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The Undead Past: How Collective Memory Configures Trade Wars (forthcoming)

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THE UNDEAD PAST: HOW COLLECTIVE MEMORY CONFIGURES TRADE WARS

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“The past is never dead. It's not even past.”*

Abstract

Conventional narratives explicate the recent trade war between the United States and China in realist terms, such as a hegemonic struggle symbolized by the “Thucydides’ trap.” Yet this universalist heuristic fatally omits ideational factors, such as beliefs, which are capable of contextualizing a particular foreign affair. The U.S.-China economic conflicts of today are characterized as much by past convictions as by simple power politics. This Article aims to remedy this analytical blind spot by employing the concept of “collective memory.” The central claim is that the particular ways and forms in which the U.S. elites and the public remember, and evoke, momentous economic conflicts of the past elucidate a recidivistic pattern of exceptionalist trade policies of the United States. While drawing from the past, collective memories manifest themselves in the present tense for the present purpose. Three decades ago, the Cold War and Japan-Bashing planted collective memories on economic warfare in the minds of the U.S. policymakers and the public. Those collective memories, this Article argues, shape how the Trumpian trade war is waged in the present time. The Article also warns that false analogies triggered by such collective memories may seriously distort the legal and economic reality of the contemporary global sphere. This Article concludes that the United States needs to be more susceptible to external opinions different from its own, thereby cultivating counter-memories that can disabuse the United States of those myths subscribed to by its power elites.

INTRODUCTION

“It’s time for us to end our vast deficits by making Japan, and others

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* WILLIAM FAULKNER, REQUIEM FOR A NUN (1951).

who can afford it, to pay,” argued Donald J. Trump emphatically in an open letter published in *New York Times* on September 2, 1987.¹ Fast forward to the present day. The same man, now the President of the United States, is acting on what he said more than three decades ago. The current trade wars that the Trump administration has been waging against its major trading partners, especially China, are an ironic déjà vu with a new geopolitical twist.

Only months after he was sworn in, President Trump shocked the world as he opened a salvo against the U.S.’ major trading nations.² In April 2017, his administration imposed punitive tariffs of 25 and 10 percent on steel and aluminum imports, respectively, based on the highly controversial national security concerns.³ The U.S. trade partners, including Canada, China and the European Union, found the justification behind these tariffs— national security— both befuddling and offensive.⁴ Then, a year later the Trump administration expanded its battleground. This time, it aimed its trade artillery at one particular country, China, based on alleged illegal and unfair intellectual property policies.⁵ In an unprecedented move, the United States imposed 10 percent tariffs on Chinese imports worth \$200 billion.⁶ After a series of tit-for-tats, both countries managed to reach a truce in December 2019,⁷ which most observers view as still fragile.⁸

Conventional narratives explicate the recent trade war between the United States and China on realist terms, such as the “Thucydides’ trap”⁹:

¹ Donald J. Trump, *There’s Nothing Wrong with America’s Foreign Defense Policy That a Little Backbone Can’t Cure*, *NY TIMES* (Sep. 2, 1987), at A 28 (emphasis original).

² See generally Chad P. Bown & Melina Kolb, *Trump’s Trade War Timeline: An Up-to-Date Guide*, *TRADE & INVESTMENT POL’Y WATCH BLOG* (Dec. 19, 2019), <https://www.piie.com/sites/default/files/documents/trump-trade-war-timeline.pdf>.

³ See Simon Lester & Huan Zhu, *Closing Pandora’s Box: The Growing Abuse of the National Security Rationale for Restricting Trade*, *CATO INST. POL’Y ANALYSIS*, No. 874 (Jun. 25, 2019), <https://www.cato.org/publications/policy-analysis/closing-pandoras-box-growing-abuse-national-security-rationale>; Peter Baker & Keith Bradsher, *Trump Asserts He Can Force U.S. Companies to Leave China*, *NY TIMES* (Aug. 24, 2019).

⁴ Doug Palmer, *Trump’s Global Trade War*, *POLITICO* (Apr. 19, 2019), <https://www.politico.eu/article/donald-trump-duties-steel-aluminum-global-trade-war/>.

⁵ Jim Tankersley & Keith Bradsher, *Trump Hits China With Tariffs on \$200 Billion in Goods, Escalating Trade War*, *NY TIMES* (Sep. 17, 2018).

⁶ *Id.*

⁷ Office of the United States Trade Representative, *United States and China Reach Phase One Agreement* (Dec. 13, 2019), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/december/united-states-and-china-reach>.

⁸ See e.g., Scott Kennedy, *A Fragile and Costly U.S. – China Trade Peace*, *COMMENTARY* (The Center for Strategic and Int’l Stud.) (Dec. 13, 2019), <https://www.csis.org/analysis/fragile-and-costly-us-china-trade-peace>.

⁹ GRAHAM ALLISON, *DESTINED FOR WAR: CAN AMERICA AND CHINA ESCAPE THE THUCYDIDES’ TRAP?* (2017).

A hegemonic economic power (the United States) will naturally contain a rising economic power (China) to maintain primacy in adopting and enforcing global economic norms. While this rationalist theory offers, through its universalist appeal, ample heuristic insights in comprehending economic conflicts, it still leaves certain analytical blind spots along the lines of ideational factors, such as values and beliefs. Cultural templates, informed by the past, are capable of configuring a national policy even without a strategic calculation.¹⁰

This Article aims to remedy these blind spots by employing the concept of “collective memory” that refers broadly to the particular ways and forms in which the U.S. elites and the public remember, and evoke, momentous events of the past.¹¹ This concept elucidates a recidivistic pattern of the United States’ exceptionalist trade policies. Both the pattern and the rationale behind the Trumpian trade wars bear a striking resemblance to those associated with similar events in the U.S. history, in particular the Cold War and Japan-Bashing during the Eighties and Nineties. This is not just a fleeting resemblance. This Article claims that prior patterns actually guide, if not determine, the contemporary event in a similar situation. The recurring pattern of bipartisan support behind U.S. trade warfare, among others, corroborates the presence of collective memory on the aggressive U.S. trade politics and triumphalism that such collective memory tends to cultivate.¹²

Collective memory is more than a passive record of “collectively remembered history.”¹³ Instead, it is an actively created memory box filled with stories to tell. A memory box contains an “emplotment of events in an affectively charged and mobilizing narrative.”¹⁴ It is not a particular historical anecdote that leads to a policymaker’s conviction; rather, that anecdote simply “confirm[s] a conviction to which [policymakers] had been brought by some deeper, perhaps unconscious processes of mind.”¹⁵ In this

¹⁰ See Stephen Bell, *Institutionalism: Old and New*, in GOVERNMENT, POLITICS, POLICY AND POWER IN AUSTRALIA 1, 8 (Dennis Woodward, Andrew Parkin & John Summers eds., 2002).

¹¹ ERIC LANGENBACHER & YOSHI SHAIN, POWER AND THE PAST: COLLECTIVE MEMORY AND INTERNATIONAL RELATIONS 213-14 (2010). See also Moshe Hirsch, *Collective Memory and International Law* 3 ESIL REFLECTIONS (Sep. 17, 2014).

¹² Elizabeth S. Dahl, *US American ‘Japan Bashing’ in the 1980s and Today’s ‘China Threat’: Is History Repeating Itself?*, Conference Paper presented at the 2012 East Asia Security Symposium and Conference, at 5 (on file with the author).

¹³ Aleida Assmann, *Transformations between History and Memory*, 75 SOC. RESEARCH 49, 68 (2008).

¹⁴ *Id.* at 55.

¹⁵ ERNEST R. MAY, “LESSONS” OF THE PAST: THE USE AND MISUSE OF HISTORY IN AMERICAN FOREIGN POLICY 84 (1975).

sense, collective memory exhibits “social stereotypes”¹⁶ or “strategic myths.”¹⁷ Once stabilized, a particular belief system is crystallized into an *idée fixe*, which either reinforces the previous collective memories or constructs a new set of collective memories. Through the aforementioned metaphoric structure,¹⁸ memory-driven cognitive blasts from the past function as “weapons of mass-instruction”¹⁹ and shape contemporary minds.

The current trade wars under the Trump administration, in particular the one waged against China, is driven by two central themes: “containment”²⁰ and “aggressive unilateralism.”²¹ These ideological themes stem from certain sets of collective memory held by the U.S. policy circle hearkening back to the Cold War (in light of containment) and the era of the “Rising Sun”²² or “Japan as Number One”²³ and the resultant “Japan-Bashing” (in light of aggressive unilateralism). Recall that the U.S. Senate once passed a unanimous resolution (92-0) that condemned Japan as an unfair trading nation.²⁴

While drawing from the past, collective memories manifest in the present tense for the present purpose. This “acceleration of history,”²⁵ often prompted by political exploitation, sheds critical light on the current trade war.²⁶ Images frozen within collective memory formulate strong messages

¹⁶ Noa Gedi & Yigal Elam, *Collective Memory – What Is It?*, 8 *HIS. & MEMORY* 30, 30 (1996).

¹⁷ Philip Lawrence, *Strategic Beliefs, Mythology and Imagery*, in *BELIEF SYSTEMS AND INTERNATIONAL RELATIONS* 147 (Richard Little & Steve Smith eds. 1988).

¹⁸ Barry Schwartz, *Frame Images: Towards a Semiotics of Collective Memory*, 121 *SEMIOTICA*, 1, 21 (1998) [hereinafter *Frame Images*].

¹⁹ Assmann, *supra* note 12, at 64 (quoting Charles Ingrao from his comment made at the “History Textbooks in a Global Perspective” conference held at the University of Chicago in April 2007).

²⁰ Lawrence, *supra* note 17, at 147.

²¹ *AGGRESSIVE UNILATERALISM: AMERICA'S 301 TRADE POLICY AND THE WORLD TRADING SYSTEM* 113 (Jagdish Bhagwati & Hugh T. Patrick eds., 1990).

²² Dahl, *supra* note 12, at 4 (maintaining that negative stereotypes of Japan began to appear in the American popular culture in mid-Eighties). See also John Schwartz et al., *Japan Goes Hollywood*, 63 *NEWSWEEK* (Oct. 9, 1989).

²³ EZRA F. VOGEL, *JAPAN AS NUMBER ONE: LESSONS FOR AMERICA* (1979).

²⁴ Peter T. Kilborn, *Trade Fight with Japan*, *NY TIMES* (Mar. 29, 1985); Donald H. May, *The Senate Passed a Resolution Thursday Urging President Reagan*, *UPI* (Mar. 28, 1985).

²⁵ Pierre Nora, *Between History and Memory: Les Lieux de Mémoire*, 26 *REPRESENTATIONS* 8 (1989) (viewing that “a memory without a past that ceaselessly reinvents tradition”).

²⁶ “Compelling evidence shows Mr. Trump’s consistent “China bashing” in his tweets and speeches won him votes in the areas most affected by outsourcing to China. A county-level analysis published in December 2016 found that a 1-point increase in import competition from China was associated with a 2.9% increase in support for Mr. Trump

in a double-layered process of “intertextual” and “extratextual” framing.²⁷ While intertextual framing connects a past event to a present one, extratextual framing connects a past image to an interpreter’s knowledge and perception of the present world. For example, collective memory on the past U.S.–Japan trade war conjures up similar images in the current U.S.–China trade war (intertextual framing). At the same time, the incumbent power elites in the United States tend to perceive the alleged current threat from China through the cognitive filter of past representations of the U.S.–Japan trade war (extratextual framing).

Accordingly, activation of collective memory requires the existence of “memory agents”²⁸ who preserve and disseminate particular images of the past to advance current political goals. They are liable to apply lessons they learned from the past to the current affairs.²⁹ Indeed, President Trump, in the Eighties, openly advocated the use of tariffs against Japan which he believed had “ripped off” the United States.³⁰ Moreover, the United States Trade Representative (USTR) Robert Lighthizer, in his past career, chaired the U.S.-Japan Investment Committee and led negotiations with Japan to restrict Japan’s steel exports to the United States.³¹ As a driving force behind “aggressive unilateralism” against Japan, he firmly believes that the Reagan administration’s trade war against Japan kept American steel industry strong.³² Even after he left the Reagan administration, he worked in a major Washington law firm as a lobbyist-cum-lawyer for the steel industry.³³ Now as the USTR, he himself “carried” those collective memories on trade confrontation with Japan in the Eighties onto the current trade war against China.³⁴

relative to earlier Republicans.” Niall Ferguson and Xiang Xu, *Trump and the ‘Chimerica’ Crisis*, WALL ST. J. (May 6, 2018).

²⁷ Schwartz, *supra* note 18, at 21; GALE MACLACHLAN & IAN REID, *FRAMING AND INTERPRETATION* (1994).

²⁸ Hirsch, *supra* note 11.

²⁹ See Dan Reiter, *Learning, Realism, and Alliances: The Weight of the Shadow of the Past*, 46 *WORLD POL.* 490 (1994) (introducing a theory of “learning” in world politics and arguing that lessons are drawn only from “high-impact events,” such as wars, in the past).

³⁰ Jim Tankersley and Mark Landler, *Trump’s Love for Tariffs Began in Japan’s ‘80s Boom*, NY TIMES (May 15, 2019).

³¹ Quinn Slobodian, *You Live in Robert Lighthizer’s World Now*, FOREIGN POL’Y (Aug. 6, 2018).

³² Robert E. Lighthizer, *Donald Trump Is No Liberal on Trade*, WASH. TIMES (May 9, 2011).

³³ Shawn Donnan, *The Tough Negotiator Turning Trump’s Trade Bluster into Reality*, INT’L TRADE DAILY (Sep. 21, 2018).

³⁴ Carrier groups are defined as “groups that maintain or promote types of knowledge, here an image of history, often with the goal of controlling memory or advancing a cause.” Joachim J. Savelsberg & Ryan D. King, *Law and Collective Memory*, ANNU. REV. L. SOC. SCI. 189, 191 (2007).

Exploring a legacy of trade wars in light of collective memory brings valuable insights. While collective memory can be touted as a useful political tool, it is fundamentally a “symbolic construct,”³⁵ rather than genuine representation of what actually happened. Thus, its users unavoidably risk countenancing false analogies from their own versions of the past.³⁶ These false analogies are prone to both legal and economic misconduct. From a legal perspective, false analogies fuel political adventurism that openly defies a time-honored multilateral trading system symbolized by the World Trade Organization.³⁷ From an economic perspective, tariff increases on such a large scale wreak havoc on both domestic and global market.³⁸

Moreover, collective memory is intersubjective. The U.S. activation of collective memory on trade warfare is liable to trigger China’s own collective memory on colonialism.³⁹ The Chinese power elite and the public perceive the U.S. pressure through the lens of humiliation.⁴⁰ Chinese media have even aired in prime time slots old war movies that glorified the Chinese combat victory in defiance of the U.S. invasion at the Korean War in the Fifties.⁴¹ We are dealing with the clash of two big echo chambers.

Then, what could be done for both countries to avoid the collision course? In the foreseeable future, U.S. hegemonic power will make it extremely difficult to escape from collective memories concerning the Cold War and Japan-Bashing. As the U.S. policy elites are “relatively impervious to evidence from the outside world which contradicts their beliefs,”⁴² they often resist external criticisms and adhere to self-

³⁵ Assmann, *supra* note 13, at 67.

³⁶ Steve Smith, *Belief Systems and the Study of International Relations*, in Little & Smith, *supra* note 17, at 25; RICHARD E. NEUSTADT & ERNEST R. MAY, *THINKING IN TIME: THE USE OF HISTORY FOR DECISION-MAKERS* (1986).

³⁷ See Ana Swanson, *Trump Cripples W.T.O. as Trade War Rages*, *NY TIMES* (Dec. 8, 2019) (accusing the Trump administration of upending the WTO system).

³⁸ Shawn Donnan & Joe Deaux, *Trump’s New Tariff Threat Comes Amid Signs Job Gains Peaking*, *BLOOMBERG LAW* (May 6, 2019) (observing that most economists ascribe punitive tariffs from trade wars as “economic malpractice”).

³⁹ See PAUL FRENCH, *BETRAYAL IN PARIS: HOW THE TREATY OF VERSAILLES LED TO CHINA’S LONG REVOLUTION* (2016).

⁴⁰ See Alan Rappeport, *19th-Century ‘Humiliation’ Haunts China-U.S. Trade Talks*, *N.Y. TIMES* (Mar. 28, 2019) (linking the Chinese colonialist past to the current China-US trade talks amid the trade war); *The Plaza Discord*, *THE ECONOMIST* (May 23, 2019) (describing how the U.S. pressure in trade ignited nationalism among Chinese who evoked memories of “unequal treaties” in the colonial era and even military confrontations between the two countries in the Korean War in the Fifties).

⁴¹ See *A Propaganda’s Own Goal*, *THE ECONOMIST* (May 23, 2019); *CCTV Airs Anti-US Invasion War Movies*, *ASIA TIMES* (May 20, 2019).

⁴² Richard Little, *Belief Systems in the Social Sciences*, in Little & Smith, *supra* note 17, at 49.

rationalization. Any meaningful change must come from an identity shift from both countries. In particular, the United States needs to be more susceptible to external opinions different from its own and cultivate *counter-memories*⁴³ that can disabuse itself of those myths subscribed to by its power elites. Social stereotypes cocooned in collective memory must be challenged by competing versions of memories and given opportunities to be re-constructed via the relentless work of both democratic deliberation and academic endeavor.⁴⁴ Only when the U.S. policymakers and the public become disenchanted with their collective memories, will they be able to pluck the deceiving mask of trade war. Admittedly, such enlightenment is a tall order amid the contemporary populist political climate within the United States.

Against this background, this Article unfolds in the following sequence. Part I introduces the concept of collective memory, highlighting its “presentist” nature. It also emphasizes that the effects of collective memory on the contemporary affairs, such as trade wars, are best captured not by positivist causality but by “narrative causality.” Part II then describes two memory boxes, the Cold War and Japan-Bashing, in which several recurring themes of trade war lie as indicators of collective memory. Part III contends that the U.S. trade policies shaped by collective memories are detrimental to both the world and domestic economy. It posits that collective memories may seriously distort reality, both symbolic and economic, of the contemporary global market. Part IV maintains that collective memory on the Trumpian trade war, if left unchecked, is likely to leave indelible marks on the minds of future American, *and* Chinese, policymakers.

I. COLLECTIVE MEMORY

Collective memory, within the meaning of this Article, must be distinguished from an actual memory in a neuro-scientific sense. It is not a mere aggregation of individual recollections of certain past events.⁴⁵ Nor does it necessarily represent shared recollections of what actually happened. Rather, it is more of a “stipulating,”⁴⁶ which reflects a certain moral,

⁴³ Cf. MICHEL FOUCAULT, LANGUAGE, COUNTER-MEMORY, PRACTICE: SELECTED ESSAYS AND INTERVIEWS (1977).

⁴⁴ Gedi & Yigal, *supra* note 15, at 30. Cf. MAY, *supra* note 14, at 190 (arguing that “if history is to be better used in government, nothing is more important than that professional historians discover means of addressing directly, succinctly, and promptly the needs of people who govern”).

⁴⁵ Nora, *supra* note 25.

⁴⁶ SUSAN SONTAG, REGARDING THE PAIN OF OTHERS 85 (2003).

ideological vision prevailing in a given time.⁴⁷ At a conceptual level, it borders on the notion of social practice operating in a collective *sub*-conscious level, distinguished from a rational, deliberative realm.⁴⁸ For example, collective memory is comprised of certain sets of philosophical beliefs, such as a harmonious or conflictual nature of the political universe (“operational code”⁴⁹) or the understanding of causality between components of a given belief system (“cognitive map”⁵⁰).

Collective memory is often contrasted with history. The two may overlap to some degree in the sense that both, broadly speaking, concern “publicly available social facts.”⁵¹ But, while history addresses “dead,” collective memory is interested in “living.”⁵² To wit, while history is the “reconstruction” of the past, prone to “analysis and criticism,” collective memory is an actual social phenomenon.⁵³

Some scholars even blur the line between the two. They advance two types of collective memory: one type concerns “historical events in their transformation into collective memory.”⁵⁴ The other type considers collective memory as a fiction invented for political or other functional purposes. While the former focuses on the “first-order,” “episodic” memory (what-where-when), the latter addresses the “second-order,” “self-reflexive” content that touches upon the present situation.⁵⁵ This Article focuses on the latter type. Thus, when collective memories are mobilized for political purposes, they turn into an “ideology,” i.e. a “system of interlinked ideas, symbols, and beliefs by which a culture – any culture – seeks to justify and perpetuate itself.”⁵⁶

Under this “presentist” approach to collective memory, the images of the past are shaped by our contemporary interests⁵⁷ as the memory

⁴⁷ Gedi & Yigal, *supra* note 16, at 30.

⁴⁸ See notably PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* (1977).

⁴⁹ Alexander L. George, *The ‘Operational Code’: A Neglected Approach to the Study of Political Leaders and Decision-Making*, 13 INT’L STUD. Q. 190, 201-16 (1969).

⁵⁰ Smith, *supra* note 36, at 23.

⁵¹ Jeffrey K. Olick, *Collective Memory*, INT’L ENCY. SOC. SCI. 7 (2nd ed.).

⁵² *Id.*

⁵³ Nora, *supra* note 25, at 8-9.

⁵⁴ Assmann, *supra* note 13, at 68. For example, collective memories regarding the Holocaust committed by the Nazi Germany and sex slaves (comfort women) under the Japanese war time rule.

⁵⁵ Michaelian, Kourken and Sutton, John, *Memory*, The Stanford Encyclopedia of Philosophy (Summer 2017 Edition), Edward N. Zalta (ed.), at <https://plato.stanford.edu/archives/sum2017/entries/memory/>

⁵⁶ Sacvan Bercovitch, *The Problem of Ideology in American Literary History*, 12 CRIT. INQ. 631, 635 (1986).

⁵⁷ See Barry Schwartz, *The Social Context of Commemoration: A Study in Collective Memory*, 61 SOC. FORCES, 374 (1982). See also *Frame Images*, *supra* note 18, at 2

processes are often “manipulated and intervened in for sometimes urgent purposes in the present.”⁵⁸ Understood this way, the main function of collective memory can be said to provide a “silent language.”⁵⁹ It shapes a “belief system” of a society, which functions as a cognitive filter through which information is channeled and given meanings.⁶⁰ It remains taken-for-granted, and therefore hardly distinctive, to language-users themselves: it may be objectified only to external observers.⁶¹ Its characteristic “persistence across time and change”⁶² helps constitute a collective identity of a social group, such as a state. In this regard, Aleida Assmann observes that:

Institutions and larger social groups, such as nations, governments, the church, or a firm do not “have” a memory—they “make” one for themselves with the aid of memorial signs such as symbols, texts, images, rites, ceremonies, places, and monuments. Together with such a memory, these groups and institutions “construct” an identity.⁶³

Finally, an epistemological note is in order. Attributing a current event to collective memory might be a daunting task. Exploring correlational, if not causal, traces of collective memories in a contemporary event might not sound scientific to the eyes of positivists. The approach employed in this Article, as is the case in human science in general, is not necessarily guided by a testable hypothesis (theory). As seen in natural science, positivism assumes that theories are separate from facts: the “language of theory” is independent of the “language of observation.”⁶⁴ Facts are “epistemologically prior” to theories.⁶⁵ Without this assumption, any “testing” to validate, or invalidate, a theory is impossible.⁶⁶ Yet, the problem is that those allegedly neutral facts have already been “conceptually constituted by theories.”⁶⁷ Such “theory-impregnated”⁶⁸ facts

(describing collective memory as “orienting symbol” that “reveal[s] where we are in relation to where we have been”).

⁵⁸ EDWARD SAID, *INVENTION, MEMORY AND SPACE* 179 (2000).

⁵⁹ EDWARD T. HALL, *THE SILENT LANGUAGE* (1973).

⁶⁰ Smith, *supra* note 36, at 22

⁶¹ Little, *supra* note 42, at 42-43.

⁶² W. James Booth, *The Work of Memory: Time, Identity, and Justice*, 75 *SOC. RESEARCH*, 237, 238 (2008).

⁶³ Assmann, *supra* note 13, at 55.

⁶⁴ Roger Tooze, *Economic Belief Systems and Understanding International Relations*, in Little & Smith, *supra* note 17, at 132.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ John G. Gunnell, *Philosophy and Political Theory*, 14 *GOV. & OPPOSITION*, 198, 209

are in a sense adulterated and only represent the “reality of the model.”⁶⁹

Ideational factors, such as beliefs, collective intention, and collective memory, cannot be observer-neutral. To substantiate the existence of a belief system is to extract an intersubjective meaning from relevant social facts, which requires a perspective of an analyst, i.e., interpretation. Here, a sharp separation between an object and a subject, which is the epistemological maxim of positivism, cannot stand. This is why positivism cannot accommodate the understanding of belief systems, such as collective memory.⁷⁰

In sum, proving the effect of collective memory requires an “epistemic reorientation.”⁷¹ It is basically a process of meaning-making, rather than that of measurement.⁷² Therefore, effects of collective memory on current affairs can be best captured by “narrative causality” that “traces the historical evolution of meanings (both subjective and intersubjective) in order to explain how they brought about, or made possible, a given social context.” Unlike positive causality in natural sciences, narrative causality aims to explore “variegated meanings and practices in time around a number of “plots” or causal stories.”⁷³

II. TWO MEMORY BOXES: THE COLD WAR AND JAPAN-BASHING

A. *The Cold War*

The Cold War provided U.S. politicians and policymakers with a simplistic yet powerful ideology that constructed the U.S. national interest *through* a Soviet threat.⁷⁴ Earlier postwar confrontations between the United States and the Soviet Union, including the Cuban missile crisis, created a salient set of collective memory in the minds of American policymakers. Such collective memory translates into the Cold War mentality, which assumes the “inherent bad faith of the Communist

(1979).

⁶⁸ Saleha Mohsin, *Mnuchin Faces Senate Democrat Pressure to Be Tough on China*, BLOOMBERG LAW (Feb. 1, 2019).

⁶⁹ PIERRE BOURDIEU, *CHOSSES DITES* (Things Said) 62 (1987) (cited in Vincent Pouliot, “Subjectivism”: *Toward a Constructive Methodology*, 51 INT’L STUD. Q. 359, 363 (2007)).

⁷⁰ Tooze, *supra* note 64, at 127.

⁷¹ *Id.* at 128.

⁷² Pouliot, *supra* note 69, at 367 (emphasizing the necessity of “narrative-building” in social sciences, which is defined as a “dynamic account that tells the story of a variety of historical processes as they unfold over time”).

⁷³ Pouliot, *supra* note 69, at 367.

⁷⁴ Lawrence, *supra* note 17, at 162.

model.”⁷⁵ From the American perspective, this mentality functioned as a powerful ideology that filtered all Soviet behavior: whatever the Soviets did was interpreted to originate from malicious intentions.⁷⁶ This ideology reproduced and consolidated earlier Cold War memory, which climaxed when Ronald Reagan branded the USSR as an “Evil Empire.”

The current U.S. government evokes the same collective memory in waging its trade war against China.⁷⁷ According to the U.S. Department of Defense, “China is a strategic competitor using predatory economics to intimidate its neighbors while militarizing features in the South China Sea.”⁷⁸ Tom Cotton, a junior Republican Senator from Arkansas, recently labeled China as an evil empire as he co-sponsored a bill that would bolster military alliance with Taiwan.⁷⁹ A private organization titled “The Committee on the Present Danger: China” was recently founded in order to “educate and inform American citizens and policymakers about the existential threats presented from the Peoples Republic of China under the misrule of the Chinese Communist Party.”⁸⁰ Likewise, there are an increasing number of observations that the U.S. military-industrial complex is nudging the U.S. multinational businesses to re-configure their global supply chains in a way which disassociates them from China.⁸¹

From a geopolitical standpoint, the trade war between the United States and China may have already begun in the Obama administration.⁸² Hilary Clinton, the then-Secretary of State, championed the negotiation of the Trans-Pacific Partnership (TPP) agreement under the newly-minted banner of the “Pivot to Asia.”⁸³ President Obama urged the Senate to pass the TPP

⁷⁵ HENRY KISSINGER, *THE NECESSITY OF CHOICE* 201 (1962).

⁷⁶ Lawrence, *supra* note 17, at 147.

⁷⁷ Jeffrey Sachs, *Donald Trump’s Cold War Tactics Will Not Work with China*, FIN. TIMES (Jan. 18, 2019). See also Edward Luce, *Getting Acclimatized to the US-China Cold War*, SWAMP NOTES (FIN. TIMES) (Jul. 18, 2019) (reporting that the U.S. political leaders have recently formed a consensus of a “new cold war” against China).

⁷⁸ The U.S. Department of Defense, Summary of the 2018 National Defense Strategy of the United States of America, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.

⁷⁹ Edward Luce, *A Warning on Tom Cotton and the China New Cold War*, FT SWAMP NOTES (Mar. 29, 2019).

⁸⁰ The Committee on the Present Danger: China, <https://presentdangerchina.org/>.

⁸¹ Rana Foroohar, *Globalized Business Is a US Security Issue*, FIN. TIMES (Jul. 15, 2018).

⁸² Anthea Roberts et al., *Geoeconomics: The Variable Relationship Between Economics and Security*, LAWFARE (Nov. 27, 2018), <https://www.lawfareblog.com/geoeconomics-variable-relationship-between-economics-and-security>.

⁸³ See Victor Cha, *The Unfinished Legacy of Obama’s Pivot to Asia*, FOREIGN POL’Y (Sep. 6, 2016).

by warning that “if we don’t write the rules, China will.”⁸⁴ The then-Secretary of Defense Ashton Carter even averred that “in terms of our rebalance in the broadest sense, passing TPP is as important to me as another aircraft carrier.”⁸⁵

Critically, the Cold War collective memory connotes an ideological righteousness, or even superiority, of U.S. foreign policies, and it provides a veil of justification with trade warfare. The rise of the “Blue Team” at the end of the century can be said to have “carried” the Cold War collective memory. A loose network of the U.S. academics, government officials and politicians promoted the view that “China is a rising and hostile power destined to threaten U.S. vital interests” and advocated a containment strategy, including “tak[ing] a harder line on China’s human rights and unfair trade practices” as well as “restrict[ing] technology transfers with military significance.”⁸⁶ Likewise, a recent revealing statement made by Jeff Colgan and Robert Keohane points to the shaping power of collective memory. Colgan and Keohane submit that:

Washington should nurture a uniquely American social identity and a national narrative. That will require othering authoritarian and illiberal countries ... such as China and Saudi Arabia. Done properly, that sort of *othering* could help clarify the American national identity and build solidarity ... It might at times constrain commercial relationships. However, a society is more than just an economy, and the benefits of social cohesion would justify a modest economic cost.⁸⁷

B. Japan-Bashing

The Trumpian trade war is silhouetted by the bitter aftershock of the Wall Street financial crisis of 2007. While open market and free trade has

⁸⁴ The White House, Remarks by the President on Trade (May 8, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/05/08/remarks-president-trade>.

⁸⁵ The Dept. of Defense, Secretary of Defense Secretary of Defense Ash Carter, Remarks on the Next Phase of the U.S. Rebalance to the Asia-Pacific (McCain Institute, Arizona State University) (Apr. 6, 2015), <https://www.defense.gov/Newsroom/Speeches/Speech/Article/606660/remarks-on-the-next-phase-of-the-us-rebalance-to-the-asia-pacific-mccain-instit/>

⁸⁶ G. John Ikenberry & Michael Mastanduno, *Conclusion: Images of Order in the Asia-Pacific and the Role of the United States*, in INTERNATIONAL RELATIONS THEORY AND THE ASIA-PACIFIC 421, 433 (G. John Ikenberry & Michael Mastanduno eds. 2003).

⁸⁷ Jeff D. Colgan & Robert O. Keohane, *The Liberal Order Is Rigged*, FOREIGN AFF. (May/June 2017), <https://www.foreignaffairs.com/articles/world/2017-04-17/liberal-order-rigged>.

usually been an elitist, top-down project, it has always been vulnerable to a popular, bottom-up political backlash in times of economic hardship.⁸⁸ Politicization of trade policies unexceptionally summons collective memory on mercantilism. While this particular set of collective memory is suppressed in relatively good economic times, it is often triggered by socio-economic crises. For example, politicians take bilateral trade deficits seriously, defying a broad consensus among economists.⁸⁹ They often attribute, wrongly, domestic unemployment to foreign competition. They also omit “surpluses” in trade in services. Finally, they ignore overwhelming contributions of foreign trade to the increase of national welfare in general. These caricatures on foreign trade become vernacularized, as seen in certain pejorative or accusative slogans, such as “unfair” trade; trade “imbalance”; currency “manipulator”; “predatory” practice, “socialist” market economy,⁹⁰ SOEs, among others.

The unique U.S. political culture often facilitates the reproduction of collective memory by institutionalizing past belief systems in legal texts. There exists a deep-rooted distrust on the centralized government power.⁹¹ Ronald Reagan famously stated that the government is the problem, not the solution.⁹² Out of this de-centric political culture emerged a “private USTR model” under various trade remedy laws, including Super and Special Section 301.⁹³ Under these trade remedy laws, the government seldom self-

⁸⁸ Thomas R. Howell, *Trade Protection: Rethinking the American Perspective*, 25 N.Y.U. J. INT'L L. & POL. 251, 262 (1993).

⁸⁹ See e.g., Alison Butler, *Trade Imbalances and Economic Theory: The Case for a U.S. – Japan Trade Deficit*, FRBSL (Mar/Apr, 1991) (maintaining that bilateral trade imbalances are attributable to structural factors, such as different savings/investment ratios and different compositions in bilateral trade and therefore any attempt to artificially correct imbalances is counterproductive); Daniel Griswold, *America's Misunderstood Trade Deficit*, Testimony before Subcommittee on International Economic Policy and Trade Committee on International Relations United States House of Representatives (Jul. 22, 2018) (challenging “enduring myths” about trade deficits among the U.S. policymakers).

⁹⁰ Harry G. Broadman, *China's Slowdown Is of Its Own Doing*, FIN. TIMES (Jan. 29, 2019).

⁹¹ Howell, *supra* note 88, at 259. “It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it.” See also The Federalist No. 48 (James Madison).

⁹² Inaugural Address (Jan. 20, 1981), Ronald Reagan Presidential Foundation & Institute, <https://www.reaganfoundation.org/ronald-reagan/reagan-quotes-speeches/inaugural-address-2/>.

⁹³ Howell, *supra* note 88, at 259-60. Super 301 refers to a new procedural “overlay” of the original trade statute (Section 301) under the Omnibus Trade and Competitiveness Act of 1988. Amelia Porges, *Settling Disputes: What Do Litigation Models Tell Us?*, 19 OHIO ST. J. ON DISP. RESOL. 141, 152 (2003). Under the title of “Identification of Trade Expansion Priorities,” Super 301 identifies “priority foreign country practices” the elimination of which is most “likely to” boost the U.S. export “either directly or through

initiates an unfair trade investigation against a foreign trading partner. Instead, it waits for a domestic producer's specific petition against an alleged unfair trade practice by a foreign country. This "legalistic and judgmental [process] operates in a very haphazard way," often baffling foreign trading partners for the U.S. government's sheer inability to articulate its real interests.⁹⁴

In what may be called "mnemonic socialization,"⁹⁵ these highly symbolic statutes de-freeze past images on trade confrontation and create mnemonic links to the current trade war with China. Those statutes are designed in a combative, and therefore unilateral, fashion in that the U.S. government plays the police, prosecutor, judge, and jury as to foreign trading nations' alleged violations of trade rules. They expose the incumbent policymakers to "ocular introjection" that "instills knowledge and strength through communication with the past."⁹⁶ Thus, such institutionalization facilitates the access, reproduction, and distribution of a particular set of collective memory on confronting alleged unfair foreign trade practices.⁹⁷ This remedial forum espouses a type of commemorative practice,⁹⁸ relying on symbolic particles of collective memory, such as "unfair trade" or "trade imbalances." It provides an effective "analogical device" with which to "evoke an attitude, a set of impressions, or a pattern of events associated . . . with the symbol."⁹⁹ In other words, "symbols of past evil can serve as analogical references that bolster calls for legal (and other) intervention in conflict."¹⁰⁰ This is how the past Japan-bashing informs the present China-bashing.

Granted, the construction and reconstruction of collective memories is

the establishment of a beneficial precedent" based on an annual "National Trade Estimate" (NTE) report issued by USTR. 19 U.S.C. §§ 2420, 2241 (b). The 1988 Act also launched other breeds of unilateral trade measures, i.e., "Special 301" and "Telecommunication 301." Special 301 is an intellectual property right (IPR) version of Super 301 designed to identify priority foreign countries which fail to provide adequate IPR protection to U.S. firms and to negotiate with, and if necessary retaliate against, these countries under the Section 301 process. 19 U.S.C. § 2413.

⁹⁴ *Id.* at 260. See also J. Michael Finger, *The Meaning of "Unfair" in United States Import Policy*, 1 MINN. J. GLOBAL TRADE 35, 41 (1992) (spotlighting the "American obsession with regulation through formalized rules" in trade statutes).

⁹⁵ Eviatar Zerubavel, *Social Memories: Steps to a Sociology of the Past*, 19 QUAL. SOC. 283, 286 (1996).

⁹⁶ *Frame Images*, *supra* note 18, at 16.

⁹⁷ Savelsberg & King, *supra* note 34, at 190; Joachim J. Savelsberg & Ryan D. King, *Institutionalizing Collective Memories of Hate: Law and Law Enforcement in Germany and the United States*, 111 AM. J. SOC. 579 (2005).

⁹⁸ Hirsch, *supra* note 11.

⁹⁹ MURRAY EDELMAN, *THE SYMBOLIC USE OF POLITICS* 6 (1985).

¹⁰⁰ Savelsberg & King, *supra* note 34, at 202.

not always smooth, nor are the consequences necessarily coherent. It is a continuing process of negotiation between and among competing versions,¹⁰¹ prone to the “*Rashomon* effect.”¹⁰² It is especially so when collective memory constitutes a conative memory regarding questions of values, morality, and justice.¹⁰³ Since some cultural meanings are “free-floating” and do not represent a “specific bearer,”¹⁰⁴ they fail to register in collective minds strongly enough to endure. For example, the notorious Smoot-Hawley Tariffs Act of 1930 might function as a counter-symbol for any aggressive unilateralism. Yet collective memory tends to be constructed in a highly selective manner. Regarding trade confrontation, foreign evils appear more salient in collective minds of the U.S. policy elites than domestic evils, such as the Smoot-Hawley Act.¹⁰⁵ Indeed, domestic evils are prone to collective amnesia,¹⁰⁶ failing to counteract the construction of collective memory focused on foreign evils. This asymmetry in the construction of collective memory on trade confrontation tends to limit conditions for legal change required to align the U.S. law with the WTO norms.¹⁰⁷

The prevalent version of collective memory provides a rich repository of symbolic resources necessary to package particular diagnoses and prognoses in a coherent manner.¹⁰⁸ Even when domestic mercantilists attack foreign mercantilists, the former still needs to avoid the burden of “cognitive dissonance”¹⁰⁹ and legitimate their call for aggressive unilateralism. The logic of “fair” trade is a case in point. While unilateralist trade penalties contradict the free trade principle, politicians attempt to overcome the contradiction (dissonance) by justifying those trade restrictions (unfree trade) as a necessary remedy to unfair trade practices by foreign trading partners. Notably, China’s alleged unfair trade practices and consequent economic carnage to U.S. business and labor have been the Trump administration’s justification of trade wars with China. Yet this self-righteous unfair trade logic actually hearkens back to Japan’s economic

¹⁰¹ EVIATAR ZERUBAVEL, *TIME MAPS: COLLECTIVE MEMORY AND THE SHAPE OF THE PAST* (2004).

¹⁰² See Robert Anderson, *The Rashomon Effect and Communication*, 41 CAN. J. COMM. 250 (2016).

¹⁰³ ERIC LANGENBACHER & YOSHI SHAIN, *supra* note 11, at 214.

¹⁰⁴ Ross Poole, *Memory, Responsibility, and Identity*, 75 SOC. RESEARCH, 263, 282 (2008).

¹⁰⁵ Savelsberg & King, *supra* note 34, at 203.

¹⁰⁶ Poole, *supra* note 104, at 270 (observing that forgetfulness is not “a mere lapse of memory; it is an active desire to put the past behind us, and to face the future”).

¹⁰⁷ Savelsberg & King, *supra* note 34, at 203.

¹⁰⁸ I owe this insight to Joe Conti.

¹⁰⁹ See notably LEON FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* (1957).

dominance in the Eighties and the Nineties. It is the same bashing yet against a different trading partner. As the then USTR highlighted structural, and even cultural, barriers erected by Japan,¹¹⁰ the current USTR accused China of state capitalism.

Importantly, it is euphoria of triumphalism that facilitates the invocation, and reinvention, of collective memories by U.S. policymakers. The end of the Cold War bestowed upon the U.S. elites a paramount sense of self-pride, often symbolized by the “End of the History,” with the vanishing existential security risks. Soon afterwards, the Washington Consensus steered democratization and marketization in the former Soviet region. A similar sense of triumphalism pervaded in the Reagan administration when the United States successfully pressured Japan to sign the Plaza accord and the Structural Impediments Initiative (SII) in an effort to resolve the alleged trade imbalances between the two countries on the U.S. terms. The Plaza accord promptly depreciated the U.S. dollar against the Japanese currency.¹¹¹ The SII was designed to dramatically increase the U.S. firms’ access to the Japanese market through a strong de-regulatory drive. While it is still controversial whether these extraordinary policies indeed narrowed the gap of trade deficits between the two countries, it is this particular set of triumphant collective memories that appears to drive the Trump administration to impose “terms for a surrender” on China amid the current trade war.¹¹² No wonder President Trump declared that “trade wars are good and *easy to win*.”¹¹³

Notably, those collective memories on trade warfare are often preserved and disseminated by certain groups of individuals, which may be labeled “carrier groups”¹¹⁴ or “memory agents.”¹¹⁵ For example, the current trade hawks in the Trump administration, in particular Robert Lighthizer (the USTR), Wilbur Ross (the Secretary of Commerce), and Peter Navarro (Senior Trade Advisor), hold deep connections with the U.S. steel industry. In his past career, Lighthizer chaired the U.S.-Japan Investment Committee and led negotiations with Japan to restrict Japan’s steel exports to the

¹¹⁰ Blake K. Thatcher, *Section 301 of the Trade Act of 1974: Its Utility Against Alleged Unfair Trade Practices by the Japanese Government*, 81 NW. U. L. REV 492, 532 (1987).

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¹¹² Prasad, quoted in Keith Bradsher, *U.S.-China Trade Talks End With Strong Demands, but Few Signs of a Deal*, NY Times (May 4, 2018).

¹¹³ *Trump Tweets: ‘Trade Wars Are Good, And Easy to Win,’* REUTERS (Mar. 2, 2018) (emphasis added).

¹¹⁴ Carrier groups are defined as “groups that maintain or promote types of knowledge, here an image of history, often with the goal of controlling memory or advancing a cause.” Savelsberg & King, *supra* note 34, at 191.

¹¹⁵ Hirsch, *supra* note 11.

United States.¹¹⁶ As a Wall Street veteran financier, Ross bought up troubled steel companies and consolidated into a new one (International Steel Group Inc.).¹¹⁷ He then sold the new company to the London-based steel empire, ArcelorMittal, on whose board he served until he joined the Trump administration. Nucor, the largest steel producer in the United States, provided funding to Navarro's production of the controversial documentary, "Death by China."¹¹⁸ Given that the U.S. steel industry has always been at the epicenter of trade warfare, then and now, private memories of these power elites tend to carry collective memories of past trade wars.

In particular, Lighthizer's biographical background merits special attention. In 1983, in his mid-thirties, Robert Lighthizer was appointed a deputy USTR and chaired the U.S.-Japan Investment Committee, leading steel imports negotiations with Japan. He was a driving force behind "aggressive unilateralism" propelled by the Reagan administration in the Eighties, especially against Japan.¹¹⁹ He stated that:

The icon of modern conservatism, Ronald Reagan, imposed quotas on imported steel, protected Harley-Davidson from Japanese competition, restrained import of semiconductors and automobiles, and took myriad similar steps to keep American industry strong.¹²⁰

After he left the Reagan administration, he worked in a major Washington law firm (Skadden) for an extensive period of time as a lobbyist-cum-lawyer for the steel industry.¹²¹ Indeed, most of trade lawyers under the current administration came from the same law firm, one of whose main customers is the steel industry.¹²²

Admittedly, individual memories must be distinguished from collective memories. Following Emile Durkheim's thesis of collective representation, memoriologists, dating back to Maurice Halbwachs, emphasize the essential distinction between private memory as individual images and collective memory as social phenomena.¹²³ Yet, collective memory can be

¹¹⁶ Slobodian, *supra* note 31.

¹¹⁷ Nick Timiraos and Rebecca Ballhaus, *Navarro's Ties to Nucor Highlight Trump Advisers' Steel-Industry Connections*, WALL ST. J. (Mar. 16, 2018).

¹¹⁸ *Id.*

¹¹⁹ Slobodian *supra* note 31.

¹²⁰ Lighthizer, *supra* note 32.

¹²¹ Shawn Donnan, *The Tough Negotiator Turning Trump's Trade Bluster into Reality*, INT'L TRADE DAILY (Sep. 21, 2018).

¹²² James Politi, *Trump Trade Team Draws Heavily from One Law Firm: Skadden*, FIN. TIMES (Sep. 26, 2018).

¹²³ Regarding psychological literature on private memory and law, *see generally* J.

instantiated only through individual memory: society is where individuals can “retrieve” their recollections.¹²⁴ Invocation of private (biographical) memory concretizes the operation of collective memory. As Habwachs aptly observed, while people acquire their memories “in society,” they also recall and recognize them “in society.”¹²⁵

C. Recursive Themes of Trade War as Indicators of Collective Memory

This Article does not claim that the current trade war with China is a carbon copy of the past trade war with Japan. Obviously, China is not Japan.¹²⁶ Back then, Japan never retaliated; today, China is retaliating. Instead, the main point here is that the underlying assumptions, and prejudices, on the basis of which the United States addressed the titular “Japan problem” have been somehow crystallized and registered, in the form of collective memory, in the minds of both power elites and the public.¹²⁷ It is this particular set of collective memories that provides the current Trump administration with a cognitive schema through which it is dealing with the alleged “China problem” via trade war. One might demonstrate the symbolic power of collective memory by identifying certain recurring themes common to the past and the present trade war. Once incumbent trade officials within the Trump administration recognize the patterns, they are likely to repeat similar types of reactions available in the collective memory box.

First comes hegemonic angst. If China is the U.S.’s strategic competitor of today, in the 80-90’s Japan was the U.S.’s newly found adversary. As Japan became an international economic powerhouse and began to threaten U.S. status, the U.S. government vehemently attacked Japan for the latter’s alleged “inability or unwillingness to restrain the one-sided and destructive expansion of its economic power.”¹²⁸ For example, James Fallows argued that:

Unless Japan is contained, therefore, several things that matter to America will be jeopardized: America's own authority to carry out

Monahan & E.F. Loftus, *The Psychology of Law*, 33 ANN. REV. PSY. 371 (1982)

¹²⁴ MAURICE HALBWACHS, ON COLLECTIVE MEMORY 175 (Lewis A. Coser ed. & trans. 1992).

¹²⁵ *Id.* at 38.

¹²⁶ See Bob Davis, *In Trade Fight, China Isn't Like Japan*, WALL ST. J. (Apr. 9, 2018).

¹²⁷ See Robert Lindsey, *Resentment of Japanese Is Growing, Poll Shows*, NY TIMES (Apr. 6, 1982). Regarding an example of anti-Japan sentiments in the Eighties and the Nineties that had penetrated into popular culture, see MICHAEL CRICHTON, *RISE OF THE SUN* (1992).

¹²⁸ James Fallows, *Containing Japan*, THE ATLANTIC (May 1989).

its foreign policy and advance its ideals, American citizens' future prospects within the world's most powerful business firms, and also the very system of free trade that America has helped sustain since the Second World War.¹²⁹

Public opinion polls at that time revealed that ordinary people had perceived the threat from Japan's growing economic power more seriously than that from the nuclear-armed Soviet Union.¹³⁰ Democratic congressman Jack Brooks even opined that “the U.S. should have dropped four nuclear bombs on Japan, not just two.”¹³¹ Such hegemonic angst is further fueled by the “plot structure” innate to collective memory.¹³² Collective memory is formulated, preserved, and passed on in stories. Within the plot-structure of collective memory, the United States is portrayed an innocent, and righteous, victim, while its adversaries, such as Japan and the Soviet Union, are demonized as “cheaters” or an “evil empire” intentionally and maliciously attempting to undermine the U.S. national interests.

An intriguing variation of collective memory on hegemonic angst is collective memory on frustration, or even betrayal. In the 80's, the United States criticized Japan for its willful abandonment of free trade principles to the U.S.'s detriment. The United States found Japan to be ungrateful in betraying the nation that guided and helped it into the unprecedented economic prosperity in the postwar era. Again, James Fallows opined that:

There is a basic conflict between Japanese and American interests That conflict arises from Japan's inability or unwillingness to restrain the one-sided and destructive expansion of its economic power. The expansion is one-sided because Japanese business does to other countries what Japan will not permit to be done to itself. It is destructive because it will lead to exactly the international ostracism that Japan most fears, because it will wreck the postwar system of free trade that has made Japan and many other nations prosperous, and because it will ultimately make the U.S.-Japanese partnership impossible to sustain.¹³³

¹²⁹ *Id.*

¹³⁰ Chronister, Andrea, *Japan-Bashing: How Propaganda Shapes Americans' Perception of the Japanese*, THESES AND DISSERTATIONS, Paper 111(1992).

¹³¹ Peter Tasker, *Trade Wars – Lessons from the 1980s*, NIKKEI ASIAN REV. (Mar. 30, 2018).

¹³² HAYDEN WHITE, *TROPICS OF DISCOURSE: ESSAYS IN CULTURAL CRITICISM* 81-99 (1978).

¹³³ Fallows, *supra* note 128, at 2-3.

Fast forward to the present, Fallows' frustration three decades ago echoes in the evaluation on Chinese trade policies by the current U.S. administration. In an annual report to Congress, the USTR concluded that:

[T]he United States had erred in supporting China's entry into the WTO on terms that have proven to be ineffective in securing China's embrace of an open, market-oriented approach to the economy and trade.¹³⁴

Second comes de-multilateralization. As the United States criticizes the WTO as having been incapable of disciplining China's alleged unfair trade practices, the United States blamed the GATT in the 80-90's for its failure to effectively address Japan's trade barriers. For example, Pat Choate argued that:

The General Agreement on Tariffs and Trade (GATT), as a foundation for global trade, is fundamentally flawed. Japan has ignored its GATT obligations, taking advantage of open markets wherever it can while keeping its markets closed through a variety of formal and informal barriers.¹³⁵

Third comes structural-cultural barriers. The U.S. government attributed unfair trade practices by the Japanese government, which allegedly contributed to massive bilateral trade deficit between the two countries, to the unique economic governance structure in Japan, symbolized by "Japan Inc."¹³⁶ The U.S. government believed that the postwar economic miracle in Japan was not a product of the Western, neoliberal free market capitalism. Instead, the Japanese government, as a master architect, picked the winners and subsidized them, both fiscally and financially, to achieve national goals within the context of well-crafted economic development blueprints. Large private enterprises were also well-structured in the form of vertical integration (*keiretsu*), which enabled the Japanese government to nurture so-called "strategic" industries, such as supercomputers.¹³⁷ As these Japanese strategic industries, such as Toshiba, became competitive and threatened the U.S. rivals, such as Intel, the U.S.

¹³⁴ USTR, 2018 Report to Congress on China's WTO Compliance 5 (Feb. 2019), <https://ustr.gov/sites/default/files/2018-USTR-Report-to-Congress-on-China%27s-WTO-Compliance.pdf>.

¹³⁵ Pat Choate, *The Future of American-Japanese Trade*, 522 ANN. AM. ACAD. POL. & SOC. SCI. 36, 36 (1992).

¹³⁶ Here, I draw on Marie Anchoy, *Japanese-American Trade Conflict and Supercomputers*, 109 POL. SCI. Q. 35, 38 (1994).

¹³⁷ *Id.*

government labeled Japan's economic planning as pathological and pressured Japan to remedy it.¹³⁸

Here, the U.S. government confuses the “depth of legal and economic differences”¹³⁹ with strategic policies and converts the former into some type of trade “barriers.”¹⁴⁰ Designating Japan as a “capitalist developmental state,” some pundits in the 80's criticized Japan for its alleged “strategies to suppress consumption, channel personal savings to industrial investment, and convert industrial competition into a ratchet-like process.”¹⁴¹ According to this view, the Japanese propensity to save somehow derived from the deliberate government policy.

Likewise, the U.S. Semiconductor Industry Association (SIA) accused Japan of allegedly “unreasonable” market structure, which SIA argued constituted a trade barrier in and of itself.¹⁴² For example, Charles Kaufman observed that:

Aiming particularly at equipment and process technology for VLSI [Very Large Scale Integration]-level integration, favorable rate loans were issued for development of key technologies. MITI [Ministry of International Trade and Industry] labs joined with manufacturers to coordinate research, formulate standards, and “rationalize” the industry by limiting competition in specific sectors. All of this occurred within a relaxed antitrust environment. Japanese firms ultimately dominated the DRAM market through superior VLSI technology, with Toshiba introducing the first 64K DRAMs.¹⁴³

Indeed, even Japanese society itself was singled out as a source of unfair trade practices.¹⁴⁴ Carla Hills, the USTR under the Bush administration in the Nineties, designated the whole nation as an unfair trader (“priority foreign country”) under the so-called “Super 301” law (Omnibus Trade and Competitiveness Act 1988) based on the “number and pervasiveness” of

¹³⁸ Charles s. Kaufman, *The U.S.-Japan Semiconductor Agreement: Chipping Away at Free Trade*, 12 UCLA PAC. BASIN L.J. 329, 336-38 (1994).

¹³⁹ Daniel K. Tarullo, *Foreword: The Structure of U.S. – Japan Trade Relations*, 27 HARV. J. INT'L L. 343, 344 (1986).

¹⁴⁰ “A closer look at the reasons behind the law's apparently limited relevance for U.S.-Japan trade suggests that the differences of economic policy between the two nations may be more structural and less susceptible to discrete forms of regulatory mediation.” *Id.*, at 346.

¹⁴¹ Fallows, *supra* note 128, at 2-3.

¹⁴² Thatcher, *supra* note 110, at 532; Petition of the Semiconductor Indus. Ass'n, No. 30148, 50 Fed. Reg. 28, 866 (1985).

¹⁴³ Kaufman, *supra* note 138, at 340-41.

¹⁴⁴ Masao Satake, *Trade Conflicts Between Japan and the United States over Market Access: The Case of Automobiles and Automotive Parts*, PAC. ECON. PAPERS 12 (2000).

their “acts, policies, or practices” that impede U.S. exports.¹⁴⁵ In sum, as Daniel Tarullo aptly observed, the U.S. attack seemed to be against the “Japanese way of life” and to therefore hold the Japanese government responsible for “altering the habits and preferences of the Japanese people.”¹⁴⁶

The U.S. pressure against Japan in the 80-90’s echoes through the U.S.’ harsh reaction against China’s masterplan of “Made in China 2025” in which the Chinese government planned to nurture, through state intervention, strategic industries, ranging from AI to quantum computing. As in the 80’s, the U.S.’s therapeutic attitude toward China’s economic policies appears to be oblivious to the fact that China “has its own cultural background, its own way of thinking, and its own way of doing business.”¹⁴⁷

Fourth comes targeting. Despite the U.S. government’s harsh accusation of Japanese anti-market industrial policies, its coercive remedial methodologies dramatically contravened market principles. The U.S. government strongly preferred numerical, “result-oriented”¹⁴⁸ agreements with Japan to boost its access to the U.S.’s key markets, such as auto and semiconductor, in a relatively short period of time. It was “in effect saying to the Japanese government ‘we don’t care how you do it, just make sure imports of our products increase.’”¹⁴⁹ Underneath the U.S. approach did lie a concealed assumption:

Once Japan liberalizes its markets, Yankee traders will swarm into the country selling American products. The streets of Tokyo will be clogged with Chevrolets and the traditional love for sashimi and eel will crumble in favor of a taste for American beef and potatoes. The traditional U.S. economic base will rise like a Phoenix from the ashes and we will return to the halcyon days of unquestioned U.S. economic leadership.¹⁵⁰

The “Market-Oriented, Sector-Specific” (MOSS) talks in the Reagan era are case in point.¹⁵¹ For example, under the MITI’s supervision private

¹⁴⁵ I. M. Destler, *U.S Trade Policy-Making in the Eighties*, in *POLITICS AND ECONOMICS IN THE EIGHTIES* 252 (Alberto Alesina & Geoffrey Carliner eds., 1991)

¹⁴⁶ Tarullo, *supra* note 139, at 355.

¹⁴⁷ John M. Augustyn, *High Technology and International Affairs: Three Conversations*, 81 *AM. SOC’Y INT’L L. PROC.* 1, 14 (1987) (quoting Zhilung Wang).

¹⁴⁸ Choate, *supra* note 135, at 44.

¹⁴⁹ Augustyn, *supra* note 147, at 14.

¹⁵⁰ Thomas J. Schoenbaum, *Trade Friction with Japan and the American Policy Response*, 82 *MICH L. REV.* 1647, 1648 (1984).

¹⁵¹ Satake, *supra* note 144, at 9-11.

companies initiated “voluntary” plans to buy foreign (American) products under the euphemistic banner of “international cooperation program.”¹⁵² Likewise, the Japanese Automobile Manufacturers Association (JAMA) pledged that “auto manufacturers would expand their purchasing of auto parts –both imports and local purchasing at US plants – by six categories, every six months for the following five years.”¹⁵³ In the late 90’s, Japan began to resist the U.S. targeting approach. Interestingly, Japan’s departure from the earlier position coincided with the launch of the new WTO system. In defiance of the Clinton administration’s numerical targets, Japan made a rare move as it filed a formal complaint before the newly created WTO DSM.¹⁵⁴

This numerical targeting has re-emerged in the current negotiations between the United States and China. In the U.S. proposed framework leaked in the Chinese media, the United States demanded that “the U.S. trade deficit with China will have decreased compared to 2018 by at least \$200 billion by the end of 2020.”¹⁵⁵ Eventually, the U.S. government managed to install such a numerical target in its most recent “Phase One” trade deal with China: China agreed to purchase \$40 billion agricultural products from the United States.¹⁵⁶

III. REPERCUSSIONS FROM COLLECTIVE MEMORY: THE WARPED REALITY

A. *Symbolic Effect: Diverging from the Authentic Legal Reality*

The legal reality of the WTO community is a “symbolic universe”¹⁵⁷ that exists only when members of that community believe it exists. A symbolic universe, as well as a particular version of legal reality it represents, is comprised of certain linguistic patterns, such as legal claims and doctrine. Thus, it is WTO norms that instantiate the WTO reality.¹⁵⁸ WTO norms, including institutional practice (*acquis*) of the WTO, constitute a collective identity of WTO members and indoctrinate its

¹⁵² *Id.*, at 18.

¹⁵³ *Id.*, at 17.

¹⁵⁴ *Id.*, at 19-21.

¹⁵⁵ 环球时报, 媒体: 美对华提出“不平等条约” 当现在是 1840 年? (May 5, 2018).

¹⁵⁶ William Mauldin et al., *U.S., China Agree to Limited Deal to Halt Trade War*, WALL ST. J. (Dec. 14, 2019).

¹⁵⁷ PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* 92-128 (1967).

¹⁵⁸ See MICHAEL BARNETT AND MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATION IN GLOBAL POLITICS* 6-7 (2004) (observing that an international organization can create its own ‘social reality’ based on norms).

members in their trade relations.¹⁵⁹ The WTO norms *qua* social fact “attains a firmness in [WTO members’] consciousness: it becomes real . . . and it can no longer be changed so readily.”¹⁶⁰ In other words, the WTO norms are taken for granted as the “unproblematic” legal lifeworld.¹⁶¹

Yet the WTO’s symbolic universe remains precarious due mainly to the innate ambiguity of language itself. An individual WTO member may hold its own version of the symbolic universe in a given issue that diverges from an official one held by the WTO. Indeed, rule-following or norm internalization often requires a taxing process of assimilating one’s own symbolic universe, comprised of a long-held way of thinking and way of life, to an unaccustomed one imposed, not necessarily suggested, by an alien entity (WTO).¹⁶² Therefore, the WTO needs to maintain its official symbolic universe through a meaning-integrating mechanism like its dispute settlement mechanism (DSM). The WTO preserves its official reality against an individual member’s subjective symbolic universe by designating the member’s “inferior cognitive status,”¹⁶³ i.e., “violation,” to the extent that the member contradicts the WTO. This symbolic response is necessary to maintain the WTO’s symbolic universe so that legal realities under the WTO remain coherent, i.e., secure and predictable.¹⁶⁴

Waging trade wars means a complete departure from the WTO’s symbolic universe. It goes beyond mere instances of violation in which a violating nation still accepts the WTO’s authority to replace the violator’s subjective symbolic universe with the WTO’s own official symbolic universe. Ignoring the DSM, waging a trade war is tantamount to a “nihilation”¹⁶⁵ of the WTO’s “symbolic power”¹⁶⁶ as if a chess player

¹⁵⁹ See Martha Finnemore, *International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy*, 47 INT’L ORG. 567(1993); MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY (1996).

¹⁶⁰ BERGER & LUCKMANN, *supra* note 157, at 59.

¹⁶¹ See Charles Taylor, *Language and Society*, in COMMUNICATIVE ACTION: ESSAYS ON HABERMAS’S THE THEORY OF COMMUNICATIVE ACTION 24 (Axel Honneth & Hans Joas eds. 1991) (“Subjects acting communicatively always come to an understanding in the horizon of a lifeworld . . . formed from more or less diffuse, always unproblematic, background convictions . . . [it] serves as a source of situation definitions that are presupposed by participants as unproblematic . . . The lifeworld also stores the interpretive work of preceding generations.”).

¹⁶² BERGER & LUCKMANN, *supra* note 157, at 82.

¹⁶³ *Id.*, at 66.

¹⁶⁴ Understanding on Rules and Procedures Governing the Settlement of Disputes, Agreement Establishing the World Trade Organization, Annex 2, 33 I.L.M 112 (1994), art. 3:2.

¹⁶⁵ BERGER & LUCKMANN, *supra* note 157, at 114.

¹⁶⁶ Pierre Bourdieu, *Outline of a Theory of Practice* 165 (Cambridge University Press

refuses to acknowledge a checkmate.¹⁶⁷ It is a form of “self-orientation” against “collective orientation.”¹⁶⁸ It is this nihilation that provides a symbolic underpinning of trade wars.

The U.S. collective memory on trade confrontation, in particular that of de-multilateralization, tends to secure its own subjective symbolic universe on trade governance, in the form of a legal “enclave,” such as Section 301, at the heart of the multilateral trading system. In tandem with the U.S.’s hegemonic status, its unique collective memory provides a persuasive account of legal ambivalence. Indeed, the United States has never fully internalized the WTO system, both legally and politically. For example, the Uruguay Round Agreements Act (URAA), enacted in 1994 as an implementation act of the WTO Agreements, provides that:

SEC. 102. RELATIONSHIP OF THE AGREEMENTS TO UNITED STATES LAW AND STATE LAW. (a) RELATIONSHIP OF AGREEMENTS TO UNITED STATES LAW.— (1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect. (2) CONSTRUCTION.— Nothing in this Act shall be construed— (A) to amend or modify any law of the United States, including any law relating to— (i) the protection of human, animal, or plant life or health, (ii) the protection of the environment, or (iii) worker safety, or (B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974, unless specifically provided for in this Act.¹⁶⁹

We may all agree that trade wars would bring disastrous consequences to the world trading system. Most people tend to interpret these consequences as material ones, such as the fatal decrease of trade volume. Yet the true *meaning* of trade wars goes beyond a material dimension, which is why trade wars could leave more serious damages than calculable losses on trade volume. We tend to perceive trade merely as a transaction (contract) in which each party struggles to outsmart the other and extract

1977).

¹⁶⁷ Oran R. Young, *International Regimes: Toward a New Theory of Institution*, 39 *WORLD POL.* 39, 104, 120 (1986).

¹⁶⁸ *Cf.* TOWARD A GENERAL THEORY OF ACTION (Talcott Parsons & Edward A. Shils eds. 1951).

¹⁶⁹ Uruguay Round Agreements Act, 19 U.S.C. § 3501 (1994).

better terms, such as better market access.¹⁷⁰ According to this rationalist view, trade wars are not very different from normal trade negotiations in that trading nations strive to maximize their mercantilist balance sheets, i.e., more exports and fewer imports.

However, what trade wars reveal is something graver than a surface reality represented by shrinking numbers. The real catastrophe of trade wars is an irreversible disintegration of the WTO's *social* reality, i.e., symbolic universe, which provides security and predictability not only to WTO members but also to individual economic players.¹⁷¹ The magnitude of harm caused by an anomic situation created by trade wars appears to be incalculable. The culture of trade wars is both contagious and self-fulfilling.¹⁷² Trading nations are likely to be suspicious of each other's measure. Perhaps history might be the only guide for such an epic failure. How could WTO members discuss the WTO's ultimate moral goal, i.e., "development,"¹⁷³ in such an anomic atmosphere?

B. Practical Effect: Diverging from the Authentic Economic Reality

Even material reality is socially constructed and therefore shaped by a prevailing belief system, which is influenced by a prevailing set of collective memory in a given society.¹⁷⁴ For example, the U.S. nuclear

¹⁷⁰ See Eric A. Posner & Alan O. Sykes, *International Law and the Limits of Macroeconomic Cooperation*, 86 S. CAL. L. REV. 1025, 1031–3 (2013) ("Country A will agree to liberalize its market for, say, computers, in return for a reciprocal concession on, say, textiles."). Cf. Robert Axelrod & Robert O. Keohane, *Achieving Cooperation under Anarchy: Strategies and Institutions*, 38 WORLD POL. 226 (1985).

¹⁷¹ Panel Report, *United States-Sections 301–310 of the Trade Act of 1974*, ¶ 7.76, WT/DS152/R (Jan. 27, 2000) ("The security and predictability in question are of the multilateral trading system. The multilateral trading system is, per force, composed not only of States but also, indeed mostly, of *individual economic operators*. The lack of security and predictability affects mostly these individual operators.") (emphasis added).

¹⁷² Cf. Laura Silver et al., *U.S. Views of China Turn Sharply Negative Amid Trade Tensions*, Pew Research Center (Aug. 13, 2019) (implying that the current bilateral tensions between the United States and China tends to aggravate the U.S. public attitudes toward China). See also James Politi, *Americans' View of China Sours as Trade War Rages*, FIN. TIMES (Aug. 13, 2019).

¹⁷³ "International trade can play a major role in the promotion of *economic development* and the *alleviation of poverty*. We recognize the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. The *majority* of WTO members are *developing countries*. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration." WTO, Ministerial Declaration of 14 November 2001, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002) (emphasis added).

¹⁷⁴ See generally Sungjoon Cho, *Social Constructivism and the Social Construction of*

strategy in the Cold War era was driven by the then-held collective memory regarding the Soviet Union, not necessarily by hard empirical evidence.¹⁷⁵ For another example, the Bush administration's nearly religious conviction on the existence of weapons of mass destruction in Iraq, despite the opposite fact-finding by the International Atomic Energy Agency (IAEA), led to the second Iraqi War.¹⁷⁶ After all, when politicians cannot locate hard evidence congenial to their theory, they tend to treat the theory as if it were reality.¹⁷⁷ As discussed above, it is collective memory that effectively molds such abstract theorizing. According to the Trump administration's theory extrapolated from the Cold War memory, China is a national security threat, as if it were the Soviet Union, which must be contained by all means.¹⁷⁸

In order to justify its theory based on collective memory, politicians are often "manipulating certain bits of the national past, suppressing others, elevating still others in an entirely functional way."¹⁷⁹ For example, the U.S. government exaggerates the importance of bilateral deficits in goods trade in direct defiance to economic principles, omits trade "surplus" in services trade, attributes domestic unemployment to foreign competition, and ignores overwhelming contributions of foreign trade to the increase of national welfare in general.¹⁸⁰ More often than not, intellectuals who are not economists, subscribe to the same misdiagnosis, which in turn generates wrong prescriptions.¹⁸¹

The authentic economic reality based on economists' consensus

World Economic Reality, in Edward Elgar Research HANDBOOK ON THE SOCIOLOGY OF INTERNATIONAL LAW 369 (Moshe Hirsch and Andrew Lang eds., 2018) [hereinafter *World Economic Reality*].

¹⁷⁵ Lawrence, *supra* note 17, at 162. See also BRUCE G. BLAIR, STRATEGIC COMMAND AND CONTROL (1985); ROBERT JERVIS, THE ILLOGIC OF AMERICAN NUCLEAR STRATEGY (1984).

¹⁷⁶ UN News, *IAEA Chief: No Evidence So Far of Revived Iraqi Nuclear Arms Programme* (Jan. 27, 2013), <https://news.un.org/en/story/2003/01/57442-iaea-chief-no-evidence-so-far-revived-iraqi-nuclear-arms-programme>; Julian Borger, *There Were No Weapons of Mass Destruction in Iraq*, THE GUARDIAN (Oct. 7, 2004).

¹⁷⁷ FRED KAPLAN, THE WIZARDS OF ARMAGEDDON 390 (1983).

¹⁷⁸ But see Kurt M. Campbell and Jake Sullivan, *Competition without Catastrophe: How America Can Both Challenge and Coexist With China*, FOREIGN AFF. (Aug. 1, 2019) (arguing that Trump's "neo-containment" policy against China is misguided as it is based on a flawed assumption that China will collapse from the "seeds of its own decay.").

¹⁷⁹ SAID, *supra* note 58, at 179.

¹⁸⁰ See Philip Stephens, *Trump's Angry Unilateralism Is a Cry of Pain*, FIN. TIMES (May 10, 2019) (observing that President Trump is "trapped in a world where economic might was indeed measured by auto sales, trade was essentially about tariffs (...)."

¹⁸¹ See e.g., Ferguson & Xu, *supra* note 26 ("What's required, in short, is a new balance. This can be achieved only if China gives ground and commits itself to reducing its bilateral trade deficit with the U.S.").

contradicts the false theory behind trade wars. While the U.S. government often attributes domestic economic maladies, such as job losses, to unfair foreign trade practices, economists advance a very different diagnosis, such as technological change and macroeconomic policies.¹⁸² More than three decades ago, Paul Krugman, the Nobel laureate in economics, aptly refuted the fiction behind the U.S. government's aggressive trade policies against foreign trading partners. He observed that:

The broad conclusion is that the industrial policies of foreign governments have not been a serious problem for the United States . . . [T]he actual policies followed by our major industrial competitors do not appear to have had important malign effects. This leaves the question of why there is so much support for the view that the actions of foreign governments are the cause of many of our problems. The answer is unfortunately depressingly obvious: over the past decade U.S. economic performance has been disappointing by any standard, and it is simply easier to blame foreigners than ourselves.¹⁸³

Likewise, the U.S.'s recent gravity-defying moves to reconfigure GVCs in an effort to thwart China's rise in high-tech areas tend to bring forth economic consequences disastrous both to foreign and domestic industries.¹⁸⁴ For example, if the U.S. government prohibits Chinese industrial champions, such as Huawei, from entering into the U.S. market on strategic grounds, the ban will irreversibly disrupt many U.S. companies' supply chains and only benefit Huawei's foreign competitors.¹⁸⁵

IV. PROGNOSIS: INDELIBLE MEMORY

At a deeper level, the U.S.'s collective memory on trade warfare is anchored by what Karl Polanyi called "economistic fallacy"¹⁸⁶ sustained by its hegemonic power. What is commonly observed in the United States or in the West in general is an economic belief that the economic sphere is, and should be, separated from the socio-political sphere. This myth of

¹⁸² Martin Sandbu, *Hyperglobalization and Its Critics*, FT Free Lunch (Jan. 30, 2019).

¹⁸³ Paul R. Krugman, *The U.S. Response to Foreign Industrial Targeting*, Brookings Papers on Economic Activity 77, 115 (1984).

¹⁸⁴ Nic Fildes & Louise Lucas, *US Charges against Huawei Hit Global Supply Chain*, FIN. TIMES (Jan. 29, 2019); Josh Zumbrun, *U.S. Consumers Hit Hardest by Trade Tariffs*, *Studies Find*, WALL ST. J. (Mar. 5, 2019).

¹⁸⁵ Fildes & Lucas, *supra* note 184.

¹⁸⁶ Karl Polanyi, *The Economic Fallacy*, 1 REV. 9 (1977). See also FRED BLOCK, *THE POWER OF MARKET FUNDAMENTALISM: KARL POLANYI'S CRITIQUE* (2014).

“normalcy” of self-regulating market “countenances, even demands, the eradication of communities of difference.”¹⁸⁷ A hegemonic international economic order, such as the Washington Consensus, “functions mainly by consent in accordance with universalist principles” and “rests upon a certain structure of power and serves to maintain that structure.”¹⁸⁸

In this regard, non-Western economic beliefs are often discounted, regarded illegitimate and even labeled “ideological,” which means “non-scientific”: they are even considered as “a political attempt to change the nature of the international economic system.”¹⁸⁹ The U.S.’s fierce attack against the Chinese state capitalism could be understood along the same lines. Importantly, however, the Washington Consensus is oblivious to the fact that the market is “normally embedded” in a given society and therefore a “historically specific political creation.”¹⁹⁰ According to this view, the neoliberal economic order cannot but remain a limited form of generalization (“thick description”) *within* similar cases, not *across* them.¹⁹¹

Against this background, the U.S. trade war as a reincarnation of its collective memory does not appear to easily vanish in the foreseeable future for the following two reasons. First, it increasingly appears that the U.S. collective memory on trade warfare is closing the minds of its policy elites, who are “relatively impervious to evidence from the outside world which contradicts their beliefs.”¹⁹² They have become extremely resistant to external criticisms and instead relied on either self-rationalization or denial as a coping mechanism.¹⁹³ Indeed, the U.S. power elites tend to mistake its material power for its ideological superiority.¹⁹⁴ The U.S.’s hegemonic power tends to extend the “cognitive distance” between the warped reality nurtured by the U.S. collective memory and the authentic reality shared by the rest.¹⁹⁵

Second, collective memory is intersubjective. As is often said, the best way to make an enemy is to find one. President Trump’s declaration of

¹⁸⁷ Daniel K. Tarullo, *Logic, Myth and the International Economic Order*, 26 HARV. INT’L L.J. 533, 550 (1985).

¹⁸⁸ Robert W. Cox, *Social Forces, States and World Orders: Beyond International Relations Theory*, in *NEOREALISM AND ITS CRITICS* 204, 246 (Robert O. Keohane ed. 1986).

¹⁸⁹ Tooze, *supra* note 64, at 134.

¹⁹⁰ *Id.*

¹⁹¹ CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 26 (1973).

¹⁹² Little, *supra* note 42, at 49.

¹⁹³ Robert P. Abelson, *Modes of Resolution of Belief Dilemmas*, 3 J. CONFLICT RES. 343 (1959).

¹⁹⁴ Paul W. Kahn, *American Hegemony and International Law*, 2 CHI. J. INT’L L. 1, 13 (2000).

¹⁹⁵ See David J. Gerber, *Prisms of Distance and Power: Viewing the U.S. Regulatory Tradition*, 93 BUS. HIST. REV. _ (forthcoming 2019).

trade war against China sent an unequivocal signal. Yet, China has its own version of collective memory regarding the United States in particular and the Western powers in general, dating back to the colonial era. For example, the May Fourth Movement was prompted by the notorious “Betrayal in Paris.”¹⁹⁶ In the Paris Peace Conference after the end of the First World War, the United States, despite Woodrow Wilson’s celebrated “Fourteen Points,” refused to return a German concession (Shandong) back to China and instead handed it to the imperial Japan. Note that China had sent 140,000 workers to help the United States and its allies on the Western front. Given that the year 2019 marked a centennial anniversary of the May Fourth Movement, China’s such collective memories seem to have been refreshed and consolidated.

In the same vein, Henry Roediger and Andrew DeSoto observe that:

In China, people remember the period from roughly 1849 to 1949 as the “century of humiliation.” The time was turbulent, from the First Opium War (a defeat by the British) through many other defeats and unfavorable treaties in which Chinese people were dominated by the Japanese, French and English. Although the century was declared over in 1949 when the People’s Republic of China was established, the Chinese remember the sting of those times and still interpret modern events through them. For example, in 1999 during the NATO bombing of Belgrade as a part of the war in (former) Yugoslavia, U.S. smart bombs hit the embassy of the People’s Republic of China, killing three reporters. (...) For the Chinese, the bombing was a sharp reminder of the century of humiliation and fit the narrative of domination by the west, carried forward.¹⁹⁷

China’s collective memory on colonialism tends to encourage the contemporary Chinese public to perceive U.S. pressure through the lens of humiliation.¹⁹⁸ Since the Chinese Communist Party’s founding motto was to stand up to such humiliation, it cannot look weak to its own people in engaging the United States.¹⁹⁹ To China and Chinese people, its rediscovered collective memory “represent[s] past aspirations and injustices

¹⁹⁶ FRENCH, *supra* note 39.

¹⁹⁷ Henry L. Roediger, III & K. Andrew DeSoto, *The Power of Collective Memory: What Do Large Groups of People Remember – And Forget?*, SCI. AM. (Jun. 28, 2016), <https://www.scientificamerican.com/article/the-power-of-collective-memory/>.

¹⁹⁸ Cf. Timothy Webster, *Paper Compliance: How China Implements WTO Decisions*, 35 MICH. J. INT’L L. 525, 536-38 (2014) (discussing China’s tragic interactions with the Western-crafted international law symbolized by “betrayal”).

¹⁹⁹ Rapoport, *supra* note 40.

to which the present generation must respond.”²⁰⁰ In sum, the clash of two big echo chambers is more likely than not.

CONCLUSION: COUNTERING MEMORY

In his recent commentary, Jeffrey Sachs appositely summarized the main thesis of this Article. Sachs argues that:

Generals fight the last war, and Washington’s economic war on China is straight from America’s tactics against the Soviet Union and its skirmishes with Japan in the 1980s. Yet China is neither the Soviet Union nor Japan. The US’s aggressive trade actions towards Beijing, unless suspended in the near future, will damage the world economy and America itself.²⁰¹

Then, what could be done for both countries to steer clear of the collision course? Any deals, big or small, cannot but be stopgaps in the presence of the Hobbesian culture. Any meaningful change must come from an identity shift from both countries. In particular, the United States needs to be more susceptible to external opinions different from their own and cultivate *counter-memories*²⁰² that can disabuse itself of those myths subscribed to by its power elites.

Without an intersubjective, and therefore objective, version of reality, the United States fails to question the criteria of its own version of reality.²⁰³ It fails to appreciate perils of trade wars and the resultant crisis, as if political scientists failed to see the fall of the Berlin Wall coming and economists failed to predict the Wall Street financial crisis. Both groups of experts were blinded by warped realities impregnated by their own models, such as realism and efficient market hypothesis, respectively.²⁰⁴ The only

²⁰⁰ Poole, *supra* note 104, at 281. *See also* *China Says U.S. Trade Talks to Continue With September Meeting*, BLOOMBERG LAW (Jul. 31, 2019) (“The Peace Hotel’s setting in the former International Settlement, which the U.S. helped manage during a period of foreign interference that the Communist Party has vowed never to repeat, is also freighted with the complicated history of America’s relationship with China.”); Shirley Yu, *China Is Using Trade War with US to Defeat Liberal Thinkers*, FIN. TIMES (Jul. 25, 2019) (observing that the Chinese leadership frames the current trade war with the United States as a battle against national humiliation in an attempt to consolidate its power).

²⁰¹ Sachs, *supra* note 77.

²⁰² *Cf.* MICHEL FOUCAULT, LANGUAGE, COUNTER-MEMORY, PRACTICE: SELECTED ESSAYS AND INTERVIEWS (1977).

²⁰³ Bryan R. Wilson, *A Sociologist’s Introduction*, in RATIONALITY vii (Bryan R. Wilson ed. 1970).

²⁰⁴ *World Economic Reality*, *supra* note 174, at 370-71.

way for the current U.S. policy elites to overcome their own collective memory is to resurrect the spirit of critique.²⁰⁵ Within the United States, social stereotypes cocooned in collective memory must be challenged by competing versions of memories and given opportunities to be re-constructed via the relentless work of both democratic reason and academic endeavor.²⁰⁶

Also, the WTO's therapeutic response in the form of re-socialization must be in order. WTO members, as a whole, need to explore various "ideational routes" toward community-building.²⁰⁷ The WTO Secretariat can advance counter-memory by invoking the WTO's own collective memory, even if that heralds a "new openness to intervention in national affairs."²⁰⁸ Concededly, re-multilateralization of the U.S. trade policy is a tall order, given its hegemonic status and the contemporary populist political culture. What is called for is a "cultural," not necessarily political or economic, dialogue, which does take time and patience. Non-legal avenues, such as high-level consultation or various forms of social marketing on the benefits of freer trade must be prioritized before the United States can see its trading partner as "a partner in pursuit of some value other than narrow strategic interest."²⁰⁹ At the same time, the U.S. government should train a new corps of negotiators and legal experts who have not succumbed to solipsistic collective memory but are well-versed in foreign language and culture.²¹⁰

In the foreseeable future, however, these suggestions may remain ideal, rather than practical. At least in the short-term, it is more likely that China will exploit the U.S. collective memory on triumphalism. As in the past, the two countries are inclined to wrap up the current trade war in a way that bestows a semblance of victory upon the Trump administration by following the pattern of Japanese concessions, including commitments to additional market opening in key areas of the U.S. interests, such as agriculture and financial services, as well as some policy changes in key areas of the U.S. concerns, such as forced technology transfer.

²⁰⁵ Assmann, *supra* note 13, at 70.

²⁰⁶ Gedi & Yigal, *supra* note 16, at 30.

²⁰⁷ WTO, WORLD TRADE REPORT 2007 97 (2007),

https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report07_e.pdf.

²⁰⁸ Savelsberg & King, *supra* note 34, at 189.

²⁰⁹ Ted Hopf, *The Promise of Constructivism in International Relations Theory*, 3 INT'L SECURITY 171, 189(1998).

²¹⁰ Schoenbaum, *supra* note 150, at 1660.