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# *Big Brother is Bleeping Us — With the Message that Ideology Doesn't Matter*

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## **Abstract**

*The term 'ideology' is used in many senses, but in one sense it refers to the role of words (and other symbolic forms) in legitimating subsisting inequalities of power. While some theorists contend that the concept of ideology has outlived its usefulness, others point to the persistence of ideology in this sense. In doing so, the latter reassert a tradition of ideology critique that has its roots in the work of Karl Marx. In this article, the author considers the relevance of that tradition for contemporary forms of international legal scholarship. She observes that the methods and objectives of ideology critique are reflected in some approaches to the study of international law, but argues that international legal scholars would do well to make the critique of ideology more central to their enquiries than they have done to date. If the thrust of our analyses was to show how that which appears necessary entrenches historical injustices, that which seems universal serves particular interests, and that which purports to be rational functions as an argument against redistributive claims, then international legal scholarship might come to play a more engaged part than hitherto, not just in interpreting the world, but also in changing it.*

## **1 Introduction**

In everyday language, the term 'ideology' is frequently used to mean something approaching *dogma*. If I say that your position is ideological, what I am generally suggesting is that your position is reached through the unreflective application of

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received doctrine. While I approach the world with an open mind, and base my judgements on observation and experience, you are just out to vindicate the preconceptions associated with some system of beliefs. This kind of usage may have polemical value, but it seriously underestimates the extent to which all thought proceeds from preconceptions. But then, of course, this is by no means the only way in which the term ideology has been and is used, whether in everyday language or in academic writing. Let me recall a few of the many other ways. According to one very familiar usage, ideology is associated with *false consciousness*, that is to say, the condition of being unaware of one's own true situation. Inasmuch as this implies a claim that I have privileged access to the truth of your situation while you languish in error and self-delusion, that is another very problematic idea, and one which is largely discredited today. A further, less controversial usage treats ideology as synonymous with *political tradition*. We speak of the ideologies of liberalism, socialism, communism, fascism and so on. And yet another usage identifies ideology with the notion of a *world-view*. Ideology in this sense points to the framework of beliefs, values and concepts about central issues of life that defines the outlook of a particular social group or even an historical epoch.

In what follows I want to consider the relevance of ideology for the analysis of international law. But I do not want to do this by reference to any of the conceptions of ideology I have just mentioned. Rather, my discussion will rely on another conception that also has quite wide currency, in which the focus is on power and its legitimation at the level of ideas. I shall use ideology to refer to the 'ways in which meaning serves to establish and sustain relations of domination',<sup>1</sup> the ways in which words (and other symbolic forms) support inequalities of power.<sup>2</sup> In Part 2 of the article I will elaborate a little on what this conception entails and where it comes from. I will also try to clarify how it differs from other competing conceptions of ideology. In Part 3 I will explain why I bother with the concept of ideology at all. For quite some time, theorists of diverse political stripes have been proclaiming the end of ideology. Even if we don't go along with them, we can't ignore that this is a concept with an exceptionally confused, and at times less than illustrious, history. Surely it has reached the end of its life as a useful analytical category. I will explain why I am persuaded by those who would have us resist this conclusion, and work instead to revitalize and renew the tradition of ideology critique. Part 4 of the article will be concerned with the bearing of these points for the study of international law. While the language of ideology is not generally used by international legal scholars, to what extent do — or might — their analyses take the form of enquiry into the contingent alliances of meaning and power?

<sup>1</sup> J. Thompson, *Ideology and Modern Culture* (1990) 56.

<sup>2</sup> For other accounts of ideology's relevance for the analysis of international law, using other conceptions of ideology, see Scott, 'International Law as Ideology: Theorizing the Relationship between International Law and International Politics', 5 *European Journal of International Law* (1994) 313 and the references there cited. The conception that informs Scott's discussion has some features in common with the one I use here, but differs in its characterization of ideology in terms of particular ideas, rather than (contextualized) instances of meaning. On this aspect, see further below.

## 2 Ideology

The association of ideology with the legitimation of ruling power goes back to Karl Marx. As is well known, Marx gave a central place in his work to the concept of ideology, but he used the term in many different senses and never sought to resolve these into a unified theory of ideology. In one of the senses, however, Marx took ideology to refer to the mystifications through which ideas help to establish and maintain class domination. His most celebrated illustration of this relates to the mystifications of the labour market. With tongue in cheek, he writes that relations of production — which experience might tell us are marked by exploitation and inequality — are

in fact a very Eden of the innate rights of man [where the owner of money and the worker] are constrained only by their own free will. They contract as free agents . . . exchange equivalent for equivalent . . . [and precisely] because each looks only to himself . . . they all . . . work together to their mutual advantage, for the common weal and in the interest of all.<sup>3</sup>

If this scarcely captures the real world of labour relations, the point for Marx is that it is the very contradiction involved here that enables 'men [to] become conscious of [class conflict] and fight it out'.<sup>4</sup> Ideology, in other words, both masks economic conditions and provides a context in which we may begin to transform those conditions.

The conception of ideology I am using takes up this Marxian idea, but extends it beyond class domination, to encompass all kinds of power relations that are systematically asymmetrical, such that people have differential capacities to take decisions, pursue ends and define interests, depending on their position within a social structure. Alongside asymmetries indexed to class, those indexed to ethnicity, gender and so on are thus also included. I will say something in a moment about some of the forms the mystifications involved here may take. But first, let me try to specify this conception a little further by indicating how it differs from other conceptions of ideology, such as those I mentioned at the beginning. Theorists of ideology draw two distinctions which are helpful at this point.<sup>5</sup> One is a distinction between neutral and critical conceptions of ideology. The notion of ideology as political tradition is an example of a neutral conception: to call something ideology in this sense is simply to categorize it, without suggesting that it is either good or bad. By contrast, the conception I am using is a critical conception: to call something ideology in my sense is to imply the need for criticism and change. A second distinction commonly drawn is between conceptions of ideology that have epistemological concerns — concerns about truth and falsity — and conceptions that have political or ethical concerns — concerns about the function of ideas in social life. The notion of ideology as false consciousness is an example of a conception with epistemological concerns: it claims to discern an understanding of reality that does not correspond to the available empirical evidence. By contrast, the conception I am using has political or ethical concerns. According to this conception, the problem with ideology is not that it

<sup>3</sup> K. Marx, *Capital*, vol. 1, chapter VI, reprinted in R. Tucker (ed.), *The Marx–Engels Reader* (1978) 343.

<sup>4</sup> K. Marx, *A Contribution to the Critique of Political Economy* (1970) 21.

<sup>5</sup> See e.g. R. Geuss, *The Idea of a Critical Theory* (1981); and T. Eagleton, *Ideology* (1991), chapter 1.

involves error, but rather that it is instrumental to injustice. To be sure, ideology in this sense may, and — as Marx suggests — generally does, involve mystification, and to this extent illusion comes into play. But the illusion does not entail a simple mistake or failure to grasp empirical reality. It is as much part of that reality as are the relations of domination which the illusion serves to sustain.

Before elaborating on that point, I need now to become a bit more precise about how ideology works, in the sense in which I am using the term. Ideology in this sense is not an inherent property of particular ideas or a characteristic of particular ideational systems, but is rather a function of the way meaning is generated, conveyed, apprehended and appropriated in particular contexts. Theorists of ideology from Marx onwards have highlighted a number of strategies which ideology typically deploys. These cannot tell us how meaning is made, and hence whether ideology is operating, in any given context; to discover that, investigation is required of the specific circumstances in which a signifying practice is produced and received. But the strategies do provide useful starting points for enquiry. I should add that, though they may be separated for analytical purposes, they generally appear in combination, to mutually reinforcing effect. One such strategy, featured in the passage from Marx I quoted earlier, is *universalization*. Through processes of universalization, social and political institutions are made to seem impartial, inclusory and rooted in considerations of mutual interest. In this way, an illusory unity may be conferred on societies, and differential levels of social power may be masked. Another familiar ideological move is *reification*: the process by which human products come to appear as if they were material things and then to dominate those who produced them. Thanks to strategies of reification, men and women may cease to recognize the social world as the outcome of human endeavour and begin to see it as fixed and unchangeable, an object of contemplation rather than a domain of action. Yet another mode in which ideology commonly operates is *naturalization*. Through strategies of naturalization, contested arrangements may be made to appear obvious and self-evident, as if they were natural phenomena belonging to a world ‘out there’. Domination is stabilized by making it impossible even to imagine more symmetrical power relations. *Rationalization* is a further manoeuvre frequently associated with ideology. Through the construction of a chain of reasoning of which the *status quo* is the logical conclusion, it may be made to seem as if there are good reasons why things are as they are. Change may thus come to appear irrational. While other strategies could also be mentioned, I confine myself to one last move. *Narrativization* involves the telling of stories which set particular developments in the context of a history.<sup>6</sup> By means of such stories, practices and institutions may be made to seem worthy of respect and perpetuation, whether because they are venerable or because they represent progress.

Reviewing these strategies confirms that there is generally an element of mystification in the ways in which ideology supports power. But, as I suggested a moment ago, the illusion involved here is different from that implied in the notion of

<sup>6</sup> Narrativization is John Thompson’s term. See Thompson, *supra* note 1, at 61.

false consciousness. I may be perfectly aware that labour relations involve exploitation and inequality, yet still act as if they do not. In doing so, I may see nothing particularly problematic about this state of affairs, and may even relish it. But that would be relatively unusual. Most people do not behave cynically most of the time. More likely, I will be troubled by my bad faith, and will look forward to the day when employment relationships are no longer exploitative and unequal. What I may be unaware of, however, is the impact of acting *as if* labour relations were based on free exchange among equals. I may not fully realise the extent to which my pretence itself helps to sustain asymmetries in the sphere of labour by keeping alive the idea that those asymmetries do not exist, or are unalterable, natural, rational, or on some other basis justified and legitimate. From this perspective, the mystification lies not in unawareness of social reality, but in unawareness of, or at any rate inattention to, the extent to which actions and words, and the ideas expressed through them, serve to shape social reality.<sup>7</sup> To borrow a term used by social theorists, the mystification lies in a failure adequately to consider the *reflexivity* of social life — the way social practices are continually re-examined and reformed in the light of what is said about them. British theorist Terry Eagleton has a good way of putting this point:

Ideology . . . [is] not just a matter of what I think about a situation; it is somehow inscribed in the situation itself. It is no good my reminding myself that I am opposed to racism as I sit down on a park bench marked 'Whites Only'; by the action of sitting on it, I have supported and perpetuated racist ideology. The ideology, so to speak, is in the bench, not in my head.<sup>8</sup>

### 3 The Critique of Ideology

I have said something about what ideology entails, as I use the term. But I have not yet explained properly why I bother with such an awkward concept. What is the point of directing attention to the operations of ideology? Wherein lies the specificity and value of ideology critique? And how is this kind of enquiry to be reconciled with claims that the 'end of ideology' has been reached?

Claims concerning the end of ideology, or at any rate its obsolescence as a meaningful analytical concept, can be divided into two broad categories. Into one category might be put theses such as those advanced in the United States in the 1950s and 1960s by Edward Shils, Daniel Bell and Seymour Lipset.<sup>9</sup> According to these scholars, developments in the first half of the twentieth century had resulted in the 'end of ideology'. By this they meant that there was no longer any room for projects of revolutionary change. On the one hand, experience of Nazism, fascism and Stalinism had demonstrated that programmatic political doctrines only lead to disaster. On the other hand, a consensus had arisen that established political institutions in Western societies offer the soundest basis for social progress. A more recent variation on this theme is Francis Fukuyama's claim that the demise of communist regimes in the late

<sup>7</sup> See Žižek, 'How Did Marx Invent the Symptom?', in S. Žižek (ed.), *Mapping Ideology* (1994) 296, at 314–316.

<sup>8</sup> Eagleton, *supra* note 5, at 40.

<sup>9</sup> See respectively Shils, 'The End of Ideology?', 5 *Encounter* (November 1955) 52; D. Bell, *The End of Ideology* (1960); and S. Lipset, *Political Man* (1964).

1980s was the occasion for the ‘end of history’.<sup>10</sup> Again, the basis for this contention was the idea that liberal political and economic practices and institutions are no longer subject to serious challenge. It is obvious that in these arguments the word ‘ideology’ is used in a very different sense from that in which I am using the word. For Shils, Bell and Lipset, it is more or less coterminous with communism, and perhaps socialism as well. For Fukuyama, ideology has a slightly wider connotation, but one that is still very different from that which I am seeking to invoke. As is no doubt also obvious, from the perspective I am adopting, this ‘end of ideology’ thesis is itself ideology. If ideology is a matter of deploying meaning to sustain existing asymmetries of power, what more effective ideological move could there be than to announce that Western political and economic institutions represent the consensus of nations and the culmination of historical processes? Far from signalling the end of ideology, these theorists confirm its persistence.

The claims I have just been discussing are the work of thinkers on the political right. But there is also another category of claims in which the enduring significance of ideology is questioned by thinkers on the left. In an interview conducted in the mid-1970s, Michel Foucault expressed the view that ideology had lost its appeal as an analytical concept for three interrelated reasons. In the first place, he said, it stands ‘in virtual opposition to something else that is supposed to count as truth’. Secondly, it predicates a notion of human beings as ‘subjects’, confronting a distinct object-domain. And, thirdly, the notion of ideology allocates ideas and symbolic forms to a ‘second position [in relation] to something else which functions as its infrastructure, as its material economic determinant’.<sup>11</sup> Here, too, it is clear that what is said to be obsolete is something very different from what I associate with ideology. Foucault patently has in mind a conception of ideology rooted in orthodox Marxist historical materialism and Engelsian false consciousness. The central flaw of such a conception, in his assessment, is its failure to grasp the political dimensions of knowledge. To Foucault’s mind, those who seek social change should not be worrying about *false* understandings of reality, but rather about what pass for *true* ones, what passes for knowledge of the world. When he insists that ideology has reached a dead end, this is, then, mainly because he assumes that ideology is necessarily concerned with falsity, and cannot afford a basis for enquiry into how power is bound up with what is held to be truth. As I hope is by now clear, the question of how power is bound up with truth is precisely the issue to which ideology, as I use the term, is addressed. It follows that Foucault’s objections need not stand in our path, and indeed (albeit in a very different way to the contentions of Shils and the others) only seem to affirm the pertinence of the enquiry we propose. That said, we should not skate over his arguments quite so quickly. For, if the issue is the interrelation of truth and power, where does this leave my earlier assertion that the conception of ideology I am using has ethical and political concerns, as distinct from epistemological ones? With Foucault’s help, we can

<sup>10</sup> See F. Fukuyama, *The End of History and the Last Man* (1992), along with Fukuyama’s earlier publications on the same theme cited there.

<sup>11</sup> M. Foucault, *Power/Knowledge* (1980) 118 *et seq.*

now see that this is too simple. It is not quite right to say that this conception of ideology has ethical and political concerns, as distinct from epistemological ones. I should rather say that it treats epistemological concerns as indissociable from ethical-political ones; to speak with Foucault, it considers truth as in part an effect of power, and power as in part an effect of truth.

Several decades before Foucault, the value of ideology as an analytical concept was also challenged from another angle by thinkers on the left. I will come back to that challenge in a moment. In order to explain it, I must now say something about the point of directing attention to the operations of ideology. If, as I have suggested, the goal is criticism and change, how precisely does the analysis of ideology aim to achieve this? The key concept here is *critique*: the analysis of ideology takes the form of a critique of ideology. What is this? When he was 25, Karl Marx famously wrote of his ambition to undertake a 'ruthless critique of everything existing'. In doing so, he drew a sharp distinction between the type of criticism he planned to undertake (traditionally rendered in English as 'critique') and the more 'dogmatic' style of criticism (traditionally rendered in English as 'criticism' or 'mere' criticism) practised by the communist-utopian writers of his day. For Marx, mere criticism entails the 'designing of the future and the proclamation of ready-made solutions'. It invents blueprints, and tries to change the world to fit them. Critique, on the other hand, seeks to push the world to live up to its own professed standards. 'Bringing out the true significance underlying [actuality]', it aims to help in 'enabling the world to clarify its consciousness, in waking it from its dream about itself'. We who practise critique, he wrote, 'do not attempt dogmatically to prefigure the future, but want to find the new world only through criticism of the old'.<sup>12</sup>

Ideology critique is in this sense a form of 'immanent' critique: it eschews the arrogance of criticism's external standpoint, while also refusing the complicity of ideology's internal self-understanding. Its concern is instead to show how that self-understanding strains at its own limitations, points beyond itself. The first step is to make more transparent the processes by which social inequalities are masked, naturalized, rationalized and otherwise legitimated. This then concentrates attention on the reality, but also the contingency and historicity, of those inequalities, and on the gap between them and the ideals (of freedom, equality, the rule of law, etc.) which are supposed to animate our social and political arrangements. In turn, this helps to unsettle the imaginative hold of the arrangements, and stimulate reflection on the untapped potential within the ideals. Reflection, or more precisely self-reflection, is thus the overall goal of critique: the aim is to engage people in a process of reflecting on their own circumstances. To make us see our own circumstances in a new way is already to change us, already to bring about a kind of emancipation. But ideology critique can also be emancipatory in the further sense that it can motivate us to act on our altered understanding. How so? Because the critique of ideology invites us to consider, on the one hand, the possibility that we make ourselves accomplices to

<sup>12</sup> Letter to Arnold Ruge, September 1843, published in *Deutsch-Französische Jahrbücher* (1844), reprinted in Tucker, *supra* note 3, at 12–15.

oppression (including that of which we are ourselves the victims). On the other hand, it invites us to consider the possibility that we have at our disposal weapons for resisting oppression, if only we would use them as such. For the very same ideas which are implicated in our complicity can also become aids to our resistance. Knowledge here is thus geared to transformative action.

Let me now return to the challenge I mentioned a moment ago. It can be found in writings produced in the 1940s and subsequently by Frankfurt School theorists Theodor Adorno and Max Horkheimer. In earlier decades, Adorno and especially Horkheimer shared Marx's enthusiasm for ideology critique, and worked to refine and develop the method he had used but only to a very limited degree explicated. By the early 1940s, however, events had made them less sure that the critique of ideology could continue to work, at least in the way Marx envisaged. The world's 'dream about itself' had started to look more like a nightmare. What could be served by invoking scrutiny of ideals when the tenets of our cherished civilization had turned out to be so many myths, lending legitimacy to domination on a grander scale than anyone could ever have imagined? Thus, Adorno declared, critique 'is obliged to make a final move ... [I]t must now turn even against itself.'<sup>13</sup> Some commentators have understood this to imply the end of ideology critique, as if Adorno was calling for those who would carry forward this tradition instead to fall on their swords.<sup>14</sup> But another possibility is that he was simply proposing a modification of our conception of what the critique of ideology might entail. Perhaps he was saying that ideology critique cannot be approached as a straightforward matter of bringing out a truth partly concealed in actuality, because there is no such truth: the principles that animate our social and political institutions are not self-interpreting thoughts or pure conceptual essences, but rather are ambiguous affairs, by no means immune from appropriation as tools of tyranny. This is not to say that our ideals of freedom, equality, the rule of law, etc. no longer count; Adorno and Horkheimer fully conceded that 'philosophy knows of no workable abstract rules or goals to replace those at present in force'.<sup>15</sup> It is just to say that these ideals are defined and redefined through social struggle which is, and must remain, permanent. If this understanding is correct, it means that ideology critique can go on, provided it does not purport to give 'guarantees'.<sup>16</sup> For one cannot anticipate the content, or indeed rely on the beneficence, of the unfulfilled potentialities that will emerge from the procedures of ideology critique. All one can do — and this is itself a liberatory move of considerable significance — is to loosen the imaginative grip of actuality and so, expand the prospects for creative engagement with claims. In Adorno's words: 'It lies in the definition of negative dialectics [his term

<sup>13</sup> T. Adorno, *Negative Dialectics* (1973) 406.

<sup>14</sup> This seems to be the principal thrust of Habermas's interpretation, though he does highlight that Adorno's attitude was not without ambivalence. See J. Habermas, *The Philosophical Discourse of Modernity* (1987), especially 118 *et seq.*

<sup>15</sup> M. Horkheimer and T. Adorno, *Dialectic of Enlightenment* (1993) 243.

<sup>16</sup> S. Benhabib, *Critique, Norm and Utopia* (1986) 173.

for this approach to critique] that it will not come to rest in itself, as if it were total. This is its form of hope.<sup>17</sup>

In their very different ways, then, scholars from both right and left can be seen to confirm that analysis of the involvement of systems of meaning with relations of power is as necessary and urgent as ever. Among those who have sought to take this point, and to reassert and renew the study of ideology against efforts to abolish it, are theorists whose work is otherwise as diverse as Terry Eagleton, Slavoj Žižek and Jürgen Habermas.<sup>18</sup> For such theorists, ideology critique retains its value as a form of enquiry that is emancipatory, even if — or rather, because — open-ended. Eagleton, as always, has an exceptionally clear and suggestive way of characterizing what is involved. He explains that the point of departure is an awareness that ideology is never a seamless monolith, but is always ‘internally contradictory, comprising at once beliefs and interests wholly “internal” to it, and other forms of discourse and practice which run counter to its ruling logic’. The critical challenge is to locate points of strain and contradiction, ‘in order to elaborate from them a political logic which might ultimately transform the power-structure as a whole’ — a political logic, in other words, which might lead actuality to ‘surpass itself’.<sup>19</sup> In this sense, Marx’s insight that the mystifications of the capitalist order both mask social conditions, and provide a context in which we may begin to transform those conditions, remains enduringly instructive. As it is the ambition of critique to bring out, ideology ‘reveals and conceals at once’.<sup>20</sup>

#### 4 International Law and the Critique of Ideology

The critique of ideology is most commonly associated with the work of sociologists, cultural commentators and political analysts seeking to show how, in the mass media and in other institutions of public and private life, words, images and other symbolic forms serve to legitimate actuality and check change. But if ideology is about the relationship between meaning and power, then the critique of ideology is no less relevant for all other practices through which meaning is made and power is shaped — of which international law is obviously one. How, then, does, or might, the critique of ideology inform the analysis of international law? In the paragraphs that follow, I would like to propose some starting points for a consideration of this question. In doing so, I wish to draw a distinction between three modes of analysis, three sorts of critical examination to which international law is, or might be, subjected. The study of international law is, of course, pursued in a huge variety of ways, and I should stress immediately that the three categories I shall describe below by no means capture the entire spectrum of these ways, or anything like it. Nor do the three categories identify bodies of scholarship that are altogether discrete; most writing is clearly informed by a

<sup>17</sup> Adorno, *supra* note 13, at 406.

<sup>18</sup> See respectively Eagleton, *supra* note 5; Žižek, ‘Introduction: The Spectre of Ideology’, in S. Žižek (ed.), *Mapping Ideology* (1994) 1; and Habermas, *supra* note 14, especially Lecture V.

<sup>19</sup> Eagleton, *supra* note 5, at 171–172.

<sup>20</sup> *Ibid.*, at 134.

diversity of approaches and cannot be so easily pigeonholed. My purpose here is simply to set up some contrasts which might help to clarify the distinctiveness and contribution of ideology critique as an aid to international legal enquiry.

I shall refer to an initial mode of investigation as 'problem-solving'. I borrow this term from Canadian theorist Robert Cox, who has used it in the context of a discussion of approaches to the study of international politics.<sup>21</sup> What characterizes a problem-solving approach for him is that its concern is to remove the tensions and confusions that disrupt, or threaten to disrupt, the operation of political processes. The effort is to identify and deal with specific failings or weaknesses, on the basis that the processes themselves are not in issue. Likewise, in relation to international law, a problem-solving approach is one that seeks to isolate problems and propose remedial action, on the footing of a framework of ideas and practices which is not itself in question. The scholar expounds an international legal rule or glosses an international instrument, with the aim of showing how strains that have arisen can be removed and inconsistencies corrected. If, for example, governments and international institutions have come to insist that lawful political authority depends on the holding of periodic and genuine elections, then the rule according to which international law remains neutral with respect to political systems can no longer stand; customary international law should now be seen to include an entitlement to democratic government.<sup>22</sup> This form of enquiry emerged against the background of nineteenth-century liberalism, and is today the most familiar style of international legal scholarship.

A second mode of international legal enquiry is what I shall label 'scepticism'. From the perspective of sceptical scholarship, problem-solving is desperately naive. It fails to grasp that strains and inconsistencies are built into the very structures of international law. One reason for this failure is that problem-solving omits to reckon with the indeterminacy of the language in which international law trades, and especially some of it. Meaning is a function of context, and context, in all its infinite variety, tends to manifest a will to power. Calling for recognition of an entitlement to democratic government is not a good idea, because democratic government can be made to mean so many different things, it is at best meaningless, and more likely imperialistic. To make international law a champion for democracy is to play into the hands of ruling elites, and contribute to writing one more chapter in the long story of efforts to remake the world in the image of the West.<sup>23</sup> Sceptical scholarship, then, seeks to puncture the confidence with which problem-solving proceeds, debunk the claims that make coherence appear possible, and expose the intractability of international legal problems, the irremediable weakness that afflicts all international legal norms. Enquiry of this kind came to prominence in the 1980s and 1990s in the context of

<sup>21</sup> Cox, 'Social Forces, States and World Orders: Beyond International Relations Theory', 10 *Millennium* (1981) 126.

<sup>22</sup> See especially Franck, 'The Emerging Right to Democratic Governance', 86 *American Journal of International Law* (1992) 46. This claim and the responses it has elicited are the focus of my discussion in *The Riddle of All Constitutions* (2000).

<sup>23</sup> See e.g. B. Roth, *Governmental Illegitimacy in International Law* (1999).

efforts to bring to the study of international law the methods of deconstruction, discourse analysis and related approaches.

A final mode of international legal analysis corresponds to the critique of ideology. I will say something in a moment about some of the forms this currently takes. But, first, let us consider how this relates to the other two categories I have just mentioned. Using the tools of ideology critique, it is not difficult to demonstrate the function of problem-solving as an ideological strategy. Indeed, this is Cox's aim in delineating the concept of problem-solving theory. In his account, problem-solving 'takes the world as it finds it, with the prevailing social and power relationships and the institutions into which they are organized, as the given framework for action'.<sup>24</sup> It achieves a high degree of rigour in its analyses only by using a narrow frame of reference, and operating on the — counter-factual — assumption that 'all other things will remain equal', that is to say, that social structures are fixed. As Cox observes, this assumption is not just false: it also betrays an 'ideological bias' in favour of those 'comfortable within the given order'.<sup>25</sup> To resolve the problems that affect the functioning of relationships and institutions is to stabilize those relationships and institutions. In treating social structures as though they were fixed, problem-solving approaches help to make them so. Whereas critique is a 'guide to strategic action for bringing about an alternative order', problem-solving is, for Cox, a 'guide to tactical actions which, intended or unintended, sustain the existing order'.<sup>26</sup> The words 'intended or unintended' are important here, for to assert the operation of ideology is not to assume a conspiracy on the part of those involved. It is simply to point to the effect of their acting *as if* actuality reflected ideals. As Eagleton reminds us, actions and words may count for more than intentions and beliefs: racist ideology is in the bench marked 'Whites Only', not (or rather, not necessarily) in the head of the person who chooses to sit down on it. From the standpoint of critique, then, problem-solving is unsatisfactory not because it is naive, but because it helps to obscure and legitimate relations of domination.

What of scepticism? Sceptical scholarship has much in common with the critique of ideology. Both share an alertness to the multivocity of language and the contingency of history, and sceptical scholarship often joins critique as well in a determination to expose the political dimensions of supposedly technical-legal ideas. Where critique stands alone, however, is in its preoccupation not just with what ideology conceals, but also with what it reveals. The concern is to investigate not just the realities of ideology, but the alternative possibilities too that can be shown to dwell in its shadows. To make international law a champion for democracy could be to play into the hands of ruling elites. As currently formulated, proposals for an entitlement to democratic governance are based on a 'weak' conception of democracy, in which the holding of periodic elections and the guarantee of civil rights are treated as the self-evident meaning of democratic governance in this context. It seems likely that an

<sup>24</sup> Cox, *supra* note 21, at 128.

<sup>25</sup> *Ibid.*, at 129.

<sup>26</sup> *Ibid.*, at 130.

entitlement framed in this way would indeed serve to constrain processes of democratic reconstruction even as it promoted them, just as the sceptic warns. On the other hand, this is not the only basis on which international law might be made democracy's champion. If the proposed entitlement were reformulated as a broader principle, resting on a 'stronger' conception of democracy, in which democratic governance is understood in terms of participatory self-government on a footing of equality among citizens, then support might be provided for more far-reaching processes of democratic reconstruction.<sup>27</sup> As this illustrates, the indeterminacy of a term such as democracy is at one level a weakness, but at another a strength. It is precisely because words are ambiguous that we are able, so to speak, to make them mean more than they currently want to mean. By the lights of critique, scepticism takes insufficient account of the uses of indeterminacy. It neglects to consider the ways in which strains and contradictions might be made to form the basis for a logic that could transform established norms, interpretations and procedures; it omits adequately to explore how international law might be shown to point beyond itself. To this extent, scepticism can itself be ideological. Allowing actuality to overwhelm ideals, it can block awareness of valuable resources for progressive change.

In a discussion of the dangers of excessive scepticism in philosophy, Jürgen Habermas criticizes those who simply hold 'the fusion of power and validity scandalous', but offer 'no direction', no orientation, as regards what might follow.<sup>28</sup> Likewise, in legal analysis, sceptical approaches are often criticized for deconstructing the autonomy of law from politics and referring to the need for reconstruction, while providing few clues as to how reconstructive proposals are to be generated and evaluated, and hence few clues as to the basis on which reconstruction is even to be believed possible in the first place.<sup>29</sup> Having laid bare aporias, contradictions and indeed undecidability at the very heart of the rule of law, analysis falters or stops. What sets critique apart is its effort to reach further, and connect analysis to the project of securing redistributive social change. All kinds of immanent critique have the advantage that they offer orientation in this sense, and do so in the most compelling and least arrogant kind of way — by suggesting that we use what we already have; that is to say, that we invoke principles which are supposed already to inform the ideas and institutions we seek to question. Where immanent critique takes the distinctive form of *ideology critique*, the orientation which is offered is quite specific. It is that found in the commitment, so deep-rooted in modern thought, to ending domination in all its manifold forms. In criticizing ideology, we create an occasion for recalling this commitment, and rethinking what has to be done to fulfil it. In the process, we raise afresh the issue of what should count as domination in the circumstances we confront. Where — in which institutions and practices — are

<sup>27</sup> These points are further elaborated in *The Riddle of All Constitutions*, *supra* note 22, at chapters 3–5.

<sup>28</sup> Habermas, *supra* note 14, at 120.

<sup>29</sup> With respect to international law, see e.g. Scobbie, 'Towards the Elimination of International Law: Some Radical Scepticism about Sceptical Radicalism', 61 *British Yearbook of International Law* (1990) 339, criticizing a deconstructive account for its 'detached and fundamentally acritical conclusions' (*ibid.*, at 352).

systematic imbalances of power at work? Whom do those imbalances hurt, and how do they hurt them? When does the impact of remedial action begin to tell? Implicit in the critique of ideology is a belief that the analyst should neither presuppose the answers to these questions, nor purport to deduce them. For the definition of domination is fundamentally a practical matter, which must be left to follow the vicissitudes of life and the concrete claims that emerge from experience of indignity and exclusion. Ideology critique, then, orients analysis to a particular problem — the problem of domination — but it does so on the basis that the dimensions of that problem, and hence the modalities for overcoming it, cannot be specified abstractly or in advance.

I turn finally to the relationship between ideology critique on the one hand and problem-solving and scepticism on the other. For all the differences just highlighted, it is important to emphasize that ideology critique should not be understood as a straightforward alternative to, or a substitute for, enquiry in those other modes. Rather, what it provides is a way of relativizing such approaches and of highlighting and transcending certain limitations which they involve. Max Horkheimer directs attention to this aspect in his pre-war writings on ideology critique.<sup>30</sup> One point that marks out 'critical' approaches to social scientific enquiry from 'traditional' ones is, according to him, that 'traditional' theory (of the kind exemplified in what I have referred to as problem-solving) 'absolutizes' its own conception of knowledge 'as though [this] were grounded in the inner nature of knowledge as such'.<sup>31</sup> In the language of earlier discussion, it *naturalizes* its own procedures and objectives; it makes them seem so obviously appropriate that consideration of the issue is otiose. From the standpoint of critique, this is part of what makes problem-solving ideological. In treating its own forms of enquiry as self-evidently valid, problem-solving removes other forms of enquiry, including more far-reachingly challenging ones, from the realm of the imaginable. 'Critical theory' (of the kind exemplified in ideology critique) differs, in that it does not absolutize its own conception of knowledge. It does not deny the possibility and, more than that, the value of other forms of analysis and, quite the contrary, invests rather heavily in them. Thus, in the context of international legal scholarship, the critique of ideology does not claim to replace problem-solving or scepticism. Nor could it do so, given the degree to which it plainly relies on the methods and logics of both. Its claim is instead to initiate, or at any rate to support, a process of reflection on the adequacy of these ways of studying international law, by showing how they are affected by contingent constraints that put them, at some level, at odds with themselves. Critique, then, offers itself as a corrective to problem-solving and scepticism, not as an alternative to them.

Within the field of international legal enquiry, the critique of ideology is perhaps most clearly instantiated in feminist scholarship. With respect to the concept of equality, for instance, feminist scholars have helped us to see how this concept has been used to sustain asymmetries linked to gender. Where equality is understood to

<sup>30</sup> Horkheimer, 'Traditional and Critical Theory', in *Critical Theory: Selected Essays* (1972) 188.

<sup>31</sup> *Ibid.*, at 194.

mean that the law should simply ignore differences among people, this confers an illusory unity on the divided social body. It universalizes as neutral or general norms and practices which in fact operate in ways that are partial and gender-specific. In so doing, it masks the extent to which the subordination of women is perpetuated by treating men and women as if they were the same. It renders irrelevant — or at any rate, natural, taken-for-granted and ahistorical — the whole range of processes by which women are invited either to conform to a male-centred standard or accept systematic disadvantage. Yet, if the ideal of equality has come to seem something of an illusion, feminist scholars have also exhorted us not to give up on it. For — to use Eagleton's words — this is no seamless monolith, but a concept that contains multiple logics, among them logics with very powerful emancipatory force. Rather than abandoning the concept of equality to those would diminish it, better — these scholars have urged — to see what can be done to refocus and reclaim it. With this in mind, feminists have set about developing new, more promising ways of conceptualizing the relation between equality and identity. Thanks in significant part to their efforts, the notion that equality means ignoring differences is today widely regarded as an unsatisfactory basis for the interpretation of non-discrimination norms. In its place (or, at any rate, alongside it), an understanding has taken root in which non-discrimination norms are held to imply the right to measures combating the processes that turn differences into grounds of marginalization and disadvantage.

But, of course, the analysis of gender relations is not the only context for the critique of international legal ideology. The question of unrealized possibilities within ideals is also raised in writings that are primarily concerned with other dimensions of social life, or with political and economic arrangements more generally.<sup>32</sup> As is no doubt clear by now, I believe, however, that international legal scholars would do well to make this mode of investigation more central to their enquiries than they have done so far. In a widely quoted passage, Robert Cox writes that academic enquiry is always 'for someone and for some purpose'.<sup>33</sup> Cox expresses here with striking simplicity and concision the important point that knowledge is always pursued from a perspective, with certain interests in view. Scholars can — and surely should — try to enlarge their perspective, or gain a certain distance from it, by reflecting upon it and considering other perspectives. But the pertinence of perspectives can never be wholly eliminated; the equation of objectivity with disinterestedness cannot stand. The critique of ideology takes this point quite self-consciously into account, and proposes — to speak with Cox again — that we try to look at the world, not from the perspective of those comfortable within the given order (who realise that change will inevitably occur, but would prefer to minimize the extent to which it does), but rather from the perspective of those who 'cannot be content with things as they are'.<sup>34</sup> If our analyses of

<sup>32</sup> An example is Kennedy, 'Turning to Market Democracy: A Tale of Two Architectures', 32 *Harvard International Law Journal* (1991) 373.

<sup>33</sup> Cox, *supra* note 21, at 128 (emphasis omitted).

<sup>34</sup> Cox, 'Democracy in Hard Times: Economic Globalization and the Limits to Liberal Democracy', in A. McGrew (ed.), *The Transformation of Democracy?* (1997) 49, at 70.

international law indeed proceeded in this way, if their thrust was to show how that which appears necessary entrenches historical injustices, that which seems universal serves particular interests, and that which purports to be rational functions as an argument against redistributive claims, then international legal scholarship might come to play a more engaged role than to date, not just in interpreting the world in various ways, but also in changing it. The study of international law might become — to a greater extent than hitherto — a form of emancipatory knowledge, the sort of 'practical-critical activity' which Karl Marx both named and carried out, and for which he remains a potent source of inspiration.<sup>35</sup>

The premise of this form of knowledge is an awareness that ideology cannot be overcome, once and for all. The work of critique is never done, for the blots on global political sociology are not stains to be lifted, as if by some super-effective washing powder, but phenomena to be exposed, analyzed, reflected upon, and addressed, against the background of an ongoing history of struggle against oppression. Critique thus does not promise the elimination or transcendence of ideology in general. Its goal is, rather, the transcendence of specific instances of ideology, on the understanding that there can be no guarantee that the result will be emancipatory, since ideology can always reappear in different guises — including (indeed, especially) the guise of critique. In the famous formulation of Adorno and Horkheimer, 'enlightenment reverts to mythology';<sup>36</sup> the process of dissolving myths can itself provide the basis for their reconstitution in new form. To disregard this and assert the arrival of a fully enlightened, post-ideological age is (as suggested earlier) itself myth, itself ideology, itself an attempt to fix, monopolize, occlude, or in some other way destroy ideals. If enquiry into ideology seems *passé*, or at any rate of limited contemporary relevance to the study of international law, perhaps, then, what is happening is as proposed a couple of years ago in a British newspaper: 'Big Brother is bleeping us — with the message that ideology doesn't matter'.<sup>37</sup>

<sup>35</sup> See 'On Feuerbach', thesis 1 (and also thesis 11), reprinted in K. Marx, *Early Political Writings* (J. O'Malley ed., 1994) 116.

<sup>36</sup> Horkheimer and Adorno, *supra* note 15, at xvi.

<sup>37</sup> *Guardian*, 4 July 1998, Saturday Review, 8 (title of a review by Stefan Collini of P. Davison (ed.), *The Complete Works of George Orwell*).