably mechanisms
9 of socialization through which people drawn to
10 politics by more public interested and public goods
11 are entered motivation, and who are less tolerant
12 of the darker side of political life, if you like,
13 are probably discouraged from making political
14 careers. And it could well be, similarly, that
15 either through the process of selection or through
16 a process of socialization, where there is an
17 entrenched system of corruption, the people who make
18 political careers will tend to be those who are
19 amenable to that system of corruption or who can
20 function within it.

21 So, this suggests that if we could think of
22 measures which would enhance the openness of the
23 political system to new social forces, to people
24 who have a strong anti-corruption attitude, or
25 simply to open up participatory opportunities, so

1 that political elites do not only engage with
2 citizens at election time, but also constantly
3 through the process of decision making relating to
4 the territory, are forced into contact with local
5 communities, this has the potential to restrain
6 some corrupt forms of decision making.

7 However, it has to be said that ordinary
8 citizens are not always as intolerant of corruption
9 as we might hope, especially when there appears to
10 be no obvious downside in the gains of particular
11 corrupt public contracts, which may have been
12 awarded corruptly; still, are very visible and
13 concrete and widely shared out amongst voters.

14 Secondly, in the same ways we could think
15 about the culture and the incentives facing
16 political elites, we could say the same for
17 business elite. Often, we focus on corruption as
18 being a political issue but, of course, it is also
19 a commercial and corporate issue and the people
20 paying the bribes and the people receiving the
21 bribes are equally culpable. So perhaps measures
22 could be made, could be taken for, which could
23 affect the risk and reward ratio to potential
24 corruptors, people who pay bribes, stricter
25 punishments for companies who are caught in

1 corruption scandals for example. Of course, the
2 problem here is that if a company received a
3 "swedging" fine as a result of involvement in
4 corrupt contracting then this would have costs for
5 not only to the individuals responsible but for the
6 employees and stakeholders of the firm more
7 broadly.

8 Finally, we could talk also about the
9 culture of the judiciary and think about the
10 incentives facing public prosecutors when they
11 learn of potentially corrupt dealings and what are
12 the risks and rewards available to prosecutors in
13 that case. In the Italian case, we can see plenty
14 of occasions on which judges have made brilliant
15 careers for themselves and sometimes subsequently
16 political careers out of unveiling, revealing
17 corruption scandals but, at the same time, other
18 judges appear to have done very well about it out
19 of doing the opposite of turning a blind eye. In
20 one very famous case, a judge corrupted by Silvio
21 Berlusconi at the end of the nineteen eighties
22 (1980s) received substantial financial rewards for
23 passing off as his own a sentence which had been
24 written in Berlusconi's own legal studio.

25 Final point, I would make a word of caution

1 as that there is very little that we can do without
2 substantial popular support for action against
3 corruption. Where corruption is accepted, even
4 welcomed at times by the communities, it's very
5 difficult to think of institutional changes which
6 would reduce the incentives for corruption in
7 political parties and at the level of political
8 elites. So a population that demands high standards
9 of its political leaders is a necessary condition
10 for any progress.

11 If corrupt dealings are accepted at all
12 levels of society all the way down to the
13 grassroots level, there is no reason to expect
14 anything different at the elite level. However, the
15 current times we're living through in which the
16 expansion of public resources available to
17 politicians is, appears now to be history and we're
18 living through times of austerity, perhaps economic
19 crisis does offer an opportunity. We've seen
20 recently as a result of the economic crisis in
21 Europe and in southern Europe in particular but
22 also in the UK, we've seen examples of this too.

23 The rapid emergence of new and often quite
24 radical populous political parties railing against,
25 amongst other things, the corruption and collusion

1 of the political elite; so these new forces are not
2 always perhaps the kind of political movements we
3 would welcome, many of them build their support on
4 hostility to immigrants and hostility to the
5 political class indiscriminately but it is also
6 true that in times of economic crisis, tolerance of
7 corrupt behaviour in the political and
8 administrative institutions is bound to fall and
9 this offers an opportunity to get a broad coalition
10 of forces supportive of some kind of restriction on
11 the opportunities for corruption.

12 Thank you very much.

13 (14:39:59)

14 Q. **[68]** Thank you very much, Professor Hopkin.

15 Obviously not an easy topic so suggesting that
16 there's no direct answers to our questions so we'll
17 try to go through a number of themes that you've
18 raised during your presentation.

19 I think the first question I would ask you
20 is the following: we, our mandate requires us to
21 look at the financing of political parties only to
22 the extent that, and if it is linked to collusion
23 and corruption in public procurement. So we're not
24 endowed with the task of rethinking the system of
25 political financing in itself.

1 But from your point of view, are there
2 systems of political financing that diminish the
3 risk of corruption and collusion in public
4 procurement or is there... are there problems,
5 whatever the kind of political or financing system
6 that we have? For instance, more specifically, does
7 having a public system as opposed to a private
8 system of financing make a difference in the
9 outcome?

10 A. Okay. Well, certainly to the extent that
11 politicians, if they are taking bribes in exchange
12 for delivering contracts to particular companies,
13 given the risks that they are taking, should...
14 potentially to being subject to prosecution, at the
15 very least, to be being exposed to political
16 unpopularity, there must be a strong incentive for
17 them to be engaged in that; and as well as the
18 possibility of personal enrichment which is always
19 somewhere in there. Most of the time, when this
20 kind of behaviour becomes systematic, it's seems to
21 respond to a systematic need to raise funds on the
22 part of political parties. And the fact that we see
23 these dynamics in lots of different contexts across
24 countries and over time suggests that there's a
25 fundamental structural problem relating to how

1 politics is funded, which is at the heart of
2 these... at the heart of the emergence of
3 systematic, endemic, corruption.

4 Obviously, isolated cases could be driven
5 by all kinds of reasons. But the fact that we see
6 the same dynamics in lots of different contexts,
7 over and over again, suggests that, at the heart of
8 this, lies a problem of how politicians and
9 political organizations raise the resources they
10 need to function.

11 This suggests that we need to look at how
12 parties get the money they need to operate.
13 Unfortunately, there's no straight forward answer
14 as to which set of arrangements works best, because
15 we have case of public funding of parties, which
16 is... which are... which correspond to very low
17 levels of corruption, such as Scandinavia, and we
18 have similar cases of public funding with very high
19 levels of corruption, for example, most of Southern
20 Europe. And that suggests that it is the public...
21 the party funding regime is just one part, it's
22 just one break in a system, if you like, of
23 incentives and opportunities for corruption.

24 There are obviously other factors which
25 drive the propensity of a political system to be

1 more or less corrupt. But given those factors, and
2 also assuming that these factors may well be things
3 that are very difficult to change in the short run,
4 at the margin, it may well be the case that a shift
5 in the party funding regime could lead to a change
6 in behaviour. We don't have very strong evidence as
7 to how likely it is but, for example, Italy has
8 recently gone through, for the second time, an
9 attempt to abolish public funding for political
10 parties. It is too soon to know and perhaps will be
11 difficult to know even in the future what kind of
12 an impact that has on the opportunities for
13 corruption and the motivations to engage in
14 corruption of Italian parties, but it is an
15 interesting experiment, that if a corrupt system
16 has coexisted with public funding, whether or not
17 removing that funding exacerbates the problem,
18 because parties have even more need to engage in
19 corruption, or whether the removal of one possible
20 channel through which resources reached
21 politicians, this perhaps had the effect of
22 dissuading certain kinds of characters from
23 entering politics in the first place.

24 So, I think it's quite indeterminate but,
25 on the whole, I think what we can say is that in

1 the absence of a very, very, strong public
2 rejection of corruption, such as that we see in
3 some countries which have limited state funding,
4 probably some form of public financing is almost
5 inevitable, because in the absence of such
6 financing, it is hard to see how parties can
7 function without some form of engagement in corrupt
8 contracting.

9 Q. [69] But, there's not guarantee that an entirely
10 public system will root out corruption, or will...
11 there's not direct link between public... purely
12 publicly funded systems and the level of
13 corruption.

14 A. Non, and I think we could frame that almost, to use
15 an economic metaphor here, we could say there's a
16 kind of supply and demand for corruption. So, from
17 the party's point of view, the demand for
18 corruption is driven by the fact that they need to
19 raise money, or perhaps to some extent, they want
20 to raise money and see that they can and that
21 the... the disincentives to doing so are perhaps
22 not strong enough. But there is also a supply of
23 corruption. So, if you act on the demand for
24 corruption by giving parties more money without
25 having to engage in corrupt contracting, it is true

1 that if nothing changes on the supply side, if
2 nothing changes in the incentives facing companies
3 that seek to influence public... awards of public
4 contracts, then they will still be knocking at the
5 door of politicians offering money. And in those
6 circumstances, if you just change one variable and
7 leave everything else intact, then it's unlikely to
8 change as much as we would like.

9 Q. [70] So, perhaps just on this point, we had a
10 system here in... well, we do have a system here
11 where we are weak. There's a limit to the political
12 contribution that can be done, and this... and the
13 limit was significantly lowered in recent years.
14 So, from what you've just said, I understand that
15 this would become an incentive for corruption...

16 A. Right.

17 Q. [71] ... lowering the amount of... So, that would
18 not be a good structural or a system... systemic
19 move to make.

20 A. Probably not, because it would seem to... yes, to
21 use the... to carry on with the same metaphor that
22 would be an enhancement of demand with no element
23 of supply.

24 Q. [72] Yes.

25 A. So, perhaps the obvious answer would be that it

1 would be likely to increase the need for parties to
2 engage in corruption. One thing I should point out
3 on the question of limits to donations though, is
4 that there is a long tradition of such limits,
5 especially in Western European, continental
6 European countries, and there's substantial
7 evidence that they don't work very well, because
8 where there is a strong desire, if you like, on the
9 parts of the supplies and demand as a corruption to
10 trade, then imposing a limit requires a heroically
11 whole seeing judicial system or a very, very honest
12 population that sees a law and decides that it
13 should be abided by. And where there are very
14 strong incentives to overcome the law, there's a
15 strong risk that these limits will be ignored. That
16 has certainly been the case in many European
17 countries which have strict limits on donations;
18 simply, the donations continue, but they continue
19 under the radar and we know even less about how
20 parties finance then we would have done.

21 Q. [73] So, and would... a way of changing the balance
22 between supply and demand would be to work out the
23 rules related to the expenses that can be made for
24 the parties? Or should we have a limit? If we limit
25 that, we need less money, and then we sort of

1 changed the balance of...

2 A. Again, we could use... we could draw in what I was
3 saying about legal origin and codified regulations
4 here. It's actually a very... it's a very parallel
5 idea that if you have, you know, political
6 activity, with all of its messiness and all of the
7 difficulty in following exactly what is happening,
8 and what, ultimately, largely rather private
9 organizations to have very strict detail
10 regulations on what is possible and then not have
11 the means though which to really observe what
12 parties are doing, is almost inviting the rules
13 being broken. And even in countries with relatively
14 lower levels of corruption this happens.

15 Britain, on the whole, appears to have less
16 of a problem of corruption than many advanced
17 democracies but even so, we've had abundant
18 indications that very detailed expenditure limits,
19 for instance, on constituency level contests, are
20 widely ignored, with parties using channelling
21 central funding, or other kinds of national-wide
22 party funding to individual constituencies when a
23 battle is perceived as being very important. And
24 it's very hard for the available auditing
25 structures to keep track of that.

1 Q. **[74]** Hmm, hmm. I will just follow up on the
2 distinction that you mentioned and that you
3 developed at some length in your presentation; this
4 idea that... what you call the "legal origin
5 argument". It's interesting because in Québec, we
6 have this mixed...

7 A. Right.

8 Q. **[75]** ... of jurisdictions, so we're not sure if the
9 Common Law origin or the Civil Law origin would
10 play in the kind of cultural way of making
11 regulations. But I guess the lesson that there is,
12 from the basis of this argument is that, too
13 detailed regulation is never a good way of dealing
14 with that kind of problems. Simpler, clearer rules
15 are more likely to give results than a number of
16 layers of regulations. Right? I guess that the
17 lesson that we should...

18 A. Yes.

19 Q. **[76]** Perhaps more generally on the idea that if we
20 want to work on the system to try to see where we
21 can adapt the system itself to lower the reasons
22 for corrupting political leaders or political
23 parties. You're referring in your, you referred in
24 your presentation to a number of variables on which
25 we could act, because we have to find places where

1 we can act and direct our attention there. So you
2 were talking about, among other variables, the...
3 what you call the incentives of the business elite.
4 I think that is a very interesting point, and I
5 would like you to elaborate on that.

6 We tend to focus on the responsibility of
7 the elected officials in the corrupt relationship,
8 but you say that there's a responsibility in the
9 business or commercial area as well. And so, could
10 you just elaborate on that, the source of that
11 responsibility, and then what could be the value of
12 attracting attention to that?

13 A. Well, the basic point is simply that corruption is
14 an exchange, and therefore there are two parties to
15 the trade. And it's true that very often, we tend
16 to focus on the political side of the trade, and
17 often, not always but often, suggesting that the
18 politicians are the predators, and that the
19 companies are the victims which, in many cases, it
20 could be true. But we could also see corruption as
21 being just one variant of a cartel oriented
22 oligopolistic strategy of companies that we know,
23 that companies are not necessarily believers in the
24 free market, especially when they have a dominant
25 market position; they would have a very incentive

1 to entrench that.

2 So in a way, we can see this is being an
3 example of competition dynamics, of competition
4 laws almost, that if there is a cartel operating in
5 an area where public contracts form the large part
6 of the market, then this is a competition issue,
7 the issue is competition. And as well as the
8 corruption dimension, the bribery dimension, there
9 is also a market, in a market competition
10 dimension, and that it isn't the interest of the
11 society that, in markets where high levels of
12 competition can produce a better outcome for the
13 consumer, then, you know, measures should be taken
14 to achieve that. And the responsibility of the
15 business elite is to work within the law, and be
16 subject to competition regulations which will make
17 the market better.

18 Q. [77] You also said that, and I think it's crucial,
19 at the end of your presentation, you make it a very
20 central point, the ideal of popular support, and
21 the importance of having citizens that disapprove
22 of corruption; for any anti-corruption policy to be
23 successful, we need popular support. We also have a
24 situation where citizens are less interested in
25 politics. So we need to imagine different ways in

1 which we can reach to popular support. So you
2 eluded to that. Could you elaborate on that
3 question? How should we, what could we do to make
4 sure that we remain connected to the citizenry, and
5 that they act as an engine, to act and to produce
6 results?

7 A. Well...

8 Q. **[78]** Small question.

9 A. That's a very difficult question, and I don't
10 really have an answer. It's true that certain
11 features of the way politics works at the moment
12 have exacerbated a problem that probably has
13 fundamental cultural causes, which are difficult to
14 really deal with. But the fact that, increasingly,
15 democratic politics is constrained at the nation's
16 State level, at the regional level, at the local
17 level, by decisions and rules imposed often by non-
18 elected institutions, so internationally, by the
19 various organizations governing trade, nationally
20 or the European case super-nationally by monetary
21 institutions, by rules on fiscal policy, all of
22 which constraint the available options in
23 mainstream party politics, to such an extend that
24 one can understand why many voters, especially
25 those that have not been socialized into a strong

1 idea of civic vertu. I'm thinking particularly of
2 younger voters, people a bit younger than me - my
3 generation may be the last one to live through a
4 period in which ordinary participatory politics
5 appear to be something that could change things and
6 I think for people in their twenties (20s) and
7 their thirties (30s) now, they can easily imagine
8 that everyone is the same, there is no real choice,
9 globalisation, all the European Union, all NAFTA or
10 whatever else has so constrained what politicians
11 can do that we're just fighting over the minutiae
12 and that doesn't help in encouraging more
13 engagement.

14 One idea which is intriguing, I'm not
15 necessarily convinced it's the answer to everything
16 but some people are very passionate about it, it's
17 the idea of participatory democracy, the idea of
18 various kinds of institutions that not only in
19 terms of big sort of the high politics of the
20 nation State but at the very local level,
21 participatory planning initiatives which I'm not
22 sure whether you've had any experiences...

23 Q. [79] Yes.

24 A. ... of this in Canada, but the idea of integrating
25 citizen assemblies more into decisions about local

1 planning, making politics more local. In my
2 country, local authorities have been so constrained
3 by central government and what they do that people
4 barely bother to turn out for local elections.
5 That's obviously not going to encourage people to
6 get into the habit of participating in politics. So
7 I think opening up more scope for participatory
8 mechanisms at every level, but especially perhaps
9 down at the grassroots level where people can start
10 to see how it can make a difference were they to
11 encourage people to engage more in politics more
12 generally and would perhaps hold out the hope that
13 people could see that politics is something that
14 affects them but also can be affected by them.

15 Q. **[80]** Uh, huh.

16 A. That second part is, I think, what's probably
17 missing for more and more, especially younger
18 citizens.

19 Q. **[81]** I'm going back to a more specific question. I
20 was wondering if we want to avoid the demand for
21 corruption, I'm not sure the demand or the supply,
22 or anyway, one of the... You'll see I'm not an
23 economist so you'll see how it works, let's suppose
24 that we're able to divide the processes by which we
25 choose the contractors or the entrepreneurs and the

1 engineering firms from the elected politicians,
2 would this be the solution that would settle the
3 problem?

4 A. Right. So this would make sense if, so clearly if
5 the elected politicians are able to define the
6 contract in such a way that it, then it's a
7 foregone conclusion because very often what we
8 observe in these cases is that the contract that
9 the counters of the bid are set out in such ways
10 that it's kind of obvious who the winning candidate
11 will be so that you can actually design the
12 contract in such ways that the outcome is a
13 foregone conclusion.

14 So there needs to be a way of not only
15 separating the actual decision on the contract but
16 the decision on what kind of contract is needed
17 which, of course, then becomes rather difficult to
18 enact because that starts to invade the spirit of
19 competence of democratically elected politicians if
20 you not only, not deciding who wins the bid but
21 what kind of bid there is - this is a fundamentally
22 political question so it's difficult to entirely
23 separate it out.

24 Where some scope could possibly be
25 introduced for increasing the scrutiny of

1 independent authorities, perhaps would be to have
2 some kind of commission of oversight which would
3 separate enough from the political process through
4 which politicians are elected that it could act as
5 some kind of legitimate scrutiniser, if you like,
6 of behaviour.

7 Certainly, we can see, I mean, in a way
8 that should be the job of the judiciary and I'm
9 also not necessarily a fan of creating new
10 institutions which will supposedly act as a third
11 party, an external observer imposing, you know, an
12 impartial execution of the law because very often
13 these institutions themselves can be captured by
14 the same interests that seek control of the
15 process. But there is perhaps some scope to do
16 that.

17 Perhaps more preferable would be an
18 increase in transparency because sometimes it is
19 not so much the fact that the politicians making
20 the decision have the motivation to engage in a
21 corrupt exchange as the fact that they are likely
22 to get away with it. If some kind of external body
23 were able to influence the extent to which that was
24 true, that could be one way forward. Another way
25 forward would be by throwing more light on the

1 process. Perhaps an external authority could play a
2 role in doing that, in perhaps making more
3 transparent the ways in which the decisions were
4 made. But either way, publicity is, if there is
5 sufficient popular disquiet about the potential for
6 corruption, then some form of publicity, some form
7 of greater visibility for the decision, is probably
8 going to help.

9 Q. [82] So, when you talk about transparency, you talk
10 about... transparency in publicity of the... the
11 way in which the contracts were awarded...

12 A. Right.

13 Q. [83] ... so, the reasons that were given, the
14 process that was followed and...

15 A. Uh..

16 Q. [84] ... and the results.

17 A. Yes.

18 Q. [85] So, that's why you think the light needs to be
19 turned on.

20 A. Yes, and, in a way, this is possibly the job of the
21 existing institutions of civil society. The
22 opposition political parties could well say, "Well,
23 look, the same company always gets the contracts.
24 What's going on?" Perhaps to the extent that there
25 is a cartel between the parties, then that

1 particular safe guard falls.

2 Q. [86]. Uh, hum.

3 A. But another, classically, is the press, the media
4 more broadly. This should be the job... the press
5 is in crisis, we know there are various reasons why
6 the tradition printed press is in all kinds of
7 trouble and there's always been a problem of
8 collusion between the media and politics, but if
9 there is some kind of scandalous behaviour going
10 on, it's not only the job of prosecutors, and it's
11 not only the job of voters, but it's also the job
12 of journalists and other civil society actors to
13 raise awareness of what's going on.

14 Q. [87] Do you think that we should have a different
15 strategy in regard to provincial political parties
16 and municipal political parties? Even though you're
17 not familiar with the "specificities" of Québec, in
18 any jurisdiction, there's this national level and
19 the local level, so are there reasons, good
20 reasons, to treat them differently? Or should we
21 have a one-size-fits-all solution for anyone
22 wanting to get election... wanted to be elected as
23 regards to political corruption?

24 A. So you are talking about different regulations...

25 Q. [88] Yes. Yes.

1 A. ... applying to different levels...

2 Q. [89] Yes. Yes.

3 A. ... of the party organization.

4 Q. [90] Uh, huh.

5 A. Well, I suppose... I mean, if any system of
6 regulation of donations, for example, and of
7 expenditure has to define the levels of which this
8 applies, because then it'd be easy to get around
9 regulations by simply transferring funds from one
10 level to another, it's true that national level
11 politics is usually more visible, in this case,
12 provincial level politics, I guess, is usually more
13 visible than the local level. I am not sure if this
14 is true for Québec; it's certainly true for Britain
15 and most of the other countries I'm familiar with.
16 So, that extent, the more visible level of politics
17 might be required to be regulated more. But if the
18 decisions are actually being made and the municipal
19 level, if the sort of, you know, the... most of the
20 scope for corrupt transaction is at the municipal
21 level, then, you know, all these things we've been
22 talking about, you know, the potential funds, some
23 kind of subsidy for party funding, the possibility
24 of, you know, particular funds of oversight to
25 raise transparency, promoting participation, has

1 to... all of these things have to operate at that
2 level, the level of which the corrupt exchanges are
3 taking place.

4 Certainly, if we're thinking about public
5 contracting, then very often it is at the local,
6 municipal level that these decisions are being
7 made. But the problem is that, very often, where
8 you get some kind of systemic form of corruption is
9 that it transcends these different levels, because
10 there may be flows of money upwards, as well as
11 downwards; there may be local politicians that have
12 particularly strong positions in corrupt
13 bargaining, then start to exercise power at the
14 national or the provincial level. So, yes, there
15 has to be awareness of the fact these different
16 levels can operate differently but perhaps the same
17 principals would have to apply.

18 Q. [91] Yes. Uh, huh. We had a number of discussions
19 around the question whether we should regulate the
20 relationship between elected officials or people
21 running for election, and the business people, and
22 the...

23 A. Huh.

24 Q. [92] So, I know you've... in your research, you
25 mainly focussed on the question of political

1 financing, that is, you know, people who give money
2 to... But, if we want to do something about
3 political corruption, I suppose it's not enough to
4 focus on the way money is transferred from A to B.
5 We also need to make sure that the relationship
6 between the two is appropriate, that, you know,
7 there's not undue influence between the two. So,
8 you tell me if this exceeds your expertise, but
9 what do you think of... or what would be our
10 responsibility as a commission, trying to find
11 solutions to undue influence? Undue influence can
12 come from money, but it can also come from perhaps
13 too intimate relationships between elected and
14 private parties. So, what guidance could you give
15 us on that score?

16 A. Yes, I mean, I suppose it's difficult, because here
17 you can't really establish some kind of strict rule
18 whereby there shouldn't be any contact between, I
19 mean... first of all, because the principal of, you
20 know, democracy in civil society implies that the
21 democratic institutions should be open to everyone
22 who is interested in... and politicians are
23 supposed to respond to the community as a whole,
24 not just individual voters, but also to, you know,
25 commercial and non-commercial organizations that

1 exist. So, the idea that we cut off interaction
2 clearly is not feasible. So, how else do you
3 regulate it? Again, I mean I suppose that sounds
4 quite a vague response, but transparency, if it is
5 obvious that there is a relationship of collusion
6 between a particular business interest and a
7 particular politician or party, then the more
8 visibility is given to that, the better.

9 I mean, again, I can kind of think of how
10 the press, and hopefully, increasingly, some of the
11 limitations of conventional printed press might be
12 overcome by new social media, which is a bit of a
13 double-edged sword, it can also have all kinds of
14 not necessarily particularly functional effects,
15 but the blogs and various other forms of
16 communication can open people's eyes to some of
17 the, you know, corruption going on.

18 The problem is that it can also get out of
19 hand. Now, I think of the Italian case at the
20 moment. We have the Five Star Movement led by a
21 comedian, Beppe Grillo, who earned twenty-five
22 percent (25%) of the vote in the last parliamentary
23 election in Italy, making it the actual largest
24 single party - not the largest coalition, but the
25 largest single party - run by a comedian. And of

1 course, you might have heard of Russel Brand who is
2 a British comedian who has had some success in the
3 States as well, I am not sure how widely known he
4 is in Canada, but he's now decided that he wants to
5 do something similar, so far without much success
6 but he's getting a lot of media time.

7 So, the problem is that if you shine too
8 much of a light on corruption and you create this
9 sense that the political institutions are nothing
10 but corruption, then it's almost in the nature of
11 the way the social media... new social media work,
12 that the reaction is always an exaggerated one.
13 It's kind of there's... you lurch from, you know,
14 silence and collusion to hysteria in one move. And
15 what we have in Italy is this Five Star Movement,
16 is essentially refusing to participate at all in
17 any forms of decision making, and simply
18 campaigning against the existing political elite
19 indiscriminately, implying they're all criminals,
20 and must simply be overthrown and replaced by a
21 party that has no real political mission of its
22 own, other than overturning the existing elite.

23 So, there's this kind of nihilistic perhaps
24 response to corruption that can emerge. I'm not
25 trying to suggest that we should be very careful

1 about shining a light on corruption for fear of
2 what kind of populist responses there are, but, you
3 know, there needs to be... the (inaudible) is on
4 the political community, the citizenry to engage in
5 politics in a way which is constructive. So, we
6 need to get our institutions to work in such ways
7 that they do not institutionalize an elitist
8 politics in which only the people at the top, who
9 may have all kinds of collusive and corrupt
10 relationships with economic elites and others, get
11 to make the decisions, but we don't either want to
12 destroy all the intermediary institutions...
13 intermediary institutions that make politics work
14 and throw ourselves at the mercy of a sort of
15 referenda oriented populist movement, like we are
16 seeing emerging in many countries in Europe.

17 So, I suppose what I'm trying to say here
18 is that political parties structured roughly in the
19 way they are now are an essential component of
20 democracy, and one of the tragedies of these kind
21 of corrupt dynamics are that it's very difficult to
22 mention in democracy that doesn't have
23 institutionalized and structured political parties.
24 But institutionalized and structured political
25 parties have an inherited tendency to become

1 oligargical. This was already in one of the
2 classics of the early political classic science
3 literature review, to Michels wrote a book, called,
4 I think, called *The high and low volega*, it was the
5 title, political parties in the Mountain State, and
6 this was written in nineteen twenty-three (1923).

7 And already, at the beginning of democracy,
8 we know that political parties offer the channel
9 through which a disorganized and possibly not very
10 motivated population could intervene in politics.
11 But at the same time, political parties have a
12 natural tendency to concentrate power around
13 elites. And because of the free ride dilemma we all
14 face when we decide how much to engage in politics,
15 there is often relatively little scrutiny on what
16 that elite does.

17 So this brings me back, and I'm kind of
18 thinking of my feet here, because I don't often get
19 so far in trying to think of solutions; like many
20 academics, I just think about problems. But
21 encouraging participation mechanisms, seeing ways
22 in which also technological changes connect and,
23 hence, the way which participation in conventional
24 politics takes places, is not throughout
25 conventional politics is being in that, eternally

1 rotten, corrupt; but find ways to make it a little
2 bit more responsive, a little bit more transparent,
3 a little bit more opened, try to break up the
4 oligarchies.

5 Q. [93] You mentioned a very interesting point when
6 you said that with the new information technology,
7 more than the social media, there's a risk that
8 transparency becomes a way of becoming even more
9 cynical towards their politicians, because we
10 focus, you know, people tend to focus on very small
11 things, and they sort of take proportions that are
12 way, far away from what they should be.

13 So, as a Commission, if we favor measures
14 that will improve transparency and improve
15 publicity, we have no choice but to take account of
16 that reality. So there is a way in which we have to
17 make sure that transparency does not become used as
18 a way of getting at the very opposite result that
19 we want. We want to increase trust in public State,
20 and politicians. So there's a risk here, isn't it?
21 Yes.

22 A. Yes, there is. For sure. I mean, I don't want to
23 idealize too much Scandinavia, which is always,
24 always seems to have the answer to everything, and
25 is someone to have a do it, but they have a kind of

1 extreme requirement of transparency, in the
2 political institution, to the extend that even the
3 daily agenda of the Prime Minister is public,
4 publicly available. I'm not sure whether that might
5 have changed do to security concerns, but this
6 certainly was the case. And even in correspondence
7 between individuals and all of the ministers in
8 Prime Minister in main public officials, are public
9 documents. I think even tax returns are public in
10 Sweden, I think. I may be wrong on that, but you
11 could check.

12 Now, of course, that' s going to work when
13 the institutions don't have that much to hide.
14 Getting to that favorable equilibrium whereby
15 institutions work and therefore, they can afford to
16 be transparent and therefore, this enhances public
17 trust, rather than diminishing it. It's a step
18 change, and you can't drift towards that, because I
19 think, probably in most political systems, we fall
20 way short of that. And any attempt to enhance
21 transparency runs the risk that, short term at
22 least, what people will learn is probably even more
23 of the bad stuff. But also, it's true that very
24 often, people are not the very good judge of how
25 they might have a realistic expectations of how

1 cleans politics can be. I was struck by the
2 expenses scandal related to the British Parliament,
3 in two thousand and nine (2009), the public got
4 incredibly outraged of a really minor breaches of
5 expenses, etiquette on the part of British M.P.'s,
6 people claiming ten pounds for some shopping was
7 seen as being outrageous, because many people, you
8 know, they notice every ten pounds and because, you
9 know, that they don't have. So, it can sometimes
10 extend to, almost, a kind of witch-hunt attitude
11 towards politicians which is not a good way of
12 encouraging people to get involved in politics if
13 you're going to be subject to that kind of
14 scrutiny.

15 But on the other hand, hiding things is
16 clearly not going to enhance public trust either
17 because the moment things go bad, the moment you
18 get some kind of scandal or there's an economic
19 crisis and people start to focus more on the
20 limitations of what the public institutions can do,
21 then, you know, knowing that there's an awful lot
22 of stuff that is hidden is probably not going to
23 enhance public trust.

24 So some combination of greater transparency
25 and strong incentives for participation I would

1 hope could lead to an enhancement of the
2 relationship between citizens and the institutions.
3 But I really don't know because, in the end, we
4 don't really know how it is. The Scandinavians,
5 some other countries have managed to get into this
6 virtuous circle but the vast majority of countries
7 in the world, let's face it, have not gotten there.

8 Q. **[94]** Getting back to the question of financing,
9 perhaps a couple of questions. One is we had
10 professor Michael Johnston here from Colgate
11 University who is working on...

12 A. Sure.

13 Q. **[95]** ... and he said that he has written an article
14 in The Washington Post suggesting that we should
15 change the system of political financing through
16 the notions, through a system of blind trusts.

17 A. Right.

18 Q. **[96]** That is we don't really know who finances the
19 political parties so here we, well it's either that
20 or another systems we have to make public the names
21 of people who contribute to political parties.

22 A. Uh, huh.

23 Q. **[97]** Would this be a good way of going if we want
24 to lower the chances of political corruption?

25 A. Well, so if people could be encouraged to make

1 contributions to politics in some way, financial
2 contributions and there was some way of short-
3 circuiting those contributions so that they could
4 not lead to any private personal gain, then that
5 would be something to be welcomed. You wonder what
6 effect that might have on the contributions if,
7 because part of the, I mean, I'm not sure what kind
8 of reasoning goes through the minds of wealthy
9 individuals who make contributions to politics for
10 no direct material gain for themselves.

11 Q. [98] Uh, huh.

12 A. I'm unfortunately not in the position that I can
13 think of making... I'm a member of a political
14 party and pay a small fee for that privilege but
15 I'm not a major contributor. So I think part of the
16 reason why people do make big donations most fall
17 into the same kind of logic as contributions,
18 donations to universities, philanthropic activities
19 of various kinds, if you think of the Gates
20 Foundation and so on.

21 So I'm not sure if part of the reason for
22 wanting to contribute financially to politics in a
23 way which is beyond any personal material gain is
24 about, in a sense, showing one's generosity to the
25 world. I can see that being a big problem if you

1 are required to hide it. And also I'm not sure that
2 would necessarily even curtail corrupt exchange
3 because one could always say, "Well, I can't
4 publicise this but I did actually make a big
5 contribution to your blind trust and you'll have to
6 take my word for it." I think that would, could be
7 circumvented in practice if there were sufficient,
8 you know, motives and incentives to do so.

9 I mean one alternative, of course, is to go
10 the exact opposite route and do what largely is the
11 system in the United States, it's to have an
12 essentially relatively unconstrained but fairly
13 public and transparent system, a free-for-all
14 system of contributions to politics with very few
15 constraints in which big contributions can be made
16 in, you know, with some degree of publicity.

17 We know quite a lot about political
18 financing in the United States because of the way
19 in which it's regulated or not regulated which
20 means, you know, the only country where we really
21 know quite a lot about how politics is financed is
22 the United States precisely because the regulations
23 allow people to make big contributions for fairly
24 obviously self-serving reasons without having to
25 hide it.

1 The big disadvantage, of course, of the
2 completely opened system is the huge weight of
3 money in politics would become very, very visible
4 and could probably erode public trust even more and
5 we know from the research of Thomas Piketty and
6 others that the role of capital in our societies,
7 wealth in our societies is getting bigger and
8 bigger and democracy, you could imagine, could be
9 increasingly controlled by narrower and narrower
10 wealthy elite, if you had a system of... which was
11 based on completely free and regulated
12 contributions.

13 Q. **[99]** Uh, huh. Perhaps, one last question and then
14 the commissioners could ask their questions. There
15 was... as you know, the Québec legislation
16 establishes limits to donations, but it also
17 prevents companies more... companies to give to
18 political parties.

19 A. At all?

20 Q. **[100]** And... at all. Yes. So, there were
21 discussions when there were allegations of
22 stratagems circumventing the statute where there's
23 allegations that the companies managed to give by
24 indirect ways. And there were suggestions that if
25 we took this element of the statute out of the

1 statute, allowing, in other words, public... or
2 corporations, companies the possibility to give to
3 political parties that, that would alleviate the
4 problem because now things would simply be made in
5 public and we would know who pays and who doesn't.
6 And, of course, this is a, again... relating to my
7 first question, this is not the mandate of the
8 Commission to determine which kind of political
9 system we could have, my question is more: do you
10 think there would be... that would be a good
11 element to alleviate the risks of corruption or is
12 it independent of that question?

13 A. To allow...

14 Q. **[101]** To allow companies to...

15 A. ... companies to contribute.

16 Q. **[102]** Yes.

17 A. Well, I suppose it depends to... what we think the
18 corruption is. If corruption... So, in the... in US
19 politics, without wanting to be too crude about it,
20 essentially, we know that money talks and that big
21 contributors to the campaigns of individual
22 congressmen or presidents can hope to get some kind
23 of favour, in policy terms, as a result of that.
24 There is quite a big... I mean, the literature, in
25 some ways, is inconclusive, because is very often

1 actually hard to pin it down, but the assumption
2 that people don't... usually don't give large
3 amounts of money away for nothing, suggests that
4 there is some hope of some kind of benefit.

5 So, to have a system in which corporate
6 money can quite openly and transparently direct,
7 politics, is something which violates our basic
8 understandings of democracy as being founded on one
9 person, one vote. Of course, we know that, in
10 reality, there's always an inequality. In fact, a
11 lot of the work I am doing at the moment is
12 precisely about the inequality, the capitalism that
13 the market system generates and how that contrasts
14 with the formal equality on which democracy rests,
15 and the tensions between those two. And political
16 corruption is one way in which this comes out, but
17 also the overwhelming influence in policy terms of
18 the wealthy classes more broadly is another more,
19 you know, less obviously corrupt but equally, in my
20 view, worrying way in which this plays out.

21 On the other hand, artificial limits on
22 contributions can only encourage it to go
23 underground. We know from the experience of
24 prohibition of drugs, even of alcohol in some
25 experiences, the US prohibition, and so on, that

1 when there's a very strong market demand for
2 something and a law which prevents it, then it
3 doesn't necessarily eliminate that something. What
4 happens is that instead it goes underground, and to
5 the extent that it's very, very difficult for
6 regulators and judges to know exactly what's going
7 on. Then, driving more stuff underground, means
8 that we have possibly even less control over it. Of
9 course, making it completely transparent also makes
10 it difficult to control because we know that money
11 in American politics is a big problem too.

12 So, I guess it's a bid of a safe answer to
13 say that we need a third way, somewhere in between
14 that. We need some kind of restriction on the bold,
15 you know, position of political choices by money
16 but, at the same time, if we over regulate it, then
17 that will probably not solve the problem either.
18 So, there needs to be a form of regulation which
19 tries to leverage the usefulness of transparency
20 invisibility, alongside some reasonable
21 restrictions, so that people can judge; so that,
22 when they're voting for someone in election, and
23 they can see who's given the money, that at least
24 they know the... alongside their vote, there is
25 also a cheque which is going in a way on the mind

1 of the policy maker when they're making their
2 choices.

3 Q. **[103]** Do you have any questions?

4 LA PRÉSIDENTE:

5 Q. **[104]** I only have one question. What do you think
6 of last President Obama campaign when he raised
7 some money online, huge amount of money...

8 A. Right, yes.

9 Q. **[105]** ... online, in all transparency?

10 A. In principal, that's fantastic and I think
11 without... I don't want to sound too (inaudible)
12 cynical. That clearly has an effect on the kinds of
13 commitments a political candidate can make to
14 different constituents. The tension is always that
15 a politician needs votes, because our democracies
16 are still democracies, politicians don't control
17 everything, they can lose. The current... in
18 Britain, we're going to have an election in about
19 six months time and nobody knows when that is going
20 to happen, and this... and certainty is what makes
21 democracy a system where our rules are, at least to
22 some extent, subject to what we want. Right? So,
23 it's... I don't... I'm not a believer that
24 democracy is a sham.

25 But of course, we also know that Obama

1 wouldn't have gotten elected without the support of
2 corporate donors in two thousand eight (2008),
3 probably slightly less so next time around, but
4 certainly in two thousand eight (2008), all the
5 evidence is that big finance supported Obama's
6 campaign quite substantially. I couldn't give you a
7 detailed analysis to prove this but my instinct
8 tells me that the online donations probably weren't
9 decisive, but they are a step in the right
10 direction, and the more... I mean, the principal
11 behind that idea of a hundred-dollar (\$100) cap -
12 is it? - on donations is a wonderful one. If only
13 you could get a number of people to donate a
14 hundred dollars (\$100). The problem is most people
15 donate nothing. I am a member of a political party.
16 I disagree with most of what it does, but I still
17 contribute a few pounds a year to politics. But I
18 am in a tiny minority in Britain. I think maybe two
19 or three percent (3%) of people, or maybe even less
20 now, who are members of political parties.

21 So, how many people are really going to
22 give money to politics? A tiny minority of people.
23 And even online fund raising, maybe in American
24 with more... greatest tradition of that kind of
25 contribution, maybe a bit more. But in the end, I

1 think it's not going to be enough, and if we look
2 at some of the research that's becoming very
3 popular and widely discussed now in the media,
4 Thomas Piketty and others work on Wells, you can
5 see that the actual share volume of money that
6 corporate and wealth interest can put together,
7 means that they can... that the sort of grassroots
8 donations are a drop in the ocean.

9 So, my suspicion is that, in a deeply
10 unequal, and becoming more unequal society, such
11 as... especially countries like mine, Canada and
12 the US, the three countries with the largest share
13 of income going to the top one percent (1%) of the
14 distribution in the whole of the advanced world,
15 it's hard to see how we can get around the fact
16 that, if private money counts the politics, that
17 well of private money is going to ultimately favour
18 people at the very, very, top of the economic
19 hierarchy.

20 Me GENEVIÈVE CARTIER:

21 Q. **[106]** Well, thank you so very much, Professor
22 Hopkin.

23 A. Thank you for listening.

24 Q. **[107]** You accepted our invitation on very short
25 notice, so we appreciate it a lot. So, your

1 presentation was extremely inspiring and useful.

2 So, thank you very much for your interest in our
3 work.

4 A. Thank you.

5 LA PRÉSIDENTE:

6 Q. **[108]** Thank you very much.

7 A. Thank you.

8

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