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How Should We Think about the Winners and Losers from Globalization? Three Narratives and Their Implications for the Redesign of International Economic Agreements

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Abstract

In the wake of Donald Trump's election to the US presidency, the 'losers' from globalization have received unprecedented attention. While few would contest that manufacturing workers in developed countries have lost out over the past decades, the remedies proposed by President Trump have been met with a mixture of concern and ridicule by the trade establishment. And, yet, it seems clear that, at least in the USA, politicians and trade officials are no longer able to convince voters that international economic agreements will 'lift all boats'. Instead, those engaged in debates about trade policy will need to be open about the fact that international economic agreements create both winners and losers. This article identifies three narratives about who those winners and losers are. The article argues that the contestation between these three narratives is not one that can be resolved through empirical analysis but, instead, that the narratives contain irreducible normative elements. The article further explores the implications of these narratives for the redesign of international economic agreements.

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1 Introduction

In the wake of Brexit and the widespread public opposition to new international economic agreements that contributed to the election of Donald Trump to the US presidency, the 'losers' from globalization – often stereotyped as low-skilled, white, working-class men – have received unprecedented attention.[1] While few would contest that manufacturing workers in developed countries have lost out over the past decades,[2] the remedy proposed by President Trump and his advisers – to tear up, or at least to renegotiate, the international economic agreements concluded by the USA – has been met with a mixture of concern and ridicule by the trade establishment.[3] And, yet, it seems clear that the success of Trump's campaign has hit a nerve. Trump's election conclusively demonstrates that, at least in the USA, politicians and trade officials are no longer able (if they ever were[4]) to convince voters that international economic agreements will 'lift all boats'. Instead, those engaged in debates about trade policy will need to be open about the fact that international economic agreements create both winners and losers. This article suggests that there are at least three narratives about who those winners and losers are and that our choice among those narratives has profound implications for the redesign of international economic agreements in the current era of increasing scepticism of, and resistance to, globalization.

The first narrative, which I call the 'Trump narrative',[5] pits US workers against workers in developing countries, such as China and Mexico, as well as workers in developed countries with which the USA has a trade deficit, such as Germany and Japan. On this view, workers are engaged in a zero-sum competition over jobs; trade agreements, including the North American Free Trade Agreement (NAFTA) and the World

1 Even before Trump was elected, there had been 'so many attempts to explain Trumpism that the genre ha[d] become a target of parody'. See J. Guo, 'A New Theory for Why Trump Voters Are So Angry – That Actually Makes Sense', *Washington Post* (8 November 2016). For an example of the genre, see D. Balz, 'Loyalty, Unease in Trump's Midwest', *Washington Post* (10 May 2018).

2 The decline of manufacturing employment in developed countries dates back as far as the 1970s. For an early account, see F. Fröbel, J. Heinrichs and O. Kreye, *The New International Division of Labour* (1980), and for a review of the literature published in the 1990s, see Kapstein, 'Winners and Losers in the Global Economy', 54 *International Organization* (2000) 359.

3 Another veritable genre that has emerged is devoted to dismantling the intellectual foundations – such as they are – of the trade policy prescriptions of Trump and his advisers and, in particular, their focus on bilateral trade deficits; see only R. Lawrence, 'Five Reasons Why the Focus on Trade Deficits Is Misleading', Peterson Institute for International Economics Policy Brief 18-6, March 2018; W. Nordhaus, 'The Trump Doctrine on International Trade: Part One', *Vox* (22 August 2017); W. Nordhaus, 'The Trump Doctrine on International Trade: Part Two', *Vox* (23 August 2017).

4 See Kapstein, *supra* note 2, at 380, who notes that the same was true in the 1990s. Indeed, opposition to trade and trade agreements is as old as trade itself; for the case of the USA, see D.A. Irwin, *Clashing over Commerce: A History of US Trade Policy* (2017).

5 While the narrative presented here sticks closely to Trump's unique mixture of colourful metaphors and idiosyncratic beliefs, there are both historical precedents for elements of the Trump narrative in the USA (e.g., Ross Perot's prediction that the North American Free Trade Agreement (NAFTA) 1992, 32 ILM 289, 605 (1993), would cause jobs to move to Mexico with a 'giant sucking sound') as well as examples of similar mindsets in other countries. See, e.g., S. Delacourt, 'Union Leader Jerry Dias Channels His Inner Donald Trump in Fighting GM Canada', *Toronto Star* (27 November 2018).

Trade Organization (WTO) Agreement,[6] have allowed the developing countries to 'steal' jobs with the aid of unfair trade practices such as export subsidies, currency manipulation and disregard for product safety and environmental standards, and have failed US workers by enshrining rules that disadvantage the USA (such as uneven tariff levels).

The second narrative, which is mainly advanced by institutions engaged in the governance of global trade (hence, I call it the 'establishment narrative'), rejects this zero-sum view of the benefits of trade and instead holds that all countries gain from trade. However, the narrative admits that, while trade may be beneficial in the aggregate, it creates winners and losers within each economy. For example, highly skilled workers in developed countries will gain, as they can specialize in high-value-added activities and become more productive, whereas relatively low-skilled workers see demand for their labour decrease, as companies gain access to a large pool of low-skilled workers in developing countries through the liberalization of trade and capital flows.

The third narrative, which I call the 'critical narrative', looks beyond the confines of national economies and focuses on the distributive effects of international economic agreements on different factors of production on a global scale. On this view, the protections for the owners of capital embodied in international economic agreements, such as intellectual property rights and far-reaching investment protections, curtail the ability of states to extract value from an investment and thereby shift the balance of benefits from an investment towards the investor. Moreover, the mobility of capital facilitated by international economic agreements not only increases the bargaining power of the owners of capital *vis-à-vis* relatively immobile factors of production but also makes it harder for states to tax capital, resulting in an increased burden of taxation on labour.

In the first part of the article, I will map the way in which these three narratives are currently invoked to explain who wins and who loses from international economic agreements. While some elements of these narratives can be shown to rest on questionable empirical assumptions, I will argue that the narratives also contain irreducible normative elements and that the contention between them therefore cannot be resolved, say, through economic analysis. The article tries to understand these narratives on their own terms, with the aim of explaining how they inform the contentious debates about the redesign of international economic agreements that are currently playing out in North America and beyond. In the second part of the article, I turn to these debates and link the narratives to proposals for specific legal changes in international economic agreements.

For those who accept the Trump narrative, international economic agreements have caused the problem and are not necessarily part of the solution. According to this view, developed countries such as the USA should attempt to 'bring back' the jobs lost to developing countries and trade surplus countries by reversing previous

[6] NAFTA, *supra* note 5; Agreement Establishing the World Trade Agreement (WTO Agreement) 1994, 1867 UNTS 154.

liberalization and using (unilateral) trade retaliation to curtail the unfair practices of those countries. This may require abandoning existing agreements or renegotiating them in a way that is tilted heavily in favour of the USA.

By contrast, the establishment narrative maintains that there is nothing wrong with international economic agreements as they currently exist. Instead, the narrative suggests that helping the losers from globalization is primarily a task for domestic policy. On this view, states should use their regulatory instruments in the areas of taxation, social policy, education and industrial policy to redistribute the gains from trade and help segments of the population that are adversely affected by trade to adjust to the changes in the economy. For most proponents of this narrative, international economic agreements only play a limited role in facilitating this process, although some academics have suggested that international agreements could oblige states to implement adjustment policies.

The third, critical narrative has the most profound implications for the design of international economic agreements. First, its proponents call for an assessment of the distributive consequences of all elements of international economic agreements. These distributive consequences are most evident where international agreements explicitly grant protections to assets, such as intellectual property rights and other investments, but the more indirect effects of other provisions (for example on the bargaining power of the factors of production) would also have to form part of the assessment. Second, the narrative calls for the inclusion of provisions in international economic agreements that are designed to counter the distributive effects in favour of the owners of capital that past agreements have tended to have. Proposals to this effect include provisions designed to strengthen the bargaining position of labour *vis-à-vis* capital by promoting the unionization of workers in developing countries as well as provisions designed to ensure that states can re-appropriate a greater share of the profits that multinational companies derive from international trade through taxation. Finally, some have suggested that international economic agreements could directly impose payment obligations on corporations that want to avail themselves of the additional protections afforded by the agreement.

The aim of this article is not to evaluate the plausibility of the narratives or to assess the feasibility of the proposals that they generate. Instead, the article attempts to take a bird's-eye view of the debates about the winners and losers from globalization and the redesign of international economic agreements. Given the conflicting normative positions underlying the three narratives, the contestation between them is unlikely to be resolved any time soon; the article aims to provide a roadmap for anyone who wants to chart the debate, who is wondering how to situate themselves in the existing narratives and who is looking for vantage points from which to understand and assess competing proposals for refashioning international economic law.[7]

[7] For those looking for further guidance on how to move forward at this critical juncture, the following articles provide excellent diagnoses of the problem and sketches of proposed solutions: Shaffer, 'Retooling Trade Agreements for Social Inclusion', 2019 *University of Illinois Law Review* (2019) 1; Cohen, 'What Is International Trade Law For?', 113 *American Journal of International Law* (2019) 326.

2 Three Narratives about the Winners and Losers from Globalization

Mapping narratives is a challenging exercise. The researcher must distil a 'story' from hundreds, if not thousands, of individual utterances on a subject matter. There is no guarantee that these utterances will cohere or that they will not give rise to multiple contradictory storylines. Despite these challenges, I argue that, in the debate on who wins and who loses from globalization, it is possible to identify at least three narratives[8] that cohere in key respects: in how they conceptualize the relationship of individuals to their jobs; in how they characterize the loss of a job; in what they identify as the cause of job losses; in how they evaluate those causes from a normative perspective; and, last but not least, in whom they see as 'winning' as a result.[9] My aim is not to give a comprehensive survey of everything that has been said on the subject but, rather, to identify the key tropes that animate each narrative and that distinguish it from the others. Moreover, I have focused on those aspects of the narratives that relate directly or indirectly to international trade and investment and, hence, to international economic agreements.

A The Trump Narrative

Donald Trump's views on international trade have been remarkably consistent over the years; at least since the 1980s, Trump has argued that foreign countries are taking advantage of the USA, using some of the same colourful metaphors that he does today.[10] Thus, Trump has long described foreign countries as 'beating the hell' and 'sucking the blood' out of the USA. In the international trade arena, as Trump sees it, the USA is 'never winning'; in fact, it is losing so badly that 'the world is laughing at' it.[11] In the 1980s, Japan was Trump's main concern. In recent years, developing countries such as Mexico and particularly China have received the brunt of his attention,

[8] Others have identified additional narratives. See, e.g., S. Lester, 'Three (Or More) Narratives about Globalization's Winners and Losers', *International Economic Law and Policy Blog* (12 December 2018). Roberts, Choer Moraes and Ferguson sketch a 'geo-economic' narrative in a series of blog posts; the first post is A. Roberts, H. Choer Moraes and V. Ferguson, 'The Geoeconomic World Order', *Lawfare* (19 November 2018).

[9] I have approached the task of identifying these narratives by reading widely across a range of sources: speeches and statements (including on social media) by candidate and President Trump and his top trade officials, including his advisor Peter Navarro, the United States Trade Representative (USTR) Robert Lighthizer and Secretary of Commerce Wilbur Ross; reactions to those statements in the media; policy papers by think tanks; reports by international organizations; academic articles and negotiating proposals by the Trump administration, the governments with which it is negotiating as well as other stakeholders, such as unions.

[10] See J.M. Schlesinger, 'Trump Forged His Ideas on Trade in the 1980s – and Never Deviated', *Wall Street Journal* (15 November 2018); see also B. Woodward, *Fear* (2018), at 138, who reports Trump's response to Gary Cohn's questions about the reasons for the president's views on trade: 'I don't know … I've had these views for 30 years.'

[11] J. Mullen, 'He Said What? A Look Back at Trump's Japan Bashing', *CNN Money* (8 February 2017), available at http://money.cnn.com/2017/02/08/news/economy/trump-japan-comments-abe/index.html.

while developed countries with which the USA has a trade deficit, such as Japan and Germany, remain firmly on his radar.

According to the view that Trump has espoused for decades, international trade is a zero-sum competition over wealth – as measured by the trade balance – and jobs. A series of tweets on China illustrate his use of these twin metrics. For example, in 2012, Trump assailed what he saw as a lack of assertiveness by the Obama administration by tweeting: 'China is robbing us blind in trade deficits and stealing our jobs, yet our leaders are claiming "progress" ... SAD!'[12] And when President Barack Obama's Treasury Department refused to classify China as a currency manipulator, Trump complained that Obama 'just helped China steal even more jobs and money from us'.[13] Similarly, in a speech on the campaign trail in 2016, Trump asserted that '[t]rillions of our dollars and millions of our jobs flowed overseas as a result' of the USA's ineffectual trade policy.[14] Trump's advisor Peter Navarro has also claimed that 'China has stolen thousands of [US] factories and millions of [US] jobs'.[15]

Since Trump assumed office, these metrics have found their way into government documents and statements by US officials. US Trade Representative (USTR) Lighthizer opened the NAFTA renegotiations by stating:

> The numbers are clear. The US government has certified that at least 700,000 Americans have lost their jobs due to changing trade flows resulting from NAFTA. Many people believe that number is much, much bigger than that. In 1993, when NAFTA was approved, the United States and Mexico experienced relatively balanced trade. However since then, we have had persistent trade deficits.[16]

In its 2017 Trade Policy Agenda, the Trump administration claimed that the USA had lost almost five million manufacturing jobs since China's entry into the WTO.[17] And at a hearing in July 2018, Lighthizer reaffirmed the administration's view that China is 'taking US jobs and US wealth'.[18]

Of the two metrics that Trump invokes to keep score of who wins and who loses in international trade, the former – bilateral trade deficits – has received far more criticism than the second. Many economists have argued that the idea that bilateral trade

[12] Twitter post by Donald Trump (@realDonaldTrump), *Twitter* (20 December 2012), available at https://twitter.com/realDonaldTrump/status/281864496912400386.

[13] Twitter post by Donald Trump (@realDonaldTrump), *Twitter* (15 October 2012), available at https://twitter.com/realDonaldTrump/status/257936201057705984.

[14] Donald Trump, Speech in Monessen, Pennsylvania, 28 June 2016, available at http://time.com/4386335/donald-trump-trade-speech-transcript/.

[15] P. Navarro, 'Death by China: How America Lost Its Manufacturing Base (Official Version)', *YouTube* (10 April 2016) at 9:55, available at www.youtube.com/watch?v=mMlmjXtnIXI.

[16] Opening Statement of USTR Robert Lighthizer at the First Round of NAFTA Renegotiations, press release, 17 August 2017, available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/august/opening-statement-ustr-robert-0.

[17] Office of the United States Trade Representative, 2017 Trade Policy Agenda and 2016 Annual Report of the President of the United States on the Trade Agreements Program (2017), at 6.

[18] Testimony of USTR Lighthizer, Senate Hearing on 2019 Trade Representative Budget Request, 26 July 2018, at 26:44, available at www.c-span.org/video/?448767-1/trade-representative-lighthizer-us-close-nafta-deal.

deficits are a meaningful indicator of a country's performance in the international economy is fallacious.[19] Reactions to the Trump narrative's claims regarding the second indicator – job losses – have been much more equivocal since there is considerable empirical support for the view that competition from low-wage countries has put pressure on US manufacturing employment.[20] And, yet, the particular way in which Trump talks about job losses has not received much attention. Most commentators cite his colourful language but appear to regard it as not more than rhetoric. By contrast, I argue that the concepts that Trump uses to describe job losses are central to the normative structure of his narrative.

A key distinguishing feature of Trump's narrative, compared to discussions of job losses among academics and other politicians, is the notion that a country that attracts investment in factories, while factories are closing in the USA, is 'stealing' jobs from US workers.[21] The conceptualization of job losses as 'theft'[22] rests on several normative judgments. First, the notion that other countries are 'stealing' jobs from US workers implies that US workers have an entitlement to their jobs that is akin to a property right. It is not hard to understand why this jobs-as-property metaphor has emotional purchase: many workers, especially those who have held jobs in a particular industry for many years (sometimes going back for generations), feel invested in their jobs in a way that is akin to a piece of personal property; their jobs are bound up with their history, their identity and their status in the community. For these workers, their job is much more than simply a means to earn a living, and the sense of loss that they experience when they are dismissed is palpable.[23] In his 2016 speech on trade, Trump evoked precisely this emotional connection when he said: 'Skilled craftsmen and tradespeople and factory workers have seen *the jobs they love* shipped thousands and thousands of miles away.'[24] And at a recent rally, Trump stated that US steelworkers who lost their jobs also 'saw … their *way of life destroyed*', noting that 'their fathers were in the mines, their grandfathers … that's what they do'.[25]

Apart from acknowledging the emotional connection that people feel to their jobs, these quotes also exemplify another element of the jobs-as-property metaphor – namely, the assimilation of jobs to physical goods that can be 'shipped

[19] In addition to the references in note 3 above, see K.D. Williamson, 'Understanding Trade Deficits', *National Review* (29 July 2018); G. Mankiw, 'Surprising Truths about Trade Deficits', *New York Times* (5 October 2018); J.E. Gagnon, 'Trump and Navarro's Mistaken Assumptions about Trade Deficits', *Peterson Institute for International Economics Trade and Investment Policy Watch* (1 November 2018).

[20] The most influential recent paper in this literature is Autor, Dorn and Hanson, 'The China Shock: Learning from Labor Market Adjustment to Large Changes in Trade', NBER Working Paper 21906 (2016).

[21] See notes 12, 13 and 15 above.

[22] For example, Trump has argued that 'China's entrance into the World Trade Organization has enabled the greatest jobs theft in history'. Trump, *supra* note 14.

[23] For a sense of what it means to lose a job that one has held for decades, see B. McDonald, J.M. Kessel and J. Woo, 'Inside a Steel Plant Facing Layoffs', *New York Times Documentary* (25 October 2017), available at www.nytimes.com/video/us/100000005007829/layoffs-steel-plant-rexnord-mexico.html.

[24] Trump, *supra* note 14 (emphasis added).

[25] Donald Trump, Rally in Murphysboro, Illinois, 27 October 2018, available at https://factba.se/transcript/donald-trump-speech-maga-rally-murphysboro-il-october-27–2018 (emphasis added).

thousands and thousands of miles away'.[26] According to this view, jobs have a physical presence; a job that was previously held by an American worker is now owned by a worker in a distant land. Perhaps the best illustration of this element of the metaphor is an image in the documentary 'Death by China', by Peter Navarro, which shows jobs – in the form of billiard balls – being transported to China on a large ship.[27]

The conception of jobs as akin to physical objects suggests a straightforward way to remedy the situation: one simply has to 'take the jobs back' from the winners of globalization – namely, the foreign workers who now have the jobs previously held by US workers.[28] As Trump promised in a 2015 interview with CNN's Chris Cuomo: 'I'll be the greatest jobs president that God ever created. I'll take them back from China, from Japan, from Mexico … we have to bring back our jobs, Chris, we have to do it, we have no choice.'[29] Since becoming president, Trump has repeated this promise numerous times. In a 2017 speech in Youngstown, Ohio, he said: '[T]hey're all coming back. … We are reclaiming our heritage as a manufacturing nation again … We are going to bring back our jobs.'[30] A concrete way to achieve this, according to Trump's advisor Navarro, is by 'unwinding and repatriating the international supply chains on which many US multinational companies rely'. In Navarro's view, the USA needs to 'manufacture those components in a robust domestic supply chain that will spur job and wage growth'.[31]

A second evaluative judgment implied by the jobs-as-property metaphor is that certain jobs are more valuable than others. The jobs-as-property metaphor is inherently conservative, even nostalgic; one can only 'bring back' jobs that have existed for some time. Consistently with this feature of the metaphor, Trump has a distinct preference for traditional blue-collar jobs, such as those in the steel, coal and auto industry. He has shown little interest in the newer manufacturing industries,[32] let alone the service sector.[33] This is not an oversight or simply the result of ignorance but, rather, a considered view. Trump is well aware of the argument that workers in traditional blue-collar professions should move into more advanced manufacturing. Trump not

26 Trump, *supra* note 14.

27 Peter Navarro, 'Death by China: How America Lost Its Manufacturing Base (Official Version)', *YouTube* (10 April 2016) at 9:55, available at www.youtube.com/watch?v=mMlmjXtnIXI.

28 As Trump's chief strategist at the time, Steve Bannon, has put it: 'The globalists gutted the American working class and created a middle class in Asia.' M. Wolff, 'Ringside with Steve Bannon at Trump Tower as the President-Elect's Strategist Plots "An Entirely New Political Movement"', *Hollywood Reporter* (28 November 2016).

29 'Donald Trump: I'll Take Jobs from China, Mexico (CNN interview with Chris Cuomo)', *CNN* (19 August 2015), at 0:00, 1:32, available at www.youtube.com/watch?v=fpNmT5UwTME.

30 Cited in L. Markay, 'Manufacturing Has a Future in Ohio – Just Not the One Trumps Thinks', *Daily Beast* (25 July 2017).

31 S. Donnan, 'Trump's Top Trade Advisor Accuses Germany of Currency Exploitation', *Financial Times* (31 January 2017).

32 Markay, *supra* note 30, who reports on Trump's visit to Youngstown, Ohio. Whereas Trump focused on the steel industry, Markay highlights the rise of high-tech manufacturing in the city, especially companies involved in additive manufacturing.

33 N. Irwin, 'Most Americans Produce Services, Not Stuff. Trump Ignores That in Talking about Trade', *New York Times* (16 March 2018).

only disagrees but has taken to mocking the idea at his rallies. The story he tells usually revolves around conversations he supposedly had with miners and steelworkers backstage and is built around the juxtaposition of strongly built men and 'little' computers or computer parts. At a rally in West Virginia in September 2018, Trump provided the following version of the trope: 'You know I get a hug backstage by miners. These guys are massive guys and we're happy. I say how would you like to make computer widgets? No, we want to dig coal right. They have no interest in little delicate computer parts'.[34] At a rally in Illinois in October 2018, Trump adapted the trope to steelworkers:

> They want to make steel. And I said to them, how about another industry? We'll teach you how to make a computer, little computers. This guy says – his hands are like this – he doesn't want to make a computer, he wants to make steel. Does that make sense? I said the same thing to the miners in West Virginia. … But I said to these beautiful guys, … big strong guys … I said, fellas, supposing we take you to Silicon Valley [laughter] and we'll teach you … how to make these beautiful little keyboards, these beautiful computers.[35]

Trump's infatuation with the 'massive guys' working in coal mines and steel mills lends credence to Martin Sandbu's description of Trump's, Navarro's and Bannon's outlook as 'factory worker machismo'.[36] Sandbu attributes to Trump and his associates a 'feeling of inadequacy' *vis-à-vis* those countries that have managed 'to hold on to the good, manly jobs that validate the status of the native working class', such as Germany, Japan and China.[37] The deep emotional significance of steel for Trump is also evident in another quote, in which he describes the 'hundreds' of steelworkers 'now back on the job' as 'pouring 2.7 million tons of raw American steel into the spine of our country'.[38] The gendered nature of Trump's narrative becomes even more evident in a crucial omission: Trump consistently fails to mention the textile industry, even though textile workers have been affected by import competition in much greater numbers than those in the coal and steel industry.[39] A key difference between the coal and steel industries, on the one hand, and the textile industry, on the other hand, is that the textile industry predominantly employs women.[40]

Trump is even more dismissive of service sector jobs. Bob Woodward has detailed Gary Cohn's painstaking attempts to convince Trump that US workers overwhelmingly choose to work in the service sector and that the service sector should hence be

34 First Draft – Speech: Donald Trump Holds a Political Rally in Wheeling, WV, 29 September 2018, available at https://factba.se/transcript/donald-trump-speech-maga-rally-wheeling-wv-september-29–2018.

35 Trump, *supra* note 25.

36 M. Sandbu, 'Donald Trump's Love of Manufacturing Is Misguided', *Financial Times* (14 February 2017).

37 *Ibid.*

38 Trump, *supra* note 25.

39 I am grateful to Jennifer Hillman for drawing my attention to this feature of the Trump narrative.

40 According to the Bureau of Labor Statistics, women accounted for 12.8 per cent of employees in the steel industry, 12.5 per cent in mining, but 69 per cent in 'cut and sew apparel manufacturing'. Bureau of Labor Statistics, 'Labor Force Statistics from the Current Population Survey', available at www.bls.gov/cps/cpsaat18.htm.

the focus of Trump's economic policies – to no avail.[41] Navarro has described Trump as a 'man who wakes up every day and thinks about how to put men and women back to work, particularly men and women who work with their hands in our manufacturing base, to rebuild our communities'.[42] The preference for jobs in certain sectors that are held predominantly by certain segments of the population is thus a second core element of the normative architecture of the Trump narrative.

A third normative judgment associated with the jobs-as-property metaphor is the notion that the processes and dynamics that allow foreign workers to gain jobs at the expense of US workers are inherently illegitimate. This is a natural corollary to the conception of jobs as property: taking someone else's property is presumptively illegitimate, so the processes by which foreign workers 'steal' US jobs must be illegitimate as well. This claim comes in three forms: in its strongest version, the Trump narrative accuses foreign countries of 'cheating'. As Trump put it in his 2016 speech: 'We allowed foreign countries to subsidize their goods, devalue their currencies, violate their agreements and cheat in every way imaginable. … The Trans-Pacific Partnership … would further open our markets to aggressive currency cheaters – cheaters, that's what they are, cheaters. They are not playing by the rules. They are cheating.'[43] Similarly, in Navarro's film, the move of manufacturing jobs to China is described as the result of the 'biggest political shell game in American economic history'.[44] As the film portrays it, China has stolen US jobs by employing a series of 'weapons of job destruction' – currency manipulation, export subsidies, worker exploitation and environmental degradation – to launch a 'sustained and devastating attack on American factories and jobs'.[45] One of Navarro's interviewees sets the tone for the movie when he argues that 'for China to sell something at one tenth the price of what it would cost in the United States to produce, they are cheating monumentally, in a major massive sort of way, on everything'.[46]

A somewhat weaker version of the claim that the causes of US job losses are illegitimate attributes them to the 'unfair' rules of international trade agreements and to the ineptitude of US politicians and trade negotiators who have failed to level the playing field for US producers. Trump has often pointed to different tariff levels and tax systems, arguing that by refusing to tax imports in the same way as US exports are taxed in other countries, US politicians and negotiators have given away the game.[47] As Trump put it in a March 2018 tweet: 'When a country Taxes our products coming in at, say, 50%, and we Tax the same product coming into our country at ZERO, not fair or smart. We will soon be starting RECIPROCAL TAXES so that we will charge the

41 Woodward, *supra* note 10, at 135–138.

42 'Economic Security as National Security: A Discussion with Dr. Peter Navarro', Center for Strategic and International Studies, 1 November 2018, available at www.csis.org/events/economic-security-national-security-discussion-dr-peter-navarro.

43 Trump, *supra* note 14.

44 Navarro, *supra* note 15, at 9:55.

45 *Ibid.*, at 14:30.

46 *Ibid.*, at 13:49.

47 Mullen, *supra* note 11, at 0:38.

same thing as they charge us. $800 Billion Trade Deficit – have no choice!'[48] Similarly, Secretary of Commerce Wilbur Ross has pointed to unequal tariff levels between the USA and its trading partners, specifically China and the European Union (EU), as evidence that the USA 'is the most open and the most exploited market in the world'.[49] The assertion here is not that other countries do not play by the rules but, rather, that the rules themselves are rigged against the USA. A weaker version of this claim is that the existing rules are simply ineffectual in disciplining the 'predatory practices'[50] of a country like China.[51]

Finally, even in the absence of cheating or rigged rules, the Trump narrative simply does not acknowledge wage differentials as a legitimate form of comparative advantage. Trump has dismissed the argument that the lower cost of production in a country like Mexico is a legitimate reason for US companies to move their production there.[52] Similarly, Ross has repeatedly distinguished between 'blameless' trade deficits, which arise due to natural comparative advantage, such as geographical location or the availability of natural resources,[53] and 'blameful' trade deficits, which are artificially created by actions such as subsidization or 'some other inappropriate source of behavior rather than the natural course',[54] including 'asymmetrical tariffs, and non-tariff trade barriers'.[55] Since wage differentials are not an immutable characteristic, trade deficits that are due to such differentials would appear to fall into the 'blameful' category.

The three avenues of attack on the legitimacy of the processes by which international trade rearranges who does what in the global economy differ both in their prominence in the Trump narrative and in the types of claims they raise. As it happens, the claim that Trump has in the past made with most bombast and conviction – that other countries are 'cheating' – is essentially an empirical claim about the compliance of US trading partners with their obligations under international trade law. Since he assumed office, Trump has had the wherewithal to have his government agencies investigate foreign governments for breaking the rules and to bring cases against US trading partners in the WTO. It is perhaps not surprising that, compared to the campaign, claims of cheating have become more muted since Trump became president.

48 Twitter post by Donald Trump (@realDonaldTrump), *Twitter* (2 March 2018), available at https://twitter.com/realdonaldtrump/status/969572374977839106?lang=en.

49 Remarks by Secretary Wilbur L. Ross at the National Press Club Headliners Luncheon, 14 May 2018, available at https://content.govdelivery.com/accounts/USDOC/bulletins/1f0127e.

50 Lighthizer, *supra* note 18, at 27:44.

51 See Wu, 'The "China, Inc." Challenge to Global Trade Governance', 57 *Harvard International Law Journal* (2016) 261, for an analysis of the difficulties that the World Trade Organization (WTO) faces in addressing China's distinctive economic system.

52 'Donald Trump', *supra* note 29, at 0:57.

53 Ross, *supra* note 49, where Ross explains that a country exporting a product like oil, in which the USA 'has historically not been self-sufficient', 'should not be criticized for doing so because we otherwise would have to buy oil from someone else'.

54 NAFTA Conversation with Secretary Wilbur Ross, Bipartisan Policy Center, Washington, DC, 31 May 2017, at 40:00, available at https://bipartisanpolicy.org/events/nafta-conversation-with-secretary-wilbur-ross/.

55 Ross, *supra* note 48.

The Treasury Department under Trump initially refrained from classifying China as a currency manipulator, just as it had done – to Trump's outrage – under the Obama administration.[56] And the USTR has been actively pursuing disputes in the WTO, including against China;[57] however, these disputes have not received much attention in public statements by Trump officials.

The question whether the rules themselves are 'unfair' or ineffectual has an empirical component – for example, one could compare average trade-weighted or unweighted tariff levels[58] – but also entails normative judgments about the proper yardstick for comparing relative levels of legal commitments and about the question of how differences between countries should be reflected in the rules.[59] The legitimacy of different modes of state intervention in the economy raises even more complex questions: while many observers agree with Trump officials that certain Chinese practices, especially in relation to cyber-espionage and forced technology transfer, are objectionable, some have queried 'why China's model of engaging in detailed industrial policy planning directed towards progressive goals should be viewed as misguided'.[60] The Trump narrative's claim that nothing less than 'the future of American industry', and, hence, also of America's 'children', is at stake in countering Chinese mercantilism[61] rests on a mixture of empirical assumptions about the effects of China's industrial policy on the international division of labour and of a normative evaluation of different forms of capitalism.

Third, whether one accepts the movement of jobs on the basis of comparative advantage as legitimate is a purely normative judgment. Denying the legitimacy of the reallocation of production based on comparative advantage is not unprecedented in US trade politics. In the first part of the 20th century, a prominently held view in the USA was that trade policy should aim to *eliminate* sources of comparative advantage by 'equali[zing] the difference in the cost of production' between

56 A. Rappeport and A. Swanson, 'Trump Declines to Label China a Currency Manipulator as Trade War Brews', *New York Times* (13 April 2018). The US Treasury ultimately named China a currency manipulator on 5 August 2019 even though China did not meet the criteria for the label. See B. Fortnam, 'Analysts Agree with China: Beijing Isn't Manipulating Its Currency', *Inside US Trade* (8 August 2019).

57 For an overview, see Office of the United States Trade Representative, 2018 Trade Policy Agenda and 2017 Annual Report of the President of the United States on the Trade Agreements Program (2018), at 21–22.

58 For discussion, see C. Freund, 'How to Measure Trade Protection?', *The Trade Post* (30 July 2018), available at https://blogs.worldbank.org/trade/how-measure-trade-protection.

59 For example, Trump has challenged China's self-declared status as a 'developing country' in the WTO and has complained that China receives 'tremendous perks and advantages, especially over the U.S.' as a result of this status, stating: 'Does anybody think this is fair. We were badly represented. The WTO is unfair to U.S.'. Twitter post by Donald Trump (@realDonaldTrump), *Twitter* (6 April 2018), available at https://twitter.com/realdonaldtrump/status/982264844136017921?lang=en.

60 F. Abbott, 'US Section 301, China, and Technology Transfer: Law and Its Limitations Revisited (Again)', *International Centre for Trade and Sustainable Development* (23 May 2018).

61 As Lighthizer put it in perhaps the most passionate part of his Senate testimony: 'If your conclusion is that China taking over all of our technology and the future of our children is a stupid fight, then you are right, we should capitulate. My view is: that's how we got where we are. I don't think it's a stupid fight. I don't know a single person who has read this report [the Section 301 report] that thinks it's a stupid fight to say that China should not be able to come in and steal the future of American industry.' Lighthizer, *supra* note 18, at 1:12:18.

countries.[62] Trade was still seen as useful primarily because it prevented domestic manufacturers from extracting monopoly rents from US consumers. The view that US manufacturers should be protected by tariffs to the extent necessary to compensate for the cost advantage of foreign manufacturers played a strong role in US trade policy until the early 1960s.[63] In refusing to accept the movement of production based on comparative cost advantages as legitimate, the Trump narrative thus harks back to a long line of thought in US trade politics.

In the final analysis, the Trump narrative evaluates the legitimacy of trading arrangements primarily on the basis of outcomes rather than on the justifiability of the processes that produce these outcomes. For proponents of the narrative, a legitimate trading relationship is a balanced trading relationship; as Trump put it in his interview with Chris Cuomo: '[W]e've got to equalize it.'[64] For some, bilateral trade balances are a proxy for the legitimacy of the practices employed by US trading partners. In his Senate testimony, Lighthizer explained that both he and President Trump were 'convinced' that if the USA was competing with other countries 'on a no-barrier – be it tariffs or anything else – kind of basis' and was letting 'pure economics make the decision', the USA would 'win' and 'do just great in an environment like that'.[65] By implication, when the USA is not 'winning' – in the sense of having a trade surplus – the trading partner must be doing something illegitimate.

B The Establishment Narrative

The Trump narrative on the winners and losers from international economic agreements has provoked a wide range of reactions. Some have responded with disbelief and ridicule, but many – especially the institutions that play a role in international economic governance – have recognized the Trump narrative as a serious challenge and have proceeded to painstakingly examine the evidence and present a different narrative. This narrative differs from the Trump narrative not only in substance but also in the form in which it is delivered. While the Trump narrative primarily comes in the form of tweets, raucous speeches, rambling interviews and incendiary books and documentaries, the alternative narrative is primarily delivered in reports that run to hundreds of pages, carefully parsing studies and data, and that are accompanied by the occasional carefully vetted tweet and orderly panel discussion. Because it is primarily presented by established institutions and represents the received wisdom of the mainstream parties in Western democracies, I call it the 'establishment' narrative.

The establishment narrative takes issue with virtually every aspect of the Trump narrative. To begin with, it rejects the Trump narrative's conception of international

[62] See W.S. Culbertson, *Reciprocity: A National Policy for Foreign Trade* (1937), at 10, n. 1 (quoting Franklin D. Roosevelt).

[63] Leddy and Norwood, 'The Escape Clause and Peril Points under the Trade Agreements Program', in W. Kelly (ed.), *Studies in United States Commercial Policy* (1963) 124.

[64] 'Donald Trump', *supra* note 29, at 5:34.

[65] Lighthizer, *supra* note 18, at 36:54–37:12.

trade as a zero-sum competition over wealth and jobs. Instead, the narrative asserts that '[t]rade openness … has brought about higher productivity, greater competition, lower prices, and improved living standards'.[66] Whereas the Trump narrative is dismissive of the effect of trade in lowering the price of goods – Trump has suggested that nobody would 'care' if US consumers pay more for goods,[67] and his secretary of commerce famously held up a can of soup on national television to illustrate the insignificance of price increases as a result of the administration's steel tariffs[68] – the establishment narrative emphasizes the 'consumption side' of trade, noting that 'open trade … benefit[s] especially lower-income households who consume a disproportionately higher share of tradeable goods and services'.[69] By conceptualizing lower prices as an increase in 'real incomes',[70] the establishment narrative treats income effects of trade on the consumption side and income effects on the production side as fungible. This fungibility assumption is the first significant normative element of the establishment narrative.[71]

Turning to the production side, the establishment narrative rejects the view that jobs are scarce quasi-physical objects over which workers in different countries compete. Instead, the narrative conceptualizes jobs as value-creating activities that are constantly changing in response to technological innovations and shifts in the international division of labour. According to this view, international trade is not a fight over a limited number of jobs but, rather, a process that facilitates a constant rearranging of who does what, where, when and how, allowing everyone involved to become more productive in the process. In the dry language of one report, '[t]rade-related shifts in the allocation of resources across sectors and firms and adoption of new technologies have generated productivity gains'.[72]

The idea of 'bringing back' jobs that have been 'shipped overseas' in this process of resource reallocation is anathema to the establishment narrative. The narrative highlights the cost to consumers of 'saving' specific jobs by putting up trade barriers.[73] For example, an analysis of US tyre safeguards imposed by the Obama administration, conducted by the Peterson Institute of International Economics,

66 International Monetary Fund (IMF), World Bank and WTO, Making Trade an Engine for Growth: The Case for Trade and for Policies to Facilitate Adjustment (2017), at 4.

67 'Donald Trump', *supra* note 29, at 1:27: 'Maybe a person will buy fewer cars over the course of a lifetime, who cares?'

68 'Trump Official Defends Tariff with Can of Soup', *CNN* (2 March 2018), available at www.cnn.com/videos/cnnmoney/2018/03/02/wilbur-ross-can-of-soup-tariff-sot.cnn.

69 IMF, World Bank and WTO, *supra* note 66, at 4.

70 *Ibid.*, at 20.

71 Megan McArdle has identified the fungibility assumption as the 'fundamental mistake' that prevented free traders from recognizing the growing discontent about trade. According to McArdle, free traders 'forgot … that people care more about their identities as producers than they do as consumers'. M. McArdle, 'How Free Traders Blew It', *Washington Post* (27 June 2018).

72 *Ibid.*, at 4.

73 IMF, World Bank and WTO, *supra* note 66, at 21; see also S. Lester, 'Saving the Trading System', *International Economic Law and Policy Blog* (1 December 2017), who notes that, although 'protectionism is vastly worse for the poorest people in society than trade liberalization is', he hasn't heard 'many concerns … about how existing protectionism harms the poor, or how new trade remedy measures will harm the poor'.

concluded that US consumers paid US $900,000 for each job saved by the measures.[74] The analysis also noted that the opportunity cost of paying extra for tyres led to less spending in other industries, resulting in an estimated net loss of 2,531 jobs as a result of the measure. It is easy to see that this type of calculation would not resonate with someone who subscribes to the jobs-as-property metaphor: a property owner cannot be forced to give up their property regardless of the opportunity cost to others.[75] By contrast, if work is seen as a value-creating activity, it appears nonsensical to ask consumers to pay extra so that a specific group of individuals (rather than others) can perform that activity, especially if it means that fewer people overall will be employed.

While the establishment narrative takes a dim view of trade barriers as a tool to preserve jobs and emphasizes that trade benefits the economy in the aggregate, it acknowledges that trade (along with other forces, especially technological change) also creates losers. In his foreword to the WTO's 2017 World Trade Report – which was devoted, not coincidentally, to the topic of 'Trade, Technology and Jobs' – the director-general of the WTO recognized: 'Clearly, benefits spread over the whole economy are of little comfort to someone who has lost his or her job.'[76] However, the establishment narrative differs fundamentally from the Trump narrative (i) in how it describes the scale and causes of the problem; (ii) in how it suggests the problem should be addressed; and (iii) in whom it conceptualizes as the 'winners' from trade.

Whereas the Trump narrative focuses exclusively on manufacturing workers who have lost their jobs,[77] the establishment narrative is careful to put the scale of the problem into perspective. It highlights that, in the USA, the number of people employed in the traditional manufacturing industries that are most exposed to international competition is relatively small.[78] And while a report written by the International Monetary Fund (IMF), the World Bank and the WTO admits that the effects of trade can be 'harsh', it also notes that they are 'frequently concentrated' and impact 'groups of workers and some communities' in 'certain locations'.[79] Moreover, the establishment narrative emphasizes that the decline in

74 G.C. Hufbauer and S. Lowry, 'US Tire Tariffs: Saving Few Jobs at High Cost', Peterson Institute for International Economics Policy Brief 12–9, April 2012. Hufbauer and another colleague came to similar conclusions in their analysis of steel safeguards imposed by the Bush administration. See G.C. Hufbauer and B. Goodrich, 'Steel Policy: The Good, the Bad, and the Ugly', International Economics Policy Briefs PB03-1, January 2003.

75 Of course, this right is limited by the government's right to expropriate under certain circumstances. Some have argued that private property rights should be loosened to improve 'allocative efficiency' by forcing property owners to sell at a price that reflects the value of the property to them. See Posner and Weyl, 'Property Is Only Another Name for Monopoly', 9 *Journal of Legal Analysis* (2017) 51.

76 WTO, World Trade Report 2017: Trade, Technology and Jobs (2017), at 3.

77 Trump famously ignores service sectors jobs, even though the majority of the US population is employed in the service sector.

78 As Daniel Pearson, a senior fellow at the Cato Institute, has pointed out, factory workers account for 8 per cent of total US employment. D. Pearson, 'Is Manufacturing Employment the Only Thing That Counts?', *Morning Consult* (2 March 2017).

79 IMF, World Bank and WTO, *supra* note 66, at 4.

manufacturing employment in developed countries is largely due to technological innovation and the resulting productivity increases rather than to trade.[80]

The establishment narrative also departs from the Trump narrative in how it conceptualizes the problem and in how it envisions potential solutions. According to the IMF, World Bank and WTO report, the problem faced by the 'losers' is not the disruption caused by trade (or technology) *per se* but, rather, 'the absence of accompanying policies' that would facilitate 'trade-related adjustments'.[81] The establishment narrative highlights that '[d]islocations depend not just on the size or abruptness of the trade shock, but on broader circumstances, such as the health of the economy, labor market rigidities, and other impediments to resource reallocation, as well as the adequacy of social protection policies'.[82] For the establishment narrative, the central question is not how to 'bring back' the jobs that are lost but, rather, how to develop 'effective policies *to support people to adjust*'.[83] The key to adjustment is 'worker mobility across firms, industries, and regions'.[84] In a nutshell, the establishment narrative tells workers affected by trade to move – to new jobs, new sectors and new cities.[85] In stark contrast to the Trump narrative, the establishment narrative thus accepts the fact that trade will force workers to adjust by moving to new value-creating activities as a legitimate, even natural, process, which is a second core normative judgment implied in the narrative.

The establishment narrative sees the vast majority of people in advanced economies (not to mention, developing countries[86]) as winners from trade. Apart from the consumption effects of trade, its proponents are confident that most people are able to move to other jobs in which they are more productive. As the IMF, World Bank and WTO report asserts optimistically after listing the 'human and economic downside' of adjustment to trade, '[i]t need not be that way. With the right policies, countries can benefit from the great opportunities that trade brings *and* lift up those who have been left behind'.[87]

Given that it sees the majority of people as winners from trade, the establishment narrative identifies a failure to communicate the benefits of trade as an important part of the explanation for the current backlash. The IMF, World Bank and WTO report is explicitly designed to 'guide the response' to the call from Group of 20 leaders 'to

80 See WTO, *supra* note 76, at 14: '[T]here is no question that technology is the dominant force' (at 3); 'the disappearance of factory jobs today, like the disappearance of agricultural jobs in the past, has more to do with automation and digitization than with offshoring and outsourcing.'

81 IMF, World Bank and WTO, *supra* note 66, at 4.

82 *Ibid.*

83 WTO, *supra* note 76, at 3 (emphasis added).

84 IMF, World Bank and WTO, *supra* note 66, at 4.

85 As Scott Lincicome, a free trader at the Cato Institute, has argued, politicians should be 'preaching adjustment and … helping with that adjustment' instead of 'promising workers that their old jobs are coming back'. Markay, *supra* note 30.

86 Proponents of the establishment narrative often highlight the role of trade in lifting hundreds of millions out of poverty in developing countries, especially China. For a nuanced discussion, see V.F. Lang and M. Mendes Tavares, 'The Distribution of Gains from Globalization', IMF Working Paper WP/18/54, March 2018.

87 IMF, World Bank and WTO, *supra* note 66, at 4 (emphasis in original).

better communicate the benefits of open trade to a public that may become sceptical'.[88] The report also highlights efforts by national governments to publicize the benefits of trade.[89] Similarly, Timothy Meyer has argued that 'the long-term sustainability of the international trade regime depends on *convincing* … voters that liberalized trade is in their interest' and that '[e]conomic and legal policy debates are failing in this task'.[90]

To summarize, the establishment narrative makes both a positive and a negative case for the view that international trade facilitated by international economic agreements is beneficial for society and should not be impeded. The positive case is that the individual hardship of the adjustment process is justified by the benefits from trade, such as efficiency gains, more aggregate wealth, lower prices and more choice. The negative case is that protecting individual jobs through trade barriers would allow workers to collect rents at the expense of their compatriots – an unjustified transfer of wealth from consumers to workers in the protected industries. The establishment narrative's case for trade is hence a utilitarian one, looking to the greatest benefit for the greatest number. It is fundamentally at odds with the view that workers are entitled to specific jobs in the way suggested by the jobs-as-property metaphor. As such, the establishment narrative has rarely held much appeal to workers displaced by trade, who may well feel that the narrative fails to recognize what the 'mobility' that it calls for entails in practice – namely, uprooting their lives, leaving their communities and, in some cases, disrupting their families.

C The Critical Narrative

The critical narrative accepts the establishment narrative's central argument that trade has the potential to increase aggregate welfare. However, it departs from the establishment narrative in three central respects. First, it submits that substantial parts of modern international economic agreements are not concerned with removing obstacles to trade but, rather, with the protection of assets and the elimination of regulatory differences. The narrative submits that these provisions can fundamentally change the distributive effects of international economic agreements in a way that the establishment narrative fails to recognize. Second, whereas both the Trump narrative and the establishment narrative focus on the distributive effects of trade agreements on different groups of workers, the critical narrative submits that, in order to fully grasp the impact of international economic agreements, we need to account for their impact on the relationship between the different factors of production and, in particular, the relationship between the owners of capital, on the one hand, and labour, on the other hand. Finally, the critical narrative suggests that we cannot grasp the distributive consequences of international economic agreements unless we consider them on a transnational scale.

88 *Ibid.*

89 *Ibid.*, at 21.

90 Meyer, 'Saving the Political Consensus in Favor of Free Trade', 70 *Vanderbilt Law Review* (2017) 985, at 1000 (emphasis added).

There is no single coherent articulation of this narrative, but it finds expression in the views of a number of stakeholders and academic commentators. Proponents of this narrative frequently note that trade agreements have changed fundamentally over the course of the past three decades. For example, Dani Rodrik argues that seeing trade agreements as 'efficiency-enhancing policies that may nevertheless leave some people behind' could be justified 'if recent trade agreements were simply about eliminating restrictions on trade such as import tariffs and quotas'.[91] However, Rodrik submits, 'the label "free trade agreements" does not do a very good job of describing' what recent international economic agreements 'actually do'.[92] He notes that modern agreements cover subjects such as 'regulatory standards, health and safety rules, investment, banking and finance, intellectual property, labor, the environment'. On these subjects, Rodrik argues, 'trade agreements are shaped largely by rent-seeking, self-interested behavior on the export side' and may well 'produce welfare-reducing, or purely redistributive outcomes under the guise of free trade'.[93]

Other economists make a similar point.[94] Paul Krugman provocatively declared that the Trans-Pacific Partnership (TPP) 'is not a trade agreement', claiming that it was 'off-point and insulting to offer an off-the-shelf lecture on how trade is good because of comparative advantage' in defence of the agreement.[95] In Krugman's view, the 'big beneficiaries' of the agreement were 'likely to be pharma companies and firms that want to sue governments'.[96] In a similar vein, Dan Ciuriak has argued that the protection of property rights, and, in particular, intellectual property rights, has become so central to modern international economic agreements that they are best described as 'asset value protection agreements' rather than free trade agreements.[97] Ciuriak submits that these agreements are designed 'to allow a corporation to optimize the terms of its international engagements and, thus, to maximize the value of its assets, in particular its IP [intellectual property] assets'.[98] And the American Federation of Labour

[91] Rodrik, 'What Do Trade Agreements Really Do?', 32 *Journal of Economic Perspectives* (2018) 73, at 74.

[92] *Ibid*.

[93] *Ibid*., at 75–76.

[94] This perspective has also been picked up in the media. See J. Barro, 'But What Does the Trade Deal Mean if You're Not a Cheesemaker?', *New York Times* (22 May 2015): 'Much of the controversy is because the T.P.P. isn't really (just) a trade agreement … there's a lot more reason to worry that some of the agreement's non-trade provisions would hurt the world economy even as they benefited specific industries'. T.B. Lee, 'The Trans-Pacific Partnership Is Great for Elites. Is It Good for Anyone Else?', *Vox* (7 October 2015): 'As opportunities for trade liberalization have dwindled, the nature of trade agreement has shifted. They're no longer just about removing barriers to trade. They've become a mechanism for setting global economic rules more generally.'

[95] P. Krugman, 'This Is Not A Trade Agreement', *The Conscience of a Liberal: New York Times Blog* (26 April 2015). Trans-Pacific Partnership Agreement between the Government of Australia and the Governments of Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States of America and Vietnam 2016, [2006] ATNIF 2.

[96] Krugman, *supra* note 95.

[97] D. Ciuriak, 'A New Name for Modern Trade Deals: Asset Value Protection Agreements', *Centre for International Governance Innovation* (11 April 2017); see also Abbott, 'Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework', 22 *Vanderbilt Journal of Transnational Law* (1989) 689.

[98] Ciuriak, *supra* note 97, at 2.

and Congress of Industrial Organizations (AFL–CIO) begins its recommendations on the NAFTA renegotiations with the observation that 'trade deals are not simply about reducing tariffs and quotas'; it faults the proponents of the establishment narrative for 'extolling the virtue of trade in general rather than the specific impacts of the rules in question'.[99] The AFL–CIO underscores that 'working people's opposition to most trade deals since NAFTA is not now, and never was, about withdrawal from international commerce or opposition to "trade" per se'. Instead, the AFL–CIO declares its opposition to 'a set of rules made largely by and for global corporations that use the United States as a flag of convenience'.[100]

The common thread in the arguments of the proponents of the critical narrative is that modern international economic agreements 'produce economic consequences that are far more ambiguous than is the case of lowering traditional border barriers' and that 'their welfare and efficiency impacts are fundamentally uncertain'.[101] The critical narrative thus faults the establishment narrative not so much for being wrong but, rather, for missing a large part of the story. While the proponents of the establishment narrative may be correct about purely trade-liberalizing agreements, as soon as other subjects are brought into the mix, international agreements 'can end up producing large redistributive consequences with few efficiency gains'.[102]

The proponents of the narrative largely concur on the subject matter with the most significant potential for distributive effects: intellectual property rights and investment protection, especially when enforceable through investor–state dispute settlement (ISDS). Ciuriak argues that improved compliance with US intellectual property standards in foreign markets would increase the rates of return to US capital by several hundred billion US dollars over the coming decades – a figure that dwarfs the estimated effects of international economic agreements 'on conventional measures of economic performance such as GDP [gross domestic product] or economic welfare'.[103] Rodrik cites the massive 'transfer of rents' from the public health budgets of developing countries to Northern pharmaceutical companies in the wake of the entry into force of the TRIPS Agreement as an example.[104] And, writing in the *New York Times*, Josh Barro observes that '[i]t's not obvious what copyrights that persist decades after an author's death are doing to promote the creation of excellent literary works, rather than just enrich owners of capital at the expense of readers and viewers'.[105] With respect to investment protections, Ciuriak notes that provisions that prohibit host countries from

99 American Federation of Labour and Congress of Industrial Organizations (AFL–CIO), Making NAFTA Work for Working People (2017), at 1.

100 *Ibid.*

101 Rodrik, *supra* note 91, at 76.

102 *Ibid.*, at 83.

103 Ciuriak, *supra* note 97.

104 Rodrik, *supra* note 91, at 77; Abbott and Reichman, 'The Doha Round's Public Health Legacy: Strategies for the Production and Diffusion of Patented Medicines under the Amended TRIPS Provision', 10 *Journal of International Economic Law* (*JIEL*) (2007) 921, at 951–952. Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, 1869 UNTS 299.

105 Barro, *supra* note 94.

imposing conditions on investments 'prevent leakage – i.e., positive spillovers from the perspective of the country in which the investment is being made – thus enhancing the returns to the investor while reducing the benefits to the investee'.[106]

Proponents of the third narrative are rarely opposed in an outright way to the inclusion of provisions on intellectual property, investment[107] and other subjects with potentially large distributive implications, such as disciplines on the management of cross-border capital flows[108] and regulatory harmonization, in international economic agreements. However, they doubt that trade negotiators, as well as observers who reflexively support these agreements, are conducting a careful analysis of the distributive consequences of these provisions and are striking the right balance between the competing interests involved.[109] Given the large potential rents at stake, proponents of the narrative are particularly concerned about the influence of interest groups who stand to benefit from strong intellectual property and investment protections on the negotiating position of countries such as the USA.[110]

The critical narrative also draws attention to the way in which international economic agreements increase the bargaining power of the owners of capital as compared to labour. In its submission on the NAFTA renegotiations, the AFL–CIO argues that 'NAFTA's rules … benefit economic elites, making it easier for global companies to suppress wages, disrupt union organizing, and skirt clean air and water obligations by relocating or threatening to relocate production elsewhere'.[111] In particular, the AFL–CIO argues that:

[106] Ciuriak, *supra* note 97. For a more extensive discussion of the welfare implications of investment protections, see Guzman, 'Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties', 38 *Virginia Journal of International Law* (1998) 639, especially at 682–684; Guzman concludes: 'The rise of BITs [bilateral investment treaties] has reduced the market power held by developing countries, which, in turn, has reduced the benefits these countries can capture from any particular investment. For this reason, the BIT regime may actually reduce the overall welfare of developing countries' (at 683).

[107] I should note that the vast majority of investment protections are provided in bilateral investment treaties, which are included in my definition of international economic agreements.

[108] Rodrik, *supra* note 91, at 77.

[109] See AFL–CIO, *supra* note 99, at 16: 'NAFTA must balance innovation with affordability of health care. The administration must work to ensure NAFTA's patent provisions do not become a corporate welfare program for brand-name pharmaceutical and medical device companies.'

[110] See Lee, *supra* note 94 (noting the close relationship between industry groups and USTR); Rodrik, *supra* note 90, at 85. The strength of these interest groups became palpable in the failure of the TPP to gain congressional approval: congressional opposition was driven by senators concerned about what they saw as insufficient additional protection for intellectual property rights (five to eight years instead of 12 years of data exclusivity for biologics), the carve out of tobacco-control measures from investor–state dispute settlement and the permission of data localization requirements. Despite the widespread perception that it was the populist backlash that led to the demise of the TPP, the specific issues that drove congressional opposition, at least on the side of the Republican majority, were corporate interests rather than worker interests. See J. Caporal, 'Hatch-Obama Call Fails to Yield Biologics Deal; Lame Duck Hopes Still Alive', *Inside US Trade* (16 June 2016); J. Caporal and J. Leonard, 'Trade Panel Touts TPP Data Fix; USTR Discusses Implementation Plans', *Inside US Trade* (15 July 2016); 'Reichert Says about 15 Republicans Will Oppose TPP over Tobacco', *World Trade Online Daily News* (3 December 2015).

[111] AFL–CIO, *supra* note 99, at 2.

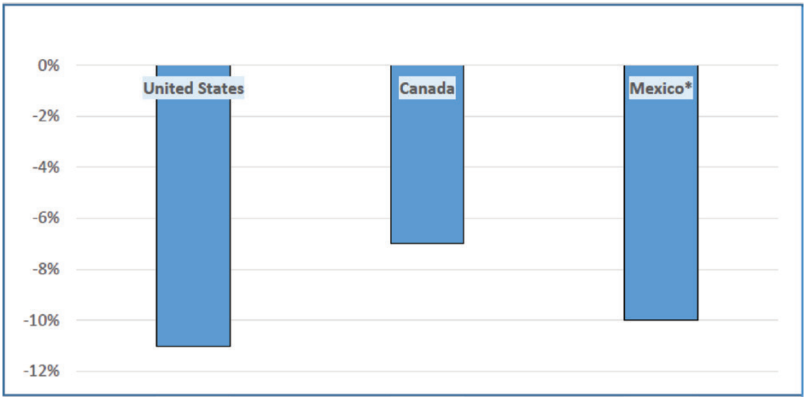

Figure 1: *Decline in Labor Share of Income, 1970–2014. Reprinted from AFL–CIO, Making NAFTA Work for Working People (2017) at 24, based on data from the International Labour Organization and the Organisation for Economic Co-operation and Development (OECD). The data from Mexico is for the 1995–2012 period.*

> by providing incentives that make offshoring decisions more attractive (including ISDS [investor–state dispute resolution], guaranteed market access, excessive intellectual property protections and a low-standards regulatory framework), these deals provide added leverage for employers to actively hold down wages and standards by 'predicting' workplace closures and offshoring of jobs if workers form a union or refuse to give back hard-won wages and protections during negotiations.[112]

On the other hand, the AFL–CIO notes: 'NAFTA provides no effective tools to raise wages', making the rules 'skewed and in dire need of rebalance.'[113] It highlights that, since the conclusion of NAFTA, 'wages in Mexico have lost purchasing power, and the U.S.-Mexico wage gap actually has increased'.[114] The AFL–CIO asserts that, as a result of trade agreements like NAFTA 'dragging down taxes, wages and standards towards their lowest level within the trade bloc', the income distribution in all three NAFTA countries has 'become more unequal as capital captures an ever-larger share and workers an ever-smaller share' (see Figure 1).

In its concern about companies relocating jobs, the critical narrative has echoes of the Trump narrative.[115] However, whereas the Trump narrative pits workers in developed and developing countries against each other, the critical narrative looks at their interests collectively. As noted above, the Trump narrative does not acknowledge wage differentials as a legitimate form of comparative advantage; hence, any movement of industries from developed to developing countries constitutes 'stealing' and is attributed to cheating. By contrast, the critical narrative acknowledges that 'developing

112 *Ibid.*, at 32.
113 *Ibid.*, at 2.
114 *Ibid.*, at 33.
115 The AFL–CIO also shares Trump's concern about the US trade balance. See *ibid.*, at 31–32.

countries should be able to attract investment based on a comparative wage advantage';[116] it only insists that producers in developing countries 'should not benefit from wages that are artificially low due to labor repression'.[117] The critical narrative is thus not concerned about developing countries 'stealing' jobs from developed countries; rather, it is concerned about corporations using labour repression to appropriate a greater share of the benefits from trade at the expense of workers in both developing and developed countries. Rather than conceptualizing jobs as being akin to property (as the Trump narrative holds) or as simply a value-creating activity (as the establishment narrative sees it), the critical narrative highlights how international economic agreements affect the power relations in which jobs are embedded.

The third narrative further argues that the mobility of capital facilitated by international economic agreements not only increases its bargaining power *vis-à-vis* relatively immobile factors of production but also makes it harder for states to tax capital, resulting in an increased burden of taxation on labour. For Rodrik, the failure of international economic agreements to address 'global tax-and-subsidy competition' is the 'dog that does not bark' – evidence of the power of special interests to prevent the inclusion of provisions that would curtail their ability to play off one country against another, despite the 'high social returns' that effective regulation would yield.[118] In a related vein, the ALF–CIO argues that NAFTA has 'stimulate[d] a form of competition that tries to increase returns to capital at the explicit expense of wages and tax revenues'.[119] As evidence of this trend, the ALF–CIO highlights the decline in corporate tax rates throughout the developed world over the past two decades and notes that tax evasion and aggressive tax avoidance schemes have further depressed tax revenues (Figure 2).[120]

For the AFL–CIO, this loss of revenue has hampered the ability of the NAFTA parties to create broad-based growth through public investments in infrastructure.[121] The AFL–CIO points out that the under-investment in infrastructure in itself has distributive effects: infrastructure is available to benefit all and 'cannot be "captured"' by special interests. Moreover, the AFL–CIO cites evidence that infrastructure investment creates many jobs with pay above the national median wage and has 'huge spillover effects for the economy as a whole'.[122] On this view, the loss of tax revenue due to the tax competition facilitated by international

[116] Testimony of Jeffrey S. Vogt before the Senate Finance Committee, Hearing on U.S. Preference Programs: Options for Reform, 9 March 2010, at 1.

[117] *Ibid*; see also D. Rodrik, *Straight Talk on Trade* (2018), at xi–xii, who emphasizes the need to 'distinguish cases where low wages in poor countries reflect low productivity from cases of genuine rights violations' and argues that only the latter 'raise serious questions about distributive justice'.

[118] Rodrik, *supra* note 91, at 88.

[119] AFL–CIO, *supra* note 99, at 22.

[120] *Ibid.*, at 22, 26.

[121] *Ibid.*, at 24.

[122] *Ibid.*, at 25.

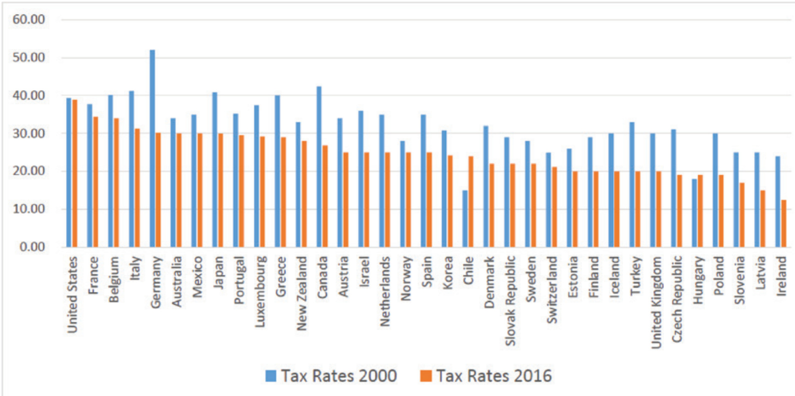

Figure 2: *Corporate Tax Rates in OECD Countries Compared (2000 and 2016). Reprinted from AFL–CIO, Making NAFTA Work for Working People (2017), at 23, based on OECD data.*

economic agreements deprives workers of the opportunities presented by larger public investments in infrastructure.

The proponents of the critical narrative rarely spell out exactly how the benefits and costs of international economic agreements should be distributed. However, the narrative is animated by a sense that the current distribution of benefits and costs deviates from normative desirable benchmarks. When the proponents of the narrative argue that legal protections of intellectual property and other investments afford 'rents' to capital owners, they suggest that the returns that these provisions allow capital owners to earn are above a 'normal' benchmark – say, the level of remuneration that would be required to reward innovation and encourage investment. Advocates who are concerned that international economic agreements provoke a race to the bottom with regard to labour rights and environmental standards similarly target the 'excess' returns that corporations derive from inadequate enforcement of those standards in developing countries, as compared to a baseline where labour rights – including the right to collective bargaining – and environmental standards are protected in all trading partners. Concerns about tax competition are also animated by a particular view of an appropriate distribution of the tax burden as between corporations and workers, just as complaints about 'under-investment' in infrastructure rely on a particular conception of how much should be spent on public infrastructure. This form of sometimes explicit and often implicit benchmarking represents the normative core of the critical narrative.

In sum, the critical narrative draws attention to the distributive effects of international economic agreements on different factors of production on a transnational scale. The narrative does not deny the legitimacy of shifts in the international distribution of labour to reflect comparative advantage. However, it argues that, apart from trade liberalization, the protection of assets has become a significant and perhaps the primary function of international economic agreements, with distributive effects that are heavily skewed towards the owners of capital. The narrative views jobs as part

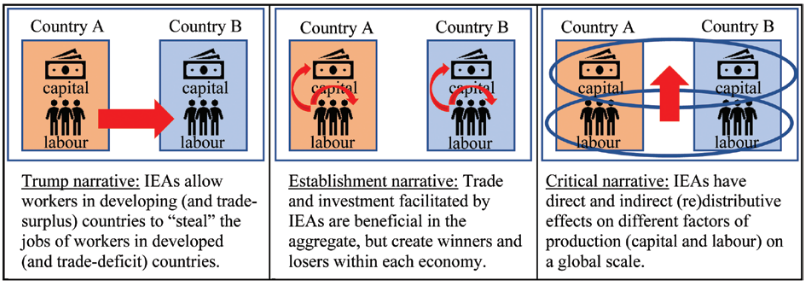

Figure 3: *Comparison of Three Narratives about Winners and Losers from Globalization*

of a power relationship between corporations and workers and highlights how international economic agreements – by regulating some subject matter and not others – affect these power relations, thereby shifting the gains from trade in ways that deviate from normatively desirable benchmarks.

D *Comparing the Three Narratives*

Figure 3 provides a side-by-side comparison of the three narratives about who wins and loses from the trade and investment flows facilitated by international economic agreements.

There is some overlap between the three narratives. For example, there is considerable agreement on the segments of the population that all three narratives identify as the losers from globalization, although they highlight different reasons for those losses (unfair practices of developing countries, a relative decrease in demand for low-skilled labour and labour's weakened bargaining position, respectively). One way of visualizing both the areas of overlap and the differences between the three narratives is to map them onto what is probably the most-discussed chart of the current era of globalization backlash: Branko Milanović's 'elephant curve' of global income growth from 1988 to 2008 (see Figure 4).[123] The superimposed arrows indicate whom each narrative sees as the winners (endpoint of the arrow) and the losers (origin of the arrow) from globalization.

A further way to illustrate the difference between the three narratives is to consider how they are invoked to shed light on a concrete incident of mass layoffs. In October 2016, the Rexnord Corporation, a manufacturer of ball bearings and other steel products, announced that it would close its factory in Indianapolis and move production to plants in Monterrey, Mexico and McAllen, Texas.[124] The company asked

[123] I owe the idea of mapping the narratives onto the elephant curve to Anthea Roberts. See A. Roberts, 'Being Charged by an Elephant: A Story of Globalization and Inequality', *EJIL: Talk!* (19 April 2017), available at www.ejiltalk.org/being-charged-by-an-elephant-a-story-of-globalization-and-inequality/. Roberts sees two narratives at work (rather than three); she contrasts the Trump narrative with that of Bernie Sanders, which incorporates aspects of both the establishment narrative (focus on domestic redistribution) and the critical narrative (highlighting the effect of trade agreements on different factors of production). For a critical discussion of the role of the elephant curve in debates about the winners and losers from globalization (which ultimately endorses the critical narrative), see M. Steinbaum, 'Should the Middle Class Fear the World's Poor?', *Boston Review* (11 March 2016).

[124] See F. Stockman, 'Becoming a Steelworker Liberated Her. Then Her Job Moved to Mexico', *New York Times* (14 October 2017).

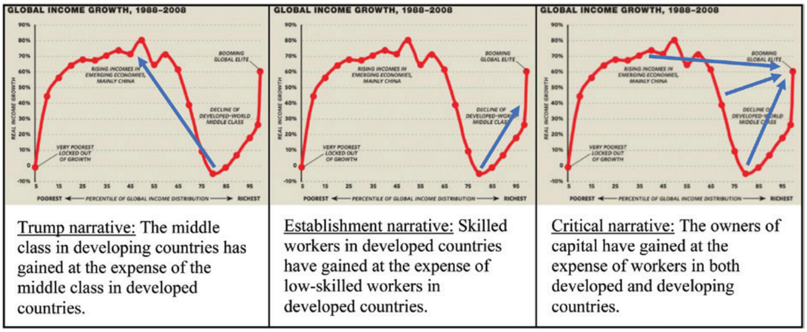

Figure 4: *The Narratives as Competing Explanations for Trends in Global Income Growth. Adapted from M. Corak, 'Worlds of Inequality', The American Prospect (18 May 2016), available at http://prospect.org/article/worlds-inequality (based on the graph originally published in B. Milanović, Global Inequality: A New Approach for the Age of Globalization [2016], at 11).*

the workers at the Indianapolis plant to train their replacements in Mexico, offering those who agreed the opportunity to stay in their jobs for a few additional weeks and to earn extra pay.[125] The *New York Times* documented the reactions of workers to this offer in a documentary. The documentary focuses on the falling out between Mark Elliott and John Leonard, who were co-workers at the plant as well as friends, over the decision whether to accept the offer. The difference between the first and the third narrative plays out in their diverging reactions. Mark decides to accept the offer to travel to Mexico to train his replacement, provoking disbelief and outrage from some of his colleagues ('you're really going to Mexico? … they're taking your jobs!').[126] His colleague John refuses to train the Mexican workers. He reports that seeing the trainees in the plant gave him 'this sour feeling in my belly' and explains: 'Look, I'm not a bad guy, I'm just an old man who doesn't want to lose his job'.[127] It is hard to avoid the impression that John and those of his colleagues who react with disgust to Mark's decision at some level blame the Mexican workers for the loss of their jobs ('I'm not helping someone take my job away', John says at one point)[128] or at least see them as the primary beneficiaries of the move – a perspective that is consonant with the Trump narrative, which firmly places the agency, as well as the gains, with foreigners who are 'stealing' US jobs.

Mark and some other colleagues take a different view. Mark highlights that it was the corporation that decided to shut down the Indianapolis operation. Mark appears to feel no animosity towards the Mexican workers, noting that 'the company is giving them the jobs'. One of his colleagues implies that the corporation will be the main beneficiary of the move: '[I]f you're gonna pay somebody less than three dollars an hour to do what we do … they're not gonna cut the price to the customer, the customer

[125] McDonald, Kessel and Woo, *supra* note 23.
[126] *Ibid.*, at 2:44.
[127] *Ibid.*, at 11:35.
[128] *Ibid.*, at 7:05.

is gonna pay full price if not more.'[129] In other words, these workers seem to suspect that the US $30 million that the company hopes to save by moving jobs from a place where workers earn up to $25 to a place where they earn $3–$5 will largely end up in the pockets of the shareholders rather than consumers. And the disbelief with which these US workers mention the $3 wage suggests that they do not see the Mexican workers as 'winners', since they will struggle to survive on that wage.[130] In sum, Mark and some of his colleagues see the events leading to their job losses primarily through the lens of the third narrative; they see their corporation taking good US jobs and making them into bad Mexican ones,[131] all for the benefit of its shareholders.

The second narrative surfaces in the documentary only towards the end, when Mark considers his options: 'What am I gonna do? … I have no real skills, am I gonna go back to school? Who's gonna hire me? I like to work with my hands, I like to … you know, work with my hands.'[132] While the second narrative appears to have little appeal to the workers involved, it asserts its prominence in a town hall discussion with experts on policy responses to the layoffs.[133]

3 Implications for the Redesign of International Economic Agreements

The three narratives about winners and losers from globalization have fundamentally different implications for the (re)design of international economic agreements. In this section, I will use the narratives to explain the logic of negotiating proposals that have been advanced by proponents of the respective narratives. Some of these proposals have already been embodied in international agreements, others are currently the subject of negotiations and yet others have only been articulated in academic articles.

A Implications of the Trump Narrative

The Trump narrative provides a number of starting points for the development of negotiating proposals, many of which have in fact been pursued by the Trump administration. Given the narrative's notion that jobs that have been lost due to trade liberalization can be 'brought back', an obvious strategy is to attempt to reverse the process of liberalization or, at the very least, prevent further liberalization. Trump's withdrawal of the USA's signature of the TPP on his first day in office falls into the latter category. Apart from the TPP, the Trump administration has so far refrained from dismantling

[129] *Ibid.*, at 8:38.

[130] For Mexican perspectives on this issue, see F. Stockman and M. Vega, '"We're Competing against Everybody Just Like You": Voices on Manufacturing in Mexico', *New York Times* (27 December 2017).

[131] To paraphrase Canadian union leader Jerry Dias. See J. Dias, 'NAFTA Took Good Canadian Jobs and Made Them Bad Ones in Mexico', *Huffington Post* (30 August 2018), available at www.huffingtonpost.ca/jerry-dias/nafta-took-good-canadian-jobs-and-made-them-bad-ones-in-mexico_a_23189630/.

[132] McDonald, Kessel and Woo, *supra* note 23, at 12:34.

[133] See F. Stockman, 'Looking at Blue-Collar Factory Jobs in the Rearview Mirror', *New York Times* (29 December 2017).

existing trade agreements, though it has used the threat to do so on multiple occasions in an attempt to extract bargaining leverage in renegotiations.[134] Instead, the administration has made unprecedented use of the entire range of instruments to increase protection that is available under existing agreements; while the aggressive pursuit of trade remedy investigations has been an ordinary feature of US trade policy for decades, the Trump administration has also used the much more rarely employed instrument of safeguards (against imported washers and solar panels) and has broken a taboo by invoking provisions meant for national security crises in order to protect the US steel and aluminium industries. Moreover, in its relationship with China, the Trump administration has shown a willingness to act completely outside the framework of the international trade regime. And, finally, the administration has renegotiated both the Korea–United States Free Trade Agreement and NAFTA with a view to reversing some of the trade liberalization provided for under those agreements.[135]

The tariffs on steel and aluminium – intermediate goods that find their way into many US products, thus making US products less competitive – have provoked particular consternation among commentators. The Trump narrative provides a clue as to what appears as the administration's obsession with the steel industry. The narrative's emphasis on 'bringing back' old jobs – as opposed to creating jobs that have not existed before – can explain the administration's focus on traditional blue-collar jobs held predominantly by white men, as opposed to the jobs in which most Americans are now employed – namely, manufacturing jobs of more recent vintage[136] and service sector jobs.[137] The Trump administration's single-minded focus on jobs in industries that have existed for decades only makes sense when one takes seriously the narrative's conceptualization of these jobs as akin to physical objects that have been 'stolen' and that can be recovered. The administration's trade policy – which punishes manufacturers and service providers who use imported inputs – is not so much an attempt to create employment *per se* but, rather, to turn back the clock and restore 'stolen' jobs to their rightful owners.

The Trump narrative's dismissive attitude towards the concept of comparative advantage and its use of the bilateral trade balance as a proxy for a 'fair' trading relationship also explains the administration's predilection for 'managing' trade – that is, using international agreements to determine the outcomes rather than just the rules

[134] Specifically, Trump repeatedly and publicly toyed with the idea of withdrawing from NAFTA and the Korea–United States Free Trade Agreement (KORUS), 10 February 2011, amended on 24 September 2018, available at https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text; the amended text is available at https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text.

[135] KORUS, *supra* note 134.

[136] See Markay, *supra* note 30; M. Bulman, 'US Solar Power Employs More People than Oil, Coal and Gas Combined, Report Shows', *Independent* (23 January 2017).

[137] Irwin, *supra* note 33; for a concrete example of how economies are changing, see P. Cohen, 'Deep in Trump Country, a Big Stake in Health Care', *New York Times* (16 October 2017), reporting about the importance of the Baxter Regional Medical Center for Baxter County, Arkansas. With 1,600 employees, the hospital employs more people than any other entity in the county.

for trade.[138] Thus, the Trump administration has used the threat of cancelling existing agreements (in the case of South Korea) or of imposing tariffs on steel and aluminium (in the case of Argentina and Brazil) to extract 'voluntary' export restraints from its trading partners. Korea and Brazil agreed to limit their steel exports to 70 per cent of previous exports, and Argentina accepted quotas of 135 per cent and 100 per cent for its steel and aluminium exports, respectively.[139] Presumably, the Trump administration believes that quantitative restrictions will affect the trade balance more reliably (provided there is no retaliation against US exports) than tariffs, which merely make the imported product more expensive. Thus, they represent a tool to tilt the trade balance towards the USA.

In the context of the NAFTA renegotiation, the US administration proposed similarly blunt instruments to reserve a greater share of auto sector jobs for the USA. Specifically, it attempted to change the rules of origin that determine when a good is eligible for duty-free access to the NAFTA parties in a way that would lead to higher US content in autos and auto parts produced in the free trade area. Under the original NAFTA, autos and auto parts have been eligible for duty-free entry into the NAFTA parties when 62.5 per cent of their value had been added in the NAFTA region. In its original proposal in the NAFTA renegotiations, the USA demanded to increase the regional value content to 85 per cent and to add a requirement of 50 per cent US content for duty-free access to the US market.[140] According to sources who were briefed on the proposal, USTR Lighthizer's aim was to '"make it as expensive as possible" for auto companies that produce in Mexico'.[141]

Canada and Mexico rejected the US proposal of a 50 per cent US content requirement outright since it ran counter to the very idea of a free trade agreement. In response, the USA began to promote a 'substitute' for the US content requirement[142] – namely, a framework that would only allow cars to satisfy the regional value content requirement (and thus access the NAFTA parties' markets duty-free) if certain critical components were 'made by workers earning a wage of at least $15 per hour'.[143] According to observers privy to the proposal, it was designed to achieve 'the same objective' as the original US proposal and would 'de facto shift production to the U.S.' by ensuring that 'important stuff [is] made by high-wage people'.[144] The aim of Lighthizer's proposal, in the view of industry sources, was to 'alter existing supply chains by forcing more production into the U.S.'.[145] This is in line with the Trump narrative's diagnosis

[138] See Ciuriak, 'NAFTA Renegotiation: Rules-based or Outcome-based Trade?', 16 August 2017, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3020406.

[139] I. Hoagland, 'Navarro "Clarifies" Section 232 Plans, Says All Exempt Countries Will Be Hit with Quotas', *World Trade Online Daily News* (1 May 2018).

[140] J. Leonard, 'USTR Set to Demand 50 Percent U.S. Content in NAFTA Auto Rules of Origin', *Inside US Trade* (12 October 2017).

[141] *Ibid.*

[142] A. Panetta and J. Smith, 'Wages in Mexico Key to NAFTA Auto Talks', *The Record* (28 March 2018).

[143] J. Leonard, 'NAFTA Auto Talks Center on "Focused Value" Approach; Lighthizer Sticks to Wage Component', *World Trade Online Daily News* (6 April 2018).

[144] *Ibid.*

[145] *Ibid.*

that, to make things right for the losers from trade, manufacturing jobs have to be brought back to the USA, including by 'repatriating' international supply chains.[146] Indeed, some close observers of the US posture in the NAFTA renegotiations have described the US goal as 'trying to "force" companies to invest in the U.S.'.[147] Canada and Mexico ultimately agreed to include a 'labor value content' (LVC) requirement in the rules of origin for cars in the US–Mexico–Canada Agreement (USMCA).[148] Under the agreement, a 'passenger vehicle is originating', and, hence, eligible for duty-free entry into the territory of the other parties, 'only if the vehicle producer certifies … that its production meets' a specified LVC, which will rise to 40 per cent by 2023 and is based on a 'production wage rate' of 'at least US$16/hour'.[149]

Two other negotiating proposals by the Trump administration were similarly designed to increase the cost of investment in Mexico and thereby retain more employment in the USA. First, the USTR was seeking to give the NAFTA parties the possibility of opting in or out of ISDS[150] – a major departure from the current text of NAFTA, which gives investors from one NAFTA party the right to initiate arbitration against another NAFTA party for the violation of certain NAFTA provisions.[151] US investors have been the main beneficiaries of arbitrations under Chapter 11, whereas the US government has not lost a single case.[152] Lighthizer's rationale for abandoning compulsory ISDS was his conviction that US corporations that want to invest in Mexico should bear the political risk of doing so themselves (or buy political risk insurance) instead of expecting the US government to protect their investments through international agreements.[153] As Lighthizer has asked rhetorically, 'why is it a good policy of the United States government to encourage investment in Mexico?'[154] In the final text of the USMCA, the possibility of ISDS will be eliminated completely between the USA and Canada within three years of the termination of NAFTA 1994[155] and will be

146 Peter Navarro, quoted in Donnan, *supra* note 31; see also P. Haavardsrud, 'Why Trump's Trade War Makes Sense – If You're Trump', *CBC News* (7 July 2018), who cites economist Dan Ciuriak's interpretation of the national security tariffs on steel and aluminium: 'If you think [that industrial capabilities critical to the country's defence ought to be repatriated], then Trump putting tariffs on production inputs makes sense, because you're forcing the supply chain to come back inside the U.S. borders. … What they're doing is breaking up the U.S. corporations' integration into global supply chains.'

147 B. Fortnam, 'NAFTA Auto, Dispute Settlement, Sunset Clause Talks Move Forward', *Inside US Trade* (8 March 2018).

148 US–Mexico–Canada Agreement (USMCA), 30 November 2018 (not in force), Art. 4-B.7, available at https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between.

149 *Ibid.*

150 J. Caporal, 'USTR Sticks to ISDS Opt-In Proposal While Stakeholders Eye Other Options', *World Trade Online Daily News* (3 May 2018).

151 See NAFTA, *supra* note 5, ch. 11, s. B.

152 Canada has been the most frequently sued NAFTA party and has paid out an estimated CDN $219 million in compensation or as settlements. D. Healing, 'NAFTA's Chapter 11 Dispute Mechanism Too Costly for Canada at $314M, Says Report', *CBC.ca* (16 January 2018), available at www.cbc.ca/news/politics/chapter-11-report-ccpa-1.4489102.

153 'In His Own Words: Lighthizer Lets Loose on Business, Hill Opposition to ISDS, Sunset Clause', *World Trade Online* (19 October 2017).

154 *Ibid.*

155 USMCA, *supra* note 148, Annex 14-C, para. 3.

severely curtailed between the USA and Mexico, including by a requirement to exhaust domestic remedies.[156] Second, the US delegation demanded that the new NAFTA contain a 'sunset' provision that would automatically terminate the agreement after five years unless the three parties agree to renew it. Again, the only thinly veiled rationale for this provision was to expose companies considering investments in Mexico to the risk of losing access to the US market after five years, in the hope of swaying them to invest in the USA instead.[157] In the final text of the USMCA, the sunset was extended to 16 years, after which the agreement terminates 'unless each Party confirms it wishes to continue the Agreement for a new 16-year term'.[158]

Finally, the ambivalent attitude of the Trump administration to international economic agreements has been brought into sharp relief by the administration's attempts to address what the Trump narrative describes as China's 'cheating' or 'weapons of job destruction'. Members of the Trump administration have consistently argued that the WTO Agreement – the only international economic agreement to which both the USA and China are parties – is unable to address what the administration sees as the most objectionable 'mercantilist' policies and practices of the Chinese government – in particular, various forms of forced technology transfer.[159] After an investigation of Chinese practices, the administration decided to initiate a WTO dispute against China, while, at the same time, imposing unilateral tariffs inconsistently with WTO rules.[160] It has since suspended the WTO dispute and escalated its unilateral tariffs against China.[161]

In sum, the key tropes of the Trump narrative have profoundly shaped the Trump administration's approach to international economic agreements. In accordance with the jobs-as-property metaphor, the Trump administration has been focused on restoring 'stolen' jobs to US workers by putting a halt to further liberalization, renegotiating existing agreements to eliminate incentives for offshoring and exploiting the full range of instruments available under existing agreement to reinstate trade barriers. With respect to China, the Trump administration has been acting entirely outside the framework of its international trade obligations, demonstrating its conviction that international legal tools are inadequate to reverse 'the greatest jobs theft in history'.[162]

156 *Ibid.*, Annex 14-D.

157 'In His Own Words', *supra* note 153.

158 USMCA, *supra* note 148, Art. 34.7.

159 See U.S. Trade Policy Priorities: Robert Lighthizer, United States Trade Representative, Center for Strategic and International Studies, 18 September 2017, available at www.csis.org/events/us-trade-policy-priorities-robert-lighthizer-united-states-trade-representative: 'The sheer scale of [China's] coordinated effort to develop their economy, to subsidize, to create national champions, to force technology transfer, and to distort markets in China and throughout the world is a threat to the world trading system that is unprecedented. Unfortunately, the World Trade Organization is not equipped to deal with this problem.' See also Ross, *supra* note 49.

160 See USTR, 'Section 301 Fact Sheet', available at https://ustr.gov/sites/default/files/USTR%20301%20Fact%20Sheet.pdf.

161 The suspended dispute is *China – Certain Measures Concerning the Protection of Intellectual Property Rights* (DS542).

162 Trump, *supra* note 14.

B Implications of the Establishment Narrative

For the establishment narrative, there is nothing fundamentally problematic about international economic agreements as they currently exist. In fact, the establishment narrative is best understood as a sophisticated attempt – marshalling studies, graphs and economic theory – to defend the *status quo*. The reports by international organizations make no concrete suggestions to change international economic agreements, apart from urging further liberalization.[163] Instead, for the proponents of the narrative, helping the losers from globalization is primarily a task for domestic policy.

According to this view, states should use their policy instruments in the areas of taxation, social policy, education and industrial policy to redistribute the gains from trade and help the affected segments of the population to adjust to the changes in the economy. For example, the IMF–World Bank–WTO report cited above suggests that '[u]nderstanding the various factors driving dislocations is critical to designing appropriate *domestic* policies to address them'.[164] The report emphasizes that '[d]omestic policies are key', and it identifies 'early action to improve labor mobility' as a priority.[165] International economic agreements only play a limited role in facilitating this process; they simply need to provide the policy space (for example, by allowing for the imposition of temporary safeguards) that states need to implement their adjustment policies.[166]

Some academics are less sanguine about the prospect that the advanced economies will use domestic policy to compensate the losers from trade to the extent necessary to 'save ... the political consensus in favour of free trade'[167] and to 'restore ... trade's social contract'.[168] They argue that obligations 'to address economic inequality' by 'redistribut[ing] the gains from trade *within* countries' should be incorporated directly into trade agreements.[169] Timothy Meyer has suggested that trade agreements should include an 'Economic Development Chapter' that (i) would require states to report information about the distributional effects of trade and their plans for addressing them to an 'Economic Development Committee' composed of independent experts; (ii) would require them to spend a specific amount on redistributive policies; and (iii) would provide for enforcement mechanisms in case states fail to comply with these obligations.[170] While states would retain considerable leeway in deciding how and where to spend the funds earmarked for redistributive projects, Meyer highlights the importance of highly visible investments in areas such as education and infrastructure that

[163] IMF, World Bank and WTO, *supra* note 66, at 37–41.

[164] *Ibid*., at 4 (emphasis added).

[165] *Ibid*., at 6. For an analysis of different labour market adjustment policies, see Trebilcock and Wong, 'Trade, Technology and Transitions: Trampolines or Safety Nets for Displaced Workers?', 21 *JIEL* (2018) 509.

[166] IMF, World Bank and WTO, *supra* note 66, at 38: 'Temporary import safeguards are another policy measure that may be appropriate in exceptional circumstances, and when consistent with a country's WTO obligations.'

[167] Meyer, *supra* note 90, at 985.

[168] Garcia and Meyer, 'Restoring Trade's Social Contract', 116 *Michigan Law Review Online* (2018) 78.

[169] Meyer, *supra* note 90, at 990 (emphasis in original).

[170] *Ibid*., at 990–991.

would be able to counteract the 'perception that trade fuels inequality' and would help to 'rebuild a broad coalition in favor of international trade agreements'.[171] An even more far-reaching proposal by Meyer and Frank Garcia argues that trade agreements should provide for a financial transactions tax to raise the funds required for providing adjustment assistance.[172]

While these proposals sound radical, they remain anchored in the establishment narrative in several respects. First, Meyer's and Garcia's proposals do not attempt to address the distributive effects of international economic agreements directly – that is, by modifying the provisions of international economic agreements that produce those effects. The proposals thus accept – if only for pragmatic reasons[173] – the establishment narrative's basic proposition that compensation for the distributive effects of international economic agreements is best accomplished through domestic policies, such as trade adjustment assistance and investments in infrastructure and education; the only role for international agreements in their proposal is to mandate (and potentially fund) those policies.

Second, Meyer's and Garcia's proposals focus squarely on domestic inequality rather than on the transnational distributive effects of international economic agreements. Thus, Meyer faults attempts to 'raise labor and environmental standards in *developing* countries' and to eliminate investor–state dispute settlement as 'outward looking' and, hence, not 'advanc[ing] the core objective of ensuring that trade agreements improve economic equality' in developed countries.[174] While he recognizes that labour provisions 'are calculated to increase labor interests' share of the gains from trade', he sees them as an example of 'domestic rules on redistribution in the context of trade agreements' in developing countries.[175] Since Meyer is focused on how trade agreements can facilitate domestic redistribution in developed countries, he does not explore, for example, how labour provisions could address the distribution of power between different factors of production on a transnational scale.[176]

C Implications of the Critical Narrative

The critical narrative has more profound implications for the design of international economic agreements than the establishment narrative. To begin with, the narrative demands an assessment of the distributive consequences of all elements of

171 *Ibid.*, at 1024.

172 Garcia and Meyer, *supra* note 168, at 93.

173 In private correspondence, Garcia and Meyer have clarified that they focus on domestic redistribution in order to make their proposals more politically palatable and thus likely to be adopted. For work by Garcia that takes a broader perspective, see Garcia, 'Between *Cosmopolis* and Community: The Emerging Basis for Global Justice', 46 *New York University Journal of International Law and Politics* (2013) 1.

174 Meyer, *supra* note 90, at 990 (emphasis in original).

175 *Ibid.*, at 1006.

176 He notes that labour provisions, to the extent that they prevent a 'race to the bottom ... should in theory prevent some jobs in the developed countries from moving overseas to take advantage of lower standards and the associated production costs', but he finds labour provisions wanting for not requiring countries 'to tackle economic inequality directly' – that is, through transfers of funds. *Ibid.*, at 1006.

international economic agreements.[177] Rodrik suggests that economists – who would appear to be particularly well suited to this task – should 'rethink their default attitudes toward trade agreements' and potentially move from an attitude of reflexive support to a 'stance of rebuttable prejudice which should be overturned only with demonstrable evidence of their benefits'.[178] Similarly, the AFL–CIO urges 'robust debates about which economic policy choices are being removed from national control and why'.[179]

Like the Trump administration, it is in the context of the NAFTA renegotiations that the proponents of the critical narrative have spelled out the policy implications of their assessment of the distributive effects of international economic agreements in their most concrete form. As noted above, a key complaint of labour advocates has been that NAFTA has allowed corporations to depress wages by moving production to Mexico and has provided 'no effective tools to raise wages' in Mexico.[180] As Jerry Dias, the national president of Unifor, the largest private sector union in Canada, has put it, 'NAFTA took good Canadian jobs and made them bad ones in Mexico'.[181] Instead of punishing companies that move production to low-wage jurisdictions with import tariffs, as Trump originally proposed,[182] the focus of labour advocates has long been to raise the wages of workers in developing countries instead. Dias has repeatedly made a point of stating that the goal of Canadian unions is not to deprive Mexican workers of their jobs by bringing them back to Canada but, rather, to help them make their jobs better. Thus, Dias has argued that 'the reality is Mexican workers have been left behind with NAFTA. Canadian workers, American workers, we lost a lot of jobs, but the Mexican workers were never compensated for the jobs that they made [sic]'.[183]

While Dias has welcomed the Trump administration's proposal to add a wage component to the calculation of NAFTA's rules of origin,[184] his perspective on the ultimate goal of this negotiating proposal differs from that of the Trump administration. As noted above, the ultimate objective of the Trump administration is to 'force' companies to move jobs back to the USA.[185] By contrast, the guiding question for Dias – 'how do we help raise all workers' standard of living?'[186] – exemplifies the third narrative's focus on the relationship between capital and labour on a transnational scale.[187]

177 Ciuriak, *supra* note 97, at 6.
178 Rodrik, *supra* note 91, at 75, 89.
179 AFL–CIO, *supra* note 99, at 1.
180 *Ibid*., at 2.
181 Dias, *supra* note 131.
182 'Donald Trump', *supra* note 29, at 1:06.
183 Canadian Press, 'UNIFOR President Calls for Higher Mexican Wages under NAFTA', *YouTube* (3 September 2017), at 0:33, available at www.youtube.com/watch?v=t88BcxFzFF8.
184 Panetta and Smith, *supra* note 142.
185 Fortnam, *supra* note 146.
186 Canadian Press, *supra* note 183, at 0:52.
187 I should note that, while Dias' statements during the NAFTA renegotiations were very much in line with the critical narrative, his rhetoric shifted decidedly towards the Trump narrative when General Motors decided to close its plant in Oshawa, Ontario, in November 2018. See Delacourt, *supra* note 5.

The main remedy to the depressed wages in Mexico that labour advocates have proposed is to include strong and enforceable labour rights in trade agreements. According to Jeffrey Vogt, the reasoning behind linking trade and labour rights is that 'workers who are able to exercise these fundamental rights will be able to bargain collectively for better wages and working conditions, ensuring that the benefits of trade accrue not only to capital but also to labor'.[188] Since the early 1990s, the labour provisions of trade agreements concluded by the USA have become progressively more ambitious, both in terms of the substantive rights guaranteed by the agreements and in terms of the enforcement machinery. The first generation of agreements merely required the parties not to fail to enforce their own labour laws, even where those laws did not incorporate internationally recognized labour standards. Moreover, the enforcement procedures for labour provisions were primarily consultative in nature. A second generation raised the bar on substantive rights, obliging the parties to observe a set of internationally recognized minimum standards and making the provisions fully enforceable under the agreements' regular dispute settlement provisions. Finally, the US trade officials who negotiated the TPP under the Obama administration went even further, designing so-called 'consistency plans' with individual countries, which took the form of side agreements to the TPP and required the countries in question to make specific changes to their laws. In the case of the consistency plan with Vietnam, the plan even allowed the USA to impose sanctions without the need to resort to dispute settlement. These agreements reflect the 'state-of-the-art' of legal provisions inspired by the critical narrative and, therefore, deserve a more extensive discussion.[189]

In negotiating the TPP, US negotiators recognized that many countries fulfilled the requirements of internationally recognized labour standards in form but not in substance. Common phenomena are so-called 'white' or 'yellow' unions sponsored by companies, which do not effectively represent the interests of workers.[190] In Vietnam, the situation was somewhat different but equally problematic; the unions affiliated with the Viet Nam General Confederation of Labour, which is under the control of the Communist Party, maintain a monopoly on worker representation.[191] However, they failed to effectively defend workers' interests. As a result, workers regularly resorted to wildcat strikes. Because these strikes were illegal, their leaders were either arrested or refused to step forward and were hence unable to negotiate with employers, diminishing the effectiveness of the strikes. US negotiators recognized that the only way to remedy this situation was by forcing Vietnam to allow the formation of independent 'grassroots' unions, and this is exactly what the USA set out to do in the United States–Viet Nam Plan for the Enhancement of Trade and Labour Relations,[192]

188 Vogt, *supra* note 116, at 1.

189 Meyer, *supra* note 90, at 1005.

190 Panetta and Smith, *supra* note 142.

191 See Human Rights Watch, *Not Yet a Worker's Paradise: Vietnam's Suppression of the Independent Workers' Movement* (2009), at 6.

192 United States–Viet Nam Plan for the Enhancement of Trade and Labour Relations (US–Viet Nam Plan), 4 February 2016, available at https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labor-Relations.pdf.

a side agreement to the TPP that would have entered into force had the USA ratified the TPP.

The central obligation of the plan is contained in Article II.A.2:

> Viet Nam shall provide in its law and practice that grassroots labour unions may, if they so choose, form or join organizations of workers, including across enterprises and at the levels above the enterprise, including the sectoral and regional levels, consistent with the labour rights as stated in the ILO Declaration and domestic procedures not inconsistent with those labour rights.

The plan proceeds to lay out precisely which provisions of its Labour Code[193] and Trade Union Law[194] Vietnam will have to change to come into compliance with this obligation, addressing matters such as guarantees for the autonomy of grassroots unions,[195] the collection of fees by unions, the selection of union officials[196] and the approval procedures for strikes[197] in considerable detail. It further specifies the institutional reforms that Vietnam needs to undertake to provide adequate administrative support and supervision of the implementation of the plan.[198]

Finally, the plan provides for an elaborate review mechanism, including a Senior Officials Committee composed of representatives of the USA and Vietnam[199] and a Labor Expert Committee, which has all the trappings of a dispute settlement panel and which is tasked with issuing regular reports.[200] Most significantly, it allows the USA, should it not be satisfied after five years that Vietnam has complied with the above-quoted obligation, to 'withhold or suspend any tariff reductions that are scheduled to come into force thereafter'.[201] If Vietnam disagrees with this determination, the burden is on Vietnam to initiate dispute settlement proceedings.[202]

After the plan became public, it provoked some resistance among Republican members of the US Congress, who felt that 'the U.S. should not be promoting the formation of unions in other countries'. As one representative put it, 'look, we're not about union-building in other countries. ... We want to make sure that workers are protected and that they're treated fairly, but ... it's not the United States' job to build unions in other countries'.[203] The critical narrative provides

193 Labour Code, Law no. 10/2012/QH13, 18 June 2012, available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91650 (in English).

194 Law on Trade Union, Law no. 12/2012/QH13, 20 June 2012, available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91648 (in English).

195 US–Viet Nam Plan, *supra* note 192, s II.B.

196 *Ibid*., s II.D.

197 *Ibid*., s II.G.

198 *Ibid*., Part III.

199 *Ibid*., s V.A.1.

200 *Ibid*., s V.B.3. The committee is composed of an independent chair (such as a representative of the International Labour Organization) and two members appointed by Vietnam and the United States, who must not be 'affiliated with or taking instructions from either government' and 'shall have expertise in international labour standards'.

201 *Ibid*., s VIII.3.

202 *Ibid*., s VIII.4.

203 'Reichert: GOP Members Object to Vietnam Labor Plan as Union Building', *Inside US Trade* (10 December 2015).

a different perspective. On this view, international economic agreements already profoundly affect the bargaining power of the different factors of production in a variety of ways. Provisions such as the US–Vietnam labour consistency plan only attempt to rebalance the skewed effect of other provisions of international economic agreements – such as provisions on market access as well as intellectual property and investment protections – on the power relationship between the owners of capital and workers.

Another proposal advanced by proponents of the critical narrative would allow states to increase tariffs on products that are artificially low-priced due to labour repression or the violation of environmental standards in the producing country. These 'social dumping' determinations could either be made as part of ordinary anti-dumping investigations or they could be subject to parallel procedures. The EU has taken a modest step towards adopting the first model in the latest version of its anti-dumping regulation: the regulation encourages the Commission to 'take … into account' international labour and environmental standards when 'assessing the existence of significant distortions'[204] and instructs the Commission to give preference to 'countries with an adequate level of social and environmental protection' in choosing third country benchmarks.[205] Gregory Shaffer has sketched the outlines of the second model: a *sui generis* procedure for allegations of social dumping that would allow countries to levy extra duties where (i) labour rights violations in another country coincide with (ii) a volume of imports from that country that injures a domestic industry.[206] Whereas the EU modified its approach unilaterally, Shaffer envisions that the use of his procedures will be explicitly authorized and disciplined by international economic agreements.[207]

Proponents of the critical narrative also demand the inclusion of provisions in international economic agreements that are designed to ensure that the state can reappropriate a greater share of the profits that multinational corporations derive from international trade through taxation. Thus, the AFL–CIO has argued that a renegotiated NAFTA should include provisions to 'combat tax havens and tax avoidance'.[208] The AFL–CIO's proposals build on the OECD's work on base erosion and profit shifting; specifically, the AFL–CIO suggests that the NAFTA parties should require large corporations to implement country-by-country reporting in accordance with OECD guidelines.[209] The AFL–CIO further argues that the agreement should require the parties to prohibit 'secret tax deals', to publicize all tax concessions made to companies and to address 'transfer mispricing schemes'.[210] In the AFL–CIO's view, the market access guarantees and investment protections granted by NAFTA 'facilitate' tax avoidance,

204 Council Regulation 2017/2321, OJ 2017 L 338/1, Recital 4.

205 *Ibid.*, Art. 1.

206 Shaffer, *supra* note 7, at 134–138. Shaffer describes this approach as a 'hybrid that combines anti-dumping procedures with a safeguard remedy' (at 137).

207 *Ibid.*, at 137–138.

208 AFL–CIO, *supra* note 99, at 25.

209 *Ibid.*, at 26, referring to Organisation for Economic Co-operation and Development, *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13* (2017).

210 AFL–CIO, *supra* note 99, at 26.

and a renegotiated NAFTA should therefore be used to redress this effect and thereby rebalance the burden of taxation that falls on the owners of capital compared to labour.[211] The inclusion of provisions regulating tax competition in a free trade agreement has also been discussed in the context of Brexit; following the United Kingdom's (UK) threat to turn itself into a tax haven if it does not get its way in trade negotiations with the EU,[212] there is a distinct possibility that the eventual UK–EU Brexit deal will include provisions on corporate taxation. Thus, the European Council has announced that a free trade agreement with the UK would have to 'encompass safeguards against unfair competitive advantages through, inter alia, tax, social, environmental and regulatory measures and practices'.[213]

Finally, a more radical proposal that addresses the concerns raised by the critical narrative envisions that international economic agreements could directly impose payment obligations on corporations that want to avail themselves of the additional protections afforded by the agreement.[214] Inspired by the discussion about how British financial institutions could retain their 'passporting' rights in the EU single market after Brexit,[215] Thomas Streinz has suggested to 'condition certain benefits transnational business actors receive from FTAs on obtaining a "free trade passport" in exchange for a fee'.[216] This proposal would provide a mechanism for states to use international economic agreements to re-appropriate some of the benefits that these agreements confer on individual corporations, thereby providing an opportunity to rebalance the distributive effects of international economic agreements.[217]

[211] Similarly, Rodrik has argued that, given the 'obvious cross-border externalities', using international economic agreements to impose 'disciplines on tax-and-subsidy competition would make excellent economic sense'. Rodrik, *supra* note 91, at 88.

[212] On the so-called 'Brexit tax haven threat', see P. Oltermann, 'Hammond Threatens EU with Aggressive Tax Changes after Brexit', *The Guardian* (15 January 2017).

[213] European Council, Guidelines Following the United Kingdom's Notification under Article 50 TEU (2017), para. 20, available at www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/.

[214] Streinz, 'Re-Embedding Liberalism: Introducing Passporting Fees for Free Trade', in A. Santos, C. Thomas and D. Trubek (eds), *World Trade and Investment Law Reimagined. A Progressive Agenda for an Inclusive Globalization* (2019) 225.

[215] J. Strupczewski and G. Baczynska, 'EU Holding Line Against Passporting for British Banks after Brexit', *Reuters* (31 January 2018).

[216] Streinz, *supra* note 214.

[217] While there are similarities between Streinz's proposal and the financial transactions tax suggested by Garcia and Meyer (see note 167 and accompanying text), I see a key difference: Streinz's proposal directly links the requirement to pay the fee to the receipt of benefits from an agreement, whereas Garcia's and Meyer's tax only has a tenuous link to the benefits that a company derives from a specific agreement. Streinz's proposal thus has an immediate impact on the distributive effects of the agreement; in the case of Garcia's and Meyer's tax, any such impact will be mediated by domestic policy choices on how to use the revenue raised by the tax.

4 Conclusion

How should we think about the winners and losers from globalization? This article has shown that there are at least three different answers to this question. The Trump narrative identifies the losers at home (blue-collar workers who have lost their jobs) and the winners abroad (the rising Asian middle class). The establishment narrative sees (mostly) winners and (temporary) losers in all economies. And, for the critical narrative, the owners of capital are winning, and the workers are losing out on a global scale. The three narratives also differ in how they explain the processes that bring about these results. The Trump narrative faults 'cheating' developing countries that 'steal' developed countries' jobs, aided and abetted by rigged or ineffective international economic agreements. The establishment narrative lays the blame at the feet of domestic policy-makers, who have failed to design effective adjustment policies. And the critical narrative identifies the provisions of international agreements themselves, as well as the negotiators who were either oblivious to their distributive effects or captured by corporate interests, as the culprits for labour's falling share of income.

Finally, the three narratives provide competing prescriptions for the redesign of international economic agreements. The Trump narrative provides the justification for abandoning agreements or renegotiating them in a way that will eliminate incentives for offshoring and will redirect investment to high-wage countries. The establishment narrative hopes for further liberalization, flanked by improved domestic policies to encourage labour mobility and ease adjustment; some proponents of the narrative see a role for international economic agreements to prod domestic policy-makers to adopt such policies or even to fund them. The critical narrative argues for a wholesale reassessment of the distributive consequences of international agreements on the different factors of production and advocates the inclusion of provisions to address those consequences in the agreements themselves.

The contestation between these three narratives is not one that can be resolved through empirical analysis.[218] Instead, I have suggested that the narratives contain irreducible normative elements. These are most evident in how the narratives conceptualize the relationship of individuals to their jobs. For the Trump narrative, jobs are akin to property, and (certain groups of) workers are entitled to their jobs, no matter the cost to others. Specifically, the Trump narrative prizes jobs held by US nationals over those held by foreigners and values traditional manufacturing jobs over newer

[218] This is not to say that proponents of the narratives are not willing to change their views, especially with respect to particular policies, in light of empirical evidence, though there seems to be a crucial difference between the narratives in this respect: the proponents of the establishment and critical narratives rely much more heavily on empirical evidence and are thus more likely to reconsider their positions in response to new empirical findings than proponents of the Trump narrative, at least some of whom rely more on their intuition than on theories and data. For example, Peter Navarro has famously said about his role in the Trump administration: 'My function, really, as an economist is to try to provide the underlying analytics that confirm his [that is, Trump's] intuition. And his intuition is always right in these matters.' Quoted in P. Coy, 'After Defeating Cohn, Trump's Trade Warrior is on the Rise Again', *Bloomberg* (8 March 2018). I thank Tony VanDuzer for his comments on this point.

manufacturing and service sector jobs. While many will find the nationalistic and gendered overtones of the jobs-as-property metaphor normatively problematic, I have also highlighted the emotional purchase that the metaphor derives from capturing the deep connection that many workers feel to their job, especially when it is bound up with their family history, their sense of identity and the viability of their community.

For the establishment narrative, jobs are no more than value-creating activities, and individuals should be expected to move on to new jobs when other workers can perform their previous jobs more efficiently. Hence, the establishment narrative does not share the Trump narrative's burden of having to justify why some people rather than others should hold certain jobs or why some types of jobs should be seen as being more valuable than others – the establishment narrative is agnostic as to who does what where. On the other hand, the assumption that income gains derived from wage increases and falling prices are fungible and that jobs are simply value-creating activities between which workers should be required to switch in line with reconfigurations of the international division of labour does not account for those non-monetary dimensions of economic life from which Trump's jobs-as-property metaphor derives much of its appeal.

For the critical narrative, the normatively significant aspect of jobs is the power relations in which they are embedded and which determine the conditions under which people work (especially their wages) and, ultimately, the distribution of the gains from trade between the owners of capital and labour. The critical narrative highlights the ways in which this distribution deviates from normatively desirable benchmarks.

A second normative point of contention between the narratives concerns the legitimacy of the processes that determine who does what in the global economy. The Trump narrative assesses the legitimacy of trading arrangements by their outcomes; the mere fact that a country may have a comparative advantage in a particular line of work cannot justify a trade balance tilted in its favour. By contrast, the establishment narrative embraces the fact that workers will have to be 'mobile' to adjust to trade as legitimate in light of the greater aggregate wealth produced by trade; it sees workers who owe their jobs to trade barriers as collecting unjustified rents at the expense of their compatriots. And while the critical narrative accepts the establishment narrative's case for open trade, it calls for a critical examination of how the provisions of international economic agreements redistribute wealth between corporations and workers. These distributive effects, the narrative suggests, may outweigh any efficiency gains achieved through the liberalization of trade.