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Recommended Citation

Raj Bhala, *Lessons About NAFTA Renegotiations from Shakespeare's Othello: From the Three Amigos to America as Iago?*, 33 Md. J. Int'l L. 38 (2018).

Available at: <https://digitalcommons.law.umaryland.edu/mjil/vol33/iss1/4>

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Lessons About NAFTA Renegotiations from Shakespeare's *Othello*: From the Three Amigos to America as Iago?

RAJ BHALA[†]

I. THREE AMIGOS RECAST AS IAGO, CASSIO, AND DESDEMONA

A. *Five Hallmarks of Iago*

The “Three Amigos” is a common characterization of relations among the North American countries,¹ particularly since 1 January 1994 when the North American Free Trade Agreement (“NAFTA”)² entered into force, superseding a deal between two buddies, Canada

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1. For example, “Three Amigos” is so common in the context of the annual trilateral of the American and Mexican Presidents and Canadian Prime Minister that Wikipedia identifies it as synonymous with the “North American Leaders’ Summit.” See https://en.wikipedia.org/wiki/North_American_Leaders%27_Summit.

2. 19 U.S.C. Section 3311.

and the United States, the Canada-United States Free Trade Agreement (“CUSFTA”),³ that had been in effect since 1 January 1989. For nearly all of the almost quarter century of NAFTA history, America, Canada, and Mexico enjoyed a stable and growing trade relationship, based on a healthy friendship.

Then Donald J. Trump was inaugurated on 20 January 2017, having won the Presidency in part with anti-NAFTA, and particularly anti-Mexico, vitriol. No longer did the common characterization of “Three Amigos” seem apt. As the Trump Administration NAFTA renegotiation goals emerged, that portrayal seemed quite misleading. Instead, Shakespeare’s great tragedy, *Othello*, provides characters to whom the three *NAFTA* Parties may be analogized, albeit loosely.⁴

The argument of this Article is that on the stage of NAFTA renegotiations, the Trump Administration has changed the script, casting America as Iago, and consequently putting Mexico in the role of Cassio, and Canada as Desdemona.

The transformation from Three Amigos to tragic figures is neither complete nor irreversible. But, it is grounded in hard-core, technical trade details, with America at the center of the plot of NAFTA renegotiations, as is Iago in *Othello*. There would have been no such renegotiations but for the scheming of candidate and now President Trump. He stirred the pot, as it were, in what was an otherwise undramatic, well-functioning, though not problem-free, relationship with Mexico and Canada.

Enmity, concealment, improvisation, omission, and corruption are the five hallmarks of Iago that render him infamous among Shakespeare’s characters. Iago hates Othello. Iago conceals the truth from all those around him. Iago is a master at improvisation to further his wicked plans. Iago omits material facts, thereby leading others astray. Finally, Iago corrupts the relationships of those who share the

3. Office of the United States Trade Representative, North American Free Trade Agreement (NAFTA), <https://ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta>.

4. WILLIAM SHAKESPEARE, *OTHELLO* [hereinafter *OTHELLO*]. The hallmarks of Iago are brilliantly explored by Professor Clare R. Kinney, of The University of Virginia, on which the discussion of these hallmarks draws. CLARE R. KINNEY, *SHAKESPEARE’S TRAGEDIES*, Lecture 7: *Othello* II—Monstrous Births, The Great Courses (The Teaching Company CD-ROM, 2007).

The analogy to *Othello* may be all the better if Richard Posner’s characterization of the play is accepted, namely, that like *Hamlet* and *Romeo and Juliet*, it “is at bottom a domestic tragedy,” whereas *Julius Caesar* and *Macbeth* are “political” tragedies. RICHARD A. POSNER, *LAW & LITERATURE* 111 (3d ed. 2009).

closest bonds.

Each hallmark is apparent in the Trump Administration's NAFTA renegotiating strategy. Trade negotiations always have had a theatrical character to them, characterized by: late-night talks on acrimonious issues among commercial allies and adversaries that thrust deadlines and ultimatums on each other; trade-offs among sectoral interests that sometimes at best are cynical and at worst irrational; and raw power asserted by the economically strong over the relatively impoverished. But, the drama this Administration has brought to NAFTA renegotiations is unprecedented for America's global theater company (otherwise known as the United States Trade Representative ("USTR")) and risks an unparalleled tragedy.

First, enmity towards Mexico's bilateral trade surplus with America motivates the Trump Administration's NAFTA renegotiation strategy. Second, that motivation conceals a corporatist agenda favoring certain powerful American business sectors, such as winter vegetable producers and e-commerce companies—an agenda the Trump Administration is advancing through secret talks with Mexico and Canada. Third, the very engagement in NAFTA renegotiations is an act of improvisation, tossing out most of the clear, final script from the Trans-Pacific Partnership ("TPP"), and concocting a new agenda for discussions. Fourth, the Trump Administration's NAFTA renegotiation strategy omits serious help for labor interests, an irony when juxtaposed with pledges Mr. Trump made both before and after entering the Oval Office. Fifth, the effect of renegotiations, at least thus far, has been to corrupt the relationships between America and Mexico, and America and Canada.

Again, by way of loose analogy, ever since Mexico committed itself to trade liberalization and economic reform in the mid-1980s, evidenced by its signing NAFTA on 17 December 1992,⁵ it has been a loyal partner of the United States. Loyalty, of course, is a defining virtue of Cassio, the lieutenant to Othello. Canada has supported warm trade relations with America since the 1989 CUSFTA, and indeed since the 1965 pact creating a free trade area in autos and auto parts.⁶ Despite disputes with America over softwood lumber and dairy products, Canada's support for free trade was staunch, redolent of that of Desdemona for Othello himself. The Trump Administration has poisoned the relationship between America and Mexico, and America

5. 19 U.S.C. Section 3311(a).

6. Jack Hervey, *Canada-U.S. Auto Pact – 13 Years After*, FEDERAL RESERVE BANK OF CHICAGO – ECONOMIC PERSPECTIVES 18 (July-August 1978).

and Canada, as did Iago with respect to Cassio and Othello, and with respect to Desdemona and Othello.

B. Substantive and Methodological Dimensions

Overall, the argument is an exercise in Law and Literature that, it is hoped, offers an enduring interdisciplinary methodology that transcends any particular trade deal or talks. How do classic literary works broaden and deepen the understanding of international trade negotiations, not in a syncretic that forces literature upon law, but rather in a synthetic way, drawing from literature into law, and vice versa? Applying the vices and virtues of the principal characters of *Othello* to the positions of the Trump Administration on technical trade issues in NAFTA renegotiations offers an insightful way to think about the changing (if not changed) relationships among the NAFTA Parties. Critically analyzing legal actors, institutions, and texts through the lens of novels, poetry, and drama can help reveal points about their nature and behavior that might not otherwise be apparent from studying them wholly in one dimension. Seeing international trade law texts, like NAFTA, as literature (that is, as literary acts), and seeing the parties to those texts as vulnerable to traits of characters in literature, may be enriching, and perhaps also entertaining.

Succinctly put, there are two important dimensions of this Article. The first dimension is substantive, arguing for an analogy most poignantly of American behavior in NAFTA renegotiations to that of Iago's in *Othello*. The second dimension is methodological—the recourse to Shakespeare's tragedy to appreciate better those renegotiations. The first dimension is not supposed to be a mere ornament, and the second dimension is not supposed to be a quixotic complication. Both dimensions are designed to broaden, deepen, and enliven comprehension—and if either or both entertains, so much the better. The first dimension is more fluid than the second, because the stage setting for international trade (whether NAFTA or some other trade deal) changes. Today NAFTA, tomorrow Brexit, and the day after tomorrow, the South Asian Free Trade Agreement (“SAFTA”). But, the opportunity for literary perspicacity persists, across NAFTA, Brexit, and SAFTA.

Is *Othello* the only Shakespearean tragedy to unmask analogies and distinctions pertinent to NAFTA or, for that matter, other trade agreements? Of course not. But, it is a good one for the reason Cambridge University Professor Tony Tanner identifies in his *Prefaces to Shakespeare*:

Hamlet could not have recourse to law. Othello, by contrast, is involved—embroiled is perhaps a better word—in law and legalism effectively from start to finish. The whole lexicon of “justice” pervades the play: arraignment and accusation; defense and pleading; testimony, evidence, and proof (crucial word); causes, vows, oaths; solicitors, imputations, and depositions—the law is, somehow, everywhere in the air. Since soldier Othello’s discourse is—initially—almost entirely martial and exotic, he is bound to go astray in this fog of forensic terminology, and of course he disastrously does. The third scene sees him accused of bewitching and seducing Desdemona by her father, Brabantio, though we should note that this is not a formally constituted court of law but a sort of improvised hearing in front of the Duke of Venice which takes place, like much of the play, misleadingly at night. Improvised law, and finally the grossest perversion of “justice,” are to become major themes of the play.⁷

So, too, is it with NAFTA renegotiations. Though there are no formal courtroom scenes, international trade law is “everywhere in the air” as American, Mexican, and Canadian trade negotiators huddle “at night” in non-transparent hotel conference rooms. America “accuses” the other NAFTA parties, especially Mexico, “vows” to “defend” its “causes,” with a “martial” style, it “improvises” proposals and “misleads,” pronouncements, and ultimately “perverts” economic “justice.”

If America, Mexico, and Canada are dressed as Iago, Cassio, and Desdemona in the theater of NAFTA renegotiations, who, then, is Othello in this drama? Perhaps the answer is whoever is being driven mad by Trump Administration trade policy.

7. TONY TANNER, PREFACES TO SHAKESPEARE 515–16 (2010) (emphasis added). See generally HAROLD BLOOM, WILLIAM SHAKESPEARE’S OTHELLO (2010) (containing literary criticism about Othello). Bloom also characterizes Iago as “the genius or bad angel of *Othello* and of Othello.” *Id.* at 1.

II. ENMITY: BILATERAL TRADE DEFICITS

“Men in rage strike those that wish them best....”

Othello, Act II, Scene 3, Line 206

(Speaking to Othello)

A. Iago’s Enmity

Iago is driven by hatred of Othello. This hatred is difficult to explain; indeed, it is irrational. Why does Iago so despise “the Moor”?⁸ The answer is peculiarly impenetrable.

In Act I, Scene 1, Iago speaks with Roderigo, a foolish, rival suitor of Othello for the hand of Desdemona. Iago tells Roderigo that Othello has marred Iago’s career prospects. Iago is the “Ensign” of Othello, meaning his “standard bearer,” or in modern military terms, the lowest-level ranking officer in a navy, or second lieutenant in an army. To be sure, Iago still is the number three to Othello, but he had hopes of being promoted to the rank of Lieutenant – hopes Othello dashed when he passed over Iago in favor of Michael Cassio. Iago characterizes Cassio as an inexperienced young nobleman, disparaging him as “a great arithmetician” who “never set a squadron in the field, [n]or the division of battle knows,” meaning Cassio is a theoretician lacking practical experience, and a “Florentine,” insinuating that as a non-Venetian, he is a foreigner.⁹

Yet, this detraction from the reputation of Cassio fails to explain why Iago hates Othello. It certainly fails to account for why Iago reeks destruction on him, Cassio, and Desdemona, out of all proportion to the rationalized grievance about Iago’s military promotion that Iago reveals to Roderigo. Perhaps that is why Iago proceeds to conjure up new reasons for his enmity. Yet again, rather than clarify, each new reason obfuscates. For instance, Iago’s first soliloquy occurs at the end of Act I, Scene 3. In it, he suspects Othello of having slept with his

8. The unflattering ethnic epithet, “Moor,” is matched by a pejorative racial depiction: [T]he play equivocates between Othello as Moor and Othello as Negro (“thick lips”). Elizabethans applied the word “Moor” indiscriminately to Africans rather than distinguishing as we do between North Africans and sub-Saharan Africans. *But this equivocation simply multiplies the prejudices against Othello....*

POSNER, *supra* note 4, at 479 (emphasis added) (citation omitted).

9. OTHELLO, *supra* note 4, at act 1, sc. 1, ll. 16–17, 19–20.

wife, Emilia:

I hate the Moor,
And it is thought abroad that 'twixt my sheets
H'as done my office. I know not if't be true,
But I for mere suspicion in that kind
Will do as if for surety.¹⁰

Iago treats suspicion as truth, thus fueling his hatred, when in fact there is no evidence in the text or action of the play of any romantic liaison between Othello and Emilia.

That suspicion leads to another reason for Iago's enmity, which he offers in his soliloquy at the end of Act II, Scene 1: Iago professes a sexual desire for Desdemona, which, if consummated, will settle the score with Othello for Othello having slept with his wife:

Now I do love her too,
Not out of absolute lust . . .
But partly led to diet my revenge,
For that I do suspect the lusty Moor
Hath leaped into my seat—the thought whereof
Doth, like a poisonous mineral, gnaw my inwards,
And nothing can or shall content my soul
Till I am evened with him, wife for wife;
Or failing so, yet that I put the Moor
At least into a jealousy so strong
That judgment cannot cure;¹¹ . . .

In the same soliloquy, Iago tosses still another rationale: "I fear Cassio with my nightcap too."¹² That is, Iago intimates Cassio has cheated on him by sleeping with his wife, Emilia.

10. *Id.* at act 1, sc. 3, ll. 377–81.

11. *Id.* at act 2, sc.1, ll 285–95.

12. *Id.* at l. 301.

Simply put, Iago offers too many reasons to hate Othello, substantiating none of them. Most, if not all, of them are false accusations of adultery (involving Emilia and Othello, and Emilia and Cassio), and he uses them to level the same charge at Desdemona and Cassio. In truth, Emilia is so concerned to please her husband, Iago, that – against her better instincts – she gives him Desdemona’s lost handkerchief. Surrendering the handkerchief proves quite literally to be fatally significant to facilitating Iago’s plot.

An irony embedded in this tragedy is Iago admission (when he says, as quoted above, “I know not if it be true”) that he does not know whether he is a cuckold, *i.e.*, a man whose wife is adulterous. What is left, what Iago is sure of, is his hatred of Othello and consequent passion to destroy Othello and all those around the Moor. The great English Romantic poet, Samuel Taylor Coleridge (1772-1834) summarized best the incarnation of destructive energy that is Iago: Iago, wrote Coleridge in his copy of *The Dramatic Works of Shakespeare*, is filled with “motiveless malignity.”¹³

B. Scenes of America’s Enmity

1. United States–Mexico Trade Deficit-Surplus

Similar to Iago’s “motiveless malignity,” American trade policy is driven by a mandate to negotiate “better deals,” grounded in no widely accepted economic or moral rationale other than “America First.”¹⁴ This policy generally, and its approach to all FTAs, including NAFTA in particular, is driven by enmity toward trade deficits.¹⁵ The

13. SAMUEL AYSCOUGH, *THE DRAMATIC WORKS OF WILLIAM SHAKESPEARE* (London, John Stockdale 1807) (photo reprint with commentary from the British Library) <https://www.bl.uk/collection-items/coleridges-annotated-copy-of-shakespeare> (Samuel Taylor Coleridge’s annotated copy). As the British Library explains,

“Coleridge’s well-known remarks on Iago are provoked by the villain’s final speech of Act 1. Responding to lines 1.3.380–404.” Coleridge writes:

The last Speech, the motive-hunting of motiveless Malignity—how awful! In itself fiendish—while yet he was allowed to bear the divine image, too fiendish for his own steady View.—A being next to Devil—only not quite Devil - & this Shakespeare has attempted—executed—without disgust, without Scandal!

Id. at 1050–51.

Coleridge seems to be suggesting that Iago’s wickedness is without clear provocation within the logic of the play. His villainy lacks a clear motive but arises from sheer delight in the suffering of others. This makes Iago ‘fiendish’ like the “devil,” yet disconcertingly human.

Id.

14. Raj Bhala, *Defining “America First” in the Trump Raj*, BLOOMBERG QUINT (Feb. 20, 2017, 4:54 AM), <https://www.bloombergquint.com/opinion/2017/02/18/defining-america-first-in-the-trump-raj>.

15. A pejorative view of Mexican immigrants is less directly connected with NAFTA

United States frequently decries “massive trade deficits.”¹⁶ The March 2017 Executive Order of President Donald J. Trump calls for an investigation of any country with which the United States has a bilateral trade deficit, targeting (*inter alia*) Mexico and Canada in particular:

Mexico has perhaps been the biggest beneficiary of NAFTA in relative terms. While Canada more than doubled exports to the U.S. to \$278 billion annually under the deal, Mexico’s exports surged seven-fold to \$294 billion. The U.S. had a \$63 billion trade deficit in goods and services with Mexico last year, compared with a \$7.7 billion surplus with Canada, according to the U.S. Bureau of Economic Analysis. The U.S. has made reduction of trade deficits a top priority of its NAFTA overhaul.¹⁷

To describe the existing deficit, the United States posits a causal link between an excess of merchandise imports over exports, and the erosion of domestic jobs and incomes:

renegotiations but underlies an apparently visceral hatred of Mexico. This view, too, is economically irrational given the considerable statistical evidence in support of the contribution of migrants to the American economy, and the fact that the migration rate has become a net outflow. It also is irrational in light of economic theory, such as the Stolper-Samuelson Theorem, though that Theorem predicts the Administration’s view.

There also is a racial dimension to the immigration story, at least to some observers:

AFL-CIO President Richard Trumka said that even though the 12.5 million-member labor federation endorsed Hillary Clinton during the election, he tried to work with the Trump administration on some common ground. But, Trumka says, one major moral difference has stood in the way.

“You had two factions in the White House,” Trumka told reporters Aug. 30 in Washington. “You had one faction that actually had some of the policies that we would have supported on trade and infrastructure, but they turned out to be racists. On the other hand, you had people who weren’t racists, but they were Wall Streeters” and are now dominating the agenda.

When later asked which camp Trump sits on – at least in terms of economic ideology, Trumka replied: “Which day?”

Sarah McGregor, *AFL-CIO Leader Calls Some of Trump’s Trade Hardliners ‘Racists’*, BLOOMBERG POLITICS (Aug. 30, 2017, 11:37 AM), <https://www.bloomberg.com/news/articles/2017-08-30/afl-cio-leader-trump-s-trade-allies-turned-out-to-be-racists>. Iago, of course, plays hideously on racial stereotypes to effect his wicked plot.

16. Josh Wingrove, Andrew Mayeda & Eric Martin, *Nafta Deadlock Dashes Hopes for a Quick Deal*, BLOOMBERG POLITICS (October 17, 2017, 11:21 AM), <https://www.bloomberg.com/news/articles/2017-10-17/mexico-and-canada-reject-u-s-nafta-demands-as-talks-wrap-up> (quoting the President from an October 17, 2017 White House address).

17. Eric Martin & Josh Wingrove, *Nafta Battle Will Test Strength of Renewed Canada-Mexico Ties*, BLOOMBERG POLITICS (August 3, 2017, 4:00 AM), <https://www.bloomberg.com/news/articles/2017-08-01/nafta-battle-will-test-strength-of-renewed-canada-mexico-ties>.

“Companies are leaving and they’re firing the people and the product is made elsewhere and then it’s sold back into the United States,” President Trump said. “I’m not going to be allowing that, so I can understand how certain countries and the leaders of certain countries may feel. But we’re just not going to allow the United States to be taken advantage of by other countries anymore.”¹⁸

Mr. Trump’s United States Trade Representative (“USTR”), Ambassador Robert Lighthizer, seethes with the same hatred of bilateral trade deficits and posits the same causal link:

Mexico and Canada have not demonstrated a willingness to answer calls to reduce U.S. trade deficits during negotiations of the North American Free Trade Agreement, U.S. Trade Representative Robert Lighthizer said at the close of the fourth round of talks in Washington.

“We have seen no indication that our partners are willing to make any changes that will result in a rebalancing and a reduction in these huge trade deficits,” Lighthizer said of his Mexican and Canadian counterparts.

...

“After many years of *one-sided benefits*, their companies have become reliant on special preferences,” he said, adding that *NAFTA must be fair to American workers and businesses*. Because of this, the U.S. can’t encourage its companies to invest in Canada and Mexico, he said.¹⁹

In such statements, three features of America’s enmity are

18. Josh Wingrove, Andrew Mayeda & Eric Martin, *NAFTA Ministers Extend Talks into 2018 as Deadlock Deepens*, 34 INT’L TRADE REP. BNA 1383 (Oct. 19, 2017) (quoting the President from an October 17, 2017 White House address).

19. Andrew Mayeda, *Mexico, Canada Refused to Improve NAFTA Text, USTR Says*, 34 INT’L TRADE REP. BNA 1383 (19 October 2017) (quoting Mr. Lighthizer at a trilateral news conference held on 17 October 2017; the same day as the President’s White House statement, suggesting coordination in conveying the message of hatred for trade deficits).

The USTR also said: “Partners who agreed to TPP [the Trans Pacific Partnership] have actually rejected its text here.” *Id.* This remark was impossible to verify, thanks to the lack of transparency in NAFTA renegotiations. Even if true, it may be understood as the difference between negotiating a new deal with eleven other nations (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) and renegotiating an existing deal with two other nations (Mexico and Canada). The same concession wrought in talks with eleven other trading partners may be inadequate for a deal with two other partners, because the commercially meaningful export opportunities are mathematically larger with eleven than with two markets at stake. And, what may be obtained across eleven other partners may be a lower common denominator than what is achievable from two other partners.

evident.

First, blame is ascribed to the surplus countries, Mexico and Canada. The fault is on them, not the United States. Recall what Tina Packer, Founding Artistic Director of Shakespeare & Company, writes of Iago's enmity, and then consider these targets of blame:

Iago ... hates the Moor, and he's in love with Desdemona. It's true he hates Othello, but he's making up that he loves Desdemona – he's incapable of loving anyone, probably incapable of having sex with anyone. Is he obsessed with Othello because he was passed over for promotion? Is it because Othello's black? Or because Othello's slept with his wife [Emilia]? Or is Iago a repressed homosexual? *Is it just that he gets a charge out of manipulating everyone and wreaking as much havoc in people's lives as possible, while always appearing to be "honest Iago"?* Or is it all of the above?²⁰

There is a kind of lashing out, by Iago and America, and the question italicized above captures the infamous "Twitter storms" of the Trump Presidency. Mexico and Canada, alleges the Trump Administration, are rigid, unfair, and propped up by trade rules supposedly crafted against the interests of Americans. By implication, America is flexible and fair, a victim of historical scheming unable to understand how its neighbors concocted a trade deal that sold its citizens out to benefit the global marketplace.

Second, the behavior of Mexico and Canada justifies an extreme response from the United States, namely, withdrawal from NAFTA.²¹

20. TINA PACKER, *WOMEN OF WILL: THE REMARKABLE EVOLUTION OF SHAKESPEARE'S FEMALE CHARACTERS* 195 (Vintage Books, 2015) (emphasis added).

21. NAFTA Article 2205 allows a country to withdraw upon six month's written notice: A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

American withdrawal would leave *NAFTA* intact as between Mexico and Canada. Moreover, the January 1, 1989 Canada – United States Free Trade Agreement ("CUSFTA"), suspended when NAFTA took effect on January 1, 1994, or at least parts thereof, would enter back into force.

The credibility of the threat to withdraw was dubious. No President has ever withdrawn from a trade agreement that Congress approved as a Congressional-Executive agreement. See Brandon J. Murrill, *U.S. Withdrawal from Free Trade Agreements: Frequently Asked Legal Questions*, CONGRESSIONAL RESEARCH SERVICE (Sept. 7, 2016), <https://fas.org/sgp/crs/misc/R44630.pdf>. NAFTA was not a self-executing accord, but rather required Congressional passage of the 1993 *North American Free Trade Implementation Act*.

The President threatened to withdraw from NAFTA three times in the span of one week, and a fourth time a few days thereafter.²² His Commerce Secretary, Wilbur Ross, reiterated the threat (on September 8, 2017, days after the second round of talks finished):

“The president has made clear if they don’t work, he’s going to pull out,” Commerce Secretary Wilbur Ross said “That shouldn’t be a shock to anyone, and really that’s the right thing. We need fixes to this deal. It has not worked the way it was intended.”²³

Third, America’s extreme response came only after careful consideration of over 11,000 public comments about renegotiating NAFTA from businesses, civil society, and private citizens (including many self-identifying members of the arch-conservative John Birch Society, who advocated for America to withdraw). The response took account of these comments when the USTR published an 18-page set of *Negotiating Objectives* in July 2017, and republished essentially the same set in November 2017, stylizing them as *Revised Objectives*.²⁴ As

Id. at 1. At least 41 statutes across the United States Code have implementing provisions, such as Title 28, which allows for NAFTA Chapter 19 panels. See Rossella Brevetti, *Threat of NAFTA Withdrawal Hangs Over Talks*, 34 INT’L TRADE REP. BNA 1503 (Nov. 16, 2017). So, even if the President withdraws, Congress would have to strike those provisions – and, of course, it would have to fund the President’s withdrawal program. Simply put, the threat of withdrawal raised the spectre of a Constitutional crisis over the power of the Presidential foreign economic affairs power.

22. Raj Bhala, *NAFTA: No A’s for Trump’s Administration*, BLOOMBERG QUINT (Sept. 19, 2017, 9:18 AM), <https://www.bloombergquint.com/opinion/2017/09/19/nafta-no-as-for-trumps-administration>.

23. See Andrew Mayeda & Rossella Brevetti, *Ross Reiterates U.S. Threat to Withdraw From NAFTA Amid Talks*, 34 INT’L TRADE REP. BNA 1215 (Sept. 14, 2017).

24. See *Summary of Objectives for the NAFTA Renegotiation*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (July 17, 2017), <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf>. See also the accompanying press release: *USTR Releases NAFTA Negotiating Objectives*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (July 2017), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/july/ustr-releases-nafta-negotiating>. See also the revised negotiation objectives: *Summary of Objectives for the NAFTA Renegotiation*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (Nov. 2017), <https://ustr.gov/sites/default/files/files/Press/Releases/Nov%20Objectives%20Update.pdf>. See also the accompanying press release: *USTR Releases Updated NAFTA Negotiating Objectives*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (Nov. 2017), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/november/ustr-releases-updated-nafta>. See also Brian Flood, *Trade Agency Deluged With Comments on NAFTA Renegotiations*, 34 INT’L TRADE REP. BNA 888 (June 15, 2017) (discussing the July 2017 document).

What prompted the November release was blockage of two Trump Administration nominees to USTR posts by Senator Ron Wyden (Democrat-Oregon), who accused the USTR of breaking the Trade Promotion Authority (“TPA”) law by failing to update regularly its objectives in any trade negotiation, for example, with respect to many of the controversial proposals discussed herein. See Rossella Brevetti, *Senior Democrat Says USTR Must Update NAFTA Objectives*, 34 INT’L TRADE REP. BNA 1534 (Nov. 16, 2017); Teaganne Finn & Len

per both documents, America's number one aim in NAFTA renegotiations is to correct what it perceives as a trade imbalance with the other two Parties.²⁵

Bracken, *Ag Industry, Lawmakers Keep Up Push Against Scrapping NAFTA*, 34 INT'L TRADE REP. (BNA) 1533 (Nov. 16, 2017). The November 2017 release unblocked the Senate confirmation process. See Rossella Brevetti & Len Bracken, *Senator Will Lift Hold on Trade Nominees*, 34 INT'L TRADE REP. (BNA) 1561 (Nov. 23, 2017). Yet, given the extremely close similarity of the two sets of *Objectives* amounted to a gift by the Senate to the Administration, *i.e.*, if the Senate had required serious substantive updating of the *Objectives*, then the stalemate on appointments may have persisted.

25. Lesley Wroughton & David Lawder, *U.S. makes lower trade deficit top priority in NAFTA talks*, REUTERS (July 17, 2017, 4:54 PM), <https://www.reuters.com/article/us-usa-trade-nafta-statement/u-s-makes-lower-trade-deficit-top-priority-in-nafta-talks-idUSKBN1A2272>; Andrew Mayeda, Josh Wingrove, & Eric Martin, *U.S. Says It Aims to Cut Trade Deficits Through NAFTA Overhaul*, 34 INT'L TRADE REP. (BNA) 1020 (July 20, 2017).

For Canada, the key negotiating objective was to "do no harm." See Josh Wingrove, *Do No Harm in NAFTA Talks, Canadian Businesses Tell Trudeau*, BLOOMBERG (Aug. 10, 2017), <https://www.bloomberg.com/news/articles/2017-08-03/do-no-harm-in-nafta-talks-canadian-businesses-tell-trudeau>. Though Mexico cast its objectives in terms of not worsening the NAFTA status quo *vis-à-vis* unimplemented TPP outcomes, they also amounted to "do not harm:"

The majority of objectives are similar to those on the U.S. list and were also negotiated in the Trans-Pacific Partnership, according to Francisco de Rosenzweig, a former senior trade minister in the Peña Nieto administration who led the TPP negotiations for Mexico.

Emily Pickrell, *Mexico Issues Broad NAFTA Vision in Objectives*, 34 INT'L TRADE REP. (BNA) 1118 (Aug. 10, 2017).

That "do no harm" also was the key objective of many American business groups, including the American Chemistry Council (representing chemical, petrochemical industries). See Adam Allington, *Chemical Industry to Trump: Don't Kill the NAFTA Golden Goose*, 34 INT'L TRADE REP. (BNA) 1302 (Sept. 28, 2017). American agricultural groups also embraced the goal. Brian Flood, *Congress Wants in on U.S., Korea Trade Talks*, INT'L TRADE DAILY (BNA) (July 18, 2017) (discussing the views of Thomas Sleight, President and Chief Executive Officer of the U.S. Grains Council). See also *Coalition Chamber Federation Letter on NAFTA to the President and Congress*, stating:

As our country's top export markets, trade with Canada and Mexico supports 14 million American jobs, including tens of thousands of jobs in every state and more than 100,000 in 35 U.S. states. Each and every day, over \$3.3 billion, or \$1.2 trillion annually, is traded between the U.S., Canada, and Mexico. In fact, half of all Canadian and Mexican imports are "made-in-the-USA."

NAFTA has been especially beneficial for America's farmers and ranchers. Agricultural exports to Canada and Mexico have quadrupled from \$8.9 billion in 1993 to \$38 billion in 2016, generating big benefits for rural America. In addition, Canada and Mexico are the top two markets in the world for U.S.-made manufactured goods, with purchases of nearly half a trillion dollars last year – a sum that tops the next ten largest markets combined. Our North American neighbors are also booming markets for U.S. services exports. In fact, the U.S. last year recorded a trade surplus of \$11.9 billion with its NAFTA partners when manufactured goods and services are combined. Among the biggest beneficiaries of this commerce are America's small and medium-sized businesses, 125,000 of which sell their goods and services to Mexico and Canada.

... [W]e must, first, "do no harm" in the NAFTA negotiations.

U.S. CHAMBER OF COMMERCE (Oct. 10, 2017), www.uschamber.com/letter/coalition-chamber-federation-letter-nafta-the-president-and-congress (emphasis added). The seven-

This perception makes *Othello* a particularly apt lens through which to view NAFTA renegotiations. *Othello* has been described as a “tragedy of perceptions.”²⁶ That is “because the other characters in the play cannot accept Othello as ‘equally human but culturally different.’”²⁷ Thus, Othello himself feels trapped by a choice “between assimilation and barbarism.”²⁸ America’s misperception of trade deficits renders it unable to accept relations with Mexico and Canada on equal terms, or to appreciate their differences. America acts as if its NAFTA partners trapped it between hostile protectionism and friendly free trade.

Of course, all three dimensions of hatred – blaming others, responding in an extreme fashion, and professing self-restraint – are untrue, as is the notion that Mexico and Canada enjoy overall, sustained trade surpluses with the United States. Truth is again concealed by hatred (a focal point of the discussion later). For now, suffice it to say that the comments were due on 12 June 2017, and the Trump Administration published its *Negotiating Objectives* on 17 July. It is hard to believe the Administration read with an open mind and meditated on all the comments in 30 days. It is more plausible that, instead of digesting 366 comments per day (11,000 comments divided by 30 days), the Administration had a draft of the *Objectives* long before the 12 June deadline, and at best was open to minor modifications in response to any notable comments. The *Objectives* were set early on, and their “objectivity” in terms of the relative truth-value remains predicated on these three dimensions of hatred, notwithstanding any comments that did not confirm Administration biases. That the November 2017 *Revised Negotiating Objectives* were a nearly *verbatim* repetition of the July publication evinces that nothing changed across the intervening four months, despite the four rounds of talks with Mexico and Canada, and considerable commentary from domestic and foreign constituencies during that period.²⁹

page letter was signed by over 310 state and local chambers of commerce.

For an excellent summary of the net benefits to American agriculture from NAFTA, see Food & Agriculture Letter on Importance of North American Market (Oct. 25, 2017), www.usdec.org/Documents/LetterFoodAGTradeAgMarketsWithdrawal171025.pdf. The letter, signed by more than 70 farm groups, is addressed to United States Secretary of Commerce Wilbur Ross.

26. Edward Berry, *Othello's Alienation*, 30 *STUDIES IN ENGLISH LITERATURE 1500-1900* 315, 318, (1990) (quoted in RICHARD A. POSNER, *LAW & LITERATURE* 480 (Harvard University Press, 3rd ed. 2009)).

27. *Id.*

28. *Id.*

29. A line-by-line comparison of the two sets of *Objectives* indicates that their essential

2. Irrationality of Trade Deficit Enmity

Hatred is irrational. Whether it is so in all instances may be debatable, but that America hates bilateral trade deficits, that this hatred drives its NAFTA renegotiations strategy, and that this hatred lacks a rational basis, is not contestable. The analogy to Iago is clear: inexplicable hatred driving a plot of disproportionate magnitude.

This hatred is ironic, as was Iago's. America's largest bilateral trade deficits are with China and Japan, respectively, not Mexico and Canada.³⁰ America has no FTA with China and Japan, but it obviously does with Mexico and Canada (as well as 18 other countries).³¹ So, its strategy (if it be called that) is to hammer China and Japan how and where it can, namely, with trade remedy cases in specific sectors, while hammering Mexico and Canada on NAFTA across all sectors. But, why is it fair to characterize the hatred as not merely ironic, but also irrational?

Politics and economics provide the answers. Politically, in the context of any free trade agreement ("FTA"), bilateral trade deficits should not matter. Parties to the FTA made a political decision to remove all internal tariff and non-tariff barriers, whether immediately upon Entry Into Force ("EIF"), or via phase-out periods, and form a single internal market. One of history's greatest examples is the United States Constitution: it created what became in the late 18th and early 19th centuries the largest FTA in the world – America. To be sure, the Southern and Northern States advocated for radically different agricultural and industrial tariff rates based on their differential reliance on slavery.³² But, the concept of a State-by-State bilateral trade balance was, and thankfully remains, unknown. Thanks to the Constitution, no one speaks of a Kansas trade surplus relative to New York, or a Kentucky trade deficit relative to North Carolina.

By extension, the whole point of NAFTA is the creation of one of

differences concern clarifications on ROOs, dairy trade, and investment dispute settlement, and articulation of proposals for Sunset Clause, limits on the access of Mexican long-haul trucking services into the United States, transparency in import-export licensing, and disciplines on SOEs.

30. Yoshiaki Nohara, *U.S. Pushes 'Fair Trade' as Economic Talks with Japan Advance*, INT'L TRADE REP. (BNA) (Oct. 19, 2017) (reporting "President Donald Trump has railed against America's mercantile trade deficit with Japan, which is second only to its gap with China given its massive imports of Japanese cars and electronics").

31. See *Free Trade Agreements*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements>.

32. See RAJ BHALA, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME I, at 253-255 (LexisNexis, 4th ed., 2015).

the world's largest free trade areas across the North American continent, and its possible expansion to a Western Hemispheric agreement, the Free Trade Area of the Americas ("FTAA"). With NAFTA, America, Canada, and Mexico focus on trade creation among them, not bilateral trade deficits and surpluses between them. To be sure, the bilateral balance between NAFTA and China or NAFTA and Japan may matter, *i.e.*, as is true for countries in any FTA, the NAFTA Parties should care about trade diversion to third non-NAFTA countries. But, politically, trade diversion among NAFTA Parties is not supposed to matter. Their entry into NAFTA means they made a political choice to accept the comparative advantages each other has in thousands of sectors.

That they have chosen not to form a customs union means they retain their respective sovereign tariff and services schedules *vis-à-vis* third countries, rather than establish a Common External Tariff ("CET"). Each has policy space to regulate trade with those countries on its own terms and conditions. Hence, a bilateral trade balance between America and China, or Canada and India, may matter to those countries. Those sets are not politically sanctioned economic communities in the way that Mexico, Canada, and the United States are under NAFTA.

Likewise, America's hatred of bilateral trade deficits within NAFTA is not economically rational. As Thomas Donahue, President and Chief Executive Officer of the U.S. Chamber of Commerce rightly stated:

[A]ny economist worth his or her salt has repeatedly explained that the trade balance is not only the wrong way to measure who's "winning" on trade, it's the wrong focus, and is impossible to achieve without crippling the economy.³³

There are two reasons why Mr. Donahue is correct in his assessment of an economic consensus that no FTA can correct a bilateral trade imbalance within it.

The first is causation. Imbalances are due to macroeconomic and exchange rate factors.³⁴ An FTA itself is not the underlying cause of a

33. Quoted in Rossella Brevetti, *Chamber Warns Of "Poison Pill" U.S. NAFTA Proposals*, 34 INT'L TRADE REP. (BNA) 1347 (Oct. 12, 2017).

34. "The Administration's emphasis on reducing trade deficits is a 'major concern' that could complicate the negotiations, said Chad Brown, Senior Fellow at the Peterson Institute for International Economics in Washington. 'It's not something achievable through trade

surplus or a balance. That economic truism is evident from the fundamental macroeconomic equation:

$$Y=C+I+(G - T)+(X - M)$$

where:

Y=Gross Domestic Product (GDP)

C=domestic Consumption expenditures

I =domestic Investment expenditures

G=domestic Government expenditures

T=domestic Tax revenues

G - T=net domestic Government expenditures

X=Exports

M=Imports

X - M =net domestic Exports

The level of “I” depends directly on “S,” domestic Savings. Other than retained earnings or individual family sources, businesses are constrained to fund their investments from capital markets, that is, stocks and bonds they issue, or loans they obtain. The pool of available investment funds in those capital markets depends on Savings. (Indeed, $S = I$.) America’s Savings are relatively low. That low rate reflects American consumer behavior, namely, high spending on goods imported from overseas. This high level of “C” is associated with a high level of “M,” and a low level of “S” and, therefore, a low level of “I.” Moreover, not all “M” undermine “Y:” imports in the form of capital equipment or other productive assets can stimulate GDP. But, imports that are essentially disposable (*e.g.*, stuff from Wal-Mart) do not enhance domestic income.

There is little NAFTA or any FTA can do to alter America’s “S” and thereby correct bilateral trade deficits. Rather, banking, monetary, and tax policies can stimulate “S.” Moreover, long-term foreign exchange rates (FX) can influence those deficits. Persistent currency

policy’ ‘You’re inevitably setting yourself up for failure if that’s your goal.’” *Quoted in Andrew Mayeda, Josh Wingrove & Eric Martin, U.S. Says It Aims to Cut Trade Deficits Through NAFTA Revamp*, BLOOMBERG (July 17, 2017, 6:14 PM), <https://www.bloomberg.com/news/articles/2017-07-17/u-s-says-it-aims-to-cut-trade-deficits-through-nafta-overhaul>.

undervaluation can discourage “M” and encourage “X,” and *vice versa*.

The second is characterization. Hatred of bilateral trade deficits presumes they need correction, *i.e.*, that deficits are evil. They are not. Economists legitimately question whether a trade deficit is all that bad and in need of correction. Consider the arguments of the 2008 winner of the Nobel Prize in Economics, Paul Krugman.³⁵ First, exports are the price Americans pay for imports, to get merchandise they want from overseas, *i.e.*, working hard to produce exports is the cost Americans incur to get what they enjoy from Mexico and Canada at the price they can afford. Second, the rise in manufactured imports and decline in America’s industrial base since 1973 are due not to free trade, but rather to changes in the composition of consumption expenditures (Americans spend less on manufactured merchandise and more on education, entertainment, health care, and legal services), and to changes in relative prices (thanks to rising American industrial productivity, manufactured goods are cheaper relative to services).

Both reasons may be summarized by the word “natural,” in contrast to how America characterizes its bilateral economic relationships (suggesting bilateral trade deficits are “unnatural”), and in contrast to what Iago says in *Othello*. Iago and Brabantio, Desdemona’s father, suggest the love between Desdemona and Othello is “unnatural.”³⁶ Their suggestion is pure prejudice, based on their negative racial and religious attitudes to the swarthy and possibly Muslim General, Othello. So it is with a bilateral trade deficit: there is nothing unnatural about it, even less so when it is between countries in

35. See RAJ BHALA, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME I, at 139-141 (LexisNexis, 4th ed., 2015).

Relatedly, trying to correct bilateral trade deficits by imposing import barriers like higher tariffs disproportionately burdens lower-income Americans. Three Republican Senators, Mike Enzi (Wyoming), James Lankford (Oklahoma), and John Thune (South Dakota), made this point to the USTR in their November 15, 2017 letter, (Letter from Sen. Mike Enzi, et al., to USTR (Nov. 15, 2017) (available at www.lankford.senate.gov/imo/media/doc/11.15.17%20Lankford,%20Thune,%20Enzi%20letter%20to%20USTR%20Lighthizer.pdf)), citing scholarly economic evidence, including (*inter alia*), Pablo Fajgelbaum & Amit Khandewal, *Measuring the Unequal Gains from Trade*, 131 THE QUARTERLY JOURNAL OF ECON. 1113 (2016).

36. Richard Posner finds it “unclear whether Shakespeare intended the audience to consider interracial marriage unnatural,” because “[s]ome of the characters in the play do; others don’t.” RICHARD A. POSNER, LAW & LITERATURE 479 (Harvard University Press, 3rd ed. 2009). One can argue that Shakespeare did not intend the audience to think in this prejudicial manner, but that is beyond the present scope. However, it is clear that the Trump Administration finds America’s bilateral trade balances within NAFTA to be unnatural. America is supposed to “win” at trade, which means persistent surpluses.

the same FTA.

What remains is endless attacks on trade deficits by an American Administration that attempts to sell its version of truth to domestic and foreign audiences. As Iago offers up multiple reasons for his hatred of Othello, the aggregate of his position leaves audiences with no cogent argument. Similarly, a deficit between America and its trading partners is offered up to describe why NAFTA is a “disaster.” But when this rationale is revealed to be mere rhetorical pretext, what subtext remains?

What made Iago so unpredictable was that his hatred lacked substantive subtext. It emanated from a void space within. And if trade deficits cannot be a rationale for NAFTA renegotiations, where are America’s partners to look for meaning if they want to take seriously its bargaining position? A peaceful resolution cannot be reached between Iago and his fellow characters precisely because there is no ability to reason with a force predicated on irrationality. Hence, *Othello* must end in the only other possible conclusion: tragedy. If America persists with irrational antipathy toward deficits, then America’s trade play may end tragically, too.

III. CONCEALMENT: STATISTICS AND SECTOR-SPECIFIC AGRICULTURAL INTERESTS

“Men should be what they seem.”

Othello, Act III, Scene 3, Line 131

(Iago Speaking to Othello)

A. Iago’s Concealment

Iago overdraws inferences from small facts and cues, thereby concealing the truth. His use of Desdemona’s handkerchief to persuade Othello that Cassio has slept with Desdemona, when in truth she was faithful to Othello, is an infamous illustration of such deception.

Iago has a remarkable ability to mask his private desires, his real nature and intentions, under a façade of honesty and bluntness. Consider when Iago says to Roderigo:

He [Cassio] hath a daily beauty in his life

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That makes me ugly;³⁷ ...

Cassio's nonchalance makes Iago despise himself more and reinforces his desire to thwart the Cassio's enjoyment of life, and indeed anyone who is or appears to be happy. If Iago, Cassio, Desdemona, and Othello are (or once were) "amigos," then Iago concealed his plot to destroy the friendships, keeping it secret even from his wife, Emilia, and manipulating the gullible Roderigo.

Not every moment is non-transparent. Sometimes, Iago reveals enough to verify that he is not who he appears to be. In Act I, Scene 3, he essentially says his entire life is an act. Roderigo casts doubt on whether Iago truly hates Othello because what Roderigo sees in the actions of Iago is a faithful attendant to Othello. Iago tellingly rebuts the implication of those actions:

In following him [Othello], I follow but myself.

Heaven is my judge, not I for love and duty

But seeming so, for my peculiar end;

For when my outward action doth demonstrate

The native act and figure of my heart

In complement extern, 'tis not long after

But I will wear my heart upon my sleeve

For daws [*i.e.*, jackdaws, crows] to peck at.³⁸

Thus, Iago transparently concludes "I am not what I am."³⁹

Logically, Roderigo ought to question whether Iago is Janus-faced to him, too. But he is gullible. Likewise, Othello fails to suspect Iago of duplicity. To the contrary, Othello describes Iago to the Duke of Venice as "a man of honesty and trust" to whom he entrusts Desdemona,⁴⁰ and along with Cassio, refers to "honest Iago" and "good Iago."⁴¹ All the while concealed, Iago effects his poisonous plot.

Iago, in another brief moment of transparency, admits that the concealed plot is "poisonous." As he says at the outset of the play, he

37. OTHELLO, *supra* note 4, act 5, sc. 1, ll. 19–20.

38. *Id.* at act 1, sc. 1, ll. 55–62.

39. *Id.* at act 1, sc. 1, l. 62.

40. *Id.* at act I, sc. 3, l. 282.

41. *See, e.g., id.* at act 1, sc. 3, l. 292; act 2, sc. 3, l. 28.

goes to Brabantio to “poison his delight,” namely, his daughter, Desdemona.⁴² Exploitation is an indispensable ingredient in this poison. Iago quietly plants in the minds of others sinister thoughts, or shrewdly detects in others hidden racial and religious prejudices, and then leverages them. One among several illustrations is Iago’s call from the darkness of night to Brabantio, shouting that “an old black ram,” “a Barbary horse” (referring to Othello) is “tupping” (copulating with) Desdemona, his (Brabantio’s) “white ewe,” and that “the devil” had taken her and would make him (Brabantio) a grandfather.⁴³ The call works, stirring Brabantio to action that, but for the wisdom and tolerance of the Duke of Venice, would have led quickly to Othello’s death.

B. Scenes of America’s Concealment

1. Overall Bilateral Trade Balances

Othello is very much a play about revenge. Iago’s claim is of vengeance, which leads to the “problem of proof,” as Richard Posner puts it, “that plagues a revenge system.”⁴⁴ Because such a system lacks the “machinery of investigation and adjudication,” concealment is easy – and Iago is masterful at concealment.⁴⁵

In turn, concealment can fuel enmity. Self-deception, ignoring or looking away from authentic truths, exacerbates hatred, and facilitates the deception of others, reinforcing hatred. So it is with American discourse about bilateral trade deficits in NAFTA renegotiations. The American position masks important true details about successful sectors, burying them amidst headline numbers that mislead the unsophisticated who, like *Othello*’s Roderigo, lack the resources to marshal all pertinent facts, and the judgment to weigh what evidence they do have.

What does genuine introspection and balanced analysis about bilateral trade deficits suggest? There are two parts to the answer: overall bilateral trade balances, and sectoral balances.

As regards the first part of the answer, “[t]he U.S. had a \$63 billion trade deficit in goods and services with Mexico last year (2016),

42. *Id.* at act 1, sc. 1, l. 65.

43. *Id.* at act I, sc. 1, ll. 85–86, 88, 108.

44. RICHARD A. POSNER, *LAW & LITERATURE* 111 (Harvard University Press, 3rd ed., 2009).

45. *Id.*

and a \$7.7 billion surplus with Canada.”⁴⁶ That was true even though Canada ships roughly 75 percent of its exports to the U.S, with particular strengths in autos, energy and food, plus financial services.⁴⁷ Moreover, the U.S. is projected to enjoy a bilateral trade surplus with Canada (for 2017) of \$22.5 billion.⁴⁸ These two data points reveal that no enmity toward Canada in respect of bilateral trade balances is justified.

What about Mexico? Another data point reveals that autos and auto parts are to blame for the bilateral imbalance with Mexico:

“The U.S. had a \$63-billion trade deficit with Mexico last year, compared with a surplus of \$7.7 billion with Canada. The automotive trade deficit with Mexico was \$74 billion. In other words, *if you took out trade in cars and car parts over America’s southern border, the U.S. would actually be running a trade surplus with Mexico.*”⁴⁹

Tellingly, the United States did not acknowledge this truth. Rather, Secretary of Commerce Wilbur Ross decried the importance of the sectoral imbalance in autos and auto parts, and demanded stricter rules of origins (“ROOs”) (discussed later):

Ross, on 22 September 2017, released a new Commerce study which found that the share of U.S.-produced content in manufactured imports from Mexico and Canada has dropped significantly since the

46. Andrew Mayeda, Josh Wingrove, & Eric Martin, *U.S. Says It Aims to Cut Trade Deficits Through NAFTA Overhaul*, BLOOMBERG (July 18, 2017), <https://www.bloomberg.com/news/articles/2017-07-17/u-s-says-it-aims-to-cut-trade-deficits-through-nafta-overhaul>.

47. Rossella Brevetti, *Canada Beefs Up Team Ahead of NAFTA Talks*, 34 INT’L TRADE REP. (BNA) 1123 (Aug. 10, 2017).

48. *Id.*

49. Andrew Mayeda, *Trump’s NAFTA Victory Rides on Big Changes to How Cars Are Built*, 34 INT’L TRADE REP. (BNA) 973 (July 6, 2017) (emphasis added); see also Gabrielle Coppolla, *Car Industry Sees “Lose-Lose” Outcome in Trump NAFTA Changes*, 34 INT’L TRADE REP. (BNA) 1402 (Oct. 19, 2017) (also reporting: “The U.S. had a \$63 billion trade deficit with Mexico last year, compared with a surplus of \$7.7 billion with Canada. The automotive trade deficit with Mexico was \$74 billion. In other words, if you took out trade in cars and car parts over America’s southern border, the U.S. would actually be running a trade surplus with Mexico.”).

Of course, the auto sector focused on the sectoral trade deficit only:

Countless manufacturing plants throughout our country have closed and hundreds of thousands of good jobs to Mexico have vanished. In 1993, the United States had an *automotive trade deficit* with Mexico of \$3.5 billion. By 2016 *that deficit* had grown to \$45.1 billion. For *auto parts*, the United States’ deficit with Mexico was \$100 million in 1993; it was 200 times larger by 2016, at \$23.8 billion.

Statement from UAW President Dennis Williams on NAFTA Negotiations Meetings, UAW (Oct. 2017), <https://uaw.org/statement-uaw-president-dennis-williams-nafta-negotiation-meetings/amp> (emphasis added).

mid-1990s. The study came on the heels of an opinion piece in the *Washington Post* where Ross said that the nation's burgeoning trade deficit has gutted U.S. manufacturing. If NAFTA's rule of origin provisions aren't fixed, the "rest of the agreement will fail to meaningfully shift the trade imbalance," Ross wrote.

...

Ross said in a CNBC interview that "more than 100 percent of the reason for the trade deficit [with Mexico and Canada] is auto and auto parts." Without that, there would be a surplus between the U.S. and its NAFTA partners, he said. But Ross said the most "shocking part" is that more and more of the content of imports from Canada and Mexico are not coming from within NAFTA.⁵⁰

Perhaps more shocking, however, was the reality of the importance of the Mexican and Canadian markets to American exporters across a vast array of sectors other than auto and auto parts.

2. Sectoral Trade Balances from Tomatoes to Wine

Regarding the second part of an introspective, balanced examination, it must readily be conceded that America does not "win" in every sector of trade with respect to Mexico or Canada. Consider tomatoes:

Florida fruit and vegetable industry representatives testified on June 27th at a U.S. Trade Representative [inter-agency] hearing [of the Trade Policy Staff Committee] on NAFTA negotiating objectives. Mike Stuart, president of the Florida Fruit & Vegetable Association, said that U.S. tomato acreage has shrunk 25 percent since NAFTA as Mexico's production has soared by 230 percent. Since 2000, most of the growth in Mexico's agricultural shipments to the U.S. has been in the fresh fruit and vegetable sector, he said. For example, strawberry imports from Mexico have almost tripled since 2000 while imports of Mexican bell peppers have grown by 163 percent, he said.

...

Florida Strawberry Grower Association Executive Director Kenneth Parker told the *NAFTA* hearing that increases in strawberry imports from Mexico are a "clear and present danger" to the U.S. industry. In the past decade, strawberry imports from Mexico have

50. Rossell Brevetti, *Commerce Secretary Calls for Tougher NAFTA Origin Rules*, 34 INT'L TRADE REP. (BNA) 1301 (Sept. 28, 2017).

increased four-fold with the help of subsidies, he said. Mexican Embassy officials did not immediately respond to a request for comment.⁵¹

As a result, in the July 2017 *Negotiating Objectives* and November 2017 *Revised Negotiating Objectives*,⁵² another aim of the USTR is “to seek a separate domestic industry provision for perishable and seasonal products in antidumping and subsidy proceedings. Such a provision is expected to help Florida [and other South Eastern] producers of perishable commodities such as cucumbers, bell peppers, and strawberries.”⁵³ The specific proposal was to lower the 25 percent standing requirement for bringing an AD-CVD petition:

Dumping petitions, which can result in steep duties, are filed on behalf of industries with a general requirement that at least 25 percent of the sector is represented in the complaint. Under the proposal, “seasonal producers” would constitute their own industry rather than be part of an overall industry.⁵⁴

In other words, by defining “seasonal producers” as their own industry, they would almost always show 100 percent support for an AD-CVD petition.

51. Rossella Brevetti, *Commerce Nominee Pressed on Winter Vegetable Imports*, 34 INT’L TRADE REP. (BNA) 977 (July 6, 2017). There is no doubt that this sector has faced difficulties:

While annual U.S. tomato consumption has risen 61 percent since 1994 [when NAFTA entered into force], to 6.9 billion pounds, domestic production has fallen 11 percent, to 3.2 billion pounds.... Meanwhile, Mexican tomato imports have quadrupled, to 3.57 billion pounds, and strawberry imports have risen sixfold, to 568 million pounds. This has led to a rash of fruit and vegetable farm bankruptcies across Florida.

Alan Bjerga, *Why Florida Farmers Want to Kill NAFTA*, INT’L TRADE DAILY (BNA) (Aug. 28, 2017).

52. See *Summary of Objectives for the NAFTA Renegotiation*, supra note 24, at 14 (for both July and Nov. *Summary of Objectives*).

53. Rossella Brevetti, *U.S. NAFTA Objectives Call for Cutting Dumping/Subsidy Panels*, INT’L TRADE DAILY (BNA) (July 18, 2017). As reported:

During the last NAFTA round in Ottawa, the U.S. offered a proposal that would make it easier for producers of perishable, seasonal, and cyclical agricultural products to get relief under the dumping laws. Florida and Southeast producers of perishable and seasonal agricultural products have asked the Administration to tweak trade laws to help protect them from being injured by unfair practices such as dumping and subsidies during their production seasons. The Administration proposal responds to that request.

Rossella Brevetti, *U.S. Proposals in NAFTA Point to Long Slog*, 34 INT’L TRADE REP. (BNA) 1346 (Oct. 12, 2017).

54. Rossella Brevetti, *U.S. Ag Groups Back Mexico in Opposing NAFTA Proposal*, 34 INT’L TRADE REP. (BNA) 1403 (Oct. 19, 2017). The 25 (and 50) percent standing requirements are discussed in RAJ BHALA, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME II, at 50-56 (LexisNexis, 4th ed., 2015).

But conceding a sectoral loss in tomatoes is not the end of this scene. The rest of the American agricultural industry entered the scene, firmly opposing the USTR proposal:

“The vast majority of U.S. agriculture is opposed to it,” Nicholas D. Giordano, [said] Vice president and Counsel for Global Government Affairs at the National Pork Producers Council.... “U.S. agriculture is export oriented. Dumping laws globally are used against us,” he said. “We’re not in support of any proposal that is going to make it easier to use the dumping laws whether in the U.S. or elsewhere.”⁵⁵

Indeed, anticipating the possibility of AD-CVD counterattacks from Mexico, which would lose them a cherished market and might trigger a WTO complaint against the United States, American farmers generally sided with Mexico in its opposition to the proposal.⁵⁶ Consumer interests also opposed the proposal, for the obvious reason that American shoppers would face higher prices and reduced choices for off-season fruits and vegetables.⁵⁷

55. Rossella Brevetti, *U.S. Proposals in NAFTA Point to Long Slog*, 34 INT’L TRADE REP. (BNA) 1346 (Oct. 12, 2017).

56. As reported:

Mexico’s agricultural industry got the support of a number of U.S. agricultural groups in opposing a U.S. *North American Free Trade Agreement* proposal on seasonal agricultural commodities.

The proposal, which debuted in round three in Ottawa, would make it easier for producers of seasonal crops, such as strawberries and bell peppers, to get relief under the dumping laws. At an Oct. 13 [2017] media event during *NAFTA* round four, agriculture industry officials warned that *the proposal would diminish NAFTA’s value and could even put the entire agreement in jeopardy because it would open the door to more trade barriers by inviting copycat restrictions.*

...

“Once you start slicing and dicing and making the rules easier for subsets [of industries], there’s no way to know where that would stop,” trade attorney Irwin Altschuler of Greenberg Traurig LLP said. It would be “honestly inconceivable” that Mexico and Canada wouldn’t demand that their governments find ways to *modify other trade laws if the U.S. proposal were adopted*, he said.

If Mexico’s market is lost, there is no other viable market for U.S. high fructose corn syrup [HFCS], Cassandra Kuball, trade and industry relations manager for the Corn Refiners Association, said. Mexico takes in about 75 percent of U.S. high fructose corn syrup exports, she said.

The U.S. industry officials were joined by Bosco de la Vega Valladolid, the President of Mexico’s National Agriculture Council, who said the proposal was a “non-starter” for Mexico’s government as well as the industry. He said it would also run counter to World Trade Organization rules and violate the principle of “do no harm” in the *NAFTA* talks.

Rossella Brevetti, *U.S. Ag Groups Back Mexico in Opposing NAFTA Proposal*, 34 INT’L TRADE REP. (BNA) 1403 (Oct. 19, 2017) (emphasis added).

57. Again, as reported:

In making this proposal, the United States also concealed the cause for its tomato trade imbalance with Mexico: The Law of Comparative Advantage. This Law operated as it was supposed to, favoring Mexico because of the labor-intensiveness of those crops (exemplified by tomatoes), but favoring America because of the capital-intensiveness of higher value crops (namely, corn). To harvest 600 acres of tomatoes, 500 workers are needed. They tend to be unskilled or low-skilled, and Mexico has an abundance of them relative to America. Conversely, just one skilled farmer with a tractor can harvest thousands of acres of corn, and the United States enjoys a relatively larger endowment of skilled laborers and capital.⁵⁸

The truth unmasked is that China, Canada, and Mexico are Numbers One, Two, and Three, in terms of the largest markets for American farm products. For example, America's beef, dairy, grain, poultry, and oilseed exports all benefit from NAFTA market access.⁵⁹ Indeed, for some products, Canada or Mexico are Numbers 1 and 2. For instance, Mexico buys more corn and dairy goods from America than from any other country:

National Corn Growers Association (NCGA) First Vice President

Richard Owen, Produce Marketing Association vice president, had a different view and said that *NAFTA* has given consumers *access to fresh fruits and vegetables on a year round basis*. Since *NAFTA* took effect, fruit, vegetable and tree nut production has grown in the U.S., he said. "A lot of the imports are driven by consumer demand," he said.

Rossella Brevetti, *Commerce Nominee Pressed on Winter Vegetable Imports*, 34 INT'L TRADE REP. (BNA) 977 (July 6, 2017). Likewise:

The provision is anti-consumer, Lance Jungmeyer, president of the Fresh Produce Association of the Americas, said, adding that it would *deprive U.S. consumers of affordable fruits and vegetables and disrupt supply chains*.

Rossella Brevetti, *U.S. Ag Groups Back Mexico in Opposing NAFTA Proposal*, 34 INT'L TRADE REP. (BNA) 1403 (Oct. 19, 2017).

58. These data, though unrevealed by the United States, are evident to its farmers: Mexico's lower labor costs are a major concern for a producer such as [Gary] Reeder [a tomato farmer in Duette, Florida, about 50 miles east of St. Petersburg]; *he, unlike an Illinois corn farmer who can harvest thousands of acres alone with his tractor, needs 500 fieldworkers to pick 600 acres of tomatoes by hand*. Says [Reggie] Brown [Executive Vice President, Florida Tomato Exchange, a group representing growers]: "I understand that people will say if Mexico can grow it cheaper, let them produce it. But there are small town depending on this, and as an American, that is my first and foremost concern."

...

The last thing U.S. farm lobbyists want is for Florida's problems to hold up a NAFTA renegotiation or to change the status quo too much. *Mexico has become the top buyer of U.S. corn, by far the most valuable crop in the U.S.* ...

Alan Bjerga, *Why Florida Farmers Want to Kill NAFTA*, INT'L TRADE DAILY (BNA) (Aug. 28, 2017).

59. Len Bracken, *Oilseed Executive Warns Against Trade-Offs in NAFTA Talks*, 34 INT'L TRADE REP. (BNA) 1095 (Aug. 3, 2017).

Kevin Skunes told the [interagency] panel [27 June hearing of Trade Policy Staff Committee] that North America has become the most important export market for the U.S. corn industry. “Corn farmers export about 20 percent of our annual corn crop, and exports account for about one-third of our income,” he said.

Mexico is the largest export market for U.S. corn as well as a significant market for distillers dried grains with solubles, he said. NCGA’s top priority for NAFTA modernization is to preserve duty-free access for corn and corn products, and to expand market access for corn in all forms, Skunes said.⁶⁰

The illustration of Mexican tomato imports (and their contrast with American corn exports) is not unique. Wine and the Canadian market is another sectoral trade concealment worth revealing.⁶¹

60. Rossella Brevetti, *House Democrats Say NAFTA Needs Major Overhaul*, 34 INT’L TRADE REP. (BNA) 975 (July 6, 2017).

61. Bryce Baschuk, *USTR Favors NAFTA Approach to Canadian Wine Row*, 34 INT’L TRADE REP. (BNA) 942 (June 29, 2017).

Besides winter fruits and vegetables with respect to Mexico, and wine with respect to Canada, poultry is another illustration in which America’s NAFTA renegotiation behavior conceals important facts. America complains about a lack of access to the Canadian poultry market:

Though the U.S. complains Canada limits sales of American poultry thanks to strict, protectionist measures, in truth Canada is the second largest market for American poultry and eggs. Canada grants duty-free, quota-free treatment to U.S. fowl meat.

So, America’s exports to Canada of these two items has grown by 209% since NAFTA took effect. In 2016, the U.S. shipped U.S. \$661 million in poultry and eggs to Canada, resulting in a bilateral trade surplus in them of \$246 million. But, America alleges Canada imposes a TRQs on poultry and eggs, and that U.S. exports in excess of import quotas are subject to a 249% tariff.

Related to poultry, note that meat groups [based on their representations at the 27-29 June 2017 USTR Public Hearing] in the U.S. generally are “divided over whether to reinstitute country-of-origin labelling requirements in NAFTA.”

The Month in International Trade – June 2017, CROWELL MORING (June 2017), www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Month-in-International-Trade-June-2017#ITB05.

On the other hand, that access has improved, and would have been enhanced under TPP, from which American withdrew:

U.S. poultry exporters, including Tyson Foods Inc. and Pilgrims Pride Corp, are expected to seek greater access to Canada’s tightly controlled market in renegotiations of the North American Free Trade Agreement (NAFTA).

The United States, the world’s second-biggest chicken exporter, will demand market access gains at least equal to those they would have realized under the failed Trans-Pacific Partnership (TPP) deal....

...

Canada currently allows tariff-free egg imports amounting to 2.98 percent of Canadian production, and chicken imports worth 7.5 percent. Imports would have doubled for eggs and jumped by more than one-quarter for chicken under TPP.

The United States complains the Canadian province of British Columbia (“B.C.”) maintains stringent rules that permit only local wines to be stocked and sold on grocery store shelves.⁶² However, B.C. has an emerging wine industry, as travellers to Vancouver wine bars who have sampled B.C. wine flights are aware. The rules take the form of a 2015 amendment to the Liquor Control and Licensing Act. Major American wine producer-exporters – such as E&J Gallo Winery, Constellation Brands Inc., the Wine Group – seek increased market access to B.C., and thus clamour against the Act amendment. In January 2017, two days before the inauguration of President Trump, the Administration of President Barack Obama launched a WTO action against Canada, alleging the retail restrictions in the amendment breached the national treatment rule of Article III:4 of the General Agreement on Tariffs and Trade (“GATT”).⁶³ The gist of the complaint is that the restrictions demand that imported [*e.g.*, American] wine be sold “through a ‘store within a store,’ rather than on the same [grocery store] shelves as domestic [Canadian] wine bottles.”⁶⁴

The Trump Administration seeks to address the complaint of American wine producer-exporters not only through the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (“Dispute Settlement Understanding,” or “DSU”) case, but also through NAFTA renegotiations. Trump thinks it is better to address the dispute not under the DSU, but rather through NAFTA renegotiations. That way, said the USTR, if the U.S. does not get what it wants in the renegotiations, it can pursue the case at the WTO.⁶⁵ To be sure, the Trump Administration also is keeping pressure on Canada through the DSU.⁶⁶ Whether a GATT Article III:4 violation exists is

“I’d be surprised if (the U.S.) starting point was anything less,” said Ontario egg producer Roger Pelissero, chairman of Egg Farmers of Canada.

Rod Nickel, *U.S. farm groups pile on Canada as Trump eyes trade fairness*, REUTERS (May 2017, 5:04 PM), <https://www.reuters.com/article/us-usa-trade-canada-agriculture/u-s-farm-groups-pile-on-canada-as-trump-eyes-trade-fairness-idUSKBN1802PH>. See also Jen Skerritt, *Canada Says U.S. Claim of Unfair Poultry Access Is “Inaccurate,”* 34 INT’L TRADE REP. (BNA) 942 (June 29, 2017) (reporting data on access to the Canadian market, and that Canada grants DFQF treatment to fowl meat originating in America).

62. Bryce Baschuk, *USTR Favors NAFTA Approach to Canadian Wine Row*, 34 INT’L TRADE REP. (BNA) 942 (June 29, 2017).

63. Bryce Baschuk, *U.S. Files New WTO Complaint Over Canada Wine Restrictions*, 34 INT’L TRADE REP. (BNA) 1317 (Oct. 5, 2017).

64. *Id.*

65. Bryce Baschuk, *USTR Favors NAFTA Approach to Canadian Wine Row*, 34 INT’L TRADE REP. (BNA) 942 (June 29, 2017).

66. Indeed, in October the Administration made a “second WTO filing for consultations on the matter,” and its “updated request includes several changes to British Columbia’s retail wine restrictions that were not covered under the original consultation request.” Bryce

uncertain, and up to a WTO panel and the Appellate Body to decide. In respect of the renegotiations, however, there are vital facts that the Administration did not reveal.

According to data from the B.C. Wine Institute, “Canada is the top export country for the California wine industry and accounted for \$461 million in sales in 2015.”⁶⁷ Moreover, the voice of that Institute asks:

“We’re not sure why they’re picking on B.C.,” said Miles Prodan, president and chief executive officer of the Kelowna-based British Columbia Wine Institute. “The Americans have got a huge foothold in the Canadian wine sector.”

...

In addition, the U.S. has grown a significant wine trade surplus of C\$450.6 million (\$360.2 million) with Canada since free trade was negotiated in 1989, according to the Canadian Vintners Association.

...

...To date [October 2017], *fewer than 20 of the province’s 1,300 retail outlets have shelves where only locally produced wine is sold*, he said. American wine producers currently have about *14 percent of the Canadian market*, while B.C. producers account for roughly 10 percent, Prodan said (emphasis added).⁶⁸

Evidently, as with tomatoes from Mexico, there is a fuller story than the United States tells. That is, America’s NAFTA renegotiations strategy overdraws inferences from isolated sectors, concealing realities in those sectors, and the overall situation on the trade stage. Controversies in those sectors are not the full truth about NAFTA. The truth is that overall, across all agricultural, manufacturing, and services sectors, NAFTA is generally understood to be a success.

Yet, redolent of Iago, America defines its interest on the basis of a narrow self-interest. Realities – like the underlying causes for an imbalance in tomatoes, or the existence of positive balances in corn and wine – are concealed. Iago concealed realities, like Cassio’s

Baschuk, *U.S. Files New WTO Complaint Over Canada Wine Restrictions*, 34 INT’L TRADE REP. (BNA) 1317 (Oct. 5, 2017).

67. Bryce Baschuk, *USTR Favors NAFTA Approach to Canadian Wine Row*, 34 INT’L TRADE REP. (BNA) 942 (June 29, 2017).

68. Bryce Baschuk, *U.S. Files New WTO Complaint Over Canada Wine Restrictions*, 34 INT’L TRADE REP. (BNA) 1317 (Oct. 5, 2017).

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loyalty and Desdemona's fidelity to Othello, and the common good of the Venetian state suffered. So, too, does the United States, when it exalts narrow sectoral interests over the nation's aggregate interests.⁶⁹

IV. IMPROVISATION: REWRITING SCRIPTS

How poor are they that have not patience!

What wound did ever heal but by degrees?

Thou know'st we work by wit and not by witchcraft,

And wit depends on dilatory time.

Othello, Act II, Scene 3, Lines 273-276

(Speaking to Roderigo)

A. Iago's Improvisation

Iago cleverly forges his plot of irrational revenge against Othello as the play proceeds. Iago does not have a complete "game plan" in Act I, Scene 1. He seizes opportunities with the Duke of Venice and Venetian senators, where he ponders how to ruin Cassio:

Cassio's a proper man. Let me see now ...

To get his place and to plume up my will

In double knavery – how? how? Let's see ...

After some time, to abuse Othello's ears

That he [Cassio] is too familiar with his [Othello's] wife [Desdemona].

He [Cassio] hath a person and a smooth dispose

69. Concealment as discussed above concerns substantive matters. Concealment on procedural ones also is afoot. America is non-transparent about NAFTA renegotiations. It refuses to release draft negotiating texts, or even proposals. Indeed, there is a double deception here: the Trump administration criticized its predecessor for negotiating TPP in secret, and yet it is following that same script with respect to *NAFTA*. See, e.g., Len Bracken, *Wyden to Block Trade Nominees Over NAFTA Transparency*, 34 INT'L TRADE REP. (BNA) 1436 (Oct. 26, 2017) (reporting the statement of Senator Ron Wyden (D.-Or., Ranking Member of Senate Finance Committee), that "[t]he American people are in the dark," ... as to American negotiating demands in NAFTA renegotiations, and the Trump Administration thereby violated the Trade Promotion Authority ("TPA") requirement to publish updated "comprehensive and detailed" summaries of its negotiating aims).

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To be suspected, framed to make women false.

The Moor is of a free and open nature

That thinks men honest that but seem to be so,

And will as tenderly be led by th' nose

As asses are

I have't! It is engendered! Hell and night

Must bring this monstrous birth to the world's light.⁷⁰

This soliloquy bespeaks the mind not so much of a master or visionary strategist as a skillful and expedient improviser. Iago exerts a monstrous creativity, fabricating a plot from falsity about Cassio and Desdemona.

Two Acts later, Iago again improvises, this time with an ostensibly innocent, yet devastatingly insidious question, Iago asks Othello about Cassio:

Iago:

Did Michael Cassio, when you [Othello] wooed my lady [Desdemona],

Know of your [Othello's] love [for Desdemona, and presumably *vice versa*]?"

Othello:

He [Cassio] did, from first to last.

Why dost thou ask?

Iago:

But for a satisfaction of my thought,

No further harm.⁷¹

The question was not scripted in advance (except by Shakespeare, of course). Rather, Iago realized a moment to plant doubt in the mind of Othello about the fidelity of Desdemona.

70. OTHELLO, act 1, sc. 3, ll. 383–395.

71. *Id.* at act 3, sc. 3, ll. 93–98.

In sum, Iago fills in details of his plot as he goes along. Most infamously, to “ensnare as great a fly as Cassio,”⁷² as Iago puts it, he uses Desdemona’s handkerchief. Insisting Emilia give him this memento of Othello’s love for Desdemona, which Emilia collects after Desdemona inadvertently drops it, Iago plants the handkerchief with Cassio, anticipating Cassio will return it to Desdemona. Such “trifles light as air” will be “to the jealous” [*i.e.*, Othello] “confirmations [*i.e.*, evidence] strong [a]s proof of holy writ” that Cassio slept with Desdemona.⁷³

B. Scenes of America’s Improvisation

1. No Script for Dairy

The July 2017 USTR *NAFTA Renegotiations Objectives*, and the November 2017 *Revised NAFTA Renegotiations Objectives*, are far less detailed documents than the analog issued by the Obama Administration for the TPP.⁷⁴ The *Objectives* are inchoate, even amateurish in parts, suggesting the United States launched a plot without fully thinking through each of its steps, much less anticipating the responses of the other actors, thereby content to fill in vital details as the drama unfolds.⁷⁵ That behavior mimics Iago’s improvised

72. *Id.* at act 2, sc. 1, ll. 67–68.

73. *Id.* at act 3, sc. 3, ll. 323–325. Tina Packer nicely summarizes the scheming, partly planned and partly improvised, of Iago:

Iago then leaves [Desdemona’s] handkerchief in the lodgings of Cassio, the man who got the job Iago wanted, *hoping that Cassio will carry it with him and take it out in public so Othello will see it.*

On their first night in Cyprus – the wedding night [of Othello and Desdemona] ... – *Iago gets Cassio (who is in charge of the garrison) drunk, and Cassio creates a huge fracas in the town, wounding the Governor and rousing Othello from his marriage bed.* Furious, Othello strips Cassio of his office.

Cassio’s shame is overwhelming, and he asks Iago what he should do. Iago counsels him to go to Desdemona and get her to plead with Othello. And that’s what happens.

In the meantime, Iago implies, insinuates, hints to Othello that there is something strange going on between Cassio and Desdemona, thus inducing in Othello a state he has never known before: jealousy. *When he sees the handkerchief in Cassio’s hand, that’s all the proof he needs to know that Desdemona is betraying him and sleeping with Cassio.*

Tina Packer, *Women of Will – The Remarkable Evolution of Shakespeare’s Female Characters* 195 (Vintage Books, 2015) (emphasis added).

74. See RAJ BHALA, *TPP OBJECTIVELY – LAW, ECONOMICS, AND NATIONAL SECURITY OF HISTORY’S LARGEST, LONGEST FREE TRADE AGREEMENT* 77-88 (Carolina Academic Press, 2016).

75. On some issues, the *Objectives* and *Revised Objectives* are nearly a blank script. *Supra* note 24. Consider wheat, particularly the proposed changes to the Canadian wheat classification system:

plotting. But, whether the analogy extends to America being clever at script-less improvisation (or, for that matter, changing a script) amidst negotiations is difficult to know, in part because of their non-transparency.

Consider the dairy sector and Canada's Supply Management System ("SMS"). The July 2017 USTR *Renegotiation Objectives* contain no script for this sector,⁷⁶ even though Canada's SMS for dairy (milk, cheese, and eggs), and poultry was not liberalized under NAFTA.⁷⁷ The *November Objectives* added the vague phrase "including by eliminating remaining Canadian tariffs on imports of U.S. dairy, poultry, and egg products" to the goal of expanding market access for American farmers in Mexico and Canada.⁷⁸ In other words, dismantling the SMS has been an issue between America and Canada for decades. And, America has a script for enhanced dairy sector exports, namely, the TPP outcome. The USTR could have used the modest liberalizations to the SMS Canada grudgingly conceded in the TPP for a precise NAFTA renegotiations script.

This missing script, redolent of the omissions in *Othello*, is a missed opportunity to resolve a long-standing dispute between what the Americans say is Canadian dairy protectionism and what the Canadians say is American dairy over-production. Instead, as

U.S. farmers ... want changes to Canadian grain laws that automatically assign the lowest price for their wheat.

...

Under Canadian legislation, U.S. wheat automatically receives the lowest quality grade and price in Canada, while Canadian wheat commands the price accorded to its quality in the United States.

The result is that U.S. farms near the border have no reason to truck grain to Canadian companies that may be closer, while plenty of Canadian wheat flows south to American delivery points, said Alan Merrill, president of Montana Farmers Union.

Alternatively, U.S. farmers can negotiate price based on the wheat's specifications, said Guy Gallant, a spokesman for Canadian Agriculture Minister Lawrence MacAulay. The vast majority of buying by Canadian grain companies, however, is done based on the country's grading system.

Rod Nickel, *U.S. farm groups pile on Canada as Trump eyes fairness*, REUTERS (May 4, 2017, 5:04 PM), <https://www.reuters.com/article/us-usa-trade-canada-agriculture/u-s-farm-groups-pile-on-canada-as-trump-eyes-trade-fairness-idUSKBN1802PH>.

76. See *Summary of Objectives for the NAFTA Renegotiation* (July 17, 2017), *supra* note 24, at 4; Lesley Wroughton & David Lawder, *U.S. makes lower trade deficit top priority in NAFTA talks*, REUTERS (July 17, 2017, 4:54 PM), <https://www.reuters.com/article/us-usa-trade-nafta-statement/u-s-makes-lower-trade-deficit-top-priority-in-nafta-talks-idUSKBN1A2272>.

77. Rossella Brevetti, *NAFTA Talks Could Face Stormy Negotiations in Round Four*, 34 INT'L TRADE REP. (BNA) 1348 (Oct. 11, 2017).

78. *Summary of Objectives for the NAFTA Renegotiation* (Nov. 2017), *supra* note 24, at 3.

President Trump called for NAFTA renegotiations in 2016-2017, the dispute not only festered but worsened. That was thanks to regulatory developments in Ontario affecting American dairy exports.

In 2016, Ontario created a “Class 6” milk category to manage the supply and pricing of milk components and ingredients for sale to Canadian processors. American dairy farmers said that category depressed market prices for ultra-filtered milk, and demand for American milk exports.⁷⁹ In 2017, the Canadian dairy industry established a “Class 7” category to price milk product ingredients, particularly protein concentrates, skim milk, and whole milk powder (used for cheese and yogurt). Again the U.S. criticized the Canadian move, saying it amounted to import substitution.

American dairy exports to Canada are just 0.2 percent of all American exports to Canada (\$631 million of the \$320.1 billion worth of goods and services America exports annually).⁸⁰ That miniscule figure suggested there was merit in the American concerns about the Class 6 and 7 categories, because there was considerable upward potential to gain market share in Canada. If so, then the missing script in the USTR *Negotiating Objectives* was a sin of omission that seemed tantamount to betrayal of the American dairy industry.

2. An Old Script for Softwood Lumber?

Another script missing from the July 2017 *Negotiating Objectives* and November 2017 *Revised Negotiating Objectives* concerns the decades-long softwood lumber dispute between the United States and Canada. Canada is the world’s largest softwood lumber exporter, and the United States is its biggest market.⁸¹ Both documents are silent about resolving American claims that certain Canadian provinces subsidize the harvesting of softwood lumber that is exported to, and dumped in, the United States. By default, both documents rely on an old script – namely, whack Canadian lumber with antidumping (“AD”) and countervailing duties (“CVDs”).

So, in yet another iteration of the dispute, in April 2017, the U.S. imposed preliminary CVDs on Canadian softwood lumber as high as 24.1 percent.⁸² In June 2017, the United States tacked on preliminary

79. See Bryce Baschuk, *Canadian Trade Minister Downplays U.S. Dairy Concerns*, INT’L TRADE REP. (BNA) (June 15, 2017).

80. *Id.*

81. Jen Skerritt & Rossella Brevetti, *U.S. to Impose More Tariffs on Canadian Softwood Lumber*, 34 INT’L TRADE REP. (BNA) 936 (June 15, 2017).

82. Lesley Wroughton & David Lawder, *U.S. makes lower trade deficit top priority in*

AD duties of 7.7 percent to certain Canadian softwood lumber imports, thus bringing the total punitive levy to nearly thirty-one percent.⁸³ And, in November 2017, America's Department of Commerce confirmed average final CVDs of 14.25 percent, and average final AD duties of 6.58 percent.⁸⁴

With their Canadian-sourced lumber as high as thirty-one percent more expensive than before, and no script to give them hope, the AD-CVD battle would be resolved through NAFTA renegotiations, and American softwood lumber importers would look for new foreign suppliers. None other than the Russians entered the stage:

Russia has emerged as one of the winners from the trade dispute between Canada and the U.S. over lumber

The U.S. is importing more softwood lumber from overseas after it slapped tariffs on Canadian supplies, making them more expensive. *Russian shipments are 42 percent higher* so far [as of August] in 2017, according to U.S. government data.

To be sure, Russia accounts for a relatively small proportion of the total, while European countries such as Germany and Sweden are among the biggest suppliers to the U.S. But the shift in volumes illustrates how a political spat has quickly altered the flow of international trade.

...

Monthly softwood lumber shipments from Russia totalled 4,214 cubic meters in May, the most since January 2008....

NAFTA talks, REUTERS (July 17, 2017, 4:54 PM), <https://www.reuters.com/article/us-usa-trade-nafta-statement/u-s-makes-lower-trade-deficit-top-priority-in-nafta-talks-idUSKBN1A2272>. The petitioners are an *ad hoc* coalition that includes various lumber manufacturing companies. The Canadian producer-exporter respondents included West Fraser Timber Co. and Canfor Corp. Canada announced adjustment funds to help dislocated Canadian companies and workers.

83. United States Dep't of Commerce, Int'l Trade Admin., *Fact Sheet: Commerce Preliminarily Finds Dumping of Imports of Softwood Lumber from Canada* 26 (June, 26 2017), <https://enforcement.trade.gov/download/factsheets/factsheet-canada-softwood-lumber-ad-prelim-062617.pdf>.

The trade remedies excluded softwood lumber from the Maritime Provinces of Newfoundland and Labrador, Prince Edward Island and Nova Scotia.

84. See Jen Skerritt, *U.S. Places Punitive Tariffs on Canadian Lumber Amid Impasse*, 34 INT'L TRADE REP. (BNA) 1479 (Nov. 9, 2017).

For the first half of the year [2017], offshore softwood-lumber imports into the U.S. rose 38 percent, while shipments from Canada declined 1 percent....⁸⁵

David MacNaughton, the Ambassador of Canada to the United States enunciated the irony of the AD-CVD action, and by inference, of the missing script:

“What we [Canada] can’t understand is why it is that some elements of the U.S. lumber industry would rather see imports from countries like Russia rather than their closest ally and friend, Canada.”⁸⁶

From an Iago-like perspective, the outcome – Russian imports increasing by forty-two percent from 2016 to 2017, displacing Canadian shipments – is understandable. Iago hates Othello to an irrational degree and destroys himself through his partly-improvised vengeful plot. America’s position in the long-running softwood lumber dispute is not subject to reason, and the position is self-injurious.

Ninety percent of American homes are built with softwood lumber, but American companies at best can supply seventy percent of domestic demand. Not surprisingly, America is Canada’s biggest market for softwood lumber exports.⁸⁷ In anticipation of trade remedies and supply shortages, the cost of lumber in the United States surged by eighteen percent between the end of January and mid-May 2017. That, in turn, drove up the cost of houses that American home buyers pay. Dampened demand for homes in the United States had an adverse knock-on effect on home builders, namely, they laid off workers.

Lumber duties won’t just affect Canadian employees in the forestry industry – it’ll *cost millions of jobs in the U.S. homebuilding industry too....*

For every \$1,000 increase in the price of a home, around 153,000 households are priced out of the market for a median-price new home, according to Washington-based National Association of Home Builders. Lumber plays a significant role in the pricing of a home, and

85. Jen Skerritt, *U.S. Houses Using More Russian Lumber, Thanks to Canada Spat*, 34 INT’L TRADE REP. (BNA) 1182 (Aug. 24, 2017) (emphasis added).

86. Jen Skerritt, *Canada Is Set to Sue U.S. on Lumber if Trade Negotiations Fail*, INT’L TRADE DAILY (BNA) (Aug. 25, 2017).

87. Peter Menyasz, *Canada Seeks NAFTA Review of U.S. Softwood Duties*, 34 INT’L TRADE REP. (BNA) 1529 (Nov. 16, 2017).

housing represents a large chunk of the U.S. economy....⁸⁸

For a rational script writer (like Shakespeare), the stage was set for a script to resolving the long-running dispute through NAFTA renegotiations. America needs Canadian lumber and passing on the costs of AD-CVD duties to American families is politically and economically unwise. Why not write a finale of peace, rather than tragedy?

In August 2017, Canada itself offered America a straightforward script for a peaceful end, a thirty-seventy percent managed trade deal:

Canada's Ambassador to Washington said in an interview this week the sides are close to an agreement on a deal that would cap Canada's share of the U.S. lumber market at 30 percent, but remained at odds over what will happen if U.S. producers can't fulfill their 70 percent share.

Richard Garneau, Chief Executive Officer at Montreal-based Resolute Forest Products Inc., said the U.S. is at best able to supply 68 percent of its own lumber requirements.

"There's room for Canada to continue to supply this market at the same levels," Garneau said ..., citing 31 percent or 32 percent. "Hopefully our government is going to be successful to make sure that the Canadian workers are going to be able to continue to have employment" in the industry.

...

Canada has regularly argued the U.S. simply can't meet its domestic demand, and that choking off Canadian wood imports would raise home prices and trigger shortages.⁸⁹

Yet, over the matter of who would supply a missing market share of one or two percent, American softwood lumber producers rejected the Canadian-proposed finale.⁹⁰ The USTR took its stage direction

88. Natalie Wong, *Resolute CEO Says U.S. Lumber Duties Won't Hurt Future Earnings*, 34 INT'L TRADE REP. (BNA) 1126 (Aug. 10, 2017).

89. Josh Wingrove & Natalie Wong, *U.S. Industry Rejects Canadian Proposal on Lumber Market Share*, 34 INT'L TRADE REP. (BNA) 1125 (Aug. 10, 2017).

90. *Id.* Left with little choice, Canada filed a NAFTA Chapter 19 complaint. See Article 1904 Binational Panel Review Pursuant to the North American Free Trade Agreement, *In the Matter of Certain Softwood Lumber Products from Canada*, Investigation Number C-122-858, Request for Panel Review (Nov. 14, 2017), available through Peter Menyas, *Canada Seeks NAFTA Review of U.S. Softwood Duties*, 34 INT'L TRADE REP. (BNA) 1529 (Nov. 16, 2017). The complaint brought together Canadian provincial governments, industry associations, and

from them, improvising through trade remedy cases and NAFTA talks, with no script written for the broader good of American home-buyers and builders.

3. A New Script for Currency Manipulation?

In July 2017, when the USTR published its *NAFTA Negotiating Objectives*, it admitted it would have to improvise its script on currency manipulation:

“The USTR is working with the Treasury Department and lawmakers on whether to add a currency clause in the new NAFTA deal. However, there’s no evidence of currency manipulation by Mexico and Canada, he [USTR Ambassador Robert Lighthizer] said. “We’re still debating whether to put a currency manipulation provision in here,” he said.”⁹¹

The script in the July 2017 *Objectives* is a call for an “appropriate mechanism [to] ensure that the NAFTA countries avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage.”⁹² The November 2017 *Objectives* have the same script.⁹³ Yet, neither Canada nor Mexico is on the United States Department of Treasury’s “watch list” for possible currency manipulation, so the meaning of that vague stage direction was all but unfathomable.⁹⁴

There was an argument against improvisation. Current senator and former United States Trade Representative Rob Portman (Republican, Ohio) agreed Mexico and Canada are not “manipulating their currencies to bolster exports...”⁹⁵ He reasoned that including currency misalignment provisions could be a “template” for future trade deals. The problem with this specific rationale, however, was the TPP already has a template, namely, a *Joint Declaration* on a

individual companies. The case was the fifth one since 1982 between America and Canada on softwood lumber. *See id.*

91. Andrew Mayeda, *Trump’s Trade Chief Says U.S. Won’t Force Quick Deal on NAFTA*, 34 INT’L TRADE REP. (BNA) 943 (June 29, 2017).

92. *See Summary of Objectives for the NAFTA Renegotiation* (July 17, 2017), *supra* note 24, at 17.

93. *See Summary of Objectives for the NAFTA Renegotiation* (Nov. 2017), *supra* note 24, at 17.

94. *USTR to seek “appropriate mechanism” in NAFTA on currency manipulation*, REUTERS (July 17, 2017, 5:02 PM), <https://www.reuters.com/article/usa-trade-nafta-currency/ustr-to-seek-appropriate-mechanism-in-nafta-on-currency-manipulation-idUSW1N1D90KZ>.

95. Len Bracken, *Senator Seeks Currency Manipulation Provisions in NAFTA*, 34 INT’L TRADE REP. (BNA) 1230 (Sept. 14, 2017).

consultative process to address allegations of currency manipulation.⁹⁶ As with dairy market liberalization and SMS reform, with currency manipulation the United States could have borrowed the script from the TPP. Yet, the USTR *Negotiating Objectives* on currency manipulation were a step backwards, away from the stage, not picking up the TPP script, not explaining why it was insufficient, and not writing a different script.

In this improvisation, America injured workers in the home building industry with respect to softwood lumber. Labor groups wanted a check against currency manipulation in NAFTA.⁹⁷ In keeping with its Iago-like improvisation, in October 2017, the U.S. was making up a proposal that was nothing more than a half-hearted, unenforceable pledge:

NAFTA negotiators are *working on a side deal* for the U.S., Canada, and Mexico to make a *non-binding pledge* to avoid devaluing their currencies for competitive purposes...

The U.S. wants to send a signal to the rest of the world that it opposes currency manipulation and prefers countries to move toward market-based exchange rates...

The currency pledge won't be brought into the main North American Free Trade Agreement... As a result, the side deal *won't be as legally enforceable* as the principal accord....⁹⁸

To be sure, any script would need to immunize legitimate central bank monetary policy that may lead to currency depreciation (*e.g.*, quantitative easing), while targeting foreign exchange operations intended to drive down the relative value of a domestic currency and

96. See RAJ BHALA, *TPP OBJECTIVELY – LAW, ECONOMICS, AND NATIONAL SECURITY OF HISTORY'S LARGEST, LONGEST FREE TRADE AGREEMENT* 325-342 (Carolina Academic Press, 2016).

97. *The Month in International Trade – June 2017*, CROWELL MORING (June 2017), www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Month-in-International-Trade-June-2017#ITB05; Unions intoned:

“We will do everything we can to make this a good agreement and to hold the President at this word and make sure we get a renegotiation,” AFL-CIO President Richard Trumka said during the call [discussing, *inter alia*, currency manipulation]. “No deal is better than a bad deal,” Trumka said.

Quoted in AFL-CIO, UNION HALL, *Reuters: Labor Unions, Democrats Pressure Trump Ahead of NAFTA Priorities Statement* (July 17, 2017). See also Rossella Brevetti, *U.S. NAFTA Objectives Call for Cutting Dumping/Subsidy Panels*, 34 INT'L TRADE REP. (BNA) 1021 (July 20, 2017).

98. See Andrew Mayeda & Eric Martin, *NAFTA Nations Said Likely to Adopt Non-Binding Currency Pledge*, 34 INT'L TRADE REP. (BNA) 1435 (Oct. 26, 2017).

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thereby stimulate export, and depress import, demand.⁹⁹

V. OMISSIONS: SOCIAL JUSTICE TOPICS LEFT OUT

Virtue? A fig! 'Tis in ourselves that we are thus or thus. Our bodies are our gardens, to the which our wills are gardeners.

Othello, Act I, Scene 3, Lines 307-309

(Iago Speaking to Roderigo)

A. Iago's Omissions

Iago is noteworthy as much for what he does not say, and what he does not do, as for what he does say and do. His sins, as it were, are on the order of omissions, not just actions. The line between concealment and omission is thin and blurry. Both entail a failure to tell the truth, or to tell the whole truth.¹⁰⁰ There is falsehood in both. The distinction,

99. On government procurement, the United States appeared to change the script. It sought a reciprocity approach, which ran counter to almost all other NAFTA provisions (a rare exception being in Chapter 17, on Intellectual Property, for secondary broadcasting rights of sound recordings under Article 1703(1), where Mexico and the U.S. agreed to a reciprocity rule).

On government procurement, the U.S. is proposing to cap its market for contracts at a dollar-for-dollar level with the combined Canada-Mexico market.... That would mean the total value of contracts the Canadians and Mexicans could access, together, couldn't exceed the total value that U.S. firms could win in those two countries, the officials said.

Given the scale of the U.S. economy and population, this could effectively leave the two with less access to U.S. procurement than some other countries, the officials said.

Eric Martin, Josh Wingrove, & Andrew Mayeda, *U.S. Demands on NAFTA Said to Risk Scuttling Trade Talks*, 34 INT'L TRADE REP. (BNA) 1316 (Oct. 5, 2017).

Othello teaches that reciprocity can be self-destructive. Iago calculates what he did not get from Othello – the promotion he sought – and thus seeks revenge. The revenge he seeks is disproportionate – as is the procurement limit reflected in the second paragraph quoted above. Mexico and Canada would be worse off, as their combined access to the American government procurement market would be less than that enjoyed by Bahrain under America's FTA with that Gulf country. See Rossella Brevetti, *America First Proposals Land with Thud on NAFTA Table*, 34 INT'L TRADE REP. 1413 (Oct. 26, 2017). (Rule 16.7.7) See also Rossella Brevetti, *U.S. Proposals in NAFTA Point to Long Slog*, 34 INT'L TRADE REP. (BNA) 1346 (Oct. 12, 2017) (reporting the observation of one Canadian private sector observer that “[t]his is a radical and aggressive position and would cut back on the obligations the U.S. has agreed to” under the World Trade Organization's *Government Procurement Agreement*.... Canada is unlikely to accept less than what it has under current trade commitments).

As for ISDS, the United States announced no major changes to ISDS. Its *Negotiating Objectives* made no commitments, saying only that foreign investors in the U.S. will not be “accorded greater substantive rights than domestic investors.” Rossella Brevetti, *NAFTA Investment Disputes Cloaked in Vague Language*, 34 INT'L TRADE REP. (BNA) 1104 (Aug. 10, 2017). There was no script to fix the vices, or reinforce the virtues, of ISDS.

100. Hence, the “Why dost thou ask?” dialogue in act 3, sc. 3, quoted earlier, can be used as an illustration of omission: Iago omits the truth about why he asks Othello whether Cassio

perhaps, turns on transparency. When Iago conceals, he covers a truth, shrouding a reality in secrecy. He is non-transparent through his active use of a veil. When Iago omits, he deletes a point, withholding it from his discourse. He is non-transparent through silence.

Consider Iago's following dialogue with Othello:

Iago:

For Michael Cassio,

I dare be sworn I think that he is honest.

Othello:

I think so too.

Iago:

Men should be what they seem,

Or those that be not, would they might seem none.

Othello:

Certain, men should be what they seem.

Iago:

Why then, I think Cassio's an honest man.

Othello:

Nay, yet there's more in this.

I prithee speak to me as to they thinkings,

As thou dost ruminat, and give thy worst of thoughts

The worst of words.¹⁰¹

Othello's final above-quoted statement indicates he doubts whether Iago is sharing all he believes about Cassio. Iago has implied that because Cassio seems honest, Othello can guess that he must be honest. But, Iago intentionally eschews a definitive answer, leaving the question to dangle. What Othello seeks is precisely what Iago omits. The effect is to upset Othello, which Iago does again several lines later

knew of Othello's love for Desdemona. OTHELLO, *supra* note 4.

101. *Id.* at act 3, sc. 3, ll. 93–98.

when he speaks of jealousy and Desdemona. Iago says to Othello:

O, beware, my lord, of jealousy!
 It is the green-eyed monster, which doth mock
 The meat it feeds on. That cuckold lives in bliss
 Who, certain of his fate, loves not his wronger;
 But O, what damnèd minutes tells he o'er
 Who dotes yet doubts, suspects yet strongly loves.

...

Look to your [Othello] wife [Desdemona]; observe her well, with
 Cassio;

Wear your eyes thus: not jealous, nor secure.

I [Iago] would not have your free and noble nature

Out of self-bounty be abused. Look to't.¹⁰²

The seed of doubt about the fidelity of Desdemona to Othello *vis-à-vis* Cassio is planted firmly by what Iago does not say.¹⁰³ He does not advise Othello to be jealous, nor tell him that Cassio and Desdemona are romantically engaged. The silence of Iago is the space in which Othello draws inferences, and thereby inexorably absorbs Iago's poison.

B. Scenes of America's Omissions

1. No Trade Adjustment Assistance

An analogy to Iago's omissions exists with respect to America's NAFTA renegotiations posture on social justice topics. Most notably,

102. *Id.* at act 3, sc. 3, ll. 168–173, 199–202.

103. Iago's wife, Emilia, also remains silent:

Having tried to bribe her way into her husband's favor by stealing the handkerchief, she is faced with a bigger problem – should she tell Desdemona the truth about the hankie, because she can see the havoc the loss is causing in the marriage, or should she remain silent? She does the latter, perhaps hoping the situation won't escalate. In the scene in which Emilia is helping Desdemona get ready for bed ... the one thing Emilia is *not* saying is "I stole the handkerchief and gave it to my husband."

TINA PACKER, *WOMEN OF WILL: THE REMARKABLE EVOLUTION OF SHAKESPEARE'S FEMALE CHARACTERS* 196 (Vintage Books, 2015) (emphasis original). Of course, unlike Iago, Emilia does not persist in her omission. In Act V, Scene 2, following Desdemona's smothering by Othello, Emilia does reveal the truth – and Iago kills her.

the strongest supporters of candidate Trump, and Trump Administration trade policy – namely, economically dislocated and socially alienated workers in the manufacturing sector – may be the least advantaged by omissions in the NAFTA renegotiations. There are two of them: Trade Adjustment Assistance (“TAA”), and labor rights.¹⁰⁴

Nothing in the July 2017 *Negotiating Objectives* or November 2017 *Revised Negotiating Objectives* references TAA, much less

104. These two matters hardly exhaust the list of omitted topics. Omission is a hallmark of America’s NAFTA renegotiations strategy with respect to environmental concerns. TPP, though sub-par with respect to the environment and climate change, called on TPP Parties to join at least one Multilateral Environmental Agreement (“MEA”) of the seven major ones, and for them to take greater account of the need for a carbon-neutral economy. See *Trans Pacific Partnership*, Art. 20:15, available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Environment.pdf>; RAJ BHALA, TPP OBJECTIVELY – LAW, ECONOMICS, AND NATIONAL SECURITY OF HISTORY’S LARGEST, LONGEST FREE TRADE AGREEMENT 376-384 (Carolina Academic Press, 2016). There is no such aim in the July 2017 *Summary of Objectives for the NAFTA Renegotiation* or the revised November 2017 *Objectives*, *supra* note 20. In both documents, the USTR says it wants to move NAFTA’s environmental provisions from the current *Side Agreement* to the core text, and to strengthen those provisions – the same shift it backed for labor rights (discussed above):

“But the proposal . . . was viewed as little more than window dressing by environmental groups that see the language as virtually identical to what they view as weak environmental provisions included in more recent trade deals such as the Trans-Pacific Partnership (TPP).

...

But Ben Beachy, director of the Sierra Club’s Responsible Trade Program, . . . [said] that language, along with other environmental proposals listed in the summary, “looks like a copy and paste of the environmental provisions of the defunct *TPP*,” a deal that U.S. environmental groups widely opposed. Beachy said the similarities are “ironic” in that the language was drawn “from a deal that Trump proclaimed to hate.” President Donald Trump withdrew the U.S. from that deal shortly after his inauguration.”

Dean Scott, *Trump Plans to Move Environmental Issues to NAFTA’s Core*, INT’L TRADE DAILY (BNA) (July 18, 2017). See also Tryone Richardson, *NAFTA Renegotiation Aims to Bolster Labor Initiatives*, INT’L TRADE DAILY (BNA) (July 18, 2017) (discussing the placement of these provisions).

Another notable illustration of omission from the July 2017 and November 2017 *Summary of Objectives for the NAFTA Renegotiation Revised Objectives*, *supra* note 20, concerns the rights of women. TPP Chapter 23, specifically Article 23:4, sought to advance those rights, albeit in soft law terms. Here, too, there is an analogy with *Othello*, if the play is interpreted (as it should be) from a feminist perspective, as Tina Packer argues:

It makes me uneasy that we so easily state that *Othello* is a play about race. *Race is one of its ingredients, but the most pervasive subject that Shakespeare is tackling is sexism.* The two women [Desdemona and Emilia] end up dead. Bianca, the third woman in the play, Cassio’s mistress, ends up in jail for something she never did, and nobody bothers to get her out. Iago, the symbol of evil, remains alive among us. Brabantio, Desdemona’s father, dies of a broken heart because of his daughter’s disobedience. And everyone is very regretful about what has happened. *But no one, other than Emilia, has pointed out that there is a terrible double standard, something rotten in the system itself.*

TINA PACKER, WOMEN OF WILL: THE REMARKABLE EVOLUTION OF SHAKESPEARE’S FEMALE CHARACTERS 198 (Vintage Books, 2015) (emphasis added). That “rotteness,” as it were, in FTAs is discussed in my forthcoming article on women’s rights and FTAs.

envisions resurrecting the original TAA program that accompanied the 1993 North American Free Trade Implementation Act.¹⁰⁵ That omission calls into question the following USTR statement:

“Too many Americans have been hurt by closed factories, exported jobs, and broken political promises,” U.S. Trade Representative Robert Lighthizer said in a statement, adding that he plans to negotiate a “fair deal.”¹⁰⁶

TAA provides a safety net to help workers dislocated from even the fairest of free trade deals. No deal is free of dislocations. Sooner or later, particularly for production factors in which the United States is relatively less endowed than Mexico, such as unskilled and semi-skilled American labor, the demand for them will fall relative to the increased demand for such labor in Mexico, and their returns (wages) will decline. At least that is the prediction of the Stolper-Samuelson Theorem, under the presumption of *ceteris paribus* (all other factors being equal) conditions.¹⁰⁷

2. Whither Labor Rights?

For all workers, those employed and made redundant, labor rights under NAFTA matter. Are they competing with workers in the other Parties, especially Mexico, who have an unfair advantage built on

105. See RAJ BHALA, *INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME I*, at 152 (LexisNexis, 4th ed., 2015).

In November 2017, United States Secretary of Agriculture Sonny Perdue suggested that, if America withdrew from NAFTA, the Department of Agriculture would protect American farmers and ranchers. The details of such protection were not revealed, but hardly summed to a comprehensive TAA plan for all dislocated workers. See Teaganne Finn, *USDA Plans to Help Farmers if U.S. Quits NAFTA: Perdue*, 34 INT'L TRADE REP. (BNA) 1532 (Nov. 16, 2017).

106. Andrew Mayeda, Josh Wingrove, & Eric Martin, *U.S. Says It Aims to Cut Trade Deficits Through NAFTA Overhaul*, 34 INT'L TRADE REP. (BNA) 1020 (July 20, 2017). Canadian labor unions made the same argument as the USTR:

NAFTA, largely uncontroversial in Canada, still has its detractors. One is organized labor, whose complaints of job losses and low Mexican wages echo those made by Trump. “NAFTA has failed workers in all three countries,” Unifor, a labor group representing auto workers, wrote in its joint submission with the United Auto Workers [UAW].

Labor rights are under attack in the U.S., essentially non-existent in Mexico, and are threatened in Canada, they argue. “NAFTA renegotiations will only be successful if they lead to higher wages in all three countries, reverse crippling trade deficits with Mexico and create new manufacturing jobs in the U.S. and Canada,” the unions wrote.

Josh Wingrove, *Do No Harm in NAFTA Talks, Canadian Businesses Tell Trudeau*, 34 INT'L TRADE REP. (BNA) 1123 (Aug. 10, 2017). The joint Unifor-UAW submission is available at www.unifor.org/sites/default/files/documents/document/unifor_uaw_statement_eng_final_2017.pdf.

107. RAJ BHALA, *INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME I*, at 147-149 (LexisNexis, 4th ed., 2015).

exploitative conditions? That question prompted Senator Ron Wyden (D.t-Ore.) to state: “NAFTA could use a complete overhaul.... That means [inter alia] *high standard, enforceable labor* and environmental commitments....”¹⁰⁸ Likewise, United States Representative Sander Levin (D.-Mich.) targeted “Mexico’s use of “protection contracts” between an employer and an employer-dominated union that doesn’t represent workers and their interests.”¹⁰⁹

Such comments, coupled with the repeated rhetoric from Mr. Trump and his supporters to help American workers compete in a global economy, suggest the July 2017 *Negotiating Objectives* and November 2017 *Revised Negotiating Objectives* would omit neither TAA nor robust protections for these workers.

To be sure, both documents called for action. The USTR professed a desire to shift labor provisions from their current position in the *Side Agreement* to the core text of NAFTA, and to strengthen those provisions.¹¹⁰ What the USTR omitted was the legal value of the shift. It was status over substance. Symbolically, that shift would signal heightened importance to labor rights, an importance given to all post-NAFTA deals starting with Article 6 of the core text of the 2001 *United States-Jordan FTA*.¹¹¹ But, the shift itself conveyed no change in the nature or enforceability of the rights. Perhaps appreciating this distinction, the USTR said it sought in a new NAFTA to:

- provide access to fair, equitable, and transparent administrative and judicial proceedings;
- require NAFTA countries to have laws governing acceptable conditions of work with respect to minimum wages, hours of work,

108. Andrew Mayeda, *Trump’s Trade Chief Says U.S. Won’t Force Quick Deal on NAFTA*, 34 INT’L TRADE REP. (BNA) 943 (June 29, 2017).

109. Rossella Brevetti, *House Democrats Say NAFTA Needs Major Overhaul*, 34 INT’L TRADE REP. (BNA) 975 (July 6, 2017) (speaking at a June 27, 2017 inter-agency panel, the Trade Policy Staff Committee, hearing).

110. See *Summary of Objectives for the NAFTA Renegotiation*, supra note 20, at 12 (for both July and Nov. *Summary of Objectives*); Tyrone Richardson, *NAFTA Renegotiation Aims to Bolster Labor Initiatives*, INT’L TRADE DAILY (BNA) (July 18, 2017). For a review of labor rights covered in the *NAFTA Labor Side Agreement*, see RAJ BHALA, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME II, at 1107-1151 (LexisNexis, 4th ed., 2015).

111. *U.S.-Jordan Free Trade Agreement*, EXPORT.GOV (Oct. 12, 2011), <https://build.export.gov/main/FTA/jordan/index.asp>; RAJ BHALA, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME II, at 787 (LexisNexis, 4th ed., 2015); *id.* at 1143.

and occupational safety and health;

- ensure that these labor obligations are subject to the same dispute settlement mechanism that applies to other enforceable obligations of the agreement;

- require that NAFTA countries take initiatives to prohibit trade in goods produced by forced labor, regardless of whether the source country is a NAFTA country; and

- establish a means for stakeholder participation, including through public advisory committees, as well as a process for the public to raise concerns directly with NAFTA governments if they believe a NAFTA country is not meeting its labor commitments.¹¹²

And yet, in each bullet point, what was concealed mattered as much as what was stated.

The first point neglected the fact that the *Labor Side Agreement* already contains a dispute settlement mechanism. The problem is it needs to be improved. Nothing in this point moves beyond ambiguous phraseology. The third bullet point suggests a unified dispute settlement mechanism for all NAFTA disputes, including ones pertaining to labor issues. But, that point was incongruous with the American position to eliminate Chapter 19 panels, and radically alter or scupper the other two dispute resolution mechanisms, Chapter 20 panels, and Investor-State Dispute Settlement (ISDS). The third bullet point offered no concrete proposal for a unified scheme.

The second and fourth bullet points were nothing more than a reference to International Labor Organization (ILO) standards. The *Labor Side Agreement* already refers to those standards, meaning these points offered nothing new to workers in any of the NAFTA Parties. The fifth bullet point omitted the fact that advisory committees already exist. In the United States, it is called the Labor Advisory Committee, and it has opined on (*inter alia*) the TPP.¹¹³ Whether the public could raise directly with a Party's government its labor concerns by working through the Committee is unclear, as the fifth bullet point does not explain why this direct access currently does not allow for it. If not, then the July 2017 and November 2017 *Objectives* should have set out

112. Tyrone Richardson, *NAFTA Renegotiation Aims to Bolster Labor Initiatives*, INT'L TRADE DAILY (BNA) (July 18, 2017).

113. See RAJ BHALA, *TPP OBJECTIVELY – LAW, ECONOMICS, AND NATIONAL SECURITY OF HISTORY'S LARGEST, LONGEST FREE TRADE AGREEMENT*, at 365-372 (Carolina Academic Press, 2016).

a sketch of a new mechanism.

Common to all points was another omission. How different were they from what America already had negotiated in the TPP? If workers do not fair better under a renegotiated NAFTA than they did under the TPP, then logically they will reject the new deal, as they did the TPP. Rather, “NAFTA 2.0” needs to be “TPP Plus” to win the approval of the American labor movement.¹¹⁴ Whether it is, and thus can do so, is unclear. Consider three topics: unionization; wage rates; and so-called “right to work” laws.

The TPP might have done more to advance labor rights overseas than America proposed for NAFTA with respect to independent trade unions.¹¹⁵ The TPP demands that its members allow for free, independent trade unions, a demand obviously pleasing to the American labor movement.¹¹⁶ Such unions do not exist in Vietnam’s one-party Communist state. But, Vietnam agreed to establish them, so as to comply with the TPP.

On minimum wages, NAFTA renegotiations affords an opportunity to go beyond the TPP, which is silent on the topic:

[Jerry] Dias [President of Canada’s largest trade union, 310,000-member Unifor] said he understands the U.S. labor proposal, made during the Ottawa talks, includes a “*very, very significant*” increase in Mexico’s minimum wage to \$32 per day from the current \$4 per day.

114. For example:

“To begin with, any renegotiation that starts off with the current trade template found in TPP is unacceptable,” the IAM’s Martinez [Robert Martinez, president of the International Association of Machinists and Aerospace Workers] said.

“Labor provisions, rules of origin, special corporate courts that undermine important food safety and environmental protections, and many other provisions in TPP fall far short of the substantive changes that need to be made in order for trade agreements to begin benefiting working families,” he said.

Tyrone Richardson, *NAFTA Renegotiation Aims to Bolster Labor Initiatives*, INT’L TRADE DAILY (BNA) (July 18, 2017).

115. See RAJ BHALA, *TPP OBJECTIVELY – LAW, ECONOMICS, AND NATIONAL SECURITY OF HISTORY’S LARGEST, LONGEST FREE TRADE AGREEMENT*, at 365-372 (Carolina Academic Press, 2016).

116. See *Trans Pacific Partnership*, Chapter 19: Labour, Art. 19:1, <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour.pdf> (definition of “labor laws,” item (a)); *id.* at Art. 19:3(1)(a) (on freedom of association); Michael B.G. Froman, *United States – Vietnam Plan for Enhancement of Trade and Labor Relations*, UNITED STATES TRADE REPRESENTATIVE (Feb. 4, 2016), <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labour-Relations.pdf> (the Bilateral Labor Side Agreement between the United States and Vietnam); RAJ BHALA, *TPP OBJECTIVELY – LAW, ECONOMICS, AND NATIONAL SECURITY OF HISTORY’S LARGEST, LONGEST FREE TRADE AGREEMENT*, at 131-132, Table III-1 (Carolina Academic Press, 2016).

“Frankly, that’s still low, but it’s a hell of a lot better,” he said.

Mexico has apparently rejected the proposal, but it’s clear that there can’t be agreement on a modernized NAFTA without greater equity on wages and labor standards, he said. “That’s not going to fly. We’ve lost hundreds of thousands of jobs because Mexico has cheated for 23 years,” he said.¹¹⁷

So, if America presses with a proposal that ultimately was adopted, then it could claim NAFTA 2.0 was TPP Plus in respect of minimum wages. That it would do so – as the USTR suggested in its second bullet point – was uncertain. America did not elaborate on a strategy or tactics to follow through on a constructive proposal Mexico could accept without sensing it had surrendered an important international comparative advantage it enjoys, namely, relatively cheaper labor rates. Was the second bullet point, then, rhetoric or reality?

Uncertainty as to American action shrouded a third labor rights issue in NAFTA negotiations, “Right to Work” laws.¹¹⁸ Twenty-eight American states have adopted them. They forbid a collective bargaining agreement (“CBA”) from containing a “union security” clause.¹¹⁹ That clause obliges any non-union worker covered by a CBA to pay representation fees, that is, union dues.¹²⁰ Those dues help finance the operations of unions, including their CBA activities, hence they are targeted by free market corporatists (*i.e.*, management), but championed by labor rights activists (*i.e.*, unions). America omitted any mention of its stance on supporting or restricting (if not repealing)

117. Peter Menyasz, *Canadian Business Pessimistic After Latest NAFTA Round*, 34 INT’L TRADE DAILY (BNA) 1329 (Oct. 5, 2017).

American labor leaders have taken care in casting blame, intoning for instance in the context of the auto sector:

Let me be clear. Mexican workers are not to blame for NAFTA’s failures. The average autoworker in Mexico makes \$3.00 an hour or less, despite healthy industry profits. Labor standards continue to be dismal, since Mexican workers are prevented from exercising their rights and bargaining for better wages and working conditions.

Statement from UAW President Dennis Williams on NAFTA Negotiations Meetings, UAW (Oct. 2017), <https://uaw.org/statement-uaw-president-dennis-williams-nafta-negotiation-meetings/amp>.

118. The rubric of these laws is misleading. Workers have the “right to work.” What the laws do is ban a union from obliging workers to pay union dues, even if those workers benefit from a CBA negotiated by the union. See Justin Wingrove, *Trudeau Teams Up With Canadian Labor in Push for NAFTA Reforms*, INT’L TRADE DAILY (BNA) (Sept. 12, 2017).

119. Tyrone Richardson, *NAFTA Talks Shift to Labor Issues, Spark Right-to-Work Debate*, INT’L TRADE DAILY (BNA) (Sept. 7, 2017).

120. *Id.*

Right to Work laws.

Arguably, none of the five bullet points could be realized fully without robust independent trade unions, so to the extent these laws starved them of finances, the United States would have called for restrictions on them (if not their outright repeal). Canada did. Labor unions obviously oppose these laws, which weaken their finances. Likewise, in the interests of strengthening worker protections, Canada took the position that any NAFTA rewrite of labor matters should lead to their removal.¹²¹

Omission creates uncertainty, which in turn generates dramatic tension manifest throughout *Othello* thanks in part to Iago's behavior. He omitted one material fact, one key detail, after another, to advance his ends. The common omission by the United States in respect of labor rights was its failure to provide comparisons and contrasts between what it had achieved with the other eleven TPP Parties, and what it sought to achieve with the other two NAFTA Parties, with respect to each of the five bullet points is listed as negotiating objectives. Lest it be forgotten, Mexico and Canada already accepted these achievements pursuant to their membership in the TPP, meaning the United States possesses an authentic, publicly visible backdrop of labor rights from which to draw a comparison, and yet it hides this backdrop from the NAFTA renegotiation stage.

Whether, and to what extent, America wanted to see TPP Plus labor rights in a new NAFTA was unclear. Uncertainty followed: would American workers, for whom the United States purported to advocate, be better off? Why this omission? Perhaps the United States feared a transparent analysis would cast it in a bad light, revealing that its advocacy might be rhetorical, designed more to gain political support than to script a new reality.

VI. CORRUPTION: UNDERMINING RELATIONSHIPS BY DIVIDING WORKERS AND DEMANDING A SUNSET

Who steals my purse steals trash. 'Tis something, nothing:

'Twas mine, 'tis his, and has been slave to thousands.

But he that filches from me my good name

121. See Justin Wingrove, *Trudeau Teams Up With Canadian Labor in Push for NAFTA Reforms*, INT'L TRADE DAILY (BNA) (Sept. 12, 2017).

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LESSONS ABOUT NAFTA RENEGOTIATIONS

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Robs me of that which not enriches him

And makes me poor indeed.

Othello, Act III, Scene 3, Lines 160-168

(Iago Speaking to Othello)

A. Iago's Corruption

Thanks to Iago, the bilateral relationships between Cassio and Othello, and Desdemona and Othello, are corrupted. Iago draws on a portfolio of behaviors – including all of the above, enmity, concealment, improvisation, and omission – to poison those relationships. Additionally, Iago is guilty of that most poisonous of behaviors: mendacity. As distinct from concealment or omission, Iago lies, which he admits almost gleefully in the concluding line of his soliloquy at the end of Act II, Scene 1: “Knavery’s plain face is never seen till used.”¹²² The falsehoods of Iago are at times outright, and on other occasions by insinuation. The foreseeable effects, what Iago intends from his mendacity, is to corrupt otherwise decent relationships around him. Not just corrupt them, but kill them. Shakespeare’s tragedy ends with three bloodied bodies on a bed.

The ability of Iago to transform horribly and debase relationships is manifested early on when he presents himself as a supreme rationalist. After the Duke of Venice validates Othello’s marriage, Roderigo moans he is so overcome by his unrequited love for Desdemona that he will drown himself. Iago lectures Rodrigo about self-control, and about the use of reason to temper emotion:

Drown thyself? Drown cats

and blind puppies. ...

...

It cannot be long that Desdemona

should continue her love to the Moor....

... It was a violent commencement

in her [Desdemona], and thou shalt see an answerable sequestration.... These Moors

122. OTHELLO, *supra* note 4, act 2, sc. 1, l. 306.

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are changeable in their wills....

...

... She [Desdemona]

must change for youth: when she is sated with his [Othello's] body,

she will find the errors of her choice. ...

...

If sanctimony and a frail vow betwixt

an erring barbarian [*i.e.*, Othello] and super-subtle Venetian [*i.e.*, Desdemona] be

not too hard for my [Iago's] wits and all the tribe of hell, thou [Rodrigo]

shalt enjoy her [Desdemona].¹²³

Iago's emphasis on reason is ironic, given the irrationality of Iago's drive to destroy Othello. Nonetheless, in this lecture by a self-proclaimed rationalist, Iago plays on the irrational in others. He convinces Roderigo that the relationship between Othello and Desdemona is doomed, thereby ensuring Roderigo will not commit suicide, but instead be available to help Iago as need be, including financially, to advance his plot.

Slippery arguments facilitate the corruption. Iago relies on unexamined assumptions and offers unproven claims to urge that the vows between Othello and Desdemona are frail. It is only lustful appetite that has drawn Othello and Desdemona together. Once their appetite is filled, they will part ways. Because Desdemona is younger than Othello, she ultimately will need to turn to a younger man for a new source of pleasure. Othello is a typical barbarian, who has transgressed by choosing a fine Venetian woman, and thus will have to depart. So, too, has the United States made unexamined assumptions and unproven claims in its attempt to sell NAFTA relationships as flawed and deleterious. As Iago would have Roderigo believe he will be the salvation of Desdemona, the American Administration would have others believe NAFTA renegotiations are necessary to resolve past transgressions against domestic industrial and commercial

123. *Id.* at act 1, sc. 3, ll. 333–334, 339–344, 346–348, 351–354.

relationships.

B. Scenes of America's Corruption

1. Dividing Workers with Rules of Origin

When America, through its USTR (Ambassador Robert Lighthizer), said it was “surprised and disappointed” by the failure of the NAFTA Parties to embrace America’s contentious proposals that “have created challenges,” that observation was disingenuous, at the very least because the Parties’ representatives (Lighthizer, Mexican Economy Minister Ildefonso Guajardo, and Canadian Foreign Minister Chrystia Freeland) already had discussed “the significant conceptual gaps among” them.¹²⁴ Iago, too, feigned surprise and disappointment. It is a device to suggest an actor is behaving reasonably, while in truth he is immoderate.¹²⁵

Few of America’s NAFTA renegotiation positions are economically or legally reasonable, no better than Iago’s stances with

124. Josh Wingrove, Andrew Mayeda & Eric Martin, *NAFTA Ministers Extend Talks into 2018 as Deadlock Deepens*, INT’L TRADE DAILY (BNA) (Oct. 18, 2017).

125. Likewise, at an October 2017 press briefing, Ambassador Robert Lighthizer “told reporters that the Trump administration was focused on getting a good agreement, but if no agreement is reached, ‘my guess is all three countries will do just fine,’” which seemed disingenuous. Rossella Brevetti, *America First Proposals Land with Thud on NAFTA Table*, 34 INT’L TRADE REP. (BNA) 1413 (Oct. 20, 2017). Contrary to his implication that “No Deal is Better than a Bad Deal,” the economic dislocations caused by withdrawal from NAFTA suggested “No Deal Is a Bad Deal.” That is why a former senior USTR official, Rufus Yerxa, President of the National Foreign Trade Council, said on October 19:

“They must be pinching themselves in Beijing,” ... adding that some of the [Trump] [A]dministration’s proposals would amount to a *de facto* withdrawal from an agreement that has kept the North American economy competitive. He also said that China would benefit if the U.S. cut itself off from its trading partners.

Id. To be sure, economists did not forecast a recession for the Parties if the U.S. withdrew from NAFTA, but they concluded their economies would be damaged (especially within the first two post-NAFTA years), mainly because the U.S. and Mexico would impose MFN tariffs on the products of the other, with Mexican average duties being about 7 percent. See Andrew Mayeda, *NAFTA Collapse Would Hurt Regional Economy; Mexico Hit Big*, INT’L TRADE DAILY (BNA)(Oct. 26, 2017). The increased tariffs would impede growth, cost jobs, and contribute to inflation. In particular:

Mexico would shed almost 1 million low-skilled jobs, compared with slightly more than 250,000 in the U.S. and 125,000 in Canada, according to ImpactEcon, an economic consulting firm based in Colorado. The ImpactEcon estimate doesn’t assume survival of the U.S.-Canada Free Trade Agreement.

Mexico’s manufacturing sector would be most at risk if the accord ends, especially in the auto industry, according to an analysis by Bloomberg Intelligence.

Id. See Terrie Walmsley & Peter Mino, *Reversing NAFTA: A Supply Chain Perspective*, IMPACTECON WORKING PAPER (Mar. 2017), <https://impactecon.com/wp-content/uploads/2017/02/NAFTA-Festschrift-Paper-1.pdf>.

respect to Cassio, Desdemona, or Othello. That is why, in particular, “Mexico and Canada have repeatedly and publicly rejected the U.S. demands on dairy, autos, dispute panels, government procurement and a sunset clause.”¹²⁶ It also is why they opted not to respond with counter-proposals:

Bosco de la Vega Valladolid, the president of Mexico’s National Agriculture Council ... [said] Mexico was very disappointed with the “protectionist and nationalistic terms” that the U.S. has put on the table. Asked about possible counter-offers from Mexico, de la Vega said Mexico *won’t consider counter-offers on protectionist proposals*.¹²⁷

In other words, FTA negotiations normally proceed on the lines of offers and counter-offers about opening markets, as the “F” in “FTA” suggests.

But, when America offered a “P” (as in “protectionist”) proposal, there was no response from Mexico or Canada, which both sought to advance, not detract from, the *status quo* of promoting the elimination of tariff and non-tariff barriers to trade. Redolent of Iago’s poisonous insinuations about a romantic liaison between Cassio and Desdemona, America’s “P” proposals were rightly characterized as “poison pills.” Those pills seemed to kill America’s NAFTA relationships.¹²⁸ It is a provocative question, posed by Richard Posner, as to “whether Iago was guilty of murder because of his role in Othello’s killing of

126. Josh Wingrove, Andrew Mayeda & Eric Martin, *NAFTA Ministers Extend Talks into 2018 as Deadlock Deepens*, INT’L TRADE DAILY (BNA) (Oct. 18, 2017); see also Rossella Brevetti, *America First Proposals Land with Thud on NAFTA Table*, INT’L TRADE DAILY (BNA) (Oct. 20, 2017) (reporting “U.S. proposals for a sunset clause, U.S. content in automobile rules of origin, dispute settlement, and dairy trade were met with outright rejection during the fourth negotiating round”).

127. Rossella Brevetti, *America First Proposals Land with Thud on NAFTA Table*, INT’L TRADE DAILY (BNA) (Oct. 20, 2017) (emphasis added).

128. See Rossella Brevetti, *America First Proposals Land with Thud on NAFTA Table*, INT’L TRADE DAILY (BNA) (Oct. 20, 2017) (reporting “one industry source close to the negotiations ... [said] “anyone who thinks that this is not headed to termination is living in serious denial”).

The pills quickly inflicted damage on Canada, and that damage contributes to the destruction of its bilateral relationship with America. For example:

Renegotiation of the *North American Free Trade Agreement* is already taking a big toll on the Canadian economy, according to the nation’s central bank.

Uncertainty about U.S. trade policy will reduce investment growth by 0.7 percentage points and export growth by 0.2 percentage points in both 2017 and 2018, according to projections in the Bank of Canada’s quarterly Monetary Policy Report, released Oct. 24 in Ottawa.

Luke Kawa, *NAFTA Uncertainty Hurting Growth, Bank of Canada Says*, INT’L TRADE DAILY (BNA) (Oct. 26, 2017).

Desdemona.”¹²⁹ Whatever the effect of America’s pills, an international criminal case against it is not in the offing, but a moral one might be, indeed a direct one holding Iago criminally liable, because America acted directly in creating and administering the pills.

On two topics, rules of origin (“ROOs”) and termination (*i.e.*, the so-called “Sunset Clause”), the poison was particularly venomous. Consider, first, ROOs for autos and auto parts, and for textiles and apparel (“T&A”), whereby America has divided American from other North American workers.

On autos, the current Regional Value Content (“RVC”) ROO is 62.5 percent, essentially meaning that two-thirds of the value of an auto must come from the United States, Canada, or Mexico to qualify as originating in NAFTA, thereby qualifying for preferential treatment (zero duty) across the three Parties.¹³⁰ That threshold is the highest of any value-added based ROO in any FTA in the world.¹³¹ The RVC ROO also has a tracing requirement, whereby the origin of approximately eighty major parts of a vehicle are traced back to ensure they are from the United States, Canada, or Mexico, and the value of any non-originating part or sub-part is excluded from the RVC. After nearly a quarter century of experience with the 62.5 percent and tracing rules, auto and auto parts manufacturers have sunk fixed costs in forging North American supply chains, which almost surely have made them more internationally competitive *vis-à-vis* non-NAFTA producers.

Yet, America has proposed three dramatic changes to the NAFTA auto ROO. First, the threshold should be raised to 85 percent (phased in over a period of several years).¹³² Second, at least 50 percent of the higher threshold should be made in America (not Canada or Mexico). That is, embedded in the 85 percent threshold would be a minimum American-content only rule, such that half of every car “Made in North

129. RICHARD A. POSNER, *LAW & LITERATURE* 548 (Harvard University Press, 3rd ed. 2009).

130. See RAJ BHALA, *INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME II*, at 952-953 (LexisNexis, 4th ed., 2015).

131. See *The Month in International Trade – June 2017*, CROWELL MORING (June 2017), www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Month-in-International-Trade-June-2017#ITB05; Rossella Brevetti, *NAFTA Should Keep Driving Auto Industry Competitiveness*, INT’L TRADE DAILY (BNA) (June 28, 2017).

132. As a technical matter, raising the 62.5 percent threshold would be possible, in that there is precedent for adjusting ROOs in NAFTA. However, such modifications occur usually when a product (*e.g.*, local inputs) are in short supply. Emily Pickrell, *Mexico’s Priority Focuses on Quick NAFTA Resolution*, 34 INT’L TRADE DAILY (BNA) 1040 (July 17, 2017). And, the magnitude and ramifications of a change for autos would be unprecedented.

America” would have to be “Made in America.” And third, certain items from America should be included in the list of products under the tracing requirement (*i.e.*, that among the list of major parts in a vehicle, certain items would be added, and they would have to come from the United States, not Canada or Mexico).¹³³ Specifically, included on the tracing list would be aluminum, steel, other metals, and textiles (so that these inputs into a car would have to come from the United States, whereas under the extant tracing list, a car can qualify for NAFTA preferences without having any North American steel in it).¹³⁴

All three changes would disrupt established North American supply chains, with the intentional goal of diverting trade away not only from non-NAFTA countries, but also from Mexico and Canada, and forcing re-routing to the United States. That is, the proposals corrupt those supply chains, and the broader economic and political relationships among the three NAFTA Parties that have fostered their development. Unsurprisingly, auto producers and parts suppliers in NAFTA are chary of changing the 62.5 percent threshold and attendant requirements.¹³⁵

133. American steel producers supported these changes:

U.S. steel producers [at the 27-29 June 2017 USTR Public Hearing] continued their push for measures to address the level of foreign imports through the NAFTA renegotiations. They sought a stricter rule of origin for autos and auto parts, including requirements to use North American steel. They also said that enforceable currency provisions should be included in any NAFTA agreement.

The Month in International Trade – June 2017, CROWELL MORING, at 10 (June 2017), www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Month-in-International-Trade-June-2017#ITB05; Rossella Brevetti, *NAFTA Should Keep Driving Auto Industry Competitiveness: Industry*, 34 INT’L TRADE REPORTER (BNA) 972 (June 28, 2017). Also, predictably, unions in the United States (including the United Auto Workers) supported an increase of the NAFTA RVC ROO to a level higher than 62.5 percent. *See* Rossella Brevetti, *U.S. Goals on NAFTA Auto Rules of Origin Get Push Back*, INT’L TRADE DAILY (BNA) (Aug. 18, 2017); Tyrone Richardson, *Labor Union Leaders Weigh In on NAFTA Renegotiation*, INT’L TRADE DAILY (BNA) (June 29, 2017).

134. *See* Ryan Beene, *Auto Industry Campaign Aims to Steer Trump From NAFTA Exit*, INT’L TRADE DAILY (BNA) (Oct. 25, 2017) (reporting “U.S. negotiators last week proposed requiring vehicles assembled in North America to get 85 percent of their parts from factories in the region, up from 62.5 percent today. At least 50 percent would have to come from the U.S. to qualify for duty-free status, under the U.S. proposal. The changes could reshape industry supply chains or push companies to pay tariffs instead of boosting regional parts sourcing.”). Arguably, the proposal is unnecessary, because “the autos that are traded tariff-free through NAFTA have about 70 percent content from the three countries, according to Center for Automotive Research data.” David Welch & Ryan Beene, *How Trump Getting His Way on NAFTA Would Reshape the Auto Sector*, INT’L TRADE DAILY (BNA) (Oct. 19, 2017).

135. *The Month in International Trade – June 2017*, CROWELL MORING, at 10 (June 2017), www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Month-in-International-Trade-June-2017#ITB05 (explaining “[t]he autos and auto parts manufacturing industry sought [at

After the first round of renegotiations, Mexico and Canada rejected the American demand for an upward revision of the auto ROO, and even the American Automotive Policy Council (“AAPC”) (which FCA US LLC, Ford Motor Co., and General Motors Co. established) thought that demand was unwise:¹³⁶

... [O]n the first day of NAFTA renegotiations [16 August 2017] when U.S. Trade Representative Robert Lighthizer said the U.S. wanted a higher North American regional content requirement as well as “substantial” U.S. content in NAFTA rules of origin for autos and auto parts. Mexican and Canadian officials quickly panned the idea.

...

AAPC President Matt Blunt ... [explained] that adding a national content requirement would be a cumbersome administrative burden to importers, making it harder for companies to get NAFTA benefits. The current regional content requirement strikes the right balance, he said, adding that upping the overall regional threshold could raise the cost of automobiles sold in the U.S. and make the U.S. industry less competitive.

Twenty percent of auto parts traded in North America do not use NAFTA preferences because of administrative requirements, he said. If you add a U.S. content requirement to an already robust regional content requirement, cumbersome certification burdens could prevent companies from benefiting from the agreement....

the 27-29 June 2017 USTR Public Hearing] to preserve existing duty free treatment, as well as existing rule of origin requirements.”). See also Rossella Brevetti, *NAFTA Should Keep Driving Auto Industry Competitiveness: Industry*, INT’L TRADE DAILY (BNA) (June 28, 2017). To be sure, the auto parts manufacturers in Mexico were not intransigent:

[T]he big U.S. auto manufacturers stated their opposition to increasing the levels of rules of origin, saying it would drive up the costs. Japanese and European manufacturers in Mexico have listed the same objections, [Mexican trade official] de la Mora said, but speculated that the auto parts industry could be more flexible, depending on the specific circumstances.

“For Mexican auto parts producers, it may be the case that they would be willing to have stricter rules of origin if it doesn’t limit their possibility of procuring inputs,” [Mexican trade official] de la Mora said. “It all depends on who they are integrated with.”

Emily Pickrell, *Mexico’s Priority Focuses on Quick NAFTA Resolution*, INT’L TRADE DAILY (BNA) (July 17, 2017). However, their flexibility depended on the part they produced, and in particular whether that part was a relatively low-value added one, in which production had been offshored to jurisdictions cheaper than Mexico, such as China. See RAJ BHALA, *TPP OBJECTIVELY – LAW, ECONOMICS, AND NATIONAL SECURITY OF HISTORY’S LARGEST, LONGEST FREE TRADE AGREEMENT*, at 240–247 (Carolina Academic Press, 2016).

136. Rossella Brevetti, *U.S. Goals on NAFTA Auto Rules of Origin Get Push Back*, INT’L TRADE DAILY (BNA) (Aug. 18, 2017).

...

Mexico's Economy Minister Ildefonso Guajardo, speaking at a news conference after Lighthizer's statement, said *content requirements work best for regions as opposed to individual countries*.

"Canada is not in favor of specific national content in rules of origin," Canadian Foreign Affairs Minister Chrystia Freeland said at a separate news conference Aug. 16.¹³⁷

In effect, on Day 1 of NAFTA talks, the other two NAFTA Parties, plus Detroit, rejected a central proposal of America's NAFTA renegotiation plans: to revise auto ROOs, and thereby address what America hates – the ostensible bilateral trade deficit with Mexico. Their rejection showed how the plans were not only self-destructive, but also delusional.

First (as discussed earlier), the bilateral trade deficit is erased if auto trade is excluded. Regardless of what happens in other goods sectors, this sectoral deficit continues, if there is no agreement on any significant change to auto ROOs that might affect that deficit (including a face-saving, modest shift from a 62.5 to 65 percent RVC). Second, whether an elevated ROO, even to 70 percent, could offset demographic and consumption trends in emerging markets is dubious.

Vietnam is one such market. Though it has the world's second highest rate of motorcycle ownership (86 percent, with Thailand first at 87 percent). Vietnamese middle class households seek to acquire cars, despite their country's narrow, congested, and poor-quality roads. Vietnam now has a mass market for cars, led by Toyota and Ford, which account for 22 and 13 percent, respectively, of sales. (Even Maserati, Mercedes-Benz, and Porsche vehicles are sold in Vietnam, albeit to high-end consumers.) The Vietnamese Communist Party seeks to ensure foreign brands do not dominate the market for both autos and auto parts. So, in August 2017 the Party announced two options to help its domestic auto parts manufacturers, that is, companies in Vietnam that make parts like engines and fuel pumps. Both options aimed to cut Vietnam's auto parts tariffs, which averaged 14–16 percent:

(1) Reduce average tariffs to 7 percent on 163 different types of materials used by companies in Vietnam to assemble cars and trucks with nine seats or fewer, and to 1 percent for trucks under five tons.

137. *Id.* (emphasis added).

(2) Eliminate tariffs on nineteen auto parts (*i.e.*, provide duty-free treatment on these 19 parts) so as to reduce the average tariff to between 9 and 11 percent on auto parts used in vehicles with nine seats, and to 7.9 percent on auto parts used in trucks under five tons.¹³⁸

Both options aimed to increase the attractiveness of Vietnam for auto manufacturing and assembly.¹³⁹ And, both options sought to bring Vietnam into line with its WTO commitments, whereby its bound tariff rates on auto components range from 0-30 percent, and the ASEAN Trade in Goods Agreement, which (effective 2018) call for all tariffs on auto parts to fall to zero.¹⁴⁰

Thailand was Vietnam's obvious competitor, but so too was NAFTA. Conceivably, a competitive tariff regime might induce Toyota, Ford, and other mass market producers to source parts from Vietnamese suppliers, produce vehicles in Vietnam, and export to NAFTA. Raising NAFTA's auto ROO from 62.5 to 70 percent might be offset by the cost-competitiveness facilitated by Vietnam's low tariff structure, and the proximity to the emerging middle class in Vietnam and across South East Asia. Moreover, for auto parts manufacturers, they might find the Vietnamese market attractive, at least as an export destination with the reduced tariff structure, and possibly also as a manufacturing site, especially if auto makers expand production in the country. Put differently, finagling in the short run with the ROO in North America masked powerful long run demographic and consumer trends in Asia that affect cross-border vertical supply chains.

That finagling would hurt the people – American workers – the Trump Administration pledged to help by renegotiating NAFTA:

“Forcing unrealistic rules of origin on businesses would leave the U.S. unable to compete by increasing the cost of manufacturing and raising prices for consumers,” ... said [Ann Wilson, senior vice president of government affairs at the Motor & Equipment Manufacturers Association]. Dramatic change to NAFTA and the rules of origin would cause the American economy to lose as many as 300,000 American jobs, she said.

138. See Lien Hoang, *Motorbike-Mad Vietnam Plans Tariff Cuts as Car Influx Looms*, INT'L TRADE DAILY (BNA) (Aug. 30, 2017).

139. Neither option was available to a carmaker in Vietnam unless it met an annual production target set by the government. See *id.* Luxury brands thus are unaffected, as their production volume remains small until a larger base of high-end consumers develops.

140. See *id.*

American Automotive Policy Council President Matt Blunt said in an email that the AAPC shares the administration's goals to strengthen the U.S. manufacturing sector and grow U.S. jobs. But he said AAPC was concerned the Administration's approach, including significant changes to the rules of origin that would be harmful to the North American auto industry's competitiveness, would be counterproductive to achieving those goals.¹⁴¹

Recall that hiding underlying trends and truisms, such as Cassio's loyalty and Desdemona's fidelity, was a specialty of Iago. Iago sought to re-shape reality through concealment. Cassio, Desdemona, and Othello are all in alignment, but Iago sows conflict among these allies through corrupt devices. Toyota and Ford look at markets in an integrated way, but the United States creates an us-versus-them view, pitting NAFTA against other areas of the world. Willfully blind to evidence of relevant non-NAFTA market forces, America sought to recast NAFTA auto market production and assembly.

These concerns did not stop America from poisoning with its three-pronged proposal the existing NAFTA auto and auto parts supply chains and its relationships with Mexico and Canada on which they rely. The unity of workers across North America, *i.e.*, a sense that "we are not merely Americans, but also North Americans," was a healthy prospect emerging from the NAFTA experience that the proposal corrupted. Indeed, it is not too quixotic to declare, or at least anticipate, that "we are all North Americans." The regional supply chains established during the nearly quarter century since NAFTA entered into force have yielded benefits to all Parties. Consider:

141. Rossella Brevetti & Andrew Mayeda, *Chamber Official Calls U.S. NAFTA Proposals Dangerous*, INT'L TRADE DAILY (BNA) (Oct. 12, 2017).

Likewise, the three-pronged proposal was unworkable in ways that would harm American workers:

Brett House, deputy chief economist at Bank of Nova Scotia in Toronto, said the rules of origin proposal would be a "potentially Pyrrhic victory" for Trump because automakers would just pay the U.S.'s 2.5 percent tariff to import cars into the country rather than deal with the complicated set of rules for NAFTA.

The proposal is unworkable, [said] a former U.S. official.... "Both a U.S. content requirement and an extension of tracing to cover practically all inputs would be unprecedented," said Bruce Hirsh, a former assistant U.S. trade representative who now heads consulting company Tailwind Global Strategies LLC. Tracing requirements haven't been used in U.S. trade pacts since NAFTA, he added.

The content requirement or the tracing extension could impose "insurmountable administrative burdens and effectively preclude autos from qualifying for NAFTA tariff benefits," Hirsh said.

Josh Wingrove, Eric Martin & Joe Deaux, *U.S. Said to Demand Steel Tracing in NAFTA Push on Autos*, INT'L TRADE DAILY (BNA) (Oct. 19, 2017).

Aurora, *Ontario-based* Magna [International, Inc.] has over 25,000 employees *in the U.S.* and supplies more original equipment parts by sales to carmakers on the continent than any other supplier.... Changing the rules now, after automakers and suppliers have invested across the region, would be a costly shift, [Chief Executive Officer Don] Walker said.

“There’s been *huge investments in Canada, the U.S., and Mexico* that are *long-term assets*,” he said. “To try and change that would be extremely expensive for the industry.”¹⁴²

Still, like Iago, America undermined the prospects for enhanced solidarity across North American auto workers. American proposals for T&A ROOs, specifically, Tariff Preference Levels (“TPLs”), bespoke a similar corruption. TPLs allow some T&A articles to qualify for preferential (duty free) treatment under NAFTA, even though they do not satisfy the NAFTA ROOs pertinent to them (such as yarn forward, because they do not use yarn sourced from within NAFTA).¹⁴³ America sowed discord with its fellow NAFTA Parties in calling for TPL elimination.

Mexico and Canada resisted the American proposals to cut back on them:

... [C]ontinued push back is likely for pending U.S. proposals that would cut tariff preference levels (“TPL”) for apparel.... TPLs allow certain textiles and apparel assembled from non-NAFTA fiber and yarn to get NAFTA preferences under certain circumstances. The U.S. textile industry views TPLs as a loophole from the requirement that yarn used to produce textiles and apparel be sourced from NAFTA countries for the

142. Gabrielle Coppolla, *Car Industry Sees “Lose-Lose” Outcome in Trump NAFTA Changes*, 34 INT’L TRADE REPORTER (BNA) 1402 (Oct. 19, 2017) (emphasis added). More generally, it is a corruption of the truth to claim NAFTA has been a “disaster.”

The academic consensus is that NAFTA hasn’t been the “disaster” for U.S. workers that Trump has called it. While trade on the continent has surged, the impact on the U.S. job market wasn’t significant, though some industries and parts of the country were hit hard, according to a study by the U.S. International Trade Commission.

Andrew Mayeda & Eric Martin, *Trump Serves Notice on NAFTA: U.S. Won’t Accept a Touchup*, INT’L TRADE DAILY (BNA) (Aug. 24, 2017). For a review and analysis of all the major studies of the effects of NAFTA on American employment and incomes, see RAJ BHALA, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME II, at Section III (LexisNexis, 4th ed., 2015).

143. See RAJ BHALA, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK, VOLUME I, at 954-955 (LexisNexis, 4th ed., 2015).

finished product to get duty-free benefits.¹⁴⁴

America also sowed discord within the North American T&A industry, and within the American segment of that industry, in suggesting TPL elimination:

National Council of Textile Organizations President and Chief Executive Officer Auggie Tantillo said June 27 that NAFTA renegotiations should eliminate TPL, which he characterized as “loopholes.”

Non-originating textile and apparel goods may qualify for preferential tariff treatment under the NAFTA TPL program. As an example, Tantillo pointed out that a cotton top, made from Chinese yarn and fabric, can be cut and sewn in Mexico and shipped duty free to the U.S. As a result, TPLs undermine benefits for NAFTA textile manufacturers, transferring them to non-signatories, such as China, he said.

However, Stephen Lamar, executive vice president of American Apparel & Footwear Association, said the AAFA is strongly opposed to attempts to limit existing flexibilities in NAFTA rules of origin such as TPLs. He warned that more restrictions would hurt U.S. manufacturers, including those who use TPLs to export finished garments and hosiery to NAFTA partners. AAFA members include Abercrombie & Fitch Trading Co. and Adimi Apparel Group.

David Spooner, counsel to the U.S. Fashion Industry Association, Barnes & Thornburg LLP, also defended TPLs as a “safety valve” for retailers.¹⁴⁵

Here, then, is another analogy to *Othello*.

Iago’s corruption of relationships was thorough. He divided as many as he could against each other. In NAFTA renegotiations, America’s corruption of relationships includes not only external ones

144. Rossella Brevetti, *U.S. Proposals in NAFTA Point to Long Slog*, INT’L TRADE DAILY (BNA) (Oct. 12, 2017).

145. Rossella Brevetti, *House Democrats Say NAFTA Needs Major Overhaul*, 34 INT’L TRADE REP. (BNA) 1975 (July 6, 2017). See also *The Month in International Trade – June 2017*, CROWELL MORING (June 2017), www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Month-in-International-Trade-June-2017#ITB05 (explaining “[a]pparel and textile groups were divided over whether the existing rules of origin under the current NAFTA should be changed. In particular [at the 27-29 June 2017 USTR Public Hearing,] there was significant discussion of whether Tariff Preference Levels, which allow some goods not meeting rule of origin requirements to qualify for benefits for a limited time, should be eliminated.”).

(with Mexico and Canada), but also internal ones (within the United States). The TPL proposals set the American textile industry (which dislikes TPLs, because they relax the requirement to use NAFTA-sourced fiber and yarn) against the U.S. apparel industry, and against U.S. retailers (which benefit from the flexibility of TPLs, and do not want their supply chains disrupted). That was a poison one degree more potent than even the proposed RVC ROO for autos, insofar as American auto workers were relatively unified in their favor (even against their own interest).

2. Dividing Countries with a Sunset Clause

Along with its ROO ideas, America's Sunset Rule proposal corrupted bilateral relationships in NAFTA.¹⁴⁶ United States Commerce Secretary Wilbur Ross threatened a five-year Sunset Rule, which the other two NAFTA Parties quickly rejected, with an analogy to marriage conjuring up what might happen if such Shakespeare had inserted such a proviso in *Othello*:

[B]y adding a so-called Sunset Clause, countries would be regularly compelled to take a fresh look at the deal to fix what isn't working, Ross said.

“The forecasts that had been made at the initiation of NAFTA and of the other trade agreements mostly had been wildly optimistic as to the results, and the results have been quite different,” he said.... “If there was systematic re-examination after a little experience period, you'd have a forum for trying to fix things that didn't work out.”

The Canadian and Mexican Ambassadors to the U.S. ... said the provision would create uncertainty for businesses that make long-term

146. See Eric Martin, Josh Wingrove & Andrew Mayeda, *U.S. Said to Make Proposal That Could Kill NAFTA in Five Years*, 34 INT'L TRADE REP. (BNA) 1400 (Oct. 19, 2017) (reporting “U.S. negotiators presented a proposal for a “sunset clause” that would see the *North American Free Trade Agreement* expire after five years unless the parties can agree to extend it”).

The proposal itself was unnecessary. The fact America was both reviewing and renegotiating NAFTA adduced its ability to review and renegotiate deals, a point made by three Republican Senators Mike Enzi (Wyoming), James Lankford (Oklahoma), and John Thune (South Dakota) in their Nov. 15 2017 letter to the USTR. See Letter from Sen. Mike Enzi, et al., to USTR (Nov. 15, 2017) (available at www.lankford.senate.gov/imo/media/doc/11.15.17%20Lankford,%20Thune,%20Enzi%20letter%20to%20USTR%20Lighthizer.pdf), *supra* note 31. Yet, Secretary of Commerce Wilbur Ross insisted on its relevance: “The reason we want it is that the tragic truth is that forecasts that were made when trade agreements were entered into, never have been achieved, at least in the case of the U.S.” Rossella Brevetti, *Mexico, Canada Would be Hurt by NAFTA Exit*, *Commerce Says*, 34 INT'L TRADE REP. (BNA) 1529 (Nov. 16, 2017).

investments.

“If every marriage had a five-year Sunset Clause on it, I think our divorce rate would be a heck of a lot higher,” Canada’s David MacNaughton said. “We can have that discussion, but I really do think it won’t be Mexico and Canada that are pushing back against the Secretary [Ross], it will be a lot of Americans.”

...

Mexico’s Geronimo Gutierrez said he agreed with his Canadian counterpart, adding the clause “would probably have very detrimental consequences to the business sector of the United States, Mexico and Canada.”¹⁴⁷

Simply put, a Sunset Clause “would not foster a pro-investment environment,” nor stable trade relations, because of the uncertainty it would inject into business planning.¹⁴⁸

147. Andrew Mayeda, *Canada, Mexico Reject U.S. Idea for NAFTA Sunset Provision*, 34 INT’L TRADE REP. (BNA) 1262 (Sept. 21, 2017) (emphasis added). See also Rossella Brevetti, *Canadian Official Calls U.S. NAFTA Proposals Troubling*, 34 INT’L TRADE REP. (BNA) 1464 (Nov. 2, 2017) (reporting on the statement of Canada’s Minister of Foreign Affairs, Chrystia Freeland, criticizing the Sunset Clause proposal: “[A]s David MacNaughton, our Ambassador to the United States, likes to joke, *if every marriage had a built-in option to divorce after five years, divorce lawyers would have an awful lot more business,*” and also pointing out that because 40 percent of Canadian exporters do not take advantage of NAFTA preferential treatment owing to red tape associated with obtaining that treatment, a constructive proposal would be on facilitating trade, that is, simplifying customs procedures so that the cost of compliance is less than the tariff saved) (emphasis added).

148. Rossella Brevetti, *Chamber Warns Of “Poison Pill” U.S. NAFTA Proposals*, 34 INT’L TRADE REP. (BNA) 1347 (Oct. 13, 2017). As Republican Senator John Cornyn (Texas) summarized:

“I think a sunset may sound like a relatively innocuous thing, but I think what you heard from the witnesses is that it would discourage investment. It would dampen negatively the benefits that come from these trade agreements, because many of them require long-term investments,”... The idea that you would encourage somebody to invest millions of dollars into some plant or business model and then pull the plug on it in five years is undermining the whole process.”

Nushin Huq, *Congress Will Need to Approve New NAFTA Deal, Sen. Cornyn Says*, 34 INT’L TRADE REP. (BNA) 1543 (Nov. 23, 2017). See also Rossella Brevetti, *NAFTA Talks Could Face Stormy Negotiations in Round Four*, 34 INT’L TRADE REP. (BNA) 1348 (Oct. 12, 2017) (“The sunset provision is very troubling. Where is the certainty?” an agriculture industry source [stated]). Similarly:

Canada and Mexico rejected the idea of a Sunset Clause after Commerce Secretary Wilbur Ross floated it last month, saying it would *create so much uncertainty for businesses that it could hurt long-term investment*. The idea of a Sunset Clause has been among the most contentious proposals for a pact that already has a relatively straight-forward exit provision—a country can leave after giving six months’ notice of withdrawal.

The U.S. has “miscalculated badly” in proposing the provision, said Nate Olson, Director of the Trade21 program at the Stimson Center in Washington. The U.S. “doesn’t understand

That the Sunset proposal, coupled with repeated threats of withdrawal, took their toll on bilateral relationships was clear from the inception of renegotiations. Mexico began work on “Plan B,” *i.e.*, what to do if NAFTA sunsets or America withdraws. It was reported that in 2017 through May, “U.S. corn shipments to Mexico are faltering and the country is no longer the biggest importer, a sign that trade tensions are driving it into the arms of other suppliers.”¹⁴⁹ That trend began even before renegotiations commenced:

Mexican purchases now seem to be rebounding as the *peso* recovers, said Lesly McNitt, Public Policy Director for the National Corn Growers Association in Washington. Still, *the relatively sluggish pace of shipments shows how the bilateral trade relationship in agriculture is at risk*, with NAFTA heading toward a renegotiation as soon as next month, she said.

“They are *preparing a Plan B in case the U.S. becomes a less reliable supplier*,” she said. “We would hope they wouldn’t have to feel the need for a Plan B. For a long time, they didn’t.”

Mexico, which imported 13.8 million metric tons of U.S. corn in 2016, *has been talking to sellers in South America*. Buenos Aires-based Adecoagro SA is pursuing opportunities to sell Argentinian corn and rice. In May, a Mexican livestock group signed a contract to import 60,000 tons from Brazil. The same month, Francisco Gurria Trevino, a Mexican government official in charge of livestock policy, said his country may import as much as 5 million tons of corn from Brazil in the medium-to-long term.¹⁵⁰

how much damage the uncertainty would do to private sector investment,” Olson said.

“The White House has not even begun to make a credible case how we’d construct a post-NAFTA world without doing huge damage to the blue-collar constituencies it purports to champion.”

Eric Martin, Josh Wingrove & Andrew Mayeda, *U.S. Said to Make Proposal That Could Kill NAFTA in Five Years*, 34 INT’L TRADE REP. (BNA) 1400 (Oct. 13, 2017) (emphasis added).

149. Andrew Bjerga, *Faltering Corn Sales to Mexico May Show Cost of U.S. Tensions*, 34 INT’L TRADE REP. (BNA) 1012 (July 13, 2017).

150. *Id.*; see also Eric Martin, *Mexico Has Trading Options Besides U.S., Minister Says*, 34 INT’L TRADE REP. (BNA) 1434 (Oct. 24, 2017) (*quoting Mexico’s Minister of the Economy, Ildefonso Guajardo: “It’s very simple: If today I’m the top buyer of yellow corn, of fructose, rice, chicken, pork from the U.S., I need to open a space for trade with Brazil and Argentina so that at the table people realize that we have options”*) (emphasis added).

To be sure, American farmers have the advantages of productive efficiency and lower transaction costs relative to Plan B suppliers:

“Mexico launched talks with other major corn-exporting countries after threats by President Donald Trump that he would withdraw from NAFTA. “While they may feel they need to say they’re looking elsewhere, we have great history and relationships and supply

Thanks to what it dubbed America's "winner-take-all" approach (an approach redolent of Iago's), Canada forged its own "Plan B."¹⁵¹ The essence of the Canadian Plan B was to forge more East-West trade relationships, and thereby lessen Canada's dependence on North-South flows, *i.e.*, trade creation between Canada and the Asia-Pacific region, possibly entailing trade diversion between Canada and the United States.¹⁵²

A final point about corruption concerns style. Relationships are corrupted not only by substantive disagreements, but also by the way in which actors disagree—the poison itself, and the effective way in which the poison is delivered. Whether the Mexican-American and Canadian-American trade relationships will be "killed" through substantive proposals like the Sunset Clause is unclear. But, America's behavior helped erode their long-run stability. Heated exchanges among officials from the NAFTA Parties, including the Mexican and American Presidents, corrupted previously warm relationships among the Amigos. In the trade talks, the style of the USTR was that of the President he served, meaning the USTR strutted with an arrogant swagger that ironically was a disservice to the President's (and America's) long-term interests.

The USTR opened the NAFTA renegotiations as follows:

U.S. Trade Representative Robert Lighthizer made clear Aug. 16

chains they hope won't be disrupted," [USDA Secretary Sonny] Perdue told reporters.

The U.S. has a "corner store" location and "frankly we will continue to take advantage of that," he said. It also has a "productive and logistical advantage" that rivals such as Brazil and Argentina cannot match, he added.

Rossella Brevetti, *Agriculture Secretary Says Mexico Unlikely to Shun U.S. Corn, Soybeans*, 34 INT'L TRADE REP. (BNA) 1094 (Aug. 3, 2017).

151. For example:

Canadian Foreign Minister Chrystia Freeland criticized a one-sided strategy in *North American Free Trade Agreement* negotiations after U.S. Commerce Secretary Wilbur Ross said he wasn't prepared to make concessions to reach a deal.

"A negotiation where one party takes a winner-takes-all approach is a negotiation that may find some difficulties in reaching a conclusion," Freeland said Oct. 26 [2017] during a press conference in Toronto, without specifying which party she was referring to. She later added that *Canada understands the value of opening new export markets in China and elsewhere*. "Perhaps now we understand it more urgently than ever."

Josh Wingrove & Eric Martin, *Canada Says NAFTA Can't Be "Winner Take All" After Ross Comments*, 34 INT'L TRADE REP. (BNA) 1446 (Oct. 27, 2017).

152. Such shifts in trade flows would not be easy for every sector. The American market is highly significant to most Canadian and Mexican producer-exporters, some more than others. For example, the United States is Canada's largest export market for beef and pork, Canada ships about two-third of its canola oil to America, and Mexico is the principal supplier to America of avocados. See Rossella Brevetti, *Agriculture Secretary Says Mexico Unlikely to Shun U.S. Corn, Soybeans*, INT'L TRADE DAILY (BNA) (July 31, 2017).

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that Trump is seeking far more than a TPP clone. Instead, the Administration will push to win back the jobs and manufacturing capacity the U.S. lost under NAFTA. “For countless Americans, *this agreement has failed*,” said Lighthizer. “We cannot ignore the huge trade deficits, the lost manufacturing jobs, the businesses that have closed.”¹⁵³

To be sure:

Like any negotiations, trade talks involve posturing. Opening positions inevitably give way to compromise. Lighthizer, a veteran trade lawyer who honed his negotiating skills under Ronald Reagan, knows the importance of projecting strength.¹⁵⁴

In contrast, the Mexican and Canadian style stressed dignified reasoning:

Lighthizer’s aggressive rhetoric contrasted with the tone of his Mexican and Canadian counterparts, who emphasized the gains to all sides of the original deal.

...

Lighthizer’s hawkish opening remarks on the first official day of talks raises the political stakes for all sides: Trump will be under pressure to sign a deal perceived as tough, while the Canadians and Mexicans will have to counter the perception that they’re being bullied by the world’s biggest economy.¹⁵⁵

There is a line between tough talk in trade negotiations, which occasionally is appropriate, and bullying behavior, which always is inopportune. Neither Mexico nor Canada should (or would) be bullied unless the aim of doing so was sinister.

VII. OTHELLO, MADNESS, AND AMERICAN TRADE POLICY

Among the great figures pertinent to the study of law and literature is the Irish writer, Oscar Wilde, not the least for his portray of moral decay in *The Picture of Dorian Gray* (1891), and for the unjust, homophobic trial (*Regina v. Wilde*, 1895) he endured. Wilde advanced the Doctrine of Aestheticism, proposing that it is not art that

153. Andrew Mayeda & Eric Martin, *Trump Serves Notice on NAFTA: U.S. Won’t Accept a Touchup*, INT’L TRADE DAILY (BNA) (Aug. 17, 2017).

154. *Id.*

155. *Id.* (emphasis added).

imitates life, but rather life that imitates art. That is true in legal life – the life of the law sometimes imitates art.

The behavior of the United States in respect of NAFTA renegotiations lends support to this Doctrine. America exhibits the character traits of Iago, none of which is admirable, much less noble. Iago undermines and ultimately destroys the nobility of a once-great General, Othello, along with the bilateral relationships across Othello, Desdemona, and Cassio. The American substantive positions, and style, seem to betray friends (as on nearly every topic on which the United States already extracted concessions from Mexico or Canada), betray specific constituencies (such as gullible workers in respect of TAA and labor rights), and betray truth (that FTAs can “fix” trade deficits).

To put the point differently, the reason Iago is among the most vile of figures, not only in Shakespearean drama, but also in all of English literature, is his reason for being (*raison d'être*) is to do harm, to take revenge for ill-defined reasons on good people, Othello and Desdemona, and to use any person he can, Cassio, Roderigo, and his own wife, Emilia, toward that end. W.H. Auden perhaps put it best:

Iago [is] a tragic hero without passion, who refuses to yield to what he knows, who wills to be himself, who knows what he is and refuses to change, who refuses to relate himself in love to others and insists on standing outside the community. Iago relates to others only negatively.¹⁵⁶

Auden's observation, from 12 March 1947, is especially haunting when considering an analogy between Iago and America.

Who, then, is Othello on the stage of NAFTA renegotiations? No literary analogy is perfect, *i.e.*, life does not perfectly imitate art. The question is uncomfortable, because as Richard Posner rightly points out, “Othello is not a bad person,” rather Iago deceives Othello, as Othello is “susceptible to being deceived because of weaknesses” in his “character.”¹⁵⁷ Who, therefore, is susceptible to being deceived? Supporters of Trump Administration trade policy, perhaps?

A different answer to the provocative problem of analogizing to

156. W.H. AUDEN, LECTURES ON SHAKESPEARE 195, 195–207 (Princeton University Press, 2000, Arthur Kirsch ed.).

157. RICHARD A. POSNER, LAW & LITERATURE 96 (Harvard University Press, 3rd ed. 2009). *See also id.*, 198 (“the great protagonist[,]” Othello, is “deluded”) and 480 (“[w]hat is certain is that Othello is grossly deceived, forms ugly ideas about women, and commits a hideous crime that he can expiate only by his own suicide”).

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Othello is to think not of innate character infirmity but outward behavioral effects. Like Othello by Iago, who is being driven mad by America's NAFTA renegotiation objectives specifically, and more generally, by the Administration's rhetoric surrounding it, the vast majority of American businesses have pled with the Administration—Iago, as it were—to “do no harm” in NAFTA negotiations. So, here the answer is the American business community. The same consideration leads to another, complementary, answer: anyone who cares about the truth of international trade law and policy—scholars, students, and practitioners. They are not just a passive audience; rather, they are part of the play.