

IN THE ZONE: WORK AT THE INTERSECTION OF TRADE AND MIGRATION

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Trade and immigration are generally described as separate dimensions of globalization. This Article challenges that story by focusing on settings where states and private actors are bringing the two together to achieve disparate economic and policy goals. In one of the two sets of cases analyzed here, governments in the Global South are seeking to increase trade through the use of migrant labor, attracting transnational firms to export manufacturing zones by importing lower-cost workers from other countries. In the other, policymakers in the Global North are seeking to decrease immigration through the use of trade by investing in export processing zones in migrant origin countries, on the theory that more trade, and the employment it creates, will deter onward migration to the Global North.

I use these contexts as the starting point for a reconsideration of core ideas in trade and migration policy and theory. In the first set of cases, governments are constructing a comparative advantage in labor from whole cloth, by bringing in workers from other countries on terms that restrict their freedom and subject them to exploitation at work. This challenges the usual description in the trade literature of labor cost as a natural phenomenon based on local wage and productivity levels, and thus a legitimate source of advantage in trade. Meanwhile, transnational firms that locate production in such export processing zones sidestep the ordinary choice between benefiting from global wage differentials by moving work overseas or by hiring migrant workers. Instead, they do both simultaneously, a strategy I term “double labor arbitrage.” I explore the ways in which the construction of comparative advantage and double labor arbitrage operate together to extract additional value from workers for the benefit of states and corporations. With regard to the second set of cases, I draw on recent empirical economic scholarship to challenge the argument that more trade will decrease emigration. More profoundly, I question the normative justification for these proposals, given the treatment of workers in the zones. Although proposed as a “solution” to immigration, I argue that they are much more likely to deepen the problems that drive it.

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Immigration and trade law do not bar any of the developments I analyze here. The question is whether they should. This Article—the first step in a larger project—launches that inquiry.

INTRODUCTION

Trade and immigration are usually presented as alternatives, running on parallel tracks. From the perspective of governments in the Global South, the two offer separate routes to development: they can attract manufacturing through the low cost of local labor (trade), or encourage their citizens to find work in higher-wage countries in order to benefit from the remittances they send home (immigration). Corporate decisions about where to locate production, meanwhile, are generally set out as an either-or choice between moving to a country with lower-wage labor (trade) or remaining in the Global North while hiring lower-wage immigrant workers (immigration). The global, regional, and domestic regulation of trade is unconnected to that of immigration, reinforcing the distance at which they stand from each other.

This Article is about new developments that fly in the face of this story, and what they mean for how we understand trade, immigration, and the relationship between the two. Today, in Jordan, Malaysia, and Thailand, something different is happening. Having invested heavily in establishing special locations and regulatory regimes to attract corporations that manufacture garments and electronics for global brands—variously called “free trade zones,” “export processing zones,” and “special economic zones” (hereinafter: zones)—the governments of these countries found themselves unable to provide firms with local labor at low enough cost to keep them there. To maintain their competitive advantage, they have turned to workers from outside their country, importing migrants from even lower-cost countries as the primary labor force within the zones. In such settings, host governments are using migration as a way to do better at the business of trade, simultaneously deploying both sets of tools to attract investment. Export-manufacturing firms, taking advantage of the opportunity that governments create, are increasing profits by moving production to those countries and then hiring migrant labor there.

Meanwhile, the past five years have seen the emergence of an entirely separate set of initiatives, led by different actors that are pursuing the employment of migrants in zones in the Global South for policy purposes rather than profit. Key institutional movers here include international financial and development agencies and the UK and European Union. Their goal is less related to trade than to immigration control: they seek to use jobs in zones in the Global South as a way to keep migrants and refugees from moving to countries in the Global North. To this end, they have proposed employing people from Senegal in electronics plants in Morocco and putting Sudanese refugees to work stitching shirts in Ethiopia. Private consulting firms are active in this arena as well, for example advocating for new zones in Honduras as a way to forestall migration to the United States.

What is happening in these places where trade and immigration intersect challenges the ways the two have traditionally been analyzed by scholars, approached by advocates, and managed by regulators. The systematic employment of migrants in zones has rarely been described, much less theorized. This Article begins that process by presenting and analyzing a series of case studies that document the emergence of this new world, based on the author's field research as well as secondary sources.¹ Export zones that rely on migrants for a substantial portion of their labor are still relatively rare. The Article focuses on them as an acute manifestation of the global quest for cheap labor. The cases offer a unique opportunity to observe the actions taken by corporate, state, and supranational actors to bring trade and immigration together, examine the arguments made in support of those actions, and compare those claims with what is actually happening at the points of convergence. What we learn from exploring the zones where trade and immigration coincide, the Article contends, has important implications for the way we analyze the two phenomena and the rules we create to govern them.

Parts I and II set out and analyze the first set of cases and their implications. In Part I, I present three paradigmatic situations where host governments are using the availability of migrant workers—together with the promise of lower tariffs and reduced domestic regulation—as an inducement to attract manufacturing. These include Jordan, where migrant workers from Bangladesh and Nepal provide most of the labor in the country's garment export industry; Malaysia, which brings in Southeast Asian migrants to staff its electronics export plants; and Thailand, which has established border garment production zones that rely on Burmese migrants as a labor force.

In Part II, I use these cases as the starting point for a reconsideration of core ideas in trade and migration policy and theory. Where host governments make migrant workers available as a source of labor in export-processing zones, we can see with particular clarity their use of law to create from whole cloth what trade scholars refer to as a comparative advantage in labor. This sits uneasily with the way low-cost labor is usually discussed in the trade scholarship, as a natural asset of countries in the Global South that allows them to compete for trade in the global economy based on their lower cost of living and productivity. Using the paradigmatic cases as a starting point, I reconceptualize comparative advantage in labor as a phenomenon that is constructed rather than found, and set out a spectrum of host government actions to this end. I call for consideration of new approaches to trade regulation that take the interests of workers into account in contexts where host governments are seeking to extract additional profit from labor for the benefit of corporations.

I then turn to the actions of firms in the paradigmatic cases, noting the ways that their employment of migrants in export zones moves beyond conventional understandings of labor arbitrage in the global economy. As to decisions about where

1 The Article draws on the author's interviews and field observations in 2018 and 2019 during visits to Jordan, Ethiopia, Bangladesh, and Mexico, as well as remote interviews and analysis of primary and secondary sources carried out between 2017 and 2021.

to locate production in the global economy, corporations are generally understood to be either footloose—in which case they will locate production in countries where they can take advantage of low local labor costs (often called outsourcing)—or locally rooted, in which case they may seek a similar effect by hiring immigrant labor present in the labor market to which the firm is tied.² Either move can be described as labor arbitrage.³ To arbitrage is to buy something (here labor) at a low price in one market, in order to profit by selling it (here in the form of the goods or services that the workers produce) in a higher-priced market. The cases show firms arbitraging labor in both ways at once: simultaneously outsourcing and relying on immigrant workers.⁴ I term this phenomenon “double labor arbitrage.”

A closer look at the construction of comparative advantage and double labor arbitrage makes clear that the benefits of free-trade zones for governments and corporations in these cases are underwritten by the unfreedom of migrant workers, who are restricted in their ability to move outside the zones, barred from changing jobs, and subject to deportation if they become pregnant or leave an abusive employer. Nothing in the trade regime makes the use of migrants in zones illegal.⁵ Neither the World Trade Organization (WTO) nor regional or bilateral trade agreements bind countries to a local labor force when they compete for trade. Yet what is happening here is troubling, because it relies on the unfreedom of workers to create a surplus that firms—and by extension host governments—are able to capture.

Parts I and II, then, are about the use of immigration as a tool to generate revenue in the context of trade. Part III, by contrast, turns to new proposals that flip the equation, seeking to use trade as a tool to generate policy outcomes in the realm of immigration. Here, I highlight cases in which Global North governments (primarily in the European Union) and international financial and development institutions have called for new trade preferences and increased investment in zones in the Global South, to create jobs there for migrants in transit. Their assertion is that more trade, and the employment it creates, will deter onward migration to the Global North, an argument I call *zone as fence*. With regard to refugees, I describe similar proposals to the same end, but couched in humanitarian terms, a framing I label *zone as gift*. This Part turns to recent economic scholarship to challenge the underlying assumption in these initiatives that trade and migration are substitutes, so that more trade will result in less migration. Empirical studies suggest that the opposite is true, raising serious doubts about the ability of the proposals to succeed on their own terms. More profoundly, I question the normative justification for

2 Diane Elson & Ruth Pearson, ‘Nimble Fingers Make Cheap Workers’: *An Analysis of Women’s Employment in Third World Export Manufacturing*, 7 FEMINIST REV. 87, 89 (Spring 1981).

3 For a discussion of the origins of the term labor arbitrage, see AIHWA ONG, NEOLIBERALISM AS EXCEPTION: MUTATIONS IN CITIZENSHIP AND SOVEREIGNTY 160-61 (2006).

4 For a fuller discussion of double labor arbitrage, see *infra* Section II.B.

5 For an argument that the United States should consider Malaysia’s reliance on migrant workers in its zones a violation of its domestic trade law under the countervailing duty provision of the Tariff Act of 1930 (19 U.S. Code §1671), see Ruarri Rogan, *Countervailing Social Dumping—Regulating Ill Gotten Economic Gains*, 42 FORDHAM INT’L L.J. 1583 (2019) (this idea has not been taken up by U.S. trade regulators).

these proposals, given the treatment of workers in the zones. Although proposed as a “solution” to immigration, I argue that they are much more likely to deepen the problems that drive it.

I. IMMIGRATION AS A WAY TO COMPETE FOR TRADE: THE PARADIGMATIC CASES

Today, much of the stuff of our daily lives is made in export-processing zones. These zones, usually in countries in the Global South, are designed to attract the manufacturers of t-shirts, toothbrushes, and cellphones for global brands. Zones as a tool for development in the Global South date back to the 1970s.⁶ They were initially promoted by the World Bank, the International Monetary Fund, the United Nations, and other supranational entities such as the Organization for Economic Cooperation and Development, on the grounds that they would attract investment from abroad that would spill over into the domestic economy and promote long-term growth.⁷

Zonal development has failed to deliver on these promises for many nations.⁸ Much of the optimism about zones was based on the early experience of a handful of countries, such as South Korea and Taiwan, that were already industrialized exporters when they adopted the zonal model as part of a broader development

6 For critical histories of such zones, see KELLER EASTERLING, *EXTRASTATECRAFT: THE POWER OF INFRASTRUCTURE SPACE* ch. 1 (2014); Dennis Arnold, *Export Processing Zones*, in *THE INTERNATIONAL ENCYCLOPEDIA OF GEOGRAPHY 1* (Douglas Richardson et al. eds., 2017); Patrick Neveling, *Free Trade Zones, Export Processing Zones, Special Economic Zones and Global Imperial Formations 200 BCE to 2015 CE*, in *THE PALGRAVE ENCYCLOPEDIA OF IMPERIALISM AND ANTI-IMPERIALISM 1007* (Immanuel Ness & Zack Cope eds., 2015).

7 Douglas Zeng, *The Past, Present, and Future of Special Economic Zones and Their Impact*, 24 J. INT'L ECON. L. 259, 265 (2021) (“In developing economies, the primary aim of SEZs is generally to build, diversify, and upgrade industries by attracting FDI, and economies that have traditionally struggled to attract FDI show a higher propensity to adopt SEZ programmes.”). For an overview of the reasons that governments in the Global South pursue foreign direct investment through zonal and other models, see MAKING FOREIGN DIRECT INVESTMENT WORK FOR SUB-SAHARAN AFRICA: LOCAL SPILLOVERS AND COMPETITIVENESS IN GLOBAL VALUE CHAINS 7-10 (Thomas Farole & Deborah Winkler eds., 2014), <https://openknowledge.worldbank.org/bitstream/handle/10986/16390/9781464801266.pdf>.

8 See generally EASTERLING, *supra* note 6, at 25-6, 34-5; Lorenzo Cotula & Liliane Mouan, *Special Economic Zones: Engines of Development of Sites of Exploitation?* (IIED Briefing Paper, Oct. 2018), <https://pubs.iied.org/17481iied>; William Milberg & Matthew Amengual, *Economic Development and Working Conditions in Export Processing Zones: A Survey of Trends 3* (Int'l Lab. Org. [ILO] Working Paper No. 3, 2008), <http://ilo.org/public/french/dialogue/download/wp3englishfinal.pdf>.

The few empirical studies of zones based on large datasets begin by characterizing the results of zonal development as “mixed,” but ultimately conclude that zones are rarely a successful development strategy. See, e.g., Susanne Frick et al., *Toward Economically Dynamic Special Economic Zones in Emerging Countries*, 95 ECON. GEO. 30, 35, 55 (“SEZs on the whole cannot be considered a growth catalyst in emerging countries.”); Rajneesh Narula & James X. Zhan, *Using Special Economic Zones to Facilitate Development: Policy Implications*, 26 TRANSNAT'L CORP. 1, 16 (2019) (“The immediate benefits of the SEZ to the broader economy are generally modest, and once the costs are considered, an SEZ may even have net negative outcomes.”).

plan.⁹ Most of the so-called “emerging” nations now investing in zones have found it challenging to replicate that success. Although a key selling point of zones is that economic activity within them will spur growth in the domestic economy,¹⁰ in fact zone-based export manufacturing in many countries in the Global South has not generated meaningful economic spillovers. Instead, zones more often operate as enclaves, sourcing from and selling to actors outside the host country.¹¹ Nor have most host countries found it easy to follow the path of the successful examples in moving from low value-added activities in global manufacturing (such as providing low-wage labor) to higher value-added contributions, such as skilled labor, research, and product development.¹² The fact that firms in zones pay sharply reduced fees and taxes to the state further limits the revenue they contribute to host governments seeking to invest in development.

Despite the by-now evident flaws of zone-based export manufacturing, it continues to be a model favored by international financial and development institutions and adopted by host governments, often in response to pressure from those institutions.¹³

9 Narula & Zhan, *supra* note 8, at 3; Zeng, *supra* note 7, at 262; Frick et al., *supra* note 8, at 32, 35; Milberg & Amengual, *supra* note 7, at 20-3.

10 Narula & Zhan, *supra* note 8, at 5.

11 See, e.g., Susanne Frick & Andrés Rodríguez-Pose, *Special Economic Zones and Sourcing Linkages with the Local Economy: Reality or Pipedream?*, 34 EUR. J. DEV. RSCH. 655 (2022) (based on a study of SEZs in Colombia, Ethiopia, Malaysia, Nigeria, Rwanda, South Africa and Vietnam, concluding that SEZs have produced only limited linkages to the domestic economy despite having them as a central objective); Milberg & Amengual, *supra* note 7, at 3 (“Despite the presence of EPZs—for over 30 years in some cases—there are very few cases where EPZs have played an important role in accomplishing these direct developmental goals. And even in these cases—Korea, Taiwan, Mauritius, Madagascar and more recently China are often mentioned—there is considerable debate over the other economic, demographic and political factors that combine with EPZs to spur development. With EPZs now operating in 130 countries, this list of successes does not represent a large percentage.”), 20-1 (citing Korea, Taiwan, and Mauritius as rare exceptions to the rule that zones generate minimal forward and backward linkages to host economies.); *World Investment Report 2019: Special Economic Zones*, UNCTAD xiii, <https://worldinvestmentreport.unctad.org/world-investment-report-2019/chapter-4-special-economic-zones/> (“Where they lift economic growth, the stimulus tends to be temporary: after the build-up period, most zones grow at the same rate as the national economy. And too many zones operate as enclaves with limited impact beyond their confines.”); Ass’n of South-East Asian Nations [ASEAN], *Guidelines for Special Economic Zones (SEZ) Development and Collaboration* 5 (2020), <https://asean.org/wp-content/uploads/2020/12/Adopted-ASEAN-Guidelines-for-Special-Economic-Zone-SEZ-Development-and-Collaboration.pdf> (“Most of the jobs created are low-skilled and concentrated in low technology manufacturing operations. With few exceptions, zones tend to work in enclaves and generate few backward linkages with domestic companies.”).

12 Frick et al., *supra* note 8, at 55.

13 For continued endorsement of zones as a development tool, see, for example, Int’l Monetary Fund [IMF], *Global Trade Liberalization and the Developing Countries* (Nov. 2001), <https://www.imf.org/external/np/exr/ib/2001/110801.htm> (promoting trade in general and the zonal model in particular as a tool for development); World Bank Grp. [WBG] & World Trade Org. [WTO], *The Role of Trade in Ending Poverty* (2015), <https://documents1.worldbank.org/curated/en/726971467989468997/pdf/97607-REPLACEMENT-The-Role-of-Trade-in-Ending-Poverty.pdf>; WTO, *World Trade Report 2020*, at 55-56, https://www.wto.org/english/res_e/booksp_e/wtr20_e/wtr20_e.pdf.

As to why the model remains popular despite its failures, Douglas Zeng, senior economist at the World Bank, notes their signaling function—see Zeng, *supra* note 7, at 261 (“In countries where governance is relatively weak and where the implementation of reforms nationwide is difficult, SEZs are often seen as the only feasible option or as a first step. When such progress fails to deliver better

There are 5,400 zones around the world today, across 147 countries, employing 90 to 100 million people.¹⁴

Although such sites take many forms and go by different names, they share key goals and features. In order to attract investment, host governments use what Aihwa Ong calls “zoning technologies”¹⁵ to deviate from the background terms for production that apply elsewhere in their domestic economies.¹⁶ The resulting sites are located within national territory but often exempted from national law, through a process that “relies on sovereignty to abdicate sovereignty.”¹⁷ Within zones, host governments free investors from costly obligations that ordinarily apply to firms under domestic law. Governments exempt the goods extracted or produced in such zones, and often the raw materials and intermediate inputs necessary for their production, from import and export duties. Many also waive regulations regarding taxes, environmental impact, intellectual property, and labor standards¹⁸ that impose costs on the activities of businesses outside of the zone. In addition to the revocation of domestic regulation that is often emphasized as the primary feature of free-trade zones, governments create further “freedoms” through affirmative preferential terms for investors and manufacturers in the zone. For example, they may offer

competitiveness rankings or expected foreign investments, SEZs may still be seen as a necessary complement to the investment promotion package and as a signal of the country’s progress in building an attractive investment climate.”).

14 UNCTAD, *World Investment Report 2019: Special Economic Zones* 128, 184 (2019), <https://worldinvestmentreport.unctad.org/world-investment-report-2019/chapter-4-special-economic-zones/>.

15 AIHWA ONG, NEOLIBERALISM AS EXCEPTION: MUTATIONS IN CITIZENSHIP AND SOVEREIGNTY 103 (2006) (defining zoning technologies as “mechanisms for creating or accommodating islands of distinct governing regimes within the broader landscape of normalized rule.”). Aihwa Ong, *The Chinese Axis: Zoning Technologies and Variegated Sovereignty*, 4 J. E. ASIAN STUD. 69, 75 (2004).

16 *Id.* at 78.

17 HANNAH APPEL, *THE LICIT LIFE OF CAPITALISM: U.S. OIL IN EQUATORIAL GUINEA* 49 (2019).

18 Whether jobs in zones are better or worse for workers than those available outside of them is a matter of some dispute, and the answer appears to depend on context, making overarching assertions difficult to support. For an overview of the legal architecture of labor rights in SEZs, see Lorenzo Cotula & Liliane Mouan, *Labour Rights in Special Economic Zones: Between Unilateralism and Transnational Law Diffusion*, 24 J. INT’L ECON. L. 341 (2021). The majority of SEZ host countries today technically extend their domestic labor regulation schemes to work within the zones. Claude Akpokavie, *Decent Work and Export Processing Zones, an ILO Perspective*, UNIVERSITÉ PARIS-DAUPHINE (June 3, 2015), https://ftz.dauphine.fr/fileadmin/mediatheque/masters/ftz/documents/Akpokavie__Decent_Work.pdf (PowerPoint presentation). However, *de jure* regulation is often accompanied by *de facto* failure to enforce compliance, *id.*; see also Int’l Lab. Org. [ILO], *Promoting Decent Work and Protecting Fundamental Principles and Rights at Work in Export Processing Zones: Report for Discussion at the Meeting of Experts to Promote Decent Work and Protection of Fundamental Principles and Rights at Work for Workers in Export Processing Zones* 21 (Nov. 2017), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_584474.pdf.

Conversely, where firms in SEZs are not required to comply with labor law, conditions may be no poorer than elsewhere in the country. Lorenzo Cotula, *The State of Exception and the Law of the Global Economy: a Conceptual and Empirico-Legal Inquiry*, 8 TRANSNAT’L LEGAL THEORY 424, 440 (2017) (noting that although workers in Export Processing Zones in Bangladesh are exempted from otherwise-applicable labor laws, this “does not necessarily entail that, in practice, EPZ workers fare significantly worse than their counterparts outside the economic zones”); *id.* at 442 (observing that “challenges affecting labour rights in Bangladesh appear to occur both inside and outside the SEZs In other words, the exception is part of a wider set of inter-related problems, rather than the overarching, foundational problem”).

guarantees against expropriation or other adverse action in case of a change in law or regime. It is also common for host governments to underwrite services within a zone, lowering the cost of access to water, internet connection, electricity, and infrastructure.¹⁹ Taken together, these actions reduce the cost of investment or production outright, and mitigate the risk of future expense.

In my paradigmatic cases, governments begin with these features, but add another: the availability of a labor force brought in from other, lower-wage countries. This is quite new, still relatively rare,²⁰ and all but unaddressed by either legal scholars or regulators.²¹ In most of the paradigmatic cases, the host country originally drew investment in manufacturing because of the low cost of its own workers.²² But when export manufacturing firms expressed dissatisfaction with the price or productivity of local labor, and the government was unable to attract or keep firms by other means (for example, by upgrading technology or offering higher-skilled, higher value-added labor²³), it responded by offering transnational migrant workers on visas as an alternative. Some of these migrants fall under bilateral labor migration

19 For a summary of the types of concessions commonly offered by host governments to firms locating production within zones, see EASTERLING, *supra* note 6 at 33-4; Douglas Zeng, *Special Economic Zones: Lessons from the Global Experience 2* (Ctr. Econ. Pol’y Rsch., Private Enterprise Development in Low Income Countries Synthesis Paper Series No. 1, 2019), https://pedl.cepr.org/sites/default/files/PEDL_Synthesis_Paper_Piece_No_1_o.pdf.

20 The three countries that I highlight here are the only ones I am aware of where migrants from another country make up a substantial proportion of the factory workers in export manufacturing zones.

21 For three exceptions to the general silence on this phenomenon in legal scholarship, see Kevin Kolben, *Trade, Development, and Migrant Garment Workers in Jordan*, 5 MIDDLE E. L. & GOV. 195 (2013) (on Jordan); Rogan, *supra* note 5 (on Malaysia), and Stephen Kim Park, *Special Economic Zones and the Perpetual Pluralism of Global Trade and Labor Migration*, 47 GEO. INT’L L.J. 1379 (2016) (on Panama, with regard to efforts by the Panamanian government to attract high-skilled migrants to play managerial roles in zones).

22 For example, with reference to Malaysia, see Loïs Bastide, *Incorporating Transnational Labour: Migration Rent, Combined Relocation, and Offshore Production Networks in Malaysia*, 9 MIGRATION STUD. 1250, 1254 (2021) (“At an early stage in the process, Malaysia’s low labour costs were instrumental in capturing foreign capital seeking to relocate from Singapore . . . [but] manufacturing wages are now ‘artificially’ kept in check through the continuous, organized influx of migrant workers.”).

Jordan is the exception here. Its zone was attractive to suppliers because of the terms of the preferential trade agreement with the United States, extended to incentivize cooperation with Israel, rather than because the country had natural resources important to garment production or competitively low wages. On the phenomenon of preferential trade agreements as the source of “‘artificial’ opportunities for sourcing and exports in locations that are not necessarily competitive in these sectors on their own,” see Shamel Azmeh, *Global Value Chains, Production Regimes, and the Governance of Migrant Workers*, in HANDBOOK ON THE GOVERNANCE AND POLITICS OF MIGRATION 218, 222 (Emma Carmel et al. eds., 2021). Nonetheless, as I explain below, garment firms in Jordan first sought to hire local workers, and only later pressured the Jordanian government to create a program that would allow employers to bring in migrant laborers to work in the factories.

23 In the successful cases such as South Korea and Taiwan, countries initially attracted investment in zones through the promise of low-cost workers, but upgraded over time to offer technological sophistication, product innovation, and access to a highly-educated labor force. Narula & Zhan, *supra* note 7, at 8, 15. Many of the countries that have adopted a zonal development model since then have not been able to “climb the ladder” in this way. Frick et al., *supra* note 8, at 55; Milberg & Amengual, *supra* note 8, at 20-1. It is my argument that, to compensate for their inability to compete by upgrading, these nations have sought to depress labor costs through the importation of migrant workers in order to continue to attract investment.

agreements between the host and origin states, while others do not.²⁴ The presence or absence of such an accord does not appear to change the functional reality that the rules under which migrants come to the zones are set unilaterally by the host state through its domestic law, on terms that deliver lower labor costs to corporations in the zones.²⁵

These still-uncommon paradigmatic cases differ from other instances of labor migration in important ways. In particular, they represent a government turn to migration specifically to increase the viability of trade. In most countries, immigrant workers are concentrated in the service industries noted above.²⁶ Here, however, governments are making migrants available to firms in order to underwrite the price of exported goods, with the goal of attracting investment in manufacturing and competing more successfully with other nations. Migrants in these cases are

24 Malaysia has BLAs with Bangladesh, Nepal, China, Sri Lanka, Thailand, Pakistan, Vietnam and Indonesia. Thailand has BLAs with Laos, Cambodia, and Myanmar. See Int'l Lab. Org. [ILO], *Bilateral Agreements and Regional Cooperation in Asia and the Pacific*, https://www.ilo.org/asia/areas/labour-migration/WCMS_226300/lang--en/index.htm. Regarding Malaysia's agreement with Nepal (not listed on the ILO site); Chandan Kumar Mandal, *Nepal and Malaysia Sign Labour Pact*, THE KATHMANDU POST (Oct. 29, 2018), <https://kathmandupost.com/miscellaneous/2018/10/29/nepal-malaysia-sign-labour-pact>. Jordan has or has had labor migration agreements or memoranda of understanding with Bangladesh, Egypt, Ethiopia, India, Indonesia, Morocco, Pakistan, the Philippines, Sri Lanka, Syria, see Adam Chilton & Eric Posner, *Why Countries Sign Bilateral Labor Agreements* 43-51 (Univ. Chi., Coase-Sandor Inst. L. & Econ. Working Paper No. 807) (2017), https://chicagounbound.uchicago.edu/law_and_economics/828/), and Nepal, see General Agreement in the field of Manpower between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal (Oct. 18, 2017), <http://apmigration.ilo.org/country-profiles/general-agreement-in-the-field-of-manpower-between-the-government-of-the-hashemite-kingdom-of-jordan-and-the-government-of-nepal>. Unlike many sectoral BLAs addressing domestic work, construction, healthcare, and other industries, none of these BLAs (nor any others of which I am aware) specifically target special economic zones or even the manufacturing sector generally.

As distinct from migrant workers with visas, Jenna Hennebry and others have documented some locations where the workforce in export zones includes migrants in transit from other countries to Global North destinations (largely, but not entirely, undocumented), see Jenna Hennebry et al., *From 'Khadema' to 'Zemegria': Morocco as a 'Migration Hub' for the EU*, in TERRITORIALITY AND MIGRATION IN THE E.U. NEIGHBOURHOOD: SPILLING OVER THE WALL 65 (Margaret Walton-Roberts & Jenna Hennebry eds., 2014). There was a time in 2018-2019 when it appeared that this might be happening with Central American migrants in maquiladoras on the U.S.-Mexico border, although it does not seem to have materialized, see Jennifer Gordon, *El gran ausente de las discusiones laborales: la migración [Central American migration: The big hole in the Mexican labor debate]*, NEXOS (Apr. 22, 2019), <https://www.nexos.com.mx/?p=42068>; Nina Ebner & Mateo Crossa, *Maquiladoras and the Exploitation of Migrants on the Border*, NACLA (Oct. 11, 2019), <https://nacla.org/news/2019/10/03/maquiladores-exploitation-migrants-border>.

25 For example, regarding Jordan, the ILO has concluded that the BLAs it has signed "have had little impact on the governance of migration flows and the protection of workers." See Int'l Lab. Org. [ILO], *Migrant Domestic and Garment Workers in Jordan: A Baseline Analysis of Trafficking in Persons and Related Laws and Policies* 51 (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554812.pdf. This is consistent with the findings of a number of the articles in this volume, and with studies of bilateral labor migration agreements more generally, which find that although such agreements may reduce recruitment costs, they rarely have a positive impact on pay or conditions of work for the migrants who travel under them.

26 On the dynamics leading to the concentration of immigrants in services in cities in the Global North, see Saskia Sassen, *New Employment Regimes in Cities: The Impact on Immigrant Workers*, 22 J. ETHNIC & MIGRATION STUD. 579, 581-86, 588-90 (1996).

part of a package of incentives for firms located within geographically bounded zones carved out of the regulations affecting businesses in the rest of the economy. This exceptionalism opens the door to additional mechanisms of control over labor migrants. The cases thus present distinctive examples of governments depressing the cost of labor in order to maintain a comparative advantage in trade, the central concern of this Article.

The use of migrant labor to keep costs low is not, of course, a phenomenon unique to countries in the Global South. To the contrary, reliance on immigrants as cheap workers is most common in wealthier nations like the United States, the Gulf countries, and the EU, where firms hire undocumented workers and migrants on temporary visas to hold down the cost of wages in sectors that cannot move elsewhere, such as agriculture, construction, healthcare, and hospitality.²⁷ In addition, many of the features of the migrant visa programs that I highlight in these cases for their role in producing a low-wage, controllable labor force in zones in the Global South echo those long in place in countries of the Global North.²⁸ Much of what I have to say here about the deployment of migrants by governments of the Global South thus applies equally or with more force in the Global North, including regarding corporate demand as the driving force behind the design of immigration regimes that deliver a steady supply of compliant workers.

In sum, what makes a paradigmatic case for the purposes of this Article is the host government's simultaneous use of three "freedom-generating" strategies that lower costs and mitigate risk for firms producing within the zone: 1) reduced barriers to trade via tariff waivers on imports to and exports from the zone); 2) other types of deregulation and special treatment under domestic law; and 3) importation of migrant workers. By focusing attention on the less common sites where the third strategy is added to the first two, I emphasize the ways in which trade and migration—rather than being substitutes or phenomena on parallel tracks—may be deployed simultaneously by host governments as inducements for investment, and taken up simultaneously by capital to increase profits. In what follows, I set out the cases in more detail, and then propose discrete analytical frameworks to

27 DOUGLAS S. MASSEY ET AL., *BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION* 15-8 (2002); SASKIA SASSEN, *THE GLOBAL CITY* 315-17 (1991); JANE WILLS ET AL., *GLOBAL CITIES AT WORK: NEW MIGRANT DIVISIONS OF LABOUR* 1-27 (2010); Bridget Anderson & Martin Ruhs, *Reliance on Migrant Labour: Inevitability or Policy Choice?*, 20 J. POVERTY & SOC. JUST. 23 (2012). That said, "South-South" labor migration is a large and growing phenomenon, which replicates the dynamics of South-North labor migration in many regards. For a sense of the scope of South-South migration, see DILIP RATHA ET AL., *MIGRATION AND REMITTANCES FACT BOOK 2016* 11 (3d ed. 2016).

28 For example, in Section II.A, I emphasize that migrant workers in the paradigmatic cases are tied to a single employer and not allowed to travel with family members. These features are common to many migrant worker schemes in the Global North. On their presence in the *kafala* system across Gulf countries, see Kali Robinson, *What Is the Kafala System* (Council on Foreign Rel., Mar. 23, 2021), <https://www.cfr.org/background/what-kafala-system>. On their presence in the H-2A and H-2B seasonal worker visa programs in the United States, see Daniel Costa, *Temporary Work Visa Programs and the Need for Reform* 20-25 (Econ. Pol'y Inst., Feb. 3, 2021), <https://files.epi.org/pdf/217871.pdf>.

shed light on the actions of states (constructing comparative advantage) and firms (conducting double labor arbitrage) in these contexts.

A. Jordan

Jordan's garment export industry typifies the paradigmatic case.²⁹ The country entered the apparel export market after the signing of a 1994 free trade agreement with the United States, which was offered as an incentive during peace negotiations with Israel. The preferential agreement grants Jordan tariff reductions for garment export to the United States, and an exemption from quotas for garments produced under specified conditions in the Qualified Industrial Zones established for this purpose beginning in 1997 (Strategy 1: Free trade). As the Jordanian garment industry grew in the wake of this agreement, most of the firms it attracted were from other garment-manufacturing nations such as China and India, seeking to benefit from the preferential terms of export from Jordan to the U.S. and to avoid quota caps under the then-extant Multi-Fiber Agreement for exports from their home countries.³⁰ To make the Qualified Industrial Zones more welcoming to foreign investors, Jordan has reduced or waived corporate, income, land and sales taxes for companies within the zones.³¹ The government has kept minimum wages for Jordanian workers within the zones lower than those in domestic sectors outside them³² (Strategy 2: Domestic deregulation).

In the initial years following the agreement, manufacturers hired Jordanians and Palestinian refugees as workers.³³ However, Jordan is a higher-income country than most other garment-producing nations, and the firms operating in the Qualified Industrial Zones found the local workforce largely unwilling to accept the low

29 For a fuller discussion of the composition and evolution of the Jordanian garment industry, see Jennifer Gordon, *Refugees and Decent Work: Lessons Learned from Recent Refugee Jobs Compacts* 14-16 (ILO Empl. Working Paper No. 256, Dec. 2019), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_732602.pdf; Kolben, *supra* note 21; Shamel Azmeh & Khalid Nadvi, 'Greater Chinese' Global Production Networks in the Middle East: The Rise of the Jordanian Garment Industry, 44 DEV. & CHANGE 1317 (2013).

30 Azmeh & Nadvi, *supra* note 29, at 1325-28; QUALIFYING INDUSTRIAL ZONES (QIZs) IN JORDAN AND EGYPT: BACKGROUND AND ISSUES FOR CONGRESS 5-6 (Congressional Research Service Report R43202, Aug. 23, 2013), https://www.everycrsreport.com/files/20130823_R43202_2f48bd3c6671a55402f17cf7b26cf65fb86obfcd.pdf (author's name redacted); Kolben, *supra* note 21, at n.54 (citing a representative for the Jordanian garment manufacturers' association who asserts that 90% of factories in the industry are foreign-owned).

31 JORDANIAN INVESTMENT COMMISSION, FREE ZONES, <https://www.jic.gov.jo/en/free-zones/> (last visited Oct. 15, 2021).

32 Azmeh & Nadvi, *supra* note 29, at 1333.

33 For a reference to Jordanian workers, see Azmeh & Nadvi, *supra* note 29, at 1326; for Palestinian workers, see Oroub el Abed & Ursula Biemann, *The Refugee-Industrial Complex: The QIZ in Jordan*, ARTEZINE (2010), <https://arteeast.org/quarterly/the-refugee-industrial-complex-the-qiz-in-jordan> (observing that although migrants eventually came to make up most of the workforce, "among the local workers, half come from Palestinian refugee camps located near the QIZs"; noting that, given that the trade agreement was intended to promote Jordan's acceptance of Israel as a political and economic partner, "the Palestinian refugees find themselves, ironically, tied into an economic agreement that normalizes the very relations that segregates [sic] them").

wages and demanding conditions that characterized the industry. To raise pay and adapt the terms of work in order to attract local labor would have eaten into their profits and reduced their competitiveness vis-à-vis apparel produced in lower-cost countries. Instead, manufacturers pressured the Jordanian government to allow them to import a labor force that would fill their labor needs. Jordan acceded, ultimately crafting a visa regime to bring migrant workers into the garment zones at a minimum wage that is 60% of that required for Jordanians.³⁴ Today, three quarters of the 55,000 workers in the Qualified Industrial Zones are women from South and Southeast Asia. The migrant workers who labor in the zones bear visas that are tied to their sponsoring employer, are required to come without families and live in dormitories on site, and are subject to deportation if they become pregnant.³⁵ In the early 2000s, exposés of physical abuse, sub-minimum wages, and workweeks of over 100 hours, among other issues,³⁶ led to some improvements. But the zones are still characterized by recurring sexual harassment and systemic issues with poor housing and pay³⁷ (Strategy 3: Importation of migrant workers).³⁸

B. Malaysia

Another paradigmatic case is electronics manufacturing in state-established Export Processing Zones in Malaysia, where almost all of the capital comes from multinational firms and much of the labor is provided by migrant workers on temporary visas.³⁹ Malaysia is both one of the largest exporters of electronics in the world and the

34 The government asserts that these wages are functionally the same as those paid to Jordanians, once the cost of “free” food and housing that the migrants are required to accept from employers is added in. Interview with ILO staff person, Amman (Apr. 17, 2018) (on file with author); BETTER WORK JORDAN ANNUAL REPORT 2019: AN INDUSTRY AND COMPLIANCE REVIEW 8 (Apr. 16, 2019), https://betterwork.org/wp-content/uploads/2020/03/Jordan-Annual-Report-2019_web.pdf.

35 On the issue of workers being deported if pregnant, see Int’l Lab. Org. [ILO], *Migrant Domestic and Garment workers in Jordan: A Baseline Analysis of Trafficking in Persons and Related Laws and Policies* 21 (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554812.pdf.

36 CHARLES KERNAGHAN, NAT’L LAB. COMM. [NOW INST. GLOB. LAB. & HUMAN RIGHTS], U.S. JORDAN FREE TRADE AGREEMENT DESCENDS INTO HUMAN TRAFFICKING AND INVOLUNTARY SERVITUDE 21 (May 2006), <https://issuu.com/iglhr/docs/0605-iglhr-usjordanfreetradeagreeme>; Kolben, *supra* note 18, at 210.

37 On conditions through the mid-2000s, see Kolben, *supra* note 21, at 210. See also AGULHAS APPLIED KNOWLEDGE, INDEPENDENT MONITOR’S ASSESSMENT REPORT: JORDAN COMPACT AND BRUSSELS MEETINGS 11-3 (Mar. 7, 2019), <https://agulhas.co.uk/app/uploads/2019/11/190917-Assessment-Report-Final-1.pdf> (on current conditions); BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, JORDAN’S GARMENT SECTOR: HOW ARE BRANDS COMBATTING WORKER EXPLOITATION AND ABUSE? 3-5 (2018), https://media.business-humanrights.org/media/documents/files/Jordan_Briefing_FINAL.pdf.

38 The garment industry in Bahrain has a similar structure to that of Jordan. Heavily reliant on tariff waivers for exports to the United States under a 2006 free trade agreement, it features a largely foreign set of producers who rely on transnational migrants from Bangladesh, Sri Lanka, India, and Pakistan as its labor force. Jennifer Bair et al., *Bahrain’s Position in the Global Apparel Value Chain: How the U.S.-Bahrain FTA and TPLs Shape Future Development Options* (Jan. 2016), <https://dukespace.lib.duke.edu/dspace/handle/10161/11512> (Report prepared for the Embassy of Bahrain, Washington, DC).

39 Sarah Bormann et al., *Migration in a Digital Age: Migrant Workers in the Malaysian Electronics Industry: Case Studies on Jabil Circuit and Flextronics*, WORLD ECON., ECOLOGY & DEV. (2010), https://electronicswatch.org/migration-in-a-digital-age_3542.pdf. In 2021, 90% of the investment in the Malaysian electronic

principal destination for migrants in Southeast Asia.⁴⁰ The electronics industry has driven much of the country's economic growth since the 1970s, today accounting for approximately half of its exports.⁴¹ Pursuant to Malaysian free-trade zone legislation, products manufactured in the zones receive tariff exemptions on imports and exports⁴² (Strategy 1: Free trade). To attract foreign firms, the government offers firms producing in the zone a tax holiday that can extend for several decades; underwrites the costs of infrastructure, including electricity, water, and land; and has limited trade union access to workers in the zones⁴³ (Strategy 2: Domestic deregulation).

Over time, the Malaysian niche has remained the assembly of components rather than capital-intensive technological innovation.⁴⁴ Assembly work creates a need for low-wage labor that Malaysians have been increasingly unwilling to provide as education levels and opportunities for skilled employment have risen in that country. Beginning in the 1990s, the Malaysian government launched a recruitment program to bring in migrants from Indonesia, Myanmar, and other Southeast Asian countries as a labor force for the electronics and other manufacturing industries, targeting export production in particular.⁴⁵ Today, migrants—both on temporary visas and undocumented—provide a high proportion of the labor in the zones.⁴⁶ Migrant workers routinely experience high recruitment fees, low, delayed, and unpaid wages, long hours, substandard living conditions, and restrictions on mobility and freedom including a prohibition on pregnancies⁴⁷ (Strategy 3: Importation of migrant workers).

components industry came from foreign sources. *Electronics Components*, Malaysian Inv. Dev. Auth., <https://www.mida.gov.my/industries/manufacturing/electrical-electronics/>.

40 Bormann et al., *supra* note 39, at 3.

41 Sri Wulandari, *Malaysia's Free Industrial Zones: Reconfiguration of the Electronics Production Space*, in SPECIAL ECONOMIC ZONES IN ASIA 212 (Asia Monitor Res. Ctr., 2012) <https://amrc.org.hk/sites/default/files/Malaysia%20Free%20Industrial%20Zone.pdf>.

42 *Id.* at 214.

43 *Id.* (Migrant workers are not permitted to join trade unions in Malaysia.). SUSTAINABILITY IMPACT ASSESSMENT (SIA) IN SUPPORT OF FREE TRADE AGREEMENT (FTA) NEGOTIATIONS BETWEEN THE EUROPEAN UNION AND MALAYSIA 81 (2019), https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157897.pdf (Malaysia is in the midst of an overhaul of its labor law which may affect both of these dimensions). Luke Hunt, *Can Malaysia Solve Its Big Migrant Worker Challenge*, THE DIPLOMAT (Dec. 25, 2019), <https://thediplomat.com/2019/12/can-malaysia-solve-its-big-migrant-worker-challenge/>.

44 Bormann et al., *supra* note 39, at 5; more recently see the assessment of Malaysian consultants 27Group: *The Electrical and Electronics Industry in Malaysia: Can We Move Up The Value Chain?* (Oct. 6, 2020), <https://27.group/electrical-electronics-industry-in-malaysia-can-we-move-up-the-value-chain/>.

45 Bormann et al., *supra* note 39, at 11. On parallel developments in the Malaysian garment industry, see Vicki Crinis & Angie Tran, *Migrant Labor and State Power: Vietnamese Workers in Malaysia and Vietnam*, 13 J. VIET. STUD. 27, 29 (2018) ("We argue that the two emerging economies of Vietnam and Malaysia, as part of a global neoliberal system, use their systems and technologies to produce citizens and non-citizen subjects who comply with labor export and foreign worker policies."); Vicki Crinis, *Sweat or No Sweat: Foreign Workers in the Garment Industry in Malaysia*, 40 J. CONTEMP. ASIA 589 (2010).

46 Wulandari, *supra* note 39, at 222-23; Rogan, *supra* note 5, at 1599 (up to 60%).

47 Bormann et al., *supra* note 39, at 16 (Malaysian "plant and machine operators" earn 32% more than noncitizens in the same sector.); WORLD BANK GRP. [WBG], MALAYSIA ECONOMIC MONITOR: IMMIGRANT LABOUR 38 (2015), <https://documents1.worldbank.org/curated/en/753511468197095162/pdf/102131-WP-P158456-Box394822B-PUBLIC-final-for-printing.pdf>.

C. Thailand

A third case, in Thailand, is worth mention here as well. In Mae Sot, close to its border with Myanmar, the Thai government has created a large industrial zone, primarily for the production of garments for export.⁴⁸ Within the zone, the Thai government has granted firms tariff waivers on imports and exports⁴⁹ (Strategy 1: Free trade). It has also waived or reduced the tax obligations of firms producing in the zone, including permitting double deductions for the cost of electricity, water, and transportation⁵⁰ (Strategy 2: Domestic deregulation). Migrants from Myanmar, just across the border, are the primary labor force in the zone. While most are undocumented, some have legal status dependent on their registration with a single employer.⁵¹ Working conditions are poor and migrants' mobility is severely constricted.⁵² Migrant workers in Thailand are not permitted to form unions and have limited rights to join existing ones.⁵³ The Thai government has made clear that it sees the availability of transnational migrant workers as a key part of its strategy to attract foreign investment and maintain competitiveness in the garment industry⁵⁴ (Strategy 3: Importation of migrant workers).

There are other situations with similar characteristics, even if they do not have every element of a paradigmatic case. One is oil extraction, which takes place under special rules regarding export, often is exempted from the ordinary domestic business regulations in the country in whose land or waters it takes place, and in some countries is reliant on migrant workers as an important part of its labor force. Hannah Appel's descriptions of the labor configuration on oil rigs in Equatorial Guinea are particularly evocative in this regard,⁵⁵ as are Andrea Wright's accounts

48 Dennis Arnold has written about this region as a paradigm of "localized spaces conducive to mobile capital and investment that, on the one hand, straddle and blur national boundaries, and on the other, redefine and reify borders, particularly in terms of flows of migrant labor." Dennis Arnold & John Pickles, *Global Work, Surplus Labor, and the Precarious Economies of the Border*, 43 ANTIPODE 1598, 1599 (2011); Dennis Arnold & Kevin Hewison, *Exploitation in Global Supply Chains: Burmese Migrant Workers in Mae Sot*, 35 J. CONTEMP. ASIA 319 (2005).

49 THAI. DPT. CUSTOMS, "FREE ZONE" 2-3 (n.d.), <https://onestopservice.ditp.go.th/download/file/6.%20Free%20Zone.pdf>.

50 THAI. BOARD INV., INVESTMENT PROMOTION POLICY FOR INVESTMENT IN SEZ, https://www.boi.go.th/un/SEZ_policy. Thailand is in the process of rewriting its SEZ law. INT'L COMM'N JURISTS, THE HUMAN RIGHTS CONSEQUENCES OF THE EASTERN ECONOMIC CORRIDOR AND SPECIAL ECONOMIC ZONES IN THAILAND 38 (July 2020, revised Feb. 2021), <https://www.icj.org/wp-content/uploads/2021/03/Thailand-SEZs-Publication-2020-ENG.pdf>.

51 Arnold & Pickles, *supra* note 48, at 1615.

52 INT'L COMM'N JURISTS, *supra* note 50, at 83-6; Kanchanadiut Jaisat et al., *Migrant Workers in Thailand's Garment Factories*, CLEAN CLOTHES CAMPAIGN 1, 13 (2014), <https://cleanclothes.org/resources/publications/migrant-workers-in-thailands-garment-factories>.

53 KIMBERLY ROGOVIN, INT'L LAB. RTS. F., TIME FOR A SEA CHANGE: WHY UNION RIGHTS FOR MIGRANT WORKERS ARE NEEDED TO PREVENT FORCED LABOR IN THE THAI SEAFOOD INDUSTRY 6 (2020), https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf.

54 Piya Pangsapa & Mark J. Smith, *Political Economy of Southeast Asian Borderlands: Migration, Environment, and Developing Country Firms*, 38 J. CONTEMP. ASIA 485, 497 (2008).

55 Hannah Appel, *Offshore Work: Oil, Modularity, and the How of Capitalism in Equatorial Guinea*, 39 AM. ETHNOLOGIST 692 (2012); Hannah Appel, *Race Makes Markets: Subcontracting in the Transnational Oil Industry*, ITEMS: INSIGHTS FROM THE SOCIAL SCIENCES (Dec. 18, 2018), <https://items.ssrc.org/race->

of the history of the reliance on Indian migrant workers in the oilfields of the Gulf.⁵⁶ Another is the seafood industry, including both offshore fishing and onshore cultivation and processing. Little of this work takes place in traditional export processing zones.⁵⁷ Nonetheless, in the countries such as Thailand and Vietnam that are primary locations for export-oriented fishing and seafood processing, seafood supply chains operate under a web of trade agreements and *de jure* or *de facto* waivers from domestic business regulation.⁵⁸ The industry is notorious for its reliance on migrant labor and for the exploitation those workers face.⁵⁹

II. USING IMMIGRATION TO COMPETE FOR TRADE: CHALLENGES TO TRADE/MIGRATION THEORY AND POLICY

There is no trade without difference. If countries were all the same, there would be nothing to gain by exchange. The difficulty in establishing a fair trade system comes in deciding which kinds of inequality should be permitted as the basis for

capitalism/race-makes-markets-subcontracting-in-the-transnational-oil-industry/; HANNAH APPEL, *OIL AND THE LICIT LIFE OF CAPITALISM* (2019).

56 Andrea Wright, *From Slaves to Contract Workers: Genealogies of Consent and Security in Indian Labor Migration*, 32 *J. WORLD HIST.* 39 (2021); Andrea Grace Wright, *Migratory Pipelines: Labor and Oil in the Arabian Sea* (Jan. 2015) (unpublished Ph.D dissertation, Michigan Univ.) (on file with author).

57 In Oman, for example, the government has announced that it will open a Fisheries Industrial Zone in the Special Economic Zone in the port of Duqm to process seafood for export. IntraFish Media, *Oman-based Mega Seafood Processing Center Set for Opening in 2022*, INTRAFISH (Mar. 18, 2020), <https://www.intrafish.com/processing/oman-based-mega-seafood-processing-center-set-for-opening-in-2022/2-1-776136>. It seems likely that migrants will make up the majority of workers in the zone, given that they make up over 87% of the Omani labor force, see Françoise de Bel Air, *Demography, Migration, and the Labour Market in Oman* (Eur. Univ. Inst., Gulf Labour Markets and Migration Programme Explanatory Note 9/2015), <http://hdl.handle.net/1814/37398>.

58 LIAM CAMPLING & ALEJANDRO COLÁS, *CAPITALISM AND THE SEA: THE MARITIME FACTOR IN THE MAKING OF THE MODERN WORLD* 147-49, 268-70 (2021); for an overview of the overlapping trade regimes governing commercial fishing, see Alastair Macfarlane, *International Seafood Trade: The Rules and the Rorts*, in *WORLD TRADE IN SEAFOOD: KEY TRENDS AND ISSUES* 27, 28-9 (2005), <https://www.fao.org/3/a1293e/a1293e01.pdf>.

59 On abuses of migrant workers in the seafood export industry, see Katrina Nakamura et al., *Seeing Slavery in Seafood Supply Chains*, 4 *SCI. ADVANCES* 1, 5 (2018); SOC'Y LAB. & DEV., *PRECARIOUS WORK IN THE ASIAN SEAFOOD GLOBAL VALUE CHAIN* (2016), https://www.ituc-csi.org/IMG/pdf/precarious_work_in_the_asian_seafood_global_value_chain.pdf. On Thailand, see KIMBERLY ROGOVIN, *INT'L LAB. RTS. F., TIME FOR A SEA CHANGE* (2020), https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf; HUMAN RIGHTS WATCH, *HIDDEN CHAINS: RIGHTS ABUSES AND FORCED LABOR IN THAILAND'S FISHING INDUSTRY* (2018), <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>.

With reference to conditions on fishing boats in particular, see, for example, Melissa Marschke & Peter Vandergeest, *Slavery Scandals: Unpacking Labour Challenges and Policy Responses Within the Offshore Fisheries Sector*, 68 *MARINE POL'Y* 39, 40-2 (2016); Melissa Marschke et al., *COVID-19, Instability and Migrant Fish Workers in Asia*, 20 *MARITIME STUD.* 87, 89 (2021) (noting that in Thailand, the industrial fishing fleet uses "relatively labour-intensive technologies and operate[s] primarily in Thailand's exclusive economic zone (EEZ)"). Note that an EEZ is not an SEZ; instead, it describes the area of the ocean to which a state has preferential access for the harvesting of natural resources, usually extending 200 nautical miles from the state's land border. See U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, ch. 5: Exclusive Economic Zone.

competition, and which should be ruled out of bounds.⁶⁰ Where the treatment of workers should stand in relation to this question has been deeply contested over time. In oversimplified summary, the conflict pits countries in the Global North, calling for the establishment of baseline labor standards as a condition of fair trade, against countries in the Global South, resisting—as protectionist—efforts to restrict their ability to benefit from the lower cost of their labor force.⁶¹ In the face of the standoff, the WTO has adopted no rules that set minimum labor standards for traded goods. Instead, such matters are left to the nonbinding processes of the International Labour Organization on the global level, and to multilateral and bilateral trade agreements between countries.

Until now, however, this debate has focused on the actions of a host government vis-à-vis the price of its *own* workers. In the paradigmatic cases, the governments—under pressure from transnational firms demanding low wages—have gone below this floor, seeking to compete for trade by bringing in workers from another country where labor is even cheaper. The introduction of cross-border migrants as workers in a zone complicates traditional ways of thinking about immigration and trade. In what follows, I revisit the question of the line between a legitimate and illegitimate comparative advantage in labor, reflecting on how host governments and firms are setting the terms of, and seeking to benefit from, what happens at this intersection; and explore the implications of these actions for legal regulation, advocacy, and scholarship.

A. *The Host Government: Constructing Comparative Advantage*

The paradigmatic cases call for a reevaluation of widely accepted perspectives on the role of Global South countries in the context of international trade. A longstanding assumption in the trade and global value chain literatures has been that governments in the Global South are players with little agency in a trade game where the rules are almost entirely set by transnational corporations and the economically powerful governments of the Global North.⁶² They can deploy their natural endowments,

60 For a foundational critique of the incoherence in U.S. trade law's characterization of "normal" versus distorted markets for trade, and of the failure of the trade sanctions regime to deliver results that advance economic efficiency, fairness, or democratic participation, see Daniel K. Turullo, *Beyond Normalcy in the Regulation of International Trade*, 100 HARV. L. REV. 546 (1987).

61 For a more nuanced account, see Álvaro Santos, *The Lessons of TPP and the Future of Labor Chapters in Trade Agreements*, in MEGAREGULATION CONTESTED: GLOBAL ECONOMIC ORDERING AFTER TPP 140, 144-47 (Benedict Kingsbury et al. eds., 2019).

62 This is beginning to change as the composition of global trade evolves. For the need to reconsider this paradigm, see Chaumtoli Huq, *Charting Global Economic Inequalities and Emancipatory Human Rights Responses from the Ground up: The Tea Workers' Movement of Bangladesh*, 52 COLUM. HUM. RTS. L. REV. 372, 402-3 (2020). Rory Horner and Khalid Nadvi also call for increased attention to the agency of Global South nations in global value chains, given the increasing percentage of trade occurring between countries of the Global South rather than along traditional North-South lines. Rory Horner & Khalid Nadvi, *Global Value Chains and the Rise of the Global South: Unpacking Twenty-first Century Polycentric Trade*, 18 GLOB. NETWORKS 207 (2018). For further critique of the field of Global Commodity Chains/Global Production Networks for its failure to adequately consider factors other than chain governance as determinants of corporate behavior in supply chains, particularly the role of the state and specifically

including abundant labor at low wages, but otherwise they are at the mercy of more powerful actors. By contrast, these cases show Jordan, Malaysia, and Thailand actively—and often successfully—using legal tools to import a labor force from abroad, structured to maximize compliance with employer demands, as a way of positioning themselves in the global market for export manufacturing.⁶³

In his foundational 1817 book *Principles of Political Economy*, David Ricardo argued that in international trade, countries will specialize in creating whatever they can produce at least expense and with greatest productivity relative to their trading partners. Ricardo focused on natural resources and labor as the central variables in creating a comparative advantage. His description of the drivers of trade remains fundamental to contemporary liberal economic theory.⁶⁴ Ricardo's argument was further developed by Heckscher and Ohlin, who added capital as a key variable and argued that countries with more capital will focus on capital-intensive production, while those with more labor will base their trading advantage on labor-intensive industries, to the benefit of all.⁶⁵

Low wages are commonly cited as the primary comparative advantage of countries in the Global South. Ricardo explicitly acknowledged that countries might come by some endowments through an accident of geography or nature, but would intentionally acquire or create others.⁶⁶ In the modern global economy, most forms of comparative advantage are constructed rather than found. Yet with the exception of countries that routinely violate fundamental international labor rights (by permitting child labor and slavery, for example, or barring collective bargaining), a comparative advantage in labor is often presented as a natural phenomenon, as if low-cost workers were a resource like oil or teak. Many trade scholars assume this without explaining; some note in passing the low cost of living or low productivity as the reason for the disparity in wages. Even sharp critics of the idea that countries should not be permitted to “artificially” compete for trade on the basis of child labor, slavery, or

as to trade policy, see Azmeh & Nadvi, *supra* note 29, at 1321-22; Louise Curran et al., *The Influence of Tariff Regimes on Global Production Networks (GPNs)*, 19 J. ECON. GEOGRAPHY 873, 878 (2019). For a similar critique focused on the field's failure to consider worker resistance and agency, see Ben Selwyn, *Social Upgrading and Labour in Global Production Networks: A Critique and an Alternative Conception*, 17 COMPETITION & CHANGE 75 (2013).

- 63 On the importance of understanding the role of the state in creating and managing these arrangements, see Arnold & Pickles, *supra* note 48, at 1619.
- 64 For a review of trade textbooks concluding that Ricardo's theory is presented in them as fundamental and nearly unchallenged, see Matthew Watson, *Historicising Ricardo's Comparative Advantage Theory*, 22 NEW POL. ECON. 257, 258-59 (2017). For a survey of overall economic theories of trade, see MICHAEL J. TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE 2-6* (3d ed. 2005).
- 65 TREBILCOCK & HOWSE, *supra* note 64, at 4. The classic statement of the Heckscher-Ohlin theory of comparative advantage comes from BERTIL OHLIN, *INTERREGIONAL AND INTERNATIONAL TRADE* (1935) (building on a 1919 paper by Eli F. Heckscher).
- 66 Ricardo argued that each country would produce “those commodities for which by its situation, its climate, and its other *natural or artificial* advantages, it is adapted.” DAVID RICARDO, *ON PRINCIPLES OF POLITICAL ECONOMY* 80 (3d ed. 1817) (emphasis added). In this regard, note the irony of Matthew Watson's critique of Ricardo's reliance in his theory on a stylized version of what Ricardo presents as a “natural” and equal trading relationship between Portugal and England, which in fact was shaped by colonialism, slavery, and resulting power imbalances that made trade between the two countries anything but equally advantageous. Watson, *supra* note 64.

other extreme violations of workers' rights have a tendency to describe other forms of comparative advantage in labor cost as "genuine."⁶⁷

What the cases I discuss in this Article push us to consider is the ways in which a comparative advantage based on low-wage labor can be—indeed almost always is, at least in part—constructed by host governments: artificial rather than natural.⁶⁸ In the paradigmatic cases, host governments are doing this from scratch, by importing a labor force of migrants regulated in ways that make them more attractive to firms than local workers. The attraction derives from more than just low wages, although it is often discussed solely in those terms.⁶⁹ Indeed, some of the host governments have set lower wages for migrant labor within the zone than for local workers (as in Jordan), and have limited access to the mechanisms that ordinarily allow workers to demand compliance with their rights or bargain for a higher pay rate. In other countries, however, firms must pay more for migrants than for local workers, particularly when employers are required to bear recruitment fees and other expenses.⁷⁰

The fact that firms still prefer migrants where there are additional expenses associated with their employment illustrates that there are many dimensions of the price of labor. In the context of global manufacturing supply chains, where brands and other buyers demand swift turnaround and low prices, control and the management of risk of labor fluctuations is supremely important to a supplier's ability to turn a profit.⁷¹ Host governments in these cases, responding to the demands

67 Lance Compa, *And the Twain Shall Meet? A North-South Controversy over Labor Rights and Trade*, 1 LAB. RSCH. REV. 50, 59, 60 (1995) (comparing artificial and genuine forms of comparative advantage in labor).

68 In a work in progress, I offer a fuller examination of the various ways that states construct a comparative advantage in labor for the purposes of trade, critiquing the idea that such an advantage can usually be attributed to "natural" as opposed to "artificial" factors.

69 Bastide, *supra* note 22, at 1257 (describing the ways that migrants are structured to appeal to firms in the context of offshore production as "migration rent," and noting that "Labour costs only represent a partial dimension of migration rent").

70 Egypt is one example of a context where export manufacturers find migrants more expensive yet still desirable. See Shamel Azmeh, *Global Value Chains, Production Regimes, and the Governance of Migrant Workers*, in HANDBOOK ON THE GOVERNANCE AND POLITICS OF MIGRATION, *supra* note 22, at 218, 221. Penang, Malaysia is another, see Philip F. Kelly, *Spaces of Labour Control: Comparative Perspectives from Southeast Asia*, 27 TRANSACTIONS INST. BRITISH GEOGRAPHERS 395, 407 (2002). The H-2A agricultural worker visa in the United States also illustrates this dynamic. Skyler Simnit & Marcelo Castillo, *Use of H-2A Guest Farm Worker Program More Than Triples in Past Decade* (U.S. Department Agric. Econ. Rsch. Serv., Sept. 7, 2021), <https://www.ers.usda.gov/amber-waves/2021/september/use-of-h-2a-guest-farm-worker-program-more-than-triples-in-past-decade/>.

71 Bastide, *supra* note 22, at 1257-58; Azmeh, *supra* note 22, at 220. Some of these reductions in cost are also available through the hiring of rural migrants from within the host country, particularly where the host country has created restrictions on internal migration that parallel those in transnational migration. The Hukou system in China is one such example, *id.* at 220-221. See also AIHWA ONG, NEOLIBERALISM AS EXCEPTION 106 (2006) (noting that under the Hukou system "migrant workers . . . are discriminated against by zone authorities as if they were foreigners. Migrants must obtain a border pass, a work permit, and a temporary resident pass to work in the SEZs").

On the structuring of migrant hiring by Malaysia as a way to reduce risk for export manufacturers, see ASIAN DEVELOPMENT BANK INSTITUTE, BUILDING PARTNERSHIPS FOR EFFECTIVELY MANAGING LABOUR MIGRATION: LESSONS FROM ASIAN COUNTRIES 79 (2019), <https://www.oecd.org/migration/mig/ADBI-Labor-Migration-2019.pdf>.

of lead firms and suppliers, have designed legal regimes that sharply reduce the chances that a worker will miss a day of work, protest wages or treatment on the job, or quit. Visas tie a migrant's right to remain in the country to employment by the sponsoring firm. Migrants face deportation if they leave exploitative work or are fired for complaining. In addition to the restrictions attached to their visas, the economic reality of labor mobility in a context of extreme global inequality means that most will have incurred significant debt to cover the costs of migration.⁷² The fear of defaulting on that debt shadows their days, reinforcing the need to comply with what is asked of them in order to avoid deportation. Beyond this, migrants' bodies and intimate relationships are controlled in the zones in exchange for their ability to earn: if they have children or partners they must leave those family members behind; often, if they get pregnant, they must go home.⁷³

While these features are common to many low-wage migrant worker visa programs, in the paradigmatic cases the zonal element offers firms further opportunities to restrict migrants' freedom of movement. Employers often require migrants to reside in dormitories in or near the zone, making them available around the clock for extra work on demand.⁷⁴ In some cases, migrants are not allowed to leave the zone—or even, at times, the dormitory—at all.⁷⁵ Although employers often explain their preference for migrants as rooted in seemingly innate features like a willingness to work hard,⁷⁶ in the paradigmatic cases it is particularly clear how law and power establish the multiple levers of control that result in a compliant workforce—and how high compliance translates directly into lower cost.⁷⁷

72 For one among many explorations of migrant debt, see INTERNATIONAL ORGANIZATION FOR MIGRATION, *DEBT AND THE MIGRATION EXPERIENCE: INSIGHTS FROM SOUTH-EAST ASIA* (2019), https://publications.iom.int/system/files/pdf/debt_and_the_migration_experience_insights_from_southeast_asia_2.pdf. On migrant debt as a form of labor discipline, see Genevieve LeBaron, *Reconceptualizing Debt Bondage: Debt as a Class-Based Form of Labor Discipline*, 40 *CRITICAL SOCIO.* 763, 771-75 (2014).

73 See Bormann et al., *supra* note 39, at 28; ILO, *MIGRANT DOMESTIC AND GARMENT WORKERS IN JORDAN: A BASELINE ANALYSIS OF TRAFFICKING IN PERSONS AND RELATED LAWS AND POLICIES* 21 (2017).

74 On migrant dormitories in Jordan, see ILO, *BETTER WORK JORDAN ANNUAL REPORT 2021: AN INDUSTRY AND COMPLIANCE REVIEW* 38 (2021), https://betterwork.org/wp-content/uploads/2021/04/BWJ_12-annual-report_EN_.pdf. In Malaysia, see Peter Gibbon et al., *An Assessment of the Impact of Export Processing Zones and an Identification of Appropriate Measures to Support their Development* 1, 40 (Danish Inst. Int'l Stud. 2008), https://www.diis.dk/files/media/publications/import/assessment_of_the_impact_of_export_processing_zones.pdf. In Thailand, see Jaisat, *supra* note 52, at 13.

75 See, e.g., Jaisat *supra* note 52, at 13 (re this phenomenon in Thailand); *BETTER WORK JORDAN*, *supra* note 34, at 26.

76 Jennifer Gordon & Robin Lenhardt, *Rethinking Work and Citizenship*, 55 *UCLA L. REV.* 1161, 1175-76 (2008); ROGER WALDINGER & MICHAEL I. LICHTER, *HOW THE OTHER HALF WORKS: IMMIGRATION AND THE SOCIAL ORGANIZATION OF LABOR* 160-67 (2003); Leticia M. Saucedo, *The Employer Preference for the Subservient Worker and the Making of the Brown Collar Workplace*, 67 *OHIO ST. L.J.* 961, 978-79 and *passim* (2006).

77 Some might argue that we should not be troubled by these conditions, since employment in the zones is freely chosen by migrants and offers them the opportunity to earn significantly more than they could at home. A full discussion of the concepts of choice and coercion in the context of labor migration is beyond the scope of this Article. In brief, however, the fact that most migrants are not physically forced into paid labor abroad does not eliminate concerns about the treatment they face during the immigration process and while on the job. Individuals may exercise agency in the decision to migrate while simultaneously experiencing various degrees of structural coercion and labor abuse. In a broad

As noted above, WTO rules do not address labor standards with regard to either local or migrant workers. This battle was fought and lost in the 1990s and early 2000s, in the context of the Doha round of WTO negotiations.⁷⁸ Advocates and governments in the Global North argued that the presence of forced labor, child labor, and other serious infringements of international labor standards were examples of social dumping that should be prohibited by the global trade regime.⁷⁹ Their counterparts in the Global South responded that the price of labor in their countries represented a natural comparative advantage, and that efforts to prevent them from competing on this basis constituted protectionism masquerading as care for workers.⁸⁰ The Doha round collapsed without a resolution on the labor standards issue. Attention then turned away from the WTO to multilateral and bilateral trade agreements. Most U.S. and EU trade accords now bar labor under conditions that violate fundamental labor standards established by the ILO or (in some cases) the country's own workplace law,⁸¹ although the usual assessment is that such clauses have been ineffectual in creating change in actual working conditions.⁸²

sense, for low-wage migrants, the decision to migrate is usually made against the backdrop of a lack of economic and social alternatives. The decision is operationalized through a process of recruitment that routinely includes misinformation about conditions and potential earnings, fraud, illegal fees, and usurious loans. While labor abuse is endemic in the positions available to temporary migrant workers, they often endure it silently, knowing that complaints will result in deportation, which would leave them burdened with the debt they incurred to migrate and further than ever from meeting their economic goals. For further discussion, see Jennifer Gordon, *Regulating the Human Supply Chain*, 102 IOWA L. REV. 445, 448-50, 470-74 (2017); Kathleen Kim, *Beyond Coercion*, 62 UCLA L. REV. 1558 (2015); Valeria Ottonelli & Tiziana Torresi, *When is Migration Voluntary?*, 47 INT'L MIGRATION REV. 783 (2013); Jean Allain et al., *Forced Labour's Business Models and Supply Chains* (Joseph Rowntree Foundation, May 2013), <http://www.jrf.org.uk/sites/files/jrf/forced-labour-business-full.pdf>.

78 WTO, TRADE AND LABOUR STANDARDS: A DIFFICULT ISSUE FOR MANY WTO MEMBER GOVERNMENTS (Doha WTO Ministerial 2001: Briefing Notes), https://www.wto.org/english/thewto_e/minist_e/mino1_e/brief_e/brief16_e.htm.

79 See, e.g., Compa, *supra* note 67, *passim*. The European Commission defines "social dumping" as "The practice whereby workers are given pay and / or working and living conditions which are sub-standard compared to those specified by law or collective agreements in the relevant labour market, or otherwise prevalent there." Eur. Comm'n, Migration & Home Aff., *Social Dumping*, EUROPEAN MIGRATION NETWORK GLOSSARY, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/social-dumping_en.

80 See, e.g., Martin Khor, *The World Trade Organisation, Labour Standards and Trade Protectionism*, THIRD WORLD RESURGENCE 30 (May 1994).

81 Kevin Kolben, *A Supply Chain Approach to Trade and Labor Provisions*, 5 POL. & GOVERNANCE 1, 60 (2017); Kerry Rittich, *Trade Agreements in the Twenty-First Century: Rethinking the Trade-Labor Linkage*, in WORLD TRADE AND INVESTMENT LAW REIMAGINED 203, 205 (Álvaro Santos et al. eds., 2019). Rittich notes that such labor provisions generally "oblige[] states not to derogate from domestic labor standards to gain a competitive advantage in trade" and also require compliance with four fundamental labor rights set out in the ILO Declaration on Fundamental Principles and Rights at Work, including bans on child labor, forced labor, and discrimination, and mandating freedom of association and the right to collective bargaining. Increasingly, health and safety and minimum wage standards are included as well. At the same time, she argues that the inclusion of these mandates has had little effect on actual working conditions; at 205-10.

82 See, e.g., *id.* at 206-8. Using as examples Mexico during the negotiation of the U.S.-Mexico-Canada Agreement and Vietnam during the negotiation of the proposed Trans-Pacific Partnership, Álvaro Santos argues that the greatest possibility of genuine improvement may grow from changes that countries are required to make to their domestic labor laws as a condition for signing trade agreements; Santos,

The line between a legitimate and illegitimate comparative advantage in labor is thus generally drawn at the point where governments permit severe forms of discrimination and abuse that violate international and/or domestic law. This emphasis on the extreme case distracts attention from the routine ways in which host governments control labor costs in zones *without* engaging in violations of widely recognized norms or domestic law, using affirmative legal standards and discretion regarding enforcement.⁸³ Setting migrants aside for the moment, a list might begin with the regulation of wages for local workers. Some host governments have declined to set national or sectoral minimum wages.⁸⁴ Others have established low minimum wages nationwide, or legislated lower minimum wages for local workers inside zones than outside them (again, Jordan is an example here).⁸⁵ In these situations, legal wages may be below the actual cost of living, leaving workers unable to cover basic expenses for themselves and their families.⁸⁶ Laws that shape permissible hours, safety standards and other features of work within zones are also price-setting tools.⁸⁷ With all labor standards, the presence or absence of effective enforcement mechanisms is as important as the laws on the books. Finally, regimes that functionally permit discrimination in the labor market based on race, gender, and other aspects of identity further depress the price of particular groups of workers. This plays a significant role in the terms of their attractiveness as a labor force to manufacturers in global supply chains.⁸⁸

supra note 61; Álvaro Santos, *Reimagining Trade Agreements for Workers: Lessons from the USMCA*, 113 AJIL UNBOUND 407, 408-9 (2019).

- 83 The focus on the extreme rather than the routine treatment of workers is a recurring danger in the realm of labor standards. Noting this with concern, Hannah Appel urges a focus not on the scandals of global capitalism, but on its licit construction through law and private contract. APPEL, *supra* note 17 at 21-2, 151; *see also* JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANTS RIGHTS* 15 (2005).
- 84 Until recently, Ethiopia—the latest entrant on the global stage for garment export production—had no minimum wage at all; its workers’ wages are the lowest in the world. *Report: Ethiopia’s Garment Workers are World’s Lowest Paid*, CNBC (May 7, 2019, 5:47 AM), <https://www.cnbc.com/2019/05/07/report-ethiopia-garment-workers-are-worlds-lowest-paid.html>.
- 85 The law in Bangladesh, for example, carves out the SEZ system from ordinarily applicable labor law. Cotula, *supra* note 18, at 438. For an argument that such carve-outs violate WTO rules, see Steve Charnovitz, *Environmental and Labour Standards in Trade*, 15 *WORLD ECON.* 335, 343 (1992).
- 86 The Asia Floor Wage proposal is an effort to remedy this situation by calculating, and bargaining for, a living wage in the garment industry across Asia. Anannya Bhattacharjee & Ashim Roy, *Bargaining in the Global Commodity Chain: The Asia Floor Wage Alliance*, in *HANDBOOK OF THE INTERNATIONAL POLITICAL ECONOMY OF PRODUCTION* 334 (Kees van der Pijl ed., 2015).
- 87 For example, in Thailand, the legally permissible workweek is 84 hours long, consisting of six 8-hour regular days plus 36 hours of overtime. Arnold & Hewison, *supra* note 48, at 324; Thailand, Labor Protection Act, 1998 (as amended), B.E. 2541, §§ 23-25, 27-29, 61-63. Migrant workers in the zones regularly exceed these hours. *Id.* at 324.
- 88 On gender and the construction of comparative advantage, see ALESSANDRA MEZZADRI, *THE SWEATSHOP REGIME: LABOURING BODIES, EXPLOITATION, AND GARMENTS MADE IN INDIA* 76 (2017) (arguing that in East Asia, governments have created a comparative advantage in labor by selling manufacturers on the idea of Asian women as low-cost workers, based on the lower value placed on women’s labor and on the myth of the submissive Asian girl/woman. Women “entered the sweatshop *because of that* difference, as a *source of comparative advantage*, a process greatly mediated by the state”; citations omitted). *See also* MELISSA WRIGHT, *DISPOSABLE WOMEN AND OTHER MYTHS OF GLOBAL CAPITALISM* (2006); Matthias Busse & Christian Spielmann, *Gender Inequality and Trade*, 14 *REV. INT’L ECON.* 362, 362 (2006) (with

Labor standards themselves are only part of the picture. Host states take action in other domains that affect the price of labor as well. For example, some governments construct dormitories in or near zones, and firms may require workers to live there. Rent is at times lower than housing on the private market, but workers pay the price in subjugation to greater employer control, particularly with regard to irregular schedules involving long hours of work on demand.⁸⁹ Some governments encourage internal migration to zones from rural areas, but only by workers who leave their children behind.⁹⁰ In these cases, a corporation does not have to pay enough to cover the cost of social reproduction, i.e., what workers and their families need to survive, because those costs are underwritten by the government (in the first case), by the worker's family and community taking care of children left behind in the home village (in the second), or by the workers themselves, as the work takes resources from their bodies without paying enough to replenish them.⁹¹ Where transnational migrants are concerned, both the host state and corporations benefit greatly from the fact that the majority of the costs of social reproduction—education, healthcare, housing, and so on—are paid, if at all, in the home country, whether by the origin country government, by family and communities at home (particularly through the unpaid labor of women), or, often, absorbed by the workers themselves, as they return home to live once they approach middle age and are no longer attractive to firms abroad, often worn out and in ill health from the demands of labor in the zones.⁹²

I examine this set of questions more fully in a future article.⁹³ There, I use the paradigmatic cases as the starting point for an exploration of the range of ways in which host governments are responding to the demands of transnational firms by actively constructing a comparative advantage in labor, arguing that this is a pervasive

regard to an empirical analysis of a sample of 92 countries, reporting that “The results indicate that gender wage inequality is positively associated with comparative advantage in labor-intensive goods, i.e., countries with a larger gender wage gap have higher exports of these goods”).

89 This is the case with the “hukou” or internal migration system in China, Pun Ngai, *Gendering the Dormitory Labor System: Production, Reproduction, and Migrant Labor in South China*, 13 *FEMINIST ECON.* 239, 240 (2007).

90 On social reproduction in the context of internal migration, see, for example, Alpa Shah & Jens Lerche, *Migration and the Invisible Economies of Care: Production, Social Reproduction and Seasonal Migrant Labour in India*, 45 *TRANSACTIONS INST. BRIT. GEOGRAPHERS* 719, 721 (2020); Alessandra Mezzadri, *On the Value of Social Reproduction: Informal Labour, the Majority World and the Need for Inclusive Theories and Politics*, 2 *RADICAL PHIL.* 33 (2019).

91 For a particularly stark example of the toll on workers' bodies resulting from export firms' failure to pay the costs of social reproduction, see Nina Ebner & Kelsey Mae Johnson, *Blood and Borders: Geographies of Social Reproduction in Ciudad Juárez-El Paso*, 111 *ANNALS OF AM. ASS'N GEOGRAPHERS* 498 (2021) (arguing that maquiladora workers in Mexico near the U.S. border increasingly sell their blood to plasma centers to compensate for wages inadequate to meet the costs of social reproduction).

92 On the ways that women's unpaid labor underwrites wages in global supply chains, see STEPHANIE BARRIENTOS, *CAPTURING THE GAINS? GENDER AND WORK IN GLOBAL VALUE CHAINS* 97 and *passim* (2019). On social reproduction in the context of transnational migration, see, for example, Rhacel Salazar Parreñas, *The Reproductive Labour of Migrant Workers*, 12 *GLOB. NETWORKS* 269 (2012); Eleonore Kofman, *Rethinking Care Through Social Reproduction: Articulating Circuits of Migration*, 19 *SOC. POL.* 142, 144 (2012); Shah & Lerche, *supra* note 90, at 721.

93 Gordon, *supra* note 68.

practice rather than an exception and should be understood as a continuum rather than as an artificial/natural binary. I then raise questions regarding where we should draw the line between legitimate and impermissible actions by governments in this regard, and—once it is drawn—how best to enforce it. Where countries are importing a labor force of migrants, structured to fit employers' specifications, are they committing an unfair trade practice? If so, should this be treated differently than the myriad ways in which host governments use law to shape the local workforce so that it is more attractive to potential investors?

In considering these issues, I argue, it is inadequate to consider the actions of host governments in a vacuum. The options at their disposal are shaped by the legacies and ongoing effects of colonialism and imperialism, which have established relationships of structural inequality that set the background terms on which nations in the Global South compete for trade and investment.⁹⁴ Critically, it is firms at the top of supply chains that drive this dynamic, deepening competition between governments seeking to capture investment in export manufacturing. An examination of the ways in which host governments craft a comparative advantage in labor is only justified in the context of a critique of the construction of the global system as a whole.

B. The Firm: Double Labor Arbitrage

When host governments use migrants to construct a comparative advantage in labor, they open the door for export manufacturing firms to adopt a previously unavailable strategy: relocating to a country where production is cheaper, and then hiring migrants present there from an even lower-wage country. This double move challenges the binary terms on which corporate decision-making about geographic location in the global economy is discussed. The conventional understanding is that some types of firms are “footloose,” while others are locally rooted. Footloose corporations—typically in manufacturing, but increasingly also in services such as call centers, IT, and back office aspects of law, medicine, and accounting—will shift production to countries where wages and other costs are lower. Firms that must do their work in a specific place—for example, those engaged in caregiving, construction, and hospitality—may pursue similar reductions in labor cost by seeking out an immigrant workforce in that location.⁹⁵

In the paradigmatic cases, however, we see the little-examined situation where firms are working both sides of the binary at the same time. I characterize this as

94 The scholars who write in the Third World Approaches to International Law (TWAAIL) tradition have made this point repeatedly. See, e.g., Anthony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-century International Law*, 40 HARV. INT'L L.J. 1 (1999); B.S. Chimni, *The World Trade Organization, Democracy & Development: A View from the South*, 40 J. WORLD TRADE 5 (2006); James Thuo Gathii, *TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography*, 3 TRADE L. & DEV. 26 (2011). See also Anna Tsing, *Supply Chains and the Human Condition*, 21 RETHINKING MARXISM 148, 151 (2009); MEZZADRI, *supra* note 88, at 104-5.

95 GORDON, *supra* note 83, at 44.

“double labor arbitrage.”⁹⁶ The term “arbitrage”—to buy something in one market and sell it in another, making a profit from the difference in price between them⁹⁷—is most often applied to currency and securities. But any commodity can be arbitrated, including labor.⁹⁸ Because arbitrage is often related to the purchase and sale of foreign currency, the term has come to imply that the price differential is the result of crossing national borders. Labor arbitrage, in the sense that I use it, adopts that implication: to arbitrage labor is to purchase it from a country where it costs less in order to reap its value in higher-priced markets.⁹⁹

Double labor arbitrage is an attractive strategy for manufacturers in global supply chains for several reasons. The cost of labor is, of course, a major part of the decision as to where to locate production. Even after moving to a place with lower labor costs, in order to remain competitive, firms remain alert to the possibility of less expensive alternatives. When a new low-wage powerhouse emerges, the threat is that firms will pick up and move operations there: from the U.S. to Mexico, and then Vietnam, and on to Bangladesh, with Ethiopia waiting in the wings. Yet labor costs are far from the only factor in firm location decisions. The terms of trade and investment regimes, geopolitics, domestic regulations, proximity of suppliers, demands from buyers,¹⁰⁰ and quality of infrastructure are only some of the key considerations. Once a manufacturer has begun production, relocation to a new place carries significant costs. For a lead firm, it is expensive to adapt to a new set of logistical challenges, conform to a new regulatory environment, and train new suppliers to meet production specifications. For suppliers, uprooting operations from one country and reestablishing them in another requires investing in new buildings, equipment, and workers, and often finding new sources for raw materials and other inputs as well.¹⁰¹

96 Lois Bastide refers to this strategy as “combined relocation.” Bastide, *supra* note 22, at 1259.

97 Merriam Webster defines arbitrage as “the nearly simultaneous purchase and sale of securities or foreign exchange in different markets in order to profit from price discrepancies.” *Arbitrage*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/arbitrage>. See also ONG, *supra* note 3, at 160.

98 On the history of the term “labor arbitrage,” see *id.* at 160-1. For an early use, see Stephen S. Roach, *More Jobs, Worse Work*, NEW YORK TIMES (Jul. 22, 2004), <https://www.nytimes.com/2004/07/22/opinion/more-jobs-worse-work.html> (using the phrase “global labor arbitrage” to describe the process through which “American companies are now replacing high-wage workers here with like-quality, low-wage workers abroad”). Regarding labor arbitrage by footloose corporations in the context of supply chains, see Milisz Miszczyński, *Labor Arbitrage: The Lifecycle of a Global Production Node*, 5 J. ORGANIZATIONAL ETHNOGRAPHY 106 (2016).

99 The purest form of labor arbitrage is that of the transnational labor recruiter, who contracts workers in a low-wage country and sells their labor in a higher-wage one, profiting from the difference. Gordon, *Regulating the Human Supply Chain*, *supra* note 77, at 451-52, 458-59, 461-62. On forms of labor arbitrage, see Bastide, *supra* note 22, at 1259-61; see also APPEL, *supra* note 16, at 186 (“In paying and scheduling employees differently according to nationality, the industry is responding to a specific kind of difference—global inequality between nations—rendered profitable. In assembling a mobile transnational workforce, companies take difference into consideration, work with it, and profit from it, while ensuring they are absolved from responsibility for promoting or reproducing it.”).

100 On buyer demands as a key factor in determining supplier location, see Azmeh & Nadvi, *supra* note 29, at 1329, 1335.

101 To add to the complexity, in many industries lead suppliers are not firms with a single location, but sophisticated corporate entities with headquarters in a developing country (say in China or India) and

How much better, then, from the firm's perspective, to bring lower-cost workers to the work, particularly on terms that allow significantly more control than can be achieved with local workers.¹⁰² The second move—importing workers from abroad into a location of production already chosen for its “comparative advantage” in low-cost labor—is double labor arbitrage. Through double labor arbitrage, mobile capital can further reduce labor costs while avoiding the expenses associated with relocating its investment. Double labor arbitrage takes place in a number of ways. For example, a multinational company in wealthy country A may contract with a supplier in relatively low-wage country B, which in turn hires undocumented immigrants present in country B from even lower-wage country C.¹⁰³ By contrast with this extralegal scenario, in the paradigmatic cases host governments have created legal arrangements that explicitly make double labor arbitrage available to firms in special economic zones.

In the paradigmatic cases, the benefits of double labor arbitrage for firms come at a high cost for migrant workers. The flip side of the “freedom” coin offered to firms is the “unfreedom” of migrants; it is precisely migrants’ subordination under

production facilities spread out across the region or the world, among which they shift jobs according to buyer preferences, the availability of inputs, and the level of tariffs. For a description of this decision-making process in the context of “Greater Chinese” garment manufacturers, see Azmeh & Nadvi, *supra* note 29, at 1328–29, 1335. These firms themselves subcontract aspects of production to other firms around the world.

102 Shamel Azmeh has studied garment firm decision-making regarding whether to locate production in zones in Egypt or Jordan, both with similar preferential trade access to the U.S. market, see Shamel Azmeh, *Labour in Global Production Networks: Workers in the Qualifying Industrial Zones (QIZs) of Egypt and Jordan*, 14 *GLOB. NETWORKS* 495, 505–7 (2014). Egypt had a longstanding garment-production industry, relatively low wages, and a substantial local workforce experienced in manufacturing, while Jordan had minimal garment export history and a dearth of experienced local workers. Nonetheless, Azmeh finds that firms overwhelmingly preferred Jordan because of access to controllable and inexpensive migrant labor there, and in particular because migrant workers in Jordan were not able to protest conditions or leave the job at will, by contrast with the reliance on local workers in Egypt who were able to express their dissatisfaction with wages and hours through high absenteeism and turnover rates.

103 See, e.g., Terray, *Le travail des étrangers en situation irrégulière*, in *SANS PAPIERS: L'ARCHAÏSME FATAL* (Balibar et al. eds., 2019), cited in Bastide, *supra* note 22, at 1259 (discussing the use of undocumented workers by firms in France as “on-site relocation”); Mark Anner, *The Struggle for Work with Dignity Through Broad Campaigns and Social Alliances*, *OPENDEMOCRACY* (Oct. 21, 2019), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/struggle-work-dignity-through-broad-campaigns-and-social-alliances/> (highlighting the role of informal workers and of internal and transnational migrants in global supply chains).

Double labor arbitrage can also take place without transnational migration. Around the world, firms in export processing zones rely on internal migrants from rural areas as their primary workforce. Sri Lanka, Bangladesh, India, Mexico, China, and Morocco (among many others) are examples here. Many of the factors that depress the cost of transnational migrant labor apply equally to those who migrate internally, including the role of labor recruiters and the burden of debt. In some countries, such as China, there are restrictions on internal movement that raise further issues analogous to international migration. For a discussion of these restrictions, see, for example, Kam Wing Chan, *The Household Registration System and Migrant Labor in China: Notes on a Debate*, 36 *POPULATION & DEV. REV.* 357 (2010); Ngai, *supra* note 89. In countries without restrictions on internal movement, the fact that internal migrants are still citizens and entitled to whatever protections citizen workers are granted within the zone, and that no visa is required, may reduce the surplus generated by their employment compared to that of noncitizen workers.

a regime of strict control that is the source of their value in the zone.¹⁰⁴ In all of the ways noted above, the terms of their admission to the host country require them to be responsive to employer demands and accept whatever terms of work are offered.¹⁰⁵ And so far I have only emphasized the legal elements of the regimes that host governments have designed to create a comparative advantage in labor. Routine features of migrant work in the zones also include pervasive under-payment and nonpayment of wages, dangerous working conditions, sexual harassment, and physical violence, among others.¹⁰⁶ When host governments offer supplier firms a workforce that cannot take a day off, refuse to work overtime, change firms, or quit outright, it gives them a way to mitigate the risk of worker resistance that could impede their ability to meet the requirements set by buyers.¹⁰⁷ All of this unfreedom increases the profit available to firms producing in the zone.

III. TRADE AS A WAY TO CONTROL IMMIGRATION: ZONE AS FENCE, ZONE AS “GIFT”

Host governments and firms, it turns out, are not the only actors that see benefits in bringing trade and migration together. And fomenting trade is not the only goal in play. The previous section analyzed cases in which governments in the Global South seek to *encourage trade* through the provision of immigrants as workers in zones in their own countries. In this section, I turn to a distinct set of situations in which

104 See, e.g., Bastide, *supra* note 22, at 1256-57; ONG, *supra* note 3, at 79, 124. Although I use the term “unfreedom,” I do not believe that migrants in these contexts are without agency. The decision to migrate, although often made under circumstances of extremely limited options, is itself an exercise of agency. The ability to leave home for another country, and the access to employment that comes with it, may allow women to escape some traditional roles and expectations, and LGBTQ+ people may be able to live openly in ways less possible at home. (At the same time, these possibilities are constrained by the policing of bodies, sexuality, and mobility that is a common feature of migrant life in a zone.) Migrants’ earnings may allow them or their family members to access economic opportunities that would be inaccessible on the wages they could earn at home. For an exploration of transnational migration to work in export zones as an exercise of agency, see Nadia Afrin, ‘I wish I would never have to wake up again’: *Material Conditions and Psychological Well-being of Bangladeshi Women Garment Workers in Jordan* 19-21, in FEMINIST PARTICIPATORY ACTION RESEARCH REPORT (Aug. 2019), https://gaatw.org/publications/Safe_and_Fair_FPAR/FPAR_Report_Jordan.pdf. For similar observations regarding internal migration to export zones as a way to escape relationships of dependence and subjugation, see Grace Carswell & Geert De Neve, *Labouring for Global Markets: Conceptualising Labour Agency in Global Production Networks*, 44 GEOFORUM 62, 64, 68 (2013).

105 As the Merriam-Webster definition of arbitrage cited above indicates in referring to the “nearly simultaneous” nature of the transactions, a key aspect of arbitrage in the financial context is speed. Rapid turnaround is a mechanism to manage the risk that the price could fall in the sale market before the exchange is completed. In the context of double labor arbitrage, the restrictions on the freedom of migrants operate as an equivalent risk-management mechanism, ensuring that they will not be able to demand greater compensation on arrival. I thank my colleague Caroline Gentile for this observation.

106 See *supra* Part I.

107 My analysis here is consistent with the call by the Institute for Global Law and Policy (IGLP) for closer examination of “legal entitlements and their role in the creation and distribution of value [that] pervade GVCs” (GVC refers to Global Value Chains). IGLP Law & Global Production Working Group, *The Role of Law in Global Value Chains: A Research Manifesto*, 4 LONDON REV. INT’L L. 57, 70 (2016). While the IGLP manifesto touches on most areas of legal regulation, immigration law is not mentioned.

policymakers in the Global North seek to *discourage immigration* through the use of zones in the Global South to employ would-be migrants at home or in transit, to deter them from pursuing opportunity elsewhere. Unlike the paradigmatic cases, which highlight the construction of comparative advantage as a state strategy to generate investment and double labor arbitrage as a firm strategy to generate profit, the settings I explore in this section are about political goals more than monetary ones.

The UK and European Union have been particularly active in advocating for free trade zones in the Global South as a policy tool to limit emigration to the Global North, whether by citizens of the country where the zone is located or by migrants or refugees temporarily located in that country. At times the field has also been joined by United Nations agencies and international financial and development institutions, as well as private consultants. With the exception of Jordan, the target countries here are different from those discussed earlier in this Article, and by contrast with the paradigmatic cases, proponents largely come from the Global North rather than from within the countries in the Global South where the zones are to be established. As to economic migrants (or would-be migrants), employment in zones is championed as a strategy to deter emigration: zone as fence. In a subset of these cases, generally where the workers in question are refugees or victims of a disaster, employment in zones is presented as a humanitarian intervention: zone as gift. Closer examination, however, reveals that the intent of the “gift” is really to build a fence, i.e., to deter secondary movement by the refugees or displaced people from their host country in the Global South to the Global North.

A. Zone as Fence

The contention that export processing zones in the Global South should be used to curtail emigration from the countries where they are located is in some ways old news. At least since the early 1990s, policymakers have argued that trade with migrant origin countries will create jobs that will attract would-be migrants.¹⁰⁸ If those jobs are concentrated in zones, the assertion is, the zones will become destinations for those who would otherwise leave for the Global North. The economic theory undergirding the idea that zones will reduce the emigration of citizens from the country where they are located and absorb transit migrants requires both explanation and interrogation. The underlying assumption is that trade is a substitute for migration: increased investment in export production will create job opportunities in migrant-

108 See notes on arguments for NAFTA, *supra* notes 96-8; *infra* notes 112-16. The idea began to be discussed in academic circles in the 1980s. See, e.g., Francisco Rivera-Batiz, *Can Border Industries Be a Substitute for Immigration?*, 76 AM. ECON. REV. 263 (1986) (concluding at 268 that contrary to policy claims, export manufacturing in Mexico at the U.S. border was likely to spur rather than deter emigration). Its traces can be found considerably earlier, for example in Mexico’s 1965 Border Industrialization Program, see generally Anna-Stina Ericson, *An Analysis of Mexico’s Border Industrialization Program*, 93 MONTHLY LAB. REV. 33-40 (1970), which constructed export factories on the Mexico side of the U.S. border that were intended to employ migrants returning to Mexico from the U.S. following the end of the Bracero program. Although not precisely a zone-as-fence initiative, the Program’s emphasis on zones as a buffer to absorb excess labor capacity was resurrected in the arguments for NAFTA.

origin countries that will induce would-be migrants to forgo the search for work in another country. This is consistent with classical economic models, which posit that migration will decrease as trade increases.¹⁰⁹ It is also intuitive: if what people migrate for is work, providing it at home should keep them from seeking it abroad.

Today, however, most economists acknowledge that the theory is unsupported by empirical evidence. The vast majority of studies show the opposite: trade is a complement to migration, i.e., an increase in trade tends to generate a corresponding increase in out-migration, at least in the short and medium term.¹¹⁰ Some scholars posit that this complementary relationship will continue until incomes in the origin country reach a certain level, at which point migration will begin to fall; this is referred to as the “migration hump.”¹¹¹ The apparent short- and medium-term

109 For an explanation of the classical theory, which is based on the Heckscher-Ohlin-Samuelson model, see ASSAF RAZIN & EFRAIM SADKA, *LABOR, CAPITAL, AND FINANCE* 14-27 (2001); Jagdeep S. Bhandari, *Migration and Trade Policies: Symmetry or Paradox?*, 6 J. INT’L BUS. & L. 17, 28-30 (2007). When applied to the immigration context, the Heckscher-Ohlin-Samuelson framework would suggest that international trade and migration are substitutes. Free trade alone erodes the incentives to migrate and free labor mobility alone would eliminate the basis for mutually profitable trade. *Id.* at 30. Bhandari explains this while acknowledging that the reality has proven considerably more complex. *Id.* at 28.

110 For scholarship arguing that trade and migration are complements rather than substitutes in the short and medium term, see, for example, Nadia Campaniello, *The Causal Effect of Trade on Migration: Evidence from Countries of the Euro-Mediterranean Partnership*, 30 LAB. ECON. 223 (2014); Gabriel Felbermayr et al., *Migration, International Trade, and Capital Formations: Cause or Effect?*, in HANDBOOK OF THE ECONOMICS OF INTERNATIONAL MIGRATION 913 (Barry R. Chiswick & Paul W. Miller eds., 2015); Hein de Haas, *Turning the Tide? Why Development Will Not Stop Migration*, 38 DEV. & CHANGE 819 (2007); David Khoudour-Castéras, *Unexpected Effects of the Washington Consensus: Trade Liberalization and Migration Flows in Latin America*, 24 INT’L TRADE J. 440 (2010); Philip Martin, *Trade and Remittances: Low- and High-Skilled Workers*, 1 REMITTANCES REV. 37 (2016); Rivera-Batiz, *supra* note 104; Christopher Rudolph, *Chapter 3: Immigration and the Political Economy of Security: Is Free Trade the Answer?*, in HANDBOOK ON MIGRATION AND SECURITY 63 (Philippe Bourbeau ed., 2017); Dambar Uprety, *The Impact of International Trade on Emigration in Developing Countries*, 26 J. INT’L TRADE & ECON. DEV. 907 (2017). See also sources cited *infra* note 96 on NAFTA as a driver of Mexico-U.S. migration. *But see* Patricio Aroca & William Maloney, *Migration, Trade, and Foreign Direct Investment in Mexico*, 19 WORLD BANK ECON. REV. 449 (2005) (finding that as to *internal* migration within Mexico, trade has a significant negative effect on migration; extrapolating to reach the same conclusion regarding Mexico-U.S. migration). For overviews of the research in this area, see Michael Clemens, *Does Development Reduce Migration?*, in INTERNATIONAL HANDBOOK ON MIGRATION AND ECONOMIC DEVELOPMENT 152 (Robert E.B. Lucas ed., 2014); Hillel Rapoport, *Migration and Trade*, in HANDBOOK OF MIGRATION AND GLOBALISATION 173, 189 (Anna Triandafyllidou ed., 2018) (concluding that “the empirical literature overwhelmingly agrees that trade and migration are mutually reinforcing in most cases”). Migration is determined by many factors, and scholars in the field acknowledge that it is difficult to prove conclusively that trade has—or has not—contributed to migration in a given case. See, e.g., Hein de Haas, *The Determinants of International Migration: Conceptualising Policy, Origin and Destination Effects*, 32 INT’L MIGRATION INST. NETWORK 2 (2011). On the complex relationship between migration and development more generally, see Hein de Haas, *Paradoxes of Migration and Development, passim* (Int’l Migration Inst. Network, Working Paper No. 157, 2019).

111 Michael Clemens, *Does Development Reduce Migration?*, in INTERNATIONAL HANDBOOK ON MIGRATION AND ECONOMIC DEVELOPMENT, *supra* note 110, at 152. For the migration hump theory, see Philip Martin & J. Edward Taylor, *The Anatomy of a Migration Hump*, in DEVELOPMENT STRATEGY, EMPLOYMENT, AND MIGRATION: INSIGHTS FROM MODELS 43 (J. Edward Taylor ed., 1996). Hein de Haas refers to a similar model as “migration transition theory,” see Hein de Haas, *Migration Transitions: A Theoretical and Empirical Inquiry into the Developmental Drivers of International Migration* 22-3 (Oxford Int’l Migration Inst., Working Paper No. 24, 2010).

complementarity between trade and migration is spurred by a combination of factors. One is that trade displaces some workers in origin countries and provides job opportunities for others. Those displaced (who tend to be older and/or male, particularly in agriculture) do not necessarily have the characteristics that export factories are looking for in their employees (who tend to be young and female), and so they may migrate transnationally in search of alternatives.¹¹² Another is that even for those who find work in export zones, the increased income seems likely to fund migration rather than replace it. Aspirations also rise as development increases, spurring a desire to migrate in order to earn more in order to achieve new goals.¹¹³ Finally, the initial uprooting that accompanies internal migration to work in free trade zones, and the connections that internal migrants make there, may make the next step of transnational migration more likely.¹¹⁴

The deployment of this trade-as-substitute for migration argument—and its empirical undoing—is famously evident in the arc of the North American Free Trade Agreement. NAFTA, signed in 1994, was proposed in part as a way to curtail Mexico-U.S. migration.¹¹⁵ The premise was that increased trade with Mexico, and the establishment of maquiladoras in free trade zones there, would reduce Mexican immigration to the United States by spurring the creation of jobs in Mexico that Mexicans would prefer to the journey north.¹¹⁶ NAFTA proved to be a prime illustration of the ways in which trade spurs immigration rather than stemming it. NAFTA decimated small farms in Mexico, leaving families without income in villages where they had lived for generations.¹¹⁷ NAFTA resulted in a surge in immigration

112 Philip Martin, *Migration, Trade and Remittances: Low-and-High-Skilled Workers*, 1 REMITTANCES REV. 37, 40-1 (2016).

113 Hein de Haas, *A Theory of Migration: The Aspirations-capabilities Framework*, 9 COMPAR. MIGRATION STUD. 1 (2021).

114 This thesis was originally proposed in SASKIA SASSEN, *THE MOBILITY OF LABOR AND CAPITAL* 94-125 (1988). For an exploration of the ways in which work in border export processing zones facilitates onward migration in Tangiers-Tetouan, Morocco, see Hennebry et al., *supra* note 24, at 78; Kathryn Kopinak et al., *Wages, Integration, Migration Motivation: Cases of Export Industry Employees in Tijuana and Tangiers-Tetouan*, 8 COMPAR. MIGRATION STUD. 1, 2 (2020).

115 There are oft-quoted remarks to this effect by Mexican President Salinas de Gortari (“We want to export goods, not people” and “Do you want our tomatoes or our tomato pickers?”) and U.S. President Bill Clinton (“there will be less illegal immigration because more Mexicans will be able to support their children by staying home”) at the time NAFTA was being negotiated. See e.g., Amaranta Melchor Del Río & Susanne Thorwarth, *Tomatoes or Tomato Pickers? Free Trade and Migration Between Mexico and the United States*, 12 J. APPLIED ECON. 109, 111 (2009); the quote about tomato pickers is cited in Jeff Faux, *Mexico’s Hopeful New President*, THE AM. PROSPECT (Fall 2018), <https://prospect.org/power/mexico-s-hopeful-new-president/>.

116 Patricia Fernández-Kelly & Douglas S. Massey, *Borders for Whom? The Role of NAFTA in Mexico-U.S. Migration*, 610 ANNALS AM. ACAD. POL. & SOC. SCI. 98 (2007); Philip Martin, *U.S.-Mexico Migration, in NAFTA REVISITED: ACHIEVEMENTS AND CHALLENGES* 441, 449 (Gary Clyde Hufbauer & Jeffrey J. Schott eds., 2005). For a discussion of the importance of the border for those who do not/cannot cross, see Laura Velasco Ortiz & Oscar F. Contreras, *The Border as a Life Experience: Identities, Asymmetry and Border Crossing between Mexico and the United States*, 26 FRONTERA NORTE 37 (2014) (focusing on “non-crossers” who lack resources to cross but whose lives and options are structured nevertheless by the presence of the border, at 44).

117 Mark Weisbrot et al., *Did NAFTA Help Mexico? An Update After 23 Years*, 10 MEXICAN L. REV. 159, 175-76 (2018). This impact on small farms was facilitated by the U.S demand that NAFTA be accompanied

from Mexico to the United States that lasted at least fifteen years.¹¹⁸ While Mexican migration to the U.S. has dropped sharply since 2010,¹¹⁹ few point to free trade as the reason.¹²⁰ Instead, the causes include increased U.S. border enforcement, falling Mexican fertility, and increased educational and economic opportunity in Mexico.¹²¹

Despite the fact that the trade-as-substitute for migration theory does not predict real-world behavior, it continues to be used as the justification for policies deploying trade and zonal development to deter migration.¹²² One example is in the Tangiers-Tetouan Corridor in Morocco. Tangiers-Tetouan is where Africa is closest to mainland Europe, and has become a major point of departure for would-be migrants making the voyage to the EU by sea. It is home to a large export processing zone, the primary product of which is garments,¹²³ and a large part of whose workforce is both internal and transnational migrants.¹²⁴ In Tangiers-Tetouan, export processing was expanded on the assertion that it would serve as a form of

by reforms in Mexican property law that made it easier for smallholders to be bought out, and the U.S. government's insistence as a part of NAFTA that Mexico stop subsidizing its own corn farmers while allowing its domestic market to be flooded by heavily-subsidized U.S. corn. For an estimation of the losses to Mexican corn farmers from these policies at \$6.6 billion in the years between 1997-2005 alone, see Timothy Wise, *Agricultural Dumping Under NAFTA: Estimating the Costs of U.S. Agricultural Policies to Mexican Producers* 3 (Tufts Global Dev. & Env't Inst., Working Paper, Dec. 2009), <https://ageconsearch.umn.edu/record/179078/>.

- 118 Chantal Thomas, *Globalization and the Border: Trade, Labor, Migration, and Agricultural Production in Mexico*, 41 *McGEORGE L. REV.* 867 (2010); Chantal Thomas, *Migration and International Economic Uncertainty*, in *WORLD TRADE AND INVESTMENT LAW REIMAGINED*, *supra* note 81, at 241, 185; Weisbrot et al., *Did NAFTA Help Mexico?* 176-78 (Ctr. Econ. & Pol'y Rsch. Report, 2017), <https://cepr.net/report/did-nafta-help-mexico-an-update-after-23-years/>; Amaranta Melchor Del Río & Susanne Thorwarth, *supra* note 115; Jeff Faux, *How NAFTA Failed Mexico: Immigration Is Not a Development Policy*, *AM. PROSPECT*, July-Aug. 2003, at 35, http://www.prospect.org/cs/articles?article=how_nafta_failed_mexico; Louis Uchitelle, *Nafta Should Have Stopped Illegal Immigration, Right?*, *N.Y. TIMES* (Feb. 18, 2007), <https://www.nytimes.com/2007/02/18/weekinreview/18uchitelle.html>.
- 119 Emma Israel & Jeanne Batalova, *Mexican Immigrants in the United States*, *MIGRATION POLICY INST.* (Nov. 5, 2020), <https://www.migrationpolicy.org/article/mexican-immigrants-united-states-2019>.
- 120 *But see* Edo Mahendra, *Trade Liberalisation and Migration Hump: NAFTA as a Quasi-Natural Experiment* (Int'l Migration Inst. Network, Working Paper No. 98, 2014), <https://www.migrationinstitute.org/publications/wp-98-14>.
- 121 Damien Cave, *Better Lives for Mexicans Cuts Allure of Going North*, *N.Y. TIMES* (July 6, 2011), <https://archive.nytimes.com/www.nytimes.com/interactive/2011/07/06/world/americas/immigration.html>; Weisbrot, *supra* note 117, at 177-78.
- 122 At times, host governments have also made this argument. E.g., in the paradigmatic case in Thailand, the government has presented the employment of Burmese migrants in the zone in Mae Sot as part of a strategy to keep them from traveling further into the country. Arnold & Pickles, *supra* note 48, at 1605-06 ("Mae Sot-Mywaddy is promoted as a 'border economic zone', and also as an 'economic dam' which will prevent the flow of Burmese migrants into central Thailand."); Jaisat, *supra* note 52.
- 123 Kathryn Kopinak et al., *Wages, Integration, Migration Motivation: Cases of Export Industry Employees in Tijuana and Tangiers-Tetouan*, 8 *COMPAR. MIGRATION STUD.* 1, 2 (2020).
- 124 Antonio Trinidad Requena et al., *Working Conditions in the Export Industry of Northern Morocco: Legal Framework and Situation on the Ground*, 157 *INT'L LAB. REV.* 307, 313 (2018); Jenna Hennebry et al., *Moving to Stay or Staying to Move? Borderlanders & Internal Migrants Negotiating Work and Mobility in Export Processing Areas of Tijuana and Tangier-Tetouan*, in *LOCALIZED GLOBAL ECONOMIES ON THE NORTHERN BORDERLANDS OF MEXICO AND MOROCCO* 181, 195 (A. Trinidad Requena et al. eds., 2019); Jenna Hennebry et al., *From 'Khadema' to 'Zemegria': Morocco as a 'Migration Hub' for the EU, in TERRITORIALITY AND MIGRATION IN THE E.U. NEIGHBOURHOOD*, *supra* note 24, at 65, 66 (hereinafter 'Khadema' to 'Zemegria').

migration control.¹²⁵ In 2020, the Moroccan government announced the opening of a new export processing zone on the border with Ceuta, an autonomous port city at the northeastern tip of Morocco that is administered by Spain. Ceuta has become a crossing for migrants seeking to enter Spain over land. The express goal of this zone is to reduce immigration, by offering employment not to migrants but to their smugglers.¹²⁶ A particularly stark instance of zone-as-fence policies is in Honduras, where a group of private actors¹²⁷ are seeking funding for a new Zone for Employment and Economic Development (or ZEDE, for the initials in Spanish), under a Honduran legal framework for charter cities,¹²⁸ to attract Hondurans who would otherwise migrate out of the country.¹²⁹ The first two ZEDes were launched in 2020, implementing many aspects of the proposal, although so far without an explicit focus on attracting would-be migrants as workers.¹³⁰

B. Kinder Fences: Zone as “Gift”

A variation on the zone-as-fence claim has emerged recently as part of the response to refugee crises, where policymakers have created initiatives to offer displaced people employment in garment export factories in Global South host countries. In the refugee context, in recognition of the expectation that interventions will be cast in humanitarian terms, the proposal is framed as a form of aid, or a “gift” to help the suffering refugees and their strained host countries, rather than being

125 Jenna Henneby et al., *Khadema’ to ‘Zemegria’, supra* note 124, at 66.

126 *Morocco Will Build a Free Trade Zone on The Border with Ceuta: The Priority of This Initiative is to End Smuggling Between Moroccan Region and Spanish Ceuta*, ATALAYAR (June 3, 2020), <https://atalayar.com/en/content/morocco-will-build-free-trade-zone-border-ceuta>.

127 The idea for ZEDes originated with NYU economist Paul Romer, although he has since pulled out of the project. Nina Ebner & Jamie Peck, *Fantasy Island: Paul Romer and the Multiplication of Hong Kong*, 46 INT’L J. URB. & REG’L RSCH. 26 (2022). For the argument that Honduran ZEDes represent an effort by U.S. conservatives and libertarians to “run a dangerous economic experiment in Honduras,” see Danielle Marie Mackey, *I’ve Seen All Sorts of Horrific Things in My Time. But None as Detrimental to the Country as This*, THE NEW REPUBLIC (Dec. 14, 2014), <https://newrepublic.com/article/120559/ive-seen-sorts-horrific-things-time-none-detrimental-country-this>; *Honduras Experiments with Charter Cities*, THE ECONOMIST (Aug. 12, 2017), <https://www.economist.com/the-americas/2017/08/12/honduras-experiments-with-charter-cities> (noting the involvement in ZEDes of “a motley group of foreign libertarians, who like the idea of lightly regulated mini-Utopias for enterprise”).

128 The ZEDE legal framework was passed by the Honduran legislature in 2012-2013 and approved by its Supreme Court in 2014. ZEDE Constitutional Amendment, Decreto No 236-2012; ZEDE Organic Law, Decreto No. 120-2013; see also Michael Castle-Miller & L. Grant Shubin, *Fostering Justice and Stability: Rights Protection and National Sovereignty in the Honduran Zones for Employment and Economic Development*, 20 ADMIN. CONST. L. REV. 49, 61-2 (2020).

129 THE ECONOMIST, *supra* note 127 (“Rather than fleeing to the United States, Hondurans threatened by the country’s ubiquitous gangs could find security and livelihoods in ZEDes.”); Reihan Salam, *The Solution to the Caravan Crisis Is in Honduras*, THE ATLANTIC (Oct. 24, 2018), <https://www.theatlantic.com/ideas/archive/2018/10/solution-caravan-crisis-honduras/573832/>; Erick Brimen, *Prosperity Hubs: A Solution to the Migration Crisis* (Jan. 17, 2019), <https://www.erickbrimen.com/post/prosperity-hubs-a-solution-to-the-migration-crisis> (“The only real way to rapidly reduce migration is by creating hubs of prosperity in Central America via zone-based reform.”).

130 Beth Gaglia, *As Private Cities Advance in Honduras, Hondurans Renew Their Opposition*, CTR. ECON. & POL’Y RSCH. (Dec. 3, 2020), <https://cepr.net/as-private-cities-advance-in-honduras-hondurans-renew-their-opposition/>.

described bluntly as an immigration control intervention. But the central argument is the same: zones should be deployed to keep refugees from moving on to wealthier nations in the Global North.

Here Jordan is again an example. In 2015, two Oxford professors, Paul Collier and Alexander Betts, proposed that the EU and World Bank fund a program to employ 150,000 Syrian refugees alongside the South Asian migrants already working in the Jordanian garment export zones described above. Collier and Betts described this as a win-win-win intervention that would attract investment and aid to Jordan, provide jobs for the refugees, and reduce the numbers of Syrians leaving Jordan in search of economic opportunities and asylum in Europe.¹³¹ The Collier and Betts proposal gained immediate traction as the EU grappled with its response to the arrival of hundreds of thousands of Syrians and other refugees. The EU-Jordan Compact, with Syrians as garment export workers as its centerpiece, was signed in early 2016 by the EU, Jordan, and the World Bank, among other institutions.¹³² The United Nations High Commissioner for Refugees and virtually every refugee relief organization in the world joined the Government of Jordan and the other signatories in a multibillion dollar effort to implement the Compact. Five years later, the enthusiasm has run its course. Only 500 Syrians work in Jordanian export zones under this program,¹³³ a fraction of the original predictions. Ultimately, manufacturers rejected Syrian refugees as a workforce because they were less subservient and more expensive than temporary migrants. Syrians rejected garment work in the zone because it demanded too much time and did not pay enough to allow them to support their families while living in Jordan.¹³⁴

The enthusiasm for the EU-Jordan Compact spurred another agreement signed the same year: the Ethiopia Jobs Compact. The Ethiopia compact proposed to employ 30,000 Somali, Sudanese and South Sudanese refugees in Ethiopia's growing garment export manufacturing zones. Although the UK, the World Bank, and the EU Investment Fund committed \$500 million to implementing this agreement, and Ethiopia has since taken steps in the direction of permitting refugees to work legally, the plan to place them in export zones appears to have been abandoned in light of the Jordanian experience and of indications that refugees in Ethiopia perceived garment export work in zones as paying too little to support a minimum standard

131 Alexander Betts & Paul Collier, *Help Refugees Help Themselves*, FOREIGN AFFS. (Nov./Dec. 2015), <https://www.foreignaffairs.com/articles/levant/2015-10-20/help-refugees-help-themselves>.

132 ANNEX to the Joint Proposal for a COUNCIL DECISION on the Union position within the Association Council set up by the Euro Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, with regard to the adoption of EU-Jordan Partnership Priorities and annexed Compact (Sep. 19, 2016), JOIN (2016) 41 final ANNEX 1, <https://data.consilium.europa.eu/doc/document/ST-12384-2016-ADD-1-COR-1/en/pdf>.

133 Gordon, *Refugees and Decent Work*, *supra* note 29, at 3.

134 *Id.* at 14-7; Katharina Lenner & Lewis Turner, *Making Refugees Work? The Politics of Integrating Syrian Refugees into the Labour Market in Jordan*, 28 MIDDLE E. CRITIQUE 65 (2019).

of living.¹³⁵ The EU-Jordan Compact is thus the only real-world attempt to date to merge a refugee camp and a free trade zone.¹³⁶

The failure of these zone-as-gift proposals notwithstanding, their proponents continue to attempt to set them up. Advocates for “Refugee Cities” (sites where refugees would live and work in export zones) include a network of consultants for whom creating zones that employ refugees represents one arm of a broader project to construct deregulated cities to attract corporations and wealthy individuals seeking tax havens, whether on land, at sea, or on the moon.¹³⁷ For the past four years, for

135 Gordon, *Refugees and Decent Work*, *supra* note 29, at 24-8; *International Development Association Program Appraisal Document for the Ethiopia Economic Opportunities Program* 84-6, WORLD BANK GRP. [WBG], Report No. 126766-ET (June 4, 2018), <https://documents1.worldbank.org/curated/en/226021530243071432/pdf/NEW-ETHIOPIA-PAD-06072018.pdf>.

136 Zones have been packaged as humanitarian “gifts” in other contexts in the recent past. EASTERLING, *supra* note 6, at 219. Perhaps most notably, the same Paul Collier who later would propose employing Syrians in Jordanian garment factories recommended industrial parks in 2008 as a development strategy for Haiti, based on its rock-bottom wages (the lowest in the western hemisphere) and its favorable access to the United States market both in geographic and in tariff reduction terms. See Paul Collier, *Haiti: From Natural Catastrophe to Economic Security—A Report for the Secretary-General of the United Nations* (Dec. 27, 2008), <https://studylib.net/doc/7257636/haiti--from-natural-catastrophe-to-economic-security>. This recommendation was subsequently endorsed by the United Nations, but a lack of funding prevented it from moving forward. Yasmine Shamsie, *Reflections on Haitian Democracy: Zooming in on a Megaproject in the Hinterland*, 54 *LATIN AM. RSCH. REV.* 35, 39 (2019). Following the devastating earthquake in Haiti in 2010, Collier’s proposal became the template for the single largest post-earthquake “reconstruction” project in the country: the building of Caracol Industrial Park. “Reconstruction” is in quotes because the Caracol area lies an eight hour drive from the quake’s epicenter, the national capital of Port au Prince. It was chosen for convenience to industry rather than its relevance to earthquake relief.

The park was controversial from the beginning because it sidestepped Haitian consultation and control and was built on land that was actively farmed by over 300 families, with the port-to-be in a bay slated for environmental conservation. The free trade zone’s primary tenant is a South Korean garment manufacturer that received free access to the property, purpose-built factories, and millions in loans from foreign donors as incentives to relocate in Haiti despite documented abuses of workers at its plant in Guatemala. Caracol Industrial Park has failed to create even a quarter of the promise of 60,000 new positions made at its inauguration, see Clinton Foundation, *President Clinton Announces Opening of Caracol Northern Industrial Park in Haiti* (Oct. 25, 2012), <https://stories.clintonfoundation.org/president-clinton-announces-opening-of-caracol-northern-industrial-park-in-haiti-4176576a7838>, much less the hundreds of thousands of jobs that Collier has predicted. As of 2019, the park had 13,000 employees. Isabel Macdonald, *10 Years Ago, We Pledged To Help Haiti Rebuild. Then What Happened?*, *IN THESE TIMES* (Jan. 12, 2020), https://inthesetimes.com/features/haiti_earthquake_recovery_us_aid_anniversary_military_waste.html.

For critiques of Caracol, see Deborah Sontag, *Earthquake Relief Where Haiti Wasn’t Broken*, *NEW YORK TIMES* (July 5, 2012), <https://www.nytimes.com/2012/07/06/world/americas/earthquake-relief-where-haiti-wasnt-broken.html>; Jake Johnson, *Outsourcing Haiti: How Disaster Relief became a Disaster of its Own*, *BOSTON REV.* (Jan. 16, 2014), <http://www.bostonreview.net/world/jake-johnston-haiti-earthquake-aid-caracol>; Jacob Kushner, *Haiti and the Failed Promise of U.S. Aid*, *THE GUARDIAN* (Oct. 11, 2019), <https://www.theguardian.com/world/2019/oct/11/haiti-and-the-failed-promise-of-us-aid>.

137 For the libertarian argument for “free cities,” see TOM BELL, *YOUR NEXT GOVERNMENT? FROM THE NATION STATE TO STATELESS NATIONS* (2018); TITUS GEBEL, *FREE PRIVATE CITIES: MAKING GOVERNMENTS COMPETE FOR YOU* (2018).

The refugee/migrant city proponents are loosely gathered around a proposal for the systematic creation of special economic zones employing refugees, either by turning a refugee camp into an SEZ or vice versa. *SUSTAINABLE DEVELOPMENT ZONES: TOOLS FOR ECONOMIC DEVELOPMENT FOR COMMUNITIES IN MASS DISPLACEMENT SCENARIOS* (2018), <http://www.joachim-ruecker.de/images/PDF/SDZ%20Concept%20Proposal%20-%20FINAL%20-%20071118.pdf>. Supporters include Michael Castle-Miller

example, representatives of this network have been seeking to negotiate agreements with mayors in Libya to create special economic zones at the municipal level to employ refugees and migrants transiting through that country.¹³⁸ To date, no such agreements have been concluded.¹³⁹ The lack of successful examples of “Refugee Cities” might be taken to indicate that the proposal merits little attention. Yet despite the absence of proof of concept, proponents of so-called refugee cities have convinced United Nations agencies, governments, and established philanthropists to fund or seriously consider their proposals. For one example, the Inter-American Development Bank in 2017 considered lending \$20 million to support the development of ZEDES in Honduras.¹⁴⁰ For another, UN-Habitat and the Robert Bosch Foundation contracted “Refugee City” proponents to plan a site on this model for internally-displaced people in Ethiopia.¹⁴¹

Given the structure of migrant employment in zones, it is troubling that such arrangements are being presented as a humanitarian solution to the problems of migrants and refugees. The zone as “gift” idea typifies what anthropologist Georgina Ramsay calls “humanitarian exploits,” or “efforts to incorporate refugees into local economies [that] not only fail to resolve their displacement but serve to exacerbate it, . . . transforming refugees from recipients of humanitarian aid to highly exploitable workers.”¹⁴² In light of the harsh realities that hold sway for workers in zones at the intersection of trade and migration, how are such arrangements

of Refugee Cities/Politas Consulting, Joachim Rücker, and the consulting firm Switxboard, as well as the overlapping SDZ Alliance (Joachim Rücker, Kilian Kleinschmidt, Michael Castle-Miller). Other key proponents include Mark Lutter of the Charter Cities Institute, DC, and Titus Gebel, former German mining executive, founder of Free Private Cities Foundation, based in Zurich.

Michael Castle-Miller, a leading proponent of employing refugees in zones, also works to advance private cities on the moon. From his website: “Michael is the founder and lead of the Lunar Development Cooperative (LDC) Working Group and developed the LDC concept. The LDC will be a public-private partnership that provides infrastructure and critical public services to enable a thriving human settlement on the Moon. The LDC is designed to generate a profit by capturing rising land values on the Moon. He formed this concept and group in collaboration with space experts from the National Space Society and other space organizations.” MICHAEL CASTLE-MILLER, PROJECTS, <http://www.michaelcastlemiller.com/projects> (last visited May 20, 2022).

138 From the Sustainable Development Zones website: “In collaboration with Libyan mayors and European stakeholders like the EU Committee of the Regions’ Nicosia Initiative, we have developed a new approach for rebuilding war-torn Libya by engaging with local governments in order to create sustainable development zones. This bottom-up approach would complement existing international and national efforts for regaining peace and stability. The SDZs would serve as ‘islands of stability.’ They would develop strong legal and governance frameworks that help grow their local economies, provide security and inclusivity for local communities, and improve the livelihoods of Libya’s growing migrant and refugee population.” <https://sdzalliance.org/projects>.

139 Author’s communication with Kilian Kleinschmidt, SDZ Alliance, Jan. 21, 2022 (on file with author).

140 THE ECONOMIST, *supra* note 123.

141 Joachim Rücker et al., *Creating Sustainable Development Zones in Ethiopia* (Proposal to UN-Habitat, 2019) (on file with author), summarized on the SDZ Alliance website at <https://sdzalliance.org/projects>. UNHabitat later withdrew from the project because of concerns that it was too sensitive. Author’s communication with Kilian Kleinschmidt, SDZ Alliance, Jan. 21, 2022 (on file with author).

142 Georgina Ramsay, *Humanitarian Exploits: Ordinary Displacement and The Political Economy Of The Global Refugee Regime*, 40 CRITIQUE ANTHROPOLOGY 3, 3 (2019).

gaining currency as “humanitarian” interventions? One functional explanation relates to the historical firewall between refugee agencies and advocates and those who work with labor migrants.¹⁴³ To humanitarians, the promise of “formal” work for refugees is very appealing. A career in refugee relief offers little exposure to free-trade zone manufacturing or indeed waged work of any kind, because refugees have generally been denied access to the labor market. For similar reasons, humanitarian actors also have minimal experience with labor standards, trade unions, or issues of enforcement. On the other hand, the dangers of the proposal would be clear to workers’ rights advocates, but few of them are involved in the conversation, much less in implementation.¹⁴⁴

From NAFTA to the Jordan Compact, the zone-as-fence argument has repeatedly been resurrected over the past thirty years. Yet no such initiative appears to have actually slowed emigration. None of the zone proposals in the refugee context have ever been fully realized, despite significant investment in some cases, and if implemented all the evidence indicates that they are likely to be ineffective in achieving their containment goals. As the research cited above demonstrates, the zone-based factories that planners frame as alternatives to migration appear likely to accelerate it instead. In the absence of evidence that work in zones actually functions as a deterrent to migration, the revival of the claim is a testament to the political utility of the fantasy it represents. It allows governments of the Global North to divert attention from the real fences they are building ever-higher at their borders, toward an intervention that sounds to humanitarians like a jobs initiative; to restrictionists like a virtual fence; to financial and development institutions like a market-based solution; and to transnational corporate interests like a new source of cheap labor.

CONCLUSION

Hannah Appel asks with relation to offshore oil production, made attractive to corporations by legal and spatial arrangements that separate it from the country within whose domain it takes place, “For whom is the offshore arrangement disentangled? For whom does it redistribute risk, and where does that redistributed risk go?”¹⁴⁵ Similarly, we might inquire of the cases discussed here, “For whom is a free-trade zone ‘free’? How does it create surplus, and where does that surplus go?”

The examples of migrant employment in zones that I presented in Part I and analyzed in Part II of this Article differ geographically (both by site of production and by migrant country of origin), materially (in terms of what is produced), and legally (in the particulars of the governing trade and migration regimes). What they have in common is the promise of freedom along multiple dimensions, made by the host government to potential investors and manufacturers. “Free” in the

143 Jennifer Gordon, *The International Governance of Refugee Work*, 1 GLOB. PUB. POL’Y & GOVERNANCE 239 (2021).

144 *Id.*

145 Appel, *Offshore Work*, *supra* note 55, at 693.

phrase “free-trade zone” technically refers to the goods produced in such a zone, which are regulated in such a way that they can move more easily across borders. But it also describes the freedom granted to firms operating in the zone, which are liberated from the obligation to comply with key aspects of the tax, environmental, intellectual property, and workplace laws of the country where production is taking place. This set of freedoms—common across almost all zones—generates a surplus that the lead firm can appropriate.

Where the zones in these cases differ from the norm is in the addition of one more benefit on offer: access to migrant workers. When firms in a free-trade zone can staff their factories with migrants, they benefit not from the “natural” reduction in the price of labor that comes from hiring local workers in a low-wage host country, but from access to a workforce from an even lower-wage country, shaped by law to maximize compliance with firm demands. Even setting aside outright wage differentials, these workers are cheaper than their local counterparts because the host government uses immigration law to prevent them from changing jobs and ensure that the threat of deportation will keep them from protesting their treatment. Their unfreedom augments the surplus available for firm appropriation. The presence of migrants in zones allows firms to carry out double labor arbitrage, crossing borders twice at the price of one relocation. Host governments that offer firms within a zone the option of hiring migrant workers thus construct their own comparative advantage.

The winners here are clear. Double labor arbitrage brings additional revenue to firms. A country that constructs a comparative advantage in this way may retain manufacturers in its zones longer than they would stay if required to rely on local labor. From the perspective of workers, however, these practices are considerably less desirable. Local workers are cut out of the picture. Migrants and refugees work long hours for low wages under conditions that restrict their autonomy, with little to no bargaining power, access to legal mechanisms, or political recourse to challenge the problems they face.

This reality should provoke skepticism about claims by international financial and development institutions and governments in the Global North, set out in Part III, that encouraging the employment of migrants and refugees in export zones is a triple win for the workers, the Global North, and host countries. Characterizing the opportunity to labor in a garment factory in a free trade zone as a “win” for workers surely represents a new low bar for victory. It is telling that when offered the choice between employment in the zones and other precarious options, including informal work in agriculture and construction, even refugees in profoundly difficult situations—Syrians in Jordan and Somali and Sudanese refugees in Ethiopia—have indicated a preference for the latter. Meanwhile, as to the immigration control “win” advertised for the Global North, there is little evidence that the assertions being made about the deterrence of emigration through zonal employment correlate to reality on the ground, at least in the short or medium term. That leaves host governments. Whether zone-based strategies are ultimately likely to generate the long-term “win”

of sustainable development in countries in the Global South is beyond the scope of this Article, but the news there does not appear to be good either.¹⁴⁶

With regard to trade policy and theory, the most immediate question these cases raise for advocates, trade regulators, and states is whether it should be permissible in trade for a country to compete on labor costs by importing workers from elsewhere. More broadly, and of concern to scholars as well as other actors, the practices I have highlighted call for further consideration of the continuum of ways in which governments construct a comparative advantage in labor through positive law, including but not limited to the immigration arena. The usual question whether a government permits labor standards violations in export zones is important, of course. But the cases presented here make clear the need for a more nuanced understanding of the full range of mechanisms that host governments use to depress the cost of the labor they offer to attract firms to export zones. This should provoke renewed debate regarding the line between legitimate and illegitimate government actions in the context of competition for trade.

One of the reasons that what is happening in the paradigmatic cases has avoided sanction in the context of trade and gained favor in policy circles may be that it operates at the intersection of two arenas in which exception from law is the norm. We have become accustomed to carve-outs from domestic law for firms in free trade zones. Immigrants, too, are often exempted from the protections offered to citizens under domestic law. Governments routinely treat noncitizens in ways that otherwise would be legally unacceptable, including denial of procedural and substantive constitutional protections guaranteed to citizens as well as exclusion from statutes establishing labor standards. This is heightened in the case of temporary labor migrants, who are structured by law as permanent noncitizens who have no political mechanism through which to voice their concerns. The merging of these two sites of exception serves to normalize the idea that migrants or refugees can be brought in as a labor force in an export zone without the rights normally held by workers or citizens.

This Article has sought to denaturalize what is happening when migrants are employed in the zones, a practice that has largely been passed over by scholars and ignored by regulators. It highlights these cases as an extreme version of a common feature of global commerce: reliance on the subjection of particular classes of workers to underwrite the interests of governments and corporations. The new developments outlined here raise serious normative questions about the kinds of unfreedom we are willing to tolerate in trade, in immigration, and at the intersection of the two.

146 See, e.g., sources cited *supra* note 7.