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The Power Underpinnings, and Some Distributional Consequences, of Trade and Investment Liberalisation in Canada (Preprint)

New Political Economy

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Suggested Citation: Brennan, Jordan (2013) : The Power Underpinnings, and Some Distributional Consequences, of Trade and Investment Liberalisation in Canada (Preprint), New Political Economy, Vol. 18, Iss. 5, pp. 715-747,
http://dx.doi.org/10.1080/13563467.2013.736955

This Version is available at:
http://hdl.handle.net/10419/157785

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Published in *New Political Economy*, 2012
http://dx.doi.org/10.1080/13563467.2013.736955

The Power Underpinnings, and Some Distributional Consequences, of Trade and Investment Liberalisation in Canada

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Abstract
Criticism of trade and investment liberalisation (TAIL) in North America has drawn attention to weak economic performance, wage-profit redistribution, social dumping and fiscal pressure on government programs as evidence that the TAIL regime has failed to deliver on some of its key promises. This criticism has been unable, however, to establish satisfactory conceptual and empirical connections between the dramatic distributional changes witnessed in the TAIL era and the institutional reorganisation of power that the TAIL regime entrenched. This paper will undertake a quantitative assessment of the Canadian political economy to see who the main beneficiaries of the TAIL era have been, contrasting returns to labour and to capital in the pre-TAIL and TAIL eras. Employing tools from the capital as power framework, two pictures are painted: the first picture examines broad changes in the distribution of income and the second examines differential business performance. The evidence from this inquiry suggests that although the official purpose of TAIL was to enhance the prosperity of all Canadians, this trade deal actually represented — both in its intentions and consequences — a political-economic transformation written *by* dominant capital, *for* dominant capital.

Keywords: Capital as power; trade and investment liberalisation; distribution; dominant capital; differential accumulation; globalisation

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Introduction

More than 20 years have passed since the Canadian Government took a 'leap of faith' and entered into a trade and investment liberalisation (TAIL hereafter) regime with the United States.[1] Socially divisive at the time, TAIL remains contested today both north and south of the Canada-US border. Evidence for this can be seen in the clandestine fashion in which the Canadian Government is pursuing a bilateral TAIL agreement with the EU and the criticism it is

beginning to draw (Lewenza 2010). During the 2008 Democratic Party presidential primaries, Senator Obama and Senator Clinton ignited a firestorm, however extinguishable, when they claimed they would potentially withdraw the US from NAFTA if the labour and environmental side agreements were not strengthened (Ibbitson 2008).[2] The opportunism aside, both candidates were preying upon the discontent many in the US probably feel with the looming effects of TAIL. What are we to make of the popular discontent with one of the hallmarks of orthodox economic thinking? After all, arguments in favour of TAIL are as old as the discipline of political economy itself, stretching as far back as the Scottish Enlightenment.[3] As Paul Krugman puts it, free trade is 'as close to a sacred tenet as any idea in economics' (1987: 131), so are we to attribute the popular discontent to economic illiteracy or to something else?

In his essay *On Liberty*, John Stuart Mill (1859: 60) urged us to continuously question the reigning ideas of our time lest they degenerate into dead dogmas. Mill believed that uncritical submission to inherited opinion is incompatible with the free exercise of our higher faculties. The consensus among mainstream economists on the question of TAIL, both across space and through time, could be greeted as a smashing success by the 'science' of economics into the 'natural laws' of capitalism. Then again it could be greeted with suspicion, for it might signal that mainstream economics is a particular way of seeing the world — a two century-old habit of thought — that consistently describes and prescribes in a uniform manner. Belief in this 'sacred tenet' invites the question: is confidence in the broad-based benefits of TAIL the product of scientific scepticism or of something else?

This paper will employ tools from the capital as power (CAP hereafter) framework pioneered by Nitzan and Bichler (N&B hereafter) to investigate the effects of the TAIL regime on the Canadian political economy. The focus will be on the distribution of income, contrasting returns to labour (wages) with returns to capital (differential business performance) in the pre-TAIL and TAIL eras. The chief claim this paper will make is that the remarkable shift in distributional outcomes witnessed in the TAIL era is the manifestation of the increasing differential power of capital. The argument will be delivered in five sections. The first section will briefly describe and critically evaluate the capital as power framework. The second will historically contextualise the move towards TAIL in Canada and review some of the criticism levelled at the TAIL regime. The third will examine broad changes in the distribution of income and the fourth will explore shifts in the pattern of differential business performance. The final section will provide a qualitative explanation that ties together the quantitative facts encountered in the third and fourth sections.

Capital as a power institution

In *Capital as Power* N&B challenge neoclassical and Marxist theories of capital, and in so doing, initiate a new approach to political economy that tries to reconceive some of the core institutions of capitalism. N&B's central claim — and one which separates them from other approaches — is that capital is vendible, commodified power. Power is a difficult concept, to be sure, not least because it is metaphysical, but also because it carries with it so many possible

meanings. The metaphysical foundations of N&B's approach are derived from Spinoza's (1677) philosophy. In trying to approach God as an object of knowledge, instead of an object of faith, Spinoza postulates a unified picture of reality with an imminent, as opposed to transcendent, deity. For Spinoza the only way to meaningfully deal with metaphysical categories is as they manifest themselves or through their effects: 'the power of an effect is defined by the power of its cause, insofar as its essence is explained or defined by the essence of its cause' (1677: 163). In the CAP framework the magnitude of capital manifests neither scarcity nor productivity but is instead the symbolic quantification of the power of investors to restructure society against opposition. The implications of this claim are far reaching, for if it has validity then capital must be thought of as a metaphysical entity, not a physical entity; a subject, not an object; an idea, not a thing; and a social structure, not a physical structure.

Power is a relational concept and so only has meaning when compared with other centres of power. In the same way that force only becomes force in the face of counter-force or resistance, power must operate on something other than itself *to be* power. One implication is that capitalists do not strive to 'maximise' profits. The performance of a CEO, hedge fund manager or global investor is not measured against an absolute standard, but against a relative benchmark. Investors are conditioned to *out*perform rivals and accumulate *faster* than the average, that is, they strive to accumulate *differentially*. The distinction might sound soft, almost semantic, but shifting our thinking from absolute accumulation in an economy to differential accumulation in a political economy yields a new set of questions, a different set of measures and an altered landscape of meaning. Because the political economy is conceived as a terrain of struggle and because power is inherently differential, distributional outcomes become the very manifestation of power. A further implication of thinking in differential and distributional terms is that any inquiry into the political economy should begin with the very largest firms or what N&B call *dominant capital*.[4]

There are a number of novel features about the CAP approach which contribute to its usefulness for understanding the global political economy. Let's begin with dominant capital and differential accumulation. These twin concepts form the operational core of this research program and can be deployed to uncover the concrete history of capitalist power and its ongoing restructuring. Dominant capital and differential accumulation are disaggregate and relative concepts by definition. Thus, they can be seamlessly woven into the power foundations of the CAP approach because power itself is disaggregate and relative. These two concepts imply new measurements and they provide researchers with a new interpretive framework which alters the meaning of social phenomena. If Viktor Frankl (1959) was correct in claiming that the human animal is primarily a meaning-seeking or *logo*-centric creature, then the CAP approach constitutes a major contribution to political economy on the grounds that it adds new meaning to familiar phenomena.

This brings us to a second unique feature of the CAP approach: by building on insights offered by Thorstein Veblen, especially the separation of business from industry, the CAP approach is able to establish direct conceptual and empirical linkages between accumulation and troublesome concept of distribution.[5] When it comes to distribution many researchers will invoke power,

but theoretically they are wedded to the belief that prices, profits and distribution are rooted in scarcity, productivity, abstinence or the labour process (as we will see when we review the critics of the North American TAIL regime). Instead of thinking of distribution *and* power the CAP approach lays the conceptual groundwork for thinking of distribution *as* power.

And finally, by rejecting a strict separation of polity from economy, capital from state and the real from the nominal, N&B embrace a holistic (or 'hologrammic') approach to accumulation. This has enabled them to establish stunning conceptual and empirical relationships between phenomena as seemingly disconnected as 'energy conflicts' in the Middle East, global inflation, domestic redistribution and the formation of corporate coalitions, to name just one example (see Bichler and Nitzan 2004). What the CAP framework is capable of doing, then, is directly linking large-scale social transformation and overt power processes, on the one hand, to shifts in prices, distribution and differential accumulation, on the other. In what follows we will see how the TAIL regime has given rise to relatively larger firms with increased pricing power and the distributional consequences that follow.

The CAP approach bears some resemblance to other influential approaches in international political economy — and in some places stands to gain from insights they offer — while remaining distinctive in orientation and method. Gill and Law's structural power of capital, like CAP, tries to establish more satisfactory linkages between the power of transnational capital and the power of states. It does this by distinguishing the 'direct' power of governments from the 'indirect' power of capital (1989: 475-6). This is a useful way of thinking of power and even though N&B try to use power and the 'state of capital' as theoretical devices to surmount the economy/polity dualism there are limits to how far this transcendence can go, if only because governments, judiciaries and the armed forces (the various branches of the state) are functionally differentiated from business, international markets and investment. Gill and Law and N&B are of one mind, however, in recognising that capital is a social relation or social structure dependent upon state power.

Frieden's (1991) politics of international capital mobility pays careful attention to the intersection between interest formation, state policy and power, and in this broad sense finds some common ground with the outlook of CAP. Whereas the CAP approach tends to focus on the interests of large capitalists ('dominant capital') as a cohesive, if competitive, class and in so doing embraces a non-Marxist class-based approach to politics and interests, Frieden (1991: 438) postulates that over the long term a class-based approach to interest formation is useful but in the shorter term the interests of workers often converge with those of managers and owners within sectors. This is a useful distinction that helps us make sense of contemporary phenomena such as the interest convergence between auto workers, auto executives and institutional investors in relation to the North American auto bailout of 2008-09. On the subject of investment liberalisation the CAP approach would find agreement with Frieden's conclusion — that it leads to an increase in the social and political power of capital (Frieden 1991: 434) — but for different reasons. Frieden's starting point is the Heckscher-Ohlin trade model, which tries to root international investment and returns/distribution in factor scarcity, relative

efficiency, substitution capability and technology. N&B claim that this way of thinking about international investment is 'akin to putting the world on its head' (2009: 356). For them, foreign investment is not about the integration of global production, but about the globalisation of capitalist power. Both approaches recognise that investment liberalisation confers greater power on capital, weakens the power of governments and labour, and tends to have distributional consequences that favour transnational capital.

And finally, the open economy politics (OEP) associated with Lake (2009) arrives at some of the same conclusions as the CAP framework even though their philosophical premises and methods are very different. OEP tries to bridge the gulf between economics and politics by conceiving domestic and international institutions as aggregating and reflecting the interests of competing social groups. Over the long term these institutions structure bargaining between competing groups and will tend to reflect the interests of the dominant group (Lake 2009: 225, 227). While N&B would probably change the verbiage of this set of claims it is likely that they would agree that domestic and international institutions reflect the interest of the powerful. The CAP approach is underdeveloped in two areas that OEP happens to be strong. Whereas OEP pays careful attention to the way institutions, especially state policies, shape social outcomes, CAP tends to privilege differential accumulation as the ultimate explanatory principle. And second, OEP takes the problem of coordination seriously and examines the way institutions help solve collective action problems. N&B frame the coordination problem in wholly power-based terms. For them, there are two ideal types: 'democratic creorders' in which autonomous human beings collectively choose their future and 'power creorders', capitalism being a variant of the latter, in which order (coordination) is imposed on society from above (2009: 305). This framing of the coordination and collective action problem is vague, tends to downplay the significance of institutions other than capital and understates or ignores the philosophical and sociological tension between collective autonomy ('democracy') and individual autonomy ('liberty').[6]

While the CAP approach stands to gain from insights offered by these approaches, there are fundamental differences when it comes to the subject of capital. N&B's framework adds clarity to one of the most perplexing concepts in all of political economy and creates new tools to work on other difficult subjects like distribution, for example. Each of the approaches reviewed here relies upon a materialist, production-centric understanding of capital and so implicitly accepts the real/nominal dualism. Gill and Law talk about 'fractions of capital', distinguishing the 'productive capital' associated with manufacturing from the 'financial capital' associated with banking and insurance (1989: 480). Frieden, too, talks about 'financial capital' and capital as a 'factor of production' (1991: 426, 437) while the neoclassical assumptions of the OEP approach means that the political economy centres on a 'production profile' (Lake 2009: 227). Let's pause for a moment and reflect on a question: when Lake talks about 'trans-border flows of capital' (2009: 221), Frieden about the 'movement of capital across national borders' (1991: 425) and Gill and Law about 'internationally mobile capital' (1989: 480) what are they referring to? *What* is 'mobile' and 'flows' across borders? Are they referring to machinery and equipment

(material-productive things) or investment (immaterial-financial claims)? Each approach conceives of capital as centering on production, but financial claims do not have a direct bearing on productive capacity or industrial serviceability; thus, it remains unclear what they mean by 'capital mobility' and why this concept is directly tied to production.

The lack of clarity on this subject has been haunting political economy for at least a century. By positing capital as a material-productive entity and an immaterial-financial magnitude, political economy has created serious problems for itself. The language used to describe capital reflects the opaqueness surrounding this subject. 'Capital mobility' is an archaic term if only because there is no *thing* that is mobile and which *moves* across borders in the first place. The way each of the approaches reviewed here seamlessly weaves back and forth between capital as physical equipment and capital as financial investment signals that the meaning of capital is unclear. The CAP approach, in contrast, is crystal clear: capital is finance and only finance. It is the legal claims by investors on future (and realised) earnings. The implications of this claim are also clear: there is no-thing which crosses borders because 'capital' is a legal relationship between persons backed by the organised violence of the state. 'Foreign investment' and 'capital mobility' are not production-centric categories; they ultimately signify a reshuffling of ownership claims and redirection of the associated incomes streams. This clarity will help us establish more satisfying linkages between investment liberalisation and distribution, but before delving into the distributional consequences of TAIL in North America we need to review where this regime came from because this paper will argue that the origins of TAIL are intimately bound up with its distributional consequences.

Re-engineering Canada: from protectionism to TAIL

Far from having active supporters throughout its history, TAIL has tended to find an unreceptive audience among the power elite in Canada. Part of the reason for anti-TAIL sentiment can be found in Canadian political culture. Unlike the US, which is thoroughly liberal-whig or bourgeois in values, Canada has traces of toryism and socialism in its official politics. Both ideologies are opposed in one way or another to liberalism and have the potential to be protectionist and nationalist in orientation.[7] Shifting from political culture to historical events, a variety of political-economic and military forces, not least the end of the American Civil War, culminated by the mid-1860s so that 'reciprocity' between Canada and the US ended. This development propelled the Canadian statesman, John A. Macdonald to propose that the maritime colonies unite with Canada East and West in a confederation that might ensure the preservation of their independence. In 1866 Macdonald's political platform called for the extension of Canada's boundaries horizontally along the American border, a linking of the territory by rail and the establishment of tariff barriers to protect the domestic market for Canadian industry. Canada was spawned, then, from anti-TAIL impulses and successive Canadian governments have had to work at safeguarding Canadian independence, something they considered threatened by TAIL (Beatty 2002).

Aversion to TAIL among the power elite persisted through much of the twentieth century but began to change in the 1970s when liberal governments undertook overtly nationalist policies, including rejecting TAIL with the US. This prompted dominant capital in Canada to re-evaluate its way of doing politics. Up until then it had lobbied political parties, helped them financially and supported them behind the scenes. In 1976 the Business Council on National Issues was formed (since re-branded the Canadian Council of Chief Executives (CCCE)), made up of the CEO's of the largest corporations operating in Canada. Taking their cue from Business Roundtable in the US the explicit objective of the organisation was to have dominant capital participate directly in the policy-making process. In the late 1970s and early 1980s the CCCE led an 'attitude adjustment' within the business community which had, until then, showed little appetite for a TAIL deal with the US. But by the early 1980s there was a near consensus on the issue of TAIL (McBride 2001: 70). Indeed, even before a free trade deal became part of the Mulroney Conservatives' policy platform the CCCE led a delegation to Washington to try to promote the idea to the Business Roundtable and Reagan Administration. In 1983 the CCCE began promoting the idea to the Canadian public. Despite this Brian Mulroney campaigned against TAIL during his 1983 Tory leadership race, but after winning the 1984 election the tory cabinet was invited by the CCCE to an extensive briefing at a secluded retreat in Quebec. The following year at the Shamrock Summit in Quebec City Mulroney and Reagan formally announced the launching of free trade negotiations. That same year Mulroney's conversion from anti- to pro-TAIL was vindicated by the Macdonald's Commissions findings (see note #1), which made TAIL with the US the centrepiece of its three volume report on Canada's economic future (Clarke 2007). By the time the liberals came to power later in 1993 they sensed the change in the ideological climate. Jean Chrétien—the Liberal Prime Minister—would famously remark: 'Protection is not left wing or right wing; it is simply passé. Liberalisation is not a right-wing or left-wing issue; it is simply a fact of life' (quoted in Alexandroff 1993: 56), and with this the conversion of Canada's power elite from anti- to pro-TAIL had been completed.

TAIL was sold to the Canadian public on two interrelated grounds: necessity and prosperity.[8] Canadians were told that technological change meant that production and markets were globalising, and should Canada not secure stable, predictable access to the US market it would be relegated to the periphery of the global political economy (Trefler 1999). Fear was not enough to induce Canadians, however. TAIL also had to hold out the promise of enhanced prosperity. The promises and predictions of TAIL were issued from a variety of sources. The Economic Council of Canada predicted a 1.8 percent boost in employment (Robinson 2007: 261). The Canadian Department of Finance predicted a boost to long-term economic performance, including a long-term increase to real GDP of three percent. The productivity gap between Canadian and US manufacturing was supposed to close along with a boost to long term productivity growth. And on the question of distribution the explicit assumption was that gains from TAIL would be shared with workers in the form of higher wages (Jackson 2007: 2).

How are we to assess the validity of the (neoclassical) predictions and the public promises that are derived from them? The success or failure of TAIL, however qualified, has continuing political relevance, for the Canadian Government is pursuing an ambitious TAIL agreement with the EU and is marketing this deal to the Canadian public on the apparent success of NAFTA (McParland 2008). But was NAFTA a success? If yes, by what criteria? Who was it successful for? Table 1 presents a few basic performative measures for the Canadian political economy. What these broad facts tell us is that inflation-adjusted ('real') GDP growth did not pick up after the institution of a TAIL regime, nor was labour productivity boosted. Unemployment increased with the inception of TAIL and it took the entire decade to recover the jobs lost in the recession of the early 1990s. The 1980s was a tough decade for organised labour, but inflation-adjusted wages have been stagnant in the TAIL era and continue to trail labour productivity. These trends in the Canadian political economy mirror those in the OECD to an extent, but that aside the promises and predictions of TAIL were not supposed to be dependent upon global economic performance. These facts alone are insufficient for generating conclusions, but at the very least they tell us that we ought to be sceptical about the public promises of TAIL and perhaps a bit suspicious of the theories that informed those promises.

TABLE 1

Basic Performative Measures (*Decade Average Growth Rate*)

MEASURE	*1950s*	*1960s*	*1970s*	*1980s*	*1990s*	*2000s*
'Real' GDP	4.8	5.1	4.1	3.0	2.4	2.1
'Real' Wages	3.30	2.35	2.78	-0.02	0.63	-0.49
Labour Productivity (Business Sector)	--	3.8	2.5	1.3	1.6	1.0
Labour Productivity (Manufacturing)	3.9	4.4	3.4	2.2	3.3	1.0
Unemployment Rate	4.2	5.1	6.8	9.4	9.6	7.0 [10*]

* Including discouraged and involuntary part-time workers.

Source: GDP from Statistics Canada; unemployment rate from the OECD (discouraged and involuntary part-time workers from Cansim table 2820086); hourly earnings from the IMF; manufacturing productivity from the Bureau of Labour Statistics, all through Global Insight; business sector labour productivity from Cansim.

These basic facts, and many others like them, have not escaped the attention of TAIL's critics (Campbell 2007). It was feared by some (Stanford 1993) that lower labour and environmental standards in the US and Mexico would divert investment away from Canada. Part of the incentive for manufacturing firms to migrate southward would be the deliberately restrictive government labour policies in some southern US states ('right to work' laws, for example) and the wage differentials created therein (Stanford 1991). 'Social dumping', the critics noted, would put continuous pressure on Canadian wages, labour and environmental regulations and government programs as high-standard jurisdictions struggled to forestall investment flight to low-standard jurisdictions (Stanford, Elwell and Sinclair 1993). The move to a 'new economy' in the 1990s had the effect of transforming the labour market and reshaping distributional outcomes (Heisz, Jackson and Picot 2001). That said, critics point out that

NAFTA has altered the relations of power in society: from workers to corporations, from low and median to high income earners and from governments to markets (Campbell 1999).

Some predicted that TAIL would redistribute income from wages to profits because the former is dependent on the bargaining power and rights of workers, which are effectively undermined when unemployment rises and capital mobility increases (Jackson 1999a; Koechlin and Larudee 1992). Enhanced capital mobility and greater investor rights also have the effect of empowering employers to demand wage concessions and resist unionisation more effectively (Jackson 1999b). The claim that productivity gains would be tilted more heavily towards capital (profits) and away from labour (wages) appears to be supported by facts from both Canada and Mexico (Russell and Dufour 2007; Larudee 1998; Larudee 1999). And contrary to the textbook argument, say the critics, wage differentials between countries exert an independent influence on FDI decisions, which means that the 'sweatshop labour argument' has more validity than its critics care to admit (Larudee and Koechlin 1999). Because the TAIL regime created greater 'openness' and induced greater profit-led growth it has become more difficult for governments to regulate labour market outcomes (Stanford 1998). TAIL also had the effect of enjoining the state to forfeit forms of regulation over competition, regional development, the environment and foreign investment, for example, which have long played a role in Canadian development (Stanford 2008). While the critics have noted that the TAIL regime is not the only factor at play in generating some of these shifts they claim that it has made these matters worse (Larudee 1999).

The critics have made important contributions to the debate about TAIL in North America, but much of their commentary — especially as it pertains to the institutional reorganisation of power — remains beholden to nineteenth century conceptions of capital. None of the critics reviewed here offer an alternative theory of capital and so end up implicitly relying upon either neoclassical or Marxist theories. Both frameworks posit capital as an economic category anchored in material reality and both treat capital as a double-sided entity: 'real' capital or 'capital goods' (physical equipment) are a 'factor of production' while 'nominal' capital or 'capital value' (equity and debt) are financial claims against pecuniary earnings. This approach to capital is predicated on an acceptance of the real/nominal duality because it treats capital as both a physically abiding entity and a financial magnitude.

The CAP approach, by contrast, builds on Veblen's rejection of capital as a material entity. For Veblen, capital is a business concept, not an industrial one. If capital lacks any physical markers, as Veblen claimed, then it follows that:

> …the substantial core of all capital is immaterial wealth… if such a view were accepted… the 'natural' distribution of incomes between capital and labor would 'go up in the air'… The returns actually accruing to [the capitalist]… would be a measure of the differential advantage held by him by virtue of his having become legally seized of the material contrivances to which the technological achievements of the community are put into effect (1908: 200).

In other words, distribution reflects social power. Many critics of TAIL might want to accept the claim that distribution has a lot to do with power ('distribution *and* power'), but by relying on neoclassical or Marxian conceptions of capital or their theoretical offspring they commit themselves to the view that profits are connected to productivity and abstinence (in the neoclassical version) or are generated in the labour process (the Marxist variant). Either way, both theories conceive of distribution as consequence of production. By rejecting the material basis of capital and all production-centred theories, the CAP framework is able to deal with the power underpinnings of distribution in a direct and theoretically consistent way. In this scheme distribution isn't just related to power, it is the very manifestation of it.

The implicit acceptance of neoclassical or Marxist theories of capital serves to limit existing criticism of TAIL, especially as it pertains to distributional matters, but also as it pertains to broader sociological questions. Who had the power to make TAIL a public policy option in the first place? Who had the ideological tools to effectively shift the state and society to a pro-TAIL position? Why were the provisions of the TAIL agreements so heavily tilted in favour of global capital? And why were the agreements not ordinary pieces of legislation, but instead were 'supraconstitutional', meaning they have the capacity to transform the polity from the outside-in and so not subject to ordinary legislative repeal? While other approaches might recognise the importance of these questions they are inherently secondary questions because they are external to the accumulation process proper. But under the CAP approach the answers to these qualitative questions are directly connected to the quantitative manifestation of prices and distribution. If we hope to have an understanding of the transformative effect of the TAIL regime we stand to benefit from the integrated approach to its institution offered by CAP.

Some animals are more equal than others

Let us shift our focus away from the critics of TAIL to a broad measure of distribution: the Ginicoefficient.[9] Figure 1 contrasts the Gini coefficient with the unemployment rate since 1976. This figure shows us two things: first, sharp rises in the Gini coefficient (increasing income inequality) correspond with increases in unemployment; second, the positive correlation between the Gini coefficient and unemployment only holds when unemployment rises; when unemployment falls the Gini remains stubbornly steady. We can infer from this chart that rising unemployment *corresponds* with redistribution. In 1989, just as CUFTA was coming into effect Canadians witnessed a sharp increase in unemployment and a corresponding spike in the Gini coefficient. Income inequality would rise for nearly ten consecutive years following the implementation of CUFTA and, though the unemployment rate fell back to pre-CUFTA levels by 2000, the Gini coefficient did not shrink proportionately with it. Therefore, crisis and unemployment led to a stable redistribution of income. And while the data for the Gini coefficient ends in 2009, if the pattern of the preceding three decades holds we can expect the latest spike in unemployment attributed to the global financial crisis to correspond to even higher levels of inequality (read: redistribution).

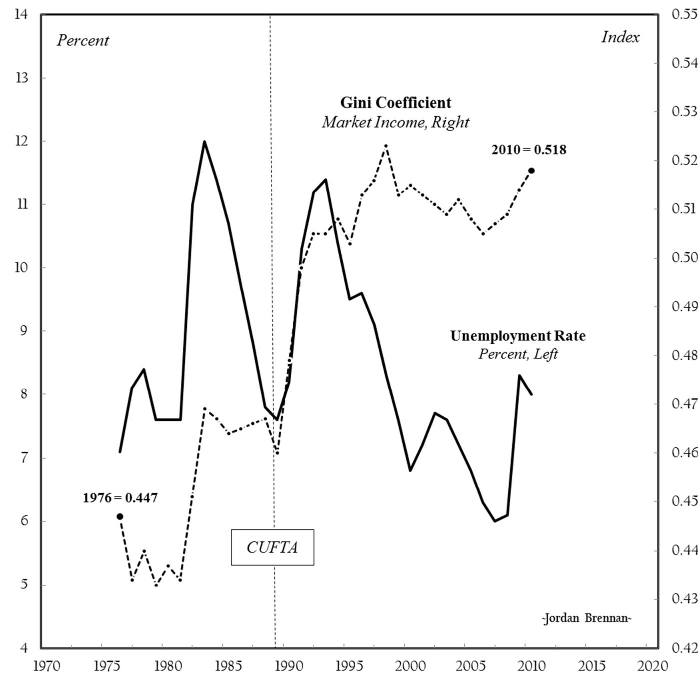

FIGURE 1
Unemployment and Income Inequality in Canada, 1976-20010
Source: Cansim Table 2020705 for gini coefficient (market income); OECD through Global Insight for unemployment rate.

If the TAIL era has corresponded with greater income inequality we should take a magnifying glass to the aggregate distribution of income in order to identify the movement of its constituent parts. Until very recently (Yalnizyan 2007, for instance) it was thought that income inequality in Canada was being driven by the income share of the top quintile with gains likely concentrated in the top decile. More precise data were unavailable until the gruelling work of Saez and Veall (Saez and Veall 2003; Saez and Veall 2005; Veall 2010) supplied us with a picture of the top income share in Canada over the twentieth and early twenty-first centuries. What the work of Saez and Veall reveal is that income inequality in Canada is not being driven by the top quintile or even decile, but by the top percentile. Figure 2 presents a disaggregated view of the income share of the top decile and a long-term view of the top percentile in Canada.

There are a few things to note in this figure. First, the top percentile saw its share of national income fall dramatically during the Second World War. This transformation was probably closely tied to the war-time move towards a centrally planned political economy replete with price controls. But the end of the war did not restore the top percentile income share. Instead, the ‘golden age of controlled capitalism’ saw the top income share fall even further. This period saw an increase in union density, roaring economic growth, wage gains and a corresponding demographic bulge in the middle class. By the 1980s the top

percentile decline eventually stabilises and then begins to rise around 1987 (two years prior to the CUFTA). A second thing to note about this figure is that the income share of the 90-99th percentiles has hardly budged since 1982. The combined income share is nearly flat, rising just over one percent from 1982 to 2007. It is the surging distributional gains made by the top percentile that is driving income inequality across Canadian society over the last generation. An earlier study (Piketty and Saez 2003) of income inequality in the US found had found the top income share to have also taken a U-shaped form over the twentieth century and subsequent research shows the trend in Canada is mirrored in the Anglo world (though not in continental Europe, where the top percentile income share is L-, not U-shaped).[10] This suggests that institutions, not globalisation, are paramount in explaining these trends.

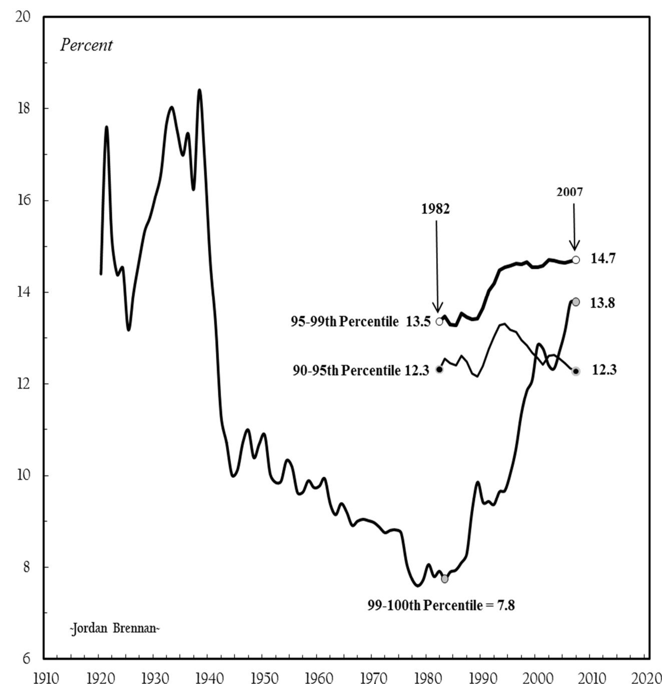

FIGURE 2
Top Income Shares in Canada, 1920-2007
Note: Gross market incomes (reported for tax purposes) excluding capital gains. *Source:* Veall (2010) Figures 1, 4 and 5 (pages 9, 12 and 13).

To recap, these broad facts tell us a few things. First, the distribution of income in Canada has become markedly more unequal in the TAIL era. Second, the only group to make notable distributional gains is the top percentile. And finally, the timing of the distributional changes corresponds, albeit imperfectly, with the implementation of the TAIL regime. The mainstream explanation for these dramatic distributional changes is to point to technology and trade or 'globalisation'. These forces, it is said, have altered the demand for certain types

of labour. As a result, 'flexible skills' are in high demand in the 'knowledge economy' and get rewarded at a higher rate than other skills. People with low education or with low skill levels are having their wages bid down by the developing world, hence the increase in income inequality (Jaumotte, Lall and Papageorgiou 2008). The ideological significance of this line of reasoning is so obvious that it barely requires mention. By rooting distribution in the blind, impersonal forces of technology and trade the more substantive questions about how our (very-human-created) institutions shape distributional outcomes is neatly side stepped (see note 8), especially questions about power. These (neoclassical) explanations of the distribution of income are rooted in intellectual support structures stretching back to the nineteenth century, chiefly, but not only, the marginal productivity theory of distribution and the production function. But the Cambridge capital controversies (see Cohen and Harcourt 2003 for a review) demonstrated the impossibility of explaining wages and profits, that is, the distribution of income across society, by drawing a connection between the physical quantities of labour and capital used in production and the physical quantities of marginal products attributable to these factors (Hunt 2002: 308-9), so how are we to explain these distributional changes?

Distribution as the manifestation of power

If the multinational corporation is the predominant form that business enterprise takes, and if it has a visible hand in shaping distributional outcomes, then we need to begin our exploration of differential business performance by looking at the relative size and profitability of the largest firms. But how are we to determine the composition of dominant capital, that is, how many firms effectively make up this category? On this matter we should take our cue from the capitalists themselves. If capitalists are benchmarkers (as opposed to maximisers), which benchmarks do they employ in measuring their performance? The main equity market benchmark for large cap firms in Canada is the TSX 60 (the top 60 firms on the Toronto Stock Exchange). And given that the Canadian political economy is approximately one tenth the size of the American political economy, and the S&P 500 is the main equity market benchmark there, utilising the top 60 firms gives us a proportionate measure for business performance in Canada. For these two reasons we will employ the largest 60 Canadian-based firms as our proxy for dominant capital.[11]

Aggregate concentration may be interpreted as a broad measure for the power of big business. Figure 3 presents this measure for market capitalisation, net profit and total revenue from the early 1960s onward. It is computed as a ratio which uses the largest 60 firms ranked annually by market capitalisation for the numerator. The denominator has a slight difference. For capitalisation it uses the total market value of all equities listed on the TSX. For the profit and revenue measures the denominator is composed of all Canadian-based firms, listed and unlisted. There are a number of striking features to note in figure 3. First, the concentration measure for capitalisation declined for nearly two decades, falling from 27 percent in 1960 to 13 percent in 1977. The 1980s saw a gradual upward movement of this measure before its eventual take-off in the early 1990s. The largest 60 firms made up fully 67 percent of total market value in 2008 — a

stunning degree of concentration. The concentration of net profit also falls in the 1960s and 1970s before rising, but its movement is much more erratic and highly cyclical, increasing from 33 percent in 1961 to 61 percent in 2010. The story with revenue is different. Its movement is nearly flat, rising from 19 percent in 1965 to 22 percent in 2009. This suggests that larger firm size translates into higher distributional profits, but not because of a distributional increase in revenue.

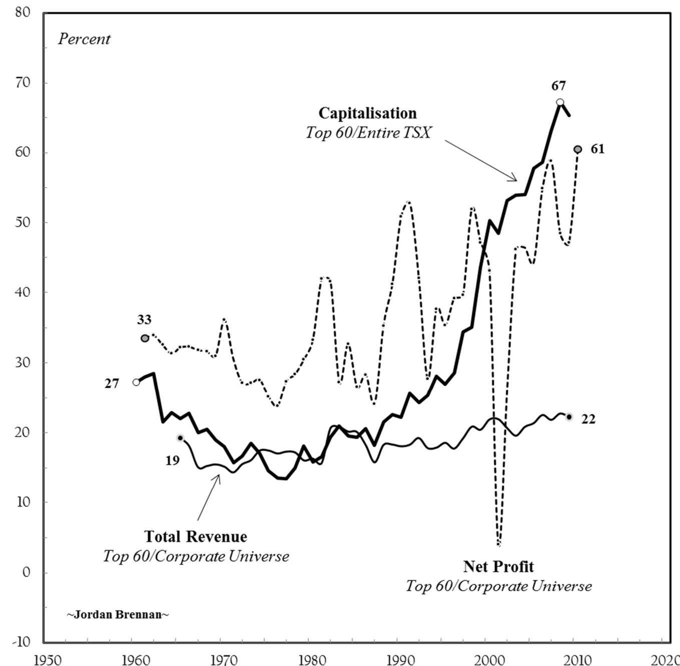

FIGURE 3
Aggregate Concentration in Canada, 1961-2010

Note: Ratio of the top 60 firms (ranked annually by market capitalisation) and (i) all firms listed on the TSX; (ii) all Canadian-based firms (listed and unlisted for net profit and total revenue). Net profit is after-tax.

Source: Compustat through WRDS for common shares outstanding, share price, revenue and net income; TSX e-Review, Review and Factbook for total market capitalisation and number of listed stocks; IMF through Global Insight for total after-tax corporate profit; Cansim for corporate revenue and total number of corporations.

Note the timing of the rises: the concentration of the largest 60 firms only takes off in the TAIL era. By 1994, with the inception of NAFTA, the concentration ratio for capitalisation is only at 28 percent or one percent higher than in 1960. Net profit was at 28 percent in 1993, well below its level in 1961. All of the gains in both capitalisation and net profit come in the TAIL era, which suggests the TAIL regime played an important role in these distributional changes. A third thing to note is the volatility of net profit compared with capitalisation. While the net profit share of the largest firms tends to fluctuate dramatically the cyclical movement is unmistakably upwards. Capitalisation, on the other hand, has a much more stable upward pathway. The reasons for this are

unclear, but we should recall that while actual earnings play a role in driving capitalisation, they do not do so alone. Other 'elementary particles' including investor expectations about future earnings, the hype and perceived risk surrounding those earnings and the discount rate all figure in capitalisation, which has the effect of making its pathway more stable than realised earnings.[12]

The picture of deepening concentration illustrated in figure 3 raises two related questions. First, what has happened to the concentration of corporate ownership across the last generation? And second, is the Canadian corporate sector being 'hollowed out', as some fear (Arthurs 2000; Watkins 2008)? These questions are too broad to explore in any detail here so the best we can do is consult some recent research. According to Carroll (2004: 44) the dispersal of ownership amongst large Canadian firms has remained steady across the last generation. The majority of large firms are still under majority control (54%) and a significant percentage are under minority control (27%), leaving a small minority (19%) with widely dispersed ownership structures. On the question of foreign ownership the number of large firms controlled by foreigners declined from 1976 to 1996 (Carroll 2004: 55). Using a network perspective, Carroll and Klassen (2010: 24-25) argue that despite the recent surge of high profile takeovers of large Canadian-based firms by foreign interests the evidence does not support the hollowing out thesis. This means that the TAIL-era has seen deepening concentration in the corporate sector to historically unprecedented levels amidst stability of the concentration of ownership in Canadian hands, signalling an overall *concentration of capitalist power* amongst a small proportion of the Canadian population.

Shifting from aggregate concentration to the profit share of national income yields figure 4. This figure presents the profit share of the Canadian corporate universe and of dominant capital. Putting these measures in historical context enables us to see just how remarkable the TAIL era has been. The pattern for both series is erratic and cyclical, but there are two things that warrant our attention. First, both trend downward in the pre-TAIL era, but explode upwards in the TAIL era. The cyclical trend is also significant. While the pre-TAIL era peaks for dominant capital remain relatively constant the troughs become successively deeper. This, too, changes in the TAIL era. The latter half of the twentieth century saw a number of deep cavities in both series, but what is striking is the changed pattern exhibited in the TAIL era. The profit share of dominant capital has never been higher and even the 'great recession' did comparatively little to undermine this trend.

Moving from the profit share of national income to differential accumulation brings us into the capital as power framework proper because the relevant measures of power are not aggregate but disaggregate (N&B 2009: 319). Differential capitalisation and differential net profit are ratios which are computed in three steps: the first step is to calculate the average capitalisation/net profit of a firm within dominant; the second is to calculate the average capitalisation/net profit of all firms listed on the TSX (and all firms in the corporate universe for net profit); and the third is to divide the first computation by the second. These ratios provide us with the differential power of capital and they are plotted in figure 5. While they are tightly and positively correlated over time what is striking for the subject at hand is the change in the

rate of growth with the inception of a TAIL regime. In 1960 an average firm within dominant capital was five times as large (by market capitalisation) as an average firm listed on the TSX. Thirty years later that ratio had risen from five to six. So the pre-TAIL era saw very little movement in differential firm size. Most of the growth in the corporate sector was either evenly distributed between large and small firms or favoured the small (generating negative differential accumulation). Since the inception of a TAIL regime that ratio has risen from 6 to 23. Dominant capital has effectively delinked from the rest of the corporate universe in the TAIL era, which suggests that something dramatic happened precisely when the TAIL regime was instituted.

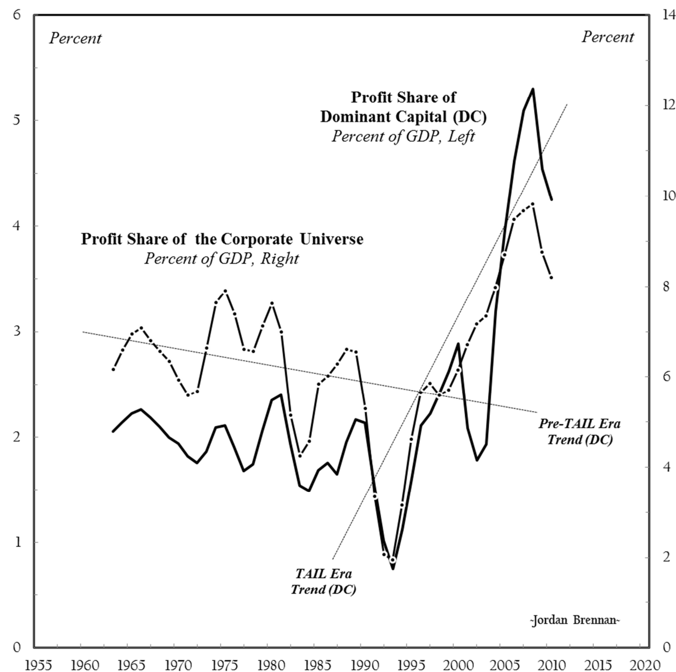

FIGURE 4

Profit Share of National Income, 1963-2010

Note: Profits are after-tax. Series' smoothed as 3-year moving averages.

Source: Statistics Canada through Global Insight for GDP and total corporate profit. Compustat through WRDS for common shares outstanding, share price and net income

Recall that one of the promises/predictions made by TAIL enthusiasts was that gains from trade would be shared between capital and labour. Unfortunately reality has refused to cooperate with theory. Figure 6 plots the returns to capital and labour since the mid-1950s.[13] Smoothing each series as 10-year moving averages helps eliminate cyclicality and setting each series to 100 in 1966 enables us to track their relative movement. From 1955 when the data begins to instituting of the TAIL regime the relative gains flowing to capital and labour are nearly equal. It was likely because gains from growth were shared more or less equally that the TAIL enthusiasts made their predictions to begin with. But

the pattern has altered dramatically in the TAIL era. The returns on labour began to slow in the 1980s and stall entirely after 1990 while the returns on capital have skyrocketed. Nearly all the gains from growth now flow to capital, a fact which is supported by the information about wage stagnation in table 1. Something dramatic happens just as TAIL is being instituted to change the relationship between these measures, and, as this paper is arguing, a large part of that change can be attributed to the reorganisation of social space and altered power relationships that the TAIL regime entrenched.

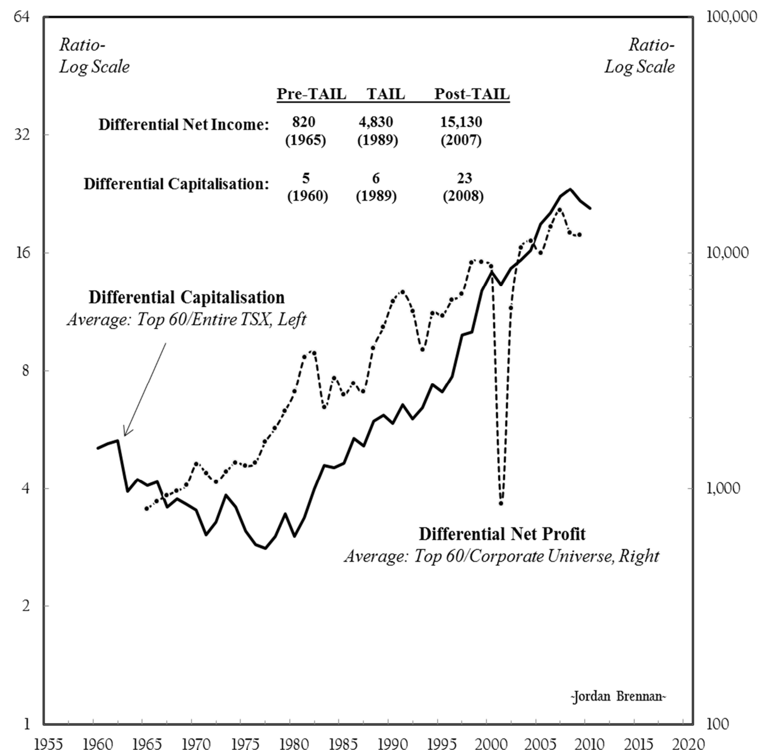

FIGURE 5

Differential Accumulation in Canada, 1960-2010

Note: Ratio of the average of the top 60 Canadian-based firms (ranked annually by market capitalisation) and the average of all firms (on the TSX for differential capitalisation; listed and unlisted for net profit). *Source:* Compustat through WRDS for common shares outstanding, closing share price and net income; TSX Review, e-Review and Factbook for total market capitalisation and number of listed stocks; IMF through Global Insight for total corporate profit; Cansim for total number of corporation.

For Canadians TAIL has probably been the chief way in which globalisation has manifested itself. With the paternalistic hand of government removed and other structural barriers to markets levelled, labour and capital were to face a new era of continental competition (Porter 1992). The overall process would ultimately be socially beneficial, so the reasoning went, because increased

competition would induce firms to innovate, forcing them to invest in productivity-enhancing technologies which would eventually translate into higher wages for workers and greater profits for capitalists. Greater competition would also bring with it lower prices, so Canadians would benefit as workers, owners *and* consumers. A few important questions follow: has the TAIL era actually ushered in more intense competition? If it has, *who* has faced greater competition (workers, capitalists or both)? And finally, how are we to determine if competition has become more or less intense, because competition, like other metaphysical categories, is not susceptible to direct empirical measurement?[14] As such, we can only understand metaphysical categories as they manifest themselves, or through their effects. But what effects should we be looking for?

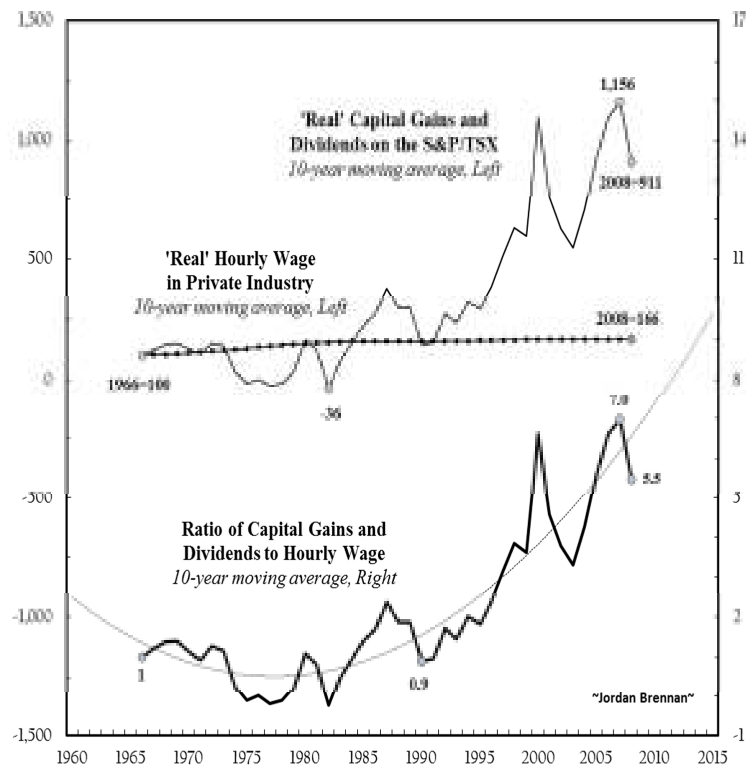

FIGURE 6

Returns on capital and labour in Canada, 1966-2008

Notes: Real series are computed by deflating nominal data by the CPI. Capital gains and dividends are the difference between successive values on the S&P/TSX Composite Total Returns Index (includes the value of the stock price index with dividends reinvested over time).

N&B (2009: 50-51) draw on Michal Kalecki's conception of the 'degree of monopoly' as a quantitative proxy for economic power, the effect of which is disclosed in the profit markup. Kalecki (1943: 49-50) saw heightened concentration leading to the formation of giant corporations whose relative size meant they did not operate in perfectly competitive markets and were not price-

takers. Rather, they could have an effect on overall market prices through practices like tacit agreement or other cartel-like behaviour (where a leading firm fixes prices which other firms follow). A major counteracting force to the degree of monopoly, Kalecki thought, was the strength of unions whose relative bargaining position is improved when the ratio of profit margins to wages increases. Changes in the degree of monopoly have decisive importance for the distribution of income between workers and capitalists and so across society generally. The dual economy literature would also have us believe that the existence of large firms has the effect of reducing competition because relative differences in firm size gives rise to different competitive behaviour, performance and market power (see Bowring 1986).

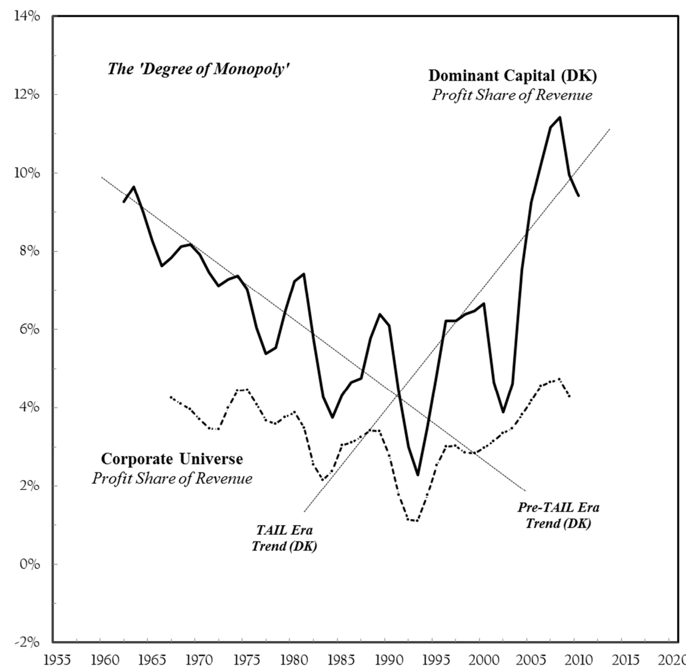

FIGURE 7

Profit Markup of Dominant Capital and the Corporate Universe, 1962-2010

Note: Profits are after-tax. Series' smoothed as 3-year moving averages. *Source:* Compustat through WRDS for commons shares outstanding, share price, total revenue and net income. IMF through Global Insight for total after-tax corporate profit; Cansim for total corporate revenue.

If the TAIL era was to usher in heightened competition this should have had the effect of shrinking, not enlarging, the profit markup. But this is not what the facts tell us. In figure 7 the markup of dominant capital is plotted against the markup of the corporate universe. For the 30-year period prior to TAIL both series trend downward indicating that competition was becoming more, not less, intense in the Canadian political economy. Recall figures 3 and 5 which showed that the largest firms were shrinking in relative size across this period. The profit markup falls all the way to the inception of the TAIL regime which, once again,

acts as an inflection point. And just as Kalecki thought, there is a strong correlation between relative firm size (as indicated in figures 3 and 5) and the profit markup. He was also right to think that the strength of organized labour plays a countervailing role to the degree of monopoly. As we will see in figure 9, the pre-TAIL era witnessed increasing unionisation while the TAIL era has seen significant de-unionisation.

After having explored the distribution of income in the previous section and differential business performance in this section the operative question becomes: is there a relationship between the two? They should be related, but how close might the relation be? Figure 8 plots differential capitalisation and the income share of the top percentile across five decades. The two series move in tandem and appear as mirror images of each other. The one (differential capitalisation) portrays the differential power of capital while the other captures the income share of the richest one percent. It's the latter category that is most likely to own and have effective control over the corporate sector so we should expect that the increasing differential power of capital (and all that comes with it) flows to this group.

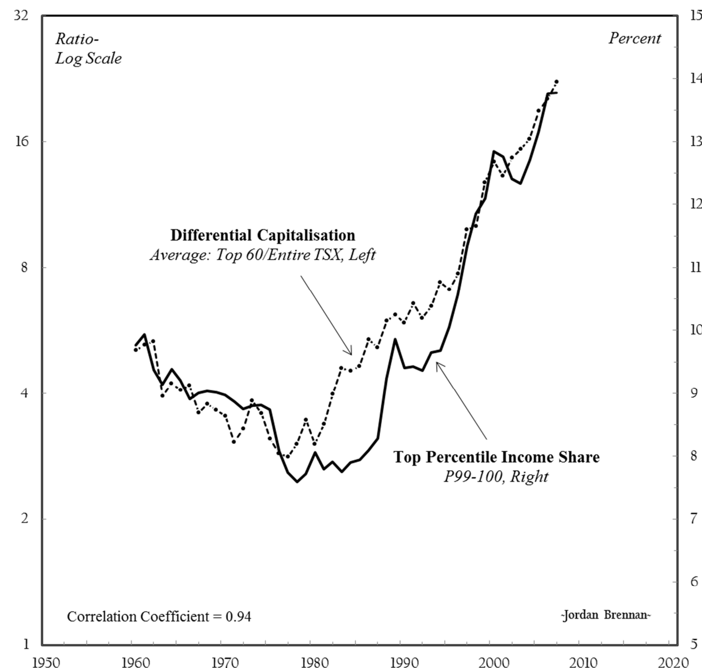

FIGURE 8

Differential Accumulation and the Top Percentile Income Share, 1960-2007

Note: Ratio of the average of the top 60 Canadian-based firms (ranked annually by market capitalisation) and the average of all firms listed on the TSX. Total pre-tax market income, excluding capital gains. *Source:* Compustat through WRDS for common shares outstanding, closing share price; TSX Review, e-Review and Factbook for total market capitalisation and number of listed stocks; Michael Veall (2010) for data on top percentile income share.

To recap, the distribution of income has become more unequal in the TAIL era (figure 1) and it is the surging gains made by the top percentile that appears to be the cause (figure 2). On the other side of the ledger, the TAIL era

has witnessed larger relative firm size (figure 3), a rising profit share of national income (figure 4), booming differential accumulation (figure 5), rising returns to capital (figure 6) and an increase in the profit markup (figure 7). The level and pattern of accumulation changes markedly with the inception of the TAIL regime along with the distribution of income. The major claim here is that these measurements (figures 3-7) find their domestic analogue in figures 1 and 2. That is to say, there is a quantitative correspondence between the rising inequality and concentrated income gains of the highest income earners, on the one hand, and the increasing differential power of capital, on the other. These (quantitative) facts require a (qualitative) explanation. Taking refuge in the 'invisible hand', 'demand and supply' or 'marginal productivity' just won't do (even if it's the dominant intellectual reflex). Thinking of these distributional changes as a reflection of the institutional reorganisation of power might go some way towards our explanation.

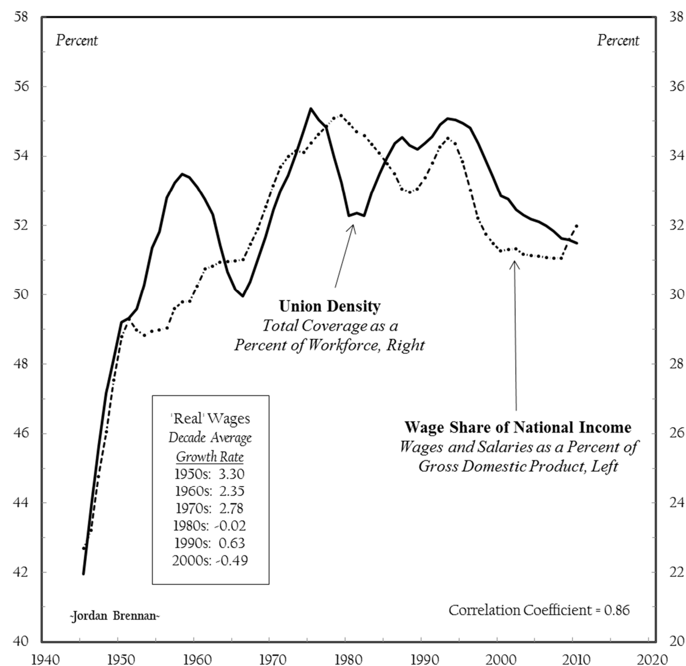

FIGURE 9

Union Density and the National Wage Bill, 1945-2010

Note: Coverage is for non-agricultural paid workers. Series' smoothed as 5-year moving averages.
Source: Union density from Historical Statistics of Canada (E175-177) and Cansim Tables (2790026 and 2820078); wage share and GDP from Historical Statistics of Canada (F1-13) and Cansim (Table 3800016).

One major difficulty with the aforementioned claims is the establishment of causal inference. Germany, France, Sweden and Japan, for example, have top percentile income shares that take an L-, as opposed to U-shape across the last century. The first three political economies, like Canada, have signed ambitious bilateral TAIL agreements and experienced a surge in foreign direct investment in the 1990s (Japan's level of FDI remained flat across the last three decades).

These facts indicate that the relationship between TAIL regimes, differential business performance and income inequality are more institutionally complex than a simple causal chain would suggest. This caveat is a call for more detailed comparative institutional analysis of the changing pattern of power and distribution associated with neoliberal restructuring.

The institutional reorganisation of power

How did TAIL reorganise power on the North American continent? The answer, which is meant to be suggestive rather than conclusive, will build on insights offered by other frameworks and will be delivered in three parts. First, a new 'bill of rights' was created that further empowers global capital. Second, labour has experienced large scale de-unionisation and faces a more difficult bargaining environment. And third, the TAIL regime acts as a 'conditioning framework' on all levels of government by restraining policy choices. It should be noted that in claiming that the institution of a TAIL regime had a large impact on these distributional outcomes it does not imply that it is the only factor at work. Plainly there are many other processes and policies that shape distributional outcomes, but as we've seen the timing and magnitude of the changes correspond with the institution of the TAIL regime, thus indicating its importance.

A new 'bill of rights' for capital

The proliferation of trade agreements since the close of the Cold War have tended to be encompassing from the standpoint of investment and CUFTA and NAFTA are no exception. These agreements include areas of law, public policy and government services that had previously been confined to the domestic sphere and rule upon such broad matters as investment, regulation, public services, procurement, intellectual property and environmental protection. International tribunals have been established that impose upon governments at all levels restraints and threats of retaliatory trade sanctions or damage awards for 'expropriated earnings' are part of the ordinary mandate of these tribunals (Shrybman 2007: 299). Some would have us believe that the rules and institutions that make up the North American TAIL regime are 'constitution-like' insofar as they commit future generations to particular norms and structures, are difficult to amend (by design), limit political possibilities, empower investors to sue states and entrench 'existing distributions of wealth and privilege' (Schneiderman 2008: 37, 69). The crucial point is that the investment provisions of NAFTA empower capital to sue governments to enforce the exclusive rights the treaty accords them. In some cases these rights are not mirrored in domestic law and would be unenforceable in national courts (Shrybman 2007: 300).

A troubling aspect of the North American investment rules regime is the wide definition given to the term 'investment' and the ambiguity surrounding the term 'indirect takings'. Public officials in North America now have to fear that any economic loss sustained by a foreign investor as a consequence of a sovereign act could initiate a claim and receive public compensation (Van

Harten 2007: 80). In short, these definitional matters mean that a broad array of regulatory measures could validly be construed as leading to 'indirect expropriation' and thus be grounds for investor restitution (Schneiderman 2008: 63). NAFTA does not just protect international investors from the confiscation of property or the outright expropriation associated with the nationalisation of industry; instead, the range of compensable takings is quite broad. And because the treaty was designed to promote and protect investment it ends up elevating the interests of investors above other groups who might be adversely affected by investment and also above public agencies which might wish to pursue reformist social policies (Schneiderman 2008: 72).

It is difficult to gauge the overall effect that Chapter 11 investor-state arbitration has had on the enhancement of capitalist power in North America. Is there an objective measure that we could employ to determine this? One method would be an assessment of the content of the rulings and their developmental direction to see if, over time, they have tended to favour capital at the expense of governments. A second method would be to tabulate the sheer number of claims (and their dollar value) brought against NAFTA states to see if it has increased over time. Then again, the real measure of power might not be contained in either metric, for the purpose and effect of the agreement was to *enable* global capital while *disabling* governments, so the real measure of power might be embedded in countless counter-factuals, that is, actions that *would have* been undertaken by public agencies or policies that *would have* been pursued by democratic governments that did *not* happen because of Chapter 11.

A cursory glance at the history of Chapter 11 investor-state disputes does not furnish us with a clear answer to the first measure of power: early instances such as the *Metalclad* case (launched against Mexico in 1996), the *Pope & Talbot* case (launched against Canada in 1998) and the challenge of a Canadian ban on the import of a toxic chemical (MMT) by the Ethyl Corporation (launched in 1997 and settled out-of-court) set disturbing precedents by granting a wide interpretation to 'expropriation', 'protected investment' and the 'minimum standard of treatment'. The latter concept is particularly important. Van Harten claims that 'a broad reading of the minimum standard of treatment transforms the international law standard… into an all-encompassing guarantee of highly flexible notions of fairness, equity and due process' (2007: 89), thus granting arbitrators broad powers to veto electoral choices by proclaiming policies unlawful and awarding damages to foreign investors. That said, in the *Methanex* case (launched against the United States in 1999 and dismissed in 2003) and others like it, tribunals refused to widen the definition of expropriation, thus diminishing the scope of regulatory takings.

While the interpretive direction of the tribunals has not been unilinearly in favour of investors at the expense of governments, a more recent set of facts pertaining to the second measure of power reveals a disturbing trend. Sinclair (2010) notes that of the 66 known claims under Chapter 11 (as of October 2010) 43 percent have been made by foreign investors against governments in Canada. What's more, in the last five years (to 2010) the number of cases increased dramatically with fully 75 percent of all new claims being brought against a Canadian government. In total, of all the claims brought against a Canadian government over the last 15 years more than half of them have come in the last

five years. For Sinclair this trend reflects an increasing awareness among foreign investors of the investment rights accorded them through NAFTA. The *AbitibiBowater* case (launched against Canada in 2009 and settled in 2010 for $130 million) set a terrible precedent not only because it is the largest NAFTA-related monetary settlement to date, and not only because the Government of Canada chose not to litigate, but because the grounds for compensating Abitibi-Bowater were for the loss of water and timber rights on crown lands — something which is not considered a compensable right under Canadian constitutional law — and this, Sinclair fears, is likely to trigger more resource-related compensation claims (2010: 8).

Not everyone interprets the investment arbitration procedures embodied in Chapter 11 of NAFTA as leading to a new 'bill of rights' for capital. Van Harten, for instance, disputes the claim that investment rule regimes resemble constitutional structures or are even 'constitution-like' for two reasons: first, governments are not bound to investment treaties like NAFTA, for in the end they can be abrogated; and second, the investment rules regime departs in crucial ways from constitutionalist models of Western liberal democracies (2010: 9). And contra the critics who condemn the arbitration process for being private and secretive (see Shrybman 2007: 300 for an example), Van Harten urges us to acknowledge the steps NAFTA states have taken to make the adjudication process more open and amenable to public participation (2007: 162-3). Those qualifications aside, Van Harten recognises that the advent of investment treaty arbitration is a 'revolutionary transformation' in international adjudication. And because it lacks judicial accountability, openness and independence, it threatens the rule of law (2007: 95).

Let's pause for a moment to review what all of this means. International investors have acquired the *power* to initiate processes for the settlement of grievances relating to state abrogation of the terms of the investment agreement. They do not require the consent of their domestic governments to do so nor are they compelled to try to resolve the dispute by going through the domestic court system. Should the differences between an investor and a state persist, investors can bring their complaints before an international tribunal whose arbitrators are empowered to award the claimant public compensation for the regulatory activity of governments. This enables investors and corporations to constrain government policy and regulation by submitting damage claims for alleged 'interference' with their 'rights' in what amounts to an exclusive court for capitalists. This legal arrangement is lopsided in favour of global capital in the sense that it is only investors who can bring claims and only states that are liable and that pay damages (Van Harten 2007: 5).

By providing capital with these powers the TAIL regime marks a dramatic departure from the norms of international law in two ways. First, capital is given a broad range of rights even though it is not actually party to the contract and does not have any obligations under it. Historically, only states had access to the powerful dispute mechanisms of international trade law. Second, Chapter 11 provides capital with the right to bring into play international commercial arbitration processes that rule upon important issues of public policy and law. In short, the deal enables global capital to put any law, program or policy of a NAFTA signator that it happens to oppose on trial and those parts of civil

society that might be affected by a NAFTA ruling are downplayed or ignored (Shrybman 2007: 300-1). It should be noted that the new powers acquired by capital do not have to be utilised to be effective. The actual application of this power is infrequent and its direct connection to distribution is probably partial. That aside, capital has acquired new legal possibilities which condition government policy and make the enactment of laws in its favour more probable.

The compression of labour

Recall that the official purpose of eliminating tariffs and reducing other trade barriers was to free capital from narrow national constraints, thus enabling it to 'move' to more productive sectors. The assumption was that the new jobs generated in the productive sectors would more than offset the loss of jobs in the unproductive sectors. But as we've seen the TAIL regime was about more than tariff reductions and the cross-border flow of commodities. Capital mobility further empowers capital over labour, especially at the level of collective bargaining. The real threat is not that capital will leave declining sectors and flow to more productive ones, but that it will leave the domestic political economy altogether. This puts downward pressure on wages in the sectors most exposed to the threat of relocation and weakens the bargaining position of labour. The wage stagnation that we see in table 1 and figure 6 is probably closely tied to the enhancement of capital mobility. Increased competitive pressure helps explain the sharp decline in the unionisation rate in Canadian manufacturing, which has fallen from 37 percent in 1988 to 26 percent in 2010 (Cansim Tables 2790026 and 2820078).

Figure 9 presents the relationship between union density and the national wage bill over the postwar era. This figure shows us three things of consequence. First, the relationship is tightly and positively correlated over the entire postwar; union density corresponds with a higher national wage bill. Second, the two measures show an inverse U-shape, rising together from the 1940s, cresting in the late 1970s and then falling together from the 1980s onward (the opposite pattern exhibited by the top income share in figure 2). And finally, average annual inflation-adjusted hourly wages grow when unions become denser and push up the national wage bill and stagnate or fall when the national wage bill falls (decade averages are embedded in the figure). Wages grew at an annual inflation-adjusted rate of 3.3 percent throughout the 1950s and would continue to grow at a robust rate throughout the 1960s and 1970s before stalling entirely from 1980-2009.

On the face of it figure 9 presents a simple relationship between two quantitative phenomena, but what lies beneath this simple measure is a qualitative process that encapsulates and crystallises the process of socio-distributional struggle. This figure manifests the successes and failures of one of the largest social movements in Canadian history: the labour movement. The process of unionisation required large-scale community activism and social mobilisation. It was initially a movement of ordinary people against the established elite who fought to repress it. There are legal and juridical dimensions to the establishment and growth of unions, of course, and they involve the highest levels of state policy and power. Throughout the 'golden

age' we see increasing union density and a corresponding demographic bulge in the middle class. In the 'new gilded age' this process goes into reverse. De-unionisation, then, *effectively means redistribution.* It is important to note that the positive feedback loops make this a self-perpetuating trend. As more jobs are lost in unionised workplaces and as new workplaces are created that are not unionised, organised labour will be put in an even worse bargaining position and so even the jobs that are not relocated will face wage compression. Union decline also implies that non-unionised sectors will be less able to bid wages up. So wage compression for unions implies wage compression for the entire wage labour market.

The identification of causal linkages between the TAIL regime, on the one hand, and decreasing union density and wage stagnation, on the other, is difficult. Tucker (2005) cautions us against unqualified acceptance of the regulatory race to the bottom hypothesis proposed by opponents of the TAIL regime. While recognising that NAFTA is bound to put some downward pressure on collective bargaining regimes, Tucker tempers this claim by reminding us that there are plenty of other factors to consider. For example, it was governments in Canada who led the attack on public sector unions in the 1990s through essential service designations, an undermining of bargaining rights, wage freezes, back-to-work legislation and threats to contract out public sector jobs. What's more, the deunionisation witnessed in the private sector may be driven as much by a changing composition of economic activity, especially in the goods-producing and manufacturing sectors, as by the straightforward effects of the TAIL regime (Fudge and Tucker 2000: 296-8). The literature suggests that private sector labour law has actually remained relatively stable in the TAIL era (Tucker 2005: 42) and the labour movement received a surprising boost in the Supreme Court of Canada's 2007 decision, *Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia*, which maintained that the right to bargain collectively is protected under the *Charter of Rights and Freedoms'* guarantee of freedom of association (Tucker 2008). Those qualifications aside, there are good reasons for thinking that the TAIL regime has played some role in deunionisation and wage stagnation, at the very least by accelerating trends that were already underway. It is no coincidence that repressive legislative interventions have peaked in the TAIL era, pattern bargaining has broken down, passive deregulation has accelerated and employers have increasingly justified wage restraint through the rhetoric of heightened competition (Tucker 2005: 44). The one thing that seems certain is that the TAIL era has brought with it more difficult environment for labour.

Disabling governments: TAIL as a conditioning framework

If we approach the accumulation of capital as a conflictual social process, and if we think of power in relational terms, then it follows that the enhancement and expansion of capitalist power entails the loss of power for other institutional groupings. In other words, by enabling capitalists to sue governments the TAIL regime serves as an institutional mechanism for the disablement of governments. Some have referred to this process as the 'new constitutionalism' (Gill 1998; Harmes 2006). Gill claims that the granting of privileged rights to large mobile

investors effectively converts them into sovereign political subjects and further entrenches their dominance in the economic life of the community. Agreements like NAFTA 'lock in' neoliberal reforms and insulate global investors from democratic rule and popular accountability (1998: 23-24). In practice this has meant that the power elite have been able to use investment rules agreements to impose policies that would not otherwise acquire domestic approval. Many of the institutional mechanisms are 'supraconstitutional' in function, meaning they are so broad in scope and have such unusual judicial authority that they are capable of transforming the domestic political order from the outside-in. The ability of NAFTA to shape government behaviour even though it does not fall under the constitution has led some to claim that 'NAFTA tied the government's hands…a clear illustration of how international agreements can be used to constitutionalise a domestic ideological position' (Clarkson 2002: 51-52). Harmes adds that the 'disembedded' or 'market-preserving' federalism promoted as the neoliberal answer to the question of multilevel governance ends up conditioning government behaviour in a way that favours large investors over the general population (2006: 740-43). By subordinating the polity (communal welfare) to the economy (private gain), NAFTA-style agreements end up increasing jurisdictional competition for investment, thereby creating institutional incentives to lower the social wage and other social standards, especially around taxation, labour and the environment. The overall effect of decentralised federalism is to discipline governments by hindering their capacity to pursue market-inhibiting or redistributive (read: progressive) policies (Harmes 2006: 744).

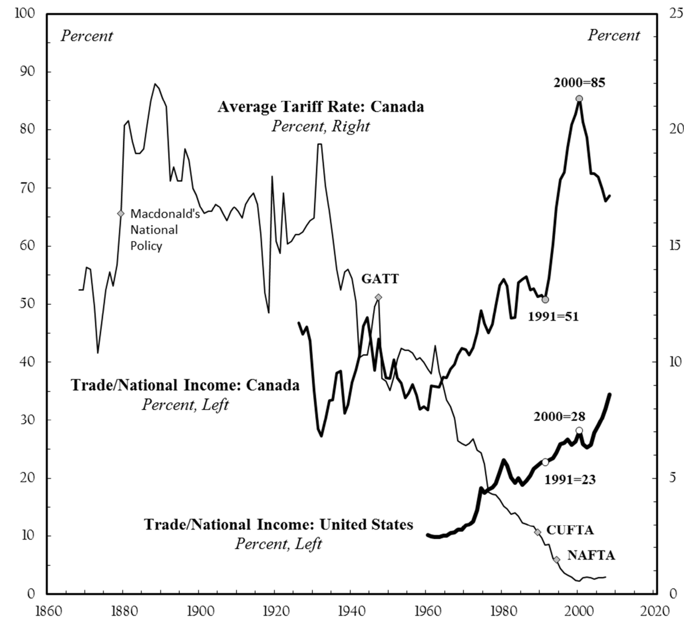

FIGURE 10

Trade and Tariffs in North America, 1868-2007

Notes: Trade equals imports plus exports. *Source:* Historical Statistics of Canada, G485 for average tariff rate (1868-1975); Cansim Tables 384007, 3840027 and 3840028 (1975-2007); Historical Statistics of Canada, F71 and Table 3800017 for imports, exports and GDP. Bureau of Economic Analysis through Global Insight for imports, exports and national income (US).

Disentangling causality: tariff cuts or the reorganisation of power?

Figures 10 and 11 portray tariffs, trade and foreign direct investment for Canada and the US. Canadian firms saw tariff protection negotiated away through the GATT and had already gained reciprocal access to the US market. The average tariff on Canadian exports to the US was negligible at the time of CUFTA with the majority of Canadian exports entering the US market duty-free. If the reduction in tariff rate in the TAIL era was historically insignificant how do we account for the massive expansion of trade and investment? A sizable proportion of the change in trade flows is probably linked to a highly devalued Canadian dollar which made exports more cost competitive than US rivals. With respect to the surge in FDI it seems more than likely that the powerful new rights and measures that capital received, including guarantees on government (in)action and an enhanced bargaining position vis-à-vis organised labour, changed the earnings expectations and risk perception of capital. Capital no longer had to fear that a new government would mean a change in the 'investment climate'. Even the threat of social change coming from the election of a progressive government was nipped in the bud because the government would have difficult time, electorally and diplomatically, reversing the neoliberal policies instituted in the TAIL regime. And finally, because the Canadian political economy is approximately one-tenth the size of the US we would expect the effects of TAIL to be proportionately greater in Canada, as figures 10 and 11 indicate. The dramatic distributional and differential outcomes that unfolded in Canada are mirrored by dramatic changes in cross-border investment flows, which cannot be meaningfully explained with reference to tariff cuts.

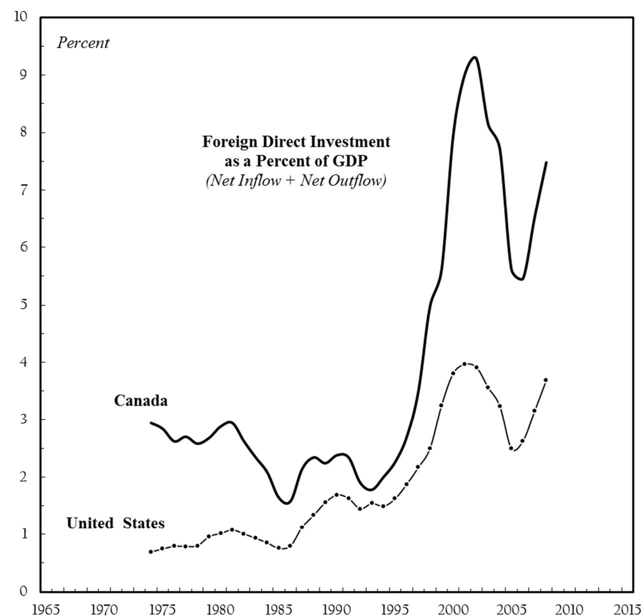

FIGURE 11
Foreign direct investment in North America, 1974-2008
Notes: Series smoothed as five-year moving averages.
Source: World Bank through World Development Indicators.

Conclusion

It turns out that the popular discontent with the TAIL regime is well placed. Contrary to the received economic wisdom, the TAIL regime has brought enhanced prosperity for the few and income and wage stagnation for the many. The great philosopher of science, Imre Lakatos, reminds us that 'in scientific reasoning, theories are confronted with facts and one of the central conditions of scientific reasoning is that theories must be supported by facts' (1978: 2). The facts do not appear to support existing theories of TAIL and its connection with the level and distribution of income. Orthodox economics is compelled, then, to generate what Lakatos calls 'rescue hypotheses', namely an account of the failed prediction and rationale for why it should be thought of as an 'anomaly'.

But we don't need to generate rescue hypotheses, much as science does not need 'sacred tenets', once we step into a new theoretical framework. The mystery of TAIL's failed predictions disappears once we begin to think of distribution and accumulation as having more to do with social power than with production and marginal utility. The new methodological tools created by Nitzan and Bichler enable us to establish strong linkages between the TAIL regime (notably Chapter 11) and the decline of unions, on the one hand, and the dramatic shift in distributional outcomes, on the other. While other approaches are attentive to the altered power relations resulting from new investment regimes, namely the rational choice approaches associated with Frieden and Lake, their commitment to a materialistic conception of capital and a production-centric view of the political economy makes their discussion of the relationship between power and distribution seem brittle and less empirically persuasive. The twin operational concepts, dominant capital and differential accumulation, by contrast, enable us to map a new empirical history and tell a new story about the increased social power of capital and the changing distribution of income.

The political engineering of a North American space for accumulation and the acquisition of new disciplinary powers by capital has given rise to increasing returns to capital, wage-profit redistribution, deepening concentration, thicker profit margins, a big boost to differential accumulation and a further skewing of the distribution of income in favour of the highest income echelons. After 100 years of protectionism and economic nationalism, Canada's power elite inaugurated a TAIL regime. Twenty years into this new regime has given us the perspective we need to evaluate this political-economic transformation. Much as we may dislike having to agree with that great Florentine political thinker, he thought deeply about power and perhaps had it right when he said:

> …men are inclined to think that they cannot hold securely what they possess unless they get more at others' expense. Furthermore, those who have great possessions can bring about changes with greater effect and greater speed (Machiavelli 1517: 118).

Notes

The author would like to thank Jonathan Nitzan for his support through all stages of the research and writing of this paper, three anonymous referees for their thoughtful recommendations and Isabel Sousa for her encouragement.

1. In 1985 the Royal Commission on the Economic Union and Development Prospects for Canada (known as the Macdonald Commission) presented its report to the Government of Canada. One of its key recommendations was for Canada to pursue a free trade agreement with the United States, a move the Report referred to as a 'leap of faith'.
2. In 1989 the Canada-US Free Trade Agreement (CUFTA) came into effect. The agreement was strengthened and extended to include Mexico in 1994. The North American Free Trade Agreement (NAFTA) thence became the world's largest trading bloc.
3. In attacking the privileges and protections of the mercantilist system and by anchoring an argument for free trade in cost competitiveness Smith (1776) goes some way towards Ricardo's (1817) theory of comparative advantage. Two centuries later Milton and Rose Friedman can do no better than recycle the arguments Smith and Ricardo made without adding anything substantively new (Friedman and Friedman 1980, chapter 2). This indicates that the strongest historical arguments for TAIL are still to be found in the works of Smith and Ricardo.
4. N&B define dominant capital as the leading corporate-government coalitions (2009: 315). Their reasoning (I speculate) is that accumulation could not exist, and is shaped at every step, by institutions like government, the judiciary, the central bank and even the armed forces. I will break with their framework and use dominant capital to denote the largest Canadian-based firms.
5. Veblen drew a distinction between 'business' and 'industry', terms which most people think of as synonyms but to Veblen were becoming closer to antonyms. Business centres on investment for profit. The language used is that of accounting and the units of measure are universal pecuniary values. The (immaterial-financial) business system is driven by capitalists competing for 'differential advantage' (1904: 18), something that is secured through the extension of ownership and control and which presupposes conflict and antagonism (amongst owners and between owners and non-owners). Industry, by contrast, is the domain upon which the economic welfare of the community rests. This (material-productive) domain contains the inherited knowledge of previous generations and is calibrated through heterogeneous material units. Its goal is the efficient and innovative servicing of the community's needs, something that requires cooperation and planning. If these two domains are inherently distinct how are they related? In a word: vertically. As Veblen saw it, the 'industrial system is organised on business principles and for pecuniary ends [with the] business man [at] the center…' (1904: 27).
6. Castoriadis is a source of philosophical inspiration for N&B and he denies the possibility of tension between individual and collective autonomy. See his 'The Nature and Value of Equality' in *Philosophy, Politics, Autonomy* (1991), p. 132.
7. Lipset (1990) and Horowitz (1968) make convincing arguments for the divergence in political values between Canada and the United States, including why the political culture of the former has elements averse to TAIL.
8. Marx and Engels' (1845) concept of ideology has three main components: it depicts social arrangements as natural, rooted in extra-human forces; it justifies social arrangements by claiming that all members benefit; and the interests of the dominant class are passed off as the interests of all. The proponents of TAIL were almost certainly innocent of Marx and Engels' ideas, but it is always remarkable to see a centuries-old idea hold up so sturdily.
9. The Gini coefficient is commonly used as a measure of income inequality. It ranges from zero (perfectly equal distribution of income) to one (perfectly unequal distribution of income).
10. Saez and Veall claim the trend towards greater income inequality is significant because it suggests that Simon Kuznets' (1955) influential hypothesis—that income inequality should demonstrate an inverse-U shape as societies modernise—can no longer account for the facts. Kuznet's theory, in short, suggests that in the early phases of economic growth, particularly the transition from pre-industrial to industrial society, incomes should show a tendency to diverge as urban industrial elites surge ahead of the rural agricultural population. The trend

towards inequality is eventually offset, at least partially, by the rising wages of urban industrial workers. As migration from countryside to city intensifies, so too should the tendency towards income equality intensify as more people enter high paying urban jobs. The trend should be one of inequality first rising, eventually stabilising and then falling, thus tending towards greater equality as modernisation takes hold (an inverse-U shape).

11. The top 60 firms are all listed on a Canadian stock exchange and almost all are Canadian-based. Determining what makes a firm 'Canadian', however, is complicated. Take Barrick Gold (stock symbol: ABX) as an example. It is the largest gold corporation in the world (by proven reserves). Barrick has its head office in Toronto but has shares trading on the Toronto and New York Stock Exchanges. It has approximately 25,000 employees dispersed across five continents and more than half of its 2011 production and gold reserves were outside North America (these facts are taken from its website). And if that wasn't complex enough, its Founder and Chairman — Peter Munk — is a Canadian citizen while Barrick's top five shareholders (in the autumn of 2011) were large institutional investors located in Los Angeles, New York and Chicago. So is Barrick Gold a Canadian firm? The nationality of capital is an important question, especially in the context of global capital, but cannot be addressed at length due to space constraints.
12. See Nitzan and Bichler (2009), chapter 11 for a discussion of the 'elementary particles' of capitalisation.
13. Figure 6 reproduces for Canada, with similar results, the US chart from a graduate course assignment offered by Jonathan Nitzan at York University.
14. I leave aside here basic neoclassical elements of competition, for example, that there be a large number of sellers in a market, something which can be directly measured. This still stands as a proxy for competition proper, which is a metaphysical category in the Aristotelian sense that it is not directly accessible to sensory perception.

Notes on Contributor

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